

IN THE SUPREME COURT OF OHIO 08-1562

IN THE MATTER OF:)	Supreme Court Case No.
)	
MEREDITH POLING,)	On Appeal from the Court of Appeals
)	of the Third Appellate Judicial District
ALLEGED DELINQUENT CHILD)	of Ohio, Hardin County
)	
[STATE OF OHIO - APPELLANT].)	Court of Appeals Case No. 6-08-09

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT STATE OF OHIO**

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**EXPLANATION OF WHY THIS CASE INVOLVES A FELONY
AND IS ONE OF PUBLIC AND GREAT GENERAL INTEREST**

This case is one of public and great general interest because it presents the critical issue for this Court to clarify the circumstances under which the State may appeal the denial of a Discretionary Bindover Motion. While this Court has previously held that a ruling on a discretionary bindover motion should not be reversed absent an abuse of discretion, *see State v. Golphin*, 1998-Ohio-336, 81 Ohio App. 3d 543, 546; *State v. Watson* (1989), 47 Ohio St. 3d 93, 96; *State v. Douglas* (1985), 20 Ohio St. 3d 34, 36, confusion still exists as to whether the State may take an immediate appeal following the denial of a discretionary bindover motion.

This case also provides this Court with the opportunity to review the incorrect determination by the Third District Court of Appeals that it would not review the errors raised in the State's Motion For Leave To Appeal pursuant to App.R. 5(C), because of its mistaken and dangerous belief that the State did not raise an issue of law that was capable of repetition yet would evade review. The State contends that the juvenile court's ex parte communications and the consideration of evidence outside the record as set forth below, did raise an issue of law which could only be reviewed at this time because the operation of double jeopardy principles would preclude meaningful review after an adjudicatory hearing on the merits in the juvenile court following the juvenile court's denial of the State's Discretionary Bindover Motion.

The Court of Appeals inexplicably refused to consider the State's appeal, and thus, unless it is set aside by this Court, the juvenile court ruling will allow the alleged delinquent child to escape an appropriate punishment for her crime, and will have done so by virtue of a fundamentally unfair procedure. Perhaps even more significantly, the Court of Appeals appeared to set forth a rule that juvenile court decisions could not be reviewed for an abuse of discretion in a motion for leave to appeal under Appellate Rule 5(C). If allowed to stand, this holding would

insulate even the most extreme abuses of discretion from any review because of the double jeopardy guarantees afforded to those who have been the subject of juvenile proceedings.

Also, this appeal raises an issue of first impression for this Court to determine what, if any weight, a judge may ascribe to the potential of a Serious Youthful Offender Disposition when ruling on a motion for discretionary bindover. This Court's guidance on this issue is necessary to assure that all future discretionary bindover decisions are justly considered.

This appeal arises from the premeditated murder of a mother by her 15-year-old daughter. This case is one of public and great general interest not just because it involves the most heinous of crimes, but also because the juvenile court ruling below improperly denied the State's Discretionary Bindover Motion to try the alleged delinquent child as an adult in a manner that violates the fundamental principles of fairness and justice upon which our court system is based.

The public has a significant interest in ensuring that juvenile who commit serious crimes are appropriately punished for their offenses, and has a strong interest in ensuring that society is protected from those who commit heinous crimes. Moreover, the public has a strong interest in ensuring that the court systems operate in a fair and proper manner, and in particular, that judicial decisions rest on the evidence presented in court, and not on information gained in independent ex parte communications by the judge. Finally, the public has a significant interest in the particular outcome of this case, in which a 15-year-old girl, who is now 17 years of age, callously shot her mother execution-style in her own home.

This Court has accepted jurisdiction in *In Re A.J.S.* on appeal from the Franklin County Court of Appeals, Tenth Appellate District, in this Court's Case No. 2007-1451, which is currently pending before this Court regarding the appropriate standard of review for a probable cause determination; and whether the denial of the mandatory bindover motion constitutes a final appealable order. The State submits that the same double jeopardy concerns exist whether a

court is reviewing a mandatory or a discretionary bindover decision because in either scenario, if the State is not permitted to immediately appeal such a decision, it will forever lose the opportunity to prosecute the alleged delinquent child as an adult for the very serious crimes for which the legislature created the transfer provisions to address and for public safety. Therefore, acceptance of jurisdiction in this matter will provide the necessary clarity and finality needed to assure that the State has a meaningful review of discretionary bindover motions and that such decisions are rendered under fair and consistent criteria throughout the State of Ohio.

STATEMENT OF THE CASE AND FACTS

On March 30, 2007, the State of Ohio filed a complaint charging Meredith Poling, with delinquency by Murder in violation of O.R.C. §2903.02(A) and a Firearm Specification contrary to O.R.C. §2941.145(A), due to her execution-style shooting of her mother, Michelle Murnahan, on August 31, 2006. The State also filed a Discretionary Bindover Motion, seeking to transfer the case to the General Division of the Court of Common Pleas to criminally prosecute Meredith Polling as an adult. Pursuant to O.R.C. §2152.12(B), a preliminary hearing on the State's Discretionary Bindover Motion was held on September 26 and 27, 2007, before Judge James S. Rapp, who found that probable cause existed to believe that Meredith Poling committed the acts charged, Murder with a Firearm Specification. Thereafter, pursuant to Juv.R. 30(C), Judge Rapp ordered a mental examination be conducted on the child for the purpose of determining her amenability to rehabilitation. Judge Rapp granted the child's attorney's request to appoint Dr. David J. Tennenbaum, Ph.D. to complete this evaluation without objection from the State.

The amenability hearing was held on February 11, 2008. In an order filed on March 19, 2008, Judge Rapp disregarded the findings of the court-ordered psychologist, ruled that Meredith was amenable to rehabilitation, and denied the State's Discretionary Bindover Motion. The State

then filed a Motion for Leave to Appeal in the Court of Appeals of the Third Appellate Judicial District, Hardin County, which declined to hear the case on June 25, 2008. On July 3, 2008, the State filed an Application for Reconsideration in the Court of Appeals. This appeal follows.

The facts of this case showed that the then 15-year-old Meredith Poling, acting with premeditation, callously shot her mother, Michelle Murnahan, in the back of the head as she sat defenseless in her home on August 31, 2006. The evidence at the probable cause hearing showed that Meredith hated her mother and planned this murder in advance. The evidence also demonstrated that Meredith Poling showed absolutely no remorse for this monstrous crime.

Dr. Tennenbaum, an esteemed psychologist with over 31 years of experience in the field of psychodiagnostics, has spent over 10 years as the Director of Clinical Services for the Central Ohio Training Institution in the Ohio Department of Youth Services. For his evaluation, Dr. Tennenbaum had the benefit of reviewing all of the legal, educational, and psychological records relating to Meredith Poling including discovery and over 2000 pages of collateral documentation. Also, Dr. Tennenbaum personally met with Meredith Poling on four separate occasions for two to three hours each session. Further, Dr. Tennenbaum interviewed Meredith's six (6) surviving relatives, spoke at length with Meredith's supervising officer and other service providers. During his meetings, Dr. Tennenbaum administered the child a complete battery of psychological tests. Based on his sessions with the child, his interviews, and his testing, Dr. Tennenbaum determined that Meredith Poling exhibited no emotion regarding her mother's death or her even her own detention. Instead, Dr. Tennenbaum reported that Meredith exhibited "smug assurance" without "any discernable upset regarding her mother's death [or] any suggestion that she misses her." Dr. Tennenbaum also testified that Meredith Poling exhibited an unusual "lack of distress" and "appears emotionally distancing; calculating; sophisticated beyond her years." Accordingly, Dr. Tennenbaum unequivocally concluded and testified that:

Meredith does not present as an adolescent for whom investment in treatment is seen, this being strongly supported by the repeated absence of change as she resided with various extended family.

Separate possibly too from other considerations is Meredith's maintaining innocence. This weighs heavily against retention for the purposes of treatment and rehabilitation within a juvenile justice system that would hold her only minimally. She does not evidence a likelihood of significant change within the short term.

In summary, from the limited perspective of the psychological inquiry, *Meredith does not appear, in my opinion, as appropriate for retention with the juvenile justice system.*

(Dr. Tennenbaum's Report at p. 20)(emphasis added).

Despite this considered opinion from an extremely experienced psychologist, Judge Rapp not only dismissed the conclusions of Dr. Tennenbaum, but he misconstrued the record, assumed facts not in evidence, and based upon these false assumptions, improperly substituted his judgment for Dr. Tennenbaum's and erroneously concluded that the expert's opinion would be substantially different if he saw the evidence the way Judge Rapp did. (Order Denying Transfer 3/19/08 at p. 11). Judge Rapp placed undue reliance on Defense Exhibit "J," which at the time of the amenability hearing when it was stipulated to on February 11, 2008, it contained nine (9) pages, consisting of a two (2) page letter purportedly prepared by "Vincent Ciola, MBA, Student Counselor, Light The Way Christian Counseling Center," dated February 6, 2008 and seven (7) pages of treatment plan forms for the child which bears the sole signature of Vincent Ciola on the "Therapist's" signature line. However, through inappropriate ex parte communications, the court later augmented Defense Exhibit "J," after the completion of the amenability hearing and while the bindover motion was under advisement. Specifically, the court improperly added two (2) letters dated February 27, 2008 to Defense Exhibit "J," nearly two weeks after the amenability hearing, which Judge Rapp inappropriately sought out, considered, and relied upon in reaching his decision, making Defense Exhibit "J," into a 12 page exhibit without giving the

State of Ohio the opportunity to cross examine or challenge this additional evidence used to bolster the conclusions of the student intern, Vincent Ciola.

Vincent Ciola's cursory letter contained a list of dates of counseling sessions he purportedly had with the child and a summarized the student counselor's general conclusions. This letter does not specifically address amenability or any of the statutory criteria contained in O.R.C. §2152.12. Additionally, there were absolutely no stipulations as to Vincent Ciola's training, experience, education, or other credentials. Moreover, a *curriculum vitae* was not offered or admitted into evidence and Vincent Ciola did not testify at the amenability hearing. This is in stark contrast to the specific written stipulations regarding: the admission into evidence of Dr. Tennenbaum's exhaustive report, his *curriculum vitae*, and to his expert qualifications and his ability to render expert opinion in this matter.

Notwithstanding the silent record, in his order denying the State's Discretionary Bindover Motion, Judge Rapp described Vincent Ciola as "a student from Case Western University graduate school as an intern, in placement with, and supervised by, the Light of the Way Christian Counseling Center." (*Id.* p .12). The letter from Ciola, however, contained no information about his background, experience, education, or training, except to note that he had an M.B.A. and where he was a student counselor. In fact, the information concerning Ciola was gathered by Judge Rapp in ex parte communications with Cindi Orley, Social Services Supervisor for the Hardin County Jobs & Family Services, which sworn affidavits later revealed that Judge Rapp called her to ask about Ciola. In response, she met with and delivered to Judge Rapp a one-page letter with an attachment consisting of a two-page letter from Brenda Sanford, Vincent Ciola's supervisor, which summarized Ciola's background and his supervision.

Using this extraneous evidence concerning Ciola, and citing to credentials that were only contained in the ex parte communications, and regardless of the fact that Ciola had no collateral

information, was unaware of the facts of the case which he did not discuss with the child, that he performed no standardized tests, and that his conclusions were based exclusively on the information provided by the accused who has a history of lying, manipulating, and in particular, telling counselors what they want to hear, Judge Rapp concluded in his order that Ciola's evaluation of the child was more persuasive and thus refused to relinquish jurisdiction.

The State then filed a Motion for Leave to Appeal in the Third District Court of Appeals arguing that the juvenile court's order was an immediately appealable order and that Judge Rapp committed various legal errors and abuses of discretion warranting reversal as set forth below. The Court of Appeals denied the motion without directly addressing the various arguments raised by the State, finding that an interlocutory ruling was not necessary because the State did not raise any issues of law that were capable of repetition yet would evade review.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. I: THE JUVENILE COURT ORDER DENYING THE STATE'S DISCRETIONARY BINDER MOTION TO TRANSFER JURISDICTION IS AN APPEALABLE ORDER AND THE STATE MAY TAKE AN IMMEDIATE APPEAL FROM THE RULING OF THE JUVENILE COURT.

The Ohio courts have recognized that the State has the right to take an immediate appeal from the denial of a motion to transfer jurisdiction over a juvenile to stand trial as an adult. *See In re A.J.S.*, 2007-Ohio-3216, 173 Ohio App. 3d 171 (State's appeal from denial of transfer for attempted murder permitted, found that juvenile court erred in failing to find probable cause – this mandatory bindover case is presently pending before this Court); *In re D.T.F.*, 2005-Ohio-5245, (State permitted to immediately appeal finding that probable cause did not exist for charge of attempted murder); *In re S.J.*, 2005-Ohio-3215, 106 Ohio St. 3d 11, (State had immediate right to appeal dismissal of murder charge).

While each of these cases dealt with the probable cause portion of bindover hearings, it is apparent that the same result must be recognized for denials based upon a finding of amenability to rehabilitation. In such situations, as with a denial based on a lack of probable cause, whether when ruling on a mandatory or discretionary bindover motion, the juvenile court's ruling means that the State forever loses the opportunity to seek the prosecution of the juvenile as an adult once there is an adjudicatory hearing in juvenile court because the double jeopardy provisions of the Fifth Amendment to the United States Constitution and Article I, §10 of the Ohio Constitution bar a subsequent prosecution of the juvenile as an adult. *See Breed v. Jones (1975)*, 421 U.S. 519, 541; *In Re Cline*, 2002-Ohio-271, (State would not be afforded a meaningful or effective remedy on appeal of unfavorable probable cause ruling if it were required to wait until after resolution of juvenile proceedings because of double jeopardy principles). Thus, absent the right of an immediate appeal, a decision of the juvenile court under O.R.C. §2152.12(B) involving a discretionary bindover, would be unreviewable, regardless of the nature of abuse(s) of discretion or how egregiously improper or incorrect that decision may be.

The Third District Court of Appeals declined to review the juvenile court decision because “[t]he State does not establish that the juvenile court failed to follow the applicable law or made an error of law that is capable of repetition yet evading review.” (Court of Appeals Journal Entry at p.2). The court then added, “[n]either the alleged ex parte conduct of the trial court, nor the trial court’s evaluation of the testimony before it raises any issue of law capable of repetition yet evading review, which would necessitate an interlocutory ruling by this court.” *Id.* The Appellant respectfully submits that jurisdiction must be accepted by this Court because without such: 1) the State is denied meaningful review and it is insufficient to merely determine that the juvenile court judge addressed the listed statutory factors in its decision denying a discretionary bindover without construing if the manner in which those factors were addressed

constituted an abuse of discretion; and 2) the appellate court's ruling requiring an error of law that is capable of repetition yet evading review is unsupported by the case law and fails to recognize the double jeopardy implications as set forth above. Additionally, as set forth below, several of the issues raised by the State in the Third District Court of Appeals constituted issues of law and not merely issues of abuse of discretion.

This Court has previously held that a juvenile court's ruling in a discretionary bindover proceeding may be reversed for an abuse of discretion. See *State v. Golphin*, 1998-Ohio-336, 81 Ohio St. 3d 543; accord *State v. Douglas* (1985), 20 Ohio St. 3d 34. While it may be true, as the Court of Appeals stated in its opinion, that a motion for leave to appeal is "typically allowed at the conclusion of trial where the underlying legal question is capable of repetition yet evading review," Court of Appeals Journal Entry at p. 2 (citing *State v. Bistricky* (1990), 51 Ohio St. 3d 157, 159), this principle in no way precludes the allowance of a motion for leave to appeal in other circumstances. As pointed out above in the discussion of double jeopardy considerations, given the procedural posture of this case, the juvenile court's abuse of discretion could be reviewed at no other time than now, prior to the adjudicatory hearing. Therefore, the Third District Court of Appeals failed to recognize the double jeopardy implications in this matter when it declined to permit the State's appeal. There is simply no persuasive reason for the requirement by the Court of Appeals of a legal error on the part of the juvenile court, as opposed to an abuse of discretion, that is capable of repetition yet evading review.

Allowing the ruling of the Court of Appeals to stand would enable a juvenile court's exercise of discretion under R.C. 2152.12(B) to be unreviewable, regardless of how extreme an abuse of discretion it may be. The legislature, in setting out a statutory scheme for the transfer of juveniles to for prosecution as adults, could not possibly have intended to give unfettered discretion to the juvenile court judge in considering whether to grant a motion for transfer.

Accordingly, this Court should accept jurisdiction not simply to correct the error in this case, but also to clarify the circumstances in which discretionary bindover decisions may be reviewed.

PROPOSITION OF LAW NO. II: THE EX PARTE COMMUNICATIONS WITH THIRD PARTIES AND THE CONSIDERATION OF EXTRANEOUS EVIDENCE BY THE JUVENILE COURT JUDGE WERE LEGAL ERRORS REQUIRING REVERSAL OF HIS RULING DENYING THE STATE'S DISCRETIONARY BIDOVER MOTION.

The Court of Appeals declined to grant the State's Motion for Leave to Appeal on its belief that the Motion did not raise any issues of law but instead complained only about the exercise of discretion by the juvenile court. This is simply not true. It is well established, as was pointed out by this Court, that ex parte communications by a judge and consideration of evidence not in the record are legal errors. *See State v. Roberts*, 2006-Ohio-3665, 110 Ohio St. 3d 71, (trial court's ex parte communication with the prosecutor in preparing court's sentencing opinion is a legal error); *Nationwide Mut. Ins. Co. v. Riggle* (1962), 173 Ohio St. 288 (court committed prejudicial legal error in considering incompetent evidence not introduced at trial); *see also Boling v. Valecko*, 2002-Ohio-449 (court committed legal error when it considered psychological assessments that were part of court's unofficial file).

It is evident that Judge Rapp's ruling was heavily influenced by the information that he obtained outside the record. This action unjustly usurped the State's trial tactic of stipulating to Defense Exhibit "J" as is, and deprived the State of the opportunity to confront and challenge this extraneous evidence through cross-examination.

PROPOSITION OF LAW NO. III: THE CONSIDERATION OF EXTRANEOUS EVIDENCE THROUGH EX PARTE COMMUNICATIONS WAS A PER SE ABUSE OF DISCRETION REQUIRING REVERSAL OF THE RULING DENYING THE STATE'S DISCRETIONARY BIDOVER MOTION.

In addition to constituting legal error, the gathering of information not in the record, through ex parte communications may be characterized as a per se abuse of discretion that requires reversal of any decision reached through the use of such information. *United States v.*

Bonas (9th Cir. 2003), 344 F. 3d 945, 948; *See Price Bros. Co. v. Philadelphia Gear Corp.* (6th Cir. 1981), 649 F.2d 416, 419 (The fair and impartial administration of justice demands that facts be determined only upon the evidence properly presented on the record.); *See also Ney v. Ney* (Pa. Super. Ct. 2007), 917 A.2d 863 (Pa. Super. Ct. 2007); *People v. Moreda* (Ct. App. 2004), 13 Cal. Rptr. 3d 154 (while a court has a supervisory capacity over the jury's function, the court abuses its discretion by considering facts or evidence outside the record). Thus, Judge Rapp's consideration of information not in the record was by itself an abuse of discretion and this Court should accept jurisdiction on that basis.

PROPOSITION OF LAW NO. IV: THE CONSIDERATION OF EXTRANEOUS EVIDENCE BY THE JUVENILE COURT JUDGE WAS UNETHICAL CONDUCT REQUIRING REVERSAL OF HIS RULING DENYING THE STATE'S DISCRETIONARY BINDER MOTION AS THE JUDGE'S MISCONDUCT PREJUDICED THE STATE AND DEPRIVED THE PROCEEDINGS OF FUNDAMENTAL FAIRNESS AND DUE PROCESS OF LAW.

By initiating an inquiry for information about Ciola, Judge Rapp engaged in unethical conduct that violated Canon 3(B)(7) of the Ohio Code of Judicial Conduct, which states:

A judge shall not initiate, receive, permit, or consider communications made to the judge outside the presence of the parties or their representatives concerning a pending or impending proceeding[.]

See Disciplinary Counsel v. Squire, 2007-Ohio-5588, 116 Ohio St. 3d 110, (This Court held the judge's conduct in "investigating" child custody matters by repeatedly contacting county children services agency and engaging in ex parte communications with parties and witnesses, violated Code of Judicial Conduct canons). Similarly, Judge Rapp's improper investigation directly impacted the outcome of this proceeding and thus he abused his discretion in retaining jurisdiction in this case.

Likewise, courts from other jurisdictions have also recognized that a judgment or order based in part upon ex parte communications by the judge are invalid and that such ex parte

communications constitute reversible error. *In re Guardianship of Garrard* (Ind. Ct. App. 1993), 624 N.E.2d 68, 70; *See also State v. Emanuel* (Ariz. Ct. App. 1989), 768 P.2d 196, 198; *Horton v. Ferrell* (Ark. 1998), 981 S.W.2d 88, 89; *Davis v. United States* (D.C. 1989), 567 A.2d 36, 38; *Teeft v. Luna Cheese Corp. of Fla.* (Fla. Dist. Ct. App. 1991), 577 So. 2d 1004; *Sherman v. State* (Wash. 1995), 905 P.2d 355, 377. Hence, while Judge Rapp did address the statutory criteria contained in O.R.C. §2152.12(D)-(E) in refusing to relinquish jurisdiction, he also impermissibly violated Judicial Canon 3(B)(7) in utilizing evidence outside the record.

PROPOSITION OF LAW NO. V: THE JUVENILE COURT JUDGE ABUSED HIS DISCRETION IN CREDITING VINCENT CIOLA'S LETTER RATHER THAN THE REPORT OF DR. TENNENBAUM AND IN SUBSTITUTING HIS OWN BELIEFS FOR THOSE OF DR. TENNENBAUM.

Even apart from the aforementioned legal errors committed by Judge Rapp, he abused his discretion in denying the State's Discretionary Bindover Motion when he placed undue reliance on a superficial letter which was devoid of a supervising therapist's signature, by a novice student counselor who had no knowledge of the facts of this case and who's conclusions were based solely on the self-serving statements provided by the accused, while discounting the extensive report of a psychologist with 31 years of experience. Judge Rapp also unacceptably substituted his own belief that Meredith Poling, who is above-average intelligence with an I.Q. of 110, and who was specifically advised by her attorney that she should be open with and freely discuss the facts of this case with Dr. Tennenbaum, for that of the expert, when he found that: "[h]er probable lack of understanding or belief that she may freely disclose and discuss her role in her mother's death, without compromising her rights," (Order 3/19/07 at p. 9). This belief is completely unsupported by the record and is inconsistent with the first-hand knowledge and experience of Dr. Tennenbaum's conclusions that Meredith Poling was not remorseful or even grieving concerning her mother's death.

While the court is not bound by the expert's opinion, *see State v. West*, 2006-Ohio-3518, 167 Ohio App.3d 598, the court cannot disregard the expert's findings arbitrarily and without reasonable justification. In the instant case, Judge Rapp arbitrarily disregarded the learned expert opinions of Dr. Tennenbaum and instead, relied on the uninformed conclusions of a student intern coupled with Judge Rapp's own unsupported psychological ruminations. Accordingly, this Court must take jurisdiction in this case to prevent a miscarriage of justice in this case and in others in the future.

PROPOSITION OF LAW NO. VI: THE JUVENILE COURT JUDGE ABUSED HIS DISCRETION WHILE WEIGHING THE STATUTORY FACTORS CONTAINED IN O.R.C. §2152.12(D)-(E), PLACED UNDUE RELIANCE ON THE POSSIBILITY OF A SERIOUS YOUTHFUL OFFENDER DISPOSITION, AND FAILED TO CONSIDER THE OVERRIDING PURPOSES FOR DISPOSITIONS IN O.R.C. §2152.01.

Under the statutory scheme for discretionary bindovers, courts are required to consider and apply all of the factors set forth in O.R.C. §2152.12(D)-(E) that weigh in favor of and against transfer. Moreover, this Court has long recognized that the more serious the offense, the less amenable the juvenile will be to rehabilitation in the juvenile system. *State v. West*, 2006-Ohio-3518, 167 Ohio App. 3d 598, at 24 (14-year-old boy, with no prior record, who fatally stabbed his sleeping aunt was not amenable to rehabilitation given the severity of crime). Also, Dr. Tennenbaum explained that Meredith Poling lacked the necessary motivation to change her behaviors. He further added that after addressing each of the statutory factors in favor and against transfer, he concluded that they overwhelmingly suggest transfer.

While paying lip-service to the factors enumerated in R.C. 2152.12(D)-(E), Judge Rapp disregarded key facts in his analysis and misapplied the expert opinion of Dr. Tennenbaum. First and foremost, Judge Rapp failed to ascribe sufficient weight to the severe nature of this crime. The evidence conclusively established that the child murdered her mother by sneaking up behind her and shooting her in the back of the head. The murder was carefully planned and

orchestrated, as is evident from the fact that Meredith told a friend prior to the murder that she was planning on committing the crime exactly as it happened. Moreover, contrary Judge Rapp's insinuation, this murder was not provoked by any conduct on the part of the victim. The suggestion in Judge Rapp's ruling that Michelle Murnahan provoked her death by her disciplining Meredith and using foul language was unconscionable, unsupported by the record, and further demonstrates how Judge Rapp demeaned the seriousness of Meredith's conduct. Such hollow, arbitrary, and capricious findings constitute an abuse of discretion as Judge Rapp misconstrued the statutory criteria.

Additionally, Judge Rapp failed to consider and apply all of the overriding purposes of dispositions as contained in O.R.C. §2152.01 including the need to protect the public interest and safety, and to hold the offender accountable for the offender's actions when ruling on the State's Discretionary Bindover Motion. Finally, Judge Rapp's assumed that if Meredith was not bound over and tried as an adult that she would automatically be subject to a M.S.Y.O. disposition, which Judge Rapp found "would be a very weighty incentive for her effort at successful rehabilitation." (Order 3/19/08 at p.14).

Pursuant to O.R.C. §2152.13(A), the imposition of a M.S.Y.O. is not a certainty; rather, a juvenile court may impose a S.Y.O. disposition only if the prosecutor initiates the process against an eligible child. It is significant to note that the legislature did not contemplate that a juvenile court judge would consider the possibility of a M.S.Y.O. disposition when determining a transfer motion, as such a consideration is certainly not listed in any of the factors set out in O.R.C. §2152.12(D)-(E). The court's consideration of a possible future S.Y.O. disposition, when no such filing was before the Court, erroneously permeated the court's decision and improperly influenced its balancing of the statutory criteria found in O.R.C. §2152.12(D)-(E).

Justice requires this Court to accept jurisdiction of this case of first impression to determine what, if any, weight a judge may properly place on the possibility of a S.Y.O. disposition when ruling on a discretionary bindover motion.

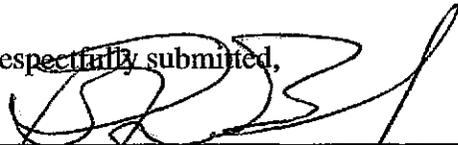
PROPOSITION OF LAW NO. VII: THE CUMULATIVE ERRORS OF THE JUVENILE COURT JUDGE REQUIRES REVERSAL.

Even if it is assumed that the separate errors and abuses of discretion of Judge Rapp are not a basis for reversal, the cumulative effect of the errors combines to undermine the validity of the judgment and supports this Court accepting jurisdiction. *See State v. Garner* (1995), 74 Ohio St. 3d 49 (1995).

CONCLUSION

For the foregoing reasons, this felony case is one of public and great general interest. Accordingly, the Appellant, State of Ohio, respectfully requests this Court to accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

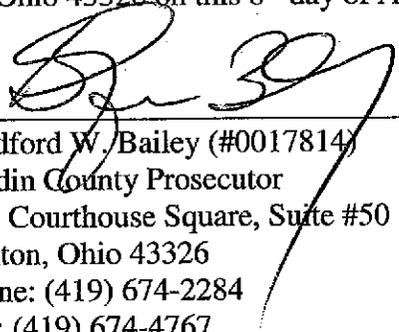
Respectfully submitted,



Bradford W. Bailey (#0017814)
Hardin County Prosecutor
Attorney for the State of Ohio

CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by United States Mail, first-class postage prepaid, to counsel for the Appellee, the Alleged Delinquent Child, at 124 South Metcalf Street, Lima, Ohio 45801, Bridget Hawkins, *Guardian Ad Litem* for the Child, at P.O. Box 549, Bellefontaine, Ohio 43311, and Teresa Glover, Attorney for H.C.J.&F.S., at 175 W. Franklin Street, Kenton, Ohio 43326 on this 8th day of August, 2008.



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APPENDIX

JUN 25 2008

Carl J. Stevenson, Clerk
Hardin Co. Court of Appeals
3rd Appellate Dist.

IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF OHIO

HARDIN COUNTY

IN THE MATTER OF:

**MEREDITH POLING,
ALLEGED DELINQUENT CHILD.
[STATE OF OHIO - APPELLANT].**

**CASE NO. 6-08-09
JOURNAL
ENTRY**

This cause comes on for determination of the State of Ohio's motion for leave to appeal and Defendant's memorandum in opposition to the motion.

The State seeks leave to appeal the juvenile court's judgment denying the State's discretionary bindover motion to transfer jurisdiction over a minor to the general division of the Hardin County Common Pleas Court for prosecution as an adult. The juvenile court found that there is probable cause to believe the minor committed the offense charged, but determined that the minor is amenable to care and rehabilitation in the juvenile system.

Ohio Revised Code 2945.67 provides that the State may request leave to appeal "any other decision, except the final verdict, of the trial court in a criminal case or of the juvenile court in a delinquency case." The decision to grant a motion for leave to appeal is solely within the discretion of this Court. See *State v. Fisher* (1988), 35 Ohio St.3d 22. Moreover, discretionary appeals such as that

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requested in the State's motion, are typically allowed at the conclusion of trial where "the underlying legal question is capable of repetition yet evading review." *State v. Bistricky* (1990), 51 Ohio St.3d 157, 159.

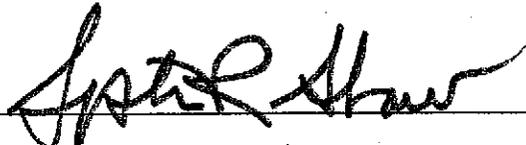
A juvenile court enjoys wide latitude to retain or relinquish jurisdiction, when ruling on a discretionary bindover, with the ultimate decision lying in its sound discretion. *State v. Watson* (1989), 47 Ohio St.3d 93, 95. A decision regarding a bindover should not be reversed absent an abuse of discretion. *State v. Golphin* (1998), 81 Ohio St.3d 543, 546.

Upon consideration of same, the Court declines to exercise its discretion to grant leave and accept the State's appeal of the interlocutory judgment in this case. See *State v. Fisher* (1988), 35 Ohio St.3d 22. The State does not establish that the juvenile court failed to follow the applicable law or made an error of law that is capable of repetition yet evading review. In fact, the juvenile court's eighteen page decision extensively analyzes and applies the factors in favor of and against transfer, as set forth in R.C. 2152.12(D) and (E).

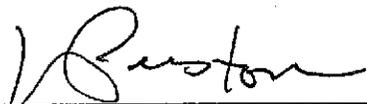
Rather, in essence, the State asserts that the juvenile court improperly investigated the credentials and credibility of various "experts" in an ex parte manner and generally evaluated that testimony in a manner that was against the weight of the evidence. Neither, the alleged ex parte conduct of the trial court, nor the trial court's evaluation of the testimony before it, raises any issue of law

capable of repetition yet evading review, which would necessitate an interlocutory ruling by this court. Accordingly, the motion is not well taken.

It is therefore **ORDERED** that the State of Ohio's motion for leave to appeal be, and hereby is, overruled at the costs of the State of Ohio.







JUDGES

DATED: June 24, 2008

/jlr

HARDIN COUNTY
JUVENILE COURT

**IN THE COURT OF COMMON PLEAS OF HARDIN COUNTY, OHIO
JUVENILE DIVISION**

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IN THE MATTER OF
MEREDITH POLING,
ALLEGED DELINQUENT CHILD

CASE NO. JD 207 20131
ORDER REGARDING
MOTION TO TRANSFER
JUV R 30(C)
ORC 2152.12(C)

The prosecution moved this Court, to transfer jurisdiction over the child, Meredith Poling, to the General Division of this Court of Common Pleas for criminal prosecution solely as an adult rather than proceeding with prosecution of the child as a "mandatory serious youth offender" ("MSYO"); however, if this Court retains jurisdiction and if the child is adjudicated as a MSYO, she would receive both a disposition as a child and a sentence as an adult. This Court previously found that the prosecution had presented some credible evidence of every element of the offense of murder at the preliminary or probable cause hearing (entry filed November 7, 2007). The amenability hearing was set for December 19, 2007, but continued, at the request of the defense and without objection, to February 11, 2008.

At this amenability hearing (after which the Court must determine whether to retain the case or transfer jurisdiction to the general division), the Court received into evidence and carefully reviewed numerous exhibits (over 700 total pages of documents) and heard the testimony of two witnesses. For the purpose of this hearing only, the Court must assume guilt, otherwise the issue of amenability to rehabilitation within the "juvenile system" would be irrelevant. A "not guilty" / "not delinquent" child would have no need for rehabilitation either in the juvenile or adult system.

The facts of this case may alternatively arouse sympathy for and prejudice against the accused child herein. The law and the oath of judge require the Court to disregard both sympathy and prejudice, and to not let emotion influence the findings and judgment of the Court. Rather, the Court must act with reason and impartiality without hint of bias, sympathy, or prejudice so that the people of the State of Ohio, the family of Michelle Murnahan, and the accused child, Meredith Poling, may confidently believe that the ruling herein was fairly and impartially rendered.

FINDINGS OF FACT

Meredith Poling, (sometimes hereinafter "Meredith" or "child") is the child of Jeffrey A. Willis and Michelle Murnahan. The child has been charged with the Mt.

Victory, Hardin County, Ohio, August 31, 2006, murder of her mother (sometimes hereinafter "Michelle" or "mother") in violation of ORC 2903.02(A) and 2915.02. The child was 15 years and six months of age at the time of her alleged offense. The complaint was filed on March 30, 2007, seven months after the alleged murder, and the child has been in detention on this charge since April 2, 2007.

Regarding the background and behavior of the child before the death of her mother, Meredith was an average to below average student in the elementary grades of the Bellefontaine City Schools. Her grades reflected difficulty in science and spelling (State's Exhibit 89). Her attendance was reasonably good, with an average of five days absent in the 3rd through 5th grade. She transferred to the Ridgemont School system on April 15, 2003, during her 6th grade school year. (Sixth grade attendance and cumulative grades were not in evidence.) At Ridgemont, (7th through 9th grade) she continued to have below average grades in science. The language arts/English grades deteriorated in the 9th grade while her achievement test score in reading was "accelerated." Her attendance at Ridgemont also deteriorated from that of the Bellefontaine school. At Ridgemont she averaged 26 absences during her 7th, 8th, and 9th grade school years. The submitted school records indicate these were excused absences (State's Exhibit 90 at page 11).

However, a truancy complaint (Case No. JU 20620089) was filed in this Court during the child's 9th grade school year at Ridgemont (State's Exhibit 85 at page 1). While in the 9th grade, Meredith received minor school disciplinary actions on February 6, March 18, and May 9, 2006, for which school detention or Saturday school were assigned as sanctions. The school truancy charge was filed on March 27, 2006, in part because of five (5) "unexcused" days recorded while she was subject to a five (5) day school suspension for smoking on school grounds during a basketball game. The child admitted to school truancy in this Court on April 12, 2006. In other words, she admitted to being an "unruly child" in that she had committed a "status offense;" she had violated a law applicable only to children. [At this point she had not been found to be a delinquent child; a delinquent child is a child who has violated a law that would be a crime if committed by an adult or a child who has violated an order of the Court such as rules of probation.]

In all adjudicated unruly and delinquency cases that come before this Court, trained Court staff administer abbreviated assessment "tools" to the child and sometimes the parent(s). These "tools" are research validated aids used: (1) to support a recommendation for a more thorough assessment by, for example, a licensed independent social worker; and (2) to support recommendations from the prosecution and defense as to the appropriate level of sanctions, supervision, and services for the child and family. As Court and community resources (for sanctions, supervision, and services) are limited, all such cases are triaged.

Diversion Officer, Brenda Boecher, on April 18, 2006, administered a risk and needs assessment tool to the child called the "Youth Level of Service/Case Management Inventory" (developed by R.D. Hoge, Ph. D. and D.A. Andrews, Ph. D.)

(Defendant's Exhibit G). The Youth Level of Service/Case Management Inventory standard cut off scores for risk and need classification of children are: 0 to 8 (low risk and low need of services and supervision); 9 to 22 (moderate risk and moderate need); 23 to 34 (high risk and high need); and 35 to 42 (very high risk and very high need for services and supervision). The child's score of five (5) placed her in the middle of the group of children who may come to the attention of juvenile courts but are of low risk and low need for services and supervision. An additional consideration is that Federal law assumes that unruly (including truant) children are low risk and "discourages" the use of court detention and "court detention school" for these "status offenders" through financial sanctions that can be imposed upon court program funding if status offenders are ordered into detention.

During the child's assessment for school truancy, it was reported by Meredith Poling and confirmed by her mother that: the child had no court involvement prior to the truancy complaint; she volunteered that her parents had difficulty in controlling her because of her attitude and outbursts; she reported that both she and her mother were very moody and that her mother was very controlling; the child was very guarded as to what she would discuss with her mother and felt that dad and step-dad were more like friends than fathers. While the child perceived her mother as very controlling, the assessment concluded that her parents had difficulty in controlling her behaviors. On April 18, 2006, during this assessment, the child rated her mother on a 10 point scale (with 5 average and 10 excellent) as being between 6 and 7, and her father and step-father between 7 and 8.

The child attributed her poor grades at the Ridgemont school to her not understanding science and not doing homework in other classes. While she reported a verbal altercation at school with two teenage girls (sisters who are known to the Court), she was confident that none of her friends were unruly or delinquent. The assessment concluded that the child had some disruptive school behavior, low achievement, and problems with peers.

During the April, 2006, Court assessment, the child reported: she had one experiment with beer ("spit it out because of taste"); she denied drug experimentation (Defendant's Exhibit G at page 17); she was involved in school (FFA, art, volleyball, and softball); she was informed prior to the April 18th assessment that she could not participate in sports, starting in the fall of 2006, due to her poor grades in the preceding grading period; she was criticized by some and admired by some for speaking her mind; she felt sorry after screaming; and she didn't know why she sometimes got mad.

The screening tool suggested (in April, 2006) that the child had poor frustration tolerance, however, it was significant that the tool did not indicate any of the following risk areas which the tool was designed to expose: physical aggression; tantrums; verbal aggression; inadequate guilt; antisocial or pro-criminal attitudes, not seeking or rejecting help, little concern for others, or defiance of authority (Defendant's Exhibit G at page 6). Assuming that the child murdered her mother just four and one-half months

later, then, either something went terribly wrong in a short period of time, or the assessment tool has significant limitations, or both.

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At that point in her life, her first appearance before a Court, the child appeared to be of low risk to herself and to others and of low need for sanctions, supervision, and services. Meredith showed insight and a willingness to change when she indicated, during the assessment interview, that she would like to be in an anger management group to help her improve her temper. On April 18, 2006, the child's mother agreed that she would cooperate (Defendant's Exhibit G at pages 8 & 9).

On April 19, 2006, the Court gave the child the choice to successfully complete the diversion program. The program required that she complete 15 hours of public service and that she regularly attend school. The truancy case would be dismissed by the prosecution if the child complies or, if not successful, the child would return to Court on June 22, 2006, for disposition (sentencing). She agreed to diversion. A diversion contract was prepared by the diversion officer and was signed by both mother and daughter (State's Exhibit 81). Although the Court had not ordered the child to attend anger management counseling, the contract prepared by Diversion Officer Boecher stipulated that she do so. It is unclear from the evidence why anger management counseling was included but was not then initiated. However, Diversion Officer Boecher recorded her subsequent observation that the family had "trouble communicating and respecting others." Boecher then recommended to the child's mother, Michelle, that the family participate in "Functional Family Therapy." Perhaps, at that time, family therapy appeared to be a higher priority to Boecher than anger management just for the child. However, the mother reported that she did not want to work with the only therapist known to provide family therapy in Hardin County (too many cancelled appointments by the Family Resource Center, Kenton, Ohio, therapist) (Boecher's testimony and State's Exhibit 94 at pages 6 and 20). As a result, Diversion Officer Boecher testified that she met with the family weekly or had weekly phone conferences in an attempt to help the family with communication and with respect issues.

The child did not complete her community service before the scheduled June 22, 2006, disposition hearing. Also, three days prior to the scheduled Court hearing, Meredith and several girlfriends snuck out of her home during the night, walked around the Village of Mt. Victory, and "felt like rebels" (State's Exhibit 83 and State's Exhibit 94 at page 19). A letter from the child dated June 22, 2006, indicates that: the diversion officer went to the child's home in Mt. Victory on the previous day; the child acknowledged that she had "messed up" but was remorseful; and she wanted to re-earn trust after she "threw it all away." A second letter from the child proposed that she lose her right to obtain a driver's license until age 18 and, that she be placed on probation if she "was to break the rules just one more time..." (State's Exhibit 82 – two letters from Meredith Poling to Officer Boecher).

Rather than returning to Court on June 22, 2006, a second diversion program behavior contract [amended contract] was agreed to by the child, mother, and diversion officer requiring three behavior changes: (1) after Meredith completes a period of house

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arrest, she will not break curfew; (2) she will not leave home without permission; and (3) she will improve her attitude and respect toward parents and achieve better communication and peace in the home (State's Exhibit 83 – Diversion Program Behavior Contract – Emphasis added). Neither "anger management" nor "Functional Family Therapy" were mentioned in the amended contract. Rather than therapy, this contract set out rewards and consequences for the child. (One substantial benefit of a behavior contract with predetermined consequences is the removal of the perceived need for a parent to yell at a child if the child violates the agreement, thus promoting "peace in the home.") If Meredith changed her behavior as indicated in the contract, she would receive "windows of time off house arrest and would be allowed to have friends visit at the home." If not, provided her mother report the violation(s), it would be recommended by Diversion Officer Boecher that the Court place the child on probation. In agreeing to this contract, Boecher indicated her assessment that the child was still capable of successfully completing diversion, and that the June 22nd scheduled Court hearing should be postponed.

Moving forward to the preliminary hearing in this murder case held on September 26, 2007, testimony therein gave the Court some picture of how the Murnahan/Poling family functioned (or disfunctioned), how the child complied (or failed to comply) with the amended contract, and how her mother, Michelle, responded to the child's noncompliance during the next two and one half months prior to Michelle Murnahan death.

Ashley McCullough testified (Joint Exhibit D beginning at page 456) that she was a friend of Meredith's and was at her home on August 24, 2006 (7 days prior to Michelle Murnahan's death). Ashley observed the child's mother bite Meredith on the arm when she reached down to get something off of her mother's plate.

Ashley testified that, shortly thereafter, outside the child's home, Meredith told Ashley that she hated her mother and spoke of an idea she had to kill her mother with a gun. [Again, although the Court is required to presume the child innocent until proven guilty, it considers this testimony to be credible for the purpose of this amenability hearing.]

Ashley McCullough also reported that, on the following day, Friday, August 25, 2006, Meredith accompanied Ashley and her family to a Ridgmont football game. Ashley testified that Meredith's mother, Michelle, brought law enforcement with her to the game in order to escort her daughter home early from the game.

Testimony of Linda Ridgeway ("Mrs. Ridgeway") (Joint Exhibit D beginning at page 11) indicated that her daughter, Erica, and Meredith were friends. Mrs. Ridgeway stated that she had liked Meredith; the child was always polite and never said anything mean-spirited about her mother. Regarding the events of August 31, 2006, the day of Michelle Murnahan's death, Mrs. Ridgeway testified: between 3:30 to 4:00 p.m., her daughter was with Meredith Poling when Mrs. Ridgeway drove her car into Mt. Victory and retrieved her daughter intending to take her to the Richwood Fair; Meredith asked if

she could accompany them to the fair; Mrs. Ridgeway said, "Let's go ask your mom," Mrs. Ridgeway and the two girls found Meredith's mom walking a dog, and Mrs. Ridgeway pulled her car to the side of the street. As witnessed by Mrs. Ridgeway, Meredith's mother immediately yelled at Meredith, "Get the fuck out of that car. Get the fuck out of that car right now;" Meredith said to Mrs. Ridgeway, "It doesn't look like I'm going anywhere." There was no evidence that any of these events (from August 24th through August 31, 2006) were reported to Diversion Officer Boecher before Michelle Murnahan's death.

The Court heard testimony at the probable cause hearing regarding the child's behavior after her mother's death. Some testimony indicated that the child did not exhibit the behavior that one might expect to see if she were in shock and grief upon the violent death of her mother. For example, one witness saw her crying but: "I did not see any liquid tears." Another: "She was not upset at all. She was more of shocked." (Joint Exhibit G at pages 27 & 473). (This Court is very cautious, if not skeptical, about the ability of lay witnesses, expert witnesses, or even the judge to know what was or is going on in the mind of a defendant.)

On the day after Michelle Murnahan's death, her daughter, as an alleged dependant child (Case No. AD20630015), was initially placed by this Court into the care and temporary legal custody of the Hardin County Department of Jobs & Family Services. The Department then placed the physical custody of the child with her maternal grandmother (Donna Johnson) in Athens, Ohio.

During the child's one month stay with her grandmother, she attended Athens High School from September 12, 2006, to October 12, 2006 (States Exhibit 91). While enrolled, she was disciplined with an in-school suspension on October 2, 2006, possibly for not dressing for physical education and missing "ES"?

On October 12, 2006, by authority of the previous truancy adjudication in this Court, the child was placed on probation, and it was further ordered that custody of the child be transferred from the Hardin County Department of Jobs and Family Services to the child's father, Jeffrey Willis, who resided in Parkersburg, West Virginia. The separate dependency case was dismissed. Meredith attended Parkersburg High School from October 16, 2006, to March 1, 2007 (State's Exhibit 92). While enrolled, she received poor grades, some failing, and five disciplinary actions: one for insubordinate or defiant behavior; one for skipping school; and three for skipping class. The child's father and stepmother were cooperative with the school and with Diversion Officer Boecher. They reported two incidents of truancy to the Parkersburg Police Department as two missing person reports (State's Exhibit 95).

While the murder investigation continued, the child was returned from West Virginia by her father to this Court, at the request of Diversion Officer Boecher, due to an alleged probation violation (unexcused school absence(s)). On November 13, 2006, the child admitted the probation violation and was placed in the Logan County, Ohio, Detention Center for six days (November 13th to November 19, 2006). She was also

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fined, and was ordered to complete public service. Less than one month later, the child was again returned from West Virginia to this Court by her father for an alleged second probation violation (unexcused school absence(s)). She again admitted the violation and was ordered to serve six additional days in detention (December 11, 2006, to December 17, 2006).

A third probation violation charge was filed on February 9, 2007, in this Court. However, similar school truancy charges had been filed in the Circuit Court of Wood County, West Virginia, on January 17, 2007. The Wood County Court had initiated jurisdiction over the child, and after conferring with the judge of that Court, it was determined that: (1) the West Virginia Court could better monitor her behavior; and (2) it was appropriate that the West Virginia Court assume sole jurisdiction over the truancy matter. The duplicated charge in this Court was dismissed.

After the murder charge herein was filed on March 30, 2007, this Court resumed its jurisdiction over Meredith Poling. The child was again placed in the Logan County, Ohio, Detention Center on May 12, 2007; she has remained in secure detention since that date. While in detention, her school attendance and grades were no longer problematic. School classes were on site ("court detention school"). Her grades were greatly improved; daily grades were most often in the +90% range with many 100% grades. Disciplinary issues appeared to be rare and minor (State's Exhibit 93).

Additional revealed history that has relevance to the child's need for and amenability to rehabilitation:

On September 1, 2006, the day after her mother's death and the same day that this Court ordered that Meredith Poling be placed into the temporary legal custody of the Hardin County Department of Jobs and Family Services as an alleged dependant child, this Court also ordered the child to be interviewed and assessed by a counselor of Lutheran Social Services, Kenton, Ohio. The Lutheran Social Services assessor (sometimes hereinafter "L.S.S. assessor") reported that the child's mood was "appropriate." During the interview the child reported that "I am actually calm right now" but in the prior 24 hours she reported that she had, at times, been "nauseous, crying, and pretty much just heartbroken." Perhaps she experienced a full range of emotions.

When asked about prior counseling, the child disclosed to the L.S.S. assessor that she had been sexually abused by a friend of her father when she was approximately 6 or 7 years old. She did not disclose the abuse until she was approximately 13 or 14 years old. Extended family members described Meredith as "a very perfect child" and "a happy excited little girl" that became "a complete stranger." Michelle Murnahan's mother, Donna Johnson, reported that things changed dramatically when "Meredith disclosed that she was sexually molested... She became withdrawn, belligerent; she would get really smart mouthed" (Joint Exhibit A at pages 4 and 6). However, the child subsequently received only limited therapy from the Family Resource Center, Kenton, Ohio, therapist. The therapist "wasn't too bad" but "cancelled too many appointments" (State's Exhibit 94 at pages 6 and 20). (Although they had

been asked about prior counseling during the child's April 18, 2006, risk and needs assessment for school truancy, none of this history had been disclosed to Officer Boecher by the child or her mother, and the sex abuse therapy records are not in evidence.)

Meredith Poling stated during the assessment by the L.S.S. assessor that, when angry, the child writes in her journal, cries, and confronts the person. "With [my] mom I get really persistent – I argue to get my way... If I wasn't on diversion [mom] would let me do stuff." The child reported that she had lots of arguments with her friends – "Four of us are a really tight group" she disclosed that she once accidentally hit a friend in the mouth when arguing (State's Exhibit 94 at page 18).

The child, Meredith, reported to the L.S.S. assessor that her mother, Michelle, had slapped her in the face and spanked her when younger; the child's first stepfather had threatened to leave Michelle if she hit her child again. Yet the child denied being abused and gave no hint of malice. "Me and my mom had issues." "I have an attitude." "We used to fight a lot." "I used to lie to my mom a lot." She reported impaired memory of what happened yesterday [the day of her mother's death]. Yet, incongruously, "I wish I could be with [my step-dad], but I did what I did, I do what I can" (State's Exhibit 94 at pages 9 and 21) (Emphasis added).

The child, as of September 1, 2006, had consistently reported that she did not use drugs and had only tasted alcohol. The child did not have any dirty drug screens while on diversion and living in Hardin County. As of September 1, 2006, the L.S.S. assessor concluded, as a result of her assessment, that the child, Meredith Poling, was a low risk to herself and a moderate risk to others (State's Exhibit 94 at page 10).

Subsequent to her mother's death, the child had two counseling sessions while living in Athens, Ohio, and then several sessions while residing with her father and stepmother in Parkersburg, West Virginia. (None of these records are in evidence.)

A psychologist of extensive experience in the Court system provided evidence in the form of testimony and a written report submitted to the Court (Joint Exhibit A). He did not counsel the child but conducted an assessment in order to provide information on factors favoring and disfavoring transfer of jurisdiction of the child for criminal prosecution solely as an adult.

The psychologist met with the child on four occasions, approximately two hours each, December 18th and 19th, 2007, and January 2nd and 4th, 2008. During these meetings, he administered five tests, assessments, or inventories. He spent more than 10 hours reviewing records and background materials provided by the defense and the prosecution. The psychologist had telephonic interviews or face to face meetings with nine additional people. His investigation appeared to be thorough.

The psychologist acknowledged a known history of the child having "multiple trauma including: sexual abuse [by her father's friend]; intense arguments; instability;

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JUVENILE COURT
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repeated real and potential violence [Meredith witnessed domestic violence as a young child and may have been a victim herself]; rejection; and recurrent abandonment by father figures" (Joint Exhibit A at page 3). In his testimony, the psychologist agreed that Meredith is a product of this history.

The psychologist reported that the child's mother, Michelle, was described as being extremely strict, and controlling, and gave her daughter no freedom at all. Michelle, herself, was also sexually abused at a young age (by a stepfather) and had a very poor relationship with her own mother. As a mother, Michelle was either unavailable physically (because of her work schedule) or emotionally (because of her depression).

The psychologist logically maintained a professional opinion or "perception that the rehabilitation [of the child, Meredith] demands disclosure [confession by the child] and a relatively candid review of that which brings forth the court's involvement." In other words, the psychologist expected the child to explain to him why and how she had murdered her mother. It appears that the psychologist also believed that the child understood she could freely discuss, with him, her role in her mother's death without compromising her right to a trial (Joint Exhibit A, at page 8). However, the Court is not persuaded that she understood and believed this to be true and the weight of the evidence does not support this conclusion. The psychologist concluded that throughout the four assessment interviews, the child was unable or unwilling to present herself with "any discernable emotion" including grief in his presence. However, this Court again notes that one's perception of the emotion of grief in another is a subjective observation that perhaps cannot always be assessed, as the psychologist states, "through defensible data." Her probable lack of understanding or belief that she may freely disclose and discuss her role in her mother's death, without compromising her rights, supports the conclusion of the psychologist that the evaluation was "hugely compromised" (Joint Exhibit A at page 18).

The fact that this child has the right to a trial and the right to remain silent, and she has not yet been adjudicated or convicted, renders an evaluation of her amenability to rehabilitation highly problematic. Did she (at that time 16 years of age) understand that she must candidly disclose to a stranger that she is guilty of a heinous crime and can safely display appropriate indicia of remorse prior to trial in order to be viewed as "open to rehabilitation?" Additionally problematic to this Court is the report of the intern counselor (hereinafter "intern") who has provided treatment to the child throughout her stay in the Logan County, Ohio, Detention Center, wherein he stated that Meredith was "instructed not to speak with anyone concerning her current charges" (Defendant's Exhibit J, at page 5). In further support of this conclusion, the child told the psychologist that "she has never had access to a counselor with whom she may discuss her mother's death" (Joint Exhibit A at page 9). (It would appear she also excluded the psychologist as a "counselor with whom she may safely discuss her mother's death.")

Rather than this child being non-emotional, it is reasonable to conclude that she felt compelled to suppress her emotions at least until her innocence or guilt is

determined by a jury. (It should not be overlooked that this child had a 9-year experience of suppressing her trauma of sexual abuse. The psychologist recognized the child's "tendency toward repression... [and] warehousing memories" in regard to her nondisclosure of being sexually molested as a 6 or 7 year old, finally disclosing her victimization at age 13 or 14, and even today recounting her experience without displaying or allowing herself to feel emotion (Joint Exhibit A at page 9). Again, regarding the circumstances of, and her feelings about, her mother's death: "I don't think about it. It's too hard, and I can't deal with that stuff in here [detention]... I know I need emotional help – my emotions – help understanding them – help sorting them out.") It may also be that, as she reports, "I didn't know how I felt; my feelings were all tangled up" (Joint Exhibit A at page 10).

The child reports positive things [feelings] about her mother. For example: "My mom is a loving person...she is very creative and artistic." But also "my mom used to be really, really strict with me...she wouldn't even let me go out on the front porch; she was scared something was going to happen to me." As Meredith got older her mother withdrew. The psychologist called it "crippling depression." The child explained:

"[My mother] started watching TV all the time. She was reading all the time. She would focus herself out of everyday life... I was always so scared I'd disappoint her, so I wouldn't talk to her about my life, [about] how I was feeling. I didn't really let her in; and I always wanted this really great relationship, but it didn't happen...mom just completely zoned out. Just TV and books. That's when I started not coming home when I was supposed to do, and hanging out with the wrong people" (Joint Exhibit A at page 11) (Emphasis added).

Following the above disclosure by the child, the psychologist states "At no time during this second meeting does Meredith discuss her feelings regarding her mother" (Joint Exhibit A at page 11). I can only assume he meant that the child did not discuss with him her feelings toward her mother prior to killing her. Otherwise, the child clearly had a mixture of emotional feelings about her mother, both good and bad.

In his submitted report, the psychologist opined: "Meredith never compromised her stance that she was in no way responsible for her mother's death." Compare these two statements of the child: "I go downstairs...there's blood all over the place" (her statement to the psychologist, Joint Exhibit A at page 12) and "I wish I could be with [my step-dad] but I did what I did. I do what I can." The second statement is very arguably a confession to the counselor just hours after her mother's death (State's Exhibit 94 at page 9 and page 21). The Court, therefore, must draw a different conclusion than that of the psychologist. Her quoted statements frequently appear to avoid accepting responsibility rather than outright denial. When the psychologist asked the child to tell him about her mother's death and about her feelings, she said "I don't think about it...It's too hard..." It does not appear that the psychologist asked the child what she meant when she stated to the counselor the morning after Michelle Murnahan's death: "I did what I did. I do what I can" (Joint Exhibit A at page 13).

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While the psychologist concluded that the child's testing showed no indication of significant psychopathology or indication of "situational depression," the MMPI-A did suggest she is:

"down hearted and discouraged, that she is somewhat pessimistic regarding her future with suggestions of hopelessness and despair" (Joint Exhibit A at page 15).

The child's feeling of hopelessness and despair (assuming her guilt) should not be surprising.

The psychologist also administered and scored the Risk-Sophistication-Treatment Inventory (RSTI). He acknowledged that he must assume the child guilty of her mother's murder in order that the test have any meaning, and he admitted that giving any weight to the test results in a case such as this is debatable (Joint Exhibit A at page 16 and 17). The psychologist's explanation was that an assessment of the child's amenability to rehabilitation prior to trial presents a:

"convoluted reality as if Meredith indeed did not participate in her mother's death, she would have an entirely contrasting series of scores...this is particularly salient here, as there is no history of known violence [by the child], no history of convictions; [and] no adequate attempt historically toward treatment" (Joint Exhibit A at page 17). (Emphasis added.)

This child and the psychologist are caught in the convoluted statutory scheme of assessing the child's amenability prior to trial. The psychologist: "This summary does not presume that Meredith participated in the act charged [murder]..." Then, within three sentences, the psychologist: "[S]eparate possibly, too, from other considerations is Meredith's maintaining innocence. This [maintaining innocence] weighs heavily against retention [of jurisdiction in the juvenile division]..." (Joint Exhibit A at page 20) (Emphasis added). In testimony, the psychologist also acknowledged that children who murder a parent have a very low recidivism rate and by his report concluded: "Meredith's risk to the general public is, of course, at this point minimal" (Joint Exhibit A at page 20) (Emphasis added). A child who is of low risk to the public and a low risk to recidivate would logically be classified as amenable to rehabilitation.

The Court concludes, from a careful review of all the evidence presented, that the psychologist's opinion as to the child's amenability to rehabilitation would have been significantly different had the child understood that she could disclose, to a total stranger, her responsibility for her mother's death (assuming she is in fact responsible) and also that she understood that she could freely disclose her emotions including feelings of guilt and grief, all without foregoing her right to a trial, "particularly [again]... as there is no history of known violence [by the child]; no history of convictions; [and] no adequate attempt historically toward treatment" (Joint Exhibit A at page 17).

Between June 25, 2007, and February 6, 2008, the child received mental health counseling services while in the Logan County Detention Center. The counselor is a student from Case Western University graduate school as an intern, in placement with, and supervised by, the Light of the Way Christian Counseling Center, Bellefontaine, Ohio. Over the course of 30 counseling sessions, he worked with this child in individual counseling for approximately 45 hours with additional group counseling of unspecified duration. The last five individual counseling sessions listed in the intern's report were after the last interview of the psychologist with the child. The intensity of this counseling is of significance and some of the observations and conclusions of the intern were significantly different than those of the psychologist while others were very similar to those reported by the psychologist.

The child's treatment with the intern was focused upon anxiety related to: "grieving the loss of her mother; being in detention (jail); and separation from her social supports." He concluded that the child had difficulty forming secure attachments due to: "lack of emotionally available caregivers; early trauma; and extreme stress as a young child" (Defendant's Exhibit J at page 2).

The intern observed that Meredith struggled with grieving and the emotions associated with the loss of her mother. He reported that she continues to struggle with expressing [those] emotions openly with strangers or people she does not trust. He did not report any suspicion that the child just told him what he wanted to hear.

In contrast to the opinion of the psychologist, the child's intern opines that Meredith Poling has worked on and shown significant improvement regarding trust and attachment while she continues to need counseling services as there "remains much room for improvement." As of the date of his February 6, 2008, report, the intern concluded that the child had made significant improvement and "she is now very emotionally articulate" (Defendant's Exhibit J at page 2).

While the psychologist's report and testimony presented a view that the child's "presentation would make her difficult to treat" (Joint Exhibit A at page 17), the child's intern, in the context of extensive counseling states: "Meredith's progress in counseling provides evidence that there remains significant plasticity in her emotional and cognitive development, and she is able to make significant improvements with adequate and appropriate services" (Defendant's Exhibit J at page 2) (Emphasis added). The Court notes that the psychologist, upon questioning, was unwilling to discredit the report or opinion of the intern. This is possibly because, at that time, the child's intern had counseled the child for approximately 45 hours in individual counseling (plus group counseling) whereas, the psychologist had met her on only 4 occasions during which he administered 5 tests. Obviously, the credentials of and purpose for the professional involvement by the psychologist (to assess) and the intern (to counsel) with this child were quite different.

Again, assuming the child guilty as charged, the Court now reviews statutory factors in favor of transfer of and against jurisdiction.

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Statutory factors in favor of transfer (ORC 2152.12 (D)):

- (1) Was the victim harmed? Yes. Michelle Murnahan died as a result her child's actions. While a homicide survivor victim impact statement from Donna Johnson (Michelle's mother and the child's grandmother) was filed with the Court, it was not presented as evidence in this hearing. The Court, however, assumes grandmother Johnson and other relatives suffered and will suffer psychological harm.
- (2) Was Michelle's murder exacerbated by her ongoing depression? No.
- (3) Did the child's relationship with the victim make the [crime] easier to accomplish? The parent child relationship gave Meredith access to her mother, however, this was not a typical crime of opportunity.
- (4) Was the murder for hire or a gang crime? No.
- (5) Did the child use a firearm? Yes. Murder is a heinous crime. Murder by firearm is a heinous crime, although, at least in this tragedy, not more heinous than if some other weapon or instrumentality of death were employed. Death was instantaneous (Joint Exhibit D at page 60).
- (6) Was the child awaiting [trial] or [sentencing] or on [probation] when the [crime] took place? No. She was on diversion for school truancy.
- (7) Do previous attempts at rehabilitation suggest a future attempt will not succeed within the "juvenile system?" No. The fact that Meredith had violated the truancy diversion contract resulting in her placement on probation (after the murder), and her subsequent violations of probation, none of which were crimes, give scant indication that rehabilitation will not occur within the juvenile system, particularly in light of her good behavior while in detention (jail) (State's Exhibit 93). Murder is, of course, a much different matter than school truancy.
- (8) Is the child emotionally, physically, or psychologically mature enough to transfer? No. The child is not physically or emotionally mature as the brain undergoes dramatic changes and growth during the teen years and early twenties (Joint Exhibit A at page 30). She is just beginning to express her emotions and show significant improvement regarding trust (Defendant's Exhibit A at page 2).
- (9) Assuming her possible release at age 21, is there insufficient time to rehabilitate the child within the juvenile justice system? No. Time is not insufficient. The Court must assume this child, if convicted, will receive appropriate support and counseling while confined in a Department of Youth Services Institution (a juvenile prison), to wit: emotional support from her family; a treatment plan that includes at least weekly individual counseling; at least weekly group counseling; appropriate sanctions and incentives within the institution; the opportunity to complete her high school education; training for independent living and for maintaining gainful employment; and information on how to access mental health and

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other support services upon her release. The Court further recognizes that, if she is not prosecuted solely as an adult, she would be subject to a mandatory "dispositional sentence" as a "mandatory serious youth offender." As such, she would receive, in addition to a commitment to the Department of Youth Services until age 21, the adult sentence for murder (a determinate sentence of 3, 4, 5, 6, 7, 8, 9, or 10 years and an additional 3 year determinate sentence for a gun specification. The adult sentence would be stayed provided she has a "successful completion of the traditional juvenile disposition imposed." (A simple assault committed by this child or any conduct of this child which creates a "substantial risk to the safety or security of the DYS institution or to the community" would add up to 13 years of incarceration after completion of up to 5 years of incarceration in juvenile jail and juvenile prison.) In other words this child's mandatory serious youth offender's "dispositional sentence" could result in this child receiving longer incarceration than if she were tried solely as an adult.

The child has commenced rehabilitation during these last eleven months in detention. The unchallenged evidence indicates she has made progress. She has already completed approximately 49 weeks of incarceration, sanctions, incentives, and counseling in the Logan County Detention Center, and upon completion of additional incarceration by the Department of Youth Services until February 17, 2012, her 21st birthday, she will have approximately 259 weeks of the same. If she is not successful at rehabilitation, she may find herself in an adult prison for many years. The stayed prison sentence would be a very weighty incentive for her effort at successful rehabilitation.

The Court is compelled to conclude that Meredith Poling has ample time for successful rehabilitation should she choose to be open to and receive an appropriate treatment regimen. If she chooses to reject treatment, no amount of imprisonment and counseling will succeed.

The Department of Youth Services, unfortunately, has had custody of numerous children who have stories similar to that of Meredith Poling. (Approximately 12 children who were between the ages of 13 to 16 upon admission are currently in its custody for the commission of aggravated murder, murder, or complicity to murder.) While it is true that there remains great room for improvement of the services available at some Department of Youth Services institutions, it is in a much better position than the adult Department of Corrections to provide the appropriate regimen of services and sanctions for successful rehabilitation of a child who murdered her mother. The Department of Youth Services unit to which she will be assigned at the Scioto Juvenile Correctional Facility currently incarcerates and treats 45 girls. It employs 4 psychology staff (2 psychologists and 2 psychology assistants) and 8 licensed social workers. The professional staff to prisoner ratio is (1 to 4). This professional staff will provide the child at least 10 hours per week of individual and evidenced-based structured group counseling in addition to 30 hours per week of high school curriculum all within the secure correctional facility. She will also have prompt access to a psychiatrist and

psychotherapeutic medication if indicated. On the other hand, the adult system (Ohio Reformatory for Women) will provide no counseling except upon request of the inmate, and, if requested, will compare very poorly to the breadth and intensity of the counseling regimen at the Scioto Juvenile Correctional Facility.

Statutory factors against transfer (ORC 2152.12(E)):

- (1) Did the victim induce or facilitate the murder? Surely not in any direct manner. As the psychologist acknowledged, the child is a product of her history and her mother created some of that history. Every juvenile court judge must recognize the tremendous impact of parenting upon a child without excusing the child's heinous behavior. I would add that the child possessed free will and was not predestined to commit this heinous crime.
- (2 & 3) Was she negatively influenced or coerced by others? Did provocation facilitate this crime? Yes, she was undoubtedly subject to negative influences. This child's history includes:
 - sexual victimization (per the psychologist)
 - repeated real and potential violence (per the psychologist)
 - abandonment by father figures (per the psychologist)
 - grossly inadequate counseling (per the psychologist)
 - an emotionally unavailable mother (per the psychologist)
 - witness to domestic violence (per Donna Johnson)
 - possible victim of domestic violence (per the counselor and psychologist)
 - a mother who used shocking and provocative confrontation with her daughter in the presence of other people: "Get the fuck out of the cars. Get the fuck out of that car right now" (per Linda Ridgeway) shortly before lethal retaliation by the child. (The Court will not speculate as to what was said by Michelle Murnahan to her daughter after Mrs. Ridgeway left the scene.) All of these influences or provocations are regrettable. None of these excuse this shocking crime. However, the statute does disfavor transfer in the presence of provocation and negative influences (as mitigating factors).
- (4) Could the child reasonably believe that discharging a firearm and propelling a bullet into the head of her mother would not cause death? No.
- (5) Was the child never previously adjudicated a delinquent child? Yes.
- (6) Is the child not emotionally, physically, or psychologically mature enough for transfer? Yes.
- (7) Is the child mentally ill or retarded? No.
- (8) Is there sufficient time to rehabilitate her within the juvenile system and is the security available sufficient for public safety? Yes. There is sufficient time to rehabilitate this child. The Department of Youth Services will protect the public during her incarceration; rehabilitation will protect the public upon her release.

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The Court finds that the factors in favor of transfer of jurisdiction to the general division do not outweigh the factors against transfer, and further finds the child to be amenable to care and rehabilitation in the juvenile justice system.

CONCLUSION OF LAW

Juvenile Rule 30(c) provides:

“In any proceedings in which transfer of a case for criminal prosecution is permitted, but not required, by statute, and in which probable cause is found at the preliminary hearing, the court shall continue the proceeding for full investigation. The investigation shall include a mental examination of the child by a public or private agency or by a person qualified to make the examination. When the investigation is completed, an amenability hearing shall be held to determine whether to transfer jurisdiction. The criteria for transfer shall be as provided by statute.”

The statute which sets forth the criteria for transfer of jurisdiction to the General Division from the Juvenile Division of the Court of Common Pleas is ORC 2152.12(B):

“Except as provided in division (A) of this section [provisions for mandatory transfer of jurisdiction] after a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer the case if the court finds all of the following:

- (1) The child was fourteen years of age or older at the time of the act charged. (This is not in dispute.)
- (2) There is probable cause to believe that the child committed the act charged. (This was previously determined.)
- (3) The child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making its decision under this division, the court shall consider whether the applicable factors under division (D) of this section indicating that the case should be transferred outweigh the applicable factors under division (E) of this section indicating that the case should not be transferred. The record shall indicate the specific factors that were applicable and that the court weighed.” (The weighing of the factors for and against transfer is the only issue in dispute herein.) (Emphasis added)

The statute and court rule both require a full investigation including a mental examination of the child ORC 2152.12(C). The psychologist submitted his report and was subject to examination.

The statute requires the Court to consider all relevant factors in the statute, "in favor of" and "against transfer" ORC 2152.12(D) & (E). The Court has carefully considered all relevant factors in favor of transfer and against transfer and has specifically discussed its findings regarding those factors herein.

It is, of course, possible that the safety of the community may require that the child be subject to adult sanctions. Adult sanctions may be imposed regardless of whether the child's case is transferred (by invoking the adult portion of the "dispositional sentence") ORC 2152.14.

In weighing the factors for and against transfer, the most compelling reason for transfer is the seriousness of this crime. Michelle Murnahan cannot be restored of her life by a court order of restitution. Restitution must take some other form to have any meaning to those who mourn her death. And, while the child is not accused of aggravated murder (with prior calculation and design), it is possible this crime was an idea she had considered several days before its commission, adequate time for her to reject it in horror. Because of the seriousness of this appalling crime, the Court would prefer an option of a longer commitment to the Department of Youth Services. This is not possible under current law.

Assuming she is guilty of the offense, this child is capable of murder. Unless she is incarcerated for her lifetime, not a sentencing option available to the Court, the best measure for public safety is an appropriate commitment to imprisonment, other sanctions, incentives, and services for rehabilitation. The most likely and appropriate place this child would receive all of the above is through the Department of Youth Services. Transfer to the adult Department of Corrections should be stayed and later invoked should she not successfully complete her traditional juvenile disposition at the Department of Youth Services institution.

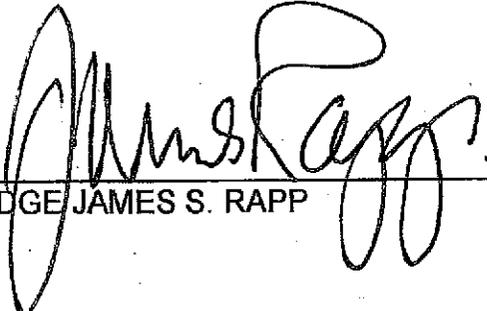
Having carefully and dispassionately reviewed the facts before the Court and having weighed the factors indicating this child's case should be transferred against the weight of the factors indicating that this case should not be transferred, and having found that the factors in favor of transfer do not outweigh the factors against transfer, and having also found that the child, Meredith Poling, is amenable to care and rehabilitation in the juvenile system, this Court is therefore not permitted to transfer this case.

ORDER

The motion to immediately transfer jurisdiction to the General Division of this Court for criminal prosecution solely as an adult rather than proceeding with prosecution

of the child, Meredith Poling, in this division as a mandatory serious youth offender must be and hereby is OVERRULED.

This matter is set for adjudication trial on May 7th, 8th, & 9th, 2008, commencing at 9:00 a.m.



JUDGE JAMES S. RAPP

Cc: Hardin County Prosecuting Attorney Bradford W. Bailey
Defense Attorney William Kluge
Guardian ad Litem Bridget Hawkins

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