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## ***Superior Court Lacks Authority to Transfer a Case, Sua Sponte, from Superior Court to Juvenile Court, Prior to Indictment***

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In State v. Herndon, S06A2040 and State v. McLendon, S06A2041 (01-22-2007), decided together, the Georgia Supreme Court held that superior court judges exceed their authority by transferring a case, *sua sponte*, from the superior court to juvenile court prior to indictment, when the district attorney has elected to proceed against the juvenile in superior court.

Under O.C.G.A. § 15-11-28 (b)(1) the superior court and juvenile court have concurrent jurisdiction of any matter which, if tried as a crime, could be punishable by loss of life, imprisonment for life without parole, or imprisonment for life. O.C.G.A. § 15-11-28 (b)(2)(C) dictates that, prior to indictment, it is in the sole discretion of the district attorney whether to proceed against the juvenile in superior court or juvenile court. Only after an indictment has been returned does the authority to transfer the case vest in the superior court. O.C.G.A. § 15-11-28 (b)(2)(B).

In the cases before the Court, the two juveniles were alleged to have robbed a store using a BB gun, and were charged with armed robbery. The district attorney elected to pursue the cases in superior court. At a bond hearing, the superior court judge ordered the cases transferred to the juvenile court. At a motion to stay the transfer, the superior court judge found the provision denying the court the authority to transfer cases pre-indictment to be unconstitutional, as violating separation of powers, equal protection, and due process.

The Georgia Supreme Court reversed the judge's ruling, and declared that O.C.G.A § 15-11-28 (b)(1) was constitutional, citing Chapman v. State, 259 Ga. 592, 385 S.E. 2d 661 (1989), and Bishop v. State, 265 Ga. 821, 462 S.E. 2d 716 (1995). Furthermore, when multiple courts have concurrent jurisdiction, the initial court to have jurisdiction of a case retains jurisdiction until it may be transferred according to the law. Citing J.G.B. v. State, 136 Ga. App. 75, 220 S.E. 2d 79 (1975). Because the statute does not provide the superior court with the authority to transfer the matter to juvenile court, *sua sponte*, prior to an indictment, the superior court exceeded its authority.