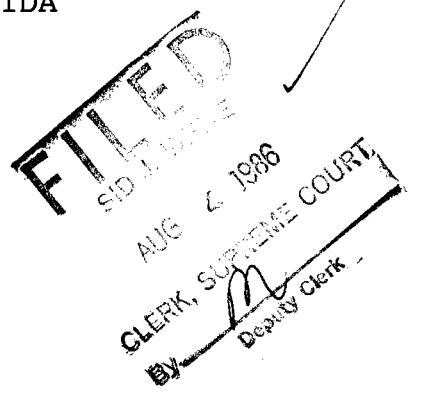
IN THE SUPREME COURT OF FLORIDA

CASE NO. 68,849



THE STATE OF FLORIDA,

Petitioner,

vs.

ROBERT PARVIS,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

BRIEF OF RESPONDENT ON THE MERITS

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TABLE OF CONTENTS

PAGE

INTRODUCTION.....1

STATEMENT OF THE CASE AND FACTS.....2

SUMMARY OF ARGUMENT.....3

ARGUMENT.....4

THE AMENDMENT TO THE SPEEDY TRIAL RULE, EFFECTIVE JANUARY 1, 1985, DOES NOT ALTER RETROSPECTIVELY THE SPEEDY TRIAL RIGHTS OF INDIVIDUALS TAKEN INTO CUSTODY PRIOR TO THAT DATE.

CONCLUSION.....20

CERTIFICATE OF SERVICE.....21

TABLE OF CITATIONS

PAGE

ARNOLD v. STATE
429 So.2d 819 (Fla. 2d DCA 1983).....4, 5, 11, 13, 16

BAMBRICK v. BAMBRICK
165 So.2d 449 (Fla. 2d DCA 1964).....9

BARKER v. WINGO
407 U.S. 514 (1972).....14

BAUMANN v. HARRISON
46 Cal.App.2d 73, 115 P.2d 523 (1941).....6, 11

BERMUDEZ v. FLORIDA POWER & LIGHT CO.
433 So.2d 565 (Fla. 3d DCA 1983),
review denied, 444 So.2d 416 (Fla. 1984).....19

BRYAN v. STATE
94 Fla. 909, 114 So. 773 (1927).....19

COMMONWEALTH v. BROWN
470 Pa. 274, 368 A.2d 626 (1976).....5, 18

COMMONWEALTH v. WOODS
461 Pa. 255, 336 A.2d 273 (Pa. 1975).....18

CULLEN v. PLANNING BOARD OF HADLEY
4 Mass.App. 842, 355 N.E.2d 490 (1976).....5, 11

DOBBERT v. FLORIDA
432 U.S. 282 (1977).....10, 13

ERVIN v. CAPITAL WEEKLY POST
97 So.2d 464 (Fla. 1957).....20

FORD v. WAINWRIGHT
451 So.2d 471 (Fla. 1984).....19

FULK v. STATE
417 So.2d 1121 (Fla. 5th DCA 1982).....4, 5, 16

GREENE v. UNITED STATES
376 U.S. 149 (1964).....5

GUE v. STATE
297 So.2d 135 (Fla. 2d DCA 1974).....14

HARRIS v. STATE
400 So.2d 819 (Fla. 5th DCA 1981).....16

HOLMES v. LEFFLER
411 So.2d 889 (Fla. 5th DCA 1982), review denied, 419 So.2d 1200 (Fla. 1982).....4, 5, 11, 13, 16

HOOD v. STATE
415 So.2d 133 (Fla. 5th DCA 1982).....4, 5, 13, 16

IN RE EMERGENCY AMENDMENTS TO RULES OF APPELLATE PROCEEDINGS
381 So.2d 1370 (Fla. 1980).....7

IN RE FLORIDA RULES OF CRIMINAL PROCEDURE
245 So.2d 37 (Fla. 1971).....15

IN RE FLORIDA RULES OF CRIMINAL PROCEDURE
251 So.2d 537 (Fla. 1971).....15

IN RE FLORIDA RULES OF CRIMINAL PROCEDURE
353 So.2d 552 (Fla. 1977).....12

IN RE FLORIDA RULES OF CRIMINAL PROCEDURE
408 So.2d 207 (Fla. 1981).....11

IN RE FLORIDA RULES OF JUVENILE PROCEDURE
393 So.2d 1077 (Fla. 1980).....12

IN RE PROPOSED FLORIDA APPELLATE RULES
351 So.2d 981 (Fla. 1977).....7

IN THE MATTER OF AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE
132 So.2d 6 (Fla. 1961).....8, 12

JACKSON v. GREEN
402 So.2d 553 (Fla. 1st DCA 1981).....5, 11, 13, 16

JOHNSON v. STATE
91 So.2d 185 (Fla. 1956).....20

JOHNSON v. STATE
No. 66,554 (Fla. Mar. 20, 1986).....19

JULIAN v. LEE
473 So.2d 736 (Fla. 5th DCA 1985).....9, 16

KOCSIS v. STATE
467 So.2d 384 (Fla. 5th DCA 1985), review denied, 475 So.2d 695 (Fla. 1985).....13

LUNSFORD v. STATE
426 So.2d 1178 (Fla. 5th DCA 1983).....13

McKNIGHT V. BLOOM
No.85-1229 (Fla.3d DCA Feb. 18, 1986).....4, 12, 16, 18

MOORE V. SPANGLER
401 Mich. 360, 258 N.W.2d 34 (1977).....5, 11

POYNTZ v. REYNOLDS
37 Fla. 533, 19 So. 649 (1896).....6, 11, 18

REINO v. STATE
352 So.2d 853 (Fla. 1977).....20

ROBINSON v. LASHER
368 So.2d 83 (Fla. 4th DCA 1979).....14

ROWE v. STATE
394 So.2d 1059 (Fla. 1st DCA 1981).....19, 20

SCOVILLE v. SCOVILLE
179 Conn. 277, 426 A.2d 271 (1979).....5, 11

SHERROD v. FRANZA
427 So.2d 161 (Fla. 1983).....9

SMITH v. STATE
80 Fla. 315, 85 So. 911 (1920).....20

STATE v. ALLAN
88 Wash.2d 394, 562 P.2d 632 (1977).....5, 11

STATE v. BOATMAN
329 So.2d 309 (Fla. 1976).....11

STATE v. FREEMAN
412 So.2d 452 (Fla. 5th DCA 1982).....4, 5, 16

STATE v. GREEN
473 So.2d 823 (Fla. 2d DCA 1985).....4, 5, 11, 12, 16

STATE v. JACKSON
478 So.2d 1054 (Fla. 1985).....10, 13

STATE v. JENKINS
389 So.2d 971 (Fla. 1980).....9, 10

STATE v. LADIGES
63 Wash.2d 230, 386 P.2d 416 (1963).....6, 11

STATE v. LAVAZZOLI
434 So.2d 321 (Fla. 1983).....10

STATE v. LLOPIS
257 So.2d 17 (Fla. 1971).....20

STATE v. PARVIS
487 So.2d 1181 (Fla. 3d DCA 1986).....4

STATE v. THADDIES
364 So.2d 819 (Fla. 4th DCA 1978).....14

STATE v. WILLIAMS
350 So.2d 81 (Fla. 1977).....10

STATE EX REL. KEEHN V. EVANS
No. 86-999 (Fla. 2d DCA July 9, 1986).....4, 18

STATE EX REL. LaPORTE v. COE
475 So.2d 732 (Fla. 2d DCA 1985).....4, 12, 16

STATE EX REL. QUIGLEY v. QUIGLEY
463 So.2d 224 (Fla. 1985).....20

STATE EX REL. SMITH v. NESBITT
355 So.2d 202 (Fla. 3d DCA 1978).....14

STATE EX REL. WILLIAMS v. COWART
281 So.2d 527 (Fla. 3d DCA 1973),
cert. denied, 286 So.2d 11 (Fla. 1973).....15

STATE EX REL. YOUNG v. MADISON CIRCUIT COURT
262 Ind. 130, 312 N.E.2d 74 (1974).....6, 18

STATE EX REL. UZELAC v. LAKE CRIMINAL COURT
247 Ind. 87, 212 N.E.2d 21 (1965).....6, 18

STEINER-LIFF IRON & METAL CO. v. WOODMONT
COUNTRY CLUB
480 S.W.2d 533 (Tenn. 1972).....6, 11

STEWART V. STATE
No. 67,315 (Fla. July 17, 1986).....15

STUART v. STATE
360 So.2d 406 (Fla. 1978).....9, 17

SYNDICATE PROPERTIES, INC. v. HOTEL FLORIDIAN CO.
94 Fla. 899, 114 So. 441 (1927).....19

THE FLORIDA BAR: IN RE RULES OF CRIMINAL PROCEDURE
389 So.2d 610 (Fla. 1980).....8, 13

THE FLORIDA BAR RE: AMENDMENTS TO RULES - CRIMINAL
PROCEDURE
462 So.2d 386 (Fla. 1984).....12

THE GOYAZ
281 F. 259 (S.D.N.Y. 1922),
aff'd., 3 F.2d 553 (2d Cir. 1924), cert. denied,
267 U.S. 594 (1925).....5

THE LOTTAWANNA
84 U.S. (21 Wall.) 354, 22 L.Ed. 654 (1875).....5

TUCKER v. STATE
357 So.2d 719 (Fla. 1978).....10

ULLERY v. GUTHRIE
148 N.C. 417, 62 S.E. 552 (1908).....6

UNITED STATES v. LOUD HAWK
___ U.S. ___, 106 S.Ct. 648 (1986).....14

UNITED STATES v. LOVASCO
431 U.S. 783 (1977).....14

UNITED STATES v. McDONALD
456 U.S. 1 (1982).....14

UNITED STATES v. MARION
404 U.S. 307 (1971).....14

WEED v. STATE
411 So.2d 863 (Fla. 1982).....14

OTHER AUTHORITIES

FLORIDA STATUTES

915.01 (Supp. 1970).....15
915.02 (Supp. 1970).....15
918.015 (1983).....9

FLORIDA RULES OF CRIMINAL PROCEDURE

1.191.....15
3.191(a)(1).....15, 17
3.191(i)(4) (1985).....17

CONSTITUTION OF THE STATE OF FLORIDA

Article I, Section 16.....9

CONSTITUTION OF THE UNITED STATES

Sixth Amendment.....9

20 Am.Jur.2d Courts § 85.....6
21 C.J.S. Courts §§ 176(c).....6
13 Fla.Jur.2d Courts and Judges § 176.....8

FLORIDA RULES OF CIVIL PROCEDURE (1961).....8

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ON PETITION FOR DISCRETIONARY REVIEW
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BRIEF OF RESPONDENT ON THE MERITS

INTRODUCTION

Petitioner, the State of Florida, was the prosecution in the trial court and the appellant in the District Court of Appeal of Florida, Third District. Respondent, Robert Parvis, was the appellant in the district court and the defendant in the trial court. In this brief, the Record on Appeal transmitted to this Court by the district court of appeal will be designated by the symbol "R.", and the transcripts of proceedings will be designated by the symbol "T.R." All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of the Case set forth in the Brief of Petitioner as an accurate statement of the procedural history of this case.

SUMMARY OF ARGUMENT

The court below held that the speedy trial rule in effect on the date on which the respondent was taken into custody is determinative of his right to a speedy trial. This holding is in conformity with the general tradition favoring prospective application, the decisional law of this state construing amendments to the speedy trial rule, and the focus of the speedy trial right itself.

Moreover, the history of this Court in implementing rules of procedure in general, and rules governing the speedy trial right in particular, compels the conclusion that the rule extant at the time an individual is taken into custody governs the speedy trial entitlement. The most basic rules of statutory construction only further underscore the propriety of this conclusion. Accordingly, the decision of the court below, which is in accordance with the decisions of every district court which has addressed this issue, should be approved.

ARGUMENT

THE AMENDMENT TO THE SPEEDY TRIAL RULE, EFFECTIVE JANUARY 1, 1985, DOES NOT ALTER RETROSPECTIVELY THE SPEEDY TRIAL RIGHTS OF INDIVIDUALS TAKEN INTO CUSTODY PRIOR TO THAT DATE.

The question before the Court is a narrow one: whether the speedy trial rule in effect on the date on which the defendant was taken into custody, and the speedy trial period accordingly commenced, is determinative of the defendant's speedy trial right. The District Courts of Appeal of Florida have been uniform in their answer to this query; each court confronted with the issue has responded in the affirmative. State v. Parvis, 487 So.2d 1181 (Fla. 3d DCA 1986) (R. 15); McKnight v. Bloom, No. 85-1229 (Fla. 3d DCA Feb. 18, 1986); State ex rel. Keehn v. Evans, No. 86-999 (Fla. 2d DCA July 9, 1986)[1]; State ex rel. LaPorte v. Coe, 475 So.2d 732 (Fla. 2d DCA 1985); State v. Green, 473 So.2d 823 (Fla. 2d DCA 1985); Arnold v. State, 429 So.2d 819, 820 (Fla. 2d DCA 1983); Fulk v. State, 417 So.2d 1121, 1123 n.1 (Fla. 5th DCA 1982); Hood v. State, 415 So.2d 133, 134 n.4 (Fla. 5th DCA 1982); State v. Freeman, 412 So.2d 452, 453 n.2 (Fla. 5th DCA 1982); Holmes v. Leffler, 411 So.2d 889, 891 (Fla. 5th DCA 1982),

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1 Apparently, the uniformity of agreement in the district courts is not matched in the different offices of the Attorney General. In State ex rel. Keehn v. Evans, supra, the speedy trial period commenced April 21, 1984, and the defendant moved for discharge in 1986. Before addressing the speedy trial issue, the Court noted that "[a]ll parties agree that the rules in effect prior to the 1985 amendment of Florida Rule of Criminal Procedure 3.191 apply." The state's position in the instant case is thus diametrically opposed to the position taken by the state in Evans.

review denied, 419 So.2d 1200 (Fla. 1982); Jackson v. Green, 402 So.2d 553, 554 (Fla. 1st DCA 1981).

The district courts have premised this holding upon 1) the general proposition that rules and statutes operate prospectively unless the contrary is indicated, State v. Green, 473 So.2d at 824; Arnold v. State, 429 So.2d at 820; Holmes v. Leffler, 411 So.2d at 891-92; Jackson v. Green, 402 So.2d at 554; 2) the language of implementation utilized by this Court in adopting the pertinent rules, State v. Green, 473 So.2d at 824; Arnold v. State, 429 So.2d at 820; Holmes v. Leffler, 411 So.2d at 892; Jackson v. Green, 402 So.2d at 554; and 3) the determination of the rule in effect at the time of the "operative event" within the meaning of the speedy trial rule. State v. Green, 473 So.2d at 824; Arnold v. State, 429 So.2d at 820; Fulk v. State, 417 So.2d at 1123 n.1; Hood v. State, 415 So.2d at 134 n.4; State v. Freeman, 412 So.2d at 453 n.2; Holmes v. Leffler, 411 So.2d at 891; Jackson v. Green, 402 So.2d at 554. The analytical framework for these decisions is rooted in the most basic tenets of American jurisprudence.

The starting point of the analysis is the long-prevailing rule of construction in favor of prospectiveness. This preference for prospective application has been underscored in a plethora of decisions from the various American courts over the last century. E.g., Greene v. United States, 376 U.S. 149, 160 (1964); The Lottawanna, 84 U.S. (21 Wall.) 354, 22 L.Ed. 654, 663 (1875); The Goyaz, 281 F. 259, 261 (S.D.N.Y. 1922), aff'd., 3 F.2d 553 (2d Cir. 1924), cert. denied, 267 U.S. 594 (1925);

Scoville v. Scoville, 179 Conn. 277, 426 A.2d 271, 272 n.1 (1979); Moore v. Spangler, 401 Mich. 360, 258 N.W.2d 34 (1977); State v. Allan, 88 Wash.2d 394, 562 P.2d 632, 634 (1977) (en banc); Cullen v. Planning Board of Hadley, 4 Mass.App. 842, 355 N.E.2d 490, 491 (1976); Commonwealth v. Brown, 470 Pa. 274, 368 A.2d 626, 628-29 (1976); State ex rel. Young v. Madison Circuit Court, 262 Ind. 130, 312 N.E.2d 74, 75 (1974); Steiner-Liff Iron & Metal Co. v. Woodmont Country Club, 480 S.W.2d 533, 540 (Tenn. 1972); State ex rel. Uzelac v. Lake Criminal Court, 247 Ind. 87, 212 N.E.2d 21, 22-24 (1965); State v. Ladiges, 63 Wash.2d 230, 386 P.2d 416, 419 (1963); Baumann v. Harrison, 46 Cal.App.2d 73, 115 P.2d 523, 528 (1941); Ullery v. Guthrie, 148 N.C. 417, 62 S.E. 552 (1908); see 20 Am.Jur.2d Courts § 85; 21 C.J.S. Courts §§ 176(c), 179(a). The premise for this consistent rule is cogently stated in the early decision of Ullery v. Guthrie, 62 S.E. at 552:

> It is indispensable, in all courts, that there should be some rules of practice, else there will be hopeless disorder and confusion. It is, for the same reason, not so important what the rules are as that the rules, whatever they may be, shall be impartially applied to all, and that changes shall be prospective by amendment to the rule, and not retroactive, by granting exemption to some which has been denied to others.

The Florida courts have taken no exception to this rule. Indeed, the tradition of prospective application can be traced to the 1896 decision in Poyntz v. Reynolds, 37 Fla. 533, 19 So. 649 (1896). In Poyntz, the Court, in ruling upon motions to dismiss by the appellee, considered the applicability of three appellate rules. Two of the rules, one requiring service by the appellant

of a copy of the transcript of the record upon the appellee and one requiring the filing of assignments of error with the clerk of the lower court at the time of applying for the transcript, were held inapplicable to the cause since the appeal had been initiated, and the transcript and record filed, prior to the explicit operative date of the rules. The third rule, which required service of a copy of the abstract or statement of the record upon the appellee, was held to apply to the appeal, since the rule specifically provided that "its provisions shall apply to all civil causes made returnable to the January term, 1896, of this court", 19 So. at 650, and the cause was returnable in that term. Ibid.[2] The Court thus held the first two rules prospective only and found them inapplicable, but found the third rule controlling due to the express terms of the implementing language.

This tradition favoring prospectiveness has been preserved throughout the history of this Court in the adoption of the various rules; although not required to do so, the Court has typically accorded its rules prospective application, with the "operative event" generally ascribed as the commencement of the legal proceeding. E.g., In re Emergency Amendments to Rules of Appellate Procedure, 381 So.2d 1370, 1371 (Fla. 1980); In re Proposed Florida Appellate Rules, 351 So.2d 981 (Fla. 1977). Where exception to this principle has been intended, this Court has been explicit regarding its intent of retrospective applica-

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2 The brief of Petitioner erroneously states that this latter rule was held applicable "to all pending cases." (Brief of Petitioner at 10).

tion. E.g., The Florida Bar: In re Rules of Criminal Procedure, 389 So.2d 610 (Fla. 1980) (Rules 3.210-3.219, adopted July 18, 1980, expressly made effective "nunc pro tunc, on July 1, 1980."). And so well-settled is this presumption of prospective effect in current Florida law, that Florida Jurisprudence provides as follows:

> Unless expressly provided, court rules generally have no retroactive effect so as to apply to questions arising prior to the effective date of their adoption.
>
> Where the application of amendments to a rule of procedure to pending cases would result in the deprivation of substantial rights previously acquired by litigants, such amendments, promulgated by Supreme Court order to become effective on a specified date, would be applicable only to cases commenced on or after such date.

13 Fla.Jur.2d Courts and Judges § 176 (footnotes omitted).

Since all rules of this Court are procedural in nature, the focus for construction purposes transcends the demarcation between substantive and procedural laws. This Court has made clear that the governing precept is that amendments to its rules will not be construed in denigration of substantial rights. The Court's experience with the adoption of the 1961 amendments to the Florida Rules of Civil Procedure is illustrative. In accordance with the principle that rules are prospective unless otherwise indicated, the Court initially adopted the amendments with the express proviso that they "shall become effective on the first day of October, 1961, and shall be applicable to all cases then pending, as well as those instituted thereafter." In the Matter of Amendments to the Florida Rules of Civil Procedure, 132

So.2d 6, 7 (Fla. 1961). The Court, however, subsequently reconsidered the propriety of a retroactive effectuation, and instead rendered the rules operative prospectively only, explaining "that the applicability of said amendments to pending cases could result in a deprivation of substantial rights previously acquired by litigants." Ibid; see also Bambrick v. Bambrick, 165 So.2d 449, 457 n.4 (Fla. 2d DCA 1964).

The right to a speedy trial of one accused in a criminal prosecution is specifically vouchsafed by Section 918.015, Florida Statutes (1983), as well as the Sixth Amendment to the Constitution of the United States and Article I, Section 16 of the Constitution of the State of Florida. This Court has recognized the significance of the procedural speedy trial rule to ensure "the effective implementation of a defendant's constitutional right to a speedy trial." State v. Jenkins, 389 So.2d 971, 974 (Fla. 1980); accord, Sherrod v. Franza, 427 So.2d 161, 163 (Fla. 1983); Stuart v. State, 360 So.2d 406, 413 (Fla. 1978).[3] It is simply indisputable that the speedy trial rule

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3 The Brief of Petitioner extensively quotes from the decision in Julian v. Lee, 473 So.2d 736 (Fla. 5th DCA 1985), in which the court construed an amendment to the juvenile rule governing a "speedy trial" in dependency proceedings to operate retrospectively. (Brief of Petitioner at 7-8). Totally ignored by petitioner is the distinction between the nature of the entitlement in a dependency case and that at issue in the present case. Equally ignored by petitioner is the Julian v. Lee decision on motion for rehearing, 473 So.2d at 739, wherein the court expressly drew the obvious distinction, in reaffirming the contrary construction accorded by that court to the adult speedy trial rule governing this case:

> Petitioners urge us to reconsider our original opinion in this case because in their view it

(Cont'd)

sufficiently relates to substantial rights, as to invoke the general proposition that the rule in effect at the time of the operative event governs the speedy trial entitlement under Florida law, unless the contrary is expressly indicated. See State v. Lavazzoli, 434 So.2d 321, 323 (Fla. 1983).

Indeed, this rule of construction, that rules are to apply prospectively, with the dichotomy drawn from the effective date of the rules, has been explicitly relied upon by this Court and the district courts in construing the various amendments to the speedy trial rule.[4] State v. Jenkins, 389 So.2d at 975; Tucker v. State, 357 So.2d 719, 721 n.9 (Fla. 1978); State v. Williams,

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> is in conflict with Holmes v. Leffler, 411 So.2d 889 (Fla. 5th DCA 1982). We find no conflict, but believe some clarification is necessary.
>
> Holmes v. Leffler involved the interpretation of Florida Rule of Criminal Procedure 3.191, the speedy trial rule, in a criminal proceeding. In criminal cases, the speedy trial rule provides procedures through which the constitutional right to a speedy trial is enforced. A juvenile dependency hearing is a civil proceeding. The constitutional right to a speedy trial in criminal cases has no application to civil proceedings.
>
> As we explained in our original opinion, no statute requires that an adjudicatory hearing in a dependency (civil) proceeding take place within a specified time.

Ibid. (citations omitted, emphasis in original); see also State v. Boatman, 329 So.2d 309, 312 (Fla. 1976).

4 Contrary to petitioner's contention, Brief of Petitioner at 11-12, the decisions in Dobbert v. Florida, 432 U.S. 282 (1977) and State v. Jackson, 478 So.2d 1054 (Fla. 1985), are readily harmonized with the general rule apposite to the case at bar. In both cases, the operative event was the sentencing proceeding. In both cases, the courts applied the law as extant at the time of the sentencing proceedings.

350 So.2d 81, 83 (Fla. 1977); State v. Boatman, 329 So.2d 309, 311-12 (Fla. 1976); State v. Green, 473 So.2d at 824; Arnold v. State, 429 So.2d at 820; Holmes v. Leffler, 411 So.2d at 891-92; Jackson v. Green, 402 So.2d at 534. In Tucker v. State, 357 So.2d at 721 n.9, this Court, citing Poyntz v. Reynolds, 37 Fla. 533, 19 So. 649 (1896), with approval, held the pertinent amendments to the speedy trial rule prospective only, since "[u]nless otherwise specifically provided, our court rules are prospective only in effect."[5]

It is to the language of effectuation then, that the focus must next turn. The 1985 amendment to the speedy trial rule was adopted with the following provision:

> The following amendments or additions to the Florida Rules of Criminal Procedure are hereby adopted and shall govern all proceedings within their scope after 12:01 A.M. January 1, 1985.[6] These rules shall supersede all

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5 The Brief of Petitioner portrays the decision in Poyntz v. Reynolds as an antiquated anomaly in Florida law, long since overruled. (Brief of Petitioner at 10-12). This portrayal is patently refuted by the precedent of this Court as well as that of the various district courts. It is additionally apparent that the Poyntz decision is in precise accord with the weight of authority in this country. See, e.g., Scoville v. Scoville, 179 Conn. 277, 426 A.2d 271, 272 n.1 (1979); Moore v. Spangler, 401 Mich. 360, 258 N.W.2d 34 (Mich. 1977); State v. Allan, 88 Wash.2d 394, 562 P.2d 632, 634 (1977) (en banc), Cullen v. Planning Board of Hadley, 4 Mass.App. 842, 355 N.E.2d 490, 491 (1976); Steiner-Liff Iron & Metal Co. v. Woodmont Country Club, 480 S.W.2d 533, 540 (Tenn. 1972); State v. Ladiges, 63 Wash.2d 230, 386 P.2d 416, 419 (1963); Baumann v. Harrison, 46 Cal.App.2d 73, 115 P.2d 523, 528 (1941).

6 This language, that the amendments "shall govern all proceedings within their scope" on a date specified, is that traditionally used in the adoption of the various court rules of procedure. E.g., In re Florida Rules of Criminal Procedure, 408 (Cont'd)

conflicting rules and statutes.

The Florida Bar Re: Amendments to Rules - Criminal Procedure, 462 So.2d 386 (Fla. 1984). It is manifest that the language does not incorporate a provision calling for a retroactive application.[7] The decision of the Second District in State v. Green, 473 So.2d at 824, upon which the Third District relied in McKnight v. Bloom, supra, thus correctly construed the implementing language of the 1985 amendments as requiring a prospective application. Accord, State ex rel. LaPorte v. Coe, 475 So.2d at 732-33.

Moreover, a review of the Court's choice of language in implementing the previous speedy trial rule amendment in 1981 confirms the propriety of the decisions of the district courts that the current amendment to the speedy trial rule was intended to operate prospectively. In 1980, the Court, in amending a multitude of criminal rules, used the same language presently at issue in effecting, inter alia, the amendment to the speedy trial rule, but rendered the rules relating to mental competency, in contrast, effective nunc pro tunc:

> Rules 3.210-3.219, relating to mental competency of a defendant, argument HB 426 which became law effective July 1, 1980. These Rules shall take effect, nunc pro tunc, on July 1, 1980. All other rules shall take effect on January 1, 1981 at 12:01 A.M., and

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So.2d 207 (Fla. 1981); In re Florida Rules of Juvenile Procedure, 393 So.2d 1077 (Fla. 1980); In re Florida Rules of Criminal Procedure, 353 So.2d 552 (Fla. 1977).

7 The language is thus to be contrasted with the language originally utilized in the adoption of the 1961 Florida Rules of Civil Procedure previously discussed in this brief at pages 8-9. In the Matter of Amendments to the Florida Rules of Civil Procedure, 132 So.2d at 6.

govern all proceedings within their scope.

The Florida Bar: In re Rules of Criminal Procedure, 389 So.2d 610 (Fla. 1980). The Court thus adhered to the principle that a retroactive application, if intended, must be expressly so indicated. Manifestly, the speedy trial amendment in 1980 was not intended to so operate. See, e. g., Arnold v. State, 429 So.2d at 820; Jackson v. Green, 402 So.2d at 554. The inexorable conclusion is that the speedy trial amendment here at issue was equally never intended to alter retrospectively the speedy trial rights effected by the prior rule.

Since the speedy trial rule, by definition, sets forth an extended period of time within which an individual must be either afforded a trial or discharged if no trial is duly commenced, the temporal question of prospectiveness compels closer scrutiny. The district courts have accordingly spoken of the need to identify the "operative event" within the meaning of the rule. E.g., Hood v. State, 415 So.2d at 134 n.4; Holmes v. Leffler, 411 So.2d at 891; Jackson v. Green, 402 So.2d at 554.[8]

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8 This analysis is further appropriate since the language of effectuation of the rules refers to "proceedings within their scope." This general language is easily applied to other 1985 amendments to the rules adopted in conjunction with the speedy trial amendment, for example, the amendment to Rule 3.390 governing jury instructions, where the pertinent "proceeding" is quite obviously the trial. See Kocsis v. State, 467 So.2d 384 (Fla. 5th DCA 1985), review denied, 475 So.2d 695 (Fla. 1985); Lunsford v. State, 426 So.2d 1178 (Fla. 5th DCA 1983). With a speedy trial rule, however, a precise date or "operative event" must be determined to ascertain the controlling rule. Cf. Dobbert v. Florida, 432 U.S. 282 (1977); State v. Jackson, 478 So.2d 1054 (Fla. 1985) (sentencing proceeding is operative event from which governing procedure can be gauged).

The resolution of which pre-trial event is the "operative event" for speedy trial purposes lies in the nature of the Sixth Amendment right itself. As the Supreme Court has repeatedly acclaimed, the focus is, and must continue to be, on the date of either arrest or charge. United States v. Loud Hawk, ___ U.S. _____, 106 S.Ct. 648, 653-54 (1986); United States v. MacDonald, 456 U.S. 1, 8 (1982); United States v. Lovasco, 431 U.S. 783, 791-92 (1977); Barker v. Wingo, 407 U.S. 514, 520 (1972); United States v. Marion, 404 U.S. 307, 312-22 (1971). A lengthy delay of trial "may impair a defendant's ability to present an effective defense", United States v. Marion, 404 U.S. at 320, yet, most significantly, it is the nature of an arrest which "may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends." Ibid. Accordingly, "it is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge" that activates the protections of the Sixth Amendment guarantee. Ibid.

The State of Florida, in implementing its rules to safeguard the speedy trial rights of its citizens, has identically identified the date of charge or arrest as the pivotal point for determining the speedy trial period. See Weed v. State, 411 So.2d 863, 865 (Fla. 1982); Robinson v. Lasher, 368 So.2d 83 (Fla. 4th DCA 1979); State v. Thaddies, 364 So.2d 819, 820 (Fla. 4th DCA 1978); State ex rel. Smith v. Nesbitt, 355 So.2d 202, 204-05 (Fla. 3d DCA 1978); Gue v. State, 297 So.2d 135 (Fla. 2d

DCA 1974); State ex rel. Williams v. Cowart, 281 So.2d 527, 529 (Fla. 3d DCA 1973), cert. denied, 286 So.2d 11 (Fla. 1973). Indeed, during the transition from the statute codifying the speedy trial right, §§ 915.01, 915.02, Fla.Stat. (Supp. 1970), to the speedy trial rule of criminal procedure, Fla.R.Crim.P. 1.191, it was the date on which the accused "was taken into custody" which consistently controlled on the issue of the governing speedy trial period. In re Florida Rules of Criminal Procedure, 251 So.2d 537 (Fla. 1971); In re Florida Rules of Criminal Procedure, 245 So.2d 37 (Fla. 1971).

The overriding importance of the date of the commencement of the speedy trial period in determining the speedy trial period is vividly demonstrated by this Court's recent decision in Stewart v. State, No. 67,315 (Fla. July 17, 1986). Stewart was originally charged with a felony and approximately 157 days after the commencement of the speedy trial period on that charge he requested a continuance. The state subsequently nolle prossed the felony information and filed a new information charging Stewart with the misdemeanor offense of petit theft. Stewart then moved for discharge, claiming that because he was now charged with a misdemeanor, the speedy trial period had expired on the 90th day following his arrest. This Court rejected Stewart's contention, finding that the controlling speedy trial time period was not the 90-day period for the misdemeanor with which Stewart was charged at the time of his motion to discharge, but rather the 180-day period for the felony with which Stewart was charged at the commencement of the speedy trial period. And

because Stewart had requested a continuance during that 180-day period, this Court held that Stewart was not entitled to discharge.

Just as the charge filed against Stewart at the time of the commencement of the speedy trial period was deemed controlling by this Court in determining the applicable speedy trial period, so too the district courts which have considered the question of the operative event in assessing the applicability of amendments to the speedy trial rule have likewise adverted to the triggering date of arrest or charge as determinative of the speedy trial entitlement. McKnight v. Bloom, No. 85-1229 (Fla. 3d DCA Feb. 18, 1986); State ex rel. LaPorte v. Coe, 475 So.2d at 732-33; State v. Green, 471 So.2d at 824; Arnold v. State, 429 So.2d at 820; Fulk v. State, 417 So.2d at 1124 n.1; State v. Freeman, 412 So.2d at 453 n.2; Holmes v. Leffler, 411 So.2d at 891; Jackson v. Green, 402 So.2d at 554.[9]

Rule 3.191(a)(1) of the Florida Rules of Criminal Procedure, as extant at the time the respondent was "taken into custody"

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9 The only exception is Harris v. State, 400 So.2d 819 (Fla. 5th DCA 1981), in which the Fifth District deviated from its prior precedent and found that the defendant's failure to appear at arraignment was the operative event controlled by the "unavailability" rule in effect at the time. In Hood v. State, 415 So.2d at 134 n.4, the Fifth District noted the tension between Harris, and its prior decision in Holmes v. Leffler, 411 So.2d at 891, which had held custody to be determinative of speedy trial rights. The Fifth District has since reaffirmed its holding in Holmes, of course, in the decision on motion for rehearing in Julian v. Lee, 473 So.2d at 739, as discussed in this brief at footnote 3.

within the meaning of the rule,[10] provides in pertinent part:

> Except as otherwise provided by this Rule, . . . every person charged with a crime by indictment or information shall without demand be brought to trial within . . . 180 days if the crime charged be a felony, and if not brought to trial within such time shall upon motion filed with the court having jurisdiction and served upon the prosecuting attorney be forever discharged from the crime; provided, the court before granting such motion, shall make the required inquiry under (d)(3). The time periods established by this section shall commence when such person is taken into custody as defined under (a)(4). A person charged with a crime is entitled to the benefits of this Rule whether such person is in custody in a jail or correctional institution of this State or a political subdivision thereof or is at liberty on bail or recognizance.

It is undisputed that the 180-day period commenced in August 1984 when respondent was "taken into custody", and that over 180 days thereafter elapsed before respondent filed his motion to discharge,[11] without any intervening delays or continuances attributable to him. (R. 10-11; T.R. 2, 6). The district court thus

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10 The term "custody" is defined in subsection (a)(4) of the rule:

> For purposes of this Rule, a person is taken into custody, (i) when the person is arrested as a result of the conduct or criminal episode which gave rise to the crime charged, or (ii) when the person is served with a notice to appear in lieu of physical arrest.

11 Under the rule in effect when respondent was taken into custody, the motion for discharge could only be made "when the movant is entitled to one - after the period has run." Stuart v. State, 360 So.2d at 413. The 1985 amendment, in contrast, permits the filing of the motion for discharge on the 175th day, with the speedy trial period expiring on the 190th day. Rule 3.191(i)(4), Fla.R.Crim.P. (1985).

correctly concluded that respondent was entitled to discharge under Rule 3.191(a)(1) as in effect at the time of his arrest. (R. 15).[12]

Petitioner has faulted the respondent, in his anticipated pleadings before this Court, and the Third District Court of Appeal, in its decision in McKnight v. Bloom, supra, for "misplaced" reliance upon the prior precedent of the First, Second and Fifth District Courts of Appeal.[13] (Brief of Petitioner at 9-12). According to petitioner, the various district courts have adhered to an erroneous rule of statutory construction, presuming prospective application unless contrarily indicated, mistakenly engendered by the syllabus of the Court in Poyntz v. Reynolds, 19 So. at 649. (Brief of Petitioner at 10-11). It has been demonstrated that the rule of construction derived from Poyntz is fundamental to American law and adhered to by this Court and

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12 The holding of the court below is in accordance with not only the precedent of this state, but also that of other states which has consistently construed speedy trial court rules and amendments thereto to be prospective only, with the rules in effect at the time of the operative event controlling. Commonwealth v. Brown, 470 Pa. 274, 368 A.2d 626, 629 (1976); Commonwealth v. Woods, 461 Pa. 255, 336 A.2d 273, 274 (Pa. 1975); State ex rel. Young v. Madison Circuit Court, 262 Ind. 130, 312 N.E.2d 74, 75-76 (1974); State ex rel. Uzelac v. Lake Criminal Court, 247 Ind. 87, 212 N.E.2d 21, 22-24 (1965). While "custody" is generally the controlling event, ibid., where an appellate order triggers a new speedy trial period, the date of order controls as the operative event. E.g., Commonwealth v. Woods, 336 A.2d at 274.

13 Petitioner presumably also finds fault with the same "misplaced" reliance upon such precedent by the Office of the Attorney General in State ex rel. Keehn v. Evans, supra. See n. 1, supra.

courts throughout the country.

But additionally, the existence of this prior wealth of Florida precedent is significant in terms of independent principles of statutory construction, which principles are equal polestars for interpreting the rules of court. Johnson v. State, No. 66,554 (Fla. Mar. 20, 1986); Syndicate Properties, Inc. v. Hotel Floridian Co., 94 Fla. 899, 114 So. 441, 443 (1927); Bryan v. State, 94 Fla. 909, 114 So. 773, 775 (1927); Rowe v. State, 394 So.2d 1059 (Fla. 1st DCA 1981). The language implementing the 1985 amendments to the rule not only fails to express a retroactive intent, but furthermore, mirrors that employed in implementing the prospective amendments in 1981.[14] That the 1981 amendment to the speedy trial rule has been repeatedly construed by the district courts to operate prospectively only, with the rule in effect at the time of custody governing the speedy trial rights of the accused, thus only further elucidates that the 1985 amendments were not intended to control cases where the "taking into custody" preceded the effective date of the revisions.

It is well established that, in interpreting a rule or statute, there is a presumption that the drafter was "acquainted with judicial decisions on the subject concerning which it subsequently enacts a statute." Ford v. Wainwright, 451 So.2d 471, 475 (Fla. 1984), citing Bermudez v. Florida Power & Light Co., 433 So.2d 565, 567 (Fla. 3d DCA 1983), review denied, 444

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14 As discussed previously, the 1981 amendments also included amendments to the rules governing mental competency which were explicitly effected to operate nunc pro tunc.

So.2d 416 (Fla. 1984). It further must be presumed that a rule or statute is promulgated with cognizance of judicial decisions construing like provisions. State ex rel. Quigley v. Quigley, 463 So.2d 224, 226 (Fla. 1985); Reino v. State, 352 So.2d 853, 860 (Fla. 1977); Johnson v. State, 91 So.2d 185, 187 (Fla. 1956); Rowe v. State, 394 So.2d at 1060. Statutory language acquires a fixed and definite meaning over time, Ervin v. Capital Weekly Post, 97 So.2d 464, 469 (Fla. 1957), Smith v. State, 80 Fla. 315, 85 So. 911, 912 (1920), and where language previously employed is substantially altered, it must be presumed that the departure from past practice was intended to effect a change. Rowe v. State, 394 So.2d at 1060. Contrariwise, and most significantly, where language previously employed is again chosen in identical or substantial part, the courts construe the language as intending the same result as previously effected. State ex rel. Quigley v. Quigley, 463 So.2d at 226; Reino v. State, 352 So.2d at 861-62; Johnson v. State, 91 So.2d at 187.

In this case, the adherence to the language previously utilized in adopting the predecessor amendment to the speedy trial rule is thus significant in light of the prior constructions of that language. And, ultimately, should any doubt remain, that doubt unquestionably must be resolved in favor of the accused. Reino v. State, 352 So.2d at 860; State v. Llopis, 257 So.2d 17 (Fla. 1971).

The key to resolution of respondent's right to speedy trial therefore remains the date on which he was taken into custody. Since this operative event transpired long before the 1985 speedy

trial revision was implemented, respondent's right to a speedy trial under Rule 3.191(a)(1), as in effect at the critical point of custody, was most assuredly abridged. The decision of the court below, which is in complete harmony with the focus of the speedy trial right, the history of this Court in effectuating that right, and the precedent of the courts of this state and throughout the country, should be approved.

CONCLUSION

Based upon the foregoing, the respondent requests that this Court approve the decision of the District Court of Appeal of Florida, Third District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to the Office of the Attorney General, 401 Northwest 2nd Avenue, Miami, Florida, this 31st day of July, 1986.

HOWARD K. BLUMBERG
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