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IN THE SUPREME COURT OF FLORIDA

ART CRAWFORD, JR.,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 66,808

PETITIONER'S BRIEF ON THE MERITS

RICHARD L. JORANDBY
Public Defender

LOUIS G. CARRES
Assistant Public Defender
15th Judicial Circuit
224 Datura Street/13th Floor
West Palm Beach, Florida 33401
(305) 837-2150

Counsel for Petitioner.

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PRELIMINARY STATEMENT

The petitioner was the defendant in the trial court, and he was the appellant in the District Court of Appeal. He will be referred to as petitioner, or by name, in this brief.

The record on appeal is bound in several volumes which are consecutively numbered. All references to the record on appeal will be by the symbol "R" followed by the appropriate page number in parentheses.

STATEMENT OF THE CASE

The petitioner was charged by an information filed in the Circuit Court of Broward County, Florida, with sexual battery with a deadly weapon and with robbery with a deadly weapon (R-535). After trial by jury the petitioner was found guilty of sexual battery as charged and guilty of robbery without a weapon (R-545-546).

Timely notice of appeal was filed, and the District Court of Appeal for the Fourth District reversed and remanded for a new trial in an opinion filed March 27, 1985. The district court held that a state witness improperly commented on the petitioner's right to remain silent, and that since the petitioner had been advised on his rights under Miranda v. Arizona, 384 U.S. 436 (1966), testimony by a police officer that petitioner, after answering a few preliminary questions, decided not to answer any more questions constituted an improper comment on the petitioner's right to remain silent. Counsel for petitioner moved for a mistrial, but the motion was denied. Instead, the trial court gave a curative instruction to the jury, but the petitioner renewed his objection and motion for mistrial on the ground that the curative instruction was not adequate to remedy the error (R-300).

The District Court of Appeal reversed pursuant to what it stated was "elemental" that a comment by a witness on the exercise by the accused of his right to remain silent constitutes

a violation of the Fifth Amendment privilege against self-incrimination and that the officer's comments impermissibly directed the attention of the jury to the defendant's exercise of his right to remain silent. The court held that under existing Florida law the harmless error doctrine cannot be applied and that the law required reversal for a new trial.

However, the district court certified to this Court the following question as being one of great public importance:

> May the harmless error doctrine be applied to cases in which a witness's testimony violated a defendant's right to remain silent under the Fifth Amendment?

Although the district court in the present case stated that there was "overwhelming evidence of guilt", the district court did not specifically find whether the evidence was so overwhelming, or the error so insignificant, as to be harmless beyond a reasonable doubt. Instead, the district court simply noted that the law pertaining to this issue in this state did not permit application of a harmless error doctrine to this case.

Other issues were raised by the petitioner on direct appeal in the district court, but those issues were not discussed and may not have been ruled upon by the district court since its resolution of the first issue raised in the briefs required reversal of the petitioner's convictions for a new trial.

Notice to invoke the discretionary jurisdiction of this Court pursuant to the certification of the question of great public importance was timely filed by the petitioner who seeks to

have this Court reaffirm its long line of cases dating from at least Rowe v. State, 87 Fla. 17, 98 So. 613 (1924), prohibiting comment either directly or indirectly upon the failure of the accused to explain under accusation, or to testify at trial, and holding that such a violation cannot be remedied by instruction and that the only complete remedy is a new trial.

STATEMENT OF THE FACTS

At trial it was shown that the alleged victim, Marie Desir, had gone to an insurance company on August 4, 181, for the purpose of purchasing automobile insurance (R-179-180). She did not have sufficient money with her and was walking to her bank to withdraw more money (R-180,196-198). As she was walking to the bank the petitioner drove by in a maroon Buick and waved at her (R-198-199). The petitioner apparently drove by again and offered her a ride (R-198-200). She observed that there was a young boy in the car and accepted the ride (R-200). Petitioner took her to the bank where she withdrew money for the insurance, but when petitioner drove her back to the insurance company it was closed until later in the afternoon (R-202-203). She accompanied petitioner as he bought shoes for the young boy and accompanied him several other places (R-203-204). He had told her that he would take her back later to the insurance company after he completed several errands (R-204).

During this time petitioner attempted to get the victim to go inside of his apartment, and after she had declined, she testified that petitioner held a knife, pulled her outside of the vehicle, and forced her into his apartment where he committed sexual battery on her (R-215-219).

After leaving the apartment petitioner drove her back to the bank where she withdrew more money at the drive-in teller by virtue of certain threats he had made to her (R-226-228).

Petitioner took approximately $500 while giving her the $50 she originally had and $92 additional dollars that she needed to purchase the insurance. (R-228-229).

When she returned to the insurance company later that afternoon, after petitioner dropped her at the entrance to the shopping center, she was crying and shaking as she talked with the insurance agent (R-228-229). He telephoned the police, and she reported that she had been raped and robbed (R-231-234). Several days later while driving with a police officer looking for the place where the assault had occurred, she observed petitioner and his vehicle (R-237-238). She told the officer that he was the one, and petitioner was arrested (R-238). She identified petitioner (R-199,239).

Pompano Police Officer Robert Drago was dispatched to the insurance agent's office where he took an initial report from the victim (R-279-286). He testified that at the time he spoke with the victim she was crying, but she was not spitting, was neatly dressed and he saw nothing unusual about her appearance (R-287-288).

The physician who examined the victim testified that during the examination he observed that the victim's clothing was undamaged and that her neck was normal and that he saw no bruises (R-336-337).

Pompano Police Officer Delores Tolbert, who was in the detective bureau at the time in question, interviewed the victim

at the police station where the victim was taken by Officer Drago (R-290). Officer Tolbert testified that the victim was upset and crying, was spitting into a styrofoam cup, had bruises on her neck, was wearing clothes that were all roughed up and had her hair sticking out from her head (R-291-292).

The trial court ruled that certain cross-examination of Officer Tolbert was improper and would have no effect upon the nature of the testimony given by the officer (R-306). Accordingly, the trial court disallowed any inquiry along the lines of why she had been demoted (R-306). The trial court did recognize from reading an article in the Miami Herald that Officer Tolbert was "involved in something," although the trial judge stated that he did not know what it was and did not care (R-306). The petitioner had asserted that the credibility of the witness was a proper subject for cross-examination and that the demotion was given to the officer for falsifying police reports, was relevant to the credibility of the witness, and that the jury had a right to know the answer and that petitioner had a right to explore its effect upon the credibility of her testimony (R-305-306). It should be noted that the officer did testify that she had been re-assigned to the patrol and had not requested such transfer (R-304-305).

Police Officer Tolbert also testified that she questioned petitioner after his arrest (R-296). The officer stated that petitioner denied being in Pompano Beach on the date in question and stated that he did not know the victim (R-299). Officer

Tolbert testified that after answering those questions the petitioner decided not to answer any more questions (R-299):

> Q (By Ms. McCleary) What did you ask Mr. Crawford?
>
> A I asked Mr. Crawford if he had been in Pompano Beach on the 4th of August.
>
> Q What did he indicate to you?
>
> A He said no. I asked him if he knew Marie and he said no and then he decided to not answer any more of my questions.
>
> MR. TENZER: Objection, your Honor. Can we approach the bench?
>
> THE COURT: What did he say specifically?
>
> THE WITNESS: I have it written down in my report. He told me he didn't want to answer any more questions.
>
> MR. TENZER: Can we approach the bench?

Petitioner immediately objected and moved for a mistrial on the basis that the law required a mistrial because the officer had testified that petitioner refused to answer questions during interrogation after he had been given his Miranda rights (R-299-300). The prosecutor asked for a curative instruction, which the court gave and denied the motion for mistrial (R-300). The petitioner then objected on the ground that a curative instruction would be inadequate and that a mistrial should be granted (R-300). A custodian of the records at the Pan American Bank testified that the account record of the victim showed that withdrawals coinciding with her testimony had been made from her account on the date in question (R-309-313).

Mary Goldman testified that she was the teller who handled the transaction in the afternoon of the date in question when a withdrawal in the amount of $692 had been made from the victim's account (R-319-320). Ms. Goldman testified that the victim was a passenger in a car driven by a man with a boy in the back seat, and she described the car as being maroon with a black top (R-319-322). She stated that the victim gave her a funny look (R-321).

The petitioner's half brother, Johnny Bryant, testified that he did not talk directly with petitioner regarding the charges and that petitioner did not tell him that he had done it (R-343-344). The state introduced, over objection, a sworn statement given by Bryant prior to trial in which Bryant had sworn that petitioner had admitted the charges, but Bryant testified that he was drunk and lying when he gave the statement (R-345-347). The Assistant State Attorney who took the statement from Bryant testified that Bryant was not under the influence of alcohol at the time the statement was given (R-380-381).

The state rested, and the defense also rested (R-399-401). The petitioner's motion for judgment of acquittal was denied (R-401,468).

There were no objections to the jury instructions (R-467). The jury returned verdicts finding petitioner guilty on Count I as charged and guilty of the lesser offense on Count II of robbery without a weapon (R-472-473).

SUMMARY OF ARGUMENT

The question certified is whether the reversible error rule with regard to comments at a jury trial upon the silence of the accused should be retained in criminal cases. Petitioner believes the rule is consistent with the law since the early part of this century regarding violations at trial of the Fifth Amendment privilege and that the rule well serves both the right of the accused and the efficient administration of criminal justice.

Miranda changed the rule as to what comes within the ambit of the privilege (and erected a new procedural safeguard). The former rule allowing evidence of silence upon accusation has been abrogated as to silence during official questioning. However, the Florida rule has recognized historically that what comes within the ambit of the privilege deserves particular protection.

Petitioner traces the history of the rule in Florida. He shows that post-arrest silence is special since the accused decides to give no evidence, either of an incriminating or exculpatory nature. Thus the use of his silence is not the same as evidence which was voluntarily given. Some of the history of the privilege relevant to the question is traced in this brief. Since petitioner relied upon the law in existence during his trial he promptly selected his remedy as required by prior rulings. He did not attempt to explain his post-arrest silence because he was not on notice that the remedy of a mistrial, or new trial when the trial court refused to grant the mistrial,

would not be available to him. Any change the Court might make in the rule should not be applied after the fact to petitioner's trial since he would be deprived of a knowing choice of whether to give an explanation of his silence after arrest.

ARGUMENT

WHETHER THE IMPROPER ADMISSION INTO EVIDENCE OF THE POST-ARREST SILENCE OF THE ACCUSED, WHEN PROPERLY PRESERVED FOR REVIEW, IS AND SHOULD REMAIN REVERSIBLE ERROR IN CRIMINAL CASES?

The issue certified by the district court of appeal concerns the continued viability of the rule that the harmless error doctrine cannot be applied in cases where a witness's testimony violates a defendant's right to remain silent under the Fifth Amendment. This rule applies in trial and appellate courts. Mistrial must be granted where timely requested, and if denied reversal must follow if appeal is perfected on the issue.

The petitioner remained silent upon questioning as to the allegations after his arrest. The case law in existence at the time of petitioner's trial required the trial court to grant the motion for mistrial which petitioner made promptly when a police officer testified that the petitioner said "he didn't want to answer any more questions" when he was being questioned about his relationship, if any, with the alleged victim (R 299-300). Petitioner moved for a mistrial, but the prosecutor asked for and received a curative instruction although the petitioner objected on the ground that a curative instruction is inadequate and that a mistrial is required (R 300).

The question certified in this case is whether the harmless error doctrine should be applied to such errors. Although the district court of appeal indicated that it might find the error

harmless in this case, the district court did not refer to the harmless beyond a reasonable doubt standard. A simple harmless error standard is not constitutionally permissible for such constitutional errors as this violation of the Fifth Amendment privilege. Chapman v. California, 386 U.S. 18 (1967); United States v. Hasting, 461 U.S. 499 (1983).

A. The history of the rule in Florida.

This court has consistently held that the intervention of the ruling in Miranda v. Arizona, 384 U.S 436 (1966) made the admission at jury trial of any comment on the silence of the accused after arrest an inadmissible matter. Bennett v. State, 316 So.2d 41 (Fla. 1975), noted that the decision in Miranda changed the rule in Florida which had previously allowed the silence of the accused upon accusation to be admissible as an item of evidence indicating guilt. In other words, Miranda changed the rule regarding admissibility of silence upon accusation after arrest, in addition to erecting procedural safeguards for the arrestee.

This court held early after the decision in Miranda that such errors would require a timely objection since counsel would be provided under the rule in Gideon v. Wainwright, 372 U.S. 335 (1963) to protect the rights of the defendant. See State v. Jones, 204 So.2d 515 (Fla. 1967).

When Miranda changed the rule about what constituted a violation of the Fifth Amendment privilege, it did not mark the advent of the rule enunciated by this court that a violation of

the Fifth Amendment privilege at trial is a serious error which denies a fair trial. As early as Simmons v. State, 139 Fla. 645, 190 So. 756 (1939), this Court held that a comment on the failure of the accused to testify in preliminary proceedings constituted reversible error and that the harmless error rule would not apply because the damage could not be satisfactorily erased by either rebuke or retraction. This Court recognized in Willinsky v. State, 360 So.2d 760 (Fla. 1978), that the statute referred to in Simmons, Section 8385 of the General Laws of 1927, is essentially the same as Florida Rule of Criminal Procedure 3.250, and that both prohibit reference at trial to the failure of the defendant to testify. In Willinsky the rule was reinstated from Simmons that comment on the failure of a defendant to testify in earlier proceedings was fundamental reversible error -- Fundamental in the sense that basic constitutional rights were violated, and reversible because neither rebuke nor retraction could completely erase its effect.

In the present case the Court must consider whether to retain this established rule. The particular significance of post-arrest silence following Miranda warnings should be considered and whether, if the rule is changed, it should be applied to this case when the petitioner relied upon the ruling in Clark v. State, 363 So.2d 331 (Fla. 1978), in determining his course of action at the trial.

Petitioner submits that the rule should be retained because it is consistent with Florida law which has recognized uniformly

that violations of the Fifth Amendment privilege taint the proceedings and cannot be erased so as to insure that reliance on the privilege will have no effect on the proceedings. While Miranda changed the rule as to what constituted a Fifth Amendment privilege violation, this Court has recognized that argument by a prosecutor in a jury trial referring to the failure of the defendant to testify constitutes reversible error without regard to the motive or intent with which it is made. Trafficante v. State, 92 So.2d 811 (Fla. 1957); Way v. State, 67 So.2d 321 (Fla. 1953); Gordon v. State, 104 So.2d 524 (Fla. 1958). These are but a few of such cases. More recently the same rule was applied to reference to any post-arrest silence of the accused. Bennet v. State, supra; Shannon v. State, 335 So.2d 5 (Fla. 1976); Clark, supra; Willinsky, supra; David v. State, 369 So.2d 943 (Fla. 1979). Thus the rule is well established, well known, and well designed to protect the accused from having a jury consider his failure to answer questions after arrest, or to testify, as "even the slightest suggestion of guilt." Way v. State, supra at 322.

When this Court considered the procedural requirement necessary for raising the issue of a violation of the privilege at trial, it recognized that Miranda construed the right to mean that the prosecution may not use at trial the fact that the defendant claimed his privilege in face of accusation and that, indisputably, such evidence is improper. The Court recognized in Clark v. State, supra, that the constitutional holdings of the

United States Supreme Court did not mandate adoption of Florida's absolute rule of reversal, but this Court held that application of a contemporaneous objection rule would promote the administration of justice. The reversible error rule also promotes the administration of justice in guaranteeing that the silence of the defendant will play no part in his conviction. It is a rule that is well known to all attorneys practicing in this state, and because of its clarity and uniformity of application numerous appeals are avoided because mistrials are granted, and appeals when necessary to be taken are efficiently decided on this issue. The district courts in this state have been spared countless hours of reviewing transcripts of testimony in order to determine the effect of comments on silence on the juries. See Stevens, J., concurring in United States v. Hasting.

Justice Thornal traced the earlier cases where this Court repeatedly enunciated the rule that the error of a violation of an accused's Fifth Amendment rights could not satisfactorily be erased, in his concurring opinion, in King v. State, 143 So.2d 458 (Fla. 1962). As Rowe v. State, 87 Fla. 17, 98 So. 613, at 618 (1924), held -- the only complete remedy is a new trial.

B. The special significance of post-arrest silence.

Thus, the history of the rule in Florida is well established and the change wrought by Miranda that disallowed post-arrest silence upon accusation to be used as evidence, merely changed what came within the ambit of the rule. While the rule applies to comments by prosecutors that reflect upon the silence of the

accused at trial or at a prior hearing, there is a very special significance to the silence of the accused after arrest and after being given Miranda warnings. By making this choice of silence the accused has chosen to exercise a privilege which has had a variety of origins and which was placed in the Constitution to protect it from encroachment. This history was partially traced in Miranda, supra at 442:

> These precious rights were fixed in our Constitution only after centuries of persecution and struggle. And in the words of Chief Justice Marshall, they were secured 'for ages to come, and... designed to approach immortality as nearly as human institutions can approach it,' Cohens v. Virginia, 6 Wheat 264, 387, 5 L.Ed. 257, 287 (1821).

In Miranda, referring to the religious origin of the privilege contained in the Fifth Amendment, the Court referred to The Trial of John Lillburn and John Wharton, 3 How St Tr 1315 (1649), where the accused refused to take the oath as a defendant which would have bound him to answer questions posed to him. In Miranda at 459 it was said that: "These sentiments worked their way over to the colonies and were implanted after great struggle into the Bill of Rights."

Thus the privilege to remain silent is special in that it protects the accused (1) from coerced confessions which are involuntary, (2) from the rack and screw which violates civilized ideals, and (3) protects the accused from being forced to condemn himself. This latter protection springs in part from religious principle that an accused never be required to take an

oath in a matter where he is a defendant accused of crime. This is so that no one will be compelled to make the choice of, if guilty, giving a confession and condemning one's body or violating the oath and condemning one's soul.

Thus an accused after arrest, and after being given Miranda warnings, is faced with three distinct choices. First, if guilty a confession may be given which if knowing and voluntary is fully admissible. Second, the accused may give an exonerating statement which, if true, may aid in his release or, if false, may be disproved by the state thus indicating his guilt. The third choice, which takes no such risks, is the choice of silence. By that choice the defendant makes the state bear the full burden of proof; he takes none of it upon himself to establish a defense or alibi, and unlike an "exonerating" statement gives the state no quarter to insinuate guilt or to allow a jury to do so. The state may obtain no aid from this choice.

C. The voluntariness aspect of a comment on silence.

It has been recognized that, as with any statement given by a defendant, be it a confession or an exonerating claim, it must be voluntarily and knowingly given to be used as evidence. However, after a defendant is given his Miranda warnings it would be fundamentally unfair, as was held in Doyle v. Ohio, 426 U.S. 610, at 617-618 (1976), and a deprivation of due process of law to allow a defendant's silence after arrest to be used to aid the state in his conviction. The use of a statement after Miranda warnings would permit the defendant to be deluded as to his true

position at the time of his arrest. This is not only contrary to Miranda but diametrically opposed to the right which the Miranda warnings are designed to preserve.

Thus the right to produce no evidence would not remain inviolate in these circumstances because the accused would be unfairly deluded into an instrument of his own conviction when he has made the choice of giving neither a confession nor an exonerating statement but has instead relied upon his privilege thinking it was the only alternative which could in no way be used as an indication of guilt. To use a choice of silence made under those circumstances would be to make the privilege "a mockery of justice" by injuriously affecting the person who is entitled to its benefits. See Johnson v. United States, 318 U.S. 189 (1943), at 196-197. United States v. Hale, 422 U.S. 171, at 180 (1975), prohibited any use of evidence of silence of the accused at or following his arrest because it "has a significant potential for prejudice." The danger is that the jury is likely to assign much "more weight to a defendant's previous silence than is warranted." Accordingly, any unraveling of the riddle of harmless error beyond a reasonable doubt under such circumstances where juries may give more weight than is warranted is a dubious venture. This makes it particularly appropriate that this Court adhere to its previous rulings assigning this error as one which requires a mistrial for an effective remedy where the defendant timely makes that choice. As has been held in Clark, the defendant must retain control over the course to be followed in

the event of such error. While the defendant may choose a lesser remedy he is entitled to no less than a trial free from such influences. That this is well established is without question. Petitioner submits it is not the kind of "old and unsatisfactory court-made rule" referred to in Hoffman v. Jones, 280 So.2d 431 (Fla. 1973). As Justice Frankfurter said in McNabb v. United States, 318 U.S. 332, at 347 (1943):

> The history of liberty has largely been the history of observance of procedural safeguards. And the effective administration of criminal justice hardly requires disregard of fair procedures imposed by law.

Thus the choice of silence, as petitioner made at the time of his arrest, was made with knowledge that anything he said could be used against him and that his choice of silence was the only other alternative then available to him. If he had had the knowledge that his choice of silence "would be submitted to the jury" it would have undoubtedly "seriously affect[ed] that choice. If the accused makes the choice without that knowledge, he may well be misled on one of the most important decisions in his defense." Johnson v. United States, supra at 198-199.

D. The decision in United States v. Hasting is inapposite.

Since the decision in United States v. Hasting, supra does not concern a Miranda violation, and nowhere mentions the decision in the Miranda case, it is inapposite to the issue presented here. Hasting concerns only argument by a prosecutor concerning presentation of evidence. It does not concern

post-arrest silence, where a jury cannot eradicate the insinuation that a prompt denial would have been forthcoming from an innocent person. Yet nothing could be further from the truth as was recognized in Gruenwald v. United States, 353 U.S. 391 (1957), that an innocent person is more likely to need the privilege in secret proceedings, and more likely to claim the privilege there, than in open judicial proceedings where the opportunity for cross-examination, compelled attendance of witnesses and assistance of counsel is provided. Thus the use as evidence of the silence of the accused after arrest is no ordinary error.

E. Petitioner relied on the established rule in making his choice of remedy at trial.

The final consideration in the present case concerns whether any change this Court may make in the rule should be applied to the petitioner's case. Despite the substantial reasons argued, why the rule should be retained, if this Court alters the rule it should make any such change prospective to the date of decision. The petitioner was tried under the former rule, relied upon his remedies guaranteed by the decision in Clark v. State, supra, and chose to exercise his right to move for a mistrial (R-299-300). The trial court erroneously denied the motion for mistrial. The district court of appeal followed the established law in reversing petitioner's conviction for a new trial.

If the petitioner had known during the state's case when comment was made upon his claiming the privilege after arrest

that the remedy of a mistrial would not be a reliable remedy he could have offered an explanation for his silence in an endeavor to minimize any potential harm. However, relying upon the remedy given in Clark the petitioner was unaware that such a choice might have to be made. Accordingly it would be unfair, and a denial of his right to due process of law, for this Court to change the rule to his detriment after the trial has been conducted. The Court recognized in Miranda v. Arizona, supra at 469, that a warning is needed in order to make the accused "aware not only of the privilege, but also of the consequences of foregoing it". Any change in the rule of Clark must be known at the time of trial in order for the accused to evaluate his alternatives and have an opportunity to implement his choice of potential remedies. Since the petitioner did not testify at trial, and if he had done so could have explained why although innocent he chose not to assert it under the conditions of his arrest, petitioner has a legitimate interest in having his trial conducted to a conclusion under the rule in effect at the time the proceeding was begun.

In conclusion on this point, the petitioner submits that by review of the cold transcript the reviewing Court is unable to ascertain whether an error of comment on post-arrest silence could be harmless beyond all reasonable doubt. The reviewing court is unable to ascertain the inflection of the witnesses, or to observe the manner in which any testimony is given. Thus as to an error with the highest potential of harm such as comment on

post-arrest silence, determinations of whether the error is harmful beyond a reasonable doubt is an impossible task. In the present case it is clear that no such determination could be made because the evidence was in sharp dispute between the state's witnesses themselves as to the appearance and actions of the alleged victim. The jury found the petitioner guilty of a lesser offense on one of the robbery counts, thus the verdicts seem to refute the district court's assertion of the overwhelming nature of the evidence. Every state witness, except one officer, testified that the alleged victim's clothing was not disheveled, that her hair was not disheveled and that she had no apparent bruises. The examining physician testified that he specifically examined for bruises and observed none. The one officer who testified to the contrary had been demoted from detective to patrol duties (R-305-306). The petitioner was permitted to show by evidence that the officer had been reassigned and had not requested a reassignment (R-304-305). The full evidence that petitioner sought to cross-examine the witness upon that she had been demoted for falsification of police reports based upon a report in a Miami Herald news article, was disallowed by the trial court (R-306).

Accordingly, there was substantial evidence in this case that could have caused the jury to have doubts about whether any sexual battery occurred, and application of the harmless error doctrine in this case is not appropriate. Moreover, the issue of whether the trial court's disallowance of cross-examination of

the detective on this subject is itself reversible error, although the district court did not mention the preserved and argued issue in its decision. Thus, petitioner submits that the case would have to be reversed for a new trial regardless of how the certified question is decided and that accordingly the Court should discharge jurisdiction and remand with instructions that the cause be remanded forthwith for a new trial.

CONCLUSION

Petitioner submits that the district court decision should be affirmed.

Respectfully submitted,

RICHARD L. JORANDBY
Public Defender

LOUIS G. CARRES
Assistant Public Defender
15th Judicial Circuit
224 Datura Street/13th Floor
West Palm Beach, Florida 33401
(305) 837-2150

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of Petitioner's Brief on the Merits has been furnished by courier/mail, to JOY B. SHEARER, Assistant Attorney General, Counsel for Respondent, Elisha Newton Dimick Building, Room 204, 111 Georgia Avenue, West Palm Beach, FL 33401, this 24th day of April, 1985.

LOUIS G. CARRES
Assistant Public Defender