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MPT-1 Library

State of Franklin v. Daniels

Excerpts from the Franklin Bail Reform Act

In any case that involves a crime of violence and/or serious bodily injury for which the maximum term of imprisonment is 10 years or more, a judge shall hold a pretrial release hearing to determine whether any condition or combination of conditions will reasonably ensure the appearance of the criminal defendant at trial and will reasonably ensure the safety of the community.

- (A) The judge shall order the defendant released on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the defendant not commit a federal, state, or local crime during the period of release, unless the judge determines that such release will not reasonably ensure the appearance of the defendant as required or will endanger the safety of any other person or the community.
- (B) In determining whether to release a defendant, the judge shall consider (1) the nature and circumstances of the offense charged, (2) the weight of the evidence against the defendant, (3) the history and characteristics of the defendant, and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.
- (C) If the judge determines that the release described in section (A) will not reasonably ensure the appearance of the defendant as required or will endanger the safety of any other person or the community, the judge shall order the pretrial release of the defendant subject to the condition that the defendant not commit a crime during the period of release and subject to the least restrictive further condition, or combination of conditions, that the judge determines will reasonably ensure the appearance of the defendant as required and the safety of any other person or the community, which may include but is not limited to the condition(s) that the defendant
 - (i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the judge that the defendant will appear as required and will not pose a danger to the safety of any other person or the community;
 - (ii) maintain employment or, if unemployed, actively seek employment;
 - (iii) maintain or commence an educational program;

- (iv) abide by specified restrictions on personal associations, place of abode, or travel;
- (v) refrain from excessive use of alcohol;

...

- (xii) post a money bond; or
- (xiii) satisfy any other condition that is reasonably necessary to ensure the appearance of the defendant as required and to ensure the safety of any other person or the community.

If the judge determines that none or no combination of these conditions will reasonably ensure the appearance of the defendant as required or the safety of any other person or the community, the judge shall order the defendant detained.

- (D) A rebuttable presumption arises that no condition or combination of conditions will reasonably ensure the safety of any other person or the community if the judge finds that
 - (i) the defendant has been convicted of or otherwise adjudicated to have committed an offense that involves serious bodily injury; and
 - (ii) a period of not more than five years has elapsed since the date of conviction or adjudication, or the release of the defendant from imprisonment, whichever is later.

State v. Donegan
Franklin Court of Appeal (2002)

The state has filed this interlocutory appeal challenging the trial judge's determination to release defendant Todd Donegan on personal recognizance pending trial. Donegan is charged with aggravated assault, a crime that involves serious bodily injury and for which the maximum punishment is 10 years in prison. At issue is whether the trial court's decision to release Donegan complies with the newly enacted Franklin Bail Reform Act (FBRA).

The Franklin legislature adopted the Bail Reform Act to limit the use of money bail bonds. The idea behind the statute is that no person should be detained pending trial solely because he or she lacks the funds to pay for a money bail bond. Instead, the statute creates a system that imposes the least restrictive alternatives on a defendant's release pending trial.

If a defendant is charged with a crime of violence or a crime that involves serious bodily injury for which the maximum punishment is 10 years or more, the trial judge is required to hold a hearing to determine whether, and under what conditions, the defendant should be released pending trial. At that hearing, the trial judge should hear evidence about all aspects of the defendant's character, background, and criminal history. *See* FBRA § B. In addition, the judge should consider the nature and circumstances of the offense charged, the weight of the evidence against the defendant, and the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release. *Id.*

The judge is mandated to release the defendant on personal recognizance (essentially on the promise that the defendant will appear in court as required) or upon execution of an unsecured appearance bond (a bond that will come due only if the defendant fails to appear in court as required), unless the judge makes a specific finding that the release will not reasonably ensure the defendant's appearance or will endanger the safety of any other person or the community.

If the judge determines that release on recognizance or release on unsecured appearance bond is not appropriate, then the judge is required to release the defendant under the least restrictive means necessary for ensuring his or her appearance and ensuring the safety of the community. The statute provides a nonexclusive list of conditions that may be considered by the trial judge.

In this case, Donegan is charged with aggravated assault, a crime that involves serious bodily injury and for which the maximum punishment is 10 years in prison. Donegan is alleged to have gotten into a bar fight and hit a fellow patron over the head with a beer bottle. The victim

sustained multiple lacerations to the face, was taken to the hospital, and was released that night. The weight of the evidence against Donegan is substantial; five unbiased witnesses reported that they observed Donegan's actions during the altercation.

As to Donegan's personal history, a neighbor testified for the state that she often hears lots of yelling and arguments from the Donegans' home. The neighbor also testified that there are often "lots and lots" of empty beer cans outside the Donegans' home.

Donegan has no previous convictions for any offenses. He submitted proof that he supports himself and his family as a truck driver. His wife testified that he is a hard worker, supports his family, and has no previous incidents of violence.

Citing this history, and despite the weight of the evidence against Donegan and the negative testimony from the neighbor, the trial judge found that release on recognizance will ensure the appearance of the defendant. The judge further found that Donegan does not pose a threat to the safety of the community or to any other person. We find that the trial judge did not abuse her discretion in making these findings, and we therefore affirm.

State v. Ross
Franklin Court of Appeal (2009)

This is an interlocutory appeal of the trial court's decision to detain the defendant pending trial. Defendant Sharon Ross is charged with manslaughter in the death of her boyfriend. In making its determination that Ross be held in custody, the trial court relied heavily on Ross's juvenile record. We reverse.

Franklin Bail Reform Act

Under the Franklin Bail Reform Act (FBRA), a criminal defendant must be released pending trial unless a judicial officer finds that no "condition or combination of conditions will reasonably ensure the appearance of the criminal defendant at trial and will reasonably ensure the safety of the community." The purpose of the Franklin Bail Reform Act is to ensure the pretrial release of defendants who do not pose a risk of failing to appear for court or of danger to the community while at the same time detaining those individuals whose release would compromise the safety of the community. However, Section D of the Act provides:

A rebuttable presumption arises that no condition or combination of conditions will reasonably ensure the safety of any other person or the community if the judge finds that (i) the defendant has been convicted of or otherwise adjudicated to have committed an offense that involves serious bodily injury; and (ii) a period of not more than five years has elapsed since the date of conviction or adjudication, or the release of the defendant from imprisonment, whichever is later.

The FBRA does not indicate whether a determination of delinquency for an offense "that involves serious bodily injury" should be considered equivalent to an adult conviction for the same offense. Within the last five years, Ms. Ross has been adjudicated delinquent for the offenses of assault with intent to commit murder and aggravated assault. Both offenses involve serious bodily injury.

To trigger Section D, the person must have been convicted of "or otherwise adjudicated to have committed" an offense that involves serious bodily injury. Thus the statute presupposes that an adult conviction is not required. But this does not necessarily answer the question whether a juvenile adjudication suffices.

Application of FBRA Section D to Juvenile Adjudications

The juvenile system is different from the adult criminal system. The principal purpose of the juvenile system, unlike the adult system, is treatment and rehabilitation. We are trying to help our children, not punish them. We also understand that juvenile adjudications are different from adult convictions. Juveniles are adjudicated to be delinquent, rather than being found guilty of a crime. To be adjudicated delinquent, the juvenile must be found by proof beyond a reasonable doubt to have committed an act that would be a crime if the child were an adult. Consequently, any child who is adjudicated a delinquent has been found guilty of committing all the elements of the crime by the same standard as an adult, but with different ramifications.

Consistent with that concern for public safety, it would be counterintuitive to exclude juvenile adjudications from the scope of the provision. If the purpose of creating the rebuttable presumption is to protect society, society would be ill-served if we failed to include violent juvenile offenses and juvenile offenses that involve serious bodily injury within the provision's ambit.

Thus, consistent with the purposes behind the juvenile system, we determine that juvenile adjudications, just like adult convictions, create a presumption of detention. However, we conclude that it is also consistent with the purposes behind the juvenile system that when assessing a presumed pretrial detention based on juvenile adjudication, that presumption may be overcome by less evidence than would be required in a case involving an adult conviction. We reach this result because the purpose of the juvenile system is to rehabilitate the juvenile. In addition, minors' brains have not developed to their full potential, and thus children who are delinquent are not as morally culpable as adults who commit crimes.

Because the trial court erroneously required the same amount of evidence to rebut the presumption created by the juvenile adjudication as it would have to rebut the presumption created by an adult conviction, we remand this case for further proceedings.

Application of FBRA Section B to Juvenile Adjudications

There is a second section of the FBRA that concerns juvenile adjudications, and we will address that issue to provide additional guidance to the trial court on remand.

Under Section B of the FBRA, the trial court is required to consider the following factors when determining whether to order pretrial release: (1) the nature and circumstances of the offense charged, (2) the weight of the evidence against the defendant, (3) the history and characteristics of the defendant, and (4) the nature and seriousness of the danger to any person or the community

that would be posed by the defendant's release. By requiring consideration of the defendant's history and characteristics, the FBRA broadly authorizes the trial court to consider a defendant's past conduct as one of many permissible factors in evaluating suitability for pretrial release.

A defendant's prior adjudications of delinquency and the nature of his or her juvenile offenses are logically part of his or her "history and characteristics" and indicative of the danger he or she poses to the community. As noted, we appreciate that the objectives of the juvenile justice system generally differ from those of the adult criminal justice process. Nonetheless, courts must consider the "whole person" in deciding whether that person's release poses a safety risk to the community.

Thus, under Section B an adult defendant's prior juvenile record may properly be considered in determining pretrial release, particularly if the juvenile adjudications are relatively recent, numerous, or severe.

In the case before us, Ross admitted to police that she strangled her boyfriend, and the physical evidence against her is very strong. Ross is 18 years old. She has no adult record; nonetheless, she has a long and violent juvenile history, including findings of delinquency for assault with intent to commit murder, armed robbery, aggravated assault, and kidnapping. Her most recent adjudication of delinquency was for an armed robbery that occurred less than one year ago. Ross presented proof that she has suffered from depression, that she was abused as a child, and that she has support from several social services agencies in the community. The proof also disclosed that Ross dropped out of school when she was 16 and has essentially been living on the streets since then.

We reverse because of the trial court's misapplication of FBRA Section D. We add that we would not find an abuse of discretion if the trial judge were to have detained the defendant pretrial based on these facts. The record demonstrates that Ross has juvenile adjudications that are relatively recent, numerous, and severe and would support a trial judge's finding that her release would pose a risk to public safety.