NO.

_____

IN THE SUPREME COURT OF OHIO

_____

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. CA-24-114280

_____

STATE OF OHIO
Plaintiff-Appellant

-vs-

HARRY HOLLIMAN, JR.
Defendant-Appellee

_____

MEMORANDUM IN SUPPORT OF JURISDICTION

_____

Counsel for Plaintiff-Appellant:

MICHAEL C. O'MALLEY (0059592)
Cuyahoga County Prosecuting Attorney

ANTHONY T. MIRANDA (0090759)
CHAUNCEY KELLER (0095344)
MICHAEL R. WAJDA (0100356)
Assistant Prosecuting Attorneys
Cuyahoga County Prosecutor's Office
The Justice Center
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
216-443-7800
216-698-2270 (fax)
amiranda@prosecutor.cuyahogacounty.us
ckeller@prosecutor.cuyahogacounty.us
mwajda@prosecutor.cuyahogacounty.us

Counsel for Defendant-Appellee:

P. ANDREW BAKER (0085755)
11510 Buckeye Road
Cleveland, Ohio 44104
Phone: 216-721-7700
pandrewbaker@gmail.com

TABLE OF CONTENTS

EXPLANATION OF WHY THIS FELONY CASE PRESENTS AN ISSUE OF PUBLIC OR GREAT GENERAL INTEREST....1

STATEMENT OF THE CASE....2

STATEMENT OF THE FACTS....3

LAW AND ARGUMENT....3

***Proposition of Law 1*: When an offender is convicted of firearm specifications pursuant to R.C. 2941.141 and R.C. 2941.145 for the same offense, and R.C. 2929.14(B)(1)(g) is inapplicable, the specifications merge and the State may choose which specification to pursue at sentencing.**....3

I. The General Assembly intended the State to elect between one and three-year firearm specifications on the same offense, as the State has elected for decades between allied offenses.....4

II. The consequence of the Eighth District's decision is a windfall to defendants convicted of violent firearm specifications.....7

III. The lower court's interpretation interfere with the prosecutor's authority to bring charges.....9

CONCLUSION....9

CERTIFICATE OF SERVICE....10

EXPLANATION OF WHY THIS FELONY CASE INVOLVES AN ISSUE OF PUBLIC OR GREAT GENERAL INTEREST

When a defendant commits a crime while possessing a firearm and while using that firearm, two different sentencing enhancements are triggered: the one-year and the three-year firearm specification. These specifications carry mandatory prison terms of one and three years respectively. R.C. 2929.14(B)(1)(a)(ii)-(iii). Additionally, when the specifications relate to the same offense, the law is clear that only one of the two prison terms may be imposed. R.C. 2929.14(A)(1)(b). But who decides which specification controls and which specification is merged?

When two or more offenses are allied and must merge, it is settled law that the "choice is given to the prosecution" to elect which offense upon which to proceed at sentencing. *Maumee v. Geiger*, 45 Ohio St.2d 238, 244 (1976). And this makes sense. After all, it is the prosecutor who brings the case and bears the burden of proof with respect to the offenses. The prosecutor also chooses whether to charge the defendant with the firearm specification and the prosecutor bears the burden of proof with respect to that specification. But the trial court in this case claimed the authority for itself to choose between the one and three-year prison terms relating to the firearm specifications. In a short opinion, the Eighth District Court of Appeals agreed, waiving away the allied offenses case law as irrelevant to sentencing enhancements such as firearm specifications.

Review from this Court is necessary to prevent trial court judges from improperly merging three-year firearm specifications into one-year firearm specifications. Failure to accept jurisdiction in this case will undermine the General Assembly's statutory scheme for punishing the possession or use of firearms in the commission of crimes. For these reasons, the State respectfully asks this Court to accept the State's appeal.

STATEMENT OF THE CASE

Defendant-Appellee Harry Holliman was found guilty after a jury trial of one count of discharging a firearm on or near prohibited premises. *State v. Holliman*, 2025-Ohio-1187, ¶ 3 (8th Dist.). He was also found guilty of one- and three-year firearm specifications with respect to that count. *Id*. At sentencing, the trial court imposed one year in prison with respect to the one-year firearm specification and declined to impose the three-year firearm specification. The trial court specifically rejected the authority of the prosecutor to elect between the specifications:

> So I believe that the trial court has the authority to select one or the other sentencing enhancement to be imposed prior to and consecutive with the underlying sentence. That decision as to which one the court will impose is entirely up to the court, and the court's own discretion.

The trial court ultimately imposed nine months in prison for the offense, consecutive to the one year in prison for the firearm specification. *Holliman*, at ¶ 3.

The State appealed that decision, arguing that the trial court erred by refusing to impose three years in prison for the three-year firearm specification. R.C. 2929.14(B)(1)(a)(ii) provides that the trial court "shall" impose a prison term of three years when the offender is convicted of a three-year firearm specification. However, the Eighth District affirmed in a short opinion. It noted that the Ohio Revised Code did not mandate that a trial court impose a three-year firearm specification instead of a one-year firearm specification. *Holliman*, at ¶ 9. Addressing the State's argument that the prosecutor retains the authority to elect between merging allied offenses, the lower court simply asserted that firearm specifications are "sentencing enhancements, not separate criminal offenses." *Id.*, at ¶ 10. The State now appeals from the appellate court's decision.

Holliman also appealed his conviction to the Eighth District in a separate appellate case. He challenged the imposition of post-release control and argued that his conviction was against

the manifest weight of the evidence. The Eighth District rejected these arguments and affirmed his convictions in a separate opinion. *State v. Holliman*, 2025-Ohio-1262 (8th Dist.).

STATEMENT OF THE FACTS

Holliman visited the home of a former friend in December 2023. *Holliman*, 2025-Ohio-1187 at ¶ 2. When the occupant answered the door and told Holliman to leave, Holliman fired two gunshots from a revolver into the air and fired a third gunshot into the friend's house. *Id*. Two adults and a minor child were present at the home when the shooting occurred. *Id*.

LAW AND ARGUMENT

Proposition of Law 1: When an offender is convicted of firearm specifications pursuant to R.C. 2941.141 and R.C. 2941.145 for the same offense, and R.C. 2929.14(B)(1)(g) is inapplicable, the specifications merge and the State may choose which specification to pursue at sentencing.

This appeal concerns the merger of firearm specifications. When a defendant commits a crime while having a firearm on his person or under his control, he is subject to a one-year prison term under R.C. 2941.141. If the defendant also displayed, brandished, indicated possession of, or used the firearm to facilitate the crime, he is subject to a three-year prison term under R.C. 2941.145. Imposition of the prison terms for the one or three-year firearm specifications is mandatory: "[I]f an offender who is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to a specification of the type described in section 2941.141 . . . or 2941.145 of the Revised Code, the court shall impose on the offender" a prison term of one or three years. R.C. 2929.14(B)(1)(a). However, "a court shall not impose more than one prison term on an offender under division (B)(1)(a) of this section for felonies committed as part of the same act or transaction." R.C. 2929.14(B)(1)(b).[1]

[1] An exception exists when the defendant is convicted of these firearm specifications *and* specific offenses such as murder or rape. R.C. 2929.14(B)(1)(g). In those situations, the court is required

The Eighth District and the trial court in this case wrongly held that the prosecutor cannot choose between merging firearm specifications. In doing so, the lower courts ignored decades of tradition that permitted prosecutors to elect among merging allied offenses. Their decisions have serious consequences, including the under-punishment of dangerous offenders that the General Assembly deemed worthy of mandatory prison terms. The lower courts' interpretations also impede the prosecutor's power to bring charges.

I. The General Assembly intended the State to elect between one and three-year firearm specifications on the same offense, as the State has elected for decades between allied offenses.

More than fifty years ago the General Assembly prohibited the imposition of multiple convictions for allied offenses of similar import: "Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one." R.C. 2941.25(A) (eff. January 1, 1974). If a defendant is found guilty of allied offenses, the defendant may be "convicted and sentenced for only one" offense. *Maumee v. Geiger*, 45 Ohio St.2d 238, 244 (1976).

Since its enactment in 1974, R.C. 2941.25 has been silent as to the method of determining among allied offenses which offense to merge and upon which offense to impose sentence. Nonetheless, this Court has long held that "[t]he choice is given to the prosecution to pursue one offense or the other, and it is plainly the intent of the General Assembly that the election may be of either offense." *Geiger*, at 238. The Legislative Service Commission Summary of Am.Sub.H.B. 511, enacting R.C. 2941.25, explicitly stated that "the prosecutor sooner or later

---

to impose "the two most serious specifications" and "in its discretion, also may impose" additional specifications. *Id*. However, this exception is inapplicable here.

must elect as to which offense it wishes to pursue." *State v. Whitfield*, 2010-Ohio-2, ¶ 20, citing Legislative Service Commission Summary of Am.Sub.H.B. 511.

The prosecutor's authority at sentencing to elect between merging allied offenses has been the settled law in Ohio for decades. *See State v. Whitfield*, 2010-Ohio-2, ¶ 20 ("The General Assembly has made clear that it is the state that chooses which of the allied offense to pursue at sentencing, and it may choose any of the allied offenses."); *State v. Culver*, 2005-Ohio-1359, ¶ 63 (2d Dist.) ("Under R.C. 2941.25, the prosecution has the choice of electing which of one or more allied offenses it wishes to pursue."); *State v. Perry*, 1981 Ohio App. LEXIS 10804 *29 (5th Dist. Dec. 29, 1981) ("We therefore reverse . . . and remand this case to said court to require Plaintiff-Appellee State to elect which Judgment of Conviction . . . the State chooses to proceed with.") *State v. Fluellen*, 1974 Ohio App. LEXIS 3688 * 5 (10th Dist. July 30, 1974) ("The prosecution is not required to elect, at any time prior to submission of the case to the jury.").

The prosecutor's power to elect among allied offenses provides important context for the merger of firearm specifications at sentencing. The three-year firearm specification has long existed in various forms. *Compare* R.C. 2941.145 *with* Former R.C. 2929.71, eff. 1/5/83, repealed in Am.Sub.S.B. 2, 146 Ohio Laws 7809. However, the one-year firearm specification was not created until 1996 with the enactment of S.B. 2. *See* R.C. 2941.141. At that time, the General Assembly was well-aware of the more than twenty-year history of prosecutors having the power to elect among allied offenses. The statutes governing the merger of firearm specifications must be interpreted within this historical framework.

"If a statute uses words or phrases that have already received authoritative construction by the jurisdiction's court of last resort . . . they are to be understood according to that construction." Scalia & Garner, *Reading Law*, at 322-26 (2012). "[W]hen a statute uses the same terminology as

an earlier statute – especially in the very same field . . . it is reasonable to believe the terminology bears a constant meaning. *Id.* at 323. "One might even say that the body of law of which a statute forms a part – especially if that body has been codified – is part of the statute's context." *Id*.

The Supreme Court of the United States has recognized this principle: "The canon teaches that if courts have settled the meaning of an existing provision, the enactment of a new provision that mirrors the existing statutory text indicates, as a general matter, that the new provision has that same meaning." *Lightfoot v. Cendant Mortg. Corp.*, 580 U.S. 82, 95-96 (2017). Put differently, a "court's prior construction of statutory language is relevant to the meaning of a similarly worded provision." *United States v. Prasad*, 18 F.4th 313, 322 (9th Cir. 2021).

R.C. 2941.25 provides that the State may charge a defendant with "two or more allied offenses . . . but the defendant may be convicted of only one." For decades, Ohio courts recognized that R.C. 2941.25 provided prosecutors the choice between the allied offenses at sentencing. Then, in 1996, the General Assembly amended R.C. 2929.14, providing that a trial court "shall not impose more than one prison term on an offender" regarding one- and three-year firearm specifications. *See* R.C. 2929.14(B)(1)(b); *see also* R.C. 2929.14(D)(1)(a)(i) (effective Oct. 17, 1996). Just as the General Assembly limited convictions among allied offenses to one, and gave the State the power to elect, the General Assembly limited the imposition of one- and three-year firearm specifications and did not change the power of the State to choose which to pursue at sentencing.

The Eighth District gave this argument short shrift:

> We are also not persuaded by the State's attempt to analogize sentencing on firearm specifications to sentencing on allied offenses, where the State picks which count to proceed on after merger. Firearm specifications are sentencing enhancements, not separate criminal offenses. *State v. Young*, 2018-Ohio-3047, ¶ 33 (8th Dist.), citing *State v. Williams*, 2003-Ohio-3950, ¶ 19-21 (8th Dist.). Because firearm specifications are not separate offenses, they cannot be allied offenses of similar

> import for purposes of R.C. 2941.25, the allied offenses statute. *State v. Blankenship*, 102 Ohio App.3d 534, 547, 657 N.E.2d 559 (12th Dist. 1995). Thus, the State's attempt to categorize gun specifications as the same as allied offenses is not well taken.

Holliman, 2025-Ohio-1187, ¶ 10. It is true that firearm specifications are sentencing enhancements, not separate criminal offenses. But firearm specifications are subject to similar merger analysis. *See generally State v. Hardnett*, 2019-Ohio-3090, fn.1 (8th Dist.). The State's argument was an analogy, not an equation. The distinction between offenses and enhancements does not meaningfully explain the denial of a prosecutor's authority to elect between merging firearm specifications.

II. The consequence of the Eighth District's decision is a windfall to defendants convicted of violent firearm specifications.

"The purpose of the firearm specification is to enhance the punishment of criminals who voluntarily introduce a firearm while committing an offense and to deter criminals from using firearms." *State v. White*, 2015-Ohio-492, ¶ 31. "The public policy . . . is apparent: a criminal with a gun is both more dangerous and harder to apprehend than one without a gun." *State v. Powell*, 59 Ohio St.3d 62, 63 (1991). "Firearms were the leading cause of death for children and teens ages 1–17, prematurely taking the lives of 2,526 young people in 2022." Villarreal, S., et al., *Gun Violence in the United States 2022: Examining the Burden Among Children and Teens* (2024), available at https://publichealth.jhu.edu/sites/default/files/2024-09/2022-cgvs-gun-violence-in-the-united-states.pdf (accessed May 13, 2025) [https://perma.cc/U7TY-KREV].

The General Assembly recognized that different harms stem from different uses of firearms and enacted a graduated system of punishment. If the factfinder determines that you have a firearm on your person while you commit a crime, you pose an increased danger to the public and to police than a criminal without a firearm. Accordingly, possessing a firearm during the commission of a

crime is separately punished by one year of prison. *See* R.C. 2929.14(B)(1)(a)(iii). Taking the additional step of using the firearm in the commission of a crime poses a greater danger than merely possessing it. Accordingly, that conduct is more severely punished by three years in prison. *See* R.C. 2929.14(B)(1)(a)(ii). In a similar manner, if you use an automatic firearm or implement a firearm muffler or suppressor in the commission of the crime, the risk of harm you create is greater still. Recognizing this, the General Assembly determined that a six-year sentence is appropriate where the jury finds the offender used an automatic firearm or firearm suppressor. *See* R.C. 2929.14(B)(1)(a)(i).

By imposing only the one-year mandatory prison term upon Holliman, the trial court under-punished him. Recall that the jury found him guilty of both the one-year specification because he possessed a firearm and the three-year specification because he *used* it. The trial court's failure to impose the punishment corresponding to the three-year firearm specification undermined the graduated system crafted by the General Assembly and trampled upon the State's choice to seek the three-year mandatory prison term.

The lower court's interpretations will have significant consequences. Normally, the State chooses to charge both the one- and the three-year specifications when the evidence shows that the defendant had a firearm and used it to commit the offense. But if the trial court can decide only to impose the one-year prison term, then the State has a new incentive to charge only the three-year firearm specification at the beginning of the case regardless of whether it believes it has evidence of both. This risks that a factfinder might judge the proof lacking with respect to the three-year specification, resulting in no guilty determination as to the one-year specification. This reduces a community's ability to punish criminal conduct to the precise degree allowed by the General Assembly and would be an unjust windfall to a dangerous defendant.

III. The lower court's interpretation interfere with the prosecutor's authority to bring charges.

"The prosecuting attorney shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party" and "may inquire into the commission of crimes within the county." R.C. 309.08(A). A duly elected prosecutor "has broad discretion in deciding whether to file particular charges." *State ex rel. Whittaker v. Lucas Cty. Prosecutor's Office*, 2021-Ohio-1241, ¶ 11. In fact, the prosecutor's decision whether to prosecute an offense is "not generally subject to judicial review." *State ex rel. Master v. Cleveland*, 75 Ohio St.3d 23, 27 (1996).

The Eighth District's decision below improperly encroaches upon the prosecutor's statutory power to bring charges. Trial court judges in Cuyahoga County may now decide, without any apparent judicial standards, which of the merged specifications to proceed with at sentencing. The lower courts' decisions have the effect of curtailing the statutory authority of the prosecutor to bring charges.

CONCLUSION

For these reasons, the trial court erred by failing to impose the three-year mandatory prison term. This Court should accept jurisdiction over this case and hold that the prosecutor has the authority to elect at sentencing between merging firearm specifications.

Respectfully submitted,

MICHAEL C. O'MALLEY (0059592)
Cuyahoga County Prosecuting Attorney

/s Anthony T. Miranda

ANTHONY T. MIRANDA (0090759)
CHAUNCEY KELLER (0095344)
MICHAEL R. WAJDA (0100356)
Assistant Prosecuting Attorneys
Cuyahoga County Prosecutor's Office
The Justice Center
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113
216-443-7800
216-698-2270 (fax)
amiranda@prosecutor.cuyahogacounty.us
ckeller@prosecutor.cuyahogacounty.us
mwajda@prosecutor.cuyahogacounty.us

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Support of Jurisdiction was provided by electronic mail on May 16, 2025 to P. Andrew Baker at pandrewbaker@gmail.com and to the Ohio Public Defender via US mail on May 16, 2025 at 250 East Broad Street, Suite 1400, Columbus, Ohio 43215.

/s/ Anthony T. Miranda

ANTHONY T. MIRANDA (0090759)
Assistant Prosecuting Attorney