

SUPREME COURT OF LOUISIANA

No. 00-KK-2279

STATE OF LOUISIANA

Versus

DAMON DAWSON AND RAYMOND VEAL

On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Parish of Orleans

CALOGERO, Chief Justice, dissents from the denial of the writ application.

The applicant raises an interesting issue that prompts me to prefer to grant this application and to set the matter for oral argument. The applicant contends that a straightforward reading of Article 305 B(1)(b) of the Children's Code¹ requires that for divesting the Juvenile Court of jurisdiction there must be a continued custody hearing with a probable cause determination and the filing of a bill of information. The State counters that Articles 305 B (3) and (4)² give the District Attorney complete

¹ La. Ch. Code art. 305(B)(1) provides:

When a child is fifteen years of age or older at the time of the commission of any of the offenses listed in Subparagraph (2) of this Paragraph, he is subjected to the exclusive jurisdiction of the juvenile court until whichever of the following occurs first:

(a) An indictment charging one of the offenses listed in Subparagraph (2) of this Paragraph is returned.

(b) The juvenile court holds a continued custody hearing and finds probable cause that the child has committed any of the offenses listed in Subparagraph (2) of this Paragraph and a bill of information charging any of the offenses listed in Subparagraph (2) of this Paragraph is filed. (Emphasis added)

² La. Ch. Code arts. 305(B)(3) and (4) provides:

(3) The district attorney shall have the discretion to file a petition alleging any of the offenses listed Subparagraph (2) of this paragraph in juvenile court or, alternatively to obtain an indictment or file a bill of information. If the child is being held in detention, the district attorney shall make his election and file the indictment or bill of information or petition in the appropriate court within thirty calendar days after the child's arrest, unless the child waives this right.

(4) If an indictment is returned or a bill of information is filed, the child is subject to the exclusive jurisdiction of the appropriate court exercising criminal jurisdiction for all

discretion to file a petition in Juvenile Court or file a bill of information in the Criminal District Court. The issue to be resolved is whether the District Attorney can divest the Juvenile Court of its jurisdiction simply by filing a bill of information or whether the bill of information must be coupled with a continued custody hearing and a finding of probable cause by the Juvenile Court judge.

The statutory provisions are ambiguous as to the procedures the District Attorney must follow to divest the Juvenile Court of jurisdiction over children fifteen years of age or older at the time of the commission of the offenses listed in Article 305B(2). Additionally, *State v. Hamilton*, 96-0107, p.1 (La. 7/2/96), 676 So. 2d 1081, does not address this issue in a controverted case. The opinion simply recites or restates the precise provisions of Art. 305.

Raymond Veal was fifteen years old when he was arrested for aggravated burglary. On December 28, 1999, he appeared in Juvenile Court when an attorney with the Orleans Parish Indigent Defenders' Office was appointed to represent him. His lawyer thereupon stipulated to probable cause, without consulting either the defendant or a concerned adult representing the juvenile's interests, and without having the benefit of or attempting to secure a continuance so that she could obtain a supplemental police report, one which as it turned out indicated that one of the two victims of the aggravated burglary could not identify the perpetrators of the crime³. The applicant contends that appointed counsel's stipulation to probable cause is the action that coupled with the bill of information filed by the District Attorney caused the transfer of the case to the Criminal District Court. If the attorney's stipulation is the

subsequent procedures, including the review of bail applications, and the child shall be transferred forthwith to the appropriate adult facility for detention prior to his trial as an adult.

³ Additionally, the application contains an affidavit from this victim, SL Williams, stating that he told the police that the accused juveniles were not the perpetrators of the aggravated burglary.

event that triggered the transfer of the case from the Juvenile Court to Criminal District Court, then that stipulation, in my view, constituted ineffective assistance of counsel in this case and would warrant remanding this case to the Juvenile Court for a continued custody hearing. On the other hand, if the proper construction of this article is that irrespective Art. 305 B(1)(b), Art. B (3) and (4) gives the District Attorney unfettered discretion to move a juvenile to Criminal District Court by filing a bill of information, then Criminal District Court judge erred in transferring the case back to Juvenile Court.

While I am not prepared to say that the applicant is correct in his assertion as to when the Juvenile Court can be divested of its exclusive jurisdiction, the issue is sufficiently unclear as to warrant our granting the writ in this case. For the foregoing reasons, I would grant the writ, and thus dissent from the denial of this writ application.