

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,)	Sup. Ct. No. 2020-1429
)	
Plaintiff-Appellee,)	Ct. App. No. 2018-CA-25
)	
v.)	On Appeal from the Champaign
)	County Court of Appeals
DONOVAN ASHER NICHOLAS)	Second Appellate District
Defendant-Appellant.)	

APPELLEE STATE OF OHIO'S MEMORANDUM CONTRA JURISDICTION

Kevin S. Talebi (#0069198)
Champaign County Prosecutor
Jane A. Napier (#0061426)
Counsel of Record
Benjamin T. Hoskinson (#0079860)
Assistant Prosecuting Attorneys
Champaign County Prosecutor's Office
200 North Main Street
Urbana, Ohio 43078
Tel: (937) 484-1900
Fax: (937) 481-1901
jnapier@champaignprosecutor.org

Timothy B. Hackett (#0093480)
Counsel of Record
Assistant Public Defender
Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
Tel: (614) 466-5394
Fax: (614) 752-5167
timothy.hackett@opd.ohio.gov

Counsel for Defendant-Appellant
Donovan Asher Nicholas

Counsel for Plaintiff-Appellee
State of Ohio

TABLE OF CONTENTS

EXPLANATION AS TO WHY THE PRESENT APPEAL DOES NOT PRESENT A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST	3
STATEMENT OF FACTS RELEVANT TO THE STATE’S RESPONSE TO APPELLANT’S PROPOSITIONS OF LAW	4
ARGUMENT IN OPPOSITION TO APPELLANT’S PROPOSITIONS OF LAW	6
<i>Response to Proposition of Law No. I: The juvenile court did not abuse its discretion and properly relinquished jurisdiction over Appellant after correctly applying the facts to the applicable factors set forth in R.C. 2152.12.</i>	6
<i>Response to Proposition of Law No. II: Appellant is asking this Court to formulate a new standard inconsistent with the clear cognizable standard set forth in R.C. 2152.12.</i>	8
<i>Response to Proposition of Law No. III: The appellate court’s decision correctly sets forth the options for a juvenile court regarding a Serious Youthful Offender blended sentence and is not in conflict with other case or statutory authority.</i>	13
CONCLUSION	15
CERTIFICATE OF SERVICE	16

TABLE OF AUTHORITIES

<i>In re M.P.</i> , 124 Ohio St.3d 445, 2010-Ohio-599, 923 N.E.2d 584.....	6, 15
<i>In re Winship</i> , 397 U.S. 358, 364 (1970).....	10
<i>Kent v. United States</i> , 383 U.S. 541, 556 (1966).....	10
<i>State v. Aalim</i> , 150 Ohio St.3d 489, 2017 Ohio 2956.....	11
<i>State v. Adams</i> , 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980)	6
<i>State v. Allen</i> , 12 th Dist. Butler No. CA2007-04-085, 2008-Ohio-1885.....	9
<i>State v. Blair</i> , 5 th Dist. Stark No. 2016CA00180, 2017-Ohio-5865	7
<i>State v. D.H.</i> , 120 Ohio St.3d 540, 2009-Ohio-9.....	14
<i>State v. D.H.</i> , 2 nd Dist. Montgomery No. 26383, 2015-Ohio-3259	7
<i>State v. Douglas</i> , 20 Ohio St.3d 34, 36-37, 485 N.E.2d 711 (1985)	7
<i>State v. Easley</i> , 10 th Dist. Franklin Nos. 16AP-9, 16AP-10, 2016 Ohio 7271	9, 11
<i>State v. Erwin</i> , 10 th Dist. No. 09AP-918, 2012-Ohio 776	7
<i>State v. Hopfer</i> , 112 Ohio App.3d 521, 535-536, 679 N.E.2d 321 (2 nd Dist.1996).....	7
<i>State v. Hoskins</i> , (2 nd Dist.) 2018-Ohio-4529, 27486, 27487	6
<i>State v. Howard</i> , 2 nd Dist. Montgomery No. 27198, 2018-Ohio-1863.....	6, 10, 13, 15
<i>State v. Johnson</i> , 8 th Dist. No. 99377, 2015-Ohio-96.....	10
<i>State v. Lopez</i> , 112 Ohio App.3d 659 (9 th Dist.1996).....	10
<i>State v. Morgan</i> , 10 th Dist. No. 13AP-620, 2014 Ohio 5661.....	9
<i>State v. Reeder (In re Reeder)</i> , 10 th Dist. Nos. 15AP-203, 15AP-218, 2016-Ohio-212	7, 9
<i>State v. Taylor</i> , 2 nd Dist. Montgomery No. 27542, 2017-Ohio-8913	6
<i>State v. Terrell</i> , 6 th Dist. Lucas No. L-04-1131, 2005-Ohio-4871.....	7
<i>State v. Valentine</i> , (2d. Dist.) 1979 WL 208379 (April 11, 1979).....	12
<i>State v. Watson</i> , 47 Ohio St.3d 93, 547 N.E.2d 1181 (1989)	6, 7, 10
<i>State v. West</i> , 167 Ohio App.3d 598, 2006-Ohio-3518, 856 N.E.2d 285	7, 9
<i>R.C. 2152.02</i>	15
<i>R.C. 2152.11(B)(3)</i>	15
<i>R.C. 2152.12(B)</i>	7, 8, 12
<i>R.C. 2152.13(A)</i>	15

**EXPLANATION AS TO WHY THE PRESENT APPEAL DOES NOT PRESENT A
SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS NOT A CASE OF PUBLIC OR
GREAT GENERAL INTEREST**

Appellant, Donovan Asher Nicholas, raises nothing in his memorandum in support of jurisdiction that rises to the level of being a substantial constitutional question or being a case of public or great general interest. Although Appellant's acts leading to his conviction in the instant case are horrendous, involving Appellant's intentional and brutal killing of his mother figure, no substantial constitutional questions are at issue, the facts are clear and the State respectfully requests that this Honorable Court decline to grant jurisdiction herein.

The propositions of law that Appellant advocates are not issues in conflict in need of resolution by this Honorable Court. The Second District Court of Appeals in this matter affirmed the discretionary transfer decision of the Champaign County Family Court (also herein identified as "juvenile court") on well-established law. There is no argument made by Appellant that reflects disagreement between the appellate court districts. Similarly, there were no obvious errors in the appellate court's decisions, including its decision on reconsideration and its decision denying *en banc* review. Appellant is clearly just making an emotional plea to this Court in an effort to have this Court veer from established case law and statutory authority in order to overturn a properly decided and reviewed case.

In the proceedings below, the juvenile court made appropriate findings regarding the statutory factors to be considered. These findings had a rational basis and were supported by the record and the decision to bind Appellant over to adult court pursuant to R.C. 2152.12(B) was not an abuse of discretion as properly found by the Second District Court of Appeals in its initial decision and as well as its decisions denying reconsideration and *en banc* review.

Appellee submits that Appellant's due process rights were protected, that the Juvenile Court properly exercised its discretion, weighed the evidence before it appropriately, and that Appellant's

bindover to adult court was proper. There is no reason to reconsider the majority decision of the Second District Court of Appeals and no further guidance is needed to the lower courts in weighing the statutory factors on the question of discretionary transfer. As such, Appellee respectfully requests that this Court DENY jurisdiction of Appellant's appeal in its entirety.

STATEMENT OF FACTS RELEVANT TO THE STATE'S RESPONSE TO APPELLANT'S PROPOSITIONS OF LAW

Appellant lived with his father, Noah Shane Nicholas, and his father's long-time companion, Heidi Fay Taylor in Champaign County, Ohio. Appellant's biological mother had virtually no contact with Appellant and Ms. Taylor filled the role as the Appellant's mother figure. Ms. Taylor raised Appellant essentially from the time he was three or four years old, and she acted in all respects as the Appellant's loving mother. Appellant called Ms. Taylor "Mom".

However, on April 6, 2017, Appellant, 14 years of age, decided to commit murder and to kill Ms. Taylor. Appellant obtained a large kitchen knife, and he hid on the first floor of his home. He hid and waited with his knife. Appellant called to Ms. Taylor. He called to her to lure her to his location because she was on the second floor. Ms. Taylor, unsuspecting of any danger, came downstairs just as Appellant had requested and when she got near his location, he revealed himself and proceeded to attack her with this kitchen knife. Appellant brutally stabbed Ms. Taylor, thrusting the knife into her body, stabbing her in the back, stabbing her in the arm, and slashing at her body. He thrust the knife into her face. He thrust the knife into her neck. He stabbed her in the skull. The attack was prolonged and brutal. Ms. Taylor resisted. She begged Appellant to stop the attack. She asked him to call 9-1-1 but Appellant refused. He continued to slash and stab at her, inflicting more than sixty separate knife wounds into her body. The attack began in the hallway near the front door and continued into the dining room.

Eventually, due to sheer exhaustion, the attack paused. Ms. Taylor, bloody and in significant distress, made her way into the next room and collapsed. Despite the brutal attack, however, she

was still alive and made one final effort to save herself. She got up while in the kitchen and slowly made her way up a back staircase that led to the second floor, apparently, to go into the master bedroom so that she could call 9-1-1 for help. Appellant, seeing her go up this back staircase, pursued her and passed her on the narrow back staircase before she reached the top. He went into the master bedroom before her and he succeeded in collecting the cell phones so she couldn't call for help. Ms. Taylor eventually enters the master bedroom and collapses on her bed. She has been brutally attacked and is suffering and bleeding, but she is still alive. She asks Appellant again to call 9-1-1 and he again refuses. Appellant then makes the decision to use a firearm to end Ms. Taylor's life. Appellant opens drawer in a nightstand next to the bed and retrieves his father's handgun. He loads the firearm, aims the weapon at Ms. Taylor's head, and pulls the trigger, firing one round of ammunition into the skull of Ms. Taylor killing her. This act did not happen in the heat of the moment. This was an intentional, planned, deliberate, brutal killing by Appellant. (Trial Tr., pp. 212-217).

On or about November 17, 2017, Appellant's juvenile case was bound over to the trial court pursuant to the discretionary bindover process law and after evidentiary hearing. The juvenile court specifically found after hearing that probable cause existed, that Appellant was 14 years old at the time of the offense, that the court had ordered an Amenability Evaluation which was received by the juvenile court on July 27, 2017 and that it had found that the statutory factors reviewed by the juvenile court favored transfer of jurisdiction to the Common Pleas Court for trial as an Adult, pursuant to Juv.R. 30 and R.C. 2152.12. (See Entry of Amenability Hearing, generally)

The trial was held and Appellant was convicted on all counts. At sentencing, the trial court imposed a life imprisonment with parole eligibility after serving twenty-eight years of imprisonment. (Journal Entry of Judgment, Conviction and Sentence of July 24, 2018, generally). The Second District Court of Appeals overruled the subject assignments of error now before this

Honorable Court as Appellant's propositions of law and denied reconsideration and *en banc* consideration.

ARGUMENT IN OPPOSITION TO APPELLANT'S PROPOSITIONS OF LAW

Response to Proposition of Law No. I: The juvenile court did not abuse its discretion and properly relinquished jurisdiction over Appellant after correctly applying the facts to the applicable factors set forth in R.C. 2152.12.

In this matter, the juvenile court's entry of November 17, 2017 effected a discretionary transfer of Appellant to the Common Pleas Court, which the appellate court reviews, and did correctly review, on a standard of abuse of discretion. *State v. Howard*, 2nd Dist. Montgomery No. 27198, 2018-Ohio-1863, ¶ 14, citing *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599, 923 N.E.2d 584, ¶ 14, and *State v. Watson*, 47 Ohio St.3d 93, 95, 547 N.E.2d 1181 (1989). A court abuses its discretion by issuing an order or decision that is "unreasonable, arbitrary or unconscionable." *State v. Taylor*, 2nd Dist. Montgomery No. 27542, 2017-Ohio-8913, ¶ 23, quoting *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). Under this standard, a "juvenile court enjoys wide latitude to retain or [to] relinquish jurisdiction," although it "is required to consider whether [any] relevant factors under R.C. 2152.12(D), which indicate that [a] case should be transferred, outweigh [any] relevant factors under R.C. 2152.12(E), which indicate that [a] case should not be transferred." *Watson* at 95; *Howard* at ¶ 15 and 19. See, also, *State v. Hoskins*, (2nd Dist.) 2018-Ohio-4529, 27486, 27487. "To determine whether the child can be rehabilitated and whether adult sanctions are necessary for the safety of the community, the court weighs the competing factors set forth in R.C. 2152.12(D) and (E) and indicates the factors weighed in the record." *State v. Terrell*, 6th Dist. Lucas No. L-04-1131, 2005-Ohio-4871, ¶ 7, citing *R.C. 2152.12(B)*. "The statutory scheme does not dictate how much weight must be afforded to any specific factor and, instead, rests the ultimate decision in the discretion of the juvenile court." *State v. Morgan*, 10th Dist. Franklin No. 13AP-620, 2014-Ohio-5661, ¶ 37. "As long as the court considers the appropriate statutory factors and there is some rational basis in the record to support the court's findings when applying

those factors, we cannot conclude that the trial court abused its discretion in deciding whether to transfer jurisdiction." *State v. West*, 167 Ohio App.3d 598, 2006-Ohio-3518, 856 N.E.2d 285, ¶ 10 (4th Dist.) (citing *R.C. 2152.12(B)*; *State v. Watson*, 47 Ohio St.3d 93, 95-96, 547 N.E.2d 1181 (1989); *State v. Douglas*, 20 Ohio St.3d 34, 36-37, 485 N.E.2d 711 (1985); and *State v. Hopfer*, 112 Ohio App.3d 521, 535-536, 679 N.E.2d 321 (2nd Dist.1996).

Appellate courts have previously stated that "the test is not whether we would have reached the same result based upon the evidence in the record, the test is whether the juvenile court abused the discretion confided in it." *Hopfer* at 534. **"If there is some rational and factual basis to support the trial court's decision, this Court is duty bound to affirm it regardless of our personal views of the evidence."** *West* at ¶ 10 (emphasis added). See also *State v. D.H.*, 2nd Dist. Montgomery No. 26383, 2015-Ohio-3259; *State v. Blair*, 5th Dist. Stark No. 2016CA00180, 2017-Ohio-5865; *State v. Reeder (In re Reeder)*, 10th Dist. Nos. 15AP-203, 15AP-218, 2016-Ohio-212; *State v. Erwin*, 10th Dist. No. 09AP-918, 2012-Ohio 776. The standard of proof in Ohio under well-established law is clear. **It is a balancing test.**

It appears from his jurisdictional memorandum that Appellant beseeches this Court to disregard the clear statutory language, to disregard established case law and to fashion a new standard inconsistent with both precedence and statutory authority, to wit: Appellant's proposal of a "clear and convincing" standard. Appellant further argues that there is not a clear litigable standard of proof here in which Appellant can contest. (See Appellant's Memorandum in Support of Jurisdiction, p. 10) However, Appellant has acknowledged that R.C. 2152.12(B)(3) clearly sets forth the relevant standard requiring the Court to consider whether the factors in favor of transfer **outweigh** the factors against transfer. (See Appellant's Memorandum in Support of Jurisdiction, p. 11) There is no confusion or conflict with other authority cited by Appellant regarding this standard of proof and the Second District Court of Appeals repeatedly found that this proposition had no

merit. Appellant, in the proceedings below, has not actually argued that the standard of proof should be clear and convincing evidence. He has repeatedly argued, however, that Dr. Hrinko's opinion as to amenability should be given more weight and, apparently, all the factors set forth in R.C. 2152.12 which the juvenile court must consider are apparently subordinate to the opinion of Dr. Hrinko. That is not the law. There is no need for this Court to review this issue further and, as Appellant also addresses this issue indirectly in his Proposition of Law No. II, the State will go into further detail below.

Response to Proposition of Law No. II: Appellant is asking this Court to formulate a new standard inconsistent with the clear cognizable standard set forth in R.C. 2152.12.

Appellant has also repeatedly raised his erroneous proposition that the State did not meet its burden of proof because Dr. Hrinko was not called as a direct witness by the State.

Here, Dr. Hrinko was the court's witness who set forth an opinion (which was stipulated by all parties as an exhibit at the start of the amenability hearing) that Appellant was amenable; however, this conclusion and the likelihood of successful treatment was severely handicapped by numerous limitations, variables and conditions. Those limitations, variables and conditions could not be sufficiently met by ODYS in the juvenile system. The juvenile court also had before it evidence of the crimes themselves, including the brutal nature of the aggravated murder which Appellant committed and was ultimately convicted of and the significant danger Appellant posed to society. That was the evidence before the juvenile court. Appellant's argument ignores the facts presented at the hearing and the law. The juvenile court did not abuse its discretion in giving Dr. Hrinko's opinion little weight and the appellate court properly held as such.

Clearly, Appellant's argument that the juvenile court's transfer order was improper is based upon Appellant's erroneous assertions that the juvenile court ignored the expert's opinion and the ODYS witnesses testimony. The juvenile court's decision **on its face** reflects consideration of the expert's and ODYS witness' testimony by the juvenile court. The Second District Court of Appeals

highlighted the juvenile court's deliberate consideration of that testimony and ultimately disagreed with Appellant's argument.

Appellant contends that, basically, the appellate court should have decided that the opinion of the expert of amenability is the factor that should be given most weight by the juvenile court. That is just not the law. In determining whether a juvenile should be transferred to adult court, "the juvenile court is not bound by expert opinion, and may assign any weight to expert opinion that it deems appropriate." *State v. Easley*, 10th Dist. Franklin Nos. 16AP-9, 16AP-10, 2016 Ohio 7271 ¶ 15, quoting *State v. Reeder (In re Reeder)*, 10th Dist. Franklin Nos. 15AP-203, 15AP-218, 2016-Ohio-212, ¶ 24, 57 N.E.2d 458 (affirming bindover where juvenile court disagreed with expert opinion about amenability) and citing *State v. Morgan*, 10th Dist. No. 13AP-620, 2014 Ohio 5661 at ¶ 37. See also *State v. Allen*, 12th Dist. Butler No. CA2007-04-085, 2008-Ohio-1885 at ¶12 ("It is well-established that a juvenile court is not bound by expert opinions in determining the amenability of a juvenile" and also holding that the juvenile court was not obligated to follow the expert's recommendations). See, also, *State v. West*, 167 Ohio App.3d 598, 2006-Ohio-3518, ¶30 (4th Dist.) (juvenile court is not bound by expert opinion on amenability, and may assign any weight to expert opinion that it deems appropriate).

Appellee notes that the severity of the offenses themselves (Aggravated Murder and Murder, both with firearm specifications) demonstrate that Appellant was and is less amenable to rehabilitation in the juvenile court system. Further, the juvenile court properly construed this evidence in its consideration of amenability. See, ex., *State v. Howard*, 2nd Dist. Montgomery No. 27198, 2018-Ohio-1863, ¶ 33 ("We note that Ohio Courts have repeatedly recognized that the more serious the offense, the less amenable the juvenile will be to rehabilitation in the juvenile system" (internal quotations, citations omitted); *State v. Lopez*, 112 Ohio App.3d 659 (9th Dist.1996) (affirming the bindover to adult court and holding a juvenile court may consider the seriousness of

the offense itself in determining whether the juvenile should be tried as an adult); *State v. Johnson*, 8th Dist. No. 99377, 2015-Ohio-96, ¶43 (same); *State v. Watson*, 47 Ohio St.3d 93, 96 (1989) (holding “[t]he seriousness of the alleged act is relevant to the assessment of the probability of rehabilitating the child within the juvenile justice system for a number of reasons” and that “[a] juvenile who has demonstrated the ability to commit a major felony may require more time for rehabilitation than one whose offenses are less serious”).¹

Further, Appellee notes that Appellant misstates and has repeatedly misstated the law in Ohio with regard to “presumptions” for juvenile transfers or bindovers. (See Appellant’s Jurisdictional Memorandum, pp. 14-15) Appellant cites to *Kent v. United States*, 383 U.S. 541, 556 (1966) in claiming that he is presumed amenable to remaining under the juvenile court’s authority.² *Kent* does not stand for the proposition that there is a presumption for remaining in juvenile court. The Supreme Court in *Kent*:

“considered what is necessary to satisfy due process in the bindover context”. Initially, the court declined to extend all constitutional guarantees that would be applicable to adults. *Id.* at 556. Importantly, however, the court did determine that ‘constitutional principles relating to due process’ are applicable to juveniles. *Id.* at 557. For purposes of bindover from juvenile court to adult court, the court held that due process is satisfied when a juvenile court issues a decision stating its reasons for the transfer after conducting a hearing at which the juvenile is represented by counsel. *Id.* at 554.”

State v. Aalim, 150 Ohio St.3d 489, 2017 Ohio 2956 at ¶24, citing *Kent*, 383 U.S. 541, *supra*.

¹ Notably, in *Watson* court held “that in deciding whether to relinquish jurisdiction over a child, a juvenile court may consider the seriousness of the alleged offense when determining, pursuant to Juv.R. 30(C)(1), if the juvenile is ‘not amenable to care or rehabilitation’ in the juvenile justice system.” *Id.* at 96. *Watson* affirmed the bindover to adult court for a juvenile charged with aggravated murder and robbery where the juvenile was a principal actor in a scheme to rob and beat the victim, with a number of blows delivered with sufficient force that any one could have been fatal. The Ohio Supreme Court noted that the appellant therein was “fifteen years old and the time available to accomplish his rehabilitation was less than six years. Balancing these facts against the admittedly favorable testimony which appellant provided at the bindover hearing, we cannot say that the juvenile court abused its discretion in concluding appellant would not be amenable to rehabilitation in the juvenile justice system.” *Id.*

² Appellant also cites *In re Winship*, 397 U.S. 358, 364 (1970), although *Winship* concerns the burden of proof required to adjudicate a juvenile as delinquent for what would be a criminal offense committed by an adult in comparison to the burden required to convict an adult of a criminal offense (*i.e.* proof beyond a reasonable doubt). *Winship* is not applicable to Appellant’s argument regarding the bindover process.

With regard to the “presumption” noted in *Kent*, that presumption was taken from the statutes at issue in that case (the District of Columbia’s Juvenile Court Act), not an independent constitutional or other basis. “This concern [that a child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children], however, does not induce us in this case to accept the invitation to rule that constitutional guarantees which would be applicable to adults charged with serious offenses for which *Kent* was tried must be applied in juvenile court proceedings concerned with allegations of law violation. The Juvenile Court Act and the decisions of the United States Court of Appeals for the District of Columbia Circuit provide an adequate basis for decision of this case, and we go no further.” *Kent*, 383 U.S. 541 at 556. “The court is admonished *by the statute* to give preference to retaining the child in the custody of his parents” *Id.* (emphasis added)

There is no such presumption in Ohio law against transfer of cases by a juvenile court. See, ex., *State v. Easley*, 10th Dist. Franklin Nos. 16AP-9, 16AP-10, 2016 Ohio 7271 ¶¶ 13-14 (a discretionary transfer case). Much like Appellant here, in *Easley*, the appellant argued “that the juvenile court disregarded the statute’s presumption to retain juveniles in the juvenile system and the expert opinion that appellant was amenable to treatment in the juvenile system.” *Id.* at ¶ 13. The *Easley* court held:

First, appellant does not provide any legal support for his claim that these statutes create a presumption in favor of retaining jurisdiction in the juvenile system. Although the juvenile court must always be mindful of the most important purpose behind the transfer determination, which is, “the assessment of the probability of rehabilitating the child within the juvenile justice system” [*State v.*] *Phillips*, [12th Dist. No. CA2009-03-001, 2010 Ohio 2711] at ¶ 39, citing *State v. Adams*, 69 Ohio St.2d 120, 123, 431 N.E.2d 326 (1982), ***neither this purpose nor R.C. 2152.12 itself create a presumption for the juvenile court to retain jurisdiction in these cases.***

Id. at ¶ 14 (emphasis added).

Just as in *Easley*, Appellant herein has failed to demonstrate any legal support for his claim that there is a presumption in Ohio in favor of retaining jurisdiction in the juvenile system that the State must overcome. R.C. 2152.12(B)(3) uses the term “outweigh” in setting forth the factors the juvenile court must consider and its use creates no ambiguity regarding standard of proof or a presumption against transfer. There is no further guidance needed from this Court. The statute is clear. Pursuant to *Kent* and *Aalim*, due process was afforded to Appellant herein.

Further, Appellant has cited language by the Second District Court of Appeals in *State v. Valentine*, as dicta, noting that the State had the burden of proof but that any objection appeared to be resolved by counsel at the amenability hearing. See *State v. Valentine*, (2d. Dist.) 1979 WL 208379 (April 11, 1979). Any error, nevertheless, was non-prejudicial as “ultimately the judge did receive the information necessary for his decision regardless of whose duty it was to present it.” *Valentine* at *11. The appellate court herein noted that *Valentine* has never been cited since its decision as authority for imposing a burden of proof on the State with respect to amenability. (See Decision and entry of October 8, 2020 (en banc), p. 8) Further, the appellate court below indicated that the context of the *Valentine* opinion reflects that the “burden” discussed therein was the burden of going forward with evidence. (See Decision and entry of October 8, 2020 (en banc), p. 8) Here, the parties were in agreement as to presentation of the evidence and, more importantly, defense counsel did not object at the end of the State’s presentation that the State hadn’t met its burden of proof. Appellant apparently now wants to rewind and make that objection herein. However, the *Valentine* case simply does not support Appellant’s argument that reversible error has occurred.

It bears repeating that Appellant also appears to ignore the severity of the crime itself and the additional testimony and stipulations that were part of the record for the juvenile court’s consideration at the amenability hearing. As the Second District Court of Appeals stated in *Howard*, Appellee also notes “that Ohio Courts have repeatedly recognized that the more serious

the offense, the less amenable the juvenile will be to rehabilitation in the juvenile system.” *State v. Howard*, 2nd Dist. Montgomery No. 27198, 2018-Ohio-1863, ¶ 33. Again, regarding the seriousness of the offenses involved, Appellant committed, was charged with, and ultimately convicted of Aggravated Murder with a firearm specification. The evidence before the juvenile court in the amenability hearing clearly revealed the seriousness of the offense.

Appellant has failed to present any authority on point demonstrating an error justifying review of the Second District Court of Appeal’s decision regarding the required standard of proof or the bindover of Appellant. The appellate decisions in this matter (initially, on reconsideration and by the court declining review *en banc*) properly followed the law in its review of the proceedings herein. Stated simply, the State met its required burden, the juvenile court’s decision was proper and is supported by the record, and the lower court’s decisions in the instant matter are not in conflict with other decisions in the Second Appellate District or otherwise. No abuse of discretion occurred and further review or guidance is not warranted here. Appellant’s aim to create law as opposed to interpretation of clear well-established law is best left to the legislature.

Response to Proposition of Law No. III: The appellate court’s decision correctly sets forth the options for a juvenile court regarding a Serious Youthful Offender blended sentence and is not in conflict with other case or statutory authority.

Appellant again argues the same point as in his brief to the lower court that “the most obvious solution” for Appellant in this matter was to receive a mandatory SYO (Serious Youthful Offender) blended sentence. Appellant even admitted previously that a “traditional, minimum juvenile commitment was not the answer” as a disposition for Appellant. (See Appellant’s Merit Brief, p. 21-22) Further, although Appellant again cites to the Supreme Court case *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, (not in support of his claim that there was confusion in the rulings and the Juvenile Court herein had to consider “myriad of alternatives” as he has previously argued in the lower appellate court), in support of clarifying “the role of juvenile courts”. (See

Appellant's Jurisdictional Memorandum, p. 13) The *D.H.* case does not stand for that proposition. Rather, *D.H.* merely held, at ¶55, that Ohio's serious-youthful-offender disposition statutes do not offend due process. There is no confusion or tension with this Supreme Court case set forth by Appellant.

R.C. 2152.02(W) defines a serious youthful offender as "a person who is eligible for a mandatory SYO or discretionary SYO but who is not transferred to adult court under a mandatory or discretionary transfer and also includes, for purposes of imposition of a mandatory serious youthful dispositional sentence under section 2152.13 of the Revised Code, a person upon whom a juvenile court is required to impose such a sentence under division (B)(3) of section 2152.121 of the Revised Code." *R.C. 2152.02*. Appellant does not fit within this definition as his case was transferred to adult court. Under R.C. 2152.10(B), if the court chooses not to transfer a child to adult court and adjudicates the child delinquent, the court is required to issue a dispositional order in accordance with R.C. 2152.11. If the case had not been transferred, Appellant would have been eligible for mandatory SYO. *R.C. 2152.11(B)(3)*. In this situation, the court would have imposed the available adult court sentence, as well as a traditional juvenile disposition, but would have stayed the adult sentence pending successful completion of the juvenile disposition. See *R.C. 2152.13(D)(1)(a)-(c)*. The fact that Nicholas would have been eligible for SYO disposition if not bound over to adult court does not mean that the court was required to take this into consideration before deciding amenability. On the contrary, this disposition is not available unless the court has elected not to transfer the child. The juvenile court was aware of this fact as the record reflects that Appellant erroneously requested such disposition prior to decision on transfer. And finally, as the State noted in its brief to the lower appellate court, a juvenile court may impose a serious youthful offender dispositional sentence on a child only if the county prosecuting attorney where the delinquent act allegedly occurred initiates the process against the child. See *R.C. 2152.13(A)*. The

appellate court below noted that if the juvenile court had denied the motion to transfer, upon a finding of delinquency, the court could have imposed a number of dispositions that may have included serious youthful offender confinement. See, also, *In re M.P.*, 124 Ohio St.3d 445, 2010 Ohio 599 (in which the Ohio Supreme Court held the state was not entitled to an appeal as of right concerning a juvenile court's denial of a discretionary bindover request, noting that, among other things, the child could be prosecuted as a serious youthful offender, if appropriate). Appellant fails to cite any authority requiring a juvenile court to consider SYO possibilities in making an amenability ruling. Further, Appellee has been unable to locate any such authority. Further still, as the lower appellate court in *State v. Howard*, 2nd Dist. Montgomery No. 27198, 2018-Ohio-1863, did not require a specific finding as to possible SYO disposition as an option, Appellee submits that there is no such requirement and, therefore, no error that needs to be addressed by this Court. As stated by the appellate court upon reconsideration, this issue also would be better addressed by the legislature.

CONCLUSION

For the reasons stated above, the State urges this Court to decline jurisdiction herein.

Respectfully submitted,
KEVIN S. TALEBI, CHAMPAIGN COUNTY
PROSECUTING ATTORNEY (#0069198)

/s/ Jane A. Napier

Jane A. Napier (#0061426)
Benjamin T. Hoskinson (#0079860)
Assistant Prosecuting Attorneys
200 North Main Street
Urbana, Ohio 43078
(937) 484-1900
Fax: (937) 484-1901
e-mail: jnapier@champaignprosecutor.org

Attorneys for Appellee State of Ohio

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 22, 2020, a copy of the foregoing State of Ohio's memorandum contra jurisdiction was served via regular first class mail on:

Attorney for Appellant:

Timothy B. Hackett
Assistant State Public Defender
250 East Broad Street Suite 1400
P.O. Box 43146
Columbus, Ohio 43215

/s/ Jane A. Napier
Jane A. Napier (# 0061426)