ORIGINAL

IN THE OHIO SUPREME COURT

STATE OF OHIO,	:	**CASE NO.: 2012-0216**
Plaintiff/Appellant	:	
vs.	:	**ON APPEAL FROM THE NINTH DISTRICT COURT OF APPEALS, SUMMIT COUNTY**
DAVID WILLAN	:	
Defendants/Appellee	:	**COURT OF APPEALS CASE NO.: CA-24894**

CROSS-APPELLEE WILLAN'S *ALLEYNE* BRIEF

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STATEMENT OF THE CASE

In November 2007, the Summit County Prosecutor's Office handed down a one-hundred and forty seven count secret indictment against Cross-Appellee David Willan and many co-defendants, alleging a RICO violation, False Representation in the Registration of Securities, Securities Fraud, Theft, Misrepresentations in the Sale of Securities, and Money Laundering among many other charges. Upon request of the State, Mr. Willan's case was severed. He was found guilty of all charges in his first trial, including Engaging in a Pattern of Corrupt Activity and False Representation in the Registering of Securities. In the second trial, Mr. Willan was found guilty of the charges for Tampering with Records and Falsification. On June 29, 2009, Mr. Willan was sentenced to a total of sixteen (16) years in prison.

On December 21, 2011, the Court of Appeals for the Ninth District ("COA") reversed 90 percent of Mr. Willan's convictions based entirely upon the insufficiency of the evidence. 12/21/11 Decision and Journal Entry ("Decision"). The Decision affirmed six of Mr. Willan's convictions. Relevant to this Court's consideration is the affirmance (on a difference basis than argued by the State or presented to the jury in the Trial Court) of three false representation in the registration of securities in violation of O.R.C. § 1707.44(B)(1). Based upon the three false representation in the registration of securities, the COA also upheld Mr. Willan's RICO conviction.

The Court of Appeals unanimously determined that the Trial Court incorrectly held that O.R.C. § 2929.14(D)(3)(a) automatically imposed a "mandatory 10-year prison term for any offender found guilty of the general offense of engaging in a pattern of corrupt activity set forth in R.C. 2923.32." Mr. Willan appealed to this Court and the State cross-appealed. This Court initially declined to take jurisdiction on May 23, 2012. Upon a Motion for Reconsideration, this

Court accepted Cross-Appellant State of Ohio'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."

On June 11, 2013, this Court issued its decision in *State v. Willan* (2013), 136 Ohio St. 3d 222. This Court determined by a four to three majority that ORC § 2929.14(D)(3)(a) was unambiguous and was capable of no other interpretation than the one advanced by the State. The Court held that "there is only one reasonable construction of R.C. 2929.14(D)(3)(a): a mandatory ten-year prison term is required 'if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree.' Because Willan fell squarely within the scope of this provision, the trial court correctly imposed the mandatory ten-year prison term."

On June 17, 2013, the Supreme Court of the United States ("SCOTUS") issued its opinion in *Alleyne v. United States*, 570 U.S. , 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013). Mr. Willan filed a Motion to Reconsider with this Court on June 21, 2013. In the Motion, Mr. Willan addressed *Alleyune*. That Motion was denied on September 4, 2013. On December 3, 2013, Mr. Willan filed a Petition for Writ of Certioari. The Writ was granted and judgment vacated on April 21, 2014. The case was remanded "for further consideration in light of *Alleyne v. United States*, 570 U. S. ___ (2013)." On September 24, 2014, this Court issued an Entry ordering the parties to brief the issue of the impact of *Alleyne* on the holding in *State v. Willan*. Mr. Willan files this Brief in response to that Order.

STATEMENT OF FACTS

The long and complicated facts of this case were set out in Mr. David Willan's Merit Brief, filed on November 14, 2012 in this matter. There is no need to repeat them in their entirety. Mr. Willan will only address the facts necessary to the issue involving *Alleyne.*

Mr. Willan was in the business of building, buying, rehabbing and renting and/or selling homes with a group of companies called the Evergreen Companies. Many home buyers would finance 80% of the purchase price and pay Evergreen 20% over time. Thus, Evergreen's profit from its home sales came over time or when the buyer refinanced. The notes receivable for the payments over time became a portion of Evergreen's assets. The delaying of profit impeded the cash flow of the company and the ability of the company to continue to buy and rehab homes. Although the assets continued to grow, Evergreen lacked the needed liquidity for continued building, buying and rehabilitating.

Mr. Willan hired a securities law firm to help determine if it might be possible to raise money through offering investments in the company. He worked with the attorneys for almost a year to develop a business plan to raise capital for Evergreen. Mr. Willan was concerned about the legal requirements necessary to raising money through investors and was adamant in instructing the attorneys at Roetzel & Andress that he wanted them to make sure he was in complete compliance with all of the laws and regulations regarding the raising of money. (Tr. Vol. 11, 1439, 1440 and Tr., Vol. 12, 1685-1687.) Mr. Willan continued to work with these attorneys for the next several years and repeatedly told them that he wanted to do whatever was necessary to ensure that his business complied with the law even when the law firm recommended action that exceeded that required under the law. *Willan*, 2011 Ohio 6603; 2011

Ohio App. LEXIS 5435, ¶ 3. In fact, he instructed them to go above and beyond what was legally necessary to make sure the he was in strict compliance. (Tr. Vol. 11, 1440.)

To implement this plan, Mr. Willan formed Evergreen Investment Corporation. Evergreen Investment was formed to purchase and hold the second mortgages that Evergreen Homes had received through its home sales and to secure investors to provide capital that would enable it to purchase the mortgages from Evergreen Homes. To accomplish this goal, Evergreen investment sold debt securities at first and then eventually secured capital directly through the sale of equity securities. These equity securities represented actual ownership interest in Evergreen Homes. *Willan*, 2011 Ohio 6603; 2011 Ohio App. LEXIS 5435, ¶ 4. With respect to the sale of its equity securities, Evergreen homes did not register these securities with the Division of Securities, but instead filed forms with the Division to notify the Division that they were exempt from the State's registration requirements. (Form D, State's Exs. 33, 34 and 35, p. 1.)

Mr. Willan remains convicted of six counts. The only convictions related to any products of the Evergreen Companies were the charges based upon the form (Form D) filed with the Division to notify them of the exemption of equity securities offering discussed in the preceding paragraph. (Counts Three, Four and Six for False Representation in the Registration of Securities.) There were three separate offerings and, thus, three separate forms and three separate charges, each alleging a violation of R.C. § 1707.44(B)(1). The form was the same for each of the three filings. Form D requires that some expenses related to the issuance must be listed but indicates that the internal expenses of the issuer are to be excluded. (State's Exs. 33, 34 and 35.) At one point on the Form D's, the expense of "commissions" is listed. Id. The Form D's for Evergreen Homes were completed by a Roetzel & Andress attorney. (Tr. Vol. 12, 1687.)

The attorney specifically testified that he did not discuss the manner in which he completed the Form D section regarding commissions because it was, and is, his belief that the forms were accurate because only commissions paid to outside salespeople were required to be listed. (Tr. Vol. 12, 1687-89, 1697.) The COA upheld Mr. Willan's conviction on these three counts on a different theory and a section of Form D not discussed with the jury, not raised by the State at any point prior to or during trial or at all in the parties' pleadings to the COA. *Willan*, 2011 Ohio 6603; 2011 Ohio App. LEXIS 5435, ¶ 66.

Mr. Willan's convictions for tampering with records and falsification also remain. These counts relate to Mr. Willan's failure to disclose a then 12-year-old misdemeanor conviction (for which he received only a small fine) on a form submitted to the State. While Mr. Willan did submit to a background check as required by the form, he did not include the conviction so these charges were affirmed.

Finally, the Count at issue before this Court is Count One. This conviction is for a violation of the RICO statute, ORC § 2923.32(B)(1),. As written in the Indictment, Count One included two detailed incidents of corrupt activity (aggravated theft) and a list of other Counts in the indictment that were "further incidents." These further incidents included additional counts in the Indictment: aggravated theft, theft from the elderly or false registration in the representations of securities, among others. The Verdict Form for Count One reads, in part: "We further find that at least one of the incidents of corrupt activity was False Representation in the Registration of Securities, Aggravated Theft **or** Theft from the Elderly." Count 1 Verdict Form, Apx. 4 (emphasis added). At the time that Mr. Willan was originally convicted, Mr. Willan was convicted of all of the enumerated crimes listed on the Verdict Form. When this Court took

jurisdiction, that was no longer the case as all of Mr. Willan's aggravated theft and theft from the elderly convictions had been vacated.

Therefore, the issue before this Court now is whether *Alleyne* prohibits the continued imposition of a mandatory ten-year sentence when the Verdict Form demonstrates only that the jury conclusively determined that aggravated theft, theft from the elderly **or** false representation in the registration of securities was one of the incidents of corrupt activity.

LAW AND ARGUMENT

A Mandatory Minimum Sentence Of Ten Years For Mr. Willan's Conviction Under ORC § 2923.32 Violates His Sixth Amendment Right As Expressed In In *Alleyne*

On June 17, 2013, SCOTUS handed down its decision in in *Alleyne v. United States*, 570 U. S. ___ (2013), Case No. 11–9335. In that decision, the Court found that because mandatory minimum sentences increase the penalty for a crime, any fact that increases the mandatory minimum is an "element" that must be submitted to the jury. The Court had held since its ruling in *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000) that facts that raise the sentence over the statutory maximum sentence for a crime must be found by a jury beyond a reasonable doubt and not by a judge. After *Apprendi*, the Court ruled in *Harris v. United States*, 536 U.S. 545 (2002) that the same principle did not apply to facts that raise the mandatory minimum sentence. In *Alleyne,* the Court overruled *Harris* and extended this principle of *Apprendi* to facts that must be found to increase a mandatory minimum "because there is no basis in principle or logic to distinguish facts that raise the maximum from those that increase the minimum, *Harris* was inconsistent with *Apprendi*. It is, accordingly, overruled." *Alleyne*, slip op at 15.

This holding of *Alleyne* is based upon the guarantees of the Sixth Amendment, which "provides that those 'accused' of a 'crime' have the right to a trial 'by an impartial jury.' This right, in conjunction with the Due Process Clause, requires that each element of a crime be proved to the jury beyond a reasonable doubt. *United States* v. *Gaudin*, 515 U. S. 506, 510, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995); *In re Winship*, 397 U. S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). The substance and scope of this right depend upon the proper designation of the facts that are elements of the crime." *Alleyne*, 570 U. S. ___, *11.

What *Alleyne* establishes is that any fact that causes the mandatory minimum to rise must now be considered an element of the crime and be conclusively found by a jury beyond a reasonable doubt. *See, e.g., United States v. Claybrooks*, 2013 U.S. App. LEXIS 18550, *8 (7th Cir.) ("After *Alleyne*, Claybrooks's mandatory minimum sentence must be determined by the drug quantity described in the jury's special verdict form. * * * The district judge cannot raise the mandatory sentencing floor based on its own determination that Claybrooks's offense involved additional amounts of narcotics beyond those determined by the jury.").

The concerns raised in *Alleyne* are particularly relevant to a case such as Mr. Willan's because the mandatory minimum may be elevated to the maximum penalty allowed for the conviction. ORC § 2923.32(B)(1), engaging in a pattern of corrupt activity, provides that the punishment for a violation is a felony of the second degree or a felony of the first degree if "at least one of the incidents of corrupt activity is a felony of the first, second, or third degree, aggravated murder, or murder..." ORC § 2929.14(A)(1) and (2) provide that the minimum sentences for felonies of the first and second degree are three and two years, respectively. This Court ruled in the instant case that those minimum sentences for a violation of ORC § 2923.32(B)(1) are increased to a mandatory minimum sentence of ten years (now eleven years after 2011 Ohio HB 86) when the conviction is for "corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree." *Willan,* ¶ 1.

Here, the ten-year mandatory minimum for Count One increases Mr. Willan's potential sentence to the maximum allowable for a felony of the first degree in the State of Ohio. Thus, the minimum was elevated from three years to ten years. The fact that a predicate act to a RICO conviction is a felony of the first degree "'alter[s] the defendant's statutorily mandated sentencing range, by increasing the mandatory minimum sentence.'" *United States v. O'Brien*

(2010), 560 U.S. 218; 130 S. Ct. 2169 at 2184 (Thomas, J., concurring) (citation omitted). As held in *Alleyne,* "the core crime and the fact triggering the mandatory minimum sentence together constitute a new, aggravated crime." *Alleyne*, 133 S.Ct. at 2161. Here, the "fact triggering the mandatory minimum sentence" was the Court's finding that felonies of the first degree were one of the incidents of corrupt activity for Mr. Willan's RICO conviction. This is the fact that increased Mr. Willan's sentence to a mandatory ten-years and, pursuant to *Alleyne*, must be found by the jury beyond a reasonable doubt. *Alleyne*, 133 S.Ct. at 2162-63.

Because *Alleyne* requires that the trigger for the mandatory minimum sentence be considered an "element" of the offense that must be determined by a jury beyond a reasonable doubt, the jury must find beyond a reasonable doubt that one of the incidents of corrupt activity is a felony of the first degree for a conviction under ORC § 2923.32 to require a mandatory minimum sentence of ten years. It is not simply enough that a defendant also be convicted of felonies of the first degree that *may* by definition be incidents of corrupt activity. The jury must make a factual finding that one of the incidents of corrupt activity *is* a felony of the first degree.

The jury's verdict hear fails *Alleyne* in two respects. Count One as charged in the Indictment was a violation of O.R.C. § 2923.32 and it included two specifically enumerated incidents of corrupt activity, both aggravated theft. Mr. Willan is no longer convicted of those crimes. Count One also swept within its orbit Counts Two through Six and Twenty-Eight through Thirty, all of which Mr. Willan was originally convicted at trial. Counts Two through Six charged violations of O.R.C. § 1707.44, Count Twenty-Eight charged Securities Fraud, Count Twenty-Nine charged Aggravated Theft, and County Thirty charged Theft from the Elderly. Counts Two, Five, Twenty-Eight, Twenty-Nine and Thirty were all reversed by the Court of Appeals on insufficiency grounds. Only Counts Three, Four and Six remain. In other

words, Mr. Willan only remains convicted of some of the false representations in the registration of securities counts.

The Verdict Form does not include a finding that the jury considered any of the counts remaining after the COA's decision to be incidents of corrupt activity. The Verdict Form only indicates that the jury found Mr. Willan guilty of a RICO violation. Because the verdict form is written in the disjunctive, it only includes a finding beyond a reasonable doubt that the jury found that either false representation in the registration of securities, aggravated theft ***or*** theft from the elderly were incidents of corrupt activity. There is no finding in the Verdict Form (or required by the jury instructions as discussed below) that the jury found beyond a reasonable doubt that false representations in the registration of securities was a predicate act. The fact that Mr. Willan was separately convicted of three counts of false representation in the registration of securities does not indicate that the jury found beyond a reasonable doubt that they were incidents in the pattern of corrupt activity.

Therefore, the only way a Court may reach the conclusion that one of the incidents of corrupt activity was "False Representation in the Registration of Securities" is to make a finding that Counts Three, Four and Six were incidents in the pattern of corrupt activity and the further finding that they are felonies of the first degree. None of these facts are contained in the Verdict Form. This is the type of judicial fact-finding that is now prohibited by *Alleyne* to support a mandatory minimum sentence.

If the Verdict Form had included an "and" instead of an "or," it may indicate that the jury had determined that False Representation in the Registration of Securities was a part of the pattern of corrupt activity. However, based on the way the Verdict Form is written, there is no

finding by the jury that Counts Three, Four and Six were incidents in a pattern of corrupt activity.

Regardless of whether it is an "and" or an "or", the Verdict Form does not demonstrate that Counts Three, Four and Six were an incidents of corrupt activity in the pattern of corrupt activity found in Count One or that any of the incidents of corrupt activity were felonies of the first degree. The Verdict Form does not even indicate that the RICO offense is a felony of the first degree. Without this finding, the Verdict Form does not support a ten-year mandatory minimum sentence. The Verdict Form does also does not contain any language such as "as charged in the indictment" that would allow the Court to rely upon or incorporate the Indictment.

Finally, there is nothing in the jury instructions that changes this analysis. The jury instructions, in fact, do just the opposite for two reasons. First, the jury instructions, like the Verdict Form, include the word "or" when referring to "False Representation in the Registration of Securities, Aggravated Theft, ***or*** Theft from the Elderly." Tr. Vol. 16, p. 2,001-2,002. The Court instructed the jury that it only had to find one of the enumerated offenses to arrive at the further finding on the Verdict Form. Id. The Verdict Form and jury instructions alike do not demonstrate or contain a finding that the jury found that False Representation in the Registration of Securities was a predicate act for Mr. Willan's RICO conviction.

The jury instructions further support the determination that a ten-year mandatory sentence for the conviction of Count One violates the principles of *Alleyne.* In the instructions, the Court, not the jury, makes the finding that the predicate acts are felonies of the first degree. The Court provided the jury with an instruction indicating that the felonies supporting the RICO conviction were felonies of the first degree. Tr. Vol. 16, p. 2,001. In other words, the Court removed the decision from jury's hand and made the determination itself when it instructed them

that the felonies supporting the RICO conviction were felonies of the first degree. There was no independent finding by the jury as required by *Alleyne*. Instead of demonstrating that the jury made the factual determination as required by *Alleyne,* the jury instructions conclusively demonstrate that no such finding was ever made by the jury. From the moment the jury was instructed by the Court, the decision was removed from their hands.

There simply is not a single document or citation to the transcript that demonstrates or even intimates that the jury found beyond a reasonable doubt that a False Representation in the Registration of Securities served as a predicate act for Count 1.

The jury instructions support the conclusion that Mr. Willan's ten-year mandatory minimum sentence runs afoul of *Alleyne.* Regardless, it is irrelevant because the jury instructions cannot be relied upon in the instant case. In *United States v. Lara-Ruiz* (2013), 721 F.3d 554 (8th Cir.), the Court found an *Alleyne* error despite the fact that the jury instructions included a definition that contained the necessary findings. The Court stated:

> The jury instructions indicated to the jury that they could find "that a firearm was used . . . if [the jury found] that it was brandished, displayed, used to strike someone or fired," thus, leaving open the option that the jury could find that the firearm was brandished. However, the jury verdict form given to the jury as part of its instructions specified no particular need for such a finding and none was found...Thus, because the jury did not find the brandishing, under *Alleyne*, the imposition of the seven-year mandatory minimum as permitted only by § 924(c)(1)(A)(ii), violated Lara-Ruiz's Sixth Amendment rights. 133 S. Ct. at 2162-63.
> *Lara-Ruiz*, 721 F.3d at 558.

An additional issue arises upon a further review the Verdict Form for Count One. The verdict form includes "False Representation in the Registration of Securities." Counts Three, Four and Six are all convictions for Form D. Form D is a form to exempt securities from registration. *Willan*, 2011 Ohio 6603; 2011 Ohio App. LEXIS 5435, ¶ 85 (noting that Form D

was for exempting, not registering, securities.) This is yet another example of how the Verdict Form fails to satisfy *Alleyne*.

The Ohio cases that have addressed *Alleyne* support Mr. Willan's position. In *State v. Fort,* 2014-Ohio-3412; 2014 Ohio App. LEXIS 3341 (8th App. Dist.), the Court of Appeals dealt with *Alleyne* in the context of O.R.C. 2925.03(C)(4), the same mandatory minimum at issue here. There, the defendant was convicted of trafficking in cocaine and was sentenced to a mandatory minimum sentence of the full term allowed by a first degree felony. The *Fort* Court recognized that *Alleyne* required that the fact triggering this mandatory minimum term be included in the jury's verdict form. *Fort*, 2014-Ohio-3412; 2014 Ohio App. LEXIS 3341, ¶ 32. The Court stated that while the "Supreme Court's decision in *Alleyne* leads to the conclusion that Ohio's major drug offender statutes could be constitutionally infirm," that was not the case before it because the jury had specifically found that Form "possessed over 100 grams of cocaine." Id. Because this "enhancing element was found by the jury," the sentence was upheld. Id.

Other decisions addressing *Alleyne* are currently before this Court. See, *State v. Bevly* (2013), 136 Ohio St. 3d 1561, *State v. F.R.* (2014), 140 Ohio St. 3d 1414 (Discretionary appeal accepted and held for the decision in *Bevly*) and *State v. North* (2014), 138 Ohio St. 3d 1432 (same). In *Bevly*, the issue before this Court is whether the mandatory sentence required by a finding under is O.R.C. 2907.05(C)(2)(a) (gross sexual imposition) implicates a defendant's Sixth Amendment right as expressed in *Alleyne*. O.R.C. 2907.05(C)(2)(a) provides that if a conviction under this statute is supported by evidence in addition to the testimony of the victim, the sentencing court must impose a prison sentence. The salient inquiry is whether that finding (that there was evidence corroborating the victim's statement) is a "fact," because only facts must be found by a jury beyond a reasonable doubt. The rulings on *Bevly*, et. al, should have no

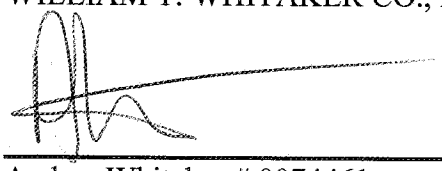
impact on the specific decision presently before the Court. In the instant case, the "fact" at issue is what crimes were committed in furtherance of (was a predicate act to) the RICO charge. What conduct of a defendant makes up predicate acts in a RICO case is clearly an issue of fact. In *Bevly,* etc., the State is arguing that a sentencing court is being called upon to judge the character of the evidence provided and not to decide a fact that must be decided by a jury.

What is relevant about *Bevly,* etc. is that it appears all parties agree that if the factor is determined to be a "fact," then it must be determined by a jury. In these cases, if it is a fact, there is nothing in the jury's verdict that demonstrates that it determined that there was corroborating evidence. The same is true for Mr. Willan's Verdict Forms. Even examining all of the Verdict Forms and not simply that Verdict Form for Count One, there is nothing explicit or implicit that demonstrates that the jury determined that a specific first degree felony was a predicate act to the RICO conviction.

CONCLUSION

The *Alleyne* decision requires that Mr. Willan's mandatory ten-year sentence be vacated as it was imposed in violation of the Sixth Amendment to the United States Constitution.

Respectfully submitted,
WILLIAM T. WHITAKER CO., L.P.A.



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CERTIFICATE OF SERVICE

A copy of the foregoing was served by regular U.S. mail this 13th day of October, 2014 upon:

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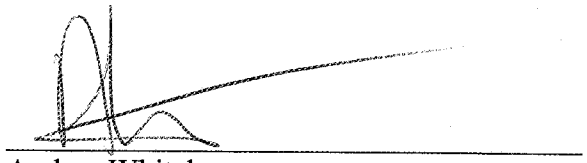

Andrea Whitaker

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SUPREME COURT OF OHIO

The Supreme Court of Ohio

State of Ohio

v.

David Willan

Case No. 2012-0216

ENTRY

(CORRECTED)

This cause came on for further consideration upon the remand of the United States Supreme Court for further consideration in light of *Alleyne v. United States*, 570 U. S. ___ (2013), and the motion to remand to the trial court of appellant/cross-appellee.

It is ordered by the court that the parties are to brief the issue of the impact of *Alleyne v. United States*, 570 U.S. ___, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013), on this court's holding in *State v. Willan*, 136 Ohio St.3d 222, 2013-Ohio-2405, 994 N.E.2d 400. Appellant/cross-appellee shall file a brief within 20 days of the date of this entry, appellee/cross-appellant shall file a brief within 20 days of the filing of appellant/cross-appellee's brief, and appellant/cross-appellee's reply brief shall be filed 10 days thereafter.

It is further ordered by the court that appellant/cross-appellee's motion to remand to the trial court is denied.

(Summit County Court of Appeals; No. 24894)

Paul E. Pfeifer

PAUL E. PFEIFER
Acting Chief Justice

A-1

Supreme Court of the United States

No. 13-7621

DAVID WILLAN,

Petitioner

v.

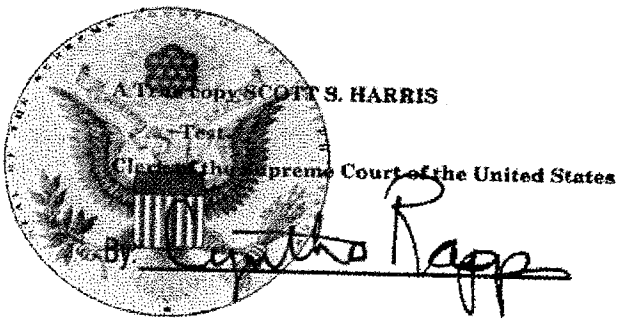
OHIO

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of Ohio.

THIS CAUSE having been submitted on the petition for writ of certiorari and the response thereto.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the motion of petitioner for leave to proceed *in forma pauperis* and the petition for writ of certiorari are granted. The judgment of the above court in this cause is vacated, and the cause is remanded to the Supreme Court of Ohio for further consideration in light of *Alleyne* v. *United States*, 570 U. S. ___ (2013).

April 13, 2014



A-2

United States of America, ss:

THE PRESIDENT OF THE UNITED STATES

13-7621

DAVID WILLAN,

Petitioner

v.

OHIO

To the Honorable the Justices of the Supreme Court of Ohio.

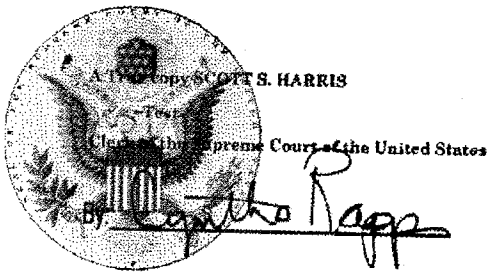
GREETINGS:

Supreme Court of Ohio case, State of Ohio v. David Willan, No. 2012-0216, was submitted to the **SUPREME COURT OF THE UNITED STATES** on the petition for writ of certiorari and the response thereto; and the Court having granted the petition.

It is ordered and adjudged on April 21, 2014, by this Court that the judgment of the above court in this cause is vacated, and the cause is remanded to the Supreme Court of Ohio for further consideration in light of *Alleyne* v. *United States*, 570 U. S. ___ (2013).

THE CAUSE IS REMANDED to you in order that such proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and Laws of the United States.

Witness the Honorable **JOHN G. ROBERTS, JR.,** Chief Justice of the United States, the 21st day of April, in the year Two Thousand and Fourteen.



Scott S. Harris
Clerk of the Supreme Court
of the United States

COPY

DANIEL M. HORRIGAN
2008 DEC -5 PM 12: 10
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

THE STATE OF OHIO	)	CASE NUMBER CR 2007 12 4233(A)
Plaintiff,	)	JUDGE MURPHY
vs.	)	
DAVID B. WILLAN,	)	**CRIMINAL VERDICT-COUNT ONE**
Defendant.	)	INDICTMENT FOR ENGAGING IN A PATTERN OF CORRUPT ACTIVITY

We, the Jury, being duly impaneled and sworn do hereby find the Defendant, DAVID B. WILLAN, * Guilty of the offense of Engaging in a Pattern of Corrupt Activity.

We further find that at least one of the incidents of corrupt activity ** Was False Representation in the Registration of Securities, Aggravated Theft or Theft from the Elderly.

We do so render our verdict upon the concurrence of twelve members of our said Jury. Each of us said Jurors concurring in said verdict signs his/her name hereto this 5 day of Dec., 2008.

1. Christine Cyo
2. [illegible]
3. Alex Bridges
4. Theresa Brumbaugh
5. [illegible]
6. [illegible]
7. Jody Hunt
8. Kareem Eugene Barrett
9. Josephine A Martin
10. Genevra P. Bond
11. Lori J. Mercik
12. [illegible]

* Insert in ink "guilty" or "not guilty."
**Insert in ink either "Was" or "Was not."

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