

**COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

IN RE J.R. : No. 110241
A Minor Child :
[Appeal by the State of Ohio] :

JOURNAL ENTRY AND OPINION

**JUDGMENT: REVERSED
RELEASED AND JOURNALIZED: July 1, 2021**

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. DL-20-100411

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Anthony T. Miranda and Mallory K.C. Buelow, Assistant Prosecuting Attorneys, *for appellant*.

Cullen Sweeney, Cuyahoga County Public Defender, and Britta M. Barthol, Assistant Public Defender, *for appellee*.

EILEEN A. GALLAGHER, J.:

{¶ 1} Plaintiff-appellant, the state of Ohio, appeals from the juvenile court's denial of its request for mandatory bindover of defendant-appellee, J.R. Following a probable cause hearing, the juvenile court found probable cause did not exist to believe that J.R. committed the offense of aggravated robbery in violation of R.C.

2911.01(A)(1) and that, therefore, he was not subject to mandatory bindover. For the reasons that follow, we reverse.

Procedural History and Factual Background

{¶ 2} On January 19, 2020, the state filed an 11-count complaint against J.R. related to his alleged participation in an armed robbery at a Dollar Tree store in Euclid, Ohio on January 13, 2020. The charges were as follows: two counts of aggravated robbery (Counts 1 and 5), six counts of robbery (Counts 2-4 and 6-8)¹ and one count each of having weapons while under disability (Count 9), safecracking (Count 10) and obstructing official business (Count 11). Counts 1-8 and 10 included one-year and three-year firearm specifications and a weapon forfeiture specification. Count 9 also included a weapon forfeiture specification. J.R. was 16 at the time of the incident.

{¶ 3} On January 14, 2020, the state filed (1) a notice of mandatory bindover and (2) a motion for an order to relinquish jurisdiction for the purpose of criminal prosecution pursuant to R.C. 2152.10(B). On March 9, 2020, the juvenile court held a probable cause hearing. The state presented testimony from five witnesses at the hearing: Euclid patrol officers Fred Stoldt, Jr., Erica Rodriquez and Jason Mausar, Euclid police detective Daniel Sawyer and the store manager, Marcus Lewis. J.R. presented no witnesses at the hearing. A summary of the relevant testimony follows.

¹ Counts 1-4 related to alleged victim Diamond Austin. Counts 5-8 related to alleged victim Marcus Lewis.

{¶ 4} Officer Stoldt testified that on January 13, 2020, at approximately 8:45 p.m., he responded to a call regarding an attempted robbery at a Dollar Tree store on 19001 Euclid Avenue in Euclid. He stated that the cashier, Diamond Austin,² had called 911 and reported the robbery. Officer Stoldt indicated that the suspect had been described as wearing a “blue hoodie under a black jacket.”

{¶ 5} Officer Stoldt testified that when he arrived at the scene, he went to the back door of the store while another officer went to the front door. Officer Stoldt stated that the back door was “wide open.” He “took up a position” behind the engine block of his police vehicle where he could see the back door, pulled out his gun and waited two or three minutes for backup.

{¶ 6} While Officer Stoldt was waiting for backup, he heard Officers Mausar and Rodriguez state over the radio that they were arriving on scene. Officer Stoldt testified that Officer Mausar further reported that “there was a male walking down the street, that he tried to stop him and that he took off running from him.” A “pretty lengthy” pursuit followed.

{¶ 7} According to Officer Stoldt, from his vantage point near the back door of the store approximately 80-100 yards away, he “could see everything that was going on” as officers “chased” the suspect “around Euclid Avenue” until the suspect “ran off out of [his] view.” Officer Stoldt stated that he “took over radio

² Diamond Austin did not testify at the probable cause hearing. The state informed the juvenile court that she had been subpoenaed to testify but did not appear.

communications,” “advising everybody else what was going on, which way the suspect was running and things of that nature.”

{¶ 8} Officer Mausar testified that when he arrived on scene, he saw a male walking north on East 191st Street. He stopped and asked the male whether he had seen anything related to the armed robbery that had just occurred. The male informed him that he had seen “a young black male running towards Euclid Avenue west of the store.” Officer Mausar stated that as he drove down Euclid Avenue, he observed a male matching the description of the robbery suspect, i.e., a male wearing a “dark or black coat with a darker blue hoodie,” on the north side of Euclid Avenue walking westbound. Officer Mausar testified that he “got behind” the suspect with his lights activated, exited his patrol vehicle and asked the suspect, later identified as J.R., to stop. J.R. was talking on a cell phone and continued to walk. Officer Mausar stated that he got back into his patrol vehicle “in an effort to get ahead” so that he could confront J.R. directly. Officer Mausar stated that, at that time, Officer Rodriguez was directly behind Officer Mausar in her patrol vehicle.

{¶ 9} Officer Rodriguez testified that she was “probably the third or fourth” officer on the scene. She stated that as she drove up to the scene, she observed a male wearing a “navy blue hoodie with a black jacket over top of it” that matched the description of the robbery suspect the officers had received from dispatch. She stated that she and Officer Mausar decided to stop the male, later identified as J.R. She indicated that she and Officer Mausar came “alongside of him” and told J.R. to stop but that he continued to walk away from the officers. According to Officer

Rodriguez, when J.R. saw the officers walking towards him, “he took off running.” Officer Rodriguez got out of her vehicle and pursued J.R. on foot while Officer Mausar “tried to cut him off in his vehicle.”

{¶ 10} Officer Rodriguez testified that she and J.R. ran in a “zig-zag pattern” across Euclid Avenue, beginning on the north end, then crossing over to the south end. Officer Rodriguez testified that she got close enough to J.R. to deploy her taser, but that it was not very effective, i.e., J.R. initially “dropped to the ground” after being tased but then “bounced right back up.” She stated that J.R. continued to run toward the north side of the street while removing his jacket and hoodie in an attempt to “eliminate the taser from affecting his body.” Officer Jackson then arrived on scene, got out of his vehicle and deployed the taser again. J.R. fell to the ground and after a brief struggle, officers secured J.R. Officer Stoldt did not see the officers apprehend J.R. He stated that approximately 20 seconds after J.R. ran out of view, someone radioed that they had secured the suspect.

{¶ 11} Officer Rodriguez testified that after he was apprehended, J.R. “kept saying,” “I’m only 16. I’m a juvenile,” and that he also “made some type of utterance about him being with another male that told him to do it and that’s where he got a gun from.” Officer Mausar testified that J.R. said, “[r]ight away,” that he was “a juvenile” and that “someone gave me the gun, somebody gave me the gun.” Officers did not find a firearm on J.R.’s person. Officer Mausar testified that he asked J.R. the location of the gun and that J.R. told him it was “up towards the store more.”

{¶ 12} After backup arrived, Officer Stoldt entered the store through the back door and found Austin in the back storeroom, “cower[ing] in the corner,” still on the phone with dispatch. Officer Stoldt testified that he and Officer Williams “cleared the store” and that he then brought Austin up to the front of the store and spoke with her “about what had happened.” He testified that Austin was “a little frantic” and told him that “two males * * * had entered the store attempting to rob it.” Officer Stoldt stated that after receiving information from dispatch that the store manager, Lewis, was at a nearby gas station, he sent another officer to pick up Lewis and bring him back to the store.

{¶ 13} Officer Stoldt testified that approximately five to ten minutes after the officer returned with Lewis, Officer Stoldt drove Austin and the other officer drove Lewis to the location where J.R. was secured to do a “cold stand.” Officer Stoldt stated that he told Austin that they were going to “drive by the scene where we caught somebody that we believe was the guy who robbed the store.” Officer Stoldt indicated that Austin appeared “very upset” and “frantic” when they first arrived for the cold stand. He stated that he explained to Austin that “she was going to sit in the back seat of the car, windows are tinted, nobody is going to be able to see who she is, just to ease her mind that she couldn’t be * * * intimidated.”

{¶ 14} Officer Stoldt testified that when they arrived for the cold stand, J.R. was standing outside the police cars “with lights illuminating him” approximately 15 yards from where Austin was seated in the back seat of his patrol vehicle. He testified that Austin looked out the tinted window of the patrol vehicle at J.R. and

said that “that was him.” No dash camera or body camera footage of the cold stand identification was presented at the hearing.³

{¶ 15} Lewis testified that he was beginning his routine closing procedures, e.g., going through the back room, conducting a walk-through of the store, “checking out the conditions,” when he saw a male “with a mask and a gun” enter the store through the front door. Lewis stated that the male was wearing a black mask, blue hoodie and some jeans with tennis shoes. When the male entered the store, Lewis was in one of the aisles, and Austin was at the front register. Lewis stated that when he saw the masked man, he immediately turned around, ran the other way and did not look back. Lewis ran out the back door of the store to a nearby gas station and called police. Lewis stated that he remained at the gas station until a police officer picked him up in a police vehicle and “took me to where it happened with the person standing outside and saying is this the guy.”

{¶ 16} Lewis viewed the same suspect Austin had viewed, J.R. Lewis testified that when he saw the suspect the police had secured, “he didn’t have on no shirt and no pants and that was from a distance” and that he could not identify him as the masked man he had seen in the store. Lewis likewise could not identify J.R. in court as the masked man he had seen in the store.

{¶ 17} Officer Rodriguez testified that after J.R. was apprehended, officers retraced his steps and located a loaded 9 mm handgun with an extended magazine

³ Officer Stoldt testified that, at that time, he had a body camera but could not recall if he had turned it on at the time of the cold-stand identification.

on Euclid Avenue. Officer Mausar testified that officers also located a cell phone near the gun. Officer Mausar indicated that although he did not see the gun or cell phone fall from J.R.'s person, he had seen J.R. slip and fall in the area in which the gun and cell phone were recovered while he was being chased by police. Detective Daniel Sawyer testified that he tested the gun and determined that it was operable.

{¶ 18} Officers also recovered the jacket and hoodie J.R. had removed during the chase and presented them as evidence at the hearing.⁴ The hoodie and jacket matched the description of what Lewis testified the masked gunman he saw was wearing at the time of the incident and the description provided by the dispatcher regarding what the suspect was wearing at the time of the incident.

{¶ 19} On April 16, 2020, the juvenile court issued a journal entry indicating that there was probable cause to believe that J.R. committed an act that would be the crime set forth in Count 9, having weapons under disability. The state appealed.

{¶ 20} In July 2020, the juvenile court held an amenability hearing on the state's motion to relinquish jurisdiction. On July 19, 2020, the juvenile court issued a journal entry setting forth its findings as to the issue of amenability.⁵

⁴ In addition to the hoodie, jacket and firearm, the state also introduced as evidence a firearm test report and certified judgment entries from DL 1910236 relating to a prior delinquency adjudication for aggravated robbery.

⁵ Although the issue is not before us, we note that there are some inconsistencies in the juvenile court's findings relating to amenability. In both its July 19, 2020 and January 12, 2021 journal entries, the juvenile court finds that (1) "there are reasonable grounds to believe that the child herein is not amenable to care or rehabilitation within the juvenile system" and that "the safety of the community may require that the child be subject to adult sanctions" and also finds that (2) "[t]here is sufficient time to rehabilitate the child within the juvenile system, and the level of security available in the juvenile

{¶ 21} On January 5, 2021, this court, sua sponte, dismissed the state's appeal for lack of a final, appealable order, noting that while the state could appeal from a juvenile court's denial of mandatory transfer, the juvenile court's April 16, 2020 journal entry "fail[ed] to indicate whether the court found probable cause to believe that the juvenile committed several of the acts charged" and "whether the court granted or denied mandatory transfer."

{¶ 22} The following day, the state filed a motion for ruling on mandatory bindover with the juvenile court. On January 12, 2021, the juvenile court issued a "corrected journal entry." The juvenile court determined that there was insufficient evidence to find probable cause to believe J.R. committed the acts charged in Counts 1-8 and 10 of the complaint, i.e., aggravated robbery, robbery and safecracking. The trial court explained its reasoning as follows:

Upon the conclusion of all evidence presented relating to the matter herein and the arguments of counsel, the Court found that the alleged victim, Marcus Lewis, was not in fact a victim, but was a witness who testified that he observed a masked person and a gun through an aisle in the store; and that he turned around and ran out the back door to the local Sunoco gas station. Realizing that he had left the alleged victim, D. Austin, in the store, he called the police and he called the alleged victim, and he remained in the station until the police arrived. Neither the police nor the store manager, Mr. Lewis, witnessed the alleged robbery and/or safe cracking, and the alleged victim, D. Austin, who remained and [was] later found in the store by police, did not testify at the hearing. The Court therefore finds and concludes that there was insufficient evidence presented to demonstrate that there was probable cause to believe that the child committed the acts set forth in counts 1 and 5, of Aggravated Robbery in violation of R.C. 2911.01(A)(1) with 1

system provides a reasonable assurance of public safety" and that "[o]nce removed from the home, the results of the current juvenile programs indicate that rehabilitation of the child has demonstrated that he is amenable to the services and rehabilitation provided in the juvenile system."

and 3 year firearm specifications, counts 2 and 6, of Robbery in violation of R.C. 2911.02(A)(1) with 1 and 3 year firearm specifications, counts 3 and 7, of Robbery in violation of R.C. 2911.02(A)(2) with 1 and 3 year firearm specifications, counts 4 and 8, of Robbery in violation of R.C. 2911.02(A)(3) with 1 and 3 year firearm specifications, and count 10, Safecracking, in violation of R.C. 2911.31(A).

{¶ 23} The juvenile court further found that J.R. was 16 and that there was probable cause to believe J.R. had committed an act that would constitute the crime of having weapons while under disability in violation of R.C. 2923.13(A)(2) if committed by an adult (Count 9). The juvenile court also incorporated its amenability findings from its July 19, 2020 journal entry into its January 12, 2021 journal entry.

{¶ 24} Once again, the state appealed, raising the following assignment of error for review:

The trial court erred in determining that Counts 1-4 were unsupported by probable cause.⁶

Law and Analysis

{¶ 25} When the state requests a mandatory bindover, the juvenile court determines whether the child is eligible for mandatory bindover “according to the child’s age, the nature of the act, and other circumstances and whether probable cause exists to believe that the juvenile committed the act charged.” *In re C.G.*, 8th Dist. Cuyahoga No. 97950, 2012-Ohio-5286, ¶ 29, quoting *In re M.P.*, 124 Ohio St.3d

⁶ The state does not challenge the juvenile court’s ruling as to Counts 5-8 and 10-11.

445, 2010-Ohio-599, 923 N.E.2d 584, ¶ 11; R.C. 2152.10(A); R.C. 2152.12(A)(1); Juv.R. 30(A)-(B).

{¶ 26} R.C. 2152.12(A)(1)(b)(ii) states, in relevant part:

After a complaint has been filed alleging that a child is a delinquent child by reason of committing a category two offense, the juvenile court at a hearing shall transfer the case if the child was sixteen or seventeen years of age at the time of the act charged and * * * [d]ivision (A)(2)(b) of section 2152.10 of the Revised Code requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

{¶ 27} Pursuant to R.C. 2152.10(A)(2), “[a] child who is alleged to be a delinquent child is eligible for mandatory transfer and shall be transferred as provided in [R.C. 2152.12]” where

[t]he child is charged with a category two offense, other than a violation of section 2905.01 of the Revised Code, the child was sixteen years of age or older at the time of the commission of the act charged, and * * * [t]he child is alleged to have had a firearm on or about the child’s person or under the child’s control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged.

{¶ 28} Thus, if a child is eligible for mandatory bindover and if probable cause exists to believe that the juvenile committed the act charged, the juvenile court must enter an order of transfer. *In re C.G.*, 2012-Ohio-5286, at ¶ 29 (“If the child is eligible for mandatory bindover and if probable cause exists to believe that the juvenile did commit the acts charged, the only procedural step remaining is for the court to enter the order of transfer.”), quoting *In re M.P.* at ¶ 11; Juv.R. 30(B) (“In any proceeding in which transfer of a case for criminal prosecution is required by

statute upon a finding of probable cause, the order of transfer shall be entered upon a finding of probable cause.”).

{¶ 29} In this case, there is no dispute that J.R. was charged with a category two offense, i.e., aggravated robbery, and that he allegedly had a firearm on his person while committing the offense. See R.C. 2152.02(BB)(1); R.C. 2152.10(A)(2)(b). The parties stipulated that J.R. was 16 years old at the time of the offense. Accordingly, the case was within the mandatory bindover provisions. R.C. 2152.10(A)(2)(b); R.C. 2152.12(A)(1)(b)(ii); Juv.R. 30(B). At issue here is whether there was probable cause to believe that J.R. committed aggravated robbery in violation of R.C. 2911.01(A)(1).

{¶ 30} R.C. 2911.01(A)(1) states:

No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall * * * [h]ave a deadly weapon on or about the offender’s person or under the offender’s control and either display the weapon, brandish it, indicate that the offender possesses it, or use it.

{¶ 31} To establish probable cause in a mandatory bindover proceeding, the state has the burden to provide sufficient credible evidence on the elements of the offense to warrant going forward with the charge. The state must provide credible evidence that “raises more than a mere suspicion of guilt,” but it “need not provide evidence proving guilt beyond a reasonable doubt.” *In re D.M.*, 140 Ohio St.3d 309, 2014-Ohio-3628, 18 N.E.3d 404, ¶ 10, quoting *State v. Iacona*, 93 Ohio St.3d 83, 93, 752 N.E.2d 937 (2001).

{¶ 32} Probable cause is ““a fair probability, not a *prima facie* showing, of criminal activity.”” *State v. Martin*, 8th Dist. Cuyahoga No. 108996, 2021-Ohio-1096, ¶ 32, quoting *State v. Starling*, 2d Dist. Clark No. 2018-CA-34, 2019-Ohio-1478, ¶ 37, quoting *State v. Grimes*, 2d Dist. Greene No. 2009-CA-30, 2010-Ohio-5385, ¶ 16; *see also In re B.W.*, 2017-Ohio-9220, 103 N.E.3d 266, ¶ 20 (7th Dist.) (“Probable cause is a flexible concept grounded in fair probabilities which can be gleaned from considering the totality of the circumstances.”), citing *Iacona* at 93. Probable cause is “a reasonable ground for belief of guilt.” *In re B.W.* at ¶ 20, quoting *Brinegar v. United States*, 338 U.S. 160, 175, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949). It does not require that a belief be correct or that it be more likely true than false. *In re B.W.* at ¶ 20, citing *Texas v. Brown*, 460 U.S. 730, 742, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983).

{¶ 33} In considering whether probable cause exists, the juvenile court must “evaluate the quality of the evidence presented by the state in support of probable cause as well as any evidence presented by the respondent that attacks probable cause” to determine whether the state has presented credible evidence going to each element of the offense charged. *Iacona* at 93. However, “while the juvenile court has a duty to assess the credibility of the evidence and to determine whether the state has presented credible evidence going to each element of the charged offense, it is not permitted to exceed the limited scope of the bindover hearing or to assume the role of the ultimate fact-finder.” *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-

5307, 897 N.E.2d 629, ¶ 44; *In re D.M.*, 140 Ohio St.3d 309, 2014-Ohio-3628, 18 N.E.3d 404, at ¶ 10.

{¶ 34} The juvenile court's probable cause determination in a mandatory bindover proceeding involves questions of both fact and law. *In re A.J.S.* at ¶ 1, 51. As a result, our review of the juvenile court's decision is mixed. We defer to the juvenile court's determinations regarding witness credibility, reviewing those determinations for abuse of discretion. However, whether the state has presented sufficient evidence to support a finding of probable cause is a question of law we review de novo, without any deference to the juvenile court. *In re C.G.*, 2012-Ohio-5286, at ¶ 31; *In re A.J.S.* at ¶ 1, 51.

{¶ 35} The primary issue at the probable cause hearing was identity, i.e., whether J.R. was one of the perpetrators who had participated in the armed robbery of the Dollar Tree store on January 13, 2020. As evidenced by its statements on the record during the hearing, the juvenile court apparently believed that Austin's statements to police could not be considered in determining probable cause because she did not testify at the hearing. At one point, early on in the proceedings, the juvenile court stated: "Can we all be careful with regard to our out-of-court statements that are hearsay?" During the state's closing argument, in response to counsel's statement that "on January 13th, 2020, Marcus Lewis and Diamond Austin were working at the Euclid Avenue Dollar Tree," the juvenile court judge remarked, "I had no evidence as to Diamond other than the testimony of Mr. Lewis." At another point during the state's closing, the juvenile court cautioned: "Careful

about too many descriptions with regard to Diamond because those are things she reported to the police. She did not come into Court and testify as to her movements.”

{¶ 36} In determining that probable cause was lacking, the juvenile court did not indicate that the state’s identification evidence was not credible. Rather, as set forth in its journal entry, the juvenile court found that “insufficient evidence [was] presented to demonstrate that there was probable cause to believe” that J.R. committed the offenses at issue because “[n]either the police nor the store manager, Mr. Lewis, witnessed the alleged robbery” and “the alleged victim, D. Austin, who remained and [was] later found in the store by police, did not testify at the hearing.”

{¶ 37} Given that a probable cause hearing is non-adjudicatory, the evidence presented at a probable cause hearing need not meet the same standards required for admissibility at trial. Confrontation clause standards for the admissibility of evidence and the Ohio Rules of Evidence do not apply to probable cause hearings. See, e.g., *State v. Powell*, 4th Dist. Gallia No. 20CA3, 2021-Ohio-200, ¶ 23, citing *State v. Burns*, 8th Dist. Cuyahoga No. 108468, 2020-Ohio-3966, ¶ 74; *State v. Starling*, 2019-Ohio-1478, at ¶ 26-28; *In re B.W.*, 2017-Ohio-9220, 103 N.E.3d 266, at ¶ 48; *State v. Grays*, 1st Dist. Hamilton No. C-790914, 1981 Ohio App. LEXIS 12488, 3-4 (Jan. 14, 1981) (“it cannot seriously be argued that testimony inadmissible at trial under the rules of evidence cannot be considered in a preliminary proceeding such as [a probable cause hearing in juvenile court]”). Accordingly, Austin’s statements to Officer Stoldt, including her identification of

J.R. at the cold stand, should have been considered in determining whether there was probable cause to bind J.R. over, regardless of whether Austin testified at trial.

{¶ 38} The state contends that there was “more than sufficient evidence to establish probable cause” that J.R. committed aggravated robbery and robbery as charged in Counts 1-4 based on the evidence that (1) “Austin positively identified J.R. less than 15 minutes after the robbery”; (2) “J.R. was apprehended wearing clothes that fit the description of the suspect”; (3) J.R. “made inculpatory statements that he committed the crime at the direction of another male and acknowledged that he was in the possession of a gun” and (4) “[t]he gun” was recovered “in the path of J.R.’s flight from police.” J.R. responds that the juvenile court properly found there was insufficient evidence of probable cause because Austin’s cold-stand identification of J.R. was “too lacking in credibility and reliability to establish probable cause.”

{¶ 39} At this stage of the proceedings, the state was not required to prove the truth of the allegations against J.R. The state merely had to present credible evidence showing probable cause supporting each element of the offense charged. Following a thorough review of the record, we find that there was probable cause to believe that J.R. committed aggravated robbery and robbery as charged in Counts 1-4.

{¶ 40} There were two eyewitnesses in this case: Austin and Lewis. Only Lewis testified at the probable cause hearing. Lewis could not identify J.R. at the cold stand or in court as the masked gunman he had seen in the store at the time of

the incident. Lewis, however, had only briefly seen the suspect, who at that time was wearing a mask. Lewis testified that when he saw the masked man, he immediately turned around, ran the other way out of the store and never looked back. Austin, however, remained in the store throughout the incident.

{¶ 41} Although Austin did not appear for the hearing, Officer Stoldt testified that Austin had positively identified J.R. as one of the individuals who robbed the Dollar Tree during the “cold stand” conducted approximately 15 minutes after the incident. At the time Austin identified J.R., Austin was seated alone in the back of a police vehicle, viewing the suspect behind tinted windows. The suspect was 15 yards away, standing outside police cars with “lights illuminating him.” There was no indication that Austin showed any hesitation or lack of certainty in identifying J.R. as one of the perpetrators. However, the evidence presented at a probable cause hearing “does not have to be unassailable’ to qualify as credible.” *In re B.W.*, 2017-Ohio-9220, 103 N.E.3d 266, at ¶ 21, quoting *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, 897 N.E.2d 629, at ¶ 46.

{¶ 42} In addition, the clothing recovered by police, which J.R. had removed during the course of the police chase, matched the description that had been given to police of the clothing that had been worn by one of the perpetrators. Although J.R. did not have a gun on his person when he was apprehended, officers testified that, when they retraced his steps, they found a 9 mm handgun in an area near where J.R. had fallen during the police chase. Finally, although J.R.’s statements to police

did not amount to a confession to aggravated robbery, those statements, along with the other evidence presented, support a finding of probable cause.

{¶ 43} Based on the evidence presented at the probable cause hearing, there was more than a “fair probability” that J.R. committed the acts charged in Counts 1-4. Accordingly, probable cause existed to believe that J.R. participated in the aggravated robbery of the Dollar Tree store and the juvenile court, therefore, erred in denying the state’s request for mandatory bindover. The state’s assignment of error is sustained.

{¶ 44} When a reviewing court reverses a juvenile court’s finding of no probable cause and finds sufficient probable cause in a mandatory transfer case, the proper remedy is to reverse and remand with instructions to enter a mandatory transfer order. *In re B.W.*, 2017-Ohio-9220, 103 N.E.3d 266, at ¶ 52-53, citing *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, 897 N.E.2d 629, at ¶ 65. Accordingly, the juvenile court’s order is reversed, and the case is remanded with instructions to enter an order of mandatory transfer.

{¶ 45} Judgment reversed. Case remanded with instructions to enter an order of mandatory transfer.

It is ordered that appellant recover from appellee the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue of this court directing the Cuyahoga County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN A. GALLAGHER, JUDGE

MARY J. BOYLE, A.J., and
KATHLEEN ANN KEOUGH, J., CONCUR