

**In the  
Supreme Court of Ohio**

<b>STATE OF OHIO,</b>	:	Case No. 2013-0827
	:	
Plaintiff-Appellant,	:	On Appeal from the
	:	Clark County
vs.	:	Court of Appeals,
	:	Second Appellate District
<b>JORDAN BEVERLY,</b>	:	
	:	Court of Appeals
Defendant-Appellee.	:	Case No. 11-CA-0064
	:	

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**APPELLEE’S MOTION FOR RECONSIDERATION, MOTION FOR  
SUPPLEMENTAL BRIEFING, AND MOTION FOR RE-ARGUMENT**

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THE STATE OF OHIO**

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Now comes Appellee, Jordan Beverly, and hereby moves this Honorable Court to reconsider its decision that the existence of an enterprise, sufficient to sustain a conviction for engaging in a pattern of corrupt activity under R.C. 2923.32(A)(1), can be established without proving that the enterprise is a structure separate and distinct from a pattern of corrupt activity. *State v. Beverly*, Slip Opinion No. 2015-Ohio-219, ¶13. This motion for reconsideration is filed pursuant to S.Ct.Prac.R. 8.7 and 11.2. The reasons for reconsideration are set forth in the accompanying memorandum.

Respectfully submitted,

*s/ Marshall G. Lachman*

**Marshall G. Lachman, Esq.**  
REG NO. 0076791

**COUNSEL FOR APPELLEE,  
JORDAN BEVERLY**

## Memorandum

In the decision issued on January 27, 2015, this Court ruled that the same evidence can be used to prove both the existence of an enterprise and the associated pattern of corrupt activity, and that the State is not required to that the defendants were associated with an organization having an existence as an entity or structure separate and distinct from the pattern of activity in which it engages. *Beverly* at ¶7. In so ruling, this Court held that Ohio's RICO statute found in R.C. 2923.31 and 2923.32 is the "law of the land" in Ohio, but relied on United States Supreme Court decisions in *United States v. Turkette*, 452 U.S. 576, 101 S.Ct. 2524, 69 L.E.2d 246 (1981) and *Boyle v. United States*, 556 U.S. 938, 129 S.Ct. 2237, 173 L.E.2d 1265 (2009) for guidance in reaching its decision herein. *Beverly* at ¶14. The Court's decision is problematic for two reasons: 1) The Court's reliance on *Turkette* and *Boyle* for guidance fails to consider that the United States Supreme Court still requires, in order to prove the enterprise element, that a group must have [1] a purpose, [2] relationships among those associated with the enterprise, and [3] longevity sufficient to permit these associates to pursue the enterprise's purpose, and that the existence of an enterprise is a separate element that must be proved, and the existence of an enterprise is an element distinct from the pattern of racketeering activity and proof of one does not necessarily establish the other; and 2) Even if the Court stands by its decision regarding the evidence necessary to establish an enterprise, the Court's application of the evidence to the facts of the case at bar is not supported by the evidence actually presented at trial.

### **Existence of an Enterprise**

Ohio's RICO statute, provides that "No person employed by, or associated with, any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity[.]" R.C. 2923.32(A)(1). An "enterprise" includes any

individual, association, or group of persons associated in fact. R.C. 2923.31(C). A "pattern of corrupt activity" requires "two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event." R.C. 2923.31(E). The United States Supreme Court had previously held that "the 'enterprise' is not the 'pattern of racketeering activity'; it is an entity separate and apart from the pattern of activity in which it engages. The existence of an enterprise at all times remains a separate element which must be proved by the Government. *Turkette* at 583. Subsequently, in *Boyle*, the United States Supreme Court held that it was not error to instruct the jury that 'the existence of an association-in-fact is oftentimes more readily proven by what it does, rather than by abstract analysis of its structure.'" *Boyle* at 951. The *Boyle* Court made clear, however, that the existence of an enterprise is a separate element that must be proved, and the existence of an enterprise is an element distinct from the pattern of racketeering activity and proof of one does not necessarily establish the other. *Boyle* at 947.

Despite this language, this Court, taking guidance from *Turkette* and *Boyle*, holds that the State is not required to prove that an enterprise has a structure separate and apart from the pattern of corrupt activity. The Court, however, fails to consider the elements that survive *Boyle*, specifically the three-part inquiry into the structure of the enterprise, requiring that the group must have [1] a purpose, [2] relationships among those associated with the enterprise, and [3] longevity sufficient to permit these associates to pursue the enterprise's purpose is accurate. The Court's decision, by failing to establish any requirement that the State prove these elements, creates a situation whereby the State can prosecute and convict individuals for racketeering

activities simply because more than one defendant was involved in the commission of the crime. Such a result runs contrary to both federal and Ohio RICO statutes.

### **Sufficiency of the Evidence**

After ruling that the existence of an enterprise, sufficient to sustain a conviction for engaging in a pattern of corrupt activity can be established without proving that the enterprise is a structure separate and distinct from a pattern of corrupt activity, this Court finds that there was sufficient evidence to support Beverly's conviction for Engaging in a Pattern of Corrupt Activity. The Court held that "the record is replete with examples of Beverly and Imber associating together for a common purpose of engaging in a course of conduct. Beverly and Imber drove (and perhaps stole) an Ohio Department of Transportation truck and used to steal an expensive stump grinder. They used a stolen Chevrolet Caprice in the course of an attempted burglary. And most notoriously, for purposes of this case, they used a stolen truck to commit several burglaries on January 28, 2011." *Beverly* at ¶16. Perhaps the Court's ruling would be correct if the evidence at trial had actually established that, as part of Beverly and Imber's enterprise, they had actually stolen the ODOT truck, the Chevrolet Caprice, or the stolen truck as part of the corrupt activity. The fact is, however, that there was no evidence offered at trial to establish that Beverly and Imber's enterprise included the stealing of these vehicles, despite the prosecutor's non-evidentiary statements that this was a part of the enterprise. Therefore, despite this Court's ruling to the contrary, evidence that Beverly and Imber used stolen vehicles during the commission of the underlying offenses is not sufficient evidence to establish the enterprise element of engaging in a pattern of corrupt activity as a matter of law.

**Conclusion**

Jordan Beverly asks this Honorable Court to grant this motion for reconsideration, permit supplemental briefing, and entertain oral re-argument of the issues herein.

Respectfully submitted,

*s/ Marshall G. Lachman* \_\_\_\_\_

**Marshall G. Lachman, Esq.**

REG NO. 0076791

**COUNSEL FOR APPELLEE,  
JORDAN BEVERLY**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Motion for Reconsideration, Motion for Supplemental Briefing, and Motion for Re-Argument was served by regular U.S. Mail upon Michael J. Hendershot, Chief Deputy Solicitor, 30 East Broad Street, 17<sup>th</sup> Floor, Columbus, Ohio 43215, upon Andrew R. Picek, Assistant Prosecuting Attorney, 50 East Columbia Street, 4<sup>th</sup> Floor, P.O. Box 1608, Springfield, Ohio 45501, and upon Christopher D. Schroeder, Assistant Prosecuting Attorney, 1200 Ontario Street, 8<sup>th</sup> Floor, Cleveland, Ohio 44113, on this 5<sup>th</sup> day of February, 2015.

*s/ Marshall G. Lachman* \_\_\_\_\_

**Marshall G. Lachman, Esq.**