

CASE NO. 2022-1053

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE FIRST DISTRICT COURT OF APPEALS
HAMILTON COUNTY, OHIO
19AP-396

STATE OF OHIO
Plaintiff-Appellant

v.

TIMOTHY WILLIAMS
Defendant-Appellee

**BRIEF OF AMICUS CURIAE CUYAHOGA COUNTY PROSECUTOR'S OFFICE IN SUPPORT
OF APPELLANT**

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INTRODUCTION

The Cuyahoga County Prosecutor's Office (CCPO) as Amicus Curiae in this case urges the Court to resolve this case through a straight-forward application of *State v. Burns*, Slip Op. No. 2022-Ohio-4606. In *Burns*, , this Court held that after a juvenile court relinquishes its jurisdiction and transfers a case for adult prosecution, the grand jury can consider offenses that are "rooted in the acts that were subject of the juvenile complaint." *Id.* at ¶13. Given that the First District decided the case below without the benefit of *Burns*, this Court's decision in *Burns* would serve as adequate grounds to support reversal here.

STATEMENT OF AMICUS CURIAE INTEREST

Prosecutor Michael C. O'Malley is the elected prosecutor in Cuyahoga County, Ohio. The CCPO has a public interest in the outcome as this case implicates how a juvenile court relinquishes its exclusive jurisdiction over a case. Furthermore, the CCPO has an interest in the effect of *State v. Smith*, 167 Ohio St.3d 423, 2022-Ohio-274 and *Burns* in that these cases impact the types of issues being raised in the courts of appeals. And in representing the State in *Burns*, the Cuyahoga County Prosecutor's Office moved to reconsider count 29 (a no probable cause count) and that motion remains pending as of the filing date here. Because of its statutory obligations under R.C. 309.08 to inquire into the commission of crimes committed within Cuyahoga County and its role in representing the State's interest in cases brought under Revised Code Chapter 2152, the State has a front line view of post-*Smith* litigation.

STATEMENT OF CASE AND FACTS

For purposes of this amicus brief, the Cuyahoga County Prosecutor's Office adopts the statement of the case and facts set forth by Appellant. But as the First District explained:

Williams was arrested and charged as a delinquent child with conduct that, if he were an adult, would have constituted murder in violation of R.C. 2903.02(A), murder in violation of R.C. 2903.02(B), and felonious assault in violation of R.C. 2903.11, all with two firearm specifications under R.C. 2941.141 and 2941.145. At the time of the alleged conduct, he was 16 years old.

The juvenile court held a mandatory bindover hearing under R.C. 2152.10(A)(1). At the hearing, the state presented testimony that Williams may have sold the firearm used in the offenses. The juvenile court determined that probable cause existed to support the murder and felonious-assault charges, and the firearm specifications. The juvenile court relinquished its jurisdiction and transferred the case to the Hamilton County Court of Common Pleas.

In the common pleas court, the state indicted Williams for 1.) murder in violation of R.C. 2903.02(A) with a firearm specification, 2.) murder in violation of R.C. 2903.02(B) with a firearm specification, 3.) felonious assault in violation of R.C. 2903.11(A)(1) with a firearm specification, and 4.) tampering with evidence in violation of R.C. 2921.12(A)(1).

Pursuant to a plea agreement, Williams pleaded guilty to count one, reduced to involuntary manslaughter, and count four, tampering with evidence. Relevant here, the trial court imposed a three-year sentence for the tampering-with-evidence charge consecutive to his sentence for count one.

Williams appeals his conviction for tampering with evidence.

State v. Williams, 1st Dist. Hamilton No. C-210384, 2022-Ohio-2022, ¶ 2-6.

LAW AND ARGUMENT

PROPOSITION OF LAW: The holding in *Smith* is limited to charges for which a juvenile court explicitly found there was no probable cause.

Another way to understand the State's proposition of law is that this Court's decision in *Burns* is grounds to reverse here, as the tampering with evidence charge is rooted in the

acts that were subject of the juvenile complaint. This is reason enough to reverse the decision below.

I. Statutory Provisions At Issue

Taking a step back, the State's proposition of law presents an opportunity to discuss how R.C. 2152.02 limits a juvenile court of exercising jurisdiction to adjudicate certain offenses after there is probable cause to believe a child has committed the act charged. In *Smith*, this Court construed R.C. 2152.12 and R.C. 2151.23(H) to hold it was error for a trial court to accept guilty pleas for specific offenses that the juvenile court previously found no probable cause, depriving a grand jury from indicting certain offenses. R.C. 2152.02 states:

(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.

R.C. 2152.12(I) provides:

The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court, 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.

R.C. 2151.23(H) states that upon transfer:

The court to which the case is transferred for criminal prosecution pursuant to that section has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court, subject to section 2152.121 of the Revised Code, *including, but not limited to* jurisdiction to accept a plea of guilty or another

plea authorized by Criminal Rule 11 or another section of the Revised Code and jurisdiction to accept a verdict and to enter a judgment of conviction pursuant to the Rules of Criminal Procedure against the child for the commission of the offense that was the basis of the transfer of the case for criminal prosecution, whether the conviction is for the same degree or a lesser degree of the offense charged, for the commission of a lesser-included offense, or for the commission of another offense that is different from the offense charged.

The directive that the adult court “hear and determine the case in the same manner as if the case originally had been commenced in that court” plainly indicates a clean slate. This point is reinforced by the grand jury guarantee under Article I, Section 10 of the Ohio Constitution. R.C. 2939.08 broadly defines the grand jury’s power to “inquire of and present all offenses committed within the county.” As this Court explained in *State v. Jackson*, 141 Ohio St.3d 171, 2014-Ohio-3707, 23 N.E.3d 1023, R.C. 2939.08 is not a jurisdictional statute. Accordingly, this Court adopted the rationale of *State v. Ahmed*, 8th Dist. Cuyahoga No. 84220, 2005-Ohio-2999 and concluded that when R.C. 2939.08 is read along with venue statutes, a grand jury is also empowered to inquire into crimes committed in other counties when those crimes were part of a course of conduct committed in Cuyahoga County. *Jackson*, at ¶ 131. Hypothetically speaking, if the juvenile court finds probable cause that a child committed the offense of murder, the grand jury, acting under its original authority, can return a no bill under R.C. 2939.23. The mere fact that the juvenile court found probable cause as to an act charged does not mean that twelve grand jurors must concur and indict the juvenile under R.C. 2939.20. Instead, the grand jurors must discharge their constitutional and statutory obligations “as if the case originally had been commenced in the [general division].” R.C. 2151.23(H). This includes independent subpoena power under R.C. 2939.12. Thus, it is conceivable that the grand jury could consider additional testimony and evidence not previously presented at the preliminary hearing before the juvenile court.

The view that the grand jury's power to inquire into crimes committed within the county should not be so limited is supported by the language R.C. 2151.23(H). The statute expressly grants jurisdiction to the general division to both: (1) accept a verdict, and (2) enter a judgment of conviction for, among other things, the commission of another offense that is different from the offense charged implicitly provides that the grand jury can return an indictment for offenses that are different from the charged offense(s).

Williams' appeal did not concern a count for which the juvenile court found probable cause lacking. Furthermore, when the juvenile court transferred jurisdiction, it relinquished its jurisdiction over Williams in its entirety under R.C. 2152.12(I).

II. The issue of whether a guilty plea to charges in the general division operates as a waiver as to defects in the juvenile court bindover hearing remains an open question.

The Seventh District Court of Appeals recently held a defendant who pleads guilty in the general division of the common pleas court waives the ability to contest the sufficiency and weight of the evidence presented at the probable cause hearing in the juvenile court. *State v. Zarlengo*, 2021-Ohio-4631, 182 N.E.3d 458, at ¶ 46 (7th Dist.). The appellate court's decision in *Zarlengo* was based on two recent decisions: this Court's 2020 decision in *Smith v. May*, 159 Ohio St.3d 106, 2020-Ohio-61, 148 N.E.3d 542 and the Fourth District's 2021 decision in *State v. Powell*, 4th Dist. Gallia No. 20CA3, 2021-Ohio-200. In *Powell*, the appellate court held that when the defendant entered a guilty plea, he waived any alleged constitutional violations unrelated to the entry of the guilty plea and nonjurisdictional defects in the proceeding. 2021-Ohio-200, ¶ 57.

In *State v. Zarlengo*, Sup. Ct. Case No. 2022-0106, the defendant urged this Court to resolve a conflict as to whether in juvenile bindover cases, guilty pleas in criminal court waive on direct appeal constitutional claims arising out of the underlying bindover hearing. Despite briefing the question on the merits, Zarlengo dismissed his own appeal before this Court. This leaves the issue an open question. Perhaps a guilty plea in case such as *Zarlengo* is analogous to waivers with respect to preliminary hearings in municipal courts when a case is bound over from the municipal court to the general division. See *State v. Spates*, 64 Ohio St.3d 269, 595 N.E.2d 351 (1992). But that question is for another day.

Under Rep.Op.R. 4.1, the parties cannot read into the Court's decision not to allow a discretionary appeal. Thus, as it did in *State v. Martin*, Slip Opinion No. 2022-Ohio-4175, this Court can decide the merits of the proposition of law accepted for review without making an express decision on the effect of Williams's guilty plea. See, *Martin*, footnote one.

III. Under this Court's analysis in *Burns*, Williams's tampering-with-evidence charge is rooted in the juvenile court complaint and the indictment including that charge was proper.

The First District decided this case without the benefit of this Court's recent opinion in *Burns*, Slip Op. No. 2022-Ohio-4606. In *Burns*, this Court held that after a juvenile court relinquishes its jurisdiction and transfers a case for adult prosecution, the grand jury can consider offenses that are "rooted in the acts that were subject of the juvenile complaint." *Burns*, at ¶13. Here the offense of tampering with evidence was rooted in the acts alleged in the juvenile court complaint and for which the juvenile court found probable cause. While the juvenile court made no express determination of any tampering with evidence charge, it heard evidence pertaining to Williams's sale of a firearm used in the offense. *Williams*, 1st Dist. Hamilton No. C-210384, 2022-Ohio-2022, ¶3. That said, the tampering with evidence

charge was rooted in the complaint and accepting Williams’s guilty plea was proper. Even without the decision in *Burns*, the general division’s ability to accept a plea to tampering with evidence is supported by R.C. 2151.23(H), which afforded the general division of the common pleas court:

The court to which the case is transferred for criminal prosecution pursuant to [R.C. 2152.12] has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court [...] *including, but not limited to* jurisdiction to accept a plea of guilty [...] and to enter judgment of conviction [...] for the commission of the offense that was the basis for transfer of the case for criminal prosecution, whether the conviction is for the same degree or *a lesser degree of the offense charged, for the commission of a lesser-included offense, or for the commission of another offense that is different from the offense charged.*”

As the Court recognized, “a case transferred from juvenile court may result in new indicted charges in the adult court when the new charges are rooted in the acts that were the subject of the juvenile complaint but were not specifically named in the individual acts transferred.”

State v. Burns, Slip Opinion No. 2022-Ohio-4606, ¶13.

IV. The decision in *Smith* still presents concern for future cases.

After *Smith*, prosecutors might have to appeal a juvenile court’s determination that probable cause lacked for a particular count more often than in the past. Sometimes a juvenile court’s determination of no probable cause to believe that a child committed some offenses in a multi-count complaint will pose concern if not appealed. Take for instance the appeal in *In re E.S.*, 8th Dist. Cuyahoga No. 110378, 2021-Ohio-4606. In that case, the juvenile court found there was no probable cause to believe E.S. committed involuntary manslaughter but found probable cause as to the predicate acts. In a hypothetical case sharing a similar procedural history but a parallel prosecution in both juvenile court and in the general division might raise double jeopardy or allied offense questions. See *State v.*

Mutter, 150 Ohio St.3d 429, 2017-Ohio-2928, 82 N.E.3d 1141 (holding that double jeopardy barred felony prosecution of ethnic intimidation where defendants pled to menacing by stalking offenses in municipal court and where the misdemeanor convictions and indictment arose from the same incident), *In re A.G.*, 148 Ohio St.3d 118, 2016-Ohio-3306, 69 N.E.3d 646 (holding that the allied offense statute applies to juvenile court proceedings).

Aside from the decision in *In re E.S.*, 8th Dist. Cuyahoga No. 110378, 2021-Ohio-4606 past cases highlight how courts might have applied incorrect legal standards. See, e.g., *In re C.G.*, 8th Dist. Cuyahoga No. 97950, 2012-Ohio-5286, footnotes one through three (affirming juvenile court decision, see discussion of procedure and eyewitness identification), *In re D.R.*, 8th Dist. Cuyahoga No. 110212, 2021-Ohio-3350, ¶51 (affirming juvenile court decision, noting court's "questioning" of eyewitness identification and police link of child to suspect vehicle in question), *In re J.R.*, 8th Dist. Cuyahoga No. 110241, 2021-Ohio-2272 (reversing because juvenile court failed to consider statement of victim who did not testify). And perhaps more concerning is how at least one appellate court has applied collateral estoppel to bindover hearings. *In re A.R.*, 10th Dist. Franklin No. 16AP-482, 2017-Ohio-1575.

These past cases are important because they highlight the idiosyncratic reasons why a juvenile court might conclude that there was no probable cause to believe a child committed a particular offense. Post-*Smith*, the State may be compelled to appeal such determinations more often than it did in the past. If a prosecutor need not be concerned that it must charge every count in a juvenile court complaint that it intends to present to a grand jury it could focus on the core of its case. That way a prosecutor can file its core charges in a juvenile court complaint. And if the juvenile court finds that probable cause exists that a child committed these core charges then the grand jury can consider any count rooted in

these core charges. Here, the tampering with evidence charges was rooted in the core charge.

CONCLUSION

As stated previously, the State's proposition of law is essentially rooted in this Court's decision in *Burns*. The CCPO urges this Court to reverse the First District's decision on the authority of *Burns*.

Respectfully submitted,

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