

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee,

vs

Supreme Court
No. 137755

GEORGE W. TENNYSON,
Defendant-Appellant.

Third Circuit Court No. 06-10137
Court of Appeals No. 278826

137755

SUPPLEMENTAL BRIEF ON APPEAL

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Supplemental Counterstatement of Issues Presented

I

MCL 750.145 makes it a misdemeanor for any person to, by *any act, tend to cause* a minor child to become delinquent so as to *tend to come* under the jurisdiction of the juvenile division of the probate court. Here, defendant possessed heroin and paraphernalia related to heroin use in the home he shared with his ten-year-old son; numerous studies have shown that children of drug-addicted parents tend to have more emotional and behavioral problems, including drug and alcohol use and run-ins with the criminal justice system. Did defendant's act of possessing and using heroin in the home he shared with his minor son tend to cause the son to become delinquent for purposes of the statute?

The People answer, "Yes."

Defendant answers, "No."

The Court of Appeals answered, "Yes."

Supplemental Counterstatement of Factual and Procedural History

The People accept defendant's statement of facts and procedural history.

Argument

I.

MCL 750.145 makes it a misdemeanor for any person to, by *any act, tend to cause* a minor child to become delinquent so as to *tend to come* under the jurisdiction of the juvenile division of the probate court. Here, defendant possessed heroin and paraphernalia related to heroin use in the home he shared with his ten-year-old son; numerous studies have shown that children of drug-addicted parents tend to have more emotional and behavioral problems, including drug and alcohol use and run-ins with the criminal justice system. Defendant's act of possessing and using heroin in the home he shared with his minor son tended to cause the son to become delinquent for purposes of the statute.

Standard of Review

Statutory construction presents an issue of law that this Court reviews de novo.¹ A claim that evidence was insufficient to support a conviction is an issue of law reviewed de novo.² When reviewing a challenge to the sufficiency of the evidence, a court must view the evidence, including circumstantial evidence and all reasonable inferences therefrom, in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.³ All evidentiary conflicts are resolved in favor of the prosecution.⁴

¹*People v Keller*, 479 Mich 467, 473-474 (2007).

²*People v Mayhew*, 236 Mich App 112, 124 (1999).

³*People v Wolfe*, 440 Mich 508, 515 (1992), amended on other grounds 441 Mich 1201 (1992); *People v Nowack*, 462 Mich 392, 400 (2000).

⁴*People v Terry*, 224 Mich App 447, 452 (1997).

Discussion

MCL 750.145 provides:

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, as defined in section 2 of chapter 12a of Act No. 288 of the Public Acts of 1939, as added by Act No. 54 of the Public Acts of the First Extra Session of 1944, and any amendments thereto, *whether or not such child shall in fact be adjudicated a ward of the probate court*, shall be guilty of a misdemeanor. [Emphasis added.]

MCL 712A.2 sets forth the circumstances that would lead a juvenile to come under the jurisdiction of the juvenile division of the probate court, which includes, among other things, use of a controlled substance. MCL 712A.2(a)(1)(D).

The issue here is whether the act of possessing heroin and the paraphernalia related to heroin use (razor, digital scale, etc) is an act that may “tend to cause” defendant’s minor child to become delinquent so as to “tend to come” under the jurisdiction of the juvenile division of the probate court, even if the child is not actually ever adjudicated a ward of that court. The answer turns on the meaning of the statutory phrases “tend to cause,” and “tend to come.” The primary goal of statutory interpretation is to discern the intent of the Legislature. “To do so, we begin with the language of the statute, ascertaining the intent that may reasonably be inferred from its language. When the language of a statute is unambiguous, the Legislature’s intent is clear and judicial construction is neither necessary nor permitted.”⁵

⁵*Odom v Wayne County*, 482 Mich 459, 467 (2008).

The word “tend” is clear and unambiguous. The Oxford Dictionary defines “tend” to mean “be apt or inclined.”⁶ Under the statute then, any act of defendant must be apt or inclined to cause defendant’s child to be apt or inclined to come under the jurisdiction of the juvenile division of the probate court. This is a low threshold of proof, perhaps reflecting the Legislature’s determination to make the offense a misdemeanor rather than a felony. Further, the statute clearly states that it does not matter whether the child is ever actually adjudicated a ward of the probate court by expressly providing that a defendant may be found guilty “*whether or not such child shall in fact be adjudicated a ward of the probate court.*” Indeed, the Court of Appeals so held over forty years ago in *People v Owens*:

By reading all sections of the relevant statute together, it is apparent that the legislature meant to prevent conduct which would *tend* to cause delinquency and neglect as well as that conduct which obviously *has* caused delinquency and neglect. Thus, we hold that prior adjudication of delinquency by the juvenile court is not a prerequisite to defendant’s conviction.⁷

Defendant’s possession and use of heroin in the home he shared with his son satisfies this statutory criteria. Numerous studies have been conducted on the effect of children living with drug-abusing fathers. Those studies have found that children of substance abusers may have significantly higher levels of both depression and anxiety, as well as more emotional and behavioral problems.⁸ Other studies have found that children of parents who use cocaine and opiates had more thought

⁶*The Oxford Dictionary and Thesaurus, American Edition*, Oxford University Press (1996).

⁷*People v Owens*, 13 Mich App 469, 479 (1968).

⁸See, e.g., Fals-Stewart, Fincham, Golden, Kelley, and Logsdon, *Emotional and Behavioral Problems of Children Living with Drug-Abusing Fathers: Comparisons with Children Living with Alcohol-Abusing and Non-Substance-Abusing Fathers*, *Journal of Family Psychology*, 2004 18(2): 319-330.

problems, delinquent behavior, and aggressive behavior.⁹ More specifically, children living with drug-addicted father were more likely to have a lifetime psychiatric diagnosis and more than twice as likely to exhibit clinical levels of behavioral symptoms and negative behaviors than children living with alcoholic fathers or non-substance-abusing parents.¹⁰ As the children of drug-abusing parents grow into adolescence, they are more likely to suffer from cognitive difficulty, poor judgment, and conduct problems, and are more likely to progress to abusing substances themselves.¹¹ In short, children of substance-abusing parents show elevated rates of delinquency, conduct disorders, anxiety, depression, and increased and early use of drugs and alcohol.¹²

Given the results of the studies cited, the evidence presented that defendant had heroin in the home of his minor child, as well as items such as a spoon, razor blade, and a digital scale with suspected narcotics residue on it, was more than sufficient under the statute to establish that defendant committed an act (the possession and use of heroin in the home of his minor child) that would be apt or inclined to cause his son to be apt or inclined to be delinquent so as to come within the jurisdiction of the juvenile division of the probate court. The Court of Appeals correctly affirmed defendant's convictions.

⁹See, e.g., Stanger, Higgins, et al, *Behavioral and Emotional Problems Among Children of Cocaine- and Opiate-Dependent Parents*, J Am Acad Child Adolesc Psychiatry, 1999 38:421.

¹⁰Kelley, Fals-Stewart, *Psychiatric Disorders of Children Living with Drug-Abusing, Alcohol-Abusing, and Non-Substance-Abusing Fathers*, J Am Acad Child Adolesc Psychiatry 2004 43(5): 621-628.

¹¹Silverman, Schonberg, *Adolescent Children of Drug-Abusing Parents*, Adolescent Medicine 2001 Oct; 12(3): 485-491.

¹²Brook, Brook, Rubenstone, Zhang, Singer & Duke, *Alcohol Use in Adolescents Whose Fathers Abuse Drugs*, Journal of Addictive Diseases 2003, 22(1): 11-34.

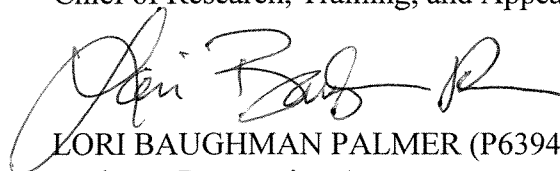
Relief

WHEREFORE, this Court should affirm the result of the Court of Appeals.

Respectfully submitted,

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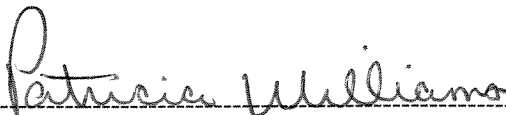
STATE OF MICHIGAN)
COUNTY OF WAYNE)ss

The undersigned deponent, being duly sworn, deposes and says that she caused to have served a true copy of **Supplemental Brief on Appeal**

upon: Julie E. Gilfix

the within named attorney for defendant by DEPOSITING SAID PLEADING IN THE U.S. MAIL IN THE CITY OF DETROIT, enclosed in an envelope bearing postage fully prepaid on October 13, 2009, plainly addressed as follows:

Julie E. Gilfix
Attorney at Law
26211 Central Park Blvd, Suite 211
Southfield, MI 48076



and said pleading was filed in the Michigan Supreme Court to the following address:

CORBIN R. DAVIS, Clerk
Michigan Supreme Court
P. O. Box 30052
Lansing, Michigan 48909

Subscribed and sworn to before me
this 13th day of October, 2009.



Notary Public, Wayne County, MI.

My Commission Expires: 1-25-2016