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## State of Florida v. Roberto Ruiz

CHIEF JUSTICE: GOOD MORNING.

MARSHAL: LADIES AND GENTLEMEN, THE FLORIDA SPRAECKT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING, EVERYONE. I SEE EVERYONE IS READY ON THE FIRST CASE, SO WITHOUT FURTHER ADO, IF COUNSEL IS READY TO PROCEED, YOU MAY PROCEED. GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. FRANK INGRASSIA HERE, ON BEHALF OF THE PETITIONER, THE STATE OF FLORIDA, IN BOTH THE RUIZ AND THE BRAGS MATTERS. I WOULD LIKE TO RESERVE FOUR MINUTES FOR MY REBUTTAL TIME. I WOULD LIKE TO TODAY ADDRESS THREE MAJOR POINTS ON THE QUESTION THAT WAS CERTIFIED BY THE THIRD DISTRICT COURT OF APPEAL, WHICH IS NAMELY WHETHER CHAPTER 2001-58, A HAS LEGITIMATELY OVER -- HAS LEDGEIES LATE AFLY OVERRULED THE DELGADO-HAS LEDGEIES LATE -- LEDGE LEGISLATE -- LEGISLATIVELY OVERRIDE THE DELGADO POSITION.

ONCE THE COURT INTERPRETS THE STATUTE AND SAYS THAT IS WHAT THE STATUTE MEANS, DOES THE LEGISLATURE HAVE THE AUTHORITY, IN ESSENCE, THEN BE ANOTHER REVIEWING AUTHORITY OVER WHAT THIS COURT DECIDED TO SAY, NO, THAT IS NOT WHAT AT LEGISLATURE MEANT IN 1990 OR WHENEVER THAT ACT WAS ESTABLISHED? AND THEN ACTUALLY OVERRULE THE DECISION OF THIS COURT. ISN'T THAT THE ISSUE OR ONE OF THE ISSUES AND I REALIZE THERE ARE OTHER ISSUES.

I THINK THAT IS ONE OF THE DISPUTED ISSUES, AND THIS IS THE REASON WHY I WOULD SUBMIT THAT THAT RULE DOESN'T REALLY APPLY IN THIS PARTICULAR CASE, WE HAD A STRING OF JUDICIAL PRECEDENCE FROM BOTH THIS COURT, GOING BACK TO THE RUTLEY CASE, IN 1997, THE RAY CASE, AND 1998. THERE IS A JUDICIAL PRECEDENT FROM THIS COURT THAT HAS HELD THAT, WHEN THIS COURT INTERPRETS A PIECE OF LEGISLATION, THAT IT IS PRESUMED THAT THE LEGISLATURE ADOPTS THAT JUDICIAL CONSTRUCTION. FOR INSTANCE, WHEN THEY REENACT THE BIENNIAL STATUTES, AS THEY CLEARLY DID A NUMBER OF TIMES, FROM THESE DECISIONS, SO WHEN THIS COURT, IN THE DELGADO CASE, I WOULD IS SUBMIT, OVERRULED THOSE AND RECEDED FROM THOSE PRECEDENTS, I SUBMIT THAT THAT WAS AN ENCROACHMENT ON THE LEGISLATURE'S AUTHORITY TO DEFINE CRIMES AND RAISES THE SEPARATION OF POWERS ISSUES.

THE CRIMES IN THIS CASE OCCURRED BEFORE FEBRUARY OF 2000, AND THEY ARE PIPELINE CASES, CORRECT?

THAT'S CORRECT.

AND SO THE ONE ISSUE THAT THE THIRD DISTRICT WAS CONCERNED ABOUT WAS WHETHER JIMENEZ HAD DONE, AND IN JIMENEZ, WE DECIDED THAT IT WOULD NOT HAVE RETROACTIVE EFFECT, BUT AS FAR AS OUR DECISION IN FLOYD, AND THE SECOND DISTRICT'S DECISION IN RC, THE, IN FLOYD AS WELL AS IN RC, THE, BOTH COURTS DECIDED THAT THE PLAIN LANGUAGE OF THE STATUTE WOULD NOT, ONLY APPLY TO CASES AFTER FEBRUARY OF 2000, SO TO GO BACK TO THIS ISSUE OF THE POWER OF THE LEGISLATURE, WE FIRST HAVE TO GET TO THE FACT OF WHETHER THE NEW, WHATEVER PART OF A THE NEW STATUTE WOULD APPLY TO MR. BRAGGS

AND MR. RUIZ, CORRECT?

CORRECT. AND, YOUR HONOR, THAT QUESTION ADDRESSES OR RAISES THE SECOND POINT THAT I WANTED TO MAKE, WHICH IS NAMELY BECAUSE THE LEGISLATURE, IN THIS PIECE OF LEGISLATION, 2001.58, SET THE DATE OF RETROACTIVITY TO FEBRUARY 1, 2000. THE REASON WHY THEY DID THAT, AND IT IS CLEAR, IF YOU LOOK AT THE FINAL STAFF ANALYSIS --' IF WE JUST STICK WITH THE LANGUAGE, BECAUSE WHAT HAPPENED IN, WHICH IS, I CONSIDER TO BE SOMEWHAT UNUSUAL, AND MAYBE UNIQUE IN JURISPRUDENCE IS THEY ACTUALLY AMENDED THE DEFINITION OF BURGLARY PROSPECTIVELY, FOR CRIMES AFTER 7-1-01, CORRECT?

ABSOLUTELY. AND THAT DEFINITION, REALLY, CLARIFIES OR AMENDS IT, SO THEY DON'T, THEY DENT RETRO AECKT I FEEL TAKE THAT DEFINITION AND SAY AND THAT IS THE DEFINITION WE HAVE ALWAYS MEANT. -- THEY DIDN'T RETROACTIVELY TAKE THAT DEFINITION AND SAY THAT IS THE DEFINITION WE HAVE ALWAYS MEANT. CORRECT?

THEY --

THAT STATUTE AMENDS THE CRIMES AFTER 7-1-01.

CORRECT.

THEY ALSO, IN ANOTHER STATUTE, 8-5-02, DID SOMETHING ELSE, AND THIS IS A STATEMENT OF THIS IS WHAT WE THINK. IT IS NOT REALLY A SUBSTANTIVE STATUTE, IS IT?

THE RETRO AECKTIVITY -- THE RETRO ACTIVITY COMPONENT?

THE ONE THAT WE TALKED ABOUT, THAT WE DON'T THINK DELGADO IS A GOOD DECISION AND WE IS HE INTEND TO NULLIFY DELGADO.

I WOULD ARGUE, KNOW -- I WOULD ARGUE, NO, THAT THAT IS NOT A SUBSTANTIVE CHANGE IN THE STATUTE THAT, THAT IS MERELY A CLARIFICATION.

IS THERE EVER AN EXAMPLE OF THE LEGISLATURE, IN SAYING, LOOK, WE ARE GOING TO CLARIFY IT, LIKE THEY TRIED TO DO OF BURGLARY OF AN OCCUPIED STRUCTURE. THEY SAY WE ARE REWRITING THE STATUTE. CAN YOU GIVE ME ANOTHER EXAMPLE WHERE THE LEGISLATURE SAYS REALLY I DIDN'T LIKE THIS DECISION OF THE COURT AND NOW WE ARE GOING TO SAY WE OVERRULE THIS DECISION.

WELL, THE TWO DECISION THAT COME TO MY MIND, CERTAINLY, IS THE TROTTER TWO DECISION, AS WELL AS THE DECISION IN STATE VERSUS LANIER.

NOW, IN STATE V LANIER, THAT IS MORE OF A CLASSIC SITUATION OF WHERE A CASE IS PENDING ON REVIEW, AND WHILE IT IS PENDING ON REVIEW IN THIS COURT, BECAUSE OF SOMETHING THAT HAS HAPPENED IN A LOWER COURT, THE LEGISLATURE COMES AND AMENDS THE STATUTE. ISN'T THAT WHAT HAPPENED IN LANIER?

IT IS WHAT HAPPENED, BUT THE SAME ANALOGY, I WOULD SUBMIT, APPLIES, BECAUSE YOU HAD A DECISION IN LANIER, OF THE THIRD DISTRICT COURT OF APPEAL, THAT HAD INTERPRETED THE APPLICABLE STATUTE, IN TERMS OF WHETHER A CERTAIN ACT OF CONSENTUAL SEX WAS OR WAS NOT ALLUDE OR LASCIVIOUS ASSAULT. THE LEGISLATURE, WHEN THE DECISION COMES OUT, OBVIOUSLY DISAGREED WITH THAT DECISION, AND THEY CLARIFIED THE STATUTE IN LANIER.

LET ME ASK --

YOU SAID, THOUGH --

LET ME ASK, YOU HAVE, ALSO, IN YOUR BRIEF, ASKED IN THE ALTERNATIVE, FOR THE COURT TO RECEDE FROM DEL GATT GAD-. -- FROM DELGADO. IS THAT THE POSITION THAT THE IS STATE SHOULD RECEDE FROM DELGADO?

I THINK CLEARLY THE COURT SHOULD RECEDE FROM DELGADO, IN LIGHT OF THE LEGISLATION, BUT I WOULD SUBMIT THAT DOESN'T SOLVE THE ISSUE OF THE RETRO AECTIVITY COMPONENT, AS IT APPLIES IN THIS PARTICULAR CASE. FOR INSTANCE, IF THERE WERE JUST A PURE RECESSION, IT MIGHT AEP PLY JUST PROSPECTIVELY, MEANING IN TERMS --

JUDGE SCHWARTZ SAID THAT, HE EXPRESSED THE VIEW THAT COURTS SHOULD RECEDE RETROACTIVELY FROM DELGADO. WHAT I AM TRYING TO GET AT IS A THAT, WHEN RUIZ, WHEN DID HE COMMIT HIS CRIME?

RUIZ COMMITTED HIS CRIME IN EARLY, JANUARY 3 OF 1998.

OKAY. ANI-.

HE WAS TRIED AND CONVICTED IN 1999. PREDELGADO.

HE WAS TRIED AND CONVICTED IN 1999, ON THE BASIS OF A BURGLARY STATUTE THAT, AND THE STANDARD INSTRUCTION AS TO THE BURGLARY STATUTE, CORRECT HE?

CORRECT. AND IT HAD BEEN INTERPRETED IN ACCORDANCE WITH ALL OF THE STRING OF PRECEDENT THAT WE HAVE JUST MENTIONED EARLIER THIS MORNING.

UNDER THE PRE-DELGADO.

CORRECT.

I ASSUME THAT THERE IS NO ARGUMENT THAT THAT WAS WHAT THE TRIAL JUDGE HAD TO DO, SINCE THAT WAS THE LAW OF THE THIRD DISTRICT AND OF THE STATE AT THAT TIME.

ABSOLUTELY. WE WOULD CONTEND THAT THE JURY WAS INSTRUCTED, ACTUALLY, IN BOTH CASES HERE, SINCE MR. BRAGGS'S CRIME WAS COMMITTED IN 1995, AND I BELIEVE HE WAS, ALSO, TRIED IN JUNE OF 1999, BUT, AGAIN, BOTH ARE PRE-DELGADO. BOTH JURIES WERE PROPERLY INSTRUCTED, I WOULD SUBMIT, IN THE LAW THAT WAS IN EFFECT PRE-DELGADO.

AND ANYONE THAT, ANY OTHER PERSON THAT COMMITTED A CRIME, THE SAME CRIME, BASED UPON THE SAME STATUTE, ON THE SAME JURY INSTRUCTION, IN, AND WAS CONVICTED IN 1999, AND WHOSE CONVICTION HAD BECOME FINAL PRIOR TO THE DATE THAT, I ASSUME, THAT DELGADO BECAME FINAL, THERE WOULDN'T BE ANY ISSUE THAT THAT BURGLARY CONVICTION, THAT PERSON SERVED ANY TIME FOR THE BURGLARY. IS THAT THE WAY THIS IS WORKING?

YEAH. THESE ARE BOTH PRE-DELGADO CASES. THESE CASES, BOTH, WERE IN THE APPELLATE PIPELINE, WHEN DELGADO CAME OUT AND WERE, REALLY, TALKING ABOUT A PERIOD IN DELGADO ROUGHLY A LITTLE LESS THAN TWO YEARS THAT NULLFIES.

YOUR ORIGINAL STATEMENT WAS THAT THE LEGISLATURE HAD THE POWER TO, IN ESSENCE, OVERRULE A DECISION, AND I WOULD LIKE FOR YOU TO EXPLAIN TO US WHERE THIS POWER EMANATES FROM. WHERE IS THIS POWER DERIVED FROM?

WELL, THE POWER DERIVES FROM A WHOLE STRING OF JUDICIAL PRECEDENT THAT SETS FORTH, AND IT IS CLEARLY ON PAGE 21 OF THE BRAGGS BRIEF, WITHOUT CITING THE CASES BY NAME, BUT THE POWER DERIVES FROM THE PRINCIPLE --

I MEAN THE POWER OF THE LEGISLATURE. THE LEGISLATURE IS THE BODY THAT DEFINES WHAT THE CRIMES ARE. THEN, THERE IS A STRING OF JUDICIAL PRECEDENT, STARTING WITH THE CASE IN 1982, AND GOING RIGHT ON UP THROUGH JIMENEZ IN 1997, WHICH IS PRE-DELGADO, AND IN ADDITION THE RAY DECISION OUT OF THE THIRD DISTRICT, IN 1988, THAT INTERPRETS THIS PARTICULAR STATUTE IN REMITING THE REMAINING ENTRY BURGLARIES, IF THAT CONSENT CAN BE DEEMED AS WITHDRAWN, AND WITH THOSE DECISIONS OUT THERE AND THE PRINCIPLE THAT THE LEGISLATURE IS DEEMED TO HAVE AT LEAST IMPLICITLY ADOPTED THE RATIONALE OF THOSE DECISIONS, FOR INSTANCE WHEN THEY REENACT THE STATUTES, THAT IS DEEMED TO BE THE READOPTION, BASICALLY, OF THAT LEGISLATIVE INTENT, AND THAT ANY ENKREECH -- ANY ENCROACHMENT --

IS THERE ANY ATTEMPT, ANY TIME THE LEGISLATURE IS UNHAPPY WE A DECISION OF THIS COURT THAT INVOLVES ANY PIECE OF THE STATUTE, THEN, YOU ARE TELLING US THAT THE LEGISLATURE, THEN, HAS THE POWER TO COME IN AND RETROACTIVELY NULLIFY WHAT THIS COURT HAS SAID.

NO. I AM NOT SAYING THAT AT ALL. THE PRINCIPLE OF JUDICIAL REVIEW, FOR INSTANCE, FOR INSTANCE, IF IT WERE THE FIRST TIME THE COURT WERE INTERPRETING A STATUTE, THAT MIGHT BE A DIFFERENT PAUL GAME, BECAUSE IN THAT INSTANCE, IT IS AN INITIAL CONSTRUCTION THAT, WHEN YOU LOOK AT A PURE SEPARATION OF POWERS ARGUMENT, CLEARLY THE COURT HAS THE POWER, BY JUDICIAL REVIEW, TO REVIEW LAWS THAT ARE ENACTED BY THE LEGISLATURE, BUT THAT BEING THE CASE, ONCE THIS COURT DOES IT, AND NOT JUST ON ONE OCCASION, IN 1982, BUT WHEN THEY GO AND THREE ADDITIONAL TIMES REVIEW THAT SAME STATUTE --

ANY TIME THE COURT WOULD, THEN, DEPART FROM STERIDECISIS, YOU ARE SAYING THAT THE LEGISLATURE CAN THEN COME IN AND SAY WE INTENDED, WE CAN INTERPRET WHAT A PREVIOUS LEGISLATURE INTENDED.

I WOULD SUBMIT THAT, WHEN YOU TALK ABOUT STARIDECISIS, THAT IT WOULD PLAY A SUPPORTNANT ROLE, WHEN YOU ARE TALKING ABOUT THE SEPARATION ON ENCROACHMENT OF POWERS, BUT WHEN YOU REALLY LOOK AT THE PRINCIPLES OF STARIDECISUS, THE WHOLE STRING OF CASES WAS OUT THERE BEFORE THE DELGADO DECISION WAS RENDERED.

YOU TALK ABOUT THE WINDOW. WE HAVE GOT DELGADO, WHICH HAS BEEN REVERSED AND REMANDED FOR A NEW TRIAL. IT IS FINAL. WE HAVE GOT, OVER THE LAST TWO YEARS, APPELLATE COURTS IN THE FOURTH DISTRICT, THE SECOND DISTRICT, ALL INTERPRETING DELGADO AND ALL IN ACCORDANCE WITH DELGADO, REVERSING CONVICTION PASS FOR BURGLARY THAT HAVE BEEN FINAL NOW. YOU HAVE GOT, REALLY, YOU HAVE GOT YOUR PROSPECTIVE -- YOUR PERSPECTIVE ARGUMENT. YOU HAVE GOT CURLEY BRAGGS, WHO AS I AM READING THIS CASE, HAS SECOND-DEGREE MURDER CONVICTION, THAT UNLESS WE REVIEW THE SUFFICIENCY OF THE EVIDENCE IS UPHELD, AND A ROBBERY CONVICTION THAT IS UPHELD, AND THE ONLY PROOF IN THIS CASE, OF A BURGLARY, HE CONCEPTUALLY ENTERED, WAS THAT THERE WAS A MURDER THAT OCCURRED. THAT IS THE PROOF OF THE BURGLARY.

WELL, IN ADDITION TO THE FACT --

I AM JUST SAYING IS THERE ANY EFFECT, I GUESS, IF THIS BURGLARY CONVICTION IS VACATED THERE, IS NO EFFECT, THIS, ON HIS MURDER CONVICTION, THERE?

NO. THE MURDER CONVICTION WOULD STAND.

OR HIS ROBBERY CONVICTION.

THE ROBBERY CONVICTION WOULD STAND.

OKAY. AND THE SAME THING FOR MR. RUIZ, WHICH IS THAT HE WAS CONVICTED OF KIDNAPING AND OF PATRY, AND SO, SEXUAL BATTERY WAS REDUCED.

CORRECT.

SO IT HAS NO EFFECT ON THOSE CONVICTIONS, EITHER, DOES IT?

NO, IT DOESN'T.

BURGLARY, REALLY, THAT WAS REALLY WHAT DELGADO WAS TALKING B THE CONCERN IS THAT -- TALKING ABOUT. THE CONCERN IS THAT, FOR BURGLARY TO BE PROVED MERELY BECAUSE SOMEBODY INSIDE A RESIDENCE COMMITS ANOTHER CRIME AND THAT CREATES THE BURGLARY, REALLY HAS THE SUFFICIENCY OF THE EVIDENCE COMPONENT, DOESN'T IT? IN OTHER WORDS WHAT IS THE PROOF OF THE BURGLARY, OTHER THAN THE KMIFINGS THE CRIME.

CHIEF JUSTICE: THE MARCH HALL -- OTHER THAN THE COMMISSION OF THE CRIME

CHIEF JUSTICE: THE MARSHAL HAS PUT THE WARNING LIGHT ON.

LET ME ANSWER THAT QUESTION AND THEN I WILL SIT DOWN FOR REBUTTAL. CLEARLY THE IMPLICATIONS ARE BEYOND THOSE THAT ARE JUST SET FORTH, AGAIN, HERE. I WOULD GET BACK TO THE SEPARATION OF POWERS ARGUMENT AND THE SAME COMPONENT THAT, HERE, CLEARLY THERE IS A BURGLARY THAT SHOULD STAND. I WILL LEAVE THE REST OF MY TIME FOR REBUTTAL.

CHIEF JUSTICE: COUNSEL.

GOOD MORNING. MANUEL ALVAREZ, THE ASSISTANT PUBLIC DEFENDER ON BEHALF OF MR. BRAGGS.

LET ME UNDERSTAND WHERE WE ARE AT THIS POINT. WE HAVE GOT A SITUATION OUT THERE IN WHICH THIS COURT HAS, THERE WAS A 1975 STATUTE THAT THIS COURT FIRST INTERPRETED IN 1982, FINAL IN '83. THE THIRD DISTRICT COMES ALONG HAD, IN RE, IN 1988, AND THEN IN 1997, THIS COURT COMES OUT WITH THREE DECISIONS, AND THE PEOPLE ARE BEING CONVICTED AND THEIR CONVICTIONS ARE BEING FINAL UNDER THIS BURGLARY STATUTE AS THEN INTERPRETED, THEN, IN 2000, THIS COURT COMES OUT WITH A 4-3 DECISION AND CHANGES IT DRAMATICALLY BIRTION ADDING THE SURREPTITIOUSLY,, AND THEN THE LEGISLATURE SAYS, NO, YOU HAVE GOT IT WRONG THAT, WHAT THIS STATUTE MEANT WAS THAT IT DIDN'T HAVE A SURREPTITIOUSLY IN IT, BUT WHAT WE END UP WITH IS PEOPLE THAT COMMITTED CRIMES, ALL OF THE WAY BACK TO 1975, WHO WERE, WHOSE CRIMES ARE NOT DETECTED, UNTIL, SAY, 1996,, AND THEN THEIRS, BY HAPPENSTANCE, DIDN'T BECOME FINAL THAT, NOT BEING CONVICTED OF BURGLARY OR HAVING THEIR CIRCUMSTANCES REVERSED, EVEN THOUGH THE LEGISLATURE HAS ACTED, AND EVEN THOUGH THIS COURT HAS SAID IT SHOULD NOT BE APPLIED RETROACTIVELY, AND ISN'T THAT JUST AN INEQUITABLE SITUATION, AND A SITUATION IN WHICH THE ONLY THING THAT HAS REALLY HAPPENED IS THIS COURT CAME OUT WITH A 4-3 DECISION AFTER LEGISLATIVE STATUTE THAT THE LEGISLATURE SAID WAS WRONG! ISN'T THAT WHERE WE ARE?

I CAN'T GIVE A YES OR NO ANSWER TO THAT QUESTION, BUT IN A SENSE, YES, WE ARE THERE, BUT I WOULD LIKE TO CLARIFY WHAT THE QUESTIONS ARE, BECAUSE I THINK THERE IS MORE THAN ONE QUESTION, AND I THINK THEY ARE SORT OF GETTING, THEY ARE OVERLAPPING. THERE IS A QUESTION AS TO WHETHER OR NOT CHAPTER 2001-58 CAN APPLY RETROACTIVELY. THAT IS ONE QUESTION. THEN SEPARATELY THERE IS A QUESTION AS TO WHETHER OR NOT THIS COURT SHOULD RECEDE FROM DELGADO, AND I SEE THAT AS A SEPARATE QUESTION, AND I WOULD BE HAPPY TO ADDRESS THEM BOTH, BUT I WOULD LIKE TO, FIRST, DISPENSE WITH THE ISSUE OF RETROACTIVITY, IN REGARD TO THE NEW CHAPTER LAW. I SUPPLEMENTED AUTHORITY LAST

WEEK, WITH TWO FIRST ISSUE COURT CASES. ONE IS FOSTER VERSUS STATE AND THE OTHER ONE IS NORMAN VERSUS STATE, AND WHAT THOSE CASES, I THINK, VERY CORRECTLY POINT OUT, THAT UNDER ARTICLE X SECTION 9 OF THE FLORIDA CONSTITUTION, WHEN THE COURT INTERPRETS A FLORIDA STATUTE, THE FLORIDA CONSTITUTION BARS THE LEGISLATURE FROM RETROACTIVELY NULLIFYING THOSE DECISION. I MEAN, WITHOUT EVEN REACHING THE EXPOS FACT-ISSUE, UNDER THE -- THE EXPOS FACTO ISSUE, UNDER THE FLORIDA CONSTITUTION, 2000-58 IS UNCONSTITUTIONAL.

UNDER THE --

THE FLORIDA CONSTITUTION RESTRICTS POWER TO NULLIFY A DECISION THAT HAS CONSTRUED A CRIMINAL STATUTE, AND THAT IS PER THE FLORIDA CONSTITUTION, AND IN FACT, IN FOSTER, WHICH IS SPECIFICALLY A DELGADO CASE, WHICH WAS DECIDED IN JUNE, THE FIRST DCA QUOTES RING VERSUS STATE, WHICH IS A FLORIDA SUPREME COURT DECISION FROM THE YEAR 1900, SO THIS IS A WELL-ENTRENCHED PRINCIPLE IN FLORIDA CONSTITUTIONAL LAW, AND THAT IS WITHOUT EVEN REACHING THE EXPOS FACTO ISSUE. WITH REGARD TO DELGADO --

CAN I ASK YOU A QUESTION ON. THAT CAN YOU DISTINGUISH ANY ACTION OR WHEN THERE IS A SUBSTANTIVE CHANGE IN THE LAW, FOR EXAMPLE ADDING OR CHANGING THE ELEMENT OF THE CRIME OR ADDING ADDITIONAL PUNISHMENT, WHICH IS REALLY RELATED TO EXPOSE FACTO, WHICH IS AS OPPOSED TO A STATUTE THAT CLARIFIES LEGISLATIVE INTENT?

IN THIS CASE, GIVEN THE FACT THAT THIS COURT HAS THE APPROPRIATE AUTHORITY TO DETERMINE WHAT THE PLAIN MEANING OF A STATUTE IS, THIS COURT DID SO, THIS COURT, IN EFFECT, DETERMINED WHAT CONSTITUTES A BURGLARY IN THIS STATE IN DELGADO. THE LEGISLATURE, IN EFFECT BIRTION TRYING TO REVERT TO -- THEY EFFECT, BY TRYING TO REVERT TO A PREGALL GAD-SITUATION --' AND I AM REFERRING TO IRVIN'S DISSENT IN FOSTER. I THINK IT IS PERTINENT TO WHAT YOU ARE SAYING.

I WOULD JUST LIKE TO POINT OUT THAT THE PRE-DELGADO CASE LAW IS RATHER, MUCH MORE NUANCED THAN SEEMS TO BE ASSUMED BY BOTH THE FLORIDA LEGISLATURE AND THE STATE. I MEAN, IF YOU LOOK AT THE CASES CITED BY THIS CASE IN DELGADO, I AM REFERRING TO RALEIGH, ROBERTSON AND SO FORTH. THOSE CASES CLEARLY INDICATE THAT, WHEN THE PERSON COMMITS A FORCIBLE CRIME INSIDE, AS LICENSEE OR AS AN INVITEE, THERE IS STILL A REQUIREMENT THAT THERE BE AT LEAST CIRCUMSTANTIAL EVIDENCE SHOWING THAT THERE WAS AN ACTUAL REVOCATION, SO DELGADO WASN'T SUCH A RADICAL SHIFT FROM THE PREEXISTING CASE LAW. WHAT THE FLORIDA LEGISLATURE HAS DONE IN ITS REVISED VERSION OF THE BURGLARY STATUTE, REALLY COMPLETELY CHANGED BURGLARY, EVEN VIS-A-VIS THE PRE-DELGADO CASE LAW.

HAVE YOU FOUND A CASE, PRIOR TO DELGADO, WHERE THIS COURT USED "SURE HE TISSUE US" HE?

NO. I CAN'T FIND WHERE THE COURT USED SURREPTITIOUS, BUT CLEARLY IN ORDER FOR THIS COURT, MY UNDERSTANDING, MY READING OF DELGADO, AND, OF COURSE, YOUR HONOR'S READING OF DELGADO IS FAR MORE AUTHORITATIVE THAN MINE, BUT MY READING OF DELGADO, DELGADO WAS TRYING TO HARMONIZE FLORIDA'S INTERPRETATION OF THE CRIME OF BURGLARY WITH TRADITIONAL CONCEPTUALIZATIONS OF BURGLARY, SUCH AS THE 1962 MODEL PENAL STATUTE, WHERE NOT ONLY IS THERE AN UNLAWFUL ENTRY COMPONENT BUT A CONCEPTUAL CRIME COMPONENT, SO THAT YOU CAN'T INFER OR STATUTORILY PRESUME A REVOCATION OF CONSENT BIRTION VIRTUE OF THE FACT THAT SOMEONE, AFTER ENTERING, LAWFULLY ENTERING A LOCATION, COMMITS A CRIME. WHAT THE FLORIDA LEGISLATURE SEEMS TO WANT TO DO OR HAS DONE, ACTUALLY, BY REVISING THE BURGLARY STATUTE, IT HAS IN EFFECT MADE IT ALMOST A STRICT LIABILITY OFFENSE, THAT IF YOU ARE AN INVITEE AND YOU COMMIT ANY

FORCIBLE CRIME, YOU ARE AUTOMATICALLY COMMITTING A BURGLARY. THAT IS DIFFERENT, I WOULD SUBMIT, FROM EVEN THE STAT YOU WAS OF THE LAW IN THE STATE, PRE-DELGADO, BECAUSE AS I POINTED OUT IN ROBERTSON AND RALEIGH AND THOSE LINES OF CASES, WHICH THIS COURT CONSIDERED AND DISCUSSED IN ITS OPINION THERE, SEEMED TO BE A REQUIREMENT THAT THERE BE SOME EVIDENTIARY SHOWING THAT THERE WAS AN ACTUAL WITHDRAWAL OF CONSENT. IT WASN'T JUST STATUTORILY ASSUMED. SO --' ALL RIGHT. BUT THE ISSUE HERE, REALLY, IN BRAGGS, AND IN RUIZ, IS THE FACT THAT YOU HAVE GOT THE STANDARD JURY INSTRUCTION THAT THIS TRIAL JUDGE, IN BOTH CASES, WAS FOLLOWING, WHICH WAS IN ACCORDANCE WITH THE LAW AT THE TIME THESE CASES WERE TRIED, AND I THINK THE, I CANNOT FIND, AND THAT WAS THE MEANING OF MY FIRST QUESTION, ANOTHER SITUATION IN FLORIDA LAW, IN WHICH WE HAVE HAD A CIRCUMSTANCE IN WHICH THERE HAS BEEN OWN INTERPRETATION OF A STATUTE FOR ALMOST 20 YEARS, AND THEN THE COURT COMES OUT AND CHANGES IT, AND THE LEGISLATURE STEPS IN AND SAYS THAT IS NOT CORRECT, LIKE IN LOWERY, AND THIS COURT DOESN'T GIVE THAT DEFERENCE. SOMEHOW. GIVE A DEFERENCE. RECOGNIZING THAT IT IS THE LEGISLATURE'S STATUTE. CAN YOU, HAVE YOU FOUND A SITUATION THAT HAS GONE FOR THAT LONG, WITH THAT MANY INTERPRETATIONS?

WELL, I CAN'T SAY, I REALLY CAN'T SAY THAT I HAVE, BUT I WOULD SIMPLY POINT OUT, AGAIN, I EVENING IF YOUR HONOR IS ASKING ME ABOUT WHETHER OR NOT THIS COURT SHOULD RECEDE FROM DELGADO, IT IS MY POSITION THAT DELGADO WAS CORRECTLY DECIDED FOR A NUMBER OF REASONS, AND LET ME JUST ADD ONE MORE REASON P IF WE AGREE THAT THE FLORIDA, THAT THE BURGLARY STATUTE WAS SUBJECT TO MORE THAN ONE INTERPRETATION, ONE WHERE ONE CAN INFER A SURREPTITIOUS REMAINING IN, AS A REMAINING IN-TYPE BURGLARY, VERSUS THE MORE STRICT LIABILITY INTERPRETATION, CLEARLY UNDER FLORIDA'S OWN CODIFIED CANONS OF STATUTORY INTERPRETATION, WHICH IS 775.01 SUB1, WHERE A CRIMINAL STATUTE IS SUBJECT TO MORE THAN ONE INTERPRETATION THAT, IS TO BE NARROWLY CONSTRUED, AND THAT INTERPRETATION WHICH IS MOST FAVORABLE TO THE DEFENDANT IS THE ONE TO BE ADOPTED. SO EVEN UNDER CODIFIED PRINCIPLES OF INTERPRETATION, I THINK DELGADO IS THE CORRECT INTERPRETATION.

IN DELGADO AND IN BRAGGS, I WOULD LIKE YOU TO ADDRESS THIS NOTION THAT, ALTHOUGH DELGADO DID GO OFF ON A STATUTORY CONSTRUCTION CASE, IT REALLY TALKS ABOUT THE SUFFICIENCY OF THE EVIDENCE AND THERE HAS TO BE SOME ADDITIONAL EVIDENCE OF A REVOCATION OF CONSENT. AS I UNDERSTAND THE BRAGGS CASE, AGAIN, THERE WAS, ASSUMING WE DON'T REVIEW THE MURDER ASPECT, THAT FIRST, I MEAN, THERE WAS SLIM EVIDENCE TO BEGIN WITH, BUT THE EVIDENCE ON THE BURGLARY WOULD CONSIES OF -- WEE CONSISTS OF WHAT IN -- WOULD CONSISTS OF WHAT IN BRAGGS?

THE VICTIM IN MR. BRAGGS'S CASE WAS HIS GRANDMOTHER. HAD HE A RELATIONSHIP WITH HIS GRANDMOTHER. THERE WAS NO INDICATION OF FORCIBLE ENTRY AND NO EVIDENCE LINKING MR. BRAGGS TO THE CRIME, OTHER THAN THE FACT THAT HE WAS SUBSEQUENTLY FOUND WITH HER JEWELRY.

BUT AS FAR AS THE CRIME, ITSELF, THE STAB WOUNDS WERE TO THE BACK, SO THERE IS REALLY NO EVIDENCE THAT THE VICTIM WAS EVEN AWARE THAT WHATEVER THIS CONSENSUAL ENTRY, THAT SHE, WHERE SHE WOULD HAVE BEEN ABLE TO REVOKE THE CONSENT, SO THERE IS ALSO, THAT GIVES RISE TO A SUFFICIENCY OF THE EVIDENCE QUESTION FROM MR. BRAGGS.

ABSOLUTELY. THERE IS REALLY VIRTUALLY NO EVIDENCE AS TO WHAT THE CIRCUMSTANCES SURROUNDING HOW HE ENTERED THE HOUSE WERE. THERE IS NO EVIDENCE AFTER FORCED ENTRY. HE KNEW THE VICTIM. SO I MEAN, IT IS PURE SPECULATION AS TO DIFFERENT SCENARIOS THAT ONE CAN CONCOCT AS TO HOW HE MIGHT HAVE COMMITTED A BURGLARY, BUT THERE IS NO EVIDENCE OF A BURGLARY, ONLY EVIDENCE AFTER HOMICIDE.

SO THE CASE IN THE SECOND-DEGREE MURDER WASN'T BASED ON A FELONY, SINCE IT WAS SECOND-DEGREE, YOU DIDN'T HAVE TO WORRY ABOUT FELONY MURDER, AS WOULD BE THE CASE IN DELGADO, WHERE, I JUST WANTED TO UNDERSTAND THAT.

THAT IS ALSO TRUE OF RUIZ.

AS FAR AS HAVE YOU BEEN ABLE TO TELL, AS FAR AS THESE PIPELINE CASES AND AS FAR AS RECEDING FROM DELGADO, IF WE WERE TO RECEDE FROM DELGADO IN THIS CASE, AS I UNDERSTAND IT THERE ARE OTHER DISTRICT COURT OF APPEAL CASES WHERE THE DECISIONS ARE ALREADY FINAL, WHERE THEY WERE PIPELINE CASES, WHERE THOSE CONVICTIONS HAVE ALREADY BEEN REVERSED. SO THERE WOULD BE ANOTHER FUNDAMENTAL FAIRNESS ARGUMENT TO BE MADE, IF WE WERE TO NOW SEE IT FROM DELGADO, BECAUSE THERE WOULD BE DEFENDANTS WHO HAD ALREADY GOTTEN THE BENEFIT OF DELGADO, INCLUDING DELGADO.

I WOULD AGREE WITH YOUR HONOR. I, IF, ONE WAY TO MAKE IT COMPLETELY FAIR IS TO APPLY DELGADO RETROACTIVELY, BUT THIS COURT HAS ALREADY DECIDED THAT ISSUE, AND I DON'T HAVE AN ANSWER AS TO HOW TO CREATE AN ABSOLUTELY EQUITABLE SOLUTION FOR EVERYONE WHO HAS BEEN CONVICTED OF A BURGLARY IN FLORIDA.

IS FLORIDA THE ONLY STATE THAT HAS INTERPRETED PITTSBURGH LARRY SCHEME AS THIS COURT DID IN DELGADO?

NO. I MEAN, I KNOW THAT, NEW YORK AND OTHER STATES HAVE, ALSO, CONCLUDED THAT THE ONLY WAY TO GET FULL EFFECT AND MEANINGFUL AND CONSISTENT EFFECT TO THE REMAINING LANGUAGE IN THESE BURGLARY STATUTES, IS TO INTERPRET IT SUCH THAT REMAINING MEANS SOMEONE THAT ENTERS LAWFULLY BUT SURREPTITIOUSLY REMAINS ON THE PREMISES, IN ORDER TO COMMIT A CRIME.

HAS THERE BEEN A CHANGE TO THE NEW STATUTE, WHERE YOU SAID IT IS CONSENT NOW IS PRESUMED, WHEREAS IF THERE IS A CRIME, CONSENT IS PRESUMED --

I AM NOT AWARE OF ONE. SURELY THE LEGISLATURE HAS THE AUTHORITY TO DEFINE CRIMES WITHIN CERTAIN BROAD PARAMETERS, BUT MY POINT WAS THAT THE LEGISLATURE'S NEW DEFINITION OF BURGLARY, I MEAN, THE LEGISLATURE FIRST COMES OUT AND SAYS, WELL, WE ARE GOING TO CLARIFY WHAT THE LEGISLATURE, BACK IN 1975, ACTUALLY INTENDED WHEN THEY PASSED THIS LAW. AND THEN THEY GO AHEAD AND REDEFINE BURGLARY IN A WAY THAT IS EVEN MORE RESTRICTIVE THAN THE PREDELGADO CASE LAW, BECAUSE IN EFFECT WHAT THEY ARE SAYING IS WHENEVER YOU ENTER, WHETHER YOU ARE A LISTENS', IF YOU ENTER A BUSINESS OR WHETHER -- A LICENSEE AND YOU ENTER A BUSINESS OR AN INVITEE AND YOU ENTER A HOME AND COMMIT A CRIME, THEY DON'T DEFINE THE CRIME, BUT A CRIME AUTOMATICALLY TRANSFORMS THAT INTO A BURGLARY, AND IT WAS GIVEN IN DELGADO --

THE LEGISLATURE HAS THE AUTHORITY TO PERSPECTIVELY OVERRULE A DECISION OF THIS COURT, AND THAT IS NOT UNUSUAL AT ALL THAT IF THE LEGISLATURE IS UNHAPPY WITH A DECISION OF THIS COURT, THAT PERSPECTIVELY THEY CAN DO THAT, AND IN DELGADO, THIS COURT SPECIFICALLY DECLINED TO MAKE THIS RETROACTIVE. IS THAT CORRECT?

YES, YOUR HONOR.

SO WE ARE REALLY TALKING ABOUT A VERY NARROW PERIOD OF APPLICABILITY. DELGADO RULES --' DELGADO WAS DECIDED, AND I BELIEVE THE NEW STATUTE BECAME EFFECTIVE ON MAY 25, 2001.

BUT WE ARE NOT. ARE WE? BECAUSE IT AFFECTS ANYBODY THAT HAS COMMITTED A CRIME PRIOR TO JULY 1, 2001, AND WHOSE CONVICTION HAD NOT BECOME FINAL, SO IT IS NOT A SMALL, IT IS

SNIB ANYBODY DATING BACK TO 1975, THAT -- SO IT IS ANYBODY DATING BACK TO 1975, THAT, WHO CONVICTION IS REVERSED OR THEY ARE JUST FOUND OR FOR WHATEVER REASON, SO IT IS NOT A NARROW GROUP.

IT IS THOSE CASES, YOUR HONOR, THAT WEREN'T FINAL AT THE TIME DELGADO WAS DECIDED, WHERE YOU HAD AN INITIAL LAWFUL ENTRY FOLLOWED BY SOME SORT OF VIOLENT, USUALLY VIOLENT OFFENSE, SO I WOULD SUGGEST THAT IT IS REALLY NOT AFFECTING THAT MANY CASES.

LET ME TEST THIS PROPOSITION. REALLY THEY JIMENEZ, WHAT THIS COURT HELD WAS THAT, WHERE THERE WAS AN ASSAULT, OR THAT TYPE OF COMMISSION, WHERE THERE WAS A COMMISSION OF A CRIME IN THE HOUSE, THAT IT PRESENTED A JURY QUESTION AS TO WHETHER CONSENT HAD BEEN REVOKED. I MEAN, THAT WAS THE ESSENCE OF WHAT THIS COURT HAD APPROVED, IN ROBERTSON, RALEIGH, CORRECT? I MEAN, THIS COURT DIDN'T LAY DOWN A FINITE RULE THAT EVERY OFFENSE, IT SAID THAT THERE WAS A SUFFICIENT BASIS IN THE EVIDENCE.

BUT IT REQUIRED --

GO TOE THE JURY.

BUT IT REQUIRED AN EVIDENTIARY SHOWING, WHETHER THROUGH DIRECTOR CIRCUMSTANCE -- IS CIRCUMSTANTIAL EVIDENCE THAT REQUIRED CONSENT. THE WAY THE LEGISLATURE SEEMS TO READ IT PERSPECTIVELY, IS THAT ONCE YOU HAVE A FORCIBLE CRIME THAT, CONSENT IS PRESUMED TO HAVE BEEN WITHDRAWN, AND THAT IS THE ISSUE.

THAT IS DIFFERENT FROM 2001, CORRECT?

BECAUSE THE PRE-DELGADO CASE LAW TODAY SEEM TO REQUIRE SOME EVIDENTIARY SHOWING OF AN ACTUAL REVOCATION OF CONSENT, AS OPPOSED TO SIMPLY PRESUMING IT AS A MATTER OF LAW. DELGADO, I DON'T BELIEVE, IS A RADICAL DEPARTURE FROM THAT CASE LAW, AND WHAT DELGADO IS CLEARLY TRYING TO DO IS TO HARMONIZE FLORIDA'S INTERPRETATION OF BURGLARY, TO MAKE IT CONSISTENT WITH TRADITIONAL CLASSES OF BURGLARY AND NOT TO GIVE RISE TO UNWANTED RESULTS, WHICH IS I AM INVITED TO SOMEONE'S HOUSE FOR DINNER, AND I BECOME IRATE AND PUNCH HIM IN THE NOSE, I HAVE COMMITTED AN ASSAULT AND BATTERY, AND THAT IS THE LOGICAL OUTCOME OF THIS BROADER INTERPRETATION.

UNDER YOUR ANALYSIS, THEN, UNDER THE PREDELGADO LAW, IF IT WAS A JURY QUESTION, THEN YOU COULD SHOW SOMETHING OTHER THAN THE FACT THAT THE DEFENDANT REMAINED IN THE PREMISES SURREPTITIOUSLY. I MEAN, YOU COULD, FOR EXAMPLE, SHOW THAT THE DEFENDANT STARTED TO DO SOMETHING, AND I TOLD HIM "GET OUT OF HERE!" SO IT WASN'T JUST SURREPTITIOUSLY REMAINING IN THE PREMISES, ONCE YOU WERE INVITED, CORRECT?

I WOULD AGREE, YES, BUT, AGAIN, THERE WOULD STILL HAVE TO BE A SHOWING, BEYOND JUST COMMISSION OF THE OFFENSE, THAT THERE WAS A REVOCATION OF THE CONSENT, IF THE INITIAL ENTRY WAS LAWFUL, WHEREAS THE POSITION THE STATE SEEMS TO BE ASSERTING IS THAT THE POSITION I THINK THE LEGISLATURE SEEMS TO BE ASSUMING, IS THAT ONCE YOU COMMIT ANY KIND OF FORCIBLE CRIME, YOU ARE AUTOMATICALLY TRANSFORMING WHAT WOULD HAVE OTHERWISE BEEN A LAWFUL ENTRY INTO A BURGLARY, AND I THINK --' EVEN PRE-DELGADO.

I DON'T THINK THE PRE-DELGADO DECISION EVEN SUPPORTED THAT INTERPRETATION, SO THANK YOU, UNLESS THE COURT HAS ANY FURTHER QUESTIONS. THANK YOU VERY MUCH.

COUNSEL, WOULD YOU ADDRESS THAT LAST HYPOTHETICAL THAT YOUR OPPONENT GAVE AS THE POSITION OF THE STATE. IN OTHER WORDS, IS THAT THE POSITION OF THE STATE? THAT THE LEGISLATURE HAS INTENDED, IN PRE-DELGADO, IF HE WAS INVITED OVER TO HIS FRIEND'S HOUSE TO WATCH THE SUPER BOWL AND THEY GOT INTO A FIGHT AND HE PUNCHED HIS FRIEND IN THE

NOSE OVER A DISPUTE OVER THE FOOTBALL GAME, THAT NOT ONLY COULD HE BE CHARGED WITH ASSAULT AND BATTERY, BUT THAT HE WOULD, ALSO, BE AUTOMATICALLY SUBJECT TO BURGLAR YOU CONVICTION. IS THAT THE STATE'S POSITION?

WELL, I THINK, IF YOU ARE TALKING ABOUT THE LAW PRE-DELGADO, THEY ARE CERTAINLY ENTITLED TO PUT ON THEIR PROOF, ON WHETHER CONSENT WAS VALIDLY WITHDRAWN OR NOT, UNLESS, ALSO, NOT -- AND LET'S, ALSO, NOT FORGET ABOUT THE EXECUTIVE AUTHORITY, IN TERMS OF WHETHER SAUCH CASE MIGHT OR MIGHT NOT BE PROSECUTED.

WOULD YOU TAKE HIS HYPOTHETICAL. IS THAT THE STATE'S POSITION, THAT UNDER HIS HYPOTHETICAL THAT, YES, NOT ONLY WOULD THERE HAVE BEEN AN ASSAULT AND BATTERY, WHERE HE WAS INVITED TO HIS FRIEND'S HOME TO WATCH THE SUPER BOWL, BUT THERE, ALSO, WOULD AUTOMATICALLY BE A BURGLARY.

I THINK --' IS THAT THE STATE'S POSITION?

I THINK IT IS REALLY AN OPPOSITE TO THAT TYPE OF POSITION THAT WE ARE DEALING WITH HERE.

I AM NOT SURE I UNDERSTAND YOUR ANSWER.

I THINK WHAT WE ARE DEALING WITH HERE, PRE-DELGADO, PRE-DELGADO ISSUE, IS --

I REALIZE THAT THESE TWO CASES PRESENT, BUT I AM ASKING YOU TO ADDRESS THE HYPOTHETICAL THAT HE, IS YOUR POSITION ON THE HYPOTHETICAL THAT HE SET UP, IS IT YES, THAT THERE WOULD AUTOMATICALLY BE A BURGLARY, IN ADDITION TO THE ASSAULT AND BATTERY?

I THINK IT MIGHT VERY WELL FIT THE STATUTORY DEFINITION, BUT I THINK, UNLESS YOU KNEW WHAT THE SPECIFIC FACTUAL CIRCUMSTANCES WERE --' HE JUST LAID OUT SPECIFIC FACTS. THEY GOT IN AN ARGUMENT OVER THE SUPER BOWL, AFTER BEING INVITED OVER TO HIS FRIEND'S HOUSE, AND HE PUNCHED HIS FRIEND IN THE NOSE AND BROKE HIS NOSE AND IS CHARGED WITH ASSAULT AND BATTERY. UNDER THE BURGLARY STATUTE, WOULD HE AUTOMATICALLY, ALSO, BE GUILTY OF BURGLARY?

WELL, I THINK HE COULD SUBMIT SOME EVIDENCE THAT WOULD SHOW THAT THERE WASN'T A CONSENT THAT HAD BEEN WITHDRAWN.

WELL, I THOUGHT THE STATE'S POSITION WAS THAT THE CONSENT WAS AUTOMATICALLY WITHDRAWN, IF HE COMMITTED THE FORCIBLE FELONY OF BATTERY.

PRE-DELGADO, CONSENT CAN BE ADDRESSED CIRCUMSTANTIALALLY A POST-DELGADO, WHAT WE ARE TALKING ABOUT, AND WE ARE NOT EVEN THEY A PROSPECTIVELY I HAVE SITUATION, WHICH -- A PROSPECTIVE SITUATION, WHICH IS POST 2001, BUT THE REASON WHY THE LEGISLATURE WENT AND DEFINED THOSE PARTICULAR AREAS TO MAKE THEM CRIMINAL, WAS BECAUSE THEY HAD HE THE DELGADO DECISION OUT THERE, AND THEY ARE OBVIOUSLY WORRIED THAT IT MIGHT BE INTERPRETED IN SUCH AWAY SO THAT IS WHY THEY ADOPTED THE 2001, JULY 1, 2001, PROSPECTIVELY, BUT I THINK THAT ISSUE IS FOR ANOTHER DAY.

ONE LAST QUESTION. DOES THE STATE HAVE ANY INDICATION OF HOW MANY CASES MIGHT BE AFFECTED IN THIS WINDOW OF PERIOD THAT WE ARE TALKING ABOUT?

OFF THE TOP OF MY HEAD, NO, I DON'T, YOUR HONOR, BUT HERE IS THE POINT THAT I DO WANT TO MAKE.

QUICKLY BECAUSE OF THE TIME.

ISSUE CAME UP ON FUNDAMENTAL FAIRNESS, AND I THINK THAT WORKS IN THE STATE'S FAVOR, AND THIS IS THE REASON WHY. YES, THERE ARE SOME CASES WHERE THE APPEALS WERE COMPLETED DURING THIS DELGADO DECISION WINDOW, AND, YES, DEFENDANTS GOT THE BENEFIT OF THAT. I WOULD SUBMIT THEY WERE LUCKY. THEY WERE, THEY GOT THEIR APPEALS DONE DURING THAT PERIOD OF TIME. THERE IS NOTHING FUNDAMENTALLY UNFAIR IN HOLDING MR. RUIZ AND MR. BRAGGS ACCOUNTABLE FOR THEIR BURGLARIES, BECAUSE AT THE DAY THAT THEY WERE COMMITTED, THESE WERE CRIMES UNDER THE LAWS OF THE STATE OF FLORIDA. THE JURIES WERE INSTRUCTED THAT WAY, AND THAT THIS COURT SHOULD THERE FOR REIS SEED FROM DELGADO, ANSWER THE CERTIFIED QUESTIONS IN THE AFFIRMATIVE, AND QUASH THE RULING BELOW AND RETHEY STATE THE BURGLARY CONVICTIONS.

THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU BOTH VERY MUCH.