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Qué RICO? Discarding the Fallacy that Florida RICO and Federal RICO Are Identical

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The Racketeer Influenced and Corrupt Organizations Act (RICO)¹ has been called one of “the most misused statutes in the federal corpus of law.”² The federal criminal RICO statute, passed in 1970, was followed seven years later with its Florida counterpart.³ In 1986, the civil RICO provisions followed, permitting any private citizen to institute a RICO action and access the bounty of treble damages.⁴ Entranced by the remote prospect of treble damages, civil litigants continue to

employ it as an “unusually potent weapon — the litigation equivalent of a thermonuclear device.”⁵

Often, civil plaintiffs in RICO cases will allege causes of action under both the Florida and federal RICO statutes with little thought as to the distinction between the two. Indeed, these plaintiffs can be forgiven for that oversight, as courts in Florida have routinely suggested that there is no meaningful difference between the two statutes, and any legal analysis of federal RICO will necessarily apply to Florida RICO.⁶ There are, however, important differences between federal and Florida civil RICO — differences that any plaintiff or defendant in a civil RICO case must be apprised of before navigating the treacherous minefield that is RICO litigation.

The four distinctions that will be addressed in this article concern: 1) the statute of limitations; 2) the applicable standard of proof; 3) the person/enterprise distinctness requirement; and 4) the application of the operation or management test to the respective statutes.

The Statute of Limitations

Perhaps the most significant difference between Florida and federal RICO is the limitations period and the possibility that the date the limitations period begins to run differs depending on the version of the RICO statute under which one is pursuing relief.

The federal RICO statute does not contain a statute of limitations provision. The only time limitation of any sort referenced in the federal RICO statute is in §1961(5), which states that to constitute a “pattern of racketeering activity,” two predicate acts must occur within 10 years.⁷ Interpreting the federal statute, the Sixth Circuit Court of Appeals applied the state limitations period most similar to the predicate offenses alleged,⁸ while the Seventh

and Ninth circuits chose uniform statutes of limitations based on a comparable state statute of limitations.⁹ This ambiguity culminated in the U.S. Supreme Court case of *Agency Holding Corp. v. Malley-Duff & Associates, et al.*, 483 U.S. 143 (1987), which noted that “[f]ederal courts have not adopted a consistent approach to the problem of selecting the most appropriate statute of limitations for civil RICO claims.” In an effort, however, to “avoid intolerable uncertainty and time-consuming litigation,” the U.S. Supreme Court determined that the statute most analogous to RICO, The Clayton Act, contains a four-year limitations period and that this same limitations period ought to be applied to RICO actions.¹⁰ More recently, the Supreme Court determined that the statute of limitations on a federal RICO claim begins to run “four years *from the date the plaintiff knew it was injured.*”¹¹

The Florida RICO statute explicitly contains a “limitation of actions” section, providing that “a civil action or proceeding under this chapter may be commenced at any time within [five] years *after the conduct in violation of a provision of this act terminates or the cause of action accrues.*”¹²

Thus, we are faced with two significant differences between the Florida and federal statutes: 1) The federal RICO statute contains a four-year limitations period, while the Florida statute contains a five-year limitations period; and 2) the federal statute begins to run from the date of discovery of the injury, whereas the Florida statute begins to run “when the conduct terminates or the cause of action accrues.”

At least one litigant has suggested that the delayed discovery doctrine applicable to the federal statute does not apply to the Florida statute, and instead a cause of action under Florida RICO begins to run at the time of commission of the last predicate act.¹³ This interpretation is consistent with F.S. §95.031(1), which states that a “cause of action accrues when the last element constituting the cause of action occurs.”¹⁴ The Florida Supreme Court, in *Davis v. Monahan*, 832 So. 2d 708 (Fla. 2002), provides some support for this position as well, noting that other than cases of fraud, products liability, professional and medical malpractice, and intentional torts based on abuse, “there is no other statutory basis for the delayed discovery rule.”¹⁵ No Florida court has directly addressed whether the delayed discovery doctrine applies to the accrual date of Florida RICO, although one pre-*Davis* court did apply the injury discovery rule to a cause of action under Florida RICO.¹⁶ Certainly, if a plaintiff sues under Florida RICO and federal RICO, and is relying on delayed-discovery for its federal claim, a defendant should explore the application of F.S. §95.031(1) to argue that the delayed-discovery doctrine does not apply to Florida RICO claims.

The Standard of Proof

Another potentially case-changing distinction between the Florida and federal civil RICO statutes is the standard of proof applicable to each. The federal RICO statute’s standard of proof is the “preponderance of the evidence” standard.¹⁷ The Florida RICO statute requires a plaintiff to prove his or her case “by clear and convincing evidence.”¹⁸

The function of a standard of proof is to “instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.”¹⁹ The standard of proof in a given case “serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision.”²⁰ The three basic standards of proof — beyond a reasonable doubt, clear and convincing evidence, and preponderance of the evidence — correlate the interest of society in “getting it right,” with the severity of the consequences. The “beyond a reasonable doubt” standard, the most stringent standard of proof typically reserved for criminal cases, “bespeaks the ‘weight and gravity’ of the private interest affected . . .

society's interest in avoiding erroneous convictions, and a judgment that those interests together require that 'society impos[e] almost the entire risk of error upon itself.'"²¹ This standard of proof is "designed to exclude as nearly as possible the likelihood of an erroneous judgment."²²

As the 11th Circuit Court of Appeals' pattern jury instructions note, "'Proof beyond a reasonable doubt' is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs."²³ The "clear and convincing" standard is the intermediate standard, "when the individual interests at stake in a state proceeding are both 'particularly important' and 'more substantial than mere loss of money.'"²⁴ According to the 11th Circuit Court of Appeals' Pattern Jury Instructions, it is "evidence that leaves you with a firm conviction that the claim is true."²⁵ The lowest of the standards of proof, preponderance of the evidence, "indicates both society's 'minimal concern with the outcome,' and a conclusion that the litigants should 'share the risk of error in roughly equal fashion.'"²⁶ The pattern jury instructions suggests that a "preponderance of the evidence simply means an amount of evidence that is enough to persuade you that the [p]laintiff's claim is more likely true than not true."²⁷

In light of what a multitude of courts have labeled the "stigma" of RICO litigation,²⁸ it is surprising that federal courts have applied the "preponderance of the evidence" standard — even to those RICO claims sounding in fraud,²⁹ which carries the additional risk of a defendant being labeled not only a racketeer, but a fraudster as well. Regardless, defendants should recognize this important distinction, particularly in light of the provision in F.S. §772.04(1) that a defendant is entitled to recover reasonable attorneys' fees and court costs upon a finding that the plaintiff "raised a claim which was without substantial fact or legal support."³⁰

The Operation or Management Test

Another potentially critical distinction is whether the "operation or management" test (and the defense of the absence of the defendant's "operation or management") applies to both Florida RICO and federal RICO. The "operation or management test," coined by the Supreme Court in *Reves*, attempted to clarify what the terms "to participate" and "to conduct" mean under §1962(c).³¹ In *Reves*, the court explained the extent to which an outside accounting firm could be liable under §1962(c) for its activities relating to an inflated valuation of a gasohol plant on the financial statements of a farm cooperative. The court determined that the accounting firm could *not* be held liable because the defendant did not participate in the "operation or management of the enterprise itself."³² *Reves* concluded that the word "participate" requires that a defendant have some part in directing the affairs of the enterprise. In other words, §1962(c) applies not to "any person" but "to any person associated with an enterprise who participates in the operation or management of the enterprise."³³ The U.S. Court of Appeals for the Seventh Circuit attempted to delineate the level and type of activity that could lead to conspiracy liability under RICO and further clarify the *Reves* operation or management test in *Brouwer v. Raffensperger Hughes & Co.*, 199 F.3d 961 (7th Cir. 2000).³⁴ In *Brouwer*, the court held that "one must knowingly agree to perform services of a kind that facilitate the activities of those who are operating the enterprise in an illegal manner. It is an agreement not to operate or manage the enterprise, but personally to facilitate the activities of those who do."³⁵ In other words, subsection (c) only applies to those who participate in the conduct of the enterprise through a pattern of racketeering activity.

In formulating the operation or management test, the Supreme Court undertook a fairly rigorous analysis of the text of §1962(c). The court noted that, in pertinent part, §1962(c)

made it illegal for anyone “employed by or associated with any enterprise ... *to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs* through a pattern of racketeering activity.”³⁶ The first iteration of the word “conduct” is as a verb; the second is as a noun. In embracing the “operation or management” test, the *Reves* court suggests that the repetition of the word “conduct” is important for two reasons — first, “unless one reads [the second use of the word] ‘conduct’ to include an element of direction when used as a noun in this phrase, the word becomes superfluous. Congress could have easily written ‘participate, directly or indirectly, in the conduct of [an] enterprise’s affairs,’ but it chose to repeat the word ‘conduct.’”³⁷ Second, the repetition of the word “conduct” narrows the application of the federal RICO statute because stating that it is unlawful to “participate in the *conduct* of such enterprise’s affairs” must have a narrower meaning than simply stating it is unlawful “to participate in affairs’ or Congress’ repetition of the word ‘conduct’ would serve no purpose.”³⁸

Unlike the federal statute, the Florida RICO statute only contains the word “conduct” once: “It is unlawful for any person . . . [e]mployed by, or associated with, any enterprise *to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.*”³⁹ This calls into question whether the *Reves* rationale even applies. Indeed, in analyzing language strikingly similar to the Florida statute, the Indiana Supreme Court has held that the operation or management test *does not* apply under Indiana law because of the absence of the second use of the word “conduct.”⁴⁰ Specifically, the Indiana Court found that “the scope of liability under the Indiana Act is broader than under the Federal Act,” because (like the Florida statute) “by not using ‘conduct’ as a noun, the Legislature wrote the Indiana Act to mean what the *Reves* court said Congress could have written but didn’t: a statute that extends liability beyond just those who conduct the racketeering enterprise’s affairs to reach those who assist the enterprise below the managerial or supervisory level.”⁴¹

Both the Georgia Court of Appeals and the Ohio Court of Appeals have taken similar approaches to that taken by the Indiana Supreme Court,⁴² although a district court in Colorado has affirmed the application of the operation or management test to the Colorado RICO statute.⁴³

At least one court in the Southern District of Florida has suggested that the operation or management test applies in equal force to both Florida and federal RICO. “Florida’s RICO statute uses the same language [as the federal statute] to indicate the level of involvement necessary for RICO liability. 18 U.S.C. §1962(c), F.S.A. §772.103(3). There appears to be no reason to believe that the operation or management test of *Reves* would not apply to Florida’s RICO statute.”⁴⁴ Nonetheless, the issue is far from well established, and if relevant, the inapplicability of the operation and management test to Florida RICO is certainly an argument worth raising.

RICO Person and Enterprise

Federal courts have long rejected the conflation of a RICO person and the alleged enterprise that is a necessary component to any RICO litigation.⁴⁵ In *Bennett v. U.S. Trust Co. of New York*, 770 F.2d 308 (2d Cir. 1985), the Second Circuit held that “under section 1962(c) a corporate entity may not be simultaneously the ‘enterprise’ and the ‘person’ who conducts the affairs of the enterprise through a pattern of racketeering activity.”⁴⁶ In reaching its decision, the Second Circuit followed the clear majority of circuit courts that had addressed the issue.⁴⁷ In *Bennett*, though the defendant U.S. Trust had been explicitly identified in the complaint as the RICO “enterprise,” it had not been identified as a §1962(c) “person.” However, the Second Circuit reasoned that “because U.S. Trust is named as the defendant,

we interpret the complaint to name U.S. Trust as the §1962(c) 'person.'"⁴⁸ Consequently, since U.S. Trust was interpreted to be both the "person" and the "enterprise" under §1962(c), the court dismissed the complaint.⁴⁹

Contrary to federal law, the Florida courts initially held that an individual associated with an enterprise composed of only himself or herself *could* satisfy the requirements of Florida RICO.⁵⁰ In *State v. Bowen*, 413 So. 2d 798 (Fla. 1st DCA 1982), the defendant was the sole proprietor of a mini-storage warehouse in which he bought and sold gold and silver. In his defense of RICO allegations, the defendant argued that since he was acting as an individual, he could not be considered an enterprise for purposes of the Florida RICO act. Rejecting this contention, the court held that an individual associating "with an enterprise that is himself" is covered by the RICO statute. Specifically, the court held:

"[E]nterprise," as defined by Section 943.461(3), means "any" individual or sole proprietorship. The inclusion of "any" within the definition clearly suggests a legislative intent to direct the thrust of the RICO Act against an individual "associating with himself." Had the legislature not intended to reach individuals such as Bowen, it could easily have narrowed the sweep of Section 943.461(3), by supplanting "any" with "another."⁵¹

Subsequent Florida decisions, however, have come around to federal law and retreated from the holding in *Bowen*. For example, the Second District Court of Appeal found the reasoning in *Bowen* "unconvincing," stating that "[i]f solo crimes by a self-employed person violated [the RICO Act] then the crime of racketeering, with its increased penalties, would apply to a substantial percentage of crimes."⁵² The *Masonoff* court recognized that a sole proprietorship may be an "enterprise" for purposes of RICO, but "the more difficult question is whether the sole proprietorship is a sufficiently separate entity from the sole proprietor, so that the sole proprietor conducts or participates in the enterprise as an employee or associate."⁵³ The court framed the issue as "whether there was in fact another entity sufficiently separate from the defendant so that the defendant can be described fairly as having been employed by or associated with the sole proprietorship."⁵⁴ The Second District Court of Appeal then criticized *Bowen*, noting that "[w]e do not believe that an individual risks a RICO indictment merely by registering a fictitious name for an illegal one-person activity. The relationship of a person with an enterprise requires a relationship involving two humans — not a person and some type of property interest."⁵⁵

Similarly, 10 years after *Bowen*, the First District Court of Appeal held that a single individual could not be held liable under RICO for associating with an enterprise consisting only of himself.⁵⁶ In *Wilson v. State*, 596 So. 2d 775 (Fla. 1st DCA 1992), the defendant was convicted of violating the Florida RICO statute when he participated in a scheme to obtain money using stolen and forged checks from various business enterprises in the Jacksonville area.⁵⁷ The court reversed the defendant's RICO conviction and held that, although "there is no question that a sole proprietorship can be an enterprise under Florida law, as can an individual. . . no entity separate from the appellant, such as a sole proprietorship, was alleged to exist."⁵⁸ Thus, "[w]ithout some sort of identifiable legal or de facto entity which stands apart from the associating person, it cannot be said that an 'association' has occurred."⁵⁹

The Second District Court of Appeal in *State v. Jackson*, 677 So. 2d 938 (Fla. 1st DCA 1996), agreed with the *Masonoff* reasoning and adopted the analysis of the U.S. Court of Appeals for the Seventh Circuit, holding that the critical factor is that the enterprise be either formally (as in the case of incorporation) or practically (as when people other than the proprietor work in the organization) separate from the defendant.⁶⁰ In *Jackson*, the court recognized that although "the charging documents do not allege that [defendant] associated with another human being, they indicate that he associated with a number of

separate and identifiable entities through which he conducted his criminal activity.”⁶¹ Therefore, it was error for the trial court to dismiss the RICO charge.

Importantly, the U.S. Supreme Court has since retreated from the clear-cut RICO/enterprise distinctness requirement laid out in *Bennett* in the case of *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158 (2001). In *Cedric Kushner*, the Supreme Court determined that an individual who owns a corporation is “distinct from the corporation itself,”⁶² which is consistent with Florida state law on the issue. In its analysis, the Supreme Court noted: “The corporate owner/employee, a natural person, is distinct from the corporation itself, a legally different entity with different rights and responsibilities due to its different legal status. And we can find nothing in the statute that requires more ‘separateness’ than that.”⁶³

Under this theory, the Supreme Court narrowed — but did not eliminate — the concept that the RICO “person” had to be clearly and completely differentiated from the RICO “enterprise.” Although the law with respect to the separateness of the enterprise is in a state of some flux, at this time, federal and state law do appear to be in lockstep. Although a shell sole-proprietorship will not be considered “separate” from the defendant/owner under RICO, any “identifiable legal or de facto entity which stands apart from the associating person” may be adequate to defeat a motion to dismiss.⁶⁴

Conclusion

Despite the fact that Florida courts often look to the federal courts for guidance in interpreting and applying the Florida RICO statute, there are noteworthy distinctions between the courts’ application of Florida and federal RICO (including some distinctions that have yet to be resolved by Florida courts). Nonetheless, the civil litigator should acquaint himself or herself with these distinctions, regardless of whether prosecuting or defending, in order to most robustly represent the client.

¹ 18 U.S.C. §§1961-1968.

² *W. 79th St. Corp. v. Congregation Kahl Minchus Chinuch*, 2004 WL 2187069 (S.D.N.Y. Sept. 29, 2004).

³ The Florida Racketeer Influenced and Corrupt Organizations Act, Ch. 77-334, 1977 Fla. Laws 1399, was originally codified at Fla Stat. §§943.46-.5. In 1981, those sections were renumbered as §§895.01-.06.

⁴ See Fla. Stat. §§772.101-772.104.

⁵ *Katzman v. Victoria’s Secret Catalogue*, 167 F.R.D. 649, 655 (S.D.N.Y. 1996). See also *Directv Inc. v. Cavanaugh*, 321 F. Supp. 2d 825, 839 (E.D. Mich. 2003) (noting that given the opprobrium and exposure to treble damages that a RICO claim brings to a party, courts should eliminate frivolous RICO claims at the earliest stage of litigation).

⁶ Because of the similarities between Florida and federal RICO acts, Florida looks to federal authority regarding the interpretation and application of its act. *Palmas y Bambu, S.A. v. E.I. Dupont De Nemours & Co., Inc.*, 881 So. 2d 565, 583 (Fla. 3d D.C.A. 2004) (citing *Lugo v. State*, 845 So. 2d 74, 96 n. 39 (Fla. 2003)) (since “Florida[’s] RICO statute ... is patterned after its federal counterpart ... Florida courts may look to federal RICO decisions as persuasive authority”); *Gross v. State*, 765 So. 2d 39, 42 (Fla. 2000) (“[g]iven the

similarity of the state and federal [RICO] statutes, Florida courts have looked to the federal courts for guidance in construing RICO provisions"); *O'Malley v. St. Thomas University, Inc.*, 599 So. 2d 999, 1000 (Fla. 3d D.C.A. 1992) ("Since Florida RICO is patterned after federal RICO, Florida courts have looked to the federal courts for guidance in interpreting and applying the act. Therefore, federal decisions should be accorded great weight."); see *RLS Business Ventures, Inc. v. Second Chance Wholesale, Inc.*, 784 So. 2d 1194, 1195 n. 2 (Fla. 2d D.C.A. 2001) (observing "Florida courts have held that cases interpreting the federal RICO statute, title 18, United States Code, are persuasive as to the meaning of Florida's RICO statute, chapter 895, Florida Statutes").

⁷ 18 U.S.C. §1961(5).

⁸ *Silverberg v. Thomson McKinnon Securities, Inc.*, 787 F.2d 1079 (6th Cir. 1986).

⁹ See, e.g., *Tellis v. U.S. Fidelity & Guaranty Co.*, 805 F.2d 741 (7th Cir. 1986); *Compton v. Ide*, 732 F.2d 1429 (9th Cir. 1984).

¹⁰ *Agency Holding Corp.*, 483 U.S. at 150.

¹¹ *Pac Harbor Capital, Inc. v. Barnett Bank, N.A.*, 252 F.3d 1246, 1251 (11th Cir. 2001) (citing *Rotella v. Wood*, 528 U.S. 549 (2000) (emphasis added)).

¹² Fla. Stat. §772.17 (emphasis added).

¹³ See *Consejo de Defensa del Estado de la Republica de Chile v. PNC Financial Services Group, Inc., et al.*, Case No. 09-20612-CIV-GOLD/MCALILEY, Motion to Dismiss [D.E. #39], at 5-8 (filed Oct. 1, 2009).

¹⁴ See Fla. Stat. §95.031(1).

¹⁵ *Davis*, 832 So. 2d at 710.

¹⁶ *Jones v. Childers*, 18 F.3d 899 (11th Cir. 1994).

¹⁷ *In re Mack*, 6:06-BK-00182-ABB, 2008 WL 4790386 (Bankr. M.D. Fla. Aug. 6, 2008) (citing *South Atlantic Ltd. P'ship of Tenn., L.P. v. Riese*, 284 F.3d 518, 530 (4th Cir.2002)).

¹⁸ Fla. Stat. §772.104.

¹⁹ *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring).

²⁰ *Addington v. Texas*, 441 U.S. 418, 423 (1979).

²¹ *Santosky v. Kramer*, 455 U.S. 745, 755 (1982).

²² *Id.*

²³ Fla. Std. Jury Instr. (Civ.) 3.

²⁴ *Santosky*, 455 U.S. at 755 (quoting *Addington v. Texas*, 441 U.S. 418, 424 (1979)).

²⁵ Fla. Std. Jury Instr. (Civ.) 3.2.1.

²⁶ *Santosky*, 455 U.S. at 755 (quoting *Addington v. Texas*, 441 U.S. 418, 424 (1979)).

²⁷ Fla. Std. Jury Instr. (Civ.) 6.1.

²⁸ *See, e.g., Hartford Ins. Co. of the Midwest v. Miller*, 681 So. 2d 301, 302 (Fla. 3d D.C.A. 1996) (noting that the burden to recover fees under Florida RICO is more lenient than Fla. Stat. §57.105 in order to “discourage frivolous RICO claims or claims brought for the purpose of intimidation because the stigma and burden of defending such claims is so great”); *Doria v. Class Action Services, LLC*, 261 F.R.D. 678, 686 (S.D. Fla. 2009) (“I agree with [d]efendants’ contention that civil RICO claims can have a stigmatizing effect upon defendants.”).

²⁹ *See, e.g., Waters v. Int’l Precious Metals Corp.*, 172 F.R.D. 479, 510 (S.D. Fla. 1996).

³⁰ Fla. Stat. §772.104(3).

³¹ *Reves v. Ernst & Young*, 507 U.S. 170 (1993).

³² *Id.* at 183.

³³ *Id.* at 185.

³⁴ *Brouwer*, 199 F. 3d at 967.

³⁵ *Id.*

³⁶ 18 U.S.C. §1962(c) (2000) (emphasis added).

³⁷ *Reves*, 507 U.S. at 169.

³⁸ *Id.* at 178.

³⁹ Fla. Stat. §772.03 (emphasis added).

⁴⁰ *Keesling v. Beegle*, 880 N.E.2d 1201, 1206 (Ind. 2008).

⁴¹ *Id.*

⁴² *See Faillace v. Columbus Bank & Trust, Co.*, 269 Ga. App. 866 (Ga. App. 2004); *State v. Siferd*, 151 Ohio App. 3d 103 (Ohio App. 2002).

⁴³ *F.D.I.C. v. First Interstate Bank of Denver, N.A.*, 937 F. Supp. 1461, 1471-1472 (D. Colo. 1996).

⁴⁴ *Bailey v. Trenam Simmons, et al.*, 938 F. Supp. 825, 828 (S.D. Fla. 1996) (citing *Reves* and *Jones v. Childers*, 18 F. 3d 899, 910 (11th Cir. 1994) for the proposition that federal RICO case law informs Florida RICO law) (emphasis added).

⁴⁵ *See, e.g., Bennett v. U.S. Trust Co. of New York*, 770 F.2d 308 (2d Cir. 1985).

⁴⁶ *Bennett*, 770 F.2d at 315.

⁴⁷ *See id.*

⁴⁸ *Bennett*, 770 F.2d at 315 n. 2.

⁴⁹ *Id.* *See also* *C.A. Westel De Venezuela v. Am. Tel. & Tel. Co.*, 90 CIV. 6665 (PKL), 1993 WL 497971 (S.D.N.Y. 1993).

⁵⁰ *See, e.g., State v. Bowen*, 413 So. 2d 798 (Fla. 1st D.C.A. 1982), *petition denied*, 424 So. 2d 760 (Fla. 1983).

⁵¹ *Bowen*, 413 So. 2d at 799 (internal citations omitted).

⁵² *Masonoff v. State*, 546 So. 2d 72, 74 (Fla. 2d D.C.A.), *rev. dismissed*, 553 So. 2d 1166 (Fla. 1989).

⁵³ *Id.* at 73-74.

⁵⁴ *Id.* at 74.

⁵⁵ *Id.* *See also* *Craver v. State*, 561 So. 2d 1251 (Fla. 2d D.C.A. 1990) (motion for judgment of acquittal improperly denied under *Masonoff* where defendant was prosecuted as a "one-man enterprise"); and *State v. Nishi*, 521 So. 2d 252 (Fla. 3d D.C.A.), *rev. den.*, 531 So. 2d 1355 (Fla. 1988) (defendant could not be employed by or associated with himself as an enterprise under RICO); *Wilson v. State*, 596 So. 2d 775, 780-81 (Fla. 1st D.C.A. 1992).

⁵⁶ *Wilson v. State*, 596 So. 2d 775 (Fla. 1st D.C.A. 1992).

⁵⁷ *Id.* at 776.

⁵⁸ *Id.* at 781.

⁵⁹ *Id.*

⁶⁰ *State v. Jackson*, 677 So. 2d 938 (Fla. 2d D.C.A. 1996) (citing *McCullough v. Suter*, 757 F.2d 142, 144 (7th Cir. 1985)).

⁶¹ *Id.* at 941.

⁶² *Cedric Kushner*, 121 S. Ct. at 2091.

⁶³ *Id.*

⁶⁴ *Wilson*, 596 So. 2d at 781.

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