

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO,

Appellee,

v.

MARK WEST,

Appellant.

Case No. 2008-0444

On Appeal from the  
Wood County Court  
of Appeals, Sixth  
Appellate District

Court of Appeals  
Case No. WD-07-002

---

**MEMORANDUM IN OPPOSITION TO  
APPELLANT'S CLAIM OF JURISDICTION**

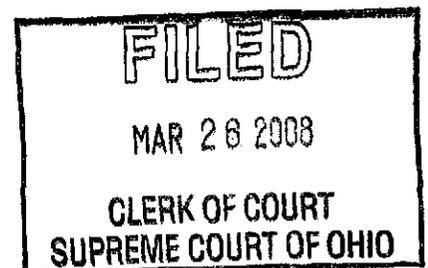
---

Raymond Fischer (#0012989)  
Wood County Prosecuting Attorney  
Paul Dobson (#0064126)  
Jacqueline M. Kirian (#0068077)  
Assistant Prosecuting Attorneys  
Wood County Prosecutor's Office  
One Courthouse Square  
Bowling Green, Ohio 43402  
Phone: (419) 354-9250  
Fax: (419) 353-2904  
Email: [jkirian@co.wood.oh.us](mailto:jkirian@co.wood.oh.us)

COUNSEL FOR APPELLEE, STATE OF OHIO

Andy P. Hart (#0075707)  
Wood County Public Defender's Office  
123 N. Summit Street, First Floor  
Bowling Green, Ohio 43402  
Phone: (419) 354-9244  
Fax: (419) 353-9865

COUNSEL FOR APPELLANT, MARK WEST



**TABLE OF CONTENTS**

EXPLANATION OF WHY THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST AND WHY A SUBSTANTIAL CONSTITUTIONAL QUESTION IS NOT INVOLVED.....1

RESPONSE TO APPELLANT’S PROPOSITION OF LAW.....2

Response to Proposition of Law: Comparing the elements of a telecommunications fraud offense to the elements of a grand theft by deception offense, the crimes are not allied offenses of similar import. The trial court thus correctly imposed sentence for both offenses.

CONCLUSION.....5

PROOF OF SERVICE.....6

**EXPLANATION OF WHY THIS CASE IS NOT OF PUBLIC OR  
GREAT GENERAL INTEREST AND WHY A SUBSTANTIAL  
CONSTITUTIONAL QUESTION IS NOT INVOLVED**

This case does not involve an issue suitable for this Court's review. Despite Mark West's contention that the Sixth District Court of Appeals gave inadequate attention to his sentencing challenge, the appellate court's opinion reveals a thorough and correct resolution to the allied-offense claim. See *State v. West*, Wood App. No. WD-07-002, 2008-Ohio-368. Because this appeal does not involve a question of great public or general interest or a substantial constitutional question, this Court should decline to accept jurisdiction.

*Id.* at 636. In *State v. Schuster*, Lucas App. No. L-05-1365, 2007-Ohio-3463, ¶33, the Sixth District Court of Appeals explained that “*Rance* has not been overruled by the Ohio Supreme Court and the standard set forth therein is still viable.”

Comparing in the abstract the statutory elements of telecommunications fraud and grand theft by deception, it appears that they do not correspond to such a degree that the offenses are of similar import:

**R.C. 2913.02(A)(3)**

- have purpose to deprive the owner of property or services
- knowingly obtain or exert control over either the property or services
- by deception

**R.C. 2913.05(A)**

- devise a scheme to defraud
- knowingly disseminate, transmit, or cause to be disseminated or transmitted
- by means of a wire, radio, satellite, telecommunication, telecommunications device, or telecommunications service
- any writing, data, sign, signal, picture, sound, or image
- with purpose to execute or otherwise further the scheme to defraud

The telecommunications fraud statute contains the elements of devising a scheme to defraud and using some form of telecommunications, both of which are not included in the grand theft by deception statute. The grand theft by deception statute, unlike the telecommunications statute, contains the elements of obtaining or exerting control of the owner’s property or services. To commit a telecommunications offense, the criminal defendant need not obtain or exert control over another’s property or services; he must only devise a scheme to do so and have the purpose to execute or otherwise further that

scheme. As the Court of Appeals properly recognized, the only “similarity between the two offenses is that each is required to be committed knowingly.” *West* at ¶48.

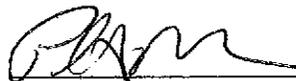
Because telecommunications fraud and grand theft by deception are not allied offenses of similar import, the fourth proposition of law should be rejected.

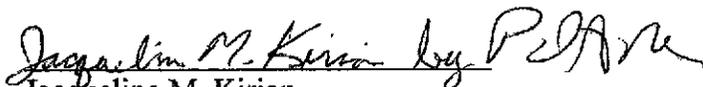
**CONCLUSION**

For the above-mentioned reasons, this case does not present an issue worthy of this Court's review. The State respectfully requests this Court to decline to accept jurisdiction.

Respectfully submitted,

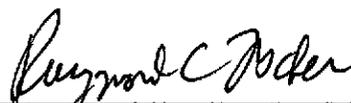
  
\_\_\_\_\_  
Raymond C. Fischer  
Wood County Prosecuting Attorney

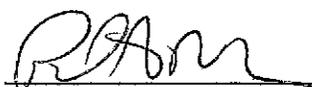
  
\_\_\_\_\_  
Paul Dobson  
Chief Assistant Prosecuting Attorney

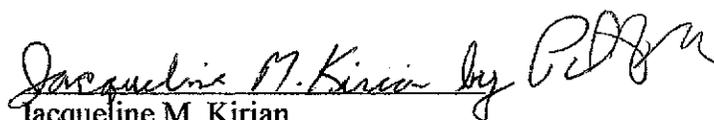
  
\_\_\_\_\_  
Jacqueline M. Kirian  
Assistant Prosecuting Attorney

**PROOF OF SERVICE**

The State hereby certifies that a copy of this Memorandum in Opposition to Jurisdiction was placed in the mailbox of counsel for West, Andy P. Hart, at the Wood County Clerk of Courts Office, One Courthouse Square, Bowling Green, Ohio, 43402, this \_\_\_\_\_ day of March 2008.

  
\_\_\_\_\_  
Raymond C. Fischer  
Wood County Prosecuting Attorney

  
\_\_\_\_\_  
Paul Dobson  
Chief Assistant Prosecuting Attorney

  
\_\_\_\_\_  
Jacqueline M. Kirian  
Assistant Prosecuting Attorney