

W2016-00912.CCA-R3-PC

IN THE CRIMINAL COURT OF TENNESSEE FOR THE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

VERN BRASWELL ,)
)
 Petitioner,)
)
VS.)
)
)
STATE OF TENNESSEE)
)
 Respondent.)

Case No. 05-03038

ANNOUNCEMENT

APRIL 20, 2011

THE HONORABLE PAULA SKAHAN , PRESIDING JUDGE

SHELBY COUNTY CRIMINAL COURT
INDICTMENT # 05-03038

VERN BRASWELL
VS.
STATE OF TENNESSEE

VOLUME 6 OF 11 VOLUMES
TRANSCRIPT OF EVIDENCE

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VARIOUS APPEARANCES:

FOR THE STATE OF TENNESSEE:

MR. DOUGLAS CARRIKER
Assistant District Attorney Generals
Shelby County District Attorney's Office
201 Poplar Avenue
Third Floor
Memphis, Tennessee 38103

FOR THE PETITIONER:

MS. TAYLOR ESKRIDGE
Attorney at Law
200 Poplar Avenue
Memphis, Tennessee 38103

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1 IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

2 DIVISION I

3
4 VERN BRASWELL)

5 Petitioner)

6)

7 VS.)

Case No. 05-03038

8)

9 STATE OF TENNESSEE,)

10 Respondent.)

11
12
13 This cause came on to be heard and was heard on the 20th day of
14 April, 2011, before the Honorable Paula Skahan, Judge, holding the Criminal
15 Court for Shelby County, Tennessee and the following proceedings were
16 had, to-wit:

17
18 -----

19
20 MS. ESKRIDGE: Judge, may we approach the bench?

21 THE COURT: Sure. Is this on Vern Braswell?

22 MS. ESKRIDGE: Yes.

23 (A bench conference was had, as follows):

24 MS. ESKRIDGE: Today is a status date, today.

25 THE COURT: You've sent me copies of the letters that he's sent to

1 you.

2 MS. ESKRIDGE: Yes.

3 MR. CARRIKER: And I've been provided those, also.

4 THE COURT: Good.

5 MS. ESKRIDGE: He also subpoenaed some information, using my
6 name with the wrong address and phone number.

7 THE COURT: You're kidding?

8 MS. ESKRIDGE: No. But, at any rate I corrected it, which is -
9 everything is weird about this case. What he has subpoenaed was the
10 employee file for Dr. Joy Carter, which was listed in that case file, prior to
11 trial, from Shelby County and Shelby County called me and they said we
12 would love to send it to you, but we don't have any records that she ever
13 worked here. So everything is a problem.

14 THE COURT: Do you know if she did?

15 MS. ESKRIDGE: She did.

16 THE COURT: Okay.

17 MS. ESKRIDGE: She was the medical examiner, she testified in
18 trial. It said she worked for Shelby County and she was the medical examiner.

19 So what is going on? I mean, he is right, that it is suspicious and
20 he, of course, thinks I work for the D. A.

21 But, at any rate, we have met and we have a pretty good idea of
22 what we are requesting, but a lot of it is not as easy as it seems.

23 THE COURT: So you need some more time?

24 MS. ESKRIDGE: We do need some more time.

25 MR. CARRIKER: I need to sit down with Mr. Baity and review

1 with him, regarding what he wants her to get from me. There is some of this
2 stuff that I am not comfortable just handing over in Court, so I'll need
3 someone else to review it, too. And that is partly because Ms. Weirich had
4 things marked as, "not exculpatory", in bold letters in an envelope and it is
5 sealed. And I want to make sure that before I hand something over that I am
6 not going to –

7 THE COURT: Oh, my Gosh.

8 MS. ESKRIDGE: Now of course, that wets my appetite, I'm like,
9 what's in the envelope?

10 THE COURT: For all I know you can file a freedom of information
11 act request for all of that.

12 MR. CARRIKER: And Mr. Baity has called me this morning, called
13 me in to make an open file discovery, but I want to meet with him and sit
14 down and show him what he's requesting that we – but, we did find a couple
15 of things that he had questioned the day we met and I want to show him what
16 – to make sure I'm doing the right thing and not getting myself in trouble with
17 the State, whatsoever.

18 THE COURT: Right.

19 MR. CARRIKER: Yeah, it is a little bit more difficult than just the
20 standard.

21 THE COURT: I know.

22 MR. CARRIKER: And to add to that, the State's file that we have
23 here is two – not manila, but they are expandable and they are both filled to
24 the brink of capacity to the point where putting anything in them is not even
25 possible. They are both, almost, a foot thick. So going through that much

1 material is – we glanced through as much as we could in about an hour and
2 found a couple of things. But, just to dig through all of that and try to locate
3 all the different things that he's wanting, I think that there's about twenty-five
4 different things that he wants, if I remember right.

5 MS. ESKRIDGE: Well, they all make sense.

6 MR. CARRIKER: Yeah, it's going to take a little time for us to find
7 all of that stuff and then I'd like to have someone else to view it with me, to
8 make sure that I am doing the right thing.

9 THE COURT: Okay. Well, is he here?

10 MS. ESKRIDGE: He is. And so I wanted to make this preliminary
11 conversation. He has already requested to stay and once we meet I'll be
12 making that request to allow him to stay so that he has access to –

13 THE COURT: I don't think that they are going to let him stay in
14 this jail. Well, I mean, for maybe a week?

15 MS. ESKRIDGE: May I make the request and then if they shoot me
16 down –

17 THE COURT: How much time do you need on this continuance?

18 MS. ESKRIDGE: Do you want to use a July date?

19 MR. CARRIKER: We had a hearing date last time, but we are not
20 going to use that. Somewhere in the first two weeks of June, Your Honor is
21 going to be out one week for vacation and one week for Judicial Conference,
22 so we could meet again then, in between that, I am hoping to have a little time
23 to sit down and look through it and maybe have a little bit more productive
24 meeting in June to see if we can get things –

25 THE COURT: Yeah. And you can bring him in a few days before

1 the report date, certainly, but we just can't keep him here.

2 MS. ESKRIDGE: All right.

3 THE COURT: Let's change it until July the 1st for report and let's
4 bring Vern Braswell out, please.

5 (End of bench conference).

6 (Petitioner present).

7 MS. ESKRIDGE: Your Honor, my client is now in the courtroom,
8 Vern Braswell.

9 On the last setting, Your Honor, we requested several items of
10 discovery from the State. It has been communicated to me that it is going to
11 take a little bit longer to produce that information. So Your Honor, our
12 request would be that we continue this matter until July 1st for additional
13 status to check on how we're doing on getting all of the information that's
14 been requested.

15 Additionally, Your Honor, my client, because of the nature of the
16 items requested and our limited contact, because he is placed at Henning
17 right now, he has requested that he remain in Memphis for a period of a
18 week, so that we can continue to work together, closely.

19 THE COURT: All right. There is no problem with remaining a
20 week, but you cannot stay here until July the 1st, okay?

21 PETITIONER BRASWELL: Your Honor, that is -

22 MS. ESKRIDGE: How long do you want to stay?

23 PETITIONER BRASWELL: I didn't know that she needed me to
24 stay.

25 THE COURT: You're ready to go back?

1 PETITIONER BRASWELL: I don't know. This is something new to
2 me. But, however, if I need to stay in order to get some things accomplished, I
3 don't have a problem with that, but -

4 THE COURT: You don't need to stay.

5 MS. ESKRIDGE: You don't have to stay.

6 PETITIONER BRASWELL: But, if she needs me to stay so that we
7 can get some things done, I can do that, I don't know. Maybe we can be reset
8 until tomorrow and then it may take them about a week to get my order in. I
9 am not opposed to staying, but this is just new to me.

10 THE COURT: No. Ms. Eskridge thought that you wanted to stay
11 here through to the next date.

12 MS. ESKRIDGE: And I am not going to be able to meet with you
13 between now and tomorrow, so. We'll just go ahead with the July the 1st date
14 and we will discuss whether or not he needs to come in before that.

15 THE COURT: Right. Mr. Braswell, I have received your letters
16 and have spoken with Ms. Eskridge about the items that you're requesting,
17 regarding the medical examiner and various things like that and she is an
18 attorney and she is quite capable of issuing subpoenas. I don't want to hear
19 about you issuing a subpoena in her name.

20 PETITIONER BRASWELL: I did not issue a subpoena in her name,
21 Your Honor. I issued some -

22 THE COURT: I don't want to hear about you issuing a subpoena.

23 PETITIONER BRASWELL: At all?

24 THE COURT: At all. You are not an Attorney and -

25 PETITIONER BRASWELL: Your Honor, I know.

1 THE COURT: Especially, if you are using her name, that is not
2 okay.

3 PETITIONER BRASWELL: Your Honor, I don't know where you
4 got that information but that is -

5 THE COURT: I got it from her and a subpoena is a Court Order,
6 from me, this Court. It is the power of this Court to order somebody to
7 produce something. It is not you.

8 PETITIONER BRASWELL: Right.

9 THE COURT: It is not Ms. Taylor, (sic), it is me, that has the
10 power behind that subpoena

11 PETITIONER BRASWELL: Right. I understand that, but -

12 THE COURT: You don't have the authority, I am not giving you
13 the authority to issue a subpoena, unless you request it from me, okay?

14 Now, Ms. Eskridge is a licensed attorney and she has my
15 authority, if she feels she needs the medical examiner, any personnel records,
16 or anything like that, requested. You do not.

17 PETITIONER BRASWELL: Yes, ma'am. But, are you just telling
18 me that she said that I issued subpoenas in her name?

19 THE COURT: Yes.

20 PETITIONER BRASWELL: That is incorrect, Your Honor, that is
21 not true.

22 THE COURT: Okay. I'm just telling you, right now, don't issue any
23 subpoenas without my authorization, okay? Let your Attorney do any
24 subpoenas.

25 PETITIONER BRASWELL: That's not a problem and I am

1 somewhat appalled that she would say that. It never occurred that she would
2 lie on me like that. I did not issue anything with her name on it. I challenge
3 her to produce something that shows that I did it.

4 THE COURT: Mr. Braswell, you take offense at anything. I am just
5 saying, stop issuing subpoenas. You can go ahead and take it that Ms.
6 Eskridge is working against you, that is not what's going on. I am telling you,
7 right now, as far as your post-conviction, let your attorney do these things so
8 that once you do obtain them, they can be presented in Court in the proper
9 way, okay. Work with her.

10 PETITIONER BRASWELL: Your Honor, I promise you, I have
11 tried. I have tried to keep the Court apprised. I just, it's just shocking that she
12 would say that I issued a subpoena in her name. I am interested to know
13 where she got it. Yes, I did issue a subpoena, but nowhere did I say, by Taylor
14 Eskridge, that did not happen. Now, maybe there is some miscommunication.

15 THE COURT: What was the situation, Ms. Eskridge?

16 PETITIONER BRASWELL: I'd love to hear it.

17 MS. ESKRIDGE: A subpoena was issued and as Your Honor is
18 aware at the bottom of the subpoena it asks for the Attorney, my name was
19 listed with the address where I worked two years ago and a phone number
20 where I worked two years ago. I got a call from the Shelby County, in follow
21 up, because I was never notified of it. After I was surprised that I got a call
22 from Shelby County, you know, I followed up with her and she faxed over a
23 copy of it to me, which is at my office. But, it has my name, my address and
24 my phone number, which is incorrect information, so of course I would not,
25 today, issue a subpoena with incorrect information to contact me.

1 PETITIONER BRASWELL: And nor would I. And I have the one
2 that I was going to send, but did not –

3 MR. ESKRIDGE: That doesn't matter.

4 THE COURT: Mr. Braswell, you are missing the whole point. I am
5 telling you to stop issuing subpoenas.

6 PETITIONER BRASWELL: That's not a problem.

7 THE COURT: The point of this is not to get you fighting with your
8 attorney, okay. Just stop. She is aware of the medical examiner issue, okay.
9 And she knows how to issue a subpoena and she knows how to put her
10 information on there, correctly. Okay. That is the point I am trying to make.

11 PETITIONER BRASWELL: I hear you, loud and clear.

12 THE COURT: Okay. Then, just drop it. And I am not trying to
13 cause any tension between you and her, all right. She is bending over
14 backwards to do a good job for you. She is going to be meeting with the
15 Attorney General's Office and going over some very large files and there's a
16 lot of attorney's in these post-conviction cases that don't do a thing. And from
17 my observation of this case she is working her tail off. So I'd suggest that you
18 show a little bit of appreciation and stop attacking her at every point that I
19 noticed. Stop and work with her.

20 PETITIONER BRASWELL: Your Honor, I hear you, but however,
21 if you noticed, Your Honor, I have said on multiple occasions when you've
22 asked me about issues, that I did not want to say anything, that I wanted to
23 handle things privately. But my concern is, Your Honor, she's been doing this
24 for two years, so what is my recourse, when I am concerned about evidence
25 that I know I need to meet the burden of proof and it doesn't seem like it's

1 coming in.

2 THE COURT: It is coming in. Sometimes it is a fight with several
3 offices to get that information. You're going to have a much harder time if
4 you represent yourself, I promise you that. I promise you that. Getting it
5 from the District Attorney's Office, getting it from the medical examiner's
6 office, getting it from the Attorney that represented you, office. I promise you
7 that.

8 PETITIONER BRASWELL: And I understand, Your Honor, and
9 that is a great fear of mine, but like last time I came in, I was set for an
10 evidentiary hearing and something that I didn't know about. And I know that
11 there are things that I need to meet the burden of proof. I promise you, I
12 understand, I know that and I am fearful of that. I am afraid to come in here
13 with assistance of counsel.

14 I am also afraid to come in here, unprepared, no matter what type
15 of allegations I make about my trial attorney's performance, to meet that
16 clear and convincing standard, I know you're going to need hard proof, you
17 need evidence. And I am concerned about, for the last two years saying, hey
18 we need this, we need this, we need this.

19 THE COURT: Mr. Braswell, do you think she's working on getting
20 that?

21 PETITIONER BRASWELL: Your Honor -

22 THE COURT: When you run into a brick wall you've got to figure
23 out a way around it and that is what I see her doing.

24 PETITIONER BRASWELL: Absolutely. And actually, when you set
25 - when the date was set for the evidentiary hearing and I knew that there

1 were things that we didn't have, I said, well let me issue some subpoenas to
2 try to get this stuff that I know we need. And I know nothing about her name
3 and I was going to – I know her new address is 200 Poplar, I wouldn't put that
4 –

5 THE COURT: It's right on the subpoena.

6 PETITIONER BRASWELL: I wouldn't put an old – that is not my –

7 THE COURT: I didn't know who did it, okay.

8 PETITIONER BRASWELL: You said that I did and I was kind of
9 hurt and shocked that she would – you said that she said. I was telling her I
10 was shocked.

11 THE COURT: Okay. Mr. Braswell, we have some issues, you are a
12 little sensitive, okay. And I am used to dealing with attorneys and maybe I
13 hurt their feelings, but I don't really care, I am used to dealing with people as
14 a Judge, okay. I am the only ego in here that I care about. That is basically the
15 way it is, okay.

16 So deal with it. We are going to continue this until July the 1st for
17 a report date, not an evidentiary hearing, okay. And at that time Ms. Eskridge
18 is going to do her best to get all of this information together, okay.

19 PETITIONER BRASWELL: Okay. So my question is, what do I do
20 when there's things that I know that I need and –

21 THE COURT: She is going to try to get – she understands what
22 you need. It is called trust. And if on July 1st she doesn't she have that we are
23 going to talk again about it. That is over two months from now, okay.

24 PETITIONER BRASWELL: Your Honor, like I said, it is kind of
25 weird, because you know, when we had that Brian Davis gentleman on my

1 case, when he left, I was told the State's going to open up their file and going
2 to allow me – and this is almost like a year later and –

3 THE COURT: I'm not happy about it being on my docket either,
4 believe me. But, we are going to get this done right and I'm going to see you
5 back here July 1st and I would love to have this off of my calendar, already had
6 the hearing and already ruled on it, but it is not ready.

7 PETITIONER BRASWELL: I'd be at home this week. But, do you
8 need me to stay? Do you need me to be here to work on this case?

9 MS. ESKRIDGE: I just need you July the 1st.

10 THE COURT: And we will bring him in a day or two early.

11 MS. ESKRIDGE: Your Honor, and also Ms. Sheila Dunn, from
12 Shelby County is in the courtroom, she is here as a result of that subpoena
13 that was issued. She reports to me that she did not have the personnel
14 records that were requested. However, we know that the person was an
15 employee, so my intention is to continue working with her, prior to the July
16 1st date to see if we can get that information. Outside of that, we would ask
17 that she be ordered to return on July the 1st.

18 THE COURT: All right. Ma'am, so there is a subpoena, the reason
19 why you are here today, is that correct?

20 WITNESS DUNN: Yes, ma'am.

21 THE COURT: Okay. So if you would, please, just continue to
22 honor that and the court date is continued until July the 1st, okay. Thank you,
23 very much.

24 MS. ESKRIDGE: Thank you, Your Honor.

25 (End of requested proceedings).

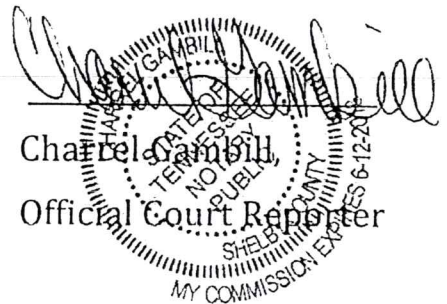
CERTIFICATE OF REPORTER

STATE OF TENNESSEE)
COUNTY OF SHELBY)

I, the undersigned, Charrel Gambill, Official Court Reporter for the Thirtieth Judicial District of the State of Tennessee, do hereby certify that the foregoing to be a true, accurate and complete transcript to the best of my knowledge understanding and ability of all the proceedings had and evidence introduced in the announcements made in this post-conviction relief hearing matter on the captioned cause, relative to appeal, in the Criminal Court for Shelby County, Tennessee on the 20th day of April, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Dated this 12th day of January, 2016.



Charrel Gambill,
Official Court Reporter

My Commission Expires:
June 12, 2018