[Cite as *State v. Taylor*, 2012-Ohio-3890.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2011-P-0090**
- vs -	:	
DAWAYNE L. TAYLOR,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2011 CR 0310.

Judgment: Affirmed in part, reversed in part, and remanded.

Victor V. Vigluicci, Portage County Prosecutor, and *Pamela J. Holder,* Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Neil P. Agarwal, 3766 Fishcreek Road, #289, Stow, OH 44224-4379 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Dawayne L. Taylor, appeals from the judgment of the Portage County Court of Common Pleas convicting him, after trial by jury, of trafficking in marijuana and having a weapon under disability. For the reasons discussed in this opinion, the judgment of the trial court is affirmed in part, reversed in part, and remanded.

{¶2} In the early morning hours of March 27, 2011, Kent police were contacted regarding several gunshots that were heard in the area of 753 Silver Meadows Boulevard. The neighborhood was generally quiet, but officers noticed lights on and people congregating on the patio of a nearby duplex. Officers further observed significant movement inside the home. Officer Dominic Poe approached the patio and recognized appellant. The officer asked appellant if he had any weapons. Appellant responded in the negative, but conceded he had a "jar of weed" on his person. Officer Poe patted appellant for weapons and, in addition to the jar, found two small plastic baggies of marijuana, baggies containing a white powdery substance, a baggie containing smaller baggies, and $390.71 in cash.

{¶3} Sergeant Richard Soika was also on the scene near the patio when he heard the sound of an object hitting the ground. He looked and noticed a gun had fallen onto the patio amidst the group. The officer shouted "gun!" and advised the individuals not to move. Officer Soika retrieved the weapon, a Glock handgun with a bullet in its chamber and a full magazine, and secured it in his cruiser. Police later found out the weapon had been stolen in Westlake, Ohio.

{¶4} The on-site officers conducted a protective sweep of the duplex and uncovered three nine millimeter shell casings in the kitchen garbage can; a baggie of marijuana on the microwave; a cellophane wrapper containing marijuana; a rolled cigar, marijuana stems, a plate with a white powdery substance and a small straw on it; and a digital scale with marijuana residue on it. The investigation later revealed that Heather Yeager, appellant's girlfriend, was house-sitting at the duplex for a friend.

{¶5} Appellant was arrested for trafficking in marijuana. Appellant, however, denied any association with the weapon taken at the scene. Prior to being released from custody, however, appellant's hands were tested for gunshot residue. The results of the analysis were "highly indicative" of gunshot residue. Further, the shell casings recovered at the scene were compared to the weapon taken from the patio. After analysis, BCI scientists concluded that the casings were fired from the same weapon, but were not fired from the Glock recovered at the scene.

{¶6} Appellant's initial charge was dismissed for further review by police. By May of 2011, however, two warrants were issued for appellant's arrest based upon facts surrounding the foregoing incident. And, on May 5, 2011, appellant was apprehended and placed into custody. On May 6, appellant asked to speak with officers regarding the charges he was facing. After being Mirandized, appellant told officers that the Glock handgun retrieved on March 27, 2011 was not his weapon and it was never fired in his presence. Appellant admitted, however, that, on the night of his arrest, he possessed a 1997 nine millimeter Argus handgun. Appellant stated he intended to sell the weapon to an individual named Vito. To demonstrate its operability, appellant told police he had fired the gun seven or eight times. After doing so, he stated he hid the weapon under a couch in the duplex Heather Yeager was watching.

{¶7} Appellant told police his decision to speak with them was premised upon his fear that he would be prosecuted for shooting a stolen weapon that he neither fired nor handled. Appellant also stated he did not know what happened to the Argus nine millimeter that he fired on the night of the incident. He suggested, however, one of the

individuals visiting the duplex on the night of his arrest likely removed the weapon from the residence. The weapon was never recovered.

{¶8} As a result of the incident, appellant was indicted on one count of trafficking in marijuana, in violation of R.C. 2925.03(A)(2), a felony of the fifth degree. Attached to this charge was a forfeiture specification alleging the $390.71 was used for or intended for use in the commission of trafficking. He was also charged with one count of receiving stolen property, in violation of R.C. 2913.51, a felony of the fourth degree; one count of having a weapon while under disability, in violation of R.C. 2923.13(A)(3), a felony of the third degree; and one count of possession of drug paraphernalia, in violation of R.C. 2925.14, a misdemeanor of the fourth degree. Appellant pleaded not guilty to all counts.

{¶9} Prior to trial, the state moved to dismiss the counts charging receiving stolen property and possession of drug paraphernalia. The motion was granted. A jury was empanelled and, after hearing the evidence, appellant was convicted for trafficking in marijuana and having a weapon under disability. Appellant was sentenced to 12 months imprisonment for trafficking in marijuana and three years imprisonment for having weapons while under disability. The trial court ordered the sentences to be served concurrently with one another for an aggregate prison term of three years. The trial court further ordered a forfeiture of the $390.71 taken at the scene of appellant's original arrest.

{¶10} Appellant filed a timely appeal and now alleges seven assignments of error for our review. His first assignment of error provides:

{¶11} "The trial court committed reversible error when it overruled Taylor's Crim.R. 29(A) motion for judgment of acquittal because the evidence was insufficient to support his conviction for having weapons while under disability. Taylor's conviction for having weapons while under disability is against the manifest weight of the evidence."

{¶12} "An appellate court reviewing whether the evidence was sufficient to support a criminal conviction examines the evidence admitted at trial and determines whether such evidence, if believed, would convince the average juror of the defendant's guilt beyond a reasonable doubt." *State v. Troisi*, 179 Ohio App.3d 326, 2008-Ohio-6062, ¶9 (11th Dist.) A reviewing court may not reweigh the evidence; rather, the appropriate inquiry is, after viewing the evidence in a light most favorable to the prosecution, whether the jury could have found the elements of the crime proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 273 (1991).

{¶13} Alternatively, a manifest weight challenge requires an appellate court to consider the entire record, including the credibility of witnesses and potential conflicts in the evidence, and determine whether the jury clearly lost its way such that the verdict of guilty resulted in a manifest miscarriage of justice requiring a new trial. *See e.g. State v. Schlee*, 11th Dist. No. 93-L-082, 1994 Ohio App. LEXIS 5862, *14-*15 (Dec. 23, 1994). A judgment of a trial court should be reversed as being against the manifest weight of the evidence "only in the exceptional case where the evidence weighs heavily against the conviction." *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

{¶14} Appellant's first assignment of error does not take issue with his conviction for trafficking in marijuana; instead, appellant challenges the sufficiency and weight of the evidence supporting his conviction for having a weapon while under a disability. In

particular, appellant alleges there was no evidence that he ever knowingly possessed, acquired, carried, or used a weapon on the night of March 27, 2011. Appellant's argument lacks merit.

{¶15} Appellant was charged with having a weapon while under disability in violation of R.C. 2923.13(A)(3). That statute provides, in relevant part:

> **{¶16}** (A) Unless relieved from disability as provided in section 2923.14 of the Revised Code, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:
>
> **{¶17}** * * *
>
> **{¶18}** (3) The person is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse * * *.

{¶19} Preliminarily, the record is clear that, in 2007, appellant was convicted of three counts of felony-four trafficking in marijuana and one count of felony-four trafficking in cocaine. The disability element of the offense was therefore proven beyond a reasonable doubt. Appellant does not dispute this point. Rather, appellant postulates that because the prosecution offered no evidence connecting him to the Glock handgun found at the duplex on March 27, 2011, the only firearm recovered from the scene, it failed to demonstrate he knowingly acquired, had, carried, or used that weapon. While appellant is correct that the prosecution offered no evidence to prove he possessed or used the Glock, this omission is of no legal significance in this case.

{¶20} Appellant's indictment for having a weapon while under disability was not premised upon the Glock recovered from the scene. Indeed, the evidence indicated that the Glock had not been fired as it had a bullet in the chamber and a full magazine. And analysis of the shell casings recovered at the scene demonstrated that the shells were fired from the same gun, but not from the Glock. Furthermore, and perhaps most significant, during his May 6, 2011 statement, appellant asserted he did not handle the weapon and, as far as he knew, the gun was not fired in the vicinity of the duplex on the night of March 27, 2011.

{¶21} Instead, appellant told officers that he had fired an Argus nine millimeter between seven and eight times into the air to prove the weapon was operable for sale to a third party. Appellant's concession was a result of his concern that he would be charged with shooting a stolen weapon with which he did not have physical contact.

{¶22} Appellant's admission that he shot a nine millimeter handgun was consistent with the positive results from the gunshot residue test taken from his hands subsequent to his arrest on March 27, 2011 as well as the evidence of the shell casings recovered from the scene. While the Argus nine millimeter was never found, appellant unequivocally admitted he shot the weapon and hid the gun under a couch in the residence. During his interview, appellant stated he did not know what happened to the weapon after he was arrested, but speculated that one of the individuals who was at the duplex on March 27, 2011 had removed it. Given appellant's admission as well as the surrounding circumstantial evidence, there was adequate, credible evidence that he knowingly had, carried, as well as used a firearm on the night of his original arrest.

Appellant's conviction for having weapons while under disability is therefore supported by both sufficient as well as the greater weight of the evidence.

{¶23} Appellant's first assignment of error lacks merit.

{¶24} Appellant's second assignment of error provides:

{¶25} "The trial court improperly sentenced Taylor on his conviction for trafficking in marijuana as a felony of the fifth degree instead of a minor misdemeanor in violation of R.C. 2945.75(a)(2) AND *State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256, 860 N.E.2d 735, because the jury verdict did not include the degree of the offense, nor any aggravating elements. (T.D. 57, 10/24/11 Sentencing Hearing, T.p. 7)."

{¶26} R.C. 2945.75 provides, in relevant part:

{¶27} (A) When the presence of one or more additional elements makes an offense one of more serious degree:

{¶28} * * *

{¶29} (2) A guilty verdict shall state either the degree of the offense of which the offender is found guilty, or that such additional element or elements are present. Otherwise, a guilty verdict constitutes a finding of guilty of the least degree of the offense charged.

{¶30} Appellant was charged by indictment with trafficking in marijuana in violation of R.C. 2925.03(A)(2) and (C)(3)(a). R.C. 2925.03(C)(3)(a) statutorily classifies trafficking as a felony of the fifth degree. Depending on the circumstances of the charge, however, a conviction for trafficking in marijuana can be as low as a minor misdemeanor. *See* R.C. 2925.03(C)(3)(h). The jury verdict form finding appellant guilty simply stated "[w]e, the Jury, find the Defendant GUILTY of Trafficking in Marijuana."

{¶31} In *Pelfrey*, *supra*, the Supreme Court of Ohio held "[p]ursuant to the clear language of R.C. 2945.75, a verdict form signed by a jury must include either the degree of the offense of which the defendant is convicted or a statement that an aggravating element has been found to justify convicting a defendant of a greater degree of a criminal offense." *Pelfrey*, *supra*, at syllabus. Although the jury was not required to find an aggravating element to convict appellant of felony-five trafficking, the crime of marijuana trafficking is nevertheless one of degree, i.e., the charging statute contains various sub-parts that have distinct offense levels.

{¶32} Here, appellant was charged with a more serious degree of the offense of marijuana trafficking than the least degree of the offense set forth in the statute. Consequently, "pursuant to the clear language of the statute," the verdict form was required to specifically state the degree of the offense of which the jury found appellant guilty. Because the verdict form was silent on the degree of the crime, by operation of R.C. 2945.75 and *Pelfrey*, appellant can only be found guilty of the least degree of the offense charged, viz., a minor misdemeanor. *See State v. Sessler*, 119 Ohio St.3d 9, 2008-Ohio-3180 (holding *Pelfrey* applies where a charging statute includes separate sub-parts with distinct offense levels).

{¶33} The state argues that, irrespective of the verdict form's shortcoming, the felony-five conviction is still valid under *Pelfrey* and therefore comports with R.C. 2945.75. The state points out that even though the verdict form does not set forth the degree of felony upon which the jury based its verdict, the trial court's judgment on the verdict nevertheless stated appellant was found guilty of a felony-five trafficking in marijuana. The state bases its position on a seemingly passing statement in the *Pelfrey*

opinion wherein the Supreme Court observed "neither [Pelfrey's] verdict form nor the trial court's verdict entry" mentioned the degree of the offense. *Id.* at ¶13. Given this observation, the state maintains that the mandates of R.C. 2945.75(A)(2) may be satisfied by *either* the jury's verdict form *or* a trial court's judgment entry on the verdict. We do not agree with the state's interpretation.

{¶34} Although the Supreme Court in *Pelfrey* indicated the judgment entry in that case failed to mention the degree of the offense or that an aggravating element was found by the jury, this does not necessarily imply that R.C. 2945.75(A) would have been satisfied had the judgment entry included either of these details. *See State v. Ligon*, 179 Ohio App.3d 544, 2008-Ohio-6085, ¶13 (3d Dist.) The narrow issue before the Court in *Pelfrey* was the sufficiency of a jury verdict form, not the trial court's judgment entry. *Id.* at ¶1. After considering the issue, the Supreme Court specifically and unambiguously held that "a *verdict form* signed by a jury *must include* either the degree of the offense of which the defendant is convicted or a statement that an aggravating element has been found to justify convicting a defendant of a greater degree of a criminal offense." (Emphasis added.) *Id.* at ¶14. The Court's holding refers only to the "verdict form signed by the jury," and makes no reference to the trial court's judgment entry whatsoever. To accept the state's position would therefore render the explicit holding of *Pelfrey* meaningless.

{¶35} Moreover, the Court in *Pelfrey* specifically stated that the express requirement of R.C. 2945.75 cannot be fulfilled by demonstrating "additional circumstances" such as incorporating the language of the indictment into the form or reviewing the evidence at trial to prove that the indicted charge was successfully

prosecuted. *Pelfrey*, *supra*. If such additional circumstances cannot be used to meet the mandates of R.C. 2945.75(A)(2), it follows that the trial court's act of "clarifying" the verdict would be insufficient as well. *See Ligon*, *supra*. (Holding that if accurate jury instructions prior to jury verdict are insufficient to cure jury verdict form's written defect, then a trial court's post-verdict judgment entry is inadequate as well); citing *State v. Sessler*, 3d Dist. No. 2-06-23, 2007-Ohio-4931, ¶13, affirmed by *State v. Sessler*, 119 Ohio St.3d 9, 2008-Ohio-3180. We therefore hold that the failure of the verdict form in this case to meet the statutory mandate of R.C. 2945.75(A)(2), as construed by *Pelfrey*, necessarily results in the finding of guilty on the least degree of the offense of trafficking in marijuana; to wit: a minor misdemeanor.

{¶36} Appellant's second assignment of error is sustained.

{¶37} Appellant's third assignment of error provides:

{¶38} "The trial court committed reversible error in imposing court costs against Taylor without complying with R.C. 2947.23(A), (T.D. 62, 10/24/11 Sentencing Hearing, T.p. 7)."

{¶39} R.C. 2947.23(A)(1) provides:

{¶40} (A) (1) In all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution, including any costs under section 2947.231 of the Revised Code, and render a judgment against the defendant for such costs. At the time the judge or magistrate imposes sentence, the judge or magistrate shall notify the defendant of both of the following:

{¶41} (a) If the defendant fails to pay that judgment or fails to timely make payments towards that judgment under a payment schedule approved by the court, the court may order the defendant to perform community service in an amount of not more than forty hours per month until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule.

{¶42} (b) If the court orders the defendant to perform the community service, the defendant will receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount.

{¶43} In *State v. Smith*, 131 Ohio St.3d 297, 2012-Ohio-781, the Supreme Court of Ohio held the foregoing statutory provisions are mandatory and a trial court must put a criminal defendant on notice of their content at the time of sentencing. *Id.* at ¶10. In this case, the trial court imposed costs, but did not issue the appropriate statutory notification. The state concedes this error. We therefore hold the matter must be reversed and remanded for resentencing for proper notification pursuant to R.C. 2947.23(A)(1)(a) and (b) regarding the costs associated with the case.

{¶44} Appellant's third assignment of error is sustained.

{¶45} Appellant's fourth assignment of error asserts:

{¶46} "The trial court committed reversible error in assessing fines and court costs without regard to Taylor's inability to pay said fines and costs. (T.d. 62, 10/24/11 Sentencing Hearing, T.p. 7)."

{¶47} R.C. 2929.18 permits a trial court to impose financial sanctions as part of a criminal sentence. Pursuant to R.C. 2929.19(B)(5), prior to imposing a financial sanction, a trial court is required to "consider the offender's present and future ability to pay the amount of the sanction or fine." A trial court need not explicitly state that it considered the offender's ability to pay; such consideration, however, may be inferred from the record under proper circumstances. *State v. McNaughton*, 11th Dist. No. 2011-L-083, 2012-Ohio-1271, ¶30.

{¶48} We first point out that court costs are not financial sanctions. *See e.g. State v. Jennings*, 2d Dist. No. 24559, 2012-Ohio-1229, ¶6. Consequently, R.C. 2929.18 and R.C. 2929.19 are inapplicable to the imposition of costs and a court need not consider a defendant's ability to pay. *See e.g. Columbus v. Kiner*, 10th Dist. No. 11AP-543, 2011-Ohio-6462, ¶3. Indeed, pursuant to R.C. 2947.23, the imposition of costs is mandatory, even though payment of those costs may be waived under proper circumstances. *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, ¶11. Hence, appellant's argument, as it relates to costs, is off-point. And even if appellant had asserted a relevant argument affecting the court's imposition of costs under this assigned error, the issue of costs was recommitted to the trial court for resentencing pursuant to our disposition of appellant's second assignment of error. That conclusion therefore renders any further analysis relating to costs moot.

{¶49} With respect to the fine, the trial court ordered appellant to pay $350 as part of his sentence. The court did not comment on appellant's ability to pay at the sentencing hearing. It did, however, state in its judgment entry on sentence that it had considered, among other things, appellant's presentence investigation report ("PSI"). The PSI indicated that, although appellant was unemployed at the time of the offense, he was close to graduating from Kent State University with a degree in business administration. As appellant was an educated individual nearing completion of a college degree, the court could reasonably conclude he had an ability to pay the fine as part of his sentence. We therefore hold the information in the PSI was sufficient to permit the inference that the court considered appellant's ability to pay the relatively meager fine of $350.

{¶50} Appellant's fourth assignment of error lacks merit.

{¶51} Appellant's fifth and sixth assignments of error shall be addressed together, they provide:

{¶52} "[5.] The Trial Court committed reversible error in ordering forfeiture of Taylor's property because it was not properly specified in the indictment, and the jury was never instructed nor found that the property was subject to forfeiture. (T.d. 1, 65, 10/24/11 Sentencing Hearing, T.p. 7, 10/27/11 Journal Entry).

{¶53} "[6.] The Trial Court committed reversible error in ordering forfeiture to the Kent Police Department Law Enforcement Trust Fund because it is not a proper party to receive forfeiture proceeds. (T.d. 62, 65, 10/24/11 Sentencing Hearing, T.p. 7, 10/27/11 Journal Entry, 11/8/11 Journal Entry)."

{¶54} Under his fifth assignment of error, appellant claims violations of R.C. 2941.1417 with respect to the indictment, jury instructions, and verdict forms. Appellant's sixth assignment of error alleges the trial court erred by ordering forfeiture of $390.71 funds to an inappropriate party.

{¶55} R.C. 2941.1417, the statute governing forfeiture specifications, provides, in relevant part:

> **{¶56}** (A) Property is not subject to forfeiture in a criminal case unless the indictment, count in the indictment, or information charging the offense specifies, to the extent it is reasonably known at the time of filing, the nature and extent of the alleged offenders interest in the property, a description of the property, and, if the property is alleged to be an instrumentality, the alleged use or intended use of the property in the commission or facilitation of the offense. The specification shall be stated at the end of the body of the indictment, count, or information and shall be in substantially the following form:
>
> **{¶57}** "SPECIFICATION (or SPECIFICATION TO THE FIRST COUNT). The grand jurors (or insert the person's or prosecuting attorney's name when appropriate) further find and specify that (set forth the alleged offender's interest in the property, a description of the property subject to forfeiture, and any alleged use or intended use of the property in the commission or facilitation of the offense)."

{¶58} (B) The trier of fact shall determine whether the property is subject to forfeiture.

{¶59} Moreover, R.C. 2981.04, the statute governing criminal forfeiture proceedings, provides in relevant part: "If the trier of fact is a jury, on the offender's * * * motion, the court shall make the determination of whether the property shall be forfeited."

{¶60} The record in this case indicates that the indictment properly charged the forfeiture specification with the trafficking in marijuana charge. After evidence was taken, however, the trial court failed to instruct the jury on the necessary law relating to the specification. Consequently, the jury did not enter a finding on the specification. Furthermore, there is nothing in the record to suggest appellant, through counsel, moved the trial court to make a determination on the forfeiture issue. As the jury made no determination vis-à-vis the forfeiture specification and the matter was not, by motion, committed to the judge, the trial court erred in issuing an order of forfeiture as a matter of law. We therefore hold both the forfeiture order and the order distributing the $390.71 must be vacated.

{¶61} Appellant's fifth assignment of error is sustained and, as a result, his sixth assignment of error is rendered moot.

{¶62} Appellant's final assignment of error asserts:

{¶63} "The cumulative effect of the Trial Court's errors denied Taylor a fair trial. (10/27/11 Journal Entry, 11/8/11 Journal Entry)."

{¶64} Appellant asks this court to reverse his convictions and remand the matter for a new trial because the multiple errors committed below rendered his trial unfair. We do not agree.

{¶65} A defendant does not have the right to an error-free trial; rather, the constitution simply confers the right to a fair trial. *State v. Stoutamire*, 11th Dist. No. 2007-T-0089, 2008-Ohio-2916, ¶100. Accordingly, "a conviction will be reversed where the cumulative effect of errors in a trial deprives a defendant of the constitutional right to a fair trial even though each of numerous instances of trial court error does not individually constitute cause for reversal." *State v. Garner*, 74 Ohio St.3d 49, 64 (1995).

{¶66} In this case, any error committed in this case occurred after both parties rested and, as discussed above, each error constitutes an independent basis for reversal. Further, as discussed under appellant's first assignment of error, the trial court did not err in overruling appellant's Crim.R. 29 motion nor did the jury lose its way in convicting appellant of the crime of having weapons while under disability. Appellant has therefore failed to demonstrate any, let alone multiple, harmless errors warranting the application of the cumulative error doctrine. *State v. Theisler*, 11th Dist. No. 2005-T-0106, 2007-Ohio-213, ¶123. This court has previously observed that the doctrine of cumulative error is inapplicable to cases where there are not multiple errors each of which, on their own, would be otherwise harmless. *Id.* at ¶124. In short, the doctrine of cumulative error does not apply to this case.

{¶67} Appellant's final assignment of error lacks merit.

{¶68} For the reasons discussed in this opinion, appellant's first, fourth, and seventh assignments of error are overruled. Appellant's second, third, and fifth

assignments of error, on the other hand, are sustained. And, given the disposition of his fifth assignment of error, appellant's sixth assignment of error is moot. It is therefore the order of this court that the judgment of the Portage County Court of Common Pleas is hereby affirmed in part, reversed in part, and remanded. Pursuant to this conclusion, the trial court is ordered to proceed as follows: The court shall vacate appellant's conviction for felony-five trafficking in marijuana, enter a conviction for minor misdemeanor trafficking in marijuana, and resentence appellant accordingly; conduct a resentencing hearing on the issue of costs in compliance with R.C. 2947.23(A)(1)(a) and (b); and, finally, vacate the portion of appellant's sentence forfeiting the $390.71 that was recovered at the time of appellant's March 27, 2011 arrest.

DIANE V. GRENDELL, J.,

MARY JANE TRAPP, J.,

concur.