State of Florida v. Jeffrey Scott Ratner
Docket Number: SC05-1007 | SC05-1009

MARSHAL: PLEASE RISE. LADIES AND GENTLEMEN, THE FLORIDA SPREEKT SPREKT.PLEASE BE S EATED.

CHIEF JUSTICE: THE NE XT CASE IS STATE OF FLORIDA VERSUS RATNER.

MAY IT PLEASE THE COURT . MY NAME IS RI CHARD VALUNTAS AND I REPRESENT THE PETITIONER IN THIS CASE , THE ISSUE THAT I WOULD LIKE TO DISCUSS WITH THE COURT TODAY IS ONE , W E ARE HERE UP MANDATORY JURISDICTION, WHICH THE FACT THAT THE FOURTH DISTRICT IN THIS CASE DECLARED THE S T ATUTE UNCONSTITUTIONAL IN THE CONTEXT OF THIS CASE, WHICH IS IT IS CLEARLY NOT. THE FO URTH DCA HAD ACCEPTED ITS JURIS DICTION WHICH WAS COMPLETELY DISCRETIONARY , AND UNDER RULE 9.030-B-4 , IT STATES THAT DISTRICT COURTS OF AP PEAL PROVIDE RULE 9.030- C --

CHIEF JUSTICE: THEY DON'THAVE TO T AKE THE CASE?

IT WAS UNDER THEIR DISCRETION TO DECIDE WHETHER TO TAKE IT OR NOT. THEY TOOK IT.

CHIEF JUSTICE: AND THEY DID WHAT THEY DID, WHIC H WAS TO TRANSFER TO THE CIRCUIT COURT FOR THE CIRCUI T COURT TO ANSWER THE CERTIFIED QUESTION?

IF THEY DIDN'T ACCEPT JURISDICTION AT FI RST BLUSH, BUT YOUR HONOR THEY CHOSENOT TO DO THAT AND SEND THE JURISDICTION AND HAD FULL BRIEFING ON IT AND THEN TURNED AR OUND AND SAID, NO , WE DON'T HAVE JURISDICTION , WHICH IN MY MIND THEY CLEARLY DO, BECAUSE WE HAVE TO LOOK UNDER 9.140-C, TOSEE IF IT APP EARS WITHIN ITS BORDER , AND FOR SOME REAS ONTHE COURT DECIDED TO IGNORE THE PROVISION OF C-2. IT LI STS C- 1 BUT IT DO ESN'T LIST C-2 , AND C -2 STATES THAT THE STATE, AS PROV IDED BY GE NERAL LAW, MAY APPE ALTO THE CIRCUIT COURT, NONFINAL ORDERS RENDERED IN THE COUN TY COURT. WELL, NOW WE GO TO THE GENERAL YOU LAW TO SEE WHAT WE CAN APPEAL FROM THE COUNTY COURT TO THE CIRCUIT COURT .

LET M E GO BACK TO YOUR ORIGINAL TH OUGHT , WHICH IS ONCE THEY GOT THE BRIEFING IN, ARE YOU SAYING THAT HAD HE ORDERED THE BRIEF ING -- THAT THEY ORDERED THE BRI EFING OR ORAL ARGUMENT , ARE YOU SAYING THAT THEY HAD THE DISCRETION TO DECIDE WHETHER OR NOT, EVEN IF YOU HAVE THE DISCRETION YOU CAN OPT TO SAY WE CAN C H EESE NOT TO EXER CISE WE CAN CHOOSE NOT TO EXERCISE OUR DISCRETION AND SEND IT B ACK TO THE CIRCUIT COURT.

THE MAIN LANGUAGE OF 9.161- O -- 9.160 SAYS THATYOU HAVE TO DE NY , AND 9.160-F SAYS THAT ISSUES THAT WOULD HAVE BEEN SUBJECT TO THE APPEAL IF THE APPEAL HAD BEEN TAKEN TO THE CIRCUIT COURT OF APPEAL . IT DOESN'T SAY IT WILL DECIDE IF IT DOESN'T CH ANGE ITS MIND.IT SAYS IT WILL DECIDE THEM .

JUSTICE: WHAT HAPPENS IS OUR PRACTICE HERE IN THE COURT OFTEN INVOLVES THAT, ONCE WE REALLY K NO W THE NITTY-GRITTY AND SOMEBODY HAS CALLED OUR ATTENTION TO THE FACT THAT T HERE ARE DISTINGUISHING CIRCUMSTANCES IN THESE ALLEGED CONFLICT CASES OR WHATEVER , ULTIMATELY DECIDE T O DECLINEJURISDICTION, AND SO IT IS DIFFICULT SOMETIMES TO SEESORT OF A PAR ALLEL SCHEME OR ANALOGOUS SC HEME , NOT TO SORT OF TAKE THE

EXPERIENCE THAT WE HAVE HERE, IN T ERMS OF EXERCISING OUR O WN JURISDICTION. ARE THERE CLEAR DIFF ERENCES, THOUGH , BET WEEN THE PROVISIONS OF THIS RULE AND THE PRACTICE ON THIS COURT AND ITS JURISDICTI ONALSCHEME?

ABSOLU TELY , YOUR HONOR. AND ONE THIN G I WOULD NOTE AND I DON'T KNOW IF IT WAS THE SAME I N YOUR DAYS AT THE FOURTH OR JUSTICE PAR IENTE , WHEN THESE CASES COME, IN IT IS GENERALLY DETERMINED A SET OF OPERATING PROCEDURES , A MOTIONS PA NEL AND A JURISDICTIONS PANEL. IT WOULD HAVE TYPICALLY BEEN THE MOTIONS PANEL THAT WOULD HAVE DECIDED THE JURISDICTIONAL ISSUE AND THEN IT GE TS HA NDED OVER TO THE MOTIONS PANEL AF TER IT GETS FULLY BRIEFED AND YOU CAN'T HAVE A FIRST PANEL OVERRULEING , AND YOU CAN' T HAVE A S E COND PANEL COMING IN AND OVER RULE ING THE FIRST PANEL , AND THAT IS ANALOGOUS TO THIS COURT , YOU ARE EN BANC AND YOU ARE THE ONETHAT IS GOING TO DECIDE WHETHER THERE IS JURISDICTION OR NOT.

CHIEF JUSTICE: LET'S TAKE THE POS ITION THAT IT SUN CONSTITUTIONAL, THE STATUTE THAT YOU -- POSITION THAT IT IS UNCONSTITUTIONAL , THESTATUTE THAT YOU ARE RE LYING ON. NOW , YOU ARE SAYING UNDER SUBSECTION TWO THAT THIS RULE INTENDS THAT ANY NONFINAL ORDER OF A COUNTY COURT , ANY NONFINAL ORDERCAN BE APPEALED TO THE CIRCUIT COURT.

IT CAN BE IF THERE IS A QUESTION OF G REAT PU BLIC IMPORTANCE CERT IFIED , ANDTHAT IS THE KEY. BECAUSE --

CHIEF JUSTICE: IT JUST SAYS, YOU SAID PROVIDED BY GENERAL LAW.

RI GHT, BUT THAT IS COMING FROM THE 9.030-B-4 CON TEXT UNDER SUBSECTION B , W HICH SAYS THE STATE CAN APPEAL. YOU CAN APPEAL THINGS AS L ONG AS THEY ARE ALSO APPEAL UNDER 9.140-C , AND 9.030-B-4, ALSO HAS THE PROVISION IN THERE HAD T HAS TO BE AQUESTION OF GR EAT PUBLIC IMPORTANCE FOR A CERTIFIED QUESTION. OTHERWISE IT WOULD NOT GO TO THE FULL DISTRICT COURT.NOW, I BELIEVE WHAT THECOURT HAS DONE IN THIS CASE IS ERRONEOU SLY RELIED ON THIS COURT'S PRE VIOUS CASES SMAINT GAINS, WHICH WERE -- SMITH AND GAINS, WHICH WERE SITUATIONS WHERE WE HAD THE SAME PROVIS IONS OF THESTATUTES, I BELIEVE , BUT THIS COURT DECL ARED THEM UNCONSTITUTIONAL, BECAUS E IN MOST CASES WE HAD CLEAR UNCONSTITUTIONALITY BECAUSEWE HAD CIRCUIT COURT APPEALSTO THE DISTRICT COURT. WE DIDN'T HAVE A RULE SCHEMEIN HERE LIKE WE DO WITH 9.030 , 9.040 , EXPRESSLY INCORPORATING THE GENE RAL LAW. WE DIDN'T HAVE THAT IN EITHER SMITH OR GA INES, ANDI THINK THAT IS WHERE THE PRO BLEM THEY RAN INTO , INSTEAD OF ADDRESSING THE ISSUE --

CHIEF JUSTICE: STRAIGHT OUT , IF THE CIRCUIT, IF THE COUNTY COURT THIN KS IT IS IMPORTANT EN OUGH THAT THEY WANT TO HAVE IT ANSWERED , AND THE IDEA IS THAT IT I S BETTER FOR A QUESTION LIKE THAT TO BE ANS WERED BY THE APPELLATE COURT.

CORR ECT.

CHIEF JUSTICE: BUT THEN GO BACK TO, BUT THE APPELLATE COURT, AS YOU AGREED, STILL WOULD HAVE DISCRETION.

IT IS ABSOLUTE, AND THE RULE SAYS ABS OLUTE DISCRETION YOUR HONOR, BUT I DON'T BELIEVE, AFT ER THEY HAVE ACCE PTED IT , AND I MEAN , I GUES S THAT RULE IS U P TO INTERPRETATION, B ECAUSE IT DOESN'T SAY AFTER YOU ACCEPT JURISDICTION YOU COULD GET R ID OF T IT SAYS YOU WILL DECIDE ALL THE ISSUES.

CHIEF JUSTICE: BUT THIS IS A PRACTICAL MATTER ONTHIS ISSUE.

UM-HUM.

CHIEF JUSTICE: ISN'T THIS ISSUE GO ING TO BE DECIDED THIS TERM BY THE UN ITED STATES SUPREME COURT?

TWO ORAL ARGUMENTS ACOUPLE OF WEEKS AGO, YOUR HONOR , HAMMOND AND D A VIS, WELL ADDRESS THE ISSUE. I DON'T KNOW IF THEY ARE GOING TO SPECIFICALLY DEAL WITH THE EX CITED UTTERANCES , B UT THEY ARE GOING TO GIVE US HOPEFULLY , A LOT OF GUIDANCE AS TO THE CRAWFORD ISSUE , BUT AS FAR AS THE FOURTH DCA DECLARING THIS STATUTE UNCONSTITUTIONAL , I THINK THAT HAS TO BE REVERSED AND SENT BACK , BECAUSE THE COURT DID HAVE JURISDICTION OVER THIS CASE, EVEN THOUGH THEY ARE CLAIMING THAT THEY DID NOT, AND IT IS SOMETHING THAT THEY SHOULD HAVE RESOLVED, AND I TRIED LOOKING --

CHIEF JUSTICE: JUSTICE CAN TERO.

LET ME ASK YOU ON THE JURISDICTION, YOU MAY BE RIGHT ABOUT THE DISTRICT COURTS COURT'S JURISDICTION , BUT IT SEEMS TO ME THAT THERE IS A ANOMALY IN OUR RULE, IN THAT THE WAY C- 2 IS W ORDED , IT SEEMS THAT THE STATE MAY APPEAL ANY COUNTY COURT ORDER TO THE CIRCUIT COURT, AS PROVIDED BY GENERAL LAW , AND GENERAL LAW , 9.240-7, SAYS ANY OTHER --

PRETRIAL ORDER . CANTERO SO APPARE NTLY YOU CAN APPEAL ANYTHING FROM COUNTY TO CIRCUIT , BUT FROM CIRCUIT TO DC A, YOU CAN APPEAL ONLY CERTAIN ENUMERATED NONFINAL ORDERS.

CORRECT, YOUR HONO R. THAT WOULD BE COR RECT , BECAUSE WE DON'T HAVE THE SITUATION WHERE I BELIEVE UNDER 9.03 0-B, IT SAYS UNDER SECTION, WE CAN APPEAL UNDER 9.140-C. NOW -- CANTERO APPARENTLY IF THIS SAME ORDER WOULD HAVE BEEN RENDERED BY THE CIRCUIT COURT INSTEAD OF THE COUNTY COURT, THEN IT WOULD BE UNCONSTITUTIONAL TO APPLY IT, BECAUSE THE STATUTE DOES SAY OTHER NONFINAL ORDERS , BUT OUR RULE DOES N'T SAY T .

CORR ECT, YOUR HONOR . FOURTH CIRCUIT , THE DISTRICT IN THIS COURT , I BELIEVE HAS HELD SUCH IN GAINES AND SMITH. HOWEVER --

CHIEF JUSTICE: THAT SEEMS L IKE NOT THE WAY WE REALLY WOULD INTEND THE THINGS TO HAPPEN, TO LET EVERYTHING JUST BE APPEALED UP TO THE CIRCUIT COURT THAT LIMITSCIRCUIT TO APPE LLATE COURT. DO YOU THINK THERE IS A GOOD REASON FOR THAT?

I BELIEVE THE GOOD REASONFOR THAT IS BECAUSE IF YOU HAVE SOMETHING LIKE THIS AT A COUNTY COURT LEVEL , I MEAN , THINK OF THE , OKAY, IF IT IS NORMALLY FROM COUNTY TO CIRCUIT, AND IT IS SUCH A QUE STION OF GREAT IMPACT, IMEAN , WHAT GOOD IS I T GOINGTO HAVE TO HAVE EVERY S INGLE CIRCUIT ACROSS THE STATEDECIDING ON THIS ISSUE , B ECAUSE WHEN THIS CASE CAME UP, THERE HAD BEEN NO CASE LAW IN FLORIDA AT ALL.

CHIEF JUSTICE: I AGREE IT LOOKS LIKE THE WAY IT IS WORKING IN THIS CASE WOULD MAKE SENSE, BUT IF YOU LOOKAT THE WAY YOU ARE READING IT , I T IS ACT UALLY THIS RULE , T HIS IS NOT THIS CASE BUT WOULD ALLO W THE STATE TO APPEAL EVERY NONFINALORDTORT CIRCUIT COURT -- NONFINAL ORDER TO THECIRCUIT COURT FROM COUNTY COURT AS PROVIDED BY GENERAL LAW REGARDING A COUNTY COURT ORDER.

WE CAN TAKE THOSE APPEALSTO THE CIRCUIT COURT, BUT WHAT WE HAVE IN THIS CASE IS A SITUATION WHERE IT IS AN IMMENSE QUESTION OF GREAT PUBLIC IMPORTANCE AND THE FOURTH DCA SAW THAT ANDDECIDED TO TAKE IT AND THEN --

JUSTICE: I F YOU ARECORRECT , THAT FO URTH DCA AT L EAST HAD THE DISCRETION T O DECIDE THIS CASE , IT WOULD SEEM AND ONLYLOUS TO ME, IF WE, THEN, -- IT WOULD SEEM ANOMOLOUS TO ME THAT , THEN , WE COULD DECIDE T.

THIS COURT WAS THE FIRSTONE TO RULE ON IT, AND IWOULD AGREE WITH YOU ON THAT POINT.I DO --

JUSTICE: SO YOU REALLY ARE AS KING US TO RE MAND THIS TO THE DCA , SEND THIS BACK SO THAT THE DCA CAN ACTUALLY RULE ON THE ME RITS OF THE C RAWFORD ISSUE?

THAT IS WHAT THEY SHOULD HAVE DONE I N THE FI RST PLA CE, BUT INIT IALLY , I BELIEVETHIS COURT SH OULD HOLD THAT THE STATUTE IS CONSTITUTIONAL IN THE CONTEXT FROM COUNTY COURT APPEALS TO THE DISTRICT COURT OF APPEAL. THAT IS THE FIRST THING .

JUSTICE: WE WILL SEND IT B ACK , YOU ARE ARGU ING, A L SO, THAT THE DCA WOULD HAVE NO OPTION BUT TO ACTUALLY HEAR THE MERITS OF THE C RAWFORD CLAIM.

THAT WOULD BE MY FIRST ARGUMENT, AND SECONDLY, IF THEY DO , IF THIS COURTDECIDES THEY DO HAVE THE ABILITY TO RECE DE FROM THE GRANTING OF THE JURISD ICTION UNDER THE RULE, THEN I THINKIT WOULD HAVE TO, IF THERE WERE IN DEED SEPARATE PANELS THAT DECIDED IT , I BELIEVEIT WOULD HAVE TO BE AN EN BANC CONSIDERATION BECAUSE IDON'T BELIEVE ONE PANEL OF THE DISTRICT COURT CAN OVERRULE THE DECI SION OF ANOTHER PANEL , W ITHOUT GOINGEN BANC , AND I KNOW AS JUSTICE PARIENTE POINTED OUT IN THE PR IO R ARGUMENT, I DO RAISE THE CRAWFORD ISSUE, WHICH IS ALSO ON NEXT MONTH'S DOCKET AND LO PEZ AND A COUP LE OF OTHER CASES. I DON'T KNOW IF THIS C OURT WOULD WA NT ME TO ENTERTAINTHAT ARGUMENT , SEE ING AS HOW YOU PREVIOUSLY STATED IS QUITE RARE THAT YOU WOULDGET INTO --

CHIEF JUSTICE: AS YOU SAID, FIRST OF ALL THIS IS THE KIND OF CASE , WE WOULD ANSWER IT , PROBABLY , IF FOURTH DISTRICT HAD ANSWERED, AND IF IT WASN'T FOR THEFACT THAT THE UN ITED STATES SUPREME COURT WILL PROBABLY GIVE US A LOT MORE GUIDANCE , BUT AS YOU SA ID WE HAVE LOPEZ CO MING UP .

NEXT MONTH.

CHIEF JUSTICE: SOME OTHER P ANEL MEM BERS M IGHT WANT TO YOU ADDR ESS THE CRAWFORD ISSUE. ANYBODY?

IF WE DON'T WANT TO DECIDE THE CRAWFORD ISSUE , IT SEEMS TO ME THAT THE CASE LAW IS ALL OVER THE BOARDHERE. THE DISTRICT COURTS OF APPEAL GOING ONE WAY AND THEN THE OTHER. THE STATES ARE ALL OVER THEBOARD , AND THE FEDERAL GOVERNMENT IS , A LSO, ALL OVER THE BOARD. SO WHAT WOULD BE YOUR BEST SUGGESTION TO THIS COURT AS TO HOW WE WOULD DEAL WITH THIS ISSUE? DO YOU SUGGEST THAT WE HAVE SOME KIND OF LIST OF FACTORS THAT THE COURT SHOULD CON SIDER , OR ARE YOU ADVOCATING A BLANKET RULE?

FOR THIS CASE , I AM ADVOCATING A BL ANKET RULE , BECAUSE AN EX CITED UTTERANCE BY ITS VERY DEFINITION, I BELIEVE TAKES IT OUT OF ANY KIND OF TESTIMONIAL DEFINITION, IF A PERSON , UNDER ANY OF THE LIST S , L ISTED CORE PROPOSITION S WHICH WEREN'T ENDORSED BY THE SUPREME COURT IN CRAWFORD, IF THE DECLARANT DOESN'T HAVE THE CAPACITY TO REFLECT ON WHAT THEY ARE SAYING BECAUSE OF THIS STRESSFUL EVENT , HOW CANTHAT PERSON EVER KNOW THAT THAT IS GOING TO BE US ED IN T RIAL AT COURT?

JUSTICE: LET'S RENDER THE FACTS OF THIS ONE. WE HAVE AN EVENT THAT OCCURS, AND SOMEONE HAS SUFFICIENT PRESENCE T O COLLECT CHILD , TO COLLECT ANIMALS, TO D RIVE , D RIVE NOT JUST TO SAFETY BUT TO DRIVE TO A POLICE STATION.

CORRECT.

JUSTICE: TO SAY I WANT TO REPORT, AND THEN GO IN SIDE , DID SHE NOT , AND THEY STA RTED FI LLING OUT SOME KIND OF FORMS , STARTED IT , ANYWAY, DI DN'T THEY?

SHE WOULDN'T GIVE ANY WRITTEN STATEMENT.

SHE WOULDN'T GIVE WRITTENSTATES, BUT DID THEY NOT HAVE A FORM AND WAS TRYING TO SO LICIT INFORMATION FOR THE FORM?

AFTER THE FACT THAT SHE HAD COME IN AND MY READING OF IT HAD CLEARLY CALMED DOWN, THEN SHE THOUGHT BETTER OF IT AND SAID I AM NOT SUPPOSED TO GIVE ANY --

JUSTICE: I THINK THAT MAY HAVE OCCURRED , BUT I WAS REALLY READING IT THIS -- READING THIS UNDER THE IMPRESSION THAT THEY DIDVACHL , DID THEY NOT? SHE WAS INSIDE THE FACILITY -- THEY DID HAVE A FORM, DID THEY NOT , AND SHE WAS INSIDE THE FACI LITY ? AND THEY WERE BEGINNING TO ASK QUESTI ONS , LIKE INTEGRATE. BEGINNING . -- LIKE INTERROGATE . BEGINNING.

NOT, JUST ONE OUTSIDE TO OFFICER DARVILLE.

JUSTICE: WHAT DID HE SAY IN HIS DEPOSITION? TO ME IT SEEMS IN HIS DEPOSITION THAT IT DID OCCURTHE WAY JUSTICE LE WIS IS ASKING YOU AB OUT IT, THAT THEY HAD IN FACT STARTED ASKING HER SOME QUESTIONS .

OUTSIDE HE ASKED WHAT HAPPENED TO YOU AND SHE SAID , AS JUSTICE LEWIS PO INTED OUT , I WANT TO RE PORT THAT MY HUSBAND BE AT ME , KICKED ME IN THE FACE , PUNCHED ME, AND THEN THEY BROUGHT HER INSIDE FOR SAFETY REASONS.

CHIEF JUSTICE: THAT WAS THE ONE THAT --

YES. THAT WAS THE ONE WE WERE LOOKING TO GET.

CHIEF JUSTICE: THE FIRSTPRONG OF CRAWFORD SAID STATEMENTS MADE UNDER CIRCUMSTANCES WHICH WOULD LEAD AN OBJECTIVE WITNESS REASONABLY TO BELIEVE THAT THE STATEMENT WOULD BE AVAILABLE.I AM GOING TO THE PO LICE. I AM NOT AT THE HOSPITAL. I DROVE TO THE POLICE STATION.

RIG HT. WHICH WAS ONLY A QUARTERMILE AWAY , SO IT WAS THE CLOSEST PL ACE T O SAFETY.

CHIEF JUSTICE: I HAVE SEE A POLICE OFFICER. I AM NOT A, A REASONABLE WITNESS WOULDN'T THINK THATTHAT STATEMENT WOULD BE AVAILABLE FOR USE AT A LATERTIME?

NOT IN HER CIRCUMSTANCES, WHEN SHE HAS GOT BLOOD P OURING ALL OVER HER FACE. SHE HAS GOT BLO ODY E YES AND ACCORDING TO HER OWN SWORN STATEMENT, WHICH I BELIEVE HAS TO BE READ WITH AGRARIAN OF SALT , HER ATTORNEY ASKEDHER DID YOU GO THERE TO M AKE A COMPLA INT? SHE SAID NO. I HAD NO PREARRANGED A G ENDA . I DIDN'T KNOW WHAT I WAS DOING.

JUSTICE: THIS IS LA TER.

THIS IS LATER. I AGREE .

JUSTICE: IT SEEMS TO ME THAT THE CHIEF JUSTICE'S QUESTION REALLY GOES TO WHETHER THIS IS AN EXCITED UTTERANCE OR NOT , AND IT SEEMS TO ME IF IT IS AN EXCITED UTTERANCE, THEN BY THE DEFINITION OF EXCITED UTTERANCE, IT MEETS THE CRAWFORD TE ST, AND IF IT DOESN'T ME ET THE CRAWFORD TEST, IT IS BECAUSE IT IS NOT AN EXCITED UTTERANCE.

THAT IS THE STATE'SPOSITION, YOUR HONOR.

JUSTICE: IF IT IS A TRUE EXCITED UTTE RAN CE.

CORRECT. IF IT IS A TRUE EXCITED UTTERANCE .

JUSTICE: SHE HAD TIME FOR REFLECTION AND --

I SEE I AM IN MY REBUTTAL.

CHIEF JUSTICE: WE HO PETHAT THE U.S. SUPREME COURT WILL GIVE US BETTER GUIDANCE.

I WILL PRAY FOR THAT . AND THE STATE WOULD REQUEST THAT YOU REVERSE THIS AND AT LEAST SEND IT BAC K TO THE DISTRICT COURT TO ENTERTAIN THE QUESTION.

GOOD MORNING , CHIEF JUSTICE , ASSOCIATE JUSTICES , AND MAY IT PLEASE THE COURT.MY NAME IS JIM EISENBERG , AND I REPRESENT THE RESPONDENT APPE LLEE JEFFREY RATNER, AND I CAN ANSWER SOME OF THE QUESTIONS ON THE RECORD BECAUSE I WAS THE T RIAL LAW YER THERE .

JUSTICE: ADDRESS THE JURISDICTIONAL ISSUE FIRST , WHICH I THINK IS REALLY THE THRESHOLD ISSUE FOR US IS WHETHER THE DISTRICT COURT HAD JURISDICTI ON OVER THIS OR NOT.

I WOULD BE HAPPY TO ANSWER THAT. THE , THIS I S NOT OUR MAIN ISSUE BECAUSE WE DON'T KAFERMENT WE JUST WANTED HEARD ON APPEAL , BUT WE UNDERSTAND WHAT THE DIST RICTCOURT, DID AND WE THINK THAT THE DISTRICT COURT WAS CORRECT THAT IT DID NOT HAVE JURISDICTION . THE STATE IS LO OKING A T RULES BY THEMSELVES, AND WITHOUT LOOK ING AT THE OVERALL VI EW OF THE -- LOOKING AT THE OVERALL VIEW OF THE RULES PUT TO GETHER .

JUSTICE: WE HAVE TO LOOK AT THE PARTICULAR RULES? WE DON'T OPERATE IN A VACULE OF -- IN A VA CUUM OF APPELLATE RULES. WE OP ERATE ACCORDING TO SPECIFIC RULES AND WHAT THEY SAY , AND THE COURT DIDN'T SEEM TO ADD RESS RULE 9.140-C-2.

THAT'S CORRECT.THEY DIDN'T ADDR ESS, IT BUT YOU HAVE BRO UGHT OUT A POI NTTHAT IS THE MOST IMPORTANT POINT AS TO THE ISSUE , BUT IDON'T THINK IT IS AN ANOMALY. I THINK IT IS A MATTER OF INTERPRETATION OF THE RULE, AND THAT IS THAT , IF YOU ARE IN CIRCUIT COURT AND YOU HAVE A FEL ONY CASE , A FELONY C ASE BY DEFI NITION IS A MORE SERIOUS CASE TO THE PUBLIC, AND IT IS A , IT, ALSO, IS IN THE PU BLIC INTEREST AND JUDICIAL INTEREST THAT MATTERS IN FELONY CASES , ISSUES, LE GAL ISSUES SHOULD BE DECIDED PR IO R TO TRIAL CORRECTLY. SO A FELONY CASE IS MORE SERIOUS, SO IT MA KES NO SENSE WHATSO EVER , THAT, IN A FELONY CASE , B E IT A MURDER, LIKE THE COURT HAD EARLIER TODAY , A SEXUAL BA TTERY , BURGLARIES, ROBBERY, WHATEVER, IT MAKES NO SENSE THAT, IF YOU WERE IN THE EXACT SAME PO SITION IN THE TRIAL COURT AND YOU HAD A M OTION IN LIMINE, NOT A MOTION TO SUPPRESS , THAT THE DCA COULD NOT HEAR IT ON APPEAL, BUT YOU ARE AT A MISDEMEANOR CASE, YOU COULD , BECAUSE IT IS A MATTER OF G REAT PUBLIC IMPORTANCE.

JUSTICE: IT SEEMS TO ME THAT YOU ARE MAKING A V ERY COGENT ARGUMENT THAT THE RULE SHOULD BE CHANGED.

I DON'T THINK SO.IT IS A MATTER OF INTERPRETATION, THAT THELANGUAGE, A MATTER OF PUBLIC IMPORTANCE, DO ESN'T GO T O GIVE THE DCA GR EATER JURISDICTION. IT TELLS US THAT IT SHOULD G O TO THE DCA IF THE DCA HAS JURISDICTION, SO THAT ITWILL BE RE PORTED DISTRICT-WIDE RAT HER THAN M ERELY WITHIN THE CIRCUIT, SO IT IS NOT A MATTER OF CONFERRING JURISD ICTION THROUGH THE BACK DOOR CIRCYOUTHLY.

JUSTICE: YOU AREAL DEGREE THAT THE RULE SAYS THAT THE APPEAL CAN BE MA DE TO THE CIRCUIT COURT.THAT IS CL EAR.

THERE IS NO QUESTION THAT THE S IMPLE RULES PROVIDES AND FOLLOWS THE STATE'S ARGUMENT. THERE IS NO QUESTION ABOUT THAT .

JUSTICE: BUT YOU ALSO AGREE THAT THE JURISDICTION OF THE DISTRICT COURTS PROVIDE THAT NONF INAL ORDERS OTHERWISE APPEAL ABLE TO THE CIRCUIT COURT , THA T THE COUNTY COURT HAS CERTIFIED TO BE OF GREAT PUBLIC IMPORTANCE.

ABSOLUTELY.

IT SEEMS THAT, WHEN YOU PUT TH OSE TWO TOGETHER, I T EQUALS THAT THE DCA HAS JURISDICTIO N.

IF YOU TAKE THE LANGUAGE AS IT IS , VE RY SHRIMP, THE STATE IS CO RRECT. -- VERY SI MPLY , THE STATE IS CORRECT. THE DCA HAS DISCRETIONARY JURISDICTION. THAT IS RIGHT.BUT IF YOU LOOK AT THE RULESOVERALL , IT MAKES N O SENSE THAT YOU CAN D O IN A MISDEMEANOR CASE WHAT YOU CANNOT DO IN A FELONY CASE, AND THAT IS WHY I AM SAYING IT IS A MATTER OF INTERPRETATION, AND THE WAYTHAT THE RULES SHO ULD BE INTERPRETED IS THAT , IF IT IS A MATTER OF GREAT PUBLIC INTEREST AND IT IS A MATTER THAT CAN GO TO THE FO URTH DCA, THEN THE COUNTY COURT APPEAL GOES T O THE DCA .

JUSTICE: THE RULE DOESN'THAVE THAT EXTRA LANGUAGE IN THERE THAT YOU ARE TALKING ABOUT.

I AM ST RICTLY ARGUING INTERPRETATION. THAT'S CORRECT.

JUSTICE: IN OTHER WORDSYOU ARE ARGUING THAT THE ORDERS THAT ARE APPEALABLE UNDER C -2 MUST TRACK THE ORDERS THAT ARE APPEAL ABLE UNDER C- 1.

YES .

JUSTICE: BUT C-2 DOESN'T SAY.THAT.

NO.IT DOESN'T SAY THAT. THAT IS AN ARGUMENT OF INTERPRETATION, IN ORDER TO MAKE SENSE OF THE ENTIRE SYSTEM.

JUSTICE: LET ME ASK YOUON THE CRAWFORD ISSUE , ITSEEMS TO ME WH EN YOU GET TO THE , DO YOU AGREE WE ARE PROBABLY ON THE THIRD PRONG , THAT THIRD FACTOR OF CRAWFORD, WHICH IS THE REASONABLE WITNESS WOULD ANTICIPATE THAT THE STATEMENTS WOULD BE ADMISSIBLE IN COURT?

YES. AND IF I MAY CORRECTSOMETHING THAT YOU SAID , JUSTICE CANTERO . JUST GIST I SAID SOMETHING W RONG --

JUSTICE: I SAID SOMETHINGWRONG?

I THINK SO. C HIEF JUSTICE PARIENTE HADASKED A QUESTION ABOUT OBJECTIVE STANDARD, WHETHER OBJECTIVELY A REAS ONABLE P ERSON WOULD KNOW THAT THEIR COMMENT WOULD BE USED FOR LATER LITIGATION, AND I BELIEVE , AND CORRECT ME IF I AM MISTAKEN, YOU SAID THAT GOES TO WHETHER IT IS A N EXCITED UTTERANCE. THAT DOES NOT GO TO WHETHERIT IS EXCITED UTTERANCE. THAT GOES TO WHETHE R IT IS TESTIMONIAL OR NOT. THE LANGUAGE TESTIMONIAL , NONTESTIMONIAL, IS CRAWFORD LANGUAGE.

JUSTICE: LET ME A SK YOU THIS ABOUT THE TESTIMONIAL PART, BECAUSE MY QUESTION , DOES CRAWFORD REALLY ESTABLISH OR CR EATE A PARADOX SO THAT AN OBJECTIVE WITNESS KNOW ING THE RULES OF EVIDENCE WOULD THINK THAT THIS WOULD BE ADMISSIBLE IN COURT BECAUSE IT IS A HEARSAY, IT IS A HEARSAY THAT WOULD OTHERWISE BE ADMISSIBLE. IT IS AN EXCITED UTTERANCE. THEREFORE BECAUSE HE BELIEVES IT WOULD BE ADMISSIBLE, IT IS NOW INADMISSIBLE?

NO. THE CRAWFORD, AND THE REASON IS THAT THE EXCITED UTTERANCE , THE HEARSAY OBJECTIONS LOOK TO THE SUBJECTIVE INTE NT OF THE DECLARANT. CRAWFORD ITSE LF , S AYS THAT IT LOOKS OBJECTIVELY, AND WE LOOKED OBJECTIVELY --

JUSTICE: BUT IS THERE AN OBJECTIVE WITNESS WITH KNOWLEDGE OF THE RULES OF EVIDENCE OR NOT ?

IT MATTERS NOT THAT THE PERSON KNOWS RULES OF EVIDENCE. ALL IT MATTERS IS THAT THE OBJECTIVE PERSON WOULD KNOW THAT THE STATEMENT THEY ARE GIVING WOULD BE LATER USED FOR LITIGATION AND THAT IS ALL THEY KNOW. THAT IS THE K EY. THEY DON'T HAVE TO KNOW ABOUT THE RULES OF EV IDENCE. THEY DON'T HAVE TO KNOW THAT IT WOULD BE ADMISSIBLE UNDER THIS OR THAT , ONLY THAT T HEY ARE MAKING A STATEMENT THAT WOULD REASONABLY OBJE CTIVELY , THEY KNOW, WOULD GO TO LATER LITIGATION.

CHIEF JUSTICE: ISN'T THE PROBLEM, AND IT IS REALLY WHAT JUSTICE CANT ERO WAS FOLLOWING UP WITH ME ON, THE VERY DEFI NITION OF EXCITED UTTERANCE , IS THAT THE PERSON HAD NO T IME TO REFLECT. IT JUST CO MES OUT U NDER , WHERE THEY HAVE BEEN UNDER EXTREME D URESS , AND SO IF IT TRULY ME ETS THE DEFINITION OF EXCITED UTTERANCE, THEN DOE S IT , ALSO, THEN , NOT MEET THE THIRD PRONG OF THE TESTIMONIAL EXCEPTION IN CRAWFORD? AND THAT IS , I MEAN , STRUGGLING, IT IS NOT AN ISSUE OF RELIABILITY ANYMORE B UT THAT IF THE OBJECTIVELY , SOMEONE WHO IS MAKING AN EXC ITED UTTERANCE , HAS NO T IME TO RE FLECT , SO THEY END UP HAVING NO INTENT TO HAVE THAT STATEMENT BE USED.

THAT IS THE STATE'S POSITION. AND THAT IS , THE LAW DOES NOT SU PPORT THAT, AND THE CASES THAT DON'T SUPPORT IT --

CHIEF JUSTICE: LE T'S BE FAIR ABOUT IT. IF THIS COURT GAVE THE KIND OF THIRD PRONG OF CRAWFORD THAT CRAWFORD G AVE , W E WOULD BE , PEOPLE WOULD BE VERY UPSET WITH US BECAUSE WE WOULD SAY WHAT DOES THIS MEAN, AND THAT IS WHAT COURTS HAVE BEEN STRUGGLING WITH SINCE CRAWFORD, SO WEARE TR YING TO DEFINE WHAT THE U.S. SUPREME COURT MEANT WHEN IN TR UTH , YOUR C LIENT , DEFENDANT , THE MAIN PART FOR YOU IS THEY ARE NOTAVAILABLE. Y OU ARE ST ILL GOING TO HAVETHE STATEMENTS THAT YOU W EREN'T AB LE TO CROSS-EXAMINE ON. SO --

IF I MI GHT TOUCH ON WHAT YOU JUST SAID , BECAUSE THAT IS THE CRUX OF THIS CASE THAT MAKES THIS CASE DIFFERENT, AND THEN I WILL ANSWER YOUR QUESTION ON THE EXCITED UTTERANCE BEING NECESSARILY NONTESTIMONIAL . THIS CASE IS UN IQUE IN ALL OF THE CRAWFORD CASES , AND I HAVE READ THE LITANY OF CASES THAT THIS THE STATE -- THAT THE STATE PUT FORWARD. IT IS UNIQUE BECAUSE THE DECLARANT IN THIS CASE IS AVAILABLE AND SHE WANTED TO TESTIFY.SHE WAS AVAILABLE AND WILLING TO TEST IFY , BUT THE STATE WE NT TO THE T R IAL COURT AND SAID WE ARE CHOOSING NOT TO PUT AN AVAILABLE WITNESS ON , BECAUSE WE DON'T THI NK SHE IS GOING TO SAY WHAT WE WANT HER TO SAY , BASICALLY, AND UNAVAILABILITY IS NOT DEFINED AS NOT SAYING WHAT THE STATE WANT S YOU TO SAY. SO THE KE Y TO THIS CASE , WHICH MAKES IT DIFFERENT FROM ALL OTHER CASES , AND I SAY ALL OTHER CASES, BECAUSEI HAVE READ SO MANY OF THEM NOW , IS THAT THE STATE HAS CHOSEN OR THE STATE IS ATTEMPTING IN THIS CASE , TO NOT PUT ON AN AV AILABLE WITNESS , SPECIFICALLY SO THAT THERE WILL BE N O CROSS-EXAMINATION, AND USE THE OUT OF COURT

STATEMENT ONLY .

JUSTICE: THAT IS REALLY PUTTING THE COURT BEFORE THEHORSE , RIGHT , BE CAUSE YOU ONLY GET TO UNAVAILABI LITYIF THERE IS A CONFRONTATION C LAUSE PROBLEM F THERE IS NO CRAWFORD -- PROBLEM. IF THERE IS NO CRAWFORD ISSUE AND THIS IS AN EXCITED UTTERANCE, THEN IT IS REALLY IRRELEVANT WHETHER THE WITNESS WAS AVAILABLE OR NOT , CORRECT?

THERE ARE SITUATIONS WHERE A STATEMENT WOULD COME IN. YOU ARE RIGHT. IF IT WASN'T A CRAWFORD ISSUE AND IT WASN'T TES TIMONIAL, THEN YOU WOULDN'T REACH THAT ISSUE, BUT HERE IT IS BECAUSE IF YOU LOOK AT THE OBJECT IVE STA NDARD --

JUSTICE: AND THE STATEISN'T ARGUING HERE THAT THE WITNESS IS UNAVAILABLE.

THE STATE IGNORES THE ISSUE ON THE AVAILABILITY OR UNAVAILABILITY.

JUSTICE: IT IS IRRELEVANT ON THIS ISSUE . IT IS REALLY NOT REL EVANT.

IT IS RELE VANT, BECAUSETHE TRIAL COURT MADE THE IMPLICIT FINDING AS WE PUTIT, THAT THE STATEMENT WAS TESTIMONIAL , AND THE REASON THAT THE TRIAL COURT DIDTHAT WAS THE LAN GUAGE THAT MRS. RATNER USED , WHEN SHE TRAVELED TO THE POLICE DEPARTMENT , AND KEEP IN MIND THIS WAS NOT A 911 CA LL. THIS WAS NOT A POLICE OFFICER WHO CA ME TO THE SCENE. SHE CAME TO THE POLICE DEPARTMENT. WHEN SHE GA THERED HER SONAND GATHERED HER DOG , AND SHE SAID, QUOTE , I WANT TO REPORT, UN QUOTE.

JUSTICE: SEE , THAT SEEMSTO ME TO BE AN ARGUME NT THAT THIS WAS NOT AN EXCITED UTTERANCE.

NO. BECAUSE , I T MATTERS NOTWHETHER IT WAS EXCITED UTTERANCE. AND THE CASE S THAT WILL BE HERE NEXT MONTH, MAYBE WILL DECIDE THAT, BUT IN THE LOPEZ CASE, I THINK THAT THE F IRST DCA WAS CORRECT WHEN IT SAYS SOME TESTIMONIAL STATEMENTS ARE RELIABLE ANDOTHERS ARE NOT. A STATEMENT DOES NOT LOSE ITS CHARACTER AS TESTIMONIAL STATEMENT , ME RELY BECAUSE THE DECLARANT WAS EXCITED AT THE TIME THAT IT WAS MADE. AND THE HAMMOND CASE, ALSO , SAYS I T WARNS AND SAYS , WE DO NOT AG REE A STATEMENT QUALIFIES AS AN EXCITED UTTERANCE IS NECESSARILY NONTESTIMONIAL, AND THE UNITED STATES VER SUS BRITTO , WHICH ALSO CAUTIONS AGAINSTAN ALL OR NOT HING APPROACH.

CHIEF JUSTICE: I THINK THE PROBLEM AND THE EXCITED UTTERANCE EXCEPTION HAS BEEN USED BY THE STATE SO MANY YEARS, IS THAT SOME O F THESE STATEMENTS THAT COME IN AS AN EXCITED UTTERANCE , AREN'T TRULY EXCITED UTTERANCE. YOU KNOW, THEY ARE BEING STATED AS EXCITED UTTERANCE S, BUT THEY ARE ACTUALLY RESPONSES TO P OLICE INQUIRY OR WHAT EVER , AND, BUT YOUKNOW, DO WE HAVE A CONFLICT IN THIS STATE BETWEEN LO PEZ AND OTHER CASES? I MEAN, ARE WE ALREADY IN A CONFLICT SITUATION?

I DON'T THINK WE A RE IN A CONFLICT SITUATION , BECAUSE WE HAVEN'T COME UP WITH THAT MANY CASES .

CHIEF JUSTICE: WHY ARE WE HEARING LOPEZ AND CON TRARES , DO YOU KNOW? ARE THEY HERE ON CONFLICT OR CERTIFIED QUESTION?

I DON'T KNOW. THAT I CAN'T ANSWER.

CHIEF JUSTICE: AND WE MAY NOT KNOW EITHER, Y ET. WE ARE GO ING TO BE LOOK ING. I CAN TE LL YOU THAT.

JUSTICE: HOW CLOSELY TO THE FACTS AND CIRCUMSTANCESOF THIS CASE PARALLEL THE DOMESTIC VIOLENCE CASE THAT IS BEFORE THE U.S. SUPREME COURT ?

THE ONE THAT IS BEFORE THE U.S. SUP REME COURT , I F I CAN HAVE ONE MOMENT , IS THE HAMMOND CASE. AND IF I CAN HAVE ONE MOM ENT ON THAT , I TOOK I T OUT , SO THAT WE COULD DISC USS IT . AND I PUT IT BACK. HERE IT IS. I AM SORR Y. IN THE HAMMOND CASE, THERE WAS A STATEMENT THAT QUALIFIES , THE COURT SAID, AND THIS WAS THE INDIAN A COURT, SAID THAT THE STATEMENT THAT QUALIFIED AS AN EXCITED UTTERANCE , IS NOT NECESSARILY TESTIMONIAL. IT WAS INTE RESTING . THE COURT, IT WAS HE LD THAT IT WAS A NONTESTIMONIAL STATEMENT, BECAUSE IT WAS A STATEMENT TO THE POLICE , W HO WERE CALLED TO THE SCENE , AND ACCORDING TO THE LANGUAGE HERE , IF I MAYQUOTE FROM IT , OFFICER MOONEY RESPONDED TO A REPORTED EMERGENCY . THAT WAS PRINCIPLY IN THE PROCESS OF ACCOMPLISHING THE PRELIMINARY TASK OF SECURING AND ASSESSING THE SC ENE. THE DECL ARANT 'S M O TIVATION WAS TO CONVEY THE B A SIC INFORMATION, AND THERE WAS NO SUGGESTION SHE WANTED HER INITIAL RESPONSES TO BE PRESERVED OR OTHERWISE USED AGAINST HER HUSBAND. SO THAT IS A MORE TYPICAL SITUATION WHERE THERE WAS A 911 CALL.

CHIEF JUSTICE: YOU SEE , BUT , THE INDIANA COURT SAID IF EXCITED UTTERANCE, WE ARE GOING TO CALL IT NONTESTIMONIAL.

THEY DID NOT. THEY SAID --

CHIEF JUSTICE: I TH OUGHT THEY FOUND IT NONTESTIMONIAL . INDIANA SUPREME COURT DIDN'T FIND IT NONTESTIMONIAL ?

THEY SAID THEY DID FI NDIT NONTE STIMONIAL, BUT THEY REJECTED THE I DEA THAT ALL EXCITED UTTERANCE S WOULDTHERE FOR BE NONTESTIMONIAL , SO THEY TOOK IT CASE BY CASE , ANALYSIS , AND WHICH I WOULDURGE THE COURT, WOULD BE THE MORE INTELLIGENT WAY TO GO ABOUT IT AND THE FAIRER WAY , R ATHER THAN HAVE A BLANKET RULING, IF YOU MEET ONE CRITERIA , WHICH IS THE SUBJECTIVE ANALYSIS, THEN NECESSARILY , YOU MEET OBJECTIVE CR ITERIA OF TESTIMONIAL.

JUSTICE: WELL , YOU WOULD AGREE THAT , WITH ALL OF THE ISSUES THAT ARE NOW ARISINGIN THE TRIAL COURTS AFTERCRAWFORD, THAT AT LEAST APER SE RULE WOULD G IVE SOME STABILITY AND SOME PREDICTABILITY TO THE LAW , AT L E AST IN THE AREA OF EXCITED UTTERANCES .

IT W OULD , BUT I WOULD NOT DO THE PER SE RULING THE WAY THE STATE WOULD HAVE IT DONE. I WOULD DO A PER SE RULING THE WAY HAMMOND TALKS ABOUT AND THE FA CTS OF HAMMOND , JUSTICE ANST EAD , I THINK, ARE IMPORTANT, AND I WOULD GO ALONG THOSE FACTS. IF IT IS A 911 CALL , A 911CALL IS NOT A REPORT LIKE IN THIS CASE. A 911 CALL IS A CALL FOR HELP. IF IT IS A 911 CALL AND THE P OLICE RESPONDING TO A 911 CALL, WHICH IS ESSENTIALLY A CALL FOR HELP, THEN I THINKIT WOULD BE MORE LIKELY THAT THE PERSON --

JUSTICE: IN THE SPECIFIC AREA OF DOMESTIC VIOLENCE , IT SEEMS TO ME THAT THIS CASE COMES VERY CLOSE TO A 9 11 CALL , BECAUSE THE VI CTIM JUST DIDN'T FEEL SAFE IN CALLING FROM THE HO ME. SHE WAS RUNNING AWAY FROM THE VERY P LACE THAT SOMEONE WOULD MAKE A 911 CALL FROM.

THERE IS NOTHING IN THERECORD TO SUPPORT THAT.

CHIEF JUSTICE: BUT THAT IS THE WH OLE, YOU KNOW , I UNDERSTAND RIGHT NOW THE RECORD MAY NOT HAVE IT BUT YOU M UST AGREE WITH WHAT THE GENERAL PROPOSITION THAT JUSTICE CANTERO JUST PRESENTED. WHICH IS THAT DOMESTIC VIOLENCE CASES BY THEIR VERY NATURE, ARE GOING TO PRESENTPROBLEMS WITH THE VIC TIMS FEELING THAT THEY HAVE GOT TO F LEE

THE AREA .

IF THAT WERE THESITUATION AND THE VICTIM WASRUNNING AW AY , THERE ARE CASES WHERE SOMEONE WAS JUST RESCUED AND THEN MADE A TERRIBLY EXCITED, CR YING , SOBBING STATEMENT, I WOULD AGREE WITH THAT , BUT IT ISNOT FAIR TO SAY THAT, JUST BECAUSE A CASE IN A DOMESTIC CASE THAT , THAT NECESSARILYMEANS THAT A WOMAN WHO, QUOTE , WHO SAYS , QUOTE , IWANT TO MAKE A REPORT, UNQUOTE , IS NECESSARILYRUNNING A WAY.

CHIEF JUSTICE: LE T'S JUST LOOK AT THE SITU ATION. PRECRAWFORD , THIS STATEMENT, IF THE COURT FOUND IT WAS AN EXCITED UTTERANCE, WOULD COME INTO EVIDENCE. CORRECT?

YES .

CHIEF JUSTICE: NOW , CRAWFORD COMES ALONG BECAUSE WHAT THEY ARE CONCERNED WITH IS WHAT THE SI XTH AMENDMENTMEANT , AND WHAT IT MEANT AT THE TIME THAT THE SIXTHAMENDMENT WAS ADOPTED ANDTALKED ABOUT THIS TESTIMONIAL ID EA. YOU HAVE PO STED AND SAID YOU KNOW WHAT? -- YOU HAVE POSITED AND SAID YOU KNOW WHAT?THIS IS REALLY SI LLY BECAUSE THIS PERS ON IS AVAILABLE, SO A LL I WOULD SAY TO YOU I S WHERE IS THE HARM, THEN , F ROM A SIXTH AMENDMENT POINTOF VI EW, IF THE STATE PUTS ON A PRIMA FACIE CASE AFTER STATEMENT MADE BY ALLEGED V ICTIM OF DOMESTIC VIOLENCE, SHOWS THE PHOTOGRAPHS OF THIS TE RRIBLE INJURIES , AND THE N YOU , WHO I GUESS THE HUSBAND AND WIFE ARE NOW STILL LIVING TOGETHER, YOU PUT ON THE WIFE , A ND YOU CAN CROSS-EXAMINATION HER. SO WHERE IS THECROSS-EXAMINATION, WHERE IS THE SIXTH AMENDMENT HARME D THAT COMES, FROM AGAIN , TH ATIS WHAT CRAWFORD WAS ABOUT IS TO IS TRY TO SAY WE WANT TO UPHOLD THIS V ALUE OF THE SIXTH AMENDMENT. I THINK WE ARE T URNING IT ON ITS, YOU KNOW , THIS DOESN'TMAKE ANY S E NSE TO ME , I N TERMS OF ESPECIALLY IN DOMESTIC VIOLENCE SETTING , THAT A TRUE EXCITED UTTERANCE COMES IN , IF THE VICTIM IS AV AILABLE , THEN THE DEFENDANT HAS THEOPPORTUNITY TO PUT THAT VICTIM ON AND THEN THERE CAN BE CROSS-EX AMINATION.HOW IS YOUR , HOW IS THERE , HOW IS YOUR C LIENT DEPRIVED OF HIS SIXTH AMEN DMENT RIGHTS IN THIS CASE?

THAT QUES TION WAS ANS WER ED RECENTLY BY THE FOU RTH DISTRICT COURT OF APPEAL , IN THE CASE CALL ED, I BELIEVE IT IS BE LVIN . NO. BELVIN. THE ONE YOU HAD IN, P ARDON ME? NO. THERE WAS A CASE THAT WAS DECIDED BY THE FOURTH DCA.

CHIEF JUSTICE: I AM AM NOT AS KING YOU WHAT THE FOURTH DCA , I AM ASKING YOU AS EXPERIENCED CRIMINAL DEFENSE LAWYE R , AS ADVOCATE, HOW IS THIS A SIXTH AMENDMENT VIOLATION?

BECAUSE THE STATE HAS THEBURDEN OF PROOF IN THE CASE , A ND THEY HAVE THE BURDEN OF PROOF ING THE CASE THROUGH LAWFUL CONSTITUTIONAL AVENUES.THE FACT THAT I MAY PUT ON A WITNESS LATER ON DOES NOT MEAN THAT IT IS OKAY FOR THE STATE TO GO FORWARD AND , IF I CORRECT, IT JUST BECAUSE I M AY HAVE THE OPPORTUNITY TO CORRECT THE CONSTITUTIONAL DEFICIENCY , DOES NOT MEAN THAT WHAT THE STATE HAS DONE IS CORRECT. I HAVE NO BU RDEN OF PROO F IN THE CASE .

CHIEF JUSTICE: SO YOU WOULD REQUIRE, THEN, SO, IF A STATE, THEN , CALLS THE WITNESS, THE WIT NESS SAYS WHATEVER, AND PLUS THE EXCITED UTTERANCE, YOU AGREE THEN THERE IS NO SIXTH AMENDMENT PROBLEM.

TH ERE WOULD BE NO SIXTH AMENDMENT VIOLATION WHATSOEVER.

CHIEF JUSTICE: ISN'T THIS ANOTHER CASE AFTER PREMATURE DECISION, BECAUSE WE REALLY DON'T KNOW EXACTLY WHAT THESTATE IS GOING TO DO?

NO. BECAUSE IN THE RECORD THE STATE SAID IT IS CHOOSING,THAT WAS THE FO CUS OF THEIRMOTION IN LIMINE. THEY SAID WE WILL NOT , WE CHOOSE NOT TO CALL THE WITNESS, AND THE TRIAL COURT , JUDGE CUNNINGHAM , SAID SPECIFICALLY, YOU MUST, ANDI AM GOING HO LD THAT THE WITNESS , AB SENT YOU CALLING THE WITN ESS'S TESTIMONY --

CHIEF JUSTICE: WH Y WOULD YOU WANT THIS CASE APPEALED? YOU WOULD BE HA PPY WITH WHAT JUDGE CUNN INGHAM SAID.

I DON'T WANT IT APPEAL ED.

CHIEF JUSTICE: I THOUGHTYOU SAID IT I THOUGHT YOUSAID YOU WANTED IT DECIDED BY SOME APPE LLATE COURT.

IF THE STATE DECI DES TO APPEAL , THEN I AM I WILL BE CANDID. I HAVE CONFIDENCE IN THE JUSTICES . FROM M Y CLIENT'S POINT OF VIEW IT MAKES NO DIFFERENCE. THEY HAVE A RIGHT TO APPEAL IT, SO ILL GRANT THAT. WE THINK THEY SHOULD APPEAL -- SO I WILL G RANT THAT WE THINK THEY SH OULD APPEAL IT TO THE CIRCUIT COURT. IF I MAY JUST ANSWER ONEOTHER QUESTION THAT YOUBROUGHT UP ON THE FACTS OF THE CASE.I THINK IT WAS JUSTICE LE WIS . THERE WAS NO FORM. THE L A DY CAME IN , AND THEPOLICE OF FICER SAID WAP WHAT HAPPENED TO YOU, AND THEN SHE -- AND THE POLICE OFFICER SAID WHAT HAPPENED TO YOU, AND THEN SHE SAID I WANT TO REPORT MY H USBAND BEAT ME UP AND THEN THEY B ROUGHT HER IN AND SHE THEN IMMEDIATELY SAID I AM NOT GIVING ANY REPORT AND BECAME UNCOOPERATIVE.

CHIEF JUSTICE: THANK YOU .

THANK YOU VERY MUCH.

JUST BRIEFLY, AND I ACTUALLY WILL BE BRIEF. I BEL IEVE THE QUESTION , CHIEF JUSTICE PA RIENTE ASKED PROBABLY IS GOING TO BE RESOLVED OR WILL BE BEFORE THIS COURT NEXT MONTH, ASFAR AS THE SIXTH AMENDMENT IMPINDICATION , AND -- IMPLICATION, AND AS FAR AS I KNOW OF IN LO PEZ AND CONTRARAS AND BLANTON , WHICH SAYS YOU CAN OP POSE AND THAT IS WHERE THE CONFRONTATION C LAUSE APPLIES. THAT IS WHERE THE COURT ADDRESSES THIS QUESTION, AND WHEN THIS COURT DRAFTED ITSRULES , THERE ARE CERTAIN APPEALS THAT THE STATE CAN T AKE DIRECTLY TO THE DCA. I DON'T THINK IT IS INCONSISTENT WITH THE FACTTHAT, IF WE HAVE SOMETHINGAT THE COUNTY COURT THAT I S OF SUCH A GR EAT IMPORTANCE , WHY ARE WE GOING TO CLOG UP THE CIRCUIT COURTS WITH A B UNCH OF APPEALS WHEN THE SDRIRKT COURT OF APPEAL -- WHEN THE DIST RICT COURT OF APPEAL IS MUCH MORE ADEPT AND MUCH MORE AT T UNED T O ANSWERING THESE QUESTIONSFARNTION THEY DON'T WANT TO ANSWER IT -- QUESTION S, AND IF THEY DON'T WANT TO ANSWER IT, THEY DON'T HAVE TO. THEY JUST SAY WE DEC LINE JURISDICTION, AND IF THECOURT DOES N'T HAVE ANY F URTHER QUESTIONS , WE WOULDASK THAT YOU REVERSE. THANK YOU.

CHIEF JUSTICE: WE TAKE THIS CASE UN DER ADVISEMENT AND HOPE THAT WE G ET SOME WIS DOM FROM ON HIGH , THAT IS HIGH IN WASHINGTON.