O/A 5-10-84

IN THE SUPREME COURT OF FLORIDA

CASE NO. 63,711

NATHANIEL DEAN,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.
_____/

ON PETITION FOR DISCRETIONARY REVIEW
TO THE DISTRICT COURT OF APPEAL OF
FLORIDA FOR THE THIRD DISTRICT

BRIEF OF PETITIONER

BENNETT BRUMMER
Public Defender

MICHAEL A. ROSEN, ESQ.
Special Assistant Public
Defender
Suite 306
1401 Brickell Avenue
Miami, Florida 33131
Tel. (305) 373-2411

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PREFACE

Petitioner, Nathaniel Dean, was Appellant in the court below and defendant in the trial court. He will be referred to throughout this brief as Petitioner.

The following symbols will be used in this brief:

"R." refers to the record on appeal.

"Tr." refers to the transcript of the trial proceedings.

"P.T. Tr." refers to the transcript of certain pre-trial proceedings held on January 8, 1979.

ISSUES PRESENTED FOR REVIEW

I. Whether the District Court of Appeal Erroneously Found that Petitioner Lacked Standing to Suppress Documents Illegally Seized by the State.

II. Whether the Trial Court Abused Its Discretion in Denying Petitioner's Motion for Severance.

III. Whether the Court of Appeal Mistakenly Applied the Harmless Error Rule to a Violation of Fla. R. Crim. P. 3.250.

STATEMENT OF THE CASE

Background:

Petitioner and a co-defendant, Nimrod Harmon, were charged by information with one count of conspiracy to commit grand lacerny in violation of Section 777.04, Fla. Stat. (1977) (Count 1); and 38 counts of grand lacerny in violation of Section 812.021(1)(a), Fla. Stat. (1977) (Counts 2-39). (R. 1-47).

The State alleged that Petitioner as President of the Edison Little River Self-Help Community Council, Inc. (a non-profit corporation) and Harmon (Treasurer of Edison Little River) had conspired and did appropriate sums of money for Petitioner's personal, family or private, business use. The State's case was divided into four areas of alleged criminal conduct. In support of Counts 2-16, the State alleged that Petitioner and Harmon issued checks drawn on the Edison Little River Account to Willie L. Johnson, Boulevard National Bank or co-defendant Harmon. In each instance, these checks were cashed at Boulevard National Bank and a cashier's check was drawn payable to Gulf Oil Corporation (R. 9-24). Second, the State alleged in support of Counts 17-28, that Petitioner and co-defendant Harmon issued checks in Edison Little River's account payable to Mozell Wright, Petitioner's wife, for salary. The State claimed that Mozell Wright never worked for Edison Little

River and had the checks cashed for her family's use (R. 25-36). Third, the State alleged in support of Counts 29-36 that Petitioner and Harmon caused Edison Little River to lease and pay rent on an apartment for Petitioner's personal use (R. 37-49). Fourth, the State alleged in support of Counts 37 and 38 that Petitioner and Harmon caused checks to be issued on Edison Little River's account which were cashed and the proceeds used to pay debts which Petitioner owed to the Internal Revenue Service (R. 45-46). 1/

Pretrial and Trial Proceedings:

Prior to trial, Petitioner filed a timely motion to suppress evidence which had been seized by the State from Edison Little River under the guise of a subpoena duces tecum (R. 99-100). When the matter came before the court for hearing, the State challenged Petitioner's standing to contest the seizure and to suppress the documents. The State conceded that for purposes of the motion, all documents which the State intended to introduce at trial were seized from Edison Little River pursuant to the subpoena (P.T. Tr. 31). The court denied the motion to suppress without hearing any evidence, ruling that Petitioner had no standing to challenge any illegal seizure

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1 / Prior to trial, the State nolle prossed Count 39 (R. 54).

of documents (P.T. Tr. 36-37).

When the case proceeded to trial, Petitioner moved on several occasions for a severance of his case from his co-defendant. (Tr. 121-122, 154, 410-411, 481, 1081-1082). In each instance, the court denied the motion. Upon conclusion of the State's case, the court entered a judgment of acquittal for co-defendant Harmon on Count 1 (Tr. 1058).

Petitioner rested his case without offering any evidence or testimony. Co-defendant Harmon testified in his own defense. Petitioner's counsel opended final argument, followed by co-defendant's counsel. When the State's turn for final argument came, the prosecutor stood up in open court, in front of the jury and stated:

> I think I can save the Court some time. The evidence speaks for itself. We rest.

(Tr. 1216). The trial judge refused to permit Petitioner's counsel to respond, and final arguments were concluded (Tr. 1216-1217). Following the court's instructions on the law, the jury deliberated and returned guilty verdict against Petitioner on Counts 1-28, 37 and 38. The jury found Petitioner not guilty on Counts 29-36 (R. 136-173). 2/ The trial court entered a judgment of conviction and sentenced

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2/ The jury found co-defendant Harmon guilty of counts 7-11, and not guilty of all remaining counts (Tr. 1354-1355).

Petitioner on each count (except Count 1) to five years in the State penitentiary with the provision that after Petitioner has served four years of the sentence, that he be placed on probation for one year. The court further sentenced Petitioner to a term of probation for one year on Count 1 of the information (R. 189-190).

Appeal:

Petitioner appealed and the District Court of Appeal affirmed. Dean v. State, 430 So.2d 491 (Fla. 3d DCA 1983). The Court, inter alia, held that:

1. The trial court was correct in denying the motion to suppress on the basis of Petitioner's lack of standing;

2. The trial court's failure to sever Petitioner's trial from his co-defendant, was not an abuse of discretion; and

3. The prosecutor's remarks before the jury did not constitute argument and, if so, the error was harmless.

Judge Ferguson filed a dissenting opinion finding that the trial court erred in denying Petitioner's motion to suppress without an evidentiary hearing, failing to sever Petitioner's case from that of his co-defendant and in denying Petitioner the right to make the concluding argument to the jury. Judge Ferguson found that the conviction should be reversed and the cause remanded for a new trial

and an evidentiary hearing on Petitioner's motion to suppress. 430 So.2d at 493-499.

ARGUMENT

I. The District Court of Appeal Erroneously Found that Petitioner Lacked Standing to Suppress Documents Illegally Seized by the State.

A. The Illegal Search and Seizure.

On November 7, 1977, Officer Gary Adams of the Dade County Public Safety Department served a subpoena for documents on the Edison Little River Self-Help Community Counsel, Inc. (Tr. 298-299). The subpoena which was styled "State of Florida v. Nathaniel Dean and Nimrod Harmon, Investigation Witness Subpoena Duces Tecum," commanded the custodian of records of Edison Little River to produce:

> All books and all records of Edison Little River Self-Help Community Council, Inc., a corporation, from January 1, 1975, through October 31, 1977, including general ledgers, accounts receivable ledgers, checks stubs, cancelled checks, bank statements, receipts, invoices, all other records and documents, correspondence and memos relating to receipt of money, property and funds from Dade County, Florida, or any agency of the U.S. Government or State of Florida, directly or indirectly, and the disbursements or expenditures of said funds during the aforesaid time period.

(P.T. Tr. 28-29). Upon service of the subpoena, Officer Adams, who was accompanied by another policeman, seized most of the records subpoenaed, as well as other documents that were not covered by the subpoena (Tr. 302, 308). At that point, two Dade County auditors who accompanied the

detectives, removed the records from Edison Little River's offices and transported them to the auditor's office (Tr. 309). These auditors were not employed by the State Attorney's office (Tr. 310).

Prior to trial, Petitioner timely filed a motion to suppress the evidence seized pursuant to the State's investigative subpoena as well as the other documents and statements which the State obtained as a result of examining the seized records (R. 99-100). See Wong Son v. United States, 371 U.S. 471 (1956). At a pretrial hearing on Petitioner's motion, the State represented that it obtained all trial exhibits which were from Edison Little River pursuant to the subpoena (P.T. Tr. 31). Before Petitioner could present any evidence, the Court denied his motion. The Court held that Petitioner lacked standing to contest the seizure of items from Edison Little River (P.T. Tr. 36-37).

The trial court's ruling and the appellate court's affirmance of that ruling directly conflicts with this Court's ruling in State v. Tsavaris, 394 So.2d 418 (Fla. 1981). In Tsavaris, this court held that a defendant had standing to object to the seizure of documents from his office pursuant to a subpoena duces tecum which was served upon his secretary. The Court went on to note that subpoenas duces tecum, properly used, are different from search warrants because they are indisputably less

intrusive. The primary reason, this Court found, is that a subpoena duces tecum is subject to a motion to quash prior to the production of the requested materials. In Tsavaris, the Court held that the subpoena was proper because it was not unduly burdensome and the documents were relevant to the purpose of investigation.

In contrast, the situation here involved use of an overbroad subpoena as a ruse to conduct what amounted to a warrantless search and seizure of documents. As the trial record indicates, the police officers who served the subpoena did not request or command any proper custodian of records of Edison Little River to produce documents at the State Attorney's office. Rather, they served the subpoena on some individual at Edison Little River who denied he was the records custodian and then seized most of the documents called for in the subpoena as well as other documents that were not covered by the subpoena. These records, the prosecutor admitted, amounted to literally truck loads of documents (Tr. 308). Furthermore, instead of being delivered to the State Attorney's office, the police officers took it upon themselves to turn over the records to auditors from Dade County who were not employees of the State Attorney's office.

It is clear that the procedure employed in this case violated Petitioner's Fourth Amendment rights. First, the State's actions amounted to nothing more than a

warrantless search and seizure of records. The protection normally afforded by a subpoena, as this Court noted in Tsavaris, is that a party has the opportunity to contest the validity of the subpoena prior to its execution. That was impossible in this case. The policemen serving the subpoena immediately seized all the documents called for by the subpoena (and others which were not included within the subpoena) and transported them from the premises. 3/ Such action clearly violated Petitioner's Fourth Amendment rights. See Mancusi v. DeForte, 392 U.S. 364, 88 S.Ct. 2120, 20 L.Ed.2d 1154 (1968); and State v. Hayes, 305 So.2d 819 (Fla. 1st DCA 1975).

The subpoena itself also was so overbroad that it amounted to a fishing expedition for any files at Edison Little River. In Imparato v. Spicola, 238 So.2d 503 (Fla. 2d DCA 1970), the Court of Appeal quashed the State Attorney's investigative subpoena which called for the production of financial records of two corporations. As the Court of Appeal stated, the subpoena "could have quite easily be put into more succinct words: 'just bring in the works, the whole works.'" 238 So.2d at 510. The court held

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3/ Indeed, the subpoena itself required the custodian to produce the records "Instanter," a procedure itself designed to keep Petitioner or Edison Little River from challenging the subpoena's legality. Dean v. State, supra, 430 So.2d at 496 n. 4 (Ferguson J., dissenting).

that a subpoena duces tecum may not be used either primarily for the purposes of discovery (either to ascertain the existence of documentary evidence or supply facts needed for litigation), or for a "fishing expedition" or general inquisitory examination of books, papers and records. "An omnibus subpoena for all, or even a substantial part, of the books or records of the subpoenaed party is invalid." 238 So.2d at 511. The court found that such a subpoena would be unreasonable and oppressive and that it would violate the constitutional guarantees under the fourth Amendment to the United States Constitution. Id. See also Fisher v. United States, 425 U.S. 391, 401, 96 S.Ct. 1569, 1576 (1976).

Here, the subpoena issued to Edison Little River was so broad that it could only be interpreted as a fishing expedition by the State to examine a mass of books and papers. The subpoena issued by the State in this case violated the standards set forth in Imparato and the trial court should have suppressed the documents seized pursuant to it.

B. The Rulings Below.

The trial court erred in ruling that Petitioner had failed to allege adequate standing to entitle him to move to suppress the evidence seized from Edison Little River, and the court below erred in affirming that ruling. In Mancusi v. DeForte, 392 U.S. 364, 88 S.Ct. 2120, 20 L. Ed.2d 1154 (1968), the Supreme Court of the United

States held that a union officer had standing to contest a seizure and introduction of records which belonged to his union local. The Court reasoned that the question was whether the individual had a reasonable expectation of privacy from governmental intrusion with respect to the records which were seized. There, the Supreme Court found that the documents were seized from a large room which DeForte (the union officer) shared with several union officials. The Court explained that DeForte and others who worked for the union could have reasonably have expected that only union officials and their personal business guests would enter the office and would have access to the records.

In the case at bar, both the trial court and the court of appeal refused to consider the circumstances surrounding the seizure of these documents, what documents, if any, were removed from Petitioner's private office at Edison Little River, whether Petitioner had actual or constructive custody of the Edison Little River documents at the time they were seized, or whether any of the seized documents actually belonged to Petitioner. Indeed, the trial court denied the motion without a hearing, ruling that Petitioner as President of Edison Little River had no

standing to contest the seizure of documents. 4/

The court of appeal, in affirming Petitioner's convictions, erred in holding that Petitioner's asserted grounds in the trial court (i.e., that he was a corporate officer), was insufficient as a matter of law to invoke standing. The court below was wrong for two reasons. First, the court ignored Petitioner's citation in the trial court to Mancusi v. DeForte in support of his standing argument. (See P.T. Tr. 39-42). Second, the court ignored this Court's ruling in State v. Tsavaris, supra, that an individual in Petitioner's position would have standing to object to a subpoena that calls for records from his office. 5/ See also United States v. Brien, 617 F.2d 299 (1st Cir.), cert. den., 446 U.S. 919, 100 S.Ct. 1854, 64 L.Ed.2d 173 (1980). By summarily ruling that Petitioner

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4 / Indeed, the trial court erred in denying the motion on the basis of standing alone without considering the substantive Fourth Amendment issues. As the United States Supreme Court held in Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421,58 L.Ed.2d 387 (1978), the concept of "standing" is to be considered in tandem with the issue of whether a defendant's rights were violated by an illegal search and seizure. See, e.g., St. John v. State, 400 So.2d 779 (Fla. 1st DCA 1981); Dean v. State, supra, 430 So.2d at 495 (Ferguson, J. dissenting).

5 / Although the subpoena was directed to Edison Little River, the subpoena was styled "State of Florida v. Nathaniel Dean and Nimrod Harmon" indicating that Petitioner and his co-defendant (also an officer of Edison Little River) were the targets of both the investigation and the subpoena.

lacked standing, the trial court precluded him from establishing the evidentiary facts both as to the illegal search and seizure and his standing to suppress that evidence. See St. John v. State, supra; Priori v. State, 386 So.2d 618 (Fla. 1st DCA 1980).

The court below also found that Appellant's motion to suppress was defective, and that the trial court could have summarily denied the motion for suppression on that ground alone. 430 So.2d at 493. However, the court of appeal ignored the fact that the State, at the trial level and on appeal, never once raised this objection to the motion to suppress nor cited any alleged defects in support of the trial court's ruling. Additionally, the trial court apparently thought the motion was sufficient enough to require a hearing - a hearing that was terminated because of the trial judge's erroneous ruling that Petitioner lacked standing. Furthermore, Petitioner's motion apparently was sufficient for the State to prepare for the suppression hearing since it immediately began to argue the standing issue (P.T. Tr. 30-33) and announced to the trial court that it was prepared to proceed with evidence on the motion to suppress if the Court found that Petitioner had standing (P.T. Tr. 32, 33-34).

Herring v. State, 394 So.2d 443 (Fla. 3d DCA 1980), which the court below cited in support of its position, is inapposite. There, the trial court did

summarily deny a motion to suppress as being defective. Here, by contrast, the State did not move to deny the motion on the basis of technical defects; and the trial court never raised or considered the issue. Further, had the trial court denied it on that basis, Petitioner may have had the right to file an amended motion curing those defects. See State v. Butterfield, 285 So.2d 626 (Fla. 4th DCA 1973). The court of appeal should not have decided an important issue of constitutional law on the basis of a technical defect which no party ever raised in either the trial or appellate court.

Finally, the court below held that Petitioner failed to preserve this issue for appellate review. However, the court overlooked the fact that Petitioner renewed his motion to suppress during the trial and the judge summarily denied it (Tr. 357-358). Petitioner's counsel also sought leave and placed into the record his citations of authority supporting the renewed motion (Tr. 1059-1060, 1182). In order to meet the court's apparent standard for proper preservation of the point for appellate review, Petitioner would have had to object to the introduction of each and every piece of evidence at trial since the State asserted during the hearing on the motion to suppress that all of the evidence came from the records of

Edison Little River. 6/

Furthermore, Petitioner's objections to the introduction of the evidence based on its illegal seizure would have been fruitless due to the fact that the trial court already had ruled that Petitioner lacked standing even to make that objection. Depriving petitioner of his right to appellate review of this serious constitutional issue on the basis of a questionable technicality exalted "form over substance."

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6 / As Judge Ferguson noted in his dissenting opinion, Petitioner further preserved his objection by noting a continuing objection to the introduction of evidence based on the motion to suppress. See 430 So.2d at 496-497 (Ferguson, J. dissenting).

II. The Trial Court Abused Its Discretion in Denying Petitioner's Motions for Severance.

Rule 3.152 of the Florida Rules of Criminal Procedure provides that the trial court shall direct a severance of defendants for trial when "such order is necessary to achieve a fair determination of the guilt or innocence of one or more defendants." In the instant case, the trial court denied Petitioner's motion for severance and subjected him to a trial where: (1) his co-defendant sought to place the blame for the alleged crimes on Petitioner; (2) the co-defendant testified in his own defense and Petitioner did not testify; and (3) Petitioner had no opportunity to rebut the co-defendant's final argument. The court below, in affirming Petitioner's conviction held that the trial court did not abuse its discretion in denying severance.

In the case at bar, Petitioner first learned of his co-defendant's strategy during opening arguments when counsel for co-defendant attacked Petitioner and argued Petitioner's guilt. Defense counsel told the jury that Petitioner: embezzled money for his gas station (Tr. 52); created a scheme to take money from Edison Little River and used people to his own advantage (Tr. 53); ensnared Harmon into Petitioner's scheme to steal money (Tr. 58); and was guilty of the crimes charged (Tr. 65). Petitioner immediately moved for a severance of the defendants and

separate trial (R. 121-122). The trial court denied the motion (Tr. 109).

Petitioner renewed his motion to sever on several occasions during the State's case and at the conclusion of the evidence (Tr. 154, 410-411, 481, 1081-1082). Again, Petitioner argued that he was prejudiced by co-defendant's posture that the blame for the criminal conduct lay with Petitioner. Even the prosecutor agreed with Petitioner's assertion regarding conflicting defenses:

> MR. YOSS: It just happens to be that [Harmon's] defense is similar to our prosecution with respect to [Petitioner]. That doesn't mean we are not prosecuting [Harmon]. We are prosecuting both of them. It happens to be a coincidence that [Harmon's] defense is pointed right at Mr. Dean (Tr. 42).

During the trial, Harmon testified that: Petitioner gave all the orders at Edison Little River; he (Harmon) had no responsibilities; and he signed checks at Petitioner's request and direction (Tr. 1088-1130). Moreover, Harmon testified that he cashed Edison Little River's checks payable to him and used the proceeds to purchase cashier's checks payable to Gulf Oil Co., after Petitioner promised to take full responsibility and execute appropriate promissory notes and other loan documents (Tr. 1096-1100).

In closing argument, Harmon's counsel renewed his verbal attack on Petitioner. Counsel accused Petitioner of

"cover[ing] his ass" and laying the blame on everyone else (Tr. 1200-1201). He argued that Petitioner was "a man who steals" (Tr. 1209), and concluded: "I think the evidence has shown that Mr. Dean is a thief, is an embezzler. He used people." (Tr. 1210).

Since the trial judge required Petitioner to present his final argument before co-defendant (Tr. 1168-1170), Petitioner was unable to rebut co-defendant's highly prejudicial and inflamatory attack. Although Petitioner sought to make concluding remarks (Tr. 1227), the court denied his request reasoning that the prosecution had waived final argument. See pp. 22-24, infra. Hence, Petitioner was deprived of an opportunity to respond to final argument not only by the State, but by his co-defendant too.

In Thomas v. State, 297 So.2d 850 (Fla. 4th DCA 1974), the court reversed the conviction of a defendant on the ground that the judge should have ordered a severance of his trial with a co-defendant because of a conflict between the defendants' defenses. The court reasoned:

> This became a definite problem when the defendant elected not to testify and the co-defendant took the stand. The defendant was required to make his final argument prior to that of the co-defendant and had no opportunity to rebut arguments of the co-defendant putting the blame on the defendant.

297 So.2d at 852.

In Crum v. State, 398 So.2d 810 (Fla. 1981), this Court held that severance should be granted when a co-defendant not only seeks to blame defendant for the crime, but puts on evidence to prove the accusation. The Court noted that failure to grant a severance forces a defendant to stand trial before two accusers: the State and his co-defendant. See also Huff v. State, 409 So.2d 144 (Fla. 2d DCA 1982); Rowe v. State, 404 So.2d 1176 (Fla. 1st DCA 1981); and Sylvia v. State, 210 So.2d 286 (Fla. 3d DCA 1968).

The instant case meets the requisites for severance found in Crum and Thomas. Here, the defendants had conflicting defenses. Harmon sought to blame Petitioner for the criminal activity, Petitioner elected not to testify although the co-defendant took the stand, and Petitioner had to present his final argument prior to Harmon's concluding remarks. Thus, Petitioner was forced to fact two accusers, the State and his co-defendant. Crum v. State, supra.

The court of appeals mistakenly relied on Menendez v. State, 368 So.2d 1278 (Fla. 1979) to affirm the trial court's denial of severance. In Menendez, a co-defendant made just two references to the appellant's guilt - during opening and closing argument. The co-defendant, however, presented no evidence of appellant's and apparently did not testify. In the case at bar, Harmon's counsel repeatedly argued Petitioner's guilt and Harmon testified and presented

evidence of Petitioner's guilt.

III. The Court of Appeal Mistakenly Applied the Harmless Error Rule to a Violation Fla.R.Crim.P. 3.250.

Rule 3.250 of the Florida Rules of Criminal Procedure provides that "... a defendant offering no testimony on his own behalf, except his own, shall be entitled to the concluding argument before the jury." This rule, which is identical to former Section 918.09, Fla. Stat. (1967), has been considered among the most inviolate and important criminal procedural safeguards.

In the present case, Petitioner neither testified nor offered any evidence in his own defense. Accordingly, he was entitled to the benefit of Rule 3.250. Petitioner's counsel opened final argument. Counel for the co-defendant followed with his final argument. Upon the conclusion of co-defendant's argument, the prosecutor stood up in open court, before the jury and asserted:

> "I think I can save the court some time. The evidence speaks for itself. We rest."

(Tr. 1216). At the same time the prosecutor made the statement he held up in his hand before the jury a number of his exhibits (Tr. 1218-1219). 7/

The trial court, over objections of Petitioner's

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7 / Even the prosecutor admitted that he picked up the exhibits while making this "statement" to the court and jury (Tr. 1223).

counsel, ruled the Petitioner was not entitled to make a concluding argument (Tr. 1217-1223). In affirming Petitioner's conviction, the court below ruled that the prosecutor's statement could not be construed as argument; and if it was, the error was harmless. Dean v. State, supra, 430 So.2d at 492.

Under any reasonable view of the prosecutor's words and actions, he did in fact make a final argument. The prosecutor's statement that "the evidence speaks for itself" constituted a comment upon the proof at trial. Obviously, the prosecutor sought to convey to the jury his view that the evidence was so overwhelming that he did not need to make an extended argument. Coupled with the prosecutor's dramatic handling of the exhibits, he made what he apparently felt was an effective closing argument to the jury. Clearly, Petitioner had the right to rebut and reply to the prosecutor's argument. Petitioner should have been afforded the opportunity to argue to the jury how and why the evidence did not in fact "speak for itself."

Moreover, the court of appeal's holding that the error, if any, was harmless is in direct conflict with the holdings of the Fourth District Court of Appeal and the Second District Court of Appeal that violation of Rule 3.250 can never be considered harmless error. Raysor v. State, 272 So.2d 867 (Fla. 4th DCA 1973); and Gari v. State, 364 So.2d 766 (Fla. 2d DCA 1978). As the court explained in

Raysor v. State, 272 So.2d at 869:

> [W]e are at a loss as a practical matter to know just how any criminal defendant could in fact make a demonstration of error because of the refusal of the trial court to follow the dictates of the rule. It is inherent in the procedure, as all acquainted with trial tactics know, that the right to address the jury finally is a fundamental advantage which simply speaks for itself.

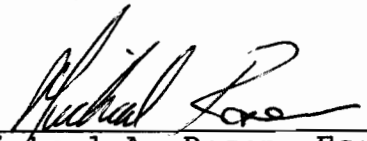
Indeed, under Rule 3.250's predecessor statute, this Court consistently held that this provision was a vested procedural right, the denial of which was reversible error. E.g., Birge v. State, 92 So.2d 819 (Fla. 1957); Wright v. State, 87 So.2d 104 (Fla. 1957); and Faulk v. State, 104 So.2d 519 (Fla. 1958). To Petitioner's knowledge, until this case, no court in this State ever held that denial of the right to closing argument was subject to the harmless error rule.

CONCLUSION

The issues involved in this case are significant and important. The court below has in effect sanctioned a procedure whereby law enforcement officers, under the guise of a subpoena duces tecum, can enter a business office and seize documents without a warrant; and thereafter, bar a corporate officer from challenging the illegal seizure of documents, even if the individual may have had a reasonable expectation of privacy with respect to those documents. For the foregoing reasons, the Court should reverse the holding of the Court of Appeal and remand the cause for a hearing on Petitioner's motion to suppress. Additionally, the Court should grant Petitioner a new trial.

Respectfully submitted,

BENNETT BRUMMER
Public Defender



Michael A. Rosen, Esq.
Special Assistant Public
Defender
Suite 306
1401 Brickell Avenue
Miami, Florida 33131
Tel. (305) 373-2411