

IN THE SUPREME COURT OF OHIO
2009

ORIGINAL

IN THE MATTER OF

Case No. 2008-1562

M. P.,

On Appeal from the
Hardin County Court
of Appeals, Third Appellate
District,

ALLEGED DELINQUENT
CHILD.

Court of Appeals
Case No. 6-08-09

**BRIEF OF AMICUS CURIAE OHIO PROSECUTING ATTORNEYS
ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLANT**

RON O'BRIEN 0017245
Franklin County Prosecuting Attorney
373 South High Street-13th Fl.
Columbus, Ohio 43215
614/462-3555

TIMOTHY YOUNG 0059200
Ohio Public Defender
Office of the Ohio Public Defender
250 East Broad Street- Suite 1400
Columbus, Ohio 43215
Phone (614) 466-5394
Fax (614) 752-5167

BARBARA A. FARNBACHER 0036862
Assistant Prosecuting Attorney
bafarnba@franklincountyohio.gov

ELIZABETH MILLER 0077362
(Counsel of Record)
Assistant State Public Defender
elizabeth.miller@opd.ohio.gov

LAURA R. SWISHER 0071197
Assistant Prosecuting Attorney
lrswishe@franklincountyohio.gov
COUNSEL FOR AMICUS CURIAE OHIO
PROSECUTING ATTORNEYS ASSOC.

COUNSEL FOR DEFENDANT-
APPELLEE

BRADFORD W. BAILEY (#0017814)
HARDIN COUNTY PROSECUTOR

COLLEEN P. LIMERICK (#0061157)
Assistant Hardin County Prosecutor
Hardin County Prosecutor's Office
One Courthouse Square, Suite #50
Kenton, Ohio 43226
Phone (419) 674-2284
Fax (419) 674-4767
hardinpa@hotmail.com



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STATEMENT OF *AMICUS* INTEREST

The Ohio Prosecuting Attorneys Association (“OPAA”) offers this amicus brief in support of plaintiff-appellant State of Ohio. The OPAA is a private non-profit membership organization that was founded in 1937 for the benefit of the 88 elected county prosecutors. Its mission is to increase the efficiency of its members in the pursuit of their profession; to broaden their interest in government; to provide cooperation and concerted action on policies that affect the office of the Prosecuting Attorney; and to aid in the furtherance of justice.

STATEMENT OF THE CASE AND FACTS

Amicus OPAA accepts the statement of the case and facts set forth in the Merit Brief of Appellant- State of Ohio, with the following additions.

The date of the offense was August 31, 2006, and on March 19, 2008, the juvenile court decided not to bindover this case for prosecution. On April 17, 2008, the State filed a notice of appeal to the state court of appeals, and on June 25, 2008, the court of appeals denied the State’s motion for leave to appeal. Thereafter, on August 8, 2008, the State filed a timely notice of appeal from the court of appeals’ decision, and on December 31, 2008, this Court accepted this appeal. On May 12, 2009, this Court ordered the State to file its brief by June 22, 2009. This amicus brief addresses only the issues contained within the First Proposition of Law.

PROPOSITION OF LAW NO. ONE:

THE JUVENILE COURT ORDER DENYING THE STATE'S DISCRETIONARY BINDOVER MOTION TO TRANSFER JURISDICTION IS AN APPEALABLE ORDER AND THE STATE MAY TAKE AN IMMEDIATE APPEAL FROM THE RULING OF THE JUVENILE COURT.

This Court has held that a juvenile court’s order denying a motion for mandatory bindover constitutes a final order from which the state may appeal as a matter of right. *In re*

A.J.S., 120 Ohio St.3d 185, 2008-Ohio-5307, syllabus, ¶28, 33. This Court concluded that a juvenile court order denying a motion for mandatory bindover terminates the state's ability to secure an indictment for the acts charged, its denial of a mandatory transfer is the functional equivalent of the dismissal of an indictment from which the State could appeal as of right. *Id.* at ¶28, 33. And in reaching this conclusion, this Court considered and applied R.C. 2505.02 (defining final order), 2505.03 (defining final appealable order), 2151.12 (governing juvenile bindover proceedings), and 2945.67(A) (governing appeal by state), in addition to App.R. 5(C) (appeals by leave of court in criminal cases, by prosecution). *Id.* at ¶15-33.

In this case, the court of appeals, however, did not have the benefit of this Court's decision in *In re A.J.S.* when it decided the State's motion for leave to appeal on June 25, 2008. (A.R. 9, at p.3). And, as a result, the court of appeals mistakenly concluded that the juvenile court's decision denying the State's request to bindover this case was an interlocutory judgment, stating "the Court declines to exercise its discretion to grant leave and accept the State's appeal of the interlocutory judgment in this case." (A.R. 9, at p. 2) (citation omitted). The court of appeals' analysis also erroneously relied on the motion for leave to appeal filed by the State, instead of the State's timely filed notice of appeal. Amicus therefore respectfully requests that this Court reverse the court of appeals' decision in this case.

"[W]hen a trial court's order constitutes a final order pursuant to R.C. 2505.02 and 2505.03, the State may appeal from that order only by leave of the court of appeals unless it is one of the types of orders that R.C. 2945.67(A) permits the state to appeal as of right." *In re A.J.S.*, 120 Ohio St.3d at ¶31 (citation omitted). Finding that a juvenile court's decision denying the State's request for a mandatory bindover is one of the types of orders that R.C. 2945.67(A) permits the state to appeal as of right, *id.*, this Court has already resolved the critical issue in this

case. Because this case is legally indistinguishable on this point from this Court's *A.J.S.* decision, amicus respectfully requests that this Court reverse the court of appeals' decision.

Recognizing that this case involved a juvenile court's discretionary bindover decision, and this Court's decision in *A.J.S.* involved a mandatory bindover decision, amicus respectfully submits that that difference is not dispositive of this Court's legal analysis of the final appealable order issue contained in the First Proposition of Law.

As this Court stated:

Because double jeopardy attaches once the adjudicatory phase of the delinquency proceedings commences, a juvenile court order finding no probable cause that the child committed the charged offense, and thus denying a motion for mandatory transfer, determines the action with respect to the provisional remedy and prevents a judgment in the state's favor. Moreover, it prevents the state from obtaining a meaningful or effective remedy by way of appeal at the conclusion of those proceedings. Thus, a juvenile court's decision denying a motion for mandatory bindover satisfies the test for determining whether the denial of a provisional remedy constitutes a final appealable order asset forth in R.C. 2505.02(B)(4).

In re A.J.S., 120 Ohio St.3d at ¶28. See, also, *id.* at syllabus, ¶31, 33. Whether the bindover is mandatory or discretionary, the end result is that once the juvenile court refuses to transfer the child, either due to lack of probable cause in a mandatory bindover or finding that the juvenile is amenable to rehabilitation in the juvenile system in a discretionary bindover, the State is without a meaningful or effective remedy. Thus, the juvenile court's bindover decision in this case was no different from the juvenile court's decision *In re A.J.S.*; it was a final appealable order, and was not an interlocutory judgment.

And finally, in this case, the State filed a timely notice of appeal along with a motion for leave. See App.R. 4(A) and 5(C), respectively. The State acted with an abundance of caution in filing the motion for leave along with its notice of appeal and should not be penalized for the additional filing. The State was without the benefit of this Court's decision in *In re A.J.S.* at the

time it filed and acted to preserve its rights. At worst, the motion for leave is surplusage and should have no bearing on whether the appellate court should have reviewed the case as an appeal as of right pursuant to *In re A.J.S.* Moreover, the record from the appellate court demonstrates that the State has at all times been acting with tremendous caution and due regard for the defendant's rights.

CONCLUSION

For the foregoing reasons, amicus respectfully requests that the appellate court's decision be reversed, or grant such other relief as is appropriate.

Respectfully submitted,

RON O'BRIEN 0017245
Prosecuting Attorney



BARBARA A. FARNBACHER 0036862
Assistant Prosecuting Attorney

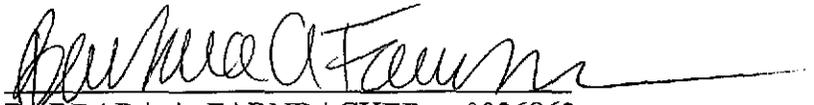


LAURA R. SWISHER 0071197
373 South High Street-13th Fl.
Columbus, Ohio 43215
614/462-3555
bafarnba@franklincountyohio.gov

Counsel for Amicus Curiae OPAA

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed to Elizabeth Miller, Assistant State Public Defender, at her office at 250 East Broad Street, Suite 1400, Columbus, Ohio, 43215 and Colleen P. Limerick, Assistant Hardin County Prosecutor, at her office at Hardin County Prosecutor's office, One Courthouse Square, Suite #50, Kenton, Ohio 43226, this 17th day of June, 2009.



BARBARA A. FARNBACHER 0036862
Assistant Prosecuting Attorney