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Ronald Cote v. State of Florida

MR. CHIEF JUSTICE: GOOD MORNING, AND WELCOME TO THE TUESDAY ORAL ARGUMENT CALENDAR FOR THE FLORIDA SUPREME COURT. WE ARE CERTAINLY WISH TO WELCOME EACH OF OF COURSE FORCE AND -- WE CERTAINLY WISH TO WELCOME EACH OF OUR VISITORS AND THE DEAN OF THE LAW SCHOOL WHO IS HEADING THE PROGRAM. WE ARE GLAD FOR YOU TO BE HERE AND YOUR INTEREST IN PURSUING LEGAL EDUCATION. THE FIRST CASE ON THE COURT'S CALENDAR THIS MORNING IS COTE VERSUS STATE. MR. ALBERTINE.

THANK YOU. MAY IT PLEASE THE COURT. MY NAME IS RICHARD ALBERTINE. I AM HERE THIS MORNING REPRESENTING RONL COTE. -- RONALD COTE. WE PETITION THIS COURT TO EXERCISE DISCRETIONARY REVIEW, TO DECIDE THE QUESTION WHETHER THE SECOND DISTRICT COURT OF APPEALS'S DECISION ON APPEAL AND DECISION IN STATE VERSUS COTE IS IN EXPRESS AND DIRECT CONFLICT WITH THE FIFTH DISTRICT COURT OF APPEALS ON MTV -- ON MT V STATE. THAT IS WHETHER PUNISHMENT AND PROSECUTION WERE BOTH CONTEMPT, IN THE JUVENILE COURT AND PROSECUTION AND PUNISHMENT IN THE CRIMINAL DIVISION OF THE CIRCUIT COURT, FOR VIOLATION OF COMMUNITY CONTROL. VIOLATES THE PROHIBITION AGAINST DOUBLE JEOPARDY.

NOW, THE NT CASE INVOLVED A JUDGE IN THE SAME DIVISION. IS THAT CORRECT? WE ARE NOT TALKING ABOUT TWO DIFFERENT DIVISIONS OF THE CIRCUIT COURT.

THAT IS A DISTINCTION.

IS THAT RIGHT?

THAT'S CORRECT.

WHY DOESN'T THAT DISTINGUISH THAT CASE FROM THIS CASE, IN TERMS OUR JURISDICTION, BASED ON DIRECT CONFLICT?

WELL, --

HERE WE DO HAVE. WE ARE PRESENTED WITH A DIFFERENT DIVISIONS OF THE CIRCUIT COURT. IS THAT CORRECT?

THAT'S CORRECT.

THE REGULAR CRIMINAL DIVISION AND THE JUVENILE DIVISION.

THAT'S CORRECT.

BUT NT INVOLVED JUST JUVENILE DIVISION, RIGHT?

IT APPEARS SO, FROM READING THE OPINION. THAT'S CORRECT. MR. COTE WOULD CONTEND THAT THE DISTINCTION BETWEEN THE, HIS CASE INVOLVED DIFFERENT DIVISIONS, VERSUS NT, WHERE IT INVOLVED THE SAME DIVISION, IS NOT MATERIAL TO RESOLUTION OF THE DOUBLE JEOPARDY ARGUMENT ISSUE, BECAUSE THE CIRCUIT COURT HAD SUBJECT MATTER JURISDICTION OVER THE CAUSE, AND PERSONAL JURISDICTION OVER THE PARTIES, SO THAT WHETHER IT WAS THE JUVENILE DIVISION OR THE CRIMINAL DIVISION, THE CIRCUIT COURT STILL HAD SUBJECT MATTER JURISDICTION, SO THAT THE PROCEEDING WOULDN'T HAVE BEEN A NULLITY, AND ANY JUDGMENT

RENDERED BY EITHER ONE WOULDN'T HAVE BEEN VOID.

WERE THE SEQUENCE OF EVENTS HERE EXACTLY AS THEY WERE IN NT? WAS THERE A CRIMINAL INTENT FIRST?

IT IS JUST REVERSED. IN MR. COTE'S CASE, THERE WAS THE IN DIRECT CRIMINAL CONTEMPT FIRST AND THEN THE VIOLATION OF COMMUNITY CONTROL AFTER. IN NT, IT WAS A REVERSE OF THAT. IT WAS THE VIOLATION OF COMMUNITY CONTROL, AND THEN THERE WAS ANOTHER VIOLATION OF COMMUNITY CONTROL, AS WELL, THE JUDGE ISSUED A SHOW CAUSE ORDER FOR IN DIRECT CRIMINAL CONTEMPT, AND THE NT, IN THAT CASE, MOVED TO DISMISS DOUBLE JEOPARDY GROUNDS, AND THEY DISMISSED THE DIRECT CRIMINAL CONTEMPT.

WOULD YOU GIVE US A TIME LINE HERE, IN TERMS OF THE ADJUDICATION OF IN DIRECT CONTEMPT AND WHETHER OR NOT HE BEGAN SERVING THAT SENTENCE OF IN DIRECT CONTEMPT, BEFORE THE VIOLATION OF COMMUNITY CONTROL WAS BROUGHT? COULD YOU GIVE US A TIME LINE?

SURE.

AND THEN WHAT ACTUALLY OCCURRED ON THE GROUND.

SURE. HE WAS DIRECT-FILED, IN MARCH OF '97, GOING BACK TO THE BEGINNING HAD, IN ADULT COURT. HE ENTERED A PLEA IN JULY OF '97. THE JUDGE WITHHELD ADJUDICATION IN ADULT COURT AND IMPOSED JUVENILE SANCTION. THAT WOULD HAVE BEEN IN SEPTEMBER OF '97. HE WAS ON COMMUNITY CONTROL AND AFTER CARE PROBATION, WHEN, IN JULY, EXCUSE ME, AUGUST OF '98, THE FOLLOWING YEAR, THE JUVENILE COURT ISSUED SHOW CAUSE ORDERS FOR IN DIRECT CRIMINAL CONTEMPT.

LET ME ASK, 3W6 YOU -- BEFORE YOU GO ON WITH THAT, ONCE THE ADULT COURT ENTERED JUVENILE SANCTIONS, SHOULD THE CASE HAVE GONE BACK TO ADULT COURT, OR DOES THE IMPOSITION OF JUVENILE SANCTIONS MAKE A DIFFERENCE HERE?

THAT IS AN INTERESTING QUESTION. PARTICULARLY BECAUSE THE CASE INVOLVED, THE TIME SPAN OF THE CASE INVOLVES WHEN IT STARTED OUT ORIGINALLY UNDER CHAPTER 39, AND THEN WHEN THE IN DIRECT CRIMINAL CONTEMPT CAME ABOUT, IT WAS UNDER 985. IN CHAPTER 39, IT REALLY ISN'T ANY, THAT ISSUE DOESN'T SEEM TO BE RESOLVED, AS CLEARLY AS IT APPEARS TO BE RESOLVED IN 985, IN SECTION 233.4-E.

WHAT DOES 985 SAY?

EXCUSE ME. WHAT DOES CHAPTER 39 SAY?

NO. YOU SAID IT IS CLEARLY RESOLVED IN 985.

985 SAYS, AT.233-4-E, SAYS ANY FUTURE SANCTIONS INVOLVING JUVENILE SANCTIONS IMPOSED BY AN ADULT COURT, WILL BE BROUGHT BACK ABOUT BEFORE THE ADULT -- BROUGHT BACK BEFORE THE ADULT COURT.

IN REALITY, IN REAL LIFE, WHEN A JUDGE MAKES THE DECISION AND SENTENCEED SOMEBODY, GIVES THEM, EVEN THOUGH THEY HAVE BEEN CHARGED AS ADULT, TO GIVE THEM JUVENILE SANCTIONS, DO THE -- DOES THE SUPERVISION OR WHATEVER HAPPENS, IS THAT FALSE ALL WITHIN THE DEPARTMENT OF JUVENILE JUSTICE AND THE -- WHERE THE JUVENILE IS PLACED IS WITHIN THE DEPARTMENT OF JUVENILE JUSTICE. IS THAT HOW THAT HAPPENS?

IT APPEARS THAT WAY FROM READING THE STATUTE. 985 SEEMS TO DIRECT THE DEPARTMENT OF

JUVENILE JUSTICE TO COME BACK TO THE ADULT COURT. CHAPTER 39 ISN'T AS EXPLICIT WITH REGARD TO THAT. IT JUST HAS LANGUAGE ABOUT WHETHER SOMEONE IS IN ADULT COURT, BEEN TRANSFERRED TO ADULT COURT, THAT FUTURE ACTIONS WILL BE HANDLED, HE WILL BE TREATED AS AN ADULT, UNLESS THERE IS A PHRASE, UNLESS JUVENILE SANCTIONS ARE IMPOSED, AND THEN THERE REALLY IS NO PLACE IN CHAPTER 39 THAT I CAN SEE, THAT SAYS EXACTLY WHO HAS JURISDICTION AT THAT POINT.

BUT IN REAL LIFE, IT -- AS FAR AS, WE ARE TALKING ABOUT JURISDICTION IN THE ABSTRACT, AS TO WHETHER THE JUDGE WHO WAS SITTING IS IN THE JUVENILE DIVISION OR THE ADULT DIVISION, BUT AS YOU SAY, YOU HAVE GOT ONE CIRCUIT COURT, SO DO THE CASES GENERALLY GO BACK FOR ENFORCEMENT TO THE JUVENILE DIVISION, OR ARE THEY GOING INTO THE ADULT FELONY DIVISION?

THAT, AGAIN, IS AN AREA OF LAW THAT IS NOT CLEAR, FROM THE CASES THAT I HAVE READ. I COULDN'T FIND ANYTHING UNDER CHAPTER 39 THAT CLEARLY SAID THAT.

OKAY. SO YOU ARE NOT IN THE JUVENILE, I MEAN, AS FAR AS ASSISTANT PUBLIC DEFENDER, YOU, I AM JUST TRYING TO FIND OUT WHAT HAPPENS IN REAL LIFE, NOT WHAT -- WHAT HAPPENS IN REAL LIFE IS WHAT HAPPENED HERE, IN THIS CASE. WHAT HAPPENS IN REAL LIFE IS THAT THE ADULT COURT SENT IT BACK TO IMPOSE JUVENILE SANCTIONS, YOU KNOW, DID A PETITION, DID A JUVENILE ORDER, COMMITTING HIM, COMMITMENT ORDER TO THE DEPARTMENT OF JUVENILE JUSTICE. I BELIEVE THAT HAPPENS IN REAL LIFE. IT HAS HAPPENED IN REAL LIFE, UP TO THIS POINT.

O'CLOCK ON. NOW, WHAT, IS IT, WHO FOUGHT THE CONTEMPT? DOES THE STATE, WAS IT, OR IS IT A COURT --

IT APPEARS AS IF, WHEN SOMEONE IS ON COMMUNITY CONTROL OR SUPERVISION BY THE DEPARTMENT OF JUVENILE JUSTICE, AND CIRCUMSTANCE WHERE THEY HAVE BEEN GIVEN, THEY WERE IN ADULT COURT AND THEN THEY HAVE IMPOSED JUVENILE SANCTIONS. IF THE DEPARTMENT OF JUVENILE JUSTICE DETERMINES THAT THE YOUNGSTER IS NOT MEETING HIS RESPONSIBILITIES WITH REGARD TO THE COMMUNITY CONTROL OR WHATEVER, THE CARE IS, AFTER CARE IN THE DEPARTMENT OF JUVENILE JUSTICE, THEN THEY BRING IT TO THE COURT. THE COURT. IN CHAPTER 39, AND IN CHAPTER 985, THE COURT, IN QUOTES, UNDER THE DEFINITION, IS THE COURT IS SUPPOSED TO HAVE JURISDICTION. SO YOU KNOW, IT IS SORT OF A CIRCULAR -- WHICH COURT IS THAT?

WHAT IS THE RULE OF LAW THAT YOU BELIEVE THAT THIS COURT NEEDS TO ENTER THAT IS GOING TO GOVERN THESE CASES? WHAT IS --

I BELIEVE THE RULE --

THE PROBLEM THAT WE HAVE, AS I SEE IT HERE, WITH JURISDICTION IS THAT THE SECOND DISTRICT HAS SAID THIS IS A MATTER ON KNEES UNIQUE FACTS -- MATTER ON THESE UNIQUE FACTS THAT HAS ARISEN, AND SO I TAKE IT THAT YOU WANT US TO DISREGARD THAT AND ENTER SOME TYPE --

MR. COTE'S POSITION WOULD BE THAT THE DISTINCTION BETWEEN ONE DIVISION VERSUS ANOTHER DIVISION IN THE SAME CIRCUIT COURT IS OF NO BEARING, WITH REGARD TO WHETHER A JUDGEMENT ENTERED BY THEM, ONE OR THE OTHER DIVISION, ON THAT CASE, WOULD BE VOID. IT MAY HAVE BEEN VOIDABLE, WHEN THE JUVENILE COURT DID WHAT THE JUVENILE COURT DID, IN TERMS OF IN DIRECT CRIMINAL CONTEMPT. IT MAY HAVE BEEN VOIDABLE. IT MAY HAVE BEEN IRREGULAR, IN TERMS OF THE PROCEDURE, BUT IT IS HARD TO SAY THAT, BECAUSE THE ADULT COURT ISSUED A JUVENILE ORDER OF COMMITMENT OUT OF THE JUVENILE DIVISION, ACCORDING TO THE STATUTE, THE DEPARTMENT OF JUSTICE IS SUPPOSED TO COME BACK TO THAT COURT.

HOW ARE THEY SUPPOSED TO KNOW THEY ARE SUPPOSED TO BE GOING TO ADULT COURT, WHEN THEY HAVE GOT A JUVENILE COMMITMENT ORDER, SO THEY COME BACK. THEY START COMING BACK TO THE JUVENILE COURT. THEN THE JUVENILE COURT ISSUES THE SHOW-CAUSE ORDERS, BRINGS IN THE DEPARTMENT IN THIS CASE, THE YOUTH, COTE, AND IN THIS CASE HE PLEAS.

DID YOU SAY --

THAT IS MY POINT.

DID YOU SAY THAT THE PEOPLE AT THE DEPARTMENT FILED THE CONTEMPT PETITION?

NO. I AM SAYING THAT THE PEOPLE IN THE DEPARTMENT WHO WERE IN CHARGE OF HIS SUPERVISION, WHEN HE WAS HAVING PROBLEMS WITH HIS SUPERVISION, IN TERMS OF DRINKING, IN TERMS OF NOT MEETING HIS CURFEW, THEY STARTED WRITING LETTERS OR HAVING CORRESPONDENCE WITH THE COURT THAT THEY THOUGHT THEY SHOULD BE ADDRESSING, AND THAT, ACCORDING TO THE COMMITMENT ORDER, WOULD HAVE BEEN THE JUVENILE COURT, AND EVEN UNDER CHAPTER 39, IT STILL MAY HAVE BEEN THE JUVENILE COURT, BECAUSE OF THE LANGUAGE THAT SAYS WHEN JUVENILE SANCTIONS ARE SERVED, ARE IMPOSED ON A PERSON THAT HAS BEEN TRANSFERRED TO ADULT COURT, THEN HE IS TREATED AS AN ADULT, UNLESS JUVENILE SANCTIONS ARE IMPOSED. WELL, WHAT DOES THAT MEAN? WHAT COURT HAS JURISDICTION NOW?

DOES THE DEPARTMENT OF JUVENILE JUSTICE, THEN, THAT ASKS THE JUVENILE JUDGE TO HOLD HIM IN CONTEMPT?

IT IS NOT CLEAR THAT THEY MADE A FORMAL Q THE RECORD SEEMS TO -- A FORMAL REQUEST. THE RECORD SEEMS TO INDICATE --

WHO INITIATED THE PROCEEDINGS? THE RECORD HAS TO SHOW. ANOTHER JUDGE ISSUED SHOW-CAUSE ORDERS.

WELL, I AM HAVING DIFFICULTY HERE, BECAUSE THE JUDGE CAN'T SPONTANEOUSLY, OUT OF HIS HEAD, KNOW WHAT IS GOING ON OVER HERE THAT MAY BE IN VIOLATION OF SOME ORDER. SOMEBODY HAS TO CALL SOMETHING TO THE COURT'S ATTENTION.

WELL, THE DEPARTMENT OF JUVENILE JUSTICE, BUT NOT WITH A FORMAL DOCUMENT OR ANYTHING. IT SEEMS LIKE THE RECORD SEEMS TO INDICATE THAT THERE ARE LETTERS FROM PEOPLE IN THE JUVENILE JUSTICE DEPARTMENT WHO WERE DOING HIS SUPERVISION TO THE COURT, AND THEN THE COURT RESPONDED BY USING THESE IN DIRECT --

SO IT WAS THE DEPARTMENT THAT CALLED THIS TO THE COURT'S ATTENTION.

YES, I BELIEVE SO.

IN THE ORIGINAL COMMITMENT ORDER, WAS THERE AN ADJUDICATION OF DELINQUENCY?

YES.

YES? WAS THERE OR WASN'T THERE?

YES. THE RECORD SHOWS THAT THERE IS. HE WAS ADJUDICATED DELINQUENT, UNDER THAT INITIAL COMMITMENT ORDER.

AND HE WAS COMMITTED TO THE DEPARTMENT OF JUVENILE JUSTICE, TO SERVE THOSE JUVENILE SANCTIONS.

THAT'S CORRECT. IN THE BEGINNING, IN THE BEGINNING, THE, WHEN THE ADULT COURT HAD JURISDICTION OVER HIM, AFTER HE HAD BEEN DIRECT-FILED, WHEN THE ADULT COURT IMPOSED SANCTIONS, THE ADULT COURT WITHHELD ADJUDICATION AND IMPOSED JUVENILE SANCTIONS.

AFTER THE JUVENILE DIVISION FOUND HIM IN IN DIRECT CRIMINAL CONTEMPT, WHAT WERE THE SANCTIONS THAT WERE ORDERED BY THE JUVENILE DIVISION?

THE RECORD IS A LITTLE UNCLEAR IN THIS PART. IT SHOWS THAT HE AT LEAST GOT TWO 15-DAY DETENTION SENTENCES, AND THAT IT LOOKED AS IF THEY HAD POSTPONED IMPOSITION OF DETENTION ON THE OTHER TWO. ALTHOUGH THERE IS ARGUABLY, HE MAY HAVE DONE FIVE-DAY ON THE FIRST ORDER, BACK IN JULY. I AM SORRY.

DID HE COMMENCE SERVING THOSE PUNISHMENTS?

YES. HE APPEARED TO HAVE SERVED TWO, ALTHOUGH THE --

WHAT MY QUESTION IS, DID HE COMMENCE SERVING THOSE, BEFORE THE PROCEEDINGS IN THE CRIMINAL DIVISION?

NO. BECAUSE, BACK TO THE TIME LINE, OKAY, BACK TO THE TIME LINE, IT IS AUGUST 3, THE SHOW-CAUSE ORDERS FOR IN DIRECT CRIMINAL CONTEMPT. AUGUST 6, THERE ABOUT, AUGUST 4 OR 6, THE STATE CAME IN WITH AN AFFIDAVIT OF VIOLATION OF COMMUNITY CONTROL. AFTER THAT, HE STILL SERVED HIS 15 DAYS, 15 DAYS.

THE PUNISHMENT FOR THE IN DIRECT CRIMINAL CONTEMPT.

YES.

SO HE DID SERVE THAT.

RIGHT.

OKAY.

SO IT IS YOUR POSITION THAT, REALLY, WE SHOULD LOOK AT THIS IN DIRECT CRIMINAL CONTEMPT, EVEN IF DJJ SENT THE LETTERS AND INITIATED IT, AS IF THE CIRCUIT COURT, THE ADULT FELONY DIVISION HAD ISSUED THE SANCTION FOR THE IN DIRECT CRIMINAL CONTEMPT, AS FAR AS MR. COTE IS CONCERNED, IT MADE NO DIFFERENCE WHO THE JUDGE WHAT JUDGE WAS, WHAT DIVISION IT WAS IN.

IN TERMS --

-- HE RECEIVED PUNISHMENT AND HE SERVED PUNISHMENT.

THAT'S CORRECT. AND HE, ALSO, PLED TO THE FOUR VIOLATIONS.

WAS THERE ANY ISSUE THAT, IF HE HAD, IF THIS HAD BEEN A CASE THAT HADN'T BEEN IN THE ADULT DIVISION, AND HE RECEIVED THE EXACT SAME SANCTION OF WHATEVER THE LEVEL 8 AND THEN VIOLATED IT WOULD HIS, THE PUNISHMENT THAT HE COULD HAVE RECEIVED, I MEAN, WAS THERE AN ISSUE AS TO WHETHER HE SHOULD HAVE RECEIVED A GREATER PUNISHMENT FOR WHAT WAS -- WHAT HE VIOLATED, BECAUSE IT WAS ADULT VERSUS JUVENILE? DO YOU UNDERSTAND WHAT I AM SAYING? IN OTHER WORDS IF -- SHOULD HE HAVE BEEN TREATED, DID HE GETS LESS, BECAUSE OF THIS ERROR, OR IS IT JUST WHAT WOULD HAVE HAPPENED, EVEN IF HE, IF THIS WAS AN ADULT FELONY DIVISION JUDGE THAT HAD FOUND HIM IN IN DIRECT CRIMINAL CONTEMPT?

THE ADULT COURT, ONCE IT WAS VIOLATED, THE JUVENILE SANCTIONS THEY HAD THE RIGHT AT THAT POINT TO IMPOSE ANY SENTENCE THEY COULD IMPOSE INITIALLY, WHICH WOULD HAVE BEEN AN ADULT SENTENCE. THE ADULT COURT APPEARED AT SENTENCING, TO BE AWARE OF MUCH OF HIS PROBLEMS, IN TERMS OF DRINKING AND IN TERMS OF CURFEW VIOLATIONS, ARGUABLY WERE A RESULT OF THE FAMILY ENVIRONMENT THAT HE WAS PUT BACK INTO. HE DID VERY WELL ON BOOT CAMP, AND HE COMPLETED THAT, GOT HIS G.E.D.. SO ON AND SO FORTH. THEN HE WAS PLACED BACK WITH HIS MOTHER, WHO HAD HAS A PROBLEM WITH ALCOHOL, AND THE ADULT COURT GAVE HIM TWO YEARS' PROBATION, WHERE HE IS RIGHT NOW ON PROBATION.

DID THE ATTORNEY HAVE ANY OBLIGATION IN THIS SITUATION TO BRING TO THE COURT'S ATTENTION THE FACT THAT THE ORIGINAL COMMITMENT ORDER WAS IN ERROR OR ANYTHING? DID THEY HAVE ANY DUTY HERE?

I WOULD THINK THEY WOULD HAVE HAD A DUTY TO POINT IT OUT. SURELY. THE SECOND DCA PUTS THE ONUS, PUTS THE BURDEN THE DEFENSE -- ON THE DEFENSE COUNSEL NOT TO SIT BY AND LET HIS COUNSEL GO IN TO ANSWER THESE IN DIRECT CRIMINAL CONTEMPT SHOW-CAUSE ORDERS, AND HE SHOULD HAVE OBJECTED TO JURISDICTION. LIKewise, WHY SHOULDN'T THE STATE HAVE HAD TO OBJECT, WHEN THE ADULT COURT IMPOSED, IN EFFECT, JUVENILE SANCTIONS IN A JUVENILE, IN THE JUVENILE DIVISION OF THE CIRCUIT COURT? IT IS A VERY SIMILAR -- LET ME JUST MAKE ONE MORE POINT, PLEASE. IT IS A VERY SIMILAR SITUATION TO THE CASE OF JS, WHERE THE GOVERNMENT OBJECTED TO THE SENTENCING BY THE ADULT COURT, GIVING IN THE JUVENILE, GIVING A JUVENILE SENTENCE.

AND IN THIS CASE, THE ACTUAL COMMITMENT ORDER SAYS THE JUVENILE DIVISION OF THE CIRCUIT COURT, AS OPPOSED TO JUST CIRCUIT COURT.

YEAH. ABSOLUTELY. YES, YOUR HONOR.

YOU ARE IN YOUR REBUTTAL TIME TIME.

IT IS A SHAME. THANK YOU.

MR. FREE LAND.

MAY IT PLEASE THE COURT. I AM TIMOTHY FREELAND HERE, ON BEHALF THE STATE OF FLORIDA. LET ME FIRST ADDRESS THE ISSUE OF CONFLICT JURISDICTION. THIS COURT DOES NOT HAVE JURISDICTION TO HEAR THIS CASE, BECAUSE THERE IS NO CONFLICT BETWEEN NT AND THIS CASE. THE REASON WHY IS THE ENTIRETY 6 THE CASE JUST -- ENTIRETY OF THE CASE WAS IN THE JURISDICTION OF JUVENILE COURT. IT WAS FILED ON IN THE JUVENILE COURT. HE WAS SENTENCED IN THE JUVENILE COURT, AND THEN, WHEN HE VIOLATED THE TERMS OF HIS COMMUNITY CONTROL, THE JUVENILE SANCTIONS, HE WAS BROUGHT BACK INTO JUVENILE COURT. ALL OF IT WAS WITHIN THE JUVENILE COURT. HERE, IN THIS CASE, THE CASE ORIGINATED IN ADULT COURT, FELONY COURT. AND BECAUSE THE DEFENDANT MET THE CRITERIA FOR JUVENILE SANCTIONS, THE ADULT COURT IMPOSED.

THERE WAS NEVER A DELINQUENCY PETITION FILED HERE?

THAT'S CORRECT. THAT'S CORRECT. THE CASE WAS DIRECT-FILED. IT HAS A FELONY COURT CASE NUMBER, AND IT WAS NEVER, NEVER APPEARED IN JUVENILE COURT.

HOW DO WE GET A COMMITMENT ORDER THAT SAYS THE JUVENILE DIVISION?

WELL, IT, THAT WAS AN ERROR ON THE PART OF THE FELONY COURT. APPARENTLY WHAT THEY DID WAS, RATHER THAN CREATE THEIR OWN FORMS, THEY ADOPTED AND USED THE FORMS STRAIGHT OUT OF THE JUVENILE COURT.

SO WHAT SHOULD THE STATE ATTORNEY HAVE DONE, WHEN THIS CASE WAS CALLED UP IN JUVENILE COURT, ON A CONTEMPT, SHOW CAUSE FOR CONTEMPT?

THE STATE CERTAINLY WISHES THAT THE STATE ATTORNEY HAD SPOKEN UP AND SAID SOMETHING ABOUT IT, BUT THERE WAS NO OBLIGATION. THERE WAS NO DUTY ON THE PART. THE FACT THAT THE STATE ATTORNEY DID NOT DO SO IS NOT FATAL TO THE STATE'S CASE, IS MY POINT.

LET ME ASK YOU IF, IN FACT, INSTEAD OF THE ORDER TO SHOW CAUSE BEING ISSUED BY A JUVENILE JUDGE, AND YOU AGREE THAT JUVENILE JUDGE HAS ITS JURISDICTION IS CIRCUIT COURT JURISDICTION.

KPAECHBLTH.

RIGHT. BUT IF THAT HAD BEEN ENTHE SAME CASE NUMBER -- BEEN THE SAME CASE NUMBER BUT IT HAD BEEN A JUDGE ASSIGNED TO THE ADULT FELONY DIVISION, WHO HAD ISSUED THE SHOW-CAUSE ORDER AND HAD IMPOSEED SANCTIONS OF TWO 15-DAY DETENTIONS, WHICH THE DEFENDANT SOUGHT, BEGAN TO SERVE, WOULD YOU, THEN, AGREE THAT, IN THAT SITUATION, THE SUBSEQUENT VIOLATION OF COMMUNITY CONTROL WOULD BE A DOUBLE JEOPARDY VIOLATION?

YES.

SO DON'T WE, REALLY, SO, IN FACT, WHAT YOU WOULD HAVE TO CONVINCING US IN THIS CASE, ASSUMING, UNLESS YOU CONVINCES THERE IS NO CONFLICT JURISDICTION, THAT WHAT THAT JUVENILE JUDGE DID, HAVING THAT HAT ON, WAS WHEN THIS, WHEN MR. COTE BEGAN SERVING, IT WAS A NULLITY, THAT THAT IS THE GIST OF THIS.

THAT IS WHAT I INTEND TO DO HERE TODAY.

OKAY. LET'S HERE IT. -- LET'S HEAR IT.

OKAY. IF YOU LOOK AT THE STATUTE, WHICH IS 985.233, THAT SETS OUT THE BASIS FOR THE STATE ATTORNEYS OFFICE TO DIRECT FILE ON A DEFENDANT, A JUVENILE DEFENDANT. THE JURISDICTION --

DOES THIS CASE ARE A RISE UNDER THAT STATUTE OR DID IT ARE A RISE UNDER 39?

UNDER 39. YES. THE DEFENDANT ENTERED A PLEA AND THEN, TWO WEEKS LATER, CHAPTER 985 BECAME EFFECTIVE, IN OCTOBER BUT BECAUSE IT IS A PROCEDURAL CHANGE, IT STILL GOVERNS. THERE IS NO, WE DON'T HAVE TO BE CONCERNING OURSELVES WITH EXPOSE THE FACTOR -- EXPOSE THE FACTO RULE. IT IS MERELY A PROCEDURAL -- EX POST FACTO RULE. IT IS MERELY A PROCEDURAL CHANGE TO WHAT THE COURT IS GOING TO GO BACK TO.

WHAT DOES THIS DO?

IT CHANGES IT FROM AN EXTREMELY UNCLEAR STATUTE TO A CLEAR STATUTE.

SO, IN OTHER WORDS, BEFORE THE CHANGE, IT APPEARS TO LOOK LIKE THE INTENT WAS THAT, IF THE ADULT, IF JUVENILE SANCTIONS WERE IMPOSED, THAT, SINCE IT IS THE DEPARTMENT OF JUVENILE JUSTICE IS, THEN, SUPERVISING THE JUVENILE, THAT THE INTENT COULD HAVE BEEN, AS JUDGE FULMER SAID IN HER DISSENT, TO SEND, HAVE THIS, THEN, HANDLED BY THE JUVENILE DIVISION.

I WOULD DISAGREE WITH THAT. I DON'T BELIEVE THAT THE STATUTE OR THE FRAMERS OF THE

STATUTE INTENDED THAT THAT IS WHAT WAS TO HAPPEN.

BUT YOU SAID IT WAS UNCLEAR.

IT IS CLEAR -- WELL, IT IS UNCLEAR. THE STATUTE DOES NOT.

BUT THE DEPARTMENT OF JUVENILE JUSTICE HAD SUPERVISORY AUTHORITY OVER THIS JUVENILE.

YES. THAT'S CORRECT. THAT IS THE WAY THAT IT IS DONE.

AND THEY ARE USED TO DEALING IN THE JUVENILE COURT, WHICH IS WHY THIS CASE, THEY SENT THE LETTERS TO THE JUVENILE COURT.

THAT IS EXACTLY WHAT HAPPENED. YES. THEY ERRONEOUSLY SENT ALL OF THEIR LETTERS TO JUDGE BROWN HE WILL, WHO IS THE JUDGE IN -- TO JUDGE BROWNELL, WHO IS THE JUDGE IN THE JUVENILE COURT, AND THAT JUDGE DID AS HE DOES IN EVERY OTHER JUVENILE CASE. HE FAILED TO SHOW CAUSE, BUT IT HAD NO BELONGING IN THE JUVENILE COURT, BASED ON THE ADULT JURISDICTION.

YOU SAID IT WAS ERRONEOUSLY IN JUVENILE COURT.

THAT'S RIGHT.

BUT IF THE STATE ATTORNEY, HE HAD RECOGNIZED, BROUGHT IT TO HIS ATTENTION, HE WOULD HAVE SAID, OKAY, I AM GOING TO ISSUE THIS AS AN ADULT, AS A CIRCUIT COURT JUDGE.

HE WOULD HAVE TO CHANGE HATS. HE WOULD HAVE TO SAY THIS IS ADULT COURT. WE ARE GOING TO TREAT YOU AS AN ADULT. NOW, IF YOU READ THE TRANSCRIPT, IT IS QUITE CLEAR THAT JUDGE BROWNELL DID NOT CONSIDER HIMSELF ACTING IN THE CAPACITY AS A FELONY COURT JUDGE. WHAT HE WAS DOING WAS HE WAS ACTING IN HIS CAPACITY AS A JUVENILE COURT JUDGE, AND HE THOROUGHLY BELIEVED THAT WHAT WOULD HAPPEN NEXT WAS THAT THIS DEFT WAS GOING TO GO TO JUDGE DABINSKI IN FELONY COURT AND THE STATE ATTORNEYS OFFICE WAS GOING TO PROCEED WITH AN ADULT VIOLATION AGAINST HIM IN ADULT COURT.

BUT EVERYBODY KNOWS THAT THIS WAS A VIOLATION THAT HAD EMANATED IN THE ADULT COURT?

YES, IT WAS. YES, THEY DID.

SO WHY WAS HE ELIGIBLE FOR SANCTIONS FOR CONTEMPT AND --

HE WAS NOT. HE WAS NOT. NOT IN JUVENILE COURT.

WELL, ARE YOU SAYING EVERYBODY INTENDED, THEN, THAT HE HAVE DOUBLE PUNISHMENT? IN OTHER WORDS THIS JUVENILE JUDGE WAS GOING TO PUNISH HIM FIRST AND THEN HE WAS GOING TO SEND HIM TO THE ADULT COURT?

THE JUVENILE COURT ACTED WITHOUT AUTHORITY. THE JUVENILE COURT HAD NO JURISDICTION TO DO WHAT IT DID. IT ACTED ERRONEOUSLY.

THE STATE DID NOT CONTEND THAT AT THE TIME.

THAT'S CORRECT.

BUT HOW DO WE COME BACK TO THE, YOU SAY WAS HE ADJUDICATED AS A A DELINQUENT?

THE ADULT COURT WITHHELD ADJUDICATION AS A FELON, AS AN ADULT, AND ADJUDICATED HIM DELINQUENT AND IMPOSED --

WHY, IF HE HAS BEEN ADJUDICATED A DELINQUENT, THEN WHY WOULDN'T THE JUVENILE COURT ORDINARILY HAS JURISDICTION OVER AN ADJUDICATED DELINQUENTS, JUST AS THE DEPARTMENT OF JUVENILE JUSTICE DOES --

BECAUSE OF WHAT THE STATUTE SAYS. THE STATUTE SAYS THAT, ONCE YOU HAVE BEEN DIRECT FILED UPON, ALL FURTHER PROCEEDINGS WILL BE HANDLED BY THE ADULT COURT.

THIS IS WHERE WE COME TO HAVING A STATUTE THAT SAYS, UNLESS JUVENILE SANCTIONS ARE IMPOSED.

YES. IT SAYS UNLESS JUVENILE SANCTIONS ARE IMPOSED, BUT THE PURPOSE OF THAT SUBSECTION OF THE STATUTE IS TO ALLOW THE ADULT COURT TO IMPOSE JUVENILE SANCTIONS.

WELL, IF WE GET TO A SITUATION WHERE WE THINK THE STATUTORY SCHEME IS AMBIGUOUS, DO WE HAVE TO APPLY THIS RULE OF INTERPRETING IT MORE IN FAVOR OF THE DEFENDANT? IN OTHER WORDS THE DELINQUENT HERE?

WELL, YOU CERTAINLY DO NEED TO APPLY THE RULE OF LINTY, BUT THE STATUTE IS NOT AMBIGUOUS HERE.

IF WE SHOULD FIND THAT IT IS AMBIGUOUS IN THAT REGARD, YOU AGREE THAT WE WOULD HAVE TO APPLY THAT RULE OF LINTY?

YES, I THINK SO, BUT I DON'T THINK THAT YOU ARE GOING TO FIND THAT THE STATUTE IS AMBIGUOUS. IT IS QUITE CLEAR THAT --

TELL ME HOW THE SECOND DISTRICT TREATED THE LATER-ENACTED STATUTE, IN TERMS OF APPLYING IT TO THIS CASE. DID THEY INTERPRET THAT LATER-ENACTED STATUTE AND APPLY IT TO THIS CASE?

YES.

TELL ME WHAT HAPPENED THERE.

WHAT THEY DETERMINED WAS THE LATER-ENACTED STATUTE APPLIED TO THIS CASE, AND THAT, AS A RESULT OF THAT LETTER-ENACTED STATUTE, THE ACTIONS OF THE JUVENILE COURT JUDGE WERE A NULLITY. THAT IS BECAUSE THE JURISDICTION OF THE JUVENILE COURT ARE A RISES, IT IS A SUBJECT MATTER JURISDICTION ISSUE. IT ARE A RISES OUT OF THE CON TUX AND OUT -- CONSTITUTION AND OUT OF THE STATUTORY LAW, WHICH GIVES THE JUVENILE COURT THE JURISDICTION TO ACT ON A CERTAIN CLASS OF CASES.

SO THEY DIDN'T INTERPRET THE PREVIOUS STATUTORY SCHEME THAT HAS THE LANGUAGE ABOUT UNLESS JUVENILE SANCTIONS. THEY RELIED ON THE LATER ENACTED STATUTE.

THE LATER-ENACTED STATUTE HAS THAT SAME LANGUAGE.

OKAY. YOU WERE GOING TO DISCUSS THE, WHY THE STATUTE IS NOT AMBIGUOUS.

YES. THANK YOU. THE STATUTE CLEARLY SAYS, IN SECTION 985.233, THAT WHEN THE CRITERIA ARE MET, A JUVENILE MAY BE DIRECT-FILED UPON, AND IT SAYS THAT ONCE THE -- ONCE IT REACHES ADULT COURT, IT GIVES A SERIES OF THINGS THAT THE ADULT COURT, OPTIONS THAT THE ADULT COURT HAS. ONE OF THOSE BEING TO IMPOSE JUVENILE SANCTIONS. THEN IT SAYS

THAT, IN THE EVENT THAT THE JUVENILE COURT, I MEAN THE ADULT COURT ELECTS TO IMPOSE JUVENILE SANCTIONS, EVEN IF IT IMPOSES JUVENILE SANCTIONS ALL FURTHER PROCEEDINGS WILL BE HANDLED IN THE ADULT COURT, AND MOREOVER, THE REMAINING JUVENILE CASES, WHICH THAT DEFENDANT MAY HAVE, ARE TO SUPPOSED TO BE BOXED UP AND TRANSFERRED TO THE ADULT COURT. THE INTENT IS FOR ONE JUDGE TO HANDLE ALL OF IT. THAT IS WHAT WAS SUPPOSED TO HAVE HAPPENED HERE. UNFORTUNATELY IT DID NOT, SO THE ADULT COURT, THE JURISDICTION OF THE JUVENILE COURT IS ELIMINATED AT THAT POINT. ONCE THE JUVENILE IS FILED UPON AS AN ADULT, THE JUVENILE COURT NO LONGER HAS JURISDICTION TO HANDLE NIP ASPECT OF THAT, OF DEFENDANT'S CASES. THEY ARE ALL SUPPOSED TO BE TRANSFERRED TO ADULT COURT.

IS THERE A LEGISLATIVE HISTORY AS TO THAT LATER-ENACTED STATUTE, TO STATE THAT THE PURPOSE WAS TO CLARIFY THAT THE INTENT WAS THAT ONCE WHAT YOU SAID THE PURPOSE WAS, WHICH WAS ONCE THE JUVENILE WAS DIRECT-FILED ON, THAT THE, OTHER THAN IMPOSING THE SANCTIONS FOR ALL OTHER PURPOSES, THAT THE JUVENILE WOULD BE TREATED --

I HAVEN'T SEEN THE LEGISLATIVE HISTORY. I HAVE READ CASE LAW, WHICH INTERPRETS IT THAT WAY. THERE IS A CASE WHICH, UNFORTUNATELY DID NOT MAKE IT INTO MY BRIEF, OUT OF THE FOURTH CIRCUIT, FOURTH DISTRICT, WHICH INTERPRETS IT THAT WAY. NOW, I WILL BE GLAD TO PROVIDE THAT CASE FOR THE COURT.

I AM HAVING TROUBLE WITH THE CONCEPT OF YOU SAID IT IS PROCEDURAL, BUT IF IT IS A QUESTION OF WHETHER OR NOT THE JUVENILE COURT HAD SUBJECT MATTER JURISDICTION, THAT DOESN'T STRIKE ME AS BEING SOMETHING THAT IS PROBABLY.

WELL, -- THAT IS PROCEDURAL.

WELL, WHAT THE STATUTE DOES IS, THE JURISDICTION OF THE JUVENILE COURT IS DEFINED BY THIS STATUTE, AND SO WHEN THE JUVENILE COURT, WHEN THE STATUTE SAYS THAT THE DEFENDANT IS TO BE DIRECT-FILED UPON, ALL THAT IT DOES IS, IT SAYS, INSTEAD OF THIS JUDGE HANDLING YOUR CASE FROM NOW ON, IT IS GOING TO BE THIS JUDGE THAT IS GOING TO BE HANDLING YOUR CASE, BECAUSE YOU NOW HAVE BEEN DIRECT-FILED UPON AND YOU ARE YOU AN ADULT. THAT IS WHY -- AND YOU ARE AN ADULT. THAT IS WHY IT IS A PROCEDURAL MATTER AND THAT IS WHY JUVENILE COURT IS DIVESTED OF SUBJECT MATTER JURISDICTION. IT IS TRANSFERRED TO ADULT COURT.

BUT THE SUBJECT MATTER IS PUNISHMENT IN THIS CASE IS SOMETHING THE ADULT COURT OR JUVENILE COURT COULDN'T IMPOSE, SO GOING BACK TO THIS THEATRICAL IDEA THAT JUDGE -- -- THIS TROT THOUGHT -- THEORETICAL IDEA THAT JUDGE BROWNELL OR SOME OTHER JUDGE IMPOSED, I AM HAVING TROUBLE FROM KNOWING WHY THE STATE STOOD BY AND EVERYONE THOUGHT THAT HE COULD HAVE TWO PUNISHMENTS WHEN HE CAN'T, THE FACT THAT JUDGE BROWNELL IMPOSED THE TWO 15-DAY DETENTIONS FOR THE IN DIRECT CRIMINAL CONTEMPT, VERSUS JUDGE WHOEVER IT WAS, DUBINSKI, IS TO MAKE A DIFFERENCE FROM THE CONSTITUTIONAL PROTECTION THAT MR. COTE IS AFFORDED.

WHEN THE STATE ATTORNEYS OFFICE DIRECT-FILED ON THIS CASE THAT ELIMINATED THE JURISDICTION OF JUVENILE COURT. IF I WERE CHARGED WITH A FELONY TODAY, I COULD NOT WALK INTO JUVENILE COURT AND ASK THAT JUVENILE COURT TO IMPOSE SANCTIONS ON ME. WHY? BECAUSE THE JUVENILE COURT DOES NOT HAVE JURISDICTION TO DO THAT TO ME. THIS DEFENDANT WAS CHARGED AS AN ADULT, AND BY STATUTE HE HAD TO BE TREATED AS ADULT.

BUT DIDN'T WE GET TO THE IDEA THAT THE STATUTE IN EFFECT AT THE TIME MUST HAVE BEEN AMBIGUOUS ENOUGH THAT ALL OF THE THAT THE DEPARTMENT OF JUVENILE JUSTICE DIDN'T KNOW WHERE THEY WERE SUPPOSED TO COMPLAIN TO, WHERE THE ASSISTANT STATE ATTORNEY DIDN'T KNOW.

NO, JUDGE. THE STATUTE IN EFFECT AT THE TIME IS THE STATUTE I AM TALKING ABOUT, CHAPTER 985. THAT STATUTE MAKES IT QUITE CLEAR DHARTION -- CLEAR THAT, ONCE THE DEFENDANT IS DIRECT-FILED ON, IT STAYS IN ADULT COURT.

SO YOU DON'T TAKE THE LANGUAGE, UNLESS THE COURT IMPOSES JUVENILE SANCTIONS UNDER 985.233, TO BE SUBJECT TO TWO DIFFERENT POSSIBLE INTERPRETATIONS AS TO WHETHER THE INTENT WAS THAT, IF AN ADULT JUDGE THOUGHT THAT THIS DEFENDANT, RATHER THAN BEING TREATED AS ADULT, DESERVED TO RECEIVE JUVENILE SANCTIONS, THAT THIS DEFENDANT, THEN, SHOULD BE TREATED AS A JUVENILE.

NO, JUDGE. NO.

THAT IS NOT A POSSIBLE INTERPRETATION.

NO, IT IS NOT, BECAUSE IN THE VERY SAME CHAPTER, CHAPTER 985.233, IF YOU READ DOWN TO CHAPTER 985.233-4-E, IT SAYS FURTHER PROCEEDINGS IN ADULT COURT. WHEN A CHILD IS SENTENCED TO JUVENILE SANCTIONS, FURTHER PROCEEDINGS INVOLVING THOSE SANCTIONS SHALL CONTINUE TO BE HEARD IN ADULT COURT. IT CAN'T BE ANY CLEARER THAN THAT.

DO YOU AGREE, ALSO THAT, THE DELINQUENT OR DEFENDANT, HERE, ACTUALLY SERVED THE PUNISHMENT METED OUT BY THE JUVENILE JUDGE?

THE RECORD THAT WE HAVE IS NOT CLEAR AS TO WHETHER HE ACTUALLY SERVED IT OR NOT.

WELL, YOUR COLLEAGUE --

I WOULD DEFER TO WHAT OPPOSING COUNSEL SAYS. THE RECORD ISN'T CLEAR.

ASSUMING THAT HE DID, OKAY, HOW CAN THAT NOT VIOLATE DOUBLE JEOPARDY PRINCIPLES, THEN THAT, IS THAT, IF HE WAS PUNISHED AND HE SERVED HIS PUNISHMENT, AND NOW WE ARE OVER IN ADULT COURT AGAIN, SAYING, WELL, WE ARE GOING TO PUNISH YOU AGAIN AND HERE IS WHAT I AM GOING TO DO.

IT IS UNFORTUNATE THAT HE WAS GIVEN A SENTENCE BY THE JUVENILE COURT JUDGE.

BUT ONCE THAT HAPPENS, OKAY, WON'T THAT VIOLATE ALL PRINCIPLES OF DOUBLE JEOPARDY, THE FACT THAT HE IS, INDEED, BEING PUNISHED TWICE, AS A MATTER OF FACT?

HE MAY HAVE BEEN PUNISHED TWICE AS A MATTER OF FACT, BUT AS A MATTER OF LAW, THE JUVENILE COURT JUDGE DID SOMETHING THAT HE COULD NOT HAVE DONE.

WHAT I AM TRYING TO SAY IS THAT, REGARDLESS OF WHETHER HE DID SOMETHING, THE STATE, OKAY, TOOK THIS PERSON AND PUNISHED HIM, AND HE SERVED HIS PUNISHMENT.

YES.

AND DOESN'T THE CONSTITUTION, UNDER THE DOUBLE JEOPARDY CLAUSE SAY ONCE YOU HAVE DONE THAT, YOU CAN'T TAKE THIS PERSON AND PUNISH HIM A SECOND TIME FOR THE SAME THING.

WELL, THAT IS THE QUESTION IS WAS IT THE SAME THING. YOU SEE, IN JUVENILE COURT, THE JUVENILE COURT JUDGE WAS ACTING ON HIS OWN, WITHOUT AUTHORITY TO DO.

BUT IT WAS THE SAME THING. IN OTHER WORDS HE -- THE JUVENILE COURT DID SOMETHING. ANOTHER UNDERLYING CONDUCTOR MISCONDUCT, THE VIOLATIONS HERE, ARE THE SAME. THERE

IS NO DISPUTE ABOUT THAT.

YES. YES. BUT THE JUVENILE COURT JUDGE DID SOMETHING HERE, BUT WHAT THE JUVENILE COURT JUDGE DID WAS A NULLITY. THE JUVENILE COURT --

WHAT I AM TRYING TO SAY, IN TERMS OF THE DOUBLE JEOPARDY CLAUSE PROTECTING PEOPLE, ACTUAL PEOPLE.

YES.

THAT CLEARLY IF HE WAS ACTUALLY PUNISHED, IT WAS THE STATE THAT WAS PUNISHING HIM, AND DOESN'T THE DOUBLE JEOPARDY CLAUSE SAY, ONCE YOU HAVE IMPOSED THAT FIRST PUNISHMENT AND ACTUALLY DONE IT, SURELY YOU CAN'T PUNISH HIM A SECOND TIME FOR THE SAME THING.

BUT IF THE JUVENILE COURT JUDGE, THE JUDGE THAT IMPOSED THE PUNISHMENT WAS ACTING WITHOUT THE AUTHORITY TO DO SO, AND HAD NO JURISDICTION OVER THE STATE --

BUT CAN THE STATE RAISE THAT UP AND SAY WE ARE SORRY. IT WAS THE WRONG JUDGE. EVEN THOUGH YOU HAVE ALREADY SERVED THAT PUNISHMENT, THE DOUBLE JEOPARDY CLAUSE, WHICH PROTECTS PEOPLE, CAN THE STATE MAKE THAT CLAIM?

WHAT THE SECOND DISTRICT COURT DID, HERE, I CAN, IS A REASONABLE -- I THINK, A REASONABLE RESOLUTION OF THAT ISSUE. THE SECOND DISTRICT RECOGNIZED THE DEFENDANT HAD BEEN GIVEN A 15-DAY SENTENCE, AS PART OF THE JUVENILE SANCTIONS THAT HE WAS GIVEN. IT IS CLEAR THAT THE JUVENILE COURT JUDGE DIDN'T HAVE THE AUTHORITY TO IMPOSE THAT SENTENCE, SO WHAT THE SECOND DISTRICT DID WITHDRAWS IT SAID -- DID WAS IT SAID HE WILL BE GIVEN CREDIT FOR THAT TIME AS PART OF HIS ADULT SENTENCE. THAT WAS THE ORDER THAT THE SECOND DISTRICT IMPOSED.

BUT I THOUGHT THAT THE ADULT SENTENCE, IN THIS CASE, WAS FOR CONTINUED PROBATION OR COMMUNITY CONTROL. IT WAS NOT TO SERVE ACTUAL DETENTION.

WELL, HE DID, IN FACT, SERVE ACTUAL DETENTION, PRIOR TO BEING GIVEN THAT SENTENCE, AND THAT IS A COMMON THING FOR ADULT COURT DEBTS, TO BE -- COURT DEFENDANTS TO BE SPENDING A CERTAIN PERIOD OF TIME IN JAIL PRIOR TO BEING SENTENCED, AND THOSE DEFENDANTS ARE FREQUENTLY GIVEN CREDIT FOR TIME SERVED AND WE WILL GIVE YOU THIS SENTENCE AND THIS PROBATIONARY PERIOD. THAT IS, I THINK, WHAT THE SECOND DISTRICT WAS TRYING TO INTERPRET IT AS HERE, THAT HE WILL BE GIVEN CREDIT FOR THAT TIME THAT HE SERVED AS PART OF HIS ADULT SENTENCE. IT IS UNFORTUNATE THAT THE JUVENILE COURT JUDGE DID WHAT HE DID, BUT LEGALLY, UNDER THE LAW, THERE WAS NO AUTHORITY, BECAUSE HE HAD NO JURISDICTION, NO JURISDICTION TO IMPOSE THAT SENTENCE.

COULD YOU TELL ME HOW, THEN, AGAIN, IN TRYING TO LOOK AT IT BOTH WAYS, IF THIS JURISDICTION IS NOT WAIVEABLE, HOW IS IT THAT WHERE SOMEBODY IS A DEFENDANT, WHO IS ALLOWED TO BE OR SHOULD BE CHARGED AS A JUVENILE AND IN JUVENILE COURT, IF THE DEFENDANT DOESN'T RAISE AN OBJECTION TO BEING TRIED IN ADULT COURT? WE HAVE HELD THAT THAT MEANS THAT THAT WAS VOIDABLE NOT VOID, BUT YET THE STATE CAN SIT BACK AND SAY NOTHING.

DO NOTHING. HERE IS THE REASON.

OKAY.

IN ADULT COURT, BOTH OF THE CASES THAT HAVE BEEN CITED BY OPPOSING COUNSEL, KING AND

GRIFFITH, BOTH OF THOSE CASES ORIGINATED IN ADULT COURT, AND THERE WAS A CHARGE DOCUMENT FILED IN ADULT COURT, INVOKING THAT COURT'S JURISDICTION. SO IT WAS UP TO SOMEBODY TO OBJECT TO THAT PROCEEDING, AND BECAUSE THE DEFENDANT WAS THE ONE WHO WAS BEING PUNISHED THERE HE NEEDED TO OBJECT, TO SAY I DON'T WANT TO BE IN ADULT COURT. I AM ENTITLED, I HAVE A RIGHT TO BE IN JUVENILE COURT SO I WANT TO BE TRANSFERRED, AND THIS COURT SAID THAT, IF YOU DON'T STAND UP AND MAKE THAT OBJECTION TO INVOKE YOUR RIGHT TO BE TRANSFERRED TO JUVENILE COURT, THEN YOU HAVE WAIVED IT. JURISDICTION ORIGINATES IN ADULT COURT IN BOTH OF THOSE CASES. THE COURT HAS PROPER JURISDICTION. BUT IT CAN BE OBJECTED TO AND TRANSFERRED, WITH THE PROPER KIND OF OBJECTION. NOW, IN THIS CASE, THERE WAS NEVER ANY PETITION OF ANY KIND FILED IN THE JUVENILE COURT. THE JURISDICTION OF THE JUVENILE COURT WAS NEVER PROPERLY INVOKED.

AGAIN, SO THE STATE, SINCE THERE WAS AN ORDER OF COMMITMENT WHERE HE WAS ADJUDICATED AS A JUVENILE, THAT YOU SAY WAS IN ERROR, THE STATE HAD NO OBLIGATION TO OBJECT TO THAT.

THE JUVENILE COURT HAD NO JURISDICTION, SO --

BUT THAT ORDER, THAT WAS A SENTENCING ORDER THAT WAS ENTERED BY THE ADULT COURT.

RIGHT.

SO THAT WAS AN ERRONEOUS FORUM. DIDN'T THE STATE HAVE SOME OBLIGATION, AT THAT TIME, TO OBJECT TO IT?

I DON'T THINK SO, JUDGE, BEING THE INTENT OF THE ADULT COURT WAS TO FOLLOW THE STATUTE AND IMPOSE JUVENILE SANCTIONS. IT IS UNFORTUNATE THAT THE FORUM THAT IT USED SAID -- THAT THE FORM THAT IT USED SAID "JUVENILE DIVISION "-ON IT, BUT THE INTENT OF THAT FORM WAS TO GIVE THE ADULT COURT SENTENCE TO THE DEFENDANT, WHICH WAS TO PUT HIM ON JUVENILE SANCTIONS.

THANK YOU, MR. FREELAND. YOUR TIME IS UP.

THANK YOU.

REBUTTAL MR. ALBERTINE.

THANK YOU. JUST BRIEFLY ON THE JURISDICTIONAL ISSUE, JUSTICE ANSTEAD, I WOULD POINT OUT THE TREATIES BY FORMER JUSTICE KOGAN WHERE SURELY THE COURT HAD, THIS COURT HAD JURISDICTION, BECAUSE THERE WAS AN OPINION TALKING ABOUT POINTS OF LAW UNDER, IS IT STAR, SO THEY HAVE JURISDICTION. THE QUESTION IS WHETHER THEY HAVE DISCRETION OR EXERCISED DISCRETION AND HE INDICATES FOUR SEPARATE ITEMS IN THERE OF CONFLICT. MISAPPLICATION AND APPARENT AND PIGGYBACK.

BUT WHAT, WHICH ONE APPLIES TO THIS CASE?

I WOULD ARGUE THAT HOLDING DID, AND UNDER THE IDEA THAT THE DIFFERENT DISTINCTIONS IN THE DIFFERENT DIVISIONS WAS NOT RELEVANT, BECAUSE THE CIRCUIT COURT HAD SUBJECT MATTER JURISDICTION, SO THAT WHEN THE CIRCUIT COURT ISSUES AN ORDER IN JUVENILE DIVISION, A COMMITMENT ORDER, THEN EVERYBODY HAD A RIGHT TO PROCEED ON THAT, AND THAT IS WHAT THE DEPARTMENT OF JUVENILE JUSTICE DID. I WOULD ALSO ARGUE --

SO YOUR ARGUMENT, REALLY, IS, DESPITE THE LANGUAGE OF THE STATUTE, 985, WHICH SAYS THAT IF YOU ARE IN ADULT COURT AND GET JUVENILE SANCTIONS, THE ADULT COURT HAS JURISDICTION THAT YOU COULD GO TO THE JUVENILE COURT, ANYWAY, AND JURISDICTION

WOULD BE FINE. THAT IS THE ESSENCE OF YOUR ARGUMENT.

THERE MAY BE SOME JURISDICTIONAL PROBLEMS, BUT THEY ARE NOT SUBJECT MATTER JURISDICTIONAL PROBLEMS. THEY MAY BE STATUTORY JURISDICTIONAL PROBLEMS, AND THEY NEED TO BE, THEY MAY BE VOIDABLE, AND IF THAT IS THE CASE, THEY NEED TO BE OBJECTED TO, AND THAT DIDN'T HAPPEN IN THIS CASE.

YOUR COLLEAGUE SAYS THE RECORD IS NOT CLEAR ON WHETHER YOUR CLIENT SERVED THIS PUNISHMENT.

I WILL STAND ON THE RECORD AND I WILL STAND ON MY BRIEF, AND THE CITATION IN THE RECORD, TO WHERE IT STATES THAT HE SERVED.

THAT HE DID SERVE.

I MEAN, I DON'T HAVE ANYTHING FROM THE COURT TO, OTHER THAN WHAT WAS IN THE RECORD. I AM SORRY.

YOU SAID MR. COTE IS SERVING THE PROBATION, NOW, THAT THE ADULT COURT IMPOSED. IS THAT CORRECT?

CORRECT. BUT HE HAS A 72-MONTH, YEAH, 72-MONTH SUSPENDED INCARCERATION SENTENCE OVER HIS HEAD.

WELL, BUT, WHAT I GUESS I AM ASKING, SO IF THIS IS, IF WE AGREE WITH YOU, AGREE WITH JUDGE FULMER, THEN WHAT IS HIS STATUS? IS HE STILL UNDER ANY TYPE OF SUPERVISION?

WELL, HE WOULD BE PAST 19, AND IF YOU WERE TO GO BACK, IF THE COURT WERE TO FIND DOUBLE JEOPARDY AS TO THE VIOLATION OF COMMUNITY CONTROL, AND REVERSE OR VACATE THE ADULT SENTENCE AND REIMPOSE THE JUVENILE SENTENCE, THEN ARGUABLY HE WOULD BE - IS HE PAST 19, SO THE JURISDICTION WOULD BE GONE, THE COMMITMENT ORDER HAD CONTINUING JURISDICTION OVER HIM UNTIL THE AGE OF 19.

THANK YOU, MR. ALBERTINE. YOUR TIME IS UP.

THANK YOU.