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James King v. State of Florida

THANK YOU, COUNSEL, AND AS SAID RIGHT BEFORE THE RECESS, WE ARE VERY APPRECIATIVE OF YOUR TIME AND EFFORT THAT THE COMMITTEES HAVE PUT IN ON STUDYING THESE MATTERS THAT ARE PRESENTED AND YOU HAVE COME HERE AND MAKING THE PRESENTATION. NOW, TO THE ARRIVAL OF MR. McSHANE, I THINK. WE WILL HEAR KING VERSUS STATE. YOU MAY PROCEED.

MY NAME IS NEAL McSHANE. I AM REPRESENTING JAMES KING IN THIS MATTER, AND I WOULD ASK THE COURT IF I CAN RESERVE FIVE MINUTES FOR REBUTTAL AT THE END. THE INITIAL STATEMENT I WOULD LIKE TO MAKE WOULD BE BASICALLY THAT THE FACTS IN THIS CASE, AS ALLEGED IN THE INFORMATION, STARTED OUT AS AN ORANGE COUNTY CASE WITH NORMAL ORANGE COUNTY CHARGES. AT SOME POINT THE OFFICE OF THE STATEWIDE PROSECUTOR BECAME INVOLVED. HE AMENDED THE CHARGES AND TOOK THE CASE AWAY FROM LOCAL PROSECUTORS AND TOOK THE CASE OVER AS A STATEWIDE PROSECUTOR'S CASE, AND THE DEFECT THAT I SEE TO THIS CASE IS ALL OF THE ALLEGATIONS OF ALL OF THE CHARGES, ALL OF THE FACTS PROVEN AT TRIAL WERE IN ORANGE COUNTY. THERE WAS NO ALLEGATION IN THE INFORMATION THAT ANY OF THE FACTS THAT WERE GOING TO BE PROVEN AT THE TRIAL TO PLACE OUTSIDE OF ORANGE COUNTY OR OUTSIDE OF THE NINETEENTH JUDICIAL CIRCUIT AND THE FACTS COMING UP AT TRIAL PROVING THESE ALLEGATIONS ULTIMATELY TOOK PLACE IN ORANGE COUNTY, FLORIDA.

YOU AGREE THE INFORMATION, ITSELF, WAS --

NO.

I THOUGHT IT WAS JUST THAT YOU CONTESTED IT AND PROOF THAT IT CAME UP NOT ADEQUATE, BUT LANGUAGE HAS BEEN PROVEN IN OTHER CASES?

YES. THE BOILERPLATE FORM WORDING, BUT NORMALLY THE OFFICE OF THE STATEWIDE PROSECUTOR WILL BE PUTTING IN COUNTS AND FACTS ANALOGY ASIAN THAT TOOK PLACE IN OTHER JURISDICTIONS OR CIRCUITS, RATHER, COUNTIES.

BUT THEY DON'T HAVE TO PROVE THAT, AS PART OF THEIR PROSECUTION OF A LOCAL BURGLARY. THEY DON'T HAVE TO PROVE THAT TO THE JURY, IN ORDER TO GET A CON SPRINGS.

WE THINK, UNDER APPRENDI, THEY NOW DO. WE THINK THAT APPRENDI HAS MADE SUCH A SUBSTANTIVE CHANGE IN THE LAW THAT THEY EITHER HAVE TO, SPEAKING OF WILLIAMS RULE, GIVE WILLIAMS RULE NOTICE AS TO WHAT THEY ARE GOING TO PROVE.

YOU SAID THAT THERE WAS AMENDED INFORMATION. IS IT YOUR CLIENT WAS CHARGED WITH BURGLARY BEFORE?

CORRECT.

WHAT WAS THE NEW CHARGE?

THEY ACTUALLY STARTED, I BELIEVE, WITH 19 COUNTS WITH THREE OR FOUR DIFFERENT CODEFENDANTS. THEY AMEND OUT ALL OF THE OTHER CODEFENDANTS AND JUST DROPPED, NOLLE PROSSED ALL OTHER CHARGES ON THE CODEFENDANTS. THEY AMENDED OUT A LOT OF THE CHARGES AGAINST THEM. IT ENDED UP WITH A NINE-COUNT INFORMATION. THEY ADDED,

ORIGINALLY BURGLARY AND THEFT CHARGES. THEY ADDED AN ATTEMPTED MURDER CHARGE AND SOLICITATION OF MURDER --

THOSE ALL WENT BEFORE A JURY?

YES, MA'AM.

I GUESS I AM TRYING TO UNDERSTAND WHY APPRENDI IS APPLICABLE IN THIS.

THE DUE PROCESS ARGUMENT IN APPRENDI THAT IS SET ON FORT THROUGHOUT THAT ENTIRE CASE IS SO POWERFUL AND SO PERSUASIVE, THAT, ON REQUEST OF THIS COURT, FINDS THAT APPRENDI APPLIES TO THIS PARTICULAR CASE. IT IS BASICALLY A DUE PROCESS ARGUMENT, WHERE APPRENDI HAS SET FORTH IN A LENGTHY DISCUSSION, THAT THE COURT CAN ONLY HAVE JURISDICTION ON A CASE SUCH, RELATING BACK TO FLORIDA, NOW, WHERE THERE IS SOME ALLEGATION IN THE INFORMATION THAT GIVES THE OFFICE OF THE STATEWIDE PROSECUTOR A TOUCHSTONE OF JURISDICTION.

NOW, THAT DIDN'T HAPPEN IN THE OPINION. IT SAYS THAT HERE IT IS ALLEGED GENERALLY IN THE INFORMATION THAT, ALTHOUGH THE CHARGED OFFENSES WERE, THEMSELVES, COMMITTED IN ORANGE COUNTY, THEY OCCURRED IN TWO OR MORE JUDICIAL CIRCUITS AS A PART OF THE RELATED TRANSACTION.

CORRECT.

AND THAT IS NOT ADEQUATE?

IT NORMALLY WOULD BE, YOUR HONOR, BUT IN THIS PARTICULAR CASE, THIS, WHY THIS CASE IS SO IMPORTANT, IN THIS PARTICULAR CASE, THERE WERE NO FACTS PROVEN UP AT TRIAL, OUTSIDE OF THE NINTH JUDICIAL CIRCUIT.

WELL, BUT, THE DISTRICT COURT WENT ON TO SAY PROOF WAS SUBMITTED TO THE TRIAL JUDGE, WHICH CONVINCED HIM OF THE TRUTH OF THIS ALLEGATION.

THAT IS ANOTHER VERY RELEVANT PROBLEM. ONE IS THAT PROOF, IF YOU READ THE PROOF IN THE TRANSCRIPT, IT IS BY ROBERT SHAFER. IT IS BASICALLY, WELL, I OVERHEARD THE DEFENDANT, SOME OTHER DEFENDANTS OVER THE LAST TEN YEARS, TALK ABOUT STEALING MOTORCYCLES IN DAYTONA BEACH DURING BIKE WEEK IN OCTOBERFEST. THAT RAISED A VERY INTERESTING ISSUE, BECAUSE WHAT STANDARD OF PROOF DOES THE TRIAL COURT GO BY?

THIS IS ON THE BASIS AFTER CERTIFIED QUESTION.

CORRECT.

AND THE QUESTION WAS THAT THE STATEWIDE PROSECUTOR HAVE JURISDICTION TO PROSECUTE A BURGLARY IN A COUNTY IN WHICH IT WAS COMMITTED, IF IT IS ALLEGED THAT THE BURGLARY WAS PART OF A BUSINESS ENTERPRISE ENGAGED IN MULTI-CIRCUIT CRIMES.

I AGREE WITH THAT, SIR. THE PROBLEM IS I DON'T BELIEVE THAT THE BOILERPLATE WORDING IS AN ALLEGATION. IT CAUGHT EVERYBODY TOTALLY OFF GUARD, WHEN IT CAME TO TRIAL ON THIS MATTER. ALL OF A SUDDEN THEY COME BACK IN AND SAY WE WOULD LIKE TO PROFFER SOME TESTIMONY.

BUT IS THAT THE QUESTION THAT WE ARE TO ANSWER? IF THAT, THIS IS NOT AN ADEQUATE ALLEGATION? OR WE TOOK THE CASE ON, EVIDENTLY, A MORE SUBSTANTIVE ISSUE OF JURISDICTION.

I BELIEVE IT IS BOTH. THE ALLEGATION, AS SET FORTH IN THE CERTIFICATION WHERE THEY ACTUALLY SET FORTH IF IT IS ALLEGED THAT THE BURGLARY WAS PART OF A BUSINESS ENTERPRISE. THERE IS NO ALLEGATION TO THAT FACT. THERE WAS NEVER ANY ALLEGATION AT ALL. THERE IS NO WILLIAMS RULE NOTICE. THERE WAS NO FACT PLED. THERE WAS NO POSSESSION, NO PROOF.

I THINK THAT THE QUESTION, AS I UNDERSTAND JUSTICE HARDING IS ASKING, IS THAT THE MATTER THAT WAS DECIDED ON THAT BASIS WAS DECIDED IN THE DISTRICT COURT. THEY CERTIFIED TO US THE QUESTION, THE FUNDAMENTAL QUESTION INVOLVED, AND IF THEY ARE ASSUMING THAT THERE ARE SUFFICIENT ALLEGATIONS, OF THIS BUSINESS ENTERPRISE, THEN WOULDN'T THE ANSWER TO THAT CERTIFIED QUESTION BE THAT THE STATEWIDE PROSECUTOR DOES HAVE JURISDICTION?

IF WE LOOK AT IT FROM THAT POINT OF VIEW AND IF YOU TAKE THE STANDARD FORM BOILERPLATE WORDING AS SUFFICIENT, AND IN THIS PARTICULAR CASE, BOILERPLATE WORDING IS NOT SUFFICIENT, SIMPLY BECAUSE THERE IS NO NOTHING IN THE ACTUAL COUNT ABOVE THAT, THAT HAS ANY TOUCHSTONE WITH ANY CIRCUIT OUTSIDE OF ORANGE COUNTY. THAT IS A MAJOR DEFECT WITH THIS, AND, ALSO, WHAT DO THEY HAVE TO PROVE? THERE IS NOTHING ALLEGED, SO THERE IS NOTHING TO DEFEND AGAINST. THERE IS NOTHING FOR US TO LOOK AT, AND SAY, OKAY, WE ARE, WE HAVE AN INFORMATION HERE, SO WE KNOW WHAT WE ARE DEFENDING AGAINST. THE GENERAL BOILERPLATE WORDING DOES NOT GIVE YOU THE TOUCHSTONE FOR US TO LOOK AT.

WE SHOULD TAKE THE CASE NOT ON THE BASIS OF THE CERTIFIED QUESTION BUT WHAT?

I BELIEVE WE ARE HERE ON THE CERTIFIED QUESTION THAT THE FIFTH DID. GO AHEAD AND CERTIFIED.

THE CERTIFIED QUESTION IS NOT DISPOSITIVE OF THE ISSUE.

I DON'T BELIEVE IT IS. I BELIEVE, WITH THE NEW U.S. SUPREME COURT COURSE IN APPRENDI, THE APPRENDI RULING HAS, NOW, BASICALLY SET FORTH YOU CAN'T, FIRST OFF, YOU HAVE TO ALLEGE IT UNDER APPRENDI. YOU HAVE TO GIVE US SOME FACTS, VERY SIMPLY SOMETHING IN THE INFORMATION PARTICULARLY YOU HAVE TO PROVE THAT, AND NEITHER HAPPENED IN THIS PARTICULAR CASE THERE. IS NO ALLEGATION.

I AM HAVING DIFFICULTY, IF YOU WOULD DRAW A LITTLE TIGHTER. YOUR CLIENT WAS CHARGED WITH BURGLARY. IS THAT CORRECT?

YES, SIR, COUNT I.

AND YOU ARE NOT HERE CLAIMING THAT THERE WAS NO PROOF, AS TO EACH OF THE ELEMENTS OF BURGLARY.

NO. THE NINE COUNTS OF INFORMATION.

SO APPRENDI HAS TO DEAL WITH THE FACT THAT THERE IS AN ELEMENT.

THAT IS THE HOLDING. HOWEVER, THE --

I REALIZE THAT I AM JUST FOR A SIMPLE CASE, IT SEEMS TO ME THAT WHAT YOU ARE CHALLENGING IS THE PROSECUTOR THAT IS PROSECUTING THE CASE AGAINST YOU, AND YOU ARE SAYING THAT THIS PROSECUTOR DOESN'T HAVE THE RIGHT TO PROSECUTE THIS CASE. ISN'T THAT REALLY WHAT YOUR ARGUMENT IS?

NO. NOT THE PROSECUTOR, HIMSELF, BUT THE OFFICE OF THE STATEWIDE PROSECUTOR JUST SIMPLY DIDN'T HAVE JURISDICTION IN THIS PARTICULAR CASE.

THE PROSECUTOR, HIMSELF.

RIGHT. I THINK THERE IS A DIFFERENCE, BECAUSE THERE IS SOME CASE LAW THAT SAYS IF WE ARE GOING AFTER THE PROSECUTOR'S JURISDICTION, WE HAVE TO DO IT BY -- YES, BUT ISN'T THAT A TOTAL SEPARATE ISSUE FROM THE APPRENDI ISSUE, WHERE THERE IS A VIOLATION OF THE LAW THAT HAS TO BE PROVEN AGAINST HIM. ALL YOU ARE CHARGED WITH IS BURGLARY, I AM NOT SAYING BUT BUT YOUR CLIENT. SOMEONE CHARGES BURGLARY, NOT SOME EXTRA CRIME THAT, BECAUSE THE STATEWIDE PROSECUTOR PROSECUTED THIS, YOU DON'T GET DOUBLE THE PENALTY OR SOMETHING. RIGHT?

CORRECT.

YOU JUST GET WHATEVER THE REGULAR, ALL THESE COUNTS OF SUBSTANTIAL PENALTY, BUT YOU DON'T GET ANY ADDITIONAL PENALTY BECAUSE IT IS THE STATEWIDE PROSECUTOR THAT PROSECUTES THIS, RIGHT?

CORRECT.

SO TELL ME, HELP ME, THEN, WITH HOW APPRENDI REQUIRES THE ISSUE OF THE JURISDICTION OF THE STATEWIDE PROSECUTOR TO BE SUBMITTED TO A JURY, BECAUSE THAT IS WHAT YOUR POSITION IS, IS THAT RIGHT?

IT IS PART OF IT, SIR. I RECOGNIZE IS THAT TOUGH ONE TO CONVINCING THE COURT ON. HOWEVER, THAT IS ONLY PART OF MY ARGUMENT. IF THEY ARE ALLOWED TO PRESENT IT TO A JUDGE, IT HAS TO BE PROVEN BEYOND TO THE EXCLUSION OF A REASONABLE DOUBT, WOULD BE MY ARGUMENT, AND IT HAS TO BE ALLEGED. THERE HAS TO BE SOME ALLEGATION AS TO WHAT THEY ARE GOING TO PROVE IN THE INFORMATION, BESIDES THE BOILERPLATE WORDING.

TELL ME WHAT THE PROCEDURE WOULD BE, UNDER YOUR SCHEME. HOW, IN OTHER WORDS, THAT THERE ARE CONSTITUTIONAL -- FIRST OF ALL, YOU ARE SAYING THAT THERE IS A CONSTITUTIONAL LIMITATION, AND THE CONSTITUTIONAL LIMITATION IS BASED ON APPRENDI?

WELL, IT IS BASED ON CHAPTER 16 AND THE FLORIDA CONSTITUTION AND ON APPRENDI. THE STATEWIDE PROSECUTORS LIMITED, TO ONLY PROSECUTE CASES WHERE --

TELL ME WHAT THE, UNDER YOUR FIGURING ALL THIS OUT, THEN, THE ANSWER WOULD BE, AND TELL US EXACTLY WHAT YOUR FORMULA IS. HERE IS WHAT IS REQUIRED OF THE STATEWIDE PROSECUTOR, NOW, AND THE COURT MUST HOLD THEM TO THIS PARTICULAR THING. TELL ME WHAT THE PROCEDURE WOULD BE. WHAT WOULD BE IN THE CHARGING DOCUMENT AND THEN WHAT WOULD HAPPEN AFTER THAT.

TWO ANSWERS, SIR. ONE IS --

WE NEED ONE ANSWER.

THERE ARE TWO-WAYS THEY CAN DO IT. LET'S PUT IT THAT WAY.

TELL US THE TWO ALTERNATIVE WAYS. IN OTHER WORDS THERE BE ONLY TWO-WAYS THEY CAN DO IT. IS THAT YOUR POSITION?

YES.

WHAT ARE THOSE TWO-WAYS?

THEY COULD HAVE PLED FACTS IN THE INFORMATION THAT THEY ACTUALLY BROUGHT UP THROUGH MR. SHAFER'S TESTIMONY. THEY COULD HAVE PLED THAT. THEY COULD HAVE PLED A CONSPIRACY THAT ALLEGED --

LET ME STOP RIGHT THERE. SO YOU ARE SAYING THAT ONE OF THE WAYS THAT THEY MUST COMPLY WITH, IS THAT THEY MUST ALLEGE, AND THEN THEY MUST PROVE TO A JURY, THESE EXTRA CIRCUIT OR EXTRA COUNTY CIRCUMSTANCES. IS THAT CORRECT? AND THEN PROVE THOSE TO A JURY BEYOND A REASONABLE DOUBT.

YES, SIR. THE FACTS THAT THEY ARE TRYING TO PROVE, THE FACTS, NOT THE FACT THAT THE PROSECUTOR HAS JURISDICTION.

OH, I SEE NOW. I AM HAVING DIFFICULTY FOLLOWING WHAT THIS FIRST ALTERNATIVE IS. YOU ARE SAYING THAT THIS IS ALL ABOUT THE STATEWIDE PROSECUTOR HAVING JURISDICTION, AND THAT THERE HAS TO BE PREDICATE FACTS ALLEGED FOR THE STATEWIDE PROSECUTOR TO HAVE JURISDICTION, AND THEN THOSE PREDICATE FACTS HAVE TO BE SUFFICIENT, FIRST OF ALL, UNDER THE SCHEME FOR THE STATEWIDE PROSECUTOR, AND THEN THEY HAVE TO BE PROVEN TO A JURY BEYOND A REASONABLE DOUBT?

YES. AND ON THAT ISSUE, OR THEY COULD GIVE ME A WILLIAMS RULE NOTICE. THEY COULD HAVE SAID, OKAY, HERE IS WHAT WE INTEND TO PROVE, IN ORDER TO GIVE US SOME TOUCHSTONE OUTSIDE THIS PARTICULAR CIRCUIT. SOMETHING HAS TO GIVE US, UNDER APPRENDI DUE PROCESS, ACTUALLY IF I COULD READ ONE SENTENCE FROM APPRENDI, I THINK THAT ANSWERS YOUR QUESTION. THE TRIAL BY JURY, AT PAGE 355, THIS IS QUOTED IN APPRENDI AND HIGHLIGHTED IN THE APPRENDI OPINION, THE TRUTH OF EVERY ACCUSATION, WHETHER REFERRED IN THE SHAPE OF AN INDICTMENT INFORMATION OR APPEAL, SHOULD AFTERWARDS BE CONFIRMED BY UNANIMOUS SUFFRAGE OF THE TWELVE OF THE DEFENDANT'S EQUALS AND NEIGHBORS, AND THEY CITE BLACKSTONE'S COMMENTARIES. THE TRUTH OF EVERY ACCUSATION --

ACCUSATIONS THAT THEY ARE TALKING ABOUT THERE ARE THE ACCUSATIONS THAT COME TO THE CRIME OF ROBBERY OR BURGLARY OR, YOU KNOW, GO TO THE PUNISHMENT FOR THE CRIME OF BURGLARY OR ROBBERY. OBVIOUSLY APPRENDI IS NOT DECIDED IN THE CONTEXT OF WHO THE PROSECUTOR CAN BE.

CORRECT.

WITHIN A SINGLE STATE'S, YOU KNOW, JURISDICTION, AND SO IT IS, THAT IS SIMPLY NOT THE CONTEXT THAT THAT STATEMENT WAS MADE, AND YOU WOULD AGREE WITH THAT.

YES. I WOULD AGREE WITH THAT. MY ARGUMENT IS IT IS A DUE PROCESS ARGUMENT, THAT YOU HAVE TO PUT SOMEONE ON NOTICE. ARTICLE I SECTION 9 WOULD BE OUR TOUCHSTONE.

WHY? WHY DO YOU HAVE TO PUT -- AGAIN, IT IS OBVIOUSLY REQUIRED FOR JURISDICTION, BUT WHY DID YOUR CLIENT, IN ORDER TO DEFEND THE CHARGES AGAINST HIM, NEED TO KNOW WHETHER THESE OTHER ACTS WERE ACTS THAT, WHERE THEY WERE VEHICLE ALTERATIONS IN LEON COUNTY OR DELIVERY OF A VEHICLE IN LAKE COUNTY. HOW WOULD THAT HAVE AFFECTED HOW HE WAS GOING TO DEFEND OR YOU WOULD DEFEND AGAINST THE CHARGES?

IT HAS A MAJOR IMPACT, SIMPLY BECAUSE, FOR INSTANCE, WE LOOK AT THE TRANSFER CAREFULLY, OF THE LAKE COUNTY ALLEGATIONS AND THE LEON COUNTY ALLEGATIONS ARE NOT IN THERE. THEY ARE NOT PROVEN.

WOULD YOU RATHER HAVE HAD THIS BE THAT THEY HAD CHARGED MULTIPLE OTHER ACTS OF STEALING MOTORCYCLES AND HAVE THE JURY BE HEARING ALL OF THAT?

ABSOLUTELY AND/OR HAD THAT BEEN GIVEN TO ME BY WAY OF A WILLIAMS RULE NOTICE, SO THAT I KNEW --

THEY DIDN'T TRY TO INTRODUCE THOSE OTHER THINGS AND THEY DIDN'T HAVE TO, IN ORDER FOR THEM TO HAVE JURISDICTION. YOU AGREE THAT THEY MAY, THAT THEY, THE STATEWIDE OFFICE, MAY PROSECUTE A LOCAL BURGLARY.

NOT UNDER THOSE FACTS. THERE HAS TO STILL BE SOME TOUCHSTONE WITH A RELATED CRIME OR CONSPIRACY OUTSIDE THAT CIRCUIT. THERE HAS TO BE, THERE IS A SECONDARY PART TO THAT.

THAT COULD BE TERRIBLY PREJUDICIAL TO YOUR CLIENT? THAT IS THAT NOW THEY ARE GOING TO COME IN AND PROVE? ORDINARILY WE HAVE THE REVERSE OF THIS, AND WE ARE SAYING THEY ARE LIMITED TO PROOF OF THE BURGLARY, BUT WE ACTUALLY WANT THEM TO COME IN AND PROVE THAT WE ARE BAD GUYS IN A MUCH MORE SERIOUS AND BROADER WAY, AND SO ARE YOU SURE THIS IS WHAT THE DEFENDANTS WANT THAT ARE BEING, THAT THEY WANT INJURIES TO HEAR THAT THEY ARE NOT JUST LOCAL BURGLARIES, BUT THESE PEOPLE ARE PART OF A STATEWIDE OR NATIONAL CRIME. THIS IS BIG STUFF HERE. IS THAT REALLY WHAT DEFENDANTS WANT?

OBVIOUSLY NOT, SIR, BUT THE PRACTICAL PROBLEM YOU RUN INTEREST IS, BECAUSE THE CASE WAS, AFTER SEVERAL MONTHS, TAKEN OVER BY THE OFFICE OF THE STATEWIDE PROSECUTOR, THEY HAVE TO HAVE SOME JURISDICTION ABOVE AND BEYOND THE SINGLE COUNTY WHERE THE BURGLARY TOOK PLACE.

IT HAS TO BE ALLUDED TO.

THE FACTS ALLEGED AND PROVEN TO THE JURY, NOT SO THEY CAN PROVE THEIR JURISDICTION, BUT THE FACT THAT WE ARE HERE ON A STATEWIDE PROSECUTOR CASE. WE ARE NOT HERE ON A LOCAL PROSECUTOR CASE. HAD THIS BEEN TRIED BY A LOCAL PROSECUTOR, WE WOULD NOT BE HERE TODAY. MR. ^CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME. THANK YOU. RESPONSE?

MAY IT PLEASE THE COURT. I AM CARMEN CORRENTE WITH THE ATTORNEY GENERALS OFFICE IN DAYTONA BEACH. I WANT TO BRIEFLY ADDRESS JURISDICTION, BECAUSE THIS COURT HAS RESERVED RULING, EVEN THOUGH THIS IS A CERTIFIED QUESTION. I DON'T BELIEVE THAT THERE IS A CONFLICT. THE LANGUAGE OF THE CERTIFIED QUESTION STATES THAT, EITHER BECAUSE IT IS OF EXCEPTIONAL IMPORTANCE OR BECAUSE OF A POSSIBLE CONFLICT WITH ANOTHER CASE. I DON'T THINK THAT MEANS AN EXPRESS AND DIRECT CONFLICT THAT IS REQUIRED, OR THIS COURT TO REVIEW A MATTER. I THINK THAT COMES FROM THE DISTRICT COURT, IN AN INSUFFICIENT MANNER UNDER THAT PRONG. ALSO, AS IS IT A MATTER OF GREAT PUBLIC IMPORTANCE? AND THE ANSWER IS VERY SIMPLY NO. BECAUSE, AS COUNSEL HAS MENTIONED, IF THE OFFICE OF STATEWIDE PROSECUTOR DID NOT PROSECUTE THIS CASE, THE LOCAL STATE ATTORNEY WOULD HAVE PROSECUTED THIS CASE, AND WE WOULDN'T BE HERE ON THIS ISSUE. WHAT HAPPENED IN THE WINTER CASE IS, AS FAR AS I KNOW, IT IS BEING PROSECUTED BY THE LOCAL STATES ATTORNEY. WHAT WE HAVE HERE IS A SITUATION WHERE THIS MATTER MUST BE BROUGHT UP BEFORE TRIAL. IF IT IS A DEFICIENCY I IN THE INFORMATION, IF THE -- IF IT IS A DEFICIENCY IN THE INFORMATION, IF THE WRONG PERSON HAS SIGNED THE INFORMATION, IF THE WRONG ATTORNEY OR AN INTERN, NOT AN ATTORNEY, HAS SIGNED THE INFORMATION, IF THE NAME IS WRONG, IF THERE IS SOMETHING DEFECTIVE ABOUT THE OFFICE THAT THERE IS A CONFLICT, YOU MOVE FOR A MOTION TO DISMISS PRETRIAL, A WRIT OF PRO WARRANTO BEFORE

TRIAL.

WHAT DOES IT TELL ABOUT WHEN THE PROSECUTOR IS EMPLOYED, WHEN THE CASE IS BROUGHT BY THE STATEWIDE PROSECUTOR AS OPPOSED TO THE LOCAL STATES ATTORNEY?

THAT IS A GOOD QUESTION. I BELIEVE -- I DON'T KNOW. I DON'T KNOW THE ANSWER TO THAT.

ARE THEY TOLD ANYTHING?

THEY MAY NOT BE. EACH COURT MAY HAVE A DIFFERENT MANNER.

I WOULD THINK THAT THAT MIGHT BE PREJUDICIAL, ALL BY ITSELF.

CORRECT.

THAT IF YOU SAID THE STATEWIDE PROSECUTOR, NOW YOU ARE IMPLYING --

YOU ARE IMPLYING SOMETHING GREATER. I THINK EACH JUDGE PROBABLY MAY INTRODUCE, AND THAT MAY NOT BE UNIFORM, AND I DON'T KNOW WHAT HAPPENED IN THIS CASE, BUT, YES, WE THINK THAT EXTRA CRIMES, THE FACT THAT IT IS A STATEWIDE PROSECUTOR IS PREJUDICIAL TO THE DEFENDANT.

AS AN ASIDE, REALLY, AND I AM NOT SURE WHETHER YOU ARE PREPARED TO ANSWER THIS, TOO, BUT IF THERE HAD BEEN AN OBJECTION AND SOME PROBLEM HERE, IS THERE ANYTHING TO PREVENT THE LOCAL PROSECUTOR FROM SWEARING IN THE PEOPLE IN THE STATEWIDE PROSECUTOR'S OFFICE, AS SPECIAL PROSECUTORS?

NOT AT ALL. IT HAS HAPPENED IN SOUTH FLORIDA. DRUG CASES THAT HAD NOTHING TO DO WITH STATEWIDE PROSECUTION. THERE WERE A NUMBER OF DRUG CASES. THEY WERE BACKLOGGED, AND THEY HAD TO HELP WITH THE OFFICE OF STATEWIDE PROSECUTION. THE STATEWIDE PROSECUTOR IS AUTHORIZED THROUGHOUT THE STATE, TO BRING CHARGES, TO FILE CHARGES. NOW, THE QUESTION BECOMES, IF A DEFENDANT WANTS TO OBJECT TO THEIR AUTHORITY, THEN THEY HAVE TO DO IT PRETRIAL. OTHERWISE IT IS WAIVED. BECAUSE THE RELIEF, THE PREJUDICE IS THAT NO, OKAY, THE LOCAL STATES ATTORNEY WILL BRING IT. THEY DON'T GET TO COME BACK TWENTY YEARS LATER AND CALL IT SUBJECT MATTER JURISDICTION AND SAY I AM SCOT-FREE AND I HAVE BEEN WRONGFULLY CONVICTED.

IN THIS CASE, WAS THIS BROUGHT, IS IT THE STATE'S POSITION THAT A MOTION IN THIS CASE WAS BROUGHT TOO LATE?

YES. JUDGMENT OF ACQUITTAL IS NOT THE TIME, AFTER A JURY HAS BEEN SWORN, TO ARGUE WHETHER OR NOT THE PROSECUTOR HAS AUTHORITY TO BE THERE.

SO WHAT YOU WOULD SAY IS SORT OF MORE, IT WOULD BE, HAVE TO BE RAISED, THE MOTION TO DISMISS, BEFORE THE JURY IS SWORN.

YES. ABSOLUTELY.

AND THEN THAT THERE WOULD BE, I GUESS, I AM TRYING TO, A TRAVERSE PROCEDURE? IN OTHER WORDS, WOULD YOU AGREE THAT, I GUESS, THAT THIS IS A BOILERPLATE INFORMATION, AS FAR AS ONLY STATING CONCLUSORY FACTS THAT, WHAT THE JURISDICTION WAS IN THE STATEWIDE PROSECUTORS OFFICE.

YES, ACCORDING TO PRECEDENT.

SO, THEN, IF THE DEFENDANT HAS A RIGHT TO SAY WHAT ARE THE FACTS BASED UPON.

CORRECT.

DO THEY HAVE THAT RIGHT, IF IT IS TIMELY DONE?

YES.

AND SO IN THIS CASE, LET'S JUST ASSUME, TO GET THE TIMELINESS ARGUMENT, I AM HEARING THAT YOUR ARGUMENT WAS THAT THE MULTI-CIRCUIT IMPLICATIONS WERE BOTH, OTHER VEHICLES WERE STOLE THEN VOLUSIA COUNTY OVER A LONG PERIOD OF TIME.

CORRECT. AND THAT WAS FROM THE HEARSAY TESTIMONY OF ONE --

MR. SHAFER.

AND WHAT, AND THAT THERE WERE VEHICLE ALTERATION NUMBERS IN LEON COUNTY?

YES. EXACTLY LIKE THE NICHOLS CASE.

AND WHOSE TESTIMONY, WHO SUPPLIED THAT TESTIMONY?

I THINK THAT WAS JUST INFERENCE. I DON'T KNOW. I DON'T REMEMBER WHO IT WAS THAT SUPPLIED THAT TESTIMONY, OTHER THAN THE VIN'S WERE ALTERED AND THAT HAS TO GO THROUGH TALLAHASSEE.

THE VIN. AND THEN THAT SOME VEHICLES WERE RECOVERED IN LAKE COUNTY.

YES.

THAT WAS IN THE --

THAT WAS TESTIMONY, I BELIEVE, OF THE OFFICERS.

AND YOU ARE SAYING THE FIRST TIME THAT THE STATE KNEW THAT THIS WAS BEING CHALLENGED WAS AFTER THE STATE'S CASE?

AT SOME POINT DURING THE BEGINNING, DURING THE EARLY PART OF THE TRIAL, THE JUDGE INQUIRED OF DEFENSE COUNSEL, ARE YOU GOING TO CHALLENGE STATEWIDE PROSECUTOR'S AUTHORITY? HE ANSWERED YES, AND THEN THE JUDGMENT OF ACQUITTAL WAS WHEN THE HEARING WAS REALLY HELD. AND IT IS OUR POSITION, JUST LIKE WITH ANY --

WAS THAT RAISED IN THE DCA? I MEAN, WE DON'T HAVE -- DO WE HAVE THAT IN FRONT OF US, ABOUT THE TIMELINESS OF THE MOTION?

THE TIMELINESS OF THE MOTION --

THAT WAS NOT RULED ON BY THE DCA.

NO. I DON'T BELIEVE THEY RULED UPON IT, CORRECT.

SO SHOULD WE GET INVOLVED IN THAT?

I DON'T THINK THIS COURT HAS JURISDICTION TO START, WITH AND I BRIEFLY WENT OVER THAT, BECAUSE WE DON'T HAVE A CONFLICT, AND WE DON'T HAVE OF GREAT PUBLIC IMPORTANCE. IF THIS COURT DOES LOOK AT IT, THEN I THINK THIS COURT NEEDS TO LOOK AT WHEN AND HOW STATEWIDE PROSECUTION AUTHORITY CAN BE CHALLENGED.

BECAUSE YOU ARE CONCERNED ABOUT THE LANGUAGE IN --

YES. VERY CONCERNED.

-- MIGHT BE APPLIED AFTER THE TIME THAT, EVEN AFTER THE VERDICT.

YES.

BUT YOU ARE SAYING THAT IT WAS CHALLENGED WHEN THEY BROUGHT IT UP, THE JUDGMENT OF ACQUITTAL? THE STATE SAID THIS SHOULD NOT BE CONSIDERED. IT IS UNTIMELY?

THE STATE, IN TRIAL, DID SAY THAT. THEY SAID WHY ARE WE ARGUING MY POWER IN A JOA?

THAT WAS RAISED BY THE STATE IN A BRIEF TO THIS PETITION?

NOT IN THE SAME WAY. I DON'T BELIEVE SO. I DON'T BELIEVE THAT WAS THE WAY IT WAS RAISED. IF YOU WOULD LOOK AT IT, WE WOULD ASK YOU TO LOOK AT IT, BASICALLY, BUT FIRST OF ALL WE DON'T THINK YOU HAVE JURISDICTION, AND SECONDLY THE NARROWLY-PHRASED CERTIFIED QUESTION, IF YOU TAKE IT AS WRITTEN, SIMPLY ASKS WHETHER OR NOT THE STATEWIDE PROSECUTOR HAS AUTHORITY TO FILE A BURGLARY CHARGE LOCALLY, AND OF COURSE THEY DO. IF NOT, THEN THIS COURT IS GOING TO BE PLACED IN THE POSITION OF SAYING, TELLING THE STATEWIDE PROSECUTOR YOU MAY HAVE TEN CRIMES ACROSS SEVERAL CIRCUITS. YOU HAVE TO CHARGE ONE HERE, ONE THERE, NOT ONE HERE. IT WOULD GET UGLY.

THERE IS NOT ANY DISAGREEMENT THAT THAT CERTIFIED QUESTION --

-- SHOULD BE ANSWERED.

-- IS ANSWERED. YES, THEY DO.

OKAY. ALL RIGHT. AND IF THIS COURT WOULD, IF THIS COURT DOES TAKE JURISDICTION, AND WISHES TO REVIEW IT, WE WOULD STRONGLY ASK THAT YOU LOOK AT THE LANGUAGE USED IN WINTER AND CLARIFY WHEN SOMETHING IN THIS MANNER, IN POLICY, AS A MATTER OF POLICY, WHEN SOMETHING OF THIS MAGNITUDE CAN BE RAISED, AND RESTRICTED TO PRETRIAL, BECAUSE THEY HAVE NOTICE. HE KNEW, AS SOON AS THE INFORMATION WAS FILED, THAT IT CONTAINED AN ALLEGATION THAT SAID "ACROSS MULTI CIRCUITS", BUT EVERY SINGLE ONE OF THE 19 COUNTS SAID ONLY ORANGE COUNTY. THAT IS THE TIME WHEN HE CAME IN WITH A BILL OF PARTICULARS AND SAID TELL ME WHAT IT IS, WHAT ELSE YOU ARE GOING TO PROVE, IF YOU ARE GOING TO PROVE YOUR JURISDICTION, AND THAT IS WHEN IT CAN BE FERRETED OUT AND EVEN REVIEWED ON APPEAL AT THAT POINT. WE WOULD ASK YOU TO AFFIRM THE FIFTH DCA.
MR.^CHIEF JUSTICE

THANK YOU, COUNSEL. MR. McSHANE, REBUTTAL.

LET ME BE REAL SPECIFIC ON SOME OF THESE ISSUES. THE STATE NEVER ARGUED TIMELINESS BELOW. THE ISSUE DID COME UP A LOT, AND IT WAS BASICALLY, LOOK, IF YOU RAISE IT, I AM GOING TO GIVE A SELF CROSS WARRANT TO THE ASSISTANT STATE ATTORNEY, WHICH IS DONE AND THEN HE IS AN ASSISTANT STATE ATTORNEY FOR THIS PARTICULAR CASE. THE RECORD, ALSO, SHOWS THAT WHEN WE DID THE JUDGMENT OF ACQUITTAL, WE ALSO CALLED IT A MOTION TO DISMISS AND SAID, I REALLY DON'T CARE WHAT THE COURT CALLS IT. I AM CALLING IT A JUDGMENT OF ACQUITTAL, MOTION TO DISMISS. IT IS JURISDICTIONAL, IF RAISED ON TIME. IN THE LEON COUNTY ISSUES, THE LEON COUNTY TESTIMONY WAS RAISED BY LIEUTENANT DODSON, NOT JUST GENERAL TESTIMONY ABOUT THIS CASE AS TO HOW TITLES ARE TITLED. IT WAS NO TIE-IN TO THIS CASE. IT WAS JUST GENERAL.

THE PROBLEM I HAVE WITH THIS IDEA, IF YOU CAN RAISE IT IN TIME, IS IF IT CAN BE CURED SIMPLY BY MAKING THE STATEWIDE PROSECUTOR A STATE ATTORNEY, WHY SHOULDN'T IT HAVE TO BE RAISED BEFORE THE TRIAL BEGAN?

IT IS A TACTICAL MOVE THE TRIAL JURY HAS TO MAKE.

I AM NOT CONCERNED -- UNDER YOUR VIEW, COULD IT BE RAISED POSTCONVICTION?

NOBODY ELSE, NO. NO. BECAUSE THAT DOESN'T HAVE MAJOR IMPLICATIONS, INSOFAR AS --

CAN YOU RAISE JURISDICTION ANY TIME?

JURISDICTION CAN BE RAISED ANY TIME, BUT I THINK YOU STILL HAVE TO HAVE SOMETHING WITH ANY FACT PATTERN LIKE THIS, WHERE ALL OF THE FACTS ARE ALLEGED AND PROVED IN ONE COUNTY.

HOW WAS THIS PROSECUTED? HOW DID HE OR SHE REFER IT?

YOU KNOW, I HONESTLY DON'T REMEMBER, EITHER.

IT OBVIOUSLY WASN'T SOMETHING THAT, I MEAN, I AM THINKING, AGAIN, LET YOU KNOW I AM FROM THE OFFICE OF THE STATEWIDE PROSECUTOR, THAT THAT MIGHT BE SOMETHING --

I DON'T KNOW. ONE OTHER BRIEF ISSUE, IF YOU LOOK AT THE TRANSCRIPT ON THE LEON COUNTY, I MEAN THE LAKE COUNTY ISSUE, THE ISSUE THERE WAS BY MR. WILKERSON, AND HE BASICALLY SAID, WELL, I LIVED IN LAKE COUNTY. WHEN I BOUGHT THE MOTORCYCLES I TOOK THEM TO LAKE COUNTY. I DON'T KNOW HOW THEY GOT BACK INTO ORANGE COUNTY, BUT THEY WERE PURCHASED IN ORANGE COUNTY.

AND YOUR CLIENT, THIS WAS ATTEMPTED MURDER?

ALL COUNTS, YES, MA'AM. AND THOSE ARE THE COUNTS THAT WERE ADDED ON LATER, WHEN APPARENTLY THE LOCAL PROSECUTORS DIDN'T PICK THEM UP. THE STATEWIDE PROSECUTOR PICKED THEM UP.

ARE YOU CHALLENGING THOSE COUNTS, TOO?

YES. THE WHOLE THING, BECAUSE ALL COUNTS, EVERY SINGLE FACT IN THE CASE, ALL FACTS PROVEN AND ALLEGED WERE IN ORANGE COUNTY. THERE WERE NO FACTS ALLEGED OR PROVEN, WHICH IS MY MAJOR PROBLEM WITH DUE PROCESS IN THIS PARTICULAR CASE. IF I COULD VERY BRIEFLY SPEAK TO THE WINTERS CASE, BECAUSE I THINK THERE IS A DIRECT CONFLICT, AND I THINK THIS CASE DOES HAVE STATEWIDE IMPORTANCE. THERE IS ABSOLUTELY NO QUESTION ABOUT IT, BASED ON THE FACT THAT THE WINTERS CASE ACTUALLY SAYS WE FIND THE LEGISLATURE HAS PURPOSEFULLY LIMITED, OFFICE OF THE STATEWIDE PROSECUTOR'S JURISDICTION. THEREFORE WE DECLINE TO GIVE EXPANSIVE READING ADVANCED BY THE STATE, WHICH IS THE SAME THING THAT HAS HAPPENED HERE. ANOTHER KEY WORDING IN WINTERS, ABSENT CLEAR PROOF OF IMPACT IN OTHER JUDICIAL CIRCUITS, WHICH ABSOLUTELY NEVER HAPPENED. THERE WAS NO PROOF. THERE WAS SKETCHY PROOF ABOUT MR. SHAFER.

THE STATE SAID THERE WAS ENOUGH OF A DECISION-MAKER TO DETERMINE THE REQUIREMENTS HAD BEEN MET. WHAT DID WE DO WITH THAT?

I THINK YOU STILL HAVE TO LOOK AT THAT JUDGE. YOU STILL HAVE TO LOOK AT THE PROOF THAT WAS SUBMITTED. IT IS ONLY FOUR OR FIVE OR SIX PAGE INS THE TRANSCRIPT. IT IS VERY SHORT AND IT IS JUST NOT THERE. IT IS JUST NOT THERE. WELL, THE OTHER ISSUE THERE, YOUR

HONOR, IS WHAT LEVEL OF PROOF ARE WE DEALING WITH? ARE WE DEALING WITH, I THINK, BEYOND A REASONABLE DOUBT? AND IF YOU LOOK AT THE PROOF THAT WAS SUBMITTED, THE TRIAL COURT ACCEPTED THAT AS ADEQUATE PROOF. IT DOESN'T EVEN COME CLOSE TO BEYOND A REASONABLE DOUBT. IT DOESN'T, IN MY OPINION, MEET ANY STANDARD OF PROOF WHATSOEVER. IS THAT A RED LIGHT? YES. I WILL BE GLAD TO STAY LONGER, IF THE COURT LIKES, IF THE COURT HAS ANY OTHER QUESTIONS. MR. ^CHIEF JUSTICE

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.