

APPENDIX 12

Motion to Remand to Family Court (filed June 14, 2004)

STATE OF SOUTH CAROLINA

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IN THE COURT OF GENERAL SESSIONS
Indictment Nos. 03-GS-12-825, 826, 827

COUNTY OF CHESTER

The State of South Carolina,

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-vs-

Christopher Frank Pittman,
Defendant.

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COPY
FILED

2004 JUN 14 P 1:26

CLERK OF COURT
CHESTER COUNTY, S.C.

DEFENDANT’S MOTION TO REMAND TO FAMILY COURT

Defendant Christopher Pittman, by and through his undersigned counsel, moves the Court to remand this case, in its entirety, to Family Court. In support of this Motion, Pittman would show the Court the following:

Twelve year old Christopher Frank Pittman was arrested in the early morning hours of November 29, 2001. From that date until June 27, 2003, he was in the exclusive, ostensibly protective, *parens patriae* jurisdiction of the Family Court. On June 27th, the Family Court “waived” its exclusive jurisdiction in favor of a referral to this Court, to try this 12 year old as an adult. At the appropriate time, *i.e.*, once a transcript of the waiver hearing is available, this Court must perform a “meaningful review” of that decision. Meanwhile, however, information is available now which was either (a) not considered by the Family Court, or, (b) which has been developed since that time, which militates very, very heavily in favor of a remand to the Family Court.

On June 5, 2004, the Supreme Court issued an Order vesting exclusive jurisdiction in this matter in The Honorable Daniel F. Pieper. That grant of plenary jurisdiction obviously empowers this Court to hear such evidence and to consider all of the current law and facts, so as to ensure itself that the initial waiver, and the continuation thereof, comports with South Carolina substantive law, and, of course, with the Constitution of the United States. *See e.g. State v. Corey D*, 529 S.E.2d 20 (S.C. 2000); *State v. Hamilton*, 285 S.C. 133, 328 S.E. 2d 633 (1985); *Patton v. Toy*, 867 F.Supp.

356, 364 (D.S.C. 1994)(granting habeas corpus relief because South Carolina Family Court deprived juvenile convicted of murder of due process viz. a viz. waiver hearing)¹

Jurisdictional Statement

It is, of course, axiomatic that “[i]ssues related to subject matter jurisdiction may be raised at any time and may be raised *sua sponte* by the court.” *In re. Jason T*, 340 S.C. 455, 531 S.E. 2d 544n.2 (2000)(Family Court did not have jurisdiction to accept guilty plea to a greater charge without affording minor due process of law). Thus, it is entirely appropriate for this Court to revisit the question of whether the Family Court’s jurisdiction was properly waived, and whether the continued assertion of this Court’s jurisdiction over this minor is consistent with the law and the facts. Indeed, the transfer statute itself specifically provides that “[w]hen an action is brought in a circuit court which, in the opinion of the judge, falls within the jurisdiction of the family court, he may transfer the action upon his own motion or the motion of any party.” S.C. Code §20-7-7605(3).

Moreover, as noted above, because the question of a juvenile court’s waiver of jurisdiction implicates due process rights, the issue is one of constitutional dimensions and “**any reviewing court** must ensure that each child receives such process.” *Patton v. Toy, supra*, 867 F.Supp. at 364.

For the following reasons, we submit that the continued assertion of jurisdiction over both the arson and murder charges is inappropriate.

This Court Clearly Has No Jurisdiction over the Arson Charge

Christopher Pittman was 12 years old at the time of the incidents giving rise to this case. They occurred on or about November 28-29, 2001. It is axiomatic that, because of his minority, the

¹ In *Patton*, Judge Blatt wrote: Juvenile waiver hearings must measure up to the essentials of due process and fair treatment,” citing *Application of Gault*, 387 U.S. 1, 30, 18 L. Ed. 2d 527, 87 S. Ct. 1428 (1967). At present counsel for Defendant Pittman are not in possession of a transcript of the Family Court’s waiver hearing. However, a copy has been ordered so that this Court can do the kind of “meaningful review” that *Patton* and the constitution require.

Family Court had exclusive jurisdiction over him at that time. *See e.g. State v. Avery*, 333 S.C. 284, 509 S.E.2d 476 (S.C. 1998).

The statutory authority which enables the Family Court to “waive” its jurisdiction “up” to this Court is S.C. Code §20-7-7605, as amended in 1998. In that statute, the Legislature made several judgments, distinguishing between 17 years olds vs. 14 and 15 year olds versus those under the age of 14. According to the most recent pronouncement from the South Carolina Supreme Court, although subsection 6 of that statute permits the waiver, regarding murder charges against a 12-year old, it does not permit such a waiver of other charges – even “related charges” – when the person charged is, like Christopher Pittman, under the age of 14 at the time of the offense/charge. *State v. Corey D*, 529 S.E.2d 20 (S.C. 2000)(“The State maintains the transfer statute applies to the transfer of jurisdiction over all related charges. We disagree.”). Prior to 1981, the statute specifically listed “arson” as a waivable charge, but it was dropped in the 1981 amendments. *Id.*

Consequently, because the waiver/transfer of the arson charges was totally contrary to South Carolina law, as recently interpreted by the Supreme Court, this Court has no jurisdiction over such charges. They should be remanded to the Family Court.

**Neither “Rehabilitative Prospects” Nor “Protection of Society”
Justify a Continued Waiver of Family Court Jurisdiction**

There is a glaring and irreconcilable anomaly in the current situation before the Court. On the one hand, by June 27, 2003 Order of the Family Court, the proceedings against Pittman were “waived up” to Circuit Court, and the Solicitor is seeking to try him as an adult. On the other hand, the Circuit Court of Chester County has continued and extended the appointment of Milton Hamilton, Esq. as “guardian *ad litem*” for Mr. Pittman. In this capacity, Mr. Hamilton, rather than Mr. Pittman, has been empowered to make certain tactical and strategic choices governing the defense in this case.

With all due respect, we submit that Chris Pittman cannot be treated as an adult for some purposes, and, yet, as a minor for others. If he is an adult, then he does not need a guardian *ad litem*, and he should be entitled to make important decisions regarding his defense on his own. But, on the other hand, if he is a child, then the case against him should proceed in Family Court. The State of South Carolina cannot have it both ways.

South Carolina has adopted the criteria articulated in the addendum to *Kent v. United States*, 383 U.S. 541 (1966) for deciding when, and under what circumstances, it is appropriate to try a juvenile as an adult. *State v. Avery*, 509 S.E.2d 476 (S.C. 1998); *In re. Sullivan*, 274 S.C. 544, 265 S.E.2d 527 (1980).

Under these cases, the courts are to consider the 8 different factors set forth in the Addendum to the Supreme Court's *Kent* opinion in determining whether adjudication in adult court is proper or not. Significantly, however, the twin "touchstones" of the inquiry are whether the youth can be "rehabilitated" within the juvenile court system and whether he presents any continuing danger to society. *State v. Avery*, 333 S.C. 284, 289, 509 S.E.2d 476, 489 (S.C. 1998). The United States Supreme Court explained this in *Kent*, as follows:

The theory of the District's Juvenile Court Act, like that of other jurisdictions, is rooted in social welfare philosophy rather than in the *corpus juris*. Its proceedings are designated as civil rather than criminal. The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. **The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment.** The State is *parens patriae* rather than prosecuting attorney and judge

383 U.S. at 554-55 (emphasis added). South Carolina employs the same basic standards for making and sustaining a waiver. *Toy, supra*.

As noted above, the transcript of the waiver hearing has been ordered, but is not yet available. Therefore, at this juncture, this Court cannot make the kind of "meaningful review" of

that decision that the Constitution requires. However, because this Court has plenary jurisdiction, it can hear evidence regarding the very significant developments which have occurred over the last year. These facts, which were obviously not available to the Family Court, militate strongly in favor of a retransfer of the entire case.

As is apparent from other pleadings in this case, at the time that these events happened, Christopher Pittman was taking Zoloft, a mind-altering “SSRI” drug. Several very significant things relating to Zoloft have happened since the June 27, 2003, decision by the Family Court. First, the regulatory authorities in both Canada and the UK have banned or “contraindicated” Zoloft for children 18 and under because of the increased risk of hostile or suicidal behavior. Thus, in those countries, it would be legally impermissible to even give Zoloft to a 12 year old. Second, in this country, on March 22, 2004, the FDA ruled that doctors prescribing Zoloft should be warned that it has been associated with increased incidents of hostility and aggression, particularly with children². Most of the other SSRI manufacturers have now issued warnings in this country concerning the potential association between these drugs and violence/suicide. Although Pfizer has apparently not yet decided that it will adhere to the FDA’s recommendations in this country, even Pfizer has issued warnings in Canada.

Third, in the intervening time between the Family Court’s waiver order and the present, Mr. Pittman has been treated on a regular basis by competent mental health professionals employed by the State of South Carolina. These professionals are in the best position to determine whether, in fact, Christopher can benefit from the rehabilitative goals of the juvenile system. It is expected that when the Court hears testimony on this matter, the Court will discover that, since he has been off the SSRI medications, Chris Pittman has been a model prisoner, and the Court will learn that he

² The Court should also be advised that, even at the time that Chris Pittman received Zoloft, it was not “indicated” or approved by the FDA for treatment of pediatric depression. In view of the fact that this was Dr. Naumann’s diagnosis, it is evident that Mr. Pittman got the Zoloft on an “off label” basis.

poses no risk to society and that there is a very high likelihood that -- even if he was convicted -- he could, in the care of the juvenile system, be totally rehabilitated and become a productive member of society long before he turns 21.

With regard to the murder charges, the Solicitor may well argue that the seriousness of the charges militates in favor of the waiver. This is certainly true. *See e.g. State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998). But it is only **part** of the truth. There are eight separate factors. Indeed, as *Corey D*, *supra*, illustrates, without a charge of this gravity, the Solicitor does not even get to first base with regard to a request for waiver. And, as *Toy*, *supra*, teaches there are circumstances involving murder charges in which waivers either have not been, or could not be, sustained.

Justice must be based on the whole truth, and nothing but the truth. And waivers may be sustained only after a “full investigation,” due process, and reasoned consideration of all eight *Kent* factors. In *Kelsey*, the South Carolina Supreme Court affirmed the waiver of murder charges against a 16 year old, in significant part, because “Kelsey would have less of a chance of rehabilitation in the juvenile justice system because his sentence under that system would be brief.” *Id.* (emphasis added). By contrast, if he was convicted in Family Court, then Chris Pittman would face potential incarceration of nearly 9 years, from the tender age of 12 to age 21. This is ample time for rehabilitation, especially under the unique circumstances of this case.

Another major factor to be considered is the potential danger to the community. *Id.* Indeed, other than the rehabilitative prospects for the accused, it is the most essential factor which can justify a waiver. In this case, the crime with which Pittman was charged was a uniquely intra-family crime. There is nothing about that charge, and certainly no other facts of record, which indicate that Chris Pittman would pose a danger to his community. And, as noted above, it is expected that his current mental health care professionals would advise the Court that, since he became medication free, he has been a model inmate.

None of the other factors listed in *Kent* or considered by South Carolina courts to justify a waiver are present in the case at bar. For example, unlike the 16 year old defendant in *State v. Hamilton*, 285 S.C. 133, 328 S.E. 2d 633 (1985), 12 year old Christopher Pittman did not have an extensive prior juvenile court record. Similarly, unlike the “almost 15 year old” in *Avery, supra*, 12 year old Chris Pittman did not have a significant problem of alcohol abuse. Nor does Christopher exhibit Avery’s “unwillingness to participate in the rehabilitative process.” To the contrary, he is remorseful, cooperative, and anxious to be fully rehabilitated.

Conclusion

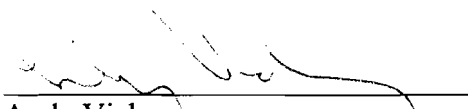
There is a natural human tendency, in any homicide case, to want to extract revenge or punishment. However, by their very nature, the juvenile courts are designed to pursue rehabilitation rather than retribution. And, as *Kent, Toy*, and their progeny teach, the focus of the courts confronted with potential “waivers” of juvenile or family court jurisdiction, even in the case of homicides, must be on the potential for such rehabilitation.

For these reasons, Pittman urges the Court to conduct an evidentiary hearing, and, after hearing testimony, *inter alia* from the mental health professionals who are most knowledgeable about Mr. Pittman’s condition, to remand this case to Family Court.

NOTICE OF HEARING

Please take note that the foregoing motion will be brought on for hearing and determination by the Court at a time and place selected by Judge Pieper, in accordance with the telephone conference between counsel and the Court.

Respectfully submitted,


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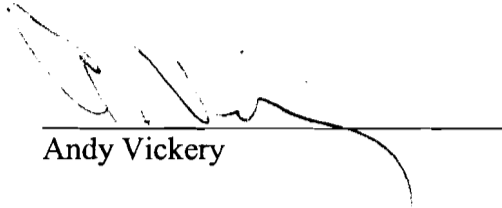
Certificate of Service

The undersigned hereby certifies that this pleading was served, this 10th day of June 2004, via FedEx., to all defense counsel listed above and to the following:

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