

**FILED**  
**Dec 08, 2014**  
Court of Appeals  
Division III  
State of Washington  
No. 32358-7-III

IN THE COURT OF APPEALS  
OF THE  
STATE OF WASHINGTON  
  
DIVISION THREE

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STATE OF WASHINGTON,

Appellant,

v.

Miguel Castillo,

Respondent.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR FRANKLIN COUNTY

The Honorable Vic. L. Vanderschoor

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RESPONDENT'S BRIEF

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## **A. SUMMARY OF ARGUMENT**

In 2009, 17-year-old B.J.V. alleged that Miguel Castillo had made sexual advances against her when B.J.V. was 13-years-old and Mr. Castillo was 11-years-old. The State investigated the case between November 2009 and April 2010. Mr. Castillo was charged with indecent liberties in juvenile court in June 2010. For the next 16 months, the State said it did not pursue trial because B.J.V. would not appear for a deposition or cooperate with prosecution. In October 2011, Mr. Castillo failed to appear for a pretrial hearing and a bench warrant issued. The juvenile court dismissed the charge without prejudice in February 2012 when Mr. Castillo turned 18-years-old.

The indecent liberties charge was re-filed in adult court in August 2013. In March 2014, the trial court dismissed the charge pursuant to CrR 8.3(b). The court found that Mr. Castillo was prejudiced by the loss of juvenile court jurisdiction when the State failed to prosecute this case while it was pending before juvenile court. The court also found that, despite B.J.V.'s apparent lack of cooperation, the State had enough information to proceed with prosecuting the juvenile case, and it explained in its oral ruling that there were other ways to proceed even without B.J.V.'s cooperation. The trial court did not abuse its discretion by

dismissing this case given the State's unjustified delay in bringing Mr. Castillo to trial in juvenile court.

Finally, the State's reliance on "preaccusatorial delay" cases is entirely misplaced as this case involves prosecutorial delay after the charge was filed in juvenile court – i.e., the trial court did not abuse its discretion by dismissing this case for simple mismanagement under CrR 8.3(b).

### **B. APPELLANT'S ASSIGNMENT OF ERROR**

1. No assignments of error were set forth in the Appellant's briefing. *See* State's Opening Brief, *passim*, and RAP 10.3(a)(4).

### **C. ISSUE ON APPEAL**

Issue 1: Whether the court made a sound discretionary decision to dismiss the charge against Mr. Castillo under CrR 8.3(b) for the State's prosecutorial delay, or simple mismanagement of the case, which prejudiced the defendant with the loss of juvenile court jurisdiction.

### **D. RESTATEMENT OF THE CASE**

In November 2009, the State was investigating sexual misconduct allegations against 15-year-old Miguel Castillo (DOB: 2-17-1994) that dated back to when Mr. Castillo was 11-years-old. (RP 2, 4) During its investigation on November 28, 2009, a 17-year-old sister of one alleged victim, B.J.V. (DOB: 8-8-1992), stated that Mr. Castillo had also committed sexual acts against her when Mr. Castillo was about 11-years-old and she was about 13-years-old, between January 1, 2005, and August

31, 2005. (RP 2-3; CP 6 FF 1-2<sup>1</sup>; CP 11) Mr. Castillo was interviewed by law enforcement regarding this accusation in December 2009, and he made incriminating statements at that time. (RP 2; CP 6-7 FF 2)

On April 15, 2010, B.J.V. was interviewed at Kids Haven regarding her allegations against the defendant. (RP 5; CP 6-7 FF 3) On June 2, 2010, the State charged Mr. Castillo in juvenile court with indecent liberties as to B.J.V. (State's Opening Brief, Appendix/Exhibit A; CP 7 FF 4) For the next 16 months, the State did not try the case because B.J.V. would not cooperate. (RP 6-7; CP 11-12; State's Opening Brief pgs. 1-2, 5, 7-8) B.J.V. did not attend interviews or a deposition with the prosecutor's office, and the prosecutor claimed that the State could not proceed with the case unless B.J.V. cooperated, despite having the victim's and the defendant's previous incriminating statements. (*Id.*; CP 7 FF 5) There is nothing in the record as to whether B.J.V. was subpoenaed to appear or whether a material witness warrant was ever requested by the State. (*See passim.*)

After a year-and-a-half of the case pending before the juvenile court, defense counsel lost contact with Mr. Castillo, Mr. Castillo failed to appear at a pretrial hearing on October 6, 2011, and a bench warrant was issued. (RP 3-4, 6; CP 7 FF 6) The juvenile court dismissed the case

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<sup>1</sup> The State did not assign error to any of the court's findings of fact, which are now referenced in this restatement of the case as verities on appeal.

without prejudice on the defendant's 18<sup>th</sup> birthday, February 17, 2012. (RP 3-4, 6; CP 7 FF 7) No additional investigation took place in this case between 04/15/2010 and 06/03/2013. (CP 7 FF 7)

In June 2013, the State interviewed B.J.V. and learned she was now willing to be available for the prosecution against Mr. Castillo. (CP 7 FF 8; 12) Mr. Castillo, then 19-years-old, was recharged with indecent liberties in adult court on August 17, 2013. (RP 4; CP 7 FF 9, CP 19)

On February 25, 2014, the court granted the defendant's CrR 8.3(b) motion to dismiss the charge. (CP 5, 9) The court said it was not finding the State did anything negligent or deliberate, but that the delay in prosecuting this case in juvenile court could not be justified and did prejudice Mr. Castillo in his loss of juvenile court jurisdiction. (RP 8) The court also noted that, "[e]ven if the victim was not cooperative, there are ways to get those introduced and [the State] had the statements of the defendant." (RP 7-8) The court's written ruling stated (under the label "Conclusions of Law"):

1. Because "prejudice is presumed when juvenile court jurisdiction is lost," *State v. Frazier*, 82 Wn. App. 576, 587-88, 918 P.2d 964 (1996), the Defendant was prejudiced by being subjected to adult jurisdiction, thereby violating his due process rights.
2. Having BJV's statement at Kids' Haven and the Defendant's statements, the State had enough information to proceed forward with prosecuting the juvenile case.



3. The reasons for the delay by the State that led to charging the Defendant in adult jurisdiction cannot be justified, though the delay in charging was neither deliberate nor negligent on the State's part.
4. The remedy for this delay is dismissal. Dismissal under CrR 8.3(b) is an extraordinary remedy and requires the defendant to show by a preponderance of the evidence arbitrary action or governmental misconduct and prejudice affecting the defendant's right to a fair trial.
5. This Court finds that 'prosecution of this case is contrary to fundamental concepts of justice,' and dismisses this case. *Frazeir* at 593.

(CP 7-8)<sup>2</sup>

The State timely appealed. (CP 3)

#### **E. ARGUMENT**

**Issue 1: Whether the court made an acceptable discretionary decision to dismiss the charge against Mr. Castillo under CrR 8.3(b) for the delay in trying this case, or simple mismanagement of the case, which prejudiced the defendant with the loss of juvenile court jurisdiction.**

The State insists that it could not hold a trial in this case while the matter was pending for 16 months in juvenile court between June 2010 and October 2011, because the State's complaining witness, B.J.V., would not cooperate. But the State already had evidence of B.J.V.'s disclosures from November 2009, the defendant's own incriminating statements in December 2009, and B.J.V.'s statements from her interview in April 2010. Also, the State could have conducted further investigation if it believed

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<sup>2</sup> Findings of fact mislabeled as conclusions of law are treated as findings of fact on review. *State v. Marcum*, 24 Wn. App. 441, 445, 601 P.2d 975 (1979).

more evidence was needed, which it failed to do after April 2010 and before the juvenile court dismissed the case in February 2012. Finally, the State could have subpoenaed B.J.V. or filed a material witness warrant so that B.J.V. would be ordered to testify and brought to court by law enforcement to comply with the court's order. Under these circumstances, the trial court did not abuse its discretion when it decided that the charge against Mr. Castillo in adult court should be dismissed under CrR 8.3(b) for simple mismanagement of the case that prejudiced Mr. Castillo with the loss of juvenile jurisdiction.

**a. The State's failure to assign error to any findings of fact makes them verities on appeal.**

As a threshold matter, a party is required to set forth assignments of error in its opening brief, including a separate and concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error. RAP 10.3(a)(4). Findings of fact that are not challenged are considered verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003); *State v. Gentry*, 125 Wn.2d 570, 605, 888 P.2d 1105, *cert. denied*, 516 U.S. 843 (1995). Findings of fact mislabeled as conclusions of law are treated as findings of fact on review. *Marcum*, 24 Wn. App. at 445.

The State assigned error to no findings in this case; thus, the findings are considered verities on appeal. The court found that, although

the defendant failed to appear in October 2011, the juvenile case had been pending prior to that failure to appear for 16 months, since June 2010, and the State could have taken actions to try the case against Mr. Castillo in juvenile court since at least April 2010. *See* CP 6-7; RP 8. The court further found that B.J.V.’s lack of cooperation did not justify the State’s delay and that the loss of juvenile court jurisdiction prejudiced Mr. Castillo. RP 8; CP 7-8. Finally, the court found that prosecution of this case was “contrary to fundamental concepts of justice...” CP 8. These and the remaining unchallenged findings are considered verities for purposes of this appeal. (*See* CP 6-8)

**b. The issue and proper standard of review in this appeal is whether the trial court abused its discretion by dismissing Mr. Castillo’s charge under CrR 8.3(b) for delay while the case was pending in juvenile court, not whether a pre-charging or “preaccusatorial delay” occurred based on this Court’s de novo review.**

The State incorrectly frames the issue on appeal as whether “[t]he trial court erred in holding that there was a preaccusatorial delay in this case.” State’s Opening Brief, pg. 3 (emphasis added). *See e.g. State v. Oppelt*, 172 Wn.2d 285, 295, 298, 257 P.3d 653 (2011) (clarifying the test from a long line of preaccusatorial delay cases, stating that a court may dismiss charges due to a preaccusatorial delay that results in the loss of juvenile court jurisdiction where (1) the defendant was actually prejudiced from the delay; (2) the court has considered the reasons for the delay; and,

(3) after weighing the reasons for delay and the prejudice to the defendant, the court determines that fundamental conceptions of justice would be violated by allowing prosecution).

Mr. Castillo agrees that it is both “factual and legally inaccurate to say that there was a preaccusatorial delay in this case.” State’s Opening Brief pg. 5. Mr. Castillo disagrees with the State’s characterization of the trial court’s ruling, which suggested that the trial court dismissed this case due to preaccusatorial delay. *Id.* at pg. 4. A plain and simple reading of the trial court’s ruling confirms that the trial court did not dismiss Mr. Castillo’s charge due to any “preaccusatorial” delay in bringing the charge in either juvenile or adult court. Indeed, the charge was filed in juvenile court only two months after Ms. Murstig interviewed B.J.V. at Kids Haven, which was over 19 months before Mr. Castillo’s 18<sup>th</sup> birthday. And, the trial court did not find any preaccusatorial delay or prejudice to Mr. Castillo by the State’s failure to bring the charge in adult court for the year-and-a-half after Mr. Castillo turned 18-years-old.<sup>3</sup>

Preaccusatorial delay in bringing the charge in either juvenile or adult court did not procure the court’s dismissal in this case. Instead, the delay in this case occurred subsequent to the charging accusation while the

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<sup>3</sup> Nor would the trial court have found prejudice, without additional facts going to some other form of prejudice other than the loss of juvenile court jurisdiction. “Any delay after the defendant’s eighteenth birthday is not prejudicial because it does not result in the loss of juvenile court jurisdiction.” *State v. Brandt*, 99 Wn. App. 184, 190, 992 P.3d 1034 (2000).

case remained pending for well over a year in juvenile court. Thus, while the State relies on preaccusatorial delay cases (which are a subcategory of CrR 8.3(b)<sup>4</sup>), the trial court's decision in this case is controlled by CrR 8.3(b) and its progeny.

Relatedly, the State is incorrect as to the applicable standard of review for deciding this appeal. State's Opening Brief, pg. 4 (suggesting de novo review). A trial court's decision on a motion to dismiss under CrR 8.3(b) is reviewed for a manifest abuse of discretion. *State v. Michielli*, 132 Wn.2d 229, 240, 937 P.2d 587 (1997) (citing *State v. Warner*, 125 Wn.2d 876, 882, 889 P.2d 479 (1995)). "Discretion is abused when the trial court's decision is manifestly unreasonable, or is exercised on untenable grounds or for untenable reasons." *Id.* (quoting *State v. Blackwell*, 120 Wn.2d 822, 830, 845 P.2d 1017 (1993)). "A decision is based 'on untenable grounds' or made 'for untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." *State v. Rohrich*, 149 Wn.2d 647, 655, 71 P.3d 638 (2003) (internal quotation omitted). "A decision is 'manifestly unreasonable' if the court, despite applying the correct legal standard to the supported facts, adopts a view 'that no reasonable person would

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<sup>4</sup> *Oppelt*, 172 Wn.2d at 297 (Preaccusatorial delay can be understood as a subcategory of government misconduct under CrR 8.3(b)).

take...and arrives at a decision ‘outside the range of acceptable choices.’”

*Id.* (internal quotations omitted).

Although the requirements to prevail on a CrR 8.3(b) motion are similar to the preaccusatorial delay requirements, “[u]nlike the due process balancing analysis, a trial court’s [decision on a motion to dismiss] under CrR 8.3(b) is reviewed under an abuse of discretion standard.” *Oppelt*, 172 Wn.2d at 297 (citing *State v. Hanna*, 123 Wn.2d 704, 715, 871 P.2d 135 (1994)). *C.f.*, *Oppelt*, 172 Wn.2d at 290 (internal cites omitted) (whether due process rights are violated by a preaccusatorial delay is a question reviewed de novo). Ultimately, the trial court exercises its discretion in deciding whether or not, under CrR 8.3(b), the prejudice to the defendant and alleged governmental misconduct, including “simple mismanagement,” is strong enough to dismiss. *Id.* at 291 n.3, 298-99.

**c. The trial court did not abuse its discretion by dismissing Mr. Castillo’s charge pursuant to CrR 8.3(b); the State’s 16-month delay in trying this case while it was pending in juvenile court was not justified just because the State’s complaining witness was uncooperative.**

“CrR 8.3(b) exists ‘to see that one charged with crime is fairly treated.’” *Michielli*, 132 Wn.2d at 245 (quoting *State v. Whitney*, 96 Wn.2d 578, 580, 637 P.2d 956 (1981)). A charge may be dismissed in the furtherance of justice with a showing of two things by a preponderance of the evidence: (1) arbitrary action or governmental misconduct and (2)

prejudice to the rights of the accused which materially affect the accused's right to a fair trial. *Id.* at 239-40 (citing CrR 8.3(b)); *Oppelt*, 172 Wn.2d at 296-97, 257 P.3d 653 (2011); *Rohrich*, 149 Wn.2d at 654.

As to the first requirement, “[g]overnmental misconduct...need not be of an evil or dishonest nature; *simple mismanagement is sufficient.*” *Michielli*, 132 Wn.2d at 239-40 (emphasis in original) (quoting *Blackwell*, 120 Wn.2d at 831). In *Michielli*, the trial court acted within its discretion by dismissing additional charges that were filed shortly before the defendant's scheduled trial. *Id.* at 244. The State possessed all of the information necessary to charge the defendant with the additional charges at the time of filing the initial information, and the State's delay in pursuing those charges until shortly before trial on the initial charges was not justified by any need for additional or ongoing investigation. *Id.* at 243. The State's mismanagement of that case, which prejudiced that defendant as to his speedy trial rights, supported the defendant's motion to dismiss the additional charges “in the furtherance of justice pursuant to CrR 8.3(b).” *Id.* at 246.

“Second, the defendant must show actual prejudice affecting his fair trial rights.” *Oppelt*, 172 Wn.2d at 297. “Prejudice is presumed when juvenile court jurisdiction is lost.” *State v. Frazier*, 82 Wn. App. 576, 587-88, 918 P.2d 964 (1996), *abrogated on other grounds by Oppelt*, 172

Wn.2d 285 (citing *State v. Dixon*, 114 Wn.2d 857, 861, 792 P.2d 137 (1990)). “[B]ecause the loss of juvenile court jurisdiction subjects the accused to harsher penalties and the potential stigma of an adult criminal conviction, we presume prejudice when juvenile jurisdiction is lost.” *Brandt*, 99 Wn. App. at 189 (citing *Dixon*, 114 Wn.2d at 860-61; *Frazier*, 82 Wn. App. at 587-88). *But see id.* at 193 (citing *Frazier*, 82 Wn. App. at 592) (A defendant may have difficulty establishing prejudice where juvenile court jurisdiction would have been either automatically or likely declined); *accord State v. Salavea*, 151 Wn.2d 133, 137, 146-47, 86 P.3d 125 (2004).

Here, the State concedes that “a delay that results in a loss of juvenile jurisdiction” is indeed prejudicial to a defendant. State’s Opening Brief, pg. 5, under its preaccusatorial delay analysis (citing *Warner*, 125 Wn.2d at 889). That concession is appropriate here. Unlike cases noted above where the defendants would not have been entitled to juvenile jurisdiction due to automatic or discretionary decline, there is no factual or legal basis for the juvenile court to have declined jurisdiction in Mr. Castillo’s case. When Mr. Castillo allegedly committed the crime of indecent liberties with B.J.V., he was only 11-years-old, B.J.V. was two years older than Mr. Castillo, and no other facts were present that would suggest Mr. Castillo should have been tried as anything other than a



juvenile. Mr. Castillo was entitled to the remedial benefits of juvenile court rather than the stigma and harsher penalties that accompany an adult conviction. Loss of this opportunity for a juvenile adjudication was highly prejudicial.

The pertinent issue, therefore, is whether the trial court committed a manifest abuse of discretion by finding that the State mismanaged the case by contributing to the delay that led to the loss of juvenile court jurisdiction. Given the circumstances presented to the trial court, no manifest abuse of discretion exists.

The trial court weighed the reasons that Mr. Castillo was not tried while his charge was pending in juvenile court. It considered the fact that the defendant failed to appear in October 2011 and thereafter lost contact with the court and his attorney, at least until the juvenile court dismissed the case a few months later. And the trial court considered the fact that the State chose not to pursue trial for the 16 previous months in juvenile court because its complaining witness would not cooperate. The court made an acceptable discretionary decision to give lesser weight to the defendant's failure to appear toward the end of the juvenile proceedings and to focus on the delay in bringing Mr. Castillo to trial between June 2010 and October 2011. Because the trial court considered the applicable facts against the proper legal standard, there was no abuse of discretion. The

trial court made a discretionary decision that was within the range of acceptable choices that another reasonable person could make.

The State submitted that it delayed bringing the case to trial for 16 months based on B.J.V.'s refusal to cooperate with the prosecution. The trial court did not abuse its discretion by finding that this basis for delaying trial was unjustified. Had the State better managed this case, Mr. Castillo could have been tried in juvenile court. The trial court suggested that there were ways for getting B.J.V.'s statements before the court even if B.J.V. was not cooperative. CP 8; RP 8. The State alleges that the trial court "is incorrect in that analysis." State's Opening Brief pg. 8. But, the trial court's analysis is supported by the law and the facts of this case. Again, its discretionary decision was supported by both fact and reason. There were, indeed, ways for the State to proceed with this case even absent B.J.V.'s cooperation.

"Most victims will appear when ordered by the court."<sup>5</sup> The trial court did not abuse its discretion by finding that there was more that the State should have done while managing this case to bring it to trial, even without B.J.V.'s cooperation. The State could have issued a subpoena to command B.J.V.'s appearance. CrR 4.8 and CR 45. The State could have

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<sup>5</sup> DV Manual for Judges 2006, Chapter 5, The Reluctant Victim, Washington State Administrative Office of the Courts, available at <http://www.courts.wa.gov/content/manuals/domViol/chapter5.pdf> (last visited 12/3/2014).

moved the court to order that B.J.V. submit to a deposition. CrR 4.6. The State could have obtained a material witness warrant for the arrest of B.J.V. if she refused to obey a lawfully issued subpoena, if B.J.V. refused to submit to a deposition ordered by the court, or if it might become impracticable to secure B.J.V.'s presence by subpoena. CrR 4.10. The State could have moved "[t]he court... [to] issue an attachment to bring such witness before them to answer for contempt, and also testify as witness in the cause in which...she was subpoenaed." RCW 5.56.070. Contempt is defined to include the "[r]efusal as a witness to appear, be sworn, or without lawful authority, to answer a question..." RCW 7.21.010(1)(c).

The trial court did not abuse its discretion by finding that the State had enough evidence to prosecute this case despite B.J.V.'s lack of cooperation. As set forth above, if the State had properly subpoenaed B.J.V. or obtained a material witness warrant, it could have obtained B.J.V.'s deposition. Then, even if B.J.V. refused to testify at trial or testified inconsistent to that given in her deposition, the State could have introduced B.J.V.'s deposed statements pursuant to ER 801(d)(1)(i) or ER 804(a)(2), (a)(5), (b)(1) (admitting prior sworn testimony of unavailable declarant who refuses to testify despite court order to do so or where the witness is absent despite the State's/proponent's "good faith" effort to

secure her presence). Finally, if B.J.V. was properly subpoenaed or arrested and brought to court to testify, but then recanted, her prior statements could be admitted without violating the confrontation clause. *See e.g., State v. Mobley*, 129 Wn. App. 378, 118 P.3d 403 (2005), *review denied*, 157 Wn.2d 1002 (2006) (confrontation clause is not violated if the declarant is a witness at trial, is asked about the event and the hearsay statement, and the defendant is provided an opportunity for full cross examination, even if the declarant recants or testifies she has little or no memory of the incident).

The State could have compelled B.J.V.'s attendance and also utilized the other evidence it had against Mr. Castillo. Indeed, when presented with B.J.V.'s accusations, Mr. Castillo made incriminating statements to law enforcement in December 2009. The State could have relied on Mr. Castillo's incriminating statements and proceeded with trial.

The State would likely argue that Mr. Castillo's statements were not alone sufficient to convict due to the corpus delicti rule. "[T]he corpus delicti rule requires proof, independent of the accused's statements, 'that a crime was committed by someone.'" *State v. Flowers*, 99 Wn. App. 57, 59-60, 991 P.2d 1206 (2000) (internal quotations omitted). But this rule "does not require 'proof of the identity of the person who committed the crime.'" *Id.* Instead, there must be "independent evidence" that a crime

was committed by someone. *Id.*; *State v. Smith*, 115 Wn.2d 775, 781, 801 P.2d 975 (1990). Explained further:

The independent evidence need not be of such a character as would establish the corpus delicti beyond a reasonable doubt, or even by a preponderance of the proof. It is sufficient if it prima facie establishes the corpus delicti... '[P]rima facie' means that there is 'evidence of sufficient circumstances which would support a logical and reasonable inference' of the facts sought to be proven... 'The independent evidence need not [have been] sufficient to support a conviction or even to send the case to the jury.

*Smith*, 115 Wn.2d at 781.

B.J.V.'s mother, officers, and investigator Ms. Murstig could have supplied the necessary "independent evidence" that a "crime was committed by someone..." without running afoul of hearsay or confrontation problems (*Flowers*, 99 Wn. App. at 59-60). In *State v. Ferguson*, also a prosecution for indecent liberties, the Court held that the victim's school teacher could testify that the victim reported "sexual advances" against her under the "fact of complaint" hearsay exception, though the teacher could not testify that the victim identified the defendant as the offender. *State v. Ferguson*, 100 Wn.2d 131, 135-36, 667 P.2d 68 (1983). Accord *State v. Ackerman*, 90 Wn. App. 477, 481-82, 953 P.2d 816 (1998); *State v. Alexander*, 64 Wn. App. 147, 151-52, 822 P.2d 1250 (1992) (under the "fact of complaint" hearsay exception, the victim's mother and counselor could testify that the victim disclosed abuse to them,

though these witnesses could not testify to the identity of the offender or specifics of the act.)

Here, B.J.V. disclosed the sexual allegations against Mr. Castillo to her mother and then to law enforcement in November 2009, and she was interviewed by Ms. Murstig pursuant to the ongoing investigation in April 2010. The witnesses hearing B.J.V.'s statements would not have been able to testify to the identity of the defendant or details of the allegations, but such identity or detailed testimony is not required to satisfy *corpus delicti*. Instead, the witnesses would have been able to testify that B.J.V. disclosed sexual advances, i.e., that a crime was committed by someone. And such testimony, coupled with the defendant's statements against interest (ER 804 (b)(3)), should have sent this case to trial. The trial court did not abuse its discretion by finding that there were other ways for the State to proceed with this case, despite B.J.V.'s lack of cooperation while the matter was pending in juvenile court.

The State did not offer any evidence or argument that it pursued any of the above options for dealing with a reluctant witness and prosecuting this case with the evidence it had. The State simply alleged that B.J.V. was uncooperative, so it decided not to follow through with prosecution while the case was pending in juvenile court. The trial court's decision that the State's delay was not justified under these circumstances

was within the range of acceptable choices given the record before it. The trial court's comment that the State could have pursued the case even without B.J.V.'s cooperation is well taken, and certainly not an abuse of discretion, in light of the law and circumstances set forth above.

**d. The State's reliance on preaccusatorial delay cases where the State's delay was justified by ongoing investigations has no application here.**

Finally, the State argues the trial court erred by dismissing Mr. Castillo's charge and that *State v. Maynard* is "directly on point..." State's Opening Brief pg. 5; *State v. Maynard*, 178 Wn. App. 413, 418, 315 P.3d 545 (2013), *review granted*, 180 Wn.2d 1001 (2014) (heard 6/12/2014 and awaiting decision)). In *State v. Maynard*, the Court refused to find "preaccusatorial delay" where the State investigated allegations for 11 months and then filed charges in juvenile court one month before the defendant turned 18. *Id.* at 414-15 ("[I]f the State files charges before juvenile jurisdiction expires and there is still an opportunity for the defendant to extend jurisdiction, then the *Oppelt* three-prong test is inapplicable.")

*State v. Maynard, supra*, has no bearing on this case. First, *State v. Maynard, supra*, is a preaccusatorial delay case. That is, the Court there was determining whether the State's 11-month delay prior to bringing charges in juvenile court should have resulted in dismissal. Whereas here,

the question is not whether there was preaccusatorial delay, but whether there was delay while the case was pending in juvenile court that warranted dismissal under CrR 8.3(b). Relatedly, the standard of review in *State v. Maynard* for alleged preaccusatorial delay was de novo, rather than a review for abuse of discretion as in this case where the delay occurred while charges were actually pending rather than pre-accusation.

As an example of further dissimilarity, the delay that occurred in *State v. Maynard, supra*, resulted from ongoing investigation. Specifically, the prosecutor in that case apparently needed more information in order to file charges, and police investigated and corresponded with the prosecutor about restitution amounts owed to victims during the 11-month delay. 178 Wn. App. at 414. Whereas here, the delay was not based on any ongoing investigation by the State. Indeed, according to the court's unchallenged finding of fact, the State did not engage in any additional investigation in this case between April 15, 2010, and June 3, 2013 (CP 7, FF7), which includes the entire 20-month period that the matter was pending in juvenile court.

Regardless, the Court's broad holding in *State v. Maynard*, that pre-accusatorial delay can never be established if a charge is brought at the eleventh hour in juvenile court before a defendant turns 18, may not stand. The State fails to note that review was granted in *State v. Maynard*, the



matter was heard by the Supreme Court, and the case is currently awaiting a decision. Although *State v. Maynard* has little impact on Mr. Castillo's case since the issue herein does not involve preaccusatorial delay or a delay bringing charges to allow for further investigation, the holding in *State v. Maynard* is circumspect. See J. Penoyar, Dissenting, 178 Wn. App. at 420 (despite the State bringing charges in juvenile court one month before the defendant's 18<sup>th</sup> birthday, "...it is clear from the record that the main cause for [Mr.] Maynard's loss of a chance to have his case resolved as a juvenile was unjustified pre-accusatorial delay.") Ultimately, *State v. Maynard* is not settled law and is not on-point to the issue in this appeal.

Finally, the State also relies on *State v. Calderon* to support its position. State's Opening Brief, pg. 6 (citing *State v. Calderon*, 102 Wn.2d 348, 684 P.2d 1293 (1984)). In *State v. Calderon*, a burglary was committed in the spring of 1981, the suspect turned 18-years-old that August, the Identification Lab that was asked to test fingerprints returned its report identifying Mr. Calderon in September, and the defendant was thereafter charged in adult court. *Id.* at 349-50. On review, the court held there was no preaccusatorial delay that warranted dismissal, because the ongoing investigation proceeded in its ordinary and standard course, justifying the delay in charging the defendant. *Id.* at 354. Whereas here, there was not any ongoing investigation that caused the delay in bringing

Mr. Castillo to trial. Unlike in *State v. Calderon*, the State completed its investigation in April 2010, and yet the case remained pending in juvenile court for almost two years without further investigation. The State's reliance on *State v. Calderon* is misplaced. Not only is this "preaccusatorial delay" case of little help in reviewing for an abuse of discretion under CrR 8.3(b), *State v. Calderon* is not even remotely analogous here since there was not an ongoing investigation that justified the delay in bringing Mr. Castillo to trial in juvenile court.

As the court explained in its unchallenged findings, the delay in prosecuting this case, which resulted in the loss of juvenile court jurisdiction, was not justified, especially since the State could have proceeded with the evidence it had rather than waited the years that it did for juvenile court jurisdiction to be lost and for B.J.V. to cooperate with the prosecution. The trial court did not abuse its discretion by granting Mr. Castillo's CrR 8.3(b) motion to dismiss, effectively finding that the State mismanaged the case by failing to pursue trial on the accusations against an 11-year-old child when it had sufficient evidence and while there was still juvenile court jurisdiction. If the trial court's decision is reversed, it could encourage alleged victims to wait until a juvenile turns 18 and then offer prosecutorial cooperation in adult court. The State must manage its cases more effectively to avoid such a conundrum, which the

trial court acknowledged by dismissing the charge against Mr. Castillo.

The trial court's discretionary decision should be affirmed.

F. **CONCLUSION**

The trial court did not abuse its discretion by dismissing the indecent liberties charge against Mr. Castillo pursuant to CrR 8.3(b). The State's argument that there was not preaccusatorial delay is not convincing, since the court's dismissal was never based on preaccusatorial delay in the first place. The trial court made a sound discretionary decision considering the applicable law and the factual circumstances that were presented. There is no basis for disturbing the trial court's discretionary decision.

Respectfully submitted this 8<sup>th</sup> day of December, 2014.

/s/ Kristina M. Nichols

Kristina M. Nichols, WSBA #35918

Attorney for Appellant

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON )  
Plaintiff/Appellant ) COA No. 32358-7-III  
vs. )  
)  
MIGUEL ANGEL CASTILLO ) PROOF OF SERVICE  
)  
Defendant/Respondent )  
\_\_\_\_\_ )

I, Kristina M. Nichols, assigned counsel for the Respondent herein, do hereby certify under penalty of perjury that on December 8, 2014, I deposited for mail by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Respondent's brief to:

Miguel Angel Castillo  
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Having obtained prior permission from Franklin County Prosecutor's Office, I also served Maureen Lorincz at mlorincz@co.franklin.wa.us and aIracheta@co.franklin.wa.us.

Dated this 8<sup>th</sup> day of December, 2014.

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