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IN THE COURT OF APPEALS OF GEORGIA

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| IN THE INTEREST OF R.T., | ) | |
| | ) | CASE NO. A05A1584 |
| A CHILD. | ) | |

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**REPLY BRIEF OF APPELLANT**

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**REPLY BRIEF OF APPELLANT**

COMES NOW R.T. (Robert Tavormina), appellant in the above-styled matter, by and through his undersigned attorney of record, and files his Reply Brief of Appellant as follows:

REPLY TO APPELLEE'S STATEMENT OF FACTS

The State argues, without any citation to the record or transcript, "T.T. also confided in her mother how the sexual contact had adversely affected her in school." (Brief of Appellee, **p.** 4). The State continued, "She described that as she became older, her peers would describe their first sexual encounters. She felt unable to reciprocate because, if she told them that her first sexual experience had been with her uncle, they would have believed she was sick. (T.29)" (Brief of Appellee, p. 4). This is followed by the State mentioning how T.T.'s mother testified about T.T. telling her about engaging in sex with an eight year old female. (Brief of Appellee, **p.** 4).

While T.T. was just shy of her sixteenth birthday, when she made the "outcry" about something that allegedly occurred when she was seven years of age, the above testimony simply serves to show, as noted in the initial Brief of Appellant, **T.T.'s** parents see her allegations against R.T. as an explanation of her being out of

control, rather than T.T.'s conduct being an explanation for her allegations against R.T., and the State has been more than willing to take up this fight, which could destroy an innocent man's life.

Moreover, this "evidence" is completely irrelevant to the issue before this Honorable Court, which is whether the Juvenile Court erred by transfering the matter to Superior Court, rather than retaining jurisdiction of the matter for final disposition.

ARGUMENT AND CITATION OF AUTHORITIES

**The Juvenile Court erred by entering an Order of Transfer to Superior Court, rather than retaining jurisdiction of the matter for final disposition, thus denying R.T. the due process guarantee of fundamental fairness and equal protection as provided by the Fourteenth Amendment to the United States Constitution and Article I, Section I, Paragraphs I and II of the 1983 Georgia Constitution.**

The State argues, "The Juvenile Court will be powerless to exercise any control or supervision over Appellant. If Appellant's argument is rejected and if convicted as charged in Superior Court, he would be amenable to control and supervision by that court for up to thirty years." (Brief of Appellee, p. 10).

First, R.T. has been accused in the delinquency petition of two counts of Child Molestation and two counts of Aggravated Child Molestation. (R-6). At the time these offenses are alleged to have occurred the maximum sentence for Child Molestation was twenty (20) years and the maximum sentence for Aggravated Child Molestation was

thirty (30) years. O.C.G.A. § 16-6-4(b) and (d) **(1993;** Ga.Pub.L. **1993,** p. 715).

Thus, R.T. faces a possible total sentence of one hundred (100) years in Superior Court, rather than the thirty (30) years argued by the State. This is definitely in stark contrast to being put under a juvenile court order of no more than two years (which under certain conditions could have been extended for two years). O.C.G.A. § 15-11-70 (formerly O.C.G.A. § **15-11-41(a) (1993)).**

The Juvenile Court Chapter of our State Code "shall be liberally construed to the end . . . [tlhat each child coming within the jurisdiction of the court shall receive, preferably in his or her own home, the care, guidance, and control that will be conducive to the child's welfare and the best interests of the state". O.C.G.A. **§ 15-11-1.**

Moreover, the creative premise for the juvenile justice system requires that the judges (and others who work within the juvenile justice system) "think outside the box" when confronted with unique factual situations. See, Murphy, Ga. Juvenile Practice & Procedure (4th ed.), § 7-22.

Thus, when a child is first hailed into juvenile court at age twenty-seven, rather than simply throwing up one's hands and claiming there is nothing the juvenile court can do (if the child is found to have committed any of the delinquent acts alleged), the Juvenile Court and the State should be willing to consider creative

responses to the unique factual situation. Thus, if R.T. were to be adjudicated delinquent, he could be supervised by (1) "'a State probation officer'" under the "state-wide probation system for felony offenders" (O.C.G.A.§ 42-8-22), (2) "'[a]ny public agency authorized by law to receive and provide care for. the child'" (O.C.G.A. § 15-11-66(a)(2)(A)), or (3) "the Juvenile Court's 'inherent powers to enforce it lawful orders.'" (Brief of Appellee, p 9, citing Brief of Appellant, p. 26).

The State argues that R.T. would not be a "felony offender" if adjudicated delinquent. (Brief of Appellee, pp. 9 - 10). However, the delinquent acts alleged are "felony offenses" and the petition, albeit erroneously, alleges that they are "designated felonies." (R-6). Moreover, nowhere is the phrase "felony offender" defined to be limited to a person convicted of a felony offense in Superior Court (of course, it could not be since persons who have not been "convicted" of any offense, felony or misdemeanor, are subject to being supervised by State probation officers when sentenced under the First Offender Act).

The State similarly argues that O.C.G.A. § 15-11-70(d) would require that R.T. "must be 'discharged from further obligation or control' by the Juvenile Court.'" (Brief of Appellee, p. 9). However, there is nothing in the language of that subsection which requires, under the facts of the present case, that the Juvenile Court must simply act as a conduit and automatically transfer this

matter to superior court, because R.T. is now twenty-eight years old. Moreover, O.C.G.A. § **15-11-70(d)** should not be considered to even be applicable since any order adjudicating R.T. delinquent, assuming he is found to have committed the delinquent acts alleged, will be entered long after his twenty-first birthday.

Furthermore, O.C.G.A. **§ 15-11-70(d)** does not hold that the Juvenile Court cannot enter an order regarding R.T. (or any person who was a child at the time of the acts alleged, but over the age of twenty-one when the petition is filed in the juvenile court), such that if the Juvenile Court retained jurisdiction and thereafter R.T. was adjudicated delinquent, the Juvenile Court would not be powerless to issue an enforceable order. The Juvenile Court not only has "inherent powers to enforce its lawful orders," O.C.G.A. § 15-11-5(a), but also "may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments." Article VI, Section I, Paragraph IV of the 1983 Georgia Constitution. It must be remembered that the juvenile courts of this State regularly enter orders affecting the rights of adults as defined by O.C.G.A. § 15-11-2(1). See, O.C.G.A. § 15-11-58 (reunification services); O.C.G.A. **§** 15-11-94 (termination of parental rights).

The State further argues, "If Appellant MUST be 'discharged from further obligation or control' by the Juvenile Court pursuant to O.C.G.A. **§ 15-11-70(d)**, then what legally enforceable Juvenile Court order could be asserted by 'any public agency authorized by

law to receive and provide care for the child' as the basis for continued supervision or control of Appellant?" (Brief of Appellee, p. 10).

First, if R.T. is not able to be suitably supervised by a probation officer of the court or a juvenile court of another state, see O.C.G.A. § 15-11-66(a)(2)(A), that subsection also allows for supervision by "[a]ny public agency authorized by law to receive and provide care for the child" or any community rehabilitation center which will agree in writing to accept supervision. O.C.G.A. § 15-11-66(a)(2)(B) and (C). There is nothing in either subparagraph which would prohibit the Juvenile Court from having this "child", who is now an adult, from being supervised by a public agency or community rehabilitation center that does not limit itself to children.

Assuming, in arguendo, that O.C.G.A. § 15-11-70(d) is applicable to a person for whom the delinquency petition was not filed until he was twenty-seven years of age for offenses alleged to have occurred before he was seventeen years of age, the Juvenile Court could enter a protective order under terms agreed to by the parties (similar to a negotiated plea) or if the parties were unable to reach an agreement, under the terms and conditions the Juvenile Court deems just and proper, with R.T. being supervised by "any public agency authorized by law to receive and provide care for the child" or any community rehabilitation center which will agree in

writing to accept supervision. Once the terms and conditions have been satisfactorily completed, the Juvenile Court would direct the State to dismiss its petition (similar to a discharge under the First Offender Act). Certainly in a matter where the allegations involve acts which were alleged to have occurred some twelve years earlier when the child was clearly within the jurisdiction of the juvenile court, such is all that justice actually demands.

Of course, since each of these options has been recommended by R.T., he would be collaterally estopped from challenging any of them on the grounds set forth by the State opposing them, or any other grounds.

The State concludes its Brief of Appellee arguing,

> Lastly it should be noted that one offense contained within the Juvenile Complaint is now properly before the Superior Court of Chatham County regardless of this Court's ruling in this matter on appeal. The last offense allegedly committed by R.T. upon T.T. occurred on July 12, 1993, the day before Appellant's seventeenth birthday. (R. 7), (T. 5, 15, 54). Consequently, Appellant was legally an adult on that day and beyond the jurisdiction of Juvenile Court with respect to that single count. Edmonds v. State, 154 Ga.App. 650 (1980).

(Brief of Appellee, p. 10).

First, the last count of the petition alleges the offense of Child Molestation having occurred "on or about July 12, 1993." (R-6-7). Thus, the State will not be required to prove that the crime occurred on July 12, 1993,[1] and, as such, should not be allowed to claim that it will for the purpose of depriving the Juvenile Court of jurisdiction in the matter.

Moreover, even though the State pointed out that it was able to pinpoint the dates "with a high degree of accuracy" (Brief of Appellee, p. 1, n. 1), it had stated, "[t]he criminal offenses against Appellant were committed during the period between July 4-12, 1993 . . . (Appellant's 17th birthday occurred the next day, July 13, 1993)." (Brief of Appellee, p. 1). Thus, of the nine day period in which the State claims the offenses occurred (of course, it has not limited itself to proving the offenses occurred during those nine days), only one is the day before R.T.'s seventeenth birthday.

Second, while Edmonds v. State, 154 Ga.App. 650, 269 S.E.2d 512, 513 (1980), quoting Thomas v. Couch, 171 Ga. 602, 156 S.E. 206

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1 See, Jefferson v. State, 136 Ga.App. 71, 220 S.E.2d 71, 74 (1975); Bloodworth v. State, 128 Ga.App. 657, 197 S.E.2d 423, 424 (1973); Martin v. State, 73 Ga.App. 573, 37 S.E.2d 411, 414-415 (1946).

(1960), did state that "'[a]t common law, "[o]ne [b]ecame of full age on the day preceding the twenty first anniversary of his birth, on the first moment of that day."'" However, there are a number of reasons why Edmonds v. State and Thomas v. Couch are not controlling in the case **sub** iudice.

First, in Edmonds v. State, based on Edmonds' own testimony, the burglary occurred on his seventeenth birthday. **Id**., 154 Ga.App. 650, 269 S.E.2d 512. However, in the case **sub** iudice, as discussed above, the alleged offense occurred sometime within a nine-day period, of which the state will not have to prove the exact date, nor even any date within the nine day period.

Second, while Edmonds claimed the burglary occurred between midnight and 1:00 a.m. on his seventeenth birthday, his birth certificate showed he was born at 1:18 a.m. **Id**., 154 Ga.App. 650, 269 S.E.2d 512. However, there was nothing in the statute that held that one did not become an adult until the exact minute of his seventeenth birthday, as opposed to the day of his seventeenth birthday.

Third, Thomas v. Couch was not a criminal matter. Moreover, the portion of Thomas v. Couch in which the Court included the language about one's birthday, under the law, actually being the day before the birthday was only joined by three of the seven justices (Justice Hill wrote the opinion in which and Presiding Justice Beck concurred, while three justices only concurred in the result; while

Justice Gilbert concurred in the general principle about when one becomes of full age, he dissented in part). Thus, the general principle about when one becomes of full age was simply dicta in Thomas v. Couch and should not have been cited by Edmonds v. State as binding, particularly in a criminal matter.

Fourth, id]elinquency and unruliness are among those proceedings in juvenile court that are quasi-criminal in nature." In the Interest of A.M.C., 213 Ga.App. 897, 446 S.E.2d 760, 761 (1994). Since the issue before this Court is the transfer of this matter to the Superior Court for prosecution as an adult, it is not merely "quasi-criminal", but completely criminal in nature.

"[C]riminal statutes must be construed strictly, and that, as said by the Supreme Court of the United States in Viereck v. United States, 318 U.S. 236(3), 63 S.Ct. 561, 87 L.Ed. 734: 'The unambiguous words of a criminal statute are not to be altered by judicial construction so as to punish one not otherwise within its reach, however deserving of punishment his conduct may seem.'" Waldroup v. State, 198 Ga. 144, 30 S.E.2d 896, 897 (1944); see also, Fleming v. State, 271 Ga. 587, 523 S.E.2d 315, 318 (1999), citing Waldroup; Vines v. State, 269 Ga. 438, 499 S.E.2d 630, 632 (1998), citing Waldroup.

"'[S]tatutes should be read according to the natural and most obvious import of the language, without resorting to subtle and forced construction, for the purpose either of limiting or extend-

ing their operation [cit.], and this principle is particularly compelling when interpreting criminal statutes.'" State v. Johnson, 269 Ga. 370, 499 S.E.2d 56, 59 (1998), quoting State v. Luster, 204 Ga.App. 156, 158, 419 S.E.2d 32 (1992); see also, Foster v. State, 273 Ga. 555, 544 S.E.2d 153, 155 (2001), citing Johnson.

Moreover, "[w]here statutory language is plain and unequivocal and leads to no absurd or impracticable consequence, the court has no authority to place a different construction on it." Johnson, 269 Ga. 370, 499 S.E.2d at 59.

Furthermore, "[w]here the language of a statute consists of common, ordinary words, and there is nothing to show that any unusual meaning is to be attached thereto, the court cannot deny the language its ordinary, usual signification; nor is the court required to give the language a forced and strained interpretation.'" State v. Corriher, 243 Ga.App. 648, 533 S.E.2d 800, 801 (2000), quoting Sheffield v. Cotton States Mut. Ins. Co., 141 Ga. App. 861, 863, 234 S.E.2d 695 (1977).

"Finally, in interpreting criminal statutes, it is axiomatic that any ambiguities must be construed most favorably to the defendant." Mann v. State, 273 Ga. 366, 541 S.E.2d 645, 647 (2001); see also, Vines, 269 Ga. 438, 499 S.E.2d at 631 (criminal statutes "'must be construed strictly against criminal liability and, if it is susceptible to more than one reasonable interpretation, the interpretation most favorable to the party facing criminal liability

must be adopted.'").

Thus, even though the juvenile code is silent as to how age is computed, Edmonds v. State, 154 Ga.App. 650, 269 S.E.2d at 513, the decision by the Edmonds Court, is quite questionable. By reading the statute "**according** to the natural and most obvious import of the language, without resorting to subtle and forced construction," and since "the language of a statute consists of common, ordinary words, and there is nothing to show that any unusual meaning is to be attached thereto," one would find that a person turns seventeen years of age on his seventeenth birthday, not the day before.

Assuming, in arguendo, there is any ambiguity in the statutory language, same would have to be construed most favorably to R.T., such that he would not be considered to have turned seventeen years of age until his seventeenth birthday, not the day before.

Finally, the State initiated these proceedings in Juvenile Court, representing to that Court that it had jurisdiction. It is most respectfully submitted that the State should be estopped from now claiming otherwise.

CONCLUSION

Appellant respectfully prays that this Court for the reasons set out above, and in the initial Brief of Appellant, reverse the court below as to each error presented as to the grant of the State's motion to transfer to superior court.

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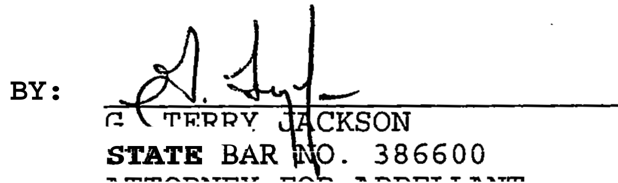
RESPECTFULLY SUBMITTED, this 6th day of June, 2005.

JACKSON AND SCHIAVONE

BY:



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CERTIFICATE OF SERVICE

I hereby certify I have this day served SPENCER LAWTON, JR., District Attorney, or his representative, at the Chatham County Courthouse, 133 Montgomery Street, Savannah, Georgia, 31401, with a true and correct copy of the within and foregoing Brief of Appellant by:

____ depositing a copy in the U.S. Mail in a properly addressed envelope with adequate postage affixed thereto to insure delivery:

____ via telecopier; or

✓ by hand delivery.

This the 6th day of June, 2005.

JACKSON AND SCHIAVONE

BY: ______________________
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