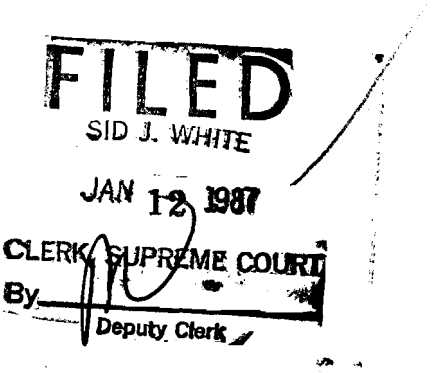
IN THE SUPREME COURT OF FLORIDA

CASE NO. 69,744



IQBAL ZABRANI,

Petitioner,

vs.

THE HONORABLE EDWARD D. COWART,
Judge of the Eleventh Judicial Circuit
in and for Dade County, Florida,

Respondent.

BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

Petitioner, IQBAL ZABRANI, was the petitioner in the Third District Court and the defendant in the trial court. Respondent, the Honorable Edward D. Cowart, was the respondent in the prohibition proceedings in the Third District, and the trial judge in the Eleventh Judicial Circuit of Florida, in and for Dade County. In this brief, the parties will be referred to as they stand before this Court. The Record on Appeal transmitted to this Court by the Third District will be referred to by the name of the particular pleading. All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

The following factual recitation is derived entirely from the pleadings and supporting appendices filed in the Third District in the prohibition proceedings. Unfortunately, the "record" in the Third District does not consist of consecutively numbered pages. Therefore, supporting references for the following factual recitation will be to the particular pleading, exhibit number, or transcript filed in the Third District.

Petitioner was taken into custody on July 11, 1984, on the charge of first degree murder. See PETITION FOR WRIT OF PROHIBITION (hereinafter PWP), paragraph 3; and see APPENDIX TO RESPONSE OF INTERVENOR at 5-17. Subsequently, on July 16, 1984, after the prosecution failed to proceed against the petitioner, the respondent trial judge ordered that the charge against the petitioner be dismissed and that he be released. PWP paragraph 3; APPENDIX TO RESPONSE OF INTERVENOR at pages 17-27.

Much later, on February 20, 1985, a warrant issued for the petitioner's arrest, and on April 6, 1985, the petitioner was arrested pursuant to that warrant. PWP, paragraph 6; Exhibit 3 to PWP (ORDER DENYING MOTION FOR DISCHARGE). The petitioner was indicted on April 16, 1985, for first degree murder. PWP, paragraph 6. On April 18, 1985, petitioner filed his first Motion for Discharge. See Exhibit 1, APPENDIX to PWP.

On April 24, 1985, a hearing was held before the respondent trial judge on petitioner's discharge motion. See APPENDIX TO RESPONSE OF INTERVENOR at 38-170. Thereafter, on April 26, 1985, the respondent trial judge made oral findings of fact which he subsequently reduced to a written ORDER DENYING MOTION FOR DISCHARGE. Exhibit 3 to APPENDIX to PWP. In said ORDER, the respondent found that the petitioner was taken into custody on July 11, 1984, and that the speedy trial period "would have expired on January 6, 1985." Id. Morever, the respondent found that when respondent ordered the petitioner's release from the first degree murder charge on July 16, 1984, petitioner "was under no obligation to appear and was not thereafter unavailable for trial." Id.

However, the respondent denied petitioner's initial motion for discharge expressly ruling that the 1985 amendment to the speedy trial rule, Rule 3.191(i)(4), Fla.R.Crim.P. (1985) applied and that the remedy under the amended rule did not provide for discharge. Id.

Therefore, on April 26, 1985, immediately upon denying petitioner's discharge motion, the respondent trial judge set a date for trial on the first degree murder charge for April 29,

1985, the following Monday. See Exhibit 2 to APPENDIX to PWP. In the words of the Third District in the decision sought to be reviewed herein, "obviously, [petitioner] was not then prepared to face trial", and petitioner thus "specifically agreed to a waiver of the ten day trial period. . .". See slip opinion at page 4 n.4.

Thereafter, the petitioner filed in the Third District a Petition for Writ of Prohibition which, after an initial order to show cause was issued, resulted on August 6, 1985, in an order vacating the previously issued rule to show cause and denying prohibition without written opinion. See Exhibit 5 to APPENDIX to PWP.

Subsequenlty, after an intervening appellate court decision from the Second District in State ex rel. LaPorte v. Coe, 475 So.2d 732 (Fla. 2d DCA 1985), see also State v. Green, 473 So.2d 823 (Fla. 2d DCA 1985), the petitioner filed a MOTION TO RENEW MOTION FOR DISCHARGE. See Exhibit 6 to APPENDIX to PWP. On December 5, 1985, the respondent trial judge denied defendant's MOTION TO RENEW MOTION FOR DISCHARGE. See Exhibit 7 to APPENDIX to PWP.

On February 18, 1986, in an unrelated case, the Third District issued its decision in McKnight v. Bloom, 490 So.2d 92 (Fla. 3d DCA 1986), expressly holding that the 1985 amendment to the speedy trial rule is inapplicable to a case where the speedy trial period commenced in 1984, prior to the effective date of the amendment.

Pursuant to McKnight, petitioner filed yet another pleading, entitled, SECOND RENEWED MOTION TO DISCHARGE AND

MEMORANDUM OF LAW. See Exhibit 11 to APPENDIX to PWP. In addition to his reliance upon McKnight, petitioner cited to the respondent several other orders of the Circuit Court in Dade County holding that the 1985 amendment is inapplicable to cases where the speedy trial period commenced prior to the January 1, 1985, effective date of the amendment. See Exhibits 8 and 9 to APPENDIX to PWP. One such order was issued in the case of State v. Parvis, 487 So.2d 1181 (Fla. 3d DCA 1986), review pending, Case No. 68, 849.

Once again, respondent trial judge denied petitioner's discharge motion. See Exhibits 12 and 13 to APPENDIX to PWP.

Thereafter, on or about April 11, 1986, petitioner filed the instant Petition for Writ of Prohibition in the Third District. See PWP. After ordering the respondent and the State of Florida, as intervenor, to respond, and after oral argument before a three judge panel, the Third District, on November 25, 1986, issued the sua sponte en banc decision sought to be reviewed herein in which the Third District expressly overruled its recent decision in McKnight v. Bloom, supra, and several other decisions following McKnight, and held that the 1985 amendment to Rule 3.191 applied to the petitioner's case and that the "operative event" was not petitioner's July 11, 1984, arrest but rather, his April, 1985 discharge motion. See slip opinion at 4. In so ruling, the en banc Third District expressly certified that its decision in the case at bar is in direct conflict with State v. Green, 473 So.2d 823 (Fla. 2d DCA 1985), and that it involves the following question of great public importance:

> Whether Fla.R.Crim.P. 3.191(i)(4) is applicable to a criminal case wherein

> the defendant is taken into custody prior to January 1, 1985, 12:01 A.M., the effective date of the above-stated rule. Slip opinion at 4.

Accordingly, petitioner filed in this Court his NOTICE TO INVOKE DISCRETIONARY REVIEW, and on December 15, 1986, this Court issued its BRIEFING SCHEDULE.

QUESTION PRESENTED

> WHETHER 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.

SUMMARY OF ARGUMENT

The speedy trial rule in effect on the date on which the petitioner was taken into custody is determinative of his right to a speedy trial. Such a rule 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 contrary to the decisions of every other district court which has addressed this issue, should be quashed.

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 petitioner was taken into custody, and the speedy trial period accordingly commenced, is determinative of the petitioner's speedy trial right. Until the Third District's enigmatic change of heart in its sua sponte en banc decision here, 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. McKnight v. Bloom, 490 So.2d 92 (Fla. 3d DCA 1986); Winfield v. State, 11 FLW 2557 (Fla. 2d DCA Dec. 3, 1986); 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), review denied, 419 So.2d 1200 (Fla. 1982); Jackson v. Green, 402 So.2d 553, 554 (Fla. 1st DCA 1981). See also Gordon v. Leffler, 495 So.2d 200, 201 (Fla. 5th DCA 1986).

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); Bauman 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. 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 application. 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 should 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).[1] It is simply indisputable that the speedy trial rule 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).

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[1] The Fifth District's decision in Julian v. Lee, 473 So.2d 736 (Fla. 5th DCA 1985), is not the contrary. There the court construed an amendment to the juvenile rule governing a "speedy trial" in dependency proceedings to operate retrospectively. The court noted the distinction between the nature of the entitlement in a dependency case and that at issue in the present case. The court, on motion for rehearing, 473 So.2d at 739, 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 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

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.[2] State v. Jenkins, 389 So.2d at 975; Tucker v. State, 357 So.2d 719, 721 n.9 (Fla. 1978); State v. Williams, 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

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[1] (continued)

> 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).

[2] 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.

provided, our court rules are prospective only in effect."[3]

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.[4] These rules shall supersede all 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.[5] The decision of the Second District in State v. Green, 473 So.2d at 824, thus correctly construed the implementing language of the 1985

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[3] It is noteworthy 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).

[4] 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 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).

[5] This 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. In the Matter of Amendments to the Florida Rules of Civil Procedure, 132 So.2d at 6.

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 every other district court that the current amendment to the speedy trial rule was intended to operate prospectively. In 1980, this 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 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.[6]

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

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[6] 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).

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 indentically 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, 204-5 (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). It, thus, logically follows that 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,

390 So.2d 92 (Fla. 3d DCA 1986), overruled en banc in Zabrani v. Cowart, 11 FLW 2468 (Fla. 3d DCA Nov. 25, 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 435 n.2; Holmes v. Leffler, 411 So.2d at 891; Jackson v. Green, 402 So.2d at 554.[7]

Rule 3.191(a)(1) of the Florida Rules of Criminal Procedure, as extant at the time the petitioner was "taken into custody" within the meaning of the rule,[8] 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

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[7] 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 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 739, as discussed in this brief at footnote 1.

[8] 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.

> 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 on July 11, 1984, when petitioner was "taken into custody," and that over 180 days thereafter elapsed before petitioner filed his motion to discharge, [9] without any intervening delays or continuances attributable to him. (See Exhibit 3, Order Denying Motion for Discharge, appended to Petitioner's Petition for Writ of Prohibition). The petitioner was therefore clearly entitled to discharge under Rule 3.191(a)(1) as in effect at the time of his arrest. Such would have been the holding of the Third District here had it adhered to McKnight and had it followed Green, decisions which are not merely in complete accord with the abundant Florida precedent on this issue but also with that of other states which have 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.

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[9] Under the rule in effect when petitioner was taken in to 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).

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, 312 N.E.2d 74, 75-76 (Ind. 1974); State ex rel. Uzelac v. Lake Criminal Court, 212 N.E.2d 21, 22-24 (Ind. 1965). While "custody" is generally the controlling event, ibid, where an appellate order triggers a new speedy trial period, the date of the order controls as the operative event. E.g., Lowe v. Price, 437 So.2d 142 (Fla. 1983); Commonwealth v. Woods, 336 A.2d at 274.

Moreover, the existence of the 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. Feder, 485 So.2d 409 (Fla. 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.[10] 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 demonstrates that the 1985 amendments were not intended to control

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

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 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).

Finally, the Third District, in its novel approach to the operative event issue held that event to be "the motion [for discharge] itself." Slip decision at 4. Since the petitioner's discharge motion was not filed until after the January 1, 1985 effective date of the amendment, the Third District reasoned that the amendment applied. However, as already observed, under the pre 1985 Rule, the discharge motion could only be made "after the period has run." Stuart v. State, 360 So.2d 406, 413 (Fla. 1978). In the case at bar, once the trial judge dismissed the initial murder charge on July 16, 1984, no pending charge against the petitioner existed from which petitioner could even seek discharge. Under the Third District's upended and contorted view of the "operative event" the State could, as it has in this very case, extend the speedy trial period indefinitely by withholding the charging instrument, here for nearly 10 months after petitioner's initial arrest, thus, prolonging at its whim both the "operative event" and the vesting of the accused's enforcement of his right to a speedy trial.[11]

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[11] The Third District's caustic footnote, slip opinion at 4, n.4, observing that petitioner "did not desire a speedy trial; rather, he seeks a speedy discharge," is at once inaccurate and unfair. Under the pre 1985 speedy trial rule, "speedy discharge" was deemed the effectuation of a defendant's procedural right to speedy trial. There is no suggestion by the State in this case that the

The key to resolution of petitioner's right to speedy trial therefore remains the date on which he was taken into custody. Since this operative event occurred long before the 1985 speedy trial revision was implemented, petitioner'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 ignores the focus of the speedy trial right, the history of this Court in effectuating that right, and the impressive precedent of the courts of this state and throughout the country, should be quashed.

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11 (continued)
petitioner engaged in whatever "perceived abuse" that prompted the 1985 amendment. Indeed, any "abuse" of the rule has been at the hands of the State in this case. Moreover, the Third District's reliance on State v. Belien, 379 So.2d 446 (Fla. 3d DCA 1980), is misplaced for there, totally unlike the case at bar, the defendant "as a matter of tactics, deliberately chose not to go to a speedy trial specifically in order to attempt to secure a dismissal" under the rule. There is simply no Belien correlation to what occurred in the case at bar where the defendant sought discharge virtually immediately after his April 6, 1985 rearrest on the identical charge which the trial court dismissed back on July 16, 1984. See Petition for Writ of Prohibition, paragraphs 3, 6; and Appendix to Response of Intervenor at pages 17-27.

CONCLUSION

Based upon the foregoing, the petitioner requests that this Court quash the decision of the District Court of Appeal of Florida, Third District, approve the decision of the Second District in Green, and answer the certified question in the negative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail to Respondent, The Honorable Edward D. Cowart, Circuit Judge, 1351 Northwest 12th Street, Miami, Florida 33125, and to Charles M. Fahlbusch, Assistant Attorney General, 401 N.W. Second Avenue, Suite 820, Miami, Florida 33128, and Joel D. Rosenblatt, Assistant State Attorney, 1351 N.W. 12th Street, Miami, Florida 33125, this 8th day of January, 1987.

Mark King Leban