

## TRANSCRIPT OF Mar09-726407.wav

Transcription by Brian D. Hill after Roberta Hill uploaded audio file to Amazon AWS service which had used the assistance of Artificial Intelligence (AI) of analyzing the audio file; with review by Stella Forinash

Date of transaction: January 14, 2024.

Date of audio file recording: March 09, 2023.

Participants: Brian D. Hill, Roberta Hill, Stella Forinash, Kenneth Forinash, Attorney Fred Smith

Recording by: Brian D. Hill, consented to recording of conversation

Conversation recorded at: Office of Fred D. Smith, Jr. P.C., 46 W Main St, Martinsville, VA 24112

Note: Transcription based on time-frame of audio file. So full sentences may be split into separate sections when created with the assistance of AI transcription.

### TRANSCRIPTION:

0

00:00:00 --> 00:00:01

[Fred Smith] Right,

1

00:00:01 --> 00:00:05

[Fred Smith] now out in this case, they uh asked that a special prosecutor be

2

00:00:06 --> 00:00:06

[Fred Smith] done.

[Roberta Hill] Ok.

3

00:00:08 --> 00:00:08

[Fred Smith] And

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00:00:08 --> 00:00:08

[Fred Smith] uh

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00:00:08 --> 00:00:10

[Fred Smith] special prosecutor,

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00:00:13 --> 00:00:13

[Fred Smith] yeah.

7

00:00:15 --> 00:00:19

[Fred Smith] Uh Justin, and I have talked extensively about

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00:00:19 --> 00:00:20

[Fred Smith] this case.

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00:00:22 --> 00:00:24

[Fred Smith] And so let me

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00:00:28 --> 00:00:29

[Fred Smith] tell you, I think

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00:00:34 --> 00:00:36

[Fred Smith] there is a provision of the law,

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00:00:37 --> 00:00:39

[Fred Smith] a special provision of the law

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00:00:40 --> 00:00:41

[Fred Smith] that

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00:00:41 --> 00:00:43

[Fred Smith] uh addresses

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00:00:44 --> 00:00:44

[Fred Smith] um

16

00:00:45 --> 00:00:46

[Fred Smith] folks who

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00:00:47 --> 00:00:50

[Fred Smith] are facing any kind of charge who have autism.

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00:00:52 --> 00:00:55

[Fred Smith] Uh I don't think this was on the books at the time

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00:00:56 --> 00:00:56

[Fred Smith] uh

20

00:00:57 --> 00:00:58

[Fred Smith] in, in 2018.

21

00:01:00 --> 00:01:00

[Fred Smith] Uh

22

00:01:01 --> 00:01:03

[Fred Smith] but it's this way

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00:01:04 --> 00:01:05

[Fred Smith] uh

24

00:01:06 --> 00:01:09

[Fred Smith] the deferred disposition in a criminal case,

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00:01:09 --> 00:01:11

[Fred Smith] persons with autism or intellectual disability

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00:01:12 --> 00:01:16

[Fred Smith] in any criminal case except a violation of 18.3 31

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00:01:17 --> 00:01:18

[Fred Smith] um

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00:01:18 --> 00:01:19

[Fred Smith] which is murder.

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00:01:20 --> 00:01:20

[Fred Smith] Uh

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00:01:21 --> 00:01:22

[Fred Smith] And then another

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00:01:22 --> 00:01:24

[Fred Smith] irrelevant section or

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00:01:24 --> 00:01:28

[Fred Smith] any crime for which a deferred disposition is provided for by statute,

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00:01:28 --> 00:01:31

[Fred Smith] a form of plea of guilty or after a plea of not guilty.

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00:01:31 --> 00:01:35

[Fred Smith] And the facts found by the court would justify finding of guilty

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00:01:35 --> 00:01:37

[Fred Smith] the court may if the defendant has

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00:01:37 --> 00:01:40

[Fred Smith] been diagnosed by a psychiatrist or clinical psychologist

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00:01:41 --> 00:01:45

[Fred Smith] with an autism spectrum disorder is defined. Most recent addition

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00:01:45 --> 00:01:48

[Fred Smith] of the diagnostic and statistical manual

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00:01:48 --> 00:01:53

[Fred Smith] of mental disorders published by the American Psychiatric Association or

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00:01:53 --> 00:01:53

[Fred Smith] in

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00:01:53 --> 00:01:57

[Fred Smith] intellectual disabilities is defined in 37.2 100.

42

00:01:57 --> 00:02:01

[Fred Smith] The court finds by clear and convincing evidence that the conduct was

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00:02:01 --> 00:02:03

[Fred Smith] caused by or has directed substantial

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00:02:03 --> 00:02:06

[Fred Smith] relationship to the person's disorder disability

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00:02:06 --> 00:02:10

[Fred Smith] without airing a judgment of guilt and with the consent of the accused. And

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00:02:10 --> 00:02:14

[Fred Smith] after giving due consideration to the position of attorney for the commonwealth

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00:02:15 --> 00:02:16

[Fred Smith] and the views of the victims defer

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00:02:16 --> 00:02:19

[Fred Smith] such proceedings and place the accused on probation

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00:02:19 --> 00:02:22

[Fred Smith] subject to terms and conditions set to the court

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00:02:23 --> 00:02:24

[Fred Smith] in violation of the term or condition.

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00:02:24 --> 00:02:27

[Fred Smith] The court may enter an adjudication of guilt

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00:02:27 --> 00:02:29

[Fred Smith] or upon fulfillment of the terms and conditions.

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00:02:29 --> 00:02:32

[Fred Smith] The court may discharge the person and dismiss the proceedings against him

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00:02:33 --> 00:02:35

[Fred Smith] without any adjudication of guilt.

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00:02:35 --> 00:02:36

[Fred Smith] So,

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00:02:38 --> 00:02:38

[Fred Smith] um

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00:02:38 --> 00:02:41

[Fred Smith] here's what uh we have under consideration.

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00:02:41 --> 00:02:43

[Fred Smith] Uh Mr uh

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00:02:44 --> 00:02:44

[Fred Smith] um

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00:02:45 --> 00:02:47

[Fred Smith] Griffin and I talked extensively about

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00:02:48 --> 00:02:50

[Fred Smith] uh your history, various diagnoses.

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00:02:52 --> 00:02:53

[Fred Smith] Uh He proposes that

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00:02:54 --> 00:02:57

[Fred Smith] uh there will be a joint motion by

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00:02:58 --> 00:02:59

[Fred Smith] the Commonwealth

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00:02:59 --> 00:03:02

[Fred Smith] and the defendant one

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00:03:03 --> 00:03:03

[Fred Smith] and

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00:03:04 --> 00:03:09

[Fred Smith] that there is an agreement on the record in the court files that you have a diagnosis

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00:03:09 --> 00:03:10

[Fred Smith] of autism

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00:03:11 --> 00:03:14

[Fred Smith] that autism explains uh

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00:03:15 --> 00:03:17

[Fred Smith] the behaviors at issue here,

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00:03:17 --> 00:03:19

[Fred Smith] uh that um

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00:03:21 --> 00:03:21

[Fred Smith] um

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00:03:22 --> 00:03:25

[Fred Smith] and o other findings and that uh

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00:03:25 --> 00:03:26

[Fred Smith] with that

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00:03:26 --> 00:03:31

[Fred Smith] you would be placed on probation for probably six months and probably the only

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00:03:32 --> 00:03:34

[Fred Smith] the biggest term of your



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00:03:34 --> 00:03:34

[Fred Smith] probation be that

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00:03:35 --> 00:03:36

[Fred Smith] you don't make any more filings

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00:03:37 --> 00:03:40

[Fred Smith] uh without the assistance of a lawyer

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00:03:40 --> 00:03:43

[Fred Smith] that, that, that would be the primary condition.

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00:03:44 --> 00:03:48

[Fred Smith] And the way that works is when we go to court tomorrow.

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00:03:49 --> 00:03:52

[Fred Smith] If this is what I'm telling you all, it's agreeable.

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00:03:53 --> 00:03:54

[Fred Smith] We would, we would

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00:03:54 --> 00:03:56

[Fred Smith] not set a trial date,

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00:03:56 --> 00:03:59

[Fred Smith] but what's called a disposition date.

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00:03:59 --> 00:04:01

[Fred Smith] And during that period of time,

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00:04:01 --> 00:04:02

[Fred Smith] Mr Griffin,

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00:04:02 --> 00:04:04

[Fred Smith] I had not had time to work on this order

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00:04:04 --> 00:04:07

[Fred Smith] because I've got a jury trial after you be in court

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00:04:07 --> 00:04:07

[Fred Smith] in tomorrow

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00:04:07 --> 00:04:09

[Fred Smith] working all day to day on that.

[Brian Hill] yeah

92

00:04:10 --> 00:04:11

[Fred Smith] And so the, the

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00:04:12 --> 00:04:12

[Fred Smith] Mr Griffin,

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00:04:13 --> 00:04:13

[Fred Smith] and I

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00:04:13 --> 00:04:14

[Fred Smith] will prepare the order,

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00:04:15 --> 00:04:18

[Fred Smith] you will review it because you have to agree to it as well.

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00:04:19 --> 00:04:21

[Fred Smith] And then, um,

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00:04:22 --> 00:04:25

[Fred Smith] uh then Judge Greer would have to agree to it.

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00:04:25 --> 00:04:26

[Fred Smith] I suspect that he would

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00:04:27 --> 00:04:28

[Fred Smith] and that would conclude the matter.

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00:04:28 --> 00:04:31

[Fred Smith] In other words, after six months, this would,

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00:04:31 --> 00:04:33

[Fred Smith] this would be dismissed no longer appear on the record.

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00:04:34 --> 00:04:34

[Fred Smith] Now,

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00:04:36 --> 00:04:39

[Fred Smith] le let me tell you what this does for you all with respect to

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00:04:40 --> 00:04:41

[Fred Smith] this situation at all.

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00:04:42 --> 00:04:43

[Fred Smith] I really wish,

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00:04:45 --> 00:04:49

[Fred Smith] you know, the public defender folks have tough jobs,

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00:04:50 --> 00:04:52

[Fred Smith] they've got so many people to defend,

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00:04:52 --> 00:04:53

[Fred Smith] but

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00:04:53 --> 00:04:56

[Fred Smith] in your case, they appropriately asked for an evaluation.

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00:04:57 --> 00:04:58

[Fred Smith] And in fact,

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00:04:59 --> 00:05:00

[Fred Smith] at the circuit court level, there've been,

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00:05:00 --> 00:05:03

[Fred Smith] there've been a notification of intent to

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00:05:03 --> 00:05:08

[Fred Smith] plead an insanity defense, which was the only way to get the issue addressed

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00:05:09 --> 00:05:11

[Fred Smith] under the law at that time.

[Brian Hill] yeah

116

00:05:12 --> 00:05:15

[Fred Smith] You see, the, the law has changed dramatically

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00:05:15 --> 00:05:17

[Fred Smith] since 2018 when that,

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00:05:17 --> 00:05:19

[Fred Smith] when you were first charged

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00:05:19 --> 00:05:20

[Fred Smith] and

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00:05:22 --> 00:05:23

[Fred Smith] my system I

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00:05:24 --> 00:05:24

[Fred Smith] get.

122

00:05:32 --> 00:05:32

[Fred Smith] Ok,

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00:05:32 --> 00:05:34

[Fred Smith] I'll just take that message.

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00:05:37 --> 00:05:37

[Fred Smith] Yeah.

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00:05:38 --> 00:05:39

[Fred Smith] And,

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00:05:39 --> 00:05:45

[Fred Smith] you know, ii, I certainly understand that you were upset and you felt like,

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00:05:45 --> 00:05:46

[Fred Smith] um,

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00:05:47 --> 00:05:49

[Fred Smith] your issues weren't being properly addressed.

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00:05:50 --> 00:05:51

[Fred Smith] I understand that.

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00:05:51 --> 00:05:52

[Fred Smith] But

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00:05:52 --> 00:05:52

[Fred Smith] what

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00:05:53 --> 00:05:56

[Fred Smith] the prosecutors used the process,

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00:05:56 --> 00:05:57

[Fred Smith] uh, and, and

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00:05:57 --> 00:05:59

[Fred Smith] I mean, the, you know, defense attorneys,

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00:06:00 --> 00:06:02

[Fred Smith] uh, when I look at the record

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00:06:03 --> 00:06:07

[Fred Smith] while all the appropriate motions took all the appropriate steps,

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00:06:08 --> 00:06:11

[Fred Smith] they were handicapped as what they could do for you in 2018.

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00:06:11 --> 00:06:13

[Fred Smith] And I understand you were upset

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00:06:13 --> 00:06:16

[Fred Smith] and Judge Greer's pan for time because,

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00:06:17 --> 00:06:19

[Fred  
Smith] because getting, getting

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00:06:20 --> 00:06:22

[Fred Smith] your issues before the court

142

00:06:22 --> 00:06:24

[Fred Smith] in the proper format

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00:06:25 --> 00:06:25

[Fred Smith] do not have,

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00:06:26 --> 00:06:27

[Brian Hill] um, actually,

145

00:06:28 --> 00:06:30

[Brian Hill] why were they allowed to let the body camera footage

146

00:06:30 --> 00:06:35

[Brian Hill] be destroyed in 2019 before seven months before I withdraw my

147

00:06:35 --> 00:06:35

[Brian Hill] appeal

148

00:06:36 --> 00:06:36

[Fred Smith] uh,

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00:06:36 --> 00:06:40

[Fred Smith] that I, I don't, I don't answer that, but that's, but you, you've got to get the,

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00:06:40 --> 00:06:44

[Fred Smith] you've got to get the proper form and the proper procedure

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00:06:45 --> 00:06:47

[Fred Smith] to, to address that Brian, you just, you know,

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00:06:47 --> 00:06:50

[Fred Smith] and so forth that has not happened.

153

00:06:50 --> 00:06:51

[Fred Smith] And so,

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00:06:51 --> 00:06:51

[Fred Smith] uh,

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00:06:51 --> 00:06:55

[Fred Smith] what needs to happen is you get this, this chapter right now,

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00:06:55 --> 00:06:57

[Fred Smith] this contempt chapter closed

[Brian Hill] alright

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00:06:57 --> 00:06:59

[Fred Smith] and you simply must

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00:06:59 --> 00:07:00

[Fred Smith] engage

159

00:07:00 --> 00:07:01

[Fred Smith] an attorney



160

00:07:02 --> 00:07:07

[Fred Smith] to pursue a petition and filing of actual innocence in the proper format.  
[Stella Forinash] Can

161

00:07:08 --> 00:07:08

[Stella Forinash] you still

162

00:07:08 --> 00:07:08

[Stella Forinash] do

163

00:07:08 --> 00:07:09

[Stella Forinash] that?

164

00:07:14 --> 00:07:15

[Fred Smith] Sure, you can, you can file the petition

165

00:07:16 --> 00:07:16

[Fred Smith] for the actual innocence anytime

166

00:07:16 --> 00:07:17

[Fred Smith] There you go. (Note: may have been in audio, AI found this one)

167

00:07:17 --> 00:07:20

[Brian Hill] Uh, that's not, they don't have that for

168

00:07:20 --> 00:07:21

[Brian Hill] misdemeanors.

169

00:07:21 --> 00:07:21

[Brian Hill] They're just felonies

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00:07:22 --> 00:07:22

[Brian Hill] I've tried

171

00:07:23 --> 00:07:23

[Brian Hill] that.

[Fred Smith] Your right about that.

172

00:07:26 --> 00:07:27

[Fred Smith] Uh

173

00:07:27 --> 00:07:29

[Fred Smith] And if that's the case, that's just the law,

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00:07:30 --> 00:07:31

[Fred Smith] that's, that's,

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00:07:31 --> 00:07:34

[Fred Smith] you know, that's just, unfortunately, the law,

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00:07:34 --> 00:07:38

[Roberta Hill] I have a question, what specifically did he say?

177

00:07:38 --> 00:07:42

[Roberta Hill] in the three appeals that offended or insulted that they

178

00:07:43 --> 00:07:44

[Fred Smith] accused him of fraud and conspi (note: almost said the word conspiracy)

179

00:07:46 --> 00:07:47

[Fred Smith] fraud on the court.

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00:07:47 --> 00:07:49

[Fred Smith] Uh

181

00:07:49 --> 00:07:49

[Fred Smith] Was it

182

00:07:51 --> 00:07:51

[Fred Smith] really

183

00:07:52 --> 00:07:55

[Fred Smith] man that when you accuse a judge of committing fraud?

184

00:07:55 --> 00:07:56

[Fred Smith] That's

185

00:07:57 --> 00:07:57

[Fred Smith] uh

186

00:07:59 --> 00:08:01

[Roberta Hill] what about freedom of speech?

[Fred Smith] what?

187

00:08:01 --> 00:08:01

[Roberta Hill] Are you

188

00:08:01 --> 00:08:01

[Roberta Hill] not

189

00:08:01 --> 00:08:02

[Roberta Hill] allowed

190

00:08:02 --> 00:08:02

[Roberta Hill] to

191

00:08:02 --> 00:08:02

[Roberta Hill] accuse

192

00:08:04 --> 00:08:04

[Roberta Hill] anybody of anything?

193

00:08:05 --> 00:08:06

[Fred Smith] You got to have facts

194

00:08:06 --> 00:08:07

[Fred Smith] to support that.

195

00:08:09 --> 00:08:09

[Stella Forinash] He did have facts.

196

00:08:09 --> 00:08:11

[Brian Hill] did you read all of the facts I have?

197

00:08:12 --> 00:08:15

[Fred Smith] I've read your facts. I haven't seen any facts

198

00:08:15 --> 00:08:16

[Fred Smith] that would have,

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00:08:16 --> 00:08:17

[Fred Smith] that would

200

00:08:18 --> 00:08:20

[Fred Smith] suggest that Judge Greer didn't do anything

201

00:08:21 --> 00:08:21  
[Fred Smith] but follow

202  
00:08:21.920 --> 00:08:22.029  
[Fred Smith] the

203  
00:08:23 --> 00:08:25  
[Fred Smith] law  
[Brian Hill] disobeying court orders is disobeying the law.

204  
00:08:26 --> 00:08:29  
[Fred Smith] I'm in a situation to get this chapter closed.  
[Brian Hill] alright

205  
00:08:30 --> 00:08:32  
[Fred Smith] I do not want to get into all this other stuff

206  
00:08:33 --> 00:08:35  
[Fred Smith] and I will not get into all this other stuff.

207  
00:08:36 --> 00:08:41  
[Fred Smith] So if you want me to conclude this matter with respect to this contempt proceeding

208  
00:08:41 --> 00:08:44  
[Fred Smith] in the fashion of which I've described I will.

209  
00:08:46 --> 00:08:48  
[Fred Smith] But you are gonna have to get some other lawyer  
[Brian Hill] alright

210  
00:08:48 --> 00:08:49  
[Fred Smith] to pick this up,

211

00:08:50 --> 00:08:52

[Fred Smith] uh, and pursue,

212

00:08:52 --> 00:08:54

[Fred Smith] uh, the issues that you all, uh,

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00:08:56 --> 00:09:00

[Fred Smith] have focused a great deal of time and attention on in recent years?

[Brian Hill] alright

214

00:09:02 --> 00:09:03

[Stella Forinash] Is that [speaker difficult to hear]

215

00:09:03 --> 00:09:03

[Stella Forinash] ok? [speaker difficult to hear]

216

00:09:04 --> 00:09:04

[Stella Forinash] Yeah. [speaker difficult to hear]

217

00:09:07 --> 00:09:11

[Fred Smith] So that the, the there are, there are attorneys out there who specialize, uh,

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00:09:11 --> 00:09:15

[Fred Smith] in, in, in these sorts of things. You might, you might could, you could,

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00:09:15 --> 00:09:19

[Fred Smith] I don't know whether it's too late to file

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00:09:19 --> 00:09:19

[Fred Smith] a habeas

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00:09:19 --> 00:09:19

[Fred Smith] corpus

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00:09:21 --> 00:09:22

[Fred Smith] petition or not.

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00:09:22 --> 00:09:26

[Brian Hill] The innocence project could go to the governor and provide

224

00:09:26 --> 00:09:29

[Brian Hill] the proof that it was not dealt the right way

225

00:09:29 --> 00:09:31

[Brian Hill] and the governor could pardon me.

[Fred Smith] You

226

00:09:32 --> 00:09:33

[Fred Smith] can, you, can

227

00:09:33 --> 00:09:33

[Fred Smith] you,

228

00:09:34 --> 00:09:36

[Fred Smith] there any number of ways you could pursue this?

229

00:09:37 --> 00:09:37

[Fred Smith] But

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00:09:37 --> 00:09:43

[Fred Smith] I'm, I'm here to get an agreement with you folks that, that what I've outlined to you

231

00:09:43 --> 00:09:48

[Fred Smith] is what you would like me to get done with respect to the current troubles Brian has.

232

00:09:49 --> 00:09:49

[Brian Hill] All right.

233

00:09:50 --> 00:09:50

[Unidentified speaker] Ok.

234

00:09:51 --> 00:09:53

[Fred Smith] All right. So that's what the plan is now tomorrow.

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00:09:53 --> 00:09:57

[Fred Smith] Then you just need to be in court with me and we'll find out the date for us to return

236

00:09:57 --> 00:10:00

[Fred Smith] and you'll sign your recognizance to be back

237

00:10:00 --> 00:10:02

[Fred Smith] in the meantime, Mr

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00:10:02 --> 00:10:05

[Fred Smith] Griffith and I will prepare the joint motion

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00:10:05 --> 00:10:10

[Fred Smith] which I will review with everyone before we submit it.

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00:10:10 --> 00:10:11

[Fred Smith] Ok.

[Brian Hill] alright



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00:10:12 --> 00:10:13

[Fred Smith] Ok.

242

00:10:14 --> 00:10:18

[Stella Forinash] Sounds good to me.

[Brian Hill] thanks

[Fred Smith] See you in the morning.

243

00:10:18 --> 00:10:19

[Brian Hill] All right.

[Stella Forinash] 9 o'clock huh?

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00:10:21 --> 00:10:21

[Fred Smith] Yep,

245

00:10:23 --> 00:10:25

[Fred Smith] how about 845.

246

00:10:27 --> 00:10:30

[Stella Forinash] I'm, I'm bad about it. They'll say like eight.

247

00:10:30 --> 00:10:30

[Stella Forinash] It's my age,

248

00:10:32 --> 00:10:32

[Fred Smith] let's

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00:10:32 --> 00:10:32

[Fred Smith] not

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00:10:33 --> 00:10:33

[Fred Smith] talk about age.