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COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

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BARBARA A. WIEDENBEIN
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OH

STATE OF OHIO :
Plaintiff : **CASE NO. 2013 CR 000348**
vs. : **Judge McBride**
TEDDY MARK REYNOLDS : **DECISION/ENTRY**
Defendant :

Catherine Adams, assistant prosecuting attorney, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Nichols, Speidel & Nichols, Todd S. Stoffel, attorney for the defendant Teddy Mark Reynolds, 237 Main Street, Batavia, Ohio 45103.

This cause is before the court for consideration of the issue of merger. The court instructed the parties to file written memoranda by March 18, 2014 and the court further indicated that any reply memoranda should be filed by March 25, 2014.

The defense filed a memorandum and motion on the issue of merger on March 18th. No other memoranda were filed and the court scheduled an evidentiary hearing on this issue on April 8, 2014. At the request of the state, the evidentiary hearing was

continued to April 10th and, after the completion of that hearing, the court took the issue of merger under advisement.

Upon consideration of the record of the proceeding, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE

The defendant Teddy Mark Reynolds was charged in a twenty-six count indictment with the following: (1) nine counts of receiving stolen property in violation of R.C. 2913.51(A), felonies of the fifth degree; (2) eight counts of tampering with identifying numbers to conceal identity of vehicle or parts replacement in violation of R.C. 4549.62(A), felonies of the fifth degree; (3) eight counts of tampering with evidence in violation of R.C. 2921.12(A)(1), felonies of the third degree; and (4) one count of insurance fraud in violation of R.C. 2913.47(B)(1), a felony of the fourth degree.

On March 4, 2014, the defendant entered pleas of guilty to seven counts of tampering with identifying numbers to conceal identity of vehicle or parts replacement in violation of R.C. 4549.62(A), felonies of the fifth degree (counts 10, 11, 12, 13, 14, 16, and 17).

At the plea hearing on this matter, the prosecutor set forth a statement of facts which indicated that each offense was committed on April 25, 2013 and occurred at 1880 S.R. 125, Amelia, Ohio 45102. The statement of facts further indicated the following: (a) Count 10 involved the removal of VIN plate 5HABE1017N001129 from a

2010 Homesteader enclosed trailer; (b) count 11 involved the alteration (stamping-over) of the VIN/Serial plate for a 2007 Quality trailer; (c) count 12 involved the removal of VIN plate 5HABE1213AN004042 from a 2010 Homesteader trailer; (d) count 13 involved the removal of VIN/Serial plate 473242029A1000180 from a Cronkhite trailer; (e) count 14 involved the removal of the Bobcat control plate numbered 78146 from the same Cronkhite trailer; (f) count 16 involved the removal of the VIN/Serial plate for a 1998 Haulmark enclosed trailer; and (g) count 17 involved the removal of VIN/Serial plate 4YZDT122741007919 from a 2004 Dump trailer. These offenses were committed with the stated purpose of concealing the identity of the vehicles.

During a sidebar at the beginning of the plea hearing, the prosecutor indicated that two VIN/Serial plates were taken from 2010 Homesteader trailers but defense counsel would not concede that these offenses involved two different 2010 Homesteader trailers because only one such Homesteader trailer was found on the defendant's property. The state indicated that the charges emanated from the possession of the two separate VIN plates. Ultimately, the sidebar conversation did not settle this issue.

At the evidentiary hearing on this matter, Investigator Mike Robinson of the Clermont County Sheriff's Office testified about each of the identification plates and the various vehicles to which those plates corresponded.¹ Specifically, with regard to count 10, he explained that the Homesteader trailer to which that VIN plate corresponded was reported stolen by Bruce That on January 20, 2011.² As to the VIN plate at issue in

¹ State's Exhibits 1-6.

² State's Exhibit 1.

count 12, that identification tag belonged to a Homesteader trailer reported stolen by Ronald French on June 5, 2011.³

The parties have agreed that, as previously set forth in the bill of particulars, the plates at issue in counts 13 and 14 came from the same Cronkhite trailer.

The defendant testified at the hearing on this matter that he took the VIN plates off the vehicles because, in mid-April 2013, Bob Ramsey came to the defendant's home and said he would call the police and report that the vehicles on the defendant's property were stolen if the defendant did not give Ramsey the title to a house he built. These facts, while perhaps providing some explanation of the defendant's thought process at the time in wanting to conceal the identification information for the vehicles, are not particularly relevant to the issue of merger.

LEGAL ANALYSIS

Pursuant to R.C. 2941.25:

"(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them."

³ State's Exhibit 3.

In *State v. Johnson*, 128 Ohio St.3d 153, 942 N.E.2d 1061, 2010–Ohio–6314, the Ohio Supreme Court set forth the following two-part test to determine if offenses are allied offenses of similar import under R.C. 2941.25:

“In determining whether offenses are allied offenses of similar import under R.C. 2941.25(A), the question is whether it is possible to commit one offense *and* commit the other with the same conduct, not whether it is possible to commit one *without* committing the other. * * * If the offenses correspond to such a degree that the conduct of the defendant constituting commission of one offense constitutes commission of the other, then the offenses are of similar import.

* * * [I]f the multiple offenses can be committed by the same conduct, then the court must determine whether the offenses were committed by the same conduct, i.e., ‘a single act, committed with a single state of mind.’ If the answer to both questions is yes, then the offenses are allied offenses of similar import and will be merged. Conversely, if the court determines that the commission of one offense will never result in the commission of the other, or if the offenses are committed separately, or if the defendant has separate animus for each offense, then, according to R.C. 2941.25(B), the offenses will not merge.”⁴

The *Johnson* decision states that “[w]hen determining whether two offenses are allied offenses of similar import subject to merger under R.C. 2941.25, the conduct of the accused must be considered.”⁵

The defendant cites *State v. Snyder*, 12th Dist. Butler No. CA2011-02-018, 2011-Ohio-6346, in support of his argument that all of the offenses merge. In *Snyder*, the court found that one count of grand theft by deception and three counts of passing bad checks were allied offenses of similar import and that the state was required to elect

⁴ *State v. Crosby* (Sept. 26, 2011), 12th Dist. Nos. CA2010-10-081 and CA2011-02-013, 2011-Ohio-4907, ¶¶ 18-19, quoting *Johnson* at ¶¶ 48-51.

⁵ *State v. Johnson*, 128 Ohio St.3d 153, 942 N.E.2d 1061, 2010–Ohio–6314, at syllabus.

whether to proceed on the grand theft offense or on the three offenses of passing bad checks.⁶

In that case, the indictment indicated that the offense of grand theft by deception occurred via a continuing course of conduct from January 2009 to March 2009.⁷ The three checks which formed the basis of the offenses of passing bad checks were all issued in February 2009.⁸ As such, the court found that “the state was prosecuting [the defendant] for the same conduct in count one of the indictment that it was prosecuting him for in counts two, three and four of the indictment.”⁹ The appellate court further found that the passing bad checks offenses were committed with the same animus because the state’s statement of facts indicated the same purpose, intent or motive for committing all of the offenses, namely to defraud the victim of \$73,762.33 in steel studs.¹⁰ However, in analyzing whether the passing bad checks counts also merged, the court found that each check was written with a separate animus because each check was written to obtain a separate shipment of the steel studs.¹¹

In that same case, the court set forth the following discussion of the term “animus”:

“ ‘R.C. 2941.25(B), by its use of the term ‘animus,’ requires us to examine the defendant’s mental state in determining whether two or more offenses may be chiseled from the same criminal conduct. In this sense, we believe that the General Assembly intended the term ‘animus’ to mean purpose or, more properly, immediate motive.

* * *

⁶ *Snyder*, supra, at ¶ 33.

⁷ *Id.* at ¶ 22.

⁸ *Id.* at ¶ 23.

⁹ *Id.*

¹⁰ *Id.* at ¶ 32.

¹¹ *Id.* at ¶ 40.

Where an individual's immediate motive involves the commission of one offense, but in the course of committing that crime he must, A priori [sic], commit another, then he may well possess but a single animus, and in that event may be convicted of only one crime.' ¹²

R.C. 4549.62(A) states that "[n]o person, with purpose to conceal or destroy the identity of a vehicle or vehicle part, shall remove, deface, cover, alter, or destroy any vehicle identification number or derivative of a vehicle identification number on a vehicle or vehicle part."

The issue in the case at bar is fairly unique. The defendant, on the same day and in the same location, removed VIN/Serial identification plates from a number of vehicles and also altered, by stamping over the number, the VIN plate of a vehicle. Two of the plates were removed from the same vehicle; a VIN/Serial plate and a Bobcat control number plate were removed from the same Cronkhite trailer. The counts pertaining to these two plates are 13 and 14 in the indictment. The count pertaining to the altered plate is 11 in the indictment. The remaining identification plates, corresponding to counts 10, 12, 16, and 17 in the indictment, were all removed from different vehicles.

The immediate motive for each offense was concealing the identity of a specific vehicle that was stolen property. The statute at issue proscribes removing, altering, etc., identification numbers to conceal or destroy *the identity of a vehicle* or vehicle part. Simply because the goal of each offense was to conceal the identity of a vehicle does not mean that the offenses were committed by a single act, committed with a single state of mind. In fact, the motive of each separate offense was to conceal the identity of a *different* vehicle.

¹² Id. at ¶¶ 28 and 30, quoting *State v. Logan*, 60 Ohio St.2d 126, 131, 397 N.E.2d 1345 (1979).

The court finds that the defendant had a separate animus with regard to the removal of identifying information from each vehicle and that the animus was to conceal the identity of that particular vehicle. Similarly, separate conduct was involved in removing the identifying information as to each particular vehicle.

The state's argument is correct that in removing the identifying information from a specific location on a vehicle, the defendant was acting with the intent to conceal that information with respect to the particular vehicle involved and not with respect to other vehicles. The fact that there were multiple stolen vehicles on the defendant's property and that he decided to remove identifying information from a number of vehicles on the same date does not mean that the defendant had the same animus while committing each offense, nor does it mean that the offenses were committed with the same conduct.

It should also be noted that "[c]ourts in Ohio, both before * * * and after *Johnson*, have held that when the same course of conduct results in multiple victims, there is a separate animus for each offense."¹³ "The overwhelming body of case law from the Ohio Appellate Districts supports separate offenses for separate victims even when there was a single course of conduct."¹⁴ In the case at bar, not only were there separate victims, namely the various owners of each vehicle, but the offenses as to each vehicle were committed by separate conduct.

Based on this analysis, the court finds that counts 13 and 14 must be merged for the purposes of sentencing. To begin with, the court finds that it is possible to commit multiple offenses of tampering with identifying numbers to conceal identity of vehicle or

¹³ *State v. Love*, 3rd Dist. Marion No. 9-13-09, 2014-Ohio-437, ¶ 38, quoting, *State v. Anderson*, 1st Dist. Hamilton No. C-110029, 2012-Ohio-3347, ¶ 61 (Dinkelacker, P.J., concurring in part and dissenting in part).

¹⁴ *Id.* at ¶ 39.

parts replacement with the same conduct. This could occur when removing multiple forms of identifying numbers from the same vehicle in the same place and at the same time. In this case, the defendant removed the VIN plate and the Bobcat control number plate from the same Cronkhite trailer on the same date and all while on the same property. The animus for each act was the same, namely, to conceal the identity of that Cronkhite trailer.

However, the remaining counts were not committed by the same conduct or with the same animus. The remainder of the VIN plates were removed, and in one instance altered, to conceal the identities of five separate vehicles. The defendant went to each separate vehicle and performed the act of removing, and in one instance altering, the identifying plates on each vehicle. As such, the court finds that these offenses will not merge for the purposes of conviction and sentencing.

CONCLUSION

Based on the above analysis, the court finds that counts 13 and 14 shall be merged for the purposes of the sentencing. Counts 10, 11, 12, 16, and 17 shall not be merged for the purposes of conviction and sentencing.

IT IS SO ORDERED.

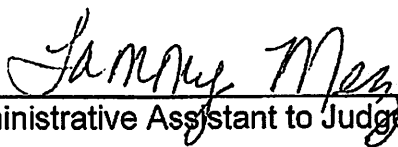
DATED: 9-19-14



Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile this 14th day of April 2014 to all counsel of record and unrepresented parties.


Administrative Assistant to Judge McBride