

NOW WE'LL MOVE TO THE FOURTH
CASE ON TODAY'S DOCKET, WOODWARD
V. THE STATE OF FLORIDA.

WELCOME BACK.

>> GOOD TO SEE YOU AGAIN,
JUSTICE CANADY.

BENJAMIN EISENBERG ON BEHALF OF
THE PETITIONER, JENNIFER
WOODWARD.

WE'RE HERE TODAY BASED ON A
DIRECT CONFLICT OF CASES
REGARDING THE TRIAL COURT,
WHETHER THE TRIAL COURT MUST
INSURE TRANSCRIPTION OF DIRECT
CRIMINAL CONTEMPT PROCEEDINGS.
THERE ARE REALLY TWO INQUIRIES
IN THIS CASE.

THE FIRST IS WHETHER OR NOT THE
TRIAL COURT HAS THE DUTY TO
INSURE TRANSCRIPTION, AND THE
SECOND IS THE REMEDY--

>> COUNSEL, CAN I ASK YOU A
QUESTION?

I WANT TO FACTUALLY UNDERSTAND
THE RECORD.

>> SURE.

>> MY UNDERSTANDING IS MARCH 2ND
OF 2016, THERE WAS A HEARING
BEFORE THE TRIAL COURT JUDGE--

>> PROBATE PROCEEDING.

>> ADVERSARIAL PROBATE
PROCEEDING, RIGHT.

AND IN THAT CASE THE DEFENDANT
IN THIS CASE, MS. WOODWARD, WAS
ASKED TO LEAVE, AND SHE WAS
EXCUSED.

FOLLOWING THAT HEARING, THE
ATTORNEY FOR THE PROBATE MATTER,
I BELIEVE, FILED A PETITION
ASKING THE TRIAL COURT JUDGE TO
HOLD HER IN CONTEMPT FOR ALLEGED
MISREPRESENTATION THAT SHE MADE
AT THE MARCH 2ND HEARING.

>> YES, YOUR HONOR.

>> AND THEN THERE WAS A HEARING,
ANOTHER HEARING THAT TOOK PLACE
ON MARCH 17TH OF 2016 WHERE SHE
SHOWED UP, AND SHE WAS AT THAT
TIME REPRESENTED BY ANOTHER
LAWYER--

>> FOR A VERY BRIEF PERIOD.
>>-- FOR A VERY BRIEF TIME, AND THEN THERE WAS A CONFLICT OF INTEREST THAT OCCURRED, AND AS A RESULT OF THAT, HE WITHDREW FROM REPRESENTING HER, AND SHE WAS LEFT UNREPRESENTED DURING THIS MARCH 17TH HEARING.

>> YES, YOUR HONOR.

>> OKAY.

AND DURING THAT MARCH 17TH HEARING, THAT MS. WOODWARD TOLD THE JUDGE, IN FACT, SHE DID NOT SAY THOSE STATEMENTS--

>> YES.

>> AND THE JUDGE SAID YOU DID, IN FACT, SAY THOSE STATEMENTS, BUT THE TRANSCRIPT SHOWS, IN FACT, SHE DID NOT MAKE THOSE STATEMENTS BECAUSE SHE HAD BEEN ASKED TO LEAVE AT THE MARCH 2ND HEARING.

>> AND, YOUR HONOR, I'LL CLARIFY AT THE TIME OF THE MARCH 17TH HEARING, THERE HAD NOT BEEN AN ORDER TO SHOW CAUSE.

SO THE HEARING ON THAT WAS HELD LATER AND, UNFORTUNATELY, IT IS A THE ONE WE DON'T HAVE THE TRIPLET TOO.

>> RIGHT.

IS IN ORDER TO SHOW CAUSE ISSUES, CORRECT?

I GUESS THERE'S, LIKE, TWO DATES.

THERE'S AN INITIAL DATE--

>> IT'S RESET.

>>-- AND A DATE OF JUNE.

BUT DURING THE MARCH 17TH HEARING, THE TRIAL COURT JUDGE DIRECTS MS. WOODWARD AS SHE'S TRYING TO ANSWER, TO ANSWER THE QUESTION ALTHOUGH SHE'S TRYING TO ANSWER THE QUESTION.

MY QUESTION IS FOR JUNE 17TH, THIS IS THIS ORDER TO SHOW CAUSE.

AND THAT IS AN ORDER TO SHOW CAUSE IN AN INDIRECT CRIMINAL CONTEMPT HEARING--

>> YES, YOUR HONOR.
>> ON WHAT TRANSPIRED ON THE MARCH 2ND HEARING.
>> YES, YOUR HONOR.
>> THERE IS NO COUNSEL PRESENT.
>> THE PUBLIC DEFENDER DID NOT FILE A NOTICE OF APPEARANCE UNTIL 11 DAYS AFTER SHE WAS CONVICTED AND SENTENCED.
>> DID THE TRIAL COURT JUDGE ADVISE HER EVEN AT THE MARCH 17TH HEARING THAT SHE HAD THE ABILITY TO RETAIN COUNSEL OR THAT HE COULD ASSIGN COUNSEL TO HER?
>> SHE INDICATED AT THE HEARING THAT SHE WOULD LIKE THE OPPORTUNITY TO RETAIN COUNSEL, BUT HE NEVER-- THE TRIAL JUDGE NEVER MENTIONED THAT SHE'D BE ENTITLED TO COUNSEL. THAT'S BECAUSE AT THAT TIME SHE HAD NOT BEEN CHARGED WITH CONTEMPT.
WE DON'T KNOW WHAT HAPPENED AT THE JUNE 17TH HEARING BECAUSE THERE'S NO TRANSCRIPT. AND THAT IS A PROBLEM.
AND--
>> BUT AT THE MARCH 17TH HEARING, THIS IS MY CONCERN. AT THE MARCH 17TH-- NOT THE MARCH 17TH HEARING, BUT THE JUNE 17TH HEARING, THAT IS-- IT WAS NOTICED AS INDIRECT CRIMINAL CONTEMPT HEARING AT THAT MOMENT IN TIME.
>> IT DID-- I DON'T BELIEVE THE SHOW CAUSE ORDER SPECIFICALLY SAID INDIRECT CRIMINAL CONTEMPT. HOWEVER, IT SAID IN ORDER TO SHOW CAUSE WHY YOU SHOULD NOT BE HELD IN CONTEMPT--
>> BUT IT WAS SOLELY FOR PURPOSES OF WHAT TRANSPIRED AT THE MARCH 2ND HEARING.
>> YES.
AND, YOUR HONOR, IN THIS APPEAL TO THE FOURTH DISTRICT COURT OF APPEAL, THAT FINDING WAS

CHALLENGED AND REVERSED.

>> BUT SHOULD THERE NOT HAVE BEEN SINCE AT THE JUNE 17TH HEARING BECAUSE IT WAS PREMISED ON INDIRECT CRIMINAL CONTEMPT, SHOULD THERE NOT HAVE BEEN AT THAT MOMENT IN TIME A TRANSCRIPTION OR RECORDING OF THE PROCEEDING?

>> THERE ABSOLUTELY SHOULD HAVE BEEN.

AND THAT BELIES THE PROBLEM OF WHY WE NEED TO HAVE TRANSCRIPTS IN DIRECT CRIMINAL CONTEMPT PROCEEDINGS.

THE TRIAL JUDGE IN THIS CASE COMMITTED MULTIPLE ERRORS AS IT RELATES TO THE INDIRECT CRIMINAL CONTEMPT PROCEEDINGS.

AND JUSTICE LAGOA JUST POINTED OUT SEVERAL OF THEM.

WHETHER OR NOT THE DUE PROCESS LIMIT-- I KNOW THAT THIS COURT HAS RECOGNIZED AND SEVERAL DISTRICT COURTS OF APPEAL HAVE RECOGNIZED THERE ARE LIMITATIONS ON DUE PROCESS FOR DIRECT CRIMINAL CONTEMPT.

HOWEVER, INDIRECT CRIMINAL CONTEMPT DEFENDANTS ARE ENTITLED TO THE FULL PANOPLY OF--

>> JUDGE GROSS WROTE THE OPINION FOR THE FOURTH DCA, AND HE DISTINGUISHED IN THAT OPINION THE DIFFERENCE BETWEEN DIRECT AND INDIRECT CRIMINAL CONTEMPT. HE NOTED THIS, THE NEED TO QUICKLY REASSERT ORDER IN THE COURTROOM JUSTIFIES IMMEDIATE ACTION.

INSTEAD OF A DELAY TO INSURE THE EXISTENCE OF A RECORD OF THE PROCEEDING.

SO THE ISSUE THAT I HAVE WITH WHAT YOU'RE SAYING IS THAT WHEN WE'RE DEALING WITH DIRECT CRIMINAL CONTEMPT, THAT IS SOMETHING THE JUDGE ACTUALLY SAW, HEARD OR BOTH.

HAPPENED IN THE PRESENCE OF THE

COURT.

IF THERE WAS NO COURT REPORTER PRESENT-- FOR EXAMPLE, LET'S SAY THIS WAS AN EVICTION HEARING IN PALM BEACH COUNTY, AND THE DEFENDANT, WHOEVER IT WAS, ACTED UP AND WAS HELD IN CONTEMPT.

I MEAN, TYPICALLY IN EVICTION PROCEEDINGS THERE'S NO RECORD. IN PALM BEACH COUNTY THERE MAY BE BECAUSE IT'S RECORDINGS. BY THE TIME YOU GET A COURT REPORTER AND BRING HER IN, THE INCIDENT HAS HAPPENED.

HOW CAN THAT OCCUR?

>> WELL, THAT IS-- THERE'S A DIFFERENCE BETWEEN THE RECITAL OF FACTS AND THE ACTUAL PROCEEDINGS OF DUE PROCESS--

>> YOU SAYING THIS RECITAL OF FACTS BY THE JUDGE IS NOT SUFFICIENT?

>> IT ISN'T SUFFICIENT TO LAY A RECORD AS TO WHETHER OR NOT HE COMPLIED WITH THE DUE PROCESS REQUIREMENTS OF 3.830 BECAUSE WE HAVE NO IDEA OTHER THAN THE RECITAL OF FACTS OF WHAT HE SAID OCCURRED.

>> DO WE HAVE ANY EVIDENCE THAT HE ALLOWED THE EVIDENCE, OR TO PRESENT EVIDENCE OF EXCUSING OR MITIGATING CIRCUMSTANCES IN THAT RECORDER?

>> NO, YOUR HONOR, AND THAT'S THE PROBLEM.

THERE'S NO EVIDENCE ON THE RECORDER THAT HE COMPLIED WITH THE--

>> ALSO, I MEAN, WHEN I READ THE ORDER, I MEAN, IT'S UNCLEAR TO ME, FRANKLY, THAT IT EVEN HAPPENED.

>> IT MAY NOT HAVE.

>> SINCE THERE WAS THAT MARCH-- MY CONCERN IS THE FOLLOWING, AND I'M ADDRESSING THIS TO THE STATE AS WELL.

MY CONCERN IS THAT ON MARCH 17TH THERE IS A HEARING WHERE THE

TRIAL COURT JUDGE REPEATEDLY
TOLD MS. WOODWARD TO ANSWER THE
QUESTION.

THERE IS NO TRANSCRIPT OF JUNE
17TH, AND I UNDERSTAND THAT, BUT
THERE SHOULD HAVE BEEN BECAUSE
IT WAS SUPPOSED TO BE AN
INDIRECT--

>> YES, YOUR HONOR.

>> BUT HERE WE ARE, AND
SOMETHING ALLEGEDLY HAPPENED.
BUT I DON'T EVEN KNOW THAT IT
HAPPENED ON JUNE 17TH BECAUSE
THE ORDER THAT IS ENTERED IN THE
RECORD DOESN'T EVEN TELL ME THAT
HEARING OCCURRED ON THIS DAY.

>> THAT'S THE PROBLEM.

>> AND THAT THIS IS WHAT
HAPPENED ON THIS DAY.

FOR ALL I KNOW, THAT'S WHAT
HAPPENED ON MARCH 17TH.

>> YOUR HONOR, EXACTLY.
AND MULTIPLE ERRORS OCCURRED AS
THE DIRECT CRIMINAL INTENT--

>> SO, OKAY.

IF THE ORDER HAD-- I THINK THIS
IS IN RESPONSE TO YOUR ANSWER TO
JUSTICE LABARGA'S QUESTION.

IF I ASKED WHY SHOULD I NOT HOLD
YOU IN CONTEMPT, CAN YOU GIVE ME
MITIGATION AND THEN SENTENCE.

IN OTHER WORDS, LAID OUT EVERY
SINGLE THING THAT HAPPENED IN
THERE, WOULD WE HAVE A PROBLEM
OR NOT HAVE A PROBLEM?

>> I BELIEVE WE STILL HAVE A
PROBLEM.

>> WHY'S THAT?

I THINK THE ANSWER TO JUSTICE
LABARGA'S QUESTION WASN'T QUITE
RIGHT YOU'RE GOING EVEN FURTHER
THAN THAT.

>> I WANT TO ANSWER HIS QUESTION
AND THEN I'LL TRANSITION TO
YOURS.

JUSTICE LABARGA'S QUESTION, AS
YOU MENTIONED, EVERYTHING'S
RECORDED AUDIO.

ALL HE WOULD HAVE TO DO IS TELL
THE CLERK TO TURN ON THE--

>> BUT THAT'S NOT TRUE
EVERYWHERE ELSE.

>> HOWEVER, THERE ARE
ALTERNATIVES.

EVERY CRIMINAL, EVERY COUNTY
OBVIOUSLY HAS A CRIMINAL COURT.
THEY COULD HOLD--

>> I KNOW, SO THIS IS WHERE I
NEED TO STOP YOU, BECAUSE-- AND
I'LL JUST SPEAK FOR MIAMI-DADE
COUNTY, WHERE I'M FROM.

THE CRIMINAL COURTHOUSE IS IN A
SEPARATE BUILDING IN SOME CASES
FROM COUNTY COURTS 20-30 MILES
FROM WHERE THIS HAPPENED.

IN THE COUNTY COURTHOUSES, THERE
ISN'T A RECORDING DEVICE UNLESS
THERE'S A COURT REPORTER THAT'S
THERE IN THE BUILDING THERE,
THERE ISN'T ONE AVAILABLE NEXT
DOOR OR JUST I CAN PULL ONE IN
AS YOUR BRIEF SEEMS TO INDICATE.
THIS CREATES PRACTICAL PROBLEMS,
AND THAT'S IN MIAMI-DADE.

I CAN ONLY IMAGINE IN SOME MORE
RURAL COUNTIES WHERE, EVEN
THOUGH THERE IS A CRIMINAL
COURTHOUSE THERE, COURT
REPORTERS ARE NOT NECESSARILY
AVAILABLE.

>> I'D SAY THAT'S CONSIDERATION
THE TRIAL JUDGE HAS TO MAKE
BEFORE HE OR SHE INSTITUTES
CRIMINAL PROCEEDINGS.

>> ISN'T THAT DIRECTLY CONTRARY
TO WHAT JUSTICE LABARGA READ,
WHICH IS TO REMEDY A SITUATION
IMMEDIATELY ON THE SPOT BASED ON
PERSONAL OBSERVATION OF THE
TRIAL COURT JUDGE?

>> AND THAT CAN BE DONE BY
REMOVING THE--

>> SO YOU PREFER TO HAVE SOMEONE
IN JAIL INSTEAD, TO HOLD THEM IN
JAIL WHILE A COURT REPORTER
COMES RATHER THAN JUST, RATHER
THAN JUST DO THE PROCEEDINGS,
HAVE THE HEARING RIGHT THERE AND
THEN GIVE A SENTENCE WHICH MIGHT
NOT INCLUDE JAIL?

>> I WOULDN'T NECESSARILY PREFER IT BE JAIL, YOU COULD BE GIVEN A NOTICE TO RETURN.

HOWEVER, I WOULD NOTE THAT I PREFER THE DEFENDANT HAVE A TRANSCRIPT RATHER THAN HAVING NO TRANSCRIPT AT ALL.

AND BACK TO YOUR QUESTION WHETHER OR NOT THE JUDGE HAD GOWN THROUGH THE PROCEDURAL HISTORY ON THE RECORD, THAT WOULD BE SUFFICIENT.

BOTH THE UNITED STATES SUPREME COURT AND THIS COURT HAVE REPEATEDLY SAID IS IT A CRIME AND UNIQUELY-- ON THE PROCEDURAL HISTORY, PLANK WAS ASKED THE ISSUE OF WHETHER OR NOT A DEFENDANT--

[INAUDIBLE]

IS ENTITLED TO COUNSEL WAS NOT A MAJORITY OPINION.

IT WAS ACTUALLY 3-3, AND CHIEF JUSTICE CANADY CONCURRED IN RESULT ONLY.

BUT THIS COURT DISCUSSED BLOOM. IT WAS THE UNITED STATES SUPREME COURT.

THEY GO THROUGH THE HISTORY DATING BACK TO THE JUDICIARY ACT OF 1789 ABOUT HOW ABUSES DID HAPPEN, AND THAT'S WHY THERE WAS A CURTAILMENT ON THE CONTEMPT POWERS.

SO HERE WE HAVE A SITUATION, YOU HAVE A TYPE OF PROCEEDING THAT IS UNIQUELY LIABLE FOR ABUSE. WE'RE LETTING THE TRIAL JUDGE NOT ONLY PROSECUTE SOMEONE SEVERELY WITHOUT THE ASSISTANCE OF COUNSEL, BUT THEN THE TRIAL COURT GETS TO MAKE THE RECORD. IF YOU LOOK, THAT IS A PROBLEM BECAUSE THE TRIAL JUDGE IS SITTING THERE NOT ONLY AS THE JUDGE IN A CASE AS THEY USUALLY WOULD, BUT ALSO THE PROSECUTOR, AND WE HAVE SITUATIONS LIKE THE PRESENT WHERE, AS JUSTICE LAGOA POINTED OUT, IF YOU LOOK AT JUST

THE-- WE HAVE MULTIPLIERS.
ULTIMATELY, I'M NOT HERE
CHALLENGING THE INDIRECT
CRIMINAL CONTEMPT BECAUSE THE
MARCH 2ND HEARING DOESN'T SHOW
THE CONTEMPT WAS ACTS THAT WERE
SET FORTH.

IF YOU DON'T HAVE A TRANSCRIPT,
YOU DON'T KNOW THAT--

>> I WAS GOING TO SUGGEST
PERHAPS A COMPROMISE.

I WAS GOING TO SUGGEST PERHAPS
THE ORDER HERE, WHEN A JUDGE IS
CONTEMPLATING HOLDING SOMEBODY
IN DIRECT CRIMINAL CONTEMPT IN
OPEN COURT, JUDGE IS REQUIRED TO
TELL THE PERSON I'M CONSIDERING
HOLDING YOU IN CONTEMPT.

I AM NOW GIVING YOU AN
OPPORTUNITY TO PRESENT ANY
MITIGATION YOU MAY HAVE BEFORE I
MAKE A DECISION.

SOMETHING LIKE THAT, THE JUDGE
IS SUPPOSED TO SAY.

ONCE THE DECISION IS MADE TO
HOLD SOMEBODY IN CONTEMPT, THE
JUDGE IS REQUIRE TO DO A
JUDGMENT, AN ORDER.

I WOULD THINK PERHAPS IF YOU'RE
GOING TO HOLD SOMEBODY IN
CONTEMPT AND YOU THROW THEM IN
JAIL FOR 15 DAYS, I WOULD
PROBABLY GO TO MY LAPTOP.

BUT NEVERTHELESS, HOW ABOUT IF
THE ORDER ACTUALLY SAYS IN
MITIGATION, THE DEFENDANT
PRESENTED THE FOLLOWING: A, B,
C, D.

AND AFTER DUE CONSIDERATION DUE
TO THOSE MITIGATION FACTORS, I
FIND THAT THEY DO NOT OUTWEIGH
THE BEHAVIOR PRESENTED IN COURT
AND, THEREFORE, HOLDING HER IN
CONTEMPT OR HIM IN CONTEMPT.

I GUESS YOU WOULD NOT LIKE THAT
BECAUSE YOU SAID THAT--

[LAUGHTER]

BECAUSE THE JUDGE IS NECESSARILY
INVOLVED IN THE PROSECUTION AND
THE SENTENCING.

>> AND THAT'S GOING TO BE MY
BASIC RESPONSE TO THAT.
IN THE DECISION OF OLIVER, THE
UNITED STATES SUPREME COURT SAID
THAT CONTEMPT IS NOT TO BE
CONSIDERED AS AN UNLIMITED
ABANDONMENT TO THE BASIC DUE
PROCESS PROCEDURAL SAFEGUARDS.
AND THE UNITED STATES SUPREME
COURT HAS SAID FOR DECADES THAT
DEFENDANTS, CRIMINAL DEFENDANTS
ARE ENTITLED TO A RECORD
SUFFICIENT FOR APPELLATE REVIEW
WHETHER THEY'RE INDIGENT OR NOT,
AND--

>> THERE'S A PREJUDICE COMPONENT
TO THAT, ISN'T THERE?

>> THERE IS A PREJUDICE
COMPONENT.

>> SO HAVE YOU ALLEGED ANY
PREJUDICE?

>> YOU HAVE A PERSON WHO WAS PRO
SE, WHO WAS BEING-- WE HAVE NO
DECISION--

>> SO THE ANSWER IS NO.

>> THE ANSWER IS, NO.

>> YOU CAN'T ASK YOUR CLIENT
WERE YOU ASKED MITIGATION?

>> I HAVE ASKED MY CLIENT, BUT
SHE CAN'T RELAY THAT IN A
PARTICULAR WAY.

COURTS HAVE HELD THAT EPITOMIZES
DUE PROCESS.

SO THERE HAS TO BE SCRUPULOUS
COMPLIANCE.

AND THIS ISN'T A SITUATION--

>> SO WHAT'S YOUR ANSWER TO THE
STATE'S POINT THOUGH ABOUT YOUR
ABILITY UNDER THE APPELLATE
RULES TO INCLUDE SOMETHING IN
THE RECORD THAT'S EVEN, IF
NECESSARY IN THE ABSENCE OF A
TRANSCRIPT, SOMETHING AS SIMPLE
AS THE PARTY'S RECOLLECTION?
IT SEEMS LIKE UNLESS WE'RE GOING
TO HAVE EVERYTHING TRANSCRIBED,
WE'RE NOT-- THE THING THAT'S
THE ACTUAL CAUSE FOR THE
CONTEMPT WOULD HAPPEN
UNTRANSCRIBED.

AND SO THE ONLY THING THAT YOU
COULD REALLY GET IF YOU WERE
GOING TO HAVE A TRANSCRIPT ONCE
THE JUDGE THINKS THAT THERE'S AN
ISSUE IS SOMETHING THAT WOULD
SHOW COMPLIANCE WITH 3.830.
SO IT SEEMS LIKE THIS RECORD
COULD HAVE EASILY INCLUDING
SOMETHING FROM YOUR CLIENT
SAYING TO THE BEST OF MY
RECOLLECTION, I WASN'T GIVEN THE
OPPORTUNITY TO DO MITIGATION, X,
Y, AND Z, AND WE WOULD HAVE
SOMETHING TO REVIEW ON APPEAL.

>> THE PROBLEM IS, YOUR HONOR,
THE BURDEN OF WRITING A RECORD
IN THESE TYPES OF CASES HAS TO
REST WITH THE TRIAL COURT
BECAUSE THE TRIAL COURT WHICH
SEEKS TO--

[INAUDIBLE]

THE PROBLEM--

>> I UNDERSTAND, BUT MAYBE AS
TO-- I'M NOT SAYING, OBVIOUSLY,
IF YOUR CLIENT WANTED TO SAY
SOMETHING ABOUT THE UNDERLYING
CONDUCT, THAT'S ONE THING.
BUT CERTAINLY, IT'S NOT ASKING
TOO MUCH FOR THERE AT LEAST TO
BE A RECORD SAYING THAT I WAS
DEPRIVED OF EVEN THE OPPORTUNITY
TO DO X, Y AND Z, RIGHT?

>> THE PROBLEM IS CONTEMPT CAN
COME OUT OF ANY TYPE OF
PROCEEDING.

A PERSONAL MAY NOT BE ENTITLED
TO COUNSEL, MAY NOT HAVE
COUNSEL, AND THEY'RE GOING TO BE
THROWN IN JAIL FOR, IN THIS
CASE, 15 DAYS, WE HAVE NO IDEA
BECAUSE THERE'S NO VETTING
WHETHER THIS PERSON WOULD BE
CAPABLE OF DEFENDING THEMSELVES,
AND THEY'RE SUPPOSED TO KNOW
PINPOINT ACCURACY ABOUT THE
RECORD--

>> DOESN'T THERE HAVE TO BE AT
LEAST AN ATTEMPT TO RECONSTRUCT?
DIDN'T WE SAY IT COULD NOT BE
RECONSTRUCTED WHICH IS WHY WE

REVERSED?

>> BUT THE PROBLEM IN THIS--

>> AM I RIGHT?

>> THAT IS WHAT CASE LAW STATES
IN A TYPICAL CRIMINAL
PROCEEDING, BUT THIS IS NOT A
TYPICAL PROCEEDING, AND, YOU
KNOW, FOR EXAMPLE--

>> THE PROBLEM IS YOU SEEM TO
WANT TO HAVE IT BOTH WAYS, TREAT
IT THE SAME AS A REGULAR
CRIMINAL PROCEEDING AND YET YOU
DON'T.

>> I WANT TO SAY THE DEFENDANT
STILL HAS DUE PROCESS RIGHTS,
BUT I ALSO SAY IT'S A DIFFERENT
PROCEEDING BECAUSE THE JUDGE IS
A PROSECUTOR--

>> WELL, LET ME ASK YOU THIS.
AT SOME POINT THE COUNSEL WAS
APPOINTED, SO COULDN'T YOU ASK
TO RELINQUISH TO RECONSTRUCT THE
RECORD?

>> BUT THE COUNSEL WAS APPOINTED
AFTER SHE'D ALREADY BEEN
CONVICTED AND SENTENCED.

>> ARE YOU ENTITLED TO RECREATE
THE RECORD WITHOUT PERMISSION
FROM THE APPELLATE COURT?

>> WELL, APPARENTLY ACCORDING TO
THE FOURTH DISTRICT COURT OF
APPEALS' RECENT DECISION IN
TERRY, YOU CAN RECONSTRUCT THE
RECORD.

HOWEVER, THE PROBLEM IS
STIPULATION OF THE PARTIES DON'T
REQUIRE IN A DIRECT CRIMINAL
CONTEMPT PROCEEDING BECAUSE
STIPULATION OF THE PARTIES
REQUIRES STIPULATION OF THE
PARTIES.

WHEN YOU HAVE A DIRECT CRIMINAL
CONTEMPT PROCEEDING, THERE IS NO
OTHER PARTY OTHER THAN THE
DEFENDANT AND THE YOUNG.
SAME THING APPLIES WITH
RECONSTRUCTION.

THE TRIAL JUDGE, HOWEVER, IS THE
PROSECUTOR.

FIRST OF ALL, YOU CAN'T SERVE

YOUR FACTS ON A DIFFERENT PARTY
BECAUSE THERE IS NO OTHER PARTY.
AND THEN YOU HAVE THE JUDGE WHO
WAS THE ONE THAT DECIDED TO
INSTITUTE THE CHARGES IS THE ONE
WHO GETS TO SETTLE AND APPROVE.
THE EASIER THING TO DO IS JUST
DO IT AT THE GET GO.

AND I DO WANT TO POINT OUT JUST
FROM A PRACTICAL STANDPOINT I'M
NOT ASKING THIS COURT TO REVERSE
THE TWO WEEK TRIAL OR MONTH
TRIAL.

PROCEEDINGS IN THE DIRECT
CRIMINAL CONTEMPT ARE RELATIVELY
SHORT.

I'M JUST ASKING GO BACK SO THE
TRIAL COURT CAN DO IT RIGHT SO
WE CAN SEE ON THE RECORD OR THAT
DUE PROCESS WAS FOLLOWED.

RULE 3.830 IS VERY SPECIFIC.
IT EMBODIES WHAT DUE PROCESS IS
IN A DIRECT CRIMINAL CONTEMPT
PROCEEDING, AND ANY ERROR IN
THERE IS FUNDAMENTAL OR ERROR.

AND THE PROBLEM IS YOU'RE
DEPRIVING A PERSON OF COUNSEL TO
BE ABLE TO MAKE A REVIEW, AND IT
GIVES SOMEONE DUE PROCESS.

I SEE I'M IN MY REBUTTAL TIME,
SO I'LL RESERVE THE REMAINDER OF
MY TIME FOR REBUTTAL.

>> THANK YOU.

>> GOOD MORNING.

MY NAME IS HEIDI BETTENDORF, AND
I'M APPEARING ON BEHALF OF THE
STATE OF FLORIDA.

>> COUNSEL, LET ME ASK YOU A
QUESTION REGARDING THE JUNE
HEARING.

IT WAS SCHEDULED AS AN INDIRECT
CRIMINAL CONTEMPT PROCEEDING,
CORRECT?

>> IT APPEARS THAT'S CORRECT,
YES.

>> SO PURSUANT TO RULE 3.840,
THERE ARE CERTAIN REQUIREMENTS
THAT HAVE TO BE FOLLOWED,
CORRECT?

>> THAT'S CORRECT.

>> SO HOW CAN THIS APPELLATE COURT OR THE APPELLATE COURT BELOW, HOW CAN WE INSURE THAT THE TRIAL COURT COMPLIED WITH THE REQUIREMENTS OF THAT RULE IF THERE'S NO TRANSCRIPT HERE?

>> WE'RE HERE ON A DIRECT CRIMINAL CONTEMPT--

>> RIGHT.

BUT THE HEARING, THE HEARING FOR THAT DATE WAS NOTICED AS AN INDIRECT CRIMINAL CONTEMPT PROCEEDING, CORRECT?

>> YES, THAT'S CORRECT.

>> AND THERE IS NO TRANSCRIPT OF THAT PROCEEDING.

>> THAT'S ALSO CORRECT.

>> ALL RIGHT.

AND IS THAT NOT ONE OF THE REQUIREMENTS THAT YOU'RE SUPPOSED TO HAVE FOR THAT KIND OF PROCEEDING?

>> THAT'S ALSO CORRECT.

PROCEEDING UNDER 3.840.

>> RIGHT.

WELL, THAT'S WHAT THE HEARING WAS NOTICED AS, CORRECT?

>> THAT'S WHAT THE HEARING WAS NOTICED AS.

>> IT WAS A 30-MINUTE HEARING.

>> YES.

>> SO UNDER 3.830, THAT'S ALSO SOMETHING THAT NEEDS TO BE SCRUPULOUSLY FOLLOWED, CORRECT?

>> THAT'S ALSO CORRECT.

>> HOW CAN THIS COURT INSURE THAT A DEFENDANT, THAT THE REQUIREMENTS THE PROCEDURAL REQUIREMENTS OF THAT RULE ARE MET, AND HOW CAN WE INSURE THAT A DEFENDANT IS GIVEN AN OPPORTUNITY TO PRESENT EVIDENCE OF MITIGATING OR EXCUSING CIRCUMSTANCES WITHOUT ANY KIND OF REVIEW, APPELLATE REVIEW IN TERMS OF EITHER A RECORDING OR A TRANSCRIPT?

>> WELL, THE TRIAL HAS ALWAYS BEEN THAT-- THE RULE HAS ALWAYS BEEN THAT UNDER APPELLATE RULE

9.200B4 THAT THE PARTIES CAN RECONSTRUCT THE RECORD WITH, WHEN THERE HAS BEEN AN ABSENCE OF A TRANSCRIPT.

IF YOU WERE TO STATE AND FOLLOW THE RULE THAT THAT BECAUSE THIS IS A CRIMINAL PROCEEDING, THEN IT ALWAYS MUST BE REVERSED FOR LACK OF A TRANSCRIPT, THAT WILL HAVE WIDESPREAD EFFECT ON ALL CRIMINAL--

>> WELL, WHY SHOULD IT NOT?

I MEAN, IF YOU'RE THROWING SOMEONE IN JAIL AND YOU'RE INCARCERATING THEM, WHY SHOULD THERE NOT BE A MOMENT WHERE WE STOP AND-- UNDER THE RULES RIGHT NOW, 3.720, A SENTENCING COURT, AND IN THIS CASE IT WOULD BE A SENTENCING COURT BECAUSE SENTENCE SHALL BE PRONOUNCED IN OPEN COURT, CORRECT?

>> YES.

>> SHALL INSURE THE RECORD OF THE ENTIRE SENTENCING PROCEEDING IS MADE AND PRESERVED IN SUCH A MANNER.

THAT DID NOT OCCUR HERE, CORRECT?

>> THAT'S ALSO CORRECT.

BUT, YOUR HONOR, THIS COURT'S RECENT OPINION IN PLANK STATED THAT THE MORE SPECIFIC RULE CONTROLS OVER THE MORE GENERAL RULE.

AND BECAUSE 3.830 SPECIFICALLY DEALS WITH SUMMARY CRIMINAL CONTEMPT, THE STATE WOULD ARGUE THAT 3.380 TAKES PRECEDENCE OVER THE TRANSCRIPT.

>> WELL, HERE IT JUST SAYS SENTENCE SHALL BE PRONOUNCED IN OPEN COURT.

HOW DOES THAT CONVICT WITH IT HAS TO BE MADE IN SUCH A MANNER THAT IT CAN BE TRANSCRIBED AS NEEDED?

>> BECAUSE 3.830 DOES NOT NECESSARILY REQUIRE THAT THERE BE A TRANSCRIPT.

IT'S A SUMMARY PROCEEDING--

>> I UNDERSTAND THAT.

BUT THE PROBLEM THAT I HAVE HERE IS THAT THAT HEARING, ASSUMING IT TOOK PLACE, THAT HEARING WAS AN INDIRECT CRIMINAL PROCEEDING HEARING, CORRECT?

IT WAS UNDER 3.840, NOT 3.830.

>> WELL, WE CAN ASSUME THAT, BUT I DON'T KNOW THAT'S NECESSARILY CORRECT, BECAUSE WE DON'T HAVE A TRANSCRIPT OF THAT HEARING.

>> WELL, YOU HAVE A, YOU HAVE A NOTICE OF HEARING, AN ORDER TO SHOW CAUSE, CORRECT, FOR THAT DATE.

>> YES.

>> AND THE ORDER TO SHOW CAUSE WAS UNDER 3.840, NOT 3.830.

>> BUT AN ORDER TO SHOW CAUSE NOT REQUIRED UNDER--

>> I UNDERSTAND THAT, COUNSEL. BUT THE POINT IN THIS CASE, IT'S EITHER A YES OR A NO.

THE ORDER TO SHOW CAUSE THAT WENT OUT WAS SOLELY FOR THE ALLEGED MISREPRESENTATIONS THAT WERE MADE AT A MARCH 2ND HEARING.

>> YES, THAT IS CORRECT.

>> AND THAT WAS SUPPOSED TO BE AN INDIRECT CRIMINAL PROCEEDING.

>> YES.

THAT IS WHAT THE NOTICE STATES.

>> OKAY.

AND THERE IS NO RECORDING OF WHAT HAPPENED DURING THAT TRANSCRIPT.

>> THAT IS ALSO CORRECT.

>> EVEN THOUGH THERE SHOULD HAVE BEEN BECAUSE IT WAS NOTICED AS A 3.840.

>> THAT'S ALSO CORRECT.

>> OKAY.

SO BUT IN THE MIDDLE OF THAT 3.840 HEARING-- ASSUMING IT HAPPENED, BECAUSE I DON'T KNOW. BECAUSE, FRANKLY, CAN YOU TELL ME WHEN YOU LOOK AT THIS ORDER THAT IT SAYS THAT THIS HAPPENED

ON THAT DATE?

>> NO.

BUT I CAN TELL LOOKING AT THAT ORDER THAT THE BEHAVIOR HAPPENED ON MARCH 2ND AND MARCH 17TH BASED ON THE TRANSCRIPTS OF THOSE HEARINGS THAT WE HAVE.

>> ARE YOU ALLEGING THAT BEHAVIOR HAPPENED ON MARCH 2ND WHEN YOU CAN READ THE TRANSCRIPT AND IT SHOWS IT DID NOT OCCUR?

>> I AM ARGUING THAT THE BEHAVIOR THAT CONSTITUTES THE DIRECT CRIMINAL CONTEMPT HAPPENED AT BOTH THE MARCH 2ND AND MARCH 17TH HEARINGS.

THE FOURTH DCA FOUND THAT THE BEHAVIOR THAT COMPRISES THE INDIRECT CRIMINAL CONTEMPT DID NOT HAPPEN AT THOSE HEARINGS.

>> AND WHAT WAS THE DIRECT BEHAVIOR THAT OCCURRED? WHERE DO YOU SAY THAT HAPPENED? ARE YOU SAYING IT HAPPENED AT MARCH 17TH?

>> NO.

I'M SAYING ON MARCH 2ND PETITIONER MADE OUTBURSTS AND CONTINUED TO MAKE OUTBURSTS AFTER BEING WARNED AND ALSO HECKLED ONE OF THE ATTORNEYS. IT'S CLEARLY SHOWN BY THE TRANSCRIPT.

>> IF THAT WAS GOING TO BE HANDLED AS DIRECT CRIMINAL CONTEMPT, IT WOULD HAVE HAD TO HAVE BEEN DONE ON MARCH 2ND.

>> SHE WAS REMOVED FROM THE COURTROOM ON MARCH 2ND.

>> BUT UNDER OUR RULES, YOU HAVE TWO OPTIONS.

ONE, YOU DEAL WITH IT IMMEDIATELY AS DIRECT, OR YOU NOTICE IT AND HANDLE IT AS INDIRECT.

YOU CAN'T, YOU CAN'T SET OFF AND DECIDE TO DEAL WITH SOMETHING WEEKS LATER AS DIRECT CRIMINAL CONTEMPT.

YOU HAVE TO DEAL WITH THAT

IMMEDIATELY, CORRECT?

OR AM I WRONG ABOUT THAT?

>> WELL, YOUR HONOR, THAT'S A GRAY AREA.

WE HAVE TWO RULE, 3.830, THAT DEALS WITH DIRECT AND CONTEMPLATES A SUMMARY PROCEDURE, AND IT DOESN'T STATE HOW LONG THERE MUST BE A BREAK BETWEEN THE BEHAVIOR AND THE ENTRY OF THE SENTENCING ORDER. AND THEN WE HAVE--

>> I'VE ALWAYS UNDERSTOOD IT TO MEAN IMMEDIATELY.

>> RIGHT.

>> THIS IS MY CONCERN, COUNSEL. MY CONCERN IS, IS THAT WHEN I LOOK AT THIS ORDER, OKAY, WHAT IS ALLEGED TO BE DIRECT CONTEMPT IS HER NOT ANSWERING QUESTIONS. THERE IS A HEARING ON MARCH 17TH WHERE THE TRIAL JUDGE SAYS THAT SHE'S NOT ANSWERING QUESTIONS. THAT'S MARCH 17TH.

THAT CANNOT BE DIRECT CRIMINAL CONTEMPT.

AND THIS ORDER DOES NOT TELL ME WHEN THIS DIRECT CRIMINAL CONTEMPT OCCURRED.

AND IN ORDER FOR IT TO BE DIRECT CRIMINAL CONTEMPT, IT HAS TO HAVE HAPPENED ON JUNE 17TH.

>> YOUR HONOR, I UNDERSTAND YOUR CONCERN THERE IS EVIDENCE IN THIS RECORD THAT BEHAVIOR WAS ENGAGED IN ON MARCH 2ND AND THAT THE ORDER WAS WITH NOT ENTERED UNTIL THREE MONTHS LATER.

>> OKAY.

[LAUGHTER]

>> I CONCEDE THAT TO YOU.

>> SO THAT'S THE STATE-- I JUST WANT TO BE CLEAR, THAT'S THE STATE'S POSITION, THAT THE BEHAVIOR WE'RE TALKING ABOUT HERE OCCURRED IN THE MARCH HEARINGS, ONE OR THE OTHER, NOT IN JUNE.

>> YES.

THAT'S THE STATE'S CONTENTION.

[INAUDIBLE CONVERSATIONS]

>> I THINK YOU MADE IT AN EASIER CASE.

>> FOR MYSELF OR MY OPPONENT?

>> THAT'S YET TO BE SEEN.

[LAUGHTER]

>> HASN'T THIS WHOLE THING BEEN LITIGATED AS IF THE DIRECT CONTEMPT AROSE OUT OF SOMETHING THAT HAPPENED IN JUNE?

WE'VE BEEN TALKING ABOUT THERE NOT BEING TRANSCRIPTED WHEN THERE ARE TRANSCRIPTS FOR THE MARCH STUFF.

>> WELL, MY CLIENT HAS NEVER ARGUED THAT HER BEHAVIOR DID NOT CONSTITUTE THE BEHAVIOR. SO AS FAR AS YOUR POINT, JUSTICE LAGOA, ABOUT WHETHER THE BEHAVIOR OUTLINED IN THE JUDGE'S ORDER CONSTITUTES DIRECT CRIMINAL CONTEMPT, THAT'S BEEN WAIVED BY MY--

>> I DON'T MAKE POINTS.

I'M JUST ASKING QUESTIONS BECAUSE I AM CONCERNED THAT, FRANKLY, A TRIAL COURT JUDGE AND AN ATTORNEY WHO WAS SUPPOSED TO BE AN OFFICER OF THE COURT FILED A PETITION AND AN ORDER TO SHOW CAUSE ON SOMEONE WHEN THEY HAD A HEARING TRANSCRIPT THAT SHOWED THAT, IN FACT, THERE WAS NO CON THEM ARABS BEHAVIOR, THAT THE ALLEGED MISREPRESENTATION THAT THEY ACCUSE THIS WOMAN OF DOING DID NOT OCCUR AND, IN FACT, FRANKLY, IF ANYTHING, THEY'RE THE ONES THAT SHOULD BE REPORTED TO THE BAR.

BECAUSE I FIND IT, FRANKLY, VERY, VERY UPSETTING THAT SOMEONE CAN BE THROWN IN JAIL WHEN THEY HAVE A TRANSCRIPT THAT SHOWS, IN FACT, IT DID NOT OCCUR.

>> JUSTICE LAGOA, I CAN UNDERSTAND YOUR OUTRAGE. HOWEVER, THERE IS PART OF THE BEHAVIOR CONTAINED IN THE ORDER

THAT DID OCCUR.

>> UNFORTUNATELY, THE ORDER TO SHOW CAUSE ONLY TALKS ABOUT THE MISREPRESENTATIONS MADE ON MARCH 2ND REGARDING WHETHER OR NOT THEY HAD VACATED THE PREMISES.

THAT IS IT.

AND YOU HAVE TO GIVE NOTICE, CORRECT, UNDER 3.840 AS TO WHAT YOU'RE BEING ACCUSED OF.

>> YES, THAT IS CORRECT.

>> RIGHT.

AND THE ONLY ACCUSATION IS THAT, MISREPRESENTATION.

>> NO.

THE ACCUSATION ALSO INCLUDES THAT SHE WAS DISRUPTIVE IN THE--

>> THAT IS NOT IN THE ORDER TO SHOW CAUSE, COUNSEL.

>> I'M SORRY, I MISUNDERSTOOD YOUR QUESTION.

I THOUGHT YOU WERE TALKING ABOUT THE ORDER FINDING HER IN CONTEMPT.

I'M SORRY, JUSTICE MUNIZ, YOU ASKED ME A QUESTION, AND DO YOU RECALL WHAT IT WAS?

>> I THINK WE'RE KIND OF SAYING THE SAME THING.

THE ORDER TO SHOW CAUSE SAID THE SPECIFIC PURPOSE OF THAT JUNE HEARING WAS GOING TO BE TALKING ABOUT THE ALLEGED LYING ABOUT WHETHER SHE WAS LIVING IN THE HOUSE.

THERE WASN'T ANYTHING ABOUT HER ALLEGED BAD BEHAVIOR IN MARCH.

THE WAY THIS WAS BRIEFED AND LITIGATED, I THINK ALL OF US ASSUME THAT WHATEVER THE DIRECT CONTEMPT BEHAVIOR WAS OCCURRED IN JUNE AND THAT PART OF THE PROBLEM WAS WE DIDN'T KNOW WHAT THE BEHAVIOR WAS, AND WE DIDN'T KNOW WHETHER THE PROCEDURAL, YOU KNOW, THE 3.830 PROCEDURAL THINGS WERE FOLLOWED.

AND NOW YOU'RE SAYING THAT THE DIRECT CONTEMPT WAS ACTUALLY

BASED ON WHAT HAPPENED IN MARCH
WHEN THIS WAS A TRANSCRIPT,
WHICH TO ME AT LEAST, THAT'S
NEWS.

I MEAN, I DIDN'T-- THE WAY
EVERYTHING HAS BEEN PUT TO US, I
DIDN'T THINK THAT THAT WAS THE
CASE.

>> WELL, YOUR HONOR, BASED ON
THE WAY MY OPPONENT JUST STOOD
UP HERE AND ARGUED THE CASE, IT
DOES NOT APPEAR THAT THE
ATTORNEY LISTED IN THE ORDER,
THE DIRECT CRIMINAL CONTEMPT
PORTION OF THE ORDER,
MR. MANSERRIE, WAS AT THE
JUNE 17TH HEARING.

HE JUST ARGUED TO YOU THAT THERE
WAS TECHNOLOGY TO JUDGE AND THE
CONTEMNORS AT THE HEARING
AND, THUS, HE WAS NOT ABLE TO
FAIRLY RECONSTRUCT THE RECORD
BECAUSE THE JUDGE AND THE--
[INAUDIBLE]

>> THE DCA OPINION IS REALLY
CLEAR.

I SAYS THE MARCH HEARING THERE
WAS A TRANSCRIPT, MARCH HEARING,
THERE'S A TRANSCRIPT, AND THEN
WE GET TO THE INDIRECT CRIMINAL
CONTEMPT HEARING, THERE WAS NO
COURT REPORTER, THEREFORE, THERE
WAS NO TRANSCRIPT.

AND SO IT'S A REVERSAL ON THE
INDIRECT.

BUT, AND THEN IT GETS DOWN TO
THE DIRECT CRIMINAL CONTEMPT AND
SAID BECAUSE THERE'S NO
TRANSCRIPT, THERE WAS NO HEARING
AVAILABLE.

IF THAT MEANS IT WAS-- IT LOOKS
LIKE TO THE FIFTH, TO THE FOURTH
IT WAS ARGUED AS IF THAT WAS THE
PROBLEM.

AND THAT'S THE WHOLE CONFLICT
ISSUE.

IT'S BASED ON THE ASSUMPTION
THAT THE DIRECT CRIMINAL
CONTEMPT OCCURRED AT THE HEARING
ON THE INDIRECT CRIMINAL

CONTEMPT MATTER WHERE THERE WAS NO COURT REPORTER WE'RE HERE ON A CONFLICT THAT ASSUMES THE DIRECT CRIMINAL CONTEMPT HAPPENED.

THAT'S HOW THE FOURTH DCA DECIDED THE ISSUE BY SAYING THERE DIDN'T HAVE TO BE A COURT REPORTER AT THAT HEARING.

IT MAKES-- SO, I MEAN, IT SOUNDS LIKE WE'RE BEING-- THE WHOLE CONFLICT ISSUE IS BASED ON A DIFFERENT UNDERSTANDING THAN THE WAY YOU'RE PRESENTING THIS.

>> WELL, YOU CAN ASK MY OPPONENT WHEN HE STANDS BACK UP HERE FOR REBUTTAL, BUT THE STATE HAS ALWAYS PRESUMED THAT THE RULE 3.830, CERTAIN ELEMENTS OF RULE 3.830 WERE MET IN THE FIRST TWO HEARINGS.

HOWEVER, THE REST OF THE, THE OTHER-- THAT THERE WERE THREE COMPONENTS OF RULE 3.830 THAT WOULD BE CONTAINED IN THE SENTENCING HEARING--

>> THEN THE ISSUE OF THE FOURTH SHOULD HAVE BEEN CAN YOU WAIT THAT LONG TO ENTER AN ORDER AFTER THE DIRECT CRIMINAL CONTEMPT PROCEEDINGS, AND THE ISSUE WOULD BE CLEARLY BE A REVERSAL BECAUSE THE TRANSCRIPT OF THE MARCH HEARINGS DOES NOT INDICATE THAT THE TRIAL JUDGE GAVE, HAD A SUMMARY PROCEEDING. THERE WAS NO OPPORTUNITY TO OFFER MITIGATION, THERE WAS NOTHING.

I MEAN, IF THE UNDERSTANDING WAS THAT THAT WAS A SUMMARY PROCEEDING AND IT WAS JUST REFLECTED LATER, THEN I THINK THE FOURTH WOULD HAVE REVERSED, CLEARLY.

BECAUSE THE LAW'S SUFFICIENTLY CLEAR AND UNCONTESTED THAT YOU HAVE TO OFFER AN OPPORTUNITY FOR MITIGATION DURING THE HEARING. IT JUST DOESN'T MAKE SENSE THAT

YOU'RE NOW SAYING--

>> JUSTICE LAWSON, I BELIEVE THAT YOU'RE COMPLETELY CORRECT THAT IT SHOULD HAVE BEEN ARGUED TO THE FOURTH DCA IF MY OPPONENT WAS ARGUING THAT TOO LONG OF A PERIOD OF TIME OCCURRED BETWEEN THE MARCH HEARINGS AND THE JUNE HEARING, EXCEPT THAT MY OPPONENT HAS NEVER ARGUED THAT AND, THEREFORE, THAT ISSUE HAS BEEN WAIVED.

AS TO WHETHER THIS WOULD REALLY QUALIFY AS A SUMMARY PROCEEDING OR WHETHER THIS SHOULD HAVE BEEN CONDUCTED UNDER RULE 3.840--

>> NOW YOU HAVE-- JUST TO CLARIFY, BECAUSE MY HEAD'S SPINNING RIGHT NOW--

[LAUGHTER]

AND IT USUALLY DOESN'T SPIN, BUT IT'S SPINNING.

THERE WERE TWO HEARINGS, RIGHT?

>> YES, THERE WERE.

>> THERE WAS THE ONE THAT SHE WAS NOTICED TO COME TO, CRIMINAL CONTEMPT HEARING, CORRECT?

>> I'M SORRY, YOUR HONOR. THERE WERE THREE HEARINGS.

>> NOW YOU'VE REALLY GOT ME SPINNING.

[LAUGHTER]

LET'S JUST STICK TO THE FIRST TWO, OKAY?

THERE'S THE ONE WHERE SHE WAS NOTICED TO COME TO, THE INDIRECT CRIMINAL CONTEMPT PROCEEDING, AM I CORRECT?

>> THAT WOULD BE THE THIRD HEARING.

>> THAT'S THE THIRD HEARING.

>> THAT'S THE THIRD HEARING, YES, SIR.

>> SHE HAD TWO HEARINGS. THERE'S A MARCH 2ND HEARING--

>> YES.

>> SO WHICH HEARING IS THE DIRECT CONTEMPT APPLIED TO?

>> THERE'S A MARCH 2ND HEARING WHERE SHE CLEARLY ENGAGED

IN BEHAVIOR AND WAS REMOVED FROM THE COURTROOM.

>> BUT THERE WAS NO SUMMARY PROCEEDING AT THAT HEARING. WE KNOW THAT BECAUSE WE HAVE A TRANSCRIPTION.

>> THAT'S CORRECT.

>> AND NONE EITHER ON MARCH 17TH.

AND THAT'S MY CONCERN BECAUSE THE ORDER ON APPEAL, WHEN I READ THE MARCH 17TH HEARING, IT ASSUMED TO ME THAT WHAT THIS IS TALKING ABOUT IS WHAT HAPPENED ON MARCH 17TH.

WHERE SHE DIDN'T ANSWER QUESTIONS, ALTHOUGH SHE WAS TRYING TO ANSWER QUESTIONS.

>> BUT THE CIRCUS LIKE ATMOSPHERE AND WHERE SHE WAS TALKING BACK TO THE ATTORNEY HAPPENED IN THE MARCH 2ND--

>> I UNDERSTAND THAT.

I UNDERSTAND THAT, BUT THAT'S WHY I ASKED--

>> THAT'S NOT THE ONE THAT SHE WAS HELD IN DIRECT CONTEMPT FOR.

>> NO.

>> IT'S IN THE FACTUAL STATEMENT--

>> HOW DO WE KNOW THAT HAPPENED JUST MARCH 2ND?

>> WELL, WE DON'T KNOW THAT IT SOLELY HAPPENED MARCH 2ND, BUT IT'S CLEAR THAT FROM THE RECORD THAT WE HAD THAT IT DID HAPPEN ON MARCH 2ND.

>> BUT HOW DO WE KNOW THAT THAT BEHAVIOR WAS EVER AT ISSUE? THERE'S NOTHING THAT WOULD LEAD US TO BELIEVE THAT.

I UNDERSTAND YOU'RE POINTING TO THAT AS SOME RECORD EVIDENCE THAT SHE WAS ACTING UP, AND IT'S THERE.

BUT I JUST DON'T UNDERSTAND HOW THAT CONNECTS WITH THIS SUBSEQUENT ORDER THAT WAS ISSUED.

>> WELL, YOUR HONOR, THE STATE'S

MAIN POINT ON APPEAL WAS AND STILL IS THAT THE DEFENDANT HAS NOT DONE WHAT SHE NEEDS TO DO IN ORDER TO PRESERVE THIS RECORD FOR APPEAL.

THAT THERE WAS-- WHILE THERE WAS NO COURT REPORTER AT THE PROCEEDING, THE DEFENDANT HAS DONE NOTHING UNDER FLORIDA RULE OF APPELLATE PROCEDURE IN ORDER TO--

>> BUT THEN WE GO, WE GO BACK TO MY ORIGINAL QUESTION WHICH IS THAT HEARING ON JUNE 17TH WAS AN INDIRECT, WAS AN ORDER TO SHOW CAUSE UNDER 3.840, AN INDIRECT CRIMINAL CONTEMPT PROCEEDING WHERE A TRANSCRIPT AND A REPORTER SHOULD HAVE BEEN. BECAUSE IT WAS AN ORDER TO SHOW CAUSE FOR INDIRECT CRIMINAL CONTEMPT.

BECAUSE THAT'S WHAT WAS NOTICED.

>> BUT THAT, FOLLOWING ALONG WITH WHAT JUSTICE CANADY JUST ASKED ME, THAT DOES NOT MEAN THAT THERE WAS-- THIS IS NOT THE SCENARIO THAT I PRESENT TO THE COURT.

HOWEVER, IT DOES NOT MEAN THERE WAS NO DIRECT BEHAVIOR THAT WOULD FALL UNDER RULE 3.830 COMMITTED AT THE JUNE HEARING. WE HAVE NO WAY OF KNOWING EVEN THOUGH IT WAS AN INDIRECT CRIMINAL CONTEMPT HEARING, WE HAVE NO WAY OF KNOWING WHETHER THERE WAS DIRECT CRIMINAL CONTEMPT ENGAGED IN BECAUSE THIS COURT AND THE PARTIES HAVEN'T BEEN PROVIDED WITH A TRANSCRIPT--

>> BUT THEN WHY, THEN IT GOES BACK TO JUSTICE LABARGA'S QUESTION WHICH IS WHY SHOULD THERE NOT BE A REQUIREMENT IN A CASE-- LET'S TAKE OUT THE INDIRECT CRIMINAL CONTEMPT, THE ORDER TO SHOW CAUSE. WHY SHOULD THERE NOT BE A

REQUIREMENT UNDER THE RULE THAT A TRIAL COURT JUDGE, IF YOU'RE HOLDING SOMEONE IN DIRECT CRIMINAL CONTEMPT, IN ORDER TO PRESERVE FOR APPELLATE REVIEW THE RECORD-- I UNDERSTAND THAT NOT EVERYONE HAS THE ABILITY TO HAVE A RECORDING OR A COURT REPORTER THERE.

SO WHY SHOULD THERE NOT BE A WRITTEN RECORD, AN ORDER WHERE YOU GO THROUGH WHAT THE FACTORS ARE THAT YOU NEED TO DO UNDER 3.830 IN AND YOU ASK WAS THERE MITIGATION, DID THEY PRESENT MITIGATION, DID YOU ADVISE THEM, I ADVISED THEM THEY HAD THE RIGHT TO HAVE MITIGATION, AND I CONSIDERED THE MITIGATION, AND I FOUND THAT THEY DID NOT WARRANT ME REVERSING MY, THE FINDINGS OF CONTEMPT.

>> CURRENTLY, THE RULES DO NOT REQUIRE THAT.

HOWEVER, THESE ARE RULES OF CRIMINAL PROCEDURE, AND THIS COURT CAN MODIFY THE RULES OF CRIMINAL PROCEDURE AT ANY TIME. AND SO, THEREFORE, I WOULD NOT SAY THAT IT SHOULD NEVER BE REQUIRED IF THIS COURT WERE TO DETERMINE THAT IT WANTED TO MODIFY THE RULES IN ORDER TO CLARIFY HOW LONG A SUMMARY PROCEEDING SHOULD LAST, TO RETURN TO YOUR QUESTION THAT YOU ASKED ME, JUSTICE LUCK, OR WHETHER THERE SHOULD BE CERTAIN ELEMENTS CONTAINED EVEN MORE SO THAN WHAT IS ALREADY REQUIRED BY RULE 3.830 AND 3.840.

THIS COURT IS CERTAINLY ABLE TO DO THAT.

AND SO I WOULD NOT SAY THAT THERE IS ANYTHING PROHIBITING THAT.

IT'S JUST THAT RIGHT NOW IT'S NOT CONTAINED IN THE RULE.

AND IF I COULD JUST QUICKLY RETURN TO WHAT JUSTICE LUCK AND

JUSTICE LAWSON, THE POINTS THEY WERE MAKING ABOUT A SUMMARY PROCEEDING.

THE EFFECT OF A SUMMARY PROCEEDING GOES BACK TO WHAT MY OPPONENT WAS ARGUING.

IF YOU STOP THE PROCEEDINGS AND YOU'RE IN A RURAL COUNTY OR A COUNTY THAT IS NOT RECORDING AND IT TAKES A DAY TO GET A COURT REPORTER IN ORDER TO TRANSCRIBE THE SENTENCING WHETHER THE DEFENDANT HAS THE OPPORTUNITY TO PRESENT IF MITIGATING FACTORS AND THE SENTENCE IS PRONOUNCED ON THE RECORD.

>> YOU ALSO HAVE THE-- THAT'S ALSO REQUIRED UNDER 3.830 UNDER DIRECT.

>> YES.

THAT'S WHAT I'M SPEAKING ON.

>> OKAY.

>> SO IF YOU ADJOURN, HOW LONG OF AN ADJOURNMENT?

IS IT NO LONGER CONSIDERED A SUMMARY PROCEEDING, AND THEN IT BECOMES A PROCEEDING UNDER RULE 3.840 BECAUSE IT'S NO LONGER A SUMMARY PROCEEDING BECAUSE NOW WE'RE WAITING FOR THE COURT REPORTER.

AND SO WE-- THIS COURT WOULD THEN HAVE TO WALK A FINE LINE. IS IT ONE DAY, IS IT TWO DAYS DEPENDING ON WHAT'S GOING ON IN THE--

>> BUT THAT'S NOT-- THE DIFFERENCE BETWEEN 3.830 AND 3.840 IS WHETHER OR NOT IT HAPPENED IN FRONT OF THE COURT. IF IT'S A DIRECT CRIMINAL CONTEMPT, IT'S SOMETHING THAT THE COURT WITNESSED, THE JUDGE SAW PERSONALLY.

IT CAN'T BE SOMETHING THAT A BAILIFF OUTSIDE THE COURTROOM SAYS THE DEFENDANT, WHEN HE WALKED OUT OR THE PLAINTIFF WHEN SHE WALKED OUT, SWORE AT THE COURT.

NO.

THEN THAT WOULD BE INDIRECT
CRIMINAL CONTEMPT.

>> UNDERSTOOD, YOUR HONOR.
EXCEPT THAT THE POINT THAT THE
OTHER TWO JUSTICES WERE MAKING
IS THAT UNDER RULE 3.830 FOR
DIRECT CRIMINAL CONTEMPT, IT
PROVIDES FOR A SUMMARY
PROCEEDING.

AND I BELIEVE THAT THE POINT
THAT THEY WERE MAKING IS WHEN
YOU HAVE, AS THE STATE IS
ALLEGING ON THE RECORD, THAT THE
BEHAVIOR WAS ENGAGED IN ON MARCH
2ND AND 17TH BUT THEN THE ORDER
IS NOT ENTERED AND THE DEFENDANT
PRESUMABLY-- ALTHOUGH WE DON'T
HAVE A TRANSCRIPT-- WAS GIVEN
THE OTHER PROTECTIONS UNDER
3.830, THEN IT IS NO LONGER A
SUMMARY PROCEEDING.

AND SO I WOULD ARGUE TO THE
COURT THAT WHEN YOU ARE GOING TO
DISMISS PROCEEDINGS IN ORDER TO
HAVE THEM THEN BE TRANSCRIBED,
YOU TAKE IT OUT OF THE REALM OF
A SUMMARY PROCEEDING, AND THEN
EVERY CONTEMPT PROCEEDING
BECOMES AN INDIRECT CRIMINAL--
IT SHOULD FOLLOW UNDER RULE
3.840 BECAUSE IT'S NO LONGER A
SUMMARY PROCEEDING.

I SEE THAT I'M OUT OF TIME, IS
THAT CORRECT?

>> YOU'RE ABOUT A MINUTE OVER
TIME.

>> OKAY.

>> GENEROUS.

SUM UP, PLEASE.

>> YES.

THE STATE-- EXCUSE ME FOR ONE
SECOND.

THE STATE WOULD SUGGEST THAT
RATHER THAN REVERSE THE TRIAL
COURT'S RULING FOR LACK OF A
TRANSCRIPT, IT SHOULD INSTEAD
CONTINUE WITH ITS LINE OF CASE
LAW WHICH HOLDS THAT A CRIMINAL
DEFENDANT MUST, FIRST, ALLEGE A

PREJUDICIAL ORDER AND, SECOND, ATTEMPT TO RECONSTRUCT THE PROCEEDINGS.

THANK YOU.

>> MR. EISENBERG, LET ME JUST CLARIFY THAT YOUR BRIEF RAISES A SINGLE ISSUE, AND THAT ISSUE IS THAT THE JUNE HEARING HAD TO BE-- YOU TREAT IT AS A DIRECT CRIMINAL CONTEMPT HEARING, AND THAT DIRECT CRIMINAL CONTEMPT HEARING ON JUNE 17TH HAD TO BE TRANSCRIBED, AND THAT'S THE ERA THAT YOU'RE SEEKING--

>> IT BEGAN AS AN INDIRECT CRIMINAL CONTEMPT PROCEEDING AND AT SOME POINT BECAME DIRECT. IT'S CONTRARY TO REASON THAT WE HAVE MARCH 2ND AND MARCH 17TH HEARINGS WHICH WE HAVE TRANSCRIBED, AT NO POINT DOES THE TRIAL JUDGE SAY TESTIFIES GOING TO HOLD HER IN DIRECT CRIMINAL CONTEMPT.

AFTER THE HEARING HE SWEARS AN ORDER TO SHOW CAUSE WHICH SPECIFICALLY SAY THE REASON HE'S GOING TO HOLD THE DEFENDANT IN CONTEMPT.

IF THE TRIAL JUDGE WAS CONSIDERING HOLDING HER IN DIRECT CRIMINAL CONTEMPT BASED ON HER ACTIONS AT THE PRIOR HEARING, IT SHOULD HAVE STATED. BUT TO GET TO THE MAIN POINT, THE FACT THAT WE'RE EVEN HAVING THIS DEBATE IS THE REASON THAT WE NEED TO HAVE AT LEAST AN ADEQUATE RECORD OR IN DIRECT CRIMINAL CONTEMPT PROCEEDINGS.

I'D JUST LIKE TO NOTE THAT IN RE INQUIRY IN PERRY, THIS COURT SAID THAT IT'S EXTREMELY IMPORTANT THAT TRIAL JUDGES PROTECT A CONTEMPT DEFENDER'S DUE PROCESS RIGHTS PARTICULARLY WHEN IT RESULTS IN THE IMPRISONMENT OF THE OFFENDER. THE SUPREME COURT-- IT GOES TO THE IRE AND THE CENTER OF THE

COURT.

IT IS, AS I SAID, COMPETENCY
OFTEN STRIKES THE MOST
VULNERABLE QUALITIES OF A--
LEGISLATIVE, EXECUTIVE AND
JUDICIAL POWERS--

[INAUDIBLE]

THE MOST TYRANNICAL
LICENTIOUSNESS.

THERE ARE SO MANY ISSUES IN THIS
CASE RELATED TO THE INDIRECT
CRIMINAL CONTEMPT, AND WITHOUT
AN ADEQUATE RECORD, WITHOUT
ANYTHING IN THE RECORD, WE
CANNOT DETERMINE WHETHER THOSE
ERRORS ALSO SEEPED DOWN.

FOR ALL THOSE REASONS, I'D ASK
THIS COURT REVERSE IF THERE'S NO
FURTHER QUESTIONS.

>> THANK YOU BOTH FOR YOUR
ARGUMENTS.