IN THE SUPREME COURT OF FLORIDA

SERGIO CORONA,

Petitioner,

v.

CASE NO: SC06-1054

STATE OF FLORIDA,

Respondent.

* *

APPEAL FROM THE DISTRICT COURT
FIFTH DISTRICT, FLORIDA

* *

MR. CORONA'S REPLY BRIEF ON THE MERITS

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THE RECORD

The state concedes that the facts outlined in Mr. Corona's brief are fair and accurate. "The majority of facts provided by petitioner are accepted by the state;..." (State's Brief, page 1). The state continues by stating that if there is disagreement, it will be addressed with supporting record citations. What follows is essentially a regurgitation of the state's (previous) argument that the court erred in accepting jurisdiction. The state confines its statement of the facts to a recitation of the district court's opinion instead of providing a structured analysis of the witness testimony and evidence presented in Corona's case. The section of the state's brief titled, "Statement of Case and Facts," focuses almost entirely upon procedure (State's Brief, pp. 3-5). The state also discusses the issue of "reliability" with regard to Amy Corona's purported statements. As we know, the issue of reliability is of no moment following *Crawford v. Washington*, 541 U.S. 36 (2004).

IT IS UNPROFESSIONAL TO REPEATEDLY CONCEDE PRESERVATION BUT MAKE A CONTRARY ARGUMENT TO THIS COURT

At page six and pages eight through twelve, the state argues that the court erred in accepting jurisdiction, and that the issue of confrontation was not preserved below. It appears that the attorney general's office takes the position, as a matter of policy, that it must strive to uphold this conviction regardless of the contrary positions it has (repeatedly) made throughout the course of this litigation.

The state conceded (before both the Supreme Court of the United States and the Fifth District Court of Appeal) that the confrontation point was preserved.

> [t]he defense counsel objected that the admission of these statements violated the defendant's "...right to **confrontation** under the constitution." (T1/70)

Page 5, State's Supplemental Answer Brief dated September 10, 2004, Fifth District Court of Appeal (Record Exhibit E).

* * * *

> **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.**

Page 9, State's Supplemental Answer Brief dated September 10, 2004, Fifth District Court of Appeal (Record Exhibit E).

* * * *

> 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.

Page 8, State's Response to Petition for Writ of Certiorari, Supreme Court, Case Number 03-7626.

> It is improper to take inconsistent positions before various courts.
>
> In contrast, we cannot be tolerant of the positions taken by the attorney general's office before this court. On the one hand, it has most disingenuously sought to deny the existence of the state attorney's concession and, on the other, most improperly, see *Finney v. State*, 420 So.2d 639 (Fla. 3rd DCA 1982) (en banc), attempted to renege upon it. The state of Florida should not have made and will not be heard even to assert either contention.

Vaprin v. State, 437 So.2d 177 (Fla. 3rd DCA 1983).

Likewise, Justice Polston expressed concern over parties taking inconsistent positions before variant tribunals. *Metropolitan Casualty Insurance Co. v. Tepper*, 2 So.3d 209, 217-218 (Fla. 2009) [Polston J. concurring and dissenting in part].

To date Mr. Corona has filed five separate briefs with this court. Two of those briefs were submitted in response to this court's order to show cause directed to the issue of preservation. Mr. Corona should not be required to rehash this point. However, in an attempt to persuade the court to reverse itself, the state quotes the record out of context. Not only did Mr. Corona specifically make a confrontation objection, the objection was acknowledged by the trial court (through a continuing objection).

> 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**.

(T1/70)(Emphasis added).

The court understood the objection and pointed out that the law (as it stood) ran against Corona.

> **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.

* * * *

The court clearly recognized that Corona was making a confrontation objection.

> Court: Motion to exclude based upon due process violation, **confrontation violations**, anything else we need to address preliminarily?

(T1/70) (Emphasis added).

This was (more than) sufficient to preserve the issue for appeal. See cases cited in Mr. Corona's brief styled, "Mr. Corona's Response to Order to Show Cause," filed with this court on April 4, 2008.

THE STATE REFUSES TO ADDRESS JUDGMENT OF ACQUITTAL ARGUMENT/CASES

At pages fifteen and sixteen of his (merits) brief, Mr. Corona argues that a judgment of acquittal should be entered in this case. He notes that an admission or confession standing alone is insufficient to sustain a criminal charge. *Geiger v. State*, 907 So.2d 668, 675-676 (Fla. 2nd DCA 2005); *B.P. v. State*, 815 So.2d 728 (Fla. 5th DCA 2002) [where confession was only evidence that offense was committed, it was insufficient to sustain conviction for sexual offense]; *Chaparro v. State*, 873 So.2d 631 (Fla. 2nd DCA 2004).

The state does not address this argument or these cases. Rather, it makes a token, if not rote, argument that this case should be remanded to the district court for a harmless error analysis. However, the state fails to note that the Fifth District Court of Appeal, in its order dated June 10, 2004, ordered briefing on "harmless

error." See **Appendix A**, attached. In response, the state failed to urge harmless error before the district court and harmless error obviously was not a basis for the district court's opinion.

As a general rule it is difficult to satisfy the harmless error test. In this case, it is an impossible undertaking. This court explained this in *Ciccarelli v. State*, 531 So.2d 129 (Fla. 1988).

> The district court in that case correctly noted that "the harmless error rule requires that the state demonstrate beyond a reasonable doubt that the error did not affect the jury verdict." (Internal citation omitted).
>
> * * * *
>
> [I]f the state has not presented a prima facie case of harmlessness in its argument, the court need go no further.
>
> If, however, the state has presented a prima facie case, the appellate court must evaluate the record to determine, not whether there was overwhelming evidence of guilt, but whether the result would have been the same absent the error:
>
> * * * *
>
> This requires more than a mere totaling of testimony, and, in most instances, more than a mere reading of a portion of the record in the abstract. It entails an evaluation of the impact of the erroneously admitted evidence in light of the overall strength of the case and the defenses asserted. Unlike the initial decision of whether error occurred, which in many instances can be made from a fragment of the record or the examination of the law alone, the effect of error on the verdict is a different inquiry. It must, in most cases, be evaluated through the examination of the entire trial transcript. The court must determine *not* if there is overwhelming evidence of guilt, but if it can be said beyond a reasonable doubt that the verdict could not have been affected by the error.

Ciccarelli at pp. 131 and 132.

Here, absent the inadmissible hearsay, the state was left without a case. The only remaining vestige was the purported admission made by Mr. Corona. These heavily-disputed admissions are striking in that they were not memorialized nor disclosed until shortly prior to the trial. Mr. Corona is entitled to a judgment of acquittal as a matter of law.

STATE CONCEDES SUBSTANTIVE VIOLATION OF *CRAWFORD*

The state concedes that the hearsay statements against Mr. Corona were improperly admitted (State's Brief at p. 14). "Given that the evidence does appear to have been **improperly admitted** under Blanton, the state will now turn to a harmless analysis." This concession ends the discussion.

The state's entire brief is devoted to technical or procedural defenses rather than substantive analysis. In other words, the state makes no attempt to argue *Crawford* or dispute the application of *Blanton v. State*, 978 So.2d 149 (Fla. 2008). Moreover, the fact that the depositions were bootstrapped to the record long after Mr. Corona's conviction is indefensible. Accordingly, and at a minimum, this case requires a remand for a new trial.

THE CONTRIVED WAY IN WHICH MR. CORONA WAS CONVICTED (THE STRAWMAN) WARRANTS THIS COURT'S ATTENTION

Candidly speaking, because of the judgment of acquittal and *Crawford*

errors in this case, it may not be necessary for the court to consider or reach this issue. Nonetheless, the strategy that the state employed from the inception of voir dire, through direct testimony, and in its closing argument, is grossly offensive to the concept of due process. Tactics like this have a tendency to continue absent the vigilant attention of the courts, especially the appellate court. Mr. Corona is respectfully requesting that the court consider his arguments.

ABSENT A WARRANT OR CONTROLLING AUTHORITY, THE ILLINOIS POLICE HAD NO JURISDICTION TO ARREST CORONA

Mr. Corona's wife accused him of committing a crime in Florida; yet he was arrested in Illinois by Illinois police agents. There was no warrant or court process entered in Florida. The question then becomes, under what authority was Mr. Corona arrested, and, more specifically, did his arrest violate the Fourth Amendment?

The state is obviously confused by this scenario because it cites no authority in opposition to this odd proposition. It should be remembered that Mr. Corona had not been arrested in Florida, he was not the subject of any court order, bond or otherwise, he was not a fugitive from justice, and no warrant had been sought or entered by any Florida court against him. He was the subject of allegations only--which were made in Orange County, Florida.

The Illinois police had no authority to take him into custody, arrest him, or interrogate him. Thus, his seizure and the purported statements obtained from him

were unconstitutionally derived in violation of the Fifth Amendment, United States ConstitutionFourteenth Amendment, United States Constitution