

## State v. Dent2020-Ohio-6670

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### Recommended Citation

Albers, Alex () "State v. Dent2020-Ohio-6670," *Ohio Northern University Law Review*: Vol. 47: Iss. 2, Article 6.

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**State v. Dent**  
**2020-Ohio-6670**

I. INTRODUCTION

In 1970, the United States Congress enacted legislation in order to punish the use of a criminal enterprise in the furtherance of crimes.<sup>1</sup> The Act, known as the Racketeer Influenced and Corrupt Organizations Act (RICO), is used to accompany certain underlying crimes, such as gambling, robbery, dealing in controlled substances, and more when the crimes are carried out in a pattern of racketeering activity through the use of a criminal enterprise.<sup>2</sup> The result can be a heightened charge when the evidence is sufficient to present a greater scheme with a purpose and associated actors carrying out the crimes.<sup>3</sup> The act's purpose, as declared by Congress, was to "eradicate organized crime" by strengthening legal tools used by prosecutors.<sup>4</sup> This act was subsequently adopted in a similar form among many of the states, including in the State of Ohio.<sup>5</sup>

In Ohio, one may be criminally charged for "Engaging in a Pattern of Corrupt Activity," a charge with elements materially similar to the federal RICO charge.<sup>6</sup> The statute prohibits being associated with the affairs of an enterprise "through a pattern of corrupt activity."<sup>7</sup> While both include a similar prohibition against a criminal enterprise, the two provisions do not give an exact definition as to what sort of pattern of activity is needed within an enterprise in order to violate the provisions.<sup>8</sup> Upon examining the definition sections of both acts, it is said that at minimum two crimes must have occurred, but the relation of those two activities is not discussed at a deeper level.<sup>9</sup> Certainly, the commission of two unrelated crimes would not elevate charges to qualify under either the federal or Ohio prohibition against this criminal enterprise. Therefore, the issue is exactly what relationship exists between the crimes.<sup>10</sup>

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1. 18 U.S.C. § 1961 (2016).
  2. 18 U.S.C. § 1962 (2016).
  3. 18 U.S.C. § 1963 (2009).
  4. *United States v. Turkette*, 452 U.S. 576, 589 (1981).
  5. *State v. Dent*, Slip Opinion No. 2020-Ohio-6670, ¶ 39.
  6. Ohio Rev. Code § 2923.32 (2011).
  7. *Id.*
  8. 18 U.S.C. § 1961 (2016); Ohio Rev. Code § 2923.31 (2018).
  9. *Id.*
  10. *Dent*, 2020-Ohio-6670 at ¶ 38.

## II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

*State v. Dent*<sup>11</sup> involved the consolidated appeals of two men, Alvin Dent, Jr. and William Walker, Jr., before the Supreme Court of Ohio.<sup>12</sup> At issue is if certain drug-related crimes would be found to have risen to the level of a pattern of corrupt activity and, therefore, elevate their crimes.<sup>13</sup> A third individual was allegedly involved in the enterprise, Drakkar Groce; however, he was a part of a separate appeal based on a separate trial in Ohio for felonious assault in a shooting.<sup>14</sup>

Beginning in February 2016, the Columbus Police Department began investigating a suspected “up-and-running drug house” within the city.<sup>15</sup> Soon after, detectives observed activity that was consistent with the suspicion, such as a high volume of visitors that stayed for a short period of time.<sup>16</sup> Testimony for a detective reported that this activity was generally associated with the sale of drugs from within the house.<sup>17</sup> A month later, surveillance was conducted on the house and similar conduct was reported.<sup>18</sup> Additionally, it was shown that one of the defendants, Walker, was seen entering the house but staying for an hour and a half, a much longer period than the other visitors.<sup>19</sup>

Based on the actions that were witnessed in the house, a confidential informant was arranged to make a purchase from the house on March 28, 2016.<sup>20</sup> Following the buy, which was suspected to be crack cocaine, a no-knock warrant was obtained in order to search the house.<sup>21</sup> On the following day, the warrant was executed, but neither Groce nor the defendants were found in the house.<sup>22</sup> Items such as small plastic bags containing cocaine were recovered inside the house, along with other drug-related items and firearms.<sup>23</sup> Additionally, police were able to recover a video recording from a camera located within the kitchen that contained four hours of footage from

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11. *Dent*, 2020-Ohio-6670.

12. *Id.* at ¶ 1.

13. *Id.*

14. John Fuddy, *Men Sentenced in Drug Case Refuse to Give Info about Shooting that Paralyzed Woman*, *The COLUMBUS DISPATCH* (July 20, 2017), <http://www.dispatch.com/article/20170720/NEWS/170729820>.

15. *Id.* at ¶ 3.

16. *Dent*, 2020-Ohio-6670 at ¶ 3.

17. *Id.*

18. *Id.* at ¶ 4.

19. *Id.*

20. *Id.* at ¶ 5.

21. *Dent*, 2020-Ohio-6670 at ¶ 5.

22. *Id.* at ¶ 6.

23. *Id.*

earlier in the day.<sup>24</sup> This discovery turned out to be a significant part of the police investigation into the activities that transpired at the house.<sup>25</sup>

The video was viewed by detectives and subsequently admitted into evidence.<sup>26</sup> Detective Gauthney, a detective for the Columbus Police, testified as to what he believed was seen on the video.<sup>27</sup> He described the events captured as the appellees along with Groce cooking crack cocaine by heating a mixture of cocaine, baking soda, and water and then packaging it.<sup>28</sup> Additionally, the video captured the sale and exchange of large amounts of money.<sup>29</sup> Appellees and Groce were all part of the activities related to drug offenses of possession, manufacture, and trafficking of cocaine.<sup>30</sup>

While the video seemed to catch all three men in underlying drug crimes, the court also considered ordinary household activities in order to add an additional charge and found the existence of a criminal enterprise.<sup>31</sup> Specific actions that were noted by the court were minor things that lead the court to believe that the appellees and Groce were living or at least comfortable spending time within the residence.<sup>32</sup> Actions such as preparing food, casually chatting with one another, and sharing drinks were mentioned.<sup>33</sup> The Court mentioned what the men were wearing and that they were without jackets as opposed to the visitors that remain in the house for a short time.<sup>34</sup> The Court even discussed how the men were acting in a casual nature while committing the underlying offenses, such as Dent preparing a sandwich while handling a large roll of cash.<sup>35</sup> These seemingly innocent interactions that were viewed by detectives on a video without audio ultimately resulted in a legal analysis with major implications.<sup>36</sup>

At trial, the jury returned verdicts against the defendants for the drug offenses, which included possession, manufacture, and trafficking of cocaine, as well as engaging in a pattern of corrupt activity.<sup>37</sup> Walker was sentenced to a prison term of twenty years and Dent was sentenced to a term of twenty-two years.<sup>38</sup> Dent's charges included a firearm specification.<sup>39</sup> Dent and

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24. *Id.*

25. *Id.* at ¶ 26.

26. *Dent*, 2020-Ohio-6670 at ¶ 7.

27. *Id.*

28. *Id.*

29. *Id.* at ¶ 8.

30. *Id.*

31. *Dent*, 2020-Ohio-6670 at ¶ 11.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Dent*, 2020-Ohio-6670 at ¶ 26.

37. *Id.* at ¶ 12.

38. *Id.*

39. *Id.*

Walker then appealed separately to the Tenth District.<sup>40</sup> On appeal, the Court agreed with the two men that the conviction for engaging in corrupt activity was not supported by sufficient evidence and reversed.<sup>41</sup> The state then sought the Supreme Court of Ohio for a discretionary review to determine if the activity by the appellees rose to the level of engaging in a pattern of corrupt activity.<sup>42</sup>

On review, the Supreme Court had to determine the following question of law: if the evidence was legally sufficient to sustain the verdict of the trial court.<sup>43</sup> In making this determination, the Court had to uphold the verdict if, when viewing the evidence in a light most favorable to the prosecution, the elements of the Ohio Revised Code section could be found by a rational trier of fact beyond a reasonable doubt.<sup>44</sup>

In reviewing the analysis performed by the Court of Appeals, the Supreme Court agreed with the Tenth Circuit in their use of a United States Supreme Court case which analyzed the similar federal Racketeer Influenced and Corrupt Organizations Act.<sup>45</sup> In making their analysis, the Tenth Circuit contrasted the situation with the appellees to a federal RICO application case, *Boyle v. United States*.<sup>46</sup> In the case of *Boyle*, a defendant was convicted of a series of bank thefts as his underlying charge.<sup>47</sup> The lower court had found that the thefts took place in several states and along with Boyle, there were several members of a core group, along with various others recruited in, in order to complete the theft.<sup>48</sup> The group was described as loose and informally organized with no certain plan, simply a group of criminals acting with the help of one another.<sup>49</sup>

In the opinion, the Court gave its analysis as to what was needed in order to find the existence of a criminal enterprise.<sup>50</sup> A formal structure or hierarchy is not what is prohibited through the federal RICO statute and the Court provided three parts found within a criminal enterprise.<sup>51</sup> These features include, “a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise’s purpose.”<sup>52</sup> The Court rejected the defendants’ request for an

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40. *Id.* at ¶ 13.

41. *Dent*, 2020-Ohio-6670 at ¶ 13.

42. *Id.* at ¶ 14.

43. *Id.*

44. *Id.* at ¶ 26.

45. *Dent*, 2020-Ohio-6670 at ¶ 19.

46. *Id.* at ¶ 19.

47. *Boyle v. United States*, 556 U.S. 938, 941 (2009).

48. *Id.*

49. *Id.*

50. *Id.* at 945.

51. *Id.*

52. *Boyle*, 556 U.S. at 946.

instruction that would require “an ascertainable structural hierarchy distinct from the charged predicate acts” and gave clear instruction as to what would raise underlying crimes to an offense within a greater enterprise.<sup>53</sup>

The Court of Appeals followed this instruction given in *Boyle* and applied it to the materially similar statute found in the Ohio Revised Code.<sup>54</sup> Their main focus with the three features spelled out by the Supreme Court was the longevity item.<sup>55</sup> The Supreme Court in the *Boyle* case did not go further to discuss what amount of time would be sufficient to satisfy this feature, only that its duration was sufficient to pursue the purpose of an enterprise.<sup>56</sup> Neither the Court nor any statutes have defined this feature either.<sup>57</sup> In fact, longevity is not even mentioned in either the federal or state statutes.<sup>58</sup> Longevity, however, was the main focus of the Court of Appeals review for the appellees.<sup>59</sup>

In reversing the trial court’s verdict, the Court of Appeals did not feel that the evidence presented was sufficient.<sup>60</sup> Even with the evidence of the detective surveillance and confidential informant purchase, the Court of Appeals reversed the trial court’s verdict by determining that the single day of video footage was not sufficient, and more facts would be required in order to find a criminal enterprise.<sup>61</sup> The Court stated that engaging in a pattern of corrupt activity could possibly occur on the same day, however, the evidence was not sufficient based on the video footage featuring only a few hours of the appellees.<sup>62</sup>

The majority in the Supreme Court of Ohio did not agree with the argument based on the duration of the video and reversed the Court of Appeals.<sup>63</sup> This is in large part due to what the court believes is the Court of Appeals adding an element into an offense, a time durational requirement.<sup>64</sup> It seemed that the Court of Appeals wanted additional evidence to show the operating period of the enterprise, but this is not what is to be reviewed.<sup>65</sup> Even if the state could have further established a definite timeline through the use of better evidence, a verdict against the appellees can still be sustained

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53. *Id.* at 943.

54. *Dent*, 2020-Ohio-6670 at ¶ 19.

55. *Id.*

56. *Boyle*, 556 U.S. at 946.

57. 18 U.S.C. § 1961 (2016); Ohio Rev. Code § 2923.31 (2018); *Boyle*, 556 U.S. at 946.

58. 18 U.S.C. § 1961 (2016); Ohio Rev. Code § 2923.31 (2018).

59. *State v. Dent*, Slip Opinion No. 2019-Ohio-1510, ¶ 12.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Dent*, 2020-Ohio-6670 at ¶ 27.

64. *Id.* at ¶ 21.

65. *Id.*

based on what has been presented in evidence.<sup>66</sup> The Supreme Court does not analyze whether or not the best evidence has been presented, the proper question is that based on what has been presented, would a rational trier of fact find the essential elements of the crime “when viewed in a light most favorable to the prosecution.”<sup>67</sup> The Court’s answer was yes.<sup>68</sup>

### III. Concurring Opinion by Judge Zmuda

In a concurring opinion, Judge Zmuda wrote separately only to highlight the amount of information gathered during police spot checks of the house.<sup>69</sup> While the majority focused on the casual appearances and familiarity with the house displayed on the video, Judge Zmuda believed the inferences that could be made based on the surveillance of the house was a significant factor along with the evidence from the prior two weeks.<sup>70</sup> The detective performing the spot checks took in great detail about what he saw at the house and presented extensive testimony at trial.<sup>71</sup> Judge Zmuda highlighted frequent visitors for a short period of time while Walker remained at the house for at least an hour and a half.<sup>72</sup> This, together with the video recovered from the house presents enough evidence of coordinated drug activity that would satisfy a longevity requirement.<sup>73</sup>

### IV. Dissenting Opinion by Judge Donnelly

While the majority gives a substantial amount of weight to the surveillance video, Judge Donnelly did not see its significance as anything more than a single, isolated instance of activity that involves multiple drug offenses.<sup>74</sup> He did not feel that the defendant’s interactions shown on the video permitted the Court to find them to be members of a crime syndicate, which is the target of the federal and Ohio statutes.<sup>75</sup> To support the type of crime he believed these statutes target, he stated that RICO is “intended to target the kind of organized-crime syndicates that have the power to ‘infiltrate and corrupt legitimate business and labor unions and democratic processes,’ resulting in harm to the nation’s economy and domestic security.”<sup>76</sup> He did not believe the statute should be used to add an additional penalty to what he

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66. *Id.* at ¶ 16.

67. *Id.*

68. *Dent*, 2020-Ohio-6670 at ¶ 16.

69. *Id.* at ¶ 28.

70. *Id.* at ¶ 32.

71. *Id.*

72. *Id.*

73. *Dent*, 2020-Ohio-6670 at ¶ 32.

74. *Id.* at ¶ 45.

75. *Id.* at ¶ 38.

76. *Id.* at ¶ 39.

considers isolated drug offenses.<sup>77</sup> The majority used suspicious circumstances surrounding a suspected “drug house” as evidence for adding major offenses to small-time drug charges.<sup>78</sup> He did not feel that the fact that Walker and Dent seemed to know one another and that they were comfortable eating sandwiches inside the house was sufficient to transform these drug crimes into an organized-crime scheme.<sup>79</sup>

## V. Discussion

In order to determine if the elements of the offense were met, the longevity feature announced by the United States Supreme Court does not have a required time duration.<sup>80</sup> Since this is not required, the trier of fact is able to conclude from the video seized at the house that the production and sale of crack cocaine, paired with the casual and familiar interaction between the appellees and Groce, was sufficient to meet the requirements of a criminal enterprise.<sup>81</sup> While it may not be the clearest evidence to prove a criminal enterprise, the jurors could determine that the activities featured in the video depict an understanding between the men that they were acting together for the purpose of perpetrating criminal activity.<sup>82</sup> Based on the Court in *Boyle* stating that longevity was only required to be “sufficient to permit the associates to pursue the enterprise’s purpose,” one could reasonably determine the conduct of the men reflects a partnership working together for the purpose of producing and selling illegal drugs.<sup>83</sup>

Additionally, while the Court of Appeals focused on a definite time requirement not being met, evidence of the ongoing enterprise was shown by the Columbus Police performing various surveillance on the house.<sup>84</sup> The original surveillance was performed on March 11, following two or three “spot checks,” which was followed by a confidential informant who made a purchase on the 28<sup>th</sup> and the search happened a day later.<sup>85</sup> As stated at trial, this was consistent with “an up and running drug house.”<sup>86</sup> Even prior to the spot check, a complaint about the criminal activity was received in February, information that prompted the investigation the next month.<sup>87</sup> Based on the knowledge of trained experts at the department, one could conclude this to be

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77. *Id.* at ¶ 38.

78. *Dent*, 2020-Ohio-6670 at ¶ 38.

79. *Id.*

80. *Boyle*, 556 U.S. at 946.

81. *Dent*, 2020-Ohio-6670 at ¶ 27.

82. *Id.*

83. *Boyle*, 556 U.S. at 946.

84. *Dent*, 2020-Ohio-6670 at ¶ 3.

85. *Id.*

86. *Id.* at ¶ 32.

87. *Id.* at ¶ 3.



sufficient evidence to meet the longevity requirement stated in *Boyle*.<sup>88</sup> Based on all of this evidence and viewing it in a light most favorable to the prosecution, the majority believes a rational juror could have reasonably found that Walker and Dent were participating in an enterprise that met all the features mentioned in the *Boyle* case beyond a reasonable doubt.<sup>89</sup>

According to Black's Law Dictionary, the requirement for an enterprise to exist is incredibly low and vague.<sup>90</sup> All that is necessary is an organization or venture, especially for business purposes.<sup>91</sup> There is no time requirement, there is no definition of structure, and there are no formal requirements that would need to be established by the members.<sup>92</sup> While the United States Supreme Court did not provide perfect guidance, it provided substantially more direction than the simple definition of the word.<sup>93</sup> Because of this, I find no issue with the majority declining to incorporate any durational requirement and believe that any discussion including this element is not supported by the known meaning of an enterprise.<sup>94</sup> While the requirement may be something that the Ohio legislature may consider and could give direction to the true purpose of the statute, implying the existence of a time requirement is not supported by the understanding of an enterprise.

Based on the majority's analysis and with all of the evidence viewed together, from the first report in February to the search conducted a month later, I would agree that a criminal enterprise could be found by a rational trier of fact.<sup>95</sup> However, I am not in agreement that the single video recording seized from the house would be sufficient to sustain a verdict for engaging in a pattern of corrupt activity.<sup>96</sup> While the majority acknowledged the existence of additional evidence brought before the court, they seem to be of the belief that the video alone is sufficient to sustain a verdict against the appellees.<sup>97</sup> I would not doubt that casual body language observed directs one towards a belief that the appellees and Groce were involved and actively participated in the production and sale of crack cocaine, but I would disagree that this is sufficient to prove all of the elements of a crime beyond a reasonable doubt.<sup>98</sup>

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88. *Boyle*, 556 U.S. at 946.

89. *Dent*, 2020-Ohio-6670 at ¶ 27.

90. *Enterprise*, BLACK'S LAW DICTIONARY (10th ed. 2014).

91. *Id.*

92. *Id.*

93. *Boyle*, 556 U.S. at 946.

94. *Dent*, 2020-Ohio-6670 at ¶ 21.

95. *Id.* at ¶ 3.

96. *Id.* at ¶ 22.

97. *Id.*

98. *Id.* at ¶ 16.

In order to establish that the appellees violated the Ohio statute, criminals in the United States must have been proven guilty beyond a reasonable doubt.<sup>99</sup> The jurors at the trial court would make this determination, but upon review, the court of appeals and the supreme court would need to make a sufficiency-of-the-evidence inquiry.<sup>100</sup> This means that the reviewing court would need to view the “evidence in a light most favorable to the prosecution” and determine whether “any reasonable trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.”<sup>101</sup> The key is that this is a review of if the jury had sufficient evidence, it is not up to the appellate court or supreme court to interpret the evidence.<sup>102</sup>

While I do not question the findings of the jury, I would hesitate to adopt the idea that the video found at the “drug house” alone is sufficient to convict the appellees on a charge of participating in a criminal enterprise.<sup>103</sup> I, of course, would agree that it is likely that the men shown in the video would seem to be participating in an ongoing criminal activity, but I would not be willing to say there is not a reasonable doubt. The idea that mere physical actions would lead a viewer to believe that the parties featured were not strangers, and therefore guilty of belonging to an ongoing criminal entity, seems to be far beyond the scope of beyond a reasonable doubt.<sup>104</sup>

In determining that the appellees are guilty beyond a reasonable doubt, the trier of fact would have to make their determination to a very high degree of certainty.<sup>105</sup> While a variety of explanations are adopted in American courts to describe the degree of certainty that one would need for a guilty verdict, it remains that this is a ruling with a desire for a very low error rate.<sup>106</sup> The Constitution does not prescribe a certain way to elaborate the standard, but generally, a jury can be expected to make a decision that is a virtual certainty.<sup>107</sup> Therefore, the jury would need to reach the conclusion that the appellees participated in the affairs of a criminal enterprise through a pattern of corrupt activity, through the single four-hour video that lacked audio, beyond any reasonable doubt.<sup>108</sup>

The majority in the opinion feel that the court of appeals is focusing too much on if the best evidence has been produced by the prosecution in this

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99. Jon O. Newman, *Beyond “Reasonable Doubt”*, 68 N.Y.U. L. REV. 979 (1993).

100. *State v. Smith*, 80 Ohio St.3d 89, 114 (1997).

101. *Id.* at 113.

102. *Id.* at 114.

103. *Dent*, 2020-Ohio-6670 at ¶ 22.

104. Newman, *supra* note 99, at 979.

105. *Id.*

106. *Id.*

107. *Victor v. Nebraska*, 511 U.S. 1 (1994).

108. *Id.*

case.<sup>109</sup> The Court of Appeals seemingly acknowledged the possibility of an enterprise but did not feel that a short four-hour video is in any way sufficient to support the verdict.<sup>110</sup> The majority then states that the wrong question was analyzed by the court of appeals and that the sole question is concerning the sufficiency of the evidence.<sup>111</sup> It does not matter if the prosecution could have produced more evidence to make their case more likely, the Court of Appeals only should review if the evidence before them is sufficient.<sup>112</sup> The majority found the contents of the video alone sufficient, stating that one would not “serendipitously find themselves in an up-and-running drug house”.<sup>113</sup>

I do not doubt the logic of the majority and would agree that the activity caught on camera would more than likely point towards the operation of a criminal enterprise, not just a single activity with multiple drug offenses involved. However, based on the standard employed in criminal cases of beyond a reasonable doubt, I do not feel that the video viewed in isolation would produce sufficient evidence to show there was a violation of the Ohio statute. Other evidence was produced, however, and in combination with all other items introduced at trial, I would ultimately agree that the evidence was sufficient for a reasonable jury to find the elements of the offense beyond a reasonable doubt.<sup>114</sup>

While the majority believes the actions presented in the court were sufficient evidence to support a conviction, the dissent focused on the connection between crimes and how they are performed to elevate the offenses to an involvement in a criminal entity.<sup>115</sup> The dissent felt that while satisfying the elements for an enterprise is part of the analysis, he did not find that the appellees were involved in a pattern of any criminal activity and, these were just isolated drug offenses.<sup>116</sup> While this is a valid criticism of the majority, I believe a court would be able to defer to the language of the statute and find that even if the purpose of it is for organized criminal activity that the dissent describes, the statute does not foreclose the possibility that a small-time “drug-house” would fail to meet the requirements.<sup>117</sup>

An early Ohio court case involving a charge of an individual involved in a pattern of corrupt activity involved a situation featuring many underlying

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109. *Dent*, 2020-Ohio-6670 at ¶ 16.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.* at ¶ 26.

114. *Dent*, 2020-Ohio-6670 at ¶ 27.

115. *Id.* at ¶ 36.

116. *Id.*

117. Ohio Rev. Code § 2923.32 (2011).

crimes related to a telemarketing operation, *State v. Schlosser*.<sup>118</sup> In that case, the appellee created scripts for employees to read to lure low-income individuals who had been denied credit cards into purchasing a card from his company.<sup>119</sup> The scripts included false information and would charge customers nearly \$150 for a credit card through his services.<sup>120</sup> After his organization's scam was discovered, the appellee was ultimately charged with eleven counts of failure to register as a credit services organization, eleven counts of charging an advance fee for credit services, eleven counts of engaging in fraudulent acts in the sale of credit services, and more.<sup>121</sup> Based on these charges, a violation of the Ohio RICO statute was imposed.<sup>122</sup>

In describing the need for the federal RICO Act, the court established that the purpose was to eradicate organized crime located throughout the country.<sup>123</sup> The Ohio legislature adopted a similar statute based on the presence of similar crime within the state.<sup>124</sup> With the statute available, prosecutors have stronger tools “in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.”<sup>125</sup> The Court further goes to compare the Ohio version to the federal version and interprets the text to require at least two acts of racketeering activity.<sup>126</sup>

At this point, the Court mentioned that merely committing related crimes would not be what the Ohio statute was intended to prevent.<sup>127</sup> This statute was not intended to be used unless an enterprise exists, which can be as simple as a group of people, not needing recognition as a legal entity.<sup>128</sup> The court gave the example that the commission of three separate robberies committed by a single person would not be sufficient.<sup>129</sup> The state is required to prove more than that, that the defendant in the crime would need to be “voluntarily connected to a pattern and performed at least two acts in furtherance of it.”<sup>130</sup> This statement, like many features of Ohio's RICO statute, was adopted straight from the United States Supreme Court.<sup>131</sup>

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118. *State v. Schlosser*, 79 Ohio St.3d 329 (1997).

119. *Id.*

120. *Id.*

121. *Id.* at 330.

122. *Id.*

123. *Schlosser*, 79 Ohio St.3d at 332.

124. *Id.* at 333.

125. *Id.* at 332.

126. *Id.* at 334.

127. *Id.* at 333.

128. *Schlosser*, 79 Ohio St.3d at 333.

129. *Id.* at 334.

130. *Id.*

131. *United States v. Palmeri*, 630 F.2d 192, 203 (1980).

In the case of *Schlosser*, the overall pattern of criminal activity was clear.<sup>132</sup> The defendant had an organized entity to sell credit cards in violation of Ohio law.<sup>133</sup> In the case of Walker and Dent, this case becomes much closer and is the focus of the dissenting opinion.<sup>134</sup> I believe this is why the combination of all of the evidence is critical and why the trial court was affirmed. If the Supreme Court wants to follow their discussion in *Schlosser* involving at least two related activities, it would seemingly be impossible to convict the appellees based only on the video recovered at the house.<sup>135</sup> As stated in dissent, Judge Donnelly was concerned that the majority would be able to affirm a conviction simply based on the appellees and Groce not appearing like strangers in the commission of the underlying drug crimes.<sup>136</sup> I find this to be a very persuasive argument and I would agree with it; however, the evidence of spot checks, surveillance, a controlled buy, and the subsequent video located confirmed a continued activity, not a single isolated event.<sup>137</sup>

## VII. Conclusion

Overall, the main disagreement that I see between the three opinions in the case is simple, what constitutes an enterprise. Nothing in the Ohio Revised Code Chapter 2923 gives any direction as to what is required in order to meet the requirement of an enterprise.<sup>138</sup> The Court of Appeals attempted to infer a time requirement, which is not adopted by the majority.<sup>139</sup> Judge Donnelly seemed to envision more structure and ongoing activity.<sup>140</sup> In a past case, the Supreme Court of Ohio expressly stated that the definition of an enterprise was left remarkably open-ended.<sup>141</sup> In referring to the United States Supreme Court for guidance in *Boyle*, the court still must deal with broad analysis on what an enterprise would be.<sup>142</sup> While I have expressed my opinion as to what evidence I think would be sufficient to establish an enterprise in violation of the Ohio statute, this determination is certainly not perfect and many individuals would likely make their own judgments in separate ways.

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132. *Schlosser*, 79 Ohio St.3d at 330.

133. *Id.*

134. *Dent*, 2020-Ohio-6670 at ¶ 38.

135. *Schlosser*, 79 Ohio St.3d at 334.

136. *Dent*, 2020-Ohio-6670 at ¶ 38.

137. *Id.* at ¶ 3.

138. Ohio Rev. Code § 2923.32 (2011).

139. *Dent*, slip op. at ¶ 21.

140. *Id.* at ¶ 39.

141. *Schlosser*, 79 Ohio St.3d at 334.

142. *Boyle*, 556 U.S. at 946.

In finding Alvin Dent, Jr. and William Walker, Jr. guilty of engaging in a pattern of corrupt activity, the majority believed that the combination of multiple pieces of evidence was sufficient to allow a reasonable trier of fact to hold the two men guilty beyond a reasonable doubt.<sup>143</sup> The Court was not concerned with the time requirement that the Tenth Circuit believed was not met and affirmed the jury's finding that two men were a part of an enterprise engaged in a pattern of corrupt activity in connection with underlying drug offenses.<sup>144</sup> Based on the full report of what was presented at the trial court, I would agree with the majority that the evidence was sufficient to affirm the lower court's finding. It seems that the individuals operating out of the house were active in the making, processing, and selling of drugs for at least two weeks. However, I would not agree with the majority's view that if the only evidence presented was the four-hour videotape, there would still be sufficient evidence to affirm the existence of a criminal enterprise. The physical appearances of the appellees, seen through a video, should not be sufficient to find them to be members of a criminal enterprise beyond a reasonable doubt.

ALEX ALBERS

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143. *Dent*, 2020-Ohio-6670 at ¶ 24.

144. *Id.* at ¶ 25.