

IN THE SUPREME COURT OF FLORIDA

**IN RE: FLORIDA RULES OF
CRIMINAL PROCEDURE
3.131 & 3.132**

Case Number SC05-739

The Public Defender of the Second Judicial Circuit respectfully submits the following comments in response to this Court's temporary readoption of Rules 3.131 and 3.132 of the Florida Rules of Criminal Procedure.

I. RULES 3.131 AND 3.132 AS PRESENTLY WRITTEN CREATE A RATIONAL SCHEME OF PRETRIAL RELEASE WHICH PROTECTS PUBLIC SAFETY AS WELL AS DEFENDANTS' CONSTITUTIONAL RIGHTS.

The Public Defender of the Second Judicial Circuit urges this Court to maintain Rules 3.131 and 3.132 in their entirety. Rule 3.131(a) is a direct application of the Florida Constitution, Article I, Section 14, which provides:

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 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.

Significantly, Rule 3.131(b)(1) requires first appearance judges to impose conditions of release that will protect the community from risk of physical harm to persons. Furthermore, 3.131(b)(3) allows the court to consider, among other factors, the nature and probability of danger that the defendant's release poses to the community.

However, these are not the only protections available in the rules scheme for assuring public safety; under Rule 3.132, the State may file a Motion for Pretrial Detention for all offenses listed in Section 907.041 (which includes domestic violence offenses) before first appearance or at any time prior to trial. This list includes the dangerous crimes which the legislature substantively designates as requiring enhanced judicial scrutiny. Thus, legislative intent is already taken into account in the Court's present pretrial release rules.

II. STATE V. RAYMOND WAS A STRAIGHTFORWARD APPLICATION OF EXISTING JURISPRUDENCE CONCERNING THE SEPARATION OF POWERS BETWEEN THE LEGISLATURE AND THE COURTS.

The Legislature's enactment of Section 907.041(3), Fla. Stat. (2000) clearly invaded the Court's authority over the practice and procedures of the courts. Arguments concerning the procedural nature of the bill were made to the Legislature as it proceeded through the legislative process, and it was inevitable that the issue would be litigated and brought before a court in an actual case or controversy. This Court had no choice but to find the statute unconstitutional, and it broke no legal ground in doing so. In fact, the Court has shown deference and respect to the Legislature by allowing further

commentary and encouraging the Legislature to file comments before taking permanent action on the reenactment of its pretrial release rules.

III. THE RULES COULD EASILY BE AMENDED TO FURTHER INCORPORATE LEGISLATIVE INTENT WITHOUT ALTERING THE PRESUMPTION IN FAVOR OF NONMONETARY PRETRIAL RELEASE FOR ALL NONCAPITAL CRIMES.

If the Court is persuaded that any change in the existing pretrial rules is appropriate, undersigned counsel suggests that 3.131(b)(3) could be amended to further emphasize legislative intent with regard to dangerous crimes. Suggested language is as follows:

(3) In determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the Court may consider the nature and circumstances of the offense charged and the penalty provided by law, including whether the offense is a dangerous crime as defined in Section 907.141(4)(a), Florida Statutes; the weight of the evidence against the defendant; the defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition; the defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings; the nature and probability of danger that the defendant's release poses to the community, particularly for dangerous crimes as defined in Section 907.141(4)(b), Florida Statutes; the source of funds used to post bail; whether the defendant is already on release pending resolution of another criminal proceeding or is on probation, parole, or other release pending completion of sentence; and any other facts the Court considers relevant, including whether the defendant has a history of domestic battery or assault, or other crimes of violence.

These changes would amplify existing rule language in a manner that further

incorporates legislative concerns for public safety without sacrificing defendants' constitutional rights or this Court's authority over practice and procedure.

IV. ANY CHANGES TO THE PRETRIAL RELEASE RULES MUST GIVE PROPER WEIGHT TO THE PRESUMPTION OF INNOCENCE.

The Florida Constitution protects public safety by prohibiting or restricting pretrial release for many, if not most, of the dangerous offenses that the Legislature addressed in Section 907.041(4)(b), Fla. Stat. (2002).

Currently, defendants charged with capital offenses and felonies punishable by life have no entitlement to pretrial release. Secondly, first appearance judges already have the tools to hold dangerous defendants not facing capital punishment or life imprisonment in pretrial detention. The rules require consideration of danger to the community, and many defendants charged with dangerous offenses can be held with no bond when a court finds that no conditions of release can protect the public. In recent years, in fact, defendants charged with new offenses who are on probation or out on bond for previous charges are routinely denied bond altogether. In addition, defendants charged with domestic violence are not permitted to bond out pursuant to jail bond schedules, and are held for first appearance before being considered for pretrial release. First appearance judges are scrupulous about considering the nature of violent offenses and defendants' prior criminal history. Satellite monitoring is increasingly used to protect the public, in particular alleged domestic violence victims, in cases involving allegations of violence. Thus, there is no need to change the existing pretrial release scheme of Rules 3.131 and 3.132. To further

demonstrate its deference to the Legislature in substantive matters, however, this Court could slightly amend the language of the rules in a manner that maintains existing constitutional protections. It must always be kept in mind that whatever changes are made, criminal defendants are presumed innocent until and unless they are found guilty beyond a reasonable doubt, and trial judges must have discretion to grant pretrial release to all defendants who are not a threat to public safety.

Respectfully submitted,

NANCY DANIELS
Public Defender
Second Judicial Circuit
301 S. Monroe Street, Room 401
Tallahassee, Florida 32301
Florida Bar No. 242705

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been forwarded by U.S. Mail to John F. Harkness, Jr., The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399.

NANCY DANIELS
Public Defender

CERTIFICATION OF FONT SIZE

I hereby certify that these comments were printed in 14 point Times New Roman.

BY: _____
NANCY DANIELS
Public Defender