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## BRIEF

Appellant State of Ohio respectfully submits its Reply Brief pursuant to S. Ct. Prac. R.

6.4.

McGlothan misrepresents the Eighth District Court of Appeal's holding by stating the appellate court did not hold that prosecutors were required to prove shared financial responsibilities to establish domestic violence. To the contrary, that is the precisely the Eighth District's finding and the only issue before this Honorable Court.

The sole basis upon which the Eighth District held that the victim was not a family or household member was the lack of testimony the couple shared living expenses, as follows.

A majority of this court holds that the testimony at trial failed to demonstrate that Robinson was a family or household member within the meaning of R.C. 2919.25. As the Ohio Supreme Court recognized in *State v. Carswell*, 114 Ohio St.3d 210, 216, 2007-Ohio-3723, 871 N.E.2d 547, " \* \* \* it is a person's determination to share some measure of life's responsibilities with another that creates cohabitation." Although Robinson testified that defendant was her boyfriend and he had slept over at her apartment for roughly a year, there was no testimony that the couple shared any living expenses, such as rent and utilities, which would demonstrate shared familial or financial responsibilities. *Accord State v. Church*, 8th Dist. No. 85582, 2005-Ohio-5198 (holding evidence to be insufficient to show that the victim was family or household member as required for conviction of domestic violence where defendant and victim, boyfriend and girlfriend, did not share any living expenses.)

*State v. McGlothan*, 8<sup>th</sup> Dist. No. 97212, 2012-Ohio-4049, ¶ 22. (Footnote omitted).

In dissent, Boyle, J. responded, finding:

As noted by the majority, the state presented evidence that McGlothan was the victim's boyfriend and that he had lived with the victim in her apartment for approximately a year. Specifically, the victim testified that McGlothan, her boyfriend, had slept over every night. Reviewing this evidence in a light most favorable to the state, I find that any rational trier of fact could have found that the state proved that McGlothan was a "household member" beyond a reasonable doubt. *State v. Gomez*, 9th Dist. Nos. 25496 and 25501, 2011-

Ohio-5475 (evidence of an intimate relationship, i.e., boyfriend-girlfriend, coupled with evidence that defendant and victim live together is sufficient to satisfy the “household member” element).

Unlike the majority, however, I do not believe that it was necessary for the state to prove that the couple shared any living expenses when it was established that McGlothan lived there. For this same reason, I find the majority’s reliance on *State v. Church*, 8th Dist. No. 85582, 2005-Ohio-5198, misplaced. In *Church*, the only evidence connecting the victim with the defendant for purposes of the domestic violence charge was that they were boyfriend and girlfriend; there was no evidence that the defendant lived with the victim at her home. In fact, the defendant was married to another woman. *Id.* at ¶ 36. Under those circumstances, evidence that the defendant helped with the victim’s living expenses would be necessary and relevant to support a domestic violence charge. I find this case to be distinguishable.

*Id.* ¶¶ 46-47.

McGlothan attempts to muddy the waters by arguing the element of “consortium” was not established and misrepresenting the victim’s testimony. But the Eighth District’s reversal of McGlothan’s domestic violence conviction was limited to the element of “shared familial or financial responsibilities.” Without testimony that the couple shared any living expenses, such as rent and utilities, the Eighth District found the State failed to demonstrate the element of “shared familial or financial responsibilities.” *Id.*, ¶ 22. No other elements were found lacking. No other issue is before this Court.

McGlothan cites various opinions for his statement that courts engage in fact intensive inquiries to determine whether individuals in domestic violence cases satisfy the element of “cohabitation.” Some of McGlothan’s cited cases include the factor of shared living expenses in order to sustain a conviction, some do not. The cases illustrate that, as in Ohio, shared living expenses is but one factor to prove “shared familial or financial responsibilities,” not a requirement as found by the Eighth District.

Finally, McGlothan argues that if this Honorable Court accepts the State's proposition of law and holds that a victim and defendant do not have to share living expenses to prove cohabitation, *State v. Williams* (1997), 79 Ohio St.3d 459, 683 N.E.2d 1126, 1997-Ohio-79 will be effectively overruled. Not so. In *Williams*, this Court set forth a non-exhaustive list of factors establishing shared familial or financial responsibilities,

Having considered the above definitions of "cohabitant" and "family or household member," we conclude that the essential elements of "cohabitation" are (1) sharing of familial or financial responsibilities and (2) consortium. R.C. 2919.25(E)(2) and related statutes. Possible factors establishing shared familial or financial responsibilities might include provisions for shelter, food, clothing, utilities, and/or commingled assets. Factors that might establish consortium include mutual respect, fidelity, affection, society, cooperation, solace, comfort, aid of each other, friendship, and conjugal relations. These factors are unique to each case and how much weight, if any, to give to each of these factors must be decided on a case-by-case basis by the trier of fact.

*Id.*, 79 Ohio St.3d at 465.

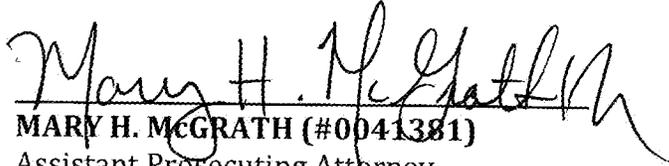
Adoption of the State's proposition of law would be entirely consistent with *Williams*. While *Williams* listed as possible factors of shared familial or financial responsibilities as providing shelter, food, clothing, utilities, and/or commingled assets, the Eighth District elevated shared financial responsibilities to an essential element of cohabitation. This requirement is contrary to *Williams* and should be held as but one element in the cohabitation analysis. The Eighth District's bar of domestic violence prosecutions solely on the basis a couple does not share living expenses is to deny the heightened protection of R.C. 2919.25 to cohabitants and family or household members who satisfy other criteria.

**CONCLUSION**

The State respectfully requests that this Honorable Court reverse the Eighth District's decision in *McGlothan* and hold that the State is not required to prove that a victim and a defendant share living expenses in order to demonstrate shared familial or financial responsibilities to prove cohabitation within the meaning of family or household member in domestic violence prosecutions.

Respectfully submitted,

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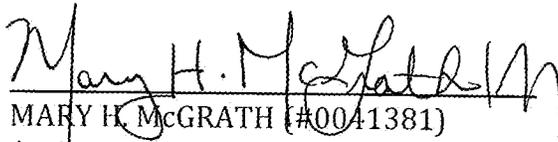
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**CERTIFICATE OF SERVICE**

A copy of the foregoing Reply Brief of Appellant State of Ohio was sent by regular U.S. mail this 19<sup>th</sup> day of June, 2013, to Erika Cunliffe, Assistant Public Defender, Cuyahoga County Public Defender's Office, 310 Lakeside Avenue, Suite 200, Cleveland, Ohio 44113.



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