

**UNITED STATES DISTRICT COURT
DISTRICT OF MCGEE**

Reece Tyler,
on behalf of himself and others
similarly situated,

Civil No. 20-86753-09

Plaintiff,

**ORDER DENYING
INJUNCTIVE RELIEF**

v.

State of McGee,

Defendant.

Plaintiff Reece Tyler, on behalf of himself and a class of similarly-situated indigent defendants, asks this court to decide whether McGee’s statute governing pretrial release following arrest for a misdemeanor violates the Fourteenth Amendment. For the reasons that follow, this court concludes it does not and that Tyler’s relatively short period of pretrial incarceration was entirely lawful.

A. Facts

1. McGee’s Statute Governing Pretrial Release While Misdemeanor Charges are Pending

In McGee, misdemeanor criminal offenses are punishable by up to 90 days in jail and by fines that differ depending on the offense. When a person is arrested for a misdemeanor offense, McGee Statutes section 609.121 governs pretrial release. Under the statute, a person arrested for a misdemeanor must be brought to a local detention facility and booked on the charged offense, where he or she will await further proceedings. However, the person may secure immediate release from pretrial incarceration by posting

an amount of cash bail equivalent to one-half the maximum fine that may be imposed upon conviction. McGee Stat. § 609.121, subd. 1.

A person who does not post standard bail will receive a bail hearing, which must be held by the end of the second business day following the arrest. McGee Stat. § 609.121, subd. 2(a). At that bail hearing, the court may set an amount of cash bail that differs from the standard amount set by the statute, or may order the defendant to be released, with or without conditions. McGee Stat. § 609.121, subd. 2(b)-(c).

If the arrestee fails to appear at a future court appearance, the court may order the posted bail amount to be forfeited, and the amount will be kept by the court and not returned to the arrestee. If the defendant complies with all future court appearances, the posted bail amount is returned to the defendant upon conclusion of the case, unless the defendant chooses to voluntarily forfeit the bail to pay any fine or fee imposed as part of the sentence following conviction.

2. *Tyler's arrest and pretrial incarceration.*

On January 16, 2020, a man entered the Skyline Bakery in McGee's capital city and attempted to purchase a bottle of orange juice using a two-dollar bill. Due to McGee's ongoing coin shortage, there was not enough change in the cash register to complete the transaction and the Skyline employee had to leave the counter to get change. While the employee was in a back room, the man left the store, having taken the bottle of orange juice, four loaves of bread from a bakery case, and a five dollar bill out of the tip jar. The total value of the property stolen was \$22.79. In McGee, this offense – theft of property

worth less than \$250 – is a misdemeanor punishable by up to 90 days in jail and/or a \$1,000 fine.

The next afternoon, the Skyline employee saw a man she believed to be the one who stole the items reading a book in a park across from the bakery. She called police, who arrested the man in the park – plaintiff Reece Tyler – for misdemeanor theft. Police booked Tyler into jail at 2:00 in the afternoon on Friday, January 17. Later that day, the state filed a complaint charging him with misdemeanor theft and a judge signed the complaint, making the determination that probable cause was established.

Tyler has no checking or savings account and only a small amount of occasional cash income. Because of his lack of assets, he could not afford to post the \$500 bail that would have guaranteed his immediate release under McGee’s misdemeanor bail statute. He remained in jail over the weekend and throughout Monday, which was Dr. Martin Luther King, Jr., Day, a legal holiday in McGee.

On Tuesday, January 21st, Tyler filed the current suit on behalf of himself and a class of similarly-situated indigent defendants who are unable to pay the standard bail necessary to secure immediate release. Tyler sought (1) a declaratory judgment that the bail statute violates the Fourteenth Amendment’s guarantees of Equal Protection and substantive Due Process as applied to him and other indigent defendants, and (2) an injunction requiring McGee to provide an alternate procedure to indigent defendants to secure pretrial release on a timeline equivalent to that available to arrestees who can pay standard bail.

On the afternoon of Wednesday, January 22nd, Tyler’s bail hearing was held. At the hearing, the court found that Tyler is indigent and accordingly was unable to post standard bail. The court ordered Tyler released on his own recognizance. Tyler was released from his pretrial incarceration at 4:15 p.m. on Wednesday, January 22.

B. Heightened Scrutiny Does Not Apply to Plaintiff’s Equal Protection Claim

The plaintiff asserts that McGee’s misdemeanor bail statute violates the Fourteenth Amendment, arguing that “any bail scheme that requires payment of a pre-fixed amount to obtain pretrial release, without any consideration of indigence or other factors, violates the Equal Protection Clause.” The plaintiff further asserts that his Equal Protection claim requires this court to apply heightened scrutiny, since under the bail statute individuals receive different outcomes depending on whether they are indigent and therefore unable to pay immediate bail in the amount set by the statute. Both claims are incorrect.

No level of heightened scrutiny, neither strict nor intermediate, applies, because indigency is not a suspect classification under the Fourteenth Amendment. *See Maher v. Roe*, 432 U.S. 464, 471 (1977). Instead, a wealth-based classification only violates the Equal Protection Clause when “because of [the class’] impecunity [its members] were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit.” *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 20 (1973). When indigency results in a class member receiving only a diminished benefit, rather than a complete deprivation, the law does not violate equal protection: “[A]t least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.” *Id.* at

24; *M.L.B. v. S.L.J.*, 519 U.S. 102, 127 (1996) (citing *Williams v. Illinois*, 399 U.S. 235, 242 (1970)) (explaining that wealth-based distinctions risk violating the constitution when the opportunity to obtain a benefit is “wholly contingent on one’s inability to pay,” and the law is “not merely *disproportionate* in impact”) (emphasis in original).

It is apparent that the plaintiff suffered no “absolute deprivation” of the benefit at issue under the challenged law: namely, pretrial release. After all, plaintiff was released on his own recognizance at the bail hearing which he timely received under the law, roughly five days after his arrest for theft. The plaintiff has not yet been tried for that offense, meaning that as of the issuance of this order, the law deprived him of pretrial release for barely one percent of the total time since he was arrested. Because the plaintiff suffered no absolute deprivation of pretrial release, his claim does not trigger heightened scrutiny under the Equal Protection Clause. *Cf. Walker v. City of Calhoun*, 901 F.3d 1245, 1260-62 (11th Cir. 2018).

Indeed, if such a claim did trigger heightened scrutiny, it is difficult to imagine where such Equal Protection claims would end. Federal, state, and local governments provide a wide range of services and obligations that require the payment of fees or costs. Is heightened scrutiny under the Equal Protection Clause triggered by a requirement that a person pay to send a package through the postal service, or to receive tuition at a state university, or to avoid property-tax foreclosure? It is not, and McGee’s bail statute, which simply requires that a person who cannot post standard bail not receive pretrial release until a hearing is held where an individualized bail determination can be made, similarly does not require heightened scrutiny under the Equal Protection Clause.

C. Heightened Scrutiny Does Not Apply to Plaintiff's Due Process Claim

The plaintiff also argues that the bail statute violates his right to substantive due process under the Fourteenth Amendment, contending that the statute infringed his “fundamental right” to “pretrial liberty.” Because the right at issue is “fundamental,” plaintiff argues, the statute must survive strict scrutiny to comply with the Fourteenth Amendment’s Due Process Clause. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). Plaintiff supports his argument by citing *United States v. Salerno*, where the Supreme Court considered whether the federal Bail Reform Act complies with the Due Process Clause. 481 U.S. 739 (1987). The plaintiff is incorrect that strict scrutiny applies to his due process claim.

Notwithstanding the *Salerno* Court’s statements about the importance of a defendant’s interest in pretrial liberty, *id.* at 750, the Court decided *Salerno* not by applying any form of heightened scrutiny, but by applying a test akin to general rational-basis review, *id.* at 748-50. Importantly, in deciding *Salerno*, the Court relied on *Schall v. Martin*’s due process analysis, which asked not whether that statute survived heightened review, but simply whether it “serve[d] a legitimate state objective” and whether its “procedural safeguards . . . [were] adequate” to ensure pretrial detention under the statute was rationally related to the state’s interest. *Id.* at 749-50 (citing *Schall*, 467 U.S. 253 (1984)). Neither *Schall* nor *Salerno* applied heightened review to due-process analysis of the pretrial detention issue in those cases, and heightened review is not the correct standard here. *Cf. Walker*, 901 F.3d at 1262-63.

Moreover, even if liberty before conviction of a crime is a “fundamental” right the denial of which might trigger strict scrutiny, it is far from clear that the pretrial detention here would constitute a denial of that right. After all, at issue is at most a few days of detention pursuant to a valid arrest based on probable cause that a crime was committed, which lasted only until a timely individualized hearing was held. It must not be lost that plaintiff, under proper application of the very bail scheme he now challenges as an unconstitutional infringement of his right to liberty, was in fact released from pretrial detention without posting any amount of monetary bail and has been free for nearly the entire pendency of the criminal proceedings.

D. The Misdemeanor Bail Statute Satisfies Rational Basis Review and is Constitutional.

Having established that rational-basis review is the proper level of scrutiny of both plaintiff’s claims, analysis of whether the law is constitutional is straightforward. The law satisfies both Clauses because it “rationally furthers [the] legitimate, articulated state purpose[s]” of ensuring that people arrested for criminal behavior appear at future court dates and do not pose a danger to public safety while the criminal proceedings are pending. *McGinnis v. Royster*, 410 U.S. 263, 270 (1973); *Glucksberg*, 521 U.S. at 728.

The state has an interest that is at the very least legitimate in ensuring that people arrested for crimes appear at future court dates. *Salerno*, 481 U.S. at 749. The state also has a legitimate, even compelling, interest in ensuring that people arrested for crimes do not endanger public safety by committing additional crimes while awaiting trial. *Id.* Of course, individuals have a “strong interest” in their personal liberty, but that interest may

be “subordinated to the greater needs of society” in order to achieve the government’s legitimate interests. *Id.* at 750-51. Keeping those interests in mind, application of the proper constitutional standard shows that the bail statute here passes muster.

Immediately upon a person’s arrest, that person’s individual characteristics are unknown to the state and the courts. Until a bail hearing can be held, the state is unapprised of facts relevant to whether that person will appear at future court appearances: current community ties, past criminal history and history of appearing at legal proceedings, et cetera. The state legislature has decided that, until a hearing to determine those individual characteristics can be held, requiring a person to post monetary bail is necessary to ensure the person appears at those later court proceedings, upon pain of forfeiting the money posted. The requirement to post monetary bail to obtain release prior to any bail hearing rationally furthers the state’s interest in ensuring the future appearance of people charged with crimes at court proceedings and enhances public safety by ensuring those whose future appearance is not secured by money have a hearing before a judge to determine conditions of release. It therefore satisfies both the Equal Protection and Due Process Clauses, and is constitutional.

IT IS HEREBY ORDERED THAT plaintiff’s request for injunctive relief is **DENIED.**

Dated: October 28, 2020

/s/ Colleen B. Guidarelli

Colleen B. Guidarelli
Judge of District Court