

The Defendant: 'Ain't We Havin' Fun'

The Challenge of Conforming Conduct to the Law

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MONCKE CORNER, S.C. — Larry Gene Bell perched on the rail of the witness stand, his hands clasped around a knee.

He had the down-home look of someone chatting on a front porch rather than a man facing the death penalty for one of the most bizarre murders ever in South Carolina. He was also a suspect in other random abduction-killings.

As the jury watched, 11th Judicial Circuit Solicitor Donald V. Myers, who had been patiently cross-examining Mr. Bell for almost an hour, started to ask direct questions about the killing of Shari Smith, the 17-year-old high-school senior Mr. Bell allegedly kidnaped and murdered last year.

"Did you tell Officer Walker that when Shari Smith died, her eyes were closed, not like in the movies?" Mr. Myers asked.

Mr. Bell burst into laughter. "Ain't we havin' fun?" he yelped like a cowboy as the jury of seven women and five men watched. "Silence is golden, my friend."

Mr. Bell, 37, was arrested last June 27 after the largest manhunt in state history. A short, stocky man with a round face and reddish beard that gives him a passing resemblance to King Henry VIII of England, he had a varied past: convictions for harassing phone calls and assaults against women as well as a history of mental disorders that, in his words, made him susceptible to "uncontrollable urges to attack females."

From the early 1970s to 1983 — except for a 23-month prison sentence in 1978-1979 — he worked for Eastern Airlines in Charlotte, N.C., as a reservations clerk. After being fired for computer tampering, he returned home to live with his parents in Lexington County, S.C., where he worked as a part-time electrician.

On May 31, 1985, Ms. Smith was abducted from her driveway about 18 miles from his home as she went to get the mail. "A beautiful young girl," as Mr. Myers was to describe her to the jury, Ms. Smith had been chosen to sing the National Anthem at her June 2 high-school graduation.

On June 2, the Smith family received the first of eight calls it would get from a man who said he had abducted Ms. Smith with a gun. The last call would lead police to Ms. Smith's body.

She was not destined to be the only victim. On June 18, two weeks to the hour that Shari Smith was abducted, a stocky man jumped from his car and grabbed 9-year-old Debra Helmick, who was playing in the front yard of her mobile home with her younger brother.

Police thought the two cases were unrelated. But on June 22, the same man who had called the Smith house about Shari called again and gave directions to the young girl's body. On June 27, acting on leads that are still undisclosed, police arrested Mr. Bell.

Mr. Bell's family promptly hired one of South Carolina's best known defense lawyers, Jack B. Swerling of Columbia's Swerling & Harpootlian, who in 1983 had represented mass murderer Donald "Pee Wee" Gaskins in a capital case. Mr. Swerling, 39, is an imposing man at 6-foot-4 and 300 pounds with a deep but gentle voice.

Mr. Myers, a dapper-looking 40-year-old lawyer with thinning hair and a veteran of more than 10 death-penalty trials, quickly announced he would seek the electric chair for Mr. Bell in Ms. Smith's killing. Mr. Bell later was charged with Debra Helmick's abduction and alleged murder. *State v. Bell*, GS-41-114.

Charlotte police also began investigating Mr. Bell in connection with a missing woman in that city.

Although Mr. Bell's trial in the Smith case originally was scheduled for November in Saluda County, which is adjacent to Lexington County and where Ms. Smith's body was found, First Circuit Judge John H. Smith (no relation to Ms. Smith) — after questioning 23 potential Saluda County jurors — ruled it couldn't be held there because of an "overwhelming feeling" in the community that Mr. Bell was guilty and deserved the electric chair.

Judge Smith then ordered the trial moved to Moncke Corner, a town of some 3,700 located two hours' drive south of Columbia. Nonetheless, nearly all the jurors had heard of the case, some in considerable detail.

The evidence against Mr. Bell appeared strong. Mr. Myers introduced it through 64 witnesses and

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The Defendant/The Columbia Record

SILENCE IS GOLDEN: Larry Gene Bell, above, was the defendant in a South Carolina murder trial in which his defense lawyer tried to convince the jury that Mr. Bell was 'guilty but mentally ill.'

some 60 exhibits. It included head and pubic hairs from Ms. Smith's body that matched those found at a rural house where Mr. Bell had been house-sitting last May and June.

But the most striking evidence were good-quality tapes made by police of the calls to the Smith family. Admitted over defense objections, they were played before the jury. Mr. Bell's friends and former co-workers testified that his voice was on the tapes.

The only question, nearly everyone connected with the case acknowledged, was whether Mr. Bell would get the death penalty.

Mr. Swerling decided his best strategy was to try to convince the jury that his client was "guilty but mentally ill," a new verdict allowed under a 1984 state law.

With this affirmative defense, Mr. Swerling has to

EXHIBIT A ON TRIAL

prove that because of mental illness, the defendant could not conform his conduct to the law — even though he knew right from wrong. Previously, the only kind of mental behavior defense to a crime in South Carolina courts was "not guilty by reason of insanity," which held the defense to a much higher standard of proof — that the defendant did not know right from wrong at the time of the crime.

In South Carolina, a "guilty but mentally ill" verdict must be returned in the first stage — the guilt or innocence phase — of a death-penalty trial.

Pursuing this strategy raised a novel question in South Carolina: If the jury found Mr. Bell "guilty but mentally ill," would Judge Smith allow the jury to deliberate on whether to sentence him to die? As it turns out, he did.

In presenting his defense, Mr. Swerling, as he later told the jury in closing arguments, cast aside most claims to Mr. Bell's innocence.

Of the defense's 17 witnesses, five were prison guards who testified about Mr. Bell's bizarre mental condition after he was arrested. Four were police officers who testified that Mr. Bell may have telephoned police with an anonymous tip in which he gave his name as the suspect.

Moreover, to show the full nature of Mr. Bell's purported sickness, Mr. Swerling also introduced evidence of other crimes his client had been convicted of or associated with — including the abduction-death of the Helmick girl and incriminating statements Mr. Bell had made to police about the missing North Carolina woman. The evidence included information about other crimes that Judge Smith had ruled the prosecution could not introduce.

On the fourth day of the defense's case, Judge Smith — with the jury out — said he wanted to say publicly that Mr. Swerling was voluntarily introducing evidence the judge had previously excluded.

"I just want to make that clear for the record," Judge Smith said.

Mr. Bell himself took the stand for nearly two days, making numerous bizarre statements dotted with odd phraseology — "gifted or fruitcake," "food for thought" and "silence is golden," to name a few. He refused to answer some questions, and rambled when answering others.

Mr. Bell insisted he was not mentally ill, and under cross-examination, said he had undergone past treatment for mental illness only to get light sentences in his previous brushes with the law.

Mr. Swerling reminded the jury that one symptom of Mr. Bell's mental illness is that he denies he is mentally ill. Mr. Bell, said Mr. Swerling, is a man who has lost touch with reality, a man who is "whacked-out." Mr. Myers, on the other hand, told the jury that Mr. Bell was a sadist who deserved an Academy Award for acting.

Meanwhile, Mr. Bell's behavior at the trial, apart from his testimony, became an issue.

Once, he pinched the cheek of defense lawyer Elizabeth O. Levy, 30, also of Swerling & Harpootlian, and at another time, he stuck his finger in her ear. On other occasions, he plucked orange tissues from a Kleenex box and dropped it on her legal pad.

On the fifth day of the defense's case, at Mr. Swerling's request, Judge Smith stopped the trial to hold a competency hearing. After hearing conflicting testimony from state and defense doctors, Judge Smith ruled the trial should continue.

"Mr. Bell does have a certain flair for the theatrical," the judge noted dryly. "He does give us his knowledge of cliches, which is quite extensive."

Two days later, during jury arguments in the guilt-or-innocence phase, Mr. Bell disrupted the court as Mr. Swerling was building toward a crescendo. Rising from the defense table, Mr. Bell said, "Your honor, today is the sabbath. I think legally and in the eyes of God, I should take the witness stand." Minutes later, after Mr. Bell said he might disrupt court proceedings again, Judge Smith ordered him removed from the courtroom.

The case went to the jury Sunday evening, Feb. 23. Jurors apparently didn't think "guilty but mentally ill" was worth discussing at length. Fifty-five minutes later, they reached a verdict: guilty.

Mr. Bell knows what he is doing, Mr. Myers told reporters later. "He just has no conscience," he said.

After hearing testimony all day Tuesday and Wednesday, Feb. 25 and 26, the jury deliberated for two hours, and reached another decision: death.

Mr. Bell became the 43d inmate on South Carolina's death row. When asked by Judge Smith if he had anything to say, Mr. Bell said, uncharacteristically, "no, sir."