

ORIGINAL

IN THE OHIO SUPREME COURT

STATE OF OHIO,
Plaintiff/Appellee/
Cross-Appellant

vs.

DAVID WILLAN
Defendant/Appellant/
Cross-Appellee

: CASE NO. 2012-0216
:
:
:
: ON APPEAL FROM THE
: SUMMIT COUNTY COURT OF
: APPEALS, NINTH DISTRICT
:
: COURT OF APPEALS
: CASE NO.: CA-24894

RESPONSE TO CROSS-APPELLANT/APPELLEE'S AND AMICI'S MEMORANDA IN
SUPPORT OF JURISDICTION

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**EXPLANATION OF WHY CROSS-APPELLANT'S APPEAL DOES
NOT RAISE ISSUES OF PUBLIC OR GREAT GENERAL INTEREST OR
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The Cross-Appellant/Appellee, State of Ohio ("State"), begins its section styled as "Explanation of Substantial Constitutional Question or Issues of Public or General Interest" by exclaiming that the issues presented by the Appellee "do not require this Court to revisit factual determinations made below" then proceeds to build an argument based upon a premise of false factual scenarios. For example, it claims that the Court need not look at the facts regarding the theft convictions and then implies that the alleged theft was used, in part, to "prop up the existence of the business façade used to convince the victim to part with his money in the first place." Memorandum in Support of Jurisdiction of the State ("Memorandum"), p. 2. That is a false representation of the facts and directly disputes that factual determinations made by the Ninth District Court of Appeals ("COA") in its Decision and Journal ("Opinion") entry. The COA found that there was no evidence uncovered in this case that suggested that the business in question was to defraud investors in the nature of a "Ponzi" scheme or that the entities were not legitimate operations. Opinion P. 6. Indeed, the Court noted that the Division of Securities had "received no complaints from any investors," that "prior to the raid investors had been paid everything they had been promised" and "Evergreen Investment had honored all requests for the redemption of certificates." Id. Most importantly, the Court noted that "Mr. Willan's companies remained financially solvent with more than sufficient assets to cover the investments" until after the public uproar created when the company was raided by law enforcement officials.

The 'Explanation' section of Appellee's memorandum is replete with broad conclusory statements such as "the erroneous actions of a single appellate court have injected a devastating degree of uncertainty into the financial system;" "agencies charged with the responsibility of

administering the laws now cannot effectively perform the task assigned by the legislature;” and, inexplicably, that those who must deal with the relevant administrative agencies are now “forced into the dilemma of choosing between following the laws as written and then implemented by the administrative agencies, (sic) or risk administrative and/or enforcement actions should they follow the mistaken application of those laws as put forth by one appellate court.” Memorandum, p. 1. The State, and Amici North American Securities Administrators Association, Inc. (“NASAA”) and the Ohio Department of Commerce (“DOC”) (collectively “Amici”), make these assertions without establishing any factual or legal premise to support them. This “sky is falling” approach is belied by the COA’s careful factual analysis. With regard to the theft offense, the Appellate Court in this case simply found that the State “offered no evidence...that Mr. Willan, Mohler, or anyone else associated with Mr. Willan had deceived any of the alleged victims about how their money would be invested.” Opinion, p. 32. This is a not the creation of a “new defense” with “implications that go far beyond the borders of this one case.” Id.

The COA correctly recognized that the ten-year mandatory sentence called for in O.R.C. § 2929.14(d)(3)(a) does not apply to the facts of this case and that the issue was not fully addressed by the Eighth Appellate District.

The COA did not strip “the public of the inherent protection provided by the strict liability nature of the SLA licensing provision.” This is not an “apparent lack of direction [which] allowed the [COA] to unintentionally destroy a firewall that the legislature created to protect the general public from dishonest business enterprises.” Memorandum, p. 3. The COA was required to examine *mens rea* in considering whether there were sufficient facts to support a conviction under the Small Loan Act (SLA). The Court correctly determined that recklessness

was the degree of culpability required by the statute and correctly noted that the facts presented at trial were not sufficient to sustain the conviction.

The State, making the same sort of unsupported sweeping conclusions, (“destroying another protective umbrella”, “creating a completely new class of second mortgages, ”Memorandum, pp. 5, 6) distorts the Opinion with regard to whether the second mortgages were issued to secure a loan as required by O.R.C. § 1321.52. The statute regulates second mortgages in connection with a loan and that there were no loans. This analysis does not create catastrophic conditions requiring this Court’s guidance.

The muddled and unsupported conclusions permeating the State’s “Explanation” are reflected in the State’s propositions of law and further underscore the fact that the State has not presented a substantial constitutional question or an issue of public or great general interest. The State sets forth as a proposition of law:

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.

Under this heading, the State includes four subheadings dealing with many different statutes. The main heading, in addition to presenting a novel and unprecedented proposition of law, presents an incomprehensible proposition. It seems to require that all reviewing courts when interpreting any statute must read every word of every section of the chapter within which the statute is located and comment on each section as well as demonstrate that the interpretation of each section is consistent with various legislative purposes.

The State and Amici continuously ignore all precedent that criminal statutes are to be construed narrowly, not broadly. *State v. Hurd* (2000), 89 Ohio St. 3d 616. Notably, only civil case are cited in support of their request for broad interpretations of the statutes at issue here.

The general rules of statutory construction of criminal statutes call for the exact opposite, to wit: a narrower definition of “criminally.” ORC. 2901.04(A) requires that “sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.” In urging a broad construction, the State and Amici again and again fail to address the specifics of Ohio law and the actual holdings of the COA’s Opinion.

STATEMENT OF THE CASE AND FACTS

The statement of the facts set forth on behalf of the State is misleading, includes facts that are false and in important respects entirely irrelevant to the issues before this Court. The State begins its misleading factual issues by discussing an alleged \$500,000.00 the State claimed was taken by Mr. Willan “over and above his usual salary.” There is no issue before this Court in which that information is any way relevant. The theft charges that were reversed by the COA have nothing to do with any alleged \$500,000.00 and were solely based on the fact that Mr. Mohler was paid a commission. The testimony with regard to the \$500,000.00 made clear that it was withdrawn over a period of years and was used for a variety of purposes. The need to reclassify the withdrawals was discovered at Mr. Willan’s direction and reported to the investors.

The State, in connection with the above misleading and irrelevant information refers to the fact that the investors were not told that someone like Ruben Weaver and James Shaffer would see their money disappear “through Mr. Willan’s fingers” and that \$2,000,000 of their money would disappear while “Appellant paid his ‘personal expenses.’” None of these facts have anything to do with the allegations of theft from investors or any of the other charges of which Mr. Willan was convicted. As it related to investors, the sole issue dealt with Mr. Mohler receiving a commission, which both testified they neither relied upon or even asked about. They testified that every payment due and owing on the investments was made until after the raid. The

\$2,000,000.00 did not disappear and the company was fully solvent with money to pay all investors until the raid which effectively ended the ability of the Evergreen companies to do business. The COA found that there was no evidence that the purpose was to defraud investors in the nature of a Ponzi scheme or that the entities were not legitimate operations. Opinion, P. 6.

I. STATE'S PROPOSITION OF LAW NO. 1: R.C. 2929(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

The State attacks the COA's opinion reversing Mr. Willan's sentence on two grounds¹. Notably, this part of the opinion was unanimous. The State first argues that the statute is not ambiguous and, therefore, no interpretation or lenity is required and that the COA failed to follow the Eighth District Court of Appeal's decision in *State v. Schneider*, 8th Dist. No. 93128, 2010 Ohio 2089². Second, Appellee/Cross-Appellant argues that COA's opinion renders part of the statute superfluous. Neither of these statements are accurate. It is a fundamental tenet of due process that "[no] one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes." *Lanzetta v. New Jersey* (1939), 306 U.S. 451, 453. Vague sentencing provisions may pose constitutional questions if they do not state with sufficient clarity the consequences of violating a given criminal statute. See *United States v. Evans* (1948), 333 U.S. 483; *United States v. Brown* (1948), 333 U.S. 18.

¹ The State's concern about the importance of this sentencing provision did not extend to seeking to vacate the sentence of one of Mr. Willan's co-defendants, Daniel Mohler, who entered into a plea agreement to serve four years (although he was released after serving less than a year) upon pleading guilty to a RICO count where the predicate acts were felonies of the first degree.

² The State did not, however, seek to certify a conflict between the Eighth and Ninth District Courts of Appeals.

The State does not take issue with the COA's analysis of the legislative history or intent. Instead, the State only argues that any interpretation was unnecessary because the statute is not vague or confusing. The State relies on *Schneider* for the holding that the statute is not ambiguous. Interestingly, although the Eighth District's brief analysis in *Schneider* did not find the statute vague, it took pains to go out of its way to point out the statute's infirmity. First, in referring the reader to the full quote of the statute, the Court states: "See footnote 1, *infra* (to read *this convoluted provision* in its entirety)." *Schneider*, 8th Dist. No. 93128, 2010 Ohio 2089, **5 (emphasis added). The Court later "acknowledge[d] that it is not the General Assembly's finest work." *Schneider*, 8th Dist. No. 93128, 2010 Ohio 2089, **8, fn. 1. It noted that the "entire section is one sentence that is 307 words long and has 23 commas." *Id.* Although the Eighth District claimed that the statute was not ambiguous or confusing, its critical discussion of the language suggests otherwise.

The COA did not ignore *Schneider*. Instead, the Court reviewed its finding and found it to be an incomplete analysis of ORC 2929.14(D)(3)(a). The *Schneider* court concluded that, because ORC § 2929.14(D)(3)(a) also identified the offense of attempted rape, it could not be interpreted as applying only to drug offenses and, therefore, was not ambiguous. However, the Court did not address the absence of any reference to ORC § 2923.32 in the statute. It was upon this basis, combined with the primary focus on drug offenses, that the COA found ORC § 2929.14(D)(3)(a) to be vague. Given that § 2929.14(D)(3)(a) is primarily a major drug offender statute (see *State v. Chandler* (2006), 109 Ohio St.3d 223, 228 and *State ex rel. Mason v. Griffin* (2004), 104 Ohio St. 3d 279, 282, *rev'd on other grounds* (referring to ORC § 2929.14(D)(3)(a) as for drug convictions)) and that other crimes are specifically enumerated therein, the finding that the statute is ambiguous was not in error. It is what is called for by the laws of this State.

ORC § 2901.04(A). The COA found relevant that the RICO statute failed to give any notice or cross-reference to § 2929.14(D)(3)(a) so that an offender would have notice of a potential ten-year mandatory minimum.

The Opinion does not render any part of ORC § 2929.14(D)(3)(a) superfluous or meaningless as suggested by the State. Memorandum, pp. 13-14. ORC § 2929.14(D)(3)(a) provides several different occasions where a ten year mandatory sentence must be imposed. The State seems to be arguing that the COA's opinion would make the portion at issue here meaningless because all drug convictions would be dealt with under other portions of the statute. This is inaccurate. In order to impose the ten year sentence for drug related charges, the trial court must make additional findings (some that must be specifically plead in the indictment) based on the specific statutes at issue. The portion addressed by the COA would require a Court to impose a ten-year sentence for all drug offenses when an offender is guilty of corrupt activity with the most serious predicate act being a felony of the first degree even if there was no specification or a finding of major drug offender. Because the Opinion thoroughly and correctly addresses ORC 2929.14(D)(3)(a), State's request to appeal this holding should be rejected.

II. STATE'S PROPOSITION OF LAW NO. 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.

It is unclear how this "heading" applies to all the subheadings in this proposition of law.

As noted above, it would require a review of the entire chapter when addressing any statute.

A. Violations of Licensing Provisions Under the Small Loans Act, ORC §1321, Are Strict Liability Crimes

The State appears to suggest that main heading in Proposition of Law No. Two would lead to the conclusion that a violation of the Small Loans Act [SLA] licensing provision, ORC

§1321.02, is a strict liability crime. There is no legal authority to support the Appellee's contention that ORC §1321.02 imposes strict criminal liability.

The State complains that the COA addressed the issue of *mens rea* as it relates to small loans. However, the COA in *Willan* properly relied on Supreme Court precedent by conducting a *de novo* review of the sufficiency of the evidence, which necessarily includes the mental state of the defendant. Opinion, pp. 15, 21 (citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386 and *State v. Fusillo*, 11th Dist. No. 2004-T-0005, 2005-Ohio-6289, at ¶ 27).

Section 2901.21(B) provides that “[w]hen the section defining an offense...neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense.” ORC §2901.21(B). The State and DOC, incorrectly interpreting *State v. Horner* (2010), 126 Ohio St. 3d 466, contend that the inclusion of a culpable mental state in a division of ORC §1321.99 creates the implication that ORC §1321.02 imposes strict criminal liability. See *Horner*, 126 Ohio St. 3d 466, 474 (this Court looked to ORC §2911.01, the specific section that defines the offense, to determine whether ORC §2911.01(A)(3) required a culpable mental state); *State v. Johnson* (2010), 128 Ohio St.3d 107, 113-15 (applying ORC §2901.21(B) by looking to the specific section that defined the crime at issue, ORC §2923.13, to determine whether other divisions within that section included a required *mens rea*); *State v. Maxwell* (2002), 95 Ohio St. 3d 254, 257 (discussing the difference between section and division in regards to the application of R.C. 2901.21(B)).

In the present case, the State's use of ORC §1321.99 as evidence that the legislature intended ORC §1321.02 to be a strict liability crime is simply an attempt to evade the correct analysis created by this Court and followed by the COA. Section 1321.02 defines the crime at

issue, does not contain any divisions, does not specify a level of culpability for the offense and does not incorporate any other offenses that do. Opinion, p. 22.

Furthermore, pursuant to the second prong of the analysis required by ORC §2901.21(B), ORC §1321.02 does not plainly indicate any purpose to impose strict criminal liability. Opinion, p. 21. Without any plain language to indicate the legislature's intent to impose strict criminal liability for a violation of ORC §1321.02, Appellee's proposition of law fails. Based on the above analysis, this Court should not take jurisdiction of this case based on this proposition of law.

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

This Court should not take jurisdiction based on the Appellee's proposition of law that the COA conducted an incomplete statutory analysis and misinterpreted the term "loan" under ORC §1321.52(A)(1)(b). The COA correctly considered whether Evergreen Homes (EH) conducted any business connected with "loans" which were secured by a secondary mortgage on a property. Opinion, p. 19. Appellee urges this Court to look to the legislative will of ORC §1321.52(A)(1)(b) but fails to acknowledge that the COA conducted such a review in determining that EH was not engaged in the business of making second mortgage loans. *Id.* at ¶41.

Initially, ORC §1321.52 does not define the term loan. In the absence of a definition, the COA noted that Chapter 1321 recognizes "that a 'loan' involves the advancement of cash by the lender to, or on behalf of, the borrower." Opinion, p. 19. In the present case, no loans were made by EH. EH sold properties using a financing agreement where 80% of the home was paid by a third party lender. The remaining 20% of the balance was paid to EH by the homebuyer over time. Through these arrangements, EH held only a second mortgage on the property to

ensure the 20% was paid over time. This type of arrangement does not implicate ORC §1321.52(A)(1)(b) because EH was not engaged in the business of making any “loan” secured by a second mortgage on the real estate. Opinion, p. 20.

The State’s singular focus on the inclusion of the terms “money, credit or choses in action” is misplaced. The COA’s analysis and interpretation of “loan” was proper as it is the instructive term in ORC §1321.52(A)(1)(b). Section 1321.52(A)(1)(b) specifically criminalizes engaging in the business of “lending or collecting...money, credit, or choses of action” for second mortgage “loans” without first obtaining a certificate of registration. Chapter 1321 regulates **loans**. Section 1321.52 is contained in a section entitled: Second Mortgage **Loans**. Section 1321.52 is itself titled: Registration of second mortgage **lenders** and brokers; mortgage **loan** originator license. EH was not engaged in any business connected with loans secured by a second mortgage. Opinion, p. 19. Therefore, the COA’s statutory analysis did not create any exceptions absent in the plain statutory language nor was it inconsistent with the legislative intent surrounding ORC §1321.52(A)(1)(b).

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

The COA's detailed and thorough review of ORC § 1707.01(E) should not be overturned. The State’s and Amici’s claim that all commission based sales are prohibited is belied by the statute. If the State and Amici’s argument that “the plain language of the Ohio Securities Act prohibits commission-based sales without a license” were true, the legislature could certainly have enacted such a blanket prohibition. The language of ORC § 1707.01(E) is anything but “plain language.” Instead, the complicated statute only requires salespeople, who are defined as being employed by dealers, to be licensed. Both of these terms, salesperson and dealer, are subject to

the very detailed and specific definition of ORC § 1707.01(E). None of the parties urging reversal address the COA's thorough and fact specific review of whether any party or entity involved in this case fits the definition of salesperson or dealer. The State and Amici ignore much of the Opinion and focus not on the language of the statute or the COA's Opinion but on the harms they claim the statute is meant to protect against. The COA's determination that the facts at issue here do not fit into the conduct requiring a license is not an abdication of the protection of the public as claimed by the State and Amici.

The State complains of the "mental gymnastics" undertaken by the Court in its discussion of the definition of dealer and then claims that the COA ignored the word "indirect." First, it is important to note that "indirect" is not used in ORC § 1707.01(E). The statute uses the word "indirectly" as a modifier for "either all or part of the person's time." In its "quote" of ORC § 1707.01(E), the State leaves out "either all or part of the person's time." ODC's Memorandum makes this exact argument and also incorrectly quotes the statute. Moreover, the State ignores what the COA refers to as an "issuer exception" of ORC § 1707.01(E)(1)(a).

Despite the fact that the COA gave the "broadest definition [of the phrase for the "person's own account" and "for the account of others"] possible" (Opinion, p. 12), the State complains that the COA narrowly construed this section of the statute. This is but one of the several reasons the COA found that no person or entity involved met the statutory definition of dealer. The COA thoroughly and exhaustively reviewed the language at issue here and correctly determined that the definition of "dealer" did not encompass either Evergreen Investment ("EI"), EH or Mr. Willan. EI fit squarely within the "issuer exception." EH was not a dealer of its own securities because that activity fell within the "issuer exception." It was not a dealer of EI's Securities because it did not sell securities "for its own account," did not receive a commission,

fee, or similar remuneration for the sale of Evergreen Investment's securities and...[neither Evergreen Homes nor Mohler] *purchased* securities and, thus, could not be said to have received any commission, fee, or similar remuneration as a result of engaging in the purchase *and* sale of securities. (Emphasis added.) R.C. 1707.01(E)(1)." Opinion, p. 12. This Court has not been presented with any meaningful analysis of any fault identified in the COA's reasoning.

The State largely eschews the Opinion and its reasoning and, instead, engages in histrionics about the implications of the ruling. Statements such as "[i]n once stroke of a pen,...created a gaping hole in licensing requirements not contemplated in the statutory language" are only meant to alarm and cannot be relied upon. The Cross-Appellants continually urge that there is a blanket prohibition on commission sales without a license despite the statutory language to the contrary. In fact, NASAA specifically asks this Court to ignore the statutory language "received by the issuer" and read it to mean payment received by an agent because that is the only "logical" reading of the statute. This attempt to broaden the conduct criminalized by the statute is contrary to state law and this Court's precedent. The Court did not invalidate any portion of the statute and did not leave any Ohio citizen unprotected. The DOC's claim that the COA abolished licensing requirements for commission-based sales is baseless. The State and Amici also ignore the COA's review of the jury instructions as it relates to these Counts which asked the jury to determine if Mr. Willan or Mr. Mohler were dealers. The COA correctly determined that there was no evidence to support the conclusion that they were. There is no matter of great public import and this Court is urged to reject this proposition of law.

The State then moves into a discussion of § 1707.44(G). The State's complaint here is that the COA missed the fact that RC § 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*³ upon the seller or purchaser." Memorandum, p. 20. There is no argument as to how the COA's opinion is contrary to ORC § 1707.01(J) or how a different result should have been reached.

The State's and Amici's arguments regarding ORC §§ 1707.01(G) and (J) ignore this Court's prior holding that "Ohio courts have recognized fraud to include: (a) a representation or, where there is a duty to disclose, concealment of a fact, (b) *which is material to the transaction at hand*, (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (d) *with the intent of misleading another into relying upon it*, (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury proximately caused by the reliance." *State v. Warner* (1990), 55 Ohio St. 3d 31, 53, n.17 (emphasis added).

The Opinion correctly notes that the same conduct at issue here is what underlies the theft convictions. The COA's analysis of the theft convictions did include the assessment that there was no indication of reliance. That is, that the alleged fraudulent statement operated or would operate as a fraud. But, the Opinion included more. The theft offenses involve a knowing deceit to deprive investors of money. The COA specifically found that Mr. Willan did not knowingly deceive another by making a false misrepresentation. That is the conduct alleged as a violation of ORC § 1707.01(G). Because the COA determined this did not occur, the conviction was overturned. Further, the Opinion determines there was no evidence whatsoever that Mr. Willan acted with any intent to mislead any investor. Opinion, pp. 32-34. The Opinion is entirely consistent with ORC §§ 1707.01(J), 1707.44(G) and this Court's opinion in *Warner*.

³ The State has italicized "or would operate as a fraud" but it is unclear why this particular language is italicized. Although it is clear that the State believes this to be significant, it is impossible for Mr. Willan to respond with no argument or analysis provided by the State.

NASAA's and DOC's Memoranda also ignore the totality of the COA's opinion. None of the Memoranda address the fact that the COA did look at materiality or that the Court determined that there was no evidence that Mr. Willan acted with any intent to mislead or defraud. The failure to do so makes their propositions of law and arguments unreliable. Further, nowhere in any of the Memoranda do the State or Amici demonstrate that the false statement at issue here was objectively material. The COA's review of the evidence revealed that no investor thought it was actually material to their decision.

The State complains of the COA's "narrow approach" to ORC § 1707.44(B)(1) in this section but offers no discussion of it whatsoever. The COA correctly determined that the statement at issue in the offering circular was not a false statement knowingly made for the purpose of registering securities or exempting securities from registration *and* that the statement in the circular was not material for the registration of securities. Opinion, p. 27. This holding would in no way be impacted or changed by the acceptance of the State's proposition of law: "Ohio Securities Law Imposes Criminal Liability for Securities Fraud Involving False Representations in Offering Documents." The COA did not find that such criminal liability is not imposed and did not "brush[] off false statements in securities registration and offering materials" as claimed by the DOC. Instead, the Opinion finds that, under the facts of this case, the single statement in the offering circular was not a violation of ORC § 1707.44(B)(1).

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.

The State continues in this section to vacillate between its admonition that the Court should not interpret statutes beyond their plain language and its complaint that the COA failed to properly consider legislative intent. Here, in addressing the overturning of Mr. Willan's

convictions for theft by deception, the State argues that any false representation necessarily means that the investors were deceived and that, therefore, Mr. Willan is guilty of theft by deception. Memorandum, p. 20-21. The State then launches into the "deception" it claims at issue. Id. at 21. The State's claim to this Court that the deception at issue is how Mr. Willan spent his money or how that money was allocated in the company books is misleading. Despite similar inflammatory and unsubstantiated statements at trial, Mr. Willan was not convicted of a single crime related to his compensation or how that money was accounted for in the companies' books. The inclusion of this outrageous claim here is meant only to inflame and has nothing to do with the charges at issue before this Court.

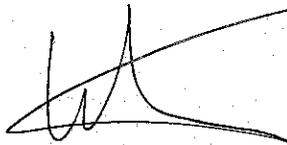
The State's myopic focus ignores the statutory requirement that the State prove that Mr. Willan knowingly obtaining money by deception and that he acted with the purpose to deprive the investors of their money. Amazingly, the State and the Amici would do away with these essential elements and only look to whether a false statement was made at all.

The COA did not, as the State claims, solely focus on whether a victim "acted on a deception." Memorandum, p. 22. The COA addressed the relevant facts and reviewed the dearth of evidence that the investors were actually deceived (that is, whether their money was taken by deception) and the lack of any evidence that Mr. Willan acted with a purpose to deprive investors of their money. Opinion, pp. 32-34. Only by ignoring the basis of the COA's Opinion can the State claim that the "decision shows a lack of understanding as to the scope of a complete statutory analysis when examining legislative purpose." Memorandum, p. 22.

CONCLUSION

For the foregoing reasons, this Court should decline to accept jurisdiction over the State's appeal and propositions of law.

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CERTIFICATE OF SERVICE

A copy of the foregoing was served by regular U.S. mail this 4th day of April, 2012

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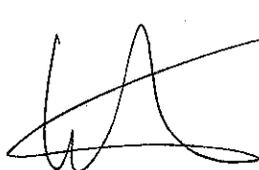
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