



CHARLES SANDOVAL
JUDGE, 380th JUDICIAL DISTRICT COURT
2100 Bloomdale, Suite 30132
Collin County Courthouse
McKinney, Texas 75071

962/548-4762, Metro 972/424-1460 ext. 4762
Fax: 972-547-5733
www.texasjudge.com
dc380th@co.collin.tx.us

October 7, 2008

Peter M. Kelly
Texas Trial Lawyers Association
1005 Heights Boulevard
Houston, Texas 77008

Re: Cause No. 380-82535-03; State of Texas v. James Vasilas

Dear Mr. Kelly:

Your name appears on an amicus brief filed about two years ago in the above case. I thought you might find my memorandum of interest.

Very truly yours,


Charles F. Sandoval

LMR/CS

CAUSE NO. 380-82535-03

THE STATE OF TEXAS

V.

JAMES VASILAS

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IN THE 380TH JUDICIAL

DISTRICT COURT

COLLIN COUNTY, TEXAS



MEMORANDUM

James Vasilas stands charged by indictment with making a false statement in a governmental record; to wit, a pleading in a civil case. He has pleaded not guilty.

This court had previously granted a motion to quash. It was appealed by the State and reversed by the Court of Appeals. The case attracted some attention and amicus briefs were filed. The decision of the Court of Appeals was affirmed by the Court of Criminal Appeals.

The case was submitted to me on stipulated evidence and this court has the duty at this time to determine whether Mr. Vasilas is guilty. The defendant's act must be put in context, so a look at the character of a pleading in a civil case is in order.

Practically every voir dire conducted by a defense lawyer in a civil case begins with the proposition that anyone can file a lawsuit and make any allegation he wishes. Unlike a criminal case where a grand jury has a winnowing function, in a civil case, anyone can sue anyone for anything and take it to trial. It happens that a lot of false pleadings are filed in a lot of cases. A pleading in a lawsuit is often an investigatory tool. The divorce lawyer, having heard the wife's one-sided version of the facts, alleges that the husband is an adulterer. If the husband admits it, the lawyer has been saved considerable time and the wife considerable expense. If the husband is faithful, he has now been (practically slanderously) falsely accused of adultery. The husband may feel that his reputation has been destroyed and he has no recourse because the law recognizes that the good of having unfettered pleading outweighs the price paid by the falsely accused. The husband can only assert that the wife's shyster lawyer made a false accusation, but it is only a pleading in a civil case, and the bar is very low for such pleadings.

It sometimes happens that A sues B, amends the pleadings several times and ends up prevailing in a lawsuit, the grounds for which were absent in the first pleadings. The better the lawyer, the better the pleading, and no lawyer can make a living filing lawsuits that are disproved.

The pleading in a criminal case is the indictment. It is the creation of the lawyer for the State. While the grand jury hears the case, the twelve jurors can not judge the quality of the pleading and as a general proposition they approve the pleading of the attorney. It sometimes happens that indictments are proved to be false. When I was prosecuting, I prepared some indictments that going in were a little thin. If the case developed properly, I would obtain a conviction. If it did not develop as I had hoped, I might dismiss the case or lose it. Perhaps I should have

been more timid. At any rate it seems to me that fairness requires that the same standard for pleading should apply to civil and criminal attorneys.

The State's attorney has governmental immunity, but the rationale for the immunity is similar to the rationale which protects the civil lawyer. These general principles with regard to pleadings have been in existence, I would assume, since before the founding of the nation. I would also assume this rationale applies to legislators' statements made in legislative chambers.

One of the arguments on appeal of this case was that sanctions in civil cases are a sufficient deterrent to bad conduct in pleadings (a proposition with which I agree) – and even sanctions practice has gotten completely out of hand. As I see it, if a request for sanctions is overstated, the movant loses, and can himself perhaps be sanctioned.

I suppose it is apparent that my view of pleadings in a civil case is much more sanguine than the appellate courts. I have the impression that if this case had been appealed to the Supreme Court of Texas or the Supreme Court of the United States, there might have been a different result. (I've never been a fan of specialized courts.)

Regardless, I am bound by the appellate court's conclusion that filing a pleading in a civil case is now viewed much like filing a tax return or applying for welfare and I must apply the law of the case here.

I find that Mr. Vasilas' pleading could easily have been a mistake of law or a mistake of fact or the result of carelessness. Accordingly, I find him not guilty. If this sort of case arises in the future, perhaps the defendant may wish to assert that he is protected by the First Amendment, the Fifth Amendment (due process), the Sixth Amendment (right to counsel) and the Fourteenth Amendment (equal protection). Who knows what could happen if cert is granted?

Signed this 6 day of October, 2008.



Clifton Anderson
Judge Presiding