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IN THE SUPREME COURT OF THE STATE OF FLORIDA

AUG 5 1997

WARREN BURK, etc.,

CLERK, SUPREME COURT

Chief Deputy Clerk

Petitioner,

v.

CASE NO.: 89,829

DISTRICT COURT OF APPEAL,  
FIFTH DISTRICT - NO. 96-1404

SHALONDA WASHINGTON,

Respondent.

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ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF

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MISCELLANEOUS:

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SUMMARY OF ARGUMENT

The Petitioner submits that the inherent power of contempt is different than a criminal offense charged by the State through an information or indictment; and unlike those cases where the State initiates the charges, a case initiated by an order to show cause by the court should not be limited by Florida's speedy trial rule.

ARGUMENT

POINT OF LAW

FLORIDA'S PROCEDURAL RULE OF SPEEDY  
TRIAL SHOULD NOT BE APPLIED TO  
CONTEMPT PROCEEDINGS.

In its initial brief the Petitioner pointed out that Florida Rule of Criminal Procedure 3.191<sup>1</sup> specifically provides that it applies "to every person charged with a crime by indictment or information-n The Respondent argues in its brief that how a proceeding is initiated has no effect on whether the speedy trial rule applies to contempt proceedings;<sup>1</sup> however, it is the Petitioner's position that this distinction is crucial. What is missing from the Respondent's argument is a recognition of the fact that contempt is an inherent power of the court and is, thus, different than an offense charged by the State. An indirect criminal contempt proceeding is initiated when the court issues an order to show cause. Florida Rule Criminal Procedure 3.840(d) provides that the

judge may conduct a hearing without  
assistance of counsel or may be assisted by

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<sup>1</sup>The Respondent submits that speedy trial applies to traffic **cases** which are not initiated by information or indictment; however, Fla. R. Traf. Ct. 6.160 specifically provides for the application of Fla. R. Crim. P. 3,191.

the prosecuting attorney or by an attorney appointed for that purpose. The defendant is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and testify in his or her own defense. All issues of law and fact shall be heard and determined by the judge.

The Respondent's argument continues in its failure to recognize this distinction when it seems to accept the fact that a civil circuit court's burden under speedy trial would be problematic except for the fact that the State would handle the matter. The Respondent writes that recent amendments to the Florida statutes "have placed the duty to prosecute violations of the injunctions squarely in the hands of the state attorneys." (RB 7).<sup>2</sup> The Respondent continues by stating that the civil courts are "relieved of any affirmative duty to investigate alleged violations of their injunctive orders . . . ." (RB 7). The Respondent later in its brief adds that it is its "position that the county court has exclusive jurisdiction over prosecutions of violations of injunctions that constitute a criminal act proscribed by 741.31(4) or 784.047." (RB 14).

The position taken by the Respondent fails to recognize the fact that the legislature cannot take away the power of the courts

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<sup>2</sup>"RB" will be used to refer to the Respondent's brief.

to initiate contempt proceedings. *See Walker v. Bentley, 678 So. 2d 1265 (Fla. 1996)*, see also, *Lopez v. Bentley, 678 So. 2d 333 (Fla. 1996)*. The position of the Respondent that violations of injunctions are exclusively the jurisdiction of county courts in their criminal capacity is exactly the issue the *Walker* case involved. The legislature had tried to eliminate the power of the court to use indirect criminal contempt in cases involving domestic injunctions; however, this Court unanimously decided that such action was unconstitutional. While the court may appoint the state attorney's office to assist in conducting the hearing,<sup>3</sup> the issue is still the violation of the court's order.

Another problem with the arguments offered by the Respondent is that they do not address the fact that the court's contempt powers exist outside the realm of domestic injunctions. While this particular case did arise from a violation of an injunction, there are numerous other situations where a court may exercise its contempt power and in which there **may** not be a related criminal offense with speedy trial problems. While civil contempt is used to coerce compliance with a court's order, it is not used to punish

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<sup>3</sup>As quoted previously, Rule 3.840 sets out that the court can conduct the hearing without assistance or appoint counsel which may or may not be from the state attorney's office.

like criminal contempt is. This point can be seen in the **case** from the Fifth District Court of Appeal which originally held that the speedy trial rule does not apply to contempt proceedings is *Mauney v. State*, 507 So. 2d 746 (Fla. 5th DCA 1987). In that case Mauney failed to show to testify although he had been properly served with a subpoena and an order to show cause was issued by the court. The Fifth at that time found that while he had certain constitutional due process protections the speedy trial rule had no application to contempt hearings. It is the position of the Petitioner that such a ruling was correct, and the Respondent has failed to show why the rule's application should be expanded into the arena of a court exercising its inherent power of contempt.

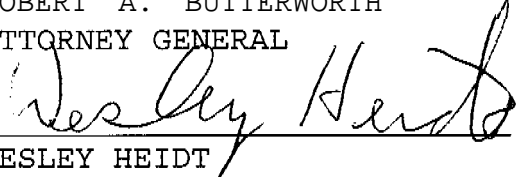


CONCLUSION

Based on the arguments and authorities presented above, the State respectfully prays this Honorable Court reverse the decision of the appellate court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copy of the above Merits Brief has been furnished by U.S. mail to BLAISE TRETTIS, executive assistant public defender, counsel for the Respondent, 2725 Judge Fran Jamieson Way, Building E, Second Floor, Viera, FL 32940, this 4<sup>th</sup> day of August 1997.

  
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