Supreme Court of Ohio Clerk of Court - Filed July 31, 2015 - Case No. 2015-0192

IN THE SUPREME COURT OF OHIO

State of Ohio	:	Case No. 2015-0192
Appellant,	:	
vs.	:	On Appeal from the Montgomery County Court of Appeals, Second Appellate District
Delaquan Brookshire	:	
Appellee.	:	

MERIT BRIEF OF APPELLANT, THE STATE OF OHIO

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STATEMENT OF THE CASE AND FACTS

This case raises the question of how trial courts should proceed when sentencing a juvenile offender whose case was transferred from juvenile court for trial as an adult under the mandatory-transfer provisions of R.C. 2152.10 and who is ultimately convicted of crimes that would constitute both mandatory-transfer offenses and discretionary-transfer offenses under Ohio juvenile law. The issue to be resolved is whether the "reverse bindover" procedure outlined in R.C. 2152.121(B), which requires the adult court to transfer a case back to the juvenile court for further proceedings after sentencing in select cases, applies (1) in cases where a juvenile is convicted of *at least one* discretionary-transfer offense; or (2) only in those cases where *all of the offenses* for which the juvenile is convicted are either discretionary-transfer or non-transfer eligible offenses.

On January 28, 2013, two separate complaints were filed against 17-year-old Delaquan Brookshire in the Montgomery County Juvenile Court. The first complaint alleged that Brookshire was delinquent for having committed four counts of aggravated robbery and three counts of kidnapping, all with attendant firearm specifications and all arising from to an armed robbery of a Penn Station restaurant in Huber Heights where Brookshire and his brother entered the restaurant and held its employees in the bathroom against their will. The second complaint alleged that Brookshire was delinquent for having committed one count of aggravated robbery and five counts of kidnapping, all with attendant firearm specifications and all arising from an armed robbery of a Burger King in Huber Heights where Brookshire and another suspect entered the restaurant and held its employees in the freezer against their will. The prosecutor additionally filed a motion to transfer jurisdiction of both cases to the general division, pursuant to R.C. 2152.10(A)(2), so that Brookshire could be tried as an adult.

On February 20, 2013, the juvenile court held a probable cause hearing relating to the prosecutor's motion to transfer. Following the hearing, the court found that Brookshire was 17 years old at the time of the offenses; that there was probable cause to believe that Brookshire had committed the offenses charged; and that Brookshire had brandished a firearm during the commission of the offenses. Because the offense of aggravated robbery, when committed while the juvenile brandishes a firearm, is subject to mandatory transfer pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), the juvenile court relinquished jurisdiction over the entire case and transferred the matter to the general division for further proceedings.

The Montgomery County Grand Jury indicted Brookshire on March 22, 2013 on five counts of aggravated robbery and eight counts of kidnapping, all with attendant three-year firearm specifications. (Dkt No. 8, item 1) Pursuant to a negotiated plea agreement, Brookshire pled guilty to three counts of aggravated robbery, three counts of kidnapping, and a single firearm specification. (Dkt No. 8, items 58 and 59; 6/19/13 Tr. 76, 79-98) In exchange for his plea, the State dismissed the remaining counts and specifications and agreed to recommend a prison sentence within the range of six to twelve years. (*Id.*) The trial court accepted Brookshire's plea and, on July 3, 2013, sentenced him to nine years in prison. (Dkt No. 8, item 65; 7/3/13 Tr. 104-105)

Brookshire appealed his conviction and sentence to the Second District Court of Appeals for Montgomery County, challenging, among other things, the trial court's failure to transfer his case back to the juvenile court following sentencing. The court of appeals agreed, in part, with Brookshire's argument that he was sentenced improperly. *State v. Brookshire*, 2nd Dist. Montgomery No. 25859, 2014-Ohio-4858, *reconsidered in part*, *State v. Brookshire*, 2nd Dist. Montgomery No. 25859, 2014-Ohio-5368.

The court of appeals concluded that, after a juvenile whose case is transferred for trial as an adult is ultimately convicted, the adult court must individually review each offense for which the juvenile was convicted to determine whether that offense should be transferred back to the juvenile court for disposition under the "reverse bindover" procedure set out in R.C. 2152.121. *Brookshire*, 2nd Dist. Montgomery No. 25859, 2014-Ohio-4858 at ¶ 23-25. As for Brookshire in particular, the court of appeals concluded that he was properly sentenced on his three counts of aggravated robbery and the single firearm specification, but that the trial court erred in the way that it disposed of the kidnapping counts. *Id.* at ¶ 20-22; *Brookshire*, 2014-Ohio-5368 at ¶ 8-9. As to the kidnapping counts, the court of appeals concluded that since those offenses were not subject to mandatory transfer, but could be subject to discretionary transfer, the adult court was required by R.C. 2152.121(B)(3) to impose a sentence for those counts, but then stay that portion of the sentence and transfer the matter back to the juvenile court for disposition on only those offenses under juvenile law. *Brookshire*, 2014-Ohio-4858 at ¶ 22.

On December 19, 2014, the State asked the court of appeals to certify a conflict between its judgment and the Eighth District's judgment in *State v. Mays*, 8th Dist. Cuyahoga No. 100265, 2014-Ohio-3815. The court of appeals found that a conflict existed, as did this Court, and the following issue is now before this Court:

> Once an adult court determines under R.C. 2152.121(B)(4) that at least one charge for which the juvenile was convicted is subject to mandatory transfer, is that court permitted to sentence the juvenile under R.C. Chapter 2929 on all charges in the case, or must the adult court complete a separate analysis under R.C. 2152.121(B) for each charge individually?

ARGUMENT

Proposition of Law:

The procedure outlined in R.C. 2152.121(B)(3) for transferring a case back to the juvenile court for further proceedings after conviction and sentencing in the general division applies only when the juvenile is convicted exclusively of offenses not subject to mandatory transfer. If the juvenile is convicted of at least one offense that would be subject to mandatory transfer, the proper procedure to follow is that set out in R.C. 2152.121(B)(4).

A. Introduction

The court of appeals concluded that R.C. 2152.121(B)(3) was the procedure that the adult court was required to follow when sentencing Brookshire on his three counts of kidnapping because kidnapping is a discretionary-transfer offense. *Brookshire*, 2nd Dist. Montgomery No. 25859, 2014-Ohio-4858 at ¶ 20-22. The State would agree with the court of appeals *if* Brookshire had been convicted of *only* kidnapping or other discretionary-transfer offenses. But he was not; he was also convicted of three counts of aggravated robbery committed while he was brandishing a firearm - offenses that subjected him to mandatory transfer of jurisdiction from the juvenile court to adult court under R.C. 2152.12(A)(1)(b)(ii). As explained below, it is Brookshire's conviction for these additional mandatory-transfer offenses that makes the court of appeals' reliance on subsection (B)(3) of R.C. 2152.121 erroneous.

B. Governing Statutes

1. R.C. 2152.12: In determining the appropriate procedure for sentencing, one must start by examining how Brookshire's case went from juvenile court to adult court in the first place. The juvenile court transferred Brookshire's entire case according to R.C. 2152.12(A)(1)(b)(ii), which requires the court to transfer "the case" if the accused was at least sixteen years old when he or she committed a category two offense with a firearm. Similarly, under R.C. 2152.12(F)(2), if the court determines that one or more of the acts for which there is

probable cause to believe that the juvenile has committed is subject to mandatory bindover, the court must transfer "the case or cases" that involve the relevant act or acts. And R.C. 2152.12(I) further states that once the court determines that there is probable cause to believe that the juvenile has committed an act that is subject to mandatory bindover, the juvenile court loses jurisdiction over all of the delinquent acts alleged in the complaint.

Here, the juvenile court found that there was probable cause to believe that Brookshire had committed a category two offense – aggravated robbery – with a firearm and, accordingly, that he had committed an act that was subject to mandatory bindover. And since at least one of the offenses for which there was probable cause to believe Brookshire had committed was subject to mandatory transfer, the juvenile court correctly applied R.C. 2152.12(A)(1)(b), (F)(2) and (I) in transferring Brookshire's entire case to the general division for trial as an adult.

2. R.C. 2152.121(B): After a juvenile's case is transferred for trial as an adult and after he or she is convicted, the next question – the question raised here – is what procedure must be followed when imposing sentence. The answer is found in R.C. 2152.121(B).

R.C. 2152.121(B) provides, in relevant part, that if a juvenile's case is transferred to the general division for trial as an adult and once the juvenile is convicted, the sentence to be imposed or the disposition to be made shall be determined as follows:

> (1) The court in which the child is convicted of or pleads guilty to the offense shall determine whether, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would have required mandatory transfer of ***the case*** or division (B) of that section would have allowed discretionary transfer of ***the case***. * * *.
>
> (2) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of ***the***

> ***case***, and division (B) of that section would not have allowed discretionary transfer of ***the case***, the court shall transfer jurisdiction of ***the case*** back to the juvenile court that initially transferred ***the case***, * * * and the juvenile court shall impose one or more traditional juvenile dispositions upon the child * * *.
>
> (3) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of ***the case*** but division (B) of that section would have allowed discretionary transfer of ***the case***, the court shall determine the sentence it believes should be imposed upon the child under Chapter 2929. of the Revised Code, shall impose that sentence upon the child, and shall stay that sentence pending completion of the procedures specified in this division. Upon imposition and staying of the sentence, the court shall transfer jurisdiction of ***the case*** back to the juvenile court that initially transferred the case and the juvenile court shall proceed in accordance with this division. * * *.
>
> * * *
>
> (4) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would have required mandatory transfer of ***the case***, the court shall impose sentence upon the child under Chapter 2929. of the Revised Code.

(Emphasis added.)

Here, the court of appeals found that subsection (B)(3) of R.C. 2152.121 applied to Brookshire case because his three kidnapping offenses were subject to discretionary transfer under R.C. 2152.12(B). *Brookshire*, 2014-Ohio-4858 at ¶ 22. But in doing so, the court of appeals misread the statute.

R.C. 2152.121 discusses mandatory or discretionary transfer of *cases* and instructs trial courts on what to do when R.C. 2152.12(A) or (B) requires or allows mandatory or discretionary transfer of *the case* from juvenile court to the general division for trial as an adult. But the court of appeals ignored the fact that Brookshire's case as a whole required mandatory transfer under

R.C. 2952.12(A)(1)(b), and incorrectly focused instead on each *offense* in isolation. Thus, rather than subsection (B)(3), the court of appeals should have applied subsection (B)(4) of R.C. 2152.121 and found that, since at least one of the offenses for which Brookshire was convicted (aggravated robbery) remained subject to mandatory transfer - mandating that his *entire case* be transferred for trial as an adult - the trial court retained the authority to both impose and carry out a sentence on every offense for which Brookshire was convicted.

This is precisely the conclusion reached by the Eighth District Court of Appeals in *State v. Mays*, 8th Dist. Cuyahoga No. 100265, 2014-Ohio-3815. In *Mays*, a 16-year-old juvenile was bound over to the general division, tried as an adult, and was ultimately convicted of aggravated robbery, robbery, felonious assault and receiving stolen property. *Id.* at ¶ 10-15. Mays argued that the "reverse bindover" procedure set out in R.C. 2152.121(B)(3) applied to his discretionary-transfer offenses (robbery, felonious assault and receiving stolen property) and that the trial court erred in carrying out a sentence on all counts. *Id.* at ¶ 36. The Eighth District disagreed, stating:

> [W]e do not interpret R.C. 2152.121(B) as requiring the common pleas court to complete a separate analysis for each charge appellant ultimately pled guilty to once it determined under R.C. 2152.121(B)(4) that Count 2, aggravated robbery, required mandatory transfer of the *entire* case. In our view, once the trial court made this determination, it was permitted to sentence appellant on each count he pled guilty to [in the case] under Chapter 2929 of the Ohio Revised Code.

(Emphasis sic.) *Id.* at ¶ 40.

The Eighth District's application of R.C. 2152.121 is correct and applies to Brookshire's case here. Like Mays, Brookshire was ultimately convicted of offenses that were subject to both mandatory-transfer (aggravated robbery with a firearm), as well as offenses that would be subject

discretionary-transfer (kidnapping). But because his case as a whole was subject to mandatory transfer under R.C. 2152.12(A)(1)(b) at its inception, and because his case remained subject to mandatory transfer after conviction (because he was convicted of both mandatory-transfer and discretionary-transfer offenses), the trial court retained jurisdiction over the entire case and was required under R.C. 2152.121(B)(4) to impose and carry out sentence on all counts under Revised Code Chapter 2929. The court of appeals' erroneous conclusion to the contrary cannot stand.

C. The court of appeals' decision creates an illogical result.

Applying subsection (B)(4) of R.C. 2152.121, rather than subsection (B)(3) as the court of appeals did, means that the trial court retained jurisdiction to impose and carry out a sentence on all counts for which Brookshire was convicted without having to transfer the kidnapping counts back to the juvenile court for a separate adjudication. That result makes sense given that the alternative result, as advanced by the court of appeal, is illogical.

If the court of appeals' interpretation of R.C. 2152.121 were true, it would result in Brookshire being sentenced to prison for nine years for his conviction on three counts of aggravated robbery and a firearm specification, but that the juvenile court could then independently choose a disposition for the remaining three counts of kidnapping that could potentially be wholly inconsistent with the prison sentence. For instance, if the juvenile court chose to commit Brookshire to the Department of Youth Services ("DYS") for one year (a permissible disposition pursuant to R.C. 2152.16(A)(1)(c) for a juvenile adjudicated delinquent for committing kidnapping), how would that disposition be carried out? Would he be sent to DYS for a year and then, once he finished his disposition there, be sent off to prison to serve out the remainder of his nine-year sentence? Or would he serve his prison sentence first, thereby

rendering his commitment to DYS moot (since Brookshire will be 26 years old when his prison sentence is completed)? What if the juvenile court chose community-control sanctions as the appropriate disposition (which is permissible under R.C. 2152.19(A)(4)), how would that disposition interplay with Brookshire's prison sentence?

By interpreting R.C. 2152.121 as not permitting the trial court to carry out its sentence on all counts, but as instead creating a mishmash of part-prison, part-juvenile adjudication, the court of appeals has not only misread the statute, but has also created an unworkable quagmire that the General Assembly could not have intended. Consequently, the court of appeals' error in its reading of R.C. 2152.121 necessitates reversal.

CONCLUSION

The reading and application of R.C. 2152.121 by the Second District Court of Appeals below is fundamentally wrong and, if allowed to stand, will create a form of hybrid sentencing for juvenile offenders who are tried as adults that is unworkable, impracticable, and not something that the Ohio General Assembly could possibly have intended. For these reasons and in view of the foregoing law and argument, the State of Ohio respectfully requests that the decision below be reversed.

Respectfully submitted,

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

By: */s/ Andrew T. French*
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Certificate of Service

I hereby certify that a copy of the foregoing *Merit Brief of Appellant* was sent by regular first class mail, postage pre-paid, to counsel for Appellee: Sheryl Trzaska, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215, on July 31, 2015.

/s/ Andrew T. French
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IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	**Case No. 15-0192**
Appellant,	:	
vs.	:	**On appeal from the Montgomery County Court of Appeals, Second Appellate District**
DELAQUAN BROOKSHIRE	:	
Appellee.	:	**Court of Appeals Case No. 25859**

NOTICE OF CERTIFIED CONFLICT

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NOTICE OF CERTIFIED CONFLICT

Appellant the State of Ohio, by and through the Office of the Prosecuting Attorney of Montgomery County, hereby gives notice to this Court, pursuant to S.Ct. Prac. R. 8.01, of a certified conflict of the judgment of the Second District Court of Appeals for Montgomery County entered in *State v. Delaquan Brookshire*, Case No. 25859, 2014-Ohio-4858. The court of appeals' order certifying a conflict was filed on January 20, 2015 pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution. The issue certified by the court of appeals is:

> Once an adult court determines under R.C. 2152.52(B)(4) that at least one charge for which the juvenile was convicted is subject to mandatory transfer, is that court permitted to sentence the juvenile under R.C. Chapter 2929 on all charges in the case, or must the adult court complete a separate analysis under R.C. 2152.121(B) for each charge individually?

Respectfully submitted,

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PROSECUTING ATTORNEY

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Assistant Prosecuting Attorney

COUNSEL FOR APPELLANT,
THE STATE OF OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was sent by regular U.S. mail to counsel for Appellee: Sheryl Trzaska, Office of the State Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215, on February 3, 2015.

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THE STATE OF OHIO

Supreme Court of Ohio Clerk of Court - Filed June 02, 2015 - Case No. 2015-0192

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	**Case No. 2015-0192**
Appellant,	:	
vs.	:	On appeal from the Montgomery County Court of Appeals, Second Appellate District
DELAQUAN BROOKSHIRE	:	
Appellee.	:	Court of Appeals Case No. 25859

MOTION TO CORRECT TYPOGRAPHICAL ERROR

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MOTION

It has come to Appellant's attention that a typographical error was made in the "certified question" before this Court – an error that originated in the court of appeal's decision and entry filed January 20, 2015, and which was repeated, ultimately, in this Court's Entry, filed April 29, 2015, determining that a conflict exists. The typographical error relates to the citation to one of the revised code sections at issue.

The question as originally stated reads as follows:

"Once an adult court determines under R.C. 2152.52(B)(4) that at least one charge for which the juvenile was convicted is subject to mandatory transfer, is that court permitted to sentence the juvenile under R.C. Chapter 2929 on all charges in the case, or must the adult court complete a separate analysis under R.C. 2152.121(B) for each charge individually?"

The question should instead read as follows:

"Once an adult court determines under **R.C. 2152.121(B)(4)** that at least one charge for which the juvenile was convicted is subject to mandatory transfer, is that court permitted to sentence the juvenile under R.C. Chapter 2929 on all charges in the case, or must the adult court complete a separate analysis under R.C. 2152.121(B) for each charge individually?"

Respectfully submitted,

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

By: /s/ Andrew T. French
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Correct Typographical Error* was sent by regular U.S. mail to counsel for Appellee: Sheryl Trzaska, Office of the State Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215, on June 2, 2015.

/s/ Andrew T. French
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THE STATE OF OHIO

[Cite as *Ohio v. Brookshire*, 2014-Ohio-4858.]

[Please see decision and entry at 2014-Ohio-5368.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 25859
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2013-CR-635/1
v.	:	
	:	
DELAQUAN BROOKSHIRE	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

. . . . . .

OPINION

Rendered on the 31st day of October, 2014.

. . . . . .

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Attorney for Defendant-Appellant

. . . . . .

FAIN, J.

{¶ 1} Defendant-appellant Delaquan Brookshire appeals from his conviction and sentence on one count of Aggravated Robbery, with a firearm specification, two counts of Aggravated Robbery, without firearm specifications, and three counts of Kidnapping. Brookshire contends that the juvenile court erred when it transferred his two cases to adult court, because the mandatory transfer provisions in R.C. 2152.10(A)(2)(b) violate his rights to due process and equal protection and violate the prohibition against cruel and unusual punishment. Brookshire also contends that the adult court was without authority to sentence Brookshire on five of the six counts to which he pled guilty. Finally, Brookshire contends that he was denied the effective assistance of trial counsel.

{¶ 2} We conclude that the mandatory transfer provisions of R.C. 2152.10 do not violate Brookshire's rights to due process and equal protection and do not violate the prohibition against cruel and unusual punishment. We also conclude that the adult court erred in failing to transfer five of the six offenses back to the juvenile court pursuant to R.C. 2152.121 after the adult court found Brookshire guilty of those offenses. Finally, we conclude that Brookshire failed to prove that he received ineffective assistance of trial counsel.

{¶ 3} Accordingly, the judgment of the trial court is Reversed, in part, and Affirmed, in part, and this cause is Remanded for further proceedings consistent with this opinion.

I. Brookshire Confesses That He Was Involved in Robberies at Burger King and Penn Station Restaurants

{¶ 4} On January 9, 2013, men in masks robbed a Burger King fast-food restaurant. On January 20, 2013, men in masks robbed a Penn Station fast-food restaurant. During the

robberies, the masked men held individuals at gunpoint. The police investigation of the Penn Station robbery led to interviewing Brookshire as a suspect. Upon questioning, Brookshire admitted to the police that he was involved in the two robberies.

II. Course of the Proceedings

{¶ 5} Delinquency complaints were filed against Brookshire. The complaint in Montgomery County Juvenile Court Case No. 2013-639 alleged that he had committed offenses that if he were an adult would have constituted one count of Aggravated Robbery and five counts of Kidnapping, all with firearm specifications. This case related to Brookshire's actions in the Burger King robbery. The delinquency complaint in Montgomery County Juvenile Court Case No. 2013-468 alleged that he had committed offenses that if he were an adult would have constituted four counts of Aggravated Robbery and three counts of Kidnapping, all with firearm specifications. This case related to Brookshire's alleged actions in the Penn Station robbery.

{¶ 6} After the delinquency complaints were filed, the State filed a motion to transfer jurisdiction to the General Division of the Common Pleas Court ("adult court") so that Brookshire could be tried as an adult. The juvenile court held a probable cause hearing in order to determine whether transfer to adult court was appropriate pursuant to R.C. 2152.10 and R.C. 2152.12.

{¶ 7} Following the probable cause hearing, the juvenile court found that Brookshire was 17 years old at the time of the charged offenses, the acts alleged in the complaint would be felonies if committed by an adult, and there was probable cause to believe that Brookshire was responsible for committing Aggravated Robbery and Kidnapping in the two robberies. Based on

these findings, the juvenile court relinquished its jurisdiction and transferred the cases to the adult court.

{¶ 8} In March 2013, a Montgomery County Grand Jury indicted Brookshire on one count of Aggravated Robbery and five counts of Kidnapping for Brookshire's alleged actions in the Burger King robbery. Each count had a firearm specification attached to it. The Grand Jury also indicted Brookshire on four counts of Aggravated Robbery and three counts of Kidnapping for Brookshire's alleged actions in the Penn Station robbery. Each count had a firearm specification attached to it.

{¶ 9} Ultimately, Brookshire pled guilty to the following counts: one count of Aggravated Robbery with a firearm specification relating to the Burger King robbery; two counts of Kidnapping relating to the Burger King robbery; two counts of Aggravated Robbery relating to the Penn Station robbery; and one count of Kidnapping relating to the Penn Station robbery. In exchange for his guilty pleas, the remaining counts of the indictment were dismissed. The adult court found Brookshire guilty of these six counts. The court sentenced Brookshire to the following: six years on the Aggravated Robbery count in the Burger King robbery and three years on the firearm specification; five years each on the two Kidnapping counts involving the Burger King robbery; six years each on the two Aggravated Robbery counts involving the Penn Station robbery; and five years on the Kidnapping count involving the Penn Station robbery. The adult court ordered that the three-year sentence on the firearm specification would be served consecutively to the six-year sentence on the Aggravated Robbery sentence. The remaining sentences were ordered to be served concurrently with each other, for a total prison sentence of nine years.

{¶ 10} Brookshire appeals from the adult court's judgment of conviction and sentence.

III. Brookshire Failed to Establish a Violation of his Right to Due Process, Right to Equal Protection, or the Prohibition Against Cruel and Unusual Punishment

{¶ 11} Brookshire's first three assignments of error state:

THE JUVENILE COURT ERRED WHEN IT TRANSFERRED DELAQUAN BROOKSHIRE'S CASE TO ADULT COURT BECAUSE THE MANDATORY-TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND R.C. 2152.12(A)(1)(b) VIOLATE A CHILD'S RIGHT TO DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION; OHIO CONSTITUTION, ARTICLE I, SECTION 16.

THE JUVENILE COURT ERRED WHEN IT TRANSFERRED DELAQUAN BROOKSHIRE'S CASE TO ADULT COURT BECAUSE THE MANDATORY-TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND R.C. 2152.12(A)(1)(b) VIOLATE A CHILD'S RIGHT TO EQUAL PROTECTION AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION; OHIO CONSTITUTION, ARTICLE I, SECTION 2.

THE JUVENILE COURT ERRED WHEN IT TRANSFERRED DELAQUAN BROOKSHIRE'S CASE TO ADULT COURT BECAUSE THE MANDATORY-TRANSFER PROVISIONS IN R.C. 2152.10(A)(2)(b) AND

R.C. 2152.12(A)(1)(b) VIOLATE THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENTS AS GUARANTEED BY THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; OHIO CONSTITUTION, ARTICLE I, SECTION 9.

{¶ 12} In *State v. Brookshire*, 2d Dist. Montgomery No. 25853, 2014-Ohio-1971, we addressed identical assignments of error brought by Delaquan's co-defendant in the Penn Station robbery, LV Lavell Brookshire. For the reasons set forth in that opinion, Delaquan Brookshire's first three assignments of error also are without merit. *Id.* at ¶ 26-33. *See also State v. Anderson*, 2d Dist. Montgomery No. 25689, 2014-Ohio-4245, ¶ 62-81.

{¶ 13} Brookshire's First, Second, and Third Assignments of Error are overruled.

IV. The Adult Court Committed Plain Error By Failing to Follow The Procedures Set Forth in R.C. 2152.121

{¶ 14} Brookshire's Fourth Assignment of Error states:

THE TRIAL COURT WAS WITHOUT AUTHORITY TO SENTENCE DELAQUAN BROOKSHIRE TO PRISON FOR COUNTS 2, 3, 7, 8, AND 10, BECAUSE THE COURT WAS REQUIRED TO IMPOSE A SENTENCE IN ACCORDANCE WITH R.C. 2152.121 AND REMAND THE MATTER TO THE JUVENILE COURT AFTER IMPOSING A STAYED SENTENCE.

{¶ 15} R.C. 2152.10(A) provides that, under certain circumstances, a juvenile court must transfer cases to adult court for criminal prosecution "as provided in section 2152.12 of the Revised Code." Specifically, R.C. 2152.10(A)(2)(b) states that a delinquent child is eligible for

mandatory transfer when the child is charged with a "category two offense," the child was sixteen years or older at the time of the commission of the offense, and "[t]he child is alleged to have had a firearm on or about the child's person * * * and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged." Category two offenses include Aggravated Robbery and Kidnapping. R.C. 2152.02(CC).

{¶ 16} All of the Aggravated Robbery and Kidnapping charges brought against Brookshire in the juvenile court included firearm specifications, which made Brookshire eligible for mandatory transfer to the adult court. R.C. 2152.10(A)(2)(b). The juvenile court then had to apply R.C. 2152.12(A) to determine whether the cases had to be transferred to the adult court.

{¶ 17} R.C. 2152.12(A)(1)(b)(ii) provides that the juvenile court "shall" transfer the case to the adult court if the child was sixteen or seventeen years of age at the time of the act charged, R.C. 2152.10(A)(2)(b) requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged. At the probable cause hearing, the juvenile court found that these conditions were met and transferred the two cases to adult court.

{¶ 18} But the fact that the juvenile court properly transferred the cases to adult court does not end our analysis. Whether all of the charges were properly transferred from the juvenile court to the adult court is a different question than whether the adult court could subsequently impose sentences on all six of the offenses. R.C. 2152.121(B) governs what the adult court must do once a juvenile has been found guilty of an offense in adult court that previously was transferred from juvenile court.

{¶ 19} R.C. 2152.121(B) provides, in part:

If a complaint is filed against a child alleging that the child is a delinquent child, if the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of section 2152.12 of the Revised Code, and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined as follows:

(1) The court * * * shall determine whether * * * division (A) of section 2152.12 of the Revised Code would have required mandatory transfer of the case or division (B) of that section would have allowed discretionary transfer of the case.

(2) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case, and division (B) of that section would not have allowed discretionary transfer of the case, the court shall transfer jurisdiction of the case back to the juvenile court that initially transferred the case, the court and all other agencies that have any record of the conviction of the child or the child's guilty plea shall expunge the conviction or guilty plea and all records of it, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have never occurred, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have been a

delinquent child adjudication of the child, and the juvenile court shall impose one or more traditional juvenile dispositions upon the child under sections 2152.19 and 2152.20 of the Revised Code.

(3) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case but division (B) of that section would have allowed discretionary transfer of the case, the court shall determine the sentence it believes should be imposed upon the child under Chapter 2929. of the Revised Code, shall impose that sentence upon the child, and shall stay that sentence pending completion of the procedures specified in this division. Upon imposition and staying of the sentence, the court shall transfer jurisdiction of the case back to the juvenile court that initially transferred the case and the juvenile court shall proceed in accordance with this division. * * *

(4) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would have required mandatory transfer of the case, the court shall impose sentence upon the child under Chapter 2929. of the Revised

Code.

{¶ 20} In summary, if the adult court is faced with a conviction on an offense that would still be a mandatory bindover for the juvenile, then the court should sentence the juvenile on that offense just as it normally would sentence an adult defendant before it. R.C. 2152.121(B)(4). However, if the juvenile is convicted of an offense that would not be a mandatory bindover for that juvenile but would be a discretionary bindover, then the adult court must "impose" an adult sentence but then stay the sentence and return the case to the juvenile court for further action there. R.C. 2152.121(B)(3). At that point, the juvenile court can ultimately transfer the case back to the adult system or make a Serious Youthful Offender disposition along with a traditional juvenile disposition. R.C. 2152.121(B)(3)(a), (b). Finally, if the juvenile is convicted of an offense that would not have been a bindover at all for the juvenile, then the adult court makes no sentence on that offense and returns the case to the juvenile court for further action there. R.C. 2152.121(B)(2).

{¶ 21} Ultimately, Brookshire was convicted of one offense that would have still been a mandatory bindover for the juvenile – the Aggravated Robbery charge with a firearm specification relating to the Burger King robbery. Pursuant to R.C. 2152.121(B)(4), the adult court was authorized to sentence Brookshire as it normally would sentence an adult defendant before it. Therefore, we find no error in the adult court's sentence on the one count of Aggravated Robbery with a firearm specification.

{¶ 22} But the remaining five convictions involve Aggravated Robbery and Kidnapping offenses with no firearm specifications. These are offenses that do not appear to be subject to a mandatory bindover but could be subject to discretionary bindover. Consequently, the adult

court was required to determine whether these five offenses were subject to mandatory transfer or discretionary transfer. If they were subject to discretionary transfer, then the adult court must "impose" an adult sentence, but then stay the sentence and return the case to the juvenile court for further action there. R.C. 2152.121(B)(3). The adult court failed to make the required determination, stay the sentence, or return the case to the juvenile court. We conclude that the adult court's failure to follow the plain language of R.C. 2152.121 constitutes plain error.

{¶ 23} The State disagrees and believes the adult court was not required to reverse transfer the five offenses to the juvenile court. In support of its position, the State cites our prior decision in *State v. Washington*, 2d Dist. Montgomery No. 20226, 2005-Ohio-6546. In *Washington*, we were faced with the question of whether a juvenile court must transfer the entire case to the adult court when at least one of the offenses in the case constituted a mandatory transfer offense. We concluded, at ¶ 24, that the entire case must be transferred:

> None of the provisions cited above apply to the CCW charge, which is a non-category offense. However, R.C. 2152.12(I) provides that when a "case" is transferred pursuant to division (A) of that section "[t]he transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court, and the case then shall be within the jurisdiction of the court to which it is transferred as described in division (H) of section 2151.23 of the Revised Code." R.C. 2151.23(H) likewise terminates the jurisdiction of the juvenile division after a transfer is ordered.

{¶ 24} We further noted that the object of R.C. 2152.12(I) "is judicial economy; to

prevent dual proceedings in the two divisions. Presumably, the General Assembly has found that the value of judicial economy in that regard outweighs any benefit that would otherwise accrue by treating the alleged offender as a juvenile." *Washington* at ¶ 25.

{¶ 25} But, as we mentioned above, the question of whether an entire case should be transferred from the juvenile court to the adult court is a different question from whether an adult court must transfer back offenses at the time of sentencing, after a single factfinder has heard the evidence and adjudicated the charges. R.C. 2152.121, not R.C. 2152.12, governs the procedure that must be followed at the time of sentencing. R.C. 2152.121(A) provides that even after a case is transferred to the adult court pursuant to R.C. 2152.12, the juvenile court retains jurisdiction to make disposition when required under R.C. 2152.121(B). Similarly, R.C. 2151.23(H) provides that the juvenile court does not have jurisdiction to hear or determine the case subsequent to the transfer to the adult court "except as provided in section 2152.121 of the Revised Code." The General Assembly explained in R.C. 2152.121(B) what the adult court must do at the time of sentencing regarding different types of "offenses." The adult court must follow the statute.

{¶ 26} We acknowledge that the judicial economy benefits we noted in *Washington* may not be served by the subsequent enactment of R.C. 2152.121, which leads to proceedings in two different divisions of the Montgomery County Common Pleas Court. But the General Assembly may have decided that the judicial economy served by transferring an entire case from juvenile court to adult court at the beginning of the case was subsequently trumped at the time of sentencing by the need to allow the juvenile court to take part in sentencing. In *State v. Murphy*, 8th Dist. Cuyahoga No. 97459, 2012-Ohio-2924, ¶ 14, the Eighth District noted the importance

of the juvenile court handling the sentencing pursuant to R.C. 2152.121:

> The state also contends that R.C. 2152.121 "does not affect sentencing; it is a purely procedural issue concerning which court shall have jurisdiction." We disagree. The very language of the statute demonstrates that it is a sentencing statute. Moreover, juvenile offenders are generally treated differently than adult offenders because the objectives of the juvenile justice system differ from those of the adult criminal justice system.

{¶ 27} The *Murphy* court noted that the overriding purposes in felony sentencing are to protect the public from future crime by the offender and to punish the offender. *Id.*, quoting R.C. 2929.11(A). On the other hand, the overriding purposes in juvenile dispositions "are to provide for the care, protection and mental and physical development of children * * * , protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender." *Murphy* at ¶ 15, quoting R.C. 2152.01(A). Also, the juvenile court is instructed to use "a system of graduated sanctions and services." *Id.*

{¶ 28} The plain language of R.C. 2151.121 required the adult court to transfer five of the six offenses back to the juvenile court. Given the differences in the purposes of sentencing between adult and juvenile courts, we conclude that the adult court's failure to do so in this case constitutes plain error.

{¶ 29} We acknowledge that, arguably, the trial court's error could be considered harmless error, because the court ordered the terms of the sentences for the five non-mandatory transfer offenses to be served concurrently with the sentence for the mandatory transfer offense of Aggravated Robbery with a firearm specification, resulting in an aggregate sentence of nine

years. *See State v. Mays*, 8th Dist. Cuyahoga No. 100265, 2014-Ohio-3815; *State v. Bradford*, 5th Dist. Stark No. 2013 CA 00124, 2014-Ohio-904. But we do not agree that the error is harmless. For example, depending on the adult court's finding pursuant to R.C. 2152.121(B), Brookshire ultimately could have his convictions and guilty pleas on the five non-mandatory transfer offenses expunged. R.C. 2151.121(B)(2), (3). Furthermore, if Brookshire seeks and obtains either State post-conviction relief or federal relief from his nine-year sentence on his Aggravated Robbery and firearm specification convictions, then the particular sentences received on his other five convictions would have independent significance. Given the record before us, we conclude that the adult court's error was not harmless.

{¶ 30} Brookshire's Fourth Assignment of Error is sustained.

V. Brookshire Has Failed to Demonstrate

Ineffective Assistance of Trial Counsel

{¶ 31} Brookshire's Fifth Assignment of Error states:

> DELAQUAN BROOKSHIRE WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; OHIO CONSTITUTION, ARTICLE I, SECTION 10.

{¶ 32} A claim of ineffective assistance of trial counsel requires both a showing that trial counsel's representation fell below an objective standard of reasonableness, and that the defendant was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A reviewing court "must indulge in a strong presumption that

counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. The prejudice prong requires a finding that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different, with a reasonable probability being "a probability sufficient to undermine confidence in the outcome." *Id.* at 694. *See also State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989).

{¶ 33} Delaquan contends that his trial counsel was ineffective "for failing to object to the constitutionality of the transfer of his case to adult court." Brief, p. 19. Since we have concluded in Part III, above, that the transfer to adult court was not unconstitutional, we conclude that trial counsel was not ineffective for failing to object on this basis.

{¶ 34} Delaquan also contends that his trial counsel "was ineffective for agreeing to a void sentence." Brief, p. 20. According to Delaquan: "Had counsel argued that R.C. 2152.121 required stayed sentences in Counts 2, 3, 7, 8, and 10, the trial court would have sentenced Delaquan in accordance with R.C. 2152.121, and he would not currently be serving prison terms for those charges." *Id.* We find no prejudice has been demonstrated.

{¶ 35} As we found in Part IV, above, the adult court should have followed the mandates of R.C. 2152.121, and made the required determination to reverse transfer five of the six offenses to the juvenile court for sentencing. On remand, this error will be corrected by the adult court. Furthermore, because we are affirming the adult court's decision to sentence Brookshire to nine years in prison on the mandatory transfer offense of Aggravated Robbery with a firearm specification, Brookshire would currently be in prison even if trial counsel had alerted the adult court that it was misapplying R.C. 2152.121. Consequently, Brookshire has failed to show that but for his trial counsel's errors, "he would not currently be serving prison terms."

Brief, p. 20.

{¶ 36} The Fifth Assignment of Error is overruled.

VI. Conclusion

{¶ 37} Brookshire's Fourth Assignment of Error having been sustained, and his other assignments of error having been overruled, the judgment of the trial court will be Reversed, in part, and Affirmed, in part. The cause is remanded for the adult court to make the required determination pursuant to R.C. 2152.121(B)(1), and to proceed accordingly, pursuant to R.C. 2152.121(B)(2)-(4).

. . . . . .

FROELICH, P.J., and WELBAUM, J., concur.

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Andrew T. French
Sheryl Trzaska
Hon. Michael Tucker

Case: CR 025859
Dkt: CRORFE

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36

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	
Plaintiff-Appellee	Appellate Case No. 25859
v.	Trial Court Case No. 2013-CR-635/1
DELAQUAN BROOKSHIRE	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	**FINAL ENTRY**

. . . . . .

Pursuant to the opinion of this court rendered on the 31st day of October, 2014, that part of the judgment of the trial court convicting and sentencing defendant-appellant Delaquan Brookshire for Aggravated Robbery with a firearm specification is **Affirmed**, Brookshire's other convictions and sentences are **Reversed**, and this cause is **Remanded** for further proceedings in accordance with the opinion.

Costs to be paid as follows: 50% by appellant, and 50% by appellee.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the clerk of the Montgomery County Court of Appeals shall immediately serve notice of this judgment upon all parties and make a note in the docket of the mailing.

JEFFREY E. FROELICH, Presiding Judge

MIKE FAIN, Judge

JEFFREY M. WELBAUM, Judge

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Montgomery County Common Pleas Court
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[Cite as *State v. Brookshire*, 2014-Ohio-5368.]

[Please see decision and entry at 2014-Ohio-4858.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 25859
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2013-CR-635/1
v.	:	
	:	
DELAQUAN BROOKSHIRE	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

. . . . . .

DECISION AND ENTRY

Rendered on the 4th day of December, 2014

(Reconsideration of Supreme Court Website No. 2014-Ohio-4858)

. . . . . .

PER CURIAM:

{¶ 1} This matter is before the court upon the application of plaintiff-appellee the State of Ohio for reconsideration of our judgment rendered herein on October 31, 2014. In that judgment, we reversed all of defendant-appellant Delaquan Brookshire's convictions and sentences other than his conviction and sentence for Aggravated Robbery with a firearm specification. In doing so, we rejected the State's argument that the juvenile court's mandatory bindover to adult court of the Aggravated Robbery with a firearm specification prevented a "reverse" bindover, under R.C. 2152.121, of other

offenses to which Brookshire pled guilty in adult court.

{¶ 2} The State now argues that we erred by concluding that two of the other offenses, both Aggravated Robbery offenses with accompanying firearm specifications being dismissed, were subject to "reverse" bindover under R.C. 2152.121. Specifically, the State contends that we erred by concluding that the dismissal of the firearm specification for these offenses was dispositive of the issue.

{¶ 3} We noted in our opinion in this appeal, *State v. Brookshire*, 2d Dist. Montgomery No. 25859, 2014-Ohio-4858, ¶ 20, that R.C. 2152.121 essentially provides that:

[I]f the adult court is faced with a conviction on an offense that would still be a mandatory bindover for the juvenile, then the court should sentence the juvenile on that offense just as it normally would sentence an adult defendant before it. R.C. 2152.121(B)(4). However, if the juvenile is convicted of an offense that would not be a mandatory bindover for that juvenile but would be a discretionary bindover, then the adult court must "impose" an adult sentence but then stay the sentence and return the case to the juvenile court for further action there. R.C. 2152.121(B)(3). At that point, the juvenile court can ultimately transfer the case back to the adult system or make a Serious Youthful Offender disposition along with a traditional juvenile disposition. R.C. 2152.121(B)(3)(a), (b). Finally, if the juvenile is convicted of an offense that would not have been a bindover at all for the juvenile, then the adult court makes no sentence on that offense and returns the case to the juvenile court for further action there. R.C. 2152.121(B)(2).

{¶ 4} The State argues that with respect to counts 7 and 8 of the indictment, two

Aggravated Robbery offenses, to which Brookshire pled guilty after the firearm specifications were dismissed, those are convictions that would still be a mandatory bindover in juvenile court, notwithstanding the dismissal of the firearm specifications. The State cites R.C. 2152.10(A)(2)(b), which provides for mandatory bindover if the child is charged with a category two offense (other than kidnapping), the child was sixteen years of age or older at the time of the offense, and "[t]he child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged." Aggravated Robbery is a category two offense. R.C. 2152.02(CC). There is no dispute that Brookshire was at least sixteen years old at the time of the offense. Finally, as the State notes, in both counts 7 and 8 of the indictment, it is alleged that:

DELAQUAN BROOKSHIRE, on or about January 20, 2013 * * * in attempting or committing a theft offense * * * , or in fleeing immediately after the attempt or offense, did have a deadly weapon, to-wit: firearm, on or about his person or under his control and did display the weapon, brandish the weapon, indicate possession of the weapon or use the weapon; contrary to the form of the statute (in violation of Section 2911.01(A)(1) of the Ohio Revised Code) in such case made and provided, and against the peace and dignity of the State of Ohio.

{¶ 5} The State argues that counts 7 and 8 of the indictment, to which Brookshire pled guilty, constitute the necessary allegations under R.C. 2152.10(A)(2)(b) for a mandatory bindover from juvenile court to adult court, so that these convictions were not subject to the "reverse" bindover provisions of R.C. 2152.121.

{¶ 6} In response, Brookshire argues that because R.C. 2923.03(F) permits a charge of complicity to be stated either in terms of complicity, or in terms of the principal offense, counts 7 and 8 of the indictment while stated in terms of the principal offense of Aggravated Robbery, may be construed as alleging complicity in that offense, merely. Brookshire cites *State v. Hanning*, 89 Ohio St.3d 86, 728 N.E.2d 1059 (2000), for the proposition that mere complicity in an offense involving a firearm is not sufficient to satisfy the mandatory bindover provisions of R.C. 2152.10(A)(2)(b). We note that in *Hanning*, the State had conceded that the defendant "did not personally have a firearm on or about his person or under his control, nor did he personally display, brandish, indicate possession of, or use a firearm to facilitate the commission of the act charged." *Id.*, at 91. There is no similar concession in the case before us.

{¶ 7} It is true that "[i]n charging complicity, the accused may be charged specifically as an accomplice under this section, or he may be charged simply as a joint offender in the offense committed." Legislative Service Commission notes to R.C. 2923.03. But in the case before us, Brookshire is the sole offender identified in counts 7 and 8 of the indictment, and he was charged in terms of the terms of the principal offense, not in terms of complicity. A defendant charged as a principal can be found guilty as an accomplice. *State v. Strub*, 48 Ohio App.2d 57, 62, 355 N.E.2d 819 (7th Dist.1975). Nevertheless, counts 7 and 8 of the indictment in the case before us do, in fact, allege that Brookshire had a firearm on or about his person or under his control and did display the weapon, brandish it, indicate its possession, or use it. This is sufficient under R.C. 2152.10(A)(2)(b) for mandatory bindover.

{¶ 8} Although the firearm specifications attached to counts 7 and 8 were dismissed, those counts were not amended to state the offense in terms of complicity, merely, but remained

as statements of the principal offense, alleging Brookshire's necessary connection to a firearm. We conclude, therefore, that the State's application for reconsideration has merit, and it is GRANTED.

{¶ 9} Our judgment entry rendered herein on October 31, 2014, is VACATED, and an amended judgment will be entered to reflect that Brookshire's convictions and sentences on counts 7 and 8 of the indictment are affirmed. In addition, our opinion of October 31, 2014 (2014-Ohio-4858) is hereby modified accordingly, consistent with this Decision and Entry.

{¶ 10} IT IS SO ORDERED.

JEFFREY E. FROELICH, Presiding Judge

MIKE FAIN, Judge

JEFFREY M. WELBAUM, Judge

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Case: CA 025859
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IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	
	Appellate Case No. 25859
Plaintiff-Appellee	
	Trial Court Case No. 2013-CR-635/1
v.	
	(Criminal Appeal from
DELAQUAN BROOKSHIRE	Common Pleas Court)
Defendant-Appellant	**AMENDED FINAL ENTRY**

. . . . . .

Pursuant to the opinion of this court rendered on the 31st day of October, 2014, and our subsequent decision and entry granting the State's application for reconsideration, that part of the judgment of the trial court convicting and sentencing defendant-appellant Delaquan Brookshire for Aggravated Robbery with a firearm specification, as charged in Count 1 of the indictment, and for Aggravated Robbery, without firearm specifications, as charged in counts 7 and 8 of the indictment, is **Affirmed**, Brookshire's other convictions and sentences are **Reversed**, and this cause is **Remanded** for further proceedings in accordance with the opinion and reconsideration decision.

Costs to be paid as follows: 50% by appellant, and 50% by appellee.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the clerk of the Montgomery County Court of Appeals shall immediately serve notice of this judgment upon all parties and make a note in the docket of the mailing.

JEFFREY E. FROELICH, Presiding Judge

MIKE FAIN, Judge

JEFFREY M. WELBAUM, Judge

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Baldwin's Ohio Revised Code Annotated
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
Dispositional Orders

R.C. § 2152.12

2152.12 Transfer of cases from juvenile court

Effective: September 28, 2012
Currentness

(A)(1)(a) After a complaint has been filed alleging that a child is a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the juvenile court at a hearing shall transfer the case if either of the following applies:

(i) The child was sixteen or seventeen years of age at the time of the act charged and there is probable cause to believe that the child committed the act charged.

(ii) The child was fourteen or fifteen years of age at the time of the act charged, section 2152.10 of the Revised Code provides that the child is eligible for mandatory transfer, and there is probable cause to believe that the child committed the act charged.

(b) After a complaint has been filed alleging that a child is a delinquent child by reason of committing a category two offense, the juvenile court at a hearing shall transfer the case if the child was sixteen or seventeen years of age at the time of the act charged and either of the following applies:

(i) Division (A)(2)(a) of section 2152.10 of the Revised Code requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

(ii) Division (A)(2)(b) of section 2152.10 of the Revised Code requires the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

(2) The juvenile court also shall transfer a case in the circumstances described in division (C)(5) of section 2152.02 of the Revised Code or if either of the following applies:

(a) A complaint is filed against a child who is eligible for a discretionary transfer under section 2152.10 of the Revised Code and who previously was convicted of or pleaded guilty to a felony in a case that was transferred to a criminal court.

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(b) A complaint is filed against a child who is domiciled in another state alleging that the child is a delinquent child for committing an act that would be a felony if committed by an adult, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile, family, or similar noncriminal court to a criminal court.

(3) If a complaint is filed against a child alleging that the child is a delinquent child and the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of this section and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined in accordance with section 2152.121 of the Revised Code.

(B) Except as provided in division (A) of this section, 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.

(2) There is probable cause to believe that the child committed the act charged.

(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.

(C) Before considering a transfer under division (B) of this section, the juvenile court shall order an investigation into the child's social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The investigation shall be completed and a report on the investigation shall be submitted to the court as soon as possible but not more than forty-five calendar days after the court orders the investigation. The court may grant one or more extensions for a reasonable length of time. The child may waive the examination required by this division if the court finds that the waiver is competently and intelligently made. Refusal to submit to a mental examination by the child constitutes a waiver of the examination.

(D) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, in favor of a transfer under that division:

(1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.

(2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.

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(3) The child's relationship with the victim facilitated the act charged.

(4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.

(5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

(6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.

(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.

(8) The child is emotionally, physically, or psychologically mature enough for the transfer.

(9) There is not sufficient time to rehabilitate the child within the juvenile system.

(E) In considering whether to transfer a child under division (B) of this section, the juvenile court shall consider the following relevant factors, and any other relevant factors, against a transfer under that division:

(1) The victim induced or facilitated the act charged.

(2) The child acted under provocation in allegedly committing the act charged.

(3) The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.

(4) The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.

(5) The child previously has not been adjudicated a delinquent child.

(6) The child is not emotionally, physically, or psychologically mature enough for the transfer.

(7) The child has a mental illness or is a mentally retarded person.

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(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

(F) If one or more complaints are filed alleging that a child is a delinquent child for committing two or more acts that would be offenses if committed by an adult, if a motion is made alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred for, and if a motion also is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to division (B) of this section, the juvenile court, in deciding the motions, shall proceed in the following manner:

(1) Initially, the court shall decide the motion alleging that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred.

(2) If the court determines that division (A) of this section applies and requires that the case or cases involving one or more of the acts charged be transferred, the court shall transfer the case or cases in accordance with that division. After the transfer pursuant to division (A) of this section, the court shall decide, in accordance with division (B) of this section, whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division. Notwithstanding division (B) of this section, prior to transferring a case pursuant to division (A) of this section, the court is not required to consider any factor specified in division (D) or (E) of this section or to conduct an investigation under division (C) of this section.

(3) If the court determines that division (A) of this section does not require that the case or cases involving one or more of the acts charged be transferred, the court shall decide in accordance with division (B) of this section whether to grant the motion requesting that the case or cases involving one or more of the acts charged be transferred pursuant to that division.

(4) No report on an investigation conducted pursuant to division (C) of this section shall include details of the alleged offense as reported by the child.

(G) The court shall give notice in writing of the time, place, and purpose of any hearing held pursuant to division (A) or (B) of this section to the child's parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing.

(H) No person, either before or after reaching eighteen years of age, shall be prosecuted as an adult for an offense committed prior to becoming eighteen years of age, unless the person has been transferred as provided in division (A) or (B) of this section or unless division (J) of this section applies. Any prosecution that is had in a criminal court on the mistaken belief that the person who is the subject of the case was eighteen years of age or older at the time of the commission of the offense shall be deemed a nullity, and the person shall not be considered to have been in jeopardy on the offense.

(I) Upon the transfer of a case under division (A) or (B) of this section, the juvenile court shall state the reasons for the transfer on the record, and shall order the child to enter into a recognizance with good and sufficient surety for the child's appearance before the appropriate court for any disposition that the court is authorized to make for a similar act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court, and the case then shall be within the jurisdiction of the court to which it is transferred as described in division (H) of section 2151.23 of the Revised Code.

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(J) 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. In those circumstances, divisions (A) and (B) of this section do not apply regarding the act, and the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case as it has in other criminal cases in that court.

CREDIT(S)

(2012 S 337, eff. 9-28-12; 2011 H 86, eff. 9-30-11; 2000 S 179, § 3, eff. 1-1-02)

Notes of Decisions (217)

R.C. § 2152.12, OH ST § 2152.12
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Baldwin's Ohio Revised Code Annotated
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2152. Juvenile Courts--Criminal Provisions (Refs & Annos)
Dispositional Orders

R.C. § 2152.121

2152.121 Retention of jurisdiction by juvenile court for purposes of making disposition of child

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Currentness

(A) If a complaint is filed against a child alleging that the child is a delinquent child and the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of section 2152.12 of the Revised Code, the juvenile court that transferred the case shall retain jurisdiction for purposes of making disposition of the child when required under division (B) of this section.

(B) If a complaint is filed against a child alleging that the child is a delinquent child, if the case is transferred pursuant to division (A)(1)(a)(i) or (A)(1)(b)(ii) of section 2152.12 of the Revised Code, and if the child subsequently is convicted of or pleads guilty to an offense in that case, the sentence to be imposed or disposition to be made of the child shall be determined as follows:

(1) The court in which the child is convicted of or pleads guilty to the offense shall determine whether, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would have required mandatory transfer of the case or division (B) of that section would have allowed discretionary transfer of the case. The court shall not consider the factor specified in division (B)(3) of section 2152.12 of the Revised Code in making its determination under this division.

(2) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case, and division (B) of that section would not have allowed discretionary transfer of the case, the court shall transfer jurisdiction of the case back to the juvenile court that initially transferred the case, the court and all other agencies that have any record of the conviction of the child or the child's guilty plea shall expunge the conviction or guilty plea and all records of it, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have never occurred, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have been a delinquent child adjudication of the child, and the juvenile court shall impose one or more traditional juvenile dispositions upon the child under sections 2152.19 and 2152.20 of the Revised Code.

(3) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would not have required mandatory transfer of the case but division (B) of that section would have allowed discretionary transfer of the case, the court shall determine the sentence it believes should be imposed upon the child under Chapter 2929. of the Revised Code, shall impose that sentence upon the child, and shall stay that sentence pending completion of the procedures specified in this division. Upon imposition and staying of the sentence, the court shall transfer jurisdiction of the case back to the juvenile court that initially transferred the case and the juvenile court shall proceed in accordance with this division. In no case may the child waive a right

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to a hearing of the type described in division (B)(3)(b) of this section, regarding a motion filed as described in that division by the prosecuting attorney in the case. Upon transfer of jurisdiction of the case back to the juvenile court, both of the following apply:

(a) Except as otherwise provided in division (B)(3)(b) of this section, the juvenile court shall impose a serious youthful offender dispositional sentence upon the child under division (D)(1) of section 2152.13 of the Revised Code. In imposing the adult portion of that sentence, the juvenile court shall consider and give preference to the sentence imposed upon the child by the court in which the child was convicted of or pleaded guilty to the offense. Upon imposing a serious youthful offender dispositional sentence upon the child as described in this division, the juvenile court shall notify the court in which the child was convicted of or pleaded guilty to the offense, the sentence imposed upon the child by that court shall terminate, the court and all other agencies that have any record of the conviction of the child or the child's guilty plea shall expunge the conviction or guilty plea and all records of it, the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have never occurred, and the conviction or guilty plea shall be considered and treated for all purposes other than as provided in this section to have been a delinquent child adjudication of the child.

(b) Within fourteen days after the filing of the journal entry regarding the transfer, the prosecuting attorney in the case may file a motion in the juvenile court that objects to the imposition of a serious youthful offender dispositional sentence upon the child and requests that the sentence imposed upon the child by the court in which the child was convicted of or pleaded guilty to the offense be invoked. Upon the filing of a motion under this division, the juvenile court shall hold a hearing to determine whether the child is not amenable to care or rehabilitation within the juvenile system and whether the safety of the community may require that the child be subject solely to adult sanctions. If the juvenile court at the hearing finds that the child is not amenable to care or rehabilitation within the juvenile system or that the safety of the community may require that the child be subject solely to adult sanctions, the court shall grant the motion. Absent such a finding, the juvenile court shall deny the motion. In making its decision under this division, the juvenile court shall consider the factors listed in division (D) of section 2152.12 of the Revised Code as factors indicating that the motion should be granted, shall consider the factors listed in division (E) of that section as factors indicating that the motion should not be granted, and shall consider whether the applicable factors listed in division (D) of that section outweigh the applicable factors listed in division (E) of that section.

If the juvenile court grants the motion of the prosecuting attorney under this division, the juvenile court shall transfer jurisdiction of the case back to the court in which the child was convicted of or pleaded guilty to the offense, and the sentence imposed by that court shall be invoked. If the juvenile court denies the motion of the prosecuting attorney under this section, the juvenile court shall impose a serious youthful offender dispositional sentence upon the child in accordance with division (B)(3)(a) of this section.

(4) If the court in which the child is convicted of or pleads guilty to the offense determines under division (B)(1) of this section that, had a complaint been filed in juvenile court alleging that the child was a delinquent child for committing an act that would be that offense if committed by an adult, division (A) of section 2152.12 of the Revised Code would have required mandatory transfer of the case, the court shall impose sentence upon the child under Chapter 2929. of the Revised Code.

CREDIT(S)

(2012 S 337, eff. 9-28-12; 2012 H 487, eff. 9-10-12; 2011 H 86, eff. 9-30-11)

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