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David Everette v. Florida Dept. of Children & Families

SC05-1996

NEXT CASE ON THE
CALENDAR IS EVERETTE VERSES
THE DEPARTMENT OF CHILDREN
AND FAMILIES.

MAY IT PLEASE THE COURT I'M
JOHN EDDIE MORRISON.
WE WOULD REQUEST THE COURT
REVERSE THE THIRD DISTRICT
COURT OF APPEALS --

>> WOULD YOU ASSURE ME THAT
MR. EVERETTE HAS NOT BEEN IN
LIMBO.

>> I WILL ASSURE YOU OF THAT.

>> OKAY.

>> I WAS UNABLE TO REACH THE
TRIAL ATTORNEY WHO DEALS
WITH THIS SPECIFICALLY.

I CAN'T GIVE YOU THE EXACT
DETAILS.

>> IT JUST -- THIS WAS -- IT
AROSE IN EMERGENCY 2004
BECAUSE JUDGE MILLER WANTED
TWO EXPERTS TO BE APPOINTED.
AND THIS.

>> I ASSURE IT -- THINGS
HAVE PROGRESSED AND GONE ON
FROM THERE.

>> THE ISSUE VERY MUCH
REMAINS WHETHER OR NOT
MR. DAVID EVERETTE A DECADE
AFTER ALL CRIMINAL CHARGES
WERE DISMISSED.

>> HOW LONG DID ON THAT
SAME -- HOW LONG DID IT TAKE
TO RESOLVE THIS ISSUE?

YOUR HONOR, I TENT KNOW THE
ANSWER TO THAT.

I'M SORRY.

OUR PUBLIC DEFENDER OFFICE
IS LARGE.

WE HAVE TRIAL ATTORNEYS
DEALING WITH THIS AT A TRIAL
LEVEL.

I DEALT WITH IT AT THE
APPELLANT LEVEL.

>> NOBODY SUGGESTED

MOOTNESS.

>> YOUR HONOR IT IS NOT MOOT
THE THIRD DISTRICT COURT OF
APPEAL HELD THAT MR. DAVID
EVERETTE IS FORENSIC CLIENT
WHICH MEAN HE HAS
SIGNIFICANTLY TRUNCATED
RIGHT.

HE'S BEING HELD ESSENTIALLY
INDEFINITELY AS SOMEONE
SPENDING A TRIAL THAT HAS
NEVER BEEN --

>> REALLY THE ISSUE HERE WAS
THE ISSUE OF WHO WOULD PAY
FOR HIS TRANSPORT; RIGHT?

>> THAT'S THE NARROW ISSUE
IN THIS CASE.

YES.

BUT THE --

>> ARE YOU TELLING ME
BECAUSE OF THE THIRD
DISTRICT'S OPINION HE HAS
NOT BEEN ABLE TO BE IN LEAST
RESTRICTIVE ENVIRONMENT?

>> THEY HAVE HELD LEGALLY.

>> I DON'T BELIEVE HE'S IN
JAIL.

I BELIEVE HE'S HELD IN
A -- HELD IN A FACILITY RUN
BY THE AGENCY FOR PERSONS
WITH DISABILITIES.

>> IN A CARE FACILITY.

IS IT A SECURE FACILITY?

>> IT'S A SECURE FACILITY TO
THE BEST OF MY TPHOPL.

>> THE SECURE FACILITY
LIMITED TO FORENSIC CLIENTS
OR DOES IT INCLUDE CIVIL --

>> YOUR HONOR, I CAN'T TELL
YOU AND THE RECORD DOESN'T
REFLECT THE ACTUAL
POPULATION.

I CAN TELL YOU WHAT THE
STATUTE ALLOWS -- THE
STATUTE DOES NOT HAVE A
PERFECT ALIGNMENT BETWEEN
SECURE FACILITIES AND
FORENSIC CLIENT AND
NONSECURED AND CIVIL
CLIENTS.

THE STATUTE ALLOWS FOR
PEOPLE WHO ARE FOR INSTANCE
WHO REALLY ARE FORENSIC
CLIENTS TO BE WHAT WE CALL

STEPPED DOWN.

PLACED IN A NONSECURE BED.

THAT'S UNDER 9 169SD, 3.09SD

2-D I BELIEVE.

CONVERSELY IT ALLOWS THOSE

NOT FORENSIC CLIENT UNDER

393 TO BE -- WE DON'T USE

THE WORD BUT "STEPPED UP" TO

A SECURED FACILITY.

THAT'S UNDER 96, 303.

>> SO YOU ARE TELLING US,

THEN THAT PEOPLE WHO ARE

CIVILLY COMMITTED WHO NEED

TO BE IN A SECURE FACILITY

BECAUSE THEY ARE DANGER TO

THEMSELVES OR TO OTHERS CAN

IN FACT BE IN THE SAME

FACILITIES THAT THESE

FORENSIC CLIENTS ARE IN.

>> YES, MA'AM.

YES, MA'AM.

THAT'S EXACTLY WHAT 303

SAYS.

IT SAYS IF YOU ARE COMMITTED

UNDER 93 -- I'M SORRY.

39311, AND THAT'S -- WHICH

IS A CIVIL COMMITMENT.

CIVIL COMMITMENT PARALLEL TO

THE ACT FOR MENTAL

RETARDATION.

AND YOU NEED SECURE FACILITY

YOU CAN BE PLACED INTO A

SECURED FACILITY.

>> AND BOTH THE REVIEWED.

>> POST PLACEMENT ARE

REVIEWED ANNUALLY.

>> YES.

>> FOR THE APPROPRIATENESS.

>> YES, YES, YOUR HONOR.

SO THE ISSUE OF THIS CASE

YOU SAY IT'S BEYOND A

FINANCIAL ONE.

BUT APPARENTLY THAT'S

WHAT -- THAT'S WHY IT IS A

BIGGER ISSUE.

>> THAT WAS THE NARROW

ISSUE.

AND THAT DEALS WITH

OBVIOUSLY THE CONSTITUTIONAL

SHERIFF'S DUTY AND

TRANSPORT.

THE BROADER ISSUE AND THE

REASON I ASK THIS COURT TO

EXERCISE THIS DISCRETION IN

REVERSE IS BECAUSE OF THE
VERY SERIOUS CONSEQUENCES TO
MY CLIENT.

JUSTICE CANTERO, YOU HAD A
QUESTION.

>> THANK YOU.

GETTING BACK TO YOUR
ORIGINAL STATEMENT ABOUT
WHETHER YOUR CLIENT IS A
QUOTE, UNQUOTE FORENSIC
CLIENT.

THE STATUTE I'M READING
916.106, 10 DEFINES THOSE
MENTALLY ILL AUTISTIC TO
DEPARTMENT PURSUANT TO THIS
CHAPTER AND WHO HAS BEEN
TERMED TO NEED TREATMENT FOR
MENTAL ILLNESS OR TRAINING
FOR RETARDATION OR AUTISM.
WHO HAS BEEN FOUND
INCOMPETENT TO PROCEED ON A
FELONY DEFENSE.

WHO HAS BEEN DETERMINED TO
BE DANGEROUS TO HIMSELF OR
OTHERS AND WHO IS AN ADULT
OR JUVENILE OR PROSECUTED AS
AN ADULT.

WHY DOESN'T YOUR CLIENT FALL
WITHIN THAT DEFINITION?

>> THE PHRASE IS "COMMITTED
UNDER THIS CHAPTER."

YOU HAVE -- HE IS NOT
COMMITTED UNDER THAT CHAPTER.
HE'S COMMITTED UNDER 393.11.

WHY DID YOU SAY THAT?

BECAUSE THE ORDER COMMITTING
THE DEFENDANT.

IS THAT WHAT THE ORDER SAID?

ABSOLUTELY YOUR HONOR.

ALSO BECAUSE THE WHOLE
STATUTORY SCHEME.

THIS WHOLE STATUTORY SCHEME
IS BASED ON JACKSON VERSUS
INDIANA.

THE OLD SUPREME COURT SAID
THAT YOU CAN'T HOLD SOMEONE
EFPBL I INDEFINITELY WAITING
A TRIAL THAT WILL NEVER
HAPPEN.

THE FLORIDA LEGISLATURE IN
RESPONSE TO THAT AND THIS IS
EARLY 70s CASE IT'S BEEN
AROUND FOR A LONG TIME NOW,
THE ESTABLISH THE SCHEME

WHERE IF YOU'RE MENTALLY
RETARDED TWO YEARS IF YOU
ARE MENTALLY ILL FIVE YEARS.
THE CHARGES HAVE TO BE
DISMISSED AND IF THERE'S ANY
FURTHER SKWEPBT COMMITMENT
IT HAS TO BE UNDER A CIVIL
SCHEME.

THAT WAY WE DON'T HOLD
PEOPLE INDEFINITELY AWAITING
THE TRIAL THAT WILL NEVER
HAPPEN.

SO THAT HAPPENED TO
MR. DAVID EVERETT.

IN 1994 HE WAS A FORENSIC
CLIENT COMMITTED AS A
FORENSIC CLIENT UNDER 916.
THE STATUTE NUMBERS HAVE
CHANGED A BIT SINCE THEN.

IN 1996, DECEMBER 18th OR
1996 JUDGE LEASEFIELD ISSUED
AN ORDER DISMISSING THE
CHARGES AND COMMITTED HIM
UNDER 393.11 A CIVIL STATUTE
AND HE'S NOT BEEN A FORENSIC
CLIENT UNDER THAT DEFINITION
EVER SINCE.

I SHOULD ALSO ADD WITH --

>> WOULD HE FIT THE
DEFINITION OF A DEFENDANT AT
THAT POINT?

ONCE THE CHARGES HAVE BEEN
DISMISSED?

BECAUSE THE STATUTE MEANS
ANY DEFENDANT WHO IS
MENTALLY ILL.

>> I THINK NOT AS WELL.

BUT THERE'S TWO SIDES TO THE
SAME POINT.

HE'S NOT A DEFENDANT AS A
FORENSIC CLIENT HE'S NOT A
DEFENDANT -- I THINK THIS IS
CLEARER UNDER THE 2006
REVISIONS TO THE STATUTE.

THIS APPARENTLY NOT AN
ATTEMPT TO CHANGE ANYTHING
WHICH THE HOUSE CLEANING
GOING THROUGH THE STATUTE.

AND THERE IT SPECIFICALLY
SAYS THAT THE PERSON IS
COMMITTED UNDER 916 -- IF I
GET THE NUMBERS RIGHT.

1916.13 WHICH IS THE MENTAL
ILLNESS, 15 WHICH IS NOT

GUILTY BY REASON OF INSANITY
AND 916.302 WHICH IS THE
MENTAL RETARDATION.
NOT 303.

WHICH IS THE SECURE
PLACEMENT.

AND THIS IS WHAT I MEAN BY
THE STATUTE VERY CLEARLY
DIFFERENTIATES BETWEEN
COMMITMENTS AND MR. EVERETTE
IS FULLY COMMITTED UNDER THE
CIVIL STATUTE.

39.

AND PLACEMENT, BUT HE'S
PLACED UNDER 916.303 AND
THOSE ARE NOT THE SAME THING.
BY EITHER DEFINITION OF
FORENSIC CLIENT IN BOTH THE
NEW AND THE OLD STATUTE.
I'M SORRY.

>> YOUR INTERPRETATION OF
THE STATUTE IS NO ONE CAN BE
A FORENSIC CLIENT FOR MORE
THAN TWO YEARS.

>> OR FIVE YEARS OR -- I'M
SORRY THERE'S A SLIGHT
HEUPBLG OF THIS.
IF FOR SOME REASON SOMEONE
IS HELD THAT LONG BUT
THERE'S REASONABLY
THE -- THEY WILL BECOME
COMPETENT.

SOMETIME IN THE NEAR FUTURE
IT CAN GO BEYOND THAT.
THAT RARELY HAPPENS.
USUAL I WILL BY THAT POINT
IN TIME THINGS ARE PREPARE
THE VOTE SET.

>> AFTER -- IF A DEFENDANT
WHO HAS COMMITTED A OR
ALLEGED COMMIT A CRIME FOUND
INCOMPETENT BECAUSE OF IN
THIS CASE WAS IT MENTAL
RETARDATION.

>> MENTAL RETARDATION AND
NOW THEY ARE CIVILLY
COMMITTED.

I WANT TO MAKE SURE I
UNDERSTAND THAT.

ARE YOU SAYING THAT IN ALL
RESPECT THE STATUTORY SCHEME
WOULD BE TREATING THAT
PERSON AS IF THEY WERE
CIVILLY COMMITTED UNDER JUST

WITHOUT HAVING COMMITTED A CRIME.

>> YES.

THAT THEY AND THAT'S WHAT JACKSON AND THE STATUTORY SCHEME DEALS WITH.

YOU CAN'T JUST HOLD SOMEONE AS THOUGH THEY ARE A CRIMINAL OR AT LEAST A CRIMINAL DEFENDANT.

>> ISN'T I -- I'M TRYING TO UNDERSTAND THE STATUTORY SCHEME.

I'M SOMEBODY WHO HAS A CHILD AND THEY END UP HAVING TO BE CIVILLY COMMITTED.

DO THE PEOPLE IN THIS STATE AND DO THE LEGISLATURE INTENDS STILL TO DIFFERENTIATE BETWEEN THOSE WHO EVEN THOUGH THEY ARE NO LONGER UNDER PROSECUTION ARE PEOPLE ARE ALLEGED TO HAVE COMMITTED A VIOLENT CRIME VERSUS SOMEBODY WHO IS JUST BEEN NOT JUDGED BECAUSE IT'S SIGNIFICANT.

PLACED IN CIVIL COMMITMENT BECAUSE OF UNDER THE BAKER ACT.

AND SO TRY TO -- IF YOU COULD EXPLAIN TO US -- WE UNDERSTAND THE IDEA THAT THEY'VE BEEN THE PROSECUTION HAS BEEN DISMISSED.

BUT HOW ELSE DOES THE STATUTORY SCHEME WORK -- IF IT'S INTERPRETED AS THE THIRD DISTRICT, AGAIN, TOWARD THE PURPOSE OR AS THE THIRD DISTRICT TO ADVANCE THE PURPOSE BASED ON THE LABELING OF THE PERSON?

>> I THINK MAYBE THIS GOES BACK TO JUSTICE QUINCE'S POINT.

THE -- IN ORDER TO BE COMMITTED UNDER A 916 AS A FORENSIC CLIENT YOU HAVE TO BE A CRIMINAL DEFENDANT. ONCE YOU ARE NO LONGER THAT, ONCE THERE ARE NO LONGER CHARGES PENDING, YOU ARE JUST -- YOU ARE NO LONGER A

FORENSIC CLIENT.
YOU ARE OUTSIDE THE FORENSIC
SYSTEM.

HOW IS THAT DEFINED IT
916.15 IN THE 2006 STATUTE
TALKS ABOUT INVOLUNTARIY
COMMITMENT OF A DEFENDANT
WHO IS ADJUDICATED NOT
GUILTY BY REASON OF
INSANITY.

AND IT TALKS ABOUT BEING
COMMITTED.

>> YOUR HONOR, I'M SORRY I
DON'T HAVE THE NGI STATUTE
IN FRONT OF ME BECAUSE IT'S
NOT RELEVANT TO THIS CASE.
IT'S CERTAINLY A COMMITMENT.
RIGHT.

AND.

>> THE POINT IS THE CRIMINAL
DEFENDANT WHO FOUND
INCOMPETENT BY REASON OF
INSANITY CAN BE COMMITTED -- OH,
ABSOLUTELY YOUR HONOR.

>> AND THE NEXT AMENDMENT
CAN LAST UP TO THE TERM OF
THE CHARGE.

>> OH, UNDER THE NGI
STATUTE.

>> UNDER -- YES.

THAT'S -- YES.

THERE ARE FORENSIC
COMMITMENTS.

I GUESS THIS IS ANOTHER
EXCEPTION WHICH I THOUGHT TO
MENTION TO JUSTICE
CANTERO'S'S QUESTION.

UNDER NGI STATUTE WHICH I
DON'T THINK OF BECAUSE I'M
DEALING WITH COMPETENCY
ISSUE HERE.

>> NGI NOT GUILTY BY REASON
OF INSANITY.

LET'S GO WITH GOVERNOR CRIST
PLAIN LANGUAGE.

>> I DEEPLY APOLOGIZE.

I'VE BEEN POLUTED BY TRIAL
COURT SPEAK.

WE SPEAK IN NOTHING BUT
ACRONYMS AND LETTERS THERE.

YES, YOU CAN BE COMMITTED.

THERE ARE FORENSIC
COMMITMENT FOR NOT GUILTY BY
REASON OF INSANITY.

THAT WHOLE SYSTEM WORKS A
LITTLE BIT DIFFERENTLY.
BUT THAT DOESN'T HAVE THE
SAME KIND OF TWO AND
FIVE-YEAR TIME LIMITS WE'RE
TALKING ABOUT WITH THE
COMPETENCY.

DOES THAT ANSWER YOUR
QUESTION?

>> BUT, LET ME ASK YOU THIS.
EVEN THE IF -- YOUR CLIENT
WHO YOU SAID WAS COMMITTED
UNDER 393, THOSE YEARLY
REVIEWS ACTUALLY COME BACK
TO THE CRIMINAL COURT,
HOWEVER DON'T THEY.

>> YES, MA'AM.

AND SO I GUESS TO SOME
EXTENT IT'S MAKES YOU
BELIEVE THAT HE IS STILL, IN
FACT, A DEFENDANT OR A
FORENSIC CLIENT IF HE HAS TO
COME BACK TO CRIMINAL COURT
AS OPPOSED TO YOU KNOW CIVIL
COURT.

>> YOUR HONOR THE WAY IT
WORKS IT'S NOT SO MUCH SO
MUCH AS CRIMINAL.
HE COMES BACK TO THE COURT
THAT COMMITTED IT.
AND THE -- IT'S JUST E -- I
DON'T THINK THE
JURISDICTIONAL STATUTE IN
ORDER THE JURY'S DECISION AS
TO WHICH JUDGE SHOULD HEAR
THIS.

THE LEGISLATURE JUST MADE A
SIMPLE DECISION.

THEY SAID ONE JUDGE -- JUDGE
TO DEAL WITH THIS CASE ALL
THE WAY THROUGH.

ALL RIGHT.

AND DEAL WITH THE CRIMINAL
CASE, AND IF THERE'S A CIVIL
COMMITMENT THE SAME JUDGE
WILL DEAL WITH IT.

VERY SORT OF EFFICIENT
COMMON SENSE KIND OF
JURISDICTIONAL DECISION.

I DON'T BELIEVE THAT, THAT
JURISDICTIONAL DECISION
DETERMINES THE LEVEL OF
RIGHT.

>> DOES IT STAY WITH THAT

JUDGE EVEN AFTER THE
TWO-YEAR PERIOD IF THEY
DETERMINE THAT THERE'S NO
REASONABLE PROBABILITY OF
REGAINING COMPETENCE?

>> YES, YOUR HONOR.

WE'RE TALKING ABOUT 916.302
THIS IS WHAT JUSTICE QUINCE
WAS SUGGESTING.

302.5.

I'M SORRY.

THAT IT STAYS WITH THE SAME
JUDGE ALL THE WAY THROUGH.

BUT I DON'T -- I FIND

NOTHING IN THERE THAT TALKS
ABOUT THE DIFFERENCE BETWEEN!!!!!!!!!!!!!!!

BETWEEN -- THE -- TO CREATE
SOMEHOW THAT THIS PERSON IS
STILL A FORENSIC CLIENT.

FOR INSTANCE THAT

JURISDICTION CONTINUES EVEN
IF THE PERSON IS PLACED ON
CONDITIONAL RELEASE.

THEY ARE NOT EVEN COMMITTED
ANYWHERE ANY MORE.

>> YOU'VE BEEN VERY GOOD IN
THE PAST TO TELL US ON THE
GROUND SOMETIMES ISSUE ARISE
IN DADE COUNTY AND THEY
DON'T ARISE ANYWHERE ELSE.

THIS IS -- HAS BEEN A
STATUTE THAT'S YOU KNOW
AMENDED A LOT.

BUT AROUND THE STATE IS IT
BEEN THE PRACTICE FOR THE
SHERIFF TO DO THE
TRANSPORTING AND I AM
CONCERNED ABOUT YOUR SECOND
ISSUE WHICH I GUESS WASN'T
AN ISSUE BELOW ABOUT THE
ABSENSE OF THE SHERIFF AS AN
INTERESTED PARTY IN ANY OF
THIS.

WHAT IS THE PRACTICE ON THE
GROUND AS FAR AS WHO IS
DOING THE TRANSPORTING?,,,,,,

YES, YOUR HONOR.

THE TRANSPORTATION OF THE
ISSUE SORT OF GOT US HERE,
BUT THE IMPACT OF THE
DECISION IS FAR BEYOND
TRANSPORTATION.

>> YOU ARE MOVING INTO
REBUTTAL TIME.

USE IT AS YOU WISH.
THANK YOU, YOUR HONOR.
I APPRECIATE THE NOTE.
I WILL, YEAH, WILL -- I WISH
I WAS NOW THE CO COUNSEL
SETTING UP FOR THE COUNTY AN
EXPLAINING THEIR POSITION.
I BELIEVE THAT ISSUE WAS
PRESERVED.
I WILL LEAVE THAT TO THE
COURT.

>>> MAY IT PLEASE THE COURT.
MY NAME IS AMY McKEEVER
TOMAN AGENCY FOR PERSONS
WITH DISABILITIES WHICH IS
SUCCESSOR AND INTEREST OF
THE DEPARTMENT OF CHILDREN
AND FAMILIES.

>> THANK YOU.
COULDN'T WE LOOK AT THE
OVERALL PICTURE HERE.
CERTAINLY, WE ARE FACED WITH
TRANSPORTATION ISSUE.

>> YES.
>> BUT THE CHARACTERIZATION
OF THE INDIVIDUAL, WOULD YOU
AGREE WILL HAVE FAR-REACHING
OR OTHER IMPACT, THAT IS A
FAIR STATEMENT?

>> YES, SIR.
OUTSIDE OF TRANSPORTATION.
>> YES, OUTSIDE OF
TRANSPORTATION.

>> WHY IS THE APPROACH OF
JUDGE MA REQUIRE REZ BE THE
THIRD DISTRICT, I MEAN THIS
CASE WITH STATUTORY
LANGUAGE, YOU CAN WRITE
ANYTHING AND MAKE IT SOUND
LOGICAL, IT SEEMS TO ME THAT
THE JUDGE'S TAKE ON THIS,
YOU KNOW, THIS 916 IS FOR
THOSE WHO REMAIN AS
DEFENDANTS, AND THOSE WHO
REMAIN WITH SUBJECT TO
CHARGES OR FOUND NOT GUILTY
WITH DUE INSANITY, BUT WE
ARE DEALING WITH A DIFFERENT
GROUP OF INDIVIDUALS, I AM
SORRY, THOSE ARE THE CIVIL
COMMITMENT, SOME MAY BE
DANGEROUS, SOME MAY NOT.
SOME MAY HAVE HAD CRIMINAL
CHARGES BEFORE, SOME MAY

NOT.

SO WOULD YOU ADDRESS THAT? I THINK YOU HAVE HEARD THIS MORNING THE CONCERN OF THE COURT AND.

I THINK IT IS REALLY IMPORTANT TO TAKE A CLOSE LOCK AT 916.303 WHICH IS REALLY THE SECTION OF THIS STATUTE THAT MR. EVERETTE WAS SUBMITTED UNDER. HE HAD GONE THROUGH THE INCOMPETENCE OF THE PROCESS. HE HAD BEEN FOUND DANGEROUS, M COMPETENT IN THE NEED OF A SECURE SETTING.

HE CAME TO THE EN OF THE TWO YEARS.

916.303, HE WAS FOUND TO BE NOT ONLY IN NEED OF A CIVIL COMMITMENT, BUT YOU ALSO IN NEED OF A SECURE SETTING.

>> AND CIVIL COMMITMENT COULD BE FOR AN INDIVIDUAL THAT IS CONSIDERED DANGEROUS.

>> THAT IS NOT TRUE.

THERE IS NO PROVISION FOR PUTTING WILLING.

THE ONLY WAY THE AGENCY FOR PERSONS OF DISABILITIES COULD HOLD MR. EVERETTE INSECURE SETING IF I WAS HELD FOR CHAP PER 916 IN ADDITION TO 39311.

>> SO THE PROCESS WAS THAT HIS DUE PROCESS RIGHTS WERE PROTECTED BY PUTTING HIM THROUGH THE 393 PROCESS OF A CIVIL COMMITMENT.

AT THE TIME! SAME TIME THE COURT DETERMINED HE WAS DANGERS OUR, IN NEED OF A SECURE SETTING.

THERE IS NO WAY FOR THE STATE AGENCY TO HOLD A PERSON IN THAT KIND OF A SETTING UNLESS THEY ARE COMMITTED THROUGH CHAP PER.

>> HE DOES NOT HAVE A PREVISION FOR SECURE SETTING.

SO ARE YOU SAYING THIS COMMITMENT, THEN, FELL UNDER

BOTH STATUTES, THE 393 AND THE 916?

AND UNDER THOSE CIRCUMSTANCES, THEN, IS THIS, IS THIS ENTITLED TO THE RIGHTS UNDER 393?

>> A PERSON COMMITTED THROUGH 393 AND 916 IS LIKE A DUAL COMMITMENT IS HOW I THINK OF IT.

THE PERSON HAS LIMITED RIGHTS.

HE HAS BEEN DETERMINED BY A COURT AFTER REVIEWING THE EVIDENCE TO BE IN NEED OF A SECURE SETTING.

HE IS DETERMINED TO BE DANGEROUS.

>> WE UNDERSTAND HE IS IN NEED OF A SECURE SETTING; HOWEVER, AS I UNDERSTAND IT, UNDER 393, HE HAS MORE DUE PROCESS RIGHT AVAILABLE TO HIM THAT HE WOULD UNDER 916, SO IF ARE SAYING, HE HAS DUAL COMMITMENT, THEN IS HE ENTITLED TO THOSE RIGHTS UNDER 393?

>> I WOULD SUGGEST HE IS GOVERNED BY THE RIGHTS IN CHAPTER 916.

>> WHY?

>> BECAUSE HE IS COMMITTED UNDER 916.303 WHICH FINDS HE IS DANGEROUS TO HIMSELF OR TO OTHERS AND THAT HE IS IN NEED OF A SECURE PLACE.

YOU KNOW, I FIND THE FACTS IN THE TO BE, IT MAKES IT SO IRONIC BECAUSE IT WAS THE DEPARTMENT THAT FILED FILED A NOTICE TO TRANSFER EVERETTE TO NON-SECURE RESIDENTIAL SETTING.

THE JUDGE SAID NOT BEFORE WE GET A WAY, THEN, WE HAVE THIS WHOLE THING GOING, WHICH, IF HE HAD ALREADY BEEN TRANSFERRED TO A NON-SECURE SETTING, WOULD YOUR ARGUMENT BE THE SAME?

THAT IS HE IS STILL FORENSIC CLIENT, SO IT NEVER ENDS?

>> NO.

MY ARGUMENT WOULD NOT BE THE SAME.

IN FACT, 916.303 GIVES THE COURT CONTINUING JURISDICTION WITH THE OPPORTUNITY FOR AN ANNUAL REVIEW TO MAKE A DETERMINATION ON AN ANNUAL BASIS WHETHER THE PERSON IS STILL IN NEED OF A SECURE SETTING OR NOT.

IF THE DETERMINE NATION HAD BEEN MADE.

I CAN TELL YOU, THEY ARE MADE IN THESE CASES, THAT THE PERSON WAS NO LONGER IN NEED OF A SECURE SETTING, THEN THE MATTER RETURNS TO NON-SEE, COULD YOU AT THAT POINT, THE PERSON IS NO LONGER FORENSIC CLIENT.

>> SO AT THIS POINT, AND I GUESS THIS WOULD, SINCE WE ARE LOOKING AT THIS IS A BROAD HERB ISSUE, BUT FOR THIS PARTICULAR PERSON, THE DEPARTMENT ALREADY SAW HIM AS SOMEONE THAT WAS IN INNON-SECURE TO BE NON-SECURE RESIDENTIAL SETTING, SO IF THE DEPARTMENT'S VIEW HAD BEEN, WELL, I GUESS, I DON'T KNOW HOW HE ENDED UP BEING TRANSPORTED, BUT HE COULD HAVE ENDED UP BEING TRANSPORTED AND INTO THE DADE COUNTY JAIL BY THE SHERIFF EVEN THOUGH THE DEPARTMENT WAS FEELING THAT HE NOW SHOULD BE IN NON-SECURE RESIDENTIAL SETTING.

DOESN'T THAT STRIKE YOU ALREADY AS BEING COUNTER PRODUCTIVE TO WHAT THE INTENT IS ABOUT THIS RESTRICTED MEANS.

>> THE DEPARTMENT MAY MAKE A RECOMMENDATION THAT SOMEBODY IS NOW READY FOR A NON-SECURE SETTING, BUT IT CAN'T HAPPEN IF THE PERSON HAS BEEN COMMITTED UNDER

916.30 3, THEY CANNOT BE
MOVED TO NON-SECURE SETTING
UNLESS THE COURT APPROVES
THAT.

OFTEN IT REQUIRES ADDITIONAL
EVIDENCE, YOU KNOW.

I GUESS, WHAT IS -- WHERE IS
THE PUBLIC POLICY IN HAVING,
INSTEAD OF THE DEPARTMENT
WHO IS IN THE BEST POSITION
TO KNOW THE NATURE OF THIS
PERSON AND I GUESS COULD
ARRANGE TO HIM HIM
TRANSPORTED HOWEVER YOU WANT
INCLUDING ASSISTANCE FROM
THE SHERIFF NOT TO HAVE THE
RESPONSIBILITY FOR
TRANSPORTATION AND FOR
HOUSING WHILE YOU ARE THE
ONES THAT ARE MAKING THE
DECISION THAT, OR AT LEAST
MAKING RECOMMENDATION THAT
THEY ARE GOING FROM
NON-SECURE TO NON-SECURE.

IT JUST SEEMS COUNTER
PRODUCTIVE TO PUT A WHOLE
OTHEREN TY IN WHEN THE CASE
HAS BEEN DISMISSED, YOU
KNOW, WITH ALL OF THE
POTENTIAL THAT, YOU KNOW,
ABUSE THAT COULD OCCUR WAS
HAVING THE SHERIFF INVOLVED
AND TREATING THIS PERSON
EVENTUALLY LUKE THEY ARE
ANOTHER CRIMINAL DEFENDANT.
I WOULD AGREE WITH YOU, YOUR
HONOR, IF THE PERSON
COMMITTED HAD NOT BEEN
DETERMINED BY THE COURT TO
BE DANGEROUS BECAUSE REALLY
THE STATE EMPLOYEE, THE
AGENCIES EMPLOYEES DON'T
HAVE THE TRAIN TRUCK STURE
OR THE CAPACITY OR THE LAW
ENFORCEMENT BACKGROUND TO
TRANSPORT SOMEBODY WHO HAS
BEEN DETERMINED TO BE
DANGEROUS.

THE DANGEROUSNESS LABELED
DOESN'T CHANGE WHETHER THE
PERSON HAS CHARGES OR NOT.

>> STRAIGHTEN ME OUT.

I KNOW THAT WE TRAVELED OVER
HERE UNDER THE ARGUMENT

ABOUT 916 AND THE 300
STATUTE, BUT WHAT WHAT
HAPPENED TO MR. EVERETTE.
WOULD YOU TELL ME THAT IN
THE PERIODS OF TIME -- DINO
IT IS NOT PART OF THE
RECORD.

DO YOU HAPPEN TO KNOW ABOUT
MR. EVERETTE'S CURRENT
STATUS.

>> WELL, I WANT TO KNOW
THAT.

BUY ALSO AM CONCERNED ABOUT
THE FACT THAT IN OCTOBER OF
2004 WHEN THE DISTRICT COURT
ISSUED THAT THERE WAS THIS
ONGOING DISPUTE BETWEEN THE
DEPARTMENT AND THE PUBLIC
DEFENDER ABOUT WHO WAS GOING
TO PAY FOR THE TRANSPORTING
AND WHAT THE MECHANISM IS
RATHER THAN COMING TO SEVEN
MEMBERS OF THIS COURT TO GET
THAT TYPE OF BUREAU CRATIC
SNARL WORKED OUT.

THAT IS WHAT I'M CONCERNED
ABOUT.

YES, HE DOES WANT TO KNOW,
WHAT HAPPENED TO THIS
INDIVIDUAL.

>> THE PATHWAY PROGRAM WAS
MOVED AS RESULT OF THE CLASS-
ACTION LAWSUIT FROM THE MM
MAY AREA UP TO MARIANA
FLORIDA, MR. EVERETTE WAS
MOVED AS ONE OF THE CURRENT
RESIDENTS DID UP THERE.

THAT IS WHERE HE IS NOW.
HE IS INSECURE SETTING IN
FORENSIC FACILITY LIKE OTHER
PEOPLE WHO ARE SIMILARLY
COMMITTED UP WILLING.

I BELIEVE THAT TRANSPORT WAS
DONE WITH LAW ENFORCEMENT
ASSISTANCE.

>> HAS HE BEEN EVALUATED AS
WAS ORDERED BY THE JUDGE?

>> I CAN'T ANSWER THAT.

>> THAT IS THE KEY QUESTION.
I MEAN JUDGE MILLER WANTED,
IT WAS JUDGE MILLER WHO WAS
FAXED A LETTER IN 2004 TO
HAVE HIM IMMEDIATELY
EVALUATED BEFORE A DECISION

WAS MADE TO BE TRANSFERRED
TO NON-SECURE RESIDENTIAL
SETTING.

JUSTICE WELLS CONCERN IN A
WAY, ALTHOUGH, IT IS MINE,
WHICH IS THAT BY THE ACTIONS
OF THE DEPARTMENT AND THEN
THE THIRD DISTRICT, THAT
THIS PARTICULAR PERSON GET,
YOU KNOW, A IN TERMS HE IS
IN A PLACE NOW WHERE HE IS
NOT GETTING THE BENEFITS OF
CONTINUED REHABILITATION.

>> WELL, THE PROGRAM --

>> WELL, OKAY, YOU
CHALLENGED US, GOOD, WE'LL
KEEP HIM INSECURE SETTING,
SO SO MUCH FOR OUR
RECOMMENDATION THAT HE GO NO
NON-SECURE SETTING.

THAT IS WHAT IT SOUNDS LIKE
MIGHT HAVE HAPPENED.

>> THE PROGRAM IS JUST LIKE
WHEN YOU MAKE IT CLEAR THAT
SORT OF PEOPLE WHO ARE
COMMITTED TO 915303 AND 311
IT IS SECURE SETTING BUT IT
IS ALSO A TREATMENT PROGRAM.
I MEAN, THERE ARE TREATMENTS
FACTORS IN THAT PROGRAM.
THE ANNUAL REVIEWS SINCE THE
TRANSITION HAS BEEN MADE ARE
OFTEN DONE BY TELEPHONE.
WITH WRITTEN REPORTS.

>> YOU SAID YOU KNEW THE
CURRENT STATUS.

>> I DO.

>> IT SOUNDS TO ME LIKE THE
BIGGEST ISSUE WHICH BROUGHT
THIS WHOLE THING ALONG, DID
HE GET EVALUATED IN MY AMY
WITH A HEARING IN MIAMI, THE
ANSWER IS YOU DON'T KNOW.

>> NO.

I DON'T KNOW NOT.

>> JUSTIN ANSTEAD HAS
QUESTION.

>> SURE.

>> IS THE LAST EVALUATION
THAT WE HAVE THE EVALUATION
OF OVER THREE YEARS AGO IN
NOVEMBER OF 2003?
AND WHICH WAS AN EVALUATION
THAT RECOMMENDED THAT HE NOW

BE TRANSPORTED TO A
LESS SECURE FACILITY.

THAT IS THE LAST EVALUATION
THAT WE HAVE ON THIS RECORD?

>> IN THE RECORD, IT IS.

>> NOW I WOULD LIKE TO HAVE
SOME KIND OF EXPLANATION
FROM YOU REPRESENTING REALLY
THE STATE HERE AS TO HOW IF
THAT EVALUATION AS THE MOST
CURRENT ONE THAT WE HAVE,
HOW IS IT THAT WE ARE HERE
NOW AS SEVERAL MEMBERS OF
THE PANEL HAVE INDICATED
OVER THREE YEARS LATER AND
THIS PERSON REMAINS IN LIMBO
CONTRARY TO THE
RECOMMENDATION OF THAT MOST
RECENT EVALUATION THAT WE
HAVE IN THE RECORD, ALL
APPARENTLY BECAUSE OF THIS
TAIL ISSUE -- TAIL ISSUE
WAGGING THE INCREDIBLY
IMPORTANT DOG IN THE CASE AS
FAR AS HOW THIS PERSON
SHOULD BE CARED FOR BY THE
STATE.

MANY, MANY YEARS AFTER ANY
CRIMINAL CHARGES HAVE BEEN
DROPPED AND WHAT JEFB
AGREEING THAT THE CRIPPLE
MALL CHARGES NOT BE
REINSTITUTED, SO HELP ME, IF
THAT IS THE MOST RECENT
EVALUATION ON THE RECORD
THAT HOW IT IS THAT THE
STATE WOULD NOT BE
DRAMATICALLY EMBARRASSED TO
BE STANDING HERE IN THE
COURT AND SAYING NOTHING HAS
HAPPENED BECAUSE OF THE
TENDENCY OF THIS
TRANSPORTATION ISSUE AS FAR
AS THIS BEING THE LATEST
RECOMMENDATION AND THAT
THERE HAS BEEN NO ACTION
TAKEN ON THAT RECOMMENDATION
SINCE THAT TIME.

I AM VERY DISTRESSED THAT WE
ARE THE ONES NOW MORE OR
LESS PRESENTED IN A CASE
INVOLVING THIS TAIL ISSUE,
OKAY?

ABOUT TRANSPORTATION, THE

ONES THAT APPARENT RY WILL
HAVE TO TAKE SOME ACTION IN
ORDER TO BREAK THIS LOGJAM
THAT HAS BEEN DESCRIBED
HERE.

EYE DO UNDERSTAND YOUR
CONCERN, YOUR HONOR.
I CAN NOT, I DO NOT HAVE
THAT INFORMATION BEYOND THE
RECORD.

I DO NOT KNOW IF
MR. EVERETTE HAS BEEN
EVALUATED SINCE THAT LAST
EVALUATION.

>> SHOULDN'T BE SOMEBODY BE
RUNNING AROUND AND SAYING,
YOU KNOW, WE GOT TO DO
SOMETHING HERE THAT WE HAD
THIS EVALUATION THAT
RECOMMENDS AFTER A LONG TIME
OF CARE OF THIS PARTICULAR
INDIVIDUAL THAT NOW HE BE
RETURNED TO HIS HOME AREA IN
LESS SECURE FACILITY AND WE
GET ON WITH THE NEXT STAGE
OF HIS REHABILITATION AND
HERE WE ARE OVER THREE YEARS
LATER AND NO ACTION HAS BEEN
TAKEN AND THAT IS NOT THE
RECOMMENDATION OF SOME
PRIVATE PSYCHOLOGISTS CAN OR
PSYCHOLOGISTS OR COUNCILOR
HIRED BY, THIS IS A
RECOMMENDATION OF THE STATE.

>> I CAN'T SPEAK TO BEYOND
THE RECORD THE FACTS OF
MR. EVERETTE'S CURRENCY,S.
I DO NOT KNOW IF HE IS STILL
CONSIDERED TO BE APPROPRIATE
FOR NON-SECURE SETTING, IF
HE HAS BEEN EVALUATED WITH
REGARD TO THAT.

>> IT SEEMS TO ME THAT
THOUGH WE WANT TO GET INTO
THIS BUSINESS ABOUT THESE
STATUTES BUT THAT THE VERY
PROBLEM IN THIS CASE IS THAT
AS UNDERSTAND WHAT HAPPENED
THAT THE TRIAL JUDGE ORDERED
THERE TO BE ANOTHER
EVALUATION AND THEN AFTER
THAT ORDER THIS MAN WAS
TAKEN FROM MIAMI TO MARIANA
AND THE QUESTION ABOUT HIM

GETTING THE EVALUATION THEN
GOT WRAPPED UP AND FY GET
HIM BACK TO MIAMI AND FOR
HEAVEN SAKES THE DEPARTMENT
AND EVERY OTHER RESPONSIBLE
GOVERNMENTAL PERSON THAT IS
IN CHARGE OF THIS HAS GOT TO
SAY WE'LL PAY FOR IT.

GET HIM BACK TO MIAMI, WE'LL
ARGUE ABOUT WHO ACTUALLY IS
GOING TO END UP WITH THE
BILL LATER.

I MEAN ISN'T THAT THE WAY IT
IS GOING TO WORK?
THAT WE ARE NOT GOING TO BE
HERE THREE YEARS LATER ARGUEING
ABOUT WHO IS GOING TO PAY
FOR IT WHEN HE IS STILL IN
MARIANA.

>> I GUESS I WOULD HAVE TO
REPEAT, YOUR HONOR, I DON'T
KNOW THAT HAS NOT OCCURRED.
WHAT I KNOW IS WHAT IN THE
RECORD.

>> WOULD YOU SUPPLEMENT THIS
RECORD PLEASE AN TELL US
WHAT HIS STATUS IS?
I WOULD BE GLAD TO.

>> HOW DO YOU TRANSPORT
CIVILLY COMMITTED SECURE
DANGEROUS PERSON?
HOW DOES THE DEPARTMENT DO
THAT?

>> WITH THE SHERIFF PURSUE
ANT TO CHAP PER 916 THE
SHERIFF DOES IT.

>> WHAT IF THEY ARE NOT
COMMITTED UNDER 916?
JUST PURELY CIVIL.
BUT THEY ARE DANGEROUS TO
THEMSELVES.

THE SAME CLASSIFICATION, BUT
MOT FORENSIC.

>> BUT THEY HAVE MOT BEEN
DETERMINED TO BE IN NEED OF
A SECURE SETTING.

>> WHAT YOU HAVE DETERMINED
ON CIVIL BASIS, THEY NEED A
SECURE, BUT YOU HAVE
ADMITTED BEFORE, YOU A PURE
CIVIL COMMITMENT, YOU CAN
PLACE THEM INSECURE
FACILITY, RIGHT?

>> ONLY IF THEY ARE

COMMITTED TO CHAPTER 916.

>> SO YOU ARE SAYING THE
RESIDENT, THE 93 SPEAKS ONLY
TO RESIDENTIAL PLACEMENT.
IT DOESN'T SAY NON-SECURE
RESIDENTIAL PLACEMENT.

>> I KNOW WHAT YOU ARE
REFERRING TO.

IF A PERSON IS COMMITTED
STRICTLY UNDER 393.11, THE
AGENCY DOES NOT HAVE THE
AUTHORITY TO PLACE THEM IN
FORENSIC OR SECURE FACILITY.
THERE IS NO PROVISION FOR
FORENSIC OR SECURE
PLACEMENT.

>> HOW ABOUT SECURE.
LET'S NOT TALK ABOUT
FORENSIC.

HOW ABOUT YOUR STATEMENT
THAT IT'S NO SECURE
PLACEMENTS UNDER 393.

>> THAT IS RIGHT.

>> SO IF THIS ORIGINAL ORDER
HAD OF THIS TRIAL JUDGE HAD
BEEN READ TO MEAN PURE LAY
393 COMMITMENT YOU COULD NOT
HAVE SATISFIED THAT ORDER
BY PLACING HIM
IN SECURE FACILITY? I

>> I DON'T BELIEVE SO.

>> SO ANY PERSON
NON-CRIMINAL PERSON WHO IS
CIVILLY COMMITTED AND IS
DANGEROUS STILL GETS TO GO
TO A NON-SECURE FACILITY?

>> YES.

>> THAT IS WHAT YOU ARE
TELLING US?

>> IT HAS NOT BEEN REQUIRED THE
COMMITTEE COURT TO BE NEED
OF A SECURE SETTING AS LEAST
RESTRICTIVE ENVIRONMENT
APPROPRIATE.

IN MR. EVERETTE'S CASE, THE
COURT MADE A DETERMINATION.
NO, I'M NOT TALKING ABOUT
SOMEONE WHO HAS PREVIOUSLY
BEEN A CRIMINAL DEFENDANT.
I AM TALKING ABOUT SOMEONE
OFF THE STREETS WHO IS
CIVILLY COMMITTED NOT EVER
BEEN A CRIMINAL DEFENDANT,
BUT THAT PERSON IS A

DANGEROUS PERSON, THEY
CANNOT TO SECURE FACILITY IN
THE STATE?

>> NOT FORENSIC FACILITY
THAT WE DEFINE AS SECURE.

>> THERE IS ANOTHER
PROVISION IF THEY ARE DULY
DIAGNOSED, THERE IS SOME
INDICATION THERE MAY BE
MENTAL HEALTH ISSUES HERE,
CAN YOU IN A PURE CIVIL
COMMITMENT PLACE A MENTAL
HEALTH AS OPPOSED TO
MENTALLY RETARDED INTO
SECURE FACILITY?

>> WITH OR WITHOUT?
I BELIEVE SO, YOUR HONOR, I
AM NOT AN EXPERT.

>> JUST JUSTICE CANTERO HAS
QUESTION.

>> THE COMMITTEE OCCURRED IN
1996, CORRECT?

>> YES.

>> THE STATUTE HAS BEEN
AMENDED, I BELIEVE, SEVERAL
TIMES, WE ARE DEALING WITH
SEVERAL DIFFERENT STATUTORY
PROVISIONS.

DO WE LOOK AT THOSE
AMENDMENTS, DO THOSE
AMENDMENTS APPLY TO THIS
PERSON OR DO WE ONLY LOOK AT
THE STATUTES IN 393 AND 916
AS THEY EXISTED IN '96?

>> I THINK YOU CAN LOOK AT
BOTH VERSIONS, THE 2006
DEFINITION OF FORENSIC
CLIENT DOES REFER TO
916.302, BUT MR. EVERETTE
WAS COMMITTED UNDER 916.303,
WITH YOU YOU CAN NOT BE
COMMITTED UNDER 916.303
UNLESS YOU ARE COMMITTED.
SO THERE IS NO WAY TO GET TO
THE COMMITMENT THAT
MR. EVERETTE HAD UNLESS YOU
WERE PREVIOUSLY COMMITTED
THROUGH THE FOR RING,
STATUTE.

>> I HAVE A QUESTION ABOUT
THE PRACTICALITY.
YOU GOT A PERSON THAT IS \$LY
UNDER THE JURISDICTION OF
NOW THE AGENCY FOR PERSONS

WITH DISABILITY.
YOU HAVE A SITUATION WHERE
TRANSPORTATION NEEDS TO
OCCUR FROM MARIANA TO MIAMI.
TO HAVE, TO SAY THE SHERIFF
IS RESPONSIBLE, AND, YOU
KNOW, THIS CERTAINLY CAME UP
WITH REVISION 7, THE COST
ISSUE IS, INSTEAD OF IT
BEING BRN STATEWIDE, THE
PERSON, WITH THE AGENCY THAT
IS IN CHARGE OF THE
INDIVIDUAL, YOU ALL OF THE
SUDDEN NOW HAVE SHERIFF,
THIS IS THE SHERIFF OF
MIAMI-DADE THAT GOES UP AND
GETS HIM, THE SHERIFF OF MY
MARIANA AND CUE JUST BRIEFLY,
YOU ARE OUT OF TIME, BUT AND
THEY ARE NOT EVEN A PARTY TO
THIS SOLUTE, YET THEY WOULD
BE THE ONES THAT WOULD BE
BEARING WOULD COULD BE
SUBSTANTIATION COSTS.

I DON'T THINK THAT ISSUE WAS
RAISED ON APPEAL, THAT IS
DISCUSSED IN MY BRIEF.

THE SHERIFF'S DEPARTMENT
THAT WILL BE RESPONSIBLE FOR
THE TRANSPORTING IS THE
SHERIFF DEPARTMENT FROM THE
AREA THAT THE PERSON WAS
COMMITTED FROM BECAUSE THAT
IS THE CRIMINAL COURT THAT
RETAINS JURISDICTION OVER
THE PERSON IN A CONTINUING
EFFORT TO DETERMINE WHETHER
OR NOT THEY ARE IN NEED OF
SECURE PLACEMENT.

WHETHER THEY ARE IN NEED OF
CONTINUED CURTAILMENT IN AN
EFFORT TO PROTECT THE
PUBLIC.

>> SO THAT IS JUST NEVER WAS
AN ISSUE THAT IS TO LOOK AND
SEE WHERE THE BUDGETS OF
THESE SHERIFF'S OFFICE OR
REALLY CONTEMPLATES COST
THAT WOULD GO FOR PEOPLE
THAT ARE NO LONGER
DEFENDANTS UNDER ACTS OF
PROSECUTION.

>> NO, JUSTICE, BECAUSE IT
IS OUR POSITION AND REALLY I

BELIEVE THAT THESE PEOPLE
ARE IN NEED OF THE
PROTECTIONS THAT 916
PROVIDES INCLUDING HAVING
THE SHERIFF'S OFFICE
TRANSPORT WHETHER THE STATE
EMPLOYEE, THE STATE VEHICLE
WITH NO PROTECTION FOR
EITHER PARTY, SO IT WOULD
STILL BE OUT TO POSITION.

>> NOTHING WOULD PREVENT YOU
FROM CONTRASTING WITH
WHOMEVER YOU WANTED.

I WOULD SUGGEST THE STATUTE
PREVENTS US FROM DOING THAT.

IF THEY ARE COVERED BY THE
STATUTES, THE STATUTE
CLEARLY SAYS IT IS
RESPONSIBLE OF THE SHERIFF'S
OFFICE TO CONTRACT WITH
SOMEONE TO DO IT.

>> WITH OUR ASSISTANCE, YOU
HAVE GONE FAR BEYOND YOUR
TIME.

THANK YOU.

>> REBUTTAL?

>>> REAL QUICK QUESTION, IN
CIVIL COMMITMENT, WHO
TRANSPORTS IN A BAKER ACT,
IF THEY ARE COMMITTED IN
THIS AREA?

TO THE MENTAL HEALTH
FACILITY.

>> I BELIEVE ON THE BAKER PER
ACT, THROUGH THE RECEIVING
FACILITY.

A RIGHT.

>> BUT BEYOND, THAT IT IS
DEPARTMENT OF CHILDREN AND
FAMILIES.

I AM NOT QUITE AS FAMILIAR.

>> HE HAS CONTRADICTED WHAT
YOU SAID.

I THOUGHT I UNDERSTOOD TO
YOUR INITIAL ARGUMENT BEING
THAT THERE CAN BE SECURE
PLACEMENTS FOR CIVIL COMMITMENT
INDIVIDUALS.

>> YES, YOUR HONOR.

THAT IS WHAT HAPPENED TO
MR. EVERETTE.

>> ONES THAT WERE NOT YOU
INITIALLY FOUND INCONFIDENCE
UNDER 916?

>> OH.

>> THERE COULD BE INSECURE
SETTINGS BOTH THOSE THAT
WERE UNDER.

I KNOW OF NO PROVISION THAT
ALLOWS THAT IN 393, ALL I
KNOW NOTHING THAT STOPS THE
DEPARTMENT FROM
ADMINISTRATIVELY DOING THAT
AND I CAN NOT IMAGINE, I
KNOW THAT WITHIN PEOPLE WHO
ARE PUR LIE CIVILLY
COMMITTED.

I KNOW THERE ARE REGULATION
WHY THEY JUST DO THAT.

IT IS UNDER
ADMINISTRATIVELY.

>> THEY GO TO SECURE
FACILITIES?

>> YES, YOUR HONOR.

IF YOU LOOK, I BELIEVE IT
INS MY REPLY TO THE
RESPONSES TO THE MOTION FOR
REHEARING, I LAY THAT OUT.
IT IS A COMPLICATED THING.
SO I KNOW THAT HAPPENS IN
BAKER ACT 394.

I CAN'T SPEAK WHETHER IT
HAPPENS IN 393.

>> ISN'T THAT SOME OTHER
CRITICAL FACTOR, THOUGH,
BECAUSE IT SEEMS TO ME, AS
THOUGH WE HAVE BEEN TALKING
ABOUT IS THE CIVIL
COMMITMENT, YOU ARE TREATED
DIFFERENTLY, YOU ARE NOT
SUBJECT TO THE PROVISIONS OF
916 AND THE STATE IS SAYING
THAT THERE IS NO SUCH THING
AS NOT BEING SUBJECT OF 916
BECAUSE UNDER 39 3, YOU HAVE
NEVER BEEN CHARGED WITH A
CRIME.

YOU HAVE NEVER ABOUT BEEN
INVOLVED IN A CRIMINAL
SYSTEM THE OM WAY YOU CAN BE
PLACED IN AND IT MAY BE THE
KEY IS THE WORD PLACEMENT
BUT SHE SAID THE ONLY WAY
YOU CAN DO IT IS BEING
COMMITTED UNDER 916 SO THAT
IS WHAT WE ARE TALKING
ABOUT.

ARE YOU SAYING IT IS ON THE

REGULATIONS, THE REGULATIONS
OF THE DEPARTMENT OF
CHILDREN AND FAMILIES IS
WHERE WE ARE GOING TO FIND
THE PROVISIONS ABOUT DEALING
WITH DANGEROUS PEOPLE UNDER
393.

>> NO.

I AM NOT SAYING THAT.
393 I WAS SPEAKING ABOUT
394.

>> DOES THAT MAKE A
DIFFERENCE?

THAT CERTAINLY MUST MAKE A
DIFFERENCE TO US, THOUGH
DOESN'T IT.

>> LET ME ADDRESS THE SPIRIT
OF WHAT YOU ARE TALKING
ABOUT.

THE ISSUE, THE IDENTITY OF
THE FACILITY IS BEING
SECURED DOES NOT IS SIMPLY
DIFFERENT DEFINITION THAN
THE PATIENT OF A PERSON
BEING A CLIENT.

THE TRANSPORTATION PROVISION
THAT THE DEPARTMENT AND
AGENCY IS RELYING ON
SPECIFICALLY REFERS TO
FORENSIC SCIENCE IT DOES NOT
SAY TO AND FROM FACILITY.

I SUBMIT TO YOU WITH ALL DUE
RESPECT TO THE AGENCY THE
WHOLE ISSUE OF WHICH KIND OF
FACILITY IS COMPLETE RED
HERRING.

>> LET'S GO BACK.

SHE NOT ONLY SAYS THE
FACILITY, SHE IS SAYING IF
YOU HAVE, AS YINDER STAND
THE ARGUMENT, IF YOU HAVE
SECURE FACILITY, YOU CAN
ONLY BE IN THERE IF YOU ARE
FOR RENS YOUR CLIENT THAT
IS THE ONLY WAY YOU ARE
GOING TO BE ON SECURE
FACILITY.

>> WELL, WHAT I UNDERSTAND
STOOD HER ARGUMENT WAS, IF
YOU ARE MENTALLY RETARDED IN
SEE YOUR SILLY TYPE FLUCHBLT
THE PAST BEEN FORENSIC
CLIENT.

>> NO, THAT IS NOT WHAT SHE

SAID.

SHE SAID ACROSS THE BOARD.

THAT IS WHAT WE NEED TO

KNOW.

>> WELL, LET ME LAYOUT.

I GOT 26 SECONDS.

>> YOU ARE GOING TO HAVE

TIME.

>> LAY IT OUT.

>> IN 302, 91630 2, YOU ARE

COMMITTED A FORENSIC CLIENT

FOR A CERTAIN NUMBER OF

YEARS.

THAT ENDS.

THEN, THE COURT CAN DECIDE

AT THAT POINT, YOU ARE NO

LONGER A FOR RING, CLIENT.

AT THAT POINT, YOU CAN BE

PLACED AND I WOULD AGREE

WITH COUNSEL ON ONE THING,

REALLY LOOK AT THE LANGUAGE,

PARTICULARLY 2005 WHERE IT

TALKS ABOUT THE COMMITMENTS

AND PLACEMENTS THEN PLACED

BUT THAT IS NOT CONTINUING,

THAT IS EXACTLY WHAT THIS

STATUTE WAS DESIGNED TO

AVOID, DESIGNED TO AVOID

THAT CONTINUING ONCE YOU ARE

COMMITTED TO FORENSIC

CLIENT, A CRIMINAL

DEFENDANT, YOU ARE FOREVER

LABELED A CRIMINAL DESPITE

THE FACT THAT YOU CAN NEVER,

WILL NEVER, HAVE A CHANCE TO

DEFEND YOURSELF IN A TRIAL.

THAT IS UNFAIR.

IT IS INAPPROPRIATE.

DOES THAT ANSWER YOUR

QUESTION, YOUR HONOR?

>> I AM NOT SURE IT DOES.

>> OKAY.

SHE HAS MADE THE STATEMENT

THAT UNDER THE STATE TR RY

STATUTORY, ONE WHO HAS NEVER

FACED ANY KIND OF A CRIMINAL

CHALLENGE THAT IF YOU GO

INTO A PORT AND IT IS 393

COMMITMENT THAT THAT PERSON

CANNOT BE PLACED IN A SECURE

FACILITY EXCEPT PURSUE SUP

ANT TO THE PROVISIONS OF 916

AND THAT IS WITHOUT REGARD.

WHETHER YOU HAVE BEEN

CHARGED WITH A CRIME OR NOT.
>> YES, YES.
IT IS CORRECT.
THEY CANNOT BE PLACED EXCEPT
UNDER 916.
>> I THINK SHE SELECTED THE
WORD COMMITTED.
>> SHE DID, YOUR HONOR.
I AM SORRY.
THE COUNSEL DID, YOUR HONOR.
I TAKE ISSUE.
>> YOU CAN NOT HAVE A DUAL
COMMITMENT.
IT IS UNDER ONE OR THE OTHER.
>> IT ENDED.
>> ANY OTHER.
THERE ARE NO OTHER
QUESTIONS.
I THINK YOU CAN TELL THERE
IS CONCERN WITH THE BOARD
BECAUSE OF THE AMOUNT OF
TIME THAT HAS PASSED AND THE
LAST QUESTION I WOULD HAVE,
ANYTHING ABOUT THE JUDICIAL
PROCESS ITSELF THAT CREATED
THIS DELAY FOR THAT MUCH
TIME?
>> SAY THAT AGAIN.
>> ANYTHING ABOUT THE
JUDICIAL PROCESS, SOMETHING
THAT THIS COURT CONTROLS
THAT CREATED THIS LENGTH OF
TIME BETWEEN WHAT HAPPENED
TO THIS INDIVIDUAL AND TODAY
IN 2007.
>> WE ARE.
THE BIGGEST PART OF THIS
FRANKLY WAS THE APPEAL FOOK
ALMOST A YEAR.
>> I KNOW.
WASN'T THAT IN '04-'05?
>> THE PETITIONS CAME IN AS
I RECALL OCTOBER OF '04, THE
DECISION WAS CLEARLY
NOVEMBER OF '04.
>> RIGHT.
I FILED A MOTION IN 15 DAYS.
>> RIGHT.
>> THE FINAL DENIAL OF THAT
CAME IN SEPTEMBER OF '05.
>> OKAY.
>> THAT WAS, THAT WAS THE
BIGGEST PART.
>> DID YOU NOT REQUEST FOR

IT TO BE EXPEDITED?

AGAIN, YOU SAID AT THE VERY BEGINNING, THE UNDERLYING ISSUES WERE RESOLVED.

THAT WE DIDN'T --

>> YEAH.

I NO I AM GROSSLY OVER TIME.

>> WE ARE TRYING TO GET UNDERSTANDING.

>> HERE IS MY UNDERSTANDING OF WHAT WE EVENTUALLY DID IN THE TRIAL COURT.

I DON'T KNOW DETAILS.

IF YOU PUT ME UNDER OATH ON THIS.

>> THAT IS UNDERSTANDING.

YOU ARE GOING TO SUPPLEMENT.

>> THE TRIAL ATTORNEYS DEALT WITH THIS SOMEWHAT.

THEY EITHER GOT EVALUATORS UP HERE, THEY GOT, THEY SENT OUR EVALUATORS UP THERE.

THEY DID SOMETHING TO GET THE ISSUE.

JUDGE MILLER WOULD NOT DEFLECT THIS THING.

>> OKAY.

>> YOU HAD THE REQUEST FROM THE COURT TO SUPPLEMENT THE RECORD.

WE ASK THAT YOU PARTICIPATE IN THE PROCESS, SO YOU ADVISE US WHAT OCCURRED AND WE WOULD LIKE TO HAVE THAT DONE WITHIN 15 DAYS TO GET TOGETHER THIS INFORMATION AND SO ALL OF US WILL HAVE IT.

NOT JUST WHERE WE IS TODAY, BUT LET US KNOW WHAT HAPPENED IN THE CASE, WE HAVE A RESPONSIBILITY TO THE PEOPLE OF FLORIDA AND THERE IS CHILDREN OUT THERE.

>> I APPRECIATE THE COURT'S CONCERN.

I CANNOT TELL YOU HOW DEEPLY, DEEPLY APPRECIATIVE I AM OF THE COURT'S CONCERN. THANKS.

I WOULD HAVE MADE MUCH BIGGER THINGS ABOUT THIS ON THE BRIEF IF MY ATTORNEYS SHOWED ME SOMETHING HAD NOT

BEEN DEALT WITH.

I REGRET I AM CLOSING ON THE
FACTS AFTER ALL OF THIS.

>> THANK YOU.

IF WE GET IT RIGHT IN THE
END, WE GET IT RIGHT.

WE THANK YOU BOTH FOR PRESS
SEN TATIONS.

THANK YOU VERY MUCH.

THE COURT WILL TAKE ITS
MORNING RECESS.

>> PLEASE RISE.