

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2193

FLORIDA POLICE BENEVOLENT
ASSOCIATION, INC., JOHN DOE 1
and JOHN DOE 2,

Appellants,

v.

CITY OF TALLAHASSEE, FLORIDA,

Appellee.

On appeal from the Circuit Court for Leon County.
Charles W. Dodson, Judge.

April 6, 2021

ROWE, J.

In two separate encounters, crime suspects threatened Tallahassee police officers with deadly force. Faced with the imminent threat of harm, the officers responded in kind, resulting in fatalities. Following the encounters, the City of Tallahassee revealed its intent to disclose the identities of the police officers to the public. The officers and their registered bargaining representative, the Florida Police Benevolent Association, Inc. (collectively, Appellants), opposed public disclosure of the officers' identities and sought a declaration from the trial court that the officers were entitled to the protections granted crime victims

under article I, section 16 of the Florida Constitution.¹ Appellants also asked the court to enjoin the City from disclosing any personal information that could be used to identify or locate the officers. But the trial court determined that the protections afforded crime victims under article I, section 16 were unavailable to law enforcement officers even when a crime suspect threatened an officer with deadly force. And the court found that even if the officers were crime victims, their names were not entitled to confidential treatment. Appellants challenge the trial court's ruling. We reverse.

I. Background

The Tallahassee Police Department employs two police officers who were involved in separate encounters with crime suspects that ended with fatalities. The first encounter occurred after the police officer responded to a report of an aggravated battery. The battery victim reported that the suspect was armed with knives, which he brandished during the attack on the victim. When the officer arrived on the scene, he saw the suspect hiding behind bushes. The suspect, who was standing between ten and fifteen feet away from the officer, threatened to kill the officer, waved a large hunting-style knife at the officer, and then rushed toward him. In response to the imminent threat, the officer shot the suspect while trying to retreat. The suspect died from the gunshot wounds.

The second encounter occurred when the police officer responded to a report of a stabbing in which the suspect fled the scene with a gun and a knife. The officer encountered the suspect leaning into the passenger window of a parked SUV. A woman then leapt from the SUV toward another police vehicle, pleading for help. Next, the suspect moved toward the officer, assumed a shooting stance, and pointed a gun at the officer. Fearing for his life, the officer exited his vehicle and shot the suspect. The suspect continued to reach for his gun. Right after the shooting, bystanders began threatening the officer, causing him to fear for his safety. The suspect later died from the gunshot wounds.

¹ In 2018, voters approved Marsy's Law, added to the Florida Constitution in article I, section 16.

Following the two encounters, Appellants asserted that the officers were crime victims entitled to the protections granted under article I, section 16. Appellants asked the City not to release to the public any information that could be used to identify or locate the two officers. At first the City committed that it would not release the name of a police officer who became a victim of a criminal offense and who requested confidentiality. But then, the City changed course and asserted that law enforcement officers were excluded from the protections granted crime victims under article 1, section 16.

Appellants then sued in circuit court, seeking a declaratory judgment, a writ of mandamus, and an injunction. They asked for a declaration that the officers were entitled to the protections afforded victims under article I, section 16. Appellants also asked for a writ of mandamus directing the City to show cause why the officers were not entitled to declaratory relief, and for an order enjoining the City from releasing personal identifying information, including the officers' names.

The News Media² then intervened, asserting that the Tallahassee Police Department failed to respond to their public records requests seeking records identifying the two officers involved in the shootings. The City and the News Media (collectively, Appellees) argued that the records identifying the officers' names were subject to disclosure as public records under article I, section 24(a) of the Florida Constitution. They argued that the officers were not entitled to the protections afforded crime victims under article I, section 16 because law enforcement officers acting in their official capacities cannot be victims under that law.

The trial court held a hearing. After considering legal arguments from the parties, the court denied Appellants' requests for relief. The court observed that the facts were undisputed—the parties stipulated that the suspects in the two encounters

² The News Media includes the First Amendment Foundation; Florida Press Association; Gannett Co., Inc.; Miami Herald Media Company; and the New York Times Company.

threatened the officers with deadly weapons. Appellees did not object to Appellants' assertion that the officers had a well-founded fear that violence against their persons was imminent. But even though those facts suggested that the officers were crime victims, the trial court found that a law enforcement officer acting in his official capacity could not be a victim under article I, section 16:

The Court finds that the explicit language of Marsy's Law was not intended to apply to law enforcement officers when acting in their official capacity. Marsy's Law provides "victims" certain rights such as the "right to due process and to be treated with fairness and respect for the victim's dignity," the right "within the judicial process, to be reasonably protected from the accused" and the right "to have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pretrial release conditions." Art. 1, § 16(b)(1), (3), (4), Fla. Const.

In the case at hand, Petitioner seeks to treat officers Doe 1 and Doe 2 as victims; however, the would-be accuseds are dead, killed by the officers in the line of duty. The officers do not seek protection from the would-be accuseds, instead they apparently seek protection from possible retribution for their on-duty actions from unknown persons in the community. This type of protection is outside the scope of Marsy's Law and is inconsistent with the express purpose and language of the amendment. This Court cannot interpret Marsy's Law to shield police officers from public scrutiny of their official actions.

In reaching its conclusions, the trial court pointed out that article I, section 24(a) grants the public a broad right to inspect and copy records of any state or local agency. The court determined it was necessary to balance crime victims' rights under article I, section 16 against the public's right to hold government accountable under article I, section 24(a). The court observed that "[t]his case presents a situation in which law enforcement seeks to enforce its interpretation of a specific constitutional provision which has the practical effect of removing their actions from public

scrutiny,” and that this is “inconsistent with the expressed purpose of Marsy’s Law.”

The court then suggested that the protections of article I, section 16 are available to crime victims only when a criminal proceeding begins. And finally, the court found that even if the officers were crime victims, records that would reveal their names were not entitled to confidential treatment and were not exempt from public disclosure.

For those reasons, the trial court denied Appellants’ requests for relief. The trial court also ordered that the City “disclose the requested public records in a form that identifies the names of officers.” Appellants immediately sought review of the trial court’s order. The order is stayed pending this appeal.

II. Analysis

Appellants argue that the trial court misconstrued article I, section 16 and article I, section 24(a) when it determined that the officers were not entitled to the protections granted crime victims under article I, section 16.

We review the trial court’s interpretation of the constitutional text de novo. *Benjamin v. Tandem Healthcare, Inc.*, 998 So. 2d 566, 570 (Fla. 2008). And we begin with the plain language of the text. *Ervin v. Collins*, 85 So. 2d 852, 855 (Fla. 1956) (“We are called on to construe the terms of the Constitution, an instrument from the people, and we are to effectuate their purpose from the words employed in the document.”). “The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Advisory Op. to the Governor Re: Implementation of Amend. 4*, 288 So. 3d 1070, 1078 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). And so, “[w]here the language of the Constitution ‘is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written.’” *Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla. 2019) (quoting *Fla. Soc’y of Ophthalmology v. Fla. Optometric Ass’n*, 489 So. 2d 1118, 1119 (Fla. 1986)). Applying these interpretive principles, we hold that the trial court misconstrued article I, section 16 by ignoring its

plain language and then limiting the class of victims entitled to protection under the law.

A. Article I, section 16 and article I, section 24(a) do not conflict.

Appellants asked the trial court for a judgment under section 86.011, Florida Statutes declaring that the officers were entitled to the confidentiality afforded crime victims under article I, section 16. To decide whether the officers were entitled to the protections of article I, section 16, the trial court determined that it also needed to consider the open government requirements of article I, section 24(a). After examining both constitutional provisions, the trial court found that the intent behind article I, section 24(a) does not permit a reading of article I, section 16 that would treat a law enforcement officer acting in his official capacity as a crime victim. The court found that protecting law enforcement officers under article I, section 16 by treating certain public records as confidential would shield the officers from public scrutiny of their official actions, and thus contradict the purpose of article I, section 24(a). This was error because article I, section 16 and article I, section 24(a) do not conflict. And the trial court's construction of the constitutional text read into article I, section 16 a limitation not supported by its plain language and not required by any language in article I, section 24(a).

In 2018, over 4.8 million Floridians, representing sixty-one percent of the vote, voted for the Marsy's Law revision proposed by the Constitution Revision Commission. Marsy's Law was added to the Constitution in article I, section 16. Article 1, section 24(a) was added in 1992. Nothing in article I, section 16 suggests that Marsy's Law was to revise or repeal any portion of article I, section 24(a). *See Advisory Op. to the Att'y Gen. Re: All Voters Vote in Primary Elections for State Legislature, Governor, & Cabinet*, 291 So. 3d 901, 909 (Fla. 2020) (Lawson, J. concurring and concurring specially) (recognizing that if an amendment to the constitution does not "expressly or by necessary implication repeal or modify an existing provision, the amendment co-exists with all other provisions of the constitution that have not been repealed by another amendment"); *see also Jackson v. Consol. Gov't of Jacksonville*, 225 So. 2d 497, 500–01 (Fla. 1969) ("Unless the later amendment expressly repeals or purports to modify an existing

provision, the old and new should stand and operate together unless the clear intent of the later provision is thereby defeated.”). Instead, the two provisions coexist and should be construed in harmony. *State v. Div. of Bond Fin.*, 278 So. 2d 614, 617 (Fla. 1973) (observing that “if possible, amendments to the Constitution should be construed so as to harmonize with other constitutional provisions”).

Article I, section 16 can be construed in harmony with article I, section 24(a)—without excluding from the definition of crime victim any person entitled to protection under article I, section 16. Article I, section 24(a) describes the broad right to inspect or copy public records in Florida:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, **except with respect to records exempted under this section or specifically made confidential by this Constitution.**

(Emphasis supplied.)

By its express terms, article I, section 24(a) does not provide that **all** public records are subject to disclosure. Rather, the text acknowledges the right of the people of Florida to amend their constitution to grant confidentiality for public records ordinarily subject to disclosure. And article I, section 24(c) allows the Legislature, by a two-thirds vote of each house, to exempt public records from the disclosure requirements under article I, section 24(a).

The express purpose of Article I, section 16 is “to preserve and protect” certain rights of crime victims. Art. I, sec. 16(b), Fla. Const. A crime victim is “a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed.” Art. I, sec. 16(e), Fla. Const. A police officer meets the definition of a crime victim under article I, section 16 when a crime suspect threatens the officer with deadly force, placing the officer in fear for his life.

That the officer acts in self-defense to that threat does not defeat the officer's status as a crime victim. And thus as a crime victim, such an officer has the right to keep confidential "information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim." Art. I, § 16(b)(5), Fla. Const.

Even so, the trial court determined that extending the protections for crime victims under article I, section 16 to law enforcement officers threatened with harm by crime suspects would thwart the purpose of article I, section 24(a) by shielding law enforcement officers from public scrutiny of their official actions. The trial court found that public records related to the actions of a law enforcement officer acting in his official capacity could not be treated as confidential under article I, section 16 when the officer is a crime victim. But in reaching this conclusion, the trial court carved out an exception from article I, section 16 for law enforcement officers—one that would apply equally to all of Florida's state and local government employees, numbering over one million. *See* United States Census Bureau, 2019 Annual Survey of Public Employment & Payroll Methodology, 2019 ASPEP Datasets & Tables (2020), https://www2.census.gov/programs-surveys/apes/technical-documentation/methodology/19_methodology.pdf; *see* Art. I, § 24(a) Fla. Const. (stating that section 24 specifically includes "legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution").

But there was no need to limit the reach of article I, section 16 because it does not conflict with article I, section 24(a). Nothing in article I, section 16 excludes law enforcement officers—or other government employees—from the protections granted crime victims.³ And no language in either article I, section 16 or article

³ One can envision any number of situations in which a public employee may become a victim of a crime while acting in his or her official capacity. For example, correctional officers often encounter violence while performing their duties. *See Johnson v. State*, 301

I, section 24(a) suggests that public records related to government employees ordinarily subject to disclosure are not entitled to confidential treatment under article I, section 16 when a government employee becomes a crime victim.

Our reading of article I, section 16 does not conflict with the broad right of access to public records provided under article I, section 24(a). And including a law enforcement officer within the definition of crime victim under article I, section 16(e) when a person committing a crime threatens the officer with harm does not thwart the purpose of either constitutional provision. Article I, section 24(a) acknowledges that other provisions of Florida's constitution may grant confidentiality for public records otherwise subject to disclosure. Because article I, section 16 does not exclude from its protections law enforcement officers or other public employees when they become victims of crime, Appellants had a right to seek confidential treatment for public records that could be used to locate or harass them. *See Thompson v. DeSantis*, 301 So. 3d 180, 185 (Fla. 2020) (explaining that multiple constitutional provisions addressing a similar subject must be read in *pari materia* to give consistent and logical effect to each provision).

This does not mean that the public cannot hold law enforcement officers accountable for any misconduct. Maintaining confidential information about a law enforcement officer who is a crime victim would not halt an internal affairs investigation nor impede any grand jury proceedings. Nor would it prevent a state attorney from reviewing the facts and considering whether the

So. 3d 443, 445 (Fla. 1st DCA 2020) (defendant convicted of three counts of battery with bodily fluids on multiple correctional officers); *Burley v. State*, 59 So. 3d 131, 133 (Fla. 3d DCA 2011) (defendant struck a correctional officer in the face with his fist). Public health providers also face the threat of violence while performing their duties. *See Twigg v. State*, 254 So. 3d 464, 466 (Fla. 4th DCA 2018) (defendant charged with battery after an altercation with a staff member at a Veteran's Administration hospital); *Meagher v. State*, 424 So. 2d 872, 873 (Fla. 4th DCA 1982) (defendant admitted to throwing an inflammable liquid on an employee at the South Florida State Hospital and igniting it).

officer was a victim. If a prosecutor determines that the officer was not a victim and instead charges the officer for his conduct, then the officer would forfeit the protections under article I, section 16. *See* Art. I, § 16(e), Fla. Const. (excluding an accused from the definition of a victim).

Further, in reaching this holding, we are mindful of the breadth and scope of article I, section 24(a) and the importance of the right of access to public records for transparency and accountability in government. *See Rhea v. Dist. Bd. of Trs. of Santa Fe Coll.*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013) (“A citizen’s access to public records is a fundamental constitutional right in Florida.”); *cf. Forsburg v. Housing Auth. of City of Miami Beach*, 455 So. 2d 373, 378 (Fla. 1984) (Overton, J., specially concurring in result) (“The purpose of the Public Records Act is to promote public awareness and knowledge of governmental actions in order to ensure that governmental officials and agencies remain accountable to the people.”).

But however compelling the public policy considerations may be in favoring broad public records disclosure and the ability of the public to access records of the machinery of government, it is not the province of the judiciary to read into the language of the constitutional text anything not included or to limit the text in a manner not supported by its plain language. “Our role is not to make or amend the law.” *See Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731, 1823, (2020) (Kavanaugh, J., dissenting); *Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ.*, 262 So. 3d 127, 142 (Fla. 2019) (“declin[ing] the invitation for the courts to overstep their bounds” and inject the court into policy making and oversight). Rather, if the people of Florida wish to exclude law enforcement officers or other government employees from the protections of article I, section 16, multiple avenues for amending or revising the constitution are available. *See* Art XI, Fla. Const. (providing that amendments or revisions to the constitution may be proposed by joint resolution of the legislature, by a constitution revision commission, by initiative petition, by a constitutional convention, or a taxation and budget reform commission); *see also McCall v. Scott*, 199 So. 3d 359, 374 (Fla. 1st DCA 2016) (holding that appellants’ remedy for its quarrel with policy judgments is at the polls).

B. Article I, section 16 protects victims starting when they are victimized and affords confidential treatment of a victim's name.

The trial court found that even if the law enforcement officers were crime victims, they were not entitled to the protections under article I, section 16 for two reasons. First, a criminal proceeding is required before the protections of article I, section 16 apply. And, second, the right to confidential treatment for “information or records that could be used to locate or harass the victim . . . or which could disclose confidential or privileged information of the victim” does not extend to protecting a victim’s name from disclosure. We reject the trial court’s reasoning on both points.

First, the trial court suggested that because many rights enumerated under article I, section 16 pertain to a criminal prosecution, a crime victim’s rights do not attach until a criminal prosecution begins. But this interpretation of the text limiting a crime victim’s rights to criminal proceedings contradicts the language set out in article I, section 16(b) providing that “every victim is entitled to the enumerated rights, **beginning at the time of his or her victimization.**” (Emphasis supplied.) The trial court’s interpretation also conflicts with this Court’s decision in *L.T. v. State*, 296 So. 3d 490, 494 (Fla. 1st DCA 2020). There, we recognized that the protections afforded crime victims under article 1, section 16 begin at the time of victimization. *See id.*

And nothing in article I, section 16 says that a criminal proceeding needs to commence before a crime victim is entitled to the protections offered under the law. It is true that under article I, section 16 many rights granted to crime victims do relate to criminal proceedings. For example, victims have a right to have their welfare and the welfare of their family considered when a trial court sets bail or conditions of pretrial release, to be reasonably protected from the accused during the judicial process, and to confer with the prosecuting attorney about any plea agreement. Even so, other rights granted to crime victims under article I, section 16 extend beyond the judicial process. Crime victims have a right to be free from intimidation, harassment, and abuse and to confidential treatment of records that could be used to locate or harass them. Art. I, § 16(b). Crime victims also have

the right “to be treated with fairness and respect for the victim’s dignity.” Art. I, § 16(b)(1). Applying the plain language of the text, we hold that a criminal prosecution need not begin before a victim may assert his rights under article I, section 16(e).

Second, the trial court determined that the officers’ names were not entitled to confidential treatment under article I, section 16(b)(5). That subsection grants crime victims certain rights to confidentiality, including:

The right to prevent the disclosure of **information or records** that **could be used** to locate or harass the victim or the victim’s family, or **which could disclose** confidential or privileged information of the victim.

Art. I, § 16(b)(5), Fla. Const. (emphasis supplied).

Contrary to the trial court’s conclusion, “information . . . that could be used to locate or harass the victim or the victim’s family” includes records that could reveal the victim’s name or identity. This construction of article I, section 16 aligns with other provisions of Florida law that treat as confidential records that could reveal a victim’s identity. For example, the Florida Legislature exempted from disclosure public records that could reveal the names of certain crime victims. *Cf.* § 119.071(2)(h), Fla. Stat. (exempting from disclosure criminal intelligence or criminal investigative information that would reveal the name of a victim of certain offenses including child abuse, sexual battery, and other sexual offenses); § 119.071(2)(j), Fla. Stat. (exempting from disclosure “[a]ny document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime”); *see also* Ch. 95-207, § 2, Laws of Fla. (enacting the Crime Victims Protection Act, the Florida Legislature found “that it is a public necessity that disclosure to the public of victims’ identities be limited as provided for in this Act”). The people of Florida granted this type of protection for the dignity and privacy of crime victims when they approved Marsy’s Law. With multiple online search resources available to seek out information about individuals when the person’s name is known, a crime victim’s name is the key that opens the door to locating the victim.

Thus, we hold that the trial court erred when it found that “information . . . that could be used to locate or harass the victim or the victim’s family, or which could disclose confidential or privileged information of the victim” does not include records that could reveal the victim’s identity.

III. Conclusion

We reverse the trial court’s order directing the City to disclose public records that would reveal the identities of the two officers. And we reverse the trial court’s judgment declaring that the protections afforded crime victims under article I, section 16 are not available to law enforcement officers.

REVERSED.

OSTERHAUS and LONG, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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