IN THE SUPREME COURT OF FLORIDA

JAHQUELLE DAVIS,)
)
Petitioner,)
)
v.)
)
STATE OF FLORIDA,)
)
Respondent.)
_____)

CASE NO.: SC18-1627
Lower Tribunal No(s).:
5D17-745
2014-CF-008745-D-O

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA
FIFTH DISTRICT

INITIAL BRIEF ON THE MERITS

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

This Court has jurisdiction under Article V, section 3(b)(3) and (4), of the Florida Constitution.

The facts are provided by the opinion below, and are accepted for purposes of this appeal.

> "On May 29, 2014, sheriff's deputies responded to a robbery and shooting at OU Metal Recycling. Video surveillance was used to identify the getaway vehicle involved in the robbery; it was later found outside a house. Using a loudspeaker, deputies ordered the occupants out of the house. When nobody responded to that command, the S.W.A.T. team was deployed to the scene. The stand-off ended approximately ninety minutes later, when Appellant, four other males, and two females exited the house. The males were instructed to stand along the curb near the house while a show-up was conducted, during which one victim recognized one of the men—not Appellant—as the driver of the getaway vehicle.
>
> Deputies believed that it would be impractical to interview the five males at the house because it was in a high crime area, the S.W.A.T. team and news media surrounded the area, and the detective handling the investigation had multiple people to interview. Accordingly, the males were handcuffed, placed into individual squad cars, transported to the sheriff's department, and placed in separate rooms in a secured area of the building, where their handcuffs were removed. After being read their Miranda [citation omitted], they were sequentially interviewed by the same detective. All the males were eventually swabbed for gunshot residue and DNA.
>
> The detective, who referred to Appellant's status as

> "investigative detention," began his interview of Appellant by apologizing for the delay in getting to him. Appellant testified at his evidentiary hearing that he agreed to speak to the detective and consented to the gunshot residue and DNA testing because he wanted to help and also wanted to clear his name. During this time, Appellant was not informed he was free to leave. Indeed, outside the door of his interview room was a uniformed deputy who would not have permitted him to leave. During the approximately four to six hours that Appellant was at the sheriff's department, he was never told he was under arrest, that he was suspected of committing the robbery, or that he was charged with any crime.
>
> The detective ended his interview of Appellant by advising him that he was not under arrest and that he was free to leave. The detective offered Appellant transportation, which Appellant declined. At the time Appellant was released, there was no information connecting him to the robbery or shooting beyond his presence at the house where the getaway vehicle was found.
>
> Appellant was not formally arrested until June 17, 2015, after the investigation was essentially completed and after two different witnesses identified Appellant as one of the robbers. The information charging Appellant was filed on June 19, 2015. Appellant moved for discharge, arguing that his prosecution was barred by Florida's speedy trial rule as far more than 175 days had passed since his May 29, 2014 detention.
>
> Appellant preserved this speedy trial issue by making a pre-trial motion, seeking a writ of prohibition, renewing his motion during trial, and pursuing this timely appeal following his jury trial and conviction."

The Fifth District affirmed the trial court's order, relied on *Melton v. State*, 75 So. 2d 291 (Fla. 1954), and concluding that the undisputed material facts were legally sufficient to withstand a motion to dismiss. However, the Fifth District certified the following 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, 43 Fla. L. Weekly D2029 (Fla. 5th DCA Aug. 31, 2018), review granted, SC18-1627, 2018 WL 4817692 (Fla. Oct. 4, 2018)

On September 25, 2018, Appellant/Petitioner filed a Notice to Invoke Discretionary Jurisdiction pursuant to Florida Rules of Appellate Procedure 9.030(a)(2)(A)(v) and 9.120(b) and (c). This Court accepted jurisdiction on October 4, 2018. This brief follows.

SUMMARY OF ARGUMENT

The Court should recede from *Melton v. State*, 75 So. 2d 291 (Fla. 1954). A new standard should provide a consistent definition of arrest in different situations and/or should provide for objective rather than subjective considerations or considerations that are subject to corruption or after the fact manipulation. The Petitioner should be afforded a renewed opportunity to present facts to a fact finding court at a later date after a new standard is announced.

ARGUMENT

THE DETERMINATION OF WHETHER AN ARREST HAS OCCURRED FOR SPEEDY TRIAL PURPOSES SHOULD BE BASED ON AN OBJECTIVE CONSIDERATION OF THE TOTALITY OF THE CIRCUMSTANCES.

STANDARD OF REVIEW

"Because this is a question of law arising from undisputed facts, the standard of review is *de novo*." *Aills v. Boemi*, 29 So. 3d 1105, 1108 (Fla. 2010) (*citing Kirton v. Fields*, 997 So. 2d 349, 352 (Fla. 2008); *D'Angelo v. Fitzmaurice*, 863 So. 2d 311, 314 (Fla. 2003) (stating that the standard of review for pure questions of law is *de novo*)).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Amend. V, U.S. Const. "No person shall...be deprived of life, liberty, or property, without due process of law...."

U.S. Const. Amend. VI, U.S. Const. "In all criminal prosecutions, the accused shall enjoy the right to a speedy...trial...."

U.S. Const. Amend. XIV, Section 1 U.S. Const. "....nor shall any State deprive any person of life, liberty, or property, without due process of law...."

Art. I, § 2, Fla. Const. Basic rights.

Art. I, § 16(a), Fla. Const. “In all criminal prosecutions the accused shall [...] have a speedy and public trial [...].”

Art. I, Section 9, Fla. Const. Due process. “No person shall be deprived of life, liberty or property without due process of law [...]”

Fla. R. Crim. P. 3.191(d)(1)

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

MERITS

The Fifth District Decision. After the Fifth District applied *Melton v. State*, 75 So. 2d 291 (Fla. 1954) to the facts of the present case, the Court certified the following 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?"

Petitioner contends that the holding in *Melton* is no longer viable, and that an arrest is an arrest regardless of context. The Petitioner would further offer the following recommendations:

I. Any replacement standard should contain a definition of arrest consistent in other contexts; and/or

II. Any replacement standard should be based on objective considerations rather than subjective ones and should be resistant to after the fact manipulation.

Problems with Melton and discussion.

There are several problems with *Melton* that need to be addressed by the Court. First, *Melton* relies on subjective rather than objective factors. In *Melton*, in order for a person to be under arrest for purposes of speedy trial, all four of the following elements must be present[1]:

> (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, of 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.

The four part *Melton* test conflicts with the definition of arrest in other contexts. In a Fifth Amendment context, the Florida Supreme Court has held that regardless of whether the federal Miranda warning has been given, the Florida right against self-incrimination attaches at the time of arrest. *State v. Hoggins*, 718 So.2d 761, 768-69 (Fla. 1998) This Court has applied a "totality of the circumstances"

[1] *Melton*, 75 So. 2d at 294 (internal citations omitted).

test, similar to that urged by the Fifth District in the present case, in Fifth Amendment situations. *See Connor v. State*, 803 So. 2d 598, 605 (Fla. 2001) "In order for a court to conclude that a suspect was in custody, it must be evident that, under the totality of the circumstances, a reasonable person in the suspect's position would feel a restraint of his or her freedom of movement, fairly characterized, so that the suspect would not feel free to leave or to terminate the encounter with police. *See Voorhees v. State*, 699 So. 2d 602, 608 (Fla. 1997) (*citing Florida v. Bostick*, 501 U.S. 429, 439, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991))."

Arrest is clearly defined in the context of Fourth Amendment search and seizure analysis. *Popple v. State*, 626 So. 2d 185, 186 (Fla. 1993). The *Popple* Court categorized police citizen interactions as either a "consensual encounter," "investigatory stop," or "arrest." This standard is routinely applied by lawyers and judges and is understandable to both law enforcement and the citizenry. An overly confusing state of "arrest" for one purpose and not for another is overly confusing and therefore difficult to apply at the trial court level.

While different public policy considerations may undergird the differing treatments, there is no logical reason to change the definition of "arrest" to accommodate those differing interests. It is unworkable that the definition of

"arrest" changes meaning depending on context.[2] An arrest is an arrest regardless of whatever backward looking context. Further, creating separate rules for arrest for different Constitutional rights is pointlessly confusing, difficult to apply, and irrational from the point of the average citizen (not to mention the average lawyer practitioner).

While it may appear that Fourth Amendment analysis arises from different public policy concerns[3], the *Popple* description also benefits from a constitutionalist view of enumerated and reserved[4] individual Rights and delegated State powers. In all cases of arrest, the delegated police power is at issue. Thus, the State has a specifically constitutionally delegated power to investigate crime. The *Popple* analysis balances these competing interests and finds a middle ground short

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[2] Note too that other contexts (sometimes favoring the State) require a clear definition of arrest. For example, for there to be an escape, there must first be a valid arrest. *Kyser v. State*, 533 So. 2d 285, 287 (Fla. 1988) What is good for the goose should also be good for the gander.

[3] The speedy trial provisions provided by the state and federal constitution are "an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibility that long delay will impair the ability of an accused to defend himself." *Dickey v. Florida*, 398 U.S. 30, 37–38 (1970); *contra State v. Lail*, 687 So. 2d 873 (Fla. 2d DCA 1997) (custody for Fourth Amendment purposes does not constitute custody for purposes of speedy trial rule).

[4] U.S. Const. Amend. X, U.S. Const.

of arrest where a police agency can investigate crime and actually detain and question citizens. This second level of police citizen encounter allows officers to secure a crime scene, identify witnesses and/or participants, and generally check surrounding persons without probable cause as to any of the detained individuals. This delegated police power is checked by individually enumerated rights (and by other rights reserved by the People), most generally described as the liberty interest of a citizen to be free from unreasonable State detention. Anything more than a investigatory detention must be deemed an arrest for purposes of speedy trial since there is no Constitutionally delegated authority for police to detain a citizen outside of the *Popple* analysis.

As a matter of checks and balances, what is "arrest" cannot be defined by police, but instead must be objectively defined by the legislative and judicial branch. In this vein, Florida has clearly disapproved "investigatory stop" from becoming a custody trigger for the speedy trial clock, limiting the trigger to a citizen being "taken into custody" defined as "arrest." Fla. R. Crim. P. 3.191(d)[5]; *Reed v. State*, 649 So. 2d 227 (Fla. 1995). In the past, courts have found that the triggering of speedy trial is something less than formal arrest. See, e.g., *Bannister*

[5] Fla. R. Crim. P. 3.191(d)(1) Custody. For purposes of this rule, a person is taken into custody: [...] when the person is arrested as a result of the conduct or criminal episode that gave rise to the crime charged [...]

v. State, 382 So. 2d 77 (Fla. 5th DCA 1980). (A formal arrest, complete with fingerprinting and formal charges, is not required to start time running for speedy trial purposes). There should be no disagreement between Petitioner and the State when a formal arrest is involved. Therefore, the focus must be on defining what makes up a "de facto arrest" (an arrest that does not result in booking, charging or jailing).

Florida already applies a workable objective standard when defining arrest. For example, in *State v. Devard*, 178 So. 3d 41 (Fla. 2d DCA 2015), the defendant was arrested and the speedy trial period started to run under the speedy trial rule when: 1) she was put in handcuffs 2) her car was seized after she was involved in a drug deal, 3) she was relocated to the police district office and advised of her Miranda rights, and 4) she was released but advised that charges may be forthcoming. Similarly, in *Griggs v. State*, 994 So. 2d 1198 (Fla. 5th DCA 2008), a defendant (who was transported in handcuffs from scene of stop of his automobile to police station where he was offered choice of providing substantial assistance to police or being booked immediately into jail) was "arrested" for purposes of speedy trial rule. These cases illustrate that an arrest is not simply booking an individual at a jailhouse, but involves the unwilling detention of a citizen.

Citizens of Florida have a Right to liberty and freedom.[6] Clopping hand cuffs on citizens and dragging them off to the police station for multi-hour questioning in an interrogation room would feel like an arrest to any reasonable citizen. In such a situation, there must be a Constitutional basis for such detention. Officers have an interest in solving crime. With these (sometimes) competing interests in mind, the definition of arrest is best understood through the lens of State delegated powers. From this perspective, the question does not become from what source does the Right of an individual arise, instead it becomes what delegated power the State is relying on in its detention of a citizen. Viewed in the delegated State power context, "arrest" could be defined as when the State exceeds the limits of its police power to detain a person beyond what is allowed under the police power, such as in an investigatory stop. Petitioner suggests that the balancing test laid out in *Popple* has proven itself practical, understandable and workable.

A final consideration that must be taken into account is that any test be protected from after-the-fact manipulation. Although most state actors such as police and prosecutors act in good faith, all too often the temptations of "winning" can override ethical obligations of fair play. Examples of this type of manipulation

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[6] "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

are laid out more fully below.

The Court below proposed that a "totality of the circumstances" test, and grafted some of the *Melton* factors to be considered, although stating that they should be considered non-exclusively. Some of the factors within *Melton* and suggested by the Court below are problematic, as laid out below.

"(1) whether the person was detained with the intent to effect an arrest under a real or pretended authority;"

The intent of the officer cannot be objectively determined, and is subject to post-arrest manipulation. Any standard should protect Citizens from the situation where a police officer can defeat the rights of a citizen by manipulating facts. For example, consider the following all to common exchange between a prosecutor and an officer:

> Prosecutor: "Did you intend to arrest Mr. Defendant?"
>
> Officer: "No."
>
> Prosecutor: "No more questions your honor!"

A police officer stating that they never intended to arrest the citizen should have no impact on the realities of the situation to the Citizen. A replacement objective

standard must guard against this kind of manipulation.[7]

"(2) whether there was an actual or constructive seizure or detention by someone with the present power to control the person detained;"

This is probably the most objective of the four factors mentioned. Many cases involving de facto arrest center their factual discussions on whether a person in handcuffed or otherwise physically restrained, whether someone is involuntarily

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[7] *Cf. Ruiz v. State*, 50 So. 3d 1229 (Fla. 4th DCA 2011) (discussing "sinister" possibility that police have come to recognize consent as a catch-all exception for the Fourth Amendment and "tailor their testimony accordingly," but acknowledging that appellate court must nevertheless defer to express findings of credibility made by trial court); Bennett L. Gershman, Prosecutorial Misconduct ix (1st ed. 1985). ("Restraints on prosecutorial misconduct are either meaningless or nonexistent. Relatively few judicial or constitutional sanctions exist to penalize or deter misconduct; the available sanctions are sparingly used and even when used have not proved effective. Misconduct is commonly met with judicial passivity and bar association hypocrisy."); Glenn Harlan Reynolds, "Prosecutors protect themselves first" USA Today March 10, 2015; Glenn Harlan Reynolds, Ham Sandwich Nation: Due Process When Everything Is a Crime, 113 Colum. L. Rev. Sidebar 102 (2013); Thomas P. Sullivan & Maurice Possley, The Chronic Failure to Discipline Prosecutors for Misconduct: Proposals for Reform, 105 J. Crim. L. & Criminology 881, 923 (2015); *See also Cf. United States v. Janis*, 428 U.S. 433, 447 (1976) noting that the exclusionary rule tends to lessen the accuracy of the evidence presented in court because it encourages the police to lie in order to avoid suppression of evidence.

transported, and the length of time a person is detained.[8]

"(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;"

This is an objective factor, but should be given less weight because it is subject to manipulation by the officers, who could adopt an informal policy of never telling a person they are under arrest.

"And (4) whether a reasonable person in the detainee's position would have understood that he or she was under arrest?"

This is a reasonable person standard that is used in many legal contexts, and is generally considered to be objective, although it could be subject to arbitrary application due to differing trial judge standards of reasonableness. *Connor v. State*, 803 So. 2d 598 (Fla. 2001); *See also Cf. Bey v State*, 355 So. 2d 850 (Fla. 3d

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[8] *Compare Cocke v. State*, 889 So. 2d 132 (Fla. 4th DCA 2004) (handcuffed, involuntarily placed in patrol car, detained for 25 minutes); *Adams v. State*, 830 So. 2d 911 (Fla. 3d DCA 2002) (tackled suspect, handcuffed, forcibly placed in patrol car and transported to police station); *Schoenwetter v. State*, 931 So. 2d 857 (Fla. 2006) (voluntarily transported to police station, no handcuffs, suspect free to leave); *Taylor v. State*, 855 So. 2d 1 (Fla. 2003) (suspect voluntarily transported to police station, not handcuffed); *Abraham v. State*, 155 So. 3d 491 (Fla. 3d DCA 2015) (suspect handcuffed, placed in back of officer's squad car, taken to police station, placed in locked interrogation room, and shackled to floor).

DCA 1978).

The present case and proposed solutions.

The Information charging Mr. Davis was beyond 175 days from his interactions with police on May 29, 2014. The hearing in the trial court was necessarily focused on the *Melton* elements. The trial court found that two *Melton* elements were not met, and the District Court upheld that decision while questioning the continuing viability of the *Melton* holding. Petitioner suggests that the development of the law supports the Fifth District's criticism of the *Melton* factors and compels this Honorable Court to reconsider the *Melton* standard. Florida should not endorse an arbitrarily shifting definition of a commonly used word such as "arrest" by creating a new definition specifically for the speedy trial context. An arrest is an arrest regardless of context. This Honorable Court could follow the *Popple* analysis (three levels of police citizen encounter) for purpose of arrest, which has been shown over time to be understandable and workable in everyday application. Alternatively, this Honorable Court could adopt a "totality of circumstances" test as suggested by the Court below. Petitioner urges that a totality of circumstances test not incorporate the subjective *Melton* factors but rather be based on objective factors such as length of detention, degree of confinement,

assertion of authority, etc. Further, the Court should avoid factors subject to after the fact manipulations such as intent of the arresting officer.

CONCLUSION

The decision *Melton v. State*, 75 So. 2d 291 (Fla. 1954) should be receded from[9] and an updated replacement standard announced that addresses the concerns laid out above. The present case should be remanded to give the parties an opportunity to present evidence contemplating the new standard for a factual determination and for the trial court to apply the replacement standard to the facts after hearing.

Respectfully submitted,

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[9] Note that *Melton* is very infrequently cited and therefore its precedential value is limited, therefore overruling it will have minimal impact. For example, the Florida Supreme Court has infrequently applied the *Melton* definition of arrest for resolving speedy trial issues. *See, i.e., Brown v. State*, 515 So. 2d 211 (Fla. 1987) and *Griffin v. State*, 474 So. 2d 777 (Fla. 1985) (prisoner detention contexts); *Bulgin v. State*, 912 So. 2d 307 (Fla. 2005) and *Giblin v. City of Coral Gables*, 149 So.2d 561 (Fla. 1963); *State v. Parnell*, 221 So. 2d 129, 130 (Fla. 1969).

CERTIFICATE OF FONT

I HEREBY CERTIFY that the font used in this brief is 14-point proportionally spaced Times New Roman.

DESIGNATION OF E-MAIL ADDRESS

I HEREBY DESIGNATE the following e-mail addresses for purpose of service of all documents, pursuant to Rule 2.516, Florida Rules of Judicial Administration, in this proceeding: appellate.efile@pd7.org (primary) and gosney.steve@pd7.org (secondary).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed electronically to the Florida Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, at www.myflcourtaccess.com; delivered electronically to the Office of the Attorney General, 444 Seabreeze Boulevard, fifth floor, Daytona Beach, Florida 32118, at crimappdab@myfloridalegal.com and rebecca.mcguigan@myfloridalegal.com; and Mr. Jahquell Marquis Davis, Inmate #X88678, Gulf Correctional Institution, 500 Ike Steele Road, Wewahitchka, Florida 32465-0010, on this 29th day of November, 2018

/s/ Steven N. Gosney
STEVEN N. GOSNEY
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