

CASE NO. 2022-1069

IN THE SUPREME COURT OF OHIO

APPEAL FROM  
THE TENTH DISTRICT COURT OF APPEALS  
FRANKLIN COUNTY, OHIO  
19AP-396

STATE OF OHIO  
Plaintiff-Appellant

v.

DAMON TAYLOR  
Defendant-Appellee

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

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## **INTRODUCTION AND STATEMENT OF AMICUS CURIAE INTEREST**

The Cuyahoga County Prosecutor's Office (CCPO) as Amicus Curiae 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 Tenth District decided *State v. Taylor*, 2022-Ohio-2877, 194 N.E.3d 867 (10th Dist.) without the benefit of *Burns*, this Court's decision in *Burns* would serve as adequate grounds to support reversal here as to propositions of law one through three.

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 exclusive jurisdiction over a case alleging delinquency. 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 raised in the courts of appeals. 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 CCPO has a front line view of post-*Smith* litigation.

In addition, as it relates to the fourth and fifth proposition of law, the CCPO has an interest in the adoption of the State's propositions of law.

## **STATEMENT OF THE CASE AND FACTS**

In this case, a complaint was filed on December 12, 2016, in the Franklin County Juvenile Court charging defendant-appellee Damon Taylor with Murder, in violation of R.C. 2903.02, with a three-year firearm specification. (R. 3, Franklin County No. 16 JU 14766,

Complaint). The act charged under R.C. 2152.02(A) or the act identified in the complaint alleging Taylor was a delinquent child was purposeful murder, a category one offense. Taylor was subject to mandatory transfer to the adult court for prosecution if the juvenile court found there was probable cause to believe he committed the act of murder. The Tenth District, in forming the basis for its opinion, summarized the case as follows:

Plaintiff-appellee, State of Ohio, alleged that on April 15, 2016, Taylor shot and killed Enrique Straughter. The facts at trial indicated that late in the evening of April 14, 2016, Taylor either stole or borrowed his mother's car, which happened to contain his stepfather Michael Jackson's firearm, a Smith & Wesson MP40 semiautomatic pistol. Taylor met up with his friend (and his sister Dasha's boyfriend) Damion Wade, went to the home of his two sisters Dasha and Asha on Commons Road, and drank and smoked marijuana with Wade and Asha. At some point Taylor became agitated about the loss of a chain that he owned and apparently believed that it had been stolen by Straughter, whom he had considered a friend. Straughter lived in the same apartment complex as Dasha and Asha, on Lavenham Road, which is well within walking distance of Commons Road.

Shortly after midnight on April 15, 2016, Reynoldsburg police were called to Lavenham on report of a shooting. They discovered Straughter on the ground with gunshot wounds, at the time still alive and struggling to breathe. He was pronounced dead shortly thereafter. Crime scene investigators examining the immediate area found three .40 caliber shell casings, four unfired .40 caliber bullets, a broken pistol slide rail, two red Nike Jordan sandals, and an electronic Chevrolet key fob. (See State's Ex. B to Bindover Hearing.) The key fob triggered the locks of a Chevy Malibu awkwardly parked about 200 feet away. The car belonged to Taylor's mother, who reported the car stolen at approximately 3:30 a.m. on April 15, 2016 and also reported Taylor himself as missing since 11:45 the prior evening. She apparently followed up with the police to report that Taylor had not reported to school on April 15 either.

Based on this evidence, Reynoldsburg police obtained a search warrant for the apartment belonging to Taylor's two sisters. When they arrived at the apartment to execute the warrant, Taylor was there. It is unclear whether Taylor was arrested before or during the search of the apartment, but notwithstanding, police seized several cell phones from the apartment, one of which tied to a Bluetooth device and identified as "Damon Taylor." Police were eventually able to extract several Snapchat photos from this phone—one the photos, time-stamped on April 14, 2016 at 11:33 p.m., shows a hand holding a Smith & Wesson pistol inside a Chevrolet, and another photo, taken at 10:55 a.m. on April 15 depicts Taylor laying back on a couch with his hand across his

chest, and is captioned: "They tryna take me for murda." (State's Ex. C2 and C4 to Bindover Hearing.) Police were also able to extract messages from the phone, which depicted the following conversation:

ME: I'm not on god I left my gun in the car and someone shot someone with it and took off in the whip I go see a lawyer in like 30 mij

OFF: Why do you have a gun

ME: It was my stepdads he left it in the car and then I left the doors unlock

And got high fell asleep woke up to some bad news

(State's Ex. C3 to Bindover Hearing.) Subsequent DNA tests on the gun rail were found to contain a two-person DNA mixture, and the major contributor was identified as Straughter, while the minor contributor was identified as Taylor. (Apr. 12, 2019 Tr. at 1085.)

After he was arrested, Taylor was taken to the police station for interrogation. (State's Ex. B to Mar. 15, 2018 Mot. Hearing; see also State's Ex. C(1) to Mar. 15, 2018 Mot. Hearing at 14:14 et seq.) A video of the encounter demonstrates some discussion prior to Taylor being provided any *Miranda* warnings about him being named as a missing person and a suspect in the auto theft, and also that he is a person of interest in a homicide. Taylor, then a minor, requests to call his mother and his stepfather. He also seems to dispute any knowledge of where the automobile is parked, although the video is not clear on this point. The video does clearly demonstrate that two police officers told Taylor that he was a murder suspect and that they had witnesses to that effect.

Prior to providing Taylor any *Miranda* warnings, the officers tell him that they would like to hear "his side of the story" while it's "fresh in his mind." Taylor states that he is willing to talk to them about what happened the prior night and that he did not care about witnesses, but also that "I already talked to my lawyer." Subsequently, Reynoldsburg Police Detective Tim Doersam begins to read the *Miranda* form to Taylor, who agrees that he understands all of them, but then repeatedly states that he wants his lawyer to be present. Detective Doersam then goes back to the top of the form to fill in his identifying information. Taylor repeatedly indicates that he will not talk without a lawyer. Detective Doersam and the other officer push him to talk even after he says he's not going to talk without his lawyer present, and suggest that Taylor's mother might get charged with some offense. After they indicate on the *Miranda* form that Taylor refuses to talk to them without an attorney present, they seek and obtain his consent for a DNA swab, test him for gunshot residue, and continue to encourage him to talk to them and ask him questions about the case. Taylor engages with them somewhat but is consistent about his desire to talk to his attorney and also his mother and is largely silent. After

approximately one and one-half hours the video ends, and Taylor is told that his lawyer had arrived and was coming in. The trial court found that shortly thereafter, "counsel advised the detectives that Defendant would not consent to be interviewed, and ultimately, Defendant was released to his counsel. Over the next eight months, police continued to investigate Mr. Straughter's death. During that time, Defendant's counsel advised both the detectives and the Assistant Prosecuting Attorney that Defendant would not consent to an interview or proffer." (Nov. 05, 2018 Order & Entry at 4.)

But on December 12, 2016, charges were filed against Taylor, he was again arrested, and was again interrogated by Detective Doersam. This interrogation was also videotaped, and when Detective Doersam went over the *Miranda* rights form this time, Taylor signed the waiver and talked with the police. (State's Ex. E to Mar. 15, 2018 Mot. Hearing; see also State's Ex. C(2) to Mar. 15, 2018 Mot. Hearing at 11:25:15 et seq.) Taylor filed a motion to suppress evidence, and at a motion hearing Detective Doersam admitted that after April 15, 2016, he was aware that Taylor was represented by an attorney and that he had subsequent contacts with that attorney, but claimed that when Taylor was arrested on December 12, 2016, he did "not a hundred percent" know that the attorney he had been dealing with was still representing Taylor on that date. (Mar. 14 and 15, 2018 Tr. at 36.) He admitted that he knew that Taylor's attorney had been "actively involved in the case," id. at 78, that the prosecutor had previously reached out to Taylor's attorney to request that Taylor give a statement about the case to the prosecutor and Detective Doersam, id., that he had a meeting with the prosecutor's office in December prior to filing the charges against Taylor, id. at 79, that at the time the charges were approved by the prosecutor and filed, he knew Taylor's attorney "had represented him up until the last time I talked to you," id. at 80, and that no one had ever communicated to him that Taylor was no longer represented by his attorney, id. at 81. Finally, Detective Doersam admitted that he made no attempt to contact Taylor's attorney:

[Dodgion]: Okay. You didn't contact me, correct?

[Detective Doersam]: Correct.

Q: You didn't make an attempt to contact me, correct?

A: Correct.

Q: Mr. -- As far as you know, nobody from the county prosecutors made an attempt to contact me, correct?

A: Correct.

Q: And on your direct examination, you kind of intimated or implied that, eh, at that point in time I really didn't know who was representing him or whether or not Mr. Dodgion was representing him, didn't you, yesterday?

A: I said I could not be a hundred percent at that point.

Q: Okay. Fair enough. That was your answer. But, again, nobody had told you differently, right?

A: Correct.

Q: Okay. And you didn't even ask Damon Taylor whether or not I was still representing him, did you?

A: I don't believe so.

Q: And that's because you didn't want the answer, right?

A: It's because it's his decision.

Q: But you didn't ask because you didn't want the answer, correct?

A: I don't -- I didn't -- more because I don't think the decision mattered -- or the answer didn't matter that much.

Q: It didn't matter. So if you would have asked him, hey, you know, we got you down here, we know that Mr. Dodgion was representing you in the past and up 'til a month or so ago. Is he still representing you, by the way? You know that if he'd -- if you'd asked that question and he answered, yes, Mr. Dodgion is representing me everything stops, right?

A: I -- Not -- No.

(Mar. 14 and 15, 2018 Tr. at 84-85.)

Because Taylor was a juvenile at that time Straughter was killed, the case was filed in juvenile court as a mandatory bindover offense. But on December 22, 2016, SUPREME COURT OF OHIO issued *State v. Aalim*, 150 Ohio St.3d 463, 2016-Ohio-8278, 83 N.E.3d 862 ("*Aalim I*"), and held Ohio's mandatory bindover statute to be unconstitutional. A probable cause hearing commenced in juvenile court and on April 28, 2017, that juvenile court found there was probable cause to bind Taylor over for the crime of complicity to murder with specification. Then, on May 25, 2017, the Supreme Court reconsidered *Aalim I*, reversed its earlier decision, and determined that Ohio's mandatory bindover statute was constitutional. See *State v. Aalim*, 150 Ohio St.3d 489, 2017-Ohio-2956, 83 N.E.3d 883 ("*Aalim II*"). Subsequently, in accordance with

*Aalim II* the juvenile court transferred jurisdiction of the case to the general division without proceeding to an amenability determination.

Because it had found that there was conflicting evidence about whether Taylor or Wade shot Straughter, when the juvenile court relinquished jurisdiction over the case it found probable cause for complicity rather than purposeful murder. Notwithstanding this ruling, on June 30, 2017 Taylor was indicted by the General Division of the Franklin County Court of Common Pleas for aggravated murder, purposeful murder, and felony murder by felonious assault, each with a three-year gun specification. Following a trial, Taylor was found guilty by a jury of felony murder by felonious assault with gun specification, and was found not guilty of the two other charges and specifications. On May 28, 2019, the trial court sentenced Taylor to 15 years to life plus 3 mandatory and consecutive years on the gun specification, for an aggregate sentence of 18 years to life.

*State v. Taylor*, 2022-Ohio-2877, 194 N.E.3d 867, ¶ 2-9 (10th Dist.).

Taylor appealed to the Tenth District, raising nine assignments of error. *State v. Taylor*, 2022-Ohio-2877, 194 N.E.3d 867 (10th Dist.). After briefing had concluded, the Tenth District requested supplemental briefing on *Smith*. The appellate court rejected Taylor's claims that mandatory bindovers are unconstitutional and that there was no probable cause for his bindover. *Id.* at ¶ 10-15. The majority held Taylor's bindover and therefore his conviction were unlawful based on this Court's holding in *Smith*. 2022-Ohio-2877, ¶ 16-22. The Tenth District also found the Sixth Amendment required suppression of Taylor's December 12, 2016 statements. *Id.* at ¶ 23-32. The remaining assignments of error were determined moot by the majority and the matter was remanded to the juvenile court. *Id.* at ¶ 33-34.

The State commenced this appeal, which the Court accepted on the following propositions of law.

## **LAW AND ARGUMENT**

### **PROPOSITION OF LAW I: *State v. Smith*, 167 Ohio St.3d 423, 2022-Ohio-274, does not prohibit complicity-based mandatory bindovers on category-one offenses.**

The State's first proposition of law presents an opportunity to discuss how R.C. 2152.02 limits a juvenile court's jurisdiction to adjudicate certain offenses after there is probable cause to believe a child has committed the act charged. In *State v. Smith*, 167 Ohio St.3d 423, 2022-Ohio-274, the majority opinion of this Court construed R.C. 2152.12 and R.C. 2151.23(H) as depriving a grand jury of authority to indict certain offenses. But if there has been a legal determination that Taylor committed the offense of murder, the juvenile court should not retain jurisdiction to adjudicate that offense when 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, in relevant part, that, “[t]he 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) plainly states that upon transfer, “[t]he 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 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 for transfer of the case for criminal prosecution." (Emphasis added).

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 was read in conjunction with venue statutes, the grand jury was also empowered to inquire into crimes committed in other counties when those crimes were part of a course of conduct committed in Cuyahoga County. Hypothetically speaking, if a juvenile court found probable cause in a case that a child committed the offense of murder, a grand jury acting under its original authority could return a no bill under R.C. 2939.23. The mere fact a juvenile court finds probable cause as to an act charged does not necessarily mean twelve grand jurors must concur in the finding of an indictment under R.C. 2939.20. Instead, the grand jurors should 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 a grand jury could hear 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 respective county should not be so limited is supported by the language R.C. 2151.23(H). The express grant of jurisdiction for the general division is to: (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. This implicitly implies the grand jury can return an indictment for offenses different from the charged offense(s). Acceptance of a verdict implicates that the case proceeded to a trial on the indictment.

The Eighth District Court of Appeals has held defendants such as Taylor can be bound over through the mandatory transfer process where probable cause is found that the defendant is complicit in committing a category-one offense. See *State v. Bond*, 8th Dist. Cuyahoga No. 110520, 2022-Ohio-1246 and *State v. Bishop*, 8th Dist. Cuyahoga No. 89184, 2007-Ohio-6197.

Returning to R.C. 2152.12(A)(1)(a), the juvenile court is required to transfer a case for adult prosecution if, “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.” In charging the act, it is sufficient for the complaint to be stated in terms of the principal offense. As R.C. 2923.03 explains:

“Whoever violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he were a principal offender. A charge of complicity may be stated in terms of this section, or in terms of the principal offense.”

It follows that with respect to a complaint filed in juvenile court, a complicity charge may be stated in terms of the principal offense. Therefore, a finding that Taylor was complicit in committing the offense of purposeful murder also satisfied the terms of R.C. 2152.12(A)(1)(a). The Tenth District's decision focused on this Court's decision in *State v. Hanning*, 89 Ohio St.3d 86, 728 N.E.2d 1059 (2000). However, as this Court explained in *Agee v. Russell*, 92 Ohio St.3d 540, 751 N.E.2d 1043 (2001):

Therefore, our holding in *Hanning* does not warrant a finding that the juvenile court lacked jurisdiction, much less that it *patently and unambiguously lacked jurisdiction* to transfer *Agee* under R.C. 2151.26(B)(3)(a) for prosecution as an adult. We hold that *Hanning* is limited to mandatory bindover cases under R.C. 2151.26(B)(4)(b) and does not apply to mandatory bindover cases under R.C. 2151.26(B)(3).

*Agee v. Russell*, 92 Ohio St.3d 540, 548, 751 N.E.2d 1043 (2001)

As such, complicity-based mandatory bindovers on category-one offenses are not prohibited.

**PROPOSITION OF LAW II: R.C. 2151.23(H) authorizes an adult court to convict a defendant of any offense “rooted in” the offense that was the basis of the transfer, unless the conviction is for an offense that was charged in juvenile court and found to be unsupported by probable cause.**

Under this Court's analysis in *Burns*, Taylor's indictment is rooted in the juvenile court complaint and the indictment including that charge was proper.

The Tenth District decided this case without the benefit of this Court's recent opinion in *Burns*, Slip Op. No. 2022-Ohio-4606. *Burns* holds 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. The act that was subject of Taylor's juvenile complaint was purposeful murder. Rooted in that offense were the counts that formed the basis of the indictment in adult court. Because

the offense of murder is one that is punishable with life imprisonment, it cannot be prosecuted by information. See R.C. 2941.021. The offense for which the juvenile court found probable cause to believe Taylor committed was not binding upon the grand jury. Contrary to the Tenth District's own opinion in *In re A.R.*, 10th Dist. Franklin No. 16AP-482, 2017-Ohio-1575, principles of collateral estoppel should not bind any court, given that a probable cause hearing is a preliminary hearing.

Here, the offenses of aggravated murder, murder, and felony murder for which Taylor was indicted were rooted in the act (purposeful murder) alleged in the juvenile court complaint. It may not have been clear to the juvenile court at the probable cause hearing whether Taylor was the principal offender. However, the grand jury returned an indictment based upon probable cause and a jury found Taylor guilty of felony murder.

Even without this Court's decision in *Burns*, the general division's ability to accept a guilty verdict to felony murder by felonious assault was supported by R.C. 2151.23(H), which provides:

\* \* \* 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 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 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." (Emphasis added).

As this Court recognized in *Burns*, "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.” 2022-Ohio-4606, ¶13. The decision in *Smith* still presents concern for future cases.

After *Smith*, prosecutors may be compelled to appeal a juvenile court’s determination that probable cause lacked for a particular count more often than in the past. Occasionally, a juvenile court’s determination of no probable cause to believe that a child committed some offense(s) in a multi-count complaint poses 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, parallel prosecutions 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 the allied offense statute applies to juvenile court proceedings).

Aside from the decision in *In re E.S.*, 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); and *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).

These past cases highlight the idiosyncratic reasons why a juvenile court might conclude 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 in the past. If a prosecutor need not be concerned that it must charge every count in a juvenile court complaint intended to be presented to a grand jury, they can focus on the core of the case. The prosecutor could file its core charges in a juvenile court complaint, and if the juvenile court finds probable cause exists to believe the child committed the acts that were the subject of core charges, the grand jury could consider any count “rooted in the act(s) that were subject of the juvenile complaint,” e.g., the core charges.

This approach can still lead to irregularities. In the case at bar, the juvenile court did not find probable cause to believe Taylor committed the offense of purposeful murder as a principal offender. The jury, however, later found Taylor guilty beyond a reasonable doubt of felony murder, an offense subject to mandatory transfer under R.C. 2152.12(A)(1)(a). To say that Taylor cannot be convicted of felony murder because a juvenile court did not expressly make a determination that there was probable cause that Taylor committed that offense ignores the grand jury’s own probable cause determination, the jury’s verdict, and the statutory language suggesting that such an offense cannot remain in juvenile court for adjudication under R.C. 2152.12(A)(1)(a).

Because Taylor’s convictions were rooted in the basis of transfer, the convictions must be affirmed.

**PROPOSITION OF LAW III: The jurisdiction referenced in R.C. 2151.23(H) implicates jurisdiction over the case, not subject-matter jurisdiction.**

"[A] bindover procedure is "proper" even when the juvenile waives R.C. 2152.12's mandatory requirements. And if the requirements are waivable, they are not jurisdictional."

*Smith v. May*, 159 Ohio St.3d 106, 2020-Ohio-61, 148 N.E.3d 542, ¶ 26.

In *May*, four delinquency complaints were filed against the 16-year old Ja'Relle Smith, alleging category two offenses involving a firearm. *Id.* at ¶ 7. The juvenile court failed to comply with the notice requirements of R.C. 2152.12(G) in connection with one of those complaints. *Id.* at 9. Ja'Relle acknowledged his right to have his father present, agreed to proceed without him, waived his right to a bindover hearing, and then stipulated to probable cause. *Id.*

The juvenile court transferred the matter to adult court, where Ja'Relle was indicted on five counts of aggravated robbery, three counts of aggravated burglary, two counts of kidnapping, and one count of burglary, all with firearm specifications. 2020-Ohio-61 at ¶ 10. He pleaded guilty to three counts of aggravated robbery (one with a firearm specification), one count of aggravated burglary, and one count of kidnapping. *Id.* The trial court imposed an aggregate prison sentence of 16 years. *Id.* The convictions and sentences were affirmed on direct appeal. *Id.* at ¶ 11.

In 2017, Ja'Relle filed a petition for a writ of habeas corpus, claiming the common pleas court lacked subject-matter jurisdiction to convict him because the juvenile court did not provide the statutory notice required by R.C. 2152.12(G). *May*, 2020-Ohio-61, ¶ 12. The court of appeals denied the petition and Smith appealed to the Ohio Supreme Court. *Id.*

The Court found the juvenile court did not comply with R.C. 2152.12(G)'s notice

requirements. 2020-Ohio-61 at ¶ 15. Regardless, citing two prior decisions, the Court noted “noncompliance with a statutory bindover requirement does not prevent a juvenile court from transferring its subject-matter jurisdiction and does not render an adult court's judgment void.” *Id.* at ¶ 18.

“Because R.C. 2152.12(G) did not clearly make the provision of notice a jurisdictional barrier, Smith's sentencing court did not lack subject-matter jurisdiction.” *May*, 2020-Ohio-61, ¶ 34. This Court emphasized:

Smith had an adequate remedy at law. He could have objected to the juvenile court's failure to give his father timely notice, and if the court overruled his objection, he could have appealed the ruling in his appeal from his criminal convictions.

*Id.* at ¶ 35.

The 2022 decision in *State v. Smith*, found the adult court lacked subject-matter jurisdiction over specific counts (Counts 4, 6, 7, and 8 and the firearm specifications) but not the entire case. *State v. Smith*, 2022-Ohio-274, ¶ 43. In support of this finding the Court cited its 1995 decision in *State v. Wilson*, 73 Ohio St.3d 40, 652 N.E.2d 196. *Smith*, 2022-Ohio-274 at ¶ 41.

Wilson was a situation where the child *never* appeared before the juvenile court, as the state and court both mistakenly believed he was eighteen when he committed his offense. 73 Ohio St.3d at 44. The Court held he was still subject to the exclusive special subject matter jurisdiction of the juvenile court. *Id.* As a result, the adult court lacked subject matter jurisdiction to convict him. *Id.*

*Wilson's* holding was extended in *Gaskins v. Shipley*, 74 Ohio St. 3d 149, 656 N.E.2d 1282 (1995) (“*Gaskins I*”), where this Court held a juvenile offender could collaterally attack an adult criminal conviction by way of a habeas action based on a bindover error.

*Gaskins I* was expressly overruled in *Smith v. May*. 2020-Ohio-61, ¶ 28. The Court stated the *Gaskins I* court was wrong when it adopted a broad rule that *any* deviation from the statutory bindover procedure renders the adult court's judgment void. *Id.* (Emphasis in original). In reaching this decision, the Court noted: "The *Gaskins I* court should have examined the statute's text concerning the *specific* error alleged, to determine whether the statute clearly established a barrier to the adult court's subject-matter jurisdiction." *Id.* (Emphasis in original).

The Court in this matter should follow the instructions set forth *Smith v. May* and examine whether the statutory text clearly establishes a barrier to the adult court's subject matter jurisdiction over Taylor, especially in light of the holding in *Burns* that the grand jury could consider offenses "rooted in the acts that were subject of the juvenile complaint." *Burns*, Slip Op. No. 2022-Ohio-4606, ¶13. If the juvenile court can consider offenses rooted in the acts that were subject of the juvenile complaint, any alleged error could not relate to subject-matter jurisdiction.

As the concurring opinion in *Smith v. May* noted:

Subject-matter jurisdiction refers to the constitutional or statutory power of a court to adjudicate a particular class or type of case. \* \* \* "A court's subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case." \* \* \* Rather, the focus is on whether the forum itself is competent to hear the controversy.

[O]nce a juvenile court relinquishes jurisdiction, "[t]he 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." R.C. 2152.12(I).

It is therefore within the subject-matter jurisdiction of a juvenile court to transfer a case and within the subject-matter jurisdiction of the general division of the common pleas court to receive it.

"Once a tribunal has jurisdiction over both the subject matter of an action and the parties to it, " \* \* \* the right to hear and determine is perfect; and the decision of every question thereafter arising is but the exercise of the jurisdiction thus conferred." \* \* \* And when a specific action is within a court's subject-matter jurisdiction, any error in the exercise of that jurisdiction renders the court's judgment voidable, not void. \* \* \*

*May, 2020-Ohio-61, ¶ 37-40 (Kennedy, J., concurring in judgment only).*

**PROPOSITION OF LAW IV: The right to counsel in juvenile proceedings under either the Sixth Amendment or the Due Process Clause attaches not upon the State's approval of the charges; but rather upon the actual filing of the complaint.**

**PROPOSITION OF LAW V: The right to counsel under either the Sixth Amendment or the Due Process Clause may not be anticipatorily asserted prior to the filing of the juvenile complaint and may be waived without the advice of counsel.**

Amicus Curiae supports the State's positions of law through a discussion of the Court's decision in *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164, as well as the statutes applicable in that case. The issue in *M.W.* was whether questioning a child prior to the filing of a complaint in juvenile court was a proceeding under R.C. 2151.352. The child argued the State violated R.C. 2151.352 when it obtained his statement. *M.W.* at ¶ 7. The child sought to have this Court's decision in *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, preclude a waiver of rights. *Id.* The decision in *In re C.S.* was not unanimous. Even though Appellant did not argue R.C. 2151.352 and the Tenth District did not cite the statute, it is important to understand the ways the statute is in line with constitutional provisions.

This Court held an interrogation that occurs prior to the filing of a complaint alleging delinquency or prior to an appearance in juvenile court is not a proceeding that falls within the scope of R.C. Chapter 2151. *M.W.* at ¶ 23. Because proceedings had not yet commenced,

the constitutional right had not yet attached. *Id.* at ¶ 26 (referencing Sixth Amendment). And because R.C. 2151.352 is inapplicable then any constitutional right including any Due Process right is subject to waiver as discussed by the State and the Ohio Attorney General.

**I. R.C. 2151.352 and Juvenile Rule 4(A).**

The statutes at issue in *In re M.W.* focused on the statutory term, “all stages of the proceedings under this chapter or Chapter 2152 of the Revised Code,” as found in R.C. 2152.352. Juvenile Rule 4(A) reiterates the right to counsel:

Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding. This rule shall not be construed to provide for a right to appointed counsel in cases which that right is not otherwise provided for by constitution or statute.

Plainly reading R.C. 2151.352 in conjunction with Juv. R. 4(A) establishes that the right to counsel “at all stages of the proceedings” under Chapter 2151 or Chapter 2152 is the right to counsel during juvenile court proceedings.

As a matter of statutory interpretation, the term “stage of the proceedings” as it is used in the first paragraph of R.C. 2151.352 does not include a “custodial interrogation. This is not invoked prior to the filing of a juvenile complaint.

**II. The legislative history of R.C. 2151.352 indicates the legislative intent that “stage of proceedings” refer to court proceedings and not custodial interrogations. R.C. 2151.352 separately provides juveniles taken into custody the same rights afforded to adults.**

The roots of R.C. 2151.352 provide insight into the General Assembly’s intent in using the words “stage of the proceedings.” Prior to R.C. 2151.352’s enactment in 1969, the statute was preceded by R.C. 2151.35.

R.C. 2151.35 was analogous to General Code 1639-30, which related to juvenile court hearings. R.C. 2151.35 did not mention the right to legal counsel until September 14, 1957. That amendment to R.C. 2151.35 added:

The juvenile court shall permit a child to be represented by an attorney-at-law during, any hearing before such court and shall extend to such child all rights and privileges of section 2935.17 of the Revised Code. Such attorney-at-law, the parents or guardian of such child and any attorney-at-law representing them shall be entitled to visit such child at any reasonable time and to be present at any hearing involving the child and shall be given reasonable notice of such hearing.

See Am. H.B. No. 161, 127 Ohio Laws, 547, 549.<sup>1</sup> The former R.C. 2151.35 while granting the right to representation at hearings did not explicitly include the right to court appointed counsel. Notably the right granted under the former R.C. 2151.35 was the right to counsel at any hearing before the juvenile court.

The right to court appointed counsel was first codified in Am. S.B. 383. The legislation enacted the former R.C. 2151.351 which provided as follows:

When a child is brought before the juvenile court for hearing to determine whether or not such child is delinquent, dependent, neglected, or a juvenile traffic offender in cases where it appears that such juvenile traffic offender may be adjudged delinquent, if he and his parents are indigent, the court may assign counsel to such child and his parents. Such counsel shall not be a partner in the practice of law of any attorney representing any interest adverse to the child.

See R.C. 2151.351, Am. S.B. 383, 132 Ohio Laws, Part I, 916.

A legislative service commission note dated August 21, 1967 indicates Am. S.B. 383, as reported by the House Judiciary Committee, "brings Ohio law in line with the recent U.S. Supreme Court decision which extends the protection of the 14th amendment of the U.S.

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<sup>1</sup> The former R.C. 2935.17 was repealed by H.B. 219, 128 Ohio Law 97. The former R.C. 2935.17 became R.C. 2935.14 and 2937.03

Constitution to juveniles, and requires that they be given notice sufficient to permit preparation of defense to charges, be advised of their right to counsel (including assigned counsel) and of their right to remain silent, and be afforded the right of confrontation and cross-examination. *In re Gault*, 35 LW 4399 (U.S. Supreme Court, May 15, 1967)."

The former R.C. 2151.351 is also significant in that although it recognized the right to appointed counsel in delinquency proceedings, it did not codify the right to counsel during a custodial interrogation. This is evidenced by the fact that the statute began by stating: "When a child is brought before the juvenile court for hearing to determine whether or not such child is delinquent \* \* \*."

Of equal importance, the right to *appointed* counsel while granted in delinquency proceedings under the former R.C. 2151.351, did not appear to extend to all juvenile court proceedings. The version of R.C. 2151.35 at the time of R.C. 2151.351's enactment, while mentioning the right to representation during juvenile court proceedings, did not mention a right for indigents to have appointed counsel. See 130 Ohio Laws 621; 130 Ohio Laws 623 and 132 Ohio Laws , Part I, 914-916.

#### R.C. 2151.352 as Originally Enacted

The year following the enactment of R.C. 2151.351, the statute was repealed and replaced by R.C. 2151.352, which was enacted as part of Am. Sub. H.B. No. 320. See Am. Sub. H.B. No. 320, 133 Ohio Laws, Part II, 2040, 2062. The law continued to provide a juvenile, their parents, custodian or other person in loco parentis of the juvenile the right to legal representation. Like the prior existing law, the enactment also codified a separate rule granting a juvenile taken into custody the same rights afforded to adults under R.C. 2935.14. Legislative notes at the time provided that the law was being enacted to:

[Give] a child taken into custody the same rights as an adult, including visits at any reasonable time with an attorney; gives counsel access to any report prepared by the court as well as notice of any hearing; provides that the child and his parents are entitled to representation by legal counsel at all stages of the proceedings, and, if indigent, are entitled to have counsel provided.

Ohio Legislative Service Commission, Summary of 1969 Enactments, Pg. 20.

At the time of original enactment the statute read as follows:

A child, his parents, custodian, or other person in loco parentis of such child is entitled to representation by legal counsel at all stages of the proceedings and if, as an indigent person, he is unable to employ counsel, to have the court provide counsel for him. If a party appears without counsel, the court shall ascertain whether he knows of his right to counsel and of his right to be provided with counsel by the court if he is an indigent person. The court may continue the case to enable a party to obtain the case to enable a party to obtain counsel and shall provide counsel for an unrepresented indigent person upon his request. The court shall appoint counsel for any parties found to be indigent unless representation is competently and intelligently waived. Counsel must be provided for a child not represented by his parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel shall be provided for each of them.

An indigent person is one who, at the time his need is determined, is unable by reason of lack of property or income to provide for the full payment of legal counsel and all other necessary expenses of representation.

Section 2935.14 of the Revised Code shall apply to any child taken into custody. The parties, custodian, or guardian of such child, and any attorney at law representing them or the child, shall be entitled to visit such child at any reasonable time, be present at any hearing involving the child, and be given reasonable notice of such hearing.

Any report or part thereof concerning such child, which is used in the hearing and is pertinent thereto, shall for good cause shown be made available to any attorney at law representing such child and to any attorney at law representing the parents, custodian, or guardian of such child, upon written request prior to any hearing involving such child.

R.C. 2151.352, Am. Sub. H.B. No. 320, 133 Ohio Laws, Book II, 2040, 2062

The first paragraph of R.C. 2151.352 as originally enacted in 1969 contained the term "stage of the proceedings." The entire paragraph discussed actions by "the court." For

example, the second sentence of the first paragraph stated “the court shall ascertain whether [the party] knows of his right to counsel and of his right to be provided with counsel.” The third sentence of the same paragraph stated the court’s ability to continue the case. The fourth sentence discussed the court’s appointment of counsel for an indigent child unless representation was waived. When the entire first paragraph is read together, it is clear the subject matter was one that pertained to actions by a juvenile court.

The third paragraph of the former R.C. 2151.352 (now second paragraph) strongly indicated what the General Assembly intended by “stage of the proceedings.” The third paragraph specifically granted a child taken into custody the same rights granted to adults under R.C. 2935.14. This is a strong indication that the General Assembly did not intend to include a custodial interrogation under “stage of the proceedings.” The General Assembly could have expanded and provided additional rights to a child taken into custody in the third paragraph, but did not.

The remaining paragraphs in the original statute provided a definition for an indigent person. The second paragraph defined an indigent person while the fourth paragraph provide that a child’s attorney must be given any report concerning the child.

The law which preceded R.C. 2151.352, although granting a right to counsel at all hearings before a juvenile court, did not grant the right to appointed counsel at all juvenile court hearings. R.C. 2151.352 when enacted was a continuation of existing law that recognized a right to counsel in juvenile court proceedings but also granted the right of appointed counsel for indigents in all stages of the proceedings under Chapter 2151.

Subsequent amendments to R.C. 2151.352 confirm “stages of the proceedings” is limited to proceedings in the juvenile court.

Subsequent amendments to the R.C. 2151.352 did not change the definition of “stage of the proceedings.” R.C. 2151.352 was next amended in 1976. Under Am. Sub. H.B. No. 164, R.C. 2151.352 was amended to allow for the appointment of a public defender. The 1976 amendment also deleted the paragraph defining “an indigent person.” The only change to the third paragraph was replacing “Section 2935.14 of the Revised Code shall apply to any child taken into custody” with “Section 2935.14 of the Revised Code applies to any child taken into custody.” R.C. 2151.352, Am. Sub. H.B. No. 164, 136 Ohio Laws, Part I, 1868, 1891.

The statute was next amended in 2002. The 2002 amendment did not make substantial changes, but modified the language reading: “A child, his parents custodian, or other person in loco parentis of such child is entitled to representation at all stages of the proceedings,” to: “A child, or the child’s parents, custodian, or other person in loco parentis of such child is entitled to representation by legal counsel at all stages of the proceedings under this chapter or chapter 2152 of the Revised Code.” R.C. 2151.352, Am. Sub. S.B. 179, 148 Ohio Laws, Part IV, 9447, 9519. This amendment reflected the enactment of Chapter 2152, which was enacted through Am. Sub. S.B. 179.

When reviewing the legislative history of R.C. 2151.352 and the former R.C. 2151.35 and the former R.C. 2151.351, it is clear that the reference to “all stages of the proceedings” codifies the right to counsel in proceedings before a juvenile court and not custodial questioning or other events prior to the filing of the juvenile complaint.

The conclusion that the rights codified under R.C. 2151.352 do not apply until formal proceedings have begun is consistent with this Court’s statement in *State v. Ostrowski*, 30 Ohio St.2d 34, 282 N.E.2d 359 (1972), “Taken as a whole, the purpose of R.C. 2151.352 is to

insure to the juvenile his right to counsel and/or his rights to have parents present at any hearing." And these proceedings commence upon the filing of a complaint. *In re D.H.*, 8th Dist. Cuyahoga No. 109284, 2020-Ohio-5003, ¶14.

### **III. Conclusion**

Here, the Tenth District's constitutional analysis was incorrect as proceedings have not yet commenced and Taylor's constitutional rights were not violated.

### **CONCLUSION**

WHEREFORE, for the reasons stated herein, amicus curiae, the Cuyahoga County Prosecutor's Office urges this Court to reverse the decision of the Tenth District.

Respectfully submitted,

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