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THE STATE WOULDN'T TAKE THE VIEW THAT THEY ARE COMMONLY UNDERSTOOD AND HAVE A BROADER DEFINITION THAN WHAT IS IN THE -- THOSE PARTICULAR STATUTES.

WE ACKNOWLEDGE THAT THEY ARE TERMS OF ART, FOR PURPOSES OF THIS STATUTE, AND THAT THOSE DEFINITIONS AS ARE DEFINED IN THOSE OTHER CHAPTERS CAN BE APPLIED HERE, AND IT IS THE FINDING OF THE FIFTH DISTRICT BELOW THAT THAT CAN'T BE DONE, AND IT IS OUR POSITION THAT THAT RATIONALE, THE FIFTH DISTRICT COURT OF APPEAL CITING BOWDERS, AND I READ THROUGH BOWDERS SEVERAL TIMES, AND THAT RATIONALE IS SIMPLY NOT IN THE BOWDERS' CASE, AND THE RATIONALE IN THE LOWER COURT DIDN'T FIT AND NOW THIS COURT HAS THE OPPORTUNITY TO PROPERLY RULE THE STATUTORY CONSTRUCTION, BECAUSE THAT STATUTORY CONSTRUCTION APPLIES UNLESS THIS COURT OTHERWISE RULES. THOSE PRIMARY STATUTES THAT ARE RELATED TO EACH OTHER ARE REGARDED IN PARAPATARIA, AND THEY SHOULD BE CONSTRUED IN HARMONY, AND IT IS OUR POSITION THAT THE TERMS, AS DEFINED IN CHAPTER 39, WHICH INVOLVES DEPENDENCY ACTIONS AND CHAPTER 984, WHICH INVOLVES SERVICES AND CHAPTER 985, WHICH DEFINES DELINQUENCY PROCEEDINGS, THOSE CAN BE DEFINED THERE AND APPLIED TO THIS STATUTE.

WHAT HAS THE STATUTE CHANGED? WHAT DO WE MAKE OF THE CHANGE IN THE STATUTE?

IT IS OUR POSITION THAT THE AMENDMENT IN 1996, WHICH DELETED THE TERM, THE PHRASE, AS DEFINED UNDER THE LAWS OF FLORIDA, WAS MERELY AN EFFORT ON THE LEGISLATURE TO DELETE UNNECESSARY SURPLUSES, THAT THAT LANGUAGE IS NOT NECESSARY TO MAKE THE STATUTE CONSTITUTIONAL, AND IT IS NOT NECESSARY TO REFUTE A VAGUENESS CLAIM. IT IS OUR POSITION THAT, ALSO, WHEN THEY AMENDED THE STATUTE IN 1996, IT WAS REALLY MORE OF A RESHOVELING OF SOME OF THE CHILD -- RESHUFFLING OF THE CHILD ABUSE STATUTE.

DID IT PREDATE THAT CHANGE?

IT, ALSO, HASN'T BEEN CHANGED TO REFLECT THAT 985 WAS CREATED FOR DELINQUENCY. THEY JUST REFER TO CHAPTER 39, WHICH USED TO HOLD, CONTAIN THE DEPENDENCY AND DELINQUENCY STATUTES, TOGETHER. THEY WERE ALL SEPARATED IN 1997.

WE ARE USING, IN THE TRIALS OF THESE CASES, THEY ARE USING THE SAME JURY INSTRUCTION THEY WERE USING UNDER THE STANDARD INSTRUCTION THEY WERE USING UNDER THE PRECHANGE STATUTE.

CORRECT. BUT THEY ARE USING -- YEAH. THEY ARE REFERENCING TO THE CHAPTER, TO DEFINE THOSE TERMS, WHEN INSTRUCTING ON THE ELEMENTS. THE NOTE SAYS THE TRIAL JUDGE SHOULD LOOK TO THE DEFINITIONS OF DELINQUENT DEPENDENT AND CHILD SERVICES AS THEY ARE IN THAT CHAPTER.

HOW DO YOU RESOLVE THE SEAMING IN CONGRUITY OF US ACCEPTING AN INTERPRETATION OF THE STATUTE, NOW, WHICH, REALLY, BRINGS BACK INTO THE STATUTE, THE VERY WORDS THAT WERE DELETED BY THE LEGISLATURE? THAT IS IF I UNDERSTAND YOUR POSITION, IT IS THAT WE SHOULD INTERPRET THE STATUTE TO MEAN THAT THESE WORDS AND PHRASES, AS DEFINED, UNDER FLORIDA LAW, SPECIFICALLY AS DEFINED UNDER THE DEFINITIONS GIVEN IN CHAPTER 39, REMAIN A PART OF THE STATUTE, AND YET THE LEGISLATURE HAS ELIMINATED THAT VERY LANGUAGE. IT SAYS "AS DEFINED THERE IN". IT IS A LITTLE STRANGE THERE. WE ARE PUTTING BACK IN --

WE ARE NOT ASKING --

-- WORDS THAT THE LEGISLATURE HAS EXPRESSLY TAKEN OUT.

WHICH WE BELIEVE, WE THOUGHT IT WAS, THE LANGUAGE WAS SURPLUS, AND IT IS NOT NECESSARY TO CONSTRUE THE CONSTITUTIONALITY HERE. THIS COURT, IN ORDER TO DO SO, IT CAN USE THE RULE OF STATUTORY CONSTRUCTION, REGARDING PARAMATERIA AND USE THOSE CONSTRUCTIONS AND APPLY THEM HERE AND ANOTHER CASE THAT I CITED IN MY BRIEF, SAYS THAT IF THE STATUTE IS ACCEPTABLE TO TWO INTERPRETATIONS, THE INTERPRETATION THAT MAKES IT CONSTITUTIONAL SHOULD BE APPLIED. THE LEGISLATIVE CHANGE, WE BELIEVE, IS JUST A DELETION OF THE LANGUAGE THAT WAS NECESSARY.

WHEN WE HAVE UPHELD THE LANGUAGE BEFORE, WE HAVE UPHELD IT SPECIFICALLY REFERRING TO THE VERY LANGUAGE THAT WAS DELETED AS THE REASON WE WERE UPHOLDING THE CONSTITUTIONALITY, WHERE IT SAID "AS DEFINED UNDER THE LAWS OF FLORIDA", SO WHERE WOULD THE LEGISLATURE, KNOWING THAT WAS THE BASIS FOR UPHOLDING THE CONSTITUTIONALITY, TAKE OUT THAT LANGUAGE, UNLESS THEY WERE INTENDING TO MAKE IT BROADER OR SOMETHING?

IT IS OUR POSITION THAT THAT WAS NOT THE PLETH I HAVE INTENT. IT WAS A -- INTENT. IT WAS A MERE DELETION. HOWEVER, THE STATUTE HASN'T BEEN ADDRESSED. THE LAST TIME THE CONSTITUTIONALITY OF IT WAS ADDRESSED WAS IN 1969, AND IT IS OUR POSITION THAT THIS --

WHY WOULD IT HAVE TO BE ADDRESSED AGAIN, UNLESS IT --

NOW THIS COURT CAN ADDRESS THE STATUTE WITHOUT THE PHRASE AND APPLY THE RULES OF CONSTRUCTION AS CONSTITUTIONAL WITHOUT THE PHRASE AS VAGUE, THAN IS WHAT WE SHOULD DO HERE THIS MORNING.

WHERE WOULD THIS STATUTE, THE CHILDREN WEREN'T DELINQUENT. IS THE STATE CONTENDING IT WAS DEPENDENT OR CHILDREN IN NEED OF SUPERVISION OR BOTH? I KNOW WE ARE NOT AT THAT STAGE, BUT I AM CURIOUS ABOUT HOW A LOT OF PEOPLE DON'T QUITE KNOW WHAT CHILDREN IN NEED OF SUPERVISION ACTUALLY MEANS.

THE FACT OF THIS CASE DEMONSTRATES THAT THE MOTHER LEFT HER 11-YEAR-OLD SON AND HIS FOUR AND FIVE-YEAR-OLD SISTERS HOME ALONE AT NIGHT, UNSUPERVISED WITHOUT A TELEPHONE, AND IT IS OUR POSITION THAT THE CHILDREN, AS DEPENDENT IS DEFINED IN CHAPTERS 939 AND 984, IT DEFINES DEPENDENT TO MEAN A CHILD WHO HAS BEEN ABANDONED, ABUSED OR NEGLECT, AND IT IS OUR POSITION THAT THEY WOULD FALL UNDER THAT, THAT THE CRIME WAS THAT THOSE CHILDREN BECAME DEPENDENT, BASED UPON THAT DEFINITION, WHEN THEY WERE LEFT ALONE AT NIGHT, UNSUPERVISED, WHILE THE MOTHER WENT OUT TO GO FIND HER BOYFRIEND AND THEN SUBSEQUENTLY WAS ARRESTED.

WOULD THEY QUALIFY, ALSO, AS CHILDREN IN NEED OF SUPERVISION?

CHILDREN IN NEED OF SUPERVISION IS A DIFFERENT TYPE OF STATUTE, AND IN THAT STATUTE IT IS MORE OF OF, ACTUALLY, THE CONVERSE TO THAT, WHERE CHILDREN, THE FAMILY, ALMOST, NEEDS HELP. CHILDREN ARE HABITUALLY TRUANT. THOSE ARE THE TYPES OF ISSUES WHERE THE DEPARTMENT OF FAMILY SERVICES KIND OF STEP IN, TO AID THE PARENTS AND KIND OF GUIDING THIS CHILD. THIS REALLY OUR POSITION IN WHAT WOULD BE ARGUED TO A JURY BELOW. THIS IS NOT BEFORE US YET, WOULD BE THAT THESE CHILDREN BECAME DEPENDENT, FOR PURPOSES OF THIS STATUTE.

IN YOUR FURTHER ARGUMENT, WOULD IT BE THAT A PARENT WOULD KNOW OF THIS TYPE OF BEHAVIOR, WHICH IS JUST TO LEAVE CHILDREN OF THIS AGE ALONE IN THIS SITUATION IS

SOMETHING THAT THE STATE WOULD NOT SANCTION?

ABSOLUTELY. YOU KNOW, THE FACTS OF THIS CASE, THAT IS FOR A JURY. WE ARE NOT THERE YET, BUT THOSE ARE THE FACTS OF THIS CASE, AND WE DO BELIEVE THAT THE EVIDENCE SHOWS THAT THE CHILDREN WERE DEPENDENT, AS IS DEFINED IN THE STATUTE.

LET ME MAKE SURE I UNDERSTAND YOUR POSITION HERE. IT IS YOUR POSITION THAT, AS I INDICATED BEFORE, WE REALLY PUT THOSE WORDS BACK IN THE STATUTE, THAT IS "AS DEFINED BY FLORIDA LAW", AND THAT, INDEED, THE STATUTE WOULD BE LIMITED TO APPLICATIONS WHERE THOSE DEFINITIONS THAT ARE SET OUT IN CHAPTER 39 ARE APPLIED. THERE WOULD BE NO BROADER DEFINITION OF THOSE PHRASES.

NO.

-- THAN THOSE THAT ARE SET OUT IN CHAPTER 39, UNDER THE STATE'S VIEW. IS THAT CORRECT?

THAT'S CORRECT. THE ARGUMENT IS THAT THE DELETION OF THE LANGUAGE IS NOT NECESSARY, THAT THE RULES OF STATUTORY CONSTRUCTION ALLOW THE COURTS TO READ STATUTES IN PARAMATERIA, SO THAT WE CAN GO TO THE OTHER CHAPTERS, 984 AND 985 AND 39, TO DEFINE THOSE DEFINITIONS, AND THOSE ARE READILY AND APPLICABLE IN THIS STATUTE. IF YOU READ STATUTE 8.074, THAT STATUTE, YOUR HONORS, IT IS NOT NECESSARY FOR A COURT OF JURISDICTION TO MAKE AN ELECTION THAT THE CHILD IS DEPENDENT OR A CHILD IN NEED OF SERVICES, IN ORDER TO PROSECUTE A VIOLATION UNDER THIS SECTION. I THINK THAT SUBSECTION TWO ILLUSTRATES THE POINT FURTHER, BECAUSE IT IS SAYING THAT IT IS NOT NECESSARY FOR ANY COURT TO EXERCISE JUVENILE JURISDICTION TO MAKE A DECISION REGARDING THESE TERMS, AND THE ONLY PLACE THAT GIVES COURSE JUVENILE JURISDICTION DO, IN DELINQUENT CHILD ACTIONS, IS CHAPTERS 984 AND 985, AND I THINK IT IS, IN FACT, INDICATIVE OF THE LEGISLATURE TO REFER BACK TO THOSE CHAPTERS, WHEN ADDRESSING AND UTILIZING THIS STATUTE. IN ADDITION, WE, ALSO, DIRECT THIS COURT'S ATTENTION TO THE TWO CASES WE CITED IN OUR BRIEF, STATE VERSUS MIAMI AND MIAMI DOLPHINS. ALSO IT CITES THE PROVISION THAT THERE ISN'T DOESN'T NEED TO BE AN ALLUSION OR REFERENCE TO DEFINE A STATUTORY TERM, AND THIS COURT HAS HELD OTHERWISE. WE CAN CONSTRUE IT USING THE RULES OF STATUTORY CONSTRUCTION, WHICH THIS COURT HAS THE RIGHT TO DO.

RATHER THAN SOMETHING LIKE THIS BEING SURPLUS AGE, THIS THAT IT IS REALLY BETTER FOR THE LEGISLATURE, IN ITS DRAFTING, TO REFER TO THE STATUTE THAT IS INTENDING -- INTENDING TO HAVE CRIMINALIZED, BECAUSE, AS JUSTICE ANSTEAD SAYS, WE ARE LEFT TO SAY THEY MUST HAVE MEANT THE STATUTORY DEFINITION RATHER THAN SOMETHING BROADER, BUT THERE MIGHT BE TIMES THAT THEY ACTUALLY WANT THE TERM TO BE USED IN A BROADER SENSE, AND SO IF -- WOULDN'T THAT BE -- IF WE WERE TO RIGHT ON THIS, THEN, UPHOLD THE CONSTITUTIONALITY, THAT WE AGREE THAT IT IS SURPLUS AGE, JUST THAT WE ARE GOING TO BASICALLY TAKE THIS LANGUAGE AND PUT IT BACK IN THE STATUTE?

SURE. OF COURSE THE STATUTE CAN BE WRITTEN A LITTLE BIT DIFFERENTLY, AND THE REFERENCES CAN BE IN THERE. IT IS NOT THE BEST MODEL OF DRAFTING, NOR IS THAT PHRASE "AS DEFINED UNDER THE LAWS OF FLORIDA", AND I DON'T DISAGREE WITH YOU THAT THE STATUTE COULD BE BETTER WRITTEN TO CROSS-REFERENCE THESE CHAPTERS, AS OTHER STATUTES NORMALLY DO. HOWEVER THERE, ARE PLENTY OF STATUTES THAT DON'T CROSS-REFERENCE, AND THE STANDARD JURY INSTRUCTIONS DO REFER TO THE DEFINITION OF FIREARMS, FOR EXAMPLE. THAT TERM IS USED IN ROBBERY STATUTES, THE TRESPASS STATUTE, CARJACKING, AND IN ALL OF THE STANDARD JURY INSTRUCTIONS, THEY CROSS-REFERENCE TO CHAPTER 790, TO DEFINE FIREARMS, SO, YES, I DO THINK THAT THE STATUTE COULD BE WRITTEN A LITTLE BIT BETTER, BUT I DON'T THINK THAT IT IS VAGUE, THE BAY WEIGH IT IS, BASED UPON THE RULES OF STATUTORY CONSTRUCTION, THE WAY IT EXISTS. AT THIS POINT, YOUR HONORS, I

AM GOING TO TAKE A SEAT AND USE THE REMAINDER OF MY TIME FOR REBUTTAL. THANK YOU.

YOU MAY DO SO. MS. DAVIS. MAY IT PLEASE THE COURT. MY NAME IS BARBARA DAVIS, AND HE I REPRESENT THE RESPONDENT GWENDOLYN FUCHS. JUST TO ADDRESS A COUPLE OF QUESTIONS, THE JURY INSTRUCTION DOES REFER TO 3901, AND IN 39.01, THERE IS ONLY ONE DEFINITION, WHICH IS A CHILD WHO IS FOUND TO BE DEPENDENT. AS THE FIFTH DISTRICT COURT OF APPEAL POINTED OUT, OUR STATUTE USES DELINQUENT DEPENDENT CHILD IN NEED OF SERVICES. IF YOU LOOK TO ANY OF THE OTHER STATUTES, YOU AM NOT FIND THIS UNDER THE D'S. YOU WILL FIND IT UNDER A CHILD WHO HAS COMMIT ADD DELINQUENT ACTOR A CHILD WHO HAS BECOME A DEPENDENT. NOW, THE STATE HAS ARGUED, SEVERAL TIMES, THAT THE STATUTE SHOULD BE READ IN PARAMATERIA. IF YOU LOOK AT THE SECTION OR STATUTE 1.04, WHICH IS THE STATUTORY CONSTRUCTION, IT TALKS ABOUT WHEN STATUTES ARE WRITTEN AND ENACTED IN THE SAME LEGISLATIVE SESSION, THEY ARE MEANT TO BE READ TOGETHER. IF YOU LOOK UP THE DEFINITION OF IN PARAMATERIA, IT SAYS THESE SAME SUBJECT OR MATTER. NOW, UNDER THAT REASONING, IF WE LOOK AT WHAT THEY DID IN SENATE BILL 96.322, WHAT THEY DID IN THAT ONE STATUTE IS THEY SEPARATED OUT THE CHILD ABUSE. THEY PROVIDED DEFINITIONS FOR THE CHILD ABUSE. AND YET THEY STRUCK TWICE. THEY MENTIONED IT. THEY STRUCK TWICE, AS DEFINED BY THE LAWS OF FLORIDA. NOW, THAT IS NOT JUST A COINCIDENCE. THEY MEANT TO DO IT. THE STATE IS ACTING LIKE THIS WAS AN OVERSIGHT. THEY STRUCK IT. NOW, IF WE ARE GOING TO READ THOSE TWO STATUTES, WHICH WERE ENACTED IN THE SAME LEGISLATIVE SESSION, IN PARAMATERIA, NEGLECT IS DEFINED AS THE FAILURE OF A CAREGIVER. CAREGIVER IS DEFINED IN CHAPTER 415, WHICH IS THE PROTECTION OF CHILDREN, SO BY TAKING THAT OUT, WHAT THEY HAVE DONE IS THEY HAVE MADE THIS STATUTE FATALLY DEFECTIVE. WE DON'T KNOW WHERE TO FIND THAT DEFINITION. THEY ARE SAYING, WELL, QUITE OBVIOUSLY, YOU FIND IT IN THE STATUTE. THE JURY INSTRUCTION TELLS YOU TO FIND IT IN 39. THEY ARE SAYING FIND IT IN 984 AND 98 A, SO WE ARE ALL OVER THE BOARD WITH THIS.

WOULD YOU ADDRESS --

YES, SIR.

WOULD YOU ADDRESS THERE, IS A VERY POWERFUL STATEMENT OF LAW IN THE CONCLUSION OF LAW, WITH REGARD TO THIS CASE, AND IT IS VERY CONCISE AND WAS QUOTED BY THE STATE, AND THAT IS THAT THE PENAL STATUTE EITHER MUST DEFINE ANY TERMS THAT DO NOT HAVE AN ORDINARY MEANING OR AT LEAST MUST SPECIFY A SOURCE. THAT PRINCIPLE OF LAW I DO NOT FIND IN THE CASE CITED NOR IN THE SUPREME COURT CASE, AND I WAS WONDERING IF THERE IS ANY AUTHORITY ANYWHERE FOR THAT, BECAUSE THAT IS A VERY DEFINITE PRINCIPLE OF LAW. HAVE YOU FOUND ONE ANYWHERE ELSE THAT STATES THAT IS A REQUIREMENT TO AVOID A VAGUENESS CHALLENGE?

THE, UNDER STANDARD OF REVIEW, WHEN I WAS LOOKING UP FOR STANDARD OF REVIEW, THERE IS A BARKER CASE OUT OF THIS COURT, 654.646, WHICH SAYS ALTHOUGH LEGISLATIVE ENACTMENTS ARE PRESUMED CONSTITUTIONAL, WHEN THERE IS ANY DOUBT ABOUT A STATUTE IN A VAGUENESS QUESTION, THE DOUBT IS TO BE RESOLVED IN FAVOR OF THE CITIZENS AND AGAINST THE STATE. NOW, WE RELIED ON WINTERS, WHICH BASICALLY --

I AM GOING TO THAT YOU MUST SPECIFY THE SOURCE OF THE DEFINITION. THAT IS REALLY WHAT I AM LOOKING FOR, TO SEE IF THIS IS A CORRECT STATEMENT OF LAW.

YES. BECAUSE IN THE WINTERS CASE, YOU LOOK AT, THEY SAY, IF YOU DEFINE IT, OR USE A DICTIONARY TO DEPINE IT. IN ALL OF THE CASES, THE LINDSAY SAYS CASE THAT THE STATE HAS CITED, SAYS THAT THE REASON WE CAN SAVE THE STATUTE IS BECAUSE IT SAYS DEFINE IT BY THE LAWS OF FLORIDA. IN THE BOWDERS CASE IT TALKS ABOUT IT. IN THE FERRARI CASE THAT THEY HAVE CITED.

ARE THERE OTHER PENAL SITUATIONS IN FLORIDA, WHERE THIS COURT HAS NOT HAD A SPECIFIC DEFINITION BUT HAS LOOKED TO CASE LAW OR SOME OTHER STATUTE, WITHOUT THAT SPECIFIC DIRECTIVE, TO UPHOLD THE CONSTITUTIONALITY?

I THINK THE FERRARI CASE WOULD PROBABLY BE THEIR BEST EXAMPLE. WHERE IT WAS A BILL DUE AND OBEYING UNDER THE CONTRACTOR'S LICENSE AND THEN THEY SAID, WELL, WE OBVIOUSLY LOOKED AT THE UCC.

IS THERE, ALSO, A CASE ABOUT THE FISHING CASE, THE DEALS WITH COUNTIES AND THE DEFINITIONS OF COUNTIES AND WHAT IS A TRAWLER AND THOSE KINDS OF THINGS? ARE YOU FAMILIAR WITH THAT?

THE TRAWLER CASE, WHERE THEY SAID THE TRAWLING NET, AND THEY SAID THAT WOULD BE QUITE OBVIOUS.

IN CHARLOTTE COUNTY, YOU LOOKED TO THE DEFINITION IN ANOTHER STATUTE OR SOMETHING?

THEY SAID THOSE ARE OBVIOUS MEANINGS. THAT IS KNOWN TO THE ORDINARY MAN, WHAT A TRAWLING NET IS, BUT, THEN, LIKE INTRUDED, THE COURT SAID ILLEGAL OR UNLAWFUL. THAT IS NOT SOMETHING THAT THE ORDINARY MAN IS GOING TO KNOW. NOT AUTHORIZED BY LAW. LAULER -- LAWLER VERSUS CUDGEN, AS WE ALREADY KNOW, IF YOU TAKE THE TERM DELINQUENT AND RUN IT ON A RESEARCH PROGRAM, IN 639 SO.2D, YOU ARE GOING TO COME UP WITH SO MANY DEFINITIONS ON DELINQUENT. YOU HAVE CHAPTER 194 REGARDING TAXES. YOU HAVE 790. YOU HAVE --

WOULD THIS HAVE BEEN THE SAME RESULT, BACK AT THE TIME THAT THIS COURT UPHELD THE VALIDITY, BY JUST REFERENCE TO FLORIDA LAW, OR WOULD THAT HAVE BEEN TRUE AT THE TIME AS WELL?

I AM NOT SURE, BECAUSE IT HASN'T BEEN RULED ON SINCE 1979, SO I DON'T KNOW HOW THE LAW HAS EVOLVED, BUT UNDER DELINQUENCY, YOU GET TAXES FOR CLOSURES. NOTICES. PROMISSORY NOTES. SELF INSURANCE. UNDER DEPENDENTS.

WELL, WELL CLEARLY, JUST IN INTERPRETING THE STATUTE ON ITS OWN LANGUAGE, AND AS YOUR OPPONENT POINTS OUT THE VERY NEXT SUBSECTION, IT TALKS ABOUT THAT IT BEING UNNECESSARY THAT SOMEBODY ACTUALLY BE CONVICTED OF THESE UNDERLYING OFFENSES OR WHATEVER. THAT THIS STATUTE IS NOT TALKING ABOUT TAX DELINQUENCY OR SOMETHING LIKE THAT. SO HOW IS IT ANY DIFFERENT THAT THE STATUTE, AS IT READS RIGHT NOW, THAN IT WAS WHEN IT ACTUALLY CONTAINED THE EXPRESS PHRASE, AS DEFINED UNDER FLORIDA LAW OR AS PROVIDED FOR UNDER FLORIDA LAW? BECAUSE ISN'T THAT THE WAY THE STATUTE WOULD HAVE TO BE CONSTRUED, ANYWAY? THAT IS THAT WE WOULD HAVE TO HAVE DEFINITIONS OF THOSE TERMS, AS PROVIDED UNDER FLORIDA LAW, EVEN IF THE STATUTE DOESN'T HAVE THAT PHRASE IN THERE. I AM NOT SURE I AM ASKING THAT RATHER AWKWARDLY, BUT ISN'T THAT THE WAY THE STATUTE WOULD HAVE TO BE INTERPRETED, AS IT IS NOW, OR AS IT WAS. THAT IS THAT THOSE PHRASES, THOSE WORDS, WOULD HAVE TO BE INTERPRETED AS ALREADY PROVIDED FOR UNDER FLORIDA LAW, WHETHER IT HAD THAT PHRASE IN THERE OR NOT.

I WOULD HOPE SO. NOW, THERE ARE SOME SECTIONS IN THE TAX SECTION THAT, OF COURSE, YOU WOULD REFER TO IRC, UNDER DELINQUENCY. THE PROBLEM IS THEY STRUCK THAT, UNDER FLORIDA LAW, AND WE ARE TALKING ABOUT THE ORDINARY MAN FINDING WHAT KIND OF ACTIVITY IS PRECLUDED. WE DON'T HAVE AN EXACT DEFINITION OF DEPENDENCY. WE -- WELL, MAYBE WE DO IN THE DIVORCE STATUTE OR THE TAX STATUTES, BECAUSE IF YOU LOOK AT DEPENDENCY IN THERE, YOU TALK ABOUT FINANCIAL DEPENDENT. LIABILITY OF AN EMPLOYER FOR DEPENDENTS. DEPENDENT IS USED MANY, MANY TIMES IN THE STATUTE.

IT SEEMS TO ME WHAT YOU ARE SAYING IS THAT, IF, UNDER YOU, IF THEY HAD KEPT THE PHRASE IN, AS UNDER THE LAWS OF FLORIDA, THAT WOULDN'T HELP ANYMORE, BECAUSE IT IS DEFINED IN SO MANY DIFFERENT WAYS IN SO MANY DIFFERENT PLACES AND ONLY THEY WOULD EITHER HAVE TO DEFINE IT IN THE STATUTE, SO -- ORRAPHY REIGNS THE SPECIFIC STATUTE -- OR REFERENCE THE SPECIFIC STATUTE THAT THEY ARE REFERRING TO. ISN'T THAT A FAIR ASSESSMENT OF WHAT YOU ARE SAYING? IN OTHER WORDS THAT IF WE READ BACK, THAT YOU WOULD NOT AGREE THAT JUST READING BACK, UNDER THE LAWS OF FLORIDA, WOULD MAKE THIS, SOLVE THE VAGUENESS PROBLEM.

YES. AND I THINK --

IS THAT CORRECT?

YES. THAT IS WHAT THE FIFTH DISTRICT SAID. IN THEIR OPINION, THEY SAID, AND WE CAN'T SAY THAT JUST BY PUTTING THAT LANGUAGE BACK IN, THEY COULD SAVE THE STATUTE AT THIS POINT, AND UNDERSTANDING THAT, NOW, I THINK, IF YOU WANT TO FOLLOW THE RATIONALE IN PARAMATERIA, WE HAVE SEPARATED OUT CHILD ABUSE AND DEFINED IT AS NEGLECT AND REFERRING CAREGIVER BACK TO THE PROTECTION OF CHILD ABUSE AND CHILDREN. ANOTHER INTERESTING PART OF THE PART THEY SEPARATED OUT IS THAT, IF YOU GO TO THE AGGRAVATED MANSLAUGHTER OF A CHILD, IT CROSS REFERENCES YOU TO THE DEFINITION, IN 827.03, THE NEGLECT AND ABUSE OF A CHILD, SO IF WE ARE READING IN PARAMATERIA, ARE WE GOING TO READ THAT, IN NEGLECT OF A CHILD, AND THEN WE REFER OVER TO PROTECTION AND ABUSE OF A CHILD IN CHAPTER 415. OR DO WE LOOK TO THE JURY INSTRUCTS INSTRUCTIONS FOR GUIDANCE, AND THERE IS A SECTION THAT HAS BEEN REPEALED. SO THE ORDINARY --

JURY INSTRUCTIONS, AS THEY WERE, HAVE NOT BEEN REVISED, SINCE THE STATUTE WAS REVISEED?

NO. IT SAYS TO GIVE THE INSTRUCTION, AS PER 39.01. YOU GO TO 39.01, THERE WAS ONLY A CHILD, WHAT I AM SAYING, BECOMING DEPENDENT.

I THOUGHT THAT JOLLY SAID THAT THE INSTRUCTIONS HAVE NOT BEEN REVISED SINCE THE STATUTE WAS REVISED.

THEY HAVE NOT.

THAT IS THE PROBLEM. THE INSTRUCTION IS NOT WITH HOW YOU MAKE IT THROUGH THE STATUTE.

EXACTLY. AND PLUS THE ORDINARY MAN HAS NO PLACE TO LOOK. IF I LOOK FOR DEPENDENT, DELINQUENT, OR CHILD IN NEED OF SPECIAL SERVICES, I DON'T KNOW WHERE TO FIND THAT. IF I LOOK TO THE JUVENILE STATUTES, I FOUND CHILD WHO IS COMMITTED A DELINQUENT ACT. WELL, IS THAT CLOSE ENOUGH, OR DO I LOOK FOR DELINQUENCY IN THE STATUTE? CHILD IN NEED OF SPECIAL SERVICES. DO I LOOK TO THE EDUCATION CHAPTER OR NOT?

A DEPENDENT CHILD. DO I LOOK TO THE DIVORCE STATUTES, THE TAX STATUTES. DO I LOOK IN CHAPTER 415, FOR THE ABUSE AND NEGLECT? SO I THINK THE FIFTH DCA IS SAYING THAT, THE WAY THE LAW IS NOW, IT IS SO DIVERSE AND IT HAS EVOLVED SO FAR THAT, EVEN IF YOU PUT IN, AS DEFINED BY THE LAWS OF FLORIDA, IT PROBABLY WOULDN'T SAY IT. YOU PROBABLY NEED A SPECIFIC CROSS-REFERENCE TO EXACTLY HOW YOU WANT THIS DEFINED.

IS THERE EVER A POINT WHEN A TERM THAT WE CONSIDER A TERM OF ART ACTUALLY HAS A COMMON AND ORDINARY MEANING?

I THINK THE COURT, ONE TIME, SAID THAT THERE IS A TERM OF ART THAT AUTHENT INDICATES,

WAS THE CASE, WHERE THEY SAID THAT IS A COMMON TERM. EVEN THOUGH IT WAS USED IN THE STATUTE, AUTHENTICATE IS SOMETHING THAT WE WOULD ALL KNOW HOW TO DETERMINE, AND, PLUS, YOU CAN GO TO ADDICTION AREA AND LOOK IT UP.

SO IS THERE ANY ARGUMENT THAT CAN BE MADE, IN THIS PARTICULAR STATUTE, THAT THESE THREE TERMS HAVE ACTUALLY BECOME TERMS OF ORDINARY USAGE?

NOT IN THIS CONTEXT. BECAUSE THEY ARE, ALSO, ORDINARILY USED, A DEPENDENT CHILD FOR TAX PURPOSES, A DEPENDENT CHILD FOR DIVORCE PURPOSES, A CHILD IN NEED OF SPECIAL SERVICES FOR EDUCATION PURPOSES, A MENTALLY CHALLENGED CHILD. IT DOESN'T NECESSARILY MEAN WHAT IT SAYS IN THE DELINQUENCY STATUTE. A CHILD IN NEED OF SPECIAL SERVICES IS ONE WHO COULD BE HABITUALLY TRUANT. IS THAT A DELINQUENT CHILD, ONE THAT IS HABITUALLY LATE, OR IS A DELINQUENT CHILD ONE WHO COMMITS A CRIMINAL ACT? YOU GO TO THE DICTIONARY, AND IT DOESN'T HELP YOU, AND THAT IS WHAT A LOT OF THE CASES HAVE SAID, WELL, WE CAN DO AUTHENTICATE OR WE CAN DO ACKNOWLEDGE.

SO, REALLY, YOUR ARGUMENT, REALLY, BREAKS DOWN TO WHAT JUSTTIS -- WHAT JUSTICE PARIENTE ACTUALLY SAID, IN THIS PARTICULAR STATUTE, YOU NEED TO HAVE THE TERM DEFINED, WITH NO REFERENCE TO ANY OTHER STATUTE OR THE TERM GENERAL LAW.

IF THEY ARE GOING TO DON'T THE DEFINITION DIRECTLY FROM ANOTHER STATUTE, FROM 984 OR 985, I THINK THEY COULD PROBABLY CROSS-REFERENCE TO THAT STATUTE. THE SAME WAY THE AGGRAVATED MANSLAUGHTER REFERENCES TO THE GIVE MISSION OF THE CHILD ABUSE -- TO THE DEFINITION OF THE CHILD ABUSE, BUT IT HAS TO BE A LITTLE MORE SPECIFIC THAN IN THE LAWS OF FLORIDA, PARTICULARLY WHEREAS, HERE, IF YOU WANT TO READ WHAT THEY HAVE DONE IN THIS SENATE BILL IN PARAMATERIA, WE HAVE GOT NEGLECT GOING INTO ANOTHER SECTION, DEFINED BY CHAPTER 415, SO WE ARE JUST ALL OVER THE BOARD HERE. AND, I MEAN, WHY WOULD THEY GO IN AND DO DEFINITIONS FOR PART OF THE STATUTE THAT THEY ARE SEVERING OUT AND THEN DELETE THE DEFINITIONS, ANY REFERENCE TO DEFINITION IN THE OTHER? THEY SAY IT MAYBE JUST AN OVERSIGHT. THEY DIDN'T MEAN TO DELETE IT. MORELOGICALLY, WHAT THEY PROBABLY MEANT TO DO WAS PUT IN SOME SPECIFIC DEFINITIONS AND DIDN'T, SO WHAT WE HAVE NOW IS JUST AN ENORMOUS VOID.

WE DON'T HAVE ANY INDICATION, FROM LEGISLATIVE HISTORY, OF WHAT THEY MEANT, DO WE?

THE ONLY THING THAT THEY SAY IN HERE, AND I HAVEN'T DONE THE COMPLETE RESEARCH ON THE LEGISLATIVE HISTORY, LISTENED TO THE TAPES AND ALL OF THAT, BUT THE ONLY THING THEY SAY IS THEY ARE TRYING TO CLARIFY THE STATUTE, AND I REALLY THINK WHAT THEY MEAN BY CLARIFY IT IS THEY ARE CLARIFYING THE OFFENSE OF CONTRIBUTING TO THE DELINQUENCY OR DEPENDENCY IS OF A CHILD, BECAUSE WHAT THEY -- OR DEPENDENCY OF A CHILD, BECAUSE WHAT THEY HAD BEFORE WAS DELINQUENCY OR CHILD ABUSE, ALL STUCK TOGETHER, AND THIS COURT, ALSO, HAD THE CASES ON THE MEN'S RAY, A THE ONES THAT -- THE MENS REA, AND THE MENS REA FOR THE CHILD ABUSE CAN BE NOT BE SIMPLY NEGLECT, SO THAT PUT THAT UP AND MADE THE CHILD ABUSE NEGLECT, AND THEY DEFINED NEGLECT UNDER THE CRIMINAL, WHICH GOES BACK TO YOUR QUESTION. IF IT IS A PENAL STATUTE, DOES IT HAVE TO BE DEFINED? THERE IS AN INSTANCE OF WHERE THEY SPECIFICALLY WENT IN, AFTER JOYCE AND, IN THE SUBSEQUENT CASE, MENSY, AND SAID FOR PURPOSES OF CRIMINAL INTENT, IF WE WANT TO CALL IT CHILD ABUSE, WE BETTER SPECIFICALLY DEFINE MENS REA IN THERE AND THEY DID, BUT IN THIS CASE WE HAD THE COURT SPECIFICALLY DELETING IT TWICE. I THINK ACTUALLY -- MITRO WAS THE CASE THAT THE STATE CITED, AND IT SAID YOU CAN USE ADDICTION AREA F YOU GO TO THE DICTIONARY AND LOOK UP "DELINQUENT" OR "DEPENDENT" OR "CHILD IN NEED OF SERVICES", IT IS SIMPLY NOT GOING TO HELP YOU. THE WORDS ARE SIMPLY TOO BROAD. THEY HAVE NOT BECOME A TERM OF ART, AS FAR AS JUVENILE OR DELINQUENCY STATUTES, BECAUSE WE HAVE THE WHOLE H.R.S. STATUTES OUT THERE, THE CHAPTER 415S. WE HAVE ALL THOSE

DIVORCE AND SUPPORT STATUTES OUT THERE FOR DEPENDENT CHILDREN. SO THERE IS SIMPLY NO WAY TO NARROW THIS DOWN, IF YOU READ ALL THE LAWS OF FLORIDA, WHICH LAWS OF FLORIDA ARE WE SUPPOSED TO LOOK TO, AND THAT IS THE TEST. CAN A MAN OF ORDINARY INTELLIGENCE FIGURE OUT WHAT HE IS NOT SUPPOSED TO DO AND, UNDER THIS, YOU SIMPLY CANNOT. THANK YOU.

THANK YOU. MS. DAVIS. REBUTTAL, MS. JOLLEY.

JUST BRIEFLY, YOUR HONOR. WITH REGARD TO WHAT MS. DAVIS WHAT JUST MENTIONING, THIS -- WAS JUST MENTIONING, THE OVERBROAD USE OF THE TERMS, I THINK IT NARROWS IT DOWN TO CHAPTER 984 AND 985, WHEN IT TALKS ABOUT THERE DOESN'T HAVE TO BE AN ADJUDICATION THAT THE CHILD IS DELINQUENT, DEPENDENT OR IN NEED OF SERVICES, WITH THE JUVENILE COURT JURISDICTION, TO MAKE THAT DETERMINATION. THAT THROWS YOU RIGHT INTO 984 AND 985, BECAUSE THOSE ARE THE CHAPTERS THAT HANDLE THOSE PROCEEDINGS.

WHAT WOULD BE AN EXAMPLE THAT YOU WOULD GIVE, FOR INSTANCE, FOR PROSECUTION UNDER THIS STATUTE, FOR A CHILD IN NEED OF SERVICES? WHAT WOULD BE THE CIRCUMSTANCES, AND THEN HOW WOULD A JURY BE CHARGED?

I THINK CIRCUMSTANCES FOR THAT WOULD BE A PERSON WHO ENCOURAGES A CHILD TO NOT GO TO SCHOOL. CHILD IN NEED OF SERVICES IS ONE OF THE DEFINITIONS IS A CHILD IS HABITUALLY TRUANT, AND A PERSON WHO SAYS, HEY, YOU KNOW, REPEATEDLY SAYS, WHO PICKS UP A CHILD AND TAKES HIM TO THE MALL EVERYDAY, THAT THEY HAVE ENCOURAGED OR ENTICED THAT CHILD TO BECOME A CHILD IN NEED OF SERVICES, AND IT COULD FALL UNDER. THAT IS HOW THAT IS DEFINED.

HOW WOULD THE JURY BE CHARGED? WHAT WOULD BE THE JURY BE TOLD, IN TERMS OF DEFINING IN NEED OF SERVICES?

THE JURY INSTRUCTION, AS IT READS, I DO ACKNOWLEDGE THAT IT NEEDS TO BE NOT AMENDED BUT ALTERED TO REFLECT THE PROPER CHAPTERS, WHICH NOW DEFINE THESE TERMS, BECAUSE THE CHAPTER 39 JUST HANDLES DEPENDENCY NOW, AND 984 AND 985 HANDLE THE OTHER TWO IN NEED OF SERVICES AND DELINQUENCY RESPECTIVELY. THE INSTRUCTION WOULD INSTRUCT ON THE ELEMENTS OF THE CRIME, AND AS IT SAYS NOW, NOTE TO THE TRIAL JUDGE "CHILD IN NEED OF SERVICES" AS DEFINED IN CHAPTERS 984 AND 985, I BELIEVE. THEY CAN DO IT THAT WAY, AND THAT IS REALLY, I THINK --

BUT AREN'T THE DEFINITIONS OR THE PROVISIONS IN CHAPTER 39, WITH REFERENCE TO CHILDREN IN NEED OF SERVICES, RATHER LENGTHY AND BROAD AND OPEN ENDED, THEMSELVES?

IN YOU READ THEM, THEY ARE PRETTY SPECIFIC. IF I MAY JUST GRAB THEM.

SURELY. -- IF I MAY JUST GRAB THEM.

SURELY.

INITIALLY, WHEN YOU LOOK AT THEM, IT LOOKS LONG, BUT THEN THEY ARE, AS A READING TO ME, THEY ARE PRETTY CLEAR, AND I DON'T THINK THE LENGTH WOULD NECESSARILY -- I MEAN THE TRIAL JUDGE CAN INSTRUCT AND USE THE STATUTE TO DEFINE IT. I DON'T THINK THE LENGTH IS THE PROBLEM. I THINK THE JURY CAN EASILY UNDERSTAND THEM. THEY -- LET ME TURN THE PAGE HERE. THEY TALK ABOUT -- CONSISTENTLY RUN AWAY FROM THE CHILD'S PARENTS IS THE FIRST SUBSECTION I AM MAKING MORE CONCISE. TO BE HABITUALLY TRUANT. THE ONE EXAMPLE I USED, AND TO PERSISTENTLY DISOBEY THE REASONABLE AND LAWFUL DEMANDS OF THE CHILD'S PARENT. I THINK THOSE INSTRUCTIONS WOULD BE PRETTY CLEAR TO A JURY, IN A CRIMINAL TRIAL, THE INSTRUCTION OF THE ELEMENTS OF THE SECTION TWO.



YOU ARE SAYING IT IS SUBSECTION TWO THAT HELPS TO NARROW WHAT THE SCOPE MUST HAVE BEEN?

YES.

BECAUSE, AGAIN, IF THE TERM THAT IT IS NOT NECESSARY TO MAKE AN ADJUDICATION THAT ANY CHILD IS DELINQUENT OR DEPENDENT OR IN NEED OF SERVICES, THAT, THEREFORE, NARROWS THE SITUATION THAT IT MIGHT REFER TO CHILDREN THAT ARE IN SPECIAL NEED OF SERVICES OR PERPETUALLY LATE OR SOMETHING OF THAT NATURE?

YES. THAT IS EXACTLY WHAT IT DOES. IT NARROWS IT, AND IT DOESN'T -- IF YOU LOOK AT THE CONTEXT OF THE TERMS THAT THEY ARE UTILIZING IN THIS STATUTE, WE ARE NOT TALKING ABOUT A DEPENDENT, FOR PURPOSES OF INCOME TAX OR, YOU KNOW, FAMILY. IT IS SPECIFIC IN THAT CONTEXT, ON ITS FACE. ALSO I JUST WANT TO REITERATE THE POINT IN BOWDERS. THAT IS THE POINT THE FIFTH DISTRICT COURT OF APPEAL BASED THEIR RATIONALE ON, THAT A STATUTE OR REPEAL PROVISION MUST DEFINE ITS TERMS OR HAVE ACROSS REFERENCE TO STATUTORY DEFINITIONS. BOWDERS DOES NOT SAY THAT, AND I THINK THE RULES OF STATUTORY PROVISION DECLARE IT OPPOSITE. I ASK THAT THIS BE DECLARED CONSTITUTIONAL, AS PRESENTED NOW, AND THAT THE FIFTH DISTRICT COURT OF APPEAL DECISION BE REJECTED.

THANK YOU VERY MUCH.