

[Cite as *State v. Bilka*, 2012-Ohio-3924.]

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

DAVID BILKA

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Julie A. Edwards, J.

Case No. 11CA127

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Richland County Common  
Pleas Court, Case No. 2011CR234

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

August 22, 2012

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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RICHLAND COUNTY, OHIO

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*Hoffman, P.J.*

{¶1} Defendant-appellant David Bilka appeals his criminal convictions entered by the Common Pleas Court of Richland County via Sentencing Entry filed on November 10, 2011. The state of Ohio is plaintiff-appellee.

#### STATE OF THE CASE<sup>1</sup>

{¶2} Appellant was indicted on four counts: Count I, Burglary with a forfeiture specification; Count II, Breaking and Entering with a forfeiture specification; Count III, Receiving Stolen Property with a forfeiture specification; and Count IV, Safecracking with a forfeiture specification. Appellant pled not guilty to the charges and the case proceeded to jury trial.

{¶3} During closing argument, the prosecutor stated:

{¶4} “Now, I told you that I was going to probably just get rid of the breaking and entering charge. After discussing that with counsel and the Court, we’ve decided to let you decide” Transcript at p. 319. Following closing arguments, the trial court instructed the jury on the elements of all four counts and also how to complete the verdict forms for all four counts.

{¶5} The jury returned executed guilty verdict forms for Counts I, III, and IV and the forfeiture specification. The jury did not return a verdict form on Count II, Breaking and Entering. The jury was discharged with no mention being made by anyone as to Count II.

{¶6} At the sentencing hearing held on November 9, 2011, the trial court stated:

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<sup>1</sup> A rendition of the facts is unnecessary for our disposition of this Appeal.

{¶17} “The record would indicate that the Defendant came before this Court on the 31<sup>st</sup> day of October, 2011, charged with four counts of felony, Counts 1 and 2 being charged in the alternative burglary and breaking and entering.” Transcript at p. 360. The trial court filed its Sentencing Entry on November 10, 2011, reflecting Appellant’s convictions for burglary, receiving stolen property, safecracking and the forfeiture specification. No disposition was made with respect to the breaking and entering charge.

{¶18} We have reviewed the transcript. It does not reflect the burglary and breaking and entering charges were charged in the alternative. As noted supra, it is clear Appellee desired the jury reach a verdict on that charge.

{¶19} While we recognize had the jury convicted Appellant on Count II, it would likely to have been merged with Count I, the fact remains there has been no verdict nor other disposition of Count II. Accordingly, we find no final appealable order exists and this Court is without jurisdiction to entertain Appellant’s appeal at this time.

By: Hoffman, P.J.

Farmer, J. and

Edwards, J. concur

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer  
HON. SHEILA G. FARMER

s/ Julie A. Edwards  
HON. JULIE A. EDWARDS

