

UNDERSTANDING AND CHALLENGING THE LAW: PENNSYLVANIA AND FEDERAL DRUG DELIVERY RESULTING IN DEATH (DDRD) STATUTES DECODED

Presenters:

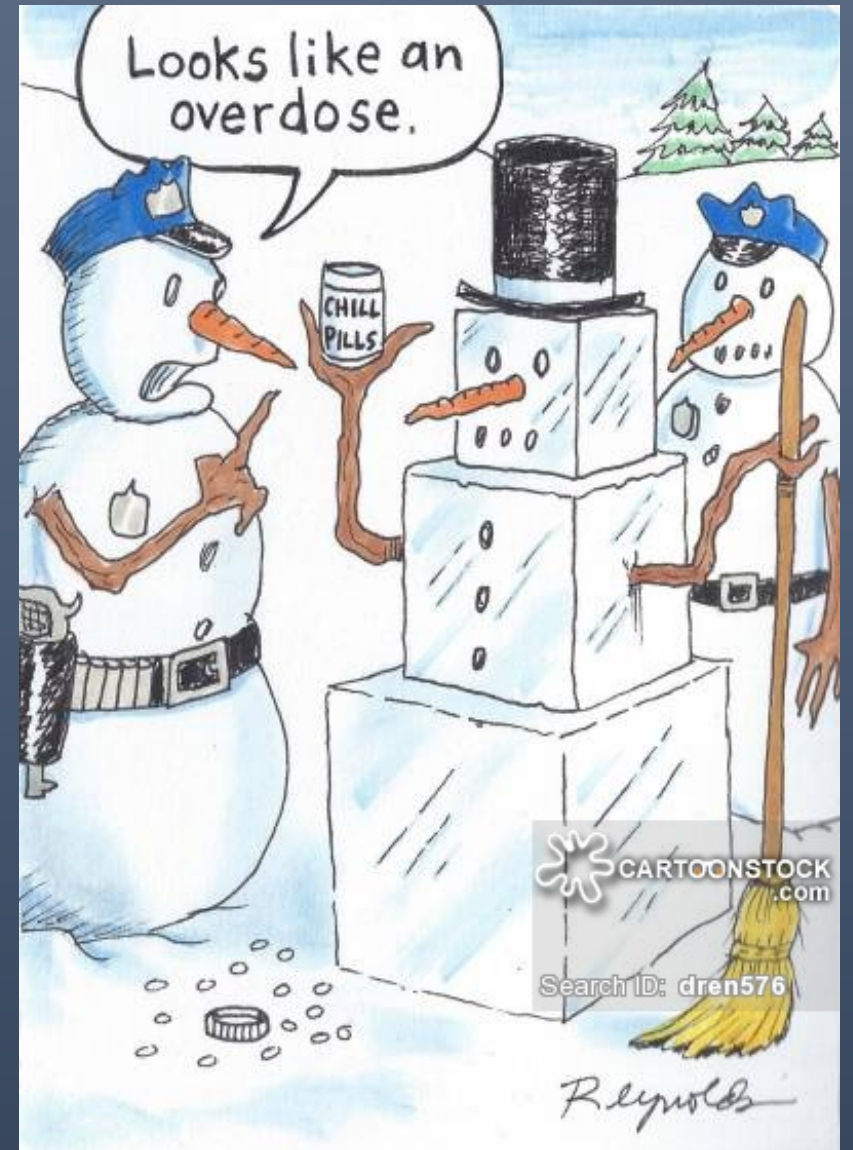
- Brian McNeil, Appellate Public Defender and Intern Coordinator, York County (PA) Public Defender's Office
- Andrea Harris, Assistant Federal Public Defender, Western District of Virginia

Understanding & Challenging the Law: Pennsylvania and Federal DDRD Statutes Decoded

November 6, 2019

Brian McNeil, Public Defender, Appellate Unit, York Co. Public Defender
Andrea Harris, Assistant Federal Public Defender, Western District of VA

Attempt at Overdose Humor?



The State Part (from an Appellate Perspective)

- History of the PA DDRD statute
- Elements
- Strategies



"I'll work on the appeal. You try to escape."

History of the Statute

Original Version (1989)

§2506. Drug Delivery Resulting in Death.

(A) General Rule.— A person commits murder of the third degree who administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of Section 13(A)(14) or (30) of the Act of April 14, 1972 (P.L. 233, No. 64), known as the Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance.

(B) Mandatory Minimum Sentence.— A person convicted under Subsection (A) shall be sentenced to a mandatory minimum term of imprisonment of five years and a fine of \$15,000, or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(C) Proof of Sentencing.—Provisions of this section shall not be an element of the crime. Notice of the applicability of this section to the Defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the Defendant an opportunity to present necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.

(D) Mandatory Sentencing.— There shall be no authority in any court to impose on an offender to which this section is applicable a lesser sentence than provided for herein or to place the offender on probation, parole, work release or prerelease or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than provided for herein. Disposition under Section 17 or 18 of the Controlled Substance, Drug, Device and Cosmetic Act shall not be available to a Defendant to which this section applies.

(E) Appellate Review.— If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

(F) Forfeiture.— Assets against which a forfeiture petition had been filed and is pending or against which the Commonwealth has indicated an intention to file a forfeiture petition shall not be subject to a fine. Nothing in this section shall prevent a fine from being imposed on assets which have been subject to an unsuccessful forfeiture petition.

Subsection (c)

(C) Proof of Sentencing.—Provisions of this section shall not be an element of the crime. Notice of the applicability of this section to the Defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the Defendant an opportunity to present necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.

Subsections (d) and (e)

(D) Mandatory Sentencing.— There shall be no authority in any court to impose on an offender to which this section is applicable a lesser sentence than provided for herein or to place the offender on probation, parole, work release or prerelease or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than provided for herein. Disposition under Section 17 or 18 of the Controlled Substance, Drug, Device and Cosmetic Act shall not be available to a Defendant to which this section applies.

(E) Appellate Review.— If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

Commonwealth v. Highhawk

687 A.2d 1123 (Pa. Super. 1996)

Amended Version (1998-2011)

§ 2506. Drug delivery resulting in death

(a) General rule.--A person commits murder of the third degree who administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance.

(b) Mandatory minimum sentence.--A person convicted under subsection (a) shall be sentenced to a minimum sentence of at least five years of total confinement and a fine of \$15,000, or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity, notwithstanding any other provision of this title or other statute to the contrary.

(c) Deleted.

(d) Authority of court in sentencing.--There shall be no authority in any court to impose on an offender to which this section is applicable a lesser sentence than provided for herein or to place the offender on probation, parole, work release or prerelease or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than provided herein. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided herein. Disposition under section 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic Act shall not be available to a defendant to which this section applies.

(e) Appeal by Commonwealth.--If a sentencing court refuses to apply subsection (b) where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with subsection (b) if it finds that the sentence was imposed in violation of subsection (b).

(f) Forfeiture.--Assets against which a forfeiture petition has been filed and is pending or against which the Commonwealth has indicated an intention to file a forfeiture petition shall not be subject to a fine. Nothing in this section shall prevent a fine from being imposed on assets which have been subject to an unsuccessful forfeiture petition.

Commonwealth v. Ludwig

874 A.2d 623 (Pa. 2005)

“Using an existing element of the crime to demonstrate a separate element, malice, vitiates malice as an independent element to be proven and renders Section 2506 a strict liability crime.”

Previous Version (2011-2014)

(a) Offense defined.--A person commits a felony of the first degree if the person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L. 233, No. 64),¹ known as The Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance.

(b) Penalty.--A person convicted under subsection (a) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.

(c), (d), (e) -- Deleted by amendment.

(f) Forfeiture.--Assets against which a forfeiture petition has been filed and is pending or against which the Commonwealth has indicated an intention to file a forfeiture petition shall not be subject to a fine. Nothing in this section shall prevent a fine from being imposed on assets which have been subject to an unsuccessful forfeiture petition.

Current Text

§ 2506. Drug delivery resulting in death.

(a) Offense defined.--A person commits a felony of the first degree if the person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance.

(b) Penalty.--

(1) A person convicted under subsection (a) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.

(2) Paragraph (1) shall not apply to a person convicted under section 2502(c) (relating to murder) when the victim is less than 13 years of age and the conduct arises out of the same criminal act.

(c), (d), (e) -- Deleted by amendment.

(f) Forfeiture.--Assets against which a forfeiture petition has been filed and is pending or against which the Commonwealth has indicated an intention to file a forfeiture petition shall not be subject to a fine. Nothing in this section shall prevent a fine from being imposed on assets which have been subject to an unsuccessful forfeiture petition.

Elements of the offense

- 1) intentionally;
- 2) deliver[ing] . . . any controlled substance or counterfeit controlled substance;
- 3) in violation of section 13(a)(14) or (30) of . . . The Controlled Substance, Drug, Device and Cosmetic Act; and
- 4) another person dies as a result of using the substance.

Commonwealth v. Peck

202 A.2d 739 (Pa. Super. 2018)

- (1) Where the drug delivery resulting in death (“DDRD”) statute explicitly applies only to deliveries occurring “in violation of section 13(a)(14) or (30) of” the Controlled Substance, Drug, Device and Cosmetic Act (“The Act”), is violation of the Act an essential element of DDRD?
- (2) Where a drug delivery occurs wholly in another state, can that delivery violate the Act, which explicitly applies only to deliveries occurring “within the Commonwealth?”
- (3) If a violation of the Act is an element of DDRD and an out-of-state delivery does not violate the Act, did the Superior Court err in affirming [Petitioner’s] DDRD conviction based on a delivery occurring wholly in Maryland?

Pretrial Issues

Fourth Amendment

and

Rules of Evidence

Fourth Amendment

Commonwealth v. Fulton, 179 A.3d 475 (Pa. 2018)

Rules of Evidence (Authentication and Hearsay)

Commonwealth v. Koch, 39 A.3d 996 (Pa. Super. 2011)

Constitutional Attacks

Vagueness

Commonwealth v. Kakhankham, 132 A.3d 986 (Pa. Super. 2015)

Commonwealth v. Proctor, 156 A.3d 261 (Pa. Super. 2017)

Commonwealth v. Storey, 167 A.3d 750 (Pa. Super. 2017)

Ludwig

“Using an existing element of the crime to demonstrate a separate element, malice, vitiates malice as an independent element to be proven and renders Section 2506 a strict liability crime.”

Sufficiency and Weight

“When ‘the figure of Justice totters on her pedestal,’ or when ‘the jury’s verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience.’ ”

Sentencing

Factors inherent in offense or already reflected in the sentencing guidelines

Commonwealth v. Goggins, 748 A.2d 721 (Pa. Super. 2000) (*en banc*)

Commonwealth v. Johnson, 758 A.2d 1214 (Pa. Super. 2000)

Ludwig, yet again

Brian McNeil

717-771-9217, ext. 3017

bamcneil@yorkcountypa.gov