

>> SUPREME COURT OF FLORIDA IS NOW IN SESSION, THE HONORABLE CHARLES CANNADY PRESIDING.

>> WELCOME TO THIS SESSION OF THE FLORIDA SUPREME COURT. TWO CASES ON TODAY'S DACA, THE FIRST OF WHICH IS FOR THEM AND VERSUS JUNIOR.

RECOGNIZE COUNSEL.

>> JOHN MORRISON, IF I MAY RESERVE 5 MINUTES FOR REBUTTAL. I BELIEVE THE PROCEDURAL HISTORY OF THIS CASE SHOWS THE UNDERLYING CONSTITUTIONAL PROBLEM.

AND THIS IS NOT UNIQUE TO HIS SITUATION.

THIS HAPPENED TO MISTER MOORE IN THE CASE BEFORE HIM.

STATE SHOWS PROBABLE CAUSE, NURSING PRESUMPTION, SAT IN JAIL WITHOUT BOND AWAITING A HEARING WHICH WHEN IT OCCURRED THE STATE COULD NEVER MEET BURDEN OF PROOF.

>> I UNDERSTAND WHAT YOU ARE SAYING AND THIS IS A SIGNIFICANT ISSUE BUT LET ME ASK YOU THIS. AS A PRACTICAL MATTER, FOR THE MOST PART IS THIS A TEMPEST IN A TEAPOT?

I UNDERSTAND HOW WE INTERPRET THE FIRST SENTENCE OF ARTICLE 1 SECTION 14 THAT IN LIGHT OF THE SECOND SENTENCE WHICH ALLOWS DETENTION IF NO CONDITIONS OF RELEASE PHYSICAL HARM TO PERSONS OR IN SURE THE PRESENCE OF THE ACCUSED AT TRIAL AND SO ON MANY OF THE CIRCUMSTANCES WHERE THE FIRST SENTENCE MIGHT COME INTO PLAY, MORE READILY COVERED BY THE SECOND SENTENCE?

>> THERE ARE CERTAINLY CASES OF OVERLAP.

THERE ARE TWO EXCEPTIONS TO WRITE TO PRETRIAL AND THIS IS WHAT THE RULES SHOULD BE.

WHEN THE JUDGE GETS THE CASE THE JUDGE SETS A BONDS UNLESS ONE OR

TWO THINGS IS TRUE, EITHER THE STATE HAS PROVED THE BURDEN OF PROOF OR FILED A MOTION FOR PRETRIAL ATTENTION AND MISTER THOURTMAN'S CASE THE STATE DOES NOT FILE A MOTION AND THEY CANNOT MEET THEIR BURDEN, THERE ARE CASES WHERE BOTH EXCEPTIONS COULD APPLY, THERE ARE CASES WHERE ONE OR THE OTHER WOULD APPLY.

>> THE EVIDENTIARY ISSUES ASSOCIATED WITH THE SECOND SENTENCE MIGHT BE LESS COMPLEX THAN THOSE ASSOCIATED WITH THE FIRST SENTENCE.

>> I WOULDN'T CHARACTERIZE IT THAT WAY.

BASED ON MY EXPERIENCE I SEE THE STATE BEING RELUCTANT TO FILE MOTIONS FOR PRETRIAL DETENTION. I SEE FEW OF THEM HERE WHICH INDICATES TO ME THE STATE CONSIDERS SOME SOMETHING TO THINK ABOUT AND THINK THOROUGHLY ABOUT.

I DON'T HAVE ANY REASON TO BELIEVE THAT THE PROSECUTOR CAN ANSWER THAT BETTER, WHICH ONE IS EASIER, THERE ARE DIFFERENT STANDARDS WITH DIFFERENT PURPOSES.

THE SECOND SENTENCE IS FORWARD-LOOKING.

FUTURE DANGER OR FUTURE FLIGHT OR FUTURE TAMPERING WITH JUSTICE OR WITNESSES ETC..

THE FIRST SENTENCE IS BACKWARD LOOKING.

DID THE STATE HAVE ENOUGH EVIDENCE TO REMOVE PRESUMPTION OF INNOCENCE WHICH OTHERWISE THIS WHOLE FIRST SENTENCE IS ABOUT PRESUMPTION OF INNOCENCE. DOES THE STATE HAVE ENOUGH EVIDENCE TO REMOVE THAT PRESUMPTION?

THAT IS A DIFFERENT ISSUE FOR A DIFFERENT PURPOSE.

THE FIRST SENTENCE IS MORE ABOUT

FAIRNESS.

WHY SHOULD SOMEONE HAVE THEIR JAIL SENTENCE CUT BECAUSE THEY ARE RICH ENOUGH TO BE INVOLVED WHEREAS THEY ARE LESS RICH, THE NUMBER OF THE FIRST SENTENCE. AND WHAT DO THEY SHOW ABOUT THE PRESUMPTION OF INNOCENCE.

>> YOU SEE VERY FEW, THE JUDGE IN A BUSY CIRCUIT, MOST WERE PROCESSED, IT IS NOT UNUSUAL, WITH 200 CASES THAT YOU HAVE THREE HOURS FOR, GIVEN THAT CONTEXT IS IT SURPRISING THE STATE HASN'T HAD TIME TO SHOW UP WITH MOTIONS FOR PRETRIAL WHERE IT IS WARRANTED?

>> I BELIEVE THE RULES TAKE THAT INTO ACCOUNT, AND ANNOUNCEMENT THEY INTEND TO FILE MOTION FOR PRETRIAL ATTENTION.

>> YOU DON'T SEE THAT VERY MUCH. WE DON'T SEE MOTIONS VERY MUCH.

>> I DON'T SEE OFTEN.

I AM SURE THIS VERY CIRCUIT TO CIRCUIT, STATE ATTORNEY TO STATE ATTORNEY.

THE STATE TAKES THOSE SERIOUSLY AND FILES FROM IN APPROPRIATE CASES, BUT NOT FOR KNOCK OF A BETTER WORD BASIS.

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>> THE OPINION FROM THE LOWER COURT INDICATES YOU AGREE TO ORAL ARGUMENT THAT THE CONSTITUTIONAL TEXT REGARDING TIMING OF THE HEARING, HAD TO OCCUR WITHIN A REASONABLE TIME AFTER INITIAL APPEARANCE AND WAS THAT CONCESSION MADE?

>> THAT WAS NOT ME.

THAT WAS A DIFFERENT ATTORNEY, A DIFFERENT SOLICITOR GENERAL. THE CONCESSION, IT WAS IN THE CONTEXT OF AN ARTHUR HEARING, USUALLY AND OFTEN WILL TAKE SOME TIME TO PUT UP AND THAT IS FINE. AND ARTHUR HEARING ISN'T AN EXIGENCY, ISN'T A LOOKING FORWARD, LOOKING BACKWARDS.

THE STATE WILL MEET THE BURDEN OF PROOF.  
THE QUESTION IS, THAT WOULD TAKE A LONG TIME.  
AND UNTIL THE STATE REMOVES THE PRESUMPTION OF INNOCENCE, AND PRETRIAL RELEASE.  
AND IT IS BASED ON CHARGES, SERIOUS CHARGES.  
>> IT SEEMS NATURAL, BECAUSE IT TAKES TIME, AND INITIAL APPEARANCES HAPPENS.  
IT WAS LESS THEN A DAY, AND A REASONABLE TIME AFTER ARREST.  
SO, OR THE OTHER ALTERNATIVE WOULD BE IT HAS TO BE IMMEDIATELY UPON ARREST.  
ONE OR THE OTHER, A REASONABLE INTERPRETATION, AND ARTHUR HEARING, THE REAL HEARING AT A REASONABLE TIME, IT WOULD EITHER BE GIVEN THE SILENCE IMMEDIATELY WHICH DOESN'T MAKE SENSE OR WITHIN A REASONABLE TIME.  
WOULD YOU AGREE WITH THAT?  
>> NOW, ON TWO COUNT.  
ONE, I DON'T SEE SILENCE.  
CLAUSE SAYS UNLESS, A CONDITION PRECEDENT, UNLESS THE STATE HAS PROVEN IT YOU HAVE A RIGHT TO PRETRIAL, I DON'T SEE THE SILENCE.  
>> IF YOU TOOK THAT LITERALLY, THAT WOULD MEAN BOOKING INTO JAIL THE STATE WOULD BE PREPARED FOR AN ARTHUR HEARING, FOR ANY PERIOD OF TIME WITHOUT BOND.  
>> BOOKING INTO JAIL IS AN EXECUTIVE FUNCTION.  
THIS IS ABOUT PRESUMPTION OF INNOCENCE, THAT WAS A JUDICIAL FUNCTION.  
THE QUESTION IS WHEN THE CASE COMES BEFORE A JUDGE, NOT -- BEFORE THAT, EXECUTIVE FUNCTION, FOURTH AMENDMENT.  
>> AS FORMER CIRCUIT JUDGE, IN PALM BEACH COUNTY, ALL JUDGES TAKE TURNS WITH WEEKEND FIRST APPEARANCES.

I WAS A JUDGE FOR 13 YEARS, YOU HAD A FEW OF THOSE ROTATING AROUND.

DONE A LOT OF THESE, WHATEVER TIME AND EVERYTHING FROM SHOPLIFTING TO MURDER.

PEOPLE HAVE BEEN ARRESTED THE NIGHT BEFORE.

THE THIRD DCA GOING BACK TO WHAT WE HEAR FOR, CALLED IT A PRELIMINARY HEARING ON FIRST APPEARANCE AND WE WILL FOLLOW UP, SUBSEQUENT FOOL ARTHUR HEARING.

LET'S TALK ABOUT THIS PRELIMINARY SO-CALLED ARTHUR HEARING.

JUDGE FIRST APPEARANCE WALKS IN, AN HOUR AND A HALF OR SO AHEAD OF TIME AND THE CLERK WILL HAND US THE AFFIDAVITS FOR EVERY ONE. I WILL READ THEM ALL, MAKE NOTES ON THEM, WHAT TALKING PROBABLE CAUSE, AFFIDAVITS FROM SHOPLIFTING TO MURDER.

PROBABLE CAUSE AFFIDAVIT IS WRITTEN BY THE ARRESTING OFFICER, MAY BE ONE PARAGRAPH. PROBABLE CAUSE AFFIDAVIT OR HOMICIDE CASE IS USUALLY FOR 5 PAGES LONG.

THE JUDGE READS THOSE AND MAKE THE DECISION WHETHER THERE IS PROBABLE CAUSE OR NOT AND THERE'S A PROVISION IN THE RULES OF PROCEDURE, IF THE JUDGE FINDS THERE IS AND PROBABLE CAUSE, THEY ARE AFFORDED ADDITIONAL TIME, TYPICALLY THE PERSON IS BROUGHT BACK THE NEXT DAY AND BY THAT TIME THE PROSECUTOR WOULD HAVE CONTACTED THE OFFICER OR WHATEVER AND REVISED, AMENDED AFFIDAVIT AS FILED THAT WOULD CONTAIN AN ANSWER TO THE JUDGE'S CONCERN ABOUT PROBABLE CAUSE. WHEN TALKING ABOUT A HOMICIDE CASE AS OPPOSED TO A SHOPLIFTING CASE THE PROCESS IS THE SAME. THE JUDGE WILL READ THE

AFFIDAVIT AND MAKE A DETERMINATION WHETHER THERE IS PROBABLE CAUSE OR NOT.

AMONG MANY OTHERS, ONE, IS THERE PROBABLE CAUSE, AND 2, DEAL WITH AN ISSUE OF BOND.

IN THIS INSTANCE THE ONLY THING THE JUDGE HAS TO DO, I AM QUOTING THE THIRD DCA PRELIMINARY HEARING, THE ONLY THING THE JUDGE HAS TO DO IS DIFFERENT THAN HE OR SHE WOULD DO IN ANY OTHER CASE, AT THE END, THE JUDGE WOULD HAVE TO RECITE INTO THE RECORD IF THERE IS FINDING OF IT, THE GUILT IS EVIDENT OR PRESUMPTION IS GREAT. ACCORDING TO THE FOURTH DCA, A JUDGE CAN MAKE THE FINDING, SAID THAT IN GRAY, THE FINDING WITH AN AFFIDAVIT WITH PROBABLE CAUSE AFFIDAVIT.

ANY REASON THAT CAN'T BE DONE, HE FINDS THERE IS INSUFFICIENT EVIDENCE, THE PRESUMPTION IS GREAT.

THE PROSECUTOR HAD AN OPPORTUNITY TO BRING THE CASE BACK THE NEXT DAY LIKE ANY OTHER CASE OR THE OFFICERS TO ADD WHATEVER FACTS I NEEDED THAT ARE THERE TO ANSWER THE JUDGE'S CONCERNS.

IS THAT THE PROCEDURE THAT YOU SEE?

SEEMS TO ME WE WERE TALKING ABOUT AN OWNER AS LONG HEARING AND WE ARE NOT.

>> THE IDEA OF A PULMONARY VERSUS A FINAL HEARING, THE SOMETHING THE STATE HAS BEEN CHARGING US WITH, THAT WAS NEVER THE POSITION WHAT THE THIRD DCA SAID, THAT WAS NEVER OUR POSITION, OUR POSITION IS THEIRS AND ARTHUR HERE.

WHENEVER THE STATE PUTS ON THEIR BURDEN OF PROOF THE FIRST APPEARANCE LATER, DOESN'T MATTER THAT IS WHEN IT IS.

YOUR HONOR HAS SUGGESTED TIMES  
THE STATE COULD MARSHAL ITS  
EVIDENCE AT A FIRST APPEARANCE  
OR THE NEXT DAY.

STILL WITHIN THE TIME HELD UNDER  
THE 3.0NE 3 ONE.

THAT MAY BE.

IN MANY CASES IN MY CIRCUIT,  
THAT IS NOT WHAT ENDS UP  
HAPPENING AND THAT IS WHY  
REPRESENTATIONS ARE MADE, THE  
STATE NEEDS MORE TIME THAN THAT,  
ALL OF THAT IS A POSITION, THE  
DEFENSE DOESN'T TAKE A POSITION  
ON.

THE DEFENSE POSITION IS BEFORE,  
UNLESS TO USE FROM THE SECTION,  
THE STATE MEET ITS BURDEN OF  
PROOF.

THE JUDGE SETS A BOND AND THAT  
IS THE CONSTITUTIONAL STANDARD,  
WHAT ARTHUR HELD, VERY SIMPLY --  
>> YOU ARE INTO REBUTTAL TIME BY  
A MINUTE.

YOU NEED TO BE AWARE OF THAT.

>> THANK YOU.

ARTHUR HELD PRESUMPTION OF  
INNOCENCE, PRESUMPTION OF  
INNOCENCE APPLIES THROUGHOUT THE  
CASE TO REVERSE THAT, WHEN THEY  
DO THAT, THE STATE'S DECISION, I  
RESERVE THE REMAINDER OF MY  
TIME, THANK YOU.

>> COUNSEL FOR THE STATE.

>> MAY IT PLEASE THE COURT, ASAD  
ALI, ASSISTANT ATTORNEY GENERAL,  
I WOULD LIKE TO ADDRESS MISTER  
THOURTMAN'S CLAIM, IF THE STATE  
DOES NOT PROVE, AND THE  
DEFENDANT WOULD BE ENTITLED TO  
PRETRIAL RELEASE.

AND THIS COURT, I SUPPORT THAT  
POSITION.

AND WITH LIFE IMPRISONMENT AND  
PROOF OF GUILT, THE PRESUMPTION  
IS GREAT, AND INSTEAD OF  
GROUPING THIS CATEGORY INTO THE  
GROUP.

AND HAVING A BURDEN AND  
DETERMINED IS DIFFERENT, PROOF

NOT BEING EVIDENT OR PRESUMPTION  
NOT BEING GREAT.

TO VIEW THE PLAIN LANGUAGE IN  
ISOLATION I DON'T THINK IT  
SUPPORTS THAT HOLDING, IF THE  
PROOF ISN'T EVIDENCE, STILL A  
QUESTION THAT IS OPEN, WE HOLD  
THERE FOR THE FULL RELEASE ON  
BAIL CAN EVER BE DENIED.

THOSE WERE THE WORDS AND EVER  
INCLUDES FIRST APPEARANCES.

>> CORRECT AND I THINK TOO GOING  
TO THIS COURT'S OPINION IT IS  
IMPORTANT TO CLARIFY THE FACTS  
AND PROCEDURAL HISTORY WHICH -  
FOLLOWED AN EVIDENTIARY HEARING  
THAT WAS TRIGGERED BY THE  
DEFENDANT FILING A MOTION SET  
BOND.

AND THE OUTRIGHT DENIAL.

AND BUT DIDN'T ADDRESS  
WHETHER SOMEONE COULD BE  
TEMPORARILY DETAINED AND IF THE  
BURDEN IS ON DETERMINED.

IF IT IS UNDETERMINED AND  
SOMEONE IS TEMPORARILY HELD TO  
MAKE AN AWKWARD DETERMINATION  
WHICH WOULD OCCUR AT A HEARING  
SUBSEQUENT TO FIRST APPEARANCE.

>> LET ME ASK YOU SOMETHING IN  
RELATION TO MY LONG-WINDED  
QUESTION WHICH SIMPLY PUT CAN BE  
A QUESTION OF PROOF OF GUILT IS  
EVIDENT, CAN THAT BE PROVEN BY  
SOMETHING OTHER THAN LIVE  
TESTIMONY LIKE AFFIDAVITS,  
DEPOSITIONS, TRANSCRIPT AND SO  
ON?

SAY THAT WE HAD A FOOL ARTHUR  
HEARING AND THE STATE WALKS IN  
WITH NO WITNESSES.

I WANT YOU TO TALK ABOUT THE  
SWORN AFFIDAVIT AND IN THERE,  
THE DEFENDANT CONFESSED, THE DNA  
WAS FOUND, FINGERPRINTS WERE  
FOUND, SO ON AND ON.

CAN A JUDGE BASED ON THAT  
AFFIDAVIT MAKE THAT FINDING  
EVIDENT?

>> HYPOTHETICAL, ALWAYS A JUDGE

MAY AND THE OPINION AND ARTHUR WHEN REFERRED TO TRANSCRIPT AND AFFIDAVITS POSSIBLY BEING SUFFICIENT TO ESTABLISH THAT BURDEN.

IN THAT SITUATION IT MAY BUT AS FAR AS ESTABLISHING A BRIGHT LINE RULE, IT WOULD BE FACT SPECIFIC FOR EACH CASE BUT IT MAY CARRY THE BURDEN.

>> ISN'T IT THE CASE THAT IN ARTHUR, NOT ONLY IS IT POSSIBLE BUT THE STATE CAN CARRY THE BURDEN BY PRESENTING THE EVIDENCE RELIED BY THE GRAND JURY ON THE STATE ATTORNEY CHARGING THE CRIME MAY BE PRESENTED IN THE FORM OF TRANSCRIPT OR AFFIDAVITS?

>> CORRECT, THE COURT DID STATE THAT BUT AS FAR AS MAKING AN ACCURATE DETERMINATION, GREAT BURDEN HAS BEEN MET BUT IT IS IMPORTANT, WHAT THEY PRESENTED, TO PRESENT HIS OWN EVIDENCE TO REBUT WHAT THE STATE PRESENTED, WITNESSES, EVIDENCE, SUPPORT, OBTAINING PRETRIAL RELEASE IF THE BURDEN HAS BEEN MET.

IN ORDER TO DETERMINE WHETHER A BURDEN HAS BEEN ESTABLISHED IT WOULD NEED TO BE DONE WHERE BOTH SIDES CAN PRESENT AND REBUT.

IF WE WANT TO GIVE FULL EFFECT TO THE BURDEN EXPRESSLY CONTAINED IN SECTION 14 IT WOULD HAVE TO BE DONE AT A HEARING WHERE BOTH SIDES CAN ADEQUATELY PRESENT AND PREPARE EVIDENCE, STATE IS NOT SUGGESTING IT CAN INVARIABLY BE DONE AT FIRST APPEARANCE, IT MAY, BUT THE MAJORITY OF THE COURT IS FAMILIAR WITH ESSENTIALLY THE REALITY OF WHAT HAPPENS AT FIRST APPEARANCE AND HOW THEY GENERALLY ARE CONDUCTED.

>> IS IT THE STATE'S POSITION THAT WHEN THE FIRST SENTENCE OF SECTION 14 REFERS TO EVIDENT

PRESUMPTION, WHAT IS PRESUMED AS GUILT?

>> THE TEXT ITSELF DOESN'T REFER TO IT BUT THIS COURT HAS SEVERAL OPINIONS, DOES REFER TO GILSON.

>> IT IS INTERESTING THAT YOU SAY THAT.

I'M FAMILIAR WITH ONE CASE FROM 1956 OF THIS COURT SAYING SOMETHING LIKE THAT.

WHAT IS THE STATUS OF PRESUMPTION OF INNOCENCE AFTER A SUCCESSFUL HEARING, IS IT REBUTTED?

>> PENDING A TRIAL IN VERY LIMITED CIRCUMSTANCES DOESN'T NECESSARILY INFRINGE ON PRESUMPTION OF INNOCENCE.

IN A NARROWLY CIRCUMSCRIBED SITUATION WHERE THERE IS A NARROW CLASS OF DEFENDANTS WHO MAY BE DETAINED PENDING THEIR TRIAL NECESSARILY INFRINGES ON PRESUMPTION OF INNOCENCE.

THE PROOF EVIDENT PRESUMPTION UNDERSTOOD IN DIFFERENT JURISDICTIONS WITH VARYING BURDENS OF PROOF, IT IS UNDERSTOOD TO BE A BURDEN OF PROOF HIGHER THAN BEYOND A REASONABLE DOUBT, AND

>> THE BURDEN.

AND THE STATE'S POSITION, MORE THAN THE STATE WOULD HAVE TO DO IT TRIAL TO GET A CONVICTION. IS THAT ACCURATE?

>> THAT IS GENERALLY THAT COULD BE A FAIR STATEMENT.

SORT OF EXPRESSED AS A PROTECTIVE BARRIER AGAINST THE DEFENDANT BECAUSE SOMEONE WHO HASN'T BEEN FOUND GUILTY AND GAINED A HAND PRIOR TO TRIAL CERTAINLY IS SOMETHING OF CONCERN.

>> CLEARLY THERE IS A SECOND SENTENCE TO SECTION 14 THE TALKS ABOUT DANGER TO THE COMMUNITY, FORWARD-LOOKING DETERMINATIONS THAT CAN BE MADE.

I'M FOCUSED ON THE FIRST SENTENCE WHERE IF THE STATE IS TO SUSTAIN ITS BURDEN THEN IT WOULD SEEM WHAT THE STATE IS NOW ARGUING IS IT NEEDS TO MEET AT THE ARTHUR HEARING A HIGHER STANDARD OF PROOF AS TO REMOVAL OF PRESUMPTION OF INNOCENCE IT MUST AT THE CONCLUSION OF TRIAL. IS THAT THE STATE'S POSITION? >> I WOULD ANSWER YES BUT QUALIFY.

IN THIS CONTEXT I DON'T THINK WE ARE COMPARING THEM IN THE SIMILAR TERMS.

THIS BURDEN OF PROOF IS UNDERSTOOD TO BE MORE THAN NECESSARY TO SUSTAIN A COMMITTAL CONVICTION.

THAT IS WHAT THIS COURT HAS HELD AS STATED BEFORE AND AFTER AUTHOR BUT I DON'T THINK IT IS COMPLETELY ANALOGOUS WHERE WE HAVE TO PRESENT MORE EVIDENCE THAN NECESSARY TO CARRY A CRIMINAL CONVICTION.

IT IS REASONABLY UNDERSTOOD TO MEAN THIS HAS TO BE MORE THAN PROBABLE CAUSE WHICH IS A LOWER STANDARD THAN NECESSARY FOR CRIMINAL CONVICTION.

IT WOULD HAVE TO BE HIGHER THAN PROBABLE CAUSE AND ENSURE THE JUDGE IN THIS CASE, IN ALL CASES THERE IS A REASONABLE POSSIBILITY.

>> WHY SHOULDN'T THE STATE MAKE A MOTION AT INITIAL APPEARANCE, WHY NOT REQUIRE THE STATE TO DO THAT?

>> ONE SECTION 14 WAS AMENDED IN 1983 THE PRETRIAL DETENTION EXCEPTIONS ADDRESS A DIFFERENT CATEGORY OF CONCERN OF THE DEFENDANT'S CONCERNS THAT MAY EXIST AT THE TWO EXCEPTIONS EXIST DIFFERENTLY.

THERE IS SOME OVERLAP AND THERE WILL BE OVERLAP ON MANY OCCASIONS BUT EACH ADDRESS

DIFFERENT CATEGORIES OF DEFENDANTS SO I DON'T THINK THE STATE IS REQUIRED BY VIRTUE OF THE SECOND EXCEPTION TO FILE A MOTION.

READING SECTION 14 AS A WHOLE I DON'T THINK YOU NECESSARILY NEED TO GO AROUND IT BY USING THE SECOND EXCEPTION INVARIABLY ON EVERY OCCASION.

TO GIVE FULL EFFECT TO BOTH EXCEPTIONS THE STATE SHOULD BE ENTITLED TO PROCEED WHEN APPLICABLE.

>> SOME HOMICIDES LET'S SAY IT HAPPENS AT 2:00 IN THE MORNING AND THE PERSON GETS BOOKED INTO COUNTY JAIL AT 3:00 IN THE MORNING, THE FIRST APPEARANCE IS 8:00, THE STATE WILL NOT HAVE THE OPPORTUNITY TO MOTION FOR PRETRIAL RELEASE IN THAT PERIOD OF TIME.

YOU MAY ASK MORE TIME THE NEXT DAY BUT THINGS HAPPEN THAT WAY. SOMETIMES.

>> IN EVERY CASE IT IS DIFFERENT BUT AS YOUR MENTION, A COMMON OCCURRENCE MAY HAPPEN AND IF THAT WERE TO HAPPEN WHAT THE STATE WOULD NOT NECESSARILY HAVE THE TIME NOR WOULD THE DEFENSE AND POSSIBLY REBUT IT, TO HAVE PRETRIAL RELEASE REMOVED SO THAT IS AN IMPORTANT FACTOR TO CONSIDER.

INTERPRETING THIS PROVISION, IN EVERY SINGLE MANNER TO ALLOW THE STATE AND THE DEFENDANT TO FAIRLY ESTABLISH OR TRY TO REBUT THIS BURDEN.

DOESN'T PREVENT A TRIAL COURT FROM SETTING A HEARING OFF TEMPORARILY DETAINING THE DEFENDANT ON THE ENTITLEMENT RELEASE UNTIL BOTH SIDES ARE GIVEN SUFFICIENT OPPORTUNITY BUT THE FACTS OF THIS CASE, A GOOD EXAMPLE OF BOTH SIDES BEING PROVIDED AN OPPORTUNITY AND AS

AN INITIAL MATTER I WANT TO CLARIFY THE POSITION, HE WASN'T HELD IN CUSTODY FOR A MONTH, HE REQUESTED AN AUTHOR HEARING IN THE MOMENT HE DID THE TRIAL COURT SUGGESTED IT OCCUR. THE FOLLOWING MONDAY THE RECORD REFLECTS THAT AND BECAUSE OF SCHEDULING ISSUES IT WAS HELD UP FOUR BUSINESS DAYS AFTER HE REQUESTED IT.

THE FIRST APPEARANCE, HE DIDN'T REQUEST ANY TYPE OF AUTHOR HEARING A REPORT THAT HE WANTED BUT THIS CASE IS A GOOD EXAMPLE THAT DURING THE AUTHOR HEARING IN THIS CASE BOTH SIDES WERE -- THE STATE PRESENTED EVIDENCE AND VERY IMPORTANTLY COUNSEL WAS ABLE TO CROSS EXAMINE THE STATE'S PRIMARY WITNESS, RECROSS THEM AND PRESENT SIGNIFICANT ARGUMENT TO THE COURT AND THAT IS AN IMPORTANT CONSIDERATION, WASN'T ASKED TO POSSESS A FIREARM DURING THE OFFENSE.

>> IF THERE IS A PROBLEM IS THAT PROBLEM THAT WE DON'T HAVE A PROCEDURAL RULE THAT OUTLINES WHAT A REASONABLE TIME IS IN WHICH TO HOLD THIS HEARING OR HOW THE STATE INDICATES HOW TO USE THIS POSITION TO HOLD THE DEFENDANT?

>> IT MAY POSE SOME CONCERNS BUT I WOULD POINT OUT THIS PROCEDURE HAS EXISTED FOR 40 YEARS AND HASN'T COME ACROSS BUT WHETHER A PROCEDURAL RULE WOULD BENEFIT BOTH SIDES IS POSSIBLE.

IT MAY BE SOMETHING DIRECTED TO APPLICABLE --

>> IF WE DID HAVE A PROCEDURE WOULD IT MAKE SENSE TO PROVIDE PROBABLE CAUSE WHETHER A STATE COULD MEET HIGHER STANDARD AT A HEARING?

>> AT THE INITIAL APPEARANCE.

>> THE STATE WOULD NEED TO.

IT WOULD BE REQUIRED TO HOLD THE

DEFENDANT BECAUSE WITHOUT THAT DETERMINATION THERE IS NO JUSTIFICATION, WITHOUT PROBABLE CAUSE DETERMINATION. SHOULD THAT ROLE BE ENACTED, PROBABLE CAUSE TO BE ESTABLISHED PRIOR TO DETERMINATION BEING MADE.

>> JUSTICE LAWSON'S QUESTION, IS THERE PROBABLE CAUSE TO BELIEVE THE STANDARD WILL BE MET? INITIALLY, RIGHT AWAY? IS AND THAT'S WHAT YOU WERE ASKING?

>> YES.

>> I THINK ALONG THE SAME LINES THAT WOULD ADEQUATELY ADDRESS BOTH SIDES CONCERNS AND THERE SHOULD BE PROBABLE CAUSE AND MAYBE ESTABLISH AT A LATER DATE, THAT IS FAIR.

IF THIS COURT HAS NO OTHER QUESTIONS WE WOULD ASK TO AFFIRM THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL, THANK YOU.

>> REBUTTAL.

>> MAY IT PLEASE THE COURT, I WANT TO ADDRESS THE STATE'S POSITION THAT THE ISSUE IS AN DETERMINED OR THAT THE RULING IS DEFERRED, THAT IS WHY WE HAVE PRESUMPTIONS.

THE ENTIRE ISSUE IS THE PRESUMPTION OF INNOCENCE. BEFORE ARTHUR IT WAS THE PRESUMPTION OF GUILT AND THOSE ALL WORK TOGETHER.

IF THERE IS PRESUMPTION OF INNOCENCE THEN THE BURDEN IS ON THE STATE AND THE CUSTODY DECISION IS RELEASED ON A REASONABLE CONDITIONS OF PRETRIAL RELEASE.

IF THE PRESUMPTION IS GUILT THEN THE BURDEN IS ON THE DEFENSE AND BECAUSE YOU STAY IN CUSTODY THE STATE PROPOSAL THAT THE QUESTION IS ON DETERMINED REQUIRES THE COURT TO FALL BACK ON THE

PRESUMPTION AND THE PRESUMPTION IS INNOCENCE UNLESS THE STATE'S POSITION IS IT SHOULD BE REVERSED AND I DON'T HEAR THE STATE MAKING THAT ARGUMENT SO FUNDAMENTALLY I THINK THAT ANSWERS THE STATE'S POSITION.

>> MAY I ASK DO YOU THINK IT WOULD VIOLATE THE STATUTE IF THE JUDGE MADE A PROBABLE CAUSE DETERMINATION THAT THE STANDARD COULD BE MET AND THAT WOULD BE THE BASIS FOR HOLDING THE DEFENDANT FROM A REASONABLE TIME UNTIL AN AUTHOR HEARING COULD BE FELT?

>> PLAIN LANGUAGE IS A LESSER CRIME CHARGED BY LIFE OR DEATH AND PROOF IS EVIDENT, PRESUMPTION IS GREAT, UNLESS THE STATE MET ITS BURDEN, PROBABLE CAUSE, WOULD BE A VERY DELIBERATE -

>> YOUR POSITION IS ANY PROCEDURE THAT ALLOWS A REASONABLE TIME TO HOLD THE ARTHUR HEARING WOULD BE VIOLATIVE OF THE STATUTE?

>> KNOW.

MY POSITION IS HOLDING THE DEFENDANT WITHOUT BOND UNTIL AND UNLESS THE STATE MAKES THE STANDARD IS VIOLATIVE.

>> BACK TO IF THAT IS WHAT THE STATUTE MEANS, HOW CAN YOU HAVE SOMEONE INCARCERATED PRIOR TO INITIAL APPEARANCE WITHOUT BOND?

>> GOES BACK TO MY EARLIER ANSWER, THAT IS AN EXECUTIVE FUNCTION.

>> INCARCERATION IS CONTROLLED BY THE EXECUTIVE.

TALKING ABOUT WHAT THE EXECUTIVE DOES UNTIL THEY HAVE THEIR DAY IN COURT I DON'T UNDERSTAND THE DISTINCTION UNDER THE STATUTE.

>> ARTICLE 1 SECTION 14, PRETRIAL RELEASE, THAT IS A JUDICIAL DECISION, THAT IS NOT AN EXECUTIVE DECISION, NOT THE

POLICE OFFICERS OR ANYTHING, THE JUDICIAL DECISION, AT THAT POINT

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>> THE RIGHT APPEARANCE BECAUSE WE DON'T HAVE ANOTHER PROCEDURE IN PLACE FOR THE AUTHOR DETERMINATION, IF WE HAD A PROCEDURE THAT HAD A DIFFERENT TIME THE DEFENDANT WOULD BE HELD WITHOUT BOND UNTIL THE HEARING.

>> I BELIEVE THE FIRST APPEARANCE BASED ON THE FIRST TIME THE PERSON APPEARS BEFORE A COURT AND THE COURT IS BOUND BY CONSTITUTIONAL LANGUAGE UNLESS THE STATE HAS MET ITS BURDEN IT MAY NOT, THE JUDGE MUST IMPOSE RECENT POSITIONS.

I AM OUT OF TIME, UNLESS ANYBODY HAS ADDITIONAL QUESTIONS, SEEING NONE, THANK YOU.

>> WE THANK BOTH OF YOU FOR YOUR ARGUMENT AND THE COURT WILL NOW PREPARE TO TAKE UP THE SECOND CASE ON TODAY'S DOCKET.