ORIGINAL

IN THE

SUPREME COURT OF OHIO

IN RE D.M.,	:	NO. 2013-0579
A Minor Child.	:	On Appeal from the Hamilton County Court of Appeals, First Appellate District
	:	
	:	Court of Appeals Case Number C-1200794
	:	

MEMORANDUM IN RESPONSE

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FIRST PROPOSITION OF LAW: A JUVENILE IS NOT ENTITLED TO FULL UNFETTERED DISCOVERY PRIOR TO A PROBABLE CAUSE HEARING. THE STATE MUST PROVIDE THE EVIDENCE THE STATE INTENDS TO USE AT THE HEARING TO ESTABLISH EACH ELEMENT OF THE CHARGED OFFENSE AND BRADY MATERIAL. 3

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EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION

The general principles of a juvenile's right to due process relating to discovery in bindover proceedings is well established by case law statewide.[1] The First District's opinion below represents a reasonable interpretation of the law and a common sense application of it. D.M. has completely mischaracterized the proceedings below by asserting that "hundreds even thousands of youth in Hamilton County will be denied basic discovery rights" if the decision stands. This is simply not true. D.M. received discovery here – as noted by the First District.

The State complied with discovery. The State's October 22, 2012 discovery response is of record. The State provided D.M. with the names of all witnesses it intended to call at the probable cause hearing, the contents of their statements, as well as D.M.'s waiver of rights form, his statement and the co-defendant's statements. D.M. was informed that no *Brady* material or evidence favorable was known.

D.M.'s premise is that because he was not provided full unfettered discovery – meaning police reports, surveillance video, text messages, phone records, a gun, medical records etc. – his right to due process and a fair trial was severely limited.

D.M.'s premise was properly rejected below as an overly expansive interpretation of what due process requires. Neither this Court nor the Juvenile Rules themselves provide for such full discovery. Indeed, Juv. R. 24 conspicuously lacks any reference to police reports. (Presumably – this was the intent as police reports are mentioned in Crim. R. 16.)

D.M. cites to cases from the Sixth and Eighth Districts as though they represent districts supporting full discovery. They do not. Indeed, they simply stand for the proposition that a

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[1] See *State v. Iacona*, 93 Ohio St.3d 83, 91, 2001-Ohio-1292, 752 N.E.2d 957, quoting *Kent v. United States*, 383 U.S. 541, 562, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966).

juvenile is entitled to some discovery and such discovery can even be limited in scope for a probable cause bindover hearing. These districts' decisions essentially dove-tail with the First District. To claim the First District is out-of-the mainstream here is patently false. It was the trial court below-which dismissed a charge for a non-existent discovery violation – that was out of line. Hence, the First District's reversal of that abuse of discretion.

Jurisdiction is properly denied.

STATEMENT OF THE CASE AND FACTS

The State appealed from the ruling and entry of the trial court on November 19, 2012, in which the Court dismissed an aggravated robbery complaint after the State declined to disclose police reports to defense counsel in discovery.

The Court of Appeals reversed, holding the trial court abused its discretion when it ruled the State was required to provide the reports – and committed error when it dismissed the case based on the State's failure to abide by the order.

FACTS:

A complaint was filed against D.M. for Aggravated Robbery with a firearm. The State sought Relinquishment of Jurisdiction. D.M. filed for discovery and *Brady* material on October 17, 2012. The State filed a response to discovery on October 22, 2012. The prosecution provided defense counsel with the names of all witnesses it intended to call at trial, the contents of their written and oral statements, as well as the waiver of rights form. Nonetheless, D.M. filed a Motion to Compel Discovery on October 25, 2012, seeking police report forms 301 and 527B.

On November 8, 2012, a hearing was held on D.M.'s Motion to Compel. The trial court ordered the State to turn over the 527B and 301 police reports. The State sought and was granted a continuance to review the propriety of disclosing the forms in discovery and to determine how

it would proceed in light of the trial court's order. The case was continued to November 19, 2012.

On November 16, 2012, D.M. filed a Motion to Dismiss, because the State had not yet provided the forms to defense counsel. On November 19, 2012, the State appeared at the hearing prepared to explain that it would be filing a Writ of Prohibition in the Court of Appeals because it was the State's position that the police reports were non-discoverable. However, the trial court abruptly dismissed the case because the State had not obeyed its order to turn over the forms.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. 1: A juvenile is not entitled to full unfettered discovery prior to a probable cause hearing. The State must provide the evidence the State intends to use at the hearing to establish each element of the charged offense and *Brady* material.

D.M. argues a juvenile is entitled to "full" discovery prior to a probable cause hearing under Juv. R. 24(A). In support of this position, D.M. cites *State v. Iacona*[2] from this Court and two cases from other appellate districts, which, D.M. claims, reflect how exspansively Juv. R. 24(A) is to be interpreted. Based upon this expansive view of discovery, D.M. sought police reports because they are statements written by witnesses (i.e. the officers themselves) and "may" contain evidence favorable to D.M. D.M.'s overly expansive interpretation of discovery in this regard was properly rejected by the First Appellate District below.

A probable-cause hearing is limited in scope. A probable cause hearing is not an adjudication, jeopardy does not attach, and a juvenile facing a bindover does not present a defense in the traditional sense of the word. *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, 897. The outcome of a bindover proceeding necessarily determines whether Juv. R. 24 or Crim. R. 16 will govern discovery in a given case. That said, a bind over hearing is "a critically

[2] 93 Ohio St.3d 83, 752 N.E.2d 937, 2001-Ohio-1292

important stage" in juvenile proceedings. As such, this Court held in *Iacona*[3] that the Due Process Clauses of the Ohio and U.S. Constitution impose a duty to disclose to the juvenile "all evidence in State's possession favorable to the juvenile respondent and material either to guilt or punishment that is known at the time of a mandatory bindover hearing held pursuant to R.C. 2151.26 and that may become known to the prosecuting attorney after the bindover."[4]

This Court went on to hold that the State must provide credible evidence of every element of an offense to support a finding that probable cause exists to believe that the juvenile committed the offense before ordering mandatory waiver of juvenile court jurisdiction pursuant to R.C. 2151.26(B).[5] Nowhere in *Iacona* does this Court hold that the State must provide polce reports generally in discovery. Nowhere in *Iacona* does this Court hold that a juvenile is entitled to full, unfettered discovery at a bindover hearing. And Juv. R. 24 (unlike its Crim. R. 16 counterpart) does <u>not</u> require police reports to be disclosed.

D.M. is hoping to use this Court's language "material to guilt or punishment" to argue that <u>everything</u> in the State's file must somehow be material to guilt or punishment, in some fashion, to access the State's full file – including police reports. This reading is not supported by *Iacona* and not required by due process. And significantly, it is not supported by *State v. Gilbert* (Sixth District) or *In Re A.M.* (Eighth District). D.M. cites these cases as evidence of how expansively other districts treat discovery. But a cursory review of each reveals quite the opposite – they each acknowledge the <u>limited</u> nature of discovery in probable cause hearings.

In *Gilbert*,[6] the Sixth District held that discovery in juvenile court <u>could properly be limited</u> to the evidence relevant to the probable cause hearing. Thus, the court ruled that the trial

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[3] *Id.*
[4] *Id.*
[5] *Id.* syllabus ¶ 3.
[6] Not Reported in N.E.2d , 2005 WL 1125324 (Ohio App. 6 Dist.), 2005-Ohio-2350

court did not abuse its discretion at the probable cause hearing when it deleted any request by the juvenile for discovery of evidence and witnesses that the State intended to use at trial.

In *In re A.M.*,[7] the Eighth District ruled that a juvenile is certainly entitled to limited discovery in preparation for the hearing. (Context is important here. In this case, the State had refused to provide <u>any</u> discovery.) The court stated:

> ". . . The juvenile plainly has a legitimate interest in discovering the evidence that the prosecutor will offer to establish probable cause mandating transfer. We see no reason why the juvenile, in preparing for the only proceeding that will determine whether he will be tried as a juvenile or as an adult, should be denied the opportunity to discover the evidence the state will present to establish probable cause. While the discovery provided in anticipation of the mandatory bindover hearing under R.C. 2151.26(B) need not go beyond the limited issues that will be decided at the hearing, we find no support for the prosecutor's contention that the juvenile is not entitled to any discovery for that hearing. . . ."

In short, the take-away from these cases is that, while a juvenile is certainly entitled to discovery prior to a probable cause hearing, such discovery is properly limited in scope – far from the "full unfettered open-file" interpretation D.M. is urging.

<u>D.M. Was Provided Substantial Discovery</u>

D.M. argues the First District permits "far less discovery" than other districts and unfairly limits discovery in violation of a juvenile's due process rights. However, a review of record below reveals D.M. received substantial discovery.

The State provided D.M. with the names of three witnesses, copies of statements by D.M. and two other witnesses, as well as D.M.'s "waiver of rights" form. No evidence favorable was known. All evidence the State intended to use during the probable cause hearing was disclosed to the defense.

The State complied with discovery. D.M. was clearly displeased that he was not provided everything he sought: "surveillance video, text messages, phone records, a gun, victim

[7] 139 Ohio App.3d 303, 743 N.E.2d 937

statements, 'IDs,' medical records, and police reports." But due process simply imposes no duty upon the State to provide such material in discovery for a probable cause hearing.

It is also disturbing for D.M. to argue that he is entitled to see police reports because "the information in police reports is also material either to guilt or punishment and, possibly, is favorable to D.M. as well . . ." (D.M. Memorandum in Support of Jurisdiction, p. 6) That is not the standard. D.M. is not to decide what material is exculpatory – due process requires the State to make that determination – not the trial court.

In *Pennsylvania v. Ritchie*, the United States Supreme Court stated:

> "In the typical case where a defendant makes only a general request for exculpatory material under *Brady*, it is the state that decides which information must be disclosed. Unless defense counsel becomes aware that other exculpatory evidence was withheld and brings it to the court's attention, the prosecutor's decision on disclosure is final."[8]

The prosecution, not the trial judge, or the juvenile, bears the duty to examine documents for potential *Brady* material. In *State v. Patterson*[9], the court held that, after the defendant's general request for exculpatory material, the prosecution's review and representation to the court that none exists is sufficient to satisfy *Brady*. "While the *Brady* rule imposes a general obligation upon the government to disclose evidence that is favorable to the accused and material to guilt or punishment, the government typically is the sole judge of what evidence in its possession is subject to disclosure."[10]

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[8] *Ritchie* (1987), 480 U.S. 39, 59, 107 S.Ct. 989, 1002, 94 L.Ed.2d 40, 59.
[9] (1971), 28 Ohio St.2d 181, 182-183, 57 O.O.2d 422, 423, 277 N.E.2d 201, 203.
[10] *Unites States v. Presser* (C.A. 6, 1988), 844 F.2d 1275, 1281.

CONCLUSION

In sum, jurisdiction is properly denied. The constitutional limits of discovery in juvenile bindover proceedings are established. The First District's decision is in line with case law and due process. The Court of Appeals below was correct to reverse the trial court's dismissal of the case for a non-existent discovery violation. No issue of great public or general interest is presented.

Respectfully,

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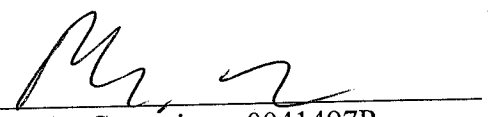

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I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by United States mail, addressed to Gordon C. Magella (0083770), Hamilton County Public Defender's Office, 230 E. Ninth Street, Third Floor, Cincinnati, Ohio 45202, counsel of record, this 9 day of May, 2013.

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