

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
JAMES DONALD KRAFT	:	
	:	
Appellant	:	No. 718 WDA 2025

Appeal from the Judgment of Sentence Entered October 28, 2024
In the Court of Common Pleas of Allegheny County Criminal Division at
No(s): CP-02-CR-0006027-2022

BEFORE: NICHOLS, J., McLAUGHLIN, J., and SULLIVAN, J.

MEMORANDUM BY NICHOLS, J:

FILED: SEPTEMBER 23, 2026

Appellant James Donald Kraft appeals from the judgment of sentence entered after a jury convicted him on one count of third-degree murder¹ for his role in the fentanyl-poisoning death of his two-year-old son in the family home and on three counts of third-degree felony endangering the welfare of children² (one for each of his three children). Sentenced to an aggregate prison sentence of 25 to 50 years' incarceration, Appellant raises challenges to the sufficiency of the evidence offered to prove third-degree murder and to the legality of his sentence. After careful consideration, we deem Appellant's sufficiency claim meritless but agree with the trial court, Appellant and the

¹ 18 Pa.C.S. § 2502(c).

² 18 Pa.C.S. § 4304(a).

Commonwealth that a remand for resentencing is required on the endangering the welfare of children convictions.

The trial court aptly summarizes the facts and procedural history of the present matter:

On May 12, 2022, police officers from the Borough of Munhall were dispatched to a residence at 1418 Margaret Street in the borough of Munhall, Pennsylvania for a 911 report of an unresponsive child. Upon arrival, police officers entered the residence and observed trash all over the residence including, but not limited to, old food and dirty diapers. Dirty clothes were strewn all over the residence. Importantly, [and developed more specifically *infra*,] stamp bags used to package fentanyl were found all over the residence on the floor, on tables and on dressers.^[3] According to officers on scene, there were hundreds, if not thousands, of stamp bags in the residence. A foul odor permeated the residence.

As the officers entered the residence, [Appellant] was holding his son, [R.K.], in his arms. [R.K.] was two years old. [R.K.] was unresponsive. [Appellant's] two other young children (ages four and seven) were also present in the residence.

* * *

Detective Nicole DePaoli of Allegheny County Police Department testified that . . . she observed a very large amount of drug paraphernalia present in the residence. . . . [Donning a hazmat suit, DePaoli] observed syringes, needles, cooker caps (used to ingest drugs)[,] stamp bags, pill bottles and drug paraphernalia all around the residence. A child's drink was located next to stamp bags. . . . These items were found in virtually every room of the residence and were accessible to anyone in the residence.

* * *

³ A stamp bag is a glassine bag manufactured for use by stamp collectors and used "in the criminal world . . . for packaging heroin, fentanyl, or other types of narcotics." N.T. Trial, 7/24/24, at 96.

Dr. Idris Evans, the supervising physician in the Intensive Care Unit at the Children's Hospital of Pittsburgh, testified that [he] treated [R.K.] upon his arrival . . . and [he] believed [at that time that R.K.] had suffered life threatening injuries and would not survive.

* * *

Katrina Lindauer, a Forensic Toxicologist in the Allegheny County Office of the Medical Examiner testified that [R.K.'s] post-mortem blood sample contained fentanyl and norfentanyl.

Michele Clayton, the Division Chief of the Child Advocacy Center at Children's Hospital of Pittsburgh, testified that one of [the brothers, J.K.,] was treated . . . and he tested positive for fentanyl.

Detective Michael Hoffman of the Allegheny County Police Department testified that he interviewed [Appellant] in the early morning hours after the incident. During the interview, [Appellant] admitted that the drugs and drug paraphernalia in the residence belonged to him. He told the detective that he would reuse the stamp bags to facilitate his drug use. He also acknowledged that drugs and paraphernalia were found in one of the rooms that was set up to be the children's room.

* * *

[Dr.] Ariel Goldschmidt, the Chief Medical Examiner of Allegheny County, testified that she performed the autopsy on [R.K.] She testified that he died from a fatal dose of fentanyl. The cause of death was fentanyl intoxication and the manner of death was homicide. At the conclusion of trial, [Appellant] was convicted as set forth above.

Trial Ct. Op., 8/27/25, at 2-4.

On October 28, 2024, the trial court sentenced Appellant to a term of 15 to 30 years' imprisonment for his conviction of third-degree murder. The trial court imposed consecutive sentences of four to eight years' imprisonment, four to eight years' imprisonment, and two to four years'

imprisonment, respectively for the three convictions of endangering the welfare of children, all of which were to be served consecutively, for an aggregate sentence of 25 to 50 years' imprisonment.

Appellant filed post-sentence motions, which the trial court denied. Appellant did not initially file a notice of appeal. On April 17, 2025, Appellant filed a petition pursuant to the Post Conviction Relief Act⁴ (PCRA) seeking reinstatement of his direct appellate rights. The trial court granted Appellant's petition and on June 16, 2025, Appellant filed a timely notice of appeal. Both Appellant and the trial court complied with Pa.R.A.P. 1925.

Appellant raises the following issues for this Court's review:

- I. Was the evidence insufficient to sustain the conviction for third degree murder insofar as the Commonwealth did not prove beyond a reasonable doubt that [Appellant] acted with malice by possessing and using controlled substances to support his addiction in the residence he shared with his children and their mother?
- II. Did the court err in sentencing [] Appellant to endangering welfare of children graded as a first degree felony at two counts, and as a second degree felony at the third count where the jury wasn't instructed as to the "course of conduct" factor required for grading of the offenses as a second degree felony under 18 Pa.C.S. § 4304(a)(1)(b)(iv)?

Appellant's Brief at 5 (some formatting altered).

In Appellant's first issue, he contends that the Commonwealth's evidence was insufficient to prove beyond a reasonable doubt that he acted with malice when he knowingly permitted discarded glassine stamp baggies

⁴ 42 Pa.C.S. §§ 9541-9546.

that had been used to hold fentanyl to lie about the rooms of his home where his two-year-old son, R.K., his four-year-old son J.K, and seven-year-old son A.K. lived and played. **See** Appellant's Brief at 17. Specifically, he argues such evidence did not establish his conscious disregard for an unjustified and extremely high risk that his children would handle a baggie with fentanyl residue and incur a serious bodily injury or even die. **See id.** at 20.

The standard we apply in reviewing the sufficiency of the evidence is whether[,] viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the finder of fact[,] while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Robinson, 348 A.3d 291, 297 (Pa. Super. 2025) (citations omitted).

Pursuant to 18 Pa.C.S. § 2501(a), "[a] person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently causes the death of another human being." Third-degree murder is any murder that is not murder in the first or second degree, that is, not an intentional killing or

one committed in the commission of a felony. **See** 18 Pa.C.S. § 2502(c); **Commonwealth v. Hammaker**, 166 MDA 2023, 2024 WL 1134059, at *3 (Pa. Super. filed Mar. 15, 2024) (unpublished mem.) (citing **Commonwealth v. Packer**, 168 A.3d 161, 168 (Pa. 2017)). To sustain a conviction of third-degree murder, the Commonwealth must establish “(1) an intentional act, (2) done with malice, that (3) results in an unintentional killing.” **Commonwealth v. Arrington**, 247 A.3d 456, 461 (Pa. Super. 2021) (citation omitted). Accordingly, an unlawful killing with malice does not require that a defendant intend to injure or kill the victim. **Commonwealth v. Wright**, 864 WDA 2019, 2020 WL 2315932 at * 3 (Pa. Super. filed May 11, 2020) (unpublished mem.).⁵

“Malice is present if the defendant consciously disregarded an unjustified and extremely high risk that his conduct might cause death or serious bodily injury.” **Commonwealth v. Peters**, 355 A.3d 1270, 1290 (Pa. 2026). “Malice comprehends not only a particular ill-will, but also a wickedness of disposition, hardness of heart, recklessness of consequences, and a mind regardless of social duty, although a particular person may not be intended to be injured.” **Commonwealth v. Vansyckel**, 341 A.3d 174, 179 (Pa. Super. 2025) (*en banc*) (citation omitted). A factfinder may infer malice from the totality of the circumstances. **Commonwealth v. Golphin**, 161 A.3d 1009, 1018 (Pa. Super. 2017); **Wright**, 2020 WL 2315932 at *3.

⁵ Unpublished memoranda filed by this Court after May 1, 2019 may be cited as persuasive authority. Pa.R.A.P. 126(b).

At Appellant's jury trial, the Commonwealth introduced testimonial and video evidence of the large pile of new and used stamp bags within Appellant's home discovered during the emergency response to the 9-1-1 call. Officer Cody Hayden of the Munhall Borough Police Department testified that he was among the first responders dispatched to Appellant's home on May 12, 2022, after receiving a report of an unresponsive child there. N.T. Trial, 7/24/24, at 91. He recounted his observations and impressions of the interior of the residence and narrated the video taken by his body-worn camera during that visit as it was played for the jury. **Id.** at 92.⁶

As Officer Hayden first entered the home, he saw to his immediate left a room filled with "hundreds if not thousands of stamp bags. Garbage. Trash all through the house. Old food. Dirty diapers. Just completely in disarray." **Id.** at 95-96. He explained to the jury that a "stamp bag" is a "glassine bag that was actually originally intended for stamp collectors to use, but in the criminal world everybody uses [it] for packaging heroin, fentanyl, or other types of narcotics." **Id.** at 96.

Several Commonwealth witnesses presented medical evidence. Dr. Idris Evans, the supervising doctor of the Intensive Care Unit ("ICU") at Pittsburgh's Children's Hospital, testified that he oversaw R.K.'s care when the two year-old arrived at the ICU. N.T.-2, 7/24/24, at 4-5. Dr. Evans indicated

⁶ The video was marked as Commonwealth Exhibit 1 and entered into evidence. N.T. Trial, 7/22/24, at 92. Appellant, however, has not included it in the certified record transmitted to this Court. **Id.**

that laboratory findings relating to R.K.'s kidneys, liver, and lungs and a CAT scan of his brain led to the diagnosis and prognosis that the two-year-old "suffered life threatening injuries and was unable to survive." **Id.** at 7-8. Toxicologist Katrina Lindauer of the Allegheny County Office of the Medical Examiner provided expert testimony that her administration of a fentanyl quantitation test of both R.K.'s ante-mortem hospital blood samples and his post-mortem blood samples taken during the autopsy produced positive screens for fentanyl. **Id.** at 11-17. Dr. Michelle Clayton, the Division Chief of the Child Advocacy Center at Children's Hospital of Pittsburgh testified that the hospital's medical records established that R.K.'s older brother J.K. was treated at the hospital's emergency department on the same dates in question, May 12 and 13 of 2022, and he, too, tested positive for fentanyl. **Id.** at 20-25.

The Commonwealth also offered Robert Ramsey, who was employed in the drug chemistry section of the Allegheny County Medical Examiner's Office in the Division of Forensic Laboratories, as an expert in drug chemistry analysis. He testified that his work entails seeking the presence or absence of narcotics in samples brought to his laboratory. **Id.** at 44-45. He testified that he performed an analysis of metal cooker caps taken from Appellant's home, explaining for the jury that cooker caps were "any device generally . . . like a shallow pan to tea candles. It's like a metal cap that you can use to ingest drugs. You grind [the drug] up a little bit with water, stir it, and inject that." **Id.** at 47.

Mr. Ramsey testified that he received two metal caps that were recovered from Appellant's household, but he tested only one, as the other was contaminated with a red/brown stained piece of cotton that could contaminate the test result. ***Id.*** at 47. The tested metal cap produced a positive result for fentanyl. ***Id.*** at 50.

Detective Michael Hoffman of the Allegheny County Police Department, Narcotics Section, testified that fentanyl is normally packaged in what is called a "stamp bag," which he described as a little plastic bag that's airtight or water resistant. ***Id.*** at 36. He confirmed that those who choose to inject fentanyl by needle would use caps in which they liquify the fentanyl with water and then draw it into the needle. ***Id.*** at 37-38. He also described how he noticed while interviewing R.K.'s sibling, J.K., that the boy was becoming concerningly lethargic. He noted that J.K. was "still breathing, but he [was] deadweight. He [was] out." ***Id.*** at 41.

Detective Nicole DePaoli of the Homicide Unit of the Allegheny County Police Department testified that she assisted in processing the potential crime scene inside Appellant's home. ***Id.*** at 55-57. She explained that "[w]hen we first entered to take our photos, there was such a large amount of drug paraphernalia that the scientist from the Allegheny County mobile crime lab [recommended that personnel wear] hazmat suites [sic] and mov[e] through the scene to eliminate the risk of accidental exposure." ***Id.*** at 57.

From the witness stand, Detective DePaoli reviewed photos of the home's interior that were admitted into evidence, and she deemed them

consistent with her recollection of the home. **Id.** at 57-58. In one photo she identified a stamp bag among a pile of items near the entrance that one would have to climb to reach other parts of the apartment. **Id.** at 60. She explained that the apartment contained "a bunk bedroom and a back bedroom." **Id.** at 60. A photo of the bedroom with bunk beds depicted "a pile of empty stamp bags on the dresser and at the "top of the dresser in the bunk bedroom" are "pill bottles and drug paraphernalia. . . ." **Id.** at 61. In the drawer of the dresser, Detective DePaoli continued, were "syringes, needles, cooker caps, and tiny cotton [balls]," as well as a stamp bag. **Id.** at 61. The cooker cap contained red/brown staining in addition to a dirty piece of cotton. **Id.** at 66. More stamp bags were in another drawer of the dresser in the bunk bed bedroom. **Id.** at 61. A different photograph of the bunk bed bedroom showed a collection of used stamp bags between the dresser and the wall. **Id.** at 62-63.

When asked if she and other investigators were able to count every stamp bag, Detective DePaoli answered, "Absolutely not." **Id.** at 63. She testified, however, that there were "hundreds at least" of stamp bags in the bunk bed bedroom. **Id.** Returning to the photographs, she identified more stamp bags in a second dresser in the opposite corner of the bunk bed bedroom. All three drawers contained used stamp bags. **Id.** at 64. Also depicted were more stamp bags lying next to a toy school bus in the very bottom drawer. **Id.** at 65. A syringe with colored liquid in it was lying on a stamp bag. **Id.** at 67.

Photographs of the other bedroom labeled as the “back bedroom” showed that it contained drug-delivery paraphernalia and a pile of stamp bags. **Id.** at 67-68. Again, Detective DePaoli estimated there were “hundreds[,] [m]aybe thousands” of stamp bags in the back bedroom. **Id.** at 68.

The jury reviewed photographs of the apartment’s common areas, which continued the theme of discarded stamp bags spread across Appellant’s home. A photo of the pathway between the hallway and the living room depicted “lots of stamp bags,” according to Detective DePaoli. **Id.** at 70. Another depicts stamp bags on a toy dinosaur’s tail, **Id.** at 70-71, and a photo of the path between the dining room and living room depicts even more stamp bags. **Id.** at 71. An “empty knotted bag,” which Detective DePaoli identified as a common medium in which pills and marijuana are purchased, is depicted next to toys and a stamp bag. **Id.** at 72.

Officer Cody Hayden of the Munhall Borough Police Department, who also responded to the Krafts’ 911 call, corroborated Detective DePaoli’s testimony, as he too testified that in “[t]he room immediately to the left as you walk in, it’s about five feet from the threshold of the doorway, there was hundreds if not thousands of stamp bags.” **Id.** at 95.

Appellant concedes that “the apartment was filled with stamp bags and cotton balls—used and new” that were accessible to his toddler children. Appellant’s Brief at 17. He attributes the living conditions to a drug addiction that rendered him unable to make decisions consistent with appropriate parenting. **See id.** at 19. In this argument, Appellant admits that he was

negligent in his duty to protect his children from lethal fentanyl exposures in their own home, as he denies having had the capacity for malice necessary to support a third-degree murder charge. **See id.** at 19-20.

To support his position that the Commonwealth failed to prove malice, Appellant points to testimony that he tried to keep the drugs away from his children by storing used syringes and metal cooker caps⁷ in out-of-reach places, like the top of his dresser. **See id.** at 17. Aligned with this evidence, he argues, was that no “stash” of narcotics was found in the apartment and no indication existed that he knew the children could access drugs in the home. **Id.** He offers that many households contain inherently dangerous products and medications “that are no less hazardous to children[,]” and he posits that carelessness in their storage may amount to negligence that would support a manslaughter charge in the wake of a fatal childhood exposure or ingestion but not to malice that would be necessary to support a third-degree murder charge. **Id.** at 18.

The Commonwealth notes that Appellant’s home “was strewn with thousands of stamp bags, needles, loaded syringes, and other examples of drug paraphernalia—some of which were even found amongst toys and other items belonging to the children.” Commonwealth’s Brief at 14. The very act of exposing his children to such an extreme risk of instant death, it argues, reflects a recklessness of consequences and extreme indifference to the value

⁷ A “cooker cap” is a device used to ingest drugs. **See** N.T. Trial, 7/24/24, at 46-47, 65-66.

of human life that satisfied the malice element to the charge of third-degree murder. **See id.** at 24-25.

The *mens rea* required for a conviction of third-degree murder is malice, which “is present if the defendant consciously disregarded an unjustified and extremely high risk that his chosen course of conduct might cause death or serious bodily injury.” **Peters**, 355 A.3d at 1286 (endorsing the “broad” definition of malice espoused in **Commonwealth v. Taylor**, 337 A.2d 545, 549 (Pa. 1975), and clarifying that “malice is malice,” having the same standard “regardless of whether the defendant drove while intoxicated or fired a gun”). The **Peters** Court observed that the “the requisite *mens rea* is only met in circumstances where ‘the defendant could reasonably anticipate that serious bodily injury or death would be the likely and logical consequence of his actions ... [but] the consequence was ignored.’” **Id.** at 1286 (quoting **Packer**, 168 A.3d at 170). **Cf Commonwealth v. Travinski**, 346 A.3d 787, 793-94 (Pa. Super. 2025) (discussing two-part test of causation as it relates to attributing criminal responsibility, in which second part is satisfied when victim’s death is foreseeable consequence of defendant’s conduct; holding newborn’s fentanyl-related death was natural and foreseeable consequence of parent’s reckless disregard of dangers associated with conflating activities of drug habit with those of rearing newborn baby.)

Here, the Commonwealth presented evidence that throughout the living spaces of Appellant’s family home, where his three small children freely walked and crawled, lay many hundreds and likely thousands of used and

reused stamp bags containing deadly fentanyl residue. Appellant, as the children's custodial father, had an affirmative duty to care for and oversee them by providing a home that was not cluttered with potentially lethal baggies placed within their reach wherever they were. His failure to heed this self-evident duty of care displayed a callous disregard for the likely and logical consequence of serious bodily injury or death that his children would experience from exposure to the highly dangerous environment that was their family home. Accordingly, we conclude that the evidence clearly demonstrated Appellant's extreme indifference to the value of human life and, therefore, supported the jury's determination that he acted with malice as required to prove the charge of third-degree murder. **See *Peters***, 355 A.3d at 1286.

In Appellant's second issue, he seeks a remand for resentencing because the charges of endangering the welfare of children were graded improperly. Specifically, the Commonwealth charged Appellant with three felony counts of endangering the welfare of children, with one charge applying to each child. The trial court and both parties agree the convictions are felonies but were graded improperly, and request a remand for resentencing.

Pursuant to 18 Pa.C.S. § 4304(b)(1)(iii), a third-degree felony arises if the actor, in committing the offense, creates a substantial risk of death or serious bodily injury. To rise to the level of a second-degree felony, the actor's conduct must also have been part of a "course of conduct." **See** 18 Pa.C.S. § 4304(b)(1)(iv). Of relevance here, "[t]he grading of an offense under this

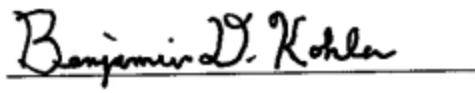
section shall be increased one grade if, at the time of the commission of the offense, the child was under six years of age.” 18 Pa.C.S. § 4304(b)(2).

In the present matter, the Commonwealth did not present for the jury’s consideration the question of whether Appellant’s actions were part of a “course of conduct.” Therefore, the jury’s verdict may not be understood to reflect a determination that Appellant’s actions were part of a course of conduct in endangering his children. We note that the trial court and the Commonwealth agree that the endangering of children convictions as to R.K. and J.K.⁸ should be downgraded to second-degree felonies and the conviction as to A.K. should be downgraded to a third-degree felony. We agree and remand for resentencing pursuant to this decision.

Judgment of sentence affirmed in part and vacated in part. Appellant’s Judgment of sentence is affirmed as it relates to Appellant’s conviction of third-degree murder. We affirm Appellant’s convictions but vacate his judgment of sentence for endangering the welfare of children and remand for resentencing consistent with this memorandum. Jurisdiction relinquished.

⁸ At the time of the underlying actions giving rise to this case, R.K. was two years old, J.K. was four years old, and a third child under Appellant’s care was seven years old. **See** Trial Ct. Op., 8/27/25, at 2.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 9/23/2026