

MSC Opinion: Bindover on felony drug delivery correct where defendant drove purchaser to buy drugs and provided purchase money

31. March 2010

On March 30, 2010, the Supreme Court issued an opinion in *People v. Ronald James Plunkett*, No. 138123, in a 4-3 decision by Justice Young, joined by Justices Weaver, Corrigan, and Markman. This appeal concerned the sufficiency of evidence to bind the defendant over for trial on criminal charges of delivery of heroin and delivery of heroin causing death. In the case, the defendant, then an attorney, did not directly give the heroin to the decedent. Both the Court's opinion and the dissent, authored by Chief Justice Kelly, can be found [here](#).

In lieu of granting leave to appeal, the bench peremptorily reversed the Court of Appeals' decision to vacate the district court's bindover, and it remanded the case for trial. The Supreme Court held that it was sufficient for bindover at preliminary examination that the defendant had transported a third party, a prostitute named Tracy Corson, to purchase the heroin; supplied the money to buy it; and intended that a purchase occur. After these events, Corson gave some heroin to a childhood friend, Tiffany Gregory, after inviting her over to the defendant's apartment. Gregory died from an accidental overdose from heroin that Corson gave her.

In the majority opinion, Justice Young agreed with the prosecution's position that actual physical transfer of the heroin from the defendant to Corson was not required to prove "delivery" of heroin. The Court concluded that probable cause existed to demonstrate that the defendant aided and abetted delivery of heroin from the drug dealer to Corson, enough to show guilt of delivering heroin. Moreover, the Court held that the plain language of the statute providing additional punishment for those delivering heroin that causes a person's death supports a conclusion that this crime applies even when the delivery is not directly made to the decedent, as here.

The statute reads: "A person who delivers a schedule 1 or 2 controlled substance . . . to another person in violation of . . . MCL 333.7401 . . . that is consumed by that person or any other person and that causes the death of that person or other person is guilty of a felony punishable by imprisonment for life or any term of years." As Justice Young put it, it is enough to merely put the drugs "in the stream of commerce" since the statute does not on its face require that the recipient and the decedent be the same person. The Court held that it was not necessary that the defendant aided and abetted delivery directly to the decedent, so the defendant's acts were enough to establish probable cause that he committed both crimes—straight delivery and delivery causing death.

Chief Justice Kelly's dissent, in which Justices Cavanagh and Hathaway joined, did not agree that merely driving Corson to purchase heroin and paying for the heroin was enough to aid and abet its delivery. The dissenters

argued that those acts were sufficient only for aiding and abetting possession by Corson, not delivery by the drug dealer to Corson. They also found it crucial that, according to case law, aider and abetter liability arises only when there is proof of some “assistance *given to the perpetrator of a crime* by words or deeds that are intended to encourage, support, or incite the commission of *that crime*.” The dissent argued that this opinion essentially makes the crime of aiding and abetting possession of illicit drugs obsolete, since anyone charged with that could be charged with aiding and abetting delivery under this ruling.