

SUPREME COURT OF LOUISIANA

No. 02-K-2531

STATE OF LOUISIANA

v.

CLIFFORD OCHELTRIE

On Writ of Certiorari to the  
Fourth Circuit Court of Appeal

PER CURIAM:

Granted in part; denied in part. The state did not seek review in this Court of the Fourth Circuit's order of January 18, 2002, directing the trial court to grant the defendant's motion to quash and confining prosecution of the case to the dates alleged in the original bill of information. Acting pursuant to that uncontested order, the trial court quashed the bill of information and ordered the defendant discharged from his bail obligation on January 22, 2002. The new bill of information filed by the state on March 12, 2002, charging the defendant with the same offense, "related back" to the first prosecution, not as a matter of this Court's decision in State v. Case, 357 So.2d 498 (La. 1978), which permits amendment of an extant bill of information, but as a matter of La.C.Cr.P. art. 576. That statute gives the state six months from the granting of a motion to quash a timely-filed indictment "for any defect, irregularity, or deficiency," to institute a new prosecution "for the same offense or for a lesser offense based on the same facts . . . ." The state's second bill of information charging the defendant with the same offense was therefore timely filed on March 12, 2002, less than six months after

the quashing of the original bill of information, because the original bill had been timely filed within four years of the commission of the offense. La.C.Cr.P. art. 572(2).

The trial court therefore erred in quashing the second bill of information. However, because institution of a new prosecution for the same offense must also as a matter of La.C.Cr.P. art. 576 rest on the "same facts," the state may not enlarge the time frame alleged in the original bill of information for purposes of proving additional acts committed by the defendant in support of the single count of theft charged against him. The state is therefore entitled to amend its bill of information to conform the allegations to those of the original bill of information, i.e., that the defendant committed theft of currency valued at more than \$500 between August 19, 1995, and November 20, 1997.