# The Burger Court Opinion Writing Database

## *Francis v. Franklin*

471 U.S. 307 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University




Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 10, 1984

RE: 83-1590 - Francis v. Franklin

Dear Bill:

Will you take on a dissent in this case?

Regards,

Justice Rehnquist

cc: Justice Powell
Justice O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 10, 1985

Re: No. 83-1590 - Robert Francis, Warden v. Raymond Lee Franklin

Dear Bill,

I join your dissent.

Regards,

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 30, 1984

No. 83-1590

Francis v. Franklin

Dear Chief,

I'll undertake the opinion for the Court in the above case.

Sincerely,

Bill

The Chief Justice
Copies to the Conference

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: February 5, 1985

Recirculated: _____

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 83–1590

ROBERT FRANCIS, WARDEN, PETITIONER *v.*
RAYMOND LEE FRANKLIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[February ——, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

This case requires that we decide whether certain jury instructions in a criminal prosecution in which intent is an element of the crime charged and the only contested issue at trial satisfy the principles of *Sandstrom* v. *Montana*, 442 U. S. 512 (1979). Specifically, we must evaluate in light of *Sandstrom* jury instructions stating that: (1) "[t]he acts of a person of sound mind and discretion are presumed to be the product of a person's will, but the presumption may be rebutted" and (2) "[a] person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts, but the presumption may be rebutted." App. 8a–9a. The question is whether these instructions, when read in the context of the jury charge as a whole, violate the Fourteenth Amendment's requirement that the State prove every element of a criminal offense beyond a reasonable doubt. See *Sandstrom*, *supra*; *In re Winship*, 397 U. S. 358, 364 (1970).

I

Respondent Raymond Lee Franklin, then 21 years old and imprisoned for offenses unrelated to this case, sought to escape custody on January 17, 1979, while he and three other prisoners were receiving dental care at a local dentist's office. The four prisoners were secured by handcuffs to the same eight-foot length of chain as they sat in the dentist's waiting

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: MAR 2 5 1985

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 10, 13-15, 16-17



**2nd DRAFT**

# SUPREME COURT OF THE UNITED STATES

No. 83-1590

ROBERT FRANCIS, WARDEN, PETITIONER *v.*
RAYMOND LEE FRANKLIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[March ——, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

This case requires that we decide whether certain jury instructions in a criminal prosecution in which intent is an element of the crime charged and the only contested issue at trial satisfy the principles of *Sandstrom* v. *Montana*, 442 U. S. 512 (1979). Specifically, we must evaluate jury instructions stating that: (1) "[t]he acts of a person of sound mind and discretion are presumed to be the product of a person's will, but the presumption may be rebutted" and (2) "[a] person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts, but the presumption may be rebutted." App. 8a–9a. The question is whether these instructions, when read in the context of the jury charge as a whole, violate the Fourteenth Amendment's requirement that the State prove every element of a criminal offense beyond a reasonable doubt. See *Sandstrom*, *supra*; *In re Winship*, 397 U. S. 358, 364 (1970).

## I

Respondent Raymond Lee Franklin, then 21 years old and imprisoned for offenses unrelated to this case, sought to escape custody on January 17, 1979, while he and three other prisoners were receiving dental care at a local dentist's office. The four prisoners were secured by handcuffs to the same eight-foot length of chain as they sat in the dentist's waiting

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 83–1590

ROBERT FRANCIS, WARDEN, PETITIONER *v.*
RAYMOND LEE FRANKLIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[April ——, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

This case requires that we decide whether certain jury instructions in a criminal prosecution in which intent is an element of the crime charged and the only contested issue at trial satisfy the principles of *Sandstrom* v. *Montana*, 442 U. S. 510 (1979). Specifically, we must evaluate jury instructions stating that: (1) "[t]he acts of a person of sound mind and discretion are presumed to be the product of a person's will, but the presumption may be rebutted" and (2) "[a] person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts, but the presumption may be rebutted." App. 8a–9a. The question is whether these instructions, when read in the context of the jury charge as a whole, violate the Fourteenth Amendment's requirement that the State prove every element of a criminal offense beyond a reasonable doubt. See *Sandstrom*, *supra*; *In re Winship*, 397 U. S. 358, 364 (1970).

## I

Respondent Raymond Lee Franklin, then 21 years old and imprisoned for offenses unrelated to this case, sought to escape custody on January 17, 1979, while he and three other prisoners were receiving dental care at a local dentist's office. The four prisoners were secured by handcuffs to the same 8-foot length of chain as they sat in the dentist's waiting room.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 7, 1985

MEMORANDUM TO THE CONFERENCE

Cases Held for No. 83-1590, Francis v. Franklin

Six cases have been held for the decision in Francis v. Franklin:

1. No. 84-5343, Hux v. Murphy

Petitioner was convicted of the theft of a small number of tires and chrome wheels and was sentenced under Oklahoma's repeat offender statute to a term of 28 years in prison. The portion of the jury charge challenged as violative of Sandstrom v. Montana reads as follows:

> "The burden is on the State to provide believable evidence justifying your affirmative finding of these items:
> ...
>
> "(4) Did he know what he was doing and that it was wrong?
>
> "In this regard you may bear in mind the legal presumption that one intends the obvious and natural consequences of his acts, unless the contrary is shown.
> ...
>
> "If you find from your consideration of the evidence, under these instructions, that each of these items have been proven beyond a reasonable doubt ... it is your duty to find ... Defendant guilty."

The district court denied federal habeas relief as procedurally barred under Wainwright v. Sykes as a result of a lack of contemporaneous objection. The CA8, rejecting the

10

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 11, 1985

83-1590 - Francis v. Franklin

Dear Bill,

Please join me.

Sincerely yours,

Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 8, 1985

Re: No. 83-1590-Francis v. Franklin

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Supreme Court of the United States
Washington, D. C. 20543

April 5, 1985

Re: No. 83-1590, Francis v. Franklin

Dear Bill:

Please join me.

Sincerely,

Harry

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 9, 1985

No. 83-1590, Francis v. Franklin.

Dear Bill:

Although I partly agree with Bill Rehnquist's dissent, I find that my view of the case differs in some respects. I will therefore write a brief separate dissent of my own.

Sincerely,

L.F.P./dro

Justice Brennan

lfp/dro

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: APR 2 0 1985

Recirculated: _____



1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 83-1590

ROBERT FRANCIS, WARDEN, PETITIONER *v.*
RAYMOND LEE FRANKLIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[April ——, 1985]

JUSTICE POWELL, dissenting.

In *Sandstrom* v. *Montana*, 442 U. S. 510 (1979), we held that instructing the jury that "the law presumes that a person intends the ordinary consequences of his voluntary acts" violates due process. We invalidated this instruction because a reasonable juror could interpret it either as "an irrebuttable direction by the court to find intent once convinced of the facts triggering the presumption" or "as a direction to find intent upon proof of the defendant's voluntary actions . . . unless *the defendant* proved the contrary by some quantum of proof which may well have been considerably greater than 'some' evidence—thus effectively shifting the burden of persuasion on the element of intent." *Id.*, at 517 (original emphasis). Either interpretation, we held, would have relieved the State of its burden of proving every element of the crime beyond a reasonable doubt. See *id.*, at 521; *Mullaney* v. *Wilbur*, 421 U. S. 684, 698–701 (1975).

Unlike the charge in *Sandstrom*, the charge in the present case is not susceptible of either interpretation. It creates no "irrebuttable direction" and a reasonable juror could not conclude that it relieves the State of its burden of persuasion. The Court, however, believes that two sentences make the charge infirm:

> "The acts of a person of sound mind and discretion are presumed to be the product of the person's will, but the

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 11, 1984

Re: No. 83-1590 Francis v. Franklin

Dear Chief,

I would be happy to take on the dissent in this case.

Sincerely,

WHR

The Chief Justice

cc: Justice Powell
Justice O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 14, 1985

Re: No. 83-1590 Francis v. Franklin

Dear Bill,

In due course I will circulate a dissent.

Sincerely,

WHR

Justice Brennan

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: 3/7/85

Recirculated: _____



1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 83-1590

ROBERT FRANCIS, WARDEN, PETITIONER *v.*
RAYMOND LEE FRANKLIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[March ——, 1985]

JUSTICE REHNQUIST, dissenting.

In *In re Winship*, 397 U. S. 358 (1970), the trial judge in a bench trial held that although the State's proof was sufficient to warrant a finding of guilt by a preponderance of the evidence, it was not sufficient to warrant such a finding beyond a reasonable doubt. The outcome of the case turned on which burden of proof was to be imposed on the prosecution. This Court held that the Constitution requires proof beyond a reasonable doubt in a criminal case, and Winship's adjudication was set aside.

Today the Court sets aside Franklin's murder conviction, but not because either the trial judge or the trial jury found that his guilt had not been proven beyond a reasonable doubt. The conviction is set aside because this Court concludes that one or two sentences out of several pages of instructions given by the judge to the jury could be read as allowing the jury to return a guilty verdict in the absence of proof establishing every statutory element of the crime beyond a reasonable doubt. The Court reaches this result even though the judge admonished the jury at least four separate times that they could convict only if they found guilt beyond a reasonable doubt. The Court, instead of examining the charge to the jury as a whole, seems bent on piling syllogism on syllogism to prove that someone *might* understand a few sentences in the charge to allow conviction on less than proof be-

Pg 3

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: MAR 8 1985



**2nd DRAFT**

# SUPREME COURT OF THE UNITED STATES

No. 83-1590

ROBERT FRANCIS, WARDEN, PETITIONER *v.*
RAYMOND LEE FRANKLIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[March ——, 1985]

JUSTICE REHNQUIST, dissenting.

In *In re Winship*, 397 U. S. 358 (1970), the trial judge in a bench trial held that although the State's proof was sufficient to warrant a finding of guilt by a preponderance of the evidence, it was not sufficient to warrant such a finding beyond a reasonable doubt. The outcome of the case turned on which burden of proof was to be imposed on the prosecution. This Court held that the Constitution requires proof beyond a reasonable doubt in a criminal case, and Winship's adjudication was set aside.

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: 4/1/85



8p 10, 11, 12

**3rd DRAFT**

# SUPREME COURT OF THE UNITED STATES

No. 83–1590

ROBERT FRANCIS, WARDEN, PETITIONER *v.*
RAYMOND LEE FRANKLIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[April ——, 1985]

JUSTICE REHNQUIST, dissenting.

In *In re Winship*, 397 U. S. 358 (1970), the trial judge in a bench trial held that although the State's proof was sufficient to warrant a finding of guilt by a preponderance of the evidence, it was not sufficient to warrant such a finding beyond a reasonable doubt. The outcome of the case turned on which burden of proof was to be imposed on the prosecution. This Court held that the Constitution requires proof beyond a reasonable doubt in a criminal case, and Winship's adjudication was set aside.

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P. 1

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: _____

Recirculated: APR 26 1985

4th DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 83-1590

ROBERT FRANCIS, WARDEN, PETITIONER *v.*
RAYMOND LEE FRANKLIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[April 29, 1985]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and JUSTICE O'CONNOR join, dissenting.

In *In re Winship*, 397 U. S. 358 (1970), the trial judge in a bench trial held that although the State's proof was sufficient to warrant a finding of guilt by a preponderance of the evidence, it was not sufficient to warrant such a finding beyond a reasonable doubt. The outcome of the case turned on which burden of proof was to be imposed on the prosecution. This Court held that the Constitution requires proof beyond a reasonable doubt in a criminal case, and Winship's adjudication was set aside.

Today the Court sets aside Franklin's murder conviction, but not because either the trial judge or the trial jury found that his guilt had not been proven beyond a reasonable doubt. The conviction is set aside because this Court concludes that one or two sentences out of several pages of instructions given by the judge to the jury could be read as allowing the jury to return a guilty verdict in the absence of proof establishing every statutory element of the crime beyond a reasonable doubt. The Court reaches this result even though the judge admonished the jury at least four separate times that they could convict only if they found guilt beyond a reasonable doubt. The Court, instead of examining the charge to the jury as a whole, seems bent on piling syllogism on syllogism to prove that someone *might* understand a few sen-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 7, 1985

Re: 83-1590 - Francis v. Franklin

Dear Bill:

Please join me.

Respectfully,

Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 11, 1985

No. 83-1590 Francis v. Franklin

Dear Bill,

For the present, I will await the dissent.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 8, 1985

No. 83-1590 Francis v. Franklin

Dear Bill,

Please join me in your dissent.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference