IN THE SUPREME COURT OF FLORIDA

CASE NO. 95,155

MICHAEL RIECHE,

Petitioner,

-vs-

LOIS SPEARS, Interim Director,
Dade County Department of Corrections, and
THE STATE OF FLORIDA,

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

The Petitioner, MICHAEL RIECHE, was the Defendant in the trial court and the Appellant in the Third District Court of Appeal (hereafter, “Third District”). The State of Florida was the prosecution in the trial court and the Appellee in the Third District. In this brief, the parties will be referred to as they stood in the trial court. The symbols "R.", "S.R.”, and “S.R.2.” will refer to the record on appeal, the supplemented record filed by the Defendant, and the supplemented record filed by the State, respectively. Moreover, the symbol “App.” followed by a letter will refer to the documents contained in the appendix to this brief.

CERTIFICATE OF FONT AND TYPE SIZE

This brief is formatted to print in 12 point Courier New type size and style.

STATEMENT OF THE CASE AND FACTS

On December 16, 1998, the Defendant was arrested for grand theft auto, grand theft, and resisting arrest without violence, and this matter was ultimately assigned the court case number F98-42153B. (R. 4-5, 13-18) The arrest affidavit indicated that the Defendant was a passenger in an stolen automobile which was towing a stolen trailer, and when the officer stopped the automobile, the Defendant ran. (R. 4-5)

The following day, the Defendant was released on bail in the amount of $11,000. (R. 1, 6) On January 7, 1999, the Defendant's bond was surrendered because he breached his bail bond agreement (R, 7; S.R.2. 1), but on January 16, 1999, the Defendant was released on bond again in the amount of $11,000. (R. 1, 8)

On January 19, 1999, the Defendant was arrested on new charges of tampering with a witness and battery. (R. 11-12) This matter was assigned to the domestic violence unit and was ultimately assigned the court case number F99-2174. (R. 11-12) The arrest affidavit alleged that, on December 24, 1998, when the Victim, the Defendant's girlfriend, was packing her bags to move back in with the Defendant, the Defendant became angry over a letter the Victim had allegedly written to an ex-boyfriend. (R. 11-12) The Defendant slapped the Victim about the face, grabbed her by the face, and threw her on the bed. (R. 11-12) When the Victim tried to telephone the police, the Defendant took the telephone from her,

smashed it on the floor, and left the Victim's residence.[1] (R. 11-12) The Victim suffered a minor injury to her lip and a bruise on the left side of her face. (R. 11-12) The day following his arrest for the domestic abuse crime (case F99-2174), the Defendant's bond in the 98-42153B case was surrendered. (R. 9)

On January 25, 1999, the Defendant was formally charged by Information with resisting an officer without violence, grand theft in the third degree, and trespass in a structure or conveyance in case F98-42153B. (R. 13-18) In open court that day, the State represented to the trial court that the Defendant had been arrested on new charges in the domestic abuse case number F99-2174 and requested that the trial court hold the Defendant without bond after it reviewed the arrest affidavit for those new charges. (R. 35) The matter was reset when it was realized that the arrest affidavit for case number F99-2174 was not before the trial court. (R. 35-36)

On February 9, 1999, in open court the State announced that it was going to formally charge the Defendant by Information in the F99-2174 domestic abuse case, that it was charging the Defendant with one count of battery, and that because they were not filing charges for tampering with a witness, the matter was to be

[1] In his brief, the Defendant appears to take issue with the fact that he was arrested twenty-six days after he committed the domestic abuse incident. However, a review of the arrest affidavit indicates that the Defendant left the Victim's residence after the incident. (R. 11-12)

transferred to county court.[2] (R. 21-23, 40) The Defendant requested that he be released on bond in case number F98-42153B arguing that the battery charge was being transferred to county court, and because the Defendant worked. (R. 40) The following discussions then ensued:

> [DEFENSE COUNSEL]: I am asking if you would set a bond in his case. He is telling me he works.
>
> ...
>
> I believe you gave him no bond because he got re-arrested on a felony charge.
>
> THE COURT: That is the way it is going to remain.
>
> [DEFENSE COUNSEL]: In light of the State filing a misdemeanor, would you consider setting some kind of bond?
>
> THE COURT: No bond.
>
> [DEFENSE COUNSEL]: Does the State have his priors to see if he ever been arrested before?
>
> THE COURT: I don't know, but I would give you an opportunity to explore that.

(R. 40-41)

After a recess, the Defendant then argued:

> [DEFENSE COUNSEL]: ... This is the gentleman who picked up a new case which turned out to be a misdemeanor and you revoked his bond on F98-42153B.
>
> Judge, I would like to tell you a little bit about [the Defendant]. He lived in Dade County for the last 6 years. He has two children and a wife. His aunt who is present here in court, his mother and father. His father would be here except he had an injury. He works. He

[2] The tampering with a witness charge was not included in the Information. (R. 21-23)

supports the family and pays the rent.

He has no felony convictions that I could see. He has a prior misdemeanor for battery.[3] And I ask, judge, that you set a bond on F98-42153B because I believe there are reasonable means to protect the community for him to have a bond.

THE COURT: State, what is your position?

[THE PROSECUTOR]: Judge, in County Court. [The Defendant] was out awaiting a felony trial, we filed a misdemeanor battery. Under the case of Houser v. Manning, not only probable cause was found by the County Court but actual charges were found.

THE COURT: Motion denied.

[DEFENSE COUNSEL]: I just want to state for my record, Houser v. Manning isn't applicable in this situation. That is a factual situation where somebody had no bond, went to an Arthur hearing. They were in jail on a felony that was punishable for life. The Arthur hearing judge in its discretion gave them a bond and then he picked up a new case.

I think that is distinguishable from this case. I don't think the criteria of 907.041 have been met. I am just objecting.

(R. 41-42)

That same day, the State formally charged the Defendant by filing an Information with the clerk charging the Defendant with battery stemming from the December 24, 1998 domestic violence incident in case number F99-2174. (R. 21-23) This case was thereafter transferred to county court and assigned case number M99-7433. (R. 24)

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[3] That misdemeanor battery was also a domestic abuse matter whereby the Defendant was charged with battery and culpable negligence against a different girlfriend in case M98-56661. (S.R.2. 2, 3)

On February 17, 1999, the Defendant filed a petition for writ of habeas corpus in this Court. On March 10, 1999, this Court transferred the Defendant's petition to the Third District Court. On March 17, 1999, the Third District denied the Defendant's petition for writ of habeas corpus and certified direct conflict with *Paul v. Jenne*, 728 So.2d 1167 (Fla. 4th DCA 1999). On March 29, 1999, this Court postponed its decision on jurisdiction and ordered the parties to file briefs on the merits.

Thereafter, on April 13, 1999, the Defendant entered a guilty plea in case F98-42153B for resisting an officer without violence, grand theft in the third degree, and trespass in a structure or conveyance. (S.R. 2-3) The trial court withheld the adjudication of guilt and placed the Defendant on probation for one year. (S.R. 4-6)

On April 14, 1999, the following day, the State nolle prossed the Defendant's battery charge in case M99-7433. (S.R. 1) Also on April 14, 1999, the Defendant entered a plea of guilty in the additional outstanding domestic abuse matter assigned case number M98-56661 where the Defendant had been charged with battery and culpable negligence of a different girlfriend. (S.R.2. 2) The trial court withheld adjudication in that matter and placed the Defendant on one year probation to run concurrently with the F98-42153B case. (S.R.2. 2)

On May 14, 1999, the Defendant was arrested on new charges of

burglary of an occupied dwelling with a battery which occurred on May 8, 1999. (S.R.2. 4) Thereafter, an affidavit of violation of probation and an amended affidavit were filed in case F98-42153B alleging that the Defendant failed to remain at liberty with the law by committing the new crime and failed to file a full and truthful written report for the month of May 1999. (S.R.2. 5, 6) On May 19, 1999, the Defendant was held in case F99-42153B with no bond. (App. 7, 8) On June 14, 1999, an information was filed for the new offense charging him with burglary of an occupied dwelling. (S.R.2. 9)

The Defendant also violated his probation in the M98-5661 matter. (S.R.2. 2)

POINT INVOLVED ON APPEAL

WHETHER THE LOWER COURT ERRED WHEN IT REVOKED THE DEFENDANT'S BOND.

SUMMARY OF THE ARGUMENT

The Third District correctly interpreted the Legislature's intent when it found that trial courts have discretion to deny bail where an accused has been released but then subsequently breaches one or more conditions of his bond.

First, the passage of legislation clearly indicated the Legislature's intent to solve the problem which resulted from *Paul* and its progeny when that court declared that the trial courts authority to deny release after a violation of a bond was subject to the mandates of the pretrial detention statute. By passing the Bill, the Legislature demonstrated that *Houser* was the proper interpretation and clarified the intent of the statute was to ensure that the trial courts have the discretion to deny bail where there has been a violation of one or more conditions of bond.

The *Houser* ruling is also supported by the existence of the inherent authority which existed prior to the 1982 constitutional amendment, and the fact that the 1982 amendment and the statute enacted to implement such amendment did not explicitly take away that inherent authority.

Here, the denial bond was proper since the Defendant violated a statutory condition of his bond, and was given the proper procedural safeguards at the time his bond was revoked and at the time it was determined that it would not be reinstated.

ARGUMENT

THE LOWER COURT PROPERLY FOUND THAT THE DEFENDANT WAS NOT ENTITLED TO BE RELEASED ON BOND AFTER HE VIOLATED THE TERMS OF THAT BOND.

Following the enactment of the pretrial detention statute, the decisions of *Houser v. Manning*, 719 So.2d 307 (Fla. 3d DCA 1998), and *Paul v. Jenne*, 728 So.2d 1167, 1172 (Fla. 4th DCA 1999), and their progeny, have resulted in conflicting interpretations of legislative intent of that statute as it relates to detention where conditions of bond have been violated. The State would submit that the *Houser* opinion correctly interprets the legislative intent. First, the vetoed legislation to the pretrial detention statute passed after *Houser* and *Paul* clarified that the legislative intent of the statute was to ensure that the trial courts have the discretion to deny bail where there has been a violation of one or more conditions of bond - the same outcome as in *Houser*. Second, the *Houser* opinion properly interpreted that the legislative intent was for the courts to have the inherent authority to determine detention after bond violations and that the 1982 constitutional amendment and the pretrial detention statute were only supplements to that authority.[4]

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[4] The State would note that unless this Court finds that this issue concerns a question of great public importance or likely to recur, this relief requested by the Defendant should be deemed moot. *See Gregory v. Rice*, 24 Fla.L.Weekly S78, n. 1 (Fla. Feb. 11, 1999); *Dugger v. Grant*, 610 So.2d 428, n. 1 (Fla. 1992); *Holly v. Auld*, 450 So.2d 217, n. 1 (Fla. 1984). This is because the Defendant pled guilty and received probation, but thereafter

In *Houser*, the defendant was charged with armed robbery with a firearm. *Houser*, 719 So.2d at 307. At his *Arthur*[5] hearing, the defendant was released on bond and house arrest and a specific condition of his bond was not to "use, possess, or carry a firearm, gun, weapon, or ammunition." *Id.* While out on bond, the defendant committed the new crime[6] of carrying a concealed weapon and the victim identified that the firearm was the one used in the initial charge of armed robbery; thus, violating the statutory and specific conditions of his bond. *Id.* at 308, 311. The trial court denied the defendant's motion to reinstate bond in the first case holding that no conditions of release would assure the safety of the community. *Id.* On petition for writ of habeas corpus, the *Houser* court held that where the defendant forfeited his right to bail by breaching the bond conditions, the defendant "was still entitled to come forward with a request to be readmitted to bail in the court's discretion." *Id.* at 309. It then held that the "trial court's ruling on the defendant's request to be readmitted to bail is then reviewable for abuse of discretion." *Id.*

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violated probation when he was charged with burglary of an occupied dwelling, and as a result is incarcerated. (S.R. 2-3, S.R.2. 4, 5, 6, 7, 8) Moreover, the next legislative session, a new law concerning this issue will most likely address the issue at hand.

[5] *State v. Arthur*, 390 So.2d 717 (Fla. 1980).

[6] It is a statutory condition of pretrial release that a defendant not engage in any criminal activity. § 907.47(1)(a), Fla.Stat. (1997).

After *Houser*, *Paul v. Jenne*, 728 So.2d 1167, 1172 (Fla. 4th DCA 1999), was issued, and in that opinion the Fourth District Court of Appeals certified conflict with *Houser*. In *Paul*, the defendant's bond on pending attempted second degree murder charges was also revoked after a hearing where it was determined that the defendant was arrested for various new offenses. *Id.* at 1167. On a petition for writ of habeas corpus, the Fourth District Court of Appeal granted the petition holding that the State failed to meet its burden by showing that the defendant met one of the conditions which permitted detention as provided in § 907.041(4)(b) of the pretrial detention statute. The *Paul* court went further to find that the trial court does not have the absolute discretion to deny bond unless a defendant meets the criteria for detention without bond under the pretrial detention statute, § 907.041, Fla.Stat. *Id.* at 1171.

A. The Legislature's recently vetoed legislation clarifies that it was its intent to empower the trial courts with the authority to deny bail where there have been bond violations.

After *Paul* and *Houser,* the Legislature passed legislation which indicates that it was its intent that trial courts have the power to detain persons after violations of bond conditions. Hence, it is clear that *Houser* correctly interpreted the legislative intent.

Presently, the pretrial detention statute, section 907.041, Fla.Stat., addresses the revocation of bond in the *first instance,*

but does not deal with the courts' inherent authority to deny release after violations of bond conditions. *Houser*, 719 So.2d at 310-311. That statute "announced 'the policy of the State that persons committing serious criminal offenses, posing a threat to the safety of the community or the integrity of the judicial process, or failing to appear at trial *be detained upon arrest*.'" *Houser*, 719 So.2d at 310 (citing §907.041(1) Fla. Stat.) (emphasis in *Houser*).

Subsection (4)(b) lists those situations whereby a trial court has the authority to order pretrial detention in the *first instance*:

> The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046[7], and any other relevant facts, that:
>
> 1. The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;
>
> 2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the

[7] Those criteria include: 1) nature and circumstances of the offense; 2) weight of the evidence; 3) family ties, length of residence, employment history, financial resources, and mental condition; 4) past and present conduct; 5) nature and probability of danger to the community; 6) source of funds to post bail; 7) whether already on release in another matter; 8) street value of any controlled substance connected to the criminal charge; 9) nature and probability of intimidation and danger to victims; and 10) any other relevant factors. §903.046 (2)(a)-(j).

obstruction of the judicial process;

3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings; or

4. The defendant poses the threat of harm to the community. The court may so conclude if it finds that the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. In addition, the court must find that at least one of the following conditions is present:

a. The defendant has previously been convicted of a crime punishable by death or life imprisonment.

b. The defendant has been convicted of a dangerous crime within the 10 years immediately preceding the date of his or her arrest for the crime presently charged.

c. The defendant is on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time of the current arrest.

When the Fourth District issued *Paul* and its progeny whereby those rulings effectively eliminated trial courts' inherent authority to deny bond to those individuals who had violated conditions of their bond *after* they were initially released, the Legislature saw the need to correct the problem those cases presented and to give back to the trial courts the power it

originally intended them to have. It did so by recently passing CS/SB 748 entitled the "Trooper Robert Smith Act" (hereinafter "The Bill"), by adding a provision to §907.041(4)(b) which had the same result as *Houser*. CS/SB 748 (Fla. 1st Engrossed Legislature 1999) (a copy of which is attached hereto as App. B). Although the Governor vetoed the Bill on June 5, 1999, the legislative history makes it abundantly clear that both the Legislature and the Governor *strongly approved* of the Bill but for a last minute amendment regarding the use of public funds.[8] *See Neu v. Miami Herald Publ. Co.,* 462 So.2d 821 (Fla. 1985) (where court looked to vetoed legislation to interpret legislative intent).

The preamble of the Bill indicates that the Legislature

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[8] The Final Analysis of the House of Representatives Committee on Crime and Punishment reveals that:

> CB/SB 748 was vetoed by the Governor on June 5, 1999. The veto message strongly approved of the original bill, however, approval of the bill was withheld because of a last minute amendment which provided that public funds may not be used to subsidize release of persons charged with violent offenses. The veto message noted that the amendment would allow every defendant who posts bond to "walk the streets without supervision."
>
> ...
>
> This amendment [concerning public funds] subsequently caused the Governor to veto the bill. The amendment was ambiguous as to whether a judge would have been able to require conditions of bond such as electronic monitoring unless the defendant paid the state's costs.

Committee on Crime and Punishment, House of Representatives Final Analysis on CS/HB 389 at §§ I, VII (Passed as CS/SB 748) (a copy of which is attached hereto as App. B).

attempted to amend § 907.041 by:

> *permitting pretrial detention for any violation of conditions of pretrial release or bond which, in the discretion of the court*, supports a finding that no condition of release can reasonably protect the community from physical harm, assure the presence of the accused at trial, or assure the integrity of the judicial process.

CS/SB 748, at preamble ln 16-24 (Fla. 1st Engrossed Legislature 1999) (App. A) (emphasis added). Moreover, the Legislature's intent was also clearly delineated in the Legislative Committee's final analysis of the Bill when it provided:

> Violation of Supervision or Pretrial Release for Any Crime
>
> The bill would have authorized pretrial detention without bond for any offense if a defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court which, in the discretion of the court, support the finding that no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process.

Committee on Crime and Punishment, House of Representatives Final Analysis on CS/HB 389 (Passed as CS/SB 748) (App. B)(emphasis in the original). Hence, the additions made clear that the Legislature's intent was that the trial court have the authority to order pretrial detention where a defendant has violated a condition of bond by placing this provision within subsection (4)(b) of the pretrial detention statute.

The following language was included in the Bill to enact such authority:

> 7. The defendant has *violated one or more conditions of pretrial release or bond for the offense currently before the court* and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial.

CS/SB 748, at 5 ln 14-19 (Fla. Legislature 1999) (1st Engrossed App. A) (emphasis added).

Hence, the vetoed amendment to §907.041(4)(b) clarified that the legislative intent of the statute was to give back to the trial court the discretion to deny bail where there has been a violation of one or more conditions of bond. An established rule of statutory construction is for courts to consider subsequent legislation to determine the Legislature's original intent rather than a substantive change. *Palma Del Mar Condominium Ass'n No. 5 of St. Petersburg, Inc. v. Commercial Laundries of West Florida, Inc.,* 586 So.2d 315, 317 (Fla. 1991); *Burdick v. State*, 594 So.2d 267 (Fla. 1992); *U.S. v. Sepulveda*, 115 F.3d 882, n. 5 (11th Cir. 1997). This is especially true where there has been judicial interpretation after the original enactment of a statute. *Palma Del Mar Condominium Ass'n No. 5 of St. Petersburg,* Inc. 586 So.2d at 317; State *v. Sedia*, 614 So.2d 533, 535 (Fla. 4th DCA 1993); *Lincoln v. Florida Parole Com'n*, 643 So.2d 668, 672 (Fla. 1st DCA 1994). Here, after judicial interpretation of the pretrial detention statute concerning violation of bond conditions, the Legislature passed the Bill addressing those concerns in

conformance with *Houser*.

B. It was the legislative intent prior to the recent legislation that the trial courts have the inherent authority to detain those who have violated conditions of their bond after they had been originally released.

Moreover, not only is *Houser* in conformity with the legislative intent as shown by the passage of the Bill but is also as evident from the evolution of the law concerning bond determinations. Prior to the 1982 constitutional amendment of Article I, § 14 of the Florida Constitution, the right to bail under the constitution provided for "release on reasonable bail ... unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great." Fla. Const. Art. I, § 14 (1968). Courts interpreted this language to mean that when a person came before the court charged with something other than a life or capital offense and requested to be released for the first time, there was an absolute right to bond. *Houser*, 719 So.2d 310; *Gomez v. Hinckley* 473 So.2d 809, 810 (Fla. 4th DCA 1985); *Gardner v. Murphy*, 402 So.2d 525 (Fla. 5th DCA 1981).

During the time this version of the Constitution was in place, the courts also recognized a court's inherent power to enforce the conditions it imposed upon bond in face of an absolute right to bond in the first instance - by denying the renewal of bail where a previously released defendant violated a bond condition. *Houser*,

719 So.2d at 310; *Gardner*, 402 So.2d at 526[9]; *Gomez*, 473 So.2d at 810.

In response to the interpretation that the pre 1982 version of the Florida Constitution which prohibited the use of bond to deter future dangerousness, and the resulting problem that arose when persons who were on pretrial release posed a threat to the community, the Constitution was amended to provide:

> Unless charged with a capital offense or an offense punishable by life imprisonment and the proof is evident or the presumption is great, every person charged with a crime or violation of a municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. *If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained*.

Fla.Const. Art. I, § 14 (amended 1982) (emphasis added); Committee on Criminal Justice, Senate Staff Analysis and Economic Impact Statement on HJR 43-H (a copy of which is attached hereto as App. C); *Harp v. Hinckley*, 410 So.2d 619 (Fla. 4th DCA 1982). Hence, this amendment was intended to *increase* the courts' ability to detain defendants in the first instance. *See Houser*, 719 So.2d at 310; *State v. Ajim,* 565 So.2d 712 (Fla. 4th DCA 1990); *see also State v. Fox*, 647 So.2d 1051, 1051-1052 (Fla. 5th DCA 1994); *Driggers v. Carson*, 486 So.2d 25 (Fla. 1st DCA 1986). Moreover,

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[9] Although the facts in *Gardner* are not directly on point, the court's holding and the language it used clearly is.

the amendment was intended to *supplement* the already existing law regarding bond decisions - such as the right to order pretrial detention where there has been a violation of a bond condition - because there was no language prohibiting the continuation of this existing authority. *Id.* To read the amendment and § 907.041, Fla.Stat. enacted to implement it as reducing the courts ability to detain defendants, as the Fourth District did in *Paul*, would be directly contrary to the Legislature's intent. *Houser*, 719 So.2d at 310-311.

C. The Defendant's request, that this Court follow the mandates of *Paul*, is contrary to the rules of statutory construction and the Legislature's intent.

Although the Defendant acknowledges that the Bill contains a provision which attempted to vest the trial court with the authority to grant or deny bail after violations of bond conditions without having to meet any of the other conditions contained in §907.041(4)(b), he still asks this Court to adopt the contrary view contained in the *Paul* opinion. By doing so, the Defendant asks this Court to ignore rules of statutory construction and the intent of the Legislature.

Moreover, the *Houser* interpretation makes logical sense whereas the interpretation of the statute found in *Paul* does not. If a defendant, when he initially comes before the trial court, meets one of the conditions for pretrial detention under §907.041(4)(b), that defendant will most likely be detained; hence,

would not have the opportunity to breach a condition of bond. Therefore, the interpretation which requires that a defendant released on bond, who then breaches a condition of bond, but then can only be detained by meeting one of the conditions in subsection (4)(b), when those conditions were already analyzed prior to his initial release, would only have an absurd result. This would result in a situation whereby, in most instances, a defendant could never be detained for violating the statutory condition of pretrial release of engaging in criminal activity or any special condition of his release which is not the same as one of those conditions set forth in subsection §907.041(4)(b).

The Defendant draws a distinction between the Bill and the *Houser* opinion claiming that the *Houser* opinion fails to provide for the procedural safeguards which are contained in the pretrial detention statute. However, the *Houser* opinion does provide for procedural due process protection when it analogized this situation to that found in *State v. Arthur*, 390 So.2d 717 (Fla. 1980), and held that where a defendant breaches his bond conditions, he forfeits his right to bail but is "still entitled to *come forward with a request to be readmitted to bail* in the court's discretion." *Houser*, 719 So.2d at 309 (emphasis added). This opinion clearly provides that an accused should be afforded notice and the opportunity to be heard as required by the Rules of Criminal Procedure and is reviewable for an abuse of discretion to ensure

that procedural due process rights guaranteed by the federal and state constitutions are not violated. U.S. Const. amend. XIV, § 1; Art. I, § 9, Fla. Const.; *see Matthews v. State*, 687 So.2d 908 (Fla. 4th DCA 1997).

Florida Rule of Criminal Procedure 3.131(d) provides that a defendant is entitled to three hours of notice when his bond is to be changed or revoked. At that hearing, a defendant is entitled to challenge the alleged violation of his bond conditions. The State is entitled to show probable cause through the use of affidavits. *See Gerstein v. Pugh*, 95 S.Ct. 854, 420 U.S. 103, 43 L.Ed.2d 54 (1975); *U.S. v. Cook*, No. 89-4107 (5th Cir. May 31, 1989) (published as an appendix to *U.S. v. Aron*, 904 F.2d 221 (5th Cir 1990)). If the State shows that the defendant has violated a condition of his bond, the defendant is entitled to apply to be readmitted to bond pursuant to Fla.R.Crim.P. 3.131(h). At that hearing, the trial court should determine whether the defendant could be readmitted to bond and on what conditions pursuant to Fla.R.Crim.P. 3.131(b).

Because the procedural safeguards delineated in §907.041(4)(c-I) deal with the determination of release in the *first instance*, those procedures are not applicable when there has been a violation of a bond after release.[10]

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[10] Subsections (4)(c) through (4)(i) provide for the procedures to be followed when a defendant is arrested for the offense for which he has been charged and faces pretrial detention

The Defendant also contends, without addressing the Bill's existence on this point, that §907.041 already includes a provision which addresses the factual scenario found in *Houser* and *Paul*. Clearly, if that were the correct interpretation, the Bill would have placed an identical provision within the same subsection of the statute producing an absurd result. "In construing legislation, courts should not assume the legislature acted pointlessly." *Neu*, 462 So.2d at 825.

The Defendant also claims that under *Houser*, a defendant receives no protection whereas a defendant entitled to an *Arthur* hearing does. However, that viewpoint wholly disregards the fact that a defendant was released on bail in the *first instance;* thus, affording a defendant much greater protection than an *Arthur* hearing. A defendant who is let out on bail, told the conditions of his bond, breaches those conditions "cannot claim he has been deprived of his constitutional right to bail should the trial court reasonably deny subsequent applications for bail." *Gardner*, 402 So.2d at 526.

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for the first time. §907.041 (4)(c)-(i), Fla.Stat. These procedures provide that: 1) the arresting agency shall provide certain information relating to the defendant to the state attorney; 2) the defendant be detained only twenty-four hours prior to the filing of a motion for pretrial detention; 3) the burden of proof is on the State; 4) the defendant is entitled to an evidentiary hearing represented by counsel; and 5) the trial court's written or oral order be based upon the findings of fact and conclusions of law and be rendered within twenty-four hours. §907.041(4)(c)-(i), Fla.Stat.

The Defendant finally contends that *Houser* judicially amended the Constitution by created an "*automatic exception* to the right to pretrial release if the state alleges that a defendant violated a condition of pretrial release," and flies in the face of the Rule of Criminal Procedure 3.131(h). *See* Initial Brief at 9 (emphasis added). However, the Defendant's interpretation of *Houser* is incorrect. First, as stated above, *Houser* opinion ensures that a defendant can come forward and be heard and the trial court's decision is reviewable for abuse of discretion. *Houser*, 719 So.2d at 309.

Second, by giving examples of where detention may not be appropriate when there has been a breach of a bond condition, the *Houser* court clearly did not intend for an automatic exception where there has been a breach. *See Houser*, 719 So.2d at 309.[11]

Third, the result in *Houser* cannot be considered a constitutional amendment because again the trial courts had the authority to order the detention of persons who violated conditions of bond *before* the 1982 amendment or the statute, and the amendment did not attempt to eliminate this authority.

Fourth, Rule 3.131(h) of the Florida Rules of Criminal

[11] For instance, the *Houser* court stated that detention may not be warranted where there has been minor violation of bond such one of a non-criminal nature. *Id.* at 309.

Procedure[12] existed *prior* to the 1982 amendment and at the time case law announced the trial court's inherent authority to detain individual after bond violations, and in fact existed as §903.23 Fla.Stat. prior to the adoption of the Florida Rules of Criminal Procedure in 1968. Fla.R.Crim.P. 3.131(h) committee notes; *Gardner*, 402 So.2d 525. As such, it cannot be said that the adoption of this rule had any effect on this authority when it existed prior to the amendment, and since that amendment did not attempt to eliminate this authority, it had no effect *after* the 1982 amendment.

Fifth, in making these arguments, the Defendant fails to again acknowledge the existence of the Bill which ratified the *Houser* opinion and where the Legislature provided that those portions of Rules 3.131 and 3.132 of the Florida Rules of Criminal Procedure which were inconsistent with the Bill be repealed. *See* App. B; *see Palma Del Mar Condominium Ass'n No. 5 of St. Petersburg, Inc.,* 586 So.2d at 317; *Burdick*, 594 So.2d at 267; *Sepulveda*, 115 F.3d at n. 5; *Sedia*, 614 So.2d at 535; *Lincoln*, 643 So.2d at 672.

D. The Defendant here was properly detained after he violated the statutory condition of his bond and was afforded procedural due

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[12] This rule provides:

> If the defendant applies to be admitted to bail after recommitment, the court that recommitted the defendant shall determine conditions of release, if any, subject to the limitations of (b) above.

Fla.R.Crim.P. 3.131(h).

process.

In the case presently before this Court, the Defendant was arrested for grand theft and was released on bail. (R. 4, 6-7) Thereafter, the Defendant breached the statutory condition of pretrial release by engaging in criminal activity. *See* §907.47(1)(a). The lower court found probable cause that the Defendant engaged in domestic abuse by committing a battery on his Victim girlfriend, and tampering with a witness, also of his Victim girlfriend. (R. 11) Interestingly, the conduct which the Defendant engaged in following his release, domestic abuse, is defined in the pretrial detention statute as a "dangerous crime." *See* §907.041(4)(a)(18), Fla.Stat. (1997). Since the Defendant engaged in criminal activity after his release and because there existed a valid probable cause affidavit, he clearly violated a statutory condition of his release.

The Defendant here was also afforded procedural due process. First, the State moved to detain the Defendant following his arrest on the domestic abuse charges. (R. 35) Second, the Defendant was afforded sufficient notice of the State's intent to seek detention when it orally announced its intentions on January 21, 1999, and the trial court actually heard the matter on February 9, 1999. (R. 28-32, 38-43) Third, the trial court held two hearings on the Defendants motion for reinstatement of bond and after the trial court heard argument it granted the Defendant's counsel a recess to

investigate the Defendant's criminal history. (R. 41) After the recess, the Defendant argued for release on the basis of his residence in Dade County, his family life, his work history, and his prior criminal history. (R. 41-42) Defense counsel also represented to the trial court that the Defendant's aunt and mother were present in the courtroom but never offered their testimony. (R. 41-42) Hence, the Defendant was afforded the opportunity to challenge the revocation of his bond. The trial court had before it the arrest affidavit for the domestic abuse charges[13] where it was earlier found that there was probable cause for the offense. During the two hearings, the Defendant was also afforded the opportunity to show that detention was not necessary and that lesser conditions would suffice. Although he argued for such relief, he never made any suggestions as to how that could be achieved. (R. 41-42)

Under *Houser*, the trial court did not abuse its discretion by denying the Defendant bail. By engaging in criminal activity, considered dangerous crimes under the pretrial detention statute, following his release, the Defendant showed a flagrant disregard for the court's authority and breached a condition of his bond. The Defendant's actions clearly indicate that the trial court had

[13] The State would submit that this was the case because an earlier hearing on the matter was postponed for the sole reason that the trial court did not have the arrest affidavit of the domestic abuse matter before it. (R. 35-36)

reason to believe that upon release he would only continue to engage in criminal activity.

CONCLUSION

Based upon the foregoing, the State submits that Third District properly held that the Defendant was not entitled to release after he violated the terms of his bond. This Court should therefore affirm.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent was mailed this ____ day of July, 1999, to John E. Morrison, Assistant Public Defender, 1320 N.W. 14th Street, Miami, Florida, 33125.

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IN THE SUPREME COURT OF FLORIDA

CASE NO. 95, 155

MICHAEL RIECHE,

Petitioner,

vs. **APPENDIX TO RESPONDENTS' BRIEF**

LOIS SPEARS, Interim Director,
Dade County Department of
Corrections, and THE STATE OF FLORIDA,

Respondents.
_____/

INDEX TO APPENDIX