

**IN THE
SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA**

CASE NUMBER 16-1994-CF-009776-XXXX-MA
DIVISION CR-G (Circuit)

APPEAL NUMBER SC18-1713

MICHAEL BERNARD BELL
VS
STATE OF FLORIDA

Appellant____,

Appellee____,

RONNIE FUSSELL,
CLERK
OF THE CIRCUIT AND
COUNTY COURTS

RECORD ON APPEAL

VOLUME 1

Appeal from the Circuit Court

Duval County, Florida

BEFORE THE HONORABLE JUDGE CHARLES ARNOLD

ROBERT A. NORGARD
FOR APPELLANT

ATTORNEY GENERAL
FOR APPELLEE

FLORIDA SUPREME COURT

11/14/2018

RECEIVED

IN THE CIRCUIT COURT OF THE FOURTH
JUDICIAL CIRCUIT, IN AND FOR DUVAL
COUNTY, FLORIDA

MICHAEL BERNARD BELL

CASE NO: 16-1994-CF-009776-AXXX-MA
DIVISION: CR-G (Circuit)

APPELLANT

STATE OF FLORIDA

APPEAL NO: SC18-1713

APPELLEE

VOLUME 1

INSTRUMENT	DATE FILED	PAGE
SUPREME COURT MANDATE AFFIRMING THE DENIAL OF BELL'S MOTION, STYLED- SUPREME COURT, SC17-1045 BOOK 18283 PAGE 994-997	02/14/18	1-4
MOTION TO VACATE JUDGE. & SENT. (RULE 3.850) AMENDED SUCCESSIVE	02/20/18	5-13
MOTION TO VACATE JUDG. & SENT. (RULE 3.850) SUCCESSIVE	02/20/18	14-21
STATE'S RESPONSE TO DEFENDANT'S AMENDED SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE	03/02/18	22-32
MOTION DEFT'S FOR LEAVE TO REPLY	03/22/18	33-34
ANSWERS - DEFT'S REPLY TO STATE'S ANSWER TO DEFT'S AMENDED SUCCESSIVE MOTION TO VACATE JUDGMENT & SENTENCE	03/22/18	35-40
ORDER APPOINTING SENIOR JUDGE	04/16/18	41
COURT ORDER SETTING CASE MANAGEMENT CONFERENCE	04/18/18	42-43
ORDER DENYING DEFENDANT'S REQUEST FOR EVIDENTIARY HEARING AND SETTING ORAL ARGUMENT	05/14/18	44-46
GRANTING DEFENDANT'S MOTION FOR LEAVE TO REPLY	05/14/18	47-48
MEMO TRANSFERRING DIVISION FROM CR-	05/17/18	49

F, PER ADMINISTRATIVE ORDER 2017-14		
MOTION FOR PAYMENT OF ATTORNEY'S FEES	05/17/18	50-54
MOTION TO EXCEED STATUTORY CAP AND FOR PAYMENT OF ATTORNEY'S FEES AND COSTS	05/17/18	55-60
ORDER GRANTING MOTION FOR PAYMENT OF ATTORNEY'S FEES	05/22/18	61
ORDER DENYING MOTION TO VACATE JUDG. AND SENT. (AMENDED SUCCESSIVE)	09/27/18	62-70
NOTICE OF APPEAL (3.851) BOOK 18562 PAGE 752-761	10/11/18	71-80
DIRECTIONS TO CLERK	10/11/18	81
STATEMENT OF JUDICIAL ACTS TO BE REVIEWED	10/11/18	82
DESIGNATION TO COURT REPORTER	10/11/18	83-84
REPORTER'S ACKNOWLEDGEMENT	10/12/18	85
SUPREME COURT ACKNOWLEDGMENT SC18-1713	10/18/18	86
COURT ORDER SETTING HEARING ON STATUS OF RECORD ON APPEAL	10/26/18	87-88
TESTIMONY & PROCEEDINGS OF MAY 7, 2018	11/08/18	89-100
TESTIMONY & PROCEEDINGS OF JUNE 26, 2018	11/08/18	101-118
CERTIFICATE OF CLERK		

Case #: 16-1994-CF-009776-AXXX-MA
VS
MICHAEL BERNARD BELL (Offender # 1994-013995)

#	Effective Date	Count	Description
1	09/15/1994		ARREST & BOOKING REPORT 940139951
2	09/16/1994		AFFIDAVIT & ORDER OF INSOLVENCY & APPT. OF PUB. DEF.
3	09/16/1994		DEFENDANTS CLAIM OF RIGHTS
4	09/16/1994		MOTION ON BOND
5	09/16/1994		FINDING OF PROBABLE CAUSE ,
6	09/20/1994		CERTIFICATE OF CONFLICT & MOTION TO WITHDRAW
7	09/29/1994	1	INDICTMENT FILED FOR MURDER - 1
8	09/29/1994	1	MURDER - 1
9	09/29/1994		BOND SET AT 0.00
10	09/29/1994		ARRAIGNMENT DATE 10/04/1994 9 09:00 00
11	10/04/1994		ASST. STATE ATTY. BATEH, GEORGE
12	10/04/1994		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
13	10/04/1994		MOT. TO WITHDRAW-GRANTED
14	10/04/1994		PUB. DEF. PERMITTED TO W/DRAW AS COUNSEL FOR DEF.
15	10/04/1994		(CONFLICT)
16	10/04/1994		DEF. W/READING OF INFO & PLEAD NG
17	10/04/1994		PASSED FOR PRETRIAL 10/11/1994 9 09:00 00
18	10/05/1994		TRIAL ORDER FILED
19	10/11/1994		ASST. STATE ATTY. BATEH, GEORGE
20	10/11/1994		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
21	10/11/1994		PASSED FOR PRETRIAL 10/18/1994 9 09:00 00
22	10/13/1994		MOT. FOR STATEMENT OF PARTICULARS
23	10/13/1994		DEMAND FOR DISCOVERY
24	10/18/1994		ASST. STATE ATTY. BATEH, GEORGE
25	10/18/1994		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
26	10/18/1994		NOTICE OF INTENT TO CLASSIFY DEF. AS HAB. VIOL. FEL. OFF
27	10/18/1994		PASSED FOR PRETRIAL 11/01/1994 9 09:00 00
28	10/24/1994		RESPONSE TO DEMAND & DEMAND FOR RECIPROCAL DISCOVERY
29	10/24/1994		STATEMENT OF PART & DEM FOR NOT OF INTENT TO CLAIM ALIBI
30	11/01/1994		ASST. STATE ATTY. BATEH, GEORGE
31	11/01/1994		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
32	11/01/1994		PASSED FOR PRETRIAL 11/15/1994 9 09:00 00
33	11/02/1994		WRIT OF HABEAS CORPUS AD
34	11/02/1994		PROSEQUENDUM
35	11/07/1994		ORDER OF RETURN

36	11/07/1994		ORDER OF RETURN
37	11/15/1994		ORDER RETURNED EXECUTED
38	11/15/1994		ASST. STATE ATTY. BATEH, GEORGE
39	11/15/1994		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
40	11/15/1994		PASSED FOR PRETRIAL 11/29/1994 9 09:00 00
41	11/18/1994		ORDER RETURNED EXECUTED
42	11/21/1994		NOTICE OF TAKING DEPOSITION
43	11/22/1994		ORDER RETURNED EXECUTED
44	11/22/1994		ORDER RETURNED EXECUTED
45	11/29/1994		ASST. STATE ATTY. BATEH, GEORGE
46	11/29/1994		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
47	11/29/1994		PASSED FOR HEARING ON MOTION 12/09/1994 9 03:00 00
48	12/02/1994		ORDER RETURNING PRISONER TO
49	12/02/1994		DUVAL COUNTY, FLORIDA
50	12/05/1994		FIRST ADDITIONAL RESPONSE TO DEMAND FOR DISCOVERY
51	12/07/1994		ORDER RETURNED EXECUTED
52	12/09/1994		ASST. STATE ATTY. BATEH, GEORGE
53	12/09/1994		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
54	12/09/1994		ORAL SUGGESTION OF INSANITY-
55	12/09/1994		GRANTED.
56	12/09/1994		PASSED FOR DOCTOR'S REPORT 12/16/1994 9 09:00 00
57	12/12/1994		SECOND ADDITIONAL RESPONSE TO
58	12/12/1994		DEMAND FOR DISCOVERY
59	12/13/1994		ORDER FOR PSYCHIATRIC EXAMINATION
60	12/14/1994		PASSED FOR DOCTOR'S REPORT 12/19/1994 9 09:00 00
61	12/14/1994		PER JUDGE OLLIFF-PHONE-ESTHER
62	12/15/1994	1	INDICTMENT FILED FOR MURDER - 1
63	12/15/1994	1	MURDER - 1
64	12/15/1994		BOND SET AT 0.00
65	12/15/1994		ARRAIGNMENT DATE 12/16/1994 9 09:00 00
66	12/15/1994		SECOND INDICTMENT FILED
67	12/15/1994		ORDER RETURNED EXECUTED
68	12/15/1994		ORDER FOR PSYCHIATRIC EXAMINATION
69	12/16/1994		ASST. STATE ATTY. BATEH, GEORGE
70	12/16/1994		ATTY. FOR DEF. RICHARD NICHOLS, APPT'D.
71	12/16/1994		ARRAIGNMENT DATE 12/19/1994 6 09:00 00
72	12/19/1994		ASST. STATE ATTY. BATEH, GEORGE
73	12/19/1994		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
74	12/19/1994		ARRAIGNMENT DATE 01/03/1995 9 09:00 00
75	12/20/1994		ORDER TO TRANSPORT
76	12/20/1994		(FILED AS "ORDER OF RETURN")
77	12/20/1994		ORDER TO TRANSPORT
78	12/20/1994		(FILED AS "ORDER OF RETURN")
79	01/03/1995		ASST. STATE ATTY. BATEH, GEORGE
80	01/03/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.

81	01/03/1995		DEF. W/READING OF INFO & PLEAD NG
82	01/03/1995		(AMENDED INDICTMENT)
83	01/03/1995		PASSED FOR PRETRIAL 01/04/1995 9 09:00 00
84	01/03/1995		ORDER RETURNED EXECUTED
85	01/04/1995		3RD ADDITIONAL RESPONSE TO
86	01/04/1995		DEMAND FOR DISCOVERY
87	01/04/1995		ASST. STATE ATTY. BATEH, GEORGE
88	01/04/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
89	01/04/1995		DEFT'S ORAL MOT. TO INCUR
90	01/04/1995		COSTS OF INVESTIGATOR-GRANTED.
91	01/04/1995		DEFT'S ORAL MOTION FOR
92	01/04/1995		CONTINUANCE-GRANTED.
93	01/04/1995		DEFT'S ORAL PRO SE MOTION TO
94	01/04/1995		ACT AS CO-COUNSEL-DENIED AFTER
95	01/04/1995		HEARING
96	01/04/1995		PASSED FOR PRETRIAL 01/09/1995 9 09:00 00
97	01/05/1995		ORDER RETURNED EXECUTED
98	01/05/1995		ORDER GRANTING ORAL MOT. OF
99	01/05/1995		DEFENSE COUNSEL FOR APPT. OF
100	01/05/1995		PRIVATE INVESTIGATOR.
101	01/06/1995		ORDER RETURNING PRISONER
102	01/06/1995		ORDER RETURNING PRISONER
103	01/09/1995		ASST. STATE ATTY. BATEH, GEORGE
104	01/09/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
105	01/09/1995		PASSED FOR PRETRIAL 01/24/1995 9 09:00 00
106	01/09/1995		(3-6-95 TRIAL)
107	01/09/1995		PSYCHIATRIC REPT.- MILLER
108	01/10/1995		ORDER RETURNED EXECUTED
109	01/10/1995		TRIAL ORDER FILED
110	01/17/1995		ORDER RETURNED EXECUTED
111	01/24/1995		ASST. STATE ATTY. BATEH, GEORGE
112	01/24/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
113	01/24/1995		PASSED FOR PRETRIAL 02/01/1995 9 09:00 00
114	02/01/1995		MOTION FOR PAYMENT OF
115	02/01/1995		INVESTIGATIVE COSTS
116	02/01/1995		ORDER (FOR PAYMENT OF
117	02/01/1995		INVESTIGATIVE COSTS)
118	02/01/1995		ASST. STATE ATTY. BATEH, GEORGE
119	02/01/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
120	02/01/1995		PASSED FOR HEARING ON MOTION 02/10/1995 9 03:00 00
121	02/10/1995		ASST. STATE ATTY. BATEH, GEORGE
122	02/10/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
123	02/10/1995		PASSED FOR PRETRIAL 02/17/1995 9 09:00 00
124	02/17/1995		ORDER OF RETURN
125	02/17/1995		ORDER OF RETURN
126	02/17/1995		ASST. STATE ATTY. BATEH, GEORGE

127	02/17/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
128	02/17/1995		PASSED FOR HEARING ON MOTION 02/24/1995 9 04:00 00
129	02/22/1995		ORDER RETURNED EXECUTED
130	02/22/1995		MOTION FOR PAYMENT OF COURT
131	02/22/1995		REPORTER COSTS
132	02/22/1995		ORDER FOR PAYMENT OF COURT
133	02/22/1995		REPORTER COSTS
134	02/24/1995		ORDER RETURNED EXECUTED
135	02/24/1995		ASST. STATE ATTY. BATEH, GEORGE
136	02/24/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
137	02/24/1995		MOT. TO DECLARE DEATH PENALTY
138	02/24/1995		UNCONSTITUTIONAL
139	02/24/1995		PASSED FOR HEARING ON MOTION 03/01/1995 9 09:00 00
140	03/01/1995		ASST. STATE ATTY. BATEH, GEORGE
141	03/01/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
142	03/01/1995		DEFT'S MOT. TO DECLARE DEATH
143	03/01/1995		PENALTY UNCONSTITUTIONAL -
144	03/01/1995		DENIED - ORDER ENTERED.
145	03/01/1995		DEFT'S 2ND MOTION TO DECLARE
146	03/01/1995		DEATH PENALTY UNCONSTITUTIONAL
147	03/01/1995		FILED - DENIED.
148	03/01/1995		JURY SELECTION 03/06/1995 9 09:00 00
149	03/06/1995		PASSED FOR TRIAL 03/07/1995 9 10:00 00
150	03/06/1995		ASST. STATE ATTY. BATEH, GEORGE
151	03/06/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
152	03/06/1995		DEFT'S PRO SE MOTION TO
153	03/06/1995		WITHDRAW ATTORNEY-FILED-DENIED
154	03/06/1995		JURY SELECTED
155	03/06/1995		PASSED FOR TRIAL 03/07/1995 9 10:00 00
156	03/07/1995		PASSED FOR TRIAL 03/08/1995 9 10:00 00
157	03/07/1995		ASST. STATE ATTY. BATEH, GEORGE
158	03/07/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
159	03/07/1995		JURY EMPANELLED & SWORN
160	03/07/1995		(COUNTS 1 & 2)
161	03/07/1995		RULE INVOKED
162	03/07/1995		EVIDENCE TO JURY IN PART
163	03/07/1995		PASSED FOR HEARING ON MOTION 03/08/1995 9 10:00 00
164	03/08/1995		ORDER RETURNING PRISONER
165	03/08/1995		ORDER RETURNING PRISONER
166	03/08/1995		PASSED FOR HEARING ON MOTION 03/09/1995 9 09:00 00
167	03/08/1995		ASST. STATE ATTY. BATEH, GEORGE
168	03/08/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
169	03/08/1995		EVIDENCE TO JURY IN FULL
170	03/08/1995		DEFT'S ORAL MOT. FOR MISTRIAL-
171	03/08/1995		DENIED.
172	03/08/1995		DEFT'S ORAL MOTION FOR

173	03/08/1995		JUDGMENT OF ACQUITTAL-DENIED.
174	03/08/1995		PASSED FOR TRIAL 03/09/1995 9 09:00 00
175	03/09/1995		ASST. STATE ATTY. BATEH, GEORGE
176	03/09/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
177	03/09/1995		STATE DELETES 775.087.
178	03/09/1995		ARGUMENTS & CHARGE TO JURY
179	03/09/1995		(COUNTS 1 & 2)
180	03/09/1995		VERDICT- GUILTY
181	03/09/1995		AS CHARGED, AS TO COUNT 1.
182	03/09/1995		VERDICT- GUILTY
183	03/09/1995		AS CHARGED, AS TO COUNT 2.
184	03/09/1995		DEF. ADJUDGED GUILTY - FINGERPRINTS TAKEN
185	03/09/1995		INSTRUCTIONS TO THE JURY-FILED
186	03/09/1995		PASSED 03/17/1995 9 10:00 00
187	03/09/1995		(ADVISORY SENT. HEARING)
188	03/13/1995		ORDER RETURNED EXECUTED
189	03/13/1995		STATE'S REQUESTED PENALTY
190	03/13/1995		PHASE JURY INSTRUCTION NO. ONE
191	03/16/1995		ADDITIONAL RESPONSE TO DEMAND FOR DISCOVERY
192	03/16/1995		(FOURTH)
193	03/16/1995		ORDER RETURNED EXECUTED
194	03/17/1995		ASST. STATE ATTY. BATEH, GEORGE
195	03/17/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
196	03/17/1995		BIFURCATION HEARING HELD IN
197	03/17/1995		FULL.
198	03/17/1995		JURY RECOMMENDS DEATH BY VOTE
199	03/17/1995		OF 12.
200	03/17/1995		STATE'S REQUESTED PENALTY
201	03/17/1995		PHASE JURY INSTRUCTION #1-
202	03/17/1995		GRANTED-ORDER ENTERED.
203	03/17/1995		CAPITAL CASES PENALTY
204	03/17/1995		PROCEEDINGS-JURY INSTRUCTIONS-
205	03/17/1995		FILED.
206	03/17/1995		PRELIMINARY INSTRUCTIONS AT
207	03/17/1995		ADVISORY SENTENCE-FILED.
208	03/17/1995		ADVISORY SENTENCE (1ST & 2ND
209	03/17/1995		COUNTS)-FILED.
210	03/17/1995		SENTENCE DEFERRED 04/21/1995 9 09:00 00
211	03/17/1995		CLERKS EXHIBIT MEMO
212	03/22/1995		MOTION FOR PAYMENT OF
213	03/22/1995		INVESTIGATIVE COSTS
214	03/22/1995		MOT. TO INCUR INVESTIGATIVE
215	03/22/1995		COSTS
216	03/22/1995		ORDER ON DEFT'S MOTIONS FOR
217	03/22/1995		PAYMENT OF COSTS
218	04/21/1995		ASST. STATE ATTY. BATEH, GEORGE

219	04/21/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
220	04/21/1995		SENTENCE DEFERRED 05/05/1995 9 02:00 00
221	05/05/1995		ASST. STATE ATTY. BATEH, GEORGE
222	05/05/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
223	05/05/1995		SENTENCE DEFERRED 05/10/1995 9 09:00 00
224	05/10/1995		SENTENCE DEFERRED 05/11/1995 9 09:00 00
225	05/10/1995		ASST. STATE ATTY. BATEH, GEORGE
226	05/10/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPOINTED.
227	05/10/1995		SENTENCE DEFERRED 05/11/1995 9 09:00 00
228	05/11/1995		ASST. STATE ATTY. BATEH, GEORGE
229	05/11/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
230	05/11/1995		SENTENCE DEFERRED 06/02/1995 9 09:00 00
231	05/15/1995		TRANSCRIPT OF DEFT'S REQUEST
232	05/15/1995		NOT TO PUT ON WITNESSES AT
233	05/15/1995		SENTENCING HEARING, ON 5-11-95
234	06/02/1995		ASST. STATE ATTY. BATEH, GEORGE
235	06/02/1995		ATTY. FOR DEF. RICHARD NICHOLS, APPT.
236	06/02/1995		775.084 DOES NOT APPLY.
237	06/02/1995		JUDGEMENT AND SENTENCE TO STATE PRISON FOR DEATH
238	06/02/1995		WITH CREDIT FOR 261 DAYS JAIL
239	06/02/1995		TIME, AS TO COUNT 1.
240	06/02/1995		JUDGEMENT AND SENTENCE TO STATE PRISON FOR DEATH
241	06/02/1995		WITH NO JAIL CREDIT, AS TO
242	06/02/1995		COUNT 2, TO RUN CONSECUTIVE TO
243	06/02/1995		COUNT 1.
244	06/02/1995		CRIMINAL JUSTICE TRUST FUND I000000300
245	06/02/1995		COURT ASSESSES C.C.T. FUND - 50.00
246	06/02/1995		COURT ASSESSES FELONY COST - 200.00
247	06/02/1995		DEF. ADJUDGED INSOLVENT PUB. DEF. APPTD.
248	06/02/1995		FOR PURPOSE OF APPEAL
249	06/02/1995		ORDER OF INSOL. & APPT. OF COUNSEL FOR PUR.OF APPEAL
250	06/02/1995		SENTENCING GUIDELINES
251	06/02/1995		JUDGMENT AND RESTITUTION ORDER [F.S.775.089]
252	06/02/1995		JUDGMENT AND RESTITUTION ORDER [F.S.775.089]
253	06/02/1995		WRITTEN SENTENCE - FILED
254	06/02/1995		UNIFORM COMMITMENT TO CUSTODY OF DEPT. OF CORRECTIONS
255	06/05/1995		PRE-SENT. INVESTIGATION REPORT SEALED ,
256	06/29/1995		NOTICE OF APPEAL
257	07/03/1995		DESIGNATION TO COURT REPORTER
258	07/03/1995		FOR STENOGRAPHIC NOTES
259	07/03/1995		STATEMENT OF JUDICIAL ACTS TO BE REVIEWED
260	07/03/1995		DIRECTIONS TO CLERK
261	08/03/1995		SUPREME COURT ORDER - WITH
262	08/03/1995		DIRECTIONS TO THE COURT

263	08/03/1995		REPORTER AND TRIAL COURT CLERK
264	09/21/1995		COMMITMENT CHECKLIST SENT
265	12/08/1995		DESIG. OF PUB. DEF. OF 2ND JUD. CIRCUIT TO HANDLE APPEAL
266	02/22/1996		ORDER TO TRANSPORT
267	03/28/1996		SUPREME COURT ORDER-
268	03/28/1996		APPELLANT'S MOT. TO SUPPLEMENT
269	03/28/1996		RECORD ON APPEAL IS GRANTED.
270	03/29/1996		SUPPLEMENTAL DESIGNATION TO
271	03/29/1996		THE COURT REPORTER FOR
272	03/29/1996		STENOGRAPHIC NOTES
273	03/29/1996		DIRECTIONS TO CLERK
274	03/29/1996		(SUPPLEMENTAL)
275	10/22/1997		MANDATE FROM APPELLATE COURT A
276	10/22/1997		FROM SUPREME COURT
277	10/22/1997		ORDER SUPREME COURT DENYING
278	10/22/1997		MOTION FOR REHEARING
279	05/04/1998		MOTION TO CORRECT SENTENCE
280	06/12/1998		ORDER DENYING DEFENDANT'S
281	06/12/1998		MOTION TO CORRECT AN ILLEGAL
282	06/12/1998		SENTENCE
283	08/28/1998		MOTION TO WITHDRAW
284	09/03/1998		ORDER APPOINTING ATTORNEY
285	09/16/1998		NOTICE OF APPEARANCE AS
286	09/16/1998		CO-COUNSEL
287	10/13/1998		ORDER ON POST CNVICTION
288	10/13/1998		COUNSEL'S MOTION TO WITHDRAW
289	10/13/1998		- GRANTED
290	10/13/1998		ORDER APPOINTING ATTORNEY
291	10/19/1998		NOTICE TO STATE ATTORNEY OF
292	10/19/1998		AFFIRMANCE OF DEATH PENALTY
293	10/19/1998		NOTICE TO SECRETARY OF
294	10/19/1998		DEPARTMENT OF CORRECTIONS OF
295	10/19/1998		AFFIRMANCE OF DEATH PENALTY
296	11/06/1998		STATE ATTORNEY'S NOTICE TO
297	11/06/1998		ATTORNEY GENERAL OF
298	11/06/1998		PERTINENT INFORMATION
299	11/18/1998		NOTICE OF APPEARANCE
300	12/18/1998		NOTICE OF DELIVERY OF EXEMPT
301	12/18/1998		PUBLIC RECORDS TO RECORDS
302	12/18/1998		REPOSITORY
303	12/18/1998		NOTICE OF COMPLIANCE BY S.A.
304	12/21/1998		ORDER APPOINTING SENIOR JUDGE
305	01/15/1999		NOTICE OF COMPLIANCE BY LAW
306	01/15/1999		ENFORCEMENT AGENCY & NOTICE
307	01/15/1999		OF DELIVERY OF EXEMPT PUBLIC

308	01/15/1999		RECORDS
309	01/26/1999		NOTICE OF COMPLIANCE BY FLA.
310	01/26/1999		DEPARTMENT OF LAW ENFORCEMENT
311	03/19/1999		MOTION FOR FULL DISCLOSURE
312	03/29/1999		ORDER STRIKING DEFT'S PRO SE
313	03/29/1999		MOT. FOR FULL DISCLOSURE
314	03/29/1999		PURSUANT TO CHAPTER 119, F.S.
315	03/31/1999		DEFT'S DEMAND FOR PUBLIC
316	03/31/1999		RECORDS PERTAINING TO
317	03/31/1999		DEFT'S CASE
318	04/22/1999		STATE'S MOTION TO STRIKE
319	04/22/1999		DEFT'S DEMAND FOR PUBLIC
320	04/22/1999		RECORDS
321	06/01/1999		MOT. TO VACATE JUDG. & SENT. (RULE 3.850)
322	06/01/1999		WITH SPECIAL REQUEST FOR LEAVE
323	06/01/1999		TO AMEND
324	06/15/1999		ORDER ON STATE'S MOTION TO
325	06/15/1999		STRIKE (GRANTED)
326	08/26/1999		NO ACTION TAKEN ON 3.850
327	08/26/1999		MOTION. JUDGE OLLIFF WILL
328	08/26/1999		ADDRESS AT A LATER DATE
329	08/31/1999		NOTICE OF HEARING
330	08/31/1999		NOTICE OF HEARING 09/17/1999 3 02:00 00
331	09/17/1999		DEFT'S MOTION FOR CONTINUANCE
332	09/17/1999		ASST. STATE ATTY. BATEH, GEORGE
333	09/17/1999		AND S. WRIGHT
334	09/17/1999		ATTY. FOR DEF. RICHARD NICHOLS (NOT PRESENT)
335	09/17/1999		ATTY. FOR DEF. SHERON WELLS (DOC)
336	09/17/1999		ATTY. FOR DEF. L. KEMNER (FDLE)
337	09/17/1999		ATTY. FOR DEF. S. ROHAN (CITY OF JACKSONVILLE
338	09/17/1999		EMPLOYEES (OGC)
339	09/17/1999		ATTY. FOR DEF. J. SASSER (ATTORNEY FOR
340	09/17/1999		DEFENDANT)
341	09/17/1999		NO ACTION TAKEN ON 3.850
342	09/17/1999		MOTION
343	09/17/1999		STATUS HEARING TO BE SET
344	11/08/1999		STATE'S RESPONSE TO DEFT'S
345	11/08/1999		MOT. TO VACATE JUDGMENT AND
346	11/08/1999		SENTENCE WITH SPECIAL REQUEST
347	11/08/1999		FOR LEAVE TO AMEND
348	01/13/2000		ORDER DENYING MOT. TO VACATE JUDG. AND SENT.
349	01/28/2000		NOTICE OF APPEAL
350	01/28/2000		(3.850)
351	04/12/2000		DESIGNATION TO COURT REPORTER
352	05/17/2000		WRITTEN STATEMENT OF KAREN
353	05/17/2000		STROLLO, COURT REPORTER

354	06/08/2000		DEFT'S MOTION FOR ORDER TO
355	06/08/2000		RELEASE FILE
356	07/05/2000		DEFENDANT'S MOT. FOR REVIEW
357	07/05/2000		AND RELEASE OF SEALED FILES
358	07/05/2000		HELD BY THE CAPITAL POST-
359	07/05/2000		CONVICTION REPOSITORY
360	09/28/2000		SUPREME COURT ORDER-APPELLEE'S
361	09/28/2000		MOTION TO SUPPLEMENT THE
362	09/28/2000		RECORD, AND AMENDMENT THERETO,
363	09/28/2000		ARE GRANTED.
364	09/28/2000		COPY OF SUPREME COURT FILED
365	09/28/2000		MOTION TO SUPPLEMENT THE
366	09/28/2000		RECORD AND TO TOLL TIME FOR
367	09/28/2000		FILING APPELLEE'S BRIEF
368	09/28/2000		COPY OF SUPREME COURT FILED
369	09/28/2000		AMENDMENT TO MOTION TO
370	09/28/2000		SUPPLEMENT THE RECORD AND TO
371	09/28/2000		TOLL TIME FOR FILING
372	09/28/2000		APPELLEE'S BRIEF
373	10/13/2000		LETTER FROM BARBARA YATES
374	10/13/2000		(OFFICE OF THE ATTY. GENERAL)-
375	10/13/2000		TO R. REFUERZO, DEPUTY CLERK
376	10/13/2000		COPY OF LETTER TO JUDGE MORAN-
377	10/13/2000		FROM BAYA HARRISON, III -
378	10/13/2000		PROVIDED BY ATTY. GEN. OFFICE
379	10/13/2000		COPY OF LETTER TO JUDGE OLLIFF
380	10/13/2000		FROM COMMISSION ON
381	10/13/2000		ADMINISTRATION OF JUSTICE IN
382	10/13/2000		CAPITAL CASES - PROVIDED BY
383	10/13/2000		ATTY. GEN. OFFICE
384	04/25/2001		MOTION FOR PAYMENT OF PRIVATE
385	04/25/2001		INVESTIGATOR'S FEES AND COSTS
386	04/26/2001		ORDER FOR PAYMENT OF
387	04/26/2001		INVESTIGATION FEES AND COSTS
388	05/21/2001		ORDER OF REASSIGNMENT
389	05/21/2001		SUPREME COURT ORDER REVERSING
390	05/21/2001		THE FINAL JUDGMENT & REMANDING
391	05/21/2001		THE CASE TO CIRCUIT COURT FOR
392	05/21/2001		THE CHIEF JUDGE TO ASSIGN AN
393	05/21/2001		ACTIVE CIRCUIT JUDGE TO
394	05/21/2001		PRESIDE OVER PROCEEDINGS.
395	05/21/2001		THE ATTACHED LETTER FROM BELL
396	05/21/2001		IS TRANSFERRED TO THE CIRCUIT
397	05/21/2001		COURT.
398	05/21/2001		DEFT'S LETTER TO SUPREME COURT
399	05/21/2001		FILED

400	05/22/2001		NOTICE OF HEARING 05/29/2001 7 12:00 00
401	05/22/2001		TO BE HELD IN JUDGE'S CHAMBERS
402	05/23/2001		ORDER DIRECTING DEPT. OF
403	05/23/2001		CORRECTIONS TO MAKE
404	05/23/2001		TELECONFERENCING AVAILABLE TO
405	05/23/2001		DEFT. FOR PURPOSES OF HEARING
406	05/24/2001		ORDER SCHEDULING CASE
407	05/24/2001		MANAGEMENT CONFERENCE
408	05/29/2001		ASST. STATE ATTY. BATEH, GEORGE
409	05/29/2001		ATTY. FOR DEF. J. SASSER
410	05/29/2001		BARBARA YATES, ATTORNEY
411	05/29/2001		GENERAL'S OFFICE PRESENT
412	05/29/2001		TELEPHONE CONVERSATION HELD
413	05/29/2001		WITH DEFT. AND SGT. MICHAEL
414	05/29/2001		YOUNG PRESENT AT DEPT. OF
415	05/29/2001		CORRECTIONS.
416	05/29/2001		STATUS HEARING HELD IN FULL.
417	05/29/2001		NOTICE OF HEARING 11/01/2001 7 09:00 00
418	06/04/2001		ORDER FROM CASE MANAGEMENT
419	06/04/2001		CONFERENCE
420	06/04/2001		ORDER TO DELIVER EXEMPT
421	06/04/2001		PUBLIC RECORDS
422	06/04/2001		STATUS HEARING 11/01/2001 7 11:30 00
423	06/04/2001		(ORDER FROM CASE MANAGEMENT
424	06/04/2001		CONFERENCE)
425	06/05/2001		RECEIVED EXEMPT PUBLIC RECORDS
426	06/05/2001		2 SEALED BOXES AND 1 ENVELOPE
427	06/05/2001		CONFIDENTIAL PUBLIC RECORDS
428	06/05/2001		REC'D FROM RECORDS REPOSITORY-
429	06/05/2001		RELEASED TO JUDGE CHARLES
430	06/05/2001		ARNOLD, DIV. CR-F THIS DATE-LJ
431	06/05/2001		CONF. RECORDS CONSISTED OF:
432	06/05/2001		(2) BOXES & 1 SEALED WHITE
433	06/05/2001		LARGE ENVELOPE
434	06/07/2001		NOTICE OF DELIVERY OF EXEMPT
435	06/07/2001		PUBLIC RECORDS TO CLERK OF
436	06/07/2001		CIRCUIT COURT
437	06/11/2001		ORDER ON DEFT'S MOTION FOR
438	06/11/2001		REVIEW AND RELEASE OF SEALED
439	06/11/2001		RECORDS HELD BY THE CAPITAL
440	06/11/2001		POST-CONVICTION REPOSITORY
441	06/11/2001		TWO BOXES OF SEALED DOCUMENTS
442	06/11/2001		RETURNED TO CLERK - RESEALED.
443	06/11/2001		BOXES LOCATED IN FILE ROOM,
444	06/11/2001		TOP OF DEATH ROW.
445	06/26/2001		LETTER TO JUDGE REQUESTING

446	06/26/2001		FOR DEFT. TO BE TRANSPORTED.
447	06/26/2001		ORDER STRIKING DEFT'S
448	06/26/2001		CONSTRUED MOTION TO TRANSPORT
449	08/22/2001		LETTER TO JUDGE FROM DEFT.
450	09/10/2001		DEFENDANT'S MOTION TO REMOVE
451	09/10/2001		CONFLICT COUNSEL
452	09/10/2001		AMENDED MOTION TO VACATE
453	09/10/2001		JUDGEMENT OF CONVICTION AND
454	09/10/2001		SENTENCE
455	09/11/2001		DEFT'S MOTION FOR SELF
456	09/11/2001		REPRESENTATION.
457	09/11/2001		ORDER TO TRANSPORT
458	09/11/2001		STATUS HEARING 09/20/2001 7 11:00 00
459	09/12/2001		NOTICE OF FILING
460	09/18/2001		ORDER RESCHEDULING HEARING &
461	09/18/2001		ORDER TO TRANSPORT
462	09/18/2001		STATUS HEARING 09/24/2001 7 01:30 00
463	09/24/2001		ASST. STATE ATTY. BATEH, GEORGE
464	09/24/2001		ATTY. FOR DEF. J. SASSER
465	09/24/2001		DEFT'S MOTION TO REMOVE
466	09/24/2001		CONFLICT COUNSEL-DENIED &
467	09/24/2001		ORDER TO BE ENTERED.
468	09/24/2001		DEFT'S MOTION FOR SELF
469	09/24/2001		REPRESENTATION-GRANTED & ORDER
470	09/24/2001		ENTERED.
471	09/24/2001		LETTER TO JUDGE FROM LAW
472	09/24/2001		OFFICE OF J. SASSER
473	09/24/2001		PASSED 11/01/2001 7 09:00 00
474	10/03/2001		ORDER ON PENDING MOTIONS AND
475	10/03/2001		SCHEDULING DATES
476	10/03/2001		AND PREVIOUSLY SCHEDULED COURT
477	10/03/2001		DATE OF 11/1/01 IS CANCELLED.
478	10/03/2001		MOT. TO VACATE JUDG. & SENT. (RULE 3.850)
479	10/03/2001		AMENDED
480	10/04/2001		PASSED 11/01/2001 7 04:00 00
481	10/04/2001		HUFF HEARING AND
482	10/04/2001		ORDER TO TRANSPORT
483	10/05/2001		MOTION FOR ORDER TO RELEASE
484	10/05/2001		FILE
485	10/17/2001		NOTICE OF COMPLIANCE
486	10/24/2001		RESPONSE TO AMENDED MOTION TO
487	10/24/2001		VACATE JUDGMENT AND SENTENCE
488	10/25/2001		ADDITIONAL DOCUMENTS FROM DEFT
489	10/25/2001		FOR 3.850 MOTION
490	10/30/2001		DEFT'S DEMAND FOR ADDITIONAL
491	10/30/2001		PUBLIC RECORDS PERTAINING TO

492	10/30/2001		DEFT'S CASE
493	10/30/2001		DEFT'S DEMAND FOR ADDITIONAL
494	10/30/2001		PUBLIC RECORDS PERTAINING
495	10/30/2001		TO DEFT'S CASE
496	10/30/2001		LETTER TO JUDGE REQUESTING
497	10/30/2001		PUBLIC RECORDS REQUEST
498	10/31/2001		LETTER FROM COMMISSION ON
499	10/31/2001		CAPITAL CASES TO DEFT. (COPY)
500	10/31/2001		RESPONSE AND OBJECTIONS TO
501	10/31/2001		DEFT'S SUPPLEMENTAL REQUEST
502	10/31/2001		FOR PRODUCTION OF RECORDS
503	10/31/2001		RESPONSE AND OBJECTIONS TO
504	10/31/2001		DEFT'S DEMAND FOR ADDITIONAL
505	10/31/2001		PUBLIC RECORDS PERTAINING TO
506	10/31/2001		DEFT'S CASE
507	10/31/2001		LETTER TO JUDGE FROM DEFT.
508	11/01/2001		ASST. STATE ATTY. BATEH, GEORGE
509	11/01/2001		AND STEPHEN SEGAL
510	11/01/2001		ATTY. FOR DEF. PRO SE AND J. SASSER
511	11/01/2001		BARBARA YATES GENERAL ATTORNEY
512	11/01/2001		OFFICE
513	11/01/2001		STATUS HEARING RELATING TO
514	11/01/2001		ISSUES FOR HUFF HEARING HELD
515	11/01/2001		IN FULL.
516	11/01/2001		CLERK'S MEMO OF HEARING-FILED.
517	11/02/2001		RESPONSE TO REQUEST FOR PUBLIC
518	11/02/2001		RECORDS
519	11/05/2001		ORDER DIRECTING CLERK TO
520	11/05/2001		DELIVER SEALED PUBLIC RECORDS
521	11/08/2001		DEFENDANT'S REQUEST FOR
522	11/08/2001		INFORMATION (LETTER)
523	11/13/2001		LETTER FROM THE FLORIDA
524	11/13/2001		DEPARTMENT OF CHILDREN AND
525	11/13/2001		FAMILIES
526	11/13/2001		COPY OF DEPARTMENT OF CHILDREN
527	11/13/2001		AND FAMILIES' OBJECTIONS TO
528	11/13/2001		DEFENDANT'S FORMAL
529	11/13/2001		SUPPLEMENTAL REQUEST FOR
530	11/13/2001		PRODUCTION OF RECORDS
531	11/15/2001		ORDER CONTINUING HUFF HEARING
532	11/15/2001		AND ORDER TO TRANSPORT
533	11/19/2001		PASSED FOR HEARING ON MOTION 11/20/2001 7 09:00 00
534	11/20/2001		ASST. STATE ATTY. BATEH, GEORGE
535	11/20/2001		ATTY. FOR DEF. PRO SE AND J. SASSER
536	11/20/2001		HUFF HEARING HELD IN FULL -
537	11/20/2001		ORDER TO BE ENTERED

538	11/20/2001		CLERKS MEMORANDUM OF HEARING
539	11/20/2001		PASSED FOR HEARING ON MOTION 12/07/2001 7 09:00 00
540	11/21/2001		ORDER ON DEPARTMENT OF
541	11/21/2001		CHILDREN AND FAMILIES
542	11/21/2001		OBJECTIONS TO DEFENDANT'S
543	11/21/2001		FORMAL SUPPLEMENTAL REQUEST
544	11/21/2001		FOR PRODUCTION OF RECORDS
545	11/28/2001		ORDER SCHEDULING EVIDENTIARY
546	11/28/2001		HEARING
547	11/28/2001		TESTIMONY & PROCEEDINGS OF NOVEMBER 20, 2001
548	11/28/2001		NOTICE OF COMPLIANCE BY
549	11/28/2001		MEDICAL EXAMINER
550	11/29/2001		DEPARTMENT OF JUVENILE
551	11/29/2001		JUSTICE'S OBJECTIONS TO
552	11/29/2001		DEFENDANT'S FORMAL
553	11/29/2001		SUPPLEMENTAL REQUEST FOR
554	11/29/2001		PRODUCTION OF RECORDS
555	11/30/2001		LETTER FROM JUDGE TO FLORIDA
556	11/30/2001		SUPREME COURT
557	11/30/2001		COPY OF DEFENDANT'S LETTER
558	11/30/2001		ATTACHED
559	12/03/2001		DEPARTMENT OF CORRECTIONS
560	12/03/2001		RESPONSE TO DEFENDANT'S
561	12/03/2001		SUPPLEMENTAL REQUEST FOR
562	12/03/2001		PRODUCTION OF RECORDS
563	12/03/2001		RESPONSE AND OBJECTIONS TO
564	12/03/2001		DEFENDANT'S DEMAND FOR
565	12/03/2001		ADDITIONAL PUBLIC RECORDS
566	12/04/2001		RESPONSE IN OPPOSITION TO
567	12/04/2001		DEFENDANT'S SUPPLEMENTAL
568	12/04/2001		REQUEST FOR PUBLIC RECORDS
569	12/07/2001		ASST. STATE ATTY. BATEH, GEORGE
570	12/07/2001		ATTY. FOR DEF. PRO SE AND J. SASSER
571	12/07/2001		NO COURT
572	12/07/2001		PASSED FOR HEARING ON MOTION 01/02/2002 7 09:00 00
573	12/10/2001		COPY OF LETTER TO THE
574	12/10/2001		DEFENDANT FROM THE FLORIDA
575	12/10/2001		PAROLE COMMISSION
576	12/12/2001		SUPREME COURT ORDER -
577	12/12/2001		GRANTING APPELLEE'S MOTION FOR
578	12/12/2001		EXTENSION OF TIME - IS
579	12/12/2001		EXTENDED TO AND INCLUDING
580	12/12/2001		JUNE 3, 2002.
581	12/21/2001		COPY OF LETTER FROM OFFICE OF
582	12/21/2001		THE COMPTROLLER - FILED.
583	12/21/2001		LETTER FROM JEANINE B. SASSER,

584	12/21/2001		P.A.
585	12/21/2001		MOT. FOR ATTORNEY'S FEES
586	12/21/2001		ORDER PAYING ATTORNEY'S FEE
587	12/31/2001		STRIKE 1/3/02 COURTDATE
588	12/31/2001		PER LINDA
589	01/07/2002		LETTER TO JUDGE FROM DEFT.
590	01/07/2002		(2)
591	01/10/2002		ORDER SCHEDULING HEARING ON
592	01/10/2002		DEFTS 3.850 MOTION
593	01/10/2002		PASSED - HEARING ON 3.850 MOTION 04/08/2002 7 09:00 00
594	01/10/2002		ORDER SCHEDULING TELEPHONIC
595	01/10/2002		STATUS CONFERENCE
596	01/10/2002		STATUS HEARING 02/04/2002 7 01:30 00
597	01/10/2002		ORDER DIRECTING DEPARTMENT OF
598	01/10/2002		CORRECTIONS TO MAKE
599	01/10/2002		TELECONFERENCING AVAILABLE TO
600	01/10/2002		DEFT FOR PURPOSES OF HEARING
601	01/14/2002		MOTION TO TRANSCRIBE
602	01/14/2002		ORDER DENYING MOTION TO
603	01/14/2002		TRANSCRIBE
604	01/14/2002		ORDER SCHEDULING HEARING ON
605	01/14/2002		OBJECTIONS TO PUBLIC RECORDS
606	01/14/2002		REQUESTS AND ORDER DIRECTING
607	01/14/2002		DEPT OF CORRECTIONS TO MAKE
608	01/14/2002		TELECONFERENCING AVAILABLE TO
609	01/14/2002		DEFT FOR PURPOSES OF HEARING
610	01/14/2002		NOTICE OF HEARING 01/16/2002 7 01:30 00
611	01/14/2002		AMENDED ORDER SCHEDULING
612	01/14/2002		HEARING ON OBJECTIONS TO
613	01/14/2002		PUBLIC RECORDS REQUESTS AND
614	01/14/2002		ORDER DIRECTING DEPARTMENT OF
615	01/14/2002		CORRECTIONS TO MAKE
616	01/14/2002		TELECONFERENCING AVAILABLE TO
617	01/14/2002		DEFT FOR PURPOSES OF HEARING
618	01/14/2002		NOTICE OF HEARING 01/16/2002 7 01:30 00
619	01/16/2002		ASST. STATE ATTY. BATEH, GEORGE
620	01/16/2002		PRIVATE ATTORNEY
621	01/16/2002		PERSONS PRESENT:
622	01/16/2002		STEVE SIEGEL (SAO), BARBARA
623	01/16/2002		YATES (OAG), BILL COMPER
624	01/16/2002		(PAROLE COMMISSION), SUSAN
625	01/16/2002		SCHWARTZ (DOC), HEIDI HUGHES
626	01/16/2002		(DEPT OF STATE), BRIAN
627	01/16/2002		BERKOWITZ (DEPT OF CHILDREN &
628	01/16/2002		FAMILY SERVICES), JIM MARTIN

629	01/16/2002		(FDLE), JOHN RAYMAHER (DEPT OF
630	01/16/2002		JUVENILE JUSTICE), ROGER MOOS
631	01/16/2002		(CAPITAL COLLATERAL
632	01/16/2002		COMMISSION) & MICHAEL BELL
633	01/16/2002		(PRO SE)
634	01/16/2002		TELEPHONIC HEARING ON
635	01/16/2002		OBJECTIONS TO PUBLIC RECORDS
636	01/16/2002		REQUEST HELD IN FULL.
637	01/16/2002		ORDER TO BE ISSUED.
638	01/16/2002		STATUS HEARING 02/04/2002 7 09:00 00
639	01/16/2002		(HEARING ON MOTION)
640	01/24/2002		ORDER ON AGENCIES' OBJECTIONS
641	01/24/2002		TO DEFTS SUPPLEMENTAL REQUESTS
642	01/24/2002		FOR PRODUCTION OF RECORDS
643	01/31/2002		MOTION TO APPOINTMENT A
644	01/31/2002		EXPERT WITNESS
645	02/05/2002		2 BOXES OF SEALED RECORDS
646	02/05/2002		RELEASED TO ERIC SHADDOCK OF
647	02/05/2002		JUDICIAL STAFF ATTY OFFICE
648	02/05/2002		ORDER FROM STATUS CONFERENCE
649	02/05/2002		ASST. STATE ATTY. BATEH, GEORGE
650	02/05/2002		TELEPHONIC STATUS CONFERENCE
651	02/05/2002		HELD IN FULL
652	02/05/2002		STATUS HEARING 03/07/2002 7 09:00 00
653	02/11/2002		COPY OF LETTER TO DEFT FROM
654	02/11/2002		JUDGE
655	02/14/2002		ORDER TO DEPT OF CORRECTIONS
656	02/14/2002		CONCERNING DEFTS PARTICIPATION
657	02/14/2002		AT SCHEDULED HEARINGS
658	02/14/2002		(ORDER TO TRANSPORT IN BODY)
659	02/21/2002		DEPT OF JUVENILE JUSTICE'S
660	02/21/2002		DUE DILIGENCE RESPONSE TO
661	02/21/2002		ORDER TO PRODUCE RECORDS
662	02/25/2002		STATES WITNESS LIST FOR
663	02/25/2002		EVIDENTIARY HEARING
664	03/01/2002		MOTION TO QUASH SUBPOENAS
665	03/04/2002		WRIT OF HABEAS CORPUS AD
666	03/04/2002		TESTIFICANDUM
667	03/04/2002		(3)
668	03/04/2002		LETTER TO JUDGE FROM DEFT. IN
669	03/04/2002		RE: NON RECEIVING OF
670	03/04/2002		TRANSCRIPTS
671	03/04/2002		LETTER TO JUDGE REQUESTING
672	03/04/2002		LIST OF NAMES FOR SUBPOENA
673	03/04/2002		FOR EVIDINTIARY HEARING
674	03/04/2002		ORDER TO TRANSPORT

675	03/04/2002		(4 ORDERS FILED)
676	03/04/2002		WITNESS SUBPOENA(S) FOR D
677	03/04/2002		FOR TRIAL
678	03/04/2002		14 FILED W/ ATTACHED RECEIPTS
679	03/05/2002		DEFT'S WITNESS LIST FOR
680	03/05/2002		EVIDENTIARY HEARING
681	03/07/2002		2 BOXES OF SEALED RECORDS
682	03/07/2002		RE-RELEASED TO ERICK SHADDOCK
683	03/07/2002		OF JUDICIAL STAFF ATTY OFFICE
684	03/07/2002		ORDER ON DEFTS MOTION TO
685	03/07/2002		APPOINT AN EXPERT WITNESS -
686	03/07/2002		DENIED.
687	03/07/2002		2 BOXES OF SEALED RECORDS
688	03/07/2002		RETURNED TO CLERK FROM
689	03/07/2002		ERICK SHADDOCK. LOCATED ON
690	03/07/2002		TOP OF DEATH ROW FILES.
691	03/07/2002		ASST. STATE ATTY. BATEH, GEORGE
692	03/07/2002		BARBARA YATES, ATTY GENERALS
693	03/07/2002		OFFICE - PRESENT
694	03/07/2002		J. SASSER - PRESENT
695	03/07/2002		DOROTHY DEPIAZZA, JSO -
696	03/07/2002		PRESENT
697	03/07/2002		STATES MOTION TO QUASH SUBPOENA
698	03/07/2002		GRANTED IN PART AND DENIED IN
699	03/07/2002		PART, ORDER TO BE ENTERED
700	03/07/2002		TELEPHONIC STATUS HEARING HELD
701	03/07/2002		IN FULL
702	03/07/2002		STATUS HEARING 04/01/2002 7 01:30 00
703	03/08/2002		ORDER DIRECTING DEPT OF
704	03/08/2002		CORRECTIONS TO MAKE
705	03/08/2002		TELECONFERENCING AVAILABLE TO
706	03/08/2002		DEFT.
707	03/08/2002		ORDER TO TRANSPORT
708	03/08/2002		WITNESS FROM PRISON FOR COURT
709	03/08/2002		PROCEEDING
710	03/12/2002		ORDER ON STATE'S MOTION TO
711	03/12/2002		QUASH SUBPOENA'S - GRANTED AS
712	03/12/2002		TO DR. BONFACIO FLORO.
713	03/12/2002		PRAE, FOR WITNESS SUBPOENA- S
714	03/12/2002		EVIDENTIARY HEARING
715	03/13/2002		WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D
716	03/14/2002		WITNESS SUBPOENA(S) FOR D
717	03/14/2002		WITH ATTACHED RETURN
718	03/14/2002		(4)
719	03/20/2002		COPY OF LETTER FROM JUDGE
720	03/20/2002		ARNOLD TO DEFT.

721	03/21/2002		WITNESS SUBPOENA(S) FOR D
722	03/21/2002		WITH ATTACHED RETURN
723	03/28/2002		PRAE, FOR WITNESS SUBPOENA- S
724	03/28/2002		EVIDENTIARY HEARING
725	03/29/2002		ORDER RETURNED EXECUTED
726	03/29/2002		ORDER RETURNED EXECUTED
727	03/29/2002		ORDER RETURNED EXECUTED
728	03/29/2002		ORDER RETURNED EXECUTED
729	03/29/2002		ORDER RETURNED EXECUTED
730	03/29/2002		ORDER RETURNED EXECUTED
731	03/29/2002		ORDER RETURNED EXECUTED
732	04/01/2002		ASST. STATE ATTY. BATEH, GEORGE
733	04/01/2002		ATTY. FOR DEF. PRO-SE
734	04/01/2002		BARBARA YATES, ATTY GENERALS
735	04/01/2002		OFFICE, PRESENT
736	04/01/2002		J. SASSER, PRESENT
737	04/01/2002		STATUS HEARING HELD IN FULL
738	04/01/2002		PASSED FOR HEARING ON MOTION 04/08/2002 7 09:00 00
739	04/04/2002		ORDER RETURNED EXECUTED
740	04/08/2002		PASSED FOR HEARING ON MOTION 04/09/2002 7 09:00 00
741	04/08/2002		ASST. STATE ATTY. BATEH, GEORGE
742	04/08/2002		ATTY. FOR DEF. PRO SE
743	04/08/2002		HEARING ON DEFT'S. 3.850
744	04/08/2002		MOT. FOR POST CONVICTION
745	04/08/2002		RELIEF HELD IN PART
746	04/08/2002		HEARING ON MOT. 4-9-02 7 0900
747	04/09/2002		PASSED FOR HEARING ON MOTION 04/10/2002 7 09:00 00
748	04/09/2002		ASST. STATE ATTY. BATEH, GEORGE
749	04/09/2002		ATTY. FOR DEF. PRO SE
750	04/09/2002		HEARING ON MOT. 4-10-02 7 0900
751	04/09/2002		WITNESS SUBPOENA(S) FOR D
752	04/09/2002		(3) FOR TRIAL
753	04/10/2002		ASST. STATE ATTY. BATEH, GEORGE
754	04/10/2002		ATTY. FOR DEF. PRO SE
755	04/10/2002		HEARING ON DEFT'S. 3.850
756	04/10/2002		MOT. FOR POST CONVICTION
757	04/10/2002		RELIEF HELD IN FULL - RESERVE
758	04/10/2002		RULING
759	04/10/2002		CLERKS' MEMO OF HEARING
760	04/10/2002		CLERKS EXHIBIT MEMO
761	04/10/2002		STATE EXHIBITS 1 THROUGH 6
762	04/10/2002		FILED (ALL PAPER DOCUMENTS)
763	04/10/2002		DEFENSE EXHIBITS 1 THROUGH 40
764	04/10/2002		ALL PAPER DOCUMENTS FILED
765	04/10/2002		(SEE EXHIBIT MEMORANDUM)
766	04/12/2002		ORDER FROM EVIDENTIARY

767	04/12/2002		HEARING
768	04/12/2002		ORDER RETURNED EXECUTED
769	04/12/2002		ORDER RETURNED EXECUTED
770	04/15/2002		WITNESS SUBPOENA(S) FOR D
771	04/15/2002		FOR TRIAL
772	04/18/2002		WITNESS SUBPOENA(S) DUCES TECUM ISSUED D
773	04/18/2002		FOR TRIAL
774	04/18/2002		WITNESS SUBPOENA(S) FOR D
775	04/18/2002		(4) FOR TRIAL
776	04/19/2002		ORDER RETURNED EXECUTED
777	04/19/2002		ORDER RETURNED EXECUTED
778	04/19/2002		ORDER RETURNED EXECUTED
779	04/19/2002		ORDER RETURNED EXECUTED
780	04/19/2002		ORDER RETURNED EXECUTED
781	04/23/2002		WITNESS SUBPOENA(S) FOR D
782	04/23/2002		FOR TRIAL
783	04/24/2002		MOT. FOR PAYMENT OF COSTS
784	04/24/2002		ORDER FOR PAYMENT OF COSTS
785	04/29/2002		ORDER RETURNED EXECUTED
786	05/02/2002		ORDER DIRECTING CLERK TO SEAL
787	05/02/2002		RECORDS
788	05/02/2002		FOUR ENVELOPES OF DOCUMENTS
789	05/02/2002		(SEALED) RECORDS OF JOHN
790	05/02/2002		BRADLEY & ASSOCIATES
791	05/09/2002		STATE'S POST EVIDENTIARY
792	05/09/2002		HEARING MEMORANDUM IN
793	05/09/2002		OPPOSITION TO DEFT'S. AMENDED
794	05/09/2002		MOT. FOR POST CONVICTION
795	05/09/2002		RELIEF
796	05/16/2002		WRITTEN CLOSING ARGUMENT IN
797	05/16/2002		SUPPORT OF GRANTING POST
798	05/16/2002		CONVICTION RELIEF
799	05/16/2002		LETTER TO JUDGE ARNOLD FROM
800	05/16/2002		MICHAEL BELL REQUESTING COPY
801	05/16/2002		OF WRITTEN CLOSING ARGUMENT
802	05/22/2002		NOTICE OF FILING SWORN
803	05/22/2002		STATEMENT
804	05/22/2002		SWORN STATEMENT OF
805	05/22/2002		CHRISTOPHER MAYS
806	05/23/2002		COPY OF LETTER WRITTEN BY
807	05/23/2002		MICHAEL BELL (SINGLE PAGE)
808	05/23/2002		VIDEO TAPE (NOT FILED AS
809	05/23/2002		EVIDENCE)
810	05/31/2002		ORDER DENYING MOT. TO VACATE JUDG. AND SENT.
811	05/31/2002		TESTIMONY & PROCEEDINGS OF 010401
812	05/31/2002		AND FEBRUARY 4, 2002

813	05/31/2002		TESTIMONY & PROCEEDINGS OF 092401
814	06/03/2002		(COPY) DEFT'S. RESPONSE TO
815	06/03/2002		STATE'S POST EVIDENTIARY
816	06/03/2002		HEARING MEMORANDUM IN
817	06/03/2002		OPPOSITION TO DEFT'S. AMENDED
818	06/03/2002		MOT. FOR POST CONVICTION
819	06/03/2002		RELIEF
820	06/03/2002		LETTER TO WARDEN FROM JUDGE
821	06/04/2002		MOT. TO PERMIT DEPOSITION OF A
822	06/04/2002		DEFENSE WITNESS
823	06/04/2002		SUBPOENA DUCES TECUM
824	06/04/2002		ORDER ON DEFT'S. SUBPOENA
825	06/04/2002		DUCES TECUM & MOT. TO
826	06/04/2002		PERMIT DEPOSITION OF A DEFENSE
827	06/04/2002		WITNESS - DENIED
828	06/11/2002		MOT. TO ORDER THE
829	06/11/2002		INVESTIGATOR (JOHN BRADLEY)
830	06/11/2002		TO FOLLOW MR. BELL'S REQUEST
831	06/11/2002		AND/OR TO APPOINT ANOTHER
832	06/11/2002		INVESTIGATOR
833	06/11/2002		ORDER DENYING MOT. TO ORDER
834	06/11/2002		THE INVESTIGATOR (JOHN
835	06/11/2002		BRADLEY) TO FOLLOW MR. BELL'S
836	06/11/2002		REQUEST AND/OR TO APPOINT
837	06/11/2002		ANOTHER INVESTIGATOR
838	06/14/2002		MOTION FOR REHEARING
839	06/18/2002		ORDER ON MOTION FOR REHEARING - D
840	07/01/2002		MOTION FOR PAYMENT OF PRIVATE
841	07/01/2002		INVESTIGATORS FEES AND COSTS
842	07/01/2002		AND PAYMENT OF EXPERT WITNESS
843	07/01/2002		FEE
844	07/03/2002		ORDER FOR PAYMENT OF
845	07/03/2002		INVESTIGATION FEES AND COSTS
846	07/03/2002		AND PAYMENT OF EXPERT WITNESS
847	07/03/2002		FEE
848	07/03/2002		LETTER FROM ATTORNEY TO THE
849	07/03/2002		JUDGE REG: WITNESS FEES
850	07/31/2002		STATUS HEARING 08/12/2002 7 10:00 00
851	07/31/2002		PER LINDA/FAX
852	07/31/2002		DESIGNATION TO COURT REPORTER
853	07/31/2002		AND REPORTER'S ACKNOWLEDGMENT
854	07/31/2002		ORDER SCHEDULING HEARING ON
855	07/31/2002		STATUS OF ATTORNEY
856	07/31/2002		REPRESENTATION OF DEFENDANT,
857	07/31/2002		AND ORDER DIRECTING DEPARTMENT
858	07/31/2002		OF CORRECTIONS TO MAKE

859	07/31/2002		TELECONFERENCING AVAILABLE TO
860	07/31/2002		DEFENDANT FOR HEARING
861	07/31/2002		NOTICE OF APPEAL
862	07/31/2002		(3.850?)
863	08/08/2002		LETTER FROM ATTORNEY'S OFFICE
864	08/08/2002		TO THE JUDGE
865	08/08/2002		AMENDED ORDER FOR PAYMENT OF
866	08/08/2002		INVESTIGATION FEES AND COSTS
867	08/08/2002		AND PAYMENT OF EXPERT WITNESS
868	08/08/2002		FEE
869	08/12/2002		ASST. STATE ATTY. BATEH, GEORGE
870	08/12/2002		AND S. SIEGEL
871	08/12/2002		ATTY. FOR DEF. PRO SE
872	08/12/2002		STATUS HEARING HELD IN FULL
873	08/12/2002		CURTIS FRENCH (ATTORNEY
874	08/12/2002		GENERAL'S OFFICE,
875	08/12/2002		(TELEPHONICALLY)
876	08/12/2002		ATTORNEY J. SASSER, PRESENT
877	08/12/2002		DEFENDANT PRESENT, TELEPHONIC
878	08/12/2002		CLERK'S MEMORANDUM OF HEARING-
879	08/12/2002		FILED
880	08/14/2002		ORDER ALLOWING WITHDRAWAL OF STANDBY
881	08/14/2002		COUNSEL AND APPOINTMENT OF NEW
882	08/14/2002		STANDBY COUNSEL TO REPRESENT
883	08/14/2002		DEFENDANT FOR APPEAL PURPOSES
884	10/11/2002		LETTER TO JUDGE FROM DEFT.
885	11/06/2002		CLOSING ARGUMENT IN SUPPORT OF
886	11/06/2002		GRANTING POST CONVICTION
887	11/06/2002		RELIEF
888	11/18/2002		THE DEFENDANT'S RESPONSE TO
889	11/18/2002		THE STATE'S POST-EVIDENTIARY
890	11/18/2002		HEARING MEMORANDUM IN
891	11/18/2002		OPPOSITION TO DEFENDANT'S
892	11/18/2002		AMENDED MOTION FOR POST
893	11/18/2002		CONVICTION RELIEF
894	11/25/2002		NOTICE OF EXPIRATION OF
895	11/25/2002		SPEEDY TRIAL TIME AND OR
896	11/25/2002		MOTION OR LACK OF SPEEDY TRIAL
897	12/06/2002		ORDER STRIKING DEFENDANT'S PRO-SE
898	12/06/2002		PLEADINGS
899	01/28/2003		ORDER VACATING PRIOR ORDER STRIKING
900	01/28/2003		DEFENDANT'S PRO SE PLEADINGS
901	01/28/2003		AND STRIKING DEFENDANT'S
902	01/28/2003		INSTANT PLEADINGS
903	03/14/2003		SUPREME COURT ORDER-APPELLANT
904	03/14/2003		HAS FILED A NOTICE OF APPEAL

905	03/14/2003		ON A ORDER DENYING 3.850
906	03/14/2003		MOTION. APPELLANT CANNOT
907	03/14/2003		PROCEED WITHOUT COUNSEL IN
908	03/14/2003		THIS PROCEEDINGS IN THIS COURT
909	03/14/2003		JURISDICTION IS RELINQUISHED
910	03/14/2003		TO THE CIRCUIT COURT AND
911	03/14/2003		WITHIN 30 DAYS TO APPOINT
912	03/14/2003		COUNSEL TO REPRESENT APPELLANT
913	03/14/2003		IN APPEAL
914	03/19/2003		ORDER APPOINTING COUNSEL FOR
915	03/19/2003		PURPOSES OF APPEAL
916	03/19/2003		ATTY. FOR DEF. J. MORROW
917	04/15/2003		MOT. FOR EXTENSION OF TIME
918	04/15/2003		ORDER ON DEFENDANT'S MOTION FOR
919	04/15/2003		EXTENSION OF TIME
920	04/29/2003		ORDER FOR PAYMENT OF DEFENDANT'S
921	04/29/2003		STANDBY COUNSEL'S MOTION FOR
922	04/29/2003		ATTORNEY'S FEES
923	04/30/2003		STANDBY COUNSEL'S MOTION FOR
924	04/30/2003		ATTORNEY'S FEES
925	12/17/2003		HEARING BEFORE THE HONORABLE
926	12/17/2003		CHARLES ARNOLD, AUGUST 12, 2002
927	12/17/2003		STATUS HEARING BEFORE THE
928	12/17/2003		HONORABLE CHARLES ARNOLD,
929	12/17/2003		FEBRUARY 4, 2002
930	12/17/2003		3.850 BEFORE THE HONORABLE
931	12/17/2003		CHARLES ARNOLD, NOVEMBER
932	12/17/2003		20, 2001
933	12/17/2003		HEARING BEFORE THE HONORABLE
934	12/17/2003		CHARLES ARNOLD, MARCH 7, 2002
935	06/01/2004		ORDER APPOINTING COUNSEL IN
936	06/01/2004		COMPLIANCE WITH ORDER OF
937	06/01/2004		FLORIDA SUPREME COURT
938	06/14/2004		ORDER SUPREME COURT- MOTION
939	06/14/2004		TO WITHDRAW IS GRANTED
940	10/12/2005		SUPREME COURT ORDER- THE
941	10/12/2005		REQUEST TO WITHDRAW BY
942	10/12/2005		R. KURITZ, IS GRANTED
943	10/20/2005		ORDER APPOINTING COUNSEL
944	10/20/2005		PURSUANT TO SUPREME COURT
945	10/20/2005		OF FLORIDA ORDER
946	10/20/2005		JUDGE'S COPY SUPREME COURT
947	10/20/2005		ORDER
948	11/09/2005		NOTICE OF APPEARANCE
949	04/07/2006		MOT. FOR ATTORNEY'S FEES
950	04/07/2006		AND INCORPORATED MEMORANDUM

951	04/10/2006		MOTION FOR ATTORNEY'S FEES AND
952	04/10/2006		COSTS AND INCORPORATED
953	04/10/2006		MEMORANDUM
954	04/10/2006		ORDER FOR PAYMENT OF ATTORNEYS
955	04/10/2006		FEES
956	04/12/2006		ORDER PAYING ATTORNEY'S FEE
957	04/24/2006		ORDER DIRECTING PAYMENT OF
958	04/24/2006		FEES AND COSTS
959	05/11/2006		MOTION FOR PAYMENT OF
960	05/11/2006		CONTINUING LEGAL EDUCATION
961	05/11/2006		EXPENSES
962	05/17/2006		MOTION FOR PAYMENT OF
963	05/17/2006		CONTINUING LEGAL EDUCATION
964	05/17/2006		EXPENSES
965	05/17/2006		ORDER GRANTING MOTION FOR
966	05/17/2006		REIMBURSEMENT OF CONTINUING
967	05/17/2006		LEGAL EDUCATION EXPENSES
968	07/19/2006		MOTION FOR PAYMENT OF
969	07/19/2006		ATTORNEY'S COSTS FOR EDUCATION
970	07/19/2006		ORDER DIRECTING PAYMENT OF
971	07/19/2006		ATTORNEY'S COSTS FOR EDUCATION
972	07/19/2006		LETTER TO JUDGE ARNOLD: FROM
973	07/19/2006		DEFT'S ATTORNEY
974	11/21/2006		PROVIDE QUALITY REPRESENTATION
975	11/21/2006		MOTION TO DISMISS COURT
976	11/21/2006		APPOINTED REGISTRY COUNSEL
977	11/21/2006		FOR FAILURE TO PURSUANT TO
978	11/21/2006		FLORIDA STATUTE 27.711(12)
979	11/21/2006		ANT TO REQUEST A NELSON
980	11/21/2006		HEARING PURSUANT TO NELSON
981	11/21/2006		V.STATE,274.SO2D256(FLA 4TH DC
982	12/04/2006		ORDER DIRECTING STATE ATTY
983	12/04/2006		TO FILE A RESPONSE
984	02/26/2007		LETTER TO JUDGE
985	02/26/2007		ORDER DENYING BELL'S MOTION
986	02/26/2007		TO DISMISS COURT-APPOINTED
987	02/26/2007		COUNSEL
988	03/06/2007		LETTER TO JUDGE FROM DEFT
989	03/12/2007		ORDER DENYING MOTION FOR
990	03/12/2007		REHEARING AND/OR CERTIFICATION
991	03/12/2007		MOTOPM FPR REHEARING AND/OR
992	03/12/2007		CERTIFICATION
993	03/26/2007		NOTICE OF APPEAL
994	03/26/2007		(DENIAL)
995	03/26/2007		BK 13891 PG 2383
996	06/11/2007		ORDER(STYLED SC)

997	06/11/2007		THE PRO SE NOA AND INITIAL
998	06/11/2007		BRIEF HAVE BEEN TREATED AS A
999	06/11/2007		MOTION FOR REVIEW,AND SUPPL.
1000	06/11/2007		THERETO,OF THE CIRCUIT COURT
1001	06/11/2007		OF THE FOURTH JUDICIAL CIRCUIT
1002	06/11/2007		IN AND FOR DUVAL COUNTY,FL
1003	06/11/2007		ORDER DATED FEB 26,2007 AND IT
1004	06/11/2007		IS ORDERED THAT SAID ORDER
1005	06/11/2007		IS AFFIRMED
1006	06/11/2007		ORDER(STYLED SC)MOTION FOR
1007	06/11/2007		REVIEW AND RELEASE OF SEALED
1008	06/11/2007		RECORDS-DENIED, PRO SE MOTION
1009	06/11/2007		TO SUPPL.RECORD;PRO SE INITIAL
1010	06/11/2007		BRIEF AND PETITION FOR WRIT OF
1011	06/11/2007		HABEAS CORPUS,MOTION FOR
1012	06/11/2007		PERMISSION TO FILE PRO SE
1013	06/11/2007		REQUEST TO TAKE JUDICIAL NOTICE
1014	06/11/2007		PRO SE MOTION FOR RELINQUISH
1015	06/11/2007		JURISDICTION IN PART TO L.T.
1016	06/11/2007		IS DENIED.PRO SE REQUEST TO
1017	06/11/2007		TAKE JUDICIAL NOTICE FILED
1018	06/11/2007		05/18/07 IS HEREBY STRIKEN
1019	06/11/2007		COPY TO JUDGE CHARLES ARNOLD
1020	07/19/2007		MOTION FOR PAYMENT OF
1021	07/19/2007		ATTORNEY'S COSTS FOR EDUCATION
1022	07/19/2007		LETTER FILED
1023	07/19/2007		LETTER TO JUDGE ARNOLD FROM:
1024	07/19/2007		THE LAW OFFICE OF CHRISTOPHER
1025	07/19/2007		ANDERSON
1026	07/19/2007		ORDER DIRECTING PAYMENT OF
1027	07/19/2007		ATTORNEY'S COSTS
1028	07/27/2007		ORDER DIRECTING PAYMENT OF
1029	07/27/2007		ATTORNEY'S FEES AND COSTS
1030	07/27/2007		LETTER TO JUDGE
1031	07/27/2007		LETTER- FILED
1032	07/27/2007		REQUEST FOR PAYMENT INTENDED
1033	07/27/2007		BILLING INVOICES AND
1034	07/27/2007		SUPPORTING AFFIDAVIT OF COURT-
1035	07/27/2007		APPOINTED ATTORNEY CHRISTOPHER
1036	07/27/2007		J. ANDERSON
1037	07/27/2007		MOTION FOR PAYMENT OF ATTORNEY
1038	07/27/2007		FEES AND MISCELLANEOUS
1039	07/27/2007		EXPENSES (COSTS)
1040	09/24/2007		SC-ORDER:APPELLANT'S MOTION
1041	09/24/2007		FOR REHEARING IS STRICKEN.
1042	09/24/2007		AND APPELLEE'S MOTION TO STRIKE

1043	09/24/2007		APPELLANT'S MOTION FOR RE-
1044	09/24/2007		HEARING IS DENIED AS MOOT.
1045	09/24/2007		EXHIBIT'S RETURNED FROM SC.
1046	09/24/2007		MANDATE FROM APPELLATE COURT A
1047	09/24/2007		(AFFIRMED THE DENIAL OF THE
1048	09/24/2007		POSTCONVICTION MOTION AND
1049	09/24/2007		DENY THE PETITION FOR A
1050	09/24/2007		WRIT OF HABEAS CORPUS)
1051	12/13/2007		ORDER DIRECTING PAYMENT OF ATTORNEY'S FEES AND COSTS
1052	12/13/2007		LETTER TO JUDGE
1053	12/13/2007		REQUEST FOR PAYMENT AND INTENDED BILLING INVOICES AND SUPPORTING AFFIDAVIT OF COURT -APPOINTED ATTORNEY CHRISTOPHER J. ANDERSON
1054	03/04/2008		LETTER FROM ATTORNEY TO CLERK
1055	03/04/2008		NOTICE THAT DEFENDANT MICHAEL BERNARD BELL HAS REJECTED ALL SERVICES OF ANY COURT-APPOINTED COUNSEL AND HAS CHOSEN TO REPRESENT HIMSELF PRO SE IN ALL FURTHER PROCEEDINGS
1056	03/06/2008		NOTICE THAT DEFENDANT MICHAEL BERNARD BELL HAS REJECTED ALL SERVICES OF ANY COURT-APPOINTED COUNSEL AND HAS CHOSEN TO REPRESENT HIMSELF PRO SE IN ALL FURTHER PROCEEDINGS
1057	03/19/2008		RESPONSE TO MR ANDERSON'S NOTICE THAT DEFENDANT MICHAEL B. BELL HAS REJECTED ALL SERVICES OF ANY COURT-APPOINTED COUNSEL AND HAS CHOSEN TO REPRESENT HIMSELF PRO SE IN ALL FURTHER PROCEEDINGS
1058	09/19/2008		CLERKS EXHIBIT MEMO
1059	12/02/2010		MOT. TO VACATE JUDG. & SENT. (RULE 3.850)
1060	12/02/2010		> SUCCESSIVE
1061	01/05/2011		ORDER DIRECTING THE STATE TO FILE AN ANSWER
1062	01/10/2011		ASST. STATE ATTY.
1063	01/10/2011		STATE'S MOTION FOR EXTENSION OF TIME TO SUBMIT RESPONSE
1064	01/12/2011		ORDER GRANTING STATE'S MOTION FOR EXTENSION OF TIME TO SUBMIT RESPONSE
1065	01/14/2011		STATUS CONFERENCE 01/24/2011 10:00 AM - 227 CHAMBERS
1066	01/14/2011		PER LINDA (JUDGE ARNOLD TO HANDLE)
1067	01/14/2011		STATE'S RESPONSE TO BELL'S SUCCESSIVE MOTION TO VACATE JUDGMENTS OF CONVICTION & SENTENCE
1068	01/14/2011		PER LINDA (JUDGE ARNOLD TO HANDLE)
1069	01/19/2011		ORDER SCHEDULING CASE MANGEMENT CONFERENCE
1070	02/08/2011		ORDER DIRECTING DEFENDANT TO RESPOND TO THE STATE'S PROPOSED ORDER ON HIS SUCCESSIVE 3.851 MOTION

1071	03/07/2011		ORDER ON DEFT. SUCCESSIVE MOTION VACATE JUDGMENTS OF CONVICTION AND SENTENCE
1072	03/23/2011		ORDER DENYING MOTION TO VACATE JUDG. AND SENT. - AMENDED ON DEFT'S SUCCESSIVE MOTION
1073	04/04/2011		NOTICE OF APPEAL BOOK 15561 PAGE 2187-2187
1074	04/04/2011		DIRECTIONS TO CLERK
1075	04/05/2011		INDEX & RECORD OF APPEAL 3.850
1076	04/05/2011		RECORD ON APPEAL COMPLETED AND DELIVERD TO TALLAHASSEE 3.850
1077	04/18/2011		SUPREME COURT ACKNOWLEDGMENT SC11-694
1078	07/01/2011		ORDER DISCHARGING COURT- APPOINTED COUNSEL CHRISTOPHER J. ANDERSON RETROACTIVE TO NOV. 7, 2007
1079	07/01/2011		ORDER DISCHARGING COURT- APPOINTED COUNSEL CHRISTOPHER J. ANDERSON RETROACTIVE TO NOV. 7, 2007
1080	07/27/2011		SUPREME COURT ORDER GRANTING THE APPELLANT'S UNOPPOSED MOTION TO SUPPLEMENT THE RECORD ON APPEAL SC11-694
1081	07/28/2011		SUPPLEMENTAL RECORD OF APPEAL SC11-694
1082	07/28/2011		RECORD ON APPEAL COMPLETE & DELIVERED TO TALLAHASSEE
1083	11/03/2011		MOTION FOR ATTORNEY FEES 11-15-11 AT 1:30 PM - NO CLERK NEEDED
1084	11/14/2011		MOT. FOR ATTORNEY'S FEES
1085	11/16/2011		ORDER PAYING ATTORNEY'S FEE
1086	03/22/2012		MOTION FOR RULLING ON BELL'S MOTION TO DISMISS COURT-APPOINTED REGISTRY COUNSEL FOR FAILURE TO PURSUANT TO FLORIDA STATUE 27.11(12) AND TO REQUEST A NELSON HEARING PURSUANT TO NELSON V. STATE, 274 SO.2D 256 (FLA. 4TH DCA 1973)
1087	05/10/2012		OPINION - AFFIRMED
1088	05/11/2012		TRIAL-TESTIMONY & PROCEEDINGS PENALTY PHASE MARCH 17, 1995
1089	05/11/2012		TESTIMONY & PROCEEDINGS OF JANUARY 24, 2011, BEFORE THE HONORABLE CHARLES ARNOLD
1090	06/26/2012		SUPREME COURT ORDER APPELLANT'S MOTION FOR REHEARING IS HEREBY DENIED SC11-694
1091	07/13/2012		SUPREME COURT MANDATE AFFIRMED SC11-694
1092	12/18/2012		ORDER DIRECTING PAYMENT OF ATTORNEYS FEES PURSUANT TO FLORIDA STATUTE 27.711(4)(A)
1093	12/18/2012		MOTION FOR ORDER DIRECTING PAYMENT OF ATTORNEY FEES
1094	12/18/2012		LETTER- FILED
1095	07/12/2013		TRIAL ASSISTANT STATE ATTORNEY CHANGED TO Loizos, Sheila Ann PER SAO
1096	12/03/2014		NOTICE OF INQUIRY

1097	12/03/2014		MOTION FOR POST CONVICTION RELIEF (SUCCESSIVE) 3.851(E)(2)
1098	01/09/2015		MOTION TO STRIKE PRO-SE SUCCESSION POSTCONVICTION MOTION
1099	01/22/2015		COURT ORDER SETTING CASE MANAGEMENT CONFERENCE
1100	02/02/2015		STATUS HEARING 02/02/2015 9:00 AM - 702 CHAMBERS, 501 W ADAMS ST JACKSONVILLE FL 32202
1101	02/02/2015		@ 12:00PM TO BE HEARD BY JUDGE ARNOLD // PER ORDER // HUFF HEARING
1102	02/02/2015		JUDGE ARNOLD, CHARLES W
1103	02/02/2015		ASST. STATE ATTY. CHARBULA, MEREDITH
1104	02/02/2015		ATTY. FOR DEF. TASSONE, FRANK JOHN
1105	02/02/2015		OTHERS PRESENT: AGO; CHARMAINE MILLSAPS
1106	02/02/2015		HUFF HEARING HELD IN FULL
1107	02/02/2015		ORDER TO BE ENTERED
1108	02/02/2015		JUDGE ARNOLD, CHARLES W
1109	02/02/2015		JURY TRIAL HELD
1110	02/02/2015		ASST. STATE ATTY. BATEH, GEORGE ZIADEH
1111	02/02/2015		ATTY. FOR DEF. TASSONE, FRANK JOHN JR
1112	02/03/2015		COURT ORDER GRANTING STATE'S MOTION TO STRIKE AND STRIKING DEFENDANT'S SECOND SUCCESSIVE POST-CONVICTION MOTION
1113	02/04/2015		RESPONSE TO THE STATE'S MOTION TO STRIKE PRO-SE SUCCESSION POST-CONVICTION MOTION
1114	02/04/2015		MOTION TO PROCEED PRO-SE
1115	02/22/2015		MOTION TO DISCHARGE COURT-APPOINTED COUNSEL
1116	02/26/2015		MOTION TO DISCHARGE COURT - APPOINTED COUNSEL BECAUSE HE FAILED TO ACT AS BELLS LEGAL AGENT
1117	03/04/2015		NOTICE OF APPEAL BOOK 17086 PAGE 1016-1025
1118	03/04/2015		COURT ORDER DENYING DEFENDANT'S MOTION TO DISCHARGE COURT-APPOINTED COUNSEL AND MOTION TO PROCEED PRO SE
1119	03/05/2015		INDEX & RECORD OF APPEAL
1120	03/05/2015		RECORD ON APPEAL E-FILED TO DCA
1121	03/06/2015		DCA ACKNOWLEDGMENT RECEIPT 1D15-1012
1122	03/16/2015		DIRECTIONS TO CLERK
1123	04/13/2015		UNOPPOSED MOTION FOR PAYMENT OF ATTORNEY FEES AND FOR DISCHARGE AND PROPOSED ORDER
1124	04/15/2015		DCA ORDER IS HEREBY TRANSFERRING THIS CAUSE TO THE SUPREME COURT OF FLORIDA FOR FURTHER PROCEEDINGS, 1D15-1012
1125	04/15/2015		MOTION STATE'S EMERGENCY TO APPOINT COUNSEL
1126	04/15/2015		MOTION TO APPOINT NEW STATE POSTCONVICTION COUNSEL
1127	04/15/2015		COURT ORDER GRANTING UNOPPOSED MOTION FOR PAYMENT OF ATTORNEY FEES PURSUANT TO FLORIDA

			STATUTE 27.711 (4)(E) AND FOR DISCHARGE
1128	04/15/2015		DOCUMENTS / LETTER OF NO OBJECTION
1129	04/21/2015		COURT ORDER APPOINTING COUNSEL FOR DEFT., MICHAEL B. BELL
1130	04/24/2015		COURT ORDER VACATING AND SETTING ASIDE ORDER APPOINTING COUNSEL FOR DEFENDANT, MICHAEL B. BELL
1131	04/27/2015		MOTION TO STAY PROCEEDINGS
1132	05/05/2015		COURT ORDER GRANTING STATE'S MOTIONS TO APPOINT COUNSEL AND APPOINTING COUNSEL TO REPRESENT DEFENDANT, MICHAEL B. BELL
1133	09/10/2015		TRIAL ASSISTANT STATE ATTORNEY CHANGED TO Bateh, George Ziadeh PER SAO
1134	11/02/2015		SUPREME COURT ORDER STRICKING THE PRO SE NOTICE OF APPEAL AND DISMISSING THE CASE, SC15-1733
1135	11/20/2015		NOTICE OF APPEARANCE AND DESIGNATION OF E-MAIL ADDRESSES
1136	12/22/2015		NOTICE OF SUBSTITUTION OF COUNSEL FOR ATTORNEY GENERAL
1137	02/05/2016		SUPREME COURT ORDER OF A NEW CASE, SC16-229
1138	03/02/2016		SUPREME COURT ORDER IS HEREBY GRANTING THE ORIGINAL PETITION SEEKING BELATED APPEAL, SC16-229
1139	03/07/2016		DESIGNATION TO COURT REPORTER
1140	03/07/2016		DIRECTIONS TO CLERK
1141	03/07/2016		REPORTER'S ACKNOWLEDGEMENT
1142	03/09/2016		SUPREME COURT ACKNOWLEDGMENT OF A NEW CASE, SC16-369
1143	03/09/2016		SUPREME COURT ORDER DIRECTING THE CLERK OF THE COURT TO FILE AND COMPLETE THE RECORD ON APPEAL, SC16-369
1144	03/18/2016		COURT ORDER SETTING STATUS CONFERENCE ON PREPARATION OF RECORD ON APPEAL
1145	03/18/2016		STATUS CONFERENCE 03/31/2016 9:00 AM - 702 CHAMBERS, 501 W ADAMS ST JACKSONVILLE FL 32202
1146	03/18/2016		BEFORE JUDGE C. ARNOLD @10:00 A.M. AS TO REVIEW THE PREPARATION OF THE RECORD ON APPEAL
1147	03/30/2016		NOTICE OF APPEAL
1148	03/31/2016		JUDGE ARNOLD, CHARLES W
1149	03/31/2016		ASST. STATE ATTY. CHARBULA, MEREDITH
1150	03/31/2016		ATTY. FOR DEF. NORGARD, ROBERT ANTHONY
1151	03/31/2016		> VIA PHONE
1152	03/31/2016		DEFENDANT NOT PRESENT
1153	03/31/2016		OTHERS PRESENT: TINISHIA MORRIS - ASST. ATTORNEY GENERAL VIA PHONE
1154	03/31/2016		STATUS HEARING HELD IN FULL
1155	03/31/2016		COURT ORDER TO BE ENTERED
1156	04/04/2016		INDEX & RECORD OF APPEAL SC16-369
1157	04/06/2016		TESTIMONY & PROCEEDINGS OF FEBRUARY 2, 2015

			BEFORE THE HONORABLE JUDGE CHARLES ARNOLD
1158	04/06/2016		COURT ORDER ON STATUS CONFERENCE
1159	04/12/2016		TESTIMONY & PROCEEDINGS OF MARCH 31, 2016, BEFORE THE HONORABLE CHARLES ARNOLD
1160	01/06/2017		MOTION TO VACATE JUDG. & SENT. (NON 3.850 MOTION) SECOND SUCCESSIVE 3.851
1161	01/23/2017		NOTICE OF APPEARANCE FOR ATTORNEY GENERAL
1162	01/24/2017		TRIAL ASSISTANT STATE ATTORNEY CHANGED TO Bateh, George Ziadeh PER SAO
1163	01/24/2017		MOTION TO EXCEED STATUTORY CAP IN PART AND FOR PAYMENT OF ATTORNEY'S FEES
1164	01/25/2017		STATE'S ANSWER TO DEFENDANT'S SECOND SUCCESSIVE POSTCONVICTION MOTION
1165	02/02/2017		COURT ORDER POSTPONING THE SCHEDULE OF A RULE 3.851(F)(5)(B) CASE MANAGEMENT CONFERENCE UNTIL ASAY V. STATE, 41 FLA.L. WEEKLY S646A, (FLA. DEC. 22, 2016), BECOMES FINAL
1166	03/10/2017		ORDER DENYING MOTION TO VACATE JUDG. AND SENT (NON 3.850 ORDER) SECOND SUCCESSIVE
1167	03/14/2017		DIRECTIONS TO CLERK
1168	03/14/2017		STATEMENT OF JUDICIAL ACTS TO BE REVIEWED
1169	03/14/2017		NOTICE OF APPEAL BOOK 17909 PAGE 2489-2496
1170	04/18/2017		INDEX & RECORD OF APPEAL
1171	04/18/2017		RECORD ON APPEAL E-FILED TO DCA
1172	05/10/2017		HEARING ON MOTION (TO BE SET) 05/15/2017 9:00 AM - 307 3RD FLOOR, 501 W ADAMS ST JACKSONVILLE FL 32202
1173	05/10/2017		MOTION TO EXCEED STATUTORY CAP OF FEES -PER JA E-MAIL
1174	05/15/2017		JUDGE WALLACE, III, WADDELL A.
1175	05/15/2017		ASST. STATE ATTY. PERRY, ERIN TOWNSEND
1176	05/15/2017		ATTY. FOR DEF. NORGARD, ROBERT ANTHONY
1177	05/15/2017		> ATTY ROBERT NORGARD APPEARED TELEPHONICALLY
1178	05/15/2017		OTHERS PRESENT: BRAD BISCHOFF, JAC, APPEARED TELEPHONICALLY
1179	05/15/2017		DEFENDANT NOT PRESENT
1180	05/15/2017		NO PASS DATE GIVEN
1181	05/17/2017		ORDER GRANTING MOTION TO EXCEED STATUTORY CAP IN PART AND FOR PAYMENT OF ATTORNEY'S FEES
1182	06/05/2017		INDEX & RECORD OF APPEAL
1183	06/05/2017		RECORD ON APPEAL E-FILED TO SUPREME COURT
1184	06/06/2017		SUPREME COURT ACKNOWLEDGMENT SC17-1045
1185	06/07/2017		SUPREME COURT ORDER STAYING THIS APPEAL PENDING DISPOSITION OF HITCHCOCK V. STATE, SC17-445; SC17-1045
1186	06/26/2017		NOTICE OF SUBSTITUTION/CHANGE OF COUNSEL FOR ATTORNEY GENERAL
1187	01/29/2018		OPINION AFFIRMING THE DENIAL OF BELL'S MOTION,

			STYLED-SUPREME COURT, SC17-1045
1188	02/14/2018		SUPREME COURT MANDATE AFFIRMING THE DENIAL OF BELL'S MOTION, STYLED-SUPREME COURT, SC17-1045 BOOK 18283 PAGE 994-997
1189	02/20/2018		MOTION TO VACATE JUDGE. & SENT. (RULE 3.850) AMENDED SUCCESSIVE
1190	02/20/2018		MOTION TO VACATE JUDGE. & SENT. (RULE 3.850) SUCCESSIVE
1191	03/02/2018		STATE'S RESPONSE TO DEFENDANT'S AMENDED SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE
1192	03/22/2018		MOTION DEFT'S FOR LEAVE TO REPLY
1193	03/22/2018		ANSWERS - DEFT'S REPLY TO STATE'S ANSWER TO DEFT'S AMENDED SUCCESSIVE MOTION TO VACATE JUDGMENT & SENTENCE
1194	04/16/2018		ORDER APPOINTING SENIOR JUDGE
1195	04/18/2018		COURT ORDER SETTING CASE MANAGEMENT CONFERENCE
1196	04/18/2018		CASE MANAGMENT CONFERENCE 05/07/2018 9:00 AM - 702 CHAMBERS, 501 W ADAMS ST JACKSONVILLE FL 32202
1197	04/18/2018		@11:00 A.M. BEFORE JUDGE ARNOLD
1198	05/07/2018		JUDGE ARNOLD, CHARLES W.
1199	05/07/2018		ASST. STATE ATTY. SKINNER, DANIEL E
1200	05/07/2018		ASST ATTY GEN JENNIFER DONAHUE - APPEARED TELEPHONICALLY
1201	05/07/2018		ATTY. FOR DEF. NORGARD, ROBERT ANTHONY
1202	05/07/2018		> ATTY NORGARD APPEARED TELEPHONICALLY
1203	05/07/2018		DEFENDANT NOT PRESENT
1204	05/07/2018		> SGT BRANNON, DOC (TELEPHONICALLY) STATES DEFT REFUSED TO COME OUT OF CELL FOR TELEPHONIC APPEARANCE
1205	05/07/2018		CASE MANAGEMENT CONFERENCE HELD - NO FUTURE COURT DATE SET TODAY
1206	05/14/2018		ORDER DENYING DEFENDANT'S REQUEST FOR EVIDENTIARY HEARING AND SETTING ORAL ARGUMENT
1207	05/14/2018		GRANTING DEFENDANT'S MOTION FOR LEAVE TO REPLY
1208	05/14/2018		HEARING ON MOTION 06/26/2018 9:00 AM - 702 CHAMBERS, 501 W ADAMS ST JACKSONVILLE FL 32202
1209	05/14/2018		BEFORE JUDGE C. ARNOLD @11:00 A.M. (ORAL ARUGMENT AMENDED SUCCESSIVE MOTION TO VACATE JUDGMENT & SENTENCE)
1210	05/17/2018		MEMO TRANSFERRING DIVISION FROM CR-F, PER ADMINISTRATIVE ORDER 2017-14
1211	05/17/2018		TRANSFER TO DIV. CR-G (CIRCUIT)
1212	05/17/2018		MOTION FOR PAYMENT OF ATTORNEY'S FEES
1213	05/17/2018		MOTION TO EXCEED STATUTORY CAP AND FOR PAYMENT OF ATTORNEY'S FEES AND COSTS

1214	05/22/2018		ORDER GRANTING MOTION FOR PAYMENT OF ATTORNEY'S FEES
1215	05/22/2018		NOTICE OF HEARING
1216	06/26/2018		JUDGE ARNOLD, CHARLES W.
1217	06/26/2018		ASST ATTY GEN JENNIFER DONAHUE - TELEPHONICALLY
1218	06/26/2018		ATTY. FOR DEF. NORGARD, ROBERT ANTHONY - TELEPHONICALLY
1219	06/26/2018		DEFENDANT NOT PRESENT (FSP)
1220	06/26/2018		HEARING ON AMENDED SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE HELD IN FULL - ORDER TO BE ENTERED
1221	09/27/2018		ORDER DENYING MOTION TO VACATE JUDG. AND SENT. (AMENDED SUCCESSIVE)
1222	10/11/2018		NOTICE OF APPEAL (3.851) BOOK 18562 PAGE 752-761
1223	10/11/2018		DIRECTIONS TO CLERK
1224	10/11/2018		STATEMENT OF JUDICIAL ACTS TO BE REVIEWED
1225	10/11/2018		DESIGNATION TO COURT REPORTER
1226	10/12/2018		REPORTER'S ACKNOWLEDGEMENT
1227	10/18/2018		SUPREME COURT ACKNOWLEDGMENT SC18-1713
1228	10/18/2018		SUPREME COURT ORDER DIRECTING THE CLERK TO FILE THE RECORD ON APPEAL TWENTY DAYS AFTER THE FILING OF THE TRANSCRIPT, SC18-1713
1229	10/26/2018		STATUS CONFERENCE 11/05/2018 9:00 AM - 711 CHAMBERS, 501 W ADAMS ST JACKSONVILLE FL 32202
1230	10/26/2018		@ 10:00AM ROOM 711 FOR A STATUS RECORD OF APPEAL. SENIOR JUDGE CHARLES ARNOLD SITTING JUDGE PER JA EMAIL
1231	10/26/2018		COURT ORDER SETTING HEARING ON STATUS OF RECORD ON APPEAL
1232	11/05/2018		JUDGE ARNOLD, CHARLES W.
1233	11/05/2018		ASST ATTY GEN JENNIFER DONAHUE - TELEPHONICALLY
1234	11/05/2018		ATTY. FOR DEF. NORGARD, ROBERT ANTHONY - TELEPHONICALLY
1235	11/05/2018		APPEALS CLERK JAMES HATHAWAY AND SHELBY RIGDON
1236	11/05/2018		DEFENDANT NOT PRESENT (FSP)
1237	11/05/2018		STATUS HEARING ON APPEAL - NO FUTURE COURT DATE GIVEN
1238	11/08/2018		TESTIMONY & PROCEEDINGS OF MAY 7, 2018
1239	11/08/2018		TESTIMONY & PROCEEDINGS OF JUNE 26, 2018

CERTIFICATE OF CLERK

**STATE OF Florida,
COUNTY OF DUVAL**

**16-1994-CF-009776-AXXX-MA
SC18-1713**

I, RONNIE FUSSELL, Clerk of the Circuit and County Courts for the County of Duval, State of Florida, do hereby certify that the foregoing pages 1 to 118 inclusive contain a correct transcript of the record of the judgment in the case of STATE OF FLORIDA vs. MICHAEL BERNARD BELL and a true and correct recital and copy of all such papers and proceedings in said cause as appears from records and files of my office and that have been directed to be included in said record by the directions furnished to me.

VOLUME 1

PAGES 1 TO 118

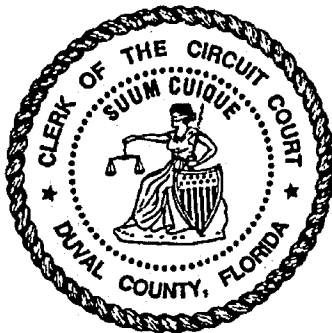
In Witness Whereof, I have set my hand and affixed the Seal of said Court this 14th day of November, A.D. 2018.

**RONNIE FUSSELL,
CLERK OF THE CIRCUIT AND
COUNTY COURTS OF DUVAL
COUNTY**

/s/ Katherine Espiritu

**BY KATHERINE ESPIRITU
Deputy Clerk**

**501 West Adams St. Room 1262
Jacksonville, FL 32202
(904) 255-2208
Email:
Katherine.Espiritu@DuvalClerk.com**



Filing # 67931488 E-Filed 02/14/2018 08:30:55 AM

MANDATE

SUPREME COURT OF FLORIDA

To the Honorable, the Judges of the:

Circuit Court in and for Duval County, Florida

WHEREAS, in that certain cause filed in this Court styled:

MICHAEL BERNARD BELL vs. STATE OF FLORIDA

CR-F

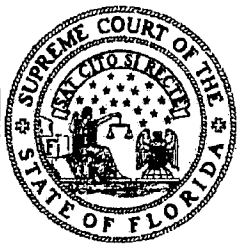
Case No.: **SC17-1045**

Your Case No.: **161994CF009776AXXXMA**

The attached opinion was rendered on: **01/29/2018**

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rule of this Court and the laws of the State of Florida.

*WITNESS, The Honorable JORGE LABARGA, Chief Justice of the Supreme Court of Florida
and the Seal of said Court at Tallahassee, the Capital, on this 14th day of February 2018.*




Clerk of the Supreme Court of Florida

FILED 02/14/18 09:29 FUSSELL

Filing # 67931488 E-Filed 02/14/2018 08:30:55 AM

Supreme Court of Florida

No. SC17-1045

MICHAEL BERNARD BELL,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[January 29, 2018]

PER CURIAM.

We have for review Michael Bernard Bell's appeal of the circuit court's order denying Bell's motion filed pursuant to Florida Rule of Criminal Procedure 3.851. This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const.

Bell's motion sought relief pursuant to the United States Supreme Court's decision in Hurst v. Florida, 136 S. Ct. 616 (2016), and our decision on remand in Hurst v. State (Hurst), 202 So. 3d 40 (Fla. 2016), cert. denied, 137 S. Ct. 2161 (2017). This Court stayed Bell's appeal pending the disposition of Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017). After this

Court decided Hitchcock, Bell responded to this Court's order to show cause arguing why Hitchcock should not be dispositive in this case.

After reviewing Bell's response to the order to show cause, as well as the State's arguments in reply, we conclude that Bell is not entitled to relief. A jury convicted Bell of two counts of first-degree murder and unanimously recommended a sentence of death for both murders. Bell v. State, 699 So. 2d 674, 675 (Fla. 1997). Following the jury's recommendations, the trial court sentenced Bell to death on both counts. Id. at 976. Bell's sentences of death became final in 1998. Bell v. Florida, 522 U.S. 1123 (1998). Thus, Hurst does not apply retroactively to Bell's sentences of death. See Hitchcock, 226 So. 3d at 217. Accordingly, we affirm the denial of Bell's motion.

The Court having carefully considered all arguments raised by Bell, we caution that any rehearing motion containing reargument will be stricken. It is so ordered.

LABARGA, C.J., and QUINCE, POLSTON, and LAWSON, JJ., concur.
PARIENTE, J., concurs in result with an opinion.
LEWIS and CANADY, JJ., concur in result.

PARIENTE, J., concurring in result.

I concur in result because I recognize that this Court's opinion in Hitchcock v. State, 226 So. 3d 216 (Fla. 2017), cert. denied, 138 S. Ct. 513 (2017), is now

final. However, I continue to adhere to the views expressed in my dissenting opinion in Hitchcock.

An Appeal from the Circuit Court in and for Duval County,
Charles Warner Arnold, Jr., Judge - Case No. 161994CF009776AXXXMA

Robert A. Norgard of Norgard, Norgard & Chastang, Bartow, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, and Jennifer A. Donahue, Assistant Attorney General, Tallahassee, Florida,

for Appellee

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 1994-CF-9776

v.

**MICHAEL BERNARD BELL,
Defendant.**

_____ /

AMENDED SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE

Defendant Michael Bernard Bell, through counsel, moves for post-conviction relief from his sentences of death in light of *Buck v. Davis*, 137 S. Ct. 759 (2017). During his trial, Mr. Bell's trial counsel depicted Mr. Bell, an African American man, as a person who committed a "senseless jungle like barbaric killing," that endorsed a theme in the State's arguments that Mr. Bell was a person who lived by the "law of the jungle." This racially-tinged language impermissibly injected race into Mr. Bell's trial, in violation of his Fourteenth Amendment due process rights and Sixth Amendment right to effective assistance of counsel.

I. Procedural History

In 1995, Mr. Bell was convicted of two counts of first-degree murder in the Fourth Judicial Circuit Court, in and for Duval County. Following a penalty phase, the jury unanimously recommended two death sentences. The Circuit Court found three aggravating circumstances: (1) that Bell had been convicted of a prior violent felony; (2) that he had knowingly created a great risk of death to many persons; and (3) that the killings were committed in a cold, calculated, and premeditated manner. The Circuit Court found one "marginal" statutory mitigating circumstance: extreme mental or emotional disturbance because of the death of appellant's brother five months earlier. It is this judgment and sentence that is under attack.

On July 17, 1997, the Florida Supreme Court affirmed Mr. Bell's death sentence. *Bell v. State*, 699 So. 2d 674 (Fla. 1997), *cert. denied Bell v. Florida*, 522 U.S. 1123 (1997). The issues raised on appeal and the disposition are as follows: (1) the trial court acted within its discretion in refusing to allow defendant to act as his own co-counsel; (2) the evidence supported the finding that the murders were committed in a cold, calculated and premeditated manner; (3) the trial court properly considered mitigating circumstances.

Due to a change in Florida's process for appointing counsel for state post-conviction, Mr. Bell's time to file a petition under 28 U.S.C. § 2254 ran for eight months before he was appointed counsel. *See Bell v. Fla. Atty Gen.*, 461 F. App'x 843, 845-46 (11th Cir. 2012). While he was waiting, Mr. Bell filed a pro se motion to vacate his sentence on April 28, 1998, which the trial court denied. *See id.* Once appointed, state post-conviction counsel filed a motion for post-conviction relief on June 1, 1999. One of Mr. Bell's claims, among others, was that trial counsel was ineffective because of inappropriate remarks and arguments he made during the closing argument. The trial court denied the motion, and the Florida Supreme Court affirmed. *See Bell v. State*, 965 So. 2d 48, 54 (Fla. 2007).

Mr. Bell filed a pro se 28 U.S.C. § 2254 petition in the Middle District of Florida on September 10, 2007. *Bell v. Fla. Atty Gen.*, No. 3:07-cv-00860-ODE (M.D. Fla. Sept. 10, 2007)), ECF No. 1. On November 21, 2007, the State filed a summary judgment motion contending that Petitioner's § 2254 petition was untimely, *id.* at ECF No. 13, which the District Court granted in January of 2009. Mr. Bell filed a pro se notice of appeal on the grant of the summary judgment motion, *Bell v. Fla. Atty Gen.*, No. 3:07-cv-00860-ODE, ECF No. 80, and the Eleventh Circuit granted the certificate of appealability but affirmed the District Court. *Id.*

In January of 2017, Mr. Bell filed a successive motion to vacate judgment and sentence in light of *Hurst v. Florida*, 136 S. Ct. 616 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). This Court denied that motion on March 10, 2017. Mr. Bell filed a notice of appeal in the Florida Supreme Court. The appeal was stayed without further briefing pending the Florida Supreme Court's decision in *Hitchcock v. State*, 226 So. 3d 216 (Fla. 2017). The Florida Supreme Court denied Defendant's appeal on January 29, 2018.

II. Grounds for Relief

The State's case, endorsed by trial counsel, urged one theme: that there is a more civilized society that follows Florida law, and that there are those like Mr. Bell, who subscribe to "the law of the jungle" and thus are not a part of civilization. This racially-charged language injected the impermissible factor of race into both phases of Mr. Bell's trial.

A. Both the State and Mr. Bell's trial lawyer used racist euphemisms to depict Mr. Bell as an uncivilized barbarian from the jungle

In 1995, Mr. Bell was convicted of first degree murder for killing the brother of his own brother's killer. This case involved deep-seated tension between two sets of brothers: Mr. Bell and his brother, Lamar "Pewe" Bell, versus Theodore Wright and his brother, Jimmy West. Testimony during the trial showed that both sets of brothers shared mutual animosity for one another. *Bell*, 699 So. 2d at 675. In June 1993, Theodore Wright killed Lamar "Pewe" Bell, Mr. Bell's brother. Mr. Wright was not convicted of this murder after successfully asserting self-defense. *Id.* Over the next five months, Mr. Wright and his brother, Jimmy West, made threats against Mr. Bell and Mr. Bell's mother. *Id.* at 675-76. This animosity culminated in the shooting death of Jimmy West and his girlfriend on December 3, 1993.

During the State's opening statement, it told the jury: "This is a case of a man who placed himself above the law. An individual who lived by his own law, the law of the jungle" Tr.

247. The State elaborated further on this theme in its closing argument. *See* Tr. 584 (“He lived by his own law, the law of the jungle.”). The State drew comparisons between the jungles where Mr. Bell came from and civilization, arguing, “This defendant, the evidence in this case has shown has lived his life by his own law. Not the civilized law, it’s the law of the jungle.” Tr. 591. “[H]e lived by the law of the jungle where innocent people get killed and others are exposed to death.” Tr. 592.

Trial counsel did not object to the State’s “law of the jungle” remarks, but instead endorsed them and used them in his own closing argument. He argued, “[T]here are neighborhoods in our community, some within a mile or two of this courthouse which are no safer than the jungle.” Tr. 596. He talked about those “who live in a world different from ours,” Tr. 597, then described his own client’s act as a “senseless jungle like barbaric killing” Tr. 606.

This theme continued into the penalty phase where the State argued an additional four times that Mr. Bell was not from civilization but instead operated under “the law of the jungle.” *See* Tr. 682; 690; 691; and 695. The State’s descriptions became particularly animalistic when it argued, “[Mr. Bell] didn’t care about the law of Florida that had ruled his brother’s death self-defense, he chose to live by the law of the jungle, he hunted those people down” Tr. 695. Again, trial counsel failed to object and instead joined the State in drawing a line between civilization and Mr. Bell, who came from a “completely different world,” Tr. 709, and conducted acts that do not belong “in a civilized society.” Tr. 705.

B. It is a violation of Mr. Bell’s Fourteenth Amendment due process rights to insert race into the trial proceedings, especially when done by his own lawyer

It is absolutely impermissible for race to play a factor at any phase of a criminal trial. In *Buck v. Davis*, the Supreme Court made clear that the injection of race into the trial by one’s own

attorney is unconstitutional and potentially more prejudicial. 137 S. Ct. 759 (2017). In Buck, the Court states, “Our law punishes people for what they do, not who they are. Dispensing punishment on the basis of an immutable characteristic flatly contravenes this guiding principle.” *Buck v. Davis*, 137 S. Ct. 759, 778 (2017).

Trial counsel in *Buck* presented an expert who testified that the defendant, an African American man, was more prone to violence because of his race. *Id.* at 776. In finding counsel’s actions ineffective, the Court observed: “When a defendant’s own lawyer puts in the offending evidence, it is in the nature of an admission against interest, more likely to be taken at face value.” *Id.* at 777. “No competent defense attorney would introduce such evidence about his own client.” *Id.* at 775. The inappropriate suggestion that race caused a defendant’s actions by the defense, then, is ineffective assistance of counsel, as it falls below the objective standard of reasonableness and inherently prejudices the defendant. *See Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). Prejudice results when the evidence of race “appeals[] to a powerful racial stereotype.” *Buck*, 137 S. Ct. at 776. In *Buck*, the expert’s testimony was prejudicial when it played into the stereotype “of black men as ‘violence prone.’” *Id.* The Court described the stereotypical violent nature of black men as “a particularly noxious strain of racial prejudice” that “provide[d] support for making a decision on life or death on the basis of race.” *Id.* The Supreme Court found prejudice in *Buck* even though there were only two references to race in the entire trial. The Court explained that “the impact of that evidence cannot be measured simply by how much air time it received at trial or how many pages it occupies in the record. Some toxins can be deadly in small doses.” *Id.* at 777. Under the equal protection clause of both the U.S. and Florida Constitutions, Mr. Bell’s fundamental constitutional rights were violated.

Here, the comments at Mr. Bell's trial comparing him to an uncivilized barbarian operating under "jungle law" were inexcusable and unconstitutional. There is a deep history of likening the African continent to a jungle full of savages and barbarians, with imagery of Africans as various jungle animals.¹ This is in contrast to a more civilized, Caucasian society. The State's theme of comparing Mr. Bell's actions under "jungle law" in comparison to civilized society impermissibly injected these racial overtones into the trial. Worse, trial counsel *endorsed* this strategy, isolating Mr. Bell from the jurors with his otherness and describing his actions as "jungle like" and "barbaric." Tr. 606.

Moreover, such coded language was unnecessary to either the State or trial counsel's points. They used non-racially-charged language in other instances. The State argued Mr. Bell's "lawless pursuit of revenge," Tr. 248, and trial counsel at one point made references to shoot-outs in the "Old West," Tr. 709. So neither lawyer needed to rely on "jungle law," or suggest that Mr. Bell is some "barbaric" creature plaguing civilization. This language was instead meant to inject race into Mr. Bell's trial proceedings. The State fully intended to depict Mr. Bell as a jungle savage not fit for civilization, and the defense, in an attempt to explain Mr. Bell's actions, further ostracized and dehumanized him.

C. Trial counsel was ineffective for injecting race into both phases of Mr. Bell's trial

Trial counsel was ineffective for injecting Mr. Bell's race into both phases of his trial. Mr. Bell previously raised a claim of ineffective assistance counsel due to his lawyer's

¹ See, e.g., Wulf D. Hund & Charles W. Mills, *Comparing Black People to Monkeys has a Long, Dark, Simian History*, Huffington Post, (describing that for centuries, "Africa and Africans occupied a special place in the white imaginary, marked by the most shameless misrepresentations," including Africa's label as "a contagious continent incubating pestilences of all sorts in hot muggy jungles" and the people who inhabit it as barbaric apes), *available at* https://www.huffingtonpost.com/the-conversation-africa/comparing-black-people-to_b_9345322.html.

inappropriate remarks arguing Mr. Bell's "otherness" in his initial 3.850 proceedings. The Circuit Court denied relief because it found trial counsel's tactical decision to explain Mr. Bell's background to the jury to be reasonable. R. 732. Similarly, the Florida Supreme Court on appeal found trial counsel's actions to be reasonable, explaining that "given the State's closing arguments describing Bell as living by the 'law of the jungle,' it is not unreasonable in this context for trial counsel to have made the comments he made." *Bell*, 965 So. 2d at 65.

Those claims were decided before *Buck*, though. Neither court had the benefit of the United States Supreme Court's guidance that such reliance by trial counsel on racially-charged language was impermissible. Not only did the State insert race into both phases of the trial, which is in itself impermissible, but trial counsel endorsed those comments in a way that dehumanized Mr. Bell's experience. No matter what trial counsel's strategy, it could not have been reasonable for trial counsel to argue that Mr. Bell had engaged in a "senseless jungle like barbaric killing." Tr. 606. This is especially true after the whole theme of the State's closing argument had been Mr. Bell's "law of the jungle." Tr. 584. Just as in *Buck*, the overall theme of Mr. Bell's trial played into the racist stereotype that black men are barbaric savages. Accordingly, "[n]o competent defense attorney would introduce such evidence about his own client." *Buck*, 137 S. Ct. at 775.

Given the decision in *Buck*, it is also clear that trial counsel's comments prejudiced Mr. Bell. In *Buck*, the Supreme Court found prejudice after only a few passing references to race. *See id.* at 777. Here, though, the State's entire trial theme centered around jungle law. And trial counsel did nothing to rebut that but instead encouraged such an argument. This argument infected the guilt phase and then "provide[d] support for making a decision of life or death on the basis of race" at both stages of Mr. Bell's trial. *See Buck*, at 776. The errors that occurred at Mr.

Bell's trial "strikes at the core concerns of the Fourteenth Amendment." *Rose*, 443 U.S. at 564. Accordingly, his death sentences should be vacated.

III. Timeliness of Motion

The fundamental constitutional rights asserted in this Motion were established in Buck. This Motion was filed within one (1) year after the Buck decision. The reason these claims were not revised in the former motions is because Buck is a newly established fundamental constitutional right.

IV. Conclusion

For the foregoing reasons, this Court should vacate Mr. Bell's convictions and death sentences. Mr. Bell's convictions and sentences should not be based on the arbitrary factor of race, suggesting that Mr. Bell, as an African American man, was prone to violence due to his barbaric and uncivilized roots in the jungle.

Respectfully submitted,

/s/ Robert A. Norgard
ROBERT A. NORGARD

CERTIFICATION REGARDING CLIENT AND GOOD FAITH

Undersigned counsel certifies that the contents of the motion were fully disclosed to the defendant, that he has complied with Rule 4-1.4 of the Rules of Professional Conduct, and that the motion is filed in good faith.

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of this motion has been served via transmission to the Office of the Attorney General, capapp@myfloridalegal.com, to the Office of the State Attorney, SAO4DuvalCriminal@coj.net, on this 20th day of February, 2018.

/s/ Robert A. Norgard
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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO. 1994-CF-9776

v.

MICHAEL BERNARD BELL,
Defendant.

_____ /

SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE

Defendant Michael Bernard Bell, through counsel, moves for post-conviction relief from his sentences of death in light of *Buck v. Davis*, 137 S. Ct. 759 (2017). During his trial, Mr. Bell's trial counsel depicted Mr. Bell, an African American man, as a person who committed a "senseless jungle like barbaric killing," that endorsed a theme in the State's arguments that Mr. Bell was a person who lived by the "law of the jungle." This racially-tinged language impermissibly injected race into Mr. Bell's trial, in violation of his Fourteenth Amendment due process rights and Sixth Amendment right to effective assistance of counsel.

I. Procedural History

In 1995, Mr. Bell was convicted of two counts of first-degree murder in the Fourth Judicial Circuit Court, in and for Duval County. *See Bell v. State*, 699 So. 2d 674, 675 (Fla. 1997). Following a penalty phase, the jury unanimously recommended two death sentences. *Id.* The Circuit Court found three aggravating circumstances: (1) that Bell had been convicted of a prior violent felony; (2) that he had knowingly created a great risk of death to many persons; and (3) that the killings were committed in a cold, calculated, and premeditated manner. *Id.* at 676 n.1. The Circuit Court found one "marginal" statutory mitigating circumstance: extreme mental or emotional disturbance because of the death of appellant's brother five months earlier. *Id.* at 676 n.2.

On July 17, 1997, the Florida Supreme Court affirmed Mr. Bell's death sentence. *Id.*, *cert. denied Bell v. Florida*, 522 U.S. 1123 (1997).

Due to a change in Florida's process for appointing counsel for state post-conviction, Mr. Bell's time to file a petition under 28 U.S.C. § 2254 ran for eight months before he was appointed counsel. *See Bell v. Fla. Atty Gen.*, 461 F. App'x 843, 845-46 (11th Cir. 2012). While he was waiting, Mr. Bell filed a pro se motion to vacate his sentence on April 28, 1998, which the trial court denied. *See id.* Once appointed, state post-conviction counsel filed a motion for post-conviction relief on June 1, 1999. One of Mr. Bell's claims, among others, was that trial counsel was ineffective because of inappropriate remarks and arguments he made during the closing argument. The trial court denied the motion, and the Florida Supreme Court affirmed. *See Bell v. State*, 965 So. 2d 48, 54 (Fla. 2007).

Mr. Bell filed a pro se 28 U.S.C. § 2254 petition in the Middle District of Florida on September 10, 2007. *Bell v. Fla. Atty Gen.*, No. 3:07-cv-00860-ODE (M.D. Fla. Sept. 10, 2007)), ECF No. 1. On November 21, 2007, the State filed a summary judgment motion contending that Petitioner's § 2254 petition was untimely, *id.* at ECF No. 13, which the District Court granted in January of 2009. Mr. Bell filed a pro se notice of appeal on the grant of the summary judgment motion, *Bell v. Fla. Atty Gen.*, No. 3:07-cv-00860-ODE, ECF No. 80, and the Eleventh Circuit granted the certificate of appealability but affirmed the District Court. *Id.*

In January of 2017, Mr. Bell filed a successive motion to vacate judgment and sentence in light of *Hurst v. Florida*, 136 S. Ct. 616 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). This Court denied that motion on March 10, 2017. Mr. Bell filed a notice of appeal in the Florida Supreme Court. The appeal was stayed without further briefing pending the Florida Supreme

Court's decision in *Hitchcock v. State*, 226 So. 3d 216 (Fla. 2017). The Florida Supreme Court denied Defendant's appeal on January 29, 2018.

II. Grounds for Relief

The State's case, endorsed by trial counsel, urged one theme: that there is a more civilized society that follows Florida law, and that there are those like Mr. Bell, who subscribe to "the law of the jungle" and thus are not a part of civilization. This racially-charged language injected the impermissible factor of race into both phases of Mr. Bell's trial.

A. Both the State and Mr. Bell's trial lawyer used racist euphemisms to depict Mr. Bell as an uncivilized barbarian from the jungle

In 1995, Mr. Bell was convicted of first degree murder for killing the brother of his own brother's killer. This case involved deep-seated tension between two sets of brothers: Mr. Bell and his brother, Lamar "Pewe" Bell, versus Theodore Wright and his brother, Jimmy West. Testimony during the trial showed that both sets of brothers shared mutual animosity for one another. *Bell*, 699 So. 2d at 675. In June 1993, Theodore Wright killed Lamar "Pewe" Bell, Mr. Bell's brother. Mr. Wright was not convicted of this murder after successfully asserting self-defense. *Id.* Over the next five months, Mr. Wright and his brother, Jimmy West, made threats against Mr. Bell and Mr. Bell's mother. *Id.* at 675-76. This animosity culminated in the shooting death of Jimmy West and his girlfriend on December 3, 1993.

During the State's opening statement, it told the jury: "This is a case of a man who placed himself above the law. An individual who lived by his own law, the law of the jungle" Tr. 247. The State elaborated further on this theme in its closing argument. *See* Tr. 584 ("He lived by his own law, the law of the jungle."). The State drew comparisons between the jungles where Mr. Bell came from and civilization, arguing, "This defendant, the evidence in this case has shown has lived his life by his own law. Not the civilized law, it's the law of the jungle." Tr.

591. “[H]e lived by the law of the jungle where innocent people get killed and others are exposed to death.” Tr. 592.

Trial counsel did not object to the State’s “law of the jungle” remarks, but instead endorsed them and used them in his own closing argument. He argued, “[T]here are neighborhoods in our community, some within a mile or two of this courthouse which are no safer than the jungle.” Tr. 596. He talked about those “who live in a world different from ours,” Tr. 597, then described his own client’s act as a “senseless jungle like barbaric killing” Tr. 606.

This theme continued into the penalty phase where the State argued an additional four times that Mr. Bell was not from civilization but instead operated under “the law of the jungle.” *See* Tr. 682; 690; 691; and 695. The State’s descriptions became particularly animalistic when it argued, “[Mr. Bell] didn’t care about the law of Florida that had ruled his brother’s death self-defense, he chose to live by the law of the jungle, he hunted those people down” Tr. 695. Again, trial counsel failed to object and instead joined the State in drawing a line between civilization and Mr. Bell, who came from a “completely different world,” Tr. 709, and conducted acts that do not belong “in a civilized society.” Tr. 705.

B. It is a violation of Mr. Bell’s Fourteenth Amendment due process rights to insert race into the trial proceedings, especially when done by his own lawyer

It is absolutely impermissible for race to play a factor at any phase of a criminal trial. In *Buck v. Davis*, the Supreme Court made clear that the injection of race into the trial by one’s own attorney is unconstitutional and potentially more prejudicial. 137 S. Ct. 759 (2017). In *Buck*, the Court states, “Our law punishes people for what they do, not who they are. Dispensing punishment on the basis of an immutable characteristic flatly contravenes this guiding principle.” *Buck v. Davis*, 137 S. Ct. 759, 778 (2017).

Trial counsel in *Buck* presented an expert who testified that the defendant, an African American man, was more prone to violence because of his race. *Id.* at 776. In finding counsel's actions ineffective, the Court observed: "When a defendant's own lawyer puts in the offending evidence, it is in the nature of an admission against interest, more likely to be taken at face value." *Id.* at 777. "No competent defense attorney would introduce such evidence about his own client." *Id.* at 775. The inappropriate suggestion that race caused a defendant's actions by the defense, then, is ineffective assistance of counsel, as it falls below the objective standard of reasonableness and inherently prejudices the defendant. *See Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). Prejudice results when the evidence of race "appeals[] to a powerful racial stereotype." *Buck*, 137 S. Ct. at 776. In *Buck*, the expert's testimony was prejudicial when it played into the stereotype "of black men as 'violence prone.'" *Id.* The Court described the stereotypical violent nature of black men as "a particularly noxious strain of racial prejudice" that "provide[d] support for making a decision on life or death on the basis of race." *Id.* The Supreme Court found prejudice in *Buck* even though there were only two references to race in the entire trial. The Court explained that "the impact of that evidence cannot be measured simply by how much air time it received at trial or how many pages it occupies in the record. Some toxins can be deadly in small doses." *Id.* at 777. Under the equal protection clause of both the U.S. and Florida Constitutions, Mr. Bell's fundamental constitutional rights were violated.

Here, the comments at Mr. Bell's trial comparing him to an uncivilized barbarian operating under "jungle law" were inexcusable and unconstitutional. There is a deep history of likening the African continent to a jungle full of savages and barbarians, with imagery of

Africans as various jungle animals.¹ This is in contrast to a more civilized, Caucasian society. The State's theme of comparing Mr. Bell's actions under "jungle law" in comparison to civilized society impermissibly injected these racial overtones into the trial. Worse, trial counsel *endorsed* this strategy, isolating Mr. Bell from the jurors with his otherness and describing his actions as "jungle like" and "barbaric." Tr. 606.

Moreover, such coded language was unnecessary to either the State or trial counsel's points. They used non-racially-charged language in other instances. The State argued Mr. Bell's "lawless pursuit of revenge," Tr. 248, and trial counsel at one point made references to shoot-outs in the "Old West," Tr. 709. So neither lawyer needed to rely on "jungle law," or suggest that Mr. Bell is some "barbaric" creature plaguing civilization. This language was instead meant to inject race into Mr. Bell's trial proceedings. The State fully intended to depict Mr. Bell as a jungle savage not fit for civilization, and the defense, in an attempt to explain Mr. Bell's actions, further ostracized and dehumanized him.

C. Trial counsel was ineffective for injecting race into both phases of Mr. Bell's trial

Trial counsel was ineffective for injecting Mr. Bell's race into both phases of his trial. Mr. Bell previously raised a claim of ineffective assistance counsel due to his lawyer's inappropriate remarks arguing Mr. Bell's "otherness" in his initial 3.850 proceedings. The Circuit Court denied relief because it found trial counsel's tactical decision to explain Mr. Bell's background to the jury to be reasonable. R. 732. Similarly, the Florida Supreme Court on appeal

¹ See, e.g., Wulf D. Hund & Charles W. Mills, *Comparing Black People to Monkeys has a Long, Dark, Simian History*, Huffington Post, (describing that for centuries, "Africa and Africans occupied a special place in the white imaginary, marked by the most shameless misrepresentations," including Africa's label as "a contagious continent incubating pestilences of all sorts in hot muggy jungles" and the people who inhabit it as barbaric apes), *available at* https://www.huffingtonpost.com/the-conversation-africa/comparing-black-people-to_b_9345322.html.

found trial counsel's actions to be reasonable, explaining that "given the State's closing arguments describing Bell as living by the 'law of the jungle,' it is not unreasonable in this context for trial counsel to have made the comments he made." *Bell*, 965 So. 2d at 65.

Those claims were decided before *Buck*, though. Neither court had the benefit of the United States Supreme Court's guidance that such reliance by trial counsel on racially-charged language was impermissible. Not only did the State insert race into both phases of the trial, which is in itself impermissible, but trial counsel endorsed those comments in a way that dehumanized Mr. Bell's experience. No matter what trial counsel's strategy, it could not have been reasonable for trial counsel to argue that Mr. Bell had engaged in a "senseless jungle like barbaric killing." Tr. 606. This is especially true after the whole theme of the State's closing argument had been Mr. Bell's "law of the jungle." Tr. 584. Just as in *Buck*, the overall theme of Mr. Bell's trial played into the racist stereotype that black men are barbaric savages. Accordingly, "[n]o competent defense attorney would introduce such evidence about his own client." *Buck*, 137 S. Ct. at 775.

Given the decision in *Buck*, it is also clear that trial counsel's comments prejudiced Mr. Bell. In *Buck*, the Supreme Court found prejudice after only a few passing references to race. *See id.* at 777. Here, though, the State's entire trial theme centered around jungle law. And trial counsel did nothing to rebut that but instead encouraged such an argument. This argument infected the guilt phase and then "provide[d] support for making a decision of life or death on the basis of race" at both stages of Mr. Bell's trial. *See Buck*, at 776. The errors that occurred at Mr. Bell's trial "strikes at the core concerns of the Fourteenth Amendment." *Rose*, 443 U.S. at 564. Accordingly, his death sentences should be vacated.

III. Timeliness of Motion

The fundamental constitutional rights asserted in this Motion were established in Buck. This Motion was filed within one (1) year after the Buck decision.

IV. Conclusion

For the foregoing reasons, this Court should vacate Mr. Bell's convictions and death sentences. Mr. Bell's convictions and sentences should not be based on the arbitrary factor of race, suggesting that Mr. Bell, as an African American man, was prone to violence due to his barbaric and uncivilized roots in the jungle.

Respectfully submitted,

/s/ Robert A. Norgard
ROBERT A. NORGARD

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of this motion has been served via transmission to the Office of the Attorney General, capapp@myfloridalegal.com, to the Office of the State Attorney, SAO4DuvalCriminal@coj.net, on this 20th day of February, 2018.

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IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO.: 1994-CF-9776

CAPITAL CASE

MICHAEL BERNARD BELL,

Defendant.

/

**STATE'S ANSWER TO DEFENDANT'S AMENDED SUCCESSIVE MOTION TO
VACATE JUDGMENT AND SENTENCE**

COMES NOW, the State of Florida, by and through the undersigned counsel, and hereby responds to Defendant's Amended Successive Motion to Vacate Judgment and Sentence ("Motion") filed February 20, 2018. The claims in the Motion are procedurally barred and should be summarily denied.

FACTS AND PROCEDURAL HISTORY

The Defendant, Michael Bell, was convicted of first-degree murder and was sentenced to death after a unanimous jury recommendation. Bell v. State, 699 So. 2d 674, 676 (Fla. 1997).

On December 9, 1993, appellant Michael Bell shot to death Jimmy West and Tamecka Smith as they entered a car outside a liquor lounge in Jacksonville. Three eyewitnesses testified regarding the murders, which the trial court described in the sentencing order as follows. In June 1993, Theodore Wright killed Lamar Bell in a shoot-out which was found to be justifiable homicide committed in self-defense. Michael Bell then swore to get revenge for the murder of his brother, Lamar Bell. During the five months following Lamar Bell's death, Michael Bell repeatedly told friends and relatives he planned to kill Wright. On December 8, 1993, Michael Bell, through a girlfriend, purchased an AK-47 assault rifle, a thirty-round magazine, and 160 bullets. The next night, Bell saw Theodore Wright's

car, a yellow Plymouth. Bell left the area and shortly returned with two friends and his rifle loaded with thirty bullets. After a short search, he saw the yellow car in the parking lot of a liquor lounge. Bell did not know that Wright had sold the car to Wright's half-brother, Jimmy West, and that West had parked it and had gone into the lounge. Bell waited in the parking lot until West left the lounge with Tamecka Smith and another female. Bell picked up the loaded AK-47 and approached the car as West got into the driver's seat and Smith began to enter on the passenger's side. Bell approached the open door on the driver's side and at point-blank range fired twelve bullets into West and four into Smith. The other female ducked and escaped injury. After shooting West and Smith, Bell riddled with bullets the front of the lounge where about a dozen people were waiting to go inside. Bell then drove to his aunt's house and said to her, "Theodore got my brother and now I got his brother."

Id. at 675. For aggravating circumstances, "[t]he court found that Bell had been convicted of a prior violent felony; that he had knowingly created a great risk of death to many persons; and that the killings were committed in cold, calculated, and premeditated manner." Id. at 676 n.1. For mitigating circumstances, "[t]he court found a marginal statutory mitigating circumstance of extreme mental or emotional disturbance because of the death of appellant's brother five months earlier." Id. at 676 n.2. The Florida Supreme Court affirmed the convictions and sentences. Id. at 679. The judgment and sentence became final upon denial of certiorari by the United States Supreme Court on February 23, 1998. Bell v. Florida, 522 U.S. 1123 (1998).

The Florida Supreme Court affirmed the denial of the post-conviction motion and denied a previous writ of habeas corpus. Bell v. State, 965 So. 2d 48 (Fla. 2007). Other than his claims of ineffective assistance of counsel, the Court found

that the following claims are procedurally barred, and we reject Bell's arguments that they were improperly summarily denied by the circuit court: (1) the prosecutor's comments regarding jury deliberations were in error; (2) the State suppressed evidence in violation of Brady; (3) the trial court improperly found the aggravating factor that the defendant knowingly created a great risk of death to many persons; (4) the prosecutor made improper remarks to the jury during voir dire; and (5) the trial court erred in consolidating Bell's two charges for trial.

Id. at 55 n.7. Defendant raised a claim of ineffective assistance of counsel for

failing to object to various comments made by the State in its closing arguments at both the guilt and penalty phases of the trial. At the guilt-phase closing arguments, these comments included three separate remarks that Bell lived "by the law of the jungle." The prosecutor also stated: "I submit to you that the blood, the blood of Tamecka Smith and the blood of Jimmy West that that defendant spilled in the parking lot, that cold pavement of that Moncrief Liquors parking lot, their blood cries out for justice."

Id. at 59. "To the extent that Bell's claim asserts that the prosecutor's comments were error, this claim should have been raised on direct appeal and is procedurally barred as a postconviction claim." Id. at 60. Regarding the claim of ineffective assistance of counsel, the Florida Supreme Court held that

Bell failed to demonstrate the necessary prejudice to satisfy the second prong of the Strickland test. We agree that even assuming Nichols was deficient in not objecting to the prosecutor's closing argument, Bell has not demonstrated prejudice in either the guilt or the penalty phase of the trial. Our confidence in the outcome has not been undermined.

Id. at 61; Strickland v. Washington, 466 U.S. 668 (1984). The Florida Supreme Court affirmed the denial of the post-conviction claims and denied the habeas petition. Id. at 79. Bell appealed and the United States Supreme Court again denied certiorari. Bell v. Florida, 552 U.S. 1011 (2007).

Bell sought a writ of habeas corpus in federal court, and the Eleventh Circuit affirmed the denial of the writ as time barred by the United States District Court for the Middle District of Florida. Bell v. Fla. Att'y Gen., Nn. 09-10782, 2012 WL 386253 (11th Cir. 2012). The United States Supreme Court again denied certiorari. Bell v. Bondi, 134 S.Ct. 2290 (2014), reh'g denied 135 S.Ct. 24 (2014).

Defendant filed a successive post-conviction motion arguing that Hurst should be retroactively applied to his case and the Florida Supreme Court affirmed the denial of the motion. Bell v. State, no. SC17-1045, 2018 WL 577718 (Fla. Jan. 29, 2018); Hurst v. Florida, 136 S.Ct. 616 (2016); Hurst v. State, 202 So. 3d 40 (Fla. 2016).

On February 20, 2018, the Defendant filed this Motion raising a claim of violation of due process and ineffective

assistance of counsel because "racially-tinged language impermissibly injected race into Mr. Bell's trial." (Motion at 1). This is the State's Answer.

ARGUMENT

Defendant's claims are both procedurally barred and meritless and should be summarily denied. A court can summarily deny a claim if "(1) the motion, files, and records in the case conclusively show that the movant is entitled to no relief, or (2) the motion or particular claim is legally insufficient." Franqui v. State, 59 So. 3d 82, 94-95 (Fla. 2011), citing Freeman v. State, 761 So. 2d 1055, 1061 (Fla. 2000). The trial and appellate records in this case conclusively show that Defendant is not entitled to relief as his claims were raised previously and rejected. Claims that have been previously raised and decided are procedurally barred under the law of the case doctrine, or collateral estoppel.

The doctrine of the law of the case requires that questions of law actually decided on appeal must govern the case in the same court and the trial court, throughout all subsequent stages of the proceedings. See Green v. Massey, 384 So. 2d 24, 28 (Fla. 1980) ("All points of law which have been adjudicated become the law of the case and are, except in exceptional circumstances, no longer open for discussion or consideration in subsequent proceedings in the case.").

Fla. Dep't of Transp. v. Juliano, 801 So. 2d 101, 105 (Fla. 2001). "In Florida, collateral estoppel prevents the same

parties from relitigating issues that have already been fully litigated and determined.” Zeigler v. State, 116 So. 3d 255, 258 (Fla. 2013), citing State v. McBride, 848 So. 2d 287, 290-91 (Fla. 2003); see also Allen v. State, 854 So. 2d 1255, 1262 (Fla. 2003) (finding inmate was precluded from raising claim relating to proportionality review in habeas petition as claim had already been raised and rejected on direct appeal).

Following his original post-conviction motion, both the circuit court and the Florida Supreme Court rejected Bell’s claims related to the prosecutor’s comments about the “law of the jungle.” Any claim of prosecutorial misconduct related to these comments made during the closing arguments should have been objected to at trial and raised on direct appeal. Since Defendant failed to do either, the Florida Supreme Court found his claims of prosecutorial misconduct to be procedurally barred. Because this claim of prosecutorial misconduct was previously raised in the original post-conviction proceedings, the law of the case doctrine and collateral estoppel prevent Bell from relitigating this settled issue. Thus, this claim should be summarily denied.

Bell’s claim of ineffective assistance of counsel for failing to object to the prosecutor’s comments is also procedurally barred. In order to demonstrate ineffective assistance of counsel, a defendant must demonstrate both that

counsel's performance was deficient and that the deficiency prejudiced the defendant. Strickland, 466 U.S. at 687. This claim was also raised in the original post-conviction proceedings. The Florida Supreme Court found that even if counsel was deficient, Bell could not demonstrate that he was prejudiced by his counsel's failure to object to the prosecutor's comments. Bell, 965 So. 2d at 61. Relitigation of this claim is procedurally barred under the law of the case doctrine and collateral estoppel. Thus, this claim should be summarily denied.

Though Bell relies on Buck as his basis for relitigating these claims, the Buck opinion does not fall under any of the exceptions to the requirement that claims be filed within one year of the judgment and sentence becoming final. Buck v. Davis, 137 S.Ct. 759 (2017); Fla. R. Crim. P. 3.851(d). Buck is not the basis of newly discovered evidence in Bell's case as Buck did not provide facts that were unknown to counsel. Fla. R. Crim. P. 3.851(d)(2)(A). Buck also did not announce a substantive change in the law or fundamental constitutional right which has been held to be retroactive. Fla. R. Crim. P. 3.851(d)(2)(B). Race related comments have long been considered improper. See Rose v. Mitchell, 443 U.S. 545, 555 (1979) ("Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice."); Zant

v. Stephens, 462 U.S. 862, 885 (1983) (identifying race as a factor that is "constitutionally impermissible or totally irrelevant to the sentencing process"). Thus, Buck cannot be the basis for relitigating these claims.

Additionally, Bell's case is significantly distinguishable from Buck. In Buck, the claim raised was ineffective assistance of trial counsel for calling a psychologist to testify at sentencing who testified that "one of the factors pertinent in assessing a person's propensity for violence was his race, and that Buck was statistically more likely to act violently because he is black." Buck, 137 S.Ct. at 767. During sentencing, the jury was charged with making findings related to future dangerousness before they could impose the death penalty. Id. at 775. The Supreme Court determined that this testimony essentially told the jury "that the color of Buck's skin made him more deserving of execution." Id. The Court held that the deficiency prong of Strickland had been met in Buck because "[n]o competent defense attorney would introduce such evidence about his own client." Id.

As related to the prejudice prong of Strickland, the Court found that the testimony "was potent evidence" from an expert witness related to "an otherwise speculative inquiry" of whether Buck would be dangerous in the future. Buck, 137 S.Ct. at 767. This "testimony appealed to a powerful racial stereotype—that of

black men as 'violence prone.'" Id. at 777 (quoting Turner v. Murray, 476 U.S. 28, 35 (1986)). The Court found that Buck was prejudiced by this evidence because the jury heard "expert testimony that expressly [made] a defendant's race directly pertinent on the question of life or death." Id.

Unlike Buck, here, there was no expert testimony directly and expressly associating an aggravating factor to the defendant based on his race. Instead, the prosecutor made comments about Bell living "by the law of the jungle" in an attempt to allude to the concept that lawlessness cannot be tolerated in our society. Though such comments could contain a racial undercurrent in certain situations, that does not appear to be the case here. The prosecutor could have just as easily said that Bell subscribes to the law of the Wild West. The point was about the conduct being unlawful, not about Bell's race. Not only is this not a direct statement about race as occurred in Buck, in this case, it was part of closing argument and not evidence presented by an expert. Thus, Bell failed to demonstrate that these "jungle" comments alone undermined confidence in the outcome at his trial. The facts of Buck are vastly, and incomparably distinct from Bell's case. The Florida Supreme Court correctly held that Bell failed to establish prejudice related to the comments made by the prosecutor during closing arguments. Bell, 965 So. 2d at 61. Bell's case is a

far cry from the introduction of "race or ethnicity as evidence of criminality." Buck, 137 S.Ct. at 777.

Because the Defendant has previously raised these claims, the law of the case doctrine and collateral estoppel prevent relitigation. These claims are procedurally barred and they should be summarily denied without holding an evidentiary hearing.

CONCLUSION

Therefore, this Court should summarily deny Defendant's Amended Successive Motion to Vacate Judgment and Sentence.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Jennifer A. Donahue
JENNIFER A. DONAHUE
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Phone: (850)414-3580
Co-counsel for the Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing State's Answer to Defendant's Amended Successive Motion to Vacate Judgment and Sentence has been furnished via the eportal to Robert Norgard, Esq., norgardlaw@verizon.net, Attorney for the Defendant; the Office of the State Attorney, SAO4DuvalCriminal@coj.net; this 2nd day of March, 2018.

/s/ Jennifer A. Donahue
Co-counsel for the Plaintiff

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO. 1994-CF-9776

v.

MICHAEL BERNARD BELL,
Defendant.

_____ /

DEFENDANT'S MOTION FOR LEAVE TO REPLY

Defendant Michael Bell, through counsel, files this motion for leave to file a reply to the State's March 2, 2018, answer to Defendant's motion to vacate judgment and sentence in light of *Buck v. Davis*, 137 S. Ct. 759 (2017).

The State's answer raises arguments with broad implications that warrant a reply. Those issues include clarification of the issue Mr. Bell is actually raising and the impact of *Buck* on prior decisions in this case.

Replies have been permitted and helpful to the courts in cases in a similar posture where the defendant has filed a successive 3.851 motion in light of a recent United States Supreme Court decision. *See, e.g., State v. Grim*, No. 1998-CF-000510 (Fla. Santa Rosa Cty.) (seeking relief after *Hurst v. Florida*, 136 S. Ct. 616 (2016); *State v. Hernandez*, No. 2004-CF-1184 (Fla. Santa Rosa Cty.) (same); *State v. Foster*, No. 93-CF-012001-A-0 (Fla. Orange Ct.) (seeking relief after *Hall v. Florida*, 134 S. Ct. 1986 (2014)).

The Reply, we submit, will be helpful to the Court in its consideration of this matter.

Respectfully submitted,

/s/ Robert A. Norgard
ROBERT A. NOROARD

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of this motion has been served via transmission to the Office of the Attorney General, capapp@myfloridalegal.com, to the Office of the State Attorney, SAO4DuvalCriminal@coj.net, on this 22nd day of March, 2018.

/s/ Robert A. Norgard
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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO. 1994-CF-9776

v.

MICHAEL BERNARD BELL,
Defendant.

_____ /

DEFENDANT'S REPLY TO STATE'S ANSWER TO DEFENDANT'S AMENDED
SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE

Defendant Michael Bell, through undersigned counsel, files this reply to the State's response to Mr. Bell's 3.851 motion seeking relief under *Buck v. Davis*, 137 S.Ct. 759 (2017). Because trial counsel impermissibly injected race into the guilt and sentencing determinations and none of the State's arguments preclude relief, this Court should vacate Mr. Bell's convictions and death sentences.

I. Mr. Bell's *Buck* claim is not procedurally barred

The State argues that because Mr. Bell previously raised trial counsel's inappropriate comments, the law of the case bars relitigation of this issue. State's Resp. at 7.¹ It suggests that *Buck* did not lead to newly discovered evidence or a new constitutional right, so Mr. Bell's only opportunity to raise this claim would have been within one year of his sentence becoming final.

The State's position overlooks the significance of *Buck* as it relates to the prior treatment of Mr. Bell's ineffectiveness claim regarding trial counsel's comments. When Mr. Bell first raised trial counsel's comments during his initial 3.851 proceedings, the Florida Supreme Court found that, "given the State's closing arguments describing Bell as living by the 'law of the

¹ The State made a similar argument about a prosecutorial misconduct claim. *See* State's Resp. at 6. However, Mr. Bell has not raised a prosecutorial misconduct claim. References to the State's inappropriate comments at trial are referenced to provide context to trial counsel's comments.

jungle,’ it is not unreasonable in this context for trial counsel to have made the comments he made.” *Bell v. State*, 965 So. 2d 48, 65 (2007). At the time the Florida Supreme Court made this determination, the relevant case law did not go as far as Buck with respect to trial counsel’s deficient performance by injecting race into the trial, and the resulting prejudice. It was not until *Buck* that the United States Supreme Court explained, “No competent defense attorney would introduce such evidence about his own client.” *Buck*, 137 S. Ct. at 775. Indeed, the focus of *Buck* was the defense lawyer’s role in bringing race into the trial. The Court stated, “When a defendant’s own lawyer puts in the offending evidence, it is in the nature of an admission against interest, more likely to be taken at face value.” *Id.* at 777.

The State is also wrong that prior Supreme Court precedent precluding the use of race during guilt and sentencing determinations means that *Buck* did not create new law. The United States Supreme Court’s holding in *Buck* that a defendant’s own lawyer should not inject race into a trial did announce a new constitutional right. This is no different than other instances where the Supreme Court has extended established law into new situations. For example, after the United States held in *Lockett v. Ohio*, 438 U.S. 586 (1978), that the sentencer cannot be precluded from hearing mitigation about the defendant’s character and record and the circumstances of the offense, defendants in Florida asserted that the limitation of mitigation evidence to those categories listed in the statute was in violation of *Lockett*. After *Hitchcock v. Florida*, the Supreme Court ruled that *Lockett* required Florida to allow nonstatutory mitigators. Defendants who had previously raised their claims under the old, pre-*Hitchcock* law were able to reassert their claims. Similarly, before *Hall v. Florida*, 134 S. Ct. 1986 (2014), defendants who had an I.Q. score over 70 were precluded from presenting evidence of intellectual disability. After *Hall*,

defendants who lost their intellectual disability claims because of the prior bad law are now able to reassert those claims. *See, e.g., Walls v. State*, 213 So. 3d 340, 347 (Fla. 2016).

Buck's significance on the use of race by defense counsel in a criminal proceeding is similarly impactful. Since *Buck*, there have been increased efforts by courts to prevent race from influencing criminal trials, first by the United States Supreme Court and then by courts across the country. In *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 861 (2017), the Supreme Court carved out an exception in the "centuries old" rule preventing the impeachment of jury deliberations "when, after the jury is discharged, a juror comes forward with compelling evidence that another juror made clear and explicit statements indicating that racial animus was a significant motivating factor in his or her vote to convict." *Id.* Similarly, in *Tharpe v. Sellers*, 138 S. Ct. 545 (2018), the United States Supreme Court found that a certificate of appealability in federal court was warranted where the defendant had "present[ed] a strong factual basis for the argument that Tharpe's race affected [the juror's] vote for a death verdict." *Id.* at 545. Multiple federal circuit courts, including the Eleventh Circuit, have acknowledged that "trial counsel[s] present[ation] of race-based evidence" is the type of error that "give[s] rise to the sort of pernicious injury that affects communities at large, instead of garden-variety ineffective-trial-counsel claims." *Lambrix v. Sec'y, Fla. Dept. of Corrs.*, 851 F.3d 1158, 1172 (11th Cir. 2017); *see also Davis v. Kelley*, 855 F.3d 833 (8th Cir. 2017) ("*Buck* focused on the race-based nature of the case and its far reaching impact on the community by the prospect of a defendant having been sentenced to death because of his race"); *Blankenburg v. Miller*, No. 1:16-cv-505, 2017 WL 2633186, at *19 (*Buck* shows that "even exposure of a jury to testimony tending to produce a conviction or sentence based on a defendant's race requires correction").

Here, the Florida Supreme Court previously acknowledged that the State's use of this language was inappropriate, *see Bell*, 965 So. 2d at 60-61, but it did not consider it problematic that trial counsel himself had made those same comments because trial counsel was being "strateg[ic]," *id.* at 65. Mr. Bell lost his claim under pre-*Buck* law that there is no constitutional error where defense counsel is the one to insert race into the proceedings. However, *Buck* announced that error does in fact exist where it is defense counsel impermissibly using race. Now, Mr. Bell is raising an ineffective assistance of counsel claim under *Buck* based on trial counsel's inappropriate and racially tainted comments that Mr. Bell was "barbaric" and subscribed to "jungle law." Mr. Bell properly raised this claim within one year of that right being announced.

II. Trial counsel's references to Mr. Bell's "law of the jungle," in response to the State's similar comments, impermissibly injected race into both phases of Mr. Bell's trial

The State makes the erroneous suggestion that Mr. Bell's *Buck* claim is also meritless because Mr. Bell's case is "significantly distinguishable" from *Buck*. State's Resp. at 8. As Mr. Bell explained in his 3.851, though, to the extent that his case differs from *Buck*, it offers more, not less, support for relief in his case. *See Bell* 3.851, at 5. In addition, in *Buck*, the same expert who testified that the defendant was more likely to be violent because of his race also opined that that Mr. Buck was *not* likely to be a future danger in prison. *Buck*, 137 S. Ct. at 769. Race was mentioned a couple times in the expert's responses, but only as part of a list of factors. Unlike *Buck*, the racial comments here was the State's theme, later endorsed by the defense. The jungle law theme was mentioned *eleven* times, in addition to trial counsel's reference to his own client as "barbaric." *See R.* 606. The State relies on the fact that the race evidence came in through expert testimony in *Buck*, *see State's Resp.* at 9. But the *Buck* Court emphasized that the

injection of race by the defense is where the significance lies. Whether it is by a defense expert or trial counsel himself, offensive evidence by the defense is “more likely to be taken at face value.” *Buck*, 137 X. Ct. at 777.

The similarities of Mr. Bell’s case to *Buck* are equally important. Just like *Buck*, the race evidence in Mr. Bell’s case “appealed to a powerful racial stereotype—that of black men as ‘violence prone.’” *Id.* at 776. Here, Mr. Bell, an African American, was a “barbari[an]” subscribing to the “law of the jungle,” R. 606, feeding on the stereotype that his race and ethnic origin in the “jungle[s]” of Africa made him prone to violence.

The State acknowledges “such comments could contain a racial undercurrent in certain situations” State’s Resp. at 9. The State argues that this “does not appear to be the case here” because “[t]he prosecutor could have just as easily said that Bell subscribes to the law of the Wild West.” *Id.* That is exactly Mr. Bell’s point. Other race-neutral images could have been used to describe this case. Instead, in the prosecution of an African-American man, both the State and trial counsel instead chose to use imagery that “contain a racial undercurrent.” At one point, trial counsel did refer to the “Old West.” R. 709. However, the overarching theme of the State’s case and the only image to be used multiple times throughout both parties’ arguments was the “law of the jungle.” Trial counsel’s failure to object to this theme and later use of the same phrase irreparably tied his African American client to a “barbaric” and lawless “jungle.”

Finally, the State argues that Mr. Bell cannot show prejudice, relying on the Florida Supreme Court’s prior prejudice analysis on this claim. *See* State’s Resp. at 9. As Mr. Bell explained in his 3.851 motion, he was prejudiced by trial counsel’s conduct. *See* Bell 3.851 at 7-8. The Florida Supreme Court’s former discussion did not include the guidance in *Buck*, rejecting the notion that the inappropriate injection of race into a trial can be “de minimis.” *See Buck*, 137

S. Ct. at 777. The United States Supreme Court explained that “the impact of [race] evidence cannot be measured simply by how much air time it received at trial or how many pages it occupies in the record. Some toxins can be deadly in small doses.” *Id.* Here, of course, “jungle law” was the whole theme of the trial. The Florida Supreme Court also did not have *Buck*’s assertion that this type of offensive evidence means even more when offered by “a defendant’s own lawyer . . . , more likely to be taken at face value.” *Id.*

Because the State’s arguments do not provide any reason to deny Mr. Bell’s request for relief under *Buck*, this Court should vacate his convictions and sentences. Both phases of Mr. Bell’s trial were impermissibly tainted by race in violation of his equal protection rights, and a conviction and sentence obtained in part by race cannot stand.

Respectfully submitted,

/s/ Robert A. Norgard
ROBERT A. NORGARD

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of this motion has been served via transmission to the Office of the Attorney General, capapp@myfloridalegal.com, to the Office of the State Attorney, SAO4DuvalCriminal@coj.net, on this 22nd day of March, 2018.

/s/ Robert A. Norgard
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Fla. Bar No. 322059

IN THE CIRCUIT COURT OF THE FOURTH
JUDICIAL CIRCUIT, IN AND FOR DUVAL
COUNTY, FLORIDA.

CASE NO.:1994-CF-9776A
DIVISION: CR-F

STATE OF FLORIDA

vs.

MICHAEL BERNARD BELL,

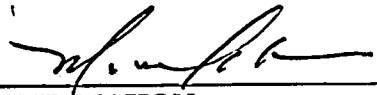
Defendant

ORDER APPOINTING SENIOR JUDGE

This matter having come before the Chief Judge, it appears that a Senior Judge should be appointed to preside over this action, and after consideration, it is,

ORDERED that this action is hereby assigned to Senior Judge Charles W. Arnold, Jr., for further proceeding and disposition.

DONE AND ORDERED at Jacksonville, Duval County, Florida, this 16th day of April, 2018.



MARK H. MAHON
CHIEF JUDGE

Copies furnished to:

The Honorable Charles W. Arnold, Jr.

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capapp@myfloridalega.com

Office of the State Attorney
SAO4DuvalCriminal@coj.net

Robert A. Norgard, Esq.
Norgardlaw@verizon.net

**IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA**

**CASE NO.: 16-1994-CF-009776-AXXX
DIVISION: CR-F**

STATE OF FLORIDA

v.

**MICHAEL BERNARD BELL,
DOC # 108426**

Defendant.

ORDER SETTING CASE MANAGEMENT CONFERENCE

The above-styled case is hereby set for a Case Management Conference before the Honorable Charles W. Arnold, Jr., on Monday, May 7, 2018, at 11:00 a.m. The hearing will take place at the Duval County Unified Courthouse, 501 W. Adams Street, Jacksonville, Florida 32202, in Hearing Room 702.

The Defendant, Michael Bernard Bell-DOC#108426, is authorized to appear telephonically for the status hearing. The Court will call the Union Correctional Institution at (386) 431-4198 at the time of the hearing.

Please contact Donna M. Luoto, judicial assistant if you have any questions regarding this Case Management Conference, by calling (904)255-2400 or by email at dvail@coj.net

DONE AND ORDERED in Chambers, in Jacksonville, Duval County, Florida, on this 18th day of April, 2018.


**CHARLES W. ARNOLD, JR.
CIRCUIT JUDGE**

FILED 04/18/18 PM 11:00 FUSSELL

Copies to:

Office of the State Attorney- Erin Perry

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Attorney for Defendant- Robert A. Norgard, Esquire-
Nordgardlaw@verizon.net

Union Correctional Institution- Kelley.taylor@fdc.myflorida.com

Michael B. Bell
DOC #108426
Union Correctional Institution (Male)
7819 NW 228th Street
Raiford, FL 32026-4000

CERTIFICATE OF SERVICE

I do hereby certify that a copy hereof has been furnished to Defendant by United States
mail this 18 day of April, 2018.


Deputy Clerk

Case No.: 16-1994-CF-009776-AXXX
/dml

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-1994-CF-9776-AXXX-MA
DIVISION: CR-F

STATE OF FLORIDA

v.

MICHAEL BERNARD BELL,
Defendant.

_____/

**ORDER DENYING DEFENDANT'S REQUEST FOR EVIDENTIARY HEARING AND
SETTING ORAL ARGUMENT**

This cause came before this Court May 7, 2018 for a case management conference on Defendant's Amended Successive Motion to Vacate Judgment and Sentence, where Defendant, through counsel, requested an evidentiary hearing at which he would intend to present expert testimony by an attorney on Defendant's assertion that, under Buck v. Davis, --- U.S. ---, 137 S. Ct. 759 (2017), injection of race into trial, as Defendant contends occurred in the instant case, would be improper regardless of any tactical reason trial counsel may have had for doing so.

The Court heard argument on the necessity for such an evidentiary hearing. The applicable Rule provides that, at a case management conference on a successive postconviction motion, this Court "shall determine whether an evidentiary hearing should be held" Fla. R. Crim. P. 3.851(f)(5)(B). The rule also commands that this Court "hear argument on any purely legal claims not based on disputed facts." Id. This Court concludes that, in view of the unavailability of trial counsel, who is deceased, testimony from an attorney as requested by Defendant would merely be in the nature of legal argument why, under applicable law, the undisputed record of trial counsel's actions constituted ineffective assistance of counsel. In other words, the instant Motion involves no factual dispute about what trial counsel said, did, or omitted to do at trial. Therefore, an evidentiary hearing as requested by Defendant's counsel is not

necessary. Instead, Defendant may present legal argument at the hearing set in this Order, which was coordinated with counsel.

Therefore, it is

ORDERED as follows:

1. Defendant's request for an evidentiary hearing on his Amended Successive Motion to Vacate Judgment and Sentence is hereby **DENIED**.

2. This matter is set for oral argument on Defendant's Amended Successive Motion to Vacate Judgment and Sentence before the Honorable Charles W. Arnold, Jr., on Tuesday, June 26, 2018 at 11:00 a.m. The hearing will take place at the Duval County Unified Courthouse, 501 W. Adams Street, Jacksonville, Florida 32202, in Hearing Room 702.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 14th day of May, 2018.



CHARLES W. ARNOLD, JR.
Senior Circuit Judge

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Case No. 16-1994-CF-9776-AXXX-MA
/bw

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-1994-CF-9776-AXXX-MA
DIVISION: CR-F

STATE OF FLORIDA

v.

MICHAEL BERNARD BELL,
Defendant.

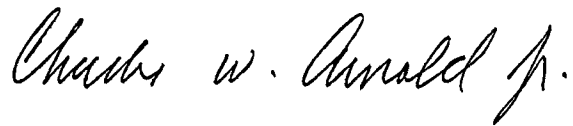
_____/

ORDER GRANTING DEFENDANT'S MOTION FOR LEAVE TO REPLY

This cause is before this Court on Defendant's Motion for Leave to Reply, filed through counsel on March 22, 2018, simultaneously with Defendant's proposed Reply to State's Answer to Defendant's Amended Successive Motion to Vacate Judgment and Sentence. Having considered Defendant's Amended Successive Motion and the State's Answer thereto, the record in this cause and relevant authority, as well as Defendant's proposed Reply, it is

ORDERED that Defendant's Motion for Leave to Reply is hereby **GRANTED**.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 14th day of May, 2018.



CHARLES W. ARNOLD, JR.
Senior Circuit Judge

Copies to:

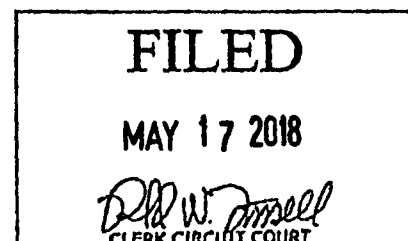
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Case No. 16-1994-CF-9776-AXXX-MA
/bw

2011-CF-05048	Robert McKinney	<u>E</u>
1999-CF-05365	Christopher Thompson	<u>G</u>
1999-CF-14223	William Walters	<u>H</u>
(II)		
2004-CF-09068	Mose L. Harris	<u>I</u>
2013-CF-05302	Terry Marshall	<u>I</u>
1994-CF-09776	Michael Bell	<u>H</u>
2011-CF-10132	Benjamin Morales	<u>G</u>
2013-CF-08416	Raul Estevez	<u>E</u> (listed on page 6)
1997-CF-02028	Timothy Thomas	<u>D</u>
2009-CF-12288	Marcus Jones	<u>C</u>
2012-CF-11582	Corey Bright	<u>B</u>
2010-CF-13063	Lashajuan Gordon	<u>A</u>
1998-CF-05995	Harold Long	<u>A</u>
2011-CF-02209	Antonio Knight	<u>B</u>
2009-CF-01226	Christopher Bowden	<u>C</u>
2009-CF-01416	Christopher Bowden	<u>C</u>
2009-CF-02486	Christopher Bowden	<u>C</u>
2001-CF-04448	Brodrick Dixon	<u>D</u>
1996-CF-04221	James McKenzie	<u>E</u>
2017-CF-07135	Howard Johnson	<u>G</u>



IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA

Petitioner,

v.

CASE NO. 1994-CF-9776

MICHAEL BERNARD BELL,

Defendant.

MOTION FOR PAYMENT OF ATTORNEY'S FEES

The undersigned attorney moves for an entry of an Order awarding him a reasonable attorney's fee and as grounds therefore states:

1. Counsel was appointed by Order of this Court on April 28, 2015 to represent the Defendant in capital postconviction matters.

2. On or about April 13, 2018, undersigned counsel submitted to the Justice Administration Commission [JAC] a Capital Collateral Attorney Fees, Costs, or Related Expenses Invoice/Voucher Cover, along with a Log of Work Performed and Services Rendered through Stage 3 of the proceedings. See attached.

3. On May 15, 2018, JAC sent undersigned counsel a Letter of No Objection as to the work performed through Stage 3. See attached copy of JAC Letter.

4. The statutory fee limit for work performed through Stage 3 is \$20,000.00.

WHEREFORE, undersigned counsel moves this Court to award reasonable attorney's fee in the amount of \$9,450.00 in the above-styled case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above-Motion has been furnished electronically to the Justice Administration Commission, at pleadings@justiceadmin.org this 17th day of May 2018

/s/ ROBERT A. NORGARD

ROBERT A. NORGARD

Attorney at Law

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Fla. Bar No. 322059

CCR-0814
OL-0116

-----ATTACH DETAILED IN-COURT AND OUT-OF-COURT INVOICES-----

PAGE # 51

Log of Work Performed and Services Rendered

State v. Michael Bell

Date	Description of Work Performed	Time	Attorney
11/25/2016	Review and Analyze Client Letter and Attachments (12 pgs)	1.80	AN
	Legal Research - Successor Motion Grounds	1.20	AN
	Legal Research - Successor Motion Grounds	1.60	RN
11/26/2016	Legal Research - Successor Motion Grounds	1.40	RN
11/28/2016	Legal Research - Successor Motion Grounds	1.50	AN
	Review and Analyze File (76 pgs)	1.90	AN
	Co-counsel Meeting	0.90	RN
11/29/2016	Work on Client Letter	1.10	AN
12/1/2016	Review and Analyze Client Letter (2 pgs)	0.30	AN
12/3/2016	Review and Analyze Client Letter and Attachments (8 pgs)	1.10	AN
12/10/2016	Co-counsel Meeting	0.40	RN
12/12/2016	Co-counsel Meeting	0.60	RN
12/16/2016	Review and Analyze Client Letter and Attachments (11 pgs)	2.10	AN
	Legal Research - Successor Motion Grounds	1.80	AN
	Review and Analyze File (47 pgs)	1.90	AN
	Legal Research - Successor Motion Grounds	1.50	RN
12/17/2016	Legal Research - Successor Motion Grounds	1.60	RN
12/22/2016	Review and Analyze Client Letter (2 pgs)	0.50	AN
	Co-counsel Meeting	0.60	RN
12/23/2016	Co-counsel Phone Call	0.60	RN
	Co-counsel Meeting	0.80	RN
12/24/2016	Review and Analyze Client Letter (1 page)	0.20	AN
	Legal Research - <u>Asay</u> and Related Cases	2.60	RN
	Co-counsel Meeting	0.80	RN
12/27/2016	Legal Research - <u>Asay</u> and Related Cases	2.10	AN
	Co-counsel Meeting	0.80	RN
	Work on Successor Motion	1.60	RN
12/28/2016	Work on Client Letter	0.40	AN
	Co-counsel Meeting	0.60	RN
	Legal Research - Successor Motions	1.80	RN
	Work on Successor Motion	1.40	RN
12/29/2016	Legal Research - <u>Asay</u> and Related Cases	1.60	RN
	Work on Things to Do	0.30	RN
	Organize Material for Client	0.60	RN
	Work on Successor Motion	2.20	RN
	Work on Client Letter	0.20	RN
	Co-counsel Meeting	0.90	RN
12/30/2016	DOC Correction Officer Contact	0.30	RN
	Organize Material for Client	0.30	RN
	Attempted Client Meeting	0.50	RN
12/31/2016	Work on Successor Motion	0.90	RN
1/2/2017	Work on Successor Motion	0.80	RN
1/3/2017	Review and Analyze Client Letter (1 page)	0.20	AN
	Work on Successor Motion	4.40	AN
	Review and Analyze File (142 pgs)	2.90	AN
	DOC Phone Call	0.10	RN

Log of Work Performed and Services Rendered

State v. Michael Bell

	Co-counsel Meeting	0.80	RN
1/4/2017	Work on Successor Motion	2.40	AN
	Legal Research - Successor Motion	2.90	AN
1/5/2017	Work on Successor Motion	2.40	AN
	DOC Phone Call	0.30	RN
1/6/2017	Client Phone Call Preparation	0.30	RN
	Attempted Client Phone Call	0.10	RN
	Work on Successor Motion	1.30	RN
	Co-counsel Phone Call	0.30	RN
1/25/2017	Review and Analyze AG Response (12 pgs)	2.60	RN
	Legal Research - AG Response	2.80	RN
1/26/2017	Legal Research - AG Response	1.90	RN
1/27/2017	Review and Analyze AG Response (12 pgs)	3.20	AN
	Legal Research - AG Response	2.80	AN
1/28/2017	Co-counsel Meeting	1.20	RN
2/1/2017	Review and Analyze Client Letter and Attachments (10 pgs)	2.10	AN
2/2/2017	Review and Analyze Client Letter (5 pgs)	0.50	AN
	Legal Research - Successor Motions	1.10	AN
2/3/2017	Legal Research - Successor Motions	1.40	AN
	Review and Analyze File (64 pgs)	1.80	AN
	Co-counsel Meeting	0.70	RN
2/5/2017	Work on Client Letter	1.70	AN
	Review and Analyze File (47 pgs)	1.10	AN
	Review and Analyze Client Letters (2)(7 pgs)	0.40	AN
	Co-counsel Meeting	0.60	RN
3/8/2017	Review Clker's Website	0.10	RN
3/10/2017	Review and Analyze Order (6 pgs)	1.20	AN
3/11/2017	Review and Analyze Order (6 pgs)	1.50	RN
	Co-counsel Meeting	0.80	RN
	Work on Notice of Appeal, etc	0.40	RN
	Work on Letter to Client	0.10	RN
	Total	94.50	



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JUSTICE ADMINISTRATIVE COMMISSION

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Brad King, Chair
State Attorney
Diamond R. Litty
Public Defender
Kathleen A. Smith
Public Defender
Brian Haas
State Attorney

LETTER OF NO OBJECTION

5/15/2018

ROBERT NORGARD norgardlaw@verizon.net
Case Number: 16 CF 1994 009776 0000 XX Party: MICHAEL BELL
INVOICE: 03112017

Dear Mr. Norgard,

Pursuant to s. 27.711, F.S., the Justice Administrative Commission (JAC) has reviewed your intended billing, affidavit and documentation for completeness and compliance with contractual and statutory requirements in the above matter. Your motion to the Court to approve compensation must specify whether JAC objects to any portion of the billing or the sufficiency of documentation.

JAC has **no objection** to your billing for attorney fees in the amount of **\$9,450.00** inasmuch as this amount does not exceed the statutory cap of \$20,000.00 set forth in s. 27.711(4)(c), F.S.

Pursuant to section 27.711(13), F.S., the fact that JAC has not objected to any portion of a billing or to the sufficiency of the documentation is not binding on the Court, which retains primary authority and responsibility for determining the reasonableness of all billings for fees, costs, and related expenses, subject to statutory limitations.

When you file your Motion for Compensation, specify that JAC does not object to the billing. **You must attach a copy of this letter for the Court's determination of your fee.** JAC does not request to appear at any hearing on your motion. Should the Court desire additional input, JAC may be reached toll-free at (866) 355-7902.

JAC Legal Section
brb

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA

Petitioner,

v.

CASE NO. 1994-CF-9776

MICHAEL BERNARD BELL,

Defendant.

MOTION TO EXCEED STATUTORY CAP
AND FOR PAYMENT OF ATTORNEY'S FEES AND COSTS

The undersigned attorney moves for an entry of an Order exceeding the statutory cap and awarding him a reasonable attorney's fee and costs and as grounds therefore states:

1. Counsel was appointed by Order of this Court to represent the Defendant in capital postconviction matters in the above-styled case.

2. On or about April 13, 2018, undersigned counsel submitted to the Justice Administration Commission [JAC] Capital Collateral Attorney Fees, Costs, or Related Expenses Invoice/Voucher Cover, along with a Log of Work Performed and Services Rendered. See, attached.

3. On May 15, 2018, JAC sent undersigned counsel a Letter of Objection – No Hearing Requested in response to undersigned counsel's intended billing in this case. See, attached copy of JAC Letter.

4. JAC objects to the billing for attorney's fees in the amount of \$10,690.00 inasmuch as the billed amount exceeds the statutory cap of \$20,000.00. JAC's records indicate that \$21,730.00 has been previously paid under the subsection "Stage 4."

5. The statutory fee limit in this case is \$20,000.00.

6. The statutory fee limit can be exceeded where the fees claimed are reasonable and incurred as the result of unusual and extraordinary circumstances associated with the representation pursuant to Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986).

Undersigned counsel should be entitled to attorney fees in the amount of \$10,690.00 because these properly documented attorney's fees are reasonable and incurred as a result of the unusual and extraordinary circumstances with the representation pursuant to Makemson based on the following:

a. The previous billing for appeal work was based on undersigned counsel's initial representation of the Defendant dating back to April 2015 - October 2016.

b. The previous billing for appeal work is related to undersigned counsel's representation on issues created by the United States Supreme Court decision in Hurst v. Florida and the Florida Supreme Court decision in Hurst v. State, which constitutes reasonable attorney's fees incurred as a result of these unusual and extraordinary circumstances.

7. To not award the attorney's fees in the amount of \$10,690.00 would be confiscatory.

WHEREFORE, undersigned counsel moves this Court to exceed the cap and award a reasonable attorney's fee in the amount of \$10,690.00 in the above-styled case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above-Motion has been furnished electronically to the Justice Administration Commission, at pleadings@justiceadmin.org, this 17th day of May 2018.

/s/ ROBERT A. NORGARD
ROBERT A. NORGARD
Attorney at Law
P.O. Box 811
Bartow, FL 33831
863-533-8556
Fax 863-533-1334
norgardlaw@verizon.net
Fla. Bar No. 322059

Capital Collateral Attorney Fees, Costs, or Related Expenses Invoice/Voucher Cover

CCR-0814
OL-0116

Attorney Name: (as indicated in Order of Appointment) ROBERT NORGARD	Invoice Number: 01292018 (MAX 9 characters)		
Florida Bar Number: 322059	Case Number: 16 CF 1994 009776 0000 XX		
Tax ID Number: REDACTED (MUST match ID on Substitute Form W-9 and JAC Contract)	County and Circuit: Duval(4)		
Defendant/Client Name: MICHAEL BELL	Total Invoice Amount: \$10,690.00 (automatically calculated as form is completed)		
INVOICE INFORMATION: For cases involving multiple case numbers, the JAC Multi-Case Addendum listing all case numbers MUST be attached. By signing below, I affirm that the matter identified above has reached a billable point and that I was the attorney of record at billable point for the matter identified above.			
☐ Multiple Cases Select one: ☒ JAC Contract ☐ DFS Contract			
Billable Stages and Caps: (Select a Stage; Only one Stage may be selected per invoice.)			
☐ Stage 1: \$2,500 from appointment and filing notice of appearance. ☐ Stage 5: \$10,000 through issuance of a final order on motion for postconviction relief upon remand from appellate proceedings. ☐ Stage 2: \$20,000 through filing motion for postconviction relief. ☐ Stage 6: \$4,000 through denial of appeal. ☐ Stage 3: \$20,000 through issuance of final order on motion for postconviction relief. ☐ Stage 7: \$2,500 for petition for writ of certiorari to the U.S. Supreme Court. ☒ Stage 4: \$20,000 through filing of briefs on appeal of order on motion for postconviction relief. ☐ Stage 8: \$5,000 for proceedings following issuance of a death warrant.			
IN-COURT:	Hours (in tenths)	Hourly Rate	\$0.00
OUT-OF-COURT:	Hours (in tenths) 106.9	Hourly Rate \$100.00	\$10,690.00
TRAVEL EXPENSES/MILEAGE A properly completed <u>DFS Travel Voucher</u> MUST BE ATTACHED. Mileage may be billed only when the destination is in excess of 50 miles (one-way) from attorney's office. Any one-way trip that exceeds 50 miles must be supported by documentation. The <u>DOT Mileage Calculator</u> MUST BE USED when cities are listed therein. If not listed, other documentation may be used.			
OTHER REIMBURSEMENT EXPENSES: (invoice/receipt, court order, and proof of payment MUST BE ATTACHED)			

-----ATTACH DETAILED IN-COURT AND OUT-OF-COURT INVOICES-----

Attorney Certification I certify that the attorney's fees listed above for which I am billing the Justice Administrative Commission of the State of Florida are fair, true, accurate, reasonable and necessary. I affirm that I have read ss. 27.710 and 27.711, F.S., and have not recovered or attempted to recover, either for myself or for anyone else, from the State of Florida any funds for costs or expenses which were not fair, true, accurate, reasonable and necessary in the preparation of the above entitled action. I affirm that this Certification is applicable to all invoices and certifications for fees, costs and expenses submitted by me to the Justice Administrative Commission at any time in the above entitled action. I affirm that I have not received payment from any other source in relation to the compensation listed above. I certify that the above transactions were authorized, obtained and conducted in accordance with all applicable laws, statutes and rules of the State of Florida. Under penalty of perjury, I do hereby attest that I have read the foregoing Capital Collateral Attorney Hourly/Extraordinary Fees, Costs, or Related Expenses Invoice/Voucher Cover, and that all facts, information and statements supplied above, as well as all submitted and provided supporting documentation attached hereto are fair, true and accurate to the best of my knowledge. /S/ Robert A. Norgard Attorney Signature 4/13/2018 Date MM/DD/YYYY ROBERT NORGARD Attorney Printed Name / Florida Bar Number 322059	JAC DOC STAMP
JAC APPROVAL	AUDIT NOTES

4/13/2018 1:11:04 PM

Log of Work Performed and Services Rendered

State v. Michael Bell

Date	Description of Work Performed	Time	Attorney
04/08/17	Review and Analyze Client Letter and Attachments (5 pages)	0.90	AN
04/10/17	Review and Analyze Client Letter and Attachments (6 pages)	0.80	AN
	Review and Analyze Client Letter and Attachments (6 pages)	0.60	RN
04/25/17	Work on Client Letter	0.20	RN
04/28/17	Work on Client Letter	0.50	AN
05/05/17	Review and Analyze Client Letter and Attachments (12 pages)	1.10	RN
06/07/17	Review FSC Order	0.10	AN
	Legal Research - <u>Hitchcock</u> and related cases	3.40	AN
06/08/17	Review FSC Acknowledgment of New Case	0.10	RN
	Review FSC Order	0.10	RN
	Review AG Notice of Appearance	0.10	RN
	Legal Research - <u>Hitchcock</u> and related cases	4.70	AN
06/09/17	Legal Research - <u>Hitchcock</u> and related cases	2.90	RN
	Co-counsel Meeting	0.80	RN
06/15/17	Review and Analyze Client Letter (2 pages)	0.10	RN
06/16/17	Review and Analyze Client Letter (2 pages)	0.20	AN
	Co-counsel Meeting	0.40	RN
06/26/17	Review AG Motion for Substitution of Counsel	0.10	AN
06/27/17	Work on Client Letter	0.30	RN
	Federal PD Capital Habeas Unit (CHU) Email	0.10	RN
06/28/17	Work on Client Letter	0.10	RN
	Federal PD CHU Emails	0.40	RN
08/06/17	Review and Analyze Client Letter (2 pages)	0.30	AN
	Review and Analyze File (49 pages)	1.30	AN
08/08/17	Review and Analyze Client Letter (2 pages)	0.10	RN
	Co-counsel Meeting	0.40	RN
08/13/17	Organize Material for Client	0.40	RN
08/14/17	Work on Client Letter and Attachments	0.30	AN
09/25/17	Review FSC Order	0.10	AN
	Legal Research - <u>Hitchcock</u> and related cases	3.80	AN
09/27/17	Review FSC Order	0.10	RN
	Co-counsel Phone Call	0.40	RN
	Federal PD CHU Phone Call	0.10	RN
10/04/17	Federal PD CHU Phone Call	0.20	AN
	Work on Client Letter with Attachments	1.40	AN
10/06/17	Work on Response	3.10	RN
	Co-counsel Meeting	0.80	RN
10/07/17	Review and Analyze File (98 pages)	2.10	AN
	Work on Response	3.90	AN
	Co-counsel Meeting	0.60	RN
10/08/17	Work on Response	3.20	AN
	Legal Research - <u>Hitchcock</u> and related cases	4.10	AN
	Co-counsel Meeting	0.40	RN
10/09/17	Work on Response	4.60	AN
	Review and Analyze File (49 pages)	1.30	AN
	Legal Research - <u>Hitchcock</u> and related cases	2.90	AN

**Log of Work Performed and Services Rendered
State v. Michael Bell**

	Co-counsel Meeting	0.60	RN
10/10/17	Legal Research - <u>Hitchcock</u> and related cases	5.10	AN
	Work on Response	3.30	AN
	Co-counsel Meeting	0.80	RN
10/11/17	Work on Response	3.10	RN
	Co-counsel Meeting	1.00	RN
10/12/17	Work on Response	0.90	RN
	Legal Research - <u>Hitchcock</u> and related cases	0.60	RN
	Co-counsel Meeting	0.20	RN
10/13/17	Federal PD CHU Phone Call	0.10	RN
	Work on Response	1.80	RN
	Co-counsel Meeting	0.40	RN
10/14/17	Co-counsel Meeting	0.80	RN
10/15/17	Work on Response	2.70	AN
10/16/17	Work on Response	1.80	AN
	Co-counsel Meeting	0.40	RN
	Work on Client Letter	0.10	AN
10/20/17	Review and Analyze AG Response (15 pages)	0.80	AN
	Co-counsel Meeting	0.40	RN
10/21/17	Review and Analyze AG Response (15 pages)	2.40	AN
	Legal Research - AG Response	3.60	AN
	Co-counsel Meeting	0.40	RN
10/31/17	Review and Analyze Client Letter (4 pages)	0.50	AN
11/02/17	Work on Reply	3.10	AN
	Legal Research - AG Response/Reply	3.40	AN
	Co-counsel Meeting	0.40	RN
11/03/17	Work on Reply	1.60	RN
	Legal Research - AG Response/Reply	2.80	RN
	Co-counsel Meeting	0.20	RN
11/04/17	Work on Reply	1.10	RN
	Co-counsel Meeting	0.40	RN
11/05/17	Work on Reply	2.80	AN
	Legal Research - AG Response/Reply	0.80	AN
	Co-counsel Meeting	0.40	RN
	Work on Client Letter	0.10	AN
11/27/17	Review and Analyze Client Letter (2 pages)	0.10	AN
	Work on Client Letter	0.40	AN
01/19/18	Review and Analyze Client Letter and Attachments (6 pages)	1.20	AN
	Work on Client Letter	0.60	AN
01/29/18	Review and Analyze FSC Order	1.00	AN
	Co-counsel Meeting	0.80	RN
	Total	106.90	



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State Attorney
Diamond R. Litty
Public Defender
Kathleen A. Smith
Public Defender
Brian Haas
State Attorney

LETTER OF OBJECTION – NO HEARING REQUESTED

5/15/2018

ROBERT NORGARD
Case Number: 16 CF 1994 009776 0000 XX
INVOICE: 01292018

norgardlaw@verizon.net
Party: MICHAEL BELL

Dear Mr. Norgard,

Pursuant to s. 27.711, F.S., the Justice Administrative Commission (JAC) reviewed your intended billing, affidavit and documentation for completeness and compliance with statutory and contractual requirements in the above matter.

JAC **objects** to your billing for attorney's fees in the amount of **\$10,690.00** inasmuch as the billed amount exceeds the statutory cap of \$20,000.00 set forth in s. 27.711(4)(d), F.S. JAC's records show that \$21,730.00 has been paid under this subsection.

Pursuant to section 27.711(13), F.S., the fact that JAC has not objected to any portion of a billing or to the sufficiency of the documentation is not binding on the Court, which retains primary authority and responsibility for determining the reasonableness of all billings for fees, costs, and related expenses, subject to statutory limitations.

When you file your Motion for Compensation, specify that JAC objects to portions of the billing. **You must attach a copy of this letter for the Court's determination of your fee.** JAC does not request to appear at any hearing on your motion. Should the Court desire additional input, JAC may be reached toll-free at (866) 355-7902.

JAC Legal Section
brb

Please be advised that this Letter is valid for one year from date of issuance. If this Letter is not acted upon within one year from date of issuance, this Letter shall be deemed withdrawn and the intended billing(s) referenced herein shall be deemed abandoned without further notice.

The Justice Administrative Commission administratively serves the offices of State Attorney, Public Defender, Capital Collateral Regional Counsel, the Statewide Guardian ad Litem Program, and the Criminal Conflict and Civil Regional Counsel; and provides compliance and financial review of court appointed attorney due process costs.

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA

Petitioner,

v.

CASE NO. 1994-CF-9776

MICHAEL BERNARD BELL,

Defendant.

ORDER GRANTING MOTION FOR PAYMENT OF ATTORNEY'S FEES

THIS CAUSE coming on to be heard upon a Motion for Payment of Attorney's Fees, and Robert A. Norgard having been appointed to represent the Defendant in the above-styled case, and the Court having reviewed the relevant material, the Court being otherwise fully advised in the premises, the Court finds as follows:

1. JAC has no objection to the attorney's fees in the amount of \$9,450.00.
2. The attorney's fees in the amount of \$9,450.00 are reasonable and necessary for purposes of representation in this case.

It is therefore **ORDERED AND ADJUDGED:**

1. That the Motion for Payment of Attorney Fees and Costs is hereby **GRANTED**.
2. That the Justice Administration Commission shall pay to Robert A. Norgard, Attorney at Law, \$9,450.00 for attorney fees in the above-case.

DONE AND ORDERED in Jacksonville, Duval County, Florida this 22nd day of May 2018.



Charles W. Arnold, Jr.
Circuit Judge

cc: Robert A. Norgard, Esq.
JAC

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-1994-CF-9776-AXXX-MA
DIVISION: CR-H

STATE OF FLORIDA

v.

MICHAEL BERNARD BELL,
Defendant.

**ORDER DENYING DEFENDANT'S AMENDED SUCCESSIVE MOTION TO VACATE
JUDGMENT AND SENTENCE**

This cause was heard by this Court June 26, 2018, on Defendant's Amended Successive Motion to Vacate Judgment and Sentence ("Motion"), filed through counsel on February 20, 2018, pursuant to Florida Rule of Criminal Procedure 3.851. This Court, having heard argument of counsel, having considered the Motion, the State's Answer thereto filed on March 2, 2018, Defendant's Reply filed with leave of Court on March 22, 2018, the record in this cause, and relevant authority, makes the following findings of fact and conclusions of law.

The facts surrounding the December 9, 1993 murders of Jimmy West and Tamecka Smith were reported by the Florida Supreme Court as follows:

On December 9, 1993, appellant Michael Bell shot to death Jimmy West and Tamecka Smith as they entered a car outside a liquor lounge in Jacksonville. Three eyewitnesses testified regarding the murders, which the trial court described in the sentencing order as follows. In June 1993, Theodore Wright killed Lamar Bell in a shoot-out which was found to be justifiable homicide committed in self-defense. Michael Bell then swore to get revenge for the murder of his brother, Lamar Bell. During the five months following Lamar Bell's death, Michael Bell repeatedly told friends and relatives he planned to kill Wright. On December 8, 1993, Michael Bell, through a girlfriend, purchased an AK-47 assault rifle, a thirty-round magazine, and 160 bullets. The next night, Bell saw Theodore Wright's car, a yellow Plymouth. Bell left the area and shortly returned with two friends and his rifle loaded with thirty bullets. After a short search, he saw the yellow car in the parking lot of a liquor lounge. Bell did not know that Wright had sold the car to Wright's half-brother, Jimmy West, and that West had parked it and had gone into the lounge. Bell waited in the parking lot until West left the lounge

with Tamecka Smith and another female. Bell picked up the loaded AK-47 and approached the car as West got into the driver's seat and Smith began to enter on the passenger's side. Bell approached the open door on the driver's side and at point-blank range fired twelve bullets into West and four into Smith. The other female ducked and escaped injury. After shooting West and Smith, Bell riddled with bullets the front of the lounge where about a dozen people were waiting to go inside. Bell then drove to his aunt's house and said to her, "Theodore got my brother and now I got his brother."

Bell v. State, 699 So. 2d 674, 675 (Fla. 1997). The procedural history of this cause is stated succinctly in the instant Motion and in the State's Answer thereto.

A rule 3.851 motion must be filed within one year of the conviction and sentence of death becoming final. Fla. R. Crim. P. 3.851(d)(1). A rule 3.851 motion may be considered beyond the one-year time bar, however, if it alleges that "the fundamental constitutional right asserted was not established within the [one-year] period provided for in subsection (d)(1) and has been held to apply retroactively." Fla. R. Crim. P. 3.851(d)(2)(B).

Even if found to be timely, a successive rule 3.851 motion may be denied without an evidentiary hearing if the record conclusively shows the defendant is not entitled to relief. Gaskin v. State, 218 So. 3d 399, 400 (Fla. 2017)(citing Reed v. State, 116 So. 3d 260, 264 (Fla. 2013)). "Under rule 3.851, 'postconviction claims may be summarily denied when they are legally insufficient, should have been brought on direct appeal, or are positively refuted by the record.'" Carroll v. State, 114 So. 3d 883, 885-86 (Fla. 2013)(quoting Marek v. State, 8 So. 3d 1123, 1127 (Fla. 2009)).

Defendant's convictions and sentences of death became final on February 23, 1998, upon denial of his petition for writ of certiorari by the United States Supreme Court. See Fla. R. Crim. P. 3.851(d)(1)(B)(stating, for purposes of rule 3.851, "a judgment is final . . . on the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed"); Bell v. Florida, 522 U.S. 1123 (1998)(denying Defendant's petition for writ of certiorari). Thus, any postconviction

claim asserted more than one year after February 23, 1998, must be denied unless the claim falls within the newly-recognized-constitutional-right exception in subsection (d)(2)(B). Carroll, 114 So. 3d at 886 (“Rule 3.851 requires . . . that motions for postconviction relief must be filed within one year from when the conviction and sentence become final unless the claim is based on . . . a newly recognized fundamental constitutional right that has been held to apply retroactively.”).

In his Motion, Defendant asserts that, “[d]uring his trial, Mr. Bell’s trial counsel depicted Mr. Bell, an African American man, as a person who committed a ‘senseless jungle like barbaric killing,’ that endorsed a theme in the State’s arguments that Mr. Bell was a person who lived by the ‘law of the jungle.’ This racially-tinged language impermissibly injected race into Mr. Bell’s trial” (Mot. at 1.)

The Motion is Untimely

Defendant claims a newly-recognized constitutional right in Buck v. Davis, --- U.S. ---, 137 S. Ct. 759 (2017). Buck was convicted of capital murder in Texas. Buck, 137 S. Ct. at 767. Under Texas law, the jury could impose the death penalty only if it found “‘a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.’” Id. at 768 (quoting Tex. Code Crim. Proc. Ann., Art. 37.071, § 2(b)(1) (Vernon 1998)). At the penalty phase of trial, Buck introduced the report of an expert witness, a psychologist, whose report identified race as one of seven statistical factors, and read, in relevant part, “**Race. Black: Increased probability. There is an over-representation of Blacks among the violent offenders.**” Buck, 137 S. Ct. at 768 (internal quotation marks omitted). Buck’s counsel elicited testimony about the statistical factors and, though the expert concluded that Buck was unlikely to commit acts of violence in the future, he testified consistently with his report that, statistically speaking, Buck was more likely to act violently because he was black. Id. at 767-69. The Court characterized the report as saying, “in effect, that the color of Buck’s skin made him more

deserving of execution.” Id. at 775. The Court continued, “It would be patently unconstitutional for a state to argue that a defendant is liable to be a future danger because of his race. See Zant v. Stephens, 462 U.S. 862, 885, 103 S. Ct. 2733, 77 L.Ed.2d 235 (1983)(identifying race among factors that are ‘constitutionally impermissible or totally irrelevant to the sentencing process’).” Id. See also Rose v. Mitchell, 443 U.S. 545, 555 (1979)(“Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.”). The Court concluded that “[n]o competent defense attorney would introduce such evidence about his own client.” Buck, 137 S. Ct. at 775.

Defendant asserts that Buck created new law when it went farther than any court had gone before regarding trial counsel’s deficient performance by injecting race into the trial and the resulting prejudice. It is Buck’s focus on defense counsel’s role in bringing race into the trial which defendant asserts as the new recognition of a constitutional right. This Court disagrees. The constitutional right at issue in Buck was the Sixth Amendment right to counsel which, under Strickland v. Washington, 466 U.S. 668, 686 (1984), is the right to effective counsel. Buck merely applied Strickland to determine that Buck’s counsel rendered deficient performance which prejudiced Buck, the two elements necessary for Strickland relief. Strickland, 466 U.S. at 687; Buck, 137 S. Ct. at 775. At most, Buck’s statement—that no competent defense attorney would introduce evidence about his own client such as the expert report which said, in effect, that the color of Buck’s skin made him more deserving of execution—may be read as a holding that such conduct is per se deficient performance, thereby satisfying the first prong of Strickland. However, the Buck Court did not find defense counsel’s conduct to be per se prejudicial. Instead, the Court engaged in a detailed prejudice analysis, casting the question as “whether Buck had demonstrated a reasonable probability that, without [the expert]’s testimony on race, at least one juror would have harbored a reasonable doubt about whether Buck was likely to be violent in the

future.” Id. at 776.

The Court cited several considerations in support of its conclusion that Buck had demonstrated prejudice. The emphasis and focus of penalty phase testimony and closing argument was on whether Buck would present a danger in the future. Id. During deliberations, the jury asked to see the expert reports on dangerousness. The Court noted the unusual nature of the issue before the jury, in that it required the jury to make a prediction, which inevitably involved speculation. Id. Although defense argued that Buck would not be dangerous if sentenced to life in prison, because his prior violent acts had occurred in the context of romantic relationships with women, the expert opined that an immutable characteristic—Buck’s race—increased the probability of future violence. Id. The expert’s opinion was “hard statistical evidence” from a medical expert with the court’s imprimatur “to guide an otherwise speculative inquiry.” Id. at 776-77. The Court described all of this as “an unusual confluence of factors” which lent support to making a decision on life or death on the basis of race. Id. at 776. Buck was merely an application of Strickland to actions of counsel which crossed an already-existing line and caused prejudice, and it has not been held to apply retroactively. It is apparent that, after Buck, a claim that any party impermissibly injected race into court proceedings must be analyzed under Strickland, just as before Buck. Because Buck did not newly recognize a fundamental constitutional right that has been held to apply retroactively, Buck cannot save the instant Motion from the procedural time bar of rule 3.851(d)(1).

The Motion is Barred by Collateral Estoppel

In an Amended Motion for Post Conviction Relief filed June 1, 1999, and amended October 3, 2001, Defendant alleged that trial counsel had rendered ineffective assistance by making some of the same comments and arguments of trial counsel at issue in this Motion and by failing to object to similar comments by the State. Trial counsel appeared at an evidentiary

hearing on that Motion and testified to his trial strategy of making the jury understand the world or environment the Defendant lived in as an attempt at mitigation. (SC02-1765 R. v. IX, p. 1662.) Trial counsel explained his intent to argue at the end of trial, “this is a situation that they don’t really understand and that they ought to spare your life.” (*Id.* at 1633.) This Court found trial counsel’s “argument to the jury was a reasonable tactical decision based upon the facts of the case.” (*Id.* v. IV, p. 732.) Defendant’s ineffective assistance of counsel claim regarding opening statements and closing arguments was fully litigated, and the Florida Supreme Court affirmed this Court’s denial of that claim, concluding that counsel made a reasonable tactical decision, one which arose late in trial, to try to convince the jury of self-defense under circumstances which counsel surmised would be foreign to the jurors, where a more traditional self-defense claim would not have matched the facts. *Bell v. State*, 965 So. 2d 48, 65-66 (Fla. 2007). To the extent to which Defendant claims ineffective assistance of counsel based on the same statements and arguments, the instant Motion is procedurally barred by the doctrine of collateral estoppel. *Zeigler v. State*, 116 So. 3d 255, 258 (Fla. 2013).

The Motion is Without Merit

Despite the procedural bars, this Court considers the merits of the Motion, and finds the instant case distinguishable from *Buck*. The inescapable fact, conceded by Defendant’s counsel at the hearing, is that trial counsel’s comments and arguments at issue in this case made no explicit reference to Defendant’s race. In fact, there is nothing inherently racist about any of the statements at issue. References to the Defendant living by his own law, not civilized law, but the law of the jungle, hunting down his victims, living in a world different from that of the jurors and trial counsel, are not “tinged” with racism as Defendant asserts. As noted, trial counsel had legitimate tactical reasons for his actions and remarks. *Bell*, 965 So. 2d at 65; *see also Bell*, 699 So. 2d at 678 (“Here, the record clearly shows that the motivation for the murders was

retribution.”) Moreover, while Defendant asserts in his Motion that references to jungles and barbarians conjure images of Africa, in this case trial counsel stated explicitly that the jungle he referred to was near the Duval County Courthouse: “[T]here are neighborhoods in our community, some within a mile or two of this courthouse which are no safer than the jungle. Little safer than the front lines of some war zone.” (SC60-86094 R. v. 10, p. 595.) Defendant’s assertion that “jungle” references carry racial undertones is unpersuasive. Also, the interchangeable references to “jungle” and “war zone” underscore the lack of racial character inherent in the remarks. During guilt phase closing argument, defense counsel recounted the trial testimony of Theodore Wright, the killer of Defendant’s brother and the brother of victim Jimmy West in this case:

[J]ust to give you more flavor of the kind of environment these people live in, Theodore Wright takes the stand and tells you that some months ago he was in a bar or game room or some place and was told Bell’s brothers were outside and they were looking for him and there was going to be some trouble. Did he hide? Did he try to get out a back door? Did he send somebody out to try to see what the problem was and try to quell the situation or calm it down? Did he call the police? Almost like a scene out of some Wild West sort of sleuth [sic] out, he borrows a gun, strolls out into the road and they have a shoot out. That’s the kind of environment these people were living in.

(SC60-86094 R. v. 10, p. 600.) The fact that Defense counsel described the environment where Defendant and his brother lived with the victim and his brother and their associates in some instances as a jungle, or as barbaric or, in this instance, as comparable to the Wild West, similar to counsel’s interchangeable use of “jungle” and “war zone,” belies Defendant’s contention that the remarks carried any message regarding race.

Also significant is the fact that the racial reference in Buck was introduced as evidence, both through testimony and a written report of an expert witness, while the comments at issue in this case are just that—comments by counsel made during statements and argument to the jury. Defendant argued at the hearing that this case is more egregious than Buck because it was not a

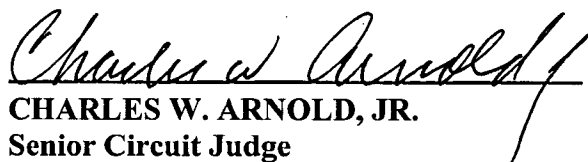
witness, but Defendant's own counsel, who injected race into the proceedings. This Court disagrees, for two reasons. First, as noted, there was no explicit reference to Defendant's race. Second, the jury in this case was instructed that its verdict must be based only on the evidence and on the law as given by the trial court, and was specifically instructed that statements by the attorneys were not evidence. (SC60-86094 R. v. VIII, pp. 241-42.) This is in sharp contrast to Buck, where the Court noted that the expert witness who testified that Buck's race made him more likely to be dangerous in the future provided "hard statistical evidence" and had the trial court's imprimatur. Buck, 137 S. Ct. at 776-77.

Simply put, what happened in Buck is not what happened in this case. Buck provides no basis for setting aside the Judgment and Sentence in this case. Trial counsel's performance was not deficient. Bell, 965 So. 2d at 64. The instant Motion, grounded as it is on Buck, is without merit.

In view of the above, it is

ORDERED that Defendant's Amended Successive Motion to Vacate Judgment and Sentence, filed through counsel on February 20, 2018, is hereby **DENIED**. This is a final Order. The Defendant shall have thirty (30) days from the date that this Order is filed to take an appeal, by filing a Notice of Appeal with the Clerk of the Court.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 28th day of September, 2018.


CHARLES W. ARNOLD, JR.
Senior Circuit Judge

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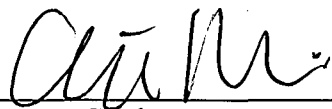
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Raiford, FL 32083-1000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been served on the above-named parties by

United States Mail or electronic service on September 27, 2018.


Deputy Clerk

Case No. 16-1994-CF-9776-AXXX-MA
/bw

Filing # 79207234 E-Filed 10/11/2018 02:19:20 PM

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR DUVAL COUNTY

STATE OF FLORIDA
Plaintiff,

v.

MICHAEL B. BELL,
Defendant.

Case No.: 16-1994-CF-9776-AXXX-MA
Court Appointed

NOTICE OF APPEAL

NOTICE IS GIVEN that MICHAEL B. BELL, Defendant/Appellant, appeals to the Florida Supreme Court, the Order Denying Defendant's Amended Successive Motion to Vacate Judgment and Sentence rendered September 28, 2018.

/S/ ROBERT A. NORGARD

ROBERT A. NORGARD

I HEREBY CERTIFY a true and correct copy of the foregoing has been served electronically on the Office of the Attorney General at capapp@myfloridalegal.com, to the Office of the State Attorney, at SAO4DuvalCriminal@coj.net, to Billy Nolas, Federal Public Defender's Office (CHU), at Billy.Nolas@fd.org and by U.S. mail to Michael B. Bell, DOC # 108426, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083 this 11th day of October 2018.

/S/ ROBERT A. NORGARD

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Fla. Bar No. 322059

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-1994-CF-9776-AXXX-MA
DIVISION: CR-H

STATE OF FLORIDA

v.

MICHAEL BERNARD BELL,
Defendant.

**ORDER DENYING DEFENDANT'S AMENDED SUCCESSIVE MOTION TO VACATE
JUDGMENT AND SENTENCE**

This cause was heard by this Court June 26, 2018, on Defendant's Amended Successive Motion to Vacate Judgment and Sentence ("Motion"), filed through counsel on February 20, 2018, pursuant to Florida Rule of Criminal Procedure 3.851. This Court, having heard argument of counsel, having considered the Motion, the State's Answer thereto filed on March 2, 2018, Defendant's Reply filed with leave of Court on March 22, 2018, the record in this cause, and relevant authority, makes the following findings of fact and conclusions of law.

The facts surrounding the December 9, 1993 murders of Jimmy West and Tamecka Smith were reported by the Florida Supreme Court as follows:

On December 9, 1993, appellant Michael Bell shot to death Jimmy West and Tamecka Smith as they entered a car outside a liquor lounge in Jacksonville. Three eyewitnesses testified regarding the murders, which the trial court described in the sentencing order as follows. In June 1993, Theodore Wright killed Lamar Bell in a shoot-out which was found to be justifiable homicide committed in self-defense. Michael Bell then swore to get revenge for the murder of his brother, Lamar Bell. During the five months following Lamar Bell's death, Michael Bell repeatedly told friends and relatives he planned to kill Wright. On December 8, 1993, Michael Bell, through a girlfriend, purchased an AK-47 assault rifle, a thirty-round magazine, and 160 bullets. The next night, Bell saw Theodore Wright's car, a yellow Plymouth. Bell left the area and shortly returned with two friends and his rifle loaded with thirty bullets. After a short search, he saw the yellow car in the parking lot of a liquor lounge. Bell did not know that Wright had sold the car to Wright's half-brother, Jimmy West, and that West had parked it and had gone into the lounge. Bell waited in the parking lot until West left the lounge

with Tamecka Smith and another female. Bell picked up the loaded AK-47 and approached the car as West got into the driver's seat and Smith began to enter on the passenger's side. Bell approached the open door on the driver's side and at point-blank range fired twelve bullets into West and four into Smith. The other female ducked and escaped injury. After shooting West and Smith, Bell riddled with bullets the front of the lounge where about a dozen people were waiting to go inside. Bell then drove to his aunt's house and said to her, "Theodore got my brother and now I got his brother."

Bell v. State, 699 So. 2d 674, 675 (Fla. 1997). The procedural history of this cause is stated succinctly in the instant Motion and in the State's Answer thereto.

A rule 3.851 motion must be filed within one year of the conviction and sentence of death becoming final. Fla. R. Crim. P. 3.851(d)(1). A rule 3.851 motion may be considered beyond the one-year time bar, however, if it alleges that "the fundamental constitutional right asserted was not established within the [one-year] period provided for in subsection (d)(1) and has been held to apply retroactively." Fla. R. Crim. P. 3.851(d)(2)(B).

Even if found to be timely, a successive rule 3.851 motion may be denied without an evidentiary hearing if the record conclusively shows the defendant is not entitled to relief. Gaskin v. State, 218 So. 3d 399, 400 (Fla. 2017)(citing Reed v. State, 116 So. 3d 260, 264 (Fla. 2013)). "Under rule 3.851, 'postconviction claims may be summarily denied when they are legally insufficient, should have been brought on direct appeal, or are positively refuted by the record.'" Carroll v. State, 114 So. 3d 883, 885-86 (Fla. 2013)(quoting Marek v. State, 8 So. 3d 1123, 1127 (Fla. 2009)).

Defendant's convictions and sentences of death became final on February 23, 1998, upon denial of his petition for writ of certiorari by the United States Supreme Court. See Fla. R. Crim. P. 3.851(d)(1)(B)(stating, for purposes of rule 3.851, "a judgment is final . . . on the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed"); Bell v. Florida, 522 U.S. 1123 (1998)(denying Defendant's petition for writ of certiorari). Thus, any postconviction

claim asserted more than one year after February 23, 1998, must be denied unless the claim falls within the newly-recognized-constitutional-right exception in subsection (d)(2)(B). Carroll, 114 So. 3d at 886 (“Rule 3.851 requires . . . that motions for postconviction relief must be filed within one year from when the conviction and sentence become final unless the claim is based on . . . a newly recognized fundamental constitutional right that has been held to apply retroactively.”).

In his Motion, Defendant asserts that, “[d]uring his trial, Mr. Bell’s trial counsel depicted Mr. Bell, an African American man, as a person who committed a ‘senseless jungle like barbaric killing,’ that endorsed a theme in the State’s arguments that Mr. Bell was a person who lived by the ‘law of the jungle.’ This racially-tinged language impermissibly injected race into Mr. Bell’s trial” (Mot. at 1.)

The Motion is Untimely

Defendant claims a newly-recognized constitutional right in Buck v. Davis, --- U.S. ---, 137 S. Ct. 759 (2017). Buck was convicted of capital murder in Texas. Buck, 137 S. Ct. at 767. Under Texas law, the jury could impose the death penalty only if it found “‘a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.’” Id. at 768 (quoting Tex. Code Crim. Proc. Ann., Art. 37.071, § 2(b)(1) (Vernon 1998)). At the penalty phase of trial, Buck introduced the report of an expert witness, a psychologist, whose report identified race as one of seven statistical factors, and read, in relevant part, “**Race. Black: Increased probability. There is an over-representation of Blacks among the violent offenders.**” Buck, 137 S. Ct. at 768 (internal quotation marks omitted). Buck’s counsel elicited testimony about the statistical factors and, though the expert concluded that Buck was unlikely to commit acts of violence in the future, he testified consistently with his report that, statistically speaking, Buck was more likely to act violently because he was black. Id. at 767-69. The Court characterized the report as saying, “in effect, that the color of Buck’s skin made him more

deserving of execution.” Id. at 775. The Court continued, “It would be patently unconstitutional for a state to argue that a defendant is liable to be a future danger because of his race. See Zant v. Stephens, 462 U.S. 862, 885, 103 S. Ct. 2733, 77 L.Ed.2d 235 (1983)(identifying race among factors that are ‘constitutionally impermissible or totally irrelevant to the sentencing process’).” Id. See also Rose v. Mitchell, 443 U.S. 545, 555 (1979)(“Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.”). The Court concluded that “[n]o competent defense attorney would introduce such evidence about his own client.” Buck, 137 S. Ct. at 775.

Defendant asserts that Buck created new law when it went farther than any court had gone before regarding trial counsel’s deficient performance by injecting race into the trial and the resulting prejudice. It is Buck’s focus on defense counsel’s role in bringing race into the trial which defendant asserts as the new recognition of a constitutional right. This Court disagrees. The constitutional right at issue in Buck was the Sixth Amendment right to counsel which, under Strickland v. Washington, 466 U.S. 668, 686 (1984), is the right to effective counsel. Buck merely applied Strickland to determine that Buck’s counsel rendered deficient performance which prejudiced Buck, the two elements necessary for Strickland relief. Strickland, 466 U.S. at 687; Buck, 137 S. Ct. at 775. At most, Buck’s statement—that no competent defense attorney would introduce evidence about his own client such as the expert report which said, in effect, that the color of Buck’s skin made him more deserving of execution—may be read as a holding that such conduct is per se deficient performance, thereby satisfying the first prong of Strickland. However, the Buck Court did not find defense counsel’s conduct to be per se prejudicial. Instead, the Court engaged in a detailed prejudice analysis, casting the question as “whether Buck had demonstrated a reasonable probability that, without [the expert]’s testimony on race, at least one juror would have harbored a reasonable doubt about whether Buck was likely to be violent in the

future.” Id. at 776.

The Court cited several considerations in support of its conclusion that Buck had demonstrated prejudice. The emphasis and focus of penalty phase testimony and closing argument was on whether Buck would present a danger in the future. Id. During deliberations, the jury asked to see the expert reports on dangerousness. The Court noted the unusual nature of the issue before the jury, in that it required the jury to make a prediction, which inevitably involved speculation. Id. Although defense argued that Buck would not be dangerous if sentenced to life in prison, because his prior violent acts had occurred in the context of romantic relationships with women, the expert opined that an immutable characteristic—Buck’s race—increased the probability of future violence. Id. The expert’s opinion was “hard statistical evidence” from a medical expert with the court’s imprimatur “to guide an otherwise speculative inquiry.” Id. at 776-77. The Court described all of this as “an unusual confluence of factors” which lent support to making a decision on life or death on the basis of race. Id. at 776. Buck was merely an application of Strickland to actions of counsel which crossed an already-existing line and caused prejudice, and it has not been held to apply retroactively. It is apparent that, after Buck, a claim that any party impermissibly injected race into court proceedings must be analyzed under Strickland, just as before Buck. Because Buck did not newly recognize a fundamental constitutional right that has been held to apply retroactively, Buck cannot save the instant Motion from the procedural time bar of rule 3.851(d)(1).

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The Motion is Without Merit

Despite the procedural bars, this Court considers the merits of the Motion, and finds the instant case distinguishable from *Buck*. The inescapable fact, conceded by Defendant’s counsel at the hearing, is that trial counsel’s comments and arguments at issue in this case made no explicit reference to Defendant’s race. In fact, there is nothing inherently racist about any of the statements at issue. References to the Defendant living by his own law, not civilized law, but the law of the jungle, hunting down his victims, living in a world different from that of the jurors and trial counsel, are not “tinged” with racism as Defendant asserts. As noted, trial counsel had legitimate tactical reasons for his actions and remarks. *Bell*, 965 So. 2d at 65; see also *Bell*, 699 So. 2d at 678 (“Here, the record clearly shows that the motivation for the murders was

retribution.”) Moreover, while Defendant asserts in his Motion that references to jungles and barbarians conjure images of Africa, in this case trial counsel stated explicitly that the jungle he referred to was near the Duval County Courthouse: “[T]here are neighborhoods in our community, some within a mile or two of this courthouse which are no safer than the jungle. Little safer than the front lines of some war zone.” (SC60-86094 R. v. 10, p. 595.) Defendant’s assertion that “jungle” references carry racial undertones is unpersuasive. Also, the interchangeable references to “jungle” and “war zone” underscore the lack of racial character inherent in the remarks. During guilt phase closing argument, defense counsel recounted the trial testimony of Theodore Wright, the killer of Defendant’s brother and the brother of victim Jimmy West in this case:

[J]ust to give you more flavor of the kind of environment these people live in, Theodore Wright takes the stand and tells you that some months ago he was in a bar or game room or some place and was told Bell’s brothers were outside and they were looking for him and there was going to be some trouble. Did he hide? Did he try to get out a back door? Did he send somebody out to try to see what the problem was and try to quell the situation or calm it down? Did he call the police? Almost like a scene out of some Wild West sort of sleuth [sic] out, he borrows a gun, strolls out into the road and they have a shoot out. That’s the kind of environment these people were living in.

(SC60-86094 R. v. 10, p. 600.) The fact that Defense counsel described the environment where Defendant and his brother lived with the victim and his brother and their associates in some instances as a jungle, or as barbaric or, in this instance, as comparable to the Wild West, similar to counsel’s interchangeable use of “jungle” and “war zone,” belies Defendant’s contention that the remarks carried any message regarding race.

Also significant is the fact that the racial reference in Buck was introduced as evidence, both through testimony and a written report of an expert witness, while the comments at issue in this case are just that—comments by counsel made during statements and argument to the jury. Defendant argued at the hearing that this case is more egregious than Buck because it was not a

witness, but Defendant's own counsel, who injected race into the proceedings. This Court disagrees, for two reasons. First, as noted, there was no explicit reference to Defendant's race. Second, the jury in this case was instructed that its verdict must be based only on the evidence and on the law as given by the trial court, and was specifically instructed that statements by the attorneys were not evidence. (SC60-86094 R. v. VIII, pp. 241-42.) This is in sharp contrast to Buck, where the Court noted that the expert witness who testified that Buck's race made him more likely to be dangerous in the future provided "hard statistical evidence" and had the trial court's imprimatur. Buck, 137 S. Ct. at 776-77.

Simply put, what happened in Buck is not what happened in this case. Buck provides no basis for setting aside the Judgment and Sentence in this case. Trial counsel's performance was not deficient. Bell, 965 So. 2d at 64. The instant Motion, grounded as it is on Buck, is without merit.

In view of the above, it is

ORDERED that Defendant's Amended Successive Motion to Vacate Judgment and Sentence, filed through counsel on February 20, 2018, is hereby **DENIED**. This is a final Order. The Defendant shall have thirty (30) days from the date that this Order is filed to take an appeal, by filing a Notice of Appeal with the Clerk of the Court.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 28th day of September, 2018.


CHARLES W. ARNOLD, JR.
 Senior Circuit Judge

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Union Correctional Institution
P.O. Box 1000
Raiford, FL 32083-1000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been served on the above-named parties by
United States Mail or electronic service on _____, 2018.

Deputy Clerk

Case No. 16-1994-CF-9776-AXXX-MA
/bw

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR DUVAL COUNTY

STATE OF FLORIDA
Plaintiff,

v.

MICHAEL B. BELL,
Defendant.

Case No.: 16-1994-CF-9776-AXXX-MA
Court Appointed

DIRECTIONS TO THE CLERK

Defendant, MICHAEL B. BELL, directs the clerk to include the following items from the record on appeal:

1. Any items required by Fla. R. App. P. 9.142(1)(B).

Defendant, MICHAEL B. BELL, directs the Clerk to exclude the following items from the record on appeal:

1. Any items that should not be duplicated pursuant to Fla. R. App. P. 9.142(1)(C).

I HEREBY CERTIFY a true and correct copy of the foregoing has been served electronically on the Office of the Attorney General at capapp@myfloridalegal.com, to the Office of the State Attorney, at SAO4DuvalCriminal@coj.net, to Billy Nolas, Federal Public Defender's Office (CHU), at Billy.Nolas@fd.org and by U.S. mail to Michael B. Bell, DOC # 108426, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083 this 11th day of October 2018.

/s/ ROBERT A. NORGARD

ROBERT A. NORGARD

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Fla. Bar No. 322059

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR DUVAL COUNTY

STATE OF FLORIDA
Plaintiff,

v.

MICHAEL B. BELL,
Defendant.

Case No.: 16-1994-CF-9776-AXXX-MA
Court Appointed

STATEMENT OF JUDICIAL ACTS TO BE REVIEWED

Defendant, MICHAEL B. BELL, submits the following statement of judicial acts to be reviewed:

1. The Court's Order Denying Defendant's Amended Successive Motion to Vacate Judgment and Sentence.

I HEREBY CERTIFY a true and correct copy of the foregoing has been served electronically on the Office of the Attorney General at capapp@myfloridalegal.com, to the Office of the State Attorney, at SAO4DuvalCriminal@coj.net, to Billy Nolas, Federal Public Defender's Office (CHU), at Billy_Nolas@fd.org and by U.S. mail to Michael B. Bell, DOC # 108426, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083 this 11th day of October 2018.

/s/ ROBERT A. NORGARD

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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR DUVAL COUNTY

STATE OF FLORIDA
Plaintiff,

v.

MICHAEL B. BELL,
Defendant.

Case No.: 16-1994-CF-9776-AXXX-MA
Court Appointed

I. DESIGNATION TO THE COURT REPORTER

TO: Official Reporters, Inc.
scheduling@officialreportersinc.com

Please transcribe and file with the clerk of the court the following in triplicate:

1. Case Management Conference held before the Honorable Charles W. Arnold on May 7, 2018.
2. Hearing on Amended Successive Motion to Vacate Judgment and Sentence held before the Honorable Charles W. Arnold on June 26, 2018.

I HEREBY CERTIFY a true and correct copy of the foregoing has been served electronically on the Office of the Attorney General at capapp@myfloridalegal.com, to the Office of the State Attorney, at SAO4DuvalCriminal@coj.net, to Billy Nolas, Federal Public Defender's Office (CHU), at Billy_Nolas@fd.org and by U.S. mail to Michael B. Bell, DOC # 108426, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083 this 11th day of October 2018.

/s/ ROBERT A. NORGARD
ROBERT A. NORGARD
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II. COURT REPORTER'S ACKNOWLEDGEMENT

1. The designation to the court reporter was served on _____ and received on _____.

2. Because the defendant has been determined to be indigent, the court reporter is satisfied that the county will pay for preparation of the transcript.

3. Number of trials or hearings: _____.

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5a. The transcript will be available within thirty (30) days of service of the designation and will be filed on or before _____.

OR

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6. Completion and filing of this acknowledgement by the court reporter constitutes submission to the jurisdiction of the court for all purposes related to these appellate proceedings.

7. The undersigned court certifies that the foregoing is true and correct and that a copy has been furnished by mail () or hand delivery () this ____ day of _____, 2018, to each of the parties or their counsel.

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ADDRESS: _____

NOTE: The foregoing acknowledgment shall be properly completed, signed by the court reporter, and filed with the clerk of the appellate court within five days of service of the designation upon the court reporter. A copy shall be served on all parties or their counsel, who shall have five days to object to any requested extension of time. see Fla. R. App. P. 9.200 (b) (1)-(3), 9.900 (g).

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT IN AND
FOR DUVAL COUNTY, FLORIDA

II REPORTER'S ACKNOWLEDGEMENT

CASE NO: 1994-CF
9776

State of Florida

Vs.

Michael Bell

The foregoing designation was served 10-12-18 and was received
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Satisfactory arrangements ☒ have () have not been made for payment of the transcript costs.
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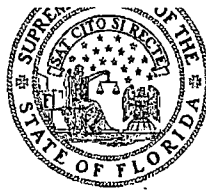
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Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

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MARK CLAYTON
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JULIA BREEDING
STAFF ATTORNEY

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www.floridasupremecourt.org

CR-G

ACKNOWLEDGMENT OF NEW CASE

October 18, 2018

RE: MICHAEL BERNARD BELL vs. STATE OF FLORIDA

CASE NUMBER: SC18-1713

Lower Tribunal Case Number(s): 161994CF009776AXXXMA

Lower Tribunal Filing Date: 10/11/2018

The Florida Supreme Court has received the following documents reflecting a filing date of 10/16/2018.

Notice of Appeal

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause.

cd

cc:

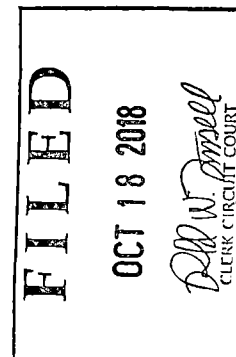
ROBERT ANTHONY NORGARD

JENNIFER ANN DONAHUE

GEORGE BATEH

HON. RONNIE FUSSELL, CLERK

BILLY H. NOLAS



IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO: 16-94-CF-009776-AXXX
DIVISION: CR-F

STATE OF FLORIDA

vs.

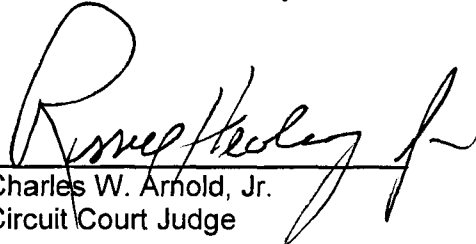
MICHAEL BERNARD BELL,
DOC# 108426,
Defendant.

ORDER SETTING HEARING ON STATUS OF RECORD ON APPEAL

The above-styled case is hereby set for a Hearing on Status of Record on Appeal before the Honorable Charles W. Arnold, Jr., on **Monday, November 5, 2018 at 10:00 a.m.** The hearing will take place at the Duval County Courthouse, 501 West Adams Street, Jacksonville, FL 32202 in Hearing **Room 711.**

Out of town attorneys may appear telephonically by calling **(904) 255-1648.** Defendant's presence is not required.

DONE AND ORDERED in Chambers, at Jacksonville, Duval County, Florida on
this 26 day of October, 2018.


Charles W. Arnold, Jr.
Circuit Court Judge

Copies to:

Office of the State Attorney
Attn: Erin Perry

Jennifer Donahue, Esq.
Office of the Attorney General
jennifer.donahue@myfloridalegal.com

Robert Norgard, Esq.
Attorney for Defendant
Nordgardlaw@verizon.net

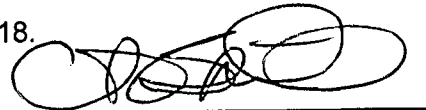
FILED 10-26-18 PM 2:07 RUSSELL

Billy Nola, Esq.
Office of the Federal Public Defender
Billy_Nolas@fd.org

Michael Bell, DC#108426
Union Correctional Institution
7819 Northwest 228th Street
Raiford, FL 32026-4000

CERTIFICATE OF SERVICE

I do hereby certify that a copy hereof has been furnished to Defendant by United
States mail on this 29th day of Oct., 2018.



Deputy Clerk

Case No.: 16-94-CF-009776-AXXX

/bp

1 IN THE CIRCUIT COURT OF THE
2 FOURTH JUDICIAL CIRCUIT, IN
3 AND FOR DUVAL COUNTY, FLORIDA.

4 Case No: 16-1994-CF-9776-AXXX-MA

5
6 STATE OF FLORIDA

7 -vs-

8 MICHAEL BELL,

9 Defendant,
10 -----

11
12 PROCEEDINGS taken before the
13 Honorable Charles Arnold, Judge of the Circuit Court, on
14 May 7, 2018, and as reported by Faye M. Gay, Certified
15 Realtime Reporter, Registered Merit Reporter, and
16 Certified Legal Video Specialist.

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24 421 W. Church St., Suite 701
25 Jacksonville Florida 32202
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25

1 APPEARANCES:

2 JENNIFER DONAHUE, Esquire,

3 Assistant Attorney General,
4 Appearing telephonically on behalf of the
5 State of Florida.

6 DANIEL SKINNER, Esquire,
7 Assistant State Attorney,
8 Appearing on behalf of the State of Florida.

9

10 ROBERT NORGARD, Esquire,

11 Appearing telephonically on behalf of the Defendant.

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1	PROCEEDINGS	
2	PROCEEDING	PAGE
3	Status Conference.....	4
4		
5		
6		
7		
8		
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10		
11		
12		
13		
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1 MR. NORGDARD: I was told that Mr. Bell
2 probably wouldn't want to come out of his cell.
3 He never leaves his cell.

4 THE COURT: Hold on a minute, Mr. Norgard.
5 This is Judge Arnold.

6 MR. NORGDARD: Oh, hey, Judge.

7 THE COURT: We're here today because
8 Mr. Norgard has filed on behalf of Mr. Bell a
9 successive motion to vacate his judgment and
10 sentence.

11 And I know we have Mr. Norgard on the phone
12 and is Ms. Donahue on the phone as well?

13 MS. DONAHUE: Yes, Your Honor.

14 THE COURT: Okay. And then I think we have
15 an officer with the Florida State Prison with us
16 as well, is that correct?

17 SERGEANT BRANDON: Yes, sir. This is
18 Sergeant Brandon.

19 THE COURT: Sergeant Brandon, tell us about
20 Mr. Bell. I know we made arrangements through
21 your office to have him appear by phone today and
22 I understand that he's not there. Explain that to
23 us.

24 SERGEANT BRANDON: Yes, sir, we told him and
25 told him that it was with you and he refused and

1 he signed a refusal to come out and be on the
2 phone.

3 THE COURT: All right. Thank you very much.

4 Mr. Norgard, did you want to ask the sergeant
5 anything further on that subject?

6 MR. NORGARD: No, sir. I just was going to
7 mention I was confirming with Sergeant Brandon the
8 situation when you got on the line. Even in our
9 experience in dealing with Mr. Bell, because of
10 some issues he has, he's generally refused to
11 leave his cell for even attorney phone calls or
12 visits and I generally deal with him by mail and
13 he's been apprised of everything and about today's
14 hearing so I did not anticipate him participating
15 today.

16 THE COURT: Thank you for letting us know
17 that, Mr. Norgard.

18 And, Sergeant Brandon, thank you very much
19 for your time and we'll let you go now.

20 SERGEANT BRANDON: Okay. Thank you, sir.

21 THE COURT: Okay. First Mr. Sharritt with
22 the Clerk's office is here with us and Ms. Faye
23 Gay, our court reporter, is here. Mr. Ben Wooded
24 (phonetically), my attorney, is here and me and we
25 have two guests that work with the Federal Public

1 Defender's Office observing today.

2 And that's who's here for benefit of you all
3 on the phone. I thought somebody with the State
4 Attorney's Office would be here, but I know
5 Ms. Donahue is primarily responsible for this
6 anyway. So since we are past 11:00 we'll go ahead
7 and proceed.

8 To begin with, Mr. Norgard, you had filed a
9 motion for leave to file your reply to the State's
10 response to successive motion and having, of course,
11 filed it I'll go ahead -- I'll enter an order today
12 granting that motion to file it and it will stand as
13 filed.

14 MR. NORGDARD: Thank you, sir.

15 THE COURT: And after that, just to let you
16 know where I am, I, as you know, I didn't try this
17 case, but many -- excuse me -- many years ago it
18 was assigned to me for post-conviction matters and
19 I actually conducted an evidentiary hearing awhile
20 back.

21 Of course, I've read your motion, the State's
22 response, your reply and some of the other
23 opinions that are mentioned in there and from
24 looking at everything so far it would appear to me
25 that it would require on my part an examination of

1 parts of the original trial transcript as well as
2 the hearing that Mr. Nichols testified to on the
3 original 3.851 motion, and then I would be glad to
4 schedule some oral argument, if Mr. Norgard or the
5 State wanted to, and hear from you all further and
6 then enter a ruling.

7 And by saying all that I'm just asking
8 Mr. Norgard am I missing something. Do we need to
9 do any other kind of hearing or is that where we
10 are?

11 MR. NORGARD: Your Honor, my intent today was
12 to initially request that there be -- it would be
13 very limited, but would request a limited
14 evidentiary hearing in this matter. As you
15 correctly noted, in order to rule on this motion
16 at the minimum the Court would need to take
17 judicial notice of the trial record, review the
18 relevant portions, including the original trial
19 and the comments made at trial, also the hearing
20 and testimony at the post-conviction hearing.

21 The trial attorney is now deceased, but it's
22 our position that that is such a game changer in
23 terms of how issues have been raised or addressed
24 in the trial court as it relates to comments by an
25 attorney or evidence presented by defense attorney

1 that at a minimum we would want to present expert
2 testimony indicating that under Buck it would be
3 improper for defense attorney to interject race in
4 the way that it was interjected in this trial or
5 adopted in this trial versus back when there was a
6 post-conviction hearing in this case where the
7 Florida Supreme Court allowed it to be a matter of
8 tactical and strategic decisions on the part of
9 the trial attorney.

10 It's our position that expert attorney would
11 testify that based on the principles of Buck it
12 would be improper regardless of any tactical or
13 strategic reason and we feel that needs to be part
14 of our record as it relates to this Buck issue.
15 And so I would request a limited evidentiary
16 hearing on that matter to present expert testimony
17 since we no longer have the trial attorney.

18 THE COURT: Given the fact that the reference
19 to "the law of the jungle", if you will, my
20 recollection of the record is that not only me but
21 the Florida Supreme Court has looked at that from
22 a prejudice standpoint and found there wasn't any.
23 So why do we need to revisit it just because of
24 the Buck decision?

25 MR. NORGARD: Well, I think if you look at

1 the Buck decision, the reference to race, what was
2 made in that particular case was an extremely
3 passing, extremely limited reference to race.

4 The government argued in the Buck decision that it
5 was such a limited part of the trial, such a brief
6 reference in the trial, and the U.S. Supreme Court
7 spoke at length about the prejudice involved in
8 that situation where a defense attorney interjects
9 evidence of race in a negative manner. And I
10 think not only are we dealing with an issue where
11 trial attorneys, defense attorneys can no longer
12 use race tactically and strategically, but also
13 the prejudice associated with it is established in
14 a very strong fashion in the Buck decision.

15 (Mr. Daniel Skinner, Assistant State Attorney
16 arrives.)

17 THE COURT: In Buck the defense attorney
18 actually called an expert witness to testify
19 really about race and the fact that his client
20 shouldn't be held to the same standard as other
21 folks which is, I think, significantly different,
22 but certainly I'll glad to listen to your argument
23 on that point.

24 MR. NORGDARD: I apologize, but our position is
25 for the defense attorney himself to say it versus a

1 witness is even worse, but -- but, like I said,
2 just solely on the issue of an evidentiary hearing,
3 without getting into the merits of the argument,
4 you know, I think the Court does need to, of
5 course, refresh its recollection factually on those
6 other matters, but I think that we need to be able
7 to put on the record what reasonably competent
8 counsel would or wouldn't do as it relates to the
9 application of Buck.

10 THE COURT: Well, I'm not totally disagreeing
11 with you I'm just -- the law of the case in this
12 case already, I'm not sure that's appropriate or
13 not, but I'm not ruling on that at this point.

14 Let me ask Ms. Donahue what you would like to
15 say, if anything, on that point of allowing him to
16 call an attorney to testify as an expert.

17 MS. DONAHUE: Well, Your Honor, we would
18 object. Your Honor is perfectly capable of
19 determining whether it meets the Strickland
20 standard. I believe having an attorney, you know,
21 put on their opinion about what it means is not
22 appropriate in this case.

23 THE COURT: Okay. Mr. Dan Skipper has joined
24 us from the State Attorney's Office.

25 Mr. Skinner, what I just said is kind of where

1 we are. Is there anything you'd like to add?

2 MR. SKINNER: No, sir. Thank you.

3 THE COURT: Okay. All right. Let me talk to
4 my lawyer a minute.

5 Ben, is there anything else we want to carve
6 out today or we want to just get back --

7 STAFF ATTORNEY: No, sir.

8 THE COURT: What I'm going to do is meet with
9 my attorney and we'll talk about this further and
10 I'll enter an order on where we stand and your
11 request for the evidentiary hearing and then
12 before I schedule anything I will get back to you
13 and find a convenient date for everyone and we'll
14 go from there.

15 So --

16 MR. NORGARD: All right. Thank you very
17 much, sir.

18 THE COURT: Thank you for your time,
19 Mr. Norgard and Ms. Donohue.

20 MS. DONAHUE: Thank you, Your Honor.

21 THE COURT: Okay.

22 (Thus the proceedings ended.)
23
24
25

1 C E R T I F I C A T E

2

3 I, Faye M. Gay, hereby certify that the foregoing
4 transcript is a true and accurate transcription of my
5 Stenograph notes taken at the time and date stated herein.

6 Dated this 8th day of November, 2018.

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10 /S/ Faye M. Gay

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Faye M. Gay, CRR, RMR, FCR, RPR, CLVS

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1 IN THE CIRCUIT COURT OF THE
2 FOURTH JUDICIAL CIRCUIT, IN
3 AND FOR DUVAL COUNTY, FLORIDA.

4 Case No: 16-1994-CF-9776-AXXX-MA

5

6

7 STATE OF FLORIDA

8 -vs-

9 MICHAEL BELL,

10 Defendant,

11 -----

12

13 PROCEEDINGS taken before the
14 Honorable Charles Arnold, Judge of the Circuit Court, on
15 June 26, 2018, and as reported by Faye M. Gay, Certified
16 Realtime Reporter, Registered Merit Reporter, and
17 Certified Legal Video Specialist.

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26

1 APPEARANCES:

2 JENNIFER DONAHUE, Esquire,

3 Assistant Attorney General,
4 Appearing telephonically on behalf of the
5 State of Florida.

6

7 BRAD BISHOFF, Esquire,
8 Justice Administration Commission.

9

10

11 ROBERT NORGARD, Esquire,

12

13 Appearing telephonically on behalf of the Defendant.

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1	PROCEEDINGS	
2	PROCEEDING	PAGE
3	Status Conference.....	4
4		
5		
6		
7		
8		
9		
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11		
12		
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14		
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1 MR. BISHOFF: Good morning. This is Brad
2 Bishoff with the JAC.

3 THE COURT: Thank you, Mr. Bishoff.

4 I know you all had filed an objection but you
5 didn't require a hearing, but I included you all
6 because it exceeds the statutory cap and I didn't
7 know if you had anything to say, other than the
8 fact that it's over the \$20,000 and, quite
9 frankly, the -- the form that deals with the
10 different stages is something that I haven't dealt
11 with before and so that's really why I bothered
12 you all today, but I know Mr. Norgard -- I signed
13 an order recently dealing with the State's three
14 issues.

15 What did you do different in stage 4 that
16 wasn't paid for in stage 3?

17 MR. NORGARD: There actually is -- I notice
18 there was a typo in my motion.

19 THE COURT: Um-hum.

20 MR. NORGARD: The previous billing was for an
21 appeal that we had done dating back to April, 2015
22 through October of 2016. That dealt with the
23 pending issues in Mr. Bell's case at the time we
24 took over. Part of that was related to his
25 desires to try to represent himself pro se,

1 arguing that in the Florida Supreme Court. The
2 billing for this appeal is solely related to the
3 Hurst issue which did not arise until well after
4 we completed our appellate work in that other
5 case.

6 THE COURT: Okay. I kind of guessed that,
7 but I wanted to hear it from you.

8 MR. NORGARD: Well, I was looking at my
9 motion and in paragraph B, and I didn't catch it
10 either, it just says previous billing for appeal
11 work as related to Hurst stuff. That should have
12 said the billing for the appeal work in this bill
13 is related to the Hurst material. So I think
14 things just got transposed there and I didn't
15 catch it.

16 THE COURT: I gotcha. All right.

17 Mr. Bishoff, do you have anything else you'd
18 like to say today?

19 MR. BISHOFF: No, Your Honor. The case law
20 indicates that to exceed the statutory cap the
21 Court must find that the case involved
22 extraordinary circumstances and if that finding is
23 made the Court may award a fee greater than the
24 statutory cap.

25 THE COURT: All right. Mr. Norgard, if you

1 would, if you'd e-mail a proposed order to Donna
2 and make reference to the fact that that earlier
3 9,450 related to the other matter and this stuff
4 that you did for the additional fee relates to the
5 Buck decision that came down.

6 MR. NORGDARD: Hurst decision you mean?

7 THE COURT: I mean Hurst decision. I'm
8 thinking about Buck as we're going to talk about
9 at 11:00.

10 MR. NORGDARD: Yeah.

11 THE COURT: If you would send that to Donna
12 I'd appreciate it and I'll go ahead and enter the
13 order.

14 Thank you, Mr. Bishoff.

15 MR. BISHOFF: Thank you, sir.

16 MR. NORGDARD: Should I hang up and wait for a
17 call at 11:00 with the AG?

18 THE COURT: Yes. Let's do that. I'll tell
19 Donna to call you back at 11:00.

20 MR. NORGDARD: I'll be looking for that call.

21 MR. BISHOFF: Thank you, Your Honor.

22 THE COURT: Thank you very much.

23 (PHONE CALL ENDED.)

24 THE COURT: This is judge Arnold.

25 MR. NORGDARD: Judge Arnold, Bob Norgard

1 again.

2 THE COURT: Good.

3 MR. NORGARD: And we have the AG.

4 MS. DONAHUE: Jennifer Donohue.

5 THE COURT: Thank you, Ms. Donohue.

6 And I didn't notice -- I don't think anybody
7 from the State Attorney's Office is coming over or
8 they probably would have been here. So I think we
9 can go ahead.

10 And we're here on Mr. Bell's amended
11 successive motion to vacate judgment and sentence
12 which we've previously had a status hearing on and
13 I entered an order.

14 And, of course, Mr. Norgard as well as
15 Ms. Donahue have thoroughly explained the issue to
16 me. I think I have a pretty good understanding of
17 it. And I ruled that an evidentiary hearing was
18 not necessary because of the reasons stated in the
19 order.

20 And so we're here today really for any
21 further argument either side would like to make on
22 -- on the successive motion.

23 And we'll start with Mr. Norgard.

24 MR. NORGARD: All right. Thank you, sir.

25 As a starting point, just so it's clear, I

1 understand the Judge's ruling, your ruling on the
2 issue of the evidentiary hearing. I want to make it
3 clear I'm not abandoning my position regarding that.
4 I just, you know, I understand your ruling and --

5 THE COURT: Sure.

6 MR. NORGARD: -- ready to move forward into
7 the argument itself.

8 As a starting point, I don't really like to
9 just simply repeat what's in my motions. Your
10 Honor's read the motion. We try to be as thorough
11 as we can in presenting our position, our argument,
12 the law, and so for purposes of my argument today I
13 would adopt the matters raised in my amended
14 successor motion.

15 Also we did file a reply to the State's
16 response and Your Honor did allow the -- did
17 authorize the reply to be part of this. To a
18 certain extent we did address the State's position
19 in the reply. So what I'm going to focus on in just
20 a little bit more detail is I do wish to address the
21 three arguments made by the State.

22 The State's first position regarding this
23 successive motion is that the issue related to what
24 I'll just shorthand form call the racial claim, law
25 of the jungle claim, was previously raised and

1 decided. And what I would point out to the Court
2 is that essentially what the Florida Supreme Court
3 did in reviewing this, without the benefit of the
4 Buck decision having been issued at the time of the
5 appeal of the 3.851, the trial attorney claimed
6 that it was tactical and strategic as to why he
7 addressed the law of the jungle argument that was
8 made at trial by the State. He indicated that was
9 tactical and strategic.

10 Under the Buck decision, had it existed at the
11 time of the Florida Supreme Court opinion on that
12 3.851 appeal, a tactical and strategic claim would
13 have not flown. That's essentially what happened
14 in Buck. It was a situation in Buck where the
15 testimony was entered as part of a psychologist's
16 testimony. The issue of whether or not it was
17 tactical or strategic was irrelevant to the U.S.
18 Supreme Court and their decision in Buck.

19 The other reason that I think the fact that it
20 was previously raised and decided by the Florida
21 Supreme Court in light of Buck. As to why this is
22 an issue which is still relevant and needs to be
23 decided by this Court, is that although the Florida
24 Supreme Court found, even though they found it was
25 tactical and strategic, they went on to find that

1 there was a lack of prejudice.

2 Under Buck that's also a game-changer in terms
3 of to what degree there can be prejudice where a
4 defendant's own attorney, in the case of Buck,
5 introduces it through a witness or, in the case of
6 Mr. Bell, does it through his own position taken at
7 trial. That's something that the Court found to be
8 extremely prejudicial. And one of the things that
9 the government tried to argue in Buck was that the
10 comment that was brought out by the psychologist was
11 a rather passing comment, they tried to argue it was
12 harmless, that it was inconsequential, that it
13 wasn't prejudicial, and the U.S. Supreme Court made
14 it very clear that anything of this nature carries
15 such a high degree of prejudice that reversal is
16 warranted.

17 And so it's my position that had Buck existed
18 at the time of the 3.851 appeal in this case that
19 they would have had to follow the law in Buck and
20 found that it wasn't tactical or strategic and that
21 what did occur was extremely prejudicial and
22 warranted, you know, a new penalty phase, new
23 trial.

24 With respect to the State's second argument as
25 to retroactivity, it would be my position, as we've

1 argued, that it should be something that's held
2 retroactive under the Witt test and we -- I think
3 everybody spent a lot of time looking at the issues
4 of retroactivity, given what's gone on in Hurst, but
5 under the Witt test, it's a U.S. Supreme Court
6 decision, it's constitutional in nature, and it's
7 our position that this is a development of the law
8 that creates a fundamental -- it is a law -- change
9 in the law of fundamental significance.

10 I don't -- I can't think off the top of my
11 head, or in preparing for this case, any decision
12 where -- or if there are, there are very few where
13 the courts have taken out of the trial attorney's
14 hands tactic and strategy and said that even if
15 something is tactical and strategic it's just not
16 something you can do, period, and even if it was
17 tactical and strategic we will not allow it to
18 happen in our courts.

19 The issues of race have been a very fundamental
20 issue in U.S. Supreme Court decisions in many
21 different instances and so it would be my position
22 that, you know, utilizing the Witt test that it
23 should be held retroactive.

24 And, finally, the State argues that Buck was
25 distinguishable from this case because they pointed

1 out that the facts in Buck were a psychologist -- it
2 came out through a psychologist, and in this
3 instance it was the trial attorney who brought it
4 out and sort of bought into the State's approach on
5 this.

6 It's my position that, frankly, it's even
7 worse for the client's own attorney to do that.
8 You know, it's bad enough, like in Buck, when a
9 witness does it, but when the client's own attorney
10 does it, in my mind that's even worse.

11 And so those are the points that I wanted to
12 bring out relative to our position on Buck and I'll
13 turn it over to Your Honor and the State.

14 THE COURT: Let me ask you this, Mr. Norgard.
15 In my search of the record I can't find where any
16 reference to the actual race of the defendant was
17 stated by either side. Am I correct?

18 MR. NORGARD: Yes. I would agree with that.
19 The references were law of the jungle phrases so
20 -- of that nature, and I think -- I mean I think
21 on a very -- when you talk about law of the jungle
22 I'm sorry people think of Africa and when you
23 think of Africa you think of African-Americans who
24 are black, and so I think it does have the racial
25 connotations, although it wasn't specifically

1 referenced by race.

2 THE COURT: And, of course, the psychologist
3 in Buck did, in fact, mention race in his
4 testimony, would be a difference as well. But I
5 understand your argument, it's worse for the
6 lawyer to bring it up than the witness.

7 But as I recall when Mr. Nichols, before he
8 passed away and testified at the earlier hearing,
9 his law of the jungle argument was to put the jury
10 in the context of an eye-for-an-eye, if you would,
11 between feuding families, which to me doesn't really
12 seem to be racially motivated. It's just -- you
13 could argue the same thing with the Hatfields and
14 McCoys who, of course, were not African-American.

15 Isn't that what Nichols said? He was trying to
16 argue the point that the community where these
17 people had their violence in was more of an
18 eye-for-an-eye crowd rather than a bunch of jungle
19 people running around doing jungle stuff?

20 MR. NORGARD: And I think that highlights my
21 point, is that that was part of where he was
22 arguing that this was tactical and strategic, but
23 as we've pointed out, there's a lot -- and you
24 just pointed it out, there's a lot of other ways
25 to make that point without using a phrase like law

1 of the jungle, which does have racial
2 connotations.

3 I think most jurors -- there's even been a TV
4 show recently about the whole Hatfield and McCoy
5 thing. That's certainly a race neutral way of
6 expressing differences between two different
7 factions of people. There's a lot of different
8 ways that that could have been presented versus
9 using something that carried racial connotations.

10 THE COURT: For example, if you use my
11 example where if Mr. Nichols had argued that this
12 was like a feud between the Hatfields and the
13 McCoys that would have been okay.

14 MR. NORGARD: You know, I think the key is,
15 you know, to present something race neutral. You
16 know, if the point you're trying to make is that
17 here's two groups of people where because of
18 history there were problems between them, there's
19 a lot of different ways that you can bring that to
20 a jury's attention in a way that they'll
21 understand without talking the law of the jungle.

22 And, frankly, using something like the
23 Hatfields and the McCoys is more on point because,
24 you know, by arguing law of the jungle, in the
25 jungle you don't necessarily have inner, you know,

1 may not reference enter-tribal warfare or warfare
2 between two groups that have issues.

3 To me law of the jungle is more you just kill
4 or be killed, a lack of morality, you know, the
5 Joseph Conrad Heart of Darkness connotations.

6 The Hatfields and the McCoys is a perfect
7 example of two distinct groups that have issues
8 between each other and bad blood between each
9 other, which is more on point to what came up in
10 this case.

11 THE COURT: Yeah, I don't know. When I think
12 law of the jungle I think more of animals than I
13 do people, kill or be killed, and, of course,
14 there's jungles all over the world where
15 African-Americans don't live either. So you could
16 make that argument as well.

17 Anyway, I understand your position and
18 certainly on behalf of Mr. Bell you certainly --
19 it's proper for you to raise this. That's for
20 darn sure.

21 Ms. Donahue, would you have anything you'd
22 like to add?

23 MS. DONAHUE: Well, Your Honor, I mean Buck
24 is just basically Strickland, infusing race.
25 Trying to avoid infusing race into a trial has

1 been a concern from -- I think I quoted a case
2 from 1979. So this is nothing new.

3 THE COURT: Right.

4 MS. DONAHUE: And it's not retroactive, it's
5 not a change in the law. So anyway you look at
6 it, this claim is procedurally barred. As you
7 said, Your Honor, it's very factually different
8 than Buck, as we discussed in our pleadings.

9 And I'll just rest on the rest of my pleading
10 as well. I don't want to repeat myself further,
11 Your Honor.

12 THE COURT: I understand. And you did good
13 work. Both of you did. And it's made it very
14 clear for us.

15 Mr. Norgard, anything else you'd like to add?
16 I'll give you the last word if you would.

17 MR. NORGARD: Thank you, sir.

18 I just want to address the comment thing that
19 this is just Strickland. Strickland deals solely
20 with the deficient performance of counsel and the
21 resulting prejudice. It's actually some of the
22 progeny of Strickland where the Court, you know,
23 did recognize and allow the trial attorneys to
24 make tactical and strategical decisions.

25 And essentially the U.S. Supreme Court in Buck

1 said you might have a tactical and strategic
2 decision for interjecting something that has racial
3 connotations, but that does not fly here forward
4 because of this decision in Buck, and that's why we
5 see it as being such a fundamental decision as it
6 relates to race.

7 Certainly there have been other cases that
8 deal with the issue of race, but not in the context
9 of the application of Strickland and its progeny
10 where it takes the tactical and strategic part of
11 it out of the trial attorney's hands when it comes
12 to racial type issues.

13 So, thank you very much, Your Honor.

14 THE COURT: All right. Thank both of you.
15 And we will be working on an order and get it to
16 you in a timely fashion.

17 MR. NORGARD: Thank you. Yes, sir.

18 THE COURT: Thank you again.

19 MR. NORGARD: Okay. Thank you.

20 MS. DONAHUE: Thank you, Your Honor.

21 (Thus the proceedings ended.)
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1 C E R T I F I C A T E

2

3 I, Faye M. Gay, hereby certify that the foregoing
4 transcript is a true and accurate transcription of my
5 Stenograph notes taken at the time and date stated herein.

6 Dated this 8th day of November, 2018.

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10 /S/ Faye M. Gay

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Faye M. Gay, CRR, RMR, FCR, RPR, CLVS

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