

>> NEXT CASE WILL BE MIRANDA
VERSUS STATE.

>> WHENEVER YOU'RE READY.
GIVE YOU A CHANCE TO SET UP
THERE.
READY?

>> MAY IT PLEASE THE COURT, JOHN
EDDIE MORRISSON ON BEHALF OF
HUGO MIRANDA.

I'LL ATTEMPT TO RESERVE FIVE
MINUTES FOR REBUTTAL.
SEE HOW SUCCESSFUL I AM.
IN EVERY OTHER CIRCUIT IN EVERY
OTHER DISTRICT IN THIS STATE, IF
A DEFENDANT IS INCOMPETENT,
DEFENDANT MUST EITHER BE
RELEASED ON CONDITIONAL RELEASE
OR COMMITTED TO STATE HOSPITALS.
THAT COMMITMENT IS UNDER A
STATUTE, HAS DEFINITE CRITERIA.
THERE'S A DEFINITE TREATMENT
PROVIDER, THE DEPARTMENT OF
CHILDREN AND FAMILIES.
AND IT'S DONE ONLY BY THE
CIRCUIT COURT.

IN THE THIRD DISTRICT COURT OF
APPEAL, NONE OF THOSE THINGS ARE
TRUE.

THERE IS NO STATUTE GOVERNING
WHEN A PERSON CAN BE SENT TO
JAIL AS INCOMPETENT.

THERE IS NO CRITERIA.

IT IS BROAD DISCRETION.

THERE IS NO TREATMENT PROVIDER.

>> LET ME LOOK AT THE THIRD
DISTRICT OPINION IN THIS CASE,
AND THE THIRD DISTRICT BASICALLY
SAYS THAT THIS CASE HAS TO GO
BACK TO THE TRIAL COURT BECAUSE
THERE WERE NOT FINDINGS MADE
THAT WOULD SUPPORT THAT HE WAS
INCOMPETENT, THAT THERE WAS ANY
TREATMENT THAT WAS AVAILABLE
THAT WOULD RESTORE HIS
COMPETENCY, ALL THOSE KINDS OF
ISSUES.

AND SO MY QUESTION TO YOU IS
WHAT -- ISN'T THAT THE BASIC
HOLDING OF THE THIRD DISTRICT?

>> YOUR HONOR, I BELIEVE THERE'S

TWO HOLDINGS.
THAT IS THE FIRST HOLDINGS.
I'VE NOT CHALLENGED THAT ON
APPEAL MOSTLY BECAUSE THIS IS AN
INTERLOCUTORY MATTER AND IT
DOESN'T MATTER.

>> THEN MY NEXT QUESTION TO YOU
IS ISN'T THE REST OF THE
OPINION, WHERE THE -- ISN'T IT
THE DISSENT BASICALLY REALLY
CORRECT, THAT THE REST OF THE
OPINION THAT TALKS ABOUT THE
FOUR OPTIONS REALLY PRETTY MUCH
DICTA OR AN ADVISORY OPINION?

>> NO, YOUR HONOR.

GIVEN THIS IS GOING BACK, THE
QUESTION IS WHAT CAN HAPPEN AT
THAT HEARING.

AND THAT IS THE ISSUE FOR THIS
COURT.

IN EVERY OTHER DISTRICTS THERE'S
ONLY TWO OPTIONS.

IN THE THIRD DISTRICT THEY'VE
ADDED COMMITMENT TO JAIL.

>> DO WE KNOW FROM THE RECORD
WHAT THE STATUS IS NOW?

>> THE STATUS IS AFTER THIS HE
WAS RELEASED.

HE DID NOT SHOW UP FOR THE NEXT
HEARING, HARDLY SURPRISING GIVEN
HIS INTELLECTUAL DISABILITY.

AN AC WAS ISSUED.

HE WAS PICKED UP THE NEXT DAY,
BROUGHT BEFORE THE COURT.

STILL DID NOT ASK FOR ANY
HEARING.

WAS RE-RELEASED.

HE DID NOT SHOW UP.

ANOTHER AC WAS ISSUED.

HE HAS NOT BEEN PICKED UP ON
THAT AC.

WE DO NOT KNOW WHERE HE IS.

I DEEPLY SUSPECT HE IS AT
HOMESTEAD WORKING THE GROUPS.

>> NOW, IS THERE A DISPARITY
BETWEEN THE RULE AND THE
STATUTES?

BECAUSE THE RULE SAYS THE COURT
MAY ORDER -- WHERE IS IT?
MAY ORDER TREATMENT TO BE

ADMINISTERED AT THE CUSTODIAL FACILITY.
THAT WOULD BE IF HE'S BEING HELD IN JAIL, THAT IT COULD BE ADMINISTERED TO JAIL.
IS THAT CORRECT OR INCORRECT?
>> THAT IS CERTAINLY CORRECT AS TO WHAT THE RULE SAYS.
BUT THE RULE GOVERNS TWO SITUATIONS.
BOTH PEOPLE WHO ARE INCOMPETENT AND PEOPLE WHO HAVE FRAGILE COMPETENT.
WE ARE CERTAINLY FAMILIAR WITH PEOPLE WHO BECOME COMPETENT AND DECOMPENSATE IN JAIL AND BECOME COMPETENT.
THE RULE IS DESIGNED TO AVOID THAT TO ALLOW THE COURT TO ORDER TREATMENT OF COMPETENT DEFENDANTS IN JAIL.
SO THE RULE GOVERNS TWO SITUATIONS.
THE STATUTE SIMPLY TALKS ABOUT INCOMPETENT DEFENDANTS.
I DON'T THINK THERE'S INCONSISTENCY.
I DON'T THINK ANYBODY UNDERSTOOD THIS RULE TO HELD WHAT THE DISTRICT HELD IT MEAN.
CERTAINLY ALL THE OTHER DC AS DID NOT UNDERSTAND THAT.
>> WHICH CASE IS FROM THE OTHER DCAS REALLY HOLD SOMETHING CONTRARY TO WHAT HAPPENED HERE, WITH THE ORDER GOING BACK UNDER THESE IDENTICAL CIRCUMSTANCES?
>> UNDER AN IDENTICAL CIRCUMSTANCES, NOT, YOUR HONOR.
BUT --
>> BY IMPLICATION --
>> THE FUNDAMENTAL LAW IN ALL THE OTHER DCAS IS THAT IF A DEFENDANT IS INCOMPETENT, THERE ARE TWO OPTIONS.
THEY ALL SAY THAT. IT'S MOSHER IN THE FIRST DCA.
IT'S JUDD IN THE SECOND DCA.
IT IS DOUSE IN THE FOURTH DCA.
>> BUT WE HAVE NO FINDING OF

INCOMPETENCE.

>> THE STATE IS APPEALING THE FINDING OF INCOMPETENCY.

THE FINDING OF INCOMPETENCY WAS ENTERED ON JANUARY 11 AND NUNC PRO TUNC BACK TO DECEMBER.

I'M SORRY.

I DON'T HAVE THE EXACT PAGE IN THE RECORD.

BUT NO.

IT REAFFIRMS THAT FINDING AGAIN IN THE SECOND ORDER.

>> WHICH OF THE CASES THAT YOU MENTIONED ADDRESS THE PROVISIONS OF THE RULE THAT'S AT ISSUE HERE?

>> NONE OF THEM ADDRESS THE RULE.

THEY ADDRESS THE STATUTE. CONFLICT IS BASED ON OUTCOMES. IT'S BASED ON HOLDINGS. IT'S NOT BASED ON WHAT A COURT CITES.

>> BUT IF A COURT -- IF ONE COURT IS ADDRESSING A HOLDING OR HAS A HOLDING THAT'S BASED ON THE PROVISIONS OF A RULE AND OTHER COURTS HAVE NOT EVEN CONSIDERED THAT RULE, IT SEEMS LIKE TO ME THAT THERE ARE JUST DIFFERENT ISSUES IN THE CASES. IN ONE CASE THERE'S AN ISSUE ABOUT THE INTERPRETATION OF THE RULE.

IN THE OTHER CASE THERE'S NOT. AT LEAST SO FAR AS WE CAN TELL FROM THE OPINION, THERE'S NOT AN ISSUE ABOUT THE INTERPRETATION AND APPLICATION OF THE RULE.

WHY ISN'T THAT RIGHT?

>> YOUR HONOR, I BELIEVE LEGAL ISSUE IS WHAT HAPPENS IN A CASE. A LEGAL ISSUE IS NOT THE LEGAL BASIS THE COURT CITES FOR REACHING THAT CONCLUSION.

>> THE LEGAL ISSUE DEPENDS ON THE ARGUMENTS THAT ARE PRESENTED, THE REASONS ADVANCED FOR A PARTICULAR RESULT. YOU'RE SAYING YOU JUST LOOK AT

THE RESULTS.

I DON'T THINK THAT'S CONSISTENT WITH THE WAY WE UNDERSTAND HOLDINGS.

>> I BELIEVE THAT IS, YOUR HONOR.

I MEAN, THE QUESTION IS WHAT CAN HAPPEN.

IN EVERY OTHER DCA IN THE STATE, THERE'S TWO OPTIONS.

IN THE THIRD DCA THERE ARE THREE OPTIONS.

I DON'T KNOW WHAT CLEARER CONFLICT THERE CAN BE.

>> BUT THAT'S LIKE SAYING A STATUTE IS UPHELD IN ONE STATUTE AGAINST A DUE PROCESS CHALLENGE, BUT IN ANOTHER CASE IT IS INVALIDATED ON THE BASIS OF EQUAL PROTECTION.

AND THEN YOU'RE GOING TO SAY THERE'S A CONFLICT BETWEEN THOSE TWO?

BECAUSE THEY'RE LOOKING AT DIFFERENT REASONS, DIFFERENT -- HOW WOULD THERE BE A CONFLICT? IT'S A DIFFERENT ISSUE.

>> I'M SORRY.

I APOLOGIZE FOR SPEAKING OVER YOU.

I BELIEVE THAT HOW A COURT GETS TO A RESULT IS NOT THE -- I MEAN, YOUR HONOR'S EXAMPLE IS CORRECT, BUT I THINK THAT'S A DIFFERENT --

>> I DON'T UNDERSTAND WHY THAT ISN'T -- THAT EXAMPLE I GIVE ISN'T PERFECTLY ANALOGOUS TO THE CIRCUMSTANCES HERE.

>> THE SIMPLE ANSWER IS BECAUSE YOU WOULD NEVER HAVE CONFLICT. THE COURTS SIMPLY SAY I FIND A BASED ON ABC, AND THE OTHER COURT SAYS I FIND NOT A BASED ON X, Y, Z, AND BECAUSE THE COURTS WON'T TALK TO EACH OTHER, THIS COURT DOESN'T HAVE CONFLICT JURISDICTION?

I BELIEVE -- AND THIS IS AN IMPORTANT ISSUE.

I MEAN, EVERY COUNTY COURT JUDGE IN FLORIDA IT LOOKING AT THIS, AS TO WHETHER THEY CAN SENTENCE INCOMPETENT DEFENDANTS TO JAIL. YOU CAN'T DO IT IN ALL THE OTHER DCAS.

YOU CAN DO IT IN THE THIRD DCA. THIS IS AN IMPORTANT DECISION AND IT NEEDS TO BE DECIDED BY THIS COURT.

WHAT'S THE LAW IN THE STATE OF FLORIDA?

IS IT TWO OPTIONS OR THREE?

>> WELL, AND WE SHOULDN'T WAIT TO SEE EXACTLY WHAT HAPPENS AFTER A HEARING ON THIS?

THIS HAS JUST BEEN IN THE NATURE OF A REMAND.

SO WHY SHOULD NOT THE SYSTEM AWAIT THE OUTCOME TO SEE WHAT THE OUTCOME IS TO MAKE A DETERMINATION ABOUT SOMETHING? IF NOT, THEN WE'RE JUST GOING TO BE OFFERING ADVISORY OPINIONS ON SOMETHING.

I MEAN, THIS SAYS THAT -- TO ME IT SAYS THAT IT CRIES OUT FOR A HEARING, ACTUALLY.

>> I DISAGREE WITH THAT, YOUR HONOR, BUT LET ME JUST ADDRESS TO YOUR POINT.

FIRST, WE KNOW WHAT THE TRIAL COURT JUDGE HAS DONE.

TRIAL COURT JUDGE FIRST SENTENCED HIM TO JAIL -- SORRY. STRIKE THE WORD "SENTENCED." CONFINED HIM TO JAIL.

SECOND, BASED ON THE ARGUMENT I'VE BELOW AND HERE, RELEASED HIM.

SO WE KNOW THAT MUCH.

SECOND, WITH ALL DUE RESPECT, WAITING FOR MENTALLY INCOMPETENT PEOPLE TO BE LEFT IN JAIL FOR A COUPLE, TWO OR THREE YEARS BEFORE THIS COURT CAN REACH A DECISION ON THIS AND SOLVE THIS CONFLICT I DO NOT THINK IS IN THE BEST INTEREST OF FLORIDA AT ALL.

THIS CASE IS GOING TO BE
REMANDED TO JUDGE RODRIGUEZ.
JUDGE RODRIGUEZ NEEDS TO KNOW
THE FOLLOWING: WHAT CAN I DO?
WE ALREADY KNOW WHAT HE WANTS TO
DO.

THE STATE'S MADE IT CLEAR IN HIS
BRIEF.

HE WANTS TO HOLD HIM IN JAIL.
HE NEEDS TO KNOW THE ANSWER TO
THAT QUESTION.

I MEAN, JUST AS A VERY PRACTICAL
MATTER FOR THAT JUDGE SITTING IN
FRONT OF THAT HEARING.

WHAT CAN I DO?

AND I BELIEVE THAT THAT TAKES US
WELL OUT OF THE IDEA OF A --

>> ONE OF THE THINGS HE CAN DO
IS HE CAN COMMIT HIM IF HE GOES
THROUGH THE PROCESS OF
DETERMINING WHETHER HE MEETS THE
CRITERIA FOR COMMITMENT, CAN'T
HE?

I MEAN, YOU SEEM TO BE ASSUMING
THAT HE'S GOING TO SEND HIM --
HAVE TREATMENT IN JAIL PURSUANT
TO THE RULE.

BUT ANOTHER OPTION, OF COURSE,
IS THE COMMITMENT IF HE MEETS
THAT CRITERIA, AND HE NEVER WENT
THROUGH -- AS I UNDERSTAND THE
THIRD DISTRICT OPINION, THEY ARE
SAYING THAT HE NEVER WENT
THROUGH THE PROCESS OF MAKING A
DETERMINATION OF WHETHER OR NOT
HE MET THE CRITERIA FOR
INVOLUNTARY COMMITMENT AND
WHETHER OR NOT THERE WAS ANY
KIND OF TREATMENT THAT HE COULD
GET THAT WOULD RESTORE HIS
COMPETENCY.

>> YOUR HONOR IS LARGELY
CORRECT.

I BELIEVE THAT'S WHAT THE THIRD
DISTRICT COURT OF APPEALS HELD.
IT DOES NOT MATCH ANYTHING IN
THE RECORD.

THE RECORD HAS THE DOCTOR'S
OPINIONS, IT HAS THE STATE
STIPULATING HE DOES NOT MEET THE

CRITERIA FOR COMMITMENT AND THE JUDGE ACCEPTING THAT STIPULATION AND ENTERING AN ORDER OF INCOMPETENCE.

THIS HAPPENS, I'M NOT EXAGGERATING, HUNDREDS AND HUNDREDS OF TIMES A YEAR IN EXACTLY THAT WAY IN MIAMI-DADE COUNTY.

THE STATE NEVER -- THE ONLY TIME THE STATE ASKS FOR A HEARING WAS LATER.

IT WAS ON SOMETHING THAT WAS NOT THE ISSUE.

>> I THOUGHT THEY STIPULATED THAT HE WAS INCOMPETENT, NOT THAT HE --

>> THEY STIPULATED TO THE DOCTOR'S REPORTS, YOUR HONOR. THE STIPULATION'S ALWAYS TO THE EVIDENCE.

AND THE DOCTOR'S REPORTS ARE UNANIMOUS.

HE DOES NOT MEET THE CRITERIA FOR COMMITMENT.

THE STATE WISHES TO REVERSE THAT STIPULATION?

>> THIS SEEMS LIKE -- THIS IS A CASE WHERE HE WAS CHARGED WITH -- WAS IT AGGRAVATED STALKING?

>> YES, MA'AM.

>> AND THEN HE GETS OUT AND HE STALKS THE SAME TWO VICTIMS AND THEY FIND THAT HE'S NOT A DANGER TO HIMSELF OR ANYONE ELSE?

>> YES, MA'AM.

AND I BELIEVE IT'S SIMPLY THAT ONCE THE PSYCHOLOGIST AND DOCTORS LOOKED AT HIM, THEY REALIZED WHAT HAD HAPPENED.

NO ONE I THINK UNDERSTOOD THAT HE WAS INTELLECTUALLY DISABLED. AND LET'S BE CANDID.

PEOPLE ARE SOMETIMES AFRAID OF THE INTELLECTUALLY DISABLED. AND I THINK THAT'S PROBABLY WHAT HAPPENED.

THAT'S WHAT THE DOCTORS CONCLUDED.

THE STATE STIPULATED THAT.

THE STATE WISHES TO REVERSE
THEIR STIPULATION, THE STATE IS
WELCOME TO DO THAT.

IF THE STATE WISHES TO CALENDAR
THIS FOR A HEARING, PRESENTING
ANY EXPERTS THEY WISH, THEY ARE
ALWAYS FREE TO DO THAT.

THIS IS AN INTERLOCUTORY ORDER.
THERE IS -- THE HEARING IS NOT
THE ISSUE.

THE ISSUE IS WHAT ARE THE
ALTERNATIVES THAT THE COURT
FACES.

AND I BELIEVE THAT THE THIRD
ALTERNATIVE IS NOT WHAT THIS
COURT INTENDED.

I BELIEVE THAT IT VIOLATES
SEPARATION OF POWERS, BECAUSE
IT'S NOT IN THE STATUTE.

IT'S DEFINITELY A VIOLATION OF
EQUAL PROTECTION, BECAUSE IT'S
NECESSARILY A LESSER STANDARD OF
COMMITMENT.

THERE IS NO TREATMENT IN JAIL.
THERE'S NO ENTITY PROVIDING
TREATMENT IN JAIL.

AND FAR MORE IMPORTANTLY, IT
OPENS THIS UP TO THE COUNTY
COURT JUDGES TO JAIL EVERY
MENTALLY ILL DEFENDANT WHO'S
INCOMPETENT.

>> YOU ARE MAKING ARGUMENTS
BASICALLY ON SHOULD BE A
CERTIFIED QUESTION OF GREAT
PUBLIC IMPORTANCE, IT SEEMS TO
ME.

BUT THAT'S NOT WHAT'S BEFORE US.
WE'RE HERE ON CONFLICT, RIGHT?

>> YES, SIR.

>> SO YOUR ARGUMENTS, THOUGH,
SEEM TO INDICATE THIS IS A
MATTER OF STATEWIDE, GENERAL,
GREAT PUBLIC IMPORTANCE AND
THEREFORE WE SHOULD TAKE THIS
CASE.

BUT THERE'S NO PETITION HERE ON
THAT BASIS.

>> THE PETITION IS NOT ON THAT
BASIS.

THE PETITION IS ON THE BASIS OF

THE CONFLICT AND ALSO ON THE
IMPACT ON THE SHERIFFS.
THE SHERIFFS, EVEN IF THEY DON'T
HAVE TO PROVIDE TREATMENT, THEY
HAVE TO HOUSE ALL THESE PEOPLE.
THIS IS A VERY SERIOUS PROBLEM
IN OUR JAILS.

I MEAN, THE CRIMINALIZATION OF
MENTAL HEALTH HAS BECOME A VERY,
VERY SERIOUS PROBLEM IN THE
STATE OF FLORIDA.

BUT THE CONFLICT IS THERE.
THE OTHER DCAS ALL SAY THERE'S
TWO OPTIONS.

THIS DCA SAYS THERE'S THREE
OPTIONS.

WHICH ROAD THEY GO TO GET TO
THAT RESULT, THIS IS NOT THE
DIFFERENCE IT'S OKAY UNDER EQUAL
PROTECTION BUT NOT DUE PROCESS.
THIS IS HOW MANY OPTIONS ARE
THERE?

AND ONE HAND SAYS TWO AND ONE
SAYS THREE.

WHAT'S THE ANSWER?

AS A PRACTICAL MATTER, WHEN
JUDGE RODRIGUEZ GETS THIS CASE
BACK, WHAT ARE HIS OPTIONS?
DOES THAT VARY DEPENDING ON
WHERE HE'S SITTING?

YES, IT DOES.

RIGHT NOW IN THE STATE OF
FLORIDA THAT VARIES DEPENDING ON
WHICH JURISDICTION HE'S IN.

I BELIEVE THAT'S A CONFLICT.
I BELIEVE I'M INTO MY REBUTTAL
TIME.

I THANK YOU FOR YOUR ATTENTION.

>> MAY IT PLEASE THE COURT, MY
NAME IS JEFFREY GELDENS,
ASSISTANT ATTORNEY GENERAL, HERE
ON BEHALF OF THE RESPONDENT.
JUSTICE POLSTON, YOU NAILED IT
ON THE HEAD WITH REGARDS TO THE
QUESTION.

WITH REGARD TO JURISDICTION IF
IT IS A PUBLIC QUESTION.

NO JURISDICTION.

THE ORDER AT ISSUE BASICALLY
SAYS EXACTLY WHAT THREE OF THE

JUSTICES HAVE ALREADY POINTED OUT, WHICH IS GO BACK AND FOLLOW THE STATUTE.

THAT'S NOT A CONFLICT AND THAT DOESN'T CREATE ANY ISSUES WITH REGARD TO --

>> THE CONCERN APPEARS TO BE THAT THE OPTION OF TREATING COMPETENCY IN JAIL -- AND THIS IS OBVIOUSLY A HUGE ISSUE AROUND THE STATE, BUT PARTICULARLY IN MIAMI-DADE COUNTY, WHERE EVERYTHING THAT IS BEING DONE DOWN THERE IS TO AVOID THE JAILS BEING USED FOR MENTALLY ILL PEOPLE.

ISN'T IT HOLDING EVEN IF IT'S DICTA, BUT IT'S PART OF THE CASE THAT AN ACCEPTABLE ALTERNATIVE IS TO PROVIDE TREATMENT IN JAIL, WHERE THERE IS NO STATUTORY AUTHORITY FOR THAT?

AND THAT'S A -- OR IS THE STATE SAYING, NO, NO, THAT COULDN'T HAPPEN.

WE WOULD NOT ADVOCATE FOR TREATMENT IN JAIL.

>> THE ANSWER TO THAT QUESTION IS NO AND THE REASON IS --

>> NO WHAT?

>> NO, IT'S NOT -- THE ORDER FROM THE DCA DOESN'T SAY TREAT THEM IN JAIL.

>> AND THE STATE IS SAYING EVEN THOUGH WHATEVER THE APPELLATE DECISION SAYS, THE STATE WOULD NEVER ADVOCATE THAT THERE BE TREATMENT TO RESTORE COMPETENCY FOR AN INCOMPETENT PERSON, NOT SOMEONE THAT DECOMPENSATES IN JAIL?

>> WELL, IT HAS TO ALREADY EXIST.

THAT'S WHAT THE STATUTE CONTEMPLATES.

THE STATUTE SAYS YOU CONSIDER -- YOU START WITH COMPETENCY, WHICH FIRST OF ALL WITH REGARD TO COMPETENCY THERE'S ACTUALLY IN THIS CASE -- ALTHOUGH THERE WAS

A STIPULATION, THAT STIPULATION DIDN'T CONTEMPLATE THE ISSUE OF RESTORABILITY.

YOU CAN LOOK AT THE DOCTOR'S REPORT.

>> LET'S JUST TRY TO ANSWER MY QUESTION.

HE'S INCOMPETENT.

CAN -- UNDER THE THIRD DCA DECISION, IS THE JAIL UNDER THE STATUTE AND THE RULE AN APPROPRIATE PLACE FOR THERE TO BE TREATMENT TO RESTORE COMPETENCY?

>> THAT ASSUMES THERE'S A RESTORABILITY OPTION IN THE COUNTY JAIL.

THAT'S WHY THE DCA REMANDED. HE'S NOT GOING TO BE FORCED TO PARTICIPATE IN A PROGRAM THAT DOESN'T EXIST.

>> IS THAT UNDER THE DEPARTMENT OF CHILDREN AND FAMILIES OR UNDER -- DO THEY GO INTO JAILS TO HAVE PROGRAMS TO RESTORE COMPETENCY?

>> WELL, PART OF THE PROBLEM WITH THE TRIAL COURT'S ORDER IS WE DON'T KNOW THAT AS TO THIS DEFENDANT.

>> WE DO REALIZE -- AND IT MAY BE THAT WE DON'T HAVE JURISDICTION, BUT THIS IS A HUGE, HUGE ISSUE BECAUSE WE'RE TAKING SOMEBODY WHO WAS -- AGAIN, I'M NOT MINIMIZING THE STALKING, BUT CHARGES MANY TIMES IN THE COUNTY COURT ARE MISDEMEANORS, AND THEN THEY'RE BEING COMMITTED -- THEY'RE BEING PUT INTO JAIL AND THEN THERE ISN'T ADEQUATE FACILITY OR DOLLARS TO TREAT THEM, AND THEY JUST REMAIN IN JAIL AND THIS IS WHY JUDGE LEIFMAN IN MIAMI-DADE HAS GONE STATEWIDE TO TRY TO SAY, NO, THE JAILS CAN'T BE THE PLACE TO PUT MENTALLY ILL PEOPLE.

SO IT IS A PRETTY CONCERN.

WHETHER THERE'S NOT
JURISDICTION, THAT'S ANOTHER
QUESTION.

BUT I'M CONCERNED WITH THIS
DICTA THAT THE THIRD DISTRICT,
IF IT IS DICTA, ENGAGED IN.
I'M STILL NOT SURE WHAT THE
STATE'S POSITION IS ON IT.

>> THE STATE'S POSITION IS
THAT'S A QUESTION FOR ANOTHER
DAY.

THIS DEFENDANT IS CHARGED WITH A
FELONY, THREE FELONIES.

AND SO HE'S NOT IN COUNTY COURT.
HE'S IN CIRCUIT COURT.

AROUND THE DETENTION HAPPENS IN
THE COUNTY JAIL, BUT HE'S NOT IN
COUNTY COURT.

SO TO THE EXTENT THERE'S AN
ISSUE WITH REGARD TO DEFENDANTS
IN COUNTY COURTS OR CHARGED WITH
MISDEMEANORS, THAT'S NOT THIS
DEFENDANT.

THIS COURT DOESN'T RENDER
ADVISORY OPINIONS.

>> BUT DOES THE THIRD DISTRICT
MAKE A RULING ABOUT WHERE
COMPETENCY CAN BE -- WHERE YOU
CAN BE TREATED BASED ON WHETHER
THERE'S A FELONY OR MISDEMEANOR?

>> THE THIRD DISTRICT SAID THAT
THE TRIAL JUDGE HAD TO CONSIDER
THE OPTIONS AVAILABLE FOR THIS
DEFENDANT.

THE STATUTE SPECIFICALLY SAYS
WHEN THE EXPERTS RENDER THEIR
REPORT, THEY'RE REQUIRED TO
CONSIDER CERTAIN THINGS.

THEY HAVE TO CONSIDER -- AND
IT'S IN SECTION 916.3012, THE
LAST ONE OF 1, WHERE IT LAYS OUT
WHAT THE ELEMENTS ARE THAT THE
EXPERTS ARE SUPPOSED TO BE
CONSIDERING.

SO THAT'S, AGAIN, THE REASON
THAT THIS CASE DOESN'T INVOLVE
THE CONCERNS THAT THE PETITIONER
IS RAISING.

THIS DEFENDANT WAS RELEASED ON
RECOGNIZANCE.

YOU HAVE AN ISSUE HERE WITH REGARD TO WHAT IS TURNING INTO AN ADVISORY PETITION.

IT'S ALL OVER THE PETITIONER'S ARGUMENT SAYING THIS IS A POLICY ISSUE, THIS COURT SHOULD ADDRESS IT.

THE ORDER ON APPEAL IS A QUESTION OF STATUTORY RULE INTERPRETATION AS APPLIED TO THIS DEFENDANT AND THAT ORDER SPECIFICALLY SAYS THAT THE DEFENDANT IS TO WEAR A GPS, STAY AWAY FROM THE VICTIMS, ENROLL IN A SCHOOL OR TEACHING FACILITY IN THE HOMESTEAD AREA TO LEARN HOW TO READ AND WRITE.

WHAT THE THIRD DISTRICT'S OPINION SAYS IS THAT LAST SENTENCE IS INCONSISTENT WITH THE STATUTORY REQUIREMENTS BECAUSE IT LOOKS LIKE WHAT YOU'RE ORDERING IS CONDITIONAL RELEASE UNDER THE STATUTE, BUT THE PROVISION IN THE STATUTE THAT REQUIRES CONDITIONAL RELEASE SAYS IT HAS TO BE CONSISTENT WITH A WRITTEN PLAN. SO BACK TO THE IDEA IF THIS IS A COMMIT OR RELEASE CASE, IT'S NOT, BECAUSE THIS DEFENDANT WASN'T COMMITTED.

TO THE EXTENT HE WAS RELEASED, IT WAS INCONSISTENT WITH THE STATUTE.

THE DCA SAID GO BACK AND GO THROUGH THE STATUTE.

THAT'S WHY, YOUR HONORS, THE STATE SUGGESTS THAT THE DCA CAN BE AFFIRMED AND THERE'S NO REASON TO REVISIT THAT DETERMINATION IN THIS CASE BECAUSE THAT'S THE ONLY ISSUE. AND IF THERE ARE NO OTHER QUESTIONS, REQUEST YOU AFFIRM. THANK YOU, YOUR HONORS.

>> REBUTTAL?

>> MAY IT PLEASE THE COURT, I DO NOT BELIEVE IN ANY WAY THIS IS AN ADVISORY OPINION.

THIS IS A VERY, VERY LIVE ISSUE
OF WHAT THIS PARTICULAR JUDGE IN
THIS PARTICULAR CASE CAN DO.
THERE IS -- THERE'S NO IFS, ANDS
OR BUTS ABOUT IT.

AT THE END WHETHER THIS GOES
BACK, WHAT AM I GOING TO TELL
JUDGE RODRIGUEZ?

WHAT ARE HIS OPTIONS?

I BELIEVE THAT IS VERY MUCH A
LIVE ISSUE.

THIS IS IN NO WAY AN ADVISORY
OPINION.

THAT IS WHY THE THIRD DCA
DECIDED THE ISSUE.

THEY ARE BOUND BY THE RULE.
THEY DON'T ISSUE ADVISORY
OPINIONS ANY MORE THAN THIS
COURT DOES.

THAT'S WHY THEY DECIDED IT.
THAT'S WHY YOU NEED TO DECIDE
IT.

AND FUNDAMENTALLY, THE STATE
ADMITS THE THIRD DCA'S
INTERPRETATION OF THIS RULE IS
JUST WRONG.

IT'S A VIOLATION OF THE
CONSTITUTION.

IT'S A HUGE PROBLEM.

AND IT CANNOT BE ALLOWED TO
STAND.

I'LL TAKE ANY OTHER QUESTIONS
FROM THE COURT.

THANK YOU FOR YOUR TIME AND
ATTENTION.

>> THANK YOU FOR YOUR ARGUMENTS.
WE ARE IN RECESS UNTIL TOMORROW
AT 9:00.

>> ALL RISE.