

097

IN THE SUPREME COURT OF FLORIDA

**FILED**  
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SEP 2 1997  
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**BOBBY LEE BROWN,**

*Petitioner,*

vs.

CASE NUMBER 90, 891

**STATE OF FLORIDA,**

*Respondent.*

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PETITIONER'S REPLY BRIEF ON THE MERITS

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## ARGUMENT

In its Statement of the Case and Facts, the State mentions a motion filed by the prosecutor after the speedy trial motion was filed, alleging that the speedy trial motion was in essence a sham. These are of course only allegations and there is no record evidence to support these contentions. Although the trial was continued for approximately one month, the State never repeated these allegations. To this end, the State argues this is a case of "speedy discharge".

Cute phrasing aside, the facts of this case demonstrate why the speedy trial rule exists. The State did nothing in this case for almost five months, waiting until March 27, 1995 to file the information. Mr. Brown was arraigned three weeks later. At the time Mr. Brown filed his motion for discharge, 189 days had passed since his arrest. Even with the extra time, the State had done nothing to move this case. Therefore, the State's attempt to attribute bad motives to Mr. Brown's filing of the motion to discharge is unfounded on the facts of this case.

Only in passing does the State acknowledge that the appellate opinions addressing the certified question supporting Mr. Brown. These decisions draw the logical distinction between the 175 days during which case would be ready for trial and the operation of the recapture period. It is important to remember that the recapture does not begin until a motion for discharge is filed; it is simply not accurate that the

prosecutor's medical illness had to have occurred before the 175th day. If Mr. Brown had not filed a motion for discharge prior to the illness, the State could have moved to continue the trial. This is not the disputed fact that drives this case.

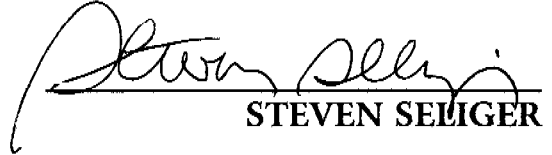
The recapture period was designed to give the State a further opportunity to try a case after it has failed to do so within the 175 day period. The recapture period was a benefit to the prosecution and tempered the effects of the automatic discharge provision. The First District's rationale, argued by the State in this Court, wants to expand the recapture period beyond its intended use. The speedy trial rule is a practical provision that required the trial participants to be prepared within a specified time period. If a party recognized a problem, it is free to file a motion to extend or waive the 175 day time period. For reasons that this record does not tell us, the State never did that. Instead, the State waited until the defendant exercised his right under the criminal procedure rules to get the case ready for trial.

The State seeks to defend the First District's opinion by appealing to this Court morality. "Brown is asking this Court to construe the judicially-created rule in a manner that maximized the opportunities for violent persons, like himself, to go free. To do as he asks, this Court would have to turn a blind eye and deaf ear to the plight of the innocent and defenseless public, as is represented by the three victims in the case at bar." State Answer Brief pg. 16. Apparently the State believes a "judicially-created rule" is not entitled to the same respect as other rules. This is nonsense.

Second, this case cannot be decided based on the facts of the crime. The rule applies to every felony case, regardless of its severity. Mr. Brown should be treated no differently than if the crime was public assistance fraud. This is not an “unjustified windfall” to Mr. Brown. The right result, that the recapture period is exactly what the name says it is, requires this Court to reverse the decision of the First District by answering the certified question that an exceptional circumstance extension is only authorized during the 175 day period or prior to the time a motion for discharge is filed, whichever is later.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States mail this 29<sup>th</sup> day of August, 1997 to Ms. Carolyn J. Mosley, Assistant Attorney General, The Capitol, Tallahassee, Florida 32399-1050.

  
STEVEN SELIGER