

IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,731

FILED

SID J. WHITE

MAR 22 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

MARSHA L. LYONS and the CIRCUIT COURT
FOR THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA,
CRIMINAL DIVISION (03),

Petitioners,

vs.

METROPOLITAN DADE COUNTY,

Respondent.

On Petition for Discretionary Review

BRIEF OF PETITIONERS ON JURISDICTION

MARSHA L. LYONS, ESQ.
Florida Bar No. 128281
Lyons and Farrar, P.A.
201 Alhambra Circle
Suite 1200
Coral Gables, Florida 33134
Telephone: (305) 444-1599

TABLE OF CITATIONS

	<u>Page</u>
<u>Cases</u>	
<u>Broward County v. Wright,</u> 420 So.2d 401 (4th D.C.A. 1982)	9
<u>Martin County v. Makemson,</u> No. 83-1138 (Fla. 4th D.C.A. Mar. 6, 1985) (10 F.L.W. 569)	1
<u>Metropolitan Dade County v. Bridges,</u> 402 So.2d 411, 412 (Fla. 1981)	6, 9, 10
<u>Okeechobee County v. Jennings, et al.,</u> No. 83-1179 (Fla. 4th D.C.A. Mar. 6, 1985) (10 F.L.W. 572)	1
<u>Rose v. Palm Beach County,</u> 361 So.2d 135 (1978)	8, 9
 <u>Statutes</u>	
Fla. Stat. § 925.036 (1983)	1, 6

TABLE OF CONTENTS

	<u>Page</u>
Table of Citations	i
Table of Contents	ii
Preliminary Statement	1
Jurisdictional Issue	
WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THIS COURT AND OTHER DISTRICT COURTS OF APPEAL BY HOLDING THAT FLORIDA STATUTE § 925.036 IS MANDATORY, AND THAT THE COURT HAS NO INHERENT AUTHORITY TO AWARD FEES IN EXCESS OF THE THE STATUTORY AMOUNT PROVIDED, EVEN UNDER DEMONSTRABLY EXTREME CIRCUMSTANCES	
	1
Statement of the Facts and Case	2
Argument	6
Conclusion	10
Certificate of Service	11

PRELIMINARY STATEMENT

Marsha L. Lyons and the Circuit Court for the Eleventh Judicial Circuit in and for Dade County, Florida, Criminal Division (03), petitions for discretionary review of the February 13, 1985, decision denying rehearing on Respondents' Motion for Rehearing on the decision of the District Court of Appeal of Florida, Third District, which granted Metropolitan Dade County's Petition for Writ of Certiorari and quashed a trial court order awarding attorney's fees to Marsha L. Lyons in the sum of \$25,000.00.

Marsha L. Lyons was the court-appointed attorney for indigent criminal defendant Robert Patton in the trial court. The parties will be referred to by name or as they appear in this Court. References to the Appendix to this brief will be designated by the letters "App."

JURISDICTIONAL ISSUE

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER DISTRICT COURTS OF APPEAL BY HOLDING THAT FLORIDA STATUTE § 925.036 IS MANDATORY, AND THAT THE COURT HAS NO INHERENT AUTHORITY TO AWARD FEES IN EXCESS OF THE STATUTORY AMOUNT PROVIDED, EVEN UNDER ¹ DEMONSTRABLY EXTREME CIRCUMSTANCES.

¹/ Recently in Martin County v. Makemson, No. 83-1138 (Fla. 4th D.C.A. Mar. 6, 1985) (10 F.L.W. 569), and Okeechobee County v. Jennings, et al., No. 83-1179 (Fla. 4th D.C.A. Mar. 6, 1985) (10 F.L.W. 572), the Fourth District Court of Appeal certified questions relating to this statute and these issues as being of great public importance.

STATEMENT OF THE FACTS AND CASE

In September of 1981 Marsha L. Lyons was appointed by Circuit Court Judge Thomas E. Scott as a Special Assistant Public Defender to represent Robert Patton in three cases, following a certification of conflict of interest filed by the public defender in each. Patton was indicted for three separate offenses in Case No. 81-19702, including murder in the first degree in connection with the shooting death of police officer Nathaniel Broome on September 2, 1981; grand theft of an automobile, which took place two days prior to the day of the shooting; and an armed robbery which took place at another location shortly after the shooting. At the time of these alleged offenses, Patton was a convicted felon and on probation; as a result, he was also charged with unlawful possession of a firearm in Case No. 81-22454 and an Affidavit for Probation Violation was filed in Case No. 81-05341. (App. 3, 4, 5, 6). After these appointments, Ms. Lyons became convinced that a single attorney could not effectively represent the defendant in these cases, both at the guilt and penalty phases. The State had made it clear that they were seeking the death penalty and would not discuss any other alternative. (App. 11B). As a result, counsel filed a motion asking the court to appoint a separate law firm to handle the penalty phase of the murder trial.

Judge Scott denied that motion, but during the hearing ordered Ms. Lyons to utilize whatever time it took and not to be "bound or have any consideration . . . as to the monetary limitations provided by law". (App. 11B). The trial judge stated that he could waive the fee limitation if it prohibited effective representation of counsel and that he was doing so in this case. Judge Scott also said that he would contact the County Attorney's Office to "have him absolutely waive the fee in this case". (App. 11B). Counsel complied with the court's order and continued to represent the defendant Patton in all three cases. Active representation continued for a period of approximately seven months. (App. 11A).

On June 15, 1984, Judge Thomas Scott entered an Order awarding the Respondent Lyons \$25,000.00 in attorney's fees in connection with the three matters. (App. 3). In that Order the court found that the amount of time expended by counsel was "both reasonable and necessary to provide the Defendant effective representation" and that:

"The maximum amount designated for representation in a capital case under Fla. Stat. 923.036, as applied to this case, is so unreasonably insufficient as to make it impossible for this Court to have appointed any competent counsel to represent the Defendant Robert Patton, even recognizing the willingness of attorneys to generously provide their

time and services to indigent defendants, without the expectation of any or minimal compensation."²

Judge Scott's Order specifically detailed various facts that he considered particularly important in finding that the statutory limitations had to be waived in this instance, including the highly-publicized nature of the case, involving the shooting of a black police officer by a white defendant, the extent of the State's investigation, the number of witnesses (over 100) and number of actual separate offenses, and the State's commitment of multiple trial and appellate counsel as well as investigators, to the case throughout the proceedings. (App. 3). The court also pointed out the amount of time that Ms. Lyons and her office had to devote to these matters.

"7. From approximate mid-January to the end of trial, defense counsel had to utilize an average of nearly twelve hours a day every day of the month of attorney time available in her office in connection with these matters.

"8. To have stayed within the statutory fees provided in all three cases, counsel would have had to have reduced the number of hours spent (even at the \$40.00 an hour rate) by over two-thirds. No attorney could have provided even minimally effective representation of the Defendant in this case within such confines." (App.3).

^{2/} Although the court found that the Motion for Attorney's Fees requesting \$30,313.00 was reasonable and necessary and that the time in fact was expended, nonetheless, the court recognizing that the fees must be paid from public funds awarded a lesser amount.

The trial in connection with the charges against the defendant lasted six days. There were approximately 18 other court appearances in regard to motions and evidentiary hearings. (App. 7, 8, 9, 10, 11). Defense counsel had in excess of 730 hours of time, which included over 110 hours spent in court alone. If counsel had stayed within the time limitations necessarily imposed by the statute, the amount of preparation would have had to have dropped to approximately 100 hours spent out of court, since in excess of 110 hours was expended in connection with the trial and various other court proceedings. (App. 11).

The court also specifically adopted the factual information contained in the Affidavits in Support of the Motion for Attorney's Fees and Costs filed by Ms. Lyons, as well as the supporting exhibits, and Affidavits of Talbot D'Alemberte, Robert Josefsberg and Michael Von Zamft. (App. 3). Those affidavits recite additional information about the scope of the evidence against Patton and the extent of the preparation which had to be undertaken by counsel. (App. 8, 9, 10).

The trial court in reviewing the Patton prosecution stated:

"In all of the death cases which this Court has presided over and is aware of, this is the most extreme case the Court has ever observed in terms of the thoroughness of the State's investigation, the number of State witnesses and

exhibits, the lack of options available to the defense, and the extreme consequences faced by the defendant." (App. 3).

Metropolitan Dade County petitioned the District Court of Appeal for the Third District for a writ of common law certiorari to review the Order of Circuit Court Judge Thomas E. Scott ordering that the County pay a total of \$25,000.00 in attorney's fees to court-appointed counsel Marsha L. Lyons. (App. 2).

On December 18, 1984, the Third District Court of Appeal granted Metropolitan Dade County's Petition for Writ of Certiorari quashing Judge Scott's Order. (App. 2).

The Petition for Rehearing filed thereafter was denied on February 13, 1985. (App. 1).

ARGUMENT

The Third District Court of Appeal granted Metropolitan Dade County's Petition for Certiorari and quashed the trial court Order Awarding Attorney's Fees on the basis that Fla. Stat. § 925.035 provided the only basis for awarding attorney's fees to counsel appointed to represent indigent defendants. In Metropolitan Dade County v. Bridges, 402 So.2d 411, 412 (Fla. 1981), this Court upheld the constitutionality of § 925.036 as then worded.

In the plurality opinion only three justices concurred that the statute was

". . . mandatory and not directory and that therefore, the trial court may not award in excess of the statutory limits. . . ."

Two justices dissented in part as to

"that portion of the decision that holds that a trial court has no power to award fees in excess of the statutory maximum in extraordinary circumstances." (At p. 416).

An additional concurring opinion, concurred in by another justice, stated that the statute was "facially constitutional insofar as the assaults made upon it" in that case. This concurrence went on to state:

"Hence, should it be demonstrated that the monetary limitation placed by the legislature on the compensation paid to court-appointed attorneys representing indigent criminal defendants be so unreasonable as to make it impossible to secure effective counsel to those individuals, then there is no doubt in my mind that it would be the duty of the courts to strike down such limitations in favor of reasonable compensation. In assessing the reasonableness of the compensation for representation of indigents, naturally the lawyer's professional obligation to aid the poor would have to be taken into account. The test would not be lavish compensation or that which would be expected from a pecunious client, rather it would be that amount which is fair in light of the lawyer's professional obligation to the poor and not confiscatory of his time and talents." (At p. 415).

These justices concluded, however, that the duty to strike down such limitations would only occur upon a showing made by "lawyers or types of cases as a class".

In Rose v. Palm Beach County, 361 So.2d 135 (1978), the court dealt with the "mandatory" language of a witness compensation statute,³ by holding that a "statute which attempts to restrict the inherent powers will be broadly interpreted as laying down reasonable guidelines. . . ." The opinion reasoned that the courts have

"inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, subject to valid existing laws and constitutional provisions." (At p. 137).

In that case this Court held that the trial court did have the inherent power to order prepayment of travel and lodging expenses to indigent witnesses in excess of the statutory maximum in order to insure a fair trial to a criminal defendant. The county commission had argued that under common law there was no right in an accused to compulsory process against witnesses and that the development of that right did not give rise to any right in the witness to be compensated. This argument was similar to the County's position in this case concerning the development of provision for compensation of attorneys for representation of indigent defendants, i.e., since the right of

^{3/} "90.14. Witness; Pay. - Witness in all cases, civil and criminal, in all courts, now or hereafter created, and witnesses summoned . . . shall receive for each day's actual attendance five dollars and also six cents per mile for actual distance traveled to and from courts."

court-appointed counsel to receive compensation did not exist at common law, the legislature has the right to set any limitations which it chooses. However, the Supreme Court in Rose v. Palm Beach County, 361 So. 135, 139 (Fla. 1978), recognized that the legislature in passing such a provision has "expressed the public will with regard to trials held under normal circumstances". However, it also explained that if this statute was

"deemed to establish an absolute maximum in all situations, then it must be said to improperly infringe the prerogative of the court in effectuating the right to compulsory process. If, on the other hand, the statute is deemed merely declaratory as a guideline pertaining to a matter within the competence of the court to determine, then it need not be declared an infringement." (At p. 139).

In Broward County v. Wright, 420 So.2d 401 (4th D.C.A. 1982), the Fourth District also stated that there were circumstances under which attorney fees awards in excess of statutory limits could be made. In that case the appellate court quashed a trial court order awarding \$10,000.00 in attorney's fees in connection with a first-degree murder case citing Bridges, supra. The court noted that:

"The trial court here made no findings that its award in excess of the statutory maximum was mandated by demonstrably extreme circumstances and the respondent advanced no such contention in his petition for compensation." (At p. 402).

The Fourth District referring to the Bridges decision recognized, that in that decision:

"Several members of the court also expressed the view that under certain circumstances the statutory limit should not apply. The court thus hinted at the possibility that in the demonstrably extreme case an award of attorney's fees in excess of the statutory maximum might be mandated. Such has been held to be the case with statutorily authorized witness fees, citing Rose v. Palm Beach County, 361 So.2d 135 (Fla. 1978)." (At p. 402).

By granting the County's Petition for Writ of Certiorari and quashing the trial court's Order Awarding Attorney's Fees the decision of the Third District Court of Appeal below conflicts with the cited decisions of this Court and other District Courts of Appeal.

CONCLUSION

For the reasons stated and upon the decisions cited herein, this Court has decisional conflict jurisdiction to review the February 13, 1985, decision of the Third District Court of Appeal. Additionally, questions raised by this petition have been certified as being issues of great public importance. The Petitioners, Marsha L. Lyons and the Circuit Court for the Eleventh Judicial Circuit in and for Dade County, Florida, Criminal Division (03), respectfully request that this Court exercise discretion and accept jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,

LYONS AND FARRAR, P.A.
201 Alhambra Circle
Suite 1200
Coral Gables, Florida 33134
Telephone: (305) 444-1599

By: Marsha L. Lyons
MARSHA L. LYONS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been mailed to: ERIC K. GRESSMAN, Assistant County Attorney, 1611 N.W. 12th Avenue, Executive Suite C, Room 108, W.W., Miami, Florida 33136, this 20th day of March, 1985.

By: Marsha L. Lyons
MARSHA L. LYONS