[Cite as *State v. Knott*, 2025-Ohio-5745.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

STATE OF OHIO,	:	
	:	Case No. 23CA4056
Plaintiff-Appellee,	:	
	:	
v.	:	
	:	
AMYE KNOTT,	:	
	:	DECISION AND JUDGMENT
	:	ENTRY
Defendant-Appellant.	:	
	:	

APPEARANCES:

Christopher Bazeley, Cincinnati, Ohio, for appellant.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay S. Willis, Assistant Scioto County Prosecutor, Portsmouth, Ohio, for appellee.

Smith, P.J.

{¶1} Appellant, Amye Knott ("Knott"), appeals the judgment of the Scioto County Court of Common Pleas after a jury found her guilty of three counts of a four-count indictment. The charges arose from the death of ten and one-half-month-old K.F., who died from an overdose of fentanyl and fluro-fentanyl on September 17, 2021. Knott was convicted of involuntary manslaughter, endangering children, and possession of a fentanyl-related compound. On appeal, Knott raises six assignments of error contending that 1) her convictions for

involuntary manslaughter and possession of drugs are not supported by legally sufficient evidence and are against the manifest weight of the evidence; 2) her conviction for involuntary manslaughter is based upon the juror's improper stacking of inferences; 3) the trial court abused its discretion when it admitted prejudicial evidence of Knott's past drug use; 4) the trial court abused its discretion by admitting unnecessary gruesome autopsy photographs; 5) the trial court failed to award Knott jail-time credit at sentencing; and 6) the trial court failed to advise Knott of her rights under the Reagan Tokes Act. Because we find no merit to assignments of error one through four raised by Knott, they are overruled. However, we find that the trial court failed to address Knott's pretrial jail-time credit and also failed to provide the proper Reagan Tokes notifications at the sentencing hearing such that this matter must be remanded for the purposes of sentencing only. Thus, the judgment of the trial court is affirmed in part and reversed in part.

FACTUAL AND PROCEDURAL BACKGROUND

{¶2} On January 10, 2023, Knott was indicted by a Scioto County Grand Jury, along with co-defendant Justin Sheets, on a superseding indictment alleging Count One, involuntary manslaughter, a first-degree felony in violation of R.C. 2903.04(A)(C); Count Two, endangering children, a third-degree felony in violation of R.C. 2919.22(A)(E)(2)(c); Count Three, possession of a fentanyl-

related compound, a fifth-degree felony in violation of R.C. 2925.11(A)(C)(11)(a) and Count Four, aggravated possession of drugs (methamphetamine), a fifth-degree felony in violation of R.C. 2925.11(A)(C)(1)(a). The original indictment involved defendants Robert Filius and Michaela Hupp. The indictments arose from circumstances occurring on September 17, 2021, resulting in the death of K.F.

{¶3} K.F., along with her two small siblings, resided at Knott's and Sheets' residence in Portsmouth with Filius and Hupp. Sheets was the child's maternal grandfather, and Knott's fiancé, therefore Knott called herself the child's grandmother. Filius and Hupp were K.F.'s parents. On September 17, 2021, Knott called 911 exclaiming that K.F. was not breathing and unresponsive. Although first responders arrived at the residence within minutes, they were not able to revive K.F., and she was pronounced deceased shortly thereafter. At the time first responders arrived at the scene, Knott and Sheets were at the residence, Hupp was at a nearby park with the other children, and Filius had run to the park to try to get Hupp.

{¶4} Police interviewed the residents of the approximately 1,000-square-foot home. They determined that K.F., who was crawling around on the floor, climbing on things, and could pull herself up to a standing position, was in the bedroom with Sheets and Knott while Hupp and Filius were in the living room.

Roughly ten minutes after the child went into her grandparents' bedroom, Sheets carried K.F. to the living room where he set her on the floor. The child crawled to the kitchen, where she appeared to be in a "daze" and shortly thereafter began falling asleep, as if "nodding out." The parents thought the child was simply tired because she had been up teething most of the night before. Hupp therefore put the child down for a nap.

{¶5} When Filius went in to check on K.F. at 6:30 p.m., the child's lips were blue, her eyes were closed, and she was stiff. Filius began screaming and woke up Sheets and Knott who were sleeping in their bedroom at the time. Police discovered Filius ran to the park to get Hupp and Knott called 911. Knott's phone call to 911 had been left active so several minutes after Filius left the residence, one can hear Knott and Sheets on the call. When listening to the entire call, police heard Sheets saying, "I'm fucking fucked" and statements such as "I fucking killed her, Amye," and "I fucked up."

{¶6} An autopsy revealed that the child had nothing wrong congenitally, no developmental problems, and no trauma. The only abnormal findings were that the lungs were heavy and contained frothy, bloody fluid. The toxicology screening revealed that the child had fentanyl and fluro-fentanyl in her system, and intoxication due to those substances was determined the cause of death.

{¶7} Interviews with the four adult occupants of the residence, consent searches of the residence, and text messages seized from Knott's and Filius' phones revealed rampant drug use and abuse in the home including fentanyl, methamphetamine, methadone, heroin, and marijuana. Sheets and Knott were aware of Filius' and Hupp's use of illicit substances. Knott and Sheets avoided drug screens, nodded out frequently, and showed other signs of opiate abuse. In addition to finding evidence that drug paraphernalia was left within the reach of small children, the investigation also revealed that drugs had been accessible by the small child on at least one or two other occasions.

{¶8} A children's services investigation had been commenced against the parents, Filius and Hupp, which revealed they were methamphetamine and marijuana users, but did not use fentanyl. The child had no methamphetamine in her system. Police also discovered through interviews and texts that Sheets and Knott (rather than Filius and Hupp) primarily used heroin and fentanyl. Knott also had Narcan available, which is used for opiate overdose, but she did not use it that evening.

{¶9} On the evening of the incident, law enforcement did not know the child's cause of death. They performed a walk-through of the residence to see whether there were drugs in plain view and later gained consent from all adults in the home to search the common areas and each of the two bedrooms. Law

enforcement did not find any drugs either time, but testimony at trial was that they did not conduct a thorough search by, for example, lifting up the carpet. After law enforcement left that day, Hupp went into the house and Sheets lifted up his mattress in the grandparents' bedroom. At that time, Hupp saw that Sheets had hidden a cell phone, a syringe, and "dope," or white powder in a bag. The State also presented testimony from law enforcement familiar with drug abuse that fentanyl is generally a white-powdered substance.

{¶10} Knott and Sheets were tried together in a four-day jury trial from December 11-14, 2023. The State called 13 witnesses including Filius and Hupp. The trial court also admitted over 80 exhibits.

{¶11} The jury convicted both defendants of the first three counts of the indictment and found them not guilty of Count Four, aggravated possession of drugs (methamphetamine). The trial court imposed an indefinite prison term of 10-15 years. This timely appeal followed.

ASSIGNMENTS OF ERROR

I. KNOTT'S CONVICTIONS FOR INVOLUNTARY MANSLAUGHTER AND POSSESSION OF DRUGS ARE NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE AND ARE AGAINST THE WEIGHT OF THE EVIDENCE.

II. KNOTT'S CONVICTION FOR INVOLUNTARY MANSLAUGHTER IS BASED UPON THE JURY'S IMPROPER STACKING OF INFERENCES.

III. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ADMITTED PREJUDICIAL EVIDENCE OF KNOTT'S PAST DRUG USE.

IV. THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING UNNECESSARY GRUESOME AUTOPSY PHOTOGRAPHS.

V. THE TRIAL COURT FAILED TO AWARD KNOTT JAIL TIME CREDIT AT SENTENCING.

VI. THE TRIAL COURT FAILED TO ADVISE KNOTT OF HER RIGHTS UNDER THE REAGAN TOKES ACT.

ASSIGNMENT OF ERROR I

{¶12} In her first assignment of error, Knott avers that her convictions for involuntary manslaughter and possession of drugs are not supported by legally sufficient evidence and are against the manifest weight of the evidence. Specifically, Knott claims that while the evidence shows she is an addict and that the child died of a fentanyl/fluro-fentanyl overdose, it does not show that Knott possessed the substance nor that she proximately caused the child's death. Rather, Knott contends, the evidence conclusively shows that Sheets caused the child's death. The State refutes this contention, asserting it proved Knott was a principal offender, but also was complicit in the child's death.

Standard of Review

{¶13} A claim of insufficient evidence invokes a due process concern and raises a question of whether the evidence is legally sufficient to support the verdict

as a matter of law. *See State v. Thompkins*, 78 Ohio St.3d 380, 386, (1997). "Whether the evidence is legally sufficient to sustain a verdict is a question of law." *Id.* "Therefore, our review is de novo." *State v. Groce*, 2020-Ohio-6671, ¶ 7, citing *In re J.V.*, 2012-Ohio-4961, ¶ 3.

{¶14} When reviewing the sufficiency of the evidence, our inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support a finding of guilt beyond a reasonable doubt. *Thompkins* at syllabus. The standard of review is whether, after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense proven beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Jenks*, 61 Ohio St.3d 259, 273 (1991). Furthermore, a reviewing court is not to assess "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." *Thompkins* at 390 (Cook, J., concurring).

{¶15} Thus, when reviewing a sufficiency-of-the-evidence claim, an appellate court must construe the evidence in a light most favorable to the prosecution. *See State v. Hill*, 75 Ohio St.3d 195, 205 (1996); *State v. Grant*, 67 Ohio St.3d 465, 477 (1993). A reviewing court will not overturn a conviction on a sufficiency-of-the-evidence claim unless reasonable minds could not reach the

conclusion that the trier of fact did. *State v. Tibbetts*, 92 Ohio St.3d 146, 162 (2001); *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001).

{¶16} However, when an appellate court considers a claim that a conviction is against the manifest weight of the evidence, the court must dutifully examine the entire record, weigh the evidence and all reasonable inferences, and consider the witness credibility. *See State v. Dean*, 2015-Ohio-4347, ¶ 151; citing *State v. Thompkins, supra*, at 387. A reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve. *See State v. Issa*, 93 Ohio St.3d 49, 67 (2001); *State v. Murphy*, 2008-Ohio-1744, ¶ 31 (4th Dist.). " ' "Because the trier of fact sees and hears the witnesses and is particularly competent to decide 'whether, and to what extent, to credit the testimony of particular witnesses,' we must afford substantial deference to its determinations of credibility." ' " *State v. Kuntz*, 2024-Ohio-1680, ¶ 20 (4th Dist.), quoting *Barberton v. Jenney*, 2010-Ohio-2420, ¶ 20, quoting *State v. Konya*, 2006-Ohio-6312, ¶ 6 (2d Dist.), in turn quoting *State v. Lawson*, 1997 WL 476684 (Aug. 22, 1997, 2d Dist.).

{¶17} As the Court explained in *Eastley v. Volkman*, 2012-Ohio-2179:

> " '[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment must be made in favor of the judgment and the finding of facts.
>
> * * *

> If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.' "

Eastley, supra at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984), in turn quoting 5 Ohio Jurisprudence 3d, Appellate Review, § 60, 191-192 (1978).

{¶18} Thus, an appellate court will leave the issues of weight and credibility of the evidence to the fact-finder as long as a rational basis exists in the record for its decision. *See State v. Picklesimer*, 2012-Ohio-1282, ¶ 24 (4th Dist.); *see also State v. Howard*, 2007-Ohio-6331, ¶ 6 (4th Dist.) ("We will not intercede as long as the trier of fact has some factual and rational basis for its determination of credibility and weight.").

{¶19} Once the reviewing court finishes its examination, the court may reverse the judgment of conviction only if it appears that the fact-finder, when resolving the conflicts in evidence, "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). *See also Thompkins, supra*, at 387. If the prosecution presented substantial credible evidence upon which the trier of fact reasonably could conclude, beyond a reasonable doubt, that the essential elements of the offense had been established, the judgment of conviction is not against the manifest weight of the evidence. *See*

State v. Eley, 56 Ohio St.2d 169 (1978), syllabus, superseded by state constitutional amendment on other grounds in *State v. Smith*, 80 Ohio St.3d 89 (1997); *see also Eastley* at ¶ 12 and *Thompkins* at 387 (explaining that a judgment is not against the manifest weight of the evidence when "the greater amount of credible evidence" supports it). Thus, " '[w]hen conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the jury believed the prosecution testimony.' " *State v. Cooper*, 2007-Ohio-1186, ¶ 17 (4th Dist.), quoting *State v. Mason*, 2003-Ohio-5785, ¶ 17 (9th Dist.). Instead, a reviewing court should find a conviction against the manifest weight of the evidence only in the " ' "exceptional case in which the evidence weighs heavily against the conviction." ' " *State v. Lindsey*, 87 Ohio St.3d 479, 483 (2000), quoting *Thompkins* at 387, in turn quoting *Martin* at 175.

> {¶20} The State may prove its case by circumstantial evidence:
>
> It is well-established * * * that "a defendant may be convicted solely on the basis of circumstantial evidence." *State v. Nicely*, 39 Ohio St.3d 147, 151, 529 N.E.2d 1236 (1988). "Circumstantial evidence and direct evidence inherently possess the same probating value." *Jenks*, paragraph one of the syllabus. "Circumstantial evidence is defined as '[t]estimony not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions are drawn, showing indirectly the facts sought to be proved. * * * ' " *Nicely*, 39 Ohio St.3d at 150, quoting Black's Law Dictionary (5 Ed. 1979) 221.

State v. Wickersham, 2015-Ohio-2756, ¶ 39 (4th Dist.); *see also*, *State v. Barnes,* 2020-Ohio-3943, ¶ 23-24 (4th Dist.).

{¶21} Further, "[w]hen an appellate court concludes that the weight of the evidence supports a defendant's conviction, this conclusion necessarily includes a finding that sufficient evidence supports the conviction." *Wickersham*, at ¶ 15, citing *State v. Pollitt,* 2010-Ohio-2556, ¶ 15 (4th Dist.). A determination that a conviction is not against the manifest weight of the evidence is therefore dispositive of the issue of whether the evidence is sufficient to sustain a conviction. *Id.*, citing *State v. Lombardi,* 2005-Ohio-4942, ¶ 9 (9th Dist.). Therefore, in the instant case, we first consider Knott's argument that her convictions are against the manifest weight of the evidence.

Legal Analysis

{¶22} Here, Knott challenges her convictions for involuntary manslaughter and drug possession. Knott asserts it was Sheets, and not her, that committed the offenses. In addition to arguing Knott was a principal offender, the State argues in the alternative that she was complicit in Sheets' possession of fentanyl and endangering children in the home which caused K.F.'s death.

{¶23} R.C. 2903.04(A), involuntary manslaughter, states, "[n]o person shall cause the death of another . . . as a proximate result of the offender's committing or attempting to commit a felony." " 'The culpable mental state of involuntary manslaughter is supplied by the underlying offense.' " *State v. Pinkerman,* 2024-Ohio-1150, ¶ 35 (4th Dist.), quoting *State v. Johnson,* 2011-Ohio-1919, ¶ 54 (8th

Dist.) and citing *State v. Brown*, 2018-Ohio-899, ¶ 11 (3d Dist.). Even though Knott does not challenge her conviction for endangering children, the indictment in the instant case alleges that Knott committed involuntary manslaughter by causing the victim's death as a proximate result of (1) endangering children and/or (2) possession of drugs. The jury verdict form in the case at bar indicates Knott committed involuntary manslaughter under both predicate-felony offenses.. As a result, we will first consider whether Knott committed the offenses of child endangering and possession of drugs, and then, if so, whether K.F.'s death was a proximate result of her committing those offenses.

{¶24} At trial the State first presented the testimony of Lieutenant Joshua Justice, a 20-year veteran of the Portsmouth Police Department who had extensive experience in drug investigations. Justice testified to the properties of fentanyl (that it is a white or gray powder). Justice explained to the jury the effects of the drug including lethargy and nodding off, and also explained that persons who are exposed to fentanyl are affected very quickly by the drug. In addition, Justice described the use of Narcan, and how it works as a life-saving measure in the case of opiate overdose.

{¶25} Justice testified that on September 17, 2021, he responded to a 911 call of a young infant not breathing and unresponsive, who was probably deceased. Two officers were dispatched to the scene of a single-story dwelling at 1677

Robinson Avenue in Portsmouth, and Justice went to supervise. When Justice arrived at the scene, Sheets and Knott were there and the child was in the squad already. Knott told Justice that Filius had run to nearby Mound Park to get Hupp.

{¶26} Justice transported Sheets and Knott to the department and other officers provided security at the residence until the detective arrived. Officer (now detective) Croasmun transported Filius and Hupp to the department.

{¶27} Next to testify was Officer Tyler Spriggs. Spriggs testified that he and Officer Croasmun were dispatched to a 911 call regarding a child "not breathing" and they responded within a "couple of minutes at the most." Spriggs also explained that in his experience he is regularly called out regarding overdoses and that he responds with the fire department. He also explained that persons who ingest opiates usually "nod off, can't focus," and "get real sleepy."

{¶28} When Spriggs arrived on scene he saw a medic from the fire department carrying a limp child out of the house. Spriggs cleared the house, did a protective sweep, and started talking to the witnesses on the scene to get a general idea of what happened. Sheets and Knott were sitting on the porch crying.

{¶29} Spriggs testified that Sheets and Knott said they were in the bedroom sleeping when they overheard Filius scream that the infant was not breathing. Both Sheets and Knott told Spriggs that Filius ran to Mound Park to get Hupp, who

was there with her other two children. Sheets claimed he was trying to do CPR as they called 911.

{¶30} Spriggs saw Filius and Hupp running down the street. Filius told Spriggs the infant had been laid down for a nap about an hour and a half before. Filius said when he returned to get the infant she wasn't responding to him so he started rubbing her back and noticed she wasn't breathing. Filius said that's when "they" called 911 and Filius went to get his girlfriend, Hupp. Spriggs noted that Hupp was "hysterical" and she did not talk a lot at the time.

{¶31} The State next called Stacey Croasmun to the witness stand. Croasmun arrived at the same time as Spriggs and let the medics go in first. Sheets and Knott were at the house when she arrived. Croasmun said the child was "absolutely limp" when the medics took her into the squad. Croasmun asked Sheets and Knott what room the child was in so she could give information to the medics. One of the grandparents told Croasmun that the child was possibly given melatonin so Croasmun relayed that to the paramedics. Sheets and Knott also told Croasmun that Hupp had gone to Mound Park with her older children and after finding the child unresponsive, Filius had gone to the park to get Hupp. When Filius returned with Hupp, he said he had to go get Hupp because he didn't have any way to get in contact with her.

{¶32} Croasmun took Sheets and Knott to the department. While there, Croasmun recalled that Sheets' demeanor was "odd." At some point, Sheets started to "nod in and out" when the three were in the room. In other words, Croasmun thought Sheets appeared to be under the influence of an opiate or depressant. Knott was quietly sobbing. On cross-examination, Croasmun acknowledged that it was possible that Sheets was just "tired."

{¶33} Scott Osborne, a paramedic, testified as a lay witness and as a designated expert in critical paramedic care. He also explained the effects of opiate use (e.g., nodding off and pinpoint pupils).

{¶34} Osborne was dispatched at 6:33 and arrived at 6:35. When he arrived at Robinson Avenue, he noticed there were a couple of people who didn't appear to be reacting much, but others that were obviously distraught.

{¶35} When Osborne had contact with the infant he found no heartbeat or respirations. He found no signs of trauma on the child. He saw no evidence of SIDS or a co-sleeping death. There were signs of lividity in the right side of the face and left foot. He explained that, in his experience, he had never seen lividity occur within 30 minutes. He determined the heart had been inactive for some time. The child was therefore pronounced deceased by medical personnel.

{¶36} Detective Charles Crapyou arrived about ten minutes after the 911 call. He learned the child was deceased and he took photographs. One of the

items he saw sitting in plain sight in the living room of the residence was a drink box container that had been altered to smoke drugs. Infant's things were nearby the table the drink box was sitting on. After Crapyou eventually obtained Knott's and Sheets' consent to search, marijuana paraphernalia was found in their bedroom.

{¶37} Crapyou testified that Knott's phone, which was found lying in the living room, was the phone used to call 911. When Crapyou picked the phone up the 911 call was still open and running so he got the 911 tape. Crapyou found out from the phone call that Filius had left. Crapyou heard the 911 call with a male's voice that says, "I'm fucking fucked," and "I effing killed her," or something to the essence of that.

{¶38} In addition to the first responders and investigators, the State called the child's father, Robert Filius, to testify. Filius was indicted in the same way as Sheets and Knott and pled guilty to endangering children, possession of a fentanyl-related compound and aggravated possession of drugs. In exchange for testifying truthfully he received a four-year and nine-month sentence, with judicial release after half.

{¶39} Filius testified that he was a methamphetamine and marijuana user. He said he saw incidents of Sheets and Knott under the influence of fentanyl multiple times while he was living at the Robinson Avenue residence (between

February-September, 2021). Filius saw bottles of methadone lying around the house. He also stated that Sheets and Knott paid the rent and utilities at the home.

{¶40} At some point, Filius found a plate with brown powder in Sheets' and Knott's bedroom and expressed concerns to Hupp that they were using heroin in the home. From text messages, it appears this occurred on August 20, 2021.

{¶41} The State introduced various text messages (primarily between July 2021 and September 2021) between Filius and Hupp. They demonstrated ongoing drug use by Sheets and Knott, primarily of fentanyl. Filius testified that Sheets and Knott primarily used fentanyl. Further, Filius told Hupp that Sheets and Knott at various times had passed out, sometimes in the bathroom, living room or on the front porch.

{¶42} In addition, on July 4, 2021, Filius found a "Tramadol" on the floor. On August 24, 2021, Filius found the child with a Neurontin in her mouth. Filius saw the child chewing on something so he went over and got it out of her mouth and saw it was a pill. Knott originally said, "it's not mine," but later that night asked if she could get the pill back. Filius also testified that at the time of the incident the child could crawl, get to a table and pull herself up, and was getting into whatever she could get into.

{¶43} On September 16, 2021, Filius was up most of the night because the child was teething. On the morning of the incident, September 17, the child finally

went to sleep, and Filius and Hupp did a line of meth. Afterwards, both agreed they didn't want to do meth anymore so they flushed the bag down the toilet. The child got up around 11:30 or 12:00 and Filius fed her. It was a normal day so they did the routine. Hupp had decided to take the children to the park at some point because it was her day off. Sheets and Knott were gone most of the morning.

{¶44} Sheets and Knott got back and went to their bedroom. Hupp and Filius were sitting in the living room, the boys were doing crafts and eating at the table, and the child was crawling around the 1,000-square-foot house. At one point the child crawled into Sheets' and Knott's bedroom and Sheets carried her out about ten minutes later. The child crawled into the kitchen in a "daze" and Filius brought the child back to the living room where she began "nodding out." Her head "started to just nod down." Hupp put the child down for a nap about 4:00 p.m. Then Hupp went to the park with the other children. Filius stayed with the child, waiting for her to wake up. He checked on her about 6:30 p.m.

{¶45} The child didn't wake up. Filius walked over and started rubbing her back. He picked up the child. Her lips were blue, her eyes weren't waking up, she was stiff. He left to get Hupp. The voices on the 911 call are Sheets' and Knott's.

{¶46} Filius acknowledged that when he first talked to law enforcement he didn't tell them the whole truth. He admitted he should have told the officers that he was high and had been using. Everybody in the house was using. However, he

took a drug screen that evening, and when he did, it was positive for methamphetamine and "weed," not fentanyl or heroin.

{¶47} After Filius testified, Dr. Anna Catiglione, deputy coroner from Dayton and an expert in forensic pathology, testified that she found no trauma on the child. She also found nothing congenitally or developmentally wrong with the child. The only abnormal finding that the pathologist found was that the lungs were a little "heavy and congested."

{¶48} After receiving the toxicology report, the pathologist determined that the cause of death was drug intoxication due to fentanyl and fluro-fentanyl in an amount that was the highest she had ever seen in any person, and most of the people she has examined who overdosed were adults. She also explained that in someone this size that has ingested this amount of the drug, the death would occur within minutes; however, the coroner was not able to determine how the drugs were ingested.

{¶49} Heather Antonides, forensic toxicologist, was declared an expert in forensic toxicology. She testified that the child's toxicology was positive for fentanyl, fluro-fentanyl, metabolites associated with those two drugs, and some acetaminophen.

{¶50} Detective Kevin Metzler, a member of various drug enforcement agencies as well as the Portsmouth Police Department, testified regarding his

obtaining of Knott's cell phone records. He also buttressed the testimony of others about the signs of opiate/fentanyl use, that methamphetamine was an "upper" and fentanyl/heroin are "downers," and that most heroin users know that the drug they are using is actually fentanyl, *not* heroin. He also explained the various terminology street users use when referring to drugs and drug transactions.

{¶51} Metzler testified about several messages from Knott to Sheets from June 2021 through September 17, 2021. They include information that all members of the home knew of drug use in the home, descriptions of Sheets and Knott wanting to get "high," trying to avoid drug screens because they'd test positive, arguments over hiding of drugs or who did more or less, messages about contacting "Jeremy," who appears to be their supplier, and messages about saving drugs to use later. They include texts that show Knott had ample knowledge of Sheets' drug use, and that Sheets would hide drugs. They also included proof of Knott's own use. There was clear proof that the pair sometimes held some of the drugs back for another day. In essence, these text messages Knott sent to Sheets show that both were using drugs and the other knew it. There are times that Knott appears to beg Sheets to procure more drugs. In addition, a specific text shows that the individual Knott called "Jeremy" throughout the texts is someone from which Sheets and Knott procured the product, and there is a call from Knott to Jeremy on September 16, 2021—the day before the incident.

{¶52} The State called Michaela Hupp as a witness. Like Filius, she was charged the same as the other co-defendants. Also, like Filius, she pled to endangering children, possession of a fentanyl-related compound, and aggravated possession of drugs.

{¶53} Hupp testified that Sheets and Knott were fentanyl users, and she knew that because she had seen a plate with powder in their bedroom, and needle caps lying around.

{¶54} She also clarified that the child was ten and one-half months at the time and the child was crawling around, climbing, and almost ready to walk. She said that the other children living at Robinson Avenue were four and five years old at the time.

{¶55} Hupp testified to the day's events essentially the same as Filius. Hupp also observed that after Sheets brought the child back from Knott's room and sat the child on the floor, the child started "kind of falling asleep." Hupp didn't think anything of it because the child had been teething the night before and was up all night. Hupp also admitted she had initially lied to law enforcement about her using methamphetamines and marijuana because she didn't want CPS to take her children and didn't want to rat out her father for using opiates (Sheets).

{¶56} Hupp also testified that after law enforcement had gone back into the house to search, she had gone with Sheets and he lifted up the mattress in his room

where he had hidden a phone, a syringe and a bag of "dope" (white powder in a bag). In addition, Hupp said that she had later listened to the 911 call and the voices therein are Sheets and Knott.

{¶57} Detective Sergeant Jodie Conkel testified. Conkel testified similarly to other law enforcement except she added that when she got to the scene, "the smell of marijuana would knock you over; it was very strong." She further testified that at first Sheets and Knott would not let law enforcement in their bedroom. At the time they transported the occupants of the home to the department, law enforcement did not have the information from the 911 call, nor the toxicology results which came in a couple months later.

{¶58} At the time of the interview, Conkel suspected that Sheets and Knott were under the influence because they both had pinpoint pupils, were very slow with their actions, had slurred speech, and their appearance was typical of someone who abused opiates. Both Knott and Sheets were dishonest in their initial interviews with Conkel. The investigation also revealed rent receipts and bills in Knott's name.

{¶59} Conkel described the searches of the residence and explained that they did not "tear the house apart and lift the carpet up" like they would typically do if part of the drug task force. She also mentioned that Knott did not ask to take a drug test, but Knott asked if the child had been tested.

{¶60} Finally, Investigator Steven Timberlake testified. He testified to the circumstances surrounding Sheets' and Knott's second interviews that occurred after law enforcement had discovered the death was caused by fentanyl/fluro-fentanyl overdose. During the interview, Knott initially denied opiate use. However, when Timberlake confronted her with text messages, Knott admitted she and Sheets were using heroin and opiates in the weeks or months leading up to this incident. In addition, when Timberlake asked if Knott used fentanyl specifically, she said, "no one calls it that." Knott and Sheets both claimed that Sheets was out of town before the incident, but text messages obtained by law enforcement contradict that.

Endangering Children

{¶61} The offense of endangering children relevant to the instant case, R.C. 2919.22(A), is defined in pertinent part as:

> 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 . . . shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support.

R.C. 2919.22(E)(2)(c) further provides that a violation of division (A) that results in serious physical harm to the child involved in the offense is a third-degree felony. "Substantial risk" is defined as "a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist." R.C. 2901.01(A)(8). Additionally, the State must also

prove that appellant acted recklessly. *State v. Sykes,* 2022-Ohio-865, ¶ 21 (6th Dist.), citing *State v. McGee*, 79 Ohio St.3d 193, syllabus ("The existence of the culpable mental state of recklessness is an essential element of the crime of endangering children under R.C. 2919.22(A).").

{¶62} The initial question is first, did Knott commit the offense of endangering children, a predicate offense to involuntary manslaughter. On appeal, Knott challenges her conviction for involuntary manslaughter, a predicate offense of which was endangering children. Thus, even though she does not challenge her conviction for endangering children, if she is guilty of endangering children and it proximately caused the child's death, then she is guilty of involuntary manslaughter. The first question is, did the State prove she recklessly created a substantial risk to the health or safety of the child by violating a duty of care, protection, or support?

{¶63} The evidence shows that while Sheets and Knott may have been asleep at the time Filius discovered the child not breathing, they had been awake earlier in the day. Hupp, for example, testified that both had been out that morning. Hupp and Filius also testified that earlier in the day, the child had crawled into her grandparents' room when Sheets and Knott were in the room, and where Sheets and Knott had used and kept drugs.

{¶64} Approximately ten minutes after the child crawled into the room, Sheets carried the child out and placed her on the floor. It was after this time in her grandparents' room that the child looked "dazed" and started "falling asleep" or "nodding off." Only then did Hupp put her down for a nap because the parents thought she was sleepy from being up the night before.

{¶65} When Filius tried to rouse the child at approximately 6:30, or a few hours after she had been put down for the nap, he then yelled the baby was not breathing. At trial, the paramedic and coroner testified that the child had been dead for some time before the first responders arrived on the scene. It is uncontroverted that Filius went to rouse the baby from a nap shortly before the call was made. Further, the coroner and others testified that death from fentanyl overdose would have happened very soon after the child ingested or was exposed to the substance. As a result, Sheets was the adult in the home who was with the child immediately before she started to show the effects of what was later to be determined as fentanyl/fluro-fentanyl. Knott was also in the bedroom with him and the child.

{¶66} There is a great deal of circumstantial evidence that numerous types of drugs were being used in the residence, and drug paraphernalia had been left within the reach of small children within the home. All of the members in the household, including Knott, were aware that the child could crawl and get into

things. There is also evidence that Knott knew about the drugs in the home, and that Sheets and Knott were the users of fentanyl. Knott admitted to Investigator Timberlake that she and Sheets were using opiates, or heroin (claiming no one calls it fentanyl) in the weeks before the incident.

{¶67} In *State v. Trivett,* the Ninth District upheld a conviction for third-degree felony endangering children when a three-year-old overdosed on his mother's prescription medication and suffered significant harm. 2018-Ohio-3926 (9th Dist.). On appeal, the defendant/mother raised the issue that her conviction was against the manifest weight of evidence because there was no evidence of how the child ingested the medication. *Trivett* at ¶ 15, 25. During the trial, the State presented evidence that the prescription medication could have either been deliberately given to the child by the defendant/mother or he could have accidentally ingested it. *Id.* at ¶ 19. Either way, the Ninth District held that even though the evidence at trial was circumstantial and a "clear cut explanation of [the child's] overdose was not established," the defendant/mother's conviction was still not against the manifest weight that defendant/mother had committed the offense of endangering children. *Id.* at 34.

{¶68} In the instant case, like *Trivett*, it is clear that the child suffered an overdose from one particular drug. In *Trivett*, the defendant/mother was conclusively the one who had been prescribed the drug found in the child's system.

Here, the grandparents were the only ones in the residence who used fentanyl and showed symptoms of opiate use on the evening of the incident. In contrast, the parents did not use opiates, but other drugs (methamphetamine and marijuana) which had not been found in the child's toxicology. The only significant difference between *Trivett* and this case is that that overdose did not result in death.

{¶69} Even if Sheets and not Knott had been using the fentanyl, she clearly knew that it was kept in the bedroom and recklessly failed to protect the child. Knott also knew how dangerous the substance is. Knott knew the child had put a Neurontin pill in her mouth on a prior occasion. Knott was the one who had Narcan in her car, according to Hupp. Knott clearly recklessly created a substantial risk to the health and safety of K.F. when she violated a duty of care, protection, and support. The State therefore proved the essential elements of endangering children in this case.

Possession of Drugs (Fentanyl)

{¶70} The offense of possession of drugs relevant to the instant case, R.C. 2925.11, is defined in pertinent part as: "[n]o person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog." This court has previously observed with regard to the "knowingly" element of the offense as follows: " ' "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be

of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." ' " *State v. Barnes,* 2020-Ohio-3943, ¶ 21 (4th Dist.), quoting *State v. Bailey*, 2015-Ohio-5483, ¶ 85 (4th Dist.), quoting *Wickersham*, 2015-Ohio-2756, ¶ 30, quoting R.C. 2901.22(B). "Whether a defendant knowingly possessed a controlled substance 'is to be determined from all the attendant facts and circumstances available.' " *State v. Hodges,* 2025-Ohio-2050, ¶ 34, quoting *State v. Teamer*, 82 Ohio St.3d 490, 492 (1998); *accord State v. Corson*, 2015-Ohio-5332, ¶ 13 (4th Dist.).

{¶71} " ' "[P]ossession" is defined as "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." ' " *Barnes* at ¶ 22, quoting *State v. Gavin*, 2015-Ohio-2996, ¶ 35, quoting R.C. 2925.01(K). " ' "Possession may be actual or constructive." ' " *Id*., quoting Gavin at ¶ 35, quoting *State v. Moon*, 2009-Ohio-4830, ¶ 19 (4th Dist.), citing *State v. Butler*, 42 Ohio St.3d 174, 175 (1989) ("[t]o constitute possession, it is sufficient that the defendant has constructive possession").

{¶72} " ' "Actual possession exists when the circumstances indicate that an individual has or had an item within his immediate physical possession." ' " *Id*., quoting *Gavin* at ¶ 36, quoting *State v. Kingsland*, 2008-Ohio-4148, ¶ 13 (4th

Dist.). However, " ' "[c]onstructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession." ' " *Id*., quoting *Gavin* at ¶ 36, quoting *State v. Hankerson*, 70 Ohio St.2d 87, syllabus (1982). "For constructive possession to exist, the State must show that the defendant was conscious of the object's presence." *Id*., quoting *Gavin,* at ¶ 36, *Hankerson* at 91; *Kingsland* at ¶ 13. " 'A defendant's mere presence in an area where drugs are located does not conclusively establish constructive possession.' " *Id*., quoting *State v. Markin*, 2014-Ohio-3630, ¶ 29 (4th Dist.), citing *State v. Williams*, 2004-Ohio-1130, ¶ 25 (4th Dist.). However, a defendant's proximity to drugs may constitute some evidence of constructive possession. *Id*., citing *Markin* at ¶ 29, citing *Williams* at ¶ 25. Thus, a defendant's " '[m]ere presence in the vicinity of drugs, coupled with another factor probative of dominion or control over the contraband, may establish constructive possession.' " *Id*., quoting *Markin* at ¶ 29. "Moreover, two or more persons may have joint constructive possession of the same object." *State v. Tate,* 2018-Ohio-2765, ¶ 4 (7th Dist.), citing *State v. Smith*, 2001 WL 563077, at *3 (8th Dist. May 24, 2001).

{¶73} First, Hupp testified that Sheets lifted a mattress and she saw a white-powdered substance, along with a syringe and cell phone. Evidence at the trial was that fentanyl was most often a white, powdered substance. Clearly, the substance

was in the grandparents' room, in the home owned by Knott. Certainly, it was Knott's phone that was used to call "Jeremy" the supplier on the previous day, and Conkel, who sat across from Knott during an interview, noticed that Knott appeared to be under the influence of an opiate on the evening of the offense. Text messages showed that the couple held back certain amounts of the drug for later use. The child, who Sheets carried immediately before she had symptoms from the grandparents' bedroom, tested positive for fentanyl.

{¶74} As noted, proximity to drugs can constitute some circumstantial evidence of constructive possession and Knott and Sheets shared the mattress where drugs were located. In addition, Knott was physically in the bedroom earlier in the day where Hupp had seen the white powder and from where Sheets carried the child shortly before the child began nodding out. Filius' testimony and the text messages from Knott's phone show that Knott possessed drugs and also had knowledge that Sheets had them. Clearly, the circumstantial evidence showed that Knott, along with Sheets, constructively possessed the fentanyl in the household. Circumstantial evidence shows she certainly aided and abetted Sheets with the possession of fentanyl when a call was placed to their dealer from Knott's phone, allowing Sheets to keep the drug in a residence which she rented, and being under the influence of the drug the day of the incident.

{¶75} The uncontroverted evidence was that the child was fine and had not been anywhere outside the home that day. The child then was found in the home with what was later determined to be a lethal amount of fentanyl/fluro-fentanyl in her system. Fentanyl had to have been introduced into her system someway, somewhere inside that home. The evidence showed that Hupp and Filius used methamphetamine and marijuana--not fentanyl. Further, Croasmun testified she believed Sheets was under the influence of opiates that day, and Conkel, who had sat across from Sheets and Knott during separate interviews for several minutes, concluded that both Sheets and Knott were under the influence of an opiate that day. The only mention that anyone else in the home had ever used opiates was (1) Filius' testimony that he had used the drug several years before once or twice; and (2) Knott's claim that Filius and Hupp used opiates. But Knott admitted, after Timberlake confronted her with a slew of text messages, that Sheets and she were the ones who used opiates. Thus, the majority of the credible evidence is that the grandparents were the fentanyl users in the home at the time of the incident.

Involuntary Manslaughter

{¶76} Knott's convictions for child endangerment and possession of drugs are not against the manifest weight of the evidence. Thus, the evidence showed that Knott's involuntary manslaughter conviction had a properly supported predicate conviction by committing both offenses. *See Pinkerman,* 2024-Ohio-1150 at ¶ 38

and *State v Vogt,* 2018-Ohio-4457, ¶ 93. Even if there were not sufficient evidence on one predicate offense, she is guilty by committing the other felony if K.F.'s death occurred as a proximate result of one of the predicate offenses. The question then becomes, did Knott cause K.F.'s death as a proximate result of her committing endangering children or possession of drugs, or was she complicit in committing this offense?

{¶77} " ' "The term 'proximate result' in the involuntary manslaughter statute involves two concepts: causation and foreseeability." ' " *Pinkerman* at ¶ 38, quoting *State v. Potee,* 2017-Ohio-2926, ¶ 33 (12th Dist.), quoting *State v. Hall,* 2017-Ohio-879, ¶ 71 (12th Dist.).

{¶78} There are two components of causation: (1) the actual cause and (2) the legal or proximate cause that involves foreseeability. *State v. Platt,* 2024-Ohio-1330, ¶ 37-38 (4th Dist.), citing *State v. Carpenter,* 2019-Ohio-58, ¶ 51-53 (3d Dist.).

{¶79} "In general, to 'cause' another person's death means to commit 'an act or failure to act which in a natural and continuous sequence directly produces the death of a person, and without which, it would not have occurred.' " *Id.* at ¶ 39, quoting *State v. Price,* 2020-Ohio-4926, ¶ 33. "Moreover, "[c]onduct is the cause of a result if it is an event, but for which the result in question would not have occurred.' " *Id.*, quoting *Price* at ¶ 33.

> [H]owever, there are circumstances under which the "but for" test is inapplicable and an act or omission can be considered a cause in fact if it was a "substantial" or "contributing" factor in producing the result. * * * "In other words, a defendant can still be held criminally responsible where the defendant's conduct combined with other occurrences to jointly result in a legal injury." [Citations and parentheticals omitted.]

Pinkerman at ¶ 40 (4th Dist.), quoting *Carpenter* at ¶ 52.

{¶80} " 'The second component of causation—the legal or "proximate" cause—refers to the foreseeability of the result.' " *Id*., quoting *Carpenter* at ¶ 53. Thus,

> [a] defendant will be held responsible for those foreseeable consequences which are known to be, or should be known to be, within the scope of risk created by his conduct. * * * [T]hat means that death [or serious physical harm] reasonably could be anticipated by an ordinarily prudent person as likely to result under these or similar circumstances. [Citations and parentheticals omitted.]

Id., quoting *Carpenter* at ¶ 53. In addition, " ' "for something to be foreseeable does not mean that it be actually envisioned." ' " *State v. Platt,* 2024-Ohio-1330, ¶ 45, (4th) quoting *State v. Wells,* 2017-Ohio-420, ¶ 35 (12th Dist.), quoting *State v. Lovelace,* 137 Ohio App.3d 206, 219 (1st Dist. 1999).

{¶81} Further, Ohio courts have held that an overdose is a "reasonably foreseeable consequence" of the *sale* of a controlled substance. *Pinkerman* at ¶ 41, citing *State v. Vogt,* 2018-Ohio-4457, ¶ 101-105 (4th Dist.); *State v. Patterson,* 2015-Ohio-4423, ¶ 91 (11th Dist.); *State v. Veley,* 2017-Ohio-9064, ¶ 30 (6th

Dist.); *State v. Wells,* 2017-Ohio-420, ¶ 39 (12th Dist.) " 'The possibility of an overdose is a reasonably foreseeable consequence of providing a controlled substance to another.' " *Pinkerman* at ¶ 41, quoting *Wells* at ¶ 39.

{¶82} Similarly, the possibility of an overdose is a reasonably foreseeable consequence of possessing a highly lethal drug within the reach of a small child and failing to properly protect or supervise that child who is known to put things in her mouth. It is also a reasonably foreseeable consequence when someone has created a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support, even if the offender does not herself possess the drug but knows clearly of its existence and does not protect the child. Thus, even if Knott were not guilty of one of the predicate offenses for involuntary manslaughter by causing the death of K.F., she was guilty of the other.

{¶83} To establish the defendant's actions were the proximate cause of K.F.'s death does not require proving precisely how the child ingested the drug. For example, the Supreme Court of Ohio upheld a conviction for involuntary manslaughter when the predicate offense was having a weapon under disability, even when the evidence did "not make it definitively clear who shot and killed [the victim]." *State v. Crawford,* 2022-Ohio-1509, ¶ 12. The court emphasized "[t]he foreseeable harm is what matters for proximate cause." *Crawford* at ¶ 16.

{¶84} Similarly, in *State v. Gruden*, the Third District upheld convictions for involuntary manslaughter resulting from drug abuse. 65 Ohio App.3d 777 (3d 1989). The evidence in *Gruden* was that the defendant's daughter was visiting in his home, she had been put down for a nap in the bedroom, and the defendant had fallen asleep on the couch in the living room. An undetermined amount of cocaine belonging to the defendant was lying on a coffee table beside the couch. While it was not exactly known, the circumstantial evidence showed that the child apparently woke up, came into the living room while the defendant was still asleep, ate some of the cocaine, and expired from cardiac arrest. *Gruden* at 779. After EMS arrived, the defendant blurted out at least three times, "I killed her." *Id.* at 781. In *Gruden*, there was evidence of how the child ingested the cocaine because the defendant (who had been asleep) assumed the child "ate the coke I had on the table." *Id.*

{¶85} Even so, the defendant/father in that case asserted on appeal that the evidence was insufficient to establish the drug possession proximately caused the death of his daughter. *Id.* at 783. The Third District rejected his claim, holding that "reasonable minds could readily have concluded . . . that the infant's death was proximately caused by defendant's conduct in leaving a gram of cocaine unattended on a coffee table, well within the reach and propensities of a 13-month old child." *Id.* at 784.

{¶86} Here, it is uncontroverted the child died of an overdose of fentanyl. The grandparents used fentanyl and Hupp saw a white powdered substance later in the day in the same bedroom from which Sheets had carried the child immediately before she showed the effects of the opiate. The other residents of the home did not use opiates. Knott and Sheets admitted they used opiates, including fentanyl, in the weeks leading to the death. Conkel believed Knott and Sheets were under the influence of an opiate during interviews the evening of the incident. The child was almost 11 months old and certainly had the propensities to put things in her mouth, and Knott knew this. Knott's constructive drug possession (as well as her committing endangering children) was clearly a proximate cause of the child's death.

{¶87} Knott argues that the evidence suggests that Sheets, not she, was the proximate cause of K.F.'s death. She reasons that Sheets had physical contact with the child when he brought her in the living room. She also says that Sheets was overheard on the 911 call saying "I fucked up" and "I fucking killed her, Amye." Knott also says that the text messages showed that Sheets at times tried to "sneak" using the drugs, trying to get higher than her, which, she claims shows that she wasn't always aware when he had the drugs. But, actually the opposite could be true. The text messages, including the September 2, 2021 text, show that Knott actually *discovered* the fact that Sheets had hidden drugs and kept larger portions

for himself. That particular text, taken with other texts, showed that she *knew* he had drugs. In fact, in many instances the drugs were procured for them both. That is likely true on the day of the incident because Knott appeared to be under the influence of an opiate that day.

{¶88} The State contends that Knott could be guilty pursuant to the legal theory of complicity. As we have observed, "[t]he complicity statute does not require the state to charge the defendant with complicity." Instead, R.C. 2923.03(F) allows the state to charge the defendant as a principal offender. That statute provides that " '[a] charge of complicity may be stated in terms of [the complicity statute], or in terms of the principal offense.' " *State v. Whitehead*, 2022-Ohio-479, ¶ 82 (4th Dist.), quoting *State v. Widner,* 69 Ohio St.2d 267, 269 (1982).

{¶89} R.C. 2923.03(A)(2) provides, "[n]o person, acting with the kind of culpability required for the commission of an offense, shall do any of the following: . . . (2) [a]id or abet another in committing the offense." "[T]o aid or abet is ' " '[t]o assist or facilitate the commission of a crime, or to promote its accomplishment.' " ' " *Id.* at ¶ 80, quoting *State v. McFarland,* 2020-Ohio-3343, ¶27, quoting *State v. Johnson,* 93 Ohio St.3d 240, 243 (2001, quoting Black's Law Dictionary 69 (7th Ed. 1999). " ' "[P]articipation in criminal intent may be inferred from presence, companionship, and conduct before and after the offense is

committed." ' " *Id.* at 81, quoting *Johnson* at 245, quoting *State v. Pruitt,* 28 Ohio App. 2d 29, 34 (4th Dist. 1971). However, " ' "the mere presence of an accused at the scene of a crime is not sufficient to prove, in and of itself, that the accused was an aider and abettor." ' " *Id*., quoting *Johnson* at 243, quoting *State v. Widner*, 69 Ohio St.2d 267, 269 (1982).

{¶90} In the instant case, the State charged Knott as a principal offender. However, the State asserts in the alternative that Knott was complicit in Sheets committing the offenses and the trial court gave the jury complicity instructions. Therefore, we discuss whether Knott aided and abetted the principal offender in committing involuntary manslaughter and drug possession.

{¶91} Knott herself rented the home and allowed the child, her parents and two other small children to live in the residence while she and Sheets used various drugs including highly lethal fentanyl, which at the time were left in the reach of the small child. In fact, it was Knott's Neurontin pill that was found in the mouth of the child only three weeks prior. So, Knott had knowledge of the danger in the home. Knott, along with Sheets "held back" shots of the drug from time to time and used the drug various times in the child's presence. Knott was the one who had Narcan, a potentially life-saving measure, but failed to use it the day of the incident. Knott knew that Sheets used. Even if Knott herself had not used that day, she knew about the drug use in the home, but failed to tell any EMS about it

or even the detectives later until detectives confronted her with text messages. She also lied to detectives, claiming that Sheets was out of town the week before the incident, covering up the couple's comings and goings before the incident occurred. Both Knott and Sheets were the fentanyl users in the home and worked together to obtain and use the drug. A caller from Knott's phone placed a call to the couple's dealer "Jeremy" the day before. Clearly, Knott's actions aided and abetted Sheets in the offenses that resulted in the child's death, even if she was not the principal offender.

{¶92} Knott's convictions for child endangerment and possession of drugs are not against the manifest weight of the evidence. Thus, we believe that Knott's involuntary manslaughter conviction has a properly supported predicate conviction. *See Pinkerman* at ¶ 38 and *State v Vogt,* 2018-Ohio-4457, ¶ 93. Further, the State conclusively proved that Knott's commission of endangering children and possession of drugs resulted in K.F.'s death. Thus, we find that the jury did not clearly lose its way and therefore overrule Knott's first assignment of error.

ASSIGNMENT OF ERROR II

{¶93} In her second assignment of error Knott asserts that the jury improperly stacked inferences when concluding that she was guilty of involuntary manslaughter. Knott further argues that the jury stacked inferences when

concluding Knott possessed the fentanyl/fluro-fentanyl. The State responds that the jury relied not on inference stacking, but instead, circumstantial evidence. The State also answers that Knott ignores her own complicity in the offenses, that all four adults in the home were complicit in possessing the drugs and endangering the child in the home, and the resulting death.

Legal Principles

{¶94} "Inferences are ' "conclusion[s] which, by means of data founded upon common experience, natural reason draws from facts which are proven." ' " *In re A.R.,* 2025-Ohio-1160 (1st Dist.) ¶ 28, quoting *State v. Armstrong*, 2016-Ohio-7841, ¶ 22 (11th Dist.), quoting *State v. Nevius*, 147 Ohio St. 263, 274 (1947). "An inference 'may be drawn from the facts and conditions established.' " *Id.*, quoting *Armstrong* at ¶ 22. " 'A trier of fact may not draw "[a]n inference based . . . entirely upon another inference, unsupported by any additional fact or another inference from other facts[.]" ' " *State v. Greeno,* 2021-Ohio-1372, ¶ 32, quoting *State v. Cowans,* 87 Ohio St.3d 68, 78 (1999), quoting *Hurt v. Charles J. Rogers Transp. Co.,* 164 Ohio. St. 329, paragraph one of the syllabus (1955). " 'When an inference, which forms the basis of a conviction, is drawn solely from another inference and that inference is not supported by any additional facts or inferences drawn from other established facts, the conviction is improper.' " *Id*., quoting *Armstrong* at ¶ 23.

{¶95} " 'Though widely denounced by both courts and legal commentators, the rule prohibiting the stacking of one inference upon another is still recognized in Ohio.' " *Greeno at* ¶ 33, quoting *Donaldson v. N. Trading Co*., 82 Ohio App.3d 476, 481 (10th Dist. 1992). Accordingly, " 'the rule has very limited application. It prohibits only the drawing of one inference solely and entirely from another inference, where that inference is unsupported by any additional facts or inferences drawn from other facts.' " *Id*., quoting *Donaldson*, 82 Ohio App.3d at 481.

{¶96} As the Supreme Court of Ohio has observed, " 'the rule forbidding the stacking of an inference upon an inference is disfavored by scholars and many courts. If such a rule were uniformly enforced, "* * * hardly a single trial could be adequately prosecuted." ' " *Id*., quoting *Motorists Mut. Ins. Co. v. Hamilton Twp. Trustees,* 28 Ohio St.3d 13, 17 (1986), quoting 1A Wigmore, Evidence (Tillers Rev. 1983) 1106, 1111, § 41.

{¶97} The rule does not apply in two instances. *Greeno* at ¶ 30. "The first is when '[a]n inference which is based in part upon another inference and in part upon factual support is called a parallel inference and is universally approved provided it is a reasonable conclusion for the jury to deduce.' " *Id*., quoting *Hurt v. Charles J. Roers Transp. Co.,* 164 Ohio St. 329, paragraph three the syllabus (1955). "The second is when multiple inferences arise separately from the same

set of facts." *Id*., citing *McDougall v. Glenn Cartage Co.*, 169 Ohio St. 522, paragraph two of the syllabus (1959).

Legal Analysis

{¶98} Knott contends there is no "direct evidence to show that K.F. ingested fentanyl or who provided it to her." It is true that no one actually saw the child ingest the substance. However, as is noted, circumstantial evidence carries the same weight as direct evidence. According to Knott, there is no evidence that she either possessed the fentanyl or knew that Sheets had fentanyl on September 17. We disagree. As discussed above, there is ample evidence that she constructively possessed the drugs and knew that Sheets had had fentanyl in that room on or about the date of the offense.

{¶99} A rational trier of fact could conclude that Knott constructively possessed the fentanyl/fluro-fentanyl without improperly stacking inferences. Further, a rational trier of fact could also conclude that Knott was complicit in the death of the child both by her constructive possession of the fentanyl/fluro-fentanyl and also her acts that endangered the child. We find this assignment of error to be without merit and hereby overrule the same.

ASSIGNMENT OF ERROR III

[¶100} In her third assignment of error, Knott claims that the trial court

abused its discretion when it admitted prejudicial evidence of her past drug use. Specifically, Knott posits the issue of whether evidence of a defendant's drug use that occurred months prior to the incident in question violates Evid.R. 404. The evidence Knott directs us to on appeal are text messages between Knott and her co-defendant, Sheets, and some of Filius' testimony. The State points out that it filed a Notice of Intent to Use Other Acts Evidence on December 6, 2023, and that Knott responded with a motion in limine regarding particular issues, including other acts evidence, that the trial court addressed the issue on the morning of trial, prior to witness testimony, excluding some proposed evidence, while allowing others. The State asserts that this evidence was inextricably intertwined with the charges, relevant, and not more prejudicial than probative for other purposes, including identity, knowledge, and lack of mistake or accident.

Standard of Review

{¶101} Evid.R. 404(B) provides, in pertinent part:

> (1) *Prohibited Uses.* Evidence of any other crime, wrong or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
>
> (2) *Permitted Uses; Notice.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Similarly, R.C. 2945.59 states:

> In any criminal case in which the defendant's motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing an act is material, any acts of the defendant which tend to show his motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing the act in question may be proved, whether they are contemporaneous with or prior or subsequent thereto, notwithstanding that such proof may show or tend to show the commission of another crime by the defendant.

Thus, while the admission of evidence of other crimes, wrongs, or acts offered to prove the character of an accused in order to show the accused acted in conformity therewith is prohibited, the evidence may be admissible for other purposes. *State v. Sims*, 2023-Ohio-1179, ¶ 95 (4th Dist.), citing *State v. Williams*, 2012-Ohio-5695, syllabus.

{¶102} We have used a three-step analysis to determine whether evidence of other crimes, wrongs or acts of an accused may be admissible, as have our sister courts. *See State v. Stevens,* 2023-Ohio-3280, ¶ 125 (4th Dist.), citing *State v. Ludwick,* 2022-Ohio-2609, ¶ 17 (4th Dist.), citing *State v. Williams*, 2012-Ohio-5695, ¶ 19. *See also State v. Glaeser,* 2025-Ohio-2386, ¶ 26 (3d Dist.); *State v. Stevens,* 2025-Ohio-2121, ¶ 20 (5th Dist.); *State v. Covington,* 2025-Ohio-1720, ¶ 23 (1st Dist.); *State v. Griffin,* 2025-Ohio-1403, ¶ 13 (12th Dist.); *State v. Gibson,* 2025-Ohio-543 (8th Dist.); *State v. Ison,* 2025-Ohio-604, ¶ 33 (11th Dist.); *State v. Venable,* 2025-Ohio-335, ¶ 26 (7th Dist.).

> The first step is to consider whether the other acts evidence is relevant to making any fact that is of consequence to the

> determination of the action more or less probable than it would be without the evidence. Evid.R. 401. The next step is to consider whether evidence of the other crimes, wrongs, or acts is presented to prove the character of the accused in order to show activity in conformity therewith or whether the other acts evidence is presented for a legitimate purpose, such as those stated in Evid.R. 404(B). The third step is to consider whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice. *See* Evid.R. 403.

State v. Bennett, 2024-Ohio-4557, ¶ 54 (4th Dist.), *Williams* at ¶ 20. Because the first two steps of the test are questions of law that do not involve an exercise of discretion, we conduct a de novo review of those steps. *Id.,* citing *Stevens* at ¶ 126, quoting *State v. Hartman,* 2020-Ohio-4440, ¶ 22. However, the third step, involving Rule 403's balancing test, "constitutes a judgment call," so we apply an abuse-of-discretion review to that step. *Id.*, *Stevens* at ¶ 126, quoting *Hartman* at ¶ 30. "The key is that the evidence must prove something other than the defendant's disposition to commit certain acts." *Hartman* at ¶ 22. Further, "[t]o properly apply the rule, . . . courts must scrutinize the proponent's logic to determine exactly how the evidence connects to a proper purpose without relying on any intermediate improper-character inferences." *Hartman* at ¶ 23.

{¶103} However, the Supreme Court of Ohio has recently addressed other acts evidence by applying a simpler two-step test, as follows, clarifying *Hartman*:

> In *Hartman*, we made clear that to be admissible, other-acts evidence (1) had to be relevant for an appropriate purpose other than showing the defendant's propensity to commit crime, and (2) that (like all evidence) it must satisfy the requirement of

> Evid.R. 403(A) that its probative value not be "substantially outweighed by the danger of unfair prejudice." 161 Ohio St.3d 214, 2020-Ohio-4440, 161 N.E.3d 651, at ¶ 20-26, 29.

State v. Echols, 2024-Ohio-5088, ¶ 28, citing *Hartman* at ¶ 20-26, 29. As noted above, determining whether other acts evidence is admissible is a question of law, as would be the first step of this simpler analysis. *Hartman* at ¶ 22, citing Leonard, *The New Wigmore: Evidence of Other Misconduct and Similar Events,* § 4.10 (2d Ed. 2019) (because "[d]etermining whether the evidence is offered for an impermissible purpose does not involve the exercise of discretion * * *, an appellate court should scrutinize the [trial court's] finding under a *de novo* standard" of review). The *Echols* court does go on to apply an abuse-of-discretion review when applying the second step, or applying Evid.R. 403(A).

Legal Analysis

{¶104} In the instant case, the State filed a "Notice of Intent to Use Inextricably Intertwined Evidence, or in the Alterative, Other Acts Evidence." In the notice, the State set forth its intention to use specific cell phone texts between Knott and Sheets to show the "setting" of the case. The State argued the texts were admissible for several permissible purposes in the pleading. On December 10, 2023, the defense responded by filing a motion in limine, arguing that evidence of other acts should be inadmissible in general, but did not discuss which particular texts or evidence were objectionable.

{¶105} The morning of the first day of trial, the trial court held a hearing regarding the other acts evidence. The trial court asked Knott's and Sheets' attorneys to outline which evidence in particular was objectionable. They responded that the defense was objecting to text messages between Knott and Sheets discussing purchasing drugs and acquiring drugs in the weeks or months prior to the incident.

{¶106} The State explained that when the 911 call was made, Knott's phone was left on the living room floor and therefore seized by law enforcement. A check of the phone revealed several text messages between the pair which the State asserted was clearly intertwined with the facts of the case, but that the texts also showed identity, knowledge, and absence of accident or mistake. According to the State, some of the messages were from June, but most were from July, August, and September, and showed a pattern of drug use getting heavier and more reckless up to the month that the child died. One in particular dated three weeks before the death showed the crawling child had placed a prescription pill in her mouth that had been left in her reach. Testimony by Filius showed the pill belonged to Knott. The State, both in general and specific terms, pointed to various texts to show how it would use these texts and testimony to prove elements of all the indicted offenses.

{¶107} The defense argued that the texts were still more prejudicial than

probative. In addition, the morning of trial, the parties discussed the Timberlake interviews of Knott and Sheets, in which Knott and Sheets volunteered their prior use of opiates, as well as prior convictions that involved the use of opiates. The trial court held that the other acts evidence could come in, specifically that the defendants had a "heroin issue," except for any discussion of the parties' prior incarcerations or convictions related to drug use. In addition to this evidence discussed at the beginning of the trial, the State also introduced evidence of past drug use through Filius' own observations independent of text messages, as well as testimony of Hupp as to Knott's and Sheets' drug use.

{¶108} We note at the outset of our review that Knott failed to specifically object to the admission of some of the drug evidence. When the trial court asked defense counsel which evidence they specifically objected to being admitted in their motion in limine, they did not specifically object to Filius' observations, as Knott has on appeal. In addition, we note that some of the evidence regarding past drug use was admitted through Hupp that Knott does not object to on appeal. Knott did, however, specifically object at trial to the testimony and the admission of Knott's text messages and also certain references to drug use during the Timberlake interviews of Knott and Sheets. However, we observe that the text messages and testimony of especially Filius was so intertwined that we will discuss

them as a whole. Certainly, Knott's motion in limine generally objected to the use of all evidence of prior drug use.

{¶109} Though Knott failed to renew her objections during trial, we view as a "definit[e]" ruling the court's announcement on the morning of trial that the text messages and the interview mentions of drug use would be admitted in full, except for limited redactions regarding their incarceration or convictions. *See State v. Echols,* 2024-Ohio-5088, ¶ 28; Evid.R. 103(A) ("Once the court rules definitely on the record, either before or at trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.").

{¶110} Because the parties apply the three-step test of appellate courts, we will do so here. The first step is to consider whether the other acts evidence is relevant to making any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. On appeal, Knott argues that the text messages from Knott to Sheets were irrelevant because they go back as far as three months prior to the incident. She asserts that the State can't use its own broad language in an indictment to give it a limitless time frame to show Knott possessed fentanyl. The State responds that the date and time are by no means essential elements of the charges and are not conclusively indicative of whether Knott had actual or constructive possession of fentanyl at the time.

{¶111} "A complaint may reference an approximate date for an offense,

because generally the precise date is not a dispositive element of an offense." *State v. Covington,* 2025-Oho-1720, ¶ 30 (1st Dist.), citing *State v. Sellards*, 17 Ohio St.3d 169, 172 (1985). "Unless the exact date and time are material to the elements of a crime, the failure to prove a temporal component of a crime is generally inconsequential." *Id*., citing *State v. Leonard*, 2024-Ohio-2817, ¶ 12 (1st Dist.). "The state's only responsibility is to present proof that the offenses alleged in the indictment occurred reasonably within the time frame alleged." *State v. Cave,* 2015-Ohio-2233, ¶ 18 (4th Dist.), citing *State v. Cochran,* 2012-Ohio-5899, ¶ 82, citing *Sellards* at 171, *State v. Barnhart,* 2010-Ohio-3282, 2010 ¶ 50 (7th Dist.). While Knott claims that her possession of fentanyl in June is not dispositive of whether she possessed it on September 17, that fact could be highly relevant if it tends " 'to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' " *State v. Hartman*, 2020-Ohio-4440, ¶ 24, quoting Evid.R. 401. We therefore cannot end our inquiry there. We must go forward to determine whether the other acts evidence is relevant to the particular purpose for which it is offered. *Id*., citing *State v. Curry,* 43 Ohio St.2d 66, 73 (1975).

{¶112} The next step is to consider whether evidence of the other crimes, wrongs, or acts is presented to prove the character of the accused in order to show activity in conformity therewith or whether the other acts evidence is presented for

a legitimate purpose, such as those stated in Evid.R. 404(B). The State asserts at trial and on appeal that the evidence intertwined with the facts of the case, but also that the texts showed identity, knowledge, and absence of accident or mistake for elements essential to its burden of proof regarding all three offenses.

{¶113} First, a pertinent issue in this case was the actual person or persons who possessed the fentanyl that caused the child's death. Therefore, the text messages regarding use of fentanyl, the addiction to fentanyl, and the absence of references to Filius and Hupp using the drug in text messages of Filius and Knott, clearly show the identity of who possessed the fentanyl. Second, many of the text messages were relevant for a nonpropensity purpose to show that Knott had knowledge of fentanyl being in the residence both by her own use and Sheets' use.

{¶114} Further, what is important in this case is that Knott was charged not only with possession, but with endangering children. The numerous text messages of both Knott and Filius, even involving other drugs, show how Knott was well aware of not only fentanyl but methamphetamine, marijuana and methadone (and in at least one instance Neurontin prescription medication) being frequently used in the home which she owned, often in the presence of children, and around the child who had a propensity to place items in her mouth. Thus, the other acts evidence, including text messages and Knott and Sheets' interview admissions of opiate use, was relevant to show both identity of the persons who used fentanyl and Knott's

knowledge of the fentanyl in the home, as well as other drugs, showing how she violated a duty of care to protect the child.

{¶115} Finally, the other acts evidence being relevant to show "lack of mistake or accident" is also asserted by the State, and we agree. For example, some of the text messages at times show that the couple held back portions of the drugs they used for a future date. Similarly, the text messages were essential in context to show who "Jeremy" was because the fact that Knott's call log shows a call was placed to a person named "Jeremy" the day before the incident, and the text messages show the context that this person is the drug dealer, it is highly relevant to the indicted offenses. We find that this evidence was not only relevant for the particular purpose for which it was offered, but also, offered for a material issue that was actually in dispute among the parties. *See Hartman* at ¶ 26-27.

{¶116} The third step is to consider whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice. *See* Evid.R. 403. Here, we are concerned with whether the trial court abused its discretion. We would note that some of the text messages were crucial to the State's case and alternative evidence to prove the same fact through less prejudicial means was not necessarily available. We cannot find that the evidence was overly prejudicial. It was highly relevant to facts that were contested.

{¶117} As for the evidence admitted through Filius' testimony, we

cannot find that the trial court abused its discretion because it was admitted for basically for the same reasons and purposes set forth above. In addition, Filius' testimony at times was necessary to explain the text messages he sent to Hupp, as well as the context for many of Knott's messages to Sheets.

{¶118} Finally, as the Supreme Court of Ohio observed, "[w]hen a court determines that other-acts evidence should be admitted, it must take steps to minimize the danger of unfair prejudice inherent in the use of such evidence and to ensure that the evidence is considered only for a proper purpose." *Hartman*, 2020-Ohio-4440, ¶ 34. Thus, *Hartman* advises to look to whether the trial court explained the specific purpose for which the evidence may be considered, as well as putting its rationale on the record. *Id.* In addition, *Hartman* suggests that a jury instruction regarding the specific purpose for the evidence helps reduce the risk of confusion and unfair prejudice.

{¶119} We would note that the trial court, during its discussions about the motion in limine, did not specifically set forth why it allowed the testimony of a "heroin problem," except for testimony of incarceration or conviction; however, the State clearly evinced its specific intentions and uses for the evidence, and the trial court approved of the State's request. Further, at the request of the defense, the trial court specifically included language in the jury instructions that the evidence was not to be used for propensity purposes.

{¶120} Even if we were to find that it was error for the trial court to have admitted some of the evidence regarding drug use, we would find the error harmless. "An appellate court may not reverse a judgment due to the trial court's error in admitting evidence at trial if the error was harmless." *State v. Stevenson,* 2023-Ohio-4853, ¶ 82 (6th Dist.). Harmless error is " 'any error, defect, irregularity, or variance which does not affect substantial rights.' " *Stevenson* at ¶82, citing *State v. Kamer*, 2022-Ohio-2070 ¶ 154, (6th Dist.), quoting Crim.R. 52(B). " 'When determining whether a trial court's improper admission of other-acts evidence affected the substantial rights of a defendant, an appellate court must (1) determine whether the error prejudiced the defendant (i.e., the error affected the verdict), (2) declare a belief that the error was not harmless beyond a reasonable doubt, and (3) excise the improper evidence from the record, look to the remaining evidence, and determine whether there is evidence beyond a reasonable doubt of defendant's guilt.' " *Stevenson* at ¶ 83, quoting *Kamer* at ¶ 155, citing *State v. Harris*, 2015-Ohio-166, ¶ 37. "In other words, 'an appellate court must consider both the impact of the offending evidence on the verdict and the strength of the remaining evidence.' " *Id*., quoting *State v. Morris*, 2014-Ohio-5052, ¶ 33. " '[T]he real issue when Evid.R. 404(B) evidence is improperly admitted at trial is whether a defendant has suffered any prejudice as a result.' " *State v. Elkins*, 2019-Ohio-2427, ¶ 24 (4th Dist.), quoting *Morris* at ¶ 25.

{¶121} Here, Knott objects on appeal to the text messages she sent to Sheets, as well as some of Filius' testimony regarding his text messages, as well as general indications of Knott's drug abuse. On appeal, Knott does not necessarily point to the admissibility of the statements she gave to investigators, nor mention at all Hupp's testimony of drug use. It appears there was also at least some other evidence regarding Knott's drug use, including her obviously being under the influence the day of the incident. Knott has not shown how she was particularly prejudiced by the admission of this evidence to which she now objects. Crucially, especially as it relates to endangering children and involuntary manslaughter as a result of endangering children, this evidence was particularly relevant. Accordingly, we overrule Knott's third assignment of error.

ASSIGNMENT OF ERROR IV

{¶122} In her fourth assignment of error, Knott contends that the trial court abused its discretion by admitting certain "gruesome photographs" from K.F.'s autopsy. She claims the autopsy photographs were unnecessary because the defendants did not contest the cause of death. The State responds that it limited the number of photographs to the minimum necessary for the forensic pathologist's testimony pertaining to the determination of the cause of death. The State also disputes that the defense stipulated to the cause of death throughout the trial.

Standard of Review

{¶123} The admission of photographs is within " 'the sound discretion of the trial court.' " *State v. Knuff,* 2024-Ohio-902, ¶ 172, quoting *State v. Johnson*, 88 Ohio St.3d 95 (2000). "[A]utopsy photographs are generally gruesome and prejudicial." *State v. Bennett,* 2006-Ohio-2757, ¶ 45 (4th Dist.). Thus, "[t]he relevant inquiry . . . is whether that prejudice is outweighed by the photograph's probative value." *Id.*, citing *State v. Skatzes,* 2004-Ohio-6391, at ¶ 116. "Indeed, the text of Evid.R. 403(A) focuses not on whether prejudice exists at all, but rather dictates the court balance the danger of unfair prejudice against the evidence's probative value." *State v. Hurst,* 2012-Ohio-2465, ¶ 18, (4th Dist.).

{¶124} "Generally, autopsy photographs are admissible where they are probative of the defendant's intent and the manner and circumstances of the victim's death." *State v. Payne,* 2024-Ohio-4698, ¶ 45 (10th Dist.), citing *State v. Craig*, 2006-Ohio-4571, ¶ 92. The Supreme Court of Ohio has recognized that "gruesome photographs" are those that show "actual bodies or body parts," observing the "shock value" often associated with photographs of a corpse. *Id.* at ¶ 46, citing *State v. DePew*, 38 Ohio St.3d 275, 281 (1988). These "gruesome photographs expose jurors to horrific images and might serve no useful purpose except to inflame the passions of the jurors." *Id.*, citing *State v. Ford,* 2019-Ohio-4539, ¶ 257. Yet, the mere fact that a photograph is gruesome is not sufficient to

render it inadmissible if the trial court, in the exercise of its discretion, determines that the photograph proves useful to the jury. *State v. Hale,* 2024-Ohio-1587, ¶ 131 (8th Dist.), citing *State v. Frazier,* 61 Ohio St.3d 247, 252 (1991). Therefore, even if the cause of death is uncontested, the State may present evidence showing the cause of death, to give the jury an "appreciation of the nature and circumstance of the crimes." *Hale* at ¶ 127, citing *State v. Chatman,* 2013-Ohio-5245, ¶ 41 (8th Dist.), citing *State v. Evans,* 63 Ohio St.3d 231, 251 (1992).

Legal Analysis

{¶125} In the instant case, Knott filed a motion in limine to exclude certain photographs. The State responded that the coroner needed certain photographs to explain her thorough examination of the child related to the determination of the cause of death. The State also explained it had narrowed down the photographs it would use to nine photographs. At trial, the defense did not ultimately object to three of the nine photographs.

{¶126} On appeal, Knott claims the State acknowledged the cause of death of the child was not contested by referencing the State's closing argument rebuttal. However, that was after the conclusion of testimony. Knott's trial counsel's opening statement includes the observation that "[a]fter you hear the State's evidence of the facts, you'll have probably more questions than answers provided. Because the fact is nobody knows what happened in the moments leading up to the

911 call and the events that lead to this tragedy and I am remiss if I don't acknowledge that."

{¶127} The trial court addressed the issue before, during, and after the State's case. The trial court heard argument in which the State explained the coroner herself had pointed to these photographs as necessary to explain her examination of the child. The trial court heard from the coroner out of the presence of the jury. Afterwards, the trial court examined several autopsy photographs and excluded one photograph from admission.

{¶128} Further, during trial, the coroner explained that she did not receive a lot of information on the case prior to her examination of the child. The information she did receive was that this was an uncertain cause of death--that the child was found unresponsive, but they really didn't have a lot of information as to why. At the time of autopsy, the photographs illustrated the lack of injury and ensured that the examination was thorough regarding the cause of death. The toxicology report that finally led to a conclusion of fentanyl/fluro-fentanyl overdose was not received until later. Thus, the State presented the coroner's testimony and autopsy photographs to meet its burden to show that the death was conclusively caused by a fentanyl/fluro-fentanyl overdose, and nothing else. *See, e.g., State v. Lee,* 2021-Ohio-2925, ¶ 23 (8th Dist.) (where the Eighth District found the trial court did not abuse its discretion when it permitted the State to use

photographs to corroborate and illustrate the cause of the victim's death, though the defense argued the cause of death was undisputed).

{¶129} Moreover, even if this Court were to find that the autopsy photographs were improperly admitted, any error would be harmless. The question is not just the degree to which the photographs depict truly gruesome images, but also whether a defendant shows prejudice in order to demonstrate reversible error. *State v. Motley,* 2023-Ohio-1811, ¶ 47-48, (8th Dist.), citing *State v. Lundgren*, 73 Ohio St.3d 474, 486 (1995) (where the Supreme Court of Ohio found error in the introduction of 16 autopsy photographs, but the error was harmless given the overwhelming evidence of the defendant's guilt). *See also State v. Froman*, 2020-Ohio-4523, ¶ 106 (where the Supreme Court of Ohio found that some gruesome photographs were properly admitted for the purpose of aiding the testimony of the coroner regarding the cause of death and the remaining four "repetitive" photos should not have been admitted, but the error was harmless because of the overwhelming evidence of defendant's guilt).

{¶130} Hence, we overrule Knott's fourth assignment of error.

ASSIGNMENT OF ERROR V

{¶131} In her fifth assignment of error, Knott contends the trial court committed plain error when it failed to award her jail-time credit for time she spent in jail pending trial. The State concedes that the trial court erred because the

sentencing entry awarded Knott only prospective jail-time credit for time she spent awaiting transportation to ODRC.

{¶132} " 'The practice of awarding jail-time credit, although now covered by state statute, has its roots in the Equal Protection Clauses of the Ohio and United States Constitutions.' " *State v. Hodge,* 2022-Ohio-2748, ¶ 37 (4th Dist.), quoting *State v. Fugate*, 2008-Ohio-856, ¶ 7. " 'The Equal Protection Clause requires that all time spent in any jail prior to trial and commitment by [a prisoner who is] unable to make bail because of indigency must be credited to his sentence.' " *State v. Harris,* 2024-Ohio-214, ¶21 (11th Dist.), quoting *Fugate* at ¶ 7. "R.C. 2967.191(A) codifies a defendant's equal protection right to credit for prior incarceration." *Hodge* at ¶37. "The Supreme Court of Ohio has held: 'R.C. 2929.01(FF)'s indication that a stated prison term "includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison" is best understood as a simple acknowledgment that R.C. 2967.191 requires application of *all* due jail-time credit and that a stated prison sentence *must* be shortened by the amount of time spent in jail before entry into the state prison system.' " *Harris* at ¶ 21, quoting *State v. Moore*, 2018-Ohio-3237, ¶ 15. (Emphasis in original).

{¶133} "If an alleged error regarding jail-time credit is 'raised on direct

appeal, a reviewing court must check the trial court's calculation of jail-time credit to see if the calculation is supported by competent, credible evidence. If the calculation of jail-time credit is not supported by competent, credible evidence, plain error will be found.' " *State v. Crisp,* 2022-Ohio-1221, ¶ 13 (4th Dist.), quoting *State v. Price*, 2020-Ohio-6702, ¶ 22 (4th Dist.). If a trial court fails to ascertain the number of days of pretrial incarceration, the proper remedy is a remand of that portion of the sentence only for recalculation. *See Hodge* at ¶ 43.

{¶134} In the instant case, the record reflects that a superseding indictment that included Knott was filed January 10, 2023. An arrest warrant was served upon Knott on January 12, 2023. Knott was released on her own recognizance on January 13, 2023. Knott's fifth assignment of error is therefore sustained, and the matter should be remanded for the purposes of ascertaining the proper jail-time credit Knott accrued prior to trial.

ASSIGNMENT OF ERROR VI

{¶135} In her sixth assignment of error Knott asserts, and the State concedes, that although Knott received the appropriate notices required by R.C. 2929.19(B)(2)(c) in the sentencing entry, her sentence is contrary to law because she did not receive all of the notifications at the sentencing hearing. In the instant case, the trial court imposed a non-life indefinite prison sentence for involuntary manslaughter. Although the trial court advised appellant of the Reagan Tokes

factors in the sentencing entry, it failed to orally advise her of the pertinent factors at the sentencing hearing.

{¶136} Because Knott did not object to the trial court's instructions at sentencing, she has forfeited this issue, absent plain error. *State v. Price*, 2024-Ohio-1641, ¶ 7 (4th Dist.), citing *State v. Whitaker*, 2022-Ohio-2840, ¶ 166 (errors in sentencing that defendant fails to object to are reviewed for plain error). "A sentence is contrary to law if a trial court sentences an offender to an indefinite prison term under the Reagan Tokes Law and fails to advise the offender of all the notifications set forth in R.C. 2929.19(B)(2)(c) at the sentencing hearing." *Id.* at ¶ 7, citing *State v. Long, 2021-Ohio-2672,* ¶ 27-29 (4th Dist.).

{¶137} R.C. 2929.19(B)(2)(c) sets out the notifications that are to be provided in accordance with subsections (B)(1) and (2) which mandates that the court notify the offender at the sentencing hearing:

> (c) If the prison term is a non-life felony indefinite prison term, notify the offender of all of the following:
>
> (i) That it is rebuttably presumed that the offender will be released from service of the sentence on the expiration of the minimum prison term imposed as part of the sentence or on the offender's presumptive earned early release date, as defined in section 2967.271 of the Revised Code, whichever is earlier;
>
> (ii) That the department of rehabilitation and correction may rebut the presumption described in division (B)(2)(c)(i) of this section if, at a hearing held under section 2967.271 of the Revised Code, the department makes specified determinations regarding the offender's conduct while confined, the offender's

> rehabilitation, the offender's threat to society, the offender's restrictive housing, if any, while confined, and the offender's security classification;
>
> (iii) That if, as described in division (B)(2)(c)(ii) of this section, the department at the hearing makes the specified determinations and rebuts the presumption, the department may maintain the offender's incarceration after the expiration of that minimum term or after that presumptive earned early release date for the length of time the department determines to be reasonable, subject to the limitation specified in section 2967.271 of the Revised Code;
>
> (iv) That the department may make the specified determinations and maintain the offender's incarceration under the provisions described in divisions (B)(2)(c)(i) and (ii) of this section more than one time, subject to the limitation specified in section 2967.271 of the Revised Code;
>
> (v) That if the offender has not been released prior to the expiration of the offender's maximum prison term imposed as part of the sentence, the offender must be released upon the expiration of that term.

{¶138} In the instant case, the parties agree that even though the notifications were included in the sentencing entry the trial court did not provide the Reagan Tokes notices at the sentencing hearing. Upon review of the sentencing transcript, we agree that the trial court failed to fulfill the requirements of the statute and notify Knott of the information set forth in R.C. 2929.19(B)(2)(c) at the sentencing hearing. While the trial court did include in the sentencing entry the language set forth in R.C. 2929.19(B)(2)(c), the statute requires that the notification also take place at the sentencing hearing. *State v. Holland*, 2023-Ohio-

4834, ¶ 96 (2d Dist.). Thus, we sustain Knott's sixth assignment of error as to Count One only, the sentence for involuntary manslaughter is contrary to law. *See State v. Estep*, 2024-Ohio-58, ¶ 53-60; (4th Dist.) and *State v. Price*, 2024-Ohio-1641, ¶¶ 6-10 (4th Dist.).

CONCLUSION

{¶139} We therefore overrule Knott's first, second, third, and fourth assignment of error but sustain Knott's fifth and sixth assignment of error and remand to the trial court for resentencing consistent with this decision.

JUDGMENT AFFIRMED IN PART, REVERSED IN PART AND CAUSE REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED. Appellant and appellee shall split the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. and Hess, J. concur in Judgment and Opinion.

For the Court,

_____
Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.