

IN THE SUPREME COURT OF OHIO

2016

State of Ohio,

Plaintiff - Appellee

v.

Darren Reese

Defendant - Appellant

On Appeal from the Fifth District Court of

Appeals, Muskingum County

Case No. CT2015-0046

APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION

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TABLE OF CONTENTS

TABLE OF CONTENTS	I
TABLE OF AUTHORITIES	II
EXPLANATION OF WHY THE COURT SHOULD ACCEPT JURISDICTION	1
STATEMENT OF THE CASE AND FACTS	2
ARGUMENT	4
CONCLUSION	5

TABLE OF AUTHORITIES

Cases

<i>State v. Gonzales</i> , 6th Dist. Wood No. WD-13-086, 2015-Ohio-461	1
<i>State v. Reese</i> , 5th Dist. No. CT2015-0046, 2016-Ohio-1591	1
<i>State v. Smith</i> , 2nd Dist. Greene No. 2010-CA-36, 2011-Ohio-2658	1

EXPLANATION OF WHY THE COURT SHOULD ACCEPT JURISDICTION

This Court should accept jurisdiction in this case and hold it for the decision in *State v. Gonzalez*, Case No. 2015-0384.

As noted by the Fifth District Court of Appeals this case involves the same issue as *Gonzalez*. “The issue of whether the state, in prosecuting cocaine offenses involving mixed substances under R.C. 2925.11(C)(4)(a) through (f), must prove that the weight of the cocaine meets the statutory threshold, excluding the weight of any filler materials used in the mixture, is currently before the Ohio Supreme Court on a certified conflict between the decision of the Sixth District in *State v. Gonzales*, 6th Dist. Wood No. WD–13–086, 2015-Ohio-461, and the decision of the Second District in *State v. Smith*, 2nd Dist. Greene No. 2010–CA–36, 2011-Ohio-2658.” *State v. Reese*, 5th Dist. No. CT2015-0046, 2016-Ohio-1591, P6.

This court should accept jurisdiction in this case and hold it for the decision in *Gonzalez* because they involves precisely the same issue. Undersigned counsel asked the Fifth District to stay briefing and await the decision in *Gonzalez* but that request was denied.

STATEMENT OF THE CASE AND FACTS

On June 3, 2015, Darren Reese was charged with four counts of Trafficking in Drugs (Cocaine) (two F-1s, one F-2, and one F-3), one count of Illegal Manufacture of Drugs (F-2), and one count of Possession of Drugs (F-1) [See Indictment]. On August 4, 2015, Mr. Reese's counsel filed a "Motion to Conduct a Purity Analysis on the Cocaine Referenced in Each Count of the Indictment," and the State responded opposing the testing. On August 17, 2015, Mr. Reese pleaded No Contest to the indictment and stipulated to the lab tests that did not specify purity. [Tr. 8/17/2015 at 3-5].

The No Contest pleas were based on the following facts: "This case involved a series of controlled buys that were completed by the Zanesville-Muskingum County Drug Task Force on April 9th of 2015; April 21st, 2015; May 7th, 2015; May 28th, 2015, and then a search warrant that was conducted on June 1st of 2015. During those transactions, the Defendant offered to sell, and, in fact, did sell cocaine to an undercover informant with the drug unit. The amounts were very large amounts. In the case of the first count it was 51.4 grams of cocaine. There was 27.4 grams in the second transaction. The third transaction included 104.97 grams after drying, and 149.65 grams before so. And the next was 14.62 grams after having been dried, and 26.69 beforehand, and there was 83.13 grams to come out of the search warrant." [Id. at 16].

On September 21, 2015, the trial court sentenced Mr. Reese to a total of 16 years in prison. [Tr. 9/21/2015 at 10-12]. The sentences were apportioned as follows: an 11 year mandatory sentence for each first degree felony [concurrent to one another]; an 8 year sentence for each second degree felony [concurrent to one another and to the 11 year sentence]; a 36

month sentence on the third degree felony [also concurrent]; and an additional consecutive 5 year sentence for the Major Drug Offender specification. [*Id.*]

ARGUMENT

1. First Proposition of Law: The state, in prosecuting cocaine offenses involving mixed substances under R.C. 2925.11(C)(4)(a) through (f), must prove that the weight of the cocaine meets the statutory threshold, excluding the weight of any filler materials used in the mixture.

Because this Proposition of Law has already been briefed and argued in *State v. Gonzalez*, Case No. 2015-0384, undersigned counsel respectfully requests the Court adopt the Appellee's arguments in *Gonzalez* and decide this case accordingly.

CONCLUSION

For the reasons outlined above, this Court should accept jurisdiction and hold this case for the decision in *State v. Gonzalez*, Case No. 2015-0384.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A true and accurate copy of this document was served by regular mail to Gerald Anderson II, 27 North 5th St., PO Box 189 Zanesville, OH 43702, on April 28, 2016.

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