

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-1263

STATE OF FLORIDA,

Appellant,

-vs-

MARTI CASSANDRA RAYMOND,

Appellee.

APPEAL FROM THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

INITIALBRIEF OF APPELLANT

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INTRODUCTION

The Appellant, the State of Florida, was the Appellant below, and the Appellee, Marti Cassandra Raymond, was the Appellee below. In this brief, the parties will be referred to as they stand before this court. The symbol "R." will refer to the record on appeal.

STATEMENT OF THE CASE AND FACTS

The Appellee was arrested on January 31, 2002 and charged with battery and timely brought for a first appearance hearing on Friday February 1, 2002. (R. 77, 138) The Appellee had no prior offenses. (R. 77, 138). A monetary bond of \$1,500 was set and it appeared that the Appellee could not afford to post the bond in the immediate future. (R. 77, 138). The Appellee was scheduled to appear on Monday, February 4, 2002, at which time the Appellee would be released to the custody of the PTS without having to post monetary bond. (R. 77). Upon being advised that she would be denied release to PTS the Appellee filed a motion seeking consideration of non-monetary pretrial release. (R. 78).

The Appellee motion sought to have section 907.041(4)(b)¹, Fla. Stat. (2000) declared unconstitutional as violative of Article II, Section 3 of the Florida Constitution. (R. 78). The Appellee claimed that the statute violated the separation of powers clause by dictating when the court may order a certain form of nonmonetary release at first appearance hearings for individuals charged with dangerous crimes. (R.

¹Section 907.041(4)(b) provides that:

No person charged with a dangerous crime shall be granted nonmonetary pretrial release at a first appearance hearing; however, the court shall retain the discretion to release an accused on electronic monitoring or on recognizance bond if the findings on the record of facts and circumstances warrant such a finding.

78). The Appellee argued that section 907.041(4)(b) is a procedural rule which does not regulate whether a defendant may be released to PTS, but rather merely regulates when a defendant may be released to PTS. (R. 78).

After hearing argument, the trial court found that section 907.041(4)(b) does not violate the separation of powers clause of the Florida Constitution. (R. 84). The trial court observed that prior to the enactment of section 907.041(4)(b) defendants in domestic violence court were regularly released to PTS at first appearance hearings. (R. 80). Subsequent to the enactment of the statute, courts in the domestic violence division may no longer order PTS to otherwise eligible defendants at first appearance hearings. (R. 80). The court now sets a monetary bond and resets the defendant for the next day at which time the defendant may be released to PTS. (R. 80). The trial court recognized that other forms of nonmonetary pretrial release are still available, including releasing defendants on a recognizance bond. (R. 81).

The trial court found that the Legislature acted within its “police power” in enacting section 907.041(4)(b). (R. 83). The court also found that section 907.041(4)(b) has both substantive and procedural requirements, however it does not intrude upon or interfere with the procedures and processes of the Florida Supreme Court in its rulemaking authority so as to constitute an impermissible separation of powers violation. (R. 84). It found that section 907.041(4)(b) imposes a reasonable

accommodation between the right of a presumptively innocent defendant to pretrial release by the least restrictive means and the public's right to be protected from individuals accused of dangerous crimes. (R. 85). There is nothing in the statute which prohibits the Florida Supreme Court from promulgating rules to carry out the substantive goals of section 907.041(4)(b). (R. 85).

The trial court certified the following question of great public importance:

DOES SECTION 907.041(4)(b), FLORIDA STATUTES (2000), IMPERMISSIBLY INTRUDE UPON THE SUPREME COURT'S RULE MAKING AUTHORITY IN VIOLATION OF THE SEPARATION OF POWERS CLAUSE OF ARTICLE II, SECTION 3, OF THE FLORIDA CONSTITUTION? (R. 86).

The Appellee filed a petition for writ of habeas corpus with the Third District Court of Appeal. (R. 139). The District Court transferred the petition to the Circuit Court, Appellate Division. (R. 40). The Circuit Court issued an order to show cause. (R. 41). State filed its response to the petition. (R. 64-107).

In her petition the Appellee contended that section 907.401(4)(b), Florida Statutes violated the separation of powers clause of the Florida Constitution. (R. 6). She argued that the Legislature had infringed upon the province of the Supreme Court of Florida to adopt rules for the practice and procedure in all courts. (R. 7-8). The Appellee's argument was that the timing of the hearing on pre-trial release is a matter of procedure which is left to this Court to determine. (R. 10-14).

In its response the State argued that section 907.041(4)(b), Florida Statutes was not a violation of the separation of powers clause when viewed in light of the remainder of section 907.041, Florida Statutes. (R. 67-70). The State argued that section 907.041 sets forth the public's substantive right to protection from those accused of committing dangerous crimes and that the procedural aspects of the statute were merely incidental to the implementation of the legitimate substantive provisions. (R. 70).

The Circuit Court, Appellate Division, after argument, found that section 907.041(4)(b), Florida Statutes was unconstitutional in that it violated the separation of powers clause. (R. 138). The court found that section 907.041(4)(b) was purely procedural in nature and was irreconcilable with the substantive rights created in section 907.401, Florida Statutes. (R. 144). The court found that the legislative history of the statute was devoid of any explanation of the reasoning for the delay in granting pretrial release. (R. 144). The court also found that the delay was not necessary in all cases so that an investigation could be performed to determine the Appellee's entitlement to pretrial release. (R. 144). The court found that the delay was not necessary in the instant case because the trial court found that the Appellee qualified for pretrial release at the first appearance hearing. (R. 145). The court found that the

Legislature did not have authority to create a new procedural rule in place of the repealed rule. (R. 145).

The Third District Court of Appeal affirmed the lower court's order and adopted the reasoning as its own. (R. 147-148). This appeal follows.

POINT ON APPEAL

WHETHER THE LOWER COURT ERRED IN FINDING THAT SECTION 907.041(4)(b), FLORIDA STATUTES IS PURELY PROCEDURAL AND THEREFORE VIOLATES THE SEPARATION OF POWERS CLAUSE OF THE FLORIDA CONSTITUTION?

SUMMARY OF THE ARGUMENT

The Legislature properly established substantive requirements for those who are entitled to nonmonetary pretrial release. The legislative intent is that the protection of the public should be the primary concern in determining the appropriateness of pretrial release for those charged with a dangerous crime. This is a legitimate and compelling state interest. The Legislature evinced this intent by removing the presumption in favor of nonmonetary release for those so charged. The Legislature's prohibition on nonmonetary pretrial release at first appearance did not remove the trial court's discretion to release a defendant on a recognizance bond or electronic monitoring where the findings on the record support such a release. All time limitations are not per se procedural. Even if the time limits in this case are procedural, the procedural aspects of this legislative scheme for pretrial release are minimal and do not run afoul of the separation of powers clause of the Florida Constitution.

Alternatively, if the subject statute should be found in violation of the separation of powers clause, this court should formulate procedural rules which conform with the expressed legislative intent.

ARGUMENT

I. THE LOWER COURT ERRED IN FINDING THAT SECTION 907.041(4)(b), FLORIDA STATUTES IS PURELY PROCEDURAL AND THEREFORE VIOLATES THE SEPARATION OF POWERS CLAUSE OF THE FLORIDA CONSTITUTION.

The lower court erroneously found that section 907.041(4)(b) is purely procedural because it limits when the court may consider whether a defendant qualifies for nonmonetary pre-trial release.

“It is a fundamental rule of statutory construction that, if at all possible, a statute should be construed to be constitutional.” St. Mary's Hospital, Inc. v. Phillippe, 769 So.2d 961, 972 (Fla. 2000). A court is required "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. Elder, 382 So.2d 687, 690 (Fla.1980).

Substantive law prescribes the duties and rights under our system of government. Procedural law concerns the means and method to apply and enforce those duties and rights. Benyard v. Wainwright, 322 So.2d 473 (Fla. 1975). In State v. Golden, 350 So. 2d 344 (Fla. 1976), the court was faced with a determination of whether a statute which concerned the period of time a juvenile may be detained prior to a judicial hearing was procedural or substantive. There the court found that the

statute, which reduced the time period from 48 to 24 hours, created a substantive right to a detention hearing speedier than that afforded by the rule. Id. at 347. In so holding the Court recognized that “the length of time an individual may spend in confinement is substantive in nature and within the prerogative of the Legislature to the extent it does not violate a constitutional provision.” Id. Furthermore, The United States Supreme Court has recognized that: “The government's interest in preventing crime by arrestees is both legitimate and compelling.” United States v. Salerno, 481 U.S. 739, 749; 107 S. Ct. 2095, 2103; 95 L. Ed. 2d 697, 711 (1987)(citing De Veau v. Braisted, 363 U.S. 144, 155 (1960)).

The finding that section 907.041 impermissibly regulates only the timing of when a court can grant release on nonmonetary conditions, and is therefore purely procedural, ignores the fact that the statute was amended to *remove* the presumption in favor of release on nonmonetary conditions *for persons charged with a dangerous crime*. Prior to the enactment of section 907.041(4)(b), Florida Statutes (2000) there existed no exemption to the presumption in favor of release on nonmonetary conditions. See §907.041(3), Fla. Stat. (1999). Previously, section 907.041(3), Florida Statutes, provided that “It is the intent of the Legislature to create a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release.” Id. At the same time that section 907.041(4)(b) was enacted, section

907.041(3) was amended to read, “It is the intent of the Legislature to create a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release *unless such person is charged with a dangerous crime as defined in subsection (4).*” §907.041(3)(a), Fla. Stat. (2001) (*emphasis added*). At the same time section 907.041(3)(b) was also created. Subsection (3)(b) provides that no person shall be released on nonmonetary conditions under the supervision of a pretrial service unless the service certifies that it has verified all factors necessary to assist the court in determining whether release to the service is appropriate. Factors to be verified pursuant to section 907.041(3)(b) include the circumstances of the accused’s family, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearances at court proceedings, of flight to avoid prosecution, of failure to appear at court proceedings, and any other factor necessary to assist the court in its determination of the indigency of the accused. To give effect to the changed presumption of section 907.041(3)(a) and the substantive requirements set forth in section 907.041(3)(b) the Legislature properly prohibited admitting a defendant charged with a dangerous crime to certain nonmonetary pretrial release at first appearance. The Legislature expressly provided that the trial court retained the discretion to release an accused on electronic

monitoring or recognizance bond *if the findings on the record of facts and circumstances warrant such a release.* §907.041(4)(b), Fla. Stat. (2001).

This prohibition against nonmonetary pretrial release at first appearance is a reasonable limitation which serves the legitimate and compelling state interest of protecting the public from those accused of dangerous crimes. As was recognized by the trial court, the regular practice of courts prior to the revisions to section 907.041 was to release most domestic violence defendants to pretrial release at a first appearance hearing. This regular practice directly conflicts with the Legislature's express intent "that the primary consideration be the protection of the community from risk of physical harm to persons."§907.041(1), Fla.Stat. (2001). Contrary to this regular practice of the trial courts, the Legislature removed any presumption in favor of nonmonetary pretrial release for persons charged with a dangerous crime. §907.041(3)(a), Fla.Stat. (2001). However, the trial court retains discretion to grant certain types of nonmonetary release if the findings on the record of facts and circumstances warrant such a release. The procedural aspects of the statute, if any, are merely incidental to the implementation of the legitimate and compelling state interest reflected in the substantive provisions of the statute and do not conflict with any existing court rule of procedure.

In passing the amendments to section 907.041 the Legislature expressly repealed Florida Rule of Criminal Procedure 3.131 to the extent that it is inconsistent with the act.² 2000 Fla. Laws ch 2000-178 §5. There is nothing in the statute which bars this Court from enacting specific rules designed to carry out the substantive goals of section 907.041(4)(b). Thus, the finding that the statute is an unconstitutional encroachment on the Supreme Court's rule-making powers must be reversed. See Kalway v. State, 730 So.2d 861 (Fla. 1st DCA 1999).³

The lower court found that the enactment of section 907.041(3)(b), requiring certain certifications from PTS, cannot provide the rationale for the enactment of section 907.041(4)(b) because the requirements of section 907.041(3)(b) apply to all cases. Standing alone, section 907.041(3)(b) might not provide sufficient rationale for the enactment of section 907.041(4)(b), however at the same time section 907.041(3)(b) was enacted, the Legislature removed the presumption in favor of nonmonetary pretrial release for persons accused of committing dangerous crimes. §907.041(3)(a), Fla. Stat. (2001). Therefore, the court must be well informed prior to releasing the defendant accused of committing a dangerous crime on nonmonetary

²The bill was passed unanimously, thus meeting the two-thirds majority required to repeal a rule of procedure.

³The State argues alternatively in Issue II that the Court should adopt a procedural rule implementing the intent of the Legislature.

release and the prohibition against release at first appearance, where there are no findings on the record of facts and circumstances warranting a release, provides an opportunity to obtain the necessary information.

While it is a judicial function - and thus proper subject of a rule - to control the procedure by which a defendant's right to bail may be exercised, it is legislative function - and thus the proper subject of a statute - to declare what persons are entitled to bail. State v. Jimenez, 508 So.2d 1257 (Fla. 3d DCA 1987). A review of section 907.041 demonstrates that section 907.041 does nothing more than set forth the State's legitimate and compelling interest in protecting the public by ensuring that persons accused of dangerous crimes not be released on certain nonmonetary conditions at first appearance, without findings on the record. The Legislature has removed the presumption that those accused of committing dangerous crimes are not entitled to nonmonetary pretrial release at first appearance. This is a reasonable restriction given the legislative intent, yet retains the trial court's discretion to release an accused where findings on the record establish that such a release is warranted.

The construction of the statute argued above is a fair construction which is consistent with the legislative intent and the Florida Constitution. The legislative intent is an express part of the statute which supports this construction and it is not necessary to resort to the legislative history to construe this statute. It is a logical

interpretation which relies on a reading of the entire statute and its recent amendments to find that the Legislature's primary purpose was to enact substantive law to further a legitimate and compelling state interest while having a minimal impact on procedure. This Court has described section 907.041, Florida Statutes "a comprehensive and specific framework setting forth the multiple circumstances under which trial courts may act to deny bail and order pretrial detention." State v. Paul, 783 So. 2d 1042 (Fla. 2001). It is within this comprehensive framework that the Legislature has determined that those accused of dangerous crimes are not entitled to nonmonetary release at first appearance absent findings on the record.

II. SHOULD THE COURT FIND THAT SECTION 907.041(4)(b) IS AN UNCONSTITUTIONAL INTRUSION BY THE LEGISLATURE IN THE RULE MAKING AUTHORITY OF THE COURT IT IS RESPECTFULLY SUGGESTED THAT THE COURT ADOPT A RULE WHICH IMPLEMENTS THE LEGISLATIVE INTENT TO INSURE ADEQUATE INVESTIGATION PRIOR TO RELEASING AN INDIVIDUAL CHARGED WITH A DANGEROUS CRIME TO PRETRIAL RELEASE SERVICES.

As pointed out above, the Legislature expressly repealed Florida Rule of Criminal Procedure 3.131 to the extent that it is inconsistent with the act. 2000 Fla. Laws ch 2000-178 §5. There is nothing in the statute which bars this Court from enacting specific rules designed to carry out the substantive goals of section 907.041(4)(b). The State would respectfully suggests that, should this Court find that

section 907.041(4)(b) is an unconstitutional encroachment on its rulemaking authority by the Legislature, then this Court should exercise its rulemaking power to enact a procedural rule which embraces the legislative intent to provide for additional protection to the public through more detailed investigation into the areas delineated in section 907.041(3)(b).

In In re Rules of Civil Procedure, 281 So. 2d 204 (Fla. 1973), this Court held that the Legislature had enacted laws which related to practice and procedure, however after considering that the laws expressed the intent of the Legislature the Court formulated rules of practice and procedure that attempted to conform with the intent of the Legislature while furthering the orderly procedure of the judicial branch. Furthermore, “[a]s a practical matter, th[is] Court on occasion has deferred to the expertise of the legislature in implementing its rules of procedure.” Kalway v. Singletary, 708 So. 2d 267, 269 (Fla. , 1998). In Kalway the Court recognized that some technical matters are not outside the purview of the Legislature and such action would not be seen as an intrusion into the Court’s jurisdiction over practice and procedure. Id. at 269. The instant case concerns just such a technical matter regarding whether individuals charged with dangerous crimes should be released to pretrial services after a mere cursory determination of their circumstances, or whether the pretrial services should conduct a more detailed investigation of the individual’s

circumstances. The Legislature determined that a more detailed investigation was required. The Court should defer to the Legislature's expertise on this issue.

Therefore, in the instant case, this Court, if it finds the subject provision unconstitutional, should consider the formulation of rules which conform with the intent of the Legislature to protect the public while furthering the orderly procedures of the judiciary in the area of pretrial release.

CONCLUSION

Based upon the arguments and authorities cited herein, the appellee respectfully requests this Court to find that section 907.041(4)(b) does not violate the separation of powers clause of the Florida Constitution.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Appellee was mailed this 3rd day of September, 2003, to John Morrison, Assistant Public Defender, 1320 N.W. 14th Street, Miami, FL 33125.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the font used in this brief is in compliance with Fla. App. R. Proc. 9.210(a)(2) and is times new roman 14 point font.

JOHN BARKER
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