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David Eric Hobbs v. State of Florida

SC08-615

>> THE NEXT CASE ON THE COURT'S CALENDAR IS, HOBBS VERSUS STATE.

PARTIES READY TO PROCEED?

>> YES, WE ARE, JUSTICE.

JUSTICE I REGRET HAVING TO FOLLOW MR. ^KURITZ, I KNOW HIM FROM JACKSONVILLE.

HE IS CERTAINLY YOUNG AND WELL-INFORMED.

I BELIEVE IT WAS FAULKNER WHO SAID THE BLOOD IN YOUNG MEN FLOWS MUCH MORE SWIFTLY THAN IT DOES AS WE GROW OLDER.

>> AMEN.

>> BUT FOLLOWING RICHARD GIVES ME THE OPPORTUNITY TO KNOW WHAT PROFESSIONAL YOUNG MEN AND WOMEN CAN BE LIKE IN THE PRACTICE OF LAW HERE IN FLORIDA AND I APPLAUD HIM.

I TRULY DO.

MY NAME IS DALE CARSON.

I'M HERE TODAY REPRESENTING THE PETITIONER, DAVID HOBBS, BEFORE THIS COURT.

THERE IS A CONFLICT AS THE JUSTICES ALREADY KNOW BETWEEN THE FIRST DCA --

>> AS I UNDERSTAND YOUR POSITION, YOU DON'T CONTEST THE FACT THAT THE LEGISLATURE CAN RESTRICT THE CORPUS DELICTI RULE?

>> NO, YOUR HONOR.

>> OKAY.

SO, THIS IS STRICTLY A MATTER OF CONSTITUTIONAL, OF STATUTORY CONSTRUCTION?

>> IN A SENSE, YOUR HONOR, BUT I BELIEVE THE UNDERLYING ISSUE THAT IS BROUGHT BEFORE THE COURT TODAY IS A BIT BROADER THAN THAT.

THIS PARTICULAR STATUTE, 925.65, RELATES TO SEX CRIMES.

SEX CRIMES, INDIVIDUALS, MY CLIENT'S CHARGED WITH THOSE OFFENSES, ARE MOST VILIFIED OF INDIVIDUALS IN OUR SOCIETY AND THE RESULT OF THAT IS --

>> BUT THE WAY THAT WE'RE TO, AS I LOOK AT THESE CASES, THE, THE WAY THAT THE DISTRICT COURTS DEALT WITH THEM WAS ON MATTERS HAVING TO DO WITH CONSTRUING THE STATUTE AS TO WHETHER THE WORDS IN THE STATUTE, FACTORS BUT NOT LIMITED TO, MEAN THAT THERE CAN BE OTHER MATTERS THAT ARE NOT CONTEMPORANEOUS WITH THE ACTUAL EVENT.

THAT CAN BE A BASIS UPON WHICH THE CORPUS DELICTI RULE IS DISPENSED.

I MEAN THAT WAS THE ISSUE IN THE DISTRICT COURTS, CORRECT?

>> MY READING THAT STATUTE IS THAT THE EVENTS WHICH CAUSED THE UNAVAILABILITY OF THE VICTIM WITNESS WOULD HAVE TO BE CONTEMPORANEOUS WITH THE EVENTS WHEN THEY OCCURRED.

SO IN THAT REGARD, THAT IS SOMEWHAT DIFFERENT THAN WHAT THE JUSTICES STATED.

IN OTHER WORDS, THE EVENTS THAT CONTROL HER UNAVAILABILITY OR HIS UNAVAILABILITY, RELATE SPECIFICALLY TO THE EVENTS THAT SURROUND THE INCIDENT ITSELF.

SO THEY COULDN'T SOME YEARS LATER, SHE COULDN'T BE IN A TRAFFIC ACCIDENT, THE VICTIM, NOT BE ABLE TO TESTIFY LATER --

>> IN OTHER WORDS, YOUR POSITION IS THAT THIS, THAT THE LEGISLATURE DID NOT DO AWAY WITH THE USE OF CORPUS DELICTI IN A SITUATION IN WHICH THE STATE CAN'T PROVE ITS CASE BECAUSE THE VICTIM RECANDED?

>> THAT IS CORRECT, JUSTICE.

>> OKAY.

NOW BUT, WHAT DO YOU MAKE OF THE FACT THAT THE LEGISLATURE SETS OUT THAT THE FACTORS, EXPRESSLY, THAT THE FACTORS IN

THE STATUTE ARE NOT TENDED TO BE INCLUSIVE OF ALL THE FACTORS THAT ARE TO BE CONSIDERED?

>> OUR POSITION, JUDGE, IS THAT, THE EJUSDEM GENERIS OF THAT LIST, BUT NOT LIMITED TO, MUST BE CONSISTENT GENERALLY WHAT IS LISTED BELOW.

AND IN THOSE LISTS BELOW, IT'S A DISABILITY THAT PREVENTS HER OR HIM FROM TESTIFYING, IT IS NOT IN FACT A RECANING OF THE INITIAL STATEMENT.

>> WHY IS IT, I MEAN IN EITHER SITUATION, THE STATE CAN NO LONGER PRESENT THIS WITNESS? AND I GUESS, YOUR ARGUMENT WOULD BE, WELL, IF THE LEGISLATURE DIDN'T INTEND TO HAVE VICTIM RECANATION BE PART OF THE REASON, IT WOULD HAVE INCLUDED IT.

>> THAT IS CORRECT, JUSTICE.

>> I KNOW THAT'S YOUR ARGUMENT BUT IT DOESN'T SEEM THAT IT MAKES A LOT OF SENSE IF YOU'RE GOING TO CHANGE CORPUS DELICTI, THAT, YOU KNOW, THE INABILITY NECESSARILY HAS TO RELATE TO DISABILITY.

IT COULD BE ANY REASON THAT THE STATE CAN'T ESTABLISH ITS ELEMENTS INDEPENDENTLY.

HERE AGAIN, WE'RE DEALING WITH, THERE IS A CONFESSION, NO QUESTION.

SO WE'RE JUST TALKING ABOUT WHAT IS GOING TO CORROBORATE THAT CONFESSION, CORRECT?

>> I WOULD NOT CONCEDE, YOUR HONOR, THERE IS VOLUNTARY CONFESSION.

I WOULD CONCEDE THERE IS PROTRACTED INTERVIEW OF MR. HOBBS, BY THE GOVERNMENT AND THAT ULTIMATELY HE DID MAKE STATEMENTS WHICH COULD BE CONSTRUED AS A CONFESSION.

>> THAT IS, THE STATE WILL PUT THAT ON ASSUMING IT GOES TO TRIAL.

>> YES.

>> IT WILL PUT THOSE STATEMENTS ON AS INCUHPATORY STATEMENTS.

>> YES, THEY COULD, JUDGE.
THE PROBLEM LAW ENFORCEMENT HAS
IN THESE TYPES OF CASES IS
THAT, AND YOU ASKED JUSTICE
WELLS, WHY IT WAS, PERHAPS THAT
THE LEGISLATURE PROMOTED 92.565
AND WHY I CAN'T PRETEND TO GET
IN THE HEAD OF THE LEGISLATURE,
I WILL SAY THAT DURING THAT
PERIOD OF TIME WHEN THAT LAW
WAS PASSED, THE FBI, ONE AMONG
THEM WERE TEACHING IN THE
COUNTRY SEX CRIMES
INVESTIGATIONS TO A GREAT MANY
LOCAL LAW ENFORCEMENT AGENCIES.
AND IT CAME TO THE FORE THAT WE
BELIEVE FOR MANY YEARS, TOO
MANY OF THESE CASES WERE JUST
PASSING UNDERNEATH THE RADAR
AND WERE NOT PROSECUTED SIMPLY
BECAUSE OF CIRCUMSTANCES --

>> THEY DID IT NOT ONLY IN
RESPECT TO THE SEXUAL CRIMES,
THEY DID IT IN RESPECT TO MONEY
LAUNDERING, FOR INSTANCE.

>> THAT IS CORRECT, JUSTICE.

>> AND I MEAN THE LEGISLATURE
LIMITED IT, THE MONEY
LAUNDERING LIMITATION DIDN'T
CONTAIN THIS LANGUAGE ABOUT
OTHER FACTORS I UNDERSTAND.
REAL THING THAT THE LEGISLATURE
DID WAS TO, YOU KNOW, FOLLOW
THE OLD 1954 CASE OUT OF THE
U.S. SUPREME COURT.

>> YES, SIR.

>> MAKE THE TRUSTWORTHINESS AS
OPPOSED TO THE CORPUS DELICTI.

>> MAY I ADDRESS THAT VERY
ISSUE?

THAT IS VERY COGENT, JUDGE.
THE FEDERAL SYSTEM IS ENTIRELY
DIFFERENT FROM THE STATE
SYSTEM.

IN THE FEDERAL SYSTEM WE'RE NOT
PERMITTED TO ARREST ANYONE
UNLESS THE U.S. ATTORNEY'S
OFFICE CONCURS WITH THE
PROSECUTION.

ERGO, THERE ARE PEOPLE WHO ARE
OUT THERE, WHO HAVE NOT BEEN
ARRESTED, WHO THE STATE OR
GOVERNMENT, FEDERAL GOVERNMENT
IS STILL CONSIDERING CHARGING

BUT YOU ACTUALLY HAVE THE U.S. ATTORNEY'S OFFICE AS A SECOND AUTHORITY, SPEAKING ON WHETHER OR NOT THIS INDIVIDUAL SHOULD BE PROSECUTED.

AND HE CANNOT BE ARRESTED UNTIL THE U.S. ATTORNEY'S OFFICE SAYS, YEAH, WE WILL PROSECUTE THAT CASE. THAT IS WHOLLY DIFFERENT THAN WHAT WE HAVE IN EVERYDAY LAW ENFORCEMENT IN THE COMMUNITY. POLICE OFFICERS ARREST FIRST. ONCE THEY ARE ARRESTED THEY CONFER WITH THE STATE ATTORNEY AND TRY TO PUT TOGETHER A CASE.

BUT THE INDIVIDUAL THAT HAS BEEN ARRESTED, I CAN ASSURE YOU, JUSTICE, IF YOU'RE ARRESTED FOR A SEX CRIME LIKE THIS, YOUR LIFE ENDS RIGHT THEN, JUST WITH THE ARREST.

>> WHAT'S THAT GOT TO DO WITH CORPUS DELICTI?

YOU DON'T HAVE TO HAVE A CORPUS DELICTI TO HAVE PROBABLE CAUSE FOR AN ARREST, DO YOU?

CAN'T THE POLICE ARREST SOMEBODY JUST BASED ON, IF HE COMES IN AND CONFESSES TO SOMETHING?

WOULDN'T THAT GIVE THEM REASONABLE BELIEVE, PROBABLE CAUSE TO MAKE THE ARREST?

>> WELL, CORPUS DELICTI, VALUE OF IT TO US, IS THAT IT PREVENTS SOMEONE WHO'S NOT IN A RIGHT MIND, OR A MISTAKE, OR OFFICIAL FABRICATION.

WHAT IS OFFICIAL FABRICATION? OFFICIAL FABRICATION CAN BE POLICE GET YOUNG LADY WITNESS WHICH THEY DID IN THE HOBBS CASE, THEY INTERVIEW HER, THEY DETERMINE SHE IS IN TROUBLE WITH THE POLICE.

HER FATHER CALLED.

ONE THING THIS WOMAN COULD SAY AND DID IN FACT SAY TURN THE TABLES, THE FACT SHE WAS FIGHTING WITH HER FATHER OVER A DENTIST, DENTAL ISSUE, WAS TO SAY MY FATHER MOLESTED ME. NOT ONLY DID SHE SAY THAT BUT

THEY KNEW THE POLICE DID, THAT HE HAD JUST GONE TO WORK AND WHERE DID HE GO TO WORK? HE WENT TO WORK AT DISNEY. PUTTING THOSE THINGS TOGETHER THAT INSTITUTES A GROUP WE HAVE ESTABLISHED HERE IN THE COMMUNITY CALLED THE SEX CRIMES UNIT WITH THE POLICE DEPARTMENT, AND THE SEXUAL ASSAULT DIVISION OF THE STATE ATTORNEY'S OFFICE.

THOSE TWO COLLECTIVELY MAKE THE DECISION TO PROSECUTE.

AND WHAT I'M ARGUING IS THAT THE PROBLEM WE HAVE IN GETTING TO THE TRUTH OF THESE MATTERS, WE DO NOT KNOW PRECISELY WHAT QUESTIONS WERE ASKED OF THE YOUNG LADY.

WE DON'T KNOW.

>> THE PROBLEM WE HAVE, MR. CARSON, IS THE FACT THAT, ANSWERED MY QUESTION AT THE BEGINNING THAT THE LEGISLATURE HAD THE POWER TO DO WHAT IT DID IN PASSING THIS STATUTE.

AND THE STATUTE DEALS WITH THE FACT THAT THE, THEY HAVE DETERMINED THAT THE CORPUS DELICTI RULE, WHICH THIS COURT FOLLOWED FOR MANY, MANY YEARS, IS NO LONGER GOING TO BE THE RULE IN THESE KIND OF CASES. BUT RATHER IT'S GOING TO BE A TEST OF TRUSTWORTHINESS.

>> YES, YOUR HONOR.

THE TRUSTWORTHINESS ISSUE, IN ORDER TO TERM DETERMINE TRUSTWORTHINESS.

YOU HAVE TO THINGS SUCH AS RELIABILITY.

THE STANDARD I THINK WOULD BE INFORMANTS.

HOW DO WE DETERMINE WHETHER AN INFORMANT IS TELLING US THE TRUTH TO GET A SEARCH WARRANT? THERE ARE CERTAIN INDICIA RELIABILITY.

THE COURT KNOWS WHAT THEY ARE. THEY ARE RELIABILITY OF PREVIOUSLY FURNISHED INFORMATION.

CERTAINLY THAT COULD NOT HAPPEN IN THIS CASE BECAUSE THIS YOUNG

LADY DID NOT FURNISH PREVIOUS INFORMATION.

THERE WOULD BE INFORMATION OF SUCH SPECIFICITY THAT AN INDIVIDUAL WOULD BELIEVE WHAT THE WOMAN WAS SAYING OR THE INFORMANT WAS SAYING, SUCH THAT THEY COULD THEN GO OUT AND VERIFY SOME OF THAT INFORMATION PROVIDED BY THE INFORMANT AND THEY WOULD HAVE SOME RATIONALE.

>> IN THIS CASE THE FIFTH DISTRICT SAID TO THE TRIAL JUDGE, YOU GO BACK AND MAKE THOSE DETERMINATIONS. BECAUSE WHAT THIS TRIAL JUDGE DID WAS FOLLOW THE FIRST DISTRICT, WHICH THE TRIAL JUDGE HAD TO DO, AND MADE A DETERMINATION WITHOUT FOLLOWING THE WHAT HA HAD TO BE FOLLOWED IN THE STATUTE TO DETERMINE WHETHER THE STATE COULD PROVE THE ELEMENTS OR MAKE A DETERMINATION AS TO TRUSTWORTHINESS. SO WE'RE SORT OF PRELIMINARY ON THAT ISSUE.

>> YES, JUDGE. IN THE HOBBS CASE, IF YOU'LL RECALL, SHE WAS CONFRONTED BY POLICE. IN THIS DISCUSSION SHE SAID SHE HAD BEEN ASSAULTED. SHE WAS ASKED TO TAKE A PELVIC BY SEX CRIMES. SHE REFUSED.

>> YOU'RE NOW GOING BACK, IF YOU AGREE WITH WHAT JUSTICE WELLS SAID, IF THE FIFTH DISTRICT -- IT'S NOT THE END OF THE LINE AS FAR AS --

[INAUDIBLE]

IS THAT CORRECT?

OR AM I --

>> THAT IS CORRECT, JUSTICE.

>> SO THE ISSUE HERE ABOUT ARGUING HOW RELIABLE RECANTING ORIGINAL STATEMENT IS NOT BEFORE US.

I WANT TO FOCUS, MAKE SURE I UNDERSTAND.

WHAT'S BEFORE US IS WHETHER THE

STATE, THROUGH THIS
LEGISLATURE, HAS ABROGATED THE
CORPUS DELICTI RULE SO THAT
INABILITY TO PROVE THE,
INDEPENDENCE OF THE ELEMENTS OF
THE CRIME, WHICH WOULD BE
ESTABLISHED HERE BY THE, QUOTE,
CONFESSION INCULPATORY
STATEMENTS COULD COME, THEY
COULD USE THAT CONFESSION
WITHOUT HAVING TO HAVE A,
ANOTHER, SOMETHING ELSE TO, TO
ESTABLISH RELIABILITY ON IT AT
TRIAL.

>> THAT'S CORRECT, JUSTICE.

>> AT TRIAL, ASSUME THAT'S
CORRECT.

AT TRIAL THEN WHAT WOULD
HAPPEN?

THE STATE WOULD PUT ON THE
INCULPATORY STATEMENTS OF THE
FATHER.

>> YES.

>> OKAY.

THERE WOULD BE AN ISSUE THEN
OF, WHETHER AT THE END OF THAT
CASE, WHETHER THEY HAD PROVEN
ALL THE ELEMENTS BEYOND A
REASONABLE -- OR GO FORWARD OR
WHETHER BE A JOA.

THAT WOULD BE ANOTHER CHANCE
FOR TO YOU SAY THAT'S NOT
ENOUGH, CORRECT?

>> THAT'S CORRECT, JUDGE.

>> YOU PUT ON YOUR DEFENSE.

PRESUMABLY YOU PUT ON NOW, THE
DAUGHTER AND THEN SHE SAYS NO,
THIS NEVER HAPPENED.

I MADE IT UP.

I WAS MAD.

IS SHE CROSS-EXAMINED THEN WITH
THIS RECANTED STATEMENT?

>> CERTAINLY.

>> THAT RECANTED STATEMENT, HER
ORIGINAL STATEMENT DOESN'T COME
IN INDEPENDENTLY, CORRECT?
OR DOES IT?

>> I SUPPOSE INITIALLY IT WOULD
COME IN THROUGH THE POLICE
REPORTING AND BECAUSE THEY DID
TAKE A STATEMENT FROM HER, IT
WOULD BE PART OF THE RECORD.

>> IT'S NOW RECANTED SOME
THAT'S ANOTHER ISSUE I HAD

REALLY IS.

WOULD EITHER BE, IT'S NOT ONE OF THOSE THINGS, IT WOULD BE INDEPENDENTLY ADMISSIBLE BECAUSE IT'S NOW RECANTED. I GOT TO GO BACK ON THAT ONE. WE'RE ONLY HERE AGAIN, TO SEE WHETHER THIS CASE CAN EITHER, WHETHER THE INQUIRY CAN BE MADE UNDER THE STATUTE IF WE DECIDE THAT THE STATUTE DOES CONTEMPLATE THAT INABILITY TO ESTABLISH INDEPENDENTLY THE ELEMENTS, INCLUDES A RECANTED STATEMENT.

>> THAT IS TRUE.

THAT IS ULTIMATELY THE DECISION.

>> THIS OTHER THING ABOUT WHAT THE U.S. ATTORNEY'S OFFICE DOES, IT'S VERY INTERESTING BUT, YOU KNOW, WE'RE HERE TO SEE WHAT THE LEGISLATURE INTENDED WHEN THEY PASSED THIS STATUTE.

AND THAT'S BASED ON THE FACT THAT THERE IS DEROGATION OF THE COMMON LAW.

IT MAY BE THAT IT'S RULE OF REMEDY.

YOU LOOK AT WHAT THE, WHAT DO YOU CALL IT EJUSDEM GENERIS, WHATEVER THAT OTHER LATIN PHRASE.

THESE ARE SIMILAR, HAVE TO DO WITH DISABILITIES AND THAT'S HOW WE GET TO WHETHER IT IS OR ISN'T THE LEGISLATIVE INTENT IN THIS CASE.

>> UNDERSTAND THAT, JUSTICE. I'M MERELY TRYING TO POINT OUT FROM MY CLIENT'S PERSPECTIVE, THE IMPACT OF PERMITTING THE GOVERNMENT TO GO FORWARD WITH LIMITED EVIDENCE, PARTICULARLY IN IT THIS CASE WHAT THEY WERE PERMITTED TO DO OR ARE YOU SIGNING OFF ON, THEY CONDUCTED WHAT I CONSIDER NOT A VERY THOROUGH INVESTIGATION.

>> IF THE LEGISLATURE, IF THIS IS ALLOWING THINGS TO HAPPEN THAT ARE DEFENSE PUBLIC POLICY OF THE STATE, ARREST FOR SEXUAL

OFFENSE IS HORRIBLE THING, AS
ARREST FOR ANY CRIME WHICH A
PERSON DID COMMIT.

WE'RE NOT PART, THE EXECUTIVE
BRANCH DECIDES WHETHER TO
PROSECUTE.

THE LEGISLATIVE BRANCH DECIDES
WHETHER THERE'S A CRIME.

THEN WE DECIDE WHAT WE'VE
DECIDED.

ALL WE HAVE DECIDED WHAT THE
INTENT IS OF THE STATUTE.

I JUST DON'T WANT TO, WE DO
HAVE THREE BRANCHES, TO BE
MIXING UP OUR ROLE IN THIS WITH
THE OTHER TWO BRANCHES.

>> UNDERSTAND THAT, JUSTICE.

I, HOWEVER, CERTAINLY YOU KNOW
THIS, JUDGE, KNOW THAT THE
IMPACT, ALTHOUGH IT MAY SEEM
MINOR TO THE COURT, IS
SIGNIFICANT OBVIOUSLY --

>> IT DOESN'T SEEM MINOR.

THE COURT, SEEMS MAJOR TO THE
COURT.

WHETHER IT'S SMALLEST ISSUE OR
BIGGEST ISSUE WE STILL ANALYZE
STATUTORY CONSTRUCTION THE SAME
WAY.

>> I HAVE PRESENTED THAT, THE
LEGAL ARGUMENTS FOR THAT, JUDGE
IN MY PLEADINGS TO THE COURT.

>> DO YOU AGREE WITH THE
GOVERNMENT THAT IF WE FIND SOME
AMBIGUITY THAT NEEDS
CONSTRUCTION WITHIN THE
STATUTE, THAT THE LEGISLATIVE
HISTORY WOULD CONFIRM THAT IT'S
WHAT IS DESIGNED BY THE STATUTE
IS NOT NECESSARILY JUST TO
LIMIT IT TO THOSE AREAS OF
DISABILITY BUT IS TO REPLACE
THE CORPUS DELICTI WITH THE
TRUSTWORTHINESS, IF WE LOOK AT
THAT?

>> I WOULD DISAGREE WITH THAT.

>> YOU DISAGREE?

TELL ME WHY.

>> I DISAGREE WITH THAT BECAUSE
I BELIEVE THE CORPUS DELICTI
CONTEMPLATES A LARGER AND
BROADER SPECTRUM.

IT RESTRICTS THE CONDUCT OF THE
POLICE SO THEY CAN'T SIMPLY

OFFICIALLY FABRICATE, AS THEY MAY HAVE DONE HERE.

I'M NOT SUGGESTING THAT THE POLICE DID ANYTHING WRONG, FAR FROM IT.

BUT WHAT I AM SUGGESTING BY NOT FORCING THE GOVERNMENT TO COME UP WITH THE CRIME IN ADVANCE OF THE CONFESSION, WHAT WE'RE DOING IS PERMITTING THEM TO PERFORM --

>> BUT YOU SAID THAT THE LEGISLATURE COULD, COULD, PASS THE STATUTE?

SO I'M GOING TO THE LEGISLATIVE HISTORY ON WHAT IT DID PASS. AND, IT COMES DOWN TO THE IDEAS THAT, AM I MISREADING THE LEGISLATIVE HISTORY, OR DO YOU AGREE WITH THE GOVERNMENT THAT IT DID STATE IN THAT HISTORY THAT WE'RE GOING TO REPLACE IN, THE CORPUS DELICTI WITH TRUSTWORTHINESS DOCTRINE?

I THINK IT'S WHERE JUSTICE WELLS WAS GOING INITIALLY, DOES THE LEGISLATIVE HISTORY INDICATE THAT?

>> I'M AWARE OF THAT, JUSTICE.

>> SO YOU DO AGREE WITH THAT?

>> BUT I DO AGREE WITH THE FIRST DCA'S VERSE OF THE EVENTS, JUDGE AND COME DOWN, BECAUSE THE RESTRICTIONS ON THE FORCE OF GOVERNMENT ARE IN PLACE TO PROTECT US.

>> YOU'RE ARGUING THAT WE MAY AGREE WITH YOU BUT WE DIDN'T HAVE THE POWER TO VOTE ON THAT STATUTE.

>> YES, JUDGE.

>> WE'RE TRYING TO DETERMINE ON PULLING ALL THOSE THESE THINGS TOGETHER, WHAT AS JUSTICE PARIENTE INDICATED TO STAY WITHIN WHAT OUR POWER IS. WHETHER WE AGREE WITH IT OR NOT IS REALLY NOT THE ISSUE THIS MORNING.

WHAT WE HAVE TO ADDRESS IS WHAT DOES THE STATUTE SAY, WHAT DOES IT MEAN, WHAT IS INTENT OF THE LEGISLATURE?

>> I HAVE EXPLAINED THAT, I

BELIEVE, THAT ANYTHING IN DEROGATION OF COMMON LAW MUST BE STRICTLY CONSTRUED.

IF ONE STRICTLY CONSTRUED THAT STATUTE, 92.565, ONE IS LEFT WITH THE FIRM IMPRESSION THAT PRESENTED TO THE COURT THAT IT CANNOT TAKE THE PLACE OF A VICTIM'S RECOUNTING --

>> WHAT, HOW DO YOU READ THE STATUTE, THE LANGUAGE IN THE STATUTE THAT TALKS ABOUT, IF YOU CONSIDER THESE FACTORS AS TO WHETHER OR NOT THE STATE CAN PROVE ITS CASE WITHOUT THIS INFORMATION BUT IS NOT LIMITED TO?

WHAT DOES THAT PHRASE MEAN? BECAUSE AS I UNDERSTAND YOUR ARGUMENT, IT READS THAT PHRASE OUT OF THE STATUTE.

>> BUT NOT LIMITED TO THINGS OF THAT SAME FEATHER, YOUR HONOR. NOT THINGS BEYOND AND OUTSIDE THE SCOPE.

>> STATUTE DOESN'T SAY THAT. IT DOESN'T SAY NOT LIMITED TO THIS THINGS ARE SIMILAR TO ONE, TWO AND THREE, OR WHAT IS IT, A, B AND C.

>> YES, YOUR HONOR. EJUSDEM GENERIS IS THE MECHANISM FOR LIMITING THAT BIT OF INFORMATION AND THAT IS CONSTRUCTIVELY CONSTRUING THE STATUTE.

IF YOU DO THAT YOU'RE LEFT WITH A THE FACT THAT IT DOESN'T BROADLY, IT DOESN'T BROADLY ALLOW THE STATE TO SIMPLY BRING A CASE WHEN THEY CAN'T MEET CORPUS DELICTI.

THERE IS VERY SELECT GROUP. AND THEY ARE DISABILITY AT THE TIME OF THE OCCURRENCE, NOT SUBSEQUENTLY BUT AT THE TIME OF THE OCCURRENCE.

THEN THE GOVERNMENT CAN BRING THAT FORTH.

ALL OF THESE CASES, IT OCCURRED, THE EVENTS, RECOUNTING DIDN'T OCCUR AT THE TIME OF THE EVENT. IT OCCURRED SUBSEQUENTLY.

QUITE FRANKLY, IT IS TO OUR BENEFIT TO HAVE THE MATTER, THE TRUTH COME OUT BEFORE THE CRUCIBLE OF CROSS-EXAMINATION. AND THAT CERTAINLY WHAT HAPPENED HERE.

OUR POSITION NOT THAT SHE TOLD THE TRUTH INITIALLY AND THEN RECANTED.

IT IS INITIALLY SHE LIED IN OR THE ORDER TO PROTECT HER OWN PERSONAL INTERESTS BECAUSE IT WAS PRUDENT FOR HER TO DO THAT THEN SHE ULTIMATELY, THE NEXT DAY, I MIGHT ADD, TOLD THE TRUTH.

>> NOW THAT'S YOUR POSITION. I WOULD IMAGINE THAT THE STATE IS SAYING, SHE TOLD THE TRUTH INITIALLY.

AND FOR WHATEVER REASON, THE FAMILY GETS TO HER AND SAYS, LOOK, YOU DON'T WANT THIS TO HAPPEN TO YOUR FATHER, BLAH, BLAH, AND THEN SO SHE RECANT BASED ON THAT.

>> ORDINARILY THAT WOULD BE CORRECT, JUSTICE BUT IN THIS CASE SHE WAS TAKEN AWAY BY THE STATE.

THERE IS NO OTHER FAMILY AVAILABLE TO HER.

AND THIS WAS --

>> MAYBE SHE JUST THOUGHT ABOUT IT AND SAID I DON'T WANT THIS TO HAPPEN TO MY FATHER.

THIS IS A VERY SERIOUS KIND OF EVENT.

>> THAT IS CORRECT, JUSTICE. IT COULD BE EITHER.

>> I SEE THAT YOU'VE USED YOUR TIME.

WE WILL LET YOU HAVE A MINUTE OR SO FOR REBUTTAL.

>> THANK YOU, JUSTICE.

>> MAY IT PLEASE THE COURT.

MY NAME IS PAMELA KOLLER.

I REPRESENT THE STATE OF FLORIDA IN THIS APPEAL.

THE STATE'S POSITION THERE IS

NO NEED TO TURN TO ANY

STATUTORY RULES OF

INTERPRETATION.

PLAIN MEANING OF THE STATUTE IS

OBVIOUS.

>> THIS IS MY PROBLEM.

IT MAY BE A VERY GOOD IDEA,
ESPECIALLY IN THESE CASES FOR
THE LEGISLATURE TO SUBSTITUTE
TRUSTWORTHINESS FOR CORPUS
DELICTI.

THAT MAY MAKE A LOT OF SENSE.
MY PROBLEM, AND I UNDERSTAND
INCLUDING DOESN'T SAY, ONLY
THAT.

BUT, THEY DID GIVE A LIST.

>> CORRECT.

>> AND SINCE RECANTED TESTIMONY
BY VICTIMS, WHETHER IT'S
DOMESTIC VIOLENCE WHERE IT'S A
HUGE PROBLEM, LET'S SAY.

>> SURE.

>> SEXUAL ABUSE, FAMILY
MEMBERS, HUGE PROBLEM.

THAT WOULD SEEM TO BE AT THE
TOP OF THE LIST AS TO RECANTED
TESTIMONY AND THEN THE JUDGE
DECIDES TRUSTWORTHINESS.

I'M VERY CONCERNED, GIVEN THAT

-- I DON'T SEE PLAIN LANGUAGE

BEING THAT IT'S PLAINLY

RECANTED TESTIMONY IS THERE.

IF THEY HAD SAID GENERALLY,

THAT THE JUDGE CAN CONSIDER, IF

THEY'RE ONLY DOING, YOU KNOW,

BEFORE THEY PUT A CONFESSION

IN, SHALL EXAMINE THE TOTALITY

OF THE CIRCUMSTANCES AS TO WHY

THE STATE CANNOT INDEPENDENTLY

DO IT.

AND THEN BASED ON THAT, IF IT'S

OTHERWISE, IF ALL THE OTHER

CIRCUMSTANCES LEADS TO TRUST

WORTHINESS, THEN THE

TRUSTWORTHINESS AND THEN

CONFESSION CAN COME IN.

THEY MAY GO BACK NEXT MARCH AND

SAY THAT'S WHAT WE WANT TO DO.

I'M CONCERNED THAT THE LANGUAGE

THEY USED AND THE LIST, THOSE

ELEMENTS ARE ALL TYPES OF

DISABILITIES.

SO THAT'S, WHERE MY CONCERN IS

ON STATUTORY CONSTRUCTION WHEN

YOU HAVE DEROGATION OF THE

COMMON LAW, IS THAT RULE OF

LENITY, YOU HAVE A LIST THAT

DOESN'T, WOULD BE ALL THOSE

OTHER THINGS ARE THE LEAST COMMON.

THAT IS SOMEONE BEING DISABLED OR, MOST COMMON IS, THAT THEY RECANT.

THAT IS VERY MOST.

THAT WOULD BE, IN MY VIEW, AT THE TOP OF THE LIST IF THAT'S WHAT THEY HAD INTENDED BASED ON THE LANGUAGE THAT THE LEGISLATURE USED.

>> NUMBER ONE, I THINK WHAT THEY DID HERE, THEY JUST INSERTED THE DIFFERENT TYPES OF SEXUAL BATTERY UNDER 94.001. IF YOU LOOK AT STATUTE, TALKS ABOUT PHYSICALLY INCAPACITATED. MENTALLY INCAPACITATED UNDER THE AGE OF 12.

THEY THREW THOSE IN BECAUSE THOSE ARE DIFFERENT TYPES OF SEXUAL BATTERY.

THEY DESCRIBE WHAT PHYSICALLY CAN PASS TATED IS HIGHER CRIME BECAUSE THE VICTIM AT THE TIME WAS --

>> MAYBE THEY WERE CONSIDERING IN THOSE CASES WHERE YOU'RE UNDER 12, PHYSICALLY OR MENTALLY, THEY NEED THE HELP OF OTHER TRUSTWORTHINESS WHEREAS ALL THE OTHER ONES, I MEAN TO ME WHAT YOU JUST SAID ACTUALLY HELPS THE ARGUMENT OF --

>> HOW IS LESS THAN 12 YEARS OF AGE BEING INCAPACITATED OR MENTALLY INFIRMED?

>> THAT IS ANOTHER CLASS OF SEXUAL CRIME.

>> RIGHT.

>> WHERE SOMEONE UNDER 12, NOW WE'RE GOING TO LOOK AT REALLY THE WHOLE CIRCUMSTANCES. BUT FOR THE OTHER ONES THAT ARE OVER 12 AND ARE NOT PHYSICALLY OR MENTALLY INCAPACITATED WE'RE NOT GOING TO BE CHANGING THE CORPUS DELICTI RULE AS TO THEM. THAT'S ACTUALLY MAKES, I DON'T KNOW THAT YOU THOUGHT, IF YOU THOUGHT THAT HELPED YOU, I'M NOT SURE HOW IT HELPS YOU?

>> BECAUSE IF YOU LOOK AT LEGISLATIVE HISTORY, THEY THREW

IN THIS LANGUAGE IN ONE DAY.
WENT ALONG WITH THIS LANGUAGE
ALL OF SUDDEN THEY THREW THIS
LANGUAGE IN. LOOKS LIKE THEY
LOOKED AT THE SEX BAT STATUTE
AND WE'LL --

>> CHANGE COMMON LAW OF SEVERAL
HUNDRED YEARS BASED ON SOMEONE
DAY THING ISN'T CLEAR ON ITS
FACE WHAT THEY WERE DOING?

>> I THINK IT'S VERY CLEAR.
IF YOU LOOK AT LEGISLATURE THIS
IS NON-INCLUSIVE LIST.

THEY SAY THAT OVER AND OVER IN
THE LEGISLATIVE HISTORY.
THEY MAKE IT VERY CLEAR.

>> JUSTICE CANTERO WAS HERE TO
TELL YOU, WE FIRST LOOK AT
LANGUAGE WHAT IS USED NOT WHAT
A COUPLE OF PEOPLE --

>> SURE.

I UNDERSTAND THAT IS NOT, RULE
OF LENITY IS NOT LOOKED AT,
RULE OF INTERPRETATION IF THE
LANGUAGE ITSELF IS CLEAR OF THE
STATUTE.

I THINK ALL THEE DID WAS THROW
IN SOME EXAMPLES THEY SAY, MAY
BE OF, RELEVANT, BUT ARE NOT,
BUT ARE NOT LIMITED TO.

>> ARE THEY REALLY EXAMPLES OF?
BECAUSE I'M, LET'S TAKE A
JUDGE, FOR INSTANCE, THAT GETS
ONE OF THEM, THE STATE
ADVOCATES, USE OF THIS STATUTE.
STATE ARGUES TO THE TRIAL
JUDGE, WELL, THE STATUTE SAYS,
UNDER 12.

AND WE THINK THE LEGISLATURE
MADE A MISTAKE THERE BECAUSE
REALLY IT SHOULD BE UNDER 13,
OR UNDER 14.

THE JUDGE LISTENS, THE SAYS,
YOU KNOW, YOU'RE RIGHT.
I'VE DEALT WITH A LOT OF
CHILD WITNESSES OR WHATEVER.
UNDER 12 BUSINESS IS JUST
TOTALLY ARBITRARY.

AND, WHAT I'M GOING TO DO, I'M
GOING TO INTERPRET THIS SAID
THEY HAVE, EXCLUSIVE LANGUAGE
AND I'M GOING TO BOOST IT UP TO
UNDER 14.

NOW, HERE THE LEGISLATURE HAS

EXPLICITLY WRITTEN IN, UNDER
12.

JUDGE IS SAYING, NO, I KNOW
BETTER.

I'M GOING TO DO IT UNDER 14.

I HAVE A LOT OF DIFFICULTY WITH
THAT BECAUSE IT SEEMS TO ME
THAT THE JUDGE WOULD BE DOING
WOULD BE REALLY AMENDING THE
STATUTE, SUBSTITUTING THE
JUDGE'S.

BECAUSE LEGISLATURE KNOW HOW TO
SAY UNDER 12 OR UNDER 13, OR
UNDER 14, OR WHATEVER.

WHY WOULD THEY GO THROUGH AN
EXERCISE OF SAYING UNDER 12
WHEN THEY REALLY MEANT ANY
CIRCUMSTANCE AND THEN JUST
APPLY THE TEST?

WHAT WOULD YOUR VIEW BE IF THE
TRIAL JUDGE SAID, WELL, I THINK
IT OUGHT TO BE UNDER 14 AND
THAT'S WHAT I'M GOING TO DO.
I'LL GOING TO IGNORE UNDER 12
AND I'M GOING TO EXPAND IT
UNDER 14.

DOES THE STATE SAY, YEAH, THAT
IS OKAY BECAUSE IT'S EXPANSION
UNDER THE LANGUAGE SAYS NOT
LIMITED TO.

IS THAT THE STATE'S POSITION?

>> CORRECT.

FACTORS --

>> EVEN THOUGH THE LANGUAGE OF
THE STATUTE EXPRESSLY SHOWS THE
LEGISLATURE PICKED OUT UNDER
12?

>> BUT BEFORE THAT LANGUAGE THE
LEGISLATURE ALSO PUT IN,
FACTORS WHICH MAY, MAY, BE
RELEVANT IN TERM DETERMINING
WHETHER THE STATE UNABLE TO
SHOW EXISTENCE OF EACH ELEMENT
OF THE CRIME BUT ARE NOT
LIMITED TO FOLLOWING.

THEY MADE IT VERY CLEAR.

WE'RE JUST THROWING OUT SOME
EXAMPLES BUT THIS IS CLEARLY
NOT AN EXHAUSTIVE LIST.

IN THAT, AND OF COURSE I MEAN
THE STATE DOESN'T GET TO USE
THIS IN EVERY SEX CRIME CASE.
THIS IS ONLY WHERE THE STATE
CANNOT ESTABLISH EACH ELEMENT

OF THE OFFENSE.

SO, IF WE'VE GOT A VICTIM WHO WALKS IN WILLING TO TESTIFY, DOES NOT RECONT HER TESTIMONY, WE DON'T NEED THIS WE CAN PROVE THE CORPUS OF THE CRIME AND PROVE HE WILL ETCH ELEMENT OF THE CRIME AND WE DON'T NEED TO GO UNDER THE STATUTE.

THIS STATUTE ONLY APPLIES IN LIMITED CASES WHERE THE STATE CANNOT ESTABLISH EACH ELEMENT OF THE OFFENSE BECAUSE THERE IS SOME PROBLEM WITH THE VICTIM.

>> HAS AN AUTOMOBILE ACCIDENT LATER.

>> CORRECT.

>> THIS RULE CAN BE INVOKED.

>> ASSUMING WE --

>> EVEN THOUGH THERE IS NO VICTIM.

>> WE STILL, IT'S NOT LIKE THE STATE'S GETTING SOME KIND OF FREE PASS.

WE STILL HAVE TO ESTABLISH THE CASE BEYOND A REASONABLE DOUBT AT TRIAL.

>> SOMETHING SO BROAD, THAT, DO THESE EXAMPLES, OKAY, THAT IS, WHY NOT JUST GO AHEAD AND, FOR THAT, THIS CATEGORY OF CASES, JUST ELIMINATE IT?

WOULDN'T THAT BE THE NATURAL, LOGICAL WAY TO DO IT AND NOT GIVE THESE, LOGICAL WAY TO DO IT WOULD BE TO SAY, FOR THIS CATEGORY OF CASES WE ARE DOING AWAY WITH AND WE'RE SUBSTITUTING THERE FOR THIS RELIABILITY TEST, WOULD YOU AGREE WITH THAT.

>> THAT WOULD MAKE IT OBVIOUSLY MUCH MORE CLEAR.

BUT I STILL THINK IT'S PRETTY CLEAR WHEN THE SENTENCE IMMEDIATELY BEFORE IT IS, FACTORS WHICH MAY BE RELEVANT ARE BUT ARE NOT LIMITED TO THE FACT THAT, THEN THEY LIST THESE THREE INSTANCE.

I DON'T SEE HOW LESS THAN 12 YEARS OF AGE IS SOME KIND OF PHYSICAL DISABILITY.

CHILDREN UNDER THE AGE OF 12
TESTIFY ALL THE TIME PERFECTLY
COHERENT AND COGENT AND MAKE
EXCELLENT WITNESSES.

IT'S JUST --

>> PHYSICALLY HELPLESS MIGHT BE
ABLE TO TESTIFY.

>> CORRECT.

>> THIS IS NOT, KEEP PEOPLE
BEING ON THIS LIST WOULD IN THE
NECESSARILY MEAN --

>> CORRECT.

>> THAT THE STATE IS UNABLE TO
SHOW EXISTENCE OF EACH ELEMENT.

>> RIGHT.

>> WOULD BE THINGS FACTORED IN
AND CONSIDERED.

>> I TRIED TO FIGURE OUT WHERE
THEY MIGHT HAVE GOTTEN THIS.

THAT'S ONLY THING I COULD
FIGURE OUT IS THAT THE SEX BAT
STATUTE.

BECAUSE, I MEAN UNLESS SHE WAS
UNDER THE INFLUENCE OF GHB OR
SOMETHING SHE DOESN'T REMEMBER
WHAT HAPPENED, JUST BECAUSE SHE
IS PHYSICALLY INCAPACITATED AT
TIME OR JUST BECAUSE SHE IS
MENTALLY INFIRMED DOESN'T MEAN
SHE CAN TESTIFY AT TRIAL AND
IDENTIFY THE DEFENDANT AND
ESTABLISH THE CRIME BEYOND A
REASONABLE DOUBT.

>> YOU WOULD SAY IN SITUATION
WHERE THE STATE HAD A
CONFESSION, THEY ARE NOT ABLE
TO SIMPLY SAY, WELL, I'VE GOT
A, A VICTIM WHO IS 75.

THEY WOULD HAVE TO SHOW
SOMETHING MORE ABOUT THAT
VICTIM?

>> FOR SOME REASON SHE COULDN'T
TESTIFY BECAUSE OF THAT.

I THINK YOU WOULD HAVE TO SHOW
THAT, FOR SOME REASON SHE
WASN'T ABLE TO COME IN AND
TESTIFY AND ALLOW THE STATE TO
ESTABLISH EACH ELEMENT OF THE
OFFENSE.

>> HOW, I JUST WANT TO AGAIN,
MAKE SURE I'M UNDERSTANDING
REAL LIFE WAY WE'RE -- ASSUMING
UNDER THE FIFTH DISTRICT'S CASE
IT HAS TO GO BACK AND THE JUDGE

THEN MAKE AS WHETHER THERE IS SUFFICIENT CORROBORATING EVIDENCE THAT TENDS TO ESTABLISH THE TRUSTWORTHINESS OF THE STATEMENT.

>> CORRECT.

>> THAT'S STILL THERE?

>> YES.

>> AND THAT HEARSAY EVIDENCE IS ADMISSIBLE DURING THE PRESENTATION OF THE EVIDENCE.

>> CORRECT.

>> PRESUMABLY THAT MIGHT INCLUDE THE RECANTED -- STATEMENT.

>> CORRECT.

>> BUT THEN WE GET TO, THEN THE JUDGE SAYS, MAKE FINDINGS OR HE MAKES FINDINGS OF FACT AS TO WHY.

NOW WE GET TO THE PROSECUTION OF THE CASE.

WHAT IS THE PROSECUTION ABLE TO PUT ON IN THIS CASE, IN THIS?

THEY GET TO PUT ON WHAT THE DEFENDANT SAID IS IT?

>> CORRECT.

>> THEY, THE DOES THE STATE TO GET TO PUT ON THE RECANTED STATEMENT?

>> WELL, ASSUMING SHE COMES IN AND TESTIFIES, CONSISTENT WITH HER RECANTATION --

>> THEY WOULD CALL HER KNOWING THAT, THEY WOULD CALL HER IN THE CASE IN CHIEF EVEN KNOWING SHE WASN'T GOING TO CHANGE HER

--

>> YOU DON'T KNOW.

>> RECANTED TESTIMONY DOESN'T COME IN AS SUBSTANTIVE EVIDENCE.

>> RIGHT. IT WOULD BE PRIOR INCONSISTENT STATEMENT TO IMPEACH TESTIMONY.

>> WOULDN'T COME IN INDEPENDENTLY.

WHATEVER SHE TESTIFIED IT GOES TO IMPEACH HER?

>> CORRECT.

>> SO THAT, IN THIS CASE IS THERE ANYTHING, DO WE KNOW FROM THE RECORD IF THERE IS ANYTHING ELSE?

>> NO, YOUR HONOR.
>> THERE MAY BE.
>> NEVER GOT TO THAT POINT --
CORRECT.
>> THERE MAY BE NEIGHBORS THAT
SAW THEM.
THERE MAY BE --
>> WE DON'T KNOW.
>> THERE WOULD HAVE TO ALSO BE
A FINDING BY THE TRIAL JUDGE
THAT THE STATE WAS UNABLE TO
PROVE.
>> EACH ELEMENT.
>> EACH ELEMENT.
>> CORRECT.
>> THAT HAS TO BE A SPECIFIC
FINDING ALSO.
>> CORRECT.
>> UNDER --
[INAUDIBLE]
>> I THINK THE STATUTE
OBVIOUSLY IS YOU KNOW,
MR. CARSON WAS VERY WORRIED
ABOUT THIS WHOLE, THE
DEFENDANT'S RIGHTS AND THINGS
LIKE THAT.
WE STILL WOULD HAVE TO SHOW
TRUSTWORTHY -- I'M SORRY, I'M
NOT TRYING TO MAKE IT SOUND NOT
WORTHY.
>> WE'RE NOT TRYING
CONSTITUTIONAL ISSUE.
SO WE'RE CLEAR ABOUT THAT.
>> THERE IS TRUSTWORTHINESS
REQUIREMENT HERE THAT THE STATE
WOULD HAVE TO ESTABLISH BY
PREPONDERANCE OF EVIDENCE IN
FRONT OF THE TRIAL COURT.
TRIAL COURT HAS TO MAKE
SPECIFIC FINDINGS OF FACT.
THERE ARE PROTECTIONS FOR THE
DEFENDANT THAT ARE BEING
SUBSTITUTED FOR THE CORPUS
DELICTI.
>> ONCE YOU GET TO TRIAL, DOES
THE STATE HAVE TO ALSO
DEMONSTRATE -- I MEAN IN ORDER TO
EVEN HAVE THE DEFENDANT'S
CONFESSION COME IN UNDER THESE
CIRCUMSTANCES, YOU'VE GOT THAT
CORROBORATING INFORMATION THAT
MUST BE DEMONSTRATED TO THE
TRIAL COURT.
>> CORRECT.

>> IS IT NECESSARY THAT THAT CORROBORATING INFORMATION ALSO BE PRESENTED AT THE TRIAL? BECAUSE I COULD ENVISION A SITUATION WHERE YOU GET TO TRIAL, AND ALL YOU WOULD HAVE IS THE DEFENDANT'S STATEMENT, TO PROVE EVERYTHING.

>> IT SPECIFICALLY SAYS THAT YOU'RE SUPPOSED TO HOLD A HEARING OUTSIDE THE PRESENCE OF JURY.

LET THE JURY OUT.

IF THERE IS ANY EVIDENCE THAT TO CORROBORATE FOR PURPOSES OF UNDER, TO ADMIT THE STATEMENT UNDER THE STATUTE, ASSUMING IT WOULD BE HARMFUL OR, EVIDENCE OF THE JURY'S NOT ALLOWED TO HEAR, THE JUDGE COULD HEAR IT AT HEARING AND MAKE RULING ON THAT BASIS.

THEY COULD GO FORWARD, JUDGE WOULD FIND IT TO BE TRUST WORTH HI OR NOT?

>> GO FORWARD WITH WHAT?

>> WHATEVER EVIDENCE THEY HAVE. I DON'T KNOW.

>> I'M TRYING TO FIND OUT IF WE COULD HAVE A SITUATION WHERE YOU GO TO TRIAL, YOU END UP WITH JUST THE DEFENDANT'S CONFESSION --

>> AND VICTIM'S PRIOR INCONSISTENT STATEMENT. AND VICTIM'S PRIOR INCONSISTENT --

>> ASSUMING YOU DON'T HAVE THE VICTIM'S PRIOR INCONSISTENT STATEMENT.

>> CASE LAW SAYS THE DEFENSE CONFESSION IS NOT ENOUGH TO CONVICT HIM OF A CRIME.

>> THAT'S WHAT I WAS GOING TO SAY.

THE JUDGE IN THIS CASE COULD FIND OUT, THEY THOUGHT IT WAS THE SITUATION WAS TRUSTWORTHINESS TO ESTABLISH THE ELEMENTS.

>> CORRECT.

>> BUT THE JUDGE DOESN'T MAKE HIS DETERMINATION AT THAT POINT AS TO WHETHER THOSE ELEMENTS

HAVE BEEN ESTABLISHED BEYOND A REASONABLE DOUBT.

>> CORRECT.

YOU STILL HAVE THE JOA AND RIGHT, ABSOLUTELY.

>> THEY HAVE A CONFESSION --

>> AND STATE STILL HAS TO ESTABLISH THE CRIME ITSELF BEYOND A REASONABLE DOUBT.

EACH ELEMENT OF THE CRIME BEYOND A REASONABLE DOUBT THAT DOESN'T CHANGE THIS AS ALL.

>> THAT, YOU GO BACK, IF YOU COULD -- UNDER THE STATUTE THOUGH.

IN OTHER WORDS IF YOU HAVE YOU HAD OTHER CORROBORATING ELEMENTS OF THE EVIDENCE OF THE CRIME, YOU WOULDN'T GO BACK TO THE STATUTE.

>> UNLESS THERE WAS, BECAUSE, IN THE BRADLEY CASE WHAT HAPPENED WAS, THE VICTIM TESTIFIED.

SHE WAS UNDER THE AGE OF 12 AT THE TIME.

SHE COULD TESTIFY TO SEVERAL OF, CAPITAL SEXUAL CRIME THAT HE WAS CHARGED WITH.

BUT SHE NEVER COULD TESTIFY AS TO DIGITAL PENETRATION.

SHE JUST SAID PUT HIS FINGER AROUND HER.

THEY WERE ALLOWED UNDER 92.565, THE STATE OF FLORIDA TO INTRODUCE HIS CONFESSION WHERE HE ADMITTED TO DIGITALLY PENETRATING HER.

THE STATE COULD DEMONSTRATE THE CRIME OF CAPITAL SEXUAL BATTERY.

>> BUT THE POINT HERE IS NOT, WHETHER THERE IS OTHER CORROBORATING EVIDENCE OF THE CRIME.

>> CORRECT.

>> THE POINT HERE IS TO WHETHER THERE'S CORROBORATING EVIDENCE OF THE TRUSTWORTHINESS OF THE CONFESSION.

>> CORRECT.

ABSOLUTELY.

>> AND THAT'S THE REASON THIS COMES DOWN, THAT'S WHAT THE

U.S. SUPREME COURT SAID IN
1954.

>> CORRECT.

>> WAS THE DISTINCTION.
AND THEY WENT WITH
TRUSTWORTHINESS.

>> RIGHT.

>> AS I READ THIS, THAT'S WHAT
THE LEGISLATURE DID IN 2000.

>> RIGHT.

I MEAN WE HAVEN'T EVEN GOTTEN
TO THAT ISSUE IN THIS CASE.

WE DON'T KNOW.

WE DON'T KNOW.

AND THE FIFTH DCA SPECIFICALLY
SAID IT'S REVERSE OR REMANDED
TO HOLD A HEARING ON THE ISSUE
OF TRUSTWORTHINESS AND TRIAL
COURT MAKE A SUBLIST FINDINGS
OR NOT THE STATEMENT.

>> IN ANSWER TO THE CHIEF
JUSTICE'S QUESTION, WITH REGARD
TO YOU COULD HAVE A TRIAL THAT
COULD CONSIST ONLY OF THE
CONFESSION?

>> CORRECT.

OBVIOUSLY THE STATE WOULD NOT
BE ABLE TO PASS BY A JOA.

WE WOULD HAVE PROGRAMS.

>> ADMITS ALL THE ELEMENTS OF
SEXUAL BATTERY, WHY NOT.

>> TWO THINGS.

WE'RE LOOKING SIMPLY GETTING
TRUSTWORTHINESS OF GETTING
STATEMENT IN.

THAT'S ALL THE STATUTE IS WORD
ABOUT.

NOT WHETHER THE CASE CAN PROVE
THE CASE BEYOND A REASONABLE
DOUBT.

WHETHER THE CASE CAN PROVE EACH
ELEMENT SOMETHING HAPPENED TO
THE VICTIM.

SOMETHING HAPPENED TO THE
VICTIM SOME CASES VICTIMS
RECAIT ESPECIALLY DAUGHTER-FORT
KIND OF SITUATION, THAT THE
STATE IS ALLOWED TO THEN, IF WE
HAVE NO, NOTHING ELSE TO
ESTABLISH THE ELEMENTS OF THE
OFFENSE, THEN WE CAN ALLOW THE
ADMISSION OF THE STATEMENT.

OBVIOUSLY WE HAVE THE VICTIM'S,
IN THIS CASE, PRIOR STATEMENT.

>> WHAT IS POINT OF ADMITTING THE DEFENDANT'S CONFESSION?

>> TO ESTABLISH WHATEVER ELEMENT THE IT IS STATE CANNOT ESTABLISH BECAUSE OF A PROBLEM WITH THE VICTIM.

>> SEEMS PRETTY CIRCULAR TO ME, YOU'RE GOING, YOU'RE ALLOWING THIS CONFESSION IN BECAUSE YOU DON'T HAVE ENOUGH INFORMATION TO PROVE THE ELEMENTS OF THE DEFENSE.

SO THE WHOLE POINT OF THE DEFENDANT'S STATEMENT IS TO PROVE THE ELEMENTS OF THE OFFENSE.

>> WE DON'T KNOW WHAT MORE EVIDENCE THE STATE COULD OBTAIN BETWEEN A HEARING AND A TRIAL. KIND OF CORPUS --

>> THEORETICALLY THE STATE MAY NOT HAVE ANY OTHER EVIDENCE, BUT EVERY ELEMENT OF THE CRIME IS STILL FILLED IN BECAUSE YOU HAVE THE DEFENDANT'S STATEMENT.

>> CORRECT.

BUT THAT ONLY, I MEAN, THAT'S, WHY WE CAN USE THE TRUSTWORTHINESS AS OPPOSED TO CORPUS.

CORPUS KIND OF DOES THE SAME THING.

CORPUS JUST SAID SAYS WE CAN GO FORWARD WITH THIS CASE.

>> IS THERE A CASE OUT THERE, MAYBE IT'S ONE OF OUR CASES, IF AT TRIAL, THEY SIMPLY PUT IN THESE STATEMENTS THAT THAT'S NOT GOING TO BE ENOUGH TO CONVICT HIM?

>> CORRECT.

GENERALLY THE DEFENDANT'S --

>> WHAT --

[INAUDIBLE]

>> JUST THAT, YOU HAVE TO PROVE EACH ELEMENT BEYOND AND TO THE EXCLUSION OF EVERY REASONABLE DOUBT.

>> WHY WOULDN'T HIS OWN ADMISSION SATISFY THAT?

>> BECAUSE GENERALLY, WE DON'T, WELL, I MEAN AS LONG AS THE STATEMENT WAS ADMISSIBLE, I DON'T KNOW.

I DON'T, I KNOW THAT THERE IS
CASE LAW.

>> THIS MAY BE, NOT DIRECT
ISSUE BUT AS, WAS STATED HERE,
THIS IS A VERY SERIOUS CRIME.
I DON'T KNOW IF HE STILL
INCARCERATED FOR -- I MEAN
SOMETHING HE COULD SPEND THE
REST OF HIS LIFE IN PRISON FOR.
IF ULTIMATELY THE STATE
IS GOING TO GO UP, WE REALLY
DON'T HAVE ENOUGH TO ESTABLISH,
WE'LL GET TO THIS POINT BUT WE
CAN'T WIN, THAT SEEMS LIKE
AWFULLY, VERY FLIMSY WAY TO
HANDLE IT.

YOU MAY HAVE NOT BEEN PREPARED
FOR THAT PART OF THE
QUESTIONING SO WE'RE NOT GOING
TO HOLD YOU TO THIS.

THINK THAT IS WHERE JUSTICE
QUINCE STARTED GOING.
MINE IS THAT WE DON'T, THIS IS
ALL GOING TO BE ABOUT
TRUSTWORTHINESS AND WE NEEDED
TO UNDERSTAND HOW THAT --
[INAUDIBLE]

YOU'RE NOT GOING TO BE ABLE TO
PUT RECANTED STATEMENT IN TO
ESTABLISH AN ELEMENT OF THE
CRIME.

SO WITH THIS PRIOR INCONSISTENT
THAT'S ALL IT IS.

-- IS NOT DIRECT EVIDENCE.

>> IF YOU HAVE A PRIOR
INCONSISTENT STATEMENT WITH
THE DEFENSE CONFESSION.

>> THAT CAN'T BE.

THAT'S THE WHOLE POINT, THAT'S
WHAT THEY'RE SPEAKING TO.

I THINK WE DO HAVE CASE LAW
TALKS IN TERMS OF WHETHER A
CONFESSION, RECANTATION, WHAT
IMPACT THAT AS HAS.

WE ISSUED AN OPINION ON THAT
NOT TOO LONG AGO.

>> I KNOW YOU SAID THERE HAS TO
BE SOME OTHER CROP
CORROBORATIVE EVIDENCE AS FAR
AS VICTIM'S STATE STATEMENT
WHERE SHE RECANTED IT.

I THINK WE'RE PUTTING THE CART
BEFORE THE HORSE.

ALL WE'RE WORRYING ABOUT NOW IS

THE STATUTE IS CLEAR THEY DON'T
WANT TO FILE THE CORPUS DELICTI

--

>> I DON'T THINK IT'S REALLY
CART BEFORE THE HORSE.
WE'RE TRYING TO AS ON
INSTITUTION UNDERSTAND HOW THIS
OPERATES AND BECAUSE IT'S GOING
TO IMPACT WHAT HAPPENS AT THE
TRIAL LEVEL.

>> SURE.

>> PEOPLE NEED GUIDANCE ON
THESE KINDS OF THINGS.
SO WE NEED TO KNOW WHAT'S THE
IMPACT.

HOW DOES IT OPERATE?

>> TO BE HONEST I THINK THIS
STATUTE WAS BASICALLY GEARED TO
APPLY SITUATIONS LIKE IN
BRADLEY WERE THE VICTIM GETS UP
THERE AND BREAK DOWN AND THEY
START CRYING OR REFUSE TO
TESTIFY OR SOMETHING TO THAT
EFFECT AND THE STATE IS LEFT
WITH, WE DON'T HAVE THE VICTIM
ANYMORE.

SO WE'RE ALLOWED TO GET IN THE
DEFENDANT'S TESTIMONY TO
ESTABLISH ONE OF THE ELEMENTS
OF THE OFFENSE, LIKE IN THE
BRADLEY CASE.

I THINK THAT'S WHAT THIS,
BECAUSE THE FACT THAT THEY TALK
ABOUT SUPPOSED TO BE HEARING
OUTSIDE THE PRESENCE OF THE
JURY.

SO I MEAN IT'S --

>> WHEN WAS THE STATUTE PASSED?

>> IN 2000.

>> IF YOU, I'M SORRY, YOU'RE
BEYOND YOUR TIME.

IF YOU WOULD GIVE US YOUR --

>> JUST I THINK THE CLEAR
LANGUAGE MAKES IT CLEAR, I MEAN
THE FACT THAT THEY SAY THE
FACTORS WHICH MAY BE RELEVANT
IN DETERMINING WHETHER THE
STATE IS UNABLE TO SHOW
EXISTENCE OF EACH ELEMENT OF
THE CRIME INCLUDE BUT NOT
LIMITED TO THE FOLLOWING, I
THINK THAT THAT, I MEAN ALL OF
THOSE DON'T REALLY GO TOGETHER
AS FAR AS TWO HAVE TO DO WITH

DEFECTIVENESS.

ONE HAS TO DO WITH LESS THAN 12
YEARS OF AGE.

I MEAN I THINK THAT'S THE
TRUSTWORTHINESS DOCTRINE WOULD
APPLY WHERE THE STATE CANNOT
ESTABLISH EACH ELEMENT OF THE
OFFENSE AND ONLY IN THOSE
CASES.

THANK YOU.

>> MR. CARSON, WE'LL GIVE YOU A
MINUTE TO WRAP UP.

>> IF IT PLEASE THE COURT.
YOUR HONOR, IF I COULD JUST,
INSOFAR AS THE TRUSTWORTHINESS
ISSUE IS CONCERNED IN THE HOBBS
CASE SHE PROVIDED INFORMATION
TO THE POLICE OFFICERS --

>> I DON'T THINK YOU SHOULD GO
THERE BECAUSE WE'RE NOT AT THE
TRUSTWORTHINESS.

THAT'S WHAT THE TRIAL JUDGE,
THAT'S YOUR ARGUMENT THERE.
WHAT I WANT TO KNOW IS THIS.
JUST LIKE JUSTICE CANADY SAID
IF THIS LIST WAS EXCLUSIVE
RATHER THAN EXAMPLES, WOULD YOU
AGREE THEY CAN'T JUST SAY THAT
SOMEBODY IS PHYSICALLY
INCAPACITATED AND, NOT, AND
JUST USE THE CONFESSION FOR
CORPUS DELICTI?

THEY WOULD ACTUALLY HAVE TO
SHOW AN INABILITY TO ESTABLISH
THE ELEMENTS AND IT MIGHT NOT
JUST BE PER SE ESTABLISHED BY
ANY ONE OF THOSE THREE EXAMPLES
THAT THEY HAVE USED?

>> YES, JUSTICE.

AND --

>> ALSO ISN'T IT LOGICAL, THAT
THOSE ARE BEING KEYED TO
DIFFERENT TYPES OF SEXUAL
BATTERY AND THAT'S THE BETTER
EXPLANATION FOR WHY THOSE THREE
WERE PUT IN THERE?

>> I WOULD AGREE WITH MISS
KOLLER THAT'S PROBABLY WHY THEY
WERE THERE, JUSTICE.

MY CONCERN IS THAT BY
PERMITTING THE GOVERNMENT TO
PROCEED WITHOUT MEETING THE
CORPUS DELICTI, IT LIGHTENS THE
BURDEN ON INVESTIGATORS TO

PROVE CASES THAT MIGHT
OTHERWISE DIE A OF NATURAL
CAUSE --

>> MAYBE YOU WILL MAKE THAT
ARGUMENT NEXT YEAR IN THE
LEGISLATURE IF WE DON'T AGREE
WITH YOU.

>> YES, JUSTICE.

>> ONE OF THE STATUTES, OR NOT
THE STATUTE, WHAT IF THE REASON
FOR THE RECANTATION WAS BECAUSE
THE VICTIM WAS REALLY AFRAID.

>>> I THINK THAT'S PROBABLY
TRUE.

AND THE ACTUAL STATUTE SPEAKS
TO THOSE IN CERTAIN CASES,
BELOW 12, A NUMBER OF ISSUES.
THIS IS A 17-YEAR-OLD WOMAN AND
I DON'T BELIEVE THAT APPLIES TO
HER.

IN FACT THE FACTS OF THE CASE
SUGGEST IN FACT SHE SIMPLY
RECANTED BECAUSE SHE WAS NOW
TELLING THE TRUTH.

>> WHAT IF THAT WASN'T, FOR ANY
VICTIM CAN'T RECANT BECAUSE
THEY'RE REALLY AFRAID?
WOULD THAT SATISFY THE STATUTE?

>> I BELIEVE IT WOULD BE
BECAUSE SHE WOULD BE RELUCTANT
OR HE WOULD BE RELUCTANT
TO TESTIFY AND THEY
COULD INVOKE THAT AND HAD A
HEARING BEST TRIAL JUDGE AND
JUDGE DETERMINED YES, I'M
DETERMINED CONCERNED ABOUT THE
WELFARE OF --

>> QUESTION IS PROBABLY DOES
THAT FIT UNDER THOSE THREE YOU
SAY ARE REALLY EXCLUSIVE THINGS
YOU LOOK AT?

BECAUSE YOU'RE AFRAID DOESN'T
MEAN YOU'RE UNDER AGE 12 AND IT
DOESN'T MEAN YOU'RE PHYSICALLY
OR MENTALLY INCAPACITATED.

>> IF IT MANIFESTS IN A
PHYSICAL DISABILITY A, YES.

>> SO YOU'RE ADDING --

>> YES, JUSTICE.

I BELIEVE THE LEGISLATURE COULD
HAVE PUT IN THERE RECANTED
TESTIMONY HAD THEY THOUGHT THAT
WAS APPROPRIATE.

>> HOW OLD IS YOUR CLIENT?

>> MY CLIENT IS 34, JUDGE.
>> AND WE HAVE, JUST, BECAUSE
YOU'RE ACTING AS IF THIS IS
CASE WHERE WE'RE JUST GOING TO
BE RELYING ON RECANTED
TESTIMONY.
FOR WHATEVER REASON, AFTER
BEING CONFRONTED WITH THIS,
YOUR CLIENT MADE INCULPATORY
STATEMENTS THAT, IF TRUE, SHOW
A YEAR-LONG SEXUAL ASSAULT ON
HIS DAUGHTER.
AND SO, JUST SO WE PUT THIS
INTO PERSPECTIVE, IT'S NOT AS
IF YOUR CLIENT IS JUST STOOD
SILENT ABOUT THIS HE APPARENTLY
MADE SIGNIFICANT INCULPATORY
STATEMENTS.
I REALIZE, THAT'S JUST ON
OBSERVATION WE'RE TALKING ABOUT
SORT OF BALANCING THE EQUITIES

>> IT IS NOT AS IF YOUR
CLIENT JUST -- STOOD SILENT
ABOUT THIS, HE APPARENTLY MADE
SIGNIFICANT INCULPATORY
STATEMENTS, THAT IS JUST AN
OBSERVATION, BECAUSE TALKING
ABOUT SORT OF BALANCING THE
EQUITIES HERE.

>> YES, JUSTICE.

>> WITH THAT YOU HAVE USED UP
ALL OF YOUR TIME AND MORE.
THANK YOU VERY MUCH FOR YOUR
ARGUMENTS.

>> THANK YOU.