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**Michael Bernard Bell v. State of Florida**

THE FINAL CASE FOR THIS MORNING'S CALENDAR IS BELL. BELL VERSUS STATE. MR. SASS IR. -- MS. SASSER.

MAY IT PLEASE THE COURT. I AM JEANINE SASSER, REPRESENTING MICHAEL BELL. THIS CASE IS BEFORE THE COURT ON A SPECIAL RELIEF TO AMEND ON A REQUEST --

MS. SASSER, LET ME RUN THROUGH THE TIMING IN THIS SITUATION, BECAUSE QUITE FRANKLY, I AM VERY CONCERNED ABOUT WHERE WE ARE IN THIS SITUATION. AS I UNDERSTAND IT, YOU CAME IN THE CASE IN THE FALL OF 1999 OR 1998?

OCTOBER 12 OF '98.

OCTOBER 12, '98. AND THEN, FROM THAT POINT UNTIL THE NOTICE OF APPEAL WAS FILED, IN THIS CASE THAT BROUGHT THE MATTER HERE, WHICH I UNDERSTAND WAS IN JANUARY 2000, WHAT STEPS DID YOU TAKE, DURING THAT PERIOD OF TIME, TO GET TRIAL COUNSEL'S FILE?

I HAVE TRIED CASES WITH HIM AND KNOWN HIM PERSONALLY FOR 20 YEARS. I TRIED CASES WITH HIM AND SAW HIM ON SEVERAL LEVELS. I SAW HIM, PERSONALLY, ON FOUR INDICATIONS.

DID YOU TAKE THE MATTER TO THE TRIAL JUDGE?

NO. BECAUSE EACH TIME, MR. NICHOLS WOULD TELL ME THAT HE WOULD GET THE FILE. HE HAS, SINCE THAT TIME, TOLD ME THAT HE HAS LOST THE FILE.

DID YOU REVIEW ANY OF THE RECORDS WHICH ARE HERE IN THE REPOSITORY IN TALLAHASSEE?

I HAVE TAKEN COPIES OF ALL OF THE RECORDS THAT WERE IN THE REPOSITORY, HERE, THROUGH AN INVESTIGATOR AND REVIEWED ALL OF THOSE. LATER ON, THEY WERE, ALSO, SENT TO ME ON CD, AND I REVIEWED THE TRIAL COURT'S TRIAL AT THE -- THE TRIAL COURT FILE, WHICH WAS IN JACKSONVILLE, SO, YES, I HAVE REVIEWED ALL OF THE RECORDS AND REVIEWED THE TRIAL COURT, AND -- MY CLIENT, ON FOUR OCCASIONS -- ANOTHER ONLY THING HE DIDN'T HAVE, IN ORDER TO FILE A FULLY-PLED MOTION, AT THE TIME THAT THE CASE WAS DISMISSED, WAS THE TRIAL COUNSEL'S FILE?

THAT'S CORRECT. AND THE REASON I THOUGHT THAT THAT WAS IMPORTANT WAS BECAUSE THE ALLEGATIONS THAT MY CLIENT WAS TELLING ME, AND I THOUGHT THAT I SHOULD AT LEAST LOOK AT THAT FILE.

IT CERTAINLY SEEMS TO ME THAT IT WAS IMPORTANT, BUT IT, ALSO, CERTAINLY SEEMS TO MAE THAT YOU AND THE STATE, STATES ATTORNEYS OFFICE OVER THERE, NEEDED TO TAKE SOME STEPS TO GET THE TRIAL JUDGE TO INTERVENE, THERE, AND GET THAT FILE. I MEAN, HERE WE ARE, MORE THAN A YEAR AFTER THIS CASE HAS, NOW, BEEN HERE, IN THIS COURT. MR. BELL SITS OVER THERE ON DEATH ROW WITH NO PROGRESS BEING MADE, WHATSOEVER, IN THIS POSTCONVICTION PROCEEDING, AND THAT GREATLY DISTURBS ME, THAT I DON'T UNDERSTAND HOW COUNSEL CAN PROCEED ON THAT BASIS, WITH LETTING THE MATTER ROLL ON, WITHOUT GETTING SOME HELP FROM THE TRIAL COURT.

ONCE THE NOTICE OF APPEAL HAD BEEN FILED AND THE TRIAL COURT LOST JURISDICTION, I

APPROACHED THE STATE ATTORNEY IN JACKSONVILLE, TO ASK HIM WOULD HE AGREE TO HELP GET THE THE FILE, TO RELINQUISH JURISDICTION BACK TO THE TRIAL COURT, AND TO GET IT DISPOSED OF THAT WAY. HE -- THERE APPARENTLY WAS SOME DESIRE TO HAVE A SHELL MOTION COME BEFORE THIS COURT, AND THAT IS, I THINK, WHY WE ARE HERE. BECAUSE I DID NOT FEEL LIKE I COULD DISMISS THE CASE FROM HERE, WITHOUT SOME UNDERSTANDING WITH THE STATE ATTORNEY'S OFFICE THAT WE COULD, THEN, GO FORWARD, AND I WAS NOT ABLE TO GET THAT UNDERSTANDING.

I UNDERSTAND THAT, IN YOUR SHELL MOTION, YOU HAVE 33 CLAIMS, AS IT WERE, AND ALL OF THESE CLAIMS DEPEND ON THE TRIAL ATTORNEYS FILE?

NO. THEY DON'T ALL DEPEND ON THE TRIAL ATTORNEYS FILE. MANY OF THE CLAIMS HAVE ALREADY BEEN SUBSTANTIATED AT THIS POINT.

AND HAS THE MOTION BEEN AMENDED AT THIS POINT?

I HAVE NOT FILED AN AMENDED MOTION, BECAUSE THERE IS NO JURISDICTION IN THE TRIAL COURT AT THIS TIME.

ONCE WE MAKE OUR DECISION IN THIS CASE, ARE YOU IN A POSITION TO FILE A FULLY-PLED 3.851 MOTION?

WITH EXCEPTION OF I HAVE NOT YET SEEN THE TRIAL COUNSEL'S BRIEF, YES. EVERYTHING ELSE HAS BEEN DONE.

YOU HAVEN'T SEEN THE TRIAL COUNSEL --

I AM SORRY. NOT BRIEF. RECORD.

AND HOW MANY ISSUES, OF YOUR 33 ISSUES, DEPEND ON SEEING THE TRIAL ATTORNEY'S RECORD?

I WOULD HAVE TO SEE THAT TO TELL YOU, BUT I THINK PROBABLY TWO OR THREE OF THEM.

IS THIS WHAT YOU SAID THAT THE TRIAL ATTORNEY, YOU DON'T THINK, HAS THE FILE.

THAT IS WHAT HE LAST TOLD ME. THAT WAS AFTER THIS COURT TOOK JURISDICTION. I CONTINUED TO PURSUE IT WITH HIM, AFTER THE COURT TOOK JURISDICTION, AND HE FINALLY SAID THAT HE DID THOUGHT THAT HE HAD LOST THE FILE.

THE WHOLE FILE OF THE DEFENSE OF THIS CASE?

THAT IS WHAT HE TOLD ME. HE HAS, SINCE, LIMITED HIS PRACTICE OF LAW AND HAS CLOSED HIS OFFICE IN JACKSONVILLE.

WHEN DID THIS TRIAL TAKE PLACE?

A MANDATE WAS ISSUED BY THIS COURT IN NOVEMBER OF '97. IT WAS DENIED BY THE UNITED STATES SUPREME COURT, THE PETITION, IN JUNE OF '98. IT WAS, THEN, AS IBD TO THE CHRAT R58 -- IT WAS, THEN, ASSIGNED TO THE COLLATERAL CAPITAL APPEALS AND IT WASN'T SENT TO US UNTIL SOME TIME LATER.

YOU ARE REPRESENTING THAT THE FILE OF THE TRIAL ATTORNEY IS ONLY WHAT IS MISSING NOW. IS THAT BECAUSE ARE SAYING?

IT IS THE HOLD UP. I DO HAVE A MOTION ASKING THE COURT TO REVIEW THE RECORDS THAT THE

STATE ATTORNEY HAS WITHHELD, BUT I DON'T ANTICIPATE THAT THAT IS A PROBLEM.

WHEN WAS THAT FILED?

THAT WAS FILED AFTER -- I FILED A MOTION WITH THE TRIAL COURT, AFTER THIS COURT HAD JURISDICTION, JUST TO TRY AND MOVE THINGS ALONG, AND IT WAS FILED AT THE SAME TIME. I REALIZE THE COURT DIDN'T HAVE JURISDICTION, THOUGH, BUT I WENT AHEAD AND FILED THE MOTION.

YOU MAY CONTINUE.

THANK. AS THE COURT IS AWARE OF THE CYCLE OF THINGS, IT IS OUR POSITION THAT THE COURT ERRED IN DENYING THE MOTION, WITHOUT GIVING ANY KIND OF RELIEF, AND WHAT WE ARE ASKING FOR, IN COUNT ONE, IS THAT THIS BE REMAND, AND THAT THE SCHEDULE B GRANTED FOR REHEAVE FOR THE DEFENDANT, AND THAT -- FOR RELIEF FOR THE DEFENDANT, AND THAT IT BE 90 DAYS AFTER EITHER THE TRIAL COUNSEL SAYS THAT HE HAS LOST THE FILE, BY AFFIDAVIT, WHICH HE HAS SAID THAT HE WOULD GIVE ME, OR THAT IT IS, THEN, PRODUCED, AND THAT IS OUR FIRST MOTION, BASICALLY. THERE IS, IN THE STATE'S MOTION AND ARGUMENT, THAT ONLY IT IS OUR POSITION THAT IF TRIAL COUNSEL WAS NOT AVAILABLE, IF IT IS NOT IN THIS POSITION BECAUSE OF CAPITAL COLLATERAL APPEALS, THAT THAT ONE-YEAR LIMITATION DOES APPLY, AND 3.851-B-3, STATES THAT THE RULE DOES NOT PRECLUDE THE RIGHT TO AMEND OR TO PRESENT SUBSEQUENT PLEADINGS, AND THAT UNDER THAT ARGUMENT, WE SHOULD BE ALLOWED TO AMEND OR SUPPLEMENT PLEADINGS, ALSO. IN OUR SECOND ARGUMENT, WE HAVE MERELY ASKED THAT THIS CASE BE REMANDED SO THAT A HUFF HEARING BE HELD. A HUFF WAS DECIDED BY THIS COURT IN 1993, WHERE THE COURT HELD THAT, BECAUSE OF THE SEVERITY OF PUNISHMENT AT ISSUE IN A DEATH PENALTY POSTCONVICTION CASE, WE HAVE DETERMINED THAT HENCEFORTH THE JUDGE MUST ALLOW THE ATTORNEYS THE OPPORTUNITY TO APPEAR BEFORE THE COURT AND TO BE HEARD ON AN INITIAL 3.850 MOTION. HUFF DOES NOT SAY THAT YOU ARE ENTITLED TO ADD EVIDENTIARY HEARING, JUST LEGAL ARGUMENT IN PERSON. IN COMMENTS TO THE RULES, THAT ARGUMENT CAN, EVEN, BE DONE BY TELECONFERENCE.

WHAT OCCURRED AT THE HEARING THAT TOOK PLACE HERE? WERE YOU GIVEN AN OPPORTUNITY -- WASN'T THERE SOME KIND OF HEARING BEFORE THE TRIAL JUDGE, BEFORE HE DISMISSED THESE CLAIMS?

NO. THERE WAS A STATUS CONFERENCE BEFORE THE MOTION WAS FILED. AT THE STATUS CONFERENCE, THE JUDGE SAID THAT HE WOULD READ THE MOTION ON THE STATUS CONFERENCE. IT WAS NOT RECORDED. THERE WERE THREE CASES THERE THAT DAY. IT WAS A NONEVENT. I DID ADVISE THE STATE ATTORNEY, AT THAT TIME, THAT WE NEEDED THE TRIAL COUNSEL'S FILE AND THAT THAT WAS A MAJOR PROBLEM. SO BASICALLY WHAT WE ARE ASKING IS THAT THIS COURT SIMPLY REMAND IT FOR A BRIEFING SCHEDULE, TO ALLOW US TO AMEND OR TO SCHEDULE FOR THAT, AND TO REMAND FOR A HUFF HEARING. THANK YOU.

MISS YATES.

MAY IT PLEASE THE COURT. BARBARA YATES, ASSISTANT ATTORNEY GENERAL, ON BEHALF THE STATE OF FLORIDA. JUSTICE QIBS, YOU ASKED ABOUT THE STAT -- JUSTICE QUINCE, YOU ASKED ABOUT STATUS CONFERENCE. I BELIEVE COLLATERAL COUNSEL STATED THAT THE STATUS CONFERENCE WAS HELD BEFORE THE INFORMATION. THAT IS INCORRECT. THE STATUS CONFERENCE OCCURRED IN SEPTEMBER OF 1999. THE SHELL MOTION WAS FILED IN MAY OF 1999. ONE OF THE REASONS THE STATE WAS INTERESTED IN BRINGING THIS CASE BEFORE YOU IS THE SHELL MOTION THAT WAS FILED IN THIS CASE. THIS COURT CONSIDERED A SHELL MOTION EXACTLY LIKE THIS INVENT YOUR A V STATE AND -- IN VENTURA V STATE AND ISSUED AN OPINION I DON'T KNOW IN 1996, SAYING TRIAL JUDGE, YOU SHOULD NOT HAVE DISMISSED THE SHELL MOTION WITHOUT PREJUDICE, BECAUSE PUBLIC RECORDS HAD NOT BEEN PROVIDED, AND I

BELIEVE JUSTICE WELLS, IN HIS CONCURRENCE, SAID WE NEED A RULE ABOUT PUBLIC RECORDS. 3.852 IS THAT RULE YOU SUGGESTED. THIS IS A 3.852 CASE. IT CAME ENTIRELY UNDER IT. IF YOU READ THROUGH THIS MOTION, IT IS THE PRE3.852 SHELL MOTION. IT SAYS WE HAVEN'T GOTTEN ANY PUBLIC RECORDS. THAT IS ENTIRELY INCORRECT. SUPPLEMENTAL RECORDS, THERE IS A COPY OF THE STATE'S MOTION TO STRIKE. THE PUBLIC RECORDS DEMAND, THE COLLATERAL COUNSEL FILED IN MARCH OF 1999. ATTACHED TO THAT MOTION TO STRIKE ARE THE NOTICES THAT WERE SENT TO THE STATE ATTORNEY AND TO THE DEPARTMENT OF CORRECTIONS. THIS CASE BECAME FINAL, FOR PURPOSES OF THE 3.852, OCTOBER 1 OF 1998.

WHAT ARE YOU SUGGESTING THAT WE DO?

YOUR HONOR, EVERYBODY IS MESSED UP ON THIS THING. COLLATERAL COUNSEL, AT THAT STATUS CONFERENCE, WHAT I UNDERSTAND OF IT, THERE IS NO TRANSCRIPT OF IT. FROM WHAT I UNDERSTAND IN THE STATE'S PLEADINGS, WHICH HAVE NOT BEEN CONTESTED BY CHAT -- CONTESTED BY COLLATERAL COUNSEL, SHE STATED THAT SHE WOULD FILE AMENDED MOTION IN APRIL 1999. WHEN THAT DID NOT HAPPEN, THE STATE FILED A MOTION TO DISMISS IN NOVEMBER 1999. JUSTICE OLIN WAS A RETIRED JUDGE THAT TRIED THIS CASE IN 1995, AND HE HAS CONTINUED TO HAVE THE CASE IN POSTCONVICTION. HE ISSUED THE ORDER, GRANTING THE STATE'S MOTION TO DISMISS, ON DECEMBER 30, 1999.

BUT ARE YOU SUGGESTING THAT WE SHOULD UPHOLD THE DISMISSAL OF THIS CASE?

I WOULD LOVE TO BE ABLE TO TELL YOU THAT, YOUR HONOR. I DON'T THINK THERE IS A CHANCE IN THE WORLD YOU ARE GOING TO. THIS NEEDS TO BE SENT BACK.

WHAT ARE YOU SUGGESTING?

I THINK THIS COURT NEEDS TO -- ONE OTHER THING. INSTEAD OF FILING A MOTION FOR REHEARING, FILING THE MOTION TO COMPEL PRODUCTION OF COUNSEL'S RECORDS, COLLATERAL COUNSEL FILED A NOTICE OF APPEAL AT THE END OF JANUARY. THAT DIVESTED JURISDICTION FROM THE TRIAL COURT. THAT WAS THE END OF JANUARY, 2000. IN JUNE, SHE FILED TWO MOTIONS, ONE AT THE BEGINNING OF THE MONTH, ONE LATER IN THE MONTH. ONE WAS A MOTION TO COMPEL PRODUCTION OF TRIAL COUNSEL FILED, AND THE OTHER WAS A MOTION FOR IN CAMERA INSPECTION OF THE RECORDS THAT HAD BEEN SENT TO THE REPOSITORY, WHERE SEVERAL AGENCIES WERE CLAIMING EXEMPTION OF CONFIDENTIALITY. ALL OF THESE THINGS COULD HAVE BEEN DONE IN A MUCH MORE TIMELY MANNER. THE JUDGE, WHEN HE GOT THE MOTION FOR DISMISS, COULD HAVE SET A HUFF HEARING, COULD HAVE ISSUED AN ORDER TO SHOW CAUSE. THIS CASE HAS FALLEN THROUGH THE CRACKS, AND EACH ONE OF US ARE PARTLY TO BLAME ON THIS. HOWEVER, I THINK YOU DO NEED TO SEND IT BACK TO THE CIRCUIT COURT. AS WE ARE DEALING WITH A RETIRED JUDGE HERE, THIS IS VERY DELICATE, BUT I HEARD YESTERDAY THAT THIS RETIRED JUDGE HAD A STROKE A COUPLE OF MONTHS AGO. I DON'T EVEN KNOW IF HE IS HEALTHFUL ANYMORE. I SUGGEST YOU SEND THIS BACK TO THE CIRCUIT COURT, CHIEF JUDGE, WITH ORDERS THAT TRIAL COUNSEL, AN ORDER COMPELLING TRIAL COUNSEL TO PRODUCE RECORDS, THERE BE AN ORDER THAT, WHICHEVER JUDGE IS ASSIGNED TO THIS CASE, GET THE EXEMPT RECORDS FROM THE REPOSITORY AND CONDUCT AN IN CAMERA REVIEW, AND THAT THERE BE AN ORDER BY COLLATERAL COUNSEL FILE A FULLY-AMENDED MOTION, WITHIN THE SPECIFIED TIME, AND FOR THE STATE TO ANSWER IT WITHIN THAT SPECIFIED TIME. THAT WILL GET THIS CASE BACK ON TRACK. THIS IS NOT ONE OF THE CASES THAT IS GOING ON FOREVER. THE TRIAL WAS IN 1995. THIS COURT AFFIRMED THE CONVICTION OF TWO DEATH SENTENCES, IN 1997. THE U.S. SUPREME COURT DENIED IN '98, SO IT IS NOT ONE OF THOSE CASES WHERE IT LANGWISHED --

THE STATE IS NOT ARGUING THAT IT STAY BEFORE THE SAME JUDGE.

NEW YORK CITY YOUR HONOR. IN THE FOURTH CIRCUIT, IT IS THE PRACTICE THAT, IF YOU TRY THE CASE, YOU KEEP T OTHER CIRCUITS, IT IS DIFFERENT. SOME -- YOU KEEP IT. OTHER CIRCUITS, IT IS DIFFERENT. SOME RETIRED JUDGES REFUSE TO HEAR IT, AFTER THE TRIAL.

WHAT BOTHERS ME ABOUT THIS CASE IS IT SEEMS TO ME WHAT YOU HAVE OUTLINED IS A -- SOMETHING THAT WOULD BE A REASONABLE STEP TO TAKE, BUT WHAT BOTHERS ME IS THAT THE STATE DIDN'T COME IN AND MAKE THAT TYPE OF OUTLINE, IMMEDIATELY UPON THIS THING BEING FILED. I MEAN, THERE IS NO REASON THAT WE ARE HERE 14 MONTHS LATER, IN A CASE WHICH WAS, FOR A 1993 MURDER, THAT WAS AFFIRMED BY THIS COURT IN 1997. AND THAT WE SIMPLY HAVE TO DEPEND UPON THE STATE TO TAKE THE REALIZEISTIC VIEW THAT THESE MATTERS ARE GOING TO BE HEARD. AND TO OUTLINE A PROCEDURE UPON WHICH THAT IS GOING TO BE DONE.

THE ASSISTANT STATE ATTORNEY, I DISCUSSED THIS AFTER I TOOK OVER THE CASE, WHEN IT CAME UP ON PALE, WE DISCUSSED -- ON PALP EEL -- ON APPEAL, WE DISCUSSED WHETHER THE STATE WOULD OPPOSE A MOTION TO DISMISS, IF IT WERE FILED BY COLLATERAL COUNSEL. WE DECIDED THAT WE WANTED TO BE ABLE TO PROCEED. SORRY, BUT THAT IS THE WAY IT IS. LIKE I SAID, ALL OF US, THE STATE, DEFENSE, THE JUDGE, WE ALL BEAR SOME RESPONSIBILITY IN THIS, BUT IT DOES NEED TO BE SENT BACK AND SENT BACK WITH DIRECTION THAT CERTAIN THINGS BE DONE IN A TIMELY MANNER IN THIS CASE. COUNSEL SAID ALL SHE NEEDS IS TRIAL COUNSEL'S FILE, AND SHE WILL BE PREPARED TO, SHORTLY AFTER RECEIVING THOSE FILES, TO FILE A FULLY- PLED AMENDED MOTION. ANOTHER ATTORNEY GENERAL DIDN'T PARTICIPATE IN THE CASE, UNTIL AFTER THE CASE WAS DISMISSED AT THE TRIAL LEVEL. IS THAT CORRECT?

NO, JUDGE. IT WAS AN ASSISTANT ATTORNEY GENERAL. MY PREDECESSOR ON THIS CASE, WHO FILED THE MOTION TO STRIKE THE PUBLIC RECORDS DEMANDS, IT WAS THE ASSISTANT ATTORNEY GENERAL WHO FILED THE RESPONSE TO THE SHELL MOTION AND ASKED THAT IT BE DISMISSED.

THANK YOU FOR YOUR CANDOR.

THANK YOU.

REBUTTAL?

I DON'T REALLY HAVE A REBUTTAL, SINCE APPARENTLY WE ARE ASKING FOR THE SAME THING AT THIS POINT AND JUST ASK THE COURT TO DO. THAT.

THANK YOU. THE COURT WILL BE IN RECESS. THANK YOU, COUNSEL. THE MARSHAL: PLEASE RISE.