

**WISCONSIN SUPREME COURT
TUESDAY, SEPTEMBER 14, 2010
10:45 a.m.**

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a Juneau County Circuit Court decision, Judge Charles A. Pollex, presiding.

2008AP1968

[State v. Patrick R. Patterson](#)

This reckless homicide case involves the death of a 17-year-old girl, who died as a result of a drug overdose.

The primary issues before the Supreme Court are whether contributing to the delinquency of a child resulting in death is a lesser-included offense of first-degree reckless homicide under Wis. Stat. § 939.66(2), and whether a defendant can be found guilty of contributing to the delinquency of a 17-year-old, even though 17-year-olds cannot be prosecuted as juveniles.

Some background: The state alleged that Patrick R. Patterson gave Oxycodone to a 17-year-old girl, and that she died as a result of an overdose.

Patterson was ultimately convicted of four crimes, each as a repeat offender: first-degree reckless homicide by delivery of a controlled substance; contributing to the delinquency of a child with death as a consequence; and two counts of delivery of a controlled substance. The circuit court imposed concurrent and consecutive sentences that totaled 23 years of initial confinement and nine years of extended supervision.

On appeal, Patterson argued that the first-degree reckless homicide charge and the charge of intentionally contributing to the delinquency of a child with death as a result were multiplicitous.

The Court of Appeals concluded that while these offenses were identical in fact (both resulted from giving narcotics to the girl, which led to her ingesting them and dying), they were not identical in law.

The Court of Appeals noted that the particular reckless homicide offense required proof that the victim's death was caused by the defendant's delivery of a controlled substance. The victim need not be a child. On the other hand, while the delinquency charge required the death of a child, it did not require that the death be caused by the delivery of a controlled substance. Thus, since the offenses were not identical in law, the Court of Appeals applied the presumption that the legislature intended cumulative punishments and placed the burden on Patterson to show a clear legislative intent not to authorize cumulative punishments.

Patterson argues that the Legislature's enactment of Wis. Stat. § 939.66 showed a clear intent not to allow cumulative punishments for the two charges lodged against him. He contends that the language of the statute defines an included crime in the context of homicide as a less serious type of criminal homicide than the one charged. He asserts that this plainly applies to the two charges filed against him because first-degree reckless homicide is a Class C felony carrying a maximum prison term of 40 years and a maximum fine of \$100,000 while the contributing to delinquency charge is a Class D felony, carrying a maximum prison term of 25 years and a maximum fine of \$100,000.

Thus, he contends that the offense of contributing to the delinquency of a juvenile causing death is a “less serious type of criminal homicide” than first-degree reckless homicide.

The Court of Appeals also rejected Patterson’s claim that he could not contribute to the delinquency of a 17-year-old person as a matter of law essentially because 17-year-old individuals are now prosecuted as adults. Patterson relied on the definition of “delinquent” in Wis. Stat. § 938.02. That definition defines “delinquent” as a juvenile who is 10 years of age or older but less than 18 years old. The definition, however, contains an exception for 17-year-olds. It states that “‘juvenile’ does not include a person who has attained 17 years of age” if that person is “alleged to have violated [a law].” Wis. Stat. § 938.02(10m).

The Court of Appeals concluded that this exception did not mean that one cannot contribute to the delinquency of a 17-year-old. It said that a 17-year-old is excepted from the definition of a “juvenile” for the single purpose of “investigating or prosecuting” a crime.

Patterson notes that the Supreme Court has construed the contributing statute and the statutes defining delinquency together. He asserts that construction led the court to conclude that a 17-year-old boy could be a victim of a contributing offense because the boy could be prosecuted as a delinquent. State ex rel. Schulter v. Roraff, 39 Wis. 2d 342, 159 N.W.2d 25 (1968). He contends, however, that the statutes defining “delinquent” have since been changed to except 17-year-olds from being prosecuted as delinquent. Thus, he argues that one can no longer contribute to the delinquency of a 17-year-old.

A decision by the Supreme Court could clarify law in these areas.