

SUPREME COURT OF OHIO

State v. Pountney

152 Ohio St. 3d 474, 2018-Ohio-22 (2018) · No. 2016-1255 · Decided January 4, 2018

SUMMARY

The Supreme Court of Ohio held that the state failed to prove the statutory “bulk amount” of transdermal fentanyl required to enhance Mark Pountney’s aggravated-possession offense to a second-degree felony. Because the applicable pharmaceutical reference manual did not specify a maximum daily dose in a usual dose range for transdermal fentanyl, the state could not rely on morphine dosage information to establish the bulk amount. The court affirmed the Eighth District Court of Appeals’ judgment.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	French, J.; O'Connor, C.J.; O'Donnell, J.; Kennedy, J.; O'Neill, J.; Fischer, J.; DeWine, J.
JURISDICTION	Ohio
DECIDED	January 4, 2018
DOCKET	2016-1255
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State of Ohio appealed by discretionary appeal from the Eighth District Court of Appeals' judgment reversing Pountney's second-degree-felony conviction for aggravated possession of fentanyl and remanding for entry of a fifth-degree-felony conviction and resentencing.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. Sufficiency of the evidence is reviewed by asking whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements proven beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; binding precedent in Ohio.
PARTIES	The State of Ohio v. Mark H. Pountney

TOPICS

statutory interpretation

criminal procedure

sentencing

standard of review

appellate procedure

PRACTICE AREAS

Criminal law

Criminal procedure

Controlled-substance offenses

Statutory interpretation

Evidence and sufficiency of the evidence

QUESTIONS PRESENTED

1. Whether the State may use the usual dose range of morphine and a morphine-to-fentanyl conversion table to establish the maximum daily dose in the usual dose range of transdermal fentanyl under R.C. 2925.01(D)(1)(d).
2. Whether the State presented sufficient evidence that Pountney possessed at least five times the statutory bulk amount of transdermal fentanyl for purposes of the enhanced felony level in R.C. 2925.11(C)(1)(c).

HOLDINGS

1. To prove the bulk amount under the dosage prong of R.C. 2925.01(D)(1)(d), the State must identify a maximum daily dose in the usual dose range for the drug at issue that is specified in a standard pharmaceutical reference manual; a manual's dosing instructions or reference points for calculating a dose are insufficient.
2. The State may not rely on the usual dose range of morphine, an entirely different drug, to establish the bulk amount of transdermal fentanyl when the reference manual does not specify a fentanyl dose range or maximum daily dose.
3. The State failed to present sufficient evidence that Pountney possessed at least five times the bulk amount of transdermal fentanyl; under the current statutory scheme, the offense therefore remained a fifth-degree felony.

KEY QUOTATIONS

“the manual must specify the usual dose range itself, or at least the maximum daily dose within that range.”
(¶ 26)

“So, without a standard pharmaceutical reference manual that specifies the maximum daily dose in the usual dose range for transdermal fentanyl, possession of less than 20 grams of transdermal fentanyl will be a fifth-degree felony under R.C. 2925.11(C)(1)(a) unless and until the General Assembly amends the statutory framework for assigning enhanced felony levels to offenses involving possession of fentanyl.” (¶ 33)

FACTUAL BACKGROUND

Pountney stipulated that he knowingly possessed ten three-day transdermal fentanyl patches, each delivering 50 micrograms of fentanyl per hour. The State sought to prove that the patches constituted at least five times the statutory bulk amount, which would elevate the offense to a second-degree felony. Its pharmacist expert relied on a morphine-to-fentanyl conversion table in the American Hospital Formulary Service because the manual did not specify a usual dose range or maximum daily dose for transdermal fentanyl.

PROCEDURAL HISTORY

Pountney was indicted for theft, identity fraud, and drug-possession offenses. After a bench trial limited to whether ten transdermal fentanyl patches equaled at least five times the statutory bulk amount, the common pleas court convicted him of second-degree-felony aggravated possession of fentanyl and sentenced him to prison. The Eighth District held that the State failed to present sufficient evidence of fentanyl's bulk amount, reversed, and remanded for a fifth-degree-felony conviction and resentencing. The Supreme Court of Ohio accepted the State's discretionary appeal and affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Supreme Court affirmed the Eighth District's judgment, which directed the trial court to enter a finding of guilt on Count 4 as a fifth-degree felony and resentence Pountney accordingly.

CASES CITED

- State v. Jenks, 61 Ohio St. 3d 259, 574 N.E.2d 492 (1991)
- State v. Pariag, 137 Ohio St. 3d 81, 2013-Ohio-4010, 998 N.E.2d 401
- State v. Lowe, 112 Ohio St. 3d 507, 2007-Ohio-606, 861 N.E.2d 512
- State v. Montgomery, 17 Ohio App. 3d 258, 260, 479 N.E.2d 904 (1st Dist. 1984)
- State v. Caldwell, 5th Dist. Richland No. CA-2369, 1986 WL 7456
- State v. Bange, 4th Dist. Ross No. 10CA3160, 2011-Ohio-378
- State v. Huber, 187 Ohio App. 3d 697, 2010-Ohio-2919, 933 N.E.2d 345 (2d Dist.)
- State v. Baker, 2d Dist. Montgomery No. 7753, 1982 WL 3801