Supreme Court of Ohio Clerk of Court - Filed June 21, 2021 - Case No. 2020-1429

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 Second Appellate District
DONOVAN NICHOLAS,	)	
Defendant-Appellant.	)	

MERIT BRIEF OF APPELLEE STATE OF OHIO

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STATEMENT OF FACTS RELEVANT TO THE STATE'S RESPONSE TO APPELLANT'S BRIEF

Appellant lived with his father, Noah Shane Nicholas, and his father's long-time companion, Heidi Fay Taylor (the victim) 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 9 months of age, decided to commit murder and to kill Ms. Taylor. Appellant deliberately and methodically planned his attack on his unsuspecting victim. The reason for this calculated murder was that Appellant lost cell phone privileges due to inappropriate contact with a female. Before committing the murder, Appellant chose a specific outfit to wear. 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 but Appellant refused. She begged Appellant 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 his sheer exhaustion, Appellant paused his brutal attack. Appellant stopped to get himself a glass of water and to rest, before finishing off Ms. Taylor, while ignoring Ms. Taylor's pleas. Ms. Taylor, bloody and facing certain death without assistance, made her way into the next room and collapsed. Despite suffering from the numerous knife wounds, however, she was still alive and made one final effort to save herself.

Ms. Taylor 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 staircase before she reached the top. He went into the master bedroom before her and he collected the cell phones, ensuring the victim had no avenues to seek aid and leaving her entirely dependent on Appellant for any chance of survival. Ms. Taylor eventually makes it into the master bedroom and collapses on her bed. She has been brutally attacked and is suffering and bleeding, but she is still alive. She begs Appellant again to call 9-1-1 and he again refuses. Appellant then chooses to use a firearm to end Ms. Taylor's life. Appellant opens a drawer in a nightstand next to the bed and retrieves his father's handgun. He is familiar with the firearm and its operation. He has fired the weapon before, with his father. He loads the firearm, aims the weapon at Ms. Taylor's head, and pulls the trigger, firing one round into the skull of Ms. Taylor, killing her. Appellant's murder of Ms. Taylor did not happen in the heat of the moment. This aggravated murder of his "mom" was not and is not an issue the impetuousness of youth. Appellant chose the time, the place, the weapons, the method, the means of ambushing his unsuspecting "mom". Defendant even chose the outfit he was going to wear to commit the murder. This was an intentional, planned, deliberate, brutal killing orchestrated 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 and after evidentiary hearing. The juvenile court considered stipulated exhibits including general stipulations, Dr. Hrinko's report, the guardian ad litem ("GAL") report, and the coroner's report. The court considered the testimony of witnesses including Dispatcher Caitlin Lockard, Champaign County Sheriff's Office ("CCSO") Detective Glenn Kemp, and CCSO Detective Josh Welty. The Court considered the 26 exhibits submitted by the State and the State's memorandum in support of the motion for transfer to adult court. The Court also considered testimony of Dr. Hrinko, Taetum DeMoss, and Sarah Book, as well as Appellant's Exhibit A and his memorandum in opposition to transfer to adult court.

The juvenile court specifically found after hearing that probable cause existed (due to waiver of a probable cause hearing by Appellant), that Appellant was 14 years old at the time of the offense (more accurately 14 years, 9 months of age), that the court had ordered an Amenability Evaluation by Dr. Hrinko 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 favoring transfer of jurisdiction to the Common Pleas Court for trial as an Adult outweighed the factors against a transfer, pursuant to Juv.R. 30 and R.C. §2152.12. The record indicates the specific factors the juvenile court found applicable and weighed in reaching its decision. The juvenile court properly exercised its discretion and, pursuant to R.C. §2152.12, the case was then bound over to the general division of the Champaign County Court of Common Pleas. (See Entry of Amenability Hearing, generally)

The trial was held in the Champaign County Court of Common Pleas and Appellant was convicted on all counts. At sentencing, the trial court imposed a prison term consisting of a minimum term of twenty-eight years (25 years plus a three-year firearm specification) and a maximum term of life. (Journal Entry of Judgment, Conviction and Sentence of July 24, 2018,

generally). The Second District Court of Appeals overruled the raised assignments of error and denied reconsideration and *en banc* consideration. It is now before this Honorable Court on the juvenile bindover issues Appellant raised for the first time in the appellate court and that were rejected therein.

ARGUMENT IN OPPOSITION TO APPELLANT'S PROPOSITIONS OF LAW

Preliminary Matter: Waiver/Forfeiture and Plain Error

Appellant's arguments all concern the juvenile court's bindover/amenability hearing and the decision to bind Appellant over to juvenile court.

Prior to addressing the merits of Appellant's arguments, Appellee notes that Appellant failed to raise these arguments with the juvenile court at the amenability hearing. At the hearing, Appellant failed to object to the structure of the amenability hearing process (and even stipulated to the process), failed to raise the issue that the State did not meet its "burden" at any time during the hearing or at the conclusion of the hearing, and failed to raise the issue that the juvenile court must consider a Serious Youthful Offender (SYO) blended sentence before transferring the matter to adult court. As a result, it is Appellee's position that Appellant has waived or forfeited these claims.

"In *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, we noted the 'well-established rule that an appellate court will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court.'" *State v. Barker*, 149 Ohio St.3d 1, 2016-Ohio-2708, ¶ 64, quoting *Quarterman*, supra, at ¶ 15 (additional internal quotations, citations omitted).

"Accordingly, the question of the constitutionality of a statute must generally be raised at the first opportunity and, in a criminal prosecution, this means in the trial court." *State v. Awan*, 22 Ohio St.3d 120, 122 (1986) (citation omitted). "This rule applies both to appellant's claim that the statute is unconstitutionally vague on its face and to his claim that the trial court interpreted the statute in such a way as to render the statute unconstitutionally vague." *Id.* at 122-123.

"Crim.R. 52(B) affords appellate courts discretion to correct '[p]lain errors or defects affecting substantial rights' notwithstanding the accused's failure to meet his obligation to bring those errors to the attention of the trial court." *Barker* at ¶ 65. "However, the accused bears the burden of proof to demonstrate plain error on the record, *Quarterman* at ¶ 16, and must show 'an error, *i.e.*, a deviation from a legal rule' that constitutes 'an "obvious" defect in the trial proceedings[.]'" *Barker* at ¶ 65, quoting *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68. "However, even if the error is obvious, it must have affected substantial rights, and we have interpreted this aspect of the rule to mean that the trial court's error must have affected the outcome of the trial." *Barker* at ¶ 65 (internal quotations, citations omitted). "Thus, as we recently clarified in *State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, ¶ 22, the accused is 'required to demonstrate a reasonable *probability* that the error resulted in prejudice.' (Emphasis sic.)" *Barker* at ¶ 65. "But even when the accused demonstrates that a plain error affected the outcome of the proceeding, an appellate court is not required to correct it; we have admonished courts to notice plain error with the utmost caution, under exceptional circumstances and *only* to prevent a manifest miscarriage of justice." *Id.* at ¶ 66 (internal quotations, citations omitted). "Even if an appellant satisfies this burden, an appellate court has discretion to disregard the error." *State v. Lewis*, 9th Dist., Summit No. 29696, 2021-Ohio-1575, ¶ 23, citing *State v. Perry*, 101 Ohio St.3d 118, 2004-Ohio-297, ¶ 14.

"To constitute plain error in juvenile court proceedings, the juvenile must 'prove the error affected the outcome of the proceeding, that is, that he would not have been bound over to the adult court.'" *State v. Brown*, 10th Dist. No. 17AP-695, 2018-Ohio-4185 at ¶29, quoting *State v. Morgan*, 153 Ohio St.3d 196, 2017-Ohio-7565 at ¶ 51 (reconsideration denied by *State v. Morgan*, 151 Ohio St.3d 1458, 2017-Ohio-8842). "**[S]peculation *cannot* prove prejudice.**" *Morgan* at ¶ 53 (emphasis added). "Accordingly, [any] contention that it was possible the court could have retained jurisdiction is insufficient to demonstrate plain error." *Brown*, at ¶ 29. The Tenth District Court of Appeals in *Brown* found that several of the R.C. 2152.12(D) factors in favor of transfer were present and that, in contrast, few if any of the R.C. 2152.12(E) factors against transfer were applicable. *Id.* at ¶ 30. "Accordingly, Brown fails to demonstrate plain error." *Id.*

Again, as noted by the Second District Court of Appeals below in its decision denying reconsideration, here "the parties and court appeared to be in agreement as to presentation of the evidence and, unlike the juvenile in *Valentine*, no objection was made in the juvenile court proceedings. And, as noted in *Valentine*, any such error would have been harmless, because the juvenile court did receive all evidence needed to make a decision." (See Oct. 8, 2020 Decision on Reconsideration Application, p. 8) Furthermore, any contention by Appellant that the juvenile court *could* have retained jurisdiction is insufficient to demonstrate plain error. There was ample evidence to support the juvenile court's conclusion, made through the sound exercise of the juvenile court's discretion, that factors in support of transfer outweighed any factors against transfer.

In short, Appellant failed to raise the claims before this Court at the juvenile court level, waiving all but plain error. Furthermore, Appellant cannot meet his burden to demonstrate plain

error, *i.e.*, that he would not have otherwise been bound over to the adult court. As a result, Appellee requests that this Court find Appellant's assignments of error not well taken.

<u>Response to Proposition of Law No. I</u>: Appellant is asking this Court to ignore the Ohio Constitution, to completely disregard the mandate of Juv.R. 30(C), and to usurp the powers of the General Assembly in order to formulate a new standard inconsistent with the clear, cognizable, and constitutional standard set forth in R.C. 2152.12.

Appellant's first proposition of law is a *policy* argument that is, ultimately, solely within the purview of the General Assembly under the Ohio Constitution. Appellant's attempts to couch this assignment of error in the cloak of due process fall flat. There is no constitutional right to be tried as a juvenile; any such right comes from the statutory mechanisms provided by the General Assembly pursuant to its constitutional authority. *Juv.R. 30(C)*, concerning discretionary bindovers, at least implicitly recognizes that the transfer mechanism is a matter for the General Assembly to decide, as it provides in pertinent part (with emphasis added): "***The criteria for transfer shall be as provided by statute.***"[1] Furthermore, due process is satisfied by the statutory mechanisms in place both in general and in this case in particular.

"The General Assembly determines the jurisdiction of the juvenile court. Ohio Constitution, Article IV, Section 4(B)." *State v. Aalim ("Aalim II")* 150 Ohio St.3d 489, 2017-Ohio-2956, ¶ 26. "Our decision in *Aalim I* . . . usurped the General Assembly's exclusive constitutional authority to define the jurisdiction of the courts of common pleas . . . ." *Aalim II*, ¶3. "Moreover, there is an explicit mandate in Article IV, Section 4(B) of the Ohio Constitution for the General Assembly to define the jurisdiction of all divisions of the common pleas courts in this state, and this court is duty bound to follow the structure established by the people of Ohio in our state Constitution." *Aalim II*, ¶ 37. See, also, *Juv.R. 30(C).*

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[1] See, ex., Staff Notes to Juv.R. 30 concerning the 1997 amendment removing from the rule all provisions governing substantive law, thus confining the rule to procedural matters.

"'The safeguard of a hearing is contained in the Revised Code and rules of Juvenile Procedure, and it is grounded in due process and other constitutional protections.'" *Aalim II*, ¶ 24, quoting *State v. D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, ¶ 20. "For purposes of bindover from juvenile court to adult court, the [United States Supreme Court, in *Kent v. U.S.*, 383 U.S. 541 (1966)] 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. [*Kent*] at 554." *Aalim II*, ¶24. In the instant matter, it is without question that an amenability hearing was held where Appellant was represented by competent counsel, where the juvenile court considered evidence presented in favor of and against transfer to adult court, where the juvenile court exercised its discretion in weighing the factors described in R.C. §2152.12, and that the juvenile court issued a decision that stated its reasons for ordering Appellant bound over to the adult court. In short, the *Kent* due process standard was met.

Furthermore, "[a]ll enacted legislation enjoys a strong presumption of constitutionality." *State v. Rober*, 6th Dist. No. L-14-1168, 2015-Ohio-5501, ¶17, citing *State v. Dorso*, 4 Ohio St.3d 60, 61 (1993). "This presumption remains unless the challenger proves beyond a reasonable doubt that the legislation is clearly unconstitutional." *Rober*, ¶ 17, citing *State v. Williams*, 88 Ohio St.3d 513, 521, 2000-Ohio-428. An argument that the statute be altered (to Appellant's liking) is not sufficient to find a statute unconstitutional.

In Appellant's attempts to portray this case to fit his arguments, Appellant flatly denies the existence of the substantial evidence presented to the juvenile court in support of the bindover decision. It appears from his brief that Appellant beseeches this Court to disregard clear statutory language and the mandate of Juv.R. 30(C), to ignore the Ohio Constitution, to disregard decades of well-established case law and to fashion a new standard inconsistent with both precedence and

statutory authority without good rationale or any supporting authority, to wit: Appellant's proposal of a "clear and convincing" standard (although he actually goes further in his argument as will be addressed hereinbelow).

Appellant falsely claims that there is not a clear litigable standard of proof which Appellant can contest. (See Appellant's Merit Brief, pp. 23-26) However, Appellant has admitted his argument lacks merit by acknowledging that R.C. §2152.12(B)(3) clearly sets forth the relevant standard requiring the juvenile court to consider whether the factors in favor of transfer **outweigh** the factors against transfer. (See Appellant's Merit Brief, pp. 22, 29-30, emphasis added) Appellant, here, is not actually arguing that the juvenile court abused its discretion. Rather, Appellant argues that the appellate court, and now this Court, should violate the Ohio Constitution,[2] ignore the law and a plain reading of straightforward statutory language, refute decades of well-established precedent, and usurp the authority bestowed in the General Assembly in order to fashion a standard of proof requirement of Appellant's choosing, to wit: "clear and convincing evidence". He sets forth his proposed standard as an example of a necessary heightened standard but fails to cite a single case on point in support of his position. (See Appellant's Merit Brief, pp. 17-18) There is no confusion or conflict with other authorities cited by Appellant regarding this standard of proof. Appellant has not cited any court, including Ohio's appellate courts and other state courts, that has found that this proposition had merit. This Court, if it concurs with Appellant, would overturn years of precedence in Ohio and declare most, if not all, decisions from other states fatally flawed. See *Breed v. Jones, 95 S.Ct. 1779, 421 U.S. 519, 537-38 (1975)* (citing *Kent*, noting that the United States Supreme Court "has never attempted to prescribe criteria for, or the nature and quantum of evidence that must support, a decision to

[2] See, ex., *Aalim II*, supra; Ohio Constitution, Article IV, Section 4(B)

transfer a juvenile for trial in adult court"; due process "require[s] only that, whatever the relevant criteria, and whatever the evidence demanded, a State determine whether it wants to treat a juvenile within the juvenile-court system before entering upon a proceeding that may result in an adjudication that he has violated a criminal law and in a substantial deprivation of liberty, rather than subject him to the expense, delay, strain, and embarrassment of two such proceedings"); *Stout v. Commonwealth, 44 S.W.3d 781, 786-789 (KYCt.App.2000)* (no constitutional right to clear and convincing evidence, statutory scheme is not violative of due process rights because it neglects a standard of proof as long as decision is supported by substantial evidence to pass judicial review); *State v. Rosado, 669 A.2d 180 (ME.1996)* (held the standard of proof required for defendant's bind-over was not so low that it violated his due process rights, finding juvenile bindover to adult court does not of itself put a juvenile's liberty at risk nor deny the juvenile the opportunity for rehabilitation nor impose a sentence or lengthen a sentence, but merely designates the further legal process by which the juvenile's rights will be addressed and that the *Eldridge* doctrine does not require more than the preponderance of the evidence standard for bindovers established by Maine's legislature); *State v. B.T.D., 296 So. 3d 343, 353-354, (AL Crim.App.2019), cert. denied by B.T.D. v. Alabama, 140 S. Ct.1220 (2020)* (no constitutional right to be tried in juvenile court, rather, it is one granted by the state legislature); *W.M.F. v. State, 723 P.2d 1298 (AK Ct.App.1986)* ("preponderance of the evidence" test adopted by Alaska Supreme Court re: a minor's nonamenability is not the lowest standard in use by various states, that in some jurisdictions the burden is on the juvenile, in others the requirement is merely "substantial evidence", and that Alaska's preponderance standard does not violate due process; privacy and lesser penalties of juvenile delinquency proceedings are rights granted by the state legislature, and the legislature may restrict or qualify those rights as it desires, so long as no arbitrary or discriminatory

classification is involved); *State v. Ladd, 951 P.2d 1220 (AK Ct.App.1998)* (follows *W.M.F., supra*, juvenile has no constitutional right to be tried in a juvenile court; Alaska's burden-shifting provisions requiring the juvenile to prove amenability to juvenile treatment do not violate equal protection); *Hicks v. Superior Court, 36 Cal. App. 4th 1549, 43 Cal. Rptr. 2d 269, 274 (Cal. App.1995)* (a minor has no constitutional right to juvenile treatment, nor a right to a presumption of amenability to juvenile treatment); *State in Interest of A.L., 271 N.J. Super. 192, 638 A.2d 814, 817 (N.J. App.1994)* (the legislature can restrict or qualify a minor's right to juvenile treatment so long as it does not create an arbitrary or discriminatory classification scheme); *Commonwealth v. Wayne W., 414 Mass. 218, 606 N.E.2d 1323, 1326 (Mass.1993)* (a minor has no constitutional right to juvenile treatment, but only a due process right to essential fairness in the classification scheme); *In the Interest of D.B., 616 S.W.3d 748, 756 (Ct.App.W.D.MO.2021)* (rejecting a challenge to Missouri's bindover statute claiming no specific standard of proof was prescribed, finding Missouri's statutory process "fully satisfies constitutional principles of due process under the United States and Missouri constitutions"); *Rosier v. Jones, 7-80757-CIV-MIDDLEBROOKS/BRANNON, 2019 U.S. Dist. LEXIS 125886 (S.D.FL.2019)* (distinguishing *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama* as those cases do not establish that juveniles have a right to not be sentenced as adults in cases involving less than life imprisonment and noting that the district court "has not found any cases establishing that juveniles have a right to not be sentenced as adults").[3]

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[3] Even the Institute of Judicial Administration/American Bar Association's *recommendation* that Appellant relies upon clearly recognizes that its advocated position of clear and convincing is not the norm. "The court may find that a juvenile is not a proper person for juvenile court handling only on the basis of clear and convincing evidence. ***This provision is a compromise between the widely used standard of proof of the justification for waiver by a preponderance of the evidence*** and the beyond-a-reasonable-doubt standard required in juvenile adjudications." (emphasis added; Appellant's Merit Brief appendix p. A-198; Appellant's Merit Brief, p. 22)"

Essentially, Appellant is demanding that this Court should engraft onto the statute, under the guise of due process, that which is not required by the Ohio Constitution or the United States Constitution. Appellant has, without question, failed to demonstrate that Ohio's bindover mechanism does not meet the requirements of due process. As such, his argument fails and Appellee respectfully requests that it be denied.

While couching his arguments in terms of seeking creation of a clear and convincing standard for transfer, Appellant has repeatedly argued, in contravention of well-established case law, that Dr. Hrinko's opinion as to amenability should be given more weight than all the factors set forth in R.C. §2152.12. Appellant's argument is essentially that the juvenile court must consider all of the other factors as subordinate to and irrelevant in light of the opinion of Dr. Hrinko. Not only that, but Appellant also appears to argue that this weight must be assigned to Dr. Hrinko's testimony regardless of the many limitations, variables, and conditions of that opinion. In essence, Appellant seeks a ruling from this Court that, no matter how absurd or limited or equivocal an expert's opinion may be, the existence of that opinion shall serve as an automatic veto of the juvenile court's discretion in determining amenability. However, Appellant's position is not the law.

As discussed in more detail below, the juvenile court was free to determine what weight to give to the R.C. §2152.12 factors, including what weight, if any, to give to all or part of the expert's testimony. Similarly, the juvenile court was free to determine what weight to give to the guardian ad litem ("GAL") report and recommendation.[4] Appellant seems to place great weight on the GAL

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[4] The juvenile court appointed a guardian ad litem ("GAL") in the case. See, ex., *Juv.R. 2(O)* (defining guardian ad litem); *Juv.R. 4(B)(2)* (instructing the juvenile court to appoint a GAL to protect the interests of a child when the interests of the child and the interests of the parent may conflict); R.C. 2151.281(A)(2). "A guardian ad litem is a 'person appointed to protect the interests of a party in a juvenile court proceeding.' Juv.R. 2(O)." *State v. Legg*, 4th Dist. No. 14CA23, 2016-Ohio-801, ¶ 16. "The role of guardian ad litem is to investigate the ward's situation and then to ask the court to do what the guardian feels is in the child's best interest." *Id.* (internal quotations, citations omitted). "A colorable claim of conflict frequently arises in a delinquency proceeding when a parent speaks against a child's

report. However, any weight assigned to the GAL's report and recommendation must be viewed through the lens of the GAL's duties under the juvenile rules and R.C. §2151.281, *to wit*: to ask the court to do what the guardian feels is in the child's best interests. Indeed, the report is focused upon "Donovan's best interest". It is worth noting that such a "best interests of the child" standard certainly is not the standard involved in amenability/bindover determinations. As a result, the GAL's report and recommendation with regard to amenability should not be given great weight.

Although not applicable here, R.C. §2152.12(A) sets forth the circumstances wherein a child is mandatorily transferred to adult court without any court findings as to amenability. Appellee notes, based on the facts of this case and the charges involved (including Aggravated Murder with firearm specifications), that had Appellant been 16 at the time of the offense (only 15 months older), he would have been subject to the mandatory bindover pursuant to, ex., R.C. 2152.12(A)(1)(a)(i), and no amenability hearing would have been required. Appellee suggests that the mandatory bindover process, in essence, constitutes a finding by the General Assembly that a similarly situated 16-year-old offender has no chance for sufficient rehabilitation within the juvenile system.

This Court has found recently that a mandatory bindover from the juvenile division to the general division of the common pleas court satisfied the requirements of "fundamental fairness" required by Ohio's Due Course of Law Clause and the federal Due Process Clause. *State v. Aalim, ("Aalim II") 150 Ohio St.3d 489, 2017-Ohio-2956, ¶27.* Otherwise, as in this case, R.C. §2152.12(B) sets forth the findings that control whether a case <u>may</u> be transferred by a juvenile court, also known as a "discretionary bindover": (1) the child was fourteen or older at the time of

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penal interests." *State v. Brown*, 10th Dist. No. 17AP-695, 2018-Ohio-4185, ¶ 36 (internal quotations, citations omitted). Appellant was, of course, charged with (and ultimately convicted of) murdering his father's long-term girlfriend and the woman Appellant considered to be "mom".

the act charged; (2) there was probable cause to believe the child committed the act charged; and (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. The statute goes on to identify the applicable factors for the juvenile court to consider in ruling on whether to transfer the case to adult court. Clearly, if the requirements of fundamental fairness and due process are satisfied by the statutory mandatory bindover provision, then a full hearing on a discretionary bindover in which the Appellant was provided competent counsel, had a parent present and a GAL present, and the court stated its reasons for transfer also satisfies due process. See *Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966).*

In this matter, the juvenile court's entry of November 17, 2017 effected a discretionary transfer of Appellant to the General Division of the Common Pleas Court, which the appellate court appropriately reviewed pursuant to this Court's mandate in, ex., *In re M.P.*, to wit: an abuse of discretion standard. *State v. Nicholas*, 2nd Dist. Champaign No. 2018-CA-25, 2020-Ohio-3478, ¶ 57. See, also, *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,[5] 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

[5] In that case, this Court held: "In contrast to the probable-cause inquiry, an amenability hearing is a broad assessment of individual circumstances and is inherently individualized and fact-based. Thus, a juvenile court's determination regarding a child's amenability to rehabilitation in the juvenile system is reviewed by an appellate court under an abuse-of-discretion standard." *In re M.P.*, ¶ 14 (citations omitted).

factors under R.C. 2152.12(E), which indicate that [a] case should not be transferred." *State v. Hoskins*, 2nd Montgomery Nos. 27486, 27487, 2018-Ohio-4529, citing *Watson* at 95 and *Howard* at ¶ 15 and 19.

"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 (emphasis added). "R.C. 2152.12 is silent with regard to how a juvenile court should weigh the factors in R.C. §2152.12(D) and (E). Thus, the juvenile court has the discretion to determine how much weight should be accorded to any given factor." *State v. Blair*, 5th Dist. Stark No. 2016CA00180, 2017-Ohio-5865, ¶ 30, citing *Morgan*, at ¶ 37.

> In this broad assessment, any one particular circumstance may carry more weight than other circumstances. For example, the seriousness of the alleged act may speak not only to a child's mental health, but also to her threat to the community and to her need for rehabilitation beyond her twenty-first birthday. See [*State v. Watson*, 47 Ohio St.3d 93, 96 (1989]. ***In sum, any evidence that reasonably supports the juvenile court's decision to relinquish jurisdiction will suffice to sustain that court's judgment.***

Blair, 2017-Ohio-5865, ¶40, (emphasis added) quoting *State v. Hopfer*, 112 Ohio App.3d 521 at 536 (2nd Dist.1996).

"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 repeatedly held 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. See, also, *State v. Gregory*, 2nd Dist. Montgomery No. 28695, 2020-Ohio-5207, ¶ 30 (same, quoting and following *Hopfer*); *State v. Davis*, 189 Ohio App.3d 374, 2020-Ohio-3782, ¶ 13 (4th Dist.2010) (same); *In re M.A.*, 12th Dist. Brown No. CA2018-07-005, 2019-Ohio-829, ¶ 26 (same). "If there is some rational and factual basis to support the juvenile court's decision, we are duty bound to affirm it regardless of our personal views of the evidence." *Gregory*, at ¶ 30 (citations omitted).

Again, Appellant's argument is not really that the juvenile court abused its discretion in applying Ohio law. Rather, he just makes a policy argument, to the wrong branch of government, that bindover determinations should be subject to a different standard. The standard of proof in Ohio is clear. **It is a balancing test and should remain a balancing test.**

Chief Justice O'Connor in her dissent in *Aalim II* stated that a juvenile judge should make an individualized assessment of the juvenile considering the sophistication and maturity of the juvenile and the entire history of the child and held up Ohio's discretionary-transfer provision as an example of such assessment. *State v. Aalim, 150 Ohio St.3d 489, 2017-Ohio-2956, O'CONNOR, C.J., dissent ¶¶99-100.* That is what occurred here.

There is no need for this Court to review this issue further. Appellant failed to raise his constitutional arguments in the juvenile court and as such has waived or forfeited the issue. Under a plain error analysis (or any other appropriate analysis), Appellant's constitutional challenge to

Ohio's bindover mechanism fails. Without question, Ohio's standards meet the requirements of due process and the juvenile court herein complied with those standards. As Appellant also addresses this issue indirectly in his Proposition of Law No. II, the State will go into further detail below.

<u>Response to Proposition of Law No. II</u>: 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.

As discussed above, Appellee takes the position that Appellant failed to raise this issue in the juvenile court and has, therefore, waived or forfeited the alleged error contained within his second proposition of law. Insofar as this Court may review the merits of the assignment of error, Appellee takes the position that Appellant's claim is without merit and respectfully requests that this Court affirm the bindover.

Appellant has also repeatedly raised his erroneous proposition that the State did not meet its burden of proof and falsely claims the State presented no evidence. (See Appellant's Merit Brief, p. 6) Specifically, Appellant appears to reiterate such contention, apparently, because Dr. Hrinko was not called as a direct witness by the State, despite the fact that Dr. Hrinko's report was admitted as a stipulated exhibit.[6] Further, in making his "no evidence" claim, Appellant clearly ignores the over fifty pages of transcripts involving testimony from State's amenability hearing witnesses Caitlyn Lockard, Glenn Kemp, and Josh Welty, as well as the multiple exhibits including

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[6] The report includes a recitation of facts Dr. Hrinko relied on in making his determination, and that recitation included Appellant's social and educational history, acknowledgment of reviewing the State's discovery packet concerning the offenses committed by Appellant, and also specifically mentions some of the details related to the aggravated murder committed by Appellant. This stipulated exhibit, to wit ,"the entire report" was admitted "as is" and Appellant waived any right to exclude certain portions of that report. (See Amenability Hearing Transcript, pp. 73-74)

photos, the coroner's report, and 911 audio that was also played for the juvenile court's consideration. (See Amenability Hearing Transcript, particularly pp. 11-69)

It is worth noting that the juvenile court's decision was not premised just on the inability of the Ohio Department of Youth Services ("ODYS") to provide the extent of care that would be needed to ***attempt*** to rehabilitate Appellant in the manner Dr. Hrinko indicated would be necessary to support his amenability opinion. (An opinion that was rife with limitations and conditions and given even though Dr. Hrinko could not point to a single case of successful treatment of a person similarly situated to Appellant.) The bindover decision was also based on the undisputed fact that Appellant was a danger to society and, of course, was made in consideration of the criteria found within R.C. §2152.12.

The decision regarding amenability within the juvenile system and safety of the community is based upon the juvenile court's consideration of applicable factors under R.C. §2152.12(D) and (E) and is ultimately entrusted to the sound discretion of the juvenile court judge.

R.C. §2152.12(D) lists factors that support transfer of jurisdiction of the case:

> (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.
> (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.

R.C. §2152.12(D)

R.C. §2152.12(E) lists factors to be considered that support retention of jurisdiction by the juvenile court:

(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 intellectual disability.
(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.

R.C. §2152.12(E)

Similar to his argument concerning the "clear and convincing" standard he advocates for, the ABA Model Standards that Appellant relies on for the proposition that "the prosecuting attorney should bear the burden of proving" nonamenability are but recommendations, and not requirements of constitutional law. Additionally, Appellant's argument that the Justice Department ("DOJ") "require[s] that prosecutors bear the burden of proving non-amenability" is completely inaccurate. There is no such "requirement" found within Appellant's cited DOJ source. Rather, in the cited document the DOJ was merely providing a summary of the laws it had reviewed concerning the myriad procedures employed by the states in a juvenile bindover setting.

The State has been unable to find a single case that specifies R.C. §2152.12 requires the State to prove non-amenability, let alone that the juvenile court may *only* consider evidence favorable to transfer if it was presented through witnesses "called" by the State, as opposed to evidence introduced through all witnesses, regardless of whether the witness was "called" by the

State, the juvenile, or the court itself. (This would be, in essence, a burden of production argument that Appellant has waived by not raising it in the juvenile court.) However, subsequent to the appellate court's decisions concerning reconsideration and *en banc* review below, Appellee has found a 1991 decision of the Ninth District Court of Appeals reviewing former R.C. §2151.26 and former Juv.R. 30. *State v. Parsons*, 9th Dist. Summit Nos. 14787, 14788, 1991 Ohio App. LEXIS 1008. In *Parsons*, the appellate court was faced with challenges to the bindover procedure employed in that case and provided by former R.C. §2151.26 and former Juv.R. 30. The appellant claimed that former R.C. §2151.26 and former Juv.R. 30 failed to impose any burden of proof on the state, that they were void for vagueness as they did not define the "reasonable grounds" standard used therein, and that they violated due process because they failed to set forth factors the juvenile court can use to base its decision as to the safety of the community factor. The *Parsons* court rejected all of the appellant's challenges. Regarding the burden of proof, the *Parsons* court stated:

> The Court of Appeals for Lucas County determined that the procedures set out in R.C. 2151.26 and Juv.R. 30 are constitutional. State v. DeBoe (Dec. 12, 1975), 6th Dist. Lucas No. L-75-133, [1975 Ohio App. LEXIS 8407,] unreported; State v. Forte (July 9, 1976), 6th Dist. Lucas No. L-75-214, [1976 Ohio App. LEXIS 6755,] unreported. We agree. R.C. 2151.26 and Juv.R. 30 impose on the state the burden of presenting evidence sufficient to persuade the trial court in its sound discretion that the juvenile should be bound over to be tried as an adult.

Parsons at *8-9. Thus, while no significant analysis was provided, the *Parsons* court noted that former R.C. 2151.26 and former Juv.R. 30 imposed on the State the "burden of presenting evidence sufficient to persuade the trial court in its sound discretion that the juvenile should be bound over to be tried as an adult." *Id.* at *9.

In *State v. Forte*, 6th Dist. Lucas No. L-75-214, 1976 Ohio App. LEXIS 6755 (July 9, 1976), the Sixth District Court of Appeals also rejected the appellant's due process challenges to former R.C. §2151.26 and former Juv.R. 30. In that case, the appellant argued he was denied due process due to the claim that Juv.R. 30 "fails to state the evidentiary burdens by which the prosecution or the defense must disprove or prove 'amenability to care or rehabilittation'". The *Forte* court held that this argument was not well taken. The court found that former R.C. §2151.26 "is only a preliminary hearing and the Juvenile Court need only make a determination of probable cause" and that "Where the Juvenile Court determines that there are reasonable grounds to believe the child cannot be rehabilitated and that there is probable cause that the child committed the act which would be a felony if committed by an adult, the Juvenile Court may relinquish jurisdiction." *Id.* at *17-18.

Similarly, in *State v. DeBoe*, 6th Dist. Lucas No. L-75-133, 1975 Ohio App. LEXIS 8407 (Dec. 12, 1975), the court of appeals found that former Juv.R. 30 was not unconstitutionally vague, that it set forth the criteria for determination of amenability, that the criteria are definite and reasonably certain, that the former R.C. §2151.26 hearing is only a preliminary proceeding, reiterated the reasonable grounds standard, and held that the appellant's challenges (including that it failed to state evidentiary burdens by which the prosecution or defense must prove or disprove amenability) was therefore not well taken. *Id.*, at*3-4.

Again, these cases (*Parsons*, *Forte*, *DeBoe*), all concern *former* R.C. §2151.26 and *former* Juv.R. 30. Assuming that *Parsons* is good law, that it also applies to the current versions of Juv.R. 30 and R.C. §2151.12, and ***assuming that the issue has not been waived as Appellant failed to raise any such challenge during proceedings in the juvenile court below***, the State submits that

is has clearly met its burden of "presenting evidence sufficient to persuade the [juvenile] court in its sound discretion that [Appellant] should be bound over" to adult court.

The record reflects that the State presented significant testimony of witnesses and evidence in favor of transfer that supports the juvenile court's determination and satisfies any burden placed on the State at an amenability hearing. (See Entry of November 17, 2017; Amenability Hearing Transcript, generally.) The juvenile court had before it evidence of and the juvenile court clearly considered, among other things: Appellant's emotional, physical, and psychological maturity (although over fourteen years of age at the time of the offense, Appellant was fifteen at the time of the amenability/bindover hearing); the crimes themselves, including the brutal nature of the aggravated murder Appellant had committed and was ultimately convicted of; and the significant danger Appellant posed (and poses) to society. The juvenile court also had before it evidence of the relationship between Appellant and the victim, who was a mother figure to Appellant for the vast majority of his life and who Appellant referred to as "mom", and the use of multiple weapons including a knife used to stab the victim numerous times (inflicting over 60 individual knife wounds) which would have caused the victim great physical and psychological suffering, and the use of a gun to end her life when Appellant loaded and aimed the weapon at the victim's head and fired at point blank range after she had repeatedly begged Appellant for her life.

Dr. Hrinko was the court's witness, pursuant to R.C. §2152.12(C), who set forth an opinion (again, the written opinion was stipulated by all parties as an exhibit at the start of the amenability hearing and admitted "as is"[7]) that Appellant *may* be amenable under "24/7 supervision and support" which the Department of Youth Services was unable, in testimony, to guarantee. The appellate court correctly summarized the testimony of Dr. Hrinko by noting that his conclusion

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[7] See Amenability Hearing Tr., pp. 73-74

and the likelihood of successful treatment was severely handicapped by numerous limitations, variables and conditions. (See ex. Amenability Hearing of October 31, 2017, Tr. pp. 96-118, and App. Decision of June 26, 2020, 2020-Ohio-3478, ¶¶ 60-68) Those limitations, variables and conditions could not be sufficiently met by ODYS in the juvenile system. Further, Appellee submits that at least some of these limitations, variables, and conditions were evident from the report itself. Further still, these limitations, variables, conditions, and the equivocal nature of Dr. Hrinko's assessment were fleshed out in Dr. Hrinko's testimony at the hearing. Dr. Hrinko admitted that the danger Appellant posed to others was significant if Appellant was not successfully treated; indeed, Dr. Hrinko was unable to provide any examples of successful treatment necessary to support his amenability opinion, noting the rarity of this case.[8] (See Amenability Hearing of October 31,2017, Tr. pp. 93, 97-99). That was the evidence before the juvenile court.

Appellant's *post hoc* challenge to the procedure in which the juvenile court accepted evidence for its consideration at the amenability hearing is without merit and should be denied. First, and again, the State presented more than sufficient evidence to support the juvenile court's decision, in weighing the factors provided by R.C. §2152.12 and pursuant to its discretion, to determine that bindover was appropriate.[9] That the State met any such burden is further evident

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[8] While Appellant's counsel at the amenability hearing understandably and competently sought to bolster the weight of Dr. Hrinko's written report through testimony, unfortunately for Appellant the result of Dr. Hrinko's testimony was the highlighting of the equivocal nature of his amenability determination and the weaknesses of that opinion generally, including Dr. Hrinko's lack of experience with the mental illness he indicated Appellant suffered from as well as the numerous limitations, variables, and conditions of his opinion.

[9] Again, evidence introduced by the State and/or through stipulation prior to Appellant calling any witnesses include testimony and evidence concerning the offense itself (including the severity thereof, the serious harm suffered by the victim, Appellant's relationship to the victim having facilitated the offense, that Appellant was the principal offender, Appellant's use of a firearm to ultimately hasten the victim's death as part of his calculated plan to kill the victim, etc.); Appellant's age and emotional/physical/psychological maturity; that the victim did not induce or facilitate the offense; that Appellant did not act under provocation; that Appellant poses a significant danger to the community; etc. See, ex., *Watson*, 47 Ohio St.3d 93 (juvenile court may consider the seriousness of the alleged offense when determining if the juvenile is not amenable to care or rehabilitation in the juvenile justice system). See also, *State v. Oviedo*, 5 Ohio App.3d 168, 172 (6th Dist.1982) ("it is appropriate for the [juvenile] court to consider the nature of the

by the fact that no single R.C. §2152.12 factor is controlling, and that the juvenile court is free to exercise its discretion in the weighing and evaluation of all such factors.[10]

This is true even if this Court were to accept Appellant's apparent argument that the juvenile court could not consider (either as evidence in favor of transfer to adult court or as minimizing/reducing/eliminating the weight to be given to factors that may have otherwise been against transfer) or is somehow precluded from relying on or considering evidence obtained through the direct, redirect, and cross-examination of witnesses "called" by Appellant. Again, the juvenile court is free to use its discretion in weighing the evidence and factors before it in making a determination regarding bindover. *Morgan*, 2014-Ohio-5661, ¶ 37; *Blair*, 2017-Ohio-5865, ¶ 30; *State v. Hopfer*, 112 Ohio App.3d at 536. Further still, case law is replete with authority plainly authorizing the juvenile court to consider, among other things, the nature and severity of the offense as evidence against the juvenile's amenability to the juvenile system, as evidence of the juvenile's threat to the safety of the community, etc. *Watson*, supra; *Parson*; supra; *Nicholas*, 2020-Ohio-3478, ¶ 70. The State, without question, presented sufficient evidence to support the juvenile court's exercise of its discretion in ordering the bindover.

Second, any argument that the juvenile court, in making a bindover decision, could not consider evidence harmful to Appellant's position and that was adduced through the examination of witnesses "called" by Appellant is ridiculous. It would be akin to holding that a trial judge or jury (whoever is serving as the finder of fact) could not consider evidence the State adduces

offense . . . [in determining the "safety of the community" factor]"); *Parsons*, supra, at *9-12 (holding former R.C. 2151.26 and former Juv.R. 30 do not violate due process regarding consideration of the "safety of the community" factor; following *Oviedo*, supra, in holding the juvenile court may properly consider the "nature of the offense" when considering the safety of the community; ***and further citing in support of the bindover the opinion of the clinical psychologist's testimony that Parsons had a borderline personality disorder and that DYS could not adequately provide the psychological and counseling services the psychologist believed Parsons needed***).

[10] However, even if clear and convincing evidence was the standard (which it is not), the State takes the position that ample evidence was presented that would meet that standard.

through cross-examination of a defendant or defense witness at trial if that evidence was harmful to the defendant. Such a proposition defies logic, common sense, and the law.

Third, as noted by the Second District Court of Appeals below in its decision denying reconsideration, here "the parties and court appeared to be in agreement as to presentation of the evidence and, unlike the juvenile in *Valentine*, no objection was made in the juvenile court proceedings. And, as noted in *Valentine*, any such error would have been harmless, because the juvenile court did receive all evidence needed to make a decision." (See Oct. 8, 2020 Decision on Reconsideration Application, p. 8)

Finally, Appellant has waived or forfeited this challenge (whether couched in terms of due process or abuse of discretion) to the procedure by which the juvenile court admitted testimony and evidence concerning amenability. While the matter was before the juvenile court, Appellant failed to object to the manner in which the testimony and evidence was admitted (other than "a general objection to talking about the facts and circumstances of the case" and relevance of information concerning the facts and circumstances of the aggravated murder, said objections being overruled by the court, as the State was introducing such evidence as evidence in support of R.C. §2152.12 factors that favor bindover to adult court). As a result, Appellant has waived or forfeited this claimed error. See, ex., *Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034; *Barker*, 149 Ohio St.3d 1, 2016-Ohio-2708; *Brown*, 10th Dist. No. 17AP-695, 2018-Ohio-4185 at ¶29; *Morgan*, 153 Ohio St.3d 196, 2017-Ohio-7565 at ¶ 51 (reconsideration denied by *State v. Morgan*, 151 Ohio St.3d 1458, 2017-Ohio-8842). "**[S]peculation *cannot* prove prejudice.**" *Morgan* at ¶53 (emphasis added). "Accordingly, [any] contention that it was possible the court could have retained jurisdiction is insufficient to demonstrate plain error." *Brown*, at ¶ 29. The Tenth District Court of Appeal in *Brown* found that several of the R.C. §2152.12(D) factors in favor of transfer

were present and that, in contrast, few if any of the R.C. §2152.12(E) factors against transfer were applicable. *Id.* at ¶ 30. "Accordingly, Brown fails to demonstrate plain error." *Id.*

Again, as noted by the Second District Court of Appeals below in its decision denying reconsideration, here "the parties and court appeared to be in agreement as to presentation of the evidence and, unlike the juvenile in *Valentine*, no objection was made in the juvenile court proceedings. And, as noted in *Valentine*, any such error would have been harmless, because the juvenile court did receive all evidence needed to make a decision." (See Oct. 8, 2020 Decision on Reconsideration Application, p. 8) If error that was objected to was harmless in *Valentine*, Appellee believes Appellant is wholly unable to demonstrate reversible error (plain or otherwise) here. Furthermore, any contention by Appellant that the juvenile court *could* have retained jurisdiction is insufficient to demonstrate plain error. There was ample evidence to support the juvenile court's conclusion, made through the sound exercise of the juvenile court's discretion, that factors in support of transfer outweighed any factors against transfer.

In short, the juvenile court's decision to bind Appellant over to adult court was based on sufficient evidence, any burden on the State in those proceedings has been met, Appellant failed to raise these claims at the juvenile court level, and Appellant cannot meet his burden to demonstrate plain error, that is, that he would not have otherwise been bound over to the adult court. As a result, Appellee requests that this Court find Appellant's assignment of error not well taken.

Appellant's argument ignores the facts presented at the amenability hearing and the law. The juvenile court did not abuse its discretion in not agreeing with Dr. Hrinko's speculative conclusion regarding Appellant's amenability as even Dr. Hrinko admitted in his testimony that he had very little evidence to support his opinion regarding potential successful treatment and Dr.

Hrinko further acknowledged that "bad things will happen" if Appellant is not rehabilitated and the appellate court properly held as such. It must be noted here that, in discussing the reduction in (but not the elimination of) risk, Dr. Hrinko acknowledged that Appellant "will need to be vigilant about how he thinks, feels, and reacts to whatever life throws at him over the next 30, 50 years". (See Amenability Hearing of Oct. 31, 2017, Tr. pp. 112-113) ***Thirty to fifty years* of vigilance.** Here, the juvenile system would lose authority over Appellant in less than ***six*** years.

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 witness' 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. The juvenile court, acting well within its discretion and pursuant to law, disagreed with the amenability opinion of Dr. Hrinko.

Appellant contends that, basically, the appellate court should have decided that the expert's opinion of possible or likely amenability within the juvenile system is the factor that should be given most weight by the juvenile court and, not just the most weight, but that Dr. Hrinko's speculative opinion must in and of itself outweigh all other statutory factors regarding amenability. Clearly, that contention is wholly contrary to the applicable statute and all case authority. 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,[11] (a

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[11] Discretionary appeal not allowed by *In re Reeder*, 145 Ohio St.3d 1472, 2016-Ohio-3028

unanimous decision authored by then Judge and now Justice Brunner 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); *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); *State v. Gregory*, 2nd Dist. Montgomery No. 28695, 2020-Ohio-5207 at ¶ 50 ("Under settled law, the juvenile court could disregard any part of these doctors' testimony or could assign any weight to the testimony"); *State v. Reese*, 1st Dist. Nos. C-180126, C-180412, 2019-Ohio-3680 at ¶18 ("juvenile court is not bound by any expert opinion, and may assign any weight to the expert opinion that it deems appropriate", noting with emphasis added ***"[t]o hold otherwise would constrain judicial discretion and allow expert testimony to usurp the function of the juvenile court, which is the ultimate decision maker"***); *State v. Morgan*, 153 Ohio St.3d 196, 2017-Ohio-7565, ¶11 (noting that the juvenile court "[h]aving significantly discounted Dr. Bergman's 'conclusions and recommendations' [in favor of amenability], the judge held that Morgan was not amenable. . ."). See, also, *State v. Everhardt*, 3rd Dist. Hancock No. 5-17-25, 2018-Ohio-1252 at ¶22 ("The [juvenile discretionary bindover] statutes are silent with regard to how a juvenile court should weigh these factors[, t]hus, the juvenile court has the discretion to determine how much weight should be accorded to any given factor"); *State v. Marshall*, 1st Dist. No. C-150383, 2016-Ohio-3184, ¶ 15 (same); *Ohio Jury Instruction OJI CR 409.21(3)* (concerning weight of expert testimony and noting that, in "determining its weight, you may take into consideration his skill, experience, knowledge,

veracity, familiarity with the facts of this case, and the usual rules for testing credibility and determining the weight to be given to testimony").

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").[12]

Further, Appellant misstates and has repeatedly misstated the law in Ohio with regard to "presumptions" for juvenile transfers or bindovers. (See Appellant's Brief, pp. 29-30) Appellant cites to *Kent v. United States*, 383 U.S. 541, 556 (1966) in claiming that he is presumed amenable

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[12] Notably, in *Watson* , the 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.*

to remaining under the juvenile court's authority.[13] *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 ("Aalim II"), 150 Ohio St.3d 489, 2017 Ohio 2956 at ¶24, citing *Kent, 383 U.S. 541, supra.*

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)

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[13] 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.

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.[14] There is no further guidance needed from this Court. The statute is clear. Pursuant to *Kent* and *Aalim II*, due process was afforded to Appellant herein.

Further, Appellant has cited dicta from the Second District Court of Appeals in *State v. Valentine,* that the State had the burden of proof but that any objection appeared to be resolved by

[14] Even if this Court were to find that the term "outweigh" creates a statutory "presumption" for remaining in juvenile court, the record herein clearly demonstrates no error regarding such a "presumption" in the juvenile court's consideration and weighing of factors, nor its conclusions that the factors in favor of transfer to adult court outweighed those against transfer. The standard set forth by the General Assembly pursuant to its exclusive constitutional authority has been met, regardless of the label.

counsel at the amenability hearing. See *State v. Valentine,* 2nd Dist. Montgomery No. 6024, 1979 Ohio App. LEXIS 10143, 1979 WL 208379 (April 11, 1979). Any error, nevertheless, was found to be 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". Although the issue was clearly waived by the failure to object at the time of the hearing, Appellant apparently now wants to rewind and make that objection herein. Nevertheless, 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*, "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. "The Supreme Court has never deviated from allowing the nature of a juvenile's crime to be considered in deciding if he or she is amenable to rehabilitation in the juvenile system. And that is for a good reason – it is certainly relevant." (Second District Court of Appeals Decision on Reconsideration, p. 15) Again, regarding the

seriousness of the offenses involved: Appellant committed, was charged with, and was 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 and strongly militated against Appellant's proposed finding that Appellant was, in fact, amenable. Further, based on the evidence before it, the juvenile court clearly did not abuse its discretion.

Appellant has failed to present any authority on point demonstrating an error justifying reversal 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 well-established law in its review of the proceedings herein. Stated simply, the juvenile court's decision was not an abuse of its discretion and is supported by the record, and the lower court's decisions in the instant matter are not in conflict with the controlling statutes, other decisions of this Court, the Second Appellate District or otherwise. 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.

<u>Response to Proposition of Law No. III</u>: 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 (in Appellant's self-serving opinion) for Appellant in this matter was to receive a mandatory serious youthful offender ("SYO") blended sentence. ***<u>Appellant</u> has even admitted previously that a "traditional, minimum juvenile commitment was not the answer" as a disposition for Appellant.*** (See Appellant's Merit Brief to Second District Court of Appeals, pp. 21-22 (emphasis added))

"A serious-youthful-offender disposition consists of a 'blended' sentence; a traditional juvenile disposition and a stayed adult sentence." *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, ¶ 2. "The court ***may*** enforce the adult portion of the sentence at a later time if the juvenile commits certain acts that indicate that the juvenile disposition has been unsuccessful in rehabilitating him." *Id.* (emphasis added.)

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(W).* "A juvenile charged as a potential serious youthful offender does not face bindover to an adult court; the case remains in juvenile court." *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, ¶ 18. 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).* "Any adult sentence that the trial court imposes through R.C. 2152.13(D)(2)(a)(i) is only a potential sentence – it is stayed pursuant to R.C. §2152.13(D)(2)(a)(iii) 'pending the successful completion of the traditional juvenile dispositions

imposed'." *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9 at ¶30. (Although concerning R.C. §2152.13(D)(2), Appellee submits that the same holds true for SYO sentencing imposed under R.C. §2152.13(D)(1).)

The fact that Appellant would have been eligible for SYO disposition ***if not bound over*** to adult court does not mean that the juvenile 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 (or, it would seem, where the State did not otherwise seek bindover to adult court but did seek SYO). The juvenile court is aware of all options available for juvenile dispositions and was specifically aware of the potential SYO disposition here as the record reflects that Appellant (erroneously) requested such disposition prior to decision on transfer. 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 included serious youthful offender confinement. See, *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599 (in which this 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); See also *State v. D.H., 120 Ohio St.3d. 540, 901 N.E.2d 209, 2009-Ohio-9.*

Again, SYO adjudication involves a "blended" sentence of a traditional juvenile disposition and a stayed adult sentence. *Id.* However, the discretionary bindover criteria concerns a finding that the child "is not amenable to care or rehabilitation ***within the juvenile system*** . . .." *R.C. §2152.12(B)(3)* (emphasis added). See, also. *R.C. §2152.12(C);*[15] *In re Wilson*, 11th Dist.

[15] R.C. 2152.12(C) provides, in pertinent part (with emphasis added): "Before considering a transfer under division (B) of this section, the juvenile court shall order an investigation . . . bearing on whether the child is amenable to ***juvenile rehabilitation*** . . . ."

Lake No. 2003-L-160, 2005-Ohio-3262, ¶ 15.[16] The "juvenile system" aspect of SYO is limited by the juvenile's age and terminates by, inter alia, the time the juvenile turns 21. *In re A.W.*, 160 Ohio St.3d 183, 2020-Ohio-1457, ¶ 7 (citing *R.C. §2152.22* and noting "With respect to dispositional orders entered by the juvenile court, the original jurisdiction exists—within certain inapplicable exceptions—'until terminated or modified by the court or until the child attains twenty-one years of age'"). In fact, even if the juvenile court orders the adult portion of an SYO sentence be imposed, if the journal entry is not filed until the day the juvenile turns 21, the juvenile court lacks subject matter jurisdiction to impose that adult sanction. *In re A.W.*, 160 Ohio St.3d 183, 2020-Ohio-1457 (*sua sponte* vacating the adult portion of the juvenile's SYO disposition as the order invoking the adult sentence was not filed until the offender's twenty-first birthday).

Appellant does not delve into the reality of SYO, but just glosses over the requirements of SYO, if imposed. In fact, under the SYO scheme, Appellant would not be given a sentence lasting longer than his twenty-first birthday for the brutal and premeditated murder of his "mom". Rather, the stayed adult portion could *only* be imposed if Appellant later committed specific acts or conduct during the term of the juvenile portion of his sentence. Such specific act or conduct must be (1) a violation of the conditions of supervision that could be charged as any felony or as a first degree misdemeanor offense of violence if committed by an adult or (2) engaging in conduct that creates a substantial risk to the safety or security of the community or of the victim. See *R.C. §2152.14(B)(1) and (2).* Appellant's position appears all the more untenable where, as here, he readily admits a traditional juvenile sentence is inadequate. It is important to note that there is

[16] In the *In re Wilson* case, the court of appeals noted that, in determining whether a discretionary SYO finding was appropriate, the juvenile court must consider certain factors, including "the length of time the child can be in the juvenile system". *Id.* at ¶ 11. Elaborating, the court stated: "The next factor is the length of time the child can be in the juvenile system. Appellant argues 'length of time' means the time the juvenile has been in the system. The state argues 'length of time' means the time left within which the child is subject to the juvenile system. **'Length of time' clearly refers to the time left within which the child is subject to the *juvenile system*.**" Id., ¶15 (emphasis added).

nothing about the SYO status that would change this inadequacy. Treatment in the juvenile system will be the same whether a SYO status is imposed or not.

Therefore, Appellee submits that any potential availability of a stayed "adult portion" in a possible SYO adjudication (that only becomes available if, among other things, the bindover does not occur) is ***not*** "care or rehabilitation within the ***juvenile system***" as contemplated by R.C. §2152.12(B)(3) (emphasis added). As such, a potential adult portion of a blended sentence (which can be imposed only if the offender commits certain future acts or offenses after the sentence is imposed and stayed but prior to the offender turning twenty-one) cannot and should not be a required factor for a juvenile court to consider in making an amenability/bindover determination under R.C. §2152.12, even under the "any other factor" category. If, as here, the juvenile court determines that the juvenile is not amenable to care or rehabilitation within the juvenile system (i.e. before the offender turns 21), then the case is bound over to adult court and SYO is no longer applicable to the offender. Here, similar to the defendant in *Watson*, 47 Ohio St.3d 93 (1989), Appellant was 15 at the time of the amenability hearing and would turn 21 less than six years from the date of the decision to bind him over to adult court. One way or another, by age 21, the "juvenile system" is done with Appellant. Thus, in making its amenability determination under R.C. §2152.12, the juvenile court must consider whether the offender is amenable to care or rehabilitation prior to the offender's twenty-first birthday. Clearly, the juvenile court in this case did so. (See, ex., Nov. 17, 2017 Entry on Amenability Hearing, p. 2 "This Court can maintain jurisdiction over the juvenile for the next six (6) years".)

Appellant, while claiming SYO to be a reasonable "middle ground", essentially argues that no juvenile subject to discretionary bindover should ever be bound over because the General Assembly has crafted a "safety net" of SYO. However, the General Assembly has not abolished

the discretionary bindover process. Had the General Assembly intended the result for which Appellant advocates, it could have done so. It could have created an exception from discretionary bindovers, excluding from that process offenses and particular classifications it deemed appropriate. Instead, Appellant is making a public policy argument and is attempting to bypass the legislative process, asking this Court to ignore the existing law and eviscerate the discretionary bindover process. Appellant's argument here goes beyond mere claims of evidentiary standards and burdens of proof. The argument also goes beyond the standards established by the General Assembly, which exercised its exclusive constitutional authority to set those standards.

Appellant fails to cite any authority requiring a juvenile court to explicitly note its consideration of SYO possibilities or potentialities when making an amenability ruling. Further, Appellee has been unable to locate any such authority. Further still, as the court of appeals 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

Appellant has waived or forfeited his claimed errors as he failed to raise arguments presented to this Court to the juvenile court. Appellant cannot demonstrate that, but for the claimed errors, the juvenile court would not have bound him over to adult court. More to the point, Appellant's arguments are meritless. Appellant's policy arguments are properly addressed to the General Assembly and not this Court. The statutory mechanisms for bindover and the well-established abuse of discretion standard of appellate review satisfy due process. The juvenile court

complied with the bindover provisions of Ohio law and properly exercised its discretion in weighing the factors concerning bindover. Appellant's dissatisfaction with the juvenile court's well-reasoned decision binding him over to adult court and the General Assembly's clearly-established procedures governing such bindovers does not merit reversal.

For the reasons stated above, the State respectfully urges this Court to affirm the Second District Court of Appeals' decision below to uphold the juvenile court's decision.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 21, 2021, a copy of the foregoing State of Ohio's Brief was served via regular first class mail and email transmission upon:

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