

>> NEXT CASE IS STATE OF FLORIDA
V. S.M.

>> YOU MAY PROCEED.

>> MAY IT PLEASE THE COURT, MY
NAME IS RICHARD VERLANTES, AND I
REPRESENT THE STATE OF FLORIDA.
I'D LIKE TO RESERVE FIVE MINUTES
FOR REBUTTAL.

LUCKILY, BOTH SIDES AGREE THAT
THERE ARE INSTANCES WHERE YOU
CAN SCORE ZERO ON A RISK
ASSESSMENT INSTRUMENT AND STILL
RECEIVE DETENTION, SO THE ISSUE
BEFORE THE COURT TODAY IS
WHETHER SOMEONE CHARGED WITH A
PROBATION VIOLATION SCORED A
ZERO OR, YOU KNOW, LESS THAN
SEVEN ON A RISK ASSESSMENT
INSTRUMENT CAN BE DETAINED IN
HOME DETENTION WITH ELECTRONIC
MONITORING BY THE TRIAL COURT.
BASICALLY, THE ISSUE BEFORE THE
COURT IS WHO GOT IT RIGHT, DID
THE SECOND DCA GET IT RIGHT IN
JLT, OR DID THE FOURTH DISTRICT
GET IT RIGHT, IN THIS CASE, SM?
IT'S THE STATE'S POSITION THAT
THE SECOND DCA GOT IT RIGHT
BECAUSE NOT ONLY DID THEY DO A
THOROUGH ANALYSIS OF THE LAW,
THEY ACTUALLY LOOKED AT THE RISK
ASSESSMENT INSTRUMENT DOCUMENT
WHICH IS THE MOST CRITICAL
DOCUMENT IN A CASE FOR PRETRIAL
DETENTION --

>> WELL, ONE OF THE STRANGE
THINGS ABOUT THE CASE IS THAT IN
THE DISTRICT COURT THE RISK
ASSESSMENT INSTRUMENT WAS ON THE
RECORD, ISN'T THAT CORRECT?

>> YES, YOUR HONOR.

>> WELL, NOW ORDINARILY WE DON'T
LOOK AT MATTERS THAT ARE NOT IN
THE RECORD BEFORE THE COURT
BELOW.

NOW, THIS IS KIND OF A STRANGE
THING HERE BECAUSE THE DETENTION
RISK ASSESSMENT INSTRUMENT,
THAT'S SOMETHING FINISH IT'S NOT
IN THE FLORIDA ADMINISTRATIVE

CODE FROM WHAT I CAN SEE.
IT REFERS TO THIS EXISTENCE, AND
THEN YOU CAN GO TO THE
DEPARTMENT AND GET A COPY OF IT.
THOUGH IT'S SOMETHING OUT THERE,
A RECORD OF THE STATE IN THAT
SENSE.
FORM.

>> CORRECT.

>> SO WHAT DOES THAT ALL -- THE
WAY THAT HAS COME HERE, WHAT
IMPACT DOES THAT HAVE ON THIS
CASE?

>> I DON'T THINK IT HAS A WHOLE
LOT OF IMPACT BECAUSE IT
TECHNICALLY DID MAKE IT INTO THE
RECORD WITH MY MOTION TO
REHEARING.

SO THAT'S HOW AFTER THE OPINION
HAD COME OUT, I WAS PROVIDED
WITH A COPY OF THE RISK
ASSESSMENT INSTRUMENT.
AND IF YOU LOOK AT THE PLAIN
LANGUAGE --

>> IT WAS IN THE RECORD AT THE
DISTRICT COURT AFTER THE INITIAL
DECISION HAD ISSUED.

>> CORRECT, YOUR HONOR.
AND I'M REFERRING TO PAGE 3 OF 5
OF THE RISK ASSESSMENT
INSTRUMENT.

AFTER YOU GO THROUGH SECTION
TWO, THERE'S A LITTLE BOX.
IT SAYS IF A THROUGH E ARE
ANSWERED YES, PROCEED TO SECTION
THREE WHICH IS WHERE THE SCORING
IS DONE, OKAY?

WE DON'T HAVE THAT HERE BECAUSE
THROUGH THE HEARINGS WE
ESTABLISHED THAT WE'RE JUST
GOING FORWARD ON A VOP.

AND THEN IT SAYS IF A THROUGH E
ARE ANSWERED NO, THE YOUTH MUST
BE RELEASED UNLESS F THROUGH K
IS ANSWERED YES.

WELL, THAT'S WHAT WE HAVE HERE.
J, WHICH WAS A PROBE BASE
VIOLATION, WAS ANSWERED YES, AND
TYPICALLY WHAT HAPPENS A CHILD
PRESENTS WITH A VIOLATION OF

PROBATION, DJJ CHECKS OFF J,
ZEROS OUT SECTION THREE, THEN IT
GOES BEFORE THE TRIAL COURT.
AND THE TRIAL COURT DOES HAVE
THE DISCRETION ONE THING THE
FOURTH IS ABSOLUTELY RIGHT ABOUT
IS THE TRIAL COURT IS NOT BOUND
TO PUT A JUVENILE IN HOME
DETENTION WITH ELECTRONIC
MONITORING JUST BECAUSE SHE'S
ACCUSED OF VIOLATING THE TERMS
OF HER PROBATION.

THAT'S ABSOLUTELY RIGHT.
HOWEVER, THE JUDGE DID EXERCISE
HIS DISCRETION IN THIS CASE, AND
THEN ON A HABEAS PETITION TO THE
FOURTH WITHOUT A COPY OF THE
RISK ASSESSMENT INSTRUMENT
WHICH -- THIS IS WHY THE SECOND
DCA'S OPINION, IN MY OPINION, IS
CORRECT, BECAUSE THEY ACTUALLY
READ FROM THE LANGUAGE OF THE
DOCUMENT THAT THE FOURTH DIDN'T
HAVE, AND IT DIRECTS YOU THAT
PRETTY MUCH WHAT DJJ CALLS
AUTOMATIC QUALIFIERS ARE WHAT
EXIST BE IN F THROUGH K.
AND THAT'S WHAT WE HAD HERE.
AND AS FAR AS MY ARGUMENT ON
SECTION TWO, I MEAN, THE CASE
LAW --

>> WAIT A MINUTE.

>> YES.

>> SO YOUR ARGUMENT IS THE
FOURTH DISTRICT GOT IT WRONG
BECAUSE THEY DID NOT HAVE A RISK
ASSESSMENT INSTRUMENT BEFORE
THEM?

>> CORRECT.

THAT'S ONE -- JUSTICE QUINCE?

>> WAS THE ARGUMENT MADE BY THE
STATE ABOUT SECTION J?

>> OH, ABSOLUTELY.

AND THAT WAS IN MY PONCE.

>> AND SO, OKAY, AND SO WHAT DID
THE FOURTH DISTRICT SAY ABOUT
SECTION J?

OR WAS IT DISCUSSED?

>> NO.

WHAT THEY SAID, THEY DECIDED TO

CREATE A PRESUPPOSITION.
SEE, THEY DIDN'T ACTUALLY TALK
ABOUT J AT ALL BECAUSE THEY
DIDN'T HAVE THE DOCUMENT.
>> I'M SORRY, YOU'RE --
>> I'M SORRY.
THEY DIDN'T TALK ABOUT J ON THE
RIA AT ALL BECAUSE THEY DIDN'T
HAVE IT IN FRONT OF THEM.
WHAT THEY TALKED ABOUT WAS THE
STATUTORY SECTION THAT A
BASICALLY J COMES FROM, AND THEY
DECIDED TO MAKE THE LOGICAL LEAP
THAT WELL BECAUSE A TRIAL COURT
CAN CONTINUE THE DETENTION OF
SOMEONE ON PROBATION.
SOMEHOW THIS STATUTE PRESUPPOSES
A SCORE ON THE RISK ASSESSMENT
INSTRUMENT WHICH REALLY DOESN'T
MAKE SENSE BECAUSE THE
LEGISLATURE DELEGATED THE
AUTHORITY OF CREATING A RISK
ASSESSMENT INSTRUMENT TO THE
DEPARTMENT OF JUVENILE JUSTICE.
THERE'S NO STATUTE THAT REQUIRES
ANY POINTS WHATSOEVER IN THIS
DOCUMENT, SO --
>> YOU KNOW, IT'S STILL
INTERESTING TO ME WHY THIS RISK
ASSESSMENT INSTRUMENT WASN'T
BEFORE THE COURT.
THE TRIAL COURT HAD IT.
>> CORRECT.
BUT --
>> WAIT A MINUTE, LET ME --
>> I'M SORRY, JUSTICE QUINCE.
>> THE TRIAL COURT HAD THAT
INSTRUMENT BEFORE IT MADE ITS
DECISION, CORRECT?
>> CORRECT.
>> AND SO WHY WASN'T IT A PART
OF THE RECORD?
>> WELL, THE EXPLANATION --
WELL, IT WASN'T A PART OF THE
RECORD BECAUSE THE DEFENSE
DIDN'T GIVE IT TO THE COURT AS
AN ATTACHMENT BECAUSE THIS IS
MAYBE CROSS.
THE ONLY RECORD THEY GET IS WHAT
THE DEFENSE GIVES THEM.

AND THEY DIDN'T GIVE IT TO THEM.

>> AND SO ON HABEAS PETITION THE RESPONDENT CANNOT ATTACH ANYTHING TO THE RESPONSE?

>> I WOULD BELIEVE I COULD IF I HAD IT.

>> WELL, DIDN'T YOU HAVE IT AT THE TRIAL COURT?

I'M --

>> WELL, THE 19TH CIRCUIT STATE ATTORNEY'S OFFICE HAD IT, ABSOLUTELY.

BUT THE WAY THIS CAME IN, I GOT IT ON THE 17TH.

MY RESPONSE WAS DUE ON THE 18TH. AND I ASKED THEM FOR IT.

THERE'S NO ONE'S NAME ATTACHED TO IT, SO, I MEAN, IN THEORY, YES, YOUR HONOR --

>> SO IN THEORY, YES, THE STATE COULD HAVE ATTACHED IT TO THEIR RESPONSE TO THE HABEAS PETITION.

>> CORRECT.

BUT IT'S NOT MY OBLIGATION.

>> TO ME, WHAT WOULD HAVE BEEN DONE IN THE ORDINARY COURSE IF THEY'RE SAYING I AM ENTITLED TO NOT BE ON HOME DETENTION, AND YOU'RE SAYING THEY ABSOLUTELY ARE BECAUSE SECTION J SAYS THAT WE CAN, THEY CAN BE PUT ON HOME DETENTION BECAUSE OF THE PROBATION VIOLATION I WOULD THINK IN A SITUATION WHERE, YOU KNOW, BOTH PEOPLE -- THERE'S NO OFFICIAL RECORD, AND PEOPLE ARE ATTACHING WHATEVER TO SUPPORT THEIR POSITION, THAT'S WHAT WOULD HAVE BEEN DONE.

>> WELL, SEE WHAT HAPPENED IN THE INITIAL RESPONSE, YOUR HONOR, WAS I DIDN'T WANT ARGUE THAT.

MY ARGUMENT WAS --

>> YOU DIDN'T ARGUE --

>> I DID NOT.

IN THE ORIGIN RESPONSE MY ARGUMENT WAS, LOOK, I DIDN'T GET A COPY OF THE TRANSCRIPTS, I DIDN'T GET A COPY OF THE RISK

ASSESSMENT INSTRUMENT, HOW IN THE WORLD CAN YOU REVERSE WHAT THE TRIAL COURT DID WHEN YOU'RE NOT PROVIDING THESE INTEGRAL DOCUMENTS?

THAT WAS MY ARGUMENT.

>> AND YOU NEVER -- AND YOUR SECONDARY ARGUMENT WAS NOT THAT IT WAS A VIOLATION OF PROBATION ALLEGED AND SO, CLEARLY, THE TRIAL JUDGE COULD PUT THEM ON HOME DETENTION?

>> WELL, THAT DIDN'T COME OUT UNTIL THE REHEARING AFTER I GOT A COPY OF THE RISK ASSESSMENT INSTRUMENT.

AND, AGAIN, THIS IS SOMETHING THAT THE FOURTH DISTRICT JUST PRESUPPOSED AS OPPOSED TO ACTUALLY LOOKING AT THE DOCUMENT.

AND ON MY SECOND POINT, THE LAW'S PRETTY CLEAR.

IF YOU HAVE A SITUATION WHERE THE JUDGE ISSUED HOME DETENTION WITHOUT THE USE OF THE PIVOTAL RISK ASSESSMENT INSTRUMENT AND THE HABEAS IS TAKEN UP, THAT'S ALMOST --

>> REVERSIBLE ERROR.

>> THERE ARE CIRCUMSTANCES UNDER CRITERION F THROUGH --

[INAUDIBLE]

RAI WHERE SOMEONE CAN BE DETAINED WITHOUT HAVING, WITH A ZERO, CORRECT?

>> ABSOLUTELY.

>> AND I THINK J PROVIDES THAT VIOLATION OF PROBATION'S ONE OF THEM?

>> YES.

>> OKAY.

SO WHAT IS THE ARGUMENT THAT IS BEING MADE HERE?

>> WELL, THE ARGUMENT IS --

>> WHY THE JUDGE WAS WRONG?

>> NO, THE TRIAL JUDGE WAS WRONG -- WAS RIGHT.

>> [INAUDIBLE]

>> NO.

NOT ONLY DO YOU HAVE TO HAVE ONE OF THESE F-Ks WHICH IS CONTRARY TO THE PLAIN LANGUAGE OF THE DOCUMENT, BUT ALSO YOU NEED A CERTAIN SCORE TO GET SOMEONE IN HOME DETENTION WITH ELECTRONIC MONITORING, AND THAT'S NOWHERE IN THE STATUTE OR THE RISK ASSESSMENT INSTRUMENT, AND THAT'S WHY THE FOURTH DCA GOT IT WRONG AND THE SECOND DCA GOT IT RIGHT.

AND IF THE COURT DOESN'T HAVE ANY FURTHER QUESTIONS, I'D RESERVE THE REST OF MY TIME FOR REBUTTAL.

>> THANK YOU.

>> THANK YOU, YOUR HONOR.

>> COURT, MY NAME'S RENEE --
[INAUDIBLE]

AND I'M HERE ON BEHALF OF S.M., THE RESPONDENT IN THIS CASE. WE'RE ASKING THE COURT TODAY, RESPECTFULLY, TO APPROVE THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL ON S.M. AND REJECT THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL AND J. L.T.

WE'RE ASKING THE COURT TO HOLD THAT A CHILD CANNOT BE HELD IN DETENTION ABSENT A QUALIFYING RISK ASSESSMENT SCORE, A STATUTORY EXCEPTION TO THE SCORE OR THE TRIAL COURT HAVING MADE WRITTEN FINDINGS OF CLEAR AND CONVINCING REASONS WHY THE CHILD CAN BE HELD WITHOUT A SCORE.

>> SO WHAT DO WE DO --

>> COULD I ASK YOU, YOU DON'T HAVE ANY OBJECTION TO OUR LOOKING AT THIS AND CONSIDERING THIS DETENTION RISK ASSESSMENT INSTRUMENT IN THIS CASE, DO YOU?

>> NO, YOUR HONOR.

>> OKAY.

EVERYBODY AGREES THIS IS FAIR GAME, AND WHAT'S HERE IS APPROPRIATE FOR US TO LOOK AT.

>> IT'S APPROPRIATE FOR THE

COURT TO CONSIDER, JUSTICE CANADY, HOWEVER, IT WAS NOT PROVIDED ON THE PETITION FOR WRIT OF HABEAS CORPUS BECAUSE I THINK IT SCORED 12 OR 15 POINTS AT THE TRIAL COURT WHEN THE CASE CAME UP FOR DETENTION REVIEW HEARING.

THE STATE SAID AND AGREED THAT THE CHILD SHOULD BE SCORED ZERO POINTS.

SO THE DEFENSE BE AGREED TO ZERO POINTS.

>> ALL RIGHT.

>> AND I DON'T THINK PHYSICALLY THAT THE TRIAL COURT MADE THE CORRECTION TO THE RISK ASSESSMENT.

I THINK IT WOULD HAVE CONFUSED THE ISSUES WHEN THERE WAS A STIPULATION OF ZERO POINTS AND THE DETENTION ORDER INDICATED THAT THE CHILD SCORED ZERO POINTS.

>> WELL, LET ME ASK YOU THIS, WHAT DOES THIS LANGUAGE MEAN ON THE RISK ASSESSMENT FORM THAT SAYS A YOUTH IS ALLEGED TO HAVE VIOLATED THE CONDITIONS OF THE YOUTH'S PROBATION OR CONDITIONAL RELEASE SUPERVISION?

THE YOUTH MAY BE HELD IN A CONSEQUENCE IF ONE HAS BEEN DESIGNATED AND IS MADE AVAILABLE BY DEPARTMENT.

IF THAT UNIT IS NOT AVAILABLE, CAN BE PLACED ON HOME DETENTION.

WHAT DOES THAT LANGUAGE MEAN? IT SEEMS TO ME THAT THAT LANGUAGE CLEARLY SAYS THAT IF THEY'VE ALLEGED TO HAVE A VIOLATION OF PROBATION, THAT THEY CAN BE HELD IN HOME DETENTION.

THAT'S WHAT HAPPENED HERE. THERE WAS AN ALLEGED VIOLATION OF PROBATION, AND THE TRIAL JUDGE SAID HOME DETENTION.

>> WELL, JUSTICE QUINCE, THE RISK ASSESSMENT INSTRUMENT IS

PREPARED BY THE JUVENILE PROBATION OFFICER UPON INTAKE, SO UPON THE CHILD'S ARREST AND BEING BROUGHT TO THE DETENTION CENTER.

IT'S USED THEN TO DETERMINE WHAT CAN HAPPEN TO THE CHILD FOR THE NEXT 24 HOURS BEFORE BEING BROUGHT FOR THE COURT FOR DETENTION HEARING.

SO WHEN THE INITIAL DETERMINATION IS MADE BY THE JUVENILE PROBATION OFFICER WHETHER THEY SHOULD BE RELEASED OUTRIGHT, PLACED IN SECURE DETENTION PENDING REVIEW BY THE COURT TO DETERMINE WHAT'S APPROPRIATE AND THE NEED FOR CONTINUED DETENTION.

AT THE DETENTION HEARING --
>> THIS IS ONLY, LET ME MAKE SURE I UNDERSTAND WHAT YOU JUST SAID.

THIS RAI FORM IS ONLY GOOD FOR THE 24 HOURS BEFORE HE OR SHE IS BROUGHT BEFORE THE COURT?

>> IT IS INITIALLY GOOD FOR THAT, AND THEN THE COURT CAN CONSIDER IT AND ALSO CONSIDER ANY OTHER FACTORS TO DETERMINE WHETHER THERE'S A NEED FOR CONTINUED DETENTION.

BUT THE CASE R.A.P. V. PAR KINS WAS A FIRST DISTRICT CASE, AND THAT SAID THAT THE HOME DETENTION PROVISION THAT YOU JUST READ, JUSTICE QUINCE, IS BASICALLY A STATUTORY MAXIMUM FOR WHAT CAN HAPPEN AS FAR AS DETENTION WHEN A CHILD'S CHARGED WITH VIOLATION OF PROBATION.

IT'S INTERESTING THAT IN THIS CASE THE CHILD WAS ALLEGED BY THE STATE ATTORNEY IN THE OPEN COURT AT THE DETENTION HEARING TO HAVE VIOLATED PROBATION, BUT THE CASE NUMBER THAT WE'RE HERE ON, THE CASE NUMBER THAT THE CHILD WAS DETAINED ON WAS NOT EVEN A VIOLATION OF PROBATION.

IT WAS A NEW LAW VIOLATION.
AND AT THE DETENTION HEARING,
THE STATE ATTORNEY AND THE
PROBATION OFFICER JUST SAID,
WELL, THE CHILD'S ALSO ON
PROBATION BUT WAS NEVER DETAINED
ON THAT VIOLATION OF PROBATION,
WAS DETAINED ON A NEW LAW
MISDEMEANOR.

USING THE FACT THAT THE CHILD
WAS ON PROBATION.

>> BUT -- I GUESS I'M, I DON'T
KNOW ABOUT THESE RISK
INSTRUMENTS AND THINGS, BUT ARE
YOU TELLING MANY ME THAT YOU
HAVE TO HAVE TWO DIFFERENT CASES
IF A CHILD IS ALLEGED TO HAVE
COMMITTED AN OFFENSE AND THE
CHILD IS ON PROBATION AND SO NOW
YOU'RE ALSO ALLEGING A VIOLATION
OF PROBATION, YOU NEED TWO
DIFFERENT INSTRUMENTS?

>> I DON'T THINK YOU NEED TWO
DIFFERENT INSTRUMENTS, BUT I
THINK YOU DO NEED TO HAVE A
VIOLATION BEFORE THE COURT.
I THINK THERE NEEDED AB AN
AFFIDAVIT OF VIOLATION TO LET
THE COURT KNOW THAT A VIOLATION
OF PROBATION WAS GOING TO GO
FORWARD BEFORE THEY WERE TO
INCLUDE THAT IN THE INSTRUMENT
AND AS PART OF THE DETENTION
HEARING.

>> LET ME ASK YOU AGAIN ABOUT
THIS, THE LANGUAGE THAT'S ON THE
FORM.

BECAUSE IT SEEMS TO BE VERY
CLEAR THAT IF YES IS CHECKED
HERE ON J, WHICH IT WAS, THAT
YOU DON'T GO AND, YOU DON'T EVEN
GO BEYOND SECTION ONE TO THE
RISK ASSESSMENT IN SECTION
THREE.

ISN'T THAT CORRECT?

>> NO, I DON'T THINK THAT'S
CORRECT.

TO DO SO, TO AUTOMATICALLY SAY
EVERY CHILD ACCUSED BY ANYONE
EVEN IF NOT FORMALLY ACCUSED IN

AN AFFIDAVIT OF VIOLATION,
ANYONE ACCUSED OF VIOLATION OF
PROBATION WOULD BE AUTOMATICALLY
SUBJECT TO HOME DETENTION?

IT WOULD COMPLETELY OBTIATE THE
NEED TO EVEN HAVE A DETENTION
HEARING.

WE COULD JUST HAVE THE JUVENILE
PROBATION OFFICERS AT INTAKE
FOLLOW A SET OF RULES N THIS
CASE YOU DETAIN, THIS CASE YOU
DON'T --

>> BUT I'M JUST READING THE
FORM.

I UNDERSTAND THAT MIGHT NOT BE
THE IDEAL WAY TO DO IT, BUT
YOU'RE NOT CHALLENGING THE
LEGALITY OF THE FORM BE, ARE
YOU?

>> NO.

AS FAR AS THE FIRST 24 HOURS OF
DETENTION, YES.

I THINK THAT IF THE JPO DECIDED
NOT TO DO THE POINTS, THAT THEY
COULD HOLD THE CHILD IN HOME
DETENTION FOR 24 HOURS PENDING
THAT DETENTION HEARING.

>> BUT, AGAIN, IN THE INSTRUMENT
IS ALSO USED BY THE JUDGE TO
DETERMINE WHETHER THERE'S GOING
TO BE FURTHER DETENTION.

ONCE THE INITIAL INTAKE DECISION
IS MADE, IF I YOU SAID THIS
CORRECTLY CAN -- IF I UNDERSTAND
THIS CORRECTLY, AND THEN THIS
DETENTION HEARING IS HELD, AND
THIS INSTRUMENT IS USED IN THAT
PROCESS OF THE DETENTION
HEARING, ISN'T THAT CORRECT?

>> YES, JUSTICE CANADY.

>> WELL, AND SO WHEN THE JUDGE
IS LOOKING AT THIS, IT SEEMS TO
ME THAT YOU JUST, IT'S A
CATEGORY MISTAKE.

THAT YOU ARE MAKING AND THAT THE
DISTRICT COURT MADE BE THAT THE
SECOND DISTRICT DIDN'T MAKE.

THEY UNDERSTAND THAT WHEN
THERE'S, IF A YOUTH IS ALLEGED
TO HAVE VIOLATED THE CONDITIONS

OF THE YOUTH PROBATION OR
CONDITIONAL RELEASE SUPERVISION,
OKAY?

WHEN THAT GETS CHECKED YES, THEN
THERE'S NO, THERE'S NO GOING ON
TO THE NEXT STEP.

>> ACCORDING TO THE FORM, NOT
ACCORDING TO THE LAW, NOT
ACCORDING TO STATUTE, NOT
ACCORDING TO THE CASE LAW.

>> SO YOU ARE DISAGREEING WITH
THE FORM.

A MINUTE AGO I ASKED YOU IF YOU
WERE CHALLENGING THE LEGALITY OF
FORM, AND I THOUGHT YOU SAID,
NO.

>> THAT'S CORRECT, YOUR HONOR.

>> IT SEEMS TO ME WHAT YOU'RE
SAYING NOW IS THIS FORM REALLY
DOESN'T CONFORM TO THE STATUTES.
AM I MISSING SOMETHING?

>> THE FORM DOESN'T MAKE A LOT
OF SENSE.

THE FORM NEEDS CHANGING.

>> WELL, THE STATUTE MIGHT NOT
EITHER, BUT YOU'VE GOT TO LOOK
AT ALL OF IT AND TRY TO FIGURE
OUT --

>> IT IS CLEAR THAT THE
DETENTION OF JUVENILES IS
GOVERNED SPIRALLY BY STATUTE --
ENTIRELY BY STATUTE AND STRICT
COMPLIANCE IS REQUIRED.

SO REGARDLESS OF WHAT THE FORM
WANTS YOU TO DO, YOU HAVE TO
FOLLOW THE STATUTES.

THE STATUTES REQUIRE THAT ONE OF
THOSE ADMISSION CRITERIA BE MET
AND CALLS A-J IN 985255, SO IT
DOESN'T EXCLUDE F-K, IT SAYS
SA-J.

SO THE STATUTES TALK ABOUT THOSE
BEING TWO DIFFERENT THINGS.

THERE'S AN INITIAL THRESHOLD OF
MEETING THE CRITERIA, AND THEN
YOU GO TO THE POINTS.

THAT'S WHAT TKB SAYS, IT SAYS
IT'S A TWO-STEP PROCESS THAT,
FIRST OF ALL, YOU HAVE TO MEET
THE MISSION CRITERIA, AND IF YOU

DO, YOU PROCEED TO A TALLYING OF POINT TO DETERMINE WHETHER THE RISK ASSESSMENT SCORE IS THERE. SO WE HAVE CASE LAW AND STATUTES SAYING THAT THAT'S A TWO-STEP PROCESS.

>> SO YOU'RE SAYING THE FORM IS FINE FOR THE 4 HOURS, BUT -- 24 HOURS, BUT FOR THE LATER ASSESSMENT, THE FORM DOES NOT COMPORT WITH THE STATUTE?

>> YES, YOUR HONOR, I THINK THE JUDGE NEEDS TO GO FURTHER AND CONFORM WITH THE STATUTES AND THE CASE LAW AND TALLY THE POINTS.

SO IF THE DETENTION, THE JUVENILE PROBATION OFFICER DECIDES NOT TO DO THAT FOR 24 HOURS, THAT'S FINE, BUT THE COURT'S GOING TO NEED TO CONSIDER THAT AND HAVE THAT, OR THE STATE AND THE DEFENSE CAN AGREE TO IT, BUT THEY'RE GOING TO HAVE TO HAVE THAT TALLYING OF POINT IN ORDER TO CONTINUE DETENTION.

THEY'VE GOT TO --

>> AND WHERE DOES THAT CLEARLY SAY THAT IN THE STATUTE?

>> 985.245 --

>> 985 --

>> .245.

>> .245.

>> SECTION ONE.

>> OKAY.

>> IT DOESN'T SAY SCORE IN THAT PART, BUT IT SAYS THAT THE CRITERIA MUST BE MET.

IT SAYS ALL DETERMINATIONS AND COURT ORDERS REGARDING THE PLACEMENT OF A CHILD INTO DETENTION CARE SHALL COMPLY WITH ALL REQUIREMENTS AND CRITERIA PROVIDED IN THIS PART AND SHALL BE BASED ON A RISK ASSESSMENT OF THE CHILD UNLESS THE CHILD IS PLACED IN DETENTION CARE AS PROVIDED IN .552 WHICH IS JUST ONE OF THE --

>> THIS IS THE RISK ASSESSMENT.
THE FORM IS, IT SEEMS LIKE THAT
TAKES YOU, WHAT YOU JUST READ
TAKES YOU AROUND TO THE
DETENTION RISK ASSESSMENT.
AND THIS RISK ASSESSMENT
INSTRUMENT SAYS DON'T GO TO THE
POINTS, THAT YOU GET -- IT'S
EITHER GOING TO BE CONSEQUENCE
UNIT OR HOME DETENTION IF
THERE'S A VIOLATION OF
PROBATION.
ALLEGED.

>> AGAIN, I DON'T THINK IT
CLEARLY SAYS DON'T GO TO POINTS,
AND I DON'T THINK THERE'S
ANYTHING IN ANY OF THE STATUTES
THAT SAYS --

>> BUT IT SAYS RIGHT ON THE FORM
THERE ALSO IN ADDITION TO WHAT'S
ON THE PAGE THAT WE REFERRED TO
EARLIER, ON J HERE WHERE IT'S
GOT, DESCRIBES OR LISTS THE
VIOLATION OF PROBATION FOR
CONDITIONAL RELEASE, RIGHT BELOW
THAT IT'S GOT A BOX TO CHECK.
AND I UNDERSTAND THERE ARE
RESTRICTIONS, BUT IT SEEMS TO
CLEARLY CONTEMPLATE THAT IT'S
GOING TO BE -- IT MAY BE ONE OR
THE OTHER, DOESN'T IT?

>> RIGHT.

AGAIN, I THINK THAT'S FOR THE
FIRST 24 HOURS, AND I THINK
R.A.P. GOT IT RIGHT IN THE FIRST
DISTRICT WHEN THEY SAID THAT'S
THE MAXIMUM YOU CAN DO WHEN YOU
JUST HAVE A VIOLATION OF
PROBATION.

IF THERE ARE NO MORE QUESTIONS,
I'D CONCLUDE BY ASKING YOU ALL
TO APPROVE THE DECISION OF THE
FOURTH DISTRICT.

>> THANK YOU MORE YOUR ARGUMENT.
>> JUST BRIEFLY, YOUR HONOR, AND
THEREIN LIES THE PROBLEM WITH
WHY THE FOURTH DISTRICT GOT IT
WRONG.

THERE IS NOTHING IN THE STATUTES
WHATSOEVER ABOUT SCORES.

WHAT HAPPENS IS THE SCORES ARE A CREATION OF THE DEPARTMENT OF JUVENILE JUSTICE THROUGH SECTION 985.245 WHERE THEY WERE DELEGATED THE AUTHORITY TO DO IT.

IN FACT, THE CASES SHE CITED ARE ABSOLUTELY WRONG.

IF YOU LOOK AT THE PLAIN LANGUAGE OF THE FORM BE, IT'S NOT TRULY JUST A TWO-STEP PROCESS.

BECAUSE IF YOU GO TO THE FIRST STEP AND YOU FIND SOMEONE, LET'S SAY, OH, THEY ADMITTED DOMESTIC VIOLENCE, WAIT A SECOND, RISK ASSESSMENT FORM SAYS YOU DON'T EVEN GO TO THE POINTS.

SO HOW COULD IT BE A TWO-POINT PROCESS WHEN THE DOCUMENT ITSELF SAYS YOU DON'T GO TO THE SCORE WHEN YOU HAVE SOMEONE CHECKED OFF SOLELY WITH D?

SO THAT IS THE PROBLEM.

I THINK THAT THE DISTRICT COURT OF APPEAL RAN INTO, THEY EQUATED SCORE WITH A QUALIFYING RISK ASSESSMENT INSTRUMENT WHICH IS WHAT THE STATUTE SAYS WHICH IS WHAT THE SECOND DISTRICT RECOGNIZED, AND THE RISK ASSESSMENT INSTRUMENT, THERE IS NO DISCRETION.

I MEAN, THIS IS SOMETHING THAT'S CREATED AT INTAKE, BUT THE TRIAL COURT HAS TO CONSIDER THAT DOCUMENT.

AND IF WE WERE TO SAY, WHICH I BELIEVE THE LAW IS, YOU CAN CONTINUE THIS PERSON, CHECK OFF THE VIOLATION OF PROBATION, THERE IS STILL A PURPOSE FOR A DETENTION HEARING.

YOU COME TO THE DETENTION HEARING, THE JUDGE STILL HAS THE DISCRETION TO SAY NO.

YOU GET TO GO HOME.

IF THE JUDGE HEARS FROM MOM AND DAD AND SAYS, HEY, YOU KNOW, IT'S GOING TO BE BETTER, I DON'T

NEED AN ELECTRONIC MONITOR ON
YOU, THIS IS YOUR FIRST-TIME
OFFENSE AND MOM AND DAD ARE YOU
GOING THE TAKE CARE OF YOU AND
WHY INVOLVE THE STATE, I'M
COMFORTABLE WITH YOU.
AND THE FOURTH GOT THAT RIGHT.
THE TRIAL COURT DOES NOT HAVE TO
SENTENCE HOME DETENTION WITH
ELECTRONIC MONITORING.
AND I THANK YOU FOR YOUR TIME.
>> THANK YOU FOR YOUR ARGUMENTS.
COURT IS ADJOURNED.
>> ALL RISE.