

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

**MOTION TO STRIKE IMPROPER ARGUMENT FROM APPELLEE'S BRIEF OR
FOR LEAVE TO FILE A REPLY BRIEF**

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Now comes the appellant, through counsel, and moves to strike improper argument included in the appellee’s brief or for leave to file a reply brief addressing the new argument raised by the appellee for the reasons set forth herein.

This Court issued an entry on September 22, 2011, stating, “Appellant shall file his brief clarifying the exact date of the offense within 10 day of the date of this entry and appellee may file a brief within 10 days after the filing of appellant’s brief.”

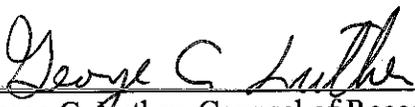
This is a Senate Bill 10 (Adam Walsh Act) case that was stayed pending this Court’s decision in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, dealing with the retroactive application of the law to offenses that occurred before the effective date of the law. The appellant complied with this Court’s request and filed a brief noting that the offense occurred on October 31, 2007, and that the effective date of the statutes contested were January 1, 2008, and that the defendant entered his guilty plea and was sentenced after this effective date.

The appellee filed a brief that went beyond the issue of the date of the offense and raised a legal issue arguing that the law was enacted on June 30, 2007, when it was signed by the governor and that this date is controlling with respect to the retroactive application of the law as opposed to the effective date of the law. See, appellee's brief, pages 3-4.

The appellant attempted to file a reply brief to rebut the claim wherein it was argued that Section Three of Senate Bill 10 provided for the effective date of the different statutes and that under this section all of the laws that applied to the appellant during his proceedings were effective January 1, 2008, and that it is the effective date of the statute that controls for purposes of retroactivity considerations and not when the bill was signed by the governor. However, the Clerk's Office would not accept the reply brief on the grounds that the order for briefing did not allow for one.

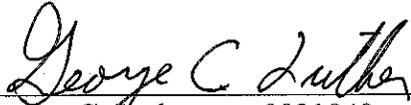
If this is the case, it would be fundamentally unfair to allow the appellee to raise a legal issue for the first time in its brief that went beyond the scope requested by this Court without giving the appellant a chance to address the legal merits thereof. Thus the appellant would request that this argument be stricken from appellee's brief or, in the alternative, for leave to file a reply brief setting forth the argument and the rule of law that it is the effective date of a statute that is controlling for purposes of retroactive prohibitions rather than the date the bill was signed by the governor.

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 Wednesday, October 19, 2011.


George C. Luther 0031940
Counsel for Defendant-Appellant