ORIGINAL

No . 2012-0216

IN THE SUPREME COURT OF OHIO

APPEAL FROM THE SUMMIT COUNTY COURT OF APPEALS
NINTH APPELLATE DISTRICT
SUMMIT COUNTY, OHIO
Appellate Case No. 24894

STATE OF OHIO,
Appellee/Cross-Appellant

v.

DAVID WILLAN,
Appellant/Cross-Appellee

Cross-Appellant State of Ohio Reply Brief

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I. Statement of the Case and Statement of Facts

Willan was convicted of multiple felonies inclusive of Engaging in a Pattern of Corrupt Activity [*RICO*], Theft, Theft from the Elderly, and five separate counts of False Representations in the Registration of Securities [False Representations]. The *Willan* Indictment on the *RICO* charge identified that the incidents of Corrupt Activity involved the crimes of Theft, Theft from the Elderly, and the five separate counts of False Representations.

While the Ninth Appellate District reversed the convictions on Theft, Theft from the Elderly, and two of the five counts of False Representations, three of the convictions for False Representations and the *RICO* conviction remained intact. Further, the Appellate Court decided that *RC 2929.14(D)(3)(a),* which establishes a ten year mandatory minimum sentence when an offender is convicted of a pattern of corrupt activity where the most serious offense in the pattern of corrupt activity is a first degree felony, was ambiguous and, therefore, could not be applied to the sentence *Willan* received for the conviction on the *RICO* count.

This Court accepted a limited appeal from the State to consider the narrow question of whether the statutory sentencing provision, *RC 2929.14(D)(3)(a),* required a mandatory ten-year prison term for the Corrupt Activity conviction where the most serious offense in the pattern of corrupt activity is a felony of the first degree.

On June 11, 2013, this Court reversed the Ninth Appellate District Court of Appeals decision that the sentencing statute was ambiguous, finding there was only one reasonable construction, *i.e.* that *RC 2929.14(D)(3)(a)* required a mandatory ten-year prison term "if the court imposing sentence upon the offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree."

On June 17, 2013 the US Supreme Court decided *Alleyne v. United States,* 133 S.Ct. 2151 (2013). As the question of *Alleyne* was not before the Ohio Supreme Court, on June 21, 2013, *Willan*

requested the Ohio Supreme Court reopen the appeal to consider a new proposition of law concerning *Alleyne*, and reconsider its decision of June 11, 2013. On September 4, 2013, this Court, without opinion, declined to reopen the decision that the State's sentencing statute required a mandatory ten year sentence when an offender is convicted of a Pattern of Corrupt Activity that involved a first degree predicate crime.

Willan filed a *Writ of Certiorari* with the US Supreme Court, noting that the Ohio Supreme Court did not address the *Alleyne* question, which *Willan* attempted to raise after the initial decision was issued by the Ohio Supreme Court. On April 13, 2014, the US Supreme Court remanded the matter back to this Court for further consideration in light of *Alleyne*. On September 24, 2014, this Court directed the parties to brief the issue of the impact of *Alleyne* on this Court's decision in *State v. Willan,* 136 Ohio St.3d 222, 2013-Ohio-2405 (2013).

II. Argument

Proposition of Law

Alleyne v. United States, 570 US __, 133 S.Ct. 2151 (2013), Has No Impact On the Mandatory Sentence Required By RC 2929.14(D)(3)(a) Where the Jury Makes the Factual Finding Demonstrating that an Offense that is, by Statute, a Corrupt Activity Is a First Degree Felony

The question in this case revolves around the US Supreme Court's recognition that:

> ***because mandatory minimum sentences increase the penalty for a crime, any fact that increases the mandatory minimum is an 'element' that must be submitted to the jury.

Alleyne v. United States, 570 US __, 133 S.Ct. 2151 (2013). To that end,

> ***juries must find any facts that increase either the statutory maximum or minimum because the Sixth Amendment applies where a finding of fact both alters the legally prescribed range and does so in a way that aggravates the penalty.

Id. at 2162. However, the US Supreme Court also recognized that the ruling in *Alleyne*:

> ***does not mean that any fact that influences judicial discretion must be found by a jury. We have long recognized that broad sentencing discretion, informed by judicial factfinding, does not violate the Sixth Amendment.

Id. at 2163. The exercise of [sentencing] discretion does not contravene the Sixth Amendment even if it is informed by judge-found facts. *Id, citing Dillon v. United States,* 560 US 817, 130 S.Ct. 2683, 2692 (2010). This recognition by the US Supreme Court effectively makes a significant observation; *i.e.* that there are *operative facts* within the province of a jury to determine, as opposed to *legal facts* that are within the province of the court to determine.

Here, *Willan* launches a two-pronged complaint under the guise of *Alleyne* that attempts to transfer the role of the court to determine what the law is to the jury. First, *Willan* opines that the trial judge made a "finding" that the predicate crimes *Willan* was convicted of, False Representations in the Registration of Securities, [False Representations] were "incidents of corrupt activity." Next, *Willan* contends the trial judge made the "finding" that the predicate crimes, False Representations, were first degree felonies. *Willan* contends that it was necessary *for the jury* to make these "findings" under the dictates of *Alleyne* since these "facts" were aggravating factors that established a mandatory ten-year sentence. Simply put, *Willan* is wrong.

1. *The Statute Establishes that the Crime of False Representations In the Registration of Securities is a Corrupt Activity*

Willan's erroneous contention that the trial judge made the "factual finding" that the crime of False Representations was an incident of Corrupt Activity is the result of a myopic refusal to acknowledge two key factors. First, the trial judge in this case had nothing to do with "finding" that the offense of False Representations, prohibited by *RC 1707.44(B),* is an incident of Corrupt Activity. The General Assembly established that the offense of False Representations is a Corrupt Activity in the body of *RC 2923.31(I)(2). Appendix 1.* Moreover, even after the decision by the Ninth

Appellate District, the record still demonstrates that the jury specifically convicted *Willan* of more than one incident of False Representations.

Willan posits that the trial court somehow did something wrong when it found that the crime of False Representations was a Corrupt Activity. *Willan Brief at p. 9.* While the trial court then instructed the jury that False Representations was a Corrupt Activity, that instruction was a correct *statement of law.* *Willan* fails to provide legal authority establishing a proposition that it is somehow improper for a judge to correctly instruct a jury as to what the law clearly states. The basis for that failure would appear to exist in a long standing recognition by the US Supreme Court that the duty of the court is to decide what the law is, and the duty of the jury is to follow that law. *Alleyne, supra at 2163, citing Sparf v. United States,* 156 US 51, 90 (1895).

In light of the clear division of duties between a judge and the jury, and the expressed determination made by the General Assembly in the form of *RC 2923.31(I)(2),* the trial judge was not at liberty to tell the jury that the offense of False Representations was not a Corrupt Activity. Moreover, the jury was not at liberty to "find" that the offense of False Representations was not a Corrupt Activity.

In addition, *Willan's* contention that the jury was required to make a "finding" that the offense of False Representations was a "Corrupt Activity" ignores the fact that the General Assembly did not require or establish any criteria or elements that must be met, in order for an offense listed in *RC 2923.31(I)(2)* to be a "Corrupt Activity." If an offense appears in the list established by the General Assembly, the offense is a Corrupt Activity. Nothing else is required.

This point alone serves to highlight the erroneous nature of *Willan's* contention that the jury must make a "finding" that an offense is a "Corrupt Activity." Since there is no set of criteria, there is no evidence the State could present at trial to prove to the trier of fact that a crime is or is not a "Corrupt Activity." There is nothing that sets an offense that is a Corrupt Activity apart from an

offense that is not a Corrupt Activity, other than the fact one is listed in *RC 2923.31(I)(2)* as a Corrupt Activity and the other is not.

2. *The Jury Made Any Factual Finding Necessary Under the Requirements of Alleyne*

Willan further contends the trial judge, contrary to the dictates of *Alleyne,* made the "finding" that the Corrupt Activity of False Representations was a first degree felony.[1] Indeed, *Willan* complains that the trial court instructed the jury that the False Representations offense was a first degree felony. *Willan Brief at p. 11.* However, the fact that the trial court provided such an instruction is meaningless to any determination under *Alleyne.* Again, *Willan's* view of the case is myopic in that it steadfastly refuses to acknowledge that the jury, not the trial judge, made the *factual finding* necessary for the legal determination that classification of the offense of False Representations was a first degree felony.

The crime of False Representations, which the General Assembly designated as a Corrupt Activity in *RC 2923.31(I)(2),* is a first degree felony where the value of the securities involved is one-hundred thousand dollars or more. *See RC 1707.99(E)*[2]. *Appendix 2.* Where a jury finds a defendant committed all the elements of the offense of False Representations in the Registration of Securities, inclusive of the *factual finding* that the amount involved was one-hundred thousand dollars or more, the offense is, by operation of the statute, a first degree felony. There is no additional fact the jury must find to trigger the classification of this offense as a first degree felony.

In *Willan's* case, the jury was specifically instructed that, *as an element of the offense,* they must determine whether the value of the securities involved in the False Representations fell within

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[1] *Willan* claims that the jury must find that one of the incidents of Corrupt Activity he was convicted of was a first degree felony. *Willan's Brief* at p.9. Here, all the Corrupt Activities *Willan* was convicted of were first degree felonies. There was one incident of Theft, one incident consisting of Theft from the Elderly, and five incidents of False Representations. Relevant to this matter, after the initial decision by the Ninth Appellate District, three incidents of False Representation remained untouched, supporting the charge of Engaging in a Pattern of Corrupt Activity.

[2] The current version of *RC 1707.99(E)* now requires the amount of money involved to be one-hundred fifty thousand dollars or greater to classify False Representations as a first degree felony.

specified ranges. The jury, not the trial judge, then identified the range that, in turn, established the statutory classification of the offenses as a first degree felony, *i.e. a range of one hundred thousand dollars or more. See Jury Instructions, Appendix 3.* Moreover, the verdict forms required the jury to identify the value of the securities for each incident of False Representations identified in the Indictment. *Appendix 4, 5, 6, 7, 8.* When the jury made the specific *factual finding* that the value of the securities involved in each of the incidents of False Representations was one hundred thousand dollars or more, and noted that *factual finding* on the relevant jury verdict forms, those factual findings in turn allowed the trial court to then determine the correct statutory classification of the offenses as first degree felonies for the purpose of sentencing. Nothing more is required under *Alleyne.*[3]

Despite the fact that the *Willan* jury made the specific factual finding necessary for a trial court to determine the statutory felony classification of this particular offense, *Willan* continues to make the vacant contention that the jury is required to find that a crime is a first degree felony. However, noticeably absent from *Willan's* hollow claim is an explanation of how a jury would be able to determine that an offense is classified as a specific degree felony under a particular statute.

A jury is capable of making the determination of the existence or non-existence of a *fact* required to classify an offense as a particular degree of felony. However, in light of the fact that there is no evidence that could conceivably be presented that would tell a jury an offense is a particular degree felony, accepting *Willan's* position that the jury must also make a statement that the offense is a first degree felony would mandate that a trial court tell the jury the legal fact that an offense is a specific degree felony and then, in turn, ask the jury to identify in a verdict form what felony classification they find the offense is. Such an absurd procedure and result is certainly not mandated by *Alleyne* or any other judicial decision.

[3] Interestingly, *Willan* points to *State v. Fort*, 2014-Ohio-3412 (2014), as a case that supports his arguments. However, as stated by *Willan,* the *Fort* Court found that the dictates of *Alleyne* were not violated by Ohio's Major Drug Offender statute because, in that case, the jury found the defendant possessed an amount of drugs in a specific range. The precise same type of finding was made in this case where the jury specifically found the monetary amount necessary to determine a first degree felony.

In this case, the jury made the specific factual finding necessary for the trial court to make the legal determination that the Corrupt Activity offense of False Representations was a first degree felony. Consequently, all the offenses that were, by statute, Corrupt Activities, that *Willan* was convicted of by the jury were also, by statute, first degree felonies[4]. The next step was the determination of the appropriate range for *Willan's* conviction on the charge of Engaging in a Pattern of Corrupt Activity. Relevant to the determination of the appropriate range of such a sentence, the *Alleyne* Court recognized that:

> ***Nothing *** suggests that it is impermissible for judges to exercise discretion-taking into consideration various factors relating both to offense and offender-in imposing a judgment *within the range* prescribed by statute.

Id, citing Apprendi v. New Jersey, 530 US 466, 481(2000).

The appropriate range for the conviction on the charge of Engaging in a Pattern of Corrupt Activity as a ten year mandatory minimum was established by *RC 2929.14(D)(3)(a)*[5], which provided in pertinent part:

> ***the court imposing sentence***finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree,***

Appendix 11. The statutory classification of the offense of False Representations as a first degree felony was nothing more than a factor the US Supreme Court recognizes as permissible for a sentencing judge to consider within the dictates of *Alleyne.*

Willan's contention that the trial judge engaged in impermissible factfinding to determine the proper range of his sentence for Engaging in a Pattern of Corrupt Activity contrary to the dictates of *Alleyne* steadfastly ignores that, after the jury found the fact necessary to establish the Corrupt

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[4] Both the charges of Theft and Theft from the Elderly charges were first degree felonies as well. The remaining charges of False Representations reversed by the Ninth Appellate Court were also 1st degree felonies. *Appendix 9, 10.*
[5] *RC 2929.14(D)(3)(a)* was renumbered as *RC 2929.14(B)(3).*

Activity offense of False Representations was a first degree felony, the trial court merely recognized and applied the proper range for the penalty established by the General Assembly in the sentencing statute.

3. Alleyne Does Not Convert an "Enhancement" Into an "Element" of an Offense

Willan identifies that the trigger for the mandatory minimum sentence for Engaging in a Pattern of Corrupt Activity is the fact that the underlying predicate crime is classified as a first degree felony. *Willan* is correct. Where *Willan* goes astray is that he then contends that the legal classification of the Corrupt Activity offense as a first degree felony is, according to *Alleyne,* an "element" of Engaging in a Pattern of Corrupt Activity that must be determined by the jury beyond a reasonable doubt. *Willan Brief at p.9. Willan* is wrong.

Alleyne requires the jury to make the *factual finding* that triggers an increase in the statutory minimum sentence. *Alleyne, supra at 2162. Willan* attempts to misdirect the Court by focusing on a contention that the necessary *factual finding* in this instance is made in connection with the conviction for Engaging in a Pattern of Corrupt Activity. However, that specific factual finding was made in connection with the relevant Corrupt Activity offense, *i.e. False Representations.* As demonstrated above, the *factual finding* that was *necessary* to establish the legal classification of the Corrupt Activity offense of False Representations as a first degree felony was made by the jury, *i.e.* that the monetary amount involved was one hundred thousand dollars or more. *Alleyne* does not alter the fact that this particular Corrupt Activity, statutorily classified as a first degree felony, in turn, triggered an "enhancement" to the minimum sentence for Engaging in a Pattern of Corrupt Activity; it was not an independent element of the offense of Engaging in a Pattern of Corrupt Activity.

The Corrupt Activity statute itself was designed as an enhancement to the penalties for certain criminal activity. *RC 2923.32* was enacted to criminalize the "pattern of corrupt activity," and not the underlying predicate acts. *State v. Dudas,* 2009-Ohio-1001 (Lake cty 2009) *citing US v.*

Neapolitan, 791 F.2d 489 (7th Cir. 1986). The purpose of *RICO* as stated in its legislative history is to eradicate organized crime in the United States ***, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime. *Russello v. US*, 464 US 16 (1983) *citing US v. Turkette,* 452 US 576, 588-89 (1981).

Predictably, as in this case, defendants have attempted to claim that *Alleyne* converted sentence enhancements to the status of "elements" of an offense that must be found by a jury because they increase the minimum threshold penalty for an offense. Courts have rejected the very premise *Willan* now asks this Court to accept.

> ***[A] defendant who is convicted and then has ***any other guidelines enhancement applied in the calculation of his sentence has not been convicted of being guilty of the enhancement. *** the facts underlying *** the enhancement do not qualify as "elements" or "ingredients" of Petitioner's offense.

Harris v. US, 2013 WL 4882227 (2013) *citing US v. Kenney,* 391 Fed. Appx. 169, 172 (3rd Cir. 2010) *unpublished; Gilbert v. US,* 640 F.3d 1293, 1320 (11th Cir. 2011) [(The defendant's) position turns on treating sentences as convictions, and an argument that depends on calling a duck a donkey is not much of an argument.] Thus, a legal fact that triggers a sentencing enhancement is not an element of an offense.

In this case, the General Assembly plainly established that, where the predicate crimes for a Pattern of Corrupt Activity involves one or more offenses that are the most serious possible, *i.e.* a first degree felony, the penalty for Engaging in a Pattern of Corrupt Activity is *enhanced* to a mandatory minimum of ten years under *RC 2929.14(D)(3)(a).* The enhancement trigger in *RC 2929.14(D)(3)(a),* the *legal classification* of the Corrupt Activity offense of False Representations as a first degree felony, is not an element of the crime of Engaging in a Pattern of Corrupt Activity and is

not converted into one by the dictates of *Alleyne.*[6] The jury did make any factual finding required by *Alleyne* when they made the factual findings required for the convictions for the Corrupt Activity offense of False Representations.

Conclusion

Alleyne v. United States, 133 S.Ct. 2151 (2013), has no impact on the decision this Court made concerning *State v. Willan,* 136 Ohio St.3d 222, 2013-Ohio-2405 (2013). Any *Alleyne* requirement that the jury make a factual finding that establishes a mandatory minimum sentence a defendant must receive was fully met in this particular case when the *Willan* jury made the specific factual finding that the crime of False Representations in the Registration of Securities involved a monetary value in excess of one-hundred thousand dollars, thus classifying the offense a felony of the first degree, according to statute.

The factual finding made by the jury resulted in the judicial recognition of the statutory classification that the Corrupt Activity offenses of False Representations in the Registration of Securities as a felony of the first degree. The trial court then properly applied the range of incarceration as established in the statutory guidance provided by *RC 2929.14(D)(3)(a).* In *Willan's* case, that the minimum sentence for the conviction of Engaging in a Pattern of Corrupt Activities was an enhanced penalty of a mandatory minimum sentence of ten years.

For the reasons stated herein, Cross-Appellant State of Ohio respectfully requests this Court find that the US Supreme Court case of *Alleyne v. United States,* 133 S.Ct. 2151 (2013), has no impact on the decision this Court made concerning *State v. Willan,* 136 Ohio St.3d 222, 2013-Ohio-2405 (2013).

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[6] Moreover, as stated earlier, there is no set of evidence the State could ever produce that would tell a jury a particular crime is a first degree felony. Indeed, absent a trial court flatly telling the jury the classification of a particular crime, the jury has no way to know a crime is a first, second, etc… degree felony. The jury is only required to make a *factual finding* that allows the court to identify the crime qualifies as a particular class felony under the guidance of the particular statute where more than one classification is possible.

Respectfully Submitted,

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Certificate of Service

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(F) "Pecuniary value" means money, a negotiable instrument, a commercial interest, or anything of value, as defined in section 1.03 of the Revised Code, or any other property or service that has a value in excess of one hundred dollars.

(G) "Person" means any person, as defined in section 1.59 of the Revised Code, and any governmental officer, employee, or entity.

(H) "Personal property" means any personal property, any interest in personal property, or any right, including, but not limited to, bank accounts, debts, corporate stocks, patents, or copyrights. Personal property and any beneficial interest in personal property are deemed to be located where the trustee of the property, the personal property, or the instrument evidencing the right is located.

(I) "Corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following:

(1) Conduct defined as "racketeering activity" under the "Organized Crime Control Act of 1970," 84 Stat. 941, 18 U.S.C. 1961(1)(B), (1)(C), (1)(D), and (1)(E) , as amended;

(2) Conduct constituting any of the following:

(a) A violation of section 1315.55 , 1322.02 , 2903.01 , 2903.02 , 2903.03 , 2903.04 , 2903.11 , 2903.12 , 2905.01 , 2905.02 , 2905.11 , 2905.22 , 2905.32 as specified in division (I)(2)(g) of this section, 2907.321 , 2907.322 , 2907.323 , 2909.02 , 2909.03 , 2909.22 , 2909.23 , 2909.24 , 2909.26 , 2909.27 , 2909.28 , 2909.29 , 2911.01 , 2911.02 , 2911.11 , 2911.12 , 2911.13 , 2911.31 , 2913.05 , 2913.06 , 2921.02 , 2921.03 , 2921.04 , 2921.11 , 2921.12 , 2921.32 , 2921.41 , 2921.42 , 2921.43 , 2923.12 , or 2923.17 ; division (F)(1)(a), (b), or (c) of section 1315.53 ; division (A)(1) or (2) of section 1707.042 ; division (B), (C)(4), (D), (E), or (F) of section 1707.44 ; division (A)(1) or (2) of section 2923.20 ; division (E) or (G) of section 3772.99 ; division (J)(1) of section 4712.02 ; section 4719.02 , 4719.05 , or 4719.06 ; division (C), (D), or (E) of section 4719.07 ; section 4719.08 ; or division (A) of section 4719.09 of the Revised Code.

(b) Any violation of section 3769.11 , 3769.15, 3769.16, or 3769.19 of the Revised Code as it existed prior to July 1, 1996, any violation of section 2915.02 of the Revised Code that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of section 3769.11 of the Revised Code as it existed prior to that date, or any violation of section 2915.05 of the Revised Code that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of section 3769.15, 3769.16, or 3769.19 of the Revised Code as it existed prior to that date.

(c) Any violation of section 2907.21 , 2907.22 , 2907.31 , 2913.02 , 2913.11 , 2913.21 , 2913.31 , 2913.32 , 2913.34 , 2913.42 , 2913.47 , 2913.51 , 2915.03 , 2925.03 , 2925.04 , 2925.05 , or 2925.37 of the Revised Code, any violation of section 2925.11 of the Revised Code that is a felony of the first, second, third, or fourth degree and that occurs on or after July 1, 1996, any violation of section 2915.02 of the Revised Code that occurred prior to July 1, 1996, any violation of section 2915.02 of the Revised Code that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of section 3769.11 of the Revised Code as it existed prior to that date, any violation of section 2915.06 of the Revised Code as it existed prior to July 1, 1996, or any violation of division (B) of section 2915.05 of the Revised Code as it exists on and after July 1, 1996, when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in

Appendix I

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2010 Ohio Revised Code
Title [17] XVII CORPORATIONS - PARTNERSHIPS
Chapter 1707: SECURITIES
1707.99 Penalty.

1707.99 Penalty.

Whoever commits any act described in division (A) of section 1707.042 or section 1707.44 of the Revised Code is guilty of a violation of sections 1707.01 to 1707.45 of the Revised Code and the following apply to the offender:

(A) If the value of the funds or securities involved in the offense or the loss to the victim is less than five hundred dollars, the offender is guilty of a felony of the fifth degree, and the court may impose upon the offender an additional fine of not more than two thousand five hundred dollars.

(B) If the value of the funds or securities involved in the offense or the loss to the victim is five hundred dollars or more but less than five thousand dollars, the offender is guilty of a felony of the fourth degree, and the court may impose upon the offender an additional fine of not more than five thousand dollars.

(C) If the value of the funds or securities involved in the offense or the loss to the victim is five thousand dollars or more but less than twenty-five thousand dollars, the offender is guilty of a felony of the third degree, and the court may impose upon the offender an additional fine of not more than ten thousand dollars.

(D) If the value of the funds or securities involved in the offense or the loss to the victim is twenty-five thousand dollars or more but less than one hundred thousand dollars, the offender is guilty of a felony of the second degree, and the court may impose upon the offender an additional fine of not more than fifteen thousand dollars.

(E) If the value of the funds or securities involved in the offense or the loss to the victim is one hundred thousand dollars or more, the offender is guilty of a felony of the first degree, and the court may impose upon the offender an additional fine of not more than twenty thousand dollars.

Effective Date: 03-18-1999

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Dayton, OH

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Criminal Law, DUI & DWI, Personal Injury
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Appendix 2

If you find the Defendant not guilty, this concludes your consideration of the charge. If you find the Defendant guilty, you must make an additional finding, beyond a reasonable doubt, of whether Defendant is guilty of False Representation in the Registration of Securities, Aggravated Theft or Theft from the Elderly.

FALSE REPRESENTATION IN THE REGISTERING OF SECURITIES

The law of Ohio provides as follows:

> No person shall knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for registering securities or transactions, or exempting securities or transactions from registration.

Before you can find this Defendant guilty of the first offense, you must find beyond a reasonable doubt that on or about February 18, 2004, and in Summit County, Ohio, this Defendant did knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for registering securities or transactions, or exempting securities or transactions from registration.

The following are the definitions that you shall use when deciding this case.

KNOWINGLY

A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result. A person has knowledge of circumstances when he is aware that such circumstances probably exist.

CAUSE

Cause is an act or failure to act which in a natural and continuous sequence directly produces the harm and without which it would not have occurred.

MATERIAL

The representation must be material; that is, it must be important, necessary or having influence on the transaction. It must be so substantial and important that it influenced the person to whom it was made.

The Defendant is also charged with False Representation in the Registering of Securities on or about November 24, 2004. Before you can find the Defendant guilty of this offense, you must find beyond a reasonable doubt that on or about November 24, 2004, and in Summit County, Ohio, the Defendant did knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for registering securities or transactions, or exempting securities or transactions from registration.

The Defendant is also charged with False Representation in the Registering of Securities on or about April 29, 2005. Before you can find the Defendant guilty of this offense, you must find beyond a reasonable doubt that on or about April 29, 2005 and in Summit County, Ohio, this Defendant did knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for registering securities or transactions, or exempting securities or transactions from registration.

The Defendant is also charged with False Representation in the Registering of Securities on or about June 10, 2005. Before you can find the Defendant guilty of this offense, you must find beyond a reasonable doubt that on

or about June 10, 2005, and in Summit County, Ohio, this Defendant did knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for registering securities or transactions, or exempting securities or transactions from registration.

The Defendant is also charged with False Representation in the Registering of Securities on or about July 25, 2005. Before you can find the Defendant guilty of this offense, you must find beyond a reasonable doubt that on or about July 25, 2005, and in Summit County, Ohio, this Defendant did knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for registering securities or transactions, or exempting securities or transactions from registration.

The law that applies and all of the elements and definitions are the same as previously stated to you except for the dates of the alleged incidents.

If you find the Defendant not guilty, this ends your consideration of these counts. If you find the Defendant guilty of one or more of the counts, you will go on to find, beyond a reasonable doubt, the amount of the registration and determine if the amount of the registration is less than five hundred dollars; if the amount of the registration is five hundred dollars or more but less than five thousand dollars; if the amount of the registration is five thousand dollars or more but less than twenty-five thousand dollars; if the amount of the registration is twenty-five thousand dollars or more but less than one hundred thousand dollars; or if the amount of the registration is one hundred thousand dollars or more.

UNLICENSED DEALER

The law of Ohio provides as follows:

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CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

THE STATE OF OHIO	)	CASE NUMBER CR 2007 12 4233(A)
Plaintiff,	)	JUDGE MURPHY
vs.	)	**CRIMINAL VERDICT-COUNT TWO**
DAVID B. WILLAN,	)	INDICTMENT FOR FALSE REPRESENTATION IN THE REGISTERING OF SECURITIES- **FEBRUARY 18, 2004**
Defendant.	)	

We, the Jury, being duly impaneled and sworn do hereby find the Defendant, DAVID B. WILLAN, * Guilty of the offense of False Representation in the Registering of Securities.

We further find the amount of the registration to be: (select one)

____less than five hundred dollars

____five hundred dollars or more but less than five thousand dollars

____five thousand dollars or more but less than twenty-five thousand dollars

____twenty-five thousand dollars or more but less than one hundred thousand dollars

✓ one hundred thousand dollars or more

We do so render our verdict upon the concurrence of twelve members of our said Jury. Each of us said Jurors concurring in said verdict signs his/her name hereto this 4 day of Dec., 2008.

1. [signature] 7. [signature]
2. [signature] 8. [signature]
3. [signature] 9. [signature]
4. [signature] 10. [signature]
5. [signature] 11. [signature]
6. [signature] 12. [signature]

* Insert in ink "guilty" or "not guilty."

I certify this to be a true copy of the original
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_____ Deputy

Appendix 4

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IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

THE STATE OF OHIO,	)	CASE NUMBER CR 2007 12 4233(A)
Plaintiff,	)	JUDGE MURPHY
vs.	)	**CRIMINAL VERDICT-COUNT FIVE**
DAVID B. WILLAN,	)	INDICTMENT FOR FALSE REPRESENTATION IN THE REGISTERING OF SECURITIES-
Defendant.	)	**JUNE 10, 2005**

We, the Jury, being duly impaneled and sworn do hereby find the Defendant, DAVID B. WILLAN, * Guilty of the offense of False Representation in the Registering of Securities.

We further find the amount of the registration to be: (select one)

____less than five hundred dollars

____five hundred dollars or more but less than five thousand dollars

____five thousand dollars or more but less than twenty-five thousand dollars

____twenty-five thousand dollars or more but less than one hundred thousand dollars

✓ one hundred thousand dollars or more

We do so render our verdict upon the concurrence of twelve members of our said Jury. Each of us said Jurors concurring in said verdict signs his/her name hereto this 4 day of Dec., 2008.

1. Christine Cyst
2. [illegible]
3. Alex Bridges
4. Theresa Brumbaugh
5. [illegible]
6. Gloria J. Dingle
7. Jody B. Hunt
8. Kathleen Enfield Barrett
9. Josephine A Martin
10. Genevra P. Dowling
11. Lori A Mincek
12. [illegible]

* Insert in ink "guilty" or "not guilty."

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_____ Deputy

Appendix 5

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SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

STATE OF OHIO, Plaintiff,	)	CASE NUMBER CR 2007 12 4233(A)
vs.	)	JUDGE MURPHY
DAVID B. WILLAN, Defendant.	)	**CRIMINAL VERDICT-COUNT THREE**
	)	INDICTMENT FOR FALSE REPRESENTATION IN THE REGISTERING OF SECURITIES- **NOVEMBER 24, 2004**

We, the Jury, being duly impaneled and sworn do hereby find the Defendant, DAVID B. WILLAN, * Guilty of the offense of False Representation in the Registering of Securities.

We further find the amount of the registration to be: (select one)

____less than five hundred dollars

____five hundred dollars or more but less than five thousand dollars

____five thousand dollars or more but less than twenty-five thousand dollars

____twenty-five thousand dollars or more but less than one hundred thousand dollars

✓ one hundred thousand dollars or more

We do so render our verdict upon the concurrence of twelve members of our said Jury. Each of us said Jurors concurring in said verdict signs his/her name hereto this 4 day of Dec., 2008.

1. [signature] 7. [signature]
2. [signature] 8. [signature]
3. [signature] 9. [signature]
4. [signature] 10. [signature]
5. [signature] 11. [signature]
6. [signature] 12. [signature]

* Insert in ink "guilty" or "not guilty."

Appendix 6

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SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

THE STATE OF OHIO,	)	CASE NUMBER CR 2007 12 4233(A)
Plaintiff,	)	JUDGE MURPHY
vs.	)	**CRIMINAL VERDICT-COUNT FOUR**
DAVID B. WILLAN,	)	INDICTMENT FOR FALSE REPRESENTATION IN THE REGISTERING OF SECURITIES- **APRIL 29, 2005**
Defendant.	)	

We, the Jury, being duly impaneled and sworn do hereby find the Defendant, DAVID B. WILLAN, * Guilty of the offense of False Representation in the Registering of Securities.

We further find the amount of the registration to be: (select one)

____less than five hundred dollars

____five hundred dollars or more but less than five thousand dollars

____five thousand dollars or more but less than twenty-five thousand dollars

____twenty-five thousand dollars or more but less than one hundred thousand dollars

✓ one hundred thousand dollars or more

We do so render our verdict upon the concurrence of twelve members of our said Jury. Each of us said Jurors concurring in said verdict signs his/her name hereto this 4 day of Dec., 2008.

1. [illegible] 7. [illegible]
2. [illegible] 8. [illegible]
3. [illegible] 9. [illegible]
4. [illegible] 10. [illegible]
5. [illegible] 11. [illegible]
6. [illegible] 12. [illegible]

* Insert in ink "guilty" or "not guilty."

Appendix 7

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IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

THE STATE OF OHIO,	)	CASE NUMBER CR 2007 12 4233(A)
Plaintiff,	)	JUDGE MURPHY
vs.	)	**CRIMINAL VERDICT-COUNT SIX**
DAVID B. WILLAN,	)	INDICTMENT FOR FALSE REPRESENTATION IN THE REGISTERING OF SECURITIES-
Defendant.	)	**JULY 25, 2005**

We, the Jury, being duly impaneled and sworn do hereby find the Defendant, DAVID B. WILLAN, * Guilty of the offense of False Representation in the Registering of Securities.

We further find the amount of the registration to be: (select one)

____less than five hundred dollars

____five hundred dollars or more but less than five thousand dollars

____five thousand dollars or more but less than twenty-five thousand dollars

____twenty-five thousand dollars or more but less than one hundred thousand dollars

✓ one hundred thousand dollars or more

We do so render our verdict upon the concurrence of twelve members of our said Jury. Each of us said Jurors concurring in said verdict signs his/her name hereto this 4 day of Dec, 2008.

1. _____ 7. _____
2. _____ 8. _____
3. _____ 9. _____
4. _____ 10. _____
5. _____ 11. _____
6. _____ 12. _____

* Insert in ink "guilty" or "not guilty."

Appendix 8

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IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

THE STATE OF OHIO,	)	CASE NUMBER CR 2007 12 4233(A)
Plaintiff,	)	JUDGE MURPHY
vs.	)	**CRIMINAL VERDICT-**
	)	**COUNT TWENTY NINE**
DAVID B. WILLAN,	)	
	)	INDICTMENT FOR
Defendant.	)	AGGRAVATED THEFT

We, the Jury, being duly impaneled and sworn do hereby find the Defendant, DAVID B. WILLAN, * Guilty of the offense of Aggravated Theft.

We further find the amount of property and/or services to be: (select one)

____five hundred dollars or more but less than five thousand dollars

____five thousand dollars or more but less than one hundred thousand dollars

____one hundred thousand dollars or more but less than five hundred thousand dollars

____five hundred thousand dollars or more but less than one million dollars

✓ more than one million dollars

We do so render our verdict upon the concurrence of twelve members of our said Jury. Each of us said Jurors concurring in said verdict signs his/her name hereto this 5 day of Dec. 2008.

1. [signature] 7. Jody R. Hunt
2. [signature] 8. Katrina Enfield Barrett
3. Alex Bridges 9. Josephine A. Martin
4. Theresa Brumbaugh 10. Genevra P. Dooley
5. Cathy Wiley 11. Lori J. Moncik
6. Gloria J. Bridges 12. Carrie Wilson

* Insert in ink "guilty" or "not guilty."

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_____ Deputy

Appendix 9

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SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

THE STATE OF OHIO,	)	CASE NUMBER CR 2007 12 4233(A)
	)	
Plaintiff,	)	JUDGE MURPHY
vs.	)	**CRIMINAL VERDICT-**
	)	**COUNT THIRTY**
DAVID B. WILLAN,	)	
	)	INDICTMENT FOR
Defendant.	)	THEFT FROM THE ELDERLY

We, the Jury, being duly impaneled and sworn do hereby find the Defendant, DAVID B. WILLAN, * Guilty of the offense of Theft from the Elderly.

We further find that Sam Schott and/or Faydell Schott, and/or Dennis Wandling and/or Betty Wandling, and/or James Beringer Sr. and/or James Shaeffer and/or Eleanor Shaeffer are all elderly persons.**

We further find the amount of the property and/or services to be: (select one)

____five hundred dollars or less

____five hundred dollars or more but less than five thousand dollars

____five thousand dollars or more but less than twenty-five thousand dollars

____twenty-five thousand dollars or more but less than one hundred thousand dollars

✓ one hundred thousand dollars or more

We do so render our verdict upon the concurrence of twelve members of our said Jury. Each of us said Jurors concurring in said verdict signs his/her name hereto this 5 day of Dec, 2008.

1. Christine Cyse
2. [illegible]
3. Alex Bridges
4. Theresa Brumbaugh
5. [illegible]
6. Gloria J. [illegible]
7. Jody R. Hunt
8. Kathryn English Barrett
9. Josephine A. Martin
10. Genevra P. Dooley
11. Lori J. Mincik
12. [illegible]

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Appendix 10

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2010 Ohio Revised Code
Title [29] XXIX CRIMES - PROCEDURE
Chapter 2929: PENALTIES AND SENTENCING
2929.14 Definite prison terms.

2929.14 Definite prison terms.

(A) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(4), (D)(5), (D)(6), (D)(7), (D)(8), (G), (I), (J), or (L) of this section or in division (D)(6) of section 2919.25 of the Revised Code and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a definite prison term that shall be one of the following:

(1) For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, or ten years.

(2) For a felony of the second degree, the prison term shall be two, three, four, five, six, seven, or eight years.

(3) For a felony of the third degree, the prison term shall be one, two, three, four, or five years.

(4) For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

(B) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(5), (D)(6), (D)(7), (D)(8), (G), (I), (J), or (L) of this section, in section 2907.02, 2907.05, or 2919.25 of the Revised Code, or in Chapter 2925. of the Revised Code, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender, the court shall impose the shortest prison term authorized for the offense pursuant to division (A) of this section, unless one or more of the following applies:

(1) The offender was serving a prison term at the time of the offense, or the offender previously had served a prison term.

(2) The court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others.

(C) Except as provided in division (D)(7), (D)(8), (G), or (L) of this section, in section 2919.25 of the Revised Code, or in Chapter 2925. of the Revised Code, the court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst forms of the offense, upon offenders who pose the greatest likelihood of committing future crimes, upon certain major drug offenders under division (D)(3) of this section, and upon certain repeat violent offenders in accordance with division (D)(2) of this section.

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Appendix II

(D)(1)(a) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.141, 2941.144, or 2941.145 of the Revised Code, the court shall impose on the offender one of the following prison terms:

(i) A prison term of six years if the specification is of the type described in section 2941.144 of the Revised Code that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony;

(ii) A prison term of three years if the specification is of the type described in section 2941.145 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

(iii) A prison term of one year if the specification is of the type described in section 2941.141 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.

(b) If a court imposes a prison term on an offender under division (D)(1)(a) of this section, the prison term shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. Except as provided in division (D)(1)(g) of this section, a court shall not impose more than one prison term on an offender under division (D)(1)(a) of this section for felonies committed as part of the same act or transaction.

(c) Except as provided in division (D)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of section 2923.161 of the Revised Code or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in section 2941.146 of the Revised Code that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of section 2923.161 of the Revised Code or for the other felony offense under division (A), (D)(2), or (D)(3) of this section, shall impose an additional prison term of five years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one additional prison term on an offender under division (D)(1)(c) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (D)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (D)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

(d) If an offender who is convicted of or pleads guilty to an offense of violence that is a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.1411 of the Revised Code that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender a prison term of two years. The prison term so imposed shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (D)(1)(d) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term under division (D)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (D)(1)(d) of this section.

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(e) The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of section 2923.12 or 2923.123 of the Revised Code. The court shall not impose any of the prison terms described in division (D)(1)(a) or (b) of this section upon an offender for a violation of section 2923.122 that involves a deadly weapon that is a firearm other than a dangerous ordnance, section 2923.16, or section 2923.121 of the Revised Code. The court shall not impose any of the prison terms described in division (D)(1)(a) of this section or any of the additional prison terms described in division (D)(1)(c) of this section upon an offender for a violation of section 2923.13 of the Revised Code unless all of the following apply:

(i) The offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree.

(ii) Less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

(f) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in section 2941.1412 of the Revised Code that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in section 2935.01 of the Revised Code or a corrections officer, as defined in section 2941.1412 of the Revised Code, the court, after imposing a prison term on the offender for the felony offense under division (A), (D)(2), or (D)(3) of this section, shall impose an additional prison term of seven years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. If an offender is convicted of or pleads guilty to two or more felonies that include, as an essential element, causing or attempting to cause the death or physical harm to another and also is convicted of or pleads guilty to a specification of the type described under division (D)(1)(f) of this section in connection with two or more of the felonies of which the offender is convicted or to which the offender pleads guilty, the sentencing court shall impose on the offender the prison term specified under division (D)(1)(f) of this section for each of two of the specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications. If a court imposes an additional prison term on an offender under division (D)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (D)(1)(a) or (c) of this section relative to the same offense.

(g) If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies is aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (D)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under division (D)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

(2)(a) If division (D)(2)(b) of this section does not apply, the court may impose on an offender, in addition to the longest prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 of the Revised Code that the offender is a repeat violent offender.

(ii) The offense of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(iii) The court imposes the longest prison term for the offense that is not life imprisonment without parole.

(iv) The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are inadequate to punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a greater likelihood of recidivism outweigh the applicable factors under that section indicating a lesser likelihood of recidivism.

(v) The court finds that the prison terms imposed pursuant to division (D)(2)(a)(iii) of this section and, if applicable, division (D)(1) or (3) of this section are demeaning to the seriousness of the offense, because one or more of the factors under section 2929.12 of the Revised Code indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that section indicating that the offender's conduct is less serious than conduct normally constituting the offense.

(b) The court shall impose on an offender the longest prison term authorized or required for the offense and shall impose on the offender an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:

(i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 of the Revised Code that the offender is a repeat violent offender.

(ii) The offender within the preceding twenty years has been convicted of or pleaded guilty to three or more offenses described in division (CC)(1) of section 2929.01 of the Revised Code, including all offenses described in that division of which the offender is convicted or to which the offender pleads guilty in the current prosecution and all offenses described in that division of which the offender previously has been convicted or to which the offender previously pleaded guilty, whether prosecuted together or separately.

(iii) The offense or offenses of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(c) For purposes of division (D)(2)(b) of this section, two or more offenses committed at the same time or as part of the same act or event shall be considered one offense, and that one offense shall be the offense with the greatest penalty.

(d) A sentence imposed under division (D)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20 or section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense.

(e) When imposing a sentence pursuant to division (D)(2)(a) or (b) of this section, the court shall state its findings explaining the imposed sentence.

(3)(a) Except when an offender commits a violation of section 2903.01 or 2907.02 of the Revised Code and the penalty imposed for the violation is life imprisonment or commits a violation of section 2903.02 of the Revised Code, if the offender commits a violation of section 2925.03 or 2925.11 of the Revised Code and that section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term on the offender, if the offender commits a felony violation of section 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161, 4729.37, or 4729.61, division (C) or (D) of section 3719.172, division (C) of section 4729.51, or division (J) of section 4729.54 of the Revised Code that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in section 2941.1410 of the Revised Code charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of section 2907.02 of the Revised Code and, had the offender completed the violation of section 2907.02 of the Revised Code that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of section 2907.02 of the Revised Code, the court shall impose upon the offender for the felony violation a ten-year prison term that cannot be reduced pursuant to section 2929.20 or Chapter 2967. or 5120. of the Revised Code.

(b) The court imposing a prison term on an offender under division (D)(3)(a) of this section may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court, with respect to the term imposed under division (D)(3)(a) of this section and, if applicable, divisions (D)(1) and (2) of this section, makes both of the findings set forth in divisions (D)(2)(a)(iv) and (v) of this section.

(4) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the sentencing court shall impose upon the offender a mandatory prison term in accordance with that division. In addition to the mandatory prison term, if the offender is being sentenced for a fourth degree felony OVI offense, the court, notwithstanding division (A)(4) of this section, may sentence the offender to a definite prison term of not less than six months and not more than thirty months, and if the offender is being sentenced for a third degree felony OVI offense, the sentencing court may sentence the offender to an additional prison term of any duration specified in division (A)(3) of this section. In either case, the additional prison term imposed shall be reduced by the sixty or one hundred twenty days imposed upon the offender as the mandatory prison term. The total of the additional prison term imposed under division (D)(4) of this section plus the sixty or one hundred twenty days imposed as the mandatory prison term shall equal a definite term in the range of six months to thirty months for a fourth degree felony OVI offense and shall equal one of the authorized prison terms specified in division (A)(3) of this section for a third degree felony OVI offense. If the court imposes an additional prison term under division (D)(4) of this section, the offender shall serve the additional prison term after the offender has served the mandatory prison term required for the offense.