IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	)	**SUPREME COURT CASE NO. _____**
Appellant,	)	
vs.	)	
DONALD E. MORA, JR.,	)	**ON APPEAL FROM THE OHIO NINTH DISTRICT COURT OF APPEALS, CASE NO. 20CA0023-M**
Appellee.	)	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT THE STATE OF OHIO

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EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

Ohio's RICO statute, Ohio Revised Code (R.C.) § 2923.32 ("Engaging in a Pattern of Corrupt Activity") is a critical tool for Ohio's law enforcement and prosecutors to hold repeat felony offenders accountable for a course of criminal conduct in a manner that would not otherwise be possible. This Court has recently taken an interest in the important question of what constitutes a "pattern of corrupt activity" under Ohio's RICO statute. In 2019 this Court accepted for review the cases of co-defendants Drakkar Groce (Case Number 2019-0594), Alvin Dent (Case Number 2019-0651), and William Walker (Case Number 2019-0654) after the Tenth District Court of Appeals reversed those RICO convictions on sufficiency grounds. On December 16, 2020, this Court reversed the Tenth District, holding that the State of Ohio presented sufficient evidence to support the convictions. *State v. Dent*, Slip Opinion No. 2020-Ohio-6670; *State v. Groce*, Slip Opinion No. 2020-Ohio-6671. In this case the Ninth District Court of Appeals took the extraordinary action of overturning the Engaging in a Pattern of Corrupt Activity conviction of Appellee Donald E. Mora, Jr. on the ground of insufficient evidence. For several reasons further outlined below, the facts of the instant case are far more compelling than those involved in *Dent* and *Groce*.

R.C. § 2923.31(E) defines a "pattern of corrupt activity" as two or more incidents of corrupt activity 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. Ohio's prosecutors, defense bar, and judges have constantly sought guidance beyond this definition as to what sort of conduct elevates the commission of multiple low-level felony offenses to a second-

degree felony "pattern of corrupt activity." The Ninth District Court of Appeals' decision in this case will surely create more confusion as to what constitutes a "pattern of corrupt activity."

The Ninth District held that the State of Ohio failed to present sufficient evidence to prove a pattern of corrupt activity. In so doing, the Ninth District appears to have applied a standard of review more akin to manifest weight of the evidence, despite the fact that manifest weight was not challenged in Mora's appeal. Like the Tenth District Court of Appeals in *Dent* and *Groce*, the Ninth District in this case applied far too high of a standard when considering the sufficiency of the evidence and improperly imposed a time-duration requirement. Rather than consider whether any rational juror could have found Mora guilty beyond a reasonable doubt, which is the proper standard, the Ninth District focused on whether *it* believed the State of Ohio proved its case beyond a reasonable doubt. The Ninth District then reasoned in contradictory fashion that it believed the three break-ins at issue in this case were either too isolated from each other or too connected to the point of constituting a single event. Therefore, the Ninth District did not even make clear which end of the spectrum it believes the State of Ohio's case erred on.

This Court should make clear that there is no specific time frame required to constitute a pattern of corrupt activity, which can occur within a single day, because a pattern of corrupt activity need only last long enough to allow the members of an enterprise to pursue the enterprise's criminal purpose. In this case, although the three break-ins in question took place on the same day, there was compelling evidence to support a pattern of corrupt activity, including evidence of multiple crime scenes in two different counties, evidence of close relationships between the co-defendants, and direct evidence from a co-defendant of detailed planning days in advance. At the very least this evidence was sufficient to allow the matter to reach the jury. A rational juror could have found Mora guilty of Engaging in a Pattern of Corrupt Activity beyond a reasonable doubt

and, in fact, twelve of them did in this case. The jury's decision should be respected and allowed to stand.

STATEMENT OF THE CASE AND FACTS

The Ninth District Court of Appeals summarized the facts of this case as follows:

> Just after 2:30 a.m., a group of four individuals set out to break into a VFW Post in Columbia Station ("the VFW") to steal any money kept on-site. The group consisted of Mora, his wife, his long-time acquaintance (A.V.), and a friend of the acquaintance (R.F.). A.V. drove the group to the VFW and waited in his truck while Mora, his wife, and R.F. approached the establishment on foot. Although Mora's wife thought she had a working set of keys for the establishment, the locks recently had been changed. She, Mora, and R.F. were unable to break in using the keys and soon abandoned their efforts. After a brief discussion among the members of the group, A.V. drove them to a second location.
>
> At the Fraternal Order of Eagles in Columbia Station ("the Columbia Station Eagles"), Mora and R.F. broke through an outside door while A.V. remained in his truck with Mora's wife. Their forced entry triggered an alarm, so they only spent a few minutes inside. After several attempts to kick through a deadbolted office door, the two ran back to the truck. Once again, the group left emptyhanded.
>
> After weighing their options, the group decided to try a third location. Mora directed A.V. to drive to Wadsworth where another Fraternal Order of Eagles was located ("the Wadsworth Eagles"). At the Wadsworth Eagles, Mora successfully broke in and took a safe that the establishment kept on-site. The group then took the safe to A.V.'s home, used a grinder to open it, and split its contents. A.V. was apprehended about two weeks later, and his arrest and additional investigation led the police to Mora and the others.
>
> A grand jury indicted Mora on three counts of breaking and entering, two counts of vandalism, one count of grand theft, one count of theft, one count of safecracking, and one count of engaging in a pattern of corrupt activity. Mora pleaded guilty to eight of his counts and requested a jury trial on his ninth count for engaging in a pattern of corrupt activity. A jury found him guilty on that count, and the court sentenced him to a total of eleven years in prison.

State v. Mora, 9th Dist. Medina No. 20CA0023-M, 2020-Ohio-5455, ¶ 2-5.

On November 30, 2020, the Ninth District Court of Appeals reversed Mora's Engaging in a Pattern of Corrupt Activity conviction on the ground of insufficient evidence. The State of Ohio now appeals to this Court and hereby requests this Court to accept jurisdiction.

LAW AND ARGUMENT

STATE OF OHIO'S PROPOSITION OF LAW I

The proper question in a sufficiency analysis is whether the evidence presented, when viewed in a light most favorable to the prosecution, would allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. A reviewing court may not focus on whether the State of Ohio presented the best evidence and may not focus on whether *it* believes the State of Ohio proved its case beyond a reasonable doubt.

I. Sufficiency Standard of Review

"Whether the evidence is legally sufficient to sustain a verdict is a question of law." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541. Therefore, an appellate court's review is de novo. *In re J.V.*, 134 Ohio St.3d 1, 2012-Ohio-4961, ¶ 3. In a sufficiency of the evidence inquiry, the question is whether the evidence presented, when viewed in a light most favorable to the prosecution, would allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781 (1979).

II. Analysis

The Ninth District Court of Appeals erred when it took the extraordinary action of overturning Appellee Mora's Engaging in a Pattern of Corrupt Activity conviction on the ground of insufficient evidence. Like the Tenth District in *Dent* and *Groce*, the Ninth District appears to have applied an incorrect standard of review when analyzing the sufficiency of the evidence.

The Ninth District applied a standard of review more akin to manifest weight of the evidence, which was not challenged in Mora's appeal, and improperly imposed a time-duration requirement on the pattern of corrupt activity (the second portion is further explored in Proposition of Law II, *infra*). In *Dent*, this Court noted that the Tenth District erroneously applied too high of

a standard when considering the sufficiency of the evidence and focused on a time-duration requirement that does not exist:

> [T]he court of appeals ultimately concluded that the state's evidence was insufficient because 'the state put forth no evidence that these men worked beyond the single day of the surveillance video.' . . . In making this conclusion, the court of appeals elevated a time-duration requirement as an element of the offense. And by suggesting what *additional* evidence might have compelled it to reach a different conclusion, . . . the court of appeals focused on whether the state presented the *best* evidence. But the proper question is whether the evidence presented, *when viewed in a light most favorable to the prosecution*, would allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. Applying the proper standard, we conclude that it does.

Dent, 2020-Ohio-6670, ¶ 16. The Ninth District Court of Appeals made the same mistake in this case, focusing on whether the State of Ohio presented the best possible evidence instead of viewing the existing evidence in a light most favorable to the State of Ohio. *Dent* served as a timely reminder of the proper sufficiency of the evidence standard.

The Ninth District held that "we simply cannot conclude that the State proved, beyond a reasonable doubt, that Mora engaged in a pattern of corrupt activity." *Mora*, 2020-Ohio-5455, ¶ 22. But as the United States Supreme Court has long noted, a sufficiency inquiry "does not require a court to ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." *Jackson*, 443 U.S. at 319. Rather, the question is whether, when viewing the evidence in a light most favorable to the prosecution, *any rational trier of fact* could have found all of the elements of the crime proven beyond a reasonable doubt. *Jenks*, 61 Ohio St.3d at paragraph two of the syllabus. In this case, a rational juror could have found Mora guilty of Engaging in a Pattern of Corrupt Activity beyond a reasonable doubt and, in fact, twelve of them did. The jury's decision should be respected and allowed to stand. While the Ninth District may believe that the State of Ohio did not prove its case beyond a reasonable doubt, this does not mean any rational trier of fact could not have found that to be the case.

For the foregoing reasons, the State of Ohio respectfully requests that this Court accept jurisdiction with respect to its Proposition of Law I.

STATE OF OHIO'S PROPOSITION OF LAW II

Ohio's Engaging in a Pattern of Corrupt Activity statutes include no time-duration requirement for an enterprise or a pattern of corrupt activity, and the incidents of corrupt activity may occur on the same day. Evidence of advance planning is not an element of Engaging in a Pattern of Corrupt Activity, but it may be used to support the "enterprise" element. Planning need not be proven with direct evidence, but may be inferred by the trier of fact when considering the totality of the circumstances.

I. Engaging in a Pattern of Corrupt Activity

Ohio Revised Code (R.C.) § 2923.32(A)(1) provides that "[n]o 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. § 2923.31(E) defines "pattern of corrupt activity," in relevant part, as "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."

II. Analysis

In finding that the State of Ohio did not sufficiently prove a pattern of corrupt activity, the Ninth District held that Mora and his co-defendants "engaged in 'isolated' incidents or incidents that were 'so closely related to each other and connected in time and place that they constitute[d] a single event.'" *Mora*, 2020-Ohio-5455, ¶ 23. This contradictory statement makes it unclear whether the Ninth District believed that the three break-ins at issue in this case were too isolated from each other or too connected to the point of constituting a single event.

In *State v. Beverly*, this Court held that "[t]he 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." 143 Ohio St.3d 258, 2015-Ohio-219, syllabus. Therefore, the same evidence can be used to prove both the existence of an enterprise and a pattern of corrupt activity. *Id.* at ¶ 7-8. In *Beverly* this Court also noted that in *Boyle v. United States*, 556 U.S. 938, 129 S. Ct. 2237 (2009), the Supreme Court of the United States stated that "the evidence used to prove the pattern of racketeering activity and the evidence establishing an enterprise 'may in particular cases coalesce.'" *Id.* at ¶ 10, quoting *Boyle*, 556 U.S. at 947, itself quoting *United States v. Turkette*, 452 U.S. 576, 583, 101 S. Ct. 2524 (1981). In *Beverly* this Court ultimately reversed the Second District Court of Appeals and found that there was sufficient evidence to support a rational trier of fact's conclusion that Beverly and his co-defendant were an association-in-fact enterprise which engaged in a pattern of corrupt activity. *Id.* at ¶ 15-16.

In support of his argument to the Ninth District, Mora relied heavily on the Tenth District Court of Appeals' decision in *State v. Groce*, 10th Dist. Franklin No. 18AP-51, 2019-Ohio-1007, a case that this Court recently reversed. *See Dent*, Slip Opinion No. 2020-Ohio-6670; *Groce*, Slip Opinion No. 2020-Ohio-6671. In *Dent* and *Groce*, the defendants were convicted of, *inter alia*, Engaging in a Pattern of Corrupt Activity, the predicate offenses being drug possession, trafficking, and manufacturing. *Dent*, 2020-Ohio-6670, ¶ 2, 12. The basis of the pattern of corrupt activity in those cases was drug activity that occurred in the same house on the same day. *Id.* at ¶ 20. The Tenth District reversed the defendants' Engaging in a Pattern of Corrupt Activity convictions after finding the evidence insufficient to establish an enterprise and a pattern of corrupt activity. *Id.* The Tenth District noted that "all of the predicate offenses occurred on the same day in the same location" and noted that "the state presented no evidence that the relationships of these men extended beyond a single day." *Id.*

In *Boyle*, the United States Supreme Court held that an association-in-fact enterprise need not have a formal structure, but must have at least "a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." 556 U.S. at 946. In *Dent* this Court reiterated that the longevity required for an association-in-fact enterprise is only that sufficient to permit the enterprise's associates to pursue the enterprise's purpose. 2020-Ohio-6670, ¶ 21, citing *Boyle*, 556 U.S. at 946. Furthermore, "nothing in the statutes or caselaw pertaining to the definition of 'enterprise' in R.C. 2923.31(C) specifies a time duration." *Id.* Like the Tenth District, the Ninth District improperly imposed a time-duration requirement in this case.

The obvious similarity between this case and *Dent* and *Groce* is that all of the incidents of corrupt activity occurred on the same day. However, the facts of this case are actually far more compelling than those involved in *Dent* and *Groce*. This case included evidence of multiple crime scenes in different counties, close relationships between the co-defendants, and direct evidence from Mora's co-defendant of detailed planning days in advance. *Dent* and *Groce* involved the same location for all of the incidents and included no evidence of advance planning outside of what the jury might have inferred. This case included testimony describing the longstanding relationships of the associates in the enterprise, while in *Dent* and *Groce* the relationships between the co-defendants were not explored at all. Construing the evidence in a light most favorable to the State of Ohio, and particularly in light of *Dent* and *Groce*, the State of Ohio presented sufficient evidence that Mora engaged in a pattern of corrupt activity.

Specifically, the break-ins in this case took place at three different locations across Lorain and Medina Counties (the Columbia Station VFW, the Columbia Station Eagles, and the Wadsworth Eagles), whereas in *Dent* and *Groce* the crimes took place at the same house. In *Groce*

the Tenth District noted that the State presented no evidence that the relationships of the co-defendants extended beyond a single day. In this case, the State of Ohio presented evidence that the relationships of the co-defendants extended far beyond a single day, with Donald and Meghan Mora being married and Donald Mora and Arthur Vecchio having known each other since high school. In his testimony Mr. Vecchio also outlined the detailed planning that was involved in the Columbia Station VFW break-in. Mr. Vecchio testified that the planning occurred between himself, Donald Mora, and Meghan Mora starting on February 8, 2019 and culminated with an attempted break-in at the VFW and two other successful break-ins on February 10, 2019.

The evidence showed that Mora and his co-defendants initially planned to break into the Columbia Station VFW because they believed that they had working keys to that facility. The Ninth District placed great emphasis on the fact that "[t]he evidence showed that Mora and the others planned to break into one establishment and, possibly, to break into a second establishment if the first proved unsuccessful." *Mora*, 2020-Ohio-5455, ¶ 22. The Ninth District noted that only after the initial plan failed did Mora and his co-defendants settle on two additional break-ins, which the Ninth District inferred to mean a lack of advance planning (not a required element under Ohio's RICO statute, as further outlined *infra*). *Id.* In *Dent* this Court directly challenged the logic of the Tenth District in *Groce* and the Ninth District in this case, reasoning that

> a rational juror could reasonably infer from the activity and interactions observed in the surveillance-video evidence that the predicate offenses were not isolated, that appellees did not serendipitously find themselves in an up-and-running drug house and decide independently to cook crack cocaine and then weigh, bag and sell it to customers who happened to enter the house.

2020-Ohio-6670, ¶ 26. In this case a reasonable trier of fact could similarly infer that Mora and his co-defendants pivoting so quickly to the other two break-in locations demonstrates that they had discussed breaking into the other locations and likely "cased" them in at least some way prior

to the day in question. Just as a jury could reasonably infer that Dent and Groce did not serendipitously find themselves in a drug house, a jury could reasonably infer that Mora and his co-defendants did not serendipitously find themselves at the second and third break-in locations.

The Ninth District also emphasized evidence that members of the group disagreed initially about whether to attempt the third break-in at the Wadsworth Eagles. *Mora*, 2020-Ohio-6670, ¶ 22. Arthur Vecchio testified that Mora was against attempting to break into the Wadsworth Eagles until his wife, co-defendant Meghan Mora, convinced him otherwise. *Id.* But a brief initial disagreement between two members of the group about whether to commit the third break-in is not a fact that weighs against an enterprise or a pattern of corrupt activity. If anything, this discussion weighs in *favor* of an enterprise and a pattern of corrupt activity because it evidences interaction between the co-defendants and planning. Applying the Ninth District's reasoning, RICO defendants could rebut a pattern of corrupt activity by simply stating that they were not all in total agreement about the plan every step of the way. Even assuming *arguendo* that the Ninth District's faulty logic was sound, it should additionally be noted that only two incidents of corrupt activity are required under the statute. The evidence showed that the group had no disagreement whatsoever when it came to committing the second break-in.

The Ninth District further stated that "[t]he evidence showed that the three break-ins occurred within a short-time frame with little-to-no advanced planning." *Mora*, 2020-Ohio-5455, ¶ 23. Neither the relevant statutes nor the case law require the participants in a pattern of corrupt activity to have planned each individual incident of corrupt activity in advance. In fact, there is no requirement that a pattern of corrupt activity be planned at all. In any event, in this case the evidence showed that Mora and his co-defendants engaged in detailed planning for two days before the Columbia Station VFW break-in. The Ninth District acknowledged that the corrupt activity

statutes do not require evidence of any specific length of association between members of an enterprise. What the Ninth District omitted is that there is also no longevity requirement for a pattern of corrupt activity because evidence of an enterprise can be used to prove a pattern of corrupt activity and vice versa. *See Beverly*, *supra*. Particularly in light of *Dent* and *Groce* (which involved no evidence of planning), the State of Ohio submits that detailed planning for two days before a series of break-ins is not a "short time frame," nor does it constitute "little-to-no advanced planning." At the very least, this was a question for the jury and not one that should have been decided on sufficiency grounds.

For the foregoing reasons, the State of Ohio respectfully requests that this Court accept jurisdiction with respect to its Proposition of Law II.

CONCLUSION

For all of the foregoing reasons, the State of Ohio respectfully requests that this Court accept jurisdiction of its Propositions of Law I and II. The decision of the Ohio Ninth District Court of Appeals creates a dangerous precedent which should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of the State of Ohio was sent via regular U.S. mail to David C. Sheldon, Counsel for Appellee, at 669 W. Liberty Street, Medina, Ohio 44256, on this 11th day of January, 2021.

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