

>> THE LAST CASE ON THE COURT'S
AGENDA IS STATE VERSUS NELSON.
>> MAY IT PLEASE THE COURT.
THOMAS WINOKUR OF THE ATTORNEY
GENERAL'S OFFICE FOR THE
PETITIONER, STATE OF FLORIDA.
I'D LIKE TO RESERVE --
>> KEEP YOUR VOICE UP, PLEASE.
>> EXCUSE ME.
TRY THAT.
LIKE TO RESERVE EIGHT MINUTES
OF MY TIME FOR REBUTTAL.
THE ISSUE IN THIS CASE, AND IN
ITS SIMPLEST TERMS IS WHETHER A
DEFENSE REQUESTED CONTINUANCE
FILED AFTER THE EXPIRATION OF
THE SPEEDY TRIAL RULES BASIC
PERIOD, WAIVES THE DEFENDANT'S
RIGHTS UNDER THIS RULE.
>> LET ME SEE IF I UNDERSTAND
HERE.
THE 90-DAY SPEEDY TRIAL FOR
JUVENILE CASES HAD EXPIRED BUT,
NOT THE RECAPTURE PERIOD YOU
WOULD HAVE IF IN FACT A NOTICE
OF EXPIRATION HAD BEEN FILED?
IS THAT --
>> WELL, NO NOTICE OF
EXPIRATION HAD BEEN FILED.
>> I KNOW NO NOTICE HAD BEEN
FILED. ASSUMING --
>> IF THEY HAD FILED IT ON THE
FIRST DAY OF THE EXPIRATION,
THEN NO.
IN FACT, IT WAS THE SAME DAY.
IT WAS ACTUALLY THE 91st TODAY

THAT THE CONTINUANCE WAS REQUESTED AND NOT 92nd DAY AS THE DCA INDICATED.

>> YOU'RE QUESTION IS NOT JUST WHETHER THE CONTINUANCE FILED AFTER THE SPEEDY EXPIRES, BUT IT ALSO MUST INCLUDE AS A FACTUAL PREDICATE TO DECIDE THIS CASE, WHETHER THAT IS FILED BEFORE OR AFTER A NOTICE OF EXPIRATION?

>> WELL, THE STATE'S CONTENTION IS THAT IT DOESN'T MATTER WHETHER IT IS FILED BEFORE OR AFTER THE NOTICE OF EXPIRATION.

>> TO ME THAT IS FAR DIFFERENT QUESTION BECAUSE IF YOU'RE LOOKING TO THAT RECAPTURE PERIOD THAT MAKES, IN MY VIEW, MAKES A TOTALLY DIFFERENT FACTUAL SCENARIO HERE.

>> I DON'T AGREE, JUSTICE LEWIS.

I THINK THAT THE WAY THAT THE SPEEDY TRIAL RULE IS STRUCTURED IS THAT ANY TIME A DEFENDANT INTENTIONALLY, KNOWINGLY, DELAYS THE TIME IN WHICH THE TRIAL IS GOING TO BE HELD THAT THAT CONSTITUTES A WAIVER OF THE PROTECTIONS OF THE RULE, UNLESS AND UNTIL THEY REINVOKE THE PROTECTIONS OF THE RULE BY FILING A DEMAND.

>> SO YOU, YOU ARE SAYING, THAT WHETHER WE'RE TALKING ABOUT THE

90-DAY RULE OR THE 175-DAY RULE, ONCE IT EXPIRES, AT ANY POINT AFTER IT HAS EXPIRED, IF THE DEFENDANT ASKS FOR A CONTINUANCE, THAT.

THE TIME CAN GO ON AD INFINITUM AND THE STATE CAN FILE OTHER THINGS AND ALL THAT BECAUSE OF THAT REQUEST?

>> UNLESS AND UNTIL THE DEFENDANT FILE AS DEMAND, THAT'S CORRECT.

BECAUSE, THE STRUCTURE OF THE RULE IS THAT ANY TIME A DEFENDANT FILE AS CONTINUANCE, DELAYS THE ONSET OF TRIAL, THAT SHOULD CONSIDER A WAIVER OF THE RULE.

AND UNDER THE CURRENT STRUCTURE OF THE RULE THERE IS NO LEGITIMATE REASON TO DISTINGUISH BETWEEN A PRE175-DAY, OR IN THIS CASE, 90-DAY EXTENSION AND A POST EXPIRATION EXTENSION.

>> LET'S TALK HISTORICALLY FOR A SECOND.

BEFORE THE NEW RULE CAME INTO PLACE, WE USED TO HAVE A SPEEDY TRIAL RULE, I THINK BEFORE, IT WAS 1984, '85 WHERE, LET'S TALK ABOUT THE ADULT SPEEDY TRIAL RULE.

IT IS EASIER.

GAVE THE DEFENDANTS 180, SPEEDY TRIAL PERIOD OF 180

DAYS.

IF THE STATE DID NOT FILE
CHARGES WITHIN 180 DAYS, AFTER
COURT.

SO, THEY BASICALLY WERE
DISCHARGED.

>> NOT ONLY IF THEY STATE
FAILED TO FILE CHARGES, EVEN IF
THEY DID FILE CHARGES.

>> RIGHT.

THAT'S WHAT I'M GETTING TO.

THAT'S WHAT I'M GETTING TO.

IF, THE DEFENDANT, WAIVED,
LET'S SAY FORGET A MOTION FOR
CONTINUANCE, OUTRIGHT FILED A
WRITTEN WAIVER OF SPEEDY TRIAL
ON 181st DAY, BACK IN THOSE
DAYS THAT WAIVER WOULD HAVE
BEEN CONSIDERED A NULLITY?

>> THAT'S CORRECT.

>> THAT IS CORRECT.

HE HAD VESTED RIGHT TO
DISCHARGE ONCE 180 DAYS PASSED?

>> THAT'S EXACTLY CORRECT,
JUSTICE LABARGA.

>> IS THAT, SEEMS TO ME READING
THE FOURTH DISTRICT COURT OF
APPEALS CASE, PARTICULARLY THE
REHEARING, SEEMS TO ME THAT
JUDGE WARNER SEEMS TO BE GOING
ON THAT TANGENT.

THAT HE HAD, IN THIS PARTICULAR
CASE, THE BASIC SPEEDY TRIAL
PERIOD HAD EXPIRED.

THEREFORE HE HAD A VESTED RIGHT
IN THAT PERIOD OF TIME.

AND ANYTHING THAT HAPPENED
AFTER THAT, BEFORE THE NOTICE
OF EXPIRATION WAS FILED, I
THINK SHE DIDN'T COME OUT AND
SAY IT, BUT I THINK SHE IS
SAYING A NULLITY, IS THAT WHAT
SHE IS SAYING HERE?

>> I DON'T THINK SHE IS SAYING
THAT.

PRIOR TO THE 1984 AMENDMENT THE
DEFENDANT WAS ENTITLED TO
DISCHARGE.

AS SOON AS THAT 180 DAYS
EXPIRED THE DEFENDANT WAS
ENTITLED TO DISCHARGE.

NOTHING ELSE NEEDED TO BE DONE.

A CONTINUANCE FILED AFTER THAT
TIME WAS A NULLITY, HONESTLY
BECAUSE I THINK ANY LAWYER THAT
FILES A MOTION FOR CONTINUANCE
WAIVING A RIGHT TO SPEEDY TRIAL
AT A TIME WHEN THE DEFENDANT IS
ALREADY ENTITLED TO A DISCHARGE
IS INEFFECTIVE.

I CAN'T FORESEE ANY WAY, ANY
REASON THAT COUNSEL WOULD
CHOOSE --

>> UNDER THE RULE HE IS NOT
ENTITLED TO AUTOMATIC
DISCHARGE, CORRECT?

>> THAT'S CORRECT.

>> SO IT ISN'T A NULLITY TO
FILE A MOTION FOR CONTINUANCE?

>> THAT'S EXACTLY CORRECT.

>> THAT'S WHAT I'M TRYING TO
SAY, BUT SEEMS TO ME THE FOURTH

DISTRICT, PARTICULARLY IN THE
OPINION ON REHEARING SEEMS TO
BE GOING ON THE FACT THAT ONCE
THE BASIC SPEEDY TRIAL PERIOD
EXPIRES, ANY WAIVERS OR MOTIONS
FOR CONTINUANCE AFTER THAT ARE
NULLTYS AND THAT IS NOT THE
CASE UNDER THE NEW RULE.

>> THAT IS EXACTLY CORRECT,
YOUR HONOR.

I THINK THE PRINCIPLE OF THE
OLD RULE STILL APPLIES.

THE PRINCIPLE IS THAT IN A
SITUATION WHERE A DEFENDANT IS
ENTITLED TO DISCHARGE AND NEEDS
TO DO NOTHING ELSE TO BE
ENTITLED TO THAT DISCHARGE A
CONTINUANCE FILED AFTER THAT
POINT IN TIME, SHOULD BE A
NULLITY BECAUSE THERE IS REALLY
NO REASON WHY A DEFENDANT WOULD
FILE, WOULD WAIVE HIS SPEEDY
TRIAL RIGHTS AFTER HE HAS BEEN
ENTITLED TO DISCHARGE.

THAT STILL APPLIES.

THE ONLY DIFFERENCE IS YOU'RE
ENTITLED TO DISCHARGE AT A
DIFFERENT POINT NOW THAN YOU
WERE BEFORE THE RECAPTURE
PERIOD WAS CREATED THERE IS TWO
SITUATIONS I CAN THINK OF WHERE
YOU'RE ENTITLED TO DISCHARGE
UNDER THE SPEEDY TRIAL RULE
TODAY.

NUMBER ONE YOU FILE A NOTICE OF
EXPIRATION AND DELAY IS NOT

ATTRIBUTABLE TO THE DEFENDANT.

AND 15 DAYS PASSES.

AND THE DEFENDANT IS NOT TRIED.

AT THAT POINT, THE DEFENDANT IS ENTITLED TO DISCHARGE.

A CONTINUANCE FILED AFTER THAT POINT SHOULD BE CONSIDERED A NULLITY TO THE STAPLE EXTENT IT WAS CONSIDERED A NULLITY IN THE OLD DAYS AT EXPIRATION OF 180 DAYS AGAIN THE DEFENDANT WAS ENTITLED TO DISCHARGE.

THE SECOND WAY IS, ESSENTIALLY, APPLICATION OF THIS COURT'S DECISION IN STATE v. WILLIAMS IN 2001 WHERE YOU RULED THAT A INFORMATION FILED AFTER THE EXPIRATION OF THE BASIC PERIOD IS ESSENTIALLY A NULLITY AND THE STATE'S NOT ENTITLED TO RECAPTURE PERIOD.

IN OTHER WORDS THE DEFENDANT IS ENTITLED TO AN IMMEDIATE DISCHARGE.

A CONTINUANCE FILED AFTER THAT POINT IN TIME, SHOULD LIKEWISE STILL BE CONSIDERED A NULLITY.

I THINK THAT IS WHAT HAPPENED IN THE THIRD DISTRICT DECISION IN LESLIE WHICH THE DCA CITED IN ITS OPINION PRIOR TO REHEARING AS A EXAMPLE OF WHERE THE DEFENDANT IS, WHERE A POSTEXPIRATION CONTINUANCE IS CONSIDERED A NULLITY EVEN AFTER THE 175 DAYS, I'M SORRY, AFTER

THE ADVENT OF THE RECAPTURE PERIOD.

WELL THE REASON IS BECAUSE THE STATE DIDN'T FILE THE INFORMATION UNTIL THE 177th DAY.

SO THE DEFENDANT WAS ENTITLED TO DISCHARGE IMMEDIATELY.

AND WHEN THE --

>> THAT IS BECAUSE, THE DEFENDANT IS IN A POSITION WHERE HE, HE DOESN'T KNOW ANYTHING IS GOING ON.

I MEAN, HE HAS GOT REALLY NOTHING TO FILE THE, FILE WHAT HE WOULD OTHERWISE FILE IF CHARGES HAD BEEN FILED AGAINST HIM.

HE IS KIND OF LEFT THERE.

>> I THINK THAT IS PART OF THE BASIS OF WILLIAMS, JUSTICE CANDY FOR CERTAIN BUT I THINK THE PRIMARY BASIS WAS TRYING TO PREVENT THE STATE FROM SIMPLY WAITING UNTIL AD INFINITUM AFTER AN ARREST TO FILE AN INFORMATION AND THEN SAYING WELL, WE'RE STILL ENTITLED TO RECAPTURE PERIOD.

THAT I THINK IS THE WHAT THE RULE OF WILLIAMS WAS INTENDED TO PREVENT.

>> DIDN'T THEY SORT OF DO THAT IN THIS CASE?

DIDN'T THEY FILE THE FELONY INFORMATION EVEN AFTER THE

FELONY SPEEDY TRIAL RULE HAD EXPIRED?

>> YES THEY DID.

AND IF THERE HAD NOT BEEN A CONTINUANCE WHICH WAIVES THE PROTECTIONS OF THE RULE AND NOT FILED A DEMAND TO REINVOKE THOSE PROTECTIONS THAT, INFORMATION, WOULD HAVE BEEN INVALID AND WE WASN'T BE HERE BECAUSE THE DEFENDANT WOULD HAVE BEEN ENTITLED TO DISCHARGE.

IT IS CONTINUANCE FILED IN THIS CASE THAT PREVENTS THAT FROM HAPPENING.

>> OF COURSE THERE IS THE SITUATION WHERE, AGAIN, EVEN WITH THE INVOKING OF THE 175 DAYS, WHERE 175 DAYS COULDS PASS AND HE IS ENTITLED TO BASIC SPEEDY TRIAL PERIOD AND DEFENDANT IS STILL NOT READY TO GO TO TRIAL.

>> THAT IS EXACTLY CORRECT.

>> MY CONCERN IS THAT THE RULE CAN BE MANIPULATED IN THE SENSE THAT ONCE HE IS VESTED IN THE RIGHT, BASIC SPEEDY TRIAL HAS ALREADY EXPIRED, A DEFENDANT COULD, ASK FOR A 60-DAY CONTINUANCE, JUDGE, I'M STILL NOT READY.

I HAVE TO TAKE 18 DEPOSITIONS.

I HAVEN'T DONE A THING.

I JUST INHERITED THIS CASE FROM

SOMEONE ELSE.

ALL THOSE THINGS ARE HAPPENING IN TRIAL COURT.

AND, I NEED A 60-DAY CONTINUANCE.

SO HE TAKES, IN THREE WEEKS TIME, COUNSEL GETTING READY FOR TRIAL.

TOOK ALL THE DEPOSITIONS.

HE CAN JUST FILE THAT NOTICE OF EXPIRATION.

AND HE IS ENTITLED TO A TRIAL WITHIN 15 DAYS.

SO HE HAS, AND, A DEMAND FOR SPEEDY TRIAL SO TO SPEAK, AVAILABLE TO HIM.

SO, IT CAN BE MANIPULATED IN THAT SENSE, SEEMS TO ME.

>> WITHOUT A DOUBT.

I THINK THAT IS KIND OF THE KEY DIFFERENCE BETWEEN THE WAY THE RULE IS STRUCTURED NOW AND WAY IT WAS STRUCTURED PRIOR TO 1984.

THERE IS REALLY NO PRACTICAL DIFFERENCE TODAY, BETWEEN THE PERIOD OF TIME ARREST TODAY 175, ASSUMING A FELONY CASE AND THE TIME AFTER THAT.

THERE IS, THE DEFENDANT ISN'T ENTITLED TO DISCHARGE AT THE END OF IT.

IT OFTEN TIMES, THESE CASES CONTINUE TO GO.

THE ONLY THING THAT HAPPENS AT THE END OF 175 DAYS, AND IN

PRACTICAL TERMS, THEY
GET THE RIGHT OF DEMAND STATE
TO RETRY THEM IN 15 DAYS.
WHICH THEY CAN FILE WHATEVER
THEY WANT.
THERE IS TO DISTINCTIONING
BETWEEN THE PREEXPIRATION
CONTINUES WANTS AND POST
EXPIRATION CONTINUANCE.
WHEN THE DEFENDANT CHOOSES TO
DELAY THE TRIAL, TO DELAY
PROCEEDINGS, THAT HE OR SHE HAS
WAIVED THE PROTECTION OF THE
RULE.
AND THERE'S REALLY NO REASON
UNDER THE CURRENT STRUCTURE OF
THE RULE WHY THAT SHOULDN'T
APPLY AFTER THE EXPIRATION OF
THE 175 DAY PERIOD.
THERE IS REALLY NO DIFFERENCE.
THE --
>> EXCEPT TO THE EXTENT THAT IT
SEEMS TO ME THAT A DEFENDANT
WHO ASKS FOR A CONTINUANCE ON A
JUVENILE CASE WHERE, POSSIBLY
FACING JUVENILE SANCTIONS, AND
THEN, YOU KNOW, 170, 180 DAYS
LATER, HE IS NOW FACING FELONY
SANCTIONS, IS A CERTAINLY A
WHOLE DIFFERENT BALL GAME THAN
WHAT THE DEFENDANT WAS DEALING
WITH ORIGINALLY.
>> THAT'S TRUE, JUSTICE QUINCE.
ON THE OTHER HAND, THERE WAS
REALLY NOTHING THAT WOULD HAVE
PREVENTED THE STATE FROM

BRINGING FELONY CHARGES,
PRESUMING HE HADN'T BEEN TRIED
ON THE JUVENILE CHARGES.

THAT'S A DIFFICULT MATTER.

BUT IF HE HAD NOT BEEN TRIED
ON THE JUVENILE CHARGES YET,
THERE WAS NOTHING THAT
PREVENTED THE STATE FROM FILING
AN INFORMATION AT ANY POINT.

THE ONLY PROBLEM HERE IS THAT
THEY FILED IT --

>> ANY POINT INCLUDING AFTER
THE 180 DAYS?

>> THE ONLY WAY THEY COULD FILE
IT AFTER 175 DAYS IS IF THERE
HAD BEEN A WAIVER.

EVEN THOUGH --

>> THAT'S WHAT I'M TALKING
ABOUT.

IF THERE HAD BEEN NO WAIVER.

>> I UNDERSTAND.

>> THE STATE WOULD NOT HAVE
BEEN ABLE TO FILE THESE KINDS
OF FELONY CHARGES, CORRECT.

>> THAT'S CORRECT.

HOWEVER THEY WOULD, LET'S JUST
SAY THERE HAD NEVER BEEN ANY
WAIVER.

IF THE STATE HAD FILED FELONY
CHARGES, LESS THAN 100, MORE
THAN 90 DAYS, BUT LESS THAN 175
DAYS AFTER ARREST, THERE
WOULDN'T BE ANY PROBLEM WITH
THAT.

THIS DEFENDANT DID, WAS IN FACT
FACING THE PROSPECT OF THESE

FELONY CHARGES, PRESUMING THAT HE HADN'T BEEN TRIED YET ON THE JUVENILE CHARGES.

SO THE MERE FACT --

>> BUT ONLY UP TO 180 DAYS.

>> ONLY UP TO 180 DAYS.

MY POINT IS, OTHER THAN THE TWO DAYS THAT IT TOOK THE STATE TO FILE THE INFORMATION AFTER 175 DAYS, THERE'S REALLY NO REASON WHY THE WAIVER HAD ANY EFFECT ON THE STATE'S ABILITY TO DO THAT.

SO I DON'T THINK THAT'S A REASON WHY THE CONTINUANCE IN THIS CASE SHOULD BE CONSIDERED A NULLITY.

I'M INTO MY REBUTTAL TIME.

SO I WILL RESERVE THE REMAINDER OF MY TIME.

>> MISS FORREST?

>> GOOD MORNING.

YOUR HONORS, MY PLEASURE TO BE HERE.

THIS IS MY FIRST TIME BEFORE YOU SO IT IS A REAL HONOR.

MY NAME IS TAMMY FORREST AND I REPRESENT MR. ^NELSON IN THIS CASE.

>> MISS FORREST, ALTHOUGH IT MAY BE YOUR FIRST TIME, I DON'T MEAN TO BE AGGRESSIVE IN THE QUESTION BUT, YOU NEED TO BE ABLE TO CONVINC ME --

>> OKAY.

>> -- THAT IN CONNECTION WITH THIS

CASE, THAT UNTIL A NOTICE OF EXPIRATION OF SPEEDIES IS ACTUALLY FILED AND THAT RECAPTURE PERIOD IS CONSIDERED, THAT THIS ISSUE OF A CONTINUANCE VIOLATING THAT, THERE IS NO VESTED RIGHT ON THE PART OF A DEFENDANT IT SEEMS TO ME.

AND THAT WITH A CHANGE IN THE RULES, 1984-85, THEY REALLY CHANGED THE WHOLE SPECTRUM. THAT A SPEEDY DOES NOT ENTITLE THE PERSON TO A DISCHARGE UNTIL AFTER THAT NOTICE OF EXPIRATION HAS BEEN FILED.

>> CORRECT.

>> SO HERE IT HAD NOT BEEN, EVEN THOUGH THE TIME PERIOD, THE SPEEDY TIME PERIOD MAY HAVE RUN, THAT THE REQUESTING OF AN EXTENSION BEFORE THE NOTICE OF EXPIRATION, RENDERS IT JUST AS THOUGH THAT HAD HAPPENED BEFORE IT EXPIRED BECAUSE THERE IS NO RIGHT TO IMMEDIATE DISCHARGE.

>> CORRECT. HOWEVER, THE DEFENDANT IN THE THIS CASE WAS ARRESTED ON MAY 16th.

THE PETITION FOR DELINQUENCY IS FILED ON JUNE 6th.

>> RIGHT.

>> THE 90 DAYS EXPIRED ON AUGUST 13th.

>> RIGHT.

>> BEFORE THE CASE FIRST EVER APPEARED FOR CALENDAR CALL.

>> RIGHT.

>> WHICH IS DOCKET SOUNDING STATUS WHERE BOTH GET UP AND SAY I'M READY, YOU'RE READY, WHATEVER.

>> RIGHT.

>> SO FOR SOME FLUKE IN THE SYSTEM, THE CASE GOT DRAGGED ALONG AFTER THE 90-DAY NATURAL EXPIRATION.

>> IT WENT, WAIT A MINUTE. ON AUGUST 15th, WHEN THE DEFENDANT APPEARED --

>> CORRECT.

>> NO NOTICE OF EXPIRATION HAD BEEN FILED, CORRECT.

>> CORRECT.

>> BUT AT THAT TIME, THE DEFENDANT ASKED FOR A CONTINUANCE.

>> TO OBTAIN DISCOVERY.

>> AND THE JUDGE DIDN'T THE JUDGE AT THAT POINT IN TIME CHARGE CONTINUANCE WAS AT LEAST ONE OF THE REASONS TO THE DEFENDANT?

>> CORRECT.

>> SO, THAT DOESN'T THAT RENDER THE SPEEDY NON-APPLICABLE AT THAT POINT?

>> NO.

>> WHY NOT?

>> BECAUSE, UNDER RULE 8.090-A. FLORIDA RULES OF JUVENILE

PROCEDURE --

>> RIGHT.

>> SHOWING THAT A DEFENDANT
MUST BE TRIED WITHIN 90 DAYS OF
HIS ARREST.

>> RIGHT.

>> THERE WAS NOTHING THAT
INDICATED THAT BEFORE THOSE 90
DAYS AND UP UNTO THOSE 90 DAYS
EXPIRED DEFENSE WAS NOT READY
FOR TRIAL OR STATE NOT READY
FOR TRIAL.

>> LET ME ASK YOU THAT QUESTION
UNDER THAT RULE, THE 90-DAY
RULE.

>> YES.

>> ISN'T IT NECESSARY TO FILE
NOTICE OF EXPIRATION?
DOESN'T THE STATE NOT HAVE THE
SAME RECAPTURE IN JUVENILE
PROCEEDINGS AS THEY DO IN THE
ADULT PROCEEDINGS?.

>> IT IS MY UNDERSTANDING THAT
THEY DO NOT HAVE THE RECAPTURE
PROCEEDING.

NO, I APOLOGIZE.

IN THIS PARTICULAR INSTANCE,
WITH THE PETITION FOR
DELINQUENCY, IT WAS FILED PRIOR
TO THE EXPIRATION OF THE SPEEDY
TRIAL THEY WOULD HAVE A
RECAPTURE PERIOD.

>> RIGHT.

SO WE HAVE ON THAT DAY, AT THE
TIME ON 8-15 WHEN THEY APPEARED
FOR TRIAL, NO NOTICE OF

EXPIRATION HAD BEEN FILED?

>> CORRECT.

>> SO IF NO NOTICE OF EXPIRATION HAD BEEN FILED THAT DEFENDANT, THE JUVENILE WAS NOT ENTITLED TO DISCHARGE ON THAT DAY UNTIL GIVING THE NOTICE, CORRECT?

>> WELL --

>> GIVE THE NOTICE AND THEY HAVE TO PROCEED WITHIN A CERTAIN NUMBER OF DAYS OR BE DISCHARGED, CORRECT?

>> I DON'T AGREE WITH THAT.

>> OKAY.

EXPLAIN TO ME WHY.

>> AS THE FOURTH DISTRICT COURT OF APPEAL POINTED OUT, THE TRIAL COURT DETERMINED THAT THE PETITIONER'S MOTION TO CONTINUE THE JUVENILE PROCEEDING AFTER THE JUVENILE SPEEDY TRIAL PERIOD CONSTITUTED A WAIVER. THEY DISAGREE.

A REQUEST FOR CONTINUANCE AFTER A SPEEDY TRIAL PERIOD HAS RUN, BUT BEFORE MOVING FOR A DISCHARGE DOES NOT EFFECT THE DEFENDANT'S RIGHT TO HIS DEMAND OF SPEEDY TRIAL RIGHTS.

AND THEY STATE, THEY CITE STATE V. LESLIE.

>> LET'S LOOK AT THOSE.

AREN'T THOSE CASES GOING BACK AND LOOKING AT OLD RULE THOUGH?

LESLIE IS THIRD DISTRICT CASE

FROM '97.

>> CORRECT.

>> AND NOT ASKED FOR A CONTINUANCE UNTIL AFTER IT HAD, HAD BEEN WAIVED BUT AS YOU START LOOKING AT THOSE, AREN'T THOSE ALL CASES THAT LOOKED TO THE STEWART CASE, 1986, LOOKING AT OLD LAW, AND THAT UNDER THE CURRENT RULE, I'M, SORRY I JUST CAN'T FOLLOW WHY.

IF YOU LOOK AT THOSE CASES AND THE REASONING IT WAS BECAUSE IT HAD IN FACT, THE SPEEDIES HAD EXPIRED.

DIDN'T NEED TO DO ANYTHING ELSE.

BUT UNDER THE CURRENT RULE, A DEFENDANT UNDER BOTH JUVENILE AND IN THE FELONY COURT MUST FILE THAT NOTICE OF EXPIRATION FIRST.

I THINK THIS IS WHAT THE FOURTH DISTRICT, MY CONCERN IS, THIS IS WHAT THE FOURTH DISTRICT TOTALLY OVERLOOKED OR DIDN'T ADDRESS.

AND YOU CAN GO BACK AND LOOK AT THOSE OLDER CASES BUT THE ONES UPON WHICH THEY RELY ARE OLD, OLD CASES BEFORE THE CHANGE IN THE RULE.

SO, YOU SEE WHAT I'M SAYING IS, THAT YOU MUST BE IN A POSTURE BEFORE, WHATEVER YOU DO, TO CONSTITUTE A WAIVER, IS THAT

IT MUST BE DONE
BEFORE YOU'RE ENTITLED TO
DISCHARGE.

UNDER BOTH RULES YOU'RE NOT
ENTITLED TO DISCHARGE UNTIL YOU
GIVE THE NOTICE OF EXPIRATION
AND YOU HAVE THE RECAPTURE
PERIOD.

SO THEREFORE, THE CONTINUANCE
BEFORE YOU DO THAT, IS THE SAME
AS IF THEY HAD NOT EXPIRED YET.
BECAUSE YOU'RE NOT ENTITLED TO
THAT DISCHARGE.

>> BUT THEN IN ESSENCE, THAT
CONTINUANCE WOULD ALLOW THE
STATE AD NAUSEUM FOREVER TO BE
ABLE TO DO WHATEVER THEY
WANTED.

>> THAT MAY BE THE RESULT,
I UNDERSTAND, BUT ONCE IT IS
WAIVED IT IS WAIVED IS MY
UNDERSTANDING OF LOOKING AT THE
LAW.

>> YOU CAN ALWAYS MAKE A DEMAND
FOR SPEEDY TRIAL TO HAVE ONE
WITHIN 60 DAYS.

>> CORRECT.

>> SO THE STATE IS NOT GOING TO
GO AND AD NAUSEUM.

LET ME ASK YOU THIS.

AND AGAIN, I CAME FROM THE
TRIAL COURT AND I SAW THE
PRACTICAL ASPECT OF THESE
THINGS.

AND WHAT HAPPENS IS THESE
PUBLIC DEFENDERS IN THESE BIG

CITIES, THEY HAVE, YOU KNOW,
100 TO 150 CLIENTS AT ANY
DIFFERENT GIVEN TIME.

IT IS NOT UNUSUAL FOR DEFENSE
ATTORNEYS NOT TO BE READY, AND
SOME OF THESE CASES FALL IN THE
CRACKS AND IT MAY BE 175 DAYS
BEFORE THEY EVEN LOOK AT IT.

>> CORRECT.

>> SO, THEN THEY WILL COME INTO
COURT, 15 DAYS HAVE EXPIRED,
BECAUSE THEY HAVEN'T LOOKED AT
FILE.

PERHAPS THE FILE HAS BEEN
ASSIGNED TO THREE DIFFERENT
LAWYERS WITHIN THAT 175-PERIOD
OF TIME AND NO ONE REALLY EVEN
MET WITH THE CLIENT YET.

AND ON THE 180th DAY, SOMEBODY
FINALLY LOOKS AT IT AND COMES
IN AND MOVES FOR CONTINUANCE
BECAUSE THEY'RE NOT READY.

SO I GUESS WE NEED TO LOOK AT
THE PHILOSOPHICAL REASON FOR
THE SPEEDY TRIAL RULE.

DO YOU FEEL THAT IT IS THERE TO
ASSURE THAT A DEFENDANT GETS A
SPEEDY TRIAL WITHIN A

REASONABLE PERIOD OF TIME?

OR IS IT THERE TO ASSURE THAT A
DEFENDANT GETS DISCHARGED?

>> I THINK IT IS THERE TO

INSURE THAT THE DEFENDANT GET
AS SPEEDY TRIAL IN A REASONABLE
AMOUNT OF TIME.

THAT IS WHY OUR FOREMAKERS MADE

IT SO IMPORTANT AS PART OF OUR
CONSTITUTION.

THAT THE STATE SHOULD NOT BE
ALLOWED TO SIT THERE AND SIT ON
THEIR THUMBS AND NOT TRY
SOMEBODY.

>> BUT THE WAY THE RULE IS SET
UP, THE STATE CAN'T JUST SIT
THERE, BUT THE DEFENDANT'S GOT
AN OBLIGATION TO SAY YOU CAN'T
JUST SIT THERE.

>> I ABSOLUTELY AGREE.

>> BUT WITH THE RECAPTURE RULE,
ONCE THE LANDSCAPE WAS CHANGED
BY THAT IT KIND OF SHIFTED SOME
RESPONSIBILITY OVER TO THE
DEFENDANT TO LET THE STATE KNOW
THIS HAS GONE ON TOO LONG, AND,
YOU GOT TO FISH OR CUT BAIT.
BUT, YOU'RE REALLY, THE
POSITION THAT THE, DISTRICT
COURT HAS ADOPTED HERE, REALLY
IS KIND OF LOST IN TIME BACK
THERE BEFORE THE RECAPTURE RULE
CAME IN.

>> I SEE WHAT YOU'RE SAYING.
I THINK WHAT HAPPENED HERE, AND
I APOLOGIZE, I'M NOT THE ONE
WHO ORIGINALLY HAD THIS CASE.
I'M NOT THE ONE WHO ASKED FOR
THE CONTINUANCE.
SO I KIND OF JUMPED IN AT THE
LAST MINUTE BUT I THINK WHAT
HAPPENED IN REVIEWING THE
ENTIRE CASE, IS THAT,
APPARENTLY WHAT WAS HAPPENING

WAS THE STATE WAS WAITING ON
SOME DNA.

THEY PARTIALLY FILED SOME
CHARGES, THE GRAND THEFT AND
CCW IN JUVENILE COURT.

THEY PROBABLY LET IT SIT THERE.
FORGOT ABOUT IT.

AND THEN REALIZED THE SPEEDY
TRIAL WAS RUNNING AFTER IT WAS
BROUGHT TO THEIR ATTENTION.

AND ACTUALLY, IN ALL FAIRNESS
INTENDED ON FILING IN ADULT
COURT DUE TO THE SERIOUSNESS OF
THE CASE.

BUT BY THE TIME THEY GOT AROUND
TO FILING AN INFORMATION OF THE
ARMED BURGLARY AND 12 COUNTS OF
GRAND THEFT OF A FIREARM WHICH
AROSE OUT OF THE EXACT SAME
INSTANCE THE 175 DAYS HAD RAN.
ON THAT INSTANCE.

AND THEN THEY TURN AROUND AND
NOL PROS THE JUVI CASE AND
REFILE THE JUVI CASE AS FELONY
IN FELONY COURT.

IT WASN'T UNTIL DESTHEN UNTIL
MARCH, NOTICE OF EXPIRATION AND
MOTION FOR DISCHARGE WAS FILED.

SO, IT IS MY CONTENTION THAT
SINCE THE 90 DAYS, I'M GOING
ALONG WITH THE DIRECTION OF THE
FOURTH DCA, THAT ONCE THE 90
DAYS EXPIRED, THE CASE WAS
DEAD.

ANY MOTION FOR CONTINUANCE WAS
A NULLITY AT THAT POINT.

AND THE STATE SHOULD NOT BE
ALLOWED THEN TO GO PICK UP
THE PIECES ESPECIALLY --

>> WHAT DO YOU THINK SHOULD
HAPPEN?

THE 90 DAYS EXPIRES.

>> CORRECT.

>> ASSUMING THERE WAS NO
REQUEST FOR CONTINUANCE, WHAT
THEN?

YOU THINK THE CASE IS OVER AND
DONE WITH?

THAT THE DEFENDANT --

>> I THINK A MOTION FOR A
DISCHARGE SHOULD BE FILED.

>> WELL, BUT, ONE IN THIS CASE
WAS NOT.

>> THERE WAS ONE BUT IT WAS ON
MARCH 3rd, 08.

>> WHICH IS HOW LONG A PERIOD
OF TIME?

>> FROM THE 90 DAYS EXPIRING,
FROM AUGUST 13, '07 TO MARCH '08

>> '08?

>> CORRECT.

>> SO, I MEAN, IT SEEMS TO ME
YOU'RE ARGUING FOR IT BOTH WAY.
A DEFENDANT CAN WAIT FOREVER TO
FILE A MOTION FOR DISCHARGE AND
YOU'RE SAYING THAT THE STATE
CAN'T?

THIS WAS FILED EVEN AFTER THE
STATE HAD FILED THE FELONY
CHARGES, CORRECT?

>> CORRECT.

THEY FILED THOSE ON NOVEMBER

9th, '07 AFTER, THREE DAYS AFTER
THE 175-DAY SPEEDY TRIAL RAN IN
ADULT COURT.

>> AND YOU TAKE, I BELIEVE THE
STATE HAS ALSO ARGUED THAT ONCE
A CONTINUANCE IS REQUESTED,
THAT FOLLOWS ON THROUGH EVEN TO
THE FELONY, TO THE FELONY
COMPLAINT?

DO YOU TAKE ANY EXCEPTION WITH
THAT?

>> I TAKE AN EXCEPTION WITH
THAT, IN THAT, THESE ARE
INSTANCES --

>> ASSUMING IT WAS A VALID
REQUEST FOR A CONTINUANCE.

>> RIGHT.

>> THAT DOES IN FACT CARRY ON
THROUGH, THROUGH TO THE FELONY
INFORMATION THAT WAS FILED?

>> YES, IT WOULD.

YES, IT WOULD.

>> OKAY. SO YOU DON'T TAKE EXCEPTION
WITH THAT?

>> NO.

>> WE DO UNDERSTAND THAT THE
MAYBE YOU WEREN'T INVOLVED AT
THAT TIME, BUT NONETHELESS, WE
HAVE TO ASK YOU THOSE
QUESTIONS.

>> ASK ME ANYTHING YOU WANT.

>> THIS IS NOT SHOOTING THE
MESSENGER.

>> ASK ME ANYTHING YOU WANT.

>> I DON'T SEE FROM OUR
DISCUSSION THIS MORNING HOW YOU

CAN PREVAIL BECAUSE THAT CONTINUANCE WAS REQUESTED BACK ON AUGUST 15th, AND YOU AGREE THAT WOULD APPLY TO ANY SUBSEQUENT FILING, OF FELONY CHARGES, AND, SEE, I THINK THE KEY HERE IS THAT, IT IS THE POINT AT WHICH A DEFENDANT IS ENTITLED TO DISCHARGE IS WHAT I THINK YOU'RE HEARING IN THE QUESTIONS IS HOW WE PERCEIVE IT.

AND IF WE'RE WRONG, PLEASE HELP US UNDERSTAND WHY WE'RE WRONG. I MEAN THAT'S, AND THE DEFENDANT'S NOT ENTITLED TO THE DISCHARGE UNTIL AFTER YOU GIVE THE NOTICE OF EXPIRATION AND AT THAT TIME IT EXPIRES.

>> I'M -- UNDERSTOOD.

TO BE HONEST WITH YOU, FOR THE LIFE OF ME I DON'T UNDERSTAND WHY, TO BE QUITE CANDID WHY THERE WAS A MOTION FOR CONTINUANCE ONCE SHE REALIZED THAT SPEEDY TRIAL HAD RAN INTO I APPRECIATE YOUR CANDOR.

>> I DON'T.

>> THE ONLY -- FILED NOTICE OF EXPIRATION, WHICH WOULD HAVE, TOLD THAT PERSON TO GO TO TRIAL WITHIN 60 DAYS.

>> SO.

>> AT THAT TIME THEY WOULD HAVE FILED A MOTION FOR CONTINUES WANTS BECAUSE SHE OBVIOUSLY

WASN'T READY.

>> OKAY. NOW HERE I AM --

>> CONSOLATION FOR YOU, FIRST
ORAL ARGUMENT I GOT YELLED AT
FOR 10 MINUTES BECAUSE I MOVED
PODIUM FOR 10 INCHES AT
DISTRICT COURT.

YOU HAVE DONE FINE.

>> DO YOU HAVE ANY OTHER
QUESTIONS?

DO YOU HAVE ANY OTHER
QUESTIONS?

NO, OKAY.

>> WE THANK YOU VERY MUCH FOR
YOUR ARGUMENT.

AND MR. ^WINOKUR.

>> JUST A COUPLE OF QUICK
POINTS TO FINISH UP WITH.
THE FIRST IS, IN THE STEWART
CASE, THIS COURT'S 1986 CASE,
IT SAID WHEN A DEFENDANT
REQUESTS A CONTINUANCE PRIOR TO
THE EXPIRATION OF THE
APPLICABLE SPEEDY TRIAL TIME
PERIOD FOR THE CRIME WHICH HE
IS CHARGED THE DEFENDANT WAIVES
HIS SPEEDY TRIAL RIGHT TO ALL
OTHER CHARGES WHICH EMANATE
FROM THE SAME EPISODE.

THAT IS THE BASIS
WHICH THE STATE IS CONTENDING
THE INFORMATION AT LEAST THE
FIRST INFORMATION WAS
JUSTIFIABLE.

>> FIRST FELONY INFORMATION?
THE FELONY CASE?

>> YES, MA'AM.

THAT'S RIGHT.

>> OKAY.

>> BECAUSE HE HAD FILED A
CONTINUANCE HE WAIVES HIS
SPEEDY TRIAL RIGHT AS TO ALL
OTHER CHARGES.

IT IS FEW, STEWART SAYS PRIOR
TO THE EXPIRATION OF THE
APPLICABLE
SPEEDY TRIAL PERIOD.

I THINK I EXPLAINED BEST I CAN
WHY THAT PERIOD IS ACTUALLY
REALLY ANY PERIOD BEFORE THE
EXPIRATION OF RECAPTURE PERIOD
UNDER THE RULE AS IT CURRENTLY
STRUCTURED.

>> THAT IS THE DIFFERENCE IN
THIS CASE.

NO NOTICE OF EXPIRATION WAS
FILED?

>> YES, SIR.

>> THAT IS WHERE THIS CASE
TURNS?

>> YES, SIR.

>> SECOND, JUSTICE LEWIS, IN
RESPONSE TO YOUR COMMENTS ABOUT
LESLIE, I DO WANT TO STAY THAT
CASE DID ACTUALLY ARISE AFTER
THE CREATION OF THE RECAPTURE
PERIOD.

I BELIEVE '97.

>> OH, I AGREE.

IT RELIED ON CASES FROM BEFORE.

>> IT DID.

>> AND RELIED ON A DIFFERENT

RULE.

>> I DON'T THINK LESLIE IS
WRONGLY DECIDED EVEN THOUGH IT
WAS DECIDED WHEN WE HAD A
RECAPTURE PERIOD.

BECAUSE THE STATE FILED THE
INFORMATION ON THE 177th DAY IN
THAT CASE.

SO HE WAS IN FACT ENTITLED TO
IMMEDIATE DISCHARGE.

SO THE LESLIE COURT WAS RIGHT
IN SAYING THAT, THE LATER FILED
CONTINUANCE DID NOT IN FACT
WAIVE.

JUST SIMPLY, AN APPLICATION OF
THE PRINCIPLE THAT, STILL
EXISTS JUST BECAUSE IN A DIFFERENT
CONTEXT THAN IT DID THEN.

LAST THING I SAY SPEEDY TRIAL
RULE COURT SAID MANY TIMES IS
NOT OF CONSTITUTIONAL
DIMENSION.

SO ANY WAIVER OF THE RIGHTS
HERE DOESN'T CONSTITUTE A
WAIVER OF CONSTITUTIONAL
RIGHTS.

AND WITH THAT, THE STATE WOULD
ASK YOU TO REVERSE THE FOURTH
DISTRICT'S DECISION AND, ANSWER
THE CERTIFIED QUESTION,
AFFIRMATIVE.

THANK YOU VERY MUCH.

>> THANK YOU.

THANK YOU BOTH FOR YOUR
ARGUMENTS HERE TODAY.

AND THE COURT WILL BE IN RECESS

UNTIL 9:00 TOMORROW MORNING.

>> PLEASE RISE.

SUPREME COURT IS NOW ADJOURNED.