

>> THE COURT WILL PROCEED TO CONSIDERATION OF THE SECOND AND FINAL CASE ON TODAY'S DOCKET, DAWSON VERSUS THE STATE. COUNSEL?

>> MAY IT PLEASE THE COURT. MY NAME IS LORI WILLNER AND I WOULD LIKE TO RECEIVE 5 MINUTES FOR REBUTTAL, THEY PLACED THE BURDEN ON THE DEFENSE RATHER THAN ON THE STATE. THIS LEGAL ERROR CANNOT BE FOUND HARMLESS UNDER THE FACTS OF THIS CASE.

WHEN EVALUATED PROPERLY THE EVIDENCE, AND HE COULD HAVE BEEN ENTITLED TO IMMUNITY.

AN ERROR IN THAT TYPE OF PROCEEDING MAY BE HARMLESS. IN THE FIRST BOSTON ORDERED A NEW IMMUNITY HEARING, THE CASE CAME BACK FROM THIS COURT THE FIRST DCA, THE VERDICT RENDERED HARMLESS ANY ERROR, THE VERDICT SHOULD ONLY BE THE STARTING PLACE TO BE THE ANALYSIS.

WHEN THE BURDEN -- THAT I?

>>

>>

>> IN A LOT OF REGARDS IT WOULD. WHEN HELD THE DAY BEFORE A TRIAL IF MY CLIENT HAD TESTIFIED, AND THAT WOULD BE USED, IN THE TRIAL ITSELF AND THE TIMING OF THE HEARING IS NOT THE DISPOSITIVE FACTOR HERE.

>> THE WAIVER MAY BE. MY QUESTION IS SINCE YOU AGREE THIS WOULD BE A STRONGER CASE FOR YOU, IF YOUR CLIENT HADN'T WAIVED A SEPARATE HEARING HOW WOULD THE CASE BE BETTER FOR YOU IF HE HADN'T WAIVED IT?

>> THE WAY THE CASE WOULD BE BETTER WOULD BE IF THE TRIAL COURT PLACED THE BURDEN ON THE STATE.

>> THAT IS NOT MY QUESTION.

>> WHAT ARE WE TO MAKE OF CLIENTS KNOWING AND INTELLIGENT DECISION WITH COUNSEL TO WAIVE A SEPARATE HEARING, YOU HAVE CONCEDED YOUR ARGUMENT WOULD BE

STRONGER HAD HE NOT MADE THAT WAIVER.

MY QUESTION IS HOW WOULD IT BE STRONGER?

TELLING WHAT EFFECT TO GIVE YOUR CLIENTS WAIVER?

>> I'M NOT CONCEDED THAT THE CASE WOULD BE STRONGER BUT THE FACTS WOULD BE STRONGER AND THE REASON MY CLIENT WAIVED THE HEARING BEING HELD DURING THE TRIAL IS NOT IN THE RECORD AND WITH ALL DUE RESPECT THOSE DECISIONS ARE OFTEN MADE FOR THE CONVENIENCE OF THE TRIAL COURT INSTEAD OF CONVENIENCE OF THE WITNESSES, IF THEY ARE NOT CALLING AGAIN.

I DON'T THINK THERE'S ANY LEGAL EFFECT TO MY CLIENT HAVING THE HEARING HEARD DURING THE TRIAL OTHER THAN THE LEGISLATURE SAYS THIS SHOULD BE A PRETRIAL HEARING AND EVERYONE AGREES IT SHOULD BE.

>> IS THAT A COMMON PRACTICE TO WAIVE THE PRETRIAL HEARING AND HAVE THE TRIAL?

>> APPARENTLY IT IS BECAUSE IT IS CONVENIENT FOR EVERYONE BUT TO EFFECT THE INTENT OF THE LEGISLATURE IT SHOULD BE DONE PRETRIAL BUT IN MISTER BOSTON'S CASE, AND DENYING THE MOTION, WAS RENDERED HARMLESS BY THE VERDICT, IN THE FACT OF THIS CASE.

AND SUPPLEMENTED BY THE STATE. THE FACTS OF THE CASE, IN THE ELDERS, THE FACTS DON'T SUPPORT IMMUNITY FROM MISTER VALDES WHERE THE FACTS OF THIS CASE THE UNDISPUTED FACTS COULD SUPPORT IMMUNITY.

>> I'M STRUGGLING TO UNDERSTAND, YOU ACKNOWLEDGE THE STATE HAS PROVEN BEYOND REASONABLE DOUBT TO THE SATISFACTION OF THE JURY, THAT YOUR CLIENT DID NOT ACT IN SELF DEFENSE.

IS THAT CORRECT?

>> YES.

>> THE STANDARD AT THE PRETRIAL IMMUNITY HEARING WOULD BE A

LESSER BURDEN, EVIDENTIARY AREA  
BURDEN, CORRECT?

>> YES.

>> THE FIRST DCA CONCLUDED  
BECAUSE OF THE HIGHER BURDEN AND  
OPPORTUNITY FOR A FAIR TRIAL IN  
WHICH HE COULD PRESENT THE  
DEFENSE, THAT CURES EVERY ISSUE  
AND AS A MATTER OF LAW SEEMS IT  
WOULD.

IF YOUR CLIENT HAD TO PROCESS,  
THE OPPORTUNITY TO PRESENT THE  
SELF-DEFENSE DEFENSE, THE  
SETTING THAT HE ELECTED --  
DEPRIVED OF ANY DUE PROCESS, AND  
HAVE HIS DAY IN COURT WITH ALL  
THE RIGHTS GUARANTEED BY THE  
CONSTITUTION WHY ISN'T THAT A  
COMPLETE CURE?

>> BECAUSE THE RIGHT THAT HE DID  
NOT RECEIVE WAS A PROPER  
HEARING, IN ORDER -- TO GO ALONG  
WITH --

>> HE DIDN'T RECEIVE A  
PROCEDURAL, DENIED DUE PROCESS  
PROCEDURAL DUE PROCESS.  
FOR NOT HAVING A HEARING, THE  
TRIAL DID NOT PROVIDE ALL  
CONSTITUTIONAL RIGHTS AND HE  
WAVED THE QUESTION.

>> ANY TYPE OF HARMLESS ERROR  
ANALYSIS, YOU HAVE TO LOOK AT  
THE INDIVIDUAL CASE.

THERE CANNOT BE RULE OF LAW THAT  
SAYS A JURY VERDICT CURES ALL  
ERRORS.

>> WHY NOT?

>> PARDON?

>> ALL PROCEDURAL ERRORS?

>> THIS WAS MORE THAN A  
PROCEDURAL ERROR.

ANYTIME BURDEN IS PLACED ON THE  
WRONG PARTY THAT CAN INDEED  
AFFECT MORE THAN THE PROCEDURE.  
THE REASON IT IS HARMFUL IS  
MISTER BOSTON MAY HAVE BEEN  
ENTITLED TO IMMUNITY.  
BASED ON THE UNDISPUTED FACTS OF  
THE CASE.

>> WE KNOW THAT HE WASN'T  
ENTITLED TO IMMUNITY BECAUSE HE  
GOT TO PRESENT EVERYTHING HE  
WOULD HAVE PRESENTED AT THE  
HEARING HE ELECTED NOT TO HAVE

IN FRONT OF A JURY AND FOUND BEYOND REASONABLE DOUBT HE COMMITTED THE CRIME AND DID NOT ACT IN SELF DEFENSE.

THAT IS WHERE WE ARE.

>> BECAUSE WHAT WE NEED TO LOOK AT IS THE EVIDENCE THROUGH THE FACTFINDER WHICH FOR THE STAND YOUR GROUND HEARING WAS THE TRIAL JUDGE AND THE PERSPECTIVE OF THE TRIAL JUDGE IS COLORED BY THE BURDEN AND HOW THE TRIAL JUDGE PERCEIVES THE EVIDENCE. IN THIS CASE IF THE BURDEN HAD BEEN PLACED ON THE PROPER PARTY THE TRIAL JUDGE IS LOOKING AT THE EVIDENCE IN A TOTALLY DIFFERENT WAY.

DID THE STATE MEET ITS BURDEN? GRANTED THE EFFECT OF THE ERRONEOUS RULING MAY HAVE BEEN MISTER BOSTON TESTIFIED OR DID NOT TESTIFY.

>> THE STATE'S BURDEN UNDER THE CURRENT PRECEDENT WOULD BE TO DEMONSTRATE HE DID NOT ACT IN SELF DEFENSE.

BY A LOWER STANDARD THAN THE JURY FOUND THE STATEMENT.

CORRECT?

>> CORRECT.

>> I AM SORRY.

>> OKAY.

>> I THINK THAT CONCLUSION IGOR'S THE REALITY OF WHAT HAPPENS TO A MOTION TO DISMISS COMMUNITY HEARING BECAUSE IF THE TRIAL COURT AS DEFINED IN EFFECT LOOKS AT THE EVIDENCE PRESENTED THE WAY IT IS SUPPOSED TO BE, MISTER BOSTON COULD BE ENTITLED TO IMMUNITY AND THAT IS WHY IT IS IMPERATIVE THIS COURT EVENT THAT NEW HEARING.

>> WAS THERE ANY PROCEDURE OR OTHER VIOLATION THAT PROHIBITED THE JURY FROM VIEWING THE CASE?

>> YES, YOUR HONOR.

THE CASE NEVER SHOULD HAVE GONE TO THE JURY IF DONE CORRECTLY. THIS IS THE ULTIMATE DISPOSITIVE MOTION.

UNLIKE A MOTION TO SUPPRESS WHERE IF EVIDENCE GETS ADMITTED

ERRONEOUSLY AND THE JURY  
CONVICTS THE ANALYSIS DOES NOT  
END WITH THE JURY VERDICT.  
YOU LOOK AT OTHER FACTORS.  
WAS THERE OTHER EVIDENCE THAT  
RENDERED THE ERROR IN ADMITTING  
THE EVIDENCE HARMLESS?  
DID THE INDIVIDUAL CONFESS?  
IN THIS CASE WHEN YOU LOOK AT  
ALL THE FACTS THAT MISTER TUCKER  
PICKED UP THE LEVEL TO -- PRIZES  
AT THE TIME HE PICKED UP A  
HAMMER, WHEN YOU LOOK AT THE  
TESTIMONY OF EVERYONE AND THE  
PRESENTATION BY THE STATE AT THE  
TRIAL, IT IS POSSIBLE THAT UNDER  
A PROPER HEARING THAT MISTER  
BOSTON WOULD HAVE BEEN ENTITLED  
TO IMMUNITY AND IN THAT CASE --  
>> I AM SORRY.

IS IT A FAIR CONSTRUCTION OF  
YOUR POSITION TO SAY SECTION  
776.032 AND DENNIS STAND FOR THE  
PROPOSITION THAT AN IMMUNITY  
HEARING IS UNWAIVABLE AND MUST  
OCCUR PRIOR TO TRIAL, YOUR IT IS  
FUNDAMENTAL ERROR.

>> THAT'S NOT MY POSITION AT  
ALL.

>> HELP ME UNDERSTAND WHAT YOUR  
POSITION IS.

>> BEST PRACTICES THAT YOU HAVE  
PRETRIAL PAID BY THE  
LEGISLATURE, IF THE TRIAL COURT  
RUNNING A COURTROOM, SAYS IT  
WOULD BE BEST, I DON'T HAVE TIME  
ON MY MOTION CALENDAR, LET'S  
JUST TEAR IT DURING TRIAL.

AND THEN YOU DO THAT PART OF THE  
HEARING AS PART OF THE PROCESS,  
HERE IS MY POINT.

WHERE THERE IS AN IMPROPER  
HEARING THE APPELLATE COURTS  
NEED TO REVIEW THAT FOR HARMLESS  
ERROR IN THE ONLY WAY TO REVIEW  
FOR HARMLESS ERROR IS LOOK AT  
THE FACTS OF THE CASE.

IS THE COURT -- OF THE COURT  
WERE TO RULE THAT THE VERDICT  
CURES THE ERROR AND EVERY DENIAL  
OF THE MOTION OF IMMUNITY BASED  
ON IMMUNITY, AND UNDOABLE,

>> I UNDERSTAND THAT ARGUMENT  
BUT RATHER THAN SMACK THAT

PARTICULAR STRAW MAN.  
HE IS HEALED WITH ANOTHER  
HOLDING THAT RESULTS IN AN  
AFFIRMATION OF THE CONVICTION  
WHICH IS WE FIND THAT IT WASN'T  
HARMFUL AIR WERE ON THESE FACTS  
BECAUSE OF YOUR CLIENTS WAIVER  
WHICH IS WHAT I ASKED EARLIER.  
LET'S GO AS FAR AS THE PARADE OF  
HORRIBLES YOU ARE SUGGESTING,  
WE DON'T SAY THAT THE JURY'S  
VERDICT CURES EVERY PROCEDURAL  
HARM.

FINE.

BUT WHAT IF WE SAY THAT THE  
WAIVER HERE HAD THE EFFECT OF  
ANSWERING THE QUESTION BEFORE  
US.

YOU LOSE, RIGHT?

>> YOUR HONOR, I DON'T  
UNDERSTAND WHY THE WAIVER WOULD  
CHANGE THE ANALYSIS OTHER THAN  
THE FACT THAT IT WASN'T  
PRETRIAL.

THE, I GUESS I'M NOT  
UNDERSTANDING HOW THE WAIVER  
AFFECTS THE ANALYSIS--

>> OUR CRIMINAL LAW GIVES RIGHTS  
TO DEFENDANTS INCLUDING THE  
RIGHT TO WAIVE CERTAIN  
PROTECTIONS THAT THEY HAVE ON  
THE ADVICE OF COUNSEL.

>> YES.

>> AT THE BEGINNING OF OUR ORAL  
ARGUMENT, I ASKED YOU WOULDN'T  
THIS BE AN EASIER CASE IF YOUR  
CLIENT HADN'T WAIVED, AND YOU  
SAID, YES.

HELP US UNDERSTAND WHAT EFFECT  
YOU ARE ASKING US TO GIVE TO  
YOUR CLIENT'S WAIVER.

IF THE ANSWER IS GIVE IT NO  
EFFECT, COURT, THEN I'M NOT SURE  
THERE'S ANY WAY FOR YOU TO WIN  
TODAY'S ARGUMENT.

TELL ME I'M WRONG.

[LAUGHTER]

>> I WOULD NEVER DO THAT.

I THINK THE ONLY EFFECT WE CAN  
GIVE THE WAIVER IS THE TIMING OF  
THE HEARING.

I DON'T UNDERSTAND WHY THE  
ANALYSIS CHANGED BASED ON WHEN  
THE HEARING IS HELD.

THE-- IT WAS THIS COURT THAT SAID IN DENNIS IT MAY BE HARMLESS.

THIS COURT DICTATED TO THE APPELLATE COURTS DO A HARMLESS ERROR ANALYSIS, AND THAT IS WHAT THE FIRST DCA SHOULD HAVE DONE. IN THE FIRST BOSTON, IT DID NOT. IT ORDERED A NEW IMMUNITY HEARING.

THEN IN THE SECOND BOSTON HEARING, IT SAID, OH, WAIT A MINUTE.

MR. BOSTON IS CONVICTED BY A JURY.

WELL, HE WAS ALWAYS CONVICTED BY A JURY.

THAT DOESN'T COME INTO THE ANALYSIS HERE.

THERE'S LONGSTANDING LAW IN FLORIDA THAT IN ORDER TO RENDER AN ERROR HARMLESS THERE HAS TO BE AN EXAMINATION OF THE FACTS OF THE CASE.

THE FACTS DON'T CHANGE, YOUR HONOR, BASED ON WHETHER THE HEARING IS HELD THE DAY BEFORE THE TRIAL OR DURING THE TRIAL. WHAT CHANGES HERE IS THE FACT FINDER'S PERCEPTION OF THE EVIDENCE THROUGH THE WRONG LOOKING GLASS.

AND IF THE HEARING-- WHETHER IT WAS DAY BEFORE OR DURING TRIAL-- WAS CONDUCTED PROPERLY, MR. BOSTON MAY HAVE BEEN ENTITLED TO IMMUNITY.

THE CASE NEVER GETS TO THE JURY. HE WAIVED THE RIGHT TO HAVE-- THE STATUTE PROVIDES FOR NOT BEING ARRESTED, NOT BEING DETAINED, NOT BEING PROSECUTED. HE WAIVED ALL OF THAT, YOUR HONOR, BUT HE DIDN'T WAIVE HIS RIGHT TO BE CONVICTED WHEN HE MAY HAVE BEEN ENTITLED TO IMMUNITY.

AND THAT'S EXACTLY WHAT ALL THE COURT-- THE CASES SAY.

THE WHOLE PURPOSE IS TO NOT ALLOW SOMEONE TO REACH THAT POINT IF THEY MAY BE ENTITLED TO IMMUNITY.

AND, AGAIN, IN VALDEZ, IN

LITTLE, IN THE OTHER--  
>>-- THE SAME QUESTION JUSTICE  
COURIEL HAS.  
YOUR CLIENT, BY HIS OWN CHOICE,  
ELECTED TO HAVE THE HEARING  
COTERMINOUS WITH THE TRIAL.  
SO THAT WAS HIS DECISION.  
AND YOU SEEM TO BE SAYING THAT  
HE COULDN'T WAIVE THAT.  
AND SO THERE WAS HARMFUL ERROR  
BECAUSE HE HAD THE HEARING AT  
THE SAME TIME?  
IS THAT--  
>> THAT-- I'M SORRY, YOU'RE  
HONOR, IF I'M GIVING THAT  
IMPRESSION.  
THAT IS NOT AT ALL WHAT I AM  
ARGUING.  
I AM ARGUING THAT THE EFFECT OF  
THE WAIVER WAS ONLY TO GO TO THE  
TIMING OF THE HEARING.  
MY ARGUMENT IS THAT THE HEARING  
WAS IMPROPER NOT BECAUSE IT WAS  
HEARD DURING THE TRIAL--  
>> OKAY.  
>>-- BECAUSE THAT'S THE WAY THE  
TRIAL JUDGE WANTED IT.  
IT WAS WRONG BECAUSE THE TRIAL  
JUDGE DIDN'T PLACE THE BURDEN ON  
THE RIGHT PARTY, AND UNDER THE  
FACTS OF THIS CASE THAT ERROR  
CANNOT BE RENDERED HARMLESS--  
[INAUDIBLE CONVERSATIONS]  
>> YOU AGREE THAT THE JURY  
PLACED THE BURDEN ON THE RIGHT  
PARTY.  
>> YES, YOUR HONOR.  
>> THEY WERE-- OKAY.  
>> YES, YOUR HONOR, I DO AGREE  
WITH THAT.  
MY ARGUMENT IS THAT IT SHOULD  
NEVER HAVE GOTTEN TO THE JURY.  
>> ALL RIGHT, COUNSELOR.  
YOU'RE IN YOUR REBUTTAL TIME  
NOW.  
YOU CAN KEEP GOING, BUT YOU'RE  
CONSUMING YOUR TIME.  
>> YES, YOUR HONOR.  
I'M WILLING TO RESERVE THE REST  
OF MY TIME UNLESS JUSTICE LAWSON  
WOULD LIKE ME TO CONTINUE.  
THANK YOU.  
>> COUNSEL.  
>> THANK YOU, MR. CHIEF JUSTICE,

AND MAY IT PLEASE THE COURT.  
CHRISTOPHER BAUM FOR THE STATE.  
DENNIS V. STATE MAKES IT CLEAR  
THAT THIS IS A SIMPLE CASE.  
THERE THE COURT HELD THAT  
SECTION 776.032 GRANTED  
DEFENDANTS A RIGHT TO AVOID  
BEING SUBJECTED TO TRIAL.  
NOW HERE PETITIONER WAIVED THAT  
RIGHT EVEN AFTER HE HAD HEARD  
BEFORE THE JURY WAS SWORN THAT  
THE COURT CHOSE THE INCORRECT  
STANDARD.  
NOW, TO THE EXTENT THAT  
PETITIONER NOW ARGUES THAT HE  
DIDN'T WAIVE THE RIGHT TO A  
PROPER HEARING, DENNIS ALSO  
MAKES CLEAR THAT THAT WAS  
HARMLESS ERROR.  
IN DENNIS, FOR EXAMPLE, THE  
TRIAL COURT DID NOT HOLD ANY  
PRETRIAL EVIDENTIARY HEARING.  
NOW, AS IN DENNIS THE JURY  
REJECTED PETITIONER'S CLAIM OF  
SELF-DEFENSE BEYOND A REASONABLE  
DOUBT.  
AS IN DENNIS, THE PETITIONER  
DOES NOT CONTEND THAT HIS TRIAL  
WAS UNFAIR IN ANY WAY, HE DOES  
NOT CONTEND THAT HIS ABILITY TO  
PRESENT EVIDENCE ON HIS  
SELF-DEFENSE CLAIM WAS LIMITED  
IN ANY WAY, AND HE DOES NOT  
CONTEND THAT HE PRESENTED ANY  
NEW EVIDENCE.  
THEREFORE, DENNIS CONTROLS.  
>> COUNSEL, I'M SORRY TO  
INTERRUPT YOU.  
SO IF WE TAKE THE GUILTY PLEA  
AND RESERVATION SCENARIO OUT, IS  
THE PRACTICAL EFFECT OF WHAT  
YOUR POSITION AND IF WE WERE TO  
DECIDE THIS CASE THE WAY YOU'RE  
ASKING US TO, THAT BASICALLY THE  
ONLY WAY TO ADDRESS AN ERROR IN  
THE STAND YOUR GROUND HEARING IS  
THROUGH A PROHIBITION?  
IF THAT AVENUE DOESN'T HAPPEN  
THEN, ESSENTIALLY, THE PERSON  
MIGHT BE ACQUITTED OR IF THEY'RE  
FOUND GUILTY, YOU KNOW, AND  
THERE MAY BE A PROBLEM THAT  
THEIR SELF-DEFENSE INSTRUCTION  
WAS WRONG ON WHATEVER.

BUT BASICALLY AS IT RELATES TO THE STAND YOUR GROUND ISSUE, DOES THAT BASICALLY GO AWAY IF THE WRIT OF PROHIBITION ROUTE ISN'T TAKEN?

>> I THINK THAT'S RIGHT, YOUR HONOR.

BECAUSE AS IN DENNIS, I MEAN, THE COURT SAID IN DENNIS THAT THE RIGHT THAT THE LEGISLATURE CREATED WAS TO AVOID GOING TO TRIAL.

AND IF THE DEFENDANT WANTS TO AVAIL HIMSELF OF THAT RIGHT, HE SHOULD SEEK A WRIT OF PROHIBITION.

OR IN THIS CASE, HE COULD HAVE MOVED TO SEPARATE THE TRIAL FROM THE IMMUNITY HEARING OR SOUGHT A WRIT OF PROHIBITION AFTER THE TRIAL COURT CHOSE THE INCORRECT STANDARD.

AND I THINK THAT THE REMEDY PETITIONER REQUESTS AT PAGE 22 OF HIS INITIAL BRIEF BELIES THE NOTION THAT THERE WAS ANY HARMLESS ERROR-- ANY HARMFUL ERROR IN HIS TRIAL BECAUSE PETITIONER REQUESTED THAT HE RECEIVE A NEW IMMUNITY HEARING, AND IF HE DID NOT-- IF HE WAS NOT ENTITLED TO IMMUNITY AFTER THAT HEARING, HE ASKED THAT HIS CONVICTION BE REINSTATED.

SO I DON'T UNDERSTAND THE ARGUMENT THAT THE ERROR OF CHOOSING THE INCORRECT STANDARD SOMEHOW WAS HARMFUL ERROR AS TO THE CONVICTION ITSELF.

PETITIONER'S OTHER ARGUMENTS ARE EFFECTIVELY IRRELEVANT BECAUSE ANY PURPORTED ERROR RELATING TO PETITIONER'S TRIAL STRATEGY RESULTED FROM THE INVITED ERROR OF HOLDING HIS HEARING AND THE TRIAL AT THE SAME TIME.

SO FOR ALL THESE REASONS, WE THINK THAT DENNIS CONTROLS AND THAT THIS IS A RELATIVELY SIMPLE CASE.

UNLESS THE COURT HAS ANY FURTHER QUESTIONS, THE STATE RESPECTFULLY SUBMITS THAT THE DECISION BELOW SHOULD BE

APPROVED AND THAT THE COURT SHOULD HOLD THAT, AS A GENERAL MATTER, WHEN A JURY IS PROPERLY INSTRUCTED AS TO SELF-DEFENSE CLAIM AND WHERE THE DEFENDANT DOES NOT CONTEND THAT HIS TRIAL WAS UNFAIR IN ANY WAY, THAT HIS ABILITY TO PRESENT SELF-DEFENSE EVIDENCE WAS LIMITED IN ANY WAY OR THAT HE WOULD PRESENT DIFFERENT EVIDENCE AT A NEW IMMUNITY HEARING, THAT THE JURY'S REJECTION OF HIS SELF-DEFENSE CLAIM BEYOND A REASONABLE DOUBT CURES ANY ERROR IN APPLYING THE INCORRECT STANDARD TO THE STAND YOUR GROUND MOTION.

>> ALL RIGHT.

THANK YOU, COUNSEL.

REBUTTAL.

>> THANK YOU, YOUR HONOR.

I QUESTION WHEN MR. BOSTON WAS SUPPOSED TO CONTEND THOSE FACTORS FROM DENNIS.

IS THE TRIAL LAWYER SUPPOSED TO STAND UP WHEN THE MOTION TO DISMISS IS DENIED AND SAY, YOUR HONOR, I WOULD HAVE DONE THE CASE TOTALLY DIFFERENT IF YOU HAD PUT THE BURDEN ON THE RIGHT PARTY?

OR IS MR. BOSTON TO SAY, AS HE DID IN HIS INITIAL BRIEF, I WOULD HAVE DONE THIS DIFFERENTLY.

I MIGHT NOT HAVE TESTIFIED.

I WOULD HAVE PRESENTED DIFFERENT EVIDENCE.

AND I DO AGREE THAT DENNIS CONTROLS.

BUT, YOUR HONORS, LET'S THINK ABOUT WHAT THE REMEDY WOULD HAVE BEEN IF THIS COURT HAD ORDERED THAT MR. DENNIS WAS ENTITLED TO A NEW IMMUNITY HEARING.

HE WOULD HAVE HAD THE EXACT SAME BURDEN.

IT WAS 2010.

IT WOULD HAVE BEEN EXACTLY THE SAME AS THE TRIAL.

THAT IS NOT THE CASE HERE.

THE LEGISLATURE HAS SAID WE WANT TO HAVE A DETERMINATION OF

IMMUNITY PRIOR TO TRIAL OR IN THIS CASE PRIOR TO CONVICTION. AND THE ARGUMENT THAT MR. BOSTON WAS TO CONTEND ALL OF THOSE FACTORS, WELL, I DON'T DENY THAT THE TRIAL WAS FAIR.

WHAT I DENY IS IT SHOULDN'T HAVE GOTTEN TO THE JURY.

THE ERROR WAS IN THE HEARING ITSELF.

AND THIS COURT SAYS-- AND, FRANKLY, VALDEZ DOES AN EXCELLENT JOB, THE CASE FROM THE THIRD DCA, IN GOING THROUGH AND STATING HOW DENNIS APPLIES.

AND IT WENT THROUGH AND SAID THE VERDICT WAS ONLY THE STARTING POINT, AND IT LOOKED AT THE ANALYSIS OF THE DENNIS FACTORS AND SAID UNDER THE FACTS OF THAT CASE-- JUST AS THIS COURT SAID IN DENNIS UNDER THE FACTS OF THAT CASE.

AND, FRANKLY, IN LITTLE THOSE FACTS SUPPORT NO IMMUNITY.

BUT IN MR. BOSTON'S CASE, THE FACTS COULD SUPPORT IMMUNITY. THIS IS NOT A JOA OR SUFFICIENCY OF THE EVIDENCE ARGUMENT.

MR. BOSTON IS NOT ASKING THIS COURT TO FIND HIM IMMUNE.

MR. BOSTON IS ASKING THAT THIS COURT REMAND THE CASE BACK TO THE TRIAL COURT FOR A PROPER DETERMINATION WITH THE PROPER BURDEN OF THE EVIDENCE.

>> WHAT DO YOU MAKE OF THE STATE'S SUGGESTION THAT THIS IS A CASE OF INVITED ERROR?

>> WELL, I THINK MR. BOSTON AGREEING TO HEAR THE CASE DURING TRIAL FOR CONVENIENCE AND NOT TO WAIVER, I THINK WHAT THE STATE IS REFERRING TO IS BY HEARING IT DURING THE HEARING AND FEELING LIKE HE HAD TO TESTIFY, THE JURY WAS ABLE TO HEAR OF HIS PRIOR CONVICTION.

TO THAT EXTENT, HE MAYBE SHOULDN'T HAVE WAIVED, AND THAT'S WHAT I WAS TRYING TO GET TO AT THE BEGINNING.

BUT AS FAR AS ANY TESTIMONY THAT MR. BOSTON GAVE AT THE HEARING,

THAT WOULD HAVE BEEN ADMISSIBLE  
ANYWAY.

SO I THINK THAT'S THE ONLY  
INVITED ERROR BECAUSE THE ERROR  
WASN'T IN HAVING THE CASE HEARD  
DURING THE TRIAL, THE ERROR WAS  
BECAUSE OF UNDER THE FACTS OF  
THIS CASE AND THE INCORRECT  
BURDEN IT COULD NOT BE FOUND TO  
BE A HARMLESS ERROR.

MR. BOSTON REQUESTS THAT THIS  
COURT REVERSE AND UPHOLD THIS  
COURT'S LAW AND THE LONGSTANDING  
RULE OF LAW FROM DENNIS.

IF THIS COURT WERE TO SAY THAT A  
JURY VERDICT CURES ALL ERRORS IN  
IMMUNITY HEARING, IT WOULD  
TOTALLY NEGATE THE PURPOSE AND  
INTENT OF THE LEGISLATURE IN  
ENACTING SUBSECTION 4 TO THE  
AMENDMENT.

THANK YOU.

>> ALL RIGHT.

WE THANK YOU BOTH FOR YOUR  
ARGUMENTS IN THIS CASE TODAY.  
THAT'S THE LAST CASE ON TODAY'S  
DOCKET, SO THE COURT WILL NOW BE  
IN RECESS.