Charging dealers in overdose deaths is tricky but legal, experts say

**AJC CONTINUING COVERAGE: DRUG DEATH**

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**By**

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[https://www.ajc.com/news/local/charging-dealers-overdose-deaths-tricky-but-legal-experts-say/voIUdTc4srSW4kPQJQCSXJ/#](https://www.ajc.com/news/local/charging-dealers-overdose-deaths-tricky-but-legal-experts-say/voIUdTc4srSW4kPQJQCSXJ/)

There may be some hurdles, but there is legal standing for the murder prosecution of a DeKalb County man who allegedly sold drugs to a 22-year-old who later fatally overdosed, local experts said.

The case against Antoin Thornton, 28, is believed to be the first of its kind for DeKalb. Thornton allegedly sold heroin to Alexander Whitehead, who was found dead at a Dunwoody apartment complex in March. Police said the drugs, laced with the potent opioid fentanyl, caused the overdose.

The unique nature of the case — an alleged street-level dealer accused of murder in the death of someone who later overdosed — could send a powerful message about the type of charges prosecutors can bring forward as a way of combating the deadly opioid crisis, according to practicing legal experts.

“Probably every prosecutor in the metro area is looking for a case where we can charge someone with felony murder based on selling or distributing a narcotic to an unsuspecting person,” Gwinnett County District Attorney Danny Porter said. “It’s the message it sends.”

Thornton, arrested in May, waived his arraignment last Thursday and pleaded not guilty to felony murder and several drug charges. His attorney has argued the murder charge should be thrown out, claiming prosecutors in DeKalb District Attorney Sherry Boston’s office have not shown that Thornton’s actions directly caused Whitehead to overdose and die.

Porter and other legal experts told The Atlanta Journal-Constitution a felony murder prosecution is possible for this type of case because of the way state law is written.

“In Georgia, any felony … that causes a death is a felony murder,” said Steve Sadow, a prominent metro Atlanta defense attorney who is not involved with the Thornton case. “Under that broad interpretation, if the distribution of a controlled substance is the cause of a death, it fits within the felony murder statute.”

But if this kind of case goes to trial, there would certainly be challenges for prosecutors to get a felony murder conviction. They would have to show that the drugs dealt by the defendant were the actual drugs that caused the victim’s death, Sadow said. That could be tough to prove if the user regularly did a variety of drugs, and it would require evidence linking the two parties, he added.

Prosecutors also have to prove that the dealer knew what they were selling could be lethal, said Porter, who is also not involved in the Thornton case.

“If they were selling heroin and didn’t know there was fentanyl in it, you have a much more difficult case,” he said. Fentanyl is a synthetic opioid that is more powerful than heroin and has been linked to a growing number of overdose deaths.



DeKalb County District Attorney Sherry Boston’s office is bringing forward murder charges against an alleged heroin dealer accused of selling drugs to a man who later overdosed. AJC file/David Barnes

Photo: AJC file/David Barnes

With the case in DeKalb, some of those questions might only be answered if it goes to trial. But Thornton’s attorney Noah Pines is already pushing back on the state’s case.

In a document recently filed in DeKalb County Superior Court, Pines said prosecutors have not specified the exact date Thornton allegedly sold heroin to Whitehead. Pines also wrote that Thornton’s indictment did not explain how he caused Whitehead’s death.

“Did Mr. Whitehead get shot While Mr. Thornton was allegedly distributing heroin to Mr. Whitehead? Did Mr. Whitehead die some other way While Mr. Thornton was allegedly distributing heroin t0 Mr. Whitehead?” Pines wrote, asking the court to dismiss the charges. A hearing on that motion is scheduled for Nov. 8.

“Certainly, if this were a trial, I would struggle to convict based on what I have heard today,” Judge Christine Koehler said during a June 5 preliminary hearing. She ruled that the case could move forward, but admitted she had some “discomfort and reservations” about the decision.

A Dunwoody police detective testified that after Whitehead’s March 18 death, investigators tracked the source of the drugs using text messages from the victim’s phone and people who knew him.

What makes this case unique is that after Thornton’s May 9 arrest, he allegedly said to police he sold heroin but did not use it, according to Lance Cross, the deputy chief assistant district attorney in DeKalb who is leading the prosecution.

In other metro Atlanta counties where similar prosecutions were tried, defendants have pleaded guilty for their roles in overdose deaths. In two [Fulton County cases](https://www.ajc.com/entertainment/music/atlanta-rocker-convicted-drug-overdose-death/d3nZj1Xx02SoCj4VkSo8nL/), the suspects were [initially charged](https://www.ajc.com/news/alpharetta-man-who-injected-deadly-heroin-into-friend-sentenced/lsILIpnxPzgJWdhIpMtgjL/) with murder, but the charges were reduced when they pleaded guilty, according to Atlanta Journal-Constitution archives.



Dunwoody police arrested Thornton in May. (Alyssa Pointer/alyssa.pointer@ajc.com)

Photo: Alyssa Pointer/alyssa.pointer@ajc.com

But those cases are different from Thornton’s, however, since those defendants were present with the victims when they overdosed and knew them more closely.

There is also an [ongoing Fulton County case](https://www.ajc.com/news/local/court-reinstates-murder-charge-closely-watched-heroin-overdose-case/L8TYXiaeyvggXcw6pLZjqL/) where a grand jury indicted Graham Williams on a felony murder charge for his role in the death of Gregg Ivey, 28, on Oct. 21, 2015. Prosecutors said Williams injected heroin into Ivey. A judge dismissed the murder indictment, but the Georgia Supreme Court reinstated it in a ruling in June, sending the case back to the trial judge.

The flurry of cases reflect prosecutors trying to make a statement in the midst of the opioid drug crisis, which has killed more than 1,000 people in Georgia in 2017, according to federal statistics. The number of opioid-related overdose deaths in the state has steadily grown since 2000.

The DeKalb district attorney’s office declined to comment for this article, citing the ongoing litigation. But Cross previously told the AJC that his office is “trying to help addicts and folks that have a health issue with heroin. … There are folks out there that are profiting off of their misery, and we have to also use the law appropriately to target those individuals.”

Georgia Attorney General Chris Carr spoke at a press conference announcing Thornton’s arrest, thanking Dunwoody police and Boston’s office for their work on the case.

Could a conviction encourage other Georgia prosecutors to pursue similar cases in the future? It’s possible, Sadow and Porter said, if DeKalb can overcome the evidence-based roadblocks.

“There are logistics issues to this case,” Porter said. “If they can overcome them, it shows a blueprint for everybody else.”