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BAILIFF: PLEASE BE SEATED.

ALL RIGHT. THE NEXT CASE ON THE COURT'S CALENDAR IS THE STATE OF FLORIDA VERSUS OLIVO. COUNSEL?

THANK YOU. MICHAEL NEIMAND ON BEHALF THE STATE. THIS CASE ARISES OUT OF A CASE OF A 16-YEAR-OLD DUI WITH PERSONAL INJURES, BROUGHT IN JUVENILE COURT, AND AT THAT POINT IN TIME THE STATE HAD INDICATED THAT THEY WERE GOING TO DIRECT FILE. THE JUVENILE WAS APPOINTED COUNSEL AND WAS ADMITTED -- REMITTED TO THE CUSTODY OF HIS PARENTS. THROUGHOUT HE NUMEROUS JUVENILE PROCEEDINGS, THE STATE KEPT ON INDICATING THEY WERE GOING TO BE FILING AND SUBSEQUENT TO THE 90-DAY PERIOD OF TIME FOR FILING, THE STATE NOTICED IN JUVENILE COURT A DIRECT ACTION FILING AND SUBSEQUENTLY THE MATTER WAS A DIRECT ACTION FILE, AND THE PROCEEDINGS WENT ON ACCORDINGLY. DURING THAT PERIOD OF TIME, THE DISCOVERY HAD TAKEN PLACE AND THE TRIAL HAD TAKEN PLACE AND IN FACT A COUPLE OF PLEAS WERE GOING ON, AND AFTER THE ADULT SPEEDY TRIAL TIME HAD EXPIRED, THE JUVENILE'S ATTORNEY MOVED FOR DISMISSAL ON SPEEDY TRIAL GROUNDS ON THE CASE LAW OF THE THIRD DISTRICT, INDICATING THAT, IF THERE IS A DIRECT TRIAL, EVEN IF THERE HAS NEVER BEEN A PETITION FILED, THEN THE 90-DAY PERIOD CONTROLS AND SINCE NOTHING WAS FILED WITHIN 90 DAYS IN JUVENILE COURT, THE STATE HAD VIOLATED THE JUVENILE SPEEDY TRIAL RIGHTS.

IF WE APPROVE THE THIRD DISTRICT, WOULD WE BE WRITING INTO THE RULES IN THE STATUTE, A REQUIREMENT THAT THE STATE CHARGE A JUVENILE THAT THEY INTEND TO CHARGE AS AN ADULT, WITHIN 90 DAYS? IS THAT THE EFFECT?

YES, MA'AM. WHEN YOU READ THE SPEEDY TRIAL RULES OF JUVENILE, THE ONLY TIME THEY COME INTO PLAY IS IF A PETITION HAS BEEN FILED. IF YOU READ THE STATUTES ON DIRECT FILING, THERE IS NO REQUIREMENT THAT ANY ACTION BE TAKEN PRIOR TO THE DIRECT FILE. THE JUVENILE IS ALWAYS UNDER THE JURISDICTION OF THE COURTS, WHETHER IT BE THE JUVENILE COURT OR THE ADULT COURT, DURING THAT PERIOD OF TIME. THUS IT REALLY DOESN'T MATTER TO THE STATE WHERE IT IS GOING TO FILE, AS LONG AS IT IS TIMELY FILED. IT HAS THE DISCRETION SOLE DISCRETION WHETHER OR NOT TO FILE UNDER THE JUVENILE AUSPICES, AND IF THAT IS THE CASE, THEY HAVE TO FILE IN THE 45 OR 90-DAY PERIOD, OR THE ADULT SITUATION, WHERE THEY ARE ONLY BOUND BY THE 175-DAY PERIOD.

THEN THEY HAVE HOW LONG TO FILE A PETITION FOR DELINQUENCY?

IN JUVENILE, 90 DAYS, MA'AM.

0 DAYS. AND THAT IS SPECIFIED?

IN THE RULES.

BUT THE PART THAT WE WOULD BE WRITING IN WOULD BE A COEXTENSIVE REQUIREMENT THAT THE -- AN INFORMATION BE FILED WITHIN 90 DAYS, AND THAT IS NOT -- DOES NOT APPEAR --

ON A PETITION. THE DIRECT --

ON A PETITION FOR DELINQUENCY. BUT, AGAIN, THAT IS ALREADY IN THERE.

NOT IF WE ARE GOING DIRECT ACTION, YOUR HONOR. IF THERE IS GOING TO BE A WAIVER HERE,

THEN IT IS IN THERE. IF THERE IS A WAIVER HERE, AND WE HAVE FILED A PETITION AND SEEKING THE COURT'S DETERMINATION WHETHER OR NOT TO WAIVE IT OVER, BECAUSE IT IS ONE OF THE AREAS THAT IT IS NOT SOLELY WITHIN THE DISCRETION OF THE STATE ATTORNEY, THEN WE ARE SEEKING THE COURT'S PERMISSION TO SEND IT TO ADULT COURT, AND ON THAT GROUND, THEN WE MUST FILE, AND THAT IS IN THE RULES. THE TWO OTHER MATTERS, THE DIRECT FILE AND THE GRAND JURY, IS NOT IN THE STATUTES THAT JUST SAYS WE CAN DO THAT, AND IT IS NOT IN THE RULES, SO, YES, THIS COURT WOULD, A HAVE TO CREATE A RULE/STATUTE OR STATUTORY INTERPRETATION, WHERE IT IS NOT THERE.

WHY SHOULD WE DO THAT?

YOU SHOULDN'T! THAT IS THE STATE'S POINT. BECAUSE THE STATE HAS A DISCRETION TO FILE, UNDER THE STATUTE. THE STATUTE IS VERY CLEAR. THERE ARE THREE PRONGS TO THE STATUTE. THE FIRST PRONG THAT WE ALL AGREE IS, IF WE DIRECT, IF WE FILE A PETITION AND SEEK A WAIVER HEARING, THEN WE ARE BOUND BY THE JUVENILE SPEEDY TRIAL RULES.

BUT YOU ARE STILL DEALING, AREN'T YOU, IN PRINCIPLE, STILL DEALING WITH A JUVENILE THAT CAN BE PROSECUTED IN A GIVEN MANNER, IN CERTAIN INSTANCES? ISN'T THIS THE REALITY OF IT?

YES, WE ARE, YOUR HONOR. WE ARE NOT DEBATING THAT, BUT FROM DAY ONE, IN THIS PROCEEDING, WE HAD GIVEN THE JUVENILE COURT AND THE JUVENILE AND HIS ATTORNEY, THE NOTICE THAT WE WERE REVIEWING THIS FOR DIRECT FILING. AND THEREFORE NOTHING WAS FILED. AND --

LET ME ASK YOU, AS A PRACTICAL MATTER, WHEN A JUVENILE IS ARRESTED, YOU HAVE TO BRING THEM UP TO DETERMINE WHETHER YOU ARE GOING TO RELEASE THEM AND THAT KIND OF THING, LIKE ANYONE ELSE. CORRECT?

CORRECT.

WHAT COURT HAS JURISDICTION AT THAT POINT?

WELL, AT THIS POINT IN TIME, SINCE THERE WAS NO DIRECT FILE, IT WAS CLEARLY THE JUVENILE COURT.

OKAY. SO NOTWITHSTANDING THIS CASE, BECAUSE WE KNOW THAT IN THIS PARTICULAR CASE, THE STATE GAVE THEM SOME KIND OF NOTICE THAT THEY WERE CONSIDERING A DIRECT FILE. BUT IN THE ORDINARY CASE, WHERE, SAY, THE STATE DOES NOT, AND THE JUVENILE IS RELEASED, HOW WOULD THE JUVENILE KNOW WHAT HIS FATE IS GOING TO BE, WHETHER IT WOULD BE IN JUVENILE COURT OR FELONY CIRCUIT COURT?

WELL, FIRST OF ALL, I WOULD SAY THIS IS THE ORDINARY CASE, AND THE OTHER WOULD BEED EXTRAORDINARY CASE, BUT THE -- WOULD BE THE EXTRAORDINARY CASE, BUT THE ANSWER WOULD BE THE SAME, YOUR HONOR. THAT WOULD BE WHEN THEY ARE BROUGHT TO COURT, THEY USUALLY BE APPOINTED A PUBLIC DEFENDER. THEY USUALLY ARE RELEASED FROM CUSTODY. IT IS NOT A CASE WHERE THEY ARE GOING TO STAY IN JAIL, AND THEN IT IS UNDER THE AUSPICES OF THE COURT TO REPORT AT ALL TIMES, EITHER THROUGH COUNSEL OR THROUGH NOTICE, AND WE HAVE NEVER LOST JURISDICTION OF THAT, AND SIMPLY BY ADVISING THEM THAT THERE -- IN THIS CASE THERE WAS A CONTINUING PROCEEDING. IF WE HAD A SITUATION WHERE, ALL OF A SUDDEN, THE STATE DECIDED THAT IT WAS MORE SERIOUS THAN ORIGINALLY THOUGHT, AND WE, THEN, DECIDED TO DIRECT FILE, WE WOULD, STILL, HAVE TO GO IN FRONT OF THE JUVENILE PROCEEDINGS, WHERE WE STARTED, TO FILE A NOTICE OF DIRECT FILING. WE WOULD HAVE TO LET THE JUVENILE COURT KNOW WHERE WE ARE GOING, AND IN THAT SAME VEIN, WITH WHEN WE PUT THAT ON CALENDAR, THE JUVENILE'S COUNSEL AND/OR THE JUVENILE,

HIMSELF, TOO BE THERE, NO DIFFERENT THAN IN FELONY COURT, WHEN THE INDIVIDUAL IS OUT ON BOND AND NOTICE IS GIVEN, COUNSEL CAN SHOW, WITHOUT THE DEFENDANT, IF IT IS NOT REQUIRED. THEY COULD ASK THE COURT TO WAIVE THE PRESENCE OF THE DEFENDANT. BUT THAT IS STILL NOTICE, THEN, IMPUTED FROM COUNSEL TO HIS CLIENT. AND IT IS NO DIFFERENT IN JUVENILE COURT, SO THAT NOTICE TO COUNSEL THAT THEY WERE GOING TO FILE A DIRECTION ACTION SHOULD HAVE BEEN IMPUTED AND SHOULD BE IMPUTED TO THE JUVENILE, AND THEREFORE THAT IS HIS KNOWLEDGE THAT WE ARE NOW TREATING HIM AS AN ADULT. AND THAT IS A DISCRETIONARY ASPECT ON THE STATUTE THAT WE HAVE.

WHEN DOES THE SPEEDY TRIAL FOR THE ADULT, AS AN ADULT, START TO RUN?

AT THE TIME OF ARREST.

SO IN THIS SITUATION, DOES THIS JUVENILE, IS THIS JUVENILE IN A WORSE SITUATION, THOUGH, FOR HIS ARREST FOR THE, ON THE INFORMATION OR THE ORIGINAL ARE AES?

NO. FROM THE ORIGINAL TIME OF THE ACCIDENT.

SO HE NOT IN ANY WORSE SITUATION.

NO. WE ARE NOT TAKING ADVANTAGE OF THE TIME LIMITS TO GET INTO A SITUATION WHERE WE ARE EXTENDING THE SPEEDY TRIAL, DEALING WERE FROM THE TIME OF THE ORIGINAL ARREST.

WOULD YOU AGREE THAT THERE IS A LEGISLATIVE RECOGNIZE R. MISSION THAT, NOW -- RECOGNITION, THAT, THIS IS BEFORE THE STATE FILES, THAT A JUVENILE SHOULD BE BROUGHT TO ADJUDICATION IN A SHORTER PERIOD OF TIME THAN AN ADULT?

I WOULD SAY WHEN YOU READ THE ENTIRE STATUTE, THERE IS A LIMITED RECOGNITION, BECAUSE WE DO HAVE THE TWO EXCEPTIONS OF 16 AND 17 YEAR OLD WHO CAN BE DIRECT FILED, AND ALL INDIVIDUALS WHO CAN BE A GRAND JURY INDICTMENT CAN BE BROUGHT AGAINST THEM, SO THERE IS LIMITED, ALMOST TO THE POINT WHERE THE EXCEPTION IS AS GREAT AS THE INTENTION OF THE LEGISLATURE TO TREAT JUVENILES.

WHY DO YOU THINK THERE IS THAT LEGISLATIVE RECOGNITION?

BECAUSE THERE ARE CERTAIN CRIMES THAT NEED TO BE DISPOSED OF QUICKLY. THERE ARE CERTAIN AGE THAT IS NEED TO BE DISPOSED OF QUICKLY, AND YET THERE ARE ALSO CERTAIN CRIMES, IN PARTICULAR THIS CRIME IS A CRIME THAT ANY ADULT, BECAUSE WE NOW ALLOW OUR 16 YEAR OLD TO DRIVE CARS, HE HAS ADULT SPONLTS. HE WAS DUI WITH PERSONAL INJURES. IF AN ADULT DID THIS, THERE ARE SERIOUS SANCTIONS TO IT, AND THEREFORE IT IS NOT A NOT-SERIOUS CRIME. IT IS NOT SOMETHING TO BE DEALT WITH LIGHTLY, AND WE HAVE -- WE ARE GIVING, THROUGH STATUTE, THE STATE ATTORNEYS THE DISCRETION IN THIS EXACT SITUATION, TO DETERMINE, AND IT IS THEIR DETERMINATION, WHETHER OR NOT THIS IS THAT TYPE OF CRIME THAT SHOULD BE DISPOSED OF QUICKLY OR SHOULD BE PUT THROUGH THE ADULT PROCESS, AND HERE WE HAVE A 16 -- THE WRECK WAS A DIFFERENCE ON THE EXACT DATE. EITHER 16 OR 17. HE WAS DEFINITELY 16 OR 17, AND IT WAS ONE OF THE CRIMES THAT THIS THEY, THE STATE -- THAT THEY, THE STATE ATTORNEY FELT, WAS AN ADULT CRIME AND SHOULD BE TREATED AS AN ADULT, AND THEREFORE THAT DISCRETION IS, ALSO, BUILT INTO THE STATUTE. THAT INTENTION THAT WE ARE TALKING ABOUT TO TREAT JUVENILES IN A SPEEDY MANNER IS, ALSO, RECOGNIZED BY THE STATUTE THAT THERE ARE GOING TO BE EXCEPTIONS TO THAT, BASED UPON THE AGE AND THE TYPE OF CRIME COMMITTED.

SO THE METAMORPHOSIS TAKES PLACE WITH THE FILING BY THE STATE. IS THAT WHAT HAPPENS? FOR PURPOSES OF NOTIFICATION, SPEEDY TRIAL AND THIS TYPE OF THING, ONCE THE STATE FILES, THERE IS A CHANGE IN THE NATURE OF THIS PERSON. HE IS AN ADULT, FOR ALL PRACTICAL

PURPOSES.

I WOULDN'T --

THIS COUNTERMANDZ THIS RECOGNITION THAT WE ARE TALKING ABOUT.

I WOULD SAY THAT THAT IS THE EVENT THAT WE HAVE TO RECOGNIZE AS HOW THE SYSTEM OPERATES. I THINK THAT IT IS OBVIOUSLY A DIFFERENCE OF OPINION ON THE ULTIMATE, ON THE INITIAL TREATMENT, AS TO THE SERIOUSNESS OF THE CRIME, AND HERE WE SAW, FROM DAY ONE, THAT THE STATE WAS CONSIDERING DIRECT FILE, BECAUSE IT WAS A DUI WITH SERIOUS BODILY INJURY.

SO LET ME ASK YOU THIS. IF THE STATE MADE NO INDICATION THAT IT WAS CONSIDERING STATE -- ANY KIND OF DIRECT FILE, AND THE JUVENILE WAS ARRESTED, AFTER 90 DAYS HAD PASSED, IS THERE ANYTHING THAT THE JUVENILE COULD HAVE FILED TO GET A DISMISSAL OF THE CHARGES?

NO. THERE WAS NOTHING FILED TO BE DISMISSED. IF WE DIDN'T EVER FILE THE PETITION, IT IS THE SAME THING AS IN ADULT COURT. IF WE HAD NEVER FILED AN INFORMATION, SPEEDY TRIAL CAN NEVER BE GRANTED. NOW, GRANTED THAT WE MIGHT FILE THE INFORMATION LATE, EVENTUALLY, AND THEN THE MOTION CAN BE DETERMINED WHETHER OR NOT WE HAD THE WINDOW PERIOD OR AN AG VIOLATION OR SUCH, BUT SOMETHING HAS TO BE FILED BEFORE THERE CAN BE A DETERMINATION MADE. THE STATE WILL GO SO FAR AS TO AGREE THAT, IF IT CAN BE SHOWN THAT THIS WAS BEING DONE IN BAD FAITH BECAUSE WE MISSED THE CUT-OFF DATES AND WE HAD NEVER GIVEN NOTICE OR ANYTHING OF THAT NATURE, WHERE THERE WAS A POSITIVE SHOWING, THEN, IN FACT, IT MIGHT NOT AND SPEEDY TRIAL VIOLATION, BUT IT COULD BE, IN FACT, A DUE PROCESS VIOLATION.

THERE HIS CASE LAW TO THAT EFFECT, ISN'T THERE? THE STATE DOESN'T HAVE TO GO TO THAT.

I AM JUST SAYING THAT, IN TERMS, BECAUSE THERE IS NOTHING FILED, IT WOULD BE -- IT WOULD NOT BE AN AG VIOLATION, BECAUSE THERE IS NOTHING FILED AND NOLLE PROCESSED, BUT IF THE ONLY REASON IT CAN BE SHOWN IS THAT ADULT CHARGES FILED, THEN THERE WOULD BE NOTHING -- PLUS WE HAVE ADULT LAW THAT CLEARLY INDICATES THAT, IF WE FILE THE ADULT CHARGE ANSWER IT GETS REMANDED BACK TO JUVENILE COURT, BASED UPON THE JUVENILE AS MOTION AND IT -- THE JUVENILE'S MOTION AND IT IS PAST THE 90 DAYS, THEN THE JUVENILE LAW DOES, IN FACT, KICK IN, SO THERE ARE REMEDIES TO DEAL WITH THIS AT THAT POINT IN TIME, BUT IT IS NOT AN ADULT SPEEDY TRIAL PROBLEM.

OTHER THAN THE STATUTE OF LIMITATIONS, WHAT IS THE LIMITATION ON THE STATE, IN TERMS OF TIME, ON FILING ON THIS DELINQUENT AS AN ADULT?

IF, ASSUMING, AS WE MUST, BASED UPON THE RECORD, THAT WE HAVE NEVER LOST JURISDICTION OVER THE INDIVIDUAL, THEN WE PROBABLY COULD FILE IT ISN'T, SUBJECT TO A -- FILE IT AT ANY TIME, SUBJECT TO A 15-DAY WINDOW PERIOD. THE SUBJECT HAS RAISED THE AG ISSUE HERE, BECAUSE WE HAD AN ARREST WARRANT, AND THAT WAS I SHOULD BASED UPON NOTICE, AND IF THE COURT IS CONCERNED ABOUT THAT ISSUE, AS I STATED IN OUR BRIEFS, WE WOULD ASK A REMAND TO DETERMINE WHETHER OR NOT THERE WAS, IN FACT, AN AG VIOLATION. OUTSIDE OF AN AG VIOLATION, WHERE THERE WOULD BE NO BAD FAITH AND NO MANIPULATION ON THE PART OF THE STATE OR THE SPEEDY TRIAL, THEN IT WOULD BE LIKE ANY OTHER ADULT CASE.

SO ONCE HE IS ARRESTED OCTOBER 13, 1995, WHAT, SAY IT IS NOW TWO YEARS LATER. IS HE STILL WITHIN THE JURISDICTION OF THE COURT?

YES.

WHAT IS THE COURT? I MEAN WHAT TYPE OF -- HE IS UNDER WHATEVER THE TERMS OF HIS RELEASE ARE, SO IF HE VIOLATES, HE COULD BE IN PERPETUAL PRETRIAL RELEASE?

IT WOULD BE VERY MUCH LIKE AN ADULT SITUATION. IF AN ADULT SITUATION IS OUT ON BARBLINGS NORMALLY, INCLUDED, YOUR HONOR, IF THERE ARE SERIOUS CONCERNS ON ADULT SITUATION, THERE WOULD BE SOME SORT OF ACTION GOING ON. IN THIS CASE HE WAS PUT INTO THE CUSTODY OF HIS PARENTS AND THERE WAS, REALLY, NO RAMIFICATIONS OR NO BAIL OR BOND THAT WOULD BE VIOLATED IN THAT SITUATION, BUT EVEN ASSUMING THERE WAS A SITUATION WHERE YOU WOULD VIOLATE THE BAIL OR THE BOND, AND THEY WOULD COME BACK AND TRY AND CHARGE HIM, IF THEY CHARGE HIM AS A JUVENILE, YOU WOULD HAVE THE 90-DAY PERIOD AND IT WOULD REQUIRE A DISMISSAL. IF YOU CHARGE HIM AS AN ADULT, THEN YOU WOULD HAVE TO SEE WHETHER OR NOT THERE WAS SOME SORT OF REASON FOR THE DISMISSAL, BECAUSE WHETHER OR NOT HE WAS UNDER THE AUSPICES OF --

SO ONCE YOU CHARGE HIM AS AN ADULT, THEN, YOU MUST BRING HIM TO TRIAL WITHIN TEN DAYS?

RIGHT. WITHIN THE WINDOW PERIOD. EXACTLY. IF HE IS READY TO GO. IF THE MOTION --

SO YOU ARE GOING ON FOR TWO YEARS AND FILE AND THEN SAY, OKAY, NOW WE HAVE GOT TO GO TO TRIAL IN TEN DAYS? I MEAN, DOESN'T IT SEEM LIKE THERE IS SOMETHING MISSING IN THIS SCHEME?

NO. AGAIN, YOU REMEMBER, WHEN YOU ARE TALKING ABOUT THE WINDOW PERIOD, IT IS NOT AN AUTOMATIC PERIOD. THE DEFENDANT, IF HE DOES NOT WISH TO GO TO TRIAL IMMEDIATELY, DOESN'T HAVE TO FILE HIS MOTION FOR DISCHARGE. HE CAN WAIT, AND, THEN, WHEN HE IS READY, FILE IT, OR HE CAN TAKE HIS CHANCES AND MOVE FOR THE DISCHARGE. A LOT OF TIMES WHEN WE HAVE THIS, IT WOULD BE BENEFICIAL TO THE DEFENDANT TO GO FORWARD AS QUICKLY AS POSSIBLE, ONCE THIS HAS OCCURRED, BECAUSE THERE WOULD BE NO DISCOVERY GIVEN. THE STATE WOULD HAVE TO DO EVERYTHING IN A QUITE IMMEDIATE FASHION AND PROBABLY WOULD NOT BE ABLE TO GO TO TRIAL AS QUICKLY, BECAUSE BY REQUESTING YOUR SPEEDY TRIAL RIGHTS, THE STATE IS PUTTING ON A BURDEN TO GO FORWARD, SO THE BURDEN OF THE STATE TO WAIT THAT LONG, IN THIS SITUATION, IN OTHER WORDS THERE IS NOTHING BENEFICIAL FOR THE STATE TO WAIT. TO WAIT THAT LONG IN THIS TYPE OF SITUATION OR ANY TYPE OF SITUATION.

BUT THE STATE DID WAIT UNTIL, LET'S SAY, THE TIME HAD JUST ABOUT RUN FOR THE JUVENILE, AND THEN FILED DIRECT. IT COULD GIVE ITSELF ADDITIONAL TIME. IS THAT RIGHT? IT WOULD INCREASE THE SPEEDY TRIAL.

BUT THERE IS NOTHING WRONG WITH THAT. THE WAY THE RULE IS WRITTEN, THERE IS NOTHING WRONG WITH THAT, BECAUSE WE CAN DO THAT WITHOUT, IN A REGULAR ADULT CASE.

BUT WE GO BACK TO THIS RECOGNITION THAT WE WANT TO GET JUVENILES TO AN ADJUDICATION AS QUICKLY AS POSSIBLE. THERE MUST BE SOMETHING WRONG.

NO. THEN YOU GO BACK TO LOOKING AT THE THREE PRONGS OF THE STATUTE, WHICH DEAL WITH REGULAR PETITIONS, WITHDRAWAL PETITIONS, DIRECT FILES, AND IN DIPTS.

WELL, IS -- AND INDICTMENTS.

WELL, IS THERE A QUESTION IN THERE, AND PERHAPS INJUSTICE SHAW'S QUESTION, OF THE POTENTIAL FOR ABUSE OF THIS AUTHORITY, IN REGARD TO THE CASE LAW THAT HAS GONE BACK AND FORTH ON SPEEDY TRIAL? THAT IS THAT THE POTENTIAL FOR ABUSE IN THE SENSE THAT THE

90 DAYS IS ABOUT TO EXPIRE OR HAS EXPIRED, AND THE ONLY WAY WE CAN CATCH THIS IS TO DIRECT FILE, AND SO EVEN THOUGH IT IS NOT ONE THAT WE ORIGINALLY DETERMINED WE WERE GOING TO DIRECT FILE ON, IN ORDER TO SAVE THE CASE, WE WILL DIRECT FILE, SORT OF DOING, IN OTHER WORDS, AS I SAY, A POTENTIAL FOR ABUSE?

I UNDERSTAND YOUR HONOR'S QUESTION AND THEN YOU HAVE TO REMEMBER ABOUT THE 45-DAY FILING PERIOD. NOT ONLY DO YOU HAVE THE SPEEDY TRIAL PERIOD BUT THERE IS A SPEEDY FILING PERIOD, AND YOU MUST FILE YOUR PETITION WITHIN 45 DAYS, SO IF YOU DO NOT FILE YOUR PETITION WITHIN 45 DAYS, THEN YOU BASICALLY CANNOT FILE A PETITION, AND YOU ARE BOUND BY ADULT COURT, AND NORMALLY IN THESE SITUATIONS THE STATE DOES NOT REALLY LOOK ON THE NONSERIOUS OFFENSES TO GO TO ADULT COURT. NORMALLY THERE IS A IMMEDIATE DETERMINATION THAT THERE IS GOING TO BE A DIRECT FILE, AND IT JUST TAKES TIME TO DO THE DIRECT FILE. I THINK THERE MIGHT BE TIMES THAT WE DO SEE BAD SITUATIONS. I DON'T THINK THAT IS THE NORM. I THINK THAT IS EXCEPTION. I THINK BECAUSE OF THE EXCEPTION, WE WOULD HAVE TO DEAL WITH THE EXCEPTION AS IT COMES THROUGH, AND I WOULD LIKE TO RESERVE THE MINUTE AND-A-HALF OF TIME FOR REBUTTAL. THANK YOU.

THANK YOU. MR. ROSE ENTHAT WILL. -- MR. ROSENTHAL.

THANK YOU. MAY IT PLEASE THE COURT. MR. ROSENTHAL ON BEHALF OF DEFENDANT OLIVO. THERE ARE CASES THAT HANG IN THE BALANCE OF THE THIRD DISTRICT'S APPROACH AND THE APPROACH OF THE OTHER DISTRICTS. THE OTHER THING IS THE SPEEDY TRIAL AS RELATIVE TO THE CASE. I ADMIT THAT THE OTHER MATTERS WHICH ARE IMPORTANT AND I WILL ADDRESS CAREFULLY, IS THE SPEEDY TRIAL RULE IN THIS CASE. I THINK THE SPEEDY TRIAL RULE, ALMOST SINCE ITS TIME OF INCEPTION, HAS RECOGNIZED THAT, WHEN THE STATE RUNS THE RISK OF CHANGING THE METHOD OR FORUM OF ITS PROSECUTIONS, IT RISKS DOING THE THINGS IT NEEDS TO DO TO MAKE A TIMELY PROSECUTION. THE ARGUMENT BY MR. NEIMAN, HAD WHAT HE DESCRIBED OCCURRED, MY POSITION WOULD BE WEAKER. WHAT HAPPENED IN THIS CASE WAS THAT, NO LESS THAN EIGHT TIMES DURING THE FIVE MONTHS THAT THIS CASE REMAINED IN JUVENILE COURT DID THE STATE HAVE THIS CASE CALENDARED TO TELL THE JUDGE WHETHER IT IS GOING TO DIRECT FILE. ONE DOES NOT NEED TO BE A PROSECUTORIAL ROCKET SCIENTIST TO DECIDE IF THIS IS SERIOUS ENOUGH TO FILE, THEN WE WILL GO AHEAD AND FILE AS AN ADULT. I BELIEVE THAT, ALTHOUGH WHAT USED TO BE CHAPTER 985 IS NOW THE TIME EXAMPLES THAT HAVE BEEN TIME TO GO TO AN INDICTMENT ARE MORE OR LESS CARRIED OVER, AND THAT IS MORE OR LESS WITHIN THE PERIOD. EVEN WHEN YOU ARE DEALING WITH A CRIME SERIOUS ENOUGH TO BE CHARGEABLE BY INDICTMENT, THE STATE CAN SUBMIT AND TIMELY BRING IT OVER TO ADULT COURT. THIS IS INFORMATION THAT IS NOT A 21-DAY PERIOD, BUT WHAT I AM SUGGESTING IS THAT THERE IS A VERY RIPE AREA OF ABUSE, PRECISELY AS JUSTICE ANSTEAD INDICATED, THAT IF YOU ARE REACHING THE 90-DAY PERIOD AND THE STATE, WHICH HAS NEVER FILED AS AN ADULT, TO SEE ABOUT THE JUVENILE CASE ABOUT TO BE CLOSED, WHAT WOULD PREVENT THEM FROM FILING TO --

AREN'T YOU REALLY WRITING INTO THE STATUTE, UNDER THE RULES, A REQUIREMENT, I BELIEVE JUSTICE PARIENTE ASKED THIS EARLIER, A REQUIREMENT THAT THE STATE FILE A JUVENILE PETITION, NOT A JUVENILE PETITION BUT A DIRECT INFORMATION ON A JUVENILE, WITHIN 90 DAYS?

I THINK NOT. I THINK THAT HOW ONE STRUCTURES THAT RULE, IF ONE WANTS TO STRUCTURE IT, CAN BE SUBJECT TO DIFFERENT APPROACHES. I DO SUBMIT TO THE COURT THAT THERE ARE TO BE SOME IMPOSITION IN THE RELATION TO THE JUVENILE AND ADULT RULE AND THE JUVENILE PROCESSES, SOME REASON OF DILIGENCE.

THAT IS PRESENTLY NOT IN THE RULE.

IT IS NOT IN THE RULE, JUDGE, BUT IT IS IMPLICIT IN THE ENTIRE SPEEDY TRIAL RULES. IT IS REQUIRING TIMELY INDULGENCE OF PROSECUTION.

DOES THAT APPLY TO THE ADULT SPEEDY TRIAL RULE, ALSO?

THE TIMELINESS AND DILIGENCE?

YES.

ABSOLUTELY, JUDGE. ABSOLUTELY. THAT IS BEDROCK JURISPRUDENCE THROUGHOUT THE HISTORY --

WHY SHOULDN'T WE JUST TREAT THIS, THOUGH, A ADULT SPEEDY TRIAL ISSUE, AND THAT IS THAT SINCE THE LEGISLATURE HAS VESTED, IN THE PROSECUTION AUTHORITY, THE RIGHT TO DIRECT FILE HERE, ISN'T YOUR CLIENT ON NOTICE THAT THE PROSECUTOR HAS THAT DISCRETION AUTHORITY, AND IN ESSENCE, THEN, IS NOT HOME FREE, I MEAN ABS SOMETHING ELSE HAPPENING, YOU -- I MEAN ABSENT SOMETHING ELSE HAPPENING, LIKE THE FILING OF A PETITION IN JUVENILE COURT AND OTHER THINGS GOING ON THERE, BUT ISN'T YOUR CLIENT ON NOTICE, JUST BY VIRTUE THAT A STATUTORY SCHEME, THAT THE PROSECUTION IS ENTITLED TO TREAT YOUR CLIENT AS AN ADULT, WITH REFERENCE TO THIS DIRECT FILE ISSUE?

THEY HAVE THAT PREROGATIVE, AND I ACKNOWLEDGE TO THE COURT IN MY BRIEF THAT I AM NOT ALLEGING ABUSE HERE. I AM ALLEGING A RAMPANT AREA OF ABUSE, IF THE COURT DOES NOT RESOLVE THE CASE APPROPRIATELY IN TERMS TO THE POLICY INTERESTS, BUT THERE IS NO CONSTRAINT ON THE STATE. HE CAN COME IN AND FILE AT ANY TIME. BUT HE, ALSO, SAID IF WE FILE A PETITION, WE HAVE TO DO IT WITHIN 45 DAYS. I DON'T BELIEVE THAT STATUTE IS IN EFFECT. I DON'T BELIEVE IT HAS BEEN ON THE BOOKS FOR SEVERAL YEARS, AND IF THERE IS, THERE IS NO IMPORT FOR DISCHARGE POSITION.

DON'T YOU HAVE TO, IN EFFECT, AMEND EXISTING RULES, BY CASE LAW, I SUPPOSE, IF WE ARE GOING TO HAVE A DIFFERENT SCHEME, AND THAT IS THAT YOU HAVE GOT TO NOW, BY CASE LAW, WRITE SOMETHING IN, WITH REFERENCE TO WHAT THE STATE HAS TO DO IN A SITUATION LIKE THIS? DO YOU NOT?

THE -- OKAY.

HOW ARE YOU GOING TO SECURE A DISCHARGE UNDER THE JUVENILE RULES, WITHOUT WRITING IN, IN EFFECT, LIKE THE HOLDING OF THE THIRD DISTRICT?

I DON'T SEEK TO SUPPORT DISCHARGE IN THIS CASE. I SIMPLY HAVE STATED IN THE BRIEF THAT THE DEFENDANT IS ENTITLED TO DISCHARGE INDEPENDENTLY BY A FACT OF RULE 3.191, BECAUSE THE FACTUAL CIRCUMSTANCES OF THIS PARTICULAR CASE.

BUT THAT IS NOT THE BASIS OF THE THIRD DISTRICT DECISION.

WELL, BUT A LOWER COURT CAN BE RIGHT FOR ANY REASON OR FOR REASON NOT REACHED --

LET'S JUST CONSIDER THEIR RULING.

THE THIRD DISTRICT'S REASONING IS SIMPLY A SUMMARY DLAININGS OF CONFLICT. IT IS A SIMPLE DECLARATION OF THE VITALITY OF ITS EARLIER DECISION, THE PERES CASE, SO I HAVE TO REACH TO THE REASONS THAT UNDER LIE THAT DECISION.

WHAT IS WRONG WITH THE STATE'S POSITION THAT WE CAN DO IT THIS WAY, AND UNLESS YOU CAN SHOW THAT THERE IS BAD FAITH IN US DOING IT THIS WAY, THE STATUTE ALLOWS IT? THAT

IS THE STATE'S POSITION, PRINCIPALLY, THAT SO WHAT? YOU KNOW, TO ALL OF YOUR ARGUMENT, IT SAYS SO WHAT? THE LAW ALLOWS US TO DO IT THIS WAY, UNLESS YOU CAN SHOW WE ARE DOING IT IN BAD FAITH, AND IF YOU CAN MAKE THAT SHOWING, THE BURDEN IS ON YOU, AND IF YOU CAN MAKE THAT SHOWING, THAT, THEN YOU WIN.

JUSTICE SHAW --

WHAT IS WRONG WITH THAT --

I DO NOT CONTEND BAD FAITH IN THIS CASE. I DO CONTEND GROSS NEGLIGENCE, SOMETHING FULL AND SHORT OF BAD FAITH. THAT IS EIGHT CALENDARINGS IN EIGHT MONTHS. THIS IS NOT A CIRCUMSTANCE WHERE THE STATE CAN COME IN AND SAY WE DID EVERYTHING WE COULD TO SALVAGE THIS PROSECUTION. THE STATE DID NOTHING FOR FIVE MONTHS. WHEN IT DID FILE THE INFORMATION, IT DID NOT INFORM THE JUVENILE COURT FOR FIVE DAYS. IT FILED IT AT THE END OF THE ADULT SPEEDY TRIAL PERIOD AND LET ME END, DID NOT BRING THE ADULT BACK BEFORE THE JURISDICTION OF THE CIRCUIT COURT. NOW, MR. NEIMAN HAS, I THINK, A BIT OF A HIGH WIRE ACT, STATING THAT, WELL, YOU PRESUMED NOTICE TO COUNSEL AND IF COUNSEL IS NOTICE, YOU CAN PRESUME NOTIFIED. FIRST OF ALL THERE IS NO RECORD PROVIDED BY THE COURT, TO THE APPELLANT OF THE THIRD DISTRICT TO SHOW THAT EITHER THE JUF JUSTIFY -- JUVENILE WAS OBLIGATED TO APPEAR OR REQUIRED TO APPEAR.

DOES THIS NOT PROVIDE IN THE THIRD DISTRICT?

NO, JUDGE. AND I BELIEVE THE APPROPRIATE RULE IS THAT IF THE COURT IS CORRECT ON ANY THEORY OF THE LAW, THEN IT IS CORRECT. IT DOESN'T HAVE TO BE CORRECT ON THAT THEORY BUT ANY THEORY.

YOUR ALTERNATIVE THEORY IS THAT THIS IS A VIOLATION OF THE ADULT SPEEDY TRIAL?

ABSOLUTELY.

HOW CAN WE MAKE A RULING ON THAT, IF THERE IS NO RECORD IN THE LOWER COURT?

BECAUSE IT WAS THE DUTY OF THE APPELLANT TO MAKE A RECORD.

IS IT HIS DUTY, HIS OR HER DUTY TO MAKE THAT RECORD, IF THAT IS NOT AN ISSUE OF THE COURT?

VANLT IN -- AVAILABILITY IN A SPEEDY TRIAL CASE IS ALWAYS AN ISSUE, AND IF I WERE AN ATTORNEY IN A SPEEDY TRIAL CASE, I WOULD ALSO LOOK FOR AVAILABILITY, BECAUSE YOU NEVER KNOW HOW THE DOCTRINE IS GOING TO BE EVOLVED. IN THIS CASE THERE WERE EIGHT CALENDARINGS IN THE YUF NILE COURT, NOTHING THAT -- IN THE JUVENILE COURT, NOTHING THAT INDICATES THE IN AVAILABILITY BEFORE THE JUVENILE COURT.

IS THAT REALLY AT ISSUE HERE?

IT IS AN ISSUE, I SUBMIT.

BUT THE REAL ISSUE THAT WE HAVE TO RESOLVE IS WHETHER OR NOT THE STATE MUST, DURING THE INITIAL 90-DAY PERIOD, FILE AN INFORMATION. OTHERWISE THE JUVENILE HAS TO BE DEALT WITH IN JUVENILE COURT. THAT IS WHAT YOUR ARGUMENT REALLY BREAKS DOWN TO.

NO. I DON'T THINK SO. I THINK WHAT MY ARGUMENT IS THAT THERE HAS TO BE TIMELYNES OF THE DECISION TO PROSECUTE AS AN ADULT. NOTHING IN THIS DECISION IMPINGES UPON THE STATE'S PREROGATIVE, WHICH I FULLY ACKNOWLEDGE, TO DECIDE WHETHER TO CHARGE A CASE

AS ADULT CASE OR TO LEAVE IT IN ITS DEFAULT MODE, WHICH IS THE STATUTORY DEFAULT MODE AS A JUVENILE CASE.

BUT AREN'T YOU REQUIRED, AT THE ADULT SPEEDY TRIAL LEVEL, TO MAKE THE ARGUMENT THAT YOU ARE MAKING NOW? THAT IS THAT, IF THAT IS THE PROBLEM, THAT THERE IS A ADULT SPEEDY TRIAL VIOLATION, THEN YOU ARE ENTITLED TO INVOKE THAT AT THE TRIAL LEVEL AND HAVE THAT RESOLVED, YOU KNOW, AND APPROPRIATELY REVIEWED. IT SEEMS TO ME THAT, WITHOUT PUTTING WORDS IN YOUR MOUTH, THAT YOU ARE CONCEDED THAT THE THIRD DISTRICT WAS PROBABLY WRONG INsofar AS THE BASIS FOR ITS DECISION HERE. AND I, I MEAN WE APPRECIATE, OBVIOUSLY, AT THIS LEVEL, ESPECIALLY, CANDOR ON THE PART OF COUNSEL. IS THAT WHAT YOU ARE --

JUSTICE, I HAVE NOT FOCUSED ON THAT, BECAUSE I THINK THERE IS SO MUCH MORE IMPORTANT IN THE CASE TO ADDRESS.

WE ARE TRYING, INITIALLY, TO DEAL WITH THE ISSUE OF LAW THAT THE THIRD DISTRICT DEALT WITH.

OKAY. OKAY.

AND AS I SAID BEFORE, I AM HAVING A DIFFICULT TIME JUSTIFYING THIS DECISION ON THE BASIS OF THE REASONING OF THE THIRD DISTRICT. THAT IS WITHOUT, IN EFFECT, AMENDING THE RULES, NOW, THAT PRESENTLY EXIST, I AM NOT TALKING AT ALL, NOW, ABOUT YOUR ALTERNATIVE ARGUMENT, BUT I AM TALKING ABOUT HOW CAN WE JUSTIFY THE OUTCOME ON THE BASIS OF THE REASONING OF THE THIRD DISTRICT? CAN IT BE JUSTIFIED?

I CANNOT ANSWER THAT QUESTION, WITH RESPECT, EXCEPT WITH REFERENCE TO WHATEVER EXTENDED FACTUAL RECORD IS CREATED BEFORE THIS COURT, AND I THINK THAT A RULE OF EXISTING PROCEDURE, NOT A NEW RULE, A SUGGESTED RULE, BUT A RULE OF EXISTENT PROCEDURE, THAT SAYS WHEN YOU FILE AN INFORMATION AGAINST AN INDIVIDUAL, YOU MUST ISSUE A CAPE YAS. NOW, THERE IS A -- A CAPEAS. NOW, THERE IS AN EXCEPTION FOR A JUVENILE.

NOW WE GO TO THE ALTERNATIVE ARGUMENT THAT YOU ARE MAKING, CORRECT?

THAT'S CORRECT. BUT I DO WANT TO CLARIFY THAT I AM NOT CONCEDED THE LOWER COURT'S DECISION ON THE CORRECTNESS OF 090 AS A GROUND. I THINK THAT IS CORRECT, BUT I CAN'T ACKNOWLEDGE TAKE -- ACKNOWLEDGE THAT WITH REFERENCE TO THIS CASE, BECAUSE THE CASE WAS DRAGGED THROUGH THE PARED AND ALMOST WENT TO THE RULE 3.191 BEFORE IT FILED AND NEVER GOT TO THE POSITION OF THE JUVENILE. I WANT TO CORRECT A FACTUAL -- I THINK I MISS READ THE STATE'S DOCKET, PAGE 26 OF THE SUPPLEMENTAL RECORD, I HAD CHARACTERIZED AS INDICATING THE ARREST OF THE JUVENILE ON APRIL 19, 1986. THAT IS INCORRECT. THE STATE DIDN'T EVEN ISSUE A CAPEAS UNTIL APRIL 9 AND HE WASN'T ARRESTED UNTIL SEPTEMBER OF THE NEXT YEAR, NEARLY A YEAR AFTER THE INITIAL ARREST.

TWO THINGS I WANT TO GET FACTORED HERE? ARE YOU OR ARE YOU NOT ARGUING THAT THE STATE MUST DO SOMETHING IN THAT FIRST INITIAL 90-DAY PERIOD?

I THINK THAT, UNLESS THEY CAN SHOW OTHERWISE, PRESUMETIVELY YES.

SO YOU ARE ARGUING THAT THE STATE MUST FILE ITS DIRECT INFORMATION WITHIN THAT --

NO, JUDGE. I AM NOT CHARACTERIZING IT TO THAT EXTENT. WHAT I AM STATING IS THAT THE STATE MUST MAKE DILIGENT EFFORTS TO PROSECUTE. IF IT IS GOING TO TAKE THE ENTIRE 90 DAYS TO MAKE THE DECISION, THERE HAS TO BE SOME JUSTIFICATION ON THE RECORD. THERE HAS TO BE SOMETHING THAT THE STATE IS DOING TIMELY TO PROFITS CASE. IF THAT IS THE

CASE, IT IS TRUE THE LEGISLATURE HAS RECOGNIZED A NEED TO DEAL WITH JUVENILE PROCEEDINGS MORE QUICKLY THAN ADULT PROCEEDINGS.

WHAT LAW IS IT THAT YOU ARE SAYING --

LET'S LOOK AT THE IMPLICATIONS, IF THE RULE IS OTHERWISE. IF THE COURT DOES INSTRUCT --

I RECOGNIZE THE IMPLICATION. BUT I, ALSO, RECOGNIZE THE LAW, AND WHAT -- ARE YOU ARGUING BAD FAITH? IS THAT --

NO. I AM ARGUING EXTREME NEGLIGENCE. BAD FAITH IS SORT OF A MENS RAE. I AM ARGUING EXTREME NEGLIGENCE IN TIMES OF PROSECUTION. THIS COURT, IN STATE VAGEE, APPROVED THE FIRST DISTRICT'S DECISION, AND THE FIRST DISTRICT'S DECISION SAID GOOD FAITH OR NOT IS IRRELEVANT, IN QUEST OF TIMELINESS OF PROSECUTION. IT IS NOT RELEVANT, IN TERMS OF PROSECUTION. THERE IS A DIFFERENCE.

WHAT LAW DID THE STATE VIOLATE?

WHAT LAW?

WHAT DID THE STATE VIOLATE?

THE STATE, OKAY, IN THE FIRST, THE PRIMARY ANSWER TO THAT IS THAT, BEFORE YOU EVEN GET TO 8.090, THE STATE VIOLATED 3.181, IN THE FACTS OF THIS CASE, BECAUSE THEY DID NOT HALE THE JUVENILE BEFORE THE JURISDICTION OF THE FELONY COURT UNTIL NEARLY A YEAR AFTER ARREST, AND MR. NEIMAN HAS ASSERTED TO THIS COURT THAT, UNLESS YOU HAVE A CHARGING DOCUMENT, YOU HAVE NOTHING HAPPENING IN SPEEDY TRIAL TERMS. I SUBMIT TO THE COURT THIS COURT HAS DECIDED OTHERWISE, IN A CASE DECIDED JUST A FEW YEARS AGO, GENDONV FULLER. IN GENDON THERE WAS NO ACTION. NO ACTION IS A CLOAK WILL USE -- IN A COLOQUIAL ISSUE.

AM I RIGHT OR AM I NOT RIGHT THAT THIS IS A CONFLICT CASE.

CONFLICT OF LAW. YES. YES.

THIS IS A MATTER OF CONFLICT OF DECISIONS BETWEEN A THIRD DISTRICT AND THE SECOND OR THE FOURTH OR WHATEVER.

YES. YES.

HOW DO WE RESOLVE THE CONFLICT? HOW DO YOU SUGGEST WE RESOLVE THAT CONFLICT?

I SUGGEST THAT YOU RESOLVE THE CONFLICT, NOT BY HOLDING THAT THE INFORMATION IS TO BE FOLLOWED AND MUST BE FOLLOWED WITHIN -- IS TO BE FILED AND MUST BE FILED WITHIN 90 DAYS BUT TO MAKE THE STATE FILE WITHIN A REASONABLE TIME OR TO SHOW GOOD REASON WHY IT CANNOT.

THE CONFLICT BETWEEN THE THIRD DISTRICT AND THE SECOND DISTRICT GOOD FAITH?

IRONICALLY, JUSTICE, THERE ARE TWO CASES THAT THE THIRD DISTRICT DECLARES CONFLICT WITH. ONE IS PAR, WHICH IS THE FIRST OF THE CASES TO RECOGNIZE CONFLICT WITH THE EARLY DECISION IN PERES, AND IN PAR, THE DEFENDANT ULTIMATELY, IN PAR, GETS DISCHARGED UNDER THE SPEEDY TRIAL RULE, SO PART OF WHAT PAR IS TECHNICALLY VINDICTIVE. THEY HELD THAT HE WAS NOT PROPERLY HELD IN ADULT COURT AND SINCE THE JUVENILE TIME HAD PASSED, IT WAS TOO LATE TO FILE AN INFORMATION.

I GUESS I AM TRYING TO GET FROM YOU EXACTLY WHY THIS CASE IS IN THIS COURT.

WHY THE CASE IS --

WHY THIS CASE IS IN THIS COURT? HOW DID THIS CASE GET HERE?

BECAUSE THE THIRD DISTRICT CERTIFIED WITH PAR.

AND WHAT WAS THE CONFLICT BETWEEN THE CASES?

PAR HOLDS WITH PERES.

WHAT LAW WAS IN CONFLICT?

PAR DISAGREES WITH PERES, I GUESS, TO THE EXTENT THAT PAR INDICATES, AND I THINK IN PAR IT IS, TO SOME EXTENT, DICTUM, BUT IT DOES STATE IT. IT RECOGNIZES THAT THE STATUTES PROVIDE DISTRICT DIRECT FILING AUTHORITY TO -- PROVIDE DIRECT FILING AUTHORITY TO THE STATE, AND GIVEN THE FACT THAT THERE IS NO RELATIONSHIP BETWEEN THE ADULT AND JUVENILE FILING TIMES OR PROSECUTORIAL PROCESSES, THAT THERE FOR IT DOES NOT NEED TO BE FILED WITHIN 90 DAYS, BUT THEY DID NOT IMPART FACTUALLY DESCRIBED, JUSTICE QUINCE, THEY DID NOT DESCRIBE, IT WASN'T THE JUVENILE HAD BEEN TLAN JUVENILE COURT FOR SEVERAL MONTHS, AND THERE IS NOTHING TO INDICATE UNTIMELINESS, OTHER THAN --

SO YOU RECOGNIZE, THEN, THAT THE CONFLICT THAT WE ARE ACTUALLY BEING ASKED TO RESOLVE IS WHETHER OR NOT THE STATE MUST FILE, DIRECT FILE, WITHIN 90 DAYS.

I AM NOT SURE THAT PAR OR BELL ARE PRESITELY SO -- PRECISELY SO LIMITED OR SO DESCRIBED, BUT THAT MIGHT BE ONE FACTOR THAT YOU MIGHT WANT TO DESCRIBE TO RESOLVE THAT CONFLICT.

HOW DO WE RESOLVE THAT CONFLICT?

WHAT ARE THE EVILS OF AN INCORRECT DECISION? THAT IS THE FIRST THING, AND THE EVILS AFTER INCORRECT DECISION, MEAN AGO DECISION WHICH PLACES NO CONSTRAINT UPON THE STATE, IS THE IMPLICATION THAT IT DOESN'T PREVENT THE STATE FROM GOING OVER TO ADULT COURT FOR NO REASON OTHER THAN IT RUNS SPEEDY TRIAL ON THE STATE.

IN PAR, ISN'T THAT THE CASE WHERE THEY FILED A DIRECT FILE, BUT THEN THE COURT SAID THAT WAS INCORRECT. YOU SHOULD HAVE BEEN IN JUVENILE COURT AND ONCE DID YOU GET JUVENILE COURT, THE JUVENILE SPEEDY TRIAL TIME HAD RUN?

YES, JUSTICE, BUT THE STATUTES, BY THE WAY, IT IS CRITICAL, BY THE WAY, TO NOTE THAT, AT ANY POINT IN TIME YOU HAVE TO LOOK AT THE STATUTORY STRUCTURE. THE STATUTES THAT WE WERE DEALING WITH BACK THEN WERE COMPLETELY DIFFERENT. IN THAT CASE THERE WAS A PROVISION FOR A JUVENILE TO GET A CASE BACK FROM ADULT COURT THAT HAD BEEN FILED, AND NOW IF A CASE IS DIRECT FILED, MEANING THAT THE JUVENILE FALSE WITHIN THE DISCRETIONARY POWER THAT THE JUDGE IS ALLOWED TO -- THAT THE STATE IS ALLOWED TO FILE ON, THERE IS NO WAY TO GET IT BACK TO JUVENILE COURT. IN THE PAR CASE, IT STATED THAT THE JUVENILE COULD HAVE TRANSFERRED BACK, UNLESS HE HAD PRIOR CONVICTIONS AND THOSE CONVICTIONS WERE INVALID BECAUSE THE PLEAS WERE INVALID, AND IT WAS NOT A PERMISSIBLE TACT, AND THEREFORE THE INFORMATION WASN'T CORRECTLY FILED AND THEREFORE HE SHOULD HAVE BEEN IN JUVENILE COURT, AND SINCE THE TIME HAD RUN, HE COULDN'T BE FILED ON CORRECTLY. THAT WAS IN TIMELYNNESS WITH THE PRESENCE OF 8.090.

DOESN'T YOUR POSITION PLACE A BURDEN A POSITION THAT THE STATUTE DOESN'T PLACE ON

THE STATE, THAT THE BURDEN IS ON THE STATE TO SHOW GOOD FAITH, IF THEY WAIT AND FILE LATE?

BUT ONE OF THE IMPLICATIONS OF A DELAY IN FILING IS NO DISCOVERY OCCURS UNTIL THE STATE FILES. THAT IS TRUE IN JUVENILE AND IN ADULT COURT. NO DISCOVERY OCCURS. IN THIS CASE THE STATE DIDN'T FILE UNTIL THE END OF THE ADULT SPEEDY TRIAL PERIOD. NOW, WHAT IS A JUVENILE SUPPOSED TO DO AT THAT POINT? WHAT IS ANYBODY SUPPOSED TO DO AT THAT POINT? I SUBMIT TO THE COURT THAT IT IS PERFECTLY PROPER, IF WE ARE TALK ABOUT A CONSTITUTIONAL UNDER LAY, WHICH WE ARE, OF SPEEDY TRIAL PROSECUTION. THAT IS WHAT 909 AND 091 REPRESENT. THE RETH LURE'S APPEALING ON -- THE LEGISLATURE'S APPEALING ON STATUTE AND ASKING THIS COURT TO DECIDE TIMELY WHAT RIGHTS DOES THE STATE HAVE TO SPEEDY TRIAL?

ISN'T IT TRUE IN ADULT COURT, IF THE STATE WAITED UNTIL THE 89th DAY AND FILED AN INFORMATION AGAINST AN ADULT?

THE CASE LAW, PRIOR TO THE EXISTENCE OF THE WINDOW PERIOD, WOULD INDEED HAVE BEEN PREEXISTENT OF THE RECOGNITION THAT YOU CAN'T WAIT TO BEGIN.

IN THIS CASE, THE MOTION FOR DISCHARGE BY THE DEFENDANT IS BASED SOLELY ON PER SNES.

I THINK IT MIGHT HAVE CITED BOTH RULES, JUSTICE. I JUST DON'T RECALL WHETHER -- I THOUGHT THAT IT CITED BOTH THE ADULT AND THE JUVENILE RULES, AND I JUST DON'T RECALL RIGHT NOW.

THAT WOULD BE WHATEVER THE THIRD DISTRICT REACHED, THE RECORD WOULD BE WHATEVER THE RECORD IS BEFORE THE TRIAL COURT.

OF COURSE. OBVIOUSLY. BUT I SUBMIT TO THE COURT THAT THE ENTITLEMENT TO DISCHARGE IS NOT SO LIMITED, WHEN YOU LOOK AT THE FACTS, AND THE STATE HAS PRESENTED YOU WITH A NONEXISTENT RECORD. THAT IS WHY I SAID AT THE OUTSET THERE ARE TWO CONCERNS. ONE IS THE SPEEDY TRIAL STAT THUS THIS PARTICULAR -- STATUS IN THIS PARTICULAR CASE AND OTHER IS THE MORE BROAD REACHING POLICY CONCERNS, AND I WOULD ASK THE COURT, IN CONSIDERING THAT SITUATION, TO CONSIDER BOTH CASES THAT WE ASK YOU TO RECGING ONNIZE, THAT -- RECOGNIZE, AND THAT IS THE JUVENILE IS NOT BROUGHT INTO COURT UNTIL NEARLY A YEAR LATER, AND THE JUVENILE DIDN'T APPEAR. THERE IS NOTHING TO INDICATE THAT YOU HAVE A PRESUMPTION OF UNAVAILABILITY. THERE IS NO PRESUMPTION OF UNAVAILABILITY UNDER THE SPEEDY TRIAL RULE. THERE IS NOTHING TO INDICATE, EITHER, A POSITION OF CAPEAS TIMELY OR BRINGING BEFORE THE ADULT COURT TIMELY.

THANK YOU, COUNSEL.

THE ANSWER TO THE QUESTION IS THE CONFLICT IS TIME LIMIT AGENCIES RELATING TO JUVENILE PROCEEDINGS -- LIMITATIONS RELATING TO JUVENILE PROCEEDINGS DOES OR DOES NOT APPLY TO THE PROSECUTION OF A JUVENILE UNDER DIRECT FILE IN CIRCUIT COURT. THAT IS A EXACT ISSUE THAT WAS RAISED AND DECIDEDED IN BELL VERSUS STATE. NO INDICATIVE. NO NOTHING. -- NO DICTIVE. NO NOTHING. THAT IS A CONFLICT THAT HAS TO BE RESOLVED.

IN THE FIRST DISTRICT, THE ONLY ISSUE BRIEFED WAS THE PERES --

THE ONLY ISSUE FROM DAY ONE WAS THIS ISSUE. HAD THE OTHERISH -- HAD THE OTHER ISSUE BEEN RAISED, THEN WE WOULD HAVE A RECORD. I AM NOT SAYING THAT HE IS NOT ENTITLED TO DISCHARGE. THE FACTUAL ISSUE THAT COURT CAN DECIDE IS THE CONFLICT BEFORE THE COURT, AND THAT IS IF THE COURT FINDS IN THE STATE'S FAVOR, OBVIOUSLY, SEND IT BACK DOWN. LET THE JUVENILE FILE HIS MOTION. LET US HAVE A RECORD.

HE IS NOT SAYING THAT IT WAS WAIVED.

NO. NOT NECESSARILY WAIVED. WE DON'T KNOW. I AM SAYING WE DON'T KNOW. THE PETITIONER TAKING ONE VIEW OF THE FACTS. RESPONDENT IS TAKING THE OTHER. IT IS NOT THE PETITIONER'S BURDEN TEN TO CREATE THE RECORD, WHEN THE MOTION THAT WE DID WAS --

FROM THE PETITIONER'S -- FROM THE RESPONDENT'S POINT OF VIEW, I GUESS FOR ALMOST 20 YEARS, PERES WAS THE LAW IN THE THIRD DISTRICT.

WELL, IT IS INTERESTING. IF YOU LOOK AT PERES VERY CAREFULLY, BECAUSE I JUST DID, AND THERE REALLY IS NO CONFLICT WITH THIS CASE AND PERES, BECAUSE IN THE PERES HOLDINGS, IT SAID THAT THE JUVENILE NEVER GOT ANY NOTICE, UNTIL THE DIRECT FILE WAS FILED.

BUT DID YOU ARGUE THAT POINT IN THE THIRD DISTRICT?

NO. I AM JUST SAYING I SAW THAT NOW. I AM JUST SAYING THAT THE CONFLICT, WE DON'T HAVE TO WORRY ABOUT THE CONFLICT WITH PERES, BECAUSE IF THEY ARE HOLDING, IF THEY ARE READING PERES VERY STRICTLY, THE HOLDING IS, IN FACT, IN CONFLICT WITH BELL, AND THEN WE COME BACK TO LEGISLATIVE INTENT REQUIREMENT. AND I DON'T THINK IT IS THIS COURT'S ABILITY TO READ SOMETHING INTO THE STATUTE THAT ISN'T THERE. IT IS JUST VERY CLEAR THAT IT IS WITHIN THE PROPER DISCRETION SO WE WOULD ASK THAT THE COURT CROSS YOUR ORDER OF THE OPINION OF THE THIRD DISTRICT AND AFFIRM THE HOLDINGS OF PAR AND BELL IN THIS CASE AND, IF, IN FACT, IT IS THE RULE IN THE STATE'S FAVOR, THEN ALLOW THE DEFENDANT TO FILE HIS ADULT SPEEDY TRIAL MOTION, AND SO WE CAN GET THE FACTS DEVELOPED, THEN HE MIGHT, IN FACT, BE ENTITLED TO A SPEEDY TRIAL DISMISSAL, UNDER THE PROPER RULE OF LAW, IN FACT. THANK YOU VERY MUCH.

THANK, COUNSEL. THANKS TO BOTH OF YOU. THE NEXT CASE IS STATE V