

Appellate Court Decisions - Week of 10/5/15

First Appellate District of Ohio

State v. Dabney, 2015-Ohio-4142

**Allied Offenses: R.C. 2941.25: Theft: Money Laundering:
Telecommunications Fraud: Sentencing**

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-4142.pdf>

Summary from the First District:

“Defendant’s money-laundering conviction under R.C. 1315.55(A)(1) was based upon sufficient evidence and was not against the manifest weight of the evidence where the defendant supplied counterfeit currency to individuals who then tendered it to a retailer to illegally obtain merchandise, returned the stolen merchandise to the retailer with the purchase receipts, and received United States currency in exchange for the returned stolen items.

“Defendant’s telecommunications-fraud conviction was based upon sufficient evidence and was not against the manifest weight of the evidence where the defendant had devised a scheme whereby, at his direction and with his cooperation, a codefendant used his personal identification to return stolen merchandise to a retailer, where the retailer required a customer to produce a driver’s license or identification card, which the retailer would scan through an internet-based system operated by a third-party vendor that monitored customer returns and store inventory, and where in exchange for the nonreceipted merchandise, the retailer issued a store credit card to the codefendant.

“The trial court properly sentenced defendant separately for money-laundering, theft, and five counts of telecommunications fraud under R.C. 2941.25 where the offenses were committed separately: the money-laundering conviction was based upon the defendant’s counterfeit-currency operation; his theft conviction was based upon his stealing merchandise from a retailer and then returning the merchandise to the retailer in exchange for store credit; and the telecommunications-fraud convictions were based upon his separate conduct in directing five separate codefendants to engage in fraudulent transactions with their identification cards.

“Where the trial court failed to incorporate its consecutive-sentencing findings into the sentencing entry the cause must be remanded for the court to incorporate its findings into the sentencing entry by nunc pro tunc entry.”

State v. Littleon, 2015-Ohio-4143

Crim.R. 11

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-4143.pdf>

Summary from the First District:

“The trial court did not err in accepting the defendant’s guilty pleas, because it substantially complied with Crim.R. 11(C) when it held a supplementary plea hearing to inform the defendant about the imposition of a mandatory fine.

“In a separate case, the trial court erred when it accepted the defendant’s guilty pleas because it did not inform the defendant about the constitutional rights he was waiving by pleading guilty.”

Second Appellate District of Ohio

Nothing new.

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

State v. McCoy, 2015-Ohio-4124

OVI: Sentencing: Repeat Offender

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2015/2015-Ohio-4124.pdf>

Appellant was convicted of an OVI in violation of R.C. 4511.19(A)(1)(a) and/or (d). Appellant had five or more convictions or guilty pleas to OVI offenses within the previous twenty years. He was sentenced to a mandatory term of three years on the underlying OVI offense and a mandatory one year in prison term on the repeat OVI offender specification. The Fifth District, agreeing with the Twelfth District in *State*

***v. Burkhead*, 2015-Ohio-1085, held that sentence was error, however, because when an offender has been convicted of a third-degree felony OVI and also has been convicted of the habitual offender specification, the trial court may only impose an additional non-mandatory prison term of 9, 12, 18, 24, 30, or 36 months.**

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

***State v. Green*, 2015-Ohio-4078**

Sentencing: Consecutive Sentences: Endangering Children

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-4078.pdf>

The trial court imposed consecutive sentences on appellant for her two counts of endangering children. The Eighth District vacated the sentences and remanded them to the trial court on the question of consecutive sentences. The trial court erroneously relied on Green’s underlying conduct in these offenses to support a consecutive sentence finding under R.C. 2929.14(C)(4)(c), but “the possibility exists for the trial court to make another finding to support the imposition of consecutive sentences.”

***Bay Village v. Barringer*, 2015-Ohio-4079**

Sentencing

Full decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-4079.pdf>

The trial court in this case revisited its final sentence in order to impose stricter sanctions based on appellant’s failure to comply with the terms of his plea agreement. The trial court, however, was without jurisdiction to resentence appellant and impose a longer term of community control with stricter sanctions based on the violation of the plea agreement alone. “If the terms of the plea agreement had been codified as terms of the community

control sanction, it is possible that [appellant's] noncompliance could have been addressed. By failing to incorporate the terms of the plea agreement into the community control sanction imposed on a suspended jail term, however, the court was without jurisdiction to resentence [appellant].”

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

Nothing new.

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.