

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Family Division -- Juvenile Branch

IN THE MATTER OF

:
: **Docket No.**
: **Social File No.:**
: **Hon.**
: **Trial:**

**MOTION TO DISMISS TRAFFIC CASE FOR LACK OF FAMILY COURT
JURISDICTION OR IN THE ALTERNATIVE MOTION TO TRANSFER THE
TRAFFIC CASE TO THE TRAFFIC DIVISION AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF¹**

Defendant _____, through undersigned counsel, respectfully moves this Court to dismiss the criminal indictment charging him with traffic offenses, pursuant to Superior Court Rules of Criminal Procedure 1(b)(3) and 12, and D.C. Code §§ 11-1101 and 16-2301 (2001), or in the alternative to transfer the criminal traffic charges in case number 2007 CTF 024168 to the Superior Court Traffic Division. The indictment must be dismissed because the Family Court lacks jurisdiction over traffic prosecutions, which must be brought in the Traffic Branch of the Criminal Division. _____ requests a hearing on this Motion.

In support of this Motion, upon information and belief, counsel states:

1. On _____ (respondent) was charged by petition with one count of first-degree theft in violation of D.C. Code §§ 22-3211 and 22-3212(a), one count of unauthorized use of a vehicle (driver) in violation of D.C. Code § 22-3215, one count of receiving stolen property in violation of D.C. Code § 22-3232(a) and (c)(1).

¹ The undersigned recognizes that the instant motion to dismiss may not be properly filed in the juvenile delinquency case and may be more appropriately filed in the CTF jacket. However, since the respondent has not yet been arraigned in Case No. _____, and in the interest of affording the parties sufficient notice in litigating this issue, the undersigned is filing the instant motion in case _____. In the interest of protecting the respondent's confidentiality, a corresponding motion containing a more limited proffer of alleged facts and circumstances will be filed in the traffic jacket at a later time.

2. On _____ an indictment was filed charging _____ with one count of fleeing law enforcement in a motor vehicle (felony) in violation of D.C. Code § 50-2201.01 et seq. (2001); one count of reckless driving, in violation of D.C. Code § 50-2201.04(b) and (c) (2001); and one count of operating a motor vehicle without an operator's permit, in violation of D.C. Code § 50-1401.01(d) (2001).

3. Trial is scheduled in the above-captioned case for _____.

4. At the time of these alleged offenses, _____ was sixteen years old.

5. During a status hearing on November 26, 2007 the government indicated its intent to bring the traffic prosecution in the Juvenile Branch of the Family Court.

6. Superior Court Rule of Criminal Procedure 1(b)(3) provides that traffic offenses shall be prosecuted in the Traffic Branch of the Criminal Court.

7. D.C. Code § 11-1101 limits the jurisdiction of the Family Court to certain enumerated classes of cases, not including traffic cases. With respect to allegations of conduct violating criminal statutes, the Family Court has jurisdiction over "proceedings in which a child, as defined in § 16-2301, is alleged to be delinquent...." D.C. Code § 11-1101(a)(13). But § 16-2301 specifically excludes from its definition of "child" those individuals who are sixteen years of age or older and charged with traffic offenses. D.C. Code § 16-2301(3)(C). Similarly, § 16-2301(7) provides that traffic offenses committed by children over the age of 16 are not delinquent acts. D.C. Code § 16-2301(7).

8. Since the Family Court lacks jurisdiction over traffic offenses allegedly committed by a child sixteen years of age or older, and _____ was sixteen at the time of the alleged offenses, the Court must dismiss the traffic charges against _____.

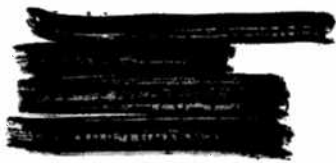
9. Even if the Court determines that the Family Court has jurisdiction over the traffic offenses, the Court should transfer the traffic case to the Traffic Court. In order to protect the respondent's statutory right to confidentiality of Juvenile proceedings, preserve his Fifth Amendment right to testify in one of the cases while remaining silent in the other case, and prevent the fact-finder from hearing evidence that is not mutually admissible in the two cases, the cases should be considered separately.

10. Additionally, the trial of both matters in the same proceeding is both infeasible and impractical, and jeopardizes the respondent's right to confidentiality. The procedure presents extreme difficulty for the Court to assess and parse all testimony in advance to prevent the jury from hearing inadmissible testimony. The jury will have to be excused repeatedly from proceedings during witness testimony, which will be likely to unnecessarily frustrate jurors surrendering personal time to carry out their duties. Furthermore, the procedure will likely render impossible the effective protection of _____'s right to confidentiality in his juvenile case. See D.C. Code § 16-2331.

WHEREFORE, for the foregoing reasons, and any others that may appear to the Court at a hearing on this matter, _____ respectfully requests that this Motion to Dismiss Traffic Case for Lack of Family Court Jurisdiction or in the Alternative Motion to Transfer the Traffic Case to the Traffic Division be granted.

Respectfully submitted,

Counsel for _____
D.C. Bar No. _____
Public Defender Service for D.C.
633 Indiana Avenue, NW



MEMORANDUM OF POINTS AND AUTHORITIES

I. **THE FAMILY COURT LACKS JURISDICTION OVER TRAFFIC PROSECUTIONS AGAINST DEFENDANTS WHO ARE SIXTEEN YEARS OF AGE OR OLDER.**

A. The Statute and Rules of the Family Court Do Not Provide for the Consideration of Traffic Matters in the Family Court.

The jurisdiction of this court is established by statute. D.C. Code § 11-1101(13).

The jurisdictional statute is clear that traffic cases fall outside the jurisdiction of the Family Court. Pursuant to the Superior Court Rules of Criminal Procedure, traffic offenses must be prosecuted in the Traffic Branch, which is part of the Criminal Division. See Super. Ct. Crim. R. 1(b)(3). (“Prosecutions in the name of the District of Columbia, except those brought pursuant to the provisions of the statute relating to taxes levied by or in behalf of the District of Columbia, shall be conducted in the District of Columbia-Traffic Branch.”) While the Superior Court has jurisdiction over criminal matters, see D.C. Code § 11-923 (granting jurisdiction over all criminal cases arising under laws applicable exclusively to the District of Columbia), those matters may not be heard in Family Court. “[The] general jurisdictional grant does not mean ... that each individual division of the Superior Court has power beyond its court rules or its relevant statutory subject matters.” Poe v. Noble, 525 A.2d 190, 195 (D.C. 1987) (superceded on other grounds.)

The Family Court lacks jurisdiction to hear traffic cases, except those involving a child under sixteen years old. D.C. Code § 11-1101 defines the jurisdiction of the Family

Court. With respect to allegations of conduct amounting to a criminal offense, the Family Court has jurisdiction over “proceedings in which a child, as defined in 16-2301, is alleged to be delinquent....” D.C. Code § 11-1101(a)(13). The statute assigning matters of original jurisdiction to the Family Court does not provide for the Family Division to have original jurisdiction over criminal matters. Traffic offenses in the District of Columbia are criminal cases.

Section 16-2301 defines “child” to mean those individuals under age eighteen, except individuals sixteen or older charged with a traffic offense. D.C. Code § 16-2301(3)(C). Cf. D.C. Code § 16-2301(7) (“Traffic offenses shall not be deemed delinquent acts unless committed by an individual who is under the age of sixteen.”). Courts should favor interpretations indicated by the plain language of a statute. See J. Parreco & Son v. Rental Housing Comm'n, 567 A.2d 43, 45 (D.C.1989); Peoples Drug Stores v. District of Columbia, 470 A.2d 751, 753 (D.C.1983) (en banc). As such, the Family Court may not hear cases involving a child sixteen or older charged with traffic offenses. Since _____ was 16 years old at the time of the alleged offenses, the Court must dismiss his traffic case for lack of jurisdiction.

B. The Consideration of the Traffic Case in the Family Court Controverts the Intent of the Council Evidenced in the Statute Establishing the Juvenile Justice System in the District of Columbia.

The purpose of the juvenile delinquency statute is “to create a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system that will treat children as children in all phases of their involvement”. D.C. Code § 16-2301.02. Additionally, the statute establishes clear goals for the handling of delinquency cases in

the Family Court, including the objective of placing “a premium on the rehabilitation of children with the goal of creating productive citizens”. D.C. Code § 16-2301.02(5).

The purpose of establishing a delinquency system within the Family Court is consistent with the explicit grant of the Family Court’s general jurisdiction over the types of actions enumerated in D.C. Code § 11-1101(a). Title 11 of the D.C. Code does not explicitly grant authority to the Family Court to consider criminal actions, or more specifically, traffic offenses.

Rather, the statute actually contemplates the specific types of actions brought against persons under the age of eighteen that may be considered by the criminal division and a mechanism for the transfer of such cases. See D.C. Code § 16-2307; Super. Ct. R. Juv. Proc. 108 and 109. The statute does not permit the trial of persons over the age of fifteen and under the age of eighteen, who are subject to transfer from the Family Division to the Criminal Division, to be charged by indictment in a criminal matter and for such cases to be considered by the Family Division. Just as the Family Division does not have the jurisdictional authority to consider criminal matters, it does not have the jurisdictional authority to consider traffic cases. Similarly, the statute does not provide for other divisions of the Superior Court to consider juvenile delinquency cases.

C. A Ruling that the Family Division Has Jurisdiction Over Traffic Cases Would Open the Door to Consideration of Civil Matters in the Family Division Which Are Not Enumerated in D.C. Code § 11-1101(a).

The Family Division does not have original jurisdiction over civil matters that are not otherwise granted to the Court by D.C. Code § 11-1101(a). The Court has the authority to consider actions for divorce, actions to enforce support, actions to determine property rights, civil proceedings for protection involving intrafamily offenses, and civil

commitment proceedings, but is not otherwise granted the authority to consider other civil actions even those arising out of the same facts of the underlying delinquency matter.² See D.C. Code § 11-1101(a). The statute does not grant jurisdiction, for example, for the Court to consider a civil suit against the Metropolitan Police Department for misconduct arising out of an alleged arrest of the respondent.³ In the absence of any statutory authority, this Court should not open the door to the consideration by the Family Division of matters under the jurisdiction of every other division of the Superior Court.

II. THE CONSIDERATION OF A TRAFFIC CASE BY THE FAMILY COURT IN THE SAME PROCEEDING AS A DELINQUENCY CASE NOT PRACTICAL, IS NOT FEASIBLE, AND SEVERELY PREJUDICES (RESPONDENT).

A. The Consideration of the Traffic Case in the Same Proceeding as the Juvenile Delinquency Case is Not Practical or Feasible.

The practical barriers to conducting a joined jury trial and bench trial are tremendous. The Family Court is not organized in a manner that contemplates such a procedure. Since confidentiality of juvenile proceedings is statutorily required and criminal proceedings are public, the Court during proceedings would be required to identify which portions of testimony would be open to the public and those which would be closed. The Court would be required to identify in advance, by proffer or *voir dire*, the admissible and inadmissible portions of the testimony of every witness and excuse the jury for portions of testimony that would not be relevant or would otherwise be inadmissible in the adult traffic case. Such a procedure is not only infeasible, it is likely

² In fact, the Superior Court Rules of Juvenile Procedure specifically define civil actions as those "action(s) in the Civil Division of the Superior Court". See Super. Ct. R. Juv. Proc. 101.

³ For example, if allegations were raised that a child was harmed as a result of police misconduct during an arrest prosecuted by petition in the juvenile delinquency court, the jurisdictional precedent set by this Court's finding of original jurisdiction may be read to grant the respondent the authority to bring a counterclaim in the Family division. Even though the two allegations may arise out of the same incident or series of events, courts in the Family Division have not traditionally heard such civil claims.

to unnecessarily frustrate individuals surrendering personal time to carry out their duties as citizens, and is likely to negatively impact their ability as fact finders to fairly consider the evidence. Additionally, the procedure would require that the parties give separate opening statements and closing arguments to reflect the case-specific evidence. This would require the government and respondent to each potentially give two opening statements, two closing arguments, and potentially two rebuttal statements by the government. Nothing in the Superior Court Rules of Juvenile Procedure or Rules of Criminal Procedure contemplates such a bifurcated manner of adjudicating cases.

For example, since the respondent is charged with theft, evidence of the alleged theft, including anticipated testimony by a complaining witness and various police officers may be appropriate for consideration by the Court in the juvenile matter, but would not be relevant and prejudicial to the trial on the adult traffic charges. In the event that any witness has information relating to both cases, that witness would be required to testify in part before the jury and then the jury would need to be excused for the remainder of the witness' testimony. The potential for juror disenchantment in such situations is significant.

B. _____ Would be Severely Prejudiced by the Joint Consideration of the Traffic and Delinquency Matters.

The procedure will also hinder the respondent's Fifth Amendment due process right to effectively put on a defense and confront witnesses against him. Requiring _____ to defend himself against both cases simultaneously confounds his ability to present distinct defenses. The District of Columbia Court of Appeals has recognized that if a defendant is prejudiced by joinder of offenses a judge has discretion to grant a severance of offenses. Russell v. United States, 586 A.2d 695, 698 (D.C.

1991); Grant v. United States, 402 A.2d 405, 406 (D.C. 1979). Superior Court Criminal Procedure Rule 14 also allows for severance of joined counts where there is a danger of prejudice to an accused.

The consideration of cases in the same proceeding also creates the risk that the accused would be confounded in trying to defend against multiple charges, for example if the accused wishes to testify about some charges and not others. Here, a combined trial would improperly prejudice _____'s presentation of separate defenses. A combined trial here would deny _____ the right to intelligently balance the factors relevant to his decision whether to testify and present other witnesses regarding each separate set of offenses. In the most real way, _____ would be confounded in the presentation of his respective defenses at a joint trial.⁴

C. The Statutory Grant of Confidentiality of _____'s Juvenile Delinquency Matter Could Not be Effectively Protected in a Joint Proceeding.

All matters in juvenile court are confidential. As mentioned *supra*, a combined trial would create extreme difficulty, if not render impossible, the effective protection of _____'s right to confidentiality in all juvenile cases proceedings. See D.C. Code § 16-2331. Not only would the procedure require unusual vigilance in pre-hearing and analyzing testimony to ensure adequate closure of the Court and balancing of the public's right to open trials, but may expose jurors to information that otherwise must be kept confidential. For example, one may imagine that during testimony the jury may be

⁴ Here, a combined trial will very likely impact _____'s decision whether to testify in his own behalf. If required by the Court, undersigned will proffer *ex parte* _____'s possible defenses and potential testimony in these matters to the Court.

inadvertently exposed to evidence subsequently ruled inadmissible by the Court, thus breaching the statutory confidentiality of the juvenile court proceedings.

Accordingly, for the reasons stated above and any others identified by the Court, if the Court finds that the Family Division does have jurisdiction to consider the traffic case, this Court still should transfer the traffic case to the Traffic Division in order to protect the respondent's rights conferred by the United States Constitution and District of Columbia statutes.

III. CONCLUSION

Since the Family Court does not have jurisdiction over a person sixteen years old charged with traffic offenses, and this case is within the exclusive jurisdiction of the traffic division, this Honorable Court must dismiss the traffic case. In the alternative, for the reasons stated in this motion, the case charging the traffic offenses should be severed from the delinquency case and transferred to the Traffic Branch of the Criminal Division.

Respectfully submitted,

[REDACTED]
Counsel for _____

[REDACTED]
Public Defender Service for D.C.
633 Indiana Avenue, NW
Washington, DC 20004
[REDACTED]
[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Dismiss Traffic Case for Lack of Family Court Jurisdiction or in the Alternative Motion to Transfer the Traffic Case to the Traffic Division was served by email and intraoffice mail upon the Office of the Attorney General, Attn: AAG _____, 441 Fourth Street NW, Suite 450N, Washington, D.C. 20001, on this _____ day of _____, 2007.

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Family Division -- Juvenile Branch

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ORDER

Upon consideration of Respondent _____'s Motion to Dismiss Traffic Case for Lack of Family Court Jurisdiction or in the Alternative Motion to Transfer the Traffic Case to the Traffic Division, it is this _____ day of _____, _____, ORDERED that Respondent's Motion is GRANTED.

Hon. _____

Copies to:

Counsel for _____
Public Defender Service for D.C.
633 Indiana Avenue, N.W.
Washington, D.C. 20004

Assistant Attorney General
Office of Attorney General for D.C.
441 Fourth Street, N.W.
Washington, D.C. 20001