

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : OSC Case No: 2008-2415
Appellee, : On Appeal from the Butler
County Court of Appeals,
v. : Twelfth Appellate District
JAMES C. MCCAUSLAND, : Court of Appeals
Appellant. : Case No. CA2007-10-254

MERIT BRIEF OF APPELLANT JAMES C. MCCAUSLAND

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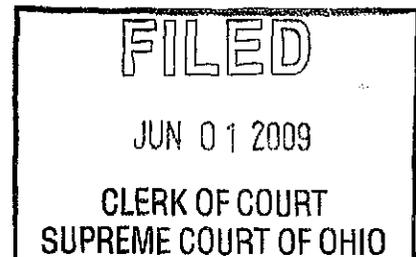


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STATEMENT OF FACTS

Mr. McCausland was charged with Speeding, Operating a Vehicle under the Influence of Alcohol under ORC § 4511.19(A)(1)(a) and Refusal of a Chemical Test with a Prior Conviction within 20 years under 4511.19(A)(2)(b).

On September 4, 2007, Mr. McCausland, along with trial counsel, tried the case to the bench after waiving a jury. After the presentation of the evidence but without a closing argument, the Judge found Mr. McCausland guilty on all 3 charges. The Judge never asked defense counsel if he wanted to present a closing argument nor did he give defense counsel any opportunity to present a closing argument prior to finding Mr. McCausland guilty of all three charges.

Defendant appealed to the Twelfth District and a Judgment Entry was issued by the Court on November 3, 2008 affirming the guilty finding of the Trial Court.

On March 6, 2007 at 2:15 AM, Mr. McCausland was operating a vehicle when an Ohio State Highway Patrol Trooper stopped him for speeding (T.p. 4). The Trooper conducted 1 field sobriety test (T.p. 7) and decided to arrest Mr. McCausland on the charges of Operating a Vehicle under the Influence of Alcohol and Refusal of a Chemical Test with a Prior OVI Conviction within 20 Years.

A trial was held in the Butler County Area III Court and a jury was waived. Judge Hendrickson heard evidence from both the Prosecution and Defense and then immediately went into his decision without allowing an opportunity for a closing argument.

Neither the Prosecutor nor Defense Counsel were ever given the opportunity to make a closing argument. A closing argument would have allowed Defense Counsel the opportunity to point out relevant statutes or case law that could have impacted the Judge's decision.

The judge found Mr. McCausland guilty and he filed a Notice of Appeal and the Twelfth District affirmed the decision of the trial court.

ARGUMENT

Proposition of Law No. I:

The trial court erred and denied Appellant a fair trial in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 and 16 of the Ohio Constitution when it denied Counsel the opportunity to make a closing argument prior to the judgment of the trial court.

In Herring v. New York, (1975) 422 U.S. 853, 95 S.Ct. 2550, the United States Supreme court held that:

There can be no doubt that closing argument for the defense is a basic element of the adversary factfinding process in a criminal trial. Accordingly, it has universally been held that counsel for the defense has a right to make a closing summation to the jury, no matter how strong the case for the prosecution may appear to the presiding judge. The issue has been considered less often in the context of a so-called bench trial. But the overwhelming weight of authority, in both federal and state courts, holds that a total denial of the opportunity for final argument in a nonjury criminal trial is a denial of the basic right of the accused to make his defense.

Herring dealt with a New York statute that allowed a trial judge the discretion to deny a closing argument at the judge's discretion. This was a bench trial where the Defendant asked for a closing argument and the Judge denied the request.

The United States Supreme Court underscored the importance of a closing argument and found that it is a element of the trial and a right of the defendant.

In Hunter v. Moore, C.A. 11th, September 4, 2002, 304 F.3d 1066, the 11th Circuit held that the complete denial of an opportunity for closing argument constitutes denial of counsel at a critical stage warranting reversal of conviction. Further, there was no waiver of closing argument where court announced decision without opportunity to object to lack of closing argument.

In State v. Baumgardt, 2002-Ohio-4662, the Fifth District held that:

The Sixth Amendment's guarantee of assistance of counsel, applicable to the States through the Fourteenth Amendment, is violated when a trial court, in either a jury of a bench trial, denies the defense the opportunity to make a closing argument before rendition of judgment. Herring v. New York (1975), 422 U.S. 853, 95 S.Ct. 2550, 45 L.Ed.2d 593. * * * The defense cannot be denied this right even when it appears to the trial court that there is no question about guilt. Id. At 863. This is a *per se* rule, to which the harmless error standard does not apply. Patty v. Bordenkircher (6th Cir.1979), 603 Fed.2d 587.

For a waiver of the Federal Constitutional right to a closing argument to be effective, it must be plainly shown that there was an intentional relinquishment or abandonment of a known right. City of Columbus v. Woodrick (1976), 48 Ohio App.2d 274, 357 N.E.2d 58.

A failure to object on the record is not sufficient to waive this constitutional right. State v. Barnard (May 6, 1991), Stark App. No. CA-8388.

In this case, the Defendant tried the case to the judge without a jury. The State called one witness, the State Trooper. After that, the State rested. The Defense argued a Rule 29 motion, which was denied. The Defense called one witness, Mr. McCausland and the State recalled its only witness to the stand.

After the rebuttal witness, the Judge went straight into his decision finding the

Appellant guilty of the speeding charge, the OVI charge and the Refusal charge.

The Twelfth District attempted to distinguish the United States Supreme Court decision in Herring by interpreting the word "opportunity" for a closing argument as meaning the Defendant has to ask for a closing argument and be denied by the trial court. This is a misinterpretation of the case law. The above-cited cases make it clear that the failure to object does not waive this right. It is a basic element of a trial and a right of the defendant secured by the United States Constitution.

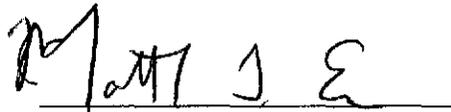
It is quite clear that the denial of a closing argument is reversible error. It can never be harmless error and the right cannot be waived unless it is clear on the record that Defendant wanted to relinquish that right. The record in this case is absolutely silent as to any waiver.

CONCLUSION

Mr. McCausland was never afforded the opportunity to make a summation before the rendition of the judgment by the trial judge. Accordingly he was not afforded the assistance of counsel that the United States and Ohio Constitutions guarantee.

Respectfully submitted,

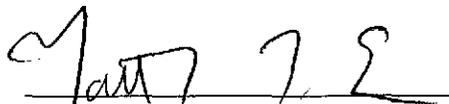
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Certificate of Service

I hereby certify that I served a copy of the foregoing Appellant's Merit Brief upon Robin Piper, Esq., Prosecuting Attorney of Butler County, Ohio, 315 High Street, 11th Floor, Hamilton, Ohio 45011 by ordinary U.S. Mail this 1st day of June, 2009.

A handwritten signature in black ink, appearing to read "Matt T. Ernst", written over a horizontal line.

Matthew T. Ernst

COUNSEL FOR APPELLANT,
JAMES C. MCCAUSLAND

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

v.

JAMES C. MCCAUSLAND

Appellant.

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08-2415

On Appeal from the Butler
County Court of Appeals,
Twelfth Appellate District

Court of Appeals Case No.
CA2007-10-254

NOTICE OF APPEAL OF APPELLANT JAMES C. MCCAUSLAND

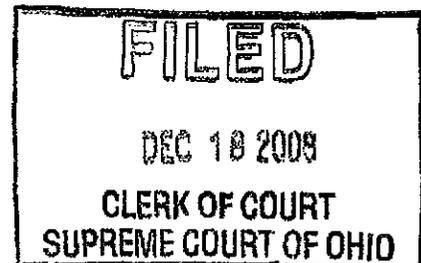
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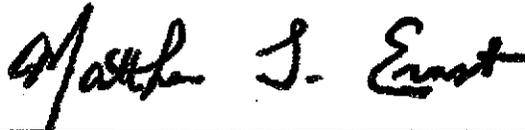


Notice of Appeal of Appellant James C. McCausland

Appellant, James C. McCausland, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Butler County Court of Appeals, Twelfth Appellate District, entered in Court of Appeals Case No. CA2007-10-254 on November 3, 2008.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,



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COUNSEL FOR DEFENDANT-APPELLANT,
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Notice of Appeal upon Robin Piper, Butler County Prosecuting Attorney and Gloria J. Sigman, Assistant Prosecuting Attorney Government Services Center, 315 High Street 11th Floor Hamilton, Ohio 45011-6057 this 18th day of December, 2008.



Matthew T. Ernst (0066686),
Attorney for Defendant-Appellant

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2007-10-254
 :
 - vs - : OPINION
 : 11/3/2008
 :
 JAMES C. MCCAUSLAND, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT AREA III
Case Nos. TRC0701482A, TRC0701482B and TRC0701482C

Robin N. Piper, Butler County Prosecuting Attorney, Gloria J. Sigman, Government Services Center, 315 High Street, 11th Floor, Hamilton, OH 45011-6057, for plaintiff-appellee

Matthew T. Ernst, 114 East 8th Street, Cincinnati, OH 45202, for defendant-appellant

POWELL, J.

{¶1} Defendant-Appellant, James C. McCausland, appeals the decision of the Butler County Area III Court, finding him guilty, at the conclusion of a bench trial, for speeding, operating a vehicle under the influence (OVI), and an OVI refusal with a prior conviction.¹ We affirm the decision of the trial court.

{¶2} On March 6, 2007, appellant's vehicle was stopped after an Ohio State Highway

1. The OVI refusal was merged into the OVI.

Patrol Officer determined that he was travelling in excess of the speed limit, was driving in two lanes, and had a slow reaction to a red light. Upon approaching appellant, the officer detected the odor of alcohol emanating from him, and noted his eyes were both bloodshot and glassy. In addition, appellant admitted to the officer that he had a large beer (twenty ounces) prior to operating his motor vehicle. The officer conducted a field sobriety test which appellant failed.² The officer then requested that appellant submit to a portable breath test, but appellant refused. Subsequently, the officer placed him under arrest for the OVI, read him his *Miranda* rights and took him to the Monroe Police Department. While at the police department, appellant refused yet another breath test. Appellant was cited for speeding in violation of R.C. 4511.21(C); an OVI in violation of R.C. 4511.19(A)(1)(a); and an OVI refusal with a prior conviction within 20 years in violation of R.C. 4511.19(A)(2)(b).

{13} Appellant initially pled not guilty and requested a jury trial. A few days prior to the trial date, however, appellant withdrew his jury demand and the court set a bench trial for September 4, 2007. At the bench trial, the prosecution and the defense were both given the opportunity to present their cases. Each party presented one witness. After the defense rested their case, the prosecution recalled their witness, the patrol officer, to give further testimony. The defense was also given the opportunity to recross-examine the witness. The prosecution then rested its case. A "pause" was noted on the record, after which the judge made his findings of guilt as to the speeding violation, and found that a totality of the circumstances indicated that the state had proven beyond a reasonable doubt that appellant was guilty of an OVI and an OVI refusal with a prior conviction. The court then sentenced appellant accordingly.³

2. The officer conducted a horizontal gaze nystagmus test which appellant did not satisfactorily perform.

3. The court assessed appellant a \$10.00 fine for speeding and a \$350.00 fine for the OVI plus costs. The sentence also included a 180 day jail sentence, of which 174 days were suspended; two years of non-reporting probation; a three-day alcohol intervention program and a 180-day license suspension.

{14} Prior to pronouncing the sentence and prior to adjourning court, the judge had at least two more conversations on the record with appellant's attorney. While the court did not ask for closing arguments, at no time did appellant's counsel object to not being able to make a summation, nor did he request the opportunity to make a closing argument. Appellant now appeals the trial court's decision by raising a single assignment of error.

{15} "THE TRIAL COURT ERRED AND DENIED APPELLANT A FAIR TRIAL IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHEN IT DENIED COUNSEL THE OPPORTUNITY TO MAKE A CLOSING ARGUMENT PRIOR TO THE JUDGMENT OF THE TRIAL COURT."

{16} In his sole assignment of error, appellant argues that the trial court denied his counsel the opportunity to make a closing argument before the court rendered its decision. We find appellant's argument without merit.

{17} In 1975, the United States Supreme Court discussed the issue of the denial of closing arguments in *Herring v. New York* (1975), 422 U.S. 853, 95 S.Ct. 2550. At that time, the state of New York had a statute which granted a trial court the discretion to deny counsel an opportunity to make a summation of the evidence prior to judgment in a nonjury criminal trial. *Id.* At the close of the defense's case, Herring's attorney requested some time to "be heard * * * on the facts." *Id.* The court summarily denied his request pursuant to the statute, and proceeded with its determination of guilt. *Id.* The Supreme Court stated that the Sixth Amendment Right to Counsel, as applied to the states via the Fourteenth Amendment, had been found to mean that there should never be "restrictions on the function of counsel in defending a criminal prosecution." *Id.* The Court then noted, "[t]he right to the assistance of counsel has thus been given a meaning that ensures to the defense in a criminal trial the opportunity to participate fully and fairly in the adversary factfinding process." *Id.* at 858.

{18} The Court then went on to state that the defense's closing argument, "is a basic

element of the adversa[rial] factfinding process in a criminal trial." *Id.* Even where a case seems overwhelmingly in favor of the prosecution, defense counsel has a right to make a closing argument to a jury. *Id.*⁴ The *Herring* Court then noted there was considerable authority to suggest that "a total *denial of the opportunity* for final argument in a nonjury criminal trial is a denial of the basic right of the accused to make his defense." *Id.* (emphasis added).⁵

{¶9} While the *Herring* Court did find that the defendant had a right to a "summation of the evidence most favorable to him" the Court's holding was limited to a constitutional violation where a trial court affirmatively denied the defense's request for a closing argument. *Id.* at 864-65. There was nothing in *Herring* to suggest that its holding applied when there was merely an omission of a summation.

{¶10} In Ohio, the appellate districts are split with regards to the issue of whether the omission of an opportunity to make a closing argument is a constitutional violation. The question was first addressed by the Tenth District in *City of Columbus v. Woodrick* (1976), 48 Ohio App.2d 274. The *Woodrick* court determined *Herring* stood for the proposition that, "a closing argument is part of a basic due process right, [and] there is necessarily a presumption against a waiver of such a fundamental right." *Id.* at 277. The court continued by stating that because the right to a closing argument was a constitutional right, "it must be clearly established * * * [or] it must be plainly shown that there was an intentional relinquishment or abandonment of a known right." *Id.* at 277-78. Most recently, the Tenth District put a further requirement on closing argument waivers by finding the "relinquishment of the right to closing

4. Among the cases cited by the *Herring* court was *Weaver v. State* (1874), 24 Ohio St. 584. *Herring* at fn. 8.

5. The Supreme Court cited *Decker v. State* (1925), 113 Ohio St. 512, 525-26, which held that a judge's refusal to hear any argument from the defense was a deprivation of defendant's right to a defense as he had a fundamental right to, "state his case fully and fairly, both upon the legal propositions and upon the evidence presented." *Herring* at fn. 9.

argument must be express, intentional, and voluntary." *State v. Garrard*, 170 Ohio App.3d 487, 2007-Ohio-1244, ¶51.⁶

{¶11} The Fifth, Sixth and Seventh Districts have embraced the Tenth District's rationale and accepted the idea that "failure to request closing argument is an insufficient indication of a clear waiver of the right to present a closing argument." *State v. Baron*, Mahoning App. No. 05-MA-156, 2007-Ohio-4323, ¶34, citing *Woodrick* at syllabus;⁷ but see, *State v. Bowersock*, Monroe App. No. 05 MO 19, 05 MO 20, 2006-Ohio 7102, ¶20-22 (holding where a request for a closing argument, or a lack of objection, *would be unavailing or denied*, there must be an affirmative waiver of the right to a closing argument (emphasis added)), and *State v. Barnard* (May 6, 1991), Stark App. No. CA-8388, 1991 WL 76455 at *2 (holding that an "appellant's failure to object on the record *after the trial court denied the closing argument* is not sufficient to waive the constitutional right" (emphasis added)).

{¶12} Other districts have adopted a contrary position on this issue. In *State v. Brown* (Dec. 30, 1983), Clermont App. No. CA-1210, 1211, at 4, this court found that the holding in *Herring* applied only to an improper denial of defense counsel's request for a final argument. In *Brown*, we found that because there was no request for a final argument by either party, both parties had the opportunity to request a summation, the trial court did not affirmatively deny any request by the appellant to make a closing argument, and the appellant failed to raise an objection to the trial court before or after the verdict was rendered, the failure to allow

6. The *Garrard* court found there was no waiver. *Id.* at ¶54. The court chose to apply the plain error doctrine and found there was a recognizable error; however, because the recognition of plain error is discretionary, the court decided not to exercise its discretion and overruled the appellant's assignment of error. *Id.* at ¶58, 64, 70-71.

7. See also, *State v. Baumgardt*, Fairfield App. No. 02CA7, 2002-Ohio-4662, ¶12-14; *In Matter of Wilson* (Feb. 22, 1994), Stark App. No. CA-9438, 1994 WL 66879 at *1; *State v. Woods* (Apr. 5, 1993), Stark App. No. CA-9115, 1993 WL 116096, *2-3; *State v. Hoover* (May 11, 1992), Stark App. No. CA-8761, 1992 WL 127070 at *2-3; *State v. Patton* (Dec. 30, 1983), Wood App. No. WD-83-51, 1983 WL 2346 at *1-2; and *City of Toledo v. Volkens* (Sep. 27, 1985), Lucas App. No. L-85-114, 1985 WL 7606 at *1.

a closing argument was not reversible error.⁸ *Id.* at 4-5.

{¶13} A few years later, the Ninth District agreed with this court's rationale in *Brown* stating, "absent an affirmative denial of closing argument, the lack of such argument is not a basis for reversal." *State v. Yoder* (Feb. 5 1986), Wayne App. No. 2099, 1986 WL 1740 at *3. Additionally the court noted, "had counsel wished to object [to an absence of a summation] * * * he would have done so." *Id.*

{¶14} Both the Eleventh District and the Eighth District have also adopted a similar view. In *State v. Erickson* (Apr. 29, 1988), Lake App. No. 12-137, 1988 WL 41557 at *2, the Eleventh District distinguished *Herring* by holding that because the record before them did not contain a request to make a closing argument, the failure to make a request did not warrant overturning the decision of the trial court. The Eleventh District further confirmed this holding when it held, "[i]f defense counsel in a criminal trial does not object or request the opportunity to make a closing argument, then the issue is waived upon appeal."⁹ *State v. Newton* (June 27, 1997), Lake App. No. 96-L-058, 1997 WL 401557 at *4. Finally, the Eighth District held that because there was no denial by the trial court of the opportunity for appellant's counsel to make a closing argument and because there was no request for a closing argument, the assignment of error was overruled. *Jackson v. Jackson* (Dec. 16, 1993), Cuyahoga App. Nos. 64284, 64873, 1993 WL 526704 at *4.

{¶15} We find, consistent with our prior holding in *Brown*, that the Tenth, Fifth, Sixth

8. "[W]aiver of [a] closing argument * * * might simply constitute a matter of trial strategy." *State v. Farrah*, Franklin App. No. 01AP-968, 2002-Ohio-1918, ¶58, citing *State v. Burke*, 73 Ohio St.3d 399, 404-05, 1995-Ohio-290 and *State v. Apanovich* (1987), 33 Ohio St.3d 19, 24. It is entirely possible that counsel, by his silence, chose not to make a summation in this case. We must presume, if this was indeed the case, counsel's decision was rendered within the standard of "reasonable professional assistance." *Strickland v. Washington* (1984), 466 U.S. 668, 689, 104 S.Ct. 2052.

9. Because of *Herring's* limited holding, we do not reach the question of whether there was a knowing, voluntary or intelligent waiver or in fact merely a failure by defense counsel to make a timely request for a closing argument. See, *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, ¶23; see also, *United States v. Olano* (1993), 507 U.S. 725, 733, 113 S.Ct. 1770.

and Seventh Districts' extension of *Herring's* holding is unpersuasive. The opinion in *Herring* dealt with the affirmative denial of a summation request, and we decline to expand its rationale to create a presumption against waiver when a closing is neither requested by the defense nor objected to when not offered by the court.

{¶16} We also take note of two additional cases with regards to this issue. In *State v. Jack*, 156 Ohio App.3d 260, 2004-Ohio-775, ¶26, the Second District stated, "[w]here a trial judge simply forgets to afford counsel the opportunity to make closing argument, it is reasonable to expect trial counsel, as an officer of the court, to remind the judge that his client is entitled to argue the case."¹⁰ Lastly, the Third District stated that, "[w]hile denial of the right to present a summation in a criminal case is error," the appellant failed to demonstrate that the error was prejudicial and his assignment of error was overruled. *State v. Wheeler* (Dec. 30, 1991), Seneca App. No. 13-91-10, 1991 WL 280010, at *5.

{¶17} Finally, we note that R.C. 2315.01(A)(6), following a section regarding the conclusion of evidence, states:

{¶18} "The parties then *may* submit or argue the case to the jury. The party required first to produce that party's evidence shall have the opening and closing arguments. If several defendants have separate defenses and appear by different counsel, the court shall arrange their relative order." (Emphasis added).

{¶19} While the language of the procedure is specific to jury trials, the statute uses the word "may" rather than "shall" or "will" indicating the parties themselves carry the burden of asserting their desire to make a summation. We will not expand either the meaning of the Ohio Revised Code or the holding in *Herring* beyond what the plain meaning of their words

10. It should be observed that the Second District reversed the trial court in *Jack* because the record indicated that any attempt made by counsel to request a closing argument, or object to the lack of opportunity to make one, would have been unavailing. *Jack* at ¶25; see also, *State v. Bowersock*, Monroe App. Nos. 05MO19, 05MO20, 2006-Ohio-7102.

convey.

{¶20} Turning to the instant case, and consistent with our holding in *Brown*, we find *Herring* inapplicable to the facts now before us. The trial court did not deny appellant's request for a closing argument because appellant never requested a summation. Neither defense counsel nor the prosecution asked for a final argument, although they had the opportunity to request one before the court rendered its verdict. In fact, the record indicates there was a "pause" after the examination of the recalled witness, but before the judge made his determination. Appellant also neglected to raise an objection to the trial court either before, or after, the verdict was returned. The transcript of the trial also shows that appellant's attorney spoke to the court after the decision, yet nothing was mentioned regarding a summation.

{¶21} We also note that the bench trial was set for three o'clock p.m. and was completed by the end of the day, as there was no break indicated in the transcript. Furthermore, the state only called one witness, the patrol officer, and the defense only called appellant as a witness. There was also very little complexity to the case. With this in mind, it is entirely plausible that appellant's counsel did not feel the need to make a closing argument to the court.

{¶22} Finally we address appellant's argument that denial of a summation is reversible error, while appellee argues that a plain error standard should be applied to this matter.

{¶23} "A fair administration of justice requires that, when an error occurs in a trial, the trial judge should be given an opportunity, if possible, to correct it. Otherwise, a party could take a chance on success without raising any objection to such error, and then, if he failed to succeed, avail himself of an error which might otherwise have been corrected." *State v. Hunt* (Aug. 31, 1983), Warren App. No. 83-01-001, at 5; quoting 3 American Jurisprudence, 25 et seq., Section 246. Even if we assumed an actual error was involved, because appellant's

counsel failed to raise the issue, any analysis made by this court would be under plain error. Crim.R. 52.

{¶24} An error or defect which affects substantial rights is analyzed under a plain error standard: (1) "there must be an error * * * a deviation from a legal rule;" (2) "the error must be plain" that is "an obvious defect in the trial proceedings;" and (3) "the error must have affected substantial rights" meaning "the error must have affected the outcome of the trial." *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68 (internal quotations omitted). "Plain error does not exist unless it can be said that but for the error, the outcome of the trial would clearly have been otherwise." *State v. Moreland* (1990), 50 Ohio St.3d 58, 62.

{¶25} "[An] error, defect, irregularity or variance which does not affect substantial rights shall be disregarded" as harmless error. Crim.R. 52(A); see also *State v. Brown* (1992), 65 Ohio St.3d 483, 485. "In other words, the accused has a constitutional guarantee to a trial free from prejudicial error, not necessarily one free from all error." *State v. Collier*, Butler App. No. CA03-11-282, 2005-Ohio-944, ¶20, citing *Brown* at 485.¹¹

{¶26} Plain error does not exist because there is no indication that the outcome of this trial would have been any different even if a closing argument had been made. As we previously stated, there were only two witnesses, the trial was conducted over a relatively short time period, and the issues were not so complex as to require a detailed summation at the close of evidence. Thus, even applying a plain error analysis, nothing indicates that the outcome of the trial would have been different had defense counsel presented a closing argument.

{¶27} Because the court did not deny appellant's counsel the ability to make a closing

11. Even where the harmless error is linked to some constitutional guarantee, a court need only, "declare a belief that it was harmless beyond a reasonable doubt." *Brown* at 485, quoting *Chapman v. California* (1967), 386 U.S. 18, 24, 87 S.Ct. 824.

argument prior to making its judgment, appellant's assignment of error is hereby overruled.

{¶28} Judgment affirmed.

WALSH, P.J. and YOUNG, J., concur.

This opinion or decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/ROD/documents/>. Final versions of decisions are also available on the Twelfth District's web site at: <http://www.twelfth.courts.state.oh.us/search.asp>

United States Constitution Amendment 6 - Right to Speedy Trial, Confrontation of Witnesses

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution Amendment 14 - Citizenship Rights

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Ohio Constitution § 1.10 Trial for crimes; witness

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.
(As amended September 3, 1912.)

Ohio Constitution § 1.16 Redress in courts

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

(As amended September 3, 1912.)