

which everybody is so upset about now where prosecutors and judges were not dealing with the element of malice in the offense of second degree murder. In that instance, one of the essential elements was not included in the charge that the judge made to the jury. So one of the essential elements was not considered by the jury. If that element could not be proved beyond a reasonable doubt, the offense could not be deemed to have been committed. In this situation, if the element that makes the offense is the gun, you cannot make the use of the gun a secondary offense to be tacked on top of this one. You couldn't have the offense without the gun, so when the gun is an essential element...

SENATOR HALL: One minute.

SENATOR CHAMBERS: ...the fact that the gun is used cannot be a basis for creating a separate distinct offense. That's what the language is designed to make clear. If you follow Senator Abboud's lead and you reject this language, what will you say if a prosecutor mischarges and it goes before an appellate court and the court says what I'm saying, what Senator Lindsay's language is saying. People will say, why didn't the Legislature get it right? This is the opportunity to get it right. You're not excusing somebody, as Senator Abboud said, if they come up with a gun and put it in your face and take your money. See, robbery is an offense...

SENATOR HALL: Time. Thank you, Senator Chambers. Senator Lindsay, your light is next.

SENATOR LINDSAY: Thank you, Mr. President, and members, I have to clear a couple of things up here. First of all, Senator Witek, I don't mind if you don't vote for portions of this amendment. I'm not going to vote for portions of this amendment. If the whole thing comes to a vote and there's stuff in there that's not good, I'm going to vote against that. The idea was to debate the bill and this is a way to debate the bill rather than...because we have not yet debated the bill. We've debated a lot of amendments to committee amendments but that's all we did by going through the eight hours. I intend also to vote against several of these provisions. I don't think they are good policy. I'm not trying to weaken the bill. I'm saying we ought to debate the bill. And when we get there, when we...Senator Abboud has mentioned on this one the explanation is just...I don't think it's correct. What this has to do has