No. 45833-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

B. J. C.,

Appellant.

Cowlitz County Superior Court Cause No. 13-8-00274-7

The Honorable Judge Gary Bashor

Appellant's Opening Brief

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2. The court admitted B.J.C.'s statements in violation of his right to remain silent under Wash. Const. art. I, § 9.

3. B.J.C.'s confession was not voluntary under the totality of the circumstances.

4. B.J.C.'s confession was not the product of rational intellect and free will.

> **ISSUE 1:** A confession is not voluntary unless it is the product of rational intellect and free will under the totality of the circumstances. Thirteen-year-old B.J.C. was interrogated by two police officers who assured him that they were not there to arrest him. Was B.J.C.'s confession involuntary under the state and federal constitutions when he was not aware of its consequences?

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STATEMENT OF FACTS AND PRIOR PROCEEDINGS

B.J.C. had recently turned thirteen when two police officers knocked on the door of his apartment. RP 25. The officers directed him to leave the apartment and his adult caregivers. RP 16. The officers requested that he lead them to a place where they could talk. RP 20-21.

B.J.C. took the officers to the courtyard area of his apartment complex. RP 52. The officers asked him about alleged sexual contact with a seven-year-old relative he had recently babysat. RP 53. When B.J.C. denied any sexual contact, the officers said they did not believe him. RP 54. They claimed they already had information from the alleged victim that contradicted his statement. RP 54, 70-71. After that, B.J.C. said that he had taken a shower with the child. CP 54-56. The officers elicited more and more detail from him. RP 54-56. At one point, an officer asked B.J.C. specifically if he had put his penis in the alleged victim's mouth and he said yes. RP 74.

The officers did not read B.J.C. his *Miranda* rights. RP 17.[1] They never asked him if he wanted to talk to his parents or to an attorney. RP 17-18. They did not tell him that what he said could be used to prosecute

[1] The officers did tell B.J.C. he could terminate questioning. RP 18.

him for a crime.[2] RP 17-18. Instead, the officers told B.J.C. that they had no intention of arresting him. RP 12, 21.

B.J.C. moved to suppress his statements, arguing that they were not voluntary and that he was subjected to custodial interrogation without the benefit of *Miranda.* CP 3-10. The court admitted the statements. CP CP 43. The court recognized that it would be reasonable for a thirteen year old to believe he was in custody, but refused to suppress the statements. CP 43. The court found dispositive the fact that B.J.C. had chosen the location of the interrogation. CP 43.

The state charged B.J.C. with two counts of rape of a child in the first degree and one count of child molestation in the first degree. CP 1-2. The two rape counts were based exclusively on the information in B.J.C.'s confession.[3] *See* RP 70-74, 77-100, 119-24, 139-208.

Each of the counts derived from an alleged series of events taking place during a period of a few minutes in the bathroom at the alleged victim's home. RP 54-57.

The court found B.J.C. guilty of one count of rape of a child and one count of child molestation. CP 22. The court ordered B.J.C. to

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[2] B.J.C. did not have any prior convictions. CP 22.

[3] One rape count was dismissed because the state did not present any independent evidence of the *corpus delicti* of the offense. CP 22. During trial, however, the alleged victim said for the first time that B.J.C. had put his penis in her mouth, allowing the second count to go forward. RP 96.

register as a sex offender. CP 30. The court sentenced B.J.C. to two consecutive terms of fifteen to thirty-six weeks' confinement. CP 27.

This timely appeal follows. CP 34.

ARGUMENT

I. THE COURT ADMITTED B.J.C.'S STATEMENTS IN VIOLATION OF HIS RIGHT TO REMAIN SILENT UNDER THE FIFTH AMENDMENT AND WASH. CONST. ART. I, § 9.

A. Standard of Review.

Constitutional issues are reviewed *de novo*. *Dellen Wood Products, Inc. v. Washington State Dep't of Labor & Indus.*, 179 Wn. App. 601, 626, 319 P.3d 847 (2014).

B. B.J.C.'s statements to the police were not voluntary because he was not aware that they could be used against him in court.

The Fifth Amendment to the U.S. Constitution provides that "No person shall… be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V.[4] The privilege against self-incrimination applies in state prosecutions. U.S. Const. Amend. XIV; *Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964).

In cases involving juveniles, "the greatest care must be taken" to ensure that any confession is voluntary. *Application of Gault*, 387 U.S. 1,

55, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); *See also State v. Unga*, 165 Wn.2d 95, 103, 196 P.3d 645 (2008). Voluntariness includes not only freedom from coercion, but also assurance that the confession "was not the product of ignorance of rights or of adolescent fantasy, fright or despair." *Gault*, 387 U.S. at 55. This is so because scientific research has "cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children." *Id.* at 52; *See also e.g.* Joshua A. Tepfer, Laura H. Nirider, Lynda M. Tricarico, *Arresting Development: Convictions of Innocent Youth*, 62 Rutgers L. Rev. 887, 904 (2010); Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 Law & Psychol. Rev. 53, 56 (2007).

To be voluntary, a confession must be the product of rational intellect and free will. *State v. Sargent*, 111 Wn.2d 641, 660, 762 P.2d 1127 (1988). A juvenile's statement to the police is not voluntary if s/he does not understand that it could be used in court to support criminal charges. *State v. Tim S.*, 41 Wn. App. 60, 64 n. 2, 701 P.2d 1120 (1985).

Voluntariness is analyzed under the totality of the circumstances, including the length and location of the interrogation; the maturity and education of the accused; and the failure of police to advise the accused of

[4] The Washington State Constitution similarly provides that "No person shall be compelled in any case to give evidence against himself..." Wash. Const. art. I, § 9.

his/her rights. *Withrow v. Williams*, 507 U.S. 680, 693-94, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993). In cases involving children, it is also relevant whether the accused's parents were present for the interrogation. *See e.g. Gault*, 387 U.S. at 56.

B.J.C.'s statement to the police was not voluntary because he was not aware that it could be used against him in court. *Tim S.*, 41 Wn. App. at 64 n. 2. B.J.C. did not have any prior convictions. CP 22. He was thirteen years old at the time of his interrogation. RP 25. The officers isolated him from his adult caregivers. RP 16. They assured him that they were not there to arrest him. RP 12, 21. The officers did not warn B.J.C. that he was at risk of criminal prosecution, that his statements could be used against him, or that he had the right to an attorney. RP 12, 21.

Under the totality of the circumstances, B.J.C.'s statements to the police were not voluntary. *Williams*, 507 U.S. at 693-94; *Gault*, 387 U.S. at 56. Considering his age, isolation from adults, the lack of *Miranda* warnings, and the officer's assurance that he would not be arrested, B.J.C. did not know that his statements could be used to convict him of a crime. His confession was not the product of rational intellect and free will but of inexperience, immaturity, and ignorance of his rights. *Gault*, 387 U.S. at 55*; Sargent*, 111 Wn.2d at 660.

B.J.C.'s statements to the police were not voluntary. *Williams*, 507 U.S. at 693-94. The admission of those statements violated the constitutional privilege against self-incrimination. *Id.* B.J.C.'s convictions must be reversed and the evidence suppressed on remand. *Id.*

C. B.J.C should have been *Mirandized* because a reasonable thirteen year old would not have felt free to terminate the police interrogation and leave.

The Fifth Amendment prohibits the admission of evidence that is the fruit custodial interrogation without the benefit of *Miranda* warnings. *State v. Hickman*, 157 Wn. App. 767, 772, 238 P.3d 1240 (2010). Unwarned custodial statements are presumptively involuntary. *Id.* Questions reasonably likely to elicit an incriminating response constitute interrogation. *State v. Godsey*, 131 Wn. App. 278, 285, 127 P.3d 11 (2006).

A juvenile is "in custody" for *Miranda* purposes if a reasonable person of the same age would not have felt free to terminate the interrogation and leave. *J.D.B. v. N. Carolina*, 131 S.Ct. 2394, 2402, 180 L.Ed.2d 310 (2011). The juvenile's age informs the analysis because a reasonable child can feel pressured to submit to police interrogation even when a reasonable adult would feel free to go. *Id.* at 2403. Indeed "events that would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens." *Id.* (internal citation omitted).

B.J.C. was in custody during his interrogation. A reasonable thirteen year old would not have felt free to leave. *J.D.B.*, 131 S.Ct. at 2402. Two officers interrogated B.J.C. away from the adults in his home. RP 16. The officers did not *Mirandize* him.[5] RP 17. When B.J.C. answered their questions in a way that they did not like, the officers confronted him with contrary information and indicated that they thought he was lying. RP 54, 70-71.

Under these circumstances, a reasonable thirteen-year-old would not have felt entitled to terminate the interrogation and walk away. *J.D.B.*, 131 S.Ct. at 2402. The officers exerted their authority over B.J.C. in a manner to which a middle-schooler is trained to submit. Just as a young teen is not free to walk away from the principal's office when being disciplined, a reasonable thirteen-year-old would have felt constrained to cooperate and answer the officers' questions. B.J.C. was in custody during his interrogation by the police. *J.D.B.*, 131 S.Ct. at 2402.

B.J.C. was subjected to custodial interrogation without the benefit of *Miranda* warnings. *Hickman*, 157 Wn. App. at 772. The admission of his statements violated the constitutional privilege against self-

[5] The officers told B.J.C. that he could stop answering questions at any time. RP 18. But they did not tell him that he could walk away. RP 17-18. Nor did they tell him that he had the right to an attorney, that he could be charged with a crime, or that his statements could be used against him in court. RP 17-18.

incrimination. *Id.* B.J.C.'s convictions must be reversed and the evidence suppressed on remand. *Id.*

II. THE COURT'S ORDER REQUIRING B.J.C. TO REGISTER AS A SEX OFFENDER VIOLATES SUBSTANTIVE DUE PROCESS.

A. Standard of Review.

Constitutional issues are reviewed *de novo*. *Dellen Wood Products*, 179 Wn. App. at 626.

B. Washington's juvenile sex offender registration requirement violates substantive due process because it is not narrowly tailored to meet a compelling state interest.

The Fourteenth Amendment right to due process includes a substantive component. *Lawrence v. Texas*, 539 U.S. 558, 565, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003); *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). This component has "fundamental significance in defining the rights of the person." *Lawrence* 539 U.S. at 565. Substantive due process goes beyond mere procedural protections to actually limit the government's ability to operate in certain realms. *Id.* at 578; *Troxel,* 530 U.S. at 65.

Due process guarantees the fundamental right to travel. *Aptheker v. Sec'y of State*, 378 U.S. 500, 505, 84 S.Ct. 1659, 12 L.Ed.2d 992 (1964); *Attorney Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 901, 106 S.Ct.

2317, 90 L.Ed.2d 899 (1986); U.S. Const. Amends. V, XIV; Wash. Const. art. I, § 3. The right to travel includes the right to travel within a state. *State v. Enquist*, 163 Wn. App. 41, 50, 256 P.3d 1277 (2011). The constitution also guarantees a fundamental right to freedom of movement. *State v. J.D.*, 86 Wn. App. 501, 506, 937 P.2d 630 (1997). That right is rooted in due process and the First Amendment freedom of association. *Id.*

A statute that burdens the fundamental rights to travel and to freedom of movement is subject to strict scrutiny. *Macias v. Dep't of Labor & Indus. of State of Wash.*, 100 Wn.2d 263, 273, 668 P.2d 1278 (1983); *J.D.*, 86 Wn. App. at 508. A state law implicates the right to travel if it indirectly burdens exercise of that right by creating "any classification which serves to penalize the exercise of the right." *Soto-Lopez*, 476 U.S. at 903 (internal citations omitted). A statute burdening a fundamental right cannot survive strict scrutiny unless it is narrowly tailored to meet a compelling state interest. *Lawrence* 539 U.S. at 593; *J.D.*, 86 Wn. App. at 508.

The right to travel is one of the few rights so fundamental that statutes burdening it are subject to facial overbreadth challenges. *Sabri v. United States*, 541 U.S. 600, 610, 124 S.Ct. 1941, 158 L.Ed.2d 891 (2004)

(*citing Aptheker* 378 U.S. 500). Litigants may challenge an overbroad statute even if it could constitutionally be applied to them. *Id.*

Governmental intrusions into fundamental rights may not sweep unnecessarily broadly: "precision must be the touchstone of legislation affecting freedoms." *Aptheker,* 378 U.S. at 508, 514 (internal citation omitted). A statute is not narrowly tailored if other reasonable ways to achieve the state's purpose would impose a lesser burden on constitutionally protected activity. *Soto-Lopez*, 476 U.S. at 909-10.

The sex offender registration requirements place a burden on the fundamental rights to travel and to freedom of movement. RCW 9A.44.130; RCW 9A.44 132. The registration statute requires that an offender with a fixed residence register the address at which s/he spends a majority of the week.[6] RCW 9A.44.128(5) (defining "fixed residence" as the place where the person spends the majority of the week); RCW 9A.44.130(4). A registered sex offender with a fixed address cannot travel away from home for more than three nights. By leaving home for more than three days, the person would likely be at risk of criminal prosecution.[7] RCW 9A.44.132.

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[6] A person without a fixed residence must register as a transient and check in with the county sheriff once a week. RCW 9A.44.128(9); RCW 9A.44.130(5).

[7] The statute does not make clear whether a person with a fixed address may re-register temporarily at a place s/he stayed while traveling. The statutory scheme does not anticipate re-registration unless the person has changed or lost his/her fixed residence. *See* RCW

The purpose of the registration scheme "is to assist law enforcement agencies' efforts to protect their communities against re-offense by convicted sex offenders." *State v. Pray*, 96 Wn. App. 25, 28, 980 P.2d 240 (1999), *review denied,* 139 Wn.2d 1010 (1999). Assuming this is a compelling interest, the statute nonetheless violates substantive due process because it is not narrowly tailored to meet that aim. *Aptheker,* 378 U.S. at 508.

1. The requirement that juveniles register as sex offenders is not narrowly tailored because it burdens a fundamental right without considering the "relevant characteristic" of youth.

Legislative discrimination affecting fundamental rights must be correlated to a person's "*relevant* characteristics." *Soto-Lopez*, 476 U.S. at 911 (italics in original). A statute is not narrowly tailored if it "excludes plainly relevant considerations" in its burden of a fundamental right. *Aptheker*, 378 U.S. at 514.

The requirement that juveniles register as sex offenders is not narrowly tailored because it covers offenders who are neither dangerous nor likely to reoffend. The requirement rests on the assumption that any youth convicted of a sex offense will pose a danger to society. This

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9A.44.130(4)-(5). Even if temporary re-registration were permitted by the statute, the requirement would still place a burden on the rights to travel and to freedom of movement. Accordingly, the statute would need to be narrowly tailored to meet a compelling state interest.

assumption is unwarranted, and cannot support the registration scheme for juvenile offenders.

Research demonstrates that people who commit sex offenses as juveniles have very low recidivism rates. *See e.g.* Amy E. Halbrook, *Juvenile Pariahs*, 65 Hastings L.J. 1, 13 (2013); L. Chrysanthi, et al, *Net-Widening in Delaware: The Overuse of Registration and Residential Treatment for Youth Who Commit Sex Offenses,* 17 Widener L. Rev. 127, 149 (2011); Richard A. Paladino, *The Adam Walsh Act As Applied to Juveniles: One Size Does Not Fit All*, 40 Hofstra L. Rev. 269, 290-92 (2011).

Several large studies, for example, have found that adjudication for a juvenile sex offense does not make a person statistically more likely to commit a sex offense as an adult. See Halbrook, 65 Hastings L.J. at 13-14 (*citing* Michael F. Caldwell et al., *An Examination of the Sex Offender Registration and Notification Act as Applied to Juveniles: Evaluating the Ability to Predict Sexual Recidivism*, 14 Psychol. Pub. Pol'y & L. 89, 101 (2008); Michael F. Caldwell, *Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offenders*, 19 Sex Abuse 107, 107 (2007); Franklin E. Zimring et al., *Investigating the Continuity of Sex Offending: Evidence from the Second Philadelphia Birth Cohort Study*, 26 Just. Q. 58, 58 (2009); Franklin E. Zimring et al., *Sexual Delinquency in Racine: Does*

Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?, 6 Criminology & Pub. Pol'y 507, 529 (2007)).

Nonetheless, Washington all juveniles adjudicated for sex offenses are required to register as sex offenders and face criminal prosecution if they fail to do so.[8] RCW 9A.44.130(a)(1); RCW 9A.44.132.

Empirical evidence does not support the legislative assumption that all juveniles convicted of sex offenses pose a danger to society. Indeed, the available evidence suggests the opposite. Nonetheless, the statutory scheme requires registration even by youth who are not dangerous or at risk of recidivating. The statute is not precise enough to justify the burden it places on the fundamental rights to travel and freedom of movement. *Aptheker,* 378 U.S. at 514.

The lower court violated B.J.C.'s right to substantive due process by ordering him to register as a sex offender absent any indication that he was actually dangerous or likely to commit future sex offenses. *Soto-Lopez*, 476 U.S. at 911; *Aptheker*, 378 U.S. at 514. The requirement that B.J.C. register as a sex offender must be stricken from his judgment and

[8] Some people adjudicated guilty for sex offenses as juveniles may later move for relief from the registration requirements after a period of time has passed. RCW 9A.44.143. This fact does not alter the analysis regarding whether the sex offender registration scheme is narrowly tailored during the period when they are required to register.

sentence. The case must be remanded for entry of an order making clear that B.J.C. is exempt from Washington's registration requirement.

2. The requirement that juveniles register as sex offenders is not narrowly tailored because there is no "evidentiary nexus" between its purpose and effect.

To qualify as narrowly tailored, "there must be an evidentiary nexus between a law's purpose and effect." *J.D.*, 86 Wn. App. at 508. The Washington juvenile sex offender registration scheme is not narrowly tailored because it lacks an evidentiary nexus: the registration requirement does not serve its stated goal of protecting the public. *Id.*

A Washington-specific study has found that the sex offender registration requirements have no statistically significant effect on recidivism. Nor do registration requirements increase public safety. Molly J. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 La. L. Rev. 509, 523 (2013) (*citing* Donna D. Schram & Cheryl Darling Milloy, Wash. State Inst. for Pub. Pol'y, *Community Notification: A Study of Offender Characteristics and Recidivism* (1995)). Numerous other studies have reached the same conclusion. *Id.* at 523-24; *see also* J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?,* 54 J.L. & Econ. 161 (2011) (finding that sex offender

registration may actually increase recidivism); Amanda Y. Agan, *Sex Offender Registries: Fear Without Function?,* 54 J.L. & Econ. 207 (2011).

Research focusing on juveniles has similarly determined that sex offender registration for young people has no effect on reducing their already low recidivism rates. *Id.* at 15 (*citing* Elizabeth J. Letourneau et al., *The Influence of Sex Offender Registration on Juvenile Sexual Recidivism*, 20 Crim. Just. Pol'y Rev. 136, 136 (2009); Elizabeth J. Letourneau & Kevin S. Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sex Offenders*, 20 Sexual Abuse: J. Res. & Treatment 393, 403 (2008)).

The requirement that juveniles register as sex offenders is not narrowly tailored because there is no "evidentiary nexus between [its] purpose and effect." *J.D.*, 86 Wn. App. at 508. Because of this, the registration requirement violates substantive due process on its face as applied to juvenile offenders. It impedes the rights to travel and to freedom of movement even though there is evidentiary evidence that it does not promote any state interest. *Aptheker,* 378 U.S. at 508, 514; *Soto-Lopez*, 476 U.S. at 909-10. The order for B.J.C. to register as a sex offender must be stricken. *Id.*

III. THE COURT EXCEEDED ITS AUTHORITY BY SENTENCING B.J.C TO MORE THAN 150% OF THE TERM FOR HIS MOST SERIOUS OFFENSE.

A. Standard of Review.

Sentencing decisions are reviewed for abuse of discretion. *State v. Williams*, 176 Wn. App. 138, 141, 307 P.3d 819 (2013) (Williams I). A court abuses its discretion if a decision is manifestly unreasonable, based on untenable grounds, or made for untenable reasons. *Id.* A court's failure to exercise discretion is itself an abuse of discretion. *Brunson v. Pierce Cnty.*, 149 Wn. App. 855, 861, 205 P.3d 963 (2009).

B. Because B.J.C.'s offenses arose from a single act or omission, his maximum possible sentence was 150% of the disposition for the most serious offense.

Generally, sentences for multiple juvenile dispositions run consecutively. RCW 13.40.180(1). However, when two or more offenses arise from a single act or omission, the court is limited to a total sentence of not more than 150% of the term imposed for the most serious offense. RCW 13.40.180(1)(a).

Offenses arise from a "single act or omission" if they comprise the "same criminal conduct" under the test applied in the adult context. *State v. Contreras*, 124 Wn.2d 741, 748, 880 P.2d 1000 (1994). Two offenses encompass the same criminal conduct if they have the same criminal

intent, involve the same victim, and are committed at the same time and place. RCW 9.94A.589(1)(a).

In determining whether multiple offenses require the same criminal intent, the sentencing court "'should focus on the extent to which the criminal intent, as objectively viewed, changed from one crime to the next....'" *State v. Garza-Villarreal*, 123 Wn.2d 42, 46-47, 864 P.2d 1378 (1993) (*quoting State v. Dunaway*, 109 Wn.2d 207, 215, 743 P.2d 1237 (1987)). The word "intent" refers not to the *mens rea* element of the offense, but to the actor's overall criminal purpose. *See e.g. Contreras*, 124 Wn.2d at 748. A continuing, uninterrupted sequence of conduct may stem from a single overall criminal objective; simultaneity is not required. *State v. Williams*, 135 Wn.2d 365, 368, 957 P.2d 216 (1998) (Williams II); *State v. Porter,* 133 Wn.2d 177, 183, 942 P.2d 974 (1997).

The court exceeded its authority by sentencing B.J.C. to two full consecutive dispositions because his two adjudications arose from a single act or omission. RCW 13.40.180(1)(a). The two offenses involved the same victim and occurred in the same place over the course of a few minutes. The actions involved a single criminal purpose: sexual gratification. The court erred by refusing to limit B.J.C.'s disposition to 150% of the term imposed for the most serious offense. RCW 13.40.180(1)(a).

The court exceeded its authority by sentencing B.J.C. to twice the term imposed for the most serious offense. *Id.* His case must be remanded for resentencing. *Contreras*, 124 Wn.2d at 749.

C. This court should reject the *per se* rule announced in *S.S.Y.* because that case conflicts with *Contreras* and other Supreme Court precedent.

Division II has applied a *per se* rule that two offenses cannot constitute a "single act or omission" if they have different statutory intent elements. *State v. S.S.Y.*, 150 Wn. App. 325, 333, 207 P.3d 1273 (2009) *aff'd in part on other grounds,* 170 Wn.2d 322, 241 P.3d 781 (2010). As noted by the Supreme Court, however, that approach is at odds with the analysis employed by the Supreme Court and the other divisions of the Court of Appeals. *S.S.Y.*, 170 Wn.2d at 332 ("The court's per se rule follows a line of Division Two cases that appear to be in conflict with cases from Division One, Division Three, and this court") (*citing Dunaway*, 109 Wn.2d at 213-17; *State v. Adame*, 56 Wn. App. 803, 811, 785 P.2d 1144 (1990)).

In *Dunway*, the court adopted an objective test for determining whether two offenses had the same intent for sentencing purposes. *Dunway*, 109 Wn.2d at 215. The test is met if there is "no substantial change in the nature of the criminal objective" between two offenses. *Id.* at 214. Applying the *Dunway* test in the juvenile context, the Supreme

Court held that adjudications for custodial assualt, unlawful imprisonment, and first degree escape constituted a single act or ommission. *Contreras*, 124 Wn.2d at 748. The court's reasoning turned on the fact that the offenses were all committed with the criminal purpose of leaving a juvenile detention facility. *Id.* The court did not look to the *mens rea* elements of the offenses, which are not the same. *See* RCW 9A.36.100, 9A.40.040, 9A.76.110.

The *per se* rule applied in *S.S.Y.* conflicts with the Supreme Court's precedent in *Dunway* and *Contreras*. This court should overrule *S.S.Y.,* and reject the *per se* rule announced in that case. *Contreras*, 124 Wn.2d at 748.

CONCLUSION

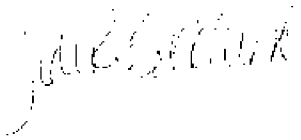
The admission of B.J.C.'s statements to the police violated constitutional privilege against self-incrimination. His convictions must be reversed and the statements suppressed on remand.

The order for B.J.C to register as a sex offense violates substantive due process because it is not narrowly tailored to meet a compelling state interest. The order must be stricken, and the case remanded with instructions to enter an order exempting B.J.C. from any registration requirement in Washington.

The court exceeded its authority by sentencing B.J.C. to more than 150% of the term imposed for his most serious offense. His case must be remanded for resentencing.

Respectfully submitted on July 8, 2014,

BACKLUND AND MISTRY



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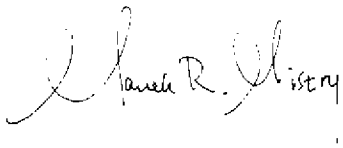
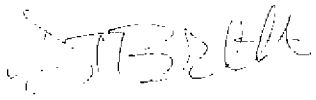


Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

B. J. C.
Echo Glen
33010 SE 99th St
Snoqualmie, WA 98065

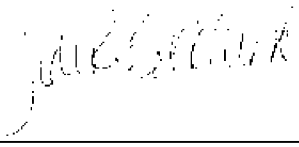
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Cowlitz County Prosecuting Attorney
baurs@co.cowlitz.wa.us

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on July 8, 2014.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

July 08, 2014 - 1:07 PM

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