

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

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STATE OF OHIO :
Plaintiff : **CASE NO. 2015 CR 00226**
vs. : **Judge McBride**
RANDALL A. C. PANGBURN : **DECISION/ENTRY**
Defendant :

Carol A. Rowe, assistant prosecuting attorney for the state of Ohio, 76 S. Riverside Dr., 2nd Floor, Batavia, Ohio 45103.

Daniel B. Startzman III, attorney for the defendant Randall A. C. Pangburn, 302 E. Main Street, Batavia, Ohio 45103.

This cause came before the court for trial on August 10, 2015. At the conclusion of the trial, the court took the issues raised in the case under advisement.

The defendant Randal A. C. Pangburn is charged in a two-count indictment with: (1) one count of Receiving Stolen Property in violation of R.C. 2913.51(A), a felony of the fifth degree, and (2) one count of Misuse of Credit Cards in violation of R.C. 2913.21(B)(2), a felony of the fifth degree.

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

FINDINGS OF FACT

The court makes the following findings of fact based upon the exhibits admitted into evidence and the testimony it found to be credible and reliable as presented at trial:

On March 17, 2015, Nina Pittillo's home in Amelia, Ohio was burglarized. She reported the theft of her safe to the Clermont County Sheriff's Office that same morning. Nina Pittillo testified that she last used her safe at approximately 1:40 a.m. on March 17th, and discovered it had been stolen at approximately 8:40 a.m. that same day. Among the valuables stolen from Nina Pittillo's safe was her Discover credit card. Investigator Chris Allen of the Clermont County Sheriff's Office testified that he investigated the theft, but the perpetrator was never identified, and Nina Pittillo's property was never recovered.

The next day, March 18th, Nina Pittillo was notified by her credit card company that the stolen Discover credit card had been used at a Meijer store in Union Township, Ohio that morning. Nina Pittillo then notified Investigator Allen of this fact. In response to this new information, Investigator Allen contacted Terry Derossett of Meijer to retrieve security surveillance videos.

Terry Derossett testified that he works in Meijer's asset protection department and has full access to all of the security video footage at the Meijer store in Union Township. Terry Derossett provided Investigator Allen with the transaction information sheet, which he described as a detailed receipt of the purchase made with Nina Pittillo's Discover credit card.¹ The transaction information sheet showed that a purchase of a

¹ State's Exhibit 4.

prepaid \$100 MasterCard was made at 10:24 a.m. on March 18th using Nina Pittillo's stolen Discover credit card.

Terry Derossett then produced still frames from the Meijer surveillance video footage recorded at 10:24 a.m., which had been filmed by cameras located above the check-out lanes and outside the store's exit. The still frames depict the defendant and his stepfather standing at a self-check-out kiosk at 10:24 a.m., and then the pictures show the defendant and his stepfather exiting the Meijer immediately thereafter.² The defendant was holding a small plastic bag and a receipt as he left the store.³ After the Sheriff's Office posted the pictures of the defendant onto its Facebook webpage, Investigator Allen learned that the man pictured was the defendant Randall A. C. Pangburn.

Once the defendant was in police custody, Investigator Allen explained to the defendant that he was investigating the theft of a safe that contained a Discover credit card, which had been used at the Meijer store earlier in the day. The defendant indicated that he understood what Investigator Allen was referring to.⁴ Investigator Allen showed the defendant a photograph of the defendant as he exited the Meijer store, and the defendant positively identified himself and his stepfather in those photographs.

Investigator Allen requested that the defendant explain the surveillance photos of him at the Meijer store and further asked him where he located the Discover credit card. The defendant admitted that he had found the credit card earlier that morning, on March

² State's Exhibits 1-3.

³ State's Exhibits 2-3.

⁴ The parties stipulated before trial that the defendant was not linked to the theft of Nina Pittillo's safe, nor had he participated in it.

18, 2015, on the ground in a residential parking lot where his mother and step-father reside. The defendant further admitted that he used the Discover credit card to purchase a prepaid \$100 MasterCard at Meijer. He said that he discarded Nina Pittillo's Discover credit card into a trash receptacle outside Meijer as he exited the store. The defendant told Investigator Allen that he is homeless and purchased the prepaid \$100 MasterCard using the Discover credit card because he was hungry. He admitted multiple times that he knew it was wrong to have used the Discover credit card because his name was not on it. The defendant also remarked that he was surprised the credit card had worked when he used it at Meijer. Investigator Allen did not find the prepaid \$100 MasterCard on the defendant's person and he did not track the MasterCard to see how it was used. During cross examination at trial, Investigator Allen stated that there was no evidence in the investigation to refute the defendant's admission that he used the Discover credit card at Meijer to buy a prepaid \$100 MasterCard.

STANDARD OF REVIEW

In a criminal case, it is the state's burden to prove the defendant's guilt beyond a reasonable doubt.⁵ Ohio Revised Code 2901.05(E) provides that "[r]easonable doubt' is present when the [trier of fact], after ... carefully consider[ing] and compar[ing] all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. 'Proof beyond a reasonable doubt' is proof of such

⁵ R.C. 2901.05(A).

character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs.”

LEGAL ANALYSIS

(A) RECEIVING STOLEN PROPERTY

The Ohio Revised Code criminalizes the receipt of stolen property: “No person shall receive, retain or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense.”⁶ When the stolen property is a credit card, the receipt of stolen property constitutes a fifth degree felony.⁷ Phrased another way, R.C. 2913.51(A) requires the state to establish two elements: “(1) the defendant received, retained or disposed of property which was not his own; and (2) the defendant knew or had reasonable cause to believe the property was stolen.”⁸

In Count I of the instant case, the defendant has been charged with Receiving Stolen Property. The first element of Receiving Stolen Property under R.C. 2913.51(A) is clearly satisfied. The evidence establishes that the defendant retained stolen property that was not his own, namely he retained Nina Pittillo’s Discover credit card and later disposed of it. This conclusion is directly supported by the defendant’s admission to Investigator Allen that he found the credit card and used it to purchase a prepaid \$100 MasterCard. Moreover, the defendant’s admission is corroborated by

⁶ R.C. 2913.51(A); *State of Ohio v. O’Dell*, 45 Ohio St. 3d 140, 147, 543 N.E.2d 1220 (1989).

⁷ R.C. 2913.51(C), 2913.71(A).

⁸ *State of Ohio v. Emery*, 6th Dist. Lucas No. L-11-1228, 2003-Ohio-208, ¶ 15.

multiple Meijer surveillance photographs and the Meijer transaction information sheet, which collectively shows the defendant was at a self-check-out kiosk in Meijer at the exact time when a purchase of a \$100 MasterCard was made with Nina Pittillo's MasterCard. Furthermore, the photographs show the defendant leaving the store carrying a small plastic bag and receipt within moments after the purchase.

At trial the defendant argued that the State has failed to satisfy the second element for Receiving Stolen Property, which requires that the defendant knew or had reasonable cause to believe the property was stolen.⁹ Unless the defendant provides an admission, "the question of whether the defendant had reasonable cause to believe any item was stolen can only be proved by circumstantial evidence."¹⁰

In the instant case, the defendant admitted to Investigator Allen that he found and retained the Discover credit card, used it at Meijer, and knew it was wrong to have done so. However, he did not expressly state that he knew or suspected the Discover credit card was stolen. Where the defendant declines to testify, as in this case, and there is no direct evidence, the fact finder is left to consider "only evidence of surrounding circumstances."¹¹

A defendant "has reasonable cause to believe property was obtained through a theft offense when, after putting oneself in the position of this defendant, with his knowledge, lack of knowledge, and under the circumstances and conditions that

⁹ R.C. 2913.51(A); *O'Dell*, 45 Ohio St. 3d at 147.

¹⁰ *State of Ohio v. Rivera*, 12th Dist. Butler No. CA2012-11-220, 2013-Ohio-3203, ¶ 9 citing *State v. White*, 12th Dist. Butler No. CA2002-07-161, 2003-Ohio-2011. See *State v. Coldiron*, 12th Dist. Clermont Nos. CA-2003-09-078, CA2003-09-079, 2004-Ohio-5651, ¶ 20 (finding that circumstantial evidence can be appropriate and sufficient to determine the requisite mental state for a conviction of receiving stolen property); See *State of Ohio v. Colon*, 9th Dist. Summit No. 20949, 2002-Ohio-3895, ¶ 18 citing *State v. Hankerson*, 70 Ohio St.2d 87, 92, 434 N.E.2d 1362 (1982) (holding same).

¹¹ *State of Ohio v. Collins*, 10th Dist. Franklin No. 11AP-130, 2012-Ohio-372, ¶ 13.

surrounded him at the time, the acts and words and all the surrounding circumstances would have caused" a reasonable person "to believe that the property had been obtained" by theft.¹² When making an assessment as to whether the defendant knew or should have known that the property involved has been stolen, the following factors are relevant: "(a) the defendant's unexplained possession of the merchandise,¹³ (b) the nature of the merchandise, (c) the frequency with which such merchandise is stolen, (d) the nature of the defendant's commercial activities, and (e) the relatively limited time between the thefts and the recovery of the merchandise."¹⁴

In this case, multiple factors weigh in favor of finding that the defendant knew or had reasonable cause to believe the Discover credit card he found was stolen.¹⁵ To begin with, a credit card, by its nature, is a very valuable piece of property because it can be used to charge large amounts of money and to purchase a vast spectrum of merchandise and services. Its value is buttressed by the fact that receiving a stolen credit card carries a heftier penalty than other types of property.¹⁶ The General Assembly's Legislative Service Commission has explained that "a credit card or blank check represents only a few cents worth of plastic, paper, embossing, or printing and

¹² (Citation omitted.) *Id.* at ¶ 12.

¹³ See *Rivera* at ¶ 11 citing *State v. Reed*, 10th Dist. Franklin No. 08AP-20, 2008-Ohio-6082, ¶ 44 (explaining a "defendant may be found guilty by inference when the defendant's possession of recently stolen property is not satisfactorily explained in light of the surrounding circumstances developed from the case."). See *Collins* at ¶ 12 citing *State v. Arthur*, 42 Ohio St.2d 67, 68, N.E.2d 888 (1975) (holding same).

¹⁴ (Citation omitted.) *Rivera* at ¶ 10. The factors for determining the state of the defendant's knowledge were first articulated in *State of Ohio v. Davis*, from the Eighth District, and the factors have been widely adopted by other districts. 49 Ohio App.3d 109, 550 N.E.2d 966 (8th Dist. 1988), paragraph 1 of the syllabus; See *Emery*, 6th Dist. Lucas No. L-11-1228, 2003-Ohio-208, ¶ 19; *Colon*, 9th Dist. Summit No. 20949, 2002 WL 1800274 (Aug. 7, 2002); *Collins* at ¶ 14.

¹⁵ The fourth *Davis* factor, examining the defendant's commercial activities, has no application in the present case.

¹⁶ See R.C. 2913.71(A).

can easily be replaced, but the thief or his successors may meanwhile receive many hundreds or even thousands of dollars through their unlawful use.”¹⁷ As a result, due to their highly valuable nature, credit cards are predictably a common target for theft.

Significantly in this case, there also was a short time period between the theft, which occurred sometime between 1:40 a.m. and 8:40 a.m. on March 17, 2015, and the defendant’s use of the credit card at 10:24 a.m. on March 18, 2015.

The only *Davis* factor that weighs in the defendant’s favor is that he did provide an explanation as to how he came to possess the Discover credit card, which was that he found it laying on the ground in the apartment complex parking lot where his mother and stepfather lived. While plausible, the defendant’s account is uncorroborated because he failed to submit evidence or witnesses. The fact finder may consider the “obvious gaps or discrepancies in a putative explanation, its vagueness, and whether any attempt was made to corroborate or prove it when the opportunity existed.”¹⁸

By way of example, when affirming a conviction for Receiving Stolen Property, the court in *State v. Emery*, 6th Dist. Lucas No. L-11-1228, 2003-Ohio-208, discounted the persuasive value and credibility of the defendant’s explanation to police as to how he possessed the stolen property.¹⁹ The court did so because the defendant’s explanation was weak, and he neither testified nor called witnesses to rebut the state’s evidence, which tended to show the defendant knew the property was stolen.²⁰

¹⁷ The Legal Service Commission Notes, reprinted in Baldwin’s Ohio Revised Code Annotated at R.C. 2921.34.

¹⁸ *Emery* at ¶ 25.

¹⁹ *Id.* at ¶ 21.

²⁰ *Id.* at ¶ 21. In *State v. Fair* the appellant had been convicted of receiving stolen property after possessing another person’s credit card without permission. 8th Dist. Cuyahoga No. 74149, 1999 WL 328623, *1-2 (May 20, 1999). The appellant appealed on the ground that the state did not demonstrate beyond a reasonable doubt that he knew, or had reasonable cause to

Similarly, the defendant in the case at bar was able to offer a plausible explanation to Investigator Allen, but he failed to proffer any witness or submit any evidence to support his account. Moreover, even when the defendant offers an explanation as to why he had no reason to believe the property was stolen, "the mere fact that there is some evidence tending to explain a defendant's possession consistent with innocence" does not foreclose the fact finder from weighing the explanation to determine whether it is satisfactory.²¹

In this regard, while the defendant states he believed the card was lost, he never attempted to contact Discover, Nina Pittillo, or local authorities to report he had found a lost credit card. Instead, within minutes of purchasing the prepaid \$100 MasterCard, which he did soon after the credit card came into his possession, he threw the credit card away. Further telling are the defendant's repeated statements to Investigator Allen that he knew using the card was wrong because it did not have his name on it and that he was surprised when it worked.²² While these facts are not totally inconsistent with

believe, that the credit card was obtained through the commission of a theft offense. *Id.* at *3. The appellant argued that the state could not meet its burden because there was "no evidence regarding how he came into possession of the credit card." *Id.* The court reviewed the circumstances surrounding the incident and found for the state based on four circumstantial facts: (1) appellant could not explain how he gained the credit card, (2) the card clearly bore the name of someone else, indicating it was someone else's property, (3) the card had been stolen the day before the appellant was arrested, and (4) when the appellant was arrested he reached for his pocket containing the credit card, indicating he needed to dispose of it. *Id.* at *3-4.

²¹ *State of Ohio v. Ewing*, 10th Dist. Franklin No. 06AP-243, 2006-Ohio-5523, ¶ 17.

²² Other courts have imputed knowledge onto a defendant who was in possession of property, which he had no right to possess, and which he knew his possession of was beyond the scope of any consent or authorization by the owner. See *State v. Asberry*, 10th Dist. Franklin No. 04AP-1113, 2005-Ohio-4547 (upholding a conviction for receiving stolen property, a motor vehicle, where there was evidence that the defendant retained possession of the vehicle beyond the scope that the owner consented to). Similarly, the defendant in the instant case did not have permission from the victim to use her credit card. Any possession or use of her credit card was beyond the scope of her authorization, and the defendant admitted he knew it was wrong to have taken and used the credit card.

him believing that the card had been lost, they are certainly more consistent with him knowing or having reasonable cause to believe that the credit card had been stolen.

In response to the defense's position regarding the defendant's state of knowledge, the state argued at trial the defendant had reasonable cause to believe that the credit card was stolen because he found the credit card in a residential parking lot, as opposed to a commercial parking lot. The defense countered that such a distinction is misplaced because people can just as easily lose a credit card in a residential lot as in a commercial lot. The court is unaware of case law that makes such a distinction and therefore declines to distinguish between residential and commercial properties.

However, what is significant is that the card was found in a parking lot, which is not a place where it is likely that the owner would have simply dropped it on the ground. In this regard, finding the credit card in a parking lot is significantly different from finding the card in a retail store at or around the checkout point, where customers are routinely opening their wallets and purses to retrieve a credit card or cash, and where it is more plausible that a credit card could have simply been dropped accidentally from one's purse or wallet at that time.

In *State of Ohio v. Davis*, 5th Dist. Stark No. 2002CA00049, 2002-Ohio-5434, the appellant had been convicted of receiving stolen property as a result of using a credit card that was not his, which he testified he discovered lying on the ground on his way into an In and Out Mart.²³ The appellant argued there was an absence of evidence to prove he had reason to believe the credit card had been stolen.²⁴

²³ *State v. Davis*, 5th Dist. Stark No. 2002CA00049, 2002-Ohio-5434, ¶¶ 2-3, 9-10.

²⁴ *Id.* at ¶¶ 17-18.

The court reviewed the surrounding circumstances.²⁵ When affirming the conviction, the court explained that “by possession of the credit card, which appellant knew he did not have authority to possess, coupled with his attempt to draw \$300 on the card while claiming it belonged to his girlfriend, appellant committed the underlying theft offense necessary for the ‘knowledge’ element of the crime of receiving stolen property.”²⁶ Similarly, the defendant in the instant case discovered a credit card in a parking lot, the card was retrieved by the defendant from the parking lot shortly after it was stolen, the defendant acknowledged to police that he knew it was wrong to use the card because his name was not on it, he made no effort to report the “lost card” to authorities or to the management of the apartment complex, and he charged a large amount of money by using the card to purchase a prepaid \$100 MasterCard.

Furthermore, even if the defendant initially believed the Discover credit card was lost and not stolen, by the time he exited the Meijer store with his merchandise in hand, his behavior certainly suggested that he knew or had reason to believe that the Discover credit card was stolen. The “crime of receiving stolen property does not require that a suspect, immediately upon receipt, recognize the property as stolen. Rather it is sufficient that at some point after receipt, the recognition occur.”²⁷

After reviewing “the circumstances and conditions that surrounded” the defendant, and “putting oneself in the position of this defendant,” the court finds that a reasonable person would “believe that the property had been obtained through the commission of a theft offense.”²⁸ Thus, the defendant’s explanation in this case for how

²⁵ Id. at ¶ 20.

²⁶ Id. at ¶ 20.

²⁷ *State v. Ready*, 143 Ohio App.3d 748, 760, 758 N.E.2d 1203 (11th Dist. 2001).

²⁸ *Collins*, 10th Dist. No. 11AP-130, 2012-Ohio-372, ¶ 13.

he obtained the stolen property, while plausible, does not outweigh the other corroborated *Davis* factors suggesting the defendant knew or had reasonable cause to believe the Discover credit card was stolen.

The facts compelling the court's finding include: (1) the high value a credit card possesses, (2) the high frequency with which credit cards are stolen, (3) the short period of time between the theft and the defendant's possession and use of the credit card, (4) the fact that the credit card, even by the defendant's statement, was found in a location where it is unlikely that someone would have simply dropped it there by accident, 5) the fact that the defendant did not do any of the things that one would be expected to do with a lost card, such as report it to the owner of the card, the owner of the property, or the authorities, 6) the defendant's admission that he knew it was wrong to use the credit card because it bore another person's name, (7) the fact that the defendant disposed of the credit card immediately after using it, and (8) the defendant's failure to submit any evidence to corroborate his position. Therefore, the court finds that the state has proven beyond a reasonable doubt all of the elements for Receiving Stolen Property under R.C. 2913.51(A).

(B) MISUSE OF CREDIT CARDS

In Count II the defendant is charged with Misuse of Credit Cards in violation of R.C. 2913.21(B)(2), with a specification that the victim was an elderly person in violation of R.C. 2913.21(D)(4), a fifth degree felony. Under Ohio Revised Code 2913.21(B)(2), "No person, with the purpose to defraud, shall ... [o]btain property or services by the

use of a credit card, in one or more transactions, knowing or having reasonable cause to believe that the card has expired or been revoked, or was obtained, is retained, or is being used in violation of law.”

A defendant “acts purposely when it is the person’s specific intention to cause a certain result.”²⁹ To defraud “means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another.”³⁰

By his own admission to Investigator Allen, the defendant did obtain property by using Nina Pittillo's Discover credit card. The defendant acted purposely because it was his intention to retain the Discover credit card and use it to purchase a prepaid MasterCard so that he could buy food. Furthermore, the defendant had intent to defraud because he admitted to Investigator Allen that he knew it was wrong to use the Discover credit card because his name was not on it. The defendant knew his name was not on the Discover credit card and he still used it anyway, thereby benefiting himself through use of deception, which was to the detriment of Nina Pittillo. Accordingly, the state has proven beyond a reasonable doubt that the defendant obtained the prepaid \$100 MasterCard by using Nina Pittillo's Discover credit card with the purpose to defraud.

The defense argued during the trial that the defendant's admissions were not credible and that the remaining evidence was insufficient to prove that the defendant, not another person, used the Discover credit card to buy the prepaid MasterCard. This argument is wholly unsupported by the record. There is no evidence that would tend to

²⁹ R.C. § 2901.22(A).

³⁰ R.C. § 2913.01(B). See *State v. Jones*, 9th Dist. Summit No. 26540, 2013-Ohio-3604, ¶ 8 (applying the definitions of “purposely” and “defraud” set forth in R.C. §§ 2901.22(A) and 2913.01(B), respectively, when reviewing a misuse of credit cards conviction).

show that a person other than the defendant used the Discover credit card. In fact, the evidence is to the contrary. When asked by defense counsel if there was any evidence that would refute the defendant's admission that he used the Discover credit card to purchase the prepaid \$100 MasterCard, Investigator Allen answered that there is no evidence to refute the defendant's admissions. "Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt."³¹ The court finds Investigator Allen's testimony to be credible, and with a lack of evidence to the contrary, the court finds there is no reasonable doubt that the defendant is the person who used Nina Pittillo's Discover credit card to purchase a prepaid \$100 MasterCard.

Even if the court discounted the defendant's admissions, as the defense urges, adequate evidence still exists to prove beyond a reasonable doubt that the defendant, not a different person, acted with the purpose to defraud another when he obtained property using Nina Pittillo's credit card. In *State v. Jones*, 9th Dist. Summit No. 26540, 2013-Ohio-3604, the Ninth District Court of Appeals upheld a conviction for Misuse of Credit Cards where video footage showed the defendant inside and outside of the store where unauthorized credit card transactions occurred, but he was not shown swiping the credit card.³² The video, which was corroborated by store receipts, did show the defendant's companion using the credit card.³³ The appellant argued that the evidence merely demonstrated his companion alone used a credit card to obtain merchandise.³⁴ The court instead found that "although [the defendant] did not touch or swipe [the

³¹ R.C. 2901.05(A).

³² *Jones* at ¶¶ at 13-14.

³³ *Id.* at ¶ 21.

³⁴ *Id.* at ¶ 20.

victim's] credit cards at the store registers himself, he nevertheless constructively possessed the cards by exercising control over their use for the fraudulent purchases of merchandise for his benefit."³⁵ In the instant case the defendant is pictured inside Meijer with his stepfather at self-check-out kiosk, and he is then pictured carrying a small bag and a receipt as he exits Meijer with his stepfather. Under these circumstances, even if the defendant's stepfather was the person who swiped the Discover credit card, the defendant would still have constructive possession of the card, as in *Jones*. Accordingly, the court finds there is sufficient evidence to prove beyond a reasonable doubt that the defendant obtained the prepaid \$100 MasterCard by using Nina Pittillo's Discover credit card with the purpose to defraud.

The final element for Misuse of Credit Cards requires that the defendant act "knowing or having reasonable cause to believe that the card has expired or been revoked, or was obtained, is retained, or is being used in violation of law" R.C. 2913.21(B)(2). As discussed at length in Section A above, the court has found that the State has proven beyond a reasonable doubt that the defendant knew or had reasonable cause to believe that the Discover credit card had been obtained or used in violation of law, namely that the card was stolen. As additional support, the defendant told Investigator Allen that he was surprised the Discover credit card worked. This statement tends to prove the defendant had reason to believe that the credit card was revoked, which satisfies R.C. 2913.21(B)(2). Therefore, the State of Ohio has proven beyond a reasonable doubt all of the elements for Misuse of Credit Cards under R.C. 2913.21(B)(2).

³⁵ *Id.* at 17.

CONCLUSION

The court finds that the state has proven beyond a reasonable doubt the defendant's guilt to the charges of (1) Receiving Stolen Property in violation of R.C. 2913.51(A), a felony of the fifth degree, and (2) one count of Misuse of Credit Cards in violation of R.C. 2913.21(B)(2), a felony of the fifth degree.

The Probation Department is hereby ordered to complete a presentence investigation and to submit to the court a presentence report.

The sentencing has been scheduled for October 19, 2015 at 8:00 a.m.

IT IS SO ORDERED.

DATED: 9-14-15



Judge Jerry R. McBride