State of Florida vs James J. Norris, Jr.

NEXT CASE ON THE COURT'S CALENDAR IS STATE OF FLORIDA VERSUS JAMES J NORRIS. MS. SCHUMANN.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS BELL SHOE MAN. I REPRESENT -- MY NAME IS BELL SCHUMANN. I REPRESENT THE STATE OF FLORIDA IN THIS CASE. THE ISSUE THIS MORNING IS WHETHER THE RULES OF PROCEDURE PERMIT THE FIRST ANDENS JUDGE TO MODIFY A BAIL BOND WHEN A PERSON IS ARRESTED PURSUANT TO A WARRANT AND THE ISSUING MAGISTRATE HAS SET A FIRM AMOUNT OF BOND.

LET'S GO THROUGH THIS FROM THE BEGINNING, IF WE COULD. I THINK IT WOULD BE HELPFUL.

ALL RIGHT.

WE ARE DEALING, HERE, WITH A WARRANT.

AN ARREST WARRANT.

IN THE NORRIS CASE.

YES, SIR.

NOW, WOULD YOU AGREE THAT, UNDER THE RULES, THAT THE SITUATION IS DIFFERENT FOR A CAPE YAS THAN A WARRANT?

WELL, IN BOTH OF THOSE INSTANCES, IT IS AN ORDER BY THE JUDGE THAT A PERSON BE ARRESTED. I SEE NO PRACTICAL DIFFERENCE BETWEEN THOSE TWO.

WHAT IS THE STATE'S REASON THAT THERE WOULD BE A SPECIFIC SECTION IN JAY, UNDER 3.131, FOR A CAPEAS, AND THERE IS NO MENTION OF A WARRANT?

SOMETIMES RULES ARE USED INTERCHANGEBLY, IN OTHER WORDS. CAPEAS, WARRANT, BAIL BOND, THOSE SORTS OF THINGS. THE STATE WOULD DETERMINE THAT THERE IS NO REAL DISTINCTION BETWEEN THOSE TERMS.

BUT THERE IS A DISTINCTION BETWEEN A CAPEAS AND A WARRANT, ISN'T THERE? THERE IS A SPECIFIC STATUTE AND RULE THAT DEALS WITH WARRANTS. IN 3., WHAT IS IT, 3.130 OR 129.

CERTAINLY THERE IS A DISTINCTION BETWEEN WHAT CAUSES IT TO BE ISSUED. A CAPEAS IS ISSUED THROUGH A WARRANT, AND A WARRANT IS ISSUED THROUGH A LAW ENFORCEMENT OFFICER, WHO TAKES IT TO A JUDGE AGE GETS THE JUDGE TO REVIEW THE CAUSE OF ACTION. AND THE OTHER CASE, THE JUDGE, ALSO, ESTABLISHES PROBABLE CAUSE AND SETS A BOND AND INDICATES WHETHER OR NOT THAT CAN BE MODIFIED.

BUT IN BOTH SITUATIONS, THE JUDGE DOESN'T HAVE THE DEFENDANT BEFORE HIM OR HER, TO ACTUALLY DETERMINE WHAT THE BOND IS.

THAT'S CORRECT. IT IS A NONADVERSARIAL HEARING.

AND IN ONE THE STATE ATTORNEY I WOULD ASSUME, BECAUSE THE CAPEAS IS ISSUED AFTER AN INDICTMENT HAS BEEN FILED, AND THE STATE ATTORNEY IS ASKING THE COURT TO ISSUE CAPEAS?

YES. GENERALLY FOR FAILURE TO APPEAR, IS MY UNDERSTANDING, WHEN SOMEONE HAS MISSED A COURT APPEARANCE, SUCH AS ARRAIGNMENT, A CAPEAS IS ISSUED FROM THE BENCH, AND THE DEFENDANT WOULD NOT BE PRESENT.

BUT ONE IS TREATED DIFFERENTLY FROM THE OTHER. WHY SHOULD A CAPEAS -- WHY SHOULD A JUDGE BE ABLE TO SAY, ON A CAPEAS, THAT YOU CAN NOT ALTER THE BAIL AND YOU CAN ON AN ARREST WARRANT?

WELL, BECAUSE IT IS FURTHER GOVERNED BY RULE 3.31-D, IN BOTH SITUATIONS, AN AMOUNT OF BOND IS SET, IF IT IS A BAILABLE OFFENSE. ON AN ARREST WARRANT THERE, IS A FURTHER INDICATION OF WHETHER OR NOT THAT BOND CAN BE MODIFIED BY THE FIRST APPEARANCE JUDGE. IN THE CASES BEFORE THE COURT THIS MORNING, THERE WAS AN INDICATION, FIRST OF ALL, THAT THERE WAS PROBABLE CAUSE. SECOND, THAT THE AMOUNT OF BOND WAS FIXED AT A SET AMOUNT, AND THIRD --

HOW IS THAT FIXED? HOW IS THAT AMOUNT DETERMINED?

IT IS DETERMINED, LIKE ALL OTHER DISCRETIONARY MATTERS BEFORE THE ISSUING MAGISTRATE. HE REVIEWS THE AFFIDAVIT. HE REVIEWS THE HISTORY OF THE PERSON OR -- THAT IS REALTYED IN THE ARRESTING -- THAT IS RELATED IN THE ARRESTING AFFIDAVIT. PERHAPS THERE HAVE BEEN OTHER INCIDENTS OF VIOLENCE OR PERHAPS OTHER FAILURE TO APPEARS.

WHAT ABOUT FAMILY DIES AND LENGTH OF RESIDENCE AND EMPLOYMENT HISTORY. THAT CAN'T BE DETERMINED IN A NONADVERSARIAL, NONRECORDED SITUATION, WITHOUT DENYING A CONSTITUTIONAL RIGHT --

THAT'S CORRECT. IT IS A NONADVERSARIAL HEARING. THAT'S CORRECT.

WHY DO YOU CALL IT A NONADVERSARIAL HEARING? ISN'T IT AN EXPARTE HEARING?

IN SOME INSTANCES, YES, IT IS AN EXPARTE HEARING, MUCH LIKE THE DECISION TO ISSUE A CAPEAS, IF THE DEFENDANT IS NOT THERE. EXPARTE. BOTH SIDES ARE NOT THERE TO PRESENT THE FULL FACTS. WE ARE NOT SAYING THAT THAT IS AN ONE-TIME FIXED RULE.

BOTH SIDES. IS THAT CORRECT? THIS IS AN EXPARTE PROCEEDING IS WHAT IT IS.

YES. IN BOTH CASES.

IN BOTH INSTANCES IT IS AN EXPARTE PROCEEDINGS.

WE ARE NOT SAYING -- THIS IS BAIL.

ISN'T BAIL SUPPOSED TO BE HEARD, THOUGH, WITH THE CONSIDERATIONS, SUCH AS JUSTICE PARIENTE OUTLINED, THAT IS THAT TIME AFTER TIME, WE HAVE OUTLINED WHAT THE FACTORS ARE, AND HOW CAN THAT HAPPEN IN AN EXPARTE HEARING?

WELL, THE STATE CERTAINLY AGREES THAT, IN AN ADVERSARIAL BOND HEARING, THOSE ARE THE DETERMINATIONS THAT ARE CONSIDERED, BUT MUCH LIKE WHEN AN ARREST WARRANT IS ISSUED, THERE HAS BEEN A DETERMINATION OF PROBABLE CAUSE FOR THE ARREST. YOU DON'T REARGUE WHETHER THERE IS PROBABLE CAUSE AT THE FIRST APPEARANCE HEARING. IF YOU ARE ARRESTED WITHOUT A WARRANT AND YOU GO TO FIRST APPEARANCE, THEN THE INITIAL FIRST

APPEARANCE --

ISN'T THE REASON FOR THAT, THOUGH, THAT THE DEFENDANT HAS A RIGHT, IMMEDIATELY, TO HAVE A NEUTRAL MADGEIES STRAIGHT IN AN ADVERSARIAL PROCEEDING DETERMINE THESE FACTORS, AND THAT IS CLASSICALLY THE WAY THAT A BAIL DETERMINATION IS SUPPOSED TO BE MADE, IS IT NOT?

YES. HOWEVER --

CAN YOU SAY THAT A FAIR BAIL DETERMINATION IS MADE, ABSENT THAT?

INITIALLY, YES. BECAUSE THE PERSON, JUST LIKE IF SOMEONE IS ARRESTED PURSUANT TO A WARRANT, THERE HAS BEEN A PROBABLE CAUSE DETERMINATION FOR THE ARREST. THERE HAS BEEN A BOND SET. JUST LIKE THE PERSON RETAINS THE RIGHT, AT A LATER DATE, TO HAVE AN ADVERSARIAL DETERMINATION OF PROBABLE CAUSE, HE, ALSO, RETAINS THE RIGHT ON THREE --

WHY SHOULD THERE BE ANY PRESETING OF THE AMOUNT OF BAIL, WITHOUT AN ADVERSARIAL? WHAT IS THE NECESSITY FOR THAT? SINCE SOMEBODY IS ARRESTED AND CLEARLY THEY CANNOT BE RELEASED, UNTIL A JUDGE DOES SET THE TERMS OF BAIL. WHAT -- WHERE IS THE NEED TO HAVE, IN AN EXPARTE PROCEEDING, AN ARBITRARY SETTING OF A BAIL AMOUNT?

BECAUSE THE ISSUING MAGISTRATE HAS, BEFOREHAND, THE PROBABLE CAUSE AFFIDAVITS. PERHAPS THEY HAVE KNOWN IF THE DEFENDANT HAS THREATENED THE VICTIM IN THE PAST OR THEY SET THE AMOUNT OF BOND, BASED ON THE FACTORS OF THE CRIME. THAT IS NOT FIXED --

WHERE IS THE NECESSITY FOR THAT? THAT IS DOESN'T THAT SAME ISSUING MAGISTRATE KNOW THAT, BEFORE THAT PERSON CAN BE RELEASED ON BAIL AND CONDITIONS AND WHATEVER, THAT IT WILL HAVE TO GO BEFORE A JUDGE, A NEUTRAL JUDGE THAT WILL HAVE THE ABILITY TO DETERMINE THIS LAUNDRY LIST OF PROPER FACTORS, SO WHERE -- TELL ME WHERE THE NECESSITY IS FOR AN EXPARTE PROCEEDING TO DETERMINE THAT, WHEN THERE IS GOING TO BE, AVAILABLE, IMMEDIATELY, AN ADVERSARIAL PROCEEDING, WHICH WE ALL AGREE, AND I ASSUME THE STATE WOULD AGREE, IS THE BEST WAY TO DO IT?

WELL, I WOULD RESPECTFULLY DISAGREE WITH THAT, BECAUSE --

WHY ISN'T THAT THE BEST WAY TO DO IT?

WELL, BECAUSE WHEN AN ISSUE EWING MAGISTRATE IN, SAY, TALLAHASSEE, REVIEWS THE FACTS OF THE CRIME, REVIEWS THE PRIOR HISTORY OF THE PARTIES INVOLVED, THE DEFENDANT MAY BE ARRESTED IN TALLAHASSEE. HE MAY BE ARRESTED IN KEY WEST, AND KEY WEST JUDGE HAS NO KNOWLEDGE. THE STATE ATTORNEY FROM MONROE COUNTY KNOWS NOTHING OF THE CASE ALTHOUGH THERE IS A STATE'S REPRESENTATIVE THERE. IF THE ISSUING MAGISTRATE IN TALLAHASSEE, AFTER A FULL REVIEW OF THE AFFIDAVITS, THE FACTS OF THE CASE, SAYS I AM GOING TO SET THIS BOND UNTIL, AND I DON'T WANT IT CHANGED UNTIL THAT DEFENDANT COMES BACK BEFORE ME FOR A FULL-BLOWN ADVERSARIAL HEARING, THEN IS HE IN A BETTER POSITION THAN ANY JUDGE WITHIN OR WITHOUT THE STATE.

SETTING IT.

SETTING IT. COULD ACTUALLY WORK TO THE ADVANTAGE OF THE DEFENDANT, I WOULD TAKE IT.

CORRECT.

BECAUSE THAT WAY THE DEFENDANT CAN IMMEDIATELY BE RELEASED. BUT --

THAT'S CORRECT.

LET ME ASK YOU THIS. WHAT IS THE STATE'S POSITION ON WHAT THE PROVISION IN 3.31 -- 131-D -- 2 MEANS, WHERE IT SAYS THE JUDGE, AT THE DEFENDANT'S FIRST APPEARANCE, CONSIDER ALL AVAILABLE RELEVANT FACTORS, TO DETERMINE WHAT FORM OF RELEASE IS NECESSARY TO ASSURE THE DEFENDANT'S APPEARANCE. IT WOULD SEEM TO ME THAT, IF WE STRIP THE FIRST APPEARANCE JUDGE OF DISCRETION THAT THAT IS SORT OF AN EMPTY PROVISION OF THIS RULE.

WELL, IN THE MAJORITY OF THE TIME, THE FIRST APPEARANCE JUDGE SETS BOND. HOWEVER, IN THOSE INSTANCES, JUST LIKE THE FIRST APPEARANCE JUDGE DOESN'T MAKE A SECOND PROBABLE CAUSE DETERMINATION. WE ARE STRIPPING HIM OF THAT DETERMINATION. WE ARE, ALSO, IN THOSE INSTANCES WHEN THERE HAS BEEN AN ARREST WARRANT. THERE HAS BEEN AN AMOUNT OF BOND SET. WE ARE SAYING WE ARE GOING TO MAINTAIN THE STATUS QUO, UNTIL WE CAN GET ALL INTERESTED PARTIES, GIVE THEM ALL NOTICE AND GET THEM BEFORE AN IMAGE STRAIGHT. SO IT IS JUST IN THOSE INSTANCES WHERE IT HASN'T ALREADY BEEN DONE. THERE HAS ALREADY BEEN A JUDICIAL DETERMINATION OF PROBABLE CAUSE. THERE HAS, ALREADY, BEEN A JUDICIAL SETTING OF BOND AND AN APPROPRIATE AMOUNT.

ARE YOU USING SETTING AND ENDORSING IN THE SAME WAY?

YES. MY OPPONENT SUGGESTS THAT ENDORSE MEANS MUCH LIKE MICHAEL JORDAN ENDORSES TENNIS SHOES, IT THAT IT IS A MERE SUGGESTION, RECOMMENDATION. THE STATE CONTENDS THAT THE MORE APPROPRIATE INTERPRETATION OF THAT WORD WOULD BE TO AFFIX ONE'S SIGNATURE TO, AND THAT IT IS, IN FACT, A JUDICIAL ORDER.

EITHER WAY, IT IS NOT THE SETTING OF THE BOND. IT IS AN ENDORSEMENT, AND AS JUSTICE WELLS SAID, AS YOUR OPPONENT HAS SUGGESTED, IT IS FOR THE PURPOSE THAT, IF SOMEONE IS ARRESTED AND THEY WANT TO BE ABLE TO GET OUT OF JAIL IMMEDIATELY, THEY HAVE AN AMOUNT THAT THEY CAN POST, AND THEY CAN GET OUT OF JAIL, SO IT IS AN ADDITIONAL PROTECTION FOR THE DEFENDANT, BUT WHERE DO YOU SEE, IN THE STATUTE OR THE RULE, THAT IT IS THEREFORE, THEN, A PRECONCLUSION OF THE FIRST APPEARANCE JUDGE TO ACTUALLY HAVE A DETERMINATION TO ACTUALLY SET THE AMOUNT OF THE BOND? AND I GUESS THAT IS WHERE WE ARE GOING BACK TO WHETHER, IF WE SAY ENDORSEMENT, ITq DOES NOT MEAN SETTING. THEN WE ARE GOING BACK AND LOOKING AT THE RULES, AND THE RULES SEEM PRETTY CLEAR AS TO WHAT IS SUPPOSED TO HAPPEN IN FIRST APPEARANCE.

WELL, WE WOULD RELY ON D PART OF THAT RULE THAT SAYS SUBSEQUENT APPLICATION OR MODIFICATION OF BAIL. SUBSEQUENT APPLICATION. THAT RULE SAYS NO JUDGE OF EQUAL OR INFERIOR JURISDICTION MAY MODIFY OR SET A BOND, UNLESS, D, SAYS, HE WAS THE FIRST APPEARANCE JUDGE AND/OR WAS AUTHORIZED BY THE JUDGE SETTING THE BOND. THIS RULE DOES NOT CONTEMPLATE. IT DOES CONTEMPLATE THAT, IN SOME INSTANCES THE FIRST APPEARANCE IS GOING TO BE THE SUBSEQUENT HEARING OR ELSE HE WOULDN'T BE THERE.

I GUESS D WAS THERE, BECAUSE AT THE POINT WHERE THE FIRST APPEARANCE JUDGE SETS IT AND THE DEFENDANT IS NOT HAPPY, THIS ISN'T GOING TO ALLOW THE DEFENDANT TO GO FIND A JUDGE THAT IS GOING TO SET A LESSER BOND. THAT IS WHAT THAT PROTECTION IS -- I MEAN, ISN'T -- SO WHAT YOU ARE REALLY SAYING IS THAT WHAT WE HAVE TO DO IS INTERPRET OUR OWN RULES, AND YOU WOULD AGREE THAT WE HAVE TO INTERPRET THOSE RULES CONSISTENT WITH A DEFENDANT'S CONSTITUTIONAL RIGHTS.

WELL --

DO YOU AGREE WITH BOTH THOSE PROPOSITIONS? NUMBER ONE, IT IS A RULE CONSTRUCTION.

IT IS A RULE CONSTRUCTION.

AND SECONDLY THAT, HOWEVER WE CONSTRUE THIS, WHETHER IT IS AMBIGUOUS OR IT IS NOT THAT, WE HAVE GOT TO CONSTRUE CONSISTENT WITH THE DEFENDANT'S CONSTITUTIONAL RIGHTS.

THERE IS NO FOURTH AMENDMENT CONSTITUTIONAL RIGHT HERE. THESE RULES ARE DERIVED FROM --

I AM TALKING ABOUT, UNDER THE FLORIDA CONSTITUTION, THE RIGHT TO BAIL.

WELL, UNDER THE FLORIDA CONSTITUTION OR THE FEDERAL CONSTITUTION, THE FIRST AMENDMENT RIGHTS ARE GOVERNED BY THE FOURTH AMENDMENT. THEY ARE SOLELY DERIVED, THE PROCEDURES AND STANDARDS FOR ARREST AND PRETRIAL DETENTION, ARE SOLELY DERIVED FROM THE FOURTH AMENDMENT, AND UNDER GURSTEIN VERSUS PEW, THERE ISN'T A RIGHT AT ALL, IF SOMEONE IS ARRESTED UNDER AN ARREST WARRANT SO THERE IS NO CONSTITUTIONAL RIGHT HERE, BECAUSE IT IS GOVERNED SOLELY BY THE FOURTH AMENDMENT, AND THE CASES CITED IN THE BRIEF THAT REALLY HAVE NOTHING DO WITH CONSTITUTIONAL RIGHTS, THERE IS REALLY NO CONSTITUTIONAL RIGHT HERE, BECAUSE IT DERIVES SOLELY FROM THE FOURTH AMENDMENT.

ONE OF THE PROBLEMS HERE THAT I HAVE IS YOU SAID THE JUDGE THAT ISSUES THE ARREST WARRANT SETS OR DETERMINES, WHICHEVER TERM YOU WANT TO USE, THE AMOUNT OF BAIL, AND SAYS THIS CAN'T BE CHANGED, UNTIL YOU COME BACK TO ME. SUPPOSE THIS IS NOT THE JUDGE WHO THE CASE IS ASSIGNED TO, AND THERE, REALLY, ISN'T ANY REASON TO EVER HAVE GONE BACK TO THE JUDGE WHO SIGNED THE ARREST WARRANT. WHAT HAPPENS IN THOSE SITUATIONS?

WELL, THERE ARE A AND B PARTS OF THE RULE THAT SAYS, IF IT IS THE CHIEF JUDGE OF THE CIRCUIT OR THE JUDGE TO WHOM THE CASE IS ULTIMATELY ASSIGNED.

SO YOU HAVE GOT TO WAIT UNTIL --

CAN BE MODIFIED. YEAH. THERE HAS TO BE THREE HOURS -- A DEFENDANT CAN OBTAIN AN ADVERSARY BOND HEARING ON AS LITTLE AS THREE HOURS-NOTICE TO THE STATE, BUT THE STATE NEEDS TO HAVE SOME NOTICE, WHETHER THEY ARE ARRESTED IN TALLAHASSEE OR PENSACOLA OR KEY WEST. THEY HAVE TO HAVE SOME NOTICE TO BE ABLE TO -- THE VICTIMS HAVE A RIGHT TO BE THERE. THE LAW ENFORCEMENT OFFICER HAS A RIGHT TO BE THERE. THERE IS NOTHING IN THIS CASE THAT INDICATES THAT THIS JUDGE HAD, BEFORE HIM, THE ARREST AFFIDAVITS OR ANY OF THE INFORMATION OF THE CRIME. THE FIRST APPEARANCE JUDGE HAS THE DEFENDANT AND THE TIES TO THE COMMUNITY AND THOSE FACTORS. THE ISSUING MAGISTRATE HAS THAT OTHER HALF.

ISN'T THE STATE THERE AT THE FIRST APPEARANCE HEARING, ALSO?

YES, BUT IT IS WHEREVER HE HAPPENS TO BE ARRESTED. HE MAY OR MAY NOT KNOW A THING ABOUT THE CASE, SO THE STATE IS THERE. THAT IS TRUE. BUT A STATE ATTORNEY FROM ESCAMBIA COUNTY DOESN'T KNOW ANYTHING ABOUT A CASE FROM MONROE COUNTY.

BUT THE STATE ATTORNEY KNOWS THAT THIS FIRST APPEARANCE HEARING IS COMING UP, AND SO THEORETICALLY, ANYWAY, YOU COULD --

THEY ARE HANDED A LIST OF CASES OF THE PROCEEDING 24 HOURS' ARREST. THAT IS TRUE. THEY KNOW THAT THERE IS GOING TO BE A FIRST APPEARANCE. IT IS THE DEFENDANT WHO KNOWS WHERE HE IS GOING TO BE AT ANY GIVEN TIME, NOT THE STATE. THAT IS WHY WE NEED TO HAVE --

SO ARE YOU, THEN, ADVOCATING THAT, WHEN YOU COME TO THIS FIRST APPEARANCE HEARING, THE DEFENDANT, THEN, AND THE JUDGE ON THE ARREST WARRANT, HAS SAID THIS AMOUNT CANNOT BE CHANGED. IT IS AT THAT POINT THAT THE DEFENDANT, THEN, REQUESTS THE HEARING?

HE COULD AT THAT POINT. BUT AT SOME POINT, HE HAS TO GO BACK BEFORE EITHER THE ISSUING MAGISTRATE OR BACK TO THE CIRCUIT WHERE THE ARREST WARRANT WAS ISSUED, BECAUSE THOSE -- THAT IS THE PLACE WHERE THEY HAVE KNOWLEDGE OF THE FACTS OF THE CASE, AND THEY CAN PUT BOTH HALVES TOGETHER, THE HALVES ABOUT THE DEFENDANT'S INFORMATION AND HEAR FROM THE VICTIMS AND THE OTHER INTERESTED PARTIES WHO HAVE, AT THAT POINT, NOTICE OF WHAT IS GOING TO HAPPEN. THIS IS NOTHING KNEW. WE -- THIS IS NOTHING NEW. WE DON'T PERMIT FORM SHOPING IN BAIL DETERMINATION.

AREN'T WE IN A SITUATION THAT IS UNIQUE, APPARENTLY, IN THIS COUNTY, WHERE, BY ORDER, THERE IS A PARTICULAR JUDGE THAT IS THE FIRST APPEARANCE JUDGE, SO WITHIN THAT CIRCUIT, THEY CAN ADJUST, IF THEY WANT TO CHANGE ASSIGNMENTS OR DO SOMETHING THAT WILL -- BUT THE DEFENDANT IS NOT FORM SHOPPING. THE DEFENDANT IS GOING BEFORE THE FIRST APPEARANCE JUDGE. HOW IS THE DEFENDANT FORUM SHOPPING? THE DEFENDANT DIDN'T KNOW WHO THE ARRESTING JUDGE WAS. IT WAS DONE WITHOUT HIS OR HER PRESENCE, AND THE CIRCUIT HAS DESIGNATED WHO THE FIRST APPEARANCE JUDGE IS.

WELL, BY GOING TO HERNANDO COUNTY, HE KNOWS THAT HE IS THE ONE AND ONLY ONE JUDGE THAT IS GOING TO. NOW, MAYBE IS HE IN HERNANDO AND MAYBE IS HE IN KEY WEST AND MAYBE IS HE IN PENSACOLA. WE DON'T KNOW WHERE HE IS GOING TO BE WHEN HE IS ARRESTED. WE DON'T PERMIT MODIFICATION OF BOND BY ANYONE OTHER THAN THE JUDGE WHO SET THE BOND IN THE FIRST INSTANCE OR THE CHIEF JUDGE OF THE CIRCUIT. THAT IS NOT A NOVEL CONCEPT, AND THE REASON FOR THAT --

THE JUDGE DOES NOT HAVE TO SAY THAT IT CANNOT BE CHANGED. THE JUDGE WHO ISSUES THE ARREST WARRANT CAN LEAVE IT BLANK AND ANY --

THAT IS THE SITUATION IN McCAUGHEY, THAN IS EXACTLY RIGHT BUT BECAUSE THAT ISSUING MAGISTRATE HAS PARTICULAR KNOWLEDGE OF THE FACTS OF THE CASE, OF THE, PERHAPS, PRIOR THREATS OR, PERHAPS, KNOWLEDGE OR -- THAT IS RELATED IN THE AFFIDAVIT THAT THE PERSON IS ESPECIALLY DANGEROUS FOR SOME REASON. HE SETS AN AMOUNT OF BOND AND THEN, FURTHER, ORDERS --

THAT IS NOT NECESSARILY TRUE.

NO, IT IS NOT.

ALL A JUDGE REALLY HAS TO HAVE TO ISSUE THE ARREST WARRANT IS ENOUGH INFORMATION TO DETERMINE THAT THERE IS PROBABLE CAUSE. CORRECT?

THAT'S CORRECT.

SO YOU REALLY DON'T HAVE TO HAVE ANY KIND OF ADDITIONAL INFORMATION ABOUT A DEFENDANT.

YOU DON'T HAVE TO BUT YOU COULD, AND THAT COULD BE A REASON WHY, AS JUDGE GOSHORN SAID, IN HIS ISSUING INFORMATION THAT, IT COULD NOT BE FURTHER MODIFIED UNTIL -- BY THE FIRST APPEARANCE JUDGE, UNDER RULE 1.--

WHAT IS THE RULE AS TO THE VICTIM'S RIGHTS IN THE STATE CONSTITUTION THAT PLAY IN HIS THIS SETTING OF BAIL?

WELL, CERTAINLY AT ALL CRITICAL STAGES OF THE PROCEEDINGS, THE VICTIM HAS A RIGHT TO BE HEARD. PARTIES HAVE A RIGHT TO BE HEARD. THE STATE ATTORNEY WITH THE INFORMATION RELATING TO THE CRIME, LAW ENFORCEMENT, OTHER WITNESSES, MAY WISH TO COME BEFORE THE -- AND BE HEARD ON THE ISSUE OF WHETHER THE BOND SHOULD BE LOWERED. THE VICTIM MAY COME BEFORE AND SAY, LOOK, I HAVE RECEIVED DEATH THREATS. I AM IN FEAR FOR MY LIFE. PLEASE DON'T LOWER THE BOND. THAT IS THE KIND OF INFORMATION THAT THE ISSUING MAGISTRATE WOULD HAVE THAT THE FIRST APPEARANCE JUDGE, WHEREVER IN THE STATE, MAY, PROBABLY WOULD NOT HAVE BEFORE HIM. SO THE STATE IS NOT SAYING --

IS THIS, IN THE FIELD, A ROUTINE PRACTICE FOR THE STATE TO GIVE NOTICE TO THE VICTIM OF THE MATTER HAVING TO DO WITH THE REDUCTION OF BAIL?

WHEN THERE IS AN ADVERSARY HEARING SET AND ALL PARTIES HAVE NOTICE OF WHEN AND WHERE IT IS GOING TO BE MODIFIED, I WOULD CERTAINLY BELIEVE THAT, YES, ALL INTERESTED PARTIES WOULD BE PRESENT. THE POINT IS THEY HAVE NOTICE. WHETHER THEY ARE THERE OR NOT, THEY HAVE NOTICE. THEY HAVE TIME TO PREPARE. BOTH SIDES HAVE TIME TO PREPARE. NOT JUST ONE SIDE, WHEN IT IS THE ISSUING MAGISTRATE. NOT JUST OTHER SIDE AT FIRST APPEARANCE, BUT IT IS NOT UNTIL YOU HAVE AN ADVERSARIAL HEARING THAT BOTH SIDES ARE THERE AND CAN GIVE A FULL AND FAIR, CONSTITUTIONALLY-REQUIRED CONSIDERATION OF THE ISSUES.

IN THIS CASE, WHAT WERE THE FACTORS THAT THE ISSUING MAGISTRATE RELIED ON, IN SETTING THE -- ENDORSING THE BOND AT 20,000? WERE THERE PRIOR THREATS? WHAT WAS THERE?

THERE IS A VERY SPARSE RECORD HERE, BECAUSE IT CAME UP AS WRIT OF PROHIBITION.

ISN'T THERE A SPARSE RECORD, BECAUSE YOU ARE NEVER GOING TO KNOW WHAT WAS IN THE JUDGE'S MIND WHEN HE SET THE AMOUNT, BECAUSE THERE IS NO REQUIREMENT THAT IT BE SPECIFIED, AND ISN'T THAT THE PROBLEM, IS THAT IF A DEFENDANT THEREAFTER TRIES TO GO AND MODIFY AN AMOUNT, THAT HAS BEEN SET, THEY DON'T KNOW WHAT FACTORS THE JUDGE EVEN USED TO GET THE AMOUNT TO THE SECOND AMOUNT.

IN ALL INSTANCES WE PRESUME THAT JUDGES EXERCISE THEIR DISCRETION BASED ON LEGALLY IDENTIFIABLE FACTORS. AS FAR AS THIS PARTICULAR CASE, THERE IS A SPARSE RECORD, BUT WE ARE LOOKING AT THE LARGER PICTURE HERE, AND THE LARGER PICTURE IS, WHEN AN ARREST WARRANT IS ISSUED IN PENSACOLA, AND THAT JUDGE HAS AFFIDAVIT AND INFORMATION, SETS A BOND, AND THEN TAKES THE FURTHER STEP AND INDICATES, YOU KNOW, I DON'T WANT THE FIRST APPEARANCE JUDGE WHEREVER IN THE STATE. I WANT TO HAVE THE DEFENDANT TO COME BACK BEFORE ME OR SOME OTHER JUDGE OF THIS CIRCUIT. I DON'T WANT THE BOND MODIFIED, UNTIL THAT TIME. WE ARE NOT SAYING THAT THIS IS AN ONE-TIME FIXED RULING. WE ARE SAYING THAT WE NEED, IN SOME CASES, THERE HAS TO BE AWAY TO MAINTAIN STATUS QUO, ONCE THE PERSON IS ARRESTED, UNTIL THERE CAN BE A FULL HEARING.

WOULD YOU ADVOCATE A DIFFERENT RULE, IF THE ARREST TAKES PLACE IN THE SAME CIRCUIT WHERE THE ARREST WARRANT WAS ISSUED?

IF -- WELL, THE RULE IS ADEQUATELY STATED AS IT IS. THE RULE SAYS A SUBSEQUENT MODIFICATION, A SUBSEQUENT APPLICATION OR MODIFICATION OF BAIL CAN'T TAKE PLACE BY A JUDGE OF EQUAL OR INFERIOR JURISDICTION, UNLESS IS THE FIRST APPEARANCE JUDGE AND THEY WERE AUTHORIZED TO DO SO UNDER THE ARREST WASHINGTON. IF THEY ARE NOT ---THE ARREST WARRANT. IF THEY ARE NOT AUTHORIZED TO DO SO UNDER THE ARREST WARRANT, THEY CANNOT DO SO, UNDER THE CLEAR RULE, UNLESS IT IS A THE A SUBSEQUENT TIME.

IF YOU WOULD LIKE TO RESERVE YOUR TIME.

I WOULD. THANK YOU. THANK YOU. MS. OSMAN.

GOOD MORNING. I AM ELIZABETH OSMAN, AND I AM HERE ON BEHALF OF THE RESPONDENT JAMES J NORRIS. I WOULD LIKE TO TAKE ISSUE WITH SOME OF THE ANSWERS THAT THE STATE PROVIDED THE COURT WITH THEIR QUESTIONS. WE HAVE THOROUGHLY BRIEFED THESE ISSUES, AND I AM SURE THE COURT IS AWARE OF THE RESPONDENT'S POSITION.

LET ME START OFF WITH YOU, WITH THE SAME QUESTION I STARTED WITH THE STATE. DO I READ YOUR PAPERS CORRECT THAT YOU ARE NOT CHALLENGES THE CAPE -- CAPEAS PART OF THIS ADMINISTRATIVE ORDER. A THAT'S CORRECT.

SO WE HAVE A SITUATION IN WHICH IF THERE IS A CAPEAS AND THE -- IT IS DONE EXPARTE, TOO, QUOTE, EXPARTE, IN THAT THE DEFENDANT IS NOT PRESENT AT THE TIME THAT --

THAT'S CORRECT. YES.

-- THE COURT ISSUES A CAPEAS. A CAPEAS ISSUES UPON THE STATE ATTORNEY'S SIGNATURE ON THE INDICTMENT OR INFORMATION.

AND THE JUDGE ENDORSES THAT.

AND THE JUDGE ENDORSES THAT PARTICULAR BOND.

FROM THAT STANDPOINT, THE ONLY DIFFERENCE IS THAT THE STATES ATTORNEY IS INVOLVED IN THE CAPEAS, AS OPPOSED TO LAW ENFORCEMENT INVOLVED IN THE WARRANT.

WELL, I THINK IT IS, ALSO, A SECOND REVIEW. IN ORDER FOR THE STATE ATTORNEY TO ISSUE THE INFORMATION, THE STATE ATTORNEY HAS CERTAIN DUTY, I UNDER BOTH THEIR ETHICAL OBLIGATIONS AND THE RULES.

THE WAY THIS WORKS IN A CAPEAS, IS THAT, THEN, THE COURT THE -- ISSUES THE CAPEAS. CAN, SAY, WHETHER OR NOT THE -- THERE SHOULD BE A FURTHER DETERMINATION MADE IN RESPECT TO BAIL.

THAT'S CORRECT.

AND IF THE JUDGE DECIDES THERE SHOULD NOT BE, THEN AT FIRST APPEARANCE, THERE ISN'T ANY FURTHER CONSIDERATION.

THAT WOULD BE CORRECT.

NOW, SO, WE ARE NOT -- YOU ARE NOT SAYING THAT THERE SHOULD BE ANY CHANGE IN THAT PROCEDURE. YOU ARE SAYING THAT THE WARRANT IS SUCH A DISTINCTIVE PROPOSITION THAT THAT FIRST APPEARANCE, THAT THERE SHOULD BE AN EXAMINATION OF THE AMOUNT OF BAIL WHICH HAS BEEN SET AT FIRST APPEARANCE.

THAT'S CORRECT. AND THAT THERE IS A SEPARATE RULE GOVERNING THE CAPEAS AND GOVERNING THE ABILITY TO MODIFY THE BOND THAT HAS BEEN AS, IN A WORD, ENDORSED BY THE JUDGE.

DESPITE THE SEPARATE RULE, EXPLAIN TO ME WHY YOU BELIEVE THAT THE FIRST APPEARANCE JUDGE SHOULD, IN FACT, BE ABLE TO CHANGE THE BOND, BASED ON A CAPE YAS AND NOT ON A WARRANT. I MEAN, IN EITHER SITUATION, AS I SEE IT, THE DEFENDANT IS NOT THERE. IN ONE SITUATION YOU HAVE A STATE ATTORNEY THERE. ONE YOU HAVE LAW ENFORCEMENT THERE. WHAT IS THE RULE DIFFERENCE IN THOSE TWO SITUATIONS?

PERSONALLY, I DON'T SEE THAT THERE IS A MAJOR DIFFERENCES BETWEEN THE TWO. IT IS SIMPLY THAT THE LEGISLATURE HAS ELECTED OR THE SUPREME COURT HAS ELECTED TO IMPLEMENT RULES AND STATUTES THAT GOVERN THEM SEPARATELY. THIS CASE CAME UP ON A WARRANT.

IT IS BASED ON THE RULE.

THIS CASE CAME UP ON A WARRANT. CASE. THAT IS HOW WE GOT HERE, AND UNDER THE CONSTRUCTION OF THE RULES AND UNDER ANY -- WHEN YOU STRICTLY CONSTRUE THE PENAL STATUTES, IT CLEARLY SAYS THAT A CAPE YAS REQUIRES -- A CAPEAS REQUIRES THE MODIFICATION, AND YOU CAN'T CHANGE IT WITHOUT, AND THE WARRANT THAT, IS NOT INVOLVED. WHEN YOU HAVE A STATUTE THAT DOES NOT INVOLVE THAT LANGUAGE, IT, THEREFORE, HAS TO IN YOU ARE TO THE DEFENDANT -- TO INURE TO THE DEFENDANT AND THE DEFENDANT IS ENTITLED TO HIS BAIL HEARING.

SO AS A FOLLOW-UP, WE ARE NOT DISCUSSING CONSTITUTIONAL RIGHTS THAT ARE BEING IMPLICATED. WE ARE SIMPLY CONSTRUING RULES OF THIS COURT?

I THINK THAT BOTH ARE AT ISSUE. I THINK --

HOW IS IT THERE COULD BE A CONSTITUTIONAL RIGHT, IF THE PERSON WHO IS ARE AESTED -- WHO IS ARRESTED ON A CAPEAS DOESN'T HAVE A BOND ENDORSED ON AN EXPARTE HEARING AND DOESN'T HAVE THAT FIRST APPEARANCE RIGHT AND ONE THAT GETS ARRESTED, PURSUANT TO AN ARREST WARRANT DOES, AND SOMEBODY WHO IS JUST ARRESTED, FOR SURE, DOES. WHERE ARE THE -- WHAT IS THE GOVERNING CONSTITUTIONAL PRINCIPLES THAT ALLOW THAT TO OCCUR?

I THINK THE CONSTITUTIONAL PRINCIPLE WOULD, PROBABLY, BE THE SAME, IF THE CAPEAS ISSUE WAS ADDRESSED, WHETHER OR NOT THAT PARTICULAR RULE IS CONSTITUTIONAL OR NOT. IT NEVERTHELESS IS NOT THE SAME AS THE RULE AVAILABLE FOR THE WARRANT.

SO YOU ARE JUST SAYING WE DON'T NEED TO REACH THE CONSTITUTIONAL ISSUE.

CORRECT.

BECAUSE WE HAVE GOT SOMETHING THAT OUR RULES -- THAT YOU SAY ARE FAIRLY CLEAR.

CORRECT. I THINK IT SEPARATES THE TWO.

YOU ARE NOT SAYING IT IS OKAY WITH THE CAPEAS. IT IS JUST NOT BEFORE YOU.

IT IS NOT BEFORE YOU, AND IT CAME BEFORE YOU ON THE PARTICULAR ISSUE OF THE WARRANT. I THINK, TO DENY THE DEFENDANT TO HAVE A RIGHT TO AN EFFECTIVE AND MEANINGFUL FIRST APPEARANCE BOND HEARING IS UNCONSTITUTIONAL. I THINK YOUR DEFENDANT IS ENTITLED TO SHOW ALL OF THE THINGS THAT THE COURTS AND THE LEGISLATURE HAVE PROVIDED TO HIM THAT BEING THE TIES TO THE COMMUNITY, THE EMPLOYMENT HISTORY, MENTAL HEALTH HISTORY, AND ALL OF THOSE THINGS. THERE IS NO QUESTION THE STATE HAS ITS RIGHTS, ALSO, TO ESTABLISH THE VICTIM'S TESTIMONY THE LAW ENFORCEMENT, AND ANYTHING ELSE THEY WISH TO PRESENT, BUT THE PROCEDURE FOR PRESENTATION IS FIRST APPEARANCE UNLESS YOU FALL UNDER ONE OF THE SPECIFICALLY EXCLUDED AREAS, WHICH INCLUDE CAPITAL OR LIFE FELONIES, WHICH INCLUDE ANYTHING THE STATE FILED A PRETRIAL DETENTION MOTION ON, WHICH, CLEARLY, IS AVAILABLE TO THE STATE.

WELL, THEN, IT WOULD BE YOUR ARGUMENT THAT THE -- EVALUATION OF THE AMOUNT OF BAIL

WOULD BE A CRUCIAL STAGE OF THE PROCEEDING.

I BELIEVE IT IS, YES.

AND DON'T YOU HAVE TO NOTIFY THE VICTIM?

I BELIEVE THAT THAT IS THE STATE'S RESPONSIBILITY, TO NOTIFY THE VICTIM. THE STATE ATTORNEY IS THE FIRST PERSON AWARE OF HIS PICKUP.

WE ARE DEALING WITH, IF IT IS GOING TO BE DONE AT FIRST APPEARANCE, THEN YOU ARE GOING TO HAVE TO NOTIFY THE VICTIM, WITHIN 24 HOURS, AND IF -- THAT IS SORT OF A HOLLOW CONSTITUTIONAL RIGHT THAT THE VICTIM HAS, THAT IF THE PERSON IS ARRESTED IN KEY WEST, AND, IN FACT, THE CRIME OCCURRED IN PENSACOLA.

I WOULD DISAGREE WITH THAT REASONING, BECAUSE PRESUMABLY, WHOEVER HAS ISSUED, WHATEVER STATE ATTORNEY OR WHOEVER HAS DEALT WITH THIS INITIAL CASE IN THAT COUNTY HAS HAD CONTACT WITH THE VICTIM. THE STATE ATTORNEY OF THAT COUNTY CAN CERTAINLY BE NOTIFIED JUST AS THE DEFENDANT'S COUNSEL IS OBLIGATED TO NOTIFY PARENTS. CAN YOU POST BOND? WHAT AMOUNT OF BOND CAN YOU POST?

BUT THE PROBLEM THAT I SEE IS THIS PROBLEM OF THE MOBILITY OF THE DEFENDANT, BEING SOMEWHERE ELSE OTHER THAN WHERE THE ALLEGED REASON FOR THE COMMITMENT IS, AND TRYING TO WORK THAT WITH WHAT THE CONSTITUTION PLAINLY SAYS, IN ARTICLE I SECTION 16 B, THAT THE VICTIM HAS A RIGHT TO NOTICE OR BE PRESENT AT ALL CRUCIAL STAGES OF CRIMINAL PROCEEDINGS.

THAT WOULD BE THE RESPONSIBILITY OF THE STATE ATTORNEY OR LAW ENFORCEMENT, AND THE VICTIM, IF THE VICTIM HAS RELOCATED AND THEY CAN'T NOTICE THEM, ANY -- THEY ARE NOT REQUIRED TO FOLLOW THEM, MERELY MAKE THE EFFORT TO NOTIFY THEM. THEY CAN, CERTAINLY, BE HEARD ABOUT VIA TELEPHONE. THEY CAN BE HEARD BY THE VOICE OF THE STATE ATTORNEY. THERE ARE WAYS TO HAVE PARTIES HEARD, JUST AS IF HE IS ARRESTED IN KEY WEST, I CAN NOTIFY KEY WEST THAT I HAVE PARENTS WILLING TO POST $10,000, OR THEY CAN CONTACT ME. YOU KNOW. DO YOU HAVE FAMILY IN THE AREA? WHAT CAN YOU DO? THOSE THINGS ARE AVAILABLE. IT IS TRUE THAT THEY ARE SELDOM DONE, BUT IT IS NOT BECAUSE IT IS NOT -- THEY ARE NOT AVAILABLE AVENUES. IT IS BECAUSE THEY CHOOSE NOT TO. AND WHEN THEY CHOOSE NOT TO, THEY MAY NOT GET THE VICTIM IN, BUT IT IS AVAILABLE TO THEM.

IS THE JUDGE THAT ISSUES THE ARREST WARRANT OBLIGATED, UP OUR RULES, TO ENDORSE AN AMOUNT OF -- A BOND AMOUNT?

I BELIEVE IT SAYS THAT HE SHALL ENDORSE AMOUNT, BUT IT DOES NOT SAY THAT IT SHALL NOT BE MODIFIED.

WHAT IS THE -- WHAT IS YOUR UNDERSTANDING OF THE PURPOSE OF THAT SUBDIVISION?

SO THAT ANYONE WHO IS ARRESTED, AND THE RIGHTS UPON ARREST DO GO TO THE DEFENDANT UPON ARREST. HE IS ABLE TO BOND OUT.

SO IN OTHER WORDS, BECAUSE IT DOESN'T ALLOW THE ISSUING MAGISTRATE TO SAY, WELL, I AM GOING TO RELEASE THIS PERSON. THE DEFENDANT, ON HIS OR HER ONE RECOGNIZANCE, BECAUSE THAT IS SOMETHING THAT CAN ONLY BE DETERMINED AT A HEARING WHERE THE DEFENDANT PRODUCES EVIDENCE AS TO WHY THAT SHOULD BE HAPPEN.

UNLESS YOU HAVE A CAPITAL OR A LIFE FELONY, NOT HAVING A BOND SET BY SOMEONE, EITHER LAW ENFORCEMENT OR A COURT, UPON THE ISSUANCE OF A WARRANT, YOU WOULD HAVE TO

HAVE A JUDGE APPROACHED EVERY TIME AN ARREST OCCURRED, ANY TIME DURING THE EVENING, BECAUSE THEY ARE ENTITLED TO BOND, UNLESS THEY ARE THERE ON A CAPITAL OR LIFE FELONY. WE WOULD HAVE OUR JUDGES GETTING UP ALL NIGHT LONG, EVERY NIGHT, ANSWERING WE PICKED UP SOMEONE FOR DUI AT THREE O'CLOCK.

SO YOUR CONTENTION IS THAT THAT SUBDIVISION IS ACTUALLY FOR THE PROTECTION OF THE DEFENDANT?

I THINK IT IS FOR THE PROTECTION OF THE DEFENDANT. I THINK IT IS FOR THE CONVENIENCE OF THE COURTS. I THINK IT IS FOR THE SWIFT ADMINISTRATION OF JUSTICE. I THINK WE HAVE TO HAVE SOME PROVISION, AND THERE IS -- THERE IS LAW ASSERTING. THAT THERE HAS TO BE SOME PROVISION TO ALLOW SOMETHING TO OCCUR FROM A 6:00 P.M. ARREST UNTIL A 10 A.M. FIRST APPEARANCE APPEARANCE.

IF LAW ENFORCEMENT IS CONCERNED ABOUT THE DANGER THAT THE DEFENDANT MIGHT POSE, THEN THE AMOUNT PRESUMABLY, IS SET HIGH ENOUGH, SO THAT IT IS --

HE IS STILL THERE AT FIRST APPEARANCE.

TELL ME HOW THIS WORKS IN REAL LIFE, IN PLACES OTHER THAN HERNANDO COUNTY. YOU PRACTICE OTHER PLACES, OTHER THAN HERNANDO COUNTY?

I HAVE PRACTICEED IN BREVARD COUNTY, WHICH IS MUCH LARGER.

IN BREVARD COUNTY, DO WE HAVE THIS CONFLICT BETWEEN THE JUDGES AS TO WHETHER THEY ARE GOING TO ALLOW THE FIRST APPEARANCE JUDGE TO SET THE --

IN BREVARD COUNTY, IF THERE WAS SUCH A CONFLICT, I WAS NOT AWARE OF IT. I AM AWARE OF TALLAHASSEE, THAT THERE WAS SUCH A CONFLICT, AN UNWRITTEN RULE, AND THAT WOULD BE THE FAUTIST CASE, WHICH CAME BEHIND OURS, WHICH WAS AND WRITTEN RULE, WHERE THE JUDGES IN FORMALLY AGREED, TO MY UNDERSTANDING, INFORMALLY AGREED NOT TO CHANGE EACH OTHER'S BOND AMOUNTS THAT WERE I SHOULD ON THE -- THAT WERE ISSUED ON THE PARTICULAR WARRANTS. IN BREVARD COUNTY, I AM NOT AWARE OF THAT PARTICULAR ISSUE, AND I AM NOT AWARE OF WHETHER THE BONDS WERE CHANGED ON WARRANTS OR NOT CHANGED.

WELL, IN MOST INSTANCES, WERE THE JUDGES JUST NOT CHECKING WHETHER THE FIRST APPEARANCE JUDGE COULD?

THAT WAS THE CASE IN McCAUGHEY, OUT OF DADE COUNTY, WHERE NO BOX WAS CHECKED.

I AM TALKING ABOUT YOUR EXPERIENCE IN BREVARD.

MY EXPERIENCE IN BREVARD, I DON'T RECALL. I DON'T KNOW IF THEY CHECKED IT. APPARENTLY IT WAS CHECKED IN TALLAHASSEE AND IT WAS NOT CHECKED IN McCAUGHEY, IN DADE COUNTY. OTHER THAN THAT, I DON'T KNOW.

I SORT OF ASSUMED FROM THIS CASE THAT IT WAS ONLY BECAUSE THERE WAS THIS ADMINISTRATIVE ORDER THAT WAS ENTERED BY THE CHIEF JUDGE OF THAT CIRCUIT, THAT WE HAD ANY QUESTION ABOUT WHETHER THE FIRST APPEARANCE JUDGE COULD OR COULD NOT CHANGE THIS BOND. IS THAT NOT TRUE?

I THINK IT INITIALLY BEGAN THAT WAY, SINCE I FILED IT AS A WRIT. I FILED IT AS A WRIT TO RELEASE THE DEFENDANT AND HAVE A BOND HEARING. IT WENT UP ON THE ISSUANCE OF THE AN ADMINISTRATIVE ORDER. THE FIFTH DCA BROADENED THAT TO ENCOMPASS THE BOND ISSUE AT

FIRST APPEARANCE.

SO THE ISSUE HAS BEEN SORT OF -- IT SOUNDS LIKE PERCOLATING IN OTHER CIRCUITS, DESPITE NO ADMINISTRATIVE ORDER.

I THINK IT HAS BEEN PERCOLATING, WITHOUT ADMINISTRATIVE ORDERS, AND IN FAUTIS, I AM AWARE THAT THE ISSUE IN THAT AROSE OUT OF AN INFORMAL AGREEMENT. SO I THINK IT HAS BEEN AROUND. AS TO THE STATE'S CONTENTION THAT THIS RECORD IS SPARSE, THE STATE WAS AN ORIGINAL PARTY TO THE ORIGINAL WRIT AND CHOSE NOT TO RESPOND. THE STATE HAD AMPLE OPPORTUNITY TO RESPOND AND WAS SERVED WITH THE ORIGINAL WRIT. RESPONDING TO THE ORIGINAL WRIT WAS ONLY JUDGE SWAG EARTH AND -- SWAGGERT AND JUDGE ISLIP, WHO RESPONDED WITH CHIP MANDOR. THE DECISION WAS REACHED, AT THE FIFTH, WITH RESPONSES FROM JUDGE SWAGGERT, JUDGE HISLIP, AND ON BEHALF OF THE RESPONDENT NORRIS. MR. NORRIS, THE OTHER THING I WANT TO BE VERY, VERY CLEAR ABOUT, IS THE STATE'S CONTENTION THAT YOU ARE ENTITLED TO A BOND HEARING WITHIN THREE-HOUR NOTICE IS ABSOLUTELY INCORRECT. THE RULE READS THAT YOU MUST GIVE OPPOSING PARTY A MINIMUM OF THREE HOURS. MR. NORRIS, WHOM THE FIRST APPEARANCE JUDGE DETERMINED AN APPROPRIATE BOND WAS $1500, SAT IN JAIL TWO WEEKS, ON A $20,000 BOND, BEFORE HE COULD GET A BOND HEARING. THERE IS NO MAXIMUM AMOUNT OF TIME THAT THEY CAN SIT BEFORE THEY GET THEIR, QUOTE, SUBSEQUENT APPLICATION. MERELY A MINIMUM.

WHEN DID HE ACTUALLY APPLY TO HAVE THAT HEARING?

I WOULD ASSUME WITHIN THE DAY WITHIN A DAY OR TWO. OF THE FIRST APPEARANCE. I KNEW ABOUT IT AT THE TIME OF FIRST APPEARANCE, THAT I MAY HAVE ACTUALLY CONTACTED THE JUDGE, WHO WOULD BE AS IBD BEFORE -- WHO WOULD BE ASSIGNED BEFORE, THE SECRETARY FOR THAT TIME OR THE NEXT DAY.

WOULD THE RULES NEED TO BE MODIFIED OR WHETHER THEY ARE PERFECTLY FINE, IF WE WERE TO CONSTRUE THE RULE TO, AS THE STATE REQUESTS, WOULD YOU SUGGEST THAT THE RULE WOULD NEED TO BE CHANGED, TO MAKE SURE THAT IN THIS SITUATION THAT THERE BE A BOND HEARING WITHIN 24 HOURS?

WITHOUT QUESTION. EVEN ON V. OP, THE -- EVEN ON VOP, THE DEFENDANT ON A VOP HAS TO GO BACK BEFORE THE JUDGE THAT ISSUED THE V.O.P. WARRANT, BECAUSE PRESUMABLY HE IS RESPONSIBLE FOR THE SUPERVISION. HE HAVE EASTBOUND IN A -- EVEN IN A VOP WARRANT, THAT HAS BEEN CONSTRUED, THEY ARE REQUIRED TO BRING THE DEFENDANT BEFORE THE JUDGE WHO ISSUED THE WARRANT FORT WITH, AND THAT HAS BEEN CONSTRUED AS 24 HOURS. PEOPLE ARE SITTING IN JAIL BECAUSE THEY DON'T GET --.

BUT YOU HAVEN'T RAISED THAT AS AN ALTERNATIVE. IN OTHER WORDS IF WE CONSTRUE THE RULE TO BE THIS, THEN THERE OUGHT TO BE A RIGHT TO GO BACK BEFORE THE ORIGINAL JUDGE, WITHIN 24 HOURS.

I THINK THAT THAT IS CORRECT. THAT IS THE CONSTRUCTION --

HAVE YOU ASSERTED THAT AS AN ALTERNATIVE?

NO, I HAVEN'T, BECAUSE IT IS MY POSITION THAT ANY AMBIGUITY INURES TO THE DEFENDANT.

FOR WHATEVER REASON, IF WE DON'T AGREE WITH THE STATE --

IN THE INITIAL WRIT, I ASKED FOR THAT PARTICULAR REMEDY. THE REMEDY THAT I RECEIVED IN THE INITIAL WRIT WAS MY PRIMARY REMEDY, WHICH IS THAT THE ORDER WAS QUASHED, AND THE FIRST APPEARANCE JUDGE WOULD HAVE THE AUTHORITY TO MODIFY THE BOND.

BUT YOU ALTERNATIVELY PLED THAT THERE OUGHT TO BE A RIGHT TO A HEARING WITHIN 24 HOURS.

IN THE INITIAL WRIT, BUT I DID NOT RESPOND WITH THAT ON MY RESPONSE TO THE SUPREME COURT, BECAUSE IT CAME UP ON THE BROADER ISSUE. BUT AT THIS PARTICULAR POINT IN TIME, GIVEN THE RULES AND GIVEN THE CONSTRUCTION OF THE RULES AND GIVEN THE FACT THAT ALL PENAL STATUTES AND RULES HAVE TO BE STRICTLY CONSTRUED, I THINK THERE IS NO QUESTION THAT THE DEFENDANT IS ENTITLED, UPON ARREST, TO A MEANINGFUL BAIL HEARING AT A FIRST APPEARANCE. IF THAT IS DIFFICULT FOR THE STATE, THEN THE STATE ATTORNEYS NEED TO MAKE A MORE DILIGENT EFFORT TO GET THEIR VICTIM INPUT THEIR LAW ENFORCEMENT INPUT, AND WHATEVER IT IS THEY NEED OR WISH TO INTRODUCE. THERE IS NO QUESTION THAT THE INITIAL WARRANT, WHEN SIGNED BY THE JUDGE, IS DONE IN AN EXPARTE MANNER. ANY ASSERTION THAT HE HAS ANY FACTS AS TO PRIOR THREATS, ANYTHING LIKE THAT, IS NONLT OUTSIDE OF THE -- IS NOT ONLY OUTSIDE OF THE RECORD AND NOT PRESENT IN THIS CASE, IT IS, ALSO, HIGHLY UNLIKELY. MOST OFTEN, AT LEAST IN OUR COUNTY, THIS IS GOING PAPERWORK.

THERE IS SOME ALLEGATION, AND I GUESS IT IS NOT IN THE RECORD, BUT THESE ARE ACTUALLY PRESET AMOUNTS THAT ARE JUST DETERMINED ACCORDING TO A SCHEDULE.

THE PRESET AMOUNTS HAVE COME UP AND BEEN ADDED TO THE RECORD BY VIRTUE OF THE FIFTH DISTRICT COURT OF APPEALS ACCEPTING JUDICIAL NOTICE OF A PRIOR CASE. THERE IS A PRESET BOND SCHEDULE, AND OFTEN THESE ARE PRESET AMOUNTS. THERE IS NO DETERMINATION AS TO WHETHER THE VICTIM OR THE DEFENDANT CAN OR CAN'T MAKE IT. TIES TO THE COMMUNITY, PRIOR RECORD. IT WOULD BE EXTREMELY UNLIKELY THAT A JUDGE ISSUING A WARRANT WOULD HAVE ANY INFORMATION WHATSOEVER ABOUT PRIOR THREATS OR ANYTHING ELSE. THIS IS PAPERWORK. SHUFFLED FROM THE STATE ATTORNEY'S OFFICE --

ONE MORE TIME BEFORE YOU SIT DOWN, THOSE SITUATIONS WHERE THERE ARE SPECIAL CIRCUMSTANCES AND THE TRIAL COURT THAT ISSUES THE WARRANT DOES HAVE SPECIAL INFORMATION THAT THE PARTICULAR DEFENDANT IS A THREAT TO FLEE OR IS A THREAT TO SOMEBODY'S SAFETY HOW WOULD YOU SUGGEST, IF WE CONSTRUE THE RULE THE WAY THAT YOU ARE ASKING US TO, THAT THAT JUDGE, WHO ISSUES THE WARRANT AND THEN WEREN'T A SPECIAL CONSIDERATION BECAUSE OF THAT -- AND THEN WANTS A SPECIAL CONSIDERATION BECAUSE OF THAT, TOIRB EW TO THE MAGISTRATE THAT COMES BEFORE, SO THAT A MISTAKE IS NOT MADE, HOW WOULD YOU SUGGEST THAT THAT BE ACCOMPLISHED?

I WOULD SUGGEST THAT THE STATE FILE A MOTION FOR PRETRIAL DETENTION, AN AVENUE AVAILABLE TO THEM AND THAT THEY ARE RESPONSIBLE FOR. IF SOMEONE IS IN DANGER, THAT IS THE REMEDY, TO HOLD HIM IN CUSTODY, AND THAT CAN, IF THAT IS GRANTED, WHETHER THE COURT IS HERE OR ELSEWHERE, IF THAT IS GRANTED, THAT DEFENDANT WILL SIT IN CUSTODY UNTIL HE COMES TO TRIAL, AND THAT IS THE REMEDY TO PROTECT SOCIETY FROM THOSE TYPES OF ISSUES. IS THERE ANYTHING MORE?

HOW IS THAT GOING TO OCCUR? AS A PRACTICAL MATTER, IF WE ARE TALKING ABOUT JURISDICTIONS OR VENUES, THAT ARE DIFFERENT FROM THE ISSUING WARRANTS VENUE? THAT IS, IN OTHER WORDS, THE EXTREME EXAMPLE BEING, IF THE WARRANTS ARE ISSUED IN KEY WEST AND THE DEFENDANT IS PICKED UP IN PENSACOLA ACHT HOW IS THAT GOING TO OCCUR, AS A PRACTICAL MATTER,, SINCE IN PENSACOLA THEY ARE GOING TO HAVE THAT FIRST APPEARANCE IMMEDIATELY THE NEXT MORNING?

VIA THE SAME TELETYPE OR TRANSMISSION THAT THE WARRANT GETS THERE. THESE PEOPLE ARE GETTING PICKED UP BY TELETYPE. ALL THAT IT NEEDS TO SAY IS THAT THERE IS A HOLD FOR PRETRIAL DRE DETENSION AS WELL. -- FOR PRETRIAL DETENTION AS WELL, JUST AS IF HE WAS PICKED UP ON TWO HOLDS, ONE FROM THE STATE OF CALIFORNIA AS A FUGITIVE.

DON'T YOU HAVE A TIME LIMITATION FOR LEON COUNTY TO GO TO THE KEYS TO PICK UP THAT PERSON?

I DON'T UNDERSTAND THE QUESTION.

ISN'T THERE, IF A DEFENDANT IS ARRESTED IN KEY WEST ON A LEON COUNTY WARRANT, AND THERE IS A FIXED AMOUNT SET IN THE BOND, AND THEY NOTIFY LEON COUNTY THAT THEY HAVE THE PERSON IN CUSTODY, ISN'T THERE A TIME LIMITATION?

NO. THERE IS NOT. THAT IS ESTABLISHED BY THE FIRST APPEARANCE OR THE COUNTY. FOR DPAFERP HE WILL -- FOR EXAMPLE IN OUR COUNTY, PASCAL WILL PICK UP TOMORROW. IF YOU ARE PICKED UP TODAY, PASCAL WILL PICK UP TOMORROW.

THERE IS NO LIMITATION?

NO, THERE ISN'T N FACT, I HAVE SOME KNOWLEDGE OF KEY WEST AND DADE COUNTY. DADE COUNTY DOES NOT NOTIFY MONROE COUNTY TO COME GET THEM, AND SOMEONE SAT IN DADE COUNTY, IN THIS SAME ISSUE FILED IN DADE COUNTY, WHICH IS HOW I KNOW ABOUT IT, SAT IN DADE COUNTY FOR TWO WEEKS, AND MONROE JUST SIMPLY DIDN'T COME AND GET HIM.

OKAY. THANK YOU VERY MUCH. MS. SCHUMANN.

JUST A COUPLE OF VERY QUICK POINTS. FIRST OF ALL, THE STATE WOULD LIKE TO DRAW THIS COURT'S ATTENTION TO THE FACT THAT SEVEN MONTHS ELAPSED BETWEEN ISSUANCE OF THE WARRANT IN THIS CASE AND WHEN MR. NORRIS WAS ACTUALLY ARRESTED. TO REQUIRE THE STATE AND THE VICTIM AND LAW ENFORCEMENT TO BE PREPARED WITHIN THAT SEVEN-MONTH PERIOD, EACH AND EVERYDAY FOR A FIRST, FOR A FULL-BLOWN ADMINISTRATIVE HEARING, IS BEYOND THE INTERPRETATION OF THE RULES. IT IS, ALSO, MY RECOLLECTION OF THE RECORD, I WILL DEFER TO COUNSEL ON THIS, BUT THE ADVERSARIAL HEARING WAS WITHIN ONE WEEK AND THE BOND WAS REDUCED. I WOULD, ALSO, POINT OUT TO THIS COURT THAT MODIFICATION CAN GO EITHER UP OR DOWN, THAT IF THIS COURT RULES THAT YOU CAN HAVE A FULL-BLOWN ADVERSARIAL HEARING AT FIRST APPEARANCE, THE STATE COULD, ALSO, MOVE TO HAVE IT INCREASED, AS WELL AS DECREASED.

THERE IS NOTHING -- WHAT IS WRONG WITH THAT?

CERTAINLY IT CUTS BOTH WAYS.

DOESN'T THAT ACTUALLY PROTECT THE STATE, AS WELL, AND THE VICTIM, WHICH IS THAT MAYBE, AGAIN, BECAUSE THE ISSUING JUDGE DOES NOT HAVE ALL THE INFORMATION, DOES THE BEST IN JUST SETTING AN AMOUNT? AND THEN WE HAVE EXACTLY THIS SITUATION, WHERE A REASONABLE BOND CAN BE SET, ONCE ALL THE INTERESTED PARTIES ARE BEFORE THE COURT.

WELL, EXCEPT THAT THE INTERESTED PARTIES AREN'T ALWAYS THE INTERESTED PARTIES. THE STATE ATTORNEY FROM ESCAMBIA COUNTY IS NOT THE SAME INTEREST AS THE STATE ATTORNEY FROM MONROE COUNTY.

HOPEFULLY, IN THIS DAY OF COMMUNICATION AND E-MAILS AND FAXES, ALL OF THAT SHOULD BE FAR EASIER THAN A COUPLE OF YEARS AGO.

THAT IS TRUE, BUT THERE IS NOTHING THIS RECORD TO INDICATE THAT THE FIRST APPEARANCE JUDGE HAD THOSE CONSIDERATIONS. IT IS THE STATE'S POSITION THAT THE ADMINISTRATIVE ORDER, HERE, IS -- NEITHER ADDS TO OR DETRACTS FROM THE STATE'S ARGUMENT. IF THE ADMINISTRATIVE ORDER IS IN COMPLIANCE WITH THE PROCEDURE BE THEN IT VALID. IF IT IS NOT, THEN IT ISN'T. IT IS NOT ALL ABOUT THE CONSTITUTION OR THE ADMINISTRATIVE ORDER.

ISN'T THE ORDER ABOUT WHETHER YOU ARE GOING TO ALLOW THE JUDGE THAT FIRST HAS THE DEFENDANT BEFORE THAT JUDGE AND THE STATE, THERE, THE DISCRETION TO MAKE A DETERMINATION AS TO WHETHER THAT PERSON SHOULD BE RELEASED? AND THAT IS WHAT THIS CASE IS ABOUT, ISN'T IT?

WELL, IT IS ONLY IN THOSE INSTANCES WHERE THE ISSUING MAGISTRATE HAS TAKEN THAT ADDITIONAL STEP, BECAUSE UNDER THE RULES, IT SAYS IF YOU ARE THE FIRST APPEARANCE JUDGE AND YOU ARE AUTHORIZED.

ALL OF THESE KINDS OF SITUATIONS, THE PARADE OF THE HORRIBLES, WHERE THE JUDGE IN PENSACOLA IS GOING TO DO SOMETHING BIZARRE, IT WOULD BE BIZARRE, BECAUSE MOST OF THE TIME, IF THE JUDGE DOESN'T HAVE SOME REASON GIVEN THAT THE AMOUNT SHOULD BE REDUCED FROM WHAT IS ORIGINALLY SET, THE JUDGE IS GOING TO LEAVE IT THERE ISN'T HE OR SHE?

ONE WOULD HOPE THAT THEY WOULD GIVE DUE DEFERENCE TO THE ORDER.

ISN'T THAT WHAT IS HAPPENING, REALLY?

ONE WOULD HOPE THAT THEY WOULD GIVE DUE DEFERENCE AND JUDICIAL COURTESY, WOULD ORDINARILY CAUSE THAT RESULT. YES, SIR. AS FAR AS THE STATE NOT RESPONDING, THIS CAME UP AS A WRIT AND THE STATE WAS NOT ORDERED TO RESPOND. THAT IS WHY THE STATE DIDN'T APPEAR IN THE FIFTH. AS FAR AS IF THIS COURT CHOOSES TO AMEND THE RULES TO PUT SOME SORT OF TIME LIMITATION ON IT, THE STATE WOULD REQUEST THE COURT TO TAKE INTO CONSIDERATION THE FACT THAT YOU ARE STILL TALKING ABOUT A VERY LARGE GEOGRAPHIC STATE, AND SOMETHING LIKE TWO OR THREE WORKING DAYS WOULD CERTAINLY ENABLE ALL PARTIES TO HAVE ADEQUATE NOTICE AND MARSHALL THEIR FORCES. I SEE MY TIME HAS EXPIRED. I WILL RELY ON THE BRIEF. THANK YOU VERY MUCH.

ONE LAST QUESTION. IS THERE ANY TIME LIMITATION ON SOMEONE GOING TO ANOTHER COUNTY TO PICK UP A PERSON WHO HAS BEEN ARRESTED ON A WARRANT?

I AM NOT FAMILIAR. I DON'T KNOW.

THANK YOU VERY MUCH.

THANK YOU.

THANK YOU, COUNSEL.