

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

MEMORANDUM IN SUPPORT OF JURISDICTION OF CROSS-APPEAL  
OF APPELLEE/CROSS-APPELLANT STATE OF OHIO  
AND  
RESPONSE TO APPELLANT/CROSS-APPELLEE'S MEMORANDUM IN SUPPORT

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*Appellee's Explanation of Substantial Constitutional Question or  
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The issues the State present for review do not require this Court to revisit factual determinations made below. The issues involve the evenhanded application of a statutory structure designed to prevent unscrupulous individuals from preying upon an unsophisticated general public and the interplay of that statutory structure with the criminal judicial system, statewide. Here, the erroneous actions of a single appellate court have injected a devastating degree of uncertainty into the financial system, such that agencies charged with the responsibility of administering the laws now cannot effectively perform the task assigned by the legislature. The regulated community that must deal with the relevant administrative agencies is now forced into the dilemma of choosing between following the laws as written and then implemented by the administrative agencies, or risk administrative and/or enforcement actions should they follow the mistaken application of those laws as put forth by one appellate court. Moreover, the general public is now open to the very economic dangers the legislature sought to control.

First, the appellate court invalidated the application of the 10-year mandatory sentence in *R.C. 2929.14(D)(3)(a)* to the corrupt activity statute. With one stroke of the pen, the court mistakenly ignored clear statutory language and shattered any perception of an evenhanded administration of justice in the State's criminal system. Defendants convicted of corrupt activities involving first degree predicates are cast into an abyss of uncertainty as to how they will be sentenced; as it is now solely dependent upon where in the State they are convicted. Should the conviction take place in a county falling within the Eighth or Sixth Appellate Districts, the defendant can expect the imposition of a 10-year mandatory sentence for the corrupt activity charge. However, should a defendant be convicted of the exact same crime, under the exact same or similar circumstances, in a county within the purview of the Ninth

Appellate District, the 10-year mandatory sentence in *R.C. 2929.14(D)(3)(a)* is not mandatory.

Moreover, a sentence for the exact same crime under the exact same or similar circumstances in any other county simply depends on whether the county aligns with the findings of the Ninth Appellate District or those of the Sixth and Eighth. Thus, defendants in any of the remaining counties have no idea what to rationally expect in the form of a sentence, since trial courts lack guidance as to which path is the correct path in establishing a proper sentence. Logically, the lack of guidance as to the application of the mandatory sentencing provision in *R.C. 2929.14(D)(3)(a)* could possibly lead to the unintended consequence of forum shopping.

The wide disparity in potential sentences creates the appearance that the justice system is fundamentally unfair when the potential sentence is dependent upon *where* you are convicted instead of *what* you are convicted of. Further, such a result is repugnant to well established concepts of due process, that a defendant has the right to fair warning and foreseeability. The court's tortured analysis in this case, finding *R.C. 2929.14(D)(3)(a)* is somehow ambiguous, disregards the plain language of the statute and renders language used meaningless. The cloud of uncertainty created by this decision requires elimination by clarification of the application of the mandatory sentencing provisions of *R.C. 2929.14(D)(3)(a)* to the corrupt activity statute.

Next, by reversing certain theft convictions, the appellate court created a new defense to theft by deception in a corrupt activity case. It is now a defense to steal part of a victim's money, as long as some of the money is used to prop up the existence of the business facade used to convince the victim to part with his money in the first place.

The implications of this new defense go far beyond the borders of this one case. The State is required to show the existence of an enterprise in every corrupt activity case. In many instances, the enterprise used by a criminal to steal money is an existing business or activity

presented as a business. The fact the corrupt activity statute includes theft by deception as a predicate crime is meaningless should this Court sanction a new defense that exonerates someone, solely on the basis that they used part of a victim's money to create or perpetuate a business facade needed to deceive future victims.

Repeating the same mistake numerous times, by first performing a statutory analysis when one is not necessary and, second, following a procedure that allows for faulty analysis, this appellate court sounds an alarm that there is a need for additional instruction by this Court. An apparent lack of direction allowed the Ninth Appellate District to unintentionally destroy a firewall the legislature created to protect the general public from dishonest business enterprises. In this instance, the court reversed convictions under the Small Loan Act [SLA], finding the statute did not make licensing violations strict liability crimes. However, the court overlooked the fact the SLA was intended to prevent dishonest businesses, or those acting in violation of the Act, from obtaining a license and interacting with the public in the first place. Indeed, the legislature viewed the protective nature of a license in such a critical light that it did not include a requirement for a *mens rea* in *R.C. 1321.99(A)*.

In stripping the public of the inherent protection created by the strict liability nature of the SLA licensing provisions, the appellate court made several mistakes that create implications extending far beyond the reach of this particular statute. The Ninth Appellate District expanded the scope of the mandated review by any appellate court whenever a party questions the sufficiency of the evidence in an appeal. As demonstrated by the circumstances here, Appellant's challenge to the sufficiency of his SLA convictions was solely directed at a claim that the State failed to specify the applicable interest rate as to the loans made in the course of his business. However, the appellate court determined that a sufficiency of the evidence claim

mandates the reviewing court to go beyond the specific question raised by the appellant and always perform a sufficiency of the evidence analysis concerning the mental state of the defendant in committing the crime.

A *mens rea* issue was not raised by either party at trial or on appeal. Without the benefit of briefing by either party, or as much as a single question at oral argument, the appellate court overlooked, and did not address, the *mala prohibita* nature of protective measures controlling who can make small loans to the public. Moreover, the *post hoc, sua sponte* consideration by the court overlooked language contained in *R.C. 1321.99(A) & (D)*, which not only establishes the criminality of the licensing requirements, but also indicates the plain legislative intent that licensing violations are strict liability crimes.

Tacit approval of the *sua sponte* missteps in the statutory analysis by this appellate court puts the State in an impossible position in any future criminal appeals. The potential for invited error is open-ended. Clearly, at trial, a party could implicitly accept that a violation was a strict liability crime with the intention that the conviction would later be nullified. The State, blindsided by silence on the issue at any stage of the litigation, including the appellate stage, is stripped of any ability to present an argument to the contrary that would preserve the conviction. Indeed, even the trial court is stripped of the opportunity to control its own courtroom by correcting, or even considering, a potential error.

Here, the facts provide the perfect example of a faulty statutory analysis procedure that could have been avoided had the appellate court asked a single question on the issue, at any point. Clearly, the appellate court looked at the provision in *R.C. 1321.99(A)* making violations of the licensing requirements a fifth degree felony. However, while recognizing the procedure identified in *State v. Horner* (2010), 126 Ohio St.3d 466, the court plainly failed to properly

execute that procedure. Indeed, it did not review subdivision *1321.99(D)*, where the legislature did specify violations of *R.C. 1321.57* through *1321.60* had to be *willful*.

The result of this incomplete analysis is devastating in that the decision is directly contrary to the expressed intent of the legislature and nullified the legislative determination that strict liability was a component necessary to protect vulnerable members of the public from unscrupulous money lenders. While the guidance this Court established in *State v. Horner, supra*, appeared sufficient at first blush, the very existence of this faulty, incomplete analysis demonstrates that further instruction is critically necessary. Now, a potential Pandora's Box has been opened as the result of what must be an uninformed misstep in the scope of the analysis performed by this appellate court. Thus, entities that would otherwise never receive a license to engage in the business of making small loans now get one free bite at the apple by simply claiming, if they are caught, that they did not know they needed such a license. Regretfully, the same mistake could be repeated in other statutory reviews should this Court not instruct lower courts as to the scope of the review that must be conducted.

Indeed, despite the fact that case law appears to indicate when and how a statutory analysis should be conducted; this same appellate court repeats the use of a flawed analysis procedure to reverse additional convictions under the same statute, *R.C. Chapter 1321*. This mistaken analysis had the unintended consequence of destroying another protective umbrella the legislature established in the form of licensing requirements requiring a review by the Division of Financial Institutions [DFI], the agency charged with administering these statutory provisions.

In this instance, convictions for engaging in the business of making second mortgages without first obtaining a certificate of registration were overturned. Again, the method of analysis used by the appellate court resulted in an incomplete evaluation; focusing on one word

in the statute, “loan.” The incomplete evaluation inadvertently created a completely new class of second mortgages, entirely exempt from registration requirements. This entirely new category bypasses what was once a substantial checkpoint that prevented dishonest people from engaging in the business in the first instance. By engaging in an unnecessary analysis, the court shredded the DFI’s ability to protect the public by monitoring and regulating those issuing second mortgages.

A key indication that direction by this Court is required is that the appellate court’s analysis allowed it to ignore a statutory definition and overlook language used in the statute, revealing interpretation of “loan” was unnecessary. The court somehow missed language *used with* the word “loan” clearly includes every type of second mortgage, regardless of whether the mortgage involves the transfer of money or an extension of credit on the unpaid balance.

The fact that this appellate court reversed additional convictions under the State’s securities laws indicates a lack of guidance defining when a reviewing court should step in and define statutory terminology, rather than apply the plain language. Indeed, the need for review is amplified by the fact the appellate court discounted the interpretation of the agency charged with enforcing securities laws statewide, the Division of Securities [DOS]. The appellate court then conducted a flawed and unnecessary analysis that redefined terms, created a new “reliance” element of the offense in misrepresentation cases, and unintentionally established exemptions to licensing and registration requirements neither created nor contemplated by the Legislature.

A review of the key provisions the appellate court inadvertently altered is essential to restore the ability of the DOS and DFI to accomplish the very task the legislature delegated to the agencies; *i.e.*: to protect the public from unscrupulous and dishonest individuals in the economic arena. In addition, the facts of this case provide a platform upon which this Court can

fill the apparent instructional void that somehow permits an appellate court to repeatedly perform unnecessary, and flawed, statutory analysis which generates unintended results contrary to the purposes for which particular statutes were created.

***Appellee's Response to Appellant's Contention of a Substantial Constitutional Question or Issues of Public or Great General Interest***

The tenuous foundation Appellant uses to claim his allegations are matters of public or great general interest is the contention that he relied upon advice of counsel when submitting the falsified documents that are at the heart of this case. Appellant reasons that, in light of that contention, there would be a chilling effect on business in Ohio if his convictions were allowed to stand since; in his view, he did nothing different from any other business. Further, in Appellant's view, his specific factual claim, rejected by the jury and the trial court, *i.e.* that he relied upon the advice of counsel, demonstrated a "lack of knowledge" amounting to a constitutional question of due process and is an issue of public or great general interest.

The key indication that this claim is not an issue of public or great general interest stems from the very point Appellant relies upon to claim that it does; *i.e.* the factual claim that he relied upon the advice of counsel. The boundaries of when advice of counsel may be raised and presented as an affirmative defense are well defined in case law. The question of whether a defendant disclosed all relevant information to his counsel is a question of specific fact, not a question of public or great general interest to the business or legal community. Appellant's claim of a "lack of knowledge" is a fact specific determination, unique to his particular case.

Appellant's First Proposition of Law is framed as the contention that he was not charged properly under the State's securities laws. However, the last line of his argument concludes "\*\*\*\*the state failed to prove that any statement in Form D was made for the purpose of registering securities or exempting securities from registration\*\*\*. While incorrectly indicating

what the evidence was, in order to make the statement, the statement itself confirms the actual nature of the Proposition is a factual review unique to this particular Appellant. There is no demonstration of how the requested fact specific review creates a substantial constitutional question or is an issue of public or great general interest.

Appellant's Second Proposition of Law first claims entitlement to various jury instructions. However, the claim simply involves facts unique to this case and the application of those unique facts to existing case law. Thus, the claimed issue of a right to certain jury instructions is confined to the borders of this specific case.

Appellant next claims he was charged with an "omission" of fact, instead of an affirmative misrepresentation, in relation to Form D exemption documents submitted to the State DOS. Despite the fact that the contention represents a complete unwillingness to recognize the fact the State's arguments and evidence at trial repeatedly identified the actual total dollar amounts disclosed on the forms were the misrepresentation, the argument itself discloses that it is fact specific to this particular case. There is no implication that a review by this Court would involve or resolve a substantial constitutional question or issue of public or great general interest.

Appellant's Third Proposition of Law claims the appellate court went outside the trial record and considered evidence not presented nor argued at trial. First, the basic contention is flatly wrong. The Form Ds reviewed by the court were submitted in evidence during the trial. Second, the precise nature of Appellant's claim demonstrates it is fact specific to this particular case with no implications beyond this particular individual. Finally, since the document reviewed by the appellate court was part of the evidence submitted at trial, the claim that the court's review of the document was improper ignores the fact that a sufficiency of the evidence claim, such as made by Appellant, requires the appellate court to conduct a *de novo* review of the

evidence presented. Thus, the Third Proposition of Law presents no substantial constitutional question or issue of interest beyond the specific interest of this one particular Appellant.

Appellant's Fourth and Fifth Propositions of Law are nothing more than different formulations of the same contention; *i.e.* that Appellant was entitled to rely upon the affirmative defense of advice of counsel. The nature of this claim indicates that it is a request for a specific evaluation of the facts unique to this particular Appellant, to determine whether he disclosed all relevant information to his attorneys such that he would be entitled to assert the affirmative defense. A fact specific contention unique to this specific individual does not present a substantial constitutional question or issue of public or great general interest.

Appellant's Sixth Proposition of Law is a request to review a fact specific determination that does not present a substantial constitutional question or issue of interest to any person beyond this one Appellant. Appellant was charged with issuing second mortgages without first obtaining a registration certificate from the State DFI. At the start of trial, Appellant specifically stated evidence would show the requirement to obtain a certificate did not apply to his business. Pursuant to *O.R.E. 404(B)*, the State then introduced the second mortgage certificate applications Appellant submitted to DFI. The applications directly demonstrated intent concerning the act of continuing to issue second mortgages without a certificate. Appellant knew he falsified information in the application concerning the existence of a prior conviction. Thus, there was no reasonable expectation that DFI was going to actually issue the required certificate. The fact specific determination requested here does not reach past the borders of this case to present a constitutional question or issue of great general interest.

Appellant's last Proposition of Law requests a review of his conviction under the corrupt activity statute. Appellant claims his conviction cannot stand since he was charged with multiple

felonies identified as predicate crimes, convicted of those felonies, and then the appellate court reversed all but three first degree predicate felonies. Appellee concedes that, considered with Appellee's First Proposition of Law concerning the State's corrupt activity statute, Appellant's last Proposition could logically present an issue of public or great general interest. Appellee's First Proposition requests a review of the lower court's decision that the mandatory sentencing provision in *R.C. 2929.14(D)(3)(a)* does not apply to the State's corrupt activity statute despite clear wording in the sentencing statute.

Alone, Appellant's last Proposition of Law does not rise to the level of an issue of public of great general interest because it appears isolated to the facts of this specific case. However, Appellant's last Proposition would mesh with an evaluation of whether the sentencing provisions in *R.C. 2929.14(D)(3)(a)* apply to the corrupt activity statute in the first place and, if so, what predicates trigger mandatory sentencing. Logically, when considered with the greater implications of the applicability of *R.C. 2929.14(D)(3)(a)* to the Corrupt Activity statute, the issue reaches beyond the confines of this particular case and would be proper for review.

#### ***Statement of the Case and Facts***

This case involves the business activities of two legally separate companies, Evergreen Investment Corporation (EIC) and Evergreen Homes, LLC (EH), run by the Appellant. EH was the focal point of Appellant's business activities, and was the company Appellant used to rehab homes. To facilitate the sale of the homes that were rehabbed, Appellant engaged in the business of making second mortgages and small unsecured loans, mostly to potential homebuyers. While Appellant filed applications with the DFI to obtain a certification to issue second mortgages, despite making no less than 18 small loans in a time frame of 18 months, Appellant never applied for a license to issue small loans. Moreover, the required mortgage certification was

never issued, as Appellant never completed the application process.

In order to infuse EH with cash, Appellant expanded his business activities into issuing securities. Appellant created EIC to raise money by selling securities. Potential buyers were told money from the sale of EIC investment certificates would be used to purchase second mortgages that were being made by EH. Appellant later expanded his fundraising to include membership securities that were directly sold by EH instead of EIC.

While the EIC securities circular told potential buyers that invested money would be used to buy the second mortgages from EH, the circular did not tell buyers that Appellant would take \$500,000.00 out of the company, over and above his usual salary, for personal expenses. Buyers were not told that Appellant identified the money he took as “properties held for sale” in the company books. Buyers were not told that the subterfuge was discovered by the account manager, well after the money was taken, who then told the companies’ accounting firm. Buyers were not told that the missing money was then reclassified as “loans” with creatively backdated loan papers; “loans” that never saw a single dollar returned to the company.

The circular did not tell buyers that almost \$400,000.00 would be used in the space of 2 years to pay the securities salesperson on a commission basis. In fact, the circular specifically told buyers that no commissions would be paid to sell securities. Buyers were not told the securities salesperson for EIC would be employed by, and paid a commission by, EH. In fact, buyers were specifically told that only EIC officers or employees would sell the securities.

Buyers were not told that someone like Ruben Weaver, a factory worker, would work for 32 years only to see his entire retirement savings of \$417,000.00 disappear through Appellant’s fingers. They were not told that someone like 83 year old James Shaeffer would be convinced to move his investments with another company to EIC securities by the EIC salesman, who told

him the fiction that the other company was in “deep financial trouble.” The buyers were not told that someone like Mr. Shaeffer would then see his trust and \$224,900.00 vanish. Indeed, buyers were never told that, in the end, over \$2,000,000.00 of their money would disappear, while Appellant paid his “personal expenses.”

Appellant and others were indicted on December 19, 2007. Charges solely relating to Appellant were severed and, on November 17, 2008, Appellant proceeded to trial on 69 counts involving securities, second mortgages, small loans, theft and engaging in a pattern of corrupt activity. One licensing count that encompassed specific dates in other licensing counts was dismissed. Appellant was convicted on the remaining 68 counts. A second trial on the remaining charges commenced on May 18, 2009, and resulted in a conviction on two counts.

Appellant timely appealed on August 4, 2009. Eighteen months after oral argument, on December 21, 2011, the appellate court reversed Appellant’s convictions on a number of securities violations, small loan violations, second mortgage violations, and theft charges. The court also held the trial court improperly used *R.C. 2929.14(D)(3)(a)* to sentence Appellant to a mandatory sentence of 10 years on the corrupt activity violation. The court ordered the case remanded for resentencing on the remaining convictions.

While Appellant filed a timely Application for Reconsideration on January 3, 2012 that has yet to be ruled upon, he filed a Notice of Appeal with this Court on February 6, 2012.

### *Arguments on Propositions of Law*

#### *Appellee’s Proposition of Law 1:*

***R.C. 2929.14(D)(3)(a) Establishes a Mandatory 10-Year Sentence Where a Defendant is Found Guilty of a Corrupt Activity Where The Predicate Crime is a Felony of the First Degree***

A court may interpret a statute only where the statute is ambiguous. *State ex. Rel.*

*Celebrezze v. Allen* (1987), 32 Ohio St.3d 24, 27. A statute is ambiguous if its language is susceptible to more than one reasonable interpretation. *State ex.rel. Toledo Edison Co., v. Clyde* (1996), 76 Ohio St.3d 508, 513. Where the language is unambiguous, a court must apply the clear meaning of the words used. *Roxane Laboratories, Inc. v. Tracy* (1996), 75 Ohio St.3d 125, 127, 1996-Ohio-257. The statute must be applied as written and no further interpretation is necessary. *Burrows v. Indus. Comm.* (1997), 78 Ohio St.3d 78, 81. Rules of statutory construction require provisions not be interpreted so as to render them meaningless. *State v. Dickey* (1991), 61 Ohio St.3d 175. A court must give effect to words used in the statute and not delete words used or insert words that are not used. *Cleveland Elec. Illum. Co. v. Cleveland* (1988), 37 Ohio St.3d 50.

Here, Appellant was convicted of a first degree felony violation of *R.C. 2923.32*, and sentenced to a 10-year mandatory term of incarceration pursuant to the provisions of *R.C. 2929.14(D)(3)(a)*<sup>1</sup>, which states in pertinent part:

\*\*\*if the court imposing sentence upon an offender for a felony finds 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,\*\*\*the court shall impose upon the offender for the felony violation a ten-year prison term that cannot be reduced\*\*\*

The appellate court interpreted this provision based upon the professed need to examine the legal significance of the fact that *2929.14(D)(3)(a)* did not reference the corrupt activity statute by number. While *State v. Schneider* (2010 Cuyahoga cty), 2010 Ohio App. LEXIS 1721, considered the exact same claim, *i.e.* the fact that *R.C. 2923.32* was not expressly cited, this appellate court announced the *Schneider* Court decision that the statute was not ambiguous was limited, because *Schneider* also examined language in the statute concerning drug offenses. This decision, disregarding the finding of another appellate district on the exact same question of

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<sup>1</sup> The language of *R.C. 2929.14(D)(3)(a)* is now embodied within the provisions of *R.C. 2929.14(B)(3)*.

ambiguity, was based upon a meaningless distinction, violated rules of construction, and mistakenly invalidated the application of this sentencing provision to corrupt activities.

*R.C. 2929.14(D)(3)(a)* expressly uses the language “guilty of corrupt activity.” While statutory numbers are not used, the plain words clearly identify the corrupt activity statute. There is only one statute establishing the crime of a “corrupt activity,” *R.C. 2923.32, et seq.* There is only one statute establishing what a corrupt activity consists of and what crimes can constitute a “pattern of corrupt activity”, *R.C. 2923.32*. The plain wording of the sentencing statute is not susceptible to more than one interpretation and is not ambiguous.

The mistaken nullification of the mandatory 10-year sentencing provision as applied to the corrupt activity statute violates a long standing rule of construction, requiring a court to give effect to the words actually used in the statute. The nullification also violates a second rule of construction by making the entire section of *2929.14(D)(3)(a)* cited above meaningless. If the decision of the Ninth Appellate District is allowed to stand, the terminology used in *2929.14(D)(3)(a)* does not mean exactly what the clear wording says, and the legislature must be deemed to have intended to include a meaningless string of words having no legal significance.

***Appellee’s Proposition of Law 2:***

***A Court Must Examine and Comment on All Applicable Statutory Language to Determine Legislative Intent and Must Demonstrate Interpretation Is Consistent With the Purpose of Both the Criminal and Remedial Statute***

***A. Violations of Licensing Provisions Under the Small Loans Act, R.C. Chapter 1321. Are Strict Liability Crimes***

The lower court reversed convictions under the Small Loan Act [SLA] finding the statute did not make licensing violations strict liability crimes. The incomplete nature of the statutory analysis conducted here begins with a failure to consider the *malum prohibitum* nature of a remedial statute such as the SLA. The SLA was intended to prevent dishonest businesses, or

those acting in violation of the Act, from obtaining a license in the first instance. Indeed, *R.C. 1321.04(A)* mandates a licensing decision consider specific types of information to identify whether the business will be operated lawfully, honestly, and fairly.

Thus, courts, with the exception of this appellate court, recognize the SLA provides for licensing to conduct the business of making small loans, containing innumerable provisions intended to protect borrowers dealing with such licensees. *See Akron Auto Finance Co. v. Stonebraker* (1941), 66 Ohio App. 507, 519. A statute such as the SLA should receive such interpretation as will accomplish the purpose intended. *Cf Capital Loan & Savings Co. v. Biery, et.al.* (1938), 134 Ohio St. 333. The remedial, *malum prohibitum* intent behind the SLA is woefully absent from the analysis of *R.C. 1321.02* made by the Ninth Appellate District.

Moreover, the statutory analysis was curiously incomplete. While the court recognized the holding in *State v. Horner* (2010), 126 Ohio St.3d 466, that the inclusion of a culpable mental state in one division and the omission of a culpable mental state from another means the Legislature plainly indicated a purpose to impose strict liability in the second division, the court did not complete the analysis, as there is absolutely no mention of *R.C.1321.99 (D)*.

Violations of *R.C. 1321.02* are made criminal pursuant to *R.C. 1321.99(A)*, which does not contain a *mens rea* requirement. While *R.C. 1321.99(A)* does not contain a *mens rea* for violations of *R.C. 1321.02*, the same cannot be said for violations of other provisions of *R.C. Chapter 1321*. *R.C.1321.99(D)* establishes the criminality of violations of *R.C. 1321.57* through *1321.60*. In contrast to the lack of a *mens rea* requirement for violations of *R.C.1321.02*, the legislature did specify violations of *R.C. 1321.57* through *1321.60* had to be *willful*. Thus, in accord with *State v. Horner, supra.*, the legislature expressed the plain intention that violations of the licensing requirements in *R.C. 1321.02* were to be strict liability crimes.

In eighteen months of consideration, while plainly looking to the provisions of *R.C. 1321.99(A)* to say violations of *R.C. 1321.02* were a fifth degree felony, the court inexplicably failed to comment on the effect of the existence of a *mens rea* requirement in *R.C. 1321.99(D)*, a subsection of *R.C. 1321.99*. Thus, the decision that licensing violations are not strict liability crimes resulted from an incomplete, faulty analysis, contrary to legislative intent.

Highlighting the existence of the incomplete statutory analysis in this case is the recognition that, where a reviewing court considers an issue not suggested by the parties on appeal, but implicated by evidence in the record, the court of appeals should give the parties notice of its intention and an opportunity to brief the issue. *State v. Peagler* (1996), 76 Ohio St.3d 496, citing *Toledo's Great E. Shoppers City, Inc. v. Abde's Black Angus Steak House No. III, Inc.* (1986), 24 Ohio St.3d 198, 202. Here, the issue of whether violations of *R.C. 1321.02* are strict liability crimes was not raised by either party. The issue was not briefed and, at oral argument, not a single question was asked concerning the issue. Clearly, had the issue been raised, error in failing to consider and explain the significance of a *mens rea* in *R.C. 1321.99(D)* could have been avoided and an accurate analysis of legislative intent performed.

***B. An Incomplete Statutory Analysis Created Exceptions Absent in the Plain Statutory Language and Inconsistent with Legislative Intent***

In this case, the court reversed convictions under *R.C.1321.52* finding Appellant did not conduct business connected with “loans” secured by a second mortgage. According to the court, Appellant simply retained an interest in property securing his right to payment of the 20% balance of the purchase price not covered by the first mortgage. Creating significance for this observation, the court misinterpreted the word “loan” in *R.C.1321.52(A)(1)(b)*, failing to consider all the words in that subdivision. Then, because Appellant did not advance “money”, the court decided he did not issue “loans” within the meaning of the statute.

The primary purpose in the interpretation or construction of statutes is to ascertain the legislative will. *Henry v. Central Natl. Bank* (1968), 16 Ohio St.2d 16. Where the statutory language clearly expresses legislative intent, that language will not be construed by the courts. *Provident Bank v. Wood* (1973), 36 Ohio St.2d 101, 106. Words are not absolutes, however. Because their meanings may vary according to context, custom and usage, statutory language cannot be declared clear or ambiguous until the context in which it appears are taken into consideration. *State v. Hooper* (1979), 57 Ohio St.2d 87.

The plain language of *R.C.1321.52(A)*, where the court found the word “loan” to interpret, specifically requires a person to obtain a registration certificate from the DFI before engaging in the business of lending or collecting the person’s own or another person’s *money, credit, or choses in action* for non-first lien residential mortgage loans. Without question, a review of *all* the terminology of *R.C.1321.52(A)* discloses it broadly encompasses all second mortgages, with no limitation or restriction. In contrast to the court’s limited focus on the single word “loan”, wording in the same line shows it is erroneous to limit registration requirements to second mortgages that only involve the actual transfer of money. The specific wording describing the scope of second mortgages covered by the registration requirements, and ignored by the court, included *money, credit, or choses in action*.

Considering the word “loan” in context with the words *money, credit, or choses in action*, no ambiguity requiring interpretation exists. Clearly, the legislative intent was to include all possible second mortgages under the registration requirements. Indeed, one has only to look at the statutory definition of loan in *R.C. 1321.51(F)* to confirm that fact. There is no greater evil discernable from a second mortgage involving an advance of money, over one involving credit, which would lead the legislature to require pre-registration in one instance and not in the other.

The statute is designed to protect all consumers from deceptive or unscrupulous practices. *See Leacock v. Household Realty Corp.* (Lorain Cty 1992), 1992 Ohio App. LEXIS 2918.

Here, the court somehow missed the fact the statute specifically references that “credit” is included within the concept of a second mortgage. There is no legally valid reason for a distinction between a second mortgage using an advance of money, from one using credit. Indeed, the buyer still owes a definite sum of money to the maker of the mortgage. The buyer still pays interest and principal, the property still secures the requirement to pay the builder the principal and interest, and failure to pay still results in the loss of one’s property through foreclosure.

Limiting registration requirements only to makers of second mortgages who advance money rather than extend credit is unwarranted and illogical. There is no explanation by the appellate court as to how the creation of a new classification of second mortgages not required to be registered, is consistent with the obvious legislative intent to protect consumers by ensuring those making second mortgages operate lawfully, honestly, and fairly.

***C. Ohio Securities Law Prohibits Commission-Based Sales Without a License And Imposes Criminal Liability for Securities Fraud Involving False Representations in Offering Documents Without Proof of Reliance or a Specific Intent to Deceive***

Securities laws are called ‘blue sky laws’ because such regulations are directed at promoters who would sell investors speculative schemes which have no more basis than so many feet of ‘blue sky’. *Hall v. Geiger-Jones Co.* (1917), 242 U.S. 539, 550. Determining whether a scheme constitutes a security requires an examination of the nature of the scheme in light of the broad policy to prevent fraudulent exploitation of the investing public. *In Re Columbus Skyline Securities, Inc.* (1996), 74 Ohio St.3d 495. The Ohio Blue Sky Laws are remedial in nature and are “drafted broadly to protect the investing public from its own imprudence as well as the

chicanery of unscrupulous dealers.” *Id.*

Courts lack authority to ignore the plain language of a statute under the guise of statutory interpretation or liberal or narrow construction. *Covington v. Airborne Express, Inc.* (Franklin city 2004), 2004 Ohio App. LEXIS 6456. A court must give effect to words used in the statute; accord words their usual and customary meaning, and not delete words used or insert words that are not used. *Cleveland Elec. Illum. Co. v. Cleveland* (1988), 37 Ohio St.3d 50.

*R.C. 1707.01(E)* broadly defines the term “dealer” to include:

“every person,\*\*\*, who engages or professes to engage in,\*\*\*, directly or indirectly,\*\*\*for the person’s own account, or\*\*\*for the account of others in a reasonable expectation of receiving a commission,\*\*\*, or other remuneration\*\*\*.

Amazingly, the court ignored the fact the statute specifically uses the word “indirect”, *with no qualification*. In a mind-boggling display of mental gymnastics, the Ninth Appellate District decided there are various degrees of “indirect” and that the legislature should have explained how “indirect” a benefit could be and still qualify as a benefit. Eliminating the word “indirect”, the court decided that a dealer could avoid licensing requirements by selling securities through a second company and paying an employee of that company a commission to sell securities for the original, issuing company. In one stroke of the pen, the court created a gaping hole in licensing requirements not contemplated in the statutory language.

The appellate court continued to follow an excessively narrow approach in reviewing and then misapplying the provisions of *R.C. 1707.44(G)* and *.44(B)(1)*; nullifying convictions for securities fraud by finding the State did not prove that DOS or any investor specifically acted on the specific false representations Appellant made or that he did not intend to deprive investors of their money . *R.C. 1707.44(G)* prohibits knowingly engaging in any act or practice declared illegal, defined as fraudulent, or prohibited. However, the court missed the fact that *R.C.*

1707.01(J) explains “fraudulent” as any representation relating to the purchase or sale of securities that has operated *or would operate as a fraud* upon the seller or purchaser.

The excessively narrow focus that only reviewed the language of *R.C.1707.44(G)* and neglected key language in *R.C.1707.01(J)* inadvertently stripped the plain language used by the legislature, “*would operate as a fraud,*” of any meaning. The restrictive review, interpretation and misapplication of these statutory provisions is detrimental to the clear legislative purpose to protect unsophisticated consumers from the creativity of unscrupulous dealers selling securities.

***D. The State is Not Required to Prove Specific Reliance Upon a Misrepresentation in Documents Connected with the Sale of Securities to Establish Theft by Deception***

In order to overturn theft convictions under *R.C. 2913.02(A)(3)*, the appellate court did not consider how the legislative intention to protect the investing public in matters involving the sale of securities affected applicable theft definitions. Securities laws are remedial in nature and “drafted broadly to protect the investing public from its own imprudence as well as the chicanery of unscrupulous dealers. *In Re Columbus Skyline Securities, Inc.* (1996), 74 Ohio St.3d 495. Consequently, the laws require dealers to provide the information necessary for investors to make a decision to buy. *All* information provided is deemed material to the investor’s decision.

In light of the remedial nature of securities laws, *R.C. 2913.01(A)* provides “deception” is knowingly deceiving another or causing another to be deceived by any false or misleading representation,\*\*\*, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another,\*\*\*. Here, the court’s misapplication of this definition not only ignored the purpose of the securities laws; it also ignored part of the definition.

In this case, the *only information* victims had was provided by the person selling the securities; information that contained false representations. Thus, a jury could reasonably find that victims could not help but be deceived. Requiring proof that every investor was specifically

deceived by particular information, and *acted* on that specific falsehood, eliminates an important part of the definition of deception and ignores the realities involved in how securities are sold. As demonstrated by the actions of this appellate court, an excessively narrow focus and misapplication of the definition of deception reaches far beyond the borders of the theft statute and negatively impacts the ability of State agencies to protect unsophisticated members of the public from acts of fraud, contrary to the intent of the Legislature.

At trial, evidence demonstrated investors were told EIC would use their money to buy second mortgages from EH. Investors were not told their money would be used for reasons beyond the stated purposes. Investors were not told Appellant would take over \$500,000.00 to pay personal expenses. Investors were not told Appellant would call the money “properties held for sale” in the company books. Investors were not told the subterfuge was discovered by the account manager, well after the money was taken, who then told the companies’ accounting firm. Investors were not told the money was then reclassified as “loans” with backdated loan papers created to cover the missing money; “loans” that never saw a single payment. In addition, investors were not told the \$500,000.00 taken to pay personal expenses does not include almost \$400,000.00 in commissions taken to pay the securities salesman in the space of 2 years. Indeed, investors were specifically told no commissions would be paid for selling the securities.

The court acknowledged the fact Appellant included false information in the sales documents he gave to potential investors. However, rather than broadly apply the definition of deception in light of the intent of the securities law, the court inexplicably ignored the statutory language that focused on a defendant’s actions and determined deception could only be proven where the State establishes victims acted solely on the specific deceptive information. Prior to this decision, it seemed clear that deception included where a defendant “knowingly acts to

deceive” the victim, not solely where a victim acted on the deception.

Considering the legislative purpose behind the securities laws and the full definition of “deception”, the court’s decision shows a lack of understanding as to the scope of a complete statutory analysis when examining legislative purpose. This case provides a springboard to instruct lower courts on the critical need to analyze the interplay between *Title 29* offenses and other remedial statutes designed to protect the public welfare, to ensure a decision will not negatively impact legislative intent.

***Appellant’s Proposition of Law No. 1:***

***Making a False Representation “For the Purpose of” Registering Securities or Exempting Securities from Registration under Chapter 1707. on a Notice Filing can Only be Charged as a Violation of O.R.C. 1707.44(B)(6) and is not Properly Charged as a Violation of O.R.C. 1707.44(B)(1)***

Appellant claims he was incorrectly charged with making a false representation in registering or exempting securities from registration requirements under *R.C. 1707.44(B)(1)*. Appellant claims a charge for falsifying a notice of exemption, such as a Form D, can only be brought under *R.C. 1707.44(B)(6)*, which mentions *R.C. 1707.03(X)*.

Appellant fails to acknowledge the provisions of *R.C. 1707.44(B)(1)* through *(B)(6)* provide a listing of documents involved in the process of selling securities. The prohibition against falsifying information itself rests in subsection *(B)*. There is no indication that documents associated with one subsection are excluded from others. For instance, while a circular is used to sell securities, Appellant’s civil attorney testified the circular was required to be submitted with a 6(A)(1) registration application. In fact, he testified the required DOS certificate to sell securities would not be issued without submission of the circular. Thus, the circular is also a registration document. The court overlooked this clear testimony and reversed several convictions for submitting false statements in 6(A)(1) registration application materials

deciding the circular containing the false statements was not a registration document.

Because the same circular is a document used to describe the securities to prospective buyers, it also falls under subdivision (B)(4), relating to selling securities. However, the same document also falls under subdivision (B)(5), as a document that advises for compensation, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

Here, the fact that an exemption document such as a Form D is mentioned in subdivision (B)(6), does not magically exclude it as a document required to be submitted for the purpose of exempting a sale of securities from registration requirements under subdivision (B)(1). Indeed, that is precisely what the document is.

*R.C. 1707.03(X)* lists three elements necessary to sell securities without going through the state registration requirements. While *R.C. 1707.44(B)(6)* references the exemption explained in *R.C. 1707.03(X)*, the reference does not say a notice claiming the exemption is not a document involving registration or exemption requirements *under R.C. Chapter 1707.*, as related in *R.C. 1707.44(B)(1)*. Indeed, former DOS attorney Safko testified that failure to file the Form D with DOS would trigger the need to comply with the full registration requirements.

Appellant also fails to point out any additional or different element of the offense that would have existed, regardless of which subdivision was referenced by the charge in this case. Appellant had full and complete notice of exactly what documents were involved; what the falsified information in the documents was; and that the statute prohibited submitting the falsified documents to the State DOS.

***Appellant's Proposition of Law No. 2:***

***Jury Instructions For Multiple Violations of O.R.C. 1707.44(B)(1) Involving Separate and Distinct Conduct Must be Charged Separately to Avoid Confusion and Misunderstanding And the Instruction for a Violation of O.R.C. 1707.44(B)(1) Must Include Instruction on All the Elements of the Crime***

The sum and substance of a proposed instruction must be given in the trial court's charge to the jury. *State v. O'Dell* (1989), 45 Ohio St.3d 140. The trial court need not repeat the exact language proposed by a party. *State v. Scott* (1986), 26 Ohio St.3d 92. When the general charge does not contain the precise language requested by counsel, but sufficiently contains the substance of the law requested by the special instruction, no prejudice results from a failure to give the exact wording of the request. *State v. Guster* (1981), 66 Ohio St.3d 266.

Appellant claims the trial court failed to charge the jury on an element of the offense under *R.C. 1707.44(B)(1)*, false representations in registering securities. Appellant claims the failure to use the words "for the purpose of" registering securities in the instructions relating to his convictions for violations under *R.C.1707.44(B)(1)* was a fatal error<sup>2</sup>. Appellant points out the trial court's instruction simply stated "for" registering securities. However, Appellant fails to demonstrate the effect of the difference in the terminology. Indeed, the difficulty seems to stem from the fact the trial court's wording has the same meaning as Appellant's wordier version. Appellant received the "sum and substance" of the wording requested.

Appellant claims the terminology "under this chapter" is a missing "essential element" of the false representation in registering securities charge. However, the only *Ohio* registration requirements are in *R.C. Chapter 1707*. Failing to file proper forms for an exemption, *pursuant to R.C. Chapter 1707., with the DOS*, means you *must register the securities, pursuant to R.C. Chapter 1707*. Failing to tell the jury a charge of false representations in registering securities in violation of *R.C. 1707.44(B)(1)* is *under R.C. Chapter 1707*. does not create confusion.

Appellant's claim the false representation charge was an omission rather than an affirmative misrepresentation is a refusal to acknowledge the State's theory and evidence were,

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<sup>2</sup> *R.C. 1707.44(B)* does not state "for the purpose of." The specific wording used in the statute is "for any of the following purposes\*\*\*."

unmistakably, that the false statement in the exemption documents was an *affirmative falsehood*. The State's closing argument specifically identified the precise nature of the falsified statement as an *affirmative representation as to the total expenses and source of the expenses*. Thus, there was no possibility of jury confusion as to the nature of the lie requiring a special instruction.

Appellant's claim the jury was confused because the instructions did not specify the precise false statement in each registration document is misplaced. There are only 5 documents involved; two 6(A)(1) registration applications and three Form Ds. The instructions identified the specific date for each charge which corresponded to dates on the documents with the false statements. The false statements in the 6(A)(1) forms involved the payment of commissions and who sold the securities. The false statements in the Form Ds involved the total amount of money reported as expended on the sale of the securities. There was no confusion.

***Appellant's Proposition of Law No. 3:***

***A Criminal Conviction Cannot Be Affirmed on Evidence Not Adduced at Trial and Not Relied on or Argued in the Trial Court***

A sufficiency claim raises a narrow question of law that is reviewed *de novo*. [The court] review[s] the record to determine whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Barbarotta* (Cuyahoga cty 2002), 2002 Ohio App. LEXIS 384, 2002-Ohio-334, *citing State v. Stallings* (2000), 89 Ohio St.3d 280.

Here, the decision on the misrepresentations in the Form Ds was based on evidence placed before the jury. First, Appellant repeats a mantra that an omission of fact was the false representation relied upon by the State, *i.e.* that commissions were paid. Appellant flatly states the State made no other argument. Appellant is incorrect. The State's closing argument explicitly described the false representation was an affirmative representation as to the total

expenses and their source and not an omission.

When a party has made an affirmative misrepresentation, there will invariably also be items he has left undisclosed. *State v. Warner* (1990), 55 Ohio St.3d 31. Appellant's obsession with claiming the false representation was an omission overlooks that, in order to prove the amount of money reported as a total expense was false, evidence necessarily had to show an additional expense not included and reported as part of the total expense. The closing argument highlighted the State relied upon the affirmative misrepresentation of the total amounts Appellant reported when falsifying the Form Ds as the violation.

Appellant claims the appellate court upheld a conviction on grounds not addressed at trial since it referred to sections of the Form D that were not "stressed" at trial. The claim overlooks that the entire Form D was admitted as evidence, without objection. In addition, there was no request to redact the Form D. Thus, the entire, short, document was in evidence before the jury.

Next, a plain reading of the appellate decision shows the court examined the evidence presented at trial along with arguments made about that evidence. Appellant's actual complaint is that the court did examine, and then reject, his claim that his failure to include the amount of his commissions in the total expenses did not constitute an affirmative misrepresentation. Much to Appellant's dismay, the court discounted his claim by pointing out a provision in the Form D where Appellant again specifically identified no commissions would be paid.

***Appellant's Proposition of Law No. 4:***

***When [a] Evidence Establishes that a Defendant Hired an Experienced Partner in a Reputable Local Law Firm and Repeatedly Told Them he Wanted to do Everything Necessary to Comply with the Law and Then Followed Their Advice With Respect to the Conduct Charged in a Criminal Indictment, an Advice of Counsel Instruction Must be Given.***

Appellant's desire for an advice of counsel instruction simply because a defendant hires

an attorney stands contrary to established case law. The question is not whether a defendant hired an attorney who gave him advice that he followed. The question is whether a defendant provided the attorney with all material facts that led to the advice he received. To be a defense, the defendant must fairly and impartially inform counsel of all material facts and he must follow the advice in good faith. *Killilea v. Sears, Roebuck & Co.* (1985), 27 Ohio App.3d 163. A trial court may refuse to give an instruction which is not applicable to the evidence governing a case. *State v. Taylor* (Lorain cty 2008), 2008 Ohio App. LEXIS 1276.

Here, Appellant sculpted the information he gave his attorney to get the “advice” he wanted, to provide cover for his activities. Notably, he cleverly failed to tell his attorney the material facts playing a key role in the crimes. Appellant *did not tell* his attorney he never personally sold any securities or that the salesman worked for EH, a different legal entity than EIC, the issuer. He *did not tell* his attorney *the only person who sold securities* was the one salesman; thus leading his attorney to assume Appellant would be selling the securities in accord with representations in the circular that EIC officers or employees would be making the sales. Appellant *did not tell* his attorney the salesman was paid on a commission basis.

Moreover, the trial court stated the instruction was rejected based upon the evidence. Thus, the rejection was not unreasonable, arbitrary, capricious, or contrary to law.

***Appellant’s Proposition of Law No. 5:***

***The Filing of a Form That Contains no Knowingly False Statements Cannot Form the Basis of a Criminal Violation of a Statute Requiring Proof of a Knowingly False Statement as an Element of That Offense***

Appellant again beats the drum that he relied upon the advice of counsel. As discussed earlier, the trial revealed Appellant did not tell his attorney material facts playing a key role in the crimes. The Form D language requiring disclosure is simple and clear. A jury could clearly

find that Appellant knew he paid almost \$400,000.00 in commissions for selling securities for 2 years which he then knowingly concealed from his attorney. Reliance on a *post hoc rationalization* by his attorney at trial does not negate *his knowledge* of key facts *at the time*, that he did not disclose to his attorney.

Appellant's claimed belief that he just did not know he was lying was fully vetted before the jury. The jury was able to evaluate the existence of relevant facts, as well as their credibility in light of the plain language in the Form Ds, and Appellant was convicted.

***Appellant's Proposition of Law No. 6:***

***The Introduction of Prejudicial Other Act Evidence of an Old Misdemeanor Conviction That Does Not Fall Under any of the Exceptions Necessary to the Admission of Other Act Evidence Under the Ohio Rules of Evidence, Evid.R.404 (B), and Repeated Reference to The "Criminal Record" of that Defendant Solely Because of the Misdemeanor Conviction Requires Reversal of Any Convictions Returned***

Appellant claims evidence about his falsification of applications for a registration to make second mortgages was improperly admitted. He speculates the evidence affected the jury's guilty verdicts on the falsified Form Ds that are the subject of the securities convictions.

Appellant misstates the nature and context of the evidence at issue. At trial, Appellant specifically told the jury evidence would show the requirement to have a license to engage in the business of making second mortgages did not apply to his business. Given that direct statement, the State produced evidence showing he was not operating under a mistaken belief that the second mortgages he made did not require a license. *See R.C. 2945.59*. The evidence was two registration applications submitted to DFI that directly bore on his claim in two respects.

First, there was no mistaken belief that registration requirements did not apply to his business since he did submit applications for the required registrations. Second, he knowingly issued second mortgages without a registration since, based upon his knowledge that information

in the applications was false, he had no reasonable expectation DFI would issue the registrations.

Appellant overstates the use of the misdemeanor conviction at trial. The critical point was not the existence of the “misdemeanor” conviction itself; it was the failure to *disclose* the *existence* of the prior conviction. Indeed, key indicators of intent were Appellant’s later efforts to determine if DFI could find out about the prior conviction, and then delay discovery by DFI, in light of the fact DFI would deny the applications for failing to disclose information.

Appellant’s claim of a “belief” registration requirements did not apply to his business activities made the existence of falsified applications, the reason they were false, and efforts to conceal the falsification, material because they show any “belief” was a *post-hoc* rationalization. These actions revealed the absence of any mistake and an apparent scheme or plan to delay any decision on the registration applications while he continued to do business.

***Appellant’s Proposition of Law No. 7:***

***A Rico Conviction, Obtained on the Basis of Numerous Serious Allegations, Subsequently Reversed, Should Not be Permitted to Stand Pursuant to M[urrow v. Reminger and Reminger, (2009), 183 Ohio App.3d 40 (10<sup>th</sup> App. Dist.) Without a Jury Determination As to Whether Three Remaining Charges Constitute a Pattern of Corrupt Activity***

Appellant contends his conviction under R.C. 2923.32 should be reversed because, after the appellate decision, only three first degree felony convictions remain. The remaining felonies are predicate acts. Appellant opines three convictions do not establish a pattern of corrupt activity because he simply repeated the same false statement, in exactly the same circumstances for the same purpose.

Here, Appellant stands convicted of three felonies involving three separate Form Ds filed with the DOS. The claim his actions just repeated the *same false statement*, in exactly the same circumstances, for the *exact same purpose*, is not true. While Appellant made the same *type* of false statement, he did not repeat the *same false statement* in each Form D. The Form D’s were

submitted individually over an eight month span of time.

The November 24, 2004 Form D involved the sale of \$1,500,000.00 worth of securities by EH. That Form D reported the total type and amount of expenses only consisted of legal fees totaling \$25,000.00. That information was false. The April 29, 2005 Form D was related to the activities of the same enterprise, *i.e.*; EH, however, it was for a completely different sale of \$2,000,000.00. This time the Form D reported the total type and amount of expenses as legal fees totaling \$5,000.00. Again, the information was false. The July 25, 2005 Form D was related to the activities of the same enterprise, *i.e.*; EH. However, it was for a completely different sale of \$500,000.00. The final Form D stated the total type and amount of expenses as legal fees totaling \$5,000.00. The information was false. These three distinct acts comport with the plain language of *R.C. Chapter 2923.31(E)* and establish a pattern of corrupt activity.

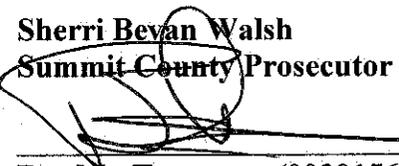
Appellant mistakenly relies upon *Morrow v. Reminger and Reminger* (2009), 183 Ohio App.3d 40, for the proposition that two incidents of corrupt activity are insufficient to establish a pattern of corrupt activity. Appellant's reliance is misplaced because, whether *Morrow* is correctly represented or not, Appellant still stands convicted of three separate incidents of corrupt activity, identified in *R.C. Chapter 2923*. as predicate offenses.

### ***Conclusion***

For the reasons stated herein, this case with multiple felonies, presents issues of public and great general interest. Appellee respectfully requests that this Court accept jurisdiction.

Respectfully Submitted,

**Sherri Bevan Walsh**  
**Summit County Prosecutor**



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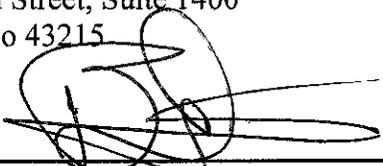
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**Certificate of Service**

This is to certify that the foregoing **Memorandum In Support of Jurisdiction of Appellee/Cross Appellant State of Ohio** was served upon the following by **CERTIFIED and Regular US Mail**, this 6<sup>th</sup> day of March, 2012.

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