

>> HEAR YE, HEAR YE, HEAR YE.
THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, YOU
WILL BE HEARD.

GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA, THIS
HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.

>> GOOD MORNING.

WELCOME TO THE FLORIDA SUPREME
COURT.

THE FIRST CASE ON THE DOCKET
IS STATE OF FLORIDA VERSUS
LAWRENCE INGRAM.
COUNSEL?

>> GOOD MORNING.

MAY IT PLEASE THE COURT,
COUNSEL, MY NAME IS
KELLIE NIELAN.

I'M WITH THE ATTORNEY GENERAL'S
OFFICE, HERE ON BEHALF OF THE
STATE OF FLORIDA.

I JUST WANT TO EMPHASIZE AT THE
OUTSET OF THIS THAT THIS CASE IS
NOT ABOUT PRETRIAL DISCOVERY,
IT'S NOT ABOUT POSTCONVICTION
DISCOVERY, IT'S NOT ABOUT
WITHHELD EVIDENCE, IT'S NOT
ABOUT GIGLIO, IT'S NOT ABOUT
BRADY, IT'S NOT ABOUT DUE
PROCESS, IT'S NOT ABOUT
CONFRONTATION.

THE SOLE ISSUE IN THIS CASE IS
WHETHER A VIDEOTAPED STATEMENT
OF A CHILD OF AN ENUMERATED
SEXUAL OFFENSE SHOULD BE
AVAILABLE PURSUANT TO A PUBLIC
RECORDS DEMAND TO INCARCERATED
INMATE.

AND IT'S OUR POSITION THAT
IT IS NOT.

IT IS CLEARLY EXEMPTED UNDER THE
PUBLIC RECORDS STATUTE.

>> LET'S MAKE IT BROADER
THAN THAT.

YOU SAID TO AN INCARCERATED
INMATE AND YOU SAID THIS WASN'T

ABOUT CRIMINAL DISCOVERY.
THE SAME -- IT WOULD BE-- IS IT
AVAILABLE TO ANY MEMBER OF
THE PUBLIC?

>> NO.

>> SO IT'S NOT BECAUSE
THIS DEFENDANT IS AN
INCARCERATED INMATE.
IT'S THAT YOUR INTERPRETATION,
WHICH SEEMS LIKE A LOGICAL ONE,
OF THE PUBLIC RECORDS LAW IS
THAT THIS IS BOTH EXEMPT AND
CONFIDENTIAL MATERIAL.

>> CORRECT.

>> OKAY.

SO LET'S LEAVE OUT THE -- I
MEAN, THAT'S HOW -- BECAUSE I
THINK THAT IF YOU SAY SOMEHOW
THAT INCARCERATED INMATE HAS A
DIFFERENT STATUS, WE THEN SORT
OF EVEN SAY THIS WOULD BE
AVAILABLE TO THE PUBLIC AND IT
SHOULDN'T BE AVAILABLE TO THE
PUBLIC UNDER THE CLEAR
STATUTORY INTENT.

>> CORRECT.

THE REASON I INCLUDED THAT WAS
BECAUSE I GOT A BACKUP ON A
BACKUP ON A BACKUP.
THEY FOUND BECAUSE HE WAS A
DEFENDANT, HE WAS ENTITLED
TO IT.

>> BUT AS A DEFENDANT IF THIS IS
SOMETHING THAT HE NEEDS TO FILE
15 YEARS LATER A MOTION -- I
DON'T KNOW WHAT IT WOULD BE.
CAN'T BE NEWLY-DISCOVERED
EVIDENCE.

HE WOULD BE ENTITLED TO IT,
WOULDN'T HE?

>> I THINK IT WOULD DEPEND.

>> THAT'S NOT WHAT WE'RE
HERE ABOUT.

>> CORRECT.

HE WOULD NOT BE ENTITLED TO IT
UNDER THE PUBLIC RECORDS LAW.

>> IS IT YOUR POSITION THAT HE'S
NOT ENTITLED TO IT AT ALL OR
THAT HE IS NOT ENTITLED TO AN
UNREDACTED COPY OF IT?

>> IT'S OUR POSITION HE'S NOT ENTITLED TO IT AT ALL UNDER THE EXEMPTION H1, WHICH SAYS ANY VIDEOTAPE.

>> SO THAT'S WHAT YOU'VE ARGUED HERE.

>> THAT'S OUR PRIMARY ARGUMENT, THAT HE'S NOT ENTITLED TO IT AT ALL.

>> IF HE WAS FACING TRIAL -- FORGET THE PRESENT STATUS OF THE CASE.

LET'S SAY HE GOT ARRESTED AND HE'S PREPARING FOR TRIAL AND HE'S REPRESENTING HIMSELF, PRO SE.

WOULD HE BE ENTITLED TO AN UNREDACTED COPY OF THE TAPE IN THAT INSTANT?

>> PURSUANT TO THE RULES OF DISCOVERY, ABSOLUTELY.

AND MAYBE NOT EVEN A COPY OF THE TAPE, BUT ARRANGEMENTS WOULD DEFINITELY HAVE TO BE FOR HIM TO COME AND VIEW IT AT THE SHERIFF'S OFFICE OR STATE ATTORNEY'S OFFICE.

THAT'S GENERALLY HOW THESE THINGS ARE VIEWED.

THEY DON'T JUST PASS OUT COPIES TO EVERYONE THAT'S INVOLVED IN THE CASE.

NORMALLY THERE'S A MEETING SET UP.

IN THIS CASE IT WOULD BE THE SHERIFF'S OFFICE BECAUSE IT WAS AN INTERVIEW THAT WAS CONDUCTED BY A DETECTIVE WITH THE HERNANDO COUNTY SHERIFF'S OFFICE.

THE PARTIES WOULD ALL MEET THERE AND VIEW IT AND IT WOULD REMAIN IN CUSTODY OF THE SHERIFF'S OFFICE.

>> THERE IS A VIDEOTAPE. IS THERE SOMETHING IN EXISTENCE OR ARE WE JUST SORT OF TALKING ABOUT THIS IN THE ABSTRACT?

>> WELL, WE WENT BACK FOR A HEARING AND THERE WAS NO VIDEOTAPE, BUT --

>> SO THIS ACTUALLY --

>> WHY ARE WE HERE?

>> BECAUSE I DON'T THINK WE'RE
TALKING ABOUT IT IN THE
ABSTRACT.

I THINK THE DISTRICT COURT HELD
THAT UNDER THAT ONE SECTION THAT
A DEFENDANT IS ENTITLED TO AN
UNREDACTED COPY OF A VIDEOTAPE.

>> THE MOON IS MADE OF CHEESE,
BUT IT HAS NOTHING TO DO
WITH THE CASE.

WHY ARE WE -- I'VE NEVER -- AS
-- SITTING HERE RESPECTFULLY,
I'VE NEVER HEARD OF A CASE LIKE
THIS AND PRACTICING LAW FOR 40
YEARS, NEVER SAW A CASE
PRESENTED TO A COURT THAT SAID,
NOW, THIS DOESN'T REALLY EXIST.
WE JUST WANT TO ANSWER
THIS QUESTION.

>> WELL, IT'S LIKE ALL THE
ABORTION CASES, WHERE A WOMAN
WAS NO LONGER PREGNANT, BUT IT
WAS CAPABLE OF REPETITION.
THERE ARE NUMEROUS CASES WHERE
COURTS HAVE RULED ON AN ISSUE --

>> THIS WAS NEVER AN ISSUE.

THERE WAS NEVER A TAPE.

THIS WAS NEVER AT ISSUE.

YOU'RE EITHER PREGNANT OR NOT
IN AN ABORTION CASE.

IT'S NOT AN ABORTION CASE IF
YOU'RE NOT PREGNANT.

HOW CAN THIS BE A CASE IF
THERE'S NO TAPE?

I DON'T WANT TO WASTE ALL
YOUR TIME.

JUST GO AHEAD AND ARGUE.

>> THE DISTRICT COURT HELD THE
DEFENDANT IS ENTITLED TO AN
UNREDACTED COPY, WHICH TO ME
MEANS ANY DEFENDANT CAN MAKE A
PUBLIC RECORDS DEMAND FOR ANY
VIDEOTAPE OF HIS CHILD VICTIM
AND THE STATE HAS TO PROVIDE IT
TO HIM UNDER THE DISTRICT
COURT'S HOLDING IN THIS CASE.

>> YOU'RE BASICALLY ASKING US TO
DO AN ADVISORY OPINION IN CASE

THIS HAPPENS AGAIN, IN CASE
THERE IS A TAPE.

>> NO.

I'M ASKING THIS COURT TO REVERSE
THE LEGAL HOLDING OF THE FIFTH
DISTRICT COURT OF APPEAL AND
QUASH THEIR OPINION AND SAY YOUR
HOLDING IS INCORRECT, THAT
EXCEPTION APPLIES TO THE
DEFENDANT IN THIS CASE, JUST
AS IT APPLIES TO EVERY MEMBER
OF THE PUBLIC.

>> OKAY.

>> BUT THE PROBLEM IS IT'S A
HOLDING ON A CONTROVERSY THAT
DOES NOT IN FACT EXIST.

THERE'S NO CONCRETE CONTROVERSY
IF YOU ADMIT THERE'S NO TAPE,
THIS IS KIND OF -- THIS IS ALL
JUST KIND OF AN INTELLECTUAL
EXERCISE, THERE'S NO CONCRETE
CONTROVERSY.

YOU WOULD ADMIT IN THIS CASE
THERE'S NO REAL CONTROVERSY
ABOUT A TAPE.

>> AS TO THIS CASE, I MEAN, IT'S
A NOTICE DOCTRINE, YES.

IT IS MOOT AS TO THIS CASE, BUT
UNDER THE MOOTNESS DOCTRINE
THERE IS --

>> EXCUSE ME.

HIS POINT WAS THAT THERE IS
NEVER A CONTROVERSY.

IT'S NOT THAT THERE WAS ONE AND
IT BECAME MOOT.

THERE WAS NEVER A CONTROVERSY.
IT DOESN'T EXIST.

>> THERE WAS A TAPE.

>> YOU SAID THERE WAS NOT.

>> THERE WAS AN INTERVIEW.
THERE WAS AN INTERVIEW.

I MEAN, THIS WAS DISCLOSED
DURING PRETRIAL DISCOVERY.
EVERYBODY KNEW ABOUT IT.

THE VICTIM GAVE AN INTERVIEW.
HER MOTHER GAVE AN INTERVIEW.
YES.

AT ONE TIME ALL THESE THINGS
EXISTED.

THIS IS A CASE FROM 2005, IS

WHEN HE WAS ARRESTED.
SO BY THE TIME HE MADE HIS
DEMAND OR MOVED TO ENFORCE IT IN
2013, THE STATE ATTORNEY'S
OFFICE SAID CAN'T REDACT IT.
BY THE TIME THEY WENT BACK TO
LOOK AT IT, THE SHERIFF'S OFFICE
HAD DESTROYED THE EVIDENCE
BECAUSE A CERTAIN NUMBER OF
YEARS HAD PASSED.

>> WHAT RECORD?

WAS THAT THE RECORD BEFORE THE
FIFTH DISTRICT?

>> NO, IT WAS NOT.

>> SO WHERE IS THAT -- WHERE IS
THAT RECORD?

>> IT'S NOT PART OF THE RECORD.
YOU ASKED, SO I'M JUST LETTING
YOU KNOW THAT AFTER THE COURT
ORDERED A HEARING, WE WENT BACK
AND HAD THE HEARING AND THAT'S
WHAT WAS LEARNED AT THE HEARING.

>> SO WHEN THE STATE RESPONDED
AND ASSERTED WHAT ITS RESPONSE
TO BE, ARE YOU SAYING THE STATE
SHOULD HAVE SAID WE HAVE NO SUCH
RECORDS AS OPPOSED TO TRYING TO
DEFEND ON LEGAL ARGUMENTS?

>> NO.

I BELIEVE THE STATE BELIEVED
THEY STILL EXISTED, BUT THEY
WERE IN THE CUSTODY OF THE
SHERIFF'S OFFICE.

>> THEY DIDN'T KNOW THEY DIDN'T
EXIST.

>> CORRECT.

>> WELL, IT DOES SEEM TO ME IF
THERE'S A RECORD AND NOW--
DEPENDING ON WHAT WE DECIDE,
THAT YOU OUGHT TO SUPPLEMENT
THIS RECORD WITH THAT RECORD,
BECAUSE -- AND WE'LL SEE WHAT
THE OTHER SIDE SAYS, BUT TO HAVE
A COMPLETE UNDERSTANDING.

SO JUST TO MAKE THIS WHOLE
PICTURE COMPLETE, HE -- HIS
ATTORNEY -- HE WAS REPRESENTED
BY ATTORNEY AT TRIAL?

>> CORRECT.

>> AND THOSE -- WHATEVER NOW

DOESN'T EXIST WAS IN FACT MADE
AVAILABLE UNREDACTED TO HIM?

>> CORRECT.

>> SO THIS IS REALLY ALMOST --
SO THIS WAS A PRO SE PRISONER
HAS MADE A -- SOMETHING OUT OF
WHAT IS REALLY SOMETHING HE
WOULD HAVE -- HE HAD BACK THEN.

>> CORRECT.

>> OKAY.

SO --

>> HE ALSO FILED A 3850.
HE WAS REPRESENTED BY COUNSEL.
COUNSEL NEVER ASKED TO REVIEW
THIS.

>> YOU'RE SAYING THE RECORD
WOULD SHOW IT WAS MADE
AVAILABLE.

>> CORRECT.

>> FIRST OF ALL, WE WANT TO MAKE
SURE FROM A BASIC RIGHTS OF
DEFENDANTS IN A CASE LIKE THIS,
YES, THIS IS AVAILABLE AND
PRODUCIBLE PRETRIAL TO A
DEFENDANT.

>> CORRECT.

>> SECOND, THAT ON THE OTHER
HAND THIS TYPE OF A TAPE IS NOT
AVAILABLE TO THE WORLD.

>> CORRECT.

>> OKAY.

AND YOU READ THE FIFTH
DISTRICT'S OPINION AS MAKING IT
AVAILABLE TO THE WORLD.

>> NO.

NO.

I READ THE FIFTH DISTRICT'S
OPINION AS MAKING IT AVAILABLE
TO A DEFENDANT BASED ON THAT
LANGUAGE IN --

>> BUT THIS IS -- BUT UNDER THE
PUBLIC RECORDS LAW.

I MEAN, AGAIN, IT'S AVAILABLE TO
A DEFENDANT.

NOT UNDER THE PUBLIC RECORDS
LAW.

>> CORRECT.

CORRECT.

>> YOUR ARGUMENT IS THE FIFTH
DCA ERRONEOUSLY CARVED OUT AN

EXCEPTION TO THE PUBLIC RECORD
LAW.

>> FOR A DEFENDANT.
THAT'S IT.

>> INSTEAD OF USING -- AND THE
SECTION THEY USED IS THE SECTION
THAT SAYS IF SOMEONE -- IT'S IN
THEIR POSSESSION, THEY CAN'T
MAKE IT AVAILABLE TO OTHER
PEOPLE.

>> IT'S A CRIME TO MAKE IT
AVAILABLE TO ANYONE EXCEPT THE
ATTORNEY OR THE DEFENDANT.

>> BECAUSE THEY'RE GOING TO BE
GETTING IT IN SOME OTHER WAY,
NOT THROUGH THE PUBLIC RECORDS
LAW.

>> CORRECT.

>> THAT WOULD BE THE INTENT OF
THE SECOND SECTION.

>> CORRECT.

>> PLUS THE FACT THAT THIS CAN'T
BE THAT YOU WOULD ALLOW
VIDEOTAPES OF MINORS TO BE MORE
AVAILABLE THAN VIDEOTAPES OF
ADULTS.

>> CORRECT.

CORRECT.

I MEAN, IN A NUTSHELL OUR
POSITION IS IT'S A PUBLIC
RECORD.

IF IT'S A PUBLIC RECORD IT'S
AVAILABLE TO EVERYONE.

IF IT'S NOT A PUBLIC RECORD,
IT'S NOT AVAILABLE TO ANYONE.

>> THE FIFTH DISTRICT WAS
READING IT AS MAKING IT NOT
AVAILABLE TO EVERYONE, JUST
AVAILABLE TO A DEFENDANT.

>> CORRECT.

>> AND WHAT'S WRONG WITH THAT
INTERPRETATION?

>> BECAUSE UNDER THE PUBLIC
RECORDS LAW, AS I SAID, IT'S
EITHER A PUBLIC RECORD OR IT'S
NOT A PUBLIC RECORD.

IT COULD BE AVAILABLE.

THE DEFENDANT COULD FILE A
MOTION IN THE TRIAL COURT IF
THEY BELIEVED THEY NEEDED IT FOR

A POSTCONVICTION MOTION OR SOME OTHER PROCEEDING AND THE TRIAL COURT WOULD HAVE THE DISCRETION TO ADDRESS IT AT THAT MATTER, LOOK AT IT IN CAMERA OR APPOINT THE DEFENDANT IS ATTORNEY AND DECIDE WHETHER THIS REALLY NEEDED TO BE DISCLOSED. BECAUSE IT WOULD NOT BE CONFIDENTIAL AS TO THE DEFENDANT.

THAT STILL DOES NOT MAKE IT A PUBLIC RECORD, THOUGH.

>> SO WHAT YOU'RE REALLY SAYING HERE IS THAT THIS DEFENDANT, EVEN THOUGH THIS VIDEOTAPE CONCERNS A CASE THAT HE HAD IN THE PAST, HE IS LIKE ANY OTHER MEMBER OF THE PUBLIC --

>> CORRECT.

>> -- AND IS NOT ENTITLED TO THIS AS A PUBLIC RECORD.

>> EXACTLY.

>> OKAY.

>> EXACTLY.

AND IF THERE ARE NO OTHER QUESTIONS, I WILL RESERVE MY REMAINING TIME FOR REBUTTAL. THANK YOU.

>> I'D LIKE TO ASK YOU, WHAT EXACTLY DO YOU ARGUE?

I MEAN, THE CONCLUSION TO YOUR BRIEF, YOU ASK FOR US TO FIND THAT THE STATE IS NOT REQUIRED TO PROVIDE AN UNREDACTED COPY OF VIDEOTAPED STATEMENT OF A MINOR VICTIM OF ENUMERATED SEXUAL OFFENSE TO THE PERSON WHO COMMITTED THE OFFENSE AGAINST THE MINOR VICTIM.

WHERE DO YOU ACTUALLY ARGUE THAT HE'S NOT ENTITLED TO ANY COPY, REDACTED OR UNREDACTED?

>> MY BRIEF CITES TO THE EXEMPTION UNDER 2H1.

AND THAT'S WHAT --

>> DOESN'T THAT TALK ABOUT INFORMATION?

DOESN'T THAT SECTION TALK ABOUT -- REFER TO INFORMATION?

IDENTIFYING INFORMATION?

>> THE FOLLOWING CRIMINAL
INTELLIGENT INFORMATION IS
CONFIDENTIAL AND EXEMPT.

C, A PHOTOGRAPH, VIDEOTAPE OR
IMAGE OF ANY PART OF THE BODY OF
A VICTIM OF A SEXUAL OFFENSE.

AND THAT'S THE PART THAT WAS
ENACTED PURSUANT TO THAT WEEKS
VERSUS GOLDEN CASE, WHERE -- AND
THE LANGUAGE IN THE LEGISLATIVE
SUMMARY -- ACTUALLY, THEY QUOTED
THE OPINION.

THE COURT STATED THAT THE
PHOTOGRAPHS DID NOT SATISFY A
DIFFERENT SECTION, AND THEY
CONCLUDED THAT IF THE
LEGISLATURE HAD INTENDED TO
EXEMPT ALL PHOTOGRAPHS OF
VICTIMS, IT COULD HAVE EASILY
SAID SO.

AND THIS IS THE LEGISLATURE
SAYING SO.

WE'RE EXEMPTING ALL PHOTOGRAPHS,
ALL VIDEOTAPES OF ANY IMAGE OF
ANY PART OF THE BODY.

THANK YOU.

>> MAY IT PLEASE THE COURT, MY
NAME IS TYLER PITCHFORD.

I REPRESENT MR. INGRAM, THE
RESPONDENT.

AT COUNSEL TABLE IS STEVEN
BRANNOCK.

IN REGARD TO YOUR QUESTION, I
BELIEVE WHAT THE STATE WAS
ATTEMPTING TO SAY IS THAT THE
IMAGE PORTION OF THE VIDEO IS
NOT -- NEEDS TO BE REDACTED
COMPLETELY, BUT THE AUDIO
PORTION WOULD STILL BE
AVAILABLE.

I DON'T WANT TO SPEAK FOR THE
STATE, BUT I DO BELIEVE THAT'S
WHAT THEIR POSITION IS.

OBVIOUSLY, WE DISAGREE.

WE BELIEVE MR. INGRAM IS
ENTITLED TO AN UNREDACTED
VERSION OF THE VIDEO IN ITS
COMPLETE FORM.

>> INCLUDING THE FACE THAT WOULD

IDENTIFY THE VICTIM.

>> CORRECT.

UNDER THE FIFTH DISTRICT'S
HOLDING UNDER 2J2(B), THE
LEGISLATURE HAS CARVED OUT AN
EXEMPTION FOR DEFENDANTS AND FOR
DEFENDANT'S COUNSEL SO THAT AN
UNREDACTED COPY MAY BE PROVIDED.
THE PROBLEM HERE IS WE DON'T
KNOW WHAT'S IN THE VIDEO.
TYPICALLY THIS IS GIVEN TO THE
COURT, THE COURT LOOKS AT IT IN
CAMERA AND THE COURT DECIDES
WHAT NEEDS TO BE REDACTED.

WE DON'T HAVE THE VIDEO.

WE DON'T KNOW IF IT'S A VIDEO OF
HER FACE.

>> SHE SAID IT'S BEEN DESTROYED.

>> IT APPEARS TO HAVE BEEN
DESTROYED.

WE DON'T KNOW.

IN THE TIME LINE ON THAT, I
WANTED TO GO BACK.

THE STATE I BELIEVE MISSPOKE.
THE ORIGINAL REQUEST FOR RECORDS
WAS IN 2008.

MR. INGRAM WAS STILL IN THE
PROCESS OF POSTCONVICTION
APPEALS.

THE FINAL OPINION ON THAT CAME
OUT SEPTEMBER OF 2012.

SO HIS FIRST REQUEST WENT TO THE
STATE ATTORNEY'S OFFICE IN 2008.
HE SENT A FOLLOW-UP REQUEST IN
2012, DECEMBER.

>> THOSE WERE BOTH UNDER PUBLIC
RECORDS REQUESTS?

>> CORRECT.

>> HE WAS THEN NOT REPRESENTED?
HE WASN'T REPRESENTED BY AN
ATTORNEY?

>> I DON'T KNOW IF HE HAD AN
ATTORNEY AT THAT POINT.

HE DID HAVE AN ATTORNEY.

HE HIRED AN ATTORNEY DURING HIS
POSTCONVICTION APPEALS, BUT I
DON'T KNOW AT WHAT POINT THE
ATTORNEY WAS RETAINED.

I APOLOGIZE.

>> AND DID HE HAVE ACCESS TO

THIS VIDEO DURING HIS ORIGINAL TRIAL?

>> THAT'S UNCLEAR FROM WHAT I'VE BEEN PROVIDED.

I HONESTLY DON'T KNOW.

THE STATE SAYS THAT IT WAS MENTIONED AT THE TRIAL THAT THE VIDEO WAS AVAILABLE.

AS FAR AS THE RECORD INDICATES, IT APPEARS THERE WAS A VIDEO BASED ON THE STATE'S ASSERTION THAT THEY WERE READY, WILLING AND ABLE TO PROVIDE IT, BUT THERE'S NO VIDEO OBVIOUSLY IN THE RECORD AND THERE'S NO RECORD OF WHEN THE VIDEO WAS DESTROYED OR WHAT IT CONTAINED OR IF IT WAS EVER PROVIDED TO MR. INGRAM.

>> WHY DOES THIS DEFENDANT NEED AN UNREDACTED COPY OF THIS VIDEOTAPE?

>> AS ASSERTED IN HIS PUBLIC RECORDS REQUEST AND ORIGINAL PETITION, HE BELIEVES THERE WAS EXCULPATORY EVIDENCE CONTAINED WITHIN THIS VIDEO THAT WAS NEVER PROVIDED, BRADY EVIDENCE SPECIFICALLY.

I DON'T KNOW EXACTLY WHAT THAT IS, BUT THAT'S WHAT THE RECORD INDICATES.

>> THERE'S NO INDICATION OF WHAT THAT IS?

I MEAN, WHAT WE'RE TALKING ABOUT IS THE FACE AND IDENTIFICATION OF THE VICTIM AND HE WANTS THAT TO DO WHAT?

>> SPECIFICALLY, HE BELIEVES THAT THERE'S EXCULPATORY EVIDENCE BASED ON -- I DON'T WANT TO GO INTO TOO MANY DETAILS, DIVULGE CLIENT INFORMATION, BUT HE BELIEVES THERE WAS EXCULPATORY INFORMATION THAT WAS WITHHELD FROM HIM AND HIS ATTORNEY.

>> DON'T YOU HAVE TO MAKE SOME SHOWING?

ASSUMING HE HAS TO ASK FOR THIS IN HIS CRIMINAL PROCEEDING, NOT

UNDER THE PUBLIC RECORDS LAW,
BUT AS A PART OF HIS CRIMINAL
PROCEEDING, DOESN'T HE HAVE TO
MAKE SOME SHOWING ABOUT WHY HE
WOULD NEED THAT AT THIS POINT?

>> AT THIS POINT --

>> I MEAN, THIS IS AFTER HE'S
BEEN CONVICTED.

>> THE POINT YOU'RE GOING TO WAS
ADDRESSED BY THE FIFTH DISTRICT
WHEN THEY STATED THAT CERTAIN
EVIDENCE -- SO, FOR EXAMPLE, THE
FIFTH GAVE THE EXAMPLE OF IF
CERTAIN EVIDENCE HAS BEEN
WRONGLY WITHHELD OR REDACTED,
YOU WOULDN'T BE ABLE TO GET THAT
DURING THE PROCESS BECAUSE THAT
EVIDENCE HAD BEEN WRONGLY
MODIFIED.

THE ONLY WAY TO GET THAT
WOULD BE THROUGH THE
PUBLIC RECORDS LAW.

THE FIFTH BELIEVED THAT'S WHAT
THE EXEMPTION WAS FOR.

UNDER 2B2 THERE'S NO PURPOSE
SERVED BY EXCLUDING IT FROM
THE DEFENDANT.

THE DEFENDANT CLEARLY KNOWS WHO
THAT VICTIM IS.

NOTHING WOULD STOP THE DEFENDANT
FROM DIVULGING THAT INFORMATION.

THERE'S NO PROHIBITION.

FOR EXAMPLE, HE COULD GET A
REDACTED VIDEO, OVER DUB IT AND
RELEASE IT BACK TO THE PUBLIC
AND THERE'S NO PROBLEM.

THE INFORMATION IS OUT TO
THE PUBLIC.

THAT COMPLIES WITH WHAT THE
STATE THEORY IS AND DOESN'T
SERVE ANY PURPOSE TO THE GENERAL
PUBLIC AT ALL.

PREVENTING IT FROM DISCLOSURE
DOESN'T PREVENT ANYTHING WHEN
IT'S DISCLOSED TO SOMEONE WHO
ALREADY KNOWS WHO THE VICTIM IS.

>> AT THIS POINT WE'RE IN
STATUTORY CONSTRUCTION.

>> CORRECT.

>> DOES THE -- IS IT A DIFFERENT

RESULT -- AND THIS IS WHAT CONCERNS ME -- WITH A MINOR VICTIM THAN WITH AN ADULT VICTIM?

AND THAT INCONSISTENCY WOULD SEEM TO BE ILLOGICAL, THAT YOU'D WANT TO GIVE THE MINOR VICTIM MORE PROTECTION THAN AN ADULT VICTIM.

>> I THINK YOU MEANT LESS PROTECTION.

IS THAT CORRECT?

>> YOU'D WANT TO GIVE A MINOR VICTIM MORE PROTECTION.

>> OH.

WELL, THE FIFTH DISTRICT ADDRESSED THAT IN THEIR OPINION WHERE THEY STATE IT SEEMS IT SEEMS A LOGICAL INCONSISTENCY.

>> BUT IS THAT TRUE, THAT THE SAME EXCEPTION WOULD NOT APPLY FOR AN ADULT VICTIM?

>> ONLY APPLIES TO THE VIDEO STATEMENTS OF MINOR VICTIMS, THAT'S CORRECT.

>> TO ME THAT'S THE PART THAT TIPS ME TO SAY THIS COULDN'T BE -- I UNDERSTAND SOMETIMES THE LEGISLATURE DOES THINGS THAT WE GO, WELL, THAT DOESN'T MAKE SENSE, BUT IT'S CLEAR. BUT IF IT'S NOT CLEAR, IT'S RIDICULOUS.

I MEAN, I DON'T KNOW.

THAT'S NOT A TERM OF STATUTORY CONSTRUCTION, BUT IT'S MY TERM TO SAY THAT YOU WOULD NOT -- THAT ANYBODY WOULD SAY, NO, A MINOR VICTIM GETS THE UTMOST PROTECTION UNDER EVERY LAW THAT THERE WOULD BE IN THE LEGISLATURE; THEREFORE, INTENDED TO CRIMINALIZE ANY ATTEMPT TO DO ANYTHING WITH REGARD TO IF YOU HAVE POSSESSION TO RELEASE IT. AND THAT'S WHAT THAT, TO ME, THAT SUBSECTION MEANS, NOT THAT THEY GET MORE ABILITY -- A GREATER ABILITY TO OBTAIN IT UNDER PUBLIC RECORDS.

WHY ISN'T THAT A LOGICAL
INTERPRETATION OF THAT STATUTE?

>> WELL, TYPICALLY IN THE MINOR
VICTIM CASES THERE'S MORE OF A
HE SAID/SHE SAID ASPECT IS
WHAT I BELIEVE AND WHAT
IS REFERENCED BY --

>> EXCEPT THAT THE STATE AGREES
THAT YOU IN A DISCOVERY MATTER
HAS ACCESS, AND NOBODY WOULD
DISAGREE WITH THAT.

THAT'S ENTIRELY SOMETHING THAT
YOU'RE ENTITLED TO UNDER
DISCOVERY, UNDER BRADY, YOU
KNOW, MAYBE, I DON'T KNOW,
GIGLIO, BUT THAT YOU'RE
ENTITLED TO IT.

AND PRESUMABLY HE RECEIVED IT.
AND IF HE DIDN'T RECEIVE IT,
THEN THERE IS -- AND IT EXISTED,
THAT'S A REAL FAILURE OF BOTH
THE STATE AND HIS ATTORNEY.
BUT THAT'S NOT WHAT WE'RE
DEALING WITH HERE.

>> THIS IS PUBLIC RECORDS.
NO.

AND I AGREE.

I'VE GONE THROUGH THE
LEGISLATIVE HISTORY AND I CAN'T
DISCERN EXACTLY WHAT THE
LEGISLATURE WAS GOING FOR, BUT
WHAT'S WRITTEN IS AN EXCEPTION
ALLOWING ACCESS FOR A DEFENDANT
AND HIS ATTORNEY.

WHAT THE LEGISLATURE WAS
THINKING UNFORTUNATELY FLORIDA
DOESN'T RECORD ALL OF THE
HEARINGS AND WHATNOT.

ALL WE HAVE IS THE SUMMARIES.
THOSE SUMMARIES ARE VERY BLANK.
BUT IT WAS PASSED AFTER SECTION
H WAS AND AFTER THE WHOLE WEEKS
ISSUE, WHERE H1A THROUGH C
WERE PASSED.

THEY PASSED THIS NEW EXCEPTION
FOR MINOR VICTIMS.

THE STATE'S THEORY ON THIS IS
UNDER H1.

THIS IS WHAT THEY MOVED.

THERE WAS NO ARGUMENT UNDER

2JB BELOW.

THE STATE'S ARGUMENT HAS BEEN
ALL THE DENIALS OF PUBLIC
RECORDS WERE ALWAYS UNDER 2H1.
NOT SPECIFIC SUBSECTIONS.

AND AS APPLIED THEY ARE
ESSENTIALLY ARGUING THAT THEY
CAN WITHHOLD ANY IMAGE OF ANY
CRIMINAL INVESTIGATIVE
INFORMATION, ANY IMAGE,
VIDEOTAPE, AUDIO RECORDING,
ET CETERA, FOR ANY SEXUAL ABUSE
VICTIM AT ANY POINT.

THAT'S NOT WHAT THE LEGISLATURE
INTENDED.

THE LEGISLATIVE HISTORY IS CLEAR
IT WAS INTENDED TO PREVENT A
REPEAT OF WEEKS, WHERE IT
SPECIFICALLY STATES A PART OF
THE BODY.

THE VIDEO IS NOT A PART OF
THE BODY.

IT'S THE ENTIRE -- ARGUABLY --
AGAIN, WE DON'T HAVE THE VIDEO,
BUT OSTENSIBLY WAS A VIDEOTAPED
RECORDING OF THE VICTIM FULLY
CLOTHED AND MORE THAN ONE PART
OF THE BODY.

THAT'S NOT WHAT THE WEEKS
EXCEPTION WAS MADE FOR.

>> IS THE EXISTENCE OF THE VIDEO
IN DISPUTE OR DO YOU CONCEDE THE
FACT THAT IT'S NOT IN EXISTENCE?

>> THE ONLY -- AND THIS IS
OUTSIDE THE RECORD.

THIS CAME AFTER THE FACT, THE
HEARINGS.

WE HAVE NO EVIDENCE THAT -- WE
HAVE NO REASON TO DISPUTE THAT
THEY'VE DESTROYED THE VIDEO.

WE DON'T KNOW WHY IT WAS
DESTROYED OR WHEN.

THAT WASN'T IN THE HEARING
RECORD THAT I WAS PROVIDED.

BUT IT APPEARS SOMETIME BETWEEN
WHEN IT WAS REQUESTED, DURING
TRIAL OBVIOUSLY, AND IN 2005 THE
FIRST PUBLIC RECORDS REQUEST
WENT OUT IN 2008.

THE STATE CONSISTENTLY STATED

THEY WERE READY, WILLING AND
ABLE TO PROVIDE IT IN 2012,
2013.

AFTER THE OPINION CAME OUT THEY
WENT BACK TO HEARING AND THE
RECORDS WERE APPARENTLY
DESTROYED AT THAT POINT.

I DON'T KNOW WHERE IN THE
TIME LINE.

THE STATE MAY HAVE MORE
INFORMATION THAN I ON THAT,
OUTSIDE THE RECORD.

THE TIME LINE'S NOT, BUT WHAT
HAPPENED TO THE RECORDS.

AND I DO WANT TO GO BACK TO
SOMETHING YOU SAID, JUSTICE
LEWIS, REGARDING CASE OR
CONTROVERSY.

IF THE STATE HAD RESPONDED THAT
THE RECORDS HAD BEEN DESTROYED
IN 2008, CHAPTER 119 DOES
REQUIRE THE STATE TO HAVE A GOOD
FAITH RESPONSE AND TO GO OUT
AND SEEK THE CUSTODIAN OF
THOSE RECORDS.

SO THE STATE ATTORNEY'S OFFICE
HAS SAID THAT IT WAS -- THE
SHERIFF'S OFFICE.

WELL, THEY SHOULD HAVE CONTACTED
THE SHERIFF'S OFFICE AND
RESPONDED BACK WITH WE EITHER
HAVE OR DON'T HAVE THESE
RECORDS.

THEY RESPONDED THAT THEY HAD
THESE RECORDS.

DOWN THE LINE NOW THAT WE'VE
GOTTEN A CASE THAT WAS NEVER A
CASE FOR CONTROVERSY TO BEGIN
WITH, NOW WE HAVE AN ADVISORY
OPINION FROM THE FIFTH DISTRICT
WHICH IS NOW UPON APPEAL ON A
CERTIFIED QUESTION.

>> THIS WOULD BE MORE TROUBLING,
THAT IT WAS DESTROYED SOMETIME
BETWEEN 2008 AND WHEN YOU HAD
THE HEARING.

>> CORRECT.

>> I KNOW YOU'RE PRO BONO.

>> I WAS APPOINTED BY THE COURT.

>> SO IS THERE -- THAT WOULD BE

A GREATER -- I MEAN, A DIFFERENT CONCERN.

>> YES.

AND A COMPLETELY DIFFERENT ISSUE, BUT GREATLY CONCERNING NONETHELESS.

AND I THINK THAT'S WHERE A LARGE PART OF THIS COMES INTO A PROBLEM IN THIS OPINION.

IF THE COURT IS TO ACTUALLY GET TO THE MERITS OF THIS CASE AND NOT RELEASE JURISDICTION -- RELINQUISH JURISDICTION, THE PROBLEM HERE IS THAT MR. INGRAM DUE TO THE STATE'S FAILURES BELOW STILL NEEDS TO BE GRANTED ACCESS TO AN UNREDACTED VIDEO. THE STATE DIDN'T RAISE THE ARGUMENT.

THEY DIDN'T FILE AN EXCEPTION TO THE PUBLIC RECORDS ACT STATING WHAT THEY STATE NOW.

THEY SPECIFICALLY FILED THREE AND A HALF PAGES IN THE FIFTH DISTRICT NOT RAISING ANYTHING THEY ARGUE NOW.

SO MR. INGRAM IS ENTITLED IT AN UNREDACTED COPY.

THE FIFTH DISTRICT HAS FOUND THEY WAIVED THESE ARGUMENTS. THE STATE HASN'T CHALLENGED THAT ON APPEAL, NOR COULD THEY AT THIS POINT.

>> BUT WHATEVER HAPPENS WITH THIS CASE, WHICH SEEMS LIKE IT'S A -- HAS A VERY TWISTED HISTORY BECAUSE, AGAIN, THIS IS SOMETHING HE OBVIOUSLY SHOULD HAVE HAD AT HIS ORIGINAL TRIAL. IF HE DIDN'T HAVE IT, THEY'RE SAYING THAT HE DID HAVE IT AND WE DON'T KNOW THAT.

BUT FOR THE FUTURE, WE WANT TO -- WE ARE NOW -- IF WE KEEP THIS CASE, WE NEED TO CLARIFY WHAT THE APPROPRIATE SCOPE OF PUBLIC RECORDS ACCESS IS.

AND ARE YOU -- DO YOU AGREE OR ARE YOU SAYING THAT THIS WOULD BE UNDER THE FIFTH DISTRICT'S

OPINION THAT ANY MEMBER OF THE
PUBLIC WOULD HAVE EQUAL ACCESS
TO THIS?

OR JUST DEFENDANTS AND
DEFENDANTS' ATTORNEYS?

>> NO.

I BELIEVE THAT THE FIFTH
DISTRICT'S OPINION WAS SPECIFIC
AND IT'S BASED ON THE STATE'S
WAIVER OF THE ARGUMENTS THEY'RE
NOW RAISING.

THE OPINION SPECIFICALLY STATES
-- IT'S ON PAGE 5 OF THE PRINTED
OPINION -- ALTHOUGH NOT
ESSENTIAL TO OUR HOLDING AND
THEN IT CONTINUES ON TO EXPLAIN
THE REASONING OF WHY
MR. INGRAM'S ENTITLED TO
UNREDACTED VIDEO.

>> ALTHOUGH NOT ESSENTIAL TO OUR
HOLDING.

SO DICTA.

>> CORRECT.

IT'S IN BLACK AND WHITE PRINT
THERE.

IT'S VERY CLEAR THAT THE STATE
WAS SAYING -- OR THE FIFTH
DISTRICT WAS SAYING THE HISTORY
OF THIS CASE IS TWISTED, BUT WE
FIND THAT WHEN THIS CASE GOES
BACK TO A HEARING -- BECAUSE THE
TRIAL COURT DIDN'T HOLD A
HEARING.

THE TRIAL COURT SIMPLY RUBBER
STAMPED IT THROUGH AND SAID I'M
NOT GOING TO LISTEN TO THESE
ARGUMENTS.

THE FIFTH DISTRICT SAID YOU NEED
TO GO BACK AND HOLD A HEARING.
AND WHEN YOU HOLD THAT HEARING
FOR THE TRIAL COURT -- FOR THE
TRIAL COURT'S INFORMATION, WHEN
YOU GO BACK AND HAVE THIS
HEARING, YOU NEED TO PROVIDE --
YOU NEED TO REDACT THE FORENSIC
INFORMATION ON THE COMPUTER IF
IT CONTAINS IDENTIFYING
INFORMATION.

YOU NEED TO REDACT CERTAIN
IDENTIFYING INFORMATION FROM THE

OTHER MATERIALS MR. INGRAM'S REQUESTED.

AND IF THERE'S A VIDEO OF A MINOR STATEMENT, IT NEEDS TO BE PROVIDED UNREDACTED DUE TO THE STATE'S WAIVERS ON THIS AND THEIR DICTA REGARDING 2J2B. SO DO I THINK IT'S -- APPLIES TO EVERYONE IN THE STATE?

NO.

I THINK IT WAS A VERY FACT-SPECIFIC OPINION THAT WAS AN ADVISORY OPINION AND THAT WE SHOULD NEVER HAVE GOTTEN HERE TO BEGIN WITH.

>> IT SEEMS LIKE WE SHOULD THEN VACATE THE DISTRICT COURT OF APPEAL OPINION AND JUST DISMISS THIS CASE.

>> I THINK THE PROBLEM THERE IS THERE'S A SEPARATE SECTION THAT STATES -- THAT REQUIRED THE HEARING.

NOW IT'S GONE BACK.

THE HEARING'S ALREADY OCCURRED. AND IN REGARDS TO MR. INGRAM, HE SHOULD STILL BE ENTITLED TO AN UNREDACTED COPY AT THE VERY LEAST BECAUSE OF THE STATE'S WAIVERS BELOW.

THEY DIDN'T PROPERLY ASSERT EXEMPTIONS UNDER THE PUBLIC RECORDS ACT.

>> BUT IF THE VIDEOTAPE DOESN'T EXIST, THEN AREN'T WE REALLY TALKING ABOUT JUST AN ADVISORY OPINION, AS YOU JUST SAID?

>> WELL, I DO BELIEVE THAT IT WAS MOST LIKELY -- I DON'T KNOW WHEN THE VIDEOS WERE DESTROYED. MR. INGRAM HAS STATED HE WOULD LIKE TO CONTINUE TO TRY TO FIND COPIES OF THAT VIDEO IF IT'S AVAILABLE THROUGH THE STATE ATTORNEY'S OFFICE.

WE DON'T HAVE ANYTHING.

IT'S OUTSIDE THE RECORD.

I CAN'T CONFIRM WHETHER OR NOT IT'S BEEN DESTROYED, BUT WE DO BELIEVE IT HAS BEEN.

IF THERE IS A VIDEO, MR. INGRAM SHOULD STILL BE ENTITLED TO AN UNREDACTED COPY DUE TO THE STATE'S FAILURES BELOW.

THEY FAILED TO ASSERT UNDER EXEMPTIONS UNDER 119.

THEY FAILED TO PERFORM A GOOD FAITH ANALYSIS.

>> MAY BE AN ADVISORY OPINION OR IT MAY NOT BE.

YOU'RE NOT SURE.

>> I DON'T HAVE A RECORD, TO BE HONEST.

SO NO.

DO I THINK IT WAS PROBABLY AN ADVISORY OPINION?

YES, PERSONALLY.

BUT I DON'T HAVE -- THE HEARING OCCURRED AFTER THE OPINION WAS RELEASED.

IT'S ACTUALLY MENTIONED IN THE STATE'S REHEARING MOTION, THAT THE HEARING'S OCCURRING IN JANUARY AND THEN WE GOT A COPY IN OCTOBER, 2014.

>> OKAY.

>> FOR ALL THOSE REASONS, I THINK THIS COURT SHOULD RESPECTFULLY DISMISS JURISDICTION OVER THIS CASE. OTHERWISE ALLOW MR. INGRAM TO CONTINUE A REDACTED VIDEO AT THE VERY LEAST.

HOWEVER, IF YOU'RE GOING TO CONTINUE ON TO ANSWER THE CERTIFIED QUESTION, DUE TO THE EXEMPTION THAT THE STATE DID PROVIDE UNDER 2B2J2, THE COURT SHOULD ANSWER THE DISTRICT COURT'S QUESTION IN THE NEGATIVE.

>> REBUTTAL?

>> JUST VERY BRIEFLY.

IN TERMS OF THE WAIVER ARGUMENT, OUR RESPONSE IN THE DISTRICT COURT SAYS THE EXHIBITS IN INGRAM'S PETITION DEMONSTRATE THE STATE ATTORNEY'S OFFICE RESPONDED --

>> I CAN'T UNDERSTAND WHAT

YOU'RE SAYING.

>> I'M SORRY.

I'LL BRING IT UP HERE THEN.

>> THE STATE ATTORNEY'S OFFICE
CONSISTENTLY CLAIMED AN
EXEMPTION PURSUANT TO
119.0712H1.

THAT PROVIDES FOR THE
CONFIDENTIALITY OF AN EXEMPTION
FROM 071, CERTAIN CRIMINAL
INVESTIGATION AND INTELLIGENCE
INFORMATION, INCLUDING
INFORMATION THAT MAY REVEAL THE
IDENTITY OF A VICTIM OF A SEXUAL
OFFENSE AND PHOTOGRAPHS,
VIDEOTAPES OR IMAGES OF THE
SEXUAL OFFENSE.

WE CITED HARVARD VERSUS VILLAGE
OF PALM SPRINGS THAT THERE IS NO
LAW PROHIBITING HER FROM
OBTAINING A VIDEOTAPE WHICH WAS
A VIDEOTAPE OF HER SON'S
INTERVIEW.

SECTION 119.071 FLORIDA STATUTES
PROVIDES THAT THE VIDEO OF A
VICTIM IS EXEMPT FROM A PUBLIC
RECORDS REQUEST IF IT IS TAKEN
DURING THE COURSE OF ONE OF
SEVERAL ENUMERATED TYPES OF
CRIMINAL INVESTIGATIONS.

SO THE STATE HAS CONSISTENTLY
RELIED ON THIS EXEMPTION FOR
THIS DOCUMENT.

SO I WOULD ASK YOU TO QUASH THE
OPINION OF THE FIFTH DISTRICT
COURT OF APPEALS.

THANK YOU.

>> THANK YOU.

THE COURT THANKS YOU FOR
UNDERTAKING THE REPRESENTATION
OF MR. INGRAM ON A PRO BONO
BASIS AND WE THANK THE LAW FIRM
FOR ALLOWING YOU THE OPPORTUNITY
TO DO SO.

THANK YOU.