IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

JEFFREY THOMAS DANIEL,

Appellant,

v. Case No. 5D21-237

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed May 19, 2021

Appeal from the Circuit Court
for Volusia County,
Raul A. Zambrano, Judge.

Matthew J. Metz, Public Defender, and Nancy Ryan, Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Allison L. Morris, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

Jeffrey Thomas Daniel ("Daniel") was charged with making a written threat to kill or cause bodily harm in violation of section 836.10, Florida

Statutes (2020). The State is holding Daniel without bond based upon the trial court's interpretation of Florida's pretrial detention and release statute found in section 907.041(4)(c)2., Florida Statutes (2020). Because the trial court's construction of section 907.041(4)(c)2. is contrary to its plain and ordinary meaning, we grant Daniel relief.

BACKGROUND

In February 2020, the State charged Daniel with one count of making a written threat to kill or cause bodily harm, a violation of section 836.10. The criminal charge pending against Daniel is based on a document threatening law enforcement officers that he authored and published.

After charging Daniel, the State filed a motion for pretrial detention and objected to Daniel's motion for bond. The State argued unsuccessfully that Daniel should be held without bond under section 907.041(4)(c)5., because his offense qualified as a dangerous crime. Because the enumerated crimes designated in the statute did not include the crime for which Daniel was charged, the trial court rejected the State's argument.[1] Nonetheless, the trial court sua sponte found an alternate ground in the statute to grant the State's request.

[1] The enumerated "dangerous crimes" set out in section 907.041(4)(a) do not include making a written threat to kill or cause bodily harm.

Relying on section 907.041(4)(c)2., the trial court granted the State's motion for pretrial detention after determining that "law enforcement officers" can qualify as a "judicial officer" for the purpose of the statute. Thereafter, Daniel filed a petition for writ of habeas corpus in the trial court arguing that the trial court's expansive interpretation of the term judicial officer was in error. The trial court denied Daniel's petition for writ of habeas corpus, prompting him to file this appeal.

PROCEDURE

Under the principle previously explained by this Court in *Dollar v. State*, 909 So. 2d 399, 401 (Fla. 5th DCA 2005), the trial court's order here denying the petition for writ of habeas corpus is arguably a nullity because that petition should have been filed in this Court. Alternatively, the trial court should have transferred the petition to this Court instead of undertaking a review of its own orders. *Id*. Accordingly, we deem it best to treat this appeal as a petition for writ of habeas corpus filed in this Court. *Id.*

LAW AND ANALYSIS

The narrow issue before this Court is whether Daniel's written threat against law enforcement officers qualifies as a threat to a judicial officer under section 907.041(4)(c)2. It is an issue of pure statutory interpretation and thus is subject to de novo review. *Kumar v. Patel*, 227 So. 3d 557, 558

(Fla. 2017). When the issue presented is one of statutory interpretation, we examine the text of the statute for its plain and ordinary meaning. *Lopez v. Hall*, 233 So. 3d 451, 453 (Fla. 2020).

The statute at issue, section 907.041(4)(c)2., states as follows:

> (c) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present behavior, the criteria in s. 903.046, and any other relevant facts, that any of the following circumstances exist:
>
> . . . .
>
> 2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process.

In analyzing the statute, we ask whether reasonable readers would understand the term judicial officer to include law enforcement officers acting outside of the confines of a courthouse and direction of a judge. *See L.C. v. State*, 283 So. 3d 442, 444 (Fla. 2d DCA 2019) (asking what a reasonable reader would understand). They would not.

In both common parlance and common legal usage, there is a distinction between law enforcement officers and judicial officers. The State has not provided a single example, and this Court can think of none, where a reasonable user of the English language would use the terms

interchangeably. The Legislature certainly could have included law enforcement officers when drafting the statute at issue here, but it did not do so. As this Court has long recognized, it is not our place to add words to a statute. *Brook v. State*, 999 So. 2d 1093, 1097 (Fla. 5th DCA 2009) ("Courts must give statutory language its plain and ordinary meaning and cannot add words which were not placed there by the Legislature.").

Daniel's argument as to the plain and ordinary meaning of the term judicial officer is further supported by the dictionary. When considering the plain and ordinary meaning of terms used in a statute, Florida courts look to the terms' ordinary definitions, which may be derived from dictionaries. *Debaun v. State*, 213 So. 3d 747, 751-52 (Fla. 2017)*; see also Nunes v. Herschman*, 310 So. 3d 79, 82 (Fla. 4th DCA 2021) (referencing a dictionary to define "judicial" as "of, relating to, or by the court"). Black's Law Dictionary offers three definitions for judicial officer, none of which naturally apply to law enforcement officers.

> **judicial officer.** (17c) **1.** A judge or magistrate. **2.** Any officer of the court, such as a bailiff or court reporter. **3.** A person, usu. an attorney, who serves in an appointive capacity at the pleasure of an appointing judge, and whose actions and decisions are reviewed by that judge.—Also termed *magistrate*; *referee*; *special master*; *commissioner*; *hearing officer*.

Judicial Officer, *Black's Law Dictionary* (11th ed. 2019).

In addition to a dictionary, the plain and ordinary meaning of a term can also be gleaned from the term's use in case law and related authority. *See Debaun*, 213 So. 3d at 753 (explaining that "[i]n the absence of a statutory definition, it is permissible to look to case law or related statutory provisions that define the term[.]"). As Daniel noted, when the Florida Supreme Court uses the term judicial officers it is referring to justices, judges, and magistrates. *See, e.g., Fla. Bar v. Sibley*, 995 So. 2d 346 (Fla. 2008); *In re Inquiry Concerning a Judge*, *J.Q.C. No. 77-16*, 357 So. 2d 172 (Fla. 1978); *Farish v. Smoot*, 58 So. 2d 534, 537 (Fla. 1952). Likewise, when Florida Rule of Criminal Procedure 3.131 regarding pretrial release uses the term judicial officer, it is clearly *not* referring to a law enforcement officer. *See* Fla. R. Crim. P. 3.131 ("The judicial officer shall impose the first of the following conditions of release . . . .").

Instead of making arguments based upon the plain and ordinary meaning of the statute, the State invites this Court to issue an affirmance based upon the general intent of the Legislature. We reject that invitation, and instead look to what a reasonable reader of the statute would understand it to mean. We conclude that a reasonable reader of the statute would not understand the term judicial officer to include law enforcement officers and thereby reject the trial court's interpretation of section 907.041(4)(c)2.

Alternatively, the State argues for the first time on appeal that law enforcement officers are potential witnesses and therefore, still fall within the ambit of 907.041(4)(c)2. Because the trial court did not make the factual findings necessary to support this alternate theory, we decline to adopt the State's suggestion that Daniel's petition should be denied pursuant to the tipsy coachman rule. *See Bueno v. Workman*, 20 So. 3d 993, 998 (Fla. 4th DCA 2009) ("[A]n appellate court cannot employ the tipsy coachman rule where a lower court has not made factual findings on an issue and it would be inappropriate for an appellate court to do so.").

CONCLUSION

For the reasons set forth above, we grant Daniel's petition for writ of habeas corpus and remand to the trial court to set an expedited hearing to determine the issue of pretrial release or his further detention. *See Jacobs v. Rambosk*, 239 So. 3d 647 (Fla. 2d DCA 2017); *see also Bratton v. Ryan*, 133 So. 3d 1158, 1159 (Fla. 3d DCA 2014).

PETITION GRANTED.

NARDELLA, J., concurs.
EVANDER, C.J., concurs specially, with opinion.
LAMBERT, J., concurs specially, with opinion.

EVANDER. C.J., concurring specially.

I agree that Daniel's request for review is properly treated as a petition for writ of habeas corpus, that a police officer is not a "judicial officer" under section 907.041(4)(c)2., Florida Statutes (2020), and that remand for an expedited hearing to determine the issue of pretrial release or detention is appropriate. I write to address the State's tipsy coachman argument that Daniel's petition should be denied on the grounds that Daniel threatened a potential witness with the intent to obstruct the judicial process.

The Legislature has stated that "[i]t is the policy of this state that persons committing serious criminal offenses, [and] posing a threat to the safety of the community or the integrity of the judicial process, . . . be detained upon arrest." § 907.041(1), Fla. Stat (2020). In determining whether pretrial detention is appropriate, the Legislature has also decided that the primary consideration is "the protection of the community from risk of physical harm to persons." *Id*.

A pretrial detention order must be based solely upon evidence presented at a pretrial detention hearing and shall contain findings of fact and conclusions of law to support it. § 907.041(4)(i), Fla. Stat. (2020).

Pretrial detention is authorized where "[t]he defendant, with the intent to obstruct the judicial process, has threatened, [or] intimidated . . . any . . . potential witness . . . or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process." § 907.041(4)(c)2., Fla. Stat. (2020).

Here, the State presented evidence at the pretrial detention hearing that Daniel had posted a "manifesto" on Facebook, threatening to kill all police officers (particularly those in the local community who had participated in the detention of mentally ill persons) and, encouraging others to do so. This broad threat allegedly made by Daniel necessarily included the local police officers who were involved in the investigation that ultimately resulted in the determination that Daniel was the individual who had posted and/or transmitted the manifesto. At least three of the investigating officers were identified in the record below, including one officer who testified at the pretrial detention hearing. These officers are all likely witnesses in Daniel's criminal prosecution. Thus, I would suggest that, although the trial court did not make an express factual finding on this point, the State presented sufficient

evidence to support the conclusion that Daniel threatened a potential witness.[2]

Furthermore, although the trial court made a factual finding that Daniel's threats against police officers were intended to obstruct future Baker Act proceedings, no factual findings were made as to whether Daniel's alleged threats were made with the intent to obstruct his criminal prosecution under section 836.10, or whether there were any conditions of release that would otherwise reasonably prevent the obstruction of Daniel's criminal prosecution. Because the trial court failed to make the necessary factual findings to support the State's tipsy coachman argument under section 907.041(4)(c)2., Daniel's petition is properly granted.

[2] Daniel argued below that section 907.041(4)(c)2. only applies to threats made after the defendant has been charged with a crime. I disagree. First, the statute does not limit its application to ongoing judicial proceedings. Rather, the statute references threats that are intended to obstruct "the judicial process." Second, Daniel's suggested interpretation of section 907.041(4)(c)2. would be contrary to the Legislature's clearly stated policy to protect "the integrity of the judicial process." To accept Daniel's argument would mean that a criminal suspect who threatened to kill (or have killed) a potential witness to his or her criminal conduct would not be subject to pretrial detention under section 907.041(4)(c)2. if the threat was made during the criminal investigation of said suspect, but prior to the commencement of a judicial proceeding. The language adopted by the Legislature in enacting section 907.041 does not support such an unsound result.

LAMBERT, J., concurring specially. 5D21-237

I concur with the majority opinion insofar that it holds that the trial court erred in determining that law enforcement officers can qualify as a "judicial officer" under section 907.041(4)(c)2., Florida Statutes, and that Daniel's appeal here is more appropriately treated as a petition for writ of habeas corpus.

I write briefly to reiterate that the majority opinion does not compel the trial court to grant Daniel pretrial release on remand; instead, we have directed the court to hold an expedited hearing to determine the issue of Daniel's pretrial release or his further detention. To that end, I agree with Chief Judge Evander's analysis in his separate concurring opinion that the State presented sufficient evidence at the earlier detention hearing that Daniel has threatened potential witnesses,[3] which is a specific factor authorizing pretrial detention under section 907.041(4)(c)2. when done with the intent to obstruct the judicial process.

More particularly, Daniel's self-titled manifesto advocates for what he refers to as "the killing of police [officers] for therapeutic reasons." He

[3] Daniel is presently in custody at the Volusia County Jail. Daniel's "manifesto" describes, among other things, his prior interactions with unnamed law enforcement officers in Volusia County whom he submits treated him unfairly and inappropriately.

describes a litany of what he views as his prior adverse contacts with law enforcement that, in conjunction with other observations that he makes, lead Daniel to his meticulously-expressed conclusion as to how both his wellbeing and that of other persons whom he refers to as "mentally ill individuals" will improve by killing police officers. Daniel then threatens that he will "be standing there . . . and the same cop, who I'd seen dozens of times would have his back turned. I'd shoot him in the back when he was not looking without taking the gun out of my jacket."[4]

Chief Judge Evander's concurring opinion correctly observes that the present detention order does not contain all of the statutorily-required findings of fact and conclusions of law for pretrial detention. As such, and in light of the length of time between Daniel's detention and this matter being brought before this court, I am compelled to agree with the majority that an additional hearing is appropriate. There, the parties may present additional evidence and argument for the trial court to evaluate and thereafter enter a proper order either granting Daniel pretrial release or keeping him in pretrial detention, bearing in mind that the Florida Legislature has provided that the primary consideration in determining whether pretrial detention is

[4] Daniel does suggest that he would wait until near the end of his life to kill a law enforcement officer, inferring that before spending any significant time in prison he would die a natural death.

appropriate is “the protection of the community from risk of physical harm to persons.” *See* § 907.041(1), Fla. Stat. (2020).

Law enforcement officers fall within the umbrella of this protection.