NEXT CASE IS STATE OF FLORIDA VERSUS JOHN PAUL -- JEAN-PAUL. JEAN DAVID PAUL. MR. CAMPBELL, ARE YOU READY TO PROCEED?

MAY IT PLEASE THE COURT. LESLIE CAMPBELL, ASSISTANT ATTORNEY GENERAL FOR THE STATE OF FLORIDA, FOR PETITIONER. WE ARE HERE, TODAY, BASED ON THE FOURTH DISTRICT COURT OF APPEALS' CERTIFICATION OF CONFLICT WITH HAUSER V MANNING. THERE ARE TWO OTHER CASES BEFORE THE COURT WHERE SIMILAR CONFLICT HAS BEEN CERTIFIED. THERE ARE RESSECV SPEARS, WHICH IS OUT OF THE THIRD, AND THERE IS JEAN V SPORTS, WHICH IS OUT OF THE FOURTH. WHAT THIS CASE ASKS TODAY IS THAT THIS COURT DETERMINE THE TRIAL COURT'S DISCRETION TO DENY PRETRIAL RELEASE TO A DEFENDANT WHO HAS BEEN ON BOND AND VIOLATED THAT BOND, BASED UPON THE COMMISSION OF A NEW CRIME. HAVING SAID --

IS THE BASIS FOR THE THIRD DISTRICT'S OPINION, AND IN TERMS OF WHAT OUR DECISION WOULD BE HERE, WOULD YOU EXPLAIN WHETHER IT IS THE STATE'S VIEW THAT THE BASIS IS THAT, ONCE THE DEFENDANT HAS VIOLATED A CONDITION OF THE BOND, THAT THE DEFENDANT HAS LOST HIS CONSTITUTIONAL RIGHT TO BE RERELEASED, SO THERE IS NO CONSTITUTIONAL RIGHT, OR WHETHER IT IS BASED ON THE FACT THAT A CONTEMPT OF COURT HAS BEEN COMMITTED, AND IT IS THERE FOR IN THAT THE DEFENDANT IS IN VIOLATION OF A COURT ORDER, OR WHETHER IT IS JUST GENERALLY UNDER THE INHERENT AUTHORITY OF THE COURT TO DO IT. IF YOU COULD JUST ADDRESS THE BASIS FOR THE AUTHORITY.

YES, YOUR HONOR. I THINK IT IS A DUAL BASIS. ONE, IT IS THAT THE COURT DOES HAVE AN INHERENT AUTHORITY TO ENFORCE ITS RULES AND REGULATIONS, AND ONE OF THOSE BEING THAT, IF YOU ARE OUT ON BOND, YOU SHOULDN'T VIOLATE THE LAW BY COMMITTING A NEW CRIME. IN ORDER TO UPHOLD THE INTEGRITY OF THE COURT, THERE IS CERTAINLY GOING TO HAVE SOME SORT OF PENALTY FOR THAT DEFENDANT.

WELL, THEN, SO THAT WOULD BE -- THEN YOU WOULD FOLLOW, IN THAT CASE, THE RULES OF IN DIRECT CRIMINAL CONTEMPT? BECAUSE IT IS NOT A CONTEMPT THAT HAS OCCURRED IN THE COURT'S PRESENCE.

YOU MIGHT. BUT THERE IS THE OTHER AVENUE, WHICH IS THAT THE DEFENDANT DID HAVE HIS CONSTITUTIONAL RIGHTS PROTECTED, BY INITIALLY RECEIVING PRETRIAL RELEASE. HE, THEN, FLAGRANTLY DISREGARDED THE COURT'S ORDER AND COMMITTED A NEW CRIME. SO IT IS DUAL. IT IS, BOTH, UNDER THE CONSTITUTION, AND JUST INHERENT AUTHORITY OF THE COURT TO ENFORCE ITS ORDERS.

NOW, HOW DO WE WORK WITH THE FACT THAT IT LOOKS LIKE THE LEGISLATE YOUR, IN THIS AREA, CAME UP WITH A VERY, VERY DETAILED SCHEME TO GUIDE THE COURT IN ITS DISCRETION AND INCLUDED, IN THERE, FACTORS THAT WOULD SPECIFICALLY ALLOW THE COURT TO CONSIDER THE INCREASED RISK OF THE DEFENDANT FLEEING, BECAUSE OF THE ADDITIONAL CRIMES, AND OTHER ASPECTS OF IT? IN OTHER WORDS SO THEY REALLY DEALT WITH IT IN THAT STATUTE, AND SINCE THE STATUTE IS VERY COMPREHENSIVE, ISN'T THAT A BETTER FRAMEWORK TO USE THAN JUST TO KIND OF LEAVE THIS PART, SAY, WELL, THERE IS THAT, AND THEN THERE IS, ALSO, JUST COURT'S AUTHORITY TO DO WHAT THE COURT THINKS IS APPROPRIATE?

AGAIN, THE ANSWER IS A DUAL ANSWER. WHILE THE STATUTE MAY GIVE CERTAIN PARAMETERS, THERE ARE THOSE CASES WHERE, JUST BECAUSE OF THE NATURE OF THE CRIME THAT THE DEFENDANT IS FACING, BOTH HIS INITIAL CRIME OF ATTEMPTED SECOND-DEGREE MURDER IN THIS CASE, AND, ALSO, THE FACT THAT HE IS CARRYING FIREARMS, AND MAKING VEILED

THREATS AGAINST THE VICTIM, THAT HE WAS CARRYING FIREARMS FOR THE PURPOSE THAT, IF THAT VICTIM CAME AFTER HIM, HE WOULD BE PROTECTED. SO IN THAT CONTEXT, THE COURT SHOULD HAVE THE ADDITIONAL DISCRETION TO SAY, WELL, THERE IS ABSOLUTELY NOTHING I CAN DO TO PROTECT THE COMMUNITY. AND THERE ARE NO CONDITIONS THAT I CAN IMPOSE THAT WOULD PROTECT THE COMMUNITY. THIS DEFENDANT IS JUST TOO DANGEROUS. AND ONCE YOU REACH THAT, YOU LOOK TO THE CONSTITUTION, AND THE CONSTITUTION SAYS THERE ARE THREE OTHER AREAS WHERE YOU CAN DENY PRETRIAL RELEASE, AND REMEMBER, AGAIN, IT IS AFTER THE DEFENDANT HAS ALREADY BEAN GIVEN HIS FIRST SHOT AT BAIL. AND HAS VIOLATED IT.

BUT SHOULDN'T THAT CONSIDERATION, THAT IS THAT THE DEFENDANT IS A THREAT TO THE COMMUNITY, BE SOMETHING THAT THE COURT IS LOOKING AT, EVEN IN THE INITIAL PERIOD? WHY IS THAT SOMETHING THAT YOU WOULD JUST LOOK AT THE SECOND TIME AROUND? ISN'T THAT SOMETHING THAT IS THE CORE OF WHAT -- WITH THE CONSTITUTIONAL AMENDMENT, WHAT THE COURT SHOULD BE LOOKING AT INITIALLY?

SURE. THE COURT IS LOOKING AT THAT INITIALLY. HOWEVER --

I MEAN, SO, WHY ISN'T THERE INHERENT AUTHORITY, EVEN INITIALLY, TO DO THAT SAME EXACT THING AND JUST NOT REALLY WORRY ABOUT THE STATUTE AND HOW THE LEGISLATURE SET IT UP?

I WOULD SAY THAT THE COURT PROBABLY DOES HAVE A DEGREE OF DISCRETION TO DENY BOND INITIALLY. HOWEVER, THIS COURT HAS INDICATED THAT THE FIRST TIME AROUND, THERE SHOULD BE A RIGHT TO VAIL. SO WHAT WE ARE LOOKING AT IS AN ADMISSIONAL CRIME. AN ADDITIONAL VIOLATION THAT, IN THIS PARTICULAR CASE, ACTUALLY GOES TO THE FIRST CRIME OF ATTEMPTED SECOND-DEGREE MURDER. IT JUST SEEMS ABSURD THAT, IF A DEFENDANT IS OUT ON A DANGEROUS CRIME, AND THEN COMMITS ADDITIONAL OFFENSES, WHETHER THEY BE PETTY DRUG OFFENSES, NARCOTIC OFFENSES, OR HE IS CARRYING FIREARMS, WHERE THE SERIAL NUMBERS ARE REMOVED, WHERE THEY ARE LOADED. THERE SHOULD BE SOMETHING THAT THE COURT CAN DO.

WHY ISN'T A HIGHER BILL SUFFICIENT UNDER THOSE CIRCUMSTANCES?

THE COURT FOUND THAT IT WOULDN'T BE SUFFICIENT. THE COURT HEARD TESTIMONY FROM THE DEFENDANT'S FATHER, SAID, LEAVE HIM AT HOME WITH ME. THE DEFENDANT IS FINE WHEN I AM WITH HIM. HE IS JUST TERRIBLE WHEN HE GETS WILD, WHEN HE IS WITH HIS FRIENDS. THE COURT FOUND THAT THAT WASN'T SUFFICIENT. AND I THINK THE COURT FOUND THAT IT WASN'T SUFFICIENT, BECAUSE THE COURT FOUND --

THE COURT FOUND THAT LEAVING HIM AT HOME WITH HIS FATHER WASN'T SUFFICIENT?

THAT'S CORRECT.

HOW MUCH WAS HIS BAIL INITIALLY?

$25,000.

AND DID THE TRIAL JUDGE ACTUALLY GO THROUGH AND SAY A $100,000 BOND WOULD NOT BE SUFFICIENT?

THERE WAS NOTHING ON THE RECORD THAT HE SAID THAT, NO, BUT CERTAINLY IN HIS MIND, WHEN HE WAS MAKING A DETERMINATION, HE MUST HAVE THOUGHT ABOUT THAT, BUT HE, ALSO, MADE A FINDING THAT NOTHING HE HEARD IN COURT FROM THE DEFENSE WAS REASONABLE. EVERYTHING, TO HIM, SEEMED FABRICATED. HE DIDN'T BELIEVE WHAT THE

DEFENDANT SAID. HE DIDN'T BELIEVE WHAT THE DEFENDANT'S BROTHER SAID, WITH REGARD TO THE GUNS. HE WAS, EXCUSE ME, THE COURT SEEMED VERY CONCERNED THAT THIS DEFENDANT WAS OUT COMMITTING ADDITIONAL CRIMES, AFTER HE HAD BEEN OUT ON BAIL FOR ATTEMPTED SECOND-DEGREE MURDER.

UNDER THE STATUTE, ISN'T THERE A GOOD POSSIBILITY THAT A LOT OF THE CRIMES, THAT THE DEFENDANT WOULD NOT QUALIFY FOR RELEASE ON BAIL FOR THAT NEW CRIME, BASED ON ON THE CRITERIA OF THE STATUTE? IN OTHER WORDS IF THIS HAD BEEN, AND I DON'T HAVE THE EXACT WORDING OF THE STATUTE IN FRONT OF ME, BUT ONCE HE HAS THAT SECOND CRIME, YOU LOOK BACK TO THE OTHER CRIME, THE PRIOR CRIME, WHICH WOULD BE THE SECOND-DEGREE MURDER, THERE IS A GOOD CHANCE THAT MOST OF THOSE CASES WOULD BE COVERED BY THE BEING DENIED BOND ON THE SECOND CRIME.

ON THE SECOND CRIME? YES. BUT THE STATE WAS GOING TO -- WAS TRYING TO GET BAIL REVOKED AND NO PRETRIAL RELEASE ON THE FIRST CRIME CRIME.

THE -- FIRST CRIME. ANOTHER PROBLEM IN THIS CASE IS WE DON'T KNOW WHAT ELSE MIGHT HAVE HAPPENED. THE JUDGE PROCEEDED UNDER THE STATUTE, AND USED THE JUVENILE CONVICTION, WHICH, I GUESS, THE STATE AGREES IS NOT -- CAN'T BE USED, SO, REALLY, WE DON'T KNOW WHAT WOULD HAVE HAPPENED IN THIS CASE, IF EVERYONE HAD REALIZED THAT THEY COULDN'T USE THAT JUVENILE CONVICTION.

I WOULD SUBMIT THAT THE JUVENILE CONVICTION SHOULD BE USED, AND I WOULD INVITE THE COURT TO TAKE A LOOK AT THAT.

I THOUGHT THE STATE HASN'T CROSS APPEALED THAT.

NO. WE DIDN'T CROSS APPEAL THAT, BUT WHAT I AM SAYING IS IT IS IN THE BRIEF THAT THERE WAS A DISCUSSION OF THE JUVENILE, SO I WOULD INVITE THE COURT TO TAKE A LOOK AT THAT. IT DOESN'T --

WHAT I AM -- YOU KNOW, INVITING US AND ACTUALLY RAISING IT, I MEAN, BECAUSE IF IT QUALIFIES, THAT WOULD END THIS, THE ISSUE FOR THIS CASE, WOULDN'T IT?

THE FOURTH DIDN'T FIND IT QUALIFIED.

BUT IF THE STATE -- IS THE STATE PRECLUDED FROM HAVING RAISED THAT AS AN ISSUE?

WE WERE UP HERE ON CONFLICT, AND WE WOULD ASK THE COURT TO FOLLOW HAUSER. AS FAR AS THE CONSTITUTION IS CONCERNED, THE CONSTITUTION, IN, BEFORE 1983, WHEN THE AMENDMENT WENT IN, INTO EFFECT, ALLOWED THE COURT TO DENY BAIL INSERT CIRCUMSTANCES. THEN THE NEW AMENDMENTS ALLOWED THE COURT TO DENY BAIL IN ADDITIONAL CIRCUMSTANCES. THIS COURT INITIALLY, BACK IN 1923, FOUND THAT THERE ARE TIMES WHEN PRETRIAL RELEASE COULD BE FORFEITED BY THE DEFENDANT. LATER ON, THE FIFTH, IN GARDENER, FOUND THE SAME THING. THERE ARE TYPES WHEN A DEFENDANT CAN COMMIT CERTAIN CRIMES OR COMMIT CERTAIN ACTS, WHERE HE FORFEITS HIS BAIL.

HOW WOULD YOU FASHION THE RULE? I GUESS THE QUESTION BETWEEN JUST SAYING YOU COMMIT ANOTHER OFFENSE AND IT IS JUST WITHIN THE COURT'S DISCRETION. IS THAT THE RULE THAT THE STATE IS ADVOCATING?

IT WOULD BE A REASONABLE. IT WOULD, UNDER HAUSER, THEY ARE SAYING SOMETHING REASONABLE. IF IT IS A PETTY OFFENSE, THEN IT SHOULD BE WELL WITHIN THE COURT'S DISCRETION TO GIVE BAIL AGAIN, BUT IF IT IS SOMETHING THAT IS TIED TO THE FIRST OFFENSE OR IF IT IS A MAJOR VIOLATION, THEN THE COURT SHOULD HAVE DISCRETION TO SAY NO.

WHAT WOULD A MAJOR -- -- HOW WOULD YOU DEFINE THAT?

CARRYING FIREARMS, WHEN YOUR FIRST OFFENSE IS ATTEMPTED SECOND-DEGREE MURDER WITH A FIREARM. THAT CERTAINLY SHOWS A CONTINUED PROPENSITY TO COMMIT CRIMES OF THE SAME NATURE OF WHICH YOU ARE CHARGED. IT JUST SEEMS ABSURD THAT THE COURT DOESN'T HAVE THAT AUTHORITY, THAT BASIC AUTHORITY, TO SAY I PUT INTO EFFECT A CERTAIN ORDER. DO NOT COMMIT CRIMES, AND NOW YOU ARE OUT, COMMITTING CRIMES AGAIN.

IF THE LEGISLATURE HADN'T ENACTED ANYTHING, THEN THE COURT WOULD HAVE HAD A FASHION OF SOME SERIES OF CASES THAT WOULD HAVE SORT OF SET THE PARAMETERS FOR THE COURT, FOR THE JUDGES? IS THAT WHAT YOU WOULD ARGUE? I GUESS I AM HAVING TROUBLE WITH THE FACT OF WHAT THE LEGISLATURE HAVING LEGISLATED IN AN AREA THAT YOU SAY TRADITIONALLY THE COURTS WERE AWARE OF THE DISCRETION WAS VESTED, TO DECIDE WHETHER A DEFENDANT WAS RELEASED, AND HOW THAT LEGISLATIVE ENACTMENT WORKS TO EITHER SUPERSEDE OR IN TANDEM, AND THAT IS --

I WOULD SAY IT IS IN TANDEM.

BUT YOU WOULD SAY THAT, EVEN AS TO THE FIRST, WOULD YOU SAY THAT EVEN AS TO THE FIRST CRIME, THAT EVEN IF IT DIDN'T FIT IN THE STATUTE, THE JUDGE DIDN'T FEEL THAT THE DEFENDANT SHOULD BE RELEASED, BECAUSE OF DANGEROUSNESS, THAT THE JUDGE WOULD HAVE THAT DISCRETION EVEN AS TO THE FIRST CRIME?

NO. THAT HAS BEEN PRETTY WELL LITIGATED THAT THE FIRST TIME AROUND, THE DEFENDANT DOES HAVE A SHOT AT BAIL. HE SHOULD BE -- THE INTENT IS TO GIVE THE DEFENDANT BAIL THE FIRST TIME AROUND. IT IS THE ADDED NATURE OF DISREGARDING THE COURT OF STILL BEING A DANGER TO THE COMMUNITY, THAT GIVES THE COURT THE DISCRETION TO, THEN, SAY, WELL, THIS DEFENDANT DOES NOT DESERVE BAIL. THIS DEFENDANT JUST CANNOT BE TRUSTED OUT IN THE REAL WORLD. HE NEEDS TO BE INCARCERATED UNTIL WE MAKE A DETERMINATION THAT HIS -- HE IS GUILTY OF THE ORIGINAL CRIME OR HE SHOULD BE LET FREE. HE IS NOT GUILTY. IT IS JUST UNREASONABLE RESULT THAT A DEFENDANT CAN, IN A RESOLVING -- IN A REVOLVING DOOR FASHION, CAN COMMIT A CRIME, BE PUT OUT ON BAIL. COMMIT ANOTHER CRIME. BE PUT OUT ON BAIL. COMMIT A THIRD CRIME. BE PUT OUT ON BAIL, WITHOUT THE COURT ACTUALLY STEPING IN AND SAYING ENOUGH IS ENOUGH! WE, AS A SOCIETY, DO NOT WANT THIS INDIVIDUAL CONTINUALLY COMMITTING CRIMES. THE SOCIETY SHOULD NOT SUFFER THIS DEFENDANT'S ACTIONS.

SO UNDER YOUR ARGUMENT, WHAT -- ARE YOU REALLY SAYING THAT THE STATUTORY SCHEME THAT THE LEGISLATURE HAS ENACTED IS WHAT THE TRIAL JUDGE HAS TO DEAL WITH ON THE FIRST DETERMINATION OF WHETHER OR NOT WHAT BAIL TO GIVE A DEFENDANT. BUT ONCE A DEFENDANT HAS VIOLATED THAT BAIL, THE COURT IS, THEN, FREE TO MAKE A DETERMINATION, WITHOUT REGARD TO THE STATUTORY FACTORS?

YES. UNDER HAUSER, THAT IS THE FACT. THAT IS HOW THEY FOUND. AND THEY USED A CASE -- TWO CASES OUT OF THE FIFTH, WHERE THEY, WHERE THE COURT FOUND THAT THERE ARE TIMES WHEN A DEFENDANT DOES FORFEIT HIS BAIL. ESPECIALLY WHEN HE HAS BEEN ON BAIL AND HAS VIOLATED THOSE TERMS. AND EVEN OUT OF THE FOURTH, THERE IS THE GOMEZ CASE, GOMEZ V HINKLEY, AND IT SAID, ALLOWS COURTS TO DENY BAIL INSERT SITUATIONS TO PERSONS ACCUSED OF OFFENSES OTHER THAN CAPITAL OFFENSES, OR OFFENSES PUNISH PUNISHABLE BY LIFE IN PRISON. SO THERE ARE TIMES WHEN THE COURT HAS FOUND THAT A DEFENDANT JUST DOES NOT DESERVE BAIL, IRREGARDLESS OF THE STATUTE.

IN RESPECT TO THE CONDITIONS THAT ARE, WERE PUT ON THIS BAIL BOND IN THE FIRST PLACE, WHAT IS THE DEFENDANT ADVISED WILL OCCUR, IF THOSE CONDITIONS ARE VIOLATED?

BAIL CAN BE REVOKED.

IS THAT STATED EXACTLY?

I DON'T HAVE THE --

IS IT IN THE RECORD?

I DON'T HAVE THAT RECORD. NO, YOUR HONOR. BUT IT IS PART OF THE STATUTE. BAIL CAN BE REVOKED, AND THEN HE CAN REAPPLY TO BAIL. REAPPLY.

WHAT SHOULD THE FOCUS OF THE COURT BE, ONCE THERE HAS BEEN A VIOLATION OF A CONDITION, AND NOW RECONSIDERING THE BAIL ISSUE? IN OTHER WORDS SHOULD THE FOCUS BE THE TRADITIONAL FOCUS OF WHETHER OR NOT THE DEFENDANT WILL APPEAR IN COURT, WHEN HE IS COMMANDED TO APPEAR IN COURT, OR SHOULD IT NOW BE MORE IN THE NATURE OF CONTEMPT OR WHATEVER? IN OTHER WORDS WHAT SHOULD THE FOCUS OF THE COURT BE, NOW, IN DETERMINING WHAT TO DO WITH THE DEFENDANT THAT HAS VIOLATED A CONDITION OF PROBATION?

I THINK IT NEEDS TO BE A TOTALITY OF THE CIRCUMSTANCES.

I AM TALKING ABOUT THE OBJECT OF THE -- YOU ARE SAYING YOU ARE CONSIDERING OR THE COURT SHOULD CONSIDER ALL THESE THINGS, BUT I AM TALKING ABOUT WHAT IS THE GOAL, HERE? THAT THE COURT SHOULD HAVE, AFTER THIS HAS OCCURRED? SHOULD IT BE, AGAIN, SIMPLY REFOCUSING ON WHETHER OR NOT THIS DEFENDANT CAN BE PLACED ON BAIL AND THE COURT CAN BE ASSURED THAT HE WILL SHOW UP FOR PROCEEDINGS? YOU KNOW, THE TRADITIONAL PURPOSE AND FOCUS OF BAIL, OR NOW SHOULD IT BE, IN A SENSE, A PUNITIVE MEASURE, NOW THAT THE DEFENDANT HAS VIOLATED A CONDITION?

THE TRADITIONAL FOCUS WAS THAT HE WOULD SHOW UP. HOWEVER, THERE IS THE ADDED FOCUS OF PROTECTING THE COMMUNITY. SO THAT THE COURT SHOULD LOOK TO THAT. BUT THE BASIS FOR ITS ADDITIONAL -- ITS SECOND LOOK AT BAIL, IS THAT THE DEFENDANT VIOLATED THE TERMS OF THE COURT'S ORDERS, WHICH WAS TO NOT COMMITTED AITIONAL CRIMES. SO IT IS STILL YOU HAVE TO LOOK AT IT AS, FROM A DUAL STANDPOINT. THE DEFENDANT COMMITTED SOME SORT OF ACT THAT WAS AGAINST THE COURT'S DIRECTION, AND THE COURT, NOW, IS TO LOOK TO THE PROTECTION OF THE COMMUNITY FROM THAT DEFENDANT. THAT DEFENDANT HAS SHOWN THAT HE IS NOT TRUSTWORTHY TO BE OUT ON BAIL AND NOT COMMITTED AITIONAL CRIMES.

SO SHOULD THAT, THEN, END UP BEING THE TEST? THAT IS WHETHER OR NOT THE RECORD WILL SUSTAIN THE TRIAL COURT IN A DETERMINATION THAT THE COMMUNITY IS ENDANGERED BY THE DEFENDANT'S RELEASE, SUFFICIENTLY TO NOT ALLOW HIS RELEASE?

YES, YOUR HONOR. THERE HAS TO BE SOMETHING --

THAT IS WHAT I AM TRYING TO SHAPE SOMETHING. YOU KNOW, BASED ON THIS, BECAUSE AS YOU INDICATED BEFORE, I BELIEVE, THERE COULD BE A RANGE OF CONDITIONS. YOU KNOW, A CONDITION COULD BE THAT YOU HAVE TO CALL THE COURT OR THE PROBATION SERVICES OR SOMEBODY EVERY DAY AT FIVE O'CLOCK, SO THAT WE KNOW YOU ARE --

-- WHERE YOU ARE SUPPOSED TO BE.

YOU ARE LOCAL, AND YOU ARE CALL, AND SO ONE DAY HE MISSES A CALL AND THE COURT IS MADE AWARE OF THAT AND SAYS, WELL, NOW I AM GOING TO REVOKE YOUR BAIL, BECAUSE YOU DIDN'T CALL YESTERDAY. AND THEN THERE IS A SHOWING THAT WELL, HE WENT TO WORK. HE IS

STILL SLEEPING AT HOME WITH HIS PARENTS AND ALL OF THAT. WELL, WE CAN SEE IN THE RANGE OF JUDGES THAT SOME JUDGES WOULD SAY, WELL, NO, I GAVE YOU A CHANCE. YOU DIDN'T CALL THAT DAY. YOU ARE OUT OF LUCK. SO I ASSUME YOU WOULD AGREE THAT THAT SOUNDS AN AWFUL LOT LIKE AN ABUSE OF DISCRETION.

THAT CERTAINLY DOES, AND --

AND THE FOCUS, THEN, WOULD BE ON WHETHER OR NOT THAT WAS A REASONABLE EXERCISE OF THE COURT'S AUTHORITY IN SETTING BAIL TO BEGIN WITH, AS FAR AS PROTECTING THE PUBLIC OR IN HAVING HIM APPEAR FOR PROCEEDINGS.

I DON'T KNOW THAT IT WOULD GO BACK TO THE ORIGINAL BAIL. I THINK IT WOULD GO TO THE INTENT THAT THE DEFENDANT EXERCISED IN NOT CALLING IN THAT DAY. SOMETHING SIMILAR TO WHAT GOES ON IN A VIOLATION OF PROBATION, WHERE THERE IS SOME SORT OF SUBSTANTIAL VIOLATION, AS OPPOSED TO SOME SORT OF PETTY VIOLATION. YOU MISS THE DEADLINE TO CALL THE PROBATION OFFICER. YOU MISSED SOME SORT OF DEADLINE TO FILE A REPORT. THAT MAY NOT BE SOMETHING WHERE YOU WOULD ACTUALLY WANT TO VIOLATE AND REVOKE PROBATION. THAT WOULD BE SOMETHING SIMILAR IN BAIL. YOU WOULDN'T MORE LIKELY THAN NOT, YOU WOULDN'T WANT TO VIOLATE BAIL OR DENY PRETRIAL RELEASE IN A SITUATION WHERE HE DIDN'T CALL THE OFFICER THAT HE WAS TO CALL. I SEE I HAVE VERY LITTLE TIME LEFT. IF I COULD --

I WANT TO MAKE SURE I UNDERSTOOD SOMETHING YOU SAID. YOU SAID THE PART OF THE STATUTE IS THAT THE JUDGE HAS AUTHORITY TO REVOKE THE BAIL, AND THEN THE DEFENDANT HAS THE RIGHT TO REAPPLY. WHICH STATUTE ARE YOU REFERRING?

IT IS UNDER 907.041. SO ISN'T THAT DEALING WITH, AND GOING BACK TO WHAT JUSTICE QUINCE ASKED, WHAT, REALLY, IS CONTEMPLATED SHOULD HAPPEN, WHICH IS THAT THE DEFENDANT'S BAIL GETS REVOKED AND THEN THE DEFENDANT HAS THE RIGHT TO REAPPLY, SO THE JUDGE HAS THE ABILITY TO SET NEW CONDITIONS?

WELL, BUT, IN THIS PARTICULAR SITUATION, THE PUBLIC POLICY STANDPOINT, THE PUBLIC SAFETY CONCERN, UNDER THE CONSTITUTION, SHOULD ALLOW THE COURT TO HAVE ITS OWN DISCRETION ITS OWN AUTHORITY, TO DENY BAIL, WHEN THE DEFENDANT, ESPECIALLY IN A SITUATION SUCH AS THIS, COMMITS A SECOND CRIME THAT IS VERY SIMILAR OR PART OF THE FIRST CRIME. THANK YOU.

THANK YOU, MS. CAMPBELL. MS. CUDDIHY.

MAY IT PLEASE THE COURT. MY NAME IS DIANE CAN YOU DO MILE -- MY NAME IS DIANE CUDDIHY, AND I AM THE COUNSEL FOR THE RESPONDENT, JEAN PAUL. THE ISSUE IS WHETHER THE CONSTITUTIONAL RIGHT GUARANTEEING PRETRIAL RELEASE CAN BE DENIED BY A TRIAL COURT, ABS FINDINGS THAT THE STATE HAS PROVEN, BEYOND A REASONABLE DOUBT, THAT THE DEFENDANT MEETS THE CRITERIA FOR THE PRETRIAL DETENTION STATUTE.

WHY IS IT THAT THE STATUTE, IF THE LEGISLATURE HADN'T LEGISLATED IN THIS AREA, GOT A CONSTITUTION, I MEAN, YOU HAVE GOT THE COURT PROTECTING THE DEFENDANT'S CONSTITUTIONAL RIGHTS, BUT WHY IS IT THAT THE COURTS, EVEN IN THE FIRST INSTANCE, HAVE TO FOLLOW THE STATUTORY CRITERIA, RATHER THAN EXERCISING THEIR OWN DISCRETION BASED ON THE CONSTITUTIONAL PRINCIPLES?

THE LEGISLATURE ENACTED THE STATUTE IN RESPONSE TO THE AMENDMENT TO THE ARTICLE I SECTION 14 OF THE FLORIDA CONSTITUTION, WHICH GUARANTEES BAIL.

SO BEFORE THAT AMENDMENT IN 1983, THERE WAS NO, WAS THERE ANY STATUTE?

THERE WAS AN EXCEPTION TO THE RIGHT TO BOND, WHEN YOU ARE CHARGED WITH A CAPITAL OFF EPPS OR OFFENSE PUNISHED BAY LIFE IMPRISONMENT, BUT THERE WAS NO OTHER ATTEMPT TO AMEND BOND.

WHAT WAS THE CASE OF THE LAW IF A DEFENDANT RESPECT OUT ON BAIL, VIOLATED THE CONDITIONS BY COMMITTING A NEW OFFENSE?

WELL --

HOW WOULD THE COURTS DEAL WITH THAT?

THE HAUSER COURT REFERS TO THE GARDENER DECISION FROM THE FIFTH, WHICH IS A 1981. IT, ALSO, THIS COURT'S DECISION, 1923, EX PARTE WITH DANO, BOTH OF THOSE CASES INVOLVED INSTANCES OF NOT OF A VIOLATION OF A PRETRIAL BOND BUT OF SETTING OF A BOND INITIALLY. IN EX PARTE McDANIEL, THE COURT, ALTHOUGH SAYING THAT THERE MAY BE CONDITIONS WHERE THE CONSTITUTIONAL RIGHT TO BOND CAN BE DENIED, GRANTED BOND IN THAT CASE. AND THE GARDENER CASE, IT WAS A CASE WHERE THE DEFENDANT WAS CHARGED WITH ESCAPE, AND THE COURT, AGAIN, STATED THAT THERE MIGHT BE CONDITIONS WHERE PRETRIAL BOND CAN BE REVOKED, BUT GRANTED BOND IN THAT CASE. IN BOTH OF THOSE CASES, RELIED ON BY HAUSER, BOND WAS GRANTED.

SO THERE IS NO REASON THAT THE COURT DOESN'T HAVE ITS OWN INHERENT AUTHORITY TO ENFORCE THE PRINCIPLES OF THE CONSTITUTION. CORRECT?

CORRECT, YOUR HONOR.

SO NOW WE HAVE, THOUGH, WE HAVE GOT THE STATUTE, AND DOES THE STATUTE SOMEHOW PREEMPT THE JUDICIARY'S INHERENT AUTHORITY THAT IT POSSESSED BEFORE THE STATUTE WENT INTO EXISTENCE?

WHAT THE STATUTE DOES IS IT LIMITS THOSE INSTANCES WHERE PRETRIAL DETENTION CAN BE ORDERED. JUDGE TAYLOR'S'S BELOW CAN BE RECOGNIZED THAT, IF A DEFENDANT OUT ON BOND GOES OUT AND COMMITS A NEW OFFENSE, THAT THE COURT CAN THEN REVOKE THAT BOND, THAT DEFENDANT HAS FORFEITED HIS OR HER RIGHT TO THAT PARTICULAR BOND, BUT UNDER THE RULES OF CRIMINAL PROCEDURE, RULE 1.31, THE, OR 3.131, EXCUSE ME, IT PROVIDES THAT A COURT CAN ORDER THE ARREST AND RECOMMITMENT OF A DEFENDANT, IF THEY VIOLATE THE CONDITION OF BOND, BUT IF THE DEFENDANT APPLIES FOR READMISSION TO BAIL, IT, THEN, REFERS THE COURT. THE COURT SHALL MAKE A DETERMINATION AS TO SETTING OF THE BAIL, PURSUANT TO SUBSECTION B OF THE RULE. WHEN YOU FLIP TO SUBSECTION B OF THE RULE, THE FIRST SENTENCE SAYS, UNLESS THE STATE HAS FILED A MOTION FOR PRETRIAL DETENTION, THE COURT SHALL CONSIDER THE FOLLOWING. IN SOME OF THOSE THINGS THAT ARE IDENTIFIED AS CRITERIA WHEN DETERMINING BOND, IS WHETHER THEY HAVE -- THEIR PAST CONDUCTOR THAT THEY VIOLATED ANY CONDITIONS OF BOND, WHETHER THEY HAVE COMMITTED ANY NEW OFFENSES, BUT UNLESS PRETRIAL DETENTION HAS BEEN MOVED FOR BY THE STATE, THE TRIAL COURT MUST SET A BOND. COULD BE AN ELEVATED BOND IN LIGHT OF THIS CIRCUMSTANCE THAT THE DEFENDANT HAS BEEN ARRESTED. AGAIN, IN THIS PARTICULAR CASE --

THAT RULE, IS THE RULE BASED ON THE STATUTE?

THE RULE IS BASED ON THE STATUTE. 903 SETS FORTH THE CONDITIONS OF BOND. 907 SETS FORTH THE CONDITIONS FOR PRETRIAL DETENTION.

THE COURT CAN SET ITS OWN RULES. I MEAN, IF THE COURT DECIDES THAT ADDITIONAL RULES ARE NECESSARY, BECAUSE THE, AND THIS GOES BACK TO WHERE THE STATE'S ARGUMENT, HERE

WE HAVE GOT, MAYBE, A GLITCH IN THE LEGISLATION? I MEAN, YOU WOULD AGREE THAT, IF THIS JUVENILE, WHATEVER IT WAS, DISPOSITION, WAS A CONVICTION, UNDER THE STATUTE, YOUR CLIENT WOULD NOT HAVE BEEN ELIGIBLE FOR RELEASE ON BOND. CORRECT?

YES, YOUR HONOR.

SO WE HAVE GOT, REALLY, IT LOOKS LIKE, A GLITCH, BECAUSE SOMEBODY THAT MAY HAVE HAD A JUVENILE OFFENSE, I MEAN, WHY IS THAT PERSON ANY LESS OR MORE DANGEROUS THAN SOMEBODY THAT HAD A CONVICTION, SO WHY SHOULDN'T THE JUDGE, WHEN, AGAIN, TAKING THE PRINCIPLES THAT THE STATE IS TALKING ABOUT, THAT YOU HAVE GIVEN THEM THEIR CONSTITUTIONAL RIGHT, RELEASE ON BAIL. THEY HAVE VIOLATED A CONDITION, AN IMPORTANT CONDITION, NOT TO COMMIT ANY NEW OFFENSES. AND THAT THE COURT HAS A RESPONSIBILITY TO ENFORCE THE PROVISIONS OF THE CONSTITUTION THAT REQUIRE THAT THE THREAT OF DANGER TO THE COMMUNITY IS PROTECTED, SO WHY ISN'T THAT, THEN, A SUFFICIENT REASON THAT, PUBLIC SAFETY, SOMEONE HAS COMMITTED A NEW OFFENSE THAT IS SIMILAR TO THE OFFENSE THAT THEY HAVE BEEN, ALREADY, CHARGED WITH, THAT THEY SHOULD BE DENIED THEIR RIGHT TO BAIL?

WELL, JUDGE, FIRST OF ALL, I JUST POINT OUT FACTUALLY THAT MR. PAUL WAS NOT CHARGED WITH ANY OF THE CRIMES THAT HE WAS A LATER ARRESTED FOR, AND SECONDLY I WOULD SAY THAT THE PRETRIAL DETENTION STATUTE IS PARTICULAR, IN THOSE CIRCUMSTANCES WHERE A PERSON MAY BE DETAINED, AND IT DOES ADDRESS MOST OF THE CONCERNS BROUGHT OUT BY THE STATE. THERE WAS NO FINDING BY THE TRIAL COURT THAT MR. PAUL WAS A THREAT TO THE VICTIM IN THE ATTEMPTED FIRST-DEGREE MURDER CASE. I WOULD TAKE ISSUE WITH THAT. BUT THE PRETRIAL DETENTION STATUTE DOES PROVIDE THAT, IF SOMEONE GOES OUT AND THEN, THREATENS, A WITNESS OR A VICTIM IN A CASE, THAT THAT, IN AND OF ITSELF, IS GROUNDS FOR PRETRIAL DETENTION. THERE IS, ALSO, A PROVISION THAT, IF SOMEONE VIOLATES A CONDITION OF BOND, THEY CAN BE DETAINED UNDER THE PRETRIAL DETENTION STATUTE, BUT THERE MUST BE AN ADDITIONAL FINDING THAT THE PERSON, THERE ARE NO REASONABLE CONDITIONS OF BOND THAT WILL ASSURE THAT PERSON'S APPEARANCE AT SUBSEQUENT COURT PROCEEDINGS.

WHAT -- AND MAYBE MY MIND IS JUST TOO SIMPLISTIC ON IT, BUT IT SEEMS TO ME THAT WHAT THE THIRD DISTRICT, JUDGE COPE, WAS SAYING, IS KIND OF LOGICAL, AND THAT IS THAT, IF THE COURT SAYS YOU CAN HAVE -- YOU CAN BE RELEASED ON BAIL, BUT YOU HAVE GOT TO ABIDE BY THESE CONDITIONS. AND THEN IT IS BROUGHT TO THE COURT'S ATTENTION THAT THE DEFENDANT, WHILE ON THAT BOND, DIDN'T ABIDE BY THE CONDITIONS, IF THE DEFENDANT HAS BEEN ADVISED TO BEGIN WITH, THAT IF YOU VIOLATE THESE CONDITIONS, I AM GOING TO REVOKE -- YOUR BOND IS GOING TO BE REVOKED, THE COURT CAN'T FULFILL WHAT IT TOLD THE DEFENDANT IT WAS GOING TO DO. WHY IS THAT?

JUDGE, THE COURT CAN REVOKE THAT BOND, BUT THE LEGISLATURE HAS DECIDED THAT HE CAN ONLY FURTHER DENY BOND, IF THEY MEET CRITERIA FOR PRETRIAL DETENTION, AND THIS COURT HAS RECOGNIZED, IN OTHER CASES, THAT THE LEGISLATURE CAN LIMIT THIS COURT, A COURT'S PUNISHMENT FOR A CONTEMPT, EVEN THOUGH CONTEMPT IS AN INHERENT POWER OF THE COURT USED TO ENFORCE THE COURT ORDERS. THE LEGISLATURE CAN LIMIT THE PUNISHMENT THAT THE COURT IMPOSES UPON A FINDING OF CONTEMPT, SIMILARLY, IN THIS INSTANCE, WHAT THE LEGISLATURE HAS DECIDED IS YOU CAN REVOKE BOND, BUT YOU CAN ONLY PUNISH THAT INDIVIDUAL OR FURTHER DENY BOND, IF THEY MEET THESE SPECIFIC CRITERIA. IN LIGHT OF THE FACT --

DOES THE STATUTE EXPRESSLY STATE THAT?

THE STATUTE STATES THAT BOND CAN ONLY BE DENIED, WHEN YOU MEET THE SPECIFIC CRITERIA FOR PRETRIAL DETENTION AND THEN DILL I KNOW YEAS --

-- DELINEATES --

DOES THE STATUTE ADDRESS, SPECIFIC, THAT THE TRIAL COURT CANNOT, UPON THE VIOLATION OF ONE OF THE IMPOSED CONDITIONS,, REVOKE BAIL, EXCEPT UNDER CERTAIN CONDITIONS?

NO. THE STATUTE DOES NOT ADDRESS THE REVOCATION OF BOND UPON A VIOLATION OF CONDITION. THE RULE DOES. THE RULE, RULE 3.131, STATES THAT, IF THE -- THAT THE COURT CAN ORDER THE ARREST AND RECOMMITMENT OF A DEFENDANT, AND THEN IF THE DEFENDANT, IN A SEPARATE SUBSECTION, IF THE DEFENDANT APPLIES FOR READMISSION TO BAIL, THEN THE COURT IS TO MAKE FINDINGS, PURSUANT TO SUBSECTION B, WHICH GOES THROUGH A LITANY OF REASONS TO LOOK AT AND IN MAKING DETERMINATION AS TO WHAT BAIL IS APPROPRIATE, BUT SPECIFICALLY REFERS THAT, IF THE STATE HAS FILED A MOTION FOR PRETRIAL DETENTION THAT, IS THE ROUTE THAT YOU, THEN, TAKE. THE MOTION FOR PRETRIAL DETENTION PROVIDES FOR SIGNIFICANT DUE PROCESS PROTECTIONS FOR A CRIMINAL DEFENDANT. THE MOTION, THE DEFENDANT CAN ONLY BE DETAINED FOR 24 HOURS BEFORE THE MOTION IS FILED. A HEARING HAS TO BE HELD WITHIN FIVE DAYS, UNLESS THERE IS GOOD CAUSE SHOWN. THE DEFENDANT IS ENTITLED TO COUNSEL. HE IS ENTITLED TO CROSS-EXAMINE WITNESSES. HE IS ENTITLED TO PRESENT HIS OWN EVIDENCE. THE COURT HAS TO MAKE A FINDING BASED ONLY ON THE EVIDENCE BEFORE IT, AND CANNOT USE EVIDENCE OBTAINED IN VIOLATION OF THE CONSTITUTION TO MAKE THAT FINDING OF PRETRIAL DETENTION. AND IMPORTANTLY, THE COURT HAS TO RULE ON IT WITHIN 24 HOURS, AND THEN THE DEFENDANT, IF PRETRIAL DETENTION IS ORDERED, CAN ONLY BE -- HAS TO BE TRIED WITHIN 90 DAYS.

SO PROCEDURALLY, ARE YOU SAYING THAT, IF A DEFENDANT REVOKES, HIS BOND IS REVOKED BECAUSE OF SUBSEQUENT ACTIVITY, AND HE, THEN, APPEARS BEFORE THE COURT, TO HAVE A NEW BOND SET, THE TRIAL JUDGE CAN ONLY DENY PRETRIAL RELEASE, IF THE STATE HAS MOVED FOR DENIAL?

YES, YOUR HONOR. YES, YOUR HONOR. UNLESS THEY HAVE PROVED THE CONDITIONS OF PRETRAIL DETENTION, HE CAN REVOKE THE BOND AND SET A NEW BOND AND CERTAINLY TAKE IN THE FACT THAT THE DEFENDANT HAS BEEN REARRESTED INTO CONSIDERATION, BUT UNLESS PRETRIAL DETENTION HAS BEEN PROVEN, THE COURT CANNOT DENY BOND.

SO JUST AS A PART OF THE DEFENDANT'S REQUEST TO SET A NEW BOND, HE CANNOT DETAIN HIM.

CORRECT, YOUR HONOR, UNLESS HE -- HE HAS TO GO THROUGH THE FINDINGS OF 3.131, AND THE STATE, AT THAT POINT, HAS AN OPPORTUNITY TO FILE A MOTION FOR PRETRIAL DETENTION.

LET ME ASK YOU IN THIS SITUATION -- DID YOU WANT TO FIN SNIRB.

I AM FINISHED. THANK YOU.

HE WAS ARRESTED FOR A FIREARM CHARGE. THE DEFENDANT HERE. COULD THE -- IF THIS HAD PROCEEDED WHERE THE PARTIES WERE NOT UNDER THE, OPERATING UNDER THE ASSUMPTION THAT THE JUVENILE CONVICTION, THE JUVENILE DISPOSITION QUALIFIED AS A CONVICTION, WOULD THE STATUTE DEAL WITH THE ABILITY OF THE STATE OR THE COURT NOT TO GRANT HIM RELACY ON BOND FOR THE NEW CRIME, BECAUSE HE WOULD HAVE PANE OUT, IF THEY FIND THAT HE POSED A THREAT TO THE COMMUNITY AND HE WAS OUT ON PRETRIAL RELEASE FOR A DANGEROUS CRIME AT THE TIME OF THE CURRENT ARREST? IN THIS CASE THE DANGEROUS CRIME WOULD BE THE ATTEMPTED SECOND-DEGREE MURDER?

NO, YOUR HONOR. WHAT THAT PROVISION ADDRESSES IS THAT IF YOU WERE OUT ON BOND FOR DANGEROUS CRIME, ONE OF THE ENUMERATED DANGEROUS CRIMES, AND THE STATE MOVES PRETRIAL DETENTION AND YOU ARE ARRESTED BECAUSE YOU HAVE BEEN ARRESTED FOR A SECOND DANGEROUS CRIME, WHAT THE COURT LOOKS TO IS THAT YOU HAVE A PRIOR

CONVICTION FOR A DANGEROUS CRIME OR YOU ARE ON PRETRIAL RELEASE OR DETENTION FOR A DANGEROUS CRIME. THE CONCEALED FIREARM CHARGE FOR WHICH HE WAS ARRESTED IS NOT AN ENUMERATED DANGEROUS CRIME. THEREFORE BOND CANNOT HAVE BEEN DENIED ON THE SECOND OFFENSE. BUT THEY DID MOVE FOR PRETRIAL DETENTION ON THE FIRST OFFENSE.

BUT THE SECOND OFFENSE QUALIFIED, BECAUSE THE LEGISLATURE HAS STATED WHAT THEY CONSIDER TO BE DANGEROUS CRIMES. IF THE SECOND CRIME QUALIFIED UNDER THE LEGISLATIVE DEFINITION OF A DANGEROUS CRIME. AND HE IS OUT ON RELEASE FOR A DANGEROUS CRIME, UNDER THAT CIRCUMSTANCES, HE, THE LEGISLATURE HAS PROVIDED THAT HE WOULD NOT RECEIVE A RIGHT TO BE OUT ON BAIL FOR THE, BOND FOR THE SECOND CRIME?

IN. THEY COULD HAVE DETAINED HIM, UNDER PRETRIAL DETENTION, FOR THE FIRST CRIME.

FOR THE FIRST CRIME.

RIGHT. FOR THE FIRST CRIME.

SO HOW DO THEY DEAL WITH THE SECOND CRIME?

YOU ARE TALKING ABOUT IF THERE WAS A DANGEROUS CRIME THE SECOND ARREST WAS A DANGEROUS CRIME?

CORRECT.

YES, YOU ARE CORRECT, YOUR HONOR. UNDER THE PRETRIAL DETENTION STATUTE, IF HE IS ON PRETRIAL RELEASE FOR A DANGEROUS CRIME, THEY CAN, THEN, MOVE FOR PRETRIAL DEFINANCIAL -- DETENTION FOR THE FIRST CRIME.

THE LEGISLATURE DEALS WITH THIS, THAT DEALS WITH THE PROBLEM OF THE REVOLVING DOOR, IF THE PERSON IS COMMITTING DANGEROUS CRIMES.

THE LEGISLATURE HAS PROVIDED THAT A PERSON COMMITTING DANGEROUS CRIMES, PERSONS THREATENING VICTIMS, PERSONS VIOLATING CONDITIONS OF BOND CAN BE DETAINED, WHERE THERE IS GOING TO BE A SITUATION OF A REVOLVING DOOR, IF THEY ARE COMMITTING DANGEROUS CRIMES, ENUMERATED BY THIS STATUTE.

HOW ARE WE SUPPOSED TO CONSIDER AT ALL IN THIS CASE, I GUESS THE LEGISLATURE LAST YEAR ATTEMPTED TO AMEND THIS STATUTE, TO ACTUALLY MAKE IT BROADER, WHICH WOULD COVER THIS SITUATION? I GUESS IT WAS VETOED BY THE GOVERNOR. ARE WE TO IGNORE THAT? HOW DO WE --

I KNOW IT WASN'T RAISED IN THESE BRIEFS, BUT IT WAS RAISED IN THE RICCI BRIEFS, WHICH ARE A RELATED CASE, AND THE WAY IT WAS HANDLED IN THAT, IS THAT, YES, IT WAS VO'ED. THEY DID PROVIDE FOR THAT IN SUBSECTION B-1. WHERE IF YOU ARE CHARGED WITH A VIOLATION OF CONDITION OF BOND, IF YOU ARE CHARGED WITH A VIOLATION OF CONDITION OF BOND AND THERE IS NO STATING THAT NO CONDITION OF BOND WILL ASSURE THE DEFENDANT'S PRESENCE OR APPEARANCE, THEN THEY CAN HOLD IN PRETRIAL DETENTION. WHAT THE LEGISLATURE WAS, WAS TO AMEND THAT LANGUAGE WHERE YOU VIOLATED A CONDITION OF BOND AND THERE IS A FINDING THAT YOU ARE A THREAT TO THE COMMUNITY, THAT THEY CAN, THEN, DETAIN HIM UNDER PRETRIAL DETENTION STATUTE. THAT STATUTE WAS VETOED BY THE GOVERNOR. I CAN ONLY SUGGEST TO THE COURT THAT, BECAUSE THE LEGISLATURE DID AMEND IT, THAT IT WAS NOT THE INTENT OF THE LEGISLATURE THAT THE ORIGINAL ENACTMENT OF THE STATUTE, THAT THE PERSON, THERE IS A THREAT TO THE COMMUNITY PROVISION IN PRETRIAL DETENTION STATUTE, BUT THAT REQUIRES THAT THE DEFENDANT BE CURRENTLY CHARGED WITH A DANGEROUS CRIME, AND THAT THERE BE AN ADDITIONAL FEIGNEDING THAT EITHER THE

DEFENDANT HAS A PRIOR CONVICTION FOR A CAPITAL OFFENSE OR LIFE FELONY, THAT THE DEFENDANT HAS A PRIOR CONVICTION WITHIN TEN YEARS OF ANOTHER DANGEROUS CRIME, OR THAT THE DEFENDANT IS ON PRETRIAL RELEASE OR SOME. OF RELEASE ON A DANGEROUS CRIME.

WHY SHOULDN'T THE JUVENILE DISPOSITION, HERE, QUALIFY? AS A PRIOR CONVICTION?

IT WAS RECOGNIZED BY THE DISTRICT COURT BELOW, IN MOODY VERSUS CAMPBELL, WHICH IS A FIRST DISTRICT COURT OF APPEAL DECISION. I THINK THAT PAUL AND MOODY VERSUS CAMPBELL ARE THE ONLY TWO CASES THAT ADDRESS THIS ISSUE, AND WHAT MOODY HELD, AND WHAT PAUL ADOPTED, WAS THAT THE STATUTE DOES NOT SPECIFICALLY ADDRESS THAT A JUVENILE CONVICTION WILL COUNT. IN OTHER INSTANCES, SUCH AS THE SENTENCING GUIDELINES, THEY DO ADDRESS THAT. THE LEGISLATURE DID ADDRESS THAT. BECAUSE OF THE RULE OF LENITY IN CRIMINAL LAW AND BECAUSE THE STATUTE DOES NOT ADDRESS THAT, THAT DOES NOT COUNT AS PRIOR CONVICTION, FOR PURPOSES OF PRETRIAL DETENTION. I WOULD POINT OUT TO THE COURT THAT, UNDER HAUSER VERSUS MANNING, THERE ARE NO DUE PROCESS PROTECTIONS. THERE IS NO REQUIREMENT THAT THERE BE A HEARING. THERE IS NO REQUIREMENT THAT THERE BE ANY KIND OF SUBSTANTIAL VIOLATION OF THE BOND. THERE IS NO REQUIREMENT THAT IT BE PROVEN THAT THE DEFENDANT IS A THREAT TO THE COMMUNITY OR A FLIGHT RISK. THERE IS NO REQUIREMENT THAT ANY VIOLATION OF BOND BE PROVEN BEYOND A REASONABLE DOUBT, AS IS AVAILABLE IN THE PRETRIAL DETENTION STATUTE.

WHAT ABOUT THE ABA STANDARDS? THEY SEEM TO SORT OF GO ALONG WITH WHAT THE STATE IS ESPOUSING? COULD YOU ADDRESS ABA USUALLY IS A BODY THAT IS LOOKING OUT TO PROTECT DEFENDANT'S RIGHTS. WOULD YOU ADDRESS THAT?

I DO KNOW THAT THE ABA STANDARDS, I THINK THAT THEY, ALSO, ADDRESS A PRETRIAL DETENTION STATUTE, AND THEY ENVISION A PRETRIAL DETENTION STATUTE, WHICH WE DO HAVE HERE. WHAT HAUSER IS TRYING TO DO IS HAUSER IS TRYING TO CARVE OUT A THIRD EXCEPTION TO THE DENIAL OF PRETRIAL RELEASE, AND MAKE IT JUST FOR JUDICIAL DISCRETION. THE ABA STANDARDS RECOGNIZE -- EXCUSE ME.

IF THE INHERENT AUTHORITY EXCEPTION WAS RECOGNIZED, WOULD THERE BE AWAY, IN YOUR OPINION, TO COORDINATE THAT WITH THE PROTECTIONS OF PRETRIAL DETENTION? I MEAN CERTAINLY WHEN THE COURT HOLDS SOMEONE IN THIS DIRECTOR DIRECT CRIMINAL CONTEMPT, WE HAVE SET OUT PROCEDURES TO PROTECT THE DEFENDANT IN THAT SITUATION. COULDN'T SOME OF THOSE PROTECTIONS DRAFTED, THEN, INTO A RULE THAT WOULD DEAL WITH THAT SITUATION?

AGAIN, I DON'T THINK THAT NECESSARILY THE PRETRIAL DETENTION STATUTE MAKES THE COURT HAVE NO MORE INHERENT AUTHORITY TO REVOKE BOND. THE COURT HAS AN INHERENT AUTHORITY TO REVOKE THE PARTICULAR BOND IS OUT ON. THE LEGISLATURE, HOWEVER, HAS DECIDED THAT ONLY IN CERTAIN INSTANCES, IN A CRIMINAL DEFENDANT, CAN HE BE DETAINED WITHOUT BOND, SO THE COURT, WHEN REVOKING A BOND AND WHEN NO MOTION FOR PRETRIAL DETENTION IS FILED BEFORE THE COURT, THE COURT HAS TO SET A BOND, ACCORDING TO THE GUIDELINES AND THE CRIMINAL RULES OF PROCEDURE. AND THAT, MOST LIKELY, WILL BE AN ELEVATED BOND, BUT CAN IT CANNOT DETAIN THE DEFENDANT WITHOUT THE STATE MAKING A FINDING, BEYOND A REASONABLE DOUBT, UNDER GROUNDS FOR PRETRIAL DETENTION. WHAT MAY HAPPEN IS ALLUDED TO IN THE RICCI BRIEFS, IS, IN THE THIRD DISTRICT COURT OF APPEAL, WHERE HAUSER IS THE LAW, THERE ARE NO MOTIONS FOR PRETRIAL DETENTION. AND THE FOURTH DISTRICT COURT OF APPEAL, WHERE THE FOURTH HAS STEADFASTLY PROTECTED THE CONSTITUTIONAL RIGHT TO BOND, THERE ARE MOTIONS FOR PRETRIAL DETENTION. SO WHAT WILL HAPPEN IS, IF IT IS RECOGNIZED, THERE IS A JUDICIAL EXCEPTION, JUDICIAL DISCRETION EXCEPTION, TO THE CONSTITUTIONAL RIGHT TO BOND, IS PROSECUTORS WILL NOT BE FILING MOTIONS FOR PRETRIAL DETENTION, BECAUSE THEY ARE MUCH MORE DIFFICULT TO PROVE. THEY

HAVE A "BURDEN OF PROOF", AND THEY HAVE A TIME FRAME, AND THEY WILL SIMPLY DEFINE MOTION TO SAY REVOKE BOND, HOPING THAT THE INDIVIDUAL TRIAL COURTS WILL FIND THAT THEIR CONDITIONS OF BOND WERE VIOLATED AND WILL JUST DENY BOND. SO THE LEGISLATURE, THE FOURTH DISTRICT COURT OF APPEAL, RECOGNIZED THAT, WHAT THE LEGISLATURE WAS INTENDING ON TO DO IS IN ONE SITUATION THEY WOULD FILE PRETRIAL DETENTION MOTIONS IN ONE CIRCUIT AND IN ANOTHER CIRCUIT THEY WOULDN'T, RECOGNIZED THAT THE LEGISLATURE WAS ATTEMPTING TO LIMIT THOSE INSTANCES WHERE A CRIMINAL DEFENDANT WOULD BE DETAINED WITHOUT BOND.

DO WE KNOW WHAT IS HAPPENING IN THE OTHER DISTRICTS?

YOUR HONOR, I DON'T. I DON'T KNOW. I KNOW THAT THE CASES, CERTIFIED CONFLICT, ARE FROM THE THIRD AND THE FOURTH.

IT IS AMAZING THAT THIS HAS TAKEN THIS LONG TO GET UP HERE.

WE HAVE HAD MANY CASES IN THE FOURTH WHERE WE HAVE HAD -- WHERE WE HAVE FILED WRITS OF HABEAS AND BEEN SUCCESSFUL. THE HAUSER IS A SECOND OPINION. THE COURT DOESN'T HAVE ANY FURTHER --

YOUR LIGHT HAS COME UP.

IF THE COURT DOESN'T HAVE ANY FURTHER QUESTIONS, I WOULD CONCLUDE BY ASKING THE COURT TO AFFIRM THE FOURTH DISTRICT COURT OF APPEALS DECISION.

THANK BOTH FOR YOUR ASSISTANCE IN THIS MATTER. WE WILL TAKE A 15-MINUTE RECESS. A BAILIFF: PLEASE RISE.