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Thomas Parker v. State of Florida

MR. CHIEF JUSTICE

THE NEXT CASE ON THE ORAL ARGUMENT CALENDAR IS PARKER VERSUS STATE. MAY IT PLEASE THE COURT. MY NAME IS DIANE CUDDIHY. I REPRESENT MR. THOMAS PARKER. HE WAS ARRESTED AND POSTED A $2500 BOND AND WAS RELEASED FROM CUSTODY. HE LATER COMMITTED A MISDEMEANOR AND RELEASED FROM CUSTODY ON A BOND. AT THE HEARING ON THE CASE, THE COURT CREATED --

DID YOU SAY THE SECOND CRIME WAS A MISDEMEANOR?

NO, YOUR HONOR. THE SECOND CRIME WAS FOR POSSESSION OF COCAINE WITH INTENT TO DELIVER AND A MISDEMEANOR POSSESSION. IF IT FINDS PROBABLE CAUSE TO BELIEVE THE DEFENDANT HAS COMMITTED A NEW OFFENSE WHILE ON BOND, TO REVOKE BOND WHILE ON TRIAL DETENTION. THE COURT DID THAT AND REVOKED BOND ON MR. PARKER'S FIRST CASE AND REMANDED HIM TO CUSTODY WITHOUT BOND.

DID THE COURT MAKE AN ADDITIONAL FINDING THAT WAS ACTUALLY REQUIRED UNDER THAT STATUTE? DID HE MAKE A FINDING THAT THERE WAS A LIKELIHOOD OF HARM?

THE DISTRICT COURT, IN ITS OPINION, STATED THAT THE TRIAL COURT MADE A FINDING THAT NO CONDITION OF BOND WOULD REASONABLY PROTECT THE COMMUNITY FROM RISK OF PHYSICAL HARM. HOWEVER, AS ARGUED IN THE BRIEF, THE DISTRICT COURT, IN A MOTION TO, FOR A REHEARING FROM THE DISTRICT COURT, THE DISTRICT COURT MISS AND BEHINDED THE TRIAL COURT'S BOND. TWO WEEKS AFTER MR. PARKER WAS DETAINED, THE COURT HEARD EVIDENCE REGARDING MR. PARKER'S TIE TO SAY THE COMMUNITY AND THE CONSTITUTIONAL CHALLENGES TO THE STATUTE. THE COURT DID NOT HEAR ANY EVIDENCE REGARDING THE SECOND ARREST. THE COURT NOTED THAT AN INCIDENT HAD OCCURRED IN BROWARD COUNTY, THE NIGHT BEFORE THAT HEARING. THE MOTION TO RECONSIDER BOND, WHERE IN APPARENTLY A CHILD HAD BEEN KILLED IN A HIGH-SPEED CHASE. THAT INCIDENT DID NOT INVOLVE MR MR. PARKER. THE COURT DID NOT, THEN, MAKE ANY FINDING THAT NO CONDITION OF BOND COULD SECURE THE COMMUNITY, THEIR PHYSICAL SAFETY, AND REMANDED HIM TO CUSTODY, SO, NO, EVEN THOUGH THE DISTRICT COURT DID STATE THAT IN THE OPINION, THERE WAS NO FINDING TO THAT FACT.

DO YOU AGREE, THOUGH, AS A FREE-STANDING PROVISION THAT, THE STATUTE DOES NOT REQUIRE THAT ADDITIONAL FINDING.

ABSOLUTELY, YOUR HONOR, AND THAT IS ACTUALLY THE CONSTITUTIONAL CHALLENGE, ONE OF 9 CONSTITUTIONAL CHALLENGES TO THE STATUTE -- ONE OF THE CONSTITUTIONAL CHALLENGES TO THE STATUTE. THE DISTRICT COURT DENIED POET FOR -- DENIED PETITION FOR HABEAS RELIEF AND FOUND THE STATUTE TO BE CONSTITUTIONAL BECAUSE IT IS CIRCUMSCRIBED BY ARTICLE I SECTION 14, WHICH REQUIRES SUCH A FINDING T ALSO FOUND THAT THE STATUTE DID NOT VIOLATE SUBSTANTIVE DUE PROCESS BECAUSE PROBABLE IS A DECISION TO JUSTIFY AN ARREST. IT FOUND THE STATUTE DID NOT FIND PROCEDURAL DUE PROCESS, BECAUSE MR. PARKER WAS NOT INITIALLY RETAINED. HE WAS ONLY DETAINED AFTER HIS BOND WAS REVOKED.

BUT YOU DO AGREE, THOUGH, THAT IF THE COURT FINDS PROBABLE CAUSE TO BELIEVE THAT

THE DEFENDANT COMMITTED THE NEW CRIME, THE COURT MAY, ON ITS OWN MOTION, ORDER A PRETRIAL DETENTION. DO YOU AGREE WITH THAT PROPOSITION?

I AGREE THAT THAT IS WHAT THE NEW STATUTE SAYS CAN BE DONE, BUT I DO NOT AGREE THAT THAT IS A CONSTITUTIONAL PRETRIAL DETENTION. THE ARTICLE I SECTION 14 OF THE FLORIDA CONSTITUTION, PROVIDES THAT THE DEFENDANT A RIGHT TO PRETRIAL RELEASE WITH ONLY TWO EXCEPTIONS, THE FIRST BEING IF A PERSON IS CHARGED WITH A CAPITAL CRIME OR A LIFE FELONY, WHERE THE EVIDENCE OF GUILT IS GREAT OR PRESUMPTION IS GREAT. PRETRIAL DETENTION CAN BE ORDERED. THE SECOND INSTANCE WHERE PRETRIAL DETENTION CAN BE ORDERED IS WHEN A TRIAL COURT MAKES A FINDING THAT NO CONDITION OF BOND CAN REASONABLY PROTECT THE COMMUNITY FROM RISK OF PHYSICAL HARM OR ASSURE THE PRESENCE OF THE ACCUSED AT TRIAL OR ASSURE THE INTEGRITY OF JUDICIAL PROCESS.

THERE IS NOTHING THAT THE TRIAL COURT HAVING TO MAKE THE FINDING, DOES IT?

WELL, YOUR HONOR, IT SAYS THAT NO CONDITION OF BOND WILL REASONABLY PROTECT, AND PETITIONER WOULD SUBMIT THAT A TRIAL COURT DOES HAVE TO MAKE A FINDING TO THAT EFFECT.

WHAT ABOUT THE EXCEPTION TO "OR ENSURE THE INTEGRITY OF THE JUDICIAL PROCESS?" WHAT DOES THAT MEAN?

YOUR HONOR THERE, IS NO CASE LAW TO DETERMINE WHAT THAT MEANS.

IN THIS CASE.

THIS MIGHT BE THE CASE. I THINK THAT THE COURT CAN LOOK TO GUIDANCE TO 907.041, WHICH IS THE OTHER PRETRIAL DETENTION STATUTE, WHICH SPECIFICALLY STATES THAT THE COURT CAN ORDER PRETRIAL DETENTION, IF A DEFENDANT THREATENED A WITNESS, A VICTIM, POTENTIAL JUROR, OR MEMBER OF THE COURT, AND I WOULD SUGGEST THAT THAT IS WHAT THE LEGISLATURE INTERPRETED INTEGRITY OF THE JUDICIAL SYSTEM TO MEAN.

WELL, ISN'T THE, COMMITTING ANOTHER CRIME, AND LET'S ASSUME THAT THE PROOF IS SATISFACTORY AND THAT IT IS ESTABLISHED THAT ANOTHER CRIME WAS COMMITTED WHILE ON BAIL, AND EXPRESS CONDITION OF THE GRANTED BAIL IS THAT YOU COMMIT NO FURTHER CRIMINAL ACTS. ISN'T THAT, I MEAN, ISN'T THAT JUST PRIME FARB EVIDENCE OF -- PRIMA FACIE EVIDENCE OF JUDICIAL PROCESS AND DISREGARDS FURTHER JUDICIAL PROCESS, BY WHEN YOU ARE ALLOWED, IN TERMS OF BAIL AND RELEASE, FOR THE CHARGES THAT ARE PENDING, THAT IT IS FOUND THAT YOU HAVE GONE OUT AND FLAUNTED THAT AND COMMITTED ANOTHER CRIME? ISN'T THAT IMPLICITLY OR EXPLICITLY, REALLY, A VIOLATION OF THE JUDICIAL PROCESS?

WELL, YOUR HONOR, FIRST OF ALL, I WOULD JUST SUGGEST THAT THIS COURT RECOGNIZE, IN STATE VERSUS PAUL, THAT THE RIGHT TO PRETRIAL DETENTION INVOLVES THE PRESUMPTION OF INNOCENCE, AND EVEN WITH THE SECOND INSTANCE, SOMEONE IS PRESUMED INNOCENT, BUT MORE IMPORTANTLY, I WOULD, ALSO, POINT OUT THAT THE LEGISLATURE, IN ONE OF THE EARLY DRAFTS OF THE STATUTE, CONTAINED LANGUAGE IN THE STATUTE CONSISTENT WITH SECTION 14, WHICH WOULD REQUIRE THE COURT TO FIND PROBABLE CAUSE FOR A NEW OFFENSE, BUT ALSO WOULD REQUIRE THE COURT TO FIND NO CONDITION OF BOND, IN THE REQUIREMENTS OF ARTICLE I SECTION 14. THE LEGISLATURE SPECIFICALLY DELETED THAT LANGUAGE FROM THE STATUTE. BECAUSE THE LEGISLATURE IS PRESUMED TO ACT WITH DLIBRANS AND NOT IN -- WITH DELIBERANCE AND NOT INADVERTENCE, THAT THEY WOULD TAKE THAT LANGUAGE OUT.

IS THAT LANGUAGE IN THE CONSTITUTION, THE INTEGRITY --

YES, YOUR HONOR, IT IS.

OBVIOUSLY, WELL, THE CONSTITUTIONAL CONSIDERATIONS ARE THE OVERALL UMBRELLA UNDER WHICH THE REST OF THIS IS CONSIDERED. ARE YOU ARGUING THAT THIS IS A STATUTORY VIOLATION OR A CONSTITUTIONAL VIOLATION? I THOUGHT THAT THE ISSUE BEFORE US WAS WHETHER OR NOT THERE WAS A CONSTITUTIONAL VIOLATION, BY THE ENACTMENT OF THE STATUTE.

THAT'S CORRECT, YOUR HONOR. I AM ARGUING THAT THERE IS A CONSTITUTIONAL VIOLATION.

SO WE HAVE A PROVISION IN THE CONSTITUTION THAT SAYS, IF THE INTEGRITY OF THE JUDICIAL PROCESS CANNOT BE OTHERWISE PROTECTED, THEN THAT BAIL MAYBE DENIED.

YES, YOUR HONOR.

OKAY. AND NOW WE HAVE A PROVISION THAT SAYS, IF, WHILE YOU ARE OUT ON BAIL, YOU COMMIT ANOTHER CRIME, AND, AGAIN, I AM -- FOR THE PURPOSE OF MY QUESTION, I AM ASSUMING THAT THE PROPER PROOF HAS BEEN SUBMITTED TO ESTABLISH THAT, SO THAT IS A GIVEN RIGHT NOW. I REALIZE THERE MAY BE PROBLEMS, YOU KNOW, WITH THAT, WITH THE STANDARD OF THE GIVEN, BUT WHY WOULDN'T, IF WE PUT THOSE TWO PROVISIONS TOGETHER, THE CONSTITUTIONAL PROVISION, WITH REFERENCE TO THE INTEGRITY OF THE JUDICIAL PROCESS, AND NOW AN EXPLICIT STATUTORY PROVISION THAT SAYS IF YOU COMMIT ANOTHER CRIME WHILE YOU ARE BEING LET OUT ON BAIL, PENDING THE FIRST CHARGES, THAT THAT DOES INVOLVE A VIOLATION OF THAT CONSTITUTIONAL PROVISION? IE THE INTEGRITY OF THE JUDICIAL PROCESS. DOESN'T THAT MAKE SENSE?

YES, YOUR HONOR, AND THAT IS EXACTLY WHAT THE DISTRICT COURT ATTEMPTED TO DO. BY ARGUING THAT THE STATUTE, 903.0471, WERE CIRCUMSCRIBED BY ARTICLE I SECTION 14, THEY INADVERTENTLY READ THAT CONSTITUTIONAL PROVISION INTO THE STATUTE. HOWEVER, AS THIS COURT IS WELL AWARE, IT IS OBLIGATED TO FIND A STATUTE CONSTITUTIONAL, IF IT CAN KEEP THE PLAIN LANGUAGE OF THE STATUTE IN THE LEGISLATURE'S INTENT. THE LEGISLATURE SPECIFICALLY DELETEED THAT LANGUAGE FROM THE STATUTE, AND BY DOING SO, THEY EVIDENCED THEIR INTENT TO AUTHORIZE A TRIAL COURT TO ORDER A PRETRIAL DETENTION, ONLY UPON A FINDING OF PROBABLE CAUSE THAT SOMEONE COMMIT ADD NEW OFFENSE, AND THAT IS WHAT MAKES THE STATUTE UNCONSTITUTIONAL, IN THAT THE LEGISLATURE DID NOT INTEND FOR THE TRIAL COURT TO HAVE TO MAKE SUCH FINDINGS. IN THIS CASE, JUDGE GARDENER DID NOT MAKE THAT FINDING.

THAT IS SORT OF SUGGESTING, ISN'T IT, THAT THE LEGISLATURE IS INTENTIONALLY DOING IT SELF IN. THAT IS THAT THERE IS PERFECTLY GOOD COVER OR AUTHORITY TO HAVE A STATUTE LIKE THIS, PROVIDED IN THE CONSTITUTION, AND YOU ARE SUGGESTING THAT THE LEGISLATURE INTENTIONALLY DIDN'T TAKE ADVANTAGE OF THAT COVER AND, IN FACT, INTENTIONALLY DID AWAY WITH IT, AND I, THAT, WOULDN'T THAT BE JUST A LITTLE BIT IRRATIONAL?

JUDGE, YOUR HONOR, I WOULD SUGGEST THAT, YES, IT DOES APPEAR TO BE IRRATIONAL, BUT IT IS INTERESTING IT NOTE THAT THE LANGUAGE FROM THE CONSTITUTION IS IN 907.041. THE LEGISLATURE USED THAT LANGUAGE THROUGHOUT 907.041 AND REQUIRED, IN EVERY INSTANCE OF PRETRIAL DETENTION, FOR THE TRIAL COURT TO MAKE A FINDING CONSISTENT WITH ARTICLE I SECTION 14. THE FACT THAT THEY HAD AN EARLIER DRAFT OF THE STATUTE THAT HAD THAT LANGUAGE IN IT AND THEN INTENTIONALLY TOOK IT OUT, I DON'T THINK THAT THIS COURT CAN IGNORE THAT.

BUT IF YOU READ THE TWO NEW AMENDMENTS TOGETHER, WHICH IS THAT THE LEGISLATURE OBVIOUSLY MADE A DECISION THAT NOT EVERY VIOLATION OF A CONDITION OF PRETRIAL RELEASE WOULD BE AUTOMATICALLY SOMETHING THAT THEY WOULD WANT THE TRIAL COURT TO NOT ADMIT, TO REVOKE THE BOND AND NOT ALLOW PRETRIAL DETENTION BUT WHEN THE

COURT FINDS THAT THEY HAVE COMMITTED A NEW CRIME, THAT THAT WOULD BE A CLEAR REASON, FREE STANDING, TO ALLOW THE PRETRIAL RELIEF TO BE DENIED AND SO TO ME, READING THE TWO TOGETHER, WHICH IS A CONCERN THAT WE HAD EXPRESSED, WHERE WOULD BE THE STANDARD FOR THE TRIAL COURTS TO FOLLOW? SO NOW WE HAVE GOT CLEAR GUIDANCE, WHICH IS THAT THERE IS A VIOLATION OF A CONDITION OF PRETRIAL RELEASE, THEN THE JUDGE HAS TO, ALSO, FIND THAT EITHER THEY CAN'T PROTECT THE COMMUNITY OR ASSURE THE PRESENCE HAD, THAT THOSE TWO, THAT FINDING WOULD HAVE TO BE MADE, BUT IF THE DEFENDANT COMMITS A NEW CRIME, UNDER 0471, AND THERE IS PROBABLE CAUSE TO BELIEVE THAT CRIME HAS BEEN COMMITTED, THAT THAT, ALONE, IS SUFFICIENT, SO IT IS CLEAR THAT THE LEGISLATIVE INTENT IS TO ALLOW THIS TO HAPPEN, AND SO NOW WE GO BACK TO THE QUESTION AS TO WHY WOULDN'T COMMIT AGO NEW CRIME WHILE ON PRETRIAL RELEASE, BE SUFFICIENT, UNDER THE FLORIDA CONSTITUTION, TO COMPLY WITH THE REQUIREMENT THAT THIS IS, ALSO, DENIED BAIL, IF IT IS NECESSARY TO ENSURE THE INTEGRITY OF THE JUDICIAL PROCESS.

YOUR HONOR, I WILL SUBMIT THAT, AS JUSTICE ANSTEAD POINTED OUT, THERE IS STATUTE 907 .0 046 I BELIEVE -- 903.046, I BELIEVE, WHICH HAS A CONDITION STANDARD CONDITION OF BOND THAT THE DEFENDANT WILL NOT GO OUT AND COMMIT A NEW OFFENSE, SO IT IS THE SAME AS A VIOLATION OF BOND. I WOULD SUGGEST THAT IT IS UNCONSTITUTIONAL, REGARDLESS OF THE WAY THAT A PERSON VIOLATES A CONDITION OF BOND, TO HAVE ONE PRETRIAL DETENTION COMPORT WITH ARTICLE I SECTION 14, IN ONE WAY NOT COMPORT WITH ARTICLE I SECTION 14. THE TRIAL COURT STILL HAS TO MAKE A FINDING THAT NO CONDITION OF BOND CAN ASSURE THE INTEGRITY OF THE JUDICIAL PROCESS. EVEN CONCEDING THAT GOING OUT AND COMMITTING A NEW OFFENSE IS IMPUGNING THE INTEGRITY OF THE JUDICIAL PROCESS. THE COURT, STILL, HAS THE OPTIONS OF OBVIOUSLY INCREASING BOND, OF OTHER MONITORING DEVICES, OF OTHER CONDITIONS OF BOND THAT, OF COURSE THE COURT CAN PLACE ON THE DEFENDANT, ALMOST LIKE AN ARREST, HOUSE ARREST-LIKE SITUATION, BUT THE COURT HAS TO MAKE A FINDING, UNDER THE CONSTITUTION THAT, NO CONDITION OF BOND CAN SECURE THE INTEGRITY OF THE JUDICIAL PROCESS.

DID THE TRIAL COURT HERE, CONSTRUE THIS STATUTE, OR DID THE DISTRICT COURT, AS BEING MANDATORY? THAT IS THAT, IF, INDEED, ANOTHER CRIME IS COMMITTED, THAT IT IS MANDATORY THAT BAIL BE REVOKED AND THAT NO BAIL BE GRANTED? THERE WAS NO RULING TO THAT EFFECT.

NEW YORK CITY YOUR HONOR, THERE WASN'T.

SO AREN'T WE TALKING ABOUT WE -- NO, YOUR HONOR, THERE WASN'T.

SO AREN'T WE STILL TALKING ABOUT THE ABUSE OF DISCRETION OR AN IMPROPER APPLICATION OF THIS LAW, DO WE NOT? THAT IS FOR INSTANCE, LET'S ASSUME THAT THIS IS SOMEBODY THAT DIDN'T GET ALONG. THIS IS -- YOUR CLIENT IS A MAN, RIGHT? YOUR CLIENT DIDN'T GET ALONG WITH HIS GIRLFRIEND AND HE PUNCHED HER IN THE SHAULD OR -- IN THE SHOULDER OR SOMETHING AND HE WAS CHARGED WITH A SIMPLE BATTERY, AND IF IT WAS SHOWN THAT SHE ACTUALLY CAUSED HIM TO DO IT, SHE HIT HIM WITH A FRYING PAN BEFORE HE PUNCHED HER IN THE SHOULDER OR SOMETHING, THAT THE JUDGE REVOKED BAIL HERE IN THAT CASE. SO WHAT I AM TRYING TO DO IS SET UP AN EXAMPLE OF WHERE IT WOULD SEEM, YOU KNOW, NOT REASONABLE TO FORFEIT BAIL AND TO DENY ALL BAIL. THAT, STILL, WOULD BE REVIEWABLE WOULD IT NOT? UNDER THE HOLDEN --

YES, YOUR HONOR, BUT THEN IT IS REVIEWED BY AN ABUSE OF DISCRETION STANDARD AS OPPOSED TO A CONSTITUTIONAL STANDARD. AS THE COURT POINTED OUT, THIS STATUTE APPLIES EQUALLY TO PERSONS ON PRETRIAL RELEASE ON MISDEMEANORS, WHERE THERE IS PROBABLE CAUSE TO BELIEVE THAT HE COMMITTED A SECOND MISDEMEANOR, AS IT DOES TO PRETRIAL RELEASE FELONIES, WHERE THERE IS PROBABLE CAUSE TO BELIEVE THAT THEY COMMITTED A

SECOND FELONY, SO IN THE COURT'S EXAMPLE, IT WOULD STILL BE REVIEWABLE ON A HABEAS PETITION, BUT THE HABEAS PETITION WOULD BE BASED ON ABUSE OF DISCRETION. ALSO, THE SECOND REASON IDEA STATUTE IS UNCONSTITUTIONAL, IS BECAUSE IT VIOLATES SUBSTANTIVE DUE PROCESS, BY ONLY USING A PROBABLE CAUSE STANDARD TO PROVE UP THE COMMISSION OF THE NEW OFFENSE. THIS COURT IS AWARE THAT THE BALANCING TEST TO DETERMINING WHETHER A STANDARD OF PROOF VIOLATES SUBSTANTIVE DUE PROCESS WAS SET FORTH BY THE UNITED STATES SUPREME COURT IN ELDREDGE AND THE COURT IN SUPREME COURTED THAT THREE FACTORS SHOULD BE BALANCED. THE FIRST FACTOR IS THE PRIVATE INTEREST --

YOU ARE IN YOUR REBUTTAL TIME.

THANK YOU, YOUR HONOR. THE FIRST FACTOR IS THE PRIVATE INTEREST AFFECTED. THE SECOND FACTOR IS THE RISK OF ERROR OF HE -- ERROR OF ERRONEOUS DETENTION, AND THE THIRD FACTOR IS THE COUNTERBALANCING GOVERNMENTAL INTEREST. THE PRIVATE INTEREST HERE IS THE EMBODIMENT OF PRESUMPTION OF INNOCENCE. THE RISK OF ERROR IS FOR ERRONEOUS PRETRIAL DETENTION. THIS COURT HAS TO DECIDE WHO BEARS THAT, THE COURT OR THE STATE. THE COURT HAS A GREATER RISK OF JURY FROM THE ERRONEOUS PRETRIAL DETENTION THAN THE STATE DOES. LOOKING AT LOSS OF JOB, INCOME, FAMILIAR, INABILITY TO MAINTAIN RELATIONSHIPS, INABILITY TO PREPARE HIS DEFENSE, THESE THINGS CANNOT BE ADDRESSED BY SUBSEQUENT ACQUITTAL. ALSO, IF THE DEFENDANT IS THEN FORCED TO CHOOSE BETWEEN PROLONGING HIS INCARCERATION OR FILING WRITS, MOTIONS, CONDUCTING INVESTIGATION AND DISCOVERY, THAT MIGHT INCREASE HIS LIKELIHOOD OF ACQUITTAL. THE STATE'S INTERESTS HAVE TO DO WITH PROTECTION OF THE COMMUNITY ASSURING THE PRESENCE OF THE DEFENDANT, ASSURING THE INTEGRITY OF THE JUDICIAL PROCESS. HOWEVER, THESE CONCERNS ARE NOT FOUNDED ON OR DO NOT REQUIRE A LOWER STANDARD OF PROOF. THE STATE HAS NO INTEREST IN DETAINING SOMEONE WHO IS NOT A DANGER TO THE COMMUNITY. THE STATE HAS NO INTEREST IN DETAINING SOMEONE WHO IS NOT A FLIGHT RISK OR HAS NO INTENTION OF IMPUGNING THE INTEGRITY OF THE COURT. THE STATE'S INTEREST DOES NOT, IS NOT GREATER THAN AN INDIVIDUAL'S INTEREST. SO THE THIRD FACTOR, ALSO, IS THE COUNTERVALING STATE INTEREST WHICH IS NOT THE PROBABLE CAUSE STANDARD. THERE IS NO REASON TO HAVE A LOWER PROBABLE CAUSE STANDARD TO FURTHER THE STATE'S INTEREST.

DOESN'T THE STATE HAVE A GREAT INTEREST, IN A PERSON WHO HAS DEMONSTRATED THEIR LACK OF ABILITY TO FOLLOW THE LAW, TO CONTINUE TO BE OUT THERE, COMMITTING SUCH OFFENSES?

THE PROBABLE CAUSE STANDARD, YOUR HONOR, DOESN'T FURTHER THAT INTEREST. THE ELDREDGE TEST REQUIRES THE COURT TO BALANCE NOT ONLY THE RISK OF ERROR BUT THE LIKELIHOOD THAT A HIGHER BURDEN OF PROOF WOULD EITHER ELIMINATE THE RISK OF ERROR OR ALLEVIATE THE RISK OF ERROR.

WHAT WOULD YOU SUGGEST BE THE BURDEN OF PROOF?

IN 907.0 41ST BURDEN IS SUB-- IN 907.041, THE BURDEN IS SUBSTANTIAL PROBABILITY. THERE IS NO DOUBT IT HAS TO BE MORE THAN PROBABLE CAUSE. I WOULD RESERVE THE REST OF MY TIME, UNLESS THERE ARE ANY FURTHER QUESTIONS, FOR REBUTTAL.

MAY IT PLEASE THE COURT. MY NAME IS JOSEPH TREN GALLEY. I REPRESENT THE -- MY NAME IS JOSEPH BRING ALLY. I REPRESENT THE STATE OF FLORIDA IN THIS -- MY NAME IS JOSEPH TRINGALI. FIRST, THE STATE WOULD SUBMIT TO THIS COURT THAT THE PROBABLE CAUSE STANDARD IS THE PROBABLE CAUSE STANDARD THAT IS USED EVERYDAY, IN EVERY COURTROOM IN FLORIDA. IN FACT, IT IS USED EVERYDAY IN VIRTUALLY EVERY COURTROOM IN THE UNITED STATES, TO MAKE A DETERMINATION AS TO WHETHER OR NOT A PARTICULAR DEFENDANT SHOULD BE RELEASED COMPLETELY FREE, OR THAT THE PROCESS SHOULD

CONTINUE. THERE IS NO MAGIC IN THE PROBABLE CAUSE STANDARD. IT IS COMMONLY USED. IT IS MADE BY MAGISTRATES, LITERALLY, SEVEN DAYS A WEEK. THE POINT THAT IS BEING MADE HERE, IN THIS ARGUMENT, COUNSEL IS SOMEHOW SUGGESTING THAT THERE SHOULD BE SOME HIGHER STANDARD TO APPLY TO PERSONS WHO ARE AT CONDITIONAL LIBERTY IN THE FIRST INSTANCE, WHO, THEN, ARE REARRESTED FOR A SECOND OFFENSE. THE STATE WOULD SUBMIT THERE IS SIMPLY NO REASON TO ASSUME THAT IT IS A PROPER CONCLUSION. IT CERTAINLY WOULD NOT BE REQUIRED BY THE FLORIDA CONSTITUTION, AND IT WOULD NOT BE REQUIRED BY ANY STATUTE. THE FLORIDA CONSTITUTION, IN THE 1983 AMENDMENT, SPECIFICALLY PROVIDED THAT BAIL COULD BE RESTRICTED, COULD BE DENIED UNDER CERTAIN CIRCUMSTANCES, AND AS JUSTICE ANSTEAD POINTED OUT, ONE OF THOSE CIRCUMSTANCES SPECIFICALLY NAMED IN THE CONSTITUTION, IS THE CIRCUMSTANCE IN WHICH THE STATE WAS SEEKING TO ASSURE THE INTEGRITY OF THE JUDICIAL PROCESS.

SHOULD THE COURT HAVE TO MAKE A FINDING THAT THAT IS WHY BAIL IS BEING DENIED? THAT THAT IS THE PURPOSE OF IT? THE DISTRICT COURT HERE SEEMS TO HAVE INDICATED THAT THIS IS REALLY MORE BECAUSE HE COULDN'T PROTECT THE PUBLIC, AND SO SHOULD THE TRIAL JUDGE HAVE TO MAKE A FINDING AS TO ONE OF THOSE CONSTITUTIONAL REASONS FOR DENYING BAIL?

I WOULD SUBMIT NOT, YOUR HONOR. I WOULD SUBMIT THAT, CERTAINLY, THE LEGISLATURE COULD DEVISE A SCHEME OR A PLAN IN WHICH A HEARING WOULD BE REQUIRED, IN WHICH CERTAIN PROCEDURES WOULD BE FOLLOWED, AND IN WHICH THE, IN WHICH FINDINGS WOULD BE REQUIRED, AND THE LEGISLATURE DID THAT IN 907. THE LEGISLATURE, ALSO, SAID, IN THIS PARTICULAR CASE, AND INCIDENTALLY, IN STATE VERSUS PAUL, THIS COURT POINTED OUT THAT THE LEGISLATURE HAD SET UP A COMPREHENSIVE SCHEME, DEALING WITH THE ISSUE OF BAIL, AND ALL OF THOSE FACTORS ARE STILL IN PLACE. THE LEGISLATURE, HOWEVER, THEN CAME OUT WITH AN ADDITIONAL PROVISION, AND THIS IS THE ADDITIONAL PROVISION, WHAT WE ARE DEALING WITH HERE TODAY. IT IS THE 5DITIONAL PROVISION, AND -- THE ADDITIONAL PROVISION, AND THE LEGISLATURE SAID QUITE CLEARLY, AS JUSTICE ANSTEAD POINTED OUT, NOTWITHSTANDING ALL OF THOSE OTHER PROVISIONS, THAT IF THE TRIAL COURT HAS PROBABLE CAUSE TO BELIEVE THAT A SECOND CRIME WAS COMMITTED, WHILE THE DEFENDANT WAS ON BAIL, THEN THE COURT CAN REVOKE BAIL IN THE FIRST CASE. THAT IS THE FINDING. THE PROBABLE CAUSE FINDING OR THE FINDING THAT THERE IS PROBABLE CAUSE, THAT THE DEFENDANT COMMITTED A SECOND CRIME WHILE ON BAIL, IS THE FINDING THAT IS REQUIRED IN THIS VERY PARTICULAR LIMITED CIRCUMSTANCE. IT DOESN'T THROW OUT THE REST OF 907. IT DOESN'T THROW OUT ALL OF THE OTHER PROCEDURES. IT DOESN'T THROW OUT ALL OF THE OTHER SAFEGUARDS DEALING WITH WHETHER OR NOT SOMEONE VIOLATED A CONDITION OF PRETRIAL RELEASE, BY NOT COMING HOME ON TIME.

NOW, THE CONSTITUTIONAL PROVISION DOESN'T SAY THAT THIS IS APPLICABLE TO THE FIRST TIME A PERSON APPEARS BEFORE THE COURT FOR A BOND DETERMINATION OR BAIL DETERMINATION, SO WHY SHOULDN'T A PERSON, WHENEVER THEY APPEAR BEFORE THE COURT, HAVE THAT SAME RIGHT THAT, SAME CONSTITUTIONAL RIGHT, THEY HAD TO MAKE, PURSUANT TO THE CONSTITUTION?

I WOULD SUBMIT TO YOUR HONOR THAT THE CONSTITUTION REALLY CAN'T SAY THAT, UNLESS YOU DEVELOP A CONSTITUTION THAT IS AS LONG AS ALL OF THE STATUTES OF FLORIDA. THE CONSTITUTION LAYS OUT, VERY BASIC PRINCIPLES, AND UNTIL 1983 VIRTUALLY SAID THAT BAIL COULD NOT BE DENIED, AND IN THAT YEAR, THE CONSTITUTION WAS AMEND WITH ONE SENTENCE, WHICH SAID, YES, BAIL CAN BE DENIED IN THESE THREE CIRCUMSTANCES, TO ASSURE THE SAFETY OF THE PUBLIC, WHEN NOTHING ELSE WILL ASSURE THE PRESENCE OF THE DEFENDANT AT TRIAL OR TO ENSURE THE INTEGRITY OF THE JUDICIAL PROCESS.

WELL, THE FIRST TWO ARE, THERE HAVE BEEN CASE LAW AND, OF COURSE, 041 DEALS EXTENSIVELY WITH THOSE FIRST TWO PROVISIONS, AND ALL OF THOSE PROVISIONS REQUIRE THE

JUDGE TO FIND A SUBSTANTIAL PROBABILITY IN CONNECTION WITH IT. THE QUESTION OR THE CONCERN I HAVE WITH 047, IT IS CLEAR WHAT THE LEGISLATURE INTEND, WHICH IS TO VEST THAT DISCRETION IN THE TRIAL COURT, WHICH THE THIRD DISTRICT THOUGHT THE TRIAL COURT HAD, ANYWAY, THAT IF A NEW CRIME/n IS COMMITTED, THAT PRETRIAL RELEASE CAN BE DENIED, BUT YOU AGREE THAT IT IS NOT STATED IN MANDATORY LANGUAGE.

NO. IT IS NOT MANDATORY.

SO, IT IS THERE FOR REVIEWED WITHIN THE TRIAL COURT'S DISCRETION IF IT IS NOT MANDATORY.

IT WOULD BE REVIEWED WITHIN THE TRIAL COURT'S DISCRETION YES.

AND FOR A REVIEWING COURT, THEN, TO DETERMINE WHETHER THERE HAS BEEN AN ABUSE OF DISCRETION WITHOUT THE TRIAL COURT MAKING A FINDING, SINCE WE ARE NOT REALLY EXACTLY SURE WHAT ASSURES THE INTEGRITY OF THE JUDICIAL PROCESS MEANS, AND UNLESS WE SAY IT IS EQUATED, YOU COMMIT A NEW CRIME, THERE HAS BEEN A VIOLATION OF THE INTEGRITY OF THE JUDICIAL PROCESS, IF THAT IS THE CASE, THAT IS THE TWO ARE AUTOMATICALLY EQUATED, SO THAT NO FINDING IS MADE, I GUESS MY QUESTION WOULD BE, THEN, WELL, HOW WILL THE APPELLATE COURTS DETERMINE WHEN THE DISCRETION HAS BEEN ABREU -- ABUSED, OR IS THE STATE'S POSITION THAT, IF A NEW CRIME IS COMMITTED, IT WILL ALWAYS BE A REASONABLE DECISION TO DENY PRETRIAL RELEASE?

THE STATE'S POSITION IS THAT, GIVEN THE STATUTE, WHICH INTERPRETS OR WHICH PUTS INTO EFFECT THE CONSTITUTIONAL PROVISION, BEGIN THAT STATUTE, IF THERE IS A FINDING THAT THERE IS PROBABLE CAUSE TO BELIEVE A SECOND CRIME HAS BEEN COMMITTED WHILE THE DEFENDANT IS ON BAIL, THAT IS THE ONE AND ONLY FINDING NECESSARY IN THIS CIRCUMSTANCE.

SO IT DOESN'T REALLY MATTER, THEN, WHAT THE CRIME IS. IT COULD BE THAT THE PERSON WAS DISORDERLY. IT COULD BE THAT THERE WAS, JUST SIMPLY POSSESSION OF MARIJUANA. IT WOULDN'T MATTER WHAT THE CRIME WAS OR WHAT THE POTENTIAL DEFENSES MIGHT BE TO THAT CRIME, AS LONG AS THERE HAS BEEN AN ARREST AND THERE IS THE MINIMUM THRESHOLD OF PROBABLE CAUSE, THAT THE DEFENDANT CAN BE KEPT IN JAIL, PENDING --

GIVEN THAT THRESH HOLE, THE STATUTE -- GIVEN THAT THRESHOLD, THE STATUTE SAYS THE TRIAL COURT MAY REVOKE BOND.

YOU ARE NOW LECTURING TO A BUNCH OF TRIAL JUDGES AS TO WHAT THEY WILL USE IN EXERCISING THEIR DISCRETION. DO YOU TELL THEM TO LOOK AT THE NATURE OF THE CRIME? DO YOU TELL THEM TO LOOK AT POTENTIAL DEFENSES? THAT, I MEAN, WOULD, THIS IS A NONADVERSARIAL PROCEEDING AT THIS POINT. WHAT DO YOU, HOW DO YOU, IS THE DEFENDANT ALLOWED TO PUT ON ANY TESTIMONY? TO EXPLAIN THE CIRCUMSTANCES? WHAT IS THE APPELLATE COURT REVIEW?

CERTAINLY HE WOULD BE ALLOWED TO PUT ON TESTIMONY, IF YOU WILL PUT ON A CASE, BUT THE CASE IS LIMITED TO THE QUESTION BEFORE THE COURT, AND THE QUESTION BEFORE THE COURT IS WAS A SECOND CRIME COMMITTED? WAS THERE A CRIME HERE? WERE YOU ARRESTED FOR SOMETHING, OR WAS THIS SOMETHING, WAS IT SOME SORT OF MISUNDERSTANDING OR SOME SORT OF SET UP OR SOMETHING SOMETHING? BAD SORT OF THING.

SO IT DOES NOT HAVE TO DEPEND ON THE NATURE OF THE CRIME. CATAGORICALLY, ANY CRIME.

ANY CRIME GIVES THE TRIAL COURT THE RIGHT TO REVOKE BAIL FROM THE FIRST --

KOOT COURT HAVE GRANTED THIS MOTION TO ALLOW HIM TO -- COULD THE COURT HAVE

GRANTED THIS MOTION TO ALLOW HIM TO BE RELEASED ON BAIL AGAIN, BY RAISING THE AMOUNT OF THE BOND TO $5,000?

THIS SETS THE PROCEDURE IN PROCESS. VERY INTERESTING, IN THE RECORD BEFORE THIS COURT, THE STATE'S ORIGINAL RESPONSE WAS THAT THIS IS ALMOST IN THE NATURE OF A WARRANT THAT IS ISSUED FOR VIOLATION OF PROBATION, OR THE PROBATION OFFICER COMES BEFORE THE JUDGE. THE JUDGE SIMPLY, BASED ON ONE SIDE ALONE, ISSUES A WARRANT FOR A VIOLATION. THE PROBATIONER IS ARRESTED. HE IS TAKEN INTO CUSTODY. THAT DOES NOT PREVENT HIM FROM MAKING ANOTHER APPLICATION FOR BAIL. THAT DOES NOT PREVENT THE TRIAL JUDGE FROM SETTING BAIL. BUT CERTAINLY THIS STATUTE ALLOWS THE TRIAL JUDGE TO SET THE PROCESS IN MOTION, BY REVOKING BAIL ON THE FIRST CASE.

AND THERE CAN BE, AS I UNDERSTAND YOUR ARGUMENT, ONCE THE PROBABLE CAUSE FINDING IS HAD, THERE COULD BE NO, AS A PRACTICAL MATTER, ABUSE OF DISCRETION THERE, AT THAT LEVEL. THAT WOULD BE ALMOST UNREVIEWABLE.

IT WOULD ALMOST BE UNREVIEWABLE.

IS THAT CORRECT?

YES. YES.

SO IT WOULD BE UPON THE DEFENDANT, THEN, TO MAKE ADDITIONAL APPLICATION FOR BAIL.

CORRECT, AND THEN I THINK WE GO BACK TO THE PROVISIONS OF, THAT ARE ALREADY LAID OUT IN THE STATUTE. BUT THAT DOES NOT, GOING BACK TO WHERE THIS ARGUMENT STARTED, WITH ALL DUE RESPECT, WHAT WE ARE HERE TO DISCUSS IS THE CONSTITUTIONALITY OF THIS PARTICULAR STATUTE, WHICH APPLIES IN A PARTICULAR CIRCUMSTANCE. CAN THE TRIAL COURT REVOKE BAIL, BASED ON A SECOND CRIME COMMITTED, WHILE THE DEFENDANT IS OUT?

SEE, NOW, I GUESS I AM CONFUSED, BECAUSE I THOUGHT THE ARGUMENT IN STATE V PAUL WAS THAT A VIOLATION OF THE CONDITIONS OF PRETRIAL RELEASE WILL ALLOW THE TRIAL COURT TO REVOKE THE CURRENT FINE, BUT THEN WHEN A DEFENDANT TIMES A MOTION TO BE -- WHEN A DEFENDANT FILES A MOTION TO BE RELEASED, 041 AND THOSE REQUIREMENTS, MY UNDERSTANDING WITH 041 IN PLACE, THE DEFENDANT NO LONGER HAS A RIGHT, UNDER 041, TO APPLY UNDER THOSE PROCEDURES, THAT PRETRIAL DETENTION THAT, IS THE END OF IT. YOU VIOLATED YOUR BOND, BY COMMIT AGO NEW CRIME, AND THAT IS THE END OF THE STORE I.

HE CERTAINLY MADE THE AND -- AND THAT IS THE END OF THE STORY.

HE CERTAINLY MADE THE APPLICATION IN THIS CASE AFTER THE BOND WAS REVOKED. HE CERTAINLY MADE THE ARGUMENT THE JUDGE REFUSED TO SET BOND. I DON'T THINK THERE IS ANYTHING REQUIRING, CERTAINLY UNDER 903.0471. THERE IS NOTHING --

041 DOES NOT HAVE TO BE FOLLOWED. OTHERWISE THERE WOULD BE, WE WOULD BE INTERPRETING THE STATUTE TO GO BACK TO THE WAY IT WAS UNDER STATE V PAUL, AND IT IS PRETTY CLEAR THE LEGISLATURE INTENDED TO SAY THAT PRETRIAL DETENTION MAY BE ORDERED, UPON THE COMMISSION OF A NEW CRIME, NO MATTER WHAT THE CRIME IS, NO MATTER HOW SMALL, NO MATTER WHAT THE DEFENSES ARE. THAT IS THE END.

CLEARLY, AS POINTED OUT BY THIS COURT, IN STATE VERSUS PAUL, IN THE DISSENTING OPINION, CLEARLY WHAT THE LEGISLATURE WAS DOING APPEARED TO BE DOING, AND IN FACT THE LEGISLATIVE NOTES INDICATE THAT WHAT THEY WERE DOING WAS OVERRULEING THE HOLDING OF PAUL VERSUS GINNY, AT THE FOURTH DCA, AND ATTEMPTING TO GIVE THE TRIAL JUDGES AUTHORITY, WITHIN THE ENTIRE LEGISLATIVE SCHEME, TO REVOKE BAIL IN THIS CIRCUMSTANCE.

AND TO NOT GIVE THE DEFENDANT AN ADDITIONAL RIGHT TO FILE A MOTION, SO IN ANSWER TO JUSTICE SHAW'S QUESTION, THAT SAID THE DEFENDANT CAN FILE A MOTION, THE DEFENDANT CAN FILE A MOTION, BUT 0471 SAYS THE JUDGE DOESN'T HAVE TO EVEN ENTERTAIN THAT MOTION.

AGREED.

OKAY.

AGREED. BUT HE CAN FILE THE MOTION. I MEAN, THIS IS NOT, I MEAN, HE CAN FILE THE MOTION, AND --

WHAT WOULD HE SAY?

IF I WERE IN THAT POSITION, I WOULD SAY THAT THIS IS A MISTAKE. I WAS SET UP. THIS IS NOT, YOU KNOW, I WAS ARRESTED FOR SOMETHING THAT WAS NOT MY FAULT, THAT SORT OF THING THING.

SOMETHING THAT WOULD GO TO WHETHER THERE WAS PROBABLE CAUSE ONLY TO THE ISSUE AS TO WHETHER THERE WAS PROBABLE CAUSE THAT A NEW CRIME HAS BEEN COMMITTED.

THAT WOULD BE MY POSITION. YES, YOUR HONOR.

WHAT WOULD HAPPEN IF, AFTER 0471 WAS REVOKED, AND THE STATE DISMISSEST CHARGE, UNDER THE WAY THE -- DISMISSS THE CHARGE, UNDER THE WAY IT IS SET UP, IS THERE AN AUTOMATIC PROCEDURE FOR THE DEFENDANT SET UP, OR --

THERE IS CERTAINLY NO AUTOMATIC PROCEDURE, BUT LET'S ASSUME THAT THE SECOND ARREST TRIGGERS REVOCATION IN THE FIRST CASE. LET'S, FURTHER, ASSUME THAT FOR WHATEVER REASON, THE SECOND ARREST BECOMES NUMBER AND VOID -- BECOMES NULL AND VOID. IS NOLLE PROSSED BECAUSE THERE WAS NO CAUSE OR WHATEVER. THEN CERTAINLY HE WOULD HAVE A DEFENDANT IN THAT CIRCUMSTANCE WOULD HAVE A VERY REASONABLE ARGUMENT, UNDER THE ENTIRE BAIL SCHEME, TO GO BACK TO THE TRIAL COURT AND SAY, WELL, THERE WAS NO PROBABLE CAUSE. PROBABLE CAUSE, NOW, THERE IS NO SECOND QAS. THEREFORE I SHOULD BE -- THERE IS NO SECOND CASE. THEREFORE I SHOULD BE READMITTED TO BAIL, AS I WAS IN THE BEGINNING. THAT IS GOING TO BE A DETERMINATION, CERTAINLY, DOWN THE ROAD, BUT THE QUESTION BEFORE THIS COURT IS SHOULD THIS IS THIS STATUTE AS PASSED BY THE FLORIDA LEGISLATURE, GIVEN THE ARTICLE I SECTION 14 OF THE FLORIDA CONSTITUTION, AS IT STANDS TODAY, IS THIS STATUTE CONSTITUTIONAL? AND THE STATE SUBMITS THAT CLEARLY THE STATUTE IS CONSTITUTIONAL. CLEARLY IT IS PART OF THE OVERALL SCHEME INTENDED BY THE LEGISLATURE, AND ALREADY CONSIDERED BY THIS COURT, AND THE COURT SHOULD CONTINUE TO FIND, AS IT DID IN THE PAST, THAT THIS IS SIMPLY ANOTHER ONE OF THE FACTORS AND THEREFORE THE STATUTE, ITSELF, IS CONSTITUTIONAL. THANK YOU. MR. CHIEF JUSTICE

REBUTTAL.

I WOULD FIRST LIKE TO ADDRESS THAT THE STATE IS MISS CATEGORYIZING THE -- IS MISS CAT CORE GUISE SIZE -- IS MISS CATAGORIZING THE STATUTE AS A BOND REVOCATION STATUTE. IT AUTHORIZES THE COURT TO HOLD THE DEFENDANT IN PRETRIAL DETENTION. THE COURT IS CONCERNED THAT THIS COULD BE UTILIZED FOR MISDEMEANOR IS CORRECT. IT IS BEING USED IN COUNTY COURT AND, ALSO, THIS STATUTE DOES NOT REQUIRE AN ARREST. WE ARE USING THE WORD "ARREST". IT DOES NOT REQUIRE THAT AN ARREST OR PROSECUTION BE TAKEN, BASED UPON PROBABLE CAUSE THAT THE DEFENDANT COMMITTED A NEW OFFENSE. IN THIS INSTANCE, MR. PARKER WAS IN FACT, ARRESTED, BUT THE STATUTE DOES NOT REQUIRE THAT. MR. CHIEF JUSTICE

THANK YOU. YOUR TIME IS UP. THANK YOU, COUNSEL. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE, THE FINAL CASE TO