[Cite as *State v. Beauregard*, 2015-Ohio-1021.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101418

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MARCUS BEAUREGARD

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-571433-A

BEFORE: McCormack, J., Celebrezze, A.J., and Blackmon, J.

RELEASED AND JOURNALIZED: March 19, 2015

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TIM McCORMACK, J.:

{¶1} Defendant-appellant, Marcus Beauregard, a juvenile, appeals from his conviction in the Cuyahoga Court of Common Pleas of aggravated robbery, robbery, felonious assault, and failure to comply. He argues he was improperly transferred from the juvenile court to adult court. After a review of the record and applicable law, we affirm the judgment of the trial court.

Substantive Facts and Procedural History

{¶2} Beauregard, 17, and codefendant, Arran Mays, 16, were involved in a series of robberies on November 4, 2012, involving three separate victims — Rita Stasienko, Keionna Speights, and Navetta Clark. In Mays's appeal, *State v. Mays*, 2014-Ohio-3815, 18 N.E.3d 850 (8th Dist.), based on the testimony given at the probable cause hearing, this court provided an account of robbery incidents, which we summarize as follows:

{¶3} On November 4, 2012, at 6:00 a.m., 66-year-old Rita Stasienko walked from her home in Cleveland to a nearby bus stop. When she arrived at the bus stop, she was robbed at gunpoint by two men wearing masks. After her purse was taken, one of the individuals hit her in the head with his gun and fired it into the air several times. The individuals fled the scene in a stolen vehicle. Fifteen to 20 minutes later, Keionna Speights was walking to her bus stop when a vehicle pulled up next to her. A man brandishing a gun jumped out of the backseat of the vehicle and demanded her purse.

{¶4} Officer Sedlack responded to a dispatch for shots fired in the area of East 75th and Canton Avenue. He interviewed Rita Stasienko, who provided him with a description of the suspects and the vehicle in which they fled. While completing his investigation into the robbery of Stasienko, Officer Sedlack received a dispatch regarding the suspects' vehicle possibly being involved in additional robberies.

{¶5} Sergeant Lentz received a dispatch indicating that three males in a Toyota had committed three robberies in the area. While patrolling, Sgt. Lentz observed a vehicle matching the description driving north on East 124th Street. When Sgt. Lentz attempted to get closer to the vehicle, it took off at a high speed. Sgt. Lentz pursued the vehicle for several minutes before the vehicle stopped near East 129th Street and the three individuals inside the vehicle "bailed" and attempted to flee the scene. The driver, later identified as Marcus Beauregard, jumped out of the vehicle holding a firearm in his hand as he ran. Arran Mays, later identified as the individual sitting in the back seat of the vehicle, also fled. Beauregard and Mays were apprehended and arrested. *Mays* at ¶ 2-8.

{¶6} On December 10, 2012, complaints were filed against Beauregard and Mays in the juvenile court, alleging the two juveniles committed offenses that if they were adults would have constituted three counts of aggravated robbery, with one-and-three-year firearm specifications, one count of receiving stolen property with one-year firearm specification, and one count of discharge of a firearm on or near a prohibited premises.

{¶7} The state subsequently requested a transfer to the general division of the common pleas court so that Beauregard and Mays could be tried as adults. After a joint probable cause hearing, the juvenile court relinquished jurisdiction and transferred the case to the general division.

{¶8} Beauregard was then indicted by a grand jury on a 12-count indictment: three counts of kidnapping (Counts 1, 3, and 5); three counts of aggravated robbery (Counts 2, 4, and 6); felonious assault of Rita Stasienko (Count 7); theft of an elderly person (Count 8); discharge of a firearm on or near a prohibited premises (Count 9); receiving stolen property (Count 10); and two counts of failure to comply (Counts 11 and 12). All counts included

one-and-three-year firearm specifications, except for receiving stolen property, which had one-year firearm specification.

{¶9} Beauregard, through counsel, filed a motion to dismiss, alleging proper bindover procedure was not followed. The trial court dismissed the motion. Subsequently, under a plea agreement, Beauregard pleaded guilty to the following four counts: (1) Count 2 (regarding victim Keionna Speights), which was amended as robbery with both firearm specifications deleted, but incorporated victim Navetta Clark; (2) Count 6 (aggravated robbery of victim Rita Stasienko) with one- and three-year-firearm specifications; (3) Count 7 (felonious assault of victim Rita Stasienko) with both firearm specifications deleted; and (4) Count 12 (failure to comply) with one- and-three-year firearm specifications.

{¶10} The trial court sentenced Beauregard to three years in prison on Count 6 (aggravated robbery of Rita Stasienko), consecutive to three years on the firearm specifications. The court also imposed a consecutive nine-month term on Count 12 (failure to comply). The court in addition imposed two years each on Count 2 (robbery of victims Keionna Speights and Navetta Clark) and Count 7 (felonious assault of victim Rita Stasienko), to run concurrently with the sentence on Count 6. Beauregard received a total of six years and nine months of prison time. He filed a delayed notice of appeal.

{¶11} On appeal, Beauregard raises three assignments of error. We begin with a brief review of Ohio's mandatory bindover procedure.

Mandatory Bindover

{¶12} "Juvenile courts possess exclusive jurisdiction over children alleged to be delinquent for committing acts that would constitute a crime if committed by an adult." *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599, 923 N.E.2d 584, ¶ 11. Under certain circumstances,

however, "the juvenile court has the duty to transfer a case, or bind a juvenile over, to the adult criminal system." *Id.*, citing R.C. 2152.10 and 2152.12. Under Ohio's juvenile justice system, there are two types of transfer: mandatory and discretionary.

{¶13} "Discretionary transfer, as its name implies, allows judges the discretion to transfer or bind over to adult court certain juveniles who do not appear to be amenable to care or rehabilitation within the juvenile system or appear to be a threat to public safety." *State v. Hanning*, 89 Ohio St.3d 86, 90, 728 N.E.2d 1059 (2000).

{¶14} Mandatory transfer, on the other hand, removes discretion from judges in the transfer decision in certain situations. *Id.* Mandatory transfer is governed by R.C. 2152.10(A), which requires the juvenile court to transfer the case to adult court under certain situations provided in R.C. 2152.12.

{¶15} One such mandatory transfer situation is where, as in this case, the juvenile is charged with a "category two" offense, the juvenile is 16 or older at the time of the offense, and the juvenile is alleged to have brandished or used a firearm to commit an offense. R.C. 2152.10(A)(2)(b). Before mandatory bindover occurs, however, the juvenile court must hold a hearing to determine if "there is probable cause to believe that the child committed the act charged." R.C. 2152.12(A)(1)(b)(ii).[1]

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[1]2152.12(A)(1)(b)(ii) provides:

> (b) 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:
>
> * * *
>
> (ii) Division (A)(2)(b) of section 2152.10 of the Revised Code requires the

Constitutional Challenges

{¶16} Under the first and second assignments of error, Beauregard claims that mandatory bindover provisions set forth in R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b), which authorize a transfer to adult court without an amenability hearing, violate his constitutional rights to due process and equal protection.

{¶17} Beauregard's codefendant Mays raised similar constitutional claims in his appeal. This court reasoned that the constitutional claims were not raised in the juvenile or the trial court, and therefore waived. *Mays*, 2014-Ohio-3815, 18 N.E.3d 850, at ¶ 43, citing *State v. Jones*, 8th Dist. Cuyahoga No. 88493, 2007-Ohio-3265. In addition, this court noted that the defendant waived his right to challenge the constitutionality of the mandatory bindover statutes by pleading guilty. *Mays* at ¶ 44, citing *State v. Bradford*, 5th Dist. Stark No. 2013 CA 00124, 2014-Ohio-904, ¶ 76-79.

{¶18} Beauregard argues that his constitutional challenge impacts the trial court's jurisdiction, and, as a jurisdictional matter, it cannot be waived. Regardless of whether Beauregard has preserved his constitutional claims, we note that, as we have already pointed out in *Mays*, our sister districts have consistently upheld the constitutionality of the mandatory bindover provisions. We cited the precedent from several appellate districts that have held that the mandatory bindover provisions do not violate due process or equal protection rights under the Fourteenth Amendment. *Id*. at ¶ 45, citing *State v. Ramey*, 2d Dist. Montgomery No. 16442, 1998 Ohio App. LEXIS 2617 (May 22, 1998); *State v. Agee*, 133 Ohio App.3d 441, 728 N.E.2d

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mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

442 (2d Dist.1999); *State v. Kelly*, 3d Dist. Union No. 14-98-26, 1998 Ohio App. LEXIS 5630 (Nov. 18, 1998); *State v. Lee*, 11th Dist. Lake No. 97-L-091, 1998 Ohio App. LEXIS 4250 (Sept. 11, 1998); *State v. Collins*, 9th Dist. Lorain No. 97CA006845, 1998 Ohio App. LEXIS 2474 (June 3, 1998).[2]

{¶19} As in *Mays* and *State v. Ponyard*, 8th Dist. Cuyahoga No. 101266, 2015-Ohio-311, ¶ 17-18, we will continue to follow the precedent on this issue unless the Supreme Court of Ohio rules otherwise.[3] The first and second assignments of error are overruled.

{¶20} Under the third assignment of error, Beauregard challenges the trial court's jurisdiction over Count 2 (robbery of victims Keionna Speights and Navetta Clark) and Count 12 (failure to comply).

{¶21} The record reflects Beauregard filed a motion to dismiss, which challenged the propriety of the mandatory bindover under the statutes regarding several counts of his indictment, including Count 2 and Count 12. Although a defendant who pleads guilty waives the right to

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[2] Beauregard predicates his equal protection argument on the distinction the statute makes based on the age of the juvenile: those who are 14 or 15 and commit a category two offense with a firearm are transferred only if the juvenile court finds they are not amenable to rehabilitation in the juvenile system, while those who are 16 or 17 committing the same offense are subject to mandatory bindover. He argues that none of the precedent cited in *Mays* involved a equal protection claim on the ground of age. We note that in other contexts, such as the mandatory classification of the juvenile as a sex offender when the juvenile is 16 or 17, the courts have rejected age-based equal protection claim. *See In re M.R.*, 7th Dist. Jefferson No. 13 JE 30, 2014-Ohio-2623, ¶ 45; *In re J.M.*, 3d Dist. Wyandot No. 16-12-01, 2012-Ohio-4109, ¶ 32.

[3] We note that several weeks after our decision in *Mays*, the Supreme Court of Ohio issued *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900. The court declined to address the constitutionality of Ohio's mandatory bindover procedures because appellant failed to preserve the issue. Not only did appellant fail to raise the issue at either the juvenile court or the general division of the common pleas court, he also failed to make any attempt to demonstrate that applying the mandatory bindover statutes rose to plain error.

appeal issues arising at prior stages of the proceedings, this issue is not waived by his guilty plea as it involves the trial court's jurisdiction. *See State v. McQueeney*, 148 Ohio App.3d 606, 2002-Ohio-3731, 774 N.E.2d 1228, ¶ 13 (12th Dist.). In the following, we address Count 2 and Count 12 in turn.

Jurisdiction Over Count 2

{¶22} Under the guilty plea, Beauregard pleaded guilty to Count 2, which was amended to incorporate the robbery of victim Navetta Clark, an offense originally charged in Count 3 in the juvenile complaint. The record reflects that while the other two victims testified at the probable cause hearing, Clark did not testify. Beauregard now claims that, because Clark did not testify, there was no probable cause to support the transfer of the robbery count regarding this victim to the general division of the common pleas court.

> [A] juvenile court's probable-cause determination in a mandatory-bindover proceeding involves questions of both fact and law, and thus, we defer to the trial court's determinations regarding witness credibility, but we review de novo the legal conclusion whether the state presented sufficient evidence to demonstrate probable cause to believe that the juvenile committed the acts charged.

In re A.J.S., 120 Ohio St.3d 185, 2008-Ohio-5307, 897 N.E.2d 629, ¶ 51.

{¶23} The state must provide credible evidence to support a finding that probable cause exists to believe that the juvenile committed the offense before ordering mandatory bindover, and, in meeting this standard, the state must produce evidence that "raises more than a mere suspicion of guilt, but need not provide evidence proving guilt beyond a reasonable doubt." *A.J.S.* at ¶ 42, citing *State v. Iacona*, 93 Ohio St.3d 83, 93, 752 N.E.2d 937 (2001).

{¶24} Here, at the probable cause hearing, Officer Sedlak testified that as he interviewed the first robbery victim, Rita Stasienko, in the vicinity of where that incident occurred near East 75th and Canton, he received another dispatch call for a second robbery in the

area of 129th and Gay Avenue. When he headed toward that location, he received a third dispatch call for a third robbery in the area of 136th and Southview. Sgt. Lentz also testified there were three dispatch calls for robberies in those three locations, all involving a Toyota with three black males. Although the third robbery victim, Navetta Clark, herself did not testify at the hearing, this record reflects the state produced credible evidence to support a finding that probable cause existed to believe Beauregard committed the three robbery offenses.

{¶25} Furthermore, *regardless of* whether there was sufficient probable cause regarding the robbery of Navetta Clark, the general division had jurisdiction over that count pursuant to R.C. 2152.12(I). That statute states:

> Upon the transfer of a case under division (A) or (B) of this section, the juvenile court shall state the reasons for the transfer on the record, and shall order the child to enter into a recognizance with good and sufficient surety for the child's appearance before the appropriate court for any disposition that the court is authorized to make for a similar act committed by an adult. *The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint*, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court, and the case then shall be within the jurisdiction of the court to which it is transferred as described in division (H) of section 2151.23 of the Revised Code.

(Emphasis added.)

{¶26} In *Mays*, 2014-Ohio-3815, 18 N.E.3d 850, appellant claimed there was no probable cause to transfer him regarding the three aggravated robbery counts. This court reviewed the evidence presented at the probable cause hearing and determined that probable cause clearly existed regarding Count 2 (aggravated robbery of Keionna Speights). And, because the offenses charged in Count 1 (aggravated robbery of Rita Stasienko) and Count 3 (aggravated robbery of Navetta Clark) were committed during "the same course of conduct," the juvenile court had the authority to transfer *the entire case* pursuant to R.C. 2152.12(I). *Mays* at ¶ 28. This court

noted the "'same course of conduct' have been defined as 'offenses that through their similarity, regularity and time between them are concluded to be part of a single episode, spree, or ongoing series of offenses.'" *Id*. at fn. 2, quoting *United States v. Sheehan*, D.Montana No. CR 09-13-M-DWM, 2009 U.S. Dist. LEXIS 99800 (Oct. 27, 2009).

{¶27} The three robberies charged in the juvenile complaint were part of the "the same course of conduct" due to the proximity of time and location, and the utilization of the same vehicle and firearm. Thus, the juvenile court had the authority to transfer the entire case pursuant to R.C. 2152.12(I), once it found probable cause for mandatory bindover on one of the counts alleged in the juvenile complaint.

Jurisdiction Over Count 12

{¶28} Beauregard also claims the general division did not have jurisdiction on Count 12 (failure to comply) because that count was not charged in the juvenile complaint. As the Third District stated in *State v. Foust*, 3d Dist. Crawford No. 3-07-11, 2007-Ohio-5767,

> "[i]t is well established in Ohio jurisprudence that upon transfer from juvenile court, a grand jury is authorized to return a proper indictment on the facts submitted to it, and is not confined to the charges originally filed in the juvenile court. *State v. Adams* (1982), 69 Ohio St.2d 120, 431 N.E.2d 326, paragraph two of the syllabus. To confine an indictment solely to the charges presented from juvenile court would improperly restrict the power of the grand jury to review the facts and indict on the charge or charges it feels is appropriate in any given case."

Id. at ¶ 17, quoting *State v. Duncan*, 9th Dist. Medina No. 3117-M, 2001 Ohio App. LEXIS 4022 (Sept. 12, 2001). *See also State v. Walker*, 5th Delaware Dist. No. 99 CA 2, 1999 Ohio App. LEXIS 4590 (Sept. 28, 1999)*; State v. Sims*, 7th Dist. Mahoning No. 07MA180, 2008-Ohio-6367, ¶ 30 (R.C. 2151.12(I) transfers subject matter jurisdiction with respect to "delinquent acts," not only the charges filed in the juvenile court related to those delinquent acts)*; State v. Whisenant*, 127 Ohio App.3d 75, 81, 711 N.E.2d 1016 (11th Dist.1998), fn. 4

(the grand jury was within its power to indict appellant for counts that were not alleged in the juvenile proceedings).

{¶29} Here, Beauregard fled from the police immediately after the robberies to elude capture. The failure to comply was part of the same delinquent acts as the robbery offenses. Therefore, the grand jury was authorized to indict him on the failure-to-comply count based on "the facts submitted to it." The trial court did not exceed its jurisdiction when it convicted him of this count after a guilty plea.

{¶30} For these reasons, the third assignment of error is without merit.

{¶31} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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TIM McCORMACK, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
PATRICIA ANN BLACKMON, J., CONCUR