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NO. 89786-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

CHRISTOPHER NELSON MAYNARD,

Petitioner.

BRIEF OF AMICUS CURIAE
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I. INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys (“WAPA”) represents the elected prosecuting attorneys of Washington State. Those persons are responsible by law for the prosecution of all felony cases in this state and of all gross misdemeanors and misdemeanors charged under state statutes.

WAPA is interested in cases, such as this, that have wide-ranging impact on the criminal justice system. Respect for the courts and prosecutors is lost when legal principles are distorted in order to provide a defendant’s requested relief for ineffective assistance of counsel.

II. ISSUE PRESENTED

Whether this Court should expand its jurisprudence regarding preaccusatorial delay in order to provide the remedy requested by a defendant, who after being timely charged in juvenile court, faced adult court prosecution due to his counsel’s failure to request an extension of juvenile court jurisdiction prior to the defendant’s eighteenth birthday?

III. STATEMENT OF THE CASE

A number of structures were “tagged” in July and August of 2010. CP 106, FOF 1. Maynard was identified as one of the “taggers” shortly after his 17th birthday. *Id.* Maynard and other members of his “tagging crew” acknowledged their involvement in the malicious mischiefs. CP 106, FOF

3-5. Neither Maynard nor the other members of his “tagging crew” placed a figure on the amount of damage caused by their conduct. *See* CP 35-46 (statements of Maynard, O’Connor, and Fallis).

The State, by information filed on July 7, 2011, charged Maynard in juvenile court with multiple counts of malicious mischief. CP 62. This information contained Maynard’s birthday in the caption. *Id.* Maynard’s first appearance in juvenile court occurred on July 12, 2011. On that date, the juvenile court found probable cause and appointed an attorney to represent Maynard. CP 78.

Tierra Busby, who was appointed to represent Maynard, had over 10 years of juvenile court experience. RP 10. She met Maynard prior to arraignment on July 19, 2011. RP 10 and 13. Ms. Busby explained to Maynard what to expect at arraignment, but she did not discuss the facts of the offense. RP 14.

Ms. Busby did not note Maynard’s date of birth on the information and did not ask Maynard’s age. RP 34, 37-38; CP 109, FOF 14. Ms. Busby, who believed that the juvenile probation department was responsible for ensuring that an offender did not “age out” of juvenile court, never moved for entry of a pre-adjudication order extending juvenile court jurisdiction.

RP 13.¹ The arraignment ended with the setting of a number of hearings. RP 14; CP 79.

Subsequent to arraignment, counsel for the State noticed that the pre-trial hearing and adjudication were both set for after Maynard's 18th birthday. CP 93. Counsel for the State promptly sent an e-mail to Maynard's attorney. The e-mail notified Ms. Busby of the problem, of the consequences of non-action, and of the State's willingness to accommodate any hearing Ms. Busby should request to address the issue. CP 93, 109 at FOF 16. This e-mail followed shortly on the heels of the State's plea offer of a deferred disposition. CP 81, 93, 109 at FOF 15-16.

Ms. Busby either did not review the State's July 25th e-mail or did not fully understand its import until she met with Maynard a few days after Maynard's 18th birthday.² See RP 15, 20. This was Ms. Busby's only contact with Maynard following arraignment. *Id.* Ms. Busby, therefore, did

¹Ms. Busby's sworn testimony on this point was as follows:

- Q. And, once again, what was the practice at the first appearance in regards to a juvenile nearing their 18th birthday?
- A. Okay. Normally because the probation department would have met with the youth and there is an intake probation officer assigned, the probation department would bring that up. I can safely say that in my ten-plus years of practice out there, either as a prosecutor or a defense attorney, I was never responsible for initiating that issue of juvenile court jurisdiction.

RP 13.

²Ms. Busby candidly stated that she had "no knowledge in my mind that he turned 18 until the date that he came into my office." RP 21. Ms. Busby apparently missed or overlooked the State's e-mail due to the number of e-mails she receives on a daily basis and the presence of out-of-town company. RP 22.

not notify Maynard of the State's plea offer at a point in time when Maynard could accept the offer.

During Ms. Busby's August 3rd meeting with Maynard, Ms. Busby responded to the prosecutor's e-mail about Maynard's imminent birthday as follows:

Hi, Lacey: I think you sent me an email previously about this kid turning 18 but I didn't get it in my file. I also understood your e-mail to mean that he was turning 18 after the pretrial rather than before so assumed we would take the matter up at pretrial. He is now here. I realized he turned 18 two days ago. Do your notes reflect that the Court did or did not extend jurisdiction? If not specifically extended, is there any way we can agree to maintain juvenile court jurisdiction? He is willing and ready to enter into a deferred. It seems that even if not expressly extended, there is an implied extension by virtue of arraigning the juvenile in juvenile court and beginning the court in juvi. I'm hoping there is some case law to assist on that.

RP 20-21.

Since the case law precluded each of Ms. Busby's theories, the juvenile court dismissed the charges Maynard faced without prejudice due to Maynard reaching his 18th birthday prior to entry of a written order extending jurisdiction. CP 77.

Once Maynard was charged with malicious mischief in adult court, he filed a motion to dismiss the charges arguing both preaccusatorial delay and ineffective assistance of counsel. CP 11, 82-90, CP 109 at FOF 18. In granting the motion, the trial court specifically found that:

Juvenile court defense counsel's failure to note the defendant's age at arraignment and failure to then move to extend jurisdiction caused prejudice to the defendant through (1) the loss of juvenile court jurisdiction, and (2) the loss of an opportunity to obtain a deferred sentence.

CP 110, FOF 21.

The Court of Appeals reversed the dismissal of the charges on the grounds that ineffective assistance of counsel and not preaccusatorial delay caused the loss of juvenile court jurisdiction. *State v. Maynard*, 178 Wn. App. 413, 415, 315 P.3d 545 (2013), *review granted*, 180 Wn.2d 1001 (2014). The Court further noted that a retrial, not dismissal is the normal remedy for ineffective assistance of counsel. *Id.*

IV. ARGUMENT

A. There is No Constitutional Right to Be Tried in a Juvenile Court and Juvenile Court Jurisdiction Cannot Be Extended Prior to Adjudication Without an Offender's Consent.

The Juvenile Justice Act (JJA) provides for "necessary treatment, supervision, and custody for juvenile offenders" while still holding juveniles responsible for their actions. RCW 13.40.010(2)(c), (f). The system is specifically designed to respond to the needs of youthful offenders and their victims. RCW 13.40.010(2). The act ensures that punishment takes into consideration the age, crime, and criminal history of the juvenile offender. RCW 13.40.010(2)(d). Although both the juvenile and adult justice systems serve the purpose of punishing wrongdoers, the juvenile system alone makes

rehabilitation an equally important goal and also seeks to keep children out of adult facilities. *See In re Pers. Restraint of Smiley*, 96 Wn.2d 950, 953-54, 640 P.2d 7 (1982). There is, however, no constitutional right to be tried in a juvenile court. *In re Pers. Restraint of Dalluge*, 152 Wn.2d 772, 784 n.8, 100 P.3d 279 (2004), *overruled on other grounds by State v. Posey*, 174 Wn.2d 131, 139, 272 P.3d 840 (2012).

The JJA's focus on rehabilitation allows for standard dispositions sentences that can exceed the standard range sentence an adult would receive for the same offense. *See State v. Miller*, 54 Wn. App. 763, 776 P.2d 149 (1989). The JJA's focus on rehabilitation allows for departures from the standard disposition on grounds not available for adult offenders. *See, e.g., State v. T.E.C.*, 122 Wn. App. 9, 92 P.3d 263, *review denied*, 152 Wn.2d 1012 (2004) (manifest injustice disposition justified by lack of parental control and need for treatment); *State v. S.S.*, 67 Wn. App. 800, 816-17, 840 P.2d 891 (1992) (manifest injustice sentence may be imposed due to the offender's high likelihood of reoffending). The JJA's focus on rehabilitation allows for community supervision, that is generally of longer duration and intensity than is imposed upon an adult who is convicted of the same offense.

Compare RCW 13.40.020(4) and (19), *with* RCW 9.94A.030(1), RCW 9.94A.5011 and RCW 9.94A.703. The JJA's focus on rehabilitation allows

for deferred dispositions that are not generally available for adult felons.³
Compare RCW 13.40.127 *with* RCW 9.94A.575.

The JJA allows a court to extend juvenile jurisdiction beyond the age of 18 for offenders who have cases pending prior to their eighteenth birthday. RCW 13.40.300, however, does not alter the long-standing rule that the juvenile court loses jurisdiction over a case if, prior to a hearing on the merits, the offender becomes 18. *State v. Calderon*, 102 Wn.2d 350, 351, 684 P.2d 1293 (1984). RCW 13.40.300 does not allow for an extension of juvenile court jurisdiction once such jurisdiction lapses. *State v. Nicholson*, 84 Wn. App. 75, 925 P.2d 637, *review denied*, 131 Wn.2d 1025 (1996) (juvenile court cannot extend jurisdiction, even with the consent of the parties, once jurisdiction has been lost); *State v. Rosenbaum*, 56 Wn. App. 407, 784 P.2d 166 (1989) (juvenile court could not review restitution with a nunc pro tunc order entered after jurisdiction was lost); *State v. Cirkovich*, 41 Wn. App. 275, 703 P.2d 1075, *review denied*, 104 Wn.2d 1019 (1985).

The entry of a written order extending juvenile court jurisdiction, preadjudication, is not a mere formality. The order must include specific reasons justifying the extension. *See* RCW 13.40.300(1)(a). An order that merely states jurisdiction is being extended “because it is in the best interest

³Adults charged with non-felonies may receive deferred dispositions. *See* RCW 9.92.060, .064, and .066; RCW 3.66.067-.069. Adults charged with many non-felonies may completely avoid conviction through a compromise of misdemeanor. *See* RCW 10.22.010.

of the child””, *In re Morris*, 19 Wn. App. 613, 615, 576 P.2d 1333 (1978) (quoting the trial court order), is insufficient. An offender is not precluded from subsequently challenging the adequacy of an order that extends juvenile court jurisdiction. *In re Morris, supra* (granting offender’s challenge to the order extending juvenile court jurisdiction beyond the offender’s 18th birthday).

Once a person reaches the age of 18, an offender may no longer benefit from juvenile rehabilitation. In fact, the offender may chafe under restrictions that are incompatible with adult life. Once a person reaches the age of 18, the offender may wish to have his guilty adjudicated by a jury rather than a judge. An option that is not available in juvenile court. *See State v. Chavez*, 163 Wn.2d 262, 180 P.3d 1250 (2008).

In keeping with Washington’s long-standing recognition of offender autonomy,⁴ neither the JJA nor the Juvenile Court Rules (JuCR) authorize

⁴The Washington Constitution expressly recognizes a defendant’s right to defend a criminal charge without counsel. Const. art. I, § 22. In *State v. Coristine*, 177 Wn.2d 370, 376, 300 P.2d 400 (2013), this Court held that

[R]espect for a defendant’s freedom as a person mandates that he or she be permitted to make fundamental decisions about the course of proceedings. Such respect demands that courts do not impose defenses on unwilling defendants. Imposing a defense on an unwilling defendant impinges on the independent autonomy the accused must have to defend against charges.

Id., at 377 ¶ 13 (citations omitted). This respect for offender autonomy applies even when the offender’s decision does not appear to be in the offender’s best interest. *See, e.g., In re Personal Res. of Rhome*, 172 Wn.2d 654, 260 P.3d 874 (2011) (a competent, but mentally ill, defendant may represent himself in a criminal case); *State v. Sagastegui*, 135 Wn.2d 67, 954 P.2d 1311 (1998) (competent defendant may elect to defend himself at a capital sentencing and may decide to not present mitigating evidence at trial); *State v. Dodd*, 120

the entry of a pre-adjudication order extending juvenile court jurisdiction without notice to the offender or absent a request from the offender. *See generally* JuCr 7.6 (procedure during arraignment does not include a requirement that an extension of juvenile court jurisdiction be considered); JuCr 7.8 (rule governing the setting of the adjudicatory hearing does not require that the hearing be set prior to the offender's eighteenth birthday or direct that an extension of juvenile court jurisdiction be considered); JuCr 1.4(b) (superior court criminal rules apply to juvenile offense proceedings); CrR 8.4 (CR 5 governs service and filing of written motions in criminal cases); CR 5(a) (every motion other than one which may be heard *ex parte* shall be served upon each of the parties).

In the instant case, the prosecutor affirmatively inquired, prior to Maynard's 18th birthday, whether Maynard desired an extension of juvenile court jurisdiction.⁵ CP 93, 109 at FOF 16. There was nothing else the prosecutor could have done to prevent the loss of juvenile court jurisdiction prior to adjudication of the charges. There was nothing else the prosecutor

Wn.2d 1, 838 P.2d 86 (1992) (competent defendant who is sentenced to die may waive general appellate review); *State v. Jones*, 99 Wn.2d 735, 664 P.2d 1216 (1983) (a plea of not guilty by reason of insanity may not be asserted over the objections of a competent defendant).

⁵The prosecutor was barred by RPC 4.2 from directly informing Maynard about the imminent loss of juvenile court jurisdiction, when Maynard's attorney did not respond to the prosecutor's warning. The Sixth Amendment also prohibits a prosecutor from intervening between a defendant and his attorney.

was required to do. *Cf. State v. Dixon*, 114 Wn.2d 857, 865-66, 792 P.2d 137 (1990) (juvenile offenses should typically be managed in the same manner as are adult crimes; prosecutors are not required to create special procedures or to keep track of every juvenile's birthday).

B. Ineffective Assistance of Counsel Claims Are Unique in That the Government Is Not Responsible for the Conduct That Results in Reversal

Claims of ineffective assistance of counsel are unique in constitutional criminal procedure. For all other claims of constitutional error, an overturning of a conviction is triggered by some error committed by the state or its agents, such as passing a vague law, *see Connally v. General Constr. Co.*, 269 U. S. 385, 393, 46 S. Ct. 126, 70 L. Ed. 322 (1926), coercing a confession, *see Brown v. Mississippi*, 297 U. S. 278, 286, 56 S. Ct. 461, 80 L. Ed. 682 (1936), or withholding exculpatory evidence, *see Brady v. Maryland*, 373 U. S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). In the context of ineffective assistance of counsel, however, “[t]he government is not responsible for, and hence not able to prevent, attorney errors that will result in reversal of a conviction or sentence.” *Strickland v. Washington*, 466 U.S. 668, 693, 104 S. Ct. 2068, 80 L. Ed. 2d 674 (1984).

While the United States Supreme Court has held that this seemingly counterintuitive result is dictated by the Sixth Amendment,⁶ this expansion

⁶ *See Murray v. Carrier*, 477 U. S. 478, 488, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986).

of the Sixth Amendment right to counsel should be stretched no further than necessary to protect the core purpose of the constitutional right. That purpose is to ensure that counsel's representation does not "so undermine[] the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U. S., at 686.

A successful ineffective assistance claim penalizes the state for an act over which it has no control. Not only is the state unable to influence defense counsel's pre-trial tactics, but it is also difficult for the state to spot most instances of incompetent assistance until it is too late. "Many aspects of [defense] counsel's performance either occur outside the trial court's notice or reasonably appear to be, though they are not in fact, competent. Thus, the existence of incompetence does not necessarily imply fault on the part of the state." S. Giles, *Effective Assistance of Counsel: The Sixth Amendment and the Fair Trial Guarantee*, 50 U. Chi. L. Rev. 1380, 1397 (1983). Imputing counsel's error to the state forces the state to stand as an insurer against a criminal defendant's risk of incompetent counsel, thereby spreading the risk from defendants to the people through reversed convictions.

But criminal convictions are not accidents to be insured against, and the Sixth Amendment is not an insurance policy. While some attorney error may reasonably lead to a reversed conviction, the state cannot be required to assure an ideal trial.

When a defendant shows ineffective assistance of counsel, there is the question of what constitutes an appropriate remedy. The usual remedy for a claim of ineffective assistance of counsel is a new trial. Other remedies may also be available, but no case supports the outright dismissal of charges.

The United States Supreme Court warns that

Sixth Amendment remedies should be “tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests.” *United States v. Morrison*, 449 U.S. 361, 364, 101 S. Ct. 665, 66 L. Ed. 2d 564 (1981). Thus, a remedy must “neutralize the taint” of a constitutional violation, *id.*, at 365, 101 S. Ct. 665, 66 L. Ed. 2d 564, while at the same time not grant a windfall to the defendant or needlessly squander the considerable resources the State properly invested in the criminal prosecution. See *Mechanik*, 475 U.S., at 72, 106 S. Ct. 938, 89 L. Ed. 2d 50 (“The reversal of a conviction entails substantial social costs: it forces jurors, witnesses, courts, the prosecution, and the defendants to expend further time, energy, and other resources to repeat a trial that has already once taken place; victims may be asked to relive their disturbing experiences”).

Lafler v. Cooper, ___ U.S. ___, 132 S. Ct. 1376, 1381, 182 L. Ed. 2d 398 (2012) (discussing factors to be considered in fashioning a remedy for ineffective assistance of counsel during plea bargaining).

In the instant case, it cannot be disputed that Ms. Busby’s representation was grossly deficient.⁷ Ms. Busby allowed juvenile court

⁷Ms. Busby’s conduct appears to have violated both RPC 1.1(competence) and 1.3 (diligence). Cf. *In re Discipline of Longacre*, 155 Wn.2d 723, 122 P.3d 710 (2005) (a defense attorney’s failure to communicate several plea offers to his client and to correctly inform the client of the correct sentencing range the client faced if her were convicted at trial merited imposition of 30 additional hours of CLE course and a 60-day suspension). Whatever remedy the Court carves out in this case, will not protect the public and maintain public

jurisdiction to lapse without the knowledge or consent of her client. Ms. Busby allowed a plea offer to lapse, by operation of statute, prior to communicating the offer to her client.

Despite Ms. Busby's clear deficiencies and the undisputed prejudice caused to Maynard, this Court is not called upon to determine what an appropriate remedy may be for this Sixth Amendment violation. This Court is only called upon to determine whether Maynard's requested remedy of dismissal is proper. *Cf. State v. Kinnaman*, No. 89342-0, ___ Wn.2d ___, ___ P.3d ___ (Apr. 10, 2014) (court of appeals erred in fashioning a remedy for an involuntary guilty plea to an enhancement that the defendant did not request, rather than remanding the matter with instructions to vacate the entire guilty plea the court of appeals should have simply denied the defendant's request to vacate only a portion of the indivisible plea agreement).

Maynard's requested remedy is dismissal of all charges. This remedy constitutes a windfall to Maynard, and unnecessarily infringes on competing

confidence and trust in the legal system or deter other lawyers from similar behavior. *In re Disciplinary Proceeding Against Noble*, 100 Wn.2d 88, 95, 667 P.2d 608 (1983) (identifying the purposes of the bar disciplinary process). Many courts suggest that a finding of ineffective assistance of counsel should impel the trial judge and the appellate courts to look at the circumstances and determine whether there is arguably some infraction that should be called to the attention of the appropriate bar authorities. *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94, 99 n. 5 (1993). The goal of improving overall representation for criminal defendants is better served through the Bar diversion program, ELC 6.1, which would remediate the deficiencies demonstrated by the attorney, than through dismissal of criminal charges.

interests. Both the legislature and this Court has recognized the interest of crime victims in having their victimizers held accountable for their conduct. *See, e.g., State v. Devin*, 158 Wn.2d 157, 142 P.3d 599 (2006) (abandoning the abatement doctrine that vacated convictions when a defendant dies because it was harmful to crime victims and could adversely impact the victims' ability to collect restitution); RCW 7.69.030 (establishes various "rights" of victims, including restitution in all felony cases); RCW 9.94A.411(2)(a)(i)(B) (prosecutor should select charges that will result in restitution to all victims); RCW 9.94A.750(5) (authorizing imposition of restitution for uncharged crimes as part of a plea agreement); RCW 13.40.010(2)(the intent of the JJA is to provide opportunities for victim participation in the juvenile justice process, to hold offenders accountable and to provide for restitution to victims of crime); RCW 13.40.077(3)(a)(ii) (prosecutor should file charges that will result in restitution to all victims); RCW 13.40.127(5) (mandating that restitution "shall be a condition of community supervision" as part of a deferred disposition). Dismissal of charges ignores this important interest.

Maynard's requested remedy of dismissal, moreover, is unsupported by the case law. An offender in Washington, who is convicted in juvenile court of an offense and who obtains a reversal of that conviction on appeal or in a collateral attack, faces retrial as an adult if the offender's age

precludes a retrial in juvenile court. *See, e.g., Dillenburg v. Maxwell*, 70 Wn.2d 331, 355-56, 413 P.2d 940, 422 P.2d 783 (1966) (“If the conviction be set aside, and the convicted person be under the age of 18 years, and thus amenable to juvenile court authority, his case should be remanded to juvenile court for proper disposition. Should he, however, be over the age of 18 years at the time the conviction be set aside, he is then amenable to prosecution as an adult, and a new trial should be granted to him.”). *Accord Dalluge*, 152 Wn.2d at 785-87. Dismissal of charges has never been the remedy. *Maynard* provides no reasoned basis for abandoning or overruling this long-standing principle. *See Devin*, 158 Wn.2d at 168 (the doctrine of stare decisis requires a clear showing that an established rule is incorrect and harmful before it is abandoned). The Court of Appeals’ decision remanding this matter for trial should, therefore, be affirmed.

C. The State’s Actions Did Not Cause the Loss of Juvenile Court Jurisdiction.

The State, in a juvenile case, bears the same burden of proof as in an adult prosecution. *Dixon*, 114 Wn.2d at 864. The determination of when the evidence available to the prosecution is sufficient to obtain a conviction rests with the prosecutor assigned to the matter. *Id.* at 862-63. That prosecutor’s decision is not improper, even if other reasonable person reach conflicting conclusions. *State v. Lidge*, 111 Wn.2d 845, 850, 765 P.2d 1292 (1989)

(quoting *United States v. Lovasco*, 431 U.S. 783, 793; 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977)). Even when the State has assembled sufficient evidence to prove guilt beyond a reasonable doubt, the due process clause does not require immediate prosecution. *Dixon*, 114 Wn.2d at 863(citing *United States v. Lovasco*, *supra* at 792-95).

The crime at issue in the instant case, malicious mischief, is divided into different degrees based upon the amount of physical damage inflicted. See generally RCW 9A.48.070, .080, and .090. The State must prove that the amount of physical damage exceeds the value contained in the higher degree crime beyond a reasonable doubt, or face an acquittal or entry of a verdict of guilty on the lesser crime. See RCW 10.61.003. The face value of a repair estimate is not unimpeachable proof of the amount of damages incurred. See, .e.g., *State v. Kleist*, 126 Wn.2d 432, 895 P.2d 398 (1995) (value of goods shoplifted at one store could be challenged with evidence of sale prices at a nearby store); *State v. Gilbert*, 79 Wn. App. 383, 902 P.3d 182 (1995) (testimony offered both as to the estimated cost of repairs and actual cost of repairs; challenge to the inclusion of sales tax in the measure of damages); *State v. Ratliff*, 48 Wn. App. 325, 327, 730 P.2d 716 (1986) (testimony elicited as to what other shops would charge, compared to amount paid, for repairs of damage), *review denied*, 108 Wn.2d 1002 (1987). The State, in determining the value of the harm done by the offender, must

differentiate between the damage committed by the offender and damage committed before or after that inflicted by others not acting in concert with the defendant.

In the instant case, the original police reports were vague as to the amount of damages. The \$860.80 estimate for repairing the damage to the Woodland Little League baseball fields was based upon “the multiple occurrences of tagging” and “did not take into account the time and effort required to paint over the graffiti the initial two times.” CP 60. This statement would lead a reasonable person to believe that the estimate was based upon damage inflicted on more than two occasions. If true, this was problematic as Maynard only admitted to personally tagging “the little league fields twice.” CP 37. A cautious prosecutor would want to gather the evidence necessary to address this discrepancy prior to the start of trial.

The trial court judge’s⁸ and Ms. Busby’s⁹ disagreement with Deputy Prosecuting Attorney (DPA) Lacey Skalisky’s decision to pursue clarity on the value of damages¹⁰ does not establish a due process violation. *Lovasco*, 431 U.S. at 790 (the Due Process Clause “does not permit courts to abort criminal prosecutions simply because they disagree with a prosecutor’s

⁸See CP 108 at FOF 10; CP 110 at COL 3.

⁹See RP 23-24, 27-28.

¹⁰See CP 92-93.

judgment as to when to seek an indictment”). This is true even if DPA Skalisky’s request for additional information had proven fruitless. *Lovasco*, 431 U.S. at 795 n. 16 (the fact that “further investigation proved unavailing . . . cannot transform an otherwise permissible delay into an impermissible one”); *Lidge*, 111 Wn.2d at 851 n. 3 (a delay in filing so that additional information may be sought does not become improper solely because the additional information does not appear in a certificate of probable cause or the further investigation proves fruitless).

The Court of Appeals, however, properly identified the fatal flaw in Maynard’s preaccusatorial delay claim. The prejudice Maynard claimed – the loss of juvenile court jurisdiction – was the result of Ms. Busby’s Sixth Amendment violation. *Maynard*, 178 Wn. App. at 415, 418. *Accord* CP 110; FOF 21. The State filed charges in juvenile court sufficiently in advance of Maynard’s 18th birthday to enable him to have those charges completely adjudicated in juvenile court.

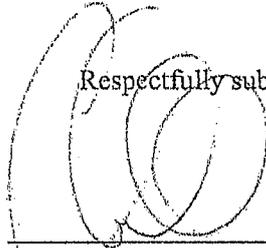
V. CONCLUSION

WAPA respectfully requests that this Court refrain from expanding the doctrine of preaccusatorial delay as a means for providing Maynard with his requested remedy for the Sixth Amendment violation.

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Respectfully submitted this 8th day of May, 2014.



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From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, May 09, 2014 3:12 PM
To: 'Pam Loginsky'; John Hays; Lacey Skalisky
Cc: Todd Dowell
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Rec'd 5-9-14

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From: Pam Loginsky [mailto:Pamloginsky@waprosecutors.org]
Sent: Friday, May 09, 2014 3:10 PM
To: John Hays; Lacey Skalisky; OFFICE RECEPTIONIST, CLERK
Cc: Todd Dowell
Subject: State v. Maynard, No. 89786-7

Dear Clerk and Counsel:

Attached for filing is the Washington Association of Prosecuting Attorney's Motion for Leave to File an Amicus Curiae Brief, WAPA's proposed brief, and a proof of service.

Please let me know if you should encounter any difficulty in opening these documents.

Sincerely,

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