

ORIGINAL

IN THE SUPREME COURT OF OHIO

| | | |
|-------------------|---|-------------------------|
| State of Ohio, | : | Case No. 2009-0273 |
| Appellee, | : | On Appeal from the |
| v. | : | Warren County Court |
| Barry A. Mentser, | : | of Appeals, Twelfth |
| Appellant. | : | Appellate District |
| | : | Court of Appeals |
| | : | Case Nos. CA2008-06-075 |
| | : | CA2008-06-076 |

**APPELLANT'S BRIEF SETTING FORTH THE DATES OF THE OFFENSES AS
REQUESTED BY THE COURT**

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Phone: (513) 695-1325

and

John Michael Greer 0084352, Counsel of Record
Assistant Prosecuting Attorney
Counsel for Plaintiff-Appellee

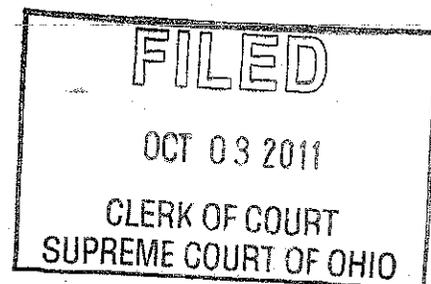


TABLE OF CONTENTS

| | <u>Page No.</u> |
|--|-----------------|
| Dates of Offenses..... | 1 |
| Certificate of Service..... | 2 |
| Appendix | |
| Indictment, Warren County Court of Common Pleas Case No. 07CR24636..... | A-1 |
| Judgment Entry, Warren County Court of Common Pleas Case No. 07CR24636 | A-3 |
| Indictment, Franklin County Court of Common Pleas Case No. 07CR-8287 and Warren County Court of Common Pleas Case No. 08CR24893 | A-5 |
| Agreed Entry of Transfer from Franklin County to Warren County..... | A-8 |
| Judgment Entry, Warren County Court of Common Pleas Case No. 08CR24893.... | A-9 |

DATES OF OFFENSES

Procedural Posture:

This brief is filed pursuant to the entry of this Court (attached) requesting the parties to file briefs clarifying the exact dates of the offenses for purposes of determining whether S.B. 10, The Adam Walsh Act, applied to the appellant.

App. Case No. CA2008-06-075 and Warren County Court of Common Pleas Case No. 07CR24636

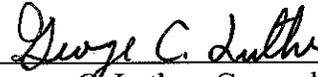
In this case, the appellant pled to the single count of the indictment charging him with importuning in violation of R.C. 2907.07(D)(2). The indictment (attached) alleged that the offense occurred on October 31, 2007.

App. Case No. CA2008-06-076 and Warren County Court of Common Pleas Case No. 08CR24893 (also Franklin County Court of Common Pleas Case No. 07CR-8287

This matter was indicted in Franklin County Ohio under Case No. 07CR-8287 and was transferred to Warren County where it was renumbered Case No. 08CR24893. The appellant pled guilty to count one of the indictment, attempted unlawful sexual conduct with a minor in violation of R.C. 2923.02 and 2907.04. The indictment (attached) alleged that the incident occurred on October, 31, 2007.

The appellant entered guilty pleas in the above cases on April 1, 2008, and was sentenced on both cases on May 14, 2008, and the judgment entries were filed on May 15, 2008. (Entries attached) The effective date of S.B. 10, as it applied to the appellant, who was sentenced on May 14, 2008, was January 1, 2008. His offenses, according to the indictments, occurred before the effective date of S.B. 10, as its provisions applied to the appellant.

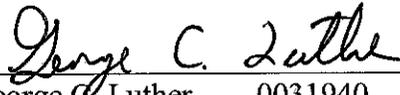
Respectfully submitted,



George C. Luther, Counsel of Record for
Defendant-Appellant

CERTIFICATE OF SERVICE

I certify that a copy of this brief was sent by regular U.S. mail to John Michael Greer, Assistant Warren County Prosecutor, 500 Justice Drive, Lebanon, OH 45036, on Monday, October 03, 2011.



George C. Luther 0031940
Counsel for Defendant-Appellant

IN THE SUPREME COURT OF OHIO

| | | |
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| State of Ohio, | : | Case No. 2009-0273 |
| Appellee, | : | On Appeal from the |
| v. | : | Warren County Court |
| Barry A. Mentser, | : | of Appeals, Twelfth |
| Appellant. | : | Appellate District |
| | : | Court of Appeals |
| | : | Case Nos. CA2008-06-075 |
| | : | CA2008-06-076 |

APPENDIX

TABLE OF CONTENTS

| | <u>Page No.</u> |
|--|-----------------|
| Indictment, Warren County Court of Common Pleas Case No. 07CR24636..... | A-1 |
| Judgment Entry, Warren County Court of Common Pleas Case No. 07CR24636 | A-3 |
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COMMON PLEAS COURT

NOVEMBER, 2007 CASE NO. 07CR24636

WARREN COUNTY, OHIO

THE STATE OF OHIO VS. BARRY A. MENTSER

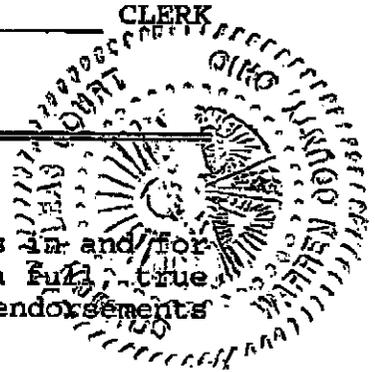
INDICTMENT FOR: IMPORTUNING 2907.07(D)(2) F5

Rachel A. Hutzel
RACHEL A. HUTZEL
PROSECUTING ATTORNEY
ATTY. REG. #0055757

A TRUE BILL
W. J. Ferrell
GRAND JURY FOREPERSON

FILED: December 21, 2007
BY: Jan K. Kiegre

James L. Spaeth CLERK
DEPUTY CLERK



THE STATE OF OHIO, WARREN COUNTY.

I, the undersigned, Clerk of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the original indictment, with the endorsements thereon, now on file in my office.

WITNESS MY HAND AND SEAL OF SAID COURT, AT

Lebanon, Ohio, this
21st day of December, 2007

James L. Spaeth Clerk

BY: Jan K. Kiegre Deputy

NOTICE TO APPEAR

BARRY A. MENTSER, YOU HAVE BEEN INDICTED BY THE GRAND JURY OF WARREN COUNTY, OHIO, AND YOU ARE HEREBY ORDERED TO PERSONALLY APPEAR AT 8:30 A.M. JANUARY 11, 2007 AT THE COMMON PLEAS COURT AT THE JUSTICE CENTER, 500 JUSTICE DRIVE, LEBANON, OHIO OR IF YOU ARE INCARCERATED YOU WILL BE SCHEDULED FOR A VIDEO ARRAIGNMENT AND THAT FAILURE TO APPEAR WILL RESULT IN A WARRANT FOR ARREST, FORFEITURE OF BOND, IF ANY, OR ADDITIONAL CRIMINAL CHARGES FOR FAILURE TO APPEAR UNDER REVISED CODE 2937.99.

A-1

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

07 DEC 21 PM 3:35

JAMES L. SPAETH
CLERK OF COURTS

STATE OF OHIO, WARREN COUNTY

COMMON PLEAS COURT

STATE OF OHIO,

CASE NO. 07CR24636

Plaintiff

VS.

INDICTMENT

BARRY A. MENTSER,

Defendant.

COUNT ONE
IMPORTUNING

OF the term NOVEMBER, in the year Two Thousand and Seven, THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 31st day of October, 2007, in the State of Ohio, County of Warren, the defendant, BARRY A. MENTSER,

did solicit another by means of a telecommunications device, as defined in Section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and the other person is a law enforcement officer posing as a person who is thirteen years of age or older but less than sixteen years of age, the offender believes that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement officer assumes in posing as the person who is thirteen years of age or older but less than sixteen years of age, said offense a Felony of the 5th degree, contrary to and in violation of Section 2907.07(D)(2) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

RACHEL A. RUTZEL
Warren County Prosecuting Atty.
Atty. Reg. #0055757



COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

08 MAY 15 AM 9:47

JAMES L. SPAETH
CLERK OF COURTS

STATE OF OHIO, WARREN COUNTY
COMMON PLEAS COURT

STATE OF OHIO,

Plaintiff,

vs.

BARRY A. MENTSER,

Defendant.

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CASE NO. 07CR~~2636~~

24636

GOC

561 141

JUDGMENT ENTRY OF SENTENCE
(Community Control)

On May 14, 2008, the Defendant appeared in Court with his attorney, Charles Rittgers and George Luther, to be sentenced for the following offense(s): IMPORTUNING, violation of 2907.07(D)(2), a felony of the fifth degree.

The Defendant was previously found guilty pursuant to a guilty plea by Defendant.

The Court inquired if the Defendant had anything to say in mitigation regarding the sentence. The Court has considered the record, oral statements, any victim impact statement and presentence report prepared, as well as the principles and purposes of sentencing under R.C. §2929.11, and has balanced the seriousness and recidivism factors under R.C. §2929.12.

The Court has considered the factors under R.C. §2929.13.

It is hereby ORDERED that Defendant be sentenced to three (3) years of community control, specifically to include:

- A. Warren County Jail for (30) thirty days concurrent with Case No. 08CR24893
- B. Community Corrections Work Release Program _____
- C. a fine of \$500 (\$ _____ is mandatory)
- D. a license suspension of _____
- E. community service of _____ days
- F. electronic monitoring for _____ (term)
- G. Restitution _____
- H. Completion of inpatient treatment program as arranged by probation
- I. Complete program at T.A.S.C.
- I. Other Continue Treatment



* W C O 2 8 - 0 7 C R 2 4 6 3 6 *

05/15/08 JUDGMENT ENTRY OF SENTENCE THREE (3)

The Court finds that the defendant has or is reasonably expected to have the means to pay the financial sanctions, fines, and court appointed attorney's fees imposed herein.

Defendant shall receive -3- days jail time credit.

Any defendant sentenced to the Warren County Jail for a non-violent offense may serve his/her time in the MSJ Pod. Any work release afforded the defendant shall be monitored through the Community Corrections Program.

The defendant shall be monitored by the Warren County Adult Probation Department and is subject to the attached rules and conditions. Every defendant convicted of a felony offense shall submit a DNA sample pursuant to R.C. §2901.07. Any Temporary Protection Order issued in this case is hereby terminated. Violation of this sentence may lead to a longer or more restrictive sanction, or may impose a prison term of (12) twelve months.

Defendant is therefore ORDERED to report to the Warren County Adult Probation Department forthwith. Defendant is ordered to pay any restitution, all prosecution costs, court appointed counsel costs and any fees permitted pursuant to R.C. §2929.18(A)(4), for which execution is hereby ordered.

In addition a period of control or supervision by the Adult Parole Authority after release from prison is **optional** in this case. The control period may be a maximum term of up to 3 years. A violation of any post-release control rule or condition can result in a more restrictive sanction while released, an increased duration of supervision or control, up to the maximum set out above and/or re-imprisonment even though you have served the entire stated prison sentence imposed upon you by this court for all offenses set out above. Re-imprisonment can be imposed in segments of up to 9 months but cannot exceed a maximum of $\frac{1}{2}$ of the total term imposed for all of the offenses set out above.

If you commit another felony while subject to this period of control or supervision you may be subject to an additional prison term consisting of the maximum period of unserved time remaining on post-release control as set out above or 12 months whichever is greater. This prison term must be served consecutively to any term imposed for the new felony you are convicted of committing.

The sentence imposed by the Court automatically includes any extension of the stated prison term by the Parole Board.



JUDGE BRONSON

Warren County Common Pleas Court

Case No. 07CR2636

A-4
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5-15-08

Case No. 07CR-8287

State of Ohio,
Franklin County, ss:

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2008 JAN 11 PM 2:01
CLERK OF COURTS

INDICTMENT FOR: Attempt Unlawful Sexual Conduct With A Minor (2923.02 R.C.) (F-4) (1 Count) and Disseminating Matter Harmful To Juveniles (2907.31 R.C.) (F-5) (1 Count); (Total: 2 Counts)

In the Court of Common Pleas, Franklin County, Ohio, of the Grand Jury term beginning September fourteenth, in the year of our Lord, Two Thousand Seven.

Count 1

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Barry Alan Mentser late of said County, on or about the 31st day of October in the year of our Lord, 2007, within the County of Franklin aforesaid, in violation of section 2923.02 of the Ohio Revised Code, did knowingly engage in conduct that if successful, would have constituted or resulted in the offense of Unlawful Sexual Conduct with a Minor, a violation of section 2907.04 of the Ohio Revised Code, in that the said Barry Alan Mentser attempted to in violation of section 2907.04 of the Ohio Revised Code, being eighteen (18) years of age or older, did engage in sexual conduct, to wit: vaginal intercourse and/or cunnilingus and/or fellatio, with Jane Doe (AKA OhioSoccerGirl14), not his spouse, the said Barry Alan Mentser knowing that Jane Doe (AKA OhioSoccerGirl14) was thirteen (13) years of age or older but less than sixteen (16) years of age, or the said Barry Alan Mentser being reckless in that regard, and the said Barry Alan Mentser was ten (10) or more years older than the victim Jane Doe (AKA OhioSoccerGirl14),

ON COMPUTER

A-5

Count 2

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, upon their oath do find and present that Barry Alan Mentser late of said County, from on or about May 2, 2006 to October 30, 2007, within the County of Franklin aforesaid, in violation of section 2907.31 of the Ohio Revised Code, with knowledge of its character or content, did recklessly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a law enforcement officer posing as a juvenile, to wit: Lt. Jeff Braley, any material or performance that is obscene and harmful to juveniles, contrary to the statute in such cases made and provided and against the peace and dignity of the State of Ohio.

RON O'BRIEN
Prosecuting Attorney
Franklin County, Ohio

A TRUE BILL

Walt Davis
Assistant Prosecuting Attorney

Tom McGehee
Foreperson, Grand Jury

State of Ohio v. Barry Alan Mentser
Address: 1267 Harrison Pond Drive, New Albany, Ohio 43054
DOB: 3-26-59
Sex/Race: male white
Date of Arrest: 10-31-07
SSN: 268-54-4493
Police Agency: CPD
Municipal Reference: 27927-07
ITN #:
Count 1: Attempt Unlawful Sexual Conduct With A Minor
2923.02 F-4
Count 2: Disseminating Matter Harmful To Juveniles
2907.31 F-5

Case No. 07CR-8287

The Court finds that the defendant has or is reasonably expected to have the means to pay the financial sanctions, fines, and court appointed attorney's fees imposed herein.

Defendant shall receive -3- days jail time credit.

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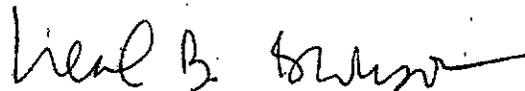
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The sentence imposed by the Court automatically includes any extension of the stated prison term by the Parole Board.



JUDGE BRONSON

Warren County Common Pleas Court

Case No. 08CR24893