

In this episode, Dr. Artello and Nia walk you through typical pre-trial motions for Skippy's case.

Nia: Hi Dr. Artello

Dr. Artello: Hi Nia.

Nia: So in our last podcast, we covered arraignment and some of the pre-trial motions. What other motions are available?

Dr. Artello: Let's say that Skippy's case was very big news in this area. Everyone knew about it and the news kept talking about it. If the news digs up some really bad information about Skippy--for example, he had been suspected of participating with a radical group against the public parks.

Nia: But there is a lot of press coverage for criminal cases. Why would there be a motion on this? Don't we have free speech?

Dr. Artello: You are getting two things confused. When you are talking about coverage of case, you could be poisoning the jury pool.

Nia: Poisoning the jury pool?

Dr. Artello: That means you are making so that Skippy can't get a fair trial. Remember the Sixth Amendment states that the accused shall have the right to a public trial by an impartial jury in the place where the crime occurred.

Nia: So how do you know if the jury pool has been poisoned? It is not like looking for arsenic in the water.

Dr. Artello: Not quite but kind of close. The Court in Sheppard v. Maryland set the standard as "where there is a reasonable likelihood that prejudicial news coverage prior to a trial will prevent a fair trial, the judge should continue until the threat abates or transfer it to another county not so permeated with publicity." Do you remember the movie the Fugitive?

Nia: Yes, I do. Great flick with Harrison Ford.

Dr. Artello: It was also a TV show and both were based on this case in Cleveland Ohio where a prominent surgeon was accused of killing his wife. The TV and news coverage was immense including editorials that revealed evidence discovered in the investigation and weighing its meaning for the public. One editorial's headline--Someone's getting away with murder.

Nia: Wow! I didn't know that had been a real case.

Dr. Artello: Yes. So Sheppard was convicted and appealed his case to the Supreme Court. The Court held that in the reasonable-likelihood-of-prejudice test, you need to look at four

factors to see if the poisoning is bad enough to transfer the venue--meaning moving the trial. 1) what is the kind and amount of community bias that endangers a fair trial 2) the size of community from which the jury will be pulled, 3) details and seriousness of crime and 4) the status of the victim and accused. Courts will also consider a few other factors for fairness too. The burden for witnesses to travel, the public's interest in being tried where the crime occurred for sense of justice, changing prosecutors disrupts cases, courts can't decide actual prejudice until the jury is impanelled and after impaneling a jury, courts dislike transferring the case. Courts dislike wasting time.

Nia: Ok--So we've talked about motions to suppress evidence, discover evidence from the other party and change of venue. Anything else?

Dr. Artello: We have two more to talk about. One is double jeopardy.

Nia: Like the game show? Expect instead of losing money, you lose your freedom?

Dr. Artello: Not quite but kind of. Do you remember the Rodney King beating in the early 1990s?

Nia: Kind of but others may not.

Dr. Artello: So Rodney King's beating by LAPD officers with batons was the first videotaped police beating made by a bystander. There was a time before cell phone with cameras and videos everywhere.

Nia: many people forget

Dr. Artello: Yes they think we've always had them. Anyways four officers beat him and caused significant injuries. Los Angeles prosecutor charged the officers with assault. They were found not guilty. Then the government came in charged the four officers with violations of the Civil Rights Act.

Nia: What does this have to do with double jeopardy?

Dr. Artello: Double jeopardy says you can't be tried for the same crime twice. It stemmed from the prosecutor trying and re-trying people to get what he wanted. So this Amendment was to protect us from state power to prosecute someone repeatedly for the same crimes.

Nia; Ok but isn't that what happened to those officers?

Dr. Artello: No, it isn't. While they arise from the same facts--the beating of Rodney King. They are different charges with different elements for the government to prove. Also we've talked

about how the state and federal governments are different. They are different sovereigns--in America it is called Dual sovereignty.

Nia: Dual sovereignty?

Dr. Artello: Yes, you are citizen of the Commonwealth of Virginia and a citizen of the United States. There are different laws that come from the state and those that come from the US. So the example of the officers in the Rodney King beating are an example of dual sovereignty doctrine to double jeopardy.

Nia: So in summary, what is double jeopardy?

Dr. Artello: you can't be tried and punished for the same offense twice.

Nia: Wait a minute. I hear all the time about people being retried. Wasn't Miranda tried twice for the same crimes?

Dr. Artello: That is different. A person may be retried if there was an error in the first trial. He was retried when the first trial allowed his confession erroneously. A person has a right to trial free from legal errors. You may also be retried if the jury can't reach a decision. That is called a hung jury.

Nia; Wow that is a lot of motions before we even get to the trial.

Dr. Artello: Exactly why you sometimes have motions on speedy trial requirement that comes from the Sixth Amendment again. There are two parts of this doctrine. First is called the statute of limitations.

Nia: Statute of limitations? What is that?

Dr. Artello: It says the state has a certain amount of time to discover and charge you with your crime. A few crimes do not have statute of limitations--like murder. But other crimes, say tax evasion has time limits.

Nia: Ok--so if you commit certain crimes, you just hold your breath and hope the police do not figure out what you did.

Dr. Artello: That is about it. So that is one side of the right to speedy trial. The other side is based on due process-- you have a right to a speedy trial that is not unduly delayed.

Nia: How does the court determine if it is "unduly delayed"?

Dr. Artello: The court balances four elements--the length and reason for delay; the defendant needs to assert the right and how much harm has the defendant experienced by the delay. Let's

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take Skippy's case. If Skippy had left the camp to meet a girlfriend, the case was delayed for a couple years. During that time, this alibi witnesses dies in a car accident. His case is hurt badly. The court will weigh that in his favor especially if the delay is not Skippy's fault.

Nia: So what would happen?

Dr. Artello: The court has two remedies. Dismissal with prejudice which means that the case can not be brought again or dismissed without prejudice, which means that the case can be brought again.

Nia: Ok--but let's say that court has ruled on all of the pretrial motions for Skippy. What happens next?

Dr. Artello: We are now moving onto trial.

Nia: we'll continue that next time.