

develops, in the course of the trial, you may prove beyond a reasonable doubt that one of the...let's say there were two people in the car with a gun, that one of those two persons fired the weapon that caused the damage or the injury and thus you've got a conviction. On the other hand, the evidence may not rise to the point where the jury feels comfortable with that and if you have the charge of...that you say can't be charged here as a multiple or a second offense then you wouldn't be able to have that charge for the jury to consider, so they would have to, first of all, the prosecutor would have to make an election right away as to whether or not he had enough evidence before trial to charge the drive-by shooting. If he felt there was a chance he didn't, he would have to drop to the other offense and go only on the other offense. Is that correct, or am I...am I misstating something?

SENATOR LINDSAY: Well, I...I don't think, first of all, as a county attorney, if you don't have the evidence, I don't think you...and correct me if I'm wrong, Curt, I've never been a county attorney, but if you know you don't have the evidence to get a conviction, ethically, can you file that charge?

SENATOR BROMM: Well, you don't...

SENATOR LINDSAY: I mean,...

SENATOR BROMM: ...you don't know a lot of times, you have circumstantial evidence, you have statements, you have people changing their testimony at some...you know, sometimes people change their statements. But let's assume that you've got some evidence...

SENATOR LINDSAY: A good faith.

SENATOR BROMM: ...to make a prima facie case, let's say to get by a preliminary hearing...

SENATOR LINDSAY: Okay.

SENATOR BROMM: ...to charge the drive-by shooting offense but because it's not rock-clad solid you go ahead and charge the other crime of possession of the...of the weapon. I'm not quoting it exactly right but that's the other idea of it. I think...I think if we adopted your amendment, I would be precluded from doing that.