

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

IN RE: C.T. :
 :
 : C.A. CASE NO. 24036
 :
 : T.C. NO. 095986
 :
 : (Civil appeal from Common
 : Pleas Court, Juvenile
 Division)
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OPINION

Rendered on the 3rd day of December, 2010.

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DONOVAN, P.J.

{¶ 1} Plaintiff-appellant State of Ohio appeals a decision of the Montgomery
County Court of Common Pleas, Juvenile Division, overruling its objections and
adopting the decision of the magistrate dismissing the criminal charges against the

defendant-appellee C.T pursuant to Crim.R. 29. The trial court filed its written decision on April 12, 2010. The State filed a timely notice of appeal with this Court on May 7, 2010.

I

{¶ 2} The instant appeal stems from an incident which occurred on July 4, 2009, when C.T. allegedly struck Dayton Police Officer Stephen Bauer in the back with an umbrella while Officer Bauer was attempting to place a male suspect under arrest at a holiday party behind a residence located at 339 Middle Street in Dayton, Ohio. After striking Officer Bauer, C.T. was immediately arrested and placed in the back of a police cruiser by Lieutenant Brian Johns who was also present at the scene.

{¶ 3} C.T. was subsequently charged by a delinquent complaint with one count of assault on peace officer, in violation of 2903.13(A)(C)(3), a felony of the fourth degree, aggravated riot, in violation of 2917.02(A)(2), a felony of the fourth degree, and obstructing justice, in violation of 2921.32, a misdemeanor of the first degree.

{¶ 4} An adjudicatory hearing was held before a magistrate on August 27, 2009. After the State presented its case and rested, C.T. moved for acquittal pursuant to Crim.R. 29. Specifically, defense counsel argued that the State failed to prove C.T.'s age. C.T. also argued that the State failed to prove all of the elements of aggravated riot. The State requested that it be permitted to reopen its case in order to offer evidence regarding C.T.'s age. The magistrate denied the State's request to reopen and dismissed the complaint against C.T. In a brief

written decision filed September 9, 2009, the magistrate dismissed the complaint with prejudice simply holding that the State “failed to prove the case.”

{¶ 5} The State filed objections to the magistrate’s decision on September 23, 2009. After being granted leave of the court, C.T. filed a response to the State’s objections on February 23, 2010. On April 12, 2010, the trial court issued a written decision overruling the State’s objections and adopting the decision of the magistrate dismissing the complaint against C.T. In its decision, the trial court held that it retained both subject matter jurisdiction and personal jurisdiction over C.T. The court, however, framed the determinative issue in the case as “whether age [was] an essential element of the offense[s] charged.” The court answered that question in the affirmative, holding that the State had the burden of establishing that C.T. was a minor when the crimes occurred. The court found that C.T. refused to stipulate to age at the beginning of the adjudicatory hearing. More importantly, the trial court found that the State failed to adduce any evidence regarding C.T.’s age during the hearing. Based on its findings, the trial court held that C.T.’s Crim.R. 29 motion was properly granted by the magistrate because the State failed to provide sufficient evidence in order to sustain adjudications of delinquency for the charged offenses.

{¶ 6} It is from this judgment that the State now appeals.

II

{¶ 7} The State’s sole assignment of error is as follows:

{¶ 8} “THE TRIAL COURT ERRED IN ITS LEGAL INTERPRETATION OF R.C. 2151.23 AND JUV. R. 22 AND THE RESULTING CONCLUSION THAT IN A

JUVENILE ADJUDICATORY DELINQUENCY HEARING THE STATE IS REQUIRED TO PROVE THE JUVENILE'S AGE AS AN ELEMENT OF THE OFFENSE WHEN THE OFFENSES ALLEGED DID NOT INCLUDE THE AGE OF THE OFFENDER AS AN ELEMENT.”

{¶ 9} In its sole assignment, the State contends that the trial court erred when it adopted the decision of the magistrate granting C.T.'s Crim. R. 29 motion for acquittal based upon the State's failure to adduce any evidence regarding C.T.'s age during the adjudicatory hearing. Specifically, the State argues that the trial court erred when it held that C.T.'s age was an essential element of the charged offenses.

{¶ 10} Crim. R. 29(A) states that a court shall order an entry of judgment of acquittal if the evidence is insufficient to sustain a conviction for the charged offense. “Reviewing the denial of a Crim. R. 29 motion therefore requires an appellate court to use the same standard as is used to review a sufficiency of the evidence claim.” *State v. Witcher*, Lucas App. No. L-06-1039, 2007-Ohio-3960. “In reviewing a claim of insufficient evidence, ‘[t]he relevant inquiry is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.’ (Internal citations omitted).” *State v. Crowley*, Clark App. No. 2007 CA 99, 2008-Ohio-4636.

{¶ 11} A court has jurisdiction to rule on a controversy between parties if it had obtained personal jurisdiction over the parties and possesses subject matter jurisdiction over the parties' claims. *In re C.W.*, Butler App. No. CA2004-12-312,

2005-Ohio-3905; *In re Burton S.*, 136 Ohio App.3d 386. Subject matter jurisdiction refers to a court's "power to hear and decide a case upon its merits[.]" *Morrison v. Steiner* (1972), 32 Ohio St.2d 86. The subject matter jurisdiction of a court is invoked by the filing of a complaint. *In re C.W.*, 2005-Ohio-3905. The defense of lack of subject matter jurisdiction can never be waived. *Id.*, citing, *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, 1996-Ohio-224. Therefore, objections based on lack of subject matter jurisdiction may be raised at any stage of the proceedings. *In re Byard*, 74 Ohio St.3d 294, 296, 1996-Ohio-163.

{¶ 12} "In contrast, personal jurisdiction can be waived. A court obtains personal jurisdiction over a defendant by service of process, or by the defendant's voluntary appearance or actions. Thus, the defense of lack of personal jurisdiction is waived if it is not raised in a responsive pleading or in a motion filed prior to the answer." (Internal citations omitted.) *In re Burton S.* (1999), 136 Ohio App.3d at 391.

{¶ 13} A juvenile court has exclusive original subject matter jurisdiction over any child alleged to be delinquent for having committed, when younger than 18 years of age, an act that would be a crime if committed by an adult. R.C. 2151.23(A)(1), 2151.011(B)(5), and 2152.02(F). Since the complaint alleged C.T. to be a delinquent child, the court was rebuttably presumed to have subject matter jurisdiction. The complaint in the instant case stated the following:

{¶ 14} "The complainant being first duly sworn says that he/she has knowledge based upon information and belief that one [C.T.], *a child about the age of 13 years, who appears to be delinquent* in that on or about 07-04-09, in the

County of Montgomery, State of Ohio, the youth ***.”

{¶ 15} Upon further consideration, we agree with the trial court’s finding that it had personal jurisdiction over C.T. since she voluntarily appeared at the adjudicatory hearing held on August 27, 2009. Juv.R. 22(D) states that defenses or objections based on defects in the institution of the proceedings or in the complaint “other than a failure to show jurisdiction in the court” or to the charge, “must be heard before the adjudicatory hearing.” Thus, a Crim.R. 29 motion raised at the close of the State’s case regarding the lack of testimony to establish the age of the accused juvenile, relates to personal jurisdiction over the accused, and is waived under Juv.R. 22(D) by going forward with the trial. *In re C.W.*, 2005-Ohio-3905.

{¶ 16} After C.T. appeared at the hearing, she failed to object to the court’s personal jurisdiction over her. Thus, she voluntarily waived the right to raise the issue thereafter, and her status as a juvenile was no longer in dispute. We also note that C.T.’s refusal to stipulate to venue and her juvenile status was not fatal to the State’s case against her. Once personal jurisdiction was waived based upon her failure to raise the issue prior to the hearing or object at the beginning of the hearing, C.T.’s juvenile status was deemed established. Thus, C.T.’s attempt to exploit the State’s failure to adduce evidence regarding her age through a Crim.R. 29 motion should have been denied.

{¶ 17} We reached a similar conclusion in *In re Fudge* (1977), 59 Ohio App.2d 129, 132, wherein we held the following :

{¶ 18} “It is our opinion that jurisdiction over the person is presumed in the

absence of an objection. When an objection to jurisdiction is made, the question must be conclusively resolved by a determinative finding by the trial court. A failure to object in an obvious situation such as this where a 13 year old child appears on a charge of stealing candy and thereafter resorting to a failure of proof of an issue only of jurisdiction over the person is sand bagging on a technicality and not on one of the issues essential to prove the offense. Besides, the child who appeared with counsel was seen and observed by the court. With youths of a tender age this may constitute sufficient evidence that the subject is a juvenile.”

{¶ 19} In the instant case, the trial court specifically held that it retained both subject matter and personal jurisdiction over C.T. That should have been the end of the analysis, and the trial court should have sustained the objections of the State and reversed the decision of the magistrate. The trial court, however, concluded that C.T.’s age was an essential element of the charged offenses of assault, aggravated riot, and obstructing justice. Accordingly, the court held that the State had the burden of establishing that C.T. was under the age of eighteen. Thus, since the State failed to adduce any evidence which established C.T.’s age, the court adopted the decision of the magistrate dismissing all of the charges against C.T. This conclusion was error. We hold that “once a trial court has properly established subject matter and personal jurisdiction over an alleged juvenile offender, additional evidence of the juvenile’s age is not essential to a finding of delinquency, unless one of the elements of the adult crime alleged requires specific proof of age.” *In re Burton S.* (1999), 136 Ohio App.3d at 392. Upon review, none of the elements of the charges brought against C.T. require proof of age. Thus,

the trial court erred when it adopted the decision of the magistrate granting C.T.'s Crim.R. 29 motion for acquittal.

{¶ 20} The State's sole assignment of error is sustained.

III

{¶ 21} The State's sole assignment of error having been sustained, the judgment of the trial court is reversed, and this matter is remanded for proceedings consistent with this opinion.

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BROGAN, J. and FAIN, J., concur.

Copies mailed to:

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