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State of Florida v. Jeffrey Lovelace Docket Number: 05-1395

THE COURT WILL HEAR THE LAST CASE OF STATE VERSUS LOVELACE.

CHIEF JUSTICE: ARE THE PARTIES READY? MR. WINOKUR. NOT USED TO SEEING YOU ON THAT SIDE.

EXACTLY RIGHT. I DIDN'T KNOW IF I SHOULD DIRECTLY APPROACH THE PODIUM, YOUR HONOR. THOMAS WINOKUR FOR THE PETITIONER, THE STATE OF FLORIDA IN THIS CASE. THIS CASE IS BEFORE THIS COURT ON CERTIFIED CONFLICT WITH THE FIRST DISTRICT COURT OF APPEALS DECISION IN STATE V JACKSON.

ON THE CONFLICT, IS THERE REALLY CONFLICT BETWEEN THIS CASE AND JACKSON? AS I UNDERSTAND IT, JACKSON IS A CASE BASICALLY WHERE THE STATE ENDED UP FILING BOTH THE FELONY AND THE MISDEMEANOR IN THIS -- IN THEIR -- IN FELONY COURT.

IT APPEARS THAT WAY.

IN THIS CASE IT DID NOT HAPPEN SO DON'T WE REALLY HAVE A DIFFERENT SITUATION IN JACKSON, ALTHOUGH I RECOGNIZE THAT THE 4TH DISTRICT CERTIFICATED THE CONFLICT BUT IS THERE REALLY CONFLICT?

I THINK THERE IS MOST CERTAINLY CONFLICT IN THIS CASE.

WHAT NOW?

THERE IS A CONFLICT IN THIS CASE, BECAUSE THE 1ST DISTRICT IN JACKSON SPECIFICALLY GAVE TWO BASES FOR FINDING THAT THE COUNTY COURT DID NOT HAVE JURISDICTION. THE FIRST ONE IS THE ONE THAT YOU MENTIONED WHICH IS FOR SOME REASON THE STATE DECIDED TO FILE A MISDEMEANOR AND A FELONY CHARGE IN CIRCUIT COURT, AND THE 1ST DISTRICT FOUND THAT THAT --

WASN'T THAT FILED BEFORE THE EXPIRATION OF THE SPEEDY TRIAL OF THE MISDEMEANOR?

YES, IT WAS. BUT THE SECOND REASON THAT THEY FOUND THAT THE COURT DID NOT -- THE COUNTY COURT DID NOT HAVE JURISDICTION ANY MORE TO END ALL OF THE MISDEMEANOR CASES AND TO FILE THE DISCHARGE WAS BECAUSE THE STATE HAD FILED A NOL PROS AND IF YOU READ THE CASES IT CITED IT CITES STATE V SPENCE AND STATE V RJ FOR THOSE PROPOSITIONS AND THEY WERE RULING THAT THE NOL PROS DID HAVE JURISDICTION. THAT IS THE RULING IN WHICH THE FOURTH DISTRICT IN LOVELACE DECIDED.

DO WE HAVE A NOL PROS IN LOVELACE? WHAT WE HAD AS I UNDERSTAND IT IS A NO ACTION WHICH AT LEAST SOME OF THE DISTRICT COURTS SEEM TO TREAT DIFFERENTLY FROM A NOL PROS?

WELL, IT WAS TREATED DIFFERENTLY THAN A NOL PROS IN PURCHASE V STATE BUT I THINK THAT WAS DECIDED BASICALLY ON THE INTENT OF THE STATE IN FILING THE DOCUMENT, AND I THINK THAT, YOU KNOW, EVERY COURT THAT CONSIDERED THIS CASE, THE COUNTY COURT, THE CIRCUIT COURT, EVEN THE DISTRICT COURT WHICH RULED IN RESPONDENT'S FAVOR IN THIS CASE

CONSIDERED THE DOCUMENT THAT THE STATE FILED A TERMINATION OF THE PROSECUTION WHICH WAS FOR THE PURPOSES OF THIS CASE A NOL PROS. IT IS TRUE THAT A NOL ACTION AND A NOL PROS ARE DIFFERENT ANIMALS AND HAVE DIFFERENT PURPOSES BUT THE INTENT IN THIS CASE IS CLEARLY SHOWN BY THE COUNTY COURT, CIRCUIT COURT AND DISTRICT COURT THAT IT WAS AN INTENT TO TERMINATE THE PROSECUTION. I BELIEVE THAT DOCUMENT IS IN THE RECORD HERE. THIS COURT CAN LOOK AT THAT DOCUMENT AND IN ITS CONSIDERABLE COLLECTIVE JUDICIAL WISDOM CAN DETERMINE WHAT THE STATE'S INTENT WAS IN THIS CASE. EVERY OTHER COURT THAT HAS CONSIDERED IT HAS SAID THAT THE INTENT WAS TO TERMINATE PROSECUTION IN THE SAME WAY THAT A NOL PROS WOULD TERMINATE PROSECUTION.

CAN YOU HELP ME WITH THE FACTS OF THIS CASE? IN THIS CASE THE STATE FILED AN INFORMATION FOR FELONY DUI, CORRECT?

THAT'S CORRECT.

AND THAT WAS BASED ON THREE OR FOUR PRIOR DUI'S?

WELL, ONLY TWO PRIORS ACTUALLY.

PLUS THE ONE MISDEMEANOR IN THIS CASE?

THAT'S CORRECT.

SO THAT'S WHERE I HAVE A PROBLEM IS USING THIS, IF YOU WERE SAYING, WELL, NOW WE THINK IT IS THE BURGLARY WAS A FELONY NOT A MISDEMEANOR, THAT'S ONE THING, BUT WHERE YOU ARE SAYING THERE IS A FELONY BASED ON THE MISDEMEANOR THAT YOU EITHER NOL PROS OR TAKEN NO ACTION ON AND THE SPEEDY TRIAL TIME HAS RUN ON THAT, I DON'T SEE HOW --

I WOULD DISAGREE THAT THE STATE IS SAYING IT IS CHARGING SOMEBODY WITH A MISDEMEANOR DUI. IF YOU LOOK AT THE STATUTE, THERE IS DRIVING UNDER THE INFLUENCE. IT IS DEFINED UNDER SUBSECTION 1 OF 316.193. IT SAYS THAT YOU ARE IN ACTUAL PHYSICAL CONTROL OF THE VEHICLE AND THAT YOU ARE UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE. THE NEXT SECTION DETERMINES UNDER WHAT CIRCUMSTANCES IT IS A MISDEMEANOR, UNDER WHAT CIRCUMSTANCES IT IS A FELONY. THERE ARE ALL DIFFERENT KINDS OF EXTRA FACTORS THAT CAN DO IT, THAT CAN DETERMINE THAT. THE STATE DID NOT CHARGE HIM WITH A MISDEMEANOR DUI OFFENSE IN CIRCUIT COURT. IT CHARGED HIM WITH FELONY DUI. IT WASN'T IN ANY WAY DEPENDENT UPON THE DUI'S DESIGNATION IN COUNTY COURT AS A MISDEMEANOR AT ALL. AND THAT'S WHAT IT COURT DECIDED IN WOODRUFF. IT SPECIFICALLY SAID THAT FELONY DUI AND MISDEMEANOR DUI ARE TWO SEPARATE OFFENSES.

BUT IN ORDER TO HAVE THE FELONY DUI, DIDN'T YOU NEED THREE MISDEMEANOR DUI'S AND DIDN'T THE COURT, WERE YOU RELYING ON THE FELONY DUI ALSO INCLUDING THE THIRD MISDEMEANOR DUI?

WELL, YOUR HONOR --

WHICH YOU CAN'T DO.

MY PROBLEM WITH THAT CHARACTERIZATION OF IT IS CALLING THE CURRENT DUI A MISDEMEANOR MDUI. IT IS NOT A MISDEMEANOR DUI. IT IS A DUI THAT'S ONE ELEMENT OF THE OFFENSE. IT IS ACTUALLY TWO ELEMENTS AND THE NEXT ELEMENT OF THE OFFENSE IS TWO PRIOR CONVICTIONS FOR DUI.

BUT THAT'S A DEFENSE BASICALLY, ISN'T IT?

I DISAGREE. IN FACT, THE MAJORITY IN WOODRUFF SPECIFICALLY SAID THAT YOU CAN CHARGE A LESSER-INCLUDED OFFENSE, I'M SORRY, YOU COULD CHARGE A LESSER-INCLUDED OFFENSE IN COUNTY COURT.

TECHNICALLY THE MAJORITY, THERE WAS NO MAJORITY SAYING ANYTHING IN WOODRUFF AS WOODRUFF WAS A PLURALITY OPINION WHERE THERE WERE TWO CONCUR IN RESULT ONLY.

THAT IS CORRECT. THE PLURALITY OPINION DOES STATE THAT THE STATE CAN CHARGE A LESSER OFFENSE IN COUNTY COURT AND THEN LATER CHARGE A FELONY CHARGE BASED ON THE SAME FACTUAL SITUATION. NOW, IT IS TRUE THAT IN THIS CASE YOU'VE GOT DUI, AND THEN YOU'VE GOT FELONY DUI AND THAT DUI BY ITSELF IS A MISDEMEANOR. BUT I DISAGREE WITH THE CHARACTERIZATION OF THAT DUI AS MISDEMEANOR DUI. AND I THINK THAT MANY --

YOU DISAGREE WITH THE CHARACTERIZATION OF WHAT DUI AS A MISDEMEANOR DUI? YOU SAID YOU DISAGREE WITH THE CHARACTERIZATION.

I DISAGREE WITH THE CHARACTERIZATION OF ANYTHING IN THIS CASE AS A MISDEMEANOR DUI, OTHER THAN THE CITATION THAT WAS ISSUED TO MR. ^LOVELACE.

WELL, I GUESS I'M STILL HAVING A HARD TIME FOLLOWING THEN HERE. WHAT YOU ARE SAYING IS ONCE YOU HAVE TWO MISDEMEANOR DUI CONVICTIONS THAT ALL OF THE STATE THEN NEEDS TO DO IS CHARGE YOU WITH A FELONY DUI UNDER THE STATUTE?

THAT'S CORRECT, YOUR HONOR. THAT'S CORRECT. AND UNDER THOSE STANDARDS, AND UNDER WOODRUFF IT STILL DOESN'T -- IT MAKES NO DIFFERENCE WHETHER THE DUI, WHETHER THE MISDEMEANOR CASE -- IT DOES MAKE A DIFFERENCE WHETHER IT IS NOL PROS BEFORE OR AFTER THE EXPIRATION OF THE SPEEDY TRIAL PERIOD.

WELL, WHY WOULD IT MAKE A DIFFERENCE HERE IF THE FELONY CASE IS COMPLETELY DIFFERENT FROM THE MISDEMEANOR CASE?

THAT'S WHAT WOODRUFF HOLDS. WOODRUFF HOLDS THAT IF A MISDEMEANOR CASE THAT IS STILL VIABLE IN COUNTY COURT HAS BEEN DISCHARGED BY OPERATION OF THE SPEEDY TRIAL RULE, THEN, RANKS AN AS AN ESTOPPEL ON THE FELONY PROSECUTION. IT IS ALMOST, I'M NOT QUITE SURE IF THIS COURT WANTS TO REVISIT WOODRUFF I WOULD INVITE IT TO. WOODRUFF BASICALLY CREATES AN EXCEPTION TO THE GENERAL PRINCIPLES.

WHAT I HEAR YOU ARE TALKING ABOUT, IS THAT IF FORGET ABOUT A FILING IN COUNTY COURT THAT IF THERE IS A THIRD DUI AND THAT IS FILED IN THE CIRCUIT COURT AS A FELONY DUI, THEN YOU DON'T -- THEN THE THIRD CONVICTION IS WITHIN THE FELONY CHARGE AS OPPOSED TO A SEPARATE MISDEMEANOR CHARGE?

THAT'S CORRECT, YOUR HONOR. BUT UNDER WOODRUFF AS WE HAVE RIGHT NOW, UNDER THE PLURALITY OPINION IN WOODRUFF IF, IN FACT, THE MISDEMEANOR CASE IS LEFT VIABLE UNTIL THE END OF THE COUNTY COURT SPEEDY TRIAL PERIOD, THEN THE STATE CANNOT PROVE THE FELONY DUI, BECAUSE ONE OF THOSE ELEMENTS BASICALLY HAS BEEN DISCHARGED AND CANNOT BE REVIVED, BUT I WANT TO STRESS THAT JACKSON IS PERFECTLY CONSISTENT WITH WOODRUFF. I DON'T WANT TO EVEN IMPLY THAT IT IS NECESSARY FOR THIS COURT TO RECONSIDER WOODRUFF IN ORDER TO SUPPORT THE HOLDING IN JACKSON AND TO QUASH THE DECISION IN LOVELACE, IN THE CASE BEFORE US. AND THAT'S BECAUSE THE CASE, THE LOVELACE DISTRICT COURT MISS APPLIED THIS COURT'S HOLDING IN STATE VAGIE. WHAT THE JACKSON COURT HELD WAS THAT THE NOL PROS OF THE MISDEMEANOR TICKET PRIOR TO THE EXPIRATION OF THE MISDEMEANOR SPEEDY TRIAL PERIOD TERMINATED THE MISDEMEANOR PROSECUTION AND THEREFORE THERE WAS NO DISCHARGE UNDER THE SPEEDY TRIAL RULE AND THE FELONY DUI REMAINED VIABLE. WHAT THE LOVELACE COURT SAYS IS THAT THAT DECISION IS WRONG

BECAUSE IT CONFLICTS WITH STATE V^AGIE AND CITES THE FOLLOWING SENTENCE FROM THE AGEE CASE. ONE, THE STATE ENTERS A NOL PROS THE SPEEDY TRIAL PERIOD CONTINUES TO RUN AND THE STATE MAY NOT REFILE CHARGES BASED ON THE CONDUCT AFTER THE PERIOD EXPIRES. FROM THE STATE'S STANDPOINT THE LOVELACE COURT LEFT OUT THAT LAST CLAUSE AND MADE IT WHEN THE STATE ENTERS A NOL PROS THE TIME CONTINUES TO RUN AND THE STATE MAY NOT FILE CHARGES BASED ON THAT CONDUCT. THAT'S FINE. THE STATE COULD NOT HAVE REFILED THE MISDEMEANOR CHARGES IN THIS CASE AFTER THEY FILED THE NOL ACTION. IT WOULD HAVE BEEN PRECLUDED BY THE SPEEDY TRIAL RULE.

THE SPEEDY TRIAL RULE SPEAKS TO THIS SAME CONDUCT OR CRIMINAL EPISODE.

THAT IS TRUE, YOUR HONOR.

AND ISN'T IT REFILEING VIOLATING THAT SECOND PART, THE SAME CRIMINAL EPISODE? IT MAY NOT BE THE SAME CONDUCT, MISDEMEANOR VERSUS FELONY.

IT IS IN FACT THE CRIMINAL EPISODE BUT THE KEY IS AGEE IS THE LAST CLAUSE OF IT. AFTER THE PERIOD EXPIRES AND IN AGEE IT WAS NOT A QUESTION OF DIFFERENT SPEEDY TRIAL PERIOD. IN AGEE THE STATE NOL PROSED FELONY CHARGES AND THIS COURT SAID THAT THAT WAS A VIOLATION OF THE RULE AND THE RULE ACTUALLY SPECIFICALLY SAYS THAT YOU CAN'T USE A NOL PROS TO AVOID THE EFFECT OF THE RULE.

BUT THIS IS REALLY A RARE CIRCUMSTANCE THAT OCCURS BECAUSE IT IS USUALLY A MISDEMEANOR IS A MISDEMEANOR AND THE FELONY IS A FELONY AND IT IS RARE THAT A MISDEMEANOR BECOMES A FELONY.

THAT'S CORRECT, YOUR HONOR, AND THIS COURT SAID SO IN WOODRUFF THAT ONLY THE SPECIFIC REQUIREMENTS OF THIS STATUTE, WHICH HAS ODD LANGUAGE, WHICH ACTUALLY SAYS THAT A FELONY CONVICTION IS BASED ON A CURRENT CONVICTION FOR DUI, PLUS TWO PRIOR CONVICTIONS, MANDATED THE RESULTS IN WOODRUFF. OTHERWISE, EVEN UNDER THE PLURALITY OPINION THE DECISION WOULD HAVE BEEN DIFFERENT.

I GUESS IT MAY APPLY IN SITUATIONS WHERE YOU CHARGE A MISDEMEANOR BURGLARY OR THEFT AND THEN FIND OUT THAT THE PROPERTY WAS WORTH MORE THAN \$100 AND THEN WANT TO RECHARGE AS A FELONY?

THAT'S EXACTLY RIGHT, YOUR HONOR.

BUT COULDN'T IT ALSO APPLY IN A FELONY BATTERY?

I'M SORRY?

WOULDN'T IT NOT QUITE OFTEN APPLY IN A FELONY BATTERY CHARGE WHERE YOU HAVE A MISDEMEANOR MATTER AND YOU HAVE SO MANY PRIORS?

I BELIEVE THE SAME THING COULD HAPPEN IN FELONY BATTERY AS IN FELONY DUI. THERE ARE NO CASES ON THAT. IT SEEMS LIKE FELONY DUI IS QUITE A BIT MORE COMMON THAN FELONY BATTERY IN THIS STATE.

SO IN THIS CASE, HE WAS CHARGED WITH MISDEMEANOR DUI?

HE WAS GIVEN A CITATION FOR DUI, YOUR HONOR.

WHICH IS ENOUGH TO CHARGE ONE WITH A MISDEMEANOR DUI, CORRECT?

YES, MA'AM.

SO IF THE SPEEDY TRIAL -- IF WE FIND THAT THE SPEEDY TRIAL RULE, IN FACT, EXPIRED ON THAT MISDEMEANOR, WHAT IS THE STATUS OF THIS FELONY CASE?

UNDER WOODRUFF, THE FELONY CASE MAY NOT BE PROSECUTED. UNDER WOODRUFF.

SO WHAT IS YOUR ARGUMENT THAT THE MISDEMEANOR IF SPEEDY TRIALED HAD NOT EXPIRED?

THAT'S SIMPLE, YOUR HONOR, UNDER JACKSON THEY SAY THAT THE NOL PROS OF THE MISDEMEANOR CASE IN COUNTY COURT PRIOR TO THE EXPIRATION OF THE SPEEDY TRIAL PERIOD TERMINATED THE PROSECUTION THUS MAKING ANY SUBSEQUENT ACTION UNDER THE SPEEDY TRIAL RULE OR ANYWHERE A NULLITY.

SO NO ACTION IN THIS CASE, YOU ARE ARGUING IS EQUIVALENT TO A NOL PROS?

YES, MA'AM, THAT'S CORRECT.

BUT ISN'T THAT THE CRITICAL DIFFERENCE BETWEEN JACKSON IN THIS CASE AS IN JACKSON THAT THE SPEEDY TRIAL HAD NOT NOT RUN AT THE TIME THE MISDEMEANOR OFFENSE WAS NOL PROSED?

NOW, WHICH SPEEDY TRIAL? THE DIFFERENCE IN JACKSON IS IT WAS BEFORE THE 90 DAYS. HERE IT IS AFTER THE 90 DAYS.

THE STATE CONTENDS THAT THAT DISTINCTION --.

CHIEF JUSTICE: IS THAT CORRECT?

THAT IS CORRECT, YOUR HONOR.

THAT DISTINCTION IS IRRELEVANT TO THESE CHARGES. THE ISSUE IS AT WHAT POINT THE MISDEMEANOR CHARGE WAS DISCHARGED. AND UNDER THE SPEEDY TRIAL RULE AS IT EXISTED, AS IT HAS EXISTED SINCE 1984, YOU ARE NOT ENTITLED TO ANY DISCHARGE UNTIL AFTER 15 DAYS AFTER A NOTICE OF EXPIRATION IS FILED. THE SPEEDY TRIAL RULE DOES NOT REQUIRE THE STATE TO TRY A DEFENDANT WITHIN A CERTAIN NUMBER OF DAYS. THAT'S JUST NOT THE WAY OUR RULE WORKS. IT SAYS THAT AFTER A CERTAIN NUMBER OF DAYS YOU CAN, WHENEVER YOU WANT, THE DAY AFTER, MONTHS AFTER, FILE A NOTICE OF EXPIRATION AND REQUIRE THE STATE TO TRY YOU IN 15 DAYS.

SO WHEN THIS EXPIRED AND HE FILED A NOTICE IN THIS CASE AND THEN HE FILED THE NOTICE OF THE EXPIRATION OF SPEEDY TRIAL AND THEN HE FILED A MOTION FOR DISCHARGE BASED UPON SPEEDY TRIAL AND THAT'S THE MOTION THAT THE 4TH DISTRICT SAYS SHOULD HAVE BEEN GRANTED?

THAT'S CORRECT, YOUR HONOR.

AND IF WE FIND THAT NO ACTION FILED BY THE STATE IS, IN FACT, NOT THE EQUIVALENT OF A NOL PROS THEN THE 4TH DISTRICT WOULD BE CORRECT THAT THAT MOTION SHOULD HAVE BEEN GRANTED BY THE TRIAL COURT?

IF YOU FIND THAT THE STATE DID NOT TERMINATE PROSECUTION THEN THAT'S CORRECT UNDER WOODRUFF, THE 4TH DISTRICT DECISION WOULD STAND AND THE STATE WOULD BE UNABLE TO CONTINUE THE FELONY CHARGES. I WOULD SIMPLY ASK THIS COURT TO LOOK AT THAT DOCUMENT AND DETERMINE WHAT ITS INTENT IS AND BASE ITS DECISION ON THAT AND NOT

WHAT THE STATE ENTITLED IT. YOU KNOW, WE DON'T WANT TO EXALT FORM OVER SUBSTANCE IN THIS CASE. IF WE DID THE STATE MIGHT ARGUE THAT THE MOTION FOR DISCHARGE FILED IN THE CIRCUIT COURT IN THIS CASE WAS INVALID BECAUSE AS RESPONDENTS HAVE CONTENTED THE STATE DIDN'T VIOLATE THE SPEEDY TRIAL RULE SO A MOTION FOR DISCHARGE WASN'T TECHNICALLY THE APPROPRIATE MOTION. IT SHOULD HAVE BEEN A MOTION TO DISMISS UNDER WOODRUFF. IT WAS ONE OF THE ELEMENTS THAT COULDN'T BE FOUND.

BUT THEY FILED ONE IN THE MISDEMEANOR COURT, ALSO, WASN'T A MOTION FOR DISCHARGE FILED IN BOTH THE COUNTY COURT?

A MOTION FOR DISCHARGE WAS APPROPRIATE IN COUNTY COURT BECAUSE IT WAS A SPEEDY TRIAL MATTER AND IN CIRCUIT COURT IT WASN'T BECAUSE THE REASON FOR DISMISSAL WAS THAT IT NOW COULDN'T BE PROVEN UNDER WOODRUFF. WE ARE TALKING FORM OVER SUBSTANCE. NO PARTY TRIED TO CLAIM THAT THE STATE DIDN'T INTEND TO SEEK A DISMISSAL UNDER WOODRUFF BECAUSE THEY MISTITLED IT A MOTION FOR DISCHARGE AND TRIED TO SEEK DISCHARGE UNDER RULE 3191. THE STATE ASKED FOR THE SAME CONSIDERATION.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL SUBSTANTIALLY.

WITH REGARD TO THE NO ACTION. THANK YOU.

CHIEF JUSTICE: MR. ^BERNARD?

MAY IT PLEASE THE COURT, CHARLES BARNARD FOR MR. ^JEFFREY LOVELACE, WHO IS PRESENT. YOUR HONORS, THE FIRST ISSUE IS DOES JACKSON CONFLICT WITH LOVELACE? AND IN JACKSON THE ISSUE WAS ON THE FILING OF THE INFORMATION IN CIRCUIT COURT CHARGING BOTH THE FELONIES AND THE MISDEMEANORS THAT THE COUNTY COURT LOST JURISDICTION OVER THE MISDEMEANOR CHARGE. AND IN LOVELACE THE INFORMATION THAT WAS FILED IN THE CIRCUIT COURT ONLY CHARGED THE DUI. IT DID NOT CHARGE THE MISDEMEANOR WITH THE DUI. AND THAT MISDEMEANOR REMAINED IN COUNTY COURT AND THE CIRCUIT COURT NEVER OBTAINED JURISDICTION OVER THE MISDEMEANOR CHARGE. IT THEREFORE DID NOT HAVE EXCLUSIVE JURISDICTION SO WHAT WE HAVE HERE, THERE IS NO CONFLICT BETWEEN JACKSON AND LOVELACE BECAUSE THE PROCEDURAL FACT PATTERN REGARDING THE COURT RETAINING JURISDICTIONS ARE DIFFERENT. IN OTHER WORDS THE ACTUAL JURISDICTIONS ARE DIFFERENT. YOU'VE GOT ONE IN LOVELACE WHERE THE COURT NEVER PICKS JURISDICTION OVER THE COUNTY COURT AND ACCORDING TO THE OPINION AND THE COURT IN JACKSON, THE COURT WITHOUT THE COUNTY COURT OF JURISDICTION AND OBTAINS JURISDICTION IN CIRCUIT COURT. THE OTHER ISSUE IS THE NO ACTION VERSUS THE NOL PROS. CLEARLY AT NO TIME DO WE HAVE THE DEFENDANT IN THIS CASE SAYING THAT A NO ACTION IS A NOL PROS. DON'T WORRY ABOUT IT.

BUT NOW THE APPELLANT ARGUES HERE THAT BASICALLY THAT EVEN THOUGH IT MAY HAVE BEEN TERMED A NO ACTION, THAT IS THE FUNCTIONAL EQUIVALENT OF A NOL PROS AND THAT IT INDICATES THAT THAT IS WHAT THE STATE WAS DOING, AND SO WHY SHOULDN'T WE LOOK AT THAT AND NOT ELEVATE THAT?

ALL I CAN SUGGEST IS PURCHASE VERSUS STATE ACTUALLY TALKS ABOUT WHAT THE DIFFERENCE IS BETWEEN A NO ACTION. NOW, LET'S TALK ABOUT PROCEDURALLY WHAT HAPPENED IN MR. ^LOVELACE'S CASE.

HAVEN'T WE TREATED IN I THINK IT WAS REED, A NO ACTION FOR PURPOSES OF THE SPEEDY TRIAL RULE AS THE EQUIVALENT OF A NOL PROS?

THAT MAY BE, JUDGE, BUT THE ACTUAL A NO ACTION BASICALLY MEANS THAT YOU ARE PUTTING THE DEFENDANT ON NOTICE THAT THERE IS NO FORMAL CHARGES FILED. IN A TYPICAL CASE,

JUDGE, WHERE A DEFENDANT IS ARRESTED FOR EXAMPLE FOR A PETTY THEFT OR A GRAND THEFT THE DEFENDANT IS NOT GIVEN A CHARGING DOCUMENT. 21 DAYS LATER THEY ARE GIVEN --.

I UNDERSTOOD THAT AND DISSENTED IS THE REASON I REMEMBER THAT BUT THIS COURT TREATED IT, THOUGH.

YES. IF IN LOVELACE, IF I MAY JUST GET INTO THAT, IF LOVELACE WOODRUFF AND JACKSON, WE HAVE EACH OF THESE DEFENDANTS BEING ARRESTED. EACH OF THESE DEFENDANTS ARE NOW GIVEN A UNIFORM DUI CITATION, OKAY? AND THE UNIFORM DUI CITATION UNDER RULE 6.165A IS THE CHARGING DOCUMENT. NOW, THIS IS NOT LIKE A NORMAL OR I SHOULD SAY IT IS NOT LIKE MOST OTHER CRIMES THAT ARE CHARGED BECAUSE TYPICALLY THE DEFENDANT IS ARRESTED AND HE IS NOT CHARGED WITH A DOCUMENT RIGHT THERE. IN A TRAFFIC CRIMINAL OFFENSE, LIKE A DUI, THAT HAPPENS. SO NOW WE HAVE A COURT, THE COUNTY COURT WHICH IS SADDLED WITH THE CHARGING DOCUMENT, THE DUI CITATION, AND THE SPEEDY TRIAL IS, THE MISDEMEANOR SPEEDY TRIAL WHICH IS 90 DAYS HAS STARTED TO RUN AND IT WILL CONTINUE UNLESS SOMETHING IS DONE ABOUT IT AND WHAT DO YOU DO? YOU LOOK TO WOODRUFF TO SAY WE HAVE THIS SITUATION THAT IS NOT TYPICAL BECAUSE NOW WE HAVE A CHARGING DOCUMENT. WHAT DO WE DO? WELL, FLORIDA RULES OF CRIMINAL PROCEDURE 3.91F SAYS WHEN A FELONY AND MISDEMEANOR ARE CONSOLIDATED FOR THE DISPOSITION IN CIRCUIT COURT, THE MISDEMEANOR SHALL BE GOVERNED BY THE SAME TIME PERIOD APPLICABLE TO THE FELONY SO WHAT DOES THE STATE HAVE TO DO BASED ON WOODRUFF? ALL THEY HAVE TO DO IS LOOK UP THE DEFENDANT'S PRIORS SAND SAY, LOOK, IN THIS CASE MR.^LOVELACE HAS TWO PRIOR DUI MISDEMEANORS. THIS IS GOING TO BE A THIRD AND SO IF IT IS A THIRD WITHIN TEN YEARS OF A SECOND WE HAVE TO CHARGE HIM WITH A FELONY SO WHAT DO WE DO? WE FILE THE FELONY CHARGE IN THE FELONY INFORMATION IN CIRCUIT COURT AND THEN MOVE TO CONSOLIDATE THE MISDEMEANOR WITH THE FELONY CHARGE WITHIN THE 90-DAY PERIOD.

MY CONFUSION OVER THAT, MY CONCEPTUAL PROBLEM WITH IT IS IN THIS CASE IT IS NOT A CASE WHERE THERE IS A MISDEMEANOR CHARGED AND A FELONY AND THEN THEY ARE GOING TO BE CONSOLIDATED. IT IS A CASE WHERE THE MISDEMEANOR BECOMES A FELONY.

WELL --

IT IS NOT TWO CHARGES. IT IS NOW ONE BECOMING ANOTHER.

I WOULD SUGGEST THIS: THE COUNTY COURT IS SADDLED WITH THE MISDEMEANOR CHARGE, OKAY, BECAUSE HE HAS BEEN CHARGED BY THE TRAFFIC CITATION UNDER RULE 6.165A. THAT SPEEDY TRIAL CONTINUES, AND IN LOVELACE IT CONTINUES PAST THE 90 DAYS. THE DEFENDANT IN THIS PARTICULAR CASE FILED A NOTICE OF EXPIRATION AFTER THE 90 DAYS AND AFTER THE RECAPTURE PERIOD HAD ENDED THEN MR.^LOVELACE FILED A MOTION FOR DISCHARGE AND THE DAY AFTER THE MOTION FOR DISCHARGE THEN THE STATE FILED A FELONY INFORMATION, BUT THEY DID NOT FILE THE MISDEMEANOR WITH THE FELONY NOR DID THEY BEFORE THE 90 DAYS MOVE TO CONSOLIDATE. HAD THEY DONE SO, THEN WE WOULDN'T BE HERE.

WELL, OF COURSE, AND ALSO I THINK THE STATE WOULD CONCEDE THAT THE STATE WOULD HAVE BEEN PROHIBITED FROM FILING ANOTHER, FROM REFILEING THE MISDEMEANOR DUI BUT WHY SHOULDN'T IT BE ABLE TO FILE A FELONY DUI WITHIN THE FELONY TRIAL PERIOD?

BECAUSE WE ARE SADDLED WITH THE MISDEMEANOR HAVING BEEN CHARGED BY TRAFFIC CITATIONS, UNLIKE OTHER CASES, AND ONCE YOU'VE GOT THAT GOING, THAT MISDEMEANOR 90 DAY SPEEDY TRIAL GOING, YOU HAVE TO DO SOMETHING WITH IT. YOU CAN'T IGNORE IT, AND THE ONLY WAY, WOODRUFF SAYS THE ONLY WAY TO OUTST THE COUNTY COURT OF JURISDICTION IS TO MOVE TO CONSOLIDATE WITHIN THE 90 DAYS IN A TIMELY MOTION TO CONSOLIDATE.

CHIEF JUSTICE: SO IF INSTEAD OF A NO ACTION, HOW ABOUT IF ON THAT DATE THEY HAD FILED A MOTION TO TRANSFER?

IN LOVELACE, IF THEY HAD FILED A MOTION TO CONSOLIDATE THE MISDEMEANOR WITH THE FELONY CHARGE, THE DAY AFTER HE FILED HIS MOTION FOR DISCHARGE IN COUNTY COURT, THEN IT WOULDN'T BE EFFECTIVE BECAUSE SPECIFICALLY WOODRUFF SAYS IN FOOTNOTE TWO, HAD THE CASES BEEN CONSOLIDATED BY A TIMELY MOTION WHICH IS WITHIN THE 90 DAYS, THE OF THE STATE OF WOODRUFF THE COUNTY COURT'S JURISDICTION OVER ORIGINAL CHARGES WOULD HAVE BEEN LOST AND THE CIRCUIT COURT'S DISMISSAL OF INFORMATION WOULD HAVE BEEN VOID.

CHIEF JUSTICE: TELL ME, ARE WE DEALING WITH TECHNICALITIES HERE?

NO, MA'AM, WE'RE NOT.

CHIEF JUSTICE: I'M JUST HAVING A REAL PROBLEM WITH THIS, AND, YOU KNOW, IT GOES BACK TO THE QUESTION OF EVERY TIME I SEE ONE OF THESE SPEEDY TRIAL CASES I TRY TO THINK OF WHAT RIGHTS OF THE DEFENDANT WERE -- WE ARE VINDICATING AND THAT BALANCE, AND HERE, THOUGH, IT JUST SEEMS WHEN YOU ARE SAYING, WELL, IF THEY HAD JUST DONE IT THIS WAY IT WOULD HAVE BEEN FINE. I MEAN, IT STILL WOULD SUBJECT MR. LOVELACE TO, I MEAN THE TIME PERIODS WOULD HAVE BEEN THE SAME. IT IS JUST A QUESTION OF WHETHER THEY FILED THE CORRECT MOTION AT THE CORRECT TIME. IN OTHER WORDS, TELL ME WHAT -- TELL ME AGAIN HOW YOU SAY THAT THIS IS NOT A TECHNICALITY.

OKAY. THE REASON IT IS NOT A TECHNICALITY IS BECAUSE ON DUI'S, UNLIKE MOST OTHER CRIMES, ARE CHARGED BY DUI CITATIONS, OKAY? AND ONCE THAT DUI CITATION IS CHARGED THEN WE'VE GOT THE 90 DAYS TO DEAL WITH IT. NOW, YOU CAN'T IGNORE IT, BECAUSE IF THE 90 DAYS PASSED THEN THE DEFENDANT IS ENTITLED TO MOVE FOR DISCHARGE AFTER FILING A NOTICE OF EXPIRATION. SO THE PROBLEM WITH THIS IS THAT IT IS JUST THE UNIQUE NATURE OF A DUI CHARGE. YOU'VE GOT THAT TIME PERIOD GOING. IF THIS WAS A PETTY THEFT THAT MAYBE TURNED OUT TO BE THE AMOUNT OF MONEY WAS GREATER, IN OTHER WORDS IT TURNED OUT NOT TO BE UNDER 300 BUT OVER \$300, A PETTY THEFT CASE YOU ARE NOT GIVEN TYPICALLY, YOU ARE TAKEN INTO CUSTODY. YOU ARE NOT GIVEN ANY KIND OF CHARGING DOCUMENT BUT LATER THEY FIND IT COSTS MORE MONEY SO THERE IS MORE MONEY INVOLVED OVER \$300 SO THE STATE FILES A FELONY CHARGE. DUI'S ARE TOTALLY DIFFERENT. WHEN YOU FILE THAT MISDEMEANOR, THAT DUI, UNIFORM DUI CITATION YOU ARE SADDLED WITH A 90 DAYS.

CHIEF JUSTICE: BUT YOU'RE SAYING THEY ARE SADDLED WITH IT BUT THERE ARE WAYS FOR THE STATE TO EFFECTIVELY TRANSFER THAT MISDEMEANOR TO THE CIRCUIT COURT?

IT IS THE SIMPLEST THING ON THE PLANET EARTH. THEY HAVE TO FILE THE FELONY INFORMATION AND MOVE TO CONSOLIDATE THE MISDEMEANOR WITHIN THE 90-DAY PERIOD.

THERE WOULDN'T BE ANYTHING TO CONSOLIDATE BECAUSE ONCE THE FELONY WAS CHARGED THEN THE MISDEMEANOR WOULD HAVE GONE AWAY. AS JUSTICE CANTERO SAID, THERE ARE NOT TWO SEPARATE OFFENSES IN THIS CASE. THE QUESTION IS WHETHER THE OFFENSE WAS A FELONY OR A MISDEMEANOR.

NO, THERE ARE TWO SEPARATE OFFENSES BECAUSE THE MISDEMEANOR IS NOT -- THE MISDEMEANOR DUI IS NOT A FELONY DUI, BUT A TOTALLY DIFFERENT ANIMAL FROM THE MISDEMEANOR BECAUSE WE'RE TALKING ABOUT TWO MISDEMEANOR DUI'S THAT HAVE OCCURRED. THE SECOND WHICH HAS OCCURRED WITHIN TEN YEARS OF THE THIRD CHARGE SO YOU HAVE TO MOVE ACCORDING TO WOODRUFF AND I BELIEVE THAT'S CORRECT YOU HAVE TO MOVE THE COURT TO CONSOLIDATE THE MISDEMEANOR WHEN YOU FILE THE FELONY CHARGE THEN THE STATE GETS THE BENEFIT OF EXTENDING THAT 90-DAY PERIOD THROUGH 175 DAYS.

BECAUSE AS THEY POINTED OUT, WHEN A FELONY MISDEMEANOR ARE CONSOLIDATED FOR DISPOSITION IN THE CIRCUIT COURT THE MISDEMEANOR SHALL BE GOVERNED BY THE SAME TIME PERIOD APPLICABLE TO THE FELONY. SO IT TAKES THE BURDEN OFF OF THE STATE. THEY GET THEIR 175 DAYS, BECAUSE THE MISDEMEANOR NOW HAS BEEN CONSOLIDATED WITH A FELONY. IF YOU LET IT GO PAST THE 90-DAY MISDEMEANOR SPEEDY TRIAL RULE THEN YOU'VE EFFECTIVELY

--

SO IN YOUR ARGUMENT IF THE PERSON IS FOUND GUILTY OF THE SAME EVENT HE COULD BE SENTENCED AND PUNISHED FOR BOTH FELONY DUI AND MISDEMEANOR DUI? IS THAT YOUR ARGUMENT?

I'M NOT UNDERSTANDING YOUR QUESTION HERE.

YOU ARE SAYING THEY ARE TWO SEPARATE OFFENSES?

YES.

CONSOLIDATED. SO YOU COULD BE SENTENCED FOR A FELONY AND A MISDEMEANOR FOR ONE^THIRD DUI?

I WOULD SUGGEST THIS, YOU COULD BE CONVICTED OF A MISDEMEANOR DUI BUT THAT STILL IS NOT THE SAME THING BECAUSE YOU HAVE THE TWO PRIORS TO PROVE IT UP SO THERE ARE MORE ELEMENTS AND THAT'S WHAT WOODRUFF SPEAKS ABOUT.

SO YOU DON'T SEE IT AS A LESSER-INCLUDED OFFENSE OF A FELONY?

NO.

OKAY. AND JUST TO CORRECT THE PROCEDURAL HISTORY, IN JACKSON, THEY NOL PROSED, THE DEFENDANT IS CHARGED WITH A DUI CITATION, THEY NOL PROSED THE CASE 30 DAYS LATER. IN LOVELACE THE 90-DAY PERIOD RAN. THEY DIDN'T NOL PROS OR NO ACTION. THE RECAPTURE PERIOD RAN AFTER NOTICE OF EXPIRATION, NOTHING HAPPENED. THE DISCHARGE WAS FILED AND THEN THEY FILED THEIR FELONY DUI.

I'M NOT CERTAIN THAT I --

I APOLOGIZE. THE NO INFORMATION WAS FILED AFTER THE 90-DAY PERIOD BUT WITHIN THE RECAPTURE PERIOD IT WAS FILED LIKE 7 DAYS LATER.

I'M SURE I HEARD YOU ANSWER JUSTICE BELL'S QUESTION, AT LEAST I UNDERSTOOD YOUR ANSWER TO BE, IS IT YOUR POSITION THAT IN THE CIRCUIT COURT, IN FELONY COURT, THAT THERE WOULD BE TWO SEPARATE CONVICTIONS, ONE WOULD BE FOR THE MISDEMEANOR DUI CHARGE THAT WAS ORIGINALLY CHARGED, THAT WOULD BE A SEPARATE CONVICTION SENTENCE FOR THAT, AND THEN THERE WOULD BE A SEPARATE CONVICTION AND SENTENCE FOR THE FELONY DUI CHARGE SO THERE WOULD BE TWO SEPARATE CONVICTIONS AND SENTENCES IN THE CIRCUIT COURT; IS THAT YOUR ANSWER TO JUSTICE BELL'S QUESTION?

YES, JUDGE, BECAUSE THEY WOULD ATTEMPT TO FILE BOTH THE MISDEMEANOR AND THE FELONY CHARGE IN THE SAME INFORMATION SO THEY WOULD HAVE TWO CONVICTIONS BUT MY RECOLLECTION OF THE DUI LAW IS THAT YOU CAN ONLY BE SENTENCED IF YOU ARE CONVICTED TWICE WILL IS ONLY ONE SENTENCING. IT WOULD BE THE FELONY SENTENCE.

BUT THERE WOULD BE TWO SEPARATE CONVICTIONS?

THERE WOULD BE TWO SEPARATE CONVICTIONS. BUT THEN IF YOU ACCEPT THAT ARGUMENT

THEN THE SPEEDY TRIAL RAN AS TO THE MISDEMEANOR BUT NOT AS TO THE FELONY DUI?

IF THEY HAVE BEEN CONSOLIDATED THEN IT IS EXTENDED TO 175 DAYS. IF THEY WERE NEVER --

THE STATE SAID THEY CONCEDE, THE MISDEMEANOR IS GONE BUT WE WANT TO GO AFTER THE FELONY. IT IS A SEPARATE OFFENSE. BASED UPON YOUR ARGUMENT.

THEY CANNOT DO IT UNDER WOODRUFF BECAUSE THEY ARE ESTOPPED. ONCE THAT MISDEMEANOR SPEEDY TRIAL RULE HAS RUN, OKAY, THEN THEY MOVE FOR DISCHARGE AND DO WHATEVER THEY'VE GOT TO DO, THEY FILE THE MISDEMEANOR. THE MISDEMEANOR AND FELONY CHARGE ARE IN THE STATE'S INFORMATION. NOW, MAYBE THAT DUI IN THE COUNTY COURT IS GONE, BUT THERE IS STILL ESTOPPED FROM PROCEEDING ON THE MISDEMEANOR BECAUSE THE SPEEDY TRIAL RULE HAS RUN. NOW, IF THE DEFENSE ATTORNEY MOVES TO DISCHARGE THE MISDEMEANOR'S SPEEDY TRIAL IN THE FELONY INFORMATION, AND THAT'S GONE, THEN THEY CAN'T PROVE UP THE PRESENT MISDEMEANOR CHARGE. THEY CANNOT PROVE UP ONE OF THE ELEMENTS IN THE FELONY AND THE FELONY WILL NOT -- WILL NOT PRECLUDE. IN FACT, WHAT WOODRUFF, WHAT WOODRUFF SAID NOTWITHSTANDING A CONVICTION OF THE FELONY DUI CHARGE IN THE INSTANT CASE WOULD BE IMPOSSIBLE TO OBTAIN.

YOU WOULD ALSO AGREE THAT THE MAJORITY OF THIS COURT DID NOT SAY ANYTHING IN WOODRUFF?

IT IS A PLURALITY DECISION, JUDGE.

THERE ARE THREE PEOPLE THAT JOINED IN THE OPINION. TWO PEOPLE CONCURRED IN RESULT ONLY AND THEN THERE WERE TWO OF US WHO DISSENTED SO THE MAJORITY OF THIS COURT DIDN'T SAY ANYTHING.

AND YOU ARE ABSOLUTELY CORRECT, JUDGE. I'M READING FROM THE OPINION. WHAT THE OPINION SAID, AND I'M NOT SAYING, I AM JUST USING WHAT WAS FROM THE OPINION. NOTWITHSTANDING A CONVICTION OF A FELONY DUI CHARGE IN THE INSTANT CASE WOULD BE IMPOSSIBLE TO OBTAIN UNDER SECTION 316.1932B AND MR. ^LOVELACE'S CHARGE UNDER B1, WHICH IS THE TWO MISDEMEANOR DUI'S AND THE THIRD WITHIN TEN YEARS WITH THE SECOND, A FELONY DUI CONVICTIONS IS OBTAINED BY PROVING A MISDEMEANOR DUI CONVICTION ON THE PRESENT CHARGE AND PROOF OF THREE OR MORE MISDEMEANOR DUI CONVICTIONS. NOW, IN MR. ^LOVELACE'S CASE IT IS PROOF OF TWO OR MORE MISDEMEANOR DUI CONVICTIONS THE SECOND HAVING BEEN WITHIN TEN YEARS OF THE THIRD. HERE, EACH PRESENT MISDEMEANOR DUI CHARGE BECAUSE IN WOODRUFF THEY CHARGED HIM WITH MORE THAN ONE. THERE WERE LIKE FOUR DUI TICKETS. HERE WITH EACH PRESENT DUI CHARGE, EACH PRESENT MISDEMEANOR DUI CHARGE WAS DISCHARGED, THEREBY RENDERING IT IMPOSSIBLE TO PROVE THE CURRENT MISDEMEANOR DUI CONVICTIONS WITHOUT THE CURRENT MISDEMEANOR DI CONVICTIONS OF THE CHARGE, A FELONY DUI COULD NOT BE PROVEN. THANK YOU. AND SO I WOULD RESPECTFULLY ASK THE COURT TO CONSIDER BOTH THE PROCEDURAL HISTORY AND THE FACT THAT NO ACTION AN IS NOL PROS TO THE -- TO INDICATE THERE IS CERTAINLY A CONFLICT BETWEEN JACKSON AND THE LOVELACE AND THAT ON THE BASIS OF WOODRUFF THAT LOVELACE BE AFFIRMED.

CHIEF JUSTICE: THANK YOU. MR. ^WINOKUR?

THANK YOU. I JUST WANTED TO CLARIFY ONE THING REGARDING WOODRUFF, AND THE POINT MADE IN A FOOTNOTE REGARDING CONSOLIDATION. I DON'T HAVE TO BELABOR THIS TOO MUCH BECAUSE JUSTICE CANTERO AND JUSTICE BELL MADE THIS POINT, BUT IN WOODRUFF IT WAS NOT A SIMPLE DUI. I DON'T CALL IT A MISDEMEANOR DUI, A SIMPLE DUI LATER CHANGED TO A FELONY DUI. THERE WERE, IN FACT, MULTIPLE MISDEMEANOR DUI CHARGES, NOT SIMPLE DUI CHARGES BUT OTHER MISDEMEANOR -- CHARGES BUT SIMPLE CHARGES THAT WERE DUI CHARGES

INJURY AND DUI WITH PROPERTY DAMAGES. THOSE ARE CRIMES WITH DIFFERENT ELEMENTS FROM A SIMPLE DUI. DIFFERENT ELEMENTS FROM A FELONY DUI AND THAT'S WHY THIS COURT IN WOODRUFF SUGGESTED THAT THE STATE COULD HAVE CONSOLIDATED THOSE CHARGES WITH THE FELONY DUI CHARGES. THERE IS NEVER A SUGGESTION IN LOVELACE, I'M SORRY, IN JACKSON OR LOVELACE THAT CONSOLIDATION WOULD HAVE BEEN APPROPRIATE IN A SITUATION WHERE A PERSON WHO IS CHARGED WITH ONE OFFENSE, WHICH IS A SIMPLE DUI, WHICH IS, IN FACT, A LESSER-INCLUDED OFFENSE OF FELONY DUI.

BUT THE PLURALITY OPINION IN WOODRUFF DOES, IN FACT, SAY THAT WITHOUT THE MISDEMEANOR DUI, THAT THE STATE WOULD NOT BE ABLE TO PROVE THE FELONY DUI.

THAT'S WHAT THE PLURALITY SAID.

CHIEF JUSTICE: BUT YOU AGREE THAT IF THE MISDEMEANOR DUI IN THIS CASE WAS DISCHARGED, THEY COULD NOT -- YOU COULD NOT PROVE UP THE FELONY DUI?

IF THE STATE HAD FAILED TO TERMINATE THE PROSECUTION PRIOR TO THE EXPIRATION OF THE NOTICE OF EXPIRATION, THE 15 DAYS, THEN UNDER WOODRUFF THE STATE WOULD NOT BE ABLE TO CONTINUE PROSECUTION OF THE FELONY.

CHIEF JUSTICE: BUT IN THE PRACTICAL EFFECT, THOUGH, IS THAT IF THIS WERE, BECAUSE AGAIN YOU AGREE THAT THESE MISDEMEANOR DUI'S DO START WITH THESE TRAFFIC CITATIONS?

ALL DUI'S TYPICALLY START WITH A TRAFFIC CITATION.

SO THAT'S GOING TO ALWAYS BE THE CASE SO IF YOU WERE TO SAY WHEN YOU GO BACK TO TALK TO ASSISTANT STATE ATTORNEYS WHAT WOULD YOU TELL THEM AFTER THIS CASE?

I HAVEN'T GOTTEN THE RULING YET.

WHAT WOULD YOU TELL THEM TO MAKE SURE YOU AVOID THIS WHOLE THING?

TO BE HONEST, CHIEF JUSTICE, I WOULD TELL THEM TO DO EXACTLY AS THEY DID IN THIS CASE TO ENSURE THAT THE MISDEMEANOR CASE IS TERMINATED PRIOR TO THE EXPIRATION OF THE SPEEDY TRIAL PERIOD UNLESS AND UNTIL WOODRUFF IS OVERRULED AND THIS COURT RECOGNIZES THAT A FELONY DUI IS NOT THE SAME THING, IS NOT A MISDEMEANOR DUI. WELL, IT IS ANOTHER ELEMENT.

WHY WOULDN'T YOU TELL THEM AT THE OUTSET TO CHARGE A FELONY DUI WHEN THEY DISCOVER THAT THERE ARE TWO PREVIOUS DUI CONVICTIONS?

I UNDERSTAND YOUR POINT, JUSTICE, AND I THINK THAT THEY PROBABLY SHOULD, BUT THIS COURT HAS SAID IN NUMEROUS CASES STATE V WILLIAMS A FEW YEARS AGO AND THE STATE UNDER THE SPEEDY TRIAL RULE HAS 175 DAYS TO FILE FELONY INFORMATION, AND THERE IS NO REASON WHY IT SHOULD BE ANY DIFFERENT IN THIS CASE MERELY BY VIRTUE OF THE FACT THAT A UNIFORM CITATION WAS ISSUED WHEN THE PERSON WAS INITIALLY ARRESTED. AND THE WAY YOU APPLY THE RESPONDENT'S ARGUMENT IN THIS CASE IS YOU HAVE A MISDEMEANOR CASE THAT JUST GOES INEXORABLY, YOU CAN'T TERMINATE THE PROSECUTION, YOU CAN'T DERAIL THIS RUN AWAY TRAIN IN ANY WAY, OTHER THAN CONSOLIDATING WHICH IT IS REQUIRED TO DO WITHIN 90 DAYS EVEN THOUGH IT NORMALLY WOULD HAVE 175 DAYS TO FILE A FELONY PROSECUTION AND THEN CONSOLIDATE A MISDEMEANOR CHARGE, A LESSER-INCLUDED CHARGE INTO A FELONY CHARGE WHICH WAS NOT THE HOLDING IN WOODRUFF BECAUSE IT WASN'T THE FACTS IN WOODRUFF.

CHIEF JUSTICE: NOR WAS IT A MAJORITY. WITH THAT, WE WILL TAKE THIS CASE UNDER

ADVISEMENT. AND HOPE THAT WE CAN HELP CLARIFY THE LAW IN THIS AREA.

THANK YOU.

CHIEF JUSTICE: THANK YOU. I CAN'T PROMISE YOU THAT, THOUGH. THE COURT WILL BE IN RECESS UNTIL 9:00 TOMORROW MORNING.

THE MARSHAL: PLEASE RISE.