

Len Bias - Criminal Defense Investigation

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Len Bias

- Who is he?
 - Maryland basketball star
 - Drafted by Boston Celtics with 2nd pick 1986
 - Died fewer than 48 hours later; cocaine overdose

Political Ramifications

- Anti-drug abuse act of 1986 rushed into effect
 - AKA “The Len Bias Law”
 - Congressional Republicans accuse Democrats of being soft on crime in 1984
 - Congressional Democrats saw opportunity to “Get tough on drugs”
 - In less than one month the bill was formulated, discussed and written

Criminal Ramifications

- Federal mandatory minimum sentences for first-time offenders
 - 5 grams crack/500 grams powder = 5 year sentence
 - 50 grams crack/5 kilos powder = 10 year sentence
 - 1/10 amount of crack triggers same mandatory minimum as powder

Racial Ramifications

- 1986 (Maryland)
 - Of all offenders sent to prison for drug offenses comprise 17% white and 15% black
- 1999 (Maryland)
 - Of all offenders sent to prison for drug offenses 21% white compared to 47% black
- Federal:
 - African Americans now serve virtually as much time in prison for a drug offense (57.2 months) as whites to for a violent offense (58.8 months)

Wisconsin Ramifications

- Wisconsin's version of Len Bias Law passed
 - Drug overdose death fits in a subsection of 1st degree Reckless Homicide
 - Maximum penalty of 25 years prison

Increase in Len Bias prosecution

- Increase in heroin use
 - Increase in availability of heroin
 - Decrease in availability of other drugs
(prescriptions/ingredients)
- Quality control

Jury Instructions 940.02(2)

- 1987 Wisconsin Act 339
- 1st Degree Reckless Homicide is committed by one who causes the death of another human being by delivery of a controlled substance

Elements State must prove

- Defendant delivered a substance
- Substance was xxx
- Defendant knew or believed substance was xxx
- Victim used substance alleged to have been delivered by defendant and died of that use
 - Requires use of substance was substantial factor in cause of the death

Delivery

- Defendant does not have to directly deliver substance to victim
 - Charges can go all the way to the original source of the substance

Investigating First Element

- Defendant Delivered a substance
 - What substance did defendant deliver?
 - Was it the same substance as taken
 - Timeline - Date of sale/Date of death
 - Other source of same substance
 - Check text messages and actual phones
 - Email, Facebook, private messages
- Brainstorm

Investigation Second Element

- Substance was XXX
 - Adulterated
 - By whom, with what
 - Was it adulterated before/after sale
 - Compare source substance, if possible
- Brainstorm

Defendant knew or believed substance was XXX

- Verify with client what they thought they delivered
- Brainstorm

Victim used substance alleged to have been delivered by client...

- Was another substance involved
- Was another substance of same type, different source, used
- Anything else contribute to death
 - Deficient immune system
 - Underlying medical conditions
 - Suicidal tendencies
- Brainstorm

Questions

References

- Wisconsin Jury Instructions
- Len Bias - The death that ushered in two decades of destruction by Pete Guither
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