

ORIGINAL

No. 2012-0252

---

IN THE SUPREME COURT OF OHIO

---

APPEAL FROM  
THE EIGHTH COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO  
NO. 96653

---

STATE OF OHIO  
Plaintiff-Appellant

-vs-

MATTHEW LINDSTROM  
Defendant-Appellee

---

**MEMORANDUM IN OPPOSITION TO JURISDICTION**

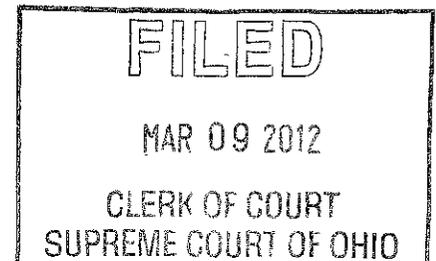
---

William D. Mason, Esq.  
Cuyahoga County Prosecutor  
9<sup>th</sup> Floor, Justice Center, Court Tower  
1200 Ontario Street  
Cleveland, Ohio 44113  
(216) 443-7800

Attorney for Plaintiff-Appellant  
The State of Ohio

John B. Gibbons, Esq. (#0027294)  
2000 The Standard Building  
1370 Ontario Street  
Cleveland, Ohio 44113  
(216) 363-6086; (216) 363-6075 Fax  
jgibbons4@sbcglobal.net

Attorney for Defendant-Appellee  
Matthew Lindstrom



**TABLE OF CONTENTS**

Table of Contents. . . . .	ii
Table of Authorities. . . . .	iii
Statement of the Case and Statements of the Facts. . . . .	1-3
Law and Argument . . . . .	3-9
Conclusion . . . . .	10
Certificate of Service . . . . .	11

## TABLE OF AUTHORITIES

### STATUTES

O.R.C. 2152.02(c)(2) .....	4, 7
O.R.C. 2152.02(c)(3) .....	4
O.R.C. 2935.09(c) .....	7
O.R.C. 2935.10(a) .....	7
O.R.C.2152.10(B) .....	1, 4, 6
Ohio Revised Code §2151.23(I) .....	4

### STATE CASES

<u>State ex. rel N.A. v. Cross, Judge</u> , 125 Ohio St.3d 6, 2010 Ohio 1471, 925 N.E.2d 614... 4	
<u>State v. Steele</u> , 2008 Ohio 2467 .....	7
<u>State v. Walls</u> , 96 Ohio St.3d 437, 2002 Ohio 5059, 775 N.E.2d 829.....	4, 6
<u>State v. Warren</u> , 118 Ohio St.3d 200, 2008 Ohio 2011, 887 N.E.2d 1145 .....	4

### RULES OF PROCEDURE

Juvenile Rule of Procedure 10 (b)(1) .....	8
Juvenile Rule of Procedure 6(A)(1)(2) .....	7

## **STATEMENT OF THE CASE AND STATEMENT OF THE FACTS**

In January 2010, Matthew Lindstrom's younger natural sister complained to the Kennebec County, Maine Sheriff's Department that the Defendant-Appellee engaged in "sexual conduct" with her in Cuyahoga County, Ohio on several occasions between August, 1999 and August, 2003. At the time of the alleged offenses, the sister was between five and nine years of age. Those facts were apparently conveyed to Ohio Law Enforcement Officers. At the time of the alleged delinquent acts Lindstrom was approximately nine to thirteen or possibly fourteen years of age. A Detective from the Brook Park Police Department signed a certified delinquency Complaint alleging four counts of Rape. The Complaint was filed by the Prosecuting Attorney for Cuyahoga County in the Juvenile Division of the Common Pleas Court on October 21, 2010. This filing date was six days before Lindstrom's 21<sup>st</sup> birthday. The Complaint was served by the Clerk of the Juvenile Court by certified mail on Lindstrom on October 26, 2010, one day before Lindstrom's twenty-first (21) birthday. He appeared with Counsel for his Arraignment/First Appearance at the Juvenile Division on November 22, 2010. Lindstrom formally denied the allegations of the Complaint before the assigned Judge, Alison Nelson Floyd. He was released on his own recognizance. The Prosecuting Attorney was present at the Arraignment but did not object to his release on the "Personal Recognizance" Bond. Also on November 22, 2010, the Prosecuting Attorney filed its motion with the Juvenile Division seeking an order to relinquish jurisdiction for criminal prosecution in the Adult Felony Division, pursuant to O.R.C. 2152.10(B) and also filed a simultaneous request for preliminary hearing. On November 29, 2010, the Juvenile

Division Judge journalized the fact that the “bind-over” motion was continued for further hearing. The Juvenile Court conducted a pretrial hearing on the record on January 5, 2011. As reflected in the Juvenile Court docket the parties were directed by the Juvenile Court Judge to brief this very issue, whether the Jurisdiction of the Juvenile Court Division was proper. Lindstrom appeared with Counsel for every pretrial. Lindstrom’s Attorney filed a brief on his behalf addressing these exact jurisdictional issues, as directed by the Juvenile Court Judge. The State of Ohio never filed a brief with the Juvenile Division Judge. A scheduled pretrial in the Juvenile Division was pending when, on March 8, 2011, the State Prosecutors presented these same exact facts to the Grand Jury for the Common Pleas Court for Cuyahoga County and obtained a “secret” ten count indictment alleging counts of Rape, Kidnapping, and Gross Sexual Imposition together with Sexually Violent Predator Specifications. That General Division case was captioned as CR 11-547876, State of Ohio v. Matthew Lindstrom. The State Prosecutors obtained a capias. The Brook Park Police Detectives actively sought to locate Lindstrom to arrest him on the felony warrant which was issued by the Clerk of Court for the General Division on March 10, 2011. On March 9, 2011, the State of Ohio filed in the Juvenile Division, a motion to dismiss the delinquency Complaint without prejudice and with a finding of probable cause. The dismissal motion was never served on Counsel for Lindstrom. That motion was granted by the assigned Juvenile Court Judge on March 11, 2011. However, the Juvenile Court was never made aware of the fact that the State had previously obtained the indictment in the General Adult Division.

On March 16, 2011, Lindstrom filed his motion with the Administrative Judge of the General Division of the Cuyahoga County Common Pleas Court, requesting that the

criminal case be remanded back to the Juvenile Division and that the scheduled Arraignment on indictment be held in abeyance. On March 21, 2011, acting Administrative Judge Richard McMonagle conducted an oral hearing and granted Lindstrom's motion. On April 5, 2011, the Common Pleas Court formally clarified the wording of its order pursuant to the State's subsequent motion.

The State of Ohio appealed that judgment to the Court of Appeals for Cuyahoga County, 8<sup>th</sup> Appellate District. The case was fully briefed and oral argument was conducted. On December 29, 2011, the Court of Appeals issued an order affirming the order of the Administrative Judge of the Common Pleas Court, General Division. The State of Ohio now seeks the jurisdiction of this Court.

### **LAW AND ARGUMENT**

#### **CONSTITUTIONAL QUESTION**

The State of Ohio argues that the phrase "taken into custody or apprehended", as used in the particular sections of the Ohio Revised Code, indicates that the Juvenile Court lacks jurisdiction to hear Lindstrom's delinquency Complaint. The State now, therefore, asserts that the statutory phrase "taken into custody or apprehended" which is not defined in the applicable sections of the Revised Code therefore, can only mean a "physical arrest". The State argues that the only plain and ordinary meaning of the particular words of that statutory expression is a physical arrest. However, the State's position in seeking jurisdiction with this Court stands in sharp contrast to their original position asserted when the case started. The State filed its Complaint in the Juvenile Division of the Court and reaffirmed the jurisdiction question by seeking to "bind-over" Lindstrom's case to the adult division.

The issues of this case have been addressed by this Court in prior decisions, to include State v. Walls, 96 Ohio St.3d 437, 2002 Ohio 5059, 775 N.E.2d 829; State v. Warren, 118 Ohio St.3d 200, 2008 Ohio 2011, 887 N.E.2d 1145 and State ex. rel N.A. v. Cross, Judge, 125 Ohio St.3d 6, 2010 Ohio 1471, 925 N.E.2d 614. Therefore, the State's explanation of why this case involves a substantial constitutional question or is an issue of great public or general interest is not adequate.

Ohio Revised Code §2151.23(I) provides that the Juvenile Division of the Common Pleas Court has exclusive jurisdiction to hear cases "if a person under eighteen years of age allegedly commits an act that would be a felony. If committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the Juvenile Court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act."

A "child" is defined in O.R.C. 2152.02(c)(2) as "any person who violated a federal or state law or a municipal ordinance prior to turning eighteen years of age...irrespective of that person's age at the time the Complaint with respect to that violation is filed or the hearing on the Complaint is held." Except the definition of "child" does not include "any person who, while under eighteen years of age, commits the act that would be a felony if committed by an adult and who is not "taken into custody or apprehended for that act until after the person obtains twenty-one years of age" is not a "child" in relation to that act. (See O.R.C. 2152.02(c)(3)).

These statutes must always be read in conjunction with O.R.C.2152.10(B) which provides for the State of Ohio to move the Juvenile Division to transfer or "bind-over" the pending delinquency charges to the Grand Jury of the General Division of the

Common Pleas Court for prosecution as criminal violations of Chapter 29. Therefore, if a person is not yet 21 years of age and the State intends to prosecute acts committed by a child as felonies in the General Division, the delinquency charges must be first filed in the Juvenile Division. Thereafter, the State can then move the Juvenile Division to “bind-over” or transfer the delinquency allegations to the General Division. This was the precise procedure followed by the State. The filing of the “bind-over” motion by the State of Ohio constituted an acknowledgment that jurisdiction was proper, at least initially, in the Juvenile Division.

Thereafter, the State awkwardly changed course. The State Prosecutors continuously dealt from the bottom of the deck in this case. In Juvenile Court, the Judge recognized these precise jurisdictional issues and directed Counsel for the alleged delinquent and the Prosecutor as reflected in the docket to set forth their respective positions in writing. Counsel for Lindstrom did so. The State failed to address these issues for nearly two months. Then without notice to the Juvenile Division Judge, the State presented these facts to the Grand Jury, obtained an unlawful indictment and actively sought to arrest Lindstrom on a Grand Jury Indictment *capias*.

Without notice to the delinquent, the charges were dismissed in the Juvenile Division. The State dismissed the delinquency charges in Juvenile Court while the Indictment was pending and did not provide an accurate description in their Dismissal Motion presented to the Court.

In this instance, the Juvenile Division had exclusive subject matter jurisdiction and personal jurisdiction as Lindstrom was alleged to have committed the offenses prior to the age of eighteen (18). The State filed its initial complaint and properly proceeded

against him in the Juvenile Division on October 21, 2010, as he was then twenty (20) years of age. The State chose to issue a summons and serve the Complaint by certified mail. Lindstrom was properly served with the Complaint before his twenty-first (21) birthday. The Juvenile Court acquired personal jurisdiction over Lindstrom when the Complaint was filed and properly served. Lindstrom submitted to the jurisdiction of the Juvenile Division by appearing to deny the various counts of the delinquency Complaint and by submitting to the conditions of pretrial release. Moreover it was the State of Ohio which chose the method of service and caused the Clerk to file the Complaint on October 21, 2010. It was the State of Ohio who chose to serve Lindstrom by certified mail. Service of process on Lindstrom was accomplished on October 26, 2010, one day before his twenty-first (21) birthday.

The Common Pleas General Division Judge and the 8<sup>th</sup> District Court of Appeals panel properly concluded that Lindstrom was “taken into custody or apprehended” before he turned twenty-one (21). Both the General Division Judge and Court of Appeals panel properly relied upon State v. Walls, (supra), where this Court taught that the “age of the offender upon apprehension” is the touchstone of determining Juvenile Court Jurisdiction. This fact was confirmed by the State when they filed a “bind-over” motion pursuant to O.R.C. 2152.10(B) which did acknowledge the proper jurisdiction of the Juvenile Division and acknowledged that the proceeding had to start in the juvenile division. In other words, the bind-over proceedings in this case were a necessary first procedural step which must have proceeded a transfer of, at most, one count to the General Division. The Juvenile Division never formally relinquished jurisdiction to the General Division.

The State of Ohio, pursuant to the provision of O.R.C. 2935.09(c), O.R.C. 2935.10(a) and Juvenile Rule of Procedure 6(A)(1)(2) had the option to obtain an arrest warrant for Lindstrom and take him into Juvenile custody immediately. The power of a Court to determine a particular case starts with the filing of a Complaint or Indictment. The Juvenile Court has been granted, by “statute” exclusive initial subject matter jurisdiction to determine a case concerning a child alleged to be delinquent for committing an act which constitutes a felony. By statute, O.R.C. 2152.02(c)(2), a person who commits an act which is a violation of State Law prior to the age of eighteen (18) is considered a “child” irrespective of that person’s age at the time of the filing of the Complaint.

The Court of Appeals correctly relied upon State v. Steele, 2008 Ohio 2467 which reaffirmed the proposition that in cases in which the act occurred when the delinquent was a “child”; the case must originate in the Juvenile Division of the Common Pleas Court. Thereafter the State can seek to transfer the case to the General Division. The “bind-over” motion filed by the Prosecutor was still pending in the Juvenile Division when the State of Ohio obtained the indictment based upon the very same facts and equivalent adult criminal accusations. Therefore, the Court of Appeals correctly found the Juvenile Division acquired jurisdiction over Lindstrom by the filing of the Complaint, service of process of the Complaint upon him, his voluntary appearance in Juvenile Court and his submission to their jurisdiction.

By rule, the Clerk of Court Juvenile Division had the option of issuing a summons to Lindstrom compelling his appearance in Court or by the issuance of a request by the Prosecutor for an arrest warrant. The State of Ohio chose to have a summons issued. In

this instance both the filing of the Complaint and the service of process were accomplished before Lindstrom's twenty-first (21) birthday.

Obviously, Lindstrom was not taken into physical custody with the filing of the Complaint, when the delinquency Complaint was served upon him or when he was released by the Court on a personal bond. However, the Juvenile Division exercised its authority over Lindstrom to determine the acts which clearly occurred when he was a juvenile child between the age of nine (9) and thirteen (13) years of age, when the Complaint was filed and when the Complaint was served upon him. This exercise of jurisdiction both occurred prior to Lindstrom's twenty-first (21) birthday.

Juvenile Rule of Procedure 10 (b)(1) clearly states that it is the filing of the Complaint which brings the proceeding within the Jurisdiction of the Court. Since the bind-over motion had not been decided and the case was pending when the indictment was obtained, that subsequent indictment is void.

The Court of Appeals correctly determined that Lindstrom was "taken into custody or apprehended" before he turned twenty-one (21) years of age. Therefore, the Juvenile Division had jurisdiction to determine his matter. The disjunctive wording of the statute correctly points to a distinction between the statutory expression "taken into custody" or being "apprehended".

Even if the Court falls back on common definitions found in dictionaries, the Juvenile Court certainly "apprehended" Lindstrom prior to his twenty-first (21) birthday. The plain and ordinary meaning of "apprehension" does not necessarily equate to an actual "arrest" or a physical seizure. At least one dictionary definition cited by the State equates "apprehension" with a "seizure by legal process". In this instance, Lindstrom

was subjected to the jurisdiction of the Court, and his ability to defy the summons, prior to his 21<sup>st</sup> birthday, was restricted.

Two divisions of the same Common Pleas Court cannot exercise jurisdiction of the same person and the same offenses at the same time. The Juvenile Division properly had personal and subject matter jurisdiction over Lindstrom when the Indictment was obtained and returned in the Common Pleas Court. The Juvenile Division had not legally relinquished jurisdiction. Therefore, the Indictment is a legally nullity and the Common Pleas Court was correct in transferring the action back to the Juvenile Court.

Lindstrom was, in fact, “apprehended” prior to his twenty-first (21) birthday. The Juvenile Complaint subjected him to physical arrest had the State of Ohio pursued that option. Lindstrom could not ignore the Juvenile Court Complaint once it was filed and served upon him. His freedom was subject to the control of the Juvenile Division once the Complaint was filed and served.

If the State’s logic is followed, an absurd result would occur. The now adult Lindstrom would face prosecution, with the penalties provided in Chapter 29 of the Revised Code, for acts he was alleged to have committed as a child between the ages of nine (9) to thirteen (13) years of age. At most, one of the delinquency charges may have been committed by Lindstrom while he was fourteen (14) years of age. At best, the State could have moved to “bind-over” only that particular charge to the adult court. The other delinquency charges must remain in the Juvenile Division because of his age at the commission of the offenses, as alleged in the Complaint. This is the precise purpose of the statutory bind-over proceeding which must precede a transfer of jurisdiction.

**CONCLUSION**

This case does not present a substantial constitutional question. Nor does this case present an issue of great public or general interest. Therefore, based upon all of the foregoing arguments, the Defendant-Appellee, Matthew Lindstrom respectfully moves this Honorable Court to enter an order denying jurisdiction to hear this case.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John B. Gibbons", written over a horizontal line.

John B. Gibbons  
Attorney for Defendant-Appellee  
Matthew Lindstrom

**Certificate of Service**

A copy of the foregoing Memorandum In Opposition to Jurisdiction was personally served on this 8<sup>th</sup> day of March 2012 upon William D. Mason, Esq., Prosecuting Attorney for Cuyahoga County, Ohio, Daniel T. Van, Esq., Assistant Prosecuting Attorneys for Plaintiff-Appellant at the Justice Center, 1200 Ontario Street, 8<sup>th</sup> Floor, Cleveland, Ohio 44113.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John B. Gibbons", written over a horizontal line.

John B. Gibbons  
Attorney for Defendant-Appellee  
Matthew Lindstrom