

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO	:	NO. 2017-0087
Plaintiff-Appellee	:	On Appeal from the Hamilton County Court of Appeals, First Appellate District
vs.	:	
ANTHONY CARNES	:	Court of Appeals Case Number C-150752
Defendant-Appellant	:	

MEMORANDUM IN RESPONSE

Joseph T. Deters (0012084P)
Prosecuting Attorney

Scott M. Heenan (0075734P)
Assistant Prosecuting Attorney

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3227
Fax No. (513) 946-3021

COUNSEL FOR PLAINTIFF-APPELLEE, STATE OF OHIO

Peter Galyardt
Attorney at Law
State Public Defender's Office
250 E. Broad St., Suite 1400
Columbus, Ohio 43215
(614) 466-5394

COUNSEL FOR DEFENDANT-APPELLANT, ANTHONY CARNES

Table of Contents

	<u>Page</u>
Explanation of why this case is not a case of public or great general interest and does not involve a substantial constitutional question.....	1
Statement of the Case and Facts	2
Argument in Support of State’s Proposition of Law	4
<u>State’s Proposition of Law</u> : While a juvenile adjudication may not be used to enhance a sentence or the degree of an offense, it may be used as an element of an offense.....	4
Conclusion	6
Proof of Service	6

Explanation of why this case is not a case of public or great general interest and does not involve a substantial constitutional question

In *State v. Hand*, this court has recently ruled that juvenile adjudications cannot be used to enhance either a sentence or the degree of a criminal offense. That ruling was based off of both this court's prior decisions and United States Supreme Court precedent.

Carnes wants this court to take things to a new level. He wants this court to say that juvenile adjudications cannot be used as elements of other crimes. That is something that neither this nor the United States Supreme Court has done. Nor is there any reason to do so. Whether a prior adjudication should be used as an element of another crime is something that is properly in the legislature's discretion. As such, this is not a matter of public or great general interest and does not involve a substantial constitutional question.

Statement of the Case and Facts

In early 1994, Anthony Carnes was adjudicated delinquent of felonious assault.¹ At that hearing, both he and his mother signed off on him waiving his right to counsel.² This waiver was recognized on the judge's sheet that Carnes filed in the matter below along with the waiver he signed.³

In 2014, Carnes was charged with having weapons while under a disability. The disability was a result of his 1994 adjudication.⁴

Carnes moved to dismiss the indictment against him based upon his belief that his waiver of counsel in the juvenile court was improper.⁵ Since he felt it was improper, he argued that it could not be used against him as an adult. After considering the arguments of the parties, the trial court denied his motion.⁶

The trial court later allowed a second hearing on his motion for reconsideration and, once again, denied his motion. After this, Carnes was tried before a jury, which found him guilty of having weapons while under disability.⁷

During that trial, the evidence showed that Carnes was adjudicated delinquent in March 1994, which caused him to be under a disability that prevented him from having, possessing, or using firearms.⁸ On the night of his arrest in the immediately underlying matter, Carnes told

¹ Hamilton County Juvenile Case No. 94-1910X.

² T.d. 52.

³ Id.

⁴ T.d. 1.

⁵ T.d. 50.

⁶ T.p. 24-26.

⁷ T.p. 179.

⁸ T.p. 290-297 & State's Exhibit 26.

officers that, based upon his criminal record, he could not possess a gun.⁹ In spite of this disability, Carnes was in possession of firearm.¹⁰

In addition to this evidence, through his cross-examination, Carnes brought forth the facts underlying that adjudication showing that he engaged in a fist fight with another person and that Carnes knocked some of that person's teeth out.¹¹

⁹ T.p. 180.

¹⁰ T.p. 191-193.

¹¹ T.p. 297-303.

Argument in Support of State's Proposition of Law

State's Proposition of Law: While a juvenile adjudication may not be used to enhance a sentence or the degree of an offense, it may be used as an element of an offense.

This court recently released *State v. Hand*, which held that juvenile adjudications cannot be used “as a previous conviction that enhances either the degree of or the sentence for a subsequent offense committed as an adult” and “[b]ecause 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.” *State v. Hand*, ___, N.E.3d ___, 2016-Ohio-5504, paragraph 1 and 2 of the syllabus.

Hand involved the application of a statute, which is not at issue here, that allowed juvenile adjudications to be treated as though they were adult convictions in certain circumstances. This court based its finding that allowing this to happen was unconstitutional off a reading of *Apprendi v. New Jersey*. In *Apprendi*, the United States Supreme Court ruled that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the statutory prescribed maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).¹² Since juvenile adjudications generally do not come with a right to a jury trial, this court ruled that they could not be used to enhance a sentence.

A similar conclusion was reached in *State v. Bode*: “[A]n adjudication of delinquency may not be used to enhance the penalty for a later offense under R.C. 4511.19(G)(1)(d) when the adjudication carried the possibility of confinement, the adjudication was uncounseled, and there was no effective waiver of the right to counsel.” *State v. Bode*, 144 Ohio St. 3d 155, 2015-Ohio-

¹² The state is not sure how Carnes’ own cross-examination bringing forth proof of the underlying offense would affect things, but since that issue was not raised it will not be addressed at this time.

1519, 41 N.E.3d 1159, ¶ 1. Turning away from juveniles, this court applied the same rule to adults in *State v. Brooke*: “For purposes of penalty enhancement in later convictions under R.C. 4511.19, when the defendant presents a prima facie showing that prior convictions were unconstitutional because they were uncounseled and resulted in confinement, the burden shifts to the state to prove that the right to counsel was properly waived.” *State v. Brooke*, 133 Ohio St. 3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, paragraph 1 on the syllabus.

Notably, both *Bode* and *Brooke* only cause issues when there is no effective waiver of counsel, which is not at issue here. Regardless, there is a bright line that runs through *Hand*, *Bode*, *Brooke*, and *Apprendi*: sentence enhancement. Here, Carnes’ juvenile adjudication was not an enhancement, it was an element.

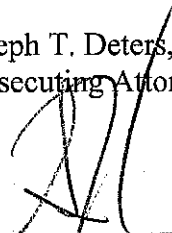
Returning to the statute at issue here, the Ohio Legislature felt it was wise to create a disability that prohibits a person from possessing firearms if they have been adjudicated delinquent. As such, the Legislature made being adjudicated delinquent an element of the crime of having weapons while under disability. R.C. 2923.13. Since it is an element of the crime and not a sentence or degree enhancement, it is constitutional.

Conclusion

While juvenile adjudications cannot be used to enhance a sentence or the degree of an offense, nothing prevents it from being an element of an offense. In this matter, the Ohio Legislature has found it wise to allow juvenile adjudications to create a disability that prevents a person from possessing firearms and, therefore, made a juvenile adjudication an element of the crime of having weapons while under a disability. Since the adjudication does not affect the sentence or the degree of the offense, it is proper to allow it to be used as an element of the offense.

Respectfully,

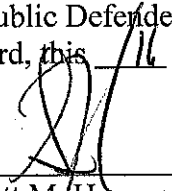
Joseph T. Deters, 0012084P
Prosecuting Attorney



Scott M. Heenan, 0075734P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: 946-3227
Attorneys for Plaintiff-Appellee, State of Ohio

Proof of Service

I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by United States mail, addressed to Peter Galyardt, State Public Defender's Office, 250 E. Broad St., Suite 1400, Columbus, Ohio 43215, counsel of record, this 16 day of February, 2017.



Scott M. Heenan, 0075734P
Assistant Prosecuting Attorney