IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	NO. 102534-3
	)	
vs.	)	ANSWER TO THREE
	)	AMICI
CHRISTOPHER MILES GATES,	)	
	)	
	)	
Appellant.	)	
	)	

I. INTRODUCTION

Three memorandums of law, by six organizations, have been filed in support of review: Memorandum of Amicus Curiae The Defender Initiative and Washington Defender Association (herein after, "TDI and WDA Memo"), Memorandum of Amici Curiae ACLU of Washington Foundation and Fred T. Korematsu Center for Law and Equity

(ACLU/Korematsu"), and Memorandum of Amici Curiae The National Association of Criminal Defense Lawyers and The Coalition for Prior Conviction Impeachment Reform) (NACDL/The Coalition).

The State of Washington files this single answer to succinctly point out critical weakness in each of these memos that strongly suggest this case is a poor vehicle to review legal arguments that are claimed to be present but are not. In short, granting review in a case with a factual record so grossly underdeveloped and misrepresented would be an exercise in futility.

II. COMMENTS IN ANSWER

The TDI/WDA memo proceeds thunderously from this opening factual assertion:

> Mr. Gates' appointed counsel were unable to work on his case for more than 18 months. The Deputy Director of the King County Department of Public Defense (DPD) told the court that Mr. Gates had gone "essentially a year

> and a half … with no representation, with no work done in this case." In effect, Mr. Gates was deprived of counsel during that critical time.

TDI/WDA Memo at 1. As fully set forth in the Answer to Petition for Review, this factual assertion was and remains hotly contested. The State strongly believes that Gates's lawyers pursued this case as best they could under difficult circumstances. Many of those difficulties were brought about by Gates's own attempts to micromanage his case and through his dissatisfaction with lawyers who apparently would not accede to his attempts to control tactical judgments. Regardless of who is right about these factual matters, no court has yet made a factual or legal inquiry into the matter because the issue of competence of counsel was not litigated in the trial court and was not argued as such in the Court of Appeals. As a result, there is simply no factual record upon which to decide these

issues in a direct appeal. Review at this stage would run into multiple factual dead ends.

The ACLU/Korematsu memo claims that the prosecutor committed misconduct and was guilty of using "coded" language designed to play upon jurors' racial prejudices. ACLU/Korematsu Memo, at 1-3. Gates, himself, never said in his Brief of Appellant, Reply Brief, or his Petition for Review that the State used "coded" language. Rather, Gates suggested that the State used race-based arguments. Those arguments were constructed in a fashion to make it look like the prosecutor referred to Gates' race when, in fact, the prosecutor never did.

As to ACLU/Korematsu's new twist on this claim, it too is unsupported. The prosecutor's language in closing argument came in response to self-defense arguments by Gates' lawyer. The prosecutor's language *mirrored* the language used by Gates' lawyer. Thus, if there was hidden code in that language,

Gates and his lawyer embedded the code, not the prosecutor. The prosecutor cannot commit misconduct by adopting language used by the defense lawyer to argue self-defense. There was no effort, concerted or otherwise, by the prosecutor in this case to play upon racial animus. This claim unfairly attributes improper language to the prosecutor instead of recognizing its true source — Gates and his lawyer. Review is not warranted as to this claim.

ACLU/Korematsu also argues that the Privacy Act claim merits review because ridesharing is ubiquitous. Be that as it may, the issue in this case is rooted in uniqueness and rarity, not ubiquitousness. This rideshare driver and his passenger had the misfortune of stumbling upon a shooting on a public street and a recording device captured the sounds of gunfire. That is hardly a typical experience in rideshare vehicles, whether they are equipped with recording devices or not. Although there

might be interesting issues as to whether recordings in rideshare vehicles sometimes might capture private conversations, no such conversations were recorded here, and the passenger was warned of the recording anyway. No conversation from within the rideshare vehicle was used at trial. For all these reasons, issues of substantial public import under the Privacy Act are not squarely presented in this case.

Finally, the NACDL/Coalition memo claims that this Court should grant review of the ER 609 issue. But, as argued in the State's Answer to Petition for Review, reversing this Court's clear precedents and announcing now that robbery is *not* a crime of dishonesty is not *interpretation* or *re-interpretation* of a court rule, it would be an **amendment** to the court rule. The procedure for amending a court rule is set forth in GR 9. NACDL/Coalition should follow its procedures rather

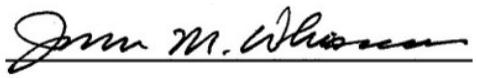
than ask this Court to "re-interpret" a rule that has been relied upon in good faith by countless trial courts.

For the foregoing reasons, this Court should reject the arguments of the three amicus memoranda and deny review in this case.

This document contains 827 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Submitted this 8th day of February, 2024.

LEESA MANION (she/her)
King County Prosecuting Attorney

By: 
James M. Whisman, WSBA #19109
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2385

(206) 477-9497 FAX (206) 259-2795

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

February 08, 2024 - 3:28 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,534-3
Appellate Court Case Title:	State of Washington v. Christopher Miles Gates

The following documents have been uploaded:

- 1025343_Briefs_20240208152656SC391463_8769.pdf
  This File Contains:
  Briefs - Answer to Amicus Curiae
  The Original File Name was 102534-3 ANSWER TO THREE AMICI.pdf

A copy of the uploaded files will be sent to:

- baker@aclu-wa.org
- boruchor@seattleu.edu
- changro@seattleu.edu
- enorwood@sidley.com
- greg@washapp.org
- jason.schwarz@snoco.org
- jmidgley@aclu-wa.org
- laurwilson@kingcounty.gov
- leeme@seattleu.edu
- levinje@seattleu.edu
- lila@washapp.org
- pleadings@aclu-wa.org
- rcboru@aol.com
- rwechkin@sidley.com
- rwechkin@sidley.com
- sgalai@aclu-wa.org
- wapofficemai@washapp.org
- wapofficemail@washapp.org

Comments:

Sender Name: Bora Ly - Email: bora.ly@kingcounty.gov
Filing on Behalf of: James Morrissey Whisman - Email: Jim.Whisman@kingcounty.gov (Alternate Email:)

Address:
King County Prosecutor's Office - Appellate Unit
W554 King County Courthouse, 516 Third Avenue
Seattle, WA, 98104
Phone: (206) 477-9499

Note: The Filing Id is 20240208152656SC391463