

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150504
	:	TRIAL NO. B-1403020-A
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
NAHKEEM CHAPPELL,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Nahkeem Chappell appeals from the judgment of the Hamilton County Court of Common Pleas convicting him, after accepting his pleas of guilty, of two counts of robbery, and single counts of felonious assault and carrying a concealed weapon.

Shortly after midnight on April 30, 2014, Chappell, then 17 years old, and three others approached a man and woman walking in the Clifton neighborhood of Cincinnati. The victims observed that at least two of the perpetrators brandished handguns. One perpetrator, wearing a dark, zippered jacket with no shirt beneath, put his gun to the male victim's head. The attackers roughed up the victims and took their cell phones and the female victim's purse. They fled in a vehicle driven by a fifth perpetrator.

The victims signaled a passing police cruiser. Within minutes a vehicle matching the description given by the victims was stopped nearby. Chappell was found in the back

seat. Four loaded and operable firearms and the victims' cell phones and purse were found on the floor of the car.

Investigating officers filed three complaints against Chappell in juvenile court alleging that he was a delinquent child and had engaged in conduct that, if committed by an adult, would have constituted the aggravated robbery of each victim and carrying a concealed weapon. Pursuant to Juv.R. 30(A), the state filed petitions asking the juvenile court to transfer Chappell's cases to the general division of the common pleas court for Chappell to be prosecuted as an adult. Following a hearing on the petitions, the juvenile court found that probable cause existed for each allegation and transferred jurisdiction over each of the charges.

After accepting Chappell's guilty pleas, the trial court imposed an aggregate sentence of five years' imprisonment. At the sentencing hearing, the court stated that Chappell was entitled to 328 days of jail-time credit.

In his first assignment of error, Chappell contends that the juvenile court erred when it found that his charges were subject to mandatory transfer for criminal prosecution as an adult. Chappell first argues that the record fails to support the juvenile court's conclusion that probable cause existed to demonstrate that he had committed the acts charged. Chappell claims that the state had merely demonstrated that he had been found in a car with loaded, operable firearms, and that there was no evidence demonstrating that he had displayed, brandished, indicated possession of, or used a firearm to facilitate the commission of the offenses.

Bindover was mandatory for the aggravated-robbery offenses under R.C. 2152.10(A) as long as there was probable cause to believe that Chappell had committed the acts charged. *See* R.C. 2152.12(A) and 2152.02(CC)(1). To meet this standard, the state had to produce evidence that raised more than a mere suspicion of guilt, but it did not

have to provide evidence of guilt beyond a reasonable doubt. *See In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, 897 N.E.2d 629, ¶ 62; *see also State v. Washington*, 1st Dist. Hamilton No. C-130213, 2014-Ohio-4178, ¶ 13.

Here, Chappell had been apprehended minutes after the robbery in a car matching the description of the get-away vehicle. Loaded and operable firearms and the victims' property had been found on the floor of the car. The male victim had told police that the perpetrator who had held a gun to his head was wearing a dark, zippered jacket and no shirt underneath it. When Chappell was apprehended minutes after the robbery, his apparel had matched this description exactly. The state presented ample evidence to establish probable cause that Chappell had purposely engaged in conduct that would have constituted aggravated robbery if committed by an adult.

Chappell next argues that the juvenile court erred by transferring his carrying-a-concealed-weapon charge without first conducting an amenability hearing. Here, the carrying-a-concealed-weapon charge and the two aggravated-robbery charges arose out of a common nucleus of operative facts. The complaints all reference the same date, time, and location, and all reference the use of a firearm. Therefore, the three complaints constituted a single case for the purposes of R.C. 2152.12, and the juvenile court properly transferred the carrying-a-concealed-weapon charge without an amenability hearing. *See State v. Cockrell*, 1st Dist. Hamilton No. C-150497 (Sept. 14, 2016). The first assignment of error is overruled.

Chappell next asserts that because the mandatory-transfer provisions of R.C. Chapter 2152 are unconstitutional, the juvenile court committed plain error in transferring his cases for criminal prosecution. This court has previously rejected this argument. The second assignment of error is overruled on the authority of *State v. McKinney*, 2015-Ohio-4398, 46 N.E.3d 179, ¶ 25 and 29.

But we must sustain Chappell's third assignment of error, in which he argues that the trial court committed plain error in failing to award credit for jail-time already served. At the sentencing hearing, the trial court stated that Chappell was entitled to 328 days of jail-time credit, but the court failed to record the jail-time credit in its judgment entry. The trial court's failure constituted plain error, cognizable on direct appeal. *See State v. Bowden*, 1st Dist. Hamilton No. C-140462, 2015-Ohio-3740, ¶ 18. This error is correctable by nunc pro tunc entry. *State v. Campbell*, 8th Dist. Cuyahoga No. 99807, 2014-Ohio-493, ¶ 53.

Chappell's fourth assignment of error, in which he claims that his trial counsel was ineffective for failing to object to the transfer to the common pleas court and to that court's failure to award jail-time credit, is overruled. In light of counsel's careful cross-examination of witnesses and his vigorous argument in juvenile court against transfer, this court's prior decision that mandatory-bindover is constitutional, and our resolution of Chappell's jail-credit argument in his favor, we hold that there were no acts or omissions by counsel that deprived Chappell of a substantive or procedural right, or that rendered the proceedings fundamentally unfair. *See Lockhart v. Fretwell*, 506 U.S. 364, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993); *see also Strickland v. Washington*, 466 U.S. 668, 689, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraphs two and three of the syllabus.

Based on our resolution of the third assignment of error, we remand this case to the trial court with instructions to issue a nunc pro tunc sentencing entry crediting Chappell with 328 days of jail-time credit, and to cause that entry to be delivered to the Ohio Department of Rehabilitation and Correction without delay. The trial court's judgment is affirmed in all other respects.

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Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DEWINE and MOCK, JJ.

To the clerk:

Enter upon the journal of the court on September 14, 2016
per order of the court _____.
Presiding Judge