

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-898 (C.P.C. No. 11CR-2723)
Clayvon Johnson,	:	
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on May 16, 2013

Ron O'Brien, Prosecuting Attorney, and *Michael P. Walton*,
for appellee.

Yeura Venters, Public Defender, and *Timothy E. Pierce*, for
appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Clayvon Johnson is appealing following his convictions on two charges of aggravated robbery with a gun specification and from the related sentences totaling 15 years of incarceration. The convictions and sentences were entered as part of a guilty plea following his being bound over from the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

{¶ 2} Two errors are assigned for our consideration:

First Assignment of Error: The juvenile court erred in accepting Appellant's stipulation to probable cause at the May 23, 2011 bindover hearing without insuring that it was being made knowingly, intelligently, and voluntarily with a full understanding of the rights Appellant waived by so doing in violation of the Due Process Clause of the Ohio and United States Constitutions.

Second Assignment of Error: The juvenile court failed to determine at the May 23, 2011 bindover hearing that probable cause existed to sustain the State's motion for it to relinquish jurisdiction in violation of Ohio R. Juv. P. 30(B), R.C. § 2152.12(A)(1)(b), and R.C. § 2152.12(I).

{¶ 3} In addressing these assignments of error, we are bound by R.C. 2152.12(A)(1)(b) and 2152.10(A)(2)(b). R.C. 2152.12(A)(1)(b) reads:

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

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

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

{¶ 4} R.C. 2152.10(A)(2)(b) reads:

The child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged.

{¶ 5} Johnson was 17 years old at the time of his bindover hearing. He was charged with committing aggravated robberies while armed with a firearm. Bindover to adult court was mandatory if there existed probable cause to believe he committed one or more of those crimes.

{¶ 6} Johnson, with the assistance of experienced criminal defense counsel, decided not to contest the issue of probable cause in juvenile court. An evidentiary hearing would have entailed having the victims of the robberies come into open court and identify Johnson as the robber. This testimony could then be used in adult court as proof

of Johnson's guilt if something happened between the juvenile court proceedings and the trial court trial or if the victims chose not to testify again in adult court.

{¶ 7} Further, proceedings in which the victim sees the alleged robber in juvenile court strengthens how sure the victim is of the accuracy of the victim's identification of the robber.

{¶ 8} The judge in the juvenile court carefully explained the purpose of the bindover hearing and the procedure to be followed since Johnson wanted to stipulate.

JUDGE BROWNE: Seventeen years old. And sir, I'm gonna need to ask a number of questions for you so you can stand up, please. All right. Mr. Johnson, I think first of all it's very important for you to understand that you have not been tried and you have not been found guilty of anything at this point, do you understand that?

CLAYVON JOHNSON: Yes, ma'am.

JUDGE BROWNE: The purpose of the hearing today was to determine where your trial would take place, juvenile court or adult court, do you understand?

CLAYVON JOHNSON: Yes, ma'am.

JUDGE BROWNE: Sir, do you understand that if I accepted your stipulation to probable cause in these cases, the cases automatically go to adult court?

CLAYVON JOHNSON: Yes, ma'am.

JUDGE BROWNE: That's your understanding?

CLAYVON JOHNSON: Yes, ma'am.

JUDGE BROWNE: You talked over the pros and cons with Mr. Cicero?

CLAYVON JOHNSON: Yes, ma'am.

JUDGE BROWNE: And you're asking this Court to accept your stipulation to probable cause?

CLAYVON JOHNSON: Yes ma'am.

JUDGE BROWNE: And then you understand that you'll still have a trial over in adult court –

CLAYVON JOHNSON: Yes, ma'am.

JUDGE BROWNE: and then you'll be found either innocent or guilty at that point and that's your wish?

CLAYVON JOHNSON: Yes ma'am.

JUDGE BROWNE: All right. Thank you. You may be seated. All right. The Court will accept the stipulation of probable cause and dismiss 812, 5057, 11448, and 6403. And when will you have paperwork for me to sign, Ms. Muncy?

PROSECUTOR MUNCY: We'll have it early this afternoon.

JUDGE BROWNE: Okay. Anything else further? Do you want to put the statement of facts on?

(May 23, 2011 Tr. 5-7.)

{¶ 9} The record does not support the assertion that Johnson was not knowingly, intelligently and voluntarily waiving his right to an evidentiary hearing to establish probable cause to believe he committed one or more aggravated robberies while armed with a firearm.

{¶ 10} The first assignment of error is overruled.

{¶ 11} The trial court accepted the stipulation of probable case in open court and then followed it with journal entries reflecting the probable cause finding.

{¶ 12} The second assignment of error is overruled.

{¶ 13} Both assignments of error having been overruled, the bindover decision of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

KLATT, P.J., and BRYANT, J., concur.
