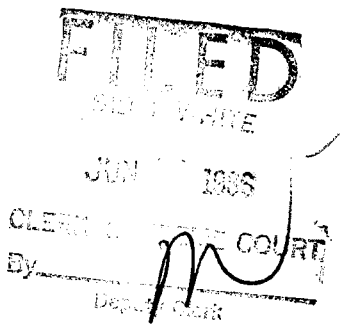
IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, v. GEORGE WILLIAM THAYER, Respondent.	)	CASE NO. 68,842



PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, STATE OF FLORIDA, was the prosecution, and Respondent, GEORGE WILLIAM THAYER, was the defendant, in the pre-trial proceedings held in the Circuit Court of the Nineteenth Judicial Circuit, in and for Palm Beach County, Florida. Petitioner and Respondent were designated as such, in Petitioner's proceeding for common-law certiorari, before the Fourth District Court of Appeal.

In this brief, the STATE OF FLORIDA and GEORGE WILLIAM THAYER will be referred to as Petitioner and Respondent, respectively.

Additionally, the symbol PA means Petitioner's Appendix, attached to its Initial Brief herein; and "e.a." means "emphasis added." The Fourth District's opinion in this case, included as Exhibit L in Petitioner's Appendix, will be referred to in its slip opinion form.

STATEMENT OF THE CASE

On November 30, 1984, Respondent was charged, in St. Lucie County, Florida, in Case No. 84-1726 CF with the commission of six separate offenses, upon the victim, [redacted] on November 11, 1984, including kidnapping with a deadly weapon; aggravated assault; battery; attempted sexual battery; attempted first-degree murder with a deadly weapon; and attempted armed robbery. (PA, Exhibit F, 1-3).[1] Trial was set in the Circuit Court, in and for St. Lucie County, Florida, the Honorable Judge Rupert Jasen Smith presiding, for November 19, 1985.

On November 7, 1985, Respondent filed a Motion for Jury List, and to Submit Questionnaire. (PA, Exhibit A, 1-2). On November 8, 1985, the Circuit Court held a hearing on said Motion. (PA, Exhibit B, 1-24).

In a written order issued November 8, 1985, the trial court granted Respondent's Motion, and adopted Respondent's questionnaire, as modified by the court, directing that it be sent to each jury venireperson scheduled to appear before the Court on November 18, 1985. (PA, Exhibit C, at 1, with attachments, 1-5). On November 8, 1985, Petitioner filed a motion, in the Circuit Court, to stay the order, directing issuance of the questionnaire, so as to allow the State to seek review of the trial court's ruling. (PA, Exhibit D). Said Motion was granted by the trial court, initially effective until November 13, 1985 at 4:30 PM (Exhibit E), and then orally amended, upon further motion, to be effective until November 14, 1985, at 1 PM.

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[1] In the interest of clarity and convenience, Record references will be made herein, to correspond to the way pleading and documents were designated before the Fourth District, whenever possible.

On November 13, 1986, Petitioner filed a petition for common-law certiorari (Exhibit G), with the Fourth District Court of Appeal, seeking such writ to quash the ruling of the Circuit Court, St. Lucie County, invoking the venire questionnaire, and a remand with instructions not to permit or authorize such questionnaire, and to "proceed to the standard, in-court voir dire selection process, at time of trial." (Exhibit G, at 8). Petitioner also sought an Emergency Stay of the proceedings, pending the Fourth District's ruling on the certiorari petition (Exhibit H), which was granted on November 14, 1985. (Exhibit I).

After receiving Respondent's response to the State's petition, (Exhibit J), and Petitioner's reply (Exhibit K), the Fourth District issued its ruling, denying the State's petition. State v. Thayer, 11 FLW 1083 (Fla. 4th DCA, May 7, 1986); slip op., at 1-3. (Exhibit L). In its opinion, the majority acknowledged express conflict between its decision denying certiorari, and the decision of the First District in State v. Wilson, 483 S.2d 23 (Fla. 1st DCA 1986). Thayer, supra, slip op., at 2. Furthermore, the Fourth District's majority opinion certified the following question, as one of great public importance:

> DO THE HOLDINGS IN JONES v. STATE, 477 So.2d 566 (Fla. 1985), STATE v. G.P., 476 So.2d 1272 [sic: (Fla. 1985)] AND STATE v. C.C., 476 So.2d 144 (Fla. 1985) PRECLUDE THE STATE FROM SEEKING CERTIORARI REVIEW OF NON-APPEALABLE INTERLOCUTORY ORDERS IN A CRIMINAL CASE WHERE THE STATE HAS DEMONSTRATED A CLEAR DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW?

Judge Glickstein filed a dissenting opinion. Thayer, slip op., at 3; State v. Thayer, 11 FLW, supra, at 1083-1084 (Glickstein, J, dissenting opinion).

Petitioner filed its Notice, to invoke this Court's discretionary jurisdiction, on May 22, 1986. (Exhibit M).

STATEMENT OF FACTS

This appeal arises from the Fourth District's denial of common-law certiorari, as sought by Petitioner, seeking to prevent the use by the Circuit Court, in and for St. Lucie County, Florida, of a pre-trial written questionnaire, to be submitted to all venirepersons scheduled to appear before the Circuit Court, the Honorable Judge Rupert Jasen Smith presiding. (Exhibit A, C, G).

In his motion to submit the questionnaire, Respondent alleged, inter alia, that a written questionnaire be sent to all prospective jurors, to be returned personally on the day of trial, or beforehand by mail, in the interest of judicial economy and fairness. (Exhibit A, at 1-2). Respondent maintained that such a process would save time during voir dire, which Respondent alleged would be "long and complex." (Exhibit A, at 1, 2). Respondent based his motion on Rule 3.281, Fla.R.Crim.P. and the Committee Note to said Rule. (Exhibit A, 1).

At the hearing on said Motion, (Exhibit B), Respondent reiterated that the jury selection process would be expedited, and that careful screening of the venire persons was required. (Exhibit B, 4). Although Respondent acknowledged that statutory authorization, for the sending out of such questionnaires, had been rejected by the Florida Supreme Court, the trial court continued to hold the discretion to permit and require such a questionnaire. (Exhibit B, 4-5).

The State, in opposing the motion, maintained that the trial court had no authority, to order such questionnaires to be sent out. (Exhibit B, 5). Petitioner argued that the statutory authorization for questionnaires had been substantively repealed (Exhibit B, 5, 8); that

such a questionnaire, even when statutorily permitted, referred to basic questions, qualifying and/or disqualifying jurors, by reference to statutory grounds, and did not include many of the questions proposed by Respondent in his motion which constituted an invasion of privacy (Exhibit B, 5, 6, 11); that such questionnaire would be improperly taken, in writing, not under oath, and would improperly precede qualification of the jurors (Exhibit B, 11, 18); and that such a process would not only be non-expeditious, but would create practical problems, and would be duplicitious of the questions to be asked during open-court voir dire. (Exhibit B, 6, 10, 11). The State of Florida additionally maintained that such a process would create improper distinctions between literate and illiterate prospective jurors, as well as between those prospective jurors at home, and away, in the week before trial, when such questionnaires would be mailed. (Exhibit B, 14). The trial court, although noting that the crucial inquiry of jurors, was their ability to follow the law, whether in agreement with it or not (Exhibit B, 12), granted the motion, and subsequently ruled on the validity of specific questions, as proposed by Respondent. (Exhibit B, 12-21). The State objected to the entire questionnaire, proposed by Respondent. (Exhibit B, 20).

In its petition for common-law certiorari, the State maintained, inter alia, that Respondent's statutory and procedural authority had been expressly repealed, and judicially declared Unconstitutional, and no longer had any remaining validity. (Exhibit G, at 2-4). The State also argued that the nature of many of the questions approved by the trial court, were well beyond the underlying purpose of voir dire questioning, to uncover grounds for peremptory challenges and statutory

disqualification. (Exhibit G, 5-6). Petitioner additionally contended that the obtaining of information from venirepersons, without a prior oath, out of court, violated the specific requirements of criminal procedural rules, and additionally deprived the State from its rights to obtain full information, including subjective evaluations of the demeanor of jurors, so as to make an intelligent and informed decision in seeking impartial jurors. (Exhibit G, at 6-7).

In seeking the remedy of common-law certiorari, Petitioner maintained that the trial court's ruling, authorizing the submission of the questionnaire, constituted a departure from the essential requirements of law. (Exhibit G, at 3; K, at 2-3). Petitioner also emphasized that the State would have no adequate legal remedy, in the event Respondent was acquitted of the criminal charges. (Exhibit G, at 3). Petitioner clearly sought the remedy of common-law certiorari on this basis, and not as a substitute for or alternative to direct appellate review, citing Article V, §4(b)(3), and Rule 9.100 et seq., Fla.R.App.P., as the basis for jurisdiction by the Fourth District. (Exhibit G, at 1, 3).

In its ruling, the Fourth District majority expressly concluded that questions contained in the questionnaire, concerning "... the jurors' politics, religion, social views, hobbies, books read, what, if any, bumper stickers they have on their cars...", went "... far beyond the questions that might ordinarily be asked during voir dire examination." Thayer, slip op., at 1. The majority expressly maintained that the trial court's granting of Respondent's motion to submit the questionnaire, was a departure from the essential requirement of law. Id. However, the majority felt bound by a strict application of this Court's

ruling in Jones v. State, 477 So.2d 566 (Fla. 1985), to deny certiorari, but did acknowledge that Chief Justice Boyd's interpretation of Jones (in his specially concurring opinion) was "instructive." Thayer, slip op., at 2.

In his dissenting opinion, Judge Glickstein concluded that certiorari should have been granted, agreeing with the interpretation of the First District which granted certiorari in State v. Wilson, 483 So.2d 23 (Fla. 1st DCA 1986). Thayer, slip op., at 3 (Glickstein, J., dissenting opinion). Judge Glickstein concluded that this Court had not intended to "foreclose common-law certiorari review to the State in cases where an interlocutory order of the trial court departs from the essential requirements of law and the State has no other avenue of review ...". Id. Judge Glickstein further noted that the only questionnaire that should be sent to venirepersons, was that authorized under Rule 1.431, Fla.R.Civ.P. Id.

POINT ON APPEAL

WHETHER STATE HAS RIGHT TO SEEK REVIEW OF NON-APPEALABLE, INTERLOCUTORY ORDER IN A CRIMINAL CASE, WHEN SUCH ORDER DEPARTS FROM ESSENTIAL REQUIREMENTS OF LAW, BY INDEPENDENT MEANS OF WRIT OF COMMON-LAW CERTIORARI; WHETHER, THUS, CERTIFIED QUESTION SHOULD BE ANSWERED IN THE NEGATIVE?

SUMMARY OF ARGUMENT

The State's right to seek the independent remedy of common-law certiorari, to redress the trial court's ruling granting Respondent's motion to submit a questionnaire to venirepersons, containing irrelevant and unwarranted questions that invaded the jurors' privacy, that is unauthorized by law, was not foreclosed by this Court's rulings, as cited in the Fourth District's certified question to this Court. A strict application of this Court's ruling in Jones v. State, 477 So.2d 566 (Fla. 1985), as followed by the Fourth District in its ruling, could serve to completely prevent the State from the remedy of common-law certiorari, whenever there was no right to direct appeal in a given case. This interpretation is unreasonable, given the nature of the writ of common-law certiorari and its requirements, as a discretionary basis for original jurisdiction, to redress rulings which depart from the essential requirements of law, and for which there exists no adequate legal remedy.

The certified question before this Court, should be answered in the negative. Affirmance of the Fourth District majority opinion, will leave a trial court's ruling uncorrected, that is acknowledged by the Fourth District to be an erroneous departure from essential legal requirements; and will result in the authorization of a juror questionnaire unauthorized by law, which invades the privacy of prospective jurors, and tangentially "chills" their First Amendment freedoms; and deprives the State of its rights to full, thorough, in-court information, so as to enable the State to effectively exercise its rights to choose impartial jurors, that will base their verdict solely on the evidence of the law.

ARGUMENT

STATE HAS RIGHT TO SEEK REVIEW ON NON-APPEALABLE, INTERLOCUTORY ORDER IN A CRIMINAL CASE, WHEN SUCH ORDER DEPARTS FROM ESSENTIAL REQUIREMENTS OF LAW, BY INDEPENDENT MEANS OF WRIT OF COMMON-LAW CERTIORARI; THUS, CERTIFIED QUESTION SHOULD BE ANSWERED IN THE NEGATIVE.

Despite the fact that the Fourth District expressly agreed with Petitioner that the nature of the trial court's order, submitting a questionnaire to prospective jurors at Respondent's request, not the established criteria for common-law certiorari relief, a majority of said appeals court denied such relief. State v. Thayer, 11 FLW 1083 (Fla. 4th DCA, May 7, 1986); slip op., at 1-2. In coming to this conclusion, the Fourth District majority based its reasoning on prior decisions of this Court, which essentially held that the State had no right to seek redress of such erroneous orders by resort to common-law certiorari, because the State had no right to a direct appeal of said orders. Thayer, slip op., supra, at 1-2. The effect of the Fourth District's ruling herein was to prevent the State from seeking a remedy that was specifically deemed appropriate under the circumstances, based on prior decisions of this Court which have been interpreted to eliminate any use by the State, alone amongst the litigants in a criminal case, of a process consistently approved and applied by this and other courts in similar circumstances, pursuant to a long and consistent line of Florida decisional law. State v. Jones, 11 FLW 215, 216 (Fla., May 15, 1986)(Boyd, C., J, Ehrlich, J, and Shaw, J, concurring in part, dissenting in part); Jones v. State, 477 So. 2d 566 (Fla. 1985)(Boyd, C., J, specially concurring opinion); State v. Wilson, 483 So.2d 23, 25 (Fla. 2nd DCA 1985), rev. granted, Florida

Supreme Court, Case No. 68,369. In view of the nature and purpose of common-law certiorari, and State's appropriate resort to such remedy herein, in a manner not at all intended as a "backdoor direct appeal," this Court should answer the certified question in the negative, and recede from those decisions noted in said question by the Fourth District.

It is axiomatic that common-law certiorari exists as a remedy, to any litigant, to seek to correct court rulings which depart from the essential requirements of law, and for which the moving party has no adequate remedy at law, including the right to a direct appeal of the ruling. Wilson, supra, at 25; Jones, supra, at 567-569 (Boyd, specially concurring opinion) and cases cited therein; State v. Busciglio, 426 So.2d 1233 (Fla. 2nd DCA 1983); Jantzen v. State, 422 So.2d 1090 (Fla. 3rd DCA 1982); State v. Steinbrecher, 409 So.2d 510 (Fla. 3rd DCA 1982); State ex rel Bludworth v. Kapner, 394 So.2d 541 (Fla. 4th DCA 1981); State v. Smith, 260 So.2d 489 (Fla. 1972); Kilgore v. Bird, 6 So.2d 541, 149 Fla. 570 (Fla. 1942). Among such decisions, as pointed out by Chief Justice Boyd in his specially concurring opinion in Jones, supra, are those cases where certiorari was denied, on the basis of the failure of the movant to establish the required criteria for common-law certiorari relief, but not the inability or lack of authority of an appellate court to issue such a writ, if warranted. Article V, §4(b)(3), Fla. Const. (1980); Jones, supra, at 507 (Boyd, C., J, specially concurring opinion), and cases cited; see also, Hydrocarbon Trading & Transport Company v. Ramco International, 11 FLW 1178 (Fla. 4th DCA, May 21, 1986); Martin-Johnson, Inc. v. Savage, 11 FLW 978 (Fla. 1st DCA, April 28, 1986). As these cases demonstrate, the remedy of common-law certiorari, and the prerequisites

for properly invoking it, have been applied in a variety of circumstances, as a basis for invoking the discretionary jurisdiction of an appeals court, as an independent means of review, existing separate and apart from review by direct appeal. State v. Jones, supra (Boyd, C., J; Shaw, J; Ehrlich, J, concurring in part and dissenting in part); Jones v. State, supra (Boyd, C., J, specially concurring opinion); Steinbrecher, supra, at 511; Smith, supra, at 491; State v. Harris, 136 So.2d 633 (Fla. 1962); Article V, §4(b)(3), supra; Rule 9.100(a), Fla.R.App.P. (1985); Rule 9.030(b)(3), Fla.R.App.P. (1985). This procedure thus evidently does not encompass an alternate means of direct appellate review for the State, or any other litigant, since availability of such an appellate remedy immediately renders such relief inappropriate, and since the mechanism and scope of common-law certiorari does not address the same magnitude or degree of error in a legal ruling, as on direct appeal. State v. Jones, at 175 (Boyd, C., J; Shaw, J; Ehrlich, J, concurring in part, dissenting in part); Jones v. State, at 569 (Boyd, C., J, concurring opinion); Jantzen, supra; Steinbrecher; State v. Horvatch, 413 So.2d 469 (Fla. 4th DCA 1982); Smith. However, despite the scope and underlying requirements for the seeking of such relief, this Court has issued opinions (upon which the Fourth District's ruling was based), which could be interpreted to equate review by common-law certiorari, with direct appellate review. Jones v. State, supra; State v. G.P., 476 So.2d 1272 (Fla. 1985); State v. C.C., 476 So.2d 144 (Fla. 1985). In examining the actual nature of such decisions, and their context, the only legitimate conclusion to be drawn is that said cases should not be interpreted to prevent the entertaining or granting of Petitioner's action before the

Fourth District.

This Court's decision in C.C., supra, involved circumstances in which the State sought appellate review of the granting of a suppression motion in a delinquency proceeding, among other orders therein. C.C., at 145. This Court concluded that since no statutory right to direct appeal of such rulings by the State, and the statutory provisions governing criminal cases were not analogous to juvenile proceedings, the State had no right to appeal interlocutory or plenary judgments or rulings. C.C., at 146. The majority relied on Article V, §4(b)(1), Fla. Const. (1980), in further concluding that, regarding appeals of interlocutory orders, such direct appellate review existed only in cases involving direct appeal as a matter of entitlement, and that the Florida Supreme Court had not created rules enabling the State to appeal any adverse ruling. Id. Clearly, the C.C. decision's impact and effect was limited solely to attempts by the State to seek review by direct appeal, which, as aforementioned, is not tantamount or analogous to review by common-law certiorari. Jones v. State, supra (Boyd, C., J, specially concurring opinion); Wilson, supra, at 25. Since there was obviously no discussion or mention of certiorari review of a non-appealable, interlocutory order, the C.C. decision does not prevent the State from seeking such review, where, as herein, there was a demonstration by Petitioner, before the Fourth District, of a ruling by a trial court which clearly met the magnitude of error required for such relief. Thayer, at 1-2.

This Court's decision in G.P., supra, encompassed a final order, dismissing a juvenile delinquency petition, from which the State sought direct appeal, and appeal by certiorari. G.P., at 1273. Without much

discussion, this Court noted that interlocutory appellate review was limited to cases encompassing a right to direct appeal, and concluded that "Chapter 39, dealing with juveniles, is a purely statutory creation which does not give the State the right of appeal. The State has no greater right by certiorari." Id. (e.a.). It is thus apparent that the Second District correctly interpreted the G.P. case, as standing for the proposition that the State could not employ certiorari review, as an alternative means of direct appellate review. Wilson, at 25; Jones v. State, (Boyd, C., J, specially concurring opinion). Given the fact that the State sought common-law certiorari herein as its independent and sole basis for review, before the Fourth District, and the fact that any other interpretation of G.P. would not be reasonable, in light of the aforementioned consistent and appropriate invoking of the remedy of common-law certiorari in Florida decisional law, supra, this Court's G.P. decision does not impede the State's seeking of certiorari review herein.[2]

In Jones, supra, as in C.C. and G.P., this Court was faced again with factual circumstances --- a State appeal of a final order, dismissing probation violation charges --- not presented by the present case. Jones, at 566; Wilson, at 25. The holding of this Court therein,

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[2] It is noteworthy to point out that in the most recent session, the Florida legislature adopted a measure that specifically provides for the State to seek direct appellate review of pre-trial orders that were the subject of C.C. and G.P., as part of the statutes governing juvenile law and procedure. Committee Substitute for Committee Substitute for Senate Bill 730, Sections 1-4 (PA, Exhibit N). Although not yet established as in effect, Section 4, supra, Exhibit N, such legislation at the very least, indicates legislative intent that the State possess the right to review of the validity of such pre-trial orders. Thayer v. State, 335 So.2d 815 (Fla. 1976).

which the Fourth District expressly relied on in denying certiorari in the present case, was that the appeals court therein "erred ... in reviewing by certiorari a case it could not review by appeal." Jones, at 566. However, as Chief Justice Boyd consistently stressed in his specially concurring opinion, such a ruling must be appropriately limited to the conclusion that common-law certiorari, while not cognizable as a substitute method of seeking direct appellate review, does exist to provide a remedy to the State, for errors far beyond mere legal error, which cannot be rectified by any adequate legal remedy. Jones v. State, supra, at 567-569 (Boyd, C., J, specially concurring opinion). Based on the nature of the remedy of common-law certiorari, and its discretionary jurisdictional basis, on factors other than those involved in direct appeal of an order or judgment as an entitlement to a litigant, it appears that Chief Justice Boyd's view in Jones, as interpreted and applied by the Second District in Wilson, appropriately and correctly interprets the State's right to certiorari review of a non-appealable interlocutory order in a criminal case. Steinbrecher, at 511. As further pointed out in Justice Boyd's opinion in Jones, and in Wilson, a strict, broad application of the majority opinion of this Court in Jones, would have necessitated a complete rejection, of the consistent recognition by this and other courts of the appropriate use and common-law requirements for certiorari. Wilson, at 25; Jones v. State, supra, at 567, 568 (Boyd, C., J, specially concurring opinion); Smith, supra; Thayer, slip op., at 3 (Glickstein, J, dissenting opinion). An interpretation of Jones, in its strictest sense, thereby reaching a conclusion that "... when there is no entitlement to an appeal, certiorari is ipso facto not available as a

remedy ...", Jones v. State, at 567 (Boyd C., J, specially concurring opinion), effectively elimininates common-law certiorari as an available remedy to the State, to correct precisely the kind of error committed by the trial court in this case, as recognized by the Fourth District, Thayer, slip op., at 1, that certiorari was specifically designed to correct.

This Court's ruling in Jones, as in G.P., additionally relied upon an interpretation of Article V, §4(b)(1), supra, as allowing interlocutory appeals solely in cases where direct appeal as of right exists. Jones, at 566; G.P., at 1273. This conclusion is supported by the express language of this state Constitutional provision, dealing exclusively with direct appellate jurisdiction. Article V, §4(b)(1). Said provision is also necessarily so limited in scope, because of the nature of the common-law certiorari requirements, most significantly the absence of a legal remedy such as direct appeal. Thus, to interpret Article V, §4(b)(1), as having any effect on the propriety or scope of common-law certiorari, as an independent means of review and not an unauthorized means of direct appellate review, is belied by the consistently recognized role and scope of the remedy of certiorari. Article V, §4(b)(3), supra; Steinbrecher, supra, at 511.

Petitioner is not unmindful of the fact that a strict reading of this Court's post-Jones v. State decisions on the issue of the State's right to seek certiorari review, in State v. Jones, supra, and R.L.B. v. State, 11 FLW 174 (Fla., May 17, 1986), could be interpreted as confirming a strict application of the Jones v. State holding. However, it is initially significant to point out that both of these recent

decisions did not directly confront or address an attempt by the State to seek certiorari review of a non-appealable, interlocutory order.[3] This distinguishing feature between the present case, and each of the aforementioned cases except Wilson, is particularly apt, given the nature of common-law certiorari. It is not only the absence of a right to appeal that fulfilled the requirement in Thayer, but the interlocutory nature of the trial court's order which, unlike final orders, reinforces the absence of an adequate legal remedy, in view of the possibility that a final order of acquittal would completely deprive the State of any review. Horvatch, supra.

Furthermore, both the later Jones opinion and R.L.B. decision, were essentially summarily based, on the issue of the State's right to certiorari review, on this Court's prior decisions in Jones, G.P. and C.C. If read as a continuation of the strict holding of these prior cases, the Jones and R.L.B. decisions must also be viewed as an unreasonable interpretation of the scope and role of common-law certiorari, as completely contrasted from that of direct appellate review. To the extent that these decisions could be so interpreted, Petitioner respectfully requests that this Court recede from this view, based not only on the arguments contained and encompassed by Wilson and Chief Justice Boyd's Jones opinion, but on the additional analysis in State v. Jones, supra, at 216 (Boyd, C., J; Ehrlich, J; Shaw, J, concurring in part and dissenting in part), and R.L.B., supra, at 174-175 (Boyd, C., J, concurring in part

[3] Both decisions involved an attempt at direct appeal, of a final order. Jones (discharge by trial court of affidavit of violation of probation); R.L.B., supra (dismissal of a juvenile delinquency proceeding).

and dissenting in part).

In its decision in State v. Palmore, 11 FLW 194, 195 (Fla., May 1, 1986), this Court appears to have confirmed the interpretation of its decisions on this issue, that appear in Wilson, Chief Justice Boyd's concurrence in Jones, and Judge Glickstein's dissent in Thayer. In its discussion, expressing disagreement with the Third District's view of the nature of orders which the State has a direct statutory appeal from, in State v. Palmore, 469 So.2d 136 (Fla. 3rd DCA 1984), and State v. Steinbrecher, supra, this Court nevertheless did not expressly disapprove, criticize or reject the analysis in those two cases, on the issue of common-law certiorari. Palmore, at 195. In fact, this Court's interpretation of Palmore, as decided by the Third District, implicitly recognized said decision, in light of Steinbrecher, as one involving appropriate considerations of certiorari, resulting in the inability of the movant in Palmore to establish the common-law requirements. Id.; Palmore, at 137; Steinbrecher, at 511. Thus, this Court's decisions in Jones, G.P., Jones, and R.L.B. not to recede from decisions involving the interpretation and application of the common-law certiorari requirements, e.g., Smith, supra, when coupled with the decision in Palmore not to recede from such a case directly before this Court (the Third District's Palmore decision), suggests that the Wilson decision and the Jones concurring opinion are dispositive.

It is clear that both the immediate and long-term effects, of a decision to uphold the Fourth District's "strict application" of Jones v. State, to deny certiorari to Petitioner in this case, would be severely detrimental to the State, to citizens who serve as jurors in criminal

cases, and to the criminal justice system itself. Initially, it cannot be overemphasized that approval of the Fourth District's result in Thayer, will leave untouched and uncorrected, an error in a trial court ruling of a magnitude far greater than that of simple legal error. Horvatch; Jones v. State, at 569 (Boyd, C., J, specially concurring opinion); R.L.B., supra, at 175 (Boyd, C., J, concurring in part and dissenting in part); Jantzen, supra. Furthermore, such a result would absolutely foreclose the State from seeking the remedy specifically designed to address such departures from essential legal requirements.

The practical effect of the Fourth District's opinion, is to permit the submission to prospective St. Lucie County jurors, of a questionnaire containing questions that "go far beyond the question that might ordinarily be asked during voir dire examination." Thayer, slip op., at 1. The trial court's ruling, if left uncorrected, would permit inquiries about, inter alia, a juror's membership in civic, social, ideological and political organizations; the books a juror reads; the nature of bumper stickers on a juror's car; hobbies; the educational background of a juror and his family; and the specific nature of any personal life "pressures" that might hurry a juror's decision. (PA, Exhibit C). Such information is both irrelevant and totally unrelated to ordinary and traditional voir dire questions, and statutory qualifications or disqualifications. Smith v. Portante, 212 So.2d 298 (Fla. 1968); Author's Comment, Rule 3.281, Fla.R.Crim.P.; also, see Rule 1.431, Fla.R.Civ.P. (1971); Form 1.984, Fla.R.Civ.P. (1984).[4] Further-

[4] This Court, in its adoption for a form for a questionnaire in civil cases, has limited the scope of such questions to general background information, such as name, address, employment, and prior involvement as a juror or litigant. Rule 1.431, Fla.R.Civ.P., supra; Form 1.984, Fla.R.Civ.P., supra.

more, questions to jurors on such topics will inevitably reduce the willingness of citizens to serve as jurors, if such service subjects them to inquiries about their political, social and ideological views, that invade privacy and tangentially threaten First Amendment freedoms. The citizens of Florida should not be compelled to reveal such views and personal information, when, as the Fourth District noted, such information has absolutely no bearing on their ability to serve, and impartially determine guilt or innocence, based on the evidence and the law. Leon v. State, 396 So.2d 202 (Fla. 3rd DCA 1981); Singer v. State, 109 So.2d 7 (Fla. 1959).

Affirmance of the Fourth District's ruling, would also serve to prevent the State from making fully informed objective and subjective judgments and decisions, and observing the tenor and demeanor of jurors in answering in-court voir dire questions, under oath, in seeking an impartial jury. Rule 3.300(a), Fla.R.Crim.P.; Mitchell v. State, 458 So. 2d 819, 821 (Fla. 4th DCA 1982); Moody v. State, 418 So.2d 989, 993 (Fla. 1982), cert. denied, 459 U.S. 1214 (1982). Furthermore, the unwarranted invasion of jurors' privacy, by irrelevant and personal questioning, creates the risk of introducing completely irrelevant and unwarranted considerations into the jury deliberation process.

Additionally, it is not at all speculative to suggest that to permit the overbroad and invasive questionnaire in this case, will invite more frequent use of similar-type questions in subsequent criminal cases. The cost, expense and manpower to the State will thus be significantly increased, in order to provide for the production, distribution and collection (pre-trial) of such questionnaires, and answers to them.

In view of the fact that, as argued, a substantial number of these questions go beyond the scope of appropriate inquiry, and that the one-time statutory basis for such questionnaires was invalidated by this Court in Smith, supra,[5] a broad application of this Court's Jones decision to deny certiorari in this case could produce substantially unjustified additional expense to the criminal justice system.

On the face of the decisions in Jones, G.P. and C.C. and other relevant decisions, it appears that this Court is seeking to prevent the abuse of certiorari, to gain indirectly what the State cannot directly obtain. Thayer, supra, slip op., at 3 (Glickstein, J, dissenting opinion); G.P., supra. This apprehension is unfounded, particularly in considering the nature of certiorari. It is quite improbable that the State would resort to wholesale attempts to obtain de facto direct appellate review, by certiorari, because this remedy provides for a means of review, where no legal remedy exists. Since the basic requirement of the writ would be unfulfilled, in the event there exists an adequate remedy at law, and since the issuance of the writ is discretionary, there is no realistic chance that the State could improperly seek or obtain a writ. Moreover, the application of the writ of certiorari by Florida courts, has not been shown to be historically abused. Wilson; Jones v. State (Boyd, C., J, specially concurring opinion). More significantly, the potential, if any, for abuse of the writ, pales by comparison to the result that such an approach would permit --- namely, that a legal ruling which has been judi-

[5] §40.101, Fla. Stat. (1967); see Laws of Florida, Chapter 79-235, §1-22; Laws of Florida, Chapter 81-170, §1.

cially recognized as a departure from the essential requirements of law, will be judicially sanctioned, and result in encouraging voir dire questionnaires which are unauthorized in form or substance by this Court, in the appropriate rules of procedure.

Petitioner finally urges that the factual and legal circumstances presented in this case, are akin to those in Smith, supra, and the same conclusion should be reached here. As herein, this Court was faced with a non-appealable, interlocutory order, requiring that the State's identification witnesses submit to a court-ordered vision test. Smith, at 490. Notwithstanding the absence of any right of the State to direct appellate review of this ruling, this Court determined that such a visual examination, as unauthorized by any criminal procedural rule or discovery obligation, fulfilled the departure from "essential requirements of law" criteria, and reversed the First District's denial of certiorari relief. Smith, at 491. The circumstances before this Court, already acknowledged by the Fourth District as a departure from essential legal requirements, present an even more compelling basis for this Court, as in Smith, to quash the Fourth District's denial of certiorari, and remand with instructions to grant the writ.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities cited therein, Petitioner respectfully requests that this Honorable Court quash the opinion of the Fourth District, and remand with instructions to grant Petitioner's petition for common-law certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on the Merits has been mailed to JAY KIRSCHNER, ESQUIRE, Assistant Public Defender, 19th Judicial Circuit, 111 Atlantic Avenue, Fort Pierce, Florida 33450, on this 24th day of June, 1986.

Richard G. Bartmon

Of Counsel