

MEMORANDUM

To: Legal Committee

Fr: Deborah Ross *DKR*

Re: Request for Assistance from Sam Bridges on behalf of Andre Green - 13 year old to be tried as an adult

Date: September 7, 1994

Sam Bridges called on September 1, 1994, to ask if we would be willing to provide amicus support for his case on behalf of Andre Green in the North Carolina Court of Appeals.

Green, who is 13 years old, is accused of raping a woman last July in Fuquay-Varina. He has been charged with first degree rape, first degree burglary and felonious sex offense. On August 19, 1994, Wake County District Court Judge Joy Hamilton ruled that Green is to be tried as an adult, for the following reasons: the serious nature of the offenses; the victim was a stranger; the community's need to be aware of and protected from this serious type of criminal activity; history of assaultive behavior (fights in school) and acknowledgement that he has a bad temper; and strong evidence of probable cause based on testimony from victim and juvenile's confession to law enforcement. Green is the first 13 year old to be tried as an adult pursuant to N.C.G.S. Sec. 7A-608, which was amended in the crime session to permit 13 year olds to be tried as adults (used to be 14 year olds). If Green is tried as an adult and convicted, he will be subject to the mandatory sentencing guidelines and will serve minimum of 20 years before being eligible for parole (if the judge does not have the minimum terms for each offense run concurrently, Green will be eligible for parole in 67 years).

Sam Bridges has filed a notice of appeal of Judge Hamilton's initial ruling with the North Carolina Court of Appeals. He objects to Judge Hamilton's ruling because Green has no prior criminal record and has never received rehabilitation services provided to juvenile offenders. Bridges also contends that the mandatory sentencing guidelines were not intended to apply to children.

Sam is trying to get help with his appeal from other groups as well. He told me that Joe Chesire is interested in helping with the case, either through NCATL or on his own.

ACLU Policy and Legal Analysis

The ACLU policy (#272(a) - Due Process in Juvenile Delinquency Proceedings) on transfer or waiver of juveniles into the adult system is that such transfer or waiver should be made upon a judicial determination that the following factors support waiving: the seriousness of the offense and whether the community needs protection; the degree of violence involved; the prosecutive merit of the complaint; the sophistication and maturity of the juvenile; the record and previous history of the juvenile; and the prospects for adequate protection of the public and the best interests of the juvenile. In no case should a juvenile be waived into the adult system unless the prosecution proves to the court by clear and convincing evidence that transfer is in the best interests of the juvenile.

At first blush, it appears that Judge Hamilton did not consider the sophistication and maturity of the juvenile or the best interests of the juvenile. She also seems to have exaggerated his past behavior to produce some record or previous history to show a propensity for violence.

North Carolina case law holds that the decision to try a juvenile as an adult is a matter solely within the sound discretion of the district court judge who conducts the probable cause hearing. In making such a decision, the judge is required to give reasons for her actions but is not required to make findings of fact. In the Matter of Bunn, 34 N.C. App. 614, 239 S.E.2d 483 (1977). In Bunn The Court of Appeals held that the district court judge did not abuse his discretion by transferring an armed robbery case against a 15 year old to Superior Court for trial as an adult because the best interest of the State would be served by the transfer given the deadly nature of the crime, "the defendant's history of delinquency and the interest of the State of protecting its citizens from those who have demonstrated that they will threaten human life in order to deprive others unlawfully of their property." The present case can be distinguished from Bunn based on the fact that Green has no previous record. In addition, there is a serious policy concern raised by the Court of Appeals' holding in Bunn as to whether the district court judge should make her determination to transfer based on the best interest of the State alone without

considering the best interest of the juvenile. Finally, at the time Bunn was decided the State had not enacted the mandatory sentencing guidelines.

The U.S. Supreme Court has raised similar concerns. In Kent v. U.S., 383 U.S. 541 (1966), the Supreme Court explained the role that the juvenile court is to play in hearing cases involving criminal conduct. (Kent involved a 16 year old accused of rape, housebreaking and robbery, who the juvenile court determined should be tried as an adult without stating its reasons or providing an opportunity for counsel to put on evidence in the defendant's favor). "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." Id. at 553. In an appendix to Kent the Court suggested eight factors to be considered when a judge decides whether a juvenile case should be transferred to adult court: (1) the seriousness of the alleged offense to the community and whether the protection of the community requires waiver; (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner; (3) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted; (4) the prosecutive merit of the complaint, i.e., likelihood of indictment; (5) the desirability of trial and disposition of the entire offense in one court when the juvenile's associates are adults; (6) the sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living; (7) the record and previous history of the juvenile including previous contacts with juvenile and other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation, or prior commitments to other juvenile institutions; and (8) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile. "Although not all such factors will be involved in an individual case, the Judge will consider the relevant factors in a specific case before reaching a conclusion to waive juvenile jurisdiction...." Id. at 567-68, appendix.

I have attached the most recent newspaper article on the case.

Trial shift sought

The lawyer for a 13-year-old who could be the youngest person ever to face trial as an adult says he'll ask an appeals court to return the rape case to juvenile court.

BY SARAH AVERY
STAFF WRITER

RALEIGH — The attorney for 13-year-old Andre Green — the youngest person slated for trial as an adult in North Carolina — has filed notice that he'll ask the state Court of Appeals to shift the case back to juvenile court.

The move could transfer jurisdiction from the trial court to the appeals panel until it is settled.

Cases can take up to a year to be resolved in the higher court, but the prosecutor said Tuesday he was unfazed and would keep the case moving toward an indictment next month in Wake Superior Court.

Green is accused of raping a 22-year-old woman who lived near him in a Fuquay-Varina apartment complex.

His case was bound over to Superior Court on Aug. 19 by Joyce Hamilton, a Wake District Court judge, who said Green should be tried as an adult because of the brutality of the alleged attack.

He is charged with first-degree rape, first-degree sex offense and first-degree burglary — each of which in adult court carries a possible maximum sentence of life in prison.

"The mandatory sentences for first-degree rape and first-degree sex offense were not designed with a 13-year-old in mind," Green's attorney, Samuel Bridges, said Tuesday.

"If my client is convicted, and these mandatory sentences are imposed on a 13-year-old, the result would be barbaric."

To prevent such an outcome, Bridges has filed notice of appeal to the Court of Appeals, which is responsible for hearing disputes over final rulings in juvenile court. John Connell, clerk of the Court of Appeals, said the panel

Jackson said the judge ruled fairly when she cited the brutality of the case. To back up that contention, at his office Jackson played a tape of the woman calling police after she heard someone breaking into her apartment.

While she is talking to the emergency operator, the woman screams that she sees a young man coming at her. The screams escalate, and the woman begins pleading for the life of her 21-month-old son.

Just before the line goes dead, the son wails.

As ground for appeal, he points to Green's lack of a criminal record before he was charged in July.

"The case law on this issue gives the judge wide discretion in this matter," Bridges said. "But it also requires that the district court judge consider the prior record of the juvenile and whether the juvenile court authorities have exhausted their resources trying to rehabilitate the child."

As a result, Bridges said, the youth never had the benefit of evaluation and counseling services that usually are offered to troubled youths.

Prosecutor Frank Jackson contends that Bridges' filing is baseless. Unless he hears otherwise from the appeals court, he said, he plans to present the case to a grand jury as scheduled Sept. 13.

"There's been no disposition and no trial," Jackson said. "There is no final order that has been entered from which an appeal can be filed."

Bridges says that because the judge's decision impinges so significantly on the long-term consequences that Green might face — the potential for a life sentence in adult prison — it's all but a final order.

JUVENILE

Continued from page 1B

get about 24 cases a year from juvenile courts, out of about 250 from the state's district courts.

But the move is unusual for other reasons.

"Most cases are appealed to a higher court when they have been settled one way or another in a lower court."

Hamilton's decision is far from the final settlement of Green's case. Instead, it's a procedural matter, typically not a basis for appeal.