

Public meetings -- Sunshine Law -- Jury trial -- No right to jury trial attaches when individual is charged with noncriminal infraction of Sunshine Law with possible \$500 fine -- Possible fine is not punishment that triggers jury trial right where amount is not more than \$500 and purpose of fine is not merely punishment, but vindication of public interest under Sunshine Law

STATE OF FLORIDA, Plaintiff, vs. SUSAN FOSTER, KAY MCGINN, GEORGE BRUMMER, and LAMAR FISHER, Defendants. County Court, 17th Judicial Circuit in and for Broward County. Case No. 05-7108 COCE (53). January 25, 2006. Robert W. Lee, Judge. Counsel: Timothy Donnelly, Assistant State Attorney, Fort Lauderdale. Larry S. Davis, Hollywood, for Defendant.

ORDER STRIKING DEFENDANT'S DEMAND FOR JURY TRIAL

THIS CAUSE came before the Court on January 12, 2005 for hearing of the Demand for Jury Trial filed by the Defendant Susan Foster, and the Court's having reviewed the Motion, the entire Court file and the relevant legal authorities; having heard argument; and having been sufficiently advised in the premises, the Court finds as follows:

Background. On May 5, 2005, the State filed its Information charging the Defendants with a "Non-Criminal Infraction Sunshine Law Violation" under Fla. Stat. §286.011(3)(a). On October 10, 2005, the Defendant Susan Foster filed her Answer, which included a demand for jury trial. On January 3, 2006, this Court entered its Order setting the matter for hearing for January 12, 2006 to consider the Defendant's request for a jury trial in this infraction case. At the hearing, the State entered its objection to the demand for jury trial, arguing that the Defendant is not entitled to a jury trial in this particular case.

Conclusions of Law. The Court starts by initially noting that it is clear that a jury trial would not be implicated in this case under the Federal Constitution. *Elliott v. City of Wheat Ridge*, 49 F.3d 1458, 1459 (10th Cir. 1995) (provides a good analysis of when the right to a jury trial is triggered under the U.S. Constitution); *Territory v. Taketa*, 27 Haw. 844, 1924 WL 2900, *4-*6 (1924) (same). The question is whether the Florida Constitution, which arguably provides a broader right to a jury trial than the Federal Constitution, would require a jury trial in this case.

In 1979, the Florida Supreme Court ruled that under the State Constitution, no right to a jury trial exists for "noncriminal violations" of the State traffic code. *Nettleton v. Doughtie*, 373 So.2d 667, 668 (Fla. 1979). In so doing, the court specifically stated, "[w]hile it is true that jury trials were provided for prior to the enactment of Florida's decriminalization law, the right was a statutory one only; it has never been, and is not now, a constitutionally required right." *Id.* at 668. Further, the court noted that the only "penalty" involved was a "civil fine," not a "criminal fine or imprisonment." *Id.* Nowhere in the opinion, however, did the court address under what circumstances a jury trial becomes a "constitutionally required right."

Five years later, the Florida Supreme Court considered this issue again in the case of *Whirley v. State*, 450 So.2d 836 (Fla. 1984). In this case, the court referred back to another of its decisions issued in 1976 in which the court stated, "[i]t has long been established that this provision guarantees the right to a trial by jury in only those cases in which the right was recognized at the time of the adoption of the State's first constitution. It does not extend to those cases where the right and the remedy with it were unknown at the time of the adoption of the first constitution." 450 So.2d at 838, quoting *State v. Webb*, 335 So.2d 826, 828 (Fla. 1976). The first State Constitution of Florida was adopted in 1845. In finding that a person was not entitled to a jury trial for a traffic violation, the Florida Supreme Court held that "there being no right to a trial by jury for this traffic violation at the time of the adoption of Florida's first constitution, the denial of a jury trial [. . .] is not prohibited by [the] Florida Constitution." *Webb*, 335 So.2d at 826, 828-29. See also *In re: Forfeiture of 1978 Chevrolet Van*, 493 So.2d 433, 436 (Fla. 1986) (right to jury trial existed in 1845 in forfeiture proceedings in rem); *Dep't of Revenue v. Printing House*, 644 So.2d 498, 500 (Fla. 1994) (right to jury trial existed in 1845 in tax refund cases).

The Florida Supreme Court has found the right to a jury trial triggered in four circumstances: (1) crimes indictable at common law; (2) crimes involving moral turpitude; (3) crimes malum in se; and (4) crimes carrying a maximum penalty of more than six months imprisonment or a fine greater than \$500. *Whirley*, 450 So.2d at 838. The infraction at issue in the instant case falls into none of these categories.

The Defendant argues that the possible fine in play -- \$500 -- is in fact "punishment" which triggers the right to a jury trial. To support this argument, the Defendant cites *State v. Knowles*, 625 So.2d 88 (Fla. 5th DCA 1993). The issue in the *Knowles* case, however, was whether the double jeopardy clause was implicated, not whether the person had the right to a jury trial. *Id.* at 89. To trigger double jeopardy, the question is whether the sanction in both cases amounts to "criminal punishment," rather than the nomenclature used by the legislature. *Id.* at 90. The same analysis was not used to determine whether the right to a jury trial exists. Nevertheless, even if it were, the possible fine at play in the instant case is the same as been held in other cases not to trigger the right to a jury trial. See *Webb*, 335 So.2d at 828 (\$500 or less). While it is true that some authority exists that higher monetary sanctions could trigger the right to a jury trial, such is not the case with the small fine at issue in this instant case. See *Elliott*, 49 F.3d

at 1459 (if a "large fine" is authorized, "then despite a legislature's classification of an act as non-criminal, the rights afforded to a criminal defendant still apply"); *Dep't of Revenue*, 644 So.2d at 501 ("punitive" civil penalties seeking 50% penalty). Finally, the *Knowles* and *Dep't of Revenue* cases indicate that sanctions which have purposes other than to merely punish are less likely to be considered "punishment" under constitutional analysis. 625 So.2d at 91. In *Knowles*, the court noted that the purpose of a traffic fine is "to reduce accidents by safe driving." Similarly, in the instant case, more is at stake than merely to punish. Rather, an action for a violation of the Sunshine Law vindicates the public's interest which is clearly in play under the Sunshine Law. The Court therefore finds that no right to a jury trial is triggered when an individual faces a noncriminal violation of the Sunshine Law, Florida Statute §286.011(3)(a). Accordingly, it is hereby

ORDERED AND ADJUDGED that the Defendant's Demand for Jury Trial is hereby STRICKEN.

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