

IN THE SUPREME COURT OF OHIO
Supreme Court Case Number 2007-2193

STATE OF OHIO

Appellant

v.

WILLIAM C. BARTRUM

Appellee

**On Appeal From The Summit
County Court of Appeals
Ninth Appellate District
Court of Appeals Case No. 23549**

MERIT BRIEF OF APPELLEE
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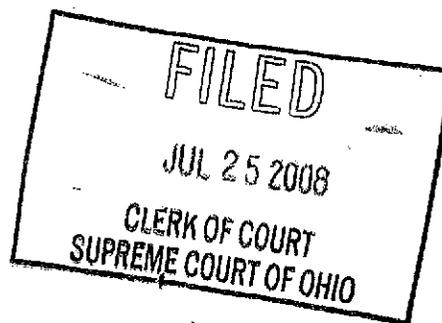


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STATEMENT OF THE CASE AND FACTS

On October 10, 2007, the Ninth District Court of Appeals reversed the conviction of Appellee, William Bartrum after he had been found guilty of Compelling Prostitution after a two day jury trial. (*State v. Bartrum*, 9th Dist. App. No. 23549, 2007-Ohio-5410). The Court of Appeals articulated that the reason for the reversal was that no actual minor was present or involved in the alleged criminal conduct, thereby basing its decision on a lack of sufficient evidence. *Id* at ¶28. The court conducted an analysis of *State v. Adrian* (168 Ohio App.3d 300, 2006-Ohio-4143) and *State v. Goldblatt* (8th Dist.App.Nos. 87442/87462, 2006-Ohio-5930) as well as an examination of agency law principles to the transaction and review. *Id* at ¶22-25, ¶27-28.

In addition, the Court of Appeals undertook a statutory construction analysis to parse through the legislative intent behind R.C. 2907.21(A)(3). *Bartrum* at ¶26. The Court rendered its decision within the confines of a sufficiency analysis as argued by Mr. Bartrum. *Id* at ¶18.

Thereupon the Appellant appealed the ruling in the instant cause.

PROPOSITION OF LAW

IN A PROSECUTION UNDER R.C. 2907.21(A)(3) IT IS NOT NECESSARY THAT THERE IS AN ACTUAL MINOR IN ORDER TO CONVICT THE DEFENDANT.

LAW AND ARGUMENT

Appellant argues that applying the holdings from *Goldblatt* and *Adrian*, along with an analysis of other statutes involving proscribed conduct with minors, that this Court should reverse the decision of the Ninth District Court of Appeals. (Brief of Appellant, p. 9). In clarifying how the holdings in the aforementioned cases should be construed, the Ninth District Court of Appeals correctly limited the use of the holding in *Adrian* since the Second District Court of Appeals never directly dealt with the issue regarding the presence of an actual minor under a prosecution of R.C. 2907.21(A)(3). *Bartrum*, supra at ¶23. Therefore, the Eighth District's Court of Appeals reliance upon *Adrian* in its *Goldblatt* opinion was misplaced. *Bartrum*, supra at ¶25.

The Ninth District correctly analyzed the statutory language and indicia of legislative intent with respect to whether R.C. 2907.21(A)(3) requires the presence of an actual minor. *Id at* ¶26. Specific statutes were created by the legislature to put the citizens on notice of various types of proscribed conduct. If the Appellant's proposition of law becomes precedent, this will reflect an expansion of statutory meanings thereby creating exceptions founded in in-depth attenuated interpretation. The general purpose of statutes is so that all conduct is not grouped under one statutory scheme. The purpose of a statute is to give notice of what conduct is proscribed and allowing the same conduct to be applicable to the many statutes through such an attenuated way as the Appellant in this case argues is not fulfilling the purpose behind statutory construction and authority.

The Court of Appeals was correct to point out that those statutes that allow prosecution when a fictitious or believed minor is involved, specifically state such in the language. *Id* at ¶26. The specific conduct that R.C. 2907.21(A)(3) is prostitution and involved activities. There are many other statutes that exist involving issues and actions regarding minors and sexual acts and/or behaviors. Importuning, attempted rape, rape, pandering obscenity, sexual imposition laws, etc. have all been created to deal with specific instances and types of conduct. This is not to say that a person could not be charged with multiple offenses, but this is not the issue in the case subjudice.

The statute at issue in this case is clear in that it involves prostitution, sex for hire. The plain meaning of what conduct would fall under this statute is activities relating to prostitution. The compelling prostitution statute centers on the common understanding of how prostitution operates by definition. An individual seeks out and pays the prostitute or the agent of the prostitute for sexual activity. Therefore, this would comport with the analysis the Ninth District put forth when it supported its reversal with principles of agency law. Everything about the transaction that Mr. Bartrum was involved with was fictitious and planned on the part of State. Since the discussion was occurring between a mother regarding her minor daughter, the state relied upon the mother as the agent. However, there was no mother, only an informant pretending to be able to fulfill the requests of Mr. Bartrum. Agency principles do apply given the nature of the pimp-prostitute arrangement or relationship that is generally considered in the context of prostitution by definition.

The issue in this case specifically involves R.C. 2907.21(A)(3) as limited by the Appellant and the holding in *Bartrum*. The issue of whether or not Mr. Bartrum was guilty of

any crime that could have been charged under a different statute was not considered by the Ninth District. *Bartrum, supra* at ¶29.

Appellant's conclusion that *Adrian* and therefore *Goldblatt* stand for the proposition that no actual minor is required is incorrect. The analysis the Appellant went through is too attenuated and the marked errors as pointed out by the Ninth District highlighting the lack of foundation justifying *Adrian* and *Goldblatt* as precedent.

Additionally, the Appellant relies upon the dissent from the Ninth District's opinion by Judge Slaby. In his dissent, Judge Slaby arrives at a factual conclusion based upon the conduct of Mr. Bartrum. The dissent references Mr. Bartrum propositioning the caller for sex with the daughter. *Bartrum, supra* at ¶36. However, as the Appellant included in its own brief to this Court, the holding in *Adrian* requires a substantial step in furtherance of engaging in or soliciting sex with an underage person, at least in terms of the attempted rape statute.

Although a factual analysis of Mr. Bartrum's conduct is not the issue in this appeal, the inclusion by the Appellant of Judge Slaby's dissent requires at least a brief response. Mr. Bartrum's conduct was over the telephone and via text messaging. He never actually arrived at the scene nor was he apprehended at or around the scene. No money was exchanged and no contact was ever made between the caller and Mr. Bartrum.

The conduct that the dissent appears to be qualifying as criminal is the agreement over the phone to the price of \$500. The dissent apparently would have affirmed the conviction of Mr. Bartrum based upon simply making the agreement evidenced by, "I find no distinction worthy of a different outcome." *Bartrum, supra* at ¶36. This holding if it was to become precedent would all but do away with an individual's ability to retreat and to change one's mind when in the midst of criminal activity. Judge Slaby correctly states in his dissent that, "The

defendant in *Adrian* took as many steps as possible toward the rape of a child that could be taken outside the presence of the victim.” *Bartrum* at ¶36. This line of reasoning directly supports the argument that Mr. Bartrum did not engage in as many steps as possible outside the presence of the victim. If the mere agreement without more is enough to secure a conviction, then no person would be able to reconsider any course of action. In this case, there was no agreement other than verbal in that Mr. Bartrum never appeared at the location to participate in the agreement, nor was any money ever exchanged.

CONCLUSION

Therefore, based upon the foregoing, Appellee, William C. Bartrum, requests that the judgment of the Ninth District Court of Appeals be affirmed and that it be determined that the conviction was not supported by sufficient evidence.

Respectfully Submitted,

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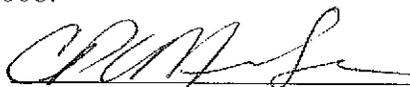
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document has been sent via regular U.S. mail to Attorney Richard S. Kasay, 53 University Avenue, Summit County Safety Building, 6th Floor, Akron, Ohio 44308, on the 25th day of July 2008.



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