

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO,	:	
	:	Case No. 2017-87
Plaintiff-Appellee,	:	
	:	On Appeal from the Hamilton
v.	:	County Court of Appeals, First
	:	Appellate District, Case No. C-150752
ANTHONY CARNES,	:	
	:	
Defendant-Appellant.	:	

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**ANTHONY CARNES'S REPLY BRIEF**

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## **INTRODUCTION**

Ohio's juvenile-justice system, and this Court's numerous decisions interpreting that system, establish the framework for analyzing the issue presented in this case. Youth who remain in the juvenile system are entitled to enter adulthood with a clean criminal-justice slate. But those who are removed from the system by law are prosecuted or punished as adults, and will thus enter adulthood with a felony record. Ohio's weapon-under-disability statute, which equates—as an element of a felony offense—a prior juvenile adjudication with a prior felony conviction improperly subjects individuals who remained in the juvenile system for their youthful indiscretions to potential adult punishment.

## **STATEMENT OF THE CASE AND FACTS**

Anthony Carnes relies upon the statement of the case and facts provided in his merit brief.

## **REPLY ARGUMENTS**

A balanced, holistic view of the question presented reveals four fundamental truths:

1. *Lewis*<sup>1</sup> is inapplicable;
2. The selective nature, retrospective rehabilitation, and prospective relief provided by Ohio's juvenile-justice system make it irrational to attach a firearm disability to a juvenile adjudication;

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<sup>1</sup> *Lewis v. United States*, 445 U.S. 55, 100 S.Ct. 915, 63 L.Ed.2d 198 (1980).

3. Juvenile adjudications are equated with adult convictions under the plain language of R.C. 2923.13(A)(2) and (3); and
4. At the most basic level, something more consequential than sentence enhancement is involved here, as otherwise lawful conduct becomes a third-degree felony.

**I. *Lewis* is inapplicable.**

If R.C. 2923.13 were a federal statute, then perhaps stringent adherence to *Lewis*—a 38-year-old federal case consisting solely of adult conduct—would be appropriate. Alternatively, if *Lewis* was grounded in any juvenile-justice system, then, again, maybe it would provide guidance in this case. Finally, if the disability-attaching conviction in *Lewis* originated in a system that did not offer the right to a jury, it may be germane. But none of these hypotheses is true. *Lewis* involved a federal statute not applicable here, and the conduct that both established the disability attachment and the violation of said disability was committed solely as an adult. *See Lewis* at 56-57, 66-67. Moreover, the adult criminal-justice system in Florida offered a trial by jury for a felony charge in 1961. But this case involves R.C. 2923.13 and Ohio’s juvenile-justice system. Accordingly, as held by the

dissenting judges in the lower courts on this issue, *Lewis* is inapplicable.<sup>2</sup> As explained in Mr. Carnes’s merit and supporting briefs, and as explained below, that conclusion also holds true regarding the statutory-relief mechanism—R.C. 2923.14—because all of the factors here operate to prohibit the attachment of the disability to a juvenile adjudication in the first place.

**II. Given the framework of Ohio’s juvenile-justice system, it is irrational to attach a firearm disability for a juvenile adjudication.**

Felons are prohibited from having guns because their prior adult conduct established innate dangerousness. Severely mentally-ill and drug- and alcohol-dependent people are prohibited from having guns because their respective current, compromised states do the same. Whatever treatment and programing available for such persons—e.g., prison programming, mental-health treatment, and addiction treatment—those systems are solely retrospectively rehabilitative. Nothing within those systems, by their nature, relieves a disability going forward. Thus, susceptibilities remain for such persons.

But the Ohio General Assembly created, and this Court has interpreted, a unique juvenile-justice system that winnows out those who prove themselves not

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<sup>2</sup> See *State v. McCray*, 1st Dist. Hamilton No. C-160272, 2017-Ohio-2996, ¶ 72 (Zayas, P.J., dissenting in part); *State v. Jackson*, 2d Dist. Montgomery No. 27351, 2017-Ohio-4197, ¶ 12-13 (Donovan, J., dissenting); *State v. Boyer*, 2d Dist. Clark No. 2016-CA-63, 2017-Ohio-4199, ¶ 17-18 (Donovan, J., dissenting); *State v. Williams*, 10th Dist. Franklin No. 16AP-540, 2017-Ohio-5598, ¶ 66-69 (Horton, J., dissenting in part); *State v. Brown*, 10th Dist. Franklin No. 16AP-753, 2017-Ohio-7134, ¶ 56-59 (Horton, J., dissenting in part); *State v. Carnes*, 1st Dist. Hamilton No. C-150752, 2016-Ohio-8019, ¶ 19 (Cunningham, P.J., dissenting).

entitled to its protections.<sup>3</sup> In essence, the juvenile system operates as a meritocracy, with those remaining having earned extra protection through their amenability and institutional conduct. This is evidenced by the fact that children as young as ten years old can receive an adult sentence if their criminal and institutional conduct warrants. *See* R.C. 2152.11(B)(2), (C)(2), and (D)(2)(c) and (d). Accordingly, those not worthy of these protections, at any stage, become felons under the adult system.

Applied here, and juxtaposed against the categories of people referenced above, the juvenile-justice system—in addition to being highly restrictive of who remains under its unique care—offers protections that operate to both retrospectively rehabilitate *and* prospectively relieve. Indeed, the juvenile system is fundamentally “designed to shield children from stigmatization based upon the bad acts of their youth.” *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 63. This Court has explained that the system wipes the slate clean. *See In re Caldwell*, 76 Ohio St.3d 156, 157, 666 N.E.2d 1367 (1996). Thus, the principles of Ohio’s juvenile-justice system are not followed when youths with juvenile adjudications are deemed to be prospectively dangerous, and it is not rational to

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<sup>3</sup> As previously described, Ohio’s juvenile system has three means—mandatory bindover, discretionary bindover, and serious-youthful-offender blended sentences—to shift its prospectively dangerous offenders to the adult system. *See generally* R.C. 2152.10; R.C. 2152.11; R.C. 2152.12; R.C. 2152.13; R.C. 2152.14; Juv.R. 30; *see also State v. Aalim*, 150 Ohio St.3d 463, 2016-Ohio-8278, 83 N.E.3d 862, ¶ 7 (*Aalim I*); *State v. Aalim*, 150 Ohio St.3d 489, 2017-Ohio-2956, 83 N.E.3d 883, ¶ 38 (*Aalim II*); *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599, 923 N.E.2d 584, ¶ 11-12, 15.



attach a firearm disability to such an adjudication. *See generally State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448, ¶ 38.

### **III. Juvenile adjudications are treated as adult convictions here.**

The plain language of the applicable statute demonstrates that juvenile adjudications are, by definition, equated with felony convictions. *See R.C. 2923.13(A)(2)* (defining that a disability attaches for a juvenile who “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”); *see also R.C. 2923.13(A)(3)* (defining that a disability attaches for a juvenile who “has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse”). Accordingly, this Court’s prior holding that “a juvenile adjudication is not a conviction of a crime and should not be treated as one,” is dispositive. *Hand*, 2016-Ohio-5504, at ¶ 38.

### **IV. Criminalizing otherwise legal conduct is improper.**

The statutory provisions challenged here have an effect more consequential than the sentencing enhancement in *Hand* because otherwise lawful conduct becomes a third-degree felony. *See State v. Williams*, 10th Dist. Franklin No. 16AP-540, 2017-Ohio-5598, ¶ 66-69 (Horton, J., dissenting in part) (finding no constitutional “distinction between facts that enhance punishment and those that prove an element of an offense,” through applying *United States v. Gaudin*, 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995), *Apprendi v. New Jersey*, 530 U.S.

466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), and *Alleyne v. United States*, 570 U.S. \_\_\_, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013)). Indeed, “[t]he 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 offense.” (Citation omitted.) *Alleyne*, 133 S.Ct. at 2158. Thus, because the juvenile adjudication establishes a felony offense when there otherwise would be none, this Court’s removal of juvenile adjudications from the prior-conviction exception in the sentencing-enhancement context is equally applicable here. *See Hand*, 2016-Ohio-5504, at ¶ 37.

### **CONCLUSION**

Applying the correct balance of context and details, the opposing arguments are significantly less persuasive than the impact of the fundamental truths flowing from and accompanying Ohio’s juvenile-justice system, and this Court’s precedent. Under that framework, this Court should hold that a juvenile adjudication cannot be deemed to meet an element of an offense charged against an adult.

Respectfully submitted,

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**CERTIFICATION OF SERVICE**

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