

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:
	: Case No. 2014-0363
Plaintiff-Appellee,	:
	: On Discretionary Appeal from the
v.	: Clark County Court of Appeals,
	: 2nd Appellate District,
TRAVIS BLANKENSHIP,	: Case No. 2012-CA-74
	:
Defendant-Appellant.	:

REPLY BRIEF OF APPELLANT TRAVIS BLANKENSHIP

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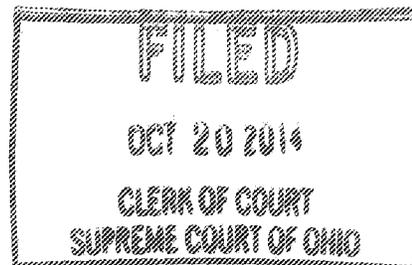
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## STATEMENT OF THE CASE AND FACTS

Mr. Blankenship relies upon the statement of the case and facts contained in his merit brief.

### ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

#### PROPOSITION OF LAW

**Mandatory sex offender classifications under Senate Bill 10 constitute cruel and unusual punishment where the classification is grossly disproportionate to the nature of the offense and character of the offender. Eighth and Fourteenth Amendments to the United States Constitution; Article 1, Section 9 of the Ohio Constitution.**

#### I. Introduction

The State emphasizes that under Ohio law Mr. Blankenship is a “sex offender.” (September 30, 2014 State’s Brief at 4 *citing* R.C. 2950.01(B)(1)). The State casts this as a determinative conclusion. But rather than being a foregone legal conclusion, this merely highlights the legal issue this Court is asked to resolve: whether it is cruel and unusual, as well as disproportionate, to automatically label someone who is demonstrably not a sex offender a “sex offender” with its related punitive results.

#### II. Proportionality Review

In its proportionality analysis the State notes that the First District Court of Appeals has addressed the issue before the Court in *State v. Bradley*, 1st Dist. Hamilton Nos. C-100833, 2011-Ohio-6266. *Bradley* is, however, readily distinguishable from this case. Most critically, in *Bradley* there was no finding that the defendant was not a sex offender, and thus was not likely to commit another sex offense and did not require sexual offender therapy.

*Bradley* involved an initially consensual first-time encounter that became a nonconsensual sexual encounter, whereas this case presents a consensual, relationship-based, encounter throughout.

Further, the defendant in *Bradley* was thirty years old and the victim was fourteen. Thus the considerations related to the brain development of an individual in his very early twenties—from which parallels to juvenile culpability may be drawn in this case—were necessarily absent in *Bradley*. See generally Lave and McCrary, *Do Sexually Violent Predator Laws Violate Double Jeopardy or Substantive Due Process?* 78 Brooklyn L. Rev. 1391, 1430 (2013) (“The studies that ended up proving so influential to the [Supreme Court of the United States] were due in large part to advances in brain imaging technology which allowed scientists to observe that the adolescent brain was still developing until a person was in his or her mid-20s, including in areas of the brain that governed impulse control, reasoning, and judgment”).

Moreover, the defendant in *Bradley* was sentenced to one year in prison. *Bradley* at ¶ 1. The State ignores that there is an additional proportionality as well as severity analysis to be had between the sentence a trial court imposes through the exercise of its discretion and the automatic classification imposed by law. In Mr. Blankenship’s case the trial court viewed twelve days in jail as sufficient punishment for his conduct. Yet Mr. Blankenship must still register for twenty-five years until he is nearly fifty years old to gain a fresh start. Thus, effectively none of the considerations and characteristics central to this case are present in *Bradley*.

### **III. The Court’s Independent Judgment**

As to the issue of culpability, Mr. Blankenship relies on the arguments set forth in his merit brief. Mr. Blankenship notes, however, that the State’s allegation that his behavior was “also typical of grooming behavior by sexual predators” is unsupported in the record, and is unaccompanied by any citation such that this assertion is no more than the State’s unsubstantiated belief. (State’ Brief at 11)

Regarding the severity of the punishment, the State notes that if the victim “had been three years younger, Mr. Blankenship’s punishment would have been mandatory life in prison with the possibility of parole after ten years.” (State’s Brief at 11). The State is correct. But if the victim had been *less than one year older* there would be *no criminal liability* at all. Similarly there would be no criminal liability if Mr. Blankenship was four years younger, and only misdemeanor liability if he were three years younger.

The State’s contention that the twenty-five year registration period is not cruel and unusual and is needed for “retribution and deterrence” ignores the determination that Mr. Blankenship is not a sex offender and is unlikely to reoffend. (State’s Brief at 13). Further, it approves of a twenty-five year period of retribution where Mr. Blankenship is stigmatized such that his everyday life and development are hampered until he is nearly fifty years old. Thus, being automatically labelled a sex offender where he is not one is cruel, unusual, and disproportionate.

For individuals whom the record reflects are not sex offenders, despite the fact that they committed a sexually oriented offense, R.C. 2950’s requirement that those individuals nonetheless be classified and required to register as sex offenders for decades is shocking to a reasonable person, particularly in light of his minimal twelve-day sentence of incarceration. Additionally, the specifics of Mr. Blankenship’s character and the nature of his offense underscore how disproportionate a mandatory 25-year punishment is for Mr. Blankenship.

Mr. Blankenship did not have prior felonies and posed no real threat to the community. *State v. Blankenship*, 2d. Dist. Clark No. 2012-CA-74, 2014-Ohio-232, ¶ 16 (Donovan, J., dissenting). The basis of the offense was a consensual relationship with a 15-year-old girl. While his underlying low-level felony was adequately punished by community control, he was mandatorily branded with “a scarlet letter of twenty-five years duration.” *Id.* at ¶ 15 (Donovan, J., dissenting). The fact that

this registration requirement attached at the beginning of his adult life, accentuates how extraordinary the punishment is. “This classification carries significant restraints on Blankenship’s liberty and a social stigma that interferes with employability, travel, and housing.” *Id.* “Blankenship was just shy of graduating with an associates degree from Clark State and was working 16-20 hours per week while in school at a department store. Numerous teachers, his former high school principal, and former employer vouched for his character and future promise.” *Id.* at ¶ 17. It is often difficult to ascertain what a community would find shocking. However, over 15 members of Mr. Blankenship’s community submitted letters with the sentencing court in support of Mr. Blankenship and these letters of support highlight how shocking his classification as a sex offender is to the community. Because this mandatory classification and registration requirement “shocks the sense of justice of the community” it therefore violates Ohio’s prohibition against cruel and unusual punishments.

### CONCLUSION

The federal and state constitutional prohibitions on disproportionate punishment are not negated by statutorily imposed, automatic punitive sex offender registration requirements. In cases such as Mr. Blankenship’s, where despite having committed a sexually oriented offense, the record demonstrates that the offender is not a sex offender, it is cruel and unusual punishment to classify that individual as a sex offender and require him to register for decades. Such a disproportionate punishment violates the Eighth Amendment to the United States Constitution as well as Ohio’s prohibition against cruel and unusual punishment. Consequently, this Court should reverse Mr. Blankenship’s classification as a Tier II sex offender.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY BRIEF OF APPELLANT TRAVIS BLANKENSHIP** was forwarded by regular U.S. Mail to Ryan A. Saunders, Clark County Assistant Prosecuting Attorney, 50 East Columbia Street, Suite 449, Springfield, Ohio 45502, this 20th day of October, 2014.

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