

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Appellant

v.

VICTOR ALAN PATE III

Appellee

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C.A. No. 30755

Trial Court Case No. 2025 CR 01506

(Criminal Appeal from Common Pleas
Court)

**FINAL JUDGMENT ENTRY &
OPINION**

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Pursuant to the opinion of this court rendered on October 9, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



ROBERT G. HANSEMAN, JUDGE

LEWIS, P.J., and EPLEY, J., concur.

OPINION
MONTGOMERY C.A. No. 30755

ANDREW T. FRENCH, Attorney for Appellant
ARVIN S. MILLER, Attorney for Appellee

HANSEMAN, J.

{¶ 1} The State of Ohio appeals from the judgment of the Montgomery County Common Pleas Court that sustained appellee Victor Alan Pate III's motion to dismiss his charge of carrying concealed weapons in violation of R.C. 2923.12(A)(2), a fourth-degree felony. Based on this court's holding in *State v. Matosky*, 2025-Ohio-5658 (2d Dist.), the judgment of the trial court is affirmed.

Facts and Course of Proceedings

{¶ 2} On June 16, 2025, a Montgomery County grand jury returned an indictment charging Pate with one count of carrying concealed weapons in violation of R.C. 2923.12(A)(2). Pate, who was 19 years old at the time of the alleged offense, pled not guilty to the charge. Following his not guilty plea, Pate filed a motion to dismiss the concealed-carry charge on grounds that R.C. 2923.12(A)(2) is unconstitutional as applied to him because it violated his Second Amendment right to bear arms. The trial court initially overruled Pate's motion, but on reconsideration, it sustained the motion based on our holding in *Matosky*.

{¶ 3} In *Matosky*, this court found that the age-based restriction applicable to violations of R.C. 2923.12(A)(2) is not consistent with the Nation's historical tradition of firearm regulation. *Matosky* at ¶ 36. In light of that finding, we held that R.C. 2923.12(A)(2) was unconstitutional as applied to the 20-year-old defendant in *Matosky*. *Id.* After applying

Matosky, the trial court likewise found that R.C. 2923.12(A)(2) was unconstitutional as applied to 19-year-old Pate and thus dismissed his concealed-carry charge.

{¶ 4} The State now appeals from the trial court’s dismissal of Pate’s concealed carry charge and raises a single assignment of error for review.

Assignment of Error

{¶ 5} Under its sole assignment of error, the State disagrees with *Matosky* and claims that the age-based restriction applicable to violations of R.C. 2923.12(A)(2) is consistent with the Nation’s historical tradition of firearm regulation and should fall outside the Second Amendment’s protection. Accordingly, the State claims that the trial court erred by applying *Matosky* and by not overruling Pate’s motion to dismiss the concealed-carry charge.

Standard of Review

{¶ 6} “Generally, appellate courts conduct a de novo review of a trial court’s decision concerning a defendant’s motion to dismiss all or part of an indictment based upon a constitutional challenge to the statute under which the defendant stands indicted.” *Matosky*, 2025-Ohio-5658, at ¶ 9 (2d Dist.), quoting *State v. Lawson*, 2025-Ohio-2650, ¶ 5 (4th Dist.). “In de novo review, we independently review trial court decisions and accord them no deference.” *Id.* at ¶ 9, quoting *Coldly v. Fuyao Glass America, Inc.*, 2022-Ohio-1960, ¶ 9 (2d Dist.).

Age-Based Restriction Applicable to R.C. 2923.12(A)(2)

{¶ 7} R.C. 2923.12(A)(2) provides that “[n]o person shall knowingly carry or have, concealed on the person’s person or concealed ready at hand, . . . [a] handgun other than a dangerous ordnance.” A person with a concealed handgun license is exempt from criminal liability under R.C. 2923.12(A)(2). R.C. 2923.12(C)(2); *Matosky* at ¶ 3. Under Ohio’s statutory scheme, “[q]ualifying adults’ need not possess a concealed handgun license to

carry a concealed firearm and are ‘treated as though they possess[] a concealed handgun license.’” *Id.* at ¶ 4, quoting *State v. Storms*, 2024-Ohio-1954, ¶ 21 (1st Dist.); R.C. 2923.111. Therefore, a “qualifying adult” is exempt from criminal liability under R.C. 2923.12(A)(2).” *Id.*, citing *State v. Barber*, 2025-Ohio-1193, ¶ 26 (1st Dist.).

{¶ 8} A “qualifying adult” is defined as a person who is all the following:

- (a) Twenty-one years of age or older;
- (b) Not legally prohibited from possessing or receiving a firearm under 18 U.S.C. 922(g)(1) to (9) or under section 2923.13 of the Revised Code or any other Revised Code provision;
- (c) Satisfies all of the criteria listed in divisions (D)(1)(a) to (j), (m), (p), (q), and (s) of section 2923.125 of the Revised Code.

R.C. 2923.111(A)(2)(a) through (c).

Analysis

{¶ 9} In this case, because 19-year-old Pate did not meet the age threshold for being a “qualifying adult,” he was prosecuted under R.C. 2923.12(A)(2). In *Matosky*, this court was presented with the exact same scenario concerning a 20-year-old defendant. As previously discussed, in *Matosky* we held that R.C. 2923.12(A)(2) was unconstitutional as applied to the 20-year-old defendant because the age-based restriction is not consistent with the Nation’s historical tradition of firearm regulation. *Matosky*, 2025-Ohio-5658, at ¶ 36 (2d Dist.). As a result, we affirmed the trial court’s dismissal of the defendant’s concealed-carry charge. *Id.* at ¶ 45. Applying *Matosky*, we did the same in *State v. Dorsey*, 2026-Ohio-581 (2d Dist.), and *State v. Reid-Payne*, 2026-Ohio-672 (2d Dist.). Until the Supreme Court of Ohio directs otherwise, we will follow the doctrine of stare decisis and continue to follow our holding in *Matosky*.

{¶ 10} The State’s arguments in the instant appeal are identical to the arguments that we addressed in *Matosky*. Therefore, for the same reasons expressed in *Matosky*, we conclude that R.C. 2923.12(A)(2) is unconstitutional as applied to Pate and that the trial court did not err by dismissing Pate’s concealed-carry charge. *Matosky* at ¶ 30-36.

{¶ 11} The State’s assignment of error is overruled.

Conclusion

{¶ 12} Having overruled the State’s assignment of error, the judgment of the trial court is affirmed.

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LEWIS, P.J., and EPLEY, J., concur.