

STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE NDD, MINOR.

PEOPLE OF THE STATE OF MICHIGAN,
Petitioner-Appellee,

v.

NDD,
Respondent-Appellant.

No. 169064

L.C. 19-015969-DL
COA No. 370602

BRIEF BY PROSECUTING ATTORNEYS ASSOCIATION
OF MICHIGAN AS AMICUS CURIAE IN SUPPORT OF THE
PEOPLE OF THE STATE OF MICHIGAN

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Statement of the Question

III.

A discretionary waiver under MCL § 712A.4 is the result of a judicial hearing that is not a trial and results in neither a conviction nor a sentence. At the actual trial, the defendant may be acquitted. Because the waiver process establishes only the jurisdiction of the circuit court, does that a judge makes the waiver decision rather than does a jury violate *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000)?

The People answer: No

Defendant answers: Yes

Amicus answers: No

Statement of Facts

Amicus joins the statement of facts of the People of the State of Michigan.

Argument

III.

A discretionary waiver under MCL § 712A.4 is the result of a judicial hearing that is not a trial and results in neither a conviction nor a sentence. At the actual trial, the defendant may be acquitted. Because the waiver process establishes only the jurisdiction of the circuit court, that a judge makes the waiver decision rather than does a jury does not violate *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

Introduction

The Court has ordered a MOAA and directed that the issues to be addressed are:

- whether the Livingston Circuit Court Family Division reversibly erred in finding, by a preponderance of the evidence, that the best interests of the juvenile and the public would best be served by granting the prosecution's motion to waive the court's jurisdiction over the respondent, see MCL § 712A.4(4); MCR 3.950(D)(2);
- whether, in deciding whether to waive its jurisdiction over the respondent, the family court was required to compare the relative suitability of programs and facilities available in the juvenile and adult correctional systems, see *People v Dunbar*, 423 Mich. 380, 388 (1985); and
- whether the discretionary waiver statute, MCL § 712A.4, violates *Apprendi v New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), because it authorizes an increase in the respondent's maximum punishment without a jury determination, beyond a reasonable doubt, of the factors considered in the waiver decision.¹

Amicus here joins the People of the State of Michigan as to the first two issues and responds to the third question, answering that MCL § 712A.4 is a

¹ *In re NDD*, 2026 WL 916797 (No. 169064, Mich. Apr. 3, 2026).

jurisdictional statute, and though the determining of jurisdiction has potential sentencing consequences, the statute nonetheless does not run afoul of *Apprendi*, it not constituting a criminal trial and resulting in neither a conviction nor a sentence.

Discussion

A. The text involved

It is the constitutionality of a statute that is involved, and so its pertinent text should be at the forefront:²

(1) If a juvenile 14 years of age or older is accused of an act that if committed by an adult would be a felony, the judge of the family division of circuit court in the county in which the offense is alleged to have been committed may waive jurisdiction under this section upon motion of the prosecuting attorney. After waiver, the juvenile may be tried in the court having general criminal jurisdiction of the offense.

(3) Before the court waives jurisdiction, the court shall determine on the record if there is probable cause to believe that an offense

² JUSTICE SCALIA: Counsel, I've been looking for the text of the California jurisdiction statute. Where is it? I mean, you know, that's what this case is all about, isn't it?

MR. DUPRESS: I believe it's—

JUSTICE SCALIA: Is it in your brief? Is it in the respondent's brief? Is it in the government's brief? I can't find the darn thing.

MR. DUPREE: Well, we'll provide the cite to Your Honor. If they—

JUSTICE SCALIA: I don't want the cite. I want the text in front of me right here.

Oral argument transcript, *Daimler, AG v Barbara Bauman et al*, p. 17-18, https://www.supremecourt.gov/oral_arguments/argument_transcripts/2013/11-965_g2hk.pdf

has been committed that if committed by an adult would be a felony and if there is probable cause to believe that the juvenile committed the offense. Before a juvenile may waive a probable cause hearing under this subsection, the court shall inform the juvenile that a waiver of this subsection waives the preliminary examination required under chapter VI of the code of criminal procedure, 1927 PA 175, MCL § 766.1 to 766.18.

(4) Upon a showing of probable cause under subsection (3), the court shall conduct a hearing to determine if the best interests of the juvenile and the public would be served by granting a waiver of jurisdiction to the court of general criminal jurisdiction. In making its determination, the court shall consider all of the following criteria, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria:

(a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines and the use of a firearm or other dangerous weapon.

(b) The culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

© The juvenile's prior record of delinquency that would be a crime if committed by an adult.

(d) The juvenile's programming history, including, but not limited to, any out-of-home placement or treatment and the juvenile's past willingness to participate meaningfully in available programming.

(e) The adequacy of the programming available to rehabilitate and hold accountable the juvenile in the juvenile justice system and the juvenile's amenability to treatment.

(f) The dispositional options available for the juvenile.

(g) The juvenile’s developmental maturity, emotional health, and mental health.

(h) If the juvenile is a member of a federally recognized Indian tribe, culturally honoring traditional values of the juvenile’s tribe.

(I) The impact on any victim.

(5) If the court determines that there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony and that the juvenile committed the offense, the court shall waive jurisdiction of the juvenile if the court finds that the juvenile has previously been subject to the jurisdiction of the circuit court under this section, section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606.

B. *Apprendi, Blakely, Alleyne, and the Sixth Amendment*

Apprendi fired shots into the dwelling of an African-American family and was charged with 2nd-degree possession of a firearm for an unlawful purpose, a statutory offense carrying a maximum prison term of 10 years. He pled guilty. The state had a “hate crimes” statute that allowed aggravation if the statutory maximum of the sentencing judge found by a preponderance of the evidence that the defendant committed the crime with a purpose to intimidate a person or group because of race, among other things. After the plea, the prosecutor filed a motion to enhance the sentence under this statute, and the sentencing judge, finding by a preponderance of the evidence that defendant’s actions were racially motivated, *did so* and sentenced Apprendi to 12 years, which is to say Apprendi’s actual sentence—not his possible sentencing exposure—was thus aggravated beyond the statutory maximum sentence by a finding not made by the jury and not made beyond a reasonable doubt. If Apprendi had been sentenced to 10 years—a non-aggravated sentence, authorized by the jury verdict alone—the Sixth Amendment issue would not have arisen.

As the Court put it, the state had “threatened Apprendi with certain pains if he unlawfully possessed a weapon and with additional pains if he selected his

victims with a purpose to intimidate them because of their race. As a matter of simple justice, it seems obvious that the procedural safeguards designed to protect *Appendi* from unwarranted pains should apply equally to the two acts that New Jersey has singled out for punishment. Merely using the label ‘sentence enhancement’ to describe the latter surely does not provide a principled basis for treating them differently.”³ The Constitution under the Sixth Amendment, the Court held, entitles a person to a jury determination of guilt of every element of the crime with which he is charged, beyond a reasonable doubt; “[a]ny possible distinction between an ‘element’ of a felony offense and a ‘sentencing factor’ was unknown to the practice of criminal indictment, trial by jury, and judgment by court as it existed during the years surrounding our Nation’s founding.”⁴ And so a sentence cannot be aggravated *beyond the statutory maximum* for that crime by a finding by the judge by a preponderance of the evidence of some fact of the manner of the crime’s commission.⁵

Appendi was applied in *Blakely v. Washington*,⁶ where Blakely pleaded guilty to kidnapping his estranged wife, and the facts of the plea supported a maximum sentence of 53 months, while an “exceptional” sentence of 90 months was permitted if the judge at sentencing found by a preponderance of the evidence that the offense was committed with extreme cruelty, which the sentencing judge

³ *Appendi v. New Jersey*, 530 U.S. 466, 476, 120 S. Ct. 2348, 2355, 147 L. Ed. 2d 435 (2000),

⁴ *Id.*, 120 S. Ct. at 2355-2356.

⁵ *Id.*, 120 S. Ct. at 2362-2363. The Court cautioned that “nothing in this history suggests that it is impermissible for judges to exercise discretion-taking into consideration various factors relating both to offense and offender-in imposing a judgment *within* the range prescribed by statute. We have often noted that judges in this country have long exercised discretion of this nature in imposing sentence within statutory limits in the individual case.” *Id.*, 120 S. Ct. at 2358 (emphasis supplied).

⁶ *Blakely v. Washington*, 542 U.S. 296, 298, 124 S. Ct. 2531, 2534, 159 L. Ed. 2d 403 (2004).

found. The Supreme Court, however, said that for *Apprendi* purposes, the statutory maximum sentence was that a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant, not facts concerning the commission of the crime found by the judge, and so the aggravation of the sentence violated the right to jury trial.⁷ As Justice Breyer put it in dissent, the Court found that “a jury must find, not only the facts that make up the crime of which the offender is charged, but also all (punishment-increasing) facts about the way in which the offender carried out that crime,” which is to say, facts about the way in which the crime was committed that *aggravate the statutory maximum* are included in the “facts that make up the crime for which the offender is charged.”

In *Alleyne v. United States*⁸—to which, interestingly, Justice Scalia, who joined *Apprendi* and wrote *Blakely*, dissented, joining Chief Justice Roberts’s dissent—Alleyne was charged with, among other things, robbery affecting interstate commerce and using or carrying a firearm in relation to a crime of violence. The offense carried a mandatory minimum of 5 years (“not less than 5 years”), but if the judge concluded at sentencing that the firearm had been brandished, the mandatory minimum was 7 years. Though the statutory maximum was greater than 7 years, the Court found that facts concerning the manner of commission of the offense that increase the legally *mandated* floor so as to aggravate the punishment must also be found by a jury beyond a reasonable doubt.⁹

⁷ Id., 124 S. Ct. at 2357.

⁸ *Alleyne v. United States*, 570 U.S. 99, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013).

⁹ Id., 133 S. Ct. at 2161.

Again, the court took “care to note what our holding does not entail. Our ruling today does not mean that any fact that influences judicial discretion must be found by a jury. We have long recognized that broad sentencing discretion, informed by judicial factfinding, does not violate the Sixth Amendment. . . . ‘[N]othing in this history suggests that it is impermissible for judges to exercise discretion—taking into consideration various factors

And so, then, the Supreme Court has determined that any fact concerning the manner of the commission of the offense charged that raises a statutory mandatory minimum or a statutory maximum is an element of the crime that must be proven beyond a reasonable doubt by a jury (or, at a bench trial, by the judge), or admitted by the defendant, as in a plea.¹⁰

relating both to offense and offender—in imposing a judgment within the range prescribed by statute’ . . . ’ ‘[E]stablishing what punishment is available by law and setting a specific punishment within the bounds that the law has prescribed are two different things.’” *Id.*, at 2163.

Chief Justice Roberts’s dissent, joined by Justices Scalia and Kennedy, is persuasive, but is not the law:

Suppose a jury convicts a defendant of a crime carrying a sentence of five to ten years. And suppose the judge says he would sentence the defendant to five years, but because he finds that the defendant used a gun during the crime, he is going to add two years and sentence him to seven. No one thinks that this violates the defendant’s right to a jury trial in any way.

Now suppose the legislature says that two years should be added to the five year minimum, if the judge finds that the defendant used a gun during the crime. Such a provision affects the role of the judge—limiting his discretion—but has no effect on the role of the jury. And because it does not affect the jury’s role, it does not violate the jury trial guarantee of the Sixth Amendment.

The Framers envisioned the Sixth Amendment as a protection for defendants from the power of the Government. The Court transforms it into a protection for judges from the power of the legislature. For that reason, I respectfully dissent.

Id., 133 S. Ct. at 2167-2168 (Roberts, C.J., dissenting).

¹⁰ Excluded is the fact of prior convictions. Though some doubt has been expressed concerning this “exception,” see *Almendarez-Torres v. United States*, 523 U.S. 224, 248, 118 S. Ct. 1219, 1233, 140 L. Ed. 2d 350 (1998) (Scalia, J., dissenting), the doubt is not, amicus submits, well taken. Prior convictions do not involve the offense but the *offender*, and facts concerning the offender should not need to be determined by a jury or judge beyond a reasonable doubt, as a crime requires an *actus reus* (the wrongful physical act) and a *mens rea* (the criminal mental state), though some offenses may impose strict liability without requiring proof of intent. *Apprendi*, *Blakely*, and *Alleyne* all involve facts concerning the manner of the commission of the act charged.

It is true that in *Cunningham v. California*, 549 U.S. 270, 291, 127 S. Ct. 856, 869, 166 L. Ed. 2d 856 (2007) the majority expressly rejected a proposal for such a “bifurcation”: “Justice KENNEDY urges a distinction between facts concerning the offense, where *Apprendi* would apply, and facts concerning the offender, where it would not. . . .

C. A waiver of jurisdiction from juvenile court to circuit court is not a trial and does not result in a conviction or a sentence of any sort, let alone one the statutory maximum of which can be aggravated by judicial fact-finding, and so *Apprendi* is inapplicable

Even assuming that facts concerning the offender rather than those going to the commission of the offense must be found beyond a reasonable doubt by the fact-finder or admitted by the defendant in order to aggravate the statutory maximum or a mandatory minimum of the sentence that is actually imposed on an offender, that principle is inapplicable to a juvenile waiver hearing, which is not a trial and does not result in a conviction and sentence, aggravated or otherwise.

The first phase of a juvenile waiver hearing is essentially a preliminary examination, its purpose being to determine whether there is probable cause that a crime occurred and that the defendant committed it: “Before the court waives jurisdiction, the court shall determine on the record if there is probable cause to

(dissenting opinion). *Apprendi* itself, however, leaves no room for the bifurcated approach Justice KENNEDY proposes. See 530 U.S., at 490, 120 S.Ct. 2348 (“[A]ny fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” (emphasis added)) [by the Court]. But the statement concerning “any fact that increases the penalty for a crime” was dicta, as involved in *Apprendi* was plainly a fact concerning the manner of the crime’s commission, namely, the racial motivation of the crime, a part of the mens rea. Further, in *Blakely* the sentence was aggravated by the judge because it was committed in a particular manner (“extreme cruelty”), and *Alleyne* aggravated a mandatory minimum on a judicial finding that the firearm involved was “brandished” during the offense, again concerning the manner of the commission of the offense. And even *Cunningham* aggravated the sentence on a judicial findings that the crime involved great violence and the threat of great bodily harm; the victim was particularly vulnerable due to his age and dependence on defendant as his father and primary caretaker; defendant threatened to commit bodily injury upon the victim in an attempt to coerce the victim to recant his statements about the crime; defendant took advantage of a position of trust to commit the crime in that he is the victim’s father and sole caregiver for a substantial period of time; defendant engaged in violent conduct which indicates a serious danger to the community; and defendant was a peace officer at the time he committed the criminal acts, violating his duty to serve the community of which the victim was a member. *People v. Cunningham*, 2005 WL 880983, at 7 (No. A103501, Cal. Ct. App. Apr. 18, 2005), rev’d in part sub nom. *Cunningham v. California*, supra).

In the end the distinction is of no moment here, as *Apprendi* is wholly inapplicable, as amicus will argue, to jurisdictional decisions.

believe that an offense has been committed that if committed by an adult would be a felony and if there is probable cause to believe that the juvenile committed the offense.” As with a preliminary examination, this phase of the hearing is not a trial,¹¹ and there is no question that a judicial finding on the point is permissible under the Constitution; that is, there is no right to jury trial on probable cause. If probable cause is found, then the second phrase, which is at issue here,¹² concerns whether “the best interests of the juvenile and the public would be served by granting a waiver of jurisdiction to the court of general criminal jurisdiction.” The judge considers the nature of the offense and its seriousness as it relates to the protection of the community, the level of culpability of the defendant in the offense, the juvenile’s prior record as to those delinquency adjudications that would be a crime if committed by an adult; the juvenile’s past willingness to participate meaningfully in available programming; the adequacy of any programming available to both rehabilitate and hold accountable the juvenile in the juvenile justice system and the juvenile’s amenability to treatment; the dispositional options available; the juvenile’s developmental maturity, emotional health, and mental health; and the impact on the victim. The prosecuting attorney has the burden to establish by a preponderance of the evidence that waiver is in the best interests of the juvenile and the public.¹³ The judge does *not* determine whether the juvenile is responsible for the charged conduct, nor does the judge sentence the juvenile. A trial is then held in circuit court, at which the juvenile

¹¹ See *People v. Redden*, 290 Mich. App. 65, 84 (2010).

¹² Though actually, *both* phases should be at issue. A determination of probable cause is necessary to the waiver, and so, if *Apprendi* applies, a jury would have to determine—beyond a reasonable doubt—that *probable cause* exists—a rather confusing proposition!

¹³ MCR 3.950(D)(2)(c).

may be acquitted. *The probate judge does not enhance the juvenile's sentence based on fact-finding because there is no conviction and no sentence to enhance.*¹⁴

A transfer of jurisdiction—though it certainly has sentencing ramifications *if and when a conviction is had and the matter proceeds to sentencing*—is just that; it is not a trial, nor is it a sentencing, and so *Apprendi* can have no application. As Professor LaFave's treatise notes:

Because the decision to move a juvenile into adult court can often increase the sentence significantly, defendants have argued that *Apprendi* requires treating as an offense element the condition that must be established before the juvenile can be transferred to adult court. Most courts, however, have rejected these arguments and upheld judicial findings. These decisions note that the jury has not made this type of decision historically, as juvenile court itself was a reform that swept the nation only a century ago. They observe also that like concurrent sentencing, which the Court has held falls outside the *Apprendi* rule, adjudication in juvenile court is designed to “temper the harshness” of historical practice, in this situation imprisoning hardened criminals along with older children.¹⁵

This is the almost uniform view in the country.

Indeed, many challenges similar to Appellant's have been rejected on the basis that *Apprendi* is not applicable.

- *Apprendi* does not require that a jury find the facts that allow the transfer to district court. The transfer proceeding

¹⁴ “[A] waiver hearing does not subject the child to loss of liberty because it is not a determination of guilt or innocence, but rather it is a determination of whether the juvenile or adult criminal justice system will better serve the needs of the public and the defendant.” *People v. Allen*, 90 Mich. App. 128, 136–137 (1979).

And a waiver decision order “will be affirmed whenever the judge’s findings, based upon substantial evidence and upon thorough investigation.” *People v. Dunbar*, 423 Mich. 380, 387 (1985) (cleaned up).

¹⁵ LaFave, 6 *Criminal Procedure* (5th ed.), § 26.4(I).

establishes the district court's jurisdiction over a defendant. Transferring Miguel to federal court for prosecution as an adult does not "increase the penalty for [Miguel's felony convictions] beyond the prescribed statutory maximum" for those crimes. . . .the transfer proceeding did not expose Miguel to greater punishment than the jury's guilty verdict later authorized.¹⁶

- Potts' argument fails to acknowledge that the adult certification procedure takes place before a juvenile has been found guilty of committing any crime. In *Apprendi*, the Supreme Court held: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." . . . But the Court cautioned that "the relevant inquiry is one not of form, but of effect—does the required finding expose the defendant to a greater punishment than that *authorized by the jury's guilty verdict*?" [Emphasis added by the court]. Since *Apprendi*, the Court has never indicated or hinted that *Apprendi* would apply to a factual determination made at a pretrial proceeding. . . . Potts' Sixth Amendment rights were not violated when the district court made factual findings authorizing the State to prosecute Potts as an adult.¹⁷
- Given the Supreme Court's recent elucidation regarding the scope of *Apprendi*—and the persuasive reasoning of other state courts in upholding their own juvenile jurisdiction statutes—we conclude that our reasoning in prior opinions rejecting the arguments presented herein is sound. The trial court's declination decision is a jurisdictional determination, intended only to locate the appropriate forum for a defendant's trial. It does not impose upon the defendant any sentence at all, much less one greater than the prescribed statutory maximum. Although, here, declination was necessary for Childress to be subject to the greater punishments available in adult criminal court, it was not sufficient; in order for Childress to be subject to any punishment at all, Childress first had to be convicted—by a

¹⁶ *United States v. Miguel*, 338 F.3d 995, 1004 (CA 9, 2003).

¹⁷ *State v. Potts*, 374 P.3d 639, 653 (Kan., 2016).

jury based upon facts proved beyond a reasonable doubt—of the alleged offense. The trial court found by a preponderance of the evidence that “declination would be in the best interest of the juvenile or the public.” . . . No more is necessary.¹⁸

- The courts in every jurisdiction that have juvenile-certification statutes similar to Missouri’s and that have considered this issue have concluded that *Apprendi*’s rule does not apply to juvenile transfer or certification proceedings and that there is no constitutional right to a jury determination respecting the transfer of a juvenile’s case to a court of general jurisdiction.¹⁹
- [B]ecause the amenability determination historically has not been made by the jury, applying *Apprendi* would interfere unnecessarily with New Mexico’s traditional discretion in administering a system of juvenile justice. We hold that the amenability determination is not within the scope of the *Apprendi* rule and the Sixth Amendment’s guarantee of a jury trial does not apply to amenability proceedings.²⁰
- Caldwell urges this Court to . . . require the Commonwealth to prove the “automatic transfer” factors beyond a reasonable doubt in juvenile court, submit them to the grand jury and have them included in the instructions to the jury. We decline to adopt such a requirement. Instead, we are persuaded by the view of those states which have concluded that *Apprendi* does not apply to juvenile proceedings. . . . A juvenile transfer proceeding does not involve sentencing or a determination of guilt or innocence. The decision to transfer a juvenile to circuit court involves

¹⁸ *State v. Childress*, 280 P.3d 1144, 1148 (Wash. App., 2012).

¹⁹ *State v. Andrews*, 329 S.W.3d 369, 374 (Mo., 2010), cert. den. *Andrews v. Missouri*, 564 U.S. 1042, 131 S. Ct. 3070, 180 L. Ed. 2d 895 (2011).

²⁰ *State v. Rudy B*, 243 P.3d 726, 740 (N.M., 2010).

the determination of which system is appropriate for a juvenile defendant.²¹

- Appellant’s *Apprendi* challenge fails on the merits. . . . Indeed, many challenges similar to Appellant’s have been rejected on the basis that *Apprendi* is not applicable.²²
- [T]he waiver statute does not set forth the elements of an offense, does not provide for a determination of guilt or innocence, and is not directed to consequences after adjudication of guilt. It does not provide a sentencing enhancement correlated with the State’s proof of a particular fact. Accordingly, we conclude that the statute does not implicate the core concerns of *Apprendi*. We will not, as urged by Villalon, declare it to be unconstitutional upon that basis.²³

There are many, many more.²⁴

Conclusion

The Court of Appeals got it exactly right:

The waiver determination has no bearing on any element of the offense and is not a “factual determination” that increases respondent’s penalty “beyond the prescribed statutory maximum.” Indeed, respondent in this case has not yet been tried, with or without a jury, nor has he been convicted of or sentenced for any

²¹ *Caldwell v. Commonwealth*, 133 S.W.3d 445, 453 (Ky., 2004), overruled in part on other grounds by *Hall v. Commonwealth*, 551 S.W.3d 7 (Ky., 2018).

²² *State v. Rice*, 737 S.E.2d 485, 487 (S.C., 2013) (citing cases).

²³ *Villalon v. State*, 956 N.E.2d 697, 704 (Ind. Ct. App., 2011).

²⁴ Perhaps the sole case to go the other way, *Commonwealth v. Quincy Q.*, 753 N.E.2d 781 (MA., 2001), overruled on other grounds by *Commonwealth v. King*, 834 N.E.2d 1175 (MA., 2005), is, for the reasons stated in these cases, mistaken, and poorly reasoned. And the case was not a waiver or transfer of jurisdiction, but what might in Michigan be called an automatic waiver case. See *Perkins v. Commonwealth*, 511 S.W.3d 380, 388 (Ky. Ct. App., 2016) describing *Quincy Q.* as requiring that the State “prove the ‘automatic transfer’ factors beyond a reasonable doubt in juvenile court, submit them to the grand jury and have them included in the instructions to the jury.”

offense. The task before the family division of the circuit court was to determine whether to waive its jurisdiction over respondent in this case. The waiver of a juvenile respondent to criminal court is a procedural mechanism by which jurisdiction is transferred from the family division of the circuit court to the general criminal court; it is not a finding of any fact bearing on any element of the offense, nor is it a determination of guilt or the imposition of a sentence. By waiving its jurisdiction over respondent in this case, the circuit court did not stray into the realm of fact-finding addressed by the Court in *Appendi*, nor did the circuit court otherwise violate respondent's right to a jury trial on whatever charge he may face in criminal court. Rather, the circuit court followed the procedure mandated by statute when a prosecutor seeks traditional waiver of a juvenile respondent to general criminal court, which does not include a jury trial on the issue of waiver.²⁵

If the Court rules otherwise, the change in juvenile law is seismic, and the effect extends beyond juvenile waiver hearings. A person is charged with a felony that contains within it a lesser included misdemeanor or misdemeanors. To bind over on the felony—to “transfer jurisdiction” from the district court to the circuit court—the district judge must find probable cause that the facts comprising the distinguishing elements were committed and probable cause that defendant committed them. This “exposes” the accused to a potentially greater punishment than proceeding on the included misdemeanor in the district court. Must, then, those facts be submitted to a jury, which must find that the probable cause standard was met beyond a reasonable doubt? And again, is it not, at best, indelibly confusing in this context to require a finding by a standard of beyond a reasonable doubt of the existence of facts by a standard of probable cause?

The Court of Appeals should be affirmed.

²⁵ *In re NDD*, 2025 WL 2382656, at 8 (No. 370602, Mich. Ct. App. Aug. 15, 2025).

Relief

WHEREFORE, the amicus requests that the Court of Appeals be affirmed or that leave be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief contains 4947 countable words.

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TAB/jf