IN THE SUPREME COURT OF FLORIDA

SERGIO CORONA,

Petitioner,

v. CASE NO.: SC06-1054

STATE OF FLORIDA, 5TH DCA CASE NO.: 5D02-2850

Respondent.
_______________________________/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON THE MERITS

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STATEMENT OF CASE AND FACTS

The majority of facts provided by Petitioner are accepted by the State; however, where there is disagreement, the State will point that out in its argument with supporting citations to the record. Additionally, the State offers the following relevant facts, some of which have been repeated for the sake of continuity:

1. Petitioner was charged with one count of capital sexual battery. (R 5). The facts which led to this charge were set out in detail in the opinion issued by the Fifth District Court of Appeal:

> On January 25, 2002, Sergio Corona ("Corona") and his family were vacationing in Orlando, Florida. The family was accompanied by relatives of Mrs. Corona. The entire group shared a suite at the Westgate Resort near Walt Disney World. Shortly after midnight, Mrs. Corona walked into the bedroom she was sharing with Corona and witnessed her husband performing oral sex on the couple's eleven-year-old daughter, A.C. Mrs. Corona lunged at her husband, who did not realize someone had entered the room, and pulled him up by the hair. He immediately fled the suite, pursued by Mrs. Corona and her relatives, then got in the family van and drove back to Chicago. Mrs. Corona tried to get a security guard to stop her husband as he drove away. The guard refused, but he did report the incident to his supervisor and the police were called. Mrs. Corona was very upset when she spoke with the police and offered little useful information. A.C., however, was able to give a statement describing the crime in detail.
>
> Mrs. Corona and A.C. returned to Chicago with other family members. Serendipitously, two days later, they

crossed paths with Corona on the Eisenhower Expressway. The family blocked Corona's van with their own SUV and refused to allow Corona to drive away. When police arrived, they found a white van in a traffic lane blocked by a black SUV. Corona was sitting in the van. More than ten irate people were on the highway, crying and yelling and trying to get at Corona. Officer Malkowski put Mr. Corona in his police car for his own protection. Corona exclaimed to him: "I can't believe I did it," and, "Why did I do it?" Officer Malkowski learned from the family members that they were angry with Corona because he had sexually assaulted the youngest daughter while they were on vacation in Florida. They said they had made a complaint to police, but that Corona had fled the scene, and they had just crossed paths with him on their way home to Chicago. Upon learning this, Officer Malkowski took Corona into custody and read Corona his rights.

A detective interviewed Mrs. Corona and A.C. in Spanish. A.C. reported that she had been on the bed with her father, who had pulled her underwear to one side and put his mouth on her genital area. Officer Malkowski, joined by State Trooper Ewald, then interviewed Corona for several hours. During the interview, Corona confessed to placing his mouth on A.C.'s genital area during the family's Florida vacation. He said his wife came into the room and saw what he was doing. At that point, he got up and ran away.

. . .

Corona v. State,[1] 920 So. 2d 588, 589-590 (Fla. 5th DCA 2006), rev. granted, 18

[1] This case was initially *per* curiam affirmed in Corona v. State, 853 So. 2d 430 (Fla. 5th DCA 2003), cert. granted, Corona v. Florida, 541 U.S. 930 (2004) (Case

So. 3d 1037 (Fla. 2009).

On July 23, 2002, the State filed a Notice of Intent to Introduce Hearsay Statements at Trial. (R 217-218). On August 2, 2002, the State filed an amended notice bringing to all parties attention that the child victim would not be available to testify at trial and that the evidence would be admitted pursuant to section 90.803(23).

On August 5, 2002, the trial began with a lengthy hearing addressing the admissibility of the child hearsay. (T 1-71). Specifically, the court addressed the issue of unavailability of the victim and the issue of the reliability of her statement. After the State presented four witnesses, legal argument began. (T 48). Eventually, defense counsel asked for a recess in order to research the issue in more detail noting that there was a case she wanted to read before additional argument. (T 58). The trial court offered 45 minutes but expanded the time to one hour upon defense counsel's request for the extra time in order for her to be able to print the case. Id.

The hearing resumed with the trial court and the prosecutor producing cases on the issue of availability; however, defense counsel did not. (T 61-63). Later, the issue of reliability was revisited, and defense counsel referenced cases

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was remanded to Fifth District Court of Appeal to be reconsidered in light of

but again admitted she had failed to bring any to the hearing. (T 65). Finally, the court made a ruling finding the child to be both unavailable and also finding the hearsay statements to be reliable. (T 67-69). The court next turned to the issue of getting Corona dressed in non-inmate clothing. At this point (after pages of argument, after a recess, and after the trial court's ruling), defense counsel stated, "Also, your Honor, in light of your ruling, I would argue that the admission of these statements violates my client's right to confrontation under the Constitution." (T 70). The court noted the objection and, then, turned to other pre-trial matters and began selecting a jury. (T 70-73).

2. The defense filed a motion to suppress Corona's statements, and a hearing was held on June 19, 2002. (R 77-155). The State presented three witnesses at this hearing: Officer Malkowski, Trooper Ewald, and Mrs. Corona. (R 82-143). The court next heard legal argument from both sides. (R 144-154).

On June 26, 2002, the trial court entered a detailed order denying the defense's motion to suppress. (R 191-203). Included in this order was a finding that the officers in Illinois had probable cause to arrest Corona given that they reasonably believed he was a suspect in the commission of a felony. (R 197). Next, the court found Corona's initial comments to the officer to be spontaneous

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Crawford.)

and voluntary and not the result of interrogation. (R 199). Finally, the court found the additional comments made by Corona to the officers were made voluntarily after proper Miranda warnings. (R 199-202).

3. Jury instructions were discussed with no objection to the lack of an instruction as to Corona's age. (T 293). When the jury was instructed, the court specifically informed them, "If you find the Defendant guilty of sexual battery upon a person less than 12 years of age and you further find that at the time of the sexual battery the Defendant was 18 years of age or older, you should find the Defendant guilty of sexual battery upon a person less than 12 years of age by a person 18 years of age or older." (R 238, T 330). Then, when the court detailed the verdict forms, it informed the jury there was a special verdict form requiring them to find Corona was 18 years of age or older at the time of the offense. (R 248, T 336). There were no objections to the jury instructions and verdict forms. (T 338).

The State presented evidence of Corona's exact age. (T 234). Corona himself testified that his date of birth was December 20, 1965. (T 247). The jury specifically found Corona was 18 years of age or older. (R 234, 248).

SUMMARY OF ARGUMENT

First, the State argues this Court should revisit its acceptance of jurisdiction in this case and, respectfully, asserts that the case should be remanded to the district court giving that court an opportunity at a harmless error analysis.

As to the child hearsay, it is the position of the State that the issue is not properly preserved as to any confrontation clause issues. If it found to be preserved, the State submits the error should be found to be harmless.

Corona's second claim is that the prosecutor's actions constituted fundamental error. For the reasons set out in the brief, clearly, such is not the case.

The third claim by Corona is that his statements and confessions were improperly admitted. Again, this issue was not preserved for appeal.

The fourth ground presented is that the trial court erred in denying the motion to suppress. Specifically, Corona submits the arresting officers in Illinois lacked probable cause to effectuate a warrantless arrest. Given the totality of the facts before the officers, the trial court found there was probable cause, and it is the State's position that the facts of this case support the trial court's determination.

The next claim by Corona is that the trial court committed fundamental error by its actions during voir dire. None of the actions of the trial court were objected to, and, therefore, none were preserved for appeal. Review of those actions show

that Corona has clearly failed to show fundamental error was committed by the trial court.

The last alleged reversible error was in the instructions given to the jury. Corona submits the jury was not instructed that it had to find that he was 18 years of age or older. Not only was this claim not preserved for appeal, it is factually incorrect.

ARGUMENT

Prior to addressing the specific points presented by Petitioner, the State begins its argument by reemphasizing its earlier assertion that this Court does not have jurisdiction of this case. The opinion of the Fifth District Court of Appeal clearly found that the Crawford[2] issue was not preserved for appeal. A review of the facts of the case supports this finding.

On July 23, 2002, the State filed a Notice of Intent to Introduce Hearsay Statements at Trial. (R 217-218). On August 2, 2002, the State filed an amended notice bringing to all parties attention that the child victim would not be available to testify at trial and that the evidence would be admitted pursuant to section 90.803(23).

On August 5, 2002, the trial began with a lengthy hearing addressing the admissibility of the child hearsay. (T 1-71). Specifically, the court addressed the issue of unavailability of the victim and the issue of the reliability of her statement. After the State presented four witnesses, legal argument began. (T 48). Eventually, defense counsel asked for a recess in order to research the issue in more detail noting that there was a case they wanted to read before additional argument. (T 58). The trial court offered 45 minutes but expanded the time to one

[2] Crawford v. Washington, 541 U.S. 36 (2004).

hour upon defense counsel's request for the extra time in order for her to be able to print the case. Id.

The hearing resumed with the trial court and the prosecutor producing cases on the issue of availability; however, defense counsel did not. (T 61-63). Later, the issue of reliability was revisited, and defense counsel referenced cases but again admitted she had failed to bring any to the hearing. (T 65). Finally, the court made a ruling finding the child to be both unavailable and also finding the hearsay statements to be reliable. (T 67-69). The court next turned to the issue of getting Corona dressed in non-inmate clothing. At this point (after pages of argument, after a recess, and after the trial court's ruling), defense counsel stated, "Also, your Honor, in light of your ruling, I would argue that the admission of these statements violates my client's right to confrontation under the Constitution." (T 70). The court then turned to other pre-trial matters and began selecting a jury. (T 70-73).

The defense's objection was clearly a general objection made **after** the trial court's ruling. See Stephens v. State, 787 So. 2d 747 (Fla. 2001) (This Court applied law that general, boilerplate, bare boned motions are insufficient to preserve specific issues for appeal). The hearsay was discussed and debated for pages with both sides being given the opportunity to present law and argument.

However, review of the record shows the discussion centered on availability of the victim and the reliability of her statements.

At trial, the general confrontation objection was not even renewed; instead, defense counsel simply made a hearsay objection which has been repeatedly rejected by courts as insufficient to preserve a Crawford claim. See Mencos v. State, 909 So. 2d 349 (Fla. 4th DCA 2005); see also U.S. v. Emmanuel, 565 F.3d 1324 (11th Cir. 2009) (Court held a general hearsay objection does not preserve a Crawford claim.). Admittedly, current law does not require an attorney to renew the objection if the ruling is clear. However, section 90.104(1)(b), Florida Statutes was not amended until 2003 when the following language was added: "If the court has made a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal." See ch. 2003-259, § 1, at 1298, Laws of Fla. (codified at § 90.104(1)(b), Fla. Stat. (2005)); see also, Franklin v. State, 965 So. 2d 79 (Fla. 2007). This case was tried in August of 2002, prior to the amendment to the statute, and the law at that time required a motion to be renewed.

These are the facts which led the Fifth District of Appeal to find that the issue was not preserved. In its opinion, the district court wrote:

> The court also found that A.C.'s statements were sufficiently reliable for admission. In light of the court's

> ruling, defense counsel made a non-specific objection that the admission of A.C.'s statement violated Corona's right to 'confrontation.'

Corona, 929 So. 2d at 590 – 591. Later, in the opinion, the district court added the following:

> Here, Corona made a generic argument pretrial that his 'confrontation' rights were being violated, once the court determined that A.C.'s hearsay statements were sufficiently reliable to be admitted. However, he never specifically argued, as did the defendant in *Crawford*, that the test for admission of this evidence, as outlined in *Ohio v. Roberts*, should be reconsidered. Instead, he primarily addressed the issue within the existing framework of *Ohio v. Roberts*, contending that the victim's statements were unreliable hearsay. Then, at trial, Corona simply objected that the testimony was impermissible hearsay. These actions are insufficient to preserve the *Crawford* issue for review.

Id. at 593. The district court set out the well-established law that the specific legal argument made on appeal should have been presented to the trial court. ("In Florida, it is well-settled that "[t]o be preserved for appeal, 'the specific legal ground upon which a claim is based must be raised at trial and a claim different than that will not be heard on appeal.'" Spann v. State, 857 So. 2d 845, 852 (Fla. 2003) (quoting Rodriguez v. State, 609 So. 2d 493, 499 (Fla. 1992))." Id. at 592.

Given these facts, this Court should revisit its jurisdictional decision. As argued in the jurisdictional brief, this Court has jurisdiction to review the decision

of a district court when that decision "expressly and directly conflicts" with a decision of either this Court or of another district court. Art. V, § 3(b)(3), Fla. Const. However, this Court has repeatedly held that such conflict must be express and direct, that is, "it must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). In the instant case, no such conflict exists.

Lastly, review of Petitioner's brief shows why this Court should not take jurisdiction over this case. He presented eight issues to the district court. The issues were briefed by each side, and his claims were rejected by the district court. The case was remanded to the Fifth District Court of Appeal from the United States Supreme Court but only for reconsideration in light of Crawford. The district court did just that. Now, Petitioner is attempting to resurrect his previous claims seeking in essence a second appeal. As suggested by this Court in its order referenced in more detail in issue one, assuming jurisdiction is taken by this Court, it should have been for the sole purpose of remanding the case to the district court for application of a harmless error analysis.

POINT I

THE ADMISSION OF THE VICTIM'S HEARSAY STATEMENTS SHOULD BE FOUND TO BE HARMESS ERROR.

It is the position of the State that the admission of the child victim's hearsay testimony should be found to be harmless error.

The trial in this case was conducted prior to the United States Supreme Court opinion in Crawford v. Washington, 541 U.S. 36 (Fla. 2004). The trial was conducted in 2002, and it was remanded to the Fifth District Court of Appeal by the United States Supreme Court for reconsideration of its ruling in light of Crawford. That is exactly what the district court did finding the issue was not preserved. Additionally, the district court found that even if the issue had been preserved, the evidence would have been admissible pursuant to the law at that time as set out in Blanton v. State, 880 So. 2d 798 (Fla. 5th DCA 2004) (holding that depositions satisfied Crawford's requirement of an opportunity to be heard).

This Court eventually rejected the holding in Blanton, and issued an order on March 26, 2008, which required the State to address why the case should not be remanded to the district court for additional consideration in light of holdings in Blanton v. State, 978 So. 2d 149 (Fla. 2008), State v. Lopez, 974 So. 2d 340 (Fla. 2008), and State v. Contreras, 979 So. 2d 896 (Fla. 2008).

The State made an argument that the hearsay was properly admitted (because of forfeiture by wrongdoing[3]) but did concede that if the hearsay was improperly admitted, then the case should be remanded to the district court for a harmless error analysis. (State's response, page five).

Given that the evidence does appear to have been improperly admitted under Blanton, the State will now turn to a harmless analysis. Law enforcement arrived at the scene in Orlando within just a few minutes of when the offense occurred and saw the victim's mother on the ground shaking and crying hysterically. (T 177, 184-185). When the Spanish speaking officer arrived, the mother told her, "Please go get him. I cannot believe that. You need to go get him." These statements were admitted as excited utterances. See Hayward v. State, 34 Fla. L. Weekly S 486 (Fla. Aug. 27, 2009) (This Court provided detailed discussion of exited utterances noting that statements had to be under stress from the startling event and with no time to reflect.) It is the State's position they were properly admitted which is a position never contested by Petitioner beyond trial. Victoria Corona was so stressed from what she saw she was on the ground and provided very little helpful information to the officers who, instead, had to acquire background information from others at the scene. (T 186).

[3] This argument has now been substantially narrowed by the United States Supreme Court in Giles v. California, 128 S. Ct. 2678 (2008)

It is undisputed that whatever happened that evening led Corona to take the family vehicle and return immediately to Illinois.

The next event is only two days later when Mrs. Corona and other members of her family find him at a street intersection. Officer Malkowski reported that when he arrived at the scene he found several vehicles blocking the path of Corona's van and a large crowd of people trying to get Corona out of the vehicle and get to him. (T 205-206). This version was collaborated by Trooper Ewald who was also at the scene. (T 223-226).

Officer Malkowski stated that he placed Corona into his cruiser in order to attempt to defuse the immediate situation, and as he tried to park his vehicle in a better spot, Corona stated, "I can't believe I did it. Why did I do it. That's my daughter." (T 207). Based upon information given to him at the scene, the officer arrested Corona and informed him of his Miranda rights. (T 208). The officer next transported Corona to the police station, and during the trip there, Corona repeated over and over things like: that he couldn't believe he had done it, why did he do it, that was his daughter, this is my family, and I couldn't help myself. (T 212).

Once at the station, Trooper Ewald arrived and became lead officer (it was her jurisdiction because the traffic situation had occurred on the expressway). (T 213). She, again, read Corona his Miranda rights after which he told both officers in detail what he had done. (T 214, 230). Corona explained to the officers that he

was in his hotel room, that all the family but the victim was outside on the terrace, that he was inside in the bedroom with his daughter, that he pulled her panties to the side, and he placed his mouth on her genital area. (T 215, 232-233).

Furthermore, the jury also heard testimony from Corona himself. Prior to his testimony, the trial court discussed with him in detail the fact he did not have to testify. However, evidently given that his statements and confession had been admitted, he decided to testify. He stated that he was only giving his daughter a good night kiss when his wife entered and started screaming, scratching, and biting him. (T 257). He stated he grabbed the keys to the van, did not get his wallet, his money or his driver's license, and he just left driving 18 hours to Chicago. (T 257, 275). When asked how he bought gasoline, he stated he sold a television that was in the van to get money. (T 275).

Corona also stated he was never informed of his Miranda rights by Officer Malkowski, and he never stated he sexually abused his daughter. (T 260, 262-264). He did admit he stated at the traffic scene that he could not believe he had done it; however, he stated that what he meant was that he could not believe he had left his family in Florida. (T 260). When asked why the officers testified differently than his version of events, he testified that both of them were not telling the truth. (T 264, 285).

Under Florida's harmless error analysis, the reviewing court must determine

"whether there is a reasonable possibility that the error affected the verdict." State v. DiGuilio, 491 So.2d 1129, 1139 (Fla. 1986); see also Blanton, 978 So. 2d at 156. In the instant case, the State submits that there is no such possibility. The jury heard evidence that officers responded to a situation in Orlando which led to Corona leaving his entire family there. There was broken glass and signs of a struggle. (T 192-193). The jury also heard that this same family surrounded Corona at an intersection only two days later and tried to remove him from his car. Additionally, the jury heard the statements Corona made at the scene repeatedly stating that he could not believe he had done this to his daughter. Lastly, and most importantly, the jury heard two different officers testify to the detailed confession Corona gave as to how he sexually abused his daughter. Combined with this was the completely inconsistent version given by Corona. His wife attacked him for no reason. He drove 18 hours leaving his family just to get away from his wife. For no known reason, his family surrounded his car. He made statements, but no admissions, was not read Miranda, and never admitted to any improper acts. The jury properly heard all of this evidence and found Corona guilty. Clearly, any error in admitting the victim's hearsay should be found to be harmless.

POINT II

PETITIONER HAS FAILED TO SHOW FUNDAMENTAL ERROR BASED ON THE CONDUCT OF THE PROSECUTOR.

Corona's second point is that the prosecutor's combined conduct throughout the trial constituted fundamental error. The State disagrees.

As this Court explained in Card v. State, 803 So. 2d 613, 622 (Fla. 2001), cert. denied, Card v. Florida, 536 U.S. 963 (2002):

> As a general rule, the failure to raise a contemporaneous objection when improper closing argument comments are made waives any claim concerning such comments for appellate review. See, e.g., Brooks v. State, 762 So. 2d 879, 898 (Fla. 2000); McDonald v. State, 743 So. 2d 501, 505 (Fla. 1999). A timely objection allows the trial court an opportunity to give a curative instruction or to admonish counsel for making an improper argument. See Nixon v. State, 572 So. 2d 1336, 1341 (Fla. 1990). The exception to the contemporaneous objection rule is where the unobjected-to comments rise to the level of fundamental error, which has been defined as error that reaches down into the validity of the trial itself to the extent that a verdict of guilty or jury recommendation of death could not have been obtained without the assistance of the alleged error. See McDonald, 743 So. 2d at 505 (quoting Urbin, 714 So. 2d at 418 n. 8); Chandler v. State, 702 So. 2d 186, 191 n. 5 (Fla. 1997) (holding that for an error to be raised for the first time on appeal, the error must be so prejudicial as to vitiate the entire trial).

Corona's claim is broader than just closing argument; instead, it appears he is attacking the entirety of the State's case and prosecutor's actions. Regardless, given that the issue presented to this Court was not preserved for appeal, Corona

must show that the alleged error rendered the entire trial unfair, and it is the position of the State that he fails.

Specifically, the questioned conduct during voir dire was only very limited. The State's entire questioning was only a small part of voir dire. (T 109-125). The last page of questioning the prosecutor asked a few questions has to the duty of a parent and the duty of the State to protect children. (T 124-125). Corona alleges this was an attempt to attack Mrs. Corona. Mothers are never even mentioned during this limited questioning; therefore, the allegation by the defense would be a reach at best and is far from fundamental error.

Corona also challenges the prosecutor's cross-examination of him. Although admitting that defense counsel asked Corona if the law enforcement officers were lying and essentially opened the door, here on appeal, Corona submits that not only were those questions by his attorney improper but that even though it led to the prosecutor's follow-up on cross-examination the prosecutor's actions created fundamental error. The State disagrees. Clearly, a defendant cannot invite error then raise the response to such on appeal. See Goodwin v. State, 751 So. 2d 537, 544 (Fla. 1999); Norton v. State, 709 So. 2d 87, 94 (Fla. 1997). The prosecutor simply got Corona to address which statements by the officers he believed to be incorrect. There has been no showing of fundamental error.

As to closing, the defense basically began its closing flat out telling the jury that the mother and the victim refused to come look them in the eyes (over the State's objection). (T 297-298). Then, in response, the prosecutor did address its failure to produce Mrs. Corona and the victim. (T 316). However, it is the position of the State that such closing is not fundamental error; instead, it was the duty of prosecutor to address the defense's position. The Fifth District Court of Appeal so held in State v. Dix, 723 So. 2d 351, 352 (Fla. 5th DCA 1998), writing:

> The state has a right, and in fact a duty, to respond to the explanation of the charges given by the defense, because to ignore the defense is to give it credence.

Like in Dix,, the prosecutor in this case was simply responding to Petitioner's argument.[4]

[4] Interestingly, the trial court commended both counsel at the conclusion of the case for their excellent representation during the trial. (T 340).

POINT III

PETITIONER'S CONFESSION WAS PROPERLY ADMITTED.

Corona's next point is that his statements and confession were improperly admitted. The State disagrees.

This issue should be found not to be preserved for appeal. To preserve an objection that the State failed to prove a crime was committed prior to the admission of a confession, the defense must make a contemporaneous objection. Martin v. State, 911 So. 2d 821 (Fla. 5th DCA 2005). Petitioner did not. Additionally, this Court has clearly held that upon failure to make a contemporaneous objection the issue is waived given that it is not fundamental in nature. J.B. v. State, 705 So. 2d 1376 (Fla. 1998).

Corona submits the pre-trial argument was sufficient to overcome the preservation requirement; however, as to corpus delicti, such an objection would be premature given that it is not until the time of trial when the confession is admitted that a court could properly determine whether the State has shown that a crime was committed. It would be similar to a pre-trial motion for judgment of acquittal. Considering the fluid nature of all trials, clearly, a trial court cannot rule in advance on such matters.

POINT IV

THE TRIAL COURT PROPERLY DENIED CORONA'S MOTION TO SUPPRESS.

Corona's next point is that the trial court erred in denying his motion to suppress. The State disagrees.

This Court has clearly set out that a trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness, and the reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling. See Pagan v. State, 830 So. 2d 792, 806 (Fla. 2002). The reviewing court is bound by the trial court's factual findings if they are supported by competent, substantial evidence. Id. However, a trial court's determination of the legal issue of probable cause is subject to the de novo standard of review. See Ornelas v. United States, 517 U.S. 690 (1996); Connor v. State, 803 So. 2d 598 (Fla. 2001).

The defense filed a motion to suppress Corona's statements, and a hearing was held on June 19, 2002. (R 77-155). The State presented three witnesses at this hearing: Officer Malkowski, Trooper Ewald, and Mrs. Corona. (R 82-143). The court next heard legal argument from both sides. (R 144-154).

On June 26, 2002, the trial court entered a detailed order denying the

defense's motion to suppress. (R 191-203). Included in this order was a finding that the officers in Illinois had probable cause to arrest Corona given that they reasonably believed he was a suspect in the commission of a felony. (R 197). Next, the court found Corona's initial comments to the officer to be spontaneous and voluntary and not the result of interrogation. (R 199). Finally, the court found the additional comments made by Corona to the officers were made voluntarily after proper Miranda warnings. (R 199-202).

Corona submits there was no probable cause to arrest him at the traffic scene. However, based on the evidence at the hearing, the trial court found otherwise. Under Florida law, an officer can make a warrantless arrest if he reasonably believes the person he is arresting has committed a felony. See section 901.15(3), Fla. Stat. (2001). While this arrest was made in Illinois, the trial court set out the comparable Illinois statutes and found that probable cause existed. Supporting this is the testimony of the two officers at the scene who were told by Corona's family members what he was accused of in Florida coupled with the statements spontaneously made by Corona in the officer's vehicle.

Furthermore, even if the initial arrest was found to be tainted, such taint should be found to have been purged. As this Court set out in State v. Frierson, 926 So.2d 1139 (Fla. 2006), there are three factors to be considered to determine if the taint is purged: (1) the time elapsed between the illegality and the acquisition

of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct. Id. at 1143; see also Golphin v. State, 945 So. 2d 1174 (Fla., 2006), cert. denied Golphin v. Florida, 552 U.S. 810 (2007). In essence, the officers responded to a chaotic scene where Corona's family members were very upset, stopping traffic, and attempting to get him out of his vehicle. Knowing nothing, they placed him into the officer's car for his own safety and to stabilize the situation. Corona himself then makes incriminating statements. Then, the family members detailed facts that showed a capital sexual battery. If this was not probable cause for an arrest, it at least was very minor "misconduct." Add to that more facts and information from the Florida authorities, and multiple readings of Miranda, and it would appear the evidence should be found to have been properly admitted.

The trial court entered a detailed order addressing each and every claim made by defense counsel. There has been no showing that such order should be reversed.

POINT V

VOIR DIRE WAS PROPERLY CONDUCTED, AND PETITIONER HAS FAILED TO SHOW FUNDAMENTAL ERROR.

Corona's next point is that the trial court committed fundamental error during voir dire. The State disagrees.

Corona presents three alleged errors during voir dire which were allegedly committed by the trial court. There was no objection to these; therefore, they would have to rise to the level of fundamental error vitiating the entire trial process. Randall v. State, 760 So.2d 892, 900-01 (Fla. 2000); Garcia v. State, 939 So. 2d 1082 (Fla. 3d DCA 2006). Furthermore, the defense counsel accepted the jury when it was sworn with no objections, again, showing he waived any issues on appeal. See Randell v. State, 938 So. 2d 542 (Fla. 1st DCA 2006)("By failing to renew his motion before the jury was sworn, Randall failed to preserve his motion."); Berry v. State, 792 So. 2d 611 (Fla. 4th DCA 2001) (treating defendant's motion for mistrial as motion to strike jury panel and finding defendant failed to preserve motion by not renewing it before jury was sworn); Barnette v. State, 768 So. 2d 1246 (Fla. 5th DCA 2000) (holding that by failing to renew an objection concerning jury selection appellant did not preserve the issue for appellate review); see also Joiner v. State, 618 So. 2d 174, 176 (Fla. 1993)

("We agree with the district court that counsel's action in accepting the jury led to a reasonable assumption that he had abandoned, for whatever reason, his earlier objection. It is reasonable to conclude that events occurring subsequent to his objection caused him to be satisfied with the jury about to be sworn.").

Specifically, the three alleged errors were restriction of defense counsel's attempt to get a juror to define reasonable doubt, comment upon the right to remain silent, and a reference to the O. J. Simpson case. The supposed Simpson reference was at the very beginning of voir dire when the court simply stated that there are two ways to pick a jury – do like California and take months or do like Florida and pick one in an afternoon. (T 75). The court then stated that the more efficient model would be followed. That was the extent of this discussion, there was no reference to Simpson, and there was no objection. Clearly, such a statement is not fundamental error.

The next alleged error was defense counsel's attempt to get a juror to define reasonable doubt. (T 126). The court interrupted and explained that the he would not allow them to attempt to define; instead, the question was whether they would accept and follow the definition as set out by the court. Defense counsel expressed no concerns with this limitation and continued her questions. These facts are completely different than Campbell v. State, 812 So. 2d 540 (Fla. 4th DCA 2002), which is relied upon by Corona. In Campbell, defense counsel was completely

restricted by the trial court, defense counsel objected, requested a side bar, and was repeatedly cut off by the judge. The next day as voir dire continued defense counsel renewed his objection. Id. at 542. Again, trial counsel in the instant case did not object to the court's explanation even once.

The last alleged improper comment by the court was when the court informed the jury that while they may want to hear from a defendant but that it is the State's burden to prove its case, a defendant does not have to testify, and a jury cannot hold a defendant's failure to testify against him. (T 106-107). Not only were there no objections to these comments by the court, they are a correct statement of the law. While such comments by prosecutors during closing have been found to be improper given it is the State making such statements, almost identical comments to the one's in the instant case when made by a trial judge were found not to be fundamental error by this Court. Mendoza v. State, 964 So. 2d 121 (Fla. 2007).

POINT VI

THE JURY WAS PROPERLY INSTRUCTED AS TO ALL ELEMENTS OF THE CHARGED OFFENSE, AND IT SPECIFICALLY FOUND IN A SPECIAL VERDICT FORM THAT CORONA WAS 18 YEARS OF AGE OR OLDER.

Corona's last point is that the jury was improper instructed. The State disagrees.

First, the State would note that there was no objection to the instructions given in this case. (T 293, 338). Jury instructions are subject to the contemporaneous objection rule, and absent an objection at trial, can be raised on appeal only if fundamental error occurred. Archer v. State, 673 So. 2d 17 (Fla. 1996); Pope v. State, 646 So. 2d 827, 828 (Fla. 5th DCA 1994)(to preserve an issue for appellate review, a party must object in the court below, and the objection must be on the same grounds asserted in the appeal).

However, of more relevance than preservation is the fact the instruction was given and the jury so found. When the jury was instructed, the court specifically informed them, "If you find the Defendant guilty of sexual battery upon a person less than 12 years of age and you further find that at the time of the sexual battery the Defendant was 18 years of age or older, you should find the Defendant guilty of sexual battery upon a person less than 12 years of age by a person 18 years of

age or older." (R 238, T 330). Then, when the court detailed the verdict forms, it informed the jury there was a special verdict form requiring them to find Corona was 18 years of age or older at the time of the offense. (R 248, T 336). There were no objections to the jury instructions and verdict forms. (T 338).

The State presented evidence of Corona's exact age. (T 234). Corona himself testified that his date of birth was December 20, 1965. (T 247). The jury specifically found Corona was 18 years of age or older. (R 234-248). Clearly, Corona has failed to show error.

CONCLUSION

Based on the arguments and authorities presented above, the State respectfully prays this Honorable Court affirm the decision of the Fifth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Merits Brief has been furnished by United States Mail to Steven G. Mason, Esq., 1643 Hillcrest Street, Orlando, FL 32803, this __________ day of January 2010.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman, in compliance with Fla. R. App. P. 9.210(a)(2).

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