

**IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division**

STATE OF FLORIDA

CASE NO: 23-CF-001904

v.

**BILLY ADAMS,
Defendant.**

DIVISION: E

**ORDER GRANTING DEFENDANT’S MOTION TO PRECLUDE
APPLICATION OF THE MOST RECENT AMENDMENTS TO F.S. 921.141,
AS SUCH APPLICATION WOULD VIOLATE F.S. 775.022**

THIS MATTER is before the Court on Defendant’s “Motion to Preclude Application of the Most Recent Amendments to F.S. 921.141, as Such Application Would Violate F.S. 775.022,” provided to the Court on January 4, 2024¹; the “State’s Response to Defendant’s Motion to Preclude Application of the Most Recent Amendments F.S. 921.141, as Such Application Would Violate F.S. 775.022,” filed on January 29, 2024; the “State’s Supplemental Response to Defendant’s Motion to Preclude Application of the Most Recent Amendments to F.S. 921.141, as Such Application Would Violate F.S. 775.022,” filed on February 6, 2024; and “Defendant’s Response to State’s Supplemental Response to Defendant’s Motion to Preclude Application of the Most Recent Amendments to F.S. 921.141, as Such Application Would Violate F.S. 775.022,” filed on February 13, 2024. The Court held a hearing on the Motion on January 30, 2024. After reviewing the motion, the State’s response and supplemental response, Defendant’s reply, and the argument presented at the January 30, 2024, hearing, the Court finds as follows:

In his motion, Defendant argues that Section 775.022 precludes application of the most recent amendments to Section 921.141, which eliminate the requirement of jury unanimity for a

¹ The Court notes Defendant’s motion was filed on April 12, 2024.

recommendation of a death sentence. *See* Motion to Preclude Application of the Most Recent Amendments to F.S. 921.141, as Such Application Would Violate F.S. 775.022. Specifically, Defendant contends that Section 775.022 requires the Section 921.141 amendments to operate only prospectively and, therefore, prohibits the application of the April 2023 amendments to a crime alleged to have been committed on January 30, 2023. *Id.*

In response, the State contends the “amendments to F.S. 921.141 fall outside the scope of F.S. 775.022” because the amendments “did not change the definition of first degree murder or the elements” nor were there any “changes to defenses to the crime of first degree murder.” *See* State’s Response to Defendant’s Motion to Preclude Application of the Most Recent Amendments F.S. 921.141, as Such Application Would Violate F.S. 775.022. Further, the State argues the amendments “did not change the maximum punishment, which was and remains a death sentence.” *Id.* The State cites to *Stapleton v. State*, 286 So. 3d 837 (Fla. 5th DCA 2019), and *Dean v. State*, 303 So. 3d 257 (Fla. 5th DCA 2010), as cases in which “there were changes to the elements of the crime or the punishment thereby triggering applications of F.S. 775.022.” *Id.* The State concludes by arguing that because SB 430 “indicated the changes were to ‘take effect upon becoming law[,]’” this language evidences the “expressed intent of the Legislature” for the “amendment [to] act retrospectively[.]” *Id.*

The State supplemented its initial response with a concession that “F.S. 921.141 is a criminal statute,” but argues “the application of ... the new death penalty amendment is not considered retroactive at this point because the sentencing proceeding has not yet occurred.” *See* State’s Supplemental Response to Defendant’s Motion to Preclude Application of the Most Recent Amendments to F.S. 921.141, as Such Application Would Violate F.S. 775.022. The State cites to *Pappas v. State*, 346 So. 3d 1200 (Fla. 1st DCA 2022), in support of its argument that

“[b]ecause the sentencing in this case has not yet taken place, F.S. 775.022 requires the new death penalty procedure to be used.” *Id.*

In reply, Defendant, also citing to *Stapleton*, 303 So. 3d at 840, argues that “absent a clear legislative intent that a new law apply retroactively ... the criminal statute in effect at the time of the crime governs the sentence an offender receives for the commission of that crime.” *See* Defendant’s Response to State’s Supplemental Response to Defendant’s Motion to Preclude Application of the Most Recent Amendments to F.S. 921.141, as Such Application Would Violate F.S. 775.022. Defendant argues the State’s reliance on *Pappas* is misplaced as the instant case is neither “dealing with a reduction in punishment” nor “dealing with legislative amendments disqualifying certain defenses to a crime (i.e., involuntary intoxication).” *Id.* Defendant concludes by requesting the Court preclude “application of the most recent amendment to F.S. 921.141” and uphold “the unanimity requirement should this case proceed to a jury sentencing.” *Id.*

After reviewing the pleadings and the argument presented by the parties, the Court finds the entitlement to Defendant’s requested relief is based purely on the application and effect of Section 775.022. In interpreting this statute, the Court starts with its text. In relevant part, Section 775.022 provides as follows:

(2) As used in this section, the term “criminal statute” means a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime.

(3) Except as expressly provided in an act of the Legislature or as provided in subsections (4) and (5), the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:

(a) The prior operation of the statute or a prosecution or enforcement thereunder.

(b) A violation of the statute based on any act or omission occurring before the effective date of the act.

§ 775.022, Fla. Stat. (2024).

To derive the meaning of this statute and perform the proper application of the statute to the instant case, the Court must “look at the text itself, as understood in its context, not to any purported intent underlying the text.” *State v. Crose*, 378 So. 3d 1217, 1234 (Fla. 2d DCA 2024). When construing a statute, the “‘first (and often only) step ... is to ask what the Legislature actually said in the statute, based upon the common meaning of the words used’ when the statute was enacted.” *Tsuji v. Fleet*, 366 So. 3d 1020, 1025 (Fla. 2023) (citing *Shepard v. State*, 259 So. 3d 701, 705 (Fla. 2018)).

Accordingly, the first step in analyzing the text at issue here is whether the amendment to Section 921.141 is the “amendment of a criminal statute” as included in Section 775.022(3). Section 775.022(2) defines the term “criminal statute” as “a statute, *whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime.*” § 775.022(2), Fla. Stat. (2024) (emphasis added). The Court finds, as the State ultimately conceded, that the amendment to Section 921.141 is a criminal statute within the meaning of Section 775.022(2). There is no question that Section 921.141, which is titled “sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence,” deals with the “punishment” of any crime that makes a defendant eligible for the death penalty. Therefore, because the amendment to Section 921.141 does constitute a “criminal statute” and, therefore, falls within the purview of Section 775.022, the Court next turns to the language of Section 775.022(3).

Section 775.022(3), in relevant part, states “the ... amendment of a criminal statute operates prospectively and does not affect or abate ... (a) [t]he ... prosecution or enforcement

thereunder” unless it is either “expressly provided in an act of the Legislature” or included within Sections 775.022(4) or (5). Here, the Court finds Defendant’s prosecution had already begun at the time the amendments to Section 921.141 went into effect. Defendant was initially arrested on February 8, 2023, and later indicted on February 23, 2023, for two counts of capital First Degree Murder. The State filed its Notice of Intent to Seek Death Penalty on March 24, 2023. All of these events took place before SB 450’s enactment date of April 20, 2023. Because of this, the Court finds the language of Section 775.022(3) prohibits Section 921.141’s amendments from “affect[ing] ... the ... prosecution” that had already begun in the instant case. The Court recognizes that Defendant is not being prosecuted for “violating” Section 921.141. However, the Court finds Defendant’s ongoing prosecution for capital First Degree Murder requires the application and enforcement of Section 921.141, thus making the amendment at issue here subject to the limitations in Section 775.022(3)(a).

The Court acknowledges the State’s argument that because Section 775.022(2) states amendments to criminal statutes “operate[] prospectively,” the amendments should be applied here since Defendant has not yet been sentenced and a jury has not been empaneled. However, the Court finds the plain language of Section 775.022(3), which forbids amendments from impacting “[t]he ... prosecution or enforcement thereunder[,]” requires a broader interpretation than that proposed by the State and precludes application of the Section 921.141 amendments to any case with a date of offense pre-dating SB 450’s enactment. As noted above, the Court must examine “what the Legislature *actually said* in the statute.” *Tsuji*, 366 So. 3d at 1025 (emphasis added). In deciding which cases “the reenactment or amendment of a criminal statute” would “not affect,” the Legislature chose the language included in subsection (a) – “[t]he prior operation of the statute or a prosecution or enforcement thereunder” – rather than more limiting language that

would clearly convey its intent to have amendments apply to any case in which a sentence had not yet been imposed.

The Court also acknowledges, but ultimately disagrees with, the State’s contention that the language included within SB 450 that “[t]his act shall take effect upon becoming law” is a clear expression from the Legislature of its intent for the amendments to Section 921.141 to apply to all pending death cases in which a sentence is yet to be imposed. As it found above, the Court reiterates its finding that the amendments only apply to cases with a date of offense on or after the date SB 450 was signed by the Governor – April 20, 2023. Finally, the Court finds that neither Section 775.022(4) nor (5) applies with respect to the amendments to Section 921.141. **Accordingly, because Section 775.022(3)(a) prohibits the amendment of a criminal statute from affecting an ongoing prosecution, the Court finds Defendant is entitled to the relief he seeks.**

It is therefore **ORDERED AND ADJUDGED** that Defendant’s “Motion to Preclude Application of the Most Recent Amendments to F.S. 921.141, as Such Application Would Violate F.S. 775.022” is hereby **GRANTED**.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, on this ____ day of April, 2024.

Electronically Conformed 4/12/2024
Mark D. Kiser

MARK D. KISER, Circuit Judge

Copies via JAWS to:

Lindsey Hodges, Assistant State Attorney

Jamie Kane, Assistant Public Defender