Weber-Lyc. Rep

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH, : CR 453-2024

vs. :

TROY BENNETT BAILEY, :
Defendant. :

FILED
LYCOMING COUNTY
2026 OCT 28 PM 2:28
PENNSYLVANIA
PROTHONOTARY &
CLERK OF COURTS

OPINION & ORDER

AND NOW, this 27th day of October, 2026, upon consideration of the Defendant's motion to disqualify the death penalty (the "Motion"),[1] his amendment to the Motion,[2] and the arguments of the parties, it is hereby ORDERED and DIRECTED that the Motion is DENIED, as explained below.

By information dated April 26, 2024[3] and amended May 14, 2025,[4] the Commonwealth charged Defendant Troy Bennett Bailey with thirty-five counts, including two counts of murder of the first degree.[5] The charges arise out of the homicide of Alisha Seese, Defendant's former girlfriend, and Ronald Dailey, her co-worker, in Williamsport, Lycoming County, Pennsylvania on the night of January 11, 2024.[6] As charged, Defendant will be sentenced to death or life imprisonment if convicted of murder of the first degree.[7]

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[1] Defendant's "Motion to Disqualify the Death Penalty," filed September 1, 2026.

[2] Defendant's "Amendment to Motion to Disqualify the Death Penalty," filed September 11, 2026.

[3] Information filed April 26, 2024.

[4] Amended Information filed May 14, 2025.

[5] 18 Pa. C.S. § 2502(a) ("A criminal homicide constitutes murder of the first degree when it is committed by an intentional killing").

[6] Affidavit of Probable Cause, sworn on March 4, 2024 by Williamsport Bureau of Police Agent Laura Kitko in Magisterial District Court 29-1-01 and filed in the instant matter on April 1, 2024.

[7] 42 Pa. C.S. § 9711(a)(1) ("After a verdict of murder of the first degree is recorded and before the jury is discharged, the court shall conduct a separate sentencing hearing in which the jury shall determine whether the defendant shall be sentenced to death or life imprisonment").

On September 1, 2026, Defendant filed the instant Motion seeking to disqualify the death penalty.[8] He raises three arguments in support of his position: (1) that Pennsylvania's capital punishment statute is unconstitutional and violates due process;[9] (2) that the status of capital punishment in Pennsylvania creates a *Caldwell* violation and deprives Defendant of due process;[10] and (3) that the District Attorney's decision to seek the death penalty in this case violates equal protection under both the United States and Pennsylvania Constitutions.[11] He filed an Amendment to the Motion on September 11, 2026, wherein he seeks disqualification of the District Attorney's Office from this case, for reasons identified in the Motion.[12]

The Court heard argument on the Motion on October 22, 2026,[13] and it is now ripe for disposition.

(1) Defendant has not shown that Pennsylvania's capital punishment statute is unconstitutional and violates due process.

Defendant first claims that Pennsylvania's capital punishment statute is unconstitutional and violates due process. He argues that:

> 2. This is because Pennsylvania's capital punishment statute limits the jury's ability to weigh aggravating factors properly thereby creating a presumption of death.
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> ...

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[8] *See*, *supra*, n.1.

[9] Motion, ¶¶ 1-12.

[10] *Id.*, ¶¶ 13-24.

[11] *Id.*, ¶¶ 25-32.

[12] Amendment.

[13] Scheduling Order dated September 10 and entered September 11, 2026. First Assistant District Attorney Martin L. Wade, Esq. and Deputy Assistant District Attorney Phoebe L. Yates, Esq. argued for the Commonwealth, and First Assistant Public Defender Jeana A. Longo, Esq. and William J. Miele, Esq. argued for the Defendant.

6. [Defendant] avers that the statutory wording mandating death as the sentence "if the jury unanimously finds one or more aggravators ... and no mitigating circumstances" is unconstitutional because this jury instruction fails to advise the jury that since it has found beyond a reasonable doubt that the Commonwealth has proven one aggravator, the jury must now decide what weight, if any, should be given to that aggravator. In other words, the jury could find one aggravator and no mitigators but at the same time decide to give that aggravator no weight. If the jury does that, they should be instructed that the verdict in that situation should be life.

7. Under Pennsylvania law, when the jury finds one or more aggravators and one or more mitigators, the jury is instructed to weigh each one and decide whether the aggravators or mitigators outweigh the other. Since the jury has found both aggravators and mitigators, it must then decide what, if any, weight to give each aggravator or mitigator it has found.

8. In accordance with the jury instruction, when there is one aggravator and no mitigators the jury is mandated to give the death penalty. In this situation, the jury is not given the option of determining what weight, if any, to give that aggravator. Instead, the instruction assumes the jury is giving weight to the aggravator because it was proven beyond a reasonable doubt. That may not be the case. It's quite possible a jury could find the Commonwealth has proven an aggravator but the jury does not believe that aggravator should be given any weight.

9. The current Pennsylvania jury instruction violates the clear language of ... [case law] that requires juries have the discretion to decide whether to impose the death penalty. This instruction takes away from the jury the discretion whether to impose the death sentence. Instead, it mandates death.

10. This jury instruction assumes that the aggravating circumstances inherently have weight and therefore a death sentence is the only option given to the jury.

11. As currently worded, Pennsylvania's jury instruction 42 Pa.C.S.A. Section 9711(c)(iv) violates the Defendant's rights guaranteed to him under Articles 6 and 9 of the Pennsylvania Constitution and Amendments 4, 6, and 14 of the United States Constitution.

12. This takes the deliberations away from the jury.[14]

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[14] Motion, ¶¶ 2, 6-12.

Section 9711 of the Judicial Code indeed requires the Court to instruct the jury that "[t]he verdict must be a sentence of death if the jury unanimously finds at least one aggravating circumstance ... and no mitigating circumstance or if the jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstances."[15] Crucially, it is the jury that must find, unanimously, the presence of aggravating and mitigating factors.

Pennsylvania's use of aggravating and mitigating factors in determining death eligibility has been found to be constitutionally sound. In *Blystone v. Pennsylvania*,[16] the United States Supreme Court explicitly rejected a constitutional challenge to Section 9711 similar to Defendant's. In so doing, the Court stated

> We think that the Pennsylvania death penalty statute satisfies the requirement that a capital sentencing jury be allowed to consider and give effect to all relevant mitigating evidence. Section 9711 does not limit the types of mitigating evidence which may be considered, and subsection (e) provides a jury with a nonexclusive list of mitigating factors which may be taken into account—including a "catchall" category providing for the consideration of "[a]ny other evidence of mitigation concerning the character and record of the defendant and the circumstances of his offense." Nor is the statute impermissibly "mandatory" as that term was understood in *Woodson* or *Roberts*. Death is not automatically imposed upon conviction for certain types of murder. It is imposed only after a determination that the aggravating circumstances outweigh the mitigating circumstances present in the particular crime committed by the particular defendant, or that there are no such mitigating circumstances. This is sufficient under *Lockett* and *Penry*.[17]

As Section 9711 has been found constitutionally sound, Defendant's instant challenge lacks merit. The jury must find aggravating and mitigating factors and is

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[15] 42 Pa. C.S. § 9711(c)(iv).

[16] *Blystone v. Pennsylvania*, 110 S. Ct. 1078 (1990).

[17] *Id.*, at 1082-83 (footnotes and citations omitted) (citing 42 Pa. C.S. § 9711(e)(8); *Woodson v. North Carolina*, 96 S. Ct. 2978 (1976); *Roberts v. Louisiana*, 96 S. Ct. 3001 (1976) *Lockett v. Ohio*, 98 S. Ct., 2954 (1978); *Penry v. Lynaugh*, 109 S. Ct. 2934 (1989)).

empowered to consider "[a]ny other evidence of mitigation concerning the character and record of the defendant and the circumstances of his offense."[18]

As such, imposition of the death penalty is exclusively within the province of the jury, and Defendant's claim that Pennsylvania's death penalty statute is unconstitutional and violates due process is DENIED.

(2) Defendant has not shown that the status of capital punishment in Pennsylvania creates a* Caldwell *violation and deprives Defendant of due process.

Defendant next claims that the status of capital punishment in Pennsylvania creates a *Caldwell*[19] violation and deprives Defendant of due process. He argues:

> 14. Bailey avers that the current moratorium on the death penalty in Pennsylvania will mislead the jury into imposing a death sentence because they will shift their moral responsibility onto the Governor.
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> 15. In an announcement to the General Assembly calling for it to abolish the death penalty Governor Shapiro stated he has a blanket reprieve policy whereby he declared that he will sign reprieves "each and every time" a death warrant comes before him.
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> ...
>
> 18. This declaration creates a permanent rather than temporary nullification of death sentences.
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> 19. This systemic undermining of jury responsibility violates the Eighth Amendment's requirement that sentencers appreciate their "truly awesome responsibility" and creates the arbitrary imposition of death sentences specifically prohibited by *Caldwell v. Mississippi.*
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> 20. Governor Shapiro, whose authority to grant death penalty reprieve derives directly from the Pennsylvania Constitution, likely issued his public statement with the intent that Pennsylvania citizens believe it and rely upon it.
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> 21. Further, his public statements inform all citizens of the Commonwealth that, regardless of the facts of the case, the death penalty will not be imposed on any defendant.

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[18] 42 Pa. C.S. § 9711(e)(8).

[19] *Caldwell v. Mississippi*, 105 S. Ct. 2633 (1985).

22. A prospective juror would reasonably believe that the death penalty may not be carried out even if the defendant is sentenced to death which may lead to a jury that could arbitrarily impose death simply because they lack the expectation of execution or feel the moral responsibility the law requires.

23. Thus, the moratorium may result in a jury that lacks the requisite appreciation of that "truly awesome responsibility."

24. The Governor's pronouncement taints the legitimacy of the entire voir dire process, and the validity of a jury-imposed sentence which violates the due process rights of [Defendant].[20]

In *Caldwell v. Mississippi* the United States Supreme Court held that "it is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere."[21] Thus, a *Caldwell* violation occurs when a capital jury is mislead to believe that the ultimate decision regarding whether a defendant will die lies elsewhere. As the sentencing body, the jury must understand that its decision will determine Defendant's fate.[22] Here, as of the date of this Opinion, the jury has not even been selected, much less addressed either by the Court or by either party. As the jury has not yet been led to believe anything in particular, it cannot possibly have been misled. *Ergo*, Defendant's claim that a *Caldwell* violation has occurred is premature.

Furthermore, the death penalty was approved by a law duly enacted. The Governor, whatever his opinion of the law, does not have the power to abolish it

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[20] Motion, ¶¶ 14-15, 18-24 (citations omitted).

[21] *Caldwell*, *supra*, 105 S. Ct. at 2639.

[22] "[M]any of the limits that this Court has placed on the imposition of capital punishment are rooted in a concern that the sentencing process should facilitate the responsible and reliable exercise of sentencing discretion." *Id.* (citations omitted).

unilaterally. The legislative power of this Commonwealth—which "in its most pristine form is the power 'to make, alter and repeal laws.' "[23]—is vested in the General Assembly,[24] and the Governor's duty is to "take care that the laws be faithfully executed."[25] Once the General Assembly passes a bill,[26] it must be presented to the Governor. He may then sign it, at which point it becomes law, or return it to the legislature with his objections, at which point it is either passed over his objections or fails to become law.[27] "[T]he Governor has that power which has been delegated to him by the Constitution and statutory provisions, or which may be implied properly from the nature of the duties imposed upon the Governor."[28] His power does not extend to making laws on his own or to refusing to enforce laws with which he disagrees.[29]

The Governor does have the power to grant a reprieve to a defendant,[30] *i.e.*, a "temporary suspension of the execution of a sentence."[31] A reprieve does not void

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[23] *Blackwell v. Com., State Ethics Comm'n*, 567 A.2d 630, 636 (Pa. 1989) (quoting *In re Marshall*, 69 A.2d 619, 626 (Pa. 1950); *Mt. Lebanon v. Cnty. Bd. of Elections*, 368 A.2d 648, 649 (Pa. 1977)).

[24] Pa. Const. Art. 2, § 1.

[25] Pa. Const. Art. 4, § 2.

[26] Pa. Const. Art. 3, §§ 1-13 (setting forth the procedure for passage of laws).

[27] Pa. Const. Art. 4, § 15; *see also Krasner v. Sunday*, --- A.3d ---, 2026 WL 3012136 (Pa. 2026) ("[W]hen a law passes both houses of the General Assembly and is signed into law by the Governor, compliance with Article III, Section 7 is presumed").

[28] *Shapp v. Butera*, 348 A.2d 910, 913 (Pa. Commw. 1975).

[29] *See, e.g.*, Pa. Const. Art. 1, § 12 ("No power of suspending laws shall be exercised unless by the Legislature or by its authority"); *Wolf v. Scarnati*, 233 A.3d 679, 696 (Pa. 2020) ("If a statute or resolution is passed over the Governor's veto, the Governor still must abide by that law, even if the General Assembly does not specifically require that the Governor enforce that law"), *superseded by constitutional amendment on other grounds as stated in Corman v. Acting Sec'y of Pa. Dep't of Health*, 266 A.3d 452, 457 (Pa. 2021).

[30] Pa. Const. Art. IV, § 9.

[31] *Com. v. Williams*, 129 A.3d 1199, 1217 (Pa. 2015).

a sentence but merely suspends its execution. In other words, the Governor's moratorium on the death penalty is temporary by definition. Defendant's argument that prospective jurors will be misled into believing that any sentence of death they impose will not be carried out is not only premature but also entirely speculative[32] and devoid of any support in fact. The Court is confident that once a jury is impaneled the seriousness of the decision it will be asked to make can be impressed upon its members.

Defendant's claim that the current moratorium creates a *Caldwell* violation is premature, speculative, without foundation and, therefore, DENIED.

(3) Defendant has not shown that the District Attorney's decision to seek the death penalty in this case violates equal protection under both the United States and Pennsylvania Constitutions.

Finally, Defendant claims that the District Attorney's decision to seek the death penalty in this case violates equal protection under both the United States and Pennsylvania Constitutions. He argues

> 27. Recently, the District Attorney's Office garnished national attention when a County Detective was video-recorded harassing and assaulting a black teenager on the street and then unlawfully detaining him; the video went viral on social media platforms and inspired condemnation from the public.
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> 28. The District Attorney contacted a reporter in Atlanta, Georgia to explain the officer's actions and to respond to public backlash over allegations of racial profiling; instead, the District Attorney made racist attacks on the Black community and, inter alia, chastising and stereotyping parents, declaring that Black men are in jail for guns and drugs and Black women have half a dozen kids with no support.
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> 29. Several weeks later, the District Attorney, responding to the public outrage over his initial remarks, gave a video-taped interview where he again made racist remarks, stereotyping the Black community as a whole.

[32] Any juror informed enough to have heard about the Governor's moratorium certainly could be expected to know that laws change, that politicians are not known for keeping their promises, and that any sentence of death is likely to be executed, if at all, many years in the future.

...

31. This District Attorney and his office, by his multiple comments has shown himself to be racist.

32. The District Attorney's decision to seek the death penalty in this case is seemingly racially motivated instead of based upon the facts of the case and applicable law.[33]

Initially, the District Attorney "has a general and widely recognized power to conduct criminal litigation and prosecutions on behalf of the Commonwealth, ... to decide whether and when to prosecute, and [to decide] whether and when to continue or discontinue a case."[34] Thus, to succeed on a claim of prosecutorial abuse of discretion in the selection of cases wherein the death penalty is sought, Defendant must make a "substantial, affirmative showing" of such abuse.[35]

Defendant's allegation that the District Attorney is racist is based on quotes attributed to him in an article concerning an unrelated matter that appeared in the *Atlanta Black Star* earlier this year. Defendant simply asserts that these statements alone are sufficient to demonstrate the District Attorney is a racist. He does not examine the veracity of the quotes, the intention behind them, to whom they were referring, or whether they are capable of innocent meaning.[36] Instead, he merely

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[33] Motion, ¶¶ 27-29, 31-32 (footnote and citations omitted).

[34] *In re Ajaj*, 288 A.3d 94, 97 (Pa. 2023) (quoting *Com. v. Brown*, 708 A.2d 81, 84 (1988)).

[35] *Com. v. Sanchez*, 907 A.2d 477, 487 (Pa. 2006) (citing *Com. v. Hardcastle*, 546 A.2d 1101, 1111 (Pa. 1988)).

[36] In the context of the law of defamation, when a statement is capable of a defamatory meaning and an innocent meaning, the plaintiff is required to plead the defamatory meaning and not merely plead its implication. As the Third Circuit explained, "The narrow, technical meaning of the term ["innuendo"] is associated with the common law system of pleading, under which an "innuendo" was an explanation of the defamatory meaning of a communication in light of extrinsic circumstances, the existence of which was averred to in a prefatory statement called an "inducement." *Pierce v. Capital Cities Communications, Inc.*, 576 F.2d 495, 499 n.7 (3d Cir. 1978). In other words, the pleader is required not merely to recite an ambiguous phrase and rely upon the court to assume its defamatory meaning; rather, he is required to explain the defamatory meaning in light of the circumstances. The same applies here.

accepts as true the allegations of the District Attorney's accusers and concludes, without evidence, that the statements were racist and, therefore, that the person is racist. Defendant does not supply evidence in support of his conclusory assertion and turns the presumption of innocence on its head.[37]

More importantly, Defendant does not explain how these comments have any bearing on his case, which was charged more than two years before the offending article appeared, and he has presented no evidence suggesting a racial motive affected the District Attorney's decision to pursue the death penalty in this case. Indeed, Defendant has failed to identify a single non-black defendant in Lycoming County against whom the District Attorney declined to pursue the death penalty when he could have done so.[38] As his sole allegation of prosecutorial abuse of

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Similarly, in the context of prosecutorial misconduct, "remarks made by a prosecutor must be evaluated in the context in which they occur." *Com. v. Freeman*, 827 A.2d 385, 413 (Pa. 2003). Thus, a claim of prosecutorial misconduct does not succeed merely because the prosecutor made a statement that arguably could be problematic. Rather, a court must analyze the statement that was made in light of the circumstances and context within which it was made. *Id.*

Here, Defendant merely selected a quote from the District Attorney and, from that quote, assumed that the District Attorney's statement implied a particular bias and, based on that assumption, further assumed that his bias applied retroactively to a completely different decision made under different circumstances more than two years prior to the statement. At the very least, Defendant is obliged to explain his reasoning and to provide evidence in support of his conclusion. He did not do that here.

[37] "One of the most fundamental tenets and principles of our justice system is that people are presumed innocent until proven guilty. Thus, an accusation is actually consistent with innocence; it does not establish guilt." *Fraternal Order of Police Lodge No. 5 by McNesby v. City of Philadelphia*, 267 A.3d 531, 543 n.17 (Pa. Commw. 2021). As the Court there went on to state, this presumption applies to allegation of police officer misconduct. *Id.* (citing *Dicks v. United States* (W.D. Pa., No. 09-2614, filed Sept. 8, 2010), 2010 WL 11484356 (holding that police officer internal affairs investigation and civil lawsuits never resulted in any finding of misconduct; thus, the allegations were not favorable to the petitioner under Brady); *United States v. Booker* (E.D. Pa., No. 95-211, filed Apr. 24, 1997), 1997 WL 214850, slip op. at *2-3 (finding that the probative value of the "evidence of prior unfounded or unsubstantiated allegations" is limited "and would be substantially outweighed by the risk of unfair prejudice")). By extension, the same grace must be extended to alleged prosecutorial misconduct.

[38] In *Commonwealth v. Sanchez*, *supra*, our Supreme Court considered a defendant's allegation that the death penalty is unconstitutional as applied because the district attorney of Lehigh County exercises "unfettered discretion" in selecting cases in which to pursue capital punishment and that the decision to pursue capital punishment in that case was based upon race. In support of his claim, defendant referenced five unpublished cases litigated in Lehigh County in which the defendant was Caucasian and at least one aggravating circumstance appeared to be present, but the prosecutor

discretion is alleged racism based upon ambiguous statements the District Attorney made to the media more than two years after the prosecutor decided to pursue the death penalty in this case, Defendant plainly has not met the threshold necessary to advance a claim of prosecutorial abuse of discretion.[39]

In sum, Defendant has alleged that the District Attorney is racist and that his decision to pursue the death penalty against Defendant was motivated by race, based upon statements the District Attorney made that could be interpreted innocently. Defendant has not produced sufficient evidence in support of his allegation, however. More importantly for this proceeding, Defendant has not demonstrated that the District Attorney's decision to pursue the death penalty here was motivated by race.

Accordingly, Defendant's claim that the District Attorney's decision to pursue the death penalty in this case violates due process and equal protection is DENIED.

(4) Defendant has not shown that the District Attorney's Office should be disqualified from this case.

Defendant's Amendment to the Motion claims that the District Attorney's Office should be disqualified from this case for the reasons set forth in the Motion. He argues that disqualification should occur on Due Process and Equal Protection grounds.[40]

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nonetheless declined to pursue the death penalty. In denying the motion, the Court stated that "the discrete and anecdotal information that Appellant has presented is insufficient to establish anything about the Lehigh County District Attorney's decisions concerning the death penalty and facially does not meet the threshold showing required under *Hardcastle*." *Sanchez*, *supra*, 907 A.2d at 487.

[39] In *Sanchez*, *supra*, the defendant made a stronger threshold showing than Defendant did here, and our Supreme Court, nevertheless, found that the claim there "facially does not meet the threshold showing required under *Hardcastle*." *Id.* As Defendant's threshold showing is even weaker here than in *Sanchez*, the Court believes it would be abusing its discretion were it to rule otherwise.

[40] Amendment, ¶ 2.

"District attorneys in this Commonwealth have the power—and the duty—to represent the Commonwealth's interests in the enforcement of its criminal laws."[41] This power is "an exclusive one" and "may not be interfered with by other public officials."[42] The District Attorney is the county's chief law enforcement officer,[43] and is responsible for "sign[ing] each bill of indictment and conduct[ing] in court each criminal and other prosecution, in the name of the Commonwealth or, if the Commonwealth is a party, that arises in the county for which the district attorney is elected...."[44]

> As an "administrator of justice," the prosecutor has the power to decide whether to initiate formal criminal proceedings, to select those criminal charges which will be filed against the accused, to negotiate plea bargains, to withdraw charges where appropriate, and, ultimately, to prosecute or dismiss charges at trial.[45]

The District Attorney's prosecutorial decisions can only be superseded by the Attorney General[46] and only in limited circumstances.[47]

All of this necessarily means that the district attorney, in the context of fulfilling his duty to represent the Commonwealth's interest in enforcing its criminal laws, has the discretion to determine when to initiate a criminal prosecution and the

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[41] *Com. ex rel. Specter v. Bauer*, 261 A.2d 573, 575 (Pa. 1970); see also *Chalfin v. Specter*, 233 A.2d 562, 565 (Pa. 1967) (stating that prosecutorial "powers, functions, [and] duties" involve prosecution of crimes committed).

[42] *In re Sheasley*, 595 B.R. 72, 82 (Bkrcy. W.D. Pa. 2018) (citing *Bauer*, *supra*, 261 A.2d at 576).

[43] *Miller v. County of Centre*, 173 A.3d 1162, 1174 (Pa. 2017) (citing 71 P.S. 732-206(a)).

[44] 16 Pa. C.S. § 14302.

[45] *Com. v. Clancy*, 192 A.3d 44, 53 (Pa. 2018).

[46] *Williams v. Fedor*, 69 F. Supp. 2d 649, 660 (M.D. Pa. 1999) (citing 71 P.S. § 732-205(a)(4)).

[47] *Com. v. Khorey*, 555 A.2d 100, 109-10 (Pa. 1989) (finding that, absent a valid request from the local district attorney's office based either on lack of resources or potential conflict of interest, the Attorney General lacks authority to take over a prosecution on his own initiative).

nature of the charges to be filed. If he cannot make such judgments, he cannot be said to have the power to determine when and when not to file charges. Upon a proper showing that the prosecutor's decisions are motivated by improper bias, the Court may intervene;[48] however, the Court has already concluded that Defendant has failed to meet the threshold necessary to demonstrate improper prosecutorial bias here.[49]

Moreover, bias alone ordinarily is insufficient to disqualify a district attorney, as "the reasons for bringing the charges" are "not relevant," even if motivated by bias.[50] Rather, a case stands on its merits, and, once it proceeds to trial, it will be the jury's exclusive province to "pass[ ] on the credibility of the witnesses and weight of the evidence," while being "free to believe all, part, or none of the evidence"[51] As the Supreme Court explained:

> Absent facts to the contrary it cannot be assumed that prosecutors will be motivated in their charging decision by factors other than the strength of their case and the likelihood that a jury would impose the death penalty if it convicts. Unless prosecutors are incompetent in their judgments the standards by which they decide whether to charge a capital felony will be the same as those by which the jury will decide the questions of guilt and sentence. Thus[,] defendants will escape the death penalty through prosecutorial charging decisions only because the offense is not sufficiently serious; or because the proof is insufficiently strong. This does not cause the system to be standardless any more than the jury's decision to impose life imprisonment on a defendant whose crime is deemed insufficiently serious or its decision to acquit someone who is probably guilty but whose guilt is not established beyond a reasonable doubt.[52]

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[48] *Commonwealth v. DeHart*, 516 A.2d 656, 670 (Pa. 1986) ("Absent some showing that prosecutorial discretion is being abused in the selection of cases in which the death penalty will be sought, there is no basis for appellant's assertion [that the discretionary nature of the prosecutor's decision of whether to seek the death penalty is unconstitutional]").

[49] *See*, *supra*, Part 3.

[50] *Com. v. Orie*, 88 A.3d 983, 1020-23 (Pa. Super. 2014).

[51] *Com. v. Smith*, 351 A.3d 1245, 1254 (Pa. Super. 2026) (citation omitted).

[52] *Gregg v. Georgia*, 96 S. Ct. 2909, 2949 (1976).

Although this Court has authority to seek the Attorney General's intervention if it "has reason to believe that the case is a proper one for the intervention of the Commonwealth,"[53] the Court will not do so here and, in any event, believes it would not be justified in doing so.[54] Furthermore, the District Attorney is part of the executive branch of government and, as such, "has the primary function of enforcing the laws of this Commonwealth" and "is vested with the considerable discretion of what charges should be brought against a particular offender."[55] Disturbing this function in this case, as in any other, carries potentially serious separation of powers implications.[56]

Therefore, Defendant's motion to disqualify the entire Office of the District Attorney is DENIED.

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[53] 71 P.S. § 732-205(a)(5). Generally, a request for intervention of this type is made by the trial judge acting through the president judge. *Ruiz v. Attorney General of Pennsylvania*, 789 A.2d 372, 374-75 (Pa. Commw. 2001), *alloc. denied*, 798 A.2d 1294 (Pa. 2002).

[54] *See, e.g., Khorey, supra*, 555 A.2d at 110 (holding that the trial court abused its discretion in finding the district attorney lacked resources to prosecute a case and turning the prosecution over to the Attorney General when the district attorney filed the information and was apparently prepared to proceed with the prosecution).

[55] *Com. v. Berryman*, 649 A.2d 961, 975 (Pa. Super. 1994).

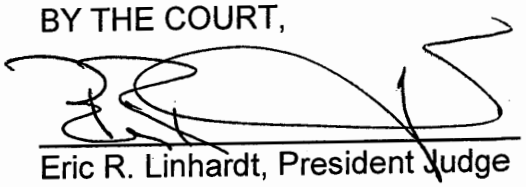
[56] *See, e.g., Com. v. Buonopane*, 599 A.2d 681, 684 (Pa. Super. 1991) ("We are further concerned with the trial court's pretrial determination [granting defendant's motion to preclude the death penalty] in that its interference with the prosecutor's discretionary functions, absent a threshold showing of a valid claim of purposeful abuse, violates the constitutional principle of separation of powers. Courts will not review the actions of the executive branch involving acts of discretion in the absence of bad faith, fraud, capricious action or abuse of power; nor will they inquire into the wisdom of such actions or into the details of the manner adopted to carry them into execution") (citing *Pa. Soc. Servs. Loc. 668 v. Pa. Lab. Rels. Bd.*, 392 A.2d 256 (Pa. 1978)); *see also, e.g., Com. v. Hill*, 239 A.3d 175, 181 (Pa. Super. 2020) ("[T]he trial court abused its discretion in dismissing the charges against Appellee and violated the separation of powers doctrine by exceeding the scope of its own authority under the Constitution of the Commonwealth"), *alloc. denied*, 250 A.3d 1161 (Pa. 2021).

(5) Conclusion and Order.

For the reasons explained at length above, Defendant's Motion, as amended, is DENIED. The Court finds that Defendant has not demonstrated that Pennsylvania's capital punishment statute is unconstitutional and violates due process; (2) that he has not proven that the status of capital punishment in Pennsylvania creates a *Caldwell* violation and deprives Defendant of due process; (3) that he has not shown that the District Attorney's decision to seek the death penalty in this case violates equal protection under both the United States and Pennsylvania Constitutions; and (4) that the entire Office of the District Attorney should not be disqualified.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, President Judge

ERL/bel

cc: Martin L. Wade, Esq., *District Attorney's Office*
Jeana A. Longo, Esq., *Public Defender's Office*
William J. Miele, Esq.
Gary Weber, Esq. (*Lycoming Reporter*)
Court Administration/Court Scheduling