
INTRODUCTION

We, the members of the Thirty-Fourth Statewide Investigating Grand Jury, have received and reviewed evidence pertaining to allegations of violations of the penal laws in and around Washington County, Pennsylvania. This investigation was conducted pursuant to Notice of Submission of Investigating Number 24 and, by this Presentment, this Grand Jury does hereby make the following findings of fact and recommendations of charges:

FINDINGS OF FACT

The Grand Jury has received the testimony of a number of individuals, including members of the Washington County District Attorney's office, the Washington County Court system and law enforcement officers from local municipalities as well as the Pennsylvania State Police. These witnesses described in varying detail the "unusual" and "disturbing" occurrences within the Washington County Court of Common Pleas on a number of criminal cases.

Commonwealth v. Shantaye Brown

Late in April, 2012, Chief Robert Lemons of the Washington City Police Department sent a letter to Judge Paul Pozonsky, Washington County Court of Common Pleas, inquiring about suspected controlled substances introduced into evidence during a criminal case against defendant Shantaye Brown. According to the police department's records, suspected cocaine had been seized from Shantaye Brown by Officer Johnathan Miller of the Washington Police Department on May 5, 2010. On May 27, 2011 at a suppression hearing held before Judge Pozonsky, the seized cocaine was introduced into evidence and custody of the controlled substance was turned over to the Judge by the officer. In his letter, the Chief expressed his concern regarding keeping the evidence records of his department up-to-date and accurate, and also about destruction of the evidence.

On May 1, 2012, Judge Pozonsky issued an Order of Court which covered sixteen different cases, including the Shantaye Brown case. Judge Pozonsky wrote that "as the prosecution of the cases in the above entitled actions have been concluded and the cases are now closed, it is hereby ORDERED, ADJUDGED and DECREED that any and all evidence related to said cases shall be destroyed." District Attorney Eugene Vittone responded with a "Motion to Partially Vacate Order and Motion for the Return of Evidence Directed to be Destroyed". This Motion pointed out that the Court's initial Destruction Order had been done without anyone's request or motion, that the evidence in these cases contained personal property and/or currency, that no notice had been given to any potentially rightful owners of said property and that there was no way to ensure that the destruction of any items was done properly

if done pursuant to the Order. At the hearing on the District Attorney's Motion the Court agreed to modify the Order to allow for the return of personal property still in the possession of the police departments but the Judge told the District Attorney that the Judge had already personally destroyed the evidence in his possession. The Court filed a "CERTIFICATION" which stated "it is hereby certified that any and all evidence related to the above entitled cases was destroyed on May 3, 2012, pursuant to this Court's Order of May 1, 2012."

The handling of evidence introduced in a trial or hearing, particularly when the evidence is a controlled substance such as cocaine, varies county by county, and in many cases from courtroom to courtroom. In most courtrooms, the Judges insist that the law enforcement agency that had custody of the substances take them back from the Court. In some instances the District Attorney's office takes custody of any controlled substances. This is in keeping with 35 P.S. §828 which states that when drugs are offered in evidence in a trial involving illegal sale or possession of such drugs that the District Attorney shall confiscate them. It is unusual for a Judge to keep custody themselves of controlled substances admitted as evidence. What is even more unusual is for a Judge to insist that the controlled substances be introduced into evidence at a pretrial hearing such as what occurred listed cases.

Officer Johnathan Miller of the Washington Police Department explained that while testifying at a suppression hearing on May 27, 2011 on the Shantaye Brown arrest, Judge Pozonsky asked him if he had brought the seized substances with him to court. Officer Miller stated that he had not. The Judge declared a recess in the hearing and instructed the Officer to go and retrieve the suspected controlled substances. The Officer questioned whether the Judge wanted all of the evidence or just the cocaine seized from Brown. The Judge told him just the cocaine. The suspected cocaine had not been sent to the Crime Lab and there had been no analysis of its contents. Officer Miller retrieved the evidence from the evidence room at the police department and returned with it to the courtroom. The evidence envelope, a manila envelope with the name of the defendant and the investigation number written on it, was opened while the Officer was testifying and the contents, which were in a clear plastic bag, displayed. The substance was then given to the Judge's clerk who put it in front of the Judge. At the conclusion of the hearing the Judge picked up the evidence envelope and went into his chambers.

Commonwealth v. Matthew Jeter

Sitting in the Courtroom during the Brown hearing was Officer Louis Bailey of the Canonsburg Police Department. He also had a hearing scheduled on that same date on a case where cocaine was seized. Officer Bailey asked the Assistant District Attorney if he needed his seized controlled substance to be produced at the hearing. After being told that he should have it there, the Officer made arrangements to have the cocaine transported to him in Washington. Officer Bailey presented the cocaine, which had been tested at the Pennsylvania State Police Crime Laboratory, at the hearing on the case of Commonwealth v. Matthew Jeter before Judge Pozonsky. The cocaine was introduced into evidence and retained by the Judge. The Crime Lab report, number G10-06050-1, stated that the

material tested positive for cocaine and weighed a total of .99 grams. This case was included in the Destruction Order issued by Judge Pozonsky.

Commonwealth v. Andre Cromwell

Back in March, 2011, Detective Jack Hancock was the arresting officer in the case of Commonwealth v. Andre Cromwell. After the suppression motion was denied by Judge Pozonsky this case proceeded to a jury trial before the same Judge. During the testimony of Detective Hancock, the cocaine which had been seized from the defendant, was introduced into evidence. Detective Hancock opened the outer evidence envelope and displayed the cocaine to the jury. The evidence was retained by the Judge after the trial concluded in the conviction of Cromwell. The controlled substance in that case was cocaine, Crime Lab report number G10-00749-1 reported that the material seized from Cromwell contained cocaine and weighed 37.6 grams. The Superior Court later reversed Cromwell's conviction, based on its finding that the suppression motion should have been granted.

Commonwealth v. Dorian Lowery

Officer David Kimball of the Charleroi Police Department served a search warrant on an apartment occupied by Dorian Lowery. Seized from the apartment were 53 grams of marijuana, 9 grams of cocaine, a sword, \$6,262 in U.S. currency and some smaller items. A hearing on this case was held before Judge Pozonsky on August 23, 2011. Officer Kimball took the drug evidence to the hearing because he had received a call from ADA Josh Carroll telling him that Judge Pozonsky was requesting that the drugs be brought to the hearing. Only the drugs were taken; the currency, sword and other items were left in the custody of the evidence custodian for the Charleroi Police Department. At this hearing the manila envelope was opened, the baggies with the drugs were exhibited and then placed back into the envelope. The envelope was placed on the Judge's desk by his law clerk. The Judge put the envelope containing the cocaine and marijuana into a brown folder and at the end of the hearing the Judge took the folder into his chambers. The hearing where this occurred concerned the Commonwealth's motion to amend the criminal information to include a count of Possession with Intent to Deliver and the defendant's motion for return of the U.S. currency. This case was also included in the Destruction Order issued by Judge Pozonsky.

Commonwealth v. Robert Campbell, docket numbers 639 & 640 of 2011

The Charleroi Police Department had two different cases against a defendant named Robert Campbell. Suppression hearings on both cases were scheduled for September 29, 2011. The officers involved, Officer David Kimball and Detective Eric Porter, were riding up to the Courthouse in Washington together for the hearings when ADA Josh Carroll called. He told them that they had to bring the drug evidence with them for the hearings. The ADA said that the Judge was requesting that the evidence be brought. At the hearings the drug evidence on both cases were admitted into evidence. The envelopes were cut open and the inner baggies examined. The baggies were sealed with evidence tape from the crime laboratory. These seals were not broken. At the conclusion of the testimony the Judge said that he was going to keep the evidence. Detective Porter, who has been with the Charleroi Police Department for fourteen years, testified that this was the first occasion where he had to bring the actual drugs to a suppression hearing.

The original crime laboratory report on the Campbell case which Detective Porter was involved with said that there were three bags of cocaine, weighing respectively 9.3, .51 and 1.2 grams. There was also one bag containing suboxone (a Schedule III controlled substance) pills. On Officer Kimball's Campbell case the crime laboratory report stated that the amount of cocaine was 35.5 grams. Also given to the Judge in the manila envelope with the cocaine on this case were thirteen suboxone pills. Both of the cases against Robert Campbell were included in the Destruction Order issued by Judge Pozonsky.

Commonwealth v. Kristopher Strejcek

The Washington County Sheriff's office also had cases where cocaine was seized and subsequent hearings were held before Judge Pozonsky. Deputies arrested Kristopher Strejcek on July 23, 2010. He was charged with Possession of a Controlled Substance, Possession with the Intent to Deliver, Possession of Drug Paraphernalia and False Identification to Law Enforcement. A suppression hearing was held before Judge Pozonsky on May 27, 2011, the same day as the hearings on the Shantaye Brown and Matthew Jeter cases. Deputy Paul Rock was told by Judge Pozonsky to have someone bring the drugs to the hearing. Deputy Rock called his office and another deputy logged the evidence out of the evidence room and had it brought to the Courtroom. Deputy Rock opened the outer manila envelope, breaking its evidence tape. This was done in the Courtroom in front of the Judge. Inside were two baggies, one containing marijuana and the other cocaine, each sealed with State Police evidence tape. The bag with cocaine actually contained two smaller bags with cocaine contained within them. The last time the Deputy saw the envelope containing the drugs they were sitting on the Judge's desk in the courtroom. The Crime Laboratory report on the materials seized by the Sheriff's Office stated that the cocaine weighed a total of 20.4 grams and the marijuana weighed 1.4 grams.

Commonwealth v. Devin Sadler

Deputy Anthony Mosco testified regarding the prosecution of Devin Sadler. In August, 2011 Mr. Sadler was arrested. Seized at that time by the Washington County Sheriff's Office was a bag containing cocaine and another bag containing marijuana. A suppression hearing took place during April, 2012 before Judge Pozonsky. At the time of the hearing the controlled substances had been tested at the Crime Laboratory (there were 8.7 grams of cocaine and 1.7 grams of marijuana) but the drugs had not yet been retrieved by the Sheriff's Office from the lab. At the hearing Judge Pozonsky asked Deputy Mosco where the drugs were. The Deputy explained that they were still at the crime lab. The Judge then told the Deputy that when he got the evidence back from the lab to bring it to the Judge's chambers. Within the next day or two the Deputy was working at the metal detector at an entrance into the courthouse when Judge Pozonsky entered the building. The Judge asked if the evidence had come back from the lab yet. The Deputy said he would have to check. Later the Deputy was again asked about the evidence by a member of the Judge's staff. The evidence never was turned over to the Judge.

Commonwealth v. Ashlie Harris

Troopers of the Pennsylvania State Police during December, 2010 obtained a search warrant to seize currency, photos, financial and drug related documents from the residence of Ashlie Harris. During the execution of the search warrant illegal drugs were observed so the search stopped while a second search warrant was obtained. Pursuant to the second search warrant cocaine was seized. The cocaine was packaged in a number of separate baggies. The Crime Laboratory report says that one bag contained a white substance which weighed 106 grams and contained cocaine, the second bag contained twenty baggie corners, each of which contained a white substance, with a total weight of 12.3 grams and contained cocaine, the third bag contained a white substance which weighed 19.6 grams and contained cocaine, the fourth bag contained 7 baggie corners, each of which contained a white substance, weighing a total of 5.0 grams and contained cocaine and the fifth bag contained vegetable matter weighing .51 grams and tested positive as marijuana. A hearing was held on a defense motion to suppress the initial search warrant for documents and currency. During the hearing on August 25, 2011 Judge Pozonsky said that he wanted the drugs associated with this case to be brought to the courtroom. This occurred despite the fact that both the Assistant District Attorney and the defense counsel said that there was no dispute that it was in fact cocaine and that what was at issue was the initial search warrant. Trooper Duval was told by Judge Pozonsky to bring the drugs to the courtroom. The next day the Pennsylvania State Police barracks in Washington, PA received calls from a person purporting to be Judge Pozonsky who was trying to get in touch with Trooper Duval about bringing in the cocaine. Trooper Duval signed the drugs out of evidence at the barracks and took them to the Courthouse. Judge Pozonsky was not present so the drugs were given to Joshua Camson, a law clerk for Judge Pozonsky, who signed for its receipt.

Joshua Camson was a law clerk for Judge Pozonsky for approximately eighteen months. He testified that he recalled receiving evidence which he signed for during late 2011. As he remembered a police officer brought the evidence in and gave it to him. Mr. Camson placed the envelope overnight into the locked cabinet where evidence was kept in the Judge's office. The next day in the presence of the Judge, Assistant District Attorney, defense counsel and the court reporter he was sworn in. He then stated for the record that he had received the envelope containing the cocaine and it was then formally entered into evidence. The envelope was opened, he believed by the Assistant District Attorney. ADA Carroll testified that he was present when this occurred and that he actually opened the envelope at the direction of Judge Pozonsky. He stated that the seals on the baggies inside the envelope were intact at the time he opened the envelope and that the seals remained intact as he handed the envelope to the Judge's staff. The evidence was then returned to the Judge's evidence locker.

Commonwealth v. Damon Reed

The Destruction Order issued by Judge Pozonsky included the case of Commonwealth v. Damon Reed. This 2004 case began when Chief Lemons, then a sergeant, responded to a call within the City of Washington. A vehicle was approached at the scene and the occupant, Damon Reed, was asked to get out of the vehicle. Found on Damon Reed was cocaine and marijuana. These items were sent to the Crime Laboratory whose report stated that there was 23.7 grams of cocaine base and 10.1 grams of powder cocaine as well as 10.2 grams of marijuana. Also seized from Mr. Reed was \$1574, U.S. currency. On the police evidence log, dated September 1, 2004, was the notation "to evidence POZ". ADA Michael Fagella said that this was in his handwriting and that the notation meant that all of the evidence had been given to Judge Pozonsky. There is no record of the evidence ever being returned to the Washington Police Department.

On May 9, 2012, Court reporter Gina Bell found a box on her desk which had not been there the previous evening. Her desk was located in the anteroom outside of Judge Pozonsky's chambers and near the entrance to the area where the evidence was kept. Upon opening the box, which was not sealed, she observed shell casings. She lifted a piece of paper in the box and saw that there was a handgun underneath it. Joshua Camson recognized the box as being an evidence box. He took the box over to the District Attorney's office where two troopers took custody of the box and its contents. Upon returning to the courtroom Mr. Camson told Judge Pozonsky what had happened. The Judge was not happy and he told Camson to go get it back. The Judge said the box was from the evidence locker. Mr. Camson tried to retrieve the box but Trooper Baumgard refused to return it or its contents. The box did contain evidence from a prior homicide trial, including a handgun and spent shell casings. There were no controlled substances in the box nor had any been introduced at the trial.

May 9, 2012 Order

On May 9, 2012, pursuant to an Order of Court issued by Washington County President Judge O'Dell-Seneca, troopers of the Pennsylvania State Police took custody of all criminal case evidence which was in Judge Pozonsky's evidence locker and chambers. The so-called evidence locker was found to be a locking file cabinet.

There was no drug evidence found by the State Police within Judge Pozonsky's office on the cases listed on the Destruction Order. That would include the criminal cases against the following defendants; Shantaye Brown, Matthew Jeter, Dorian Lowery, Damon Reed and both cases against Robert Campbell. Approximately 165 items were placed into the evidence room of the State Police upon removal from Judge Pozonsky's. These items ranged from a box of documents to an individual spent shell casing.

There were a number of manila envelopes, some of which related to cases previously described. Evidence from three prosecutions, Commonwealth v. Ashlie Harris, Commonwealth v. Andre Cromwell, and Commonwealth v. Kristopher Strelcek are particularly significant. A manila envelope with the name Ashlie Harris was found in the locker. The envelope had the State Police case number, case name, Investigating trooper's name, a Crime Laboratory sticker with the Crime Laboratory number G11-04201, a list of the contents and remnants of State Police evidence tape on the outside. Trooper Duval identified a photograph of this envelope as being the one he gave to the Judge Pozonsky's law clerk. Inside of the manila envelope were five bags, some of which contained additional baggies. Each of these bags had State Police evidence tape on them, however all but one had been opened. These were resubmitted to the Crime Laboratory.

The Crime Laboratory report on these bags states that one bag contained two separate items, 1.2 grams of loose powder containing cocaine and another baggie inside of this first bag contained 86.8 grams of powder containing cocaine and sodium bicarbonate. The second bag contained five plastic bag corners which together held 2.2 grams of powder containing cocaine. The third bag contained another baggie which held a brown substance which weighed 14.5 grams and contained no controlled substance. The fourth bag held a loose brown substance and 3 plastic baggie corners each of which contained a brown substance, all of which weighed 1.9 grams and contained no controlled substance. The fifth bag, the seal of which was intact, contained vegetable matter which was not retested.

Also retrieved from Judge Pozonsky's evidence locker were two manila envelopes with the Washington City Police Department incident number 09011709, a date of 12/30/09, OFC: HANCOCK #050, SUSPECT: ANDRE CROMWELL. One of the envelopes also had a sticker with the State Police Crime Laboratory number G10-00749-1. The envelope with the Crime Laboratory number also had taped on the outside a yellow piece of paper which is the submission form used by the State Police Crime Laboratory. The other envelope contained a scale.

The envelope with the Crime Laboratory number was sealed at one end with blue State Police Crime Laboratory tape. The other end has Washington Police Department tape which had been broken. Inside this envelope was a plastic baggie which had the Crime Laboratory number of the Cromwell case written on it. Inside that baggie was another one containing a brown substance. This was resubmitted to the Crime Laboratory for testing with the result of the brown substance weighing 63.5 grams and containing no controlled substances.

Also found in Judge Pozonsky's evidence filing cabinet in a brown folding file folder were two attached evidence envelopes with the name Kristopher James Strejcek. Attached to these two envelopes was a yellow Crime Laboratory submission sheet. The Crime Laboratory number as listed on a sticker on the envelopes and on the submission form was G10-05751. Each of the envelopes contained a plastic baggie. One of the baggies contained vegetable matter which was sealed with State Police evidence. The seal appears to be intact. The second envelope contained two baggies that were sealed with scotch tape, there was no evidence tape visible. The contents of these baggies were white. These two baggies were submitted to the Crime Laboratory for retesting. The Crime Laboratory found that the total weight of the material was 40.0 grams and contained no controlled substances.

Guirguis Rizk was a forensic scientist for the Pennsylvania State Police for approximately 21 years before his retirement in June, 2011. He did the original testing on the Andre Cromwell and Kristopher Strejcek cases. Mr. Rizk conducted what is termed quantitative testing, the determination of whether the submitted material contains a controlled substance. The test used can detect whether the material contains even a small amount of the controlled substance. Qualitative testing, the determination of the percentage of the controlled substance within the material, was not conducted. A qualitative test takes time and is only done upon the approval of the director of laboratories.

Upon examining the items recovered from Judge Pozonsky's evidence locker Mr. Rizk was able to identify his initials on the outer envelopes. That signified to him that he had tested the envelopes contents on these two cases. Upon being shown a photograph of the tape used to seal the baggie on the Strejcek case he testified that he did not think that the Crime Lab uses that type of tape and that he always put his initials on the bag, which were not present on this bag.

The chart set forth below summarizes the discrepancies between the original laboratory results and the laboratory results for the items removed from Judge Pozonsky's chambers:

Case Name – item #	Controlled Substance	Initial Crime Lab Result	2 nd Crime Lab Result
Ashlie Harris – 1.1.1	Cocaine	106 grams	86.8 grams
Ashlie Harris – 1.2	Cocaine	12.3 grams in 20 baggie corners	2.2 grams in 5 baggie corners
Ashlie Harris – 1.3	Cocaine	19.6 grams	14.5 grams – no cocaine
Ashlie Harris – 1.4	Cocaine	5 grams in 7 baggie corners	1.9 grams in 3 baggie corners – no cocaine
Andre Cromwell – 1.1	Cocaine	37.6 grams	63.5 grams – no cocaine
Kristopher Strejcek – 1.1	Cocaine	20.4 grams in 2 bags	40 grams – no cocaine (sodium bicarbonate)

The secretary for Judge Pozonsky, the two Court reporters and his law clerks over the past few years were all questioned about how and where evidence was stored once it had been introduced into evidence. They all stated that a locked file cabinet was where the majority of the evidence was stored. The key for the cabinet was kept in the secretary's desk. There was no system for keeping track of what evidence had been received, where it was stored or if any had been returned to the law enforcement agency, the District Attorney's Office, the defendant or anyone else. Joshua Camson estimated that controlled substances were introduced into evidence between six and twelve times during his time with the Judge. It was not all of the evidence seized on a case that was to be brought in for suppression hearings, only drug evidence was required to be produced. The Judge told his law clerk that this was the rule. The Judge wanted the law clerk to remind the DA's office to have the officers bring in the drug evidence for hearings. Mr. Camson testified that he observed the outer manila envelope opened on occasion in the Courtroom but he never observed the inner plastic bags containing the controlled substances opened. He often took the admitted evidence and placed it in the evidence file cabinet. The only person he ever observed removing evidence envelopes from the room which contained the locked file cabinet, other than to return it to the Courtroom during a trial, was the Judge himself. He also recalled asking Deputy Sheriff Mosco about the drug evidence on the Sadler case. He stated that he had done so because the Judge had asked about the evidence the previous day. When he asked Judge Pozonsky why the drugs had to be brought in for pretrial hearings the Judge said that "they" have the right to see the evidence against them.

The second law clerk testified that the evidence was kept in a locked file cabinet in a separate room of the Judge's office, referred to as "the vault". This clerk recalled putting evidence in the file cabinet on one occasion. That evidence was from a civil case. The clerk testified that he never removed any evidence from the file cabinet. He did observe Judge Pozonsky walk out of the vault carrying an evidence envelope of the type that contained the controlled substances admitted into evidence. The Judge would take the envelope into his office for approximately 10 to 20 minutes before returning the envelope to the vault. The clerk observed this on approximately five occasions during the year that he

worked for Judge Pozonsky. The Judge was the only person that he observed removing evidence envelopes from the vault.

The items recovered from Judge Pozonsky's evidence locker which were supposed to contain cocaine were also resubmitted to the Pennsylvania State Police Crime Lab for the purpose of DNA testing. Three testable DNA samples were recovered from the items submitted. Two were from the clear plastic tape sealing bags on the Ashlie Harris case and the third was from clear plastic tape used to seal the bag on the Andre Cromwell case. All three were compared to the DNA of the forensic scientist who originally tested the material, the Judge's law clerks, secretary and the two Court reporters with negative results. When these recovered DNA samples were compared to the DNA sample taken from Judge Pozonsky there was one matching sample. Included within the evidence recovered from Judge Pozonsky's was a clear plastic bag with broken evidence tape. The writing on the evidence tape indicated that the bag and its contents had been seized as evidence on the Ashlie Harris case. Inside of the bag was another baggie, closed with clear plastic tape, which contained three baggie corners. The DNA sample was taken from the clear plastic tape on a baggie which contained these three baggie corners. This DNA sample matched the DNA sample which had been taken from Judge Pozonsky. According to the forensic scientist who performed the testing, the probability of randomly selecting an unrelated individual exhibiting this combination of DNA types is approximately 1 in 13 quintillion from the Caucasian population, 1 in 38 quintillion from the Afro-American population and approximately 1 in 8.4 quintillion from the Hispanic population.