

1st through 3rd Degree Controlled Substance Crimes (Cocaine, Heroin, Meth) – History and Analysis

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SENIOR JUDGE MARK WERNICK
NOVEMBER 18, 2015

Sale Crimes – 1980s

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- **1980 – 1986:** Minnesota proscribes sale w/o regard to quantity;
- **1987** – Federal sentencing guidelines – drug amounts are proxy for hierarchy in distribution chain;
- **1989** – Minnesota adopts 1st – 5th degree structure – drug amounts are proxy for hierarchy in distribution chain.

1989 – 1st Degree – Major Wholesaler

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- **Possession** – 500 grams (presume intent to sell),
Sale – 50 grams (requires actual sale);
- Rationale – both describe offender selling 50 gram quantities;
- Minnesota Guidelines – 81-91 months;
- U.S. Guidelines (500 grams) – 63-78 months (cocaine), 78-97 months (heroin and meth).

1989 – 2nd Degree – Mid-level Wholesaler

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- **Possession** – 50 grams (presume intent to sell),
Sale – 10 grams (requires actual sale);
- Rationale – both describe offender selling 10 gram quantities;
- Minnesota Guidelines – 44-52 months;
- U.S. Guidelines (50 grams) – 21-27 months (cocaine), 33-41 months (heroin and meth).

1989 – 3rd Degree – Low-level Dealer

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- **Possession** – 10 grams (presume intent to sell),
Sale – any amount (requires actual sale);
- Rationale –both describe offender selling small quantities;
- Minnesota Guidelines – 21 months stay;
- U.S. Guidelines (10 grams) – 10-16* months (cocaine), 21-27 months (heroin and meth).

State v. Russell (1991)

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- **Holding:** Crack/powder cocaine distinction violates state equal protection clause;
 - E.g., 25/10 grams crack cocaine punished same as 500/50 grams powder;
 - 1988: 97% crack defendants black, 80% cocaine defendants white;
- **Dictum:** Mandatory presumption of intent to sell based on quantity seized may be unconstitutional.

Post-*Russell* Amendments to Statutes

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- Quantity thresholds for cocaine, heroin and meth reduced to crack level;
- “Sell” includes possession with intent to sell.

Post-*Russell* – 1st Degree

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- **Possession** – 25 grams (intent to sell presumed),
Sale – 10 grams (possession 10 grams w/ intent to sell);
- Effect – 1st degree offense now includes *pre-Russell* 3rd degree conduct;
- Minnesota Guidelines – 74-103 months;
- U.S. Guidelines (10 grams) – 10-16* months (cocaine), 15-21 months (heroin), 21-27 months (meth).

Post-Russell – 2nd Degree

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- **Possession** – 6 grams (intent to sell presumed),
Sale – 3 grams (possession 3 grams w/ intent to sell);
- Effect – 2nd degree now limited to *pre-Russell* 3rd degree conduct;
- Minnesota Guidelines – 41-57 months;
- U.S. Guidelines (3 grams) – 10-16* months (cocaine, heroin, meth).

Post-Russell – 3rd Degree

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- Sale or possession with intent to sell any amount;
- Effect – offense still limited to low-level dealer;
- Minnesota Guidelines – 21 months stay;
- U.S. Guidelines – 10-16* months (cocaine, heroin, meth).

Summary Graph

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	<i>Pre-Russell</i>	<i>Post-Russell</i>
1 st Degree	500 gram inventory intending (presumably) to sell 50 gram quantities	10 gram or more inventory intending to sell smaller quantities
2 nd Degree	50 gram inventory intending (presumably) to sell 10 gram quantities	3-10 gram inventory intending to sell smaller quantities
3 rd Degree	10 gram inventory intending (presumably) to sell smaller quantities	1-3 gram inventory intending to sell smaller quantities