

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

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COMMONWEALTH : 1357-1359

VS :

MUMIA ABU-JAMAL : 1982

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Room 613 City Hall  
Philadelphia, Pa.

April 1, 1982

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BEFORE: THE HONORABLE PAUL RIBNER, J.

APPEARANCES:

JOSEPH MCGILL, Esquire  
For the Commonwealth

ANTHONY JACKSON, Esquire  
For the Defendant

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COURT CRIER: This is the matter of Commonwealth versus Mumia Abu-Jamal, Your Honor.

MR. JACKSON: Good morning, Your Honor.

MR. MCGILL: Good morning, Your Honor.

THE COURT: Mr. Jackson, are you ready to go ahead?

MR. JACKSON: Yes, sir.

THE COURT: We have several rulings that have to be made this morning. First, as to the contents of the Internal Affairs file. Frank, will you give a copy of this to both counsel?

Now, I have gone through the entire file, and I have given you a list of everything that I find is in this file.

Mr. McGill, are there any portions of this which you object to turning over to Mr. Jackson? I think most of it is self-explanatory.

MR. MCGILL: May I have just a second to read through it, Judge?

THE COURT: Sure.

MR. MCGILL: I have had an opportunity to review this sheet, Your Honor, which lists sixteen separate categories. Your Honor, I have no objection to any of this information being handed over to Mr. Jackson for the purposes of his defense.

There is only one request that I would make, Your

Honor, and that is that in keeping with this Court's practice -- and certainly I would state that it's also the Commonwealth's position that this should be done -- I would ask that the addresses of the civilians be deleted.

Now, if the Court would want, rather than cause the Court or some middle party to have to provide the manpower to do that, sir, I would supply the manpower to do that, if the Court wishes -- whatever you want, sir. But that's the only request I make of the Court, which I believe is a request consistent with Your Honor's past rulings.

THE COURT: Yes, I will grant that request.

What I propose doing -- this list contains a list of interviews, assignment sheets, newspaper clippings, transcripts of radio transmissions, various interviews, hospital personnel interviews, and so on. And the material also contains a recording of an interview of a witness, a tape recording of an interview of a witness.

What I propose doing is to return this file to the Internal Affairs Unit. I have reviewed this entire file. I would return this file to the Internal Affairs Unit -- counsel has a list of the information in the file -- and direct that the file be made available to Mr. Jackson.

MR. MCGILL: Yes, sir.

MR. JACKSON: You may recall, Your Honor, that in addition to my request pursuant to the executive order I also filed a request pursuant to Directive 10, with respect to the review board, concerning the shooting. It is my

understanding, Your Honor that that review, that investigation, is a separate and distinct investigation. And I also requested the results of any investigation with respect to that.

THE COURT: I don't know if I reviewed that. Is that a separate file?

MR. JACKSON: It's my understanding that it is indeed a separate investigation, sir. My review of Directive 10 suggest that it is something separate and apart from Internal Affairs. My understanding is that the investigation conducted by Internal Affairs is pursuant to the executive order and that the investigation with regard to a shooting incident, a review of a shooting incident, is pursuant to Directive 10.

THE COURT: Mr. McGill, is there a separate file with respect to that?

MR. MCGILL: I know of no such separate file, sir. I believe all of it is consolidated in the material that Your Honor has reviewed. There is a police shooting record, which I have handed over to Mr. Jackson, but that's largely made up by the homicide detectives themselves. As I say, he has a copy of that. I handed it to him, to Mr. Jackson, this morning. If there is any other material anywhere, Your Honor, I will certainly alert this Court with respect to that. But I would say that as of now any material at all involving this incident is before Your Honor right now, any information pursuant to Mr. Jackson's request.

MR. JACKSON: I would only point out to the

Court that I don't believe Mr. McGill is in a position to make that representation to the Court, sir, that in fact it is all there. In fact, it's my understanding that Mr. McGill has not even seen the material. So I don't see how he can say it's all there.

THE COURT: He says he knows of no other files.

MR. JACKSON: I understand that.

MR. MCGILL: That's what I am saying.

MR. JACKSON: I understand that, sir. And that's my point.

THE COURT: Implicit in that statement is that it's either all there or it's not in existence.

MR. JACKSON: My point is that he doesn't know if it indeed exists. All he knows is that it hasn't been produced. And what I am saying is that in fact there is -- or there should be -- another investigation file.

THE COURT: Is that part of your motion anywhere?

MR. JACKSON: Yes, it is. It's in my omnibus pretrial motion, the motion that I filed. I believe it's Paragraph 14 or 15.

THE COURT: Mr. McGill, will you file a written answer saying there is no other information that you know of, or that your investigation discloses none, or whatever?

MR. MCGILL: I will have that filed immediately, sir, certainly by the end of this week.

MR. JACKSON: May it please the Court, I don't think that that is a satisfactory response to my request.

You may recall that the last time here you indicated that you would request both files of investigation.

THE COURT: I asked for everything from Internal Affairs. And this is it, this file.

MR. JACKSON: Well, Your Honor, you asked for both files from Internal Affairs. And my point is that Internal Affairs is not authorized to receive the information that I am requesting. They may have it, but it's not their major responsibility. That's what I am saying.

THE COURT: I am asking Mr. McGill to check and see if there is a separate file as a result of any other investigation.

MR. MCGILL: I will do that, sir.

MR. JACKSON: Your Honor, fine.

THE COURT: What more can I do? I can't order something turned over if it's not in existence.

MR. JACKSON: Your Honor, the point is you requested it once and you are assuming that it doesn't exist, with no one giving you any indication to the contrary.

THE COURT: No, not at all. I am asking Mr. McGill to check it out, to determine whether there is another file. In other words, I want a complete statement from him.

MR. MCGILL: You will have that statement, sir.

THE COURT: So we will have that in writing and it will be part of the file in this case. That's as strong a position as I can take.

MR. JACKSON: Fine, sir.

THE COURT: I'm putting the burden on Mr. McGill to check it out.

All right, that takes care of the Internal Affairs file. I will return the file to Internal Affairs, from whence it came, and you can get it through channels. And I have a list, and so does counsel, of everything that's in there.

MR. JACKSON: Yes, sir.

THE COURT: So with that you should have everything available to you.

MR. JACKSON: Fine. Very well, Your Honor.

THE COURT: I made a complete list of everything that I found in the file.

MR. JACKSON: Thank you, very much.

THE COURT: Now, the next motion has to do with the lineup.

I have reviewed the law very carefully and I have reviewed the transcripts of other hearings, earlier hearings, and I am denying any further request for a lineup.

MR. JACKSON: Very well, Your Honor.

THE COURT: On the defendant's segregation, I spoke to Superintendent Owens, and he advised me that he was going to transfer Mr. Jamal back to the general population.

MR. JACKSON: He has been so transferred.

THE COURT: Superintendent Owens explained that the order was not a punishment aimed at Mr. Jamal, but to make sure that he was protected. I said that I would leave such matters up to him, but I did request that he be returned to

the general population. Now, if there is any problem, then Superintendent Owens can do whatever he feels is necessary and report back to me, and I'll let you know.

Now, on the jury questionnaires of the potential veniremen, I am going to deny your request with respect to that. I think the scope of the voir dire should be left to the trial judge, and that's where you're going to have to make the argument as to how deeply you should be allowed to question individual panel members

So that I will leave those matters up to the trial judge, the jury questioning, the questionnaires, and so on. Those will be decisions for the trial judge to make.

MR. JACKSON: I can appreciate that, Your Honor, with regard to sending them out to their homes. My thought, nevertheless, is perhaps a fall-back position, sir, and that is that once the jurors are brought to City Hall, to the jury room, before coming to the trial courtroom -- I'm talking now about the questionnaires -- the questionnaires could be distributed at that point, before coming into the courtroom.

THE COURT: Well, that's part of the voir dire process, really, so I'll leave that up to the trial judge. Whoever the trial judge is, he or she should have discretion as to that.

MR. JACKSON: Fine. Do I understand Your Honor's order to be that when in fact a trial date is scheduled we will have sufficient time to distribute and collect the questionnaires then, sir, prior to going into the courtroom? I guess I'm wondering whether or not the trial judge would be assigned in sufficient time to --

THE COURT: As soon as the case is assigned to whatever trial judge is going to get it, he or she will call a conference with the attorneys and you will sit down and discuss scheduling. If you need more time, you will express that request to the trial judge. I just don't think that should be taken up as a pretrial matter now. So I'm denying your request to send out questionnaires now.

MR. JACKSON: To send them out now?

THE COURT: Yes. On the fall-back motion, you still have your argument before the trial judge.

Now, on the increase in costs, I will sign an order granting the normal amounts that our policy allows. I'm leaving the question open, however, to this extent: if your experts give you an itemized bill, I will consider that at that point. But I would rather do it after a bill is submitted. You won't be foreclosed from submitting an itemized bill later on, however. In other words, I just don't want to set an amount that I do

not set in other cases and have you go out and say, "I can go and hire all kinds of expensive experts." However, if you hire an expert and he has to do extensive work, have him submit an itemized bill to that effect. And you can do that before trial.

MR. JACKSON: The practical problem I have -- if I go to an expert and say, "I have one hundred and fifty dollars now, but maybe you can get more a year from now" --

THE COURT: Tell them, "The calendar judge said, 'Trust me.'"

MR. JACKSON: Okay, Your Honor. But it hasn't worked thus far. I haven't been able to secure the experts that I need, sir, because of the money problem, I really haven't. There has been no expert that I can get, other than the investigator.

THE COURT: Go out and get your best expert and tell him to give you bills. You know, if you're going to have your eyes examined you would ask the doctor what he's going to charge you.

MR. JACKSON: I understand that, Your Honor.

THE COURT: I just don't want to give you a blanket amount.

MR. JACKSON: I understand that, Your Honor. But most of the experts I need -- the ballisticians are three hundred dollars, the other experts charge three to three hundred fifty dollars, in advance.

THE COURT: You can submit an itemized bill at any stage of the proceedings. Give a copy to Mr. McGill, and if he has any objections he can express them. That way we have some control over it. I don't think we'll have any problems.

MR. MCGILL: May I make one observation, sir? Is there some kind of a defense fund that is available to the defense in this case?

THE COURT: I don't know.

MR. MCGILL: I have heard about it. Now, maybe there isn't one. But I think the Court, in the interest of justice should be made aware of that, sir, if such a fund does exist, so that you can have all the facts in front of you.

MR. JACKSON: There is an independent defense fund. Some use of that money has been made. The problem is, Your Honor, it isn't that much.

THE COURT: Well, all right. We can have a

conference with counsel, if need be, on this matter. If you have an itemized bill from an expert, the Court will consider it. I just do not want to give you a blank check, because we don't do that in any other case. But the Court will call a conference with you and Mr. McGill at any time that you have any problem.

MR. JACKSON: Very well.

MR. MCGILL: Yes, sir.

THE COURT: Any other rulings on the omnibus motions? Anything else open?

MR. JACKSON: I think that would be it, Your Honor.

THE COURT: All right. If there is any --

MR. JACKSON: May I have one moment, please?

THE COURT: Yes.

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MR. JACKSON: Your Honor, one other matter --

THE COURT: Incidentally, before you begin, I did

get a letter from Superintendent Owens. I'm going to put the letter in the file. The superintendent wants to make it very clear that there was no reason directed against Mr. Jamal for his being segregated. He says he will move to comply with my order. And he also says, "I would, however, like to take this opportunity to express my grave concerns. It is my view that the needs of the institution can best be carried out with Mr. Jamal in administrative segregation."

So the superintendent indicates that this was solely an administrative decision.

MR. JACKSON: Yes, sir.

THE COURT: The letter will be entered into the file.

MR. JACKSON: I understand Superintendent Owens' attitude.

MR. MCGILL: Yes, sir.

MR. JACKSON: And my feeling has always been that if he wanted to punish Mr. Jamal he would put him in administrative segregation.

THE COURT: Well, he says that's not so. And I

believe him. He has always been a complete gentleman.

MR. JACKSON: I'm not saying that he was attempting to punish him. I'm simply saying that the impact and effect on Mr. Jamal is punishment, whether or not it's being done for what are called good reasons.

THE COURT: Well, he says he will comply with the request. And I'm putting this in the record.

MR. JACKSON: One other matter: if you will recall, Your Honor did order that Mr. Jamal be permitted to receive certain types of food. Mr. Jamal has substantially been able to receive that food up at the prison and has been getting that diet. Now, he was bringing his food to City Hall today --

THE COURT: I asked about the raw vegetables, raw turnips, garlic, everything else.

MR. JACKSON: Fine. He was bringing food with him today, down to City Hall, and the sheriff took that food from him. And I am requesting the Court to have the food returned to him

THE COURT: Sheriff, do you know anything about that?

Well, we'll check with the sheriff's office upstairs. If the food is available we'll see that it's made available to him.

MR. JACKSON: Your Honor, it's my understanding that it was not put on the bus with Mr. Jamal when he came down.

THE COURT: There is a limit to how far we can go. As I say, the foods that are being made available are those that are in season and are easily obtainable in this area of the country. Beyond that, I'm not going to --

MR. JACKSON: I understand Your Honor's position.

THE COURT: If the food was provided to Mr. Jamal today we'll get it to him. I'll check with the sheriff's office. If it wasn't put on the bus, and if there's another bus coming down, maybe they can send it down.

MR. JACKSON: Can it be understood in the future that the sheriff's office can be directed to know that Mr. Jamal is permitted to have --

THE COURT: I'll talk to the sheriff's office.

MR. JACKSON: Fine, sir. Very well.

THE COURT: Just a moment, please.

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THE COURT: About the food, Mr. Jackson, can you arrange to get it to him today, or arrange to have it brought to him?

MR. JACKSON: If I can have an order from you, Your Honor.

THE COURT: Okay. When he gets his lunch today.

MR. JACKSON: Fine.

MR. MCGILL: Is that it, Judge?

THE COURT: Well, Mr. Jackson may have a few other things.

MR. JACKSON: I think that would complete my business before the Court today with regard to Mr. Jamal.

THE COURT: You may not have liked all of my orders today, Mr. Jackson, but rest assured I spent many hours going over what was submitted to me, many hours researching the law involved, and I think I'm right.

MR. JACKSON: Yes, sir.

MR. MCGILL: Thank you, Your Honor.

THE COURT: When do you think you will be ready to talk about preparation for trial?

MR. JACKSON: Your Honor, we have a tentative schedule -- I have a tentative appointment to meet with Mr. McGill this Friday to review the other evidence. I am on trial, as you know, before Judge Stout, but I am hopeful that I will be able to do that on Friday, meet with Mr. McGill. And then I would like to review the materials Your Honor has just received. If I can complete those things in a couple of weeks, I think I would be in a good position to suggest to Your Honor a trial date.

THE COURT: All right. Do you want to come back toward the end of April sometime? You have a June 7th run date here.

MR. JACKSON: The run date, I believe, is June 6th.

MR. MCGILL: June 7th.

THE COURT: How about if we give you another listing

toward the end of April?

MR. MCGILL: That's fine, Judge.

THE COURT: How about Thursday the 29th?

MR. MCGILL: That's fine with the Commonwealth,  
Your Honor.

THE COURT: That gives you four weeks.

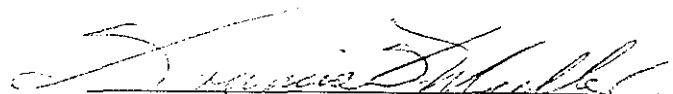
MR. JACKSON: Fine, sir.

THE COURT: All right. April '29th will be the  
next date for a status listing, and by that time, hopefully,  
we'll have some idea about trial.

MR. MCGILL: Yes, sir.

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

  
\_\_\_\_\_  
Official Stenographer

7/31 19 95  
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Date

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

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Judge