

IN THE SUPREME COURT OF THE STATE OF FLORIDA

Thomas Parker,
Petitioner,

vs.

Case No. SC01-1013

State of Florida,
Respondent.

_____)

PETITIONER'S INITIAL BRIEF ON THE MERITS

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Statement of the Case

Petitioner was the petitioner in the Fourth District Court of Appeal and the defendant in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida. Respondent, State of Florida, was the respondent in the Fourth District Court of Appeal and the prosecution in the circuit court. The district court denied petitioner's writ of habeas corpus and petitioner's motion for rehearing. A Notice to Invoke Discretionary Jurisdiction was timely filed.

The Petitioner, Thomas Parker, shall be referred to as "petitioner." The Respondent shall be referred to as "respondent." References to the Petitioner's Appendix shall be designated by the symbol "A."

Statement of the Facts

The Petitioner, Thomas Parker, was arrested on June 27, 2000, and charged with aggravated fleeing and eluding, resisting arrest without violence and driving while license suspended. (A 1) He was released from jail after posting a \$2,700 bond. The petitioner was subsequently arrested on August 24, 2000, for possession of cocaine with intent to sell and possession of marijuana. (A 2) The petitioner was released from custody after posting a \$2,500 bond.

On September 29, 2000, the petitioner appeared in court for a scheduled status conference in his first case. The state advised the court that the defendant had a second pending charge and made an *ore tenus* motion to revoke petitioner's bond in the first case. (A 3 at page 3) Defense counsel objected that she was not given any notice of the state's request. The court stated:

Reading the statute the Court can do it on its own based on reading it in chambers. I don't have to receive any motion; I don't have to receive any offer, just finding there is probable cause. I'm finding there is probable cause for the new arrest. I have read the probable cause affidavit. The Court finds there is probable cause. The Court is revoking bond. He can file any motions to set bond.

(A 3 at page 4-5) The petitioner was remanded into custody without bond.¹ (A 4)

¹ The petitioner filed in the district court a Motion for Rehearing alleging that the court misapprehended the facts of this case in its opinion. The district court's opinion stated that the trial court found probable cause that the petitioner had committed a new offense while on pretrial release *after an evidentiary hearing*. However, the trial court revoked bond and ordered pretrial detention without any

The petitioner filed a motion entitled “Motion to Reconsider Revocation of Bond Based on the Unconstitutionality of Florida Statute 903.0471.” (A 5) The state filed a response (A 6) and the court heard testimony regarding the petitioner’s substantial ties to the community and argument of counsel. (A 7;8) The trial court denied petitioner bond and ruled the statute constitutional.² (A 8 at page 15; A 9)

evidentiary hearing, based solely on a reading of the probable cause affidavit and without any notice to the petitioner. After the petitioner was remanded without bond, the petitioner filed a motion to reconsider revocation of bond. The trial court then held an evidentiary hearing directed solely to the petitioner’s ties to the community. No evidence was presented by the state to establish probable cause for the new offense. The absence of an evidentiary hearing is crucial to the petitioner’s procedural due process argument. The district court denied rehearing. (A 12;13)

² The petitioner’s motion for rehearing in the district court also argued that the court misapprehended the trial court’s finding regarding whether the petitioner was a danger to the community. The district court’s opinion states that the trial court found that the petitioner was a danger to the community and that the trial court found that detention was necessary to protect the community from the risk of physical harm. The trial court did not make either finding. (A 3 at page 5; A 3 at page 7) The trial court did remark on an incident, which did not involve the petitioner, that occurred in Broward County the night before the hearing on petitioner’s motion to reconsider revocation of bond. (A 7 at page 10) Although the transcript is somewhat unclear, the court referred to an accident in which a young child was killed by a person fleeing from the police. The petitioner was not involved in that accident. Despite its reference to this incident, the trial court did not find that the petitioner was a danger to the community or that no condition of bond could reasonably protect the community from risk of physical harm from petitioner. The petitioner did not challenge in the district court the propriety of a finding of dangerousness because the trial court did not find that the petitioner was dangerous or that detention was necessary to protect the community from risk of physical harm. If the trial court had found that detention was necessary to protect the community from physical harm, petitioner’s detention would be constitutional.

Petitioner filed a petition for writ of habeas corpus in the Fourth District Court of Appeal. (A 10) The district court denied the writ and issued an opinion finding constitutional Florida Statute 903.0471. Parker v. State, 780 So. 2d 210 (Fla. 4th DCA 2001) (A 11) In a circuitous opinion, the district court agreed that section 903.0471 must comport with Article 1, section 14. The court held that, as circumscribed by Article 1, section 14, section 903.0471 does not violate the Florida Constitution's guarantee to bail. Id. at 212. The court further held that section 903.0471 does not violate substantive due process because probable cause, sufficient to justify an arrest, is sufficient to justify pretrial detention. Id. at 213. In addition, the court held that section 903.0471 does not violate procedural due process because a defendant subject to section 903.0471 is not entitled to the procedural protections afforded someone at an initial pretrial release hearing. The court distinguished initial pretrial release hearings from subsequent pretrial detention hearings. The court held that a defendant is not entitled to "more due process than is guaranteed by Article 1, Section 14 of the Florida Constitution." Id.

The petitioner moved for rehearing contesting that portion of the opinion which stated that the trial court found that no condition of bond could protect the community from risk of physical harm. (A 12) The petitioner also alleged that the

However, in the absence of such a finding by the trial court, petitioner's detention is only authorized by Florida Statute 903.0471.

district court misapprehended the type of hearing held in the trial court. The district court denied rehearing. (A 13) Absent a stay of proceedings, the petitioner's cases have been resolved in the circuit court. (A 14) The petitioner filed a Notice to Invoke Discretionary Jurisdiction and this Court accepted jurisdiction by order dated November 2, 2001. (A 15)

SUMMARY OF ARGUMENT

The district court erred in denying habeas relief and finding constitutional Florida Statute 903.0471. Section 903.0471 is unconstitutional because it authorizes pretrial detention without the findings required by Article 1, section 14 of the Florida Constitution. The newly created statute narrows an individual's substantive right to pretrial release. The statute does not require an arrest, the filing of charges, or prosecution for an offense committed while on bond. More importantly, it does not require a finding that no condition of bond can protect the community from the risk of physical harm, assure the attendance of the defendant, or assure the integrity of the judicial process.

In addition, the statute's probable cause standard violates substantive due process. Probable cause is too low a standard by which to deny a constitutional liberty interest. The risk of error inherent in such a low standard is not justified by any countervailing government interest. Finally, section 903.0471 violates procedural due process by authorizing pretrial detention without hearing.

ARGUMENT

Pretrial release is a substantive right established by Article I, section 14 of the Florida Constitution. The right to pretrial release “embodies that principle that the presumption of innocence abides in the accused for all purposes while awaiting trial.” Paul v. State, 783 So. 2d 1042, 1045 (Fla. 2001), citing State v. Arthur, 390 So. 2d 717, 710 (Fla. 1980). Article I, section 14 states:

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, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable condition. 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.

The right to pretrial release can be constitutionally denied only as delineated in Article 1, section 14.

Florida Statute 903.0471, effective June 2, 2000, authorizes the denial of pretrial bond if there is probable cause to believe that a defendant has committed a new offense while on bond. The statute, in its entirety, states:

903.0471 Violation of Condition of Pretrial Release -- Notwithstanding s. 907.041, a court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.

The newly created statute narrows an individual’s substantive right to pretrial release. The statute does not require an arrest, the filing of charges, or prosecution

for an offense committed while on bond. More importantly, it does not require a finding that no condition of bond can protect the community from the risk of physical harm, assure the attendance of the defendant, or assure the integrity of the judicial process.³

Section 903.0471 is facially unconstitutional.

The district court found section 903.0471 constitutional because a trial court's decision to deny pretrial release under the statute is "circumscribed by the Florida Constitution." Parker, 780 So. 2d at 212. Constitutional guarantees limiting pretrial detention contained in Article 1, section 14 are ignored by the statute. Nevertheless, the district court's opinion finds that the statute fulfills the constitutional mandate that pretrial detention is justified 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. By reading this language into the statute, the district court avoided addressing the constitutionality of the statute.

Petitioner acknowledges that courts must interpret a statute to be

³ The newly created Florida Statute 907.041(4)(c)(7) provides for pretrial detention if the court finds that a defendant has violated one or more conditions of 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. The trial court did not make any such findings, but relied solely on section 903.0471.

constitutional, if possible. A court is “bound to resolve all doubts as to the validity of a statute in favor of its constitutionality, provided the statute may be given a fair construction that is consistent with the federal and state constitutions as well as with the legislative intent.” State v. Stalder, 630 So. 2d 1072, 1076 (Fla. 1994). However, a court cannot effectively rewrite a statute. Id. The district court’s opinion effectively rewrites Florida Statute 903.0471 by requiring the findings compelled by the constitution which are not contained in the statute. This judicial construction is contrary to the legislature’s intent. The first draft of the statute contained the findings required by the constitution. (A 16 at page 8-9) The legislature intentionally deleted that language from the draft evidencing its desire to permit pretrial detention upon a finding of probable cause that a defendant committed a crime while on bond and without findings consistent with Article 1, section 14. Thus, the district court’s construction is neither consistent with the plain language of the statute nor with legislative intent. Despite the district court’s efforts, section 903.0471 cannot be saved from the “constitutional dustbin.” Doe v. Mortham, 708 So. 2d 929, 934 (Fla. 1998)

The constitutional right to bail is long recognized by this Court. State v. Arthur, 390 So. 2d 717 (Fla. 1980); Russell v. State, 71 So. 27 (Fla. 1916); Ex parte McDaniel, 97 So. 317 (Fla. 1923)(right to bail is “organic”). The constitution permits the denial of bail when a person is accused of a capital crime or one

punishable by life imprisonment, if proof of guilt is evident and presumption great. Article I, section 14, Fla.Const. (1983). This burden is greater than beyond a reasonable doubt. Russell, *supra*, (“The question is whether . . .the evidence is sufficient to establish that degree of proof where the judge to whom the application is made may say that guilt is evident or the presumption is great, which is a greater degree of proof than that establishing guilt merely to the exclusion of a reasonable doubt”); Elderbroom v. Knowles, 621 So. 2d 518 (Fla. 4th DCA 1993)(state held to degree of proof greater than that required to establish guilt beyond a reasonable doubt). The second constitutional exception to the right to bond requires findings based on a “substantial probability”⁴ that no condition of release will protect the community from risk of physical harm, assure the presence of the accused or assure the integrity of the judicial process. Florida Statute 907.041 delineates these exceptions and provides for pretrial detention when the constitutional exceptions to the pretrial release are met.

Florida Statute 903.0471 provides for the denial of bond if probable cause exists that a defendant committed a new offense while on bond. The statute does not require any of the findings dictated by the constitution.⁵ The statute narrows the

⁴ Fla.Stat. §907.041(4)(c), (2001)

⁵ A prior draft of the law authorized the denial of bond if probable cause was found that the defendant committed a new offense while on bond, and the court, in its discretion, found that no condition of release would “reasonably protect the

constitutional right to pretrial release and is repugnant to Article I, section 14 of the Florida Constitution. See State v. North Florida Women's Health and Counseling Services, Inc., 26 Fla.L.Weekly D419 (Fla. 1st DCA Feb. 9, 2001), rev.granted, (court should examine whether statute is "repugnant" to Florida Constitution). Thus, section 903.0471 is facially unconstitutional.

The district court also predicated the denial of habeas relief on its determination that the trial court complied with Article I, section 14, and found that petitioner's detention was necessary to protect the community from the risk of physical harm. Petitioner's Motion for Rehearing which alleged that the district court misapprehended this fact, was denied. (A 12;13) This point is critical because, had the court made such a finding, the petitioner's detention would have been constitutional. Although the finding is not required by section 903.0471, it would have negated the constitutional argument advanced in the habeas petition. By making a finding that no condition of bond could reasonably protect the community from risk of physical harm, the trial court would have applied an unconstitutional statute in a constitutional manner. However, petitioner asserts, as he did in his motion for rehearing in the district court, that the trial court did not

community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process." This draft demonstrates that the legislature was aware of the constitutional requirements and choose to excise them from the final bill. (A 16)

find that no condition of bond could reasonably protect the community from risk of physical harm.

In Barns v. State, 768 So. 2d 529 (Fla. 4th DCA 2000), rev.dism., 796 So. 2d 535 (Fla. 2001), the Fourth District Court of Appeal denied habeas relief based upon the trial court's finding of dangerousness consistent with Article I, section 14. The detention was affirmed because the trial court found that no condition of release could reasonably protect the community from risk of physical harm. Id. at 530. The district court noted that the recent statutory changes to section 907.041 and the creation of section 903.0471 "plainly implement the trial court's discretion to impose pretrial detention *within the limits of Article 1, Section 14 of the Florida Constitution, which affords that trial judge wide latitude in the decision to deny bond[.]*" Id. at 533 (emphasis added). However, unlike the changes made to section 907.041, which continue to track the language of the constitution, Florida Statute 903.0471 creates a new exception to the right to bond and is facially unconstitutional.

Florida Statute 903.0471 is contrary to other bond statutes which do comply with Article I, section 14 of the Florida Constitution. Florida Statute 907.041(c)(1) provides for pretrial detention if a court finds a substantial probability that "the defendant has previously violated a condition of release and that *no further conditions of release are reasonably likely to assure the defendant's appearance*

at a subsequent proceeding.”⁶ Florida Statutes section 907.041(c)(7) provides for pretrial detention if a 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.*” Both statutes compel a finding that comports with Article 1, section 14, to wit: “[I]f 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.”

The lower court found section 903.0471 constitutional despite the absence of the constitutional limits to judicial discretion. Either the decision is an impermissible rewrite of the statute or the district court erred in finding the statute constitutional.

Section 903.0471 Violates Substantive Due Process

Section 903.0471, Florida Statutes, authorizes a court to revoke bond and order pretrial detention upon finding probable cause that a defendant committed a new offense while on bond. This burden of proof violates substantive due process.

A defendant charged with a capital crime or crime punishable by life

⁶ Section 903.047(1)(a), Florida Statutes, requires that a defendant refrain from any criminal activity as a condition of pretrial release.

imprisonment is entitled to bond unless it is proven by a degree of proof greater than beyond a reasonable doubt that the defendant committed the crime charged. Russell, 71 So. at 27. When pretrial detention is sought pursuant to section 907.041, the state must prove the criteria for pretrial detention by a substantial probability. Fla.Stat §907.041(4)(c), (2001). This disparity in standards of proof confirms that a probable cause standard violates due process.

In Department of Law Enforcement v. Real Property, 588 So. 2d 957 (Fla. 1991), this Court recognized that the burden or standard of proof in a criminal case is subject to substantive due process protections under the Florida Constitution. But see, Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). (Fair preponderance of the evidence standard in proceedings to terminate parental rights denied parents' right to *procedural* due process of law).

The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of fact finding, is to 'instruct the fact finder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'

Addington v. Texas, 444 U.S. 418,423, 99 S.Ct. 1804,1808, 60 L.Ed. 2d 323 (1979). "In cases involving individual rights, whether criminal or civil, the standard of proof reflects the value society places on individual liberty." Santosky, 455 U.S. at 756.

The test for determining the constitutionality of a standard of proof was

announced by the United States Supreme Court in Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976). The Eldridge test requires a court to balance three factors: the private interest affected by the proceedings; the risk of error created by the State's chosen procedure; and the countervailing governmental interest supporting the use of the challenged procedure. Id. In Santosky, 455 U.S. at 753, 102 S.Ct. at 1395, the court held that the Eldridge balancing test should be applied to determine whether a particular standard of proof in a proceeding satisfies due process.

Section 903.0471 fails the Eldridge test. Section 903.0471 violates due process by only requiring a finding of probable cause before denying pretrial release. The right to pretrial release is a constitutional liberty interest. The risk of error in a hearing utilizing a probable cause standard is high. Pretrial detention can be ordered if a defendant is not arrested or prosecuted for the crime allegedly committed while on bond. This risk of error is magnified by the fact that the statute does not provide for a hearing, but allows a court to make a *sua sponte* ruling without the defendant's presence. Lastly, the state's interest in using the probable cause standard in section 903.0471, as opposed to the Russell standard or the substantial probability standard enunciated in section 907.041, does not justify the denial of the constitutional right to pretrial release. The state need not establish probable cause that the defendant committed a *heinous* crime; it need only establish

probable cause that the defendant committed *a* crime. The state’s interest in using a probable cause standard is not related to the protection of the community because any minor offense justifies pretrial detention. Moreover, the state’s interest in using the probable cause standard is equally unrelated to concern over the defendant’s future appearance or the integrity of the judicial process; those concerns are conspicuously absent from the statute.

The district court found that the statute did not violate substantive due process because probable cause is a “sufficient basis on which to make an arrest,” and thus not too low a standard to justify pretrial detention. Parker, 780 So. 2d at 212-213. In addition, the lower court notes that section 903.0471 authorizes a “second pretrial release.” Id. However, the opinion fails to distinguish Florida Statute 907.041, which also authorizes the denial of pretrial release after violation of a condition of bond, from section 903.0471. Section 907.041 requires the state to prove by a substantial probability the need for pretrial detention. Fla.Stat. §907.041(c),(2001). As noted by this Court, section 907.041 is not limited to the initial consideration of bond, but contemplates subsequent revocations after which the state may petition for pretrial detention:

Not only has the Legislature provided comprehensive guidelines for when an original application for bail may be denied, but in doing so, it has also addressed the question of when a defendant violates the conditions of bond, which is the precise issue now before us. Section 907.041(4)(b)(1) specifically applies to a defendant who has

“previously violated conditions of release.”

State v. Paul, 783 So. 2d at 1047. Thus, the district court’s analysis is flawed.

The constitutionality of the burden of proof does not depend on whether pretrial detention is ordered initially or after bond has been revoked.

Further, the fact that probable cause is sufficient to support an arrest is equally irrelevant. An arrest does not translate into certain incarceration. An accused is constitutionally entitled to bond with few exceptions. An order of pretrial detention, as recognized by the framers of the constitution and the legislature that enacted section 907.041, requires proof greater than that justifying an arrest. An arrest is not necessarily a denial of liberty. Section 903.0471 affects the constitutional right to pretrial release. The probable cause standard risks error without any countervailing governmental interest justifying such risk. Section 903.0471 violates substantive due process.

Section 903.0471 Violates Procedural Due Process

Section 903.0471 violates procedural due process. Florida statute 907.041, provides procedural safeguards to insure due process of law before holding a defendant without bond. Specifically, it provides:

(4)(e) When a person charged with a crime for which pretrial detention could be ordered is arrested, the arresting agency may detain such defendant, prior to the filing by the state attorney of a motion seeking pretrial detention, for a period not to exceed 24 hours.

(f) The pretrial detention hearing shall be held within 5 days of the filing by the state of a complaint to seek pretrial detention. The defendant may request a continuance. No continuance shall be for longer than 5 days unless there are extenuating circumstances. The defendant may be detained pending the hearing. The state shall be entitled to one continuance for good cause.

(g) The state attorney has the burden of showing the need for pretrial detention.

(h) The defendant is entitled to be represented by counsel, to present witnesses and evidence, and to cross-examine witnesses. The court may admit relevant evidence without complying with the rules of evidence, but evidence secured in violation of the United States Constitution or the Constitution of the State of Florida shall not be admissible. No testimony by the defendant shall be admissible to prove guilt at any other judicial proceeding, but such testimony may be admitted in an action for perjury, based upon the defendant's statements made at the pretrial detention hearing, or for impeachment.

(i) The pretrial detention order of the court shall be based solely upon evidence produced at the hearing and shall contain findings of fact and conclusions of law to support it. The order shall be made either in writing or orally on the record. The court shall render its findings within 24 hours of the pretrial detention hearing.

...

(k) The defendant shall be entitled to dissolution of the pretrial detention order whenever the court finds that a subsequent event has eliminated the basis for detention.

Section 907.041 provides strict time constraints for filing a motion for pretrial detention, holding a hearing, and rendering a ruling. The statute affords the defendant the right to counsel and a full evidentiary hearing. The defendant is also entitled to dissolution of the order for pretrial detention if the basis for detention is eliminated.

Section 903.0471 provides no due process protections. The statute, in its entirety, states:

903.0471 Violation of Condition of Pretrial Release -- Notwithstanding s. 907.041, a court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.

This statute does not provide for a hearing or notice to the defendant. In a defendant's absence, a trial court can *sua sponte* find probable cause that a defendant committed an offense and order pretrial detention. Pretrial detention can be effected without counsel. The statute violates procedural due process because it does not provide for adequate and meaningful notice to a defendant, nor does it provide for a fair opportunity to be heard.

The essence of due process is that fair notice and reasonable opportunity to be heard must be given to interested parties before judgment is rendered Due process envisions law that hears before it condemns, proceeds upon inquiry, and renders judgment only after proper consideration of issues advanced by adversarial parties.

Scull v. State, 569 So. 2d 1251 (Fla. 1990).

Not only is section 903.0471 devoid of any procedural protections, the Legislature amended the rules of criminal procedure to the extent that they conflicted with the new statute. Florida Rule of Criminal Procedure 3.131(d)(2) requires three hour notice to a defendant before a court hears an application to increase bond. See Montgomery v. Jenne, 744 So. 2d 1148 (Fla. 4th DCA 1999);

Bowers v. Jenne, 710 So. 2d 681 (Fla. 4th DCA 1998). However, Chapter 2000-178, which created section 903.0471, also repealed rules 3.131⁷ and 3.132⁸ inasmuch as they were inconsistent with the new statute. Thus, rule 3.131(d)(2) does not cure the due process defects inherent in section 903.0471. A defendant is denied bond without an opportunity to be heard.

The district court denied the procedural due process claim by again distinguishing initial pretrial release hearings and subsequent pretrial detention hearings. Parker, 780 So. 2d at 213. As stated above, this is a false distinction.

The court also held that the petitioner was provided due process as guaranteed by Article 1, section 14. Id. The court seems to be referring to the substantive due process granted by the constitutional limitations on pretrial detention. It is unclear what the court believed constituted the procedural due process afforded petitioner by Article 1, section 14. In addition, the petitioner was not afforded due process *before* his bond was revoked and pretrial detention was ordered. The petitioner's motion for rehearing asserted that the district court misapprehended the hearing held by the circuit court. Upon oral request by the state, the court found probable cause that the petitioner had committed a crime while on

⁷ Rule 3.131 is entitled "Pretrial Release" and sets forth the procedure for setting, modifying, and revoking bail. Rule 3.131 Fla.R.Crim.P. (2001).

⁸ Rule 3.132 is entitled "Pretrial Detention" and sets forth the procedures delineated in Florida Statute 904.041. Rule 3.132 Fla.R.Crim.P. (2001).

bond. The petitioner was given no notice and the state called no witnesses. Petitioner's request for time to prepare was denied. Pretrial detention was ordered without any procedural due process.

CONCLUSION

The district court erred in denying habeas relief and finding constitutional Florida Statute 903.0471. Section 903.0471 is unconstitutional because it authorizes pretrial detention without the findings required by Article 1, section 14. In addition, the statute's probable cause standard violates substantive due process. Probable cause is too low a standard by which to deny a constitutional liberty interest. The risk of error inherent in such a low standard is not justified by any countervailing government interest. Finally, section 903.0471 violates procedural due process by authorizing pretrial detention without hearing.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief was delivered by U.S. Mail to Melanie A. Dale, Assistant Attorney General, Department of Legal Affairs, 1655 Palm Beach Lakes Blvd, Suite 300, West Palm Beach, Fl., 33401, this 6th day of December, 2001.

Diane M. Cuddihy

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Rule 9.100(1) Fla.R.App.P., counsel for the Petitioner hereby certifies that the instant brief has been prepared with 14 point in Times New Roman font.

Diane M. Cuddihy