ORIGINAL

IN THE SUPREME COURT OF OHIO

IN RE:	:	S. Ct. Case No. 13-1295
M.C., a minor child.	:	C.A. Case No. E-12-031
	:	C.P. Case No. 2011-JF-113
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APPEAL FROM THE SIXTH APPELLATE DISTRICT
ERIE COUNTY, OHIO

APPELLEE'S RESPONSE TO APPELLANT'S MOTION FOR RECONSIDERATION

Counsel for Appellee:

KEVIN J. BAXTER #0015782
ERIE COUNTY PROSECUTOR
Mary Ann Barylski #0038856
Assistant Prosecutor
Frank Romeo Zeleznikar #0088986
Assistant Prosecutor
247 Columbus Avenue
Sandusky, Ohio 44870
(419) 627-7697
FAX: (419) 627-7567

Counsel for Appellant:

Brook M. Burns #0080256
Assistant State Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
FAX: (614) 752-5167

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MEMORANDUM IN OPPOSITION OF RECONSIDERATION

The Ohio merger statute states that "[w]here the same conduct by a defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one." O.R.C. §2941.25(A). "If the offenses correspond to such a degree that the conduct of the defendant constituting commission of one offense constitutes commission of the other, then the offenses are of similar import." **State v. Johnson**, 128 Ohio St.3d 153, 2010-Ohio-6314, ¶ 48.

In regards to juvenile proceedings, however, multiple "Ohio Appellate Courts have held that O.R.C. §2941.25(A) . . . does not apply to juvenile delinquency matters.'" **In re S.S.**, 2011 Ohio App. LEXIS 3475, 2011-Ohio-4081,¶29 (Ohio App. 4 Dist.) quoting **In re Bowers**, 2002 Ohio App. LEXIS 6744, 2002-Ohio-6913, ¶17 (Ohio App. 11 Dist.). **See also In re M.K.**, 2013 Ohio App. LEXIS 1926, 2013-Ohio-2027, ¶19 (Ohio App. 6 Dist.); **In re H.F**, 2010 Ohio App. LEXIS 4432, 2010-Ohio-5253, ¶13-15 (Ohio App. 8 Dist.); **In re J.H.**, 2005 Ohio App. LEXIS 5133, 2005-Ohio-5964 (Ohio App. 8 Dist.); **In re Skeens**, Case Nos. 81AP-882, 81AP-883, 1982 Ohio App. LEXIS 12181 (Ohio App. 10 Dist.). The rationale for not applying O.R.C. 2941.25(A) to juvenile proceedings was first laid out by the Tenth District. In **Skeens**, the court stated that:

> R.C. 2941.25(A) does not apply to situations where a minor is alleged to be a delinquent minor since, under our Juvenile Code, *such a minor is not charged with a crime.* While the commission of acts which would constitute a crime if committed by an adult sets the machinery of the Juvenile Court in motion, the issue before the court is whether or not the minor has engaged in the kind of conduct that constitutes delinquency and will therefore justify the intervention of the state to assume his protection and custody. Evidence that the minor committed acts that would constitute a crime if committed by an adult is used only for the purpose of establishing that the minor is delinquent, *not to convict him of a crime and to subject him to punishment for that crime.* (Emphasis added)

Id. at 6-7.

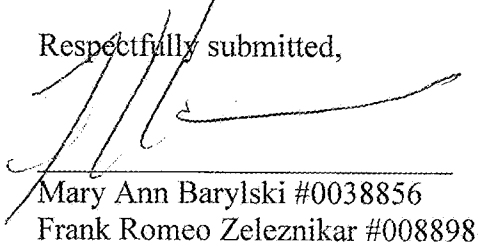
The crux of Appellant's Motion for Reconsideration rests on the assumption that "[j]uvenile dispositions resemble adult sentencing statutes more closely now than they did three decades ago." **See Appellant's Motion for Reconsideration at 2.** Appellant argues that the holding in **Skeens** is no longer applicable to the state of juvenile proceedings today. However, as the Sixth District Court of Appeals noted, most Appellate Courts have considered the issue and have determined that O.R.C. 2941.25(A) does not apply to juvenile proceedings; many of these cases being decided as recently as 2010.

Furthermore, This Honorable Court, as recently as 2009, recognized and reaffirmed the fundamental differences that exist between juvenile proceedings and adult criminal trials. **See State v. D.H.**, 120 Ohio St.3d 540, 2009-Ohio-9, ¶50. In **D.H.** this Honorable Court noted that the "State has a 'parens patriae interest in preserving and promoting the welfare of the child' **Santosky v. Kramer**, 455 U.S. 745, 766 (1982), which makes a juvenile proceeding fundamentally different from an adult criminal trial." **D.H.** 120 Ohio St. 3d at ¶50. As such, "[t]he aims of the juvenile system – and its heightened goals of rehabilitation and treatment – control [the juvenile's] disposition." **Id.** at ¶38. Due to these different aims and goals associated with juvenile proceedings and criminal proceedings, O.R.C. §2941.25 is not applicable to juvenile proceedings. **Accord In re Caldwell**, 76 Ohio St. 3d 156, 1996-Ohio-410, headnote 8 ("A juvenile court is authorized to impose consecutive terms of commitment upon a delinquent minor for separate delinquent acts whether or not they arise from the same set of operative facts")

Based on the foregoing, the differences of the aims and goals of the juvenile justice system with the aims and goals of the criminal proceedings make O.R.C. 2941.25(A) inapplicable to juvenile proceedings; said differences being recognized not only by this

Honorable Court, but also by multiple Ohio Appellate Courts. As such, Appellee would ask this Honorable to deny Appellant's Motion for Reconsideration, and decline jurisdiction.

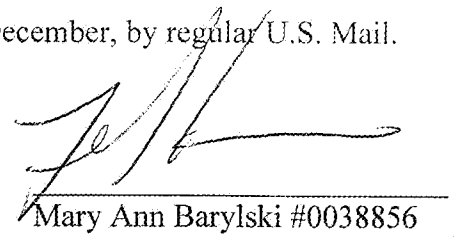
Respectfully submitted,



Mary Ann Barylski #0038856
Frank Romeo Zeleznikar #0088986
Assistant Prosecuting Attorneys

CERTIFICATION

This is to certify that a copy of the foregoing Appellee's Response to Appellant's Motion for Reconsideration was mailed to Brooke M. Burns, Asst. State Public Defender, 250 E. Broad St., Suite 1400, Columbus, Ohio 43215, this 5th of December, by regular U.S. Mail.



Mary Ann Barylski #0038856
Frank Romeo Zeleznikar #0088986
Assistant Prosecuting Attorneys