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LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
NUNC PRO TUNC
Hon. D. Chris Cook
Presiding Judge

Date Dec. 15, 2025 Case No. 24CR111313

STATE OF OHIO
Plaintiff

Chris Pierre
Plaintiff's Attorney

VS

JAMES A. STEWART, JR.
Defendant

Michael Stepanik
Defendant's Attorney

NUNC PRO TUNC

This matter is before the Court on the constitutionality of Ohio Revised Code §2929.14(B)(1)(g). The Court raised this issue *sua sponte* and Ordered the parties to brief same. The State filed its brief on November 10, 2025; the Defendant filed his Memorandum on December 5, 2025.

After consideration of said briefs, case precedent, and the analysis articulated below, this Court finds that R.C. 2929.14(B)(1)(g) is facially unconstitutional. Accordingly, its mandate will not be enforced when the Defendant is sentenced.

See Judgment Entry.

IT IS SO ORDERED.

Judge D. Chris Cook

cc: Pierre, Asst. Pros. Atty.
Stepanik, Esq.

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I. INTRODUCTION

This matter is before the Court on the constitutionality of Ohio Revised Code §2929.14(B)(1)(g). The Court raised this issue *sua sponte* and Ordered the parties to brief same.

II. RELEVANT PROCEDURAL HISTORY

6/13/2024 The Defendant is indicted on eight (8) criminal offenses:[1]

1) Murder*
2) Murder*
3) Felonious Assault*
4) Murder*
5) Felonious Assault*

[1] * On these counts, the Defendant was also indicted with a 3-year firearm specification and a forfeiture specification.
** On this count, the Defendant was indicted with a forfeiture specification only.

6) Illegal Possession of a Firearm*

7) Assault[2]

8) Using Weapons While Intoxicated**

10/16/2025 The Defendant is convicted on Counts 2, 3, 4, 5, 6, and 8, including the multiple firearm and forfeiture specifications

12/8/2025 The Defendant is sentenced to life in prison with the possibility of parole after 21-years.

III. ANALYSIS

THE COURT ORDERS THE PARTIES TO BRIEF THE ISSUE OF THE CONSTITUTIONALITY OF OHIO REVISED CODE §2929.14(B)(1)(g)

The statute at issue, R.C. 2929.14(B)(1)(g), reads, *in toto,* as follows:

> If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

In essence, this subsection of R.C. 2929.14 mandates the imposition of multiple firearm specifications where an offender is charged with aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, even if all but one of the predicate charges and firearm specifications have been merged. *State v. Bollar,* 2022-Ohio-4370.

This issue is before the Court because the Court, on its own initiative, questioned the constitutionality of R.C. 2929.14(B)(1)(g) and Ordered the parties to brief the issue as it is applicable to the case at bar.

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[2] At the conclusion of the State's case, the Court granted the Defendant's Crim.R. 29 motion for acquittal on this count.

As such, the first relevant inquiry is whether or not such procedure is apposite. In other words, can a trial court, on its own initiative, review the constitutionality of a statute? I say yes.

To be sure, there does not appear to be a definitive answer to the question, but there are a number of cases that provide guidance. For example, in *Klein v. Leis,* 2002-Ohio-1634, (1st Dist.), the First District Court of Appeals noted the following,

> **Declaring an unconstitutional statute unconstitutional is not judicial bias—it is judicial duty**. Based on the law and the record before him, the trial judge had no choice but to rule as he did.

Id. at ¶ 37, emphasis added.

The court continued,

> All judges bring the sum total of life's experiences to their courtrooms. While we strive to be free of bias or prejudice, we should not disregard our knowledge of humanity—our experiences in the ways of the world.

Id. at ¶ 38.

More recently, the Tenth District Court of Appeals observed,

> Courts must liberally construe statutes to avoid conflicts with the constitution; however, **where a statute and a constitutional provision are clearly incompatible, courts have a duty to declare the statute unconstitutional**.

CT Ohio Portsmouth, LLC v. Ohio Dept. of Medicaid, 2020-Ohio-5091, ¶ 27 (10th Dist.).

More on point, the Ohio Supreme Court has stated the following relative to a trial court's authority to *sua sponte* declare a statute unconstitutional where a trial court, on its own and without notice to the parties, declared a statute unconstitutional.

> Declaring a statute unconstitutional, sua sponte, without notice to the parties would be unprecedented.

Smith v. Landfair, 2012-Ohio-5692, ¶ 27.

The counter-inference to this maxim is, of course, that a trial court may, *sua sponte*, consider the constitutionality of a statute as long as it provides notice to the parties and an opportunity to brief and be heard on the issue.

The Fifth District Court of Appeals expounded on this principle in *Simpkins, et al. v. Grace Brethren Church of Delaware,* 2014-Ohio-3465, (5th Dist.). That court observed,

> We find the trial court erred when it sua sponte found R.C. 2307.23(C) unconstitutional **without providing notice to the parties**. Prior to declaring the statute unconstitutional, the trial court did not give the parties notice that it intended to consider the constitutionality of the statute. Where neither party raised a constitutional argument before the court, it should not sua sponte declare a statute unconstitutional **without providing parties notice of the court's intention** and the opportunity to respond.

Id. at ¶ 58.

In this matter, the Court clearly telegraphed its concerns about the constitutionality of R.C. 2929.14(B)(1)(g) and Ordered the parties to brief the issue. As such, timely, proper notice was given to the parties so that they could object to, or concur with, the Court's position.[3]

STANDARD OF REVIEW – STATUTES ARE PRESUMED CONSTITUTIONAL

It is axiomatic that statutes validly enacted by the Ohio General Assembly are presumed to be constitutionally sound. The Ohio Supreme Court has repeatedly observed,

> As an initial matter, it must be noted that statutes enacted in Ohio are presumed to be constitutional. * * * This presumption of constitutionality remains unless it is proven beyond a reasonable doubt that the legislation is clearly unconstitutional. * * *

State v. Williams, 2000-Ohio-428, at Pg. 521.

But the presumption of constitutionality is not inviolate and may be overcome.

In a more recent case, where the Supreme Court struck down an unconstitutional provision of Ohio's sexual battery statute, the high court noted,

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[3] On October 16, 2025, pursuant to R.C. 2721.12(A), out of an abundance of caution, this Court informed the Ohio Public Defender's Office and the Ohio Attorney General of its intention to consider the constitutionality of R.C. 2929.14(B)(1)(g). Neither entity expressed an interest in participating in these proceedings or briefing the issue.

At the outset, we are mindful of our duty to defer to the General Assembly:

> A statute is presumed constitutional. "In enacting a statute, it is presumed that * * * [c]ompliance with the constitutions of the state and of the United States is intended." * * * Courts have a duty to liberally construe statutes "to save them from constitutional infirmities." * * * However, **this presumption of constitutionality is rebuttable**.

State v. Mole, 2016-Ohio-5124, ¶ 10, emphasis added.

The court continued,

> The presumption of constitutionality is rebutted only when it appears beyond a reasonable doubt that the statute and the Constitution are clearly incompatible. * * * **When incompatibility is clear, it is the duty of this court to declare the statute unconstitutional**.

Mole, at ¶ 11, emphasize added.

OHIO REVISED CODE §2929.14(B)(1)(g) IS FACIALLY UNCONSTITUTIONAL

R.C. 2929.14 is generally a valid statute that defines definite prison terms under Ohio's sentencing scheme. But subdivision (B)(1)(g) irrationally imposes the imposition of multiple prison terms for firearm specifications that have been merged. Offenses that are required to be merged by the trial court do not result in a conviction and must be merged because they are offenses of similar import that do not result from separate acts, conduct, or animus.[4]

It therefore follows that R.C. 2929.14(B)(1)(g) is an arbitrarily disparate treatment of offenders who commit one crime but are charged with multiple criminal offenses with firearm specifications attached that violates the double jeopardy clause, equal protection clause, and due process clause, under both the Ohio Constitution and the United States Constitution.

To be sure, this Court is cognizant of the high hurdle that must be overcome in order to find a statute facially unconstitutional.

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[4] While the Defendant herein was convicted of multiple crimes, it is only those crimes that were merged, murder and felonious assault, that are germane to this analysis.

> Facial challenges present a higher hurdle than as-applied challenges because, in general, for a statute to be facially unconstitutional, it must be unconstitutional in all applications.

State v. Romage, 2014-Ohio-783, ¶ 7.

Here, R.C. 2929.14(B)(1)(g) is facially unconstitutional because it requires the imposition of multiple firearm specifications in all situations where multiple offenses are merged because the offender committed only one criminal act. Conversely, an offender charged with only one offense (and firearm specification) for one of the enumerated crimes, if convicted, would only be subject to one firearm specification.

For example, Joe Smith of Putnam County pulls out a gun and fires one shot at his neighbor during an argument killing him instantly. He is charged with one count of murder with a firearm specification. He pleads guilty and is sentenced for murder. He is also sentenced to serve *one* firearm specification.

A week later, in Cuyahoga County, Jim Smith commits exactly the same offense in precisely the same manner. Jim is charged with two counts of murder and two counts of felonious assault, all with firearm specifications. He also pleads guilty and by agreement, the trial court merges one of the murder charges and both felonious assault charges into the first murder charge. As such, Jim committed exactly the same conduct as Joe and is convicted of exactly the same offense as Joe, murder, with one firearm specification. But, by operation of R.C. 2929.14(B)(1)(g), Jim must serve not one, *but two*, three-year firearm specifications.[5]

How, one might ask, can this possibly be just? It cannot. And not just because of the disparate sentences imposed for the same criminal conduct, but more so because one offender, the offender whose sentence is subject to R.C. 2929.14(B)(1)(g), received multiple prison sentences imposed on multiple firearm specifications where he committed one act, with one animus, and thus, has been placed in jeopardy twice.

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[5] In fact, the trial court could actually impose a third, or even fourth, firearm specification in this situation. ". . . and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications." R. C. 2929.14(B)(1)(g).

OHIO REVISED CODE §2929.14(B)(1)(g) VIOLATES THE DOCTRINES OF MERGER, DOUBLE JEOPARDY, EQUAL PROTECTION, SUBSTANTIVE DUE PROCESS, AND IS IN CONFLICT WITH *STATE v. LOGAN*[6]

THE DOCTRINE OF MERGER & DOUBLE JEOPARDY

The Ohio Revised Code incorporates the doctrine of merger at R.C. 2941.25. It reads, *in toto*, as follows:

> (A) 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.
>
> (B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

The Ohio Supreme Court has discussed the doctrine of merger on numerous occasions. The matter of *State v. Whitfield*, 2010-Ohio-2, is particularly instructive. In that case, the Supreme Court noted,

> At the outset of our analysis, we recognize that the statute incorporates the constitutional protections against double jeopardy. **These protections generally forbid** successive prosecutions and **multiple punishments** for the same offense.

Id. at ¶ 7, emphases added.

At the outset, note that the gravamen of the merger doctrine is constitutionally grounded in the prohibition against double jeopardy. This prohibition is found in both the United States Constitution (the Fifth Amendment) and in the Ohio Constitution (Article I, Section 10).

The Supreme Court continued,

> * * * By its enactment of R.C. 2941.25(A), the General Assembly has clearly expressed its intention to prohibit multiple punishments for allied offenses of similar import. * * * ("Ohio's General Assembly has indicated its intent to

[6] 2025-Ohio-1772.

> permit or prohibit cumulative punishments for the commission of certain offenses through the multiple-count statute set forth in R.C. 2941.25").

Id. at ¶ 8.

In the *Whitfield* case, the defendant was found guilty and sentenced for the offenses of both drug possession and drug trafficking where the conduct was the result of a single act. In explaining that drug possession and drug trafficking (in this situation) are allied offenses of similar import, the high court explained that he could only be sentenced on one of the charges, possession or trafficking, and thus, only convicted of one of the offenses.

The Supreme Court asked the following question: "What exactly does R.C. 2941.25(A) prohibit when it states that a defendant may be "convicted" of only one of two allied offenses?" *Id.* at ¶ 11.

The court answered the inquiry thus.

> We have little trouble with the first question. Our past decisions make clear that for purposes of R.C. 2941.25, a "conviction" consists of a guilty verdict and the imposition of a sentence or penalty. * * * ("a conviction consists of a verdict and sentence"). * * * ("[f]or purposes of R.C. 2941.25, this court has already determined that a 'conviction' consists of both 'verdict and sentence' "

Id. at ¶ 12.

The court provided further edification by explaining that while an offender may be found guilty of multiple offenses of similar import, he may only be sentenced (and thus, convicted) on one, and that as a result of the doctrine of merger, allied offenses of similar import result in a single conviction. *Id.* at ¶ 16.

The court then went on to discuss the historical and legal significance of the merger doctrine and its relationship to the constitutional prohibition of double jeopardy.

> A defendant may be indicted and tried for allied offenses of similar import, but may be sentenced on only one of the allied offenses. * * * In fact, our precedent, including cumulative-punishment cases that predate the 1972 enactment of R.C. 2941.25(A), makes clear that a defendant may be found guilty of allied offenses but not sentenced on them. * * * ("**Where an offence forms but one transaction, and the indictment containing several counts on which the jury have returned a verdict of guilty, it is error in the court to sentence on each count separately**").

Id. at ¶ 17, emphases added.

The court concluded thus,

> In cases in which the imposition of multiple punishments is at issue, R.C. 2941.25(A)'s mandate that a defendant may be "convicted" of only one allied offense is a protection against multiple sentences rather than multiple convictions. * * * the United States Supreme Court held that the Double Jeopardy Clause protects against successive prosecutions **and against multiple punishments** for the same offense. Thus, to ensure that there are not improper cumulative punishments for allied offenses, courts must be cognizant that **R.C. 2941.25(A) requires that "the trial court effects the merger at sentencing**."

Id. at ¶ 18, emphases added.

A few years after *Whitfield* was decided, the Ohio Supreme Court issued another decision addressing merger and clarified the manner in which trial courts are to determine when merger is applicable. The case also, once again, reiterated the underpinnings of the doctrine to the constitutional construct of double jeopardy.

In *State v. Williams,* 2012-Ohio-5699, the Supreme Court observed,

> R.C. 2941.25 "codifies the protections of **the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution**, which prohibits multiple punishments for the same offense." * * * At the heart of R.C. 2941.25 is the judicial doctrine of merger; merger is "the penal philosophy that a major crime often includes as inherent therein the component elements of other crimes and that these component elements, in legal effect, are merged in the major crime." * * *

Id. at ¶ 13, emphasis added.

Justice Pfeifer further explained for the court,

> To ensure compliance with both R.C. 2941.25 **and the Double Jeopardy Clause**, "**a trial court is required to merge allied offenses of similar import at sentencing**. Thus, when the issue of allied offenses is before the court, the question is not whether a particular sentence is justified, but whether the defendant may be sentenced upon all the offenses."

Id. at ¶ 15, emphasis added.

Finally, in 2015, the Ohio Supreme Court released its most recent and comprehensive decision relating to the merger doctrine. In *State v. Ruff,* 2015-Ohio-995, the Ohio Supreme Court again reiterated the genesis of the merger doctrine and its connection to the prohibition against double jeopardy.

> The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." This protection applies to Ohio citizens through the Fourteenth Amendment to the United States Constitution * * * and is additionally guaranteed by the Ohio Constitution, Article I, Section 10. The Double Jeopardy Clause protects against three abuses: (1) "a second prosecution for the same offense after acquittal," (2) "a second prosecution for the same offense after conviction," and (3) "**multiple punishments for the same offense**." * * * It is the third protection—multiple punishments for same offense—that is before us now.

Id. at ¶ 10, emphasis added.

Towards the conclusion of *Ruff,* the Ohio Supreme Court reinforced the centuries-old constitutional concept that citizens of this country, and state, can only be punished once for conduct that constitutes a single offense.

> ***The Test for Merger of Multiple Offenses***
>
> **When the defendant's conduct constitutes a single offense, the defendant may be convicted and punished only for that offense**. When the conduct supports more than one offense, however, a court must conduct an analysis of allied offenses of similar import to determine whether the offenses merge or whether the defendant may be convicted of separate offenses. R.C. 2941.25(B).

Ruff, at ¶ 24, emphases added.

> *BOLLAR* IS NOT CONTROLLING BECAUSE THE OHIO SUPREME COURT DID NOT ENGAGE IN AN ANALYSIS OF CONSTITUTIONAL DOUBLE JEOPARDY

At first blush, one might be heard to argue that the 2022 decision in *State v. Bollar,* 2022-Ohio-4370, affirmed the constitutionality of R.C. 2929.14(B)(1)(g) when considered *in pari materia* with R.C. 2941.25(A). After all, the syllabus reads as follows,

> Criminal law—R.C. 2929.14(B)(1)(g)—R.C. 2941.25(A)—R.C. 2929.14(B)(1)(g) permits imposing prison sentences for multiple firearm specifications attached to

> felony offenses committed as part of the same act *or* transaction when the underlying offenses to which those specifications are attached have been merged—Judgment affirmed.

Bollar, syllabus.

But such is not the case.

In *Bollar,* the Supreme Court was tasked with interpreting the language of the statute and its application to Ohio's sentencing scheme, not its facial or as-applied constitutionality.

Keep in mind that the case made its way to the Supreme Court on conflict between multiple appellate districts throughout the state, some which held that merger was inapplicable and that multiple firearm specifications could be stacked upon a conviction for a single predicate offense. Others said that the application of merger to multiple offenses (with firearm specifications) that result in a single conviction prohibited stacking firearms specifications.[7]

The *Bollar* decision, authored by one of the Supreme Court's most erudite jurists, Justice Patrick Fischer, begins with, and ends with, statutory interpretation, not constitutional double jeopardy analysis.

> As we have explained before, when analyzing an issue **of statutory interpretation**, " '[t]he question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact.' * * * If the statute's language is plain and unambiguous, we apply it as written.

Bollar, at ¶ 10, emphasis added.

And the conclusion.

> Because the plain language of R.C. 2929.14(B)(1)(g) requires that offenders like Bollar receive separate prison terms for convictions on multiple firearm specifications, we answer the certified-conflict question in the affirmative and affirm the judgment of the Fifth District Court of Appeals.

Id. at ¶ 25.

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[7] The high court also accepted Bollar's discretionary appeal on the same issue and *sua sponte* consolidated the two cases for briefing. *Bollar,* at ¶ 7.

Note that nowhere in the opening analysis or conclusion of the *Bollar* decision does the Supreme Court ever mention, let alone discuss, the constitutionality of R.C. 2929.14(B)(1)(g). Instead, the entire focus of the case is upon the language of the statute and its application to the issue at hand: does, or does not, the statute provide for the imposition of multiple firearm specifications attached to merged offenses.

Despite the mental gymnastics the high court goes through to redefine the meaning of a "conviction," and in essence, distinguish, if not overrule, *Whitfield,*[8] it has no bearing on the constitutionality of the statute. Bearing on its interpretation and application, yes – on its constitutionality, no.

The Supreme Court in *Bollar* also discusses the impact of an important, previously decided case, *State v. Ford,* 2011-Ohio-765, and its impact on the interpretation of R.C. 2929.14(B)(1)(g). Two significant legal maxims flow from *Ford.* First, the concept that imposition of a separate prison sentence for a firearm specification is contingent upon an underlying felony conviction. *Bollar,* at ¶ 17; and secondly, that a firearm specification is not an independent charge, but a sentencing enhancement that attaches to a predicate offense. *Id.*; *Ford*, at ¶ 16.

Ultimately, the Supreme Court determined that the mandates enunciated in the *Ford* decision do not, ". . . speak directly to the issue before us today" and thus, did not find that case particularly enlightening.[9] Nevertheless, the first proposition of law noted above in the *Ford* decision remains accurate, good law: before an offender can be sentenced on a firearm specification, there must be a conviction for at least one predicate offense.

So, if there is only a single conviction for one predicate offense, the other offenses having been merged, how is it that an offender can still be sentenced to multiple sentencing enhancing firearms specifications? Articulated a better way, how can this statute, R.C. 2929.14.(B)(1)(g), trump the Fifth Amendment to the United States Constitution and Article I, Section 10, of the Ohio Constitution?

It cannot, yet here we are.

> No lengthy citation of authority is necessary to support the general proposition that **when a statute conflicts with a constitutional provision, the latter must prevail.**

In re Black, 36 Ohio St.2d 124,126, emphasis added.

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[8] *Id.* at ¶ 15-16.
[9] *Bollar*, at ¶ 18.

The Supreme Court determined that because Bollar plead guilty to multiple felonies and multiple specifications, despite the fact that all of the felonies merged into just one offense, ". . . according to the plain language of the statute, he must receive prison terms for the two most serious specifications to which he plead guilty." *Bollar,* at ¶ 19.

Given that it is difficult to be critical of the Supreme Court's interpretation of the statute's language and application, two significant observations from the *Bollar* decision nevertheless merit consideration. First, Justice Fischer reveals two "tells" in the decision. Interestingly, he notes that "common sense" is afoot in finding the outcome of this case curious, if not outright counterintuitive.

> Thus, while one could argue **that common sense dictates** that an offender should not be sentenced on a specification when the offender has not been sentenced on the underlying criminal offense . . .

Id. at ¶ 20, emphasis added.[10]

A second interesting observation in the *Bollar* decision is that it makes assumptions about the General Assembly's intent in enacting R.C. 2929.14(B)(1)(g). Not once, but twice in the decision does the court assume to glean legislative intent.

> This application of the plain language of the statute furthers **the apparent** legislative goal in enacting R.C. 2929.14(B)(1)(g). In requiring that offenders like Bollar be subject to separate prison terms for multiple firearm specifications, the General Assembly **appears to** have acknowledged that the use of firearms in certain violent crimes should carry a hefty penalty.

Bollar, at ¶ 20, emphases added.

This consideration by the high court is problematic for two reasons. First, the court universally avoids attempts to ferret out legislative intent when a statute is unambiguous. Justice Fischer again instructs,

> . . . we do not look at legislative intent to determine the meaning of a statute when the statute is unambiguous.

Wayt v. DHSC, LLC, 2018-Ohio-4822, ¶ 29.

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[10] With great respect to the Ohio Supreme Court, one cannot help but recall another counterintuitive case, the infamous "chicken bone" case, *Berkheimer v. REKM, et al.*, 2024-Ohio-2787, where the court determined that boneless chicken wings do not have to be . . . boneless.

Second, there is an easy fix to the issue that would withstand constitutional muster if in fact the General Assembly has a legislative goal of discouraging the use of firearms by criminals. If the goal is, as the high court notes, to impose a "hefty penalty" for the use of firearms in certain violent crimes, then it can simply increase the prison sanction for firearm specifications.

In other words, the answer should not be to mandate imposition of multiple, three-year firearm specifications resulting from one criminal act to get to a six-year sentence, but instead, make the use of a firearm in this situation subject to one, six-year sentence.

In this manner, because of the General Assembly's prerogative to create penalties for criminal offenses in the State of Ohio, courts would be taking a constitutionally paved road to get to the same destination – six years for the use of a firearm where only one charge remains viable after merger. Such an approach would steer clear of the constitutional prohibition against double jeopardy and avoid the pot marked path mandated by the *Bollar* decision.

Make no mistake, *Bollar* is the primary case that must be considered when passing on the constitutionality of R.C. 2929.14(B)(1)(g). And to be sure, one could "read into" its discussion of merger and analysis of that doctrine that the statute is constitutionally sound.

But that is not how constitutional jurisprudence operates. The constitutionality of R.C. 2929.14(B)(1)(g) was not before the high court in the *Bollar* decision, resolving its interpretation and application was. After all, the issue was before the court in the first instance because at least five different appellate districts in this state could not agree on how to apply the statute.

For the little it is worth, this Court finds no fault with the Supreme Court's decision in *Bollar* as to resolution of the statutory language and the practical application of R.C. 2929.14(B)(1)(g). It is hard to argue that the statute does not say what it says or that the Supreme Court incorrectly construed the language as written.

But that does not answer the question before this Court. This Court has delved further than simple statutory construction as that lift has already been done by the Supreme Court. Instead, this Court is tasked with examining the constitutionality of the statute in light of the state and federal constitutional prohibitions against double jeopardy.

Under that microscope, the statute cannot be saved.

OHIO REVISED CODE §2929.14(B)(1)(g) IS VIOLATIVE OF EQUAL PROTECTION

Similar to the double jeopardy clause, the equal protection clause is also present in both the federal and state constitutions.

> The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides, "No State shall * * * deny to any person within its jurisdiction the equal protection of the laws." Ohio's Equal Protection Clause, Section 2, Article I of the Ohio Constitution, states, "All political power is inherent in the people. Government is instituted for their equal protection and benefit * * *." " 'The Equal Protection Clause[s] [do] not forbid classifications. [They] simply keep[ ] governmental decisionmakers from treating differently persons who are in all relevant respects alike.' "

Pickaway Cty. Skilled Gaming LLC v. Cordray, 2010-Ohio-4908, ¶ 16.

The Supreme Court continued,

> The federal and Ohio equal-protection provisions are "functionally equivalent," * * * "are to be construed and analyzed identically," * * *

Id. at ¶ 17.

When analyzing an equal protection claim, courts are required to apply differing levels of scrutiny depending on the nature of the protected person.

> Courts apply varying levels of scrutiny to equal-protection challenges depending on the rights at issue and the purportedly discriminatory classifications created by the law. "[A] statute that does not implicate a fundamental right or a suspect classification does not violate equal-protection principles if it is rationally related to a legitimate government interest." * * *

Id. at ¶ 18.

As noted above, when the statute at issue does not implicate a fundamental right or suspect classification, the court is to apply the "rational basis" test. Where a statute does implicate a fundamental right or suspect classification, a much more exacting level of scrutiny is applied, "strict scrutiny."

> Ohio's Equal Protection Clause is contained in Article 1, Section 2 of the Ohio Constitution. It provides:

> All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.
>
> As a general matter, this provision requires that the government treat all similarly situated persons alike. * * * But not all claims brought under this clause are judged in the same way. When a claim involves a fundamental right or a suspect class, the government's action is subject to a higher level of scrutiny. But when no such right or class is involved, the government's action is subject to rational-basis review; it will be upheld "if it is rationally related to a legitimate government interest,"

Sherman v. Ohio Public Employees Ret. System, 2020-Ohio-4960, ¶ 14.

So, what test do we apply herein? Clearly, strict scrutiny.

Fair enough. But how do we know to apply strict scrutiny and what exactly is it? Again, the Ohio Supreme Court gives guidance.

> "In considering whether state legislation violates the Equal Protection Clause of the Fourteenth Amendment * * * [courts] apply different levels of scrutiny to different types of classifications." * * * We use the same analytic approach in determining whether a statutory classification violates Section 2, Article I of the Ohio Constitution. * * * Thus, all statutes are subject to at least rational-basis review, which requires that a statutory classification be rationally related to a legitimate government purpose. * * * **when classifications affect a fundamental constitutional right**, or when they are based on race or national origin, we will conduct a strict-scrutiny inquiry.* * * This latter level of scrutiny demands that a discriminatory classification be narrowly tailored to serve a compelling state interest.

State v. Thompson, 2002-Ohio-2124, ¶ 13, emphasis added.

In the case at bar, the double jeopardy right to be free from multiple punishments for the same offense is clearly an enumerated, fundamental, constitutional right. This right, when considered in harmony with the equally important, enumerated, fundamental right to equal protection, renders R.C. 2929.14(B)(1)(g) constitutionally infirm.

Recall our hypothetical example above wherein Joe and Jim commit the same criminal offense; one count of murder with a firearm. One crime, one act, one event, one

animus. One would assume that at sentencing, they would be facing the same possible punishment, that is, a prison sentence for murder and a prison sentence for using a firearm, to wit: the firearm specification.

But such may not be the case.

In one county, Joe is charged as indicated. One count of murder with a firearm specification. But in a different county, Jim is charged with two counts of murder and two counts of felonious assault, all with firearm specifications. Both Joe and Jim plead guilty. Joe is sentenced to 15-life, with a three-year firearm specification to be served prior to, and consecutive to, the murder charge. Joe's final, aggregate sentence is 18-life.

Jim, on the other hand, gets a worse result. The trial court must merge one of the murder charges and both the felonious assault charges, such that Jim too is sentenced on one murder charge with a firearm specification. So, Jim also gets a final, aggregate sentence of 18-life, right? Nope. Jim gets *at a minimum* 21-life as he must be sentenced on at least two of the firearm specifications, including one, or more, that were merged.

It is this possible outcome that is violative of equal protection and must be justified by a narrowly tailored, compelling state interest. And what, pray tell, is that? Harsh penalties for use of firearms while committing criminal acts? That may be all well and good, but it must be applied equally to all offenders. That is, offenders charged with multiple crimes for one criminal act cannot receive worse sentencing outcomes than offenders charged with only one crime for the same act.

As also noted above, the remedy is simple if the state's objective is to punish firearm offenders harshly, an obviously laudable goal. By increasing the amount of prison time that firearm specifications require and eliminating imposition of multiple penalties for one offense, Ohio's sentencing scheme will not run afoul of either the double jeopardy or equal protection clauses of the federal and state constitutions.

OHIO REVISED CODE §2929.14(B)(1)(g) IS ALSO VIOLATIVE OF SUBSTANTIVE DUE PROCESS

Similar to the double jeopardy and equal protection clauses, the due process clause is present as well in both the federal and state constitutions.

The Ohio Supreme Court, as well as the United States Supreme Court, has a substantial, well-developed body of case law and precedent interpreting the state and

federal due process provisions. Recently, in *State v. Aalim,* 2017-Ohio-2956[11], the Ohio Supreme Court observed the following,

> ***Substantive Due Process***
>
> The Supreme Court's "established method of substantive-due-process analysis has two primary features." * * * First, the court has "observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition' * * * and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'* * * Second, the court has "required in substantive-due-process cases a 'careful description' of the asserted fundamental liberty interest." * * * The court has cautioned against using the Fourteenth Amendment to define new fundamental liberty interests without "concrete examples involving fundamental rights found to be deeply rooted in our legal tradition." * * * The court has observed that "[t]his approach tends to rein in the subjective elements that are necessarily present in due-process judicial review."

Aalim, at ¶ 16.

Inarguably, citizens in the State of Ohio have a fundamental right, deeply rooted in the Nation's history and tradition, implicit in the concept of ordered liberty, to be free from multiple punishments for a single criminal act.[12]

Implicit in this understanding of due process is the concept of fundamental fairness. The Supreme Court explains,

> ***Fundamental Fairness***
>
> Next, we address Aalim's fundamental-fairness due-process argument. As the United States Supreme Court has observed, "[f]or all its consequence, 'due process' has never been, and perhaps can never be, precisely defined." * * * **Due process is a flexible concept that varies depending on the importance attached to the interest at stake and the particular circumstances under which the deprivation may occur.** * * * "Applying the Due Process Clause is therefore an uncertain enterprise which must discover what 'fundamental

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[11] Aka, *Aalim* II.

[12] To be clear, this Court takes no umbrage with sentencing *enhancements* like firearm specifications. Only that they be applied just once for each viable predicate offense.

> fairness' consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake." * * * (what process satisfies Article I, Section 16 of the Ohio Constitution "depends on considerations of fundamental fairness in a particular situation") * * *

Aalim, at ¶ 22.

In the matter at bar, the importance of the interest at stake is manifest and the deprivation of liberty is substantial. Due-process rights are applicable to criminal offenders through the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

In the context of criminal proceedings, the term "due process" " 'expresses the requirement of "fundamental fairness," a requirement whose meaning can be as opaque as its importance is lofty.' " *Id.* at ¶ 23. In evaluating "fundamental fairness" "[a] court's task is to ascertain what process is due in a given case, * * * while being true to the core concept of due process . . . to ensure orderliness and fairness." *Id.*

Applying this concept to the application of R.C. 2929.14(B)(1)(g) requires us to ask this question: does imposing multiple firearm specifications on offenders who commit a single crime with a gun promote "orderliness and fairness"? How about imposing multiple firearm specifications on only some offenders who commit a single crime with a gun but not others?

Put another way, does not the fundamental fairness prong of substantive due process demand that the deprivation of liberty for a single criminal act result in a single prison sentence, even if that single sentence is enhanced by a firearm specification?

I say it does.

Accordingly, R.C. 2929.14(B)(1)(g) cannot survive a constitutional challenge based upon its infringement on offender's state and federal due process rights.

STATE v. LOGAN[13] IS IN CONFLICT WITH *BOLLAR*

As noted by the Defendant, there appears to be a genuine conflict between the holding in *Bollar* and a much more recently decided case, *Logan.* Interestingly, both cases made their way to the Ohio Supreme Court to resolve inter-district conflicts on the interpretation of firearm specification statutes and their respective impact on Ohio's felony sentencing scheme.

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[13] 2025-Ohio-1772.

In *Logan,* a decision authored by Chief Justice Kennedy, the issue was whether a conviction for a firearm specification, which requires imposition of a mandatory prison term, required imposition of a prison term for the underlying, predicate offense. Some Ohio appellate districts reasoned it did, meaning that the trial court was required to sentence an offender to prison for the firearm specification *and* sentence the offender to prison on the underlying offense.

Other appellate districts concluded that a prison sentence on the predicate offense was not mandatory and as such, a trial court could sentence an offender to prison on the firearm specification, but impose a community control sanction on the predicate offense.

The *Logan* decision resolved the issue thus,

> R.C. 2929.13(F)(8) requires a trial court to impose a prison sentence on an offender convicted of a felony offense that has a corresponding firearm specification.

Logan, supra, syllabus.

Also, interestingly, and also like *Bollar,* the Supreme Court in *Logan* did not address a constitutional challenge, but instead, resolved the statutory interpretation upon which the district level appellate courts disagreed.

> This case presents a straightforward question of statutory interpretation, which we review de novo.

Logan, at ¶ 8.

The heart of the *Logan* decision is contained between paragraphs 9 and 16. It begins, in relevant part, as follows,

> We begin by distinguishing between offenses and firearm specifications. In Ohio, all offenses are statutory. * * * R.C. 2901.03 states that "[n]o conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code," R.C. 2901.03(A), and "[a]n offense is defined when one or more sections of the Revised Code state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty," R.C. 2901.03(B).

Logan, at ¶ 9.

The Supreme Court went on to confirm the nature of a firearm specification, as it did in *Bollar,*

> In *State v. Ford*, we recognized that "**a firearm specification is a penalty enhancement, not a criminal offense**." * * * (holding that a sentencing entry was a final, appealable order even though it did not address every firearm specification because firearm specifications are not separate criminal offenses).

Logan, at ¶ 10, emphases added.

And,

> We have also explained that "**[t]he purpose of a 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."

Logan, at ¶ 11.

Again, this axiom is consistent with the dicta in *Bollar,* though in *Bollar,* which dealt with a very similar issue, the *Ford* case was given short shrift.

> Thus, Ford does not speak directly to the issue before us today: whether an offender can be sentenced on a firearm specification that accompanied a merged count. Because Ford does not address that issue, our analysis in that case is irrelevant to our application of the plain language of R.C. 2929.14(B)(1)(g) in this case.

Bollar, at ¶ 18.

Regardless, the concerning language in *Logan* as argued by the Defendant herein, to which this Court agrees, follows,

> . . . the legislature knows how to expressly refer to specifications. For example, R.C. 2929.14(B)(1)(a) outlines sentences for "specification[s]" that are "described in section 2941.141, 2941.144, or 2941.145 of the Revised Code." In contrast, the General Assembly specified that R.C. 2929.13(F)(8) applies to offenses. **Had the General Assembly intended to require a sentence for only firearm specifications, it would have written the statute differently**: "the trial court shall impose a prison term . . . for . . . [a specification] . . . imposed pursuant to [R.C. 2929.14(B)(1)(a)] for having the firearm." The legislature did not pass that statute, and we cannot amend it by judicial fiat.

But in fact, is not this exactly what the *Bollar* decision mandates? That an offender convicted of certain felony offenses with firearm specifications must be sentenced to (at least one) additional firearm specification, even when the underlying offense is merged? So, in essence, *Bollar* says that the trial court must sentence certain offenders "for only firearm specifications" in some situations but *Logan* says that, ". . . had the General Assembly intended to require a sentence for only firearm specifications, it would have written the statute differently," and that the legislature, ". . . **did not pass that statute** . . ."[14]

So, the obvious question becomes . . . which is it?

Now to be sure, one could argue that the answer is "both." That is, in *Bollar*, the Supreme Court interpreted R.C. 2929.14(B)(1)(g) and in *Logan*, the Supreme Court interpreted R.C. 2929.14(F)(8). The former requires stacking of multiple firearm specifications, even for merged offenses. The latter requires imposition of a prison term for any felony conviction where the offender is also convicted of a firearm specification.

Makes sense, except for the last two sentences in *Logan* at ¶ 16. Recall what the Supreme Court said in *Logan*, a much more recent case, about imposing a prison sentence for a firearm specification only,

> Had the General Assembly intended to require a sentence for only firearm specifications, it would have written the statute differently . . . **The legislature did not pass that statute**, and we cannot amend it by judicial fiat.

Logan, at ¶ 16, emphasis added.

This Court finds it difficult to reconcile *Bollar* and *Logan*, when read *in pari materia*, because *Logan* says that the legislature did not pass a statute that requires imposition for a firearm specification only, but that is in fact exactly what *Bollar* mandates "by judicial fiat." The Supreme Court in *Bollar* was very clear interpreting R.C. 2929.14(B)(1)(g), holding that merged firearm specifications, where there is no conviction for the predicate offense, require a prison term for at least one of the merged firearm specifications.

So, at least according to *Bollar*, the Supreme Court determined that the legislature did in fact pass a statute that requires a prison sentence for a firearm specification only, despite what the more recent decision, *Logan*, says.

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[14] Emphasis added.

Given the above, and the difficulty of harmonizing the holdings in *Bollar* and *Logan*, the *Logan* decision at a minimum undercuts and puts in question the propriety of the *Bollar* decision.

IV. CONCLUSION

Whether examined under the state or federal constitutions, Ohio Revised Code §2929.14(B)(1)(g) is facially unconstitutional because it is violative of double jeopardy as expressed by the doctrine of merger, violates citizens' rights to equal protection under the laws, and runs roughshod over offenders' fundamental fairness due process rights.

In addition, the *Bollar* decision that interpreted R.C. 2929.14(B)(1)(g) is difficult to reconcile with the more recent decision reached in *Logan*.

As such, this Court hereby declares R.C. 2929.14(B)(1)(g) facially unconstitutional and will not apply its mandate at the time the Defendant is sentenced herein.

IT IS SO ORDERED.

JUDGE D. CHRIS COOK