

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of:	:	No. 09AP-462 (C.P.C. No. 08JU-15623)
S.C.M.,	:	No. 09AP-463 (C.P.C. No. 08JU-15624)
(State of Ohio,	:	(REGULAR CALENDAR)
Appellant).	:	

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D E C I S I O N

Rendered on December 22, 2009

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*Yeura R. Venters*, Public Defender, and *Alan V. Adair*, for  
appellee S.C.M.

*Ron O'Brien*, Prosecuting Attorney, and *Katherine J. Press*,  
for appellant.

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APPEALS from the Franklin County Court of Common Pleas,  
Division of Domestic Relations, Juvenile Branch.

BRYANT, J.

{¶1} In these two cases, which this court consolidated for purposes of appeal, appellant, the state of Ohio, appeals from judgment entries of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, finding probable cause on delinquency charges against appellee, S.C.M., a juvenile, and ordering an amenability hearing and evaluation of S.C.M. to determine whether the court should relinquish its jurisdiction and transfer the cases to the general division of the common

pleas court for criminal prosecution of S.C.M. as an adult. The state assigns a single error:

WHEN THE MANDATORY TRANSFER PROCEDURES IN R.C. 2152.12(A) APPLY, THE PROCEDURES FOR AN AMENABILITY HEARING IN A DISCRETIONARY BIND-OVER PROCEEDING ARE INAPPLICABLE.

Because the state does not appeal from a final, appealable order of the juvenile court, this appeal is dismissed for lack of this court's jurisdiction.

### **I. Procedural History**

{¶2} On November 21, 2008, the state filed two delinquency complaints against S.C.M., who was 16 years of age at the time of the events giving rise to the complaints. Each complaint charged S.C.M. with one count of aggravated robbery, a first-degree felony in violation of R.C. 2911.01(A)(1) if committed by an adult, and one count of robbery, a second-degree felony in violation of R.C. 2911.02(A)(1) if committed by an adult, with accompanying firearm specifications attached to each count. Pursuant to Juv.R. 30 and R.C. 2152.12(A) and (B), the state moved the juvenile court to relinquish its jurisdiction and transfer the two cases to the general division of the common pleas court for criminal prosecution of S.C.M. as an adult.

{¶3} The mandatory bindover provision of R.C. 2152.12(A) "removes discretion from judges in the transfer decision" in situations specified in the statute and, if the statutory conditions have been met, requires the juvenile court to transfer a case to the general division of the common pleas court for prosecution of the alleged delinquent juvenile as an adult. *State v. Hanning*, 89 Ohio St.3d 86, 90, 2000-Ohio-436; *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, ¶1, fn. 1. See also R.C. 2152.10(A) and Juv.R.

30(B). The discretionary bindover provision, R.C. 2152.12(B), "allows judges the discretion to transfer or bind over to adult court certain juveniles who do not appear to be amenable to care or rehabilitation within the juvenile system or appear to be a threat to public safety." *Hanning* at 90. See also R.C. 2152.10(B) and Juv.R. 30(C).

{¶4} On March 9 and 20, 2009, the juvenile court conducted a preliminary hearing to determine whether the evidence presented probable cause to believe S.C.M. committed the charged offenses. See Juv.R. 30(A). At the conclusion of the hearing, the juvenile court announced its decision in open court, stating it did "not believe that probable cause was established with respect to" the allegations that S.C.M. possessed or used a gun in committing the alleged offenses. (Mar. 20, 2009 Tr. 22.) The court further stated that it found the evidence established probable cause "for the Robbery but not the Aggravated Robbery \* \* \* which means we're dealing with a discretionary bindover which means that I need a[n] Amenability Hearing scheduled. So I'm gonna do that. \* \* \* [W]e're gonna be back to hear what the amenability report says before this Court makes a determination." (Mar. 20, 2009 Tr. 22.)

{¶5} Following the preliminary hearing, the juvenile court journalized its decision in a judgment entry in each case. Each of the judgment entries, at odds with the court's decision announced from the bench, recites that "[a]s to [Count I of each complaint], the court finds that there is probable cause to believe that [S.C.M.] did commit the offense of aggravated robbery," a felony "if committed by an adult." (Apr. 2 and 9, 2009 Judgment Entries.) The court further found "[S.C.M.] did have a firearm about his person while committing the alleged offense and the firearm was displayed and brandished to facilitate the alleged offense." (Apr. 2 and 9, 2009 Judgment Entries.) With those findings, the

court continued "this matter to a date and time certain \* \* \* for the second phase of bindover hearing to determine the juvenile's amenability to rehabilitation within the juvenile justice system," and ordered a bindover evaluation that included "a social evaluation." (Apr. 2 and 9, 2009 Judgment Entries.) The court's entries state the court did "not find probable cause to believe that [S.C.M.] committed the offense of robbery." (Apr. 2 and 9, 2009 Judgment Entries.)

## **II. Assignment of Error**

{¶6} In its single assignment of error, the state asserts this court should reverse the juvenile court's order for an amenability hearing and evaluation of S.C.M., remand this matter, and direct the juvenile court to transfer jurisdiction to the general division of the common pleas court pursuant to R.C. 2152.12(A), the mandatory bindover provision.

### A. Bindover Argument

{¶7} The state contends the juvenile court erred in ordering an amenability hearing in accordance with the procedures for a discretionary transfer under R.C. 2152.12(B). The state supports its contention by pointing to the findings set forth in the court's journalized judgment entries that satisfy the statutory conditions for a mandatory bindover. In those entries, the juvenile court stated it found probable cause to believe that S.C.M., a 16-year-old minor, committed aggravated robbery, a category two offense as specified in R.C. 2152.02(CC)(1), while displaying and brandishing a firearm to facilitate his commission of the alleged aggravated robbery. See R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b).

{¶8} The state acknowledges the juvenile court announced contradictory findings from the bench, finding the evidence established probable cause for the robbery charges

but not for aggravated robbery or use of a firearm. Even in those circumstances, the state argues, this court nevertheless should reverse and remand for a mandatory bindover because the court's oral pronouncements are contrary to the uncontroverted evidence that S.C.M. used a firearm when committing the robbery offenses.

#### B. Jurisdiction – Final Appealable Order

{¶9} Before addressing the state's assigned error, we first must determine whether the juvenile court's judgment entries constitute final appealable orders.

{¶10} Pursuant to Section 3(B)(2), Article IV, Ohio Constitution and R.C. 2505.03, appellate courts have jurisdiction to review only final orders, judgments, or decrees. "[T]he entire concept of 'final orders' is based upon the rationale that the court making an order which is not final is thereby retaining jurisdiction for further proceedings. A final order, therefore, is one disposing of the whole case or some separate and distinct branch thereof." *Browder v. Shea*, 10th Dist. No. 04AP-1217, 2005-Ohio-4782, ¶10, quoting *Noble v. Colwell* (1989), 44 Ohio St.3d 92, 94, quoting *Lantsberry v. Tilley Lamp Co.* (1971), 27 Ohio St.2d 303, 306. Conversely, "[a] judgment that leaves issues unresolved and contemplates that further action must be taken is not a final appealable order." *Id.*, quoting *State ex rel. Keith v. McMonagle*, 103 Ohio St.3d 430, 2004-Ohio-5580, ¶4, quoting *Bell v. Horton*, 142 Ohio App.3d 694, 696, 2001-Ohio-2593.

{¶11} While R.C. 2505.03 generally provides that every final order or judgment may be reviewed on appeal, R.C. 2945.67(A) specifically governs the state's appeals in criminal and juvenile delinquency proceedings. It provides that the state may appeal as of right an order that (1) grants a motion to dismiss all or any part of an indictment, complaint, or information, (2) grants a motion to suppress evidence, (3) grants a motion

for the return of seized property, and (4) grants postconviction relief. R.C. 2945.67(A)(1), (2), (3), and (4). It further provides that with the exception of final verdicts, the state may appeal any other decision in a criminal or juvenile delinquency proceeding with leave of the appellate court. *In re A.J.S.* at ¶30.

{¶12} An order denying a motion for mandatory bindover is the functional equivalent of a dismissal of a criminal indictment and constitutes a final appealable order under R.C. 2945.67(A)(1). *In re A.J.S.* at syllabus (so concluding in a juvenile case seeking mandatory bindover). Accordingly, the state has an appeal of right from a juvenile court order denying a motion for a mandatory bindover. *Id.* Relying heavily on *In re A.J.S.*, the state contends the juvenile court necessarily denied the state's motion for mandatory bindover when the court scheduled S.C.M. for an amenability hearing.

{¶13} The state's reliance on *In re A.J.S.* is misplaced for several reasons. Initially, *In re A.J.S.*, according to the Supreme Court's opinion, involved the state's request for a mandatory bindover. Here, the state requested either a mandatory bindover under R.C. 2152.12(A) or a discretionary bindover under R.C. 2152.12(B). The juvenile court in *In re A.J.S.* denied the requested mandatory bindover. Here, by contrast, the juvenile court neither has granted nor denied the state's motions for a bindover, either mandatory or discretionary. As a result, the juvenile court retains the ability to modify its decision to this point and to grant or deny either bindover, as the judgment entries subject of the state's appeals are merely interim orders and leave open the issue of transfer pending the juvenile court's further proceedings and determinations. Finally, in *In re A.J.S.* the court was ready to proceed with the adjudicatory phase of the proceedings and determine the juvenile's culpability, a proceeding that would preclude the state's ability to

appeal the bindover decision. By contrast, once the court here determines the state's bindover motion, and before the adjudicatory phase begins, the state may appeal. Thus, any alleged error predicated on the juvenile court's conducting an amenability hearing effectively can be raised after the juvenile court makes a final ruling disposing of the bindover motions, as the juvenile court is obliged to forego the adjudicatory phase to allow a timely appeal. As a practical matter, however, an issue would arise whether any claimed error would be moot if the juvenile court orders a bindover, even if discretionary.

{¶14} Because the state does not appeal from final orders of the juvenile court, its appeals are premature and this court lacks jurisdiction to consider the assigned error. Accordingly, the state's appeals are dismissed for lack of jurisdiction, and the causes are remanded to the juvenile court for further proceedings.

*Appeals dismissed.*

KLATT and McGRATH, JJ., concur.

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