

CASH HALL CARBAJAL CERESE KRAUSE  
KRAUSS SARAH LAHLOU-AMINE  
LAHLOU-AMINE LAHLOU-AMINE  
LAHLOU-AMINE BUTTERWORTH CZUBAK  
CZUBAK SUE BECK ZOUBEK SUE BACK  
CZUBAK DECEMBER MONDAY DESMOND  
FINNEY GIDEON WAINWRIGHT GUNN  
HAG HAAG HARRELL LUGER MADDOCK  
McCRAY McCRAE MOORE POPE ROY  
CONEY STEELE KEHOE WATERS WINTER  
ZANGER CORAM NOBIS CORAM NOBIS  
ROSHKIND CHARLENE MACHIELA  
BELINDA STEPHANSEN STEPHEN SENN  
STEPHEN SENN STEPHEN SENN  
CARDOZO KRAMER HAUSER ARABIA  
ARABIA DID LEK KEY SIEDLECKI  
SIEDLECKI GIBLIN BARUCH AROUND  
MIN YANG AROUND MIN YANG STULZ  
GERLACH DONNELLY ELSER RUSS  
MARBIN GOSSETT MINE HARD SALMON  
MILTON KELLNER OHRALIK MACHIELA  
ROSENBERG LEFT VIN LEVIN  
SCHWARTZ KOGAN SEARCY DENNEY  
SCAROLA BARNHART ARIBA SENTON  
TRAVIESO TRAVIESO MERKIN DENSUS

QUANTUM MERUIT

>> PLEASE RISE.

FLORIDA SUPREME COURT IS NOW IN  
SESSION.

PLEASE, BE SEATED.

>> WE NOW MOVE TO THE THIRD CASE  
ON OUR DOCKET WHICH IS CARBAJAL  
V. THE STATE OF FLORIDA.

EXCUSE ME IF I MISPRONOUNCED  
THAT.

>> THAT'S RIGHT, YOUR HONOR.

THANK YOU.

GOOD MORNING, AND MAY IT PLEASE  
THE COURT, MY NAME IS SARAH  
LAHLOU-AMINE, AND I'M HERE ON  
BEHALF OF THE PETITIONER,  
MR. DAVID CARBAJAL.

THIS CASE GOES TO THE VERY HEART

OF THE COURT'S AUTHORITY TO ACT,  
ITS AUTHORITY TO ADJUDICATE  
DEFENDANTS ON CRIMINAL CHARGES  
AND SENTENCE THEM, DEPRIVING  
THEM OF LIFE AND LIBERTY.

THIS AUTHORITY IS THE ESSENCE OF  
SUBJECT MATTER JURISDICTION.

IT'S NOT MERELY PROCEDURAL, IT  
CAN'T BE WAIVED, AND IT CAN'T BE  
CREATED BY THE PARTIES OR BY THE  
COURT.

RATHER, IT MUST BE EXPRESSLY  
GRANTED BY THE PEOPLE THROUGH  
THE LEGISLATURE OR THE  
CONSTITUTION.

BASED ON THIS PARAMOUNT NATURE  
OF SUBJECT MATTER JURISDICTION,  
IT'S WELL ESTABLISHED IT CAN BE  
RAISED AT ANY TIME BY ANY  
LITIGANT BY ANY CIRCUMSTANCE,  
THE PARTIES OR THE COURT.

>> ARE YOU ARGUING THAT THIS  
CIRCUIT COURT DID NOT HAVE  
SUBJECT MATTER JURISDICTION?

>> ABSOLUTELY, YOUR HONOR.

>> SO THIS CRIME WAS COMMITTED

WHERE?

WHERE DO YOU CONTEND THE CRIME  
THAT THE DEFENDANT WAS CONVICTED  
OF WAS COMMITTED?

>> THE ALLEGED CRIMES AS  
CONCEDED BY THE STATE WERE  
COMMITTED IN LEE COUNTY.

THE STATE CONCEDES ON PAGE 18 OF  
THE RECORD --

>> AND THE TRIAL TOOK PLACE  
WHERE?

>> IN LEE COUNTY.

>> YOU SEE, I'M HAVING  
TROUBLE -- I ACCEPT YOUR  
PROPOSITION THAT IF THERE IS NO  
SUBJECT MATTER JURISDICTION,  
THAT A JUDGMENT MAY BE VOID AND  
MAY BE RAISED AT ANY TIME.

IN FACT, YOU MIGHT EVEN ARGUE  
THE SENTENCE IS ILLEGAL IF IT IS  
A VOID JUDGMENT.

I'M HAVING TROUBLE WITH  
UNDERSTANDING, ASSUMING THAT  
THIS, THE PROSECUTOR SHOULD HAVE

BEEN THE LEE COUNTY PROSECUTOR  
AS OPPOSED TO THE SPECIAL  
PROSECUTOR, BASED ON ALL THE  
CASE LAW WHERE A JUDGE FROM  
ANOTHER CIRCUIT TRIES A CASE AND  
WE GO THAT'S MAYBE VOIDABLE,  
IT'S NOT VOID, OR A PROSECUTOR  
DOESN'T SIGN THE INDICTMENT.  
HOW DOES THAT AFFECT THE SUBJECT  
MATTER JURISDICTION OF THE  
CIRCUIT COURT IN LEE COUNTY AND  
THE JURY IN LEE COUNTY TO HAVE  
HEARD THIS CASE AND COME UP WITH  
A VALID CONVICTION?

>> WELL, IT GETS BACK TO THE  
AUTHORITY, THE SUBJECT MATTER  
JURISDICTION OF THE COURT AND  
THE CONSTITUTIONAL UNDERPINNINGS  
OF THAT AUTHORITY.

SPECIFICALLY --

>> BUT ISN'T IT, WASN'T -- ISN'T  
A PROSECUTOR A PROSECUTOR?  
IN OTHER WORDS, WHAT IF THE  
PROSECUTOR HAD BEEN FROM, YOU  
KNOW, ORLANDO AND WAS ON SPECIAL

ASSIGNMENT OR SOMETHING?

IT SEEMS TO ME -- AND I'M NOT --

THAT IT'S A TECHNICAL PROBLEM.

IT MAY HAVE BEEN ABLE TO BE

RAISED ON DIRECT APPEAL OR

CHALLENGED BY WAY OF MOTION TO

DISMISS, BUT THIS DEFENDANT

CHOSE TO PLEAD NOLO AND,

THEREFORE, THE STATE DIDN'T HAVE

A CHANCE TO EVEN SHOW WHY THIS

WAS COMMITTED IN MULTIPLE

CIRCUITS.

SO I HAVE, AGAIN -- AND I

REALIZE YOU'RE DOING THIS PRO

BONO, AND YOU'VE MADE A VERY

GOOD ARGUMENT, AND I APPRECIATE

IT, AND I AGREE WITH YOU IN THE

UNDERLYING PROPOSITION.

I JUST DON'T SEE HOW IN THIS

CASE -- WHICH IS, I'M SURE, WHAT

YOU WANT TO DO FOR YOUR

CLIENT -- THAT IT IS A VOID

JUDGMENT.

>> IT'S ABSOLUTELY A VOID

JUDGMENT.

THIS ISN'T A SCENARIO WHERE  
THERE'S A TECHNICAL PROBLEM WITH  
THE CASE THAT, YOU KNOW, MAKES  
IT VOIDABLE SUCH THAT IT CAN BE  
RAISED ON DIRECT APPEAL OR  
SOMETHING LIKE THAT.

THIS IS SUBJECT MATTER  
JURISDICTION BECAUSE IT GOES TO  
THE VERY AUTHORITY OF THE  
PROSECUTING OFFICER.

IN THIS CASE IT'S THE STATEWIDE  
PROSECUTOR THAT FILED THAT  
INFORMATION, AND THE BASIS --  
>> THAT IS THE AUTHORITY OF THE  
PROSECUTING AUTHORITY.

>> OKAY.

>> A QUESTION THAT'S THE SAME  
FROM THE JURISDICTION OF THE  
CIRCUIT COURT.

AND CIRCUIT COURT HAS  
JURISDICTION OVER FELONIES.

THIS WAS A FELONY.

I JUST -- AGAIN, I UNDERSTAND  
THAT'S NOT REALLY THE CONFLICT  
ISSUE.

THERE MIGHT BE MORE THAN ONE  
CONFLICT ISSUE.

IT'S NOT THE PRIMARY CONFLICT  
ISSUE WHICH IS A QUESTION OF  
WHETHER THE TIME LIMITATION IN  
3.850 CUT OFF THE CLIENTS BASED  
ON A LACK OF JURISDICTION OF THE  
COURT.

BUT I'M STILL HAVING TROUBLE --  
AND WE'LL DISCUSS THAT.

I'M STILL HAVING TROUBLE SEEING  
HOW THIS IS REALLY, WITH THE  
FACTS WE HAVE HERE, ESTABLISH  
THAT THE CIRCUIT COURT WITHOUT  
JURISDICTION.

>> WELL, I THINK REALLY ON ITS  
FACE THESE ARGUMENTS SOUND VERY  
APPEALING ON THEIR FACE BECAUSE,  
OF COURSE, IT SOUNDS LOGICAL.  
AS YOU MENTIONED, YOU KNOW, THIS  
WAS, THE TRANSACTIONS OCCURRED  
IN LEE COUNTY, IT WAS PROSECUTED  
IN LEE COUNTY.  
THAT ALL SOUNDS GREAT EXCEPT  
WHEN WE DIG DEEPER OR, AND WE GO

TO THE CONSTITUTIONAL BASIS FOR  
THE COURT'S JURISDICTION.

WHEN WE GO TO THE CONSTITUTIONAL  
BASIS FOR THE STATEWIDE  
PROSECUTOR'S ABILITY TO FILE  
INFORMATION, WE FIND THAT THAT  
ABILITY NEVER OCCURRED IN THIS  
CASE.

NOW THIS COURT HAS RECOGNIZED --

>> SO I THINK WHAT JUSTICE  
CANADY WAS JUST SAYING IS YOU  
DON'T SEE, AND BASED ON YOUR  
ARGUMENT IT SEEMS TO ME, YOU  
DON'T SEE A DIFFERENCE BETWEEN  
THE COURT'S SUBJECT MATTER  
JURISDICTION AND THE  
PROSECUTOR'S AUTHORITY TO BRING  
A CASE.

YOU DON'T SEE ANY DISTINCTION  
BETWEEN THOSE TWO ISSUES?

>> NOT WITH RESPECT TO THE  
STATEWIDE PROSECUTOR BECAUSE  
THERE ARE SPECIAL PROVISIONS IN  
THE CONSTITUTION, IN THE FLORIDA  
CONSTITUTION REGARDING THE

STATEWIDE PROSECUTOR'S

AUTHORITY.

FOR EXAMPLE, ARTICLE I, SECTION

15A OF THE CONSTITUTION PROVIDES

THAT THE COURT'S AUTHORITY IS

TRIGGERED BY THE PROSECUTING

AUTHORITY.

AND SO THAT IS WHERE WE BEGIN

THE SUBJECT MATTER JURISDICTION

ANALYSIS.

AND THEN WE MOVE TO ARTICLE IV,

SECTION 4B, TALKS ABOUT THE

STATEWIDE PROSECUTOR'S

JURISDICTION.

>> BUT WOULDN'T THAT BE MORE

BECAUSE -- LET'S ASSUME A

DIFFERENT SET OF FACTS THAN THIS

AND THAT A CRIME ACTUALLY

OCCURRED, AND THE STATEWIDE

PROSECUTOR IS PROSECUTING, IS

LOOKING AT SOME CRIMES THAT

OSTENSIBLY COVERED MULTIPLE

JURISDICTIONS.

BUT IN THE FINAL ANALYSIS THAT

HAPPENED IN ORLANDO AND WHAT

THEY WERE -- THEY WERE LOOKING  
AT ORLANDO, TAMPA, POLK COUNTY,  
ALL OF THIS.

SO THE STATEWIDE PROSECUTOR IN  
THE FINAL ANALYSIS, ARE YOU  
SAYING, WOULD NOT HAVE AUTHORITY  
TO BRING THE CASE BECAUSE IN  
THE FINAL ANALYSIS IT WAS JUST  
IN ONE COUNTY?

>> IF, IN FACT, THIS WAS ONLY  
ACTIVITY IN ONE COUNTY, THAT'S  
CORRECT.

BUT WHERE THERE'S ACTIVITY IN  
MULTIPLE COUNTIES, CERTAINLY THE  
STATEWIDE --

>> BUT WHEN YOU SAY "ACTIVITY,"  
DO YOU MEAN THAT THE CRIME  
ITSELF, OR ARE YOU TALKING ABOUT  
THINGS LEADING UP TO THE CRIME?

>> WELL, I MEAN, WE -- GOING  
BACK TO THE CONSTITUTIONAL  
PROVISION, IT PROVIDES THAT  
WHERE THE ACTIVITY OCCURRED,  
ACTIVITY IN THE TWO OR MORE  
JUDICIAL CIRCUITS AS PART OF A

RELATED TRANSACTION.

THERE HAS TO BE A RELATED  
TRANSACTION.

NOW, THE STATE CONCEDES ON PAGE  
18 OF THE RECORD THAT IS NOT THE  
CASE HERE.

RATHER, THEY PROCEED UNDER THE  
SECOND, PRESUMABLY, BECAUSE IT'S  
GENERALLY ALLEGED THAT IT'S THE  
STATEWIDE PROSECUTOR'S  
JURISDICTION.

THEY PROCEED UNDER THE SECOND  
PRONG WHERE ANY SUCH OFFENSE HAS  
AFFECTED TWO OR MORE JUDICIAL  
CIRCUITS AS PROVIDED BY GENERAL  
LAW.

THE CASE YOU MENTIONED, I THINK,  
YOU KNOW, THE FEAR IS THAT YOU  
WOULD GET THROUGH THIS LONG  
CASE, GET TO THE END OF IT, AND  
YOU'D FIND OUT, OH, IN FACT, IT  
WAS JUST THIS ONE.

IN THE CASE YOU MENTIONED IT  
SOUNDS LIKE THERE WOULD BE,  
PERHAPS, AN IMPACT --

>> HERE IS SOMEBODY WHO PLED  
NOLO, AND YOU HAVE ON ITS FACE  
AN INDICTMENT THAT'S ALLEGED  
CRIMINAL ACTIVITY IN MORE THAN  
ONE COUNTY.

AND I GUESS WHAT HAPPENED HERE  
IS THE DRUGS WERE EITHER, A,  
MANUFACTURED IN NORTH CAROLINA,  
WHATEVER.

WE DON'T HAVE -- AND THEY WERE  
TRANSPORTED DOWN HERE.

DEFENSE, DEFENDANT DOESN'T RAISE  
THAT THERE'S A PROBLEM.

ARE YOU NOW SAYING THAT IN EVERY  
CASE INVOLVING A STATEWIDE  
PROSECUTOR THAT YOU WOULD HAVE  
THE JUDGE INQUIRE OF THE FACTUAL  
BASIS FOR THE JURISDICTION OF  
THE STATEWIDE PROSECUTOR?

IS THAT WHAT SHOULD BE  
HAPPENING?

BECAUSE OTHERWISE WE PUT  
SOMEBODY IN AN UNTENABLE  
POSITION OF X NUMBER OF YEARS  
LATER, YOU KNOW, RECONSTRUCTING

THIS.

AND FOR WHAT PURPOSE?

I MEAN, AGAIN, I'M STILL TRYING

TO SEE -- DOESN'T IT AFFECT THE

FAIRNESS OF THE TRIAL, FAIRNESS

OF WHAT HAPPENED?

MR. CARBAJAL, HE DOESN'T SAY HE

WOULD WITHDRAW HIS PLEA IF HE

HAD KNOWN THAT THE STATEWIDE

PROSECUTOR COULDN'T BRING IT,

AND IF IT WAS BROUGHT UP, I

ASSUME ANOTHER INDICTMENT COULD

HAVE BEEN FILED BY THE LEE

COUNTY PROSECUTOR.

THAT'S WHY I DON'T SEE HOW IT'S

VOID.

>> WELL, AGAIN, I MEAN, THIS

GETS TO THE APPEAL OF WHAT DOES

IT MATTER IN LEE COUNTY ANYWAY,

BUT --

>> WELL, YES.

THAT'S EXACTLY -- I'M ASKING

YOU, HOW DOES IT MATTER TO

MR. CARBAJAL, AND I'M STILL NOT

SURE I'VE HEARD AN ANSWER TO

WHAT JUSTICE CANADY AND JUSTICE  
QUINCE ASKED.

HOW DOES IT MATTER TO THE  
SUBJECT MATTER JURISDICTION OF  
THE CIRCUIT COURT?

>> BECAUSE THE CIRCUIT COURT IS  
GIVEN SUBJECT MATTER  
JURISDICTION BY THE CONSTITUTION  
AND BY THE LEGISLATIVE  
AUTHORITY.

AND THE PROVISIONS THAT ARE AT  
ISSUE HERE THAT GRANT THE  
STATEWIDE PROSECUTOR THE ABILITY  
TO FILE AN INFORMATION, THAT'S  
WHAT GIVES RISE TO THE COURT'S  
SUBJECT MATTER JURISDICTION.

IF THAT STATEWIDE PROSECUTOR  
NEVER HAD JURISDICTION TO DO  
THAT IN THE FIRST PLACE, AND  
IT'S CLEAR THAT THEY DIDN'T --

>> IT IS CLEAR?

>> IT IS CLEAR.

>> OKAY.

SO YOU'RE -- HERE IS WHY IT'S  
NOT NECESSARY THOUGH.

HE'S GOING TO GET DISCHARGED

HERE.

IF HE HAD RAISED IT IN A PROPER

WAY, THE PROSECUTORIAL PARTY

COULD HAVE BROUGHT IT.

SO HE CAN GAME THE SYSTEM BY

WAITING FOR THIS INORDINATE

PERIOD OF TIME WHEN THE STATUTE

OF LIMITATIONS HAS RUN, I GUESS

THAT SHOWS, AND HE, THEREFORE,

SHOULD BE DISCHARGED?

HOW IN THE WORLD COULD THAT BE

EQUITABLE?

FORGIVE ME FOR ASKING SO

BLUNTLY.

>> IT WAS ATTEMPTED TO BE

INVOKED BY THE STATEWIDE

PROSECUTOR, AND THE STATEWIDE

PROSECUTOR HAD NO BASIS.

NOW, WHAT APPEARS TO HAVE

HAPPENED HERE, AND THE REASON I

SAY IT'S CLEAR ON THE RECORD IS

BECAUSE THEY CONCEDE THAT THIS

IS NOT WHERE WE HAVE MORE THAN

ONE CIRCUIT WHERE THERE'S A

RELATED ACTION OR RELATED  
TRANSACTION TAKING PLACE.

RATHER, THAT IT'S AFFECTING MORE  
THAN ONE.

AND THEY ARGUE THAT BECAUSE  
THERE'S OUT-OF-STATE ACTIVITY,  
THAT THAT SOMEHOW IS TANTAMOUNT  
TO MULTICIRCUIT ACTIVITY.

IN FACT, THEY ACQUAINT THE TWO  
IN THEIR RESPONSE TO MOTION FOR  
POSTCONVICTION RELEASE.

NOW, THAT'S CERTAINLY NOT THE  
CASE, AND WE DON'T EVEN KNOW,  
YOU KNOW, CERTAINLY NO EVIDENCE  
ABOUT HOW IT WOULD HAVE  
TRAVELED.

IT'S ABOUT, YOU KNOW, THE  
NARCOTICS WOULD HAVE  
ALLEGEDLY --

>> WHAT IS THE -- SHARE WITH ME  
WHAT YOU SEE IS THE LEGAL  
PROBLEM OR LEGAL FALLACY WITH  
THE FOLLOWING: A CIRCUIT COURT  
HAS JURISDICTION, SUBJECT MATTER  
JURISDICTION, BY CONSTITUTION TO

ADJUDICATE FELONIES.

DO YOU AGREE TO THAT POINT?

>> I AGREE.

>> CASES MUST COME TO THE COURT

ON SOME WRITTEN PIECE OF PAPER,

AND MANY TIMES THERE MAY BE

DEFECTS IN THAT PIECE OF PAPER;

NOT SIGNED, IMPROPER SOMETHING.

DOES THAT AFFECT SUBJECT MATTER

JURISDICTION OR JUST

JURISDICTION WITH REGARD TO THAT

PERSON AND THOSE PAPERS?

>> WELL, I UNEQUIVOCALLY --

>> WHY, WHY WOULD THAT NOT BE

THE RIGHT ANALYSIS?

GO AHEAD.

>> I UNEQUIVOCALLY AGREE WITH

YOU, AND PERHAPS THAT'S A LITTLE

PREMATURE BECAUSE, YES, THE

COURTS HAVE JURISDICTION OVER

FELONIES.

HOWEVER, UNDER ARTICLE I,

SECTION 15 OF THE FLORIDA

CONSTITUTION THAT HAS TO BE

INVOKED.

THAT DOESN'T JUST APPEAR.

YOU DON'T JUST -- A COURT

DOESN'T JUST GET A FELONY AND BE

ABLE TO DECIDE IT FROM ANYWHERE

IN THE WORLD.

IT'S GOT TO BE APPROPRIATE IN

THAT COURT.

>> BASED ON WHAT?

>> BASED ON THE PROVISIONS IN

THE CONSTITUTION.

>> WELL, THEN BUT HOW IS IT

ACTUALLY DONE?

SOME PIECE OF PAPER IS FILED.

>> YES.

>> AND IF THERE IS A PROBLEM

WITH THAT PIECE OF PAPER --

>> IF THERE'S A PROBLEM --

>> DON'T WE GENERALLY TALK ABOUT

THAT AS POSSIBLY JURISDICTION

OVER THIS CASE?

NOT SUBJECT MATTER JURISDICTION,

BUT JURISDICTION IN THIS

PARTICULAR CASE.

>> YOUR HONOR, I THINK THE CASES

THAT YOU MAY BE REFERRING TO ARE

THE CASES WHERE THERE WAS A  
DEFECT IN THE INFORMATION, AND  
THAT DEFECT WAS LATER CURED.  
NOW, THAT'S THE SUPPLEMENTAL  
AUTHORITY THAT THE STATE HAS  
BROUGHT TO THE COURT'S ATTENTION  
IS ONE OF THOSE CASES.

THERE WAS A DEFECT, PERHAPS, IN  
THE INFORMATION.

OR MAYBE THE INFORMATION WAS  
VAGUE AS TO THE CIRCUITS  
INVOLVED.

BUT, ULTIMATELY, THERE WAS  
EVIDENCE PUT ON THE RECORD OF  
MULTICIRCUIT ACTIVITY.

>> WELL, IT'S BECAUSE MAYBE IT  
WAS SOMEBODY'S GOT TO RAISE THE  
QUESTION THAT THERE'S SOMETHING  
WRONG BEFORE THERE CAN BE  
EVIDENCE.

WHAT IF, AND I'D ASK THE STATE  
THIS QUESTION, WHAT IF IT WAS  
FOUND OUT AFTER IT WAS  
PROSECUTED IN LEE COUNTY THAT,  
LET'S SAY IT WAS BY THE

PROSECUTOR IN LEE COUNTY, THAT  
THEY MADE A MISTAKE AND THAT IT  
WAS RIGHT ON THE COUNTY LINE,  
AND IT WAS, ACTUALLY, THE CRIME  
OCCURRED IN THE ADJACENT COUNTY.

AND THEY FOUND OUT 20 YEARS  
LATER.

WOULD THAT ENTIRE -- SAY IT WAS  
FOR MURDER.

WOULD THAT ENTIRE CONVICTION BE  
VOID?

>> IF THAT -- I BELIEVE IN YOUR  
EXAMPLE YOU'RE NOT USING THE  
STATEWIDE PROSECUTOR.

>> NO.

IT WAS THE WRONG PROSECUTOR, IT  
WAS PROSECUTED IN, QUOTE, THE  
WRONG COUNTY.

>> SO I'M NOT AWARE OF A  
CONSTITUTIONAL PROVISION THAT  
WOULD, THAT GOES TO, YOU KNOW,  
THAT PARTICULAR PROSECUTOR'S  
ABILITY TO FILE INFORMATION LIKE  
WHAT WE HAD HERE WITH THE  
STATEWIDE PROSECUTOR.

THIS IS A VERY SPECIAL CASE.

IT'S GROUNDED IN THE  
CONSTITUTION.

THE CONSTITUTION HAS TO GRANT  
THAT AUTHORITY FOR SUBJECT  
MATTER JURISDICTION TO EXIST.  
SUBJECT MATTER JURISDICTION  
NEVER EXISTED HERE BECAUSE THE  
STATEWIDE PROSECUTOR NEVER HAD  
THAT AUTHORITY UNDER THE  
CONSTITUTION.

>> WELL, COULD I ASK YOU TO  
ADDRESS THE CERTIFIED CONFLICT  
ISSUE AND JUST TELL ME WHY WE  
SHOULD NOT READ RULE 3.850  
ACCORDING TO -- THE RULE THERE  
SPECIFIES THAT GROUNDS FOR A  
MOTION INCLUDE THE COURT DID NOT  
HAVE JURISDICTION TO IMPOSE THE  
SENATE LISTED RIGHT THERE.  
AND THEN IT GOT THE TIME  
LIMITATIONS WITH CERTAIN  
EXCEPTIONS.  
THERE'S NO EXCEPTION FOR THE  
KIND OF CIRCUMSTANCE THAT WE

HAVE HERE.

WHY SHOULDN'T -- NO EXCEPTION  
FROM THE TIME LIMITATION.

SO WHY SHOULDN'T THE TIME  
LIMITATION HERE APPLY TO THIS  
CLAIM OF A LACK OF JURISDICTION

IF WE GET TO THIS POINT AND  
AGREE THAT THE COURT LACKED  
JURISDICTION, WHICH I DON'T, BUT

IF WE DID -- AND BASED ON  
ANALYSIS ON WHAT THE SECOND  
DISTRICT GETS -- WHY WOULDN'T WE

CONCLUDE THAT THE SECOND  
DISTRICT WAS RIGHT IN READING  
THIS RULE AS IT WAS WRITTEN?

>> THAT'S CERTAINLY HOW THE RULE  
WAS WRITTEN.

THE QUESTION IS, IS THAT VALID  
WHEN APPLIED TO SUBJECT MATTER  
JURISDICTION, AND THERE ARE  
SEVERAL REASONS WHY THIS RULE  
CAN'T APPLY.

IN FACT, THERE ARE SEVERAL  
REASONS WHY IT APPEARS SUBJECT  
MATTER JURISDICTION WASN'T EVEN

CONTEMPLATED WHEN THIS RULE WAS  
CREATED.

AND AS THIS COURT HAS NOTED  
BEFORE, SOMETIMES RULES ARE  
PROMULGATED, AND THEN THERE'S AN  
ADVERSARY PROCEEDING THAT BRINGS  
OUT THE UNSUSTAINABILITY OF A  
PROVISION AND A RULE.

AND THAT'S EXACTLY WHAT WE HAVE  
HERE.

FOR EXAMPLE, SUBSECTION B OF THE  
RULE PROVIDES GROUNDS FOR  
EXTENDING TIME LIMITS ON ITS  
APPLICATION.

OF COURSE, WE KNOW IF SOMETHING  
IS JURISDICTIONAL, LIKE SUBJECT  
MATTER JURISDICTION, THEN YOU  
CAN'T EXTEND THE TIME LIMIT.

IT'S JURISDICTIONAL.

SUBSECTION C, THE RULE SAYS THAT  
IT DOESN'T PROVIDE RELIEF ON  
GROUNDS THAT IT COULD HAVE OR  
SHOULD HAVE BEEN RAISED ON  
DIRECT APPEAL.

CERTAINLY, WE KNOW SUBJECT

MATTER JURISDICTION CAN BE  
RAISED FOR THE FIRST TIME ON  
APPEAL.  
EVEN IN AN UNAUTHORIZED MOTION  
FOR REHEARING IT CAN BE RAISED.  
IT CAN BE RAISED ANYWHERE BY  
ANYONE.

>> WHY DOESN'T THE RULE 3.190B,  
WHICH IS THE MOTION TO DISMISS  
RULE WHICH SAYS THAT ALL  
AVAILABLE BY PLEA, ETC.  
AND WHETHER THE SAME SHALL  
RELATE TO MATTERS OF FORM,  
SUBSTANCE, FORMAL ACQUITTAL,  
FORMAL JEOPARDY OR ANY OTHER  
DEFENSE, SO WHY ISN'T THIS A  
MATTER OF SUBSTANCE THAT SHOULD  
HAVE BEEN RAISED UNDER RULE  
3.190?

>> AGAIN, THAT'S, THAT'S A RULE  
CREATED BY THE COURT.  
AND SO THE SUBJECT MATTER  
JURISDICTION, THE NOTION OF A  
COURT'S AUTHORITY TO ACT IN THE  
FIRST INSTANCE, A COURT CAN'T

GIVE ITSELF THAT AUTHORITY.

>> SEE, THIS IS WHERE, TO ME,  
THE PROBLEM IS.

SOMETHING WAS FILED IN THE  
CIRCUIT COURT WHICH GAVE, IN MY  
ESTIMATION, THE CIRCUIT COURT  
JURISDICTION.

IF THERE WAS SOME DEFECT, THEN  
THIS -- WHY NOT FILE A MOTION TO  
DISMISS UNDER THIS RULE?

BECAUSE BY FILING A PIECE OF  
PAPER, SEEMS TO ME THE COURT HAD  
JURISDICTION UNLESS THERE'S SOME  
PROCESS THAT SHOULD HAVE BEEN  
BROUGHT TO THEM.

>> WELL, YOU'RE ASSUMING THE  
INFORMATION INVOKES THE COURT'S  
JURISDICTION.

IT DOESN'T WHERE THERE'S NO  
BASIS FOR THAT --

>> WELL, SO THE COURT COULDN'T  
EVEN RULE ON IT THEN.

YOU'RE SAYING A COURT COULDN'T  
EVEN RULE ON ANYTHING FILED  
BECAUSE YOU'RE SAYING THERE'S NO

SUBJECT MATTER JURISDICTION, YOU  
CAN'T EVEN RULE ON A PIECE OF  
PAPER THAT'S FILED IF THERE'S NO  
SUBJECT MATTER JURISDICTION.

>> WELL, CERTAINLY.

THE COURT NEVER HAS AUTHORITY TO  
ACT.

THAT'S WHY ALL, AS THIS COURT  
HAS HELD, THAT ANYWHERE THERE'S  
NO SUBJECT MATTER --

>> WHICH CASE?

WHICH CASE?

YEAH, THERE'S NO QUESTION THAT  
SUBJECT MATTER JURISDICTION,  
WHAT YOU'RE TALKING ABOUT --  
CIVIL CONTEXT, OTHER CONTEXTS --  
IS CORRECT.

AND I DON'T THINK YOU'RE SAYING  
ANYTHING DIFFERENT.

WHICH CASE SAYS THAT THESE  
CIRCUMSTANCES REFER TO OR ARE  
PROPERLY PART OF SUBJECT MATTER  
JURISDICTION?

>> THAT THESE --

>> THAT THE FILING HERE

ELIMINATES SUBJECT MATTER

JURISDICTION.

YOU KEEP USING THOSE TWO WORDS,

BECAUSE THOSE ARE MAGIC WORDS.

>> YES.

>> IT SEEMS AS THOUGH YOU'RE

USING THEM, BUT WHERE DOES THAT

COME FROM?

>> WELL --

>> WHICH CASE SAYS THAT THIS

SCENARIO IS SUBJECT MATTER

JURISDICTION?

>> IN THE WINTER CASE AND THE

LUGAR CASE WE CITED IN THE

BRIEF.

THOSE FACTS WEREN'T ADDRESSED IN

THE RECORD, SO THAT WAS A CASE

ALSO ADDRESSING THE STATEWIDE

PROSECUTOR'S JURISDICTION, AND

SO THAT -- IT IS A SPECIFIC

SCENARIO BECAUSE IT DOES GO TO

THESE CONSTITUTIONAL PROVISIONS

THAT EITHER GIVE THAT STATEWIDE

PROSECUTOR THE AUTHORITY TO

START THIS PROCESS, THIS

MACHINERY, OR NOT.

>> YOU HAVE NOW EXHAUSTED ALL  
YOUR TIME INCLUDING YOUR  
REBUTTAL TIME.

BUT WE HELPED YOU A LOT WITH  
THAT, SO I WILL GIVE YOU TWO  
ADDITIONAL MINUTES FOR REBUTTAL.

>> THANK YOU, YOUR HONOR.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, MY NAME  
IS ELVA MARTIN, AND I REPRESENT  
THE STATE OF FLORIDA IN THIS  
CASE.

THE STATE WOULD SUBMIT THAT THE  
COMPLICATIONS INVOLVED IN THE  
CASE DO NOT -- NONE OF THE CASES  
CITED AS CONFLICTS DIRECTLY  
CONFLICT, DIRECTLY AND EXPRESSLY  
CONFLICT WITH THE SECOND  
DISTRICT COURT OF APPEALS'  
OPINION.

ADDRESSING THE ISSUE OF SUBJECT  
MATTER JURISDICTION THAT JUSTICE  
PARIENTE SPOKE ABOUT, THE -- IN  
THIS CASE SUBJECT MATTER

JURISDICTION IS NOT, IS NOT  
AFFECTED BY THIS INFORMATION.

>> WELL, THAT'S SORT OF --

THAT -- YOU SEE, MY CONCERN IS

THIS: I AGREE THAT I CANNOT SEE

HOW THIS IS SUBJECT MATTER

JURISDICTION.

I THINK THAT'S WHAT WE'VE BEEN

TALKING ABOUT.

WHAT I AM CONCERNED WITH IS THE

BROAD LANGUAGE IN THE SECOND

DISTRICT'S OPINION THAT SAYS

THAT IF THE COURT DOESN'T HAVE

JURISDICTION TO ENTER THE

JUDGMENT, IT LACKS IT, THE

JUDGMENT IS VOID, THAT IT'S GOT

TO BE RAISED IN TWO YEARS.

I REALIZE THE RULE APPARENTLY

SAYS THAT, BUT THERE'S A REAL

ISSUE.

BECAUSE AS WE'VE SAID IN OTHER

CASES, SUBJECT MATTER

JURISDICTION CAN BE RAISED AT

ANY TIME.

WHAT IF THIS IS A CASE WHERE THE

ELEMENT OF THE CRIME IS, SAY, IF  
YOU GOT A LIFE SENTENCE BECAUSE  
THE VICTIM WAS UNDER 12 YEARS  
OLD, AND THEN IT WAS FOUND OUT  
20 YEARS LATER THAT THE VICTIM  
WAS ACTUALLY -- SAY THAT WAS  
NEWLY DISCOVERED OR SOMETHING.  
SOMETHING, AND MAYBE SOMEBODY  
ELSE CAN COME UP WITH A BETTER  
HYPOTHETICAL.  
BUT I'M CONCERNED WITH THAT  
BROAD LANGUAGE.  
A MISDEMEANOR VERSUS A FELONY.  
HELP ME OUT ON THAT.  
YOU KNOW, SOMETHING THAT IS,  
THAT WE WOULD SAY, NO, JUST THE  
ENDS OF JUSTICE WOULD NOT BE MET  
IF WE HAD A STRICT BAR, YET IN  
THIS CASE IT IS CLEAR TO ME THAT  
THIS IS NOT PROBABLY THE STATE  
CAN PROVE THIS OR DID PROVE IT,  
BUT IF IT'S NOT RAISED, NOT  
GOING TO BE MORE OF A RECORD TO  
ESTABLISH IT.  
SO WE KIND OF HAVE, ON ONE HAND,

WE HAVE CONFLICTS BECAUSE OTHER  
COURTS HAVE SAID THE  
JURISDICTION OF THE STATEWIDE  
PROSECUTOR IS SUBJECT MATTER  
JURISDICTION.

SO THEY'RE PROBABLY WRONG ON  
THAT.

AND THEN ON THE OTHER, THEN  
WE'VE GOT THE SECOND DISTRICT  
SAYING EVEN IF THERE'S NO  
JURISDICTION, IT CAN'T BE  
RAISED.

SO IT SEEMS LIKE WE'VE GOT TO  
STRAIGHTEN THIS OUT.

>> YES, I AGREE.

THE RULE ITSELF IS CLEAR IN THAT  
IT GIVES THE EXCEPTIONS TO YOUR  
LIMIT, AND THIS COURT ITSELF  
PROMULGATED THIS RULE OVER THE  
YEARS AND DEVELOPED IT TO  
ADDRESS POSTCONVICTION ISSUES.  
MOST OF THE CASES THAT INVOLVE  
THESE TYPES OF SUBJECT MATTER  
JURISDICTIONAL ISSUES CAN BE  
RAISED ANYTIME WITHIN THE TRIAL

SETTING, CAN BE RAISED ANYTIME

ON DIRECT APPEAL.

BUT WHEN IT COMES TO

POSTCONVICTION, THEY'RE GIVEN

TWO YEARS.

AND THE RULE IS CLEAR.

>> IF THIS WERE TRULY A SUBJECT

MATTER JURISDICTION CASE AND WE

KNOW THAT THE TWO YEARS HAVE

PASSED, IS THERE ANY OTHER

REMEDY?

I MEAN, IS -- WHAT ELSE COULD A

DEFENDANT FILE?

>> WELL, IF THERE'S

NEWLY-DISCOVERED EVIDENCE AS THE

EXAMPLE THAT JUDGE PARIENTE

GAVE, THEN THEY FALL UNDER, I

BELIEVE, ONE OF THE

EXCEPTIONS --

>> NO, I'M SAYING THEY DON'T

FALL UNDER ANYTHING UNDER RULE

3.850.

THE TWO YEARS HAVE GONE, IT

ISN'T SOMETHING NEWLY

DISCOVERED.

THIS ISSUE HAS BEEN OUT HERE ALL  
THE TIME JUST LIKE THE ISSUES  
HERE.

WHAT ELSE?

AND SINCE WE HAVE SAID THAT  
SUBJECT MATTER JURISDICTION CAN  
BE RAISED AT ANY TIME, WHAT  
OTHER VEHICLE DO YOU HAVE OTHER  
THAN A 3.850 MOTION TO ASSERT  
THAT RIGHT TO CHALLENGE SUBJECT  
MATTER JURISDICTION?

>> I BELIEVE THE ONLY OTHER,  
PRACTICE, VEHICLE THAT THERE  
MIGHT BE OUT THERE IS HABEAS  
RELIEF.

>> HOW ABOUT 3800s?

DON'T WE HAVE SOME 3800s THAT  
YOU COULD FILE ANYTIME?

>> I'M SORRY?

>> 3800s, THE RULES WE HAVE  
FOR --

>> YES.

SOME OF THEM HAVE LIMITS --

>> WELL, I UNDERSTAND.

SOME OF THEM DON'T HAVE ANY.

>> RIGHT.

>> AND IT'S ILLEGAL --

>> YES.

AND, AND, ACTUALLY, 3850

ADDRESSES SENTENCING ISSUES ALSO

IN THE ONE OF THE EXCEPTIONS AND

ALLOWS THAT --

>> YOU'RE NOT HELPING US, OKAY?

BECAUSE YOU'VE GOT -- THERE'S A

CASE OUT OF THE THIRD DISTRICT

SAYING THAT HARRIS COULD RAISE

ANYTIME A CLAIM THE TRIAL COURT

REVOKED HIS PROBATION AFTER THE

PROBATIONARY PERIOD EXPIRED.

IN OTHER WORDS, SOMEBODY WAS

SENTENCED TO PRISON FOR A

VIOLATION OF PROBATION EVEN

THOUGH IT WAS CLEAR THAT THE

PROBATIONARY PERIOD HAD EXPIRED.

AND, YOU KNOW, WE COULD SAY THAT

IN A LEGAL SENTENCE, THE STATE

MIGHT SAY, NO, IT'S NOT A LEGAL

SENTENCE, BUT WOULD THE STATE

ARGUE IN THAT CASE THAT EVEN

THOUGH THE PROBATION PERIOD HAD

EXPIRED AND THE JUDGE NO LONGER  
HAD JURISDICTION TO REVOKE THE  
PROBATION THAT IT WOULD STILL BE  
FINE FOR THAT DEFENDANT TO STAY  
IN PRISON FOR AN EXTENDED PERIOD  
OF TIME?

MAYBE THE REST OF HIS LIFE?

>> NO, IT WOULD NOT BE FAIR, IT  
WOULD NOT BE EQUITABLE.

>> SO YOU SAY WE CREATED A RULE  
THAT, NO, YOU'VE GOT TO RAISE IT  
IN THE TWO YEARS EVEN THOUGH THE  
DEFENSE LAWYER WAS ASLEEP AT THE  
SWITCH.

THE DEFENDANT WAS MENTALLY  
RETARDED, WOULDN'T KNOW HOW TO  
RAISE IT, AND SOME YOUNG LAWYER  
LIKE THE TWO OF YOU FOUND IT FOR  
THIS DEFENDANT THAT THE COURT  
SYSTEM WOULD HAVE SHUT THE DOOR?

>> WELL, HOW I WOULD RESPOND TO  
THAT IS THAT IN THAT ARGUMENT I  
WOULD SAY IT WAS A SENTENCING  
ISSUE AND THAT IT COULD BE  
RAISED AT ANY TIME.

HOWEVER, THE RULE ITSELF  
PROVIDES FOR THAT TO BE RAISED  
AT ANY TIME.

IF IT'S A MAXIMUM SENTENCE OR  
THE 3800s WHICH COULD BE  
RAISED AT ANY TIME.

>> LET ME ASK YOU, IF I COULD  
SHIFT A LITTLE BIT HERE.

>> SURE.

>> THE STATUTE OF LIMITATIONS  
ISSUE.

IF SOMEONE IS PROSECUTED FOR A  
CRIME FROM WHICH THE STATUTE OF  
LIMITATIONS HAS RUN AND THEY  
DON'T RAISE THAT, THEY DON'T  
OBJECT AT THE TRIAL, THEY DON'T  
RAISE DIRECT APPEAL, WHAT'S YOUR  
UNDERSTANDING ABOUT WHAT THE LAW  
IS ON THAT?

ARE THEY FORECLOSED, HAVE THEY  
WAIVED THAT ISSUE IF THEY DON'T  
RAISE IT AT THAT POINT?

AT THE TRIAL?

>> I'M NOT SURE ABOUT THE RULES  
ON STATUTE OF LIMITATIONS, YOUR

HONOR, BUT I WOULD SAY THAT WHEN  
IT COMES TO CASES SUCH AS THESE  
THAT ARE RAISED FIVE, TEN,  
FIFTEEN YEARS AFTER THE FACT,  
THE -- AT THE TIME, MOST OF THE  
TIME, THERE'S AN UNDERSTANDING  
ABOUT JURISDICTION.  
IT COULD BE AN EXAMPLE OF, LIKE,  
A COUNTY COURT TAKING, COVERING  
JURISDICTION FOR A CIRCUIT COURT  
IF IT WAS A SMALL PLACE, AND  
WHEN YOU HAVE THINGS THAT FIVE,  
TEN, TWENTY YEARS LATER, THEN  
THE, THE EVIDENCE THAT WOULD BE  
OUT THERE, THE FACTS, THE THINGS  
THAT THE COURT WOULD RELY ON TO  
MAKE SOME OF THESE TYPES OF  
DECISIONS WOULD BE GONE.  
AND WHEN IT COMES TO SOMETHING  
LIKE STATUTE OF LIMITATIONS,  
MAYBE AT THE TIME THE STATUTE OF  
LIMITATIONS WOULD NOT HAVE RUN,  
OR THERE'S CHANGES IN THE LAWS  
ALL THE TIME WITH THE STATUTE OF  
LIMITATIONS.

A CHANGE IN THE LAW WITH HOW THE  
OFFICE OF THE STATEWIDE  
PROSECUTOR WAS SUPPOSED TO PLEAD  
THIS CASE IN THE INFORMATION  
DURING THE TIME THAT HE HAD  
FILED IT.

>> JUSTICE CANADY IS ASKING YOU  
A VERY SPECIFIC QUESTION.

OKAY.

CLEAR, THE STATUTE OF  
LIMITATIONS HAS RUN, BUT NOBODY  
THOUGHT TO RAISE IT.

>> UH-HUH.

>> NOT A FACTUAL DISPUTE.

CLEAR IT RAN.

NOT A COUNTY COURT SITTING IN  
FOR THE CIRCUIT COURT.

IS THAT ONE THAT CAN BE RAISED  
AT ANY TIME, OR IF YOU DON'T  
CATCH IT --

>> I BELIEVE WE SHOULD FOLLOW  
THE CLEAR, EXPRESS LANGUAGE OF  
THE RULE.

>> HOW ABOUT ALL THOSE CASES  
THAT SAY THINGS THAT CAN BE

RAISED AT ANY TIME?

VOID JUDGMENTS.

VOID -- NOT VOIDABLE -- VOID

JUDGMENTS.

THAT IT CAN BE RAISED AT ANY

TIME.

>> WELL, THE -- THEN THE RULE

ITSELF SHOULD ALLOW FOR THAT.

>> THEN --

>> AND THE RULE DOES NOT.

>> THEN THIS COURT, IN ITS

WISDOM, WE NEED TO AMEND THE

RULE IF IT'S NOT CLEAR.

>> OR --

>> BUT IS THERE ANOTHER VEHICLE?

THAT'S WHAT IS ALWAYS OF

INTEREST TO ME IS WHILE 3.850

MAY NOT BE THE VEHICLE TO RAISE

SOMETHING, IS THERE ANOTHER

VEHICLE WHEN THERE IS A CLEAR

VIOLATION SUCH AS THE STATUTE OF

LIMITATIONS?

WOULD THAT FALL, AS JUSTICE

LEWIS ASKED YOU EARLIER, UNDER

SOMETHING LIKE 3.8500, OR IS

THAT A HABEAS ISSUE?

>> OR MANIFESTING JUSTICE --

>> IT'S A WAIVED ISSUE.

[LAUGHTER]

I MEAN, THERE ARE ALL KINDS OF  
ISSUES AND ALL KINDS OF PROBLEMS  
THAT ARE WAIVED.

ALL KIND OF CONSTITUTIONAL  
RIGHTS THAT PEOPLE WAIVE IN  
TRIAL EVERY DAY.

AND THE FACT THAT THEY WANT TO  
BRING IT UP YEARS LATER IN MOST  
CIRCUMSTANCES THEY'RE FORECLOSED  
BECAUSE THERE'S A TIME TO BRING  
THINGS UP, AND THEN THERE'S A  
TIME TO LIVE WITH THE  
CONSEQUENCES OF HAVING FAILED TO  
BRING IT UP.

AND OTHERWISE WE HAVE EVERY CASE  
IS UP FOR GRABS PERPETUALLY.

>> WELL, THAT'S WHY THE RULE IS  
PROMULGATED, TO END THAT SORT OF  
CYCLE.

AND WHEN THE RULE IS  
PROMULGATED, JURISDICTION WAS

ADDRESSED.

IT WAS ADDRESSED IN THE FIRST  
PART IN SAYING YOU CAN RAISE  
THIS IN A POSTCONVICTION.

BUT I FIND IT INTERESTING THAT  
IN THE SECOND PART IT WAS NOT  
GIVEN AS PART OF AN EXCEPTION  
FOR THE TWO-YEAR TIME LIMIT.

>> SEE, WE SEE HABEAS CASES, WE  
SEE WHAT THE PRISONERS DO.  
AND THEY RAISE DEFECTS AND  
INDICTMENTS, AND THEY RAISE, I  
MEAN, WE SEE HUNDREDS OF THESE A  
YEAR.

AND WE DENY HUNDREDS OF THEM A  
YEAR.

AND SO THIS EXTRAORDINARY  
CIRCUMSTANCE WE HAVEN'T SEEN  
THOSE AT LEAST BROUGHT TO OUR  
ATTENTION TO WHERE WE'D BE  
CRYING OUT FOR IT.

SO LET'S GET BACK JUST TO THIS  
CASE THOUGH.

I WANT TO UNDERSTAND IN THE REAL  
WORLD OF SPECIAL PROSECUTORS.

THEY, THEY ALLEGE WHAT THEY'VE  
ALLEGED IN THEIR INDICTMENT AND,  
PRESUMABLY, THEY IN GOOD FAITH  
THINK IT'S OCCURRED IN MORE THAN  
ONE CIRCUIT.

IT'S NOT LIKE THEY'RE TRYING TO  
USURP THE JURISDICTION OF THE  
LOCAL COURT.

THE, I MEAN, I DON'T -- AND THIS  
IS A FRIENDLY QUESTION -- I  
DON'T SEE HOW EITHER THAT'S NOT  
RAISED AT THE TIME THE PLEA IS  
ENTERED, IT'S EVEN A DEFECT THAT  
COULD BE RAISED ON APPEAL.

AND ENLIGHTEN US ABOUT WHY THE  
PETITIONER'S POSITION IS  
INCORRECT CONCERNING THAT THIS  
IS CONSTITUTIONAL, THEIR  
AUTHORITY, THAT IF THEY DON'T  
HAVE THE AUTHORITY, THEN THE  
CHARGING DOCUMENT IT IS  
DEFECTIVE.

>> WELL, THE OFFICE OF STATEWIDE  
PROSECUTION HAS CONCURRENT  
JURISDICTION WITH THE STATE

ATTORNEY'S OFFICE.

IF THIS HAD NOT BEEN FILED BY

THE OFFICE OF THE STATEWIDE

PROSECUTOR, IT WOULD HAVE BEEN

FILED BY THE STATE ATTORNEY.

SO THE CONCURRENT -- I BELIEVE

THE BIG DIFFERENCE IS IN A LOT

OF THESE CONFLICT CASES THAT

HAVE TO DO WITH, LET'S SAY, A

MISDEMEANOR VERSUS A FELONY OR

THE COURT THEN LOSING, YOU KNOW,

THE APPELLATE COURT HAVING

JURISDICTION AND THE CIRCUIT

COURT NOT HAVING JURISDICTION OF

EXCLUSIVITY.

THE STATE PROSECUTOR AND OFFICE

OF STATEWIDE PROSECUTOR HAS

JURISDICTION OVER THESE TYPES OF

CASES.

>> BUT THEY USE -- I WOULD LIKE

YOU TO RESPOND TO THEIR

ARGUMENT, THAT IN THIS

PARTICULAR CONTEXT THAT WHAT THE

PROBLEM IS ACCORDING TO LUGAR

AND THE OTHER CASE YOU RELIED

ON, THAT THIS IS SUBJECT MATTER  
JURISDICTION MEANING THE COURT  
HAS NO POWER TO ACT IN ANY WAY.  
THERE'S A DIFFERENCE BETWEEN  
HAVING POWER TO ACT AND BEING  
WRONG.

AS OPPOSED TO THE POWER TO EVEN  
ENTERTAIN A PIECE OF PAPER.

WHAT'S WRONG WITH THOSE CASES  
THAT YOU REALIZE?

>> FIRST OF ALL, LUGAR AND  
WINTER WERE, ACTUALLY, DIRECT  
APPEALS ON MOTIONS TO DISMISS.

>> WELL, THEY STILL SAID --

>> AND --

>> -- SUBJECT MATTER  
JURISDICTION, IS THAT WHAT THEY  
SAID?

>> WELL, THE STATE WOULD  
DISAGREE IT'S SUBJECT MATTER  
JURISDICTION.

THE AUTHORITY OF THE -- THE  
PROSECUTOR IN THIS CASE, ALBEIT  
BEING THE STATEWIDE PROSECUTION  
OFFICE, IS A DULY AUTHORIZED

PROSECUTOR IN LEE COUNTY.

THE DEFECT, THE ALLEGED DEFECT  
IS NOT A DEFECT THAT GOES TO THE  
HEART OF THE ACTUAL INFORMATION  
ITSELF.

>> WELL, THE POWER OF THE COURT  
TO ACT --

>> THE POWER OF THE COURT TO  
ACT.

THE FELONIES WERE FILED.  
THEY'RE ALL FELONIES, THEY'RE  
ALL DAY-TO-DAY FELONIES THAT GET  
FILED EVERY DAY IN EVERY CIRCUIT  
COURT THROUGHOUT THE STATE, AND  
THE OFFICE OF THE STATEWIDE  
PROSECUTOR WHETHER CORRECT OR  
NOT -- I'M NOT GOING TO GET INTO  
THE MERITS OF IT RIGHT NOW --  
FILED IT WITH A GOOD FAITH  
UNDERSTANDING THAT THIS DID  
AFFECT MULTIPLE JUDICIAL  
CIRCUITS UNDER ITS PURVIEW.

>> AND SO TO UNDERSTAND THIS  
FURTHER, I MEAN, THE STATEWIDE  
PROSECUTOR'S THERE SO THAT IT'S

OCCURRING IN LEE COUNTY AND  
BROWARD THAT YOU DON'T HAVE LEE  
AND BROWARD COUNTY PROSECUTORS  
FIGHTING OVER WHO SHOULD TAKE  
THE CASE.

STATEWIDE PROSECUTOR TAKES IT.

>> RIGHT.

>> IT'S A STOPGAP, BUT HERE

NOBODY WAS TRYING TO --

>> THERE WAS NONE OF THAT, YES.

THERE WAS NONE OF THAT.

AND, ALSO, THE OFFICE OF THE  
STATEWIDE PROSECUTOR CAN THEN  
DECIDE WHICH, OBVIOUSLY, WHICH  
VENUE IT FEELS IS MORE  
APPROPRIATE TO BRING THE CASE  
IF BOTH THINGS ARE OCCURRING IN  
TWO COUNTIES.

AND IN THIS CASE THE  
PASS-THROUGH OF THE DRUGS, THE  
ACTUAL INFORMATION ITSELF -- I  
DON'T KNOW IF YOU HAVE A COPY IN  
YOUR, IN YOUR, IN YOUR RECORD --  
THE INFORMATION ITSELF DIDN'T  
DISCHARGE MR. CARBAJAL.

IT CHARGED HIS COUSIN WHO WAS  
THE PERSON BRINGING THE DRUGS IN  
FROM OTHER -- THROUGH THE STATE  
FROM NORTH CAROLINA, MEXICO, I  
BELIEVE ATLANTA ALSO.

SO THE FURTHER PART OF THE  
INFORMATION ALSO GOES TOWARDS  
EXPLAINING HOW THIS WAS PART OF  
MULTIPLE JUDICIAL CIRCUITS.

>> YOU MENTIONED VENUE, AND SO  
IF THIS CASE HAD BEEN THAT THEY  
FIND OUT THAT IT WENT THROUGH  
DIFFERENT COUNTIES AND THEY MADE  
A DECISION TO BRING IT IN ORANGE  
COUNTY AND IT'S LATER FOUND OUT  
THAT ALL THE ACT REALLY OCCURRED  
IN LEE COUNTY, WOULD THAT BE  
WITH SUBJECT MATTER JURISDICTION  
ISSUE OR VENUE ISSUE?

>> THEN IT CAN BE WAIVED.

IT'S MY UNDERSTANDING THAT VENUE  
CAN BE WAIVED, AND VENUE IS ALSO  
SOMETHING THAT NEEDS TO BE  
BROUGHT IN THE TWO-YEAR TIME  
LIMIT OF THE 3850.

>> I DON'T EVEN KNOW WHY, THIS IS, TO ME, A PRETTY BIG DIFFERENCE BETWEEN SOMETHING THAT DOESN'T AFFECT THE FAIRNESS OF WHAT HAPPENS TO THIS DEFENDANT WHICH IS, ADMITTEDLY, A DRUG CRIME.

HE PLED GUILTY OR NOLO, AND HE HAD AN APPROPRIATE SENTENCE. MY CONCERN IS WITH, AGAIN, THE DEFENDANT WHOSE PROBATION HAS LAPSED AND SO WE DON'T CREATE A BROAD RULE.

>> WELL, IT'S VERY NARROW.

THIS KIND OF CASE IS VERY NARROW, I BELIEVE.

AND THE OFFICE OF STATEWIDE PROSECUTOR IN FILING THIS INFORMATION, OBVIOUSLY, DID SO ON A GOOD FAITH BASIS BELIEVING IT HAD THE JURISDICTION TO FILE IT IN THIS COURT.

THE FACTS OF THE CASE, BE IT AS IT MAY, WOULD BE AFFECTED IF THIS WAS BROUGHT FIVE, TEN,

FIFTEEN YEARS LATER WHETHER  
WHERE, YOU KNOW, IN THIS CASE WE  
DON'T EVEN HAVE A PLEA COLLOQUY  
WHICH SOME OF THE CASES THAT  
WERE CITED BY BOTH SIDES RELY ON  
TO MAKE A FACTUAL MERIT  
DETERMINATION.  
AND WE DON'T HAVE COLLOQUY.  
HE DID NOT FILE A DIRECT APPEAL.  
THE PLEA COLLOQUY WAS NEVER  
TRANSCRIBED.  
SO IF HE BROUGHT THIS TEN YEARS  
FROM NOW AND THAT PLEA COLLOQUY  
COULD HAVE BEEN DISPOSITED ABOUT  
THIS ISSUE, WE WOULDN'T HAVE IT.  
BECAUSE YOU KNOW OF THE WAY THE  
PROCESS WORKS AND HOW THINGS ARE  
LOST AND THINGS ARE, YOU KNOW,  
PAPERS ARE DESTROYED, AND JUDGES  
AREN'T THERE ANYMORE, AND  
PROSECUTORS AND DEFENSE  
ATTORNEYS AREN'T THERE ANYMORE.  
IF THERE WAS AN UNDERSTANDING AT  
THAT TIME THAT THERE WAS NO  
QUESTION THAT THE OFFICE OF

STATEWIDE PROSECUTION HAD  
JURISDICTION FIVE, TEN, FIFTEEN  
YEARS LATER THE RESULT MIGHT NOT  
HAVE BEEN AS CLEAR.

>> ASSUMING THAT THE INFORMATION  
REALLY WAS PROBLEMATIC, THAT IT  
ONLY WENT TO ONE COUNTY, NOT  
MULTIPLE JURISDICTIONS AS IT  
SHOULD UNDER THOSE ASSUMPTIONS  
THAT THERE WAS A TRUE PROBLEM.  
IN THAT CASE INSTEAD OF A CLAIM  
FOR SUBJECT MATTER JURISDICTION,  
WOULDN'T IT REALLY BE PERSONAL  
JURISDICTION?

BECAUSE THE ARGUMENT WOULD BE  
THAT THE DEFENDANT WOULD SAY,  
LOOK, I'M BEING HELD IN COURT  
HERE, AND I SHOULDN'T BE HERE.  
NOT THAT THE COURT ITSELF  
DOESN'T HAVE JURISDICTION, BUT  
THESE PEOPLE DO NOT HAVE THE  
AUTHORITY TO BRING ME INTO COURT  
UNDER THESE CHARGES.  
SO ISN'T THAT A PERSONAL  
JURISDICTION --

>> YES, IT IS PERSONAL

JURISDICTION.

>> AND THAT SHOULD BE RAISED  
TIMELY UNLIKE SUBJECT MATTER --

>> YES.

IT SHOULD BE RAISED IN A TIMELY  
MATTER BECAUSE IT CAN BE FIXED.  
AND IF YOU LOOK AT IT LIKE IF HE  
HAD BEEN ARRESTED, LET'S SAY IN  
COLLIER COUNTY, AND SOME OF THE  
EVENTS OCCURRED IN LEE COUNTY  
AND HE SAID, WELL, I'M NOT  
SUPPOSED TO BE IN COLLIER  
COUNTY, I'M SUPPOSED TO BE IN  
LEE COUNTY, WELL, THEN YOU'RE  
LOOKING AT, WELL, THE COURT  
STILL HAD JURISDICTION OVER HIM,  
THE CIRCUIT COURT STILL HAD  
JURISDICTION OVER THE ACTUAL  
CASES, BUT THEY WERE IN THE  
WRONG COUNTY.

>> WELL, MAYBE YOU'VE  
ACTUALLY -- AND BY SAYING WHAT  
YOU SAID, I THINK IT'S  
IMPORTANT.

TO ME, THAT PROBABLY  
DISTINGUISHES SOME OF THE CASES  
THAT WE ARE TALKING ABOUT, OR  
THE HYPOS.

STATUTE OF LIMITATIONS RAN.

CAN'T BE FIXED.

THE PROBATIONARY PERIOD RAN.

CAN'T BE FIXED.

AND THESE ARE THINGS THAT,  
OSTENSIBLY, APPEAR ON THE FACE  
OF THE RECORD.

SO I THINK THAT, TO ME, THAT'S  
WHAT DISTINGUISHES THOSE  
HYPOTHETICALS FROM THIS CASE IS  
THAT NOT ONLY COULD IT HAVE BEEN  
FIXED, BUT IT PROBABLY DIDN'T  
NEED TO BE FIXED.

THERE WAS PROBABLY NOT A PROBLEM  
TO BEGIN WITH.

BUT IF THERE WAS, THE ONLY THING  
THAT WOULD HAPPEN WAS THERE WAS  
SUPERSEDING INFORMATION, RIGHT,  
BY THE LEE COUNTY PROSECUTOR?

>> YES.

THAT'S EXACTLY RIGHT.

THAT'S EXACTLY RIGHT, YOUR  
HONOR.

>> WHAT ABOUT THE CIRCUMSTANCE  
BETWEEN THE FELONY AND A  
MISDEMEANOR.

AND THAT COULD BE FIXED.

>> I AGREE WITH THAT.

I DO THINK THEY CAN BE FIXED.

>> I MEAN, ISN'T IT THAT  
THOROUGHLY JURISDICTIONAL AS  
DISTINCTION AS HAS ENTERED INTO  
THIS DISCUSSION?

THAT'S SOMETHING THEY COULD FIX.

>> I THINK IT CAN BE FIXED.

I MEAN, I DON'T WANT TO GO  
CONTRARY TO ALL THE LAW THAT'S  
OUT THERE THAT IT'S SUBJECT  
MATTER JURISDICTION, BUT --

>> WHAT I'M SAYING, IF THAT WAS  
BROUGHT UP AT AN APPROPRIATE  
TIME --

>> YES.

>> -- IT WOULD JUST BE  
TRANSFERRED FROM THE CIRCUIT TO  
THE COUNTY COURT --

>> OR THE COUNTY.

>> IF IT WAS RAISED PROPERLY, IS  
SOMETHING THAT'S CORRECTABLE  
FEASIBLE?

>> YES.

AND IF YOU LOOK AT THE CASES  
SUCH AS WINTER AND LUGAR, THEY  
DID FILE MOTIONS TO DISMISS.

IT CAME ON APPEAL LATER, OF  
COURSE, WITH OTHER ISSUES, BUT  
THEY DID FILE MOTIONS TO THE  
COURT.

AND THE COURT WAS ABLE TO MAKE  
FACTUAL DETERMINATIONS, AND THE  
TRIAL COURT WAS ABLE TO DECIDE  
WHETHER THESE, THE MOTION TO  
DISMISS -- DECIDED AGAINST THE  
MOTION TO DISMISS BECAUSE OF THE  
FACTS THAT IT HAD BEFORE IT.

AND IN THIS CASE WHAT YOU HAVE  
IS AN EASILY FIXABLE INFORMATION  
THAT WAS FILED BY THE OFFICE OF  
THE STATEWIDE PROSECUTOR, AND  
THE DEFENDANT IN THIS CASE DID  
NOT FILE IT WITHIN THE TWO-YEAR

TIME PERIOD ALLOWED FOR IN RULE

3850.

THANK YOU.

>> OKAY.

>> IF WE'RE TALKING ABOUT

FAIRNESS, FIRST OF ALL, WE HAVE

TO LOOK TO THE SITUATION WHERE

EVERY LITIGANT IN A FLORIDA

COURT, NO MATTER THE TYPE OF

CASE, CAN BRING A SUBJECT MATTER

JURISDICTION CHALLENGE ANY TIME.

>> WHY ISN'T THIS REALLY A

PERSONAL JURISDICTION CLAIM

INSTEAD OF SUBJECT MATTER?

>> BECAUSE THIS GOES TO THE

AUTHORITY, THE POWER OF THE

STATEWIDE PROSECUTOR TO BRING --

>> THAT'S NOT THE SUBJECT MATTER

JURISDICTION WE'RE TALKING

ABOUT.

WE'RE TALKING ABOUT THE SUBJECT

MATTER JURISDICTION OF THE

CIRCUIT COURT.

>> THE SUBJECT MATTER

JURISDICTION OF THE CIRCUIT

COURT IS INITIATED BY THE  
PROSECUTING AUTHORITY.

THEREFORE, THE PROSECUTING  
AUTHORITY MUST HAVE SUBJECT  
MATTER JURISDICTION OVER THE  
MATTER.

>> APPLIES TO THE QUESTION.

PERSONAL JURISDICTION IS BECAUSE  
THEY DON'T HAVE THE POWER UNDER  
THIS PARTICULAR -- AS SET FORTH  
ON THE PIECE OF PAPER.

>> JUST LIKE IN A CIVIL CASE IF  
SOMEBODY CAME IN AND THEY DON'T  
HAVE SUFFICIENT CONTACTS, SO  
FORTH, THEY DON'T DO BUSINESS IN  
FLORIDA YET THEY'RE BROUGHT INTO  
A FLORIDA COURT AND THE ARGUMENT  
IS, HEY, YOU DON'T HAVE PERSONAL  
JURISDICTION OVER ME, YOU DON'T  
HAVE THE RIGHT TO BRING ME INTO  
THIS COURT.

SAME TYPE OF ARGUMENT HERE.

STATEWIDE PROSECUTOR.

YOU DON'T HAVE THE AUTHORITY TO  
BRING ME INTO THIS COURT.

THAT'S NOT A SUBJECT MATTER  
JURISDICTION ARGUMENT, THAT'S  
PERSONAL.

>> BUT THAT'S NOT WHAT HAPPENED  
HERE.

IT WAS IN LEE COUNTY, EVERYTHING  
WAS IN LEE COUNTY.

IT JUST WASN'T INITIATED.

THAT COURT NEVER GOT THE POWER,  
THAT COURT NEVER GOT THE  
JURISDICTION BECAUSE THAT HAS TO  
OCCUR BY THE STATEWIDE  
PROSECUTOR GETTING THE POWER  
FROM THE CONSTITUTION.

THERE HAS TO BE A GRANT OF THAT  
POWER FROM THE PEOPLE OR ELSE  
THERE'S NO AUTHORITY FOR WHICH  
THE COURT CAN BE ACTING.

>> SO PRIOR TO TODAY SEVERAL  
YEARS AGO ONLY THE STATE  
ATTORNEY, NOT HIS OR HER  
ASSISTANT, FINDS INFORMATION.  
SO IF AN ASSISTANT FILED AN  
INFORMATION, THAT INFORMATION  
WAS FILED IN THE COURT, WAS THAT

THE SUBJECT --

>> I THINK MY TIME HAS EXPIRED.

MAY I HAVE A MOMENT TO ANSWER

THE QUESTION?

>> PLEASE ANSWER.

>> OKAY.

IN THE CASE THE FACTS ARE

FLUSHED OUT AND THE FACTS

DEMONSTRATE THAT THERE'S --

>> I DON'T SEE HOW THAT'S ANY

DIFFERENT IF THE ASSISTANT STATE

ATTORNEY DID NOT HAVE THE

AUTHORITY TO SIGN THE

INFORMATION.

WHY IS THAT ANY DIFFERENT FROM

HERE WHERE YOU'RE, BASICALLY,

ARGUING FOR THE STATEWIDE

PROSECUTOR DIDN'T HAVE THE

AUTHORITY TO SIGN THE

INFORMATION.

>> WELL, IN YOUR CASE IT'S

PRESUMABLY LATER DEMONSTRATED

THAT THAT AUTHORITY DID, IN

FACT, EXIST.

>> NO.

I'M TALKING ABOUT A SITUATION  
YEARS AGO WHEN IT'S ONLY THE  
STATE ATTORNEY.

THE STATE ATTORNEY HAD THE  
AUTHORITY TO ACTUALLY SIGN THE  
INFORMATION AS OPPOSED TO AN  
ASSISTANT STATE ATTORNEY FILING  
THE --

>> OKAY.

>> YOU WOULD SAY THAT WAS THE  
SUBJECT MATTER JURISDICTION OF  
THE COURT ALSO?

>> IF THAT WAS NEVER PROPERLY  
INVOKED AND SHOWN TO EXIST.  
NOW, IN THAT CASE I'M ASSUMING  
THAT JURISDICTION DID, IN FACT,  
EXIST.

HERE JURISDICTION DOES NOT, IN  
FACT, EXIST.

BECAUSE HERE ALTHOUGH, YOU KNOW,  
THE INFORMATION DOES OSTENSIBLY  
ALLEGED THE GENERAL LANGUAGE OF  
THE STATUTE, TWO OR MORE  
CIRCUITS.

SO WHEN WE LOOK AT THE RECORD,

THERE WAS A MISTAKE MADE THAT IT  
WASN'T TWO OR MORE CIRCUITS.  
IT WAS TWO OR MORE STATES,  
PERHAPS, AND THERE IS THIS  
TANGENTIAL ACTIVITY, THIS  
ASSUMPTION THAT THE DRUGS WERE  
GOING TO BE SOMEHOW TRACKED  
THROUGH FLORIDA ON MULTIPLE  
CIRCUITS.

FIRST OF ALL, THAT'S NOT  
MULTICIRCUIT ACTIVITY.

SECOND, THAT DOESN'T EFFECT --

>> SO IF THEY, IN FACT, GOT  
DRUGS FROM MEXICO AND CAME  
ACROSS AND WENT THROUGH  
BEFORE -- WHAT COUNTY WAS THIS?

>> LEE.

>> BEFORE THEY GOT TO LEE COUNTY  
THEY CAME THROUGH HILLSBOROUGH  
AND SARASOTA AND MANATEE AND ALL  
OF THAT BEFORE THEY GOT TO LEE  
COUNTY, WOULD THAT BE  
SUFFICIENT?

>> WELL, THEY'VE CONCEDED  
THERE'S NOT MORE THAN ONE

RELATED TRANSACTION.

RATHER, THEY'RE PROCEEDING UNDER  
THIS IDEA --

>> I'M ASKING YOU.

>> SO, YES.

>> IF A DRUG CAME INTO THE STATE  
OF FLORIDA --

>> RIGHT.

>> -- AND LET'S EVEN START WITH  
LEON COUNTY.

COME THROUGH ALL THOSE COUNTIES  
THAT YOU GO THROUGH BEFORE YOU  
GET TO LEE.

IS THAT SUFFICIENT?

>> NO.

BECAUSE THAT'S ABSOLUTELY NOT  
SHOWING THAT THESE OTHER  
CIRCUITS WERE AFFECTED, AND AS  
SOME OF THE CASE LAW --

>> HOW ABOUT IF I STOPPED  
OVERNIGHT?

>> IT'S NOT AFFECTING THE  
CIRCUIT.

I MEAN, THERE'S A CASE THAT  
ADDRESSES THIS QUESTION IN THE

CONTEXT OF A BANK ACCOUNT, AN  
ACCOUNT THAT WAS, YOU KNOW,  
THERE WERE HOLDERS OF ACCOUNT,  
AND THIS ACCOUNT WAS COMPROMISED  
BY THE ALLEGED ACTIONS OF THE  
DEFENDANTS.

SO THESE PEOPLE THROUGHOUT THE  
STATE HAVE A STAKE IN THE  
ACCOUNT.

WELL, THAT CASE HELD THAT IT  
WASN'T ENOUGH TO SHOW THAT THOSE  
COUNTIES, THAT THOSE CIRCUITS  
WERE AFFECTED.

AND, CERTAINLY, TRAVELING  
THROUGH IS NOT GOING TO AFFECT  
THOSE CIRCUITS.

>> WELL, WHAT IF THERE WAS A  
TRAFFIC STOP AND THEY WERE  
ARRESTED?

COULD THEY PROSECUTE THEM FOR  
HAVING THE DRUGS?

>> I'M SORRY?

>> IF THERE WAS A TRAFFIC STOP  
AND THEY DISCOVERED THE DRUGS IN  
THE VEHICLE WHILE THEY WERE

TRAVELING THROUGH, COULD THEY

BE --

>> WELL, THAT WOULD THEN BE

WHERE THE TRANSACTION UNDER THE

LANGUAGE --

>> WELL, WHERE'S THE FRANK

ACTION?

THEY'RE JUST DRIVING WHEN THEY

GET STOPPED FOR THE TRAFFIC

TICKET.

>> WELL, THE TRANSACTIONS HERE

THAT HAVE BEEN ALLEGED ARE ONES

THAT TOOK PLACE IN LEE COUNTY,

AND THERE'S NO DISPUTE ABOUT

THAT.

WE'D RESPECTFULLY REQUEST THAT

THIS COURT REVERSE AND SENTENCE

WELL AND CONTINGENTLY IF THAT'S

NOT -- IF THIS COURT FINDS

FURTHER FACT FINDING IS

NECESSARY, THAT IT BE REMANDED

FOR AN EVIDENTIARY HEARING.

THANK YOU.

>> THANK YOU.

THANK BOTH SIDES FOR YOUR

ARGUMENT.