Filing # 83998454 E-Filed 01/28/2019 02:55:35 PM

IN THE SUPREME COURT OF FLORIDA

JAHQUELL DAVIS,

Petitioner,

v. CASE NO. SC18-1627

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S ANSWER BRIEF ON THE MERITS

ASHLEY MOODY
ATTORNEY GENERAL

KRISTEN L. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Fla. Bar #909130

WESLEY HEIDT
BUREAU CHIEF
FLORIDA BAR #773026
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(386) 238-4990

COUNSEL FOR RESPONDENT

RECEIVED, 01/28/2019 02:57:25 PM, Clerk, Supreme Court

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF FACTS 1

SUMMARY OF ARGUMENT 3

ARGUMENT

THE TRIAL COURT PROPERLY DENIED THE DEFENDANT'S MOTION FOR DISCHARGE, AND THE CERTIFIED QUESTION SHOULD BE ANSWERED IN THE NEGATIVE WHERE THERE IS NO REASON FOR THIS COURT TO RECEDE FROM LONG-STANDING PRECEDENT AND, IF IT DOES SO, THE TEST SHOULD BE SIMPLIFIED AND TAILORED TO THE ACTUAL INTERESTS PROTECTED BY THE SIXTH AMENDMENT. 4

CONCLUSION 21

CERTIFICATE OF SERVICE 22

CERTIFICATE OF COMPLIANCE 22

TABLE OF AUTHORITIES

Cases:

Born-Suniaga v. State,
256 So. 3d 783 (Fla. 2018) 16

Brown v. State,
515 So. 2d 211 (Fla. 1987) 6

Brown v. State,
843 So. 2d 328 (Fla. 1st DCA 2003) 6

Bulgin v. State,
912 So. 2d 307 (Fla. 2005) 6,15,16

Caso v. State,
524 So. 2d 422 (Fla.),
cert. denied, 488 U.S. 870 (1988) 12

Clevenger v. State,
967 So. 2d 1039 (Fla. 5th DCA 2007) 19

Davis v. State,
253 So. 3d 1234 (Fla. 5th DCA 2018) 7,9,10,14

Griffin v. State,
474 So. 2d 777 (Fla. 1985),
cert. denied, 474 U.S. 1094 (1986) 6,11

Griggs v. State,
994 So. 2d 1198 (Fla. 5th DCA 2008) 1,6

Hill v. State,
132 So. 3d 925 (Fla. 1st DCA 2014) 6

Melton v. State, 75 So. 2d 291 (Fla. 1954) . . . . . ibid.

North Fla. Women's Health and Counseling Services, Inc. v. State,
866 So. 2d 612 (Fla. 2003) 7,8

Perry v. State,
968 So. 2d 70 (Fla. 4th DCA 2007) 14

Popple v. State,
626 So. 2d 185 (Fla. 1993) 12

Pulido v. State,
181 So. 3d 1191 (Fla. 3d DCA 2015) 4

Ramirez v. State,
739 So. 2d 568 (Fla. 1999),
cert. denied, 528 U.S. 1131 (2000) 13

State v. Gray,
654 So. 2d 552 (Fla. 1995) 7

State v. Hurley,
760 So. 2d 1127 (Fla. 4th DCA 2000) 6

State v. J.P.,
907 So. 2d 1101 (Fla. 2004) 7

State v. Lail,
687 So. 2d 873 (Fla. 2d DCA 1997) 5,6

State v. Naughton,
395 So. 2d 581 (Fla. 5th DCA 1981) 6

State v. Taylor,
895 So. 2d 1217 (Fla. 2d DCA 2005) 6

Strand v. Escambia County,
992 So. 2d 150 (Fla. 2008) 8

United States v. Loud Hawk,
474 U.S. 302 (1986) 17

United States v. MacDonald,
456 U.S. 1 (1982) 13,16

United States v. Marion,
404 U.S. 307 (1971) 11,17

Valdes v. State,
3 So. 3d 1067 (Fla. 2009) 8

Walker v. State,
390 So. 2d 411 (Fla. 4th DCA 1980) 19

Williams v. State,
757 So. 2d 597 (Fla. 5th DCA 2000) 5,6

STATEMENT OF FACTS

The State submits the following additions to the Defendant's Statement of Facts:

In determining that the Defendant was not in custody for speedy trial purposes when he was detained for investigation on May 29, 2014, the trial court found as follows:

> Since the Defense agrees that all four factors in Melton are required, focusing on the first factor that says, an arrest involves the following elements: Number one, that the purpose or intention to effect an arrest under a real or pretended authority. This detective testified that it was not his purpose or intent to effect the arrest. There was no testimony presented by the Defense that the officer who ordered the defendant out of the house or placed in him in the vehicle or transported him had the purpose or intent to effect an arrest.
>
> There appears to be no probable cause presented by the Defense sufficient for an arrest of the defendant and, in fact, after the interview, he was released, indicating that there was no probable cause for arrest. Based upon the detective's credible testimony, I find that the first prong is not satisfied. Just to make the record clear, I believe there was an actual seizure and detention of the defendant in this case by a person who had the present power to control that person. I believe he was transported in handcuffs. He was detained in handcuffs for a substantial period of time.
>
> Number three, there was no communication by the person who detained the defendant that he was being arrested or that the intention was to arrest. However, the Griggs opinion indicates that the actions can overshadow the fact that there was no actual communication. But there was no actual communication that the defendant was being arrested.
>
> And number four, that the understanding by the person whose arrest is sought that it is the intention of the arresting officer then and there to arrest and detain him. I think there was an intention to detain him to interview him. He apparently was cooperative in the interview. He admitted he was cooperative in the

> interview, but there was no evidence presented by the Defense that it was the intention of the arresting officer to arrest him. And, in fact, the fact that he was not arrested at the conclusion of the interview is supportive of that.
>
> So I will deny the motion for discharge.

(R. 345-347).

The Defendant does not contest that these findings by the trial court are fully supported by the evidence presented at the hearing on his motion.

SUMMARY OF ARGUMENT

The certified question proposes a solution in search of a problem. This Court long ago set out the factors to be considered in determining whether a person has been arrested. This test has been relied on by lower courts, attorneys, and police officers for over sixty years. There is no reason to revisit this long-standing case law, and the district court's invitation to do so should be declined.

This Court should continue to follow its long-standing precedent and apply the Melton test for custody in the speedy trial context, rather than changing the test as suggested by the lower court here. The certified question should therefore be answered in the negative.

If this Court believes a change is necessary, it should reject the test advocated below and instead adopt the test used by the United States Supreme Court – an approach that is simple to apply and properly recognizes both the actual interests served by the Sixth Amendment right to a speedy trial and the ramifications of a decision that an individual was "in custody" at a certain time. That is, the speedy trial rule should be triggered only when a person is actually formally arrested, booked, and either held in custody or released on bond.

ARGUMENT

THE TRIAL COURT PROPERLY DENIED THE DEFENDANT'S MOTION FOR DISCHARGE, AND THE CERTIFIED QUESTION SHOULD BE ANSWERED IN THE NEGATIVE WHERE THERE IS NO REASON FOR THIS COURT TO RECEDE FROM LONG-STANDING PRECEDENT AND, IF IT DOES SO, THE TEST SHOULD BE SIMPLIFIED AND TAILORED TO THE ACTUAL INTERESTS PROTECTED BY THE SIXTH AMENDMENT.

The right to a speedy trial is protected by the Sixth Amendment, which provides simply that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." This right is "activated only when a criminal prosecution has begun and extends only to those persons who have been accused in the course of that prosecution." Pulido v. State, 181 So. 3d 1191 (Fla. 3d DCA 2015) (quotation omitted).

Under Florida's speedy trial rule, every person charged with a crime must be brought to trial within 90 days of arrest if the crime charged is a misdemeanor, or within 175 days of arrest if the crime charged is a felony. Fla. R. Crim. P. 3.191(a). The speedy trial time period begins to run when the defendant is "taken into custody," which occurs: (1) when the person is **arrested** as a result of the conduct or criminal episode that gave rise to the crime charged, or (2) when the person is served with a notice to appear in lieu of physical arrest. Fla. R. Crim. P. 3.191(d).

Florida courts have in the past repeatedly recognized that a formal arrest, complete with fingerprinting and formal charges, is not always necessary to start the running of the speedy trial time.

See, e.g., Williams v. State, 757 So. 2d 597, 598-599 (Fla. 5th DCA 2000); State v. Lail, 687 So. 2d 873, 874-75 (Fla. 2d DCA 1997). However, they have also universally recognized that something more than what happened here, an investigatory detention, is required.

The Melton Test for Arrest

This Court defined the phrase "arrest" over sixty years ago, in Melton v. State, 75 So. 2d 291 (Fla. 1954). There, the Court held that an arrest is "the apprehension or taking into custody of an alleged offender, in order that he may be brought into the proper court to answer for a crime." Id. at 294 (quotation omitted). The Court went on to explain that an arrest generally occurs when the following elements are satisfied:

- (1) a purpose or intention to effect an arrest under a real or pretended authority;
- (2) an actual or constructive seizure or detention of the person to be arrested by a person having present power to control the person arrested;
- (3) a communication by the arresting officer to the person whose arrest is sought, or an intention or purpose then and there to effect an arrest; and
- (4) an understanding by the person whose arrest is sought that it is the intention of the arresting officer then and there to arrest and detain him.

Id.

This Court has since reiterated these factors on several occasions in the context of the Sixth Amendment right to a speedy trial. See Bulgin v. State, 912 So. 2d 307, 313-14 (Fla. 2005) (Bell, J., concurring in result only); Brown v. State, 515 So. 2d 211 (Fla. 1987); Griffin v. State, 474 So. 2d 777, 779 (Fla. 1985), cert. denied, 474 U.S. 1094 (1986).

The district courts of appeal have repeatedly applied this test in this context as well. See, e.g., Hill v. State, 132 So. 3d 925, 928-29 (Fla. 1st DCA 2014); Griggs v. State, 994 So. 2d 1198, 1200-01 (Fla. 5th DCA 2008); State v. Taylor, 895 So. 2d 1217, 1220 (Fla. 2d DCA 2005); Brown v. State, 843 So. 2d 328, 330 (Fla. 1st DCA 2003); State v. Hurley, 760 So. 2d 1127, 1128 (Fla. 4th DCA 2000); Williams, 757 So. 2d at 599; Lail, 687 So. 2d at 874-75; State v. Naughton, 395 So. 2d 581, 583 (Fla. 5th DCA 1981).

In the present case, the trial court properly denied the Defendant's motion for discharge under the speedy trial rule because the testimony presented at the hearing on the motion showed that the Defendant was not "arrested" pursuant to these four factors when he was initially detained by police on May 29, 2014.

The Fifth District Court of Appeal affirmed this conclusion, but then asked this Court to change the test for custody to a test created for the first time in the opinion itself, as reflected in the following certified question:

> Should the determination of whether an arrest has occurred for speedy trial purposes be based on an objective consideration of the totality of the

> circumstances, including but not limited to: (1) whether the person was detained with the intent to effect an arrest under a real or pretended authority; (2) whether there was an actual or constructive seizure or detention by someone with the present power to control the person detained; (3) whether there was a communication by the detaining officer to the person whose detention is sought of an intention or purpose then and there to effect an arrest; and (4) whether a reasonable person in the detainee's position would have understood that he or she was under arrest?

Davis v. State, 253 So. 3d 1234, 1242-43 (Fla. 5th DCA 2018).

The State submits that no change to the Melton test is necessary, that if there is a change to the test for arrest a more simple and practical test should be used, and that the certified question should be answered in the negative.

Stare Decisis

This Court has repeatedly stated that the doctrine of stare decisis "is grounded on the need for stability in the law and has been a fundamental tenet of Anglo-American jurisprudence for centuries . . . adopted and codified by the Florida Legislature in 1829 [and] . . . memorialized by this Court nearly a century and a half ago." North Fla. Women's Health and Counseling Services, Inc. v. State, 866 So. 2d 612, 637-638 (Fla. 2003) (rejecting argument that precedent should be receded from because it was originally decided incorrectly). See also State v. J.P., 907 So. 2d 1101, 1109 (Fla. 2004) ("As an institution cloaked with public legitimacy, this Court cannot recede from its own controlling precedent when the only change has been the membership of the Court."); State v. Gray, 654 So. 2d 552, 554 (Fla. 1995) ("Stare

decisis provides stability to the law and to the society governed by that law.").

When asked to recede from precedent, then, this Court must consider: (1) whether the prior decision has proved to be unworkable in practice; (2) whether a reversal would cause an injustice or disruption in the stability of the law; and (3) whether the factual premises underlying the original decision have "changed so drastically as to leave the decision's central holding utterly without legal justification." North Fla. Women's Health, 866 So. 2d at 637.

Only if the answers to these questions are sufficient to overcome the strong presumption in favor of stare decisis should this Court reverse itself. Id. at 637-38. Compare Strand v. Escambia County, 992 So. 2d 150, 159-60 (Fla. 2008) (refusing to recede from case where there had been widespread reliance by numerous parties and no changes had occurred to affect the earlier decision) with Valdes v. State, 3 So. 3d 1067, 1076-77 (Fla. 2009) (receding from "same evil" test for double jeopardy where that test had proven unworkable and confusing in practice and was contrary to plain meaning of statute).

Criticism of Melton

Here, as discussed above, the Melton test for custody has been in place for over sixty years, has been expressly relied on by numerous appellate decisions, and, given its long-standing stature, has presumably been used by countless trial judges, prosecutors,

and police officers in making day-to-day decisions on motions for discharge and the treatment of suspected criminals.

Nonetheless, the court below, in its certified question, proposed an alternative test for custody, focusing on an objective "totality of the circumstances" standard that purportedly better protects the accused from "unreasonably prolonged subjection to the potential personal, social, and economic harm attendant to being arrested for or charged with a crime." Davis, 253 So. 3d at 1242-43. The Defendant agrees with the lower court that a more objective, and more lenient, test should be used in these circumstances, asking that this Court instead use the definition of arrest that applies in the Fourth or Fifth Amendment contexts.

This Court should decline the request to recede from Melton and its progeny, as there is no compelling reason to do so.

First, the Defendant and the lower court criticize the subjectiveness of the Melton factors, proposing that an objective test would be more fair. Notably, however, even in the lower court's own analysis of these subjective factors the discussion rapidly turned into the objective support for the trial court's findings on these subjective matters.

Specifically, the officer's testimony that he did not intend to arrest the Defendant in 2014 was evaluated in light of the objective factors supporting that testimony – the fact that there was no probable cause to arrest the Defendant on that date, that the Defendant was not a suspect on that date, and that he only

became a suspect much later, when a co-defendant identified him as the shooter. Davis, 253 So. 3d at 1239.

Similarly, the Defendant's subjective understanding regarding whether the officer intended to arrest him on that date was evaluated in light of what the officer actually said (and did not say) to the Defendant, the Defendant's cooperation with the testing done, and the Defendant's eventual release. Id. at 1240-41.

The subjective nature of the determination, then, is not actually as malleable as the lower court and the Defendant imply. Simply stated, the State cannot avoid speedy trial implications by convincing an officer to testify that he did not intend to effectuate an arrest or that no such intent was communicated, when all objective indicators are to the contrary. Like any other subjective inquiry, the objective circumstances would be used to evaluate the sufficiency of such testimony, and any attempt to manipulate the facts in this manner would be unsuccessful. The lower court's concerns about the subjective nature of the inquiry are unfounded.

Further, trial courts are called upon to determine subjective intent on an almost daily basis, and their expertise in judging the credibility of a witness's factual assertions is so well-recognized by Florida courts as to be unassailable here.

The lower court's concern that the Melton test does not sufficiently protect the accused from the prolonged harm of being suspected of committing a crime is also without foundation. As the

United States Supreme Court has recognized, the delay while a crime is being investigated, but before an actual arrest, does not trigger the individual protections of the Sixth Amendment:

> Invocation of the speedy trial provision thus need not await indictment, information, or other formal charge. **But we decline to extend that reach of the amendment to the period prior to arrest. Until this event occurs, a citizen suffers no restraints on his liberty and is not the subject of public accusation: his situation does not compare with that of a defendant who has been arrested and held to answer.** Passage of time, whether before or after arrest, may impair memories, cause evidence to be lost, deprive the defendant of witnesses, and otherwise interfere with his ability to defend himself. But this possibility of prejudice at trial is not itself sufficient reason to wrench the Sixth Amendment from its proper context. Possible prejudice is inherent in any delay, however short; it may also weaken the Government's case.

United States v. Marion, 404 U.S. 307, 321–22 (1971).

The Defendant also expresses concern that the test for custody in the speedy trial context is different from the test for custody in the context of the Fourth Amendment or the Fifth Amendment. Again, however, this concern is unfounded.

While the same term - "custody" - is used in each of these contexts, the interests served is different in each, necessitating a focus on different factors in determining whether an individual was actually in custody as required to trigger the protections of each amendment. See Griffin, 474 So. 2d at 778-79 (recognizing that a seizure may trigger Fourth or Fifth Amendment protections but not be an arrest under speedy trial rule).

In the Fourth Amendment context, the concept of a person being in custody is considered in light of the overall reasonableness of the intrusion by law enforcement. The minor inconvenience of an officer asking for identification, for example, need not be justified by any specific suspicion on the officer's part, as such an interaction is deemed a mere consensual encounter, from which an individual is free to walk away. Popple v. State, 626 So. 2d 185, 186 (Fla. 1993).

More justification is required as the interaction becomes more intrusive and the "freedom to leave" curtailed. A brief investigatory detention (or "Terry Stop") requires a well-founded, articulable suspicion of criminal activity, while an actual arrest must be supported by probable cause that a crime has been or is being committed. Id.

In essence, then, the Fourth Amendment's requirement that searches and seizures be reasonable necessitates different formulations of the appropriateness of the intrusion upon one's right to be left alone as that intrusion becomes more severe.

Similarly, in the Fifth Amendment context, the interest served is the right to be free from compelled self-incrimination. Recognizing that this compulsion increases as the pressures of confinement weigh on the individual being questioned by police officers, courts have required additional protections to reduce the "coercive pressures of custodial interrogation." Caso v. State, 524 So. 2d 422, 423 (Fla.), cert. denied, 488 U.S. 870 (1988).

Tailoring the definition of custody to fit these concerns, courts evaluate whether a suspect is in custody by focusing on factors relevant to this specific situation, evaluating the manner in which the police summon the suspect for questioning, the purpose, place and manner of the questioning, the extent to which the suspect is confronted with evidence of guilt, and whether the suspect is informed that he or she is free to leave. Ramirez v. State, 739 So. 2d 568, 574 (Fla. 1999) (same), cert. denied, 528 U.S. 1131 (2000). Again, the test is based on the interest to be protected in that context.

In the Sixth Amendment context, on the other hand, the right to a speedy trial "is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges." United States v. MacDonald, 456 U.S. 1, 8 (1982).

The factors used by Melton properly protect this interest, finding an arrest only in those limited circumstances where a prosecution against the individual defendant is actually going to happen -- where the police "have their man" so to speak, and accordingly where the liberty interests of that targeted individual are actually at risk.

The State submits, then, that the criticism of Melton is not well taken. As even the lower court admitted, this test is "the

benchmark for defining 'arrest" and has been repeatedly cited for that purpose." Davis, 253 So. 3d at 1238 n.4. Given the absence of any significant reason to revisit the test in the first place, short of the district court's lack of support for it, stare decisis compels that the court's invitation to revisit this issue be declined. In short, the Defendant has proposed a solution in search of a problem.

A More Realistic Test for Triggering Speedy Trial

As presently construed, Florida speedy trial rule may allow a person to forever escape the consequences of his criminal actions due to a delay in the proceedings against him, a result neither constitutionally required nor supported by public policy. The Melton definition of arrest is a "more formal and technical definition" than that used in other contexts. Perry v. State, 968 So. 2d 70, 74 (Fla. 4th DCA 2007) (quoting J.H.M. v. State, 945 So. 2d 642, 645 (Fla. 2d DCA 2006)). Given the ramifications of missing the deadline imposed by the speedy trial rule, such a strict definition of arrest is well warranted.

Allowing a criminal to be forever discharged from prosecution for his crimes and preventing a victim from having her day in court are serious ramifications indeed, not to be lightly indulged. As discussed above, the Melton test is long-standing and should be reaffirmed as the appropriate test to apply in this context.

If this Court is inclined to change this analysis, the State submits that it should do so in a manner that recognizes the real

problem with Rule 3.191. As Justice Wells explained in his dissenting opinion in Bulgin, Florida's speedy trial rule has gone well beyond the requirements of the Constitution and has morphed into a procedural rule that trumps the legislative statute of limitations:

> The original language of Florida's speedy trial rule stated that "every person charged with a crime by indictment or information shall be brought to trial" within a specified time of the arrest. Fla. R. Crim. P. 3.191(a) (2003). Despite this plain meaning, this Court has produced a line of cases that has steadily chipped away at the Legislature's statute of limitations by interpreting the rule to apply to any individual who has been arrested, even when no indictment or information has been filed and even when charges have been dismissed and the defendant released. . . . This line of cases most recently culminated in the removal of the words "by indictment or information" from the first paragraph of the rule.
>
> Florida's speedy trial rule is a procedural mechanism used to implement a defendant's constitutional right to a speedy trial. The rule itself is not constitutionally required. Florida's speedy trial rule sets precise time limits, but the State and Federal Constitutions do not require that a defendant be tried within a specific period of time. In fact, the United States Supreme Court has explicitly stated that there is "no constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months."
>
> Likewise, there is no constitutional right to a permanent discharge from a crime when a state's speedy trial rule has been violated. Many jurisdictions allow courts to remedy a violation by granting discharges (i.e., dismissals) without prejudice against a state's ability to recharge the defendant for the same crime. . . .
>
> Construing the speedy trial rule as requiring a discharge with prejudice in all cases converts the procedural rule into a trumping of the statute of limitations. This immunity extends to serious crimes like murder, effectively reducing the statute of limitations for murder from a limitless period down to only 175 days.

> This latest application of the rule fails to account for the reality that the decision to arrest is different from the decision to charge. Prosecutors are not always involved in arrest decisions. In cases where police officers make the decision to arrest, prosecutors will be forced to indict and proceed to trial within the speedy trial period even though they may need more time to gather sufficient evidence, prepare the case, secure the apprehension of other suspects, or negotiate a plea arrangement with the defendant. The only other option is to forgo arrest, which in some cases could produce even more dire consequences.

Bulgin, 912 So. 2d at 315–16 (Well, J., dissenting) (citations omitted). See also Born-Suniaga v. State, 256 So. 3d 783, 792-800 (Fla. 2018) (Lawson, J., dissenting) (explaining how the speedy trial rule has been construed in such a manner that its procedural requirements defeat the legislative statute of limitations and weaken the power of the executive to properly investigate crimes and bring appropriate charges).

If this Court is inclined to reconsider what constitutes an arrest triggering the application of the speedy trial rule, it should do so in a manner that addresses these well-analyzed concerns while recognizing the actual real world consequences that should engage the protections of the Sixth Amendment right to a speedy trial – the possibility of lengthy incarceration prior to trial, the impairment of liberty imposed on an accused while released on bail, and the disruption of life caused by these circumstances. MacDonald, 456 U.S. at 8.

In light of the actual interests protected by the Sixth Amendment, the United States Supreme Court evaluates alleged speedy

trial violations based on the time that has passed after the defendant has actually been formally arrested and held in custody or on bail. As the Court has explained:

> **Arrest is a public act that may seriously interfere with the defendant's liberty**, whether he is free on bail or not, and that 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. . . . So viewed, it is readily understandable that it is either a formal indictment or information or else **the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the speedy trial provision of the Sixth Amendment.**

United States v. Marion, 404 U.S. 307, 320 (1971) (emphasis added). See also United States v. Loud Hawk, 474 U.S. 302, 310–11 (1986) ("when no indictment is outstanding, only the 'actual restraints imposed by arrest and holding to answer a criminal charge ... engage the particular protections of the speedy trial provision of the Sixth Amendment.'")

Accordingly, the State proposes that this Court follow the decisions of the United States Supreme Court in Marion and its progeny, and find that the 175-day speedy trial period under Rule 3.191 is commenced when a defendant is actually formally arrested, booked, and held in custody or released on bond. This is when a prosecution actually, in reality, starts – not when a suspect is questioned or searched, or detained and then released. Only upon an actual formal arrest does the interest of the defendant trigger the right to a speedy trial, and this simple test would protect

this right while avoiding the concerns so eloquently expressed by Justice Wells and Justice Lawson.

Individuals who are suspected of committing a crime, taken to a police station and interrogated about a crime, or subject to detention and a search for evidence that they committed a crime are already protected by the Fourth Amendment, the Fifth Amendment, and the Due Process Clause. There is no reason to apply the often onerous requirements of the speedy trial rule until a person is actually suffering from the consequences that rule is designed to minimize.

The Defendant in the instant case was not formally arrested and held in custody when he was investigated by the police on May 29, 2014, and the lower court properly concluded that his right to a speedy trial was not violated. The certified question should be answered in the negative, and his convictions affirmed.

This Case – An Alternative Basis to Affirm

Alternatively, even if this Court concludes a de facto arrest occurred on May 29, 2014, it would not have been for the crimes for which the Defendant was later charged. The record reflects that he was detained because he was suspected of obstructing the execution of the search warrant of the house where the getaway vehicle was located, not because of the earlier attempted murder and robbery at the recycling center.

Rule 3.191(d) provides that:

> For purposes of this rule, a person is taken into custody (1) when the person is arrested **as a result of the conduct or criminal episode that gave rise to the crime charged**, or (2) when the person is served with a notice to appear in lieu of physical arrest.

(Emphasis added).

Under this rule, "[c]rimes are deemed to be part of the same criminal conduct so as to trigger the running of the speedy trial period when they are based on substantially the same conduct, even though the conduct may give rise to different consequences." Clevenger v. State, 967 So. 2d 1039, 1041 (Fla. 5th DCA 2007). The conduct needs to be more than "merely related" — it must be "the same conduct." Walker v. State, 390 So. 2d 411, 412 (Fla. 4th DCA 1980).

Here, the Defendant was detained because he was an occupant of a house that was the subject of a search warrant, and because the occupants of the house obstructed the officers' ability to execute that warrant for 90 minutes. This is a wholly different crime than attempted first degree murder, robbery, and conspiracy to commit robbery with a deadly weapon.

Had the Defendant been charged with obstruction under section 843.02, Florida Statutes, he would have been subject to a speedy trial discharge 90 days after his "arrest." However, because the attempted murder, robbery, and conspiracy were not part of the same criminal episode, his "arrest" for obstruction cannot preclude later charges for these crimes. Because the Defendant was not "arrested" on these charges, the trial court could have properly

denied the motion for discharge even if this Court concludes that he was "arrested" as a result of his transfer to the police station that day.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully requests this honorable Court approve the conclusion of the Fifth District Court of Appeal but answer the certified question in the negative.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Kristen L. Davenport
KRISTEN L. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Florida Bar # 909130

/s/Wesley Heidt
WESLEY HEIDT
BUREAU CHIEF
Florida Bar # 773026
444 Seabreeze Blvd. Ste. 500
Daytona Beach, FL 32118
(386) 238-4990
crimappdab@myfloridalegal.com

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Answer Brief On the Merits has been furnished to Steven N. Gosney, counsel for Petitioner, 444 Seabreeze Blvd., Ste. 210, Daytona Beach, Florida 32118, by e-service to appellate.efile@pd7.org and gosney.steve@pd7.org, this 28th day of January, 2019.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

/s/ Kristen L. Davenport
Kristen L. Davenport
Counsel for Respondent