COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff	:	**CASE NO. 2017 CR 000243**
vs.	:	**Judge McBride**
RUSSELL GARY BEDSOLE	:	**DECISION/ENTRY**
Defendant	:	

Scott O'Reilly, assistant prosecuting attorney for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

William Fowler, counsel for the defendant Russell Gary Bedsole, 301 East Silver Street, Lebanon, Ohio 45036.

This cause came before the court for trial on October 17, 2017. At the conclusion of the trial, the court took the issues raised in the case under advisement.

The defendant Russell Gary Bedsole was indicted on June 15, 2017 on seven counts: (1) possession of cocaine in violation of R.C. 2925.11(A), a felony of the fifth degree, (2) possession of marijuana in violation of R.C. 2925.11(A), a minor misdemeanor, (3) aggravated possession of drugs (alprazolam) in violation of R.C. 2925.11(A), a felony of the fifth degree, (4) illegal conveyance of drugs of abuse onto grounds of a specified governmental facility in violation of R.C. 2921.36(A)(2), a felony of the third degree, (5) illegal conveyance of drugs of abuse onto grounds of a specified

governmental facility in violation of R.C. 2921.36(A)(2), a felony of the third degree, (6) obstructing official business in violation of R.C. 2921.31(A), a misdemeanor of the second degree, and (7) resisting arrest in violation of R.C. 2921.33(B), a misdemeanor of the second degree.

Upon consideration of the record of the proceedings, the evidence presented for the court's consideration, the oral arguments of counsel, and the applicable law, the court now renders this written decision.

FINDINGS OF FACT

The court makes the following findings of fact based upon the testimony and exhibits it found to be credible and reliable as presented at trial:

On April 8, 2017, the defendant Russell Gary Bedsole was a passenger in a parked Ford Edge at Greenies Bar and Grill, located at 1148 State Route 28, in Clermont County, Ohio. Three other people were in the vehicle, including the defendant's girlfriend. At approximately 12:10 a.m., Officer Joshua Bale of the Miami Township Police Department, began patrolling the parking lot at Greenies Bar and Grill on foot.

Officer Bale took notice of the white Ford Edge automobile that the defendant was seated in. Before he arrived at the vehicle, all four occupants exited the vehicle and began walking towards the bar.

The defendant had been seated in the front passenger seat. Officer Bale shined a flashlight in the vehicle and saw white powder lines on the center console that appeared to be lines of a drug prepared for snorting. Officer Bale told the four individuals to stop

and to come back to the vehicle because they were being detained for a drug investigation. Three of the people stopped, but the defendant, who had been walking farthest ahead in the direction of the bar, kept walking towards the bar, began swearing, and told Officer Bale to "fuck off." Officer Bale then radioed to the dispatcher for help and asked for other officers to hurry to the scene because of the defendant's behavior.

Before the other officers arrived, all of the individuals were cooperating except the defendant, who told Officer Bale that he had no right to detain them and continued to be, in Officer Bale's words, verbally aggressive. The defendant was under the influence of marijuana, cocaine, Xanax, and alcohol at the time.

Officer Bale placed the defendant in hand restraints, with the defendant's hands behind his back. As Officer Bale tried to lead the defendant back to the Ford Edge, the defendant swore and tried to pull away. While walking, the defendant yelled, "Run! Run! Run!" to his companions. Two of the detained individuals stayed at the scene, but the defendant's girlfriend fled. Officer Bale had to let go of the defendant in order to apprehend the defendant's. Once Officer Bale secured the defendant's girlfriend again, Officer Bale testified that the defendant began "shimmying" away, even though Officer Bale told him to stop.

Against Officer Bale's instructions, the defendant walked behind the Ford Edge automobile, where he could not be observed, and began manipulating his pockets while still in hand restraints. At that point, Officer Jeremy Grooms, a road officer with the Miami Township Police Department, arrived on the scene and secured the defendant in order to pat him down. Officer Grooms found an unmarked bottle of 22 Xanax pills and a rolled

$10 bill in the defendant's jacket pockets. Additionally, while he was searching the defendant, a bag containing of 5.0 grams of cocaine fell out of the defendant's pant leg.

Meanwhile, Officer Bale searched the Ford Edge and found white powder on the center console (which later tested positive as cocaine). In the center console, he also found a bag a marijuana and a folded dollar bill with one and a half pills of Xanax inside.

While still in parking lot of Greenies Bar & Grill, Officer Bale informed Officer Grooms that the defendant had been fidgety, which is consistent with a person who is trying to conceal or destroy contraband. As a result, Officer Grooms warned the defendant that if he brought contraband into the jail, he needed to "give it up" then, and that otherwise he would be charged with a felony for bringing it into the jail. Officer Grooms then drove the defendant to the jail, which took approximately 20 minutes, during which time he warned the defendant again that if he brought contraband into the jail he would be charged with a felony for doing so. The defendant responded to these warnings with derogatory language and did not inform Officer Grooms of any additional contraband on his person.

Once at the jail, the defendant was searched in the booking area by Corrections Officer Eric Whitaker. Corrections Officer Whitaker asked the defendant if he had anything illegal on him, to which the defendant answered that he did not. Because the defendant was being charged with a felony, Corrections Officer Whitaker told the defendant that he would conduct a strip search in a private shower room.

In the shower room, the defendant told Officer Whitaker that he had a hidden bag of marijuana in his underwear, which he removed and turned over to Officer Whitaker. At that point, Corrections Officer Whitaker noticed a piece of plastic that was sticking out of

the defendant's underwear, and he asked the defendant what it was. The defendant began to fidget with his underwear, removed them, and handed them to Corrections Officer Whitaker with a closed fist. Corrections Officer Whitaker asked the defendant what he was concealing and directed him to open his hand. When the defendant did so, a small plastic bag fell onto the floor. The defendant said he did not know what it was or where it came from. The bag later tested positive for cocaine residue.

STANDARD OF REVIEW

In a criminal case, it is the state's burden to prove the defendant's guilt beyond a reasonable doubt.[1] R.C. 2901.05(E) describes reasonable doubt as follows:

> "'Reasonable doubt' is present when the [trier of fact], after * * * carefully consider[ing] and compar[ing] all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. 'Proof beyond a reasonable doubt' is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs."

LEGAL ANALYSIS

I. POSSESSION OF CONTROLLED SUBSTANCE OFFENSES

[1] R.C. 2901.05(A).

The Ohio Revised Code criminalizes the possession of controlled substances in R.C. 2925.11(A): "No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog."[2] The mental state "knowingly" is described as follows: "* * * A person has knowledge of circumstances when the person is aware that such circumstances probably exist. * * *"[3] "To act knowingly, a defendant merely has to be aware that the result may occur."[4] "Knowledge can be ascertained from the surrounding facts and circumstances of the case."[5] Furthermore, the knowledge requirement for a possession charge can be satisfied regardless of the amount.[6] As such, a person can be found guilty of possessing a controlled substance even when there is only residue on a drug instrument.[7]

To "possess" or to have "possession," as used in R.C. 2925.11(A), "means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found."[8] A person can either have actual or constructive possession of a drug.[9]

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[2] R.C. 2925.11(A).
[3] R.C. 2901.22(B).
[4] *State v. Fox*, 12th Dist. No. CA2008-03-009, 2009-Ohio-556, ¶ 13, citing *State v. Nutekpor*, 6th Dist. Wood No. WD-5-062, 2006-Ohio-4641, ¶ 15.
[5] *State v. Anderson*, 12th Dist. Fayette No. CA2008-07-026, 2009-Ohio-2521, ¶28, citing *State v. Lott*, 51 Ohio St.3d 160, 168 (1990).
[6] *State v. Garrod*, 12th Dist. Warren No. CA2006-01-011, 2006-Ohio-6071, ¶ 12, citing *State v. Teamer*, 82 Ohio St.3d 490, 492 (1998).
[7] *Garrod*, 2006-Ohio-6071 at ¶ 12, citing *State v. Lynch*, 12th Dist. Warren No. CA2004-01-002, 2005-Ohio-683, ¶ 9.
[8] R.C. 2925.01(K).
[9] *State v. Williams*, 12th Dist. Butler No. CA2014-09-180, 2015-Ohio-2010, ¶ 14, citing *State v. Brown*, 12th Dist. Butler No. CA2013-03-043, 2014-Ohio-1317, ¶ 17.

"Actual possession occurs when the defendant 'had the items within his immediate physical control.'"[10] A defendant has "constructive possession" of something when the defendant "is conscious of the item's presence and is able to exercise dominion and control over it, even if the item is not within the accused's immediate physical possession."[11] Unless the defendant provides a confession, "the surrounding facts and circumstances, including the defendant's actions, are evidence that the trier of fact can consider in determining whether the defendant had constructive possession."[12] "The discovery of readily accessible drugs in close proximity to the accused constitutes circumstantial evidence that the accused was in constructive possession of the drugs."[13] Notably, a "person may knowingly possess or control property belonging to another; the state need not establish ownership to prove constructive possession."[14]

A. COUNT 1: POSSESSION OF COCAINE

In turning to the case at bar, the court finds that the defendant is guilty of possession of cocaine in violation of R.C. 2925.11(A), a fifth degree felony.[15]

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[10] *State v. Fykes*, 6th Dist. Wood No. WD-07-072, 2009-Ohio-2926, ¶ 36, quoting *State v. Jones*, 10th Dist. Nos. 07AP977, 07AP-978, 2008-Ohio-3765, ¶ 13.

[11] *State v. Peyton*, 12th Dist. No. CA2015-06-112, 2017-Ohio-243, ¶ 44, quoting *State v. Jester*, 12th Dist. Butler No. CA2010-10-264, 2012-Ohio-544, ¶ 25. *See Williams*, 2015-Ohio-2010 at ¶ 15, quoting *State v. Alexander*, 8th Dist. Cuyahoga No. 90509, 2009-Ohio-597, ¶ 24 ("Inherent in a finding of constructive possession is that the defendant was conscious of the [drugs] and therefore had knowledge of [them]."); *Anderson*, 2009-Ohio-2521 at ¶ 27, citing *State v. Hankerson*, 70 Ohio St.2d 87, 90-91 (1982) ("For constructive possession, it must be shown that the person was conscious of the presence of the object.").

[12] *Peyton*, 2017-Ohio-243 at ¶ 45, citing *Williams*, 2015-Ohio-2010 at ¶ 15.

[13] *State v. Fletcher*, -- N.E.3d --, 2017-Ohio-1006, ¶ 58 (12th Dist.), quoting *Fultz*, 2016-Ohio-1486 at ¶ 13.

[14] *Peyton*, 2017-Ohio-243 at ¶ 44, citing *Williams*, 2015-Ohio-2010 at ¶ 14.

[15] R.C. 2925.11(C)(4)(a) provides: "* * * (4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A)

To be found guilty of possession of cocaine under R.C. 2925.11(A), the defendant must have "knowingly" possessed, controlled, or used the cocaine.[16] The surrounding facts and circumstances of the case demonstrate beyond a reasonable doubt that the defendant had such knowledge.[17]

The defendant had possession of cocaine in three instances, one when he was sitting in the passenger seat of the Ford Edge automobile, a second when a bag with 5.0 grams of cocaine fell out of his pants while in the Greenies Bar & Grill parking lot, and another when he was found to have a plastic bag with cocaine residue on his person at the jail. To begin with the first and last instances, the defendant had actual possession of cocaine. The defendant had a bag with 5.0 grams of cocaine and a bag with cocaine residue on his person, both of which were in his immediate physical control since he stored them in his underwear.[18] Because these bags of cocaine were on his person, and he was trying to fidget with his pants shortly before Officer Grooms discovered the 5.0 grams of cocaine in his pant leg, the court finds that the defendant possessed the cocaine knowingly.

Setting aside the bags of cocaine, the defendant also constructively possessed cocaine when he was in the Ford Edge automobile. As mentioned, the "discovery of readily accessible drugs in close proximity to the accused constitutes circumstantial evidence that the accused was in constructive possession of the drugs."[19] Here, the

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of this section is guilty of possession of cocaine. The penalty for the offense shall be determined as follows: (a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), or (f) of this section, possession of cocaine is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender."

[16] R.C. 2925.11(A).

[17] *Anderson*, 2009-Ohio-2521 at ¶ 28, citing *Lott*, 51 Ohio St.3d at 168.

[18] *Fykes*, 2009-Ohio-2926 at ¶ 36, quoting *Jones*, 2008-Ohio-3765 at ¶ 13.

[19] *Fletcher*, 2017-Ohio-1006 at ¶ 58, quoting *Fultz*, 2016-Ohio-1486 at ¶ 13.

defendant had been sitting in the front passenger seat immediately next to lines of cocaine that were on the center console. In looking at the facts and circumstances, the defendant would have been aware of the presence of the cocaine, which was beside him, and he would have been able to exercise dominion and control over it.[20] Accordingly, the court finds the defendant guilty of possession of the cocaine on the center console in violation of R.C. 2925.11(A).

B. COUNT 2: POSSESSION OF MARIJUANA

In turning to Count 2, the court finds that the defendant is guilty of possession of marijuana in violation of R.C. 2925.11(A), a minor misdemeanor.[21]

As discussed, to be found guilty of possession of marijuana under R.C. 2925.11(A), the defendant must have "knowingly" possessed, controlled, or used the marijuana.[22] The surrounding facts and circumstances of the case demonstrate beyond a reasonable doubt that the defendant had such knowledge.[23]

It is undisputed that the defendant had hidden a bag of marijuana in his underwear. Although he did not reveal that he had the marijuana until just before he was strip searched, because he alerted Correctional Officer Whitaker to the presence of the marijuana, it is evident that the defendant was aware of the marijuana's presence on his

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[20] *Peyton*, 2017-Ohio-243 at ¶ 44, quoting *Jester*, 2012-Ohio-544 at ¶ 25.
[21] R.C. 2925.11(C)(3)(a) provides: "* * * (3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows: (a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), (f), or (g) of this section, possession of marihuana is a minor misdemeanor. * * *"
[22] R.C. 2925.11(A).
[23] *Anderson*, 2009-Ohio-2521 at ¶ 28, citing *Lott*, 51 Ohio St.3d at 168.

body. As such, the defendant is guilty of possession of marijuana in violation of R.C. 2925.11(A).

C. COUNT 3: AGGRAVATED POSSESSION OF A SCHEDULE IV DRUG

In the third and final possession charge, Count 3, the state tried the defendant upon a charge of aggravated possession of alprazolam, a schedule IV drug, which the court finds the defendant not guilty of committing. R.C. 2925.11(C)(2)(a) provides:

> "If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:
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> (a) Except as otherwise provided in division (C)(2)(b), (c), or (d) of this section, possession of drugs is a misdemeanor of the first degree or, if the offender previously has been convicted of a drug abuse offense, a felony of the fifth degree."[24]

The defendant was indicted on aggravated possession of a schedule IV drug because the indictment alleged that he "previously has been convicted of a drug abuse offense."

Thus, in order to be found guilty of aggravated possession of alprazolam, i.e. the Xanax pills, the defendant must have not only possessed the Xanax, but also been previously convicted of a drug abuse offense. However, there was no evidence presented showing that the defendant was previously convicted of a drug abuse offense. Where there is no evidence of an element of an offense, a defendant cannot be guilty of the

[24] R.C. 2925.11(C)(2)(a).

charged crime.[25] As such, the court finds that the defendant is not guilty of aggravated possession of a schedule IV drug.

However, R.C. 2945.74 provides: "* * * When the indictment or information charges an offense, including different degrees, or if other offenses are included within the offense charged, the jury may find the defendant not guilty of the degree charged but guilty of an inferior degree or a lesser included offense."[26] As the Ohio Supreme Court has explained, "* * * a criminal defendant may be found guilty of a lesser included offense even though the lesser offense was not separately charged in the indictment. Lesser included offenses need not be separately charged in an indictment * * *."[27]

Courts employ a three-part test "* * * to determine whether one offense is a lesser included offense of another * * *: 'An offense may be a lesser included offense of another if (i) the offense carries a lesser penalty than the other; (ii) the greater offense cannot, as statutorily defined, ever be committed without the lesser offense, as statutorily defined, also being committed; and (iii) some element of the greater offense is not required to prove the commission of the lesser offense.'"[28]

The first requirement, that possession carries a lesser penalty than aggravated possession, is satisfied because possession of a schedule IV substance is a misdemeanor of the first degree, while aggravated possession of a schedule IV substance is a fifth degree felony.[29] The second requirement is satisfied because the greater

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[25] *See, e.g., State v. Workman*, 12th Dist. Clermont Nos. CA2016-12-082, CA2016-12-083, 2017-Ohio-8638, ¶ 53
[26] R.C. 2945.74.
[27] *State v. Evans*, 122 Ohio St. 3d 381, 2009-Ohio-2974, 911 N.E.2d 889, ¶ 8, citing *State v. Smith*, 121 Ohio St.3d 409, 2009-Ohio-787, 905 N.E.2d 151, ¶ 14,
[28] *Evans*, 2009-Ohio-2974 at ¶ 9, quoting *State v. Deem*, 40 Ohio St.3d 205, 533 N.E.2d 294, at paragraph three of the syllabus (1988).
[29] R.C. 2925.11(C)(2)(a).

offense, aggravated possession, cannot be committed unless the defendant has also committed possession as well. By statutory definition, aggravated possession is the offense of possession coupled with a prior drug abuse offense conviction.[30] Finally, the third requirement is met because the additional element of aggravated possession, that the defendant has previously been convicted of a drug abuse offense, is not required to prove possession.

As such, although the defendant cannot be found guilty for aggravated possession, the defendant can be found guilty of possession of a schedule IV substance, alprazolam, if, under R.C. 2925.11(A), the defendant knowingly possessed, controlled, or used the alprazolam.[31] The undisputed testimony of Officer Grooms and the defendant is that the defendant knew he had Xanax on his person. The 22 Xanax pills found in the defendant's jacket pocket later tested positive for alprazolam.[32] Accordingly, the court finds the defendant guilty of possession of a schedule IV drug in violation of R.C. 2925.11(A).

II. ILLEGAL CONVEYANCE OFFENSES

In Counts 4 and 5, the defendant is charged with illegal conveyance of drugs of abuse onto the grounds of a specified governmental facility, those drugs being marijuana and cocaine, respectively. R.C. 2921.36(A)(2) provides:

> "(A) No person shall knowingly convey, or attempt to convey, onto the grounds of a detention facility or of an institution, office building, or other place that is under the control of the department of mental health and addiction services, the department of developmental disabilities, the department of

[30] R.C. 2925.11(C)(2)(a).
[31] R.C. 2925.11(A).
[32] Under R.C. 3719.41, alprazolam is a schedule IV drug.

> youth services, or the department of rehabilitation and correction any of the following items: * * *
>
> (2) Any drug of abuse, as defined in section 3719.011 of the Revised Code * * *."[33]

In turn, R.C. 3719.011 defines "drug of abuse" as "* * * any controlled substance as defined in section 3719.01 of the Revised Code * * *." R.C. 3719.01 goes onto define a "controlled substance" as "* * * a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V."[34] Under, R.C. 3719.41, both marijuana and cocaine are controlled substances, under schedules I and II, respectively.

As discussed, the mental state "knowingly" is defined as follows: "* * * A person has knowledge of circumstances when the person is aware that such circumstances probably exist. * * *"[35]

Therefore, to prove a claim of illegal conveyance the state must prove that the defendant "(1) knowingly conveyed or attempted to convey onto the grounds of (2) a detention facility (3) a drug of abuse."[36]

A person violates R.C. 2921.36(A)(2) when the person is brought to a detention facility after an arrest and the person possesses a drug of abuse. For example, in *State v. Cargile*, 123 Ohio St.3d 343, 2009-Ohio-4939, 916 N.E.2d 755, the Ohio Supreme Court examined whether a defendant had voluntarily brought drugs into a detention facility even though it was not the defendant's choice to enter the facility. The Court determined that, by being conscious and aware of the presence of drugs hidden in his clothes, which the defendant did not reveal during searches prior to entering the facility, the defendant

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[33] R.C. 2921.36(A)(2).
[34] R.C. 3719.01(C).
[35] R.C. 2901.22(B).
[36] *State v. James*, 2016-Ohio-7825, 74 N.E.3d 769, ¶ 4 (3d Dist.).

was guilty of conveying drugs.[37] The Court explained: "Although [the defendant] did not have any choice whether to go to jail following his arrest, the fact that his entry into the jail was not of this volition does not make his conveyance of drugs into the detention facility an involuntary act. He was made to go into the detention facility, but he did not have to take the drugs with him."[38] Moreover, the court noted that he had multiple opportunities to relinquish the drugs to law enforcement before entering the detention center, but he failed to do so.[39]

A. COUNT 4: ILLEGAL CONVEYANCE OF MARIJUANA

In turning to Count 4, the court finds that the defendant is guilty of illegally conveying marijuana onto the grounds of a specified governmental facility in violation of R.C. 2921.36(A)(2). As explained, to prove a claim of illegal conveyance the state must prove that the defendant "(1) knowingly conveyed or attempted to convey onto the grounds of (2) a detention facility (3) a drug of abuse."[40] Here the defendant was warned by Officer Grooms at least two times before being brought to the jail that if he entered it with contraband he would be charged with a felony. Despite these warnings, the

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[37] *State v. Cargile*, 123 Ohio St.3d 343, 2009-Ohio-4939, 916 N.E.2d 755, ¶ 14.
[38] Id. at ¶ 13.
[39] Id. at ¶ 14. *See State v. Lynch*, 12th Dist. Warren No. CA2004-01-001, 2005-Ohio-683, ¶ 9 (finding the defendant's conviction was based on sufficient evidence where the defendant had a crack pipe hidden in a false bottom of her purse because constructive possession is adequate under R.C. 2921.31(A)); *James*, 2016-Ohio-7825 at ¶ 10 (finding sufficient evidence where the defendant was asked multiple times if he had any drugs on him before he was brought into a detention facility where he was found to have drugs on his person during a strip search).
[40] *James*, 2016-Ohio-7825 at ¶ 4.

defendant, aware that he had marijuana hidden in his underwear, did not disclose the marijuana before entering the jail.

Moreover, it is clear that the defendant was aware of the marijuana because he alerted Corrections Officer Whitaker to its presence just before the strip search. Accordingly, the court finds that the defendant knowingly conveyed marijuana onto the grounds of the jail. The defendant is therefore found guilty of illegal conveyance of marijuana in contravention of R.C. 2921.36(A)(2).

B. COUNT 5: ILLEGAL CONVEYANCE OF COCAINE

In turning to Count 5, the court finds that the defendant is guilty of illegally conveying cocaine onto the grounds of a specified governmental facility, in violation of R.C. 2921.36(A)(2). As discussed above, the defendant was aware, via admonitions from Officer Grooms, that he could not bring drugs into the jail. However, he conveyed into the jail a plastic bag with cocaine residue inside. At trial defense counsel argued that the defendant is not guilty because he was not aware that he had the bag with cocaine residue. In support, he highlights that the defendant alerted Corrections Officer Whitaker to the marijuana but not the bag with cocaine residue.

However, the court, as the factfinder, believes that the defendant was aware that he was conveying drugs into the jail by retaining the bag with cocaine residue. At trial, the defendant testified that he was not aware that he had the bag in his possession. However, the facts and circumstances surrounding Corrections Officer Whitaker's discovery of the cocaine bag belie the defendant's claim. When conducting the defendant's strip search,

Corrections Officer Whitaker noticed the plastic bag hanging from the defendant's underwear. The defendant then began to fidget with his underwear, and he gave his underwear to Corrections Officer Whitaker, but not the bag. Corrections Officer Whitaker noted this was odd because when the defendant handed him the underwear, he did so with a closed fist with the bag inside his fist. Only when Corrections Officer Whitaker asked the defendant what he was concealing did the defendant drop the bag and let it fall to the ground. The defendant told Corrections Officer Whitaker that he did not know what it was or where it came from.

The fact that the defendant continually tried to conceal the plastic bag with cocaine residue on it to prevent Corrections Officer Whitaker from finding it, even after Corrections Officer Whitaker spotted it and asked about the bag, suggests that the defendant knew of the bag and knew that it had cocaine residue on it.

Also, despite the defendant's testimony to the contrary, the court finds the defendant did not forget he had the plastic bag in his underwear. Given that the defendant was storing a plastic bag against his bare skin in his underwear, where skin tends to be sensitive, the court finds that the defendant would have been aware of its presence on his person before entering the jail. In consideration of these facts, the court finds that the defendant knowingly conveyed cocaine into the jail, and as such violated R.C. 2921.36(A)(2).

III. COUNT 6: OBSTRUCTING OFFICIAL BUSINESS

The court finds the defendant guilty of Count 6, in which the defendant was charged with obstructing official business in violation of R.C. 2921.31(A), a second degree misdemeanor. R.C. 2921.31(A) provides: "No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the public official's lawful duties."[41] In turn, a person acts "purposely when it is the person's specific intent to cause a certain result * * *."

Officer Bale testified that, when he approached the defendant and his three companions and asked them to stop walking, the defendant told him to "fuck off," and said there was no reason to detain them. Although the companions stopped, the defendant kept backing away from Officer Bale while continually swearing. After Officer Bale placed the defendant in hand restraints, with his hands behind his back, the defendant tried to pull away from Officer Bale and yelled to his companions: "Run! Run! Run!" And, in fact, one of the companions did flee, although she was apprehended by Officer Bale. After regaining control of her, the defendant began to "shimmy" away from Officer Bale, and instead of going where Officer Bale directed him, the defendant tried to go behind the Ford Edge.

Based on the above facts, the state has shown beyond a reasonable doubt that the defendant purposely obstructed Officer Bale, a public official authorized to detain the defendant and his companions, from detaining them and investigating the drugs in the vehicle. It was the defendant's specific intent to delay Officer Bale from detaining him because he continually moved away from Officer Bale and walked away from Officer Bale

[41] R.C. 2921.36(A)(2).

despite clear directions to stop.[42] Most significantly, the defendant's directive to his companions to "Run! Run! Run!" was specifically intended to prevent Officer Bale from further detaining or arresting them. Accordingly, the court finds the defendant guilty of obstructing official business in contravention of R.C. 2921.31(A).

IV. COUNT 7: RESISTING ARREST

The court finds the defendant not guilty of Count 7, in which the defendant was charged with resisting arrest under R.C. 2921.33(B), which provides: "* * * No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person and, during the course of or as a result of the resistance or interference, cause physical harm to a law enforcement officer."[43]

As previously mentioned, when there is no evidence of an element of an offense, the defendant cannot be found guilty of the charged crime.[44] In this case, there was no evidence that the defendant caused physical harm to a law enforcement officer. Neither Officer Grooms nor Officer Bale testified that the defendant caused them or any other law enforcement officer physical harm in the course of arresting the defendant. They testified that the defendant swore at them repeatedly, squirmed, and tried to "shimmy" away from them, but they did not state that the defendant caused physical harm. As such, the court finds the defendant not guilty of resisting arrest.

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[42] *See State v. Botos*, 12th Dist. Butler No. CA2004-06-145, 2005-Ohio-3504, ¶ 16 (finding that a suspect who flees after committing a minor crime can be convicted of obstructing official business).
[43] R.C. 2921.33(B).
[44] *See, e.g., Workman*, 2017-Ohio-8638 at ¶ 53.

CONCLUSION

The court finds that the state has proven beyond a reasonable doubt the defendant's guilt to the following counts:

- Count 1: possession of cocaine, in violation of R.C. 2925.11(A), a felony of the fifth degree,
- Count 2: possession of marijuana, in violation of R.C. 2925.11(A), a minor misdemeanor,
- Count 4: illegal conveyance of drugs of abuse onto grounds of a specified governmental facility, in violation of R.C. 2921.36(A)(2), a felony of the third degree,
- Count 5: illegal conveyance of drugs of abuse onto grounds of a specified governmental facility, in violation of R.C. 2921.36(A)(2), a felony of the third degree, and
- Count 6: obstructing official business, in violation of R.C. 2921.31(A), a misdemeanor of the second degree.

The court finds that the state has not proven beyond a reasonable doubt the defendant's guilt as to the following counts:

- Count 3: aggravated possession of drugs (alprazolam), in violation of R.C. 2925.11(A), a felony of the fifth degree, and
- Count 7: resisting arrest, in violation of R.C. 2921.33(B), a misdemeanor of the second degree.

Therefore, the court finds the defendant guilty of Counts 1, 2, 4, 5, and 6. The defendant is acquitted of Counts 3 and 7.

The court is directing the Probation Department to perform a presentence investigation. Counsel are requested to conference by telephone within three days of the date of this Decision and to contact the Assignment Commissioner in order to schedule a sentencing hearing.

IT IS SO ORDERED.

DATED: 12-16-2017

Judge Jerry R. McBride