2015 WL 5222646 (Fla.Cir.Ct.) (Trial Order)
Circuit Court of Florida.
Miami-dade County

STATE of Florida, Plaintiff,
v.
Elton BANDOO, Defendant.

No. F15-2700.
June 24, 2015.

Order Denying Motion to Revoke Bond

William Howell, Esq.

Seth Levey, Esq.

Miguel M. De La O, Judge.

***1 THIS CAUSE** came before this Court [1] today on the State of Florida's ("State") Motion to Revoke Bond ("Motion") filed on May 12, 2015. The Court has reviewed the Motion, heard argument of counsel, and is fully advised in the premises. The Motion is denied.

I. BACKGROUND.

The following facts are undisputed.

A. On April 20, 2015, the trial court found that the State failed to meet its burden, under *State v. Arthur*, 390 So. 2d 717 (Fla. 1980), of establishing that the proof was evident, and the presumption great that Defendant, Elton Bandoo ("Bandoo"), had committed the crime of attempted first degree felony murder of a law enforcement officer. Consequently, as required by the Florida Constitution, article 1, section 14, the trial court set a reasonable bond [2] and conditions of release for Bandoo.

B. Unbeknownst to the trial court, or Bandoo, the State had received information on April 15, 2015 from a jailhouse informant, Marcus Pratt ("Pratt"), that Bandoo had allegedly (1) admitted to Pratt that he was "awake and in his living room when police arrived at his residence and that he looked out of the window and saw that the police were arriving outside"; and (2) advised Pratt that he intended to arrange for the murder of the victim, Officer Lino Diaz. Motion at 1.

C. The trial court asked the State whether it had any more information to present in conjunction with the *Arthur* hearing before issuing its ruling on April 20, 2015. The State indicated it had no further information it wished to present, and did not ask the Court for additional time to evaluate the testimony provided by Pratt. Neither the trial court nor Bandoo had any inkling that the State was in the possession of Pratt's testimony.

***2** D. The State filed a motion for pretrial detention on April 30, 2015. This motion did not make reference to Pratt's testimony.

E. The State did not disclose the Pratt testimony between the date the trial court set bond on April 20, 2015, and the date Bandoo posted bond on May 7, 2015.

F. On May 12, 2015, five days after Bandoo posted bond and was released on house arrest, the State for the first time advised the trial court of the "new" testimony from Pratt.

II. THE HEARING ON THE MOTION.

The Motion sets forth the factual basis for the State's request that the Court revoke Bandoo's bond (*i.e.*, Pratt's testimony), but fails to articulate any legal grounds for the State's request. When this Court inquired as to the legal basis for revocation, the State posited three theories. First, the State seeks to have the Court reconsider the trial court's ruling on the *Arthur* hearing. Second, the State argues that the trial court should reconsider its ruling denying the State's motion for pretrial detention because of the "new" information provided by Pratt. Third, the State argues that Bandoo has committed a new crime by sharing his plan to murder Officer Diaz with Pratt.

The Court advised the parties that if the State could lawfully seek reconsideration of the trial court's *Arthur* hearing ruling, the Court would send the issue back to Judge Bloch because he is in a better position to address such a claim. The Court further advised that it would, if legally allowed, hear any witnesses the State wished to call in connection with its motion for pretrial detention (essentially merging the previously denied motion for pretrial detention and the Motion). As to the final asserted legal ground, the Court advised that under Florida law Bandoo must have committed the new crime while on pretrial release. *See* § 903.0471, Fla. Stat. (2014); *Santiago v. Ryan*, 109 So. 3d 848 (Fla. 3d DCA 2013). As the hearing drew to a conclusion, it appeared to the Court that the State abandoned this last theory, but the Court will address it nevertheless in an abundance of caution.

III. THE LAW.

A. THE PRATT TESTIMONY IS NOT "NEW" INFORMATION WHICH WOULD ALLOW A COURT TO REVOKE BANDOO'S BOND.

After a defendant is granted bond, it is axiomatic that a court can modify or revoke the conditions of bond "only by showing that there is good cause for the modification." *Saravia v. Miami-Dade County*, 129 So. 3d 1163, 1165 (Fla. 3d DCA 2014).

> Because the motion for pretrial detention in this case was filed after the court had entered an order setting bail, it must meet the "good cause" requirement of rule 3.131(d) as well as the substantive requirements for pretrial detention as set forth in rule 3.132. To put this another way, a motion for pretrial detention filed after the entry of an order setting bail is also a motion to modify bail.

Bush v. State, 74 So. 3d 130, 134 (Fla. 1st DCA 2011).

To establish such "good cause," the State must show "a change in circumstances or new information not made known to the first appearance judge that warrants the increase or revocation of bond." *Id*. *See Soto v. State*, 89 So. 3d 263, 263 (Fla. 3d DCA 2012) ("While the trial court has discretion to refuse bail upon the necessary showing by the State, *see State v. Arthur*, 390 So. 2d 717, 720 (Fla. 1980), once it grants bail, it cannot revoke the decision if circumstances have not changed or additional evidence emerged since the bond was originally set.").

***3** Although the Pratt testimony was not presented to Judge Bloch at the time of the *Arthur* hearing or in conjunction with the motion for pretrial detention, the Third DCA has explained:

> Evidence that was available to the State at the time of first appearance does not qualify as "new" information and therefore does not justify the subsequent revocation of bond and imposition of pretrial detention.

Id. *See Bush*, 74 So. 3d at 133 ("Evidence that was available to the state at the time of the first appearance hearing does not qualify as new information and therefore does not justify a subsequent denial of bail or a subsequent increase in the amount of bail.").

It is undisputed that the State was aware of Pratt's testimony at least five days before Judge Bloch granted Bandoo bond. The State could have informed Judge Bloch that it had uncovered new evidence that might impact both phase one and phase two of his analysis under *Arthur* and requested more time to verify the information. The State chose not to do so. Consequently, the standard which this Court must now apply to revoke Bandoo's motion is clearly articulated by the Third DCA, and the State cannot meet the "good cause" standard.

B. THE PRATT TESTIMONY DOES NOT ESTABLISH THAT BANDOO COMMITTED A NEW CRIME WHILE ON PRETRIAL RELEASE.

A court can revoke a defendant's conditions of pretrial release and hold the defendant in pretrial detention "if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release." § 903.0471, Fla. Stat. (2014). The question for this Court is whether Bandoo was on pretrial release when he allegedly told Pratt he planned to murder Officer Diaz. The undisputed facts are that he was not. The conversation with Pratt allegedly occurred sometime before April 15, 2015. Judge Bloch did not admit Bandoo to bail until April 20, 2015. Had the conversations allegedly occurred after Judge Bloch granted Bandoo pretrial release, then – even if Bandoo had not yet posted bond – this Court could revoke Bandoo's pretrial release. *See Santiago v. Ryan*, 109 So. 3d 848, 851 (Fla. 3d DCA 2013). However, those are not the facts before this Court.

This Court does not set policy, it interprets statutes. As a trial court, we are bound to follow the words of Justice Oliver Wendell Holmes: "[w]hatever the consequences, we must accept the plain meaning of plain words." *United States v. Brown*, 206 U.S. 240, 244 (1907). Section 903.0471 is clear, and this Court cannot give different meaning to the words "while on pretrial release." The Legislature could, of course, amend the statute to provide for revocation of pretrial release if there is probable cause to believe a defendant has committed a new crime while already facing criminal charges. Thus far, the Legislature has not seen fit to so amend the statute. Perhaps it should.

IV. CONCLUSION.

The law and facts are clear. Therefore, the Court has no discretion but to deny the State's Motion. This Court is aware that the charge against Bandoo is serious, and that Pratt's testimony is troubling. This Court does not pass judgment on the merits of the State's case or the veracity of Pratt's claims. However, this Court is constrained by clear and binding precedent which forbids it from addressing Bandoo's conditions of pretrial release unless there is good cause.

> ***4** It is easy to make light of insistence on scrupulous regard for the safeguards of civil liberties when invoked on behalf of the unworthy. It is too easy. History bears testimony that by such disregard are the rights of liberty extinguished, heedlessly at first, then stealthily, and brazenly in the end.

Davis v. United States, 328 U.S. 582 (1946) (Frankfurter, J., dissenting).

DONE and ORDERED in Miami-Dade County, Florida this 24 day of June, 2015.

<<signature>>

Miguel M. de la O

Circuit Judge

cc: William Howell, Esq.

Seth Levey, Esq.

Footnotes

1 This Court heard the Motion because the trial judge, Judge Jason Bloch, was unavailable to hear the Motion today. The Motion has been pending for nearly 6 weeks due to counsels' scheduling conflicts and the trial court's attendance at Advanced Judicial Studies the week of June 8th in order to obtain death penalty certification.
The Motion was originally scheduled for hearing on May 29, 2015. However, on May 21, 2015, the State asked to move the hearing date to the third week of June because of Assistant State Attorney Bill Howell's schedule. The trial court scheduled the hearing for June 17, 2015. On June 16, 2015, the State again asked the trial court to move the hearing date because of Mr. Howell's unavailability. The trial judge then set the hearing for today's date.
Yesterday, June 23, 2015, Judge Bloch advised the parties that he might have a conflict for today's hearing. Because the Motion had been pending so long, Judge Bloch advised that he would find another judge to preside over the hearing if he was unavailable. No objection was raised – by either party – at that time. Late yesterday afternoon, Judge Bloch confirmed he could not hear the Motion today and asked this Court to address the Motion so as to not cause any further delay.

2 The trial court set Bandoo's bond at $500,000.00 with a *Nebbia* requirement. Bandoo posted the bond on May 7, 2015, which required him to pay a premium of $50,000.00, after satisfying the trial court that the funds used to pay the premium where from non-criminal sources.

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