**IN THE SUPREME COURT OF FLORIDA**

**SERGIO CORONA,**

Petitioner,

**CASE NO: SC06-1054**

v.

**STATE OF FLORIDA,**

Respondent.

* * * * * * * * * * * * * * * * * * * * * * * *

**APPEAL FROM THE DISTRICT COURT**
**FIFTH DISTRICT, FLORIDA**

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# MR. CORONA'S BRIEF ON JURISDICTION


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## FACTS & PROCEDURE

Mr. Corona was accused of committing a sexual battery upon Amy Corona on January 25, 2002 (T2/187). His case was very unusual in that no witness with personal knowledge of the allegations testified against him. The entire case against Corona was based upon hearsay statements parroted by police witnesses and a purported admission that Corona made in Chicago, Illinois, two days after the events. This "admission" was never memorialized by the police in any fashion--no tape recording and no written report.

On the morning of trial, unable to present its witnesses, the state filed an amended notice to rely upon child hearsay statements (R6/229). Defense counsel objected to the admission of hearsay statements, and also objected that Mr. Corona's rights to confrontation were being violated. These hearsay objections were repeatedly renewed during trial (T1/67, 70, 72; T2/175, 184, 185, 188). In fact, at one point the court recognized a standing objection to the state's line of questioning (T2/189).

In his direct appeal Mr. Corona argued that his constitutional right to confrontation was violated, that the hearsay statements ran afoul of the Sixth and Fourteenth Amendments, and that lack of cooperation is insufficient to establish unavailability under the constitution. See page 29 of Mr. Corona's Direct Appeal Initial Brief and *Lawrence v. State*, 691 So.2d 1068 (Fla. 1997). The argument section of Mr. Corona's brief, addressing the Fifth Amendment, United States ConstitutionSixth and Fifth and Sixth Amendment right to confrontation violated when the state fails to present testimony from the alleged victim/child or any witness with personal knowledge of the offense?

* * * *

> 3. [I]is a witness (in this case, the child and her mother) constitutionally unavailable under *Ohio v. Roberts,* 448 US 56 (1980) simply because the state waits until a few days before trial to procure their attendance-- thus supporting the admission of their out-of-court statements?

See Corona's Petition for Writ of Certiorari at page 2.

> The state conceded that Corona's claim(s) were preserved for appeal.
>
> [T]he defense counsel objected that the admission of these statements violated the defendant's...right to confrontation under the constitution. (T1/70)
>
> * * * *
>
> The claims were presented to the state appellate court in terms of a deprivation of a federal constitutional right, on the same grounds raised in this petition. The state's answer brief addressed these two issues on the merits.

See State's Response to Petition for Writ of Certiorari at pp. 6-8.

The Supreme Court granted Mr. Corona's petition, vacated the judgment, and remanded his case to the District Court for reconsideration in light of *Crawford v. Washington*, 541 US 36 (2004). *Corona v. Florida*, 541 US 930 (2004).

On remand the District Court ordered supplemental briefing. Corona argued that under "*Crawford*" he was entitled to a judgment of acquittal or a new trial, and further that the Florida child-hearsay statute, Section 90.803(23) was unconstitutional. The state again conceded that the issue was preserved for appeal.

> Appellee agrees that there was a contemporaneous, timely objection to the admission of the hearsay evidence on the ground that the constitutional right to confrontation was being denied. Therefore, this issue was preserved.

See State's Supplemental Answer Brief at p. 9. See **Appendix A**.

The state asserted that the conviction should be upheld under *Blanton v. State,* 880 So.2d 798 (Fla. 5th DCA 2004), a case now under review by this Court. The state also made reference to pre-trial depositions that were taken in the case but that were not part of the record. Mr. Corona objected to these non-record depositions in that they were not part of the record and thus denied him due process. Over objection the district court allowed the state to supplement the record with the pre-trial depositions (years after the fact) of Amy and Victoria Corona.

Corona argued that "*Crawford*" and that in the past when defendants obtained the right to attend pre-trial depositions the Fifth District Court of Appeal reversed. See *State v. Talbert*, 836 So.2d 1077 (Fla. 5th DCA 2003) [allowing defendant to attend pre-trial deposition resulted in a miscarriage of justice to the state].

The District Court once again upheld Corona's conviction finding that the issue had not been preserved for appeal, citing (among others) *Mencos v. State*, 909 So.2d 349 (Fla. 4th DCA 2005) and, alternatively, finding that the conviction should be upheld under *Mencos v. State,* Case #SC05-2105*State v. Lopez,* Case #SC05-88*Blanton v. State*, #SC04-1823*Mencos v. State*, 909 So.2d 349 (Fla. 4th DCA 2005), Case #SC05-2105, and 90-803(23) hearing occurred immediately prior to the commencement of trial, it is beyond dispute that the trial judge understood the nature of Corona's objection– since there were no witnesses with personal knowledge who testified in support of the state's case.

| | |
|---|---|
| Defense Counsel: | Also, your honor, in light of your ruling, I would argue that the admission of these statements violates my client's **right to confrontation**[1] under the constitution. |

[1]This argument took place immediately prior to the selection of Corona's jury. See discussion in *Corona*, **Appendix A**. All emphasis in this brief has been added unless otherwise noted.

The Court: That was an argument to make in terms of making a record, and that has been dealt with. At this time the *Townsend* case and cases out of the United States Supreme Court run contrary to your client's position. So I'm going to deny that.

(T1/70).

The Defendant (Via Interpreter): I also understand my rights are being violated by allowing third parties to testify.

(T1/72).

Defense Counsel: Yes, your honor. At this time I'd like to renew all previous objections.

The Court: Any one in particular?

Defense Counsel: Yes, your honor, the child-hearsay statements coming in, my client's admissions coming in; any – I'm not sure if the state's tried to bring in any statements of Victoria Corona – but if they do, any of those, as well.

(T2/175) (Counsel's statement made during trial).

Defense Counsel: Objection, hearsay.

The Court: Rather than objecting to every single question that gets asked, why don't we assume you have a standing objection to this line of questioning. And based upon prior rules by the court, I'm going to overrule those objections. **But you've preserved your objection.**

Defense Counsel: Thank you.

The Court: You're welcome.

(T2/189).

This Court has repeatedly stated that there are no "**magic words**" needed to state a proper objection. Rather, the question is, in the context of the proceedings, did

the trial court understand the nature of the objection? For instance, in *Williams v. State*, 414 So.2d 509 (Fla. 1982), the question was whether the defendant properly made an ex post facto objection. This Court noted that he did not, but the fact that Williams challenged the retroactive application of the statute was sufficient to preserve the issue for appeal. This Court repeated this refrain in *Spurlock v. State*, 420 So.2d 875, 877 (Fla. 1982) [missing magic words do not concern court because the necessary substance was present], and in *State v. Heathcoat*, 442 So.2d 955, 956 (Fla. 1983) [specific word formula is not necessary for objection since same would exult form over substance]. As long as it is clear that the trial judge was aware of the objection, further objections would be pointless.]; *Thomas v. State*, 419 So.2d 634, 636 (Fla. 1982). See also, *Street v. New York*, 394 U.S. 576, 584 (1969) [discussion of preservation of error] and *United States v. Weir*, 51 F.3d 1031, 1033 (11th Cir. 1995) [court clearly understood objection and rejected it].

There are two additional opinions from this Court which conflict with the District Court's *Corona* opinion, specifically, *Evans v. State*, 838 So.2d 1090 (Fla. 2002) and *Hopkins v. State*, 632 So.2d 1372 (Fla. 1994).

In *Evans*, this Court found that because of the close relationship between hearsay and confrontation, a hearsay objection is sufficient to incorporate a confrontation claim.

> The state contends that this claim is procedurally barred because Evans asserted below only that the reports should not be admitted because they constitute hearsay. We disagree. Although Evans' counsel did not specifically assert a Sixth Amendment challenge, the hearsay objection raised is closely related to the right of confrontation. Hence, we will review this issue on the merits.

*Hopkins*, which likewise addressed confrontation and Section 90.803(23), the statute addressed in *Hopkins* at 1376.

Likewise, this Court should accept review over this case because it accepted jurisdiction over *State v. Belvin*, SC06-593*State v. Contreras*, #SC05-1767*State v. Lopez*, #SC05-88, pending with this court. Mr. Corona has filed a notice of related, pending cases with this Court.

Finally, the *Corona* opinion conflicts with Sixth Amendment and the *Corona* opinion conflicts with cases already accepted by this Court, Corona's case should likewise be accepted for review. Mr. Corona requests that the Court accept jurisdiction and order the parties to file merit briefs addressing all of the legal issues and claims raised in his appeal.

Respectfully submitted this 30th day of May, 2006.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of this amended brief has been furnished by U.S. Mail to THE **OFFICE OF THE ATTORNEY GENERAL**, 444 Seabreeze Blvd., Daytona Beach, FL 32118 and the original and five copies to the **CLERK OF COURT,** Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925 this 30th day of May, 2006.

**CERTIFICATE OF COMPLIANCE**

**I HEREBY CERTIFY** that this brief is formatted in Courier, 12 point type which does not exceed ten characters per inch.

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