

FILED

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

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COURT OF COMMON PLEAS
CLERMONT COUNTY, OH

STATE OF OHIO	:	
Plaintiff	:	CASE NO. 2018 CR 001060
vs.	:	Judge McBride
STASHA KINMAN	:	DECISION/ENTRY
Defendant	:	

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

John Treleven, counsel for the defendant Stasha Kinman, 810 Sycamore Street, Third Floor, Cincinnati, Ohio 45202.

Before the court is the defendant Stasha Kinman's memorandum in support of merger with respect to Counts 1 and 2 for corrupting another with drugs and involuntary manslaughter, respectively. The defense submitted this memorandum to the court on December 7, 2018, and filed it on December 28th. On December 10th, the state filed a response in opposition.

Upon consideration of the record of the proceedings, the written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTUAL AND PROCEDURAL BACKGROUND

The state filed a bill of information on November 14, 2018, charging the defendant with two counts: (1) corrupting another with drugs in violation of R.C. 2925.02(A)(3), a felony of the second degree, and (2) involuntary manslaughter in violation of R.C. 2903.04(B), a felony of the third degree.

Count 1 in the bill of information states:

"STASHA KINMAN, on or about the 13th day of OCTOBER, 2017, in Clermont County, Ohio, knowingly and by any means, administered or furnished to another or induced or caused another to use a controlled substance, and thereby caused serious physical harm to the other person, or cause[d] the other person to become drug dependent; and the drug involved is any compound, mixture, preparation, or substance included in schedule III, IV, or V, contrary to and in violation of Section 2925.02(A)(3) of the Revised Code of Ohio, a felony of the second degree, and against the peace and dignity of the State of Ohio."

Count 2 in the bill of information states:

"STASHA KINMAN, on or about the 16th day of OCTOBER, 2017, in Clermont County, Ohio, wit caused [*sic*] the death of another as a proximate result of the offender's committing or attempting to commit a misdemeanor of any degree, a regulatory offense, or a minor misdemeanor other than a violation of any section contained in Title XLV of the Revised Code that is a minor misdemeanor and other than a violation of an ordinance of a municipal corporation that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any section contained in Title XLV of the Revised Code that is a minor misdemeanor, contrary to and in violation of Section 2903.04(B) of the Revised Code of Ohio, a felony of the third degree, and against the peace and dignity of the State of Ohio."

On November 19th, the defendant submitted a written plea of guilty and pled guilty at her court hearing on that same date. At the conclusion of the hearing, the court

accepted the defendant's guilty plea. Defense counsel indicated that he would be submitting a memorandum in support of merger.

At the same November 19th hearing, the state indicated that the predicate offense to the involuntary manslaughter charge was endangering children in violation of R.C. 2919.22(A). Moreover, the state read a statement of facts that, in addition to the information contained in the bill of information, the defendant admitted to. The state indicated the following: The victim A.K. was the defendant's minor daughter, born on November 17, 2010. The defendant's father had given the defendant tramadol to overcome her dope sickness. On October 13, 2017, the defendant gave A.K. the tramadol. A.K. immediately showed signs of illness from the medication. The defendant quickly learned of A.K.'s condition. She did not seek any medical treatment or intervention for days until an EMS was dispatched to 953 Klondyke Road on October 16, 2017. A.K. died. The cause of her death was listed as seizures and stress cardiomyopathy complicated by delay in medical care with probable tramadol toxicity.

The defense submitted its merger memorandum to the court on December 7, 2018, and filed it on December 28th. The state filed a response in opposition on December 10th.

LEGAL ANALYSIS

The defendant argues that her convictions for corrupting another with drugs and involuntary manslaughter are allied offenses of similar import, and that they therefore merge. The defendant pled guilty to corrupting another with drugs in violation of R.C.

2925.02(A)(3). Corrupting another with drugs is criminalized in R.C. 2925.02, which provides in relevant part: ""(A) No person shall knowingly do any of the following: * * * (3) By any means, administer or furnish to another or induce or cause another to use a controlled substance, and thereby cause serious physical harm to the other person, or cause the other person to become drug dependent * * *."1

The defendant also pled guilty to involuntary manslaughter in violation of R.C. 2903.04(B). Involuntary manslaughter is criminalized in R.C. 2903.04, which provides:

"(B) No person shall cause the death of another * * * as a proximate result of the offender's committing or attempting to commit a misdemeanor of any degree, a regulatory offense, or a minor misdemeanor other than a violation of any section contained in Title XLV of the Revised Code that is a minor misdemeanor and other than a violation of an ordinance of a municipal corporation that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any section contained in Title XLV of the Revised Code that is a minor misdemeanor."2

At the plea hearing in the instant case, the state indicated that the "misdemeanor" predicate offense to involuntary manslaughter was endangering children in violation of R.C. 2919.22(A). In turn, R.C. 2919.22 provides:

"(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. * * *3

"R.C. 2941.25 codifies the protections of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and Section 10, Article I of the Ohio

¹ R.C. 2925.02(A).

² R.C. 2903.04(B).

³ R.C. 2919.22(A).

Constitution, which prohibits multiple punishments for the same offense.”⁴ R.C. 2941.25 provides:

“(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.”⁵

When analyzing whether offenses should merge, courts apply the *Ruff* factors, articulated by the Ohio Supreme Court, which provides a three-part framework, examining “the conduct, the animus, and the import” of each offense.⁶ “In conducting this analysis, if any of the following is true, the offenses cannot merge and the defendant may be convicted and sentenced for multiple offenses: (1) the offenses are dissimilar in import or significance, in other words, each offense caused separate, identifiable harm; (2) the offenses were committed separately; and (3) the offenses were committed with separate animus or motivation.⁷ The Ohio Supreme Court has advised that this analysis is at “its heart,” a fact-driven inquiry that focuses on the defendant’s conduct.⁸

⁴ *State v. Underwood*, 124 Ohio St.3d 365, 2010–Ohio–1, ¶ 23. See *State v. Back*, 12th Dist. Butler No. CA2015-03-037, 2015-Ohio-4447, ¶ 9, citing *State v. Brown*, 186 Ohio App.3d 437, 2010–Ohio–324, ¶ 7 (12th Dist.) (“Pursuant to Ohio’s multiple count statute, R.C. 2941.25, the imposition of multiple punishments for the same criminal conduct is prohibited.”).

⁵ R.C. 2941.25.

⁶ *State v. Graves*, 12th Dist. Clermont No. CA2015-03-022, 2015-Ohio-3936, ¶ 42, citing *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892.

⁷ *Graves*, 2015-Ohio-3936 at ¶ 42, citing *Ruff*, 2015-Ohio-995 at ¶ 25.

⁸ *Ruff*, 2015-Ohio-996 at ¶ 26. Moreover, in *Ruff* the Supreme Court elaborated on the factor of “similar import or significance:” “[T]wo or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant’s conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable.” *Id.* at ¶ 23.

The defense cites to the analysis set forth in *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061. At the time *Johnson* was decided, it provided an authoritative framework on how to analyze allied offenses. However, the Ohio Supreme Court has recognized that the *Johnson* merger analysis is largely supplanted by the *Ruff* merger analysis, cited above: "More recent decisions of this court, including the decision in *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, 'have rendered the analysis of the *Johnson* lead opinion largely obsolete."⁹

The parties have not submitted, nor has the court located, post-*Ruff* cases that analyze the merger of corrupting another with drugs and involuntary manslaughter. Although not directly on point, the Eleventh District Court of Appeals examined whether a conviction for corrupting another with drugs merged with a conviction for reckless homicide in *State v. Patterson*, 11th Dist. Trumbull No. 2013-T-0062, 2015-Ohio-4423. In *Patterson*, the defendant was convicted of corrupting another with drugs and reckless homicide, among other charges.¹⁰ The defendant's charge of trafficking in heroin merged with corrupting another with drugs, but on appeal he argued that the conviction for corrupting another with drugs should have also merged with his conviction for reckless homicide.¹¹

The defendant sold heroin to an individual, and then a third person, a 17 year old girl, used the heroin and died.¹² The buyer called the defendant when the victim lost consciousness and failed to regain it.¹³ The defendant returned to the apartment where

⁹ *State v. Jackson*, 149 Ohio St.3d 55, 2016-Ohio-5488, 73 N.E.3d 414, ¶ 127, quoting *State v. Earley*, 145 Ohio St.3d 281, 2015-Ohio-4615, 49 N.E.3d 266, ¶ 11.

¹⁰ *State v. Patterson*, 11th Dist. Trumbull No. 2013-T-0062, 2015-Ohio-4423, ¶ 1.

¹¹ *Id.* at ¶ 74.

¹² *Id.* at ¶¶ 1, 18, 75.

¹³ *Id.* at ¶ 75.

he had sold the heroin to the buyer and gave assurances that the victim would be fine, thus dissuading the buyer from seeking medical attention for the victim.¹⁴

On appeal, the court found that the defendant's return to the apartment after selling the heroin was additional conduct that was conducted with a separate animus, therefore preventing merger of the two counts.¹⁵ Like the defendant in this case, the defendant in *Patterson* argued that under *Johnson* the convictions were for the same continuous course of conduct.¹⁶ However, the appellate court rejected this argument. The court explained that the defendant's initial presence at the buyer's apartment was for the purpose of selling heroin, and with that purpose completed, the defendant left.¹⁷ The defendant's return to the apartment hours later was due to the buyer's anxiety regarding the victim's unconsciousness.¹⁸ Thus, the defendant's return to the apartment was not a continuation of the sale and it constituted separate conduct.¹⁹

The defendant also cites to two cases for additional comparison, *State v. Blanda*, 12th Dist. Butler No. CA2010-03-050, 2011-Ohio-411 and *State v. Hall*, 12th Dist. Preble No. CA2015-11-022, 2017-Ohio-879. However, the court does not find that these cases are instructive because neither compares corrupting another with drugs to involuntary manslaughter or a similar offense (e.g. murder, negligent homicide, etc.). Instead, *Blanda* deals with felony murder and child endangering, and *Hall* deals with involuntary manslaughter and endangering children. In *Blanda*, the felony murder charge was based upon the predicate offense of endangering children, and the defendant was separately

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at ¶ 77. Of note, the *Patterson* Court cites to *Ruff* for the current analysis factors.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

charged with endangering children as well.²⁰ In *Hall*, the involuntary manslaughter charge was based upon the predicate offense of endangering children, and the defendant was also separately charged with endangering children.²¹ By contrast, the present case does not involve an involuntary manslaughter charge along with a separate endangering children. Moreover, both *Blanda* and *Hall* involved singular occurrences that led to the death of children.²²

In turning to the present case, the court finds that under *Ruff* the defendant's offense of corrupting another with drugs is not an allied offense of similar import to her offense of involuntary manslaughter. First, the court finds that the offenses were committed separately, as in the *Patterson* case, discussed above. The offense of corrupting another with drugs occurred when the defendant administered tramadol to A.K. on October 13, 2017. The offense of involuntary manslaughter occurred after that, when the defendant did not satisfy her duty of care, protection, and support by failing to seek medical help for A.K. for three days after noticing that A.K. was ill from the medication. The defendant waited until October 16th to have an EMS dispatched for A.K. By the time the conduct constituting involuntary manslaughter began to occur, the crime of corrupting another with drugs had been completed. One crime was completed by the defendant's action (e.g. giving tramadol to A.K.) while the other occurred due to her subsequent inaction (e.g. failing to seek medical help).

²⁰ *State v. Blanda*, 12th Dist. Butler No. CA2010-03-050, 2011-Ohio-411, ¶ 6.

²¹ *State v. Hall*, 12th Dist. Preble No. CA2015-11-022, 2017-Ohio-879, ¶ 65.

²² *Hall*, 2017-Ohio-879 at ¶ 65 (noting that the defendant's "singular act" of leaving her two small children at home alone, which led to their death in a fire, was the sole criminal act that supported her charge for both crimes); *Blanda*, 2011-Ohio-411 at ¶ 19 (applying the defunct *Johnson* analysis to a case in which the defendant killed his infant daughter by violently shaking her, and the state relied on this singular event to convict the defendant).

Second, it appears that the motivations underlying the offenses were different. It is unclear what, exactly, the defendant's motivation was in providing A.K. tramadol, although her counsel suggests it was done because she thought it was melatonin. Thus, it is not self-evident whether the defendant believed A.K. needed the medication as treatment for an inflexion or if she was providing it to help A.K. fall asleep. On the other hand, not seeking medical help for A.K. is the result of the defendant's desire to avoid consequences for herself as a result of giving what she knew to be tramadol to A.K. The defendant quickly became aware that the victim was ill due to the tramadol, but yet she did not take her to a medical facility or request medical assistance. Stated differently, the defendant gave A.K. tramadol to have a certain effect on A.K., and she avoided getting her medical help to avoid certain consequences to herself.

Finally, the offenses have dissimilar import. A.K.'s cause of death was listed as seizures and stress cardiomyopathy complicated by *delay in medical care* with probable tramadol toxicity. The crime of corrupting another with drugs harmed A.K. in making her ill. However, the crime of involuntary manslaughter, committed by not seeking medical help, led to A.K.'s death. Hence, there are separate, identifiable harms caused by each of the defendant's crimes.

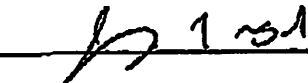
CONCLUSION

The court finds that the defendant's convictions do not merge as allied offenses of similar import, those being Count 1, corrupting another with drugs, in violation of R.C.

2925.02(A)(3), a felony of the second degree, and Count 2, involuntary manslaughter, in violation of R.C. 2903.04(B), a felony of the third degree

IT IS SO ORDERED.

DATED: 1-3-19



Judge Jerry R. McBride