

COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO

FILED  
2019 JAN -9 AM 9:16  
BRIAN J. ...  
CLERK OF COURT  
CLERMONT COUNTY, OHIO

STATE OF OHIO : CASE NO. 2018 CR 00323  
Plaintiff :  
vs. : Judge McBride  
KEVIN T. CRAIG : DECISION/ENTRY  
Defendant :

Darren D. Miller, assistant prosecuting attorney for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103

Mark T. Tillar, counsel for the defendant Kevin T. Craig, 7588 Central Park Boulevard #127, Mason, Ohio 45040

This cause came before the court for a bench trial on September 24, 2018. At the conclusion of the trial, the court took the issues raised in the case under advisement.

The defendant Kevin T. Craig was indicted in Case No. 2018 CR 00323 on April 24, 2018 on the following counts: (1) trafficking in heroin in violation of R.C. 2925.03(A)(2), a felony of the third degree, (2) aggravated trafficking in drugs in violation of R.C. 2925.03(A)(2), a felony of the fourth degree, (3) possession of heroin in violation of R.C. 2925.11(A), a felony of the third degree, and (4) aggravated possession of drugs in violation of R.C. 2925.11(A), a felony of the fifth degree.

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

### **FINDINGS OF FACT**

The charges in this case arise from an incident that occurred on September 10, 2016 in Batavia, Clermont County, Ohio. On September 10th, Corporal Christopher McMillian, a road patrol officer and canine handler for the Batavia Police Department, was on road patrol. At 11:35 a.m., Corporal McMillian saw the defendant Kevin T. Craig run a stop sign at the corner of Spring Street and Third Street, in Batavia.

Corporal McMillian stopped the defendant's vehicle. Upon walking up to the defendant's vehicle, Corporal McMillian saw the defendant reach down near the floor board. To Corporal McMillian, this sort of behavior may indicate concealment. The defendant was alone and was excessively nervous when speaking with Corporal McMillian. His hands shook and he refused to make eye contact. To Corporal McMillian, this behavior indicated that the defendant may be hiding something.

Corporal McMillian had his narcotics canine, Craft, with him in his police cruiser. He deployed Craft, and the dog indicated at the rear passenger door for a narcotic substance. Once Corporal McMillian secured Craft, he asked the defendant to exit the vehicle. While they were walking to the police cruiser, Corporal McMillian noticed the defendant's left boot was untied. Corporal McMillian asked the defendant to remove his boots, and when he did so, a baggy containing an off-white substance fell to the ground.

The defendant tried to cover the baggy with his foot, but when he did so, two more baggies fell to the ground.

Corporal McMillian had the defendant shake his pant legs, and six more baggies fell to the ground. The baggies were of different sizes, wrapped in plastic, and contained an off-white substance that appeared to be heroin.<sup>1</sup>

Corporal McMillian searched the defendant's vehicle and found a scale coated in residue and two cell phones. These items indicated to Corporal McMillian that the defendant may be dealing in narcotics.

After providing the defendant with his *Miranda* warnings, Corporal McMillian asked the defendant about the baggies he had found. The defendant said the baggies contained heroin which might be mixed with fentanyl. He stated that he sold heroin to support his own heroin habit.

Corporal McMillian asked the defendant if he could search his home. The defendant consented, and Corporal McMillian searched the defendant's home. The search revealed two more scales and empty plastic baggies, which Corporal McMillian believed was consistent with trafficking in narcotics.

Douglas R. Wimstatt, a forensic drug chemist at the Crime Lab of the Hamilton County Coroner's Office, tested the substances in the baggies removed from the defendant's person. In his position, Wimstatt tests for the presence or absence of controlled substances in drug samples submitted by police agencies. He has worked at the Hamilton County Coroner's Office for four years, and he worked as a forensic drug chemist for the Kentucky State Police Forensic Laboratory System for over ten years

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<sup>1</sup> Ex. 1.

previously. Wimstatt has a BA from Ohio University in biology and forensic chemistry. Since earning his degree, he has had further training in the course of his employment, including training in testing known and unknown samples, mock trials, and an annual proficiency test, which he has always passed. Wimstatt has analyzed thousands of heroin and fentanyl samples.

To test the samples provided by the police in this case, he weighed the samples, and conducted a preliminary test to identify what the potential drugs might be. He then took two separate samples from each larger sample (e.g. baggy), placed the samples into vials, dissolved them with methanol, capped the vials with aluminum, placed lab identification numbers on the vials, and ran the vials through the GCMS testing machine. Two samples drawn from each larger sample (e.g. baggy) were tested using different methods. After testing, Wimstatt, went back and identified the compounds in the samples and then confirmed the compounds. In this case he identified the presence of heroin and fentanyl in the samples.<sup>2</sup>

Wimstatt initially weighed the contents of six of the nine baggies of drugs.<sup>3</sup> He stopped weighing and testing them once the contents of the samples weighed over five grams.<sup>4</sup> He weighed the samples in two batches.<sup>5</sup> The first batch, sample 1-1, weighed 4.947 grams.<sup>6</sup> Sample 1-1 was composed of the contents from five baggies. The second batch, sample 1-2, weighed .0920 grams.<sup>7</sup> Sample 1-2 was composed of the content of only one baggy. The combined weight of the two batches was over five grams. The

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<sup>2</sup> Ex. 2.

<sup>3</sup> Ex. 2.

<sup>4</sup> Ex. 2.

<sup>5</sup> Ex. 2.

<sup>6</sup> Ex. 2.

<sup>7</sup> Ex. 2.

certainty in measurement of the weighed samples was determined at a probability of 99.73%.

Once Wimstatt took the samples from the baggies to test for the presence of controlled substances, he no longer had those samples available in the event the drug samples were reweighed. As mentioned, those samples had to be dissolved in methanol to be tested. It is the policy of the Hamilton County Coroner's Office not to weigh the samples that forensic drug chemists remove from the larger samples for testing, so the weights of the 12 samples that were removed for testing were not recorded.

At the defendant's request, the same samples were reweighed. Sample 1-1, which previously weighed 4.947 grams, weighed 4.360 grams.<sup>8</sup> Sample 1-2, which previously weighed .0920 grams weighed .0318 grams.<sup>9</sup> Wimstatt explained that weight differences resulted from samples being removed for testing. He also explained that a small amount of the samples were left behind in the beakers they were weighed in and the original plastic baggies they were found in because of static electricity. Due to this, he would expect a second weighing of the samples to be less than the original weighing of the samples, as was the case.

Dr. Harry B. Plotnick, an expert in forensic toxicology retained by the defense, submitted a report regarding the second weighing of the samples.<sup>10</sup> Dr. Plotnick opined:

"\* \* \* The difference in the weights from the initial weighing and those determined in my presence on August 15, 2018, resulted from the removal of a portion of the sample from the bottle for analysis to determine the nature of any drugs present in the sample. The procedure utilized by the laboratory for the analysis of drugs does not involve the determination of the weight of the material removed for

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<sup>8</sup> Ex. A.

<sup>9</sup> Ex. A.

<sup>10</sup> Ex. A.

analysis. Accordingly, there is no way to verify the weight of the sample at the time it was received and initially weighed by the laboratory. I know of no requirement that the weight of the material removed from a sample for analysis be measured or weighed and the laboratory should not be criticized for not obtaining that data. Unfortunately, in the absence of such information, there is no way to verify the original weight of the drug as seized by the law enforcement agency. \* \* \*<sup>11</sup>

The original weighing of the materials was measured with a 99.73% certainty. Given the explanation by Wimstatt and Dr. Plotnick as to why the second sample weighed less than the first, the court does not believe the reweighing casts doubt on the accuracy of the initial weighing, finding that the heroin and fentanyl weighed over five grams.

### **STANDARD OF REVIEW**

In a criminal case, it is the state's burden to prove the defendant's guilt beyond a reasonable doubt.<sup>12</sup> R.C. 2901.05(E) describes reasonable doubt as follows:

“Reasonable doubt’ is present when the [triers 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.”

Further, “[i]t is axiomatic that the state must prove each and every element of an offense \* \* \*.”<sup>13</sup>

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<sup>11</sup> Ex. A.

<sup>12</sup> R.C. 2901.05(A).

<sup>13</sup> *State v. Jones*, 91 Ohio St. 3d 335, 347, 744 N.E.2d 1163 (2001). See *State v. Brown*, 12th Dist. Warren No. CA2006-10-120, 2007-Ohio-5787, ¶ 29 (“The state has a duty to present

As the trier of fact, the court “\* \* \* makes the determinations of credibility and the weight to be given to the evidence.”<sup>14</sup> The trier of fact is in the best position to take into account any inconsistencies of evidence, “along with manner and demeanor to determine witness credibility,” and is free to believe or disbelieve all or any of the testimony.<sup>15</sup>

## **LEGAL ANALYSIS**

### **I. POSSESSION COUNTS**

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.”<sup>16</sup> Pursuant to R.C. 3119.01(C), a “controlled substance” is “a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V.” Heroin is a schedule I drug and fentanyl is a schedule II drug.<sup>17</sup>

The mental state “knowingly” is described as follows: “\* \* \* A person has knowledge of circumstances when the person is aware that such circumstances probably exist. \* \*

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evidence, beyond a reasonable doubt, as to each and every element of the crime as set forth in the indictment.”)

<sup>14</sup> *State v. Burrell*, 12th Dist. Fayette No. CA2016-04-005, 2016-Ohio-8454, ¶ 22, citing *State v. Clements*, 12th Dist. Butler No. CA2009-11-277, 2010-Ohio-4801, ¶ 20. See *State v. Shaver*, 12th Dist. Butler No. CA90-12-241, 1991 WL 170164, \*3 (Sept. 3, 1991), citing *State v. Thomas*, 70 Ohio St.2d 79, 434 N.E.2d 1356 (1982) (stating that “it is the accepted rule in Ohio that the weight to be given evidence and the credibility of the witnesses in a criminal proceeding are primarily for the trier of fact.”).

<sup>15</sup> *State v. Cope*, 12th Dist. Butler No. CA2009-11-284, 2010-Ohio-6430, ¶ 47, citing *State v. Johnson*, 10th Dist. Franklin No. 10AP-137, 2010-Ohio-5440, ¶ 18.

<sup>16</sup> R.C. 2925.11(A).

<sup>17</sup> R.C. 3719.41.

<sup>18</sup> "To act knowingly, a defendant merely has to be aware that the result may occur."<sup>19</sup>  
"Knowledge can be ascertained from the surrounding facts and circumstances of the case."<sup>20</sup> Further, the knowledge requirement for a possession charge can be satisfied regardless of the amount.<sup>21</sup> "The government need only produce sufficient evidence, direct or circumstantial, from which the [trier of fact] is able to identify the substance beyond a reasonable doubt [.]"<sup>22</sup>

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."<sup>23</sup> A person can either have actual or constructive possession of a drug.<sup>24</sup>

"Actual possession occurs when the defendant 'had the items within his immediate physical control.'"<sup>25</sup> 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

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<sup>18</sup> R.C. 2901.22(B).

<sup>19</sup> *State v. Fox*, 12th Dist. Fayette No. CA2008-03-009, 2009-Ohio-556, ¶ 13, citing *State v. Nutekpor*, 6th Dist. Wood No. WD-5-062, 2006-Ohio-4641, ¶ 15.

<sup>20</sup> *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).

<sup>21</sup> *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).

<sup>22</sup> *State v. Montoya*, 12th Dist. Clermont No. CA2012-02-015, 2013-Ohio-3312, ¶ 44, *aff'd*, 138 Ohio St.3d 345, 2014-Ohio-848, 6 N.E.3d 1172, ¶ 44 (2014).

<sup>23</sup> R.C. 2925.01(K).

<sup>24</sup> *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.

<sup>25</sup> *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.



possession.”<sup>26</sup> “Absent a defendant’s admission, 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.”<sup>27</sup>

#### A. POSSESSION OF HEROIN

Count 3 charges the defendant with possession of heroin in violation of R.C. 2925.11(A). Under R.C. 2925.11(C)(6)(c), when a defendant possesses heroin or a compound, mixture, preparation or substance containing heroin and it “exceeds five grams but is less than ten grams” the possession charge is a felony of the third degree.<sup>28</sup>

To be found guilty of possession of heroin under R.C. 2925.11(A), the defendant must have “knowingly” possessed, controlled, or used the heroin.<sup>29</sup> The surrounding facts and circumstances of the case, as well as the defendant’s statements to Corporal McMillian, demonstrate beyond a reasonable doubt that the defendant possessed what he believed to be heroin.<sup>30</sup>

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<sup>26</sup> *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.”).

<sup>27</sup> *Williams*, 2015-Ohio-2010 at ¶ 15, citing *State v. Stradford*, 8th Dist. Cuyahoga No. 95116, 2011-Ohio-1566, ¶ 16.

<sup>28</sup> R.C. 2925.11(C)(6)(c).

<sup>29</sup> R.C. 2925.11(A).

<sup>30</sup> *Anderson*, 2009-Ohio-2521 at ¶ 28, citing *Lott*, 51 Ohio St.3d at 168.

The defendant had actual possession of the heroin as it was on his person, hidden in his pant legs. It is clear that the defendant knew he had it, as he tried to hide it from Corporal McMillian. Moreover, the defendant readily admitted to Corporal McMillian that the baggies on his person contained heroin and that he had them to sell in support of his own heroin habit. The court finds that the defendant knowingly possessed and controlled heroin in an amount that exceeds five grams but less than ten grams. Accordingly, the state has proven that the defendant is guilty beyond a reasonable doubt of possession of heroin as charged in Count 3.

**B. AGGRAVATED POSSESSION OF DRUGS**

Count 4 charges the defendant with aggravated possession of drugs, fentanyl, in violation of R.C. 2925.11(A). Under R.C. 2925.11(C)(1)(a), whenever the controlled substance is, with limited exceptions, a Schedule II drug or a compound, mixture, or preparation of a Schedule II drug, a violation of R.C. 2925.11(A) constitutes aggravated possession of drugs, which is a fifth degree felony. As mentioned, fentanyl is a Schedule II drug.<sup>31</sup> It is a synthetic opioid that is approximately 100 times more potent than morphine and 50 times more potent than heroin.<sup>32</sup>

As stated above, the defendant had actual possession of the fentanyl as it was hidden on his person and in his immediate control. The defendant told Corporal McMillian that he was selling heroin, but it may also contain fentanyl. "In proving knowing possession of a controlled substance in violation of R.C. 2925.11(A), the State is not

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<sup>31</sup> R.C. 3719.41.

<sup>32</sup> *State v. Pountney*, 152 Ohio St.3d 474, 2018-Ohio-22, 97 N.E.3d 478, ¶ 2.

required to prove that Defendant 'knew' the specific characteristics of the items he possessed which made them controlled substances \* \* \*."<sup>33</sup> Furthermore, to convict the defendant, " \* \* \* [i]t is sufficient that the State proves that Defendant knew or was probably aware that the items in his possession were articles that constitute controlled substances defined as such by law."<sup>34</sup> Indeed, the Twelfth District Court of Appeals has upheld a conviction challenged on the sufficiency and weight of the evidence, in which the defendant was convicted on charges of possession of heroin and aggravated possession of drugs (fentanyl), even though the controlled substance was in the same bag and there was no evidence that the defendant knew the bag contained fentanyl.<sup>35</sup>

In applying these principles to the instant case, the state was required to prove beyond a reasonable doubt that the defendant knowingly possessed a controlled substance. The defendant was found with nine baggies of an off-white substance on his person, and he later admitted to selling that substance, which was determined to contain fentanyl, a schedule II drug. The evidence is clear that the defendant knew he used and possessed a controlled substance. Moreover, the defendant's statement to Corporal McMillian indicates that he knew it was a possibility that the heroin on his person contained fentanyl. Accordingly, the court finds that the state has proven that the

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<sup>33</sup> *State v. Williams*, 2d Dist. Montgomery No. 20271, 2005-Ohio-1597, ¶ 34. See *State v. Middleton*, 6th Dist. Lucas No. L-05-1162, 2006-Ohio-6634, ¶ 22 (in a case involving a charge of aiding and abetting in possession, under R.C. 2924.11(A) and R.C. 2929.03(A), finding " \* \* \* the state is required to prove that the defendant aided or abetted another in knowingly obtaining a controlled substance and that the controlled substance was of a specific type. There is no requirement that the state prove that the accomplice knew the specific type of controlled substance involved.").

<sup>34</sup> *Williams*, 2005-Ohio-1597 at ¶ 34.

<sup>35</sup> *State v. Woodward*, 12th Dist. Warren No. CA2016-09-084, 2017-Ohio-6941, ¶ 22 and ¶ 46 (Ringland, J., dissenting).

defendant is guilty beyond a reasonable doubt of aggravated possession of drugs, fentanyl, a Schedule II drug, as charged in Count 4.

## II. TRAFFICKING COUNTS

Trafficking is criminalized in R.C. 2825.03(A):

"(A) No person shall knowingly do any of the following: \* \* \*

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person."<sup>36</sup>

As previously mentioned, pursuant to R.C. 3119.01(C), a "controlled substance" is "a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V."<sup>37</sup> Heroin is a Schedule I drug and fentanyl is a Schedule II drug.<sup>38</sup>

Trafficking in drugs requires the state "to prove 'possession' as an element of the crime."<sup>39</sup> As described, the mental state "knowingly" means that person has knowledge of circumstances when the person is aware that such circumstances probably exist.<sup>40</sup> The defendant need only be aware that a result may occur,<sup>41</sup> and this can be ascertained by surrounding facts and circumstances.<sup>42</sup>

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<sup>36</sup> R.C. 2925.03(A)(2).

<sup>37</sup> R.C. 3119.01(C).

<sup>38</sup> R.C. 3719.41.

<sup>39</sup> *Williams*, 2015-Ohio-2010 at ¶ 13.

<sup>40</sup> R.C. 2901.22(B).

<sup>41</sup> *Fox*, 2009-Ohio-556 at ¶ 13, citing *Nutekpor*, 2006-Ohio-4641 at ¶ 15.

<sup>42</sup> *Anderson*, 2009-Ohio-2521 at ¶ 28, citing *Lott*, 51 Ohio St.3d at 168.

Like possession, “[i]n addition to direct evidence, circumstantial evidence may be used to establish the offense of drug trafficking.”<sup>43</sup> Further, “[n]umerous courts have determined that plastic baggies, digital scales, and large sums of money are often used in drug trafficking which constitute circumstantial evidence that [the defendant] was using these items to commit that crime.”<sup>44</sup>

#### A. TRAFFICKING IN HEROIN

In Count 1, the defendant is charged with trafficking in heroin, in violation of R.C. 2925.03(A)(2). Under R.C. 2925.03(C)(6)(d), when a defendant traffics a drug that “\* \* \* is heroin or a compound, mixture, preparation, or substance containing heroin \* \* \*,” and the amount of the drug “\* \* \* equals or exceeds five grams but is less than ten grams \* \* \*” the trafficking charge is a felony of the third degree.<sup>45</sup>

In the present case, the court has already found that the possession element for trafficking in heroin was satisfied when it found in relation to Count 3 that the defendant is guilty beyond a reasonable doubt of possession of more than five grams but less than ten grams of heroin.

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<sup>43</sup> *State v. Luna*, 12th Dist. Butler No. CA2008-04-115, 2009-Ohio-3421, ¶ 27, citing *State v. Harry*, 12th Dist. Butler No. CA2008-01-0013, 2008-Ohio-6380, ¶ 50. See *Harry*, 2008-Ohio-6380 at ¶ 50, citing *State v. Kutsar*, 8th Dist. Cuyahoga No. 89310, 2007-Ohio-6990, ¶ 20 (“Numerous courts have determined that plastic baggies, digital scales, and large sums of money are often used in drug trafficking which constitute circumstantial evidence that appellant was using these items to commit that crime.”).

<sup>44</sup> *State v. Trammell*, 12th Dist. Butler No. CA2016-11-220, 2017-Ohio-8198, ¶ 48, quoting *Harry*, 2008-Ohio-6380 at ¶ 50.

<sup>45</sup> R.C. 2925.03(C)(6)(d).

The court finds that the defendant was knowingly transporting, delivering, or distributing heroin intended for sale or resale. The defendant openly admitted to Corporal McMillian that he sells the heroin to support his own heroin addiction. Further, the heroin was divided into nine baggies wrapped in plastic, which indicated to Corporal McMillian that the defendant was trafficking the heroin. The defendant also had a scale in his vehicle as well as two cell phones. Moreover, evidence found at the defendant's home was also indicative of trafficking heroin. Police found two more scales as well as plastic baggies. Based on the defendant's admissions to Corporal McMillian and the surrounding circumstantial evidence, the court finds beyond a reasonable doubt that the defendant knowingly trafficked more than five grams but less than ten grams of heroin. Thus the defendant is guilty of Count 1, trafficking in heroin, in violation of R.C. 2925.03(A)(2), a felony of the third degree.

**B. AGGRAVATED TRAFFICKING IN DRUGS**

In Count 2, the defendant is charged with aggravated trafficking in drugs, specifically fentanyl, in violation of R.C. 2925.03(A)(2). Under R.C. 2925.03(C)(1)(a), when a defendant traffics in a drug that “\* \* \* is any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L.S.D., heroin, hashish, and controlled substance analogs, \* \* \*” of any amount, trafficking is a felony of the fourth degree. Here, the substance is the Schedule II drug of fentanyl.

The same analysis as in Count 1 applies. The court has already found that the defendant knowingly possessed fentanyl in finding him guilty of possession of fentanyl in

Count 4, as he told Corporal McMillian that the baggies of drugs may contain fentanyl. As with trafficking heroin, based upon the defendant's statements and the circumstantial evidence corroborating drug trafficking (e.g. scales, cell phones, and baggies), the court likewise finds beyond a reasonable doubt that the defendant knowingly trafficked fentanyl. Thus the defendant is guilty of Count 2, trafficking in drugs, fentanyl, in violation of R.C. 2925.03(A)(2), a felony of the fourth degree.

### **CONCLUSION**

The court finds that the state has proven the following counts beyond a reasonable doubt, and as such the defendant is guilty of the following:

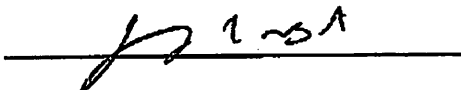
- Count 1: trafficking in heroin in violation of R.C. 2925.03(A)(2), a felony of the third degree;
- Count 2: aggravated trafficking in drugs, in violation of R.C. 2925.03(A)(2), a felony of the fourth degree;
- Count 3: possession of heroin, in violation of R.C. 2925.11(A), a felony of the third degree; and
- Count 4: aggravated possession of drugs, fentanyl, in violation of R.C. 2925.11(A), a felony of the fifth degree.

A presentence investigation shall be performed. The defendant shall report to the Probation Department within five business days for the purpose of scheduling his interview with the Probation Department and shall cooperate in the presentence investigation. Counsel shall conference and call the Assignment Commissioner within

three business days in order to schedule the sentencing hearing, which shall be held within 45 days.

**IT IS SO ORDERED.**

DATED: 12-18-18

  
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Judge Jerry R. McBride