

*The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.*

## **C.T. v. State of Florida**

CHIEF JUSTICE: LAST CASE ON THE DOCKET IS CT VERSUS STATE. ' MAY IT PLEASE THE COURT. ALLEN LIPSON, ASSISTANT PUBLIC DEFENDANTER -- DEFENDER. THE FACTS ARE THAT WE HAVE A JUVENILE CHARGED WITH A FIRST-DEGREE MISDEMEANOR, SIMPLE BATTERY, AN ALTERCATION AT SCHOOL WITH ANOTHER JUVENILE. APPARENTLY THERE WAS SOME BAD BLOOD BETWEEN THE TWO.

HOW WOULD YOU PHRASE THE LEGAL ISSUE THAT WE HAVE BEFORE US TODAY IN THIS CASE?

I PHRASE THE LEGAL ISSUE THAT THE COURT SIMPLY CANNOT DEPART OR DISREGARD THE RECOMMENDATION OF THE DEPARTMENT OF JUVENILE JUSTICE, SIMPLY BY RECITING THE SAME FACTS THAT THE DEPARTMENT RELIED UPON COMING TO THEIR RECOMMENDATION AS TO A PLACEMENT LEVEL.

IN WHAT LANGUAGE IN THE STATE WOULD YOU RELY ON FOR US TO FOLLOW THAT WITH REGARD TO WE ARE DEALING WITH A PARTICULAR STATUTE?

RIGHT. WE ARE RELYING UPON 985.233-C, WHICH SAYS -- WOULD NOT --

AND WHAT PART OF IT THAT STATUTE?

FIRST IT SAYS THAT SHALL, PRETTY MANDATORY, PRETTY STRONG LANGUAGE, IT DOES GIVE THE COURT A BIT OF A "OUT", BUT IT SAYS IF IT DOES DISREGARD THE PLACEMENT AND ORDERS PLACEMENT AT A DIFFERENT LEVEL, THEN IT SHALL STATE FOR THE RECORD THE REASONS WHICH ARE ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE, WHY THE COURT IS DISREGARDING THE ASSESSMENT OF THE CHILD AND THE RESTRICTIVENESS LEVEL RECOMMENDED BY THE DEPARTMENT.

SEE, I HAVE TROUBLE TRYING TO INCORPORATE THE ARGUMENT THAT THE COURT MUST COME UP WITH OTHER REASONS, BECAUSE MY PERCEPTION OF WHAT OCCURS IS THAT THE COURT IS NOT A SEPARATE INVESTIGATIVE KIND OF BODY, IN A POSITION TO COME UP WITH OTHER, IF YOU HAVE TO HAVE SOMETHING IN ADDITION OR DIFFERENT, AND I WOULD HOPE THAT IT IS A COMPREHENSIVE REPORT THAT COMES TO A JUDGE, AND THAT IS WHERE I AM HAVING SOME DIFFICULTY. WHERE IS THE JUDGE GOING TO EVER HAVE THESE FACTORS?

WELL, ACTUALLY I BELIEVE I ARGUED TWOFOLD. ONE, EITHER THERE IS ADDITIONAL FACTORS AND THAT MAY COME OUT AT THE PREDISPOSITION HEARING. THERE MAY BE ADDITIONAL FACTORS, OR THE JUDGE MAY, HERE AGAIN, THE JUDGE MAY LOOK AT THE PD AREN'T AND DISAGREE WITH THE -- AT THE PDR AND DISAGREE WITH THE ASSESSMENT OF A CHILD AND THERE IS A FOURTH DISTRICT CASE WHERE THAT HAPPENED, WHERE THE JUVENILE WAS ON PROBATION AND HE COMMITTED A BATTERY ON HIS TWO-YEAR-OLD NEPHEW AND THE DEPARTMENT SAID THAT THIS WAS UNSOPHISTICATED AND THE CHILD WAS IMMATURE AND SO ON AND SO FORTH AND AFTER READING THE REPORT, THE JUDGE SAID, WAIT A MINUTE, THE CHILD IS NOT UNSOPHISTICATED. AND THIS WAS A DELIBERATE ACT. HE WAS ON PROBATION, AND HE FELT A HIGHER LEVEL OF JUVENILE JUSTICE WOULD BE AT A HIGHER LEVEL.

WHY IS THIS NOT JUST A DISSERTATION OF THE REPORTED FACTS GIVEN TO THE DEPARTMENT BY

THE JUDGE, AND THE JUDGE SAYS I DON'T AGREE WITH THE INTERPRETATION OF THOSE FACTS BUT THEY ARE THE SAME FACTS.

IT HAS TO BE IN THE RECORD. IT HAS TO BE SUPPORTED BY THE RECORD.

WHAT -- AND THERE ARE OTHER CASES TALKING ABOUT A JUVENILE DOING WELL AND ANOTHER CASE THAT NO, HE WASN'T DOING WELL, THAT HE WAS STILL DISRUPTIVE IN SCHOOL AND WAS GETTING GOOD GRADES. THE REPORT HAD OPPOSITE OBSERVATIONS IN TERMS OF CHARACTERISTICS OF THE CHILD.

IS YOU HAVE A DIMINIMOUS ARGUMENT HERE THAT IS A VERY, VERY BRIEF FIVE PAGES, THE TRIAL JUDGE SPECIFICALLY ASKED, THE PDR SAYS EXPLAIN WHY THE DEPARTMENT DOES NOT RECOMMEND A MODERATE PLACEMENT OR MODERATE RISK PLACEMENT AS TO A HIGH-RISK PLACEMENT? AND THE JUDGE HAD THE FACTS PRESENTED BEFORE HIM, NOT ONLY THE PDR BUT THE TESTIMONY OF THE GRANDMOTHER, EITHER, AND THE JUDGE SAID EXPLAIN TO ME WHY THE DEPARTMENT DID NOT GET A HIGH-RISK PLACEMENT? IT GETS NO ANSWER. IT GETS A SHRUG, AND FROM ONE HAVING DONE A LOT OF THIS, FROM MY PERSPECTIVE IT SAYS THE PERSON IS SAYING YOU KNOW WHAT OUR GUIDELINES ARE.

NUMBER ONE, I THINK THAT SHE WAS INTIMIDATED BY THE JUDGE. THAT IS THE IMPRESSION THAT I GET IS THAT THE PROBATION OFFICER WAS RATHER INTIMIDATED BY THE JUDGE, AND NUMBER TWO, IF YOU LOOK AT THE STATUTORY FRAMEWORK WORK, AND I MENTION THAT IF YOU ARE -- THE STATUTORY FRAMEWORK, AND I MENTION THAT IF YOU ARE GOING TO HAVE PROBATION, YOU HAVE GOT TO HAVE A PDR, AND THE DEPARTMENT OF JUVENILE JUSTICE, WHEN THEY MAKE A RECOMMENDATION, THEY HAVE TO GO TO THE LEAST RESTRICTIVE LEVEL, TAKING INTO CONCERN THE NEEDS OF THE CHILD AND ANY POSSIBLE PUBLIC SAFETY CONCERNS, SO IT SEEMS THAT THE WHOLE SLANT OF THE STATUTE AND THE DJJ, THEY ARE COMMANDED BY THE STATUTE TO COME UP WITH THE LEAST RESTRICTIVE LEVEL UNDER THESE CIRCUMSTANCES.

BUT YOU AGREE THERE IS NO EXPLANATION, EITHER IN THE PDR OR TO THE COURT AT THE HEARING, WHY MODERATE RISK AS OPPOSED TO HIGH-RISK.

WELL, FIRST OF ALL THE STATUTE DOESN'T REQUIRE THE DEPARTMENT TO STATE THAT. AND, TWO, THEY GIVE THE CRITERIA, THAT SHE IS OUT OF CONTROL, HAS VIOLENT TENDENCY, SHE IS A FLIGHT RISK. NOBODY IS DISPUTING THOSE FACTS. THOSE FACTS ARE NOT IN DISPUTE, BUT IF THE JUDGE GETS THE OPPOSITE, THE STATUTE REQUIRES THE JUDGE, IN THE INTERPRETATION OF THE STATUTE, ALL OF THE CASE LAW HAS SAID THAT, IF A JUDGE DOES DEPART THAT, HE HAS TO DISCUSS THE CHARACTERISTICS OF THE LEVEL, VIS-A-VIS THE NEEDS OF THE CHILD, AND THAT WAS ABSOLUTELY NOT DONE HERE T WASN'T DONE IN THE OTHER SIX CASES THAT I ALSO --

ARE THERE FACILITIES FOR THE DJJ, THEY ARE MODERATE-RISK FACILITIES, FOR LEVEL SIX, AND HERE WE ARE TALKING ABOUT A JUVENILE GIRL, ARE THERE FAST ITS THAT ARE MIXED MODERATE TO HIGH-RISK?

NOT THAT I AM AWARE OF. THEY DEFINE LOW, MODERATE, HIGH, AND THE ONLY DIFFERENCE IS, IN THE MODERATE THERE, IS TWO DIFFERENT KINDS OF, ONE IS ENVIRONMENTALLY SECURE AND ONE IS ACTUALLY A LOCKDOWN HARDWARE SKEWER.

AND WHO IS, IS THAT SOMETHING THAT THE JUDGE, THEN, DESCRIBES?

THAT WOULD BE UP TO THE DJJ.

I GUESS WHAT I AM WONDERING, ONE OTHER INITIAL QUESTION ABOUT THE SCOPE OF OUR QUESTION, WHAT IF, IN THIS CASE, THE DJJ HAD ASSESSED AT A LEVEL 8, A HIGH-RISK, AND THE JUDGE SAYS I AM LISTENING TO THIS. I AM LOOKING AT THIS YOUNG GIRL, AND I AM SAYING SHE

IS MENTALLY RETARDED. SHE HAS GOT A 65 IQ. I WANT TO GIVE HER ANOTHER CHANCE BE AND LOOKING AT ALL OF THESE FACTORS, I AM GOING TO DO LEVEL, A MODERATE RISK. IS THERE, UNDER YOUR SCENARIO, CAN A JUDGE NOT DO THAT, EITHER, BASED ON THE SAME REASONS?

HE CAN GO, AGAIN, THE STATE MUST STATE AGAIN, AND HE WOULD BE ENTITLED TO APPEAL THAT, UNDER THE STATUTES.

BUT USING DISCRETION GOING BACK TO WHAT JUSTICE LEWIS SAID, USING THE SAME EVIDENCE THAT IS IN THE PDR AND WHAT THE JUDGE HEARS, THE JUDGE DISREGARDS A HIGHER LEVEL AND GOES TO A LOWER. IS, UNDER YOUR RULE, THE JUDGE WOULDN'T BE ABLE TO DO THAT EITHER.

THAT'S CORRECT. UNLESS HE DISCUSSED WHY HE FELT THAT THE MODERATE RISK WOULD BE BETTER SUITED FOR THIS CHILD, WHO IS OF LOW IQ.

BUT THE JUDGE HERE DID EXPLAIN WHY HE FELT THAT A HIGH-RISK WAS APPROPRIATE, AND HE GAVE VERY, VERY GOOD REASON TO, THE FOURTH DISTRICT SAW THOSE WERE VALID, APPROPRIATE REASONS.

HE JUST REITERATED WHAT THE DEPARTMENT OF JUVENILE JUSTICE SAID. THEY USE THOSE REASONS FOR A MODERATE RISK, BUT HE NEVER EXPLAINED WHY.

THERE APPEARS TO BE A DIFFERENCE BETWEEN -- A DIFFERENCE BETWEEN RATIONALE AND ACTUAL FACTS, IS THAT WE ARE HAVING A SEMANTICS PROBLEM, IT APPEARS, BECAUSE, AS JUSTICE PARIENTE SUGGESTED, HE DID GIVE THE RATIONALE, BUT IT IS BASED ON THE SAME FACTS.

SAME FACTS, BUT HE DIDN'T DISCUSS, HE DID NOT DISCUSS THE CHARACTER SIX OF THE LEVEL, AND IN FACT THE CASE AFTER THAT, ESB CAME OUT OF THE FIFTH DISTRICT COURT OF APPEAL, AND THE JUDGE DEPARTED, HE SAID, BECAUSE OF A PRIOR CRIMINAL RECORD, AND THE FIRST DISTRICT SAID YES, YOU CAN, AND YOU CAN RELY UPON THE SAME FACTS AS THE DEPARTMENT OF THE DJJ SET OUT IN THE PREDISPOSITION REPORT, BUT IF ALL YOU DO IS RELY UPON THE FACTS AND REWEIGH THAT EVIDENCE, THEN YOU HAVE GOT TO TAKE IT ANOTHER STEP FURTHER. YOU HAVE GOT TO NOW DISCUSS THE CHARACTERISTICS OF THE LEVEL, VIA VICE -- VIS-A-VIS THE NEEDS OF THE CHILD.

WHAT I AM, IS THE CONFLICT THAT WE HAVE GOT THIS CASE ON, BETWEEN THE FOURTH DISTRICT'S OPINION AND THE ACN OPINION OUT OF THE DISTRICT, FIRST DISTRICT? IS THAT, IS THAT --

ESN, ESB, LATER CASES, IT ALL TALKS ABOUT THE DISCUSSION --

TELL ME SPECIFICALLY, WHERE THESE CASES COLLIDE. SPECIFIC LANGUAGE.

I BELIEVE THAT THEY COLLIDE, BECAUSE THESE CASES ALL SAY YOU HAVE TO DISCUSS THE CHARACTERISTICS OF THE LEVEL, VIS-A-VIS THE NEEDS OF THE CHILD. YOU HAVE TO SAY, IN OTHER WORDS JUDGE BAKER WOULD HAVE TO SAY YOU HAVE GOT ALL THESE FACTORS. SHE IS A FLIGHT RISK. SHE HAS VIOLENT TENDENCIES. SHE IS NOT DOING WELL IN SCHOOL. SHE IS OUT OF CONTROL.

CAN YOU POINT TO ME THE LANGUAGE IN THESE TWO OPINIONS THAT ARE IN CONFLICT?

WELL, I THINK ACN SPECIFICALLY SAYS THAT THE COURT, I THINK IT WAS ACN WAS A LOW-RISK AND THE JUDGE GAVE A HIGH-RISK, AND IN ACN, THEY SAID THE JUDGE NEVER DISCUSSED WHY THE HIGH-RISK WOULD BE BETTER FOR THE CHILD, GIVEN THE NEEDS OF THE CHILD AND THE GOALS OF REHABILITATION FOR THE CHILD, WHY THE HIGH-RISK WOULD BE BETTER FOR THE

CHILD THAN THE LOW-RISK. ' OKAY.

THAT IS THE WAY TO INTERPRET ACN. YOU HAVE TO ACTUALLY GO IN AND STATE, WELL, I AM RECOMMENDING A HIGH-RISK, BECAUSE IN, MAYBE IN OUR CASE, A MODERATE RISK, MAYBE THERE IS A CHANCE SHE WILL ESCAPE. MAYBE SHE NEEDS MORE SKIP LANE AM -- MORE DISCIPLINE THAN WHAT IS IN A MODERATE RISK PROGRAM. IF HE SAID SOMETHING LIKE THAT, THEN YOU ARE MORE ABLE TO BELIEVE THAT THEY ARE ON THE RIGHT TRACK, BUT IN THIS CASE HE READS SIMPLY THAT OH, THIS IS A LEVEL 8, WHICH IS WHAT HE DID HERE.

GETTING BACK TO THE QUESTION WHICH JUSTICE WELLS ASKED ABOUT CONFLICT, ACN WAS A FIRST DISTRICT CASE, CORRECT?

YES.

AND ESB WAS A FIRST DISTRICT CASE, CORRECT?

RIGHT.

AND ESB ACTUALLY CITES THE FOURTH DISTRICT'S DECISION IN THIS CASE, CORRECT?

YES.

AND ESB AND ACN WERE WRITTEN BY THE SAME JUDGE, CORRECT?

CORRECT.

SO DOESN'T THAT INDICATE THAT THE FIRST DCA DOESN'T THINK THAT THERE IS ANY CONFLICT?

OH, YES THEY DO, BECAUSE ALTHOUGH THEY SAID, YES, WE AGREE THAT YOU CAN RELY UPON THE SAME FACTORS AND REWEIGH THE EVIDENCE, IF YOU DO THAT, THEN YOU MUST EXPLAIN WHY, THEN YOU HAVE TO GO IN TO REFERENCE THE CHARACTERISTICS OF THE LEVEL VIS-A-VIS THE NEEDS OF THE CHILD. THEY ADDED THAT REQUIREMENT WHICH ALL OF THE CASE LAW HAS BASICALLY SAID THAT THERE NEEDS TO BE COMPETENT, SUBSTANTIAL EVIDENCE. YOU CAN'T JUST DISAGREE, AND A LOT OF THESE CASES WHERE THEY FIND --

SO IS THERE IS NO DISAGREEMENT ON THE FACTS AND YOU CAN REACH A CONCLUSION. THERE IS NO DISAGREEMENT WITH THAT, SO ONCE YOU DETERMINE ACCORDING TO THE NEEDS OF THE CHILD, WHERE IN THE FOURTH DCA CASE DID THE FOURTH DCA CASE CONFLICT WITH THAT?

THEY REJECTED THAT.

WHERE DID THEY REJECT THAT?

THEY NOTED THAT, EVEN IF THEIR OWN CASE, THEY SAID THAT YOU HAVE TO DISCUSS THE NEEDS OF THE CHILD, VIS-A-VIS THE CHARACTERISTICS, THE RESTRICTIVENESS OF THE LEVEL, BUT THEY SAID THAT WE ARE NOT GOING TO REQUIRE. THAT ANOTHER FIFTH ALSO FOLLOWED THE ACN AS WELL.

ALL OF THE OTHERS, ALL CONSTANTLY SAY THAT EVEN WHERE THEY SAY THERE WASN'T SUBSTANTIAL EVIDENCE, AND I HAVE CITED ALL OF THOSE CASES AND THEY SAY OH, AND BY THE WAY, THE JUDGE DIDN'T DISCUSS THE CHARACTERISTICS OF THE RESTRICTIVENESS LEVEL VIS-A-VIS THE NEEDS OF THE CHILD, AND YOU FIND THAT IN PRACTICALLY EVERY CASE, THAT ISSUE CONSTANTLY COMES UP.

IN THE FOURTH DCA CASE, THEY NEVER DEALT WITH IT, ONE WAY OR THE OTHER.

THEY JUST SAID THAT THEY WEREN'T.

WHAT I AM READING IS THE FOURTH DISTRICT SAYS THAT THE STATUTE LITERALLY PREVENTS A COURT FROM DISREGARDING THE DJJ'S RECOMMENDATION, NOT DISAGREEING WITH IT, UNLESS THE TRIAL COURT ARTICULATES ITS REASONS WHICH ARE SUPPORTED BY THE PREPONDERANCE OF THE EVIDENCE. NOW, YOU WOULD AGREE WITH THAT, WOULDN'T YOU? YOU WOULD AGREE WITH THAT STATEMENT, WOULD YOU NOT? THE STATUTE PREVENTS A COURT FROM DISREGARDING THE DJJ'S RECOMMENDATION NOT DISAGREEING WITH IT, UNLESS THE COURT, TRIAL COURT, ARTICULATES ITS REASONS, WHICH ARE SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE. YOU WOULD AGREE WITH THAT, WOULD YOU NOT?

YES.

OKAY. AND ISN'T THAT WHAT THE FOURTH, I MEAN, THAT IS VERBATIM OUT OF THE FOURTH DISTRICT'S OPINION.

WELL, I FIND THAT THAT SIMPLY IS NOT, I MEAN, THAT IS JUST DISAGREEING. I DON'T SEE WHERE, IF WE HAVE, THERE IS A PROBLEM, AND WE BOTH AGREE THAT A, B AND C ARE THE ROOT CAUSES OF THE PROBLEM. HERE IS THE PROBLEM, A, B AND C. HOWEVER, JUSTICE, YOU TELL ME Z IS THE SOLUTION TO THE PROBLEM AND I TELL YOU, NO, JUSTICE. WHY ISN'T THE SOLUTION TO THE PROBLEM? I THINK THAT IS DISAGREEING, AND YOU MAY DISREGARDING MY SOLUTION -- YOU MAY DISREGARD MY SOLUTION WHY AND TAKE YOUR SOLUTIONS AS AGREED, BUT WE DISAGREE.

YOU ARE PUTTING A LOT OF SIGNIFICANCE ON DISREGARD VERSUS --

RIGHT.

-- VERSUS --

IT ALMOST LIKE IN TERMS OF INTERCHANGEABLE.

I AM HAVING A PROBLEM WITH UNDERSTANDING THAT SOMETHING, ALTHOUGH AS SUBTLE, I MEAN, AGAIN, WE ARE TALKING HERE, ABOUT TO ME AT LEAST CERTAIN POLICY MATTERS AND IT IS INTERESTING THE DJJ ISN'T IN HERE, BECAUSE I MIGHT WANT TO MAKE AN ARGUMENT THAT THE LEGISLATURE REALLY DID WANT TO PUT A LOT OF DISCRETIONS IN -- DISCRETION IN THE DJJ AS TO WHAT LEVEL, BECAUSE SPECIFICALLY THEY ONLY HAVE A FEW BEDS, SPECIFICALLY FOR GIRLS, THAT ARE HIGH LEVEL, AND THEY DON'T WANT JUDGES TO TEACH KIDS A LESSON TO PUT THEM IN HIGH LEVEL OF RESTRICTIVENESS, SO YOU ARE SAYING THERE HAS TO BE A LOT OF DEFERENCE TO WHAT THE DJJ SAYS AS TO ITS RESTRICTIVENESS, BUT I DON'T FIND THAT IN THE STATUTE. THAT MIGHT BE A PERFECTLY GREAT POLICY REASON, BUT I AM HAVING TROUBLE READING THE STATUTE HERE, AND WE ARE DEALING WITH STATUTORY CONSTRUCTION.

IF YOU ARE LOOKING AT REQUIRING THE DJJ TO COME UP WITH A DISPOSITION REPORT IF YOU ARE GOING TO PUT A CHILD IN A RESIDENTIAL PROGRAM AND ALSO REQUIRED THEM TO COME UP WITH THE LEASE RECEIPT RESTRICTIVE LEVEL AND -- WITH THE LEAST RESTRICTIVE LEVEL AND THEN THE COURT "SHALL COMMIT CHILD", I MEAN, IT IS REAL STRONG LEGISLATION THAT THE COURT IS TO FOLLOW THE RECOMMENDATION OF THE DJJ AND WOULD HAVE TO COME UP WITH SOME VERY GOOD REASONS, AND I THINK IT IS LOGICAL IF YOU HAVE GOT THE SAME FACTORS AND IN THIS CASE THE JUDGE SAYS, NO IN THIS CASE YOU HAVE GOT AN EIGHT NOT A SIX, AND HE HAS TO STATE WHY THE LEVEL 6 DOES NOT SATISFY THE RULES.

IN THIS INSTANCE HERE, HE SAYS IT IS MORE EXTREME THAN WHAT THE DJJ DOES, AND THAT IS WHY HE BELIEVES THAT A HIGHER SECURITY --

I DON'T SEE WHERE HE SAID THAT.

HERE IS THE STRUCTURE IN THE STATUTE, IF YOU LOOK AT 985, WHICH ISN'T FULLY QUOTED, BUT THREE A, B AND C, FIRST, IF A CHILD IS DETERMINED TO BE COMMITTED, IF THEY DO THAT, THEN IT SAYS IN B THAT, IF THE COURT DETERMINES THAT IS A COMMITMENT TO THE DEPARTMENT IS WARRANTED, THEN THE JUVENILE PROBATION OFFICER SHALL RECOMMEND TO THE COURT THE MOST -- SHALL RECOMMEND TO THE COURT THE MOST APPROPRIATE CARE AND TREATMENT PLAN, THEN THE PROBATION OFFICER COMES UP TLANT DJJ JUDGE ASKS THE PROBATION OFFICER HAD, WHO IS SUPPOSED TO, UNDER THE STATUTORY SCHEME, GIVE THE COURT THE REASONS FOR THE PLACEMENT. THIS PROBATION COURT, THE PROBATION OFFICER BEFORE THE COURT SAYS THAT IS WHAT WE HAVE GOT TO DO. DOESN'T DO WHAT THE STATUTE REQUIRES, THEN THE COURT, BASED UPON THE SAME FACTUAL, MAKES AN INDEPENDENT DETERMINATION, BUT THE OFFICER, IN THIS CASE, IF ANYTHING, FAILED TO GIVE AN ADEQUATE RATIONALE OR A RECOMMENDATION TO THE COURT BECAUSE IT SIMPLY SAID, WELL THAT, IS WHAT THEY SAID, AND IT PLACED THE TRIAL JUDGE IN AN AWKWARD POSITION HERE, BECAUSE THE TRIAL JUDGE MAKES THE DETERMINATION TO COMMIT, GETS THE RECOMMENDATION FROM THE DJJ, AND THE PROBATION OFFICER WHO, UNDER THE STATUTE IS SUPPOSED TO ARTICULATE THE REASON FOR THE RECOMMENDATION, DOESN'T DO THAT, AND THE JUDGE OUTLINES HIS REASON WHY HIGH-RISK IS MORE APPROPRIATE THAN MODERATE RISK. WITHOUT ANY CONTRAVENTION BY THE DEPARTMENT. PROBATION OFFICER. EXCUSE ME.

WELL, THE PROBATION OFFICER, WHATEVER, NO MATTER HOW WEAK HER RESPONSE WOULD BE, SHE IS STILL STUCK TO THE RECOMMENDATION OF THE DEPARTMENT. IN FACT, EVEN THE STATE ATTORNEY SAID EVEN THOUGH HE WOULD LIKE A HIGH, HE WOULD NOT OBJECT TO THE MODERATE, AND THAT WAS BECAUSE OF THE CHILD'S LIMITED JUVENILE BEHAVIOR IN THIS CASE.

WE ARE WELL INTO YOUR REBUTTAL, SO I WANT TO GIVE AWE FAIR OPPORTUNITY TO PAUSE, SO I UL STILL HAVE SOME OF THAT -- SO YOU WILL STILL HAVE SOME OF THAT TIME LEFT.

MAY IT PLEASE THE COURT. MY NAME IS SUE ELLEN KENNY. I AM AN ASSISTANT ATTORNEY GENERAL REPRESENTING THE STATE OF FLORIDA.

WHY SHOULDN'T THE TRIAL COURT BE REQUIRED, IF IT IS JUST A DISAGREEMENT OVER THE SAME, IN OTHER WORDS, EVERYBODY HERE SEEMS TO AGREE ON THE UNDERLYING CIRCUMSTANCES, AND YOU KNOW, WHAT THE RECORD IS WITH THIS PARTICULAR YOUNG LADY, BUT WHEN THE DEPARTMENT, WHO HAS BEGIN INITIAL RESPONSIBILITY AND PRIMARY RESPONSIBILITY FOR MAKING A DETERMINATION AS TO WHAT THE CONSEQUENCES SHOULD BE, WHY SHOULDN'T THE TRIAL COURT, IF IT DISAGREE, HAVE TO EXPLAIN WHY THAT LEVEL OF COMMITMENT WOULDN'T BE ADEQUATE, IN A PARTICULAR CASE? AND WHY SHOULDN'T THE TRIAL JUDGE HERE, HAVE BEEN REQUIRED TO SAY, WELL, DJJ IS RECOMMENDING THIS LEVEL, BUT THIS WOULD NOT BE ADEQUATE, BASED ON THIS YOUNG LADY'S RECORD, FOR THE FOLLOWING REASONS. NOW, HOW DO WE KNOW THAT THIS LEVEL OF RECOMMENDED TREATMENT BY DJJ WOULDN'T BE ADEQUATE IN THIS CASE?

IN TERMS OF THE WEIGHING OF THE FACTORS, THE STATUTE DOES GIVE THE JUDGE SPECIFIC DISGREETINGS TO, ONE, WEIGH THE FACTORS DIFFERENTLY, APPORTION DIFFERENT WEIGHT, AND ONCE HE OR SHE DOES APPORTION THE FACTORS APPROPRIATELY, ACCORDING TO THE JUDGE, THEN THE DETERMINATION OF THE RESTRICTIVENESS LEVEL MAY WELL ALTER, BASED ON THAT APPORTIONMENT OF WEIGHT, THE DIFFERENCE IN APPORTIONMENT OF WEIGHT.

PART OF MY CONCERN HERE IS WE HAD A LITTLE EXCHANGE ABOUT WHAT MODERATE LEVEL REALLY MEANT HERE, AND IF I UNDERSTOOD THE RESPONSE, IT WAS, THAT, WELL, IN SOME INSTANCES, YOU KNOW THAT, IS A LOCKDOWN, LOCKDOWN SOUNDS PRETTY SECURE, AND THEN IN OTHER INSTANCES, YOU KNOW, USE THE WORDEN ENVIRONMENTAL, AND I AM NOT EXACTLY WHAT THAT -- I AM NOT EXACTLY SURE WHAT THAT MEANS, BUT HOW DO WE KNOW THAT THIS MODERATE LEVEL WOULDN'T HAVE PROVIDED, IN ESSENCE, ENOUGH SECURITY FOR THIS YOUNG

LADY, BASED ON HER RECORD? HOW DO WE KNOW, YOU KNOW, BASED ON WHAT WE HAVE HERE?

THERE ARE SEVERAL DIFFERENCES BETWEEN MODERATE AND HIGH. FIRST, TO ANSWER YOUR QUESTION, ENVIRONMENTALLY SECURE, THERE IS A CAMP OUT IN THE MIDDLE OF THE EVERGLADES, AND NOBODY LEAVES IT UNLESS THEY --

IF YOU WOULD SPEAK INTO --

NOBODY LEAVES IT, BECAUSE THEY DON'T WANT TO BE EATEN BY THE GATORS. THE DIFFERENCE BETWEEN MODERATE AND HIGH ALSO INCLUDES ACCESS TO COMMUNITY, AND IN A MODERATE PLACEMENT PROGRAM, THEY WILL, THE DETAINEES HAVE SUPERVISED, HOWEVER WELL, ACCESS TO THE COMMUNITY, AND IN A HIGH-RISK PROGRAM, THEY HAVE ABSOLUTELY NO ACCESS TO THE COMMUNITY. THE HIGH-RISK IS HARDWARE SECURE AND 24-HOUR-A WEEK SUPERVISION. MODERATE CAN BE ENVIRONMENTALLY HARDWARE OR JUST STAFF SECURE.

HOW DO WE KNOW ANY OF THAT, IN EVALUATING OR TRYING, OR HOW WOULD THE DISTRICT COURT KNOW, AND WOULDN'T IT BE NECESSARY TO KNOW THE THINGS YOU HAVE JUST DESCRIBED, FOR A COURT OF APPEAL, FOR INSTANCE, TO REVIEW SOMETHING LIKE THIS?

THOSE SPECIFIC CRITERIA ARE DESCRIBED IN THE STATUTE. DEFINING THE PLACEMENT OF A MODERATE, WHAT IS A MODERATE RISK FACILITY, WHAT IS A HIGH-RISK FACILITY. SO THOSE ARE KNOWN. THOSE FACTORS ARE KNOWN.

LET ME, MY LAST QUESTION TO YOU, AND I AM SURE MY COLLEAGUES MAY HAVE SOME QUESTIONS, IS, I AM, I HAVE A LITTLE DIFFICULTY UNDERSTANDING DJJ BEING ACTUALLY ARGUING IN FAVOR OF THE COURT HAVING A PRETTY BROAD DISCRETION HERE, AS LONG AS THEY DISCUSS THE CIRCUMSTANCES THAT HAVE BEEN PRESENTED BY DJJ, THAT THE COURT WILL HAVE VERY BROAD DISCRETIONARY AUTHORITY TO -- DISCRETIONARY AUTHORITY, TO PLACE THE CHILD AT A DIFFERENT LEVEL, A HIGHER LEVEL, EVEN THOUGH THE STATUTORY SCHEME SEEMS TO CALL ON DJJ TO RECOMMEND OR PLACE THE CHILD AT THE LOWEST RESTRICTIVE LEVEL, CONSISTENT WITH THE NEEDS OF THE CHILD. HELP ME WITH THE POLICY HERE THAT DJJ IS ADVOCATING.

THAT DJJ WANTS THE COURTS TO HAVE MORE DISCRETION?

RIGHT. RIGHT. WHAT IS, WHERE --

WHERE DOES THE STATE STAND NOT DJJ?

RIGHT.

OKAY. IN TERMS OF THE STATUTORY CONSTRUCTION OF THE PLACEMENT, THE JUDGE DOES HAVE ULTIMATE DISCRETION AFTER REVIEWING THE PDR. AND IF WE WERE NOT TO GIVE THE JUDGE THAT DISCRETION THEN DJJ COULD MERELY, IF WE FOLLOW THE PUBLIC DEFENDER'S INTERPRETATION OF THIS, THE PDR COULD CONTAIN, THEN, 40 FACTORS, AND SO LONG AS THEY MENTIONED THEM, BUT DIDN'T CONSIDER THEM OR DIDN'T APPROPRIATELY CONSIDER THEM, THEN THE JUDGE WOULD BE STUCK WITH THIS LOWER OR HIGHER INAPPROPRIATE PLACEMENT LEVEL. AND THE STATUTE IS CLEARLY AUTHORIZING A JUDGE TO BE THE FINAL STOPGAP HERE AND EXERCISE HIS OR HER DISCRETION.

I THINK, I GUESS WHAT I THOUGHT WAS, SO DJJ, YOU ARE NOT HERE REPRESENTING DJJ.

NO. I AM NOT HERE REPRESENTING DJJ.

IS ON RIGHT NOW WE DON'T REALLY KNOW WHETHER DJJ'S POSITION IS THAT, BECAUSE IT SEEMS

TO ME THAT IF WE ACCEPT JURISDICTION AND WE KEEP THIS, WHAT WE ARE REALLY SAYING IS THAT, AS LONG AS YOU KNOW, IF, DOESN'T REQUIRE THE REASONS DIFFER, SO IF THE TRIAL JUDGE USES THE EXACT SAME REASONS THAT DJJ HAS COME UP WITH AND JUST SAYS THEY DISAGREE AND THEY EXPLAIN THEY DISAGREE BECAUSE I THINK THIS PERSON SHOULD BE IN A HIGH-RISK, NOT THAT THIS EVENING THAT THEY ARE A HIGHER RISK THAN DJJ, JUST THAT I THINK THAT IS A MORE APPROPRIATE PLACEMENT. REALLY, WE ARE GIVING, WE ARE SAYING THAT DJJ'S ROLE IN THIS IS REALLY MINIMAL. IT IS NOT VERY MUCH MORE THAN A PROBATION OFFICER WHO IS GIVING A PSI. THEY ARE GIVING THE JUDGE THAT INFORMATION. IT IS REALLY UP TO THE JUDGE TO MAKE THE PLACEMENT, WHICH, THAT SOUNDS TO ME LIKE THAT IS THE STATE'S POSITION. IS THAT WHAT IT IS?

ULTIMATELY, IT IS THE JUDGE'S POSITION TO DO THAT. HOWEVER,, THE FACTS THAT THE JUDGE IS GOING TO BE RELYING ON, IN MANY CASES COMES FROM DJJ.

THE REVIEWING AUTHORITY, THE APPELLATE COURT IS NOT GOING TO BE IN ANY POSITION TO SAY, IF THE JUDGE SAID, LOOK, I AM LOOKING AT THESE SAME REASONS AGE GOING TO A HIGHER LEVEL THAT, THE JUDGE ABUSED HIS DISCRETION BECAUSE, FOR THE REASON THAT IT IS EITHER YOU HAVE SEEN THE PERSON AND YOU THINK THAT PERSON IS JUST MORE APPROPRIATE IN A HIGHER LEVEL. MY CONCERN, REALLY, GOES TO KNOWING THAT, IF WE ARE CHANGING THE STATUTORY SCHEME BECAUSE IN JUVENILE PLACEMENT MORE THAN ANYTHING ELSE, WE HAVE GOT ONLY A LIMITED NUMBER OF BEDS IN THE STATE FOR, THAT ARE HIGH-RISK, AND THESE ARE VERY, THESE ARE EXPENSIVE BEDS, YOU KNOW, THAT IS WHAT, THAT IS WHERE THE MONEY HAS GONE, AND IF DJJ HAS A COMPREHENSIVE SYSTEM, FOR DECIDING WHICH JUVENILE IS AMONG ALL OF THE JUVENILES IN THE STATE, THAT NEED TO BE AT A HIGHER LEVEL, AREN'T WE REALLY SUPERSEDE WAG THAT SCHEME IS? AND THAT IS WHAT, IN OTHER WORDS THAT IS MY CONCERN. WE ARE NOT, WE ARE DEALING WITH, REALLY, GOING FROM, FORGET THE WORD "DISREGARD", WE ARE REALLY SUBSTITUTING "DISAGREE", THE JUDGE ULTIMATELY HAS THE DISCRETION TO DISAGREE, AND AS LONG AS THERE IS NO ABUSE OF DISCRETION WE ARE GOING TO UPHOLD THAT, AND THAT IS HOW THE STATE IS ASKING THAT WE INTERPRET THE STATUTE, CORRECT?

YES. I WOULD PUT FORTH THAT THE JUDGE'S REASONING FOR DISREGARDING MUST BE REASONABLE AND THAT IT MUST BE SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE, IN TERMS OF IF JUDGE BAKER HAD SAID, IN THIS INSTANCE, SHE IS A FLIGHT RISK, BUT WHEN YOU GO TO LOOK AT THE EVIDENCE, YOU ARE GOING TO SEE IT IS NOT THAT SHE IS A FLIGHT RISK. SHE HAS MISSED A COUPLE OF CURFEWS AND THAT IS WHY SHE HASBEIN VIOLATED, THEN, NO, THE JUDGE IS WRONG IN THAT INSTANCE, BECAUSE --

WE ARE NOT GETTING REALLY, HERE, WHETHER THERE IS AN ABUSE OF DISKREINGS, BUT WE ARE SAYING -- OF DISCRETION BUT WE ARE SAYING THAT THIS GOES BACK TO THE JUDGE'S ABUSE OF DISCRETION THERE IS NO EVIDENCE REALLY IN THE RECORD, AND FROM THE APPELLANT POINT OF VIEW, THERE WOULD BE ALMOST NO WAY TO SUBSTITUTE NOR SHOULD THE APPELLATE COURT SUBSTITUTE ITS DISCRETION SO WE ARE REALLY SAYING THERE IS A BROAD RANGE OF DISCRETION IN WHERE A JUDGE WILL PLACE A JUVENILE.

SO LONG, CORRECT, SO LONG AS THE REASONS ARE NOT INAPPROPRIATE, SUCH AS EXERCISE OF YOUR FIFTH OR SIXTH AMENDMENT BY MAINTAINING YOUR INNOCENCE IS ONE OF THE CASES.

SO IN THIS CASE, COULD THE TRIAL JUDGE, INSTEAD OF GOING TO THE NEXT HIGHER LEVEL OF THE HIGH-RISK CONFINEMENT, COULD THE JUDGE HAVE, UNDER THE MODERATE RISK, I THINK YOU INDICATED THAT THERE ARE SEVERAL DIFFERENT THINGS. YOU CAN BE ENVIRONMENTALLY SECURE, SECURE BY THE PERSONNEL OR SECURE BY FENCING AND LOCKDOWN AND THOSE KINDS OF THINGS. DOESN'T A JUDGE HAVE THE DISCRETION TO SAY, OKAY, I WILL GO WITH YOUR MODERATE RISK ASSESSMENT HERE, AS LONG AS THE PERSON IS PLACED IN, SAY, THE KIND OF FACILITY THAT IS LOCKED DOWN AS OPPOSED TO JUST SECURED BY THE STAFF?

NO. THE JUDGE -- THE JUDGE CANNOT TURN AROUND AND TELL THE DEPARTMENT WHERE TO PLACE THE CHILD. THAT IS ULTIMATELY THE DEPARTMENT'S RESPONSIBILITY. AND THE JUDGE CAN OFFER --

HOW IS THAT DIFFERENT FROM --

EXCUSE ME?

HOW DOES THAT REALLY DIFFER FROM SAYING, INSTEAD, WE ARE GOING TO HAVE TO GO TO THIS HIGH-RISK FACILITY OR HIGH-RISK ASSESSMENT? HOW DOES IT DIFFER?

I AM SORRY. HOW DOES WHAT DIFFER?

HOW DOES IT DIFFER FROM SAYING UNDER THE MODERATE RISK, YOU HAVE TO BE IN THIS KIND OF FACILITY, VERSUS SAYING I AM JUST GOING TO GO TO THE HIGH-RISK.

FIRST SCENARIO YOU PROVIDED IS IMPOSSIBLE, BECAUSE A JUDGE CANNOT ORDER THE SPECIFIC PLACEMENT FORM THE JUDGE CAN ONLY STATE THE LEVEL. I AM GOING TO MAKE YOU A MODERATE RISK OR I AM GOING TO MAKE YOU A HIGH-RISK, BUT I AM NOT GOING TO BE ABLE TO SAY I AM GOING TO PLACE YOU WITH ECKERD YOUTH RANCH. THAT IS NOT POSSIBLE.

I UNDERSTAND THAT. YOU CAN'T SAY THE SPECIFIC FACILITY, BUT YOU ARE TELLING ME YOU CAN'T EVEN SAY THE KIND OF FACILITY?

THERE IS NOT AWAY FOR THEM TO DESIGNATE, SO LONG AS THE -- DID I ANSWER YOUR QUESTION?

ISN'T THERE ALSO A DISTINCTION BETWEEN MODERATE RISK AND HIGH-RISK, AS TO THE LENGTH OF TREATMENT AND THE AVERAGE AGE OF THE CHILDREN IN THE PROGRAM? FOR EXAMPLE HIGH-RISK IS A LONGER COMMITMENT PROGRAM AND THE KIDS ARE TYPICALLY A LITTLE BIT OLDER THAN IN SOME OF THE MODERATE RISK PROGRAM LIKE THE ECKERD YOUTH CAMPS OR WHATEVER WERE INITIALLY DESIGNED FOR KIDS 13, 14 OR 15 YEARS OF AGE AND THE TERM OF COMMITMENT IS SHORTER THAN THE HIGH-RISK PROGRAM?

FOR ME TO ANSWER THAT, I WOULD HAVE TO GO OUTSIDE OF OUR RECORD, BUT I COULD ANSWER THE QUESTION.

I MEAN, I THINK YOU HAVE ANSWERED IT AS TO THE DIFFERENCE BETWEEN HIGH-RISK AND MODERATE RISK, BUT --

IN TERMS OF YOUR AGE GROUPS AND LENGTHS OF THE PROGRAM, IT WOULD BE, FROM INFORMATION I HAVE OUTSIDE OF THE RECORD, BUT THE ANSWER IS YES. THERE ARE DIFFERENCES IN THE LENGTHS OF THE PROGRAM. GENERALLY YOUR HIGH-RISK IS GOING TO BE A LONGER COMMITMENT THAN YOUR MODERATE RISK, AS WELL AS THE OFFENDER'S OFFENSES AND AGES.

COULD WE GO TO THE STATE'S POSITION WITH REGARD TO THE SECOND ISSUE? BECAUSE WE HAVE HEARD SOME DISCUSSION THIS MORNING WITH REGARD TO DISCRETION AND HOW AN APPELLATE COURT WOULD REVIEW IT. CERTAINLY THERE IS NO LANGUAGE IN THE STATUTE THAT GIVES US A GREAT DEAL OF HELP, BUT THE FIFTH DISTRICT HAS APPLIED A STANDARD THAT SEEMS TO HAVE BEEN ACCEPTED ACROSS THE STATE BY ALL OF THE DISTRICTS NOW, AND THAT THIS FINDING, YOU CAN USE THE SAME FACTS BUT THE DETERMINATION MUST, IN SOME WAY, RELATE TO THE RESTRICTIVE AND THE RESTRICTIVENESS NEEDS OF THE CHILD. IS THERE A DISPUTE IN THIS AREA? WHAT IS THE STATE'S VIEW WITH REGARD TO THIS? IF THIS, IF THIS OCCURS TOMORROW, THEN HOW DOES THE DISTRICT COURT OF APPEAL REVIEW IT, AND IS THE

PRESENT STANDARD CORRECT OR INCORRECT?

I WILL TELL THAT YOU, IN CT, IT IS THE STATE'S POSITION THAT THIS CASE DOES NOT CONFLICT WITH THE VIS-A-VIS REQUIREMENT. IN FACT, JUDGE BAKER INHERENTLY SPOKE TO EXACTLY THE RESTRICTIVENESS LEVEL REQUIREMENTS. HE WANTS A LOCKDOWN FACILITY, BECAUSE THIS CHILD IS A FLIGHT RISK. HE WANTS NO ACCESS TO THE COMMUNITY, BECAUSE SHE HAS VIOLENT TENDENCIES. SUPERVISED ACCESS IS NOT GOING TO BE ENOUGH. SHE HAD --

OKAY. I UNDERSTAND THAT. I AM NOT ARGUING THOSE WITH YOU, BUT MY QUESTION WOULD BE JUST BROAD STANDARD TO BE APPLIED. SHOULD WE ADDRESS THAT ISSUE OR NEED THAT NOT BE ADDRESSED?

IT IS THE STATE'S POSITION THAT THAT ISSUE ISN'T BEFORE US RIGHT NOW. THERE IS NO CONFLICT.

SO THAT CONSISTENTLY, THEY ARE APPLYING FOR REVIEW, THE DISTRICT COURTS OF APPEAL, THE STANDARD FOR REVIEW IS WHAT YOU ARE SUGGESTING.

PARDON ME?

SO YOU ARE SUGGESTING IT THAT WE HAVE CONSISTENCY WITH THE DISTRICT COURTS OF APPEALS, ALTHOUGH IS NOT STATUTORY AND IT FLOWS FROM JUDGE GRIFFIN'S INITIAL OPINION, WE HAVE CONSISTENCY THROUGH ALL THE DCA'S ON THE STANDARD OF REVIEW, IF IT HITS THE DISTRICT COURT OF APPEAL.

ACTUALLY, CURRENT, THERE WAS ONE CASE THAT CAME OUT THAT DIDN'T HOLD DIFLY FROM THE -- DIFFERENTLY FROM THE FOURTH DCA, I THINK IT IS CALLED KS THAT, ADDRESSED THE VIS-A-VIS REQUIREMENT TARNKS SAID IT IS NOT, WHEN WE TALKED ABOUT --, THAT SAID IT IS NOT, WHEN WE TALKED ABOUT THE VIS-A-VIS IN SLK, THAT WAS DICTA, AND THAT WAS BECAUSE THE HOLDING IN THAT CASE INVOLVED THE SUFFICIENCY OF THE EVIDENCE SUPPORTING THE DEPARTURE FACTOR. AND IN KS, THEY SAID THAT IS NOT PART OF THE STATUTE WHATSOEVER. HOWEVER, WE HAVE GOT IT. SO IT WAS KIND OF SAYING THE STATUTE IS NOT REQUIRING IT, BUT IN THE EVENT THAT WE HAD TO MEET THAT BURDEN, WE CAN, IN THIS IN STANSZ. -- IN THIS INSTANCE.

SO YOU ARE SUGGESTING THERE IS A CONFLICT, EVEN WITHIN THAT ASPECT, THEN.

MAYBE NOT WITH THAT CASE BUT WITH THIS CASE.

IF THERE IS A CASE OUT THERE THAT IS IN CONFLICT WITH SOMETHING, IT IS A QUESTION OF WHETHER WE NEED TO RESOLVE IT FOR THOSE USING THAT PARTICULAR STATUTE AND THE REVIEW OF THAT STATUTE AND REVIEW OF TRIAL COURT DECISIONS. THAT IS WHERE I AM GOING WITH THIS QUESTION. ' I AM TRYING TO GET THE EXACT LANGUAGE FOR YOU. OKAY.

IF YOU WOULD JUST GIVE US THE CASE THAT YOU BELIEVE HAS SOME CONFLICT, WE CAN PULL THAT OUT.

OKAY. IT IS KS VERSUS STATE. IT IS 835 AT 350 AND I DID CITE THE DISTRICT COURT'S DOCKET NUMBER, WHEN I DRAFTED THE BRIEF. IT HAD COME OUT TWO DAYS BEFORE MY BRIEF WAS DUE, SO I DIDN'T HAVE IT AS A CITE FOR YOU. I AM SORRY. AND WHAT THE COURT SAID WAS THAT THE LANGUAGE REGARDING THE VIS-A-VIS REQUIREMENT THAT THEY ENUNCIATED IN SLK WAS DICTA, AND THEY WERE CONCERNED THAT IT EXTENDED BEYOND THE STRAIGHT STATUTORY LANGUAGE, AND THAT A STATUTORY OR A NONSTATUTORY REQUIREMENT WAS BEING ADDED TO THE STATUTE BY THE JUDICIARY. HOWEVER, THE REASONS IT GOES ON TO SAY, HOWEVER, THE REASONS GIVEN BY THIS TRIAL COURT IN KS, GO AHEAD AND DEMONSTRATE THAT REQUIREMENT

AS WELL, SO, AGAIN, IT IS NOT A DIRECT CONFLICT, BUT IT BRINGS UP THE POINT THAT THERE IS SOME CONCERN.

LET ME JUST GO BACK TO THIS PROCESS, AND I GUESS YOU HAVE TO RESTRICT IT TO THE RECORD. THE RECOMMENDATION AS TO RISK LEVEL IS NOT JUST A PROBATION OFFICER JUST KIND OF COMING UP WITH THIS. ACCORDING TO THE REPORT, THAT IS IN EVIDENCE, IT IS A, IT SAYS IT IS A MULTIDISCIPLINARY STAFFING. IN ATTENDANCE IS THE SUPERVISOR, THE JUVENILE PROBATION OFFICER, GRANDMOTHER AND THE PUBLIC DEFENDER, SO THAT IS CONTEMPLATED AS BEING NOT SORT OF LIKE A PSI, WHERE YOU HAVE GOT A PROBATION OFFICER JUST KIND OF DOING THIS, THIS CONTEMPLATES, ACCORDING TO THE STATUTE, THAT THERE BE A, ALL PEOPLE ARE INVOLVED IN DETERMINING WHAT IS, FOR THIS PARTICULAR JUVENILE, THE MOST APPROPRIATE DISPOSITION, AND I GUESS SHE HAD NOT EVEN BEEN IN ANY KIND OF, SHE HAD NOT BEEN IN ANY RESIDENTIAL TREATMENT AT ALL.

NO.

THIS WAS GOING TO BE HER FIRST RESIDENTIAL TREATMENT, AND HER VIOLENT BEHAVIOR IS WHAT DID SHE DO? SHE HIT SOMEBODY?

YES. IT IS ALL BATTERIES.

BATTERIES ON INDIVIDUALS? ANOTHER RECORD, ASIDE FROM THE MAIN BATTERY THAT SHE WAS THERE, WHEN YOU GO AND LOOK AT THE ATTACHMENTS TO THE DJJ'S RECOMMENDATIONS REGARDING SECURE OR NONSECURE PLACEMENT PENDING HER NEXT PROBATIONARY --

SECURE COULD HAVE EVEN BEEN ANY OF THOSE COMMITMENTS OR SECURE COMMITMENTS, CORRECT?

THE --

LOW-RISK RESIDENTIAL, IS THAT CONSIDERED, OR DOES IT START AT MODERATE RISK WHERE IT IS SECURE DETENTION?

LOW-RISK IS NOT.

SO IT HAS TO BE EITHER MODERATE OR HIGH-RISK.

BUT WHEN YOU LOOK AT THE DETERMINATIONS OF THE DEPARTMENT OR YOU LOOK AT HER HISTORY, WHEN THE DEPARTMENT IS MAKING VARIOUS OTHER DETERMINATIONS REGARDING THIS YOUTH, SHE HAS GOT BATTERY ON AN OFFICER, A POLICE OFFICER, BATTERY ON A SCHOOL BOARD OFFICIAL, AND THEN YOU HAVE GOT BATTERY ON THIS STUDENT.

MAYBE YOU ANSWERED THIS, BUT WHAT WOULD YOU ATTRIBUTE THE SIGNIFICANCE TO THE LEGISLATURE USING "DISREGARD THE ASSESSMENT OF THE DJJ" AS OPPOSED TO "DISAGREE WITH THE ASSESSMENT OF THE DJJ"?

I THINK IT IS A MATTER OF SEMANTICS AND THEY MEAN THE SAME THING. ONE THING I WOULD LIKE TO MAKE CLEAR IS THE STATE DOES CONTEST JURISDICTION IN THIS MATTER AND DOES NOT BELIEVE THE CONFLICT EXISTS. THAT --

HOW DO YOU SQUARE ACN WITH THIS CASE?

IF YOU LOOK TO ACN, YOU WILL SEE THAT THE HOLDING IN ACN DEALT WITH THE SUFFICIENCY OF THE DEPARTURE FACTOR. THE COURT SAID I AM DEPARTING, BECAUSE YOU, DJJ, DID NOT CONSIDER THIS YOUTH'S CRIMINAL RECORD. BUT IN FACT, DJJ HAD CONSIDERED THE YOUTH'S

CRIMINAL RECORD. THEREFORE THE RECORD COMPLETELY BELIED THE FACTOR THE REASON FOR THE DEPARTURE ON THE TRIAL COURT.

BUT YOU DISAGREE IN THAT THE STATEMENT IS VERY CLEAR. THE REASONS STATED BY THE TRIAL COURT ARE REQUIRED TO ESTABLISH WHY THE COURT IS DISREGARD, IN CONTRAST TO SIMPLY DISAGREEING WITH THE DEPARTMENT'S ASSESSMENT. THEREIN LIES THE CONFLICT.

THAT IS DICTA. THE HOLDING WAS THAT --

THAT SEEMS TO BE A PRETTY STRAIGHT STATEMENT OF A PRINCIPLE OF LAW BETWEEN DISAGREEMENT AND DISREGARD.

THIS CASE, ACM WAS SPECIFICALLY REVERSED BECAUSE THE DEPARTURE REASON WASN'T SUPPORTED BY THE EVIDENCE IN THE RECORD. AND THEY SAY IT WOULD MAINTAIN THAT OUTSIDE OF THE HOLDING, YOU MIGHT HAVE SOME SIGNIFICANT STATEMENTS FROM THE COURTS, BUT AGAIN THAT WOULDN'T BE THE HOLDING AND THAT WOULD BE DICTA.

CHIEF JUSTICE: OKAY. THANK YOU VERY MUCH. MR. MARSHAL, HOW MUCH TIME FOR REBUTTAL? TWO MINUTES? OKAY.

YES. I WOULD JUST LIKE --

COUNSEL, LET ME ASK YOU THIS, BECAUSE I AM A LITTLE BIT CONFUSED ABOUT THE RECORD IN THIS CASE. YOU ARGUE THAT, IN ORDER TO DEPART FROM THE DJJ'S RECOMMENDATION, WHETHER WE CALL IT SKRAR OR DISAGREE -- DISREGARD OR DISAGREE, THAT THERE HAS TO BE EVIDENCE OTHER THAN THE REPORT, CORRECT?

THAT IS ONLY ONE WAY, OR WE AGREE WITH ESB, OR IF YOU ARE GOING TO RELY UPON THE SAME FACTORS AND REWEIGH THEM, THEN YOU HAVE GOT TO DISCUSS --

IT SEEMS TO ME, CORRECT ME IF I AM WRONG, THE WAY I READ THE RECORD WAS THAT THE TRIAL COURT HELD A HEARING ON AUGUST 1, 2001. THE GRANDMOTHER TESTIFIED AT THAT HEARING, AND IN THE COURT'S ORDER, THE COURT RELIED ON THE GRABBED MOTHER'S TESTIMONY, SO -- THE COURT RELIED ON THE GRANDMOTHER'S TESTIMONY, SO WHY, EVEN IF WE AGREE WITH YOUR STATEMENT OF WHAT THE LAW SHOULD BE, WASN'T THAT LAW COMPLIED WITH IN THIS CASE?

NO, BECAUSE IT IS THE SAME AS IN THE REPORT, BECAUSE THE JUDGE STATED AS IN THE REPORT AND AS TESTIFIED BY THE GRANDMOTHER THAT THE CHILD SOUTH OF CONTROL AND HAS VIOLENT TENDENCIES. THE COURT REITY RATED WHAT THE -- REITERATED WHAT THE GRANDMOTHER TOLD DJJ AT THE SUPPRESSION HEARING.

IS THAT A REQUIREMENT FOR WHO IS TO BE PRESENT AT THESE MULTIDISCIPLINARY HEARINGS?

SOMETIMES IF THE PARENTS ARE NOT THERE, THEY WANT THEM TO COME THERE. UNFORTUNATELY IN SOME CASES THEY DON'T GET THE PARENTS OR THE GUARDIANS TO SHOW UP. YES.

DO THEY TRY TO REACH A CONSENSUS WHAT EVERYBODY, THE PUBLIC DEFENDER, WHATEVER THE CHILD --

RIGHT. THAT IS EXACTLY WHAT THE CONSENSUS IS FOR, AND AS FAR AS THE CONSENSUS GOES, IF YOU LOOK AT PAGE 872, THEY TALK ABOUT THE REQUIREMENTS, AND THEN THE COURT GOES ON TO SAY STILL OTHER CASE LAW'S ADD ADD PREREQUISITE FROM DEAFIATING FROM THE DJJ'S RECOMMENDED RESTRICTION. VIS-A-VIS THE CHILD A'S RESTRICTION LEVEL AND THEY CITED

FROM THE DJJ ON THAT. WHEN THEY CONCLUDE, THEY SAY THE STATUTE DOES NOT REQUIRE THE TRIAL COURT REASONS FOR RELY UPON BY THE DJJ TO REACH A DIFFERENT CONCLUSION BUT RATHER THE TRIAL COURT IS REQUIRED TO STATE WHY IT DISREGARDED THE PARTICULAR RECOMMENDATION, AND WE ARE NOT -- IT CLEAR THEY ARE REJECTING THIS ADDITIONAL REQUISITE. IT ABSOLUTELY REEKS OF CONFLICT AND THEY REITERATED THAT BACK IN KS AND THEN AGAIN IN ACN, I MEAN, AFTER FINDING OUT ABOUT THE CRIMINAL RECORD. THAT WAS THE ISSUE AND THEY SAID, YES, THE DC -- THE DJJ DID TAKE INTO CONSIDERATION THE PRIOR RECORD, AND THEN IN ADDITION IT SAYS AND THE TRIAL COURT DID NOT FIND WHY A MORE TRADITIONAL PLACEMENT WAS NOT RECOMMENDED.

WHERE IS THERE INFORMATION THAT THEY RELIED UPON GRANDMA'S STATEMENTS AS REFLECTED BEFORE THE TRIAL COURT, PARTICULARLY THAT SHE IS HANGING AROUND WITH A 25-YEAR-OLD DRUG DEALER FOR WEEKS AT A TIME.

I THINK IN THE FAMILY NEED ASSESSMENT THEY TALK ABOUT THE FAMILY AND THAT SHE IS OUT OF CONTROL.

IT SAYS OUT OF CONTROL, BUT IT DOESN'T SAY ANYTHING THAT SHE IS HANGING OUT WITH A 25-YEAR-OLD DRUG DEALER.

SHE TAKES OFF AND IS FOUND WITH A 25-YEAR-OLD BOYFRIEND WHO HANGS AROUND DIFFERENT PLACES, BUT THE GRANDMOTHER SAYS, NO, SHE DOESN'T HANG AROUND THOSE PLACES.

I AM TRYING TO GET IF THERE IS ADDITIONAL INFORMATION CONTAINED IN THIS PDR, BECAUSE NOWHERE IN THIS PDR DO I FIND THAT SHE IS HANGING AROUND WITH DRUG DEALERS AND OLDER MEN AND JUDGE WHOSE DO THIS KNOWS WHAT IT MEANS, PREGNANCY AND A WHOLE BUNCH OF OTHER PROBLEMS WHEN YOU GET YOUNG GIRLS DOING STUFF LIKE THIS. YOU NEED TO REIGN THEM IN SOMEWHAT BUT NOWHERE IN THE PDR IS THERE THIS ADDITIONAL INFORMATION THAT --

NO, THAT SHE TAKES OFF AND SHE IS A FLIGHT RISK. NO. THAT IS IN THE PDR.

DO YOU AGREE THAT THERE IS ADDITIONAL INFORMATION PRESENTED IN THE TESTIMONY OF THE GRANDMOTHER?

THAT ONE ADDITIONAL PIECE OF INFORMATION IS SHE SAYS I KNOW WHERE TO FIND HER. SHE HANGS OUT WITH A 24-YEAR-OLD MAN.

CHIEF JUSTICE: WE THANK YOU FOR YOUR TIME BUT YOU ARE WAY OVER. WE THANK YOU FOR YOUR TIME, BOTH OF YOU. THE COURT WILL STAND IN RECESS UNTIL 2:30 THIS AFTERNOON WHEN WE INDUCT NEW LAWYERS. WE STAND IN RECESS.

MARSHAL: PLEASE RISE.