IN THE SUPREME COURT OF OHIO

State of Ohio, Appellee	:	Case Nos. 2007-0291 2007-0472
v.	:	On Appeal from the Court of Appeals for Franklin County, Ohio, Tenth Appellate District
D.H., Appellant.	:	Case No. 06AP-250

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STATEMENT OF FACTS

Defendant-appellant was indicted by the Franklin County Grand Jury on one count of murder with a firearm specification in violation of R.C.2903.02(A) and 2941.145, one count of felony murder with a firearm specification in violation of R.C.2903.02(B) and 2941.145, two counts of attempted murder with firearm specifications in violation of R.C. 2923.02 as it relates to R.C.2903.02 and 2941.145, and two counts of felonious assault with firearm specifications in violation of R.C.2903.11 and 2941.145 for events occurring on December 27, 2004. Each count alleged that appellant, being 15 years of age at the time of the offenses and using a firearm, was subject to a serious youthful offender sentence pursuant to R.C. 2152.11 and 2152.13.

Pursuant to R.C. 2152.13, a jury, impaneled and sworn, heard the following evidence:

Christopher Harris, appellant, and Darius Schultz have been friends since childhood. In September, 2004, Harris and Preston Smith (PJ) clashed when they ran into each other at the Easton Town Center. (T. Vol. II, 350) A few months later, on December 27, 2004, Harris, with his sisters Kiera and LaCretia, and Schultz were at Eric Green's house programming their phones. (T. Vol. II, 351) Harris called PJ and told him to apologize for his previous behavior. Green then drove Harris, Harris' sisters, and Schultz back to the Harris home on Huy Road. Green later called Harris and told him that PJ wanted to come over and fight. Harris received a telephone call that "they" were on their way over to fight. (T. Vol. II, 354) Harris called appellant and, while waiting, located his father's loaded gun. When appellant arrived, Harris handed the gun to him. (T. Vol. II, 355)

When PJ appeared, Harris, Schultz, and appellant went outside. PJ was out in the street and Harris told him to come up to the house if he wanted to fight. PJ was accompanied by another male who was holding a gun down at his side. (T. Vol. II, 356-358) PJ and his companion began to walk up to the house when Brandon Russell and another male walked up from the rear of the house, telling Harris that they wanted to watch the fight. (T. Vol. II, 359-360) Russell punched Harris and Russell's companion began to throw punches. Harris turned to run away, slipped, and heard gunshots. (T. Vol. II, 360) Harris looked and saw appellant, on the porch, with the gun pointed in the air. (T. Vol. II, 360-362) Harris saw no one else shooting a gun. (T. Vol. II, 362) When the shooting stopped, Harris found his sister lying on the ground beside the house. Kiera Harris was lifeless when the medics arrived, dying very quickly from loss of blood. The autopsy report revealed that a bullet entered Kiera's chest and exited through her back. (T. Vol. I, 125, Vol. II, 397-408)

Appellant ran inside the Harris home, gave Chris' father the gun, and washed his hands. (T. Vol. II, 366) Appellant then gathered bullet casings from the front porch. (T. Vol. II, 367)

Preston Smith (PJ) is a freshman at Columbus State but knew Harris from Mifflin High School. Harris was then a freshman and PJ was a senior. (T. Vol. I, 159) Eric Golden is Smith's friend and Eric Green and Brandon Russell were neighbors. (T. Vol. I, 127-130) On December 27, 2004 Harris called PJ and told him that he would give Smith a chance to apologize for the previous incident at the Easton Center. Later that day, Eric Golden called and told him that Harris wanted to fight, one on one. (T. Vol. I, 132-140) PJ drove to Harris' house with Russell and Sean Black. A second car carrying Eric Green, Eric

Golden, Steven and Antwon and a third car with Brandon Russell's friends followed. (T. Vol. I, 141-142, 181-182) The plan was for a fist fight, one on one. (T. Vol. I, 143) PJ walked up to the Harris home with Eric Golden and Chris Harris came outside with appellant and Schultz. (T. Vol. I, 146, 160) Keisha Harris walked up and asked Smith whether he was "PJ" and whether they were armed. (T. Vol. I, 163) Chris Harris began to argue with PJ about the phone call. Brandon Russell walked up from around the back of the house with Sean Black and the fistfight began with punches thrown. (T. Vol. I, 147) Appellant pointed the gun and fired. (T. Vol. I, 148, 186) PJ was shot in the left leg, with a wound to his upper left thigh. (T. Vol. I, 149)

Sean Black also attends college at Columbus State and is employed at Dick's Sporting Goods. Black knows PJ, Russell, Golden, and Green but did not know Chris Harris or appellant. (T. Vol. I, 194-197) On December 27, 2004 Black went to Golden's house and heard about the plan to fight someone from Huy Road. (T. Vol. I, 187-200) Black drove to Harris' home with Russell and PJ. Two other cars followed. (T. Vol. I, 201-203) Black walked up to 1713 Huy Road and stood near the porch. There were three to four people on the porch and two others standing in the grass. Black saw no punches thrown but could sense that a fight was about to occur. (T. Vol. I, 211) Kiera ran up and said that no one was going to jump her brother. (T. Vol. I, 211) Chris Harris was arguing and yelled for someone to get his "strap". (T. Vol. I, 211-212) Moments later, Black heard gunshots. (T. Vol. I, 214)

Brandon Russell was 19 years old on December 27, 2004. Earlier that day, Russell went to Sean Black's house and then to see Eric Golden before going to Huy Road. (T. Vol. II, 219-224) Russell did not know Chris Harris or why the fight was planned but

went along with the others to help. (T. Vol. II, 225, 243) Arriving at the Harris home, Russell saw several people in front of the house and one, later identified as Chris Harris, was shirtless. Three or four people were in the front yard, a few more were in the street, and a couple more were at the corner of Huy Road and Oakland Park Avenue. (T. Vol. II, 228, 281) Several of the boys were arguing. The fight began and Keith Paxton attempted to punch Chris Harris but missed. Russell tried to trip Harris, heard someone yell "grab the strap" and then heard shots firing from the house. (T. Vol. II, 228-231, 241, 246-247, 252) Russell began running to the car. (T. Vol. II, 231) PJ was limping and Russell's shirt was torn from bullets. (T. Vol. II, 233-236)

Eric Golden, a freshman at Columbus State University, drove to Harris's house with Eric Green, Steven and Antwon. (T. Vol. II, 275-276) Eric Green and PJ walked to the front of the house and Russell went around the back. (T. Vol. II, 278) Golden noticed a girl, someone on the porch, and Chris Harris in the driveway. (T. Vol. II, 279) The girl approached and told them guns were not allowed in this fight. (T. Vol. II, 280) Golden believed that no one in his group was armed. (T. Vol. II, 281) Chris Harris removed his shirt, preparing to fight. (T. Vol. II, 281) The girl said "you are not about to jump my brother" and pushed him. (Vol. II, 287) Brandon Russell came around from the back of the house and tried to punch Harris but missed. (T. Vol. II, 282) The person on the porch began to shoot and Golden ran back to the cars. (T. Vol. II, 285)

Darius Schultz, appellant's best friend, spent the day with appellant and Harris. (T. Vol. III, 500-504, 602) The friends were at Eric Green's house, programming phones, when Chris Harris noticed PJ's telephone number in Green's cell phone. Harris called PJ and told him to apologize; PJ refused. Approximately an hour later Schultz and

Harris returned to the Harris home on Huy Road. (T. Vol. III, 504-517) PJ called and said that he wanted to fight Harris, one on one. (T. Vol. III, 517) Harris agreed and got a gun out of his father's car. (T. Vol. III, 518) Harris and Schultz called their friends for help and appellant arrived first. (T. Vol. III, 519) Appellant took the gun and waited with his friends for P.J. (T. Vol. III, 521, 588) When PJ arrived, Schultz could see that there were more people around the corner. (T. Vol. III, 522) Right before the fighting began, Schultz and appellant were standing on the porch. (T. Vol. III, 524) Chris Harris and P.J. were in front of them, arguing. (T. Vol. III, 524) Schultz told Chris and PJ to go into the street to fight. (T. Vol. III, 524) Three or four others came around the back of the house and said they only wanted to watch. One from that group shook hands with Schultz and then walked over to Chris and punched him in the chest. (T. Vol. III, 526-527, 592) More people ran up and began fighting. Schultz ran over to Chris to help and then heard gunshots. (T. Vol. III, 529) Appellant was on the porch with his arm leveled, shooting the gun. (T. Vol. III, 532, 594, 606) Schultz saw no one other than appellant with a gun. (T. Vol. III, 607)

Schultz admitted that he initially told a different story to the police because he did not want appellant to go to jail. (T. Vol. III, 549, 602)

Keisha Harris, Chris's 13 year old sister, saw boys running toward her brother and fighting and then heard gunshots from the porch where appellant stood. (T. Vol. II, 322, 328-329) Keisha ran into the house and her father told her to call the police. (T. Vol. II, 331) Appellant told her that he shot someone in the leg and for her to not tell anyone. (T. Vol. II, 332) Keisha saw no one else with a gun. (T. Vol. II, 346)

Eric Green testified that, on December 27, 2004, Green helped Chris Harris and Chris' sister Kiera and later drove them home. (T. Vol. IV, 671-674) Green received

phone calls about a fist fight between Chris Harris and PJ and drove back to the Harris home. (T. Vol. IV, 677-679) Green heard no one talking about guns. (T. Vol. IV, 677) Green stayed near the parked cars and heard back-to-back gunshots. (T. Vol. IV, 680) PJ was limping when he returned to the parked cars. (T. Vol. IV, 681-683)

John Farnlacher lived across the street at 1708 Huy Road. Farnlacher was in his kitchen about 11:45 pm when he heard rapid, semi-automatic gunshots and glass breaking and dropped to the floor. (T. Vol. II, 300-305, 308) After the shooting stopped, Farnlacher discovered a broken front window and a bullet hole through the window shade. (T. Vol. II, 308-309) The police recovered a bullet from the back wall of a closet. (T. Vol. II, 314-317)

Later that night, Darius "Dean" Edwards, appellant's cousin, talked to appellant. (T. Vol. III, 495) Appellant told Edwards that he thought he had shot someone and Edwards told him to wash his hands with bleach. (T. Vol. III, 496)

Travis Carpenter, a police officer with the Clinton Township Police Department, responded to 1713 Huy Road and found a 9 millimeter semi-automatic handgun, later identified as belonging to Chris Harris's father, in the hall closet. (T. Vol. I, 38, 75, Vol. II, 355-356) The weapon smelled strongly of vinegar. (T. Vol. I, 99) Carpenter helped to locate shell casings from the front yard of 1713 Huy Road and a bullet from a closet at 1708 Huy Road. (T. Vol. I, 72-87)

Appellant did not testify; appellant's versions of events were presented through Detective McEvoy and the videotaped statement he gave to the police. (T. Vol. IV, 697-750)

Appellant, admitting that he fired the gun, first told McEvoy that he fired

into the air to stop the fight and that someone from the other group shot back toward where Kiera was standing. (T. Vol. IV, 702-707) Appellant then said that he started shooting upward and then fired down, aiming away from the group of people on the lawn. (T. Vol. IV, 707-710) Appellant changed his story a second time and said that he fired toward the group but over their heads, making sure that his arm remained high. (T. Vol. IV, 731) Finally, appellant told the officers that he fired the gun three times toward the ground and that he must have hit Kiera when she was running around the yard. (T. Vol. IV, 749)

Contrary to the version of events set forth in appellant's brief, nothing in the record supports the claim that Chris Harris made a "frantic" phone call to appellant regarding the planned fight. Likewise, nothing in the record supports the claim that Harris was in fear for his life nor the assertion that the majority of the teenagers mentioned during the trial were present at 1713 Huy Avenue as combatants rather than spectators.

At the conclusion of the trial, the jury determined that appellant was a delinquent minor child for committing the offense of reckless homicide, a felony of the third degree, as a lesser included offense of murder and felony murder and also found that appellant was 15 years old at the time of the offense and further that appellant had a firearm on or about his person or under his control and did display, brandish, indicate possession, or used a firearm during the commission of the offense, thereby making appellant eligible for a blended adult/juvenile serious youthful offender sentence pursuant to R.C.2152.11 and 2152.13.

On February 8, 2006 a sentencing hearing was held for the juvenile court to determine whether, pursuant to R.C. 2152.11 and 2152.13, an adult sentence should be

imposed. The court considered the factors set forth in R.2152.13(D)(2)(i), noted appellant's history and the seriousness of the offense, and exercised its discretion and imposed both a juvenile disposition and adult sentence (T. Vol. V, 1010-1011)

Appellant was committed to the legal custody of the Department of Youth Services for a indefinite minimum term of six months not to exceed a maximum period ending upon his 21st birthday with an additional consecutive commitment to the Department of Youth Services of three years for the use of a firearm. Appellant was also sentenced as an adult to three years for the underlying offense of reckless homicide and an additional consecutive three years on the firearm specification. The adult portion of the sentence was stayed pending appellant's successful completion of the juvenile disposition. The Judgment Entry was filed February 16, 2006 and on March 15, 2006 appellant filed a Notice of Appeal to the Franklin County Court of Appeals.

The Franklin County Appellate Court affirmed, finding that this Court's decision in ***State v. Foster*** (2006), 109 Ohio St. 3d 1, 2006 Ohio 856 does not affect juvenile blended sentences because, pursuant to ***McKeiver v. Pennsylvania*** (1971), 403 U.S. 528, 91 S.Ct. 1976, juvenile defendants do not have a 6th Amendment right to a jury. Finding its decision in conflict with the decision in ***In re Hill*** (May 22, 2006), Allen App. No. 1-05-65, 2006 Ohio 2504, unreported, the Franklin County Court of Appeals ordered this case certified to this Court. Upon review, this Court determined that a conflict exists. ***State v. D.H.*** (2007), 113 Ohio St. 3d 1486.

QUESTION CERTIFIED

> "Do constitutional jury trial rights, as articulated under the Sixth Amendment to the United States Constitution and Sections 5 and 10, Article 1 of the Ohio Constitution, and as applied to an adult felony sentencing in accordance with *State v. Foster*, 109 Ohio St. 3d 1, 2006 Ohio 856, 845 N.E.2d 470, and *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed. 2d 403, also apply, in a pre-***Foster*** sentencing, to findings that a juvenile court has made under the adult felony sentencing statutes when the juvenile court imposed the adult portion of a blended juvenile/adult sentence under 2152.13 of Ohio's serious youthful offender statutes?"

The certified question was consolidated with appellant's discretionary appeal, accepted as to appellant's Proposition of Law One. ***State v. D.H.*** (2007), 113 Ohio St. 3d 1488; 2007 Ohio 1986.

APPELLANT'S PROPOSITION OF LAW

> "A juvenile has a constitutional right to a jury trial when the state seeks to punish him as an adult by imposing adult prison terms upon him" and further whether "a statute that requires a judge, rather than a jury, to make factual findings that require the imposition of an adult prison term upon a juvenile is unconstitutional under *State v. Foster*, 109 Ohio St. 3d 1, 2006 Ohio 856, 845 N. E.2d 470 and *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2431, 159 L.Ed. 2d 403."

PROPOSITION OF LAW

A JUVENILE DEFENDANT DOES NOT HAVE A CONSTITUTIONAL RIGHT TO A JURY TRIAL UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SECTIONS 5 AND 10, ARTICLE I OF THE OHIO CONSTITUTION IN JUVENILE PROCEEDINGS. *STATE V. FOSTER*, 109 OHIO ST. 3d 1, 2006 OHIO 856 AND *BLAKELY V. WASHINGTON* (2004), 542 U.S. 296, 124 S.CT. 2531 ARE INAPPLICABLE TO FINDINGS MADE BY A JUDGE IN JUVENILE COURT WHEN, PURSUANT TO R.C.2152.13, IMPOSING THE ADULT PORTION OF A BLENDED SENTENCE.

In ***Blakely v. Washington*** (2004), 542 U.S. 296, 124 S. Ct. 2531 the United States Supreme Court ruled that a judge could not, by virtue of the court's factual findings, increase a defendant's sentence beyond the statutory minimum without violating a defendant's constitutional rights under the Sixth Amendment to have a jury determine beyond a reasonable doubt all the facts essential to his sentence.

In ***State v. Foster***, 109 Ohio St.3d 1, 2006 Ohio 856, this Court applied *Blakely* to Ohio's adult criminal sentencing statutes. *Foster* struck down as unconstitutional R.C. 2929.14(B) and (C) and 2929.19(B)(2) which required fact-finding before a court could impose more than a presumptive minimum sentence or impose the longest sentence authorized by the legislature. ***Foster*** applies to any case pending on direct review at the time that decision was announced.[1]

Appellant now claims that a juvenile defendant subject to a serious youthful offender dispositional sentence pursuant to R.C.2151.13 has a constitutional right to a determination by a jury and, citing ***Foster***, claims further that

[1] The Judgment Entry setting forth the blended sentence was filed February 16, 2006. ***Foster*** was decided February 27, 2006. The notice of appeal to the Franklin County Court of Appeals was filed March 15, 2006, within the time limits of App. R. 4. Although the certified question presumes a "pre-Foster" decision, there can be no serious argument that this case was pending direct review when ***Foster*** was announced.

R.C.2152.13(D)(2)(a)(i)[2] is unconstitutional because it requires the juvenile judge to find, on the record, that "the nature and circumstances of the violation and the history of the child, the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in section 2152.01 of the Revised Code will be met" before an adult sentence as part of a blended, serious youthful offender dispositional sentence can be ordered.

Appellee, the State of Ohio, asserts that a juvenile defendant subject to the jurisdiction of the juvenile court has no right to a jury trial under either the 6th Amendment to the Constitution of the United States or Article 1, Sections 5 and 10 of the Constitution of Ohio and, as such, proceedings under R.C. R.C.2151.13(D)(2) are constitutionally valid. Appellee, the State of Ohio, further asserts that findings made pursuant to R.C.2152.13 do not implicate the 6th Amendment of the Constitution of the United States because, in a serious youthful offender case, a discretionary adult sentence in conjunction with a traditional juvenile disposition becomes an option available to the juvenile court by virtue of the jury's verdict alone and not because the juvenile court engaged in additional factfinding.

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[2] R.C.2151.13(D)(2) provides, in pertinent part:

(D)(2)(a) If a child is adjudicated a delinquent child for committing an act under circumstances that allow, but do not require, the juvenile court to impose on the child a serious youthful offender dispositional sentence under section 2152.11 of the Revised Code, all of the following apply:

(i) If the juvenile court on the record makes a finding that, given the nature and circumstances of the violation and the history of the child, the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in section 2152.01 of the Revised Code will be met, the juvenile court may impose upon the child a sentence available for the violation, as if the child were an adult, under Chapter 2929. of the Revised Code, except that the juvenile court shall not impose on the child a sentence of death or life imprisonment without parole.

ARGUMENT

Juveniles are entitled to proceedings that are fundamentally fair and comport with due process; the Constitution, however, does not require that juveniles be treated identically as are adults within the criminal justice system:

> [C]ertain basic constitutional protections enjoyed by adults accused of crimes also apply to juveniles. See [***In re Gault*** (1967), 387 U S 1], at 31-57 (notice of charges, right to counsel, privilege against self-incrimination, right to confrontation and cross-examination); ***In re Winship***, (1970), 397 U.S.358 (proof beyond a reasonable doubt); ***Breed v. Jones*** (1975), 421 U.S. 519 (double jeopardy). But the Constitution does not mandate elimination of all differences in the treatment of juveniles. See, e.g., ***McKeiver v. Pennsylvania*** (1971), 403 U.S. 528 (no right to jury trial).

Schall v. Martin (1984), 467 U.S. 253, at 263.

The right to a determination by jury "is not * * * absolute" in all situations. For example, as recently recognized by this Court, the Ohio Constitution does not entitle all civil litigants to a trial by jury. Instead, it preserves the right only when extended by statute or if that right existed at common law prior to its adoption. ***Arrington v. DaimlerChrysler Corp.*** (2006), 109 Ohio St. 3d 539, 2006 Ohio 3257. See also, ***State ex rel. Russo v. McDonnell*** (2006), 110 Ohio St. 3d 144, 2006 Ohio 3459; ***Kneisley v. Lattimer-Stevens Co.*** (1988), 40 Ohio St. 3d 354, 356; ***Prescott v. State*** (1869), 19 Ohio St. 184, 187-188.

The right to a jury in criminal prosecutions is guaranteed by the Sixth Amendment to the United States Constitution and Article 1, sections 5 and 10, of the Ohio Constitution. A juvenile proceeding in which a child is alleged to be delinquent, however, is a creation of statute; neither a "criminal prosecution, nor a proceeding according to the course of common law, in which the right to a trial by jury is guaranteed." ***Prescott v. State,*** *supra.* As such, a juvenile proceeding does not

"com[e] within the operation of either [Article 1, Section 5 or Article 1, Section 10 of the Ohio Constitution]." *Id.*, at 187.

Citing *Prescott*, this Court recognizes that the Ohio Constitution does not provide the right to a jury trial in juvenile delinquency proceedings. ***In re Agler*** (1969), 19 Ohio St. 2d 70, 77-78. Similarly, in ***McKeiver v. Pennsylvania*** (1971), 403 U.S. 528, 91 S.C.1976, the United States Supreme Court concluded that a jury determination in juvenile court is not constitutionally required under the 6th Amendment of the Constitution of the United States.

As this court recognized in ***In re Anderson*** (2001), 92 Ohio St. 3d 63, 65, 2001 Ohio 131, the juvenile system is fundamentally different with different purposes and goals than the adult criminal process:

> The juvenile court movement reformers "designed an institution that departed from the traditional criminal court of law in almost every respect." Rossum, Holding Juveniles Accountable: Reforming America's "Juvenile Injustice System" (1995), 22 Pepperdine L. Rev. 907, 911. Because reformers "assumed that the interests of the state, delinquent children, and their families were identical, they eliminated the adversarial atmosphere of criminal courts." *Id.* "They replaced the cold, objective standards of criminal procedures with informal procedures." *Id.* A specialized vocabulary was developed. "Criminal complaints" gave way to "delinquency petitions." Instead of "trials," "hearings" were held. Juveniles were not given "sentences"; they received "dispositions." Juveniles were not "found guilty"; they were "adjudicated delinquent." *Id.* at 912.
>
> Other differences included excluding the public from juvenile hearings to protect children from the public stigma of criminal prosecution and giving judges broad discretion to adjudicate delinquency and to set dispositions. *Id.* Again, "the principle underlying [this] system was to combine flexible decision-making with individualized intervention to treat and rehabilitate offenders rather than to punish offenses." *Id.* * * *.
>
> [T]he [juvenile] court attempt[s] to "strike a balance--to respect the 'informality' and 'flexibility' that characterize juvenile proceedings * * * and yet to ensure that such proceedings comport with the 'fundamental fairness' demanded by the Due Process Clause." 467 U.S. at 263, 104 S.Ct. at 2409, 81 L.Ed. 2d at 216. In *Schall*, the court reiterated that "there is no doubt that the Due Process Clause is applicable in juvenile proceedings,"

yet reaffirmed that "the state has 'a *parens patriae* interest in preserving and promoting the welfare of the child,' * * * which makes a juvenile proceeding fundamentally different from an adult criminal trial." *Id.* at 263, 104 S.Ct. at 2409. 81 L. Ed. 2d at 216.

In ***In re Caldwell*** (1996), 76 Ohio St. 3d 156,157, 1996 Ohio 410, this Court summarized the purposes of the juvenile system, then set forth solely in R.C.2151.01:

"to provide for the care, protection, and mental and physical development of children, to protect the public from the wrongful acts committed by juvenile delinquents, and to rehabilitate errant children and bring them back to productive citizenship, or, as the statute states, to supervise, care for and rehabilitate those children. Punishment is not the goal of the juvenile system, except as necessary to direct the child toward the goal of rehabilitation."

Subsequent to ***Caldwell,*** R.C.2152.01, setting forth the purposes of dispositions for delinquent children, was enacted:

§ 2152.01. Purposes of dispositions under chapter; application of Chapter 2151

(A) The overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes shall be achieved by a system of graduated sanctions and services.

(B) Dispositions under this chapter shall be reasonably calculated to achieve the overriding purposes set forth in this section, commensurate with and not demeaning to the seriousness of the delinquent child's or the juvenile traffic offender's conduct and its impact on the victim, and consistent with dispositions for similar acts committed by similar delinquent children and juvenile traffic offenders. The court shall not base the disposition on the race, ethnic background, gender, or religion of the delinquent child or juvenile traffic offender.

(C) To the extent they do not conflict with this chapter, the provisions of Chapter 2151 of the Revised Code apply to the proceedings under this chapter.

R.C. 2152.01 expands upon R.C. 2151.01 but mere punishment, an overriding purpose governing the sentencing court in a criminal case[3], is still not a component of the juvenile system.

The juvenile court is given broad discretion to take any steps "necessary to fully and completely implement the rehabilitative disposition of a juvenile * * *." ***In re Caldwell,*** *supra,* at 159, citing ***In re Samkas*** (1992), 80 Ohio App. 3d 240, at 244. The juvenile court is awarded wide latitude because it has the "opportunity to see and hear the delinquent child, to assess the consequences of the child's delinquent behavior, and to evaluate all the circumstances involved." ***In re Caldwell,*** *supra,* at 160-161.

As recently observed by this Court, the juvenile justice system, since its origin, "has emphasized individual assessment, the best interest of the child, treatment, and rehabilitation, with a goal of reintegrating juveniles back into society." ***State v. Hanning*** (2000), 9 Ohio St. 3d 86, 88, 2000 Ohio 436. That fundamental philosophy is reflected in the serious youthful offender procedures codified in R.C.2152.13, et al. "The new law still attempts to treat or dispose of youthful offenders in the juvenile system," without invoking the previously ordered but stayed adult portion of the serious youthful offender dispositional sentence. ***In re Anderson,*** *supra,* 92 Ohio St. 3d at 66, fn.2.

R.C.2152.13, rather than criminalizing juvenile crime, emphasizes the overriding goal of treatment and rehabilitation for children within the juvenile system. In a discretionary serious youthful offender case, if "the length of time, level of security, and types of programming and resources within the juvenile system" are adequate to

[3] See, R.C.2929.11.

ensure that the purposes of juvenile dispositions as set forth in R.C.2152.01 will be met, the court is required to impose a traditional juvenile disposition only without resorting to a potential, additional, adult sentence. R.C. 2152.13(D)(2)(b). Even when the juvenile court orders an adult sentence in addition to the traditional juvenile disposition, that sentence is held in abeyance "pending the successful completion of the traditional juvenile dispositions imposed." R.C.2152.13(D)(1)(c). Ultimately, the juvenile court has the discretion to invoke the adult sentence near the end of its jurisdiction but is not required to do so. R.C.2152.14(E)(1).

The juvenile blended sentencing scheme gives the juvenile judge in a discretionary serious youthful offender case the discretion to consider the safety of the public, the seriousness of the offense, the individual characteristics of the juvenile, and the available treatment and rehabilitative options when deciding whether a child is likely to be rehabilitated while still subject to the jurisdiction of the juvenile court. R.C. 2152.13(D)(2)(a)(i). Findings regarding the level of security and potential success of programming in the remaining time before the juvenile becomes 21 years old require an understanding of the juvenile system's intricacies and objectives and are appropriately left to the judgment and unique perspective of the juvenile judge, thus advancing society's *"parens patriae"* interest in preserving and promoting the welfare of all children. ***In re Anderson***, *supra;* ***In re Caldwell***, *supra.*

Neither R.C.2152.13 nor the Constitutions of Ohio or of the United States grant appellant the right to have a jury determine whether he is amenable to rehabilitation within the juvenile system without resorting to an adult sanction. In ***Foster*** this Court struck as unconstitutional portions of R.C.2929 which required

judicial factfinding before a sentence greater than a maximum term authorized by the verdict or guilty plea could be imposed because those findings violated a defendant's right to have a jury determine all facts essential to imposition of the level of punishment. ***State v. Foster***, *supra,* 109 Ohio St.3d at 25. In a case involving a serious youthful offender, however, the adult portion of the blended sentence is derived exclusively from the jury's verdict with regard to the offense charged and the age of the child at the time the offense was committed and not from any additional factfinding by the juvenile court. The findings made by the juvenile court pursuant to R.C.2152.13(D)(2)(a)(1) are factors to be considered when the court exercises its discretion and determines whether an additional adult sentence is necessary to meet the purposes of dispositions for delinquent children under Chapter 2152 and are not findings necessary before the adult sentence is an appropriate option. See, ***Washington v. Meade*** (2005), 129 Wn. App. 918, 120 P.3d 975, cited below, ***State v. D.H.*** (2006), 169 Ohio App. 3d 798, 820, 2006 Ohio 6953, 63. See also, ***In re J.B.*** (December 30, 2005), Butler App. No. CA2004-09-226, 2005 Ohio 7029, unreported; ***In re Seavolt*** (May 29, 2007), Morrow App. No. 2006-CA-0010, 2007 Ohio 2812, unreported; ***In re Sturm*** (December 22, 2006), Washington App. No. 05CA35, 2006 Ohio 7101, unreported, jurisdiction accepted and held, 113 Ohio St. 3d 1511, 2007 Ohio 2208.

Appellant's final argument, that R.C.2152.13 et al. denies a juvenile equal protection of the law, is premised on the proposition that that children and adults are similarly situated. The guarantee of equal protection of the laws means that no person or class of persons shall be denied the same protection of the law that is enjoyed by other persons or other classes in the same place and under like circumstances. ***City of***

Cleburne, Texas, et al. v. Cleburne Living Center, Inc. et al. (1985), 473 U.S. 432; 105 S. Ct. 3249. As discussed *infra*, children and adults are not similarly situated. Juvenile courts are required by statute to evaluate, prospectively, the potential for rehabilitation before a period of incarceration pursuant to R.C.2152.13 is appropriate.

CONCLUSION

In a further attempt to address the unique issues associated with delinquent juveniles, Am. Sub. S.B. No. 179 was enacted and signed into law January 5, 2001, providing the Juvenile Court with an intermediate option, one between traditional juvenile dispositions with jurisdiction over a delinquent juvenile only until the juvenile defendant reaches the age of 21 and relinquishing jurisdiction entirely in a bindover proceeding without utilization of the rehabilitative and treatment options available in the juvenile system. In accordance with the historical, deeply-rooted discretionary decision-making of the Juvenile Court, R.C.2152.13 gives the Juvenile Court the opportunity to attempt rehabilitation in a traditional juvenile fashion but leaves open the possibility for further court intervention if the delinquent juvenile is not rehabilitated by his/her 21st birthday.

For the foregoing reasons, appellee, the State of Ohio, respectfully requests that the decision of the Franklin County Court of Appeals be affirmed.

Respectfully submitted,

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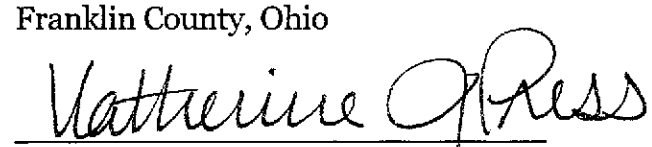

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CERTIFICATE OF SERVICE

This is to certify that on August 30, 2007 a copy of the foregoing was hand-delivered to John W. Keeling, counsel for appellant, D. H., Office of the Franklin County Public Defender, 373 South High Street, 12th Floor, Columbus, Ohio and was mailed by Ordinary United States mail to Katherine Hunt Federle, counsel for amicus curiae The Justice for Children Project, The Ohio State University College of Law, 55 W. 12th Avenue, Columbus, Ohio 43210, Jill E. Beeler and Molly J. Bruns, counsel for amicus curiae The Ohio Public Defender, 8 E. Long Street, 11th floor, Columbus, Ohio 43215, and Elise W. Porter, counsel for amicus curiae The Ohio Attorney General, 30 E. Broad Street, 17th floor, Columbus, Ohio 43215.

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