

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellant,

v.

DE'ARGO GRIFFIN

Defendant-Appellee.

Case No. 2013-1129

2013-1319

On Appeal and Certified Conflict
from the Montgomery County
Court of Appeals, Second
Appellate District

MERIT BRIEF OF APPELLEE, DE'ARGO GRIFFIN

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STATEMENT OF FACTS

I. Procedural Facts

The Second District Court of Appeals overturned Mr. Griffin's Racketeering Conviction on May 31, 2013. The State filed a Motion to Certify Conflict on June 10, 2013 on the issue of the Racketeering Conviction. The State of Ohio filed a Notice of Appeal on July 15, 2013. On July 17, 2013, the Second District Court of Appeals certified to this Court a conflict between its decision, and the decision of the Ninth Appellate District in *State v. Habash*, 9th Dist. No. 17073, 1996 WL 37752 (Jan. 31, 1996) on the following question:

In a trial for engaging in a pattern of corrupt activity under R.C. §2923.32, is an instruction sufficient to convey the law on the element of "enterprise" when the instruction states the elements of the offense, provides the statutory definitions of "enterprise" and "pattern of corrupt activity," and informs the jury that it has to find both beyond a reasonable doubt?

This Court accepted the appeal and Certified the Conflict on October 23, 2013.

II. Trial Facts

Appellee requested a separate instruction on "enterprise" as an element of engaging in a pattern of corrupt activity as was done in *State v. Fritz*, 178 Ohio App. 3d 65, 2008 Ohio App Lexis 3702, 896 NE2d 778. In all other respects appellee accepts appellant's statement of facts pursuant to S. Ct. Prac. R. 16.03(B)(2).

ARGUMENT

Issue Certified for Review:

In a trial for engaging in a pattern of corrupt activity under R.C. §2923.32, is an instruction sufficient to convey the law on the element of “enterprise” when the instruction states the elements of the offense, provides the statutory definitions of “enterprise” and “pattern of corrupt activity,” and informs the jury that it has to find both beyond a reasonable doubt?

Proposition of Law No. I:

In a trial for engaging in a pattern of corrupt activity under R.C. §2925.03 the Court is required to give an expanded definition of enterprise upon Defendant’s request.

“[I]t is prejudicial error in a criminal case to refuse to administer a requested charge which is pertinent to the case, states the law correctly, and is not covered by the general charge.” *State v. Scott* (1986), 26 Ohio St. 3d 92, 497 NE2d 55.

Mr. Griffin requested that a definition of “enterprise” be given to the jury in accordance with the definition delineated in *State v. Fritz*, 178 Ohio App. 3d 65, 2008 Ohio App Lexis 3702, 896 NE2d 778. *Fritz* held that the state must prove both that the Defendant was affiliated with an “enterprise” and the “enterprise” engaged in a pattern of corrupt activity. To prove enterprise, the State is required to prove a structured relationship between parties, a purpose of the organization to commit criminal activities, and sufficient longevity of the organization to commit the requisite number of acts. These are all components of an enterprise, and the failure to grant the request to so instruct the jury is error under *State v. Scott, supra*.

It is true that R.C. §2923.31(C) states that the definition of enterprise includes:

“ ‘Enterprise’ includes any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity. ‘Enterprise’ includes illicit as well as licit enterprises.”

This is not an exhaustive nor even complete definition. Two people that commit a crime on the spur of the moment are not a structured organization subject to the strictures of the organized crime laws.

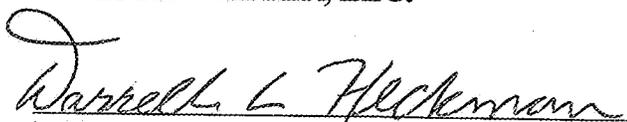
Federal Racketeering Law, upon which Ohio's statute is based, requires proof of: (1) an ongoing organization, formal or informal; (2) with associates that function as a continuing unit; and (3) with a structure separate and apart, or distinct, from the pattern of corrupt activity; *United States v. Turkette* (1981), 452 U.S. 576 (1981). The absence of either organizational structure or of a continuing operation of the group is fatal to a Racketeering charge, and the jury should have been so instructed as requested. The failure to give the expanded definition was properly held to be reversible error both in this case and in the case of Mr. Griffin's co-defendant James Franklin, whose case was not appealed. *State v. Franklin*, 2011 Ohio 6802.

CONCLUSION

It is important that jurors, who are laymen, receive instructions that are as clear as possible. Where, as here, a request is made for a jury instruction that properly states the law and is not covered by the rest of the jury charge, it is reversible error to fail to give the expanded request. The judgment of the Court of Appeals should be affirmed.

Respectfully Submitted,

**HARRIS, MEYER, HECKMAN
& DENKEWALTER, LLC.**



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CERTIFICATE OF SERVICE

A copy of the foregoing **Merit Brief of Appellee, De'Argo Griffin** was sent by first class ordinary mail, prepaid postage to Kirsten A. Brandt, Assistant Prosecuting Attorney, P.O. 972, Dayton, Ohio 45422 this 2nd day of January 2014.



Darrell L. Heckman

APPENDIX

Pursuant to S.Ct. Prac. R. 16.03(B)(3), appellee accepts appellant's appendix as a complete inclusion of materials needed or useful for the appendix.