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King County Prosecutor
Appellate Unit

NO. 78606-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MITIA DION,

Appellant.

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STATE OF WASHINGTON

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

The Honorable Harry McCarthy, Judge

SUPPLEMENTAL BRIEF OF PETITIONER

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TABLE OF CONTENTS

	Page
A. SUPPLEMENTAL ISSUE STATEMENT	1
B. SUPPLEMENTAL STATEMENT OF THE CASE	1
1. Juvenile Court Proceedings	1
2. The Court of Appeals	4
C. ARGUMENT.....	5
THE JUVENILE COURT PROPERLY EXTENDED ITS JURISDICTION OVER DION PRIOR TO HER EIGHTEENTH BIRTHDAY.	5
D. CONCLUSION.....	11

TABLE OF AUTHORITIES

	Page
 <u>WASHINGTON CASES</u>	
 <u>In re Custody of Smith,</u> 137 Wn.2d 1, 969 P.2d 21 (1998).....	6
 <u>Monroe v. Soliz,</u> 132 Wn.2d 414, 939 P.2d 205 (1997).....	5
 <u>State v. B.P.M.,</u> 97 Wn. App. 294, 982 P.2d 1208 (1999).....	9
 <u>State v. Calderon,</u> 102 Wn.2d 348, 684 P.2d 1293 (1984).....	8
 <u>State v. Delgado,</u> 148 Wn.2d 723, 63 P.3d 792 (2003).....	6
 <u>State v. Dion,</u> 131 Wn. App. 729, 129 P.3d 805 (2006).....	1-6, 9-11
 <u>State v. Gilman,</u> 105 Wn. App. 366, 19 P.3d 1116, <u>review denied</u> , 144 Wn.2d 1011 (2001).....	8, 9
 <u>State v. J.H.,</u> 96 Wn. App. 167, 978 P.2d 1121, <u>review denied</u> , 139 Wn.2d 1014 (1999), <u>cert. denied</u> , 529 U.S. 1130 (2000).....	5
 <u>State v. Mora,</u> 138 Wn.2d 43, 977 P.2d 564 (1999).....	10
 <u>State v. Salavea,</u> 151 Wn.2d 133, 86 P.3d 125 (2004).....	8
 <u>State v. Werner,</u> 129 Wn.2d 485, 918 P.2d 916 (1996).....	9

TABLE OF AUTHORITIES (CONT'D)

Page

FEDERAL CASES

Miranda v. Arizona,
384 U.S. 436, 16 L. Ed. 2d 694,
86 S. Ct. 1602 (1966).....2

RULES, STATUTES AND OTHERS

2005 Wash. Legis. Serv. Ch. 238 (S.H.B. 2061)(West)6

JuCR 7.1..... 7

JuCR 7.6(e).....8

Juvenile Justice Act (JJA).....5

RCW 13.04.030(1)..... 5, 8-10

RCW 13.04.030(1)(e)5, 8, 10

RCW 13.04.030(1)(e)(iii)10

RCW 13.04.030(1)(e)(v).....10

RCW 13.40.300 1, 3-6, 8-11

RCW 13.40.300(1)(a) 6, 8-11

A. SUPPLEMENTAL ISSUE STATEMENT

RCW 13.40.300 authorizes the Superior Court to extend juvenile jurisdiction beyond the juvenile's 18th birthday if, prior to that birthday, "proceedings are pending seeking the adjudication of a juvenile offense." Consistent with the relevant statutes and prior precedent, did the Superior Court properly recognize that "proceedings were pending" in Mitia Dion's case where, prior to her eighteenth birthday:

- Dion was arrested for robbery and placed in detention;
- the case was assigned a juvenile court cause number;
- the State argued (and the court found) probable cause to support the charge;
- the State argued for Dion's continued confinement pending the filing of an information;
- Dion was placed on strict conditions of release; and
- the juvenile court ordered Dion to make another appearance the following week?

B. SUPPLEMENTAL STATEMENT OF THE CASE

1. Juvenile Court Proceedings

Earl Edmonds is a loss prevention officer for Macy's at Bellevue Square. On July 28, 2004, Edmonds watched 17-year-old Mitia Dion remove a t-shirt from a sales rack and leave the store without paying. CP

2. Edmonds followed Dion, grabbed her by the arm, and identified

himself as security. Dion punched Edmonds. After Edmonds fell to the ground, Dion kicked him. With the assistance of another security officer, Edmonds placed Dion in handcuffs. CP 2.

Bellevue Police responded and informed Dion she was under arrest for robbery. Dion received Miranda¹ warnings and provided a statement. She was then transported to the Bellevue Police Department booking facility. CP 2.

Dion's case was assigned cause number 04-8-03290-5 in juvenile court. CP 42. She was held in custody on July 28 and July 29, 2004, and made her first appearance in court on Friday, July 30. At the hearing, the prosecutor argued that the facts contained in the Bellevue Police case file established probable cause to arrest and hold Dion for robbery in the second degree. Judge Harry McCarthy agreed. 1RP 3.

The State also argued for Dion's continued detention. 1RP 5, 10. Instead, Judge McCarthy temporarily released Dion to her father under strict, 24-hour supervision. Judge McCarthy also ordered that Dion return to court on Tuesday, August 3. 1RP 8-11.

Defense counsel informed Judge McCarthy that Dion would turn eighteen the next day, July 31, and requested a six-month extension of

¹ Miranda v. Arizona, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966).

juvenile court jurisdiction. 1RP 4-5. Over the prosecutor's objection (that jurisdiction did not begin until the filing of an information), the motion was granted.² 1RP 5; CP 42-43.

Both Edmonds and the arresting officer had completed their reports on the incident by July 29. 1RP 28. And the King County Prosecutor's Office received those reports as early as July 31. 1RP 18. But the State chose not to file the robbery charge in juvenile court and the court lifted Dion's conditions of release when she appeared on August 3. 1RP 13.

Although the order extending juvenile jurisdiction was still in effect, on September 30, 2004, the State filed an information in adult court charging Dion with second-degree robbery. CP 1. Judge McCarthy granted a defense motion to dismiss the information. CP 38-58. He reasoned that the extension of juvenile court jurisdiction in Dion's case was consistent with the goals of the Juvenile Justice Act and met RCW 13.40.300's requirement of a pending proceeding:

A proceeding may . . . be pending in juvenile court before an information is filed. The preliminary proceedings bearing upon probable cause issues, conditions of release and detention review hearings all invoke the court's jurisdiction and all appear to be proceedings which are

² To accommodate Dion's appeal, Judge McCarthy has twice extended juvenile court jurisdiction since this initial extension. Jurisdiction currently expires on July 31, 2007, which is Dion's 21st birthday.

conducted toward the ultimate objective of an adjudication. It is also apparent that when the filing of an information may be delayed by necessary investigation, the court's jurisdiction remains actively engaged.

CP 57.

The State appealed. CP 61-66.

2. The Court of Appeals

On appeal, the State maintained its position in the trial court -- there were no proceedings pending seeking an adjudication unless and until it decided to file an information formally charging a criminal offense. See Brief of Appellant, at 5-6.

Relying on the plain language of RCW 13.40.300, which does not premise (but could have premised) extended jurisdiction on the filing of an information, Dion argued the State was seeking to rewrite the statute. Consistent with Judge McCarthy's decision below, Dion argued that proceedings seeking the adjudication of a juvenile offense were indeed pending where, as here, the juvenile was arrested for a criminal offense and held in confinement, the matter was assigned a juvenile court cause number, the State argued for and obtained a finding of probable cause, the State sought continued incarceration, and the juvenile was released under strict conditions and required to make a subsequent appearance in juvenile court. Brief of Respondent, at 5-6.

Division One agreed with the State. It held that juvenile court jurisdiction is invoked upon the filing of an information and nothing short of that filing triggers RCW 13.40.300. State v. Dion, 131 Wn. App. 729, 734, 129 P.3d 805 (2006). Dion filed a Petition for Review, which this Court granted.

C. ARGUMENT

THE JUVENILE COURT PROPERLY EXTENDED ITS JURISDICTION OVER DION PRIOR TO HER EIGHTEENTH BIRTHDAY.

The Juvenile Justice Act (JJA) differs significantly from the adult sentencing scheme. With its lesser penalties and greater rehabilitative purpose, the JJA allows juvenile courts to respond to the unique needs of juvenile offenders. Monroe v. Soliz, 132 Wn.2d 414, 419-420, 939 P.2d 205 (1997); State v. J.H., 96 Wn. App. 167, 172-73, 978 P.2d 1121, review denied, 139 Wn.2d 1014 (1999), cert. denied, 529 U.S. 1130 (2000).

RCW 13.04.030(1)(e) gives juvenile courts “exclusive original jurisdiction over all proceedings . . . [r]elating to juveniles alleged or found to have committed offenses” And in recognition of the many advantages the juvenile system accords youthful offenders, the Legislature has provided juvenile court judges the authority to extend their jurisdiction beyond the offender’s eighteenth birthday:

(1) A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

RCW 13.40.300(1)(a).³

Contrary to Division One's opinion in Dion's case, RCW 13.40.300(1)(a) does not premise extensions of jurisdiction on the filing of an information. Instead, the Legislature merely requires "proceedings . . . pending seeking the adjudication of a juvenile offense."

Courts may not rewrite statutes by adding requirements that simply are not there. See, e.g., State v. Delgado, 148 Wn.2d 723, 727-28, 63 P.3d 792 (2003); In re Custody of Smith, 137 Wn.2d 1, 12-13, 969 P.2d 21 (1998). Had the Legislature intended to link extensions of jurisdiction to the filing of informations, it would have said so. Instead of requiring proceedings seeking an adjudication, the Legislature would have required "the filing of an information charging a juvenile offense."

³ RCW 13.40.300 was amended in 2005, but the pertinent portion of the statute remains the same. See 2005 Wash. Legis. Serv. Ch. 238 (S.H.B. 2061)(West).

But there was good reason not to tie jurisdiction to an information. To do so would leave it up to prosecutors to decide whether the offender is best dealt with in adult court. By waiting to file an information for an offense committed as a juvenile until after the offender's eighteenth birthday, a prosecutor could deprive the juvenile court of jurisdiction and force the offender into adult court.

And short of intentional manipulation, at the very least, tying jurisdiction to the information would have left this critical decision to utter happenstance -- when a prosecutor found time to prepare and file the document. Two juveniles with the same birthday and facing the same charge would have their fates determined by prosecutors' schedules. The prosecutor with a lighter schedule might file an information just prior to one offender's eighteenth birthday, while the prosecutor with a heavier schedule might do so just after the second offender's eighteenth birthday. Both prosecutors would have acted diligently and in good faith. But under the State's proposed rule, only the first offender would be subject to an extension of juvenile court jurisdiction. The second offender would be left to deal with the harsh reality of adult court and its attendant penalties.

The filing of an information in juvenile court certainly does convey jurisdiction over the matter. See JuCR 7.1 ("Juvenile Court jurisdiction is invoked over a juvenile offense proceeding by filing an information.").

But consistent with the language of RCW 13.04.030(1)(e) and RCW 13.40.300(1)(a), neither this Court nor any other Washington appellate court has ever held that the filing of an information is the *sole* means by which jurisdiction is obtained. See, e.g., State v. Salavea, 151 Wn.2d 133, 141, 86 P.3d 125 (2004) (“the age of the individual at the time of the proceedings is the controlling age”; emphasis added); State v. Calderon, 102 Wn.2d 348, 351-52, 684 P.2d 1293 (1984) (“jurisdiction over offenses committed by a juvenile is to be determined at the time proceedings are instituted against the offender”; emphasis added).

In fact, Division Three has already rejected the notion that juvenile court jurisdiction depends upon the filing of an information. In State v. Gilman, 105 Wn. App. 366, 19 P.3d 1116, review denied, 144 Wn.2d 1011 (2001), the State argued that JuCR 7.6(e) -- which requires a capacity hearing for any child under twelve years old within 14 days of his first court appearance -- could not apply prior to the filing of charges because the juvenile court lacks jurisdiction unless and until the State files an information. Gilman, 105 Wn. App. at 369.

In rejecting that claim, Division Three recognized that RCW 13.04.030(1) “gives juvenile courts broad and exclusive jurisdiction over juveniles who have allegedly committed a crime.” Gilman, 105 Wn. App. at 369. So long as the child is under eighteen at the time the offense

allegedly occurred, the juvenile court has both subject matter and personal jurisdiction to hear and decide issues in the case with or without an information filed. Gilman, 105 Wn. App. at 369 (citing State v. B.P.M., 97 Wn. App. 294, 982 P.2d 1208 (1999), and State v. Werner, 129 Wn.2d 485, 918 P.2d 916 (1996)).

Gilman really does no more than state the obvious. In Dion's case, it is difficult to conceive that the juvenile court did not have subject matter and personal jurisdiction given the several discretionary rulings it made at the *State's* request. These included finding probable cause to detain, establishing conditions of release, and demanding that Dion appear again the following week. And given its exercise of that jurisdiction, it certainly had the authority to extend it.

In ruling for the State in Dion's case, Division One found that a probable cause hearing (and presumably a detention review hearing) does not involve the ultimate determination of guilt and, therefore, cannot qualify under RCW 13.40.300(1)(a) as a pending proceeding "seeking the adjudication of a juvenile offense." Dion, 131 Wn. App. at 733. But as Judge McCarthy correctly recognized, the ultimate aim of proceedings to determine probable cause and detention is quite obviously an adjudication of a juvenile offense. CP 57. These proceedings are an integral part of the

State's efforts to achieve that goal and triggered the court's authority under RCW 13.40.300(1)(a).

Division One also cited RCW 13.04.030(1)(e)(iii) and (v), the automatic decline statute, noting that for some sixteen and seventeen year olds, it will not be known whether the juvenile or adult court is the proper forum until an information is filed. Dion, 131 Wn. App. at 734. But this is not a reason to deviate from the plain language of RCW 13.40.300(1)(a).

Indeed, in State v. Mora, 138 Wn.2d 43, 49-50, 977 P.2d 564 (1999), this Court recognized that the filing of charges under the automatic decline statute simply results in a "transfer" of jurisdiction to the adult court. And, of course, there can only be a transfer if the juvenile court has jurisdiction at the outset. Juvenile court jurisdiction at the beginning of a case does not turn on what charge the State may ultimately choose to file. Yet this is the rule in Division One.

Finally, Division One noted that after the juvenile court's August 3, 2004, order vacating Dion's conditions of release (based upon the State's failure to file an information in juvenile court), "there was no 'proceeding' pending." Dion, 131 Wn. App. at 734. But the *relevant* issue is whether there was a proceeding pending in the juvenile court when that court extended jurisdiction prior to Dion's eighteenth birthday (July

30, 2004), for that is all RCW 13.40.300(1)(a) required. Judge McCarthy properly found that standard met.

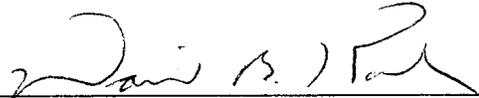
D. CONCLUSION

Dion respectfully requests that this Court reverse the decision of the Court of Appeals and reinstate the juvenile court's order dismissing the second-degree robbery charge erroneously filed in adult court.

DATED this 1st day of February, 2007.

Respectfully submitted,

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