

>> ALL RISE.

HEAR YE, HEAR YE, THE SUPREME COURT OF FLORIDA IS NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEAD, DRAW NEAR, GIVE ATTENTION YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA, THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE SUPREME COURT OF FLORIDA.

PLEASE BE SEATED.

>> GOOD MORNING.

WELCOME TO THE FLORIDA SUPREME COURT.

THE FIRST CASE ON THE DOCKET IS ROBINSON VERSUS STATE.

WHENEVER YOU'RE READY.

>> MAY IT PLEASE THE COURT.

MY NAME IS ROSS KEENE, I REPRESENT THE PETITIONER BRIAN ROBINSON.

I RESERVE FIVE MINUTES FOR REBUTTAL.

THE ISSUE TODAY BEFORE THE COURT IS HOW TO RESOLVE THE CONFLICT BETWEEN THE FIRST DISTRICT'S DECISIONS IN PIERSON AND THEN OF COURSE ROBINSON, WHO I REPRESENT AND THE SECOND DCA AND NEVERLY VERSUS STATE.

ON TOLLING PROVISIONS OR IF YOU WILL, DILIGENCE PROVISIONS AS WELL IN SECTION 775.15 FLORIDA STATUTES.

THE CHRONOLOGY IN THIS CASE, AND IT IS IMPORTANT BECAUSE I BELIEVE THE DATES GO VERY MUCH TO WHY I BELIEVE THAT ROBINSON SHOULD BE RECONSIDERED IN LIGHT OF NEGOTIATORLY.

IN THE SECOND DCA AND PEARSON SHOULD NOT BE RIGIDLY APPLIED HERE.

MR. ROBINSON IN NOVEMBER, IP ADDRESS TRACKED BASED ON IMAGE OF CHILDREN. IN FEBRUARY OF '08, SEARCH WARRANT WAS ISSUED.

HE WAS SEARCHED AND DIGITAL  
MATTER RETAINED BY LAW  
ENFORCEMENT.

IN MARCH OF '08 HE WAS  
VOLUNTARILY INTERVIEWED.

I EMPHASIZE THAT.

MR. ROBINSON CAME TO PLAY LAW  
ENFORCEMENT.

HE SPOKE TO LAW ENFORCEMENT.

HE LATER SURRENDERED IN THE  
CASE.

HE DID COOPERATE WITH THEM AND  
GAVE INTERVIEW AND GAVE  
STATEMENT IN MAY OF '08 HE WAS  
TRANSFERRED AT THAT POINT TO  
FORT BRAGG, NORTH CAROLINA.

I WANT TO GET INTO THIS.

HE WAS IN THE ARMY.

HE WAS STATIONED AT EGLIN AIR  
FORCE BASE.

THERE WAS AN ARMY POST THERE.

HE WAS THERE SINCE 2006.

THE STATE, I WANT TO ANTICIPATE  
THIS A LITTLE BIT, THE STATE  
WILL ARGUE HIS ABSENCE  
THROUGHOUT THIS. BY TRANSFERS TO  
FORT BRAGG, TO SCHOFIELD  
BARRACKS IN HAWAII, I WANT TO  
GET TO THAT IN A FEW MOMENTS I  
DON'T BELIEVE THAT NECESSARILY  
APPLIES TO THE CHRONOLOGY I  
BELIEVE THIS COURT NEEDS TO LOOK  
AT.

HE AS ARRESTED, STRIKE THAT.

THERE WAS ARREST WARRANT ISSUED  
IN 2009 IN JANUARY.

BETWEEN THAT TIME FORENSICS ON  
THE COMPUTER WERE RUN AND  
COMPLETED IN OCTOBER OF 8.

BETWEEN THE TIME THE WARRANT WAS  
ISSUED IN JANUARY OF 2009, THERE  
WAS ABSOLUTE INACTIVITY BY YOU  
LAW ENFORCEMENT ON THIS CASE.

>> LET ME ASK YOU THIS.

WAS HE IN FACT OUT OF THE STATE  
AT THAT TIME PERIOD?

YOU SAID HE WAS TRANSFERRED TO  
BRAGG IN 2008.

>> YES.

>> WAS HE CONTINUOUSLY OUTSIDE

OF THE STATE SINCE 2008?

>> IF YOU'RE TALKING ABOUT WHERE HIS BARRACKS POSITIONS WHERE, WHERE HIS DEPLOYMENTS WERE?

>> YES.

>> THERE WERE PERIODS OF TIME.

I AM NOT GOING TO SAY HE WAS BACK IN THIS REGION.

HE WAS OUT, THAT IS NOT IN DISPUTE HE WAS IN BRAGG, IN HAWAII AND IN AFGHANISTAN FOR A YEAR.

>> YOU ARE AGREEING HE WAS IN FORT BRAGG, HE WAS IN HAWAII, HE WAS IN AFGHANISTAN FROM THE PERIOD 2008 THROUGH 2012?

>> INDISPUTABLE, YES.

>> WAS THAT CONTINUOUS?

>> THAT IS WHAT WE DON'T KNOW. THAT IS THE OTHER THING ABOUT THIS, OUR FACTS THE BRIEFS ARE FACTUAL INTENSIVE, DISMISSAL HEARING BROUGHT A LOT OF THESE FACTS OUT.

MOST OF THE FACTS IN THE TRIAL COURT WERE STIPULATED BETWEEN THE PROSECUTOR AND DEFENSE.

HE HAS LIVED IN AND STILL DOES HAVE A RESIDENCE IN THE FT. WALTON BEACH AREA.

HIS PERMANENT RESIDENCE--

>> MY QUESTION, DID HE COME BACK FOR VACATION OR LEAVE OR ANY REASON COME BACK TO THE STATES DURING THAT PERIOD OF HIS DEPLOYMENT.

>> JUSTICE PERRY, THE RECORD IS UNCLEAR.

I CAN ONLY ASSUME HE DID, BECAUSE, FOR EXAMPLE, WHEN HE WAS COMING BACK FOR LEAVE IN 2012, HE WAS CONTACTED AND THAT'S WHEN HE SURRENDERED HIMSELF.

HIS FAMILY WAS THERE.

HIS WIFE, HIS CHILDREN.

HIS PARENT WERE THERE IN THE REGION.

HE HAD PERMANENT RESIDENCE THERE.

HE WAS BASED OUT, THIS IS FACT  
THAT REALLY WARRANTS  
CONSIDERATION BY THE COURT, WHEN  
YOU CONSIDER SOME OF THE  
STATUTORY LANGUAGE THAT PROVIDES  
HERE, REASONABLE INABILITY TO  
LOCATE THE DEFENDANT AND  
DILIGENT SEARCH.

WHEN YOU GET TO SUBSECTION 5, NO  
REASONABLY ASCERTAINABLE PLACE  
OF ABODE OR WORK WITHIN THE  
STATE.

HE WORKED OUT OF EGLIN AIR FORCE  
BASE.

HE WAS IN THE ARMY.

HE WAS TRANSFERRED.

HIS HOME OF RECORD, HIS HOR--

>> [INAUDIBLE]

WE ACCEPTED JURISDICTION IN THIS  
CASE BECAUSE THE DISTRICT COURT  
CERTIFIED CONFLICT.

>> YES, SIR.

>> THE CONFLICT IS SUPPOSEDLY  
WITH THE PEREZ CASE AND WITH  
NETHERLY.

>> IT DEALT WITH A THEFT CASE.

>> THAT'S CORRECT.

>> AND HAD OWN STATUTE OF  
LIMITATIONS.

AND NETHERLY CONSTRUED EARLIER  
VERSION OF THE STATUTE THAT DID  
NOT INCLUDE THIS LANGUAGE THAT  
EXISTS NOW BASICALLY SAYS, IF A  
PERSON IS OUT OF THE STATE IT  
DOESN'T TOLL THE STATUTE.

AM I CORRECT?

WHAT IS THE CONFLICT?

>> I THINK, I BELIEVE THE  
LANGUAGE IN NETHERLY DOES APPLY.  
I BELIEVE IT IS SAME LANGUAGE  
FIRST DCA WAS USING IN PIERSON.  
WE DISTINGUISHED IN MY BRIEF,  
BOTH BRIEFS, PEREZ DEALT WITH  
THE THEFT STATUTE UNDER SECTION  
812, THAT HAS LIMITATIONS IN  
THAT.

I DO NOT BELIEVE PEREZ CAN BE  
RELIED UPON BECAUSE I THINK IT  
IS TOO EASY TO DISTINGUISH IT  
BECAUSE OF THE THEFT LIMITATIONS

PROVISIONS.

IN YOU LOOK AT NETHERLY, THE REASON THEY DID IT, THIS IS THE BASIC PREMISE I WANT TO GET INTO ON THIS THING, THE PEARSON, THE FACTS THAT PEARSON HAD BEFORE IT, THIS MAY SURPRISE YOU, I BELIEVE ONE DCA WAS CORRECT IN RULING THE WAY THEY DID IN PEARSON, IF YOU LOOK AT FACTS IN PEARSON.

THEY HAD NO KNOWLEDGE WHERE HE WAS FIVE YEARS PAST BEFORE THEY FOUND OUT THROUGH A TIPSTER.

>> THE STATUTE IN NETHERLY SAYS MERELY DEMONSTRATING HIS ABSENCE WAS NOT TO TOLL THE STATUTE IN ORDER TO A VEIL THEMSELVES OF THE THREE-YEAR TOLLING PROVISION OF SECTION 775.15.

THE STATE MUST HAVE SHOWN THAT HIS ABSENCE PREVENTED OR DELAYED THIS PROSECUTION FOR THIS CASE.

I MEAN THERE SEEMS TO BE A DIFFERENT STATUTE.

SEEMS TO BE DIFFERENT VERSION.

I UNDERSTAND YOU'RE BORROWING FROM IT BUT THE LANGUAGE IS DIFFERENT.

>> WELL I THINK ONE DCA IN PEARSON BORROWED FROM IT.

I KNOW THEY DID IN ROBINSON.

ONE DCA BELIEVED IN THEIR ANALYSIS WHEN IN ADDRESSING ROBINSON IN THE OPINION THE CONFLICT MAY HAVE EXISTED.

WE ACTUALLY APPLIED FOR DISCRETIONARY REVIEW BEFORE THE COURT.

ONE DCA DID NOT CERTIFY THIS IN AND I BELIEVE THEY SHOULD HAVE.

>> COULD WE, GOING NOW, THERE IS A QUESTION THAT JUSTICE LABARGA RAISED ABOUT WHETHER WE HAVE JURISDICTION, WHETHER THIS IS ACTUAL CONFLICT.

BUT ARE WE LOOKING AT SUBSECTION 5 AND INTERPRETING THAT SECTION? IS THAT WHAT-- WE'RE LOOKING TO

SEE, WE'RE DOING A STATUTORY CONSTRUCTION ANALYSIS.

>> YES.

>> AND WE'RE LOOKING TO SEE WHETHER THERE IS ANY OBLIGATION ON THE STATE TO FIND A DEFENDANT WHEN THEY ARE, IF THEY'RE CONTINUOUSLY ABSENT FROM THE STATE.

DO YOU, DO YOU BELIEVE THAT THE LANGUAGE THAT SAYS THAT THE PERIOD OF LIMITATION TOLLED OR DOES NOT RUN, THAT SAYS, OR HAS NO-- I'M SO, THE FIRST PART, DOES NOT RUN ANYTIME WHEN THE DEFENDANT IS CONTINUOUSLY ABSENT THAT THERE IS ANY OTHER REQUIREMENT TO TOLL THE STATUTE OTHER THAN THE FACT OF CONTINUOUS ABSENCE?

>> YES.

AND I THINK--

>> SO, YES, SO YOU DON'T THINK THE PLAIN LANGUAGE SAYS JUST THAT?

WHAT DO YOU HAVE WHAT DO YOU HAVE TO INTERPRET IT WITH? IS THERE SOMETHING AMBIGUOUS ABOUT CONTINUOUSLY ABSENT?

>> BECAUSE, JUSTICE PARIENTE, I BELIEVE YOU HAVE TO GO BACK AND LOOK AT SUBSECTION 4-B WHICH PROVIDES A PROSECUTION WHICH THE DEFENDANT HAS NOT BEEN PREVIOUSLY BEEN ARRESTED AND HAS NOT BEEN COMMENCED WHEN THE INDICTMENT OR INFORMATION IS FILED PROVIDED THE CAPE JUST OR SUMMONS IS SERVED AND EXECUTED WITHOUT UNREASONABLE DELAY. THAT IS WHERE SECOND DCA WAS GOING IN NETHERLY BECAUSE YOU GET INTO THAT.

>> BUT NUMBER 5 IS A TOLLING PROVISION.

>> YES.

>> BUT THIS ONE IS WHETHER THERE IS SOME REASON FOR NOT SERVING, THAT'S THE DUE DILIGENCE PART, ISN'T IT?

IT IS TWO SEPARATE, SEEMS TO ME,  
MAYBE I'M MISSING SOMETHING  
AND--

>> I DON'T BELIEVE THEY ARE TWO  
SEPARATE PROVISIONS I THINK IN  
ORDER TO A VEIL YOURSELF OF FIVE  
I THINK YOU HAVE TO GO THROUGH  
H-ABOUT B THAT IS EXACTLY WHERE  
SECOND DCA WAS GOING IN NETHERLY  
AND LOOKING AT THOSE FACTS.

>> LET ME ASK YOU A QUESTION  
ABOUT THE STATUTE IN NETHERLY.

>> YES.

>> THE CRITICAL LANGUAGE, THE  
DISTRICT COURT AND FIRST DCA  
RELIED ON IN THE STATUTE WAS THE  
LANGUAGE THAT REFERRED TO THE,  
THAT PROVIDED PERIOD OF LIMIT  
TALKS DOES NOT RUN DURING  
ANYTIME WHEN THE DEFENDANT IS  
CONTINUOUSLY ABSENT FROM THE  
STATE.

ISN'T THAT CORRECT?

>> YES.

WENT RIGHT TO IT, YES.

>> THAT'S WHAT THEY FOCUSED ON,  
THAT'S WHAT THEY DECIDED ON.  
NOW IN NETHERLY IT, ISN'T IT  
TRUE THAT THAT SAME, THAT SAME  
LANGUAGE WAS IN THE STATUTE THAT  
THEY WERE INTERPRETING AND  
APPLYING THERE?

IT'S ACTUALLY CITED IN FOOTNOTE  
ONE IN THEIR DISCUSSION OF  
STATUTE OF LIMITATIONS, ISN'T  
THAT CORRECT?

>> IT IS BUT, NETHERLY WAS STILL  
LOOKING AT FACT THAT--

>> NETHERLY MAY-- I KNOW  
NETHERLY REACHED A DIFFERENT  
CONCLUSION.

WE KNOW THAT.

>> YES.

>> AND THEY-- ONE MIGHT VIEW  
THAT AS ADDING SOMETHING TO THE  
STATUTE.

I UNDERSTAND THAT'S NOT YOUR  
INTERPRETATION OF WHAT THE, WHAT  
THE SECOND DISTRICT DID BUT, I  
JUST WANT TO CLARIFY THAT POINT

ABOUT THE CRITICAL STATUTORY LANGUAGE BEING INVOLVED. BOTH IN NETHERLY AND IN THIS CASE?

>> WELL I THINK, AND I DON'T KNOW, WILL BE INTERESTING TO SEE WHAT THE STATE'S POSITION ON THAT BECAUSE THE STATE CERTAINLY BRIEFED IT VERY INTENSELY CONSIDERING BOTH THE 4-B AND 5 PROVISIONS.

>> LET'S ASSUME. WE TOOK THE CASE, ASSUME WE'RE GOING TO KEEP THE CASE. WE MAY OR MAY NOT.

>> YES.

>> SO YOU'VE GOT THE SAME STATUTE AS POINTED OUT IN FOOTNOTE ONE.

YOU'RE SAYING THAT THE CORRECT INTERPRETATION HAS TO BE TO READ 4-B TOGETHER WITH 5?

>> YES.

I DON'T SEE ANY OTHER WAY AROUND IT BECAUSE TO VEIL YOURSELF AS I SAID, TO AVAIL YOURSELF OF TOLLING PROVISIONS IN FIVE, HOW DO YOU GET THERE?

THERE HAS TO BE SOME CONSIDERATION.

4-B DEALS WITH SERVICE OF THE WARRANT.

THE FACT MR. ROBINSON HAD AN ARREST WARRANT ISSUED AND NOTHING WAS DONE-- I DON'T WANT TO GET AWAY FROM THIS, 27 MONTHS PASSED IN THIS CASE BETWEEN THE ISSUANCE OF THE ARREST WARRANT BEFORE LAW ENFORCEMENT STARTED DIGGING, ACCORDING TO THE RECORD, AND PICKED UP FILES FROM EASTER DAY WHO PASSED AWAY UNFORTUNATELY.

LAW ENFORCEMENT FOR 27 MONTHS DID NOTHING IN THIS CASE.

LOOKING AT FACT PATTERN YOU HAVE IN NETHERLY, THAT IS WHAT SECOND DCA WAS LOOKING AT.

FIRST DCA IN PEARSON, THAT'S EASY.

THE GUY WAS GONE.  
THERE WAS NO POSSIBILITY OF  
EXERCISING ANY DILIGENCE OR  
SCRUTINIZING 4-B OR 4-B LANGUAGE  
WHICH SAID THERE IS AN  
OBLIGATION IN THE SERVICE OF  
PROCESS, SERVING CAPE JUST OR  
SUMMONS OR BRINGING PROSECUTION.  
THAT IS WHAT SECOND DCA IS GOING  
TO.

IF YOU DON'T HAVE TWO-PART  
CONSIDERATION TO GO FROM 4-B AND  
5, LAW ENFORCEMENT CAN STAND  
BACK IN ANY CASE, THEY DON'T  
HAVE TO DO A THING UNTIL THE  
DEFENDANT BASICALLY COMES IN AND  
SELF-SURRENDERS.

>> IF THAT'S WHAT THE STATUTE  
SAYS, THAT'S WHAT THE STATUTE  
SAYS.

>> IF WE SCRUTINIZE,  
RESPECTFULLY, 4-B LOOK WHAT WAS  
DONE OR WHAT WANT DONE, LOOK AT  
REASONABLENESS AND SERVICE AND  
EXECUTION OF WARRANT.

>>-- TOLLING STATUTE OF  
LIMITATIONS MAKES NO EXPECTATION  
OF REASONABLENESS.

WHETHER YOU'RE OUTSIDE OF THE  
STATE CONTINUOUSLY.

I'M STRUGGLING TO UNDERSTAND HOW  
YOU CAN EXTRACT THIS MEANING  
THAT THE SECOND DISTRICT HAS  
EXTRACTED FROM THIS FROM THE  
TEXT?

DOESN'T SEEM TO BE THERE.

NOW, MAYBE IT WOULD BE A  
BETTER AND A FAIRER POLICY.  
PEOPLE CAN ARGUE ABOUT THAT.  
I COULD UNDERSTAND THE POSITION  
THAT WOULD BE A FAIRER POLICY  
FOR THE STATE OF FLORIDA TO  
HAVE.

BUT THE FACT OF THE MATTER IS,  
THE POLICY OF THE STATE OF  
FLORIDA IS REFLECTED IN THIS  
PARTICULAR TEXT ON THIS ISSUE.  
AND I DON'T SEE HOW YOU CAN GET  
THAT OUT OF THIS PARTICULAR  
TEXT?

TELL ME WHY I'M WRONG.  
>> I THINK I'VE STATED IT  
RESPECTFULLY.  
I BELIEVE IT'S A TWO-PART  
CONSIDERATION.  
THEY LINE UP WITH EACH OTHER.  
I DON'T KNOW, I WILL BE  
SURPRISED IF THE STATE  
DISAGREES, WE'LL SEE, BUT--  
>> I GUESS AGAIN AND I THINK THE  
ISSUE OF POLICY IS INTERESTING.  
>> YES.  
>> BECAUSE, HE'S IN THE  
MILITARY, THERE IS NO QUESTION  
ABOUT IT.  
IT'S HARD TO KNOW WHETHER THE  
CONTINUOUSLY ABSENT REALLY WAS  
APPLYING TO FUGITIVES FROM  
JUSTICE.  
HE IS NOT THAT.  
AND WE DO HAVE IN THE CIVIL  
ARENA, IN A LOT OF AREAS WHERE  
AFFIDAVIT OF MILITARY, THAT  
YOU'RE IN THE MILITARY, SO YOU  
CAN'T BE SERVED.  
SO SORT OF AS A BENEFIT.  
PERHAPS THE, IF I WERE IN  
AFGHANISTAN ON CONTINUOUS TOURS  
OF DUTY, NO ONE WOULD EXPECT THE  
STATE OF FLORIDA TO BE SERVING  
HIM WITH A WARRANT FOR HIS  
ARREST BUT YOU DON'T, WE DON'T  
HAVE A MILITARY SERVICE  
EXCEPTION AT THE PRESENT TIME,  
CORRECT?  
>> NOT THAT I'M AWARE OF BUT I  
CAN TELL YOU THAT I WOULD BE  
SURPRISED AND THESE ARE-- HE  
WAS, THEY COULD HAVE FOUND HIM  
BUT MY POINT--  
>> I GUESS WE'RE GOING TO BE  
GOING AROUND AND BACK AND ISSUE,  
OBVIOUSLY THEY COULD HAVE FOUND  
HIM.  
THERE IS NO QUESTION, I DON'T  
THINK THE STATE WOULD DISAGREE  
THEY COULD HAVE FOUND HIM.  
CALL THE MILITARY.  
WE HAVE OUTSTANDING WARRANT FOR  
A, ONE OF YOUR MILITARY

PERSONNEL WHOSE, WE HAVE, WE'LL SERVE WHATEVER THE CHILD PORNOGRAPHY, WHATEVER THE CRIME WAS AND SURE, THEY PROBABLY VOLUNTARILY BRING HIM BACK INTO FLORIDA.

>> BUT IF YOU DON'T TAKE INTO CONSIDERATION, JUSTICE PARIENTE, THE 4-B REASONABLENESS OF THE DELAY.

>> EXCUSE ME.

>> YES.

>> WHY ISN'T B, IT SEEMS TO ME WHEN YOU READ THIS STATUTE AS A WHOLE, YOU'VE GOT THE GENERAL PROVISION.

THEN YOU'VE GOT SECTION 2 WHICH TALKS ABOUT WHAT THE LIMITATIONS ARE.

YOU GET TO 4, YOU REALLY TALKING ABOUT WHEN A, THE CHARGES HAVE BEEN, THE CASE HAS COMMENCED.

THAT'S WHAT SECTION 4 IS ABOUT. SO WHY DO YOU READ, NEED TO READ THE SECTION ABOUT THE COMMENCEMENT OF THE CASE WITH THE SECTION ABOUT WHEN, YOU KNOW, THE STATUTE IS TOLLED? I'M STILL STRUGGLING WITH, AND YOU SAW SOME OF MY OTHER COLLEAGUES, WHY 4 HAS TO BE READ WITH 5?

>> I THINK IN CONTEXT OF THE LIMITATIONS, AND I GUESS, LET ME PUT IT THIS WAY.

IF IT IS NOT, AND THIS IS GETTING BACK TO THE QUESTION WITH RESPECT TO POLICY, OKAY? IF IT IS NOT CONSIDERED, IF THERE IS NOT SOME DILIGENCE COMPONENT IN THERE, AND I THINK OVERALL THAT IS WHAT SECOND DCA WAS ATTEMPTING TO ACCOMPLISH, A RECOGNITION THAT THERE HAS TO BE SOME BURDEN ON LAW ENFORCEMENT TO UNDERTAKE SOMETHING, IF THAT IS NOT DONE, YOU ARE REWARDING INACTION.

IF YOU WANT A CASE WITH FACTS WHERE LAW ENFORCEMENT'S INACTION

IS REWARDED IT'S ROBINSON VERSUS  
STATE BECAUSE THEY DID NOTHING  
TO TRY TO FIND THE MAN.

AND IF YOU LOOK AT-- YOU HAVE  
TO LOOK HISTORICALLY I THINK AT  
STATUTES OF LIMITATION AND  
STATUTES OF REPOSE.

THEY ARE TO PROTECT DEFENDANTS.  
IT IS NOT JUST IN A CIVIL  
SETTING BUT IT IS IN A CRIMINAL  
SETTING AS WELL.

EVIDENCE CAN GO STALE.

>> YOU'RE INTO REBUTTAL.

>> I'M AWARE OF THAT.

>> FREE TO CONTINUE, I'M TELLING  
YOU YOU HAVE 3 MINUTES, 27  
SECONDS LEFT.

>> I UNDERSTAND.

IF I CAN FINISH THE POINT ABOUT  
THE STATUTES OF LIMITATION, TO  
NOT CONSIDER THAT, TO NOT LOOK  
AT THAT, TO ALLOW THE STATE TO  
SIMPLY LOOK BAD, IF THEY HAD NOT  
CALLED SOMEBODY UP AND PICKED  
PHONE UP AND GOTTEN MR. ROBINSON  
TO SURRENDER IN 2012 WE MAY NOT  
BE HERE.

WE MAY BE TWO OR THREE YEARS  
FROM NOW IN WAY YOU'RE  
SUGGESTING.

I DON'T THINK THAT IS WHAT THE  
LEGISLATURE INTENDED.

>> WASN'T HE BACK IN FLORIDA  
THEN?

>> HE WAS.

HE WAS COMING BACK AND THEY MADE  
A PHONE CALL.

THAT IS JUST IT.

THAT GET'S BACK TO JUSTICE  
PERRY'S QUESTION ABOUT WHETHER  
OR NOT HE WAS BACK AND FORTH.  
HE WAS IN MILITARY AND DEPLOYED,  
NO DOUBT HE WAS BACK.

THOSE DAYS ARE NOT PART OF THE  
TRIAL RECORD.

I DON'T--

>> LET ME ASK A QUICK QUESTION.  
PERMANENT RESIDENCE WAS IN  
FLORIDA CONSISTENTLY?

>> YES.

>> DID HE RECEIVE MAIL THERE ALL THE TIME?

>> DRIVER'S LICENSE, VOTED, RECEIVED MAIL.

HAD TWO RESIDENTS.

HOME OF RECORD WAS IN PACE, FLORIDA.

HIS HOUSE WAS ON LANDMARK DRIVE IN FT. WALTON BEACH.

THERE WERE TWO RESIDENTS THERE, ONE OR EITHER THE BOTH OF RESIDENTS THAT LAW ENFORCEMENT CONTACTED HIM TO VOLUNTARY SURRENDER.

HE WAS STILL IN THE STATE AT THAT POINT.

THEY KNEW HOW TO GET HIM.

HIS COMMAND WAS THERE.

COMMAND CAN SOME MON SOMEBODY I DON'T CARE WHERE THEY ARE IN THE WORLD.

HIS COMMAND CAN FIND HIM.

>> GOOD MORNING.

VIRGINIA HARRIS ON BEHALF OF THE STATE OF FLORIDA.

YOU WERE TALKING BEFORE ABOUT WHETHER OR NOT THERE WAS CONFLICT AND I DO AGREE THAT IT'S SORT OF AS THOUGH PEARSON AND--

>> TALK INTO YOUR MIC.

>> SORRY.

PEARSON AND NETHERLY ARE IN CONFLICT BUT BOTH OF THEM INTERPRET VERSIONS OF THE STATUTE BEFORE THE 1997 AMENDMENT.

THE FIRST DISTRICT DOES INDICATE THAT THIS CASE IS IN CONFLICT WITH NETHERLY BUT AS YOU NOTED, IT IS CONSTRUING A DIFFERENT VERSION.

IT SEEMS TO ME THAT FOR PEREZ THE 2011 PEREZ BECAUSE TWO DIFFERENT PEREZS ARE DISCUSSED IN THIS CASE BUT THEY DO RELY ON A DIFFERENT STATUTE OF LIMITATIONS, MORE SPECIFIC ONE. THE FIRST DISTRICT SEEMS TO BASE THE CONFLICT ON THIS KIND OF

EXTRANEOUS STATEMENT THAT THEY PUT TOWARD THE END, SORT OF LIKE, BY THE WAY, THE STATE DIDN'T SHOW DUE DILIGENCE IRRESPECTIVE OF WHETHER HE WAS OUT-OF-STATE.

SO THAT SEEMS TO BE WHAT THEY'RE BASING THE CONFLICT ON.

>> ON THAT.

IT DOES SAY, TALKING TO SUBSECTION B, IT SAYS IN DETERMINING WHAT IS REASONABLE INABILITY TO LOCATE DEFENDANT AFTER DILIGENT SEARCH.

I GUESS WHAT HE'S SAYING IS, DID THEY KNOW BY THE WAY HE WAS IN THE MILITARY?

DID THEY, BEING LAW ENFORCEMENT?

>> WE KNOW, THIS IS BASICALLY WHAT HAPPENED.

EASTER DAY IS THE INVESTIGATOR WHO HAD THIS CASE AND HE PASSED AWAY.

SO THE STATE DOESN'T KNOW WHAT HE KNEW.

SINCE WE HAVE THE BURDEN WHEN THE STATUTE OF LIMITATIONS IS RAISED, WE ADMIT THAT WE COULDN'T SHOW WHETHER OR NOT HE CONTACTED.

SO WE DON'T KNOW WHETHER HE DID OR NOT.

>> WOULD PART OF DILIGENT SEARCH, YOU KNOW, WOULD THAT REQUIRE LAW ENFORCEMENT IN ALL THESE CASES TO HAVE A LIKE CHECKLIST WHERE TO LOOK FOR PEOPLE?

IS HE IN THE MILITARY, IS SHE IN THE MILITARY?

>> THE STATE ADMITS THAT IF WE WERE REQUIRED TO ENGAGE IN A DILIGENT SEARCH WE DID NOT DO THAT WE AGREE TO THAT.

OUR POSITION IS SIMPLY WE DID NOT HAVE TO ENGAGE IN CONTINUOUS SEARCH BECAUSE HE WAS CONTINUOUSLY OUT OF THE STATE.

>> THAT ISSUE OF CONTINUOUS ABSENCE, IS THAT CONDITION OF

FACT OR IS THAT STIPULATED TOO?  
THIS IS A MAN WHO HAD A  
PERMANENT RESIDENCE HERE, RIGHT?  
AND SO, WHAT IF HE WAS BACK OVER  
THAT PERIOD OF TIME FOR A WEEK,  
OR WERE A WEEKEND, DOES THAT  
THEN MEAN THAT HE IS NOT  
CONTINUOUSLY ABSENT?  
THAT THE IDEA HE WOULD HAVE COME  
BACK AND THEN, THAT IS WHAT THEY  
WOULD HAVE HAD TO SERVE HIM, SO  
TELL ME, IS THAT STIPULATED TO?  
OR IS THAT SOMETHING THAT NEEDS  
TO GO BACK FOR A FURTHER  
HEARING?

>> THE DEFENSE ATTORNEY NEVER  
ARGUED THAT THE DEFENDANT WAS  
BACK IN FLORIDA FOR ANY PERIOD  
OF TIME DURING THE HEARING.  
IN FACT THE STATE INDICATED THAT  
THEY WERE STIPULATE TOGETHER  
SERVICE RECORDS WHICH ARE  
INCLUDED ON THE RECORD APPEAL  
THAT SHOWS HE WAS CONTINUOUSLY  
ABSENT FROM THE STATE.

>> I READ THAT AND IT DIDN'T SAY  
THAT.

BASICALLY WHAT IT SAID WAS HE  
WAS CONTINUALLY IN THE MILITARY  
BUT DEPLOYED OUTSIDE OF THE  
STATES BUT NEVER SAID HE CAME  
BACK FOR FURLOUGH, R&R, FUNERAL,  
PICNIC OR ANYTHING.

>> THE DEFENSE ATTORNEY NEVER  
ARGUED--

>> ISN'T THAT THE STATE'S BURDEN  
TO PROVE HE WAS OUT-OF-STATE  
CONTINUOUSLY?

>> I THINK WHEN THE STATE  
INTRODUCES RECORDS SHOWING HE  
WAS AT DIFFERENT MILITARY  
LOCATIONS AND SAYS HE IS  
CONTINUOUSLY ABSENT FROM THE  
STATE BECAUSE HE IS THERE--

>> I DON'T CARE ABOUT MILITARY  
LOCATION.

YOU DON'T STAY THERE ALL THE  
TIME.

YOU HAVE FURLOUGHS, YOU HAVE  
LEAVES.

THEY DO ALLOW YOU TO COME BACK HOME.

HE HAD CHILDREN IN FLORIDA.

>> BUT THEY NEVER, THE DEFENSE ATTORNEY NEVER SAID, WELL THE STATE PRESENTED THIS EVIDENCE BUT WE DISAGREE.

HE DID COME BACK AND HERE'S THE EVIDENCE THAT HE CAME BACK.

I THINK WHEN THE STATE INTRODUCES EVIDENCE THAT HE WAS OUT OF THE STATE FOR MAY OF 2008 UNTIL MAY OF 2012 AND INTRODUCED RECORDS WHICH THE DEFENSE STIPULATED TO THE RECORDS AND DEFENSE DOES NOT ARGUE THAT NO, THIS IS WRONG.

HE CAME BACK AT TIMES, THAT THE STATE DID MEET ITS BURDEN IN THAT REGARD.

>> LET ME ASK YOU A QUESTION. AT SOME POINT, AND THIS IS-- I ALWAYS THOUGHT THIS TYPE OF SECTION WAS THERE FOR A FUGITIVE, NOT THE-- FUGITIVE, SOMEBODY THAT WAS ACTUALLY ATTEMPTING TO AVOID PROSECUTION. IF, IF YOU HAVE A SITUATION, SOMEONE'S ACTIVE DUTY MILITARY, AND I WOULD CONFESS, I DON'T KNOW HOW THAT WORKS BUT, WHERE HE DOESN'T, HE IS THERE AND IN THE MILITARY FIVE YEARS, 10 YEARS, DOES THE STATE, IS, IS THERE SOME POINT WHERE THERE IS SOME OTHER CONSIDERATION THAT YOU WAIT TOO LONG?

WHAT, IS THERE ANY OTHER STATUTE THAT DEALS WITH SOMETHING AN OUTSIDE TIME FOR TOLLING?

>> IT'S NOT A STATUTE OF LIMITATIONS DEFENSE BUT THERE IS A CASE CALLED HOWELL IN THE FIRST DCA AND, I HAVEN'T SEEN THAT IT HAS BEEN ABROGATED BY ANYTHING YOU SAID AND IT TALKS ABOUT TWO THINGS.

FIRST IS CONSTITUTIONAL SPEEDY TRIAL WHICH IN THIS CASE THE STATE FILED THE INFORMATION IN

2012.

SO THAT WOULDN'T HAVE REALLY BEEN AN ISSUE BUT IT ALSO TALKS ABOUT SOMETHING CALLED OPPRESSIVE DELAY AND, AND IT'S A DELAY OF PRE-ARREST.

AND THE TWO FACTORS THAT IT DISCUSSES ARE THE LENGTH OF DELAY AND WHETHER OR NOT THERE'S ACTUAL PREJUDICE.

SO, IT SEEMS THAT THOSE WOULD BE ONE OF THE TWO OPTIONS THAT A DEFENDANT WOULD LOOK TO OUTSIDE OF THE STATUTE OF LIMITATIONS TO PURSUE A REMEDY IF THEY FELT LIKE THEY WERE BEING FORCED TO PROCEED IN A TRIAL MANY YEARS LATER.

>> HAVE YOU LOOKED AT OTHER STATES?

IT DOES SEEM AGAIN THAT ACTIVE DUTY MILITARY WHERE WE CELEBRATE OUR MILITARY THAT THERE IS SOMETHING ABOUT THIS THAT DOES SEEM UNFAIR TO A PERSON IN THE MILITARY WHO IS CLEARLY IN THIS SITUATION COOPERATED WITH THE INTERVIEW, TURNED HIMSELF IN VOLUNTARILY WHEN HE KNEW IT BUT, WHAT IS, IS THIS THE SAME STATUTE THAT EXISTS IN ALL OF THE STATES AND NOBODY HAS A MILITARY PERP NELL EXCEPTION TO-- PERSONNEL TO DEAL WITH THEM DIFFERENTLY?

>> I'M NOT SURE IF OTHER STATES DO.

I DO NOT THINK OUR LEGISLATURE CARES THE REASON YOU'RE OUT-OF-STATE.

IT DOESN'T PUT ANY LANGUAGE TO INDICATE IT MATTERS WHETHER YOU INTENDED TO BE OUT OF THE STATE OR WHETHER IT WAS VOLUNTARY OR NOT.

MY PERSONAL OPINION, AND THIS IS SPECULATION ON MY PART, IS THAT IT WOULD BE A BURDEN WITH ALL THE CRIMES THAT ARE COMMITTED IN THE STATE OF FLORIDA, I MEAN

THERE ARE THOUSANDS AND THOUSANDS, TO MONITOR ALL THE PEOPLE GOING IN AND OUT OF THE STATE.

AND ALSO I NOTICED THEY USED WORD EXTRADITE A LOT IN BOTH OF THE PROVISIONS.

IT COSTS MONEY TO EXTRADITE PEOPLE FROM OTHER STATES.

AND SO I WOULD OPINE THAT PERHAPS THOSE ARE TWO OF THE REASONS WHY.

>> WHERE THEY CAUGHT HIM I UNDERSTAND, HAD FBI GO TO HONOLULU, ALL THE WAY TO HONOLULU.

HE WAS AT FORT BRAGG. THEY KNEW WHERE HE WAS.

>> RIGHT.

>> YOU SAID THIS MONEY THING, HAD TO GO ALL THE WAY TO HONOLULU, CALLED BACK, OH, BY THE WAY, HE IS BACK IN FLORIDA. THAT IS HOW THEY CAUGHT HIM. AT ALL TIMES HE TOLD THEM HE WOULD SURRENDER WHENEVER THEY WANTED HIM.

>> RIGHT.

WE DON'T KNOW WHETHER EASTERDAY ASKED HIM TO SELF-SURRENDER OR NOT BECAUSE INVESTIGATOR EASTERDAY IS DECEASED.

WE'RE STUCK IN THOSE TERMS TO PROVE THAT HE DID.

>> THE STATE COULD AFFORD A POSTAGE STAMP.

>> YES.

I THINK WHEN YOU LOOK AT THE STATUTE, SORT OF LIKE, WE HAD CASE LAW PRIOR TO THE AMENDMENTS WHERE MOSTLY THE SECOND SECOND DCA WAS ADDING DUE DILIGENCE EVEN IF A PERSON WAS OUT-OF-STATE.

AND FIRST DCA DISAGREED BACK THEN.

IN DETERMINING REASONABLENESS, THE COURT WILL CONSIDER AN INABILITY TO LOCATE A DEFENDANT AFTER DILIGENCE, OR ABSENCE FROM

THE STATE.

AND SO IF YOU WANTED DUE  
DILIGENCE WHY WOULD YOU PUT OR?  
WHY WOULDN'T YOU PUT AND?

BUT--

>> [INAUDIBLE]

SEE IF HE WAS IN THE STATE?

>> WE DON'T HAVE ANY EVIDENCE OF  
WHAT--

>> THEY YOU KNEW ARE WITH WHERE  
HE LIVED.

THEY KNEW WHERE HIS PARENTS  
LIVED.

>> RIGHT.

>> HAD HE BEEN IN THE STATE THEY  
WOULDN'T HAVE DONE ANYTHING?

>> WE CAN NOT PROVE, WE HAVE NO  
INFORMATION ABOUT WHAT  
INVESTIGATOR EASTERDAY DID OR  
DIDN'T DO.

>> THEY TALKED ABOUT THEY KNEW  
WHERE HE WAS.

>> ACTUALLY THE PETITIONER'S  
BRIEF AND ALSO THE RECORD, I  
THINK IN THE STATE'S RESPONSE  
INDICATE THAT WATKINS, WHEN HE  
STARTED LACKING INTO EASTERDAY'S  
OLD CASES IN APRIL OF 2011, HAD  
TO DO SOME DIGGING TO FIND OUT  
THAT THE PETITIONER WAS IN THE  
MILITARY.

WHICH MEANS IT MUST NOT HAVE  
BEEN OBVIOUS FROM EASTERDAY'S  
FILE THAT THE PETITIONER WAS IN  
THE MILITARY OR HE WOULDN'T HAVE  
TO DO DIGGING.

>>-- WHETHER OR NOT THE PERSON  
WHO WAS-- DIED.

IF THEY DIED YOU'RE UP THE  
CREEK?

>> NO, OUR POSITION HE WAS  
CONTINUOUSLY OUT-OF-STATE AND WE  
DID NOT HAVE TO ENGAGE IN DUE  
DILIGENCE.

IN FACT, IF YOU LOOK WHAT  
HAPPENED, WE HAD SOME CASE LAW  
OUT OF THE SECOND DISTRICT THAT  
SAID THAT THE STATE HAD TO  
ENGAGE IN DUE DILIGENCE WHEN  
SOMEONE WAS OUT-OF-STATE.

THEN THE LEGISLATURE COMES BACK  
IN 1997 AND IN TWO DIFFERENT  
PLACES STRONGLY INDICATES THAT  
IT INTEND TO TREAT OUT-OF-STATE  
DEFENDANTS DIFFERENTLY THAN  
IN-STATE DEFENDANTS.

IT FIRST--

>> THIS CRIMINAL-- LIMITATION  
WITH REGARD TO CHARGING THE  
CRIME MAY FIND ITS ORIGIN MORE  
RECENTLY BUT IN THE CIVIL  
CONTEXT WE'VE HAD A PROVISION  
LIKE THIS FOR OVER 40, 50 YEARS.  
SO WHAT DOES, DOES THAT GIVE US  
ANY INSIGHT?

BECAUSE YOU HAVE PERSPECTIVE  
DEFENDANTS OUTSIDE THE STATE OF  
FLORIDA AND I THINK THE LANGUAGE  
IS VIRTUALLY THE SAME AND IS  
THERE ANY ANALYSIS OF THOSE  
ABOUT THIS DILIGENCE REQUIREMENT  
OR THAT A PLAINTIFF HAS TO  
SEARCH OUT WHERE THAT DEFENDANT  
IS?

>> WELL, WELL CRIMINAL LAW IS A  
LITTLE DIFFERENT BECAUSE IF YOU  
THINK ABOUT IT, THE STATUTE OF  
LIMITATIONS IS NOT A  
CONSTITUTIONAL RIGHT.

IT'S A CREATURE OF STATUTE.  
IT'S REALLY IF YOU THINK ABOUT  
IT, A GIFT FROM THE LEGISLATURE  
BECAUSE--

>> CIVIL IS THE SAME THING.

>> RIGHT.

SO IF THE LEDGE YOU'RE WANTS TO  
SAY, WE'RE ONLY GIVING A GIFT TO  
CERTAIN PEOPLE UNDER CERTAIN  
CIRCUMSTANCES--

>> YOU DO HAVE CONSTITUTIONAL  
SPEEDY TRIAL.

YOU CAN'T JUST WAIT FOREVER TO  
PROSECUTE SOMEONE.

>> THAT'S TRUE AND THAT WOULD BE  
A LIMITATION ON THIS.

>> LET ME ASK YOU ONE THING,  
PROCEDURAL BASIS.

THIS CASE, MOTION TO DISMISS  
FILED BY THE DEFENDANT AND THE  
PARTIES WENT INTO A WHOLE BUNCH

OF STIPULATIONS ABOUT THE FACTS.  
THE TRIAL COURT DENIED THE  
MOTION TO DISMISS AND HE WENT  
FROM THAT TO THE FIRST DISTRICT.  
NO TRIAL--

>> RIGHT.

>> SO WE'RE JUST BASICALLY HERE  
ON THE MOTION TO DISMISS, IS  
THAT COMMON?

I MEAN SHOULDN'T THE CASE HAVE  
PROCEEDED TO TRIAL HAVE SOME  
DISPOSITION BEFORE IT CALM UP TO  
THE APPELLATE LADDER?

>> OFTEN TIMES I HAVE SEEN IT,  
JUST FROM READING OTHER CASES,  
THAT THE DEFENDANTS WILL DO A  
PETITION FOR WRIT OF PROHIBITION  
BEFORE-- PROHIBITION BEFORE  
TRIAL.

>> RIGHT.

>> LOOK AT CASE LAW I WOULDN'T  
SAY THE DEFENDANT PLEADING AND  
RESERVING RIGHT MOTION TO  
DISMISS IS THE MOST COMMON WAY I  
SEEN IT OCCUR.

>> RIGHT.

>> NORMALLY SEEMS TO BE THE WRIT  
OF PROHIBITION.

IN THIS CASE IT JUST APPEARS  
FROM THE FACT THAT THE  
LEGISLATURE TOOK THE TIME TO  
INCLUDE IN BOTH PROVISIONS AND  
THE PETITIONER LOSES UNDER BOTH  
BECAUSE THEY ADDED THE PROVISION  
TO 4-B OF THE 2007, FAILURE TO  
EXECUTE PROCESS ON OR EXTRADITE  
A DEFENDANT IN ANOTHER STATE WHO  
HAS BEEN CHARGED BY INFORMATION  
OR INDICTMENT WITH A CRIME IN  
THIS STATE SHALL NOT CONSTITUTE  
AN UNREASONABLE DELAY.

THAT IS THE FIRST THING THEY  
ADDED.

AND THEN FOR THE TOLLING  
PROVISION THEY SAY, THIS  
PROVISION SHALL NOT EXTEND THE  
PERIOD OF LIMITATION OTHERWISE  
APPLICABLE BY MORE THAN THREE  
YEARS BUT SHALL NOT BE CONSTRUED  
TO LIMIT THE PROSECUTION OF A

DEFENDANT WHO HAS BEEN TIMELY CHARGED BY INDICTMENT OR INFORMATION OR OTHER CHARGING DOCUMENT AND WHO HAS NOT BEEN ARRESTED DUE TO HIS OR HER ASSENSE FROM THE STATE OR WHO HAS NOT BEEN EXTRADITED FOR PROSECUTION FROM ANOTHER STATE. IF YOU THINK ABOUT IT, THE WORD EXTRADITE REALLY STANDS OUT TO ME BECAUSE IF SOMEONE IS IN ANOTHER STATE, AND THEY'RE INCARCERATED, FOR EXAMPLE, THAT IS JUST ABOUT THE EASIEST WAY TO FIND THEM.

I MEAN, IF THEY'RE INCARCERATED SOMEWHERE ELSE YOU COULD BE SITTING AT YOUR DESK AND LOOK UP A WEBSITE AND FIND THEM.

SO THE FACT THE LEGISLATURE INCLUDED THE WORD EXTRADITE SHOWS ME HOW MUCH THEY REALLY DON'T CARE ABOUT WHETHER OR NOT THE STATE EXERCISES DUE DILIGENCE WHEN SOMEONE SOUTH OF STATE.

I THINK THEY HAVE MADE A VERY CLEAR INTENT THAT IT'S JUST THE PETITIONER'S ABSENCE FROM THE STATE.

AND I UNDERSTAND YOUR POSITION, JUSTICE LABARGA, WHETHER OR NOT THERE IS ACTUALLY A CONFLICT BUT IT DOES APPEAR IT'S BASED ON THAT ONE LITTLE SENTENCE IN THE 2011 PEREZ CASE AND YOU'RE PROBABLY RIGHT, THEY DIDN'T NECESSARILY HAVE TO INCLUDE THAT LITTLE SENTENCE BUT IT DOES SAY, THE STATE DIDN'T SHOW THAT THEY EXERCISED DUE DILIGENCE IRRESPECTIVE OF WHETHER OR NOT THE DEFENDANT WAS OUT OF THE STATE.

IF YOU DON'T HAVE ANY FURTHER QUESTIONS, THE STATE ASKS THAT YOU APPROVE THE FIRST DISTRICT'S DECISION.

THANK YOU.

>> JUST VERY BRIEFLY, IF I MAY.

FIRST OF ALL, JUSTICE PARIENTE, YOU WERE TALKING EARLIER ABOUT THE CONTACT BETWEEN EASTERDAY AND WATKINS, THE INVESTIGATORS IN TERMS OF WHAT WAS OR WAS NOT DISCUSSED BETWEEN THEM.

THE RECORD IS IN THE FIRST VOLUME, PAGES 105 TO 106.

IT SPECIFICALLY STATES IN THERE WHEN WATKINS AND EASTERDAY BEFORE HE PASSED DISCUSSED THE WARRANT THAT WAS ISSUED IN THIS CASE FOR ROBINSON THAT HE SHOULD SELF-SURRENDER.

NOW I DON'T KNOW WHAT THAT MEANS.

I GUESS TURN HIM IN.

BUT THE POINT ON THIS, IF YOU GO BACK AND LOOK AT IT, HOW WOULD ROBINSON BE ABLE TO

SELF-SURRENDER, HOW WOULD KNOW IF HE WAS NOT CONTACTED BY LAW ENFORCEMENT AND TOLD THERE WAS A WARRANT OUT THERE FOR HIM?

THE LEGISLATIVE DIFFERENCE I CHARACTERIZE THE WAY COUNSEL TALKED ABOUT IT.

I DON'T THINK THE COURT HAS LUXURY LOOK AT WAY OF THE LEGISLATURE DID IF THEY ARE INDIFFERENT ABOUT THAT BECAUSE YOU HAVE TO GO BACK TO LOOK ACTUALLY WHAT HAPPENED.

JUSTICE PERRY, I APPRECIATE YOU ASKING ABOUT WHETHER HE WAS IN THE MILITARY OR NOT.

I THINK IT'S, IT WOULD BE A STRETCH FOR LACK OF A BETTER WORD, THAT LAW ENFORCEMENT DIDN'T KNOW FROM THE FIRST DAY THEY TAPPED THIS GUY'S IP ADDRESS BACK IN 2007 THAT HE WASN'T IN THE MILITARY.

THEY HAD HIS ADDRESS, SKYHAWK DRIVE.

THAT IS THE NAME OF A ROAD THAT IS MILITARY HOUSING ESTABLISHMENT.

HE WAS INTERVIEWED, A WARRANT WAS ISSUED.

THEY KNEW WHERE HE LIVED.  
THERE WAS AN OFFENSE REPORT  
PREPARED IN THIS CASE.  
THEY KNEW THE MAN WAS IN THE  
MILITARY.

I DON'T THINK THERE IS ANY DOUBT  
ABOUT IT.

I CAN'T PUT MY FINGER IN THE  
RECORD WHERE THAT IS BUT I  
THINK, I DON'T THINK YOU CAN  
SUGGEST THAT THEY DIDN'T KNOW  
THAT AND I THINK THAT'S  
IMPORTANT BECAUSE IF THEY DID  
NOT, IF THEY KNEW THAT, THEY  
KNOW THEY COULD HAVE GOTTEN HIM  
AND THEY DID NOTHING.

I UNDERSTAND ALSO WITH RESPECT  
TO THE--

>> WHERE IN THE STATUTE THOUGH  
DOES IT SAY THAT THEY KNEW HE  
WAS OUT-OF-STATE BUT THEY COULD  
HAVE GOTTEN HIM TO USE YOUR  
WORDS?

WHERE IN THE STATUTE DOES THAT  
DESCRIBE?

IT SEEMS TO ME THAT THIS IS A  
TOLLING STATUTE AND IT TOLLS  
WHEN CERTAIN EVENTS ARE  
HAPPENING.

AND THIS IS JUST LIKE, JUST LIKE  
THE CIVIL TOLLING.

>> YES IF I MAY I'M OUT OF TIME.  
IF I MAY JUST ANSWER THAT  
QUESTION.

THE BURDEN IS ON THE STATE TO  
ESTABLISH THEIR RIGHT TO TOLL  
PROVISIONS ON THIS AND IF THEY  
DO NOTHING, LAW ENFORCEMENT DO  
NOTHING, TRYING TO PROTECT  
DEFENDANT'S RIGHTS BECAUSE OF  
AMBIGUITY.

I WOULD ASK--

>> ASK YOU A QUESTION.  
WAS THE STATE CORRECT IN  
REPRESENTING BEFORE THE TRIAL  
COURT THE DEFENSE DID NOT ASSERT  
THAT, OR DID NOT DENY THAT THE  
DEFENDANT HAD BEEN CONTINUOUSLY  
OUT OF THE STATE FOR THE  
REQUISITE PERIOD.

>> THAT IS SOMETHING WE CAN LOOK UP.

>> YES.

>> BUT I'D LIKE YOU TO TELL ME WHAT I FIND WHEN I LOOK IT UP.

>> I KNOW THAT THE STATE IN THEIR BRIEFING, THEY ASSUMED HE WAS CONTINUOUSLY ABSENT.

>> I'M ASKING--

>> I DON'T KNOW--

>> LET ME BE CLEAR WHAT I'M ASKING YOU.

>> YES.

>> I'M ASKING WHAT HAPPENED IN THE PRECEDING BEFORE THE TRIAL COURT.

>> YES.

>> I'M ASKING YOU TO TELL ME, BASED ON THAT, NOT WHAT WAS IN SOMEBODY'S BRIEF, NOT SOME SPECULATION, BUT, IF YOU DON'T KNOW TELL ME THAT.

>> NO, I DO.

NO.

>> IF YOU DO KNOW, TELL ME WHAT IT WAS.

>> IT WAS EGLIN AIR FORCE BASE OR CAMP RUDDER, FORT BRAGG. SCHOFIELD BARRACKS.

>> DOESN'T ANSWER MY QUESTION.

>> I THINK HE IS CONTINUOUSLY ABSENT.

I'M ANSWERING YOUR QUESTION, SIR.

HE WAS CONTINUOUSLY ABSENT.

THOSE ARE DUTY STATIONS.

GETTING BACK TO JUSTICE PERRY'S QUESTION, HIS FAMILY WAS THERE, HE HAD LEAVE.

HOW DO YOU DEFINE CONTINUOUS ABSENCE--

>> I'M ASKING YOU WHAT HAPPENED IN THE PROCEEDING BEFORE THE TRIAL COURT.

>> YES.

>> WAS THERE ANY ASSERTION THAT HE WAS NOT CONTINUOUSLY ABSENT? I'M NOT TRYING TO BE DIFFICULT ABOUT IT.

SLIPPING AND SLIDING HERE.

>> I UNDERSTAND THAT.  
I DON'T BELIEVE, I THINK THERE  
WAS ASSUMPTION HE WAS  
CONTINUOUSLY ABSENT AND EXCLUDES  
POSSIBILITY HE WAS BACK ON LEAVE  
FOR SHORT PERIODS.  
AS FAR AS LONG PERIODS I THINK  
DEFENSE CONCEDED THAT.  
I THINK THAT IS THE FACT OF THE  
CASE.  
THANK YOU.  
>> THANK YOU.  
FOR YOUR ARGUMENTS.