

# The DA Wants to Execute Mumia Abu-Jamal Without Having a New Penalty-Phase Trial!

Mumia is appealing to the US Supreme Court regarding the Third Circuit Court's March 27 denial of a new guilt-phase trial.

The DA is appealing the Third Circuit Court's affirmation of US District Court Judge William Yohn's 2001 decision, which 'overturned' the death penalty and stated that if the DA still wants to reinstate it they must hold a new penalty-phase jury trial.

## New Guilt-Phase Trial Denied!

Ruling against three different claims, the Third Circuit Court refused to grant either a new guilt-phase trial or a preliminary hearing that could have led to a new guilt-phase trial.

However, on the issue of racist jury selection, also known as the *Batson* claim, the three judge panel of Thomas Ambro, Anthony Scirica, and Robert Cowen split 2-1, with Ambro dissenting.

The 1986 *Batson v. Kentucky* ruling established the right to a new trial if jurors were excluded on the basis of race. At the 1982 trial Prosecutor McGill used 10 of his 15 peremptory strikes to remove otherwise acceptable black jurors, yet the court ruled that there was not even the appearance of discrimination.

## Judge Thomas Ambro's Dissent

In his dissenting opinion, Ambro wrote that the denial of a preliminary *Batson* hearing "goes against the grain of our prior actions... I see no reason why we should not afford Abu-Jamal the courtesy of our precedents."

Recently granted a 60-day extension by the US Supreme Court, Mumia will be filing his appeal by *the deadline of Dec. 19.*

**(Read more about Ambro's dissent at EmajOnline.com)**



Judge Thomas Ambro

Chief Justice Anthony Scirica

Judge Robert Cowen

## Mumia can still be executed!

On March 27, the three-judge panel unanimously affirmed Federal District Court Judge William Yohn's 2001 decision overturning the death sentence. Citing the 1988 *Mills v. Maryland* precedent, Yohn had ruled that sentencing forms used by jurors and Judge Sabo's instructions to the jury were potentially confusing, and jurors could have mistakenly believed that they had to unanimously agree on any mitigating circumstances in order to consider them as weighing against a death sentence.

According to this ruling, if the DA wants to reinstate the death sentence, the DA must call for a new penalty-phase jury trial where new evidence of Mumia's innocence can be presented. But, at this penalty trial, the jury would only be able to choose between a sentence of life in prison without parole or the death penalty.

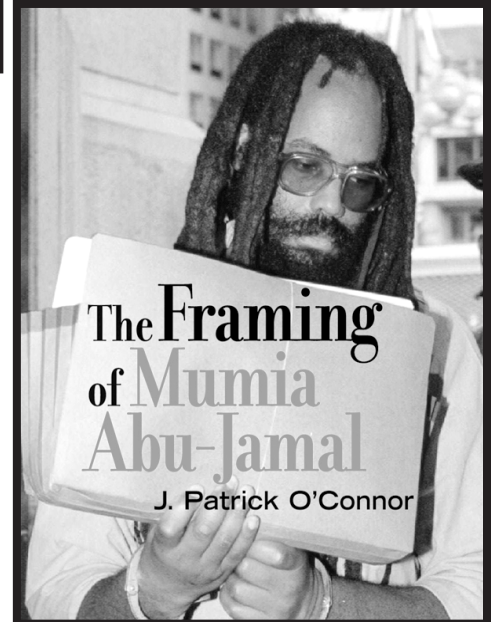
However, the DA has just announced that it will be appealing this ruling to the US Supreme Court, so that Mumia could instead be executed without a new penalty-phase trial. The DA will file their appeal by *the deadline of Nov. 19.*

Pam Africa, of *The International Concerned Family and Friends of Mumia Abu-Jamal* says: "these people are pushing for Mumia's death, despite his innocence. We need to organize like we never have before, and we urgently need donations and help preparing for Dec. 6."

# December 6, 2008

## International Day of Action

Can't come to Philadelphia on Dec. 6? Please help by organizing in your local community, copying & spreading this flyer, and contacting the media about the urgent need for fairness, balance, and accuracy. See: [FreeMumia.com](http://FreeMumia.com) or [Abu-Jamal-News.com](http://Abu-Jamal-News.com)



## Can the Big Media Keep Ignoring The Framing of Mumia Abu-Jamal?

"Patrick O'Connor's new book, *The Framing of Mumia Abu-Jamal* is based on a meticulous review of 12,000 pages of court transcripts, legal briefs, police records and an exhaustive examination of the constitutional violations perpetrated by America's criminal 'justice' system. His evidence makes a powerful case that Mumia Abu-Jamal should be granted a new trial, and having been cruelly kept on death row for 26 years, he should be immediately freed." -- author, Howard Zinn

## The Sundance Channel Acquires New British Documentary Film about Mumia

With a Dec. 8 broadcast premiere, 'In Prison My Whole Life' features Billy Cook, the Polakoff photos, and more!

This new film has been officially endorsed by *Amnesty International*, who, in 2000 published a major report calling for a new trial.

*Amnesty UK* Director Kate Allen said: "It's shocking that the US justice system has repeatedly failed to address the appalling violation of Mumia Abu-Jamal's fundamental fair trial rights.... We hope that the film's viewers will back our call for a fair retrial for Mumia Abu-Jamal - and also support our work opposing the death penalty in the US and around the world."

*In Prison* character and filmmaker, William Francome was born on the night of Mumia's 1981 arrest. Responding to the *Sundance* acquisition, he said: "*Mumia's case and the issues surrounding it are still highly important and need to be analyzed... It is so important that a trusted high quality broadcaster like Sundance has taken up the film, putting it at the fingertips of millions of Americans.*"

## Billy Cook's First Video Interview

Mumia's brother Billy Cook was at the scene on Dec. 9, 1981, after Officer Faulkner pulled Cook's VW car over. Cook denies the accusa-

tion that he struck Faulkner in the face, from which he allegedly instigated the documented beating by Faulkner. Cook shows *In Prison's* interviewers the scars still on his head today.

"They arrested me for assaulting him, but I never laid a hand on him. I was only trying to protect myself," says Cook, who also reports that before he was beaten bloody with the police flashlight, Faulkner "was kind of vulgar and nasty. And if I remember correctly he threw a slur in... 'Nigger' get back in the car."

## The Polakoff Crime Scene Photos

*In Prison* features the first interview with press photographer Pedro Polakoff, along with German author, Dr. Michael Schiffmann (University of Heidelberg), who discovered Polakoff's photos (never seen by the 1982 jury) and featured them in his new German book *Race Against Death*, published in Fall, 2006.

William Francome argues that the photos "were purposefully ignored by the prosecution and the DA's Office", because the DA knew that the photographs "could have done their case some damage in court."

## View 4 Photos at Abu-Jamal-News.com

**#1 ( Mishandling the Guns):** Officer James Forbes holds both Abu-Jamal's and Faulkner's guns in his bare hand and touches the metal parts. This contradicts his later court testimony that he had preserved the ballistics evidence and not touched the metal parts.

**#2-3 (The Moving Hat):** Faulkner's hat is moved from the top of Billy Cook's VW, and placed on the sidewalk, where it would later appear in the official police crime scene photo.

**#4 (The Missing Taxi):** Prosecution witness Robert Chobert testified that he was parked directly behind Faulkner's car, but the space behind Faulkner's car is clearly empty in the photo.

**The Missing Divots:** On the sidewalk, where Faulkner was found, there are no large bullet divots, or destroyed chunks of cement, which should be visible in the pavement if the prosecution scenario was accurate, according to which Abu-Jamal shot down at Faulkner, and allegedly missed several times. Michael Schiffmann writes: "It is thus no question any more whether the scenario presented by the prosecution at Abu-Jamal's trial is true. It is clearly not, because it is physically and ballistically impossible."

This Sept./Oct., 2008 flyer is written by *Journalists for Mumia Abu-Jamal*, an independent media-activist and news organization. For the latest updates, please visit our website: [Abu-Jamal-News.com](http://Abu-Jamal-News.com)

# US Supreme Court Rules Against Mumia Abu-Jamal's PCRA Appeal!

On Monday, October 6, the US Supreme Court rejected Mumia's *Post Conviction Relief Act* (PCRA) appeal, which was asking the courts to hear newly discovered testimony from Kenneth Pate and Yvette Williams. The appeal had been filed in July, after it was rejected by the PA Supreme Court in Feb, 2008, and in 2005 by Philadelphia Judge Pamela Dembe.

**\*\*This appeal is separate from the appeal of the recent 3rd Circuit Court decision (see the other side of the flyer)\*\***

## Kenneth Pate's Affidavit and the Fraudulent Hospital Confession

Kenneth Pate is the step-brother of hospital security guard Priscilla Durham, who testified at the 1982 trial to hearing Abu-Jamal confess at the hospital, to shooting Officer Daniel Faulkner. Pate now states in an *April 18, 2003 affidavit* that Durham confided to him during a telephone conversation "around the end of 1983 or the beginning of 1984" that she had actually lied about hearing the alleged hospital confession.

Pate states that Durham told him on the telephone that "Mumia was all bloody and the police were interfering with his treatment, saying 'let him die.' Priscilla said that the police told her that she was part of the 'brotherhood' of police since she was a security guard and that she had to stick with them and say that she heard Mumia say that he killed the police officer, when they brought Mumia in on a stretcher."

Even before Pate's affidavit, Durham's account was very suspicious.

The alleged "hospital confession," where Mumia reportedly declared, "I shot the motherf\*\*\*er and I hope the motherf\*\*\*er dies," was first officially reported to police over two months later, by hospital guards Priscilla Durham and James LeGrand (Feb. 9, 1982), PO Gary Wakshul (Feb. 11), PO Gary Bell (Feb. 25), and PO Thomas M. Bray (March 1).

Only two of these five witnesses were called by the DA: Priscilla Durham and Gary Bell (Faulkner's partner and "best friend").

### Priscilla Durham

Durham testified in 1982, and added for the very first time (not reported to the police on Feb. 9), that she had reported the confession to her supervisor the next day, making a hand-written report. Neither her supervisor, nor the alleged handwritten statement were presented in court.

Instead, the DA sent an officer to the hospital, returning with a suspicious typed version. Sabo accepted the unsigned and unauthenticated paper despite both Durham's disavowal (because it was not hand-written), and the defense's protest that authorship and authenticity were unproven.

### Gary Bell

Bell testified that his two month memory lapse resulted from him being so upset over the death of Faulkner, that he forgot to report it to police.

### Gary Wakshul: 'the negro male made no comment.'

Police Officer Gary Wakshul was not a prosecution witness, and on the final day of testimony in 1982, Mumia's lawyer discovered Wakshul's statement from Dec. 9, 1981 (Mumia's supporters cite this late discovery as another example of incompetent representation--to which defense attorney Anthony Jackson testified about at the 1995 PCRA hearings).

After riding with Abu-Jamal to the hospital and guarding him until his treatment, Wakshul reported: "the negro male made no comment."

When the defense immediately sought to call Wakshul as a witness, the DA reported that he was on vacation. On grounds that it was too late in the trial, Sabo denied the defense request to locate him for testimony.

Subsequently, the jury never heard from Wakshul or about his contradictory written report. When an outraged Abu-Jamal protested, Judge Sabo cruelly declared to him: "You and your attorney goofed."

At the 1995 PCRA Hearings, Wakshul testified that both his contradictory Dec. 9 "the negro male made no comment" report and the two month delay were simply bad mistakes. He repeated his earlier February 11, 1982 statement given to the police IAB investigator that he "didn't realize it had any importance until that day." Wakshul also testified to being home for his 1982 vacation—in accordance with explicit instructions to stay in town for the trial so that he could testify if called.

Mysteriously, just days before his PCRA testimony, Wakshul was savagely beaten by undercover police officers in front of a Judge in the Common Pleas Courtroom, where Wakshul worked as a court crier. The two attackers were later suspended without pay, as punishment. With the motive still unexplained, the beating was possibly used to intimidate Wakshul into maintaining his "confession" story at the PCRA hearings.

Regarding the alleged confession, *Amnesty International* concluded:

**"The likelihood of two police officers and a security guard forgetting or neglecting to report the confession of a suspect in the killing of another police officer for more than two months strains credulity."**

## Yvette Williams' Affidavit and the Police Coercion of Cynthia White

Yvette Williams' *July 8, 2002 affidavit*, is the just latest evidence discrediting the prosecution's star witness at the 1982 trial: Cynthia White.

Suspiciously, no official eyewitness even reported seeing White at the scene, and White is the only "witness" to report seeing alleged eyewitness Robert Chobert's taxi cab parked behind PO Faulkner's car.

*Amnesty International* documents that key DA witnesses Chobert (an arsonist on probation, driving his cab without a license) and White (a prostitute facing multiple charges) "altered their descriptions of what they saw, in ways that supported the prosecution's version of events."

Importantly, Williams' account of 1) White being coerced by police to give false testimony, and 2) Police seeking out even more false testimony, is strongly supported by the testimony of *Veronica Jones* (at the 1982 trial and the 1996 PCRA) and *Pamela Jenkins* (at the 1997 PCRA).

### The New Affidavit

Yvette Williams declares: "I was in jail with Cynthia White in December of 1981 after Police Officer Daniel Faulkner was shot and killed. Cynthia ['Lucky'] White told me the police were making her lie and say she saw Mr. Jamal shoot Officer Faulkner when she really did not see who did it.... Whenever she talked about testifying against Mumia Abu-Jamal, and how the police were making her lie, she was nervous and very excited and I could tell how scared she was from the way she was talking and crying."

Explaining why she is just now coming out with her affidavit, Williams says "I feel like I've almost had a nervous breakdown over keeping quiet about this all these years. I didn't say anything because I was afraid. I was afraid of the police. They're dangerous."

### Pamela Jenkins' 1997 PCRA Testimony

At the 1997 PCRA hearing, former prostitute Pamela Jenkins testified that 1) Police tried pressuring her to falsely testify that she saw Abu-Jamal shoot Faulkner, and 2) In late 1981, Cynthia White (who Jenkins knew as a fellow police informant) told Jenkins that she was also being pressured to testify against Mumia, and that she was afraid for her life.

As part of a 1995 federal probe of Philadelphia police corruption, Officers Thomas F. Ryan and John D. Baird were convicted of paying Jenkins to falsely testify that she had bought drugs from a Temple University student named Arthur Colbert. Jenkins' 1995 testimony about Colbert and others she falsely testified against, helped to convict Ryan, Baird, and other officers and to dismiss several dozen drug convictions.

At the 1997 PCRA, Jenkins testified that this same Thomas F. Ryan was one of the officers who attempted to have her lie about Mumia!

### The Attempts to Silence Veronica Jones

Veronica Jones, a former prostitute, first told police that she had seen two men "jogging" away from the scene before police arrived. Then, when called as a defense witness at the 1982 trial, Jones denied making the statement, but started to describe a pre-trial visit from police, where "They were getting on me telling me I was in the area and I seen Mumia, you know, do it..They were trying to get me to say something that the other girl [Cynthia White] said. I couldn't do that." Jones then explicitly testified that police offered to let her and White "work the area if we tell them" what they wanted to hear regarding Mumia's guilt.

The DA moved to block her account, calling her testimony "absolutely irrelevant." Judge Sabo agreed to block the line of questioning, strike the testimony, and then ordered the jury to disregard Jones' statement.

Later, at the 1996 PCRA, Jones testified that in 1982 she had been coerced by police to recant seeing the two men jogging away, but resisted police pressure to falsely testify that she saw Abu-Jamal shoot Faulkner.

Intimidation of Jones continued at the PCRA. Before she testified, Judge Sabo threatened her with 5-10 yrs imprisonment for admitting perjury. After testifying, he allowed NJ police to handcuff and arrest her for an outstanding arrest warrant on charges of writing a bad check.

Outraged by Jones' treatment, even the normally 'anti-Mumia' *Philadelphia Daily News* reported that: "Such heavy-handed tactics can only confirm suspicions that the court is incapable of giving Abu-Jamal a fair hearing. Sabo has long since abandoned any pretense of fairness."

**MORE: FreeMumia.com (NYC, Phila.) FreeMumia.org (SF) EmajOnline.com (Educators for Mumia) PrisonRadio.org Intl. Concerned Family and Friends of Mumia, PO Box 19709, Phila, PA 19143, (215) 476-8812, icffmaj@aol.com**