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IN THE SUPREME COURT OF FLORIDA

DONALD G. RESHA,

Petitioner, CASE NO.: 80,228

vs.

KATIE D. TUCKER,

Respondent.
______________________/

ON REVIEW FROM THE
FIRST DISTRICT COURT OF APPEAL

RESPONDENT'S ANSWER BRIEF

McCONNAUGHHAY, ROLAND, MAIDA,
CHERR, & McCRANIE, P.A.

BRIAN S. DUFFY
Florida Bar Number: 180007
Post Office Drawer 229
Tallahassee, Florida 32302
(904) 222-8121
Facsimile: (904)222-4359
Attorneys for respondent

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PRELIMINARY STATEMENT

Petitioner may sometimes be referred to **as** "Resha", while respondent may be referred to a3 "Tucker." References to the record are to Petitioner's Appendix to Petition for Review of Order Sealing Court Files, cited as "Pet. App. __"

STATEMENT OF THE **CASE**

This proceeding at the trial court level is State of Florida v. Katie D. Tucker, Defendant, Second Judicial Circuit, Leon County, Case No. **90-674-CFA.**

On October **3,** 1991, the trial court found that Tucker had "never been previously adjudicated guilty of **a** criminal offense", that she "was not adjudicated guilty of charges stemming from the arrest or criminal activity to which the instant petition pertains", and that **she** had "not secured a prior records expunction or sealing." Based upon these findings, which have never been challenged by Resha, the trial court entered an order expressly pursuant to section 943.058, Florida Statutes, and Rule 3.692, Florida Rules of Criminal Procedure, sealing **"[a]ll** court records pertaining to the" criminal case, and "all information concerning indicia of arrest or criminal history record information" in the files of law enforcement agencies. Pet. App. F.

On January 6, **1992,** attorneys for one Donald G. Resha filed an unsworn motion to vacate **the** sealing order, requesting that the court records **and** the investigating agency's records pertaining to the matters involved in the criminal litigation be unsealed. **Pet.**

App. D. Tucker submitted a memorandum of law in opposition. Pet. App. C.

The trial judge conducted a hearing on the motion to vacate on January 27, 1992. No sworn evidence was presented or proffered. Pet. App. B.

The trial court entered an order on February 24, 1992, granting the motion to allow Resha's attorneys use of the investigating agency's records for purposes of his civil action against Tucker, but denied the motion in all other respects including the request to unseal the criminal court file. Pet. App. A.

Resha sought review in the District Court of Appeal, First District, of the order denying his request to permanently unseal the court and agency records. In following days, Tucker petitioned the District Court to deny Resha access to the agency's investigative files. The District Court denied Resha's petition, granted Tucker's petition, and quashed the trial court's order in an Opinion reported as Resha v. Tucker, 600 So. 2d 16 (Fla. 1st DCA 1992).

Resha now requests that this Court reverse the decision of the District Court and direct that the court and agency files be permanently unsealed. Tucker asks that the Court deny Resha's petition.

STATEMENT OF THE FACTS

This is a case without facts.

Matters pertinent to consideration of the legal issues before the Court are:

1. Resha presented no evidence at any stage of the proceedings below. There was no affidavit. There was no sworn motion. There were no sworn interrogatory answers. There **was** no Sworn statement. There was no tangible evidence. There was no proffer of evidence.

2. Mr. Resha made no personal appearance at any stage of the proceedings below. He did not even attend the hearing before the trial judge. No reason was assigned for Mr. Resha's non-appearance.

3. **Resha** claims that, in order to win his civil action against Tucker, he needs evidence in the custody of an executive branch investigating agency, the Florida Department of Law Enforcement ("FDLE"). Resha presented no evidence that he had requested the evidence from FDLE and been refused based upon the trial court's order. Resha presented no evidence that the things he sought to obtain from FDLE were sealed by the court's **order.**

4. Resha presented no evidence that he did not obtain a copy of the court and FDLE records before the sealing order was entered.

5. Resha presented no evidence that he must have access to the sealed records in order to establish a basis for unsealing those records.

6. Resha presented no evidence of any need for the sealed records in order to prosecute his civil suit against Tucker.

7. Resha presented no evidence supporting his claimed "victim" status. Resha presented no evidence that he ever claimed victim status in the criminal case before the records were sealed.

8. Resha presented no evidence that notice was not furnished of the trial court's consideration of the request to seal Tucker's records. Resha presented no evidence that notice of the trial court's consideration of the request to seal Tucker's records had not been given to him.

9. Resha presented no evidence that he had asked anyone associated with the criminal case, including the court, to notify him of any request to seal records.

10. Resha presented no evidence that Tucker committed any crime, ever.

11. Resha presented no evidence that Tucker committed any crime while holding public office.

12. It is a matter of speculation as to why Resha did not submit any sworn statement or evidence in support of his motion and was content to rely solely upon written and oral arguments of his attorneys, who likewise offered no evidence in support of or in opposition to anything. It is a matter of speculation as to what Resha's motives are for seeking to unseal all of the court and agency records, when he asserted an actual need for only the agency's tangible evidence in order to prosecute his civil case. It is a matter of speculation as to whether these proceedings are a continuing and persevering effort of Resha to harass Tucker with the hope of eventually causing her to lose her current job and

future employment as well. Mr. Resha did not subject himself to cross-examination regarding any of these matters.

13. Resha's lawyers use the cloak of immunity to litter this record with unsubstantiated assertions presented as factual statements. Examples include the following: "During this period, Tucker returned to her office to falsify and alter documents in an effort to show that the actions against Resha were the work of an overzealous underling acting without her knowledge or against her orders."[1] "When Tucker committed the crime described in the sealed records, she was on the government payroll, in a government building, exercising the authority of a high official, using government equipment and materials, all for the purpose of violating a citizen's rights and benefitting herself."' Tucker is "unrepentant" and her conduct was "egregious."[3] Tucker should have been treated differently from other first offenders who plead nolo contendere with adjudication withheld because of "the nature of her crime."[4] "Tucker committed her offenses in the line of duty."[5]

'Petitioner's Initial Brief, Statement of Case and Facts, page 2.

[2]Petitioner's Initial Brief, page 26. Petitioner's Brief on Jurisdictian, page 5, similarly states: "Tucker was arrested and sentenced for a crime committed through exercise of her official powers, while she was on the state payroll, sitting in a government building, using state materials and equipment, all for the purpose of deceiving the governor and cabinet and persecuting a political opponent for exercise of his First Amendment rights."

[3]Petitioner's Initial Brief, page 27.

[4]Petitioner's Initial Brief, page 28.

'Petitioner's Initial Brief, page 30.

In open court before the trial judge, Resha's attorney stated without qualification: "I think the fact that Ms. Tucker continues to make false statements under oath in the civil case . . . **she's** still practicing this kind of devious and manipulative and behind-the-scenes sort of maneuvering that shows no sense of contrition or regret of any sort, that shows no intention to make a fresh start in life or mend her **ways.**"[6] And, before the District Court of Appeal, Resha's attorneys bluntly reported that "TUCKER COMMITTED **A CRIME.**"[7]

14. Resha relied upon state law and a federal right of access to courts theory before the trial court here. Resha asserted no direct reliance upon the First Amendment to the United States Constitution in the trial court.

SUMMARY OF ARGUMENT

There is no real record in this case. There is argument **atop** rhetoric steeped in citations to theories not addressed to the trial court and not supported by law. The First District Court of Appeal so recognized and denied Resha relief.

No right of access to these sealed records exists. At best there may be a qualified right of access which in this case is defeated by the interests of the State and Tucker.

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[6]**Transcript** of hearing on Resha's motion to vacate. Pet. App. **B, pages 10-11.**

[7]**Petitioner's** Reply, First.District Court of Appeal, Case Nos. 92-914 and 92-945, page **4** (upper case and underlining by Resha).

Tucker is entitled to an assumption that she is innocent of the charges lodged against her by the State. The State, recognizing that it functions as the instrument of criminal prosecutions, legislatively expressed its interest in purging false information from its files, in clearing the reputations of innocent persons accused of crimes, in restoring fundamental rights of privacy, and in ensuring that unproven charges do not handicap the former accused's employability.

Resha's reliance upon outright closure cases is misplaced, as there has been public scrutiny of the charges brought against Tucker and the disposition of those charges. The burden should be upon Resha to establish, through admissible evidence, either that Tucker's enjoyment of her vested right to the records sealing order was accomplished through fraud, or that Resha has a legitimate and demonstrated interest in securing the release of the sealed records superior to interests of Tucker and the State. He has done neither.

Resha demonstrated no right to a partial lifting of the sealing order for purposes of his civil action. The right of "access to courts" did not serve to vitiate privileges and immunities otherwise granted by law. "Access to courts" is not "access to all information", even in our Age of Information.

Tucker, a victim of unproven criminal charges, now faces Resha's unending campaign to destroy her. He brands her a criminal, when the law assumes her innocence. He yearns to use sealed records to ruin her current career. Resha is no victim, in

fact or in law. Resha's unsubstantiated rhetoric makes Tucker the victim.

The First District Court of Appeal was correct. Resha is entitled to no relief; his petition should be denied.

ARGUMENT

I. There Is No Constitutional or Common Law Right of Unlimited Access to All Judicial and Investiaative Files.

Resha's contention here that he has a right of access to the records of a criminal court and a state investigative agency is based upon an extension of principles well beyond their actual or intended reach.

The United States Supreme Court has recognized limited rights of access to trials **and** certain preliminary hearings in criminal cases. Richmond Newspapers, Inc. v. Virqinia, **448** U.S. **555, 100 S.** Ct. 2814, ***65*** L. Ed. 2d 973 (1980) (holding that the right to attend criminal trials is implicit in the guarantees of the First Amendment); Press-Enterprise Co. v. Superior Court of Cal. **(**"Press-Enterprise II"), 478 **U.S. 1, 106 S. Ct. 2735,** 92 **L.** Ed. 2d **1** (1986) (finding **a** qualified First Amendment sight of **access** to criminal preliminary hearings in California because of their trial-like features); Globe Newspaper Co. v. Superior Court, 457 U.S. 596, **102 S.** Ct. **2613,** 73 L. **Ed. 2d 248 (1982) (mandatory** exclusion of the public from all criminal trials involving sexual offenses against children violates First Amendment); Press-Enterprise Co. v. Superior Court of Cal. ("Press-Enterprise I"), 464 **U.S. 501, 104 S.**

Ct. 819, 78 L. Ed. 2d 629 (1984) (exclusion of the public from voir dire during a criminal trial and suppression of transcript of closed proceedings absent specific articulated justification was insufficient to overcome the historical presumption of openness of criminal trials).

But the Supreme Court views partial restrictions of public access to court proceedings and papers differently from total or mandatory closures. In Nixon v. Warner Communications, Inc., 435 U.S. 589, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978), the Court was called upon to release to the press tapes that had been admitted into evidence at a criminal trial, which tapes had been played in open court and the conversations widely reported in the press. The Court recognized a common law right of access to judicial records which was not absolute: courts are entitled to exercise discretion over whether to release their own records. While the press certainly had a First Amendment right to publish what it saw and heard in open court, the Supreme Court found no First or Sixth Amendment right to copy the court's records. Pertinent to the petition here is the fact that in Nixon the Court considered it significant that the information was "given wide publicity by all elements of the media." 435 U.S. at 609. Here, the District Court of Appeal pointed out that "the public and press had access to the criminal proceedings against Katie Tucker. It was not until the conclusion of these proceedings that the sealing order was entered." Resha, 600 So. 2d at 18.

In Gannett Co., Inc. v. De Pasquale, 443 U.S. 368, 99 S. Ct. 2898, 61 L. Ed. 2d 608 (1979), the Court found no violation of the First Amendment when there was no absolute ban on access to a suppression hearing in a criminal case, since there was still an "opportunity to inform the public of the details of the pretrial hearing accurately and completely." 443 U.S. at 393.

Seattle Times Co. v. Rhinehart, 467 U.S. 20, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984), arose from a civil case in which a trial judge had entered a protective order allowing a litigant access to information from its adversary, but restricting that litigant's dissemination of the information obtained through the court order. The Supreme Court held that the First Amendment had not been offended, since the confidentiality order had been entered to protect substantial government interests of privacy and religious association. And the Court thought it "significant to note that an order prohibiting dissemination of discovered information before trial is not the kind of classic prior restraint that requires exacting First Amendment scrutiny." Also significant, as here, was the fact that the protected information may be disseminated "as long as the information is gained through means independent of the court's processes." 467 U.S. at 33, 34.

In explaining the limitations historically placed upon this qualified right of access, the Supreme Court has observed that grand jury proceedings are properly conducted in complete secrecy, Press-Enterprise II, 478 U.S. at 9, that trial judges may impose restrictions an access to trials when the courtroom will not

accommodate all who seek to attend, Richmond Newspapers, Inc., 448 U.S. at 581, n. 18, that the public may not intrude upon bench conferences during trial, and that conferences may be held in chambers, since such conferences are distinct from trial proceedings, Richmond Newspapers, Inc., 448 U.S. at 598, n. 23 (concurring opinion), and also that there is no public right to government information regarding the conditions of public facilities, Houchins v. KQED, Inc., 438 U.S. 1, 98 S. Ct. 2588, 57 L. Ed. 2d 553 (1978). As the First Circuit noted in El Dia, Inc. v. Hernandez Colon, 963 F. 2d. 488, 494-95 (1st Cir. 1992),

> While the Supreme court has recognized a qualified First Amendment right of access to records and proceedings connected to the criminal justice system [citations], the Court has never recognized a corresponding right of access to Executive Branch documents. What is more, even in the criminal justice system cases, the Court has explicated a demanding standard as a prerequisite to finding a constitutionally assured right of access. This standard asks whether the Anglo-American legal system traditionally has allowed public access to the material in question; and whether access "plays a significant positive role in the functioning of the particular process in question." [citations]

Resha does not complain that he was denied access to a criminal trial, that he was denied access to a trial-like preliminary hearing, or that he was denied any opportunity to inspect and copy the court's and the investigative agency's records. The District Court found that "[t]he public and press had access to the criminal proceedings against Tucker.'' Resha, 600 So.

2d at 18.[8] Try as he might, Resha's situation simply does not fit the test of the case law he relies upon -- there was no complete closure, no denial of all access, no prior restraint, and no infringement of any qualified right of access he may be found to have had.

II. The Interests of the State and Tucker Outweigh Any Qualified Access Rights of Resha.

The trial judge entered an order sealing judicial and criminal history records pertaining to the charges lodged against Tucker in this criminal case. The order was entered in express reliance upon section 943.058, Florida Statutes (1991), and Rule 3.692, Florida Rules of Criminal Procedure. The trial court's order, on its face, reveals compliance with the procedural and substantive requirements of the rule and statute.'

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[8]Resha so conceded in his Petition for Review of Order Sealing Court Files before the District Court, served March 23, 1992, at pages 20-21: "Petitioner and his counsel were already in possession of photocopies of the FDLE files, as are all the major media outlets in Florida and most high officials in state government. These photocopies were obtained prior to the sealing order and have been widely disseminated over the past two years. Petitioner's counsel came into possession of these documents at a time when they were public records." Moreover, Resha's argument here (Petitioner's Initial Brief, p. 41) that he was faced with a Catch 22 because "the evidence was in the sealed files and therefore could not be produced" rings hollow.

[9]There can be no reasonable complaint of a separation of powers violation when the legislature enacts a law to protect the interests of the criminally accused, the courts issue implementing procedural rules and can deny relief in their "sole discretion", and the executive branch is specifically given notice and an Opportunity to object and submit evidence. Petitioner's Initial Brief, pages 8 and 49, n. 15.

Once the sealing order was entered, Tucker had a vested right to decline to acknowledge that she had been prosecuted. §943.058(6), Fla. Stat. (1991).[10] Now Resha seeks to unseal those records, and by implication destroy Tucker's vested rights.

Tucker's right of privacy, and the State's interest in restoring her privacy, spring from fundamental concepts of liberty: the presumption of innocence, maintaining one's reputation, and the ability to work and be employed. The legislature, through section 943.058, provided an elaborate mechanism to preserve and restore these rights to those accused by the State of having violated its laws when the State has not proven the charges.

Any analysis of the interests sought to be protected by the State through sealing orders entered pursuant to the referenced statute and rule begins with the presumption of innocence. Coffin v. United States, 156 U.S. 432, 155 S. Ct. 394, 39 L. Ed. 481 (1895), stated unequivocally that "[t]he principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." 156 U.S. at 453. And, more recently, the Supreme Court stated that "one accused of a crime is entitled to have his guilt or innocence determined solely an the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial."

[10]The Coast Guard is not a "criminal justice agency" under §943.058(6)(a), Fla. Stat. (1991). 14 U.S.C. §89.

Taylor v. Kentucky, 436 U.S. 478, 485, 98 S. Ct. 1930, 1934, 56 L. Ed. 2d 468 (1978) (noting in footnote 12 that the principle is more accurately characterized as an "assumption" of innocence). Despite Resha's harsh assertions, Tucker is assumed innocent of the charges that the state filed against her.

Bound up with the assumption of innocence, once the anxiety of facing criminal charges passes, is loss of reputation and consequent inability to secure employment. Liberty and property interests protected by the Due Process Clause do not always entitle a citizen to assert that he has a constitutional right to prevent the state from publicizing his arrest because deprivation of reputation alone is not of constitutional proportions. But when the defamatory character of the charges results in a stigma and there is consequent loss of governmental employment, liberty interests may have been unconstitutionally infringed. Paul v. Davis, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976). While Tucker and other former state employees may have no federal or state cause of action arising out of arrests on ultimately unproven charges due to prosecutorial and judicial immunities, the State has a legitimate interest in undoing harm to reputations and to employability caused by the State's prosecutions." Bearing the defamatory badge of criminality coupled with possible foreclosure from significant employment is continuing punishment for unproven

[11]When a prosecution is unlawful, the state has a duty to undo the damage caused by the arrest and, if it does not, the courts must do all within their power to restore the individual to the position where he would have stood absent the arrest. United States v. McLeod, 385 F. 2d 734, 749-50 (5th Cir. 1967).

conduct, which the trial judge concluded, in his sole discretion, Tucker should no longer have to endure.

Although Tucker may not be deprived of privacy in an actionable sense, decisions interpreting the federal and state constitutions have found zones of privacy that may not be invaded by the public or by the government on its behalf. Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973); Traylor v. State, 596 So. 2d 957, 963 (Fla. 1992) ("Special vigilance is required where the fundamental rights of Florida citizens suspected of wrongdoing are concerned . . . ."); In Re T.W., 551 So. 2d 1186, 1192 (Fla. 1989) (observing that the right of privacy was found implicated in Barron v. Florida Freedom Newspapers, 531 So. 2d 113 (Fla. 1988)).

Resha argues that the right of privacy declared by Article I, section 23, Florida Constitution, does not extend to public records because it contains this sentence: "This section shall not be construed to limit the public's right of access to public records and meetings as provided by law." (emphasis supplied) But the "law" provides that the records sought to be unsealed by Resha are "nonpublic records". §943.058(3)(a), Fla. Stat. (1991).

Resha does not directly assault section 943.058, Florida Statutes (1991), but rather attacks the trial court's order following the statutory prescriptions and the District Court's decision upholding the original sealing order. Of course, Resha can prevail on the arguments he voices only upon a finding that the statute and implementing procedural rule are unconstitutional.

This Court is thus called upon to determine whether the legislation somehow violated Resha's constitutional rights. In undertaking such an analysis, the Court can without doubt conclude that the interests of the State and Tucker are compelling, especially in contrast to Resha's purported "right to know" what he and the public already know. But should the Court entertain doubts, the words of Corn v. State, 332 So. 2d 4, 8 (Fla. 1976), ring clearly:

> This court is committed to the fundamental principle that it has the duty if reasonably possible, and consistent with constitutional rights, to resolve doubts as to the validity of a statute in favor of its constitutional validity and to construe a statute, if reasonably possible, in such a manner as to support its constitutionality -- to adopt a reasonable interpretation of a statute which removes it farthest from constitutional infirmity.

In Post-Newsweek Stations, Florida Inc. v. Doe, 17 Fla. L. Weekly S715 (Fla. November 25, 1992), this Court applied the test of Barron v. Florida Freedom Newspapers, Inc., 531 So. 2d 113 (Fla. 1988), rather than that of Miami Herald Publishing Co. v. Lewis, 426 So. 2d 1 (Fla. 1982), in balancing the privacy rights of individuals who participated in a crime with the State's policy of openness. The Court distinguished Lewis since it "dealt with the closure of a pretrial hearing, not with the closure of pretrial discovery documents that are at issue in this case." Id. at S716. But even the Barron test, involving outright closure, is inapplicable here, since "the information fits under a legislatively created exemption." Id. at S717. When records are not subject to chapter 119, as here, and when there are policy

considerations justifying closure, a complete denial of access will be upheld. Id. at S717, n. 4. Here, all access to the "nonpublic records" has not been denied; the balance between the qualified right of access and the constitutional right of privacy has been achieved through a constitutionally permissible statutory method.

III. Resha's Right of Access to Courts Does Not Entitle Him to Access to Records.

Resha asserts that he has a constitutional right to obtain the tangible evidence in FDLE's files and Tucker's nolo plea in the court's file because otherwise his "access to courts" would be denied.

Resha argues, in effect, that discovery in a civil action for damages between two private parties is grounded in the federal and state constitutions, and that limitations imposed thereon by the courts trample upon his constitutional right of access to courts. Adoption of such deceptively simple reasoning would mean that all discovery disputes would have constitutional proportions and that statutory privileges would be unconstitutional.

Until that day, when no secret is safe from the constitutional mandate to "tell it all", a litigant ought to at minimum present some evidentiary foundation for his desire, arising from unannounced motives, to obtain sealed criminal records. As the District Court correctly found, Resha's contention was "without . . . evidentiary support" and he did not demonstrate "the unavailability or lack of other means of obtaining the information sought." Resha, 600 So. 2d at 18.

The federal right of access to courts does not embrace the situation here. Resha relies upon Crowder v. Sinyard, **884** F. 2d **804,** 812 (5th Cir. 1989), where the court examined Ryland v. Shapiro, 708 **F.** 2d 967 (5th Cir. 1983), also cited by Resha, and stated:

> On its facts, therefore, Ryland stands for the proposition that if state officials wrongfully and intentionally conceal information crucial to a person's ability to obtain redress through the courts, and do so for the purpose of frustrating that right, and that concealment and the delay engendered by it substantially reduce the likelihood of one's obtaining the relief to which one is otherwise entitled, they may have committed a constitutional violation.

And plaintiffs must establish substantial prejudice resulting from the concealment of evidence. Bell v. City of Milwaukee, 746 F. 2d 1205, 1263, n. 72 (7th Cir. **1984);** Crowder, **884 F. 2d** at **812,** n. 9. Resha confuses his claim of civil rights cover-up with his asserted, but unproven, need for sealed records.

Resha also urges that he is entitled to an unsealing of the court file **so** that he can use Tucker's nolo contendere plea to establish her liability to Resha in his civil action. This contention was found by the District Court to be "meritless" and warranting "no discussion." Resha, 600 So. 2d at **18.** It is equally meritless in the retelling here. Barber v. State, 413 **So. 2d** 482, 484 (Fla. 2d **DCA 1982);** Duffell **v.** South Walton Emergency Services, 501 So. 2d 1352, 1353, n. **2** (Fla. 1st **DCA** 1987); **§90.410,** Fla. Stat. (nolo contendere plea not admissible).

IV. Resha's Did Not Establish That He Was a "Victim".

Resha made no effort to establish that he was a victim within the contemplation of Article I, section 16(b), Florida Constitution, but rests upon an assertion that his "status as a victim should have been obvious from the wording of the statute under which Tucker's arrest was made." Petitioner's Initial brief, page 46.

Resha made no effort to establish that a crime occurred. Resha made no effort to distinguish himself from the citizenry at large in order to bear the title of "victim." Sealing of records is a civil function, and thus not a crucial stage of a criminal proceeding. Capuano v. State, 347 So. 2d 629 (Fla. 4th DCA 1977). There is no entitlement to notice of a hearing on a motion to seal records within the statutory mechanism for implementation of victim's rights. 5960.001, Fla. Stat. (1991).

Conclusion

Resha deliberately elected to rest upon legal argument, making no factual showing. Since the trial court followed ordained procedures, in order for Resha to prevail, this Court would have to declare the sealing statute (S943.058) unconstitutional. There is no legal justification for doing so. The citizenry, including Resha, had complete access to Tucker's court and criminal history records. The United States Supreme Court has never interpreted the presumption of openness of criminal trials or the First Amendment to prevent a sealing of records under these circumstances, and

there is no reasonable basis to believe that it should. Moreover, records should be sealed under the circumstances here.

Resha's "access to courts" and "victim" contentions lack evidentiary foundations.

The decision of the First District Court of Appeal was correct. Tucker's vested rights should not be impaired. Resha's petition should be denied.

Respectfully submitted,

McCONNAUGHHAY, ROLAND, MAIDA,
CHERR, & McCRANIE, P.A.

BRIAN S. DUFFY
Florida Bar Number: 180007
Post Office Drawer 229
Tallahassee, Florida 32302
(904) 222-8121
Facsimile: (904) 222-4359
Attorneys for respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Respondent's Answer Brief has been furnished this 30th day of November, 1992, to:

by hand delivery to:

RICHARD JOHNSON
Spriggs & Johnson
324 W. College Ave
Tallahassee, FL 32301

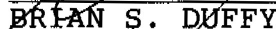
and by U. S. Mail to:

WILLIAM A. FRIEDLANDER
Attorney at Law
Lake Jackson Office Park
3045 Tower Court
Tallahassee, FL 32303

JAMES P. JUDKINS
1102 N. Gadsden
Tallahassee, FL 32303

NEILL G. WADE
State Attorney's Office
Leon County Courthouse
Tallahassee, FL 32301

MICHAEL RAMAGE
Florida Department of Law Enforcement
P.O. Box 1489
Tallahassee, FL 32302



BRIAN S. DUFFY