

IN THE
SUPREME COURT OF OHIO

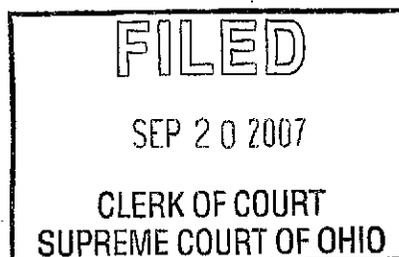
STATE OF OHIO : NO. 2007-0595 & 2007-0651
Plaintiff-Appellant/ : On Appeal from the Hamilton
Cross-Appellee : County Court of Appeals, First
 : Appellate District
vs. :
 : Court of Appeals
FERNANDO CABRALES : Case Number C050682
 :
 :
Defendant-Appellee/
Cross-Appellant

**REPLY BRIEF OF PLAINTIFF-APPELLANT AND RESPONSE TO CROSS-
APPELLANT'S MERIT BRIEF**

Joseph T. Deters (0012084P)
Prosecuting Attorney

Scott M. Heenan (0075734P)
Assistant Prosecuting Attorney
Counsel of Record

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3227
Fax No. (513) 946-3021



COUNSEL FOR PLAINTIFF-APPELLANT/CROSS-APPELLEE, STATE OF OHIO

Elizabeth E. Agar
Attorney at Law
1208 Sycamore St.
(513) 241-5670

COUNSEL FOR DEFENDANT-APPELLEE/CROSS APPELLANT, FERNANDO
CABRALES

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Defendant-Appellee	:	

Introduction

Cabrales responds to the State's arguments by directing this Court's attention to other crimes that are allied offenses of similar import. He points to crimes such as rape and robbery allied with kidnapping, domestic violence being allied with a specific form of disorderly conduct, involuntary manslaughter being allied with child endangering, and theft being allied with receiving stolen property. Part I of this reply demonstrates how each of these criminal pairings are, without a doubt, allied offenses of similar import. But it also shows why the same is not true of trafficking and possession.

He also responds by arguing that courts are misreading *State v. Rance* in such a way that they will only find allied offenses when both offenses necessarily result in the commission of the other. Part II of this reply shows that while courts will often compare

each offense with the other that doing so is often necessary and that allied offenses are being found when one of the offenses necessarily includes the other.

Cabrales next cites to a plethora of cases from other states. Part III of this reply shows that these other states use a law that is not analogous to Ohio's law. Specifically, these other states generally define trafficking as possession with an intent to traffic, whereas Ohio does not include possession as an element of its trafficking statute.

Finally, in his proposition of law, he argues that this Court should completely overrule *Rance* and, in turn, find that trafficking under R.C. 2925.03(A)(1) is an allied offense of similar import to possession under R.C. 2925.11(A). But there is no reason for this Court to do away with *Rance's* easy to follow bright-line test. And since the elements of trafficking by selling or offering to sell do not overlap with possession, and vice versa, the two are not allied offenses.

As has been demonstrated in the State's merit brief and as will be further shown in this reply and response, this case is about the Legislature's intent. *State v. Rance* is good law that finds the Legislature's intent in the laws it drafts. And the Legislature's intent is that trafficking (under either section) is separate and distinct from possession.

This Court should preserve the Legislature's intent by rejecting Cabrales' proposition of law and by reversing the First District Court of Appeals by answering the certified question in the negative.

Reply in Support of Appellant's Proposition of Law

I. Some crimes always occur when another crime is committed. A long standing example of this is kidnapping always occurring with a rape or a robbery. Possession does not always occur with trafficking.

There are some crimes in Ohio that always result in the commission of another crime. For example, rape always includes kidnapping, robbery always includes kidnapping, and theft always includes receiving stolen property. A review of these crimes shows that it is impossible to commit one without committing the other. Thus, they are allied offenses.

But trafficking does not always include possession. Nor does possession always include trafficking. Because each can be committed without committing the other they are not allied offenses of similar import.

A. Rape and robbery always involves kidnapping.

In 1979, this Court recognized that kidnapping was a special crime in that kidnapping was necessarily implicit in certain crimes, notably rape and robbery. Recognizing that some crimes always involve kidnapping, this Court held that the “primary issue, however, is whether the restraint or movement of the victim is merely incidental to a separate underlying crime or, instead, whether it has a significance independent of the other offense.”¹

¹*State v. Logan* (1979), 60 Ohio St. 2d 126, 135, 397 N.E.2d 1345.

This Court has not turned away from this principle of criminal law. It has continued to adhere to the finding that, unless the kidnapping has its own independent significance, kidnapping is an allied offense to robbery² and rape.³ And, absent the Legislature making some change to the kidnapping statute, this principle will likely remain firmly entrenched in Ohio law.

Cabrales and those who would see *Rance*⁴ done away with, however, are quick to point out that this Court has not engaged in a *Rance* analysis of kidnapping with rape or robbery. They see this as a sign that *Rance* has been overruled by this Court. But this statement begs the question of why would this Court engage in a *Rance* analysis for these crimes? It is settled that rape and robbery offenses *always* include a degree of kidnapping. Because of this unique trait of kidnapping, there is no need to engage in a *Rance* analysis because the result is predetermined. Kidnapping will be an allied offense of rape or robbery.

B. Disorderly conduct (under R.C. 2919.25[C]) is a lesser included offense of domestic violence.

Perhaps realizing this flaw, Cabrales directs this Court to its recent decision of *Shaker Hts. v. Mosely*, where it ruled that disorderly conduct is a lesser-included offense of domestic violence.⁵ But in *Mosely*, this Court recognized that the elements of

²R.C. 2905.01 & R.C. 2911.02; *State v. Fears* (1999), 86 Ohio St. 3d 329, 715 N.E.2d 136.

³*State v. Adams*, 103 Ohio St. 3d 508, 2004-Ohio-5845, 817 N.E.2d 29.

⁴*State v. Rance*, 85 Ohio St. 3d 632, 1999-Ohio-291, 710 N.E.2d 699.

⁵*Shaker Hts. v. Mosely*, 113 Ohio St. 3d 329, 2007-Ohio-2072, 865 N.E.2d 859, ¶ 19-20.

disorderly conduct were all contained in domestic violence and properly concluded that “domestic violence cannot be committed under . . . R.C. 2919.25(C) without disorderly conduct under R.C. 2917.11(A)(1) also being committed.”⁶

A lesser-included offense will always be an allied offense of the greater offense. An offense is a lesser-include offense when, looking at the elements in the abstract, the lesser offense will always be committed when the greater offense has been committed.⁷ As demonstrated in *Mosely*, courts looking for lesser-included offenses look at the statutory elements in the abstract. If the elements of trafficking and possession overlapped the way the elements of domestic violence and disorderly conduct did in *Mosely*, then trafficking and possession would be allied offenses. But they do not overlap and they are not allied.

C. Involuntary manslaughter is always an allied offense of the felony that was the proximate cause of the victim’s death.

Cabrales also cites to *State v. Cooper*, a case where this Court found that involuntary manslaughter that resulted from the commission of child endangering merged with the child endangering that caused the death.⁸ That result made sense. Involuntary manslaughter prohibits “caus[ing] the death of another . . . as a proximate result of the offender committing or attempting to commit a felony.”⁹ To prove

⁶*Id.*, ¶ 19.

⁷*State v. Deem* (1988), 40 Ohio St.3d 205, 533 N.E.2d 294, paragraph three of the syllabus.

⁸R.C. 2903.04 & R.C. 2919.22; *State v. Cooper*, 104 Ohio St. 3d 293, 2004-Ohio-6553, 819 N.E.2d 657.

⁹R.C. 2903.04(A).

involuntary manslaughter, the state must prove the commission or attempted commission of another felony. In *Cooper*, if the state could not have proven the underlying child endangering, which was an element of the involuntary manslaughter in that case, then it could not have proven the involuntary manslaughter.

By its very definition, involuntary manslaughter consumes whatever underlying felony was the proximate cause of the victim's death. Since it is impossible to commit involuntary manslaughter without also committing the underlying felony it follows that whatever the underlying offense is it is an allied offense of involuntary manslaughter. Once again, if the Legislature intended to make possession an element of trafficking – as it has done in the past – then it would have added possession to the current definition of trafficking.

D. A completed theft always involves receiving stolen property.

Cabrales also cites to *State v. Yarbrough*.¹⁰ In *Yarbrough*, this Court ruled that receiving stolen property and theft of the same property are allied offenses.¹¹ The State finds this reliance somewhat confusing because, in his proposition of law, Cabrales suggests this Court should do away with *Rance*'s rule of comparing the statutory elements in the abstract in favor of looking at the facts of his crimes. Yet this Court specifically relied on *Rance*'s abstract comparison in *Yarbrough*.¹²

¹⁰R.C. 2913.02 & R.C. 2913.51; *State v. Yarbrough*, 104 Ohio St. 3d 1, 2004-Ohio-6097, 817 N.E.2d 699.

¹¹*Id.* at ¶99.

¹²*Id.* at ¶101.

Regardless, Cabrales thinks that *Yarbrough* shows that two crimes can be allied offenses of similar import even if their elements do not strictly correspond. But, just like rape cannot be committed without a kidnapping, it is impossible to successfully commit a theft offense without also receiving stolen property. A completed theft offense requires a person to receive the property of another while knowing that the property was obtained from a theft offense.

Cabrales attempts to analogize this to trafficking and possession. He argues that a person cannot traffic drugs without also possessing them. But a person can commit a trafficking offense without committing a possession offense. As demonstrated in the merit brief, a person may act as a middleman for a drug transaction. Cabrales is quick to claim that such a person must have at least constructive possession of the drugs.

E. It is possible to commit trafficking without having actual or constructive possession of any controlled substance.

But a broker would never have actual or constructive possession of the drugs the two people he brought together would trade. A person who acted as a translator for a Spanish-speaking dealer to facilitate a sale to an English-speaking buyer would never have actual or constructive possession of the drugs involved. Nor would someone who acted as a dispatcher who directed dealers to their buyers. Yet each of them would be guilty of trafficking in drugs because each would have been part of distributing the

controlled substance. Put simply, “[w]hile ‘possession’ is certainly helpful in proving distribution, it is technically not a necessary element.”¹³

Cabrales also cites this Court to a 1987 First District decision where that court found trafficking and possession to be allied offenses of similar import.¹⁴ If the statutes in effect in 1987 were in effect today this case would not be before this court. In 1987, the trafficking statute prohibited possessing certain amounts of drugs.¹⁵ Since the 1987 law included the element of possession it was an allied offense of possession. That, however, is no longer the law in Ohio.

II. An allied offense occurs when the commission of one offense always results in the commission of the other. Courts should look at both offenses to see if the commission of one will always result in the commission of the other. Failing to do so can lead to improper results.

Cabrales argues that courts are improperly looking not only to see if offense A will necessarily result in offense B, but also looking to see if offense B will necessarily result in offense A. Are courts looking to see if things work both ways? Yes, they are. But that is something that they will often have to do.

Returning to *Yarbrough*, receiving stolen property does not always involve theft. If this Court had looked no further than that statement then *Yarbrough* would have been wrongly decided. By looking the other way, it is certain that every successful theft

¹³*United States v. Sepulveda*, (1st Cir. 1996), 102 F.3d 1313, 1317, citing *United States v. Tejada* (1st Cir. 1989), 886 F.2d 483, 490.

¹⁴*State v. Jennings* (1987), 42 Ohio App. 3d 179, 537 N.E.2d 685.

¹⁵R.C. 2925.03(A)(4) and (6) [1987].

offense involves receiving stolen property. This is true of all allied offenses. For example, even though every robbery and rape involves a kidnapping, not every kidnapping involves a robbery or rape.

Turning to the underlying crimes of this matter, possession does not always involve trafficking. Someone who possesses drugs for their own personal use will not be guilty of trafficking. And, looking at things the other way, trafficking does not always involve possession. A broker who arranges the actual transaction from a drug dealer to a purchaser never has possession of the drugs and, will not be guilty of possession.

No matter which way the offenses are considered, they are not allied offenses of similar import. Had the Legislature wished to make them allied offenses, it could have easily done so by crafting a “possession with intent” statute, something it could have done by reverting back to prior Ohio law.

III. Unlike some other states, Ohio no longer has a “possession with intent” law.

Cabrales refers this Court to a plethora of cases from other jurisdictions that he believes shows that possession is a lesser included offense of trafficking. But the cases that Cabrales cites to involve possession being a lesser-included offense of possession with intent to distribute. Ohio has no such law. If Ohio’s trafficking statute forbade “possession with intent to distribute” – as it did prior to July 1, 1996 – then Cabrales would be correct and possession would be a lesser-included offense. But the Legislature

chose to do away with that language and has, in turn, done away with Cabrales' argument.

The Ohio Legislature has deemed it appropriate to treat possession and trafficking as two different offenses. It has determined that trafficking and possession of controlled substances are different societal evils that should be attacked and punished separately. Its intent should determine the outcome of this case. The Ohio Legislature is not alone in intending to treat trafficking and possession separately.

The Colorado Supreme Court, when considering Colorado's trafficking and possession statutes, found that their legislature intended to treat trafficking and possession separately and found that convicting a defendant for both does not violate double jeopardy: "[T]he offenses are separate and distinct and proscribe different kinds of conduct. It naturally follows that possession of a narcotic drug is not a lesser-included offense of 'soft' sale of a narcotic drug. The basic rationale is that possession and sale are directed at different sorts of criminal conduct which may be independently punished. Therefore, the prohibition against double jeopardy is not violated by a conviction for both possession and simple or 'soft' sale of marijuana."¹⁶

The North Carolina Supreme Court reached the same conclusion when it reviewed North Carolina's laws: "An examination of the subject, language and history of the statutes indicates that the legislature intended that these offenses be punished separately,

¹⁶*People v. Bloom* (1978), 195 Colo. 246, 248-249, 577 P.2d 288 (internal citation omitted.)

even where the offenses are based on the same conduct. . . . N.C.G.S. § 90-9(a)(3), by its language, protects the public by prohibiting any person from possessing any amount, large or small, of a controlled substance. The policy determination underlying this statute is that the possession by any person of any amount of controlled substance is against the public's interest, presumably because it enhances the potential for use of the substance, either by the possessor or by a person to whom the possessor distributes it.

“In contrast, N.C.G.S. § 90-95(h)(3) . . . was ‘responsive to a growing concern regarding the gravity of illegal drug activity in North Carolina and the need for effective laws to deter the corrupting influence of drug dealers and traffickers.’ Unlike N.C.G.S. § 90-95(a)(3), which combats the perceived evil of individual possession of controlled substances, section (h)(3), by its language, is intended to prevent the large-scale distribution of controlled substances to the public. Because the perceived evils these statutes attempt to combat are distinct, we conclude that the legislature’s intent was to proscribe and punish separately the offenses of felonious possession of cocaine and of trafficking in cocaine by possession.”¹⁷

Just like the legislatures of Colorado and North Carolina, the Ohio Legislature intends for possession and trafficking to be treated separately. They have made both distinct and separate offenses and have made each separately punishable. The

¹⁷*State v. Pipkins* (1994), 337 N.C. 431, 434, 446 S.E.2d 360 (internal citations omitted.)

Legislature's intent should prevail. Therefore, this Court should reverse the First District Court of Appeals.

Response to Cross-Appellant's Proposition of Law

Proposition of Law 2: Trafficking under R.C. 2925.03(A)(1) and possession of a controlled substance under R.C. 2925.11 are not allied offenses of similar import. A person may sell or offer to sell a controlled substance without possessing it and vice versa.

In his proposition of law, Cabrales argues that possession and selling or offering to sell the same controlled substance are allied offenses of similar import. Cabrales is arguing that this Court should completely do away with *Rance*. As has been demonstrated, *Rance* is a good, bright-line test that works to the benefit of the courts and the Legislature. It makes the determination of what is or is not an allied offense easy.

Trafficking under R.C. 2925.03(A)(1) prohibits a person from knowingly “Sell[ing] or offer[ing] to sell a controlled substance.” Possession under R.C. 2925.11(A) prohibits a person from “knowingly obtain[ing], possess[ing], or use[ing] a controlled substance.” As the following chart illustrates, the only elements that overlap are the need for a controlled substance and the mens rea:

R.C. 2925.03(A)(1)	R.C. 2925.11(A)
Knowingly	Knowingly
sell or offer to sell	
	obtain
	possess
	use
a controlled substance	a controlled substance

The elements of these offenses do not overlap. Nor does one offense always involve the other, such as rape always involving a kidnapping. The two are not allied offenses of similar import.

Rance is good law. Courts, legislatures, prosecutors, and defendants can quickly and easily determine what offenses are allied offenses by looking at the statutory elements of each crime. There is no reason to overrule this simple, bright-line test for determining what offenses are allied offenses of similar import. Therefore, this Court should reject Cabrales' proposition of law.

Conclusion

In this case, ultimately, the Court's goal is to find and to preserve the Legislature's intent. *State v. Rance* provides the best way of doing this because it looks directly at the words the Legislature chose to codify. Looking at those words in the abstract looks directly at the Legislature's intent.

Looking at either version of trafficking and possession in the abstract shows that the elements of the offenses do not correspond to one another so that the commission of one offense will necessarily result in the commission of the other. And that was the Legislature's intent. If it had intended for the two crimes to merge it could have, as have other states, included the word "possession" in the trafficking statute.

But it chose not to do so. And this cannot be seen as some random mistake, but instead is a sign of deliberate action. This is because the trafficking statute once included possession as an element. If the Legislature intended trafficking and possession to be allied offenses, then it would have left the possession element in the statute. But having removed it, and especially having removed it shortly after *Rance* was decided, shows its intent that trafficking and possession be separate offenses that are to be separately punished.

Cabrales attempts to cloud this intent by pointing towards crimes that are allied offenses where the Legislature has not included elements of one offense in the other, such as rape and kidnapping. What Cabrales overlooks is that it is impossible to commit

a rape without a kidnapping also being committed. When it is impossible to commit one crime without committing another, then the other crime is an allied offense.

But that is not true of trafficking and possession. For example, a person who brokers a drug deal will never have possession, actual or constructive, of the controlled substance in question, will thus be guilty only of trafficking. Likewise, a person who offers to sell a controlled substance, but who never actually has the substance, will thus be guilty only of trafficking. And the opposite is true, also. A person who possesses a controlled substance for personal use will be guilty only of possession, but will not be guilty of either form of trafficking.

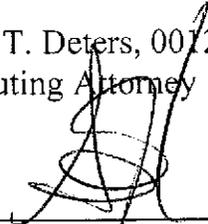
Because it is possible to commit either trafficking or possession without committing the other they are not allied offenses of each other. The First District erred when it found otherwise. And Cabrales' second proposition of law is equally erroneous. Both ignore the Legislative intent behind the trafficking and possession laws.

The certified question before this Court is: "Are the offenses of trafficking in a controlled substance in violation of R.C. 2925.03(A)(2) and possession of a controlled substance in violation of R.C. 2925.11(A) allied offenses of similar import when the same controlled substance is involved in both offenses?" The answer to that question is found in the Legislature's intent. And the answer is no.

This Court should preserve the Legislature's intent. It should reject Cabrales' proposition of law. And it should reverse the First District Court of Appeals by answering the certified question in the negative.

Respectfully,

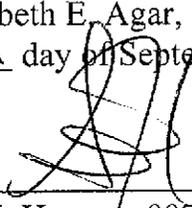
Joseph T. Deters, 0072084P
Prosecuting Attorney



Scott M. Heenan, 0075734P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: 946-3227
Attorneys for Plaintiff-Appellant

Certificate of Service

I hereby certify that I have sent a copy of the foregoing Merit Brief of Plaintiff-Appellant, by United States mail, addressed to Elizabeth E. Agar, 1208 Sycamore St., Cincinnati, Ohio 45210, counsel of record, this 19th day of September, 2007.



Scott M. Heenan, 0075734P
Assistant Prosecuting Attorney

Appendix

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R.C. 2919.25(C)	A-5.
R.C. 2925.03(A)(1)	A-6.
R.C. 2925.11(A)	A-6.

R.C. 2903.04(A)

(A) No person shall cause the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony.

R.C. 2905.01

(A) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following purposes:

- (1) To hold for ransom, or as a shield or hostage;
- (2) To facilitate the commission of any felony or flight thereafter;
- (3) To terrorize, or to inflict serious physical harm on the victim or another;
- (4) To engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against the victim's will;
- (5) To hinder, impede, or obstruct a function of government, or to force any action or concession on the part of governmental authority.

(B) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall knowingly do any of the following, under circumstances that create a substantial risk of serious physical harm to the victim or, in the case of a minor victim, under circumstances that either create a substantial risk of serious physical harm to the victim or cause physical harm to the victim:

- (1) Remove another from the place where the other person is found;
- (2) Restrain another of his liberty;
- (3) Hold another in a condition of involuntary servitude.

R.C. 2907.02

(A)(1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

- (a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.
- (b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

(c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

R.C. 2911.02

(A) No person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall do any of the following:

- (1) Have a deadly weapon on or about the offender's person or under the offender's control;
- (2) Inflict, attempt to inflict, or threaten to inflict physical harm on another;
- (3) Use or threaten the immediate use of force against another.

R.C. 2913.02

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

- (1) Without the consent of the owner or person authorized to give consent;
- (2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;
- (3) By deception;
- (4) By threat;
- (5) By intimidation.

R.C. 2913.51

(A) No person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense.

(B) It is not a defense to a charge of receiving stolen property in violation of this section that the property was obtained by means other than through the commission of a theft offense if the property was explicitly represented to the accused person as being obtained through the commission of a theft offense.

R.C. 2917.11(A)(1)

(A) No person shall recklessly cause inconvenience, annoyance, or alarm to another by doing any of the following:

(1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior

R.C. 2919.22

(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:

(1) Abuse the child;

(2) Torture or cruelly abuse the child;

(3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;

(4) Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter;

(6) Allow the child to be on the same parcel of real property and within one hundred feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within one hundred feet of, any act in violation of section 2925.04 or 2925.041 of the Revised Code when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of section 2925.04 or 2925.041 of the Revised Code that is the basis of the violation of this division.

(C)(1) No person shall operate a vehicle, streetcar, or trackless trolley within this state in violation of division (A) of section 4511.19 of the Revised Code when one or more children under eighteen years of age are in the vehicle, streetcar, or trackless trolley. Notwithstanding any other provision of law, a person may be convicted at the same trial or proceeding of a violation of this division and a violation of division (A) of section 4511.19 of the Revised Code that constitutes the basis of the charge of the violation of this division. For purposes of sections 4511.191 to 4511.197 of the Revised Code and all related provisions of law, a person arrested for a violation of this division shall be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or for operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

R.C. 2919.25(C)

(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

R.C. 2925.03(A) [1987]

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

- (1) Sell or offer to sell a controlled substance in an amount less than the minimum bulk amount as defined in section 2925.01 of the Revised Code;
- (2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or has reasonable cause to believe such drug is intended for sale or resale by the offender or another;
- (3) Cultivate, manufacture, or otherwise engage in any part of the production of a controlled substance;
- (4) Possess a controlled substance in an amount equal to or exceeding the bulk amount but in an amount less than three times that amount;
- (5) Sell or offer to sell a controlled substance in an amount equal to or exceeding three times the bulk amount;
- (6) Possess a controlled substance in an amount equal to or exceeding three times the bulk amount;
- (7) Sell or offer to sell a controlled substance in an amount equal to or exceeding three times the bulk amount;
- (8) Provide money or other items of value to another person with the purpose that the

recipient of the money or items of value would use them to obtain controlled substances for the purpose of selling or offering to sell such controlled substances in amounts exceeding a bulk amount or for the purpose of violating division (A)(3) of this section.

R.C. 2925.03(A)

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

(1) Sell or offer to sell a controlled substance;

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person

R.C. 2925.11(A)

(A) No person shall knowingly obtain, possess, or use a controlled substance.