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State of Florida v. J.M.

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS FLORIDA, STATE OF FLORIDA VERSUS J.M.. MR. DUFFY.

THANK YOU. GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS TOM DUFFY. I AM AN ASSISTANT ATTORNEY GENERAL. I REPRESENT THE STATE IN THIS APPEAL FROM THE FIRST DISTRICT COURT OF APPEAL. WE ARE HERE ON CERTIFIED CONFLICT WITH PANG VERSUS STATE OUT OF THE FIFTH DCA THAT VOFERS THE SEXUAL PREDATOR ACT AT SECTION 521 OF FLORIDA STATUTES. OUR ARGUMENT IS THAT THE SEXUAL PREDATOR ACT WAS INTENDED TO ENCOMPASS, SHOULD ENCOMPASS, AND DOES ENCOMPASS A CERTAIN NARROW CLASS OF JUVENILES OFFENDERS. THIS IS JUVENILES CHARGED IN CRIMINAL COURT. AND PROSECUTED IN CRIMINAL COURT. AND YET SANCTIONED UNDER 985.233 GIVEN JUVENILE SANCTIONS, PURSUANT TO THAT STATUTE.

BEFORE YOU GO TOO FAR, IS IT THE STATE'S POSITION THAT A DECLARES DECLARATION OF DELINQUENCY IS A CONVICTION?

IT IS FOR PURPOSES OF THE FLORIDA SEXUAL PREDATOR ACT, BECAUSE OF THE BREADTH OF THAT ACT AND BECAUSE SUCH A DEFINITION WOULD GIVE LIFE TO THE PUBLIC POLICY CONCERNS THAT THAT ACT ENCOMPASSES.

WELL, WOULDN'T THAT BE CONTRARY TO TT INITIN FOR EVY OR PURPOSE, OTHER THAN TS AC?

YES, IT WOULD.

SO BASICALLY --

IN LEGISLATIVE, SO WH, IN HE ACT, WHAT LANGUAGE IN THE ACT SAYS IT SHOULD BE INTERPRETED DIFFERENT FROM EVERYTHING ELSE?

THIS IS OUR MAIN PICK WITH THE FIRST DCA'S OPINION, THAT THEY REALLY MISCONSTRUED, MISS APPLIED THE LAW, AND IGNORED THE POLICY AND IGNORED THE BREADTH OF THE SEXUAL PREDATOR ACT. THE SEXUAL PREDATOR ACT --

BEFORE YOU GO TO THE POLICY, WE HAVE GOT TO TAKE THE PLAIN LANGUAGE. THE PLAIN LANGUAGE OF THE SEXUAL PREDATOR ACT SAYS A CONVICTION.

YES.

THE, THIS DEFENDANT WAS ADJUDICATED AS AELINQUENT. WAS NOT CONVICTED. SPECIFICALLY THE STATUTE UNDER WHICH HE WAS SANCTIONED SAYS AN ADCAON F DELINQUENCY SHALL NOT BE DEEMED A CONVICTION. POLICY ASIDE, HOW DO WE GET AROUND THE PLAIN LANGUAGE OF THE SEXUAL PREDATOR ACT?

BECAUSE A PLAIN LANGUAGE INTERPRETATION IS CONTRARY TO THE OBVIOUS INTENT OF IT. I SUBMIT TO YOU THAT THERE IS A LATENT, AT LEAST AMBIGUITY IN THE STATUTE. IF THE STATUTE APPLIES TO EVERYONE --

IF IT IS AN AMBIGUITY, THEN, YOU CAUGHT YOURSELF ON THE HORN WITH THAT.

I AM SORRY?

I SAID THE DEFENDANT GETS THE BENEFIT OF THE AMBIGUITY, DOESN'T HE, IN THE STATUTE?

NOT NECESSARILY IN THIS CASE, BECAUSE THIS IS NOT A CRIMINAL STE. THIS IS A STATUTE THAT IS REMEDIAL, AND EVERY COURT THAT HAS CONSIDERED THAT ISSUE HAS FOUND IT TO BE REMEDIAL, AND REMEDIAL STATUTES ARE CONSTRUED NOT TO THE BENEFIT OF THE INDIVIDUAL WHO MIGHT BE IN SOME WAY HARMED BY THEM. THEY ARE TO BE CONSTRUED TO THE BENEFIT OF THE CLASS OF PERSONS TO BE PROTECTED BY THAT STATUTE, AND IN THIS CASE, THAT CLASS OF PERSONS IS CHILDREN, GENERALLY, AND OTHER VULNERABLE INDIVIDUALS WHO MIGHT BE PREY TO A SEXUAL PREDATOR -- WHO MIGHT FALL PREY TO A SEXUAL PREDATOR.

ARE YOU GOING TO HAVE SOMEBODY WHO COULD POSSIBLY BE LOCKED UP PAST HIS SENTENCING?

NO, JUDGE, THIS IS NOT A "JIMMY RYCE" ACT CASE. THIS IS ONLY WHAT IS REQUIRED UNDER THE SEXUAL PREDATOR ACT, WHICH IS THAT THEY NOTIFY FDLE OF THEIR WHEREABOUTS, AND EVERY TIME THEY MOVE, AND THAT LOCAL LAW ENFORCEMENT NOTIFIES THE COMMUNITY OF THEIR PRESENCE. THIS IS --

YOUR OPENING STATEMENT, AND IT IS REALLY THIS SAME, THAT, I UNDERSTOOD, WHEN YOU MADE YOUR OPENING STATEMENT, OUTLINING THE POSITION OF THE STATE, THAT YOU WERE SAYING, REALLY, THAT THIS IS A NARROW EXCEPTION TO THE DEFINITION OF CONVICTION BEING EXCLUDED IN JUVENILE CASES, AND THAT IT IS ONLY WHEN THE JUVENILE HAS BEEN PROSECUTED IN ADULT COURT. AM I CORRECT?

THAT IS OUR POSITION.

HELP ME, THOUGH, WITH THIS, SO YOU ARE SAYING THAT, IF IT WAS THE SAME CIRCUMSTANCE, BUT THE JUVENILE WAS PROSECUTED IN THE JUVENILE DIVISION, AND THEN ADJUDICATED A DELINQUENT, THAT THIS WOULD NOT APPLY. IS THAT CORRECT?

THAT'S CORRECT. THE JUVENILE WOULD --

HOW CAN WE JUSTIFY THAT KIND OF DISTINCTION? YOU ARE SAYING THE SAME CIRCUMSTANCE, AN ELECTION HAS BEEN MADE BY A PROSECUTOR, TO PROSECUTE IN ADULT COURT, YET IT GOES BACK, BUT FOR ANY CASE, THE EXACT CIRCUMSTANCE, BUT WHAT WOULD JUSTIFY THE DIFFERENT TREATMENT? I AM -- THAT IS MY PROBLEM WITH YOUR POSITION HERE. YOU ARE SAYING THAT, IF THIS PERSON HAD STAYED IN JUVENILE COURT, THEN WE WOULDN'T BE HERE, THAT THE STATE WOULD NEVER BE CLAIMING THAT HE WOULD BE SUBJECT TO THE SEXUAL PREDATOR ACT.

TWO REASONS. ONE THE, ONE PRESUMES THAT THE MOST SERIOUS 14 AND 15-YEAR-OLD, CRIMES COMMITTED BY 14 AND 15 YEAR OLD ARE THE ONES THAT ARE DIRECT-FILED, SO YOU ARE DEALING WITH THE MOST SERIOUS CRIMES, BUT MORE THAN THAT, YOU CAN ONLY TAKE ADVANTAGE OF THE PROVISIONS OF THE JUVENILE CODE AND THE DEFINITIONS OF THE JUVENILE CODE IF YOU ARE IN JUVENILE COURT SO HE IS NOT IN JUVENILE COURT AT THAT POINT. HE IS IN CRIMINAL COURT.

WHAT ABOUT THE AUTHORITY BEGIN TO THE TRIAL COURT TO SENTENCE SOMEBODY IN THIS CIRCUMSTANCE AND ADJUDICATE THEM AS A DELINQUENT, AS OPPOSED TO CONVICTING THEM AS A CRIMINAL DEFENDANT? I AM, AND, ALSO, NOW, BECAUSE YOU ARE SAYING, IF I UNDERSTAND IT, IS THAT ESSENTIALLY, IT WOULD GIVE THE PROSECUTOR, NOT JUST DISCRETION WITH REFERENCE TO TRANSFERRING JUVENILES OUT OF THE JUVENILE DIVISION OR WHATEVER, BUT, NOW, OF

MAKING THEM SUBJECT TO THE SEXUAL PREDATOR ACT. THAT IS THAT IT WOULD BE A DISCRETIONARY CALL OF THE PROSECUTOR.

IT ALWAYS -- ALL CHARGING DECISIONS ARE DISCRETIONARY CALL.

IN OTHER WORDS IF THE SAME UNDERLYING QUALIFYING FEATURES ARE THERE, WHICH ESSENTIALLY, IN MOST CASES, IS THE COMMISSION OF THE ACT, AND SO WHAT YOU ARE SAYING, YOU CAN HAVE THE SAME, THAT IN ONE CIRCUIT THE SAME AGE OFFENSE, ET CETERA, AND THE PROSECUTOR KEEPS IT IN JUVENILE, BUT THEN YOU HAVE THE ONE IN ANOTHER CIRCUIT, A TRANSFER TO ADULT, ALTHOUGH IT IS TREATED IF FOR SENTENCING AS A JUVENILE, AND --

BUT IT IS NOT --

-- ONE WILL BE TREATED AS SEXUAL PREDATOR, AND ONE WILL NOT, AND THAT WILL ONLY BE BASED ON THE CHOICE THAT THE PROSECUTOR MAKES.

AND THAT CHOICE WILL BE, ONE ASSUM, REASONED AND BASED ON THE CONDUCT, IN OTHER WORDS NOT BASED ON SOME WHIM SICKAL NOTION OR SOMETHING THAT IS NOT STANDARD.

BUT YOU SAID THAT IT COULD BE THE IDENTICAL CONDUCT AND YET THE CHOICE COULD BE MADE DIFFERENTLY FROM ONE TO THE OTHER.

I DISAGREE, BECAUSE THERE ARE PROVISIONS UNDER THE JUVENILE CODE, UNDER THE DIRECT-FILE STATUTE, THAT PROSECUTORS ARE SUPPOSED TO KEEP TRACK OF WHAT THEY HAVE DONE AND THERE IS SUPPOSEDO BE SOME UNIFORMITY IN THAT CHARGING DECISION, BUT MORE TO THE POINT, IF YOU DIRECT FILE, IF YOU TAKE THE PROSECUTOR'S DISCRETION AND HE DIRECT FILES ON AN INDIVIDUAL, THAT PERSON CAN GO TO PRISON. I MEAN, HAD THE J.M., IN THIS CASE, COULD HAVE GONE TO PRISON FOR A MINIMUM OF 6 AND-A-HALF YEARS ON THIS, WHICH --

BUT HE WAS NOT.

NO, HE WAS NOT, BECAUSE THE JUDGE --

I ASSUME THAT IS WHY WE ARE HERE.

BECAUSE THE JUDGE DECIDED --

BUT ISN'T THAT WHY WE ARE HERE, IS THAT HE WAS NOT, AND, AGAIN, DEPENDING ON THE DEFINITIONS HERE, THAT HE WAS NOT, THEN, UNDER THE JUVENILE CODE, CONVICTED OF A CRIME. HE WAS ADJUDICATED A DELINQUENT.

RIGHT. HE IS NOT CONVICTED, UNDER THE JUVENILE CODE, WHICH MEANS THAT HIS CONVICTION CAN'T BE USED TO IMPEACH HIM. IT MEANS THAT HE CAN, IS FREE TO VOTE WHEN HE REACHES THE AGE OF MAJORITY, FREE TO OWN A FIREARM, I THINK, AFTER THE AGE OF 24. I BELIEVE THAT THE JUVENILE CODE HAS TO DO WITH THAT, AND THAT IS FINE, BUT THE LEGISLATURE, WHEN IT PASSED THE SEXUAL PREDATOR ACT, WANTED TO GRAB AS MANY SEXUAL PREDATORS, POTENTIAL SEXUAL PREDATORS, PEOPLE IDENTIFIED AS SEXUAL PREDATORS, AS POSSIBLE.

WHY WOULDN'T THEY INCLUDE, THEN, THE ONES THAT HAD BEEN ADD JUDD TATEED -- ADJUDICATED DELINQUENT IN JUVENILE COURTS FOR THE SAME ACTS?

BECAUSE PRESUMABLY JUVENILE COURT IS RESERVED FOR PEOPLE WHO DO NOT COMMIT SERIOUS CRIMES OR THERE IS SOME SERIOUS PROBLEM THE PROF THE CASE. THERE IS DISCRETION TO PROSECUTE A 14 OR 15-YEAR-OLD, UNDER A CHARGE OF SEXUAL BATTERY AS AN ADULT. THERE IS NO DISCRETION AFTER 15. AT 16 AND 17, THEY MUST BE.

BUT THEY CAN BE LEFT IN THE JUVENILE DIVISION, TOO.

NOT, WELL, 14 AND 15, YES, THEY CAN BE, BUT WHEN CONDUCT IS SERIOUS AND THE CONDUCT HERE WAS VERY SERIOUS, THE PROSECUTOR EXERCISES THE DISCRETION PROPERLY IN THIS CASE, TO CHARGE THIS PERSON WITH A SERIOUS CRIME AND CHARGE THEM IN ADULT COURT. THE FACT THAT THERE IS DISCRETION IN THE ACT AND THE FACT THAT THAT DISCRETION IMPLICATES THE FLORIDA SEXUAL PREDATOR ACT, DOES NOT MEAN THAT THE FLORIDA SEXUAL PREDATOR ACT REACHES TOO FAR WHEN IT GRABS JUVENILES.

WELL, ASSUMING YOU ARE CORRECT THAT THE LEGISLATURE DID NOT INTEND TO CATCH UP JUVENILES THAT ARE ADJUDICATED DELINQUENT IN JUVENILE COURT, WHERE IS THE LANGUAGE IN THE SEXUAL PREDATOR ACT THAT INDICATES THAT ONES THAT ARE TRANSFERRED TO ADULT COURT BUT ARE LATER TREATED AS JUVENILES FOR SENTENCING PURPOSES, THAT THE LEGISLATURE DID INTEND THE SEXUAL PREDATOR ACT TO APPLY TO THEM?

YES. BECAUSE OF THE BREADTH OF THE ACT. THE ACT IS EXTREMELY BROAD. THERE IS A BROAD DEFINITION OF WHAT A SIMILAR OFFENSE IS. A SIMILAR OFFENSE CAN BE ANYTHING THAT, VERY BROAD DEFINITION OF THAT. IT DOESN'T MATTER HOW THE CASE ENDS. THE STATUTE SAYS RESOLVED BY A PLEA OF NOLO CONTENDERE OR GUILTY OR A FINDING OF GUILT. THAT IS ALL THERE P IS. -- THAT IS ALL THERE IS. THOSE ARE THE ONLY THREE CHOICES O THE WAY A CASE ENDS, WHEN SOMEBODY HASBEIN FOUND -- HAS BEEN FOUND CULPABLE OF WHAT THEY ARE CHARGED WITH. OTHERWISE IT IS NOT GUILTY OR GUILTY OF A LESSER, BUT THOSE, OBSLYT DOESN'T MATTER HOW YOU PLEAD, DOESN'T MATTER HOW YOU GET THERE, AS LONG AS YOU HAVE GOTTEN THERE. AS LONG AS YOU ARE CULPABLE. MOREOVER, SECTION 775.24 DID B, WHICH I DIDN'T CITE IN THE BRIEF BUT I FOUND --, WHICH I DIDN'T CITE IN THE BRIEF BUT I FOUND IN RESEARCH, THAT THE JUDGE BARS, CONDITIONS A PLEA BASED UPON THE SEXUAL PREDATOR ACT.

CAN I GO BACK TO THE LANGUAGE OF THE STATUTE.

UM-HUM.

YOU ARE SAYING THAT HE SHOULD HAVE BEEN FOUND TO BE A SEXUAL PREDATOR UNDER 4-A, CORRECT?

YES.

WHICH SAYS "UPON CONVICTION".

UPON CONVICTION, YES.

WE KNOW HE WAS ADJUDICATED AS DELINQUENT. HE WAS NOT CONVICTED. SO WE SOMEHOW HAVE TO TAKE CONVICTION IN THAT SECTION AND READ IN WORDS WHICH WOULD BE ADJUDICATED AS A DELINQUENT, ALSO INCLUDES CONVICTION. CORRECT?

YES. YES.

HOWEVER, IN THE VERY SAME STATUTE, UNDER 4-B, WHICH IS THE SAME SEXUAL PREDATOR STATUTE, WHEN THEY ARE TALKING ABOUT A PRIOR FELONY, THEY SAY THAT IT MUST HAVE RESULTED IN A CONVICTION OR AN ADJUDICATION OF DELINQUENCY ENTERED SEPARATELY, SO WE HAVE GOT THE LEGISLATURE ACTUALLY WITHIN THE VERY SAME SECTION FOUR, WHEN THEY WANTED TO USE ADJUDICATION AND DELINQUENCY, THEY USED IT. WHY ISN'T THAT DISPOSITIVE TO THIS CASE? IN OTHER WORDS, TO GET TO WHERE YOU ARE, WE HAVE GOT TO TWIST AND TURN WHAT WE THINK THE LEGISLATURE MAY HAVE INTENDED, WHEREAS THE WAY THE PLAIN LANGUAGE OF THIS SHOWS THAT IT DOESN'T INCLUDE AN ADJUDICATION OF DELINQUENCY, AND

I AM JUST HAVING PROBLEMS WITH HOW WE WOULD, YOU KNOW, WE ARE ALWAYS TOLD IF IT IS THE PLAIN LANGUAGE WE STICK WITH THE PLAIN LANGUAGE AND THAT IS HOW WE CONSTRUE LEGISLATIVE INTENT, NOT BY THE WAY WE THINK THEY WANTED THIS TO COME OUT.

WELL, THE PLAIN LANGUAGE OF SUBSECTION ONE SAID SOMETHING TO THE EFFECT THAT JUVENILE ADJUDICATIONS OF DELINQUENCY SHALL NOT BE CONSTRUED AS A CONVICTION. THEN I THINK THAT IS RIGHT. THE FACT THAT IT IS USED LOWER IN A QUALIFYING FOR THE QUALIFYING OFFENSE, A, DEMONSTRATES HOW BROAD THEY WANT THE ACT TO BE, AND, B IS NOT DISPOSITIVE THAT THEY DIDN'T WANT A CONVICTION OF SOMEONE CHARGED IN ADULT COURT, IN CRIMINAL COURT, TO COUNT IN THIS. 6 ADDITIONAL EVIDENCE OF THIS BEING A VERY BROAD ACT, YOU CAN BE SUBJECT TO THIS FOR A SINGLE SERIOUS SEX CRIME OR TWO NOT NOT-AS-SERIOUS SEX CRIMES. IN OTHER WORDS TWO LEWD AND LASCIVIOUS CONVICTIONS ARE ENOUGH TO BRING YOU WITHIN THE AMBIT OF THIS ACT. VERY BROAD, VERY ALL-ENCOMPASSING. AND IT DOESN'T MATTER, AND THIS IS CRUCIAL HERE, IT DOESN'T MATTER THAT YOU ARE ADJUDICATED GUILTY. AND THAT, TO ME, IS THE CRUX OF IT. IF THE LEGISLATURE WANTED IT TO NOT INVOLVE CERTAIN PEOPLE WHOSE DISPOSITIONS CAME OUT A CERTAIN WAY, THEN THE LEGISLATURE WOULD HAVE SAID, WELL, IF YOU ARE, IF ADJUDICATION OF GUILT IS WITHHELD, THE TRIAL COURT MAY, IN ITS DISCRETION PULL IT BACK. THEY TOOK ALL DISCRETION AWAY FROM THE TRIAL COURT AND MADE A VERY BROAD DEFINITION OF WHAT QUALIFIES YOU FOR IT. HOW YOU WERE TREATED LATER IS IMMATERIAL. DOESN'T MATTER HOW YOU ARE TREATED LATER, UNDER THE STATUTE. SO THE QUALIFYING EVENT THAT GETS YOU QUALIFIED TO THIS IS WHEN YOU PLEA, AND THAT IS RIGHT IN THE LANGUAGE OF THE STATUTE. HE STATUTE SAYS AN OFFENDER WHO MEETS THE SEXUAL PREDATOR CRITERIA DESCRIBED IN PARAGRAPH 4-A, AND HE DOES, AND WHO IS BEFORE THE COURT FOR SENTENCING, AND HE WAS, FOR A CURRENT OFFENSE, COMMITTED ON OR AFTER OCTOBER 1, 1993, IS A SEXUAL PREDATOR, SO SOMEONE BEFORE THE COURT, IN OTHER WORDS SOMEONE WHO HAS BEEN FOUND CULPABLE, SOMEONE WHO HAS, THERE HAS BEEN A FINDING OF FACT THAT THIS PERSON DID IT. THAT PERSON IS A SEXUAL PREDATOR AND IT DOESN'T MATTER HOW THEY ARE TREATED LATER. MR. CHIEF JUSTICE

YOU ARE INTO YOUR REBUTTAL TIME.

OKAY. I WILL RESERVE THE REST OF MY TIME FOR REBUTTAL. THANK YOU. MR. CHIEF JUSTICE

THANK YOU. MR. BRINKMEYER.

MAY IT PLEASE THE COURT. DOUGLAS BRINKMEYER FROM THE PUBLIC DEFENDERS OFFICE ON BEHALF OF THE RESPONDENT. THE STATE'S WHOLE ARGUMENT IS ON THE WRONG SIDE OF THE STREET. IF THE STATE FEELS THE LEGISLATURE MEANT TO INCLUDE JUVENILES IN THE STATUTE, THEY SHOULD BE ACROSS THE STREET ASKING THE LEGISLATURE TO AMEND THE STATUTE. THE FIRST DCA'S OPINION IS VERY WELL-BASED, UPON TRADITIONAL RULES OF STATUTORY CONSTRUCTION, AND THE STATE IS READING IN TO CHAPTER 771, SOMETHING THAT IS NOT IN THERE. I CALL THIS COURT'S ATTENTION TO ITS PREVIOUS DECISION? STATE VERSUS McFADDEN IN NOVEMBER OF LAST YEAR, TWO YEARS AGO. THE QUESTION THERE WAS WHETHER A CONVICTION, QUOTE/UNQUOTE, COULD BE USED FOR IMPEACHMENT WHERE THERE WAS NO FINDING, ADJUDICATION OF GUILT. THIS COURT TRACED THE HISTORY OF THE TERM CONVICTION, BACK TO 1888. 1918. 929. 0. CITING CASES WHERE THIS COURT SAID THIS IS OUR DEFINITION OF CONVICTION, AND THE LEGISLATURE IS CERTAINLY AWARE OF IT, WHEN IT PASSES A STATUTE ON IMPEACHMENT. LIKewise, AS THE FIRST DISTRICT NOTED IN THE OPINION IN THE INSTANT CASE, EVER SINCE 1951, WHEN CHAPTER 39 WAS INVENTED, THE LEGISLATURE HAS RECOGNIZED, EXPRESSLY RECOGNIZED THAT AN ADJUDICATION OF DELINQUENCY SHALL NOT BE DEEMED A CONVICTION. REVISION IN 1972, SAME THING. 1977, WHEN THEY REWROTE CHAPTER 39 AND MOVED IT TO CHAPTER 985, THEY CONTINUED WITH THE SAME DEFINITION THAT THEY HAD HAD SINCE 1951. SO HERE WE ARE, 50 YEARS LATER, ARGUING ABOUT WHAT THE LEGISLATURE MEANT WHEN THEY SAID AN ADJUDICATION OF DELINQUENCY SHALL NOT BE DEEMED A CONVICTION. HOW

MUCH MORE CLEAR COULD IT BE? YES, MA'AM.

IN McFAD EN, WE WERE DEALING WITH WHETHER AN ADJUDICATION WITHHELD COULD BE CONSTITUTE A CONVICTION FOR THE PURPOSE OF IMPEACHMENT.

YES, MA'AM.

IN THIS CASE, UNDER 775.21, CONVICTION IS DEFINED BY THE LEGISLATURE. CORRECT?

IT IS DEFINED AND THE LEGISLATURE SPECIFICALLY DID NOT INCLUDE JUVENILE ADJUDICATION.

BUT REGARDLESS OF WHETHER ADJUDICATION IS WITHHELD.

YES, MA'AM.

IT IS YOUR CONTENTION THAT THEY WOULD HAVE TO MAKE, TO OVERRIDE THE JUVENILE STATUTE, WHICH SPECIFICALLY SAYS THAT AN ADJUDICATION OF GUILT IS NOT A CONVICTION AND CANNOT BE USED TO IMPOSE ANY CIVIL DISABILITIES, THAT THEY WOULD HAVE HAD, IN THE DEFINITION SECTION, HAVE SAID A CONVICTION WILL INCLUDE AN ADJUDICATION OF DELINQUENCY?

ABSOLUTELY. IF YOU LOOK AT 5, YOU WILL FIND A NORMAL JUVENILE DELINQUENCY CASE, WHERE THE CHILD IS PROSECUTED IN JUVENILE COURT AND FOUND GUILTY AND SENTENCED AS JUVENILE. THE 8 -- 985.228 SUB6, NOR SHALL THE CHILD HAVE BEEN FOUND GUILTY OR TO BE A CRIMINAL BY REASON OF THAT ADJUDICATION, NOR SHALL THAT ADJUDICATION OPERATE TO IMPOSE UPON THE CHILD ANY OF THE CIVIL DISABILITIES ORDINARILY IMPOSED OR RESULTING FROM A CONVICTION. SO THAT IS A JUVENILE PROSECUTED AS A JUVENILE, SENTENCED AS A JUVENILE. IF YOU COMPARE IT WITH 985.233-4-B, JUMP NILES PROSECUTED AS AN ADULT BUT SENTENCED AS JUVENILES, YOU FIND THE EXACT SAME LANGUAGE.

IS THIS A CASE OF LIMITED DURATION? IN OTHER WORDS DO JUDGES STILL, UNDER THE NEW AMENDED STATUTES, STILL HAVE THE ABILITY TO SENTENCE JUVENILES THAT HAVE BEEN TRANSFERRED INTO ADULT COURT, AS JUVENILES?

YES, MA'AM.

THEY DO?

HAPPENS EVERYDAY. SO I COULD SEE THE STATE'S ARGUMENT, POSSIBLY, IF, WHEN THE LEGISLATURE ENACTED 775, THEY TOOK OUT 985.233-4-B, AND SAID, OKAY, JUDGE, IF YOU HAVE A CASE WHERE A CHILD IS PROSECUTED AS AN ADULT, YOU MAY NOT IMPOSE JUVENILE SANCTIONS, WELL, THAT WOULD BE SOME INDICATION OF THEIR LEGISLATIVE INTENT. HOWEVER, THEY DID NOT DO THAT. AND I FILED SUPPLEMENTAL AUTHORITY THE OTHER DAY, WITH A LAW REVIEW ARTICLE, WHICH POINTS OUT THAT 33 STATES DO NOT INCLUDE JUVENILES WITHIN THEIR SEXUAL PREDATOR STATUTES. THE OTHER REMAINING 17 STATES THAT DO, HAVE AN EXPRESS STATEMENT IN THEIR STATUTE THAT THIS DOES, IN FACT, APPLY TO JUVENILES.

WOULD YOU EXPLAIN, AS A PRACTICAL MATTER, FOR, THIS WAS A DEFENDANT WHO WAS 14 AT THE TIME OF THIS PARTICULAR INCIDENT AND THE TRIAL JUDGE FOUND THAT HE, HIMSELF, HAD BEEN A VICTIM OF EARLIER SEXUAL ABUSE, AND THAT HE WAS NOT LIKELY TO COMMIT THIS, ANYTHING LIKE THIS AGAIN. IF HE WERE TO BE FOUND TO BE A SEXUAL PREDATOR, REALIZING THIS ISN'T THE JIMMY RYCE SITUATION, WHAT ARE THE PRACTICAL IMPLICATIONS FOR THIS BOY, IN TERMS OF WHAT DOES IT MEAN THAT HE GETS, THAT --

THE PRACTICAL CONSIDERATIONS ARE THAT HE WOULD HAVE TO REGISTER WITH THE

DEPARTMENT OF LAW ENFORCEMENT. HE WOULD HAVE TO REGISTER EVERY TIME HE GETS A DRIVER'S LICENSE. HIS NAME, ADDRESS, PERSONAL INFORMATION WOULD BE A PUBLIC RECORD. IT WOULD BE ON THE INTERNET.

SO THERE IS NO QUESTION, AND I GUESS THE STATE, REALLY, HAS NEVER CONTESTED THAT THIS WOULD BE A CIVIL DISABILITY WITHIN THE MEANING OF THE JUVENILE STATUTE THAT SAYS THAT AN ADJUDICATION OF DELINQUENCY SHOULD NOT HAVE, THERE SHOULD NOT BE, IT WOULD NOT HAVE ANY CIVIL DISABILITIES CONNECTED WITH IT.

THE STATE IS BEING INCONSISTENT ON THAT POINT. THE STATE IS SAYING THAT, SINCE THIS IS NOT A CRIMINAL PENALTY, THAT THE BROAD BRUSH OF THE LEGISLATURE, THEIR INTENT WAS THAT IT SHOULD APPLY TO JUVENILES. HOWEVER, THEY IGNORE THE EXPRESS LANGUAGE IN BOTH SECTIONS OF 985 WHICH I HAVE QUOTED, WHICH SPECIFICALLY SAY THAT A FINDING OF DELINQUENCY SHALL NOT OPERATE AS CIVIL DISABILITY. THIS, TO ME, WE COULD DEBATE ABOUT WHETHER THIS IS PUNISHMENT OR NOT, BUT ASSUMING THAT IT IS A CIVIL DISABILITY, JUST LIKE JIMMY RYCE WOULD BE, IT IS EXPRESSLY PROHIBITED BY THE LEGISLATURE. IT IS NOT A CIVIL DISABILITY THAT YOU CAN IMPOSE UPON A PERSON WHO IS SENTENCED AS A JUVENILE, REGARDLESS OF IF THEY ARE PROSECUTED IN ADULT COURT OR IN JUVENILE COURT.

THE LEGISLATURE WOULD HAVE THE ABILITY, JUST LIKE THEY DID IN SUBSECTION B, TO HAVE SAID EITHER A CONVICTION OR AN ADJUDICATION OF DELINQUENCY.

YES, MA'AM. THEY COULD HAVE VERY EASILY HAVE SAID THAT BUT THEY CHOSE NOT TO. IN FACT, IF YOU LOOK AT 775.21, YOU FIND THE WORD "CONVICTION" IN THERE TWELVES. YOU FIND "POSTCONVICTION" TWICE, "CONVICT" TWICE, AND CONVICTION ONCE. SO THEY ESSENTIALLY SAID WE ARE TALKING ABOUT CONVICTIONS HERE. WE ARE NOT TALKING ABOUT JUVENILE ADJUDICATIONS OF DELINQUENCY. ANY RELIEF THE STATE IS ENTITLED TO SHOULD BE ACROSS THE STREET IN THE LEGISLATURE -- ANY RELIEF THE STATE IS ENTITLED TO SHOULD BE ACROSS THE STREET IN THE LEGISLATURE. SO I WOULD ASK THE COURT TO AFFIRM AND UPHOLD THIS HAS NO APPLICATION TO JUVENILE DELINQUENCY. MR. CHIEF JUSTICE

THANK YOU, MR. BRINKMEYER. REBUTTAL?

FIRST OF ALL, WE DID ARGUE THAT THESE WERE NOT CIVIL DISABILITIES. WE DID IT AT PAGE TEN OF THE REPLY BRIEF. CIVIL DISABILITY IS A TERM OF ART THAT HAS TO DO WITH NOT BEING ABLE TO EXERCISE A RIGHT, SUCH AS THE RIGHT TO VOTE, RIGHTS OF MARRE, OTHER CIVIL DISABILITIES CASES HAVE INVOLVED THINGS LIKE AN ENTITLEMENT OR, IF YOU MEET CERTAIN CRITERIA OR TO CERTAIN PENSION BENEFITS. THIS IS NOT A CIVIL DISABILITY. THE JIMMY RYCE, COMMITMENT UNDER THE "JIMMY RYCE" ACT WOULD BE A CIVIL COMMITMENT, AND TO THE EXTENT THAT THAT IS A CIVIL DISABILITY, I DON'T THINK IT APPLIES HERE, BECAUSE THIS INDIVIDUAL IS NOT UNDER THE "JIMMY RYCE" ACT. NOR ARE OTHER INDIVIDUALS NECESSARILY SIMILARLY SITUATED.

HAVING TO REPORT, RIDGE STIR AS A -- REGISTER AS A SEXUAL PREDATOR, WHAT IS THAT?

THAT IS A CIVIL STATUS -- STATUS, AS EVERY COURT THAT HAS CONSIDERED IT HAS DECIDED, NOT A DISABILITY STATUS. IN OTHER WORDS THIS IS SOMETHING THAT YOU HAVE TO DO BECAUSE OF WHAT YOU ARE, JUST AS INDIVIDUALS BEEN CERTAIN AGES HAVE TO REGISTER FOR THE DRAFT. IT IS THE SAME SORT OF THING, THOUGH OBVIOUSLY IN A DIFFERENT CONTEXT. AS TO THE --

WELL, IS THERE A CERTAIN PERIOD THAT THIS PERSON CANNOT APPLY FOR A GUN OR PISTOL PERMIT?

ANYBODY ADJUDICATED DELINQUENT CAN'T APPLY FOR A GUN PERMIT, I THINK, UNTIL AGE 24. I BELIEVE I SAW THAT DURING MY RESEARCH. IF I AM NOT MISTAKEN.

SO YOU ARE SAYING THE FACT THAT THERE IS NO DISABILITY --

NO. THIS ACT DOESN'T --

-- WITHOUT BEING ADJUDICATED AS A JUVENILE.

IT DOESN'T MATTER. WHETHER THIS ACT APPLIES TO HIM OR NOT, HE CAN'T HAVE A FIREARM UNTIL HE IS 24. THAT IS UNDER THE JUVENILE LAW, NOT UNDER THIS LAW. THIS LAW REQUIRES HIM TO REGISTER AND REQUIRES LAW ENFORCEMENT TO NOTIFY PEOPLE IN THE COMMUNITY THAT HE IS THERE, AND I THINK THE FOCUS HAS NOT BEEN PLACED WHERE IT OUGHT TO BE IN THIS CASE. IN THIS DAYS -- IN THIS CASE, COURTS HAVE AN OBLIGATION TO GIVE LIFE TO A STATUTE, AND THIS STATUTE IS INTENDED TO PROTECT PEOPLE. IT IS INTENDED TO PROTECT THEM, GIVE THEM THE ABILITY TO, GIVE THEM THE ABILITY TO KNOW THAT CERTAIN DANGEROUS INDIVIDUALS, POTENTIALLY DANGEROUS INDIVIDUALS, INDIVIDUALS WHO HAVE SHOWN THEIR DANGEROUSNESS BY COMMITTING ONE OR MORE SERIOUS SEX OFFENSES, ARE LIVING AMONG THEM. THAT IS WHAT IT IS FOR.

WE CAN'T, THOUGH, WE CAN'T DISREGARD THE ACTUAL LANGUAGE THAT THE LEGISLATURE USED, WHEN WE ARE TRYING TO EFFECTUATE LEGISLATIVE INTENT. THAT IS, ISN'T THAT THE PRIMARY RULE OF STATUTORY CONSTRUCTION?

BUT THERE ARE OTHER RULES OF STATUTORY CONSTRUCTION, AND WHEN THERE IS AN AMBIGUITY, AND I CONTEND THERE IS, YOU LOOK TO AMONG OTHER THINGS, YOU CAN DISCERN AND DEFINE LEGISLATIVE INTENT FROM WHAT THE LEGISLATURE WAS TRYING TO DO. ITS EXPRESS PURPOSE IN HOW IT TRIED TO ACCOMPLISH THAT PURPOSE, AND IT TRIED TO ACCOMPLISH THAT PURPOSE BY -- THAT PURPOSE, AND IT TRIED TO ACCOMPLISH THAT PURPOSE BY CASTING A BROAD NET IN THIS CASE, THE STATUTE.

IS THE AMBIGUITY AGAIN?

THE AMBIGUITY IS THAT IT INCLUDES EVERY, EVERYBODY CONVICTED, EVERYBODY FOUND GUILTY, EVERYBODY IN CRIMINAL COURT.

BUT THE LANGUAGE ISN'T "FOUND GUILTY". THE LANGUAGE IS ACTUALLY "CONVICTED".

SO -- CONVICTED.

SO THE AMBIGUITY HAS TO BE IN THAT PARTICULAR TERM, DOESN'T IT?

YES, AND OUR POSITION IS THAT THE LEGISLATURE WANTS EVERYONE WHO IS IN CRIMINAL COURT, CHARGED WITH AND FOUND CULPABLE FOR A SEX CRIME, TO BE REGISTERED, UNDER THIS, AND DOESN'T THAT MAKE SENSE?

SO THE AMBIGUITY IS THAT THE USE OF THE WORD "CONVICTED", IS IN OPPOSITION TO THE INTENT OF THE STATUTE.

NO. THE AMBIGUITY IS THAT THE USE OF THE WORD "CONVICTED" IS AS CONSTRUED, AS NARROWED BY THE DISTRICT COURT OF APPEAL, IS, IS CONTRARY, IS CONTRARY TO THE INTENT. MY TIME IS UP. THANK YOU FOR YOUR CONSIDERATION. MR. CHIEF JUSTICE

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE. THE COURT WILL BE IN RECESS.