

In every drug transaction, there is:

1. Someone that **delivers** (in a hand-to-hand transaction or constructively, as when drugs are left somewhere for someone to pick up); and
2. Someone that **receives**.

Depending on various circumstances, the **deliverer** can be charged with:

1. Delivery of a controlled substance under § 961.41(1);
2. Possession of a controlled substance with intent to deliver under § 961.41(1m); or
3. First-degree reckless homicide by delivery of a controlled substance under § 940.02(2)(a).

Assuming the **receiver** is getting the drugs for personal use (not to re-deliver them), he or she can be charged with possession under § 961.41(3g).

The penalties for delivery, possession with intent, and reckless homicide are much stiffer than the penalties for simple possession:

1. Depending on the drug, the quantity, and whether an overdose resulted, the **deliverer** can be charged with a felony as serious as Class C.
2. Depending on the drug and the quantity, the **receiver** can be charged with either a misdemeanor or a felony as serious as Class H.

State v. Smith, 189 Wis. 2d 496 (1995), says a **receiver** who buys drugs for personal use does not conspire with the **deliverer** who sells them. Calling this basic buy-sell relationship a conspiracy would turn all receivers into deliverers, undermining the distinction drawn by the legislature between the two kinds of participants in a drug transaction and their varying levels of dangerousness and culpability.

There is no case that tackles whether a *Smith*-style **receiver** could be liable for delivery as an aider and abettor rather than as a conspirator. However, the logic of *Smith* dictates that neither PTAC theory can turn the crime of possession into one of the more serious crimes a deliverer commits.

State v. Hecht, 116 Wis. 2d 605 (1984), says someone who participates in a drug transaction not just by connecting the receiver and deliverer but by keeping the wheels of the drug deal turning for an extended period of time is liable as a **deliverer** based on both PTAC theories.

There is no case that tackles whether a *Hecht*-style participant in a drug deal whose goal is to share the drugs, not to facilitate the deal in order to get paid or for some other reason, is still subject to PTAC liability as a **deliverer**. Maybe the legislative distinction between users and sellers that *Smith* recognizes means such a participant is only subject to PTAC liability as a **receiver**. But it's probably the participant's involvement in the deal that matters, not his or her end goal, so PTAC liability as a **deliverer** would likely attach.

There is no case that tackles whether a defendant is subject to PTAC liability as a **deliverer** when:

- like the defendant in *Hecht*, he puts the wheels of a drug deal in motion or somehow makes the drug deal possible (e.g., by giving the receiver a ride);
- unlike the defendant in *Hecht*, he does so solely by interacting with the receiver, not by communicating (even indirectly) with the deliverer or with both the deliverer and receiver; and
- like the defendant in *Smith*, his goal is to use the drugs the receiver gets—not, like the defendant in *Hecht*, to make a drug deal happen in order to get paid or for some other reason.

But, again, *Hecht* holds that *extensive* involvement with *both* deliverer and receiver—more than just connecting the two—makes you liable for dealing, and *Smith* says buying drugs for your own use *can't* make you liable for dealing. If the defendant's aim was to procure drugs for his own use, and the defendant wasn't extensively involved with both sides of the drug transaction, *Hecht* and *Smith* dictate that the defendant can't be liable for dealing.

Role in the drug deal (right)	Person who directly or indirectly delivers drugs to receiver (<i>Smith</i>)	Person who receives drugs for personal use from deliverer (<i>Smith</i>)	Person who connects deliverer and receiver and then continues to make the drug deal possible (<i>Hecht</i>)	Person who connects deliverer and receiver and then continues to make the drug deal possible, with the goal of sharing the drugs the receiver gets	Person who doesn't interact with deliverer but helps receiver and thus makes the drug deal possible, with the goal of sharing the drugs the receiver gets
Kind of liability (below)					
Direct commission of the crime	Chargeable	Not chargeable	Not chargeable	Not chargeable	Not chargeable
Conspiracy to commit the crime	Not chargeable	Not chargeable	Chargeable	Not directly answered by case law	Not chargeable
Aiding and abetting commission of the crime	Not chargeable	Not directly answered by case law but <i>Smith</i> dictates not chargeable	Chargeable	Not directly answered by case law	Not directly answered by case law but <i>Hecht</i> and <i>Smith</i> dictate not chargeable