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**State of Florida v. Ransom Louis Collins
SC05-108**

FINAL CASE OF THE MORNING
AND OF THE WEEK, IS STATE OF
FLORIDA VERSUS RANSOM
COLLINS.,,

>> GOOD MORNING A BUY NAME
RONALD NAPOLITANO ASSISTANT
ATTORNEY GENERAL, I
REPRESENT THE NAERT THIS
CASE THE STATE OF FLORIDA.
GIVING A BRIEF HISTORY OF
THE CASE, THE DEFENDANT WAS
CONVICTED OF ARMED ROBBERY,
AND AT THE TIME HE ENTERED
HIS PLEA AN OPEN PLEA NO
NEGOTIATION, WHAT THE
APPROPRIATE SENTENCE WOULD
BE.

THE DEFENSE COUNSEL STATED
THAT THE DEFENDANT WAS A HAB
ITSUAL FELONY OFFENDER.

>> COUNSEL, LET ME GET RIGHT
TO THE ISSUE HERE, BECAUSE
IT HAS BEEN STIPULATED THAT
THE EVIDENCE WAS INSUF,
BELOW, INSUFFICIENT.

>> THAT IS CORRECT.

>> SO THE ISSUE HERE IS
WHETHER WHEN THE STATE
PRESENTS INSUFFICIENT
EVIDENCE AND AT SENTENCING
IT GETS A SECOND BITE AT THE
APPLE.

>> NOT EXACTLY, BECAUSE WHAT
HAPPENED WAS THE COURT
OVERRULED THE OBJECTION, HAD
THE COURT SUSTAINED THE
OBJECTION, THE STATE VERY
WELL COULD HAVE HAD OTHER
EVIDENCE TO PRESENT AT THAT
HEARING, TO ESTABLISH THOSE
SEQUENTIAL CONVICTIONS.

>> THEY WOULD HAVE HAD TO,
BECAUSE THE OBCORRECTION WAS
SUSTAINED, BUT LEAST THE
STATE HAD NOTICE WHEN IT WAS
OBJECTION THE STATE HAD

NOTICE, THAT THERE WAS AN ISSUE.

THE QUESTION IS ON APPEAL, WHEN THE DCA WAS SAID WAS INSUFFICIENT EVIDENCE I REALIZE IT IS NOT A DOUBLE JEOPARDY ISSUE WAS BECAUSE IT WASN'T IN THE GUILT PHASE BUT WHAT IN WHAT OTHER AREA OF LAW WHEN A COURT REVERSES SOMETHING, ON APPEAL, BECAUSE OF INSUFFICIENT EVIDENCE, DOES THE COURT THEN GIVE THE LITIGANT ANOTHER CHANCE TO PROVIDE THE EVIDENCE?

IN SEVERAL CASES, SEEMS TO ME CIVIL CASES SEEMS NO DOUBLE JEOPARDY ISSUE, AND YET WHEN A CASE COME UP ON APPEAL, AND THE PLAINTIFF DID NOT PROVE HIS CASE, BECAUSE HE PREVENTED PRESENT INSUFFICIENT EVIDENCE, SHOULD HAVE BEEN DIRECTED VERDICT, WE DON'T ZBI BACK AND TRY IT AGAIN.

GOOD LUCK.

>> BECAUSE WE ARE NOT DEALING WITH GUILT OR INNOCENCE, OR WHETHER THE PERSON IS LIABLE OR NOT LIABLE WE'RE TALKING ABOUT SENTENCE THEING ISSUES HERE AND SENTENCING THIS COURT HAS HELD IN THE UNITED STATES SUPREME COURT HAS HELD THERE IS NO FINALITY OR CONSTITUTIONAL FINALITY, TO SENTENCING QUESTIONS.

IF THE CASE IS REIF A SENTENCE IS -- ON APPEAL, THREE OF THE DISTRICT COURTS HAVE SAID THE STATE CAN AGAIN SEEK TO ESTABLISH --

>> I HAVE READ ALL THE CASES THEY DON'T SAY WHY THEY ARE VERY CONCLUSARY IN --

>> -- FOR A SECOND DISTRICT COURT OF APPEALS SAY WHY.

>> SO WHAT'S THE GRACE SHOULD WE ALLOW THE STATE TO GO BACK AND TRY AGAIN AND WHAT HAPPENS IF IT FAILS THE

SECOND TIME, DOES IT GET A
THIRD AND FOURTH BITE AT THE
APEL.

>> NO THE STATE DOESN'T GET
A THIRD AND FOURTH TRY BUT
THE PROBLEM HERE AND WE HAVE
FOCUSING ON PARTICULARLY, ON
THIS PARTICULAR CASE, IS
THAT THE COURT THE TRIAL
COURT OVERRULED THE OBJECTION.
HAD THE COURT TRIAL COURT
SUSTAINED THE OBJECTION, THE
STATE WOULD HAVE HAD THE
OPPORTUNITY THEN AND THERE
TO REMEDY THE SITUATION.

>> WELL THE STATE IS FULLY
AWARE THAT THE DEFENDANT MAY
HAVE THE RIGHT TO APPEAL.
THE TRIAL COURT RULING.
AND THAT THE TRIAL COURT MAY
OVERTURN IF THE DEFENDANT
TURNS OUT TO BE CORRECT GO.
BACK TO JUSTICE QUIN FERRO'
QUESTION IF YOU WOULD HE HE
BROADLY ASKED THAT IN TERMS
OF EXTENDING TO IT CIVIL
PROCEEDINGS, AS WELL AS
CRIMINAL.

NOW, IT IS TRUE FOR THAT
DOUBLE JEOPARDY PURPOSES
WHATEVER BUT IMAGINE A
SITUATION FOR INSTANCE WHERE,
THERE IS -- A FACTOR
CIRCUMSTANCES, THAT ALLOWS A
JUDGE TO AGGRAVATE A
SENTENCE.

MAYBE IT IS POSSESSION OF A
WEAPON, OR WHATEVER.
AND THE STATE DOESN'T PROVE
THAT UP.

BUT THE JUDGE GOES AHEAD AND
AFWRO GAITS IT ANYWAY NOW ON
APPEAL THERE IS A RULING
THAT -- THAT WAS ERROR
EVIDENCE TO THE STATE WAS
INSUFFICIENT IN TERMS OF
AGGRAVATING IT BY PROVING
THE WEAPON OR WHATEVER IT
WAS.

AND --

>> BUT IN THE FACTUAL
SITUATION, YOU ARE GIVING ME,
WAS THERE AN OBJECTION.
AT THE TIME.

LET'S DEAL DIRECTLY WHAT YOU ARE SAYING IS THAT ANY TIME THE TRIAL COURT, ERRONEOUSLY ALLOWS THE ADMISSION OF SOME PROOF BY THE STATE THE STATE IN OTHER WORDS THAT IS THE RULE THAT SHOULD COME OUT OF THIS CASE.

THAT IF THE JUDGE ERRONEOUSLY ALLOWS THE STATE TO PRESENT EVIDENCE IT SHOULDN'T HAVE BEEN ALLOWED TO PRESENT, THAT IN THAT CASE, THE STATE DOES GET A SECOND BITE AT THE APPLE BUT IN OTHER CASES NO.

IS THAT THE RULE THAT YOU ARE ASKING US TO ARTICULATE.

>> NO.

>> WELL, I'M HAVING TROUBLE, BECAUSE -- REPETITIONED SEVERAL TIMES -- ENTITLED TO THE SECOND BITE IS BECAUSE THE TRIAL JUDGE OVERRULED THE OBJECTION TO THE STATE'S EVIDENCE.

SO IT IS THAT THE RULE YOU ARE ARGUING FOR OR NOT?

>> WHAT I'M IS IS THAT IF THE COURT HAD SUSTAINED THE OBJECTION AT THAT HEARING, LIKE -- RIGHT THEN AND THERE, THE STATE COULD HAVE GONE CONTINUED TO GO FORWARD, AND PRODUCE SUFFICIENT EVIDENCE, WHETHER IT WOULD HAVE OR NOT, I DON'T KNOW.

BUT I WILL I WOULD LIKE TO POINT OUT CERTAIN FACTS IN THIS CASE.

THE QUESTION OF COURSE IS SEQUENTIAL CONVICTIONS.

STATE -- THE -- WAS OBJECTED IS THAT ORDERS PROBATION, NOW, RICHARD -- HAS SPECIFICALLY HELD EVNL -- STAYS REGARDLESS OF WHETHER THERE IS A WITHHOLD OF ADJUDICATION, OR NOT, PROBATION OR COMMUNITY CONTROL CONSTITUTES A PRIOR CONVICTION SO YOU HAVE THE GATES OF THE ORDERS OF PROBATION.

IN TWO CASES.

BUT IN THE OTHER CASES WHAT YOU HAVE ARE RECOVATIONS YOU HAVE -- SENTENCES REVOCATIONS OF PROBATION SO -- WAS ORIGINALLY PUT PLACED ON PROBATION.

ALL OF THE CASES YOU HAVE FINGERPRINTS.

AND THE FINGERPRINT CARDS OR THE PRINTS USED TO ESTABLISH THOSE -- THE ORDER OF PROBATION AND JUDGMENTS AND SENTENCES REALLY ARE FINGERPRINT CARDS THAT ARE ATTACHED TO THE LAST PAGE OF JUDGMENTS.

AND IF YOU LOOK AT THE RECORD, IN THIS CASE, FOR INSTANCE, IN THE FIRST CASE RELIED UPON THE STATE 851047, THE PROBATION WAS REVOKED AND HE WAS SENTENCED TO IMPRISONMENT ON OCTOBER 28th BUT THE QUESTION IS WHEN WAS HE ORIGINALLY PLACED ON PROBATION.

>> BUT ALL OF THAT MR. --

>> EXCUSE ME, MR. NAPOLITANO.

>> I'M SORRY.

>> ALL OF THAT IS FINE, WHAT THE STATE HAD.

BUT OBVIOUSLY -- BELIEVE THE STATE DID NOT HAVE SOMETHING -- PROVED UP THE WHOLE SENTENCE; CORRECT?

>> AND SO -- ARE YOU ASKING --

>> WHAT YOU ARE ASKING US, THEN, IS THAT IF THE STATE COMES TO A SENTENCING HEARING, NOT PREPARED TO PROVE WHAT THE SENTENCE SHOULD BE AND IT IS REVERSED ON APPEAL.

AND THE STATE GETS ANOTHER OPPORTUNITY TO COME TO A SENTENCING HEARING, AND PROVE UP WHAT THEY DIDN'T PROVE UP BEFORE.

IT I MEAN ISN'T THAT IN ESSENCE WHAT WOULD HAPPEN? WHAT -- WHERE WOULD YOU DRAW THE LINE?

AT ANY TIME THE STATE DID

NOT PROVE UP ITS CASE AND
THE DEFENDANT GOT A REVERSAL
OF THE SENTENCEING THE STATE
GETS REPROVE --

>> ACCORDING TO FOURTH
DISTRICT COURT OF APPEAL
TIME YOU HAVE A REVERSAL OF
A COHN SENTENCE IN QUESTION
YOU HAVE A DE NOVO HEARING
IF YOU WANT TO LOOK AT IT AS
DE NOVO HEARING WE ARE BACK
TO SQUARE ONE AND ANYTHING
CAN HAPPEN AT THE AT THE --

>> SO YOU ARE SAYING THAT
ANY TIME A DEFENDANT GETS --
OF SENTENCING HE HAS TO BE --

>> -- BRING IN THE PROOF
THAT THEY DID NOT HAVE
BEFORE?

>> -- YES, I WOULD SUBMIT
THAT WHY DO YOU NEED DE NOVO
HEARING IF YOU JUST.

>> SORRY.

>> IF YOU STRIKE THE
HABITUAL --

>> I'M SORRY EXCUSE ME?
SAY THAT AGAIN?

>> IF THE ISSUE IS THEY ARE
FINDING AS THE EVIDENCE WAS
INSUFFICIENT, THEN, AREN'T
WE JUST TALKING ABOUT
STRIKING THAT FINDING FROM
THE SENTENCING, AND HAVING
THE SENTENCE ON THEWISE
APPROVEED?

>> WELL, THAT COULDN'T
HAPPEN IN THIS CASE, BECAUSE
HE WAS SENTENCED TO 20 YEARS
IN -- IMPRISONMENT AS
HABITUAL FELONY OFFENDFER
THE HABITUAL FELONY OFFENDER
DESIGNATION WAS REMOVED THE
MAXIMUM SENTENCE HE COULD
GET WOULD BE 15 YEARESED FOR
SECOND DEGREE FELONY UNARMED
ROBBERY.

WHY IF -- NEEDS TO HAVE THAT
SENTENCE REDUCED.

OKAY.

WHY SHOULD THE STATE GET THE
ADDITIONAL BENEFIT OF GOING
BACK ON THE HABITUAL OFFENDER
SENTENCING ISSUE?

--

>> OVERRULING THE OBJECTION.
OF THATING HERE WE'RE NOT
TALKING ABOUT A SECOND BITE
WE ARE TALKING ABOUT THE
ORIGINAL HEARING THE FIRST
BITE SO TO SPEAK.

>> SO THAT IS THE THREAD YOU
FEEL DISTINGUISHS THIS CASE
FROM SECOND BITES.

>> WHAT WOULD BE THE POINT
OF A DEFENDANT?
EVEN -- RAISING A SENTENCING
ISSUE, IF -- HE ALWAYS CAN
GO BACK AND REDO IT?

>> THEN HOW DO YOU
CHARACTERIZE THE DIFFERENCE
BETWEEN WHEN THERE IS AN
OBJECTION AND WHEN THERE IS
NOT AN OBJECT SPLUN.

>> MY QUESTION --

>> I'M SORRY.

>> YOU ASKED THE QUESTION.
-- WHAT WOULD BE THE WHY
WOULD A DEFENDANT APPEAL HIS
SENTENCE AND THEN THE STATE
THEN GO BACK AND STILL DO IT
GIVEN THE SAME THING,
BECAUSE THE STATE GETS AN
OPPORTUNITY TO PROVE WHAT
THEY DIDN'T PROVE BEFORE?

>> I'M HAVING A REAL PROBLEM
UNDERSTANDING THAT KIND OF
SITUATION WE WOULD BE
SANCTIONING REALLY ISN'T ANY
REAL SANCTION FOR THE STATE,
IF THE DEFENDANT APPEALS THE
SENTENCE.

>> THE THE PROBLEM IS YOU
WANT TO GET A LEGAL SENTENCE.
ON REMAPD WHY SHOULDN'T THE
STATE HAVE AN OPPORTUNITY TO
PRESENT THE EVIDENCE TO
AFFECT THE SAME SENTENCE
THAT WAS ORIGINALLY IMPOSEED?

>> BUT WHAT WE ARE TALKING
ABOUT --

>> THE QUESTION IS IS THAT
AFTER AN APPEAL HAS BEEN
PERFECTED AND A COURT HAS
FOUND THAT THERE IS
INSUFFICIENT EVIDENCE, WHY,
WHY SHOULD THEY BE GIVEN A
SEND CHANCE?

NOT YOUR QUESTION BACK TO

HER.

COULD YOU PLEASE ADDRESS THE QUESTION THAT JUSTICE HAS POSE.

>> I CAN'T ADDRESS IT.

UNLESS WE ARE LOOKING AT THE SPECIFIC SITUATION ON THIS CASE.

THE SPECIFIC SITUATION IN THIS CASE IS THAT THE STATE DID NOT HAVE THE -- HAD THE OBJECTION BEEN SUSTAINED THE STATE WOULD HAVE HAD THE OPPORTUNITY RIGHT THEN AND THERE TO CORRECT THE SITUATION.

>> THAT IS RESPONSE TO THAT.

>> I UNDERSTAND A LONG LIST OF CASE LAW THAT SAYS A NEW SENTENCING IS A DE NOVO PROCEEDING, I HAVEN'T FOUND ANY CASES AND MAYBE CAN YOU CITE TO ME ONE, WHY IT WAS REVERSED BECAUSE OF INSUFFICIENT EVIDENCE, AND THEN THE STATE IS ABLE TO INTRODUCE THAT ON THAT SAME ISSUE WHERE IT DIDN'T INTRODUCE IT BEFORE.

>> THERE ARE NUMEROUS CASES WHETHER -- WHERE THE SENTENCE HAS BEEN FOR INSTANCE IN POST CONVICTION ACTIONS 3800 APPEALS.

>> I'M TALKING ABOUT WHERE EVIDENCE WAS DETERMINED ON APPEAL.

TO BE INSUFFICIENT NOT POST CONVICTION PROCEEDING FOR INEFFECTIVE ASSISTANCE ANYTHING LIKE THAT WHERE IT HAS BEEN DETERMINED TO BE INSUFFICIENT YOU GO BACK FOR A NEW SENTENCING, AND THEN THE STATE IS ABLE TO PREVENT PRESENT NEW EVIDENCE ON THAT ISSUE THAT WAS INSUFFICIENT IN THE FIRST SENTENCING.

>> WELL IN A 3800 MOTION.

WHEN YOU ARE ATTACKING THE LEGALITY OF A HABITUAL FELONY OFFENDER SENTENCE YOU A-- YOU ARE ATTACKING THE LEGALITY OF THE QUESTION OF

PROOF THE STATE DID NOT ESTABLISH THE -- SEQUENTIAL CONVICTIONS, IN 3800 SAME OBJECTION IS MADE.

ON REMAND THE STATE AND ALL DISTRICT COURTS AGREE THE STATE GETS ANOTHER OPPORTUNITY TO ESTABLISH.

>> LET ME ASK YOU THIS, AS FAR AS WHETHER THIS IS A DISTINCTION WHETHER IT IS MEANINGFUL.

THIS IS ONE OF THESE PACE -- CASES WHERE THE ISSUE IS CONVICTIONS OCCUR ON THE SAME DAY OR WERE THEY SEPARATE DAYS?

>> YES.

>> AND THAT WAS THE OBJECTION THAT THE DEFENDANT MADE.

>> YES.

>> ALL RIGHT.

>> WHAT WAS JUST CLARIFY WHAT WAS THE STATE'S RESPONSE?

WAS THAT IT AS MATTER OF LAW THAT SENTENCE FIVE THEM ON THE SAME DAY WERE -- WOULD MEET THE STATUTE?

>> THE STATE'S POSITION WAS THAT YOU HAD DIFFERENT SENTENCES FROM DIFFERENT CASES.

>> SO THEY WERE ACTUALLY ARGUING AS MATTER OF LAW THAT EVEN THOUGH THEY OCCURRED ON THE SAME DAY.

>> THE SENTENCEING OCCURRED-THE SAME DAY.

>> SAME DAY THAT THEY YOU COULD QUALIFY AS SEPARATE OFFENSES.

CORRECT.

>> BECAUSE THERE WERE SEPARATE CASES.

>> AND THE JUDGE ACCEPTED THAT ARGUMENT, ON AS ON THE LAW.

>> THE COURT ACCEPTED THAT ARGUMENT AND ALSO THE FACT --

>> WELL, THE REASON I'M ASKING THIS, THIS IS A FRIENDLY QUESTION.

IS BECAUSE WE'VE BEEN

JUSTICE SPEAKING ABOUT
INSUFFICIENT EVIDENCE I'M
WONDERING HERE WHERE THE
ISSUE IS THAT LEGALLY, THE
JUDGE WAS INCORRECT MY
QUESTION OUTLOUD IS TO YOURS
IS WHY SHOULDN'T THE STATE
BE ALLOWED TO GO BACK AND
ESTABLISH OTHER QUALIFYING
FELONIES?

I'M NOT SURE I SEE THE
DISTINCTION BETWEEN WHERE
THE ARGUMENT IS RAISED AND
NOT RAISED.
IF THE JUDGE BOUGHT THE IDEA
THAT IT IS A MATTER OF
MATTER OF LAW THAT THESE ARE
SUFFICIENT.

SO I DON'T KNOW IF WE HAVE
ANOTHER CASE WHERE
SUFFICIENCY OF THE EVIDENCE
WASN'T A MATTER OF LAW BUT
FACTUALLY INSUFFICIENT
WHETHER THAT IS DISTINCTION
WOULD YOU POSIT THAT THAT
COULD BE A DISTINCTION
BETWEEN --

>> YES.

>> ERRORS IN LAW AND ERRORS
IN FACT OR INSUFFICIENCY IN
LAW AND INSUFFICIENCY IN
FACT.

>> THE COURT WAS A -- COURT
BASING THE DECISION ON HE
RON --US ASSUMPTION OF LAW
DID THE STATE ARGUE FOR
THESE PURPOSES, THAT A THAT
SENTENCING ON THE STA SAME
DATE IN DIFFERENT
PROCEEDINGS WAS SUF TO
COMPLY WITH THE STATUTE?

>> DID YOU HAVE ARGUMENT

>> I BELIEVE THAT CAME UP AT
THE SENTENCING HEARING.

>> WE GO BACK TO THE POINT.
IT IS A FACTUAL MATTER
BECAUSE YOU CONCEDED AT THE
COURT OF APPEAL LEVEL THAT
THE DOCUMENTS PRESENTED TO
THE TRIAL COURT FAILED
PRECLUDE THE POSSIBILITY
THAT ALL OF COLLINS' PRIOR
FELONY OFFENSES WERE
ORIGINALLY SENTENCED ON THE

SAME DATE.

>> CORRECT.

YOU DIDN'T ARGUE THAT WELL
IT COULD BE ON THE SAME DATE
BUT A DIFFERENT PROCEEDING
THAT WOULD COMPLY WITH THE
STATUTE.

>> WELL THAT'S TRUE I DIDN'T
MAKE IS THAT POINT.

>> SO THEN I'M CONFUSED SO
WHAT WAS THE STATE'S
ARGUMENT BEFORE THE TRIAL
JUDGE?

AS TO WHY WERE THOSE
QUALIFYING FELONIES?

>> BECAUSE THEY WERE ALL --
THE CONVICTIONS WERE BASED
UPON SEPARATE CASES.

>> BUT YOU NOW --

>> OFFENSES FROM --
DIFFERENT CASES ON THE SAME
DAY.

>> SO THE STATE WAS UNDER A
MISAPPREHENSION AS TO THE
LAW.

>> YES.

>> JUSTICE --

>> -- PLEASE ANSWER
CONCISELY YOU ARE IN
REBUTTAL.

>> WHY DOESN'T CAMERON
VERSUS STATE OUT OF -- AND
02 ANSWER THE QUESTIONS SOME
OF THE OTHER JUSTICES ARE
ASKING IN THAT CASE THE
DEFENSE COUNSEL OBJECTED TO
HABITUALIZATION CONTENDING
NO EVIDENCE TO ESTABLISH SA
PARTICULAR RELEASE DATE?
ON APPEAL THE STATE CONCEDED
THAT THE PROSECUTORS
UNSUBESTABLISHED COMMENTS
WERE NOT ENOUGH AND THEN
THEY HELD THAT ON
RESENTENCING THE STATE WOULD
BE ENTITLED TO PRESENT THE
PROOF.

>> I'M NOT SURE I UNDERSTAND
YOUR QUESTION.

>>.

>> THE CAMERON CASE
SPECIFICALLY SUPPORTS MY
POINT OF VIEW ON THIS MATTER.

>> I THOUGHT WHAT USE TIS

CAN TERO WAS ASKING IS THERE
CASE LAW SUPPORTING YOUR
POSITION ISN'T CAMERON
ANSWERING THE QUESTION HE IS
ASKING OR AM I CONFUSED.

>> I SAID IN A IN BRIEF FROM
THE VERY BEGINNING THE THREE
DISTRICT COURTS OF APPEAL
HAVE ALL RULED THE FIRST THE
FOURTH,, AND THE FIFTH HAVE
ALL RULED THAT EVEN WHEN
OBJECTION WAS MADE STATE HAS
THE OPPORTUNITY ON REMAND TO
PROVE UP THE FACTUAL MATTERS
AGAIN.

>> YOU'RE INTO YOUR REBUTTAL
SUBSTANTIALLY.

>> THANK YOU.,,

>> PULL THAT MICROPHONE FUN
TO.

>> GOOD MORNING MY NAME IS
TOSHA COHEN HERE GR BARTZ TO
REPRESENT MR. ALCOHOL
COLLINS WE'VE GOTEN INTO
WHAT I BELIEVE THE CORE OF
THE CASE THAT IS REMEDY IS
IN DISPUTE THE SECOND
DISTRICT COURT OF APPEAL
BELIEVES WE SHOULD STAKE
THIS BACK TO THE TRIAL LEVEL,
AND IMPOSE A GUIDELINE
SENTENCE, NOT GIVE THEM A
MULLIGAN SHOT OR A DO-OVER
BUT TAKE IT BACK.

>> LET ME ASK YOU THIS.

>> YES?

>> DO YOU AGREE WITH YOUR
OPPONENT'S STATEMENT THAT IF
THE TRIAL COURT HAD
SUSTAINED THE OBJECTION THAT
THAT THE POINT THE STATE
WOULD HAVE BEEN ABLE TO
CORRECT OFFER WHATEVER WAS
NECESSARY IF IT HAD IT TO
CORRECT THE SFLOB WELL, I
ADMIRE THE CREATIVITY OF
THAT SOLUTION, I DON'T
BELIEVE IT IS CONSISTENT
WITH ON THE YEARS OF LAW.

>> WHY NOT?

IF THE JUDGE OVERRULED
OBJECTION IN ON THE -- OTHER
YAIRS FOR FINDING NOT
SUFFICIENT EVIDENCE IN OTHER

YAIRS SUCH AS MOTION TO SUPPRESS AND THEY RULE THAT THERE WASN'T ENOUGH THE STATE WANTS TO GET CHANCE THEN TO GO GO BACK JUST BECAUSE THE RULE OF THE COURT WAS WRONG AT THAT POINT, OR IF THE JUDGE ROVE -- OVERTROULD JUDGMENT OF ACQUITTAL DOESN'T MEAN EVIDENCE WAS SUFFICIENT DOESN'T MEAN STATE GETS TO GO BACK.

>> DO YOU HAVE A SENTENCEING CASE THAT SAYS THAT THAT AT THE TRIAL LEVEL, FORGET ABOUT WHERE ON APPEAL, AT THE TRIAL LEVEL, IF THE COURT SUSTAINS THE DEFENSE OBJECTION, TO HABITUAL SENTENCE, ON THE BASIS THAT THE STATE HASN'T LAID THE PREDICATE FOR IT, THAT THE THAT IS IT, NO CHANCE IT IS -- THE -- CAN'T REOPEN THE MATTER IT IS JUST DONE?

>> OTHER THAN THE LAW IN THIS CASE I HAVEN'T SEEN ANYTHING SPECIFIC

>> LET ME FOLLOW UP JIS TIS WELTS WHAT IF AT THE TIME THE JUDGE MAKES THAT RULING THE STATE SAYS UNHONOR WE CONTINUE THE SENTENCING HEARING FOR ANOTHER DATE THERE ARE PLENTY OF CASES WHERE YOU HAVE, JUDGMENTS FROM OUT OF STATE, AND GETS VERY DIFFICULT TO GET CERTIFIED COPIES OF THE JUDGMENTS WHATEVER AND LET'S SAY THEY HAVE A COPY OF WHAT WASN'T CERTIFIED THERE IS AN OBJECTION SO, IT WAS INSUFFICIENT, AND THE DEFENDANT MAKES THIS OBJECTION THE COURT OVERRULES IT COULDN'T THE STATE SAY YOUR HONOR, WE POSTPONE HEARING TO ALLOW ME TO --

>> ABSOLUTELY THE STATE COULD HAVE ASKED TO POSTPONE PART OF THE SENTENCING TO GET THE PROPER PAPERWORK.

BUT THE FACT THAT THE COURT MADE AN INCORRECT JUDGMENT ON THE SUFFICIENT SEE, DOES NOT A RELIEVE THE STATE OF BUVD PROOF.

>> I HAVE A PROBLEM THEN BETWEEN THE SITUATION, WHERE A TRIAL COURT OVERRULES AN OBJECTION THAT A DEFENDANT MAKES, AND ONE WHERE NO OBJECTION IS MADE.

YOU I PRESUME THAT YOU AGREE THAT WE WHERE NOBODY EJECTION IS MADE THERE AN CAN BE RESENTENCING.

>> I WON'T PROMISE THAT I WILL NEVER COME BEFORE YOU -- BUT --

>> BUT I WON'T PROMISE THAT BECAUSE I'M NOT POSITIVE WILL THERE SHOULD BE DISTINCTION.

>> THAT IS WHAT WE ARE SITTING HERE WITH THAT DISTINCTION THAT IS WHAT I'M HAVING TROUBLE WITH THERE IS NOT A DOUBLE JEOPARDY ISSUE YOU AGREE WITH THAT.

>> RIGHT IS SOMETHING THAT SOMEWHAT TO DOUBLE JEB DEE ISSUE THOUGH BECAUSE WE ARE TALK WHAT I CALL -- WILL OF JUSTICE WHERE OF THE STATE UNLIMIT REED SOURCES COMING AND BEING ABLE TO DO THIS OVER AND OVER AGAIN.

>> I APPRECIATE THIS ALL THESE ANALOGIES, TO MULLIGANS AND EVERYTHING, I JUST WANT TO STICK THOUGH WITH THE FACT THAT WHAT WE DO WHEN THERE ARE SENTENCING ERRORS, OR ERRORS DURING THE SENTENCING PROCEEDINGS, YOU'VE GOT A CASE LIKE MURRAY VERSUS STATE OUT OF THIS COURT, WHERE THE DEFENDANT ARGUED THAT HE COULD NOT BE RENDERED COULD NOT BE SENTENCE THE -- AS HABITUAL OFFENDER BECAUSE THE TRIAL COURT FAILED TO MAKE SPECIFIC FINDINGS THAT MURRAY'S KATE CONVICT HAD

NOT BEEN PARDONED OR SET ASIDE IT WAS REMANDED, WE WENT AHEAD AND SAID THAT WE DISTINGUISHED BETWEEN CASES WHERE YOU ARE NOT GOING TO GIVE THE TRIAL COURT SORT OF A CHANCE TO FIGURE OUT OTHER DEPARTURE REASONS, VERSUS THE SITUATION WHERE YOU CAN GO BACK AND THE STATE CAN ESTABLISH THIS OR THE TRIAL JUDGE CAN MAKE THESE ADDITIONAL FINDINGS, IF THE JUDGE HASN'T AND WE DO THIS A LOT REALLY, IN DEATH SENTENCE WHERE WE GIVE THE JUDGE SOMETHING WENT WRONG AND WE SEND IT BACK FOR THE JUDGE TO MAKE ADDITIONAL FINDINGS.

SO I DON'T SEE THIS AS BEING ALL THAT UNIQUE, SITUATION, SO HELP ME WITH THAT.

I MEAN WHERE IS THE HARM TO THE DEFENDANT FANTED IS ONLY ONE MORE BITE NOW MAYBE THREE, FOUR, FIVE BITES YOU MIGHT SAY THAT THIS -- SORT OF HANGING OUT THERE.

>> WELL, THE PROBLEM IS THAT WE DO HAVE A POTENTIAL FOR HAVING THOSE MULTIPLE BITES YOU HAD A SITUATION THE DEFENDANT-CAN BE WORN DOWN HAVING TO GO BACK OVER AND OVER AGAIN WHERE THE STATE IS TRYING TO JUSTIFY THIS ORIGINAL SENTENCE THEY RUN, ON LOWER ON MONEY AND PERSONNEL, AND TIME.

>> BUT THAT IS NOT WHAT WE HAVE HERE.

>> NOT YET NOT YET WE DON'T BUT WE MAY SEE HIM AGAIN.

>> PERHAPS WE OUGHT TO HAVE COME OUT WITH A POLICY STATEMENT, WHICH SAYS THAT YOU DON'T GET BUT TO DO THIS BUT ONCE.

AS THE FOURTH AND THE FIFTH, AND THESE OTHER DISTRICT COURTS HAVE DONE, BUT I'M TROUBLED WITH THE FACT BY THE FACT THAT IN AN AREA

THAT IS SO TECHNICAL, AS WE HAVE SEEN SENTENCING GROW, THAT ALL OF THE SUDDEN, IF A YOU CAN -- WE -- WEAVE INTO TRIAL COURT MAKING AN ERROR WHICH YOU -- AND GOING FORWARD THEN IN THE APPELLATE COURT REVERSES THAT, THAT THAT IS A WINDFALL FOR THE DEFENDANT AND I DON'T THINK THAT IS WHAT WE OUGHT TO BE DOING I THINK WE OUGHT TO TRY TO GET IT RIGHT.

>> I WOULD AGREE THAT WE SHOULD TRY TO GET THIS RIGHT, HOWEVER, I BELIEVE THAT IN A SITUATION WITH -- ON THE BURDEN OF PROOF THERE IS BASICALLY A PRESUMPTION HERE THAT ENHANCEMENT IS NOT APPROPRIATE, THE STATE HAD TO TAG BURDEN OF PROOF IN THIS SITUATION TO SHOW THAT ENHANCEMENT IS APPROPRIATE HERE.

THE STATE DID NOT MEET ITS BURDEN OF PROOF.

>> LET'S GO IN THIS CASE DIDN'T THE DEFENDANT CONCEDE HE WAS AN HABITUAL OFFENDER.

>> I DIDN'T THINK HE ACTUALLY DID.

>> DEFENSE COUNSEL NEVER CONCEDED AT THE BEGINNING OF THE BLAE THAT IN ACCEPTING THE PLEA IN THIS CASE THAT HE WAS AN HABITUAL OFFENDER.

>> I THINK THEY BELIEVED THEY WERE FACING THAT HE COULD BE FACING THOSE SANCTIONS THAT COULD HAVE OCCURRED DURING THE PLEA HEARING BUT MR. COLLINS FOR HIS PART I DON'T BELIEVE HE EVER CONCEDED THAT HE IS A HABITUAL PHONEDER.

>> THE SECOND QUESTION, WE TALKED ABOUT THIS MULTIPLE BITES THE RULE OF LAW THAT YOUR O PONTENTS SUGGESTED HAS BEEN THE RULE IN THE FIRST FURTHER AND FIFTH FOR QUITE A WHILE IS THERE ANY

EVIDENCE OF THIS HAPPENING OF THE MULTIPLE BITES WHERE THE STATE IS GOING BACK MULTIPLE TIMES IN ANY PARTICULAR CASE THAT YOU ARE AWARE OF?

>> I HAVEN'T SEEN ANY CASE LAW THAT GOES WITH IT BUT THAT MAY JUST MEAN THAT DEFENDANT UNDERSTAND THE SITUATION SEES THE WHOEPLESSNESS OF GOING BACK TO THE OVER AND OVER AGAIN WHEN ALL THEY ARE GOING TO DO IS GIVE THE STATE ANOTHER CHANCE.

>> YOUR OPPONENT USED THE 3800 ANALOGY, AND WHY ISN'T THAT A FAIR ANALOGY?

>> THAT IS THAT INSTEAD OF COMING UP ON APPEAL, THAT A -3 800 HAS BEEN FILED EVEN IN THIS CASE, AND THEY CAUGHT THE MISTAKE THERE.

>> AND, UNDER OUR 3 800 LAW, ISN'T THERE REALLY IN EFFECT A NEW SENTENCING HEARING WHICH ALL THAT IN OTHER WORDS, THE FLAW -- WAS CAUGHT IN THAT CASE BY THE DEFENDANT ASERTH IT IN A POST CONVICTION 3 800, BUT THERE IS A BRAND NEW HEARING STRAIGHTEN IT ALL OUT AFTER THAT ISN'T THAT WHAT HAPPENS IN 3 800 MATTERS.

>> THE 3 800 IS KIND OF A STRANGE CRITTER BECAUSE IT DOES TAKE IT BACK TO THE TRIAL LEVEL DURING THE APPEAL DOES GIVE IT MORE AN OPPORTUNITY, THAT BEING SAID I DON'T KNOW THIS WOULDN'T APPLY IN THAT SITUATION AS WELL.

WHERE YOU HAVE A BURDEN OF PROOF NOT BEING MET, THIS GOES BEYOND THE JUST SENTENCING TECHNICALITY WHERE A PIECE OF PAPER WASN'T FILED, THE BURDEN OF PROOF BY THE STATE WAS NEVER MET, AND THEY NEVER IMPROVED UP ENHANCEMENTS IF LOOK AT I TALK ABOUT A LITTLE BIT IN

MY BRIEF, THE SITUATION,
WHERE THE PREPUNISHMENT CODE
CASES WHERE WE HAVE
DEPARTURES THAT IS VERY
SIMILAR TO WHAT WE SEE HERE
AND AGAIN, ANOTHER SITUATION
WHERE WE HAVE A DEFENDANT,
WHO COULD PROBABLY COME UP
OVER AND OVER AGAIN ON THE
SAME CASE.

>> LET ME ASK YOU THIS, IN
THE GUILT DETERMINATION, WE
HAVE DOUBLE JEOPARDY CLAUSE
THAT PROHIBITS THE RETRIAL
BECAUSE IT WOULD TWICE PUT
THE DEFENDANT IN JEOPARDY.
HOWEVER, IN THE SENTENCEING
THE U.S. SUPREME COURT HAS
ALREADY SAID DOUBLE JEOPARDY
DOESN'T APPLY.

SO WHAT IS THE
JURISPRUDENTIAL HOOK THAT WE
WOULD USE GRANT YOU RELIEF
WHAT STATUTE WHAT RULE WHAT
CONSTITUTIONAL PROVISION OR
DO WE JUST SAY NO MULLIGANS?
DON'T WE HAVE TO HAVE SOME
KIND OF LEGAL JUSTIFICATION
FOR HOLDING IN YOUR FAVOR.

>> I THINK ALTHOUGH THE IDEA
OF DOUBLE JEOPARDY DOES NOT
SPECIFICALLY APPLY IN THIS
CASE THAT THERE ARE SOME
UNDER MINIMUMINGS THAT ARE
APPROPRIATE BECAUSE WE DO
HAVE THE POTENTIAL FOR THE
REPETITION, AND IF YOU LOOK
AT THE CASE THEY STACK ABOUT
THAT THEY SAID, WE BELIEVE
THAT BETTER POLICY REQUIRES
THE TRIAL COURT TO
ARTICULATE ALL OF THE
REASONS FOR DEPARTURE IN THE
ORIGINAL ORDER TO HOLD
OBSERVERWISE MAY NEDLESSLY
SUBJECT THE DEFENDANT TOWN
WARRANT EVIDENCE FORTS TO
JUSTIFY ORIGINAL SENTENCE,
AND ALSO MIGHT LEAD TO
OBSERVE RESULTS -- ABSURD
RESULTS ONE COULD ENVISION
NUMEROUS AS ONE BY ONE
REASONS OBJECTED ON MULTIPLE
APPEALS.

>> BUT THEN WE HAVE THE CASE OF LET ME MAKE SURE I HAVE IT RIGHT, MURRAY WHICH I REFERRED TO.

>> RIGHT.

>> WE HAVE JUSTICE'S CONCURRENCE WHERE SHE SAYS THE ASH DRESSES SKULL, WAS THE DANG OF DEVELOPING AFTER THE FACT REASONS FOR DEURE SENTENCES SUCH A DANGER DOES NOT EXIST HERE, THIS CASE DOES NOT INVOLVE A DEPARTURE SENTENCE MURRAY WAS SENTENCED AS HABITUAL OFFENDER SO WE HAD IN THESE DEPARTURE SENTENCE CASES, VALID POLICY REASONS, FOR NOT ALLOWING THE RESENTENCING.

DO YOU AGREE THAT IS A DISTINCTION THAT THERE THAT THAT TYPE OF ABUSE COULDN'T EXIST IN THIS SITUATION?

>> THAT WHAT WHAT SKULL OR SHUL WAS REFERRING TO DO YOU AGREE WITH THAT.

>> IN A WAY I UNDERSTAND WHAT YOU ARE SAYING BUT I BELIEVE THERE IS THE SAME SORT OF PROBLEM COULD POP UP BECAUSE THE STATE IS ARGUING FOR DE NOVO HEARINGS THEY COULD ACTUALLY FILE FOR PRR, OR ANYTHING BECAUSE WE ARE STARTING FROM SCRATCH ON THIS.

>> WELL NOW WE HAVE A DIFFERENT ARGUMENT ABOUT WHAT ELSE HAPPEN ON RESENTENCING THAT MAY BE ANOTHER ISSUE WHICH IS THEY CAN'T GO FOR ANYTHING MORE THAN THEY WENT FOR ORIGINALLY BUT I DIDN'T UNDERSTAND YOU WERE ARGUING FOR THAT KIND OF RESTRICTION, AND I SO LET'S STICK WITH THIS CASE, IN THIS CASE, YOU SEE AND I DISTINCTION BETWEEN THE FACT THAT STATE BELIEVED AT LEAST AS AT THE TIME, ASSUMING VALIDLY THAT YOU COULD HAVE FIVE SEPARATE

CONVICTIONS FROM DIFFERENT
CASES ON THE SAME DAY, AND
IT COULD QUALIFY SOMEONE FOR
HABITUAL OFFENDER STATUS
THAT THAT IS WHAT WAS OCCURRING
THAT THEY HAD THE
CONVICTIONS THERE, BUT IT
WAS IN THE JUDGE AND THE
STATE BELIEVE THAT IT THAT
THOSE WOULD LEGALLY QUALIFY.

>> CORRECT?

>> CAN YOU TELL ME WHEN
WOULD YOU DRAW DISTINCTION
WITH SOMETHING THAT WAS FACT
INADEQUATE IN OTHER WORDS,
THIS IS GOING TO TRY TO
ESTABLISH THAT THERE IS A
QUALIFYING FELONY IT COMES
FROM CALIFORNIA EVERYONE
BRINGS WITNESSES AND YOU
BRING WITNESSES, AND THEY
JUST DON'T MAKE THEIR CASE
THAT IT WAS QUALIFYING
FELONY AND YOU OBJECT ON
THAT BASIS, AND THEN THE
APPELLATE COURT SAYS YOU ARE
RO RIGHT THERE WAS FACTUALLY
INSUFFICIENT, DO YOU THINK
THERE SHOULD BE ANY
DIFFERENCE AND I REALIZE
AGAIN THIS DOESN'T HELP YOUR
CASE BUT BETWEEN A SOMETHING
THAT IS FACTUALLY INSTUFF
AND SOMETHING THAT WAS DELLY
INSUF, THAT THE JUDGE
THOUGHT WAS LEGALLY
SUFFICIENT AT THE TIME?

>> I BELIEVE THERE IS SOME
DISTINCTION ONE OF THOSE
AREAS WOULD BE IN AREA OF
FINALITY WHETHER THERE IS
EXPECTATION OF FINALITY I
BELIEVE IN CASES THAT ARE
ISSUES OF A LOBBYING THE
STATE OR THE DEFENSE ASKING
TO CHANGE A LOT THAT THERE
IS NOT AN EXPECTATION OF
FINALITY, AND THAT IS CASES
LIKE TROT WHERE YOU HAVE,
DEFENDANT BASICALLY TRYING
TO CHANGE THE LAW, AND GO
BACK IN, AND THE COURT SAID
NO FINALITY BECAUSE THIS AN
ISSUE OF -- OF LAW, AND NOT

ISSUE OF FACT, AND --

>> YOU MEAN SO IN THIS CASE,
IF THERE HAD BEEN LAW
FROM BOTH DISTRICTS SAYING
ONE YOU COULD HAVE IN ONE
DAY FIVE DIFFERENT FELONIES
AS LONG AS THEY WERE IN
DIFFERENT CASES, AND IN
ANOTHER COURT HAD SAID THE
OPPOSITE, AND THEN IT CAME
UP TO OUR COURT AND WE SAID
NO, YOU CAN'T HAVE IT.
THEN YOU ALLOW RESENTENCING?

>> I THINK THAT AS THE LAW
STANDS RIGHT NOW IF IT IS AN
ISSUE OF PURE LAW, THAT
THERE WOULD BE A DE NOVO
REVIEW.

>> WHY ISN'T THIS WHY ISN'T
WHAT HAPPENED HERE EVEN
THOUGH IT WAS FOUND
INSUFFICIENT WASN'T THE
JUDGE MAKING A DECISION PURE
LAW.

>> NO BELIEVE IN THE JUDGE
WAS LOOKING AT THE FACTS I
BELIEVE THIS CASE IS PURELY
A QUAL ISSUE THE JUDGE
MAY NOT UNDERSTAND CERTAIN
AREAS OF THE LAW WHEN HE
APPLIED TO FACTS THE LAW
UNDER SECOND DISTRICT COURT
OF APPEAL NEVER CHANGED ON
THIS ISSUE THERE WAS NO
CONFUSION OF THE LAW IN THIS
ISSUE THERE WERE A AS PURE
MATTER WHEN OR NOT WHETHER
OR NOT THERE WERE TWO PRIORS
AS SIMPLE DIFFICULT AS THAT.
AND IF TWO PRIORS HE IS HE
IS HABITUAL OFFENDER IF
THERE'S NOT HE'S NOT.
THE COURT LOOKED AT THE
PAPERWORK AND AS I
UNDERSTAND IT THERE IS A LOT
OF DISCUSSION BACK AND FORTH,
AND IT IS KIND OF HARD TO
PIN DOWN WHY THE JUDGE RULES
AS HE DOES BUT HE IS LOOKING
AT IT AND SAYING TO ME, YOU
KNOW, IF YOU ARE GOING TO
HAVE SOMEBODY ON PROBATION
RESENTENCED ALL THIS IS GOOD
ENOUGH IT IS SUFFICIENT.

AND HE MAKES THAT DETERMINATION, WITHOUT ANY REFERENCE TO YOU KNOW, A FLORIDA SUPREME COURT CASE UNDER REVIEW OR SOMETHING OF THAT EFFECT THAT IS COMPLETELY FACTUAL ISSUE, AND IF YOU LOOK AT TOTTER, WHEN THE -- DECISION WAS WRITTEN THE COURT TALKS ABOUT HARRIS HOW YOU CAN'T ATTACK SENTENCING LAW, AND THEN EXPECT FINALITY THE COURT GOES ON TO SAY WE NOTE THE STATE'S -- IN THIS CASE INVOLVED ONLY A LEGAL ISSUE NOT TRIAL COURT'S DISCRETIONARY JUDGMENT CONCERNING HARRIS'S SENTENCE THE TRIAL COURT'S DECISION AGAINST HABITUAL OFFENDER SANCTIONS WAS NOT BASED ON THE STATE'S FAILURE TO CARRY ITS BURDEN OF PERSUASION, AND I THINK THAT THAT IF IT HE DISTINCT ARE A OF CASE LAW AS ARE CASES WHERE FOR EXAMPLE THE STATE MESSES UP A DEFENDANT ASKS TO HAVE A DE NOVO HEARING AND BECAUSE THERE IS A MISTAKE BY THE STATE, THE DEFENDANT WOULD RECEIVE DE NOVO REVIEW OF THE SENTENCING, HERE WE HAVE THE STATE FAILING TO MEET ITS BURDEN OF PROOF THE STATE WANTING TO GO BACK AND HAVE A NEW HEARING, IF YOU WANT THE BURDEN OF PROOF TO HAVE ANY MEANING WHATSOEVER, YOU HAVE TO MAKE THE STATE LIVE UP TO ITS BURDEN OF PROOF THAT THE STATE HAD THOUGHT IT HAD YOU HAVE A NEUTRAL MAGISTRATE HERE WHO MADE A MISTAKE. SO WHY SHOULD EITHER PARTY THE STATE OR THE DEFENDANT BE INJURED OR HURT IN ANY WAY WHEN NEUTRAL MAGISTRATE MAKES THE MISTAKE? >> IT IS SAME SITUATION WOULD BE JOA, WHERE THE JUDGE DECIDES THAT THERE IS

ENOUGH EVIDENCE, JUST BECAUSE THE JUDGE RULES A CERTAIN WAY DOES NOT RELIEVE THE STATE OF ITS BURDEN OF PROOF THEY HAVE THE BURDEN OF PROOF, THEY DID NOT MEET THAT BURDEN.

THE TRIAL COURT WAS CONFUSED BY THE PAPERWORK UNDER QUITE FRANKLY THE PAPERWORK IS AWFUL THE COPIES ARE BAD AND IT IS VERY EASY TO BE CONFUSED BY THAT.

HE WAS CONFUSED BY THIS, AND HE THOUGHT THAT IT WAS SUFFICIENT, SECOND DISTRICT COURT OF APPEALS HAS SIMPLY SAID IT IS NOT SUFFICIENT, THE STATE DOESN'T GET ANOTHER CHANCE TO PROVE UP ITS BURDEN OF PROOF THE STATE DOES NOT ALWAYS A BURDEN OF PROOF THE STATE CHOSE TO TAKE THE BURDEN OF PROOF TO PROVE THE ENHANCEMENT WAS APPROPRIATE IN THIS CASE.

>> I GUESS MY POINT IS THE STATE DID THAT, THEY WENT TO THE NEUTRAL MJ AT ANY RATE PRESENTED TO NEUTRAL MJ AT ANY RATE ALL THEY THOUGHT WAS NECESSARY THAT NEWS AT TRAL MAGISTRATE JUDGE DOWN THERE SAID YES YOU DID WHAT THE LAW REQUIRES, THAT NOW AT TRAL MAGISTRATE WAS WRONG, APPELLATE COURT APEAV MAGISTRATE TELL US THEM THAT IT IS GOING BACK DOWN.

>> YOU WOULD STILL THINK THE STATE SHOULD BE -- PRECLUDED FROM DOING WHAT IT ALL REASONABLY, I ASHUM THOUGHT THAT IT HAD DONE CORRECTLY THE FIRST TIME.

>> THE JUDGE IS GOING TO MAKE A DETERMINATION EVERY TIME ON SUFFICIENCY DOES NOT RELIEVE THE BURDEN OF PROOF FROM PERSON DEMONSTRATING EVIDENCE DOES MAKE IT A SITUATION, AGAIN IN THE TROTTER DECISION THE FIRST

LINE I READ WAS THE ISSUE IS NOT TRIAL COURT'S DISCRETIONARY JUDGMENT CONCERNING THE CASE, THEY GROUP IN WITH THE STATE -- FAILING TO MEET ITS BURDEN OF PROOF THAT IS DIFFERENT SITUATION, THAN THE ISSUES OF LAW.

IT IS REGRETTABLE THAT THE COURT MISUNDERSTAND THE EVIDENCE KNT PROPERLY WEIGH SUFFICIENCY EVIDENCE THAT DID NOT RELIEVE BURDEN STATE TOOK UPON ITSELF TO SHOW ENHANCEMENT WAS APPROPRIATE.

>> COULD THE STATE HAVE DONE AT THE HEARING TO MEET ITS BURDEN OF PROOF?

>> IF I WERE THE PROSECUTOR IN THE CASE, I WOULD START BY GO TO BACK, AND MAKING SURE I HAD ALL THE PAPERWORK BEFORE I GOT INTO COURT SOME OF THIS IS SLOPLY LAWYERING THEY CAME IN THOUGHT THEY HAD WHAT THEY NEEDED MAYBE IT WAS IN ANOTHER FILE MAYBE THEY LEFT IT ON THEIR DESK THEY HANDED IN WHAT THEY HAD AND --

>> HOW DO YOU PROVE THESE CASES WERE SENTENCED AT DIFFERENT PROCEEDINGS IF THEY WERE SENTENCE ON THE SAME DAY HOW DO YOU PROVE THAT 15 YEARS AGO THAT THEY WERE PART OF THE DIFFERENT PROCEEDINGS?

>> IF THEY DO NOT HAVE THE PAPERWORK ON HAND THEY PROBABLY HAVE MICROFICHE I KNOW IN SECOND DISTRICT COURT THAT IS HOW WE HANDLE PAPERWORK AS WE PUT ON MICROFICHE YOU HAVE TO BACK INTO BASEMENT SCARE CAN YOU GO BACK IN THERE GET OLDER PAPER WORK.

>> WOULD PAPERWORK SHOW IT WAS DONE IN A SEPARATE PROCEEDING IF DON THE SAME DAY?

>> I MEAN SHOW THE DATE OF

THE SENTENCING.

HOW DO YOU KNOW THAT IT
WASN'T DONE 1:00 -- ONE IN
THE MORNING ONE IN THE
AFTERNOON SAME DEFENDANT
SAME DATE BUT DIFFERENT
PROCEEDING?

>> I'M NOT SURE ABOUT THE
ANSWER TO THAT.

IT MAY HAVE TIMES AND JUDGES
LISTED ON THE PAPERWORK 15
YEARS AGO I CAN'T TELL YOU
WHAT THEY WERE DOING ON THE
PAPERWORK HOWEVER WHAT I CAN
TELL YOU IN ORDER FOR THE
STATE TO MEET ITS BURDEN OF
PROOF THAT IS LEGISLATIVE
FUNCTION THAT IS NOT
SOMETHING THAT YOU KNOW WE
ARE TRYING TO RECREATE BUT
IN ORDER TO MEET BURDEN OF
PROOF THAT IS REQUIRED IN
ORDER TO JUSTIFY THIS
ENHANCEMENT THEY WOULD HAVE
TO DO THAT I DON'T KNOW IF
INFORMATION WAS AVAILABLE
THEY NEVER CLAIMED IT WASN'T
AVAILABLE IN THIS CASE I
THINK WE CAN ASSUME IT PROS
-- PROBABLY WAS THEY DIDN'T
BRING IT IN BECAUSE THEY
DIDN'T CLIMB THEY TRIED TO
GET IT THEY DIDN'T CLAIM
THEY HAD GONE DOWN TO THE
BASEMENT AND THE RECORDS
WERE MISSING, OR TRY TO
BRING IN THE JUDGE, THAT
DOES SENTENCING SEE IF HE
COULD REMEMBER IT THERE WAS
NOTHING THAT THEY DID TO TRY
TO PROVE THIS UP.

WHEN THE STATE TAKES ON THAT
BURDEN OF PROOF, THEY HAVE
TO HAVE THAT PROOF, AND THEY
HAVE TO MEET THE BURDEN IF
THEY CAN'T DO IT THEY
ENHANCEMENT THERE IS
PRESUMPTION THAT ENHANCEMENT
IS NOT GO TO GO INTO EFFECT.

>> LET'S GO ON WITH
ASSISTANCE YOU HAVE A--
EXHAUSTED ALL OF YOUR TIME,
THANK YOU VERY MUCH.

>> THANK YOU.

>> STATE'S REBUTTAL.

OF.

>> FIRST OF ALL, IN RESPONSE TO THE COURT'S QUESTION OF WHAT THE TRIAL COURT BASED ITS DECISION ON.

THE COURT STATED EVEN IF I ACCEPT THE DEFENSE ARGUMENT THAT CONVICTIONS 2, 3, 4, AND WERE SENTENCE CONCURRENTLY IN OTHER WORDS, REVOCATIONS OF PROBATION ALL OCCURRED ON THE SAME DAY.

EVEN IF I ASSUMED THAT, HE VIOLATED HIS PROBATION AND THEN WAS CITIZEN 10'D AFTER A VIOLATION, THE PERSON WAS PUT ON PROBATION AND THEN THE FINAL JUDGMENT IS ENTERED OF JAIL TIME, THAT IS A REVOCATION.

IT SAYS RIGHT HERE ON PAGE TWO IT IS A REVOCATION. ACTUALLY A BRAND NEW SENTENCING.

AT THE TIME -- I FIND SOMEBODY VIOLATED THEIR PROBATION I CAN GIVE THEM WHATEVER SENTENCE I COULD HAVE GIVEN ORIGINALLY, SO IN THIS SENTENCE UNDER THE LAST TWO CASES, APPARENTLY SEPARATE SENTENCINGS FROM 2, 3, 4, AND 5 AGAIN THE COURT WAS CONFUSING THE DATE OF REVOCATION, I MEAN THE DATE OF SENTENCING WITH THE DATE OF THE ORIGINAL THE DATE OF THE ORIGINAL PROBATION. THE STATE COULD HAVE EASILY HAVE RESOLVED THIS QUESTION HAD THE OBJECTION BEEN SUSTAINED --

>> THE OBJECTION WAS MADE; RIGHT?

THEY COULD HAVE RESOLVED IT ALSO WHEN THE OBJECTION WAS MADE.

>> SORRY.

>> THE STATE COULD HAVE RESOLVED IT ALSO WHEN OBJECTION WAS MADE IT DIDN'T HAVE TO WAIT UNTIL IT WAS OVERRULED TO SUSTAIN THEY O

COULD M SAID FINE YOU OBJECT
TO THAT LET ME INTRODUCE
THIS OTHER STUFF.

>> THE STATE TOOK THE --
TOOK THE POSITION ERRONEOUSLY
IT DIDN'T HAVE GO ANY
FURTHER --

>> YOU KNOW THE STATE MANY
TIMES WHEN DEFENDANT OBJECTS
TO SOMETHING, IN ORDER TO
PROTECT ITSELF, THE STATE
WILL COMPLY WITH THE
DEFENDANT'S OBJECTIONS, TO
PROTECT AGAINST THE REVERSAL
ON APPEAL THE STATE COULD
HAVE DONE THAT IN THIS CASE.

>> THE DEFENDANT MAKES
OBJECTION THE STATE HAS THE
OPPORTUNITY TO RESPOND TO
THE OBJECTION THE STATE'S
POSITION THE STATE YOU KNOW,
THE STATE DIDN'T HAVE ANY
QUALMS IN ITS MIND THE
PROSECUTOR HAD NO QUALMS IN
ITS MIND THAT IT WAS GOOD
THAT THE EVIDENCE THAT IT
PRESENTED WAS SUFFICIENT IF
IT HAD, ANY DOUBTS IT
PROBABLY WOULD HAVE GONE
FORWARD.

BUT THE POINT IS THATED THE
JUDGE SUSTAINED THE
OBJECTION THE STAUT WOULD
HAVE LAD OPPORTUNITY GO
FORWARD AND IT DIDN'T DO SO FORWARD AND IT DIDN'T DO
SO.

>> COUNSEL, WITH OUR
ASSISTANCE YOU'VE ALSO
EXHAUSTED YOUR TIME.
WE THANK YOU FOR YOUR
ARGUMENTS.

WE WILL CERTAINLY TAKE THIS
CASE UNDER ADVISEMENT AND WE
APPRECIATE YOUR ARGUMENTS TO
THE COURT THIS MORNING.

>> THANK YOU.

>> PLEASE RISE,,,,,,,,,,,,, YOU.

>>