

**STATE OF LOUISIANA IN  
THE INTEREST OF C. T.**

**\* NO. 2001-C-2125  
\* COURT OF APPEAL  
\* FOURTH CIRCUIT  
\* STATE OF LOUISIANA**

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**ON SUPERVISORY WRIT DIRECTED TO  
JUVENILE COURT ORLEANS PARISH  
NO. 01-282-06-QC, DIVISION "C"  
HONORABLE YVONNE HUGHES, JUDGE**

**\*\*\*\*\***

**JOAN BERNARD ARMSTRONG**

**JUDGE**

**\*\*\*\*\***

(Court composed of Judge Joan Bernard Armstrong, Judge James F. McKay, III and Judge Michael E. Kirby)

**HARRY F. CONNICK  
DISTRICT ATTORNEY  
TRENDY BURNS  
ASSISTANT DISTRICT ATTORNEY  
421 LOYOLA AVENUE  
NEW ORLEANS, LA 70119**

**COUNSEL FOR RELATOR**

**WRIT GRANTED,**  
**JUDGMENT REVERSED;**  
**STAY ORDER RECALLED.**

The defendant, who is fifteen years old, was arrested for aggravated rape; on October 9, 2001, Judge Doherty held a probable cause hearing in conformity with La. Ch. C. arts. 819 and 820, and after taking testimony from an officer, found probable cause to hold the defendant. The minute entry of October 9 indicates the case was set for a status hearing on December 6. However, on November 13 the defendant appeared for a status hearing before Judge Hughes. At the conclusion of this hearing, Judge Hughes ordered the defendant released, finding that the State failed to file an indictment against the defendant within thirty days. The State now comes before this court seeking relief.

The State alleges the trial court released the defendant because the State failed to obtain an indictment against him within thirty days as required by La. Ch.C. art. 305B. The State argues that due to the defendant's age and the nature of the offense, subpart B is not applicable to his case. Instead, art. 305A is the applicable subpart, which does not contain the thirty-day limitation.

La. Ch.C. art. 305A, which appears to apply to this case, provides:

A. (1) When a child is fifteen years of age or older at the time of the commission of first degree murder, second degree

murder, aggravated rape, or aggravated kidnapping, he is subject to the exclusive jurisdiction of the juvenile court until either:

(a) An indictment charging one of these offenses is returned.

(b) The juvenile court holds a continued custody hearing pursuant to Articles 819 and 820 and finds probable cause that he committed one of these offenses, whichever occurs first.

(2) Thereafter, the child is subject to the exclusive jurisdiction of the appropriate court exercising criminal jurisdiction for all subsequent procedures, including the review of bail applications, and the child shall be transferred forthwith to the appropriate adult facility for detention prior to his trial as an adult.

The State alleges these provisions apply to the defendant's case in that he is fifteen, he was arrested for aggravated rape, and the court found probable cause. If indeed this is the case, and the hearing was held within three days of the arrest as mandated by La. Ch.C. art. 819, the juvenile court on October 9 was divested of jurisdiction over the case, and Judge Hughes could not hold the November 13 hearing. See State v. Hamilton, 96-0107 (La. 7/2/96), 676 So.2d 1081. In addition, because he was being held in custody, the State had sixty days from arrest in which to obtain the indictment. La. Cr.C.P. art. 701.

Judge Hughes provided a per curiam in this case as ordered by this Court on November 13, 2001. Judge Hughes indicates she considered the

action to be proceeding under art. 305B because apparently the State did not present any indication of upon what offense Judge Doherty found probable cause to hold the defendant on October 9. Based on the State's lack of proof that the probable cause was for aggravated rape, which would make the case fall squarely within art. 305A and would have divested the juvenile court of jurisdiction, Judge Hughes found the provisions of art. 305B applied.

Because there was no bill filed within thirty days of the defendant's arrest, the court released the defendant without bond in conformity with art. 305B.

Because Judge Hughes based her decision to release the juvenile on the fact that there was no clear determination as to what crime Judge Doherty found probable cause at the October 9, 2001 continued custody hearing, this Court requested a per curiam from Judge Doherty. In his per curiam, Judge Doherty clearly declares that he found probable cause existed to arrest the juvenile on the charge of aggravated rape of the five year-old victim; therefore, under La. Ch. C. art. 305A jurisdiction is now vested with criminal district court. Under La. C.Cr.P. art. 701 the State has sixty days from the date of arrest in which to file an indictment.

Judge Doherty's per curiam indicates that he ordered that the juvenile be held for trial as an adult in criminal district court pursuant to La. Ch.C. art. 306D, that he be transported to an adult detention facility, that no bond

be set, and that he apply to criminal district court for a preliminary hearing and bail. In light of Judge Doherty's per curiam, we recall the stay order granted on November 13, 2001, grant the State's writ application, and reverse Judge Hughes' November 13, 2001 decision releasing the juvenile to the custody of his mother.

**WRIT GRANTED,**  
**JUDGMENT REVERSED;**  
**STAY ORDER RECALLED.**