

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

STATE OF OHIO,	:	Case No. 25CA35
Plaintiff-Appellee,	:	
v.	:	<u>DECISION AND</u>
LUTZ TRAUTZSCH,	:	<u>JUDGMENT ENTRY</u>
Defendant-Appellant.	:	RELEASED 9/24/2026

APPEARANCES:

Jon R. Sinclair, Cincinnati, Ohio, for appellant.

Brigham M. Anderson, Lawrence County Prosecutor, and Steven K. Nord, Assistant Prosecuting Attorney, Ironton, Ohio for appellee.

Hess, J.

{¶1} Lutz Trautzsch appeals his conviction following a jury trial on one count of corrupting another with drugs and one count of trafficking in a fentanyl-related compound. Trautzsch raises two assignments of error. First, he contends that his conviction for corrupting another with drugs was against the sufficiency and manifest weight of the evidence because the forensic pathologist who testified about the cause of the victim's death did not testify that the fentanyl he gave the victim was the "but for" cause of the victim's death, gave inadmissible hearsay testimony, and did not give an opinion that met the standard applicable in a criminal trial. Second, he contends he received ineffective assistance of counsel because his trial counsel failed to object to the errors in the forensic pathologist's testimony.

{¶2} We find that Trautzsch's conviction for corrupting another with drugs was supported by sufficient evidence and was not against the manifest weight of the evidence because the forensic pathologist testified that the victim had a lethal quantity of fentanyl in her system and had far less than lethal quantities of the other drugs. Additionally, other witnesses testified that the other drugs in the victim's system were either a prescription drug the victim had taken for approximately a year or cold medicine she was taking for a cold, both of which the victim had been taking and suffered no overdose effects. The forensic pathologist's opinion was admissible and the lethal ranges of drugs she referenced were based on learned treatises, not hearsay. And, because we find no error in the expert's testimony, we find that Trautzsch did not receive ineffective assistance of counsel. The statements he argues should have been objected to were admissible. We overrule Trautzsch's assignments of error and affirm the trial court's judgment.

I. FACTS AND PROCEDURAL HISTORY

{¶3} The Lawrence County grand jury indicted Trautzsch on one count of corrupting another with drugs in violation of R.C. 2925.02(A)(3), a second-degree felony, and one count of trafficking in a fentanyl-related compound in violation of R.C. 2925.03(A)(1)(C)(9)(a), a fifth-degree felony. The charges arose from the drug overdose death of a female friend Trautzsch was visiting. He pleaded not guilty, and the matter proceeded to a jury trial. The jury found him guilty on both counts and the trial court sentenced him to a prison term of 8 to 12 years. Trautzsch appealed.

II. ASSIGNMENTS OF ERROR

{¶4} Trautzsch presents the following assignments of error:

1. The trial court erred by entering a conviction for count one when there was not sufficient evidence to support a conviction and the conviction was against the manifest weight of the evidence.
2. Appellant was denied the effective assistance of counsel guaranteed under the Sixth Amendment to the U.S. Constitution thus denying his right to a fair trial.

III. LEGAL ANALYSIS

A. Sufficiency and Manifest Weight of the Evidence

{¶5} Trautzsch contends that the State failed to prove that fentanyl caused serious physical harm to the victim. He argues that the forensic pathologist did not testify that fentanyl was the overriding factor that caused the victim's death, rather she testified that it was likely the most potent drug found in her blood. He contends that because no witness testified that fentanyl was the "but for" cause of serious physical harm to the victim, his conviction for corrupting another with drugs should be overturned.

1. Standards of Review

a. Sufficiency of the Evidence

{¶6} "When a court reviews the record for sufficiency, '[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' " *State v. Maxwell*, 2014-Ohio-1019, ¶ 146, quoting *State v. Jenks*, 61 Ohio St.3d 259, (1991), paragraph two of the syllabus; following *Jackson v. Virginia*, 443 U.S. 307 (1979).

{¶7} An appellate court must construe the evidence in a "light most favorable to the prosecution." *State v. Hill*, 75 Ohio St.3d 195, 205 (1996); *State v. Grant*, 67 Ohio St.3d 465, 477 (1993). Further, "[t]he court must defer to the trier of fact on questions of

credibility and the weight assigned to the evidence.” *State v. Dillard*, 2014-Ohio-4974, ¶ 22 (4th Dist.), citing *State v. Kirkland*, 2014-Ohio-1966, ¶ 132. Thus, “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.’ ” *State v. Davis*, 2013-Ohio-1504, ¶ 12 (4th Dist.), quoting *State v. Thompkins*, 78 Ohio St.3d 380, 390 (1997) (Cook, J., concurring). 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. Lett*, 2026-Ohio-1709, ¶ 75-76 (4th Dist.).

{¶8} The Supreme Court of Ohio has made clear that “an appellate court does not conduct proper sufficiency-of-the-evidence review if it turns a blind eye to circumstantial evidence in the record.” *State v. Seymour*, 2026-Ohio-1249, ¶ 18.

Sufficiency-of-the-evidence review is not limited exclusively to testimony and other forms of direct evidence. We regularly consider circumstantial evidence, which is “ ‘sometimes defined as proof of facts by direct evidence from which the trier of fact may infer or derive by reasoning other facts in accordance with the common experience of mankind,’ ” in sufficiency-of-the-evidence review. We have also emphasized that “[c]ircumstantial evidence and direct evidence inherently possess the same probative value,” and—in practice—“circumstantial evidence may be more certain, satisfying, and persuasive than direct evidence,” Our precedent thus makes clear that an appellate court does not conduct proper sufficiency-of-the-evidence review if it turns a blind eye to circumstantial evidence in the record.

(Citations omitted.) *Id.*

b. Manifest Weight of the Evidence

{¶9} In determining whether a criminal conviction is against the manifest weight of the evidence, we must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its

way and created such a manifest miscarriage of justice that we must reverse the conviction. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997); *State v. Hunter*, 2011-Ohio-6524, ¶ 119; *State v. Hess*, 2021-Ohio-1248, ¶ 15 (4th Dist.).

{¶10} To satisfy its burden of proof, the state must present enough substantial credible evidence to allow the trier of fact to conclude that the state had proven all the essential elements of the offense beyond a reasonable doubt. *State v. Smith*, 2020-Ohio-5316, ¶ 31 (4th Dist.), citing *State v. Eskridge*, 38 Ohio St.3d 56, syllabus (1988). However, it is the role of the jury to determine the weight and credibility of evidence. *State v. Kirkland*, 2014-Ohio-1966, ¶ 132. “ ‘A jury, sitting as the trier of fact, is free to believe all, part or none of the testimony of any witness who appears before it.’ ” *State v. Reyes-Rosales*, 2016-Ohio-3338, ¶ 17 (4th Dist.), quoting *State v. West*, 2014-Ohio-1941, ¶ 23 (4th Dist.). We defer to the trier of fact on these evidentiary weight and credibility issues because it is in the best position to gauge the witnesses’ demeanor, gestures, and voice inflections, and to use these observations to weigh their credibility. *Id.*; *State v. Koon*, 2016-Ohio-416, ¶ 18 (4th Dist.).

2. Corrupting Another with Drugs

{¶11} The State had to present enough substantial credible evidence to allow the jury to conclude that all the elements of corrupting another with drugs were proven beyond a reasonable doubt. R.C. 2925.02(A)(3) prohibits corrupting another with drugs and provides:

(A) No person shall knowingly do any of the following: . . .

(3) By any means, administer or furnish to another or induce or cause another to use a controlled substance, and thereby cause serious physical harm to the other person, or cause the other person to become a person with drug dependency;

“Serious physical harm” as it relates to this case means “[a]ny physical harm that carries a substantial risk of death” or “[a]ny physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity.” R.C. 2901.01(A)(5)(b), (c); *State v. Carpenter*, 2019-Ohio-58, ¶ 42 (3d Dist.) (non-lethal overdose constitutes serious physical harm); *State v. Church*, 2012-Ohio-3877, ¶ 18 (12th Dist.) (losing consciousness constitutes serious physical harm).

{¶12} Trautzsch challenges the “serious physical harm” element of the crime and argues that no witness testified that the fentanyl he furnished to the victim caused her death. Instead, the forensic pathologist testified that the victim suffered “multiple drug intoxication” which resulted in her death – not that the fentanyl caused serious physical harm or death. He argues that the plain language of R.C. 2925.02(A)(3) requires a “but-for” test, as opposed to the substantial-factor test, to determine actual causation of serious physical harm or death from fentanyl.

{¶13} Recently the Supreme Court of Ohio discussed both the but-for test and the substantial-factor test, which are tests used to determine if the defendant’s actions were the cause of the victim’s harm. The Court explained that the but-for test – “whether the harm would not have occurred but for the defendant’s action” – is typically applied. However, “an alternative test for causation, the substantial-factor test” is applied “in cases where multiple factors combined to produce harm.” *State v. Seymour*, 2026-Ohio-1249, ¶ 1.

{¶14} *Seymour* involved a corrupting-another-with-drugs conviction following a bench trial in which the pathologist testified that the deceased victim, Adam, had four drugs in his body that combined to kill him, but the pathologist could not single out whether

the heroin that Seymour provided Adam was more responsible for his death than the other drugs. *Id.* at ¶ 16. On appeal, the appellate court reversed the conviction. *State v. Seymour*, 2024-Ohio-5179 (10th Dist.). The appellate court was critical of the substantial-factor test suggesting “[t]here is good reason to believe Ohio should depart from the ‘substantial factor’ test altogether.” *Id.* at ¶ 43. The appellate court determined that the but-for test was required by the plain language of R.C. 2925.02(A)(3) (corrupting another with drugs) and that, based on the pathologist’s testimony, the court could not say that heroin was the but-for cause of death. *Id.* at ¶ 44. The pathologist testified that none of the drugs were the “primary” cause of death and that each drug “contributed” to the death. “On cross-examination, [the pathologist] stated that he could not say whether ‘heroin alone’ caused the victim’s death or serious physical harm, nor could he be certain that the victim ‘would not have died’ but for the use of kratom, Ritalin, or Benadryl.” *Id.* at ¶ 47.

{¶15} The *Seymour* appellate court recognized that its rejection of the substantial-factor test in the mixed-drug overdose case conflicted with the Third District Court of Appeal’s decision in *State v. Carpenter*, 2019-Ohio-58 (3d Dist.), which involved a corrupting-another-with-drugs conviction in a mixed-drug overdose death.¹ The Third District in *Carpenter* recognized that “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.” *Carpenter* at ¶ 52. It sustained Carpenter’s conviction for corrupting another with drugs based on the expert testimony that the compound containing fentanyl was a substantial or contributing factor that caused the victim’s overdose death. *Carpenter* at ¶ 55. “Therefore, a rational trier of fact could

¹ Both *Seymour* and *Carpenter* also involved an involuntary manslaughter conviction but because that offense is not relevant here we omit references to it.

have found that Carpenter created a substantial risk of death or a risk of some permanent incapacity by selling [the victim] the compound containing fentanyl, and such act was a contributing cause of [the victim's] death. . . . Thus, under the facts presented by this case, we conclude that there is sufficient evidence that Carpenter corrupted [the victim] with drugs.” *Carpenter* at ¶ 57.

{¶16} The Supreme Court of Ohio accepted jurisdiction over the *Seymour* case to review two issues presented by the State: (1) the concept of “cause” in R.C. 2925.02(A)(3) (corrupting another with drugs) does not require a strict “but-for” test, but proof that the defendant’s conduct was a substantial or contributing factor in the death or serious physical harm and (2) even if a but-for test is required, the State need only prove that the death or serious physical harm would not have occurred absent the defendant’s conduct. *State v. Seymour*, 2026-Ohio-1249, ¶ 8.

{¶17} The Court recognized that under the substantial-factor test “a criminal defendant’s actions or inactions could be considered an actual cause of harm even if they were not a but-for cause of the harm, so long as they were a substantial factor in producing the harm.” *Id.* at ¶ 13. However, the Court determined that “we need not venture into the world of causal alternatives to resolve this case” because there was sufficient evidence introduced for the factfinder “to conclude that Seymour’s actions were a but-for cause of Adam’s death.” *Id.* at ¶ 14. The Court found that the appellate court had “misapplied the sufficiency-of-the-evidence standard of review.” *Id.* at ¶ 18. Even though there was “no direct testimony that Adam would have lived had he not taken the heroin, we see considerable circumstantial evidence in the record that indicates that heroin caused Adam’s overdose.” *Id.* at ¶ 19. Even though the pathologist could not say with

certainty which drug caused the death, the pathologist testified that it would be extremely or very rare to die from a Benadryl or Ritalin overdose. Moreover, the toxicology report showed non-toxic, therapeutic levels of Benadryl and Ritalin and a high concentration of kratom, but the amount of heroin found “is ‘typical to see in a heroin-related death.’ ” *Id.* at ¶ 19-20. The Court considered not only the expert’s opinion and report, but the testimony of lay witnesses concerning Adam’s life and the details of the day he died and concluded that a rational trier of fact could “readily conclude that but for Adam’s taking the heroin on the day of his overdose, he would not have died.” *Id.* at ¶ 25.

Sufficiency of the evidence review is not an exercise in scientific certainty. Though the pathologist who performed the autopsy declined to speculate whether the heroin given to Adam by Seymour was the but-for cause of Adam’s death, the appellate court was still required to review *all* the evidence admitted at trial and determine whether that evidence, when viewed in a light most favorable to the prosecution, could provide to a rational trier of fact the essential elements of crimes beyond a reasonable doubt.

(Emphasis in original). *Id.* at ¶ 26.

{¶18} Here at Trautzsch’s trial, the State’s witness, Dr. Goulsby, the Deputy Coroner for Montgomery County, testified that autopsies for Lawrence County are performed in Montgomery County. Dr. Goulsby is a forensic pathologist. She provided medical expert testimony as a pathologist, coroner, and forensic pathologist. Dr. Goulsby performed the post-mortem examination of the victim, “Charlene.” Charlene’s right leg was amputated above the knee, the tip of her middle right finger was amputated, and the left middle toe was amputated. All amputations had well-healed scars and nothing that would indicate an infection or cause of death. Charlene had no injuries other than a few abrasions that were partially healed and were insignificant in terms of any contribution to death. Dr. Goulsby examined Charlene’s internal organs and her muscular and nervous

systems and found nothing that would cause or contribute to her death. Dr. Goulsby's assistant took bodily fluids from Charlene and a toxicologist prepared a toxicology report for Dr. Goulsby's use.

{¶19} Dr. Goulsby testified that the toxicology report showed a presence of multiple drugs in Charlene's blood: (1) chlorphenamine, which is a sedative antihistamine found in many over-the-counter drugs, (2) dextromethorphan, a cough medication found in multiple over-the-counter medications, (3) mirtazapine, an antidepressant, and (4) fentanyl. Dr. Goulsby testified about the fentanyl, "the most significant drug of all that was found in Charlene . . . was the fentanyl. It is in the lethal range. . . . it's in the range that I usually see in cases that are determined to be overdoses of fentanyl." Dr. Goulsby explained that fentanyl was "the most potent" drug in Charlene's system "of all the drugs that she had in her system, that is probably the most lethal drug that she had on board." Dr. Goulsby explained that all the other drugs in Charlene's system were respiratory depressants that can slow the heart and breath to different degrees, but "the fentanyl is the most potent of them all."

{¶20} Dr. Goulsby testified that the fentanyl found in Charlene was in the lethal range and that she relied upon medical reference books used by the coroner's office to determine lethal ranges. The fentanyl found in Charlene was at 8.8 micrograms per liter, which falls within the lethal range for fentanyl concentrations, which fatality range spans from 3 to 21 micrograms per liter. Dr. Goulsby testified that the cause of death was "multiple drug intoxication" and she listed "fentanyl first, because of its overall effect" and she listed mirtazapine second because it was not at the fatal level and Charlene had been taking it as a prescription drug so Charlene "probably had a chronic use and had a level

in her body most of the time. . . it didn't significantly affect her in terms of being lethal on its own. . . it's well below the lethal range. But because it was the second highest, I listed it second." Dr. Goulsby testified that an overdose of mirtazapine "can cause disorientation, drowsiness, and tachycardia, which is an elevated heart rate, your heart beats faster." The only drug that was in the lethal range was fentanyl. The level of mirtazapine was only one tenth of the fatal quantity or ten times less than the fatal limit, but the level of fentanyl was well within the fatal range. Dr. Goulsby testified that fentanyl can have a much more potent effect on someone who has not taken the drug before. Dr. Goulsby gave her medical testimony and opinions to a reasonable degree of medical certainty.

{¶21} Based on the testimony provided by Dr. Goulsby and viewing it in a light most favorable to the prosecution, we find that a rational trier of fact could readily conclude that but for Charlene's taking fentanyl in the hours prior to her death, she would not have died. Fentanyl was the only drug found in a fatal quantity in her system. The other drug, mirtazapine "did not significantly affect her in terms of being lethal," was nowhere near the fatal level, and was a prescription drug, which the pathologist testified was at "a level in her body most of the time. . . it didn't significantly affect her in terms of being lethal on its own. . . it's well below the lethal range." Even though the pathologist gave the cause of death as "multiple drug intoxication" due to the presence of multiple drugs in her system, she testified that only one drug was present at a fatal level – fentanyl.

{¶22} We also find that Trautzsch's conviction for corrupting another with drugs is not against the manifest weight of the evidence. When we review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses, we

find that the trier of fact did not lose its way. Other witnesses testified that Charlene, who was a 48-year-old Marine veteran who was proud of her military service, was “fine” and “happy” the evening before her death and had accompanied her brother and his family out to dinner to celebrate her brother’s birthday. Her brother testified that Charlene suffered from bipolar disorder and alcoholism but took her medication and did well. She had been clean and sober for over two years and there was no indication that she was involved in “hard” drug use. Her brother testified that he was certain Charlene would never take fentanyl because a mutual friend had died from a fentanyl overdose and it affected them tremendously, “it ate us all up.” Her brother testified that as a result, Charlene would never have knowingly taken fentanyl. Her brother testified that Charlene was fine at approximately 9 p.m. the evening before her death when he walked over to her house and gave her and Trautzsch several of his birthday cupcakes. Her brother testified that he had told Charlene earlier that day when he learned that Trautzsch was planning to visit Charlene that he was not pleased and that Trautzsch was like “the wolf in sheep’s clothing that will come for you without you knowing.” However, his sister felt sorry for Trautzsch because Trautzsch had told her that his dog had recently died.

{¶23} Charlene’s sister-in-law testified that she assisted Charlene daily with her medications and personal care. Charlene took her prescription mirtazapine, 30 mg, daily and also took prescription buspirone and olanzapine which were anti-psychotic medications that Charlene had taken for years. Charlene’s sister-in-law used to dispense medication to Charlene three times a day but determined it would be easier to use a programmable pill-dispensing device that operated on a timer and could be monitored through alert messages sent by the device. Her sister-in-law testified that in the days

before her death Charlene had a cold and was taking cold medicine in addition to her prescription medications. Charlene was fine when she went out to dinner the evening before her death. However, the next morning Trautzsch knocked on Charlene's brother and sister-in-law's door and told them something was wrong with Charlene, she had stopped breathing. When Charlene's sister-in-law arrived, Charlene was blue-lipped and did not have a pulse. After attempting CPR, they called an ambulance. However, Charlene died from a fatal drug overdose.

{¶24} The State presented sufficient evidence through the pathologist's testimony to support the conviction of corrupting another with drugs and having reviewed the testimony of the victim's close family members and the other evidence adduced at trial, we do not believe that the jury clearly lost its way in convicting Trautzsch. Charlene was clean and sober for two years, did not do "hard" drugs, and had taken her prescription medication that day and was described as fine and happy the evening before her death. It was only after Trautzsch arrived later that evening and provided Charlene with fentanyl that she suffered a deadly overdose, with fatal levels of fentanyl in her system. Thus, the verdict was supported by sufficient evidence and was not against the manifest weight of the evidence. We overrule Trautzsch's first assignment of error.

B. Ineffective Assistance of Counsel

{¶25} Trautzsch contends that his trial counsel was deficient for failing to object to the pathologist's reliance on two toxicology reference manuals. He argues that references to those manuals constituted prejudicial hearsay because they were not established as reliable authorities in toxicology under Evid.R. 803(18). He argues that the failure to object to the use of these manuals was plain error.

{¶26} Trauttsch also contends that his trial counsel was deficient for failing to object to the question concerning the pathologist's degree of certainty that supported her opinions and for failing to argue "but-for" causation to the jury. He argues that the "reasonable degree of medical certainty" standard that Dr. Goulsby used is a "more likely than not" standard and was insufficient for her to state that she had established the causation of harm by fentanyl. Trauttsch argues that because the jury was never told that fentanyl caused the death, there was not a but-for causal relationship between the fentanyl Trauttsch gave Charlene and her death.

{¶27} To prevail on an ineffective assistance of counsel claim, a defendant must show: "(1) deficient performance by counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that, but for counsel's errors, the proceeding's result would have been different." *State v. Short*, 2011-Ohio-3641, ¶ 113, citing *Strickland v. Washington*, 466 U.S. 668, 687-688, 694, (1984). Failure to satisfy either part of the test is fatal to the claim. See *Strickland* at 697. The defendant "has the burden of proof because in Ohio, a properly licensed attorney is presumed competent." *State v. Gondor*, 2006-Ohio-6679, ¶ 62. We "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Strickland* at 689, quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955); *State v. Pierce*, 2024-Ohio-82, ¶ 25 (4th Dist.). "Debatable strategic and tactical decisions may not form the basis of a claim for ineffective assistance of counsel, even if, in hindsight, it looks as if a better strategy had been available." *State v. Cook*, 65 Ohio St.3d 516, 524 (1992).

{¶28} Certain statements are not hearsay and therefore are not objectionable as such. Evid.R. 803(18) provides:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness: . . . (18) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

The Staff Notes to the evidentiary rule explain that Ohio adopted the current learned treatise exception to the hearsay rule in 2006 for several reasons:

There are a number of reasons for creating a hearsay exception for statements in learned treatises under the circumstances in the proposed rule. Every expert brings a certain amount of “background hearsay” to his or her opinion, in the form of the out-of-court statements of textbook authors, colleagues, and others, that forms much of the basis of the expert's training and education. Ohio law now allows experts to rely on that knowledge in establishing their qualifications and in forming opinions.

Importantly, commentators agree that statements in learned treatises come within the two major justifications for most hearsay exceptions: reliability and necessity. Authors of scholarly works usually have no connection to the litigation and no motive to misrepresent. Their scholarly reputations are at stake when peers review their work for accuracy, enhancing reliability. With respect to necessity, there is often no other way to get the opinions of the most highly qualified researchers and scholars before the court.

Evid.R. 803(18) contains a number of safeguards against unreliability and misuse. Misunderstanding is guarded against by the fact that the statements in learned treatises come to the trier of fact only through the testimony of qualified experts who are on the stand to explain and apply the material in the treatise. The rule provides that the treatise may be read into evidence but not received as an exhibit to prevent the trier from giving it excessive weight or attempting to interpret the treatise by itself.

(Citations omitted). 2006 Staff Notes to Evid.R. 803(18).

{¶29} Dr. Goulsby was proffered as an expert pathologist, coroner, and forensic pathologist after testifying about her extensive education, residencies, fellowships, board certifications, and professional work history and experiences. She testified in detail about the steps involved in performing an autopsy. Dr. Goulsby testified that the autopsy process includes an analysis of the toxicology of the individual. The coroner removes fluids from the body and sends them to the toxicology department, which performs an analysis and issues a report to the coroner. The coroner incorporates the information from the report into the autopsy findings. Dr. Goulsby testified that she and other pathologists use reference manuals to look up values and ranges for quantities of drugs found in the toxicology report. Dr. Goulsby testified that the two manuals used are “Randall C. Beselt . . . titled ‘Disposition of Toxic Drugs in Man’ . . . Twelfth [Ed]ition which is copyright 2020. The other reference that I used was another booklet, ‘The Handbook of Forensic Toxicology for Medical Examiners’ by D.K. Molina, and that’s copyright 2010.” Dr. Goulsby testified that these reference manuals are used by all the pathologists in the Montgomery County Coroner’s Office. Dr. Goulsby testified about the lethal range for fentanyl concentrations provided in the Beselt and Molina reference manuals, but neither the manuals nor any excerpts from them were received as exhibits.

{¶30} “A text qualifies as a ‘reliable authority’ if it is generally accepted and trusted in the relevant professional community.” *Bradley v. Ohio Dept. of Transportation*, 2012-Ohio-451, ¶ 20 (10th Dist.). Dr. Goulsby’s testimony established that the two reference manuals were reliable authority used by herself and other pathologists and thus learned treatises under Evid.R. 803(18). *State v. Keaveney-Padamonsky*, 2025-Ohio-5285, ¶ 20-22 (11th Dist.) (expert witness provided testimonial foundation for his reliance on the data

regarding drug concentration reference ranges); *State v. Cheesman*, 2016-Ohio-5040, ¶ 34-35 (5th Dist.) (forensic scientist at BCI gave testimony that established an online drug reference database was reliable authority when she testified that all forensic scientists at BCI relied on and used the database for the preliminary identification of analyzed substances). Dr. Goulsby testified about the lethal drug concentration level ranges from the learned treatises but the treatises, or relevant excerpts, were not received as exhibits. Therefore, there was no basis in Evid.R. 803(18) for any objection by defense counsel to the expert's reference to them in her testimony. We find that Trautzsch has failed to establish any error occurred with respect to those reference manuals under Evid.R. 803(18).

{¶31} At the conclusion of her testimony, the State asked Dr. Goulsby:

Q: Doctor as you give us your opinions today with respect to the autopsy that you put together, the one you did from toxicology, have you expressed those to a reasonable degree of medical certainty?

A: Yes. Based on the findings at autopsy, the toxicology report, and the information describing the circumstances surrounding the death.

Trautzsch argues that this standard is a “more likely than not” standard and was not sufficient to establish harm caused by fentanyl. Additionally, he argues that based on this, defense counsel should have argued that the but-for causation was not met by Dr. Goulsby's testimony.

{¶32} The Supreme Court of Ohio has explained:

Evid.R. 702(C) requires that an expert's testimony be based on “reliable scientific, technical, or other specialized information.” Under Evid.R. 702(C), if the expert's “testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:

“(1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts or principles;

“(2) The design of the procedure, test, or experiment reliably implements the theory;

“(3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result.”

State v. Lang, 2011-Ohio-4215, ¶ 73. “Questions about the certainty of the scientific results are matters of weight for the jury.” *Id.* at ¶ 77.

{¶33} We reject Trauttsch 's argument that the expert witness must state that her opinion was made with the highest level of proof “beyond a reasonable doubt.” Dr. Goulsby was qualified as an expert to testify about the cause of death. In *State v. D'Ambrosio*, 67 Ohio St.3d 185, 191 (1993), the Court held that expert witnesses in criminal cases can testify in terms of possibility rather than in terms of a reasonable scientific certainty or probability. “We believe that the better practice, especially in criminal cases, is to let experts testify in terms of possibility.” *Id.* at 191.

{¶34} We reject the argument that an expert must use specific phrases to characterize their findings, such as the phrase Trauttsch suggests that the findings must be “to the highest proof standard of reasonable doubt.” *State v. Fannon*, 2018-Ohio-5242, ¶ 110-116 (4th Dist.). Additionally, “a set of magic words” is not necessary. *State v. Beasley*, 2018-Ohio-493, ¶ 162 (“under Evid.R. 702, experts are not required to use any particular ‘magic words.’ * * * an expert's opinion is admissible so long as it provides evidence of more than mere possibility or speculation”); *State v. Pettiford*, 2024-Ohio-4447, ¶ 29-31 (4th Dist.).

{¶35} Finally, we reject Trautzsch’s argument that his defense counsel was ineffective for failing to argue but-for causation was lacking in Dr. Goulsby’s testimony. Trautzsch’s argument tracks the faulty rationale used by the Tenth District in *Seymour*, *supra*, (which was subsequently overturned) that restricted its review to direct testimonial evidence only and failed to review the circumstantial evidence.² As the Supreme Court of Ohio held, “Sufficiency of the evidence review is not an exercise in scientific certainty.” *State v. Seymour*, 2026-Ohio-1249, ¶ 26. Moreover, we found that Dr. Goulsby’s testimony was sufficient for a rational trier of fact to conclude that fentanyl was the “but-for” cause of Charlene’s death.

{¶36} Additionally, we have reviewed defense counsel’s closing argument. The decision not to argue against Dr. Goulsby’s testimony falls within the realm of trial strategy – defense counsel focused on the “knowingly” element of the offense instead.

Generally, “[c]ounsel’s decision on whether to give an opening statement or closing argument and how to formulate and deliver them are tactical decisions.” Normally “[t]he substance of closing argument falls within the realm of trial strategy.” Further, it is well settled that statements of counsel are not to be considered as evidence.

(Citations omitted.) *State v. White*, 2024-Ohio-549, ¶ 65 (4th Dist.). And, any failure to argue a “but-for” causation defense was not prejudicial because the jury was instructed that closing arguments are not evidence:

The evidence does not include the indictment or opening statements or closing arguments of counsel. The opening statements and closing arguments of counsel are designed to assist you. They are not evidence.

“A presumption always exists that the jury has followed the instructions given to it by the trial court.” *Pang v. Minch*, 53 Ohio St.3d 186 (1990), paragraph four of the syllabus.

² Trautzsch’s brief was filed before the Court issued its decision in *State v. Seymour*, 2026-Ohio-1249. Thus, appellate counsel did not have the benefit of that holding when formulating his arguments.

{¶37} Trautzsch has failed to show any deficient performance by his defense counsel. We overrule his second assignment of error.

IV. CONCLUSION

{¶38} We overrule the assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay 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 Lawrence County Court of Common Pleas 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 set forth in 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. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

This document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.