

the Jasuta / Schulman report

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TIBA's Case of the Week

Second Court of Appeals

[Case Name]: [Jacob Wayne Lindsay v. The State of Texas](#)

- **OFFENSE:** Fentanyl Murder
- **COUNTY:** Tarrant
- **C/A CASE No.** 02-25-00176-CR
- **DATE OF OPINION:** August 27, 2026 **OPINION:** [Justice Mike Wallach](#)
- **DISPOSITION:** Conviction Affirmed
- **TRIAL COURT:** Cr D/C 2; Hon. William A. Knight
- **LAWYERS:** [Lisa Mullen](#) (Defense); [Steven Conder](#) (State)

[Background Facts]: On September 17, 2023, Appellant delivered to Brandon Harrison some methamphetamine and two “Percs.” Police officers testified at trial that a “Perc” is a counterfeit Percocet tablet containing fentanyl. Text messages from September 17 and 18 of 2025, introduced at trial, showed Harrison requesting and Appellant delivering to him some methamphetamine and the “Percs.” Harrison did not answer Appellant’s texts on the 18th, and, that evening, he was found dead of an overdose. At the time of his death, Harrison was living in a sober house attempting to recover from his drug addiction. When EMTs reported to the call about his suspected overdose, he had in one of his pockets a small baggie containing some methamphetamine residue and one blue pill; laboratory testing revealed that the pill contained fentanyl. The resulting police investigation led to Appellant’s arrest. A grand jury charged him with murder under Section 19.02(b)(4); the indictment alleged that he had knowingly delivered a controlled substance, “to-wit: fentanyl,” the ingestion of which had led to Harrison’s death.

[§ 324 Court’s Charge / Instructions & Definitions / Defensive Charges]: The charge required the jury to find that the controlled substance delivered by Appellant had caused Harrison’s death in order to find Appellant guilty. Appellant argues that murder is a result-of-conduct offense, thus “knowing delivery requires the result that a specific drug, fentanyl, is delivered,” and so the jury

charge should have limited the definition of “knowingly” in the charge to the result-of-conduct definition.

[Holding]: Lindsay acknowledges that because he did not object, the record must show egregious harm for him to prevail on this point. The State counters that while “the gravamen of murder is the result of the offense [–] the death of an individual” -- the subsection at issue here does not require a culpable mental state regarding the result of the conduct. Instead, a culpable mental state is required only as to the knowing manufacture or delivery of the controlled substance. We agree with the State. *** The murder statute [Penal Code § 19.02(b)] sets out multiple ways to commit an offense through conduct that resulted in an individual’s death. One way to commit the offense is to “intentionally or knowingly cause[] the death of an individual.” *** Proving this intentional murder offense requires proving that the defendant had a culpable mental state -- intentional or knowing -- with respect to the result of his or her conduct. See *Schroeder v. State*, 123 S.W.3d 398 (Tex.Cr.App. 2003)[see §§, Vol. 11, No. 47; 12/08/2003]. Thus, in an intentional murder case, jury charge language defining the culpable mental states should be limited to definitions that relate to the result of the defendant’s conduct. *Cook v. State*, 884 S.W.2d 485 (Tex.Cr.App. 1994). *** But the subsection at issue in this case provides that a person commits the offense of murder if the person “knowingly manufactures or delivers” certain controlled substances in violation of the Health and Safety Code and a person dies as a result of introducing that substance into the person’s body. *** The Court of Criminal Appeals has said that delivery of a controlled substance is a nature-of-conduct offense. *White v. State*, 509 S.W.3d 307 (Tex.Cr.App. 2017)[see §§, Vol. 25, No. 6; 02/20/2017]. Thus, as the State says, the statute on its face requires a culpable mental state as to the nature of the defendant’s conduct -- manufacture or delivery of the controlled substance -- but not as to the result of that conduct. *** This reading of Subsection (b)(4) is consistent with the offense of felony murder (i.e., “unintentional murder”) set out in Subsection (b)(3)3 for which no culpable mental state is required other than whatever culpable mental state is required to prove the underlying felony. See *Lomax v. State*, 233 S.W.3d 302 (Tex.Cr.App. 2007)[see §§, Vol. 15, No. 25; 07/02/2007]. Because the applicable culpable mental state is the mental state required for the underlying offense, the applicable mental state definitions are likewise those that apply to the underlying offense. *** Similarly, the culpable mental state applicable to Subsection (b)(4) is the culpable mental state for knowing manufacture or delivery of a controlled substance in Penalty Group 1-B, which is a nature-of-conduct offense. Thus, the jury charge correctly included the nature-of-conduct definition of “knowingly.”

Sidebars

[David A. Schulman] The opinion does not set out how many actual grams of fentanyl that Appellant delivered. Thus, the offense of delivering the drugs could have been a 3rd, 2nd, or even 1st degree felony, depending on the amount. What the Legislature did was to kick the offense up to a 1st degree felony, regardless of the amount of fentanyl delivered, if the person who gets the fentanyl “dies as a result of introducing it into the individual’s body,”

and designates the offense as a murder. It is, of course, the Legislature's prerogative to do that.

[Ed. Note]: The Court also held that the evidence was sufficient to permit the jury to have found that Appellant was aware that the counterfeit Percocets pills that he sold contained fentanyl, that fentanyl was the cause of death; and that Appellant knowingly delivered fentanyl; and the drugs that caused the death were delivered by Appellant, as opposed to someone else.