

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 14AP-516 (C.P.C. No. 14CR-2172)
[J.T.S.],	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

---

D E C I S I O N

Rendered on March 24, 2015

---

*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for  
appellee.

*Yeura R. Venters*, Public Defender, and *Brooke M. Burns*, for  
appellant.

---

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Defendant-appellant, J.T.S., appeals from a judgment of the Franklin County Court of Common Pleas, convicting him of murder, in violation of R.C. 2903.12, and tampering with evidence, in violation of R.C. 2921.12. For the reasons that follow, we affirm the judgment of the trial court.

**I. FACTS AND PROCEDURAL HISTORY**

{¶ 2} The prosecutor recited the following operative facts at the April 23, 2014 hearing in juvenile court. On October 20, 2013, Blendon Township police responded to a report of suspicious activity it received from a staff member at a local group home for juvenile males. When officers arrived at the group home, the staff member informed

them that he had taken two of the residents, Jonathan Quarter and appellant, to Ridgewood Park earlier in the day. The staff member told police that he observed a white female in jogging attire enter a wooded jogging trail shortly after he had observed appellant heading in that same direction. About 20 minutes later, he saw appellant running from the path, and he noticed that appellant had a fresh bruise under his right eye and some scratches. When he asked appellant what had happened, appellant told him he had tripped.

{¶ 3} Appellant exhibited suspicious behavior upon his return to the group home. According to the staff member, appellant cried during a telephone call to his mother, then took a shower and changed his clothes. The responding officers proceeded to Ridgewood Park where they discovered a trail of blood on the jogging path leading them to the lifeless body of a white female, Jane Juergens. An autopsy report subsequently revealed that Juergens had been stabbed 26 times.

{¶ 4} Upon discovering Juergens' body, police immediately took appellant into custody and obtained a search warrant. After initially denying any wrongdoing, appellant admitted that he had argued with Juergens and stabbed her. Appellant told police that Juergens was still alive when he fled and that he discarded the knife he used in the assault as he ran from the scene. Forensic evidence confirmed the presence of Juergens' DNA on a knife recovered at the scene, as well as the presence of appellant's DNA under Juergens' fingernails.

{¶ 5} A complaint filed in the Franklin County Court of Common Pleas, Juvenile Division, alleged that appellant was delinquent for committing an act that would be murder if committed by an adult. The state filed a motion, pursuant to R.C. 2152.12(A), asking the juvenile court to relinquish jurisdiction of the matter and transfer the case to the general division of the Franklin County Court of Common Pleas. At the time of the offense, appellant was 16 years of age.

{¶ 6} A juvenile court judge conducted a hearing on April 23, 2014, at which appellant was represented by counsel. The parties presented the judge with a written stipulation that there was probable cause to believe that appellant committed the acts charged. The parties also represented to the court that appellant had agreed to enter a plea of guilty to the charge of murder once the juvenile court relinquished jurisdiction and

transferred the case to the general division. Following a colloquy with appellant, the juvenile court accepted the stipulation, granted the state's motion, and transferred the case to the general division "for criminal prosecution as an adult." (Apr. 25, 2014 Entry.)

{¶ 7} On April 29, 2014, a Franklin County Grand Jury indicted appellant on charges of murder, in violation of R.C. 2903.02, an unclassified felony, and tampering with evidence, in violation of R.C. 2921.12, a felony of the third degree. On May 8, 2014, appellant entered a plea of guilty to each of the charges in the indictment. On June 2, 2014, the trial court issued a judgment entry convicting appellant and sentencing him to a consecutive prison term of 15 years for murder and 3 years for tampering with evidence. The sentence also included three years of post-release control attendant to the conviction for tampering with evidence. Appellant filed a timely notice of appeal to this court on July 2, 2014.

## **II. ASSIGNMENTS OF ERROR**

{¶ 8} Appellant's assignments of error are as follows:

I. The Franklin County Juvenile Court erred when it transferred [J.T.S.]'s case to criminal court because it did so without obtaining a knowing, intelligent, and voluntary waiver of [J.T.S.]'s right to a probable cause determination.

II. The juvenile court erred when it transferred [J.T.S.]'s case to criminal court because Ohio's mandatory transfer statutes are unconstitutional in violation of a child's right to due process as guaranteed by the Fourteenth Amendment to the U.S. Constitution and Article I, Section 16, Ohio Constitution.

III. The juvenile court erred when it transferred [J.T.S.]'s case to criminal court because Ohio's mandatory transfer statutes violate a child's right to equal protection as guaranteed by the Fourteenth Amendment to the U.S. Constitution and Article I, Section 2, Ohio Constitution.

IV. The juvenile court erred when it transferred [J.T.S.]'s case to criminal court because Ohio's mandatory transfer statutes violate the prohibition against cruel and unusual punishments as guaranteed by the Eighth and Fourteenth Amendment to the U.S. Constitution and Article I, Section 9, Ohio Constitution.

V. [J.T.S.] was denied the effective assistance of counsel.

### III. LEGAL ANALYSIS

#### A. First Assignment of Error

{¶ 9} In his first assignment of error, appellant contends that the juvenile court erred when it transferred the case to adult court without first conducting a preliminary hearing to determine whether there was probable cause to believe that appellant committed the act charged in the complaint. The state counters that the parties stipulated to the existence of probable cause and that the transfer to adult court is mandated by statute upon a finding of probable cause. For the reasons that follow, we find that the juvenile court did not err when it determined that appellant's stipulation as to the existence of probable cause was a knowing, intelligent, and voluntary waiver of his right to a probable cause hearing.

{¶ 10} "The juvenile court has exclusive original jurisdiction to hear complaints alleging that a juvenile is a delinquent child by reason of having committed an offense that would be a crime if committed by an adult." *State v. Brown*, 10th Dist. No. 13AP-349, 2014-Ohio-314, ¶ 14, citing *State v. Lucas*, 10th Dist. No. 10AP-923, 2011-Ohio-3450, ¶ 19, citing *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599, ¶ 11, and R.C. 2151.23(A). A juvenile offender may not be tried as an adult unless the juvenile court relinquishes jurisdiction of the matter to an adult court. *State v. Hicks*, 10th Dist. No. 13AP-429, 2014-Ohio-1444, ¶ 8, citing *State v. Golphin*, 81 Ohio St.3d 543, 545 (1998).

{¶ 11} "R.C. 2152.12 establishes procedures for both mandatory and discretionary transfers of juvenile cases that allege conduct that would be criminal if engaged in by an adult." *Brown* at ¶ 14. Where a juvenile court purports to transfer a juvenile case to adult court without having complied with the proper procedures in R.C. 2152.12, the adult court proceeds in the absence of subject-matter jurisdiction, and any judgment entered by the adult court is a nullity and void ab initio. *Id.* at ¶ 29 (in the context of a discretionary bindover, the adult court is without jurisdiction to accept a juvenile's guilty plea where the juvenile court has failed to conduct an amenability hearing), citing *State v. Wilson*, 73 Ohio St.3d 40, 44 (1995).

{¶ 12} R.C. 2152.12 provides for the mandatory transfer of cases from juvenile court, in relevant part, as follows:

(A)(1)(a) After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the juvenile court at a hearing shall transfer the case if either of the following applies:

(i) The child was sixteen or seventeen years of age at the time of the act charged *and there is probable cause to believe that the child committed the act charged.*

(Emphasis added.)

{¶ 13} "The mandatory bindover provision of R.C. 2152.12(A) 'removes discretion from judges in the transfer decision' in situations specified in the statute and, if the statutory conditions have been met, requires the juvenile court to transfer a case to the general division of the common pleas court for prosecution of the alleged delinquent juvenile as an adult." *In re S.C.M.*, 10th Dist. No. 09AP-462, 2009-Ohio-6778, quoting *State v. Hanning*, 89 Ohio St.3d 86, 90 (2000). Juv.R. 30, entitled "Relinquishment of jurisdiction for purposes of criminal prosecution," states in relevant part:

(A) Preliminary hearing

In any proceeding where the court considers the transfer of a case for criminal prosecution, *the court shall hold a preliminary hearing to determine if there is probable cause to believe that the child committed the act alleged and that the act would be an offense if committed by an adult. The hearing may be upon motion of the court, the prosecuting attorney, or the child.*

(B) Mandatory transfer

*In any proceeding in which transfer of a case for criminal prosecution is required by statute upon a finding of probable cause, the order of transfer shall be entered upon a finding of probable cause.*

(Emphasis added.)

{¶ 14} Probable cause is not guilt beyond a reasonable doubt; it is evidence that raises more than a suspicion of guilt. *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, ¶ 16. This standard requires the juvenile court to " 'evaluate the quality of the evidence

presented by the state in support of probable cause *as well* as any evidence presented by the respondent that attacks probable cause.' " (Emphasis sic.) *Id.* at ¶ 43, quoting *State v. Iacona*, 93 Ohio St.3d 83, 93 (2001). Ordinarily, "[a] juvenile court's probable-cause determination in a mandatory-bindover proceeding involves questions of both fact and law." *Id.* at ¶ 51. A court of appeals will "defer to the trial court's determinations regarding witness credibility, but [shall] review de novo the legal conclusion whether the state presented sufficient evidence to demonstrate probable cause to believe that the juvenile committed the acts charged." *Id.*

{¶ 15} In this case, the parties stipulated that probable cause existed, and the juvenile court accepted the stipulation. As a result of the stipulation, the juvenile court granted the state's motion to relinquish jurisdiction and transferred the case to adult court.

{¶ 16} Appellant does not contend, by his first assignment of error, that a juvenile offender cannot waive his or her right to an evidentiary hearing on the issue of probable cause. Rather, appellant argues that the trial court erred when it accepted the parties' stipulation of probable cause without first addressing appellant personally in open court to determine whether he had knowingly, intelligently, and voluntarily waived his right to a probable cause hearing. More particularly, appellant claims that the juvenile court was required to personally address appellant in the manner described by the Supreme Court of Ohio in *State v. D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544.

{¶ 17} *D.W.* was a case involving discretionary transfer. In that case, the juvenile court did not hold an amenability hearing before transferring D.W. to adult court because the court mistakenly believed that a prior bindover negated the need for such a hearing. Nor did the juvenile court personally address D.W. to determine whether he intended to waive his right to an amenability hearing. D.W. subsequently pleaded guilty to the charges in adult court, and the court of appeals affirmed the conviction and sentence. The Supreme Court reversed the decision of the court of appeals and held as follows:

An amenability hearing under R.C. 2152.12(B)(3) may be waived provided (1) the juvenile, through counsel, expressly states on the record a waiver of the amenability hearing and (2) the juvenile court engages in a colloquy on the record with

the juvenile to determine that the waiver was made knowingly, voluntarily, and intelligently.

*Id.* at syllabus.

{¶ 18} In *D.W.*, the Supreme Court likened the waiver of an amenability hearing to the waiver of counsel. Juv.R. 3(D) sets forth the requirements for a child's waiver of counsel as follows:

Any waiver of the right to counsel shall be made in open court, recorded, and in writing. In determining whether a child has knowingly, intelligently, and voluntarily waived the right to counsel, the court shall look to the totality of the circumstances including, but not limited to: the child's age; intelligence; education; background and experience generally and in the court system specifically; the child's emotional stability; and the complexity of the proceedings. The Court shall ensure that a child consults with a parent, custodian, guardian, or guardian ad litem, before any waiver of counsel. However, no parent, guardian, custodian, or other person may waive the child's right to counsel.

{¶ 19} In *D.W.*, the Supreme Court determined that a juvenile court must exercise a similar degree of caution before accepting a child's waiver of an amenability hearing. *Id.* at ¶ 32. Appellant asks this court to extend the holding in *D.W.* to require the juvenile court, in the context of a mandatory transfer, to engage in a colloquy on the record with the juvenile to determine that the juvenile's waiver of a probable cause hearing is made knowingly, voluntarily, and intelligently. The state argues that the transcript of proceedings establishes that the juvenile court did, in fact, engage in a colloquy with appellant and made a determination that the stipulation represented a knowing, voluntary, and intelligent waiver of appellant's right to a probable cause hearing.

{¶ 20} Ohio courts have generally required a juvenile's waiver of a probable cause hearing to be knowing, intelligent, and voluntary. For example, in *State v. Talbott*, 7th Dist. No. 07 MA 225, 2008-Ohio-6300, the court held that an agreed judgment entry signed by the juvenile, his attorney, the judge, and the prosecutor was a knowing and voluntary waiver of the probable cause hearing. However, in *In re C.E.S.*, 11th Dist. No. 2013-L-118, 2014-Ohio-4296, the court held that a juvenile's waiver of a probable cause hearing in a parole revocation proceeding was invalid because the juvenile never appeared

in front of a judge or magistrate for the court to determine whether the waiver was knowing, intelligent, and voluntary.<sup>1</sup>

{¶ 21} In *State v. Johnson*, 10th Dist. No. 12AP-898, 2013-Ohio-2008, this court considered the validity of a juvenile's waiver of a probable cause hearing in the context of a mandatory bindover proceeding. In *Johnson*, the juvenile complaint charged 17-year-old Clayvon Johnson with aggravated robbery committed while Johnson was in possession of a firearm. This court recognized that under such circumstances, Johnson's "[b]indover to adult court was mandatory if there existed probable cause to believe he committed one or more of those crimes." *Id.* at ¶ 5. At the preliminary hearing, Johnson and his counsel elected not to contest probable cause and entered into a stipulation to that effect. *Id.* at ¶ 6. Prior to accepting the stipulation, the juvenile court personally addressed Johnson as follows:

JUDGE BROWNE: Seventeen years old. And sir, I'm gonna need to ask a number of questions for you so you can stand up, please. All right. Mr. Johnson, I think first of all it's very important for you to understand that you have not been tried and you have not been found guilty of anything at this point, do you understand that?

CLAYVON JOHNSON: Yes, ma'am.

JUDGE BROWNE: The purpose of the hearing today was to determine where your trial would take place, juvenile court or adult court, do you understand?

CLAYVON JOHNSON: Yes, ma'am.

JUDGE BROWNE: Sir, do you understand that if I accepted your stipulation to probable cause in these cases, the cases automatically go to adult court?

---

<sup>1</sup> In the context of an adjudicatory hearing, Juv.R. 29(D) prescribes the "[i]nitial procedure upon entry of an admission" as follows:

The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

- (1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;
- (2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.

CLAYVON JOHNSON: Yes, ma'am.

JUDGE BROWNE: That's your understanding?

CLAYVON JOHNSON: Yes, ma'am.

JUDGE BROWNE: You talked over the pros and cons with Mr. Cicero?

CLAYVON JOHNSON: Yes, ma'am.

JUDGE BROWNE: And you're asking this Court to accept your stipulation to probable cause?

CLAYVON JOHNSON: Yes ma'am.

JUDGE BROWNE: And then you understand that you'll still have a trial over in adult court—

CLAYVON JOHNSON: Yes, ma'am.

JUDGE BROWNE: And then you'll be found either innocent or guilty at that point and that's your wish?

CLAYVON JOHNSON: Yes ma'am.

JUDGE BROWNE: All right. Thank you. You may be seated. All right. The Court will accept the stipulation of probable cause and dismiss 812, 5057, 11448, and 6403. And when will you have paperwork for me to sign, Ms. Muncy?

PROSECUTOR MUNCY: We'll have it early this afternoon.

*Id.* at ¶ 8.

{¶ 22} Johnson subsequently pleaded guilty in adult court to aggravated robbery with a three-year firearm specification. In his appeal to this court, Johnson alleged that the juvenile court violated his due process rights by accepting the stipulation as to the existence of probable cause "without insuring that it was being made knowingly, intelligently, and voluntarily." *Id.* at ¶ 2. After reviewing the juvenile court transcript, this court concluded that "[t]he record does not support the assertion that Johnson was not knowingly, intelligently and voluntarily waiving his right to an evidentiary hearing to establish probable cause to believe he committed one or more aggravated robberies while

armed with a firearm." *Id.* at ¶ 9. In reaching our conclusion, we noted that "[t]he judge in the juvenile court carefully explained the purpose of the bindover hearing and the procedure to be followed since Johnson wanted to stipulate." *Id.* at ¶ 8. Accordingly, we overruled appellant's assignment of error and affirmed his conviction and sentence. *Id.* at ¶ 10.

{¶ 23} The colloquy in this case is remarkably similar to the colloquy we reviewed in *Johnson*. During the April 23, 2014 proceedings, the following exchange occurred:

[THE COURT]: [J.T.S.], it has been stipulated that you are giving up certain rights in this case. And I understand that you want to stipulate to a finding of Probable Cause, which means that your case will be transferred to the General Division of Common Pleas Court.

[APPELLANT]: Yes, ma'am.

[THE COURT]: Is that correct?

[APPELLANT]: Yes, ma'am.

[THE COURT]: Did you understand that you're giving up the right to have a hearing on this matter?

[APPELLANT]: Yes, ma'am.

[THE COURT]: Okay. Have you ever been treated for any mental or emotional issues or problems?

[APPELLANT]: Yes, ma'am.

[THE COURT]: When was that?

[APPELLANT]: A while ago.

[THE COURT]: Are you currently under the influence of any drugs or medication that will prevent your understanding these proceedings today?

[APPELLANT]: No, ma'am.

[THE COURT]: Do you have any questions that have not been answered by your defense counsel?

[APPELLANT]: No ma'am.

[THE COURT]: Did you have an adequate opportunity to read and discuss this proceeding today with your attorney?

[APPELLANT]: Yes, ma'am.

[THE COURT]: Okay. And are you – and what is your date of birth?

[APPELLANT]: May 22nd, 1997.

[THE COURT]: May 22nd, 1997. Okay. You understand that in giving up the right to this hearing today you give up the right to make the State prove by – the Probable Cause to transfer this case today?

[APPELLANT]: Yes, ma'am.

[THE COURT]: Okay. And you want the Court to accept your stipulation today?

[APPELLANT]: Yes, ma'am.

(Apr. 23, 2014 Tr. 9-10.)

{¶ 24} Following this exchange, the juvenile court judge asked appellant's counsel if he had anything else to add, at which time counsel requested the court accept the stipulation. Thereupon, the court made the following finding on the record:

The Court finds that he has knowingly and intelligently waived his right to have a Probable Cause hearing and that he has been represented by counsel. He's had sufficient time to discuss his case and all possible defenses in this case with his counsel. And the Court will relinquish jurisdiction and grant the State's motion to relinquish jurisdiction in this matter.

(April 23, 2014 Tr. 12.)

{¶ 25} Our review of the transcript reveals no support for appellant's contention that his stipulation of probable cause was not a knowing, intelligent, and voluntary waiver of his right to a probable cause hearing. The court personally addressed appellant and informed him that by entering into a stipulation, he was giving up the right to require the state to prove probable cause. The court also explained to appellant that the case would be transferred to adult court as a consequence of the stipulation. The court asked

appellant if he had any questions about the proceedings and whether he had the opportunity to discuss the proceedings with his counsel. Appellant responded unequivocally that he had no other questions and that he had an opportunity to discuss the proceedings with counsel. Thus, the transcript contains a clear indication that appellant understood he had a right to a probable cause hearing and that he intended to waive that right.

{¶ 26} Appellant argues that his disclosure that he had received treatment for an unspecified mental or emotional issue or problem "[a] while ago" suggests that he was presently incapable of making a knowing, intelligent, and voluntary waiver of his right to a probable cause determination. (Apr. 23, 2014 Tr. 9.) We disagree.

{¶ 27} In our view, appellant's response to the court's query suggests only that appellant had been treated for an unspecified mental or emotional issue in the past. Appellant did not state that he was currently suffering from any emotional or mental health issues that would affect his ability to understand the rights he was waiving by entering into the stipulation. Consequently, appellant's disclosure that he had received treatment for an unspecified mental or emotional issue "[a] while ago" fails to suggest that appellant was not competent to waive his right to a probable cause hearing. We note additionally that appellant responded in the negative when asked if he was currently under the influence of any drugs or medication that would prevent him from understanding the proceedings.

{¶ 28} Moreover, even if we were to conclude that appellant's response to the court's query permitted an inference that appellant presently suffered from "mental or emotional issues or problems," we note that the competency standard for waiving constitutional or statutory rights is the same as that for determining competency to stand trial. (Apr. 23, 2014 Tr. 9.) *State v. Williams*, 99 Ohio St.3d 439, 2003-Ohio-4164. A defendant is competent to stand trial if he has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him." *Godinez v. Moran*, 509 U.S. 389, 396 (1993), quoting *Dusky v. United States*, 362 U.S. 402 (1960). The Supreme Court of Ohio has cautioned that competency "must not be equated with mere mental or emotional

instability or even with outright insanity." *State v. Neyland*, 139 Ohio St.3d 353, 2014-Ohio-1914, ¶ 48, quoting *State v. Bock*, 28 Ohio St.3d 108, 110 (1986).<sup>2</sup>

{¶ 29} Though appellant insists that the court was obligated to make further inquiries "into what those mental issues or problems" were before accepting the stipulation, the Supreme Court has observed that a defendant's legal counsel is in the best position to determine whether a competency hearing or psychiatric examination is needed. (Appellant's Brief, 14.) *Williams* at ¶ 65. Appellant's counsel never raised an issue regarding appellant's competency during the juvenile court proceedings. Appellant also makes no argument in this appeal that he suffered from a mental or emotional issue that prevented the adult court from finding that he made a knowing, intelligent, and voluntary waiver of his constitutional and statutory rights upon entering a plea of guilty. In short, appellant's disclosure that he had received treatment for an unspecified mental or emotional issue "[a] while ago" did not raise a legitimate issue of appellant's competency. Thus, the juvenile court was not obligated to make further inquiry regarding appellant's competency before accepting the stipulation of the existence of probable cause.

{¶ 30} Appellant further contends that the court was obligated to provide appellant with a legal definition of probable cause before accepting his stipulation. We disagree.

{¶ 31} We did not require the juvenile court in *Johnson* to provide the juvenile with a legal definition of probable cause and we feel no need to impose such an obligation upon the juvenile court in this case. There is no indication in the record that appellant had an inadequate opportunity to consult with legal counsel or that counsel failed to adequately explain the proceedings to his client. Appellant was present in the courtroom as the prosecutor recited the relevant facts for the court. The court proceeded to inform appellant that he had the right to require the state to prove that probable cause existed, and appellant indicated that he understood. It was reasonable for the juvenile court to rely on appellant's representation in open court that he had the opportunity to discuss the

---

<sup>2</sup> Appellate review of a trial court's determination of competency to stand trial is an abuse of discretion standard. *Neyland* at ¶ 61; *State v. Vrabel*, 99 Ohio St.3d 184, 2003-Ohio-3193, ¶ 7.

proceedings with his legal counsel and that he understood the right he was waiving by entering into a stipulation.<sup>3</sup>

{¶ 32} The same reasoning applies to appellant's contention that the trial court was required to ask him if he understood his right to demand discovery from the state. The juvenile court was entitled to rely upon appellant's representation that he had an opportunity to discuss the proceedings with his counsel and his negative response to the court's query: "Do you have any questions that have not been answered by your defense counsel?" (Apr. 23, 2014 Tr. 10.) Moreover, as the state points out, there is nothing in this record to suggest that the state was uncooperative with discovery.

{¶ 33} Based upon the foregoing, we find that appellant's stipulation of the existence of probable cause was the result of a knowing, intelligent, and voluntary waiver of his right to a probable cause hearing. Accordingly, the trial court did not err when it accepted the stipulation and transferred the case to the adult court for criminal prosecution. Appellant's first assignment of error is overruled.

### **B. Constitutional Challenges to Ohio's Mandatory Bindover Procedure**

{¶ 34} In appellant's second assignment of error, appellant argues that Ohio's mandatory bindover laws violate a juvenile offender's right to due process of law as guaranteed by the Fourteenth Amendment to the U.S. Constitution and Article I, Section 16 of the Ohio Constitution. In his third assignment of error, appellant contends that Ohio's mandatory bindover laws violate a juvenile offender's right to equal protection of the law as guaranteed by the Fourteenth Amendment to the U.S. Constitution and Article I, Section 2 of the Ohio Constitution. In appellant's fourth assignment of error, appellant argues that Ohio's mandatory bindover laws violate the prohibition against cruel and unusual punishment guaranteed by the Eighth Amendment to the U.S. Constitution and Article I, Sections 9-10 of the Ohio Constitution.

---

<sup>3</sup> In the context of an adult's waiver of the right to a trial by jury, the Supreme Court of Ohio has stated that "[t]here is no requirement for a trial court to interrogate a defendant in order to determine whether he or she is fully apprised of the right to a jury trial." *State v. Jells*, 53 Ohio St.3d 22 (1990), paragraph one of the syllabus. See also *State v. Bays*, 87 Ohio St.3d 15, 20 (1999) ("a defendant need not have a complete or technical understanding of the jury trial right in order to knowingly and intelligently waive it"); *State v. Lomax*, 114 Ohio St.3d 350, 2007-Ohio-4277, ¶ 48 (trial court is not required to employ "magic words, or a prolonged colloquy" in order to obtain a valid waiver of a defendant's right to a jury trial).

{¶ 35} As a preliminary matter, we note that several other appellate districts have considered and rejected each of appellant's constitutional challenges to Ohio's mandatory bindover statute. *See, e.g., State v. Anderson*, 2d Dist. No. 25689, 2014-Ohio-4245; *State v. Kelly*, 3d Dist. No. 14-98-26 (Nov. 18, 1998); *State v. Lane*, 11th Dist. No. 2013-G-3144, 2014-Ohio-2010; *State v. Quarterman*, 9th Dist. No. 26400, 2013-Ohio-3606 (Carr, J., concurring); *State v. Mays*, 8th Dist. No. 100265, 2014-Ohio-3815. However, the issue is one of first impression in this district.

{¶ 36} Additionally, appellant failed to interpose a constitutional challenge to the mandatory bindover procedures either in the juvenile court or the general division of the common pleas court. Ordinarily, " ' "an appellate court will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court." ' " *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, ¶ 15, quoting *State v. Awan*, 22 Ohio St.3d 120, 122 (1986), quoting *State v. Childs*, 14 Ohio St.2d 56 (1968). The Supreme Court has admonished courts to limit application of the plain error doctrine to cases "involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122-23 (1997).

{¶ 37} "Plain error does not exist unless it can be said that but for the error, the outcome of the trial would clearly have been otherwise." *State v. Moreland*, 50 Ohio St.3d 58, 62 (1990), *rehearing denied*, 51 Ohio St.3d 704, *cert. denied*, 498 U.S. 882. Pursuant to Crim.R. 52(B), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." "Crim.R. 52(B) states only that a reviewing court 'may' notice plain forfeited errors; a court is not obliged to correct them." *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002).

{¶ 38} Nonetheless, this court has discretion to consider a forfeited constitutional challenge to a statute where the rights and interests involved may warrant it. *See*

*Anderson* at ¶ 64-65. Accordingly, we will consider appellant's constitutional challenges to Ohio's mandatory transfer statutes under the plain error standard. *Id.*<sup>4</sup>

**C. Due Process of Law (Second Assignment of Error)**

{¶ 39} In his second assignment of error, appellant argues that Ohio's mandatory transfer statute violates a juvenile defendant's right to due process of law.

{¶ 40} In *Anderson*, the juvenile offender argued that R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violated due process inasmuch as the mandatory nature of the bindover prohibited juvenile courts from "making any individualized decision about the appropriateness of transferring particular cases to adult court." *Id.* at ¶ 64. In making this argument, the juvenile offender claimed that the failure to provide for an amenability hearing violated the holding of the United States Supreme Court in *Kent v. United States*, 383 U.S. 541 (1966). *Anderson* at ¶ 67. In *Anderson*, the Second District Court of Appeals distinguished *Kent* and held as follows:

*Anderson* contends that mandatory transfer and Ohio's failure to provide for an amenability hearing violate the due process holding in *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), which outlined eight factors to be considered in transfer proceedings before a juvenile court orders bindover. *However, other appellate districts have rejected this argument, based on the fact that Kent involved discretionary, rather than mandatory transfer. See State v. Lane*, 11th Dist. Geauga No. 2013-G-3144, 2014-Ohio-2010, ¶ 57, citing *State v. Kelly*, 3d Dist. Union No. 14-98-26, 1998 WL 812238, \*19–20 (Nov. 18, 1998). Thus, "because the Kent factors were intended to address the problem of arbitrary decision-making and disparate treatment in discretionary bindover determinations, due process does not require use of these factors when the legislature has statutorily eliminated discretionary bindover determinations." *Id.*

In addition, we have previously held that mandatory bindover does not violate due process. *State v. Agee*, 133 Ohio App.3d 441, 448-449, 728 N.E.2d 442 (2d Dist.1999), citing *State v. Ramey*, 2d Dist. Montgomery No. 16442, 1998 WL 310741 (May 22, 1998). In this regard, we reasoned in *Ramey* that

---

<sup>4</sup> But see *Quarterman*, 2014-Ohio-4034, wherein the Supreme Court recently elected not to address a constitutional challenge to Ohio's mandatory bindover procedure because appellant had not raised the issue in the trial court and had not properly briefed the issue on appeal. *Id.* at ¶ 16.

"[b]ecause amenability to treatment as a juvenile is not an issue determinative of transfer when the juvenile court finds that the underlying offense is one that [the statute] defines as an offense of violence, the juvenile is not thereafter entitled to a hearing to determine his amenability to treatment. Thus, no due process violation is demonstrated by the lack of an 'amenability' hearing \* \* \*."

*Id.* at ¶ 67-68.

{¶ 41} In *Kelly*, the Third District Court of Appeals determined that an amenability hearing using the *Kent* factors is not a fundamental right. The court concluded that substantive due process did not prevent the General Assembly from removing the *Kent* factors from consideration where the juvenile is charged with certain serious offenses, "provided that removal is rationally related to a legitimate governmental purpose." *Id.* The court went on to hold that the mandatory bindover statute is rationally related to the legitimate governmental objective of deterring violent juvenile crime. *Id.*

{¶ 42} Appellant's due process challenge in this case is grounded upon the same right of due process recognized by the United States Supreme Court in *Kent*. For the reasons set forth in *Anderson* and the cases cited therein, we reject appellant's contention that R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violate a juvenile offender's right to due process of law.<sup>5</sup> Accordingly, appellant's second assignment of error is overruled.

#### **D. Equal Protection Under the Law (Third Assignment of Error)**

{¶ 43} Appellant argues in his third assignment of error that R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violate the Equal Protection Clause of both the United States and Ohio Constitutions inasmuch as the statutory bindover scheme creates a bright-line, age-based classification that is not rationally related to the state's legitimate objectives. The state acknowledges that where certain serious offenses are concerned, transfer is

---

<sup>5</sup> We note that the Supreme Court of Illinois rejected a similar due process challenge to its statutory scheme that excludes from the definition of "delinquent minor" any person at least 15 years of age and who is charged with certain serious crimes of violence. *People v. J.S.*, 103 Ill.2d 395 (1984). The Supreme Court of Illinois held that, with regard to a juvenile charged with murder, the statute satisfied constitutional requirements because the different treatment of such a juvenile "is rationally based on the age of the offender and the threat posed by the offense to the victim and the community because of its violent nature and frequency of commission." *Id.* at 404.

mandatory for those 16 or older, discretionary for offenders who are 14 or 15 years of age, and is not permitted at all for offenders who are less than 14 years of age.

{¶ 44} The juvenile offender in *Anderson* made the very same equal protection argument that appellant makes herein. The *Anderson* court disposed of the argument as follows:

Although *Anderson* contends that there is little difference between children who are younger than 16 and those who are older than 16, he does not support this contention with any type of empirical evidence. In the absence of such evidence, we cannot find that the distinction the legislature made is unconnected to its aims. As the court in *Lane* observed, "the purpose of this legislation is to protect society and reduce violent crime by juveniles. \* \* \* Contrary to appellant's argument, juveniles who are 14 or 15 are markedly different from those who are 16 or 17 in many ways, *e.g.*, in terms of physical development and maturity. \* \* \* Thus, the legislature's decision to single out older juvenile homicide offenders, who are potentially more street-wise, hardened, dangerous, and violent, is rationally related to this legitimate governmental purpose."

*Id.* at ¶ 75, quoting *Lane* at ¶ 67.

{¶ 45} Here, as was the case in *Anderson*, appellant did not raise the equal protection argument in the trial court, and, consequently, he submitted no empirical evidence in support of his equal protection argument. Moreover, we agree with the reasoning of the other appellate districts on this issue: that the General Assembly's decision to single out older juvenile homicide offenders, who are potentially more street-wise, hardened, dangerous, and violent, is rationally related to this legitimate governmental purpose of protecting society and reducing violent crime by juveniles. *Anderson; Lane*. Accordingly, we overrule appellant's third assignment of error.

#### **E. Cruel and Unusual Punishment (Fourth Assignment of Error)**

{¶ 46} In appellant's fourth assignment of error, appellant argues that Ohio's mandatory bindover laws violate the Eighth Amendment prohibition against cruel and unusual punishment. We disagree.

{¶ 47} The Eighth Amendment to the U.S. Constitution states that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments

inflicted." In this instance, appellant received the mandatory prison term for murder of 15 years to life. However, pursuant to R.C. 2967.13(A), a person sentenced to life imprisonment for murder becomes eligible for parole at the expiration of the minimum term. *State ex rel. Davis v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. No. 93814, 2010-Ohio-1066.

{¶ 48} In *Anderson*, the Second District adopted the viewpoint of the Eleventh District Court of Appeals in *Lane*, stating " '[m]andatory bindover does not equate to punishment any more than the mere prosecution of an adult in the common pleas court constitutes punishment.' " *Anderson* at ¶ 79, quoting *Lane* at ¶ 73, quoting *Quarterman*, 2013-Ohio-3606, at ¶ 16.<sup>6</sup> The *Lane* court rejected the Eighth Amendment argument as follows:

The prohibition against cruel and unusual punishment by its very terms applies only to punishments. The word "punishment" has been defined as follows: "In criminal law[, a]ny \* \* \* penalty \* \* \* or confinement inflicted upon a person by authority of the \* \* \* sentence of a court, for some crime or offense committed by him \* \* \*." Black's Law Dictionary 1398 (4th Ed. Rev.1968). Further, "[m]andatory bindover does not equate to punishment any more than the mere prosecution of an adult in the common pleas court constitutes punishment." *Quarterman, supra*, at ¶ 16 (J. Carr, concurring).

Because appellant's mandatory bindover was not a penalty or confinement inflicted on him pursuant to a sentence of the juvenile court, it was not a punishment, and appellant's mandatory bindover did not constitute cruel and unusual punishment.

*Id.* at ¶ 73-74.

{¶ 49} For the reasons set forth in *Anderson*, we hold that R.C. 2152.12 does not mandate punishment, and, therefore, the statute does not violate the Eighth Amendment prohibition against cruel and unusual punishment. *See also Mays* at ¶ 47 (Ohio's mandatory bindover statutes do not violate the Eighth Amendment because they "do not govern the sentencing of juveniles, but instead govern whether a juvenile case must be

---

<sup>6</sup> Affirmed without reaching the merits in *Quarterman*, 2014-Ohio-4034.

transferred to adult court for adjudication"). Moreover, appellant has not cited any case law holding that the Eighth Amendment prohibits a mandatory life sentence, *with the possibility of parole*, for a juvenile convicted of murder.<sup>7</sup>

{¶ 50} For the foregoing reasons, appellant's fourth assignment of error is overruled.

#### **F. Fifth Assignment of Error**

{¶ 51} In appellant's fifth assignment of error, appellant contends that his trial counsel provided him with ineffective assistance inasmuch as trial counsel failed to raise the statutory and constitutional arguments raised by appellant herein. To prevail on a claim of ineffective assistance of counsel, appellant must demonstrate (1) defense counsel's performance was so deficient that he was not functioning as the counsel guaranteed under the Sixth Amendment to the U.S. Constitution, and (2) defense counsel's errors prejudiced appellant, depriving him of a trial whose result is reliable. *State v. Cochran*, 10th Dist. No. 12AP-73, 2012-Ohio-4077, ¶ 12, citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph two of the syllabus. "In Ohio, a properly licensed attorney is presumed competent." *State v. Taylor*, 10th Dist. No. 14AP-166, 2014-Ohio-3574, ¶ 11, citing *Vaughn v. Maxwell*, 2 Ohio St.2d 299, 301 (1965). Thus, the burden of demonstrating ineffective assistance of counsel is on the party asserting it. *Id.*, citing *State v. Smith*, 17 Ohio St.3d 98, 100 (1985). Additionally, in fairly assessing counsel's performance, there is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *State v. Conway*, 109 Ohio St.3d 412, 2006-Ohio-2815, ¶ 101. Strategic choices made after substantial investigation "will seldom if ever" be found wanting. *Strickland* at 681.

---

<sup>7</sup> The cases out of the United States Supreme Court that have overturned a juvenile's prison sentence on Eighth Amendment grounds have focused on the state's mandatory sentencing laws, not the state's mandatory bindover provisions. See, e.g., *State v. Long*, 138 Ohio St.3d 478, 2014-Ohio-849, ¶ 8 ("As applied to juveniles, the United States Supreme Court has held that the Eighth Amendment prohibits the imposition of the death penalty and the imposition of life without the possibility of parole for non-homicide offenses"), citing *Roper v. Simmons*, 543 U.S. 551 (2005); *Miller v. Alabama*, 132 S.Ct. 2455 (2012) (Eighth Amendment barred mandatory sentences of life without parole on juveniles who commit capital murder); *Graham v. Florida*, 560 U.S. 48 (2010) (Eighth Amendment requires that juvenile offenders sentenced to life in prison for non-homicide crimes have a meaningful chance to obtain parole).

{¶ 52} With regard to appellant's claim that his counsel performed deficiently in permitting appellant to stipulate to the existence of probable cause, appellant has not convinced this court that counsel performed poorly. As a result of the plea agreement reached with the state, appellant received less than the maximum sentence for his crimes. Moreover, given the operative facts of the case as recited by the prosecutor, there is nothing in the record to suggest that a hearing would have yielded a different result. As noted above, appellant admitted his involvement to police, appellant's DNA was found under the victim's fingernails, and police found the murder weapon in the area where appellant told them he had discarded it.

{¶ 53} Similarly, with respect to appellant's claim that counsel provided ineffective assistance by failing to raise a constitutional challenge to Ohio's mandatory bindover laws either in the juvenile court or in the general division, as noted above, there have been several appellate districts that have previously rejected the same constitutional challenges made by appellant herein. Thus, the decision to forgo such arguments may have been a strategic choice made after substantial investigation. *Id.* Moreover, even if we were to conclude that counsel performed poorly by failing to preserve constitutional claims for purposes of appeal, we have elected to consider appellant's constitutional arguments in this appeal, and we have determined that R.C. 2152.12(A) is not unconstitutional. Consequently, we cannot say that the deficiencies in counsel's performance, if any, prejudiced appellant in a meaningful way.

{¶ 54} For the foregoing reasons, appellant's fifth assignment of error is overruled.

#### **IV. CONCLUSION**

{¶ 55} Having overruled each of appellant's assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

KLATT and DORRIAN, JJ., concur.

---