

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150752
Plaintiff-Appellee,	:	TRIAL NO. B-1301227
vs.	:	<i>JUDGMENT ENTRY.</i>
ANTHONY CARNES,	:	
Defendant-Appellant.	:	

This cause was heard upon the appeal, the record, the briefs, and arguments.

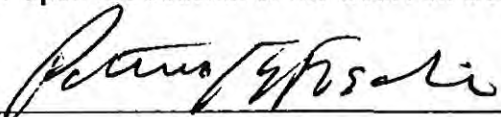
The judgment of the trial court is affirmed for the reasons set forth in the Opinion filed this date.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs are taxed under App. R. 24.

The court further orders that 1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App. R. 27.

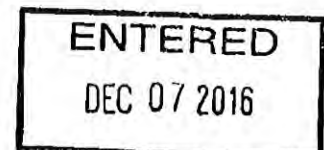
To The Clerk:

Enter upon the Journal of the Court on December 7, 2016 per Order of the Court.

By: 
Presiding Judge



D116482566



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STATE OF OHIO,	:	APPEAL NO. C-150752
Plaintiff-Appellee,	:	TRIAL NO. B-1301227
vs.	:	<i>OPINION.</i>
ANTHONY CARNES,	:	PRESENTED TO THE CLERK
Defendant-Appellant.	:	OF COURTS FOR FILING

DEC 07 2016

COURT OF APPEALS

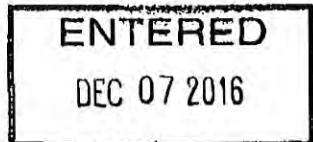
Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: December 7, 2016

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Scott M. Heenan*,
Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Edward Felson, for Defendant-Appellant.



STAUTBERG, Judge.

{¶1} The main issue presented in this appeal is whether a prior uncounseled juvenile adjudication that carried the possibility of confinement and that was obtained without an effective waiver of counsel can later be used by the state to prove the “disability” element in R.C. 2923.13(A)(2). The answer is yes.

{¶2} Defendant-appellant Anthony Carnes was indicted for having a weapon while under a disability (“WUD”), in violation of R.C. 2923.13(A)(2). Carnes’s “disability” was a 1994 juvenile adjudication for an offense that would have constituted felonious assault had Carnes been an adult. Prior to trial, Carnes moved the court to dismiss his indictment. He argued that his adjudication could not be used by the state to prove the disability element of the WUD charge because Carnes had not been represented by counsel at his adjudication and because, according to Carnes, his waiver of counsel had been invalid. Along with his motion to dismiss, Carnes submitted to the court the certified record of his 1994 juvenile court proceedings. The trial court overruled Carnes’s motion on the ground that Carnes’s waiver of counsel had been valid. Carnes was later found guilty. The trial court sentenced him to 30 months’ incarceration and costs. This appeal followed.

The Propriety of Carnes’s Motion to Dismiss His Indictment

{¶3} At the outset, we must determine whether Carnes properly raised his argument in the trial court. The state contends that, regardless of the merits of Carnes’s appeal, Carnes’s motion to dismiss was properly denied because his motion went beyond the indictment itself, and relied upon the record from his 1994 juvenile court proceedings. The state cites our opinion in *State v. Scott*, 174 Ohio App.3d 446, 2007-Ohio-7065, 882 N.E.2d 500 (1st Dist.), in support of its position.

{¶4} In *Scott*, codefendants Varian Scott and Corey Troupe moved to dismiss their indictment on the grounds that the state could not prove that Scott and Troupe had trafficked in cocaine, and also could not prove the accompanying major

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drug offender specifications. The defendants and the state stipulated to the fact that the “drugs” at issue did not contain cocaine. The trial court granted Scott and Troupe’s motion. We reversed. We held that a motion to dismiss an indictment that challenged the sufficiency of the state’s case was not a proper pretrial motion. *Scott* at ¶ 11. Our holding was based on our application of Crim.R. 12(C), which provides that “[p]rior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue.” Scott and Troupe’s motion challenged the sufficiency of the state’s evidence—a “general issue” to be determined at trial. *Scott* at ¶ 8-9. We therefore held that the motion was improper under Crim.R. 12, and that the court should not have considered any evidence when ruling on the motion. *Scott* at ¶ 8-10; see *State v. Moore*, 1st Dist. Hamilton No. C-130170, 2013-Ohio-5613; *State v. Hoskins*, 1st Dist. Hamilton No. C-090710, 2010-Ohio-2454; *State v. Love*, 1st Dist. Hamilton No. C-080184, 2008-Ohio-6833. In *Scott*, we further held that Scott and Troupe’s motion was improper as it was akin to a motion for summary judgment, which is not provided for in the Rules of Criminal Procedure. *Scott* at ¶ 9.

{¶5} *Scott* does not apply in this case. Here, Carnes was collaterally attacking the adjudication that formed the “disability” element of his WUD charge. Whether Carnes had validly waived his right to counsel in 1994 was not a “general issue for trial” on his WUD charge. And the Ohio Supreme Court has held that “Crim.R. 12 permits a court to consider evidence beyond the face of an indictment when ruling on a pretrial motion to dismiss an indictment if the matter is capable of determination without trial of the general issue.” *State v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, 894 N.E.2d 671, ¶ 3; see Crim.R. 12(F) (allowing the court to consider affidavits, testimony, and exhibits); *State v. Knox*, 8th Dist. Cuyahoga Nos. 103662 and 103664, 2016-Ohio-5519, ¶ 13-17 (where a motion to dismiss an

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indictment does not require a trial of the general issue, a trial court may consider evidence beyond the four corners of the indictment).

{¶6} Because Carnes's pretrial motion to dismiss his indictment was capable of determination without trial of the general issue, the trial court properly considered evidence aside from the indictment itself when ruling on the motion.

The Merits of Carnes's Motion

{¶7} In one assignment of error, Carnes contends that the trial court erred in failing to dismiss his indictment. We review this argument de novo. *State v. Thompson*, 1st Dist. Hamilton No. C-130053, 2013-Ohio-2647, ¶ 4.

{¶8} Carnes argues that the state should have been precluded from using his uncounseled 1994 juvenile adjudication to prove the "disability" element of his WUD charge because, according to Carnes, he had not validly waived his right to counsel in the 1994 case. We need not reach the issue of whether there was a valid waiver, however, because Carnes's motion failed as a matter of law.

{¶9} Carnes relies in large part on *State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156, in support of his argument that his motion to dismiss should have been granted. In *Bode*, the Ohio Supreme Court held that "an adjudication of delinquency may not be used under R.C. 4511.19(G)(1)(d) to enhance the penalty for a later offense when the adjudication carried the possibility of confinement, the adjudication was uncounseled, and there was no effective waiver of the right to counsel." *Id.* at syllabus. Carnes essentially argues that *Bode* should be extended to prohibit the use of an uncounseled adjudication obtained without a valid waiver to prove any element of a crime, not just one that enhances punishment. I do not read *Bode* so broadly.

{¶10} The underpinnings of the *Bode* decision can be traced to the protections afforded to criminal defendants by the Sixth and Fourteenth Amendments to the United States Constitution. In *Argersinger v. Hamlin*, 407 U.S.

25, 37, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), the United States Supreme Court held that the Sixth Amendment right to counsel, as applicable to the states through the Fourteenth Amendment, included a guarantee that, "absent a knowing and intelligent waiver [of the right to counsel], no person may be imprisoned for any offense * * * unless he was represented by counsel at his trial." The *Argersinger* Court reasoned that unless a defendant had "the guiding hand of counsel," his trial may not have had sufficient guarantees of fairness to support the severe sanction of imprisonment. *Id.* at 36-40. A few years later, in *Scott v. Illinois*, 440 U.S. 367, 373-374, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979), the Court held that the Sixth and Fourteenth Amendments require that no indigent criminal defendant be sentenced to a term of imprisonment unless the state afforded him the right to counsel. Citing *Argersinger* and *Scott*, in *Baldasar v. Illinois*, 446 U.S. 222, 226, 100 S.Ct. 1585, 64 L.Ed.2d 169 (1980), Justice Marshall, writing for a plurality of the Court, determined that "a conviction which is invalid for purposes of imposing a sentence of imprisonment for the offense itself remains invalid for purposes of increasing a term of imprisonment for a subsequent conviction." *Id.* at 228. The Supreme Court later overruled *Baldasar*, but held that an uncounseled prior conviction could be used to enhance a penalty only if the conviction was valid under *Scott*. See *Nichols v. United States*, 511 U.S. 738, 749, 114 S.Ct. 1921, 128 L.Ed.2d 745 (1994). In *Nichols*, Justice Souter in his separate concurrence opined that an uncounseled conviction without a valid waiver of counsel was not reliable enough to support the severe sanction of imprisonment. *Id.* at 750 (Souter, J., concurring in judgment).

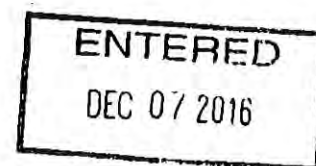
{¶11} Based on this line of cases, the Ohio Supreme Court has held similarly. See *State v. Brandon*, 45 Ohio St.3d 85, 87, 543 N.E.2d 501 (1989) (holding that a trial court could not use a prior uncounseled conviction, obtained without a valid waiver, to enhance the penalty of a later criminal offense.) In *State v. Brooke*, 113

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Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, ¶ 9, the Ohio Supreme Court explicitly recognized that “there is a limited right to collaterally attack a conviction when the state proposes to use the past conviction to enhance the penalty of a later criminal offense,” and it reaffirmed that an uncounseled conviction without a valid waiver could not later be used to enhance the penalty for another crime. In *Bode*, the Ohio Supreme Court held that *Brooke* extended to juvenile adjudications. *Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156, at ¶ 1.

{¶12} The holdings in *Brandon*, *Brooks*, and *Bode* are narrow and consistent--namely that an uncounseled conviction or adjudication obtained without a valid waiver of the right to counsel cannot be used to *enhance a penalty* for a later crime. Ultimately, these cases turn on the fairness of imposing the severe sanction of imprisonment where the trial leading to the underlying conviction and the resulting reliability of that conviction are constitutionally infirm due to a violation of the right to counsel. An uncounseled conviction obtained without a valid waiver is not infirm for all uses, however.

{¶13} In *Lewis v. United States*, 445 U.S. 55, 67-68, 100 S.Ct. 915, 63 L.Ed.2d 198 (1980), the United States Supreme Court held that it was constitutionally permissible to use a prior uncounseled felony conviction obtained without a valid waiver to impose a firearm disability under a federal statute that made it illegal for a felon to possess a firearm. The Court acknowledged that, under the Sixth Amendment, an uncounseled conviction could not be used for certain purposes such as sentencing or penalty enhancement, but reasoned that those cases turned on the unreliability of the past uncounseled convictions. *Id.* The reliability of the underlying felony in *Lewis* was immaterial because, the Court determined, it was the mere fact of the conviction that imposed the firearm disability. *Id.* The Court reasoned that “Congress could rationally conclude that any felony conviction, even



an allegedly invalid one, is a sufficient basis on which to prohibit the possession of a firearm.” *Id.* at 66.

{¶14} Likewise, in this case, the mere fact of Carnes’s 1994 adjudication imposed a disability that made it illegal under R.C. 2923.13(A)(2) for Carnes to possess a firearm in Ohio. The reliability of Carnes’s adjudication is immaterial for purposes of that statute. Therefore, the case law that Carnes cites in support of his position on appeal does not apply. Put another way, because Carnes’s 1994 adjudication was not a penalty-enhancing element of his DUS charge, *Bode* does not prohibit its use as an element of that charge.

{¶15} The dissent relies on *State v. Hand*, __ Ohio St.3d __, 2016-Ohio-5504, __ N.E.3d __, for its position that Carnes’s adjudication should be off-limits for purposes of establishing the disability element of the WUD charge. *Hand* does not apply in this case. Its holding is limited to banning the use of a juvenile adjudication to enhance punishment. It is therefore not relevant to the issue raised in this appeal.

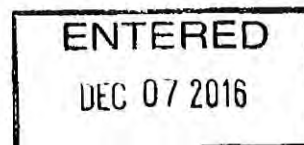
{¶16} Carnes’s sole assignment of error is overruled. The trial court’s judgment is affirmed.

Judgment affirmed.

DEWINE, J., concurs in judgment only.
CUNNINGHAM, P.J., dissents.

CUNNINGHAM, P.J., dissenting.

{¶17} I respectfully dissent. While I disagree with the lead opinion’s assertion that the Ohio Supreme Court’s pronouncements on the use of juvenile adjudications in subsequent criminal prosecutions have been “narrow,” I agree that they have been “consistent.” *The court has consistently limited their use in adult prosecutions.*

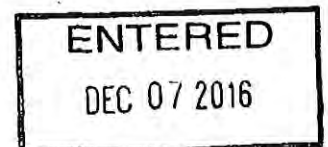


{¶18} Only four months after releasing *Bode*, in *Hand*, the court reiterated that “a juvenile adjudication is not a conviction of a crime and should not be treated as one.” *See id.* at ¶ 38 and ¶ 14 et seq. It held that a juvenile adjudication, without regard to whether it was counseled or uncounseled, may not be used to enhance the degree of or the sentence for a subsequent adult criminal offense. *See id.* at paragraph one of the syllabus. The basis of the court’s decision was its belief that it is “fundamentally unfair to allow juvenile adjudications that result from * * * less formal proceedings to be characterized as criminal convictions that may later enhance adult punishment.” *Id.* at ¶ 35.

{¶19} This fundamental unfairness, sufficient to deny a defendant due process of law, is even more apparent when a juvenile adjudication is the essential predicate for a criminal proceeding, where its use results not just in a longer sentence but in a loss of liberty itself. If juvenile adjudications are not reliable enough to enhance a criminal sentence, surely they are not sufficiently reliable to alone sustain proof beyond a reasonable doubt of an element of a crime. I would sustain the assignment of error on that basis.

Please note:

This court has recorded its own entry this date.



IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,

CASE NO.: 2016 CR 00548

Plaintiff(s),

JUDGE RICHARD S. SKELTON

-vs-

RICHARD E. JACKSON JR.,

Defendant(s).

DECISION AND JUDGMENT ENTRY
GRANTING MOTION TO DISMISS
COUNT ONE OF INDICTMENT

This matter is before the Court on the motion of defendant to dismiss Count One of the Indictment, Having Weapons While Under Disability, contrary to R.C. 2923.13(A)(2) which reads as follows: “. . . , no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordinance, if any of the following apply: **** (2) The person . . . has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.” The Indictment charges that Richard Jackson had a weapon in his vehicle and he was under a legal disability prohibiting possessing such a weapon because he had been adjudicated a delinquent in a 2008 juvenile court case number, 08JC5128, Montgomery County Juvenile Court.

Defendant relies on the Supreme Court of Ohio decision in *State v. Hand*, ___ Ohio St.3d ___, slip opinion, 2016-Ohio-5504 (Dec. 1, 2015) where the Court held that R.C. 2901.08(A) violates the Due Process Clauses of Article I, Section 16 of the Ohio Constitution and the Fourteenth Amendment to the United States Constitution because it is fundamentally unfair to treat a juvenile adjudication as a previous conviction that enhances either the degree of or the sentence

for a subsequent offense committed as an adult. Par. One, syllabus. The Supreme Court in *Hand* also held : “Because a juvenile adjudication is not established through a procedure that provides the right to a jury trial, it cannot be used to increase a sentence beyond a statutory maximum or mandatory minimum. (*Apprendi v. New Jersey*, 530 U.S. 466, . . . (2000) and *Alleyne v. United States*, ___ U.S. ___, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013), followed.). Par. Two, syllabus.

The state responds that the Court must approach the motion in the context of the presumption in favor of the constitutionality of statutes enacted by the legislature. State Mem., 3. That is a given. The State argues that R.C. 2923.13 is not within the scope of the Supreme Court’s decision in *Hand, supra*. State Mem., 4. It argues that *Hand* dealt with allowing a juvenile adjudication to be a conviction requiring a mandatory prison term under R.C. 2929.13(F)(6). Id., 5. It states: “Read together, the two statutes make juvenile adjudications equivalent to criminal convictions for the purpose of enhancing either the degree of a subsequent offense or the sentence for a subsequent offense to mandatory prison time.” Id. It argues that the basis of the decision in *Hand, supra*, is the United States Supreme Court decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Id., 6. The state states “R.C. 2923.13, however, does not flow through *Apprendi*, and does not require a finding that a juvenile adjudication be equivalent to a criminal conviction.” Id. It then quotes R.C. 2923.13(A)(2) which it argues “is clear and unambiguous.” Id. The Court notes that the Second District Court of Appeals recently held that the imposition of mandatory sentences using the juvenile court’s adjudication is plain error after *Hand. State v. Smith*, 2d Dist. Montgomery No. 26963, 2016-Ohio-7101 (Montgomery County Sept. 30, 2016), ¶13.

Later in its memorandum, the state argues that “declaring R.C. 2923.13(A)(2) unconstitutional would set a dangerous precedent.” It seeks to have the Court refrain from addressing the constitutional issue for public policy reasons. However, it is apparent that the Supreme Court in *Hand* saw the issue of using a juvenile court adjudication to impact a person after becoming an adult and allegedly committing a crime, as of such significant constitutional

importance that it struck the provision, i.e., the constitutional rights controlled over the public policy adopted by the state legislature. The state argues about the power of the legislature to enact the criminal code as it sees fit. That is not the issue in this case. The thrust of the state's argument is that the legislature chose to allow use of the juvenile court adjudication as a recidivism factor. Defendant's motion does not address using the adjudication at sentencing to assess recidivism.

As indicated, the state quotes R.C. 2923.13(A)(2) after the prefatory language "no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordinance, if any of the following apply: **** the person . . . has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence." R.C. 2901.08 provides that a juvenile adjudication is a prior conviction except as provided in division (B) where it may not be used as a prior conviction for purposes of determining whether the person is a repeat offender. Thus, the legislature's intention is that such a juvenile adjudication is the same as a prior conviction and, for purposes of having a firearm, is a "disability" that constitutes a criminal offense. R.C. 2923.13. In fact, R.C. 2901.08(A) states "the adjudication as a delinquent child or as a juvenile traffic offender is a conviction for purposes of determining the offense with which the person should be charged and, . . . the sentence to be imposed" It is not a "prior conviction" just for increasing the degree of the offense or enhancement of the penalty. It is a prior conviction for purposes of the offense charged---disability for having a firearm. R.C. 2923.13(A)(2). See *State v. Parker*, 8th Dist. Cuyahoga No. 97841, 2012-Ohio-4741 (Cuyahoga County Oct. 11, 2012), [imposition of sentence enhancement for juvenile adjudication does not violate due process or "run afoul of *Apprendi*.], ¶25.

As indicated, the state's argument is that the basis for the Ohio Supreme Court decision in *Hand* is the rationale of *Apprendi* which only dealt with an increase in the degree of the offense or enhanced the penalty. In such circumstances the defendant has a constitutional right to have a jury determine the facts necessary for the increase in the degree of the offense or the enhancement of the

penalty. The reasoning of *Hand* is not limited to that circumstance. In this case, the defendant's motion does not involve an increase in the degree of the offense or an enhancement of the penalty. It is an element of the offense itself. The problem is that the juvenile court adjudication did not allow Mr. Jackson to have a jury determine if he had committed the aggravated robbery that the juvenile court judge found that he committed. It is "fundamentally unfair to treat a juvenile adjudication as a previous conviction" and there was no "right to a jury trial". *Hand, supra*, par. One and Two, syllabus. The state's argument is contrary to the underlying principles of the right to a jury trial. The initial premise of *Apprendi* is that "the Due Process Clause of the United States Constitution requires that the finding of [disability] upon which [the crime] sentence [is] based must be proved to a jury beyond a reasonable doubt, *In re Winship*, 397 U.S. 358, 25 L.Ed.2d 368, 90 S.Ct. 1068 (1970)." *Apprendi, supra*, 530 U.S. at 471. In this case, the present jury would have to accept the juvenile judge's conclusion to find Jackson guilty. The state is correct that *Apprendi* involved a fact that enhanced the defendant's sentence and this case does not. However, the fact in this case is more basic as an essential element of the offense charged.

In *Alleyene v. United States*, ___ U.S. ___, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013), the United States Supreme Court stated: "The touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an 'element' or 'ingredient' of the charged crime." 133 S.Ct. at 2158, citing *United States v. O'Brien*, 560 U.S. 218 (2010). It further stated: "In *Apprendi*, we held that a fact is by definition an element of the offense and must be submitted to the jury if it increases the punishment above what is otherwise legally prescribed." *Id.* "Facts that increase the mandatory minimum sentence are therefore elements and must be submitted to the jury and found beyond a reasonable doubt." *Id.* As indicated, in the present case, the element of "disability" is a fact that was determined by the juvenile court judge without an opportunity for determination by a jury. It is an element of the crime charged. It necessarily would be a question for the jury except that the statute makes the juvenile court's determination back in

2008 determinative of that element. Of course, that fact of disability is an “ingredient” of a felony of the third degree, punishable by a 36-month term in prison. The disability determined by the juvenile court judge is legally essential to the punishment to be inflicted. *Alleyne, supra*, 133 S. Ct. at 2160.

Accordingly, the Court concludes that R.C. 2923.13(A)(2) unconstitutionally denies Mr. Jackson his due process right to a fair trial and to have a jury determine whether he committed the act that now renders him disabled, an essential element of the offense charged in Count One of the indictment for Having Weapons While Under Disability. The defendant’s motion to dismiss Count One is granted.

SO ORDERED:

JUDGE RICHARD S. SKELTON

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General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Entry: (Signed by Judge)
Case Number: 2016 CR 00548
Case Title: STATE OF OHIO vs RICHARD E. JACKSON JR.

So Ordered

A handwritten signature in blue ink, appearing to read "W. S. Skelton".

Electronically signed by skelton on 2016-11-08 17:20:58 page 6 of 6

IN THE COURT OF COMMON PLEAS OF CLARK COUNTY, OHIO

STATE OF OHIO,
Plaintiff,

-v-

ALEXANDER D. BOYER,
Defendant.

16-CR-0160

ENTRY

2016 OCT 12 AM 9:35
RON VAHRENWALD, CLERK
COMMON PLEAS COURT
CLARK COUNTY, OHIO

FILED

This case was before the Court on the motion of the defendant to dismiss count two, a charge of Having Weapons While Under Disability, a felony of the third degree. The defense bases its argument on the recent Ohio Supreme Court case in which the Court ruled that the State's use of a person's prior adjudication of juvenile delinquency could not be used to enhance the penalty of a subsequent adult criminal conviction. *State v. Hand*, 2016-Ohio-5504, 2016 WL 4486068.

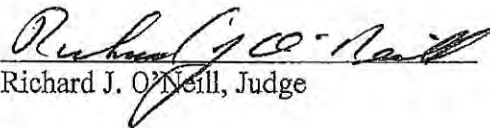
The reasoning upon which the Supreme Court based its ruling is that a juvenile does not have the same maturity as an adult in making decisions affecting the juvenile court case. Further, the Court found that the use of a juvenile adjudication to enhance the penalty for subsequent adult conviction denies the defendant's right to due process because in juvenile court the defendant did not have a right to a trial by jury.

In this case, the defendant's prior juvenile delinquency adjudication not only enhances the potential penalty, but is an element of the offense. This Court finds, using the same reasoning set forth in the *Hand* case, finds that if the use of a person's prior juvenile adjudication to enhance a subsequent adult penalty is a violation of that person's right to due process, then it is also a

violation of the persons right to due process to use a prior juvenile delinquency adjudication as an element for a subsequent adult felony offense.

It is, therefore, ORDER that the defense motion be granted and that count two of the indictment be DISMISSED.

This is a final appealable order.


Richard J. O'Neill, Judge

cc:
Brian Driscoll, Assistant Prosecuting Attorney
James Marshall, Attorney for Defendant