[Cite as *State v. King*, 2024-Ohio-4585.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 113411
v.	:	
MYLES KING, JR.,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 19, 2024

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case Nos. CR-23-677331-A and CR-23-682887-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, Tasha L. Forchione and Erica Sammon, Assistant Prosecuting Attorneys, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Robert McCaleb, Assistant Public Defender, *for appellant*.

FRANK DANIEL CELEBREZZE, III, J.:

{¶ 1} Defendant-appellant Myles King, Jr. ("King") brings the following appeal challenging the trial court's denial of his motion to dismiss his indictment

premised on the constitutionality of R.C. 2923.13(A)(2). After a thorough review of the relevant law, this court affirms.

I. Factual and Procedural History

{¶ 2} On January 10, 2023, King was indicted in Cuyahoga C.P. No. 23-677331 ("the first case") for a single count of having weapons while under disability ("HWWUD") in violation of R.C. 2923.13(A)(2), with a forfeiture specification for a Black Mossberg 715T .22 rifle. The date of offense was on or about December 30, 2022. King was charged after law enforcement found the rifle in his home while executing a search warrant pertaining to an animal protection complaint.

{¶ 3} On March 29, 2023, King filed a motion to dismiss the indictment based on the constitutionality of R.C. 2923.13(A)(2), lodging both facial and as-applied challenges to the statute's constitutionality. King's central argument was that the predicate "disabling" offense for the HWWUD charge was a juvenile adjudication that would have been felony domestic violence had King been convicted in adult court and that it is violative of the constitution for a juvenile adjudication to serve as a disabling offense.

{¶ 4} The State opposed King's motion to dismiss and filed documents pertaining to King's juvenile adjudications under seal.

{¶ 5} The court held a hearing on King's motion to dismiss on June 13, 2023. During the hearing, King restated the arguments pertaining to the disabling juvenile offense and noted that the court could find that the HWWUD statute is facially unconstitutional or could sustain King's as-applied constitutional challenge and find

that the HWWUD statute does not apply to juvenile adjudications if the factual basis for the HWWUD charge is a rifle "for the protection of the home." (Tr. 10.)

{¶ 6} The State countered that King did not have standing to bring his claims because he did not challenge "the relief from disability statute" pursuant to R.C. 2923.14 or avail himself to the process of bringing a civil claim for relief from disability. (Tr. 11-12.) About ten days after the hearing, the trial court denied King's motion to dismiss, but the State dismissed the case without prejudice shortly thereafter.

{¶ 7} The State refiled the case and on July 14, 2023, King was reindicted in Cuyahoga C.P. No. 23-682887 ("the refiled case") for a single count of HWWUD in violation of R.C. 2923.13(A)(2) with a forfeiture specification for the same Black Mossberg 715T .22 rifle. The date of offense was, as in the first case, on or about December 30, 2022.

{¶ 8} King filed a motion to dismiss that was identical to the motion to dismiss filed in the first case. The State filed a motion to incorporate the record from the first case into the record into the refiled case that the court granted.

{¶ 9} The parties convened for trial on October 30, 2023. The trial court orally denied the pending motion to dismiss, and the State moved to continue the trial because some evidence was still outstanding, and the court agreed to move the trial. When the parties reconvened for the new trial on November 6, 2023, King entered a no-contest plea to the indictment.

{¶ 10} The journal entry memorializing King's plea noted that both parties agreed to the following stipulated facts:

> 1. On December 30, 2022, Cleveland Police responded to 4701 Broadview Road in Cleveland Oh[io], located in Cuyahoga County to execute a search warrant.
>
> 2. While executing the search warrant a Mossberg rifle was found inside of Myles King's home in his possession. A Mossberg rifle is not a pistol.
>
> 3. On or about November 17, 2015, Myles King was adjudicated delinquent of domestic violence[,] a felony of the fourth degree in Cuyahoga County Court of Common Plea[s] juvenile division case no. DL-15-110889[,] which if committed by an adult would have been a felony of violence.
>
> 4. On December 30, 2022, Myles King was twenty[-]one years old.
>
> 5. On December 30, 2022, Myles King was not a fugitive from justice, was not under indictment for a violent or drug felony [sic], was not drug or alcohol dependent, had not been adjudicated mentally incompetent, had no prior felony convictions of violence or trafficking and has only one juvenile adjudication[] that would have been adult felonies of trafficking or violence as stated previously, DL-15-110889.

{¶ 11} The trial court found King guilty and ordered King to forfeit the rifle. King was sentenced to community control for one and a half years.

{¶ 12} King appeals the denial of his motion to dismiss the indictment as violative of his constitutional rights. He assigns the following two errors for our review:

> 1. The trial court erred in denying Mr. King's motion to dismiss because R.C. 2923.13(A)(2) violates the Second Amendment on its face.
>
> 2. The trial court erred in denying Mr. King's motion to dismiss because R.C. 2923.13(A)(2) violates Article I, Section 4, of the Ohio Constitution on its face.

II. Law and Analysis

{¶ 13} King's first assignment of error contends that R.C. 2923.13(A)(2) is facially[1] unconstitutional under the Second Amendment to the United States Constitution and that the trial court erred in denying his motion to dismiss premised on this alleged unconstitutionality.

{¶ 14} A trial court's decision on a motion to dismiss an indictment is reviewed under a de novo standard of review. *State v. Knox*, 2016-Ohio-5519, ¶ 12 (8th Dist.). Moreover, whether a statute is unconstitutional is a question of law that is reviewed de novo. *Cleveland v. State*, 2019-Ohio-3820, ¶ 15, citing *Crutchfield Corp. v. Testa*, 2016-Ohio-7760, ¶ 16. We are mindful that statutes carry a strong presumption of constitutionality. *Sorrell v. Thevenir*, 69 Ohio St.3d 415, 419, (1994), citing *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142 (1955), paragraph one of the syllabus.

{¶ 15} The challenged statute in this case, R.C. 2923.13(A)(2) provides that

> [u]nless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:
>
> (2) The person is under indictment for or has been convicted of any felony offense of violence or 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.

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[1] King has abandoned his as-applied constitutional challenges on appeal.

{¶ 16} The Second Amendment to the United States Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

{¶ 17} A facial challenge to a statute is much more difficult to overcome than an as-applied challenge because, generally, for a statute to be found unconstitutional, "it must be [found] unconstitutional in *all* applications." (Emphasis added.) *State v. Romage*, 2014-Ohio-783, ¶ 7, citing *Oliver v. Cleveland Indians Baseball Co. Ltd. Partnership*, 2009-Ohio-5030, ¶ 13. In other words, it must be shown that there is no set of facts under which the statute would be valid. *Romage* at *id.* Extrinsic facts are not needed to determine whether a statute is facially unconstitutional. *Reading v. PUC*, 2006-Ohio-2181, ¶ 15. This takes any "personalization" that King may rely on out of this case, i.e., under a facial challenge, these specific facts relative to King's case that are not discernable from the plain text of the statute being challenged are irrelevant to our analysis, including: (1) that the weapon was a rifle versus a handgun, (2) that the search warrant was executed for an animal protection complaint, (3) that the rifle was in King's home rather than on his person, in public, and (4) that King's "disability" was premised on a juvenile adjudication rather than an adult conviction.

{¶ 18} King's facial challenge focuses on the portion of R.C. 2923.13(A)(2) providing that a juvenile adjudication that "if committed by an adult, would have been a felony offense of violence" may serve as the predicate disability to a HWWUD charge. R.C. 2923.13(A)(2) also allows for "any felony offense of violence" to serve

as the predicate disability to a HWWUD charge. Thus, under a facial challenge, we would have to find that *both* of these predicate disabling offenses are facially unconstitutional based on the precedent that a facial challenge must prove unconstitutional in *all* applications pursuant to *Romage* and *Oliver*.

{¶ 19} Initially, we note that the only other Ohio district to decide this issue at the time of this writing has been the Fifth District, in *State v. Windland*, 2024-Ohio-1760 (5th Dist.), *appeal not accepted*, 2024-Ohio-2927. The *Windland* Court found, under a plain-error review, that R.C. 2923.13(A)(2) did not facially violate the constitutional protections afforded by the U.S. and Ohio Constitutions. *Id.* at ¶ 21, 26.

{¶ 20} The Supreme Court of Ohio has previously held that R.C. 2923.13(A)(2) did not violate due process protections under the U.S. and Ohio Constitutions, but specifically declined to address whether the State is prohibited from "criminalizing the legal possession of a firearm based upon a prior juvenile adjudication" under the Second Amendment, and Article I, Section 4 of the Ohio Constitution, because the argument was not raised in the trial court. *State v. Carnes*, 2018-Ohio-3256, ¶ 20. We also note that when presented with an opportunity to address the issue more recently, the Supreme Court of Ohio remanded the issue back to the appellate court without an opinion due to the procedural facts of the specific case. *State v. Philpotts*, 2022-Ohio-4362, ¶ 1; *see also id.* at ¶ 6 (Donnelly, J., dissenting) ("[P]erhaps years from now, will we

determine whether R.C. 2923.13(A)(2) violates the constitutional right to bear arms."); *see also State v. Windland*, 2024-Ohio-2927 (declining jurisdiction).

{¶ 21} *Windland*'s analysis, in finding R.C. 2923.13(A)(2) not violative of the Second Amendment, and Article I, Section 4, relied on numerous federal courts that "have considered the constitutionality of similar United States Code provisions" in holding that HWWUD-type restrictions have pointed to the historical tradition of keeping firearms out of the hands of individuals viewed as dangerous. *Id.* at ¶ 21. Without specifically addressing the portion of the statute dealing with juvenile adjudications, the *Windland* Court adopted the general analysis of many federal courts that have determined, as a general matter, that it is proper to restrict firearm usage from individuals categorized as "dangerous," measured by a previous violent, felonious offense regardless of their age.

{¶ 22} We agree. R.C. 2923.13(A)(2) serves to disarm those who have committed violent, felony offenses, regardless of the offender's age at the time of the felonious, violent offenses. However, the U.S. Supreme Court has offered new guidance since the *Windland* Court released its opinion that strengthens *Windland*'s conclusion. We proceed to briefly review the U.S. Supreme Court's decisions pertaining to the Second Amendment.

{¶ 23} Nearly 216 years after the Bill of Rights to the United States Constitution was ratified, the U.S. Supreme Court identified a constitutionally protected right within the Second Amendment, to "possess a firearm unconnected with service in a militia for traditionally lawful purposes, such as self-defense within

the home." *Dist. of Columbia v. Heller*, 554 U.S. 570, 576-626 (2008). *Heller,* however, was careful to endorse the continuing constitutionality of various regulatory restrictions on the right to bear arms, including restricting the Second Amendment's rights of felons, the mentally ill, and most individuals present in "sensitive places" such as schools and government buildings. *Id.* at 626-627.

{¶ 24} Two years after *Heller*, the U.S. Supreme Court recognized that the Fourteenth Amendment to the United States Constitution incorporated the Second Amendment right that was recognized in *Heller*, "to keep and bear arms for the purpose of self-defense" to the states. *McDonald v. Chicago*, 561 U.S. 742 (2010).

{¶ 25} Relevant here, the *Heller* Court unambiguously cautioned that "nothing in [*Heller*] should be taken to cast doubt on *longstanding* prohibitions on the possession of firearms by felons." *Id.* at 636. (Emphasis added.) In *McDonald*, a plurality of the Supreme Court repeated this exact sentiment from *Heller*. *Id.* at 786.

{¶ 26} The next landmark U.S. Supreme Court case dealing with the Second Amendment protections did not occur until *New York State Rifle & Pistol Assn. v. Bruen*, 597 U.S. 1 (2022). *Bruen* extended the individual right to own a handgun for self-defense to outside of the home and clarified that the proper test for determining whether a law is violative of the Second Amendment protections is a two-pronged analysis. *Id.* at 8-22. Under the first prong, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 17. Then, if it is determined that the plain text of Second

Amendment covers an individual's conduct, the burden shifts to the government to justify its regulation by demonstrating that "the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

{¶ 27} In June 2024, the U.S. Supreme Court offered some clarification for its holding in *Bruen* in *United States v. Rahimi*, ___U.S.___, 144 S.Ct. 1889 (2024). Relevant to this case, *Rahimi* held that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Id.* at 1903. *Rahimi* was released after the Fifth District's *Windland* decision but reaffirms the *Windland* Court's reliance on the progeny and historical analysis of various federal courts that found 18 U.S.C. 922(g)(8), the federal analogue of Ohio's HWWUD statute, as not violative of the Second Amendment protections. *Rahimi* specifically noted that "[s]ince the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms." *Id.* at 1896. Based on the precedent in *Rahimi* and *Bruen*, we are persuaded that R.C. 2923.13(A)(2) is not facially violative of the constitutional protections guaranteed by the Second Amendment. The restrictions under the challenged statute comport with "this Nation's historical tradition of firearm regulation" as demonstrated by the *Rahimi* Court's analysis of the federal analogue.

{¶ 28} We are cognizant of King's argument that 18 U.S.C. 922(g)(8), the federal analogue of Ohio's HWWUD statute, does not specifically disarm individuals with juvenile adjudications that would have been felonious had the individual been

charged as an adult. In *Rahimi*, the U.S. Supreme Court unequivocally specified that it is not a violation of the Second Amendment to disarm an "*individual*" (which is not limited to an adult), who has been "found by a *court*" (which is not limited to an adult court), to "pose a credible threat to the physical safety of another" (without specifying that this may be determined only by a conviction versus a juvenile adjudication). (Emphasis added.) *Rahimi* at 1903. We therefore find that the challenged statute, as it pertains to both adult violent felony convictions and juvenile adjudications that would be the equivalent of an adult violent felony conviction, fall within *Rahimi*'s guidance.

{¶ 29} In addition to the above authority, *Bruen* itself contains authority upon that we may comfortably rely. *Bruen* cites to a decree from 1866 in South Carolina which provided that "no disorderly person, vagrant, or disturber of the peace, shall be allowed to bear arms." *Id.*, 597 U.S. at 63. In the next sentence, *Bruen* discusses newspaper editors who borrowed language from a Freedmen's Bureau circular who maintained that "'[a]ny person, white or black, may be disarmed if convicted of making an improper or dangerous use of weapons[.]'" *Id.* Notably, these are not limited to *adults* and it is undisputed that juveniles may pose a threat to the safety of another. Indeed, this is the reason that there are age restrictions on purchasing and owning deadly weapons, with some specific exceptions. *See, e.g.*, R.C. 2923.211(A) ("No person under eighteen . . . shall purchase . . . a firearm."); R.C. 2923.211(B) ("No person under twenty-one years of age shall purchase . . . a handgun[.]" Also persuasive is the *Bruen* Court's dicta,

reasoning that "law-abiding, responsible citizens" have not been historically required to demonstrate a special need to carry arms in public. *Id.* at 70; *see also id.* at 78 ("*Heller* correctly recognized that the Second Amendment codifies the right of ordinary law-abiding Americans to protect themselves[.]") (Alito, J., concurring). Moreover, Justice Kavanaugh's concurring opinion in *Bruen* reiterates that "'nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons. . . .'" *Id.* at 81 (Kavanaugh, J., concurring), citing *Heller*, 554 U.S. at 626.

{¶ 30} Notwithstanding, we briefly address King's argument that juvenile adjudications should be viewed as separate and distinct from an adult conviction such that it should not constitute a disabling offense for purposes of the HWWUD statute. King cites to the goals of juvenile courts as well as the fact that juvenile cases are not tried before juries.

{¶ 31} These arguments mirror those of the dissenting opinion in *Carnes*, 2018-Ohio-3256 (O'Conner, C.J., dissenting). The author of the dissenting opinion was "vexed" that the General Assembly had not taken steps to change the portion of R.C. 2923.13(A)(2) that applies to juvenile adjudications that would have been violent felonies had the juvenile been tried in adult court. Indeed, the General Assembly still has not modified this provision since *Carnes*. Like King, the *Carnes* dissent relies on the "substantial scientific research and documentation that a juvenile's brain is underdeveloped, coupled with the related decisions by this court and the United States Supreme Court holding juveniles are less culpable for their

conduct and more likely to benefit from the rehabilitative efforts of our justice system[.]" *Carnes* at ¶ 42 (O'Conner, C.J., dissenting).

{¶ 32} Even viewing these arguments in light of *Bruen*'s instruction, we note that these arguments go to the culpability and rehabilitative nature of juvenile offenses; they do not specifically relate to "the history and tradition of firearms regulation" and can coexist with the holding in *Rahimi* — that it is not violative of the Second Amendment to temporarily disarm those who pose a threat to the physical safety of others, regardless of the predicating "event" or age of the offender at the time of the predicating event. R.C. 2923.13(A)(2) even fits squarely within the "temporary" holding of the *Rahimi* Court because R.C. 2923.13(A)(2) allows an individual to apply for relief from HWWUD pursuant to R.C. 2923.14.

{¶ 33} Based on the foregoing discussion, we cannot say that R.C. 2923.13(A)(2) violates the protections guaranteed by the Second Amendment and overrule King's first assignment of error.

{¶ 34} We next address King's second assignment of error, which mirrors the argument in his first assignment of error, but that R.C. 2923.13(A)(2) violates the protections of Article I, Section 4 of the Ohio Constitution, which provides:

> The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

{¶ 35} In analyzing R.C. 2923.13(A)(2) under the Ohio Constitution, the *Windland* Court cited to *State v. Jenkins*, 2024-Ohio-1094, ¶ 28 (5th Dist.), where

the Fifth District determined that pursuant to *Heller*, *McDonald*, and *Bruen,* that a different subsection, R.C. 2923.13(A)(3), was not violative of Article I, Section 4 because

> the United States Constitution now equally protects the right of the individual to bear arms, we see no obvious distinction between the Ohio Constitution and the United States Constitution. For the reasons stated in our consideration of Appellant's claims under the United States Constitution, we find Appellant has not demonstrated R.C. 2923.13(A)(3) is obviously unconstitutional under the Ohio Constitution, and we therefore find no plain error.

Windland, 2024-Ohio-1760, at ¶ 24, quoting *Jenkins* at ¶ 28; *see also State v. Jones*, 2024-Ohio-2959, ¶ 22 (3d Dist.).

{¶ 36} *Windland* expanded this analysis to its finding that R.C. 2923.13(A)(2) is not violative of the Ohio Constitution, finding again that there is no longer an obvious distinction between the protections of Article I, Section 4 of the Ohio Constitution, and the Second Amendment to the United States Constitution. We agree, and expound upon this analysis.

{¶ 37} King argues that the Supreme Court of Ohio, in *Arnold*, 67 Ohio St.3d 35, 46 (1993), explicitly held that "Article I, Section 4 conveys broader protections on firearms rights than the Second Amendment." Relevant to this case, *Arnold* explicitly held that the Ohio Constitution was broader in this respect, and particularly cited to the portion of Article I, Section 4 that provides for an individual right to bear arms for defense and security. *Arnold* noted that the specific addition of the phrase "for defense and security" was "obviously implemented to allow a person to possess certain firearms for defense of self and property." *Id*. at 43. At

the time *Arnold* was decided, the Second Amendment had not been incorporated to the states via the Fourteenth Amendment. *Id.* at 41. And, the protections encompassed under the Second Amendment were less certain, so the states, like Ohio, construed their state constitutions "as providing different or even broader individual liberties that those provided under the federal Constitution." *Id.* Obviously, since *Arnold* was decided, the U.S. Supreme Court has clarified that the Second Amendment protects the possession of certain firearms both inside and outside of the home in the landmark cases of *Heller, McDonald, Bruen,* and *Rahimi.*

{¶ 38} The Supreme Court of Ohio has not explicitly spoken on whether, in the wake of *Heller, McDonald, Bruen,* and *Rahimi*, Article I, Section 4 offers broader protections than the Second Amendment.[2] But, it is indisputable that *Arnold* predates the aforementioned cases and that the U.S. Supreme Court cases since *Arnold* have established that the Second Amendment's protections extend to individual rights to ownership of certain firearms for the purpose of self-defense both inside and outside of the home.

{¶ 39} It does appear, therefore, that the "broader" distinction has been abrogated by these decisions, as *Jenkins* and *Windland* have concluded. Based on the foregoing, we conclude that there is no distinction between the protections of

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[2] In 2020, the Supreme Court of Ohio declined to review the constitutionality of R.C. 2923.15 because the appellant failed to "discuss this court's precedent on that provision or otherwise argue why that provision protects his conduct in this case beyond the Second Amendment." *State v. Weber*, 2020-Ohio-6832, ¶ 48.

Article I, Section 4 and the Second Amendment for purposes of reviewing the constitutional validity of R.C. 2923.13(A)(2).

{¶ 40} Accordingly, we incorporate our analysis from King's first assigned error and overrule King's second assignment of error.

III. Conclusion

{¶ 41} The trial court did not err in denying King's motion to dismiss because R.C. 2923.13(A)(2) is not violative of the U.S. or Ohio Constitutions.

{¶ 42} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK DANIEL CELEBREZZE, III, JUDGE

EILEEN T. GALLAGHER, J., CONCURS;
LISA B. FORBES, P.J., CONCURS IN JUDGMENT ONLY