

**IN THE SUPREME COURT  
STATE OF FLORIDA  
TALLAHASSEE, FLORIDA**

DAVID CARBAJAL, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO.: SC10-466  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 )  
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**ON REVIEW FROM THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT OF FLORIDA**

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**PETITIONER'S REPLY BRIEF**

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## REPLY ARGUMENT

### I. SUMMARY

For ease of reference in this Reply Brief, Mr. Carbajal uses the same headings as in his Initial Brief on the merits to address the State's corresponding arguments on the merits, which are not separated in the same manner as in the Initial Brief.

### II. REVERSAL IS REQUIRED TO PRESERVE THE WELL-ESTABLISHED RULE OF LAW THAT A COURT CANNOT ACT WITHOUT SUBJECT MATTER JURISDICTION.

#### A. Courts Cannot Confer Subject Matter Jurisdiction Where It Does Not Exist in the First Instance.

##### 1. Subject Matter Jurisdiction Is a Fundamental Concern that Goes to the Very Authority of a Court to Act and, Therefore, Can Be Raised Anytime.

It is well-established Florida law that a subject matter jurisdiction challenge can be raised anytime. In his Initial Brief, Mr. Carbajal cited numerous cases that stand for this bedrock principle, many involving the same or similar factual or procedural scenarios. (See IBR<sup>1</sup> at 5-6 (citing *Gunn v. State*, 947 So. 2d 551, 551 (Fla. 4th DCA 2006); *Brown v. State*, 917 So. 2d 272, 273 (Fla. 5th DCA 2005); *Harris v. State*, 854 So. 2d 703, 705 (Fla. 3d DCA 2003); *Harrell v. State*, 721 So. 2d 1185, 1186-1187 (Fla. 5th DCA 1998))). The State swiftly dispenses with these

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<sup>1</sup> References to Mr. Carbajal's Initial Brief on the merits and the State's Answer Brief on the merits are made with the abbreviations "IBR" and "ABR," respectively, followed by the appropriate page number(s).

authorities without acknowledging the fundamental principles on which they were decided. (*See* ABR at 8).

For example, the State dismisses *Brown* with the mere phrase that it “rel[ies] on Rule 3.850(a).” (ABR at 8). In fact, *Brown* reversed an order dismissing a defendant’s Rule 3.850 motions that disputed the trial court’s lack of jurisdiction over the matter based on the statewide prosecutor’s lack of jurisdiction. Contrary to the State’s argument, the issue in *Brown* was a timeliness challenge under **Rule 3.850(b)**. *Brown* is indistinguishable from the case at bar.

The State disregards *Gunn* with the mere notation that it “rel[ies] on *Brown*.” *Gunn* likewise addresses a timeliness challenge to a motion for postconviction relief based on a claimed lack of subject matter jurisdiction. Such a challenge arises only under **Rule 3.850(b)**. Like *Brown*, *Gunn* ruled that a subject matter jurisdiction challenge may be raised anytime. 947 So. 2d at 551.

The State did not seek to distinguish *Harris*, which also held that “the absence of jurisdiction can be raised at any time.” 854 So. 2d at 705. With respect to cases Mr. Carbajal cites in his Initial Brief that stands for this fundamental principle, the State suggests such cases should not apply because they involve different procedural postures than the case at bar. (ABR at 14-15). This is precisely the point. No matter the procedural posture, a newly raised subject matter jurisdiction challenge cannot be precluded. *See, e.g., Page v. State*, 376 So.

2d 901, 904 (Fla. 2d DCA 1979) (challenge cannot be precluded where raised for first time on appeal from order revoking probation); *State v. Billie*, 497 So. 2d 889, 890 (Fla. 2d DCA 1986) (although Florida Rules of Criminal Procedure did not provide defendant with means to move for rehearing, “lack of subject matter jurisdiction is fundamental error which can be raised at any time”); *Booker v. State*, 497 So. 2d 957, 958 (Fla. 1st DCA 1986) (holding lack of subject matter jurisdiction is fundamental error that can be raised for first time on appeal); *Waters v. State*, 354 So. 2d 1277, 1278 (Fla. 2d DCA 1978) (entertaining subject matter jurisdiction challenge raised for first time on appeal).

The State offers another false distinction with respect to cases in which an otherwise untimely subject matter jurisdiction challenge is based on criteria other than a statewide prosecutor’s lack of jurisdiction over a case. *See Harrell*, 721 So. 2d at 1186-1187 (subject matter jurisdiction challenge based on trial court’s lack of jurisdiction to act while case was pending on appeal); *Booker*, 497 So. 2d at 958 (subject matter jurisdiction challenge based on circuit court’s lack of jurisdiction over misdemeanor charge unaccompanied by felony charge). The source of the subject matter jurisdiction defect is an immaterial distinction without a difference. There are no degrees of a court’s lack of authority to act that vary depending on the context, as the State seems to suggest.



In a similar vein, the State now argues that Mr. Carbajal's motion for postconviction relief was successive. This argument was not presented below and has been waived. However, even if this Court were to consider such an argument, Mr. Carbajal's motion was not successive because he had not previously raised subject matter jurisdiction. Even if it his motion were successive, for the same reasons presented herein and in Mr. Carbajal's Initial Brief, a subject matter jurisdiction challenge can be raised anytime. Accordingly, this argument has no impact on Mr. Carbajal's right to have raised subject matter jurisdiction when he did.

Overall, the State's position reflects a trivializing view of subject matter jurisdiction. Specifically, the State seems to view subject matter jurisdiction as a mere procedural hurdle rather than a matter of judicial authority set forth in the Florida Constitution and circumscribed by the Florida Legislature. The State's dismissive view is reflected in its description of the fundamental rule allowing subject matter jurisdiction challenges to be raised anytime as a mere "common law notion." (ABR at 15).

The rule that subject matter jurisdiction may be raised at any time is far more than an antiquated peculiarity found in the vestiges of common law. It is a matter of a court's constitutional and statutory authority to act. As established in Mr. Carbajal's Initial Brief, (IBR at 7-11), a court cannot effectively confer

jurisdiction upon itself by waiver after the passage of two years through a judicially created rule of criminal procedure. This is the result urged by the State, and it is impermissible under the law.

**2. Subject Matter Jurisdiction Is a Substantive, Not Procedural, Matter and, Therefore, Cannot Be Conferred by Judicial Action or the Florida Supreme Court's Rule-Making Authority.**

As established in Mr. Carbajal's Initial Brief, this Court's rule-making authority is limited to rules of procedure. (*See* IBR at 9-11). It cannot be used to create rules that are substantive in nature. A rule that operates to confer subject matter jurisdiction upon a court after the passage of two years, as the State argues is the effect of Rule 3.850(b), would be impermissibly substantive in nature. The general authority regarding this Court's rule-making power cited by the State, (*see* ABR at 25), in no way suggests that this Court can use such power to establish the judiciary's own subject matter jurisdiction.

**B. Public Policy Compels Reversal of the Appellate Court's Ruling, Which Unfairly Singles Out Criminal Defendants by Judicial Act to Afford Them Fewer Rights Than All Other Litigants.**

The State suggests that a policy interest in finality somehow outweighs the grave jurisdictional defect of a court's lack of authority to act in the first instance. (ABR at 25). However, longstanding precedent has been applied time and time again without unduly impinging upon finality concerns. The history and origins of

Rule 3.850 cited by the State do not suggest that this Court ever contemplated that, in the interest of finality, the rule would confer subject matter jurisdiction on a court otherwise unauthorized to act.

Again, the State's argument trivializes the serious constitutional and statutory underpinnings of subject matter jurisdiction. The judiciary simply cannot confer subject matter jurisdiction upon itself through use of its procedural rule-making authority. It certainly cannot do so in a way that has a harsher effect on criminal defendants with life and liberty at stake than it does for all other litigants who the State does not dispute can raise a court's lack of authority to act at any time.

**C. No Other Grounds Justify Affirmance of the Appellate Court's Ruling.**

The State incorrectly suggests that even if this Court found subject matter jurisdiction did not exist, it would remand this matter to the Second District Court of Appeal, which would affirm on alternate grounds. However, for the reasons stated in Mr. Carbajal's Initial Brief (IBR at 16-20) and herein, the Second District Court of Appeal's alternate grounds for affirmance are unsupported by the facts and the law.

**1. The Record Provides No Basis for the Statewide Prosecutor's Jurisdiction.**

The State incorrectly contends that the record establishes multi-circuit activity so as to support the statewide prosecutor's jurisdiction. For this proposition, the State claims, "In addition to Petitioner's admission that he previously obtained narcotics from Dade County, Petitioner also detailed his recent reliance on narcotics from Mexico, Texas, Atlanta and North Carolina." (ABR at 21). As addressed in Mr. Carbajal's Initial Brief, to the extent the record reflects out-of-state conduct, such conduct cannot form the basis for the statewide prosecutor's jurisdiction because it does not constitute multi-circuit activity involving more than one Florida county. (*See* IBR at 16-20).

With respect to the State's reference to activity in Dade County, page 36 of the record contains the following statement from the undercover detective who was describing a discussion with Mr. Carbajal about Mr. Carbajal's cousin's activity: "I told him went to Miami. He said no it's, it's better than that." Not only is this statement vague as to its actual meaning even when viewed in the surrounding context, but there is absolutely no indication that this statement or the underlying activity, whatever it is, formed the basis for the charges against Mr. Carbajal. A purported recording of Mr. Carbajal in which he allegedly stated "we used to have to go over to Miami a guy we knew over there," (R. 42), is likewise vague and inapposite because, again, there is no indication that the past conduct referenced

had any bearing on the charges actually filed against Mr. Carbajal. The information is dispositive, and it does not contain any suggestion of multi-circuit activity. (*See* IBR at 16-20); *see, e.g., Winter v. State*, 781 So. 2d 1111, 1116 (Fla. 1st DCA 2001).

**2. Where a Statewide Prosecutor Lacks Jurisdiction, the Trial Court's Jurisdiction Is Never Properly Invoked.**

The State disputes the long line of authority holding that a statewide prosecutor's lack of jurisdiction results in the court never acquiring subject matter jurisdiction. The State's argument is unsupported by any authority and fails to properly consider the statutory and constitutional grounds for the rule that a statewide prosecutor without jurisdiction cannot invoke a court's subject matter jurisdiction regardless of the category of the crime alleged. (*See* IBR at 16-20).

Contrary to the State's assertion, Mr. Carbajal's plea did not in any way affirm, waive, or invite error as to subject matter jurisdiction because just as a court cannot confer subject matter jurisdiction upon itself where it does not otherwise exist, a criminal defendant cannot create subject matter jurisdiction either. (*See* IBR at 9, 16-17 (addressing rule that subject matter jurisdiction defects cannot be waived)); *Westgate Miami Beach, Ltd. v. Newport Operating Corp.*, 16 So. 3d 855, 858 (Fla. 3d DCA 2009) (noting invited error and judicial estoppel doctrines cannot apply to confer subject matter jurisdiction where it did not exist),

*review granted*, 22 So. 3d 69 (Fla. 2009); *Waggy v. State*, 935 So. 2d 571, 573 (Fla. 1st DCA 2006) (holding entry of plea does not foreclose later claim premised on trial court's lack of subject matter jurisdiction). The State's citation to cases addressing *personal jurisdiction*, which can be waived, as opposed to *subject matter jurisdiction*, which cannot, are inapplicable.

### **CONCLUSION**

Based on the foregoing reasons, Petitioner, David Carbajal, respectfully requests that this Court reverse the decision of the Second District Court of Appeal with instructions to remand to the trial court to vacate the judgment and sentence and all resulting rulings entered against Mr. Carbajal without jurisdiction, along with any further relief deemed just and appropriate in this matter.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 2, 2010, a true and accurate copy of the foregoing has been furnished by U.S. Mail to:

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**CERTIFICATE OF COMPLIANCE**

I HERBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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