

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 05-009

Court Jurisdiction After the Defendant Is Bound Over to the Grand Jury

QUESTIONS

1. After a general sessions court binds a defendant over to the grand jury on one or more separate warrants, which court has jurisdiction over the defendant and the warrant charges before an indictment or presentment or no true bill is returned by the grand jury for purposes of reducing or increasing bond, revoking bond, entering a dismissal based on a district attorney's *nolle prosequi*, etc.?
2. Does the general sessions court retain jurisdiction until the grand jury acts or fails to act, or does the criminal court have exclusive jurisdiction after the general sessions court signs the bind-over order?
3. For purposes of jurisdiction, is the general sessions court's bind-over order final when entered, or does the general sessions court retain jurisdiction to determine bonds or enter dismissals and voluntary pleas for 10 days after the bind-over order is signed?

OPINIONS

1. While a case is pending before the grand jury, the general sessions court retains jurisdiction over the defendant and the warrant charges, except that its authority to determine bail matters ends after the case is bound over. The trial court, i.e., the criminal court or circuit court, has authority to determine the conditions of bail "at any time prior to conviction," including during the period that the matter is pending before the grand jury.
2. Except for bail matters, the general sessions court retains jurisdiction over the defendant and the warrant charges while the case is pending before the grand jury. The trial court does not assume plenary control over the case until the grand jury returns an indictment against the defendant.
3. The general sessions court's bind-over order is final when entered.

ANALYSIS

1. “Original jurisdiction of criminal actions is committed to the courts of general sessions, city judges of certain towns and cities, the circuit courts, [and] the criminal courts. . . .” Tenn. Code Ann. § 40-1-107 (2003). General sessions courts are vested with jurisdiction to hold trials and render final judgments “in all misdemeanor cases brought before the court by warrant or information wherein the person charged with such misdemeanor enters a plea of guilty in writing or requests a trial upon the merits and expressly waives an indictment, presentment, grand jury investigation and jury trial.” Tenn. Code Ann. § 40-1-109 (2003); *see also* Tenn. Code Ann. §§ 16-15-401, -501 (1994 & Supp. 2004). In addition, any person arrested except upon a *capias* pursuant to an indictment or presentment “shall be taken without unnecessary delay before the nearest appropriate magistrate of the county from which the warrant for arrest issued, or the county in which the alleged offense occurred if the arrest was made without a warrant.” Tenn. R. Crim. P. 5(a). When a defendant appears initially before the general sessions court, the court shall proceed in accordance with Rule 5 of the Tennessee Rules of Criminal Procedure. *Id.* The general sessions court shall bind the defendant over to the grand jury in appropriate circumstances. Tenn. R. Crim. P. 5(c), (d).

“A trial court does not assume plenary control over the case until the decision to charge has come into fruition in the form of a charging instrument.” *State v. Penley*, 67 S.W.3d 828, 834 (Tenn. Crim. App. 2001) (citing *Quillen v. Crockett*, 928 S.W.2d 47, 51 (Tenn. Crim. App. 1995)). The trial court’s jurisdiction to act in the case “is commenced when the charging instrument issues and is returned to the trial court.” *Id.* (citing *State v. Hammonds*, 30 S.W.3d 294, 303-04 (Tenn. 2000); *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998); Tenn. R. Crim. P. 12(a)). Accordingly, after the general sessions court binds the defendant over to the grand jury, it retains jurisdiction over the defendant and the warrant charges while the case is pending before the grand jury, except for its authority to determine bail matters, as discussed below.

Tenn. Code Ann. § 40-11-104 (2003) provides an exception to the foregoing principle that the trial court is not authorized to act with respect to matters pending before the grand jury. In questions of bail, the general sessions court has authority to determine the conditions of bail “at any time prior to or at the time the defendant is bound over to the grand jury.” Tenn. Code Ann. § 40-11-104. The trial court has authority to determine bail matters “at any time prior to conviction or thereafter.” *Id.* “Thus, whereas the magistrate’s authority to determine bail matters ends after the case is bound over, the trial judge has authority in bail matters ‘at any time prior to conviction,’ including the time during which the matter is pending before the grand jury.” *Penley*, 67 S.W.3d at 834.

2. As explained above, once the general sessions court binds the defendant over to the grand jury, it retains jurisdiction over the defendant and the warrant charges while the case is pending before the grand jury, except for bail matters. While the trial court has authority to determine bail matters while the case is pending before the grand jury, the trial court does not assume jurisdiction over the case until the grand jury returns an indictment against the defendant.

3. The general sessions court's bind-over order is final when entered. As explained above, the general sessions court retains jurisdiction over the case while it is pending before the grand jury except for bail matters. There is no provision in the Tennessee Code or the Tennessee Rules of Criminal Procedure that provides the general sessions court with authority to determine bail matters for 10 days after it enters the bind-over order.

Accordingly, it is the opinion of this Office that, while a case is pending before the grand jury, the general sessions court retains jurisdiction over the defendant and the warrant charges, except that its authority to determine bail matters ends after the case is bound over.

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