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Court of Appeals No. 34718-4-III

STATE OF WASHINGTON
COURT OF APPEALS, DIVISION III

State of Washington,
Plaintiff-Respondent,

v.

Meghan Lillian MianECKi,
Defendant-Appellant.

REPLY BRIEF OF THE APPELLANT

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A. SUMMARY OF REPLY

The State's Response to Ms. Mianecki's appeal misstates the law and appears to improperly assume the guilt of Ms. Mianecki, whom is presumed innocent at this stage of this case. Contrary to the State's assertions, this Court's review is *de novo* and its role is to determine if the State's preaccusatorial delay violated Ms. Mianecki's constitutional rights based on its own review of the record. Unlike prior decisions, Ms. Mianecki's case involves alleged sexual contact between two minors prohibited solely because of the difference in age between the accused and alleged victim. Despite these unique circumstances, the State admits that it cannot account for the critical preaccusatorial delay in this case, providing little rationale for its failure to timely file charges to allow for juvenile jurisdiction. Balancing the State's failure to explain its delay against the substantial prejudice Ms. Mianecki has suffered because of the State's preaccusatorial delay, Ms. Mianecki respectfully asks the Court to reverse the trial court's order and order dismissal of the charges against her.

B. ARGUMENT IN REPLY

1. **Standard for Appellate Review: State's assertion that this Court should give deference to the trial court's "factual" conclusions is erroneous**

The State asserts that an "appellate court should not question the determination of the fact finder...The trial court **found as a matter of fact**

that no undue delay existed.” [Respondent’s Brief, p.20 (citing State v. Carol M.D., 89 Wn. App. 77, 98, 948 P.2d 837 (1997) (J. Brown, dissent), review granted, cause remanded sub nom., State v. Doggett, 136 Wn.2d 1019, 967 P.2d 548 (1998), and State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999)](emphasis added). That is not the correct legal standard for the Court’s review of this appeal.

An appellate court reviews *de novo* “[w]hether due process rights are violated by a preaccusatorial delay.” State v. Oppelt, 172 Wn.2d 285, 290, 257 P.3d 653, 657 (2011). Because the Court’s review is *de novo*, it examines “the entire record to determine prejudice and to balance the delay against the prejudice.” See id. (citing Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 514 n. 31, 104 S.Ct. 1949, 80 L.Ed.2d 502 (1984)(court reviewing *de novo* makes original appraisal of all evidence)). The two decisions the State cited for the premise that the Court “should not question” the trial court’s findings of fact in this case, Carol and Bencivenga, are inapposite.

Citing the dissent in State v. Carol M.D., the State fails to acknowledge that the issue in Carol—**whether the trial judge appropriately admitted evidence under ER 803(a)(4)**—is inapplicable to the issue raised by Ms. Mianeki. See 89 Wn. App. at 80 (“[W]e are asked to decide whether the trial court properly admitted under ER

803(a)(4) statements made by a child to her counselor describing sexual abuse by her parents. We conclude the court admitted those statements without proper foundation.”); see also id. at 97-98. Indeed, the dissent’s opinion in Carol focuses on the trial court’s function to determine admissibility of evidence “as a preliminary fact finder under ER 104.” Id. at 98. Here, there is no issue as to admissibility of evidence.

State v. Bencivenga is similarly inapplicable to the issue raised by Ms. Miannecki. 137 Wn.2d 703, 974 P.2d 832, 833 (1999). In Bencivenga, the Court considered **whether there was sufficient evidence to uphold a conviction** for attempted burglary. Id. at 705. In its review of the appellate court’s reversal of the trial court’s conviction, the Court cautioned against invading “the province of the fact finder by appropriating to the appellate court the role of factually determining the reasonableness of an inference.” Id. at 708. Given the posture of that case, the Court noted that “[t]he role of the appellate court is to determine whether or not any rational trier of fact, viewing the evidence in the light most favorable to the prosecution could have found, beyond a reasonable doubt, all the essential elements of the crime.” Id. at 709.

Neither Carol nor Bencivenga involve a *de novo* review, and they do not change the legal standard for appellate review of whether a preaccusatorial delay violates an accused’s constitutional rights. This

Court is empowered to review the entire record *de novo* and to make an “original appraisal of all the evidence” to determine if the State’s preaccusatorial delay violated Ms. Mianecki’s rights. See Oppelt, 172 Wn.2d at 290; Bose Corp., 466 U.S. at 514 (“The independent review function is not equivalent to a ‘de novo’ review of the ultimate judgment itself, in which a reviewing court makes an original appraisal of all the evidence to decide whether or not it believes that judgment should be entered...”).

2. State’s argument that Ms. Mianecki’s case is “not unique” contradicts its stipulation to the trial court and ignores the factual differences between this case and prior decisions

The State argues that “several cases cited by [Ms. Mianecki] are juvenile sex cases” and “[t]he issues in [her] case are not unique and require no special treatment by this Court in rendering its determination.” [Respondent’s Brief, p.6]. The State’s argument appears to contradict its prior representations, specifically memorialized in the trial court’s order, co-presented and signed by both parties’ counsel, that contained the language, “**THE PARTIES ST[I]PULATE** and the Court finds that this Order involves a controlling question of law **as to which there is substantial ground for a difference of opinion...**” [CP 35-36, p.1, ll.21-27](emphasis added). The State should not be permitted to take an

inconsistent position with regard to the appropriateness of appellate review. See, e.g., Rushlight v. McLain, 28 Wn.2d 189, 193–94, 182 P.2d 62 (1947)(“[I]t is well settled that a party who has knowingly and deliberately taken a particular position in judicial proceedings is estopped to assume a position inconsistent therewith.”).

Further, though the State asserts the context of this appeal is not “unique,” it fails to cite **any decision** involving “similar allegations of statutorily prohibited sexual contact between minors.” [Appellant’s Brief, p.11]. As noted in her opening brief, while there are two prior decisions involving sex crimes (forcible rape and molestation), Ms. Mianeki has not found a prior decision involving sexual contact between two minors prohibited solely because of the difference in age between the accused and alleged victim. See State v. Brandt, 99 Wn. App. 184, 992 P.2d 1034 (2000), as amended (Sept. 15, 2000), amended, 9 P.3d 872 (Wash. Ct. App. 2000); State v. Gidley, 79 Wn. App. 205, 901 P.2d 361 (1995); [Appellant’s Brief, p.14]. Perhaps more importantly, Ms. Mianeki is unaware of any prior decision involving a criminal charge that is *premised* upon the accused’s age. As noted previously, this factual difference between prior decisions and Ms. Mianeki’s case is important because the State admittedly learned her age on the day of the alleged incident but

failed to recognize or acknowledge the significance that she was a juvenile. [RP 25, ll.17-25](see infra).

3. State has not offered a factual explanation for its preaccusatorial delay, relying instead on the arguments of its counsel

As noted in Ms. MianECKi's opening brief, the balancing test to be applied by the Court requires consideration of (1) the State's reasons for delaying filing charges with (2) the prejudice caused to Ms. MianECKi by the preaccusatorial delay. See Oppelt, 172 Wn.2d at 257. The State argues in its briefing that its investigation mandated the delay, asserting that "[i]nvestigations take time, lab work takes time, writing reports takes time, and these delays are justifiable and reasonable." [Respondent's Brief, p.20]. However, the record does not support this argument. To the contrary, **the State failed to provide an actual reason for delaying filing charges in this case.** It cannot account for the most critical delay in this case—between when Grant County received the DNA evidence (purportedly necessary to refer the file to the prosecutor's office) and when it reviewed this information. [Respondent's Brief, p.14]. Grant County received the lab report seventeen days before Ms. MianECKi turned 18, but it failed to read the results until ¹*after* her birthday.

- a. State admits that Deputy Overland "cannot account" for critical time and does not provide reason for delay

The State argues in its briefing that Deputy Overland testified that he was “extremely busy,” [Respondent’s Brief, p.3]. But this argument ignores the deputy’s testimony indicating that he could not “answer” for the critical delay:

Q. And neither one of you had any time during those--let’s see. It would have been 17 days until Meghan’s birthday on the 19th--to review that report and submit a report to the prosecutor?

A. I don’t have an answer for that, sir.

[RP 45:12-16](emphasis added). Indeed, the State admitted that “Deputy Overland **could not account for the span of time.**” [Respondent’s Brief, p.14 (citing RP 46 to support the assertion that Deputy Overland testified that getting the DNA results depended on the “speedy service of the evidence clerk,” when in fact his testimony shows that he was referring simply to the fact that the evidence clerk e-mails copies of evidence reports they receive within days)](emphasis added). The testimony of the investigating officer belies the State’s attempts to characterize its investigation as “routine” and “delayed” only to ensure “that this matter was brought against the correct person...” [Respondent’s Brief, p.18].¹

b. State admits that Grant County failed to recognize the significance that it was investigating an alleged crime

¹ Ms. Miannecki asks the Court to disregard the State’s repeated statements that presume her guilt in violation of her right to a presumption of innocence. See RCW 10.58.020.

committed by a juvenile, though the charges were premised on Ms. Mianeki's age

There is no dispute that the deputy assigned to investigate the allegations against Ms. Mianeki was in training, had never handled a sex crime investigation before, was completely unaware of the Juvenile Justice Act, and believed minors and adults were treated identically under Washington's criminal justice system. [RP at 23:23-24:5, 25:8-9, 26:16-27:10, 27:15-23]. Deputy Overland explained that while his office learned Ms. Mianeki's date of birth, identifying her as a minor, on the very first day of its investigation, [*id.* at 25, ll.17-25], it failed to "keep track of her birthday" because "we have multiple other issues...going on then." [*Id.* at 50, ll.2-7].

Though not disputing these facts, the State attempts to minimize the significance of its failure to keep track of Ms. Mianeki's age. It disputes that whether Ms. Mianeki was a minor at the time of the alleged offense is "a factor" to the issue before the Court, asserting that "[w]hat makes sexual contact between two juveniles illegal is not the age of the perpetrator but the age difference between the perpetrator and the victim."

[Respondent's Brief, p.7-9].² The State is correct that a 36-month or greater *age difference* is the basis for criminalizing non-forcible sexual contact; the State is incorrect that this means the "age of the appellant not a factor." [Respondent's Brief, p.7]; see RCW 9A.44.076. Charges under RCW 9A.44.076 and .086 both *require* law enforcement to know the age of the accused and alleged victim alike.

The State's unwillingness to acknowledge that Ms. Mianecki's age is a factor is indicative of its lack of a reason for its delay. Though prior decisions have reflected a reluctance to require the State to consider the age of the alleged minor perpetrator given the additional burden it may place on law enforcement, these decisions involved **acts that would be criminal regardless of the age of the accused** (*i.e.*, forcible rape, residential burglary, unlawful imprisonment, theft, delivery of controlled substance, escape from detention center). E.g., State v. Alvin, 109 Wn.2d 602, 605, 746 P.2d 807, 808 (1987) ("Absent extraordinary circumstances, it is appropriate that juvenile offenses be managed in the same manner as

² Ms. Mianecki never asserted that only juveniles can be charged under RCW 9A.44.076 or .086. [contra Respondent's Brief, p.8 ("There is absolutely no mention of a requirement that she be under the age of eighteen. Such a notion is absurd."). Indeed, Ms. Mianecki specifically pointed to the possibility of a much older, non-juvenile being charged under the same statutes as evidence of why similarly prosecuting Ms. Mianecki would violate "fundamental conceptions of justice." [Appellant's Brief, p.23]. The State appears to overlook the significance of the fact that it was required to know Ms. Mianecki's age to determine whether the underlying alleged acts were criminal.

are adult crimes”), holding modified by Oppelt, 172 Wn.2d at 285. Here, unlike any prior decision of which Ms. Mianecki is aware, the alleged act is criminalized solely because of her and the alleged victim’s ages. The deputy’s complete lack of appreciation for the significant difference between juvenile and adult crime only highlights the State’s lack of a reasonable excuse in the record for its preaccusatorial delay. [See infra]. Ms. Mianecki has not argued that she was to be afforded “special treatment,” only that the State has no reason for failing to take timely action given that her age was an essential element of the crime it was investigating.

4. Prejudice: State’s new argument on appeal that attempts to minimize prejudice to Ms. Mianecki is improper and incorrect

The State attempts to minimize the prejudice of its preaccusatorial delay to Ms. Mianecki by arguing, for the first time on appeal, that she “grossly misunderstands the differences, and more importantly, the similarities between the juvenile and adult system...” [Respondent’s Brief, p.10], that the “only prejudice that exists is the loss of juvenile court jurisdiction,” [id., p.12], and that the “harshest penalties for a conviction are the same in the juvenile system as the adult: sex offender registration, probation, inability to seal or vacate record, social stigma, professional restrictions,” [id., p.16]. Notably, the State failed to assert this argument in

Response to Ms. Mianecki's motion to dismiss or motion for discretionary review.

Moreover, the State is mistaken. The juvenile justice and adult criminal systems are starkly different, both as to their purposes and penalties imposed for convictions of the charges Ms. Mianecki faces. The prejudice to Ms. Mianecki caused by the State's preaccusatorial delay is far greater than simply the loss of one court's jurisdiction.

- a. Fundamental difference between the purposes of Juvenile Justice Act (rehabilitation) and adult criminal system (punishment) causes prejudice to Ms. Mianecki

Washington courts recognize that the "purposes underlying the juvenile justice system and the procedures used to effect those purposes differ significantly from those of the adult criminal justice system, particularly in the area of sentencing. **The juvenile justice system is unique in that it places more importance on rehabilitating the offender.**" State v. Jacobsen, 95 Wn. App. 967, 975-76, 977 P.2d 1250, 1254-55 (1999)(emphasis added)(citing State v. Rice, 98 Wn.2d 384, 392, 655 P.2d 1145 (1982) and State v. Bennett, 92 Wn. App. 637, 641, 963 P.2d 212 (1998)).

The critical distinction here is that nowhere in...the adult criminal justice system, is there expressed a policy of "responding to the needs" of offenders. Much less is such a policy stated as the first of the two policies underlying the whole system. This legislative directive

that the juvenile system respond to the needs of the offender is therefore one of considerable significance. It clearly indicates that the juvenile system is to some extent geared to respond to the needs of the child. ... In particular, RCW 13.40.010(2)(f) and (j) both provide for treatment of juvenile offenders. Such “treatment” may be given in lieu of or in addition to punishment. RCW 13.40.010(2)(j).

...In other words, the JJA ... does not embrace a purely punitive or retributive philosophy. Instead, it attempts to tread an equatorial line somewhere midway between the poles of rehabilitation and retribution.

The adult sentencing system, on the other hand, does not place such importance on rehabilitation.... Punishment is the paramount purpose of the adult sentencing system.... Therefore, in resolving any issue which turns on the legislative purpose of [the JJA], we must ensure that our decision effectuates to the fullest possible extent both the purpose of rehabilitation and the purpose of punishment.

Rice, 98 Wn.2d at 392–94 (citations omitted)(emphasis added).

That Ms. Mianecki faces the potential of being convicted and sentenced in a system intended to punish her, rather than a system intended to rehabilitate her depending on *her* needs, a “unique” aspect of the juvenile system, ~~is~~ extremely prejudicial. See id.

- b. Penalties for conviction of charges against Ms. Mianecki are significantly harsher under adult criminal system compared to Juvenile Justice Act

Further, the penalties for a conviction are significantly higher in the adult criminal compared to juvenile justice system for the charges Ms. Mianecki faces. As the State concedes, Ms. Mianecki now faces the

potential to be incarcerated for *twice* as long had there been no preaccusatorial delay. Had Ms. Mianecki been charged and convicted of the initial charges under the juvenile justice system, the harshest penalty she would have faced in terms of incarceration was “up to 36 weeks” [Respondent’s Brief, p.10]; whereas, under the adult criminal system, her “standard range...would be seventy-eight to one hundred and two months.” [id., p.12].

Moreover, the State is incorrect that Ms. Mianecki’s juvenile sentencing, if any, could not have been suspended under “Option B” suspended disposition; that she could not have her record sealed; that sex offender registration for persons convicted as juveniles is the same as adults; and that she would face the same public humiliation and professional and academic restrictions related to the offense.

(1) *Ms. Mianecki’s juvenile sentence, if any, could have been suspended under “Option B” suspended disposition*

The State asserts that Ms. Mianecki “is not eligible for an ‘Option B’ suspended sentence, where her sentence is suspended and she is placed on probation, because this is a sex offense.” [Respondent’s Brief, p.10 (citing RCW 13.40.0357(b))]. However, the State wrongly and improperly assumes that Ms. Mianecki has already been convicted of the initial charges. Although the initial charges are sex offenses, Ms. Mianecki is

presumed innocent at this stage, see RCW 10.58.020, and even innocent people negotiate plea bargains for lower offenses. Whether Ms. Mianecki will be convicted of any crime enumerated in RCW 13.40.0357(3) Option B that would disqualify her from a suspended sentence remains unknown.

What is known is that, as a result of the State's preaccusatorial delay, Ms. Mianecki is prejudiced because she forever lost the option to attempt to negotiate a plea bargain for a lower juvenile offense that qualifies for an Option B suspended sentence, a much more lenient sentence than any adult suspended sentence. See RCW 13.40.0357 Option B (suspension of sentence) compared to RCW 9.94A.670 [infra].

(2) Ms. Mianecki's juvenile record, if any, could have been sealed

The State asserts that Ms. Mianecki "is not eligible to have this case sealed." [Respondent's Brief, p.10 (citing RCW 13.50.260(1)(c)(i)(A) and (B))]. The State is correct that the RCW subsection it cites would prevent Ms. Mianecki from having any juvenile record of convictions for "most serious offenses" and "sex offenses" (like the initial charges) sealed upon turning 18. See RCW 13.50260(1)(c)(i). However, the State's argument again improperly assumes that Ms. Mianecki has been convicted of the initial charges, which she has not. If Ms. Mianecki prevailed at trial in juvenile court, she would be entitled to have the charges sealed. See

RCW 13.50.260(1)(a). If Ms. Mianecki negotiated a reduced charge, she may be entitled to have the file sealed. See id.

Further, Ms. Mianecki, *even if convicted of the initial charges, could have qualified to have that juvenile record sealed after five years under a subsequent subsection not cited by the State.* See RCW 13.50.260(4)(a) (“The court shall grant any motion to seal records for class A offenses...if” certain qualifications are met.)³ However, because of the State’s preaccusatorial delay, Ms. Mianecki no longer has the option to have any record of an offense she allegedly committed as a juvenile sealed. The difference between five years and a lifetime prejudices her tremendously.

(3) *Ms. Mianecki would have potentially had a five-year shorter time-period for offender registration as a juvenile than as an adult*

The State asserts that a “juvenile sex offender is required to register *just as* an adult offender must.” [Respondent’s Brief, p.10 (citing RCW 9A.44.130)](emphasis added). This is an oversimplification. Though juvenile sex offenders are required to register, the registration is not the same as an adult. A juvenile sex offender can petition the courts to

³ Among the disqualifying factors for Option B, the only one that could have automatically precluded Ms. Mianecki from having any juvenile record sealed—if the alleged conduct involves charges of “rape in the first degree, rape in the second degree, or indecent liberties that was actually committed with forcible compulsion”—is not present here. See RCW 13.50.260(4)(a)(v).

get off registration after five years, RCW 9A.44.143; whereas an adult sex offender, on the other hand, must wait a minimum of 10 years. RCW 9A.44.142(1)(b). While RCW 9A.44.143(8) may still allow Ms. Mianecki to seek relief from any registration requirement, the five year waiting period starts only after “completion of any term of confinement...”, a period of time that may be more than double in an institution designed to punish her. Again, the State is incorrect in claiming Ms. Mianecki faces minimal prejudice due to its preaccusatorial delay.

(4) Ms. Mianecki could have experienced much less, if any, public humiliation, professional and academic restrictions related to the offense

The State argues that Ms. Mianecki would have experienced the same “public humiliation, social stigma, and professional and academic restrictions” if she had been within the juvenile justice compared to the adult criminal system because she “would not have been able to seal her juvenile record.” [Respondent’s Brief, p.11]. As discussed above, the State’s argument fails because Ms. Mianecki could have qualified to have any juvenile record sealed if she prevailed at trial or after five years following confinement *even if* convicted of the initial charges. See RCW 13.50.260(4)(a)(v). She could have potentially had any juvenile record of a conviction for a lesser offense sealed as well. RCW 13.50.260(1)(c)(i). Because of the State’s preaccusatorial delay, Ms. Mianecki faces greater

public humiliation, social stigma, and professional and academic restrictions as a person.

(5) Ms. Mianecki may be eligible for sex offender alternative sentences, but those sentences are facially harsher for adults than juveniles

The State concedes that, should Ms. Mianecki be convicted and then qualify for alternative sentencing, she would still face disparate, harsher penalties in the adult criminal compared to juvenile justice system. [Respondent's Brief, p.10-11]. Under sex offender alternative sentencing, the State notes that, as a juvenile, Ms. Mianecki would have faced up to **30 days' detention**, court ordered treatment, and at least two years' community supervision. [Id. (citing RCW 13.40.162)]. It notes that, as an adult, she would face **confinement for up to 12 months**, a term of community custody of at least three years, and court ordered treatment. [Id. (citing RCW 9.94A.670)].⁴ However, the State fails to acknowledge that this different treatment, in particular facing up to one year of incarceration compared to 30 days, is facially harsher punishment that prejudices Ms. Mianecki.

5. Recent Juvenile Jurisprudence: State does not respond to Ms. Mianecki's arguments based on new case authority regarding juvenile crime

⁴ While the State is correct that Ms. Mianecki's sentencing as an adult, if convicted of the initial charges, "*could be*" suspended, this assumes facts that remain unknown. See RCW 9.94A.670(4) ("[T]he court *may* suspend the execution of the sentence...")(emphasis added).

The State fails to respond to Ms. Mianecky's arguments based on recent jurisprudence regarding juvenile crime. [Appellant Brief, pp.21-24]. Instead, the State argues that "[w]hether [Ms. Mianecky] was seventeen at the time of the offense or eighteen or eighty it is the exact same violation of the statute." [Respondent Brief, p.9]. This argument ignores the constitutional importance of the age of an accused. "**Children are different. That difference has constitutional ramifications...**" State v. Houston-Sconiers, 391 P.3d 409, 413 (Wash. 2017)(internal citations omitted)(emphasis added). Although recent decisions have focused on juvenile sentencing and the Eighth Amendment, they provide analogous authority that proceeding to prosecute Ms. Mianecky as an adult as the result of a preaccusatorial delay violates her right to due process.

Ms. Mianecky's appeal asks this Court to determine whether the trial court correctly applied the balancing test between the State's reasons for its preaccusatorial delay with the prejudice caused to Ms. Mianecky. "Regardless of the precise label of the items to be balanced, the three-pronged test is best understood as an analytical tool to assist the court in answering the underlying question of **whether a delay has resulted in a due process violation by violating fundamental conceptions of justice.**"

The ‘prongs’ should be approached with this principle in mind.” Oppelt, 172 Wn.2d at 295 (emphasis added).

The alleged acts of Ms. Mianecki exhibit juvenile lack of impulse control, “lack of maturity, underdeveloped sense of responsibility...,” “transient rashness, proclivity for risk, and inability to assess consequences.” See Miller v. Alabama, 132 S. Ct. at 2464–65; State v. Ronquillo, 190 Wn. App. 765, 771–72, 361 P.3d 779 (2015). Given the growing recognition of the difference between adult and juvenile crime, allowing the State to prosecute Ms. Mianecki as an adult for an alleged juvenile crime solely due to a trainee-deputy’s unexplained failure to review materials in a timely fashion violates the fundamental concepts of justice and thus Ms. Mianecki’s right to due process.

6. **Equal Protection: State does not respond to Ms. Mianecki’s arguments based on Equal Protection violation**

Similar to its failure to address recent jurisprudence regarding juvenile crime, the State also fails to provide any response to Ms. Mianecki’s arguments based on her constitutional right to Equal Protection. The State has not disputed that “persons similarly situated with respect to the legitimate purpose of the law **must receive like treatment.**” State v. Thorne, 129 Wn.2d 736, 770–71, 921 P.2d 514 (1996)(emphasis added); State v. Campbell, 103 Wn.2d 1, 25, 691 P.2d 929, 943

(1984)(“equal protection of the laws is denied when a prosecutor is permitted to seek varying degrees of punishment when proving identical criminal elements.”). The State further has not disputed that it has treated Ms. Mianecki differently from other similarly situated minors for allegedly committing *the exact same offense*. It has not disputed that the sole reason for its disparate treatment of Ms. Mianecki is its preaccusatorial delay. And it has not disputed that the Court should apply a “heightened scrutiny” standard of review. See State v. Williams, 156 Wn. App. 482, 496–97, 234 P.3d 1174 (2010).

Thus, the question is whether the State’s decision to treat Ms. Mianecki differently from similarly situated persons “may fairly be viewed as furthering a substantial interest of the State.” See State v. Phelan, 100 Wn.2d 508, 512, 671 P.2d 1212 (1983)(describing test for intermediate level scrutiny). The State argues that “[t]aking the time to do the process right upholds the fundamental concepts of justice.” [Respondent’s Brief, p.18]. However, as noted above, the State also admits that it “**could not account for the span of time**” between Grant County’s receipt of the final piece of evidence it purportedly needed to recommend charges and Ms. Mianecki’s eighteenth birthday. [Respondent’s Brief, p.14](emphasis added). The State cannot be found to have a substantial interest in an unexplained delay that outweighs Ms.

Mianecki's right to be treated similarly to others like her. The State's preaccusatorial delay and treatment of Ms. Mianecki has violated her constitutional right to Equal Protection. This violation, independent from the violations of Ms. Mianecki's due process rights as discussed above, warrants dismissal of the charges against her.

C. CONCLUSION

Ms. Mianecki requests this Court reverse the trial court's denial of her motion to dismiss for preaccusatorial delay and remand the case with instructions for its dismissal with prejudice. Balancing the State's actual reasons for its preaccusatorial delay with the prejudice caused to Ms. Mianecki demonstrates that allowing the prosecution to continue violates her right to due process and offends "fundamental conceptions of justice." Further, the State does not have a substantial interest in treating Ms. Mianecki differently from other similarly situated persons accused of the exact same crimes and her prosecution as an adult violates her right to Equal Protection.

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DATED this 8th day of May, 2017.

Respectfully submitted,



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~~SUPERIOR~~ ^{Appeals} COURT OF WASHINGTON FOR Spokane COUNTY

State of Washington

Plaintiff/Petitioner

No. 34718-4-111

DECLARATION OF
EMAILED DOCUMENT
(DCLR)

Meghan Lillian Mielnecki

Defendant/Respondent

Pursuant to the provisions of GR 17, I declare as follows:

1. I am the party who received the foregoing facsimile transmission for filing.
2. My address is: 304 W Spruce Ct, Spokane, WA 99218
3. My phone number is: (509) 262-8106
4. The email address where I received the document is: sgobble@abclegal.com
5. I have examined the foregoing document, determined that it consists of 27 pages, including this Declaration page, and that it is complete and legible.

I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: 5/5/17 at 1:30 pm

Signature: _____

Print Name: Skylar Gobble

FILED

MAY 08 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Court of Appeals No. 347184

STATE OF WASHINGTON
COURT OF APPEALS, DIVISION III

State of Washington,
Plaintiff-Respondent,

v.

Meghan Lillian Mianecki,
Defendant-Petitioner.

CERTIFICATE OF SERVICE

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The undersigned declares under penalty of perjury of the laws of the State of Washington, that on the date set forth below, I caused the Reply Brief of the Appellant to be served by legal messenger service to the following:

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Court of Appeals, Division III
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Spokane, WA 99201

DATED this 8th day of May, 2017.



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Appeals
SUPERIOR COURT OF WASHINGTON FOR Spokane COUNTY

State of Washington

Plaintiff/Petitioner

No. 34718-4-111

DECLARATION OF

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(DCLR)

Meghan Lillian Mianeck

Defendant/Respondent

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I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: 5/5/17, at, 1:30pm

Signature:

Print Name:



Skyles Gobble