No. 99068-9

SUPREME COURT
OF THE STATE OF WASHINGTON

M.E. and J.E., minors, through JOHN R. WILSON,
as Litigation Guardian *ad Litem*;
and JOSHUA EDDO, individually,

Appellants,

v.

CITY OF TACOMA, a political subdivision of
the State of Washington,

Respondent.

BRIEF OF *AMICUS CURIAE* KING COUNTY SEXUAL ASSAULT RESOURCE CENTER IN SUPPORT OF GRANTING REVIEW

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I. INTRODUCTION

Law enforcement agencies play a critical role in protecting children from abuse and neglect. In general, law enforcement's investigative responsibility is co-extensive with that of DSHS, *see* RCW 26.44.030, .050. Many initial calls about abuse are to the police, who have broad authority to intervene and investigate. Division II's decision overlooks law enforcement's obligation to prevent child abuse by timely and thorough investigations. As in many cases of abuse and neglect, the first call here was to the police. Tacoma Police Department's policies require them to conduct a thorough investigation, including background checks on the adults in the children's home. Such a check here would have revealed that Jason Karlan had a criminal conviction for child sexual abuse from California and should have led to more aggressive investigation of the children's safety.

A decision that is so at odds with this state's public policy of preventing child abuse is not in harmony with the law.

II. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The King County Sexual Assault Resource Center ("KCSARC"), a nonprofit corporation, is the largest sexual assault services organization in Washington. Since 1976, KCSARC has worked to prevent sexual violence and to help victims and their families recover when it does occur.

In addition to providing mental health treatment and other services, KCSARC offers a Legal Advocates program that gives legal assistance to victims and their families, including during government investigations mandated under RCW 26.44. The largest program of its kind nationwide, Legal Advocates served 2,287 people in 2018 alone. KCSARC's interest here is based on client experiences and academic research.

III. ARGUMENT IN SUPPORT OF REVIEW

A. The Division II Opinion Mistakenly Assumes That Because a Child Has Not Disclosed Abuse, It Is Not Occurring

Division II's holding fails to recognize the known dynamics of child molestation. Sexual abuse of children, especially girls, is widespread. As many as one in three girls will experience some form of sexual abuse before age 16.[1] Yet contemporaneous disclosures are infrequent. [2]

Disclosures are delayed, particularly when the offender is a live-in caregiver.[3] In *State v. Graham*, 59 Wn. App. 418, 423, 798 P.2d 314 (1990),

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[1] KCSARC, *Keeping Communities and Neighborhoods Safe*, *available at* https://www.kcsarc.org/sites/default/files/Resources%20-%20Neighborhood%20Safety.pdf.

[2] *See generally*, Washington State Supreme Court Gender & Justice Commission, *Sexual Violence Bench Guide for Judicial Officers* (Rev. 2018), *available at* http://www.courts.wa.gov/content/manuals/SexualOffense/WA_SV_Guide.pdf; KCSARC, *Engaging Elementary Schools in Violence Prevention*, *available at* https://www.kcsarc.org/sites/default/files/LaunchPad-web%20%28002%29.pdf.

[3] J. Henry, *System Intervention Trauma to Child Sexual Abuse Victims Following Disclosure*, 12 J. of Interpersonal Violence 499 (1997).

for example, an expert testified that *all* girls who reported sexual abuse to her had waited a long time, typically about a year.[4] The reasons for delay are complex and multifaceted—victims' fear (of what the offender will do), confusion (younger children lack understanding about what is happening to them), shame (victims blaming themselves), and other factors.[5] In fact, investigators from both Child Protective Services and law enforcement are trained to *expect* a child to remain silent when the suspected abuser is a person in a position of trust, as Karlan was, and the child remains in that person's care, as the girls were here.

The dynamics of sexual abuse help explain this practical reality. Child molesters are usually well known and liked by their victims and their victim's parents. Offenders carefully "groom" parents and children to gain their trust and let down their guard, often for a long time before beginning their sexual abuse.[6] The grooming procedure is extremely effective. In fact,

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[4] *See also, State v. Martinez*, 9 Wn. App. 2d 1044, 2019 WL 2751295, *review granted*, 194 Wn.2d 1009, 452 P.3d 548 (2019), *aff'd*, __ P.3d __, 2020 WL 6789075 (2020) ("Courts now recognize there are many reasons why a victim may wait to report a sexual assault." (collecting cases)).

[5] This Court's Gender and Justice Commission found these reasons to be true for adults' delays in reporting sexual assault. *See* Gender & Justice Commission, *supra* n.1, at 1-18 to 1-19. In KCSARC's experience, these reasons are especially true for children.

[6] *See* Gender & Justice Commission, *supra* n. 1, at 1-12 n.72; *see generally also,* Carla Van Dam, *Identifying Child Molesters: Preventing Child Sexual Abuse by Recognizing the Patterns of the Offenders* (2001). Because of the trust cultivated through grooming, parents' first reaction when learning about potential abuse is often to disbelieve it. *Id.*

because the offender is generally someone known to the victim, the child may feel that she has no alternative but to accept the abuse. The offender then uses manipulative behavior, including threats, to secure the victim's silence. In short, the fact that the girls here had not yet themselves disclosed should not have been dispositive of the investigation.

Instead, the focus from Division II should be the inexcusable failure of law enforcement to perform a background check on all the adults residing in the home, specifically including Karlan. Trained law enforcement agencies understand the severity of the danger of a child living with a child rapist. While studies suggest an offender is not guaranteed to re-offend, the risk is too great to tolerate because, as the U.S. Department of Justice has found, "[l]ow reporting levels make it extremely difficult to estimate actual recidivism rates."[7] When offenders have access to multiple children, all of those children are at risk. Once a child has been sexually abused, the risk of future abuse increases.[8] And young girls are the most susceptible victims. Given the danger, neither law enforcement agencies nor Washington courts should believe a child's non-disclosure is the end of the inquiry.

Law Enforcement should act with urgency when they receive

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[7] U.S. Dep't of Justice, *SOMAPI Report Highlights: Adult Sex Offender Recidivism*, https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/adultsexoffenderrecidivism.pdf.

[8] *E.g.*, Catherine C. Classen, et al., *Sexual Revictimization*, 6:2 Trauma, Violence & Abuse 103 (Apr. 2005).

information that a parent is allowing a child rapist to live in the home and spend hours alone with a child. To say and do otherwise, as Division II and Tacoma police did here, is to ignore Washington's policy objective of preventing child abuse. RAP 13.4(b)(4).

B. Being Left in a Residence with a Convicted Child Molester Is a Harmful Placement Decision

Division II also incorrectly held that any negligence by Tacoma police did not cause "a harmful placement decision." Op. at 12-14. The court's view of a harmful placement—a place where abuse has already occurred—disregards the imminent danger to children when living with a child rapist. The grooming process can unfold for several months. The offender may well be simply building the children's trust. Law enforcement officers—and the courts—should not assume that any children living with a child rapist are safe. Division II's opinion implicitly condones authorities leaving children in such a dangerous environment, violating both public policy and RCW 26.44's definition of abuse or neglect, which includes a "clear and present danger to a child's health, welfare, or safety." RCW 26.44.020(1), (18); *see also*, *Wrigley v. State*, 195 Wn.2d 65, 77, 455 P.3d 1138 (2020) (stating that RCW 26.44.050 does not require officials to "wait for the child to be harmed before taking any action").[9]

[9] The statutory scheme in Washington demonstrates the understanding that a person who is convicted of abuse must register as a sex offender in order that his access to

C. The Decision Unduly Limits Law Enforcement's Obligation Upon Receiving a Report of Child Abuse, to Investigate the Safety of Children Residing with the Suspect

Tacoma Police's failure to investigate the girls' abuse in April 2013, by which time Karlan was abusing M.E., is particularly troublesome. Division II held the girls could not show causation because, in the court's mind, a proper investigation in April 2013 would not have "accomplished anything different than what occurred in this case." Op. at 14. Put another way, even if police had checked the national criminal history database and seen Karlan was a convicted child rapist, the court believed that everyone—DSHS, police, the girls' father, and their mother—would have kept the girls in Karlan's care because they had not yet disclosed abuse, despite the fact another child was currently being abused by Karlan.

The City incorrectly focused on whether police had probable cause to arrest Karlan for a crime, instead of whether they had probable cause to take the children into protective custody. *See* Ans. at 10, 12. The City seems to argue that police officers' hands are tied even when they know that a convicted or accused child rapist lives with unprotected children and another child is alleging current sexual abuse. That is incorrect. The statute

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other children is scrutinized and limited. Similarly, the mandatory reporting law likewise anticipates that all children with whom a child sexual abuser has unsupervised contact are at risk of harm. RCW 26.44.030.

allows police to take a child into protective custody when "there is probable cause to believe that the child is abused or neglected." RCW 26.44.050. That articulation of probable cause relates to law enforcement's authority to remove the child from a harmful placement, not the authority to arrest the abuser, a critical distinction missed by Division II. The statutory definition of "abuse or neglect" includes a "clear and present danger to a child's health, welfare, or safety." RCW 26.44.020(1), (18). Nothing in RCW 26.44.050 requires police to wait for sexual abuse to occur and be disclosed before taking children into protective custody. The City's argument to the contrary is dangerous because it envisions law enforcement agencies passively documenting past abuse instead of actively preventing abuse. In enacting RCW 26.44.050, the Legislature did not want officers to take a passive role.

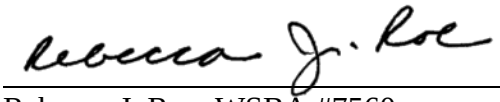
Taking the children into protective custody is just *one* element of the police's responsibility. Had Tacoma police uncovered Karlan's prior conviction, as they should have, they would have been required to inform Child Protective Services, RCW 26.44.050, and the girls' parents, CP 102. Thus, the police's negligence was harmful not just because the police failed to assume protective custody, but also because they failed to supply information that would have prompted other government authorities and the parents to remove Karlan or otherwise protect the girls.

This Court should grant review to safeguard RCW 26.44.050's goal to protect children. Review is merited. RAP 13.4(b).

IV. CONCLUSION

KCSARC urges this Court to grant review. This Court has an important responsibility to see that the Legislature's laudable goal of preventing abuse of children is not undermined by limiting law enforcement's important role in child abuse and neglect investigations.

DATED this 24th day of November, 2020.

By: 

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