IN THE SUPREME COURT OF FLORIDA

CASE NOS.: SC05-1007 & SC05-1009

LOWER TRIBUNAL NO.: 4D04-2513

STATE OF FLORIDA,
Petitioner/Appellant,

v.

JEFFREY SCOTT RATNER,
Respondent/Appellee.

****
ON REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL
****

RESPONDENT/APPELLEE'S ANSWER BRIEF ON THE MERITS

EISENBERG & FOUTS, P.A.

JAMES L. EISENBERG
KAI LI ALOE FOUTS
250 AUSTRALIAN AVENUE, SOUTH
SUITE 704
WEST PALM BEACH, FLORIDA 33401
561-659-2009

COUNSEL FOR RESPONDENT, JEFFREY SCOTT RATNER

TABLE OF CONTENTS

TABLE OF CITATIONS

FLORIDA RULES OF APPELLATE PROCEDURE

FLORIDA RULES OF CRIMINAL PROCEDURE

FLORIDA STATUTES

FLORIDA CONSTITUTION

LAW REVIEW ARTICLES

STATEMENT OF THE CASE AND FACTS

Respondent is charged, by Information, with domestic battery (bodily harm), pursuant to Section 784.03(1) and 741.283, Florida Statutes. R. 11. On June 14, 2003, Officer Wavell Darville, of the Ocean Ridge Public Safety Department, was in the parking lot of the Ocean Ridge Public Safety Department at 6450 North Ocean Boulevard, in Ocean Ridge, Florida. R. 3, 14, SR. 8. While there, Officer Darville saw the car of Mrs. Diane Ratner, the alleged victim in this case (hereinafter Mrs. Ratner), pull into the parking lot. R. 9-10, SR. 11. Mrs. Ratner parked in the parking lot and she was sitting in her car. R. 33, SR. 8, 10, 32. Mrs. Ratner stepped out of her car and she had injuries to her nose and her brow area. R. 3, 14, 32-34, SR. 8, 11, 12-13, 14, 33, 36. Officer Darville exited his patrol vehicle and asked Mrs. Ratner what happened and his exact words were "my goodness, what happened to you?" R. 3, 34, SR. 8, 32. Mrs. Ratner stated, "I want to report that my husband beat me up, punched me, knocked me down and kicked me in the face." R. 3, 14, 34, SR. 9, 12, 33, 34. Neither Appellee, nor his counsel were present at the time that Mrs. Ratner was speaking with Officer Darville at the Ocean Ridge Police Department. SR. 20.

Mrs. Ratner was treated at the Ocean Ridge Public Safety Department for her injuries, but refused transportation to the hospital and photographs were taken of her injuries. R. 14, SR. 15, 16, 17, 18. Mrs. Ratner also refused to give a

written statement. She insisted on taking her dog home and Officer Darville and Officer Burnett, also of the Ocean Ridge Public Safety Department, then accompanied her to her home. R. 14, SR. 18, 19.

Once they arrived at Mrs. Ratner's home, Appellee met the officers on the common property outside of the residence. R. 14, SR. 20, 27. Officer Darville asked Appellee if he wished to tell them what had happened between he and his wife, and Appellee stated that he did not, but that he wanted to call his attorney. R. 14, SR. 20. Officer Darville then advised Appellee that he was under arrest for the charge of domestic battery and he was taken into custody. R. 14-15, SR. 21, 23. Mrs. Ratner told the officers she did not want her husband arrested or to press charges and that she wanted to recant her previous statement. R. 15, 22,23, 29, 30, 31. The Office of the State Attorney then filed an Information alleging the above-mentioned charge. R. 11.

Mrs. Ratner did provide the state and defense counsel, in the presence of her own attorney, a sworn statement concerning the events of the evening of June 14, 2003. R. 16-42. In her sworn statement, dated July 3, 2003, Mrs. Ratner admitted that she approached and threatened Respondent with steak knives in her hands, and then dropped one of the knives on the floor. As she bent down towards the ground to pick up the knife, Appellee then tried to kick the knives away and out of her

hands, but he accidentally kicked Mrs. Ratner in the face. R. 27-31. She further admitted that she was impaired at the time due to abuse of alcohol. R. 20-24, 25, 27, 31.

While pending trial, in order to prove its case, the state filed a motion in limine seeking to admit at trial the following out-of-court statement of Mrs. Ratner as an excited utterance and therefore as an exception to the hearsay rule: "I want to make a report. My husband just punched me in the face, knocked me down and kicked me in the face." R. 87-89. On March 19, 2004, the state advised the trial court that it did not intend to call the available witness, Mrs. Ratner, as a witness at trial. R. 216, 218.

The trial court rendered an Amended Order denying the state's motion in limine based on *Crawford v. Washington*, 541 U.S. 36 (2004). Specifically, the trial court wrote that it

> must deny the State's Motion in Limine to admit the alleged victim's statement as an exception to the hearsay rule absent the State first calling the alleged victim as [a] witness in its case-in-chief before it can attempt to impeach her by introducing the alleged prior statement. To permit otherwise, would be in violation of the Confrontation Clause pursuant to the Sixth Amendment of the United State[s] Constitution and contrary to CRAWFORD."

R. 218-219 (Uppercase in original.). The trial court made no specific finding as to whether Mrs. Ratner's alleged statement constituted an excited utterance. Rather, the trial court stated that

> the [Crawford] issue would be moot if the State calls [Mrs. Ratner] as a witness because she would be subject to cross-examination by defense counsel. Thus, the only determination for this court to make would be whether the out of court statement constituted an excited utterance exception to the hearsay rule.

R. 218-219. The trial court then certified the following question as one of great public importance:

> Should the decision of the United States Supreme Court in Crawford v. Washington [541 U.S. 36 (2004)] be interpreted to preclude admission of a statement which would otherwise be admissible under the excited utterance exception to hearsay?

R. 219.

The state filed an appeal directly to the Fourth District, which exercised its discretionary jurisdiction. R. 220-223. After all briefs were filed, the Fourth District issued an opinion transferring the case to the Circuit Court because it lacked jurisdiction. *State v. Ratner*, 30 Fla. L. Weekly D851 (Fla. 4th DCA March 30, 2005). The state filed a motion for rehearing, rehearing en banc, certification of conflict, and/or certification of questions of great public importance. The state claimed that since it could appeal the County Court's ruling to the Circuit Court under Section 924.07(1)(h), Florida Statutes, and Florida Rule of Appellate

Procedure 9.140(c)(2), the Fourth District had jurisdiction over this case under Florida Rule of Appellate Procedure 9.030(b)(4)(B) because the County Court certified the question as one of great public importance.

Subsequently, the Fourth District withdrew its prior opinion and issued a new opinion holding that it did not have jurisdiction over the present case. *State v. Ratner*, 902 So. 2d 267 (Fla. 4th DCA 2005). The state then filed a petition to invoke the discretionary review of the Florida Supreme Court. This Court accepted jurisdiction on October 12, 2005, and Respondent's answer brief on the merits follows.

SUMMARY OF ARGUMENT

POINT I:

Pursuant to *Crawford v. Washington*, 124 S. Ct. 1354, 2004 WL 413301 (U.S. Wash)(2004), the trial court did not err in denying the state's motion in limine to admit a prior testimonial statement of the alleged victim, Mrs. Ratner. Since Mrs. Ratner's alleged prior statement was made in the context of a "report" in response to Officer Darville's questioning, and a reasonable person could objectively conclude that her statement could later be used for trial or other judicial proceedings, her statement was testimonial in nature.

In addition, since Mrs. Ratner's alleged prior statement was testimonial and she is available to testify for trial, Respondent must be afforded the right to

confront and cross-examine her pursuant to the Confrontation Clause, of the Sixth Amendment to the United States Constitution. The state should not be permitted to violate Respondent's right to confrontation by making the decision not to call Mrs. Ratner as a witness at trial under the guise of the excited utterance exception to the hearsay rule.

POINT II:

Florida Rules of Appellate Procedure 9.030(b)(4) and 9.140(c)(2) do not provide the district court with discretionary jurisdiction of a county court non-final order denying the state's motion in limine to admit an excited utterance at trial. Specifically, Rule 9.030(b)(4) advises district courts of their jurisdictional authority and Rule 9.140(c) informs the state as to what types of orders they may appeal.

Since the state's motion in limine is not a suppression issue or any other type of order enumerated under Rule 9.140(c), the county court's non-final order, despite its certification of a question of great public importance, is not appealable to the district court. The trial court's non-final order denying the state's motion in limine to admit an excited utterance was not an absolute bar to the evidence the state sought to admit at trial. It, therefore, cannot be characterized as a suppression issue, which the state is permitted to appeal under Rule 9.140(c)(1)(B).

Florida Rule of Appellate Procedure 9.030(b)(4)(B) gives the District Courts the discretion to review non-final county court orders if they have been certified as questions of great public importance and if they *are otherwise appealable to the circuit court* under Florida Rule of Appellate Procedure 9.140(c). Only appeals taken pursuant to Florida Rule of Appellate Procedure 9.140(c)(1)(A)-(P) are appealable to the Circuit Court. Section two of Florida Rule of Appellate Procedure 9.140(c), therefore, does not give the District Court additional jurisdiction, but rather, it only grants the state the right to appeal to the circuit court non-final orders rendered in the county court.

POINT III:

Portions of Section 924.07(1), Florida Statutes, have not been adopted and incorporated by rule in the Florida Rules of Appellate Procedure by the Florida Supreme Court. To the extent that the state relies on those portions of Section 924.07(1) in this case, they are unconstitutional as to appeals to the district courts.

ARGUMENT

POINT I

CRAWFORD V. WASHINGTON, 541 U.S. 36 (2004), MUST BE INTERPRETED TO PRECLUDE OUT OF COURT STATEMENTS THAT ARE TESTIMONIAL, AND WHERE THE DEFENDANT HAS NOT HAD THE OPPORTUNITY TO CROSS EXAMINE THE DECLARANT, EVEN IF THE TRIAL COURT WERE TO FIND THAT THE STATEMENT MAY OTHERWISE BE

ADMISSIBLE UNDER THE RULES OF EVIDENCE.

The Confrontation Clause, specifically states, "[I]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . ." Sixth Amendment, United States Constitution. Where testimonial statements are involved, the United States Supreme Court has stated that

> the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination . . . the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation.

Crawford v. Washington, 541 U.S. 36 68, (2004). This "bedrock procedural guarantee" applies to both federal and state prosecutions. *Pointer v. Texas*, 380 U.S. 400, 406, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965).

In the present case, the trial court correctly denied the state's motion in limine finding that permitting the state to introduce Mrs. Ratner's alleged prior statement, "absent the State first calling the alleged victim as [a] witness in its case-in-chief before it can attempt to impeach her" would be a violation of the Sixth Amendment to the United States Constitution and contrary to the United States Supreme Court's decision in *Crawford, supra*. R. 218-219. Despite the state's argument that Mrs. Ratner's statement to Officer Darville was not testimonial (IB. 8), *Crawford v. Washington*, 541 U.S. 36 (2004), holds otherwise.

The trial court, therefore, did not err in denying the state's motion in limine to admit what it claims is an excited utterance.

This case involves a question of fact, whether the alleged prior statement of Mrs. Ratner was testimonial or non-testimonial, and it involves a question of law, that is, whether the trial court applied the correct law to the facts. The trial court's ruling on the state's motion in limine therefore involved a mixed question of fact and law. The appellate standard of review regarding a motion in limine for the findings of fact is whether competent, substantial evidence supports the findings. *State v. Manuel*, 796 So. 2d 602 (Fla. 4th DCA 2001), *citing Hines v. State*, 737 So. 2d 1182 (Fla. 1st DCA 1999) and *Hawk v. State*, 718 So. 2d 159 (Fla. 1998). Review of the trial court's application of the law to the facts is *de novo*. *State v. Manuel*, 796 So. 2d 602 (Fla. 4th DCA 2001) *citing Ornela v. United States*, 517 U.S. 690, 696-97, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996).

In the present case, when the trial court denied the state's motion in limine based on the holding of *Crawford v. Washington*, its implicit finding was that Mrs. Ratner's statement to Officer Darville was testimonial in nature. R. 218-219. As a result, since Mrs. Ratner was available for purposes of trial, the state failed to establish both prongs of *Crawford*, that is, (1) unavailability of the witness, and (2) a prior opportunity for cross-examination, in order to satisfy the Confrontation Clause of the Sixth Amendment to the United States Constitution. R. 218-219.

The trial court was correct in finding that Mrs. Ratner's alleged statement was a testimonial statement under *Crawford*. R. 218-219. Even though the United States Supreme Court declined to spell out a comprehensive definition of "testimonial," Justice Scalia wrote, "[w]hatever else the term [testimonial] covers, it applies *at a minimum* to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations." *Id.* at 68. (Emphasis added.). Clearly stated, Justice Scalia's majority opinion explained that testimonial statements include *at a minimum* the "core" examples cited above, but are not limited only to preliminary hearings, grand jury testimony, former trial testimony and police interrogations. *Id.* at 63, 68.

By denominating these types of statements as constituting the "core" of the universe of testimonial statements, the Court left open the possibility that the definition of testimony encompasses a broader range of statements. *United States v. Saget*, 377 F. 3d 223, 228 (2d Cir. 2004) and *Crawford* at 51, 63; *see also Id.* at 61 (*citing* Richard D. Friedman, 86 Geo. L.J. 1011, 1039-43 (1998) (advocating that any statement made by a declarant who "anticipates that the statement will be used in the prosecution or investigation of a crime" be considered testimony)). With regard to police interrogations, the Supreme Court was careful to observe that "[a]n accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance

does not." *Crawford* at 51. Furthermore, testimonial statements share certain characteristics including involving a declarant's knowing response to structured questioning in an investigative environment or a courtroom setting "where the declarant would reasonably expect that his or her responses might be used in future judicial proceedings." *United States v. Saget*, 377 F. 3d 223, 228 (2d Cir. 2004).

In *Crawford*, the Supreme Court stated that the primary object of the Sixth Amendment is testimonial hearsay "and interrogations by law enforcement officers fall squarely within that class." *Id.* at 53. The Court in *Crawford* concluded that interrogation by law enforcement officers constituted testimonial hearsay, and it was careful to note that it was using the term "interrogation" in the colloquial sense, not in the narrow, legal sense:

> We use the term "interrogation" in its colloquial, rather than any technical legal, sense. *Cf. Rhode Island v. Innis*, 446 U.S. 291, 300-301, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980). Just as various definitions of "testimonial" exist, one can imagine various definitions of "interrogation," and we need not select among them in this case.

Id. at Footnote 4. The Court also acknowledged that

> [s]tatements taken by police officers in the course of interrogations are also testimonial under even a narrow standard. Police interrogations bear a striking resemblance to examinations by justices of the peace in England. The statements are not *sworn* testimony, but the absence of oath was not dispositive.

Id. at 52. (Emphasis in original.). The Court continued, explaining how prosecutorial and investigative roles of modern-day law enforcement officers are the same as the prosecutorial role of the magistrates in England, and the civil law abuses the Confrontation Clause was designed to prevent. *Id. See also, United States v. Saner*, 313 F. Supp. 2d 896 (S.D.Ind. 2004) (confrontation clause barred use of conspirator's statement against coconspirator, where conspirator invoked his fifth amendment not to testify and his statements were made during interrogation which was not a custodial interrogation).

In the present case, Mrs. Ratner's statement is precisely the type of statement to which the United Supreme Court's decision in *Crawford* applies. Mrs. Ratner's statements, which were the product of police questioning, fall squarely within the realm of testimonial statements contemplated by the United States Supreme Court as discussed above. R. 3, 34, SR. 8.

More specifically, during deposition, on September 2, 2003, Officer Darville testified that he initiated the conversation with Mrs. Ratner through questioning. SR. 8. Officer Darville stated, "I stepped out of my vehicle and my exact words were, my goodness, what happened to you?" R. 8. Officer Darville further testified that Mrs. Ratner then replied to his question stating, "I want to report that my husband beat me up, punched me, knocked me down and kicked me in the face." SR. 9, 12, 14. It is clear, therefore, that Mrs. Ratner's statement was made

in response to questioning by Officer Darville, and as such, it is testimonial in nature.

In addition, Officer Darville is a law enforcement officer whose job involves the investigation and prosecution of crimes. He questioned Mrs. Ratner after she arrived at the police station/City Hall parking lot. SR. 8, 9, 10, 11. He testified that she appeared to have been injured and there was a clear inference that a crime may have occurred. R. 3, 14, 32-34, SR. 8, 11, 12-13, 14, 33, 36. In his official capacity, as a law enforcement officer, it would be reasonable only to expect that Officer Darville's questioning of Mrs. Ratner and the answers she gave were given with an eye toward litigation. He was not a friend who had a mere conversation with Mrs. Ratner. SR. 8. It is more than reasonable, therefore, to expect that an objective witness would believe Mrs. Ratner's answers to questioning by Officer Darville would be used prosecutorially and later at trial. *See State v. Snowden*, 385 Md. 64, 867 A.2d 314 (Md. 2005) (Court of Appeals in Maryland adopted standard of whether a statement was made under circumstances that would lead an objective declarant reasonably to believe that the statement would be available for use at a later trial).

In addition, Mrs. Ratner's exact words were, according to Officer Darville, "*I want to report* that my husband beat me up, punched me, knocked me down and kicked me in the face." R. 3, 14, 34, SR. 9, 12, 33, 34, SR. 9, 12, 14. (Emphasis

added.). As such, Mrs. Ratner was not only making a "formal" statement, the kind to which *Crawford* specifically refers, but she was fully aware that her statement was formal as evidenced by her own words that she wanted to "report" what had happened. 124 S.Ct. at 1364. R. 3, 14, 34, SR. 9, 12, 33, 34, SR. 9, 12, 14.

> Formality cannot be limited to courtroom procedures for then police and prosecutor questioning of a witness at the precinct, the witness' home, the prosecutor's office, or other locations would be outside the scope of the confrontation protections.

People v. Cortes, 4 Misc. 3d 575, 781 N.Y.S. 2d 401 (May 2, 2004) (court found contents of 911 phone call were product of interrogation and were testimonial in nature).[1] Mrs. Ratner's statement that she wanted to "report" what happened was to supply information to Officer Darville about the circumstances and who was involved. R. 3, 14, 34, SR. 9, 12, 33, 34, SR. 9, 12, 14. The purpose of the information to be included in the report, therefore, was for investigation, prosecution, and potential use at a later trial or judicial proceeding. "Like the victims and witnesses before the King's courts an objective reasonable person knows that when he or she reports a crime the statement will be used in an

[1] *But see, People v. Conyers*, 777 N.Y.S. 2d 274 (N.Y. Sup. Ct. 2004); *People v. Moscat*, 777 N.Y.S. 2d 875 (N.Y. Crim. Ct. 2004) and *People v. Isaac*, 4 Misc. 3d 1001(A) 791 N.Y.S.2d 872 (Table, Text in WESTLAW), Unpublished Disposition, 2004 WL 1389219, 2004 N.Y. Slip Op. 50582(U), N.Y.Dist.Ct., Jun 16, 2004.

investigation and at proceedings relating to a prosecution." *Cortes*, 781 N.Y.S. 2d 401, 415.

Since Mrs. Ratner's report was for the purpose of invoking the police action and the prosecutorial process, the only use for her statement was for police investigation and state prosecution. As a result, Respondent is entitled to confront her as a witness under the Sixth Amendment. Absent such opportunity, Mrs. Ratner's statement is inadmissible at trial.

Mrs. Ratner's alleged statement was testimonial in nature. The state must be prohibited from circumventing Respondent's right to confront and cross-examine a witness against him by choosing not to call her for the purpose of testifying at trial. R. 87-89, 190-195, IB. 7-8. Since Mrs. Ratner is available to testify, the state cannot seek to admit into evidence at trial Mrs. Ratner's out-of-court statements under the guise of the excited utterance exception to the hearsay rule, rather than call her as a witness. R. 87-89, 190-195, 218, IB. 7-8.[2] The United States Supreme Court has entirely rejected the view that the Confrontation Clause applies only to in-court testimony and that the admissibility at trial of out-of-court testimony depends upon the rules of evidence. *See Crawford*, 541 U.S. 36, 50-51

[2]The trial court in its Amended Order found that the state advised the trial court that "it did not intend to call the available alleged victim as a witness at trial which gives rise to this issue regarding the application of Crawford as it relates to the confrontation clause." R. 218.

(2004). "Leaving the regulation of out-of-court statements to the law of evidence would render the Confrontation Clause powerless to prevent even the most flagrant inquisitorial practices." *Id.* at 51. The Supreme Court further explained that the Confrontation Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. *Id.* at 61. The Confrontation Clause

> commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. The Clause thus reflects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined.

Id. (Parenthetical in original.).

The United States Supreme Court has excluded testimony where the government failed to establish the unavailability of the witness even where the defendant had the opportunity to cross-examine. *See Crawford*, 541 U.S. 36, 57 (2004), *citing Barber v. Page,* 390 U.S. 719, 722-725, 88 S.Ct. 1318, 20 L.Ed.2d 255 (1968); *cf. Motes v. United States*, 178 U.S. 458, 470-471, 20 S.Ct. 993, 44 L.Ed. 1150 (1900). The state, therefore, must call Mrs. Ratner as a witness before attempting to admit any testimonial out-of-court statements she may have previously made. Specifically, Respondent must be afforded his right to confront

and cross-examine the testimony of the witnesses the state seeks to present against him.

> [W]hen the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements . . . It is therefore irrelevant that the reliability of some out-of-court statements "'cannot be replicated, even if the declarant testifies to the same matters in court.'" . . . The Clause does not bar admission of a statement so long as the declarant is present at trial to defend or explain it.

See Crawford, 541 U.S. 36, 59, Footnote 9 (2004) (Citations omitted.). Clearly, where a witness is available to testify and is called to the witness stand by the state, there is no Confrontation Clause issue because the defendant would have the opportunity to confront and cross-examine the witness. *See Snowden v. State*, 385 Md. 64, 867 A.2d 314 (Md. Feb 07, 2005) (Because the State did not establish that the children were unavailable to testify, hearsay statements admitted did not satisfy either of the two (2) *Crawford* foundational requirements.).

The state's suggestion that this Court should adopt the "forfeiture by wrongdoing" rule is absurd, especially in light of the fact that Mrs. Ratner is not "unavailable" as a witness. Under the rule, not only would Mrs. Ratner have to be unavailable to testify for purposes of trial, but Respondent would have to have done some wrongful act to procure Mrs. Ratner's unavailability. In the cases cited by state for this proposition, wrongdoing on the part of the defendant with the

intent of causing a witness to be unavailable is required. *See State v. Wright*, 701 N.W. 2d 802 (Minn. 2005). The court in *Wright*, specifically stated that

> [i]n Minnesota, a defendant will be found to have forfeited by his own wrongdoing his right to confront a witness against him if the state proves that the defendant engaged in wrongful conduct, that he intended to procure the witness's unavailability, and that the wrongful conduct actually did procure the witness's unavailability.

701 N.W. 2d at 814-815. *See also People v. Moore*, 117 P.3d 1, 5 (Colo. Ct. App. 2004) (homicide defendant forfeited violation of confrontation claim in past act of domestic violence where victim was unavailable because of her death which was caused by defendant). In citing *Commonwealth v. Edwards*, 830 N.E. 2d 158, 165-168 (Mass. 2005), the state concedes that the defendant must have murdered, threatened or intimidated a witness in an effort to procure the witness' unavailability.

In this case, there are no facts to support the state's claim of wrongdoing on the part of Respondent with regard to Mrs. Ratner's availability. Rather, the facts are clear that Mrs. Ratner declined to give a statement and declined to go to the hospital while at the Ocean Ridge Public Safety Department before returning to the home where the Respondent was located. R. 14-15, SR. 16-18. In addition, according to Officer Darville, prior to returning to the home and while still at the Ocean Ridge Public Safety Department, Mrs. Ratner became uncooperative. SR.

17. As a result, it is clear that Mrs. Ratner had second thoughts about the report she made to Officer Darville while at the Ocean Ridge Public Safety Department.

The state asserts that according to Officer Darville, Mrs. Ratner's attitude and demeanor changed once she arrived home, that she appeared sheepish and controlled, and that she dropped her head and would not look Respondent in the eye. SR. 22-24. The state's implication is that Mrs. Ratner's change of attitude and demeanor stems from some unknown wrongdoing on the part of Respondent once she returned to the home. All of Mrs. Ratner's actions, however, could just as easily be explained by a false report made to Officer Darville about what actually happened. This point is moot, however, since Mrs. Ratner is available to testify at trial if called.

Adopting the position that a person, who is criminally accused in a domestic violence case, should forfeit his or her right to confront and cross examine his or her accusers flies in the face of all constitutional principles and protections. If courts were willing to take the state's position, all criminally accused persons, even the innocent accused, would not have the right to confront their accusers and the right to confrontation would be nil and void.

It is true that Florida public policy is directed at reducing domestic violence. It is the public policy of all states to reduce violence overall. However, it is also in the interest of public policy that the constitutional rights guaranteed to the

criminally accused be upheld and paramount. Public policy regarding domestic violence cases cannot trump the constitutional rights of the criminally accused and the Sixth Amendment right to confront and cross examine. All domestic violence cases therefore, involving out of court statements, their admissibility and whether such statements violate one's right to confrontation under the Sixth Amendment, must be decided on a case by case basis.

Even if the trial court had determined that Mrs. Ratner's alleged statement was an excited utterance, the First District in *Lopez v. State*, 888 So. 2d 693, 697 (Fla. 1st DCA 2004) explained it does not necessarily mean that it is admissible in evidence. "An out of court statement is not admissible merely because it meets the definition of an excited utterance." *Id.* at 697. The First District further explained that a statement that "meets the definition of an excited utterance does not guarantee its admission in evidence at a trial or hearing, but only that it will not be excluded on the ground that it is hearsay." *Id.* at 697. Clearly, a statement might be inadmissible for other reasons, such that it violates the Confrontation Clause of the Sixth Amendment. As a result, the First District found that excited utterances cannot "automatically be excluded from a class of testimonial statements." Id. at 699. The First District explained further:

> the findings necessary to support a conclusion that a statement was an excited utterance do not conflict with those that are necessary to support a conclusion that it was testimonial. A statement made in the excitement of a

> startling event is likely to be more reliable given the fact that the declarant had little time to make up a story. But, under *Crawford*, reliability has no bearing on the question of whether a statement was testimonial. Some testimonial statements are reliable and others are not . . . a startled person who identifies a suspect in a statement made to a police officer at the scene of a crime surely knows that the statement is a form of accusation that will be used against the suspect. In this situation, the statement does not lose its character as a testimonial statement merely because the declarant was excited at the time it was made.

Id. at 699-700. Factual distinctions, therefore, involving out of court statements in all domestic violence cases leave no room for the position that all excited utterances are nontestimonial. *See also Hammon v. State*, 829 N.E. 2d 444, 453 (Ind. 2005) ("We do not agree, however, that a statement that qualifies as an 'excited utterance' is necessarily nontestimonial."). In *United States v. Brito*, 427 F. 3d 53, 62 (1st Cir. 2005), the court cautioned against the use of an "all or nothing" approach to the admission or exclusion of 911 calls. That same caution must be heeded with regard to all out of court statements and each case must be reviewed individually.

> It is entirely possible that some portions of a 911 call may qualify as excited utterances, while others do not. Similarly, some portions may be deemed testimonial, while other may de deemed nontestimonial. This means, of course, that some parts of a single 911 call may run headlong into the *Crawford* bar, while others do not.

Brito at 62.

Based on the foregoing, this Court must uphold the trial court's denial of the state's motion in limine to admit Mrs. Ratner's alleged testimonial statements as an exception to the hearsay rule. R. 218-219. The state must first call Mrs. Ratner as a witness in its case-in-chief before it can attempt to impeach her by introducing the alleged prior testimonial statement. To do otherwise, would be a blatant violation of the Confrontation Clause pursuant to the Sixth Amendment of the United States Constitution and contrary to the rule of law announced by the United States Supreme Court in *Crawford v. Washington, supra*.

POINT II:

FLORIDA RULES OF APPELLATE PROCEDURE 9.030(B)(4), 9.140(c)(2) AND 9.160 DO NOT PROVIDE A DISTRICT COURT OF APPEAL WITH DISCRETIONARY JURISDICTION OVER A NON-FINAL COURT ORDER (OTHERWISE APPEALABLE TO THE CIRCUIT COURT) WHICH CERTIFIES A QUESTION OF GREAT PUBLIC IMPORTANCE.

The Fourth District correctly found that it did not have discretionary jurisdiction to review the non-final order denying the state's motion in limine to admit an alleged excited utterance at trial by the County Court. The subject matter jurisdiction of a court is a question of law reviewed *de novo*. *Jacobsen v. Ross Stores*, 882 So. 2d 431, 432 (Fla. 1st DCA 2004). As the Fourth District clearly stated in its opinion, the County Court order in this case which denies the state's motion in limine is not an appealable order under Florida Rule of Appellate

Procedure 9.140(c). Specifically, the Fourth District's Order transferring the appeal explained:

> The State argues that we have jurisdiction to review this pre-trial order under section 924.07(1)(h), Florida Statutes (2004) which purports to allow the state to appeal "other pre-trial orders," and section 924.07(1)(l), which allows the state to appeal "an order or ruling suppressing evidence or evidence in limine at trial." As is apparent from our earlier discussion, however, our constitution grants the power to authorize non-final appeals to district courts of appeal to our supreme court. Although some provisions of section 924.07(1) have been adopted in rule 9.140(c) by the Florida Supreme Court, the portions relied on by the State have not been adopted by rule and *are unconstitutional as to appeals to district courts of appeal.*

It is clear that jurisdiction of the District Court of Appeal to review non-final orders may be granted only by rule of the Supreme Court of Florida in the Florida Rules of Appellate Procedure. As stated in *State v. Gaines*, 770 So. 2d 1221, 1224 (Fla. 2000), Article V, Section 4(b)(1) of the Florida Constitution vests exclusive power in the Florida Supreme Court to determine the authority of district courts of appeal. Specifically, it determines the authority of district courts to hear appeals of non-final orders.

> District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly appealable to the supreme court or a circuit court. *They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.*

Article V, Section 4(b)(1), Florida Constitution. (Emphasis supplied.). The state cannot rely on provisions of Section 924.07(1)(h) and Section 924.07(1)(l), Florida Statutes, therefore, which have not been adopted by the Florida Supreme Court in Rule 9.140(c) of the Florida Rules of Appellate Procedure, in order to appeal the County Court's order directly to the District Court of Appeal. *See Gaines*, 770 So. 2d 1221(Fla. 2000); *State v. Smith*, 260 So. 2d 489 (Fla. 1972). *See also* Point III, *infra*.

Even though the state may appeal non-final orders pursuant to Section 924.07(1), Florida Statutes, there is no provision in the Florida Rules of Appellate Procedure for the state to appeal the instant non-final order to the Fourth District in this case.

The state relies on cases where discretionary jurisdiction was exercised in matters of a constitutional nature. Specifically, the cases cited by the state, *State v. Spiegel*, 710 So. 2d 13 (Fla. 3d DCA 1998) (motion to suppress granted finding statements were made in violation of defendant's privilege against self-incrimination), *State v. Muldowny*, 871 So. 2d 911 (Fla. 5th DCA 2004) (breath test results were suppressed), *State v. Slaney*, 653 So. 2d 422 (Fla. 3d DCA 1995) (blood alcohol test suppressed), *State v. Brigham*, 694 So. 2d 793 (Fla. 2d DCA 1997) (court concluded it had jurisdiction because the non-final order "suppressed" evidence and was appealable on that basis) and *State v. Rasmussen*, 644 So. 2d

1389 (Fla. 1st DCA 1994) (breath test results were suppressed), all involved constitutional issues such as the suppression of evidence obtained through search and seizure or the suppression of a defendant's statements due to a violation of privilege against self-incrimination. The district courts in those cases took discretionary jurisdiction over the non-final orders because the state was permitted to appeal those issues of suppression pursuant to Florida Rule of Appellate Procedure 9.140(c)(1)(B).

Unlike the cases cited by the state, the County Court's pretrial ruling in the present case that an alleged excited utterance of a witness was inadmissible is not appealable under any subsection of Florida Rule of Appellate Procedure 9.140(c)(1). Despite Petitioner's characterization of the County Court's order as "suppressing evidence (the victim's excited utterance) and certifying a question of great public importance," the County Court order at issue is not suppressing evidence. Rather it is ruling that evidence is inadmissible pursuant to evidence law, and therefore is not an order appealable to the Fourth District pursuant to Florida Rule of Appellate Procedure 9.140(c)(1). Furthermore, the County Court's certification that the issue in this case is a question of great public importance does not supersede the provisions of Florida Rule of Appellate Procedure 9.140(c), which enumerate what types of appeals are permitted by the state.

In *State v. Kepke*, 596 So. 2d 715 (Fla. 4th DCA 1992), the District Court found that it did not have discretionary jurisdiction to review a non-final order which had been certified as a question of great public importance by the county court. Specifically, the court in *Kepke* explained that the non-final order was not the type of order that could be appealed to the circuit court pursuant to Florida Rule of Appellate Procedure 9.140(c)(1)(B). The state's position was that the order was appealable because it suppressed the use of the H.R.S. rules as evidence of satisfaction of the evidentiary predicate for admitting breath test results. The county court ordered that the state be required to lay a traditional predicate for breath test results in order to admit them into evidence. Since the non-final order did not have the effect of suppressing evidence, but merely required the state to provide a particular kind of predicate before submitting the breath test results, the district court determined that the non-final order did not constitute an order of suppression. The district court, therefore, did not have discretionary jurisdiction under Florida Rule of Appellate Procedure 9.030(b)(4). *See also State v. Boyd*, 610 So. 2d 64 (Fla. 1st DCA 1992) (order of county court was "not an absolute bar to admission of breathalyzer test results and, thus, since it does not suppress evidence, it is not appealable under rule 9.140(c)(1)(B), Florida Rules of Appellate Procedure.").

In the present case, the trial court's non-final order denying the state's motion in limine to admit an excited utterance was not an absolute bar to the evidence the state sought to admit at trial. The state would still have the opportunity to present its evidence if it were to call the declarant, who is available to testify for purposes of trial. *See* Point I, *supra*. The non-final order, therefore, was not an order suppressing evidence and therefore it is not reviewable by the district court.

The state claims that the Fourth District ignored section two of Florida Rule of Appellate Procedure 9.140(c), in deciding that it did not have jurisdiction over the non-final order in the present case. Florida Rule of Appellate Procedure 9.140(c) is the rule that grants the state the right to appeal and enumerates what issues may be appealed by the state. Section two of Florida Rule of Appellate Procedure 9.140(c) provides "[t]he state as provided by general law may appeal to the circuit court non-final orders rendered in the county court." On the other hand, Florida Rule of Appellate Procedure 9.030(b) determines the jurisdiction of the District Courts. Specifically, Florida Rule of Appellate Procedure 9.030(b)(4)(B) states that they may in their discretion review "non-final orders, otherwise appealable to the circuit court under rule 9.140(c) that the county court has certified to be of great public importance." It is important to note the difference between the two distinct purposes of each rule. One informs the state as to what

types of appeals may be taken and the other advises the District Courts as to their jurisdictional authority. The state misinterprets Florida Rule of Appellate Procedure 9.030(b)(4)(B), however, as giving it the right to appeal all non-final orders if they are certified to be questions of great public importance. This is not the case. If the state's position were correct, there would be no need to adopt the laundry list of orders which may be appealed by the state in Florida Rule of Appellate Procedure 9.140(c)(1).

It is clear that Florida Rule of Appellate Procedure 9.030(b)(4)(B) gives the District Courts the discretion to review non-final county court orders if they have been certified as questions of great public importance and if they *are otherwise appealable to the circuit court* under Florida Rule of Appellate Procedure 9.140(c). Only appeals taken pursuant to Florida Rule of Appellate Procedure 9.140(c)(1)(A)-(P) are appealable to the Circuit Court. Section two of Florida Rule of Appellate Procedure 9.140(c), therefore, does not give the District Court additional jurisdiction, but rather, it only grants the state the right to appeal to the circuit court non-final orders rendered in the county court.

Since the non-final order rendered by the County Court in this case is not an order of the types enumerated in Florida Rule of Appellate Procedure 9.140(c), the Fourth District was correct in transferring this case to the Circuit Court for lack of jurisdiction.

POINT III:

THE PROVISIONS OF SECTION 924.07(1), FLORIDA STATUTES, RELIED UPON BY THE STATE IN THIS CASE ARE UNCONSTITUTIONAL AS APPLIED TO NON-FINAL COUNTY COURT ORDERS ON MOTIONS IN LIMINE TO DISTRICT COURTS OF APPEAL.

It is clear that the Fourth District Court of Appeal based its decision to transfer the case to the Circuit Court on its finding that there is no constitutional provision by which it has the authority to take jurisdiction. More specifically, Section 924.07(1) is unconstitutional as applied to appeals to the district court. The proper standard of review is de novo because whether a state statute is unconstitutional involves a pure question of law. *City of Miami v. McGrath*, 824 So. 2d 143, 146 (Fla. 2002).

The Fourth District's order stated:

> Although some provisions of section 924.07(1) have been adopted in rule 9.140(c) by the Florida Supreme Court, the portions relied on by the State have not been adopted by rule and *are unconstitutional as to appeals to district courts of appeal.*

State v. Ratner, 602 So. 2d 267, 269 (Fla. 4th DCA 2005) (citations omitted) (emphasis supplied). The word "unconstitutional" was used to explain that the state was relying on Section 924.07(1), portions of which have not been adopted in Rule 9.140(c) by the Supreme Court, and therefore do not provide for appeals to the district courts of appeals. Specifically, Section 924.07 (1)(l), Florida Statutes,

states that the state may appeal from "[a]n order or ruling suppressing evidence or evidence in limine at trial." In contrast, Florida Rule of Appellate Procedure 9.140(c) enumerates the particular orders from which the state may appeal:

> dismissing an indictment or information or any count thereof or dismissing an affidavit charging thee commission of a criminal offense, the violation of probation, the violation of community control, or the violation of any supervised correctional release; (B) suppressing before trial confessions, admissions, or evidence obtained by search and seizure; (C) granting a new trial; (D)arresting judgment; (E) granting a motion for judgment of acquittal after a jury verdict; (F) discharging a defendant under Florida Rule of Criminal Procedure 3.191; (G) discharging a prisoner on habeas corpus; (H) finding a defendant incompetent or insane; (I) finding a defendant mentally retarded under Florida Rule of Criminal Procedure 3.203; (J) granting relief under Florida Rule of Criminal Procedure 3.853; (K) ruling on a question of law if a convicted defendant appeals the judgment of conviction; (L) withholding adjudication of guilt in violation of general law; (M) imposing an unlawful or illegal sentence or imposing a sentence outside the range permitted by the sentencing guidelines; (N) imposing a sentence outside the range recommended by the sentencing guidelines; (O) denying restitution; or (P) as otherwise provided by general law for final orders.

No where amongst the enumerated orders that may be appealed by the state under Florida Rule of Appellate Procedure 9.140(c), is there mention of authorization to appeal a pre-trial motion in limine to admit an excited utterance. As stated in Point II, *supra*, the state cannot characterize their appeal as permitted as a suppression issue. It therefore appears that the state is relying on Section 924.07(1)(h) which

provides the state may appeal "[a]ll other pretrial orders, except that it may not take more than one appeal under this subsection in any case." Florida Rule of Appellate Rule 9.140(c) specifically does not provide authorization for the state to appeal "all other pre-trial orders." Since the Florida Supreme Court has not adopted Section 924.07(1)(h) and incorporated it by rule in the Florida Rules of Appellate Procedure, it is unconstitutional as to appeals to district courts of appeal. As such, in the present case and with regard to appeals to the district courts of appeal, this statute violates Article V, Section 4(b) of the Florida Constitution which vests exclusive power in this Court to authorize non-final appeals.

> The Constitution does not authorize the legislature to provide for interlocutory review. Any statute purporting to grant interlocutory appeals is clearly a declaration of legislative policy and no more. Until and unless the Supreme Court of Florida adopts such a statute as its own . . . the purported enactment is void.

State v. Gaines, 770 So. 2d 1221, 1223 (Fla. 2000) (*quoting State v. Smith*, 260 So. 2d 489, 491 (Fla. 1972) and *State v. Smith*, 254 So. 2d 402, 404 (Fla. 1st DCA 1971)).

Based on the foregoing, the state's claim that this Court has "breathed life" into the applicable statutes in this case is incorrect. The portions of the statute relied upon by the state have not been expressly incorporated by rule and therefore they have not been adopted by the Florida Supreme Court. As a result, the Fourth

District was correct to transfer this case to the Circuit Court for its lack of jurisdiction.

CONCLUSION

WHEREFORE, based upon the foregoing argument and authorities cited herein, Respondent respectfully requests that this Honorable Court affirm the district court order on appeal and hold that the alleged testimonial statements at issue in this appeal are inadmissable as a violation of the Confrontation Clause pursuant to the Sixth Amendment to the United States Constitution and contrary to the rule of law announced by the United States Supreme Court *in Crawford v. Washington, supra.;* affirm the Fourth District's decision that it lacked discretionary jurisdiction in this case; and that the provisions of Section 924.07(1) relied upon by the state in this case are unconstitutional.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief on the Merits has been furnished by United States mail to: Richard Valuntas, Assistant Attorney General, 1515 North Flagler Drive, 9th Floor, West Palm Beach, Florida 33401, and to Jeffrey Ratner, Respondent, on this _____ day of November, 2005.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Answer Brief is submitted in Times New Roman, 14 point font, pursuant to Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

EISENBERG & FOUTS, P.A.
Attorneys for Jeffrey Ratner, Respondent
250 Australian Avenue, South, Ste. 704
West Palm Beach, Florida 33401
561/659-2009 561/659-2380 FACSIMILE)

JAMES L. EISENBERG
Florida Bar Number: 216615

KAI LI ALOE FOUTS
Florida Bar Number: 0076790

APPENDIX

:	Ratner & "kai li aloe"
Date/Time of Request:	Saturday, November 26, 2005 10:06:00 Central
Client Identifier:	KFJ
Database:	FL-CS
Citation Text:	902 So.2d 267
Lines:	111
Documents:	1
Images:	0

Briefs and Other Related Documents

District Court of Appeal of Florida,Fourth District.
STATE of Florida, Appellant,
v.
Jeffrey Scott **RATNER**, Appellee.
No. 4D04-2513.

May 18, 2005.

Background: State appealed from an order of the County Court, Fifteenth Judicial Circuit, Palm Beach County, Sheree Davis Cunningham, J., that denied State's motion in limine and certified question of great public importance.

Holdings: The District Court of Appeal, Klein, J., held that:

1(1) District Court of Appeal lacked jurisdiction to review order, and

2(2) statute authorizing State to appeal order was unconstitutional.

Appeal transferred.

West Headnotes

[1] **Criminal Law 110 1024(1)**

110 Criminal Law
110XXIV Review
110XXIV(D) Right of Review
110k1024 Right of Prosecution to Review
110k1024(1) k. In General. Most Cited Cases

Criminal Law 110 ⚿1068

110 Criminal Law
110XXIV Review
110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)4 Reserved or Certified Questions
110k1068 k. Cases and Questions Reserved or Certified. Most Cited Cases
District Court of Appeal lacked jurisdiction to review non-final County Court order denying State's motion in limine, even though order certified question of great public importance, where order was not otherwise appealable to Circuit Court under appellate rule governing appeals by State. West's F.S.A. Const. Art. 5, § 4(b); West's F.S.A. R.App.P.Rules 9.030(b)(4), 9.140(c).

[2] **Criminal Law 110 ⚿1005**

110 Criminal Law
110XXIV Review
110XXIV(A) Nature and Form of Remedy
110k1005 k. Constitutional and Statutory Provisions. Most Cited Cases
Statute authorizing State to appeal "an order or ruling suppressing evidence or evidence in limine at trial," or "other pre-trial orders" was unconstitutional as to appeals of non-final orders to district courts of appeal; state constitution granted Supreme Court the power to authorize non-final appeals to district courts of appeal by rule, and appellate rule governing appeals by State did not include those categories of appeals. West's F.S.A. Const. Art. 5, § 4(b); West's F.S.A. § 924.07(1)(h, *l*); West's F.S.A. R.App.P.Rules 9.030(b)(4), 9.140(c).
West CodenotesUnconstitutional as AppliedWest's F.S.A. § 924.07(1)(h, *l*).

***268** Charles J. Crist, Jr., Attorney General, Tallahassee, and Richard Valuntas, Assistant Attorney General, West Palm Beach, for appellant.
James L. Eisenberg and **Kai Li Aloe** Fouts of Eisenberg & Fouts, West Palm Beach, for appellee.

ON MOTION FOR REHEARING

ORDER TRANSFERRING APPEAL

KLEIN, J.
We withdraw our previously filed opinion and replace it with this opinion.

The State appeals the county court's denial of its motion in limine. The court certified the following question as one of great public importance:
SHOULD THE DECISION OF THE UNITED STATES SUPREME COURT IN *CRAWFORD V. WASHINGTON*, [541 U.S. 36] 123 [124] S.CT. 1354 [158 L.ED.2D 177] (2004) BE INTERPRETED TO PRECLUDE THE ADMISSION OF A STATEMENT WHICH WOULD OTHERWISE BE ADMISSIBLE UNDER THE EXCITED UTTERANCE EXCEPTION TO HEARSAY?

[1] We must dismiss this appeal because we do not have jurisdiction to review this type of non-final order of a county court which certifies a question of great public importance.

Article V, Section 4(b) of the Florida Constitution is the authority for the jurisdiction of district courts of appeal and, in the case of non-final orders, gives the Florida Supreme Court exclusive power to authorize review by the adoption of rules. The rule authorizing review of county court orders certifying questions of great public importance is Florida Rule of Appellate Procedure 9.030(b)(4), which allows review of:
(A) final orders of the county court, otherwise appealable to the circuit court under these rules, that the county court has certified to be of great public importance;
(B) non-final orders, otherwise appealable to the circuit court under rule 9.140(c), that the county court has certified to be of great public importance.

Because this is a non-final order, it would be appealable only under subsection (B), which authorizes certification if the order is appealable under rule 9.140(c). The order in this case, which denies the State's motion in limine, is not such an order.

***269** [2] The State argues that we have jurisdiction to review this pre-trial order under section 924.07(1)(h), Florida Statutes (2004) which purports to allow the state to appeal "other pre-trial orders," and section 924.07(1)(*l*), which allows the state to appeal "an order or ruling suppressing evidence or evidence in limine at trial." As is apparent from our earlier discussion, however, our constitution grants the power to authorize non-final appeals to district courts of appeal to our supreme court. Although some provisions of section 924.07(1) have been adopted in rule 9.140(c) by the Florida Supreme Court, the portions relied on by the State have not been adopted by rule and are unconstitutional as to appeals to district courts of appeal. *State v. Gaines*, 770 So.2d 1221 (Fla.2000); *State v. Smith*, 260 So.2d 489 (Fla.1972).

The state's reliance on cases such as *State v. Muldowny*, 871 So.2d 911 (Fla. 5th DCA 2004), *State v. Slaney*, 653 So.2d 422 (Fla. 3d DCA 1995), and *State v. Brigham*, 694 So.2d 793 (Fla. 2d DCA 1997) is misplaced. Unlike the present case, in which the pretrial ruling concerned the admissibility of an excited utterance of a witness, those cases involved the suppression of evidence obtained by search and seizure, which the state is permitted to appeal under rule 9.140(c)(1)(B).

The provisions in section 924.07(1) relied on by the State in this case are not unconstitutional as to the appeal of non-final orders from county court to circuit court. Article V, § 5(b) of the Florida Constitution provides that circuit courts have jurisdiction to hear appeals "when provided by general law." This order does appear to fall within the category of "other pre-trial orders," which the state can appeal to circuit court under section 924.07(1)(h). We accordingly transfer the appeal to circuit court.

POLEN, SHAHOOD, JJ., concur.
Fla.App. 4 Dist.,2005.

State v. Ratner
902 So.2d 267, 30 Fla. L. Weekly D1283

Briefs and Other Related Documents (Back to top)

• 4D04-2513 (Docket) (Jun. 29, 2004)

END OF DOCUMENT