

IN THE SUPREME COURT OF OHIO

State of Ohio : Case No. 2013-0192
Appellant, :
vs. : On Appeal from the
Delaquan Brookshire : Montgomery County
Appellee. : Court of Appeals, Second
Appellate District

REPLY BRIEF OF APPELLANT, THE STATE OF OHIO

Mathias H. Heck, Jr.
Prosecuting Attorney

Andrew T. French (COUNSEL OF RECORD)
Reg. No. 0069384
Assistant Prosecuting Attorney
Montgomery County Prosecutor's Office
P.O. Box 972
301 W. Third Street, 5th Floor
Dayton, Ohio 45422
(937) 225-4117

Counsel for Appellant,
The State of Ohio

Office of the Ohio Public Defender

Sheryl Trzaska
Reg. No. 0079915
Assistant State Public Defender
250 East Broad Street
Suite 1400
Columbus, Ohio 43215
(614) 466-5394

Counsel for Appellee,
Delaquan Brookshire

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ARGUMENT IN REPLY

The arguments set forth in the Brief of Defendant-Appellee, Delaquan Brookshire, require a response on two points.

1. R.C. 2152.121(B) speaks of cases and not offenses.

Just like the court of appeals did below, Brookshire misreads the plain language of R.C. 2152.121(B) by focusing on each offense for which he was found guilty in isolation, rather than focusing on his case as a whole as the statute requires. R.C. 2152.121(B)(2), (3) and (4) make it clear that, in determining what procedure must be followed after a juvenile is convicted in adult court but before sentencing, the trial court's first duty is to determine whether division (A) of section 2152.12 of the Revised Code would, or would not, have required mandatory transfer of the juvenile's *case*. Thus, at all times and under all circumstances, R.C. 2152.121(B) directs the trial court's focus to *the case*; each offense in isolation is never a consideration.

What constitutes a "case" within the context of R.C. 2152.121, however, is not specifically defined. The Rules of Superintendence of the Courts of Ohio, however, defines "case" to mean "* * * any of the following when filed in the court of common pleas, municipal court, and county court: * * * A criminal indictment, complaint, or other charging instrument that charges a defendant with one or more violations of the law arising from the same act, transaction, or series of acts or transactions." Sup.R. 2(A)(2). This definition suggests that *all of the charges* brought in a single indictment constitute a "case"; it does not suggest that each count or offense should be treated as separate cases.

The Ohio Revised Code also defines the term "case" in other contexts. For example, R.C. 120.36(A)(7), which addresses the assessment of an application fee on criminal defendants who are represented by public defenders or court-appointed counsel, defines "a case" to mean "one complete proceeding or trial held in one court for a person on an indictment, information,

complaint, petition, citation, writ, motion, or other document initiating a case that arises out of a single incident or a series of related incidents, or when one individual is charged with two or more offenses that the court handles simultaneously.” Additionally, in the context of when court costs should be imposed, R.C. 2947.23(D)(1) provides that “case” means “a prosecution of all of the charges that result from the same act, transaction, or series of acts or transactions and that are given the same case type designator and case number under Rule 43 of the Rules of Superintendence for the Courts of Ohio or any successor to that rule.” Thus, under either of these definitions, the meaning of “case” is clear: it refers to *all of the charges* arising out of a single incident or series of related incidents, and *all of the charges* that result from the same act, transaction, or series of acts or transactions. And what “case” does not mean is also clear from these statutes: it does not mean each charge or offense individually.

Moreover, R.C. 1.42 instructs that “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage.” To that end, Black’s Law Dictionary defines “case” as “[a] civil or criminal proceeding, action, suit, or controversy at law or equity.” *Black’s Law Dictionary* 258 (10th Ed.2014). And The Oxford English Dictionary defines “case” as “[a] cause or suit brought into court for decision.” *Oxford English Dictionary* 934 (2nd Ed.1989). These definitions likewise confirm what “case” does not mean: It does not mean each charge or offense individually.

2. Brookshire’s assumption that, if he were sentenced in both the juvenile and adult systems, he would be entitled to serve out his juvenile disposition first is unfounded.

In his Brief, Brookshire makes the following assertion: “If a child is given a juvenile disposition for offenses that are not subject to mandatory transfer, before serving the sentence for the mandatory transfer offense, the child will have the opportunity to benefit from the resources

of the juvenile system before entering the criminal justice system.” (See *Merit Brief of Defendant-Appellant* at p. 9) This assertion, however, relies on a faulty premise: it erroneously assumes that if an offender is sentenced to prison for some offenses, but is then given a juvenile disposition on other offenses, the offender will be entitled to serve out the juvenile dispositions first.

But Brookshire offers no authority to support the notion that a juvenile that is given a hybrid sentence under R.C. 2152.121 would be entitled to serve out the juvenile portion of the sentence first - perhaps because no such authority exists. Instead, it is generally understood that once a court pronounces sentence, the sentence shall be executed without delay. See generally R.C. 2949.05.¹ This necessarily means that once the adult court imposes its prison sentence, that sentence should be carried out immediately and without concern for what the juvenile court may later decide to do with the juvenile portion of the sentence. Thus, despite Brookshire’s contention to the contrary, it is highly unlikely that any juvenile who receives a hybrid sentence consisting of part adult-prison/part juvenile-disposition will be entitled to serve out the juvenile portion of the sentence first.

¹ R.C. 2945.05 provides: “If no appeal is filed, if leave to file an appeal or certification of a case is denied, if the judgment of the trial court is affirmed on appeal, or if post-conviction relief under section 2953.21 of the Revised Code is denied, the trial court or magistrate shall carry into execution the sentence or judgment which had been pronounced against the defendant.”

CONCLUSION

In view of the foregoing law and argument, as well as the law and argument set forth in Appellant's July 31, 2015 Merit Brief, it is respectfully requested that this Court reverse the decision of the court of appeals below.

Respectfully submitted,

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

By: /s/ Andrew T. French
ANDREW T. FRENCH (0069384)
Assistant Prosecuting Attorney
Montgomery County Prosecutor's Office

**Counsel for Appellant,
The State of Ohio**

Certificate of Service

I hereby certify that a copy of the foregoing *Reply Brief of Appellant* was sent by regular first class mail, postage pre-paid, to counsel for Defendant-Appellee: Sheryl Trzaska, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215, on October 9, 2015.

/s/ Andrew T. French
ANDREW T. FRENCH (0069384)
Assistant Prosecuting Attorney