

1 THE COURT: Okay. What are those concerns?

2 PETITIONER BRASWELL: I was concerned about the ability to
3 procure some evidence that I thought I needed to meet the clear and
4 convincing bar that I have to reach.

5 THE COURT: Okay. And I thought you had resolved those?

6 PETITIONER BRASWELL: I haven't even - no.

7 THE COURT: Ms. Taylor Eskridge, I'm sorry, Mr. Braswell is
8 saying that he thinks that there is some more information that needs to be
9 prepared to be presented.

10 MS. ESKRIDGE: Respectfully, Your Honor, we just have a
11 difference of opinion as to what is necessary to proceed and what is not. He
12 has addressed Your Honor, several months ago, asking if he could play a
13 significant role in his representation and if he would be able to secure some
14 evidence and you know, I am more than willing to help him do that in any
15 way, it's just some things are not feasible and I don't have access to. Some
16 things were not discoverable at trial and are still not discoverable.

17 THE COURT: Review that with me, because I don't remember.

18 PETITIONER BRASWELL: Okay. Let me give you an example,
19 Your Honor. There are some statements that were made that relate to a
20 person's death in my case, perhaps attributable to another cause, or at least,
21 would make another intervening factor. And I don't know a whole lot, but I
22 thought that there was something that could be helpful, or favorable to me
23 that I'm supposed to get those things and there are statements to that effect.

24 THE COURT: Okay. I don't have the post conviction jacket up
25 here.

1 MS. ESKRIDGE: Your Honor, there were statements from
2 witnesses who were not called at trial, that were interviewed at some point in
3 time by the State, however, those witnesses were not called at trial and those
4 statements were not available at the trial level for review by the defense and
5 they are still not in any format that are available to me now.

6 PETITIONER BRASWELL: But, my argument Your Honor is, if
7 these were statements that were available and my attorney at trial, Jay Bailey
8 did not do his due diligence to have a Brady Hearing, or never even attempted
9 to procure these statements and they have never been reviewed by any
10 representative of the defense, not Jay Bailey at trial and not her now, that
11 somebody ought to -

12 THE COURT: Okay. Well, Ms. Eskridge, those should be available
13 to you. Anything exculpatory, I'm sure if Mr. Carriker is handling this, he'll
14 turn those over to you.

15 Are you handling this for the State?

16 MR. DOUG CARRIKER: When I start breaking into it I will sit
17 down with Ms. Eskridge and we will figure out what is and isn't discoverable
18 and report back to Your Honor.

19 PETITIONER BRASWELL: Again, Your Honor, I have some other
20 things. Would you allow me to speak with Ms. Eskridge for a few minutes and
21 then bring me back in, because we may be able to - if not, unless she doesn't
22 have time. If she doesn't have time then I could - do she have time to speak
23 with me for three to five minutes in the back?

24 THE COURT: I'm sure she has a few minutes to speak with you
25 now.

1 PETITIONER BRASWELL: Thank you.

2 THE COURT: Okay. Let's just hold this for a minute, but
3 tentatively we got a July 1st evidentiary.

4 (Later this same date a bench conference was at, to-wit):

5 ~~ESKRIDGE~~ ~~THE COURT~~: Your Honor, I just wanted to approach you briefly
6 about Vern Braswell. A lot of issues have been going on with that and you're
7 aware, but Doug (Carriker), is not aware that there have been several
8 different prosecutors just handing the file over and over and over and over.

9 It was originally, Bryan Davis who has a relationship with Mr.
10 Bailey, who was the trial attorney where, if Your Honor recalls, several - even
11 Larry Copeland ended up approaching me with, Your Honor, regarding me
12 getting discovery in this case. At first, nothing was available to me, not the
13 attorney's file, not the State's file. I was even told that the State's file was
14 located in California, which I have since learned that -

15 MR. CARRIKER: What?

16 MS. ESKRIDGE: And that was not from this attorney. But, that
17 none of the State's files are located in California on any case and it is just an
18 amazing -

19 MR. CARRIKER: In a storage facility?

20 MS. ESKRIDGE: Right.

21 MS. CARRIKER: No, it's across the street.

22 MS. ESKRIDGE: So at this point, most of my request have been
23 either ignored, or just not responded to, at all.

24 I did get Mr. Bailey's file, because Your Honor requested that he
25 give it to Bryan Davis, who then gave it to me, so I've finally went over

1 thoroughly with him on that, regarding the evidence. Mr. Braswell is
2 speaking about if there are some notes in the police records that indicate two
3 or three people were spoken to regarding the case. It doesn't reveal -

4 MR. CARRIKER: Are you talking about witnesses?

5 MS. ESKRIDGE: Witnesses, that weren't called in trial that didn't
6 appear to have any information that was exculpatory, or otherwise as
7 believed that it was determined that they didn't have anything that was -

8 THE COURT: That was material.

9 MS. ESKRIDGE: That was material. However, he feels that they
10 are necessary. Which, if I had access to them, or could get them I would
11 gladly give them to him.

12 MR. CARRIKER: Do you have names?

13 MS. ESKRIDGE: I do have some names and I'll provide you with
14 and to my knowledge there may be some material on the third floor
15 prosecutors property room, which I don't have access to.

16 MR. CARRIKER: I certainly will -

17 MS. ESKRIDGE: And I did have limited access to one item that
18 was located in that third floor file which was - and that was in a storage
19 somewhere else, off-site. The third floor person went and got that file. But I
20 can't remember what it was, but it was one thing that Your Honor specifically
21 gave me permission to go get from that floor. So once I got that reviewed that
22 was no problem. But, the rest of the stuff, is not something that I've ever had
23 available to me.

24 THE COURT: Okay. But, I think that Mr. Carriker will have
25 available to any witness statements, or anything like that.

1 MR. CARRIKER: For the record, when I asked - when I opened
2 that up today's request is when I ever opened those files.

3 MS. ESKRIDGE: Right. And so he has not denied me anything.

4 MR. CARRIKER: There are thousands of pages available.

5 THE COURT: Right. I was just wondering if we want to set an
6 interim report date and bring him in.

7 MS. ESKRIDGE: Right. And my reason today for going ahead and
8 setting a report date is, Your Honor, we've had so many report dates and I've
9 felt that you wanted me to move it forward.

10 THE COURT: Well, I do.

11 MS. ESKRIDGE: So I am making every effort -

12 THE COURT: I know.

13 MS. ESKRIDGE: -- to move forward.

14 THE COURT: So is everybody.

15 MS. ESKRIDGE: Yes, and I just thought -

16 MR. CARRIKER: Can I make a suggestion? There are two weeks -
17 the first and second week of June you're going to be out for vacation and then
18 there's the week of Judicial Conference?

19 THE COURT: Right.

20 MR. CARRIKER: Why don't you and I get together a few times
21 those two weeks --

22 MS. ESKRIDGE: Okay.

23 MR. CARRIKER: -- make sure you have everything you want.
24 Before that, I know it's kind of off, but there's a - before that, give me the
25 names, get me any information that you need, it doesn't have to be formal,

1 it is sent to. Basically, it is just that they have a policy that doesn't work well
2 with the Court of Appeals policy.

3 THE COURT: Okay. It sounds like we need to re-request the
4 record back here again and once you get it back here I'll enter an order that
5 you have access to listen to, or review anything, whether it is sealed, or not
6 sealed.

7 MS. ESKRIDGE: And I am hoping that it is in CD format, because
8 at this point I don't know if it is tapes, or CD's. I am hoping that it is a CD.

9 MR. CARRIKER: In 2005, it is probably a tape.

10 MS. ESKRIDGE: Okay. And that's another thing, so then it will be
11 twenty hours of conversations that I have to stay in that room listening to. So
12 I don't know how feasible that is and I can't imagine how long it will take me
13 to listen to fifty hours worth of jail conversations, because apparently, he did
14 a lot of talking on the phone.

15 THE COURT: Well, okay, we will figure something out. We'll find
16 out what is in there. Let's get it back over here.

17 MS. ESKRIDGE: I'll do that today.

18 THE COURT: And if we need to extend this evidentiary hearing
19 date, we will. But, let's first get the record back here and then we will deal
20 with the Appeals section and getting that available to you and if we don't Mr.
21 Carriker will honor these statements, okay.

22 MR. CARRIKER: And we can do open file, we can copy whatever I
23 think is exculpatory, we can definitely look through anything we have in
24 there.

25 MS. ESKRIDGE: Okay.

1 THE COURT: You can do that and make copies of it.

* 2 MR. CARRIKER: There shouldn't be anything to hide at this point
3 since he's already been convicted, so.

4 THE COURT: Yeah, I mean, you can get it from the Freedom of
5 Information Act, so I don't think that should be any problem. But, do you
6 want to set a report date right now, an interim report date on Braswell?

7 MR. CARRIKER: How about after that first week of April, so we
8 can see where we are at at that point?

9 THE COURT: How about April the 20th?

10 MS. ESKRIDGE: Okay. And I will pass forward additional orders
11 to get him here.

12 THE COURT: Sure. And if you want to bring him in, or whatever
13 you're doing with him, that is fine.

14 MS. ESKRIDGE: Okay.

15 THE COURT: April 20th.

16 MS. ESKRIDGE: Thank you.