IN THE SUPREME COURT OF FLORIDA

THE HONORABLE CHARLES E. MINER,
CIRCUIT JUDGE, SECOND JUDICIAL
CIRCUIT, IN AND FOR LEON COUNTY,

Petitioner,

vs. CASE NO. 66,401

KELLI JEAN WESTLAKE,

Respondent.

_____/

REPLY BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

Kelli Jean Westlake was the Petitioner in the First District Court of Appeal. The State of Florida was the Respondent. The parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE AND FACTS

Counsel for Respondent Westlake has contended that the transcript of the docket sounding held on April 6, 1984, "clearly indicated that no waiver occurred." (Brief of Respondent at 4). However, the fact remains that the record before this Court contains a written order in which the trial court specifically stated that the case "had been continued and the State and Defense agreed upon a new trial date of June 8, 1984." (State's Response to Petition for Writ of Prohibition at A-1). Respondent is apparently arguing that since the transcript of the docket sounding indicates that Petitioner's counsel contended he was ready for trial, ipso facto it means that the defense could not have agreed to a trial date outside the speedy trial time. The State would point out that if that were true, the obvious question is why didn't defense counsel challenge the accuracy of the order which specifically stated that the defense had agreed to a new trial date.

ARGUMENT

ISSUE

THE DECISION OF THE LOWER COURT SHOULD BE REVERSED BECAUSE THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED RESPONDENT'S MOTION FOR SEVERANCE.

Counsel for Respondent has failed to address the State's argument that the real issue in this case is whether the trial court abused its discretion when it denied Respondent's motion to sever. Also, Respondent has not addressed the State's reliance upon Abbott v. State, 334 So.2d 642 (Fla. 3d DCA 1976), cert. denied, 431 U.S. 968, 97 S.Ct. 2926, 53 L.Ed.2d 1064 (1977), which recognized that judicial efficiency and economy dictated a single trial where possible.

Respondent instead argues that her right to a speedy trial should be placed above the State's interest in promoting judicial efficiency and preserving judicial economy simply because Rule 3.152 requires that a severance should be granted. However, this contention totally fails to address this Court's recognition in the following cases that severance was not required. For example, in O'Callaghan v. State, 429 So.2d 691, 695 (Fla. 1983), a capital case, this Court upheld the trial court's denial of the defendant's motion to sever even though the defendant had argued that his defense was antagonistic to that of his co-defendant and that his right to receive a fair trial had been

prejudiced because the co-defendant had blamed the murder on the defendant. The Court quoted from its prior opinion in McCray v. State, 416 So.2d 804, 806 (Fla. 1982), for the principle that the severance rule was not absolute--even when defendants blame each other for the crime. The State submits that if the severance rule is not absolute in a capital case in which a defendant's life is at stake, certainly it should not be absolute in a case like Respondent's which involves the theft of coins from newspaper vending machines. However, if the First District's opinion is allowed to stand, the law in Florida will be that although severance is not required in a capital case involving conflicting defenses of co-defendants, severance will be required in less serious factual situations merely because a defendant wants a procedural (as opposed to constitutional) speedy trial.

The State's position is that the above extension of the First District's decision is not logical. Rather, the better solution would be to leave the decision to the trial court in a particular case. In other words, the law should remain as it always has been, i.e., a trial court's decision to deny a defendant's motion to sever should not be reversed unless the record reveals the trial court abused its discretion. State v. Vazquez, 419 So.2d 1088, 1090 (Fla. 1982); O'Callaghan, supra; Crum v. State, 398 So.2d 810 (Fla. 1981); and Menendez v. State, 368 So.2d 1278 (Fla. 1979). See also the lower court's opinions in Scheel v. State, 350 So.2d 1120 (Fla. 3d DCA 1977) (no error to deny a motion to sever

even though a co-defendant's acts were more reprehensible); Tifford v. State, 334 So.2d 91 (Fla. 3d DCA 1976) (no error to deny motion to sever even though defendant claimed he was going to call co-defendant during trial); and Thomas v. State, 409 So.2d 1185 (Fla 4th DCA 1982) (no error to deny motion to sever because confessions were interlocking).

Respondent has contended that this case should be decided in her favor because, in effect, a defendant's speedy trial rights should be placed above any rights of the State. According to Respondent, the reason for the speedy trial rule was "[p]ublic dissatisfaction with a system whereby defendants were brought to trial only when convenient for the prosecutor . . . ." (Respondent's Brief on the Merits at 6). Apparently, this is merely counsel's opinion since the statement is not supported with any authority. Instead of the reasons espoused by Respondent, it is the State's contention that the rationale supporting the reason for the rule was ably stated by the Second District in State v. Smail, 346 So.2d 641, 644 (Fla. 2d DCA 1977), in which it was recognized that the speedy trial rule should be interpreted in a manner consistent with reason and logic:

> The rule is designed to serve the laudable purpose of insuring that persons charged with crimes are not allowed to languish in jail or otherwise suffer the indignities of a pending prosecution for an unreasonable length of time. The rule was well written and endeavored to cover as many contingencies as could be reasonably contemplated.

> However, there was little experience under similar rules upon which to draw, and it was impossible for the drafters of this rule to foresee the myriad of factual circumstances which have since occurred. Should we decline to interpret the rule in the manner in which we have done, the state will have been thwarted in its efforts to provide the appellee with a speedy trial without any lack of diligence on its part. Such a result would violate the spirit, if not the letter, of the rule. (Emphasis added).

As in Smail, supra, if the First District's opinion is not reversed by this Court, the defendant would have been afforded a speedy trial windfall even though the State attempted fully to comply with the speedy trial rule. This is especially true in light of the State's reliance upon State v. Littlefield, 457 So.2d 558, 559 (Fla. 4th DCA 1984), which was discussed in the State's initial brief, and in which the Fourth District suggested that in cases like Respondent's, a trial court should decide on the facts of the individual case whether the State's interest in avoiding multiple trials should be given precedence over the defendant's procedural right to a speedy trial. Moreover, if these competing interests were not to be balanced, the State asks why was the portion of the speedy trial rule specifically allowing an extension to the State under circumstances like those in this case ever placed in the rule in the first place?

Counsel for Respondent has also objected to the State's reliance upon this Court's opinion in Sherrod v. Franza, 427 So.2d 161, 164 (Fla. 1983), which held that a trial court's

finding of fact that an exceptional circumstance existed must be accepted by a reviewing court. Counsel for Respondent has boldly suggested that the undersigned does not understand what is a factual determination as opposed to a mixed question of law and fact. The State respectfully suggests that it is counsel for Respondent who is ill-informed. See, e.g., the United States Supreme Court's opinions in Wainwright v. Witt, ___ U.S. ___, 36 Cr.L. 3116, 3120 (1985) (trial court's finding that a juror should be excused for cause is a question of fact entitled to a presumption of correctness); Patton v. Yount, ___ U.S. ___, 81 L.Ed.2d 847 (1984) (state court's determination that jurors were not biased by pretrial publicity is a question of fact entitled to a presumption of correctness); Wainwright v. Goode, ___ U.S. ___, 78 L.Ed.2d 187, 193 (1983) (whether a state court's finding that an exceptional circumstance to support a death penalty existed is a question of fact entitled to the presumption of correctness); Marshall v. Lonberger, ___ U.S. ___, 74 L.Ed.2d 646, 657 (1983) (a state court's finding that a guilty plea was voluntary is a question of fact which is entitled to the presumption of correctness), etc.

By denying the motion for discharge, the trial court found that an exceptional circumstance existed, i.e., that a delay was necessary to accommodate the co-defendant. Under Wainwright v. Goode, supra, this is a question of fact, which, under Sherrod v. Franza, supra, should have been accepted by the First District. Moreover, since the record

clearly supports such a finding, under Canakaris v. Canakaris, 382 So.2d 1197, 1203 (Fla. 1980), it simply cannot be said that the trial court abused its discretion.

Finally, counsel for Respondent has repeatedly emphasized that Respondent should not have been forced to demand a speedy trial in order to obtain the speedy trial which Rule 3.191 guarantees to all defendants. The State would agree that this is the usual situation, however, under the facts of this case, in light of the finding that a delay was necessary to accommodate the co-defendant, if Respondent really were interested in obtaining a speedy trial rather than a speedy trial discharge, she should have filed a demand.

In summary, the State respectfully urges the Court not to reach a decision which places a defendant's procedural speedy trial right absolutely above the right of the State to preserve judicial economy and promote efficiency by holding one trial. It is the State's position that the trial court is in the best position to determine from the facts and circumstances of each case whether a severance should be granted, which is what this Court has said all along in cases involving severances. There is no reason to reject this common sense rule just because a defendant has asked for a speedy trial (without demand)--especially in light of the fact that in capital cases this Court has repeatedly refused to apply such an absolute rule. Certainly, if a right to a severance is not absolute in a capital case in which a co-defendant is pointing out the guilt of the

defendant, a right to a severance should not be absolute in a case involving the theft of coins from newspaper vending machines.

CONCLUSION

Based on the facts and foregoing arguments, the State respectfully requests that the Court quash the decision of the First District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand to Michael E. Allen, Public Defender, Post Office Box 671, Tallahassee, Florida, 32302, on this 12th day of March, 1985.

Lawrence A. Kaden

LAWRENCE A. KADEN

OF COUNSEL