IN THE SIXTH DISTRICT COURT OF APPEALS

WOOD COUNTY, OHIO

STATE OF OHIO

Plaintiff

Vs.

Harold Jason Craig

Defendant

Court of Appeals No. WD-20-034

Trial Court No. 2018-CR-0437

MOTION FOR REVIEW OF DECISION

Harold Jason Craig, Pro Se, requests that this court reviews and corrects is prior decision by reversing Mr. Craig's conviction of Engaging in a pattern of corrupt activity due to the several supporting legal factors shown in this motion. Mr. Craig brings the attention to this court that upon the vacating of Mr. Craig's three Money Laundering charges (by this court), there were no valid predicate offenses, due to the following factors contained in this motion, that allow for the Engaging charge to remain. Thus upon vacation of the charge of Engaging, Mr. Craig has fulfilled the maximum sentence allowed by law (for a 3rd degree aggravated theft conviction) and asks that this court vacates his engaging in a pattern of corrupt activity and orders his release due to the completion of his max sentence and remand back to the trial court for correction to PRC.

Statutes and Authorities

Memorandum in support

Mr. Craig asks that this court recognize that under ORC 2901.04 the interpretation that this court allowed by the State of Ohio is a violation of the revised code. The burden of two or more predicate acts were not proven. The state cannot construct charges in that the aggregate theft is the third degree felony and parts of it can be used as the other acts. This being an intentional construction to increase the penalty in violation of "the rule of lenity". Had the State of Ohio chose to charge Mr. Craig with individual thefts, not a single violation rises to the third degree felony level. Mr. Craig also contends that the error of improper jury instructions negates any assumption by the reviewing court that unindicted predicate offenses exist.

§ 2901.04

Rules of construction; references to previous conviction; interpretation of statutory references that define or specify a criminal offense.

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

State v. Perry, 2012-Ohio-4888 (Ohio Ct. App., Lake County October 22, 2012)

[*P110] In reviewing the facts of this case under the Johnson test, it is clear that HN29 commission of a single offense could not establish a "pattern" of corrupt activity. Therefore, the commission of each individual offense, standing alone, would not result in committing the offense of engaging in a pattern of corrupt activity. **State v. Reyes, 6th Dist. No. WD-03-059, 2005 Ohio 2100.**

In the instant case, even if ever single line item was a singular offense, none arise to the level of a third degree felony, thus, at best, requires a charge of Engaging in the second degree.

State v. Bradley, 2021-Ohio-2687 (Ohio Ct. App., Cuyahoga County August 5, 2021)

[*P28] HN9 This statute is a rule of "statutory construction that provides that a court will not interpret a criminal statute so as to increase the penalty it imposes on a defendant if the intended scope of the statute is ambiguous." **State v. Elmore, 122 Ohio St.3d 472**, 2009-Ohio-3478, 912 N.E.2d 582, ¶ 38. R.C. 2901.04 is limited to the interpretation of statutes.

State v. Elmore, 122 Ohio St. 3d 472 (Ohio July 28, 2009)

[**P37] HN17 The "rule of lenity" is codified in R.C. 2901.04(A), which provides that sections of the Revised Code that define penalties "shall be strictly construed against the state, and liberally construed in favor of the accused."

[**P38] HN18 The rule of lenity is a principle of statutory construction that provides that a court will not interpret a criminal statute so as to increase the penalty it imposes on a defendant if the intended scope of the statute is ambiguous..."

Ohio v. Craig, 2021-Ohio-2790 (Ohio Ct. App., Wood County August 13, 2021)

[*P113] In the indictment, the state lists several incidents of theft that occurred over a three-year period from August 1, 2012, [***65] to December 31, 2015.

In finding most favorably to the State of Ohio, and allowing somehow for the statutory construction rule to be ignored, plus, arguably using parts of the aggravated theft to create to Engaging charge resulted in Double Jeopardy for having 2 charges based on the same actions. There is still error in the failure to vacate the conviction for engaging in the 1st degree. In **State v. Reyes, 2005-Ohio-2100** this very court found the following resulting in the reversal of Engaging in a pattern of corrupt activity. State v. Reyes requires the reversal of Mr. Craig conviction of Engaging.

According to the Sixth District in Reyes, the court also found that

"Failure to instruct the jury as to the elements of a crime is not corrected just because a reviewing court decides, after the fact, that sufficient evidence existed to support conviction."

In Mr. Craig's case the opening statements and the Jury instructions not only fail to mention incidents outside of the indicted charges but describes the incidents specifically as the indicted charges.

OHIO v. Craig 2018-CR-0437 Wood County Trial Transcripts

Opening Statements

Pg. 190 Prosecutor Beard "There are many incidents that you're going to hear of. And corrupt activity can be defined as theft and money laundering. Those are the two that we're going to focus on for this trial."

Jury Instructions

Pg. 1080 Ln. 1 Judge Reger "The term corrupt activity means: (A) engaging in, (B) attempting to engage in: (C) conspiring to engage in: (D)or soliciting, coercing, or intimidating another to engage in: (1) theft, a violation of Ohio Revised Code 2913.31 (incorrect ORC), when the proceeds of the violation exceed $1,000 and/or (2) money laundering, a violation of revised code 1315.55."

State v. Reyes, 2005-Ohio-2100 (Ohio Ct. App., Wood County April 29, 2005)

[*P29] HN9 In a criminal trial, the trial judge's instructions to the jury regarding the [**13] elements of the crime charged are the only means of ensuring that the state has satisfied its burden of proving each element of the crime beyond a reasonable doubt. State v. Stacy, 12th Dist. No. CA2002-03-073, 2003 Ohio 4752, at P7, citing Glenn v. Dallman, 686 F.2d 418, 421 (C.A.6, 1982). **Failure to instruct the jury as to the elements of a crime is not corrected just because a reviewing court decides, after the fact, that sufficient evidence existed to support conviction.**

[*P30] In the instant action, appellant was indicted on two counts of trafficking in cocaine, Counts 1 and 2, and one count of engaging in a pattern of corrupt activity, Count 3. The state correctly points out that HN10 some courts have held that so long as a predicate act is set forth in the bill of particulars and the defendant is afforded ample opportunity to defend against the occurrence of the act, such an un-indicted offense can serve as a predicate act. See, e.g., State v. Siferd, 151 Ohio App. 3d 103, 2002 Ohio 6801, at P2, 783 N.E.2d 591.

[*P31] However, in those cases where an un-indicted offense served as a predicate act to support a conviction for engaging [**14] in a pattern of corrupt activity, the judge instructed the jury as to the elements of the un-indicted offense. **The critical difference in this case is that the trial judge never instructed the jury on any un-indicted offense.** Moreover, while the state alleges that the bill of particulars in this case charged that appellant committed another offense, possession of two kilograms of cocaine, the record before us lacks any such bill of particulars.

[*P32] The trial judge instructed the jury on Counts 1 and 2, and regarding Count 3, engaging in a pattern of corrupt activity, the judge instructed the jury as follows:

[*P33] "Before you can find the [appellant] guilty, you must find beyond a reasonable doubt that from the 13th day of April, 2001 continuing through May 14, 2001, the [appellant], being employed by, or associated with, an enterprise, conducted or participated in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity * * * Pattern of corrupt activity means 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, [**15] and are so closely related to each other and connected in time and place that they constitute a single event."

[*P34] HN11 Pursuant to R.C. 2923.31(E), in order to find the appellant guilty of engaging in a pattern of corrupt activity, the jury had to find, beyond a reasonable doubt, that appellant committed two or more predicate acts that are not so closely related that they constitute the same event. The jury specifically found that the act upon which it found the appellant guilty of in Count 1 served as one of the predicate acts. However, the jury's explicit not guilty verdict on Count 2 establishes that the state failed to prove its occurrence beyond a reasonable doubt. **Finally, because the jury was not instructed as to the elements of any un-indicted offense, it could not find beyond a reasonable [**16] doubt, that appellant committed any un-indicted offense. See State v. Adkins (2000), 136 Ohio App.3d 765**, 782-83, 737 N.E.2d 1021

(holding that HN12 the trial court's failure to instruct the jury on an essential element of a predicate offense precluded its use to support a conviction for engaging in a pattern of corrupt activity).

[*P35] In sum, with a not guilty verdict on Count 2, **and no jury instruction as to any other offense that could serve as a predicate act**, the state proved only one predicate act beyond a reasonable doubt. Because R.C. 2923.31(E) requires that the state prove the occurrence of two or more predicate acts beyond a reasonable doubt, there was insufficient evidence upon which the jury could convict appellant of engaging in a pattern of corrupt activity. See State v. Coleman, 2d Dist. No. 2002-CA-17, 2003 Ohio 5724, at P46.

[*P36] We find appellant's second assignment of error regarding the pattern of corrupt activity conviction to be well-taken. Because our decision renders appellant's first and third assignments of error moot, we decline to address them.

[*P37] Accordingly, the judgment of the Wood County [**17] Court of Common Pleas as to Count 3, engaging in a pattern of corrupt activity, is reversed.

Glenn v. Dallman, 686 F.2d 418 (6th Cir. Ohio August 23, 1982)

HN4 The failure to instruct a jury on an essential element of a crime is error because it deprives the defendant of the right "to have the jury told what crimes he is actually being tried for and what the essential elements of these crimes are." United States v. Natale, 526 F.2d 1160, 1167 (2nd Cir. 1975), citing, United States v. Fields, 466 F.2d 119, 121 (2nd Cir. 1972). **This error is not rectified solely because a reviewing court is satisfied after the fact of a conviction that sufficient evidence existed that the jury would or could have found that the state proved the missing element had the jury been properly instructed.** As the Second Circuit stated in United States v. Clark, 475 F.2d 240, 248 (1973):

If justice is to be done in accordance with the rule of law, it [11] is of paramount importance that the court's instructions be clear, accurate, complete and comprehensible, particularly with respect to the essential elements of the alleged crime that must be proved by the government beyond a reasonable doubt**, see Holland v. United States, 348 U.S. 121, 138, 75 S. Ct. 127, 99 L. Ed. 150 (1954).

In Craig's case, upon the reversal of the Money laundering by the Sixth District Court of appeals and the failure to instruct the Jury on specific un-indicted offenses the appeals court overlooked the required reversal of the engaging charge.

The Supreme Court of Ohio has found that the single Aggravated theft charge is structurally correct under 2913.02 and Mr. Craig thefts were required to be charged as a single theft. The again providing that upon the Money Laundering charges being reversed, there was only a single predicate offense that remained in the Jury instructions.

State v. Rice, 103 Ohio App. 3d 388 (Ohio Ct. App., Franklin County May 4, 1995)

[*402] "Appellant contends that the two theft counts in the indictment alleged violations which were actually part of an interrelated series of crimes allegedly committed by appellant in the "same employment, capacity, or relationship" with Babel. Appellant further relies upon State v. Krutz (1986), 28 Ohio St. 3d 36, 28 Ohio B. Rep. 96, 502 N.E.2d 210, wherein the Supreme Court of Ohio held that theft-in-office offenses (R.C. 2921.41) are distinct from R.C. 2913.02 theft offenses, the latter of which must be tried as a single offense under the appropriate circumstances set forth in R.C. 2913.61(C). We find merit in appellant's argument."

CONCLUSION

Mr. Craig contends that due to the failure to specify predicate offenses in opening, closing, and jury instructions by the court, the conviction for engaging in a pattern of corrupt activity must be based on the

aggravated theft and money laundering charges. Upon the reversal of the money laundering charges only a single predicate offense exists, aggravated theft. This requires the reversal of the Engaging charge. In no legal scenario does the F1 engaging hold to any legal construction according to Ohio Revised code and the above stated case law.

As show above, due to the failure of the trial court to provide jury instructions for the unindicted thefts as separate offenses **Glenn v. Dallman, 686 F.2d 418** (6th Cir. Ohio August 23, 1982)

"This error is not rectified solely because a reviewing court is satisfied after the fact of a conviction that sufficient evidence existed that the jury would or could have found that the state proved the missing element had the jury been properly instructed."

Even if the law did not require the charge as a single offense, it would have still qualified as numerous theft that did not amount to a felony in the third degree thus once again requiring the reversal of the engaging in the first degree.

Mr. Craig prays that this court recognizes its unintentional overlooking of these laws and case laws and reverses the Engaging in a Pattern of Corrupt activity in the 1st degree and order the release of Mr. Craig. Mr. Craig requests any relief that is required by law.

Harold J. Craig

CERTIFICATION

I hereby certify that this motion was sent to the Wood County Prosecutor via regular mail at

1 courthouse Sq Bowling Green, Oh 43402 on March 9th, 2024.

Harold Jason Craig

Harold J. Craig