IN THE SUPREME COURT OF FLORIDA

SERGIO CORONA,

Petitioner,

v.

CASE NO.: SC06-1054
5TH DCA CASE NO.: 5D02-2850

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

All relevant facts were included in the Fifth District Court's opinion Corona v. State, 31 Fla. L. Weekly D 1183 (Fla. 5th DCA April 28, 2006). Included in those facts were the following:

> 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.
>
> . . .

Based on these facts, Petitioner was charged with capital sexual battery on a child less than twelve years of age. Mrs. Corona and the victim initially cooperated with law enforcement; however, just prior to the trial, it became apparent neither would voluntarily appear for the trial. The State attempted to

serve the witnesses but was unsuccessful. The trial court held a hearing immediately prior to the trial, heard testimony from an investigator with the Cook County State Attorney's Office who had attempted service, and found the witnesses to be legally unavailable. The trial court made additional findings necessary for the admission of child hearsay at that time after which the defense made a "non-specific" objection to the victim's testimony violating Petitioner's right to confrontation. Then during trial, the following evidence was admitted:

> At trial, Deputy Avilis testified over a hearsay objection that A.C., in reporting the incident, said that her father had come into the bedroom, put his hand on A.C.'s shoulder, and told her she was pretty. Her father then laid her down on the bed, pulled her clothing to the side, and put his mouth on her "toto." n1 Her mother came into the bedroom, saw what was happening, and started screaming and hitting the father. No confrontation objection was made as required under Florida law. See Philmore v. State, 820 So. 2d 919, 932-33 (Fla. 2002); Hardwick v. Dugger, 648 So. 2d 100, 107 n.5 (Fla. 1994); Sedney v. State, 817 So. 2d 1074, 1075 (Fla. 5th DCA 2002);
>
> The two Chicago police officers who had taken Corona into custody in Illinois testified that Corona had confessed to the offense. Officer Malkowski testified that when he first placed Corona in his vehicle, Corona started saying in English: "I can't believe I did it. Why did I do it? That's my daughter." Malkowski said that he read

> Corona his rights, but on the way to the police station, Corona initiated conversation and said over and over in English, "I can't believe I did that. Why did I do it? That is my daughter. This is my family. I couldn't help myself." At the station, when Corona was interviewed by both Officer Malkowski and Trooper Ewald, he confessed that he had put his mouth on A.C.'s genital area under her clothing. n2
>
> At trial, Corona denied ever touching his daughter sexually. He said his wife mistook a hug he gave his daughter for improper touching. He fled to Chicago because his wife was so upset. He admitted that while he was in Officer Malkowski's patrol car, he kept saying, "I can't believe I did it." However, he said he meant that he could not believe he left his family in Florida.
>
> n1 Deputy Avilis testified that "toto" meant vagina.
>
> n2 The confession was not taped.

Based on this evidence, the jury convicted Corona of capital sexual battery and he was sentenced to life in prison. The Fifth District Court of Appeal *per curiam* affirmed the judgment and sentence in June of 2003. Corona v. State, 853 So. 2d 430 (Fla. 5th DCA 2003). Petitioner sought review in the United States Supreme Court which granted certiorari review pursuant to Crawford v. Washington, 541 U.S. 36 (2004), and remanded the case to the Fifth District Court of Appeal for reconsideration. On remand, the judgment and sentence were

again affirmed, and Petitioner is now seeking review in this Court.

SUMMARY OF ARGUMENT

While this Court does have discretion to accept jurisdiction in this case, it is the position of the State that this Court should decline to accept jurisdiction in this case. This case is distinguishable from the cases pending before this Court.

ARGUMENT

THIS COURT DOES HAVE THE DISCRETION TO ACCEPT JURISDICTION OF THIS CASE; HOWEVER, IT IS THE POSITION OF THE STATE THAT IT SHOULD DECLINE TO DO SO.

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). Petitioner in this case has failed to show such a conflict.

Petitioner submits that this Court has jurisdiction because it has previously accepted review of Blanton v. State, 880 So. 2d 798 (Fla. 5th DCA 2004) (This Court had oral argument on this case on May 4, 2006). The State admits the issue of whether the requirements of Crawford v. Washington, 541 U.S. 36 (2004), are met by pretrial depositions is addressed in both the instant case and in Blanton, and Blanton is before this Court based upon conflict with other district courts of appeal decisions.

However, the issue in Blanton which is before this Court is irrelevant if not preserved. In his jurisdictional brief

Petitioner spends the majority of his argument disagreeing with the factual findings of the Fifth District Court of Appeal. Petitioner takes issue with the appellate court's finding that the Crawford issue was not preserved and the appellate court's agreement with the trial court that the witnesses were unavailable. Petitioner does not disagree with the law relied upon by the Fifth District Court of Appeal as to these issues; instead, objecting only to the court's application of the facts to that law. Such argument does not show conflict, only disagreement with the facts.

The case law followed by the Fifth District Court of Appeal is not in conflict with other district courts of appeal or with case law from this Court. An objection should be specific and should be renewed. Neither of those requirements was met in the instant case. Therefore, the Crawford issue was not preserved.

Additionally, Petitioner cites Lawrence v. State, 691 So. 2d 1068 (Fla. 1997), for the position that the instant case is in conflict as to defining "unavailability." However, Petitioner presents no argument in support of this claim. Review of Lawrence shows a very limited effort by the State in which a witness would only testify if "forced" and the State made effort to do so. Id. at 1073. In the instant case there

was unrefuted testimony of numerous attempts to serve the witnesses at several different locations. Petitioner, clearly, has not shown any conflict on this issue.

CONCLUSION

Based on the arguments and authorities presented above, the State respectfully prays this Honorable Court does not accept jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's Brief on Jurisdiction has been furnished by U.S. mail to Steven G. Mason, attorney for Petitioner, 1643 Hillcrest Street, Orlando, FL 32803, this _____ day of June 2006.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

_____
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