

A-208

IN THE SUPREME COURT OF THE STATE OF FLORIDA

JAMES WILSON, et al.,

Petitioners,

Case No. 68,369

vs.

2d DCA 85-1397

STATE OF FLORIDA,

Respondent.

FILED
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 BY *[Signature]*
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PETITIONERS' BRIEF ON THE MERITS

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JURISDICTION

This Court has jurisdiction pursuant to a Petition for Writ of Certiorari filed on behalf of the Petitioners, based on the Second District Court of Appeal's decision in State of Florida v. James Wilson and Nancy Pauline Wilson, wherein the Court certified as of great public importance the following question:

WHETHER THE HOLDINGS IN JONES V. STATE, NO. 64,042 (FLA. OCT. 17, 1985); STATE V. G.P., NO. 63,613 (FLA. AUG. 30, 1985); AND STATE V. C.C., NO. 64,354 (FLA. AUG. 29, 1985), PRECLUDE THE STATE FROM SEEKING COMMON LAW CERTIORARI REVIEW OF NONAPPEALABLE INTERLOCUTORY ORDERS IN CRIMINAL CASES.

This Court accepted jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(v) and Florida Constitution, Article V(b)(4).

STATEMENT OF THE CASE AND OF THE FACTS

Petitioners, JAMES LEROY WILSON and NANCY PAULINE WILSON, were indicted on August 10, 1982, by the Grand Jury of Pasco County for the offense of murder in the first degree and the killing of an unborn child by injury to the mother.

Jessie Haynes was indicted on August 10, 1982, by the Grand Jury of Pasco County and charged with the same offenses.

The trial of the Petitioners was scheduled to commence on April 18, 1983. On the morning of the trial, the State requested and was denied the right to admit testimony concerning extrajudicial

statements made outside the presence of Petitioners in an attempt to prove a conspiracy between Nancy Pauline Wilson and her husband, James Leroy Wilson, and a person by the name of Jessie Haynes to murder Tina Wilson. After the hearing, the trial court denied the proffer and ruled the hearsay statements were not admissible. The State took an Interlocutory Appeal of that Order and continued the trial. The Second District Court of Appeal reversed the trial court's Order and ruled that the hearsay statements were in fact admissible at trial.

On December 21, 1984, following a trial, the Defendant, Jessie Haynes, was found not guilty of each of the counts laid in the aforementioned indictment. Petitioners were scheduled for trial to commence on June 3, 1985. Prior to the commencement of the trial, the State of Florida filed a motion in limine, seeking a pretrial ruling from the trial court on the admissibility of any evidence at Petitioners' trial regarding the not guilty verdict returned after the trial in Jessie Haynes' case. The Circuit Court, after hearing argument of counsel denied the State's motion in limine and found that evidence and argument concerning the finding by the jury that the Defendant, Jessie Haynes was not guilty would be admissible in Petitioners' trial. The State of Florida then filed a motion for stay of the proceeding and for extension of speedy trial. Upon hearing, the trial court entered its order granting the motion for stay and extending speedy trial. The State again sought appellate review of the trial court's Order by filing a petition for writ of certiorari. The

Second District Court of Appeal accepted jurisdiction and ultimately reversed the trial court's Order, thereby prohibiting the defense from admitting any evidence as to the acquittal of Jessie Haynes. In its opinion, the Second District Court of Appeal certified the aforementioned question as one of great public importance. The Second District Court of Appeal entered its decision on December 13, 1985, and a motion for rehearing filed by the Petitioners in this cause was denied on February 3, 1986.

SUMMARY OF ARGUMENT

The Second District Court of Appeal was without jurisdiction to entertain the State's petition for writ of certiorari from the trial court's ruling that the evidence of Jessie Haynes' acquittal was admissible at the trial in the instant case. The decisions and statutory law provide that the State's only right to appeal in criminal cases is strictly limited to those remedies given to the State by the Legislature and/or framers of the Florida Constitution. Further, the type of relief requested by the State and ultimately given by the Second District Court of Appeal is not within any of the appealable areas as enunciated in Florida Statutes, Chapters 924.07 and 924.071, and since one previous interlocutory appeal has already been taken by the State in this case, the Second District Court of Appeal did not have jurisdiction when it reversed the trial court's order denying the State's second pretrial motion.

ARGUMENT

THE DISTRICT COURT OF APPEAL WAS WITHOUT JURISDICTION TO ENTERTAIN BY PETITION FOR WRIT OF CERTIORARI A SECOND APPEAL OF A PRELIMINARY RULING OF LAW IN A CRIMINAL CASE PRIOR TO A FINAL JUDGMENT BEING ENTERED IN THE CASE.

In Florida, the State's right to appeal in a criminal case is strictly governed by statute. State v. Creighton, 469 So.2d 735 (Fla. 1985); E.N. v. State, 11 FLW 33 (Jan. 24, 1986). The State's right to appeal in a criminal case is set forth in Florida Statutes, Sections 924.07 and 924.071. This Court has recently held in several decisions that the State does not have a common law right to appeal and its rights to appeal in a criminal case is solely conferred by statute. State v. Creighton, supra; E.N. v. State, supra. In Creighton, the Court stated:

We reaffirm the principle that the State's common law right of appeal in criminal cases depends on statutory authorization and is governed strictly by statute.

(Creighton v. State, 469 So.2d at 740)

Since review by certiorari is clearly no longer available to the State in a criminal case, we must look to what rights of appeal have been conferred by statute to the State in a criminal case. Section 924.07, Florida Statutes (1985), authorized appeal by the State in criminal cases as follows:

"The state may appeal from:

- (1) An order dismissing an indictment or information or any count thereof;
- (2) An order granting a new trial;
- (3) An order arresting judgment;
- (4) A ruling on a question of law when the defendant is convicted and appeals from the judgment;
- (5) The sentence, on the ground that it is illegal;
- (6) A judgment discharging a prisoner on habeas corpus;
- (7) An order adjudicating a defendant insane under the Florida Rules of Criminal Procedure;
- (8) All other pretrial orders, except that it may not take more than one appeal under this subsection in any case;" (emphasis added)

* * *

"Such appeal shall embody all assignments of error in each pretrial order that the state seeks to have reviewed. The state shall pay all costs of such appeal except for the defendant's attorney's fee."

Section 924.071, Florida Statutes (1985), provides additional grounds for appeal by the State in criminal cases, none of which are applicable here.

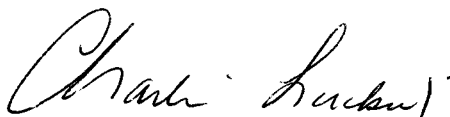
The nature of the order being reviewed in the case at bar was a pretrial motion in limine filed by the State seeking to exclude certain evidence. This type of ruling could only be appealed pursuant to Florida Statute 924.07(8). However, since one previous pretrial order has been appealed in this case ^{*}, the State is prohibited from using this subsection as an avenue for successive appeals in the same case. The language of the statute is clear and states that this subsection

* State v. Wilson, 466 So.2d 1152 (Fla. 2d DCA 1985)

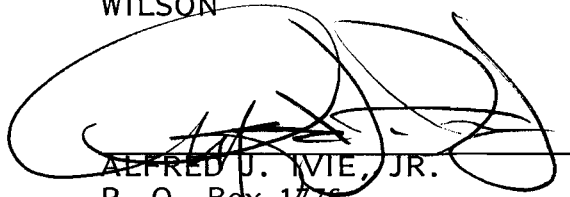
can only be used once per case. Again, this statute is subject to strict construction according to Florida law.

CONCLUSION

The State does not have the authority to review by certiorari a pretrial order in a criminal case. The State's only avenues of appeal are delineated in Florida Statutes 924.07 and 924.071. Since the State cannot avail itself of any of the specified grounds for appeal under Florida law, this Court should reverse the ruling of the Second District Court of Appeal of Florida with directions to dismiss the petition for writ of certiorari.



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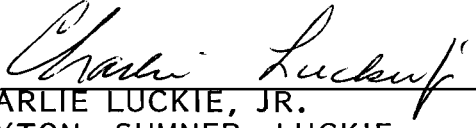
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioners' Brief on the Merits was furnished to each of the following:

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