

[Cite as *State v. Turner*, 2023-Ohio-2874.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 111808
	:	
v.	:	
	:	
TAVONTE TURNER,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED IN PART, VACATED
IN PART, AND REMANDED
RELEASED AND JOURNALIZED: August 17, 2023

Criminal Appeal from the Cuyahoga County Common Pleas Court
Case No. CR-21-660284-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Mahmoud S. Awadallah, Poula E. Hanna, and Daniel T. Van, Assistant Prosecuting Attorneys, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Rick Ferrara and Erika B. Cunliffe, Assistant Public Defenders, *for appellant*.

ANITA LASTER MAYS, A.J.:

{¶ 1} Defendant-appellant Tavonte Turner (“Turner”) appeals his convictions for attempted murder and having weapons while under disability. Turner asks this court to vacate and modify his consecutive sentences and instruct the trial court to vacate his erroneous sentence for murder, attempted murder, and having weapons while under disability. We reverse Turner’s consecutive sentences, vacate the attempted murder and weapons while under disability convictions, and remand for resentencing.

I. Procedural History

{¶ 2} In 2021, a 15-count complaint was filed against Turner in juvenile court, because he was 16 years old at the time of the incident. Attempted murder was not charged in the indictment. The juvenile court found probable cause for the offenses indicted, except for having weapons while under disability. The state also admitted that they did not present sufficient evidence regarding having weapons while under disability. (Tr. 326.) The case was bound over to Cuyahoga County Court of Common Pleas General Division. On July 8, 2021, the grand jury found probable cause to support the indictment to try Turner as an adult. On May 24, 2022, Turner subsequently pleaded guilty to murder, an unclassified felony, in violation of R.C. 2903.02(B), with a three-year firearm specification pursuant to R.C. 2941.145(A).¹ The one-year firearm specification pursuant to R.C. 2941.141 was

¹ The journal entry lists the one- and three-year firearm specifications as deleted. However, the transcript reflects that only the one-year firearm specification was deleted.

deleted. Turner also pleaded guilty to attempted murder, a first-degree felony, in violation of R.C. 2923.02/2903.02(A), with the deletion of the one- and three-year firearm specifications pursuant to R.C. 2941.141 and 2941.145(A) respectively; and having weapons while under disability, a third-degree felony, in violation of R.C. 2923.13(A)(2). The remaining counts were nolle.

{¶ 3} The trial court sentenced Turner to “25 years” imprisonment to be served consecutively to the mandatory three-year firearm specification on the murder count; seven years’ imprisonment on the attempted murder count to be served consecutively to the “25-year” sentence for murder; and 36 months’ imprisonment to be served concurrently to the previous prison terms for a total of “25 years” to life. The journal entry also reflected that the trial court made the consecutive-sentencing findings according to R.C. 2929.14(C)(4). Journal entry No. 125683730 (July 7, 2022).

II. Facts

{¶ 4} On August 19, 2020, Turner’s mother Megan Turner (“Megan”) was involved in a physical altercation. After the altercation, Megan posted a video threatening to return to the location of the altercation and killing those involved. On August 20, 2020, Megan, Turner, and other codefendants returned to the altercation location. Ring camera footage displayed Turner chasing down Joseph Owens (“Owens”) and shooting him. Once Owens fell to the ground, Turner shot

Owens again in the head, killing him. The video footage also showed Turner firing shots at an unknown person, who he did not murder.

{¶ 5} Turner filed this timely appeal assigning four errors in his original appeal and one error in a supplemental brief for our review:

- I. The trial court committed plain error in sentencing appellant to 25 years to life on Count 2 and consecutive sentences exceeding 18 years to life;
- II. The trial court committed plain error in imposing consecutive sentence but in failing to make consecutive sentence findings at either the sentencing hearing or in its journal entry of conviction;
- III. The trial court erred when it failed to discuss or apply factors for sentencing youth offenders as adults;
- IV. Appellant was deprived of due process under Ohio and federal law when the trial court explicitly attempted to reach a term of years, rather than sentenced based on each individual count by applying the sentence package doctrine; and
- V. The trial court lacked subject matter jurisdiction over appellant as to the charges of attempted murder and having weapons under disability.²

{¶ 6} We will address assignments of error I and V only; our decision regarding assignment of error I renders assignments of error II, III, and IV moot.

III. Life Sentence

{¶ 7} Turner was 16 years old at the time of the offense. In Turner's first assignment of error, he argues that the trial court plainly erred by sentencing him to

² Resulted from a supplemental briefing of this issue.

25 years to life on the murder charge. The state concedes this error and recognizes that the trial court erred in sentencing Turner.

{¶ 8} Turner’s first assignment of error is sustained and we remand for resentencing as to Count 2.

IV. Subject-Matter Jurisdiction

{¶ 9} In Turner’s fifth assignment of error, he argues that the trial court lacked subject-matter jurisdiction over him as to charges of attempted murder and having weapons while under disability because the juvenile court never made a finding of probable cause for those offenses. “Subject matter jurisdiction is the power of a court to entertain and adjudicate a particular class of cases.” *In re H.C.*, 8th Dist. Cuyahoga No. 102601, 2015-Ohio-3676, ¶ 5, quoting *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 19.

{¶ 10} Turner argues that because the juvenile court never made a finding of probable cause for the attempted murder and found no probable cause as to having weapons while under a disability, the trial court lacked subject-matter jurisdiction over the charges because of the Supreme Court’s decision in *State v. Smith*, 167 Ohio St.3d 423, 2022-Ohio-274, 194 N.E.3d 297, which states:

When no probable cause has been found by a juvenile court for an act charged, there is no cause for conducting an amenability determination in relation to the act charged. In the absence of a juvenile court’s finding probable cause or making a finding that the child is unamenable to care or rehabilitation within the juvenile system, no adult court has jurisdiction over acts that were charged in but not bound over by the juvenile court.

Id. at ¶ 44.

{¶ 11} The state argues that *Smith* does not apply to Turner’s case because *Smith* does not concern a defect in subject-matter jurisdiction. The state’s contention fails. As stated previously, during Turner’s hearing, the juvenile court did not make a finding as it relates to probable cause of the attempted murder offense because it was not presented to the court. However, the juvenile court did make a finding of no probable cause as to having weapons while under disability charge. The state submitted that it did not present evidence regarding the weapons while under disability charge.

Your Honor, at the end of the day the State believes that we’ve provided probable cause at this point for four of the five charges on the Complaint.

The State submits that we have not provided evidence of Count 4, which is Having a Weapon While Under Disability, but I will walk through the other counts.

(Tr. 326.)

{¶ 12} The Ohio Supreme Court stated, “[W]e held that a juvenile court must first find that there is probable cause to believe that the child committed the act charged before that act can be transferred to adult court.” *State v. Burns*, 170 Ohio St.3d 57, 2022-Ohio-4606, 208 N.E.3d 801, ¶ 8. *Smith* at ¶ 26. “We also concluded that an adult court lacks subject-matter jurisdiction to convict a juvenile offender

for any act charged for which no probable cause was found by the juvenile court.”
Smith at ¶ 42.

{¶ 13} Therefore, following *Smith*, the Supreme Court of Ohio reversed Burns’s conviction on a single count that was affirmed by this court and vacated the conviction. *Id.* at ¶ 10. Following the authority in *Burns*, we, therefore, reverse the having weapons while under disability conviction in this case.

{¶ 14} The state also argues that the court’s decision in *Smith* failed to account for the plain language in R.C. 2151.23(H), which states:

If a child who is charged with an act that would be an offense if committed by an adult was fourteen years of age or older and under eighteen years of age at the time of the alleged act and if the case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code, except as provided in section 2152.121 of the Revised Code, the juvenile court does not have jurisdiction to hear or determine the case subsequent to the transfer. The court to which the case is transferred for criminal prosecution pursuant to that section has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court, subject to section 2152.121 of the Revised Code, including, but not limited to, jurisdiction to accept a plea of guilty or another plea authorized by Criminal Rule 11 or another section of the Revised Code and jurisdiction to accept a verdict and to enter a judgment of conviction pursuant to the Rules of Criminal Procedure against the child for the commission of the offense that was the basis of the transfer of the case for criminal prosecution, whether the conviction is for the same degree or a lesser degree of the offense charged, for the commission of a lesser-included offense, or for the commission of another offense that is different from the offense charged.

{¶ 15} R.C. 2151.23(H) plainly states that the court to which the case is transferred can determine the case in the same manner as if the case originally had

been commenced in that court. The state argued this same point in *Burns* at ¶ 12, which states:

The state, however, argues that an adult court is not limited to considering the specific acts charged in juvenile court and that imposing such a constraint would be inconsistent with the text of R.C. 2151.23(H), which governs the jurisdiction of a juvenile court. We agree that an adult court is not necessarily limited to considering only the specific acts bound over from the juvenile court. After a case has been transferred from a juvenile court to an adult court, the adult court “has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court * * *.” R.C. 2151.23(H). In *Smith*, we explained that the “the case” before the adult court is composed of the acts that were transferred to that court. *Id.* at 28.

{¶ 16} The court continued stating:

We acknowledge that generally, a grand jury is empowered to return an indictment on any charges supported by the facts submitted to it. *See State v. Adams*, 69 Ohio St.2d 120, 431 N.E.2d 326 (1982), paragraph two of the syllabus, superseded by statute on other grounds as stated in *State v. D.W.*, 133 Ohio St.3d 434, 2012-Ohio-4544, 978 N.E.2d 894. But a grand jury may not consider additional charges arising from a different course of conduct or events that have not been properly bound over by the juvenile court. *State v. Weaver*, 6th Dist. Lucas No. L-18-1078, 2019-Ohio-2477, ¶ 14 (citing cases from several Ohio appellate districts). This means that a case transferred from a juvenile court may result in new indicted charges in the adult court when the new charges are rooted in the acts that were the subject of the juvenile complaint but were not specifically named in the individual acts transferred. *Id.*; *Smith*, 167 Ohio St.3d 423, 2022-Ohio-274, 194 N.E.3d 297, at ¶ 35.

Id. at ¶ 13.

{¶ 17} The facts in *Burns* are like the facts of this case. Burns was 16 years old and charged in a 58-count complaint in Cuyahoga County Court of Common

Pleas, Juvenile Division. The state requested the trial court to transfer jurisdiction to the general division. After a hearing, the juvenile court found that the state had established probable cause on 42 of the 58 counts. After an amenability hearing, the juvenile court transferred Burns to the general division. The Cuyahoga County Grand Jury then returned a 56-count indictment against Burns. After several months, Burns and the state reached a plea agreement to ten of the 56 charges, as amended. Burns was sentenced to 27 years in prison.

{¶ 18} Burns appealed his convictions and sentence to this court arguing amongst several assignments of error that his constitutional rights were violated when the state criminally indicted him on counts that were never transferred to adult court for failure to establish probable cause. As stated above the Supreme Court agreed that where probable cause was not established, a reindictment of probable cause on the same charge in adult court results in a failure of subject-matter jurisdiction.

{¶ 19} Additionally in *Burns*, there was an indictment in adult court on two attempted murder charges that were not part of the charges brought in juvenile court. The Supreme Court found that the grand jury has the authority to indict on new charges that are rooted in the offense that were the subject of the complaint but were not specifically named in the acts transferred from juvenile court. *Burns*, 170 Ohio St.3d 57, 2022-Ohio-4606, 208 N.E.3d 801, at ¶ 13.

{¶ 20} The record reveals that the juvenile court found probable cause to charge Turner with murder. The video evidence showed that Turner shot Owens twice and killed him. Therefore, the court has jurisdiction to determine the case in the same manner as if the charge was originally presented to the adult court.

{¶ 21} *Burns* also states, however, that “a grand jury may not consider additional charges arising from a different course of conduct or events that have not been properly bound over by the juvenile court,” quoting *State v. Weaver*, 6th Dist. Lucas No. L-18-1078, 2019-Ohio-2477, ¶ 14. *Id* at ¶ 13. Here is where *Burns* is distinguishable from this case. The video demonstrates that Turner shot at another unnamed victim. This action, attempted murder, was never presented to the juvenile court and is not “rooted in the acts” that were the subject of the juvenile complaint. Furthermore, reviewing the facts, this act was a different course of conduct that was not properly bound over by the juvenile court. Turner’s juvenile complaint only involved his shooting and killing of the victim. We determine that the two courses of conduct are separate and distinct, even though they occurred on the same day and at the same time.

{¶ 22} We find that the adult court lacked jurisdiction over Turner’s attempted murder offense, as defined in *Smith*, 167 Ohio St.3d 423, 2022-Ohio-274, 194 N.E.3d 297, and *Burns*, 170 Ohio St.3d 57, 2022-Ohio-4606, 208 N.E.3d 801, and reverse this conviction.

{¶ 23} The state also argues that Turner waived any argument with regard to the subject-matter jurisdiction because he pleaded guilty to the offenses. However, “[b]y entering a plea of guilty, a criminal defendant does not waive his objections to the subject matter jurisdiction of the court.” *State v. Williams*, 8th Dist. Cuyahoga No. 100639, 2014-Ohio-3589, ¶ 16. *See State v. Hollis*, 91 Ohio App.3d 371, 632 N.E.2d 935 (8th Dist.1993). We find this argument of the state is without merit.

{¶ 24} Therefore, Turner’s fifth assignment of error is sustained.

{¶ 25} Judgment reversed in part, vacated in part, and remanded to the trial court for further proceeding consistent with this opinion.

It is ordered that appellee and appellant share equally 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.

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

ANITA LASTER MAYS, ADMINISTRATIVE JUDGE

EMANUELLA D. GROVES, J., CONCURS;
KATHLEEN ANN KEOUGH, J., CONCURS (WITH SEPARATE OPINION)

KATHLEEN ANN KEOUGH, J., CONCURRING:

{¶ 26} I concur with the majority’s decision, but write separately to express my concern about the state’s attempt to circumvent the juvenile justice process by bringing additional charges against Turner, or any juvenile for that matter, without the juvenile court having the opportunity to consider those additional charges.

{¶ 27} I agree with the majority’s resolution reversing the attempted murder conviction because I find that this conviction is not “rooted in the acts” that were the subject of the juvenile complaint. Whether an offense is “rooted in the acts” that was the subject of the juvenile complaint is fact specific and requires looking at the conduct of the juvenile at the time of the offense. In fact, the Ohio Supreme Court stated, “[A] grand jury may not consider additional charges arising from a different course of conduct or events that have not been properly bound over by the juvenile court.” *Burns*, 170 Ohio St.3d 57, 2022-Ohio-4606, 208 N.E.3d 801, at ¶ 13, citing *State v. Weaver*, 6th Dist. Lucas No. L-18-1078, 2019-Ohio-2477, ¶ 14.

{¶ 28} I find *Burns* entirely distinguishable from the instant case because in *Burns*, the attempted-murder offenses were “rooted in the acts” that were the subject of the juvenile complaint because the juvenile complaint charged Burns with aggravated robbery, aggravated burglary, felonious assault, and kidnapping of the same victims during the same time period. Accordingly, under R.C. 2151.23(H), and the guidance of *Smith*, the attempted murder offenses were rooted in the act of the brutal attack of the elderly couple.

{¶ 29} In this case, however, the attempted murder offense was a different course of conduct that was not properly bound over by the juvenile court. The juvenile complaint only involved Turner’s conduct of shooting and killing the victim. The juvenile complaint did not charged Turner for his separate conduct of shooting at another unnamed individual. In fact, the state did not present, nor did the juvenile court consider, any charges pertaining to this separate shooting. These two courses of conduct are separate and distinct, even though they may have occurred on the same day and at the same time. Accordingly, the attempted murder of the unnamed victim was not “rooted in the acts” subject to the juvenile complaint.

{¶ 30} I find this “rooted-in-the-acts” language or analysis similar to a court’s determination whether offenses are allied. In determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must evaluate three separate factors—the conduct, the animus, and the import. *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, paragraph one of the

syllabus. If the conduct involves separate victims or harm, then the offenses are separate and identifiable. *Id.* at paragraph two of the syllabus.

{¶ 31} Here, Turner acted in a different course of conduct, with a separate animus when he shot at another unnamed person. If the state wished to charge Turner with this conduct, then it was required to present this offense to the juvenile court for a probable-cause determination. The state's failure to do so undermines the juvenile court process and allows the state to add on additional charges for acts that are not properly bound over from juvenile court.

{¶ 32} Accordingly, I agree with the majority to reverse Turner's attempted murder conviction because the adult court lacked jurisdiction over this offense, as defined in *Smith* and *Burns*.