IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	**CASE Nos. SC05-1007 & 1009**
Petitioner,	**L.T. Case No. 4D04-2513**
vs.	
JEFFREY SCOTT RATNER,	
Respondent.	

****

ON DIRECT APPEAL AND DISCRETIONARY REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL

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PETITIONER'S COMBINED BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

The petitioner, the State of Florida, was the prosecution in the trial court and was the appellant in the Fourth District Court of Appeal. The petitioner will be referred to herein as "the State." The respondent, Jeffrey Scott Ratner, was the defendant in the trial court and was the appellee in the Fourth District Court of Appeal. The respondent will be referred to as "Respondent."

STATEMENT OF THE CASE AND FACTS

Respondent was charged with domestic battery for striking his wife, Diane Ratner (the victim). (R. 11). After the battery occurred, the victim (who was bleeding all over) fled the residence. (R. 69-70). The victim went to the public safety department, which was less than one-quarter of a mile away. Id. The victim approached Officer Darville in the public safety department's parking lot. (R. 3, 50-51). Both of the victim's eyes were swollen, and she was bleeding from her eyebrow. (R. 50). The victim's nose was also swollen and bleeding. Id. The victim was crying, excited, and upset when she told Officer Darville that Respondent punched her and kicked her in the face. (R. 3, 50, 68-70, 87-89, 190). The victim refused to give a sworn statement and eventually

recanted/revised her prior statements to law enforcement. (R. 60-67, 70-73).

The State filed a motion in limine requesting that the victim's statement to Officer Darville be admitted into evidence under the excited utterance exception to the hearsay rule. (R. 87-89). The trial court held a hearing on the matter and the parties exhaustively briefed the issue. (R. 87-89, 137-141, 148-195, 198-203, 204-215). Respondent argued the decision in Crawford v. Washington, 124 S.Ct. 1354 (2004) precluded the admission of the victim's hearsay statements as evidence under the excited utterance exception to the hearsay rule. The State argued Crawford did not preclude the admission of the victim's statements because they were excited utterances, which are non-testimonial.

On June 22, 2004, the trial court entered an amended order denying the State's motion in limine based upon the decision in Crawford. (R. 218-219). The trial court acknowledged the "potentially wide-ranging implications" of its ruling, "especially as [it] pertains to cases of Domestic Violence," and certified the following question of great public importance: "Should the decision of the United States Supreme Court in *Crawford v. Washington* (2004 WL 413301) be interpreted to preclude admission of a statement which would otherwise be admissible under the excited utterance exception to hearsay?"

Id. The State appealed the trial court's order to the Fourth District, which exercised its discretion and accepted jurisdiction over the instant case.

After the case was fully briefed, the Fourth District issued an opinion transferring the case to the circuit court due to an alleged lack of jurisdiction. State v. Ratner, 30 Fla. L. Weekly D851 (Fla. 4th DCA Mar. 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's motion). The State's motion noted that since the State can appeal the trial court's ruling to the circuit court under section 924.07(1)(h) and Rule 9.140(c)(2), the Fourth District had jurisdiction over this case under Rule 9.030(b)(4)(B) because the trial court certified a question of great public importance. The Fourth District subsequently withdrew its prior opinion and entered a new opinion holding the Court did not have jurisdiction over the instant case. State v. Ratner, 902 So. 2d 267 (Fla. 4th DCA 2005). The State filed a timely petition to invoke discretionary review in this Court.[1]

[1] The State also filed a direct appeal in this case because the Fourth District's decision in this case declares portions of section 924.07(1) of the Florida Statutes to be unconstitutional.

SUMMARY ARGUMENT

POINT I The Fourth District Court of Appeal's decision in Ratner is in direct conflict with decisions from every other district court of appeal in Florida. The Fourth District clearly had jurisdiction over this case under the applicable rules and statutes because the trial court certified a question of great public importance. Accordingly, this Court should take jurisdiction over the instant case pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv).

POINT II The Fourth District Court of Appeal's decision in Ratner held that portions of section 924.07(1) "are unconstitutional as to appeals to district courts of appeal." Ratner, 902 So. 2d at 269. The applicable provisions of the Florida Constitution and the Florida Rules of Appellate Procedure require this Court to take jurisdiction over this case because the Fourth District's decision declared a state statute invalid.

ARGUMENT

POINT I

THE FOURTH DISTRICT COURT OF APPEAL'S DECISION ERRONEOUSLY CONCLUDED IT DOES NOT HAVE JURISDICTION OVER THE INSTANT CASE, WHICH IS IN DIRECT CONFLICT WITH STATE V. MULDOWNY, 871 SO. 2D 911 (FLA. 5TH DCA 2004); STATE V. SPIEGEL, 710 SO. 2D 13 (FLA. 3D DCA 1998); STATE V. SLANEY, 653 SO. 2D 422 (FLA. 3D DCA 1995); STATE V. BRIGHAM, 694 SO. 2D 793 (FLA. 2D DCA 1997); AND STATE V. RASMUSSEN, 644 SO. 2D 1389 (FLA. 1ST DCA 1994)

This Court should accept jurisdiction over the instant case because the Fourth District's holding is in direct conflict with decisions from every other district court of appeal in Florida. For example, the Fourth District's decision in Ratner is in direct conflict with the decision in State v. Spiegel, 710 So. 2d 13 (Fla. 3d DCA 1998). In Spiegel, the county court entered an order suppressing a defendant's statements made during a Florida Bar grievance interview. The county court's order also certified a question of great public importance. The Third District exercised its jurisdiction over the case and held that statements made by an attorney at a Florida Bar interview, when the attorney believes he is compelled to answer, may be suppressed in a subsequent criminal prosecution as a violation of the privilege against self-incrimination. Id. at 16. In contrast, the Fourth District's decision in Ratner held the Court did not have jurisdiction over a county court order

suppressing evidence (the victim's excited utterance) and certifying a question of great public importance.

The Fourth District's decision in Ratner also conflicts with State v. Muldowny, 871 So. 2d 911, 912-913 (Fla. 5th DCA 2004)(district court has discretionary review of non-final orders of a county court containing a question certified to be of great public importance), State v. Slaney, 653 So. 2d 422, 424 (Fla. 3d DCA 1995)("this court has jurisdiction to entertain this appeal as one taken from a non-final order of the county court certified to be of great public importance."), State v. Brigham, 694 So. 2d 793 (Fla. 2d DCA 1997)(accepting jurisdiction over case where the State appealed a county court's non-final order which (1) granted a motion in limine and (2) certified several questions of great public importance), and State v. Rasmussen, 644 So. 2d 1389 (Fla. 1st DCA 1994)(accepting jurisdiction over county court order ruling on a motion in limine and certifying a question of great public importance). The Fourth District's attempt to distinguish these cases must fail because the trial court entered an order which denied the State's motion in limine and certified a question of great public importance.

The State appealed the trial court's order to the Fourth District under Florida Rule of Appellate Procedure

9.030(b)(4)(B). Rule 9.030(b)(4)(B) provides district courts of appeal with discretionary review over "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." Rule 9.140(c)(2) expressly states "[t]he state as provided by general law may appeal to the circuit court non-final orders rendered in county court." The Fourth District acknowledged that the trial court's order in this case could be appealed to the circuit court under general law as it appears "to fall within the category of 'other pretrial orders,' which the state can appeal to circuit court under section 924.071(h)." Ratner, 902 So. 2d at 269. Since the State can appeal the trial court's ruling to the circuit court under section 924.071(h) and Rule 9.140(c)(2), the Fourth District had jurisdiction over this case under Rule 9.030(b)(4)(B) because the trial court certified a question of great public importance. See Fla. R. App. P. 9.030(b)(4)(B); Fla. R. App. P. 9.140(c)(2); §§ 924.07(1)(h) & (l), Fla. Stat. Therefore, this Court should take jurisdiction over the instant case pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv).

POINT II

THE COURT HAS JURISDICTION OVER THIS CASE BECAUSE THE FOURTH DISTRICT COURT OF APPEAL'S DECISION DECLARED PORTIONS OF A FLORIDA STATUTE UNCONSTITUTIONAL

The Florida Constitution states this Court "[s]hall hear appeals from . . . decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution." Art. V, § 3(b)(1), Fla. Const.; see also Fla. R. App. P. 9.030(a)(1)(A)(ii). When a district court of appeal declares a portion of a Florida statute unconstitutional, this Court must take appellate jurisdiction over the case. See State v. Cohen, 568 So. 2d 49, 50 (Fla. 1990)(jurisdiction is mandatory over case where a district court of appeal declares a portion of a statute unconstitutional); State v. Potts, 526 So. 2d 63 (Fla. 1988)("We have on appeal *Potts v. State*, No. 4-86-1073 (Fla. 4th DCA 1987), which declared unconstitutional a portion of section 790.07(2), Florida Statutes (1985). Jurisdiction is mandatory. Art. V, § 3(b)(1), Fla. Const."). The Fourth District's decision in Ratner expressly held that some provisions of section 924.07(1) of the Florida Statutes are unconstitutional. Ratner, 902 So. 2d at 269. Therefore, the Florida Constitution requires this Court to exercise its appellate jurisdiction over this case.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities cited herein, the State respectfully requests this Honorable Court to exercise its jurisdiction to hear this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this brief has been furnished via U.S. Mail to: James Eisenberg, 250 Australian Avenue, South, Suite 704, West Palm Beach, FL 33401 on August 3, 2005.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared with Courier New 12 point type and complies with the font requirements of Rule 9.210.

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Of Counsel