

District Court of Appeal of Florida,  
Third District.

Jose CUERVO, Appellant,  
v.  
The STATE of Florida, Appellee.  
**No. 92-486.**

Aug. 11, 1992.

Appeal was taken from nonfinal order of the Circuit Court, Dade County, Leonard E. Glick, J., challenging court's jurisdiction to revisit and amend its order committing criminal defendant to Department of Health and Rehabilitative Services (HRS) after five days of hospitalization as incompetent to stand trial for murder. The District Court of Appeal held that: (1) circuit court retained jurisdiction over defendant for purpose of continued hospitalization or release, and (2) later decision by court to transfer defendant to Department after five years of hospitalization, pursuant to Baker Act, did not divest court of jurisdiction over person and court could amend commitment order to require that administrator of HRS facility comply with criminal rule mandating that state attorney of committing court be notified no less than 30 days prior to defendant's anticipated date of release.

Affirmed.

\*654 Bennett H. Brummer, Public Defender, and Merrill & Pollack, **Gary W. Pollack**, Sp. Asst. Public Defender, for appellant.

Robert A. Butterworth, Atty. Gen. and Marc E. Brandes, Asst. Atty. Gen., for appellee.

Before NESBITT, FERGUSON and LEVY, JJ.

PER CURIAM.

This appeal challenges the court's jurisdiction to revisit and amend its order committing a criminal defendant to the Department of Health and Rehabilitative Services after five years of hospitalization as incompetent to stand trial for murder.

[1][2] Where the circuit court commits a criminal defendant to involuntary hospitalization pursuant to section 916.13, Florida Statutes (1991), as incompe-

tent to stand trial, it retains jurisdiction over the defendant for the purpose of continued hospitalization or release. A later decision by the court to transfer the defendant to the Department of Health and Rehabilitative Services after five years of hospitalization, pursuant to the Baker Act, section 394.467, Florida Statutes (1991), does not divest the court of jurisdiction over the person and it may amend the commitment order to require that the administrator of the H.R.S. facility comply with Florida Rule of Criminal Procedure 3.213(b), which mandates that the State Attorney of the committing circuit be notified no less than thirty days prior to the anticipated date of release of the defendant.

Affirmed.