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V.K.E. v. State of Florida

THE MARSHAL: PLEASE RISE . LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE S E A T E D .

CHIEF JUSTICE: GOOD MORNING AGAIN. THE LAST CASE ON THI S MORNING'S DOCKET IS ANOTH ER J U V E N I L E C A S E . V . K . E . V E R S U S T H E S T A T E O F F L O R I D A . M R . C L E G G ?

GOOD MORNING , YOUR HONOR , MADAM CHIEF JUSTICE. MY NAME IS M A R V I N C L E G G , REPRESENTING THE INTERESTS OF THE MINOR C H I L D , V . K . E . . I ' M K I N D O F G L A D T H A T M R . H E D R I C K H A S A L R E A D Y L E F T B E C A U S E H I S F A T H E R G A V E M E M Y F I R S T J O B C L E R K I N G A L I T T L E B I T A G O A N D M Y P O S I T I O N I S D I F F E R E N T T H A N H I S P O S I T I O N T O D A Y U N F O R T U N A T E L Y , I G U E S S , F O R O N E O F U S . W E ' R E H E R E O N A C E R T I F I C A T I O N F R O M T H E 5 T H D I S T R I C T I N V . K . E . ' S C A S E C O N C E R N I N G T H E I S S U E O F W H A T C O S T S C A N B E A S S E S S E D A G A I N S T J U V E N I L E S A S O N E O F G R E A T I M P O R T A N C E O R O N E H A V I N G A G R E A T A F F E C T U P O N T H E P R O P E R A D M I N I S T R A T I O N O F J U S T I C E .

I S I T A C O S T , D O W E E V E N N E E D T O G E T T H E N O M E N C L A T U R E D O W N B E F O R E W E T A L K A B O U T T H E S E T H I N G S B E C A U S E T H E R E S E E M S T O B E D I F F E R E N C E S D E P E N D I N G O N W H A T Y O U C A L L I T . T H I S S E E M S T O B E A S U R C H A J .

YOUR HONOR, I THINK M Y O R I G I N A L P O S I T I O N W A S T H A T T H E Y A R E A L L S O I N T E R M I N G L E D , S U C H A M U D D Y M E S S O F T E R M I N O L O G Y T H A T Y O U C A N ' T S E P A R A T E T H E M B U T T H E N I W E N T B A C K A N D R E A D T H E 5 T H D I S T R I C T ' S F O L L O W - U P C A S E T O V . K . E . W H I C H W A S I T H I N K S L G , A N D I N T H A T J U D G E O R F I N G E R , J U N I O R , I T H I N K T H E Y S O R T O F S H O T T H E M S E L V E S I N T H E F O O T W H E N T H E Y C I T E D T H E K E N D R Y C A S E F R O M T H I S C O U R T I B E L I E V E I T W A S , G O E S B A C K T O - - I ' M B A D W I T H C A S E N A M E S B U T I T G O E S B A C K T O A 1 8 8 7 C A S E A N D T H E Y D E F I N E D F E E S A S T H E V E R Y T H I N G T O B A C K T R A C K A L I T T L E B I T , T H E J U V E N I L E J U S T I C E C H A P T E R 9 8 5 S A Y S F E E S S H A L L N O T B E A S S E S S E D A G A I N S T J U V E N I L E S A N D I T U S E S T H E W O R D F E E S A N D T H E 5 T H S A Y S , Y O U A R E T A L K I N G A B O U T F E E S H E R E . Y O U A R E N O T T A L K I N G A B O U T C O S T S , A N D W E A R E A S S E S S I N G C O S T S A N D S U R C H A R G E S I N T H E C H A P T E R 9 3 9 O R W H A T E V E R I T I S . W E A R E A S S E S S I N G T W O D I F F E R E N T T H I N G S H E R E , B U T W H E N T H E Y C I T E D T H A T O L D C A S E F R O M 1 8 8 7 T H A T D E A L T W I T H C O W H I D E S A N D C O W ' S E A R S I T H I N K I T W A S C O U N T E R P R O D U C T I V E T O T H E I R P R O D U C T I V E B E C A U S E F E E S A R E T H E V E R Y T H I N G T H A T A R E B E I N G A S S E S S E D I N T H I S C A S E . T H E Y M A Y C A L L T H E M S U R C H A R G E S O R C O S T S B U T C O S T S A R E W H E N Y O U A W A R D T H E P R E V A I L I N G P A R T Y F O R T H E C O S T S O F P R O S E C U T I O N , C O S T S O F D E F E N S E . W H A T I S B E I N G A S S E S S E D H E R E A R E N O T C O S T S . W H A T B E I N G A S S E S S E D H E R E A R E F E E S O R T A X E S .

B U T T H E S T A T U T E T H A T T H E Y A R E B E I N G A S S E S S E D U N D E R I S 9 3 8 , A N D T H A T S T A T U T E T I T L E I S C O U R T C O S T S .

Y E S , M A ' A M .

S O H O W D O Y O U S Q U A R E T H A T W I T H Y O U R A R G U M E N T T H A T T H E S E A R E R E A L L Y F E E S W H E N T H E S T A T U T E I T S E L F S A Y S C O U R T C O S T S ?

W E L L , I D O N ' T N E C E S S A R I L Y T A K E T H E 5 T H ' S P O S I T I O N T H A T Y O U S H O U L D G O B A C K T O T H A T 1 8 7 C A S E B U T T H E Y D O , A N D T H A T I S W H Y W E A R E H E R E A N D T H A T 1 8 7 C A S E D E F I N E S F

EE S , D EFIN ES COSTS , AND F EE S A ND T AX ES W HICH IT USE S T HO SE TWO TER MS TOGETHER, THOSE ARE FOR SERVICES THE GOVERNMENT RENDERS, S UC H A S DOM ES TI C VIOLENCE CRI SIS SHE LTER S T HA T IS INVOLVED IN THIS F IR ST STATUTE HERE IN 939 .0 8 I BELIEVE IT IS.

YOU AGREE WE A RE H ER E A GA IN AS WE WERE IN THE LAST CASE , THE STATU TO RY I NT ERPRET ATIO N CASE?

YES, MA'AM.

CHIEF JUSTICE: SO IF THE LEG ISLATURE I NTENDE D FOR THESE SURCHARGES TO BE ASS ESSE D AGAINST JUVENILES THE N W E SHOULD H ONOR THA T REQ UE ST . IF T HE Y D ID N'T INTEND IT , W E CAN'T IMPOSE THEM.

CORRECT.

CHIEF JUSTICE: WE'VE GOT AS YOU M EN TION ED A S J USTI CE LEW IS P OINTED OUT , O NE STA TU TE I F W E DECIDED THESE SURCHAR GES WER E FEES IS ALREADY A PRO HI BITI ON IN E XP RE SS P RO HI BITI ON I N 985.21 AGAINST ASSESSM ENT OF FEES IN A DEL INQU EN CY PROCEEDING SO YOU WOULD BE IN AND OUT ON A S TA TUTO RY C ONSTRUCTION W ITH F EE S BUT I F WE D ON'T A GREE T HA T THE S URCHARGE I S A FEE THE N TEL L US THE N EX T , YOU R NEX T S TATUTORY ARG UM EN T WHI CH , A S I UNDERSTAND IT , I S THA T A GAIN MAYBE IT IS THE OOSIT E O F O R FOR YOU IT B EN EFIT S T HA T THE -- THESE ARE GEN ER AL SURCHARGES FOUND IN 9 38 , N OT I N T HE DEL INQU ENCY S TA TUTE , A ND THA T A LTHO UG H 9 38.0 3 SPECIFICALLY REFERS TO A DELINQUENCY A CT , 9 38 .0 8 A ND 085 DO NOT. SO THEY COULDN'T HAVE INT EN DED FOR IT TO B E A LICA BL E I N A DEL INQU ENCY PROCEEDING UNLESS THEY EXPRESSLY S TATE D IT. I S THA T THE ALT ER NA TI VE STATUTORY CONSTRUCTION ARGUMENT?

WE HAVE S EVER AL FOL LOW- UP ARGUMENTS, YOUR HONOR, AND BEFORE I FOR GE T I S EE T HE CLOCK S TARTED OUT A T 2 0 B UT I HAD ASKED TO RESERVE F IV E.

CHIEF JUSTICE: A Y EL LOW LIGHT WILL COME ON A T 5 .

IF YOU WILL REMIN D M E.

CHIEF JUSTICE: UNLESS YOUARE IN THE MIDDLE OF SOM E BRILLIANT ANSWER THAT WE C AN 'T INT ERRUPT YOU ON.

YOUR HONOR, I THINK TO LOOK AT T HE L EG IS LATI VE INT EN T HER E IS THE KEY AS YOU S AID , A ND JUDGE SHA RP O F T HE 5TH HAV E P OINTED OUT T HI S WOULD OPE N UP A PAN DO RA 'S BOX O F N OT O NLY THESE COSTS BUT O TH ER C OST S , FINES, SUR CH AR GES AND S O F OR TH AND SO I THINK T HA T FIRST J UDG E SHA RP 'S ARG UM EN T WHEN YOU LOOK IN THE DEFIN ITIONS IT IS NOT ENOUGH TO SIM PLY L OOK AT THE DEFINITION FOR A DELINQUENT ACT AND SAY, HEY, THIS IS THE S AME THING A S A LAW VIOLA TI ON . SHE SAID THAT T HE DEFINITIONS SHOULD BE CON FINE D T O C HA PTER 985. THAT'S THE FIRST A RGUMENT OF HERS IN HER CON CURR IN G O R DISSENTING OPINION AND SAY THAT.

WELL, THE STA TU TE 9 38 .0 8 TALKS A BO UT I MP OSED F OR A VIOLATION OF 984 .0 3 , WHI CH I S PRETTY BROAD L AN GUAGE. IT DOESN'T SAY A C RI MI NA L CONVICTION OR ANYTHING LIKE THAT. ANY VIO LATI ON , SO I M EA N UND ER ANY DEF INITION O F V IO LA TION O F 784.03 IT SEEMS LIK E YOU R CLIENT FULFILL S T HA T.

IF YOU TAK E T HA T , A T J US T THA T FACE V ALUE AND D ON'T REA D ANY SUR ROUNDING FACTS A ND DON'T LOOK AT THE STATU TE T HA T D EALS WITH THE MONEY T HAT COMES FROM THA T P AR TI CU LA R COSTS WHICH I WOULD LIKE TO DO IN JUST A MOMENT , THE N Y OU

COULD READ THAT THAT WAY. THAT'S CORRECT. BUT I THINK THAT ONCE YOU LOOK AT THE OVERALL LEGISLATIVE WORDING HERE, AND, IN FACT, IF YOU GO ON TO 938.085, YOU WILL SEE THAT THOSE TWO STATUTES WE ARE DEALING WITH TODAY ARE NOT EVEN WORDED THE SAME.

BUT THEY BOTH TALK ABOUT A VIOLATION OF 784.03.

CORRECT, YOUR HONOR, BUT THE ONE THAT CAME LATER IS 085 AND THAT ONE GOES ON TO READ IF I CAN FIND IT HERE. IT GOES ON TO READ THAT --

PAYMENT OF THE SURCHARGE SHALL BE A CONDITION OF PROBATION, COMMUNITY CONTROL OR ANY OTHER COURT-ORDERED SUPERVISION WHICH DOESN'T LIMIT THAT TO CRIMINAL PROCEEDINGS.

IT GOES ON TO READ THE FUNDS CREDITED TO THE TRUST FUND CONSIST OF. LET ME BACK UP JUST A BIT. THEY TALK ABOUT IN .085 THEY TALK ABOUT NOT JUST ASSESSING COSTS BUT THEY TALK ABOUT FOUND GUILTY. I DON'T HAVE THAT STATUTE IN FRONT OF ME BUT THEY TALK ABOUT FOUND GUILTY. YOU ARE NEVER FOUND GUILTY IN THE JUVENILE JUSTICE SYSTEM. THAT'S THE FIRST CLUE IN .085 THE ONE THAT DEALS WITH RAPE SHELTERS. YOU ARE NEVER FOUND GUILTY. THE TERMINOLOGY GUILTY IS JUST NOT IN THE JUVENILE SYSTEMS SO THAT'S THE FIRST CLUE ON THE ONE THAT CAME AFTER THE LAST IN TIME AND THE STATUTE IN THE 5TH MAKE A BIG DEAL ABOUT THE FACT THAT THE LAST IN TIME SHOULD PREVAIL. THE LAST IN TIME IN THESE TWO STATUTES GOES AHEAD AND FLESHES OUT THE LAW VIOLATION TO SAY THIS IF YOU PLEAD GUILTY OR NO CONTEST OR YOU ARE FOUND GUILTY IT NEVER SAYS FOUND GUILTY OR FOUND TO HAVE COMMITTED A DELINQUENT ACT. I THINK IT IS A LESS INSTRUCTIVE TO GO AHEAD AND LOOK AT WHAT THE MONEY IS USED FOR IN BOTH OF THESE TWO COSTS. 938.08 FOR THE DOMESTIC VIOLENCE STATES THAT \$115 OF THE \$201 CREDITED SHALL ONLY BE USED TO PAY COUNTY'S FEES OR COSTS OF A DULT JAIL. NOTHING FOR JUVENILES HERE UNDER 741.283. THAT STATUTE IN TURN WHEN YOU LOOK AT 841.283 WHICH IS THE ONE THAT DEALS WITH THIS MONEY WE ARE TRYING TO RAISE HERE IT SAYS IF A PERSON IS ADJUDICATED GUILTY. NEVER MENTION DELINQUENT AND YOU DON'T USE THAT PHRASE IN JUVENILE, OF A CRIME, DOMESTIC VIOLENCE, THE COURT SHALL ORDER FIVE DAYS IN THE COUNTY JAIL. AGAIN, NONE OF THIS MONEY GOES TO THE JUVENILE JUSTICE SYSTEM. WHY WOULD WE BE ASSESSING IT AGAINST JUVENILES IF WE LOOK AT THE BIG PICTURE HERE IN THE LEGISLATURE'S WORDING? IF YOU LOOK AT 938.085 TO SEE WHERE ITS MONEY GOES, \$150 GOES TOWARD RAPE CRISIS SHELTERS PURSUANT TO 794.056. IF YOU LOOK AT THAT STATUTE IT TELLS US HELPFUL INFORMATION. FUNDS CREDITED TO THE TRUST FUND CONSIST OF ADDITIONAL COURT ASSESSMENT IN EACH CASE IN WHICH A DEFENDANT, WE DON'T USE THAT WORD IN THE JUVENILE SYSTEM. >> IS IT PART OF YOUR ARGUMENT THAT THESE COSTS, FEES, SURCHARGES SHOULD NOT BE ASSESSED AGAINST A JUVENILE BECAUSE A JUVENILE DOES NOT -- THE JUVENILE SYSTEM DOESN'T BENEFIT FROM THESE FUNDS?

THAT'S A SLIGHTER ARGUMENT, YOUR HONOR, TO THE MAIN ARGUMENT, WHICH IS THAT WE LOOK AT THE SEFOLLOW-UP STATUTES THAT I JUST READ FROM BECAUSE THEY ARE PART OF THE SE PROGRAMS. THIS IS PART OF THE LEGISLATURE'S INTENT. WHAT IS THIS MONEY FOR? HOW IS IT BEING USED AND WHEN IT SAYS FUNDS CREDITED TO THE TRUST FUND CONSIST OF MONEY IN WHICH A DEFENDANT PLEADS GUILTY OR NO CONTEST OR IS FOUND GUILTY OF, THEY ARE TELLING US WHERE THAT MONEY IS COMING FROM IN ANOTHER SET OF WORDS. THEY ARE SAYING THIS MONEY THAT WE ARE SEEKING TO A LY AGAINST THE JUVENILE, THIS MONEY, THIS FUNDING COMES FROM AND THIS IS VERY CLEAR THAT IT IS COMING FROM ADULTS. SO I THINK, YES, TO ANSWER YOUR QUESTION, BUT I THINK THAT'S A SUBSIDIARY RATIO NALE TO THE MAIN ONE.

I'M MORE INTERESTED, I GUESS, IN YOUR ARGUMENT THAT UNDER 985.221 A JUVENILE

CANNOT BE A SS ES SE D . THE TERM THEY U SE D I N T HAT STATUTE IS COURT FEES AND WITNESS FEES , I B EL IEVE , AND IT SEEMS TO ME THAT OVER THE YEARS THE D ISTRIC T C OURTS O F AEAL HAVE BASICAL LY SAI D THAT , U SE T HI S S TATU TE T O S AY THA T YOU C AN NOT I MP OS E C OST S AGAINST JUVENILES , E XC EP T UNDER 9 38.0 3 , W HERE T HE L EGISLATURE SPE CIFI CALLY INCLUDED J UV ENIL E PRO CE EDIN GS . S O I W OU LD A SS UM E THA T Y OU ARE AGREEING WITH THE D IS TR IC T COURT'S ASS ES SM EN T T HAT T HAT'S HOW 985 .221 S HOUL D B E R ED ?

YES, YOUR H ON OR .

SO , I GUE SS T O S OR T O F C IRCLE B AC K T O W HERE W E STARTED IS HOW D OE S T HI S C OS T STATUTE, THE STATUTE THA T TALKS ABOUT COSTS AND T HE STATUTE THAT USE S T HE T ERM FEES, HOW CAN W E I NT ERPR ET THESE COSTS A S FEE S ?

I T HI NK B Y U SING THE 5 TH 'S O WN CITAT IO N AGAIN ST I T AND B Y G OING --

SO WE ARE GOING B AC K TO T HE 1 800 CASE AGAIN?

I S T HA T CAS E C ITED I N Y OU R BRIEF?

YES, SIR, I BELIEVE I T IS.

I DIDN'T SEE IT A NY WH ER E A T LEAST IN THE TABLE OF C ONTE NTS.

OH, I 'M SOR RY. IT WOULD HAVE B EE N W IT HI N THE Q UOTE FROM THE CASE.

SO YOU D IDN'T CITE THAT CASE IN YOUR BRIEF?

I M AY NOT HAVE , YO UR HON OR.

AND YOU HAVEN'T PROVIDED A NOTICE OF S UP PL EMENTA L AUTHORITY ON THAT CASE?

NO.

TO THE STATE?

AND LET ME A DD THA T W E D ID S ULY A SULEMENTAL AUTHORITY ON A STATUTORY CHANGE AND I HOPE YOU A LL GOT THAT. I APO LOGIZE FOR I T B EING L AT E LAST WEEK. WE OVE RN IG HTED IT. I FOU ND OUT T HA T MIS S D AVEN PORT DID NOT RECEIVE IT , AND I APO LOGIZE FOR T HAT , B UT YOU ALL HOPEFULLY H AVE . > > CHIEF JUS TI CE : C IRCLIN G BACK TO JUSTI CE L EWIS ' QUESTION . YOU HAVE THE P RO HIBITI ON AGAINST ASSES SM EN T O F C OURT FEE S. SO TELL ME WHAT I S T HE N TRADITIONALLY UNDERSTOOD IN THE JUVENILE SYSTE M T HA T IS NOT ALLOWED TO B E ASS ES SE D ?

WELL , YOUR HONOR , WHE N T HE ATTORNEY GENERAL ARGUED THAT THERE ARE NO COS TS , T HE RE I S NO C OST SEC TION O R W HATEVER IN THE JUVENILE CHAPTER, W E W OU LD RESPECTFULLY SUBMIT THERE IS , AND THE THINGS THAT THEY ALLOWED IN THE J UV ENIL E S YS TE M IN TERMS OF COSTS W ER E C OST S FOR RES ID EN TIAL H OU SING AT \$ 5 A DAY, A ND COS TS F OR SUPERVISION OF THE DEPARTMENT AT \$ 1 A D AY . YOU SEE T HE R ES TITUTI ON STATUTE THAT IS W ITHI N C HA PT ER 9 85. IN ALL OF THESE P ROVI SI ON S , WHEN THEY TALK ABOUT C OST S I N 985, THEY A RE D EALING W IT H REIMBURSING THE STA TE FOR A CTUAL COSTS THAT HAV E B EE N ENCUM BERED BY P ROSE CU TI NG O R DEFENDING THAT CHILD A ND T HE Y PUT I N SPECIAL P RO TE CTIV E LANGUAGE FOR THE FACT T HAT CHILDREN ARE CHILDREN A ND THEY DON'T HAVE THE E AR NING CAPACITY OF ADULT S A ND FOR T HE FACT THAT PARENTS ARE GOING TO BE OFTEN T IM ES CALLE D U PO N T O COME TO BAT FOR T HE C HILD . SO THE S TATE IS I NCOR RE CT W HE N T HEY SAY T HERE A RE N O C OS TS I N 985. THERE ARE.

CHIEF JUSTICE: AGAIN MAYBE I'M NOT SURE I GOT A N A NS WER TO MY QUESTION. THEN WHAT -- THIS H AS B EEN IN EFFECT SINCE 199 0. WHAT THINGS AR E NOT ASSES SE D AGAINST JUVENILES AS FA R A S COURT FEES THA T A RE ASS ESSE D AGAINST A DULT S ? > > IF YOU T AK E THE DEF IN ITION OF FEES T HA T T HE 5TH CIT ED I N ITS S LG , THE N F E E S WOU LD B E THINGS FOR S ERVI CE S FOR T HING S THAT TAXES WOULD G O F OR , SERVICES ARE OFFERED BY T HE GOVERNMENT.

CHIEF JUSTICE: WELL, AGAIN , LET'S BE CON CR ET E. USUALLY A COST - - T HE C OS T T O PROSECUTE.WHAT IS IT T HAT A JUV ENIL E ISNOT ASSESSED THAT A N ADULT I S ASSESSED?

A D OMES TI C VIOLE NC E SHE LTER , A RAPE C RISI S S HE LTER , U SE O F SERVICES THAT GOVERNMENTS ARE OFFERED THAT ARE NOT COSTS THAT ARE ENCOUNTERED BEC AU SE YOU WERE PRO SE CUTING T HA T JUVENILE. THOSE ARE SER VICES THA T A RE O FFERED NOT J US T T O T HA T J UVENILE. THEY ARE OFFER ED T O T HE SOCIETY AND THAT'S W HAT A F EE OR A TAX GOE S F OR .

ARE THE COS TS - - ARE T HE OTHER COS TS U ND ER 938 , T HA T ' S COURT COSTS, I K NO W THERE A RE OTHER COS TS DIS PERS ED I N OTH ER STATU TES BUT 9 38 I S A COU RT C OST STATUTE ITSELF. ARE ALL OF THE OTH ER S , I TEMS OF C OS TS U NDER 9 38 A LS O IMPOSED O N J UV ENIL ES ?

SHOULD THEY B E O R --.

CHIEF JUSTICE: NO, ARE THEY? WHAT IS THE T IM E S TATU S , I S T HE JUV ENILE GET TI NG T AX ED A LL OF THESE OTHER 9 38 - -

T HR OU GHOUT T HE STATE OF FLORIDA, YOUR HONOR, I AM NO LONGER IN THE JUVENILE DIVISION AND I D ON'T KNOW IN PRACTICE WHAT IS BEING ASSESSED. OUR POSITION IS THA T N OTHING SHOULD BE ASSESSED NMS I T I S SPECIFICALLY MAKES IT ALICABLE TO JUVENILES .

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL.

I'M SORRY I C AN 'T A NS WER THE O VERA LL Q UE ST IO N.

CHIEF JUSTICE: YOU DID ASK ME TO REMIND Y OU IF Y OU ARE I N YOUR REBUTTAL A ND YOU ARE IN YOUR REBUTTAL.

T HA NK Y OU , YO UR H ONOR. BASICALLY TO SUM UP , W E W OULD SUGGEST TO THIS COURT THAT WHEN THERE IS A GAP IN T HE RULES OR THE STATUTES WE SHOULDN'T JUST JUMP OVE R T O THE C RI MI NA L STA TU TE S O R THE RULES AND IMPORT T HO SE W ITHO UT SPECIFI C LANGUAGE FROM THE LEGISLATURE.ALL OF THE LEGISLATIVE CLUES THAT WE HAV E H ER E G O A GA INST THESE COS TS BEI NG A SS ESSE D W HEN WE LOO K INT O W HE RE T HE MONIES ARE GOING AND WE WOULD ASK THIS COU RT T O ANS WE R THE Q UESTION IN THE N EGATIVE. THANK YOU.

CHIEF JUSTICE: THANK YOU .

MAY IT PLEASE THE C OURT. MY NAME IS K RI S D ACHB P OV ERTY A ND - - D AVEN PORT A ND I REPRESENT THE STATE OFFLORIDA.I THINK WE NEED TO LOOK AT THE PLAIN LANGUAGE OF THE S TA TUTEAND WHEN YOU LOOK AT THE PLA IN LANGUAGE OF THE STATUTE, T HI S SURCHARGE IMPOSED FOR A VIOLATION OF AMONG OTHER THINGS A B AT TE RY S TA TUTE . THE DEF INITION - -

DO Y OU DISTI NGUISH THE DIFFERENCE BETWEEN THE DELINQUENT ACT AND A C RI MI NA L ACT? > > THE D EL INQUENT ACT I S DIFFERENT THAN A FELONY O R A MISDEMEANOR, BUT A DELINQUENT ACT IS DEFINED AS A V IO LATI ON OF THE LAW .

WHERE IS THAT DEFINITION GIVEN? BECAUSE IN 985.201 IT SPEAKS OF A DELINQUENT ACT OR VIOLATION OF LAW.

RIGHT. AND THEY HAVE THE SAME DEFINITION FOR BOTH.

WHERE IS THE DEFINITION FOR DELINQUENT ACT?

IN THAT NUMBER 58 OF THE DEFINITIONAL STATUTE. IT DEFINES A VIOLATION OF LAW OR A DELINQUENT ACT AS THE SAME THING. THEY ARE THE EQUIVALENT.

IN THE JUVENILE STATUTE IT SAYS THAT?

WHERE THEY DEFINE WHAT A DELINQUENT ACT IS. STATED IN MY BRIEF. IT IS NUMBER 58.

YOU ARE TALKING ABOUT UNDER CHAPTER 985?

YES, WHICH GOVERNS DELINQUENCY AND THEY CALL A DELINQUENT ACT A VIOLATION OF THE LAW. THEY HAVE THE SAME DEFINITION FOR BOTH OF THOSE THINGS.

IN THE POWERS OF THIS POSITION THAT IS EXPRESSED IN 1885 IT SPEAKS OF RESTITUTION, COSTS OF SUPERVISION, COSTS OF TREATMENT PROGRAM CARE, IT SPEAKS OF ALL OTHER COSTS AND EXPENSES THAT CAN BE AWARDED AGAINST THE CHILD OR IN MOST OF THESE CASES THE PARENT ENDS UP PAYING IT.

RIGHT.

WHERE IS THERE IN 985 AN EXPRESSLY GIVING THE COURT THE POWER TO, IN ADDITION TO ALL OF THOSE OTHER THINGS THAT THE COURT IS EXPRESSLY ALLOWED TO DO, TO AWARD THE COSTS UNDER 935? OR 93, EXCUSE ME.

UNDER 985.21 WHICH IS THE POWERS OF THE DISPOSITION OR THAT YOU ARE REFERRING TO, IT SAYS PROBATION MUST INCLUDE A PENALTY COMPONENT SUCH AS RESTITUTION AND MONEY AND THEN THEY GO THROUGH A BUNCH OF OTHER THINGS AND THEN THEY SAY OR OTHER NON RESIDENTIAL PUNISHMENT APPROPRIATE TO THE OFFENSE AND THEN YOU HAVE 938.08 DEFINING A SANCTION FOR A VIOLATION OF THE STATUTE THAT HE VIOLATED HERE AND THEN THERE IS A SURCHARGE IMPOSED FOR THAT SO ULTIMATELY IT FALLS UNDER THAT LANGUAGE WHICH IS A CATCH-ALL. IT IS A REAL BROAD PROVISION.

YOU ARE SAYING IT IS MANDATORY SO EVEN IF IT IS NOT APPROPRIATE TO THE OFFENSE THE JUDGE HAS TO IMPOSE IT?

IT IS A MANDATORY SURCHARGE UNDER THE LANGUAGE OF THE STATUTE.

CHIEF JUSTICE: WHAT DOES THIS BROAD STATEMENT IN 985.21 THAT PROHIBITS THE ASSESSMENT OF THE COURT FEES IN A DELINQUENCY PROCEEDING, WHAT DO THOSE REFER TO?

HONESTLY, JUDGE, I CAN'T FIND ANYTHING. I WOULD SAY THAT A COURT FEE IS DEFINED IN THE STATUTE. IT IS A STATUTORY TERM OF ART. I COULD NOT FIND ANYTHING IN THE STATUTE THAT IS DEFINED AS A COURT FEE.

CHIEF JUSTICE: SO YOU ARE TELLING ME THAT THE LEGISLATURE, IN A STATUTE THAT'S BEEN IN EFFECT SINCE 1990 THAT MAKES A BROAD PROHIBITION AGAINST ASSESSMENT OF COURT FEES WHICH, OF COURSE, WOULD GO ALONG WITH WHAT WE HEARD IN THE LAST ORAL ARGUMENT THAT IS AS WE WERE TRYING TO MAKE THIS INTO A REHABILITATIVE, PUNITIVE SYSTEM, THAT BROADLY PROHIBITS THE ASSESSMENT. THAT IT IS MEANINGLESS BECAUSE THERE

AREN'T ANY COURT FEES THAT WOULD BE ASSESSED , ANYWAY?

I'M SAYING THAT BY HAVING THAT STATUTE, IF THEY IMPOSE SOME KIND OF A FEE AND DEFINE IT AS A COURT FEE IN THE STATUTE, THAT WOULDN'T APPLY TO JUVENILES, BECAUSE OF THAT STATUTE .

IS THERE A FILING FEE ?

THERE HAS BEEN NOTHING , SO THEY PUT A STATUTE IN EFFECT IN 1990 THAT HAD NO MEANING , AND THERE WERE NO FEES THAT WOULD HAVE BEEN ASSESSED AGAINST THEM ANYWAY?

I WOULD SUBMIT THAT A COURT FEE, THERE IS NOTHING IN THE STATUTE THAT DEFINES SPECIFICALLY AS A COURT FEE. IF THERE WAS SUCH A THING IT WOULD BE THINGS LIKE A FILING FEE TYPE OF THING. THIS IS A SURCHARGE UNDER THE COURT COSTS STATUTE .

THAT WAS MY QUESTION ABOUT THE FILING FEE.

RIGHT.

YOU DON'T CHARGE FOR FILING ANY KIND OF DELINQUENCY PETITION OR DEPENDENCY PETITION.

THAT WOULD SEEM TO FALL UNDER A COURT FEE KIND OF A THEORY VERSUS THIS IS SPECIFICALLY DEFINED AS A COURT COST OR SURCHARGE.

BUT AS WE START LOOKING AT THOSE THINGS THAT ARE ASSESSED AND PEOPLE HAVE TO START PAYING WE CAN CALL A MULE A THOROUGHbred BUT THAT DOESN'T MAKE IT SO. IS THE NOMENCLATURE REALLY THAT CRITICAL OR DO YOU LOOK TO SEE WHAT IT IS THAT SEEMS TO BE THAT YOUR OPINION IS SUGGESTING? WE REALLY HAVE TO ANALYZE WHAT IT IS FOR AND HOW IT RELATES OR IS THAT JUST TOTALLY A NONARGUMENT HERE? WE JUST ARE WE CLEARLY JUST USING THESE WORDS?

I THINK THAT THESE ARE CREATURES OF STATUTE. THE COSTS ARE CREATURES OF STATUTE. THE STATUTE THAT SAYS NO COURT FEES ARE IMPOSED IN JUVENILE CASES IS A SPECIFIC STATUTE THAT SAYS THAT. THERE IS NO BROAD POLICY OR CONSTITUTIONAL REASON THAT JUVENILES CAN'T HAVE COURT FEES. IT IS PURELY A STATUTORY LANGUAGE.

BUT IS THERE NOT ROOM FOR DISCUSSION OF WHAT FEES , COURT FEES? IS THERE NO ROOM FOR DISCUSSION ON THAT?

I THINK IF THE LEGISLATURE WOULD DEFINE A SURCHARGE , IF THEY WOULD HAVE CALLED IT A COURT FEE WE WOULD HAVE TO ABIDE BY THAT DEFINITION.

WHAT IF THEY HAD ASSESSED A \$50 AND SAY THIS IS NOT A COURT FEE BUT THIS IS A SURCHARGE?

I THINK IF THEY DEFINE IT AS NOT A COURT FEE THEN THIS STATUTE SAYING COURT FEES DON'T APPLY.

NO MATTER WHAT IT IS?

NO MATTER WHAT IT IS. I THINK IT IS IMPOSSIBLE TO CATEGORIZE THIS.

CHIEF JUSTICE: YOU SAID THERE IS NO POLICY BEHIND WHAT THE LEGISLATURE MAY HAVE WANTED TO DO , AND I'M HOPEFUL THIS THE -- THAT THE LEGISLATURE AS WAS AGAIN

ARGUED STRONGLY BY THE STATE IN THE LAST ORAL ARGUMENT, HAS A VERY DIFFERENT PURPOSE FOR JUVENILES, WHICH IS REHABILITATION NOT PUNISHMENT. YOU TAKE A 15 OR 16-YEAR-OLD AND YOU IMPOSE WHATEVER YOU CALL THEM, COSTS, FEES, SURCHARGES, THAT MOUNT UP INTO THE HUNDREDS OR, YOU KNOW, POSSIBLY THOUSANDS, AND YOU DON'T GIVE THEM THE CAPACITY TO HOLD A JOB OR TO EARN IT BACK AND WHAT YOU HAVE ESSENTIALLY DONE IS PUNISHED THAT JUVENILE. SO WHY ISN'T IT A BETTER READING JUST AS A JUDGE SHARES READING OF THE ENTIRE STATUTORY SCHEME THAT UNLESS THE LEGISLATURE SPECIFICALLY MAKES A SURCHARGE APPLICABLE TO JUVENILES WE CANNOT READ IT IN, AND THEY DID IT AND THAT'S WHY IN 938.03 THEY SPECIFICALLY REFER TO A DELINQUENT ACT. SO THEY KNOW HOW TO SAY IT WHEN THEY WANT TO SAY IT, AND I THINK THAT WHEN YOU HAVE IN COMBINATION WITH 985.21, WHEN YOU HAVE 938.03 THAT SPECIFICALLY REFERS TO DELINQUENT ACTS, THAT FOR THE LEGISLATURE TO HAVE SAID, WELL, WE ARE JUST BROADLY DONE, USE A DIFFERENT LANGUAGE IN THIS STATUTE IS JUST READING INTO SOMETHING, SOMETHING THAT IS NOT CONSISTENT WITH THE OVERALL LEGISLATIVE PURPOSE OF THE JUVENILE JUSTICE SCHEME. SO HOW DO YOU GET AROUND THE '03 PART, 93.03 IN THAT THEY SPECIFICALLY REFERRED TO DELINQUENT ACT?

LET ME CLARIFY THAT. I MISSpoke WHEN I SAID NO COURT FEE. IT IS NOT A POLICY. IT IS NOT A CONSTITUTIONAL. THERE IS NO CONSTITUTIONAL BAR ON IMPOSING THESE SO IT IS NOT A CONSTITUTIONAL THING THAT SAYS JUVENILES CAN'T HAVE COURT FEES. IT IS PURELY A STATUTORY POLICY. IT IS WRITTEN OUT IN THE STATUTE WHICH IS WHY I AM SAYING WE NEED TO LOOK AT THE STATUTORY LANGUAGE TO FIND WHAT THAT EXACTLY IS. AS FAR AS THEY DID SPECIFICALLY SET OUT DELINQUENT ACT IN 938.03. I MEAN, IT IS VERY SPECIFIC. DID THEY HAVE TO DO THAT IS THE QUESTION HERE. DID THEY HAVE TO USE THOSE MAGIC WORDS FOR IT TO APPLY TO JUVENILES AND IT IS OUR ARGUMENT THEY DIDN'T HAVE TO SAY THAT. THEY COULD ALSO PHRASE IT THE WAY THEY PHRASED .08 WHICH IS ANYBODY WHO VIOLATES THESE STATUTES AND IT IS CLEAR THAT A JUVENILE VIOLATES THE STATUTE, THAT THAT PLAIN LANGUAGE IS SUFFICIENT. THEY DIDN'T HAVE TO SAY DELINQUENT ACT.

UNDER 938, ARE JUVENILES ASSESSED THE OTHER COSTS THAT ARE INDICATED UNDER 01 OR 04 OR HAVE THE COURT SO I BELIEVE THAT MOST OF THE DISTRICT COURTS HAVE HELD THAT JUVENILES ARE NOT ASSESSED THOSE FEES AND THE CASE LAW BASICALLY SAYS THAT YOU CAN DO IT UNDER 03 BECAUSE THE STATUTE SPECIFICALLY SAYS YOU CAN DO IT.

I'M NOT AWARE, YOUR HONOR, OF A LINE OF CASES SAYING THAT COSTS DON'T APPLY TO JUVENILES. THIS IS KIND OF A UNIQUE LINE IS THIS DOMESTIC VIOLENCE AND THE RATE STATUTE AND THE N DISTRICT COURTS HAVE ALL AFFIRMED APPLYING THESE TO JUVENILES.

BUT THIS PARTICULAR SECTION IN THEIR DISCUSSION OF 03 THERE ARE SOME CASES OUT THERE WHERE JUVENILES ACTUALLY AEALED THE IMPOSITION OF COSTS UNDER 03, AND IN DISCUSSING THAT THE COURTS BASICALLY HAVE SAID THAT WE ARE ALL OWING THIS PARTICULAR COST BECAUSE OF THAT SPECIFIC LANGUAGE.

RIGHT. AND THOSE WERE EASY ONE BECAUSE THERE WAS SPECIFIC LANGUAGE. THEY HAD TO APPLY TO JUVENILES. IT IS VERY CLEAR. THIS ONE IS LESS CLEAR BECAUSE IT DOESN'T HAVE THAT SPECIFIC LANGUAGE, BUT THE SPECIFIC LANGUAGE IT DOES HAVE, IT IS OUR POSITION IT DOES APPLY TO JUVENILES BECAUSE THEY VIOLATE THE STATUTE.

DO YOU KNOW ACTUALLY IN PRACTICALITY WHETHER OR NOT ANY OF THESE OTHER COSTS UNDER 938 ARE BEING ASSESSED AGAINST JUVENILES?

IN PRACTICALITY, IF YOU LOOK AT THE RECORD IN THIS CASE AT 22 TO 24 IS THE DISPOSITION ORDER. THIS JUVENILE DIDN'T JUST GET THESE COSTS. SHE HAD A LOT OF OTHER COSTS AS WELL. SHE HAD THE CRIME COMPENSATION TRUST FUND WHICH IS THE ONE THAT S

PE CIFI CA LL Y INCLUDES THE DELINQUEN T ACT . THAT ONE WAS O BV IOUS. SHE HAS \$ 3 T O T HE T EAM C OU RT . \$2 TO LAW E NFOR CEMENT EDUCATION. SHE HAD \$ 40 - -

WHAT STATUTE ARE THO SE COSTS UNDER?

THOSE ARE UND ER D IF FE RENT COSTS. LET'S SEE, THE TEAM C OU RT C OMES UNDER 9 38 .1 9 WHI CH I S PHRASED V ERY SIMILAR T O . 08 5 WHICH IS A NY BODY W HO PLE AD S O R IS CONVICTED OF A V IO LATI ON O F CRIMINAL LAW. G ETS THAT \$ 3 T EAM C OURT ASSESSMENT. SHE GOT THAT. \$2 TO LAW E NFORCEME NT OFFICER. A NOTHER 938 C OST. 938.15. IN ADDITION TO THE 938 .0 1 COS TS YOU CAN IMP OSE T HAT FOR LAW ENFORCEMENT EDU CATION. 938.01 READS EVERY P ER SON CONVI CTED OF V IO LA TING A CRIMINAL STATUTE, WHI CH JUVENILES VIO LATE C RI MINAL STATUTES. SO THEY GOT T HA T C OST. SHE HAS A \$ 40 P UB LIC D EF ENDE R ALICATI ON FEE. THAT IS UND ER 2 7. 52 W HICH I S SEEKI NG SERVICES O F THE P UBLIC DEFENDER. AGAIN, NO L ANGUAGE IN T HE RE ABOUT --. > > CHIEF JUSTICE: YOU KNOW , AGAIN LOOKING AT THIS. SHE G OT \$ 140 I N ATT ORNEY' S FEES, SO THA T' S N OT U P H ER E AND EVEN THOUGH IT SAY S T HE RE SHALL BE NO FEE S A SS ESSE D . SO --

THAT'S NOT B EI NG A EA LED. SO I T S EE MS T HA T JUS T LOOKING AT THIS DIS PO SI TI ON O RDER , JUVENILES AREN'T IMMUNE TO THESE COSTS. THEY DO GET HIT WITH COSTS. PROBABLY NOT AS MANY A S ADU LT S DO, BUT THE Y D O G ET H IT WIT H COSTS AND THE QUE ST ION HERE I S DO THEY FALL UNDER THESE STATUTES?

AGAIN JUST SO WE A RE C LEAR , YOU AGR EE IN THI S CAS E , T HI S IS A AR EN TLY J UV ENILE WAS I T A S CHOO L FIGHT I N SHE W AS A 11TH GRADER , SHE PUN CH ED ANOTHER STUDENT, BROKE THE NODES. SO IT WAS N' T - - N OS E. IT W AS N' T RAP E O R D OMES TI C VIOLENCE, SO E VE N T HOUGH T HERE IS NO R EL AT IO NS HI P T HOSE ARE AUTOMATICALLY UNDER YOU R VIEW ASSESSED BECAUSE SHE WAS CONVICTED OF O R ADJ UDIC ATED NOL O TO SIMPLE B AT TE RY?

BECAUSE SHE VIO LA TE D THE B ATTERY STATUTE. THESE STATUTES, THE S UR CH AR GE STATUTE S AREN'T LIMITED T O SEXUAL BATTERY TO FUBD T HI S - - FUND THIS R AP E PRO GR AM . C RIMES OF V IO LE NCE , A NY TIME YOU COMMIT A CRIME OF V IO LENC E YOU HELP TO PAY THE SOC IE TA L COSTS OF THAT.

CHIEF JUSTICE: DID THE JUDGE IMPOSE IT BECAUSE HE O R S HE T HOUGHT H E O R SHE W AS OBLIGATED TO DO I T O R B ECAU SE IN THE D ISCR ET IONARY WAY THOUGHT I T W AS ARO PR IATE A S PART OF T HE O VE R AL L S ANCT IO N THA T WAS B EI NG --

ON THIS RECORD I T IS N OT CLEAR.THEY SAY, JUDGE, WE HAV E THA T STANDING OBJECTION TO T HESE COSTS.IT IS SOMETHING THAT HAS C OME UP IN A L OT O F C ASES I N T HA T CIRCUIT AND THE JUDGE JUST IMPOSED THEM AND SAID , YES , W E RECOGNIZE YOUR STANDING OBJECTION.THEY DIDN'T G ET INTO THE GROUNDS OR THE ARGUMENTS. IT SEEMS LIKE THA T' S A W EL L ESTABLISHED PUBLIC DEFENDE R OBJECTS AND THE JUDGE I MPOSES THEM, BUT THESE ARE M AN DATO RY COSTS AND I DON'T BELIEVE HE HAD THE D IS CRET IO N T O N OT IMPOSE THEM HER E B EC AUSE U NDER THE PLAIN LANGUAGE OF THE STATUTE IT IS MANDATORY THE Y IMPOSE THAT.

CHIEF JUSTICE: HOW LONG WAS SHE ON PROBATION F OR ?

I'M NOT SUR E.

CHIEF JUSTICE: IN OTHERWORDS SHE COULDN'T COMPLETE HER P RO BATION U NT IL S HE P AID OFF ALL OF THE D IF FERE NT C OST S?

IT I S ONE O F T HOSE DEALS. THERE WAS LIKE \$ 90 0 I N R ESTITUTION WAS THE BIG THING AND 75 HOURS O F C OM MU NI TY SERVICE SO IT IS ONE OF THOSE WHERE AS SOON AS THEY FINISHES

THAT SHE COULD PETITION AND BE RELEASED.

CHIEF JUSTICE: IS THERE A HIERARCHY SO THAT SHE PAYS OFF THE RESTITUTION FIRST OR IS THERE A --

THE WAY THEY SET UP THE RESTITUTION AND UNDER THE STATUTE, PARENTS ARE SPECIFICALLY HELD LIABLE FOR RESTITUTION WHICH ISN'T THE CASE WITH COSTS. AT LEAST THERE IS NO STATUTE.

CHIEF JUSTICE: THAT DOESN'T SEEM FAIR IF YOU AROACH THIS BY, AGAIN, TRYING TO HELP THE JUVENILE TO MAKE RIGHT ON THEIR WRONG YOU WOULD THINK THAT YOU WOULD WANT THEM TO PAY THE RESTITUTION NOT THE PARENT.

BUT THE PARENT CAN BE HELD LIABLE. THE JUVENILE IS, TOO. THERE IS NO SPECIFIC HIERARCHY SET OUT IN THE ORDER BUT THEY HAVE TO PAY THE COSTS WITHIN 60 DAYS VERSUS A PAYMENT SCHEDULE SET OUT FOR THE \$900 IN RESTITUTION AND IT WAS AT THE HEARING THE JUDGE ASKED THE FATHER HOW MUCH HE COULD AFFORD A MONTH SO THERE IS SOME INDICATION THAT, I GUESS, IN THAT SENSE THEY WANT THE VICTIM TO BE COMPENSATED WHETHER IT IS THE JUVENILE IS GOING TO WORK OR NOT. SO THAT MIGHT BE THE POLICY WHY THE JUDGES DO THAT. I'M NOT SURE. AS FAR AS THE OTHER ARGUMENTS ABOUT .085 SAYING THAT IT DOES TALK ABOUT PLEADING GUILTY OR Nolo OR FOUND GUILTY. THERE IS A STATUTE THAT SAYS JUVENILES AREN'T FOUND GUILTY AND THEY ARE NOT CONVICTED, BUT WHEN YOU LOOK AT THE LANGUAGE OF THAT STATUTE IT SAYS EXCEPT AS THE TERM CONVICTION IS USED IN CHAPTER 322 AND HERE'S THE IMPORTANT LANGUAGE, EXCEPT FOR USE IN A SUBSEQUENT PROCEEDING UNDER THIS CHAPTER, AND A DJUDICATION OF DELINQUENCY BY A COURT PER CHILD IS COMMITTED THE DELINQUENT ACT SHALL NOT BE DEEMED A CONVICTION OR SHALL THE CHILD BE FOUND GUILTY. IT IS OUR POSITION THAT THE DISPOSITION IS A SUBSEQUENT PROCEEDING UNDER THIS CHAPTER SO THAT'S WHY .085 HAS A LITTLE MORE NARROW LANGUAGE THAN .08 WHICH DOESN'T EVER TALK ABOUT BEING FOUND GUILTY OR PLEADING Nolo OR ANYTHING LIKE THAT VIOLATION. IF THE COURT HAS NO OTHER QUESTIONS WE WOULD ASK THAT THE CERTIFIED QUESTION BE ANSWERED IN THE AFFIRMATIVE. THANK YOU.

CHIEF JUSTICE: THANK YOU. REBUTTAL?

THANK YOU, YOUR HONORS.

CHIEF JUSTICE: YOU ARE NOT CHALLENGING THE \$140 IN ATTORNEY FEES?

YOUR HONOR, I HAVE TO DEFEND THAT PUBLIC DEFENDER FEE AND SO I WOULD DIRECT YOU ALL TO 985.203 WHICH IS IN THE JUVENILE JUSTICE CHAPTER 985.203 I BELIEVE IT IS. I DON'T HAVE IT IN FRONT OF ME AND THAT COVERS THE PUBLIC DEFENDER FEE AND ALSO CHAPTER 27 WHICH TALKS IN MORE GENERAL TERMS AND THEN THERE ARE ALSO SUBSECTIONS WHICH TALK ABOUT PARENTS AND SO FORTH ON THESE FEES. SO I THINK THAT TO CORRECT --.

CHIEF JUSTICE: CAN A PARENT PAY THESE? ARE THESE SOMETHING THAT A PARENT CAN PAY SO IF YOU CAN HAVE A PARENT THAT HAS MONEY THEY CAN GO AHEAD AND JUST \$350 LIKE THAT, THE PARENT HAS NO MONEY --

I CITED THE ONE CASE AND IT IS NOT VERY RICH IN FACTS BUT I CITED THE ONE CASE OUT OF THE 1ST WHERE THE PARENT WAS HELD IN CONTEMPT FOR NOT PAYING IN THE BRIEF FOR NOT PAYING THE I THINK IT WAS DM SENIOR WAS THE INITIALS OF THE CASE. SO I BELIEVE THAT, YES, AND THAT'S WHY I ARGUED IN THE BRIEF IT CAN ACTUALLY BE COUNTERPRODUCTIVE IF YOU'VE GOT A PARENT BATTERED BY THE CHILD THEN YOU CAN ACTUALLY POTENTIALLY SEE THAT PARENT IN CONTEMPT OF COURT FOR NOT PAYING THE

COSTS . WHEN THE CHILD WAS A T FAU LT T O BEGIN WITH. TO GO BACK AND A NS WER J USTI CE QUINCE'S EARLIER Q UE STIONS I CAN POINT OUT T HAT THE JUVENILE ASS ES SMENT S HE LT ER S UNDER 938 .1 7 , T HO SE A RE NOT T O BE ASS ES SE D AGA IN ST J UVENILES LOOKING AT THOSE THAT ARE I N 938 B ECAUSE T HE LEGISLA TURE TOOK OUT THE LANGUAG E THAT HAD EARLIER A EARED T HAT DID SAY D ELINQUENTS OR A DJ UD ICATED DELINQUENTS, SO FORTH. THEY TOOK THAT O UT AND THE C ASE O F E J T ALKS A BO UT T HA T WHICH I SUP PL IE D IN THE SULEMENTAL AUTHORITY TO T HIS COURT AND ALSO T HE T EA M C OURT S I N 9 38 .1 9 , T HOSE W ER E T AKEN O UT AND I THI NK I N 2 004. > > CHIEF JUSTICE: TAKEN O UT AS --

TAKEN OUT OF T HE J UV ENIL E R EALM BY THE LEGISLATURE WHEN THE LEGISLATURE TOOK OUT THE WORDS THAT REFERRED TO DELINQUENCIES OR DEL INQU ENT ACT.IF YOU GO BACK AND LOOK.

CHIEF JUSTICE: SO THEY CAN OR CANNOT B E A SS ESSED F EE S BY THE COURT?

CANNOT B E.

CHIEF JUSTICE: A ND WHAT'S THE LANGUAGE THAT S AY S T HAT?

BECAUSE THE LEGISLA TU REWENT IN A ND S PECI FICA LLY T OO K OUT PREEXISTING LANGUAG E T HAT DID SAY A DJUD ICATED DELINQUENTS OR FOU ND T O HAV E COMMITTED --

THERE IS NO LAN GUAGE O F PROHIBITION IN THIS STATUTE.

THERE I S N O L AN GU AGE T HA T PROHIBITS, CORRECT. IT IS BY THE L EGISLATURE TAKING IT OUT A FF IR MATI VELY .

WHAT YOU ARE SAYING IS THAT THERE IS A DISTRIC T COU RT C ASE WHICH HAS C ONST RU ED THE T AKIN G OUT OF T HE L ANGU AG E A S A N IMP LIED PROHI BI TI ON.

EJ DID , Y ES , YOUR H ON OR .

WHAT DISTRICT IS THAT?

THAT IS THE 2 ND , I B EL IE VE , 2005. THEY DEAL WITH 9 38.1 7 W HICH WAS MOVED O VE R T O 9 39 .1 85 .

CHIEF JUSTICE: THERE I S MANY, WE HAVE MAN Y T AG S I N THIS C AS E. MOST OF THEM OUT O F T HE 5 TH DISTRIC T. ARE YOU I NVOLVED IN ALL O F THOSE OTHER CASES?

NO , YO UR HONOR .

CHIEF JUSTICE: I JUST WANTED TO KNOW IF THEY WERE ALL INVOLVED IN THE EXACT S AM E STATUTE OR IF THEY HAVE OTH ER -- I'M SEEING A N OD FRO M M IS S DAVENPORT.

YOU HAVE OTHER S H EA DED Y OUR WAY.

CHIEF JUSTICE: WE HAVE STAYED THEM AND IT WOULD B E IMPORTANT IF THEY HAD OTHER ISSUES MAYBE FOR THAT T O B E , YOU KNOW, I F THERE W ER E O TH ER STATUTES OTHER THAN THE SE TWO S TATUTES . MISS DAV ENPORT HAS S TA TED T HEY ARE ALL THE S AM E S TATUTE . SO THANK YOU FOR THAT.

BUT I W OULD S UB MIT , M AD AM CHIEF JUSTICE, THA T T HE RE WIL L BE LIKEL Y O TH ER COSTS C OMING YOUR WAY IF THIS C OU RT DOE S NOT SEND A CLEAR SIGNA L. WHEN THE LEGISLATURE IS CLEAR THAT IT S HOUL D P ER TA IN T O JUVENILES , T HE N T HA T' S C LE AR THAT WE S HO UL D. WHEN IT IS CLEAR T HAT I T HAS TAKEN OUT THE REFER EN CES T O JUVENILE DELINQUENCY

AS T HE E . J. CASE DEALT WITH ONE SIT UATION AND THERE ARE OTHERS THEN IT IS CLEAR THAT W AS THEIR INTENT TO TAKE IT OUT. WHEN THEY ARE NOT CLEAR EITHER WAY I SUBMIT THEY CAN BE C LE AR WHEN THEY WANT TO BE. IF THIS C OURT A LLOW S THO SE CASES, THOSE INSTANCES , THO SE COSTS WHERE IT IS U NC LE AR T O BE A SS ESSED O N A ONE -B Y-ON E SITUATION THEN I WOULD SUGGEST THAT THERE IS NOT G OING TO BE A CLEAR SIGNAL TO JUD GE S THROUGHOUT THE STATE TO T RI AL COUNSEL OR TO THE LEGISLATURE AS TO WHAT C OR RECTIONS THEY NEED TO M AKE IN THE STATUTE AND I SEE T HA T I'M O VE R. THANK YOU.

CHIEF JUSTICE: THANK Y OUVERY MUCH.THE COURT WILL BE IN REC ES S UNTIL 9:00 A.M . T OMORROW MORNING.

THE MARSHAL: P LEASE RISE.