

>> ALL RISE, HEAR YE, HEAR YE,
HEAR YE, THE SUPREME COURT OF
FLORIDA IS NOW IN SESSION, ALL
WHO HAVE CAUSE TO PLEAD, DRAW
NEAR, GIVE ATTENTION AND YOU
SHALL BE HEARD.

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

LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA,
PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.
THE FIRST CASE ON TODAY'S
DOCKET IS DAVIS VERSUS THE
STATE OF FLORIDA.
COUNSEL?

>> MAY IT PLEASE THE COURT,
STEVEN GOSNEY REPRESENTING
JAHQUELL DAVIS AND WE HAVE AN
INTERESTING CASE HERE THAT
OBVIOUSLY I REPRESENT MISTER
DAVIS AND WHAT DEFINES A REST
FOR THE PURPOSES OF SPEEDY
TRIAL.

>> CAN YOU START IN A DIFFERENT
PLACE?

WHAT IS THE PURPOSE OF THE
PROCEDURAL SPEEDY TRIAL RULE?

>> THE PURPOSE OF THE
PROCEDURAL -- IT IS TO EVALUATE
THE FEDERAL AND STATE
CONSTITUTIONAL RIGHTS OF THE
CITIZEN INDIVIDUAL TO SPEEDY
TRIAL AND IT IS ENUNCIATED IN
MANY OF THE CASES IN THE US
SUPREME COURT.

THIS IS A FUNDAMENTAL
CONSTITUTIONAL RIGHT.

HOW THAT IS IMPLEMENTED FOR
PROCEDURAL, THE PROCEDURAL
RULES AND CASE LAW IS MEANT TO
LAY OUT ADEQUATE PROTECTION FOR
THE CITIZENS TO BE FREE FROM
UNNECESSARY DETENTION AND
ARREST.

>> WHAT ACT IMPLICATES THE
SPEEDY TRIAL RIGHT?

>> THE LEGISLATURE --

>> DON'T LOOK AT PROCEDURAL RULES, WHAT ACT, PLENTY OF PRESSES FROM THE SUPREME COURT TALK ABOUT THE ACT THAT STARTS OR IMPLICATES, WHAT ACT WILL THAT BE?

>> IT WILL BE A FORMAL ARREST.

>> TALK ABOUT CONSTITUTIONAL RIGHT THIS PROCEDURAL RULE IS TRYING TO IMPLEMENT, A CONSTITUTIONAL PROTECTION.

>> IT'S AN ACT OF REST.

IT IS THEY FACTO ARREST.

FORMAL ARREST DEFINITELY TRIGGERS SPEEDY TRIAL AND --

>> SPEEDY TRIAL ATTACHES TO THE SUPREME COURT WHEN SOMEONE IS HELD AGAINST CHARGES, WHEN RELEASED ON BOND OR THEIR OWN RECOGNIZANCE BUT AFTER AN INFORMATION FILED A AFTER AN ARREST THE RESULTS IN CHARGES ON CONDITIONS, THAT IS THE SPEEDY TRIAL RIGHT, WHAT IT PROTECTS.

>> I WOULDN'T GO THAT FAR.

THE US SUPREME COURT DEFINED CONSTITUTIONAL SPEEDY TRIAL RIGHT TRIGGERED BY AN ARREST, THAT IS TRUE.

I DON'T THINK THEY'VE GOTTEN TO THE POINT BUT IT MUST BE A FORMAL BOOKING ARREST.

>> WHAT IS THE DEFINITION OF A FORMAL ARREST.

>> PICTURE TAKING AND NUMBER.

>> FORMAL ARREST TRIGGERS A SPEEDY TRIAL.

FORMAL ARREST WOULD BE THE PICTURE TAKING AND FINGERPRINTING, THAT WOULD BE FORMAL REST AND YOU COULD SAY INDICTMENT.

BUT HERE WE ARE TALKING THE DEFINITION OF AN ARREST FOR PURPOSES OF SPEEDY TRIAL AND FLORIDA STATED IN CUSTODY PUTTING SOMEBODY IN CUSTODY TRIGGERS SPEEDY TRIAL.

THAT IS ARREST UNDER FLORIDA

LAW.

>> IS THAT A DIFFERENCE BETWEEN ARREST AND DETAINED CUSTODY WHICH IS NOT NECESSARILY AN ARREST WITH CUSTODIAL INTERROGATION REQUIRING MIRANDA BUT IS NOT A FORMAL ARREST?

>> THERE ARE EXCEPTIONS, A TERRY STOP IS A DETENTION THAT IS JUSTIFIED CONSTITUTIONALLY IS A REASONABLE MEASURE POLICE MAY BE TAKING TO PROTECT THEMSELVES FROM PHYSICAL HARM TO HAVING WEAPONS.

SIMILARLY AN INVESTIGATORY STOP, YOU MIGHT HAVE A CROWD SCENE, YOU WANT TO STOP PEOPLE AND MAKE SURE WHO THESE PEOPLE ARE SO THERE'S A MINIMAL POLICE REQUIREMENT.

WHEN THE STATE ACTS IN CONTRAVENTION OF LIBERTY INTERESTS THERE NEEDS TO BE SOMETHING ADDITIONAL.

THE QUESTION IS THAT IS WHERE THE RUBBER HITS THE ROAD HERE.

>> I WOULD BE INVESTING HERE, WHY WOULD WE HAVE THE SAME DEFINITION FOR DIFFERENT TERMS USED?

THE FOURTH AMENDMENT USED THE TERM SEIZURE, THAT IS DIFFERENT FROM AN ARREST.

IT IS NOT THE SAME WORD.

>> HOW WE DEFINE WORDS IS IMPORTANT.

THE PERSPECTIVE ON DO WE AIR ON THE SIDE OF POLICE POWER AND STATE POWER OR INDIVIDUAL LIBERTY?

>> THAT IS VERY LOFTY AND I UNDERSTAND THAT.

WHY DO I DEFINE ARREST THE WAY I DEFINE A DIFFERENT WORD USED IN THE CONSTITUTION WHICH IS SEIZURE?

>> ON MIRANDA --

>> YOU ADVOCATE AND DANCES AROUND AND -- I CAN SEE THE EASE OF THAT.

IT IS EASY IF YOU READ
DIFFERENT WORDS THE SAME WAY.
WHATEVER YOU USE, THE SAME WAY
WOULD USE CONCEPT OF ARREST FOR
SPEEDY TRIAL PURPOSES.

>> THEY ARE DEFINED BY THE
CONSTITUTION.

>> THERE ARE DIFFERENT WORDS TO
DESCRIBE THOSE RIGHTS.

>> THEY USE DIFFERENT WORDS FOR
DIFFERENT THINGS AND THE REST
SHOULD REMAIN CONSISTENT.

>> DO WE READ THOSE WORDS
DIFFERENTLY?

>> THAT IS PLAYING WORD GAMES
TO EVISCERATE THE INDIVIDUAL
LIBERTY OF -- THAT MELTON
PLANES IN CREATING THE SUBJECT
STANDARDS.

>> DO YOU AGREE THERE ARE CASES
WHERE THERE COULD BE A STANDARD
SEIZURE UNDER THE FOURTH
AMENDMENT CASE BUT SEIZURE
WHICH WOULD NECESSARILY REQUIRE
A MIRANDA WARNING.

>> THE INITIAL BRIEF, AND

>> YOUR POSITION IS THAT MILTON
IS A PROSPECTIVE TEST AS
OPPOSED TO AN OBJECTIVE TEST.

>> ESPECIALLY THE FIRST
ELEMENT.

I AM A TRIAL GUY.

>> YOUR POSITION IS IT SHOULD
NOT BE BASED ON WHAT THE POLICE
OFFICER INTENDS, THE POLICE
OFFICER HAS NOT DONE A FORMAL
ARREST AND YOU ARE UNDER
CUSTODIAL INTERROGATION AND
MIRANDA IS IMPLICATED BUT YOU
ARE FREE TO GO AND YOU CAN WALK
OUT THE DOOR AND THERE IS NO
FORMAL ARREST BUT THE PERSON
WOULD PERHAPS BELIEVE THEY WERE
UNDER ARREST BECAUSE THEY WERE
NOT FREE TO LEAVE.

SPEEDY TRIAL WOULD BE
IMPLICATED.

>> IT DEPENDS ON THE STANDARD
ENUNCIATED IN FOR HE'S.

IT IS INCUMBENT ON THE POLICE

DO NOT CROSS THE LINE INTO
INDIVIDUAL LIBERTY UNLESS THEY
HAVE PROBABLE CAUSE.

ARREST TRIGGERS CONSTITUTIONAL
PROTECTIONS.

FOR PEOPLE TO SAY I WILL PUT
YOU IN HANDCUFFS, FOR YOU AT A
CAR, PUT A LIGHT IN YOUR FACE
AND QUESTION YOU FOR HOWEVER
LONG.

>> THE INDIVIDUAL WOULD HAVE
SAID WHEN HE WAS PLACED IN THE
VEHICLE AND I UNDERSTAND HE
VOLUNTARILY DID NOT GO TO THE
POLICE STATION BUT ONCE HE GOT
TO THE POLICE STATION AND THEY
READ HIM HIS MIRANDA RIGHTS, HE
AGREED, ACQUIESCED TO
INTERROGATION.

HE COULD HAVE SAID I CHOOSE NOT
TO SPEAK TO YOU AND I WOULD
LIKE A LAWYER.

>> THERE IS A CASE THAT YOU
CAN'T VOLUNTARILY -- YOU CAN'T
SUBMIT -- THAT IS A SEPARATE
ISSUE TO MY PARTICULAR CASE.
WE ARE TALKING BIG ISSUE WITH
PROTECTIONISTS, IT IS INCUMBENT
IF THE POLICE WERE CALLED TIME
UNDER THE REASONABLE PERSONS
STANDARD, THIS IS --

>> ANY DETENTION IMPLICATES A
CONSTITUTIONAL RIGHT BUT NOT
THE SPEEDY TRIAL RIGHTS.
IT IS NOT THE UNREASONABLE
DETENTION RULE OF PROCEDURE BUT
A SPEEDY TRIAL.

WOULDN'T YOU AGREE THE SPEEDY
TRIAL RIGHT SHOULD BE TIMED TO
START WHEN THE SIXTH AMENDMENT
RIGHT IS IMPLICATED SINCE THIS
IS A PROCEDURAL RULE DESIGNED
TO IMPLEMENT THE SIXTH
AMENDMENT PROTECTION.

>> I AM NOT SURE.

>> WE COULD START ON ANY
DETENTION.

THIS COULD BE THE REASONABLE
DETENTION RULE.

>> FLORIDA DEFINED A --

>> WE ARE TALKING BASIC LEVEL PRINCIPLES, THIS IS DESIGNED TO PROTECT PROCEDURAL RULE, THE SPEEDY TRIAL RIGHT AND WE ARE TALKING ABOUT WHEN THE TIME STARTS TO RUN, DOES IT MAKE SENSE TO START IT WITH ANY DETENTION?

>> KNOW.

>> THAT IS A RIGHT PROTECTED BY THE CONSTITUTION, YOU HAVE A RIGHT NOT TO BE UNREASONABLY DETAINED.

WOULD THAT WORK?

>> THE STANDARD IS RIGHT THERE. IT IS APPLIED IN THE CONTEXTS.

>> IT OUGHT TO START THE SPEEDY TRIAL RULE TO START RUNNING WHEN THE SPEEDY TRIAL RIGHT ITSELF IS IMPLICATED AND NOT SOME OTHER CONSTITUTIONAL RIGHT.

>> WE HAVE LIBERTY INTERESTS. A RIGHT TO BE FREE FROM UNNECESSARY INTERFERENCE.

ONCE THE POLICE TAKE YOU INTO CUSTODY, NOT POLICE SAFETY AS IN TERRY AND NOT MIRANDA.

>> IF SOMEONE IS DETAINED FOR AN UNREASONABLY LONG TIME AT A TRAFFIC STOP SO DOGS CAN BE CALLED TO SEARCH FOR DRUGS AND DRUGS ARE FOUND, WHAT HAPPENS?

>> UNREASONABLE DETENTION, IF SOMEONE IS DETAINED UNREASONABLY LONGER THAN IT TAKES TO CONDUCT A TRAFFIC STOP AND THEN THE SEARCH IS FOUND IN A SEARCH COCAINE IS FOUND, WHAT HAPPENS TO THOSE DRUGS?

>> THE STATE WOULD BRING CHARGES WITHIN 275 DAYS WHICH IS NOT UNREASONABLE.

>> WOULD THAT BE A VIOLATION OF THE FOURTH AMENDMENT RIGHT? THERE ARE OTHER PROTECTIONS THE DEAL WITH OTHER CONSTITUTIONAL PROVISIONS.

>> WHAT I COME BACK TO IS YOU SEEM TO WANT TO CONFLATE THE

FOURTH, FIFTH AND SIXTH
AMENDMENT RIGHTS AND I HAVE
TROUBLE UNDERSTANDING WHERE THE
FOURTH AMENDMENT USES THE WORD
SEIZE OR SEIZURE IN THE FIFTH
AMENDMENT MEANS CUSTODIAL IS IN
CUSTODIAL INTERROGATION, AND A
DIFFERENT WORD ARREST, THOSE
PROVISIONS DEAL WITH DIFFERENT
SUBJECT MATTERS.

>> THE CONSTITUTION DECLINES
OUR RIGHTS AND WE NEED TO
PROTECT THE RIGHTS --

>> WAS THE -- THEY ARE
SPECIFICALLY USED IN THE
AMENDMENTS THEMSELVES.

>> TO SHIFT THE DEFINITION INTO
THIS --

>> NOT A DIFFERENT DEFINITION
BUT A DIFFERENT WORD.

IF I USE THE WORD GREEN IT
MEANS SOMETHING DIFFERENT THAN
THE WORD BLUE.

>> I GUESS.

BUT THE ARREST WORD IS THE SAME
IN EITHER OF THOSE CONTEXTS AND
WE ARE SAYING WE WILL CHANGE
THE DEFINITION OF ARREST.

>> IF IT IS BELOW IT IS NOT
TRIGGERED.

IF I SEIZE MY FOURTH AMENDMENT
IS TRIGGERED BUT NOT MY FIFTH
BECAUSE NO QUESTIONS ARE ASKED
AND YOU WOULD AGREE WITH THAT.

>> I DON'T KNOW IF I FOLLOWED
THAT.

>> LET'S TAKE THE TERRY STOP
SITUATION.

THAT IMPLICATES THE FOURTH
AMENDMENT BUT IF NO QUESTIONS
ARE ASKED IT IS JUST A PATDOWN
OF SOME SORT, IT DOES IMPLICATE
THE FIFTH, RIGHT?

OR THE SPEEDY TRIAL RIGHT.

>> CORRECT.

>> BUT THERE IS A SEIZURE.

>> WE ARE TALKING ABOUT A
BALANCE OF INTEREST, TERRY IS
INVOLVED IN POLICE PROTECTION.

>> THE REASON IT TRIGGERS IS A

DIFFERENT WORD, A SEIZURE
HAPPENS BEFORE CUSTODY OR NOT
NECESSARILY BUT SOMETIMES AND
BEFORE AN ARREST, RIGHT?

>> THERE IS A BALANCING OF
INTEREST IN ALL THESE
CONSTITUTIONAL RIGHTS.

THEY WORK TOGETHER AND WE HAVE
TO LOOK AT LEGITIMATE POLICE
INVESTIGATORY REASONS AND
BALANCE THAT WITH LIBERTY
INTERESTS.

I DON'T SEE HOW WE CAN CHANGE
THE WORD DEPENDING ON CONTEXT
AND SAY WE WILL PLAY THE GAME
WITH THIS WHEN MILTON IS A 54
CASE, WE ARE TALKING 60 YEARS
AGO, THERE HAS BEEN PENAL CODE,
COMMON-LAW PLEADING, SO MANY
THINGS HAVE CHANGED.

>> I DON'T KNOW THAT MILTON IS
THE BEST WAY TO DEFINE IT BUT
I'M HAVING TROUBLE GETTING THE
YOU WANT US TO GO WHERE YOU
TELL US THE SAME DEFINITION OF
THE FOURTH AMENDMENT AND THE
FIFTH AMENDMENT SHOULD APPLY IN
THE SPEEDY TRIAL CONTEXT.

>> I AM WAY OVER MY TIME BUT I
WOULD LIKE TO RESERVE WHATEVER
I HAVE LEFT.

THANK YOU FOR THE QUESTIONS.

>> MAY IT PLEASE THE COURT, MY
NAME IS CHRIS DEVON PORT AND I
REPRESENT THE STATE IN THIS
MATTER.

THE MILTON TEST HAS BEEN ON FOR
A LONG TIME, USED A LOT OF
CASES.

IT IS NOT WITHOUT ITS
DEFICIENCIES AND I THINK THAT
IS ILLUSTRATED IN THE GREG'S
CASE WHERE THE GUY CAME IN, WAS
CLEARLY ARRESTED AND MILTON, HE
WAS TOLD HE WAS UNDER ARREST,
THEY INTENDED TO HOLD ONTO HIM
BUT THEN WE WILL LET YOU GO IF
YOU DO A SUBSTANTIAL ASSISTANCE
AGREEMENT WHICH HE SAID OF
COURSE I WILL DO THAT AND THE

COURT -- HUNDRED MILTON HE WAS UNDER ARREST BUT NEVER FORMALLY ARRESTED BUT HE MET ALL THOSE FACTORS, HE WAS TOLD HE WAS UNDER ARREST, BELIEVED HE WAS UNDER ARREST, THERE WAS AN INTENT TO ARREST HIM AS HE DID THIS COOPERATIVELY.

>> WHAT DOES THE WORD ARREST MEAN WHEN USED WHEN FIRST PUT INTO THE RULE IN 319170?

>> THAT, THIS COURT SAID ARREST MEANS YOU MEET THE MILTON FACTORS.

>> I KNOW WHAT WE SAID, WE HAVE APPLIED MILTON IN THE CONTEXT BUT I'M ASKING WHAT DOES IT MEAN?

>> ACCORDING TO PRECEDENT --
>> PRESIDENT ASIDE.

>> IT MEETS THESE FACTORS.

>> WHAT DOES IT MEAN WHEN WE ENACTED 3.91D, WHAT DID ARREST MEAN?

MILTON IS NOT A SPEEDY TRIAL CASE.

NOTHING -- THE SEARCH AND ARREST CASE LAW HAS BEEN COMPLETELY CHANGED SINCE THEN.

>> YES IT HAS.

BUT THAT IS THE TEST WE HAVE ALWAYS USED.

IS THE RIGHT TEST?

I WOULD SUBMIT YOU SHOULD APPLY THE FEDERAL RULE.

IT HAS ALL THE OBJECTIVITY THE FIFTH DCA WAS CONCERNED ABOUT WITH MILTON AND INVOLVE SITUATIONS WHERE A PERSON IS TOLD THEY ARE UNDER ARREST BUT NEVER ACTUALLY HAPPENS.

>> THAT MAY MAKE SENSE IF WE WRITE A RULE PROSPECTIVELY BUT WE HAVE A CASE BEFORE US APPLYING A RULE THAT APPLIED AT THE TIME AND SO MY QUESTION IS IF MILTON IS NOT RIGHT BECAUSE IT IS FROM BEFORE THE RULE WAS WRITTEN AND WAS IN CONTEXT THAT HAD NOTHING TO DO WITH THE

SPEEDY TRIAL, WHAT IS THE PROPER WAY TO READ THE RULE AS WRITTEN, NOT AS WE WANT IT TO BE BUT AS IT IS CURRENTLY WRITTEN?

>> YOU SHOULD READ THE RULE AS, READ THAT TO ME ARREST MEANS A FORMAL ARREST.

YOU GOT THE NUMBER AND LET OUT ON BOND AND HELD.

>> THERE IS A CONCEPT OF A FACTO ARREST.

YOU ARE HELD WITHOUT CHARGES SO IT TURNS INTO AN ARREST.

>> THERE THAT CONCEPT, THEY WERE APPLYING THE MILTON TEST. IS THAT THE WAY THE COURSE WANTS TO GO UNDER THE SPEEDY TRIAL RULE.

IT DOESN'T COME UP A LOT BECAUSE MILTON IS A HARD TEST. THEY HAVE TO BE ALL FOUR FACTORS IN GENERAL.

THE TEST WORKS BUT DOESN'T ALWAYS WORK IN CASES LIKE THIS. IT IS SUBJECT TO QUESTION BUT THEY DID MEET THE FACTORS AND IN CASES LIKE GREG'S, THEY ARE UNDER ARREST, THE OFFICERS THAT I INTENDED TO ARREST THEM. THEY MET THOSE FACTORS AND LET THEM GO.

UNDER THE CONSTITUTION, HE'S NOT ARRESTED AND UNDER FEDERAL LAW HE WASN'T ARRESTED.

THE COURT FOUND APPLYING THE MILTON TEST THAT HE WAS ARRESTED BECAUSE THAT IS THE TEST WE HAVE ALWAYS BEEN TOLD TO APPLY IN THIS CONTEXT.

THE FIFTH DCA SAID WE SHOULD ASK THIS COURT TO DECIDE WHETHER TO CONTINUE TO APPLY THAT TEST.

I SUBMIT THEIR TEST IS MUCH WORSE AND COMPLETELY ON BOARD FROM THE SIXTH AMENDMENT INTERESTS.

>> CAN I ASK YOU A QUESTION REGARDING THE SIXTH AMENDMENT.

THE SIXTH AMENDMENT AND
FLORIDA'S VERSION IN ARTICLE 1
SECTION 16, THE SPEEDY TRIAL OF
SIXTH AMENDMENT, LANGUAGE
SPECIFICALLY SAYS IN ALL
CRIMINAL PROSECUTIONS THE
ACCUSED SHALL ENJOY THE RIGHT
TO A SPEEDY TRIAL.

BY THE PLAIN LANGUAGE OF THAT
TEXT DOES IT NOT MEAN YOU HAVE
TO HAVE A CRIMINAL PROSECUTION
COMMENCE IN ORDER FOR THE RIGHT
TO BEGIN?

>> YES.

BY THE PLAIN LANGUAGE OF THAT
RULE YOU HAVE TO HAVE CRIMINAL
PROSECUTION.

SO WHEN THEY ARE BROUGHT IN
LIKE THIS GUY WAS THEY CHECK
HIM OUT, LET HIM GO, THERE IS
NO, PROSECUTION.

>>, PROSECUTION WOULD BEGIN
WITH FORMAL ARREST OR
INDICTMENT.

>> EXACTLY.

>> APPLYING THE PLAIN LANGUAGE
OF THE RULE, THE PLAIN LANGUAGE
OF THE CONSTITUTION THAT THE
RULE IS DESIGNED TO PROTECT, IT
SHOULD BE A FORMAL ARREST.
THAT IS WHY WE PROPOSE THAT
TEST.

MILTON HAS BEEN AROUND A LONG
TIME.

IT WORKS MOST OF THE TIME, BUT
IF YOU DON'T LOOK AT THE
LANGUAGE OF THE CONSTITUTION,
MILTON IS A FOURTH AMENDMENT
CASE WITH LITTLE TO DO WITH
SPEEDY TRIAL.

THERE IS SOME RELIANCE ON IT.
YOU HAVE ISSUES THE COURT NEEDS
TO DECIDE WHETHER THERE WOULD
BE DISRUPTION.

>> WEAKEST IN THE
CONSTITUTIONAL CONTEXT.

>> CORRECT.

>> WHAT DO WE DO IN A CASE
WHERE LAW ENFORCEMENT FOR
WHATEVER REASON DECIDES TO TAKE

SOMEONE IN AND PUT THEM IN COUNTY JAIL BUT THE PROSECUTION FILES ANY SORT OF INFORMATION, AND CHARGES.

AND OPEN THE JAIL DOOR, YOU ARE FREE TO GO.

>> THEY BOOKED HIM ON EVERYTHING.

>> THEY TOOK FINGERPRINTS, AND PUT THEM IN COUNTY JAIL AND HELD HIM FOR 5 DAYS AND OPEN THE DOOR AND LET HIM GO.

>> THEY HANDLED INITIAL APPEARANCES.

>> AN INITIAL APPEARANCE WITHIN 24 HOURS.

>> THAT IS HOW IT IS SUPPOSED TO WORK BUT WHAT HAPPENS IF IT DOESN'T WORK THAT WAY?

>> IF HE FALLS THROUGH THE CRACKS AND GET LOST IN A JAIL CELL?

>> NO ONE HAS GOTTEN -- RIGHT. NOT JUST IN JUSTICE LAWSON'S -- IT MIGHT IN DADE COUNTY.

>> HE HAS RIGHTS UNDER THE RULES CRIMINAL PROCEDURE AND GET THAT FIRST APPEARANCE AND YOU FILE CHARGES OR LET HIM GO.

>> THAT DOESN'T HAPPEN. HE IS THERE FOR 5 DAYS.

>> HE FELL THROUGH THE CRACKS.

>> TWO YEARS LATER HE IS ARRESTED ON THE SAME CHARGES. IS THAT ORIGINAL CUSTODY AND ARREST?

>> KNOW.

>> THAT IS NOT AN ARREST?

>> I SUBMIT WE NEED TO GET TO THE CONCEPT OF THEY FACTO ARREST.

>> THAT'S A PRETTY EXTREME POSITION WHERE YOU WERE HELD WITHOUT CHARGE FOR 5 DAYS AND BROUGHT BACK LATER.

>> HE IS JUST HELD, HE WASN'T ARRESTED.

>> I WANT TO CLEAR -- THE CONSTITUTION CARES ABOUT FINGERPRINTS SO BEING

FINGERPRINTED AND TAKING A PICTURE IS THE DISTINCTION BETWEEN SOMEONE WHO IS ACTUALLY ARRESTED OR NOT.

>> THE CONSTITUTION CARES WHETHER YOU ARE FORMALLY ARRESTED.

>> TELL ME WHAT THAT MEANS, THE POLICEMAN HAS TO TELL YOU YOU ARE NOW UNDER FORMAL ARREST?

>> YOU ARE BROUGHT INTO THE JAIL AND YOU GO THROUGH THE PROCESS.

THAT IS WHAT WE WOULD SUBMIT.

>> CAN'T YOU JUST HAVE LAW ENFORCEMENT DECIDE TO HOLD THIS PERSON AND NOT FORMALLY ARREST HIM AND MAYBE HE WILL BREAK AND START TALKING?

SOUNDS LIKE A POLICE STATE.

>> YOU DO HAVE OTHER CONSTITUTIONAL PROTECTIONS IN THAT CONTEXT BECAUSE IF YOU ARE HELD IN A JAIL CELL AND WE WAIT FOR YOU TO BREAK THE FIFTH AMENDMENT APPLIES, NOTHING THEY GET OUT OF HIM WILL BE INTRODUCED.

>> ASSUMING THEY LET HIM SPEAK TO A LAWYER AND GIVE HIM HIS MIRANDA WARNINGS.

THE LAW ENFORCEMENT CAN DO WHAT HE CHOOSES TO DO AND CONSTITUTIONALLY I DON'T SEE HOW THAT IS FEASIBLE.

>> IF THEY WERE UNLAWFULLY DETAINED, FOURTH AMENDMENT, FIFTH AMENDMENT PROTECTIONS, NOTHING THEY GOT FROM HIM WOULD WORK.

>> NOT THAT YOU HAVE OTHER CONSTITUTIONAL PROTECTIONS DOESN'T MEAN YOU HAVE TO GIVE UP ANOTHER ONE THAT YOU HAVE.

>> YOU ARE NOT GIVING UP ANYTHING.

IS THE SPEEDY TRIAL PERIOD RUNNING?

THERE IS NO CRIMINAL PROSECUTION AGAINST HIM.

HE'S NOT FORMALLY ARRESTED.
HE COULD FILE AHEAD BS PETITION
AND A CIVIL ACTION FOR FALSE
IMPRISONMENT, HE'S NOT WITHOUT
REMEDY.

IT IS AN UNFORTUNATE SITUATION
BUT IS THE SPEEDY TRIAL?

>> HOW WOULD THE HYPOTHETICAL
GIVEN BY HIM BE HANDLED?

>> UNDER FEDERAL LAW A SPEEDY
TRIAL WOULDN'T START RUNNING
AND THAT IS WHAT WE SHOULD FALL
ON.

IT MAKES THE MOST SENSE.
IMPLEMENTING THE SIXTH
AMENDMENT.

>> IN MCDONALD THE SUPREME
COURT, IT IS DESIGNED TO
MINIMIZE THE POSSIBILITY OF
LENGTHY INCARCERATION PRIOR TO
TRIAL, TO INTRODUCE THE
SUBSTANTIAL IMPAIRMENT OF
LIBERTY IMPOSE ON AN ACCUSED
WHILE RELEASED ON BAIL OR
SHORTEN THE DISRUPTION OF LIFE
CAUSED BY ARREST IN THE
PRESENCE OF UNRESOLVED CRIMINAL
CHARGES.

BECAUSE OF THAT THEY EXPLAIN IF
A CASE IS DISMISSED, NO
INFORMATION IS FILED.

THERE IS NO SIXTH AMENDMENT
ISSUE AT THAT POINT EVEN IF THE
PERSON WAS FORMALLY ARRESTED.

>> THAT'S NOT HOW IT HAS BEEN
APPLIED IN FLORIDA.

>> I KNOW.

YOUR POSITION IS THE PROCEDURAL
SPEEDY TRIAL RULE SHOULD BE
INTERPRETED IN LIGHT OF THE
RIGHT IT IS TRYING TO PROTECT.

>> ABSOLUTELY.

>> AND ARREST WOULD BE A FORMAL
ARREST AND SOMEONE IS EITHER IN
JAIL OR CHARGES ARE RELEASED IN
THEIR OWN RECOGNIZANCE ARE
RELEASED ON BOND.

>> THAT IS WHEN THE LIBERTY
INTEREST IS IMPLICATED.
IF YOU GET INTO THEY DETAINED

HIM FOR A LONG TIME YOU START THIS GRAY AREA AND THEY CAN TO MINNESOTA FOR 5 DAYS AND THAT IS OFFENSIVE TO EVERYBODY.

THIS GUY WAS HELD IN A POLICE STATION FOR 7 HOURS, THAT IS OFFENSIVE TO SOME PEOPLE TOO AND YOU HAVE TO START MAKING JUDGMENT CALLS.

IT IS EASIER TO FOLLOW THE FEDERAL RULE.

IT STILL PROTECTS THE SIXTH AMENDMENT INTERESTS.

THERE ARE OTHER REMEDIES.

NOT EVERYTHING IS A SPEEDY TRIAL VIOLATION BECAUSE WE DON'T LIKE WHAT THE POLICE ARE DOING, THAT IS UNLAWFUL SEIZURE.

IT WOULD BE IMPROPER CUSTODY UNLESS YOU READ MIRANDA AND GIVE HIM HIS RIGHTS, IT COULD BE INVOLUNTARY EVEN WITH MIRANDA IF THEY SET HIM IN JAIL AND SAID WE ARE GOING TO WAIT YOU OUT THAT COULD BE A FIFTH AMENDMENT VIOLATION.

IT IS NOT SPEEDY TRIAL BECAUSE WE DON'T LIKE WHAT THEY ARE DOING SO WE WOULD SUBMIT, MOUNTAIN HAS BEEN AROUND A LONG TIME IF THIS COURT IS NOT INCLINED TO FIND THAT IT SHOULD BE OVERTURNED, WE CAN WORK WITH IT BUT THE BETTER RULE WOULD BE TO FOLLOW THE FEDERAL MODEL AND THAT IS WHAT THE COURT SHOULD DO.

IT CERTAINLY SHOULDN'T DO WHAT THE FIFTH DCA SUGGESTED WHICH IS USING THE FIFTH AMENDMENT TEST IN THIS CONTEXT.

IT DOESN'T MAKE SENSE TO APPLY THAT IN THIS CONTEXT.

THEY ARE SUCH DIFFERENT ISSUES. IF I MAY QUOTE FROM JUSTICE WHITE IN MARION, THERE IS NO RIGHT TO A SPEEDY INVESTIGATION OF THE CRIME.

NO CONSTITUTIONAL RIGHT TO

THAT.

THAT'S NOT WHAT THE SIXTH
AMENDMENT SAYS.

THE FRAMERS COULD HARDLY HAVE
SELECTED LESS APPROPRIATE
LANGUAGE IF THEY HAD INTENDED
THE SPEEDY TRIAL PROVISION TO
PROTECT AGAINST PRE-ACCUSATION
DELAY.

WE AGREE WITH THAT.

WE ASK THE COURT TO ADOPT THE
FEDERAL MODEL IF IT IS INCLINED
TO ILLUMINATE.

THANK YOU.

>> THANK YOU.

IF I COULD, THE SUPREME COURT
OF THE UNITED STATES, DICKY
VERSUS FLORIDA WHICH IS CITED
IN THE INITIAL BRIEF, SPEEDY
TRIAL RIGHT IS AN IMPORTANT
SAFEGUARD TO PREVENT
INCARCERATION WHICH WE
DISCUSSED.

SPEEDY TRIAL IS INTENDED TO
MINIMIZE ANXIETY, CONCERN
ACCOMPANYING PUBLIC ACCUSATION.
WE OBSERVED LENGTHY PROSECUTION
SUBJECT TO PUBLIC SCORN PROBLEM
OF EMPLOYMENT AND CERTAINLY
WILL FORCE CURTAILMENT OF
ASSOCIATIONS ETC. SO --

>> BY THE SENTENCE YOU JUST
READ THE TALKED ABOUT PUBLIC
ACCUSATION THAT APPLIES TO
CRIMINAL PROSECUTION HAS
COMMENCED BECAUSE YOU WOULD
ONLY HAVE A PUBLIC ACCUSATION
IF THERE IS SOMETHING THAT IS
FILED.

>> AND TO DEPRIVE FORCED
CURTAILMENT OF SPEECH,
ASSOCIATIONS AND UNPOPULAR
CLAUSES, HE HAS BEEN DETAINED
FOR AN ACCUSATION FOR SOME
CRIME AND HE WILL GO FORWARD
KNOWING THE CLOUD EXISTS OVER
HIM AND THAT WILL CURTAIL HIS
LIBERTY GOING FORWARD WHILE
THIS HAPPENS.

IF THERE'S A SPEEDY TRIAL

IMPLICATED THEN THE STATE NEEDS
TO GET ON THE STICK AND CHARGE
OR NOT CHARGE WITHIN 175 DAYS.

>> I'M HAVING A HARD TIME
UNDERSTANDING HOW SOMEONE'S
LIBERTY IS IN ANY WAY LIMITED
BY DETAINED AND THAT IS TOO
LONG EXCEPT DURING THE
DETAINMENT PERIOD.

ONCE THEY ARE RELEASED,
SOMEBODY IS BEING DETAINED FOR
SOME REASON THEORETICALLY.

THERE IS A CRIME BEING
INVESTIGATED IN AN ACCUSATION
SO LET'S SAY --

>> THE PERSON IS BROUGHT IN IN
THIS CASE, THEY AGREE TO TALK
TO THE POLICE SO THEY DO.
THEY COULD HAVE SAID NO, AND I
UNDER ARREST, YES OR NO AND
THEY COULD HAVE LEFT BUT THEY
STAYED AND TALKED WITH POLICE,
YOUR CLIENT SAID HE WANTED TO
CLEAR HIS NAME, HE WANTED TO DO
THAT.

AFTER THE POLICE SAID YOU ARE
FREE TO GO, LIBERTY IN ANY WAY
IS LIMITED?

>> LET'S ASSUME THERE WAS A
CRIME ASSOCIATED HERE.

>> THERE WAS A CRIME, THEY ARE
TOLD THEY ARE FREE TO GO, THEY
ARE NOT FORMALLY ARRESTED.

HOW IS THERE LIBERTY LIMITED?
CAN THEY LEAVE THE COUNTY?

>> THAT'S THE QUESTION.
CAN THEY ASSOCIATE WITH THE
PEOPLE THEY ASSOCIATED BEFORE?

>> THE GOVERNMENT TOLD THEM I
CAN.

TO IMPACT THE BEHAVIOR
SUBSTANTIALLY, AM I ASSOCIATING
WITH THE SAME PEOPLE, GO TO THE
SAME PLACES, THERE --

>> YOU CAN HAVE AN ACCUSATION
AND ALL KINDS OF CIRCUMSTANCES?
I KNOW YOU DID IT.

WE KNOW YOU DID IT.

>> THEY ARE DOING --

>> EYES ON YOU.

THAT DOESN'T TRIGGER ANYTHING.

>> THEY ARE NOT PUT UNDER THE FACTO ARREST.

I WANT TO JUMP ONTO THE THEY FACTO ARREST.

>> THE FACT, THE ACCUSATION YOU ARE FOCUSING ON, THE INFORMAL ACCUSATION IS IRRELEVANT FOR THE SPEEDY TRIAL PURPOSES.

>> WHEN PLEASE GO TO AN EXTENT OF DETAINING OR IN PLACE YOU UNDER ARREST, THAT ACCUSATION IS BECOMING REAL WHEN YOU ARE HELPING, VOLUNTARILY HELPING THE POLICE, THAT IS A DIFFERENT SITUATION AND PUTTING IN CUSTODY OR YOUR LIBERTY IS DETAINED, THE GOVERNMENT IS POINTING A FINGER AT YOU THROUGH THAT ACTION, SOMETHING MORE THAN INTERACTING WITH A CITIZEN.

>> OTHER CONSTITUTIONAL RIGHTS ARE IMPLICATED SO YOU HAVE A MIRANDA WARNING, THAT'S WHY THE MIRANDA WARNING IS GIVEN, CUSTODIAL INTERROGATION, THEY DID CUSTODIAL INTERROGATION, MIRANDA WAS DONE AND WE SPOKE TO YOU AND YOU ARE FREE TO GO.

>> I'M NOT SURE IT WAS STATED BUT BECAUSE YOU HAVE OTHER CONSTITUTIONAL RIGHTS THAT DOESN'T MINIMIZE THE SPEEDY TRIAL.

>> THERE'S A REASON, THEY DON'T ALL HAVE THE SAME RIGHTS, CONSTITUTIONAL RIGHTS.

>> EVERY RIGHT IS DIFFERENT. THAT DOESN'T MEAN THE DEFINITION OF ARREST CHANGES DEPENDING ON WHAT RIGHT IS BEING APPLIED.

THAT IS WHAT I AM SAYING.

IS IT THE LIBERTY INTEREST OF THE CITIZEN WE ARE PROTECTING OR THE POLICE AND STATE AND OVERARCHING STATE POWER?

THERE HAS TO BE A JUDICIAL CHECK ON STATE POWER.

WHAT JUSTICE LOOK DESCRIBED,
THERE IS SOME DEFINITION THAT
EXISTS OUTSIDE THE CONTEXT OF
THE EXECUTIVE SAYING THIS IS
WHAT WE DO AND HOW WE DEFINE
IT.

THAT'S NOT THE WAY THE SYSTEM
WORKED.

WE HAD CHECKS AND BALANCES, THE
VOORHEES CASE, AND THE
CIRCUMSTANCES WHEN DECIDING
THERE WOULD BE A COMMUNICATION
TO A REASONABLE COMMUNICATION
TO TERMINATE THE ENCOUNTER.

>> HOW DO YOU DISTINGUISH THE
US VERSUS MARION CASE, US
SUPREME COURT CASE THAT
ADDRESSES THE AMENDMENT IN
SPEEDY TRIAL.

>> YOU GOT ME ON THAT.

I AM NOT SURE.

I HAVE TO PUNT.

I WILL APPRECIATE -- ONE MORE
POINT IF I CAN SNEAK IT IN.

>> YOUR TIME IS UP, MAYBE 30
SECONDS.

>> I PUT IN FOOTNOTE 9 OF THE
ORIGINAL BRIEF, NOT HEAVILY
WIDE OR ANYTHING.

IT IS ALSO NOT SOMETHING THAT
IS CONSTITUTIONAL.

THE FACT THAT WE HAD SO MANY
CHANGES IN THE PENAL CODE AND
MODERN CIVIL RIGHTS SARAH, THIS
NEEDS TO BE CONFORMED WITH
OTHER DEFINITIONS OR ARRESTS.

>> WE THANK YOU FOR YOUR
ARGUMENTS.