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MPT-1 Library:
State of Franklin v. Clegane

Excerpts from the Franklin Crime Victims' Rights Act

§ 55. Rights of Crime Victims

(a) A crime victim has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime, or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, or sentencing, or at any parole proceeding.
- (5) The reasonable right to confer with the prosecution in the case.
- (6) The right to full and timely restitution under section 56 of this Act.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.

(b) Definitions—Crime Victim

- (1) In general—As used in this Act, the term “crime victim” means a person directly and proximately harmed as a result of the commission of a Franklin criminal offense.
- (2) Minors and certain other victims—In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court may assume the crime victim's rights under this Act, but in no event shall the defendant be named as such guardian or representative.

§ 56. Restitution

(a) The court, when sentencing a defendant convicted of an offense, shall order that the defendant make restitution to any victim of such offense.

(b) The order may require that such defendant

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense,

(A) return the property to its owner or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the repair or replacement cost of the property.

(2) in the case of an offense resulting in physical, psychiatric, or psychological injury to a victim,

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense.

(c) A defendant is presumed to have the ability to pay restitution unless the defendant establishes the inability to pay by a preponderance of the evidence.

(d) In determining the amount of restitution, the court shall consider (1) public policy that favors requiring criminals to compensate for damage and injury to their victims; (2) the financial burden placed on the victim and those who provide services to the victim as a result of the criminal conduct of the defendant; and (3) the financial resources of the defendant and the nature of the burden the payment of restitution will impose on dependents of the defendant.

State v. Jones
Franklin Court of Appeal (2006)

The issue in this appeal is whether the trial court erred when it held that the girlfriend of the defendant's cocaine customer was not a "victim" entitled to provide a victim-impact statement at sentencing pursuant to the Franklin Crime Victims' Rights Act (FCVRA). We affirm.

For approximately two years between 2004 and 2006, defendant Iggy Jones was engaged in a conspiracy with others to manufacture and distribute cocaine. Based on information conveyed to an undercover law enforcement officer, the police executed a search warrant of the defendant's home, discovering the remnants of a cocaine manufacturing operation and related paraphernalia. Jones was arrested and subsequently pled guilty to conspiracy to possess cocaine with intent to distribute in violation of the Franklin Criminal Code.

After Jones pled guilty, Gina Nocona, the former girlfriend of one of the defendant's regular cocaine customers, filed a motion claiming that she was a "victim" under the FCVRA and therefore entitled to make a victim-impact statement at Jones's sentencing hearing. She claimed that her former boyfriend, a cocaine user who regularly bought drugs from Jones, "physically, mentally, and emotionally abused" her and that her former boyfriend's "poor judgment was in large part attributable to the drugs Jones had illegally sold him." Nocona asserted that her boyfriend's behavior typically became abusive only when he was under the influence of cocaine. The trial court denied Nocona's motion, ruling that Nocona did not have standing as a "victim" under the FCVRA. Nocona appealed.

Often crime victims do not feel that their voices are heard or that their concerns are properly considered in the judicial process. The Franklin legislature attempted to address these concerns when it passed the FCVRA in 2004. Among the rights this statute specifically gives victims is the right to "be reasonably heard at any public proceeding in the district court involving . . . sentencing." FCVRA § 55(a)(4). Only a "crime victim" is afforded these rights. The FCVRA defines "crime victim" as "a person directly and proximately harmed as a result of the commission of a Franklin criminal offense." *Id.* § 55(b)(1).

In applying this definition, Franklin courts have held that a purported "crime victim" under the FCVRA must demonstrate (1) that the defendant's conduct was a cause in fact of the victim's injuries and (2) that the purported victim was proximately harmed by that conduct.

In *State v. Hackett* (Fr. Ct. App. 2003), the Franklin Court of Appeal interpreted “cause in fact” and affirmed the trial court’s order that defendant George Hackett, who pled guilty to aiding and abetting methamphetamine manufacture, pay restitution to an insurance company for property damage. The damage had been caused when one of Hackett’s codefendants started a fire by placing a jar of chemicals used to manufacture methamphetamine on a hot plate. The court found that Hackett had procured the supplies his codefendants used to manufacture methamphetamine, and that he had “knowledge and understanding of the scope and structure of the enterprise and of the activities of his codefendants.” The court held that even though there were “multiple links in the causal chain,” Hackett’s conduct was a cause in fact of the resulting property damage.

In the current case, the facts do not support the same conclusion. Nocona asserts that her former boyfriend was abusive only when he was under the influence of cocaine. If true, such a statement might meet the cause-in-fact prong of the standard, although the court acknowledges that the contention raises complex questions relating to the causes of domestic violence. Nocona offered no expert testimony to support her assertion regarding causation.

Nocona’s motion also fails the second prong of the definition of a crime victim under the FCVRA, which requires that this court determine whether the defendant’s criminal act proximately harmed Nocona. The concept of foreseeability is at the heart of “proximate harm.” The closer the relationship between the actions of the defendant and the harm sustained, the more likely that a court will find that proximate harm exists. *See State v. Thomas* (Fr. Ct. App. 2002).

Nocona is unable to demonstrate that her alleged injuries were a foreseeable consequence of the defendant’s drug conspiracy. She has not provided the court with evidence that the drug conspiracy led to her injuries or that the defendant knew about the impact of the drugs on Nocona’s former boyfriend. Moreover, while we deplore the many undesirable social effects of drug trafficking, we do not think that the asserted abusive conduct of Nocona’s boyfriend toward Nocona falls within the range of reasonably foreseeable harms resulting from the defendant’s conspiracy. Nocona is not a “victim” under the FCVRA because she is not a person “directly and proximately harmed” by the criminal act committed by the defendant.

Affirmed.

State v. Berg
Franklin Court of Appeal (2012)

The defendant, Leon Berg, contends that the trial court violated his constitutional rights and the Franklin Crime Victims' Rights Act (FCVRA) in allowing the parents of Carly Appleton to make victim-impact statements at his sentencing hearing. We find that the trial court did not err, and affirm.

The defendant's girlfriend, Sheila Greene, was driving herself and Berg back from Franklin Beach to Franklin State College (FSC) in Berg's car. They offered a ride to Carly Appleton, another FSC student. Greene and Appleton were 19 years old; Berg was 22. The drinking age in Franklin is 21. They stopped at a gas station, where Berg bought a quart of vodka and a six-pack of beer. Berg and Greene drank some of the vodka and then got back into the car. Appleton did not drink anything. Berg knew that Greene had been previously arrested and fined for driving under the influence, but he allowed her to drive anyway. In fact, Berg admitted that he handed Greene a beer while she was driving. Not long after, Greene, driving considerably over the speed limit, crashed the car into a tree. Berg sustained minor injuries; Greene was killed instantly; Appleton died at the hospital four hours later. Greene's postmortem blood alcohol level was well over the legal limit for operating a motor vehicle in Franklin.

Berg pleaded guilty to the felony crime of providing alcohol to a minor resulting in death. Berg was sentenced to six months in prison followed by two years of extended supervision. Appleton's parents each petitioned the court to make victim-impact statements at Berg's sentencing hearing as representatives of their daughter, who they claimed was a victim of the defendant's offense.

We begin with an analysis of who constitutes a "victim" within the meaning of the FCVRA, which defines a "victim" as one who has been "directly and proximately harmed" by a Franklin criminal offense. § 55(b)(1). The FCVRA provides a victim with the right to "be reasonably heard at any public proceeding in the district court involving . . . sentencing." § 55(a)(4). The legislative history of the statute indicates that the term "crime victim" should be interpreted "broadly." (Citation omitted.)

Carly Appleton's life was tragically cut short as a result of the drunk driving and the car crash that occurred. It seems obvious to this court that the defendant's actions caused Greene's intoxication, which affected her ability to handle the car in the conditions leading to the crash.

But for the defendant's buying alcohol and furnishing it to Greene, the Appletons' daughter would still be alive. Thus, there is a direct causal connection between Berg's conduct and Appleton's death. This satisfies the condition that the defendant's action be a cause in fact of the person's injury. *See State v. Jones* (Fr. Ct. App. 2006).

This court must also decide whether Berg's crime proximately harmed Carly Appleton for purposes of the FCVRA. The concept of "proximate harm" is a limitation that courts place upon an actor's responsibility for the consequences of the actor's conduct; it is a means by which courts limit the scope of the actor's liability. The concept reflects ideas of what justice demands or what a court finds administratively possible and convenient. Foreseeability is at the heart of determining if an actor's conduct proximately harmed a victim. *See Jones*. In determining whether the harm was foreseeable, the court looks to whether the resulting harm was within the zone of risks resulting from the defendant's conduct for which the defendant should be found liable.

We conclude that, on these facts, it was reasonably foreseeable to Berg that if he bought alcohol and distributed it to his girlfriend, who he was aware had a history of driving drunk, then his girlfriend might drive drunk, and that her drunk driving might lead to a car crash. There is a natural and continuous sequence of events without which Appleton's death would not have occurred. In other words, there is an intuitive relationship between Berg's conduct and the resulting harm. Berg could reasonably have foreseen that he, Greene, or Carly Appleton could be seriously injured or killed as a result of Greene's drunk driving. Thus, the harm to Appleton that resulted was within the risk of Berg's actions. The loss suffered by Appleton clearly falls within the scope of Berg's conduct. Accordingly, we find that Carly Appleton was a crime victim under the FCVRA.

The trial court correctly allowed Appleton's parents to make victim-impact statements at the defendant's sentencing hearing, as they were the approved representatives of their daughter, *see* § 55(b)(2), who the trial court found was a "crime victim" under the FCVRA.

Affirmed.

State v. Humphrey
Franklin Court of Appeal (2008)

Two issues are raised in this appeal: (1) whether the trial court erred in finding that a mother, acting as the representative for her two sons, whose father had been killed, was qualified to seek restitution on behalf of her sons under the Franklin Crime Victims' Rights Act (FCVRA); and (2) whether the court erred in ordering the defendant to pay restitution under FCVRA § 56. The trial court held that the mother was an appropriate representative for the sons, who were "victims" entitled to restitution from the defendant for the loss of child-support income. We affirm with respect to the first issue and remand for further proceedings on the second.

On April 12, 2006, defendant Ted Humphrey was driving home from a party. He was texting while driving and lost control of his car. The car then skidded into the adjacent bicycle lane and hit Connor Benton, who was riding his bike home from work. Although Humphrey was able to stop his car and call 911, the first responders were unable to revive Benton, who had suffered a traumatic head injury. Humphrey was unharmed.

Humphrey was charged with one count of involuntary manslaughter, to which he pled guilty on October 30, 2006. Connor Benton's ex-wife, Kate Gove, sought restitution from Humphrey for the loss of child-support income on behalf of her two minor sons, then ages 6 and 10. Gove appeared at the defendant's sentencing hearing and testified that Connor Benton had provided critical financial support to her family before his death. The court sentenced Humphrey to 18 months in prison and ordered restitution for the lost child support provided by Connor Benton, citing the FCVRA. The defendant appeals from that decision.

One purpose of the FCVRA is to force offenders to pay full restitution to the identifiable victims of their crimes. The act applies to any "crime victim" and defines that term as "a person directly and proximately harmed as a result of the commission of a Franklin criminal offense." FCVRA § 55(b)(1). The act goes on to provide that "[i]n the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court may assume the crime victim's rights" *Id.* § 55(b)(2). It is undisputed that Gove, as the mother of Benton's minor children, is their appropriate representative under the Act.

We find that Benton's two young sons are "crime victims" in part because of the loss of financial support from their father. The FCVRA requires only that a person be "directly and proximately harmed" by an offense. The term "harm" embraces physical, financial, and psychological damage. *See* FCVRA § 56(b)(2).

We now turn to whether the court properly ordered the defendant to pay restitution in the amount of \$15,200. Section 56(c) of the FCVRA creates a rebuttable presumption that the defendant is financially capable of paying restitution and places the burden of rebutting the presumption on the defendant.

The defendant did not present any evidence to establish that he was incapable of paying restitution. Apparently relying on § 56, the court ordered \$15,200 in restitution for the value of lost child support without any inquiry into the defendant's financial situation and without any findings to justify the restitution order. On appeal, the defendant argues that the restitution statute requires the court to make express findings justifying a restitution order. The defendant's reading of the statute is correct. Section 56(d) identifies three factors that the court must take into account in determining the amount of restitution: (1) public policy that favors requiring criminals to compensate for damage and injury to their victims; (2) the financial burden placed on the victim and those who provide services to the victim as a result of the criminal conduct of the defendant; and (3) the financial resources of the defendant.

Before imposing restitution, the sentencing judge must make a "serious inquiry" into all three factors. *See State v. Schmidt* (Fr. Sup. Ct. 2003). While the statute places the burden of proof on the defendant to show inability to pay, the court should inquire into the additional factors. This case will be remanded with instructions to the trial court to conduct that inquiry.

Affirmed in part and remanded for further findings consistent with this opinion.

