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IN THE
COURT OF APPEALS OF INDIANA

State of Indiana,
Appellant-Plaintiff,

v.

Anthony J. Neukam,
Appellee-Defendant.

July 20, 2021

Court of Appeals Case No.
20A-CR-2006

Appeal from the Dubois Circuit
Court

The Honorable Nathan A.
Verkamp, Judge

Trial Court Cause No.
19C01-1711-F3-1157

Pyle, Judge.

Statement of the Case

[1] In this interlocutory appeal, the State appeals the trial court’s order denying the State’s motion to amend the charging information against twenty-three-year-old Anthony Neukam (“Neukam”) to include eight additional child molesting

charges that were alleged to have occurred when Neukam was under the age of eighteen. These eight additional charges had been originally filed in the juvenile court but were dismissed pursuant to our Indiana Supreme Court’s holding in *D.P. v. State*, 151 N.E.3d 1210 (Ind. 2020). The State argues that the trial court erred by denying its motion to amend, asserting that the trial court had jurisdiction over Neukam and the additional child molesting charges where Neukam was over the age of eighteen at the time of the proposed amendment. Concluding that the relevant juvenile statutes set forth by our legislature do not provide the trial court with the necessary jurisdiction under the specific facts of this case, we affirm the trial court’s order.

[2] We affirm.

Issue

Whether the trial court erred by denying the State’s motion to amend the charging information.

Facts

[3] In November 2017, the State charged twenty-year-old Neukam with four counts of Level 3 felony child molesting, three counts of Level 3 felony rape, and two counts of Level 5 felony sexual misconduct with a minor (“Neukam’s adult criminal case”). The charging information alleged that Neukam had committed these acts against the same victim, who was Neukam’s female cousin, between January 2015 and December 2015. During that time period, Neukam would have been eighteen years old, and the victim would have been thirteen or

fourteen years old. These charges were filed in the Dubois Circuit Court (“adult criminal court”).

[4] In February 2019, when Neukam was twenty-two years old, the State filed a juvenile delinquency petition with the juvenile court. In the petition, the State alleged that Neukam had committed, when he was under the age of eighteen, eight separate acts that would constitute Class B felony child molesting if committed by an adult (“Neukam’s juvenile delinquency case”). Specifically, the State alleged that Neukam had committed the eight acts of child molesting between September 2011 and January 2015, when Neukam would have been between the ages of fourteen and seventeen years old. The alleged victim listed in the delinquency petition was the same person listed in the charging information in Neukam’s adult criminal case. The State also filed a petition to have the juvenile court waive jurisdiction to the adult criminal court.

[5] On September 8, 2020, the Indiana Supreme Court issued an opinion in *D.P. v. State*, 151 N.E.3d 1210 (Ind. 2020), which involved the issue of “a juvenile court’s ability to waive an individual who is twenty-one or older into adult criminal court.” *D.P.*, 151 N.E.3d at 1212. The *D.P.* case was a consolidated appeal from two cases in which the State had filed juvenile delinquent petitions against D.P. and N.B. for committing, when they were under the age of eighteen, acts of felony child molesting if committed by an adult. The State also requested to have the juvenile court waive jurisdiction of D.P. and N.B. to adult criminal court. At the time these juvenile petitions and waiver requests were filed, neither D.P. nor N.B. was a “child” as defined by the juvenile law

statutes. *See* IND. CODE § 31-9-2-13(d).¹ Specifically, D.P. was twenty-three years old, and N.B. was twenty-one years old.

[6] D.P. and N.B. each filed a motion to dismiss their respective juvenile cases for lack of subject matter jurisdiction. In D.P.’s case, the juvenile court denied D.P.’s motion to dismiss, and this Court affirmed the juvenile court’s order. *See D.P. v. State*, 136 N.E.3d 620 (Ind. Ct. App. 2019), *trans. granted*. In N.B.’s case, the juvenile court granted N.B.’s motion, and this Court reversed the juvenile court’s judgment. *See State v. N.B.*, 139 N.E.3d 284 (Ind. Ct. App. 2020), *trans. granted*.

[7] After this Court issued opinions in each case, the Indiana Supreme Court granted transfer in both cases. In a consolidated opinion, our supreme court affirmed the juvenile court’s dismissal order in N.B.’s case, and it reversed the juvenile court’s order denying D.P.’s motion to dismiss, remanding the case to the juvenile court with instructions to grant D.P.’s motion to dismiss. *See D.P.*,

¹ INDIANA CODE § 31-9-2-13(d) provides the following three definitions of a child;

(d) Except as otherwise provided by this section, “child”, for purposes of the juvenile law and IC 31-27, means:

(1) a person who is less than eighteen (18) years of age;

(2) a person:

(A) who is eighteen (18), nineteen (19), or twenty (20) years of age; and

(B) who either:

(i) is charged with a delinquent act committed before the person’s eighteenth birthday; or

(ii) has been adjudicated a child in need of services before the person’s eighteenth birthday; or

(3) a person:

(A) who is alleged to have committed an act that would have been murder if committed by an adult;

(B) who was less than eighteen (18) years of age at the time of the alleged act; and

(C) who is less than twenty-one (21) years of age.

151 N.E.3d at 1217. Our supreme court explained that “[t]he age of the offender is determinative of subject matter jurisdiction in the juvenile court[.]” *Id.* at 1211 (quoting *Twyman v. State*, 459 N.E.2d 705, 708 (Ind. 1984)). The *D.P.* Court clarified that under the “plain language” of the “unambiguous” juvenile jurisdiction statute, INDIANA CODE § 31-30-1-1(1), “a juvenile court has subject matter jurisdiction in delinquency proceedings when the alleged offender is a ‘child,’ a term that [INDIANA CODE §] 31-9-2-13(d) specifically defines as excluding anyone aged twenty-one or older.” *D.P.*, 151 N.E.3d at 1216. The parties agreed that the juvenile court lacked subject matter jurisdiction to adjudicate D.P. or N.B. to be a delinquent child due to their ages. The *D.P.* Court explained that, like the juvenile jurisdictional statute, the juvenile waiver statutes, INDIANA CODE §§ 31-30-3-5 and 31-30-3-6, applied only when the alleged offender was a “child.” *See id.* at 1216. Because neither D.P. nor N.B. fit the definition of a “child” at the time their respective delinquency petitions were filed, the Indiana Supreme Court held that the juvenile court lacked subject matter jurisdiction to waive D.P. and N.B., as individuals aged twenty-one or older, into adult criminal court. *See id.* at 1213-16.

[8] The *D.P.* Court noted the parties had “spen[t] considerable time debating whether the State could directly file charges against D.P. and N.B. in adult criminal court if a juvenile court does[] n[o]t have subject matter jurisdiction to conduct a waiver hearing.” *Id.* at 1217 n.2. Our supreme court, however, left

this “tangential” issue for another day because the State had “never attempted to file charges in criminal court.” *Id.*

[9] Additionally, the *D.P.* Court acknowledged the parties’ competing policy arguments for why the juvenile court did or did not have subject matter jurisdiction to waive D.P. and N.B. into adult court. Specifically, the State argued that “finding no subject matter jurisdiction in these cases would run afoul of legislative intent by effectively shortening the child-molesting statute of limitations for D.P., N.B., and those similarly situated.” *Id.* at 1216. The State’s argument was based on INDIANA CODE § 35-41-4-2(e)(1), which provides that a prosecution for child molesting may be commenced before the date the alleged victim reaches the age of thirty-one. The “competing policy argument” was that “accepting the State’s position would lead to adults being punished many years after their youthful offenses, without any opportunity for juvenile rehabilitation.” *Id.* at 1217. The *D.P.* Court noted, by example, that following the State’s argument that the juvenile court had maintained jurisdiction for waiver purposes could potentially lead to the State being able to file a delinquency petition against N.B. when he was in his late thirties for acts that allegedly occurred when he was between twelve and fifteen years old. *Id.*

[10] The *D.P.* Court, however, concluded that it “need not decide whose policy argument carrie[d] more weight” because it was “bound by the plain language of the relevant juvenile-law provisions” that “unambiguous[ly]” provided that “the juvenile court d[id] not have the authority to waive D.P. and N.B. into adult criminal court.” *Id.* The *D.P.* Court emphasized that “[t]o decide

differently would require this Court to rewrite clearly written statutes, violating bedrock separation-of-powers principles.” *Id.* Furthermore, the *D.P.* Court cautioned that if its interpretation of the juvenile statutes and its holding “was not the intent of the legislature,” then it was the province of the legislature, not the Court, to “make the necessary statutory changes.” *Id.*

[11] In light of the holding in *D.P.*, the State moved to dismiss Neukam’s juvenile delinquency case. The juvenile court granted the motion and dismissed the juvenile case.

[12] Thereafter, on September 18, 2020, the State moved to amend the complaint in Neukam’s adult criminal case to add the eight child molesting charges from Neukam’s dismissed juvenile delinquency case. Again, these additional child molesting charges were alleged to have occurred when Neukam was under the age of eighteen. The State asserted that the proposed eight charges “constitute[d] an ongoing pattern of alleged criminal activity [that] began prior to [Neukam’s] eighteenth (18th) birthday[.]” (App. Vol. 2 at 179). The State acknowledged that it had originally filed these eight charges in juvenile court and that they had been dismissed pursuant to our Indiana Supreme Court’s holding in *D.P.* The State further alleged that Neukam would not be prejudiced by adding the eight charges to the complaint in Neukam’s adult criminal case because he had been aware of the allegation since the time of Neukam’s juvenile delinquency case.

[13] On September 24, 2020, the adult criminal court issued the interlocutory order at issue in this case and denied the State’s motion to amend the complaint. The adult criminal court denied the motion “due to the age of [Neukam] at the time of the alleged offenses to be added to the charging information[.]” (App. Vol. 2 at 190). Thereafter, the State filed a motion requesting that the adult criminal court certify its order and stay the proceedings, and the adult criminal court granted both requests. The State then sought permission to file this interlocutory appeal, and this Court granted its request. The State now appeals.

Decision

[14] The State challenges the adult criminal court’s interlocutory order denying the State’s motion to amend the complaint in Neukam’s adult criminal case. Specifically, the State argues that “[t]he [adult criminal] court erred by denying the State’s motion to amend the charges merely because Neukam was under age 18 at the time of the alleged offenses.” (State’s Br. 7).

[15] While this interlocutory appeal comes to this Court from an order on the State’s motion to amend, the crux of this appeal involves jurisdiction. This appeal requires this Court to answer the question left unanswered by our supreme court in the *D.P.* opinion. Specifically, we are asked to determine “whether the State [may] directly file charges . . . in adult criminal court if a juvenile court does[] n[o]t have subject matter jurisdiction to conduct a waiver hearing.” *See D.P.*, 151 N.E.3d at 1217 n.2. Stated differently, this appeal involves the question of whether, under relevant statutes, an adult criminal court has jurisdiction over child molesting allegations that were alleged to have occurred

when an individual was under eighteen years of age but is now over the age of twenty-one. The answer to the question presented on appeal depends on jurisdiction.

[16] “To act in a given case, a trial court must possess both subject matter jurisdiction and personal jurisdiction.” *R.L. Turner Corp. v. Town of Brownsburg*, 963 N.E.2d 453, 457 (Ind. 2012) (citing *K.S. v. State*, 849 N.E.2d 538 (Ind. 2006)). *See also* I.C. § 35-34-1-1(b) (providing that “all prosecutions of crimes shall be instituted by the filing of an information in a court with jurisdiction over the crime charged”). A trial court has subject matter jurisdiction when “the Indiana Constitution or a statute grants the court the power to hear and decide cases of the general class to which any particular proceeding belongs.” *R.L. Turner Corp.*, 963 N.E.2d at 457. *See also D.P.*, 151 N.E.3d at 1213 (“Subject matter jurisdiction refers to a court’s constitutional or statutory power to hear and adjudicate a certain type of case.”). Personal jurisdiction is “the power of a court to bring a person into its adjudicative process and render a valid judgment over a person, which requires effective service of process.” *M.C. v. State*, 127 N.E.3d 1178, 1180 (Ind. Ct. App. 2019). *See also R.L. Turner Corp.*, 963 N.E.2d at 457 (explaining that “[p]ersonal jurisdiction exists when a defendant both has sufficient minimum contacts within the state to justify a court subjecting the defendant to its control, and has received proper notice of a suit against him in that court”). The existence of jurisdiction is a question of law that appellate courts review de novo. *See D.P.*, 151 N.E.3d at 1213.

Additionally, we apply a de novo standard of review to the interpretation of statutes. *Id.*

[17] Here, the parties focus on the existence of subject matter jurisdiction.² The State acknowledges that Neukam, who is now over twenty-one years old, is “beyond the jurisdiction of the juvenile courts for the acts he committed before he was 18” years old. (State’s Br. 7). Instead, the State asserts that this fact “does not mean [Neukam] is beyond the power of the State of Indiana to enforce the criminal law at all.” (State’s Br. 7). The State reasons that Neukam “is an adult, and like all adults, he is subject to the general criminal jurisdiction of the criminal courts of Indiana to answer for his violation of the criminal law.” (State’s Br. 7). Thus, the State suggests that subject matter jurisdiction of the juvenile delinquency allegations should transfer to the adult criminal court in Neukam’s adult criminal case because, as a circuit court, it had original and concurrent jurisdiction in all criminal cases under INDIANA CODE § 33-28-1-2(a)(1).³ The State also sets forth hypothetical musings about what would have

² Because of Neukam’s pending adult criminal case, the parties do not dispute the adult criminal court’s personal jurisdiction over Neukam. However, in the State’s reply brief, it raises an argument regarding personal jurisdiction. Specifically, the State contends that it is personal jurisdiction that is at issue in this appeal because, pursuant to *Twyman*, the adult criminal court’s subject matter jurisdiction already existed. We reject the State’s argument. First, a party waives any argument that is first raised in a reply brief. *See Curtis v. State*, 948 N.E.2d 1143, 1148 (Ind. 2011) (citing Appellate Rule 46(C) and explaining that a party “may not raise an issue . . . for the first time in a reply brief”). Moreover, our supreme court’s *Twyman* case is distinguishable from this case. *Twyman* involved a juvenile, who had appeared in the Marion Superior Court in 1974, misrepresented his age as being twenty, was charged with robbery but pled guilty to battery, and then challenged the adult criminal court’s jurisdiction on in a post-conviction proceeding in 1982. Additionally, *Twyman* involved the interpretation of the 1974 versions of jurisdictional statutes that granted exclusive jurisdiction to both the juvenile court and the Marion criminal court.

³ When discussing a circuit court’s jurisdiction, both parties cite *Truax v. State*, which set forth that “[a]n Indiana circuit court has original jurisdiction in a criminal case unless exclusive jurisdiction is conferred upon

happened if the juvenile court had sufficient jurisdiction to waive Neukam into adult criminal court. The State ponders that “[h]ad the State been able to initiate juvenile proceedings with sufficient time to seek waiver while the [juvenile] court had jurisdiction over Neukam, waiver would have been likely.” (State’s Br. 14).

[18] On the other hand, Neukam asserts that the State cannot file the charges in adult criminal court because the alleged acts occurred when he was a “child” and that the legislature has not provided the adult criminal court with subject matter jurisdiction over acts or offenses that were alleged to have been done by a “child.” *See* I.C. § 31-9-2-13(d) (defining “child” for juvenile law purposes). Neukam further asserts that “Indiana Courts only have jurisdiction to the extent that jurisdiction has been granted to them by the constitution or by statute.” (Neukam’s Br. 9). In addition, Neukam contends that “[h]ad the legislature intended to allow the State to amend adult charges for offenses allegedly committed by Neukam, as a child, and bypass the waiver provisions . . . , there would be statutory direction to allow such an action, such as provided in I.C. [§] 31-30-3-4, involving the allegation of Murder.” (Neukam’s Br. 7). Neukam argues that “[i]t is not for the State to create statutory authority to address

another court by law.” *Truax v. State*, 856 N.E.2d 116, 122 (Ind. Ct. App. 2006) (citing I.C. § 33-28-1-2 (2004)). However, pursuant to a 2011 amendment, the current version of this statute provides that a circuit court has “original and concurrent jurisdiction . . . in all criminal matters[.]” I.C. § 33-28-1-2(a)(1).

factual situations that are silent in the law” and that, instead, it “is a function of the legislative branch.” (Neukam’s Br. 11).

[19] “[O]ur [Indiana] Supreme Court [has] noted that juvenile jurisdiction is a confused area of the law.” *Griffith v. State*, 791 N.E.2d 235, 237 (Ind. Ct. App. 2003) (citing *Twyman*, 459 N.E.2d at 707), *trans. denied, disapproved of by Phares v. State*, 796 N.E.2d 305 (Ind. Ct. App. 2003). “The vagaries of juvenile jurisdiction have been caused by the use of imprecise language and loose terminology in appellate opinions, and in the jurisdictional statutes as well.” *Twyman*, 459 N.E.2d at 707. However, “[w]hen the legislature is imprecise, the State does not get the benefit of the doubt.” *K.C.G. v. State*, 156 N.E.3d 1281, 1284 (Ind. 2020). “We are bound by the plain language of the relevant juvenile-law provisions.” *D.P.*, 151 N.E.3d at 1217.

[20] In this appeal, we are faced with such vagaries and confusion due to the juvenile statutory law, or lack thereof. We agree with Neukam that the current juvenile statutory scheme set forth by our legislature does not explicitly provide for the State’s proposed action of amending the charging information in Neukam’s adult criminal case to add eight additional child molesting charges that were alleged to have occurred when he was under the age of eighteen.

[21] As set forth by INDIANA CODE § 33-28-1-2, the legislature has provided a circuit court with “original and concurrent jurisdiction . . . in all criminal matters[.]” I.C. § 33-28-1-2(a)(1). Thus, this statute granted the adult criminal court here, as a circuit court, subject matter jurisdiction over all criminal cases. *See D.P.*,

151 N.E.3d at 1213 (“Subject matter jurisdiction refers to a court’s constitutional or statutory power to hear and adjudicate a certain type of case.”). A “crime” is defined as “a felony or a misdemeanor.” I.C. § 35-31.5-2-75.

[22] Here, the allegations that the State sought to add to the charging information in Neukam’s adult criminal case were child molesting charges that were alleged to have occurred when Neukam was under the age of eighteen. Thus, the proposed charges were allegations of delinquent acts. *See* I.C. § 31-37-1-2(1) (defining a delinquent act, in relevant part, as an act that “would be an offense if committed by adult” and that is committed by a “child . . . before becoming eighteen (18) years of age”).⁴

[23] In this instant case, we need not decide whether a circuit court’s jurisdiction in “all criminal matters” would include jurisdiction for allegations of delinquent acts of child molesting that are alleged to have occurred when an individual was under the age of eighteen but when the individual was twenty-one or older at the time the charges are filed. Even assuming that a circuit court, as the adult criminal court was here, had subject matter jurisdiction for allegations of delinquent acts of child molesting such as the ones that are specifically involved

⁴ We note that the legislature has not included child molesting in INDIANA CODE § 31-30-1-4, which lists the “alleged violation[s]” for which a juvenile court lacks jurisdiction.

in this case, any such jurisdiction would be subject to the restrictions imposed by our legislature.

[24] Here, in INDIANA CODE § 31-30-1-11, the legislature set forth a specific restriction on an adult criminal court’s jurisdiction. Specifically, INDIANA CODE § 31-30-1-11, provides that “if a court having criminal jurisdiction determines that a defendant is alleged to have committed a crime before the defendant is eighteen (18) years of age, the court *shall* immediately transfer the case . . . to the juvenile court.” I.C. § 31-30-1-11(a) (emphasis added). Thus, in this instant case, the adult criminal court could not grant the State’s motion to amend because it would not, based on the allegations that Neukam committed the alleged child molesting offenses before he was eighteen years old, have had the necessary jurisdiction over such allegations.

[25] While it is clear, pursuant to our supreme court’s opinion in *D.P.*, that based on Neukam’s age, a juvenile court would no longer have jurisdiction to enter a delinquency adjudication or waive Neukam to adult court, we cannot rewrite or insert provisions into our juvenile statutes. *See D.P.*, 151 N.E.3d at 1217 (declining to “violat[e] bedrock separation-of-power principles” by rewriting statutes set forth by our legislature). *See also K.C.G.*, 156 N.E.3d at 1285 (declining to “rewrit[e] the legislature’s narrow enactment” of juvenile statutes).⁵ Our legislature has not yet provided the statutory authority to grant

⁵ We note that, in *K.C.G.*, our supreme court held that a juvenile court lacked subject matter jurisdiction to adjudicate an individual as a delinquent child for the offense of dangerous possession of a firearm because the

subject matter jurisdiction to an adult criminal court in the situation of this case where the adult criminal court is aware that an individual is alleged to have committed a delinquent act of child molesting when he was under eighteen (a child) but is twenty-one or older at the time the State seeks to file charges against him. Until that time when the legislature provides an adult criminal court with jurisdiction over such a situation, we cannot interpret the existing statutes to fill that void. “If today’s result was not the intent of the legislature, then it—not we—must make the necessary statutory changes.” *D.P.*, 151 N.E.3d at 1217. Accordingly, we affirm the adult criminal court’s order denying the State’s motion to amend the charging information in Neukam’s adult criminal case.⁶

[26] Affirmed.

[27] Najam, J., and Tavitas, J., concur.

language of the statute governing that offense, INDIANA CODE § 35-47-10-5(a), applied only to children and the language of the “delinquent act” statute, INDIANA CODE § 31-31-1-2, defined such act as one “that would be an offense if committed by an adult[.]” *See K.C.G.*, 156 N.E.3d at 1283. Because the State could not allege that the offense of dangerous possession of a firearm would be an offense if committed by adult, as defined in the delinquent act statute, the juvenile court’s jurisdiction was lacking. *Id.* (citing *D.P.*, 151 N.E.3d at 1213). In apparent response to our supreme court’s *K.C.G.* opinion, the legislature amended the delinquent act statute, expanding the definition of a delinquent act to include a “violation of [INDIANA CODE §] 35-47-10-5[.]” the dangerous possession of a firearm statute, and a “violation of [INDIANA CODE §] 35-45-4-6[.]” the statute for the offense of indecent display by a youth. *See* I.C. § 31-31-1-2(2),(3).

⁶ Lastly, we note that the State, as it did in *D.P.* to support its jurisdiction argument, points to INDIANA CODE § 35-41-4-2(e)(1), which provides that a prosecution for the offense of child molesting may be commenced any time before the date the alleged victim of the offense reaches age thirty-one. This statute sets for the period of limitations for criminal offenses. The statute does not convey jurisdiction. Additionally, as explained by our supreme court in *D.P.*, the reference to this statute leads to policy arguments that we need not decide because we bound by the statutory language of the relevant statutes that address jurisdiction. *See D.P.*, 151 N.E.3d at 1217.