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**Jarvis Ramon Haynes v. State of Florida**

**SC07-123**

ALL RISE. SO IF GOOD MORNING.

GOOD MORNING.,, FLORIDA SUPREME COURT IS BACK IN SESSION, IN NEXT CASE ON CALENDAR IS HAYNES VERSUS STATE OF FLORIDA.

GOOD MORNING YOUR HONOR MAY IT PLEASE THE COURT, I'M TERRENCE KEYHOE ON BEHALF OF THE PETITIONER, TRAVIS HAYNES!!\$!!!!!! HAYNES, CONVICTED OF DIRECT CRIMINAL CONTEMPT AND SENTENCED TO JAIL, ON APPEAL THE FIFTH DISTRICT COURT OF APPEAL AFFIRMED THE CONVICTION!!\$!!!!!! CONVICTION, VACATED THE SENTENCE AND REMANDED FOR RESENTENCING!!\$!!!!!! RESENTENCING. WE HAVE CONTENDED THAT THE FIFTH DISTRICT SHOULD HAVE VAI KAYED THE LEGITIMIZE, AND THE THAT ISSUE WE HAVE ASKED FOR CONLIKE IN JURIES ZHOONG IN THIS CASE HAS TO DEAL HAS TO DO WITH, FAILURE TO PROVIDE MR. HAYNES THE OPPORTUNITY TO PRESENT EXCUSING AND MITIGATING CIRCUMSTANCES, PRIOR TO THE ADJUDICATION OF GUILTY.

MY --

RULE --

MY -- QUESTION IS IS THIS A RULE CONFLICT ISSUE? IN OTHER WORDS, INTERPRETATION OF RULE OR CONSTITUTIONAL DIMENSION?

THIS IS A -- CONFLICT RULE -- RULE -- THIS IS -- STRICTLY A 3.830 ISSUE.

JUSTICE QUINCE HAD A QUESTION.

I'M SORRY.

WHAT IS THE PURPOSE OF THE LANGUAGE, THAT TALKS ABOUT GIVING THE DEFENDANT AN OPPORTUNITY TO SEND EVIDENCE OF EXCUSE AND MITIGATING CIRCUMSTANCE WHAT IS IT THAT THE DEFENDANT IS SUPPOSED TO BE PRESENTING AT THAT POINT?

WELL, HIS JUSTIFICATION FOR DOING WHAT HE DID, OBVIOUSLY CONTEMPT CAN TAKE!!\$!!!!!! TAKE --

SO YOU WOULD AGREE THAT HE IS COMMITTED THE -- AND SO, THAT HEAD OF THE WOULD BE PREAS HE THE EVIDENCE THAT WOULD BE PRESENTED EXCUSING OR MITIGATING IS NOT EVIDENCE THAT HE DID NOT COMMIT THIS CONDUCT.

RIGHT, AT THE POINT IN TIME -- WE ARE -- WHERE IT SHOULD HAVE OCCURRED IN THIS CASE, WHEN THE JUDGE ADDRESS!!\$!!!!!! ADDRESSED HIM AND SAID I'M ORDERING TO YOU TESTIFY YOU ABOUT TESTIFY HE SAID NO, OKAY? HE IS NOW COMMITTED THE CONTEMPT, DIRECT CONTEMPT AND I --

IT IS NOT A DISSENT -- WE ARE NOT LOOKING AT EVIDENCE THAT A DEFENDANT WOULD IN THE NORMAL COURSE HAVE AS A DEFENSE!!\$!!!!!! DEFENSE, TOP REACTION -- NO, NO, NO.

CHARGE.

I DISAGREE THIS THIS IS AN ISSUE OF A DEFENSE, THAT IS WHY IT IS PRIOR TO ADJUDICATION!!\$!!!!!! ADJUDICATION, OKAY?

BUT I THOUGHT YOU SAID WAIT A MINUTE I THOUGHT YOU JUST AGREED THAT, YES, HE HAS COMMITTED THE OFFENSE.

WELL BUT -- BUT -- AN EXCUSING CIRCUMSTANCE IN A BATTERY CASE, YES, I PUNCHED HIM, BUT - - WHICH IS A ADMIT!!\$!!!!!! ADMITTING THE BATTERY, BUT I DID IT IN SELF-DEFENSE, IN A SEXUAL BATTERY CASE, YES, I HAD SEXUAL INTERCOURSE WITH THE WOMAN, BUT, SHE CONSENT!!\$!!!!!! CONSENTED. EXCUSING CIRCUMSTANCE IS ESSENTIALLY A DEFENSE OR WHY WOULD YOU TAKING THE POSITION, THAT YOU ARE. WHY HE IS SAYING THAT I HAVE THE -- HOW DOES THAT -- THAT DIFFER FROM WHAT YOU WOULD -- THE SHOW CAUSE WHAT IS THE

POINT THEN OF THE SHOW CAUSE? ISN'T THAT FOR YOU TO PRESENT YOUR DEFENSE? WELL, I THINK THERE ARE VERY RELATED BUT OBVIOUSLY TWO SEPARATE THINGS, SETTLE IN THE RULE FOR TWO SEPARATE REASONS!!\$!!!!!! REASONS, ONE, SHOW CAUSE WHY YOU WHY YOU SHOULDN'T BE HELD IN CONTEMPT, THAT IS -- THAT IS A SEPARATE SENTENCE A SEPARATE PORTION OF THIS RULE.

EXACTLY BUT THAT PORTION OF THE RULE IS -- ISN'T THAT THE PORTION OF THE RULE WHERE YOU HAVE HAVE THE DEFENSE DO WHATEVER CONDUCT YOU ARE TALKING ABOUT, ISN'T THAT WHAT YOU -- WHY YOU ARE SHOWING CAUSE? WHY YOU SHOULD NOT BE ADJUDICATE TO DO HAVE COMMITTED CONTEMPT?

THE COURT -- THE RULE IS GIVING THE DEFENDANT TWO OPPORTUNITIES!!\$!!!!!! OPPORTUNITIES, TO SHOW, ONE IS TO SHOW CAUSE, AND THE SECOND THING IS THAT YOU ARE ENTITLED TO PRESENT EXCUSING CIRCUMSTANCES.

WELL -- I GUESS THE QUESTION IS ISN'T THE FIRST SENTENCE IN THAT RULE PRIOR TO THE ADJUDICATION OF GUILTY, THE JUDGE SHALL INFORM THE DEFENDANT OF THE ACCUSATION AGAINST THE DEFENDANT AND INQUIRE AS TO WHETHER THE DEFENDANT HAS ANY CAUSE TO SHOW WHY HE OR SHE SHOULD NOT BE AJOQUMGED GUILTY OF CONTEMPT, BY THE COURT AND SENTENCE THERE HAD FOR? ISN'T THAT THE -- THERE FOR.

ISN'T THAT GUILTY SENTENCE AND THE FOLLOWING SENSE, THE DEFENDANT SHALL BE GIVEN THE OPPORTUNITY TO PRESENT EVIDENCE TO THE EXCUSING MITIGATING CIRCUMSTANCES, ISN'T THAT ESSENTIALLY THE SENTENCING SECTION.

NO WOULD I SUBMIT -- THIS RULE HAS FOUR SENTENCES, YOU READ THE THIRD AND THE FOURTH SENTENCE, THE FIFTH ONE HAS TO DO WITH JUDGMENT SHALL BE SIGNED BY JUDGE ENTERED IN RECORD I SUBMIT TO YOU FOURTH SENTENCES PRIOR TO THAT ALL DEALING WITH JUDGMENT ISSUES THE 6TH LAST SENTENCE IS ONLY ONE THAT TALKING ABOUT SENTENCING!!\$!!!!!! SENTENCING.

WHAT -- WHAT IS MITIGATING CIRCUMSTANCE?

I'M SORRY?

ISN'T THE -- THE PHRASE MITIGATING CIRCUMSTANCE ISN'T THAT SOMETHING THAT GOES TO THE SENTENCE, SOMETHING THAT DOESN'T -- MEAN YOU ARE NOT GUILTY, BUT IT MITIGATES THE SENTENCE.

TYPICALLY, THAT PHRASE, AS OPPOSED TO EXCUSING CIRCUMSTANCES, TYPICALLY THE PHRASE MITIGATING CIRCUMSTANCES IS USED IN CONNECTION WITH SENTENCING. DEATH PENALTY CASES YOU HAVE MITIGATING CIRCUMSTANCES, IN THE CRIMINAL PUNISHMENT CODE YOU HAVE MITT GATORS IN THE STATUTE, MITIGATING, I AGREE WITH YOU YOU, THAT TYPICALLY THAT IS IN CONNECTION WITH THE SENTENCING.

SO ALL COMES DOWN TO WORD EXCUSING!!\$!!!!!! EXCUSING.

AND IF YOU ARE SAYING THAT EXCUSING GOES TO GUILTY, ISN'T THAT REDUNDANT OF THE PREVIOUS SECTION?

NO, IT ISN'T -- THIS WHOLE THING IS BASED ON DUE PROCESS.

WAIT A MINUTE, WAIT, BEFORE YOU SAY IT IS BASED ON DO YOU PROCESS THAT IS WHY I ASKED YOU THE FIRST QUESTION, WAS IS THIS A RULE INTERPRETATION, OR THERE ARE CONSTITUTIONAL DIMENSIONS AND YOU SAID NO, IT IS JUST A RULE -- INTERPRETATION. .

WELL IT BASED ON THE INTERPRETATION OF THIS RULE BUT THE UNDERLYING PRINCIPLE OF THIS RULE IS DUE PROCESS OF LAW, BECAUSE IT IS SUCH A SUMMARY PROCEDURE.

WHY ISN'T IT DUE PROCESS WHY ISN'T IT DUE PROCESS FOR THE COURT TO INFORM THE DEFENDANT OF THE CHARGES, AND INQUIRE AS TO WHETHER IS THERE ANY REASON WHY THE DEFENDANT SHOULD NOT PRO NOUPSED GUILTY OF -- PRONOUNCED GUILTY OF DIRECT CRIMINAL CONTEMPT AND THEN LATER!!\$!!!!!! LATER -- GIVE THE DEFENDANT THE OPPORTUNITY TO PRESENT EVIDENCE OF MITIGATING CIRCUMSTANCES?

WELL!!\$!!!!!!BUT, BUT, THE JUDGE NEVER GAVE HIM AN OPPORTUNITY FIRST OF ALL -- WE KNOW THAT THAT IS WHY DCA REMANDED FOR RESENTENCING!!\$!!!!!! RESENTENCING. RIGHT? SO THE ONLY ISSUE HERE IS WHETHER THE DRI.A SHOULD HAVE REMANDED FOR A DETERMINATION OF REDETERMINATION OF GUILTY AS WELL AS THE DETERMINATION OF SENTENCING!!\$!!!!!! SENTENCING. THAT IS THE ONLY ISSUE; RIGHT?

WELL, THE SECOND ISSUE, BRIEFED HAS TO DO WITH SUFFICIENCY OF EVIDENCE ALL THE ONES DEAL IN FIRST PART OF APPEAL, WITH THE SUFFICIENCY OF WHAT THE TRIAL COURT DID, UNDER RULE 3.830 -- THERE WE ARE ASKING WE ARE SAYING THE FIFTH -- SHOULD HAVE BEEN REMANDED FOR JUDGMENT.

BOTH JUDGMENT AND SENTENCING --

RIGHT --

BUT JUSTICE PARIENTE -- !\$\$!!!!!!!!!!!!!! PARIENTE --- DUE PROCESS THIS CRITICAL THIS A DIFFERENT TYPE OF ANIMAL IN CRIMINAL LAW THAN VIRTUALLY ANYTHING ELSE, DON'T YOU HAVE -- THE RIGHT TO WRITTEN NOTICE, DON'T YOU HAVE THEY RIGHT TO ASSISTANCE OF COUNCIL, DON'T YOU HAVE ALL OF THE PROURL THINGS SET FOR THE IN 3.840, WHICH IS THE INDIRECT CRIMINAL IF YOU JUST COMPARE TWO RULES, THERE ARE TONS OF THINGS. YOU ARE P\$\$ARSING THE RULE WE HAVEN'T EVEN YET EXPLORED THE CONTEXT, THAT WE ARE PRESENT WITH HERE, DIFFICULTY THAT I'M HAVING IS THAT THIS APPEARS TO HAVE BEEN IN EXTREMELY DELIBERATIVE PROCESS -- WHERE EVERYONE WAS MADE AWARE OF WHAT WAS GOING ON IN TERMS OF THE FACTS THAT HE WAS BEING ASKED TO TESTIFY !\$\$!!!!!! TESTIFY, AND HE WAS -- IT WAS EXPLAINED TO HIM, THAT HE WAS GOING TO BE GIVEN IF I RECALL CORRECTLY USE IMMUNITY HERE, AND THE JUDGE NOT -- NOT JUST ONCE, O CAKE, BUT MORE THAN ONCE, I'M NOT SHUSH HOW MANY TIMES -- YOU KNOW, DESPITE THE FACT HE WOULD SAY GOING TO GET THE IMMUNITY, THAT WAS GOING TO BE COMPELLED TO TESTIFY, THAT EVERYONE UNDER STOOD, UNDER THE ADVICE OF COUNSEL, THAT HE STILL WAS GOING TO INVOKE HIS WHAT HE BELIEVE TO DO BE HIS CONSTITUTIONAL PRIVILEGE NOT TO TESTIFY, AND SO THIS IS NOT WHERE SOMEBODY IS MUM !\$\$!!!! MUMBLING UNDER THEIR BREATH SON OF A B, OR SOMETHING, AND --

NO.

AND, THEREFORE -- THE MAN GETS -- HELD IN CONTEMPT YOU KNOW, BY THE JUDGE, AND NEVER GETS TO EXPLAIN THAT HE WAS WITH A REALLY CALLING HILLS A SUN OF A GUN, WHAT !\$\$!!!! WHATEVER THE THING WAS, AND THEN WE ARE LEFT WITH THAT, WHAT -- COME BACK TO JUSTICE QUINCE !\$\$!!!!!! QUINCE'S INITIAL QUESTION WHAT ARE WE REALLY LEFT WITH HERE? IN TERMS OF -- OF THE NEED WHAT IS MISSING SNEER WHAT IS MISSING.

-- UNDERSTANDING SO GIVE ME SOME HYPE HYPOTHETICAL.

IT IS NOT HYPOTHETICAL.

SAYING WAIT A MINUTE JUDGE IF YOU HAD ASKED MY, WOULD I HAVE SAID THAT REALLY -- IF I TESTIFIED -- YOU KNOW, MY MOTHER IS NOT GOING LOVE ME ANYMORE, AND -- THAT -- FLAP ON BREAKING THE FAITH, WITH THE -- OTHER CODEFENDANTS, OR -- SOMETHING HERE IN THE CONTEXT THAT WE HAVE HERE, WHAT REALLY IS LEFT OTHER THAN THE EXPLANATION. ALL RIGHT.

THAT HE IS GETTING IMMUNITY !\$\$!!!!!! IMMUNITY, AND -- HE UNDER THOSE CIRCUMSTANCES, HE CAN BE COMPELLED TO TESTIFY, OR FACE CONTEMPT, ADVISED BY A LAWYER NOTWITHSTANDING ALL THAT WHAT ARE WE LEFT WITH.

EXCUSING CIRCUMSTANCE LIT ME SAY THE CONTEMPT PORTION MOST HAS TO DO WITH PREPPING !\$\$!!!!!! PREPPING, ADVISING HIM HE IS NOW A WITNESS ET CETERA ET CETERA, THE CONTEMPT PORTION OF THIS TRANSCRIPT IS ABOUT 15 OR 20 LINES, OKAY? IT IS WHERE THE JUDGE SAYS, I'M WARNING -- ORDERING TO YOU AT THES FIVE HE SAYS I'M GOING TO EXERCISE FIFTH AMENDMENT RIGHT CATASTROPHING TESTIFY IS THAT RIGHT.

YES, STATE THE WHAT DO YOU WANT TO DO, STATE ASKED HIM BE HELD IN CONTEMPT HE IS HELD IN XOMENT SENTENCED, AT THAT POINT IN TIME REALLY DEALING WITH, YOU ARE GOING TO BE ADJUDICATED GO YOU AREING TO BE SENTENCED GIVEN NO OPPORTUNITY TO SAY ANYTHING, BUT IF HE HAD, JUDGE, WILLFULNESS ESSENTIAL ELEMENT OF CRIME ACCOMMODATE DROESHG INCORRECT WILLFULNESS IS INTENT ON THE DEFENDANT'S PART TO VIOLATE THE \$\$COURT'S RULE AE DID OFFENSE TO WILLFULNESS GOOD FAITH RELIANCE ON ADVICE OF COUNCIL, RELYING -- AND HE HAS FIFTH AMEND RIGHT.

JUSTICE HAS A QUESTION DID YOU NOT HEAR.

SORRY.

IF WE WERE HERE, THOUGH IF WE WERE HERE, ON THAT HE WASN'T GIVEN ENOUGH OPPORTUNITY

TO SHOW CAUSE, WHY HE OR SHE SHOULD NOT BE A JUDGE -- AJUDGED GUILTY OF CONTEMPT WHAT YOU ARE SAYING THEN MIGHT BE ARGUMENT WE ARE HERE BECAUSE OF A CONFLICT OF WHAT A RULE SAYS, THE SENTENCE THE DEFENDANT SHALL BE GIVEN THE OPPORTUNITY TO PRESENT EVIDENCE OF THE EXCUSE\$!!!!ING OR MITIGATING CIRCUMSTANCES, MEAN. AND SO -- BACK TO THAT THIS IS A RULE INTERPRETATION BECAUSE I DON'T DISCERN A DUE PROCESS CLAIM HAVING BEEN RAISED, IS THAT -- IF -- IF THE SECOND SENTENCE DOESN'T THAT SENTENCE EXCUSING -- DOESN'T GO TO SENTENCING!!!!!! SENTENCING, THEN WHAT WE WOULD BE SAYING WE CREATED A RULE THAT GAVE HIM AMPLE OPPORTUNITY TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CONTEMPT IN FACT TWO OPPORTUNITIES, IN ORDER TO SHOW AND HE -- ANY CAUSE, PLUS EXCUSING OR MITIGATING CIRCUMSTANCES, BUT NO NOTHING TO DO WITH -- AS TO MITIGATING AGAINST THE SENTENCE, BECAUSE THERE IS NOTHING SEPARATE TO SAY -- SENTENCE SHALL BE PRONOUNCED IN OPEN COURT THAT IS HOW YOU WANT US TO INTERPRET THAT RULE.

I DISAGREE WITH WHOLE IDEA THIS DONATES HAVE DUE PROCESS IMPLICATIONS FIRST PART PRESERVATION FUNDAMENTAL ERROR SAYS THE REASON THIS FUNDAMENTAL ERROR, THEREFORE NOT SUBJECT TO OBJECTION RULE OR THE PROFFER RULE.

I KNOW THAT YOU RAISED I'M -- YOU KNOW I DON'T HAVE THE BRIEF IN FRONT OF ME, A DUE PROCESS A SEPARATE ISSUE, THAT IF WE DON'T INTERPRET -- PRESENTATION OR MITIGATING OR -- EXCUSING CIRCUMSTANCES, AS GOING TO THE ACTUAL CONTEMPT ITSELF IT WOULD BE A VIOLATION OF YOUR CLIENT\$'S DUE PROCESS RIGHTS. DID YOU RAISE THAT IN YOUR BRIEF? FAILURE TO.

CAN YOU ANSWER -- THAT, DID YOU RAISE DUE PROCESS CONSTITUTIONAL CONSIDER!!!!!! CONSIDERATIONS.

YES.

IN YOUR BRIEF TO THIS COURT.

YES, IT IS IT IS ABSOLUTELY RAISED, BECAUSE, THESE CASES, THE -- THERE ARGUMENT ABOUT 3.830, VERY FIRST PART ABOUT 1B TALKING ABOUT THIS IS A DUE PROCESS CONSTITUTIONAL ISSUE, THAT THE REASON YOU MUST COMPLY, IS THAT -- THIS SUCH A SUMMARY PROCESS, DUE -- FUND -- FUNDAMENTAL DUE PROCESS OF LAW MUST -- THIS RULE MUST BE SCRUPULOUSLY HONOR!!!!!! HONORED, FIFTH SAID IN HUTCHISON!!!!!! HUTCHISON, AND FIRST SAID IN GARRETT, ON.

DID YOU MAKE ANY ARGUMENT THAT THE RULE ITSELF, DOES NOT COMPLY WITH DUE PROCESS. NO, I'M NOT SAYING THE RULE DONATES COMPLY WITH DUE PROCESS I'M SAYING THE FAILURE TO APPLY THE RULE TO MR. HAYNES, VIOLATED HIS DUE PROCESS? IF WE INERINTERPRET THE RULE AS GIVING THE DEFENDANT, AN OPPORTUNITY TO PRESENT HIS DEFUNDAMENTALISM!!!!!! DEFUNDAMENTALISMES, WHEN!!!!!! DEFENCES WHEN HE NOTICE TO DO SHOW CAUSE, AND THAT THE NEXT SENTENCE, THAT TALKS SENTENCE THAT TALKS ABOUT EXCUSING THE MITIGATING CIRCUMSTANCES, GOES TO SENTENCING!!!!!! SENTENCING, IF THAT IS THE CORRECT INTERPRETATION, OF THAT STATUE, IS THAT A VIOLATION OF DUE PROCESS?

NO I MEAN, THIS THE COURT HAS THE ABILITY TO THE CONSTRUCTION OF THE RULE IS UP TO THE COURT BUT EVERY DCA THAT HAS ADDRESSED THIS RULE, HAS RULED THAT THE SENTENCE ABOUT EXCUSING -- CIRCUMSTANCES HAS TO DO HAS TO BE DONE PRIOR TO ADJUDICATION OF GUILTY, EVERY DCA.

BUT DO YOU AGREE THAT EVEN IF WE DISAGREE WITH THE DCAS WHO HAVE SAID THAT. ABSOLUTELY.

WOULD IT NOT BE A DUE PROCESS VIOLATION?

YOU -- YOU -- TRUMP THE DCA!!!! DCA, ALL FOUR, FIVE, EXCUSE ME ALL FIVE DCA'S ARE INCORRECT THEY ARE INCORRECT!!!!!! INCORRECT.

BUT --

EVERY DCA THAT HAS ADDRESSED IT HAS SAID THAT -- YOU MUST BE PRESENTED AN OPPORTUNITY TO -- PRESENT.

EXCEPT THIS ONE.

PARDON ME FLOO EXCEPT THIS ONE WE ARE HERE BECAUSE THIS ONE SAYS, THAT YOU ONLY

HAVE TO GO BACK, FOR SENTENCING!!!!!! SENTENCING.

WELL --- I AGREE, BUT -- BUT -- FIFTH DKRAI. AT LEAST FOUR OTHER CASES, AND THAT HAS TO DO WITH WHY WE ASKED FOR REHEARING, AT LEAST FOUR OTHER CASES, THEY ARE SPECIFIC LANGUAGE, IN EAST MORR HUT HUT, JACKSON -- HUTCHISON, JACKSON JOHNSON, ABOUT THE -- THIS -- EXCUSING CIRCUMSTANCES IN THE SHOW CAUSE BOTH HAVE TO DEAL WITH, PRIOR TO ADJUDICATION OF GUILTY, AND THEY ARE NOT JUST SIMPLY SAY!!!! SAYO SENTENCING. WHAT -- INADEQUATE ABOUT.

PARDON.

WHAT -- ASKING IF YOU CAN SHOW CAUSE WHY YOU SHOULDN'T BE HELD IN CONTEMPT? WHAT IS INADEQUATE UNDER DUE PROCESS ABOUT THAT PROVISION?

I'M NOT SAYING THAT THAT -- THAT IT IS INADEQUATE AS MATTER OF DUE PROCESS BUT AFTER THAT THEY THEN HAVE TO SAY, DO YOU HAVE ANY EXCUSING OR -- MITIGATING EVIDENCE TO PRESENT? THERE HAS TO --

SO THE NOT -- WELL YOU ARE SAYING, IT IS INADEQUATE BECAUSE IT DOESN'T SAY THE REST OF THAT?

WELL, I --

IT THE SECOND PART?

SO YOU ARE SAYING.

I'M SAYING BECAUSE --

NOT ONLY DOES THE COURT HAVE TO -- SAY I'M GOING TO GIVE YOU AN OPPORTUNITY NOW TO SHOW CAUSE WHY I SHOULDN'T HOLD YOU IN CONTEMPT FOR WHAT HAS HAPPENED NOW. RIGHT.

THE COURT HAS TO GO FURTHER!!!!!! FURTHER.

YES.

DO YOU HAVE ANY EXCUSE MITIGATING CIRCUMSTANCES, THEN.

YOU ARE SAYING, NO --

SO YOU ARE SAYING, THAT IT IS INADEQUATE.

IT IS INADEQUATE.

IT IS NOT IN.

I WOULDN'T APPLY PROPERLY.

UNDER DO YOU PROCESS CLAUSE.

NOT AS A MATTER OF NOT THAT IT IS UNCONSTITUTIONAL SOMETHING LIKE THAT BUT IT WASN'T PROPERLY APPLIED TO THIS CASE, SECOND OF ALL, AND THEN THE NEXT STEP IS JUDGE TELL YOU ONE STEP FURTHER, NOW FOUND IN YOU CONTEMPT OF COURT DO YOU HAVE ANYTHING TO SAY PRIOR TO ME PRONOUNCING SENTENCE? NO, AND THEN PRO ANNOUNCED SENTENCE THERE IS A PROCEDURE EVEN THOUGH A SUMMARY PROCESS THE PROBLEM THIS SO IS TRUNCATED YOU HAVE TO -- TOUGH TELL THE DEFENDANT, THIS IS WHAT WE ARE DOING -- MAYBE -- 99% OF THE TIME THESE PEOPLE CONTINUE TO HAVE COUNSEL ANYTHING ELSE LIKE THAT, THE BOTTOM LINE IS, IS THAT HAS TO BE HE GIVEN THE OPPORTUNITY TO SHOW CAUSE, THEN, UNDER THE RULE, TO PRESENT EXCUSING MITIGATING STISHGS, AND THEN -- CIRCUMSTANCES, AND THEN AS A MATTER OF LAW ALSO TO SAY SOMETHING BEFORE SENTENCED, IF HE IS ASKED THAT.

AND JUDGE HAS TO GIVE --

YOU ARE INTO YOUR REBUTTAL JUST WANTED TO CAUTION YOU.

I THANK YOU YOU JUDGE.

YOU CAN USE YOUR TIME YOU SEE PLEASE I JUST WANTED.

PARDON ME.

YOU MAY USE YOUR TIME YOU SEE PLEASE.

NO, I WOULD LIKE TO SAVE FOR IT REBUTTAL JUDGE, THANK YOU.

# GOOD MORNING, MAY IT PLEASE THE COURT THIS IS ASSISTANT ATTORNEY GENERAL ON BEHALF 69 RESPONDENT STATE OF FLORIDA I THINK THIS COURT CRYSTALLIZED HOW THIS RULE SHOULD BE APPLIED IT IS AN AJUDICATORY PORTION AND THEN THIS SENTENCING PORTION, AND THE STATE HAS NEVER -- DISPUTED THE FACT THAT THE JUDGE NEVER GAVE, MR. HAYNES AN OPPORTUNITY TO SPEAK, AS TO HIS SENTENCE. AND, AND I THINK THAT THE -- THE DCA OPINION IN TERMS OF -- MY O UPONENTS, UNIFORMLY HAVE THAT IT GOES BACK FOR

ADJUDICATION!!!!!! ADJUDICATION, AND SENTENCING, AND I THINK WHAT THE APPELLATE COURT DID IN THIS CASE IS RECOGNIZE WE HAVE A DELIBERATE TO USE YOUR WORD JUSTICE ANSTEAD CONTEMPT HEARING HERE THEY ANALYZED THIS DEFENDANT WAS GIVEN REPEATED OPPORTUNITY TO SHOW CAUSE WHY THEY DIDN'T USE THOSE MAGIC WORDS!!!!!! WORDS.

I HAD THAT QUESTION WHEN WAS THE DEFENDANT GIVEN AN OPPORTUNITY TO EXPLAIN OR SHOW CAUSE WHY HE WOULD NOT ANSWER QUESTIONS?

OTHER THAN SAYING I WANT TO EXCERPT -- EXERCISE MY FIFTH THIS.

IF WE GO OVER ENTIRE HEARING OVER SIMILAR REPLY IF I ASKED OF THIS HEARING I I THINK HE DURING ARGUMENT AT THE OUTSET OF THIS TRIAL THEY NEW THIS DEFENDANT WAS GOING TO INVOKE -- INVOKE FIFTH OF THIS THERE WAS REFERENCE EARLY ON AS SOON AS HE CAME IN DEFENSE ATTORNEY SAID HE WOULD INVOKE FIFTH AMENDMENT PRIVILEGE UNIVERSAL UNDERSTANDING AMONG PARTIES AS SOON AS HE APPEARED AS THE LAST WITNESS IN CODEFENDANTS' TRIAL I THINK IN APPELLATE

KIGS!!!!!! DITION,!!!!!! IZATION!!!!!! APPELLATIZATION -- HE HE DEE DECISION COMES IN SWORN ATTORNEY MAKES STATEMENT REGARDING IMMUNITY THE TRIAL COURT SANCTUARY ATTORNEY RECOLLECTED THE DEFENDANT EXPRESSES UNDERSTAND BEING THAT HE WILL BE GIVEN IMMUNITY THERE IS POTENTIAL MOTION GOING TO BE FILED ON REDUCTION!!!!!! REDUCTIONCH SENTENCE AB.

SO THE WHOLE HEARING IS.

IS AN ARGUMENT THE WHOLE HEARING, TOOK PLACE HERE WAS THE SHOW CAUSE.

NO I'M GETTING LEADING UP TO THAT BASIS, AT THAT POINT AFTER IMMUNITY IS ACCOMPLISHED THAT HAS -- ESTABLISHED THAT WAS NEVER DISPUTED SAY AS TO AT THE 235019D YOUR POSITION.

I'M GOING TO EXCERPT -- EXERCISE FIFTH THIS HIGHLIGHTED THIS PASSAGE THAT IS IN THE OPINION STARTING BY BOTTOM 418 GIVEN 419 IF THE COURT DIRECTS THAT YOU MUST RESPOND AND ORDERS TO YOU RESPOND YOUR ANSWER TO THAT, IS CORRECT? -- WHAT IS.

I THINK THAT DEMONSTRATES!!!!!! DEMONSTRATES, NO THAT IS NOT WHY YOU'RE NOT GOING TO SHOW CAUSE BUT YOUR ANSWER IS AND HE SAYS, I'M GOING TO ASSERT FIFTH AMENDMENT PRIVILEGE NEW AGREE THE COURT NEVER SPECIFICALLY SAID YOU HAVE THE OPPORTUNITY TO SHOW CAUSE WHY YOU SHOULD NOT BE HELD IN DIRECT CONTEMPT, AND PROVIDE MITIGATING CIRCUMSTANCES?

I AGREE THAT THEY NEVER USED THOSE MAGIC WORDS, BUT I THINK THAT THIS -- WHICH CONTINUES!!!!!! CONTINUES, WHEN HE IS EXPLAINED!!!!!! EXPLAINED, AND I DIRECT YOU UNDER POWERS OF THE COURT OF CONTEMPT, SETTING FORTH WHAT THE PENALTIES WILL BE, AND I AM GOING AND HE AGAIN SAYS HE DO YOU UNDERSTAND THAT THIS IS WHAT IS GOING TO HAPPEN, YES, I DO. I'M EXERCISING MY FIFTH AMENDMENT RIGHT ALSO, UNDER NO TERMS, AND HE SAYS UNDER NO TERMS THAT IS THE PORTION WHERE HE HAD THAT OPPORTUNITY, TO PRESENT XUZING CONDUCT THE FIFTH DCA CITES WALKER VERSUS STATE -- IN THEIR OPINION, SAYING NO, ALTHOUGH THEY DID NOT USE THE SHOW CAUSE, LANGUAGE, SPECIFICALLY!!!!!! SPECIFICALLY, THAT TECHNICAL DEVIATION DOESN'T AMOUNT TO VIOLATION OF THE RULE AND I THINK THAT THIS COLLOQUY WITH THIS JUDGE, GAVE HIM AMPLE OPPORTUNITY TO GIVE THESE EXCUSES, WE DON'T KNOW WHAT HIS EXCUSES IS GOING TO BE OBVIOUSLY, BUT HE CERTAINLY HAD AMPLE OPPORTUNITY THIS WITNESS WAS ADMITTED AS WAS UNDERSTOOD AT THIS HEARING THAT HE WAS NOT GOING TO SAY ANYTHING, THE ONLY PROBLEM THAT THE TRIAL JUDGE NEVER DID WAS NEVER ASK PRESENT ANY MITIGATION -- GIVE HIM OPPORTUNITY TO PRESENT MITIGATION IN TERMS OF SENTENCE!!!!!! WE AGREE AND WE THINK THAT FIFTH DCA CARVED OUT CORRECT REMEDY GIVEN THE COLLOQUY AND THE FACTS OF THIS CASE, YES DCA UNIVERSE A LOT OF THE UNIVERSALLY INCLUDING THE FIFTH AND PRIOR CASES SENT THEM BACK FOR CONTEMPT ANOTHER CONTEMPT HEARING AND SENTENCING. WE HAVE THE RULE PARSING IT THE WAY THAT WE ARE WHY WOULDN'T IT BE PARTICULARLY IMPORTANT THAT WE DO ENFORCE THE RULE AS IT IS WRITTEN? FOR INSTANCE IN A CIRCUMSTANCE LIKE THIS, THAT AFTER A REPEATEDLY, ATTEMPT, TO HAVE HIM TESTIFY, IN THE BEING GRANTED USE IMMUNITY, THAT IN ESSENCE NOW WE REQUIRE -- THE COURT OR THE STATE

FOR INSTANCE -- SAY WELL JUDGE UNDER THESE CIRCUMSTANCES, YOU KNOW, WHERE IT IS NOW CLEAR THAT EVEN IN THE FACE OF CONSULTING WITH COUNSEL, AND WHAT!!\$\$!!!!!! WHATEVER, ANDING HE IS GETTING USE IMMUNITY, THAT HE IS NOT GOING TO TESTIFY HERE, WE WOULD ASK THE COURT TO HOLD HIM IN CONTEMPT. AND THAT THE JUDGE THEN WOULD SAY THAT YOU KNOW, VERY WELL, AND THEN TURN TO THE DEFENDANT, AND SAY UNDER THIS RULE I'M REQUIRED NOW TO ASK YOU IF YOU CAN SHOW CAUSE WHY I SHOULDN'T HOLD IN YOU CONTEMPT AS THE STATE ASKS!!\$\$!!!!!! ASKS. AND ENFORCE WHAT WE HAVE WRITTEN IN THE RULE. IN THE SITUATION LIKE THIS, AND, OBVIOUSLY, YOU KNOW, IT LOOKS LIKE AS MY EARLIER QUESTIONS INDICATED, THAT EVERYBODY SORT OF NEW WHAT WAS GOING ON HERE, YET, WE DON'T REALLY SEE FORMALLY, THAT OPPORTUNITY WHERE HE IS ACTUALLY NOW BEING TOLD WELL YOU KNOW, I LISTEN TO DO THIS, STATES ASKING THAT I HOLD IN YOU CONTEMPT, NOW, I WANT TO GIVE YOU THE OPPORTUNITY TO SHOW CAUSE WHY I SHOULDN'T DO THAT. AND YOU KNOW, NOW WE DON'T WE DON'T KNOW WHAT WHAT SOMEBODY MIGHT SAY, IN THAT CIRCUMSTANCE. BUT IF THIS IS A WAY WE ARE GOING TO P\$\$ARSE RULE SEEMS REASONABLE WAY TO DO IT. WHY SHOULDN'T WE THEN ENFORCE IT, AS IT IS WRITTEN?

AND I THINK -- A TEXTBOOK CONTEMPT HEARING THAT WOULD BE THE WAY IT GOES, CONTEMPT AGAIN IS A SUMMARY PROCEEDINGINGS!!\$\$!!!!!!!!!!!!!! PROCEEDING, DESIGNED FOR A TRIAL JUDGE IN DISRUPTION OF COURT TO SWIFTLY, AND FIRMLY ADDRESS THE NOTION -- YES. THE RULE IS WRITTEN, YOU KNOW, TO BE SURE THESE PROTECTIONS ARE THERE, AND SORT OF -- LIKE JUDGE LOOK AT THE RULE WHILE ALL THIS IS GOING ON, AND IF YOU FOLLOW THE RULE, WHILE IT IS GOING ON, YOU WILL CATCH YOURSELF. THAT IS, THAT YOU WILL DO THE ALL YOUR Is AND CROSS ALL YOUR Ts\$\$, IF YOU JUST FOLLOW THE WAY THE RULE IS WRITTEN AS OPPOSED TO TO UNFORTUNATELY THE FACT MANY TIMES THE CIRCUMSTANCES THAT ARE PRESENTED ESPECIALLY IN DIRECT CONTEMPT SITUATIONS WHERE MOTIONS OR OTHER THINGS -- EMOTIONS OR THINGS MY TAKE OVER WE TEND TO BE A LITTLE BIT MORE FORGETFUL ABOUT DOTTING THE Is AND CROSSING OUR Ts WHEN THOSE THINGS OCCUR, SO I'M HAVING -- A LITTLE BIT OF DIFFICULTY WITH WHEN!!\$\$!!Y WE SHOULDN'T MANDATE THE ENFORCEMENT OF THE RULE, EXACTLY AS IT IS WRITTEN EVEN IF WE INTERPRET IT THE WAY THE STATE URGES US, WOULD I SEEMS REASONABLE, WHY SHOULDN'T WE REQUIRE THE JUDGE THEN TO ACTUALLY UTTER THE WORDS "I'M CONSIDERING OR THE \$\$STATE'S -- FOR ME TO HOLD IN YOU DIRECT CONTEMPT NOW FIRST OF ALL I WANT TO GIVE YOU THE OPPORTUNITY TO SHOW CAUSE WHY I SHOULDN'T," WHAT EVER HE SAID NOW I'M GOING TO PICK OUT A PENALTY ARE THERE ANY OTHER EXTENUATING CIRCUMSTANCES? YOU WANT PRESENTED? .

CLEARLY, THIS COURT HAS THE OPPORTUNITY TO CRAFT A RULE, BECAUSE -- ON CONTEMPT FOR THE FIRST TIME999AESHL ADDRESS TWO -- EB ESHL ADDRESS TWO PARTICULAR PROVISOS OF THE RULE KIT IS \$\$ STATE'S POSITION THE RECORD THE FACTS CERTAIN MEET WITH WHAT REQUIREMENTS 69!!\$\$!!OF THE RULE ARE NOTWITHSTANDING LACK OF THE MAGIC WORD, AND I THINK THE FIFTH DCA HIGHLIGHTED IN INSTANCE AND IN TELL YOU HOLDING, THEY IDENTIFY THAT ONLY MITIGATING WAG NOT PROVIDED FOR EVEN IF WE COUNT THE FIRST PORTION OF THE RULE AS COUNTING EXCUSE THEN REDUNDANCY IN THAT SECOND --

YOU AGREE THAT THE BETTER PRACTICE REGARDLESS OF WHETHER UNDER FACTS OF THIS CASE, THE OPPORTUNITY WAS AS MATTER OF -- FACT, GIVEN, BUT THE BETTER PRACTICE WOULD BE, AS JUSTICE ANSTEAD SUGGESTS WHICH IS TO UTTER MAGIC WORDS SO THERE IS NO AMBIGUITY THERE IS NO GAME NO CLAIM ON APPEAL THAT HE WAS NOT GIVEN THE OPPORTUNITY.

CERTAINLY, THE WAY YOU SAID -- SET FOR THE TEXTBOOK THE WAY THIS RULE SHOULD BE APPLIED BUT IS IT MISAPPLIED IN THIS CASE? CERTAINLY NOT.

ANSWER MY QUESTION WE KNOW WHAT THE DEFENDANT DID, BUT DO WE KNOW, BECAUSE OF ABSENCE OF THAT QUESTION WHY HE CHOSE TO EXERCISE HIS FIFTH OTHER THAN ADVICE OF COUNSEL?

NO BUT, HE -- I THINK HE -- THERE WAS NO WAY HE WAS GOING TO PRESENT SAY ANYTHING AND I THINK THAT THAT IS WHAT THAT COLLOQUY DEMONSTRATES MY ANSWER IS YOE I'M GOING IT I'M AAS THE RESULTING FIFTH AMEND PRIVILEGE THAT IS HIS REASON, AND I THINK THAT THAT THE -- THAT IS THE JIFLT OF THAT I JUST THAT IS HIS EXCUSE LEGALLY THAT IS NOT ENOUGH UNDERSTOOD YOU CAN'T WHEN ORDERED TO RESPOND, AND OF YOU GIVEN GRANT IMMUNITY

YOU HAVE TO TESTIFY HIS CAMPUS WHETHER ARE YOU A OI LAWFUL FOR NOT REPRESENTED BY COUNSEL THAT WAS HIS CAMPUS --

WHAT IF THE REASON WAS I DON'T TRUST THE GOVERNMENT THAT THEY ARE NOT GOING TO USE THIS AGAINST ME EVEN THOUGH THEY SAID THEY ARE NOT GOING TO USE IT EVEN THOUGH THE LAW SAYS IT JUST I'M NOT CONFIDENT IN THAT.

HE WILL BE HELD IN CONTEMPT.

LET ME ASK YOU THIS QUESTION BECAUSE.

IF HE HE DOESN'T TESTIFY THAT AFTER.

I WANT TO.

DOESN'T THAT GIVE THE JUDGE AT LEAST THE OPPORTUNITY TO ENGAGE IN A COLLOQUY WITH THE DEFENDANT AND SAY "WELL, BUTT WE WILL ENFORCE THAT 23 THEY TRY TO DO IT, IT WOULD BE ILLEGAL, WE WOULD -- DISMISS ANY CHARGES!!\$!!!!!! CHARGES, THAT WOULD STEM AS A RESULT OF THE? "!!\$".

IDEALLY YES BUT THIS DEFENDANT WAS NOT GOING TO SAY ANYTHING, THAT WAS UNDERSTOOD IT PERMEATES THESE PROCEEDINGS SO IF HOW CAN WE OPERATE A SYSTEM OF WHAT IS UNDERSTOOD WHEN WE ARE REQUIRED TO HAVE THE WRITTEN RECORD I THINK THAT IS WHERE THE QUESTIONS ARE COMING FROM. IS THAT THERE SHOULD BE WRITTEN PROCEDURE TO OPERATE OWN SOME UNDER CURRENT OF UNDERSTANDING THERE IS PROCESSION CONTRARY REALLY TO WHAT THE RULE IS REQUIRING!!\$!!!!!! REQUIRING.

-- OBJECTION IN HEARING PRESERVATION ARGUMENT, REPRESENTED BY COUNSEL, AT THIS HEARING, WHY ISN'T IT THAT THAT IS --

BUT, THE ISSUE IS THAT THIS IS COMMITTING FUNDAMENTAL ERROR I'M GOING TO ADDRESS THAT IN A MINUTE.

I DISAGREE WITH THAT NOTION OF FUNDAMENTAL ERROR IN THIS CONTEXT, FUNDAMENTAL -- FUNDAMENTAL ERROR IN CONTEXT OF DIRECT CRIMINAL ACCOMMODATE DERIVES FROM -- CONTEMPT DERELIES FROM GARRETT CASE SECOND DCA I BELIEVE FOUND FUNDAMENTAL ERROR APPLYING INDIRECT CRIMINAL CONTEMPT RULE, I DISAGREE WITH -- THE COURTS HAVE NEVER, THIS COURT SPELL OF NEVER ADDRESSED -- IF OU MEAN, EXCUSE ME FUMENT ERROR IN THE CONTEXT OF DIRECT CRIMINAL CONTEMPT APPLIED BY DCA NOW THIS -- IN GARRETT THROUGH INDIRECT CRIMINAL CONTEMPT THE DCA\$\$'S HAVE NEVER THEY HAVE NEVER ADDRESSED AND AGAIN, THERE IS NO -- CASE OUT OF RECORD SUPREME COURT ADDRESSING IT FUNDAMENTAL ERROR I THINK THERE NEEDS TO BE I THINK, I CAN JUST --

GARRET FROM THE FIRST DISTRICT.

I'M SORRY.

AND GARRET WAS DIRECT CRIMINAL CONTEMPT CASE.

RIGHT AT THE END OF THAT OPINION, JUSTICE PARIENTE, THEY HELD IT WAS DIRECT IT WAS A THAT FUNDAMENTAL OR ERROR COULD APPLY, CITING ANALOGOUS!!\$!!!!!! ANALOGOUSLY TO INDIRECT CRIMINAL CONTEMPT.

LET ME DO THIS BECAUSE JUSTICE LEWIS WAS ASKING CERTAIN QUESTIONS I JUST WHEN WERE YOU SAYING HE NEVER MADE AN OBJECTION I WAS SAYING ISN'T THIS FUNDAMENTAL ERROR I DON'T WANT TO GET OFF BECAUSE THAT IS NOT BEING RAISED.

OKAY.

PLEASE GET BACK TO -- THE COLLOQUY WITH JUSTICE LEWIS ASKING YOU ABOUT THE ISSUE OF WHAT IS -- UNDERSTOOD VERSUS WHAT IS ON THE RECORD.

I THINK THAT THE FROM THE -- AND I -- BEING REDUNDANT I IMAGINE, BUT, IT COMES ESSENTIAL FROM THE READING OF THIS TRANSCRIPT THAT THIS THERE WAS -- THAT HE WAS GOING TO INVOKE THE FIFTH AMENDMENT PRIVILEGE THAT WAS HIS EXCUSE THAT IS IT I THINK THAT PERMEATES THIS TRANSCRIPT MAKES IT COMPORT WITH IN THE RULE IN THIS CASE I THINK THEY FIFTH DCA, FOUND THAT AND I THINK THAT IS SUPPORTED BY THE RECORD AND THE FIFTH DCA FOUVENLD HE WAS GIVEN HIS OPPORTUNITY TO PRESENT EXCUSING CIRCUMSTANCES, THEY CRAFTED THE CORRECT REMEDY HERE GIVEN THE FACTS AND I THINK THAT THIS COURT HAS THE OPPORTUNITY TO LOOK AT THE RULE, AND LOOK HOW THIS FACTS OF THIS CASE PLAYED OUT THE ONLY THING LACKING HERE WAS THIS \$\$DEFENDANT'S ABILITY TO PRESENT, EVIDENCE FACTUAL EVIDENCE IN MITIGATION!!\$!!!!!! MITIGATION.

LET'S GO BACK TO THAT ISSUE, SO IN THIS CASE, HAS IT EVER BEEN AN ISSUE ON APPEAL!!\$\$!!!!!! APPEAL? THAT HE WASN'T GIVEN SUFFICIENT OPPORTUNITY TO SHOW CAUSE WHY HE SHOULD -- NOT BE HELD IN CONTEMPT?

YES THE STATE'S POSITION TO FIFTH HE WAS GIVEN THAT SNUNT HAS THAT BEEN -- IS THAT ON APPEAL HERE, STILL IS IT TWO ISSUES, ONE IS THAT HE HASN'T BEEN GIVEN SUFFICIENT OPPORTUNITY TO SHOW CAUSE? WHY HE SHOULD NOT -- BE HELD IN CONTEMPT?

PETITIONER CONTENDS THAT WE DISAGREE, AND THE FIFTH FOUND CONSISTENT WITH OUR POSITION.

SO FOR EXAMPLE IN GARRETT I WAS IMPRESSED WITH THE FACT THAT WAS WHERE THE DEFENDANT SHOWS UP DRUNK IN COURT, AND -- THE COURT SAYS -- I'M ORDERING TO YOU SHOW CAUSE WHY I SHOULD NOT HOLD IN YOU DIRECT CONTEMPT FOR COMING TO COURT INTOXICATED DEFENSE SAYS I APOLOGIZE I WAS UP ALL NIGHT TOOK SHOWER AM I ASKING -- FOR EXPLANATION I'M ASKING WHAT I SHOULD DO, WHY I SHOULD NOT HOLD IN YOU CONTEMPT, THE DEFENDANT WASN'T INTENTIONAL YOUR HONOR JUST THAT I WAS IN FEAR THAT IS ALL OUT OF FEAR, AND THEN COURT OKAY I DON'T FIND THAT TO BE GOOD CAUSE, I FIND YOU TO BE IN DIRECT CONTEMPT. THEY THEN GO ON, AND SAY HOW STRICT COMPLIANCE IS IMPORTANT, AND THEN, THAT HE HADN'T BEEN GIVEN AN OPPORTUNITY TO PRESENT EXCUSING OR MITIGATING SIX, BUT WOULDN'T YOU AGREE UNDER THE CIRCUMSTANCES OF GARRETT, REALLY, IS THAT HE WASN'T EVEN GIVEN ADEQUATE OPPORTUNITY TO SHOW CAUSE WHY IT WAS NOT INTENTIONAL THAT IS WHAT I'M CONCERNED ABOUT MAYBE THE OTHER CASES WITH SOMEHOW BLURRING THE LINE, BETWEEN, IF SOMEONE HAS BEEN GIVEN ADEQUATE OPPORTUNITY.

UM-HMM.

-- TO EXPLAIN WHY HE OR SHE SHOULDN'T BE HELD IN CONTEMPT AT ALL IT WASN'T INTENNAL IT WAS OUT OF FEAR -- VERSUS NOW I'M HOLD IN YOUNG CONTEMPT, YOU HAVE ANY MITIGATING REASON -- WHY I SHOULD NOT -- SENTENCE TO YOU THE MAXIMUM OF 180 DAYS IN JAIL? THAT THOSE ARE THAT IS WHY THOSE ARE SEPARATE BUT WE ALWAYS HAVE TO BE MINDFUL THAT THE TRIAL COURT GIVES ADEQUATE OPPORTUNITY!!\$\$!!!!!!!!!!!!!!TO THE DEFENDANTS FULLY EXPLAIN WHY HE OR SHE SHOULD NOT BE HELD IN CONTEMPT.

CORRECT AND THAT IS WHAT THAT WORKS!!\$\$!!!!!!PORTION OF THE RULE PROVIDES IN GARRETT THERE WAS NO OPPORTUNITY TO PRESENT MITIGATION IN TERMS -- TERMS OF SENTENCED AGAIN I THINK THE BETTER REMEDY WOULD HAVE BEEN SEND IT BACK FOR SENTENCING HEARING IN A NORMAL FELONY TRIAL AND CONVICTION DEFENDANT FOUND GUILTY\$\$!!!!ITY AND THEN ERROR IN SENTENCING PROCESS HE DIFFERENT GET ONE NOT GIVEN AN OPPORTUNITY TO BE HEARD AT SENTENCING THE ENTIRE MATTER DOES NOT GOING ABOUT A TO NEW TRIAL IT GOES BACK FOR SENTENCING HEARING.

I'M SAYING THAT GARRETT LOOKS LIKE THERE WAS MAYBE A BLURRING THAT HE WASN'T EITHER GIVEN AN ADEQUATE OPPORTUNITY TO SHOW CAUSE WHY HE -- WOULD NOT BE HELD IN CONTEMPT EVEN THOUGH THEY ALSO USED THE WORD EXCUSE\$\$!!!!ING OR MITIGATION LOOKING LIKE THAT REALLY MORE WENT TO EVEN HIS WILLFULNESS AND SHOWING UP IN COURT, INTOXICATED!!\$\$!!!!!!!!!!!!!! INTOXICATED.

YEAH THERE IS A AND THERE IS -- THERE IS A BLURRING, BECAUSES EXCUSING CAN FALL UNDER BOTH CATEGORIES, ESSENTIALLY!!\$\$!!!!!!!!!!!!!! ESSENTIALLY, YOU CAN HAVE A LEGAL CAMPUS TO A SENTENCE -- EXCUSE TO SENSE OUR POSITION IS THAT WHERE EXCUSING RUNS INTO THAT SENTENCE, BUT YOU ARE -- YOUR TO SHOW CAUSE NOT TO BE HELD IN CONTEMPT OBVIOUSLY GOING TO BE EXCUSE I.E., FEAR FULL LIKE MR. GAR NET THAT CASE, I THINK ONCE THAT PORTION OF THE RULE IS COMPLIED -- ACCOMMODATE APPLIED WITH I USE THAT ANALOGY WE DON'T LIKE -- WIPE SLATE CLEAN SEND BACK WHEN A SENTENCING ERROR IT GOES BACK FOR SENTENCING HEARING EXACTLY WHAT SHOULD HAPPEN HERE TO COME PORT WITH THIS \$\$DEFENDANT'S RIGHT UNDER RULE I THINK FIFTH DCA USED FORECITY CARVING OUT CORRECT REMEDY GIVING THE FACTS OF THIS CASE I THINK THIS COURT HAS THE OPPORTUNITY, ONE, TO SET FORTH A FRAMEWORK FOR THE RULE, BECAUSE DCA, SOME SEND ALL BACK, SUMMARILY, WITHOUT.

LET ME ASK YOU THIS, ONE QUESTION, THEN.  
SMUSH.

IT APPEARS THAT -- SURE.

IT APPEARS THAT YOUR RUE THAT IS IF THIS IS TO BE UPHELD!!\$\$!!!!!! UPHELD, THAT MUST BE DETERMINED FROM THIS RECORD THAT THERE WAS COMPLIANCE WITH THE RULE, BASED ON THE RECORD. THAT THERE WAS AN OPPORTUNITY GIVEN TO EXPLAIN WHY THIS HAPPENED. CORRECT.

AND TO WILL ESSENTIALLY THOSE WORDS SO THAT IS YOUR TIN INTERPRET THAT IS THE ONLY WAY THAT THIS CAN BE UPHELD IS THAT -- IS THAT THE POSITION OF THE STATE.

YEAH AND THE FIFTH DKRAI. FOUND THAT WE THINK THAT RULING IS CORRECT REMEDY WAS. SO THE RULE WAS COMPLIED WITH?

YES.

THAT PORTION OF THE -- SENTENCE, THE -- SENTENCE THAT WORKED -- WE ARE TARGET!!\$\$!!!!!! TARGETING HERE ON THE -- DEFENDANT SHALL BE GIVEN THE OPPORTUNITY TO PRESENT EXCUSING AND MITIGATE\$\$!!!!ING -- GOES TO HIS SENTENCE ONLY THE!!\$\$!!!! THE, AND UNLESS THIS COURT HAS ANY ADDITIONALAL EE.

SIMPLEST THING JUSTICE ANSTEAD WAS ARTICULATE\$\$!!!!ING HOW TRIAL COURTS SAY INSTEAD OF GETTING INTO NUANCES, ALL THESE APPEALS AND CASES JUST SAY ONCE YOU -- BEFORE ADJUDICATION OF GUILTY THE JUDGE HAS TO SAY NOW IS YOUR OPPORTUNITY TO SHOW CAUSE AND BASICALLY SAY WHAT THE RULE SAYS, THAT REALLY SIMPLE --

MAGIC WORDS CERTAINLY MAKE IT SIMPLE JUSTICE I THINK THAT THE ISSUE, AND I DON'T DISPUTE THAT, CERTAINLY WE WOULD PROOEFR THAT APRIL JUDGES STICK TO THE SCRIPT FOR LACK OF -- TRIAL JUDGEES STICK IS TO STRIPT -- THINGS GET GREY, IN TERMS OF THE FACT OF THIS CASE, IT PERMEATES THAT HE WAS GIVEN THE OPPORTUNITY TO SAY, WHY AND, THERE CAN'T BE A VIOLATION OF THAT ASPECT OF THE RULE IN THIS CASE, WE THINK THE FIFTH DKRAI. DECISION SHOULD BE AFFIRMED THANK YOU VERY MUCH.

OKAY.

JUST HAVE A COUPLE OF POINTS.

LET ME ASK THIS QUESTION THE STATE HAS ESSENTIALLY CONCEDED THAT THE ONLY WAY THAT THIS CAN BE AFFIRMED OR THE VIEW OF THE FIFTH DCA FOLLOWED, IS THAT IT IS DETERMINED, THAT WHAT O OCCURS HERE COMPLIES WITH THE RULE, THAT THERE WAS THE OPPORTUNITY. THERE WAS THE OPPORTUNITY GIVEN TO EXPLAIN THE CONDUCT. AND WHY SHOULD NOT BE HELD IN CONTEMPT, IF THAT IS THE INTERPRETATION THAT THE STATE HAS ASSERTS, IS THIS CASE IN CONFLICT WITH ANYTHING?

YES, IT IS.

HOW SO?

IS ITS IN CONFLICT WITH -- IN CONFLICT WITH -- THE OTHER CASES THAT HAVE SAID THAT PRIOR TO ADJUDICATION OF GUILTY THE DEFENDANT MUST BE -- PROVIDED AN OPPORTUNITY TO ONE TO SHOW CAUSE AND TWO TO --

THAT IS WHAT THE STATE APPEARS TO BE CONCEDING IS THAT THERE ARE SAYING THAT THIS IS THE ONLY BASIS UPON WHICH THIS OPINION CAN BE UPHELD!!\$\$!!!!!! UPHELD, AND THAT IS THAT THE OPPORTUNITY TO SHOW CAUSE WAS IN FACT GIVEN AND SHOWN IN THIS RECORD, SO IF THAT IS THE FINDING THAT IS THE DETERMINATION -- THE ULTIMATE DETERMINATION, THEN WHERE IS THE CONFLICT? BECAUSE THE OTHER CASES TALK IN TERMS OF DO THEY NOT, AN OPPORTUNITY TO SHOW WHY YOU SHOULD NOT BE HELD IN CONTEMPT, SO THAT IS THE POINT. NO -- IF THIS COURT DETERMINES THAT HE WAS GIVEN THE OPPORTUNITY AND THIS RULE WAS COMPLIED WITH THEN WE LOSE,\$\$!!.

THEN NO CONFLICT.

WELL.

NO CONFLICT TO BEGIN WITH.

I AGREE WITH AE BECAUSE ALL OTHER CASES THAT REVERSE!!\$\$!!!!!! REVERSED HAVE SAID, THAT -- THERE WASN'T PROPER OPPORTUNITY TO SHOW CAUSE OR TO PRESENT EXCUSING OR MITIGATING CIRCUMSTANCES, JUSTICE PARIENTE -- PART 1C OF THE BRIEF PAGES NINE AN TEN DEAL WITH THE ARGUMENT SHOW CAUSE, AS WELL AS -- EXCUSING CIRCUMSTANCES, WAS ADDRESSED FIFTH DCA FIFTH DCA ADDRESSED SHOW CAUSE ISSUEHOLD HEAD-ON SAID HE WAS PROVIDED OPPORTUNITY HOW THEY INTERPRETED THE RECORD WE HAVE ARGUED WE ARGUED

THERE WE HAVE ARGUED HERE THAT HE WAS NOT GIVEN AN OPPORTUNITY, THIS -- THIS.

LET ME ASK YOU --

SHOW CAUSE, AS WELL AS --

LET ME ASK YOU I KNOW YOUR TIME IS RUNNING OUT.

SORRY.

LET ME ASK YOU THIS, WHY IS IT ASSUMING THAT THAT YOU ARE CORRECT ON THE MERITS WHY IS IT FUNDAMENTAL ERROR SUCH THAT WE WOULD NOT REQUIRE AN OBJECTION AT THE TIME TO ALLOW THE JUDGE THE OPPORTUNITY TO CORRECT IT BEFORE IT GETS UP ON APPEAL?

WELL -- ESSENTIALLY, THE CASE LAW ALL DEALS WITH THIS AS FUNDAMENTAL ERROR BECAUSE IT IS IT IS DUE PROCESS ISSUE, BECAUSE, IT IS A SUMMARY PROCEDURE, BECAUSE THE PROCEDURAL SAFEGUARDS.

LAST THINGS DUE PROCESS ISSUES WE STILL REQUIRE OBJECTION FOR.

ALL RIGHT. AND -- THAT ONE COURT THAT I HAVE NEVER SEEN NOT ONE CITE!!!!!! CITED BY THE STATE IN ITS BRIEF, HAS EVER -- REQUIRED THE DEFENSE TO PRESERVE AN OH, TO -- PROPER -- PROFFER EVIDENCE OF EXCUSING MITIGATING CIRCUMSTANCES --

HOW MANY CASES ARE THERE ON THIS SNOOSH OR CONTEMPORANEOUS OBJECTION.

HOW MANY CAUSE ON THAT ISSUE IN DIRECT CRIMINAL CONTEMPT PROCEEDINGS?

OKAY. I CITEED IN MY BRIEF SOME!!!!!! SOMEWHERE IN THE NEIGHBORHOOD OF 10 TO 15 CASES THAT ARE REVERSED ON \$\$\$!!!! I --

DIRECTION CRIMINAL CONTEMPT PROCEEDINGS.

ABSOLUTELY.

THE ONES IN 1C, 1B TALK ABOUT GARRETT HUTCHISON.

THAT FOUND FUNDAMENTAL ERROR.

ABSOLUTELY NOT ONE OF THEM HAS FOUND -- THEY THAT NOT ONE OF THEM THE COURT -- EXCUSE ME HELD -- THAT THESE THINGS HAVE TO BE OBJECTED TO, NOT ONE CASE, CITED IN EITHER BRIEF HAS REQUIRED AN OBJECTION, IN ON A DIRECT CONTEMPT ISSUE AND GARRETT, AND -- GARRETT, STAET STATE ARGUED THERE WASN'T AFTERNOON OBJECTION BELOW. AND GARRETT FIRST DCA, AND OTHER --

THAT IS THE ONLY CASE I CAN THINK OF IS GARRETT.

PARDON ME.

THAT IS THE ONLY CASE I CAN

I HAVE NO, NO, NO GARRETT, HUTCHISON, DEWIE DEWIE THE DEFENSE ATTORNEY FOURTH DCA CASE, WAS -- DEFENDANT WAS THERE, SENTENCING!!!!!! SENTENCING, FOR FELONY ISSUES HE WAS HELD IN CONTEMPT FOR FAILURE TO APPEAR, AT A PRIOR HEARING, AND THE DEFENSE ATTORNEY WAS ASKED IN SPECIFICALLY SAID NO OBJECTION, DURING THE CONTEMPT HEARING, YOUR HONOR, AT THE END OF THE OPINION, THE FIFTH DISTRICT SAID UNDER CIRCUMSTANCES OF THIS CASE ALL MR. HAYNES WAS ENTITLED TO WAS A NEW SENTENCING AND NOT A NEW HEARING. THAT IS OUT OF LINE WITH EVERY OTHER CASE THAT I HAVE PRESENTED IN MY BRIEF, AND FRANKLY THE STATE DOESN'T HAVE A CASE PRESENTED IN THEIR BRIEF THAT SUPPORTS VACATION ONLY FOR THE PURPOSE OF SENTENCING UNDER THIS TYPE OF RECORD. THANK YOU VERY MUCH, WE'LL TAKE THE CASE UNDER ADVISEMENT