

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Case No. 2012-2003
Plaintiff-Appellee, : On Appeal from the Highland County
 : Court of Appeals, Fourth Appellate District
-vs- :
 : Court of Appeals Case No. 11CA027
JEFFREY STEVENS, :
 :
Defendant-Appellant, :

MERIT BRIEF OF APPELLEE - THE STATE OF OHIO

ANNEKA P. COLLINS(0079572)
Highland County Prosecutor
112 Governor Foraker Place
Hillsboro, Ohio 45133
(937) 393-1851
FAX (937) 393-6501
acollins@co.highland.oh.us

COUNSEL FOR APPELLEE, STATE OF OHIO

BRYAN SCOTT HICKS (0065022)
P.O. Box 359
Lebanon, Ohio 45036
513-228-1111
hickslawoffice@gmail.com

COUNSEL FOR APPELLANT, JEFFREY STEVENS

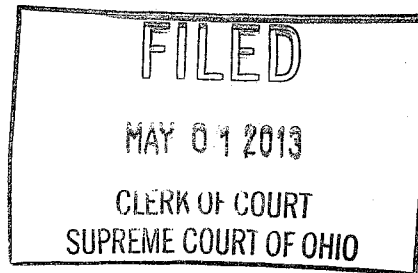
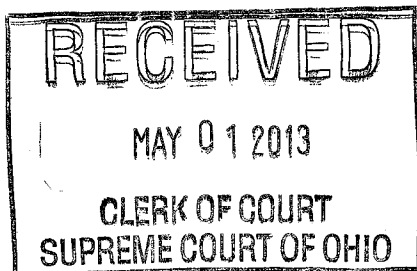


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STATEMENT OF THE CASE AND FACTS

Detective Randy Sanders with the US 23 Pipeline Task Force investigated the corrupt activity of Rodger Cassell, Jeffery Stevens, Zachary Bondurant, Melinda Steward, Megan Butcher, Maudy Jackson, Jamie Robinette, Richard Rickman, and Joseph Cowman. The investigation lasted from August 2010 through March 2011. (T.p. 212-213).

Melinda Steward began dating Jeffery Stevens in August, 2010. At that time she gave him \$3,500.00. (T.p. 423). Megan Butcher has a child with Rodger Cassell and is the sister of Melinda Steward. (T.p. 388-390). Butcher was living at 438 Olive Street and then moved to 440 Olive Street in Greenfield, Highland County, Ohio in December, 2010. (T.p. 390). Butcher saw Jeffery Stevens and Rodger Cassell involved in drug transactions in September, 2010. Cassell would weigh crack cocaine for Stevens. (T.p. 391-392). Melinda Steward also saw Cassell give narcotics to Stevens in October, 2010. (T.p. 425). Maudy Jackson also saw Stevens and Cassell together at her house delivering narcotics (T.p. 381-382).

On several occasions Detective Sanders took undercover informants to purchase narcotics from alleged drug dealers. Brittany Finnegan testified that she became an informant in order to stay clean and make money. (T.p. 309). Jason Birchfield testified that he became an informant in order to make money and help keep other people off of drugs. (T.p. 344-345).

On October 15, 2010 Sanders took Finnegan to Holtfield Station in Hillsboro to meet with Richard Rickman. (T.p. 220-222). Finnegan advised that she purchased heroin from Rickman on that day and then turned the narcotics over to Sanders (S.E. 1). (T.p. 220-222, 313).

On October 17, 2010, Sanders followed Finnegan to a location in Greenfield to purchase narcotics from Jeffery Stevens. (T.p. 225-226). Finnegan testified that she purchased heroin

from Stevens and identified Stevens in the court room. The transaction was audio recorded (S.E. 29) and Stevens' voice was identified. (T.p. 319-320). Finnegan gave the narcotics to Sanders (S.E. 3). (T.p. 227).

On October 17, 2010, Sanders took Finnegan to Holtfield Station to meet Rickman. (T.p. 228-230). Finnegan advised she purchased narcotics from Rickman on that date. (T.p. 320-321). Finnegan gave the narcotics to Sanders (S.E. 5). (T.p. 228-230).

On October 19, 2010 Sanders took Finnegan to Holtfield Station to meet Rickman. (T.p. 230-231). Finnegan advised she purchased narcotics from Rickman. (T.p. 321-323). Finnegan gave the narcotics to Sanders (S.E. 7). (T.p. 230-231).

Sanders took Finnegan to purchase narcotics from Stevens on October 20, 2010. (T.p. 231-233). Finnegan testified that she purchased narcotics on that date. The transaction was audio recorded. (S.E. 30). Stevens' voice was identified for the jury. (T.p. 323-327). Finnegan gave the narcotics purchased to Sanders (S.E. 9). (T.p. 231-233).

Melinda Steward testified that she drove Stevens to Finnegan's house and to meet Richard Rickman. Steward also saw Rickman come to her house to meet Stevens. (T.p. 423-424). Richard Rickman testified that he sold drugs to Brittany Finnegan on three occasions in October, 2010. (T.p. 412-413). Rickman further testified that he purchased ½ gram to a full gram from Jeffery Stevens and then sold part of that Finnegan. (T.p. 413-414, 420).

In February and March, 2011 Joseph Cowman was living in what is commonly known as the Old Elliott Hotel. (T.p. 346). Cowman lived across the hall from Zachary Bondurant. (T.p. 443-444). Jamie Robinette was living with Cowman during this time period. (T.p. 457). Jason Birchfield knew both Cowman and Bondurant. (T.p. 346). The residence of Cowman and Bondurant was mapped in relation to the head start school. (T.p. 207-208, 236-237). Detective

Denny Kirk with the Highland County Sheriff's Office identified the map (S.E. 28) (T.p. 207-208). The address of the head start school is 156 Jefferson Street in Greenfield. (T.p. 208). Detective Kirk identified a letter received from Sheena Weade of the Greenfield Head Start School in the regular course of business. (S.E. 20). (T.p. 208). Detective Kirk also testified to knowing the head start to be operational based on his personal observations. Additionally, the letter indicated the school has been operational for 38 years and 5 months. (S.E. 20). (T.p. 209). Finally the letter advises the school was operational in January through March 2011. (T.p. 209). The distance from the school to the Old Elliott Hotel, the home of Cowman and Bondurant, was 477 feet. (S.E.28). (T.p. 209-210).

On February 3, 2011 Sanders took Jason Birchfield to purchase narcotics from Joseph Cowman. (T.p. 236). The transaction was video recorded. (S.E.31). (T.p. 239, 346-351). During the transaction, Sanders watched the only door of the apartment complex and no one came out or went in. (T.p. 240). During the transaction, Cowman went to Bondurant and got heroin and brought it back to Birchfield. (T.p. 352). Birchfield gave the heroin to Sanders (S.E. 11). (T.p. 239).

On February 4, 2011 Sanders took Birchfield to the Old Elliott Hotel to purchase narcotics. (T.p. 244). Birchfield went into Cowman's apartment and Sanders watched the only door to the apartment complex. No one exited or entered the apartment during the transaction. (T.p. 244-246, 353-354). Birchfield gave the heroin to Sanders. (S.E. 13). The transaction was video recorded. (S.E. 32). (T.p. 244-246).

On February 5, 2011 Birchfield spoke to Bondurant by phone. Bondurant offered a couple of grams to Birchfield. Birchfield went to the apartment and purchased the heroin. (T.p. 248-250, 354-356). Sanders watched the apartment door and no one entered or exited during the

transaction. (T.p. 248-250). Birchfield gave the heroin to Sanders. (S.E. 15). The transaction was video recorded. (S.E. 33). (T.p. 248-250). The serial numbers from the money used in the transaction were recorded (S.E. 21). (T.p. 252). Detective Doug Estes with the Clinton County Sheriff's Department executed a search warrant at a storage facility in Clinton County. Found within the facility were cars belonging to Rodger Cassell. Found in the trunk of one of the cars was about \$36,00.00 in US currency. (T.p. 469-470). Detective Warner of the Highland County Sheriff's Office, identified a copy of some of the money located in the search warrant (S.E. 22). The serial numbers from (S.E. 22) matched the serial numbers of the money in (S.E. 21). The buy money from the drug transaction on February 5, 2011 was found in the trunk of Rodger Cassell's car. (T.p. 370-373).

Joseph Cowman testified that he purchased heroin from Zach Bondurant during the period of February through March 2011. Cowman then sold that heroin to Jason Birchfield. Cowman would take the money across the hall to Bondurant, Bondurant would give Cowman the heroin and Cowman would return to Birchfield with the heroin. Cowman advised that he usually told Bondurant who was buying the heroin. In every transaction, Cowman got the heroin from Bondurant and then provided that heroin to Birchfield. (T.p. 445-446). Robinette confirmed Cowman's description of events in that Robinette saw Cowman walk to Bondurant's apartment to get the heroin Cowman sold to Birchfield, and Robinette saw Bondurant hand narcotics to Cowman. (T.p. 458-459, 464). At Jeffery Stevens' direction, Melinda Steward delivered narcotics to Bondurant. Steward delivered a couple of ounces of heroin to Bondurant at the direction of Rodger Cassell. (T.p. 428). Steward delivered heroin to Bondurant during the period of August, 2010 through March, 2011. (T.p. 437). Megan Butcher and Bondurant are cousins. Butcher saw Cassell give Bondurant heroin in December, 2010 at 440 Olive Street in Greenfield.

Bondurant would usually get two ounces at a time. Butcher advised she saw Bondurant give Cassell money. (T.p. 392-393). Butcher called Bondurant on March 3, 2011 and advised him to come to her home to get the narcotics from Cassell's apartment. (T.p. 394-395). Cowman testified that he saw Rodger Cassell at Zach Bondurant's apartment. (T.p. 443-444). Robinette advised he saw Rodger Cassell at Bondurant's apartment. Cassell brought Bondurant drugs as reported by Bondurant to Robinette. (T.p. 458). Cassell admitted he knew Bondurant but denied knowing Joseph Cowman. Cassell acknowledged recorded money from a drug transaction was found in his car. (T.p. 539-540).

On or about March 3, 2011 Megan Butcher advised Melinda Steward to drive to Dayton and get the narcotics from Rodger Cassell's apartment. When she returned, Bondurant was phoned and came over and got some of the narcotics. (T.p. 394-395, 426-427). Based on a tip, Detective Richard Warner performed a traffic stop of the vehicle driven by Melinda Steward in Greenfield. Upon searching the vehicle, detectives found heroin (S.E. 18) and cocaine (S.E. 17). (T.p. 367-368).

Stanton Wheesler and Megan Snyder, both expert witnesses in substance identification and weight, employed with the Bureau of Criminal Investigation and Identification (BCI&I), identified each substance purchased as cocaine or heroin or a mixture of the two. (S.E. 2, 3, 6, 8, 10, 12, 14, 16, 19). (T.p. 176-180, 189-206).

Jeffery Stevens and Zachary Bondurant went to trial on August 15, 2011. The jury found them both guilty on all counts.

ARGUMENT IN OPPOSITION TO PROPOSITION OF LAW #1

THE FOCUS OF R.C. 2923.31(C) IS TO PROHIBIT GROUP, AND NOT INDIVIDUAL CONDUCT, THEREFORE R.C. 2923.31(C) REQUIRES ONLY THE ENTERPRISE AS A WHOLE PROFITED MORE THAN \$500.00.

R.C. 2901.04(A) requires a reviewing court to strictly construe criminal statutes against the state, however statutes "should not be given an artificially narrow interpretation that would defeat the legislative intent." *State v. White*, Slip Opinion, 2012-Ohio-2583, ¶ 20. This Court has noted that there is "little legislative history" about the enactment of Ohio's RICO statute, however comments "indicate an intent to impose the greatest level of accountability." *State v. Schlosser*, 79 Ohio St. 3d. 329, 333 (1997).

Ohio's Corrupt Activity Act, R.C. 2923.31, is patterned after the federal RICO Act and statutes passed by other states. *State v. Thrower* (1989), 62 Ohio App.3d 359, 369, 575 N.E.2d 863; *State v. Theisler*, App. No. 2005-T-0106, 2007-Ohio-213, at ¶30. In enacting the federal RICO Act, Congress found that "organized crime continues to grow" in part "because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact." Pub.L. 91-452, Section 1, 84 Stat. 922 (1970). "The substantive provisions of the RICO statute apply to insiders and outsiders, those merely 'associated with' an enterprise who participate directly and indirectly in the enterprise's affairs through a pattern of racketeering activity...*thus the RICO net is woven tightly to trap even the smallest fish, those peripherally involved with the enterprise...*once the conspiracy had been established, the government need show only 'slight evidence' that a particular person was a member of the conspiracy...a 'party to the conspiracy need not know the identity, or even the number, of his confederates. *State v. Siferd*, 2002-Ohio-6801, 151 Ohio App. 3d 103, 116, 783 N.E.2d 591, 600 (2002) aff'd, 2003-Ohio-2765, 99 Ohio St. 3d 145, 789 N.E.2d 237 (2003), citing *U.S. v. Elliot* (C.A.5, 1978), 571 F.2d 880, 902, *Hawkins v. U.S.* (1978), 439 U.S. 953, 99 S.Ct. 349, 58 L.Ed.2d 344, *Delph v. U.S.* (1978), 439 U.S. 953, 99 S.Ct 349, 58 L.Ed.25 344. (emphasis added).

To this end, Congress directed that "the provisions of this title shall be liberally construed

to effectuate its remedial purposes.” *U.S. v. Elliot* (C.A.5, 1978), 571 F.2d 880, citing Pub.L.91-452, §1, 84 Stat. 922 (1970).

Corrupt Activity is defined as follows: Any violation of section 2925.03 of the Revised Code when the proceeds of the violation, the payments made in the violation or the value of the contraband illegally, possessed, sold, or purchased in the violation exceeds five hundred dollars, or *any combination of violations* described in division (I)(2)(c) of this section *when the total proceeds of the combination of violations*, payment made in the combination of violations or value of the contraband illegally possessed, sold, or purchased in the *combination of violations exceeds five hundred dollars*. O.R.C. §2923.31(I)(2)(c). Emphasis added. Corrupt Activity is further defined as attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following: §2925.03 or §2925.11.

Corrupt activity requires two or more people working together so it only makes sense, together with the purpose of the statute, that the value would be combined among the offenders engaged in the enterprise. In other words, it is only logical that the \$500.00 referred to would be of the enterprise as a whole.

In the case at bar, the evidence was substantial that the enterprise dealt with more than \$500.00. Rodger Cassell owned several vehicles and in one of those vehicles detectives found around \$36,000.00; part of this money was recorded money from a controlled buy. (S.E. 21) (S.E. 22). (T.p. 252, 469-470, 370-373). Additionally, transactions were made with both Richard Rickman and Brittany Finnegan for the purchase of heroin.

Should this Court require each individual to participate in violations totaling \$500.00, this element too has been overcome in the case at bar. Pursuant to O.R.C. §2923.31(I)(c), “...or the value of the contraband or other property illegally possessed, sold, or purchased in the violation

exceeds five hundred dollars...”. In the case at bar the testimony was that \$40.00 was paid for .1 grams of heroin. (T.p. 178, 220). This was heroin purchased from Richard Rickman and therefore purchased from Appellant Stevens. Additionally, Megan Butcher and Melinda Steward both saw Rodger Cassell provide narcotics to Appellant Stevens. This court has held that “when the state relies on circumstantial evidence to prove an element of the offense charged, there is no requirement that the evidence must be irreconcilable with any reasonable theory of innocence in order to support a conviction.” *State v. Jenks* (1991), 61 Ohio St.3d 259, 274. This Court has further held that “the verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier of facts. The inquiry is, after reviewing the evidence in the light most favorable to the prosecution, whether any reasonable trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Jackson v. Virginia* (1979), 443 U.S. 307, 319. In the case at bar, the jury came to the conclusion that the heroin sold from Appellant Stevens to Rickman was of a value allowing the \$500.00 threshold to be met and the jury also found that Appellant Stevens was responsible for the \$36,000.00 held by ringleader, Rodger Cassell.

At a minimum, Appellant was conspiring with Rodger Cassell pursuant to O.R.C. §2923.03(A)(2) and (A)(3). Appellant does not have to be indicted for complicity, it is automatically included within the offense. The United States Supreme Court, in *Salinas*, squarely applied this principle to RICO cases. *Salinas v. United States*, 522 U.S. 52, 61-65 (1997). The Court held that even though a defendant may not be liable for a substantive RICO violation under 18 U.S.C. § 1962(c) unless he himself committed at least two racketeering acts, a defendant, nevertheless, may be liable for a RICO conspiracy offense even if he did not himself commit or agree to commit at least two racketeering acts. *Id.* at 61-65. In reaching this

conclusion, the Supreme Court relied upon two well-established tenets of conspiracy law which also govern Section 1962(d). The Supreme Court first observed that “a person may conspire for the commission of a crime by a third person.” *Id.* at 64, quoting *United States v. Holte*, 236 U.S. 140, 144 (1915). The *Salinas* Court also recognized that “[a] person . . . may be liable for conspiracy even though he was incapable of committing the substantive offense.” *Id.* at 64, citing *United States v. Rabinowich*, 238 U.S. 78, 86 (1915). Therefore, Appellant was complicit with Rodger Cassell in his obtaining \$36,000.00 and is liable for a RICO conspiracy offense even if he did not himself commit or agree to commit at least two racketeering acts.

The purpose of the statute is to capture even the smallest fish involved in the enterprise, therefore the value of violations by the enterprise should be aggregated. To hold otherwise would not effectuate the purpose of the statute, and would allow, as the trial and appellate courts stated, individuals to escape punishment because they personally never dealt in a transaction over \$500, although the enterprise they were involved in profited significantly. Considering Ohio's RICO statute is meant to impose heightened accountability for organized criminal activity involving more than two people, the appellate court interpreted the statute “to require only that the enterprise as a whole profited more than \$500.” *State v. Bondurant*, 4th Dist. Nos. 11CA25 and 11CA27, 2012-Ohio-4912. Because Stevens does not dispute that the enterprise in this case profited more than \$500, there was sufficient evidence to convict him of engaging in a pattern of corrupt activity.

Additionally, Appellant was conspiring with Rodger Cassell and Appellant was complicit with Rodger Cassell in obtaining the \$36,000.00 that was seized. Therefore, even if the amount is not aggregated, Appellant is liable for a RICO conspiracy offense although he did not himself commit or agree to commit at least two racketeering acts.

Therefore the State of Ohio respectfully requests this Court uphold the decision and judgment of the trial and appellate courts and overrule and deny Appellant's first proposition of law.

ARGUMENT IN OPPOSITION TO PROPOSITION OF LAW #2

THE CLEAR LANGUAGE OF R.C. §2923.32(B)(1) PERTAINS TO THE ACTS OF THE ENTERPRISE THEREFORE APPELLANT WAS PROPERLY CONVICTED OF A FIRST DEGREE FELONY WHEN OTHER MEMBERS OF THE ENTERPRISE WERE ENGAGED IN FELONIES OF THE FIRST, SECOND, AND THIRD DEGREES.

Appellant contends that the trial court erred in convicting Appellant of a first degree felony after the jury found him guilty of Engaging in a Pattern of Corrupt Activity pursuant to R.C. §2923.32(A)(1). First and foremost, it should be noted that defense counsel at no time objected to the verdict forms or the indictment, despite several opportunities to do so.

Corrupt activity is defined as engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following...a violation of §2925.03 or §2925.11. R.C. §2923.31(I)(c). Pattern of Corrupt Activity is defined as two or more incidents of corrupt activity...that are related to the affairs of the same enterprise...at least one of the incidents forming the pattern shall constitute a felony. R.C. §2923.31(E). Pursuant to the clear language of R.C. §2923.32(B)(1), because one of the predicate offenses of the enterprise was a violation of the first, second, or third degree, Appellant Stevens was properly charged with and convicted of a felony of the first degree.

Megan Butcher testified that she was originally charged with felonies of the first, second and, third degrees. (T.p. 398). Melinda Steward testified she was originally charged with felonies of the first and third degrees. (T.p. 430). Finally Rodger Cassell, witness for Appellant, admitted that he had entered a plea of guilty to a first degree felony. It is apparent that at least one of the offenses making up the pattern of activity was a felony of the first, second, or third

degree. Additionally, Appellant was complicit in the commission of this crime. Pursuant to R.C. §2923.03(F), a person conspiring with another or an aider or abettor shall be punished and sentenced the same as the principal offender. Therefore, Appellant was properly found guilty of a felony of the first degree.

Several players in this enterprise were convicted of felonies of the third, second, and first degrees. R.C. §2923.32(B)(1), being modeled after the Federal Rules, correctly swept Appellant into the net of the enterprise. The trial court properly sentenced Appellant after the jury found him guilty of a first degree felony based on the predicate offenses of the enterprise. Therefore the State of Ohio respectfully requests this Court uphold the decision and judgment of the trial and appellate courts and overrule and deny Appellant's second proposition of law.

CONCLUSION

The RICO net is woven tightly to trap even the smallest fish, and those peripherally involved with the enterprise. Accordingly, the focus of R.C. 2923.31(C) is to prohibit group and not individual conduct, therefore R.C. 2923.31(C) requires only the enterprise as a whole to profit more than \$500.00. Additionally, even if the amount is not aggregated, Appellant is liable for a RICO conspiracy offense although he did not himself commit or agree to commit at least two racketeering acts. Therefore the State of Ohio respectfully requests this Court overrule and deny Appellant's first proposition of law.

Others in this enterprise were convicted of felonies of the third, second, and first degrees. R.C. §2923.32(B)(1), being modeled after the Federal Rules, sweeps Appellant into the net of the enterprise. Pursuant to the clear language of R.C. §2923.32(B)(1), because one of the predicate offenses of the enterprise was a violation of the first, second, or third degree, Appellant Stevens was properly charged with and convicted of a felony of the first degree. Therefore the trial court

properly sentenced Appellant after the jury found him guilty of a first degree felony based on the predicate offenses of the enterprise and the State of Ohio respectfully requests this Court overrule and deny Appellant's first proposition of law

Therefore the State of Ohio respectfully requests this Court uphold the decision and judgment of the trial and appellate courts and overrule and deny Appellant's first and second proposition of law.

Respectfully Submitted,

Anneka P. Collins

Anneka P. Collins (0079572)
Highland County Prosecutor
112 Governor Foraker Place
Hillsboro, Ohio 45133
(937) 393-1851
FAX (937) 393-6501
acollins@co.highland.oh.us

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and accurate copy of the foregoing was served upon Bryan Scott Hicks, Attorney for Appellant, at P.O. Box 359, Lebanon, Ohio 45036 by regular US mail this 30th day of April, 2013.

Anneka P. Collins

Anneka P. Collins (0079572)
Highland County Prosecutor