

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee,

vs.

Supreme Court No. 137755  
Court of Appeals No. 278826  
Wayne CC No. 06-010137

GEORGE W. TENNYSON,

Defendant-Appellant

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137755

**DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF**  
**TO APPLICATION FOR LEAVE TO APPEAL**  
**(ORAL ARGUMENT REQUESTED)**

PROOF OF SERVICE

**FILED**

JUN 26 2009

CORBIN R. DAVIS  
CLERK  
MICHIGAN SUPREME COURT

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SUPPLEMENTAL STATEMENT OF QUESTION PRESENTED

III. WHETHER DEFENDANT TENNYSON'S CONVICTION FOR CONTRIBUTING TO THE NEGLECT OR DELINQUENCY OF A MINOR SHOULD BE VACATED WHERE THERE WAS NO EVIDENCE PRESENTED SPECIFICALLY WITH RESPECT TO THIS CHARGE?

Defendant-Appellant says yes.

The Trial Court has not addressed this issue.

Plaintiff-Appellee has not addressed this issue.

## SUPPLEMENTAL STATEMENT OF FACTS

Defendant-Appellant (hereinafter "Defendant") George W. Tennyson, was convicted after a jury trial, the Honorable James A. Callahan presiding, of possession of firearm by felon, MCL 750.224f, possession of controlled substance, MCL 333.7403(2)(a)(v), felony firearm, MCL 750.227B-A; MSA 28.424(2) and contributing to the delinquency of a minor, MCL 750.145, in the Wayne County Circuit Court.

The circumstances involved in the charges against Defendant George Tennyson involved a police search pursuant to a warrant, of his home located at 12021 Stoepel in the City of Detroit. The police found what they suspected to be a controlled substance and two firearms in this raid. Mr. Tennyson was home with his son and wife at the time. Four police officers testified for the Prosecution. No expert witnesses testified. At the beginning of the trial, Defense Counsel objected to the Prosecution's last minute filing of a new witness list with additional witnesses listed and the last-minute attempt to admit a lab sheet of the substance in question allegedly being heroin. The Court granted the Defense Motion to exclude the Prosecution's late-endorsed witnesses. (Tr. 3-19-07, p. 4-10)

At trial, Officer Reynord Reed from the Detroit Police Department testified that on August 16, 2006, they conducted a narcotic raid pursuant to a search warrant. Officer Reed testified that he first noted a female on the front porch and a 10-year old boy on the couch in the living room. He then found the Defendant Mr. Tennyson in the bedroom, sitting on the bed. Officer Reed stated that he looked under the bed and found what he believed to be, heroin on a

plate. He testified that he was familiar with drugs, the packaging and the look of the drugs. He stated that he knew that heroin had a different texture and a different color, but that at times it could be a brown color and at other times it could be another color, beige, and a different color than cocaine. He further testified that he knew the texture of heroin to be different than cocaine, that when it was "stepped up", or cut with something, it would be a lighter color and the texture would be different, that it would be much finer. (Tr. 3-19-07, p. 90-99) On cross, Officer Reed admitted that he did not have a degree in chemistry. He testified that he knew heroin came in three different colors that it could be mixed with a cutting agent, called lactose or Miami ice. He acknowledged that he did not test the substance and so he did not know whether it was mixed with lactose, he also acknowledged that he could not say it was heroin, just that it appeared to be. (Tr. 3-19-07, p. 99-102) Officer Reed testified that the house had two bedrooms, a kitchen, living room, dining room. He stated he believed that since the substance was in the house, that Mr. Tennyson had a right to "constructively" possess it since it was found in his bedroom, but he admitted that he did not see Mr. Tennyson have it on his person, in his possession. (Tr. 3-19-07, p. 102-106) Officer Reed testified on redirect that the police officers had continuing training, including with narcotics; he testified that lactose is white, that it looks like Arm and Hammer Baking Soda, but a lot finer. He testified that heroin could be sold for more or worth more, if it were cut less, by "stepping on it". (Tr. 3-19-07, p. 109)

Office Kathy Singleton testified that she was also working with the narcotics crew on August 16, 2006, when they went to the location. She observed the boy on the couch, who appeared scared and upset. She testified that she recovered a white plate from under a bed in the

southeast bedroom containing a knotted sandwich baggie containing suspected narcotics. Officer Singleton testified that that she put the baggie in a locked sealed folder. When shown the folder during her testimony, Officer Singleton testified that she recognized the packaging. She stated she handed the substance to an officer to do a preliminary test, that she witnessed the preliminary test being done by an Officer Flake and that the results were that one turned purple and one turned green, which she stated shows the presence of heroin. She testified that she had not had any training, but that she was familiar with the procedure, but that Officer Flake had some training. She testified she also saw a razor blade and a McDonald's coffee spoon. She testified that a second bag had a secondary test, called a final analysis. On cross, she stated she also arrested Mr. Tennyson's wife, but was not sure who the drugs belonged to, in the two-bedroom house, one belonging to the child. (Tr. 3-19-07, p. 110- 120)

Officer Keith McCloud next testified that he was also part of the entry team to go inside the house. He stated that he just assisted with detaining the female and the 11 year old. He also assisted in searching the home. He stated that in the southwest bedroom, they found the suspected heroin. Officer McCloud testified that he also found something in the dresser drawer, which was two blue steel revolvers, both loaded. He was shown the firearms in packaging and he stated that he recognized the evidence tag because he placed it on the inside of the folder and he recognized the revolvers. He also noted there were bullets in the bag. (Tr. 3-19-07, p. 120-127) Officer McCloud testified that he also found in the dresser a digital scale and proof of residency, such as house bills in the name of Mr. Tennyson. The Officer thought it was significant to have found a scale and firearms in a place where narcotics were found. He testified

that proof of residency showed that Tennyson lived there. (Tr. 3-19-07, p. 127-131) Officer McCloud acknowledged that there were also womens things in the dresser drawers. He testified that he did not have "exact knowledge" of who the two guns actually belonged to. He was also not aware whether the guns were ever submitted for fingerprints. He stated that Felisa Nevins, the significant other of Mr. Tennyson, was ticketed for operating a place of illegal occupation (OPIO), but he did not look for proof of residency of Ms. Nevins. He never searched Mr. Tennyson, nor did he find any rental agreement for the property nor driver's license. (Tr. 3-19-07, p. 132-139)

Sargeant Willie Smith testified that he also was working narcotics division on August 16, 2006 and was in charge of supervising the raid on that day. He testified that he confiscated the amount of \$53. in currency from the home of Mr. Tennyson. He testified that he had been working in the narcotics division for over six years and had done over 100 prior investigations into heroin. He stated that based on his experience, he looked at the substance confiscated and believed it to be heroin based on the color and texture. He thought it was 3.35 grams that was confiscated, or about \$700. in value. (Tr. 3-19-07, p. 142-144)

On cross-examination, Sgt. Smith acknowledged that he was not an evidence technician nor was anyone one his crew that day an evidence technician. He acknowledged that as the officer in charge, it would be his responsibility to take the fingerprints off the guns. He was not sure whether he ordered the fingerprints, but he said 90 percent of the time he does submit them for prints. He did not submit the suspected drugs for prints either. Sgt. Smith also testified that Mr. Tennyson was cooperative. (TR. 3-19-07, p. 147-148)

The Prosecutor then indicated to the Court that the Attorneys stipulated that Mr. Tennyson had a prior felony conviction for purposes of the firearm ineligibility. (Tr. 3-19-07, p. 148)

Prior to closing arguments, the Court noted that Defense Counsel had requested the jury instruction of mere presence. Counsel and the Court discussed that mere presence had to do more with aiding and abetting, C.J.I. 8.5, but that was not their factual situation. (Tr. 3-19-07, p. 151-153)

Defense Counsel argued in closing that the prosecution did not have any evidence of the substance being heroin other than the Officers saying they thought it was. Defense Counsel stated that Preliminary tests can not form the basis of such a conclusion. Counsel argued that Officers without training in chemistry or biology can not guess as to what may be heroin. Also, Counsel argued that with respect to the contributing to the delinquency of a minor charge, that there was no evidence presented that Mr. Tennyson was ever selling drugs, as the Prosecutor mentioned. Counsel argued that even the Police Officers admitted that they did not know who the drugs or guns belonged to, that they assumed they belonged to Mr. Tennyson because he was in the room. Counsel argued that this was not proof of possession, that the prosecution did not establish physical dominion and control because he was in the home or in the room where a small amount of drugs and guns were found. And Defense Counsel raised the idea that the Sergeant stated that he may have ordered fingerprints taken in August - because he did so in 90 percent of his cases - and did not know whether they came back now that it was March, did not make sense and could not establish the elements, without guessing. (Tr. 3-19-07, p. 157-163)

After closing arguments, the Court read the standard jury instructions to the jury. (Tr. 3-19-07, p. 167-183) After deliberating, the jury returned a verdict of guilty on all counts (Tr. 3-19-07 p. 187-191)

Defendant's sentencing took place on May 14, 2007. Prior to the sentencing, Defense Counsel raised the previously-filed Motion for Judgment Notwithstanding the Verdict (JNOV). It was argued by Defense Counsel that with respect to the suspected heroin, the Prosecution had the burden of proof to have the substance tested and weighed, rather than to simply call Police Officers to testify that from their experience, they believed that it was heroin. The Prosecution argued that the Officers testified based on their experience and their observations and also looking at the totality of the circumstances, it was consistent with a finding of narcotics. The Court denied the Defense Motion for JNOV, stating as its reason that circumstantial evidence plays an important role and that the Court believed that the "ends of justice" had been served in this particular case and that the Defendant received a fair trial. (Tr. 5-14-07, p. 3-8)

The Court sentenced Mr. Tennyson to 2 consecutive years on the felony firearm, 1-5 years on the possession of firearm by felon (the 1 year being according to the Court, the "low end of the guidelines" - [which were 5-23 months]), 5 years probation on the possession of narcotics, and sentence suspended on the contributing to the delinquency of a minor charge and for the felony firearm conviction, Mr. Tennyson received the mandatory consecutive 2 years with 57 days of jail credit. The Court also told Mr. Tennyson that he would write to the Michigan Department of Human Services to request that a petition be filed to terminate his parental rights. (Tr. 5-14-07, p. 12-17)

The Defendant timely requested appellate counsel and this appeal was by right to the Court of Appeals. The Court of Appeals subsequently affirmed the appeal by Order dated October 16, 2008. Defendant-Appellant filed an In Pro Per Application for Leave to Appeal to the Michigan Supreme Court. By Order dated April 24, 2009, this Honorable Court ordered that the undersigned Counsel be reappointed, if feasible, which was done, and that the parties may file supplemental briefs and at oral argument address the issue of whether evidence that a child was present in the home when the Defendant was charged with possession of drugs and weapons is legally sufficient to support the Defendant's conviction for doing an act that tended to cause the child to become neglected or delinquent so as to tend to come under the jurisdiction of the juvenile division of the probate court pursuant to MCL 750.145.

ARGUMENT (SUPPLEMENTAL)

III.

**DEFENDANT TENNYSON'S CONVICTION FOR CONTRIBUTING  
TO THE NEGLECT OR DELINQUENCY OF A MINOR  
SHOULD BE VACATED WHERE THERE WAS NO EVIDENCE  
PRESENTED SPECIFICALLY WITH RESPECT TO THIS CHARGE**

The issue of whether there was insufficient evidence presented at trial to support a conviction, should be reviewed de novo. *People v Wolfe*, 440 Mich 508; 489 NW2d 748 (1992), modified on other grounds at 441 Mich 1201 (1992). This issue has been preserved by the argument of Defense Counsel.

The statute in question, MCL 750.145 states in pertinent part:

**750.145 Minor; contributing to neglect or delinquency.**

Sec. 145.

Contributing to neglect or delinquency of children—Any person who shall by any act, or by any word, encourage, contribute toward, cause or tend to cause any minor child under the age of 17 years to become neglected or delinquent so as to come or tend to come under the jurisdiction of the juvenile division of the probate court, . . . whether or not such child shall in fact be adjudicated a ward of the probate court, shall be guilty of a misdemeanor.

In the present case, the Prosecution failed to establish how any possession of controlled substance or of a firearm on the part of the Defendant, caused his minor child to become

neglected or delinquent. In fact, there was absolutely no showing on the part of the Prosecution, that the child had any abuse or maltreatment by the Defendant or that the child was suffering in any way, academic or socially or emotionally or cognitively, from any possession on the part of Mr. Tennyson. There was actually little to no testimony with respect to this child other than he was on the couch and appeared upset – when the police burst in the house. Of course, any “normal” child would be upset at this. There was no evidence presented that the child was not normally developed and had any problems whatsoever. The mere assumption that Mr. Tennyson being in possession of any illegal substance and firearms (which were not out in the open), without a showing of his use or abuse of same, is not enough to conclude, by itself, that this somehow contributed or caused the neglect or delinquency of the child.

In addition, the primary case in this arena is *People v Owens*, 13 Mich App 469, 164 NW2d 712 (1967). *Owens* is a 1967 case that involved a defendant who helped a 16 year old young woman that told him she was 18, run-away from her home in Clarkston and set up residence in a motel near the Motown recording studio in Detroit. He was charged with contributing to the delinquency and neglect of a minor, although no improper activity was said to have occurred between them, although it was stated that the Defendant paid her rent and visited her there. The Defendant in *Owens* alleged that the statute was so vague and indefinite, that it was not meant to cover this type of situation and that the minor child should first be adjudged delinquent before the Court could determine guilt in this kind of situation. The Court considered the language of “tend to cause” and “tend to come” as meaning that the child did not have to be adjudicated delinquent or neglected, just that the word “tend” meant it was contributing,

conducting or directing it toward that end, object or purpose, or having a tendency, object or purpose [toward that end]. *Id* at 479.

However, the lengthy dissent in *Owens* by J. Levin, found a failure of proof under the constitutionally valid subdivision relied on in the majority opinion and as a result, Justice Levin stated that he would reverse, vacate the sentence and discharge the defendant. The dissent explained that the defendant was not charged with encouraging the child to desert her home without sufficient cause, but that he was charged with “harboring” her while she was missing from home. The dissent stated that the defendant’s conviction could not be sustained on appeal on the grounds that he encouraged her to desert her home when he was not charged with this nor was the evidence such that would have supported this conviction. The dissent stated that it was not a crime to harbor the child while she was missing from home and so his conviction should be reversed. Further, the dissent stated that that the statutory definition of delinquency was loosely drawn and that the due process guaranteed by the Fourteenth Amendment is denied one who is convicted of a crime without proof of a essential ingredient of the crime. *Id.* at 493.

It is submitted that the contribution (to the delinquency or neglect of the child) must be of an inducive effect. In other words, the Defendant Mr. Tennyson must have done something beyond the passive status of the possession of drugs and firearm, which were reported to have been under his bed and in his dresser drawer. There were no allegations of a crack house, or delivery of drugs or weapons, such that would put the child at risk of harm, in order to bring him within the juvenile code as a neglected child and particularly, there was no evidence ever presented at the trial, that the child could ever have been adjudicated a delinquent, whether

“tending to cause” and “tending to come” within the juvenile code. As such, it is submitted that in order to be convicted of contributing to the delinquency or neglect of a minor, the contribution must be of an inducive effect, and there must be a knowledgeable effort of at least a passive nature which reasonably can be said to be an enticement to do the thing prohibited, as in a delinquency case, such as to knowingly encouraging the minor to violate the law, which is not only derived from spoken words, but may be derived from actions and conduct which constitute encouragement. Also, it is submitted that even assuming *arguendo* there was some encouragement, which in this case the facts do not show, the actions of a person may give rise to substantial evidence of encouragement when words may not. See e.g., *Corpus Juris Secundum*: 43 CJS Infants § 119 (June 2008)

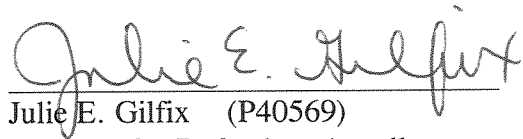
In the present case, the Defendant Mr. Tennyson was found to have had drugs under his bed and a firearm in the dresser drawer. The child in the living room was understandably scared of the situation, but the Prosecutor failed to produce any evidence to substantiate that Mr. Tennyson, by his alleged illegal possession, brought this child within the juvenile code. There was testimony that there were also women’s things, [the child’s mother] in the home, which showed that the child’s mother also lived there. No evidence that a child neglect petition could be filed, nor that this 10-year old child was somehow directed or encouraged to violate the law.

As such, there was insufficient evidence to conclude that Defendant Mr. Tennyson had violated this statute and his misdemeanor conviction for contributing to the neglect or delinquency of a minor should be reversed by this Honorable Court.

CONCLUSION

WHEREFORE, for all of the reasons described above, Defendant-Appellant, George W. Tennyson respectfully requests that this Honorable Court reverse all of his convictions and dismiss the charges and/or vacate his convictions and sentence and remand the case to the Wayne County Circuit Court for a new trial before a different Judge.

Respectfully Submitted,



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Dated: June 24, 2009