

**Criminal Procedure.** *State v. Francis*, 719 A.2d 858 (R.I. 1998). The Rhode Island Supreme Court determined that the *Maloney* rule applies in all district court proceedings. Under the *Maloney* rule, the exclusion of evidence alleged to have been obtained illegally must be sought procedurally by a motion prior to the trial. Otherwise, postponement of the suppression hearing, until during the trial, would forfeit the State's right to seek judicial review of the trial justice's finding since jeopardy would have attached at that point.

#### FACTS AND TRAVEL

*State v. Francis*<sup>1</sup> involved a trial that was scheduled to be conducted at the district court level.<sup>2</sup> Defendant had made a motion to suppress evidence which the state intended to use at trial.<sup>3</sup> Prior to trial, the state made an oral request that defendant's motion be heard and decided by the court before the commencement of the trial.<sup>4</sup> This request was made before the swearing in of any witnesses.<sup>5</sup>

The district court justice denied the state's request for a pre-trial hearing on defendant's motion to suppress after arguments by both sides.<sup>6</sup> The trial justice did, however, grant the state's motion to stay the trial in order to allow the state to petition the Rhode Island Supreme Court for a writ of certiorari.<sup>7</sup> The supreme court granted the state's petition.<sup>8</sup>

#### ANALYSIS AND HOLDING

The Rhode Island Supreme Court determined that the central issue concerning this case was jeopardy.<sup>9</sup> The court noted that jeopardy attaches in district court proceedings in a similar manner in which it attaches in superior court proceedings.<sup>10</sup> Jeopardy can

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1. 719 A.2d 858 (R.I. 1998).
  2. *Id.* at 859.
  3. *See id.*
  4. *See id.*
  5. *See id.*
  6. *See id.*
  7. *See id.*
  8. *See id.*
  9. *See id.*
  10. *See id.*

attach in two different ways, depending on whether or not the case is before a jury.<sup>11</sup> If the case is to be heard before a jury, "jeopardy attaches when the jury is empanelled and sworn."<sup>12</sup> However, in a non-jury case, "jeopardy attaches when the first witness is sworn."<sup>13</sup>

The Rhode Island Supreme Court tackled a similar issue in *State v. Maloney*.<sup>14</sup> In *Maloney*, the court held that "in all criminal trials conducted subsequent to the filing of this opinion, efforts to suppress evidence must be, by motions, made and heard prior to trial."<sup>15</sup> Unlike *Francis*, where the trial was to be conducted at the district court level, *Maloney* involved a trial conducted at the superior court.<sup>16</sup> The supreme court, however, decided that the same reasoning which applied in *Maloney* should apply equally in *Francis*.<sup>17</sup>

The court found that the extension of the *Maloney* rule to district courts was necessary to preserve the state's right to appeal a suppression.<sup>18</sup> According to the court, a postponement of the suppression hearing would "subvert the state's right to appeal," because, once the first witness is sworn, jeopardy attaches.<sup>19</sup> Therefore, if the defendant prevails in a suppression hearing held concurrent with the trial, the state's appeal of the trial justice's decision to suppress is irrelevant, because, even if successful upon appeal, the defendant cannot be re-tried due to the double jeopardy clause.

Thus, in all criminal cases held in the district court, to effectuate the state's opportunity to challenge the exclusion of essential evidence, any suppression hearings should be held prior to the commencement of the trial.<sup>20</sup> Thereupon, if the defendant's motion to suppress is granted, the state shall be afforded the opportunity

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11. *See id.*

12. *Id.* (citing *Crist v. Bretz*, 437 U.S. 28, 37 (1978)).

13. *Id.*

14. 300 A.2d 259, 265 (R.I. 1973).

15. *Francis*, 719 A.2d at 859 (quoting *State v. Maloney*, 300 A.2d 259, 265 (R.I. 1973)).

16. *See id.*

17. *See id.*

18. *See id.*

19. *Id.*

20. *See id.*

to file a petition for certiorari with the Rhode Island Supreme Court, for review of the trial justice's decision.<sup>21</sup>

#### CONCLUSION

Under the Rhode Island Supreme Court's decision in *State v. Francis*, the common district court practice of holding suppression hearings and trials simultaneously has been determined to violate the state's right to appeal the suppression of essential evidence. In *Francis*, the court extends its prior holding in *State v. Maloney*, which addressed superior court pre-trial criminal procedure, to the state's district courts. As a result, in all criminal proceedings, any suppression hearing must be heard and decided prior to the commencement of the trial.

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