

GREENWOOD V. FLORIDA, COURT OF APPEAL, SECOND DISTRICT OF FLORIDA, NO. 2D10-4143, 2/2/11

Keith Greenwood and Merrick Rice, residents of West Virginia, were arrested in Florida and charged with trafficking in oxycodone and conspiracy in trafficking oxycodone. These charges carry a mandatory minimum sentence of 25 years in prison. Neither had any ties to Florida. At their initial appearance, the two defendants, through their attorneys, asked for a brief time to address, through testimony provided under oath, the factors that the court must take into consideration in determining pretrial release, as set forth in Florida Rule of Criminal Procedure 3.131(b)(2). Those factors include: nature of the offense charged; weight of the evidence; family and community ties; employment; past and present criminal conduct; and previous flight to avoid prosecution – among several others. The court declined to allow the testimony and set bonds of \$250,000 for both defendants, suggesting that their desire to testify under oath could be accommodated at a later bail review hearing. The defendants appealed this action through a petition for a writ of habeas corpus. When that petition failed in the trial court, the two brought the case to the Florida Court of Appeal.

The bond issue was moot by the time the case reached the appeals court since the bond of the defendants had been reduced at a bail review hearing, but the appeals court decided to hear the case anyway because the issue presented was capable of repetition. In its ruling, the court noted that the defendants were not challenging the bond amounts that the trial court had imposed, rather the sufficiency of their first appearance hearing. The court noted that while a first appearance court must “exercise reasonable discretion in determining the appropriate amount of time for a hearing and the number of witnesses who may testify, . . . the court must at least give the defense a reasonable amount of time to respond to the State’s presentation and, at the very least, must allow the defendant, upon request, to be sworn in and to briefly testify as to the relevant factors.”

“Given the long list of factors to be considered under rule 3.131 and the significant number of defendants present at the typical first appearance hearing on any given day in a busy urban court,” the court noted, “it can be very challenging for a trial judge to provide an extensive hearing for each defendant within the time allotted at a first appearance. . . . Even in light of these practical realities, however, it is error for the trial court to refuse to give defendants at least a very brief opportunity to be heard at the first appearance hearing if they insist on it.”