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Our Experience in the History of the Middle District of Florida and the Speedy Trial Clause of the Sixth Amendment

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Doggett v. United States, 906 F.2d 573 (11th Cir. 1990), 505 U.S. 647 (1992)

by William J. Sheppard and Elizabeth L. White

Marc Doggett was charged by indictment with conspiracy to import and distribute cocaine. He called and made an appointment a few days after he had been arrested in Reston, Virginia. The case itself was in Jacksonville, Florida, so he came to Jacksonville and hired us. I'm not altogether clear how Mr. Doggett found me, but the minute I met him, I knew what his avenue of escape from the clutches of the United States might be. I recall meeting with Marc in the conference room in the afternoon and, during the course of our conversation, I had the folks in the office retrieve a closed file in the case of *United States v. A.J.B.*[1] AJB's case involved the same issue as Doggett's: the Sixth Amendment right to a speedy trial. I had won AJB's case on a motion to dismiss before the Honorable Charles R. Scott, United States Federal District judge for the Middle District of Florida. The difference between the two cases was that Mr. Doggett's delay was far longer than AJB (8-1/2 years versus 32 months).

AJB had been arrested after an indictment 32 months prior to his arrest. Though the government had tried to locate AJB at

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1 A. J.B. is a pseudonym.

the college he attended, it was unsuccessful because the Bureau of Narcotics and Dangerous Drugs had changed to the Drug Enforcement Administration within a month of the start of the search for AJB, and he subsequently "fell through the cracks."

Thirty-two months later, when AJB was returning from a holiday out of the country, he wa arrested at the border because of the outstanding Jacksonville, Florida, warrant. In AJB's case, I filed a motion to dismiss as indicated. Because of the passage of time, AJB was ineligible for sentencing under the Youthful Offender Act, an option utilized by the judge in sentencing his co-defendants. After two or three bifurcated hearings, Judge Scott finally dismissed the case. Ironically, and thankfully, the judge realized that 36 months to the day of the hearing, he had stayed late from work to receive a return of an indictment from the federal grand jury indicting AJB. The judge, upon making this realization, and obviously disgusted at the government's nonchalance in apprehending AJB, announced from the bench that the case would be dismissed, as he pushed the file over the edge of the bench onto the floor and recessed court.

Once I retrieved AJB's file for Doggett, I remembered AJB had absolute proof of being prejudiced by the delay of 32 months from indictment to arrest. Reviewing Judge Scott's order also convinced me that the length of delay in Mr. Doggett's case was of sufficient length to be concerned that the passage of time could prejudice him in ways I might not be able to articulate.

I felt confident enough of my position to file a motion to dismiss. The prosecutor, Thomas Morris, Assistant United States Attorney, now a United States Federal Magistrate Judge, prosecuted for the United States. The Honorable Harvey Schlesinger, then-United States Magistrate Judge, and now a Senior Federal District Judge, presided over the motion hearing. The Honorable John Moore, Federal District Judge, now Senior Federal District Judge, affirmed Magistrate Judge Schlesinger's opinion denying relief to Mr. Doggett on his motion to dismiss. Thereafter, he entered a conditional plea of guilty reserving the right to appeal the denial of the dispositive motion to dismiss. Mr. Doggett received a probationary sentence, but nevertheless was a convicted felon, and in my view, unconstitutionally so. If the constitutional right to a speedy trial meant anything, it seemed to us that we should prevail in Doggett's case.

We pursued an appeal to the Eleventh Circuit Court of Appeal in Atlanta and my partner and wife, Elizabeth "Betsy" white, argued

the case while pregnant with our second child. We lost by a two-to-one vote. Fortunately, Judge Clark wrote a concise and persuasive dissent. Until *Doggett*, prejudice had to be proven in order to prevail on a constitutional speedy trial claim. For our viewpoint, a presumption of prejudice arouse from the inordinate delay in arresting Mr. Doggett. Ultimately, that became the holding in *Doggett*, but not without a very interesting and unusual experience for everyone involved.

Marc Doggett's story, which led to his victory in *Doggett v. United States*,[2] is best told by then Justice J. Souter

> On February 22, 1980, petitioner Marc Doggett was Indicted for conspiring with several others to import And distribute cocaine. Douglas Driver, the Drug Enforcement Administration's principal agent Investigating the conspiracy, told the United States Marshal's Service that the DEA would oversee the apprehension of Doggett and his confederates. On March 18, 1980, two police officers set out under Driver's orders to arrest Doggett at his parents' house in Raleigh, North Carolina, only to find that he was not there. His mother told the officers that he had left for Colombia four days earlier.
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> To catch Doggett on his return to the United States, Driver sent word of his outstanding arrest warrant to all United States Customs stations and to a number of law enforcement organizations. He also placed Doggett's name in the Treasury Enforcement Communication System (TECS), a computer network that helps Customs agents screen people entering the country, and in the National Crime Information Center computer system, which serves similar ends. The TECS entry expired that September, however, and Doggett's name vanished from the system.
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> In September 1981, Driver found out that Doggett was under arrest on drug charges in Panama and, thinking that a formal extradition request would be futile, simply asked Panama to "expel" Doggett to the United States. Although the Panamanian authorities promised to comply when

2 *Doggett v. United States*, 505 U.S. 647 (1992).

their own proceedings had run their course, they freed Doggett the following July and let him go to Colombia, where he stayed with an aunt for several months. On September 15, 1982, he passed unhindered through Customs in New York City and settled down in Virginia. Since his return to the United States, he has married, earned a college degree, found a steady job as a computer operations manager, lived openly under his own name, and stayed within the law.

Doggett's travels abroad had not wholly escaped the Government's notice, however. In 1982, the American Embassy in Panama told the State Department of this departure to Colombia, but that information, for whatever reason, eluded the DEA, and Agent Driver assumed for several years that his quarry was still serving time in a Panamanian prison. Driver never asked DEA officials in Panama to check into Doggett's status, and only after his own fortuitous assignment to that country in 1985 did he discover Doggett's departure for Colombia. Driver then simply assumed Doggett had settled there, and he made no effort to find out for sure or to track Doggett down, either abroad or in the United States. Thus Doggett remained lost to the American criminal justice system until September 1988, when the Marshal's Service ran a simple credit check on several thousand people subject to outstanding arrest warrants and, within minutes, found out where Doggett lived and worked. On September 5, 1988, nearly 6 years after his return to the United States and 8 years after his indictment, Doggett was arrested.

There were many on our team who contributed to Marc's victory. Jan Fail answered the phone when he called for an appointment and had much contact with him over the years. Linda Hughes mastered preparing multiple briefs of perfect quality by her diligence and perseverance, long before the use of WordPerfect. Cyra O'Daniel, a young lawyer the, now a United States

Department of Justice lawyer, helped litigate the case. And, as mentioned, Betsy White argued Mr. Doggett's case before the Eleventh Circuit Court of Appeals and prepared the petition for certiorari. Alan Morrison, one of the most respected appellate attorneys in America, assisted from the moment review was granted

by the United States Supreme Court until the conclusion of the case. Alan shared his knowledge as an experienced Supreme Court litigator by arranging moot courts and giving us countless hours in preparation and advice.

One of the more unique aspects of the *Doggett* case was that it was argued twice, once with a four justice Court and the second time before a Court which included the newly appointed Justice Clarence Thomas. We argued in October 1991 and, in December 1991, received an order from the Court, which added a question to be rebriefed and set the case for reargument in February 1992. This order was probably the result of a vacancy on the Court that was filled between the two oral arguments by Justice Thomas, who ultimately dissented from the July 1992 opinion.

Appearing before the United States Supreme Court for oral argument twice in the same case is an unusual experience. With the exception of *Roe v. Wade* and *Brown v. Board of Education,*[3] we could find few other cases where the Court *sua sponte* ordered a second argument. Thus, we were left somewhat to our own devices as to what to do in this next argument. We theorized that whatever we did the first time was not successful. Because we felt strongly about the substance of our argument, the only thing we could change the second time around was our strategy. In the first oral argument, I did not present rebuttal. In re-argument several months later, I reserved a good measure of time for rebuttal. I also argued the specific facts of the case, as I felt strongly that the lengthy and unnecessary delay worked strongly in Mr. Doggett's favor. Chief Justice William Rehnquist was less than pleased with my continued recitation of the facts, so I knew I was making headway with some of the other justices. His annoyance reminded me of the old saw, "Don't confuse me with the facts," but I wasn't about to let up on a method of attack which was clearly of interest to the other justices.

As we were leaving the courtroom, Betsy White was emphatic we were going to win. I inquired about her recently –acquired clairvoyance and she very quickly replied I had changed Justice Souter's mind in our rebuttal. She perceived a different approach in his questioning as it related to prejudice/presumed prejudice. We will never know, but as it turned out, Justice Souter authored

3 *Roe v. Wade*, 410 U.S. 113 (1973) and *Brown v. Board of Education*, 347 U.S. 483 (1954).

the opinion. The day before the opinion was released Ms. White was at the United States Attorney's Office and made her prediction of success and the vote split, which amazed all involved.

The child who Ms. White was carrying while arguing before the Eleventh Circuit, and who ran into my arms after oral argument, is now a senior in college, applying to law school. The other day she asked me to read her admission essay. To my delight, he recalls our experiences before the Court as her catalyst to want to be a lawyer. The last time I checked the *Doggett* decision has been cited by various courts over 2,289 times. Thus, this case has not only impacted my life and the life of my family, it has had a profound impact on the right of our citizens to a speedy trial.

We are proud we had something to do with the history of the Speedy Trial Clause of the Sixth Amendment of the United States Constitution.

