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**Robert S. Peters v. State of Florida
SC06-341**

PLEASE RISE.

>> GOOD MORNING.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

>> OKAY.

WE'RE READY FOR CASE OF
PETERS VERSUS THE STATE OF
FLORIDA.

MR. DAVIS.

GOOD MORNING, YOUR HONOR.
IN THIS CRAWFORD ISSUE PHASE
TWO FROM THE LAST, WHAT
WE'RE HERE TODAY ON THE
FIRST DISTRICT COURT OF
APPEAL SAID IT DOES IN THE
APPLY IN THE CONTROL THEY
CERTIFIED A QUESTION TO YOU,
WHETHER OR NOT CRAWFORD
APPLIES.

IN THE CASE, MR. PETERS WAS
PLACED ON 12-MONTH PROBATION
FOLLOWED BY 24 MONTHS
SUSPENDS SENTENCE OF 24
MONTHS AND DURING THAT 12
MONTHS HIS PROBATION ORDER
ORDERED A URINALYSIS TEST
AND IT CAME BACK POSITIVE.
THE REPORT THAT CAME BACK
FROM A COMPANY CALLED FARM
KIM THAT SHOWED IT TURNED UP
POSITIVE.

THE COURT REVOKED PROBATION.

>> HOW WAS THAT RECORD PUT
INTO EVIDENCE?

>> THERE IT IS, YOUR HONOR.

>> WHO PUT IT IN?

>> THE STATE PUT IT IN.

>> I DON'T UNDERSTAND.

>> A STATUTORY REQUIREMENT
SAYS, ACTUALLY STIPULATED
AND AS RELIABLE EVIDENCE.

IT CAME IN, STATUTORY
REQUIREMENTS THAT THIS
REPORT APPARENTLY MET AND

CAME IN.

>> SO THIS IS DIFFERENT.

THIS IS UNDER THE 8036.

>> WE HAVE A CERTIFICATION.

YES.

>> GIVE NOTICE.

>> RIGHT.

RIGHT.

>> RIGHT.

THE PROBLEMS YOU WERE
HEARING ABOUT ARE NOT HERE.

THIS IS CLEARLY BUSINESS
INTRODUCED AS BUSINESS
RECORD EXCEPTION.

SO THE QUESTION, BUT THERE
WAS DEFENSE COUNSEL SAID, I
WE NEED TO BRING THAT
ANALYSTS IN HERE TO TALK
ABOUT THOSE SORT OF THINGS
HE WENT THROUGH IN THE
ANALYSIS.

NO, YOU DON'T NEED TO DO
THAT.

CRAWFORD DOESN'T APPLY
BECAUSE THIS IS NOT A
CRIPPLE CALL PART OF THE
CRIMINAL PROSECUTION WHICH
THE 6 AMENDMENT SAYS AN ALL
CRIMINAL PROSECUTIONS THE
WAY TO CONFRONT THE
WITNESSES AGAINST HIM.

SO THAT IS THE FIRST
DISTRICT, BUT THIS IS A
POST, WHAT THEY CALL POST
CONVICTION PRECEDINGS WHICH
CRAWFORD DOESN'T APPLY.

>> WHAT HAS BEEN THE CASE
LAW ABOUT, AGAIN, BEFORE
CRAWFORD, THE 6th AMENDMENT
APPLY TO PROBATION HEARINGS?

>> YOUR QUESTION REALLY IS
DOES IT APPLY, I AM SORE
RUSSIAN DOES IT AFLOIZ
SENTENCING HEARING, THAT IS
BECAUSE PROBATION IS A
DEFERRED SENTENCING, SO THE
QUESTION THEN IS REALLY,
THAT IS WHAT THE QUESTION
IS.

THE QUESTION SHOULD ASK.
THAT IS CERTAINLY THE
QUESTION THAT SHOULD, THAT
IS UNDERPINNING THIS WHOLE
THING.

IS PROBATION PART OF THE SENTENCING, YES, IT IS PART OF THE SENTENCING, YES, YOU HOLD THE CONFRONTATION APPLIES, IN FACT, NOT OM YOU HAVE, BUT THE U.S. SUPREME COURT, THE FLORIDA SUPREME COURT, DONALDSON, A COUPLE OF OTHER CASES AND IT APPLIES IN THE SENTENCING HEARINGS.

NOW AN MY ARGUE AM IS VERY SHORT.

THIS WAS PART OF THE PROBATION HEARING WAS PART OF THE SENTENCING AND CRIMINAL PROSECUTION INCLUDES SENTENCING AND FLORIDA LAW, NOW, THE PROBLEMNO CARRIERRINGCONNECT 115200

>> YES, YES.

>> IT WAS NOT APPLIED TO PROBATION?

>> WELL, I AM ASSUMING IT WOULD BE.

>> WELL, YES, BEFORE CRAWFORD, AND OHIO, AS TO HEARSAY, HEARSAY OUT OF PROBATION, IT HAS TO SATISFY THE OHIO --

>> CERTAINLY, THERE ARE CASES OUT THERE BEFORE CRAWFORD APPLIED TO OHIO VERSUS RON BETTERS TO PROBATION?

>> I DON'T KNOW.

>> IT SEEMS -- I MEAN, WE HAVE HAD, WE HAVE HUNDREDS OF CASES IN FLORIDA ON PROBATION HEARINGS. CERTAINLY NOT ONE?

>> I DON'T KNOW.

>> THE AMENDMENT APPLIED OR NOT?

>> I DON'T KNOW.

I DON'T KNOW.

MY FOCUS IS ON CRAWFORD.

I WAYNE --

>>> WE HAVE APPLIED A LESSER DUE PROCESS STANDARD, DO WE NOT AS TO PAROLE AN PROCEEDINGS AND TO FULL CRIMINAL PROCEEDINGS?

>> DUE PROS SENSE THE SENSE

OF BURDEN OF PROOF, BUT THE
TEN ATE GETS THE TROINGT
HAVE A JUDGE THERE AND
COUNSEL AND HAS A RIGHT FOR
THE STATE TO PROVE ITS CASE.
THE ONLY --

>> HOW ABOUT THE ADMISSION
OF HEARSAY EVIDENCE?

>> WELL, HEARSAY IS
ADMISSIBLE UNLESS IT BECOMES
THE SOLE BASIS, THAT IS UP
UNTIL CRAWFORD.

THAT IS WHAT WERE YOU --
THAT IS THE STANDARD.

>> SO WE HAVE APPROVED THE
ADMISSION AND PROBATION
PROCEEDINGS OF EVIDENCE THAT
OTHERWISE WOULD NOT BE
ADMISSIBLE UNDER HEARSAY
ANALYSIS.

>> YES.

>> HAD CRAWFORD NOT DECIDED,
THIS CASE WOULDN'T BE HERE.
THIS CASE WAS ADMISSIBLE
UNDER HEARSAY.

AND YOU KNOW, THERE WOULD
HAVE BEEN NO OBJECTION, THE
OBJECTION HERE WAS CRAWFORD
HAS CHANGED THINGS AN
CRAWFORD SAYS THAT I HAVE,
PETERSS THE RIGHT TO
CROSS-EXAMINE, NOT SIMPLY
THE PIECE OF PAPER.

I MEAN, THAT IS NOT
CROSS-EXAMINATION AS THE
36th AMENDMENT.

HAD THE RIGHT FOR THE PERSON
WHO PREPARED THIS REPORT.

>> GIVEN THAT PROBATION
PROCEEDING MAY BE DIFFERENT
THAN A PAROLE VIOLATION
HEARING OR PROCEEDING, IS IT
TRULY A CONTINUATION, WHERE
YOU MIGHT HAVE A SENTENCE OF
IMPRISONMENT OKAY TO BE
FOLLOWED BY A TERM OF
PROBATION AND THEN WE HAVE
AN ALLEGED PROBATION
VIOLATION, BUT WE REALLY
ALREADY HAD WHAT TRADITIONALLY
BE CONSIDERED A SENTENCING
HEARING IN WHICH PROBATION
WAS DECIDED SIMPLY TO BE A
PART OF THE SANCTIONS

IMPOSED ON THE DEFENDANT, SO IS IT, IT IS IT TRULY A CONTINUATION?

>> YES.

THAT IS WHAT THIS COURT SAID, THAT PROBATION IS A DEFERRED SENTENCING, AND I THINK THE IDEA BEING IS, WE ARE GOING TO GIVE THIS MAN, IN THE CASE, PETERS, AN OPPORTUNITY TO PROVE HIMSELF.

ON THE COURSE OF THE 12 MONTHS BEING PROVEEN, WE'LL DISCHARGE.

>> SO THERE WOULD BE A DIFFERENT RULE FIT WAS SPLIT SENTENCE?

>> A SPLIT SENTENCE BEING THEY CLARIFIED -- MY MINE IS OFF ON THAT.

>> GO TO PRISON, AFTER PRICE ON, YOU SERVE A PERIOD OF PROBATION, IF YOU VIOLATE THAT PROBATION, YOU CAN GO BACK TO PRISON?

>> RIGHT.

NO.

I THINK AT THAT POINT, THE WAY FLORIDA SANCTION 948.01 TALKS ABOUT THAT IT APPEARS THE COURT UPON HEARING THE MATTER NOT LIKELY AGAIN TO ENGAGE IN CRIMINAL CONDUCT, IT SHALL STAY, UNTIL PLACING ON PROBATION, SO I THINK WHEN HE GOES TO PRISON FOR AWHILE, THE CRIMINAL PROSECUTION CONTINUED BECAUSE THE COURT IS STILL SAYING, I STILL WANT TO LOOK AT IT SOME MORE.

>> WOULD YOU PLEASE FINISH YOUR ANSWER TO JUSTICE PARIENTE WITH REGARD TO THE PRE-CRAWFORD STATUS OF THIS IDENTICAL FACT.

>> THEN HE WOULD HAVE BEEN -- HE WOULD HAVE BEEN -- THERE WOULD HAVE BEEN NO OBJECTION ON THE SENSE IT WOULD HAVE BEEN HEARSAY AS BUSINESS RECORD.

>> I AM CONFUSED ON THAT

BECAUSE 8036 C APPLIES ONLY TO BUSINESS RECORDS.

>> AND THAT --

>> AND YOUR BRIEF SAYS FINALLY THE LABORATORY REPORT COULD BE NOT CLASSIFIED AS A BUSINESS RECORD.

>> WELL, OKAY.

>> THIS IS THE SAME TIME, THE TYPE OF TEST AS WE HAD IN THE LAST CASE.

IT IS A LAB REPORT THAT WAS DONE IN TEXAS LAB IN THE CASE, NOT EVEN A FLORIDA LABORATORY.

IT IS NOT FDLE, THAT IS WHERE THE RESULTS ARE ACCEPT.

>> OKAY.

LET ME BACK UP AND REPHRASE THAT THEN.

THIS WOULD NOT HAVE BEEN ADMISSIBLE SIMPLY BECAUSE IT IS PREPARED -- EVEN UNDER PRE-CRAWFORD.

LET ME BACK UP, ERASE THAT PRIOR ANSWER.

IT WOULD NOT HAVE BEEN ADMISSIBLE SIMPLY BECAUSE THIS WAS A REPORT PREPARED IN ANTICIPATION OF LITIGATION, AND THAT IS -- REPORTS PREPARED ARE NOT ADMISSIBLE AS A HEARSAY.

>> THAT IS ARGUMENT MADE BELOW?

>> NO.

IT WAS NOT MADE.

>> WAIT.

>> THAT ARGUMENT WAS WAIVED BECAUSE --

>> HE SAID CONCEDED THAT THE 8036 C REQUIREMENTS.

>> RIGHT.

>> MY CONCERN IS SORT OF A CARRYOVER.

YES.

CRAWFORD CHANGED THE LEAGUE LANDSCAPE, BUT WE NEED TO LOOK AT WHAT WOULD HAVE BEEN THE SITUATION PRE-CRAWFORD AS TO WHAT WOULD HAVE BEEN ADMISSIBLE, WHAT WOULD HAVE

NOT, I THINK OUR CASE IS SAYING THAT HEARSAY WAS NOT THE SOLE BASIS FOR ADMISSION COULD COME IN, IMPLIEDLY, WE ARE SAYING THE SAME SIX AMENDMENT GUARANTEES FOR TRIALS WOULD NOT BE -- IMMEDIATE TO BE MET IN PROBATION HEARING, DO YOU AGREE WITH THAT?

>> AREA, I THINK SO.

ASSUMING THEY ARE SATISFIED M.

YES,.

THINK THAT IS PROBABLY IT. I THINK CRAWFORD MADE A CHANGE IN THE LEGAL LANDSCAPE.

WE START TALKING ABOUT CRIMINAL PROSECUTIONS. THE KEY IN THERE IS DOES IT HAVE THE RIGHT, DID THEY HAVE THE OPPORTUNITY TO CROSS-EXAMINE THE EVIDENCE IN PEOPLE THAT PRESENTED THE EVIDENCE IN PUTTING IN PRISON.

SO I AM A LITTLE BIT MYSTIFIED WHY WE ARE GOING BACK BECAUSE CRAWFORD HAS CHANGED, CHANGED THE LEGAL LANDSCAPE ON THE SENSE THAT THIS IS NOW LOOKING AT A CRIMINAL PROSECUTION.

THAT WAS THE KEY AND SEEMED TO RESOLVE THE ISSUE FOR THE FIRST DISTRICT IN THE CASE.

>> IN CRAWFORD, WE DO TALK IN TERMS OF THESE, THE PRINCIPALS OF CRAWFORD BEING APPLICABLE IN A CRIMINAL PROSECUTION, CORRECT?

>> YES.

YOU ACKNOWLEDGED THAT IN, I BELIEVE THIS CASE, THE SUPREME COURT HAS SAID THAT A PROBATION LIKE THE PAROLE SPREADING, PROBATION SPREADING IS NOT A CRIMINAL, IS NOT CRIMINAL PROSECUTION, IS THAT NOT CORRECT? SO WOULDN'T CRAWFORD THEN BE ELIMINATING PROBATION AND PAROLE PROCEEDINGS?

>> NO.

WHAT THEY SAID -- THIS IS
WHAT THEY SAID -- PROBATION
LIKE PAROLE IS WHAT YOU ARE
HINTING AT IS NOT A STAGE OF
THE CRIMINAL PROSECUTION,
BUT THE KEY CRAWL FY YOU
HERE US THE FOOTNOTE 3 SAYS
DESPITE THE UNDOUBTED MINOR
DIFFERENCES ARE THE
COMMENTATORS AGREE THAT
PROBATION WERE SENTENCE HAS
BEEN PREVIOUSLY, HAS BEEN
IMPOSED PREVIOUSLY.

>> SAY THAT AGAIN?

YOU KEEP PUMP BLING IT.

>> I AM SORRY.

>> LET ME PICK UP.

OKAY.

WHERE ARE WE?

DESPITE THE UNDOUBTED MINOR
DIFFERENCES BETWEEN
PROBATION AN PAROLE, THE
COMMENTATORS HAVE AGREED
THAT PROBATION WHERE
SENTENCE HAS BEEN PREVIOUSLY
-- I AM SORRY, WHERE
SENTENCE HAS BEEN IMPOSED
PREVIOUSLY IS CONSTITUTIONAL
INDISTINGUISHABLE FROM
PAROLE.

OKAY.

THE CASE IS, WHERE SENTENCE
HAS BEEN PREVIOUSLY IMPOSED
IN FLORIDA PROBATION IS A
CONTINUATION OF THE HEARING.
IN A SENSE THAT LIKE I WAS
SAYING, THE PROBATION, THE
TRIAL JUDGE WANTS TO GIVE
THE DEFENDANT A CHANCE TO
PROVE HIMSELF, IN THE CASE,
GAVE 12 MONTH, SO UNTIL THAT
PROBATIONARY PERIOD IS OVER,
THE SENTENCING IS NOT OVER
ITSELF.

THAT IS THE TRUE TEST.

THE SPLIT SENTENCE OR IN THE
CASE WHERE HE JUST GAVE
PROBATIONARY PERIOD.

>> WELL, WE DON'T HAVE A
SPLIT SENTENCE.

>> MO.

>> WOULDN'T A SPLIT SENTENCE
THEN BE, YOU SAY IT IS A

CONTINUATION, THEN,
VIOLATION OF THAT SAME SPLIT
NOTE IF YOU KEEP TALKING
ABOUT WHICH TALKS ABOUT IN
POSITION OF SENTENCE.

AND IN A TRUE SPLIT SENTENCE,
YOU HAVE HAD.

>> FOLLOWED BY PROBATION
WHICH IS, UNLESS YOU ARE
GOING TO SAY THE SENTENCE,
THEN THE QUESTION IS -- IN
THE TRUE SPLIT SENTENCE,
THERE IS A SENTENCE IMPOSED
FOLLOWED BY A PERIOD OF
PROBATION.

I DON'T WANT TO GET OFF ON
THE SENTENCE.

SINCE WE ARE NOT DEALING
WITH IT.

>> OKAY.

THAT IS WHAT YOU ARE HOLDING
IS THAT PROBATION IS IN
GREEN VERSUS STATE.
PROBATION IS A DEFERRED
SENTENCING.

>> WHAT WERE THE
CIRCUMSTANCES?

>> WELL, THAT WAS SAID IN
TERMS OF DOUBLE JEOPARDY.

>> THAT IS A DOUBLE JEOPARDY
CASE, DOUBLE JEOPARDY DIDN'T
APPLY, BUT THE STATUTE
ITSELF, 94801, THE RULE ALSO
CLEARLY SAYING THAT -- LET'S
SEE IF CAN I FIND IT.

IT IS IN HERE SOMEWHERE.

CLEAR LYNN KATES THAT THE
SENTENCE HAS NOT -- WHAT DID
DOW WITH IT?

OH, HERE IT IS.

IF IT APPEARS TO THE COURT
UPON THE HEARING OF THE
MATTER SHALL THE DEFENDANT
IS NOT LIKELY AGAIN TO
ENGAGE IN CRIMINAL COURSE OF
CONDUCT, THE COURT SHALL
STAY UPON SUCH DEFENDANT AND
PLACE THE DEFENDANT ON
PROBATION.

SO THE COURT HAS NOT -- NOW
IN FLORIDA, I AM MAKING THIS
DISTINCTION, IN FLORIDA, THE
COURT HAS NOT SENTENCED THE
DEFENDANT WHEN HE PUTS HIM

ON PROBATION, SO THE
CRIMINAL PROSECUTION
CONTINUES UNTIL TERMINATION
OF A PROBATION BECAUSE THE
COURT IS STILL GIVING THE
DEFENDANT AN OPPORTUNITY TO
PROVE HIMSELF DURING THIS
CASE 12 MONTHS SO PROBATION
IS PART OF THE SENTENCE AND
CONFRONTATION APPLYS TO THE
SENTENCING HEARING AND
THEREFORE CRAWFORD APPLIES
SO THE COURT IN THE CASE WAS
WRONG AND SHOULD HAVE
ALLOWED THE DEFENDANT TO
CROSS-EXAMINE, NOT SIMPLY
THE PAPER, BUT THE PERSON
WHO PREPARED THIS REPORT AN
I WOULD LIKE TO STEP BACK
HERE AND TAKE A LOOK AT WHAT
IS HAPPENING IN THE FIRST
OPINION.

IF WE, IF WE ALLOW THE FIRST
DISTRICT OPINION TO STAND.
IT IS A STRANGE PROCEEDING
TO GO TO.

YOU HAVE A DEFENSE LAWYER,
YOU GOT A PROSECUTOR, YOU
GOT A JUDGE, THEN YOU HAVE A
PIECE OF PAPER.

WHERE IS THE PROCEDURE HERE?
THIS IS WHAT WE ARE TALKING
ABOUT FUNDAMENTALLY, ARE WE
GOING TO MAINTAIN A
PROCEDURE IN THE CASE?
WHEN THE DEFENDANT CAN'T SAY
ANYTHING, CAN'T ATTACK THE
CASE AGAINST HIM, IT REALLY
PUTS A SHAMBLE?

>> LET'S ADDRESS THAT POINT.
UNDER 8036 C, THE DEFENDANT
HAS AN OPPORTUNITY IF HE OR
SHE QUESTIONS THE VALIDITY
OF THE TEST TO HAVE A
HEARING BEFORE THE JUDGE, TO
IMPOSE THE WITNESSES THAT
THEY WOULD HAVE TO MAKE IT
AVAILABLE.

WHAT I AM SAYING IS, THOSE
CONFRONTATION CONCERNS OUR
ADDRESS AND THAT RULE,
AREN'T THEY?

>> THE PRESUM SHUN THAT
CRAWFORD USES THAT THESE

WITNESS IS UNAVAILABLE.
WHAT WE ARE SAYING HERE, IN
THE CASE, THE WITNESS WOULD
HAVE DONE THIS IS
UNAVAILABLE.

>> SO YOU WOULDN'T AGREE,
THERE COULD BE SOME WAY AS
LONG AS THE STATE PROVIDES
AN OPPORTUNITY FOR THE
CROSS-EXAMINATION IN THESE,
IN THESE PROCEEDINGS, YOU
WOULD STILL HAVE TO BRING
THE WITNESS IN?

>> STILL HAVE TO BRING HIM
IN, YES?

>> YOU ARE WELL INTO THE
REBUTTAL?

>> THANK YOU VERY MUCH.

>> RIVERA?

>> GOOD MORNING, MAY IT
PLEASE THE COURT ON BEHALF
OF THE STATE OF FLORIDA, THE
STATE WAS FIRST ASKED THAT
THE COURT TO LOOK AT THE
PRESERVATION ISSUES HERE,
TODAY MR. DAVIS IS MAKING
QUITE AN ARGUMENT ABOUT
WHETHER PROBATION HAS BEEN
EQUIVALENT TO SENTENCING.
THAT WAS NEVER RAISED.
THE DEFENDANT NEVER
CHALLENGED THE ADMISSION OF
THIS.

I WOULD FIRST ASK THE COURT
TO LOOK AT THAT.

>> THE FIRST QUESTION
WHETHER THE 6th AMENDMENT
APPLIES TO PROBATION
PROCEEDINGS?

>> ABSOLUTELY.

>> THAT WOULD EXIST AS A
QUESTION BEFORE CRAWFORD,
CORRECT?

>> ABSOLUTELY.

>> ALL RIGHT.

>> SO WE HAVE ANY CASES THAT
TALK ABOUT WHETHER THE 6th
AMENDMENT APPLIES IN
PROBATION?

>> STARTING WITH FEDERAL
COURT, ABSOLUTELY.

THIS COURT HAS ALSO -- HAS
TREATED THIS AS A DUE
PROCESS ISSUE.

NOT A 6th AMENDMENT ISSUE.

>> IN WHAT CASE HAVE WE DEALT WITH IT UNTHIS 14th AMENDMENT RATHER IN THIS THE 6th AMENDMENT.

>> I AM DRAWING A TOTAL BLANK.

>> IT USED TO BE IMPORTANT TO ME.

>> WHAT I AM CONCERNED ABOUT, THERE COULD BE SOME ARGUMENTS THAT SENTENCING IN A CRIMINAL CASE IS SUBJECT THE 6th AMENDMENT, BUT I BELIEVE 1 OR 2 OF THE CASE, WE HAVE SAID THAT CRAWFORD WOULD APPLY TO SENTENCING WHICH IMPLIES IN THE 6th AMENDMENT APPLIES TO SENTENCING.

I DON'T AGRI WITH THAT.

I WOULD BE HAPPY TO CITE.

THERE IS DIFFERENCE AS TO WHY WE TREAT THIS UNDER DUE PROCESS VERSUS CRIMINAL PROSECUTION.

THERE ARE DIFFERENT BURDENS OF PROOF AT ISSUE.

IT IS PRESUMED TO BE BE IN THE AS THE TIME WE GOES TO A PROSECUTION.

THE BURDEN OF PROOF IS ON THE STATE TO COME FORWARD, TO PROVIDE EVIDENCE TO SUPPORT A FINDING OF GUILT. WHEN IT COMES TO DUE PROCESS, WHAT DOES DUE PROCESS TALK ABOUT?

WE LOOK AT WHAT HE SAYS, HE IT IS ENTITLED TO AN OPPORTUNITY TO BE HEARD AP ONCE HE IS AT THAT.

IT IS HIS OBLIGATION TO COME FORWARD AND SHOW THAT EITHER HE DID NOT VIOLATE THE CONDITIONS OR THAT HE IF CAN DID SO, THERE IS A REASON IN MITIGATION WHY HE SHOULD NOT HAVE PRIVILEGE REVOKED?

THE LIBERTY INTERESTS ARE TOTALLY DIF RE.

HERE, WE HAVE A LIMITED RIGHT OF LIP TY AND THAT LIMITED RIGHT IS PROPERLY

KND UPON THE FACT THAT HE
MUST MEET CERTAIN
REQUIREMENTS THAT ARE IM
PROPOSED FOR HIM TO REMAIN
AT LIBERTY, SO IT IS A BURN
OF PROOF DIFFERENCE.

DUE PROCESS IS HISTORICALLY
ALLOWED A MISSION OF
BUSINESS RECORDS AS PROOF.
HERE THERE IS NO QUESTION
THIS WAS A BUSINESS RECORD.
IT QUALIFY FORCE ADMISSION
AN THE U.S. SUPREME COURT
HAS SPECIFICALLY SAID THAT
BUSINESS RECORDS ARE TEST
RESULTS.

THEY ARE THE SAME THING.
THEY ARE ADMISSIBLE.
THERE IS NO PROBLEMS.
THERE IS NO CONFRONTATION
ISSUE AT ALL.

>> IF THESE TECHNIQUES WERE
TO TESTIFY AT TRIAL.
WOULD THEY BE CONSIDERED
EXPERTS?

>> I BELIEVE, THEY WOULD.
I AM SURE THEY HAVE TO BE
CERTIFIED TO RUN THE
SPECIFIC CASE, THIS ISSUE.

>> DOESN'T 8036 REQUIRE THAT
IN ORDER TO ADMIT BUSINESS
RECORDS BY EXPERTS THAT
STATE AN OPINION OR
DIEMOSIS, IT HAS TO COMPLY
WITH 701 TO 705 AS WELL.
YOU HAVE TO HAVE A
CERTIFICATION THAT IN IN AIR
ARDANCE WITH THE BUSINESS
PRACTICE.

>> THIS IS A DOCUMENT UNDER
9202 I BELIEVE IT IS.
IT ALSO SAY, IT IS NOTED A
MISSABLE.

AN OPINION OR DIAGNOSIS IS
NOT ADMISSIBLE UNLESS 701 TO
705 ARE ALSO COMPLIED WITH.

>> THIS IS NOT -- ABOUT IT
IS ALSO NOT INSTRUCTLY AN
OPINION.

THIS IS AS TEST RESULT, WE
GET A YES.

WE GET A MO.

IT DUP MATTER WHO RUN THESE
TEST.

IT'S NOT A SUBJECTIVE ISSUE.
THERE IS NO POSSIBILITY FOR
BIAS OR PERSONAL OPINION IN
HERE.

IT IS A TEST RESULT, THAT IS
WHAT IT IS.

WHETHER I RUN IT OR YOU RUN
IT OR SOMEONE ELSE RUNS IT.
IT IS ALL THE SAME.

IN THE CASE, THE APPELLANT
NEVER CHALLENGED WHETHER OR
NOT THERE WAS PROBLEM WITH
HOW THIS TEST WAS RUN.

EVEN IF YOU LOOK AT THIS AS
A 6th AMENDMENT ANALYSIS.

YOU HAVE TO MAKE THE
ALLEGATIONS THAT YOU WERE
DENIED THE RIGHT TO COMPEL
THAT WITNESS.

YOU CAN'T JUST SAY IT IS
CONFRONTATION.

WE LOOK AT OTHER CASES.

>> THE SAME ANSWER OBTAIN IF
WE WERE TALKING ABOUT DNA?

>> I WOULD SAY THAT IT IS.

THIS IS SOMETHING THAT NOW
UNLESS YOU ARE CHALLENGING
THE ACTUAL MANNER IN WHICH
THE TEST IS RUN.

I.E., A FLAW IN THE
PROCEDURAL RUN OR SOME OTHER
TYPE OF FLAW IS PRETTY MUCH
ACCEPTED AS WHAT IT IS.

>> I AM CONCERNED ABOUT YOUR
ANSWER THAT THIS IS NOT.

THAT IS WHOEVER DID THE
ANALYSIS ENDS UP' RENDERING
AN OPINION BASE ON THE TEST
THAT THEY HAVE RUN AND THIS
SUBSTANCE IS SUCH AND SUCH
JUST AS THE DNA ANALYSIS?

>> URINE ANALYSIS IS
DIFFERENT FROM DNA FOR A
COUPLE OF DIFFERENT REASONS.

YOU ARE NOT DOING A
PROBABILITY CALCULATION.
YOU GET A YES OR NO ANSWER.
YOU ARE NOT APPLYING
STATISTICAL ANALYSIS.

BUT I WOULD SUBMIT EVEN WITH
DNA RESULTS, THE SCIENCE HAS
GOTTEN TO THE POINT TODAY
WHERE THE TEST IS RUN
ACCORDING TO SPECIFIC

PROCEDURE REGARDLESS OF WHICH LABORATORY DOES IT, THE PROCEDURE IS GOING TO BE THE SAME, ASSUMING THE SAME, AND THAT POINT, YOU PLUG IT INTO THE DATABASE, THEN, YOU GET A RESULT.

IT IS NOT SOMETHING WHERE THERE IS A POSSIBILITY OF OPINION.

AND THIS IS RECORD ALSO HELD TO FALL WITHIN THE PREVIEW OF MEDICAL DIAGNOSIS AND IF IT APPLIES TO MEDICAL DYING DIAGNOSES, ARGUABLE, THERE WOULD BE AN OPINION, DOCTORS WOULD HAVE A DIFFERENCE OF OPINION AND CERTAINLY IT WOULD QUALIFY HERE.

THE STATE'S POSITION IS REALLY SIMPLE.

IS IT A DUE PROCESS ANALYSIS? IT IS NOT A 6th AMENDMENT CASE.

DUE PROCESS ALLOWS FOR ADMISSION OF THE DOCUMENT AS A BUSINESS RECORD.

MR. DAVIS HAS ADMITTED TOO, THERE WAS NO OBJECTION TO THAT AS A BUSINESS RECORD. THE STATE WOULD SUBMIT THE FIFTH WAS CORRECTED AND USUALLY THIS TO AFFIRM.

THANK YOU.

>> THANK YOU VERY MUCH.

>> MR. DAVIS?

>> WELL, IT IS NOT DUE PROCESS, IF YOU DON'T HAVE 6th AMENDMENT, WE LOOK AT DUE PROCESS.

THIS IS FUNDAMENTALLY A 6th AMENDMENT CASE BECAUSE IT IS CRIMINAL PROSECUTION.

WE DON'T SAY BECAUSE IT IS PROBATION, WE'LL DUE PROCESS, NO THIS IS 6th AMENDMENT.

THIS IS A CRIMINAL.

>> WELL, IF YOU LOOK AT THE 6th AMENDMENT.

IN ALL CRIMINAL PROSECUTION, THE ACCUSED SHALL ENJOY THE RIGHT TO SPEEDY TRIAL BY AN

IMPARTIAL JURY MOVEMENT
RIGHT.

>> IS IT YOUR ARGUMENT THAT
-- SO TO MAKE IT CONSISTENT.
WOULD YOU HAVE TO ARGUE A
RIGHT TO A TRIAL BY YOU ARE
JURY WELL, I SUPPOSE, YOU
MAYBE YOU MIGHT HAVE TO.
I WILL NOT MAKE THAT
ARGUMENT TODAY.

WE ARE FOCUSING SOLELY ON
CRIMINAL PROSECUTION AS
APPLIED TO CONFRONTATION.

>> IT WOULD APPEAR, WE ARE
HAVING VOB SOME PROBLEMS
THIS MORNING.

MAYBE WE HAVE NOT PREEFED
ALL OF THE SPECIFIC
QUESTIONS THAT THE COURT
HAS.

WHAT I WOULD IS CERTAINLY
PROVIDE YOU THE OPPORTUNITY,
TEN DAY, TO PROVIDE A
MEMORANDUM OR BRIEF STYLE
TOLL THE COURT WITH REGARD
TO THE APPLICABILITY OF THE
6th AMENDMENT OF THIS
PROCEEDINGS, IF YOU NOT HAD
AN OPPORTUNITY TO CLEARLY
LOOK AT THAT, GIVE THE STATE
TEN DAYS TO REPLY AND YOU
ANOTHER 5 FOR A RESPONSE.

>> WELL, YOUR HONOR, I THINK
MY BRIEF DOES.

>> THAT IS WHAT IT CLEARLY
SAYS.

>> YOU THINK YOU HAVE
COVERED.

>> YES, THAT IS FINE.

>> THAT IS FINE.

>> THIS IS A CRIMINAL
PROSECUTION.

PROBATION IS A DEFERRED
SENTENCING.

>> OKAY.

>> THAT IS WHAT WE INTENDED.
THE DUE PROCESS -- I MEAN
THE CROSS-EXAMINATION IS
PROCEED ALLIZED, THESE
REPORTS MAY BE PERFECTLY
OKAY, BUT THE DEFENDANT IS
GIVEN THE OPPORTUNITY TO
TEST THAT AND WITHOUT THE
RIGHT TO CROSS-EXAMINE, IT

IS A PIECE OF PAPER.
HE HAS SOMETHING TO SAY.
THANK YOU VERY.
>> THANK YOU.
THANK YOU VERY MUCH,
COUNSEL, WE'LL TALK THE CASE
UNDER ADVISEMENT.