

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No.
Plaintiff-Appellee,	:	
	:	On Appeal from the Hamilton County
vs.	:	Court of Appeals
	:	First Appellate District
ANTHONY CARNES,	:	
	:	C.A. Case No. C-150752
Defendant-Appellant.	:	

**APPELLANT ANTHONY CARNES'S
MEMORANDUM IN SUPPORT OF JURISDICTION**

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INTRODUCTION

“Quite simply, a juvenile adjudication is not a conviction of a crime and should not be treated as one.” *State v. Hand*, Slip Opinion No. 2016-Ohio-5504, ¶ 38. The decision below limited this Court’s holding to enhanced punishments, refusing to apply it to an element of an offense. It did so by relying on federal law related solely to adult conduct. But this Court has afforded unique consideration to Ohio’s children and the juvenile-justice system. As such, the decision below defies both logic and the spirit of this Court’s recent juvenile-law decisions. *See id.*; *see also State v. Aalim*, Slip Opinion No. 2016-Ohio-8278, ¶ 31; *State v. Moore*, Slip Opinion No. 2016-Ohio-8288, ¶ 100; *State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156, ¶ 28-29.

EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case warrants review because it is a prime opportunity to further clarify the impact of juvenile adjudications on subsequent adult conduct in Ohio. This Court has consistently limited the use of juvenile adjudications in adult prosecutions. In *Bode*, this Court held that a juvenile adjudication cannot enhance a penalty for criminal conduct committed as an adult “when the adjudication carried the possibility of confinement,” “was uncounseled,” and “there was no effective waiver of the right to counsel.” *See Bode* at syllabus. In *Hand*, this Court 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, because 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. *See Hand* at paragraph one of the syllabus; *see also id.* at ¶ 35. Although the spirit and rationale of *Bode* and *Hand* arguably answer the question of whether juvenile adjudications may satisfy elements of an offense committed as an adult, they do not do so explicitly. Indeed, the court below refused to apply them to elements. *See State v. Carnes*, 1st Dist. Hamilton No. C-150752, 2016-Ohio-8019, ¶ 14-15.

Yet because children are different than adults and Ohio's juvenile-justice system is primarily rehabilitative, this Court has expressly precluded juvenile adjudications from enhancing punishment for subsequent adult conduct. It is illogical that such adjudications may not enhance punishments for later adult conduct, but can constitute adequate proof of an element of an offense committed as an adult. *See Carnes* at ¶ 19 (Cunningham, P.J., dissenting). Accordingly, jurisdiction should be granted to prohibit juvenile adjudications from satisfying the element of a crime committed as an adult, just as they are prohibited from enhancing punishment for such crimes.

STATEMENT OF THE CASE AND FACTS

Anthony Carnes moved to dismiss his weapon-under-disability charge because his disability was his 1994 juvenile adjudication, and that disability was an element of the offense he allegedly committed as an adult. *See State v. Carnes*, 1st Dist. Hamilton No. C-150752, 2016-Ohio-8019, ¶ 2. The trial court denied his request, and that denial was upheld on appeal. *Id.*; *see also id.* at ¶ 14-16. Due to his mistake as a 17-year old—the adjudication of which occurred without an attorney—he is now serving a two-and-a-half-year prison sentence for possessing a legal item. *Id.* at ¶ 2. In other words,

but for the conduct that he had committed nearly 20 years prior as a child, which resulted in an uncounseled juvenile adjudication, Mr. Carnes did not commit a crime.

See id.

ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

Juvenile adjudications cannot satisfy elements of an offense committed as an adult. Fifth, Sixth, and Fourteenth Amendments, United States Constitution; Sections 5 and 16, Article I, Ohio Constitution. *State v. Hand*, Slip Opinion No. 2016-Ohio-5504; *State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156; *Alleyn v. United States*, 570 U.S. ___, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013); *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed. 435 (2000).

Because “a juvenile adjudication is not a conviction of a crime and should not be treated as one,” it cannot satisfy elements of an offense committed as an adult. *See Hand* at ¶ 38.

I. Children are not adults.

There is a massive movement in the law recognizing what science and experience teach—children are, and must be treated, different than adults. *See generally Moore; Aalim; Hand; Bode; State v. Long*, 138 Ohio St.3d 478, 2014-Ohio-849, 8 N.E.3d 890; *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729; *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). Consequently, Ohio has a juvenile-specific system that bestows special consideration to children, which demands fundamental fairness and rejects a “one-size-fits-all approach” because it “runs counter to the aims and goals of

[that] system.” See *Aalim* at ¶ 18-21, 25. Importantly, this Court has required the juvenile system’s approach to extend beyond the age of majority when appropriate. See *In re C.P.* at ¶ 85; see also *Hand* at ¶ 38. At least two Ohio trial courts have done so and ruled that a juvenile adjudication cannot satisfy elements of an offense committed as an adult. See A-10, *State v. Richard Jackson, Jr.*, Montgomery County Court of Common Pleas Case No. 2016-CR-548, Decision and Judgment Entry (Nov. 8, 2016); see also A-16, *State v. Alexander Boyer*, Clark County Court of Common Pleas Case No. 16-CR-160, Entry (Oct. 12, 2016).

II. *Lewis v. United States*, 445 U.S. 55, 100 S.Ct. 915, 63 L.Ed.2d 198 (1980), did not involve a juvenile adjudication.

Any refusal to apply *Bode* and *Hand* to elements of offenses—like the decision below—must rest on *Lewis* and its rationale. See *Carnes* at ¶ 13-14. But all of the criminal conduct in *Lewis* was committed as an adult. See *Lewis* at 56-57. Thus, its holding—that the reliability and constitutionality of a conviction that institutes a firearm disability is not constitutionally significant under the federal Constitution—is of no value here.

III. This Court’s decisions in *Bode* and *Hand* demand that juvenile adjudications cannot satisfy elements of an offense committed as an adult.

“Treating a juvenile adjudication as an adult conviction [to satisfy an element of an offense committed as an adult] is inconsistent with Ohio’s system for juveniles.” See *Hand* at ¶ 38. That system is civil in nature, “predicated on the fact that children are not as culpable for their acts as adults and should be rehabilitated rather than punished,” and does not afford a juvenile the right to trial by jury. *Id.*; see also *id.* at ¶ 35. Moreover, Mr. Carnes’s adjudication was uncounseled, and this Court has limited the use of

uncounseled prior convictions for both adults and juveniles. *See generally Bode* at syllabus (juveniles); *see also State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, ¶ 9, and *State v. Brandon*, 45 Ohio St.3d 85, 87, 543 N.E.2d 501 (1989) (adults). Under these circumstances, it is incongruous to permit juvenile adjudications to constitute an “essential predicate” for a crime committed as an adult, where the juvenile adjudication produces “a loss of liberty itself,” but to prohibit said adjudication from enhancing punishment for a crime committed as an adult. *See Carnes* at ¶ 19 (Cunningham, P.J., dissenting).

IV. Ohio’s Constitution can offer greater protection.

This Court has interpreted the Ohio Constitution to offer greater protection than that of the federal Constitution when necessary. *See Bode* at ¶ 23, 28-29; *see also State v. Mole*, Slip Opinion No. 2016-Ohio-5124, ¶ 23; *In re A.G.*, Slip Opinion No. 2016-Ohio-3306, ¶ 11-13; *State v. Brown*, 143 Ohio St.3d 444, 2015-Ohio-2438, 39 N.E.3d 496, ¶ 23; *State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985, ¶ 48; *State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175, syllabus. If the federal Constitution does not prohibit the use of juvenile adjudications to satisfy elements of an offense committed as an adult, greater protection is necessary here. *See Bode* at ¶ 23, 28-29; *see also Hand* at ¶ 38.

CONCLUSION

Jurisdiction should be granted to ensure juvenile adjudications are not used to satisfy elements of offenses committed as an adult.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of this **Memorandum** was sent by regular U.S. mail to Scott Heenan, Assistant Prosecutor, Hamilton County Prosecutor's Office, 230 East 9th Street, Suite 4000, Cincinnati, Ohio 45202, on this 18th day of January, 2017.

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APPENDIX TO

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