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**State of Florida v. Lorenzo Cephus Johnson
SC06-86**

OUR NEXT CASE IS LORENZO
LORENZO -- STATE OF FLORIDA
v. LORENZO JOHNSON.
SINCE YOU VERY WERE LAST
YEAR WE HAVE EXTENDED THE
MICROPHONE.
FOR EASE OF USE.
AND SO PLEASE BE SURE THAT,
THAT'S BROUGHT CLOSELY TO
YOUR SPEAKING VOICE SO THAT
THE COURT CAN APPRECIATE AND
UNDERSTAND THE FULL
ARGUMENTS IF YOU WILL.
>> MAY IT PLEASE THE COURT.
>> THANK YOU.
>> MY NAME THE MARILYN
BECCUE I REPRESENT THE STATE
OF FLORIDA.
I WANT TO POINT OUT A FEW OF
THE RELEVANT FACTS AND THEY
ARE FAIRLY BRIEF.
THE APPELLANT IN THIS CASE
WAS CHARGED WITH POSSESSION
OF COCAINE, POSSESSION OF
CANNABIS.
INTRODUCTION OF CONTRABAND
AT THE DETENTION FACILITY
AND RESISTING AN
OFFICERS -- OFFICER WITHOUT
VIOLENCE.
EVENT THAT LED TO HIS ARREST
AND CHARGING OCCURRED IN
DECEMBER OF 2001.
DECEMBER 21st, 2001.
HE WAS PRESIDENT TRY UNTIL
JUNE 28th OF 2004.
AND IN THAT INTERVENING TIME
ANNA DEACON THE ANALYST AT
FDLE WHO CONDUCTED THE TEST
ON THE SUBSTANCE HAD LEFT
THE PLOY OF FDLE WAS AND
WORKING FOR THE FBI IN
QUANTICO, VIRGINIA.
AT THE TIME A NUMBER OF

PEOPLE TESTIFIED.

>>THE OFFICERS OBVIOUSLY WHO WERE INVOLVED IN HIS ARREST. THERE WERE FOUR OFFICERS THAT TESTIFIED, THREE WITH REFERENCE TO THE DRUG OFFENSES AND TWO THAT ARE VERY IMPORTANT, BECAUSE OFFICER STEVENSON TESTIFIED THAT SHE WAS WITH HIS -- THIS QUICK UNTOMORROW ATTACK DIVISION WHICH WAS A SPEFBGT NARCOTICS DIVISION OF THE POLICE DEPARTMENT, SHE ALSO TESTIFIED AS TO HER EXPERIENCE AND HER TRAINING WITH REFERENCE TO IDENTIFYING NARCOTICS.

SHE HAD 40 HOURS TRAINING AND ABOVE AND BEYOND THAT SOME ADDITIONAL CONTINUING EDUCATION COURSES THAT WERE PUT ON BY THE DRUG ENFORCEMENT AGENCY.

>> ARE YOU GETTING TO HARMLESS ERROR ARGUMENT.

>> YES, I AM, YOUR HONOR, ACTUALLY.

>> BEFORE WE GET TO THAT. WE STILL -- WE FIRST NEED TO DETERMINE WHETHER THIS WAS TESTIMONIAL, WHETHER THE LAB REPORT WAS TESTIMONIAL AND THEN IF IT WAS WHETHER THERE WAS HARMLESS ERROR.

>> RIGHT.

MY CONCERNS ARE THAT YOU DIDN'T HAVE THE BENEFIT OF BRIEFING DAVIS v. WASHINGTON.

BUT IT SEEMS LIKE AT LEAST AFTER THAT CASE THE DIFFERENCE BETWEEN TESTIMONIAL AND NOT TESTIMONIAL MAY BE DEPENDENT UPON WHEN THE STATEMENTS WERE MADE AND CERTAIN STATEMENTS MADE BEFORE THE INVESTIGATION OF A CRIME IDENTICAL TO STATEMENTS MADE AFTER THE COMMISSION INVESTIGATION OF A CRIME MAY DETERMINE WHETHER THEY WERE TESTIMONIAL OR NOT.

AND IT SEEMS LIKE MAYBE A REPORT THAT WAS DONE BEFORE THE CRIME OCCURRED, THE BUSINESS RECORD IS NOT TESTIMONIAL, BUT WHEN IT'S DONE AFTER THE CRIME OCCURRED, DURING THE INVESTIGATION OF A CRIME, EVEN THOUGH IT'S A BUSINESS RECORD DAVIS MAY SEEM TO HOLD IT'S TESTIMONIAL.

>> I THINK THE INTERESTING THINGS ABOUT DAVIS IS IT TAKES A NOTION THAT SOMETHING THAT YOU WOULD REASONABLY ANTICIPATE USE AT TRIAL ISN'T NECESSARILY THE TEST.

BECAUSE --

>> AND THAT'S NOT WHAT I PROPOSED.

I KNOW THAT DAVIS DIDN'T ADOPT THAT TEST. THEY SEEMED TO ADOPT THE TEST IF IT'S IN THE INVESTIGATION OF A COMPLETED CRIME THEN IT'S -- AND IT'S MADE TO LAW ENFORCEMENT IT'S TESTIMONIAL.

SO I'M NOT TALKING ABOUT ANY TEST THAT THEY MENTIONED IN CRAWFORD AND DIDN'T ADOPT. I'M TALKING ABOUT WHAT THEY SAID IN DAVIS.

>> SO IN DAVIS WHAT THEY WERE TALKING ABOUT WAS MORE ALONG THE LINES OF WHAT THEY HAD IN CRAWFORD WHICH WAS A SUBJECTIVE KIND OF INTERPRETATION OF EVENTS. IT WASN'T AN OBJECTIVE TEST LIKE YOU HAVE AT THE LAB REPORT.

THEY WERE STILL DETERMINING MORE OF WHAT THEY MEANT BY INTERROGATION. IN DAVIS WHEN THEY EVALUATED THOSE STATEMENTS.

>> WHY WAS THIS SUBSTANCE TESTED BY FDLE?

>> IT WAS TESTED TO DETERMINE WHAT THE SUBSTANCE WAS. TO DETERMINE DEFINITELY

WHAT THE SUBSTANCE WAS.
ULTIMATELY IT WAS LET THE
STATE KNOW WHAT THEIR
EVIDENCE WAS.

--

>> WHAT THERE EVIDENCE WAS
TO PROSECUTE THE VIOLATION
OF THIS LAW; RIGHT?

>> CORRECT.

>> BUT IF THE TEST
DETERMINED THAT IT WASN'T
COCAINE AND IT WASN'T
CANNABIS THE REPORT ITSELF
STILL WOULD HAVE BEEN
GENERATED AND STILL WOULD
HAVE BEEN FILED.

WE NEED TO LOOK AT WHAT
THE -- THE EVIDENCE THAT WAS
INTRODUCED IN THE REPORT
ITSELF.

>> THE ENTIRE ESSENCE OF
THIS CRIME IS REALLY TURNS
AROUND WHAT THE LAB REPORTS
ARE GOING TO SHOW; RIGHT?

>> THAT IS THAT YOU HAVE
VIOLATED THE LAW IF IT TURNS
OUT TO BE AN ILLICIT DRUG.
YOU HAVEN'T VIOLATED THE LAW
IF IT TURNS OUT TO THAT IT
WASN'T AN ILLICIT DRUG.
CORRECT.

>> SO I'M HAVING REALLY
DIFFICULTY IN VIEW OF NOW,
YOU KNOW SOME MORE HELP FROM
THE SUPREME COURT WITH
REFERENCE TO FLUSHING OUT
CRAWFORD SEEMS TO ME THAT
THIS JUST FITS PRECISELY IN
THE TESTIMONY THAT HAS BEEN
OUTLINE SEWED FAR BY THE
SUPREME COURT THAT IS THAT
THIS IS SOMETHING THAT IS
DONE EXPLICITLY IN ORDER TO
PROSECUTE THIS CRIME.

AND ORDINARILY WOULD BE DONE
IN ANTICIPATION OF USE
AGAINST THE DEFENDANT OR THE
PROSECUTION OF THE TIME.

>> CRAWFORD DIDN'T SAY THAT
THE STATE ISN'T ALLOWED TO
USE DOCUMENTARY EVIDENCE TO
PROVE AN ELEMENT OF THE
OFFENSE.

THE FACT IT WAS PROVED TO

USE THE ELEMENT OF THE
OFFENSE ISN'T WHAT MAKE
SOMETHING TESTIMONIAL OR NOT
TESTIMONIAL.

IT'S MORE THE STATEMENT
ITSELF.

YOU NEED TO LOOK AT THE
STATEMENT ITSELF.

IT'S NOT A SUBJECTIVE
INTERPRETATION OF EVENTS.
IT'S AN OBJECT TO TEST.

>> WHAT WOULD BE THE STATE'S
POSITION IF WE TOOK CRAWFORD
OUT OF THE EQUATION AND WE
ANALYZED THIS UNDER ROBERTS?

>> THE STATE'S POSITION IT
WOULD BE ADMISSIBLE UNDER
ROBERTS.

>> GIVE ME THE ANALYSIS.

>> THAT THERE IS AN ADEQUATE
RELIABILITY BECAUSE THESE
TESTS ARE COMMONLY USED IN
THE SCIENTIFIC REALM.

NOT JUST BY THE FDLE BUT IN
THE IRRELEVANT SCIENCE
ITSELF AND THAT THEY -- THEY
CAN BE QUALIFIED AND THEY
CAN BE REPLICATED TO
DETERMINE THEY ARE
LEE -- RERELIABLE.

>> WE ARE IN THE ERA OF
CRAWFORD.

AND SO WHAT DOES
CRAWFORD -- I THINK THIS ALL
TURNS ON WHETHER OR NOT THIS
REPORT IS TESTIMONIAL.

AND SO WHAT IS THE
DEFINITION OF TESTIMONY OR
TESTIMONIAL FROM CRAWFORD?

>> WELL, UNFORTUNATELY THEY
DIDN'T GIVE US BLACK LETTER
LAW AS TO WHAT THE
DEFINITION OF TESTIMONIAL
IS.

THEY DID GIVE US SOME
EXAMPLE BY WHICH WE CAN
COMPARE TO DETERMINE WHETHER
OR NOT SOMETHING IS
TESTIMONIAL AND THEY TALKED
ABOUT PRIOR TESTIMONY AT
PRELIMINARY HEARINGS.

PRIOR TESTIMONY AT A TRIAL,
PRIOR TESTIMONY IN A GRAND
JURY HEARING AND POLICE

INTERROGATION.

THE STATES --

>> ISN'T THERE ALSO SOME LANGUAGE IN CRAWFORD THAT TALKS ABOUT THAT TESTIMONY AS A DECLARATION OR AFFIRMATION THAT IS USED TO PROVE A FACT?

>> YES.

AND SO IF YOU TAKE THAT DEFINITIONS -- DEFINITION OF "TESTIMONY" WASN'T THIS LAB REPORT USED AS A DECLARATION BY WHOEVER DID THIS ANALYSIS.

>> UH-HUH.

>> OF A FACT THAT WAS GOING TO BE USED A AT TRIAL.

WHY DENT -- WHY DOESN'T THIS REPORT FIT THE DEFINITION OF TESTIMONY AS OUTLINED IN CRAWFORD?

>> BECAUSE YOU HAVE TO LOOK AT CRAWFORD AS A WHOLE. YOU CAN'T JUST TAKE THIS ONE FACTOR.

WHAT THEY DIDDEST EVALUATED THE ENTIRE BASIS OF THE CONFRONTATION CLAUSE. AND THEY DID USE THAT DEFINITION AS FAR AS WHAT IS GENERALLY CONSIDERED TESTIMONY.

BUT UTLEY THEY DIDN'T SAY THAT -- WHAT THE TESTIMONY WAS FOR PURPOSE OF THE CONFRONTATION CLAUSE. WHAT THEY SAID WAS IT SEEMS LIKE THIS PRIOR --

>> LIKE.

BUT THEY ALSO SAID THIS WAS NOT AN EXCLUSIVE LIST; CORRECT?

>> CORRECT.

>> AND SO WE KNOW THAT IF IT'S PRIOR TESTIMONY OR THOSE FACTORS THAT THEY DID, IN FACT, OUTLINE THAT, THAT IS TESTIMONIAL.

BUT CERTAINLY THAT IS NOT IN AN EN -- EXCLUSIVE LIST. SO IF WE GO BACK TO THE MEANING OF TESTIMONY, THE ROUTE OF TESTIMONIAL -- THE

ROOT OF TESTIMONIAL I HAVE A
HARD TIME TRYING TO FIGURE
OUT WHY THIS IS NOT A
STATEMENT OR AFFIRMATION FOR
THE PURPOSE OF A
ESTABLISHING A FACT.

WELL, CRAWFORD DID AND I'M
HOPING I WILL ANSWER YOUR
QUESTION.

WHAT CRAWFORD DID -- AND I
THINK IT'S IMPORTANT TO BASE
THE EVALUATION ON THIS -- IS
IT DIDN'T EXPAND THE
UNIVERSE OF STATEMENTS THAT
ARE SUBJECT TO
CONFRONTATION.

IT LIMITED IT.

BEFORE CRAWFORD ALL HERE'S
STATEMENT WERE SUBJECT TO
CONFRONTATION UNLESS
THEY HAVE RELIABILITY WHICH
WAS THE ROBERT'S TEST.

IT LIMITED IT HOW?

WHAT'S IN CRAWFORD SAYS THAT
WE'RE LIMITING WHAT IS
TESTIMONIAL?

>> WELL, THE BASIS OF THE
ENTIRE OPINION IN CRAWFORD
IS LIMITING IT BACK TO THOSE
KINDS OF THINGS WITH BY THE
FRAMERS WERE CONCERNED.
AND THE EXAMPLES AND THE
DISCUSSION THAT THEY HAVE IN
CRAWFORD ALL DEAL WITH THIS
KIND OF SUBJECTIVE GIVING OF
INFORMATION BY A WITNESS AND
THAT THE FACT OF THE
CONFRONTATION CLAUSE, THE
IMPORTANCE OF THE
CONFRONTATION CLAUSE IS TO
TEST SOMEONE BIAS, DEMEANOR
ON THE STAND, THOSE KINDS OF
THINGS.

>> WHAT ARE THE THINGS THEY
MENTIONED AS FALLING WITHIN
THAT IS AFFIDAVIT; CORRECT?

>> YES.

>> AND WHAT'S THE
DIFFERENT -- DIFFERENCE
BETWEEN THE REPORT THAT WAS
ISSUED HERE THAT SAID THE
EXHIBIT WERE ONE CHUNK AND
THREE BAGS OF TPHRAPBT
MATERIAL RESULTS WERE -- PLANT

MATERIAL AND CANNABIS.
WHAT THE DIFFERENCE BETWEEN
THAT AND FILING AN AFFIDAVIT
WHICH IS DIFFERENT STYLE AT
THE TOP AND SAYING MY NAME
IS SO AND SO AND WE EXAMINE
A LARGE WHITE CHUNK AND
THREE BAGS OF PLANT MATERIAL
AND WE FOUND THAT THE
RESULTS WERE COCAINE AND
CANNABIS OF 1.3 GRAMS.
AND INTRODUCING THAT AND
THEN SIGN ANNA SPWAEUS DECAN
UNDER PENALTY OF PERJURY.
THAT SEEMS WHAT THIS REPORT
DOES.

BUT IT HAS A DIFFERENT TITLE
ON IT.

IT HAS DFLE.

>> I THINK THE AFFIDAVIT YOU
ARE REFERRING TO IN CRAWFORD
WERE AFFIDAVITS OF
INDIVIDUALS WHO HAD
WITNESSED SOMETHING.

THOSE KINDS OF AFFIDAVITS.
THEY WEREN'T REFERRING IN
THE STATE'S OPINION TO
SOMETHING LIKE A LAB REPORT.

THAT IS THE -- THE LAB
REPORT IS DISSIMILAR TO THE
TYPES OF THINGS THEY WERE
TALKING ABOUT IN CRAWFORD.

IT'S MORE SIMILAR TO
SOMETHING LIKE BUSINESS
RECORD WHICH THEY HAD SAID
WAS -- HAD ALWAYS BEEN AN
EXCEPTION.

I WOULD LIKE TO GO BACK TO
THAT.

I'M NOT SURE THAT -- TO MY
SATISFACTION ADEQUATELY
RESPONDED TO JUST -- JUSTICE
WELLS' QUESTION.

BEFORE CRAWFORD, ALL RIGHT.
THERE'S A PIECE OF PAPER,
AUGUST 28th, 2002 SIGNED BY
ANNA DEACON.

AND IT SAYS THAT SOME
SAMPLES BELONGING TO LORENZO
JOHNSON ARE COCAINE AND
CANNABIS.

HOW IS THIS EVEN -- HOW
WOULD THIS HAVE COME IN THE
IT WAS CHALLENGED

PRECRAWFORD?

IN OTHER WORDS -- IS THE
STATE SAYING THIS IS A
BUSINESS RECORD?

>> IT'S A BUSINESS RECORD IN
THE SENSE IT'S REGULARLY
KEPT IN THE COURSE OF THE
FLORIDA DEPARTMENT OF LAW
ENFORCEMENT.

>> WOULD YOU AGREE THAT WHEN
BUSINESS RECORDS SUCH
AS -- MORE HOSPITAL RECORDS
THAT ARE ARE DIFFERENT FROM
RECORDS THAT ARE GATHERED IN
THE COURSE OF INVESTIGATING
A CRIME AND THAT THERE IS
NEVER BEEN -- AT LEAST TO MY
KNOWLEDGE SOME WHOLESOME
IDEA THAT ANY RECORD OF A
LAW ENFORCEMENT AGENCY CAN
JUST COME INTO EVIDENCE
WITHOUT THE
PERSONAL -- PERSON WHO
PERFORMED THE TEST
TESTIFYING AS TO HOW THIS
CHAIN OF CUSTODY, HOW THE
TEST WAS PERFORMED WHETHER
THERE WAS ANY YOU
KNOW -- WHAT -- WHAT TYPE OF
TEST WAS DONE.

SO I DON'T SEE HOW THIS
WOULD HAVE SURVIVED
UNDER -- ASSUMING IT'S
NONTESTIMONIAL, SURVIVE OHIO
V. ROBERTS TEST FOR
RELIABILITY.

>> WELL, IT'S -- THE WAY IT
SURVIVES THE TEST OF
RELIABILITY.

IT'S NOT THE PERSON OR
AGENCY WHO CONDUCTED THE
TEST.

IT IS THE RELIABILITY OF THE
ACTUAL SCIENTIFIC TEST.
AND THINGS LIKE CHAIN OF
CUSTODY AND THOSE TYPES OF
THINGS WHERE TESTIFIED TO.

>> WHAT WAS THE TEST?
TELL ME WHAT WAS THE
TEST -- TESTIMONY THAT LED
TO THE INTRODUCTION OF THIS
EXHIBIT.

>> WELL, JAMES FILL PERTH
WHO WAS THE SUPERVISOR AT

THE FDLE IN TAMPA -- OF THE CHEMISTRY SECTION ANIWAY TESTIFIED THAT AS TO IF PROCEDURES USED WHEN F -- FDLE OBTAINS EVIDENCE FROM LAW ENFORCEMENT AGENCY SPECIFICALLY IDENTIFIED TO A PARTICULAR CASE NUMBER. IT'S NOT IDENTIFIED TO A PARTICULAR DEFENDANT. IT'S A PARTICULAR CASE NUMBER.

AND HOW THE CHEMIST -- HE WOULD TAKE THE NUMBER. ASSIGN A CHEMIST, THE CHEMIST WOULD COME TO HIM AND OBTAIN THE EVIDENCE OUT OF THE VAULT.

IT WAS KEPT IN VAULT PRIOR TO IT BEING RELEASED.

THE KEPL KPHEUS -- CHEMIST WOULD CONDUCT THE TEST.

FILE A CASE WHERE

MY -- MR. SILVER TESTIFIED STPHE HE WOULD REVIEW THE ENTIRE FILE AND THE RESULTS OF THE TEST AND EITHER APPROVE IT OR DISAPPROVE IT.

AND IF HE APPROVED IT NO EVIDENCE WAS GOING TO COME OUT OF THAT LAB UNLESS MR. SILVER REVIEWED THAT AND MADE --

>> THIS PIECE OF PAPER COULD COME INTO EVIDENCE WITH THAT TYPE OF GENERAL TESTIMONY?

>> THE BUSINESS RECORD.

>> YES.

>> WELL FOUNDATIONLY IT'S COME INTO EVIDENCE AS A BUSINESS RECORD BECAUSE IT'S REGULARLY TESTING THE COURSE OF BUSINESS.

AND I DON'T -- YOU KNOW ROBERTS OF COURSE WAS A BALANCING DETERMINATION ABOUT WHETHER IT'S RELIABLE AND THERE'S NO INDICATION THAT THE TESTS THAT ARE PERFORMED ON A DAILY BASIS BY FDLE TO -- ESPECIALLY IN A CIVIL CASE TO DETERMINE EVIDENCE IN THE CRIMINAL CASE WHICH HAS A HIGHER

STANDARD WOULD BE IN ANY WAY
UNRELIABLE --

>> IS THERE A CASE OUT OF
FLORIDA WHICH HAS HELD PRIOR
TO GETTING INTO CRAWFORD
THAT THIS TYPE OF DOCUMENT
WOULD COME IN AS A BUSINESS
RECORD?

>> YES, AND THAT WAS TALKED
ABOUT AT THE TRIAL AND IT
WAS WILLIAM v. STATE AND
FIFTH DCA AND I THINK I HAVE
THAT TO CITE FOR YOU.
I DON'T HAVE IT RIGHT WITH
ME RIGHT NOW.

IT'S WILLIAMS v. STATE.
JUSTICE ANSTEAD HAS A
QUESTION.

>> AREN'T THERE, IN FACT,
CASES THAT HOLD THE
LABORATORY REPORTS, WHICH DO
ANALYSIS LIKE THIS ARE NOT
ADMISSIBLE IN EVIDENCE THAT
THEY ARE HERE SAY?

>> WELL, NOT TO MY
KNOWLEDGE.

>> IF IT WAS PRECRAWFORD.
YOU ARE NOT AWARE OF ANY
PRECRAWFORD DECISION THAT
HELD THAT A LAB REPORT LIKE
THIS WAS HERESAY AND COULD
NOT COME UNDER ANY EXCEPTION
TO THE HEARSAY.

I'M AWARE OF THE CASES.

I'M AWARE OF THE CASES THAT
SAY IT'S ADMISSIBILITY UNDER
THE BUSINESS RECORDS
EXCEPTIONS.

I'M NOT AWARE OF CASES THAT
TALK ABOUT AN OUTRIGHT
DENIAL OF --

>> SO YOUR ADMISSION OF A
LAB REPORT.

YOU ARE NOT AWARE OF ANY
CASES THAT HOLD THAT THEIR
LAB REPORTS LIKE THIS ARE
NOT ADMISSIBLE IN EVIDENCE
PRE-CRAWFORD.

>> NO, I'M NOT.

I'M SURE THERE'S DISCUSSIONS
IN CASES ABOUT WHETHER OR
NOT IT'S ADMISSIBLE AND
OBVIOUSLY PRECRAWFORD THERE
WAS AN EVALUATION OF

RELIABILITY.

SO CERTAINLY THERE COULD BE
LAB REPORTS THAT WERE NOT
ADMISSIBLE BECAUSE THEY WERE
DEEMED TO BE FOR SOME REASON
UNRELIABLE.

BUT POST-CRAWFORD THE
QUESTION OF RELIABILITY
DOESN'T COME UP THAT'S
PUTTING THE CART BEFORE THE
HORSE IF YOU DETERMINE
WHETHER OR NOT IT'S
TESTIMONIAL AND IF IT IS
TESTIMONIAL THEN OBVIOUSLY
THE ONLY WAY YOU CAN TEST
THE RELIABILITY IS THROUGH
CROSS-EXAMINATION AND THAT'S
THE BASIS OF CRAWFORD.

>> JUSTICE BELL HAS A
QUESTION.

YOU ARE INTO YOUR REBUTTAL.
MAKE A VERY CONCISE ANSWER.

>> FROM YOUR EXPERIENCE AND
THIS TYPE OF REPORT WHAT
WOULD THIS -- IF THIS LADY
HAD BEEN CALLED WHAT WOULD
SHE HAVE TESTIFIED TO GIVEN
THE NUMBER THEY RUN, ET
CETERA?

CAN YOU SPEAK TO THAT
ISSUE?

>> IT'S CERTAINLY
SPECULATIVE.

BUT THE DEFENDANT DIDN'T
IDENTIFY ANY SPECIFIC
QUESTIONS THAT THEY WANTED
TO ASK HER.

AND YOU WOULD PRESUME THAT
WHAT SHE WOULD TESTIFY TO IS
YES, I DID THIS TEST
ACCORDING TO MY FILE.

ACCORDING TO MY REPORT.

IT RELATED TO THIS NUMBER

ACCORDING TO MY REPORT.

AND ACCORDING TO MY REPORT
THE SUBSTANCES WERE COCAINE
AND CANNABIS.

SO I DON'T KNOW THAT YOU CAN
SAY THAT MEESE TOOKON WOULD
HAVE ANY INDEPENDENT RECK
HRUBGION OF THIS PARTICULAR
TEST THAT SHE DUHUNDREDS OF
TEST EVERY YEAR.

>> SO SHE WOULD HAVE

BEEN -- AS WE CAN ASSUME
TESTIFYING FROM THE SAME
INFORMATION THAT THE
SUPERVISOR TESTIFIED ON THE
RECORD?

>> YES, WHAT ABOUT THIS
REPORT -- WHAT IN THE REPORT
TELLS US WHAT KIND
OF -- THAT WAS RUN ON
THIS -- ON THIS PIECES OF
EVIDENCE?

>> THE REPORT ITSELF
DOESN'T.

IT'S A CASE FILE THAT
MR. SILVER REVIEWS THAT
INDICATES WHAT TYPES OF
TEST.

>> BUT MR. SILVER DID
NOT -- WAS NOT THERE WHEN
THE TEST WERE ACTUALLY RUN.

>> NO.
HE WASN'T.

>> AND MISS DEACON IS THE
ONE WHO ACTUALLY PHYSICALLY
TOOK THE EVIDENCE AND RAN
WHATEVER TESTS.

>> THAT'S CORRECT.

>> WERE RUN ON HIM.

>> USING THE PROTOCOL OF THE
FDLE, CORRECT.

THANK YOU.

MR. SHARWELL.

>> I'M WILLIAM SHARWELL.
I REPRESENTATIVE THE
RESPONDENT LORENZO JOHNSON.
IT'S MY POSITION THAT THE
LAB REPORT IN THIS CASE IS
TESTIMONIAL.

IT'S AN AFFIRMATION OR
DECLARATION TO PROVE THAT
MR. JOHNSON --

>> COULD YOU FOLLOW-UP WITH
THE QUESTION I ASKED OF THE
STATE.

IF FROM YOUR EXPERIENCE AND
UNDERSTANDING OF THIS CASE
OR OTHERWISE, IF THIS WHRAB
ANALYST WHO I ASSUME -- IF
THIS LAB ANALYST WHO I
ASSUME DOES A LOT OF HAD
BEEN CALLED TO TESTIFY AT
TRIAL, IS IT YOUR POSITION
THAT SHE WOULD HAVE HAD AN
INDEPENDENT RECOLLECTION OF

THIS PARTICULAR TESTING OR
WOULD SHE HAVE SIMPLY DONE
WHAT IS NORMALLY DONE JUST
LOOKED AT HER FILE AND
RECITED ESSENTIALLY WHAT HER
SUPERVISOR --

>> YOUR HONOR, IT'S HARD TO
TELL WHEN I READ THE PUBLIC
RECORD.

MOST OF MY EXPERIENCE IN
THIS REGARD IS REGARDING THE
PUBLIC RECORD.

IF SOMEONE COMES IN AND
TESTIFIES ABOUT SOMETHING
LIKE THAT, I HAD THE
EXPERIENCE OF SITTING ON THE
JURY IN A DRUG CASE AND THE
ANALYST CAME IN AND
TESTIFIED WITHOUT NOTE I DID
THIS TEST ON THE COCAINE.

>> DID THE SUPERVISOR HAVE
IN HIS POSSESSION WHATEVER
THE FILE IS THAT HAS BEEN
TALKED ABOUT THAT SAYS
EXACTLY WHAT TEST AND ALL
THIS WERE RUB ON THAT OR WAS
THE SUPERVISOR JUST TALKING
WITHOUT ANY --

>> I BELIEVE WHAT -- WHAT
HAPPENED WAS THE SUPERVISOR
HAD THE CASE FILE, WHICH
PRESUMABLY HAS THAT
INFORMATION.

BUT THAT DID NOT COME OUT OF
THE TRIAL.

>> IT DID NOT COME OUT OF
THE TRIAL.

IT WAS NOT ENTERED INTO.
WHAT WENT TO THE JURY WAS
THE LAB REPORT WHICH IS
STATE EXHIBIT 2.

JUSTICE CANTERO HAS A
QUESTION.

>> LET ME ASK IF YOU.
IF THIS WAS A DIFFERENT KIND
OF REPORT.
IF IT WERE JUST SOME KIND OF
CHEMICAL TEST HAD BEEN DONE
AND THE COMPUTER SPIT OUT
SOME RESULTS.

AND THIS WAS A COMPUTER
PRINTOUT.
IT WASN'T A REPORT SIGNED BY
ANYTHING -- ANYBODY.

WOULD THAT WHERE ADMISSIBLE
DOES THAT VIOLATE
CONFRONTATION?

>> IF IT WAS DONE BY LAW
ENFORCE.

IT TESTIMONY WRAL.
IT'S AFFIRMATION OR
DECLARATION.

IN MY EXAMPLE IT'S
NOT -- NOBODY IS DECLARING
ANYTHING.

IT'S THE COMPUTER DECLARING.

>> IT'S ESSENTIALLY THE SOFT
WEUR N IF COMPUTER SAYING,
YOU KNOW, THERE'S A --

>> BUT THE SOFTWARE CAN'T
COME INTO CAN
COURSE -- COURT.

>> BUT WHAT IT IS SOMEBODY
DESIGNED THE MACHINE.

SET IT UP TO THIS TEST.

IT WILL SPIT OUT THESE
NUMBERS.

BUT IN THAT CASE COULD IS
SUPERVISOR TESTIFY OR DOES
IT HAVE TO BE THE PERSON WHO
ACTUALLY PUT THE TAOERLG
INTO THE MACHINE -- PUT THE
MATERIAL INTO THE MACHINE.

>> IT'S THE PERSON THAT PUT
THE MATERIAL INTO THE
MACHINE.

IF COURT IN THOSE CASES HELD
THAT THEY ARE REQUIRED TO --

>> WE ARE TALKING ABOUT
AFFIDAVITS WHICH I THINK THE
DIFFERENT.

>> YEAH.

>> I'M JUST TALKING ABOUT A
COMPUTER PRINTOUT.

>> YOU WOULD STILL HAVE
TO -- BE ABLE TO TEST FOR
THE ACCURACY OF THE RESULTS
IN THE MACHINE.

YOU WOULD STILL HAVE KNOW
WHO PUT THE STUFF IN THE
MACHINE.

HOW HEY PUT IT IN AND MAKE
SURE IT WAS DONE DIRECTLY.

AND YOU NEED THE PERSON
THERE THAT TESTIFY THE
MACHINE WORKS CORRECTLY.

>> LET ME ASK YOU AS I
UNDERSTAND IT THERE IS -- THE

COURTS ACROSS THE COUNTRY
THAT HAVE DEALT WITH THIS
ISSUE SINCE CRAWFORD
OR -- THEY ARE SPLIT.

>> YEAH.

AND WITH OUT CHASING THE
CRAWFORD RABBIT DOWN THE
ROAD, LET'S LOOK AT THIS
FROM THE STANDPOINT OF OHIO
v. ROBERTS, AND TELL ME WHAT
WAS THE SITUATION IN FLORIDA
THE DAY BEFORE CRAWFORD CAME
OUT AS TO THIS TYPE OF
RECORD.

>> UNDER OHIO v. REPORTS
IT'S MY POSITION THAT THEY
HELD THAT THE BLOOD RESULTS
FROM A HOSPITAL TEST WERE
ADMISSIBLE ONLY BECAUSE THEY
VERY DONE BY THE HOSPITAL
LAB TECHNICIAN.

>> WAS THERE --

>> WERE THERE ANY DECISIONS
THAT YOU CAN POINT US TO OUT
OF THE DISTRICT COURT ON
THIS SPECIFIC TYPE OF
SITUATION WHERE YOU HAVE A
LAB REPORT, A DRUG TEST FROM
FDLE.

YES, THE FIFTH DCA CASE IN
RIVERA IT WAS CITED AFTER
CRAWFORD BUT IT'S IN
LANGUAGE OF OHIO v. ROBERTS.

>> CORRECT.

AND OTHER THAN RIVERA,
BECAUSE RIVERA WAS DEALING
AS YOU SAY -- IT WAS AFTER
ROBERTS -- I MEAN AFTER
CRAWFORD BUT IT DIDN'T DEAL
WITH POINTER.

>> RIGHT RIVERA DEALS WITH
THE LANGUAGE OF OHIO v.
ROBERTS.

>> IS OUR OPINION IN BAYBERG
NOW COMPROMISED BECAUSE OF
CRAWFORD OR DO YOU SEE THAT
HOSPITAL RECORDS FALL INTO A
NONTTESTIMONIAL MEDICAL
RECORD EXCEPTION?

>> MY BELIEF THAT THE OHIO
v. ROBERT IS ESSENTIALLY
DEAD.

>> YOUR DECISION WOULD
BASICALLY BE IF IT IS

HEARSAY IT'S SUBJECT TO
CONFRONTATION CLAUSE.

>> IF IT'S TESTIMONIAL
HEARSAY IT'S SUBJECT TO
CONFRONTATION.

>> WELL DISTINGUISH ANY
EVIDENCE PRESENTED IN TRIAL
IS SUPPOSED TO GO TO PROVE A
FACT.

RIGHT.

>> AN ELEMENT OF CRIME
OTHERWISE IT'S IRRELEVANT.

>> RIGHT.

SO WHAT TYPE OF HEARSAY
EVIDENCE WOULD YOU WOULD NOT
BE SUBJECT TO THE
CONFRONTATION CLAUSE.

>> WELL MY CONCERN IS THAT
YOUR DEFINITION IS SO BROAD
THAT YOU ARE BASICALLY
INCLUDING WITHIN THE
CONFRONTATION CLAUSE A
NUMBER OF HEARSAY.

>> COCONSPIRACY
STATEMENTS.

TWO GUYS DOG -- TALKING IN
THE DINER ABOUT PLANNING A
BANK ROBBERY.

WHEREAS IF YOU HAVE TWO
INDEPENDENT PEOPLE PLANNING
SOMETHING AND ONE OF THEM
DECIDES TO AFTER THE CRIME
IS DISCOVER INFORM ON THE
OTHER ONE.

I DON'T THINK THAT PROS AS A
CONFRONTATION.

HOWEVER IF ONE OF THESE
PEOPLE WAS A CONFIDENTIAL
INFORMANT, UNDER THE CONTROL
OF LAW ENFORCEMENT THAT
WOULD BE A CONFRONTATION.

>> WELL, MY CONCERN IS THE
BUSINESS RECORDS.

AS I UNDERSTAND IT BUSINESS
RECORD RULE WAS AROUND IN
THE COMMON LAW FOR A LONG
TIME.

AND THAT WE'RE GOING TO HAVE
TO -- IF WE FOLLOW THE
SECOND DISTRICT HERE, DRAW
SOME DISTINCTIONS ABOUT THE
BUSINESS RECORD RULE.

AND IT IS THE -- WHAT IS THE
DISTINCTION -- OR WOULD YOU

DRAW AN IN -- DISTINCTION OR
WOULD YOU SAY THE BUSINESS
RULE IS OUT THE WINDOW OR IS
THERE SOME BUSINESS RECORDS
THAT WOULD COME IN AND
OTHERS NOT?

WHAT IS YOUR POSITION?

>> MY POSITION -- ANYTHING
THAT WOULD PROVE A FACT THAT
IS ESSENTIAL TO A CRIMINAL
CONVICTION DOESN'T HAVE TO
BE DIRECTLY ON AN ELEMENT
WOULD VIOLATE THE RIGHT TO
CONFRONTATION.

>> THAT CAN'T BE THE CASE.
BECAUSE OTHERWISE IF THERE
WAS A BUSINESS REPORT THAT
WAS GENERATED 20 YEARS AGO
AND YOU ARE TRYING TO
INTRODUCE IT OBVIOUSLY TO
PROVE A FACT IN TRIAL, IN
FACT THAT'S THE CASE
WITHIN -- WITH ANY HERE'S
SAVE.

IF IT WEREN'T THERE TO PROVE
A FACT IT WOULDN'T BE
INTRODUCED IN TRIAL.

>> YOU CORRECT IN THAT.

>> IF SOMETHING IS GENERATED
BY LAW ENFORCEMENT WITH THE
ANTICIPATION --

>> SO GOING BACK TO MY
QUESTION ABOUT OUR DECISION
IN BAYBERG IS THAT STILL
GOOD LAW OR IS THAT BEEN
CALLED INTO QUESTION BY
CRAWFORD?

>> I THINK IT'S CALLED INTO
QUESTION.

>> THAT'S A HOSPITAL RECORD
NOT DONE BY PEOPLE INVOLVED
IN INVESTIGATING THE CRIME
IT'S DONE BASED ON TREATING
A PERSON.
HOSPITAL RECORDS.

>> RIGHT.

>> BUT I DO NOT -- THERE
COULD NOT BE ANY PROBLEM
UNDER BAYBER INTRODUCING
HOSPITAL RECORDS IN THE
TRIAL.

>> SO THEY ARE STILL GOOD
LAW.

>> WOULD SAY IT'S GOOD LAW.

BUT I THINK THE ENTIRE OHIO
v. ROBERTS FRAMEWORK IS
CALLED INTO QUESTION.

>> WHEN YOU HAVE TESTIMONIAL
AND
NONTTESTIMONIAL -- SKWRAOEUGT.

>> YOU HAVE TO FIGURE OUT
THE NONTTESTIMONIAL WHAT THE
PARADIGM FOR AN ANALYSIS IS
GOING TO BE.

AND THERE'S CERTAINLY -- SO
YOU'VE GOT TO LOOK AT
RELIABILITY OF THE HEARSAY
EXCEPTION.

YOU DON'T WANT TO SAY IF
IT'S NONTTESTIMONIAL IT COMES
IN.

>> RIGHT.

>> YOU HAVE TO LOOK AT HOW
IT COMES IN AND WHY AND
WHETHER IT IS AN EXCEPTION.

>> THE VEHICLE.

I DON'T THIS RECORD WOULD
QUALIFY.

>> THE ONE IN THIS CASE.

>> RIGHT.

WELL I THINK --

>> IF YOU LOOK AT THE
COMMENTARY THROUGH THE RULES
THEY TALK ABOUT BOTH --

>> SINCE WE HAVE TO WRITE SO
IF WE HAVE TO WRITE

SOMETHING IN THIS CASE I
WANTED TO MAKE SURE WHAT
YOUR POSITION WAS ABOUT THE
ONLY TIME THIS COURT TALKED
ABOUT A RECORD CLOSE TO THIS,
WHICH WAS THE BAYBERG CASE.

>> WELL, UNDER DAVIS THE
ISSUE THEN WOULD BE IN
INTERPRETING BAYBERG THROUGH
DAVIS v. WASHINGTON, THE
ISSUE WAS WHAT THE PRIMARY
PURPOSE OF THE RECORDS?
IS THE PRIMARY PURPOSE THE
INVESTIGATION OF PROSECUTION
OF THE OFFENSE?

OR IS IT SOMETHING ELSE?

AND IT SEEMS LIKE IN BAYBERG
THE COURT SAID THE PRIMARY
PURPOSE WAS MEDICAL.

IT MAY HAVE BEEN SUBSIDIARY
PURPOSES HERE.

BUT IT WAS REALLY GENERATED

FOR MEDICAL PURPOSES AND,
THEREFORE UNDER DAVIS THAT
WOULD STILL BE A
NONTTESTIMONIAL.

>> UNDER THIS CASE THE LAB
REPORT IS --

>> YOU JUST WANT US TO STICK
WITH THIS REPORT AND SAYING
THAT THIS IS EITHER WAY IT'S
TESTIMONIAL UNDER CRAWFORD.
OR ANY ANY EVENT IT'S NOT A
BUSINESS RECORD EVEN IF IT
IS NON -- IF IT'S
NONTTESTIMONIAL.

>> RIGHT.

IF THIS SAME REPORT WERE
GENERATED BEFORE THERE WERE
FOR SOME REASON GENERATED
BEFORE THERE WAS ANY
INVESTIGATION OF A CRIME
WOULD IT THEN BE
TESTIMONIAL?

>> YEAH.

WHY?

>> BECAUSE IT WOULD BE
REASONABLY LIKELY THAT IT
MIGHT BE USED.

WELL THAT'S A VERY TEST THAT
CRAWFORD SAID WE ARE NOT
GOING TO ADOPT.

THEY DIDN'T SAY THEY WERE
NOT ADOPTED.

THEY DECLINED TO ADOPT A
BROADER DEFINITION.

BECAUSE IN CRAWFORD AND BOTH
DAVIS.

THEY DIDN'T NEED A BROADER
DEFINITION BECAUSE THE
HEARSAY IN BOTH CRAWFORD AND
DAVIS.

AND IN DAVIS THEY ALSO DID
NOT ADOPT A REASONABLY
LIKE --

>> CORRECT.

BECAUSE DAVIS -- THEY HAD TO
FURTHER -- WHAT THEY WERE
DEALING WITH IN DAVIS WAS
CLARIFYING THE PART OF
CRAWFORD THAT SAID POLICE
INTERROGATION WAS
TESTIMONIAL.

>> IN THIS CASE THE WE
STARTED ULTIMATE OUT WITH
THIS ISSUE OF WHETHER OR NOT

LET'S ASSUME THERE'S A
CONFRONTATION CLAUSE
VIOLATION.

IT'S IT HARMLESS YOU AGREE
HARMLESS ERROR STILL ALIVES
TO THESE.

WHY IS THIS NOT HARMLESS
ERROR?

>> BECAUSE IN THIS CASE
THE -- IT WAS A PRESEPLTIVE
TEST DONE ON BOTH
SUBSTANCES -- PRESUMPTIVE
TEST DONE WITH SOMETHING
LIKE A SWIMMING POOL TEST
KIT AND THE JURY -- THE
STATE WASN'T ABLE TO SHOW
BEYOND A REASONABLE DOUBT
THAT THIS MATERIAL WAS
A -- DID NOT EFFECT THE
VERDICT.

THIS WENT -- THIS -- MY
REPORT WENT TO THE JURY AND
IN CLOSING ARGUMENT THE
PROSECUTOR SAID THIS IS YOUR
EVIDENCE.

THIS IS YOUR EVIDENCE OF
MARIJUANA.

>> AND IN THIS CASE THE
PERSON DOING THIS LAB TEST
ALTHOUGH SHE WAS OUT OF
STATE SHE WAS AVAILABLE.

>> SHE WAS ABSOLUTELY
AVAILABLE.

SHE WAS READY AND WILLING
AND ABLE TO SHOW UP THE NEXT
MORING.

>> THE STATE BEGAN ITS
ARGUMENT TODAY WITH A
DISCUSSION OF OFFICERS THAT
WENT TO THE SCENE AND THE
OFFICERS EXPERIENCE WITH
DIFFERENT DRUGS AND BEING
ABLE TO IDENTIFY DIFFERENT
DRUGS THAT OFFICER DID
TESTIFY AT TRIAL WHY DOESN'T
THAT MAKE IT HARMLESS ERROR?

>> BECAUSE IT DON'T
SHOW -- IT'S SOMETHING THE
JURY DID HAVE TO CONSIDER.
BUT THEY ALSO -- IF THE LAB
REPORT WAS CONSIDERED IN THE
DEPARTMENT OF LAW
ENS -- ENFORCEMENT WHICH IS
THE SEAL OF THE STATE IT'S

PRESUMED SCIENTIFICALLY.

>> UNDER THAT TEST, THEN
THERE WOULD NEVER BE
HARMLESS ERROR.

>> BUT THE SUPREME COURT HAS
SAID THAT A CROSS VIOLATION
IS SUBJECT TO HARMLESS ERROR
AND HARMLESS ERROR ASSUMES
THAT YOU VIOLATE A -- YOU
VIOLATED CRAWFORD BUT THAT
THERE'S OTHER EVIDENCE
INTRODUCED THAT WOULD RENDER
THAT HARMLESS.

>> YOU ARE ESSENTIALLY
COMPARING NOW THE IS 40
HOURS OF TRAINING OR
WHATEVER THE AMOUNT OF
TRAINING WAS.

THIS IS SOMETHING THAT THE
STATE ARGUED IN CLOSING
ARGUMENTS THAT WAS -- YOU
HAVE THIS LAB REPORT.

YOU KNOW IN ADDITION IT'S
SOMETHING THAT THE
PROSECUTOR SPECIFICALLY
ARGUED IN CLOSING ARGUMENT.

>> LET ME ASK YOU A
QUESTION.

JUSTICE CANTERO MENTIONED
DAVIS A COUPLE OF TIME.
THE HOLDING IN THAT CASE IS
THAT STATEMENTS ARE
NONTESTIMONIAL WHEN MADE IN
THE COURSE OF POLICE
INTERROGATION.

>> YES.

>> UNDER CIRCUMSTANCES.

>> YES.

>> AND IT GOES ON AND IT
DEFINES THEM AS TESTIMONIAL
WHEN THE CIRCUMSTANCES IN
THE CASE -- INDICATE THERE'S
AN ONGOING A PRIMARY PURPOSE
OF THE INTERROGATION IS TO
ESTABLISH A PROVED PAST
OFFENSE.

>> RIGHT.

>> IS THERE AN
INTERROGATION?

>> I WOULD SAY THERE IS IN
THIS CASE.

VERY SUBTLELY.

IF YOU LOOK AT THE LAB
RECORD IT'S FROM RANDY MEEKS

WHO IS ESSENTIALLY TWO
FDLE --

>> UNLIKE THE AFFIDAVIT THAT
HE'S TALKING ABOUT THERE'S
NO STATEMENT THAT THE -- THE
POLICE OFFICER TOLD ME AND
HE SAID -- AND HE DESCRIBED
THE EVENTS AROUND THE
COLLECTION OF THE EVIDENCE
OR ANYTHING LIKE THAT.

>> ESSENTIALLY WHAT THIS LAB
REPORT IS THEY ARE SAYING
FDLE LAB TELL ME WHAT THE
UNIDENTIFIED SUBSTANCES ARE.
THE LAB REPORT IS IN
RESPONSE TO THAT QUESTION.
IS MARIJUANA AND THIS IS
COCAINE.

>> SO IT'S AN OBJECTIVE
ANALYSIS SCIENTIFIC
ANALYSIS.
YOU WOULD AGREE WITH THAT.

>> I'M PRESUMING IT'S A
SCIENTIFIC ANALYSIS.
BUT FROM THIS REPORT YOU
CAN'T TELL.
YOU CAN'T TELL FROM THIS
RECORD.

>> THE PRACTICAL EFFECT OF
THE RESULT THAT YOU ARE
ADVOCATING IS THAT IN EVERY
CASE THE PERSON -- YOU BRING
THE PERSON THAT RAN THE LAB
TEST INTO ERBGT -- COURT.

>> CORRECT.

>> EVERY CASE YOU BRING THE
PERSON INTO COURT THAT RAN
THE TEST.

>> IF THE DEFENSE
REQUIRE -- IF THE DEFENSE
WANTS TO CONFRONT THE
EVIDENCE, YES.

BUT I'VE SEEN CASES WHERE
THERE'S STIPULATIONS AND
PEOPLE WORK THESE KIND OF
THINGS OUT.

>> I ASSUME IN THIS CASE
SHE'S FROM VIRGINIA IS THERE
A RULE THAT WOULD ALLOW A
LOT OF DEPOSITION WHERE THE
DEFENDANT FOR USE OF TRIAL?

>> 3.190J ALLOWS THE PARTY
WHO WANTS TO USE THE
DEPOSITION OF SUBSTANTIVE

EVIDENCE TO PROVIDE NOTICE.
THE DEFENDANT HAS THE RIGHT
TO BE THERE.

I DON'T REMEMBER WHAT THE
DEPOSITION RULE SAYS ABOUT
WHERE THE DEPOSITION IS
DONE.

BUT I WOULD HAVE -- DON'T
THINK THE SHERIFF WOULD LIKE
TO HAVE AN INCARCERATED
INMATE TAKEN TO VIRGINIA TO
DO THE DEPOSITION.

I KNOW IT'S TYPICALLY -- WE
GO TO FDLE AND TAMPA OR
ORLANDO TO DO THE
DEPOSITION.

>> AND TO BE FAIR TO THE
DEFENDANT IN THIS CASE THIS
IS NOT A SANDBAGGING EVENT
BY THE DEFENSE COUNSEL.

THE DEFENSE COUNSEL
WAS -- WASN'T PLACED ON
NOTICE THAT THIS WAS --

>> THERE'S NO ADVANCE
NOTICE.

HE SAID WHEN THEY ARE
ARGUING.

WHEN -- LOOK, THEY LISTED
THE -- YOU KNOW MISS BEACON
ON THE WITNESS LIST.

I EXPECTED HER TO BE HERE.
I HAD A SEPARATE CASE THIS
MORNING WITH THE JUDGE
FUENTE WHERE THEY WILL BRING
IN SOMEONE FROM NORTH
CAROLINA ON SOME TIME OF
CONFRONTATION ISSUE.

IT'S UNCLEAR EXACTLY WHAT IT
IS.

I WOULD SAY THE DEFENSE
COUNSEL WOULD -- WAS ALMOST
SANDBAGGED BY PUTTING THIS
WITNESS NAME ON THE LIST.

HE UNDERSTOOD AT SOME POINT
THAT DAY IN THE TRIAL THAT
SHE WAS NOT GOING TO BE
THERE.

ON AVAILABILITY ISSUE
TYPICALLY THE CASES ARE HALF
DAY OR DAY TRIALS.

>> YES.

>> WHAT DOES THE REPORT
REFLECT -- IS THERE SOME
ARGUMENT SHE COULD HAVE COME

THE NEXT DAY.

BUT THAT PRABG THE TICKCALLY
CREATES TROUBLE IN THE TRIAL
COURT WHEN THEY HAVE OTHER
TRIALS SQUALLED.

>> SHE COULD HAVE COME THE
NEXT MORNING.

>> MY QUESTION IS HOW LONG
WAS THE TRIAL SCHEDULED OR
WAS IT IT SCHEDULED TO GO
INTO THE NEXT DAY?

BECAUSE IF YOU CONTINUE TO
THE NEXT DAY WAIT FOR THIS
WITNESS, THE PRACTICAL
IMPACT AS YOU TOLD JURORS
THEY BE THERE FOR A DAY, ET
CETERA.

>> RIGHT.

I BELIEVE -- I DON'T KNOW
THE ANSWER TO THAT.

BUT TYPICALLY THESE THINGS
ARE -- LESS THAN A DAY.
THESE TRIALS.

AND IT'S MY POSITION THAT
RESPONSE IF THE

STATE -- STATE'S WITNESS IF
IT WAS A FORMER STATE
EMPLOYEE THE STATE HAD
OPTIONS TO PRESERVE THE
TESTIMONY IF THE TESTIMONY
WILL BECOME UNAVAILABLE.

>> GETTING BACK TO HARMLESS
ERROR ISSUE.

AREN'T THERE MANY CASES OR
AT LEAST SOME CASES WHERE
THE ONLY EVIDENCE THAT THE
STATE PROVIDES AS TO WHAT
THE NATURE OF THE SUBSTANCE
IS THE OFFICERS TESTIMONY
THAT FOUND THE SUBSTANCE
THEY PUT THEIR SUBSTANCE TO
THEIR MOUTH AND IN THEIR
EXPERIENCE THIS WAS COCAINE
OR THEY FOUND A SUBSTANCE
THAT YOU KNOW LOOKED LIKE
DRIED LEAVES AND IN THEIR
EXPERIENCE IT WAS MARIJUANA.

>> THERE'S MANY MORE OF
THOSE CASES IN REGARD TO
MARIJUANA.

I PWHRAO EF IN THIS CASE THE
OFFICER DID NOT -- BELIEVE
IN THIS CASE THE OFFICER
WASN'T SURE IT WAS COCAINE.

>> HE CONDUCTED A PRESUMPTIVE TEST. IT'S MY POSITION THAT CRAWFORD SHOULD BE READ BROADLY JUST TO AVOID THE TRIAL BY AFFIDAVIT. AND WE DON'T KNOW WHAT TESTS WERE DONE IN THIS CASE. BUT JUST BECAUSE IT'S RELIABLE DOESN'T MEAN IT SHOULDN'T BE SUBJECT TO CROSS-EXAMINATION. THAT'S BASICALLY WHAT CRAWFORD DOES. SAME THING WITH CROSS-EXAMINATION WHEN SOMETHING IS RELIABLE IT'S LIKE GETTING RID YES OF THE JURY TRIAL FOR SOMEONE WHO IS GUILT. THE COURT HAS NO MORE QUESTIONS.

>> THANK YOU VERY MUCH. REBUTTAL.

WE'VE COME FULL CIRCLE NOW TO THE HARMLESS ERROR ISSUE.

>> OBVIOUSLY THE STATE'S POSITION WAS IT WAS AN ER O. CERTAINLY THE HARMLESS ERROR ANALYSIS DOES APPLY.

>> COULD YOU EXPLAIN WHAT THE TESTIMONY OF THE OFFICER AT TRIAL EITHER THE OFFICER THAT MADE THE ARREST OR SOMEBODY ON THE SCENE AS TO THE NATURE OF THE SUBSTANCE.

>> THERE WERE TWO OFFICERS AT THE SCENE.

OFFICER STEVENSON WAS THE OFFICER THAT ACTUALLY SAW THE SUBSTANCES IN THE RESPONDENTS PO SESSION.

SHE TESTIFIED SHE WAS WITH THIS NARCOTICS

DECISION -- DIVISION OF THE TAMPA POLICE DEPART.

SHE HAD SIX OR EIGHT YEARS OF EXPERIENCE AS A POLICE OFFICER, THAT SHE HAD THIS 40-HOUR TRAINING AND ADDITIONAL SUBSEQUENT TRAINING AFTER THE 40-HOUR INITIAL TRAINING ON NARCOTICS IDENTIFICATION AND

AT THE TIME OF THE ARREST IN THIS CASE SHE WAS WORKING A FOUR-DAY WORK WEEK AND SAW COCAINE AND MARIJUANA ON THE DAILY BASIS.

AND SHE ALSO TESTIFIED THAT COCAINE AND MARIJUANA WERE A PART OF THE NARCOTIC IDENTIFICATION TRAINING THAT SHE HAD DONE.

AND OFFICER TRAINED HIM I BELIEVE IS HIS NAME I'M PROBABLY NOT PRONOUNCING THAT CORRECTLY SIMILARLY TESTIFIED HE HAD 13 YEARS OF EXPERIENCE.

BACK TO THE FIRST OFFICER THIS IS HER VISUAL DETERMINATION THAT THESE WERE.

>> YES.

YES.

AND SHE THEN GAVE THE TWAPBSS TO OFFICER WHO DID THE PRESUMPTIVE TEST.

HE TESTIFIED HE HAD 13 YEARS OF EXPERIENCE AND THE SAME KIND OF TRAINING THAT OFFICER STEVENSON DID WITH REFERENCE TO THE 40 HOURS OF THE NARCOTICS TRAINING AND THE ADDITIONAL DEA THINGS.

>> BEFORE I

FOREMOST -- FORGET THE CASE THAT WAS DISCUSSED BELIEVE WAS WILLIAMS v. 743-1149 AND IN THIS CASE ESSENTIALLY SAME -- THE FDLE ANALYST WAS ON MATERNITY LEAVE AND THE SUPERVISOR TESTIFIED AS TO SIMILAR THINGS THAT MR. SILVER DID IN THIS CASE.

AND THE LAB REPORT.

AND THE FIFTH DISTRICT AFFIRMED THAT RULING, OBVIOUSLY UNDER ROBERTS NOT UNDER CRAWFORD.

>> DID THE SUPERVISOR IN THIS CASE TESTIFY THAT HE SIGNS OFF TO THE REPORT BEFORE YOU GO OUT?

>> YES, HE DID.

>> SO HE MAINTAINS CONTROL OVER EACH REPORT THAT GOES

OUT.

>> YES, HE DOES.

IT'S A QUALITY CONTROL ASPECT OF HIS JOB IS THAT NOTHING GOES OUT OF THE FDLE WITH REFERENCE TO IDENTIFYING ANY SUBSTANCES UNTIL HE REVIEWS THE ENTIRE CASE FILE AND THE REPORT.

IT'S CERTAINLY IF HE HAD ANY ISSUE I'M SURE HE WOULD HAVE SPOKEN WITH MISS -- MISS BEACON AT THE TEE.

WITH REFERENCE TO WHAT ELSE WAS INTRODUCED THE ACTUAL EVIDENCE WAS INTRODUCED WITHOUT OBJECTION.

THE OFFICER'S TESTIMONY WAS REFERENCED FOR THEIR TRAINING AND THE PRESUMPTIVE TEST WAS INTRODUCED WITHOUT OBJECTION.

THEY STIPULATED TO THE EXPERTISE OF MR. SILVER SO PRESUMABLY THEY WOULD HAVE STIPULATED TO THE EXPERTISE OF MISS BEACON AS WELL.

AND AT FIRST BEING SANDBAGGED I DON'T THINK THAT ARGUMENT CAN BE MADE. BECAUSE THE CONVINCED SAID IT WASN'T COCAINE AND CANNABIS. THE DEFENSE SAID IT WASN'T ME.

I WASN'T THERE AND THE CANNABIS WAS IN MY POSSESSION WHEN I WAS BEING BOOKED IN WAS PLANTED ON MY OR I WAS UNAWARE OF IT.

>> IS THIS HARMLESS ERROR ARGUMENT MADE TO THE DISTRICT COURT.

>> YES.

WHAT DID THE DISTRICT COURT SAY?

>> THEY FOUND THAT THE INTRODUCTION OF THE LAB REPORT WAS SO HARMFUL IN ESSENCE THAT THE STATE COULDN'T PROVE THAT IT DIDN'T EFFECT THE JURY EYE -- JURY'S VERDICT AT ALL.

BUT CERTAINLY THERE'S A VAST

CASE LAW EXCUSE ME THAT
TALKS ABOUT OFFICER BEING
ABLE TO IDENTIFY SUBSTANCES
AS NARCOTICS.

>> THANK YOU VERY MUCH.
YOU'VE EXHAUSTED YOUR TIME.
THE COURT WILL TAKE IT'S
MORNING RECESS.
FOR 15 MINUTES.

>>