

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2022-1069
	:	
Plaintiff-Appellant,	:	
	:	On Appeal from the Franklin
vs.	:	County Court of Appeals
	:	Tenth Appellate District
DAMON L. TAYLOR,	:	Case No. 19AP-396
	:	
Defendant-Appellee.	:	

MEMORANDUM IN RESPONSE
OF DEFENDANT-APPELLEE, DAMON L. TAYLOR

G. Gary Tyack (0017524)
Franklin County Prosecuting Attorney
Seth L. Gilbert* (0072929)
**Counsel of Record*
Chief Counsel, Appellate Division
373 South High Street, 13th Floor
Columbus, Ohio 43215
Telephone: (614) 525-3555
Facsimile: (614) 525-6103
sgilbert@franklincountyohio.gov

Counsel for Plaintiff-Appellant

Dave Yost (0056290)
Attorney General of Ohio
Benjamin M. Flowers* (0095284)
**Counsel of Record*
Solicitor General
Samuel C. Peterson (0081432)
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
Telephone: (614) 466-8980
Facsimile: (614) 466-5087
benjamin.flowers@OhioAGO.gov

Counsel for Amicus Curia Ohio Attorney
General Dave Yost

Kort Gatterdam* (0040434)
**Counsel of Record*
Erik P. Henry (0085155)
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: (614) 365-4100
Facsimile: (614) 365-9145
gatterdam@carpenterlipps.com

Counsel for Defendant-Appellee

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
STATEMENT OF SUBSTANTIAL CONSTITUTIONAL QUESTIONS AND MATTER OF GREAT PUBLIC OR GENERAL INTEREST	1
STATEMENT OF THE CASE AND FACTS	2
RESPONSE TO FIRST, SECOND, AND THIRD PROPOSITIONS OF LAW: PURSUANT TO <i>STATE V. SMITH</i> , 167 OHIO ST.3D 423, 2022-OHIO-274, 194 N.E.3D 297, COMPLICITY TO PURPOSEFUL MURDER UNDER R.C. 2903.02(A) IS NOT AN EQUIVALENT “ACT CHARGED” TO FELONY MURDER BY FELONIOUS ASSAULT UNDER R.C. 2903.02(B) FOR PURPOSES OF TRANSFERRING JURISDICTION FROM JUVENILE COURT TO ADULT COURT...	6
I. The Tenth District’s straightforward application of <i>Smith</i>	6
II. Complicity-based bindovers.	8
III. Scope of adult court’s jurisdiction.	9
IV. Type of jurisdiction.....	11
RESPONSE TO FOURTH AND FIFTH PROPOSITIONS OF LAW: A JUVENILE’S SIXTH AMENDMENT RIGHT TO COUNSEL ATTACHES WHEN THE STATE OF OHIO INITIATES ADVERSARIAL PROCEEDINGS AGAINST THE JUVENILE, AND WHEN THE JUVENILE ASSERTS AND EXERCISES THE SIXTH AMENDMENT RIGHT TO COUNSEL, SUBSEQUENT STATEMENTS MADE TO LAW ENFORCEMENT MUST BE SUPPRESSED.	11
CONCLUSION.....	15
CERTIFICATE OF SERVICE	16

**STATEMENT OF SUBSTANTIAL CONSTITUTIONAL QUESTIONS AND
MATTER OF GREAT PUBLIC OR GENERAL INTEREST**

In *State v. Smith*, 167 Ohio St.3d 423, 2022-Ohio-274, 194 N.E.3d 297, ¶ 29, this Court stated clearly that “a juvenile court may transfer a case or a matter to adult court, but the adult court’s jurisdiction is limited to the acts charged for which probable cause was found.” The State of Ohio subsequently asked for reconsideration of this ruling, which this Court denied on April 12, 2022. *04/12/2022 Case Announcements*, 2022-Ohio-1163. The State’s appeal in the instant case constitutes a *second* request to reconsider *Smith*—all within a year of its issuance.

Here, a complaint filed in juvenile court charged Defendant-Appellee Damon L. Taylor with purposeful murder contrary to R.C. 2903.02(A); however, the juvenile court only found probable cause for complicity to purposeful murder contrary to R.C. 2923.03(A) as it relates to R.C. 2903.02(A). *State v. Taylor*, 10th Dist. Franklin No. 19AP-396, 2022-Ohio-2877, 194 N.E.3d 867, ¶ 19. In adult court, the indictment charged Taylor with (1) aggravated murder contrary to R.C. 2903.01, (2) purposeful murder, and (3) felony murder by felonious assault contrary to R.C. 2903.02(B)—all with no mention of complicity. *Taylor*, 2022-Ohio-2877, ¶ 19. A jury ultimately found Taylor guilty solely of felony murder. *Id.*

On appeal, the Ohio Court of Appeals for the Tenth Appellate District (“Tenth District”) concluded that “complicity to purposeful murder under R.C. 2903.02(A) is not an equivalent ‘act charged’ to felony murder by felonious assault under R.C. 2903.02(B) for purposes of transferring jurisdiction.” *Taylor*, 2022-Ohio-2877, ¶ 22. The Tenth District applied *Smith* in a straightforward manner, ultimately vacating Taylor’s conviction for felony murder. *Id.*

The State has now asked this Court to accept jurisdiction for its appeal and to ultimately reverse the Tenth District. However, this Court has already spoken and resolved the central issue here, and the State’s position constitutes nothing more than a refusal to accept this Court’s

holding in *Smith*. This Court's opinions are binding precedent; as such, they are intended to clarify the law and to ensure uniformity. Granting review on a newly-settled matter does nothing but sow confusion and discord amongst Ohio's litigants and courts. It would also signal that this Court's decisions are no steadier than a whim.

In addition to the jurisdiction issue, the Tenth District held that Taylor's statements to law enforcement on December 12, 2016, should have been suppressed pursuant to the Sixth Amendment to the U.S. Constitution because of a violation of Taylor's right to counsel. *Taylor*, 2022-Ohio-2877, ¶ 32. Law enforcement blatantly ignored Taylor's previous exercise of his Fifth and Sixth Amendment rights knowing full well he was represented by counsel. Again, the Tenth District applied long-standing case law, such as *Montejo v. Louisiana*, 556 U.S. 778 (2009), in reaching this decision. Suppression decisions are generally fact-specific, and nothing regarding the Tenth District's decision suggests that this case requires further attention by this Court to further its Sixth Amendment jurisprudence.

For these and the other reasons more fully stated below, this Court should not accept jurisdiction for the State's appeal.

STATEMENT OF THE CASE AND FACTS

I. Juvenile Court Proceedings

Before the juvenile court, the State presented several witnesses and stipulations. The parties stipulated that the deceased, 18-year-old Enrique Straughter, was discovered at 2170 Lavenham Road in Reynoldsburg and died of multiple gunshot wounds; that from a swab taken from a gun rail from a Smith & Wesson pistol, Straughter's blood was a major component; that 3 casings found at the scene were fired by the same firearm; that a bullet recovered from Straughter's head was a spent 40 caliber bullet; that Michael Jackson purchased a 40 caliber

Smith & Wesson handgun in 2014 and that a Chevrolet automobile found at the scene belonged to Mr. Jackson, who reported it stolen on April 15, 2016, and reported his handgun was in the car; that Taylor's mother reported him missing on April 15, 2016, after he failed to appear at school; and that in the search web history of a phone not belonging to Taylor but still recovered from 2131 Commons Road South, there were searches regarding removing gunshot residue made at 10:38 a.m. on April 15, 2016. (R.134, 04/27/2017 Hrg. Tr. at 19–25)

The crime scene detective, Brian Marvin, found spent shell casings, unfired rounds, a piece of a gun, a key fob, and sandals. (R.138, 04/26/2017 Hrg. Tr. at 30–31) The detective also seized numerous cell phones and laptops from an apartment one block from the scene. (*Id.* at 40–45) The detective found an image with a steering wheel and a gun, a chat between two individuals discussing the homicide, and an image of Taylor with a caption below it saying “they tryna take me for murda.” (*Id.* at 52–53, 56–57, 62–63) In the chat, one person said: “I left my gun in the car and someone shot someone with it and took off.” (*Id.* at 66) The person further wrote about the gun, “[i]t was my stepdads he left it in the car and then I left the doors unlocked.” (*Id.*) The detective further testified how, on one of the phones belonging to a friend of Taylor's, there was an Internet search about how to remove gunshot residue. (*Id.* at 67–70)

A forensic scientist confirmed the blood on the gun rail being consistent with Straughter, and further testified that Taylor's DNA could not be excluded as a contributor to the profile from the rail at 19 of 23 loci. (R.134, 04/27/2017 Hrg. Tr. at 27–38, 84–85) Ms. Simon testified that these results did not confirm who committed a crime or fired at shot, but instead indicated who may or may not have touched something at some point in time. (*Id.* at 38–39)

Detective Tim Doersam testified regarding his interrogation of Taylor. (*Id.* at 91–94) Taylor said he drove the Chevrolet automobile and parked it where it was found. (*Id.* at 97) He

rendezvoused with Damion Wade, who was supposed to sell marijuana to Straughter before going to a club; Wade left to find Straughter and they all returned to the car to smoke marijuana at around 11:30 p.m. (*Id.* at 97–99, 101, 103–04, 118) Taylor then decided to leave to retrieve his sister, Dasha Taylor, but when he came back about 20 seconds later, he saw Wade shoot Straughter. (*Id.* at 97–98, 104, 118–19) Taylor indicated that Wade returned to Dasha’s, had the firearm belonging to Taylor’s stepfather (Michael Jackson) as well as some money, and said that he had robbed Straughter. (*Id.* at 97–98, 107–08) Taylor further told the detective that he had left the gun in the car where at first it was on the front seat but he then moved it to the backseat. (*Id.* at 108–09) Moreover, Taylor mentioned how, after the shooting, the gun was put in a trashcan in the complex and how Dasha researched removing gunshot residue for Wade. (*Id.* at 110, 113–14)

Based on the foregoing, the Juvenile Court found probable cause that Taylor committed the offense of complicity to murder contrary to R.C. 2923.03(A) as it relates to R.C. 2903.02(A). (R.100, 16JU014766, Judgment Entry) The Juvenile Court did not find that Taylor actually pulled the trigger, but instead found Taylor held the gun at issue less than 1 hour before the murder occurred, thus explaining the DNA, and found him in the vicinity of the murder. (*Id.*)

II. Suppression Issue

On April 15, 2016, after Taylor’s mother reported him missing, Reynoldsburg police detectives located Taylor at 2131 Common Road South. (R.371, 03/14/2018 and 03/15/2018 Motion Hearing Transcript at 11–14) Thereafter, the detectives transported Taylor to the police department to be interrogated. (*Id.* at 20) Taylor indicated a desire to speak with a lawyer; later, his lawyer arrived, advised the detectives that Taylor would not consent to be interviewed, and told them that if something else came up in the future, to give him a call as he would be continuing to represent Taylor. (*Id.* at 73–74, 148–49)

Over the next 8 months, police continued to investigate Straughter's death and continued to communicate with Taylor's lawyer. (*Id.* at 31–32, 36, 77–78) During that time, Taylor's lawyer advised both the detectives and the prosecuting attorney that Taylor would not consent to an interview or proffer and that all communication regarding Taylor needed to come through him (Taylor's lawyer). (*Id.* at 76, 78, 128–29, 150–51)

On December 12, 2016, Reynoldsburg police filed charges against Taylor for murder and then arrested him. (*Id.* at 82, 98) Following his arrest, the police brought Taylor to the police department where he executed a *Miranda* waiver form and discussed the case. (*Id.* at 82, 86–89) No one from law enforcement communicated with Taylor's lawyer before this interrogation began despite his lawyer's continued representation and request to be notified. (*Id.* at 80–81, 84)

Before trial, Taylor filed motions seeking to suppress several pieces of evidence including statements made on December 12, 2016. After an evidentiary hearing (R.371, 03/14/2018 and 03/15/2018 Motion Hearing Transcript), on November 5, 2018, the trial court issued a decision granting in part and denying in part Taylor's motions. While the trial court suppressed statements Taylor made on April 15, 2016, the trial court refused to suppress the December 12, 2016 statements. (R.224, Order and Entry at 10–13) The State subsequently introduced Taylor's December 12th statements at trial. (T.p. 1232–39, 1246–48, 1251–55)

III. Trial and Appeal

On May 31, 2018, the Franklin County Grand Jury returned an indictment charging Taylor with one count of aggravated murder contrary to R.C. 2903.01, one count of purposeful murder contrary to R.C. 2903.02, and one count of felony murder, with felonious assault as the predicate, contrary to R.C. 2903.02. (R.5, Indictment) On April 8, 2019, trial began and on April 16, 2019, the jury returned a verdict finding Taylor not guilty of aggravated murder and of

purposeful murder, but guilty of felony murder and the accompanying firearm specification. (R.361, Amended Judgment Entry) On May 28, 2019, the trial court sentenced Taylor to a prison sentence of fifteen (15) years to life, plus an additional consecutive 3 years as to the firearm specification. (R.361, Amended Judgment Entry)

On direct appeal, on August 18, 2022, in a 2-1 decision, the Tenth District vacated Taylor's murder conviction because the trial court did not possess jurisdiction to convict Taylor of felony murder. *Taylor*, 2022-Ohio-2877, ¶ 22. In a 3-0 decision, the Tenth District also held that Taylor's statements to law enforcement on December 12, 2016, should have been suppressed under the Sixth Amendment to the U.S. Constitution. *Id.* at ¶ 32.

RESPONSE TO FIRST, SECOND, AND THIRD PROPOSITIONS OF LAW: PURSUANT TO *STATE V. SMITH*, 167 OHIO ST.3D 423, 2022-OHIO-274, 194 N.E.3D 297, COMPLICITY TO PURPOSEFUL MURDER UNDER R.C. 2903.02(A) IS NOT AN EQUIVALENT "ACT CHARGED" TO FELONY MURDER BY FELONIOUS ASSAULT UNDER R.C. 2903.02(B) FOR PURPOSES OF TRANSFERRING JURISDICTION FROM JUVENILE COURT TO ADULT COURT.

I. The Tenth District's straightforward application of *Smith*.

In *Smith*, the juvenile court found probable cause to believe that the accused committed 4 offenses with no firearm specifications, but did not find probable cause for 4 other offenses. *Smith*, 2022-Ohio-274, ¶¶ 9–10. The juvenile court transferred the case to adult court, where the grand jury returned an indictment for all 8 offenses and included firearm specifications on several of these offenses. *Id.* at ¶ 12.

After entering a guilty plea, the accused argued on appeal "that the adult court lacked subject-matter jurisdiction to consider charges related to acts for which the juvenile court had found no probable cause," i.e., 4 of the offenses and the firearm specifications. *Id.* at ¶¶ 13–14. In other words, the accused argued "that the language in the statute requires a finding of probable cause as to an act charged before that charge may be transferred to adult court." *Id.* at ¶ 25.

Meanwhile, the State argued “that once a juvenile court has made a determination that probable cause exists for any charge in a juvenile-court complaint . . . the state is free to seek and a grand jury is free to return an indictment against the juvenile on any charge, even those for which no probable cause was found by the juvenile court.” *Id.*

This Court rejected the State’s argument and instead agreed with the accused. This Court first stated that “[o]ne of the first and most critical determinations a juvenile court must make in evaluating whether to relinquish jurisdiction to an adult court—in both mandatory- and discretionary-bindover cases—is whether probable cause exists to believe that the child committed *the act charged*.” *Id.* at ¶ 27 (emphasis in original). This Court noted that the General Assembly repeatedly used in the Ohio Revised Code the word “act” in the singular, and therefore “does not connote a group of acts or a course of conduct.” *Id.* “Therefore, a juvenile court may transfer a case or a matter to adult court, but the adult court’s jurisdiction is limited to the acts charged for which probable cause was found.” *Id.* at ¶ 29.

Applied to the facts of *Smith*, this Court concluded that the adult court lacked subject-matter jurisdiction over 4 of the counts and the firearm specifications “because the juvenile court found that the acts related to those counts and specifications were not supported by probable cause and thus the juvenile court could not have made an amenability determination with regard to those acts.” *Id.* at ¶ 43.

In *Taylor*, the Tenth District considered and applied *Smith* in straightforward manner. The Tenth District first noted how “R.C. 2152.02 requires mandatory bindover and transfer of jurisdiction of ‘the act charged’ if there is a finding of probable cause on that act.” *Taylor*, 2022-Ohio-2877, ¶ 17. The Tenth District subsequently noted that “as it relates to this case, the question presented by *Smith* is whether complicity to purposeful murder under R.C. 2903.02(A)

is an equivalent ‘act charged’ to felony murder by felonious assault under R.C. 2903.02(B) for purposes of transferring jurisdiction of Taylor from the juvenile division to the general division of the Franklin County Court of Common Pleas.” *Taylor*, 2022-Ohio-2877, ¶ 19. And the Tenth District simply answered this question in the negative. *Id.* at ¶ 22.

II. Complicity-based bindovers.

The State claims the Tenth District’s decision “casts doubt on all complicity-based bindovers,” citing the Tenth District’s discussion of *State v. Hanning*, 89 Ohio St.3d 86, 2000-Ohio-436, 728 N.E.2d 1059. (State’s MISJ at 2; *see also* State’s MISJ at 9) The State also contends that the Tenth District’s decision conflicts with *State v. Bond*, 8th Dist. Cuyahoga No. 110520, 2022-Ohio-1246. (State’s MISJ at 3)

On October 17, 2022, the Tenth District issued a Memorandum Decision where it addressed both of the State’s arguments. First, the Tenth District stated that “our use of *Hanning* was clear dicta and wholly supplemental and explanatory to our decision in *Taylor*, which rests exclusively on *Smith*. Our opinion used *Hanning* to explain the Supreme Court’s decision in *Smith* rather than the other way around, as the state contends.” *State v. Taylor*, 10th Dist. Franklin No. 19AP-396, Memorandum Decision, Oct. 17, 2022, ¶ 7.

Second, the Tenth District found its decision *Taylor* did not conflict with *Bond* for several reasons, most notably that “in *Bond* the juvenile defendant waived her right to a probable cause hearing in juvenile court, and the court bound over all the offenses—including the underlying homicide offenses.” *Taylor*, Oct. 17, 2022 Memorandum Decision, ¶ 6. By contrast, the decision in *Taylor* “rested upon the fact that the juvenile court held a probable cause hearing but did not find that the state had presented probable cause to demonstrate that the appellant was the principal offender.” *Id.* Additionally, in *Bond*, the Eighth District acknowledged how *Smith* was “inapposite to our decision in this case because all charges brought in juvenile court were

found to have probable cause and were transferred.”” *Id.* at ¶ 8 (quoting *Bond*, 2022-Ohio-1246, ¶ 10, n.2). Thus, the *Smith* dictate that no adult court has jurisdiction over acts not bound over by the juvenile court “was not even present in *Bond*.” *Id.*

For these reasons, there is no conflict between *Taylor* and *Bond*, and this Court should decline jurisdiction.

III. Scope of adult court’s jurisdiction.

The State argues “it is unclear whether the dispositive fact under *Smith* is no finding of probable cause or a finding of no probable cause.” (State’s MISJ at 2; *see also* State’s MISJ at 10–11) The State asks this Court to “accept jurisdiction and hold that once a juvenile court finds probable cause (and, for discretionary bindovers, also finds non-amenable), the adult court has jurisdiction over any offense satisfying R.C. 2151.23(H) *unless* the offense was charged in juvenile court and found to be unsupported by probable cause.” (State’s MISJ at 3) Additionally, the State asks this Court to address “the proper standard under R.C. 2151.23(H).” (State’s MISJ at 3; *see also* State’s MISJ at 10–11)

However, this Court in *Smith* already addressed these arguments. For example, in *Smith*, the syllabus clearly states: “A finding of probable cause is a jurisdictional prerequisite under R.C. 2152.12 to transferring a child to adult court for prosecution of an act charged—A juvenile court may transfer a case or a matter to adult court, but the adult court’s jurisdiction is limited to the acts charged for which probable cause was found.” *Smith*, 2022-Ohio-274, syllabus. Thus, an express finding of no probable cause is not required under *Smith*; instead, there must be a juvenile court finding of probable cause for the act charged for the adult court to possess jurisdiction for that act. And in this instant case, the juvenile court only found probable cause for one offense—complicity to purposeful murder.

In *Smith*, this Court also directly addressed R.C. 2151.23(H) and stated the following:

Once an act is transferred, R.C. 2152.12(I) specifically states, the juvenile court must discontinue “all further proceedings pertaining to the act charged * * *, and the case then shall be within the jurisdiction of the court to which it is transferred as described in division (H) of section 2151.23 of the Revised Code.” **When the case is finally adjudicated by the adult court, under R.C. 2151.23(H) there are three situations in which a child may be convicted of a crime that is different from the offense transferred by the juvenile court:** the child may be convicted (1) of an offense that is the same degree or a lesser degree of the offense that was the basis of the transfer, (2) of an offense that is a lesser included offense of the offense that was the basis of the transfer, or (3) “*for the commission of another offense that is different from the offense charged.*” (Emphasis added.) R.C. 2151.23(H).

R.C. 2151.23(H) thus sets forth the jurisdiction of the adult court by describing the adult court’s “jurisdiction subsequent to the transfer.” It does not authorize jurisdiction over whatever charges the adult court independently determines should arise from the underlying course of criminal conduct that was the basis for the complaint in the juvenile court. R.C. 2151.23(H).

The phrase “another offense that is different from the offense charged” is but one of three parts of the statutory scheme of R.C. 2151.23(H) modifying the phrase “offense that was the basis of the transfer.” This language gives adult courts **flexibility in resolving cases** by allowing them to accept a plea to or convict the defendant of an offense that is either a lesser degree of, a lesser included offense of, or an offense different from the offense charged that was rooted in the offense that was the basis of the transfer.

Smith, 2022-Ohio-274, ¶¶ 33–35 (emphasis added). Thus, according to *Smith*, R.C. 2151.23(H) applies **at the end of the case** in adult court, **not at the beginning** at the time of the grand jury indictment. This Court offered an example applying this concept—an adult court could accept a plea for reckless homicide on a transferred felony-murder charge since reckless homicide is not a lesser included offense of felony murder and would therefore be an offense different from felony murder. *Id.* at ¶ 35 n.4. The Tenth District here adhered to *Smith*, concluding “that complicity to purposeful murder under R.C. 2903.02(A) is not an equivalent ‘act charged’ to felony murder by felonious assault under R.C. 2903.02(B) for purposes of transferring jurisdiction of Taylor from

the juvenile division to the general division of the Franklin County Court of Common Pleas.” *Taylor*, 2022-Ohio-2877, ¶ 22.

IV. Type of jurisdiction.

The State asks this Court to “accept jurisdiction to clarify that R.C. 2151.23(H)’s reference to ‘jurisdiction’ refers not to subject-matter jurisdiction, but rather to jurisdiction over the case. As such, any errors under the statute render the judgment voidable, not void, and must be properly preserved.” (State’s MISJ at 4; *see also* State’s MISJ at 11–12)

In *Smith*, this Court found that the adult court lacked subject-matter jurisdiction over specific counts, not the entire case. *Smith*, 2022-Ohio-274, ¶ 43. The State, in essence, is asking this Court to reconsider its remedy for the error found in *Smith*. However, this Court’s remedy in *Smith* was clear and to the point, and does not need further “clarity” as alleged by the State.

The State also argues that Taylor waived any objection here to the improper indictment and therefore forfeited all but plain error. (State’s MISJ at 4, 11) However, “[b]ecause subject-matter jurisdiction involves a court’s power to hear a case, the issue can never be waived or forfeited and may be raised at any time.” *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 10. Therefore, as this matter involves the subject-matter jurisdiction, the issue cannot be waived or forfeited.

RESPONSE TO FOURTH AND FIFTH PROPOSITIONS OF LAW: A JUVENILE’S SIXTH AMENDMENT RIGHT TO COUNSEL ATTACHES WHEN THE STATE OF OHIO INITIATES ADVERSARIAL PROCEEDINGS AGAINST THE JUVENILE, AND WHEN THE JUVENILE ASSERTS AND EXERCISES THE SIXTH AMENDMENT RIGHT TO COUNSEL, SUBSEQUENT STATEMENTS MADE TO LAW ENFORCEMENT MUST BE SUPPRESSED.

The Sixth Amendment to the United States Constitution provides, “[i]n all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defense.” The Sixth Amendment’s right to counsel is made applicable to the states through the

Due Process Clause of the Fourteenth Amendment of the United States Constitution. *Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980).

It is well established that “once the adversary judicial process has been initiated, the Sixth Amendment guarantees a defendant the right to have counsel present at all ‘critical’ stages of the criminal proceedings.” *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009). According to the U.S. Supreme Court, “[i]nterrogation by the State is such a stage.” *Id.* However, a defendant can waive the Sixth Amendment right to counsel “so long as relinquishment of the right is voluntary, knowing, and intelligent.” *Id.*

In this case, the Tenth District concluded that on December 12, 2016, “Taylor’s Sixth Amendment right to counsel was certainly effective at the time he was interrogated.” *Taylor*, 2022-Ohio-2877, ¶ 29. The Tenth District noted the detective’s testimony at the suppression hearing where the detective acknowledged a juvenile complaint being filed *prior* to Taylor’s arrest. *Id.* The Tenth District also determined the adversarial proceedings against Taylor commenced when the State approved of the detective’s request to file a charge against Taylor. *Id.* Moreover, the Tenth District found that Taylor asserted his right to counsel in April 2016, “that his trial counsel had been dealing with both prosecutors and the police on Taylor’s behalf for the entire 8-month period preceding Taylor’s arrest and interrogation on December 12,” and that the detective intentionally chose not to contact Taylor’s counsel. *Id.* at ¶ 30. Finally, the Tenth District noted, under the totality of the circumstances, that Taylor’s *Miranda* waiver was not enough to waive Taylor’s Sixth Amendment rights in part because “[h]ad police respected Taylor’s right to counsel, the interrogation would not have commenced until after Taylor’s attorney had been given a chance to consult with his client.” *Id.* at ¶ 31.

In asking this Court to accept jurisdiction, the State first relies on the time-stamp of the

juvenile complaint reading 9:21 p.m. on December 12, 2016, and claims this constitutes the time when Taylor’s Sixth Amendment rights attached. (State’s MISJ at 6) However, the record belies the State’s position.

At the suppression hearing, Detective Tim Doersam testified as follows:

Q. Okay. Subsequently, on December 12 of 2016, was the Defendant arrested?

A. Yes.

Q. And at that point in time was he actually charged with the homicide, charged with the murder?

A. Yes.

Q. Okay. And was he brought down to Reynoldsburg Police Department to be interviewed?

A. Yes.

Q. And processed?

A. Yes.

(R.371, 03/14/2018 and 03/15/2018 Motion Hearing Transcript at 32 (emphasis added)) On cross-examination, Det. Doersam answered “correct” when asked: “But you went down, you filed the charges, you arrested Mr. Taylor and you took him to Reynoldsburg.” (*Id.* at 82) Thus, Det. Doersam **clearly stated** that at the time of Taylor’s arrest, Taylor had been charged.

The interview with Taylor at the police department subsequently began at 11:16 a.m. (*Id.* at 32–33) The interview with Taylor lasted several hours; thereafter, the officers transported Taylor to the Franklin County Juvenile Detention Center where Taylor was admitted at 3:10 p.m. (R.2, 16JU014766, Admission/Filing Sheet) According to the Admission/Filing Sheet completed at the time of Taylor’s admission to the Detention Center, Taylor had already been charged with murder under R.C. 2903.02(A), further supporting the Tenth District’s conclusion that charges had been filed against Taylor prior to his arrest. (*Id.*)

The Tenth District further noted that “if the complaint had not already been approved and filed at the time Taylor was arrested and interrogated, both the arrest and the interrogation would have been improper under R.C. Chapter 2935.” *Taylor*, 2022-Ohio-2877, ¶ 29 n.5. The Tenth

District correctly held that the State could not evade “the requirements of the Constitution because it failed to perform its duty and thereby arrested and interrogated a defendant without statutory authority—the very idea turns due process upside down.” *Id.*

The State claims that “R.C. 2935.03 and R.C. 2935.04 permit warrantless arrests” and that the complaint filed here on the same day of the arrest satisfied the “without unnecessary delay” requirement of R.C. 2935.05. (State’s MISJ at 6) However, the cases the State relies upon for this proposition are easily distinguishable. For example, in *State v. Davie*, 80 Ohio St.3d 311, 311–13, 319–21, 1997-Ohio-341, 686 N.E.2d 245, the defendant was arrested approximately one hour after the offense of murder had taken place, and the affidavit describing the offense was taken before the trial court the following morning. And in *State v. Hill*, 64 Ohio St.3d 313, 313–15, 321, 1992-Ohio-43, 595 N.E.2d 884, 6 days after the alleged offense occurred, the defendant went voluntarily to the police station where he made several incriminating statements including being present for a murder, which prompted his arrest; charges were filed the day after his arrest. In the instant case, the offense at issue took place on April 15, 2016, and law enforcement personnel did not arrest Taylor until almost 8 months later on December 12, 2016. Further, unlike in *Hill*, Taylor was clearly already under arrest at the time of the interrogation on December 12, 2016.

The State further argues that Taylor waived the right to counsel and that the Tenth District’s conclusion otherwise conflicts with precedent. (State’s MISJ at 7) During the April 15, 2016 interrogation, Taylor repeatedly stated he wanted his lawyer present and would not speak until his lawyer was present. *Taylor*, 2022-Ohio-2877, ¶ 6. Taylor’s lawyer ultimately arrived at the police station and informed the detectives that Taylor would not consent to be interviewed. *Id.* In the subsequent 8 months while the police continued their investigation, Taylor’s counsel

advised the detectives and the prosecutor that Taylor would not consent to an interview or proffer. *Id.* At the suppression hearing, Det. Doersam admitted that after April 15, 2016, he knew that Taylor was represented by an attorney, admitted that he had subsequent contacts with that attorney, that no one ever told him that Taylor no longer had representation as of December 12, 2016, and that he believed he had no reason to call Taylor’s attorney unless Taylor specifically requested him to do so. *Id.* at ¶¶ 7, 30. Under the totality of *these* circumstances and the facts specific to *this case*, including “the fact that Detective Doersam and the state had already filed the charge and chose not to notify Taylor’s counsel in the first instance” and “[g]iven that Taylor’s counsel had already informed all the state’s representatives of his involvement and that Taylor would not voluntarily be speaking with them,” the Tenth District concluded that “we simply cannot conclude that under these circumstances Taylor’s waiver of his right to *counsel* can be deemed knowing, voluntary, and intelligent, even if his waiver of his right to *remain silent is.*” *Taylor*, 2022-Ohio-2877, ¶ 31. Again, this is a fact-specific ruling that does not require further attention by this Court to advance its Sixth Amendment jurisprudence.

CONCLUSION

This matter does not present substantial constitutional questions, and also is not a matter of great public or general interest. Accordingly, Defendant-Appellee Damon L. Taylor respectfully asks this Court to decline jurisdiction for this appeal.

Respectfully submitted,

/s Kort Gatterdam
Kort Gatterdam* (0040434)
**Counsel of Record*
Erik P. Henry (0085155)
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215

Telephone: (614) 365-4100
Facsimile: (614) 365-9145
gatterdam@carpenterlipps.com

Counsel for Defendant-Appellee

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Memorandum in Response was sent this October 31, 2022, via e-mail to Seth L. Gilbert, Chief Counsel, Appellate Division, 373 South High Street, 13th Floor, Columbus, Ohio 43215, sgilbert@franklincountyohio.gov, and to Benjamin M. Flowers, Solicitor General, Office of the Attorney General of Ohio, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215, benjamin.flowers@OhioAGO.gov.

/s Kort Gatterdam
Kort Gatterdam

050-1299-869545