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

REPLY BRIEF OF PETITIONER

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ARGUMENT

Conceding by silence that the Dade County Police conducted a warrantless search and seizure of the documents located at Edison Little River's offices, the State attempts to seek solace from its illegal activity by continuing to assert that Petitioner had no standing to contest the illegal search. The State's arguments are both factually incorrect and legally insufficient.

The State asserts (R.B. 10) */ that it is "beyond dispute" that Petitioner's sole basis for contesting the search and seizure of documents was his position as a corporate officer. This is incorrect. On pages 14 and 15 of its brief, the State quotes selected portions of the pretrial transcript which do not reflect Petitioner's entire argument to the trial court. The State neglects to quote the following passages which occurred just before and just after the passages cited by the State:

> ... I would like to bring to the Court's attention the case of Mancusi, M-a-n-c-u-s-i, vs. State [Sic] 392 U.S. 364, [a] 1968 case wherein the Court considered this whole proposition with respect to searches and seizures, and in

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*/ "R.B." refers to Respondent's brief.

> that particular case, the Court -- it involved a defendant who worked at a premises -- and the Court said not only did it protect going to his home but also as to his office, and it is not the property right as the Court has indicated in its ruling here, but it is whether the defendant has a reasonable expectation of freedom from government intrusion is the test. (P.T. Tr. 39). (emphasis added)
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> * * *
>
> What we are concerned about is that I believe that the Court is using the standard of property rather than the standard of expectation or reasonable expectation of government intrusion as the test, and that is the true test, not whether he necessarily has a title to a particular property in question, but whether he has a reasonable expectation of governmental intrusion. In that case, I think supports that proposition. (P.T. Tr. 41).

Clearly, Petitioner's counsel placed before the trial court his contention that Petitioner had a reasonable expectation of privacy and therefore standing to contest the search and seizure of documents. Of course, the trial court could not rule whether or not Petitioner had standing until it conducted an evidentiary hearing and heard all the evidence regarding both the search and seizure and Petitioner's claim that he had a reasonable expectation of privacy with regard to some or all of the documents seized and subsequently introduced at the trial. This is precisely why the United States Supreme Court in Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978) stated that the question of standing should be considered in

connection with, rather than separately from, the substantive Fourth Amendment issues. Petitioner never had the opportunity to present his Fourth Amendment claims to the trial judge because she held that Petitioner had no standing and terminated the hearing on the motion to suppress.

Proceeding from the false factual premise that the only basis Petitioner has to contest the illegal search and seizure is his position as a corporate officer, the State cites a number of cases that are inapposite. For example, Respondent quotes extensively from State v. Barreiro, 432 So.2d 138 (Fla. 3d DCA 1983), cert. den. 441 So.2d 631 (1983) for the proposition that Petitioner, as a corporate officer, was not an "aggrieved person" to contest a subpoena duces tecum directed to a corporation. However, in Barreiro, the defendant had moved to quash a subpoena duces tecum directed to a corporation with which he was affiliated. Barreiro's primary claim was that the State was circumventing the criminal discovery rules which require a defendant to produce documents only when he invokes the reciprocal discovery right against the State. Here, Petitioner was not moving to quash a subpoena issued to Edison Little River. Rather, he was seeking to suppress documents which were seized illegally pursuant to a warrantless search of Edison Little River's premises. Petitioner's claim, raised below and in this court, is that he had a reasonable expectation of privacy with regard to the documents and his

Fourth Amendment rights were violated by the State's illegal actions.

Similarly, United States v. Britt, 508 F.2d 1052 (5th Cir. 1975) and United States v. Bush, 582 F.2d 1016 (5th Cir. 1978) are not applicable to the case at bar. In Britt, the defendant challenged a search of a corporation's storage area to which he had no access. Furthermore, the court found that there was nothing in the record to indicate that the search for corporate documents was directed specifically at the defendant and as a corporate officer he had no standing to challenge the search. Similarly, in Bush, the court found that the search was one for general corporate documents and was not directed at the defendant. Additionally, the court found that the individual had no "legitimate interest" in the material seized. In contrast, the State's search here appears to have been directed specifically at Petitioner and his co-defendant. Indeed, the subpoena which the police officers used as a ruse to search Edison Little River's premises and seize "truck loads" of documents was styled "State of Florida v. Nathaniel Dean and Nimrod Harmon." (P.T. 28).

Faced with the clear precedent of Mancusi v. DeForte, 392 U.S. 364, 88 S.Ct. 2120, 20 L.Ed.2d 1154 (1968), which is fatal to Respondent's position in this case, the State questions its legal viability. (R.B. 23-24). The State contends that the United States Supreme

Court in Mancusi relied heavily on its earlier decision in Jones v. United States, 362 U.S. 257 (1960); but that Jones was overruled in United States v. Salvucci, 448 U.S. 82 (1980) and Rawlings v. Kentucky, 448 U.S. 98 (1980). The State's argument is specious.

First, Mancusi was cited favorably by the Supreme Court in Rakas v. Illinois, supra. There, the Court refused to expand the so called "standing" test to any person who is merely a "target" of a search. As noted before, the Court ruled that standing must be considered as part and parcel of the entire Fourth Amendment question in any search and seizure. However, the Court wrote:

> We can think of no decided cases of this Court that would have come out differently had we concluded, as we do now, that the type of standing requirement discussed in Jones and reaffirmed today is more properly subsumed under substantive Fourth Amendment doctrine.

Rakas v. Illinois, supra, 439 U.S. at 139, 58 L.Ed.2d at 398. Thus, the United States Supreme Court by implication reaffirmed its holding of Mancusi.

Two years later, when the Supreme Court decided Salvucci and Rawlings, it overruled only one portion of Jones v. United States, supra, i.e., the portion of the decision which established the "automatic standing" doctrine in cases where a defendant was charged with illegal possession of the materials seized. That doctrine was not at issue in Mancusi nor in the case at bar. Nowhere in

Salvucci or Rawlings did the United States Supreme Court criticize Mancusi or suggest that its holding was in any way affected by Salvucci or Rawlings.

CONCLUSION

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
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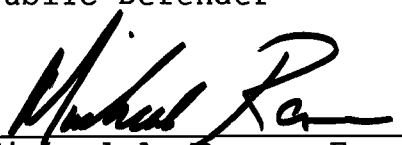

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