[Cite as *State v. Moorer*, 2026-Ohio-3877.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 116017
v.	:	
TALLIS C. MOORER, JR.,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART; DISMISSED IN PART
RELEASED AND JOURNALIZED: October 1, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-25-700845-B

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Eric Collins, Assistant Prosecuting Attorney, *for appellee*.

Elizabeth Miller, Ohio Public Defender, and Lauren Hammersmith, Assistant State Public Defender, *for appellant*.

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Tallis C. Moorer, Jr. ("Moorer") was charged in an 11-count complaint in juvenile court stemming from events in January 2024, relating to the

homicide of Tyrone Hipps, who was fatally shot while seated in the driver's seat of a Nissan Sentra at a gas station on East 93rd Street in Cleveland.

{¶ 2} The State pursued a mandatory bindover or, in the alternative, a discretionary bindover. The court held a probable-cause hearing at which the State introduced a theory that Moorer and two codefendants planned to rob Hipps and the incident turned fatal.

{¶ 3} Andrew Hayduk, a homicide detective for the Cleveland police department testified that when he arrived at the crime scene, it was "cordoned off with crime scene tape" and he observed "numerous 9 millimeter shell casings in the parking lot." (Tr. 13.) Det. Hayduk successfully retrieved surveillance footage that was played during the probable-cause hearing. He described the video:

> One of the suspects — there's multiple people running and the victim's vehicle kind of coasts forward and hits the front of the gas station. It's gonna bounce back close to where it started. . . . There's two individuals that run — it's difficult to see, but it's in the back left. You can see a muzzle flash from the suspect in all black that I believe is [codefendant M.S.] fire into the rear of the victim's vehicle. . . . So those two individuals, they run off screen to the left, which I believe is east, down Marah Avenue as the victim's vehicle coasts back next to that gas pump . . . . After striking the building, the victim's vehicle moves back in reverse.

(Tr. 16-17.)

{¶ 4} Det. Hayduk detailed the process he utilized in identifying Moorer and his codefendants. In the surveillance footage, Det. Hayduk identified Moorer as the individual "with [a] black sweatshirt with the yellow lettering on it." (Tr. 18.) He took still shots from the surveillance footage and sent them to other units

within the Cleveland Police Department. Det. Hayduk stated that a detective from the Gang Impact Unit contacted him because the detective recognized the two codefendants from a prior arrest in a different matter. Since Det. Hayduk had no leads on the individual in the black sweatshirt with yellow lettering, he sent still images of the individual to various media sources, including the police department's Facebook page, Channel 19 News, and the Instagram account called the "Cleveland Remembrance Page." Det. Hayduk noted that he received numerous tips "many of them from the Indian River Juvenile Facility," identifying Moorer as the individual in the photos. Moorer had been incarcerated at Indian River for over four years and was released in January 2024, about two to three weeks prior to the shooting.

{¶ 5} Det. Hayduk was questioned about the vehicle that took the suspects to the gas station. He identified the vehicle as a Chevrolet Equinox registered to Wakiha Fayne, believed to be Moorer's aunt and a parent of one of the codefendants. A search warrant was obtained to search Fayne's residence for the vehicle, but Fayne told Det. Hayduk that "she was on her way to the house" and he suspected that she "deliberately drove a different car to the house in order to hide the Chevy Equinox." (Tr. 34.) Fayne and another individual were eventually pulled over in the Equinox and taken to the homicide unit for questioning. Det. Hayduk described Fayne as "very evasive" and unforthcoming with any information. (Tr. 35.) A search warrant obtained for Fayne's phone revealed a text message indicating that she was in an Uber about an hour prior to the shooting and that she

sent a text to one of the codefendants, "I need my f***ing car." (Tr. 37.) Fayne sent another message the day after the incident, asking for one of the codefendant's phone numbers "because if any got pulled over and because KJ was on live talking about y'all run up Marah [Avenue] and y'all was in a car at first." *Id.* Det. Hayduk believed that this message was "a reference to them fleeing down Marah [Avenue] and being in a car earlier, [Fayne's] car." *Id.* According to the detective, when the vehicle was eventually recovered, Fayne admitted that she had cleaned the interior of the vehicle after the incident. Consistent with Fayne, Det. Hayduk described evidence in Fayne's phone suggesting that the vehicle had been cleaned between the incident and the police taking custody of the vehicle.

{¶ 6} Det. Hayduk also discussed the processing of the other vehicle in this matter — the Nissan Sentra in which the victim was shot. Photos introduced into evidence showed the vehicle with numerous bullet defects in various areas of the vehicle, two of which were in the rear of the front driver's seat, where Hipps had been shot and corresponded to wounds on Hipps's body on his right chest and right wrist. A black bag of marijuana was retrieved from the front passenger seat.

{¶ 7} Also recovered was the victim's cellphone, revealing that Hipps was communicating through FaceTime with Moorer approximately five minutes before the shooting. Det. Hayduk was able to take a screenshot of that conversation. He compared the background of the screenshot to a photo of the interior of the Chevrolet Equinox and felt that it was "very likely" that Moorer was in that vehicle when he spoke to Hipps. (Tr. 54.) The two side-by-side photos were introduced

into evidence. Det. Hayduk stated that the iCloud account used to FaceTime Hipps belonged to Moorer's older brother who had been incarcerated at the time of the shooting.

{¶ 8} Det. Hayduk also discussed his use of the codefendants' social media accounts to identify Moorer. He also saw on Fayne's Instagram account that she responded to a post about the Northern Ohio Violent Fugitive Task Force arresting a 16-year-old for the fatal shooting of Hipps and a post about an active standoff on "130th and Forest." Det. Hayduk noticed that an Instagram account associated with Fayne commented "Tallis" on these posts.

{¶ 9} While in custody, Moorer voluntarily submitted to a DNA swab. The sample was compared against DNA from a firearm that was discovered in a crawl space next to the room where Moorer was arrested. Det. Hayduk believed the recovered firearm could be the murder weapon. DNA from the recovered firearm matched Tallis's DNA, but Det. Hayduk had not received any ballistic results from the evidence collected. On cross-examination, Det. Hayduk admitted that the two codefendants and Moorer ran in opposite directions, with Moorer running in the opposite direction just prior to two muzzle flashes near the codefendants.

{¶ 10} At the close of the State's case, the court found probable cause to believe that Moorer committed the offenses charged and bound the matter over to the general division.

{¶ 11} In December 2025, Moorer agreed to plead guilty to one count of involuntary manslaughter and felonious assault, each with a three-year firearm

specification. The parties offered a jointly recommended sentencing range of 15 to 20 years, agreeing that consecutive sentences would be imposed to achieve this range. On amended Count 1, the trial court ordered Moorer to serve the three-year firearm specification prior to and consecutive to six years on the base offense of involuntary manslaughter, for a total of nine years. On Count 10, the trial court ordered Moorer to serve the three-year firearm specification prior to and consecutive to six years on the base offense of felonious assault, for a total of nine years. The trial court ordered the two counts to be served consecutively for an aggregate total of 18 years, and after applying the Reagan Tokes Law, the maximum term was a potential 21 years.

{¶ 12} Moorer appeals and assigns the following errors for our review:

I. The juvenile court erred when it transferred Moorer's case to the adult court when its probable cause finding lacked sufficient evidentiary support.

II. The trial court erred when it failed to merge for sentencing offenses that had a similar import, arose from the same conduct, and were not committed separate or with a separate animus.

III. Moorer was denied the effective assistance of counsel.

I. Juvenile Court Probable-Cause Determination

{¶ 13} In his first assignment of error, Moorer contests the sufficiency of the State's probable-cause evidence that led to his case being bound over to the general division. The State generally argues that by pleading guilty, Moorer has waived "all nonjurisdictional defects in prior stages of the proceedings," including his ability to contest the bindover proceeding. This court has repeatedly rejected

the State's broad and bright-line conclusion. *See State v. Pickens*, 2024-Ohio-951, ¶ 14 (8th Dist.), and *In re T.S.*, 2024-Ohio-4898, ¶ 69 (8th Dist.) (both recognizing precedent from this court that found a defendant could challenge the amenability determination on appeal despite pleading guilty).[1]

{¶ 14} At the outset, we note that whether a defendant has waived their probable-cause challenge by pleading guilty has not been addressed by the Ohio Supreme Court. In *State v. Turner*, 2026-Ohio-1996, ¶ 12, the Court accepted the case under three propositions of law, including whether "[i]n juvenile bindover cases, guilty pleas in criminal court waive claims arising out of the underlying bindover hearing because a grand jury determination superseded the juvenile court's probable cause finding." Because the *Turner* Court found merit to the State's first proposition of law regarding subject-matter jurisdiction, it did not decide whether a defendant waives the "right to challenge the adult court's jurisdiction over [the] case by entering guilty pleas in that court." *Turner* at ¶ 38.

{¶ 15} The Ohio Supreme Court also had the opportunity to address this issue when it accepted for review the Seventh District's decision, *State v. Zarlengo*, 2021-Ohio-4631 (7th Dist.). *See 04/27/2022 Case Announcements*, 2022-Ohio-1284, *State v. Zarlengo*, No. 2022-0106. In *Zarlengo*, the Seventh District held

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[1]At the time of release of this opinion, the issue of whether a defendant by pleading guilty waives any challenge to the amenability determination in a bindover proceeding is currently pending in the Ohio Supreme Court. *See 10/24/2024 Case Announcements #3*, 2024-Ohio-4777, *State v. D.T.*, No. 2024-1276, and *01/28/2025 Case Announcements*, 2025-Ohio-481, *State v. T.S.*, No. 2024-1647.

that "a defendant who pleads guilty in the general division of the common pleas court waives the ability to contest the sufficiency and weight of the evidence presented at the probable cause hearing in the juvenile court." *Id.* at ¶ 46.

{¶ 16} The Ohio Supreme Court accepted the discretionary appeal on three propositions of law, with the first proposition of law stating: "In juvenile bindover cases, guilty pleas in criminal court do not waive on direct appeal constitutional claims arising out of the underlying bindover hearings in the juvenile court." *Zarlengo*, No. 2022-0106. The appeal, however, was voluntarily dismissed before the Ohio Supreme Court could render a decision on this issue. *Id.*

{¶ 17} This court, however, has recently held that a guilty plea waives a defendant's right to challenge the probable-cause determination made in a bindover proceeding. *Pickens*, 2024-Ohio-951 (8th Dist.); *T.S.*, 2024-Ohio-4898 (8th Dist.); *State v. Griffin*, 2026-Ohio-925 (8th Dist.). *But see State v. Mays*, 2014-Ohio-3815 (8th Dist.) (addressing a probable-cause challenge following a guilty plea). Accordingly, based on this court's recent precedent Moorer has arguably waived his challenge on appeal.

{¶ 18} Even if Moorer did not waive his ability to challenge the probable-cause determination by pleading guilty, we would not find any merit to Moorer's assignment of error.

{¶ 19} R.C. 2152.12(A)(1)(a)(i) provides the framework for determining whether a case is subject to a mandatory bindover.

> After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be aggravated murder . . . if committed by an adult, the juvenile court at a hearing shall transfer the case if . . . [t]he 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.

{¶ 20} To establish probable cause in a bindover proceeding, the State must present credible evidence supporting each element of the alleged offenses. *State v. Iacona*, 93 Ohio St.3d 83, 93 (2001). To find probable cause, the court must find "credible evidence that 'raises more than a mere suspicion of guilt'" but does not require evidence of guilt beyond a reasonable doubt. *In re D.M.*, 2014-Ohio-3628, ¶ 18, quoting *Iacona* at *id.* In mandatory-bindover proceedings, the court is considered a gatekeeper rather than an ultimate trier of fact because it is "charged with evaluating whether sufficient credible evidence exists to warrant going forward with a prosecution on a charge that the legislature has determined triggers a mandatory transfer of jurisdiction to adult court." *In re A.J.S.*, 2008-Ohio-5307, ¶ 46. We must defer to the juvenile court's "determinations regarding witness credibility, but review de novo the legal conclusion whether the [S]tate presented sufficient evidence to demonstrate probable cause to believe that the juvenile committed the acts charged." *Id.* at ¶ 51.

{¶ 21} Here, the State was required to present sufficient evidence that Moorer caused "the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree . . . ." R.C. 2903.02(B). In a sufficiency-of-the-evidence

review, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond" a mere suspicion of guilt. *State v. Jenks*, 61 Ohio St.3d 259, 274 (1991).

{¶ 22} Moorer specifically contests the State's theory that he and his codefendants had planned to rob Hipps and asks us to consider other evidence in the record suggesting that he was not privy to a plan to rob or shoot Hipps. Moorer argues that evidence demonstrating that he spoke to the victim on FaceTime approximately five minutes before the murder does not demonstrate that he and his codefendants were planning a robbery. He also argues that there is no evidence suggesting that the meetup with Hipps was for a marijuana purchase, and no evidence suggesting that anything was stolen from the victim prior to the shooting. We disagree.

{¶ 23} As the State argued in its responsive brief, evidence required to establish probable cause for bindover purposes need not rise to the level of "beyond a reasonable doubt" as is required to sustain an actual conviction. The State presented video evidence demonstrating that Moorer was in the vehicle with the alleged suspects. The video then shows all three suspects, including Moorer, entering the store and leaving quickly without making a purchase. Surveillance footage from the gas station shows Moorer running away from the passenger side of Hipps's vehicle. When the victim's vehicle was searched, shell casings were recovered from the passenger side of the vehicle. The State also introduced cell

phone records indicating that Moorer had been speaking to Hipps via FaceTime just moments before the murder, and Det. Hayduk identified an item in Moorer's hands as he is running from the scene as a cell phone. The State also presented physical evidence suggesting that the 14 shell casings collected from the parking lot were from two different guns, and a gun was found near Moorer at the time of his arrest.

{¶ 24} The aforementioned evidence, especially when considered together and viewed in the totality of the circumstances, raises more than a mere suspicion of guilt that Moorer committed the acts charged that were considered during the bindover proceeding. Accordingly, we find that the State presented sufficient evidence to demonstrate probable cause to believe that the juvenile committed the acts charged. Regardless of whether the issue was waived or is reviewed on its merits, the trial court did not err, and Moorer's first assignment of error is overruled.

II. Allied Offenses

{¶ 25} In his second assignment of error, Moorer argues that the trial court should have merged his involuntary-manslaughter and felonious-assault charges for sentencing because they are allied offenses of similar import. The State contends that Moorer's sentence is not reviewable because it was a jointly recommended sentence, imposed by the court, and authorized by law. According to the State, the agreed-upon sentence included consecutive sentences, which

implicitly included an agreement that the multiple offenses were separate under R.C. 2941.25.

{¶ 26} R.C. 2953.08(D)(1) precludes appellate review of a sentence that is jointly recommended by the parties, imposed by the court, and authorized by law. In *State v. Underwood*, 2010-Ohio-1, the Ohio Supreme Court held that "[w]hen a sentence is imposed for multiple convictions on offenses that are allied offenses of similar import in violation of R.C. 2941.25(A), R.C. 2953.08(D)(1) does not bar appellate review of that sentence even though it was jointly recommended by the parties and imposed by the court." *Id.* at paragraph one of the syllabus.

{¶ 27} In this case, it is undisputed that the parties jointly recommended a sentencing range of 15 to 20 years. The agreement, however, was silent on whether the offenses were allied, and thus subject to merger at sentencing. Despite this silence, Moorer agreed to consecutive sentences on a two-count guilty plea, both of which included a three-year firearm specification.

{¶ 28} In *State v. Word*, 2019-Ohio-795 (8th Dist.), this court held that "a defendant cannot agree to consecutively serve sentences without agreeing that the court has the authority to impose individual sentences on each count." *Id.* at ¶ 9, citing *State v. Lee*, 2018-Ohio-1839, ¶ 9 (8th Dist.). "When an offender agrees to consecutively serve separate sentences on multiple offenses, such an agreement constitutes a waiver of the right to challenge the sentences under R.C. 2941.25." *Id.*, citing *Lee* at ¶ 9.

{¶ 29} Based on the sentencing range Moorer agreed to, the sentence was an impossibility *unless* the counts were run consecutively, and thus, it is reasonable to say that Moorer's agreement implicitly conceded that these were not allied offenses of similar import. At no point during the plea colloquy did Moorer or his counsel express any misunderstanding about consecutive sentences or the sentencing range. In fact, Moorer, through counsel, agreed with this interpretation, acknowledging at multiple points that he was not only agreeing to consecutive sentences, but agreeing to a specific range of prison time.

> THE COURT: Just so the record is clear, that it is your desire, in order to accomplish the plea here today, that consecutive sentences are going to be required?
>
> [MOORER'S COUNSEL]: That's our understanding. That's correct.

(Tr. 41.)

{¶ 30} By agreeing to consecutive sentences, Moorer implicitly agreed that the offenses were not allied. Accordingly, pursuant to R.C. 2953.08(D)(1), we lack jurisdiction to review Moorer's sentence on appeal because Moorer's sentence was jointly recommended, imposed by the court, and authorized by law.[2] His second assignment of error is overruled and that portion of the appeal is dismissed.

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[2] Even if we concluded that appellate review was permitted, we would nonetheless find that Moorer waived his right to challenge whether the offenses were allied. *See In re T.B.*, 2021-Ohio-2104 (8th Dist.) (finding the jointly recommended sentence reviewable, but the allied-offense issue waived because the parties agreed that none of the offenses were allied).

III. Effective Assistance of Counsel

{¶ 31} Moorer's final assignment of error suggests that he received ineffective assistance of counsel because counsel "failed to object to several errors in both the juvenile and the adult court — failures which prejudiced [him]." Specifically, he claims that his counsel's failure to object to the alleged errors in his first and second assignments of error "prejudiced him because he is now serving a sentence for both offenses instead of just one."

{¶ 32} For us to conclude that trial counsel provided ineffective assistance, the defendant must overcome a strong presumption that the failure to object may constitute sound trial strategy. *State v. Mohamed*, 2017-Ohio-7468, ¶ 18. The defendant first must show that counsel's performance was deficient or falls below an objective standard of reasonable representation. *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984). Next, the defendant must prove prejudice, that is, show that there is a reasonable probability that counsel's deficient performance affected the outcome of the proceedings. *Id.* at 694.

{¶ 33} Based on our disposition of the first two assignments of error, we cannot say that counsel's performance fell below an objective standard of reasonableness or that Moorer demonstrated prejudice. Notwithstanding any determination regarding waiver of the probable-cause determination, we found that the State presented sufficient evidence upon which the trial court based its decision to bind the matter over to the general division. Accordingly, an objection would not have changed the outcome.

{¶ 34} In resolving the second assigned error, we found that the assigned error was unreviewable because Moorer's plea agreement included a jointly recommended sentence that was imposed by the court and authorized by law. Moorer's agreement to consecutive sentences was an implicit agreement that the offenses did not merge for sentencing. Accordingly, Moorer cannot demonstrate prejudice. His third assignment of error is overruled.

{¶ 35} Judgment affirmed in part; dismissed in part.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's convictions having been affirmed in part, and dismissed in part, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

KATHLEEN ANN KEOUGH, JUDGE

EILEEN T. GALLAGHER, P.J., and
DEENA R. CALABRESE, J., CONCUR