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David Dionne v. State of Florida

WE WILL TAKE THE NEXT CASE ON THE COURT'S DOCKET, IS DIONNE VERSUS STATE. COUNSEL MAY APPROACH. WE WILL WAIT FOR JUSTICE QUINCE TO JOIN US ON THE BENCH.

GOOD MORNING, MAY IT PLEASE THE COURT. MY NAME IS TOM LUCK SHALL SHOW -- TOM LUKASHOW. I REPRESENT THE PETITIONER, MR. DIONNE IN THIS CASE. THE QUESTION HERE TODAY IS TO REVERSE THE QUESTION IN THE FIFTH DISTRICT THAT HELD THAT 982 FLORIDA 5, WHICH WAS A STATUTE THAT WENT INTO EFFECT IN JUNE 2000, THE FIFTH DISTRICT HELD THAT THAT STATUTE, WHICH MADE AN EXCEPTION TO THE CORPUS DELICTI RULING IN SEX ABUSE CASES, COULD BE APPLIED RETROACTIVELY.

DID WE ENACT A RULE OF PROCEDURE SUBSEQUENT TO THE ENACTMENT OF THAT STATUTE? IS THERE A RULE OF PROCEDURE THAT SAYS THIS, OR IS THIS JUST A STATUTE?

THIS IS A STATUTE.

ALL RIGHT. BECAUSE. OKAY. CONTINUE.

OKAY. AND IT IS OUR POSITION, IN FACT, THAT THIS WAS A SUBSTANTIVE CHANGE IN THE LAW, AND THEREFORE IT CANNOT BE APPLIED RETROACTIVELY UNDER THE UNITED STATES SUPREME COURT CARMEL CASE.

-- CARMEL CASE.

CAN WE USE THIS TEST TO DO THE EVALUATION? CERTAINLY WE KNOW THAT IT IS APPLYING TWO EVENTS THAT OCCURRED BEFORE. THAT IS ONE ELEMENT OF AN EX POST FACTO, BUT IT MUST DISADVANTAGE THE OFFENDER. DO YOU DISAGREE WITH THAT?

I WOULD AGREE.

DO YOU REALIZE WHAT IT MEANS BY DISAN ADVANTAGE IN ISN'T THAT REALLY -- DISADVANTAGE? ISN'T THAT WHAT WE ARE REALLY TALKING ABOUT IN THIS CASE?

IT WAS TALKED ABOUT.

THIS DISADVANTAGE WAS USED IN THE SUPREME COURT CASES AND THE DISCUSSION OF WHEN THERE IS DISADVANTAGE THAT CHANGES THE QUANTUM OF EVIDENCE. THAT IS WHAT IT SEEMS TO ME IS THAT THEY ARE CHANGING THE QUANTUM OF EVIDENCE TO MAKE THE VERDICT DEFENSIBLE. WOULD YOU HELP ME. THAT SEEMS TO BE WHERE THE LINE IS CUT.

PRIOR TO THIS STATUTE, THE STATE WOULD HAVE TO SHOW WHAT SUBSTANTIAL EVIDENCE TO EACH AND EVERY ELEMENT OF THE OFFENSE, THAT THIS THE, EACH AND EVERY ELEMENT OF THE DEFENSE WOULD HAVE TO BE ESTABLISHED BY SUBSTANTIAL EVIDENCE, BEFORE THE CONFESSION COULD BE ADMITTED. NOW, BY A PREPONDERANCE OF THE EVIDENCE, IF THEY CAN ESTABLISH THAT THE CONFESSION WAS TRUSTWORTHY --

RIGHT.

-- THEN THE CONFESSION CAN BE ADMITTED, SO I AM SAYING THAT --

THERE STILL HAS TO BE CORROBORATION, THOUGH, RIGHT?

I AM SORRY.

THERE STILL HAS TO BE CORROBORATION OF THAT.

THAT IS WHAT I BELIEVE IS UNCLEAR IN THIS STATUTE. THE STATUTE, ITSELF, DOESN'T REQUIRE THAT, IN THAT THE TRIAL JUDGE, IN FACT, IN HIS WRITTEN ORDER, HAS SAID THAT JUST BASED ON THE CONFESSION ALONE, THE STATE COULD OBTAIN A CONVICTION, AND I BELIEVE WHAT THE TRIAL JUDGE WAS, HAD IN MIND WAS THAT, PRIOR TO THE STATUTE, YOU WOULD HAVE A MARYLAND ADMISSION. NOW YOU HAVE A -- YOU WOULD HAVE AN ADMISSION. NOW YOU WOULD HAVE A TRUSTWORTHY ADMISSION, WHICH THE STATE CAN GET MORE EVIDENTIARY MILEAGE OUT OF. IN OTHER WORDS --

NOW, LET ME SEE IF I UNDERSTAND WHERE WE ARE HERE. PRIOR TO THIS RULE --

YES.

-- BEFORE A CONFESSION COULD BE ADMITTED INTO EVIDENCE, THE STATE HAD TO PROBLEM WHAT WE CALL THE CORPUS DELICTI OF THE CRIME, RIGHT? AND THAT WAS, WHAT, THAT A CRIME HAD BEEN COMMITTED, AND IT WAS COMMITTED BY A CRIMINAL AGENCY OF ANOTHER.

THAT'S CORRECT.

SO NOW WE HAVE UNDER THIS STATUTE, WHAT IS DIFFERENT?

CORRECT. WELL, THE STANDARD IS DIFFERENT, IN THAT THE STATE HAD TO PROVE THE CORPUS, EACH ELEMENT OF THE CRIME WAS SUBSTANTIAL EVIDENCE. NOW THEY NEED --

SO YOU DON'T HAVE TO DO THAT NOW? YOU DON'T HAVE TO PROVE THE CORPUS DELICTI BEFORE THIS CONFESSION WOULD COME IN?

YES. YES.

SO THEORETICALLY, THE FIRST WITNESS OUT, THAT THE STATE COULD PUT ON, COULD BE THE OFFICER, SAY, THAT THIS DEFENDANT CONFESSED TO?

WELL, FIRST THERE WOULD HAVE TO BE A HEARING OUTSIDE THE PRESENCE OF THE JURY, IN ORDER TO ESTABLISH THAT THE TESTIMONY IS TRUSTWORTHY.

OKAY.

AND IT SAYS, THE STATUTE SAYS, IN FACT WHAT JUSTICE BELL SAYS, IT SAYS SUFFICIENT CORROBORATING EVIDENCE THAT TENDS TO ESTABLISH THE TRUSTWORTHINESS OF THE STATEMENT. SO WE ARE NOT, THERE OBVIOUSLY HAS TO BE SOMETHING OUTSIDE OF THE STATEMENT, ITSELF, THAT IS ESTABLISHED, ITS TRUSTWORTHINESS, CORROBORATING EVIDENCE. EVIDENCE.

I AM NOT CLEAR ON WHAT THAT MEANS.

WE DON'T HAVE, AS I UNDERSTAND IT, THIS, THERE, IS THERE A RECORD HERE AS TO WHETHER THE STATE ACTUALLY WILL BE ABLE TO MEET ITS BURDEN UNDER THE STATUTE?

NO. BUT THE TRIAL JUDGE DID MAKE A FINDING THAT THE STATE HAD NO EVIDENCE, THAT IT WOULD BE ABLE TO PROVE THEIR CASE BY JUST MERE CONFESSION.

WELL, YOU KNOW, YOU MAY WIN ON THAT GROUND, BUT THAT IS NOT AN ISSUE BEFORE US RIGHT NOW, IS IT? IN OTHER WORDS THIS CONFESSION --

IN THE CARMEL CASE, IF THE TRIAL JUDGE IS CORRECT IN INTERPRETING THIS STATUTE, THE REQUIREMENT THAT THE STATE HAVE EXTRINSIC OR ADDITIONAL EVIDENCE TO CORROBORATE THE CRIME, NOT THE TRUSTWORTHINESS OF THE CONFESSION, WOULD, UNDER CARMEL, THERE WOULD BE A LESSER QUANTUM OF EVIDENCE REQUIRED FOR CONVICTION, BECAUSE --

AGAIN, IT GOES BACK, I AM TRYING TO UNDERSTAND, BECAUSE DOES THIS NOT REDUCE THE QUANTUM OF EVIDENCE NECESSARY OR THE CONDITION PRECEDENT TO THE ADMISSION OF A CONFESSION, NOT THE CONVICTION? THAT IS WHAT I AM ASKING.

YES, IT D IT DOES. -- YES, IT DOES. IT DOES. NOW IT ONLY REQUIRES THE PREPONDERANCE OF EVIDENCE FOR THE TRUSTWORTHINESS --

FOR THE ADMISSION OF THE CONFESSION, NOT FOR THE QUANTUM OF PROOF FOR THE CONVICTION OF THE CRIME.

RIGHT. BUT IN, STILL THE STATE WOULD HAVE A HIGHER BURDEN, IF THEY HAD TO FIRST HAVE THE, TO PROVE THE CORPUS OF THE CRIME.

THAT IS ONLY FOR THE ADMISSION OF THE CONFESSION. THAT DOESN'T CHANGE THE BURDEN OF PROOF FOR THE CRIME, DOES IT?

THAT IS ALWAYS GOING TO BE BEYOND A REASONABLE DOUBT. RIGHT. RIGHT.

THAT'S RIGHT.

BUT THAT, I DON'T BELIEVE, IS THE ISSUE, JUSTICE ADVERTISE LEWIS.

-- JUSTICE LEWIS.

HOW ABOUT COULD YOU ADDRESS, THEN, INGRAM AND THE TEST BEING THAT ALTERS, THERE ARE FOUR ELEMENTS AS TO WHAT DISADVANTAGE MEANS, AND CERTAINLY THE FIRST THREE ARE NOT EVEN ARGUABLE TO APPLY, BUT THE FOURTH ONE IS THAT IT WOULD ALTER THE RULES OF EVIDENCE AND REQUIRE THAT THERE BE LESS OR DIFFERENT TESTIMONY, IN ORDER TO CONVICT.

RIGHT.

NOT FOR THE ADMISSION OF OTHER EVIDENCE, AND THAT IS WHAT I AM TRYING TO UNDERSTAND. WHY IS THAT FOURTH ELEMENT, UNDER GRAHAM, NOT THE REAL ISSUE IN THIS CASE?

I BELIEVE IT IS THE REAL ISSUE, AND I WILL CALL YOUR ATTENTION TO THE MOCKLY CASE THAT WAS RECENTLY DECIDED IN UTAH, WHERE THE SUPREME COURT OF YOU DOWE CONSIDERED A VERY SIMILAR ISSUE INVOLVING A FRAUD INSURANCE CASE, WHERE THEY HELD THAT THE FOURTH CATEGORY PREVENTED THE RETROACTIVE APPLICATION IN THEIR CASES, THE UTAH SUPREME COURT ABOLISHED CORPUS AND WENT WITH THE TRUSTWORTHINESS DOCTRINE IN THAT CASE. HOWEVER, THEY SAID IT COULD NOT BE APPLIED RETROACTIVELY, BECAUSE PRIOR TO THEIR DECISION, IN ORDER TO GET THE CONFESSION IN, THE STATE WOULD HAVE TO SHOW, BY CLEAR AND CONVINCING EVIDENCE, EACH ELEMENT OF THE CORPUS. NOW, THEY ONLY HAVE TO SHOW BY A PREPONDERANCE THAT THE CONFESSION IS TRUSTWORTHY.

YOU ARE SAYING THE UTAH COURT GOES TO THE QUESTION OF ADMISSIBILITY OF EVIDENCE AND

NOT CONVICTION, IS WHAT YOU ARE SUGGESTING THEN, AND THAT SEEMS TO BE A DIFFERENT TEST THAN THE U.S. SUPREME COURT HAS OUTLINED, IS IT NOT?

THAT CASE, AGAIN, HAD TO DO WITH THE REDUCTION IN THE QUANTUM OF EVIDENCE. WITH THE SUPREME COURT COURT CASE REVIEWING --

FOR WHAT PURPOSE? I UNDERSTAND IT IS A REDUCTION IN THE QUANTUM OF EVIDENCE BUT FOR WHAT PURPOSE, FOR THE ADMISSION OF OTHER EVIDENCE OR FOR THE CONVICTION?

IN THE TEXAS CASE, THERE WAS, THE CONVICTION COULD NOT BE SOLELY BASED ON THE TESTIMONY OF THE VICTIM, WHICH HAD CHANGED FROM 14 TO 18, SO, AGAIN, IT WAS A REDUCTION IN THE QUANTUM OF EVIDENCE AS TO WHAT WOULD BE REQUIRED FOR A CONVICTION.

OKAY.

I AGREE WITH THAT, BUT IN THE UTAH CASE, IT HAS TO DO WITH ADMISSIBILITY. I AGREE THAT --

YOU ARE SAYING THAT THERE IS CLEAR AND CONVINCING FOR CORPUS DELICTI AND PREPONDERANCE HERE. HAVE WE WE HAVE ENUNCIATED --

IN THE UTAH CASE. IT IS SUBSTANTIAL EVIDENCE, I BELIEVE.

SO HERE WE ARE NOT, SO IT HAS NEVER BEEN CLEAR AND CONVINCING, IN ORDER THAT THE STATE HAD TO ESTABLISH EACH L CRIME?

I WOULD SUGGEST THAT SUBSTANTIAL EVIDENCE IS IN THE NEIGHBORHOOD OF CLEAR AND CONVINCING.

NOW THE QUESTION IS IS THERE SUFFICIENT CORROBORATING EVIDENCE? IN THE FIFTH DISTRICT'S OPINION, THEY GO AT IT VERY SPECIFICALLY, TO SAY THAT THE DIFFERENCE BETWEEN THE TWO DOCTRINES, BETWEEN TRUSTWORTHINESS AND CORPUS DELICTI, IS ONE IS CONCERNED WITH THE ELEMENTS OF THE OFFENSE, WHEREAS THE TRUSTWORTHINESS IS CONCERNED WITH THE TRUSTWORTHINESS OF THE STATEMENT. HOWEVER, EITHER WAY, EVEN IF ADMITTED, IT CAN'T FORM THE SOLE BASIS FOR CONVICTION. THAT IS THE CONFESSION. SO IN TERMS OF GOING BACK TO JUSTICE LEWIS'S QUESTION, HOW DOES THAT, YOU KNOW, THEY ARE BOTH RULES TO MAKE SURE THAT SOMEONE ISN'T CONVICTED BECAUSE THEY HAVE CONFESSED TO A CRIME THAT IS OR IT CERTAINLY IS A CONFESSION THAT REALLY NEVER OCCURRED, AND THAT IS WHAT WE ARE LOOKING AT IN BOTH DOCTRINES. I MOON -- I MEAN, SOME COURTS SEEM TO SAY THAT SOMETIMES TRUSTWORTHINESS IS ACTUALLY MORE RELIABLE THAN THE CORPUS DELICTI DOCTRINE. IT SEEMS TO ME THAT THAT IS A RULE THAT COURTS HAVE COME UP WITH, TO PROTECT AGAINST THIS TYPE OF THING, BUT GOING BACK TO JUSTICE LEWIS'S QUESTION, IT DOESN'T CHANGE THE BURDEN OF THE STATE TO PROVE EACH AND EVERY ELEMENT OF THE CRIME BEYOND A REASONABLE DOUBT.

WELL, THAT IS TRUE, BUT, AS I MENTIONED EARLIER, THE TRIAL COURT'S INTERPRETATION OF THE STATUTE WAS THAT THEY COULD, WITH THAT CONFESSION, USING EVIDENCE, I ASSUME, THAT THE STATE USED TO INITIALLY ESTABLISH THAT THE CONFESSION WAS TRUSTWORTHY, WITH THAT SAME EVIDENCE, COULD GO TO A JURY, WOULD SURVIVE A JOA AND WOULD GO TO A JURY, AND THE JURY WOULD FIND BEYOND A REASONABLE DOUBT, THAT THE CRIME WAS COMMITTED.

WELL, THE INTERPRETATION OF HOW THE STATUTE WILL PLAY OUT IS REALLY NOT BEFORE US IN THIS CASE. IS THAT AN ISSUE? IN OTHER WORDS WHETHER, IN THIS CASE THERE, IS OR ISN'T SUBSTANTIAL OR SUFFICIENT CORROBORATING EVIDENCE. THAT IS NOT HERE.

ONLY TO THE EXTENT, YOUR HONOR, THAT I BELIEVE THAT THE STATE WAS READY TO PROCEED.

IT IS NOT AN ISSUE BEFORE US, IN THE, IN WHAT, WHY WE HAVE THIS CASE, IS IT?

I WOULD AGREE.

OKAY. SO YOU STILL HAVE ANOTHER SHOT TO ARGUE THAT TO THE FIFTH DISTRICT, ASSUMING YOUR CLIENT IS ULTIMATELY CONVICTED.

WELL, THAT IS CORRECT. HOWEVER, I THINK THAT THE TRIAL COURTS NEED SOME GUIDANCE AS TO WHAT THIS STATUTE MEANS AND WHETHER OR NOT, IF A TRUSTWORTHY CONFESSION IS SOMEHOW YOU CAN GET MORE MILEAGE OUT OF IT.

NOW THAT IS A DIFFERENT ISSUE THAN WHETHER IT IS EX POST FACTO,.

HERE TODAY, IT IS WHETHER THIS STATUTE CAN BE APPLIED. CORRECT.

YOU ARE ARGUING SUBSTANTIVE. I WAS WONDERING WHETHER IT IS PROCEDURAL, AND AS TO PROCEDURAL, I WAS ASKING THE QUESTION AS TO WHETHER IT WAS SOMETHING THE LEGISLATURE WAS ABLE TO ALTER THROUGH THE EVIDENCE CODE OR WHETHER THIS COURT WOULD NEED TO ACTUALLY BE THE ONES TO ENACT THIS RULE. AND SO THAT IS A SEPARATE ISSUE FROM THE EXPOS FACT-QUESTION.

I UNDERSTAND. OKAY.

GETTING BACK TO THE EX POST FACTO QUESTION, HOW DO YOU DISTINGUISH OUR DECISION IN GLENDENING VERSUS STATE, WHICH -- IN THE GLEN -- IN THE GLENDENING VERSUS STATE, IN WHICH CASE WE SAID THAT WAS NOT EX POST FACTO.

AGAIN I WOULD HAVE TO GO BACK TO YOU THAT YOU --.

-- TO UTAH --

I WANT TO KNOW HOW YOU DISTINGUISH GLENDENING FROM THIS CASE.

IN MY VIEW, THERE WAS NO REDUCTION IN THE QUANTUM OF THE EVIDENCE FOR ADMISSIBILITY. IT WAS JUST A RULE OF EVIDENCE THAT ADDITIONAL EVIDENCE THAT WAS NOT PREVIOUSLY GOING TO BE ADMITTED, WAS ADMITTED.

ISN'T THAT EVEN WORSE? I MEAN, BEFORE, THEY WOULDN'T ALLOW HEARSAY TESTIMONY WHATSOEVER, AND NOW THEY ARE ALLOWING HEARSAY TESTIMONY. ISN'T THAT MORE EGREGIOUS THAN THE SITUATION WE HAVE HERE?

I BELIEVE THEY ARE BOTH EGREGIOUS, AND I AM NOT --

BUT IF WE CAN SAY THAT IT IS NOT EX POST FACTO, WHEN BEFORE WE DIDN'T ALLOW HEARSAY AND NOW WE ARE ALLOWING HEARSAY, HOW CAN WE SAY IT IS AN EX POST FACTO VIOLATION, WHERE WE USED TO ADMIT IT BEFORE AND NOW WE ARE JUST SAYING, WELL, WE ARE CHANGE THE STANDARDS FOR ADMISSIBILITY, EVEN THOUGH IT WAS ALWAYS ADMISSIBLE?

AGAIN, BECAUSE THE STANDARD IS A PREPONDERANCE OF EVIDENCE HERE, BEFORE, IN GLENDENING, YOU STILL HAD TO PROVE THE CORPUS OF THE CRIME. IN THIS CASE, YOU DO NOT. YOU CAN GET AROUND IT BY OFFERING A PREPONDERANCE OF THE EVIDENCE TO SHOW THAT THE CONFESSION WAS TRUSTWORTHY. YOU DIDN'T HAVE THAT PROBLEM IN GLENDENING. THE CORPUS STILL NEEDED TO BE ESTABLISHED, AND THAT IS IN MY MIND, HOW I WOULD

DISTINGUISH THAT.

BUT WOULDN'T YOU, I GUESS THE QUESTION THEN BECOMES WOULDN'T THE STATE STILL HAVE TO PROVE THE CORPUS OF THE CRIME, IN ORDER TO GET A CONFESSION? I MEAN, I AM SORRY, IN ORDER TO GET A CONVICTION? BECAUSE EVEN THOUGH YOU DON'T NEED IT NOW IN ORDER TO GET IN THE DEFENDANT'S CONFESSION, WOULDN'T YOU STILL NEED IT, IN ORDER TO GET A CONVICTION OF, FOR THAT CRIME?

WELL, I AM NOT SURE, UNDER THE STATUTE THAT, THAT IS NECESSARY. THE STATUTE DOESN'T REQUIRE THAT.

THE STATUTE DOESN'T ACTUALLY GO TO WHAT YOU, THE STATE HAS TO PROVE, IN ORDER TO CONVICT. BUT I AM ASKING YOU, IN ORDER TO CONVICT, DON'T YOU STILL HAVE TO PROVE THE OTHER ELEMENTS OF THE CRIME, INCLUDING THE CORPUS OF THE CRIME?

I BELIEVE THAT WOULD BE ACCURATE, BUT, AGAIN, THE TRIAL JUDGE DIDN'T BELIEVE THAT WAS THE CASE. AND THAT IS WHAT CONCERNS ME. I WOULD AGREE THAT, IN MY VIEW, THE STATE WOULD HAVE TO PROVE THE CORPUS OF THE CRIME, BECAUSE OTHERWISE THEY COULDN'T, HOW WOULD YOU KNOW A CRIME WAS COMMITTED?

SO WHAT STATEMENT BY THE TRIAL JUDGE ARE YOU TAKING ISSUE WITH?

WELL, I AM NOT, I AM, THE TRIAL JUDGE'S INTERPRETATION OF THE STATUTE IS THAT YOU DO NOT NEED ANY ADDITIONAL CORROBORATION, ABOVE THE CORROBORATION OF THE CONFESSION, ITSELF.

TO GET A CONVICTION.

TO GET A CONVICTION.

BUT DIDN'T THE FIFTH DISTRICT OPINION MAKE CLEAR THAT THERE HAS GOT TO BE EVIDENCE OUTSIDE, THAT THE, EVEN IF THE DEFENSE CONFESSION IS ADMITTED, IT MAY NOT FORM THE SOLE BASIS OF THE CONVICTION?

TO ME, THAT IS NOT CLEAR. I AM NOT SURE IF THAT IS THE UNCORROBORATED ADMISSION OR A CORROBORATED ADMISSION. I AM MAKING A DISTINCTION BETWEEN THE TWO.

WHAT IS THE EVIDENCE THAT HAS BEEN PROFFERED? THERE IS A CONFESSION. WHAT IS THERE, WHAT WAS THE STATE ARGUING WAS CORROBORATING EVIDENCE OF THIS TRUSTWORTHINESS?

THE ONLY EVIDENCE THAT THE STATE HAD WAS THAT THE VICTIM, WHO WAS 14, WAS IN THE QOMP ANY OF SEVERAL -- WAS IN THE COMPANY OF SEVERAL MALES, AND SHE TOOK SOME MEDICATION TO GO TO SLEEP. SHE HAD SOME TYPE OF ILLNESS, AND WHEN SHE WOKE UP, SHE HAD BEEN BLEEDING, AND THAT IS IT. SHE DOESN'T KNOW WHAT HAPPENED. SHE HAS, THERE WAS NO MEDICAL EVIDENCE PRESENTED. SHE WAS NOT EXAMINED BY A PHYSICIAN. ALL SHE KNOWS IS THAT SHE WAS BLEEDING, AND THAT IS IT. THAT IS THE EXTENT OF THE EVIDENCE.

AND THE DEFENDANT CONFESSED TO HAVING DONE SOMETHING TO HER?

YES. DIGITALLY.

AND HOW WAS THAT CORROBORATEED?

IT WASN'T. IT WASN'T. THERE WAS SOME, THE STATE DID MENTION SOME DOUBLE HEARSAY ABOUT IT HAD ALSO BEEN MENTIONED TO SOME OTHER FRIENDS OR SOMETHING, BUT THAT WAS

FROM A FRIEND OF A FRIEND KIND OF A SITUATION. BUT IN THIS CASE, THAT WAS THE ONLY EVIDENCE WAS THAT SHE BEEN BLEEDING. AND THERE WAS NO EVIDENCE PRESENTED THAT IT WAS ANY TYPE OF INJURY OR THAT IT WAS AN INJURY THAT OCCURRED, IF THERE WAS ONE, BY A CRIMINAL CONDUCT. IT WAS ONLY BY THE CONFESSION THAT THEY WERE ABLE TO CONNECT THAT.

CHIEF JUSTICE: THE MARSHAL HAS REMINDED YOU YOU ARE IN YOUR REBUTTAL TIME, IF YOU WOULD LIKE TO PAUSE.

YES. I WOULD LIKE TO RESERVE. THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS MARY JOLLEY. I AM FROM DAYTONA BEACH. I REPRESENT THE RESPONDENT, THE STATE OF FLORIDA. I THINK THIS COURT HAS HIGHLIGHTED THE ISSUE HERE PRETTY QUICKLY, WITH JUSTICE LEWIS, WITH YOUR OBSERVATIONS, WHERE THE FIFTH PROPERLY FOUND THAT THIS STATUTE IS PROCEDURAL AS IT ONLY REGULATES THE ADMISSIBILITY OF THE CONFESSION. IT DOESN'T GO TO THE ULTIMATE LEVEL OF SUFFICIENCY OF THE EVIDENCE, IN TERMS OF CONVICTION. THE STATE'S BURDEN OF PROOF IS NOT ALTERED, IN TERMS OF CONVICTING THIS DEFENDANT OF SEXUAL BATTERY IN THIS CASE.

IF WE DIDN'T HAVE THE HAVE THIS STATUTE, BASED ON THE STATE OF THE LAW, WOULD THE CONFESSION BE ADMITTED INTO EVIDENCE?

UNDER THIS LAW, CORPUS DELICTI IS THE LAW THAT THIS COURT STILL APPLIES. IT IS OUR POSITION THAT WE CAN MEET CORPUS HERE.

AND HOW WOULD YOU? IN WHAT WAY?

I THINK THE CORPUS IS THERE IS, I AM GOING TO ADD TO DEFENSE COUNSEL'S RENDITION OF THE FACTS, IN THAT IN HIS MOTION TO SUPPRESS, THERE WAS ALSO EVIDENCE THAT, YES, THE VICTIM WENT TO SLEEP. SHE TOOK SOME MEDICATION. SHE WENT TO SLEEP. SHE WENT TO SLEEP WITH HER SHORTS AND UNDERWEAR ON HER. SHE WAS AWAKENED WITH VAGINAL BLEELED BLOOEDING, VAG-- BLEEDING, VAGINAL DISCOMFORT AND HER SHORTS AND UNDERWEAR PULLED DOWN. IT IS OUR POSITION THAT WE CAN ESTABLISH A CRIMINAL ACT THERE AND MEET CORPUS. THAT CORROBORATES THE CONFESSION. THE DEFENDANT CONFESSED THAT HE WENT IN AND PULLED HER PANTS DOWN AND UNDERWEAR DOWN AND PENETRATED HER VAGNATURALLY WITH HIS FINGERS.

SHE WOKE UP AND FOUND OUT THIS HAD HAPPENED. IN SOME WAY HE GOT ARRESTED BEFORE THEY GOT A CONFESSION. HE MUST HAVE KNOWN SOMETHING, WHEN DEFENSE COUNSEL SAYS SHE WAS BLEEDING, SHE WOKE UP AND THEN --

SHE WAS NOT IN THE STATE SHE WAS WHEN SHE WENT TO SLEEP.

THAT WOULD, SO, THEN, IN THIS CASE, THERE ARE SOME OTHER CASES WHERE MAYBE CORPUS DELEGTY COULDN'T BE ESTABLISHED -- DELICTI COULDN'T BE ESTABLISHED BUT IN THIS CASE YOU COULD, AND YOU ARE SAYING THAT IN THIS CASE, EITHER WAY, YOU WOULD HAVE ENOUGH TO ESTABLISH THE ADMISSIBILITY OF THE CONFESSION.

WE BELIEVE SO, JUDGE. AGAIN, THE RECORD IS NOT DEVELOPED ON THE ISSUE WHICH YOU ALSO HIGHLIGHTED, BECAUSE WE ARE ALSO PRETRIAL HERE. NORMALLY CORPUS DELICTI AND TRUSTWORTHINESS FACTS COME OUT IN TRIAL AND THE STATE GOES TO ADMIT THE CONFESSION. THEN THERE IS A HEARING TO SEE IF WE MET CORPUS OR --

WHAT WAS THE CORPUS, YOU HAVE TO SHOW THAT THERE WAS A CRIMINAL ACT, AND THAT --

THROUGH THE AGENCY OF ANOTHER.

-- THROUGH THE AGENCY OF ANOTHER. SO WHAT WAS THE CRIMINAL ACT HERE? OUTSIDE OF THE DEFENDANT'S CONFESSION, WHAT WOULD YOU HAVE TO SHOW THAT THERE WAS A CRIMINAL ACT? ANOTHER FACTS THAT I HIGHLIGHTED, IN TERMS OF SHE HAS GOT, CIRCUMSTANTIAL EVIDENCE THAT HER PANTS WERE UP AND ON HER WHEN SHE WENT TO SLEEP. THEY ARE DOWN AND SHE IS BLEEDING AND DISCOMFORTED. THAT IS, SHE WAS IN A DIFFERENT CONDITION. SHE WAS HARMED. DURING THAT. DURING THE TIME SHE SLEPT.

THERE WAS NO EVIDENCE PRESENTED BY THE STATE THAT THERE WAS, THAT, OF THE CONDITION OF HER BODY, HER VAGINAL AREA OR ANYTHING, PART OF THIS.

AGAIN, THE RECORD IS UNDEVELOPED AT THAT POINT. I MEAN, WE ARE, AGAIN, PRETRIAL, BUT AT THIS POINT THERE WAS NO PHYSICAL TESTING DONE ON HER TO DETERMINE MEDICAL EXAMINATION DONE ON HER. IT IS JUST THOSE FACTS. IT IS OUR POSITION THAT IT DOES MEAN CORPUS, BUT IT CERTAINLY CORROBORATES THE TRUSTWORTHINESS OF HIS CONFESSION THAT HE PENETRATED HER, BUT, AGAIN, WE ARE PREMATURE AT THAT POINT.

DO YOU AGREE THE STATUTE, DOES THE FIFTH DISTRICT OPINION, DOES THE STATE TAKE ISSUE WITH ANY STATEMENTS IN THE FIFTH DISTRICT OPINION?

NO.

IN OTHER WORDS, SO THAT THE STATEMENT THAT I READ, WHICH IS THAT THERE HAS GOT TO BE SUFFICIENT CORROBORATING EVIDENCE, THAT, FIRST OF ALL THAT IS IN THE STATUTE, BUT THAT, ALSO, THE LAW STILL IS THAT THE CONFESSION CAN'T FORM THE SOLE BASIS FOR THE --

CORRECT. WE COULDN'T CONVICT ON A CONFESSION UNDER CORPUS. WE WOULD HAVE TO PROVE OTHER THINGS AND THE SAME HOLDS TRUE HERE WITH THE TRUST HERE WITH THE TRUSTWORTHINESS DOCTRINE. THIS IS JUST MECHANISM FOR WHICH THAT CONFESSION COMES IN.

IF THAT IS TRUE, LET ME GO BACK, AND I KNOW SOMETIMES THAT SUBSTANTIVE PROCEDURAL ISSUE GETS BLURRED AS TO WHAT IS SUBSTANCE AND WHAT IS PROCEDURAL, AND IT MAY BE DIFFERENT FOR THE EXPOS FACT-, BUT THE -- EX POST FACTO, BUT THE FIFTH DIRECT OPINION, WHEN I HEAR THAT, I THINK WHERE IS OUR RULE OF EVIDENCE? COULD YOU ADDRESS THAT ISSUE, AS TO IF IT IS PROCEDURAL, AND ISN'T IT SOMETHING THAT THIS COURT HAS TO ENACT OR CHANGE, NOT LEGISLATURE?

IT IS PROCEDURAL. WE ARE, OUR POSITION IS THAT IT IS PROCEDURAL. BEFORE I DO THE MERITS OF YOUR QUESTION, WE DO BELIEVE THAT THE SEPARATION OF POWERS CHALLENGED, PRESENT IN THIS COURT, HAS BEEN WAIVED. THIS DEFENDANT MADE NUMEROUS CONSTITUTIONAL CHALLENGES TO THE STATUTE, UNDER GROUNDS, PROCEDURAL AND SUBSTANTIVE, EQUAL PROTECTION AND RIGHT TO FAIR TRIAL. THE STATE HAS CONSISTENTLY RESPONDED THAT THIS WAS PROCEDURAL, IN THE TRIAL COURT AT THE HEARING AND OBVIOUSLY BEFORE THE FIFTH, SO THAT SEPARATION OF POWERS ARGUMENT, WE BELIEVE, HAS BEEN WAIVED AS IT APPLIES TO THIS DEFENDANT. NOTWITHSTANDING THE WAIVER --

THAT WAS NEVER ARGUED IN THE FIFTH DCA?

NO. IT WAS ARGUED THE FIRST TIME, JUSTICE CANTERO, IN THE MOTION FOR REHEARING FOLLOWING THE FIFTH'S DECISION. THAT WAS THE FIRST TIME THE SEPARATION OF POWERS ARGUMENT WAS RAISED. IT NEVER CAME UP IN THE TRIAL COURT. THE TRIAL COURT HAS NEVER HAD THE OPPORTUNITY TO ADDRESS. THAT WITH THAT ARGUMENT --

IT IS A FACIAL CHALLENGE, THOUGH, IS IT NOT? EYE BELIEVE IT IS A CHALLENGE AS IT APPLIES TO HIM, BECAUSE IT A RETRO ACTIVE APPLICATION AS TO THIS DEFENDANT.

BUT THE SEPARATION OF POWERS WOULD BE A FACIAL CHALLENGE, WOULD IT NOT?

RIGHT.

AND IF IT IS A FACIAL CHALLENGE, IT CAN BE ARGUED ON APPEAL, CAN IT NOT?

ARGUABLY, YOU HAVE TO FIND THAT IT APPLIES TO HIM OR HIS HARM, BUT NOTWITHSTANDING THAT, THIS IS A PROCEDURAL RULE, AND AS WE QUIETED -- CITED IN OUR BRIEF, THIS COURT HAS ADOPTED THE RULES OF THE EVIDENCE CODE, AND WE PRESENT THAT THIS IS A RULE OF EVIDENCE AS WELL, AND THAT THIS COURT COULD ADOPT THIS RULE.

I UNDERSTAND YOUR CANDOR, BUT REALIZING THAT WE HAVE GOT TO WRITE AN OPINION AND HAVE TO SAY SOMETHING ABOUT THE STATUTE. NORMALLY WHEN WE GET THE RULE OF EVIDENCE PETITIONS, WE TAKE A LOOK AND GET COMMENTS FROM THE REST OF THE WORLD AND MAKE A DECISION, AND MANY TIMES WE DO ADOPT IT, BUT THERE HAVE BEEN TIMES WHERE WE DON'T, AND GIVEN THAT THIS IS, YOU KNOW, HOW IT APPLIES TO EACH CASE, IS IMPORTANT, WHETHER IT MEANS SUBSTANTIAL CORROBORATING EVIDENCE, WHATEVER, WOULDNT, DO YOU KNOW ANYTHING ABOUT THE HISTORY? HAS ANYONE LOOKED TO ASK THIS COURT TO ADOPT THE RULE OF EVIDENCE?

THE TRUSTWORTHINESS --

NO. NO. NO. SINCE THIS STATUTE HAS BEEN ENACTED, I MEAN, USUALLY THE EVIDENCE COMMITTEE IS PRETTY ACTIVE IN TAKING A LOOK AND DECIDING WHAT THEY ARE GOING TO PETITION US ABOUT.

BEYOND THE LEGISLATIVE HISTORY, THERE, I, THERE IS NO, THERE HAS BEEN NO DIALOGUE YESTERDAY ON THE ADOPTION OF THIS RULE BY THIS COURT, THROUGH THE RULES COMMITTEE, IN ALL CANDOR. WE JUST FEEL THAT, YOU KNOW, KIND OF LIKE GLENDENING, WE HAVE THE HEARSAY STATUTE, WHERE THIS COURT NEVER FOUND NEW EVIDENCE THAT WAS ADMISSIBLE BEFORE, AND THIS COURT FOUND THAT THERE WAS NO EX POST FACTO ADMISSION THERE. IT IS THE SAME TYPE OF ADMISSION AREA THAT WE HAVE HERE.

YOU ARE SAYING THAT IT IS EX POST FACTO RULE, BUT THEN YOU YOU ARE GOING AHEAD AND SAY -- BUT THEN YOU ARE GOING AHEAD AND SAYING WE WANT TO INVITE COMMENT TO THIS.

THAT WOULD BE THE BEST CASE. I WANT TO TOUCH ON ONE OTHER AREA BRIEFLY, UNLESS THE COURT HAS OTHER QUESTIONS.

I DO WANT TO TOUCH ON ONE OTHER AREA BRIEFLY. THAT IS THAT, IF WE ASSUME THAT THE STATE DOES NOT HAVE ENOUGH EVIDENCE TO PROVE CORPUS DELICTI, IN ESSENCE, THE CONFESSION, UNDER THOSE CIRCUMSTANCES, ASSUMING THE OLD RULE APPLIED, THAT THE CORPUS DELICTI RULE APPLIED, THE STATE WOULD NOT BE ABLE TO GET A CONFESSION, CORRECT?

CORRECT.

BECAUSE THIS, I MEAN, A CONVICTION, BECAUSE THIS CONFESSION WOULD NOT COME IN.

RIGHT.

BUT IF THIS TRUSTWORTHINESS RULE APPLIES, AND ASSUMING CORROBORATION FOR THE

STATEMENT, THEN HAVE WE, IN ESSENCE, IF WE ADOPT THIS TRUSTWORTHINESS RULE, AT LEAST IN THIS CASE, CHANGED THE EVIDENCE THAT IS NEEDED FOR THIS GUY'S CONVICTION?

I THINK WE HAVE TO SHOW MORE, TO GET -- WE HAVE TO PUT EVERYTHING ON THE TABLE THAT CORROBORATES THAT CONFESS -- CONFESSION, TO GET IT IN UNDER THE TRUSTWORTHINESS DOCTRINE. I THINK THAT SORT OF SHOWS WHERE THAT HAS OUTLIVED HIS USEFULNESS. WE TALKED ABOUT WHERE YOU HAVE THE CRIME AND THEN YOU HAVE SOMEBODY COMING IN AND CONFESSING TO IT, NO LINK AS TO THE IDENTITY OF THE PERSON OPERATOR. -- OF THE PERPETRATOR. TRUSTWORTHINESS SAYS WE HAVE TO CORROBORATE THAT EVIDENCE AND PUT THIS ON THE TABLE AND SHOW EVERYTHING THAT CORROBORATES THE CONFESSION FORM I DISAGREE THAT IT IS LESS. IT IS -- THAT CONFESSION. I DISAGREE THAT IT IS LESS. WE BELIEVE IT IS MORE. THE MOTLEY CASE, WHICH THIS COURT FOUND OBVIOUSLY TO A DIFFERENT CONCLUSION, LOOSE TO THE BASIS FOR CORPUS DELICTI. IN UTAH, YOU HAD TO SHOW CLEAR AND CONVINCING EVIDENCE TO GET THAT CORPUS IN, AND HERE WE DON'T HAVE THAT BURDEN OF THAT SUBSTANTIAL EVIDENCE, SO IT ISN'T THAT DIFFERENCE IN THE AMOUNT OF EVIDENCE, BUT REALLY IT ISN'T THAT RELEVANT, BECAUSE IT GOES TO THE ONE PIECE OF EVIDENCE, NOT THE ULTIMATE MATT CON -- THE ULTIMATE CONVICTION. CARMEL SPOKE SPECIFICALLY OF THE SUFFICIENCY I HAVE THE EVIDENCE NEEDED TO SUPPORT SEXUAL ASSAULT CASES IN TEXAS. THE ACTUAL SUFFICIENCY OF EVIDENCE. HERE WE ARE STILL DOWN HERE AT PIECES OF EVIDENCE AS TO ADMISSIBILITY, NOT SUFFICIENCY FOR CONVICTION, SO I THINK IT IS CLEARLY DISTINGUISHABLE FROM CARMEL, WHICH IS WHAT I THINK THE TRIAL COURT RELIED ON IN REACHING ITS CONCLUSION, AND I THINK THE FIFTH DISTRICT DID A GOOD JOB IN HIGHLIGHTING THE EVIDENTIARY ISSUE AND IT ALSO DISTINGUISHES ITSELF FROM MOXLEY, IN THAT THEIR CORPUS DELICTI RULE IS DIFFERENT FROM OURS AND THEY ALSO FOUND THAT THE CONFESSION WAS ENOUGH TO CONVICT, AND IN OUR CASE WE STILL HAVE TO INTRODUCE MORE THAN THE CONFESSION, SO I THINK THAT MOXLEY WAS SUBSTANTIAL, BECAUSE THEY MISSED THE BOAT IN CARMEL, IN TERMS OF SUFFICIENCY. SO WE BELIEVE THAT, YES, THIS IS A PROCEDURAL RULE, WE BELIEVE, ONE THAT IS RIGHT FOR THIS COURT, AND WE ASK THIS COURT TO AFFIRM THE FIFTH DISTRICT COURT'S OPINION. AND I ONLY USED 11 MINUTES, SO IF ANYONE HAS ANY OTHER QUESTIONS, THANK YOU.

CHIEF JUSTICE: HOW MUCH MORE TIME LEFT FOR REBUTTAL? COUNSEL.

I WOULD LIKE TO ADDRESS THE EXPOS FACT-APPLICATION. I -- THE EXPOS FACT-APPLICATION. I BELIEVE THAT, IF THIS -- THE EXPOS FACT--- THE EXPOS FACT, THEN I BELIEVE THAT THAT WOULD NOT BE APPROPRIATE FOR 24 COURT TO DO -- FOR THIS COURT TO DO. IF THE COURT COULD SOMEHOW DO THAT WITHOUT CHANGING THE QUANDYOU MEAN OF -- THE QUANTUM OF EVIDENCE, THEN --

IF THIS IS SUBSTANTIVE, THEN DO WE HAVE ANY RIGHT TOING IT WERE IT AT ALL? YOU ARE SAYING THAT -- TO TINKER WITH IT AT ALL? YOU ARE SAYING THAT, IF IT IS TRUE THAT, IT IS SUBSTANTIVE, DON'T WE? THAT WE WOULD HAVE TO ACCEPT THAT.

IF THAT IS TRUE, YOU WOULD HAVE TO INTERPRET IT. I THINK THE LOWER COURTS NEED SOME GUIDANCE AS TO EVIDENCE IN THIS CASE WHERE THE TRIAL JUDGE BELIEVES THAT THIS STATUTE ONLY REQUIRES THE STATE TO CORROBORATE A CONVICTION --

WE ARE ACTUALLY REVIEWING THE DISTRICT COURT OPINION NOT WHAT THE TRIAL COURT SAID, CORRECT? THE DISTRICT COURT --

THAT'S CORRECT. THAT'S CORRECT. AND I AM NOT SURE, THOUGH, AGAIN, I AM NOT SURE WHAT THE FIFTH DISTRICT HAS SAID IN ITS OPINION, NECESSARILY CONTRADICTS WHAT THE TRIAL COURT ARRIVED AT. IT TALKS ABOUT CORROBORATING --

THE FIFTH DISTRICT HAS SAID THAT YOU CAN'T HAVE A CONVICTION BASED ON THIS CONFESSION

ALONE.

CORRECT.

THEN DOESN'T THAT CONTRADICT WHAT YOU SAY THE TRIAL JUDGE SAID?

I DON'T BELIEVE SO. BECAUSE I AM NOT SURE, AGAIN, IF, YOU HAVE AN UNCORROBORATED CONFESSION, AS OPPOSED TO A CORROBORATED CONFESSION, I BELIEVE THOSE ARE TWO DIFFERENT ANIMALS. I BELIEVE WHAT THE TRIAL JUDGE HAS SAID IN HIS WRITTEN ORDER, THAT A CORROBORATED CONFESSION WOULD BE SUFFICIENT FOR A CONVICTION, AND AS A MATTER OF FACT I RECENTLY READ IN AN ARTICLE THAT JUSTICE, RATHER, PROFESSOR EARHART THAT, THAT STATEMENT BY THE FIFTH DISTRICT UNCLEAR, WHAT THEY MEAN BY CORROBORATIVE EVIDENCE, AND I BELIEVE THERE IS SOME CONFUSION AS TO WHAT THAT MEANS.

I AM NOT SURE I UNDERSTAND THE TURNS THAT YOU ARE TAKING, BECAUSE THE KRORP US DELICTI RULE IS A COURT-MADE -- THE CORPUS DELICTI RULE IS A COURT-MADE RULE, IS IT NOT?

IT HAD BASIS IN COMMON LAW.

BUT IS A COURT MADE. IT IS NOT STATUTORILY IDENTIFIED AS A RULE.

I WOULD SAY YES.

CHIEF JUSTICE: ALL RIGHT. THE COURT WILL STAND IN RECESS FOR TEN MINUTES BEFORE WE HEAR THE NEXT CASE.

MARSHAL: PLEASE RISE.