ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
Plaitiff-Appellee,	:	CASE NOS.: 2008-2172 & 2008-2119
vs.	:	On Appeal from the Marion County Court of Appeals Third District Appellate Court
RUSTY JORDAN,	:	
Defendant-Appellant	:	Case No.: 9-08-11

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STATEMENT OF THE CASE AND THE FACTS

By Judgment Entry filed February 23, 2006, Defendant-Appellant was convicted of Possession of Cocaine, a felony of the fifth degree, two (2) counts of Forgery, felonies of the fifth degree, and was sentenced to a prison term of twelve (12) months, including the possibility of three (3) years of post release control, which language appeared in the entry. Defendant was released on December 12, 2006, and was advised by the Adult Parole Authority that he would be subject to post release control for one year and that he was to contact his parole officer upon release (Tr. pp. 95-96). Defendant met with his parole officer upon release and reviewed the conditions of his release referred to as "monitored time" and signed the same (Tr. p. 105).

On December 26, 2006, due to Defendant-Appellant being arrested, his parole officer reviewed new conditions of release with Defendant-Appellant (Tr. pp. 112-120). Defendant -Appellant was advised at that time that his failure to report (to the Adult Parole Authority) could result in an Escape charge for absconding supervision (Tr. p. 117). Defendant-Appellant reported as directed in January, February, March and part of April (Tr. p. 119). On or about April 18, 2007, police were looking for Defendant-Appellant; Defendant-Appellant was not located until May 2, 2007 (Tr. pp. 126-127). At that time, Defendant-Appellant was reminded by his parole officer that he could be charged with escape for running from them (Tr. p. 127). Defendant-Appellant was incarcerated by the Adult Parole Authority as a result of his failure to report and released from jail on June 4, 2007.

Upon Defendant-Appellant's release from jail, he was given a new location to report and was told to report on July 3, 2007 (Tr. pp. 128-129). According to Defendant-

Appellant, he failed to report because he either didn't know that the location changed (Tr. pp. 207-208), or he wasn't told to report to the new location (Multi-County Jail) until July 18, 2007 (Tr. pp. 129-130). During cross examination, Defendant-Appellant agreed that he never reported to any location on July 18, 2007 (Tr. pp. 218-220).

On July 18, 2007, when Defendant-Appellant was to report, the parole officer received a call that the police were looking for Defendant-Appellant regarding an "incident" (Tr. p. 131). Due to Defendant-Appellant's failure to report, an Order to Arrest was issued on August 5, 2007. The Defendant was not found until October 12, 2007 (Tr. pp.136-137). Defendant-Appellant agreed that he did not report to his parole officer as required in September or October of 2007 and that he relocated without notifying his parole officer (Tr. pp. 223-224, 226).

ARGUMENT

APPELLEE'S PROPOSITION OF LAW NO. I

The State is not required to provide a transcript from the sentencing hearing demonstrating that Defendant was advised of postrelease control in open court but must provide a properly journalized sentencing entry which reflects said notification.

The State met its burden of proving that Defendant-Appellant committed the offense of Escape, in violation of R.C. 2921.34. The evidence adduced at trial demonstrated that Defendant-Appellant "knew" that he was under detention, and the journalized judgment entry of sentencing dated February 23, 2006, which contained the postrelease control advisement, was sufficient to prove that the adult parole authority had the authority to place Defendant-Appellant under detention and to supervise him.

The State takes no exception to the imposition of the duty of the trial court to impose sentence in accordance with R.C. 2929.19(B)(3) (i.e. by notifying defendant in open court and in the judgment entry of sentencing) as argued by Defendant-Appellant. As this court previously noted "personally advising the offender about postrelease control at the sentencing hearing pursuant to R.C. 2929.19(B)(3) alleviates any potential problems pursuant to Crim.R. 43(A)" *State v. Jordan*, 104 Ohio St.3d 21, 25, 2004-Ohio-6085, 817 N.E. 864, fn. 2.

Defendant-Appellant cites various cases in which the trial court failed to properly notify the defendant of postrelease control: i.e. *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126, *State v. Bezak*, 114 Ohio St.3d 94, 868 N.E.2d 961, 2007-Ohio-3250; and *State v. Jordan*.

The State asserts that these cases are substantially dissimilar to the case at bar. Unlike *Hernandez, Jordan,* and *Bezak,* wherein defendants challenged their placement on postrelease control through direct appeal or a writ of habeas corpus, Defendant-Appellant is challenging the propriety of the imposition of postrelease control by the adult parole authority through his charge for escape. Defendant-Appellant argues that in order to prove that defendant committed the offense of escape, the State must prove proper placement of a defendant on postrelease control by providing a copy of the transcript of the sentencing hearing, as well as a certified sentencing entry containing the advisement for postrelease control.

For several reasons, Defendant-Appellant's proposition of law should not be adopted.

I. "A Court of Record speaks only through its entries"

It is important to note that a certified copy of Defendant-Appellant's sentencing entry was introduced at trial, which properly reflected the advisement of postrelease control for an optional period of three years.

"It is axiomatic that [a] court of record speaks only through its entries." *State ex rel Geauga Cty. Bd. Of Commrs. v. Milligan*, 100 Ohio St.3d 366, 2003-Ohio-6608, 800 N.E.2d 361, at ¶20. "Were it otherwise it would provide a wide field for controversy as to what the court actually decided." *Indus. Comm. v. Musselli* (1921), 102 Ohio St. 10, 15, 130 N.E. 32.

Certified copies of judgment entries from prior cases are frequently relied upon and necessary for purposes of enhancement in crimes such as operation of a motor vehicle while under the influence of alcohol or a drug of abuse, R.C. 4511.19, and domestic violence, 2919.25.

In *State v. Dowhan*, Lake App. No. 2008-L-064, 2009-Ohio-684, defendant was indicted for violation of R.C. 4511.19, and a specification that defendant had previously been convicted of or pleaded guilty to five or more violations of R.C. 4511.19 within the past twenty (20) years. Defendant filed a motion in limine, which sought to exclude two (2) prior convictions. The trial court denied defendant's motion and the case proceeded to trial. Defendant assigned the use of the prior convictions as error.

On appeal, the State argued that Defendant, in arguing the validity of a prior conviction, was making an impermissible collateral attack on the prior conviction. The Court agreed. The Court citing *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St. 3d 375, 2007-Ohio-5024, 875 N.E.2d 550, at ¶16 (citation omitted), stated that "a collateral attack is defined as "an attempt to defeat the operation of a judgment, in a proceeding where some new right derived from or through the judgment is involved." *Dowhan* at ¶10. "Black's Law Dictionary (8th Ed.2004) 278, defines 'collateral attack' as '[a]n attack on a judgment in a proceeding other than a direct appeal; esp., an attempt to undermine a judgment through a judicial proceeding in which the ground of the proceeding (or a defense in the proceeding) is that the judgment is ineffective. *Dowhan* at ¶10, citing *Ohio Pyro, Inc.* at ¶17.

In *Dowhan*, the court cites *Custis v. United States* (1994), 511 U.S. 485, 496, 114 S.Ct. 1732, 128 L.Ed.2d 517, which held that "a criminal defendant can collaterally challenge the constitutional validity of a prior conviction only on the ground that he was denied the fundamental right to be represented by counsel in the prior proceeding." *Dowhan* at ¶11. The Supreme Court reasoned that an attack on prior convictions should be limited to alleged uncounseled prior convictions due to (1) administrative difficulties obtaining files; and 2) an interest in promoting finality of judgments. *Id.* at ¶11, citing *Custis* at 496-497.

Further, this Court, in *State v. Thompson*, 121 Ohio St.3d 250, 2009-Ohio-314, held that "a bald allegation of constitutional infirmity is insufficient to establish a prima facie showing with respect to an "uncounseled" plea. Because Thompson has not introduced evidence to the contrary and established a prima facie showing, we presume that the trial courts in the prior convictions proceeded constitutionally." *Id.* at ¶7.

With respect to Defendant-Appellant's proposition of law, the State asserts that the more appropriate rule is that when a defendant is charged with escape based on failure to report to his/her parole officer, a copy of a certified judgment entry that notifies a defendant of optional or mandatory postrelease control is sufficient to prove that a defendant knew he was under detention. The case law is clear that a court speaks through its entries and that collateral attacks are disfavored. As in *Thompson*, it should be presumed that the trial court's proceedings were done in accordance with the law. If a defendant still contests the propriety of his/her placement on postrelease control, then said defendant should use the affirmative defense provided by R.C. 2921.34(B).

CERTIFIED QUESTION :

> If a defendant is under "actual" detention, can the defendant be convicted of escape under R.C. 2921.34(A)(1) when the record demonstrates that the defendant knew he was under detention or was reckless in that regard, irrespective of whether the defendant was properly under said detention?

For the following reasons, which will be addressed hereinbelow, the State would suggest that this question be answered affirmatively: 1) R.C. 2921.34(B) provides an affirmative defense for escape; 2) the elements for criminal liability under R.C. 2901.21 are met; and 3) R.C. 2929.19(B)(3)(c) and (e) state that the failure of the court to notify a defendant in a sentencing hearing, or in the entry of mandatory or optional postrelease control does not negate, limit or otherwise affect the authority of the parole board to impose supervision;

I. An Affirmative Defense is provided by R.C. 2921.34(B)

R.C. 2921.34 provides:

> (A)(1) No person, knowing that the person is under detention or being reckless in that regard, shall purposely break or attempt to break the detention, or purposely fail to return to detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement.
>
> (B) The irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, if the detention is pursuant to judicial order or in a detention facility. In the case of any other detention, irregularity or lack of jurisdiction is an affirmative defense only if either of the following occurs:
>
> 1. The escape involved no substantial risk of harm to the person or property of another.
> 2. The detaining authority knew or should have known there was no legal basis or authority for the detention.

Defendant-Appellant argues that the affirmative defense provided by R.C. 2921.34(B) does not apply because the State would have failed to show actual "detention" because "detention" requires "supervision", and "supervision" requires authority. Thus, if postrelease control was not properly imposed, then a defendant cannot have broken "detention" because he was never under "detention".

As stated above, the admission into evidence of a certified copy of the sentencing entry that properly reflects the notification of postrelease control is sufficient for a conviction for escape. Thus, a defendant would be required to move forward with the affirmative defense.

II. Requirements for Criminal Liability R.C. 2901.21

R.C. 2901.21 states as follows:

> (A) Except as provided in division (B) of this section, a person is not guilty of an offense unless both of the following apply:
>
> (1) The person's liability is based on conduct that includes either a voluntary act, or an omission to perform an act or duty that the person is capable of performing;
>
> (2) The person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the section defining the offense.
>
> In under such circumstance

A conviction for escape under such circumstances as Defendant-Appellant's herein is wholly consistent with the law. In the case at bar, it is clear that Defendant-Appellant knew in no uncertain terms that he was subject to postrelease control and was being supervised by the adult parole authority. Defendant-Appellant had been advised on multiple occasions that he could be charged with escape, and was incarcerated on multiple occasions for failure to comply with the rules. Further, Defendant-Appellant, despite incarceration for violations, never challenged his placement on postrelease

control or questioned the authority of the parole board to place him on postrelease control until subsequent to his conviction for escape.

III. R.C. 2929.19(B)(3)(c) and (e)

Finally, the enactment of R.C. 2929.19(B)(3)(c) and (e) would further suggest that such a conviction would be appropriate. Relevant to the certified question, these sections (in their relevant parts) state as follows:

> (B)(3)(c): "If a court imposes a sentence including a prison term of a type described in division (B)(3)(c) of this section on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(c) of this section that the offender will be supervised under section 2967.28 of the Revised Code after the offender leaves prison or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the mandatory period of supervision that is required for the offender under division (B) of section 2967.28 of the Revised Code."
>
> (B)(3)(e): "If a court imposes a sentence including a prison term on or after July 11, 2006, the failure of a court to notify the offender pursuant to division (B)(3)(e) of this section that the parole board may impose a prison term as described in division (B)(3)(e) of this section for a violation of that supervision or a condition of post-release control imposed under division (B) of section 2967.131 [2967.13.1] of the Revised Code or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the parole board to so impose a prison term for a violation of that nature if, pursuant to division (D)(1) of section 2967.28 of the Revised Code, the parole board notifies the offender prior to the offenders release of the boards authority to so impose a prison term.

The language of these sections is apparent and strong. The failure of the court to notify a Defendant in open court or in an entry does not "negate, limit, or otherwise affect" the authority of the parole board. This language certainly suggests that if the Defendant has the requisite mens rea, as provided by the statute, then his failure to act, or

his omission, as it were, will likely result in a conviction for escape. These sections provide the parole board with the authority to supervise with or without notification in open court in regard to a conviction for escape.

CONCLUSION

In his merit brief, Defendant-Appellant argues that the State should be required to prove proper placement on postrelease control by introducing the transcript and a copy of the certified judgment entry with notification of postrelease control, be it mandatory or optional. This position is without merit. Defendant-Appellant herein had several different methods of challenging his placement on postrelease control through pre-trial motions to dismiss the indictment, or the use of the affirmative defense which addresses irregularity in bringing about postrelease control.

Further, Defendant-Appellant never answered the certified question. The State would argue that a conviction for escape, where a defendant knows or was aware of his supervision and detention through contact with the adult parole authority is proper. Said conviction, as in this case, meets the requirements of criminal liability pursuant to R.C. 2901.21. Further, the Defendant would have the use of the affirmative defense to argue otherwise. Finally, in enacting R.C. 2929.19(B)(3)(c) and (e), the legislature appears to have intended that said failure to notify a defendant of postrelease control does not limit the ability of the adult parole authority to place the defendant on postrelease control.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was sent by email to Stephen P. Hardwick at Stephen.Hardwick@OPD.Ohio.gov, and by regular U.S. Mail, postage pre-paid, 250 E. Broad Street, Ste. 1400, Columbus, Ohio 43215 on the 15th day of June, 2009.

Denise M. Martin (0070825)

COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS OF MARION COUNTY, OHIO
GENERAL DIVISION

2006 FEB 23 AM 9:43

STATE OF OHIO,	*	Case No. 05-CR-438
Plaintiff,	JULIE M. KAGEL CLERK OF COURTS	Judge Robert S. Davidson
-vs-	*	
RUSTY JORDAN,	*	JUDGMENT ENTRY OF SENTENCING
Defendant.	*	

On January 4, 2006, the Defendant, **RUSTY JORDAN**, appeared in court with his appointed attorney, Clifford Spohn. The State of Ohio moved to dismiss Count I, Possession of Drug Paraphernalia [R.C. 2925.14(C)(1)], M4, Count III, Tampering with Evidence [R.C. 2921.12(A)(1)/(B)], F3 and Count V, Theft [R.C. 2913.02(A)(2)/(B)(2)], M1. The Court finding said motion to be well taken, hereby ORDERS Count I, III and V dismissed. The defendant withdrew his previously entered plea of Not Guilty, and entered a plea of **Guilty to Count II, Possession of Cocaine [R.C. 2925.11(A)/(C)(4)], F5, Count IV, Vandalism [R.C. 2909.05(B)(1)(b)/(E)], F5, Count VI, Forgery [R.C. 2913.31(A)(2)/(C)(1)(b)], F5, Count VII, Forgery [R.C. 2913.31(A)(2)/(C)(1)(b)], F5 and Count VIII, Receiving Stolen Property [R.C. 2913.51(A)/(C)], F4,** the remaining charges contained in the amended Indictment. Before accepting the plea, the Court personally addressed the defendant and determined, pursuant to Criminal Rule 11, that the defendant understood his rights, the maximum penalty involved, and the consequences of entering a plea.

The Court found the plea of Guilty to have been knowingly, intelligently, and voluntarily entered into by the defendant, and accepted the plea of guilty.

Thereafter, on February 17, 2006, the defendant appeared in court with his attorney for a sentencing hearing. The Court has considered the record, oral statements, any victim impact statement and pre-sentence report prepared, as well as the principles and purposes of sentencing under R.C. 2929.11, and the appropriate factors under R.C. 2929.12.

The Court finds that the shortest prison term would demean the seriousness of the defendant's conduct and would not adequately protect the public from future crime by the defendant.

The Court further finds that the defendant has previously served a prison term.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant, RUSTY JODRAN, is sentenced as follows:

<u>Count II:</u> **Possession Cocaine [R.C. 2925.11(A)/(C)(4)], F5, to a term of 11 months in prison.**

<u>Count IV:</u> **Vandalism [R.C. 2909.05(B)(1)(b)/(E)], F5, to a term of 11 months in prison.**

Count VI: **Forgery [R.C. 2913.31(A)(2)/(C)(1)(b)], F5, to a term of 11 months in prison.**

Count VII: **Forgery [R.C. 2913.31(A)(2)/(C)(1)(b)], F5, to a term of 11 months.**

Count VIII: **Receiving Stolen Property [R.C. 2913.51(A)/(C)], F4, to a term of 12 months in prison.**

IT IS FURTHER ORDERED that the sentences imposed herein shall be served concurrently to each other, **for a total sentence of 12 months.**

IT IS FURTHER ORDERED that the defendant's operator's license is suspended for a period of six (6) months commencing February 17, 2006 and ending August 17, 2006.

IT IS FURTHER ORDERED that the Defendant, **RUSTY JORDAN**, shall deliver his operator's license to the Clerk of Courts who will then forward a certified copy of this entry, and the defendant's operator's license to the Ohio Bureau of Motor Vehicles, P.O. Box 16784, Columbus, Ohio 43266-0084, along with such other information as required.

The defendant may be subject to a period of three (3) years of post release control by the parole board.

During any period of post release control, the defendant will be under the supervision of the Adult Parole Authority which will require the defendant to comply with one or more post release control sanction, the parole board may then impose a more restrictive post release control sanction, and may increase the duration, or period, of the post release control subject to a statutory maximum. The more restrictive sanction that the parole board may impose may consist of a prison term, provided that the prison term cannot exceed nine months and the maximum cumulative prison term imposed for all violations during the period of post release control cannot exceed one-half of the stated prison term originally imposed. If the violation of the post release control sanction is a felony, the defendant may be prosecuted for the new felony and, in addition to any sentence the court imposes for the new felony, the court may also impose a prison term for the violation, subject to a statutory maximum.

IT IS FURTHER ORDERED that the following financial sanctions shall be imposed pursuant to R.C. 2929.18:

1. The defendant shall pay restitution of $500.00 to Lowes, 1840 Marion Mt. Gilead Rd., Marion, OH 43302 and Lowes is granted judgment against the defendant in the sum of $500.00. This restitution is to be paid jointly and severally with Co-defendant Rocky Jordan.
2. The defendant shall pay restitution of $326.97 to Lowes, 1840 Marion Mt. Gilead Rd., Marion, OH 43302 and Lowes is granted judgment against the defendant in the sum of $326.97. This restitution is to be paid jointly and severally with Co-defendant Rocky Jordan.

3. The defendant shall pay restitution of $500.00 to Goodwill Industries, 340 W. Fairground St, Marion, OH 43302, and Goodwill Industries is granted judgment against the defendant in the sum of $500.00, less any amount that Goodwill may receive from the sale of the van. This restitution is to be paid jointly and severally with Co-defendant Rocky Jordan.

IT IS FURTHER ORDERED that the defendant be transported to the Correctional Reception Center, Orient, Ohio, for assignment to an appropriate penal institution. It is further ordered that the defendant be given credit for 65 days of local jail time that he was confined through the date of sentencing for any reason arising out of this offense, plus any additional days the defendant is confined between the date of sentencing and the date committed to the Reception Center.

IT IS FURTHER ORDERED that the drugs and drug paraphernalia shall be forfeited to the arresting law enforcement agency and destroyed according to law upon completion of the case against Co-defendant Rocky Jordan.

IT IS FURTHER ORDERED that the defendant shall forfeit his interest in the stolen property.

IT IS FURTHER ORDERED that all property being held in evidence be returned to the rightful owner.

Costs and appointed attorney fees assessed.

Judge Robert S. Davidson

cc: Brenda S. Leikala, Assistant Prosecuting Attorney
Clifford Spohn

FIREARM NOTICE

Pursuant to R.C. 2923.13, you are prohibited from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance. If prohibited, you will remain so even after you have been released from prison, community control sanctions, and/or post release control. You can only restore your right to possess a firearm by applying to the court to relieve you from disability pursuant to R.C. 2923.14. Violation of this section is a felony and is punishable by a prison sentence and/or a fine.

Rule 43. Presence of the Defendant

(A) Defendant's presence.

(1) Except as provided in Rule 10 of these rules and division (A)(2) of this rule, the defendant must be physically present at every stage of the criminal proceeding and trial, including the impaneling of the jury, the return of the verdict, and the imposition of sentence, except as otherwise provided by these rules. In all prosecutions, the defendant's voluntary absence after the trial has been commenced in the defendant's presence shall not prevent continuing the trial to and including the verdict. A corporation may appear by counsel for all purposes.

(2) Notwithstanding the provisions of division (A)(1) of this rule, in misdemeanor cases or in felony cases where a waiver has been obtained in accordance with division (A)(3) of this rule, the court may permit the presence and participation of a defendant by remote contemporaneous video for any proceeding if all of the following apply:

(a) The court gives appropriate notice to all the parties;

(b) The video arrangements allow the defendant to hear and see the proceeding;

(c) The video arrangements allow the defendant to speak, and to be seen and heard by the court and all parties;

(d) The court makes provision to allow for private communication between the defendant and counsel. The court shall inform the defendant on the record how to, at any time, communicate privately with counsel. Counsel shall be afforded the opportunity to speak to defendant privately and in person. Counsel shall be permitted to appear with defendant at the remote location if requested.

(e) The proceeding may involve sworn testimony that is subject to cross examination, if counsel is present, participates and consents.

(3) The defendant may waive, in writing or on the record, the defendant's right to be physically present under these rules with leave of court.

(B) Defendant excluded because of disruptive conduct.

Where a defendant's conduct in the courtroom is so disruptive that the hearing or trial cannot reasonably be conducted with the defendant's continued physical presence, the hearing or trial may proceed in the defendant's absence or by remote contemporaneous video, and judgment and sentence may be pronounced as if the defendant were present. Where the court determines that it may be essential to the preservation of the constitutional rights of the defendant, it may take such steps as are required for the communication of the courtroom proceedings to the defendant.

R.C. 2901.21 Requirements for criminal liability; voluntary intoxication

(A) Except as provided in division (B) of this section, a person is not guilty of an offense unless both of the following apply:

(1) The person's liability is based on conduct that includes either a voluntary act, or an omission to perform an act or duty that the person is capable of performing;

(2) The person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the section defining the offense.

(B) When the section defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section, then culpability is not required for a person to be guilty of the offense. When the section neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense.

(C) Voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense. Voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense. evidence that a person was voluntarily intoxicated may be admissible to show whether or not the person was physically capable of performing the act with which the person is charged.

(D) As used in this section:

(1) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of the possessor's control of the thing possessed for a sufficient time to have ended possession.

(2) Reflexes, convulsions, body movements during unconsciousness or sleep, and body movements that are not otherwise a product of the actor's volition, are involuntary acts.

(3) "Culpability" means purpose, knowledge, recklessness, or negligence, as defined in section 2901.22 of the Revised Code.

(4) "Intoxication" includes, but is not limited to, intoxication resulting from the ingestion of alcohol, a drug, or alcohol and a drug.