

IN THE SUPREME COURT OF FLORIDA

CASE NO. 95,302

**RALPH GROSS, JR.,**

Petitioner,

v.

**STATE OF FLORIDA,**

Respondent.

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ON DISCRETIONARY REVIEW IN THE FLORIDA SUPREME COURT

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**ANSWER BRIEF ON THE MERITS**

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CERTIFICATE OF TYPE AND STYLE

I certify that Respondent's answer brief conforms to the Administrative Order dated July 13, 1998. This brief is typed using 12 point Courier New type, a font that is not spaced proportionately.

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PRELIMINARY STATEMENT

The defendant will be referred to as "Petitioner." The State will be referred to as "Respondent." References to the record will be preceded by "(R." References to the transcript will include the volume and page numbers. References to the first supplemental record will be preceded by "(SR." The supplemental record filed in the Fourth District by Respondent on March 25, 1998, will be preceded by "(SR2." All emphasis is added unless otherwise noted.

### STATEMENT OF THE CASE

Respondent agrees with Petitioner's statement of the case, except for the suggestion that the prosecutor misstated the law in closing argument.

### STATEMENT OF THE FACTS

Forester testified that he had known Petitioner since the early eighties (V6 978). The first home invasion robbery he committed with Petitioner was on September 10, 1993 (V6 992). They discussed the robbery months before it occurred (V6 992). More specific plans were made two weeks prior to the robbery (V6 992). The conversations occurred over the phone or at Petitioner's business, Corvette Country, in Fort Lauderdale (V6 993). Petitioner drove a white Thunderbird coupe during this period (V6 994). They discussed robbing Skip Miller (V6 995). For years, they also discussed robbing other people, including Craig Mattos, a bookie (V6 996). Petitioner had information that Mattos had money in a safe (V6 996, 997). The plan was to dress as police officers and rob the victims (V6 996). Forester told Petitioner that he knew two policemen who would go with Forester (V6 996). The officers would give Forester some police gear to wear (V6 996).

As to Mattos, the plan was that Forester and the officers would come to Broward and Petitioner would show them Mattos'



location (V6 998). Petitioner would get one third of the proceeds (V6 998). Petitioner would not enter the house because he knew Mattos (V6 999).

They also discussed robbing Steven Duffy (V6 996). Petitioner got information that Duffy was a pot dealer with a lot of marijuana (V6 996, 999). He also had information that Duffy had ten thousand dollars in a kitchen drawer (V6 999). The plan was to sell the marijuana and split the proceeds (V6 1000). They would also split any cash recovered (V6 1000). These plans were discussed over a period of time (V6 1000).

As time passed, the conversations got more detailed (V7 1003). Forester asked Petitioner if Duffy would have money and marijuana (V7 1003). Petitioner said he would find out (V7 1003).

Forester testified that Detective Brady was his next door neighbor (V7 1003). Brady was interested in committing illegal acts (V7 1004). Forester knew Brady for six years (V7 1248). They were friends (V7 1005). Brady asked Forester if he knew anyone they could rob for money and drugs (V7 1005). Forester said that he did (V7 1005). Brady took care of some traffic tickets for Forester (V7 1006). Brady, Forester and Detective Evans (Brady's police partner) met and discussed the robberies (V7 1006-07). Forester told Brady and Evans that he had to talk

to Petitioner about the robberies (V7 1007). Forester told Petitioner that Brady and Evans were ready (V7 1007).

On September 10, 1993, Evans and Brady met Forester at a Waffle House in Broward (V7 1008). Forester had told Petitioner they were coming down (V7 1008). Evans and Brady knew that when Forester got to the restaurant, he had to call Petitioner to get the robbery locations (V7 1048).

Evans and Brady dropped off Forester and went to rob Skip Miller's house (V7 1011). They returned to Forester twenty minutes later and said they got a quarter pound of marijuana (V7 1012). Forester was to sell it and split the money (V7 1012).

Subsequently, Petitioner met them at a McDonald's to show them where Mattos lived (V7 1013, 1014). Petitioner had discussed the plan for the other three to go into Mattos' house dressed as police and take any money and drugs (V7 1014). They had discussed that they would be armed and tell the occupants they were conducting a police search (V7 1016). When Petitioner arrived at McDonald's, Forester got in Petitioner's car and Petitioner showed Forester where Mattos lived (V7 1017, 1018). They discussed the Mattos robbery (V7 1017). They returned to McDonald's and Petitioner led the others to Mattos' house (V7 1018). Petitioner left while the others waited for Mattos to return (V7 1018). When Mattos did not return, they called

Petitioner and met him at a restaurant (V7 1018). Petitioner then showed the other men Duffy's residence (V7 1018-19). Petitioner dropped Forester off by Brady's car, and left (V7 1019).

They had previously agreed that they would enter dressed as police so the victims would not shoot them (V7 1020, 1032). They wanted the victims to be home so the victims could show them where the money and drugs were (V7 1020). Brady, Evans and Forester went to the front door (V7 1031). No one was home (V7 1031). Evans and Forester went to the back door and entered (V7 1033). Someone came home so they left without searching the entire house, including the drawer that supposedly contained ten thousand dollars (V7 1036).

The men then went to Mattos' house (V7 1036). Mattos thought they were police and let them in (V7 1038). They took approximately three thousand dollars (V7 1039). They acted as if they were police officers conducting a search (V7 1039). They found the safe, but Mattos said he did not know the combination (V7 1040). The men pretended they got a call for a police emergency and left (V7 1043). The three men split the money (V7 1046). Forester later called Petitioner and told Petitioner he would give Petitioner some money at a later date (V7 1046).

The next day Forester talked to Brady and Evans (V7 1053). They said they would commit more crimes if "it were something good." (V7 1053). Forester drove back to Petitioner's that day (V7 1053). Forester told Petitioner to keep looking for "something good." (V7 1053). Forester contacted Petitioner every day or two (V7 1054). Forester was the common link between the members of the group (V7 1054). He needed Petitioner for information because Petitioner lived in the area of the robberies (V8 1349).

Petitioner had police hats and shirts made (V8 1389, 1442). Petitioner gave Forester a police hat after the date of the first robberies (V7 1055). Hall and Forester were going to commit some robberies without Brady because Brady did not want to go and Petitioner told them he knew of a couple people they could rob (V7 1055). Forester had a close relationship with Brady (V7 1058). Brady trusted Forester (V7 1058). Jamie Hall and Jamie Deans trusted Forester (V7 1058). Petitioner was friends with Forester (V7 1059). Petitioner and Forester each trusted that the other would not turn him in (V7 1059). The same was true of Brady and Forester (V7 1059).

After the September 10th crimes, Forester had further discussions with Brady and Evans (V7 1061). Forester paid them from the money he got from selling the marijuana they got in the

Miller robbery (V7 1062). "They would come over and get a little bit here and a little bit there." (V7 1062). Brady and Evans were willing to continue the robberies if Forester could find someone closer to where they lived (V7 1063).

Forester called Petitioner periodically to see if he had any place to rob (V7 1063). Petitioner and Forester "hung out" at clubs (V7 1064). "I didn't always come down here to talk about robberies but my eye was always open as to who had the drugs, you know. I was always looking and Ralph was looking too." (V7 1064). The next robbery victim was Ronald Payne (a\k\a Hank Williams, Jr.) on November 17, 1993 (V7 1064, V8, 1218). Forester "was waiting on [Petitioner] to tell me anybody that had drugs." (V7 1066). Forester called Petitioner (V7 1066). Petitioner said that Payne had money and cocaine (V7 1066). Petitioner said he did not know how much, but would find out (V7 1066). The next time Forester contacted Petitioner, Petitioner had not found the amount of drugs and money, but said he would find out (V7 1066). Petitioner later called Forester and told him Payne had "quite a bit." (V7 1066). Petitioner told Forester to come down to Broward (V7 1067).

Hall, Deans and Forester drove to Petitioner's warehouse and hung around, talking to Petitioner (V7 1067). The plan was for Petitioner to show Hall and Forester the location (V7 1065).

Petitioner gave them a police hat (V7 1075). Forester had a police jacket he got from Brady (V7 1076). The plan involved using guns (V7 1077). The plan was to leave the warehouse and go to a bar called "Dr. Feelgood" to meet Brian Johnson (a\k\a Small) (V7 1078). Petitioner drove his Thunderbird (V7 1078). Petitioner bought a roll of duct tape at a 7-Eleven (V7 1085). When Johnson arrived, Petitioner and Forester talked to Johnson about the robbery (V7 1082). They got in their cars and Johnson pointed out Payne's house to them (V7 1083). Johnson then left (V7 1083). Forester and Petitioner drove by the house again (V7 1083). Forester and Petitioner returned to Feelgood's and got Dean and Hall (V7 1083). Forester, Hall and Deans then followed Petitioner to the house and Petitioner kept going (V7 1084). The plan was for Petitioner to wait nearby for his cut of the proceeds (V7 1084). Forester was to page Petitioner immediately after the robbery (V7 1084). They would then meet at the Porthole Pub (V7 1084).

Hall knocked on Payne's door (V7 1085). Hall and Forester wore police garb (V7 1085). Forester bound a man in the house with duct tape (V7 1086). Hall began searching the house (V7 1087). Payne subsequently arrived with a girl in a car (V7 1088). Forester told them to come in the house because he was executing a search warrant (V7 1088). He searched them (V7

1088). Hall then said "Officer Johnson I found it." (V7 1088). Hall had found \$800 worth of cocaine and a bong (V7 1088). They later found a jug of quarters worth about \$200 (V7 1092). They left and drove to the Pub (V7 1095). Forester called Petitioner (V7 1095). Forester told Petitioner that they got cocaine and money (V7 1096). When Petitioner arrived, he said he had driven by Payne's house after Forester left. Someone chased and shot at Petitioner (V7 1096, 1098). The men split the proceeds before leaving (V7 1098).

Forester subsequently talked to Petitioner about the robbery and learned that the girl at Payne's supposedly had thirty thousand dollars in a money belt taped to her stomach (V7 1100). Forester told Petitioner to let him know as soon as he had information on another robbery (V7 1100). Forester saw Petitioner "all the time." (V7 1100). They would "hang around together and do stuff." (V7 1100). They agreed that if "somebody came up we would do it." (V7 1101).

Around November 30th, "somebody did come up." (V7 1101). They discussed it prior to the thirtieth (V7 1101). Petitioner said it was something small (V7 1101). Hall and Forester drove to Petitioner's apartment (V7 1101). The plan was for Petitioner to drive them to Jones's residence (V7 1103, V8 1218). Forester did not know the location (V7 1106).

Petitioner would wait outside (V7 1106, 1108). Hall and Forester would dress as officers (V7 1103). Petitioner said that Jones reportedly sold cocaine and had expensive stereo equipment (V7 1105). Petitioner drove them to the location (V7 1102, 1103). Hall and Forester went to the door and said they were police officers executing a search warrant (V7 1110). They handcuffed the occupants (V7 1110). Forester found some cocaine (V7 1111). Forester and Hall left and met Petitioner (V7 1117). The men then split the proceeds (V7 1117).

After that incident, the group had further discussions regarding future activity (V7 1118). They also discussed past robberies (V7 1118). They discussed the Skip Miller robbery (V7 1118). Forester asked if Miller knew that Forester had robbed him (V7 1118). Petitioner said that Miller did not (V7 1118).

The next robbery involved going back to Duffy's house (V7 1118). Petitioner said Duffy had marijuana and a lot of money (V7 1118). Hall and Forester drove to Broward and met Petitioner (V7 1119, 1120). The robbery occurred in January of 1994 (V7 1119). They bought "zipties" for restraining the victims' hands (V7 1120). They planned to carry guns (V7 1122). Forester needed Petitioner to point out where Duffy lived because Forester did not remember (V7 1121).



Forester and Hall went to the door and told the occupants they had a search warrant (V7 1123). They impersonated police officers (V7 1123). They were armed with guns and wearing police garb (V7 1126). Hall found about nine thousand dollars (V7 1125, 1126). After leaving, they met Petitioner and gave him his cut (V7 126).

In June of 1994, Petitioner approached Forester about sinking a boat so the owner could collect insurance (V7 1129). The two had previously discussed the crime, but nothing "panned out" until June (V7 1129). Petitioner said Forester could earn a couple thousand dollars (V7 1130). Forester met Petitioner in Palm Beach County (V7 1130). The plan was to take the boat for a week and strip it down (V7 1130). Petitioner was to give Forester money for the job in addition to the money Forester made selling parts from the boat (V7 1130). The boat would then be sunk for the insurance money (V7 1131). Petitioner showed Forester the boat the night before it was taken (V7 1132, 1134).

The next morning they returned to the boat (V7 1134). They took the boat up the intracoastal (V7 1135). Petitioner got off in Jupiter and Forester took the boat to Stuart (V7 1135). Forester was unable to sink the boat because of mechanical problems (V7 1136). Forester used his own money for gas for the boat (V7 1136). Petitioner said he would make sure

Forester was reimbursed (V7 1136). Forester parked the boat and left it (V7 1137). Forester called Petitioner, stating he had sunk the boat (V7 1137). Petitioner said he would try to get Forester's money the next day (V7 1137).

After Forester's arrest, Brady sent Forester money to get him out of jail (V8 1273). Forester was the "common thread" in the organization (V8 1317). Forester and Brady used pagers when communicating. One code meant Forester should leave his house because the police were on the way (V9 1480). Another code indicated there was a problem and Forester should call Brady (V9 1480).

Brady testified that he and Forester discussed possible crimes over the phone (V11 1846). Brady and Evans then met Forester at a restaurant in Fort Pierce and Forester laid out the plan for the first robbery (V11 1846).

Petitioner was with Brady, Forester, and Evans (Brady's partner at the police department) on September 10, 1993 (V10 1799, V11 1805, 1842). Petitioner showed them where Mattos and Duffy lived (V10 1800). On September 10, the plan was to rob a drug dealer who allegedly had a lot of money (V11 1809). Forester, Evans, and Brady would identify themselves as police officers and go in the homes (V11 1810). When they went to the first target's house (Rick the Greek), no one was home (V11

1811, 1855). Forester called Petitioner and found out where the Rick worked (V11 1811). They went to the business and waited for the target to leave. While waiting, Forester made several calls to Petitioner to get more information on the target (V11 1812). They left and later saw that Rick was home (V11 1813). Forester knew the target so he waited outside (V11 1813). Brady and Evans knocked on the door, but Rick would not answer (V11 1813).

Forester called Petitioner again and Forester, Evans, and Brady went to Miller's house (V11 1814). Forester did not go in because he knew Miller (V11 1814). Brady and Evans identified themselves as officers (V11 1814) and took some marijuana (V11 1815). They then picked up Forester. Forester said he had another place to rob, but did not know where it was so he called Petitioner (V11 1815). Petitioner met them at a McDonald's (V11 1815). Forester got in Petitioner's car and they left (V11 1816). They came back and Forester said they were going to drive over and look at the house (V11 1816). Evans, Brady and Forester followed Petitioner to Mattos' house (V11 1817). Petitioner hit his brake lights to signal the location (V11 1817). Mattos was not home, so they went to a doughnut shop and Forester called Petitioner (V11 1818). Petitioner was to meet them at an apartment complex in Boca Raton (V11 1819). The

victim (Duffy) was supposed to have lots of drugs and money (V11 1819). At the complex, Forester got out of Brady's car and got into Petitioner's car (V11 1820). Petitioner and Forester drove around once, then Forester got back in Brady's car and Petitioner left (V11 1820). Forester knocked on the door, but no one was home (V11 1820). Petitioner and Evans went around back and found an open door (V11 1820). When someone arrived home, Forester and Evans jumped out a window (V11 1821).

The men then went back to Mattos' residence (V11 1821). They identified themselves as police (V11 1821). Mattos would not open the safe, but they got approximately three thousand dollars and a small amount of marijuana (V11 1822). Forester said he would take care of Petitioner's share (V11 1822). They would not have known where Mattos and Duffy lived if Petitioner had not shown them (V11 1826). The next time Brady met with Forester, Forester said that Miller had called Petitioner, told him about the robbery and said a Rolex watch was taken (V11 1822). Brady assured Forester that they did not take a Rolex watch (V11 1822).

Brady and Forester committed another robbery on March 1, 1994, in Port St. Lucie (V11 1823-24). Forester and Brady went to Coto's house and identified themselves as officers (V11 1824). They stole some marijuana (V11 1824).

Brady testified that prior to his arrest, Agent Brooks came to the police station where Brady was working and asked about Forester (V10 1789). When Brady learned Forester was in a photographic line up for home invasion robberies, he thought "The jig is up. That he was going to be arrested." (V10 1790). Brady feared Forester would mention Brady (V10 1790). In June of 1994, Brady contacted Forester and told him that he was identified as being involved in some home invasion robberies and he better get out of town (V10 1791). Brady told Forester about Brooks and described Brooks' car (V10 1791).

When Forester was arrested for an unrelated offense, he called Brady, who bailed out Forester before Brooks could identify him (V10 1792-93). Brady had many conversations with Forester during July and August of 1994 (V10 1795). Forester asked if there were still warrants out for him (V10 1795). Brady periodically checked Forester's name on the NCIC to see if there were any active warrants pertaining to the robberies and informed Forester (V10 1796-97). Brady told Forester he had to avoid apprehension so that they could not tie them to the robberies (V10 1796). Brady notified Forester each time the FDLE traveled to Fort Pierce (V10 1711). Brady gave Forester vehicle descriptions and tag numbers (V10 1711).

Agent Brooks testified he questioned Petitioner on July 29, 1994 (V10 1634). Gross said he worked for "Corvette Country" and his white Thunderbird was registered in the name of that business (V10 1637). His partner in the business was Kenny Lipkowitz (V10 1637). Petitioner admitted discussing robbing Payne with Hall, Deans, Johnson and Forester (V10 1638). Petitioner showed them where Payne lived (V10 1638). Petitioner said that his car was seen in front of Payne's house and someone chased him and shot at him after pulling in behind him at the bar (V10 1639).

Petitioner also knew "all about" the Miller robbery (V10 1639). He said that Forester told him what happened (V10 1640). He also knew about the Mattos robbery (V10 1640). Petitioner identified Brady, Evans, Forester, and Hall from photographic line ups (V10 1649-53). Petitioner admitted that he met Forester at McDonalds on September 10, 1993, to point out someone with money and drugs they could rob (V10 1653). Petitioner admitted showing the others where Duffy and "the bookie" lived (V10 1654, 1658). Petitioner showed Brooks where the bookie lived (V10 1677). He said he did not go in the residences because he was scared (V10 1655). Petitioner admitted being involved in the Payne robbery and discussing it at Dr. Feelgood (V10 1638). He said that someone chased him and

shot at him when he was driving his white Thunderbird (V10 1639). Petitioner admitted to being involved "in all of this." (V10 1656). Petitioner admitted taking proceeds from the crimes (V10 1656). A taped call from Petitioner to Hall was played at trial (V10 1667). In that call Petitioner told Hall he was worried about the police investigation of the home invasion robberies (SR2, August 1, 1994 call, pp. 3-4). Petitioner was worried that Forester might talk (SR2, August 1, 1994 call, p. 4). Petitioner said that he did not go inside the residences during any of the robberies (SR2, August 1, 1994 call, p. 5).

SUMMARY OF THE ARGUMENT

I

There was more than adequate proof of an enterprise and racketeering activity. This Court should not add elements of proof to the RICO statute.

II

Petitioner's requested instruction included elements not required by the RICO statute. Petitioner's instruction was misleading and incomplete even if additional elements are added to the RICO statute.



ARGUMENT

POINT I

THE FOURTH DISTRICT CORRECTLY AFFIRMED THE  
TRIAL COURT'S DENIAL OF THE MOTION FOR  
JUDGMENT OF ACQUITTAL(RESTATED).

In moving for judgment of acquittal, Petitioner admits all facts introduced in evidence and every fair and reasonable inference must be drawn in favor of the State. McConnehead v. State, 515 So.2d 1046, 1048 (Fla. 4th DCA 1987). The motion should not be granted unless no legally sufficient evidence has been submitted under which a jury could legally find a verdict of guilty. Credibility and probative force of testimony are not determined on a motion for judgment of acquittal. Where there is room for a difference of opinion between reasonable men as to the proof or facts from which an ultimate fact is sought to be established, or where there is room for such differences as to the inferences that might be drawn from conceded facts, the case should be submitted to the fact-finder. Lynch v. State, 293 So.2d 44, 45 (Fla. 1974).

Petitioner claims the State was required to prove "an ongoing organization where members function as a continuing unit as shown by a decision making structure." He also claims the State must prove "the group must have a decision making structure and a mechanism for controlling and directing the

group on an ongoing, rather than on an ad hoc, basis." This language is taken from Boyd v. State, 578 So.2d 718 (Fla. 3d DCA), rev. denied, 581 So.2d 1310 (Fla. 1991), which relied on the Third Circuit's interpretation of the federal RICO statute. See United States v. Riccobene, 709 F.2d 214 (3d Cir.), cert. denied, Ciancaqlini v. United States, 464 U.S. 849 (1983) and Boyd, 578 So.2d at 721. Riccobene should not be followed.

In United States v. Cagnina, 697 F.2d 915 (11th Cir.), cert. denied, 464 U.S. 856 (1983), the Federal Appellate District Court for this State rejected the Third Circuit's holding in Riccobene. In Cagnina, the Court held that there was no requirement under the federal statute that the government show an "ascertainable structure." 697 F.2d at 921. That holding was reaffirmed in United States v. Hewes, 729 F.2d 1302, 1310 (11th Cir. 1984), cert. denied, Caldwell v. United States, 469 U.S. 1110 (1985):

The Appellants claim that this authority requires the government to prove that an alleged enterprise possesses two characteristics: (1) participation of all the members of the enterprise throughout its life, and (2) a definable structure distinct from the "racketeering activity." They argue that the government failed to meet its burden.

The precedent of this Circuit makes clear that neither of these components is an essential element of a RICO enterprise. Our leading case remains United States v. Elliott, 571 F.2d 880 (5th Cir.), cert. denied, 439 U.S. 953, 99 S.Ct. 349, 58 L.Ed.2d 344 (1978). (FN4)

There the Court stated that "enterprise" includes an informal, de facto association .... In defining "enterprise", Congress made clear that the statute extended beyond conventional business organizations to reach "any ... group of individuals" whose association, however loose or informal, furnishes a vehicle for the commission of two or more predicate crimes.... There is no distinction, for "enterprise" purposes, between a duly formed corporation that elects officers and holds annual meetings and an amoeba-like infra-structure that controls a secret criminal network. Id. at 898. The Appellants' argument implies that Turkette has overruled this holding. This Court has recently rejected that assertion. In United States v. Cagnina, 697 F.2d 915, 921 (11th Cir.), cert. denied, --- U.S. ----, 104 S.Ct. 175, 78 L.Ed.2d 157 (1983), we stated that 'Turkette does not prevent this Court from adhering to Elliot [Elliott]. We pointed out that 'Turkette did not suggest that the enterprise must have a distinct, formalized structure. Instead, the Supreme Court noted that the organization may be formal or informal.' Id. The Cagnina Court also rejected the holding of cases such as Bledsoe, supra, that a RICO enterprise must possess an "ascertainable structure." Id.

\* \* \*

Our precedent indicates that a RICO enterprise exists where a group of persons associates, formally or informally, with the purpose of conducting illegal activity.

In interpreting the federal statute, the United States Supreme Court has consistently refused to add elements of proof not found in the Act. In United States v. Turkette, 452 U.S. 576 (1981), the lower court held that the statute did not apply to wholly criminal enterprises. The Supreme Court reversed,

finding that the lower court improperly "departed from and limited the statutory language." 452 U.S. at 581.

Similarly, in National Organization for Women v. Scheidler, 510 U.S. 249 (1994), the lower court found that the RICO statute required proof of an economic motive. Reversing, the United States Supreme Court held that "[n]owhere . . . is there any indication that an economic motive is required." 510 U.S. at 257. Citing Turkette, the Court held that a particular kind of enterprise falls within the scope of the enterprise definition as long as Congress has not specifically excluded it. 510 U.S. at 260-62.

Section 895.02(3), Fla. Stat. (1993) defines "enterprise":

"Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities.

There is simply no requirement in the statute that the State show an "identifiable decision-making structure."<sup>1</sup>

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<sup>1</sup> Respondent also notes that a more recent version of the statute includes "criminal street gangs" within the definition of enterprise. See Section 895.02(3), Fla. Stat. (1995). The detailed definition of "criminal street gang" does not include a requirement of an "identifiable decision making structure." See Section 894.03(1), Fla. Stat. (1995).

Rather, the statute is framed broadly to include any group "associated in fact." There is also no requirement that the State show "a mechanism for controlling and directing the criminal enterprise on an ongoing rather than ad hoc basis." This was explained by Judge Cope in his concurrence in Boyd, 578 So.2d at 724-25:

In deciding how to interpret the Florida statute, we must begin with the recognition that when there is a wholly criminal organization, it will ordinarily operate as a "group of individuals associated in fact although not a legal entity...." Section 895.02(3), Fla.Stat. (1989). It is unrealistic to expect that such an association-in-fact will have a highly formalized structure or an organizational chart with the same degree of particularity as would be true of a legitimate business entity. Such an association-in-fact may or may not have formal mechanisms for direction and control. The smaller the association, the less likely that there will be the trappings of formal organization.

For those reasons, I think that the Third Circuit's test in United States v. Riccobene, 709 F.2d at 221-24, places undue emphasis on the proof of organizational structure. If the proof is sufficient to show the existence of the association-in-fact (including the continuity and common purpose elements outlined in Turkette), then proof of the details of the group's organizational and decision-making structure is surplusage. . . . We should instead follow United States v. Cagnina, 697 F.2d 915 (11th Cir.), cert. denied, 464 U.S. 856, 104 S.Ct. 175, 78 L.Ed.2d 157 (1983), in rejecting the necessity to prove "ascertainable structure" as a required element in the proof of association-in-fact, id. at 921, thereby aligning ourselves with the majority view of the federal courts of appeals (footnotes omitted).

Respondent does agree that under Turkette, the government must show an enterprise and racketeering activity:

That a wholly criminal enterprise comes within the ambit of the statute does not mean that a "pattern of racketeering activity" is an "enterprise." In order to secure a conviction under RICO, the Government must prove both the existence of an "enterprise" and the connected "pattern of racketeering activity." The enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct. The pattern of racketeering activity is, on the other hand, a series of criminal acts as defined by the statute. 18 U.S.C. § 1961(1) (1976 ed., Supp. III). The former is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit. The latter is proved by evidence of the requisite number of acts of racketeering committed by the participants in the enterprise. While the proof used to establish these separate elements may in particular cases coalesce, proof of one does not necessarily establish the other (emphasis supplied).

452 U.S. at 583. In other words, although the elements are separate, proof of one, may provide proof of the other.

Petitioner argues that the additional elements of (1) "an identifiable decision making structure" and (2) "a method for directing and controlling the criminal enterprise on an ongoing rather than an ad hoc basis," should be added to the statute. He argues that otherwise the RICO statute could be used to prosecute any two crimes perpetrated by two people on the spur of the moment (initial brief p. 21). This argument is without

merit. As previously stated, the prosecution is required to prove the existence of an enterprise and a "pattern of racketeering activity." (See quote from Turkette on pp 21-22 and J. Cope's concurrence on pp. 20-21). Moreover, Florida's statute has a restrictive definition of "pattern of racketeering." Section 895.02(4), Fla. Stat. (1993), states:

(4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

By its plain terms the statute prevents isolated incidents from being prosecuted as RICO offenses.<sup>2</sup> Moreover, under Petitioner's definition, a large group of persons that associated for many years and committed hundreds of crimes together could not be prosecuted under the statute if the group had no "identifiable decision making structure."

Here, there was ample evidence of an informal association with various associates functioning as a continuing unit.

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<sup>2</sup> The jury in this case was instructed that the incidents could not be isolated (V12 2132).

Forester and Petitioner associated since the early eighties (V6 978). For years, they discussed robbing the victims (V6 996). The first home invasion robbery Forrester committed with Petitioner was on September 10, 1993 (V6 992). They discussed the robbery months before it occurred (V6 992). Petitioner gathered intelligence on the victims prior to the commission of the crimes and shared it with other members of the group (V6 996, 997, 999, V7 1066, 1105, 1118, V10 1653, 1654, 1658, V11 1819). While discussing the plan, Forester asked Petitioner if Duffy would have a lot of drugs and money and Petitioner said he would find out (V7 1003). It was agreed before the commission of the crimes that Petitioner would get one third of the proceeds (V6 998). More specific plans were made two weeks prior to the robberies (V6 992). The conversations occurred over the phone or at Petitioner's business, Corvette Country, in Fort Lauderdale (V6 993). The plan was to dress as police officers and rob the victims (V6 996). Forester told Petitioner that he knew two police officers who would go with Forester (V6 996). The officers would give Forester some of their police gear (V6 996).

As to Mattos, the plan was that Forester and the officers would come to Fort Lauderdale and Petitioner would show them



Mattos' location (V6 998). Petitioner would not enter the house because he knew Mattos (V6 999).

As to Duffy, the plan was to sell the marijuana and split the proceeds (V6 1000). They would also split any cash recovered (V6 1000). These plans were discussed over time (V6 1000). As time passed, the conversation got more detailed (V7 1003).

Forester testified that Brady was his next door neighbor (V7 1003). Forester knew Brady for six years (V8 1248). They were friends (V7 1005). Brady asked Forester if he knew anyone they could rob for money and drugs (V7 1005). Forester said that he did (V7 1005). Brady took care of some traffic tickets for Forester (V7 1006). Brady, Forester and Evans met and discussed the robberies (V7 1006). Forester told Brady and Evans that he had to talk to Petitioner about the robberies (V7 1007). Forester told Petitioner that Brady and Evans were ready (V7 1007).

On September 10, 1993, Evans and Brady met Forester at a Waffle House in Broward County (V7 1008). Forester had told Petitioner they were coming (V7 1008). Evans and Brady knew that as soon as Forester got to the Waffle house, he had to call Petitioner to get the locations of the robberies (V7 1048).

Subsequently, Petitioner met them at a McDonald's to show them where Mattos lived (V7 1013, 1014). Petitioner had discussed the plan for the other three to go into Mattos' house dressed as police and take any money and drugs (V7 1014). They had discussed that they would be armed and tell the occupants they were conducting a police search (V7 1016). When Petitioner arrived at McDonald's, Forester got in Petitioner's car and Petitioner showed Forester where Mattos lived (V7 1017, 1018). They discussed the Mattos robbery (V7 1017). They returned to McDonald's and Petitioner led the other three to Mattos' house (V7 1018). Petitioner left while the others waited for Mattos to come home (V7 1018). When Mattos did not return, they called Petitioner and met him at a restaurant (V7 1018). Petitioner then showed them Duffy's house (V7 1018-19). Duffy was not home, so Petitioner dropped Forester off by Brady's car, and Petitioner left (V7 1019).

They were dressed as police so the victims would not shoot them (V7 1020). They wanted the victims to be home so the victims could show them where the money and drugs were (V7 1020). They had previously agreed that they would enter dressed as police (V7 1032). The three men split the money (V7 1046). Forester called Petitioner after the robbery and said he would give Petitioner some money at a later date (V7 1046).

The next day Forester talked to Brady and Evans (V7 1053). They were willing to do it again if it were "something good." (V7 1053, 1055). Forester then drove to Petitioner's with Jamie Hall (V7 1053). Forester told Petitioner to keep looking for "something good." (V7 1053). Forester contacted Petitioner every day or two (V7 1054). Forester was the common link between the members of the group (V7 1054). He needed Petitioner for information because Petitioner lived in the area of the robberies (V8 1349).

Petitioner had police hats and shirts made (V8 1389, V9 1442). Hall and Forester were going to commit some robberies without Brady because Brady did not want to go and Petitioner told them he knew of a couple people they could rob (V7 1055).

Forester had a close relationship with Brady (V7 1058). Brady trusted Forester (V7 1058). Jamie Hall and Jamie Deans trusted Forester (V7 1058). Petitioner was friends with Forester (V7 1059). Petitioner and Forester each trusted that the other would not turn him in (V7 1059). The same was true of Brady and Forester (V7 1059).

Forester called Petitioner periodically to see if he had any place to rob (V7 1063). Petitioner and Forester "hung out" at clubs (V7 1064). "I didn't always come down here to talk about robberies but my eye was always open as to who had the

drugs, you know. I was always looking and Ralph [Petitioner] was looking too." (V7 1064).

The victim of the next robbery was Ronald Payne on November 17, 1994 (V7 1064, V8 1218). Forester "was waiting on [Petitioner] to tell me anybody that had drugs." (V7 1066). Forester called Petitioner (V7 1066). Petitioner said he knew of a guy that had money and cocaine (V7 1066). Petitioner said he did not know how much, but would find out (V7 1066). The next time Forester contacted Petitioner, Petitioner had not found the amount of drugs and money, but said he would find out (V7 1066). Petitioner subsequently called Forester and told him Payne had "quite a bit." (V7 1066). Petitioner told Forester to come down to Broward (V7 1067). Hall, Deans and Forester met Petitioner at his warehouse (V7 1067).

The plan was for Petitioner to show Hall and Forester the location (V7 1065). Petitioner gave them a police hat (V7 1075). Forester had a police jacket he got from Brady (V7 1076). The plan involved using guns (V7 1077). They planned to leave the warehouse and go to a bar called "Dr. Feelgood" to meet Brian Johnson (a\k\a Small) (V7 1078). When Johnson arrived, Petitioner and Forester talked to Johnson about the robbery (V7 1082). They got in their cars and Johnson pointed out Payne's house (V7 1083). Johnson then left (V7 1083).

Forester and Petitioner then drove by the house again (V7 1083). Forester and Petitioner came back to Dr. Feelgood and got Dean and Hall (V7 1083). Forester, Hall and Dean then followed Petitioner to the house and Petitioner kept going (V7 1084). The plan was for Petitioner to wait nearby for his cut (V7 1084). Forester was supposed to page Petitioner immediately after the robbery (V7 1084). They would then meet at the Porthole Pub (V7 1084).

After completing the Payne robbery, they drove to the Porthole Pub to meet Petitioner (V7 1095, 1096). Forester called Petitioner (V7 1095). Forester told Petitioner that they got cocaine and money (V7 1096). Petitioner said he would be right there (V7 1096). They then split the proceeds (V7 1098).

Forester later talked to Petitioner about the robbery and learned that the girl at Payne's supposedly had \$30,000 dollars in a money belt taped to her stomach (V7 1100). Forester told Petitioner to let him know as soon as he had information on another robbery (V7 1100). Forester saw Petitioner "all the time." (V7 1100). They would "hang around together and do stuff." (V7 1100). They agreed that if "somebody came up we would do it." (V7 1101). Around November 30th, "somebody did come up." (V7 1101). They discussed it prior to the thirtieth (V7 1101). Petitioner said it was something small (V7 1101).

Hall and Forester drove down to Petitioner's apartment (V7 1101). The plan was for Petitioner to drive them to the Jones's residence (V7 1103, V8 1218). Forester did not know the location (V7 1106). Petitioner would not go in (V7 1106, 1108). Hall and Forester would dress as police officers (V7 1103). Petitioner said the person they were targeting was supposed to sell cocaine and had expensive stereo equipment (V7 1105). Petitioner drove them to the location (V7 1102, 1103). After the robbery, Forester and Hall met with Petitioner to split the proceeds (V7 1117).

After that incident, the group had further discussions regarding future activity (V7 1118). They also discussed past robberies, including the Skip Miller robbery (V7 1118). Forester asked Petitioner if Miller knew that Forester had robbed him (V7 1118). Petitioner said that Miller did not (V7 1118).

The next robbery involved going back to Duffy's house (V7 1118). Petitioner said Duffy had marijuana and a lot of money in a drawer (V7 1118). Petitioner said it would be much better than the previous robberies (V7 1119). Hall and Forester drove to Broward and met Petitioner (V7 1119, 1120). The robbery occurred in January of 1994 (V7 1119). They bought "zipties" to secure the victims' hands (V7 1120). Petitioner then drove them

past Duffy's (V7 1121). They discussed the fact that they would carry guns (V7 1122). Forester needed Petitioner to point out where Duffy lived because Forester did not remember (V7 1121).

Hall and Forester went to the residence (V7 1122). After the robbery, they met Petitioner and gave him his cut (V7 1126).

In June of 1994, Petitioner approached Forester about sinking a boat so the owner could collect insurance (V7 1129). The two had previously talked about the crime, but nothing "panned out" until June (V7 1129). Petitioner said Forester could earn a couple thousand dollars (V7 1130). Petitioner said Forester would have the boat for a week or two and would sell parts off it (V7 1130).

Forester met Petitioner in Palm Beach County (V7 1130). Forester was to give Petitioner money for the job in addition to the money Forester made selling parts (V7 1130). The boat would then be sunk for the insurance money (V7 1131). Petitioner showed Forester the boat the night before it was taken (V7 1132, 1134). Forester called Petitioner and told Petitioner he had sunk the boat (V7 1137). Petitioner said he would try to get Forester's money the next day (V7 1137).

After Forester's arrest, Brady sent Forester money to try to get him out of jail (V8 1273). Forester was the "common thread" in the organization (V8 1317). Forester and Brady used

pager number signals when communicating. One code meant that Forester should leave his house because the police were on the way (V9 1480). Another code indicated that there was a problem and Forester should call Brady (V9 1480). Brady notified Forester each time the FDLE traveled to Fort Pierce (V10 1711). Brady supplied Forester with vehicle descriptions and tag numbers (V10 1711).

Brady testified that he and Forester discussed possible crimes over the phone (V11 1846). Brady and Evans then met Forester at a restaurant in Fort Pierce (V11 1846). At that meeting, Forester laid out the plan for the first robbery (V11 1846).

Petitioner was with Brady, Forester, and Evans (Brady's partner at the police department) on September 10, 1993 (V10 1799, V11 1805, 1842). Petitioner showed them where Mattos and Duffy lived (V11 1800). On September 10, the plan included robbing a drug dealer who allegedly had a lot of money (V11 1809). Forester, Evans, and Brady would pose as police officers, enter the home and take the money (V11 1810). When they went to the target house (Rick the Greek), no one was home (V11 1811, 1855). Forester called Petitioner and found out where the target worked (V11 1811). They went to the business and waited for Rick to leave. While waiting, Forester made



several calls to Petitioner to get more information (V11 1812). They left and later saw that Rick was home (V11 1813). Forester knew Rick, so he waited outside (V11 1813). Brady and Evans knocked on the door, but the Rick would not answer (V11 1813). Forester called Petitioner again before Forester, Evans, and Brady went to Miller's house (V11 1814).

They picked up Forester and he said he had another place to rob, but did not know where it was so he called Petitioner (V11 1815). Petitioner met them at a McDonald's (V11 1815). Forester got in Petitioner's car and they left (V11 1816). They came back and Forester said they were going to drive over and look at the house (V11 1816). Evans, Brady and Forester followed Petitioner to Mattos' house (V11 1817). Petitioner hit his brake lights to signal the location (V11 1817).

Mattos was not home, so they went to a doughnut shop and Forester called Petitioner (V11 1818). Petitioner was to meet them at an apartment complex in Boca Raton (V11 1819). At the complex, Forester got out of Brady's car and got in Petitioner's car (V11 1820). Petitioner and Forester drove around once, then Forester got back in Brady's car and Petitioner left (V11 1820). Forester knocked on the door, but no one was home (V11 1820). Petitioner and Evans went around back and found an open door (V11 1820). The next time Brady met with Forester, Forester

said that Miller had called Petitioner, told him about the robbery and said a Rolex watch was taken (V11 1822). Brady assured Forester that he did not take a Rolex watch (V11 1822).

Brady testified that prior to his arrest, Brooks came to the police station where Brady was working and asked about Forester (V10 1789). When Brady learned Forester was in a photographic line up for the robberies, he feared that Forester would mention Brady if caught (V10 1790). In June of 1994, Brady contacted Forester and said Forester had been identified as being involved in some home invasion robberies and that he better leave town (V10 1791). Brady told Forester about Brooks and described Brooks' car because he was afraid Brooks would infiltrate Forester's crimes (V10 1791). When Forester was arrested for an unrelated offense, he called Brady, who bailed out Forester before Brooks could identify him (V10 1792-93). Brady had many conversations with Forester during July and August of 1994 (V10 1795). Forester asked if there were still warrants out for him (V10 1795). Brady periodically checked Forester's name on the NCIC to see if there were any active warrants pertaining to the robberies (V10 1797). Brady told Forester he had to avoid apprehension so that they could not tie them to the robberies (V10 1796).

As seen from the above, there was ample evidence of an informal association apart from the actual commission of the crimes. Forester was the "common thread" of the association (V8 1317). Forester was in constant contact with Petitioner, seeing if Petitioner had any information on new crimes to commit (V7 1054, 1063, 1099). Group members met to have extensive planning sessions before the robberies, sometimes discussing the crimes months in advance of the actual perpetration (e.g., V6 992, 993, 996, V7 1003). Petitioner gathered intelligence on the victims prior to the crimes and shared it with other members of the group (V6 996, 997, 999, V7 1066, 1105, 1118, V10 1653, 1644, 1658, V11 1819). At times, members met and decided that more intelligence gathering was necessary (V7 1003, 1066). Members also met or contacted each other frequently after the robberies regarding splitting the proceeds from the robberies and the selling of any drugs stolen in the robberies (V6 1000, V7 1012, 1045, 1053, 1046, 1061, 1062, 1098, 1117, 1126, 1137). Petitioner and Forester were in constant contact regarding possible future crimes (V7 1053-54, 1063-64, 1099). They also met after robberies to discuss future activity and past robberies (V7 1053, 1118, V11 1822). Forester supplied the necessary manpower (e.g., V6 996, V7 1005, 1007, 1067, 1075-76, 1101). Additionally, Petitioner supplied intelligence about the

robberies after they occurred, letting other members know what he had learned from the victims (V7 1100, 1118, V11 1822). Group members were also instructed to always keep looking for possible victims (V7 1053, 1054, 1064, 1100). It was agreed that if something came up, they would do it (V7 1101). Members also kept in contact with each other, providing intelligence on police activity and going to elaborate lengths to avoid having the association exposed (V8 1273, V9 1480, V10 1789-90, V10 1792-93, 1795-97).

The trial court properly denied the motion. See Hewes. See also United States v. Aleman, 609 F.2d 298 (7th Cir. 1979), cert. denied, 445 U.S. 946 (1980)(defendants' association in committing three home invasion robberies constituted enterprise) and United States v. Young, 906 F.2d 615, 619 (11th Cir. 1990) (individual may be convicted of RICO even though individual did not know all co-conspirators and details of the enterprise or participate in every venture).

Assuming arguendo, that the State must prove "an ongoing organization where members function as a continuing unit as shown by a decision making structure" and a "mechanism for controlling and directing the group on ongoing rather than on an ad hoc, basis," the above evidence met that standard. Under Riccobene, the decision making structure may be hierarchical or

*consensual*. It is not necessary that every decision be made by the same person and authority may be delegated. 709 F.2d at 222. Forester was the "common thread" that held the association together (V8 1317). He decided who would be asked to participate in the actual invasions and got those people together (V6 996, V7 1005, 1007, 1067, 1075, 1076, 1101). Petitioner gathered intelligence and decided who would be targeted in Fort Lauderdale and nearby areas. Forester and Petitioner were in constant contact and it was agreed that they would constantly be looking for new victims (V7 1053-54, 1063-64, 1099). It was also agreed that if something came up, "they would do it." The proof was more than adequate.

POINT II

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY REJECTING PETITIONER'S REQUESTED JURY INSTRUCTION.

Defense counsel requested the following instruction (V12 2064):

I would ask this on Count 1 that you read the definition of racketeering as I set forth [sic] in my Paragraph 1, I read that to you yesterday that in order for there to be racketeering, the State must prove the following elements beyond a reasonable doubt, and they say two but I ask that you add this, that the Defendant was employed by, associated with an ongoing structured, criminal enterprise. Such prove [sic] must show that the criminal enterprise had an identifiable decision-making structure and a mechanism for controlling and directing the criminal enterprise on an ongoing rather than ad hoc basis -- and if you want to say for a special purpose that the jury knows what ad hoc means, I even had to look it up -- that the various employees or associates functioned as a continuous unit, and the criminal enterprise had an existence separate and apart from the pattern of racketeering activity in which the criminal enterprise engaged.

The language in Petitioner's proposed instruction is taken from Boyd v. State, 578 So.2d 718 (Fla. 3d DCA 1991), which relied on United States v. Riccobene, 709 F.2d 214 (3d Cir. 1983). See Boyd, 578 So.2d at 721. As discussed in Point I, Riccobene should not be followed.

In Cagnina, the Federal Appellate District Court for this State held that there was no requirement under the statute that

the state show an "ascertainable structure." 697 F.2d at 921.

That holding was reaffirmed in Hewes, 729 F.2d at 1310:

In United States v. Cagnina, 697 F.2d 915, 921 (11th Cir.), cert. denied, --- U.S. ----, 104 S.Ct. 175, 78 L.Ed.2d 157 (1983), we stated that 'Turkette does not prevent this Court from adhering to Elliot [Elliott].' We pointed out that 'Turkette did not suggest that the enterprise must have a distinct, formalized structure. Instead, the Supreme Court noted that the organization may be formal or informal.' Id. The Cagnina Court also rejected the holding of cases such as Bledsoe, supra, that a RICO enterprise must possess an "ascertainable structure." Id.

\* \* \*

Our precedent indicates that a RICO enterprise exists where a group of persons associates, formally or informally, with the purpose of conducting illegal activity.

See also Martin v. State, 189 Ga.App. 483, 376 S.E.2d 888, 485-86 (1988)(no requirement that state prove an "ascertainable structure.") and Boyd, 578 So.2d at 724-25 (Cope, J., concurring)(rejecting Riccobene and the notion that Florida's RICO statute should be interpreted as requiring a formalized structure and formal mechanisms for control and direction).

Section 895.02(3), Fla. Stat. (1993) defines "enterprise":

"Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities.

There is no requirement in the statute that the state show "an identifiable decision-making structure." Rather, the statute is framed broadly to include any group "associated in fact." Respondent also notes that there is no requirement that the State show "a mechanism for controlling and directing the criminal enterprise on an ongoing rather than ad hoc basis." The standard jury instruction given here tracks the statutory language and is presumed correct. See In the Matter of the Use by the Trial Courts of the Standard Jury Instructions in Criminal Cases, 431 So.2d 594 (Fla.), as modified on other grounds, 431 So.2d 599 (Fla. 1981).

Even if this Court were to follow Riccobene, the trial court did not err in denying the instruction as incomplete and misleading. In addition to the selected language in Petitioner's instruction, the court in Riccobene used additional language that clarified its holding:

To satisfy this element, the government must show that some sort of structure exists within the group for the making of decisions whether it be hierarchical or consensual. There must be some mechanism for controlling and directing the affairs of the group on an on-going, rather than an ad hoc, basis. **This does not mean that every decision must be made by the same person, or that authority may not be delegated.**



709 F.2d at 222. Petitioner's requested instruction omits this qualifying language. Without the qualifying language the jury would have naturally thought that a hierarchical structure was necessary. The jury would have been misled as to what was required, even under the Riccobene standard. The trial court did not abuse its discretion. See Butler v. State, 493 So.2d 451, 452 (Fla. 1986) (court should not give instructions that are confusing or misleading); Andrade v. State, 564 So.2d 238, 239 (Fla. 3d DCA 1990)(trial court properly denied incomplete and misleading instruction); Maggard v. State, 399 So.2d 973, 975 (Fla.), cert. denied, 454 U.S. 1059, 102 S.Ct. 610, 70 L.Ed.2d 598 (1981)(In the absence of a showing of an abuse of discretion, trial court's evidentiary ruling will not be disturbed) and Booker v. State, 514 So.2d 1079, 1085 (Fla. 1987) (discretion is abused only when no reasonable man could take the trial court's view).

Additionally, as to Count II, this claim was not preserved as Petitioner never asked that the instruction be given as to that count (V12 2064).

CONCLUSION

Petitioner's attempt to add requirements of proof not found in the statute should be rejected. Criminals should not be allowed to escape the RICO Act simply because they lack the management skills or ambition to raise the group to a higher and more organized realm of criminality. This Court should approve the decision of the Fourth District. Even if this Court were to adopt the additional elements of proof, they have been met in this case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of this document has been sent by mail to: Samuel R. Halpern, 2856 E. Oakland Park Blvd., Fort Lauderdale, FL 33306, this \_\_\_\_ day of June 1999.

\_\_\_\_\_  
Of Counsel