

IN THE MARYLAND COURT OF APPEALS

LARRY BLEDSOE, GEORGE KOPP :	:	
and JOSEPH JOHNSON	:	
	:	
Petitioners,	:	Petition No. 668
	:	
SATE OF MARYLAND	:	
	:	September Term 2001
Respondent	:	

PETITIONERS' REPLY TO RESPONDENT'S ANSWER TO PETITION FOR CERTIORARI

All Petitioners, through undersigned counsel, hereby reply as follows to the Respondent's Answer to Petition to Writ of Certiorari.

DISCUSSION

Petitioners reincorporate by reference all facts and arguments set forth in their original Petition for Writ of Certiorari, and further state as follows.

A. Petitioners' Double Jeopardy Rights Preclude any Appellate Relief to the State

Respondent tries to claim that a trial must start before jeopardy can attach. However the real test for double jeopardy when a criminal case is appealed by the State from a District Court dismissal to Circuit Court is as follows: "[I]t makes no difference what the action is called which terminates the trial; the real question is whether the [dismissal] order contemplates an end to further proceedings. If it does, further prosecution is barred." *Shaw*, 282 Md. at 236-37. Here, as well, District Court Judge Rhodes's dismissal contemplated an end to further proceedings; he held that Prince

George's. Code § 14-139.02(b)(2)) ("Ordinance") did not apply to Petitioners, and that the Ordinance could not constitutionally be applied to Petitioners.

Permitting an appeal to the prosecution from a loss in the trial court is a deviation from the general bar against a prosecutor's appeal rights. Consequently, it is important that this issue be fully briefed and heard by this Court through the granting of Petitioners' *certiorari* Petition.

B. Petitioners' Speedy Trial Rights Have Been Violated

Petitioners have demonstrated that their speedy trial rights were violated.

Even assuming, *arguendo*, some substance to the State's claims about preserving issues for appeal, Md. Rule 8-131(a) enables this Court to decide issues not raised in the trial court where deciding such an issue is necessary or desirable to guide the lower court or to avoid the expense and delay of another appeal. *See also* Md. Rule 8-131(b)(1). Here, Petitioners have already shown why the four-factor balancing test weighs in their favor for their speedy trial argument. *See Cert.* Petition at 13.

Moreover, to deny an appeal on this issue will be to leave little to no incentive to the Prince George's trial courts, and perhaps the rest of Maryland's trial courts, to implement and follow reliable and fair mechanisms to assure speedy resolutions of appeals from the District Courts to the Circuit Courts. *See Cert.* Petition at 14.

The State's reliance on *United States v. Lady Hawk*, 474 U.S. 302 (1986) simply does not dispose of this issue, in part because *Lady Hawk* dealt with appeals to a court

that only handles appeals, and Petitioners' case deals with delays caused by a trial court (the Prince George's County Circuit Court) acting in a limited appellate role. Moreover, unlike *Lady Hawk*, Petitioners' case involves the public policy in favor of a much speedier trial than has been permitted by the long delay in Circuit Court in this case. *See Cert. Petition* at 17 (*e.g.*, discussing the mandate of Md. Ann. Code Cts. & Jud. Proc. art. § 5-106 that a prosecution under the Ordinance "shall be instituted within 1 year after the offense was committed") Based on the foregoing arguments, and those in Petitioners' certiorari petition, these issues should be fully argued and decided through the granting of certiorari.

C. The Ordinance May Not Lawfully Be Applied Against Petitioners

1. The Ordinance is Unconstitutional as Applied Against Petitioners

Although the State urges the Court not to consider the Constitutionality of the Ordinance because the Petitioners' predecessor counsel did not press the issue below, the State also concedes that this Court is not precluded from deciding this issue. State's Answer at 4. *See also* Md. Rule 8-131(a), *supra*.

It is best that this issue be decided at the appellate stage, either for purposes of reversing the Prince George's County Circuit Court, or for purposes of giving guidance to the District Court if this case is to go to trial after all. If this issue is not decided at the appellate stage, the matter will not go away; Petitioners will vigorously argue at every

remaining stage of this case that the Ordinance cannot be constitutionally applied to them. It was only through Petitioners' counsels' ineffectiveness -- through trial counsels' erroneous conclusion that the *Erie v. Pap's* case automatically disposed of the issue -- that this issue was not pursued in the Circuit Court; Petitioners should not have to suffer for such ineffective performance by their trial counsel, who are not representing Petitioners any longer.

2. Even if the Ordinance is Constitutional, it Does Not Apply to Petitioners

Petitioners reincorporate by reference its arguments on this point from Petitioners' *certiorari* Petition. Moreover, Petitioner notes that the State makes no effort even to refer to any case law in making its bald assertions that (1) the Showcase is a public place and (2) the issue is somehow unworthy of this Court's attention. Any time that an accused faces incarceration, as here, it is certainly worth an appellate court's time to review whether the statute even applies to a defendant's alleged behavior.

CONCLUSION

WHEREFORE, Petitioners respectfully request that their Certiorai Petition be granted.

Respectfully submitted,

MARKS & KATZ, L.L.C.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioners' Reply To Respondent's Answer To Petition For Certiorari, was served by fax and first-class mail, postage prepaid, on February 28, 2002, to:

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Font: Times New Roman 13 pt.