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Recent Developments: In re Timothy F.: State Must Prove That Juvenile Defendant Had Intent to Distribute Non-Controlled Substance as a Controlled Dangerous Substance

Jennifer M. Moss

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In re Timothy F.

In *In re Timothy F.*, 343 Md. 371, 681 A.2d 501 (1996), the Court of Appeals of Maryland held that the intent of a juvenile defendant must be twofold in order to be found guilty of possessing a non-controlled substance with the intent to distribute it as a controlled dangerous substance. First, the defendant must have intended to distribute the substance, and second, the defendant must have intended to misrepresent it as a controlled dangerous substance.

A student in Centerville Middle School reported to the principal that the petitioner ("Timothy"), a twelve year-old sixth grade student, possessed a controlled dangerous substance ("CDS"). The principal's search of the child revealed a pill bottle containing two pieces and three crumbs of a substance that significantly resembled crack cocaine. Timothy asserted that they were dried milk chips, and subsequent laboratory tests confirmed that they were not cocaine. Timothy claimed that he received the milk chips from an eighth grade student, Stanley, and that he subsequently distributed some of the substance to another sixth grader, Giovanni. During these exchanges, neither Stanley nor Timothy claimed that the milk chips were crack cocaine.

Both Stanley and Giovanni were called to the principal's office and questioned about the substance in Timothy's possession. Giovanni had a brown prescription

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By Jennifer M. Moss

bottle containing two or three pieces of the same substance, and he told the principal that they were soap chips. Stanley had a bottle containing several pieces of the substance, and he stated that the substance was "fake crack." As a result of the principal's investigation, Timothy was charged with intent to distribute a non-controlled substance intended for use or distribution as a CDS.

The Circuit Court for Queen Anne's County, sitting as a juvenile court, entered a delinquency judgment against Timothy for possession of a non-controlled substance with intent to distribute it as a CDS in violation of Article 27, section 286B of the Maryland Annotated Code. The court of special appeals affirmed, and the Court of Appeals of Maryland granted certiorari.

The court began its analysis by reviewing the applicable statute which provides, in pertinent part, that

It is unlawful for a person to distribute, attempt to

distribute, or possess with intent to distribute, any non-controlled substance intended by that person for use or distribution as a controlled dangerous substance or under circumstances where one reasonably should know that the non-controlled substance will be used or distributed for use as a controlled dangerous substance.

In re Timothy F. 343 Md. at 377, 681 A.2d at 504 (quoting MD. ANN. CODE art. 27, § 286B(c) (1992)). The court stated that it is not enough to show that Timothy possessed the substance; the State must also prove the purpose for which Timothy possessed it. *Id.* at 377-78, 681 A.2d at 504. Therefore, two intentions, rather than one, must be present to sustain a delinquency judgment for this offense. It must be shown that Timothy not only intended to distribute the substance, but that he also intended to do so by misrepresenting it as crack cocaine or some other CDS. *Id.* at 378, 681 A.2d at 504 (citing *Gipe v. State*, 55 Md. App. 604, 466 A.2d 40, 46 (1983)).

The court of appeals entertained the State's argument that intent may be inferred from the manner in which the substance was packaged. A police officer testified at trial that "a lot of people that carry crack cocaine or any kind of CDS carry it in a

container like [the pill bottle the petitioner was carrying] . . .” *Id.* at 375, 681 A.2d at 503. He further testified that a user does not keep crack in such a container unless he or she is a “user seller.” *Id.* The State relied on *Gipe v. State*, 55 Md. App. 604, 466 A.2d 40, 46 (1983), a case in which an adult defendant was arrested when he was found to possess caffeine tablets that were packaged and resembled street amphetamines. *In re Timothy F.*, 343 Md. at 378, 681 A.2d at 504. The *Gipe* court held that “the quantity and packaging of the pills could give rise to the logical inference that these pills were to be sold.” *Id.* at 379, 681 A.2d at 505 (quoting *Gipe v. State*, 55 Md. App. at 614-15, 466 A.2d at 45-46).

The state also relied on Timothy’s knowledge about the nature, appearance, and packaging of crack cocaine that he learned from the instructors in the middle school’s Drug and Alcohol Resistance Education (“DARE”) program. *Id.* at 375-76, 681 A.2d at 503. The State argued that this knowledge showed that Timothy was aware of how drugs were distributed and could, therefore, possess the requisite intent to distribute them. The defense alleged that Timothy and the other boys were play-acting as drug dealers and did not possess the uncontrolled substance with the intent of distributing it for use or as a CDS. *Id.* at 376, 681 A.2d at 503.

The court noted that the standard of review in both criminal

and juvenile delinquency proceedings is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* at 380, 681 A.2d at 505. The court then noted that section 286B(d) of the statute offers three factors to determine whether the prosecution was reasonable: (1) the nature of the packaging of the non-controlled substance; (2) whether there was an attempt to distribute the non-controlled substance in exchange for money; and (3) whether the non-controlled substance was substantially identical to a CDS. *Id.* at 381, 681 A.2d at 506 (citing MD. ANN. CODE art. 27, § 286B(d) (1992)). Applying these guidelines, the court determined that the substance was, indeed, packaged for distribution.

Furthermore, the court stated that because Timothy was enrolled in the DARE program, he most likely understood the significance of this packaging. *Id.* at 381-82, 681 A.2d at 506. In addition, the substance had actually been distributed on two occasions — once from Stanley to Timothy and again from Timothy to Giovanni. *Id.* at 382, 681 A.2d at 506. There was no testimony, however, proving that either the nature of the substance was misrepresented or that the substance was exchanged for money or property. *Id.* Therefore, all three elements had not been proven by the State.

Before concluding, the court factored the petitioner’s age into

the analysis. Judge Bell stated that there is a rebuttable presumption of criminal incapacity in children between the ages of seven and fourteen. *Id.* at 383, 681 A.2d 507. He noted that children Timothy’s age may play “cops and robbers,” and that even though children may appear as if they are committing a crime, the surrounding circumstances often indicate that they are merely pretending, rather than intending to do so. *Id.* Therefore, while the State’s evidence was sufficient to prove that Timothy intended to distribute some of the milk chips in his possession, the evidence was insufficient to prove that he intended to misrepresent them as a CDS. *Id.* at 384, 681 A.2d at 507 (citing *Felkner v. State*, 218 Md. 300, 146 A.2d 424 (1958)).

Significantly, the instant case requires that the State prove not only one, but two intents to sustain a charge of possession of a non-controlled substance with the intent to distribute it as a CDS in a juvenile delinquency proceeding. It ensures that children, whose behavior may be misinterpreted as illegal, are protected from prosecution when they are only pretending to commit crimes. While this decision protects the interests of the juvenile, it ignores the pervasive problem of drug distribution by refusing to sanction children who glorify and mimic illegal activity. This decision preserves the prosecution’s difficult task of proving two intents and minimizes the number of potential convictions for a violation of the statute.