

cases). Mr. Bueno is entitled to a hearing because his petition raises material issues of fact regarding trial counsel's effectiveness and the Commonwealth's *Brady* obligations.

4. ADA Faulk's statements during the August 15, 2016 hearing clearly prove there are material issues of disputed facts. According to Mr. Oquendo, he told Detective DeLuzio and ADA Faulk that Reina Lopez's statement regarding Mr. Bueno's alleged confession was *not* true. According to ADA Faulk's statements at the hearing, when Mr. Oquendo saw Detective DeLuzio and him, *i.e.*, ADA Faulk, Mr. Oquendo said, "fuck you," and walked out of the interview room. These are polar opposite accounts of a single encounter; by definition, when two or more witnesses provide opposite accounts of what happened during a single encounter, there are material issues of disputed fact regarding what actually occurred during this encounter. To resolve the factual disputes, the Court was obligated to hold an evidentiary hearing.

5. **Issue Two:** The Court erred by finding that ADA Matt Faulk's statements during the August 15, 2016 hearing were true and accurate. The process by which the Court made this factual finding violated Mr. Bueno's state and federal due process rights because the Court deprived Mr. Bueno the opportunity for discovery and of confronting and cross-examining ADA Faulk and Detective DeLuzio based on the discovery. U.S. Const. amds. 6, 8, 14; Pa. Const. art. I, § 9, 23.

Concise Factual Summary and Argument

6. In its August 16, 2016 opinion, the Court referred to ADA Faulk's "representations" regarding his and Detective DeLuzio's interaction with Mr. Oquendo and construed ADA Faulk's representations to be true. The Court, in other words, made a factual finding that ADA Faulk's representations to the Court were accurate and truthful. The Court then relied on this factual finding to dismiss Mr. Bueno's second PCRA petition. The process by which the Court made this finding violated Mr. Bueno's state and federal due process rights.

7. On August 15, 2016, ADA Faulk, *for the first time*, disclosed the fact that the Commonwealth interviewed Mr. Oquendo before Mr. Bueno's death penalty trial. The truthfulness of ADA Faulk's narrative of what allegedly occurred when he and Detective DeLuzio attempted to interview Mr. Oquendo, however, could not be adequately evaluated and confronted by counsel and Mr. Bueno because the Court failed to provide counsel and Mr. Bueno minimal procedural due process protections.

a. Counsel filed Mr. Bueno’s second PCRA petition in July 2016—a month before the August 15, 2016 hearing. Thus, ADA Faulk and the Commonwealth knew and were aware of the allegations regarding Mr. Oquendo. However, despite knowing these allegations, ADA Faulk and the Commonwealth never informed counsel or Mr. Bueno *before* the August 16, 2016 hearing that he and Detective DeLuzio interviewed Mr. Oquendo before trial and that Mr. Oquendo said “fuck you” and refused to speak with them. Rather, ADA Faulk waited until the August 15, 2016 hearing to tell the Court and counsel the “fuck you” narrative.

b. ADA Faulk’s belated disclosure deprived counsel and Mr. Bueno from filing a discovery motion. For instance, had counsel known of the “fuck you” narrative, counsel would have filed a discovery motion requesting the following information from the Commonwealth and SCI-Cresson:¹ (1) the date ADA Faulk and Detective DeLuzio interviewed Mr. Oquendo; (2) the time when ADA Faulk and Detective DeLuzio arrived and signed in at SCI-Cresson to interview Mr. Oquendo; (3) the time when ADA Faulk and Detective DeLuzio actually met with Mr. Oquendo at SCI-Cresson; (4) the time when ADA Faulk and Detective DeLuzio signed out of SCI-Cresson after interviewing Mr. Oquendo; and (5) the visiting logs from SCI-Cresson on the date when ADA Faulk and Detective DeLuzio interviewed Mr. Oquendo.

c. Counsel would have also requested the following information from the Commonwealth, the Bethlehem Police Department, and Allentown Police Department: any and all communications, reports, memos, emails, letters, faxes, and supplemental reports regarding ADA Faulk’s and Detective DeLuzio’s interview with Mr. Oquendo, as well as any and all communications, reports, memos, emails, letters, faxes, and supplemental reports the Commonwealth sent to trial counsel informing him of the “fuck you” narrative.

d. ADA Faulk’s “fuck you” narrative, consequently, was not subject to the type of cross-examination that is built on a thorough review of the underlying facts and discovery. As a result, the Court’s factual finding regarding the truthfulness and accuracy of ADA Faulk’s “fuck you” narrative is wrong because the process by which the Court made this factual finding was wholly inadequate under state and federal due process principles.

¹ Based on counsel’s investigation and understanding, Mr. Oquendo was housed at SCI-Cresson when ADA Faulk and Detective DeLuzio interviewed him.

8. **Issue Three:** In its August 16, 2016 opinion, the Court concluded that Mr. Bueno could have raised the Felix Oquendo issues in his first PCRA petition. The Court's factual findings supporting this legal conclusion are clearly erroneous. U.S. Const. amdots. 6, 8, 14; Pa. Const. art. I, § 9, 23.

Concise Factual Summary and Argument

9. The Court made two factual errors:

a. *First*, the Court found that Mr. Bueno knew or was aware of Mr. Oquendo's exculpatory statement to trial counsel before his trial and after his guilty plea.

b. *Second*, the Court found that counsel could have interviewed Mr. Oquendo well before November 5, 2015.

10. The *first* factual finding is clearly erroneous for the following reasons:

a. Counsel reviewed trial counsel's entire case file. There is not a single letter to Mr. Bueno from trial counsel informing Mr. Bueno of Mr. Oquendo's exculpatory statement rejecting Reina Lopez's statement.

b. Mr. Bueno wrote and filed a comprehensive *pro se* PCRA petition, wherein he cited, referenced, and quoted nearly every statement by Amarilys Soto, Dennis Velez, and Reina Lopez and explained how their statements contradicted one another. Remarkably, though, despite maintaining his innocence throughout his *pro se* PCRA petition, Mr. Bueno did not cite, reference, or quote from the following reports and facts:

i. Mr. Bueno did not cite, reference, or quote Reina Lopez's September 7, 2011 statement to Detective DeLuzio and ADA Faulk.

ii. Mr. Bueno did not cite, reference, or quote Mr. Oquendo's exculpatory statement rejecting Reina Lopez's September 7, 2011 statement.

c. For someone who has routinely claimed his innocence from day one, it is unfathomable to think that Mr. Bueno purposely and knowingly refused to cite, reference, or quote from either of these two sources in his *pro se* PCRA petition. Indeed, Mr. Oquendo's exculpatory statement to trial counsel rejecting Reina Lopez's statement is by far the most compelling evidence of his innocence outside of the two

Lehigh County Jail inmates who said Dennis Velez confessed to them to shooting a “dyke” at an LGBT bar.

d. Based on these facts, therefore, the record supports the finding that Mr. Bueno did *not know* of Mr. Oquendo’s exculpatory statement to trial counsel when he filed his first PCRA petition. Had Mr. Bueno known of this exculpatory statement, he surely would have referenced it in his *pro se* PCRA petition.

11. The *second* factual finding is clearly erroneous for the following reasons:

a. Counsel entered his appearance on Mr. Bueno’s behalf in May 2014. Counsel obtained trial counsel’s case file in early September 2014 from Sean Poll, Mr. Bueno’s initial appointed PCRA attorney. Trial counsel’s case file contained the investigative reports, which mentioned Felix Oquendo’s name a number of times. Based on this, counsel wanted to interview Mr. Oquendo. Counsel, therefore, searched for and located Mr. Oquendo at SCI-Brenner Township.

b. Under the Pennsylvania Department of Corrections’ (“DOC”) policies and regulations, counsel had to be placed on Mr. Oquendo’s visiting list at SCI-Brenner Township before counsel could schedule a face-to-face interview with Mr. Oquendo. *Unlike law enforcement and prosecutors*, defense attorneys cannot simply call, write, or fax the DOC and demand to meet with a *non-client* inmate face-to-face.

c. Starting in October 2014, shortly after counsel received trial counsel’s case file, counsel began writing Mr. Oquendo, asking him to place counsel’s name on his visiting list. Counsel wrote Mr. Oquendo several times, but received no response from Mr. Oquendo. On June 1, 2015, after not hearing from Mr. Oquendo, counsel faxed a letter to SCI-Brenner Township asking for a one-time gate pass exception to interview Mr. Oquendo face-to-face. SCI-Brenner Township immediately called counsel that day, June 1st, and informed counsel his gate-pass request was rejected and that if counsel wished to meet with Mr. Oquendo counsel had to have Mr. Oquendo place counsel’s name on his visiting list.

d. Counsel wrote Mr. Oquendo multiple times more. On October 8, 2015, Mr. Oquendo finally placed counsel’s name on his visiting list and agreed to meet with counsel face-to-face. On November 5, 2015, counsel interviewed Mr. Oquendo face-to-face at SCI-Brenner Township.

e. The Court failed to consider the DOC's policies and regulations regarding *non-client* inmate visits when making the above factual finding. Indeed, at the August 15, 2016 hearing, the Court said counsel could have interviewed Mr. Oquendo at SCI-Brenner Township *anytime* he wished. If this is true, counsel respectfully requests the Court to explain how and why in its 1925(a) opinion so counsel can adjust his understanding of the DOC's policies and regulations to effectively represent his PCRA clients moving forward.

Respectfully submitted this the **30th day of September, 2016.**

Craig M. Cooley
COOLEY LAW OFFICE
1308 Plumdale Court
Pittsburgh, PA 15239
647-502-3401 (cell)
919-228-6333 (office)
919-287-2531 (fax)
craig.m.cooley@gmail.com
www.pa-criminal-appeals.com

CERTIFICATE OF SERVICE

On **September 30, 2016**, counsel mailed the foregoing pleading to the following individuals or offices via standard USPS mail:

1. The Honorable Maria L. Dantos
2. The Lehigh County District Attorney's Office, and
3. The Lehigh County Court Administrator's Office