

No. 17-7233

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2017

GERQUAN BELTON

Petitioner

vs.

STATE OF OHIO

Respondent

**BRIEF IN OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI TO THE COURT OF APPEALS,
FIRST APPELLATE DISTRICT OF OHIO**

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QUESTION PRESENTED

I

OHIO'S STATUTORY PROVISIONS, WHICH REQUIRE JUVENILE COURTS, IN CERTAIN CASES, TO TRANSFER JURISDICTION OVER JUVENILE OFFENDERS TO THE GENERAL DIVISION FOR TRIAL AS ADULTS, DO NOT VIOLATE A JUVENILE'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

There are no parties to the proceeding other than those listed in the caption. Under Rule 29.6, Respondent states that no parties are corporations.

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ON PETITION FOR WRIT OF
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OPINIONS BELOW

The opinion for the Ohio Supreme Court is reported at *State v. Belton*, 151 Ohio St.3d 124, 2017-Ohio-7827, 86 N.E.3d 323.

The opinion for the Ohio Supreme Court's decision in *State v. Aalim* ("*Aalim II*"), on which the decision in *State v. Belton* is based is *State v. Aalim*, 150 Ohio St.3d 489, 2017-Ohio-2956, 83 N.E.3d 883.

JURISDICTIONAL STATEMENT

Petitioner Belton claims jurisdiction under 28 U.S.C. § 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case implicates the Fourteenth Amendment to the United States Constitution, which provides in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of law.

STATEMENT OF THE CASE AND FACTS

On May 23, 2013, Cincinnati Police Specialist Greg Gehring filed a complaint against Gerquan Belton alleging that Belton was a delinquent child, in that he committed an act, which if committed by an adult, would have constituted Aggravated Murder, in violation of Ohio Rev. Code Ann. § 2903.01(B), a category one offense, as specified in Ohio Rev. Code Ann. § 2152.02(BB). The complaint also alleged two firearm specifications.

P.S. Gehring also filed a complaint against Belton alleging that he was a delinquent child, in that he committed an act, which if committed by an adult, would have constituted Aggravated Robbery, in violation of Ohio Rev. Code Ann. § 2911.01(A)(1), a category two offense, as specified in Ohio Rev. Code Ann. § 2152.02(CC). The complaint also alleged a firearm specification. The offenses occurred on the same date. Belton was 16 years old at the time.

The State moved to bind the matter over to the general division of the court of common pleas for prosecution as an adult. The juvenile court conducted a bindover hearing. The juvenile court found probable cause existed for both offenses and bound Belton over to adult court as a mandatory transfer.

A Hamilton County Grand Jury indicted Belton on one count of Aggravated Murder, one count of Murder, two counts of Aggravated Robbery, and two counts of Felonious Assault, all

with firearm specifications. After trial, a jury found Belton guilty of all counts and specifications. The court ordered a pre-sentence investigation, made felony sentencing findings, and sentenced Belton to an aggregate prison term of 26 years.

Belton appealed to the First District Court of Appeals, asserting six assignments of error. The court of appeals overruled each of the assignments and affirmed the convictions and sentence. Belton appealed to the Ohio Supreme Court. On the authority of *State v. Aalim*, 150 Ohio St.3d 489, 2017-Ohio-2956, 83 N.E.3d 883, (“*Aalim I*”), the Ohio Supreme Court affirmed the First District’s decision affirming Belton’s convictions and upholding Ohio’s mandatory transfer statutes.

The facts presented during the bindover hearing, which demonstrated that there was probable cause to believe that Belton committed the offenses of aggravated murder, with firearm specifications, and aggravated robbery, with firearm specifications, are detailed below. Following these are the facts as elicited at trial, which supported the jury’s guilty verdicts.

Bindover Hearing

Belton stipulated that his date of birth was May 18, 1997, and that he was 16 at the time of the offenses at issue.

Jeffrey Payne testified that, on May 14, 2013, he was sitting on a porch on Elberon Avenue with his uncle, his friends, Mike (O’Neal) and Deon, and Belton, whom he called “G.D.” Belton was wearing a gray and red hoodie. Payne had a .38 caliber revolver with him and gave it to O’Neal, who had asked to see it. O’Neal and Belton then ran off with the gun. Soon after, Payne heard a gunshot. A few minutes after that, O’Neal and Belton came back, and Payne got into a car with them. Belton now had the gun and told Payne that he had shot “a guy” and

had gotten \$10 and a cigar from him. When Payne asked O'Neal how Belton ended up with the gun, O'Neal said he had given it to him.

Adrian Washington testified that he was with his friend Scott Kakaris, the murder victim, on the night of May 14, 2013. He and Kakaris had gone to the home of a marijuana dealer, who lived behind Kakaris, and bought \$10 worth of drugs. As they were walking back to Kakaris' house, two men in their early twenties approached them. One of them said, "You all need to know what this is. Lay it down." Washington understood this to mean that they were being robbed.

Washington testified that the man wearing a gray and red, or gray and orange, hoodie approached Kakaris and had a gun. Washington testified, "I seen the gun. I seen the man approaching Scott with the gun." Washington ran off and was chased by the other man, who was wearing all black. When Washington stopped and realized he was not being chased anymore, he turned around and heard a gunshot. Seconds later, he saw two men "going toward the top of the hill behind the apartment." Washington went to Kakaris, who said, "They shot me. They shot me." Washington thought Kakaris had been shot in the shoulder and was going to be all right. After helping Kakaris into the house, Washington left because he was wanted on misdemeanor charges.

Scott Kakaris died from a single gunshot wound to his arm and torso from a bullet that perforated his liver, diaphragm, and vena cava.

Trial

On May 14, 2013, at 11:16 p.m., police were dispatched to 545 Elberon Avenue in the Price Hill neighborhood of Cincinnati, Ohio, for a man shot. Police found Scott Kakaris lying on

the living room floor of an apartment there. Kakaris was taken to the hospital but died from blood loss caused by a gunshot wound to his arm and torso.

Kakaris' girlfriend, Sabrina Lafferty, testified that earlier Kakaris had left with Adrian Washington to buy drugs nearby. She heard a gunshot and went to the window to look. About a minute later, Kakaris came inside, holding his arm and bleeding. Lafferty could see that his injury went through to his chest. Kakaris was in and out of consciousness. A neighbor called 911, and police arrived in minutes.

Outside, police found a trail of blood between the buildings which led into Kakaris' apartment. Police located no shell casings, which indicated that the weapon used was a revolver. The bullet recovered from Kakaris during an autopsy was consistent with a bullet used in a .38 special or .357 magnum revolver.

Kakaris' friend, Adrian Washington, had gone to Kakaris' home that night around 11:00 p.m. Kakaris wanted to buy \$10 worth of marijuana, so Washington went with him to a nearby dealer's house. On their way back, they saw two black men, one of whom had a gun. The man pointing the gun was wearing a gray and orange, or gray and red, hoodie. The other man wore all black. Washington did not recognize them. The man with the gun pointed it at them and said, "You niggers know what this is." Washington could not see their faces.

Washington ran and told Kakaris to run as well. The man wearing all black chased Washington. When Washington stopped in front of Kakaris' apartment building, he saw the same two men run behind apartment buildings and enter the building across the street. Washington turned around and saw Kakaris coming from behind him, holding his arm and saying he had been shot. Washington helped him inside.

Shawn Byrd testified that he had driven over to nearby Elberon Avenue the night of the shooting and walked up to a front porch where his nephew Jeff Payne, Belton, and Mike O'Neal were talking. Belton was "hyped up." He heard Belton say something like, "Ooh, I'm ready. Come on. Let's go." Byrd took it to mean that they were going to rob someone. "From the way Gerquan was talking, like he wanted to shoot somebody. Like, come on, ooh, I'm ready." Byrd said, "I couldn't think nothing but something bad was getting ready to go down."

Byrd testified that Payne gave O'Neal a black revolver. Belton and O'Neal left and followed a man across the street. Byrd said that Payne stayed with him on the porch. Minutes later, Byrd heard a gunshot and saw O'Neal and Belton running back up Elberon toward the porch. Belton looked scared. O'Neal's car was in the driveway, and he and Belton got in the car. O'Neal was driving. Belton told Payne to get in the car, and he did. Byrd admitted that previously he lied to police about Payne getting in the car with O'Neal and Belton because he did not want his nephew to get in trouble. Byrd testified that O'Neal was wearing a baseball hat.

Jeffrey Payne testified that he knew both O'Neal and Belton. Payne moved back and forth between living with O'Neal on Seton in Price Hill and also with Deon on Elberon. On May 14, 2013, he was at Dion's on Elberon. Payne had a .38 revolver at the time, and O'Neal and Belton knew it. Belton was on the porch talking about robbing a "weed dude." Belton had said that he needed money and that he was not leaving without getting some.

Payne testified that O'Neal took the gun from him, and O'Neal and Belton "took off running" down the street after "two guys." Minutes later, Payne heard a gunshot and saw O'Neal and Belton running back across the street and getting into O'Neal's car. Payne got in with them. Payne testified, "I got in the car because it was my gun, and I asked him, what you all do? Like what happened, like? GD said he shot a guy and got \$10 and a rillo from him." Payne saw that

Belton had the gun. Payne said to them, "I mean, I told them, like, you all going to have to do something; like this ain't my gun no more; it's yours; I don't know what you all are supposed to do." Payne testified that Belton acted, "Like hyped. He was kind of hyped, like proud of shooting someone, you feel me?" "He ain't say a lot about it. He just told me what he went over there and did." Payne heard O'Neal ask Belton why he did it. "But Mike asked him, like, what did you do it for?" Then Belton asked O'Neal if he wanted to split the \$10.

Payne was concerned that Belton had killed the man, but did not know until the next day that Kakaris had died. Payne admitted he lied to police at first because the gun was his, and he was afraid he would get in trouble. Payne said Belton as wearing a red and black jacket.

Michael O'Neal, who was also indicted for the murder of Kakaris, testified at trial. On May 14, 2013, O'Neal was on a porch on Elberon with Jeff Payne, Payne's uncle, and Belton, whom he knew as "G.D." O'Neal also testified that he was wearing all black clothing and a baseball hat.

O'Neal testified that he and Belton were going to rob a man across the street who sold marijuana. He said Belton was acting "desperate." O'Neal also needed money. The two noticed a "runner" for the marijuana dealer going back and forth across the street. O'Neal asked Payne for his .38 revolver, and they chased after the runner but could not catch up to him. Not wanting to be the one with the gun, O'Neal handed it off to Belton. O'Neal and Belton then saw two other men, one white and one black, go into the drug dealer's building. They waited for them to come back outside. Their plan was to have the two men take O'Neal and Belton to the dealer's apartment so they could rob the dealer. When the two men came out of the dealer's building, O'Neal and Belton approached them. The black man got scared and ran, and O'Neal chased him. Belton remained with the white man, Kakaris. O'Neal testified to what happened next, "As I was

giving chase, I hear a shot. And that's when I froze and I ran back. And as I ran back, I see the white guy on the ground moaning and groaning. And that's when GD asked him where was the money." Kakaris said, "Here you go. Have it." O'Neal and Belton then ran to O'Neal's car. Payne also got in. O'Neal saw that Belton had \$10 and some marijuana.

Belton said he shot the man in the arm but had been aiming for his head. Belton offered to split the \$10 and the drugs with him, but O'Neal declined. They went back to O'Neal's apartment on Seton. When asked how Belton was acting after the shooting, O'Neal answered, "I would say boastful. * * * Like I would say like bragging, bragging, happy." Belton was even playing with the gun in front of the bathroom mirror.

O'Neal admitted he initially lied to the police about Belton being at his house, and that he even knew Belton. Later, he admitted to being part of the robbery. O'Neal said he threw the gun in the woods the day after the shooting.

REASONS FOR DENYING THE WRIT

OHIO'S STATUTORY PROVISIONS, WHICH REQUIRE JUVENILE COURTS, IN CERTAIN CASES, TO RELINQUISH JURISDICTION OVER JUVENILE OFFENDERS AND TO TRANSFER THEM TO THE GENERAL DIVISION FOR TRIAL AS ADULTS, DO NOT VIOLATE A JUVENILE'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

Belton's case does not warrant this Court's jurisdiction because Ohio's mandatory juvenile transfer laws are constitutionally sound under the Fourteenth Amendment to the United States Constitution.

The Ohio Supreme Court's decision in *Belton* was decided on the authority of *State v. Aalim*, 150 Ohio St.3d 489, 2017-Ohio-2956, 83 N.E.3d 883 ("*Aalim II*"), which held that

Ohio's mandatory bindover statutes comply with the due process and equal protection guarantees of the United States Constitution.

The matter of *Aalim II*, decided May 25, 2017, (at issue here) came about as a result of the Ohio Supreme Court's reconsideration of *State v. Aalim*, 150 Ohio St.3d 463, 2016-Ohio-8278, 83 N.E.862 ("*Aalim I*"), decided December 22, 2016, wherein the court had held that the Ohio Constitution requires that juveniles, who are subject to mandatory bindover, receive an "amenability" hearing.

In reaching its decision in *Aalim II*, the Ohio Supreme Court considered the constitutional authority of the Ohio General Assembly to define the jurisdiction of common pleas courts, as well as Belton's arguments regarding due process – procedural and substantive – fundamental fairness, the rational basis test, and equal protection.

In *Aalim II*, the Ohio Supreme Court held that General Assembly has the exclusive authority under the Ohio Constitution to create a narrow exception to juvenile courts' exclusive subject matter jurisdiction over cases involving juveniles and require mandatory bindover to adult court those juveniles who committed qualifying offenses when they were 16 or 17 years old, *without* holding an amenability hearing. The court also held that the mandatory bindover to adult court of juveniles who committed qualifying offenses when they were 16 or 17 years old does not violate their due process rights; that mandatory bindovers are not fundamentally unfair; that a juvenile's equal protection challenge to mandatory bindover is subject to rational basis, *not* strict scrutiny review; and the mandatory bindover of a juvenile to adult court without amenability hearing does not violate his equal protection guarantees. *Aalim II*.

Jurisdiction and the Ohio General Assembly

The Ohio General Assembly has exclusive authority to define the jurisdiction of the courts of common pleas. This authority is granted to the General Assembly by Article IV, Section 4(B) of the Ohio Constitution. In *Aalim II*, the court recognized that its decision in *Aalim I* was erroneous in that it failed to consider Article IV, Section 4(B) of the Ohio Constitution. *Aalim II* at ¶ 1. In *Aalim II*, the court pointed out that the General Assembly exercised its authority “when it vested in the juvenile courts ‘exclusive jurisdiction over children alleged to be delinquent for committing acts that would constitute a crime if committed by an adult.’” *Aalim II* at ¶ 2, citing *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599, 923 N.E.2d 584, ¶ 11, citing Ohio Rev. Code Ann. § 2151.23(A)10. And, likewise, the court correctly noted that the General Assembly exercised its authority when it later enacted § 2152.12, which created “a narrow exception to the general rule that juvenile courts have exclusive subject matter jurisdiction over any case involving a child.” *Aalim II* at ¶ 2, quoting *State v. Wilson*, 73 Ohio St.3d 40, 43, 652 N.E.2d 196 (1995). Under Ohio Rev. Code Ann. § 2152.12, a juvenile who commits a “qualifying offense,” and who meets the specified age requirements, is automatically transferred to the jurisdiction of adult court. *Aalim II* at ¶ 2.

Ohio Rev. Code Ann. § 2152.10(A) sets forth which juveniles are subject to mandatory bindover and provides:

(A) A child who is alleged to be a delinquent child is eligible for mandatory transfer and shall be transferred as provided in section 2152.12 of the Revised Code in any of the following circumstances:

(1) The child is charged with a category one offense and either of the following apply:

(a) The child was sixteen years of age or older at the time of the act charged.

(b) The child was fourteen or fifteen years of age at the time of the act charged and previously was adjudicated a delinquent child for committing an act that is a category one or category two offense and was committed to the legal custody of the department of youth services upon the basis of that adjudication.

(2) The child is charged with a category two offense, other than a violation of section 2905.01 of the Revised Code, the child was sixteen years of age or older at the time of the commission of the act charged, and either or both of the following apply:

(a) The child previously was adjudicated a delinquent child for committing an act that is a category one or a category two offense and was committed to the legal custody of the department of youth services on the basis of that adjudication.

(b) 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.

Belton was charged in juvenile court with committing Aggravated Murder, a category one offense, and Aggravated Robbery, a category two offense. He was also charged with using a firearm to commit the offenses. After a hearing, the juvenile court found that probable cause existed to believe that Belton had committed the offenses. Belton was 16 years old at the time. The Ohio statutes require that juvenile court transfer a juvenile to adult court automatically under these circumstances. Ohio Rev. Code Ann. § 2152.12(A)(1)(b)(ii). *See Aalim II* at ¶ 13.

Upon reconsideration, the court found that its decision in *Aalim I* “usurped the General Assembly’s exclusive constitutional authority to define the jurisdiction of the courts of common pleas by impermissibly allowing a juvenile-division judge discretion to veto the legislature’s grant of jurisdiction to the general division of a court of common pleas over this limited class of juvenile offenders.” *Aalim II* at ¶ 3. Accordingly, the court granted the state’s motion for reconsideration of *Aalim I*. The Ohio Supreme Court proceeded to consider the original questions concerning the constitutionality of the mandatory bindover provisions under the due process and

equal protection clauses of the Fourteenth Amendment to the United States Constitution, which are analogous to provisions found in the Ohio Constitution as presented in *Aalim I*.

Due Process and Fundamental Fairness

Like Belton, Aalim claimed that juveniles have a fundamental due process right to an amenability hearing conducted by a juvenile court judge before their cases can be transferred to the general division of the court of common pleas. Aalim also claimed it was fundamentally unfair for the General Assembly “to grant jurisdiction over a special class of juvenile offenders to the general division of the common pleas courts.” *Aalim II* at ¶ 14. Belton argues the same. And, like Aalim, Belton fails to cite to a single case in which a court has found that an amenability hearing is a constitutional requirement to transfer in situations where a state legislature has enacted a mandatory transfer statute. In fact, 26 other states have mandatory juvenile transfer statutes similar to Ohio’s. The federal government has its own under 18 U.S.C. § 5032. All such statutory schemes that mandate that certain juveniles be transferred to adult court have been upheld by the federal courts. *State v. McKinney*, 2015-Ohio-4398, 46 N.E.3d 179, ¶ 17 (1st Dist.), citing *United States v. Juvenile*, 228 F.3d 987 (9th Cir.2000); *Woodard v. Wainwright*, 556 F.2d 781 (5th Cir.1977).

Nothing in Ohio’s history and traditions suggests that due process requires that juveniles receive an individualized determination about where their case is heard. *Aalim II* at ¶ 46 (DeWine, J., concurring). In fact, Ohio’s transfer procedures, therefore, are merely “procedural prerequisites” rather than substantive or fundamental rights. *State v. Adams*, 10th Dist. Franklin No. 12AP-83, 2012-Ohio-5088, ¶ 20, citing *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, 775 N.E.2d 829, ¶ 17 (wherein the Ohio Supreme Court held that retroactive application of the 1997 changes in the juvenile transfer procedures, from all transfers being discretionary to some

transfers being mandatory, was permissible because the changes in the law “merely removed the procedural prerequisite of a juvenile-court proceeding.”)

There is a fundamental rule that legislative enactments are entitled to a strong presumption of constitutionality. *State v. Weitbrecht*, 86 Ohio St.3d 368, 370, 1999-Ohio-113, 715 N.E.2d 167, 169; *West Coast Hotel v. Parrish*, 300 U.S. 379, 398, 57 S.Ct. 578, 81 L.Ed. 703 (1937). “Any reasonable doubt regarding the constitutionality of a statute must be resolved in favor of the legislature’s power to enact the law. Thus, the legislation will not be struck down unless the challenger establishes that it is unconstitutional beyond a reasonable doubt.” (Citation omitted.) *Weitbrecht* at 370. *See also West Coast Hotel v. Parrish* at 398.

The Ohio Supreme Court has held that the Due Course of Law Clause found in Article I, Section 16 of the Ohio Constitution is equivalent to the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Aalim* at ¶ 15, citing *State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448, ¶ 11. The court used this Court’s substantive due process analysis to address *Aalim*’s claims, recognizing that “[t]he touchstones of the court’s analysis of substantive-due-process claims are whether the asserted right is grounded in history and tradition and whether the right protects against government intrusion into private conduct.” *Aalim II* at ¶ 21, citing *Reno v. Flores*, 507 U.S. 292, 303, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993); *Lawrence v. Texas*, 539 U.S. 558, 578, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003).

The Ohio Supreme Court noted, “First, the court has ‘observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition’ * * * and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed.’ ” *Aalim II* at ¶ 16, citing *Washington v. Glucksberg*, 521 U.S. 702, 720-721, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997),

quoting *Moore v. E. Cleveland*, 431 U.S. 494, 503, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (plurality opinion), and *Palko v. Connecticut*, 302 U.S. 319, 326, 58 S.Ct. 149, 82 L.Ed. 288 (1937). Next, the Ohio Supreme Court recognized that this Court has “required in substantive-due-process cases a ‘careful description’ of the asserted fundamental liberty interest.” *Aalim II* at ¶ 16, citing *Glucksberg* at 721, quoting *Reno v. Flores*, 507 U.S. 292, 302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993). And finally, the Ohio Supreme Court noted that this Court “has cautioned against using the Fourteenth Amendment to define new fundamental liberty interests without “concrete examples involving fundamental rights found to be deeply rooted in our legal tradition.” *Aalim II* at ¶ 16, citing *Glucksberg* at 721.

There is no constitutional right for a juvenile to be tried in juvenile court, nor is there a constitutional right to an amenability hearing. See *United States v. Juvenile*, 228 F.3d 987 (9th Cir.2000), citing *McKeiver v. Pennsylvania*, 403 U.S. 528, 545, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971); *United States v. Lopez*, 860 F.3d 201 (4th Cir.2017). And bindover hearings do not implicate a fundamental right. See *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, 775 N.E.2d 829. The General Assembly first provided for statewide juvenile courts in 1937. Amenability hearings were added in 1969. See *Aalim II* at ¶17. Because the Fourteenth Amendment predates “the creation of juvenile courts in Ohio and throughout the United States, these provisions cannot have created a substantive right to a specific juvenile-court proceeding.” *Aalim II* at ¶ 17. The Ohio Supreme Court concluded that “[t]herefore, an amenability hearing cannot be “deeply rooted in this Nation’s history and tradition” and ““implicit in the concept of ordered liberty.”” *Aalim* at ¶ 17, citing *Moore* at 503, quoting *Palko* at 326.

Belton fails to identify any express right to be tried as a juvenile. He only claims that such a right is implied under the due process guarantees of fundamental fairness. Belton also

fails to show he has a constitutional right to an amenability hearing before being tried in the general division of the court of common pleas. Rather, his position is best characterized as advocating for the expansion of the realm of substantive due process, something appellate courts have been reluctant to do. *Aalim II* at ¶ 47, (DeWine, J., concurring), citing *Collins v. Harker Hts.*, 503 U.S. 115, 125, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992).

Belton conflates procedural due process with substantive due process, which is problematic. As the Ohio Supreme Court pointed out,

But to transform fundamental fairness into a substantive standard simply invites courts to substitute their policy preferences for those of the legislature without any standards to guide such a task. It may well be a good idea to end all mandatory bindovers. But it is not our call to make. Nothing in our Constitution ordains that we, rather than the people's elected representatives, get to make that decision.

Aalim at ¶ 49-50 (DeWine, J., concurring). And assuming, arguendo, that some liberty interest exists in being tried in juvenile court, Belton cannot show that his due process rights have been violated. “[W]hen the legislature passes a law of generalized application, the legislative process provides all the process that is due.” *State v. McKinney*, 2015-Ohio-4398, 46 N.E.3d 179 ¶ 15 (1st Dist.), citing Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law*, Section 17.8 (2015).

Every Ohio appellate court that has considered the issue has rejected the same due process challenge to the mandatory transfer provisions that Belton now advances. *See, e.g., State v. McKinney*, 2015-Ohio-4398, 46 N.E.3d 179 ¶ 15 (1st Dist.), ¶ 11-25; *State v. Anderson*, 2nd Dist. Montgomery No. 25689, 2014-Ohio-4245, ¶ 66-76; *State v. Kelly*, 3rd Dist. Union No. 14-98-26, 1998 WL 812238 (Nov. 18, 1998), *8, *10; *State v. Mays*, 8th Dist. Cuyahoga No. 100265, 2015-Ohio-3815, ¶ 42-45, *6; *State v. Collins*, 9th Dist. Lorain No. 97CA00684, 1998

WL 289390 (June 3, 1998), * 2; *State v. J.T.S.*, 10th Dist. Franklin No. 14AP-516, 2015-Ohio-1103, ¶ 39-45; *State v. Lane*, 11th Dist. Geauga No. 2013-G-3144, 2014-Ohio-2101, ¶ 51-68; *State v. Simon*, 12th Dist. Butler No. CA2014-06-139, 2015-Ohio-970, ¶ 15-16.

Mandatory transfer laws in other states have likewise withstood due-process attacks. *See, e.g., State v. Angel C.*, 245 Conn. 93, 108-109, 715 A.2d 652 (1998); *Vega v. Bell*, 47 N.Y.2d 543, 550-551, 393 N.E.2d 450 (1979); *People v. Patterson*, 2014 IL 11512, 25 N.E.3d 526, ¶ 93-98; *Manduley v. Superior Court*, 27 Cal.4th 537, 546, 41 P.3d 3 (2002); *State v. Tyler*, 286 Kan. 1087, 1097, 191 P.3d 306 (2008); *State v. Cain*, 381 So.2d 1361, 1363-1365 (Fla.1980); *Caldwell v. Commonwealth*, 133 S.W.3d 445, 452-453 (Ky.2004).

Here, Belton's rights to due process and equal protection were satisfied when the juvenile court followed the General Assembly's procedures and transferred his case to the general division of the court of common pleas. Fundamental fairness was achieved when Belton received a hearing before a juvenile court judge, who determined his age at the time of the offense and that probable cause existed to believe that he had committed the offenses charged in the complaints, before transferring the case from the juvenile division. *See Aalim II* at ¶ 27.

Equal Protection

Aalim argued that juveniles were treated as a suspect class – a classification that triggers strict scrutiny. He also argued that the age-based distinctions found in the mandatory bindover statutes are not rationally related to the purpose of juvenile proceedings. Here, Belton essentially makes the same arguments, and these were rejected by the Ohio Supreme Court. *Aalim II* at ¶ 28. Where a statute does not implicate, or interfere with a fundamental right, or operate to the disadvantage of a suspect class, the statute will withstand constitutional scrutiny, if it is rationally

related to a legitimate government interest. *State v. Thompkins*, 75 Ohio St.3d 558, 561, 1996-Ohio-264, 664 N.E.2d 926.

First, the Ohio Supreme Court noted that the equal protection requirements of the United States Constitution and the Ohio Constitution are equivalent. *Aalim II* at ¶ 29. Next, the court determined that the proper standard of review was rational-basis. *Aalim II* at ¶ 34. The court recognized that “[w]hen legislation infringes upon a fundamental constitutional right or the rights of a suspect class, strict scrutiny applies,” and “[i]f neither a fundamental right nor a suspect class is involved, the rational-basis test is used. *Aalim II* at ¶ 31.

“The basic meaning of ‘equal protection of the laws’ is that ‘all persons similarly situated should be treated alike.’ ” *Matter of J.R.F.*, 4th Dist. Vinton No. 16CA701, 2017-Ohio-8125, ¶ 17, *appeal not allowed accepted sub nom. In re J.R.F.*, 151 Ohio St.3d 1515, 2018-Ohio-365, 90 N.E.3d 952, citing *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). Equal protection requires that individuals be treated in a manner similar to others in like circumstances. *See McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1, ¶ 6. Equal protection guarantees do not, however, preclude the state from treating different classes of persons differently. *See Eisenstadt v. Baird*, 405 U.S. 438, 446–447, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972). Equal protection prohibits legislation that treats “similar groups differently based on criteria that are unrelated to the purpose of the law.” *Matter of J.R.F.* at ¶ 17, quoting *State v. Noling*, 149 Ohio St.3d 327, 2016-Ohio-8252, 75 N.E.3d 141, ¶ 12, citing *Johnson v. Robison*, 415 U.S. 361, 374, 94 S.Ct. 1160, 39 L.Ed.2d 389 (1974).

“The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude,

and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes.” (Citations omitted.) *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440, 105 S. Ct. 3249, 3254, 87 L. Ed. 2d 313 (1985). Moreover, this Court has found that “age is not a suspect classification under the Equal Protection Clause.” *Aalim II* at ¶ 33, citing *Gregory v. Ashcroft*, 501 U.S. 452, 470, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991).

In Ohio, juveniles have never been considered a suspect class. Further, they have no fundamental right to an amenability hearing, because the right to such a hearing is not “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Aalim II* at ¶ 33, quoting *Moore, supra*, at 503, and quoting *Palko, supra*, at 325. The Ohio Supreme Court concluded, “Because the mandatory-bindover statutes do not involve a fundamental right or a suspect class, we review the statutes under the rational-basis test, which requires us to uphold the statutes if they are rationally related to a legitimate governmental purpose.” *Aalim II* at ¶ 34. And, under rational-basis review, the court stated, [W]e grant “substantial deference” to the General Assembly’s predictive judgment.” *Aalim II* at ¶ 34. *See also Turner Broadcasting Sys. v. Fed. Communications Comm.*, 520 U.S. 180, 195, 117 S.Ct. 1174, 137 L.Ed.2d 369, 391 (1997). The Ohio Supreme Court previously has echoed this Court and stated, “The state does not bear the burden of proving that some rational basis justifies the challenged legislation; rather, the challenger must negative every conceivable basis before an equal protection challenge will be upheld.” *State v. Williams*, 88 Ohio St.3d 513, 531, 2000-Ohio-428, 728 N.E.2d 342, citing *Heller v. Doe*, 509 U.S. 312, 320, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993).

In order to address extraordinary cases involving older or violent juvenile offenders, the Ohio General Assembly crafted “a narrow exception to the usual criteria for determining

amenability in certain situations where an older child has been accused of an inherently dangerous offense,” when it enacted laws allowing for mandatory bindover procedures. *Aalim II* at ¶ 36, quoting *State v. Hanning*, 89 Ohio St.3d 86, 92, 2017-Ohio-2956, 728 N.E.2d 1059. This exception is rationally related to the legitimate governmental purpose of increased punishments for serious juvenile offenders. Accordingly, it does not violate juveniles’ equal protection guarantees. *Aalim II* at ¶ 37.

The statute at issue here is plainly related to the purposes of increased punishment for serious juvenile offenders and the protection of the public. The Ohio Supreme Court reasoned, “Prosecuting older juveniles who commit serious crimes in the general division of a common pleas court is rationally related to the legitimate state interest of fighting rising juvenile crime because it allows the most serious juvenile offenders to be prosecuted in the general division, where harsher punishments are available.” Moreover, the court “has recognized that ‘harms suffered by victims are not dependent upon the age of the perpetrator.’ ” *Aalim II* at ¶ 36, quoting *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 74.

The General Assembly’s decision to treat juvenile offenders, who commit violent crimes using guns, differently than younger offenders creates a classification rationally related to the legitimate state interest in protecting society and deterring such crimes. The Ohio General Assembly had a legitimate interest in recognizing and addressing violent crimes committed by older juveniles “who are potentially more streetwise, hardened, dangerous, and violent.” *J.T.S.*, 10th Dist. Franklin No. 14AP-516, 2015-Ohio-1103, ¶ 45. Article IV of the Ohio Constitution mandates that the General Assembly define the jurisdiction of all divisions of the common pleas courts in Ohio, including the juvenile division. Under this authority, “the General Assembly could rationally achieve the legitimate state interest of decreased juvenile crime by redefining the

jurisdiction of the juvenile divisions of the common pleas courts,” including by creating the narrow exception at issue here. *Aalim II* at ¶ 37.


Because the mandatory transfer provisions in Ohio Rev. Code Ann. § 2152.10 and 2152.12 do not infringe upon substantive rights, do not adversely affect a suspect class, and are rationally-related to a legitimate government interest, they do not offend a juvenile’s right to equal protection of the law. The statutes are constitutional.

CONCLUSION

This case does not raise a federal constitutional issue or a compelling reason sufficient to invoke this Court’s jurisdiction.

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