

In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2023-0539
	:	
Appellant,	:	On appeal from the Cuyahoga County
	:	Court of Appeals,
v.	:	Eighth Appellate District
	:	
DIMITRIUS MACKLIN,	:	Court of Appeals
	:	Case No. 111117
Appellee.	:	

**BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL DAVE YOST
IN SUPPORT OF APPELLANT STATE OF OHIO**

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INTRODUCTION

Like other cases in recent years, this case concerns whether the State may proceed on criminal charges against a minor after a case transfers from juvenile court to adult court. At this point, statutory text and this Court’s precedent establish two rules. *First*, the State *may not* proceed on charges for which the juvenile court found a lack of probable cause during transfer proceedings. See *State v. Smith*, 167 Ohio St. 3d 423, 2022-Ohio-274 ¶¶27, 29; R.C. 2152.022(B). *Second*, the State *may* proceed on new charges, added after transfer from the juvenile court, “when the new charges are rooted in the acts that were the subject of the” original “juvenile complaint.” *State v. Burns*, 170 Ohio St. 3d 57, 2022-Ohio-4606 ¶13; R.C. 2151.23(H).

The second rule resolves this case. Six years ago, when Dimitrius Macklin was 17, he carjacked Hesham Kamel and then shot him twice at point-blank range—leaving him to die. The State charged Macklin with various crimes in juvenile court, and the juvenile court found probable cause to believe that Macklin committed murder, aggravated robbery, and felonious assault. The juvenile court then transferred the case to adult court, and a grand jury *added* a charge that the juvenile court never considered: conspiracy to commit aggravated robbery. Because this conspiracy charge arises from the same course of events that was the subject of the juvenile complaint, Macklin could properly face trial for conspiracy in adult court under *Burns* and R.C. 2151.23(H).

STATEMENT OF AMICUS INTEREST

The Attorney General is Ohio's chief law enforcement officer and "shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested." R.C. 109.02. He is interested in supporting courts throughout the State as they process juvenile offenders according to state law in an effort to protect the community and rehabilitate youth. The Attorney General also sometimes serves as special counsel in cases of significant importance, including in cases that involve juveniles. In those cases, the Attorney General is directly involved in the application of Ohio statutes governing the transfer of juvenile cases to adult court.

STATEMENT OF THE FACTS AND CASE

1. In August 2017, Hesham Kamel drove to Cleveland. Tragically, it was his last drive. Kamel made the trip hoping, based on online communications with a stranger, to trade his car for another car. *State v. Macklin*, 2022-Ohio-4400 ¶¶3, 13 (8th Dist.) ("App.Op."). But the car swap Kamel anticipated never occurred. Instead, when he arrived at the prearranged location for the trade, an assailant carjacked him and shot him twice at close range. *Id.* at ¶¶2 & n.1, 3, 10, 15. Kamel died shortly thereafter. *Id.* at ¶2.

The police investigated Kamel's murder for more than two years. *Id.* at ¶4. Over time, evidence piled up against Dimitrius Macklin and a group of accomplices. The police found Macklin's DNA on Kamel's stolen car. *Id.* at ¶26. Cell phone records also put Macklin at the crime scene. *Id.* at ¶23. And eventually, Macklin's accomplices turned on

him. They testified about how the group created an online account to lure prospective buyers into a fictitious car sale. *Id.* at ¶¶35; *see also id.* at ¶¶28, 32. And they identified Macklin as the one who shot Kamel. *Id.* at ¶¶34, 36; *see also id.* ¶31.

2. Macklin was 17 years old—and thus a minor—when he murdered Kamel. *See id.* at ¶5; *see also* R.C. 2152.02(C)(1). Macklin’s age matters because Ohio’s juvenile courts have exclusive original jurisdiction over minors charged with crimes. R.C. 2152.03. That jurisdiction, however, is not always permanent. Under certain circumstances, a juvenile court must transfer, or “bind over,” a case to the general division of the court of common pleas. (This brief refers to the general division as the “adult court.”) Importantly for this case, Ohio’s bindover statutes mandate that a juvenile court transfer a case to adult court if it involves certain crimes—including murders carried out by 16- and 17-year olds. R.C. 2152.12(A)(1)(a)(i). But for this type of mandatory bindover to occur, the juvenile court must find that there “is probable cause to believe that the child committed the act charged.” *Id.* (Though this case involves a mandatory bindover, a probable-cause requirement attaches to discretionary bindovers, too. R.C. 2152.12(B)(2).)

The State charged Macklin with six counts in juvenile court: aggravated murder, murder, aggravated robbery (two counts), felonious assault, and having a weapon while under disability. App.Op. ¶4. The State sought to transfer Macklin’s case to adult court, and the juvenile court held a probable-cause hearing. *Id.* at ¶5. The juvenile court found probable cause to believe that Macklin committed murder, aggravated robbery, and

felonious assault. *Id.* But it found no probable cause for the charges of aggravated murder and having a weapon while under disability. *Id.*

3. Because the juvenile court found probable cause that Macklin committed murder, it had to transfer Macklin's case to adult court. *See* R.C. 2152.12(A)(1)(a)(i). Once in adult court, the case went before a grand jury, which indicted Macklin for eleven crimes. App.Op. ¶6. Unlike the juvenile court, the grand jury found probable cause to believe that Macklin committed aggravated murder. *Id.* And, as proves critical later on, the grand jury also *added* charges that the juvenile court did not consider during its probable-cause hearing. Of particular note, the grand jury indicted Macklin on conspiracy to commit aggravated robbery. *Id.* The charge alleged that Macklin and his accomplices "planned to commit an aggravated robbery of an unknown person through the use of an online scheme to lure the unknown person to a location." *Id.* at ¶7.

Macklin's case proceeded to a jury trial. *Id.* at ¶8. The jury found Macklin not guilty of aggravated murder. *Id.* at ¶38. But it found Macklin guilty of several other crimes, including murder, aggravated robbery, and conspiracy to commit aggravated robbery. *Id.* The trial court sentenced Macklin to an aggregate prison term of twenty-five years to life for his various convictions. *Id.* at ¶39.

4. Macklin appealed to the Eighth District, raising multiple challenges to his convictions. Most relevant here, Macklin argued that the adult court lacked jurisdiction to consider charges that the juvenile court had not transferred to the adult court—

specifically, aggravated murder (a charge for which the juvenile court found no probable cause) and conspiracy to commit aggravated robbery (a charge that the State first pursued in adult court and that the juvenile court never considered).

The Eighth District agreed with this argument. Relying on this Court’s decision in *Smith*, 167 Ohio St. 3d 423, the Eighth District reasoned that if a juvenile court fails to find probable cause for a charge, “an adult court lacks subject-matter jurisdiction to convict a child” of that charge. App.Op. ¶44. It followed that, because the juvenile court had found that there was no probable cause to believe that Macklin committed aggravated murder, and because the juvenile court never considered the conspiracy charge, Macklin “should not have been brought to trial” in adult court on those charges. *Id.* at ¶52. On this reasoning, the Eighth District vacated Macklin’s conviction for conspiracy to commit aggravated robbery. *Id.* at ¶54. (The court rejected Macklin’s arguments as to his other convictions. It found sufficient evidence to support those convictions; and it held that those convictions were not against the manifest weight of the evidence. App.Op. ¶¶55–73.)

Based on this Court’s decision in *Burns*, 170 Ohio St. 3d 57, the State moved the Eighth District to reconsider its ruling on Macklin’s conspiracy conviction. In a short entry, the court denied reconsideration. Entry, (8th Dist. Mar. 9, 2023).

5. The State timely appealed and the Court accepted this case for review. *Case Announcements*, 2023-Ohio-2236 (July 5, 2022). The State, for its part, presents three propositions for the Court’s review. But the Attorney General addresses only the first two

propositions within this brief. The State’s third proposition concerns whether, after transfer to adult court, the State could pursue a conviction for aggravated murder. The jury acquitted Macklin on that charge, App.Op. ¶38, so there is no need to reach the issue.

ARGUMENT

Amicus Curiae Ohio Attorney General’s Proposition of Law 1:

An adult court’s ability to resolve newly indicted charges after a bindover turns on jurisdiction-over-the-case principles, not subject-matter-jurisdiction principles.

The State’s first proposition asks whether requirements for transferring particular charges from the juvenile court to the adult court implicate the adult court’s *subject-matter* jurisdiction. They do not. Importantly, the Court is set to consider this issue in *State of Ohio v. Damon L. Taylor*, No. 2022-1069—a case that is much further along than this one. Presumably, the Court’s decision there will dictate the Court’s answer here. The Attorney General, therefore, refers the Court and the parties to his arguments as *amicus* in that case. A.G. Amicus Br. 14–20, *State of Ohio v. Damon L. Taylor*, No. 2022-1069.

To quickly summarize the Attorney General’s position, Ohio’s bindover statutes speak in terms of the adult courts’ and juvenile courts’ “jurisdiction.” *See, e.g.*, R.C. 2152.121(A); 2152.022(B). But “jurisdiction” is a word that means different things in different contexts. *Bank of Am., N.A. v. Kuchta*, 141 Ohio St. 3d 75, 2014-Ohio-4275 ¶18. Sometimes, jurisdiction refers to a court’s power over the “subject matter” of a case. *Id.* A court’s subject-matter jurisdiction refers to a court’s power to “adjudicate a particular class of cases.” *Id.* at ¶19. Critically, “subject-matter jurisdiction is determined *without*

regard to the rights of the individual parties involved in a particular case.” Id. (emphasis added).

Other times jurisdiction refers to a court’s “jurisdiction over a particular case.” *Id.* at ¶18. In those situations, the word “refers to the court’s authority to proceed or rule on a case that is within the court’s subject-matter jurisdiction.” *Id.* at ¶19. And, while subject-matter jurisdiction has nothing to do with the specific parties in a case, a court’s jurisdiction over a particular case involves individualized “consideration of the rights of the parties” under the specific circumstances at issue. *Id.*

Ohio’s bindover statutes use the word “jurisdiction” in the jurisdiction-over-the-case sense, not the subject-matter-jurisdiction sense. Speaking as to the relevant “class of cases,” *see id.*, Ohio’s bindover statutes obviously give adult courts authority to adjudicate criminal cases involving juvenile offenders. But the adult court’s ability to adjudicate any *particular charge* turns on the rights of the individual party specifically involved in the case. For example, whether a juvenile defendant has a right to a juvenile-court forum will often depend on a juvenile court’s probable-cause determinations for specific charges. *See* R.C. 2151.23(H); R.C. 2152.022(A); R.C. 2152.12(A)(1)(a); R.C. 2152.12(B)(2). Any inquiry that requires such individualized and case-specific considerations implicates jurisdiction-over-the-case principles, not subject-matter-jurisdiction principles. *See Kuchta*, 141 Ohio St. 3d 75 ¶19.

The Eighth District saw things differently. *See* App.Op. ¶¶42–44. But the court did not grapple with the distinction between subject-matter jurisdiction and jurisdiction over a particular case. Instead, it relied on this Court’s decision in *Smith*, 167 Ohio St. 3d 423. But, as the Attorney General has argued in *Taylor*, the Court should clarify its caselaw in this area; and it need not overrule *Smith* to do so. *See* A.G. Amicus Br. 19–20, *State of Ohio v. Damon L. Taylor*, No. 2022-1069.

Amicus Curiae Ohio Attorney General’s Proposition of Law 2:

An adult court may adjudicate new charges, which a grand jury indicts after transfer to adult court, at least when those charges are rooted in the subject of the original juvenile complaint.

A. The question remains whether, once in adult court, Macklin could face trial for conspiracy to commit aggravated robbery—a charge that the grand jury *added* to the case after transfer and that the juvenile court *never considered* during its probable-cause hearing. The answer is yes, Macklin could face trial for conspiracy in adult court. After a juvenile court transfers a case, the adult court has authority to “hear and determine the case in the same manner as if the case originally had been commenced in that court.” R.C. 2153.23(H). That authority includes the authority to enter a conviction for “another offense that is different from the offense charged,” *id.*, at least “when the new charges are rooted in the acts that were the subject of the juvenile complaint,” *Burns*, 170 Ohio St. 3d 57 ¶13. To unpack this answer, it helps to review both Ohio’s bindover statutes and this Court’s recent precedent.

Begin with the statutory, probable-cause requirement. As referenced above, before a juvenile court transfers a “case” to adult court, it must conclude that there “is probable cause to believe that the child committed the act charged.” R.C. 2152.12(A)(1)(a); R.C. 2152.12(B)(2). The snag is that a “case” often involves multiple charges, not just one. What happens, then, if a juvenile court finds probable cause for some charges but finds *no* probable cause for others? The Court confronted that question in *Smith*, 167 Ohio St. 3d 423. There, the juvenile court found that there was probable cause to believe the juvenile committed some of the charged crimes but not others. *Id.* at ¶¶9–10. After the case was transferred, the State obtained a grand-jury indictment that was, in all relevant ways, identical to the complaint filed in juvenile court. Most relevant here, the indictment included the *same charges* as to which the juvenile court found probable cause lacking. *Id.* at ¶12. Interpreting R.C. 2152.12, the Court held that juveniles cannot be bound over for charges that the juvenile court determined were unsupported by probable cause. *Id.* at ¶¶27, 29.

But a slightly different question remained after *Smith*. What happens if, after transfer to adult court, a grand jury indicts a defendant for new charges that the juvenile court never considered during the probable-cause hearing? The Court answered this *distinct* question in *Burns*, 170 Ohio St. 3d 57. That case arose out of a series of robberies committed over a period of six months, each involving different places, victims, and witnesses. *Id.* at ¶2. The juvenile defendant (Burns) was ultimately convicted of several

crimes in adult court. *Id.* at ¶¶9–11. Burns argued that the adult court lacked authority over charges presented for the first time in adult court—that is, charges the grand jury indicted, but for which the juvenile court made no probable-cause finding. The Court disagreed. It explained that, under R.C. 2151.23(H), the adult court’s authority is “not limited to considering the specific acts charged in juvenile court.” *Id.* at ¶12. Rather, “a case transferred from a 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.” *Id.* at ¶13. In other words, the adult court may adjudicate new charges that “aris[e] from” the same “course of conduct or events” that was at issue in the juvenile complaint. *Id.* Said yet another way, after a case makes it to adult court, a grand jury may indict a juvenile defendant on new charges so long as those charges are “based on conduct” that was at issue during juvenile proceedings. *Id.*

After the Court decided *Smith* and *Burns*, the General Assembly amended Ohio’s bindover statutes. Am. Sub. S. B. No. 288 at 100 (effective April 4, 2023). The amendments codified *Smith* by defining the transferred “case,” under R.C. 2152.12, to mean “all charges that are included in the complaint or complaints containing the allegation that is the basis of the transfer ... for which the court found probable cause to believe that the child committed the act charged.” R.C. 2152.022(A) (effective April 4, 2023). The upshot being that (1) charges for which the juvenile court “found probable cause” are “transferred” to adult court, whereas (2) charges for which the juvenile court found no probable

cause “remain within the jurisdiction of the juvenile court, to be handled by that court in an appropriate manner.” R.C. 2152.022(B) (effective April 4, 2023). The amendments did not, however, disturb the holding in *Burns*. We know that because the amendments did not materially change the text of R.C. 2151.23(H), upon which *Burns* relied. See *Burns*, 170 Ohio St. 3d 57 ¶12.

All of this boils down to two rules. *First*, under *Smith* and R.C. 2152.022(B), the State *may not* proceed in adult court on any charge for which the juvenile court found probable cause lacking. *Second*, under *Burns* and R.C. 2151.23(H), the State *may* proceed on new charges against a juvenile in adult court, at least when such charges are “rooted in” or “based on conduct” that was “the subject of the juvenile complaint.” *Burns*, 170 Ohio St. 3d 57 ¶13.

B. The conspiracy to commit aggravated robbery charge against Macklin fits neatly within the rule from *Burns*. The State did *not* charge Macklin with conspiracy in juvenile court. App.Op. ¶¶4–5. It follows that the juvenile court did not reach any probable-cause determination as to conspiracy. *Id.* at ¶5. Instead, the grand jury added conspiracy as a new charge after the case was transferred to adult court. *Id.* at ¶6. The conspiracy charge thus presents a *Burns* scenario rather than a *Smith* scenario.

And the conspiracy charge was “rooted in” the same conduct (murder, aggravated robbery, and felonious assault) that the State charged Macklin with in juvenile court. Recall that *Burns* used the phrase “rooted in” to describe charges “arising from” the same

“course of conduct” that was before the juvenile court. 2022-Ohio-4606 ¶13. Here, the conspiracy charge meets that threshold, whether the court views the charge through a legal or a factual lens. *Legally*, a conspiracy involves a group of people planning to commit a criminal offense (here, aggravated robbery). *See* R.C. 2923.01(A)(1). It follows that, when the planned offense actually occurs (as it did here), the conspiracy and the resulting offense will necessarily be intertwined. *Factually*, Macklin and a group of accomplices planned to carjack someone at gunpoint; and the group soon carried out that plan, with Macklin ultimately murdering the victim. *See* App.Op. ¶¶28–37. Thus, the plan to commit the crimes led to the crimes themselves. This means that the charges against Macklin—both the juvenile-court charges and the conspiracy charge the grand jury added—involved the same course of events. In perhaps more practical terms, the same evidence proves all of these crimes, so it makes sense to adjudicate these crimes together. *See* Crim.R. 8(A).

C. The Eighth District held otherwise. But the Eighth District did not have the benefit of this Court’s decision in *Burns* when it initially decided the case. True, the Eighth District, with minimal analysis, refused to reconsider its decision after *Burns*. *See* Entry, (8th Dist. Mar. 9, 2023). But that refusal seems to have been based on a misunderstanding of subject-matter jurisdiction principles. *See above* 6–8.

CONCLUSION

The Court should reverse the decision below.

Respectfully submitted,

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I certify that a copy of the foregoing Brief of *Amicus Curiae* Ohio Attorney General Dave Yost in Support of Appellant was served by email this 20th day of October, 2023, upon the following counsel:

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