

IN THE SUPREME COURT OF FLORIDA

JESSIE LEE BLANTON, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

S.CT. CASE NO. SC04-1823

DCA CASE NO. 5D03-3143

ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

**PETITIONER'S JURISDICTIONAL BRIEF**

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Petitioner,	)	
	)	S.CT. CASE NO. SC04-1823
vs.	)	
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STATE OF FLORIDA,	)	
	)	
Respondent.	)	
_____	)	

**STATEMENT OF CASE AND FACTS**

The defendant, Jessie Lee Blanton, was charged in Seminole County, Florida, with multiple counts of sexual battery and promoting a sexual performance by a child. The child/victim made a statement to a police investigator, which was audiotaped. After a hearing in which the court determined the child was unavailable to testify at trial pursuant to Section 90.803(23), Florida Statutes, the audiotaped statement was admitted at trial over defense objections. Mr. Blanton was found guilty at a bench trial on April 23, 2001, and was sentenced to life imprisonment on three counts.

Mr. Blanton appealed, and while the appeal was pending, the United States Supreme Court decided the case of Crawford v. Washington, 124 S. Ct. 1354

(2004), which significantly redefined confrontation rights in criminal proceedings. Crawford held that out-of-court “testimonial” hearsay is admissible when the declarant is unavailable only if the defendant had a prior opportunity to cross-examine the declarant, regardless of whether such statements are deemed reliable by the court. *Id.* at 1354.

With the leave of court, Appellant filed a supplemental brief arguing that the child’s audiotaped statements were testimonial, and as such, their use at trial impermissibly infringed on his Sixth Amendment confrontation rights.

The Fifth District Court of Appeal expressly held that the

defendant’s constitutional right of confrontation was not violated by the admission of the child victim’s statement to the police after it was determined that the child was unavailable to testify.

In arriving at its holding, the court deemed Appellant’s confrontation rights were satisfied because the Appellant had taken a discovery deposition of the witness.

The Appellant moved for a rehearing *en banc*, and requested certification of the supplemental issue as a question of great public importance. The motion was granted only to the extent of clarifying one point in a footnote, and denied in all other respects. The Petitioner/Appellant requests review only of this supplemental point on appeal. A copy of the opinion is attached as an appendix.

## **SUMMARY OF THE ARGUMENT**

This Court may accept jurisdiction of this case on the basis of Rule 9.030(a)(2)(A)(ii), Florida Rules of Appellate Procedure. The Fifth District's decision expressly construed a constitutional provision by holding, in light of Crawford v. Washington, 124 S. Ct. 1354 (2004), that when the prior testimonial statement of an out-of-court declarant was admitted at trial pursuant to Section 90.803(23), Florida Statutes, the Defendant/Appellant's confrontation rights were satisfied because he had the opportunity to cross-examine the declarant in a discovery deposition. This unprecedented ruling is much more than a mere "application" of a constitutional provision. Because this is a significant, evolutionary development in the area of confrontation rights, this honorable Court should accept jurisdiction. The decision will have an impact within the State in the way criminal cases are prepared and tried.

## ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY CONSTRUES A CONSTITUTIONAL PROVISION, THUS VESTING THIS COURT WITH DISCRETIONARY JURISDICTION.

This Court may exercise its discretionary jurisdiction to review decisions of District Courts of Appeal which expressly construe a provision of the State or Federal Constitution. Article V, Section 3(b)(3), Florida Constitution; Rule 9.030(a)(2)(A)(ii). The decision of the Fifth District Court of Appeal expressly construes a provision of the Sixth Amendment of the United States Constitution, namely the right of a defendant in a criminal trial to be confronted with the witnesses against him.

The Fifth District was asked to decide, in the light of the recent decision in Crawford v. Washington, 124 S. Ct. 1354 (2004), whether an audiotaped statement made by the victim to police and admitted at trial under the child victim hearsay exception impermissibly infringed on the Defendant/Appellant's confrontation rights. Crawford held that out-of-court "testimonial" hearsay is admissible when the declarant is unavailable only if the defendant had a prior opportunity to cross-examine the declarant, regardless of whether such statements are deemed reliable by the court. *Id.* at 1354.

In arriving at its decision, the court considered whether the Appellant had a “prior opportunity to cross-examine” the victim. Because the Appellant had taken a discovery deposition of the child, the court held that the Appellant’s confrontation rights were not violated. The court rejected the Appellant’s arguments that the discovery examination was not meaningful or adequate, stating that it is only the “opportunity” for examination which is required. The court expressly construed the confrontation clause by asserting that a primary goal of the confrontation clause is met when the accused is provided with a notice of the charges, a copy of the statement and “a reasonable opportunity to test the veracity of the statement *by deposition.*” (Emphasis added.) This statement goes beyond the holding (or dicta) in Crawford.

The court has gone beyond merely “applying” a constitutional provision. Its ruling serves to “explain, define, or otherwise eliminate existing doubts arising from the terms of the constitutional provision.” *See Ogle v. Pepin*, 273 So. 2d 391, 392 (Fla. 1973); *Armstrong v. City of Tampa*, 106 So. 2d 407 (Fla. 1958). Justice Kogan has examined the difficulty that may be encountered in determining what constitutes a “mere application” of a provision of constitutional law. He suggested that for jurisdiction to exist, the district court’s opinion must explain or amplify the provision in a way that is an “evolutionary development in the law.” Gerald Kogan



and Robert Craig Waters, *The Operation and Jurisdiction of the Florida Supreme Court*, 18 Nova L. Rev. 1151, 1221 (1994) The Fifth District's opinion in the instant case is unprecedented. It is an evolutionary development in the area of confrontation rights. Therefore, this Court may exercise jurisdiction.

The fact that the decision is an evolutionary development is also a reason why this Court *should* choose to exercise jurisdiction. The ruling presents an important and substantial question of law which warrants this Court's review. The ruling is currently binding on Florida's circuit courts. By providing that depositions satisfy a defendant's confrontation rights, the decision affects the way criminal cases are prepared and tried statewide.

**CONCLUSION**

BASED UPON the foregoing reasons and authority, the Petitioner respectfully requests this Honorable Court accept the instant case for review.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been served upon The Honorable Charles J. Crist, Jr., Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal, and mailed to Jessie Blanton, Inmate No. X-23917, #C2-

207-L, Hardee Correctional Institution, 6901 State Road # 62, Bowling Green,  
Florida 33834-9505, on this \_\_\_\_\_ day of September, 2004.

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ROSE M. LEVERING  
Assistant Public Defender

**CERTIFICATE OF FONT**

I hereby certify that the size and style of type used in this brief is point  
proportionally spaced Times New Roman, 14 pt.

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ROSE M. LEVERING  
Assistant Public Defender