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William C. Bulgin v. State of Florida; Kinjal H. Patel v. State of Florida; Brandon P. Pelky v. State of Florida

THE LAST CASE ON THE COURT'S DOCKET THIS MORNING I S CONSOLIDATED CASES , WITH THE LEAD CASE BEING BULGIN VERSUS STATE OF FLORIDA. OKAY. ARE THE PARTIES READY?

YES , YOUR HONOR.

I UNDERSTAND THAT MR. CONRAD.

YES, MA'AM.

YOU ARE GOING TO BE ARGUING FOR , YOU ARE GOING TO TAKE THE FULL TENMINUTES?

YES, MA'AM.

AND THEN YOU ARE PLANNING FOR A REBUTTAL TEN MINUTES FOR MR . FOSTER'S ARGUMENT.

YES, MA'AM.

OKAY.

MAY IT PLEASE THE COURT. MY NAME I S FRED CONRAD . THIS IS MY FIRST ORAL ARGUMENT AND I AM A LITTLE NERVOUS , SO IF YOU WILL BEARWITH ME , WE WILL ALL GET THROUGH THIS. THE

WE WON'T POUND YOU RIGHT FROM THE GET-GO .

WAIT FOR A COUPLE OF MINUTES .

WHAT I AM ASKING THE COURT TO DO IN THIS CASE , IS TO REVERSE THE DISTRICT COURT OF APPEAL , AND I AM ASKING THE COURT TO DO THAT , BECAUSE , ONE , IT IS BASED ON FACTS THAT WERE NOT I N EVIDENCE AT THE TRIAL COURTLEVEL , AND , TWO, IT IS NOT A LOGICAL EXTENSION OF THIS COURT'S PRIOR RULINGS , IN STATE VERSUS A G EE , STATE VERSUS FULLER AND WILLIAMS .

WHY DON'T YOU START WITH THE FACTS OF WHAT IS IN THE RECORD.

WHAT IS IN THE RECORD IS THAT OUR CLIENTS WERE ARRESTED, PURSUANT TO KAFDAL INFORMANT TIP , AND THEY WERE T O A CONFIDENTIAL INFORMANT TIP, AND THEY WERE TAKEN TO THE DEPARTMENT OF LAW ENFORCEMENT , WHERE THEY WERE TOLD THEY COULD COOPERATE OR GO TO JAIL AND THEY DECIDED TO COOPERATE. THEY WERE RELEASED FROM CUSTODY AND THE STATE THEN WAITED 505 A DAYS BEFORE DECIDING TO

THEY WERE ARRESTED O N WHAT DAY?

I BELIEVE IT WAS APRIL 22 , 2001.

MAYBE I WAS NOT , DECEMBER 15?

DECEMBER 15, 2001.

AND THEN THERE WAS , THEY WERE ARRESTED AND RELEASED FIRST , AND THEN ON THE 31st , THERE WAS SOMETHING ELSE THAT HAPPENED , SO KIND OF GO TO THEY ARE FIRST ARRESTED. THEY ARE NOT TOLD ANYTHING. THEY ARE RELEASED .

ACTUALLY THEY WERE, YOUR HONOR. THEY WERE ARRESTED ON THAT NIGHT AND TAKEN TO FDLE IN THE MIDDLE OF THE NIGHT AND TOLD THEY COULD COOPERATE. THEY HAD THE GOOD SENSE TO SAY WE WOULD LIKE TO GET OUR LAWYERS THERE. MR. FOSTER AND I ACCOMPANIED THEM A FEW DAYS LATER, AND THEN THEY WERE EXPLAINED WHAT THE COOPERATION WERE ENTAIL. WE SIGNED SOME PAPERWORK, WHICH ESSENTIALLY AMOUNTED TO A RELEASE SAYING THAT IF WE GET BEAT UP, WE ARE NOT GOING TO HOLD YOU LIABLE. THEN WE WERE TOLD TO GO COOPERATE. WE DID THAT FOR A LENGTHY PERIOD OF TIME.

SO THE PART THAT YOU ARE SAYING THAT IS NOT IN THE RECORD AND SERIAL NOT ACCORDING TO YOU FOR MR . BULGIN, IS TERMS THAT THEY WERE DOING IT AT THE URGING OF THE DEFENDANTS. THAT IS THAT THEY DIDN'T WANT TO BE CHARGED , BECAUSE IF THEY APPEARED, THAT THAT COULD BE A CONCERN. THAT WAS, THAT PART OF THE OPINION, YOU SAY , HAS NO FACTUAL BASIS IN YOUR CLIENT'S RECORD.

YES, YOUR HONOR , AND I AM ALLEGING THAT THERE WAS NO SUCH COOPERATION AGREEMENT. YOU ARE NOT GOING TO FIND ANY WRITTEN AGREEMENT IN THE RECORD BELOW, AND IN FACT , WHAT THE DISTRICT COURT OF APPEALS SAID , WAS THAT THESE , QUOTE , AGREEMENTS , SATISFIED OUR CONCERN THAT FORMAL CHARGES IN COURT APPEARANCES , JEOPARDIZED OUR COVERT ASSISTANCE, AND THERE WAS NOTHING IN THE RECORD TO SUPPORT THAT THE THAT CAME FROM AN AFFIDAVIT THAT - - TO SUPPORT THAT. THAT CAME FROM AN AFFIDAVIT THAT TO SUPPORT THAT. THAT CAME FROM AFFIDAVIT THAT DIDN'T EVEN EXIST.

WERE YOU DEALING WITH THE FDLE? YOU WERE NOT DEALING WITH THE STATES ATTORNEYS OFFICE.

NO , YOUR HONOR. WE WERE DEALING WITH THE FDLE IN A JOINT TASK FORCE WITH THE TALLAHASSEE POLICE DEPARTMENT.

FOR YOUR CLIENTS, WAS THERE A DIFFERENT TIME WHEN THE REARREST ACTUALLY THEY WERE ALL REARRESTED AT THE SAME TIME.

LET ME ASK YOU, WHAT TYPE OF ARREST WAS ARRESTING LAW ENFORCEMENT GO THROUGH THE FDLE OR DID THEY GO TO JAIL AND BOOKING RELEASE?

THEY WERE PLACED IN HANDCUFFS BRIEFLY INTERROGATED AT THE APARTMENT AND THEN TAKING TO THE TAKEN TO THE FDLE.

SO THEY WERE NEVER TAKEN TO THE LOCAL JAIL.

NO, YOUR HONOR, BUT I BELIEVE I KNOW WHERE YOU WERE GOING WITH THAT. THERE WAS A STIPULATION BELOW IN THE TRIAL COURT THAT THEY WERE IN ARREST. THAT IS NOT IN DISPUTE. EVENTUALLY THESE PEOPLE

I AM TRYING TO FIGURE OUT WHY THE STATE ATTORNEY WASN'T INVOLVED AS JUSTICE WELLS WAS ALLUDING TO. THE NORMAL PROCESS THAT WOULD HAVE INVOLVED THEM WAS CIRCUITED.

THAT'S CORRECT , AND INTERESTING TO NOTE AND I THINK IS VERY RELEVANT TO NOTE IN THIS COURT'S DECISION ON THE CASE IS THERE WAS ANOTHER DEFENDANT ARRESTED AT ABOUT THE

SAME TIME. HE DID COOPERATE AND THEY DID GET A WAIVER OF SPEEDY TRIAL FROM THE DEFENDANT AND THAT WAS NOTED BELOW. THEY DID NOT GET A WAIVER IN OUR CASE.

SO HERE WE ARE IN A CONFLICT ISSUE THAT WE ARE HERE , BUT THIS IS THE FIRST TIME HERE , BUT I ASSUME THAT YOU DO CRIMINAL DEFENSE WORK.

A LITTLE BIT .

AS FAR AS IT IS STANDARD PROCEDURE ANY WAY , WHEN THEY ARE DOING THESE KINDS OF AGREEMENTS, TO GET WAIVERS OF SPEEDY TRIAL?

IT WAS THE STANDARD PROCEDURE AND IN FACT THE WAIVER THAT EXISTED IN THAT PARTICULAR CASE WAS JUST A FORM THAT WAS PUT TOGETHER WITH A PACKAGE.

SO RATHER THAN BEING THIS GIANT PUBLIC POLICY ISSUE, IT SOUNDS LIKE WHAT YOU ARE LEADING US TO BELIEVE IS THIS WAS INVERTED ON THE PART OF THE STATE INADVERTENCE ON THE PART OF THE STATE.

THAT IS EXACTLY WHAT IT WAS. THE STATE DROPPED THE BALL AND SAT ON THEIR HANDS FOR 505 DAYS AND THEN DECIDED TO RECHARGE OUR CLIENTS.

AT THE TIME YOU WERE DOING THIS DEAL , THIS DEALING, THE SPEEDY TRIAL RULE, THE WHOLE TIME , READ, WITH THE FIRST LINE BEING FROM INDICTMENT OR INFORMATION , CORRECT?

YOUR HONOR, I READ YOUR, ALL OF YOUR DISSENT.

THAT IS WHAT, BUT THAT IS WHAT THE RULE SAID. I MEAN, REGARDLESS OF WHAT ANY OPINION SAID THAT, IS WHAT THE RULE SAID.

YOUR HONOR, THE RULE SPECIFICALLY SAYS , IN SUBSECTION D, THAT SPEEDY TRIAL BEGINS TO RUN FROM THE TIME THE DEFENDANTS ARE TAKEN INTO CUSTODY . CATEGORICALLY , SPEEDY TRIAL ONLY APPLIES TO THOSE PERSONS WHO ARE ARRESTED BY EITHER/OR WHO ARE CHARGED BY EITHER INDICTMENT OR INFORMATION .

BUT WHAT , GO AHEAD .

MY SUGGESTION IS THAT THIS RULE HAS HELD IN SEVERAL CASES IN THE PAST THAT, SEED I TRIAL SPEEDY TRIAL BEGINS TO RUN AT THE TIME THE DEFENDANT IS TAKEN INTO CUSTODY , FROM THE TIME THAT THE ARREST OCCURS , AND IN FACT

THIS CASE IS A LITTLE DIFFERENT THAN WILLIAMS, WHICH IS THE CONFLICT CASE, IN THAT WILLIAMS WAS BASED ON SUBSECTION 3 , WHERE THE DEFENDANT IS UNAVAILABLE FOR TRIAL , AND THIS CASE OR THESE CASES, I BELIEVE , ARE BASED ON SUBSECTION 2, WHICH SAYS THE FAILURE TO HOLD TRIAL IS ATTRIBUTED TO THE ACCUSED . IS THAT RIGHT ? I MEAN THERE, IS THAT DIFFERENCE .

I WOULD AGREE THAT THAT IS YOUR POSITION , YOUR HONOR. I DO NOT AGREE THAT IT IS A DIFFERENT. IN FACT , I SUBMIT

I AM NOT SAYING IT IS MY POSITION. MY QUESTION IS , WAS WILLIAMS BASED ON SUBSECTION 3 AND THESE CASES BASED ON SUBSECTION 2?

LET ME ANSWER THAT WITH A NO. PLEASE LET ME EXPLAIN.

SURE .

THE , I DO NOT THINK , I THINK THAT WILLIAMS WAS BASED ON J , AND IF YOU LOOK AT SUBSECTION P , OF THE RULE , THAT SPECIFICALLY SAYS THAT NO SPEEDY TRIAL REMEDY WILL BE GRAND, UNTIL THE COURT MAKES THE REQUIRED INQUIRY UNDER SUBSECTION P , AND THERE ARE FOUR SUBSECTIONS.

UNDER SUBSECTION J.

UNDER SUBSECTION J , AND THERE ARE FOUR SUBSECTIONS TO. THAT ONE OF THEM IS THE J-2 SUBSECTION, WHICH MAY BE AN ISSUE HERE AND THE OTHER ONE IS THE J-3 EXCEPTION, WHICH IS THAT THE WILLIAMS CASE CONSIDERED. NOW , MY POSITION IS THAT, IN ORDER FOR THE COURT, IN THE WILLIAMS CONFLICT CASE, TO REACH ITS DECISION , AS A MATTER OF LAW , IT MUST HAVE CONSIDERED SUBSECTION 2.

WELL , IT DIDN'T SAY THAT IT DID.

NO , YOUR HONOR, IT DID NOT SAY THAT IT DID.

MY QUESTION, MORE PARTICULARLY , IS WHILE THE DEFENDANT MAY NOT HAVE BEEN, QUOTE , UNAVAILABLE FOR TRIAL UNDER SUBSECTION 3 , WHERE THE DEFENDANT ENGAGES IN A COOPERATION AGREEMENT WITH THE STATE, WHERE THE STATE IS NOT GOING TO PRESS CHARGES AND TAKE THE DEFENDANT TO TRIAL , WHY IS THE FAILURE TO HOLD TRIAL NOT TO BE ATTRIBUTED TO THE ACCUSED IN THAT KIND OF SITUATION?

YOUR HONOR , THE SIMPLE ANSWER TO THAT QUESTION IS THIS. IT IS THE STATE THAT HAS THE ULTIMATE BURDEN OF WHEN, WHERE AND HOW TO CHARGE. IN FACT , WE CITED CASES IN OUR BRIEF THAT HOLD THAT PROPOSITION , , AND THAT WOULD BE STATE VERSUS ANTONETTI , STATE - STATE VERSUS ANTONETTI , STATE VERSUS SAUNDERS AND STATE VERSUS GOOCH. IT WAS HELD THAT THE BURDEN IS ON THE STATE AND NOT THE DEFENDANT. WHAT'S MORE, YOUR HONOR , THE SPECIFIC READING OF THAT RULE WHICH ADDRESSES THE FAILURE TO HOLD TRIAL , OBVIOUSLY PRESUPPOSES THAT THERE IS A TRIAL SET TO HOLD.

THAT , ALSO , THAT WHOLE THING, DID NOT THAT PRESUPPOSE THAT THE SPEEDY TRIAL BEGINS TO RUN AND THE CHARGING DOCUMENT NOT ON ARREST ?

SPEEDY TRIAL BEGINS TO RUN FROM THE DATE THAT THE PERSON WAS TAKEN INTO CUSTODY , AND THAT IS CLEARLY WHAT THIS COURT HAS HELD, TIME AND TIME AGAIN.

I UNDERSTAND TIME AND TIME AGAIN.

I UNDERSTAND, BUT THE STATE'S OBLIGATION TO HOLD A TRIAL , THAT PRESUPPOSED THAT THERE WAS A CHARGING DOCUMENT THAT TIME FOR BRINGING THE TRIAL STEMMED FROM THE CHARGING DOCUMENT, WHICH NOW WE HAVE SAID THAT IT DOESN'T. IT STEMS FROM THE DATE OF ARREST. I BELIEVE THE ANSWER TO THE QUESTION THAT YOUR HONOR MAY BE LOOKING FOR , GOES RIGHT BACK TO THE RATIONALE OF THE DECISION IN THE CONFLICT WILLIAMS CASE , AND THAT IS THIS , THERE IS NO WAY WE COULD HAVE GONE IN AND ASKED FOR A SPEEDY TRIAL, BECAUSE THERE WAS NO CASE PRESENT. THERE WAS NO FILE OPENED IN THE CLERK'S OFFICE. IF WE HAD WANTED TO DEMAND SPEEDY TRIAL, WE COULD NOT DO THAT.

ISN'T THAT EXACTLY WHAT YOU COULD DO ON THE 17th DAY , YOU COULD FILE A MOTION THAT THE TIME PERIOD HAS EXPIRED, IN WHICH CASE THE STATE NOW HAS,, WHAT TEN OR 15 DAYS TO BRING THE CASE TO TRIAL.

I CAN'T DO THAT, YOUR HONOR, IF THERE IS NO CASE THAT EXISTS FOR WHICH I CAN FILE THAT.

AND YOU GO BACK TO THE GENESIS OF THIS WHOLE PROBLEM , WITH THE FACT THAT YOU ARE

UNDER , THAT YOU ARE TRYING TO TAKE ADVANTAGE OF 175 DAYS , WHICH IS IN PART A OF 3.191.

YOUR HONOR, I BELIEVE THE STATE IS NOT WITHOUT A REMEDY IN THIS CASE. THERE ARE THREE THING THAT IS THE STATE COULD HAVE DONE. ONE , THEY COULD HAVE GOTTEN A WAIVER LIKE THEY DID IN THE CODEFENDANT'S CASE. TWO, THEY DIDN'T HAVE TO ARREST OUR CLIENTS ON THE NIGHT THAT THEY ARRESTED THEM. THEY COULD HAVE WAITED UNTIL THE TIME AND DONE IT WHEN THEY REARRESTED THEM. AND FINALLY, THIS COURT STATED IN STATE VERSUS REED, IN 1995, THAT THE SUGGESTION IS NOT NEW TO THE STATE , THAT THIS COURT SPECIFICALLY TOLD THE STATE , THE STATE'S REMEDY WOULD APPEAR TO BE T O FILE CHARGES BEFORE THE EXPIRATION OF SPEEDY TRIAL TIME AND SEEK A N EXTENSION UNDER THE PROVISIONS OF THE SPEEDY TRIAL RULE. ANOTHER FOURTH ALTERNATIVE WOULD HAVE BEEN FOR THESTATE TO ACTUALLY FILE CHARGES AND INHIBIT YOUR CLIENT'S ABILITY TO COOPERATE AND THEREBY POSSIBLY OPPOSE , IMPOSE ON YOUR CLIENT , A GREATER PENALTY THAN OTHERWISE WOULD BE, WHEN YOUR CLIENT COOPERATED.

YOUR HONOR , RESPECTFULLY , I THINK THAT THAT IS SOMETHING THAT THE DISTRICT COURT OF APPEAL CAME UP WITH , AND NOT SOMETHING THAT WE SAID. WE NEVER SAID WE ARE NOT GOING TO , PLEASE DON'T FILE CHARGES , BECAUSE I T MIGHT JEOPARDIZE OUR COVERT ASSISTANCE. THAT IS NOT PART OF THE RECORD .

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME, AND I THINK YOU HAVE , IT IS UP TO YOU WHETHER YOU WANT TO TAKE SOME MORE OF YOUR CO-COUNSEL'S TIME OR

YOUR HONOR , RESPECTFULLY HE HAS WORKED VERY HARD ON THIS CASE, AND I THINK HE DESERVES A CHANCE TO TALK .

CHIEF JUSTICE: THANK YOU VERY MUCH. MR . WINOKUR.

THANK YOU , CHIEF JUSTICE. MAY IT PLEASE THE COURT. THOMAS WINOKUR WITH THE OFFICE OF THE ATTORNEY GENERAL FOR THE RESPONDENT STATE OF FLORIDA IN THIS CASE.

DO YOU AGREE ON THIS RECORD ISSUE, THAT IS THAT IT DOESN'T APPEAR , AT LEAST FROM MR . BULGIN , THAT THERE WAS ANY EVIDENCE THAT THE COOPERATION AGREEMENTS AND THE IDEA OF NOT CHARGING THEM , CAME FROM THE DEFENDANTS. DO WE HAVE THAT IN THE RECORD? I MEAN , BECAUSE THAT , TO ME , WAS SORT OF , WHEN I WAS READING THE DISTRICT COURT'S OPINION , THAT WAS SORT OF SIGNIFICANT , WHEN WE WERE TRYING TO DECIDE IF THE, QUOTE , ATTRIBUTABLE DELAY ATTRIBUTABLE TO THE DEFENDANT , SO COULD YOU HELP ME ON THAT. DO YOU AGREE THAT THAT SENTENCE IN THERE , THAT IT WAS THERE AND THAT THEY WANTED THE CHARGES DELAYED, SO THAT THEY WOULDN'T HAVE TO COME AND , YOU KNOW , SORT OF BE SEEN?

IT WOULDN'T JEOPARDIZE OUR COVERT ASSISTANCE BY DOING. THAT I DON'T KNOW WHETHER OR NOT , IT IS IN THE RECORD. THERE IS AN AFFIDAVIT IN THE RECORD.

DO YOU AGREE THAT, FOR MR . BULGIN, THAT CAME AFTER HIS

THAT CAME OUT OF THE MOTION FOR DISCHARGE IN HIS CASE , THAT IS CORRECT , AND THEY DID IN INCLUDE THAT FACT IN THERE. IT IS THEY DID INCLUDE THAT FACT IN THERE. IT IS A REASON WHY , ONE OF THE REASONS , I SUPPOSE , WHY IT IS THAT THEY AGREED TO DELAY THE FILING OF THE INFORMATION , UNTIL AFTER THE ASSISTANCE. I SUPPOSE THAT IS VERY TYPICAL TERM IN THE SUBSTANTIAL ASSISTANCE AGREEMENTS.

GIVE ME THE FACTS ABOUT HOW THIS HAPPENED, BECAUSE I AM A LITTLE CONCERNED. THE ABSENCE OF TAKING TO THE LOCAL JAIL AND BOOKING NORMALLY, I MEAN , THESE THINGS HAPPEN IN DIFFERENT WAYS. THE NORMAL PROCESS IS GET ARRESTED, TAKE TO THE JAIL ,

ATTORNEY IS APPOINTED AND THE DEFENDANT , IN THE LIGHT MOST FAVORABLE TO THE STATE'S POSITION, APPROACHES THE STATE AND SAYS I NEED TO WORK A DEAL. CAN I , WILL YOU WORK ME , I CAN MEMBERSHIP YOU GET HIGHER UP THE CHAIN AND I CAN HELP YOU GET HIGHER UP THE CHAIN AND WHATEVER , AND THEN THERE IS THE CASE WHEREIT APPEARS HERE , WHERE SOMEBODY IS ARRESTED IT , AVOID THAT ARRESTED , AVOID THAT PROCESS AND GO TOTHE FDLE, WHO SAYS WE HAVE GOT A HEAVY THUMB O N YOU. YOU CAN GO TO JAIL FOR UP TO 15 YEARS OR YOU CAN WORK WITH ME , AND WHICH ONE HOLDS THE SCENARIO-.

IT IS THE LATTER SCENARIO THAT OCCURRED IN THIS CASE. IT IS NOT CLEAR IN THE RECORD WHO VERY WELL SUGGESTED IT. IT MAY HAVE BEEN AN FDLE AGENT WHO SUGGESTED IT. I MEAN , AS MUCH AS THE STATUTE THAT THEY WERE EVENTUALLY

I MEAN, UNDER NORMAL CIRCUMSTANCES, IF SOMEONE IS ARRESTED, THEY ARE TAKEN TO JAIL, AREN'T THEY? OR IS IT A NORMAL PRACTICE THAT YOU WOULD TAKE THEM TO AN FDLE OFFICE INSTEAD?

I DON'T KNOW WHAT THE NORMAL PRACTICE IS. I KNOW THAT IS WHAT OCCURRED HERE, AND PROBABLY BECAUSE OF THE ENORMOUS AMOUNT OF DRUGS THAT WERE INVOLVED IN THIS CASE.THEY WANTED TO MAKE SURETHAT THIS WAS INVOLVED , THAT IT INVOLVED FDLE.I HUM KNOW THE IS EARTH OF THAT FROM I AM NOT CERTAIN OF THAT FROM THE RECORD THAT IS BEFORE ME. I AM SURE COUNSELORS FOR PETITIONERS THAT ARE DIRECTLY INVOLVED IN THIS COULD ANSWER THAT.

NOW, AS FAR AS THE RECORD , IS THE RECORD CLEAR THAT A CODEFENDANT THAT, THERE WAS A WAIVER , A WRITTEN WAIVER ENTERED INTO WITH A CODEFENDANT ?

THERE IS A INDICATION HERE IN THE RECORDS OF ONEOF THE CODEFENDANTS THAT , THERE WAS A SPEEDY TRIALWAIVER.

IS THERE ANY EVIDENCE IN THIS CASE THAT, BETWEEN THE TIME THEY STARTED COOPERATING AND THE TIME THEY ARE FINALLY ARRESTED , THAT THERE WAS INDICATION THE STATE WANTED TO CHARGE THEM BUT SOMEONE CAME FORTH , THE ATTORNEY OR THE CLIENT, AND SAID, LISTEN, NO , I THINK I CAN EVEN D O BETTER FOR YOU.I GUESS THE IMPLICATION BEING THE MORE COOPERATION THEY GAVE , THE LESSER THE CHARGES WOULD BE , CORRECT?

I SUPPOSE THAT I S CORRECT.

SO IS THERE ANY INDICATION, AND THIS WOULD , REALLY, BE IT , S O WHO WAS IN CONTROL OF THE ARREST , AND WHO LED WHOM DOWN WHATEVER PATH.

THERE REALLY ISN'T ANYINDICATION OF THAT.

SO WHY ISN'T IT , AS FAR AS, SO THAT WE ARE ALL CLEAR UP FRONT AND JUSTICE WELLS POINTS OUT SOME ISSUES ABOUT THE RULE AND WE ARE LOOKING AT AN AMENDMENT AS TO WHETHER THE ATTRIBUTABLE TO THE DEFENDANT BRINGING IT TO TRIAL IN LIGHT OF THE FACT THAT IT IS ARREST , THAT THAT NEEDS TO BE , PERHAPS , CLARIFIED, THAT THE ATTRIBUTABLE COULD BE THAT THE DELAY IN BEING ABLE TO COMPLY WITH THE SPEEDY TRIAL IS ATTRIBUTABLE , BUT WHEREIS IT , IN THIS RECORD, THAT THIS IS , REALLY , ONE OF THOSE CASES THAT THE DELAY , YOU KNOW, IS THE FAULT OF THE DEFENDANT , AS OPPOSED TO THAT , REALLY , IT IS A DROPPING THE BALL ON THE PART OF THE STATE , EITHER BY NOT HAVING GOTTEN AN EXPLICIT AGREEMENT, YOU KNOW , WERE THERE LAWYERS THERE TO SAY , LISTEN, THIS IS WHAT IS GOING TO HAPPEN. YOU KNOW , THEY MAY B E ARRESTED TWO YEARS FROM NOW , BUT THE MORE THEY COOPERATE, THE BENEFIT TO THEM IS THEY ARE NOT GOING TO HAVE A SPEEDY TRIAL, BUT THEY MAY HAVE THEIR CHARGES REDUCED DOWN TO YOU KNOW , NOTHING. AND THAT IS A REAL SUBSTANTIAL REASON THAT THEY MIGHT WANT TO WAIVE, BUT WITHOUT THAT HAPPENING , I

JUST, EXPLAIN YOUR BEST ARGUMENT ABOUT WHY IT FITS INTO ATTRIBUTABLE TO THE DEFENDANT.

THE REASON THAT IT IS ATTRIBUTABLE TO THE DEFENDANT THAT IT IS ATTRIBUTABLE TO THE DEFENDANT IS THERE IS REALLY NOTHING TO BENEFIT THE STATE BY FILE !!ING TO FILE THE INFORMATION. THAT ONLY BENEFITS THE DEFENDANT. AN I THOUGHT THE IDEA IS YOU ARE GOING UP THE FOOD CHAIN , RIGHT? YOU HAVE GOT ONE CONFIDENTIAL INFORMANT. HE OR SHE HAS NOW GOTTEN "X" NUMBER OF FISH, AND NOW YOU WANT THESE FISH TO GET THE BIGGER FISH , SO THE BENEFIT IS THAT, TO THE STATE , IS THAT MAYBE THEY ARE REALLY NOT LOOKING FOR THESE GUYS , THAT THEY WANT THE OTHER PEOPLE. NOW , THAT , THE DEFENDANTS, YOU KNOW, SO WHY ISN'T THAT A PRETTY SUBSTANTIAL BENEFIT TO THE STATE AND TO THE PEOPLE OF THE STATE OF FLORIDA?

IT IS A BENEFIT TO THE STATE, BUT IT IS ATTRIBUTABLE TO THE DEFENDANT, BECAUSE THERE IS NO GOOD REASON WHY IT IS THAT THE FACT THAT THEY AGREED NOT TO FILE THE INFORMATION , UNTHE ASSISTANCE WAS COMPLETE UNTIL THE ASSISTANCE WAS COMPLETE, SHOULD BE ATTRIBUTED TO THE STATE.

DOESN'T THE STATE HAVE AT LEAST THE SAME INTEREST? THIS IS A BILATERAL SITUATION WHERE IT IS MUTUALLY ADVANTAGEOUS .

IT I S CERTAINLY MUTUALLY AGREED.

CERTAINLY THE STATE KNOWS THAT ONCE IT IS FILE !!ED, THERE IS NOT A WHOLE LOT OF BENEFIT TO THE STATE.

THERE IS NOT A WHOLE LOT OF BENEFIT TO THE STATE WHEN IT IS DISCHARGED.

WHAT IS THE DEAL WITH THE AGREEMENT ABOUT DELAYING THE FILING OF INFORMATION , OBVIOUSLY NOT PUTTING THEM INTO CUSTODY OR BOOKING THEM OR FILING ANY INFORM ARX REDUCES THE DISCLOSURE THAT MIGHT INFORMATION , REDUCES THE DISCLOSURE THAT MIGHT HAPPEN.

THAT IS APPARENTLY THE INDICATION.

OTHER THAN THAT , WHERE WAS THE AGREEMENT TO DELAY FILING OF THE INFORMATION?

THERE WERE STIPULATIONS IN THE RECORD AT, I BELIEVE , BOTH MOTIONS TO DISCHARGE HERE, HEARINGS , THAT THEY WOULD BE DELAYING THE FILING OF THE INFORMATION , UNTIL THE COMPLETION OF THE ASSISTANCE. I DON'T THINK THAT HAS EVER BEEN AT ISSUE HERE.

BUT ISN'T THAT AS MUCH A BENEFIT TO THE STATE AS IT IS TO THE DEFENDANT?

I REALLY DON'T SEE HOW. THERE IS NO REASON WHY THE STATE SIMPLY COULD NOT HAVE JUST FILED THE INFORMATION AND JUST DELAYED IT UNTIL

THE FILING OF INFORMATION IS A PUBLIC DOCUMENT?

WELL , THAT IS TRUE. I MEAN, THERE ARE DANGERS TO IT, AND THEY, THE PETITIONERS HERE HAVE OBJECTED TO THE FACT THAT THE DISTRICT COURT INCLUDED ONE O F THOSE ADVANTAGES IN THE OPINION , BECAUSE IT WAS A DISPUTED FACT.

BUT, AGAIN , THE ADVANTAGE, I THINK WHAT THEY ARE DISPUTING IS THAT IT ONLY , YOU KNOW, THAT IT WAS THEIR DOING , TO GET THIS COOPERATION AGREEMENT , AND IT ONLY , THE DELAY OF THE CHARGES ONLY BENEFITED THEM. I THOUGHT YOU AGREED EARLIER WITH ME, THAT

THERE WOULD BE BENEFIT FROM, TO THE STATE , BECAUSE THE EXTENT THAT THEIR INVOLVEMENT BECAME PUBLIC, IT COULD ENDANGER WHATEVER OTHER INDIVIDUALS THE STATE WAS INTERESTED IN GOING AFTER.

WELL, THAT IS PROBABLY A BENEFIT TO BOTH PARTIES.

NO, THAT IS WHAT I AM SAYING. WE HAVE A SITUATION , WELL

TO THE OUTCOME OF THIS CASE, THOUGH, IT DOESN'T MATTER WHY

LET ME JUST , EXCEPT THAT , IN THE ISSUE OF ATTRIBUTABLE , WE ARE USUALLY LOOKING AT SOMETHING WHERE THERE IS SOME FALLS ON THE PART OF DEFENDANT, THEN WE LOOK AT THE STATE WHO , IS IN A POSITION TO DECIDE WHEN SUBSTANTIAL COOPERATION HAS BEEN GIVEN. I MEAN , THAT IS A SUBJECTIVE JUDGMENT. IT JUST DIDN'T HAPPEN IN 555 DAYS. THERE IS LOTS OF LAW ENFORCEMENT DISCRETION THAT IS GOING ON , AND WHAT CHARGES TO BRING AND WHEN TO DO IT, SO IT SEEMS LIKE THEBALL IS SORT O F ALL WITH THESTATE , AS TO , YOU KNOW, TO CONTROL THIS.

I DISAGREE WITH THAT FOR A NUMBER OF REASONS. NUMBER ONE, THE PETITIONERS HERE WERE REPRESENTED BY COUNSEL AT THE TIME THAT THEY MADE THESE DECISIONS. IF IT WAS OPEN ENDED IN TERMS OF TIME, THEN COUNSELHAD THE OPPORTUNITY TO OBJECT TO IT AT THE TIME. COUNSEL HAD THE OPPORTUNITYTO SAY THAT , LOOK , WE DON'T WANT THIS ASSISTANCE TO GO BEYOND A CERTAIN AMOUNT OF TIME. SECOND, THERE IS NOTHING IN THE RECORD THAT SAYS THAT THE PETITIONERS COULD NOT HAVE SIMPLY GONE TO THE LAW ENFORCEMENT OFFICIALS AND SAID, LOOK , YOU KNOW , WE ARE DONE WITH THIS. WE DON'T REALLY THINK THAT THERE IS ANYMORE BENEFIT TO US, TO CONTINUING WITH THIS ASSISTANCE AGREEMENT. WE WOULD LIKE TO END IT , AND YOU CAN DO WHATEVER YOU NEED TO DO AT THIS POINT . YOU CAN ARREST US. YOU CAN CHARGE US.YOU CAN GET GET THIS PROCESS STARTED.

HOW LONG DID THE ACTUAL ASSISTANCE LAST?

FROM THE TIME THAT IT WAS SIGNED TO THE TIME THAT THE WARRANT OF ARREST WAS ISSUED , WHICH WAS, I BELIEVE, ABOUT 15 AND-A-HALF MONTHS.

CAN YOU CLARIFY

BUT THAT DOESN'T ACTUALLY ANSWER THE QUESTION OF WHEN WAS THE LAST TIME THESE DEFENDANTS ACTUALLY GAVE SOME ASSISTANCE.

THAT I DON'T KNOW. I THINK THAT

SO , NOW , I AM LEADING TO WHETHER OR NOT THE STATE EVEN AFTER THE ASSISTANCE WAS OVER , WHETHER OR NOTTHERE WAS SOME LENGTHY DELAY BETWEEN THE TIME THAT THEY FINISHED THEIR JOB AS IT WERE WITH THE STATE , AND

I DON'T THINK THERE HAS BEEN ANY ALLEGATION OF THAT IN THE RECORD. I CERTAINLY THINK THAT COULD BE THE CASE , BUT ACCORDING TO INVESTIGATOR ODOM'S AFFIDAVIT , IT WAS SIMPLY THAT A TIME CAME WHEN THEY REALLY WEREN'T PROVIDING ANYMORE YOUTHFUL ASSISTANCE, AND IT WAS PROBABLY TIME TO END THE AGREEMENT.

JUSTICE CANTERO HAS A QUESTION.

CAN YOU CLARIFY SOME FACTS FOR M E HERE. WERE C HARGES EVER FILED?

YES, THEY WERE.

AND AT WHAT POINT DID THE DEFENDANTS, IF YOU REMEMBER , FILE THE MOTION TO DISCHARGE? WAS IT 176th DAY OR SOMETIME AFTER THAT?

NO. IT WAS NOT UNTIL AFTER THE INFORMATION WAS FILED. THE INFORMATION WASN'T FILED UNTIL , GOSH , SOME 18 MONTHS AFTER THE ASSISTANCE AGREEMENTS.

OKAY, AND DID THE STATE SAY AT THAT POINT, ALL RIGHT, WELL , WE CAN GO , WITHIN 15 DAYS WE CAN TRY

NO, BECAUSE AT THAT POINT WHAT HAD HAPPENED , THEY FILED THEIR MOTION TO DISCHARGE UNDER THIS COURT'S DECISION IN STATE V WILLIAMS , WHICH STATES THAT , ONCE THAT 175 DAYS PASSES, THE STATE IS NO LONGER ENTITLED TO THE RECAPTURE PERIOD, AND THEY ARE ENTITLED TO AUTOMATIC DISCHARGE, AND I THINK THE CASES PROCEEDED PRETTY CONSISTENTLY ON THAT BASIS , AND NOBODY EVER SOUGHT TO HAVE THE RECAPTURE PERIOD .

SO WHAT IS THE STATE'S POSITION? IS IT MY COLLEAGUE JUSTICE WELLS'S POSITION, OR IS IT THAT THE TIME BEGAN TO RUN AT ARREST BUT WAS TOLLED , IN ESSENCE , BY AN AGREEMENT?

THE STATE DOES SUPPORT JUSTICE WELLS'S POSITION . IT IS NOT NECESSARY TO OVERTURN THE LINE OF CASES THAT PETITIONERS' COUNSEL ALLUDED TO , IN ORDER TO AFFIRM THE DISTRICT COURT DECISION IN THIS PARTICULAR CASE. THE STATE WILL SAY THAT, FOR THE PURPOSES OF THIS CASE , THAT THEY WERE IN FACT ARRESTED AND TAKEN INTO CUSTODY ON DECEMBER 15 , 2000.

SO WHEN WOULD , SO BASICALLY THE TIME WAS TOLL ED, THE RUNNING , OR WHAT IS YOUR POSITION? HOW DO WE KNOW WHEN IT STARTS RUNNING AGAIN?

WELL , IT DOESN'T EVER ACTUALLY I T I S TOLLED. IT IS TOLLED BECAUSE OF THE ACTIONS OF THE DEFENDANT , WHICH DELAYED THE ONSET OF THE TRIAL. NOW , THEY FILED THEIR MOTION TO DISCHARGE. THE JUDGE COULD HAVE DETERMINED WHETHER THE DELAY , WHICH IT WAS CLEARLY GONE 175 DAYS HERE , WAS ATTRIBUTABLE TO ONE OF THE SECS IN SUBSECTION J OF THE RULE AND DETERMINED THAT I T DID, AND UNDER THE TERMS OF THE RULE, THE STATE, THEN , HAS 90 DAYS TO TRY THE DEFENDANT , ONCE THEY DETERMINE THAT THE DELAY IS ATTRIBUTABLE TO THE DEFENDANT.

BUT THE JUDGE FOUND WHAT?

THE JUDGE HERE DIDN'T DECIDE ANYTHING ABOUT SUBSECTION J. THE JUDGE HERE, SAID THAT THE LINE OF CASES ENDING WITH STATE V WILLIAMS , MANDATED DISCHARGE , AND THAT NOBODY HAD EVER TRIED TO APPLY ANY OF THE SUBSECTION J EXCEPTIONS.

IS IT THE STATE'S POSITION THAT , WHENEVER A DEFENDANT OFFERS ANY COOPERATION , REGARDLESS OF WHO OFFERS THE COOPERATION , AND NO MATTER HOW LONG THE COOPERATION LASTS , THAT SUBSECTION J-2 WILL ALWAYS APPLY, OR IS I T THE STATE'S POSITION THAT IT IS GOING TO DEPEND ON THE CIRCUMSTANCES OF THE PARTICULAR CASE, AND IN SOME CASES , IT WILL BE ATTRIBUTED TO THE DEFENDANT, BECAUSE OF COOPERATION . IN OTHER CASES IT MAY NOT BE ATTRIBUTABLE TO THE DEFENDANT, BECAUSE IT WAS THE STATE THAT OFFERED IT OR FOR WHATEVER REASON , THAT THE TRIAL COURT NEEDS T O CONDUCT A HEARING TO DETERMINE , IN THIS PARTICULAR CASE , WAS THIS COOPERATION ATTRIBUTABLE TO THE DEFENDANT OR T O THE STATE .

I AGREE WITH THE LATTER COMMENT.

BUT WOULDN'T IT BE EASIER , AND , AGAIN THIS AREA OF THE LAW, YOU KNOW , IT SEEMS TO ME THAT I WOULD AGREE WITH YOU TO THE EXTENT THAT THE PRIOR CASES INVOLVED THINGS

WHERE YOU COME AND SAY THE DEFENDANT WAS LULLED INTO A SENSE OF FALSE SECURITY, YOU KNOW, WHERE THEY ANNOUNCED NO ACTION OR, AND THEN THEY COME BACK AND THEY FIGURE THERE WASN'T GOING TO BE ANYTHING HERE. I DON'T HEAR THAT THE DEFENDANTS EVER THOUGHT THAT THEY WEREN'T GOING TO BE CHARGED. IT WAS JUST A MATTER OF WHEN.

THAT IS EXACTLY CORRECT.

SO I DO UNDERSTAND THAT ASPECT. ON THE OTHER HAS NOT, IN TERMS - - ON THE OTHER HAND, IN TERMS OF ACTUALLY LOOKING AT THIS RULE, WHICH HAS THING THAT IS DON'T SEEM, ALWAYS JUST TO ONE SIDE OR THE OTHER, IS, ISN'T THE BETTER SOLUTION, THOUGH, SINCE IT DOES APPEAR THAT IT MIGHT BE A STANDARD PRACTICE, TO, WHEN YOU ARE GETTING THESE AGREEMENTS, HAVE EVERYTHING SPELLED OUT, AND THERE IS, YOU KNOW, ARE WE GOING TO WAIVE SPEEDY TRIAL OR NOT, YOU KNOW, AND JUST HAVE THAT BE PART OF WHAT IS IN THE SUBSTANTIAL COOPERATION AGREEMENT. I MEAN, THAT WOULD BE FAR SUPERIOR THAN HAVING THE, HAVE JUDGES DECIDE, WELL, WHO STARTED IT AND YOU KNOW, WHO IS BENEFITTING, BECAUSE I THINK WE ARE DECIDING THAT, IT SEEMS THAT BOTH PARTS BENEFIT POTENTIAL PARTIES BENEFIT POTENTIALLY. THE STATE BENEFITS FROM GETTING MORE PARTIES THAT MIGHT BE INVOLVED IN CRIMINAL ACTIVITY, AND THE DEFENDANTS BENEFIT FROM MAYBE HAVING A REDUCED CHARGE OR REDUCED SENTENCE, SO ISN'T THAT A BETTER SOLUTION?

WELL THERE, IS NO DOUBT THAT IT WOULD AND LOT SIMPLER, IF WE JUST OBTAINED SPEEDY TRIAL WAIVERS, BUT I WOULD STRONGLY ARGUE AGAINST MAKING THAT SOME SORT OF REQUIREMENT OR SAYING THAT JUST BECAUSE THERE WAS NO SPEEDY TRIAL WAIVER IN THIS CASE, THEN WE CAN'T SIMPLY LOOK AT THE SPEEDY TRIAL RULE AND DETERMINE THAT IT COVERS THE SITUATION, THAT THERE IS AN EXCEPTION THAT APPLIES, AND TO NOT FORCE DEFENDANTS TO WAIVE

THE OTHER CHOICE THAT JUSTICE CAN CAN'T IS SAYING IS THAT ALL THAT JUSTICE CANTERO IS SAYING IS THAT SOME MAY HAVE VERBAL DISCUSSIONS AND SOME THE STATE MAY BE READY AND MAYBE SOME CASES THE STATE IS READY TO REARREST AND THE DEFENDANT SAYS I HAVE GOT MORE.

THEY CERTAINLY ARISE IN MANY DIFFERENT CONTEXTS, AND I WOULD NOT WANT TO STATE CATEGORICALLY THAT ANY TIME A SUBSTANTIAL ASSISTANCE AGREEMENT IS ENTERED, THAT THEY WAIVE ALL SPEEDY TRIAL RIGHTS WHATSOEVER UNDER THE SUN. THAT IS NOT THE STATE'S POSITION. IN FACT, AS I STATED EARLIER, THE FACT THAT THEY DO IN FACT, RETAIN RIGHTS UNDER THE SPEEDY TRIAL RULE, THEY DO STILL GET A RIGHT TO HAVE A TRIAL WITHIN 90 DAYS AFTER THAT HEARING, TO DETERMINE THAT THE DELAY WAS ATTRIBUTABLE TO THEM, IS A SUBSTANTIAL RIGHT. I MEAN, THERE IS REALLY NO REASON WHY AN ASSISTANCE AGREEMENT NEEDS TO INCLUDE THAT. THEY ARE COMPLETELY DIFFERENT THINGS. YOU CAN SAY THAT AN ASSISTANCE AGREEMENT NEEDS TO INCLUDE A WAIVER OF JURY TRIAL, SO YOU DON'T HAVE EVIDENCE ISSUES THAT ARISE LATER, AND TELL THE STATE, WELL, YOU SHOULD HAVE JUST WAIVED SPEEDY TRIAL UNDER JURY ASSISTANCE AGREEMENT, BUT YOU CAN'T HAVE EVERYTHING AND THE FACT THAT THE SPEEDY TRIAL OBLIGATION IS SHOULDN'T BE COVERED BY THIS THING. THE PURPOSE OF THE RULE

WAIT. YOU ARE TALKING ABOUT 175 DAYS, ROUGHLY SIX MONTHS. I DON'T KNOW HOW THE WORLD OF LAW ENFORCEMENT WORKS BUT IT WOULD SEEM THAT THERE ARE A NUMBER OF CASES WHERE YOU ARE JUST TALKING ABOUT MAYBE ANOTHER DRUG BUY, AND THERE IS NEVER A PROBLEM, AND THERE ARE OTHERS THAT YOU KNOW, COULD BE GOING ON FOR A YEAR OR TWO. WHY SHOULDN'T IT BE INCUMBENT ON THE STATE, LOOKING AT WHAT IS INVOLVED, TO KIND OF TAILOR THE AGREEMENT TO THAT TAILOR THE AGREEMENT TO THAT CIRCUMSTANCE AND DISCUSS WHETHER THEY ARE GOING TO BE FILING CHARGES AT THAT TIME OR NOT, SO THAT THAT COULD AT LEAST BE ON PEOPLE'S RADAR SCREEN.

THERE IS NOTHING WRONG WITH THAT APPROACH, WITH MAKING AGREEMENTS A LOT MORE SPECIFIC ON HOW LONG THE TERMS ARE TO BE. IN THIS CASE AND THAT IS ONE REASON WHY EACH CASE IS DIFFERENT. IN THIS CASE, PETITIONERS WERE REPRESENTED BY COUNSEL, WHEN THOSE AGREEMENTS WERE ENTERED INTO. IF THEY HAD CONCERNS ABOUT THE LENGTH OF THE AGREEMENT, IF THEY HAD CONCERNS THAT IT MAY EXCEED SIX MONTHS, PUT THAT IN THE AGREEMENT.

NOW ARE WE GOING TO HAVE, APPARENTLY SOME CO-DEFENDANTS, OF COURSE, THAT WOULDN'T HAVE HELPED THEIR CLIENTS, DID ENTER INTO AGREEMENTS THAT HAD WAIVERS, CORRECT?

THEY MIGHT BE THE ONES WHO WERE INEFFECTIVE, BECAUSE THEY ARE NOT HERE BEFORE US TODAY.

THAT IS WHY I STOPPED SHORT OF SAYING IT.

I DON'T FAULT COUNSEL FOR NOT INCLUDING THAT TERM IN THIS AGREEMENT, AS LONG AS WE ARE WILLING TO RATIONALLY APPLY THE TERMS OF THE RULE.

NOW, WE KEEP ON TALKING ABOUT THIS AGREEMENT. WHAT WAS IN WRITING? IT WAS NOT LIKE A WHOLE, WAS IT JUST A WAIVER OF LIABILITY PART, OR IS THERE AN ACTUAL WRITTEN

THERE IS NO WRITTEN AGREEMENT IN THE RECORD, SO I AM A LITTLE TIED WITH WHAT WAS INCLUDED. IT WAS DONE, THERE WERE STIPULATIONS OF THE MOTION TO DISCHARGE HEARING ABOUT THIS AGREEMENT, AND I AM AFRAID I HAVE TO BASE MY ENTIRE ARGUMENT ON WHAT THOSE STIPULATIONS WERE.

SO WHERE THERE IS A WRITTEN AGREEMENT BUT WE DON'T HAVE IT IN THE RECORD OR WE DON'T KNOW IF THERE IS SOMEWHERE A WRITTEN AGREEMENT.

WHETHER IT IS A WRITTEN AGREEMENT I AM NOT CERTAIN OF. I WOULD ASSUME THAT THERE IS, BUT I DON'T WANT TO STATE THAT FOR SURE. WHAT I DO KNOW IS THAT THE AGREEMENTS DID SAY THAT INFORMATION WOULD BE FILED AT THE END OF THE AGREEMENT. THE STATE COMPLIED WITH THAT PROVISION. THE STATE FILED THE INFORMATION. THE STATE DID NOTHING WRONG IN THIS CASE.

IF WE ARE ALWAYS GOING TO APPLY THAT SUBSECTION OF THE RULE, AND THE DEFENDANT IS ALWAYS GOING TO LOSE IN THESE SUBSTANTIAL ASSISTANCE AGREEMENTS, BECAUSE WE ARE GOING TO ALWAYS ATTRIBUTE THE DELAY TO THE DEFENDANT, AREN'T WE?

NOT AT ALL, JUDGE, NOT AT ALL.

SO WHAT SITUATION WOULD WE NOT?

I WOULD SAY ANY SITUATION WHERE THE STATE HAS MISLED THE DEFENDANT IN ANY WAY OR A SITUATION WHERE I GAVE AN EXAMPLE, WHERE THERE IS NO REASON WHY I HAVEN'T SEEN IN THIS CASE, WHY THE DEFENDANTS COULD NOT HAVE SIMPLY GONE TO THE LAW ENFORCEMENT AGENTS AND SAID, LOOK, I BELIEVE THAT WE NEED TO CONCLUDE THIS AGREEMENT AT THIS POINT. THERE IS NOTHING MORE USABLE, AND IF THE STATE CONTINUED ON AFTER THAT AND REFUSED TO COMPLY WITH IT, I CAN UNDERSTAND.

WHY SHOULD IT BE ON A DEFENDANT TO DO SOMETHING THAT REMINDS THE STATE OF THE SPEEDY TRIAL RULE?

WELL, I DON'T THINK IT IS, BUT THEY, AGAIN, WHAT WE HAVE HERE IS AN OPEN ENDED AGREEMENT.

BUT I GUESS WHAT I HEAR YOU SAYING IS THAT , IF THERE IS, IF THE STATE HASN'T DONE ANYTHING WRONG , THEN IT MUST BE ATTRIBUTABLE TO THE DEFENDANT , AND THAT IS WHERE I AM HAVING, YOU KNOW , THAT IS WHERE I HAVE THE PROBLEM. IT SEEMS LIKE I T IS THE BURDEN OF THE STATE , AND UNLESS THE DEFENDANT HAS DONE SOMETHING AFFIRMATIVELY WRONG, THEN THEY GET , THE STATE GETS CHARGE WITH T.

GENERALLY , THE BURDEN OF CHARGED WITH IT.

GENERALLY , THE BURDEN IS ON THE STATE T O ENSURE THAT THE DEFENDANT GETS A SPEEDY TRIAL. WHILE THAT IS TRUE, I WOULD ADD THAT THERE IS ALSO A BURDEN ON THE DEFENDANT TO EXERCISE THOSE RIGHTS . SO I DON'T THINK THAT THE BURDEN IS COMPLETELY ON THE STATE.

WHERE WOULD THEY FILE THE DEMAND?

PARDON ME?

WHERE WOULD THEY FILE THE DEMAND, IF NO CASE IS PENDING?

THEY RAISED A GOOD ISSUEABOUT THE FACT THAT , IF THERE IS NO COURT PROCEEDINGS , IT MAY BE DIFFICULT FOR THEM TO FILE A NOTICE OF EXPIRATION, AND I UNDERSTAND THAT , AND IT VERY WELL COULD BE THAT THE RULE COULD BE AMENDED TO ACCOMMODATE THAT SORT OF PROCEDURE, BUT IN FACT HERE, IT IS NOT NECESSARY, BECAUSE THERE I S NOTHING WRONG WITH WAITING UNTIL THERE IS AN INFORMATION FILED , TO CONCLUDE THESE PROCEEDINGS .

CHIEF JUSTICE: ALL RIGHT. ANY OTHER , DO YOU HAVE FURTHER QUESTIONS , JUSTICE LEWIS? THANK YOU VERY MUCH. YOUR TIME IS UP.

I ASK YOU TO APPROVE THE DECISION OF THE DISTRICT COURT. THANK YOU AGAIN.

CHIEF JUSTICE: ALL RIGHT. MR . FOSTER .

THANK YOU , JUDGE. MAY IT PLEASE THE COURT .

CHIEF JUSTICE: YOU HAVE GOT 8 AND-A-HALF MINUTES. YOU ONLY USED A MINUTE AND-A-HALF OF YOUR REBUTTAL TIME.

TO ADDRESS ONE OF THE ISSUES BROUGHT UP BY THE COURT REGARDING

DID YOU ANNOUNCE

I AM SORRY. I REPRESENT BRANDON PELKY AND KINJAL PATEL, CODEFENDANTS IN THIS CASE.

AND YOUR NAME IS?

MY NAME IS MATTHEW FOSTER. TO ADDRESS SOME OF THE ISSUES REGARDING THE RECORD , WHILE WE WERE DISCUSSING WHAT HAPPENED, I PULLED UP THE RECORD IN OUR CASE , AND THERE WAS ACTUAL STIPULATION S, AND IT STATES, ON PAGE 4 OF OUR RECORD, AT

YOU ARE REPRESENTING WHICH ONES?

BRANDON PELKY AND KINJAL PATEL. MR. CONRAD HAS MR . BULGIN. THE CASES WERE CONSOLIDATED FOR APPEAL PURPOSES. BUT IT STATE ON PAGE 4 AT THE TOP THAT , THEY WERE ARRESTED IN CONJUNCTION WITH THIS INVESTIGATION ON DECEMBER 15 , 2000 , TAKEN INTO CUSTODY, AND TRANSPORTED TO FDLE. THEY WERE IN CUSTODY AND I DON'T THINK ANYONE IS

DISPUTING THAT THE ARREST AND CUSTODY AT THAT POINT INITIATED OR TRIGGERED THE SPEEDY TRIAL TIME. GOING DOWN TO THE NEXT PARAGRAPH , WE STATED THAT THEY WERE RELEASED , BUT AT THAT TIME BEFORE THEY WERE RELEASED , THE JUDGE DAVIS OFFERED TO THEM THE OPTION OF ASSISTING LAW ENFORCEMENT. THEY AGREED TO ASSIST AND IT WAS AGREED NOT TO FILE FORMAL CHARGES UNTIL THEY WERE RELEASED , SO THEY HIRED ME. THEY APPROACHED THEM AND APPROACHED THE STATE AND HANDCUFFED THEM AND TOOK THEM DOWN TO FDLE AND SAID, LOOK, YOU ARE GOING TO GET SEVEN MINIMUM MANDATORY. IF YOU COOPERATE, AND IT WAS THE STATE'S IDEA, THE STATE PROPOSED IT TO OUR CLIENTS BEFORE WE WERE EVEN INVOLVED, SO THE STATE CAME TO THEM AND SAID THIS IS THE DEAL AND THIS IS THE WAY IT IS GOING TO WORK. WHEN YOU ARE DEALING WITH THEM IN A SITUATION , THEY DICTATE THE TERMS. THE DEFENDANT IN THIS SITUATION , DOESN'T HAVE A LOT OF LEVERAGE TO BARGAIN AND GO, WELL , NO, NO , NO. YOU ARE LOOKING AT SEVEN YEARS IF YOU DON'T COOPERATE, AND THESE WERE COLLEGE KIDS WITH LITTLE OR NO PRIOR RECORD, AND SO THE STATE WAS THE ONE LEFT HOLDING THE BIG HAMMER HERE. THE STATE CAME TO THEM , TOLD THEM THE WAY THE TERMS WOULD BE AND THEY AGREED. OF COURSE THEY HIRED US.

BUT WERE YOUR CLIENTS THE ONES WHO INITIATED THE WHOLE IDEA OF NOT FILING THE CHARGES , UNTIL AFTER THE SUBSTANTIAL ASSISTANCE WAS OVER?

THAT IS A GOOD QUESTION , AND I WANTED TO ADDRESS THAT WITH JUSTICE PARIENTE , IS THAT THERE WAS NOTHING IN THE RECORD TO SUBSTANTIATE THAT WE SUGGESTED THIS . THERE WAS AN AFFIDAVIT IN OUR CASE , THAT WAS NOT IN MR . BULGIN 'S THAT WAS ENTERED , BUT WE OBJECTED TO THE AFT AFFIDAVIT. TO THE AFFIDAVIT . WE SPECIFICALLY OBJECTED ON THE RECORD TO THE AFFIDAVIT AND TO THE PROVISION SAYING THAT WAS THEIR IDEA , BUT IN THEORY AND IN PRACTICE , LAW ENFORCEMENT AS THIS COURT NOTED , DEPENDS , IN MAKING DRUG BUSTS, IN TAKING DRUGS OFF THE STREET , THEY DEPEND ALMOST , NOT ENTIRELY BUT SIGNIFICANTLY ON OTHER ARRESTS , INCLUDING THE LATTER, AS THE COURT NOTED .

WHAT HAPPENS IF WE COME UP WITH A RULE TO INTERPRET J-2 , TO SAY THAT , WELL , SOMETIMES IN A COOPERATION AGREEMENT , WHETHER ORAL OR WRITTEN , THE DELAY OR THE FAILURE TO HOLD TRIAL MAY BE ATTRIBUTED TO THE DEFENDANT. AT OTHER TIMES, IT MAY BE ATTRIBUTED TO THE STATE. AND IT IS UP TO THE JUDGE IN A PARTICULAR CIRCUMSTANCE OF THIS CASE , TO DETERMINE AS THE JUDGE DETERMINES FOR A LOT OF OTHER FACTORS IN SUBSECTION J , WHETHER , UNDER THOSE CIRCUMSTANCES , WHO IT SHOULD BE ATTRIBUTED TO , AND IN THESE CASES , REMAND FOR HEARINGS ON THAT ISSUE.

YOU ARE EXACTLY RIGHT, YOUR HONOR. WE NORTH SAYING THAT THERE COULD NEVER BE WE ARE NOT SAYING THAT THERE COULD NEVER BE CIRCUMSTANCES WHERE THE DELAY COULD NEVER BE ATTRIBUTABLE TO THE DEFENDANT. CERTAINLY IF THE DEFENDANT BREAKS INTO FDLE AND THROWS AWAY THE PILLS WHILE COOPERATING , THAT COULD BE CIRCUMSTANCES , BUT THERE ARE CASES THAT ARE NOT ATTRIBUTABLE TO THE DEFENDANT.

YOU ARE SAYING IN THIS CASE IT WAS NOT ATTRIBUTABLE TO THE DEFENDANT.

ABSOLUTELY, YOUR HONOR.

BUT THE TRIAL COURT NEVER HELD ANY KIND OF A HEARING , ONE WAY OR THE OTHER.

WELL, IN REGARD TO THE FACT WE HAVE STIPULATIONS THAT WERE ENTERED , THE COURT , UNDER THE RULE , P-1 , IS REQUIRED TO CONSIDER ALL THE EXCEPTIONS, OF WHICH J-2 , ATTRIBUTABLE TO THE DEFENDANT , IS ONE OF THEM.

BUT I THOUGHT THAT THERE WAS SOME MISCONCEPTION THAT, ON THE PART OF THE TRIAL JUDGE , THAT IF 175 DAYS WENT BY , THAT THERE WOULDN'T BE ANY ABILITY TO APPLY ANY OF THESE

EXCEPTIONS. IS THAT NOT THE CASE?

THAT IS NOT MY RECOLLECTION, YOUR HONOR. I THINK THE FIFTH DCA , WILLIAMS HAD CAME OUT AT THAT POINT , AND THE FIFTH DCA WILLIAMS CASE WAS DEALING WITH SUBSTANTIAL ASSISTANCE. THE COURT IN THE WILLIAMS CASE, SAID, WELL , YOU DID NOT GET A WRITTEN WAIVER , AND CLEARLY THIS COURT SUPPRESSED THE FIFTH DCA AND SAID THEY ARE NOT ENTITLED TO DISCHARGE. I THINK THE TRIAL JUDGE , BY OPERATION OF LAW, HAS TO CONSIDER P-1 , P-2 , P-3 AND P-4.

DO YOU AGREE THAT THE TRIAL COURT AT THE HEARING, NEVER SAID THAT I BELIEVE THE DELAY IN BRINGING IT TO THE TRIAL IS ATTRIBUTABLE TO THE STATE IN THIS CASE OR TO THE DEFENDANT IN THIS CASE?

YOUR HONOR, I CAN'T HONESTLY STATE EXACTLY , MY RECOLLECTION EXACTLY , AS FAR AS THAT ISSUE, BUT I THINK THAT HE SAID THAT I DON'T FIND THAT THE DEFENDANTS WAIVED THEIR RIGHT , AND QUITE CANDIDLY , THEY NEVER ARGUED THE DELAY BEING ATTRIBUTABLE TO THE TRIAL COURT. THEY ARGUED A WAIVER ARGUMENT AT THE TRIAL LEVEL , AND THEN THEY ARGUED THIS THE FIRST TIME TO THE DCA. OF COURSE WE ARGUED THAT THEY DIDN'T PRESERVE IT.

THEY ARGUED THAT IT WAS AN EXPLICIT WAIVER OF THEIR SPEEDY TRIAL RIGHTS, IS THAT WHAT THE STATE WAS ARGUING?

I THINK THE STATE AT THAT POINT WAS KIND OF ARGUING WHATEVER THEY COULD GET THEIR HANDS ON AND MR . CONRAD'S CASE THEY ARGUED THAT THE DELAY WAS ATTRIBUTABLE TO THE DEFENDANT AND THE JUDGE DID NOT FIND THAT , AND HE BASED THAT ON WILLIAMS , WHICH

THERE ARE TWO DIFFERENT TRIAL JUDGES HERE?

YES, YOUR HONOR , THERE WERE, BUT IT IS NOT OUR BURDEN TO ASSESS THE STATE'S POSITION IN ARGUMENTS FOR THEM. THEY HAVE THE OPPORTUNITY TO CALL WITNESSES AND PRESENT WITNESSES AND ESTABLISH A RECORD. THEY ELECTED NOT TO DO THAT, AND IF THEY DON'T MAKE A SPECIFIC ARGUMENT , I DON'T THINK THE BURDEN SHOULD FALL ON US TO MAKE THE ARGUMENT FOR THEM, BUT I WOULD POINT OUT AGAIN , P-1 DOES REQUIRE THE TRIAL COURT TO GO THROUGH EACH EXCEPTION , WHICH INCLUDES THE DELAY BEING ATTRIBUTABLE TO THE DEFENDANT , AND I DO NOT BELIEVE THE DELAY BEING ATTRIBUTED TO THE DEFENDANT WOULD APPLY IN CASES LIKE THIS, AND THE REASON IS BECAUSE THE FIRST DCA COURT HELD THAT THE DELAY WAS ATTRIBUTABLE TO THE SUBSTANTIAL ASSISTANCE AGREEMENT, AND THEN THEY CRAM THAT INTO J-2, SAYING IT IS ATTRIBUTABLE TO THE DEFENDANT BECAUSE THEY ARE A PART OF IT , BUT J-2 , ATTRIBUTABLE TO THE DEFENDANT, IS NOT DESIGNED TO DEAL WITH AGREEMENTS THAT WOULD COME UP WITH IN THIS CASE. COME UP IN THIS CASE. THE RULE SPECIFICALLY DOES ADDRESS AGREEMENTS TO EXTEND SPEEDY TRIAL, AND THAT IS 3.19- I-1 , WHICH STATES THAT THE SPEEDY TRIAL TIME CAN BE EXTENDED , PROVIDED YOU COME BEFORE THE EXPIRATION , BY STIPULATION TO THE COURT , OR BY WRITTEN STIPULATION SIGNED BY THE PARTY IT IS ATTRIBUTED TO. THAT IS WHERE THE RULE DEALS WITH AGREEMENTS TO EXTEND SPEEDY TRIAL. I DON'T THINK IT WOULD BE APPROPRIATE FOR SOMEONE TO NOT GO TO THE COURT AND ASK FOR THAT EXTENSION TIMELY. LET IT RUN AND DO NOTHING AND COME BACK 480 DAYS IN OUR CASE AND SO, NO , WE DIDN'T REQUEST AN EXTENSION.

ISN'T THAT ARGUMENT , I THINK YOU MAKE A GOOD POINT , BUT ISN'T THAT ARGUMENT FOR THE DEFENDANT TO MAKE, AFTER THE SPEEDY TRIAL PERIOD RUNS AND THE STATE SAYS, WELL , WE GO UNDER J-2, IT IS ATTRIBUTED TO THE DEFENDANT , AND YOU CAN THEN MAKE THE ARGUMENT, JUDGE , THEY COULD HAVE DONE THIS EARLIER. IT IS NOT ATTRIBUTED TO US . THE STATE WANTED US TO COOPERATE. WE COOPERATED. THE STATE NEVER FILED A MOTION BEFORE EXPIRATION OF THE TIME . AND IT WOULD, LIKE YOU SAID BEFORE, IT WOULD DEPEND ON A

PARTICULAR CIRCUMSTANCES OF THE CASE.

AGAIN, YOUR HONOR, I DON'T THINK THAT THERE, THAT WE ARE SAYING THAT THERE CAN NEVER BE A DELAY ATTRIBUTABLE TO THE DEFENDANT, BUT I THINK THAT RULE IS DESIGNED TO DEAL WITH UNILATERAL MISCONDUCT OR DILATORY TACTICS BY THE DEFENDANT, SUCH AS IN ROSENFELD AND COLLINS, WHERE THEY ENTERED A PLEA, PREVENTED THE STATE FROM GOING TO TRIAL AND THEN LATER WITHDREW IT RIGHT BEFORE IT RAN, PREVENTING THE STATE FROM DOING IT, AND I DON'T THINK THE CIRCUMSTANCES WAS A DEMI TO THE AGREEMENT A DELAY TO AN AGREEMENT OR ATTRIBUTABLE TO ONE PARTY - -

BUT IN THE RIVERA CASE, THE DEFENDANT DIDN'T REALLY DO ANYTHING WRONG, THE STATE HADN'T, AND WE HELD THAT THAT WAS ATTRIBUTABLE TO THE DEFENDANT, EVEN THOUGH THEY COULDN'T HAVE GOTTEN DISCOVERY, SO WE HAVEN'T REALLY LOOKED AT IT AS FALSE, AS OPPOSED TO JUST SOME PROBLEMS TO WORK OUT AS TO HOW THIS RULE SHOULD WORK EQUITYBLY, I THINK.

WELL, IF THE DELAY IS TO BE HELD ATTRIBUTABLE TO THE DEFENDANT, AS THE RULE EXPRESSLY STATES, I THINK IT WOULD HAVE TO BE ATTRIBUTABLE TO THE DEFENDANT AND TO THE DEFENDANT ONLY. HERE, I DON'T THINK UNDER ANY FACTUAL CONSTRUCTION, WE CAN SAY THAT THE DELAY WAS ATTRIBUTABLE TO THE DEFENDANT, WHEN IT WAS THE STATE'S IDEA, IN FACT, TO DO THIS, AND LASTLY JURIS I WOULD POINT OUT THAT THERE IS A - - LASTLY, JUDGE, I WOULD POINT OUT THAT THERE IS A COUNTERPART, 3.91- I-5, WHERE THE DELAY IS ATTRIBUTABLE TO THE DEFENDANT, AND THAT GIVES INSIGHT AS TO WHAT THE RULE MEANS, BECAUSE UNDER THAT RULE, IF A DEFENDANT CAUSE A MAJOR DELAY OR SUBSTANTIALLY INTERFERES WITH THE PREPATION OF PROCEEDINGS, SUCH AS PREVENTING WITNESSES FROM ATTENDING OR OTHERWISE, AND THAT IS A VERY HIGH

THEN WE GET BACK TO THE SAME PROBLEM, I F THERE HAS NEVER BEEN A CASE FILED, HOW DOES THE STATE DO THAT?

WELL, YOUR HONOR, AS OPPOSING COUNSEL SAID, WE COULD HAVE DONE SOMETHING. WE SHOULD HAVE OBJECTED. WE SHOULD HAVE DONE THAT. THERE IS A LINE OF CASES SAYING WE DON'T HAVE THE OBLIGATION TO BRING OURSELVES TO TRIAL. WE DON'T HAVE AN OBLIGATION TO NOTIFY A COURT IF THEY EXTEND SPEEDY TRIAL BEYOND THE PERIOD AND SAY, JUDGE, YOU CAN'T DO THAT. SILENCE IS NOT A WAIVER AND ACQUIESCENCE IS NOT A WAIVER.

YOU SAY THE STATE CAN BRING A MOTION FOR EXTENSION, BUT IF CHARGES HAVE NOT BEEN FILED AND THE DEFENDANTS ARRESTED, THERE IS NO CASE TO BRING THAT MOTION IN, JUST LIKE THERE WOULD BE NO CASE ON THE PART OF THE DEFENDANT.

AT SOME POINT THE STATE HAS TO MAKE A DECISION HOW MUCH MORE ASSISTANCE OR CONTINUANCE DO THEY WANT TO GET, WHERE THEY MIGHT BE WAIVING.

CHIEF JUSTICE: THANK YOU. I HAVE TO STOP YOU NOW. THE TIME IS, WE HAVE GONE PAST ON BOTH SIDES. THE ORAL ARGUMENT HAS BEEN VERY HELPFUL, VERY INFORMATIVE, AND APPRECIATE BOTH SIDES HAVING BEEN VERY PREPARED AND VERY FORTUNATE COMING WITH THE COURT. THANK YOU.

THANK YOU, JUDGE.

CHIEF JUSTICE: THE COURT IS IN RECESS UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE.