

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellant,

vs.

DE'ARGO GRIFFIN

Defendant-Appellee.

Case No. 2013-1129
2013-1319

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

Court of Appeals
Case No. 24001

REPLY BRIEF
OF APPELLANT, THE STATE OF OHIO

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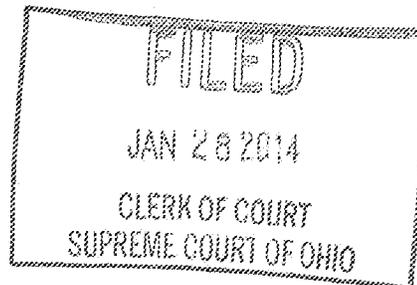


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In a trial for engaging in a pattern of corrupt activity under R.C. 2923.32, is an instruction sufficient to convey the law on the element of “enterprise” when the instruction states the elements of the offense, provides the statutory definitions of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

Proposition of Law:

In a trial for engaging in a pattern of corrupt activity under R.C. 2923.32, a jury instruction which states the elements of the offense, provides the statutory definitions of the elements, and informs the jury that it has to find both an “enterprise” and a “pattern of corrupt activity” beyond a reasonable doubt is sufficient to convey the law on the element of “enterprise.” The court is not required to instruct the jury using language from federal case law on the element of “enterprise.”

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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:

In a trial for engaging in a pattern of corrupt activity under R.C. 2923.32, a jury instruction which states the elements of the offense, provides the statutory definitions of the elements, and informs the jury that it has to find both an “enterprise” and a “pattern of corrupt activity” beyond a reasonable doubt is sufficient to convey the law on the element of “enterprise.” The court is not required to instruct the jury using language from federal case law on the element of “enterprise.”

In his merit brief, Appellee De’Argo Griffin responds to the State’s argument by stating the federal elements of an “enterprise” and asserting that the statutory definition of “enterprise” in R.C. 2923.31(C) is insufficient to cover those elements. Griffin overlooks that the structural requirements of an “enterprise” set forth in federal law are based on the ordinary meaning of the terms used in the federal RICO statute, which are very similar to the terms used in R.C. 2923.31(C) and R.C. 2923.32. *See Boyle v. United States*, 556 U.S. 938, 129 S.Ct. 2237, 173 L.Ed.2d 1265 (2009). Thus, when a trial court instructs the jury on the statutory elements of the offense of engaging in a pattern of corrupt activity, includes the statutory definitions for “enterprise” and “pattern of corrupt activity,” and informs the jury that “enterprise” and “pattern of corrupt activity” are separate elements that the State must prove, its instruction is adequate to convey the substance of the requirements recognized by the United States Supreme Court in *Boyle* and *United States v. Turkette*, 452 U.S. 576, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981).

Amicus curiae, Office of the Ohio Public Defender (“OPD”), also filed a merit brief in support of Griffin. In its brief, OPD urges this Court to dismiss both the certified conflict case and discretionary appeal as being improvidently accepted. Its sole reason for dismissal is that Griffin and his co-defendant Anthony Franklin are similarly situated and should be treated equally. OPD asserts that “[b]ecause the State did not appeal Mr. Franklin’s case, his engaging-in-a-pattern-of-corrupt-activity conviction has been dismissed without prejudice by the trial court.” (Merit Brief of Amicus Curiae, p. 2) He argues therefore that “Mr. Griffin’s engaging-in-a-pattern-of-corrupt-activity conviction must remain reversed and must be dismissed without prejudice by the trial court.” (*Id.* at 3)

Franklin and Griffin are not similarly situated. While they were tried together and convicted of the same offenses, their cases are separate cases. The State has the discretion to decide which cases to appeal. The fact that the State exercised its discretion to appeal Griffin’s case, but not Franklin’s, cannot be used by Griffin to delay this Court’s review of this important issue.

CONCLUSION

For the reasons set forth in this reply brief and the State's Merit Brief, the State asks this Court to (1) deny OPD's request to dismiss this case as improvidently accepted and (2) consider the issue certified for review and the State's proposition of law and hold that, in a trial for engaging in a pattern of corrupt activity under R.C. 2923.32, a jury instruction which states the elements of the offense, provides the statutory definitions of the elements, and informs the jury that it has to find both an "enterprise" and a "pattern of corrupt activity" beyond a reasonable doubt is sufficient to convey the law on the element of "enterprise."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief was sent by first class mail on this 28th of January, 2014, to the following: Darrell L. Heckman, One Monument Square, Suite 200, Urbana, OH 43078 and Peter Galyardt, Assistant State Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215.

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