

In the  
**Supreme Court of Ohio**

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

---

**RESPONSE OF APPELLANT STATE OF OHIO TO  
APPELLEE'S MOTION FOR RECONSIDERATION, RE-BRIEFING, AND  
REARGUMENT**

---

MARSHALL G. LACHMAN\* (0076791)  
*\*Counsel of Record*  
75 North Pioneer Boulevard  
Springboro, Ohio 45066  
937-743-9443  
937-743-6008 fax  
lachman@mglachman.com  
Counsel for Defendant-Appellee  
Jordan Beverly

MICHAEL DEWINE (0009181)  
Attorney General of Ohio  
ERIC E. MURPHY\* (0083284)  
State Solicitor  
*\*Counsel of Record*  
MICHAEL J. HENDERSHOT (0081842)  
Chief Deputy Solicitor  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43215  
614-466-8980  
614-466-5087 fax  
eric.murphy@ohioattorneygeneral.gov  
and  
D. ANDREW WILSON (0073767)  
Clark County Prosecuting Attorney  
ANDREW R. PICEK (0082121)  
Assistant Prosecuting Attorney  
50 E. Columbia Street, 4th Floor  
P.O. Box 1608  
Springfield, Ohio 45501  
937-521-1770  
dwilson@clarkcountyohio.gov  
Counsel for Plaintiff-Appellant  
State of Ohio

## RESPONSE

Beverly offers nothing new in his motion to reconsider this Court’s judgment remanding for resentencing. His two claims—that the decision “fails to consider” the components of an enterprise, Mot. at 4, and that it overlooks a lack of evidence linking certain crimes to the enterprise, *id.* at 5—were addressed both in the opinion and the State’s reply brief. Indeed, even the dissenting Justices did not embrace the exact arguments Beverly offers in his motion.

The points in the motion are the same points that Beverly raised in his Appellee Brief. *See, e.g.*, Beverly’s Br. at 4 (listing the same purpose, relationship, and longevity components of enterprise as the motion); *id.* at 7 (arguing that “no evidence” linked the vehicle thefts to a “structured plan”). The motion simply repeats these claims. *See* Mot. at 4, 5. These same arguments require the same result. The Court’s judgment reversing the Second District should stand.

The opinion correctly rejects both of these arguments. The opinion defines enterprise in terms of an association with a common purpose. *State v. Beverly*, \_\_\_ Ohio St. 3d \_\_\_, 2015-Ohio-219 ¶¶ 9, 16. That rebuffs Beverly’s argument that the opinion “fails to consider” factors such as “purpose” and “association.” Mot. at 4. The opinion also surveyed the trial evidence and concluded that it would be hard to “imagine a trier of fact concluding” that the evidence did not prove an enterprise. 2015-Ohio-219 ¶ 16. That rebuts Beverly’s argument that the opinion overlooks that “no evidence” linked Beverly’s acts (like vehicle theft) to the enterprise.

The State’s reply brief, like the opinion, squarely addressed and rebutted these same contentions. The reply used the very definition Beverly now proposes for enterprise. *See* State’s Reply at 6 (“enterprise element requires no more than evidence of purpose, relationships among

those associated with the enterprise, and enough longevity to accomplish the purpose”); Mot. at 4 (criticizing opinion for ignoring purpose-relationship-longevity test). The State’s reply also put to rest the claim that “no evidence” supported the conviction. The Reply both detailed (at 9-12) the evidence the Beverly was involved in a continuing arrangement with others to steal vehicles, burgle houses, and fence the loot, and surveyed (at 7-9) Ohio cases affirming Ohio RICO convictions with similar evidence of enterprise.

Even the dissent recognizes that the arguments in the motion are non-starters. For one thing, the dissent acknowledges that the majority defined enterprise in terms of its continuity and purpose. 2015-Ohio-219 ¶ 24 (Lanzinger and O’Neill, JJ., dissenting). For another, while the dissent parts ways with the majority over whether Beverly’s crimes *constituted* an enterprise, the dissent did not accept the argument in the motion that the crimes were not “*part of*” an enterprise. Mot. at 5; *see* 2015-Ohio-219 ¶ 25 (crimes did not show continuing organization with common purpose). That is, the dissent disagreed that the crimes revealed an ongoing organization with purpose, but Beverly argues that the crimes were not *linked to* an enterprise. That is simply another way of saying what the Court unanimously rejected—that an enterprise must have a an existence apart from the crimes (how else could crimes not be *linked to* the enterprise?). *See* 2015-Ohio-219 ¶¶ 13, 23.

The request is nothing new. The motion to restart the appellate process without changing any of the input should be denied.

Respectfully submitted,

MICHAEL DEWINE  
Attorney General of Ohio

/s Eric E. Murphy

ERIC E. MURPHY\* (0083284)

State Solicitor

*\*Counsel of Record*

MICHAEL J. HENDERSHOT (0081842)

Chief Deputy Solicitor

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

eric.murphy@ohioattorneygeneral.gov

and

D. ANDREW WILSON (0073767)

Clark County Prosecuting Attorney

ANDREW R. PICEK (0082121)

Assistant Prosecuting Attorney

50 E. Columbia Street, 4th Floor

P.O. Box 1608

Springfield, Ohio 45501

937-521-1770

dwilson@clarkcountyohio.gov

Counsel for Appellant

State of Ohio

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Response of Appellant State of Ohio to Appellee's Motion for Reconsideration was served on February 10th 2015, by U.S. mail on the following:

Marshall G. Lachman  
75 North Pioneer Boulevard  
Springboro, Ohio 45066

Counsel for Defendant-Appellee  
Jordan Beverly

/s Eric E. Murphy  
Eric E. Murphy  
State Solicitor