No. 488 EDA 2016

FILED IN SUPERIOR COURT

FEB 1 9 2016

EASTERN DISTRICT

# IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY CRIMINAL TRIAL DIVISION

COMMONWEALTH OF

CP-46-MD-3156-2015

**PENNSYLVANIA** 

OTN: T 741910-1

VS.

WILLIAM H. COSBY, JR.

Application

### CORRECTED NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendant William H. Cosby Jr., by and through his attorneys, hereby appeals—pursuant both to Rule 313 of the Pennsylvania Rules of Appellate Procedure and to the exceptional circumstances doctrine applicable to appeals of orders denying petitions for writ of habeas corpus and motions to disqualify a district attorney's office—to the Superior Court of Pennsylvania from the February 4, 2016 orders denying Mr. Cosby's petition for writ of habeas corpus and motion to disqualify the Montgomery County District Attorney's Office. These orders and the docket report showing their entry are attached hereto as Exhibit A.

This Notice of Appeal corrects the notice of appeal that was previously filed on February 12, 2016 and that has been docketed in the Superior Court as No. 488 EDA 2016. The only correction is the addition of the docket report contained in Exhibit A hereto, which was inadvertently omitted from the original notice. Otherwise, this notice is identical to the notice filed on February 12, 2016.

Request for Transcript. Hearings on this matter were held on February 2 and 3, 2016, Mr. Cosby has requested and received the transcripts thereof, and those transcripts are available online at http://www.montcopa.org/index.aspx?nid=2312 (last visited on February 12, 2016).

Respectfully Submitted,

Brian J. McMonagle MCMONAGLE, PERRI, MCHUGH, & MISCHAK P.C. 1845 Walnut Street, 19th Floor Philadelphia, PA 19103 (215) 981-0999; Fax 215-981-0977

Christopher Tayback
Joseph Sarles
(pro hac vice)
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Attorneys for Defendant

# EXHIBIT A

#### IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

No. MD-3156-15

WILLIAM H. COSBY, JR.

#### ORDER

AND NOW, this 4 day of February, 2016, it is hereby ORDERED as follows: based upon review of all the pleadings and filings, the exhibits admitted at this hearing, and all testimony of witnesses, with a credibility determination being an inherent part of this Court's ruling, the Court finds that there is no basis to grant the relief requested in paragraph 3b of the Defendant's Petition for a Writ Habeas Corpus and, therefore, the Habeas Corpus Petition seeking dismissal of the charges is hereby DENIED.

BY THE COURT:

STEVEN T. O'NEILL

Copies of this Order mailed on 🚾 to the following:

Brian J. McMonagle, Esq.

Kevin R. Steele, Esq.

Honorable Elizabeth A. McHugh

Honorable William J. Furber, Jr., President Judge

Michael R. Kehs, Esq. (Court Administrator)

J.

# IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

No. MD-3156-15

WILLIAM H. COSBY, JR.

٧.

#### ORDER

AND NOW, this \_\_\_\_\_ day of February, 2016, it is hereby ORDERED and DECREED that the Defendant's Motion to Disqualify the Montgomery County District Attorney's Office is DENIED for the reasons placed on the record following argument on February 3, 2016.

BY THE COURT:

STEVEN T. O'NEILL

J,

Copies of this Order mailed on 2/4/16

to the following:

Brian J. McMonagle, Esq.

Kevin R. Steele, Esq.

Honorable Elizabeth A. McHugh

Honorable William J. Furber, Jr., President Judge

Michael R. Kehs, Esq. (Court Administrator)

Secretary OF Admin

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Docket Number: CP-46-MD-0003156-2015 MISCELLANEOUS DOCKET

Complaint Date:

Magisterial District Judge Matters

Commonwealth of Pennsylvania

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12/30/2015

William Henry Cosby

CASE INFORMATION

Judge Assigned:

OTN: T 741910-1

LOTN:

Initial Issuing Authority: Elizabeth A. McHugh Arresting Agency: Cheltenham Twp Police Dept

Complaint/Incident #; 20152583

Case Local Number Type(s)

Date Filed: 12/30/2015

Initiation Date: 12/30/2015

Originating Docket No: MJ-38102-CR-0000131-2015

Final Issuing Authority: E-Filing Judge Arresting Officer: Schaffer, Richard

Case Local Number(s)

Case Status:

Closed

Status Date 12/30/2015

Processing Status

Completed

12/30/2015

Awailing Ball Hearing

Date Of Birth:

07/12/1937

City/State/Zip: Cheltenham, PA 19012

Alias Name

Cosby, William Henry Jr.

Participant Type

Petitioner

<u>Name</u>

Cosby, William Henry

BAILINFORMATION

Cosby, William Henry

Bail Action

<u>Date</u>

Ball Type

Percentage

<u>Amount</u>

**Bail Posting Status** 

Posted

Posting Date

Nebbia Status: None

Set

12/30/2015

Monetary - Cash

Percentage

10.00%

\$1,000,000.00

12/30/2015

Seq.	Orig Seq.	Grade	Statute	CHARGES Statute Description	Offense Dt.	OTN
1	1	F2	18 § 3125 §§A1	Agg. Ind. Assault W/O Consent	01/15/2004	T 741910-1
2	2	F2	18 § 3125 §§A4	Agg. Ind. Assault - Complainant is Unconscious or Unaware that Penetration is Occurring	01/15/2004	T 741910-1
3	3	F2	18 § 3125 §§A5	Agg. Ind. Assault - Person Impairs Complainant	01/15/2004	T 741910-1

CPCMS 9082

Printed. 02/12/2016

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### DOCKER

Docket Number: CP-46-MD-0003156-2015
MISCELLANEOUS DOCKET

Magisterial District Judge Matters

Commonwealth of Pennsylvania

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William Henry Cosby

ATTORNESINE OR WATERY Kevin R. Steele Brian J. McMonagle Name: Name: Court Appointed - Private District Attorney Supreme Court No: 042394 066335 Supreme Court No: Phone Number(s): Rep. Status: Active 610-278-3098 (Phone) Phone Number(s): 610-278-3095 (Other) 215-981-0999 (Phone) 610-278-3126 (Other) Address: Mcmonagle Perri ET AL Montgomery CO Da's Office 1845 Walnut St FI 19 PO Box 311 Philadelphia, PA 19103 Norristown, PA 19404-0311 Representing: Cosby, William Henry

Sequence Number	CP Filed Date	<b>Document Date</b>	Filed By
1	12/30/2015		Steele, Kevin R.
Motion for Modifica	ion of Ball		
2	12/30/2015		McHugh, Elizabeth A.
Bail Set - Cosby, W	Villiam Henry 		
3	12/30/2015		Cosby, William Henry
Bail Posted - Cosby	y, William Henry		
1	01/11/2016		Cosby, William Henry
District Attorney		Disqualify the Montgomery Coun	ty
1	01/13/2016	01/13/2016	O'Neill, Steven T.
Answer By	B	ladition and he time to Discounties Di	Ale Office will be 44 Days
	rtesponse - Hageas Colpus F	etition and Motion to Disqualify D.	A S Office - Within 14 Days
1	01/20/2016		Steele, Kevin R.
		etition for Writ of Habeas Corpus a	and Motion to
— — ····· ···	onlgomery County District Atto	orney's Office	
1	01/21/2016		McMonagle, Brian J.
Motion for Admission	· · · · · · · · · · · · · · · · · · ·		
Hiled by Brian J.	McMonagle, Esq.		

**CPCMS 9082** 

Printed: 02/12/2016

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Docket Number: CP-46-MD-0003156-2015

# **MISCELLANEOUS DOCKET**

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Commonwealth of Pennsylvania

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		ENTRE			
Sequence Number	CP Filed Date	Document Date	Filed By		
1	01/22/2016	01/22/2016	O'Neill, S	Steven T.	
Order Scheduling He	earing		,		
	Petition/Motion to	Disqualify Montgomery Count	y DA's Office February	2; 2016 at 9:30 a	.m.
2 Decorum Order Gove	01/22/2016 erning Hearing	01/22/2016	Furber, \	William J. Jr.	
1 Entry of Appearance	01/27/2016		МсМопа	ngle, Brian J.	
2 Motion for Admission	01/27/2016 n Pro Hace Vice		McMona	gle, Brian J.	
	01/28/2016 mmonwealth's Motion to htgomery County Distric	o Dismiss Petition for Writ of Hab t Attorney's Office		gle, Brian J.	,
2 Entry of Appearance	01/28/2016		Pressley	r, Monique D.	
3 Entry of Appearance	01/28/2016		Sades, J	loseph	·
4 Entry of Appearance	01/28/2016		Tayback	, Christopher	
5	Q1/28/2016	_ <del> </del>	O'Neill. 5	Steven T.	
Order Granting Motion McMonagle, Brian J.			2, .		
02/03/2016	First Class				
Steele, Kevin R.					
02/03/2016	Interoffice				
1	92/03/2016		Steele, H	Kevin R.	
Commonwealth's Re	ply to Defendant's Oppo	osition to the Commonwealth's M	otlon to Dismiss		
1	02/04/2016	02/04/2016	O'Neill, \$	 Steven T.	
Order Denying Motio McMonagle, Brian J.	n to Disqualify the Mon	tgomery County District Attorney	s Office		

**CPCMS 9682** 

Printed: 02/12/2016

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# Docket Number: CP-46-MD-0003156-2015 MISCELLANEOUS DOCKET

Magisterial District Judge Matters

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		William Henry Cosb			
Sequence Number	CP Filed Date	Document Date	Filed By		
Service To		Service By			
<u>Issue Date</u>	Service Type	Status Date	Service Status		
02/04/2016	First Class				
Steele, Kevin R.					
02/04/2016	Interoffice				
2	02/04/2016	02/04/2016	O'Neill, Steven T.		
Order Denying Petition to McMonagle, Brian J.	foir Writ of Habeas Corp	pus for Dismissal of Charges			
02/04/2016	First Class				
Steele, Kevin R.					
02/04/2016	Interoffice				
3	02/04/2016	02/04/2016	O'Neill, Steven T.	,	
Order Scheduling Prelin	ninary Hearing				
March 8, 2016 at 9:30	a.m. Courtroom "A"			-	
	/22/16 Remains in Effec	ct			
McMonagle, Brian J. 02/04/2016	First Class				
Steele, Kevin R.	i iist Olass				
02/04/2016	Interoffice				
waster waters maked within white water	-			<del></del>	
1	02/10/2016		Court of Common Pleas -		
Notes of Testimony			Montgomery County	•	
-	beas Comus/Motion to	Disqualify Montgomery County Distr	ict Attomev's Office, Ctrm A		
Tuesday February 2,		Disquality Montgomery Soun-y Disc	(VI) memey comments	•	
Judge O'Neill					
2	02/10/2016		Court of Common Pleas -		
Makes of Taskimanu			Montgomery County	•	
Notes of Testimony	hana Onno establish	Diamalis, Mansaarra - Occuption	int Attacher of Citizen City A		
Wednesday February  Judge O'Neill		Disqualify Montgomery County Distr	ict Attomey's Office, Clifft A		
				·	

CPCMS 9082

Printed: 02/12/2016

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#### CERTIFICATE OF SERVICE

BRIAN J. McMONAGLE, Esquire, hereby certifies that a copy of the Notice of Appeal has been served via Hand Delivery upon The Honorable Steven O'Neil, Court of Common Pleas of Montgomery County, and District Attorney Kevin Steele, on February 19, 2016.

BRIAN J. McMONAGLE, Esquire

Attorney for appellant

DATED: February 19, 2016