No Reg Case

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)

Petitioner,)

vs.) CASE NO. 69,097

GEORGE PETTIS,)

Respondent.)

_____)

RESPONDENT'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the prosecution and Respondent, George Pettis, was the defendant, in the Circuit Court of the Fifteenth Judicial Circuit, In and For Palm Beach County, Florida. Petitioner and Respondent appeared in those roles in Petitioner's proceeding for common law certiorari in the Fourth District Court of Appeal.

In this brief, the parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case. Respondent accepts the first paragraph of Petitioner's statement of the facts and the paragraph which begins on page 5 of Petitioner's initial brief on the merits. Respondent objects to and moves to strike the remainder of Petitioner's statement of the facts, which is argumentative and irrelevant.

SUMMARY OF THE ARGUMENT

There is no basis to recede form this Court's recent, binding decisions holding that the State may not circumvent the prohibition against interlocutory appeals except in certain limited, carefully defined situations, by employing the common law writ of certiorari to obtain review.

ARGUMENT

POINT I

A DISTRICT COURT OF APPEAL HAS NO JURISDICTION TO REVIEW, BY COMMON LAW CERTIORARI, INTERLOCUTORY ORDERS OF THE TRIAL COURT AT THE STATE"S BEHEST WHERE THE STATE HAS NO RIGHT TO APPEAL.

As the Petitioner concedes, this Court has already unambiguously held that where the State has no right to appeal, it may not circumvent that prohibition by resort to common law certiorari. State v. C.C., 476 So. 2d 144 (Fla. 1985); State v. G.P., 476 So. 2d 1272 (Fla. 1985). Moreover, that ruling has been repeated and applied in situations exactly like that in the present case, where the State seeks interlocutory review of a trial court's pretrial evidentiary ruling. Jones v. State, 477 So. 2d 566 (Fla. 1985). This holding has been re-affirmed as recently as McIntosh v. State, 496 So. 2d 120 (Fla. 1986).

Historically, these decisions are in complete accord with the common law, which traditionally provided that in a criminal case a writ of error would lie with the defendant, but not with the sovereign. It is now generally held that unless expressly provided for by statute, "in criminal cases the state is not entitled to appeal adverse judgments and orders." State v. Creighton, 469 So. 2d 739, 740 (Fla. 1985); see also, United States v. Sanges, 144 U.S. 310 (1892). In the context of interlocutory appeals of pretrial orders, the exceptions to the general proscription against state appeals are carefully crafted and limited.

Seen in this light, Vasquez v. State, 11 F.L.W. 548 (Fla. October 30, 1986) is completely consistent with Jones and McIntosh. In Vasquez, this Court found that a defendant who had been adjudged incompetent to stand trial could obtain review by common law certiorari of a trial court's order denying dismissal of the criminal charge after five years had passed. R.Cr.P. 3.213(b). This Court based its holding in part on a recognition that the United States Supreme Court has established certain consitutional and due process rights of an incompetent defendant. Jackson v. Indiana, 406 U.S. 715 (1972). Thus, "review by common law certiorari is necessary to insure the trial court's proper application of those constitutional mandates to an incompetent accused." Vasquez, 11 F.L.W. at 549. Otherwise, a defendant who remained in custody because of pending criminal charges which might never be tried because of his continuing incompetency could never obtain review. Such an inequitable result this Court was unwilling to countenance.

Quite diferent is the situation here. In the instant case, the State tried, via its motion in limine, to obtain a pretrial ruling from the trial court excluding certain evidence from being used in cross examination of a State witness. The trial court declined to do so. This is not a case where evidence essential to the State's case has been suppressed. Rather, it is one where evidence which casts doubt on the credibility of a key State witness has not yet been excluded. The jury is not thereby bound to disbelieve the witness, still less to acquit the defendant regardless of any additional evidence the State may

present. To the contrary, faced with such impeachment of a police officer, the jury will be performing precisely the function assigned to it in our scheme of criminal justice: assessing the credibility of the witnesses, determining whether the officer should be believed, as to his testimony regarding Respondent's involvement, or not. In short, even assuming that the trial court adheres to his preliminary ruling and again overrules the State's objection to the evidence when it is offered at trial, the result to the State's case is simply not so dire that it amounts to a "miscarriage of justice" such as is required to support the issuance of the writ of common law certiorari.

This case thus demonstrates the very real consequences of following Petitioner's suggestion to recede from this Court's carefully considered prior decisions construing Article V, Section 4(b)(1) of the Florida Constitution. To do so would be to invite a plethora of interlocutory appeals allowable only to the prosecution (because a defendant must wait until after trial and conviction) and based on nothing more than a prosecutor's disagreement with a trial judge's evidentiary ruling. Not present in any of these appeals would be the kind of fundamental liberty interest or constitutional deprivation which the Court recognized required extraordinary relief in Vasquez. We must also consider the ripple effect of such an expansion of the district courts' jurisdiction: 1) the State's

petition for writ of certiorari is accompanied by the ever-present motion for stay of proceedings; 2) the stay is nearly always granted; 3) the end result is that the overburdened criminal justice system and appellate courts become hopelessly enmeshed in an ever-expanding web of interlocutory appeals taken by the State via the medium of the petition for common law certiorari.

In making its request for such an alternative, the State manifests an unbecoming lack of faith in the integrity of the trial courts of this State. Unlike the prosecution, a trial judge is not an advocate in a case, and it is to be expected that he will rule fairly - if not always correctly - after consideration of the arguments of each party. To suggest, as Petitioner appears to at page 21 of its initial brief on the merits, that the unavailability of interlocutory review by the State will somehow encourage the trial judges to make intentionally erroneous legal rulings because they are insulated from review borders on the laughable.

Based on this Court's recent, prior, binding decisions on this precise legal question, then, the district court of appeal properly determined that it had no jurisdiction to review the trial court's pretrial order in the present case, and the decision below must be AFFIRMED.

CONCLUSION

Based on the foregoing argument and the authorities cited, Respondent respectfully requests that the order of the Fourth District Court of Appeal finding that it did not have jurisdiction over this cause be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to RICHARD BARTMON, Assistant Attorney General, 111 Georgia Avenue, Room 204, West Palm Beach, Florida, this 13th day of JANUARY, 1987.

Of Counsel