

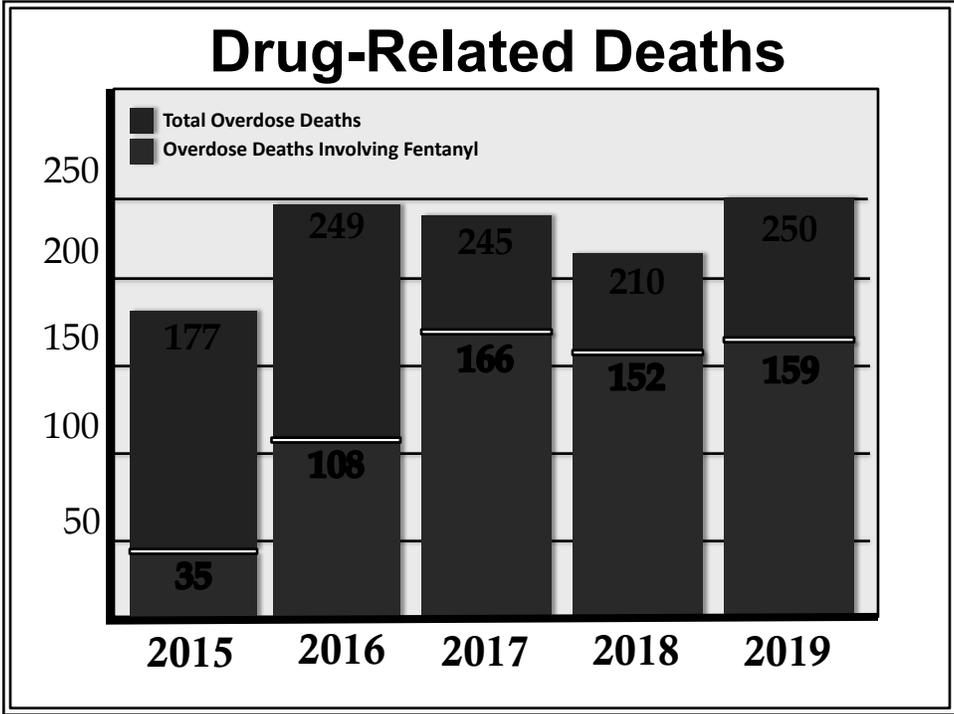
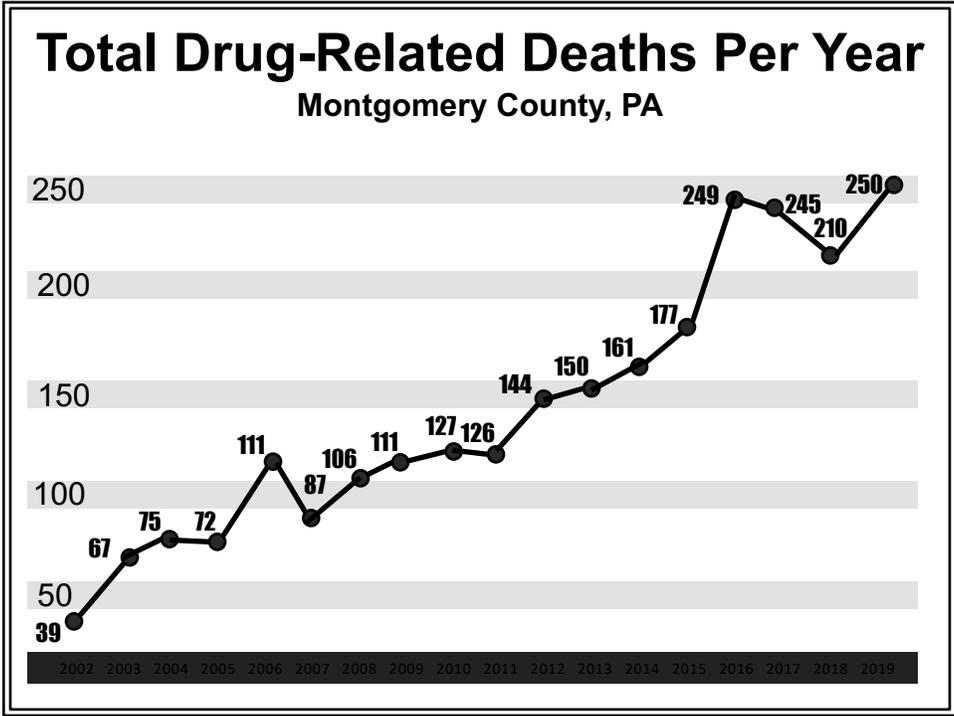
Opioids & Drug Delivery Resulting in Death



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Opioid-Heroin-Fentanyl Crisis





**The Montgomery
County Investigating
Grand Jury Report:**

The Opioid Epidemic

**Since 2015
Nearly
1,000
police
usages /
lives saved**

Naloxone

Recent Results

October 26, 2019
8,272.18 pounds

April 27, 2019
7,716.63 pounds

Since 2010:
75,000+ pounds



Drug Take Back Efforts



Prosecuting Dealers & Suppliers for DDRD

- *Drug Trafficker (non-user)
- *Dealer/User
- *User

Burrage v. U.S., 571 U.S. 204
(2014)



16 Del.C. Sec. 4752(B)

- ✓ Anyone who delivers a Schedule I or II controlled substance [of a certain quantity] to another person;
- ✓ And the controlled substance causes the death of another person who uses or consumes it

“Strict Liability for Drug Induced Deaths”

N.J.S.A. 2C:35-9

- ✓ that the defendant provided the drug; and
- ✓ it’s ingestion caused the death of the victim
- ✓ There is no ***mens rea*** for intended the result or the outcome

- Does not have a Drug Induced Homicide Charge
- Fatal overdoses can be charged under their homicide statutes depending of the facts
- **People v. Gaworecki**, 174 A.D. 3d 1143 (3d Dep't 2019) sufficient evidence to support the charge of 2nd degree manslaughter where the defendant sold heroin to victim who died from an overdose.

State v. Ferguson, 207 A.3d 1253 (N.J. 2019)



- *Drug Delivery Resulting in Death
- *Possession with Intent to Deliver
- *Delivery
- *Manufacture
- *Acquisition by Fraud

Drug Delivery Resulting in Death

- *18 PA. C.S.A. §2506
- *40-year max
- *OGS=13, PRP= 4 Points
- *PRS of 0 = 60 – 78 months (5 – 6.5 year min.)
- *PRS of 5 = 96-114 months (8 - 9.5 year min.)

1. Intentionally administer, dispense, deliver, give, prescribe, sell or distribute;

2. Any controlled and/or counterfeit substance in violation of Section 30

3. Another person dies as a result of using the substance (death must be at least recklessly caused)

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

Is the statute unconstitutionally vague?

*Does it fail to identify the requisite *mens rea* for establishing guilt?

*Does it fail to clearly indicate the requisite level of causation for the “result of” element in the statute?

*The requisite *mens rea* for establishing guilt is “Intentionally”, i.e. intent to deliver, administer, give, prescribe, sell, the drugs.

*“Result of” = “But for” test established in *U.S. v. Burrage*. “But for” the defendant selling the victim a bundle of heroin, the victim would not have died of a heroin overdose.

Death & Reckless Conduct

Kakhankham found that “the dangers of heroin are so great and well-known, the sale of heroin alone is reckless.”

Combined Drug Toxicity

Main issue:

Whether the Court erred in instructing the jury that the final element in DDRD is “that a person died as a result of using the substance even if other substances were found in his system.”

Holding:

The final element in DDRD is the “But for” test for causation. The fact that the decedent had other drugs in his system is immaterial as to causation when the heroin level was at a lethal level and was a direct and substantial factor in the death.

**Forensic Pathologist and
the Toxicologist**

*“But for” the use of heroin, would the victim have died?

*If the victim didn't take the Heroin, would they still be alive?

*Despite the other drugs in the victim's system, was the Heroin at a “lethal dose” or at a “lethal level?”

The Opinion

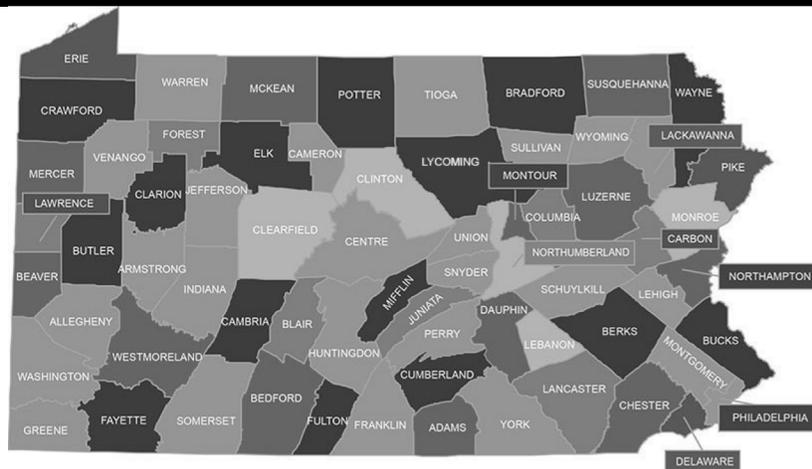
“To a reasonable degree of scientific (or medical) certainty, the victim would not have died but for the use of heroin.”



*Court examined the statute in relation to the chain of supply from supplier to end user when the end user and supplier have never met.

*Appellant claimed that because he did not know the victim who died he could not be found guilty of intentionally delivering the heroin to the victim.

The court disagreed finding that Storey's lack of knowledge of the end user was immaterial and held that the statute requires only that "another person die as a result of using the substance sold."



Commonwealth v. Graham, 196 A.3d 661, 665 (Pa. Super 2018)

Other Charges to Consider

- *Involuntary Manslaughter
- *Third Degree Murder

Investigated 465 OD Deaths Since 2016

Charges:

27 DDRD

**7 Involuntary Manslaughter
PWID and Related charges**

Building Blocks to Prove Cases

- *Montgomery County has a policy for the investigation of overdose deaths
- *Initial response and collection of evidence is paramount.
- *Evaluate phone evidence immediately.
- *Identify and connect with dealer and arrange for him to return and deliver.
- *Find key witnesses and take statements.

- *Phone calls & text messages
- *Facebook Messenger, Snapchat
- *Phone photos, videos
- *Videos from locations
- *Call Detail Records/GPS locations
(search warrants)

- ✓ Avoid Jury Nullification
- ✓ Jury Voire Dire Questions
- ✓ Victimology Considerations
- ✓ Pretrial Motion and Rulings

**Does your state
have an
Assumption of the
Risk Defense?**

Shift blame from
victim, and focus
on drug dealer's
actions.

Focus on whether the
dealer knew the victim
was a novice user

Present Expert
testimony regarding
addiction and its
effects

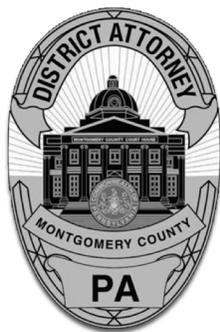
Why DDRD Cases are Important

Dear Tonya,

My sister Jacqueline died 1 year ago today.
Because of your efforts we received justice and
some closure. Thank you.

Warmest Regards,
Walter & Kimberly Hauser

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