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Court of Appeals
Division III
State of Washington

NO. 33568-2-III

IN THE COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,
RESPONDENT

V.

MICHAEL FRAZIER,
APPELLANT

BRIEF OF RESPONDENT

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A. ASSIGNMENTS OF ERROR

1. Mr. Frazier claims that the State failed to prove that he "knowingly" committed the offense of Indecent Liberties with Forcible Compulsion, as charged under RCW 9A.44.100.
2. Mr. Frazier claims that he was denied his "right to a jury trial" as required by federal and state due process.

B. ISSUES PERTAINING TO ASSIGMENTS OF ERROR

1. Did the State fail to prove the elements of RCW 9A.44.100 when all evidence is viewed in the light most favorable to the State?
2. Does RCW 13.04.021(2) violate the Sixth Amendment to the United States Constitution and Article 1, §21 and §22 of the Washington State Constitution, despite well-established legal precedent holding that it does not?

C. STATEMENT OF THE CASE

1. Procedural Facts

On February 19, 2015, the State filed an Information, charging Michael Frazier with Indecent Liberties with Forcible Compulsion, Count I. Clerk's Papers 52-53 (hereinafter CP). M.L.B. (D.O.B. 8/17/1998) was charged as the alleged victim with a date of offense listed as, "On or between December 20, 2014 and January 10, 2015". CP 52-53. On June 18, 2015, a bench trial, or juvenile factfinding, commenced in Okanogan County Superior Court with the Honorable Judge Henry Rawson presiding. CP 1-25.

The Court heard testimony from the State's witnesses, which included: M.L.B. (the alleged victim), Vicki B. (the alleged victim's grandmother), S.B. (D.O.B. 3/2/1999), C.F. (D.O.B. 4/27/1997) and Detective Deborah Behymer of the Okanogan County Sheriff's Office. CP 1-25. The Appellant, Mr. Frazier, was the sole witness called for the defense. CP 1-25. After hearing the testimony of all witnesses Judge Rawson concluded that the State had proven all elements of Indecent Liberties with Forcible Compulsion beyond any reasonable doubt and found Mr. Frazier guilty, as charged. CP 22-25. Judge Rawson concluded from all of the evidence presented that December 29, 2014, appeared to be the most accurate date when the

incident occurred. CP 23.

2. Substantive Facts

On December 29, 2014, M.L.B. was 16 years-old and resided with her grandmother, Vicky B. Report of Proceedings 18,19 (hereinafter RP). M.L.B. was a sophomore at Okanogan High School during the 2014/2015 school year. RP 19. The Appellant, Mr. Frazier, attended school with M.L.B. and was also a sophomore. RP 20-21. Mr. Frazier was 15 at the time of this incident. CP 54-60. On December 29, 2014, M.L.B. was employed at the Omak Theater, working in the box office and concessions. RP 19.

M.L.B. and Mr. Frazier had been in a dating relationship for approximately six months at the end of their eighth grade year and into that summer. RP 20. M.L.B. was the one who ended the relationship. RP 20. That relationship consisted only of hugging and kissing and Mr. Frazier "probably" touched M.L.B.'s "butt'. RP 143,151. The relationship between Mr. Frazier and M.L.B. was "awkward" after initially breaking up, but they later became friends and remained friends up until December 29, 2014. RP 22. M.L.B. and Mr. Frazier had friends in common and they would "hang out" in these groups from time to time. RP 22.

December 29, 2014, during winter break from school, was one of these times when M.L.B. and Mr. Frazier found themselves together while "hanging out" with others. RP 23. On this date, M.L.B. was ready for work at the theater early and agreed to stop by S.B.'s house on her way to work. RP 24-25. S.B. was a mutual friend of Mr. Frazier and M.L.B. RP 23. S.B. and Mr. Frazier had been messaging M.L.B. on Snapchat and asked her to stop by. RP 24. She arrived at S.B.'s house at approximately 5:00 p.m. RP 25. All three were in S.B.'s room and they were playing video games and talking. RP 26. M.L.B. stayed for approximately 10-15 minutes. RP 57. There were no "romantic advances" between M.L.B. and Mr. Frazier during this time. RP 154. When it was time to leave, both Mr. Frazier and S.B. walked M.L.B. to her car. RP 26.

As M.L.B. was leaving, Mr. Frazier pulled her in for a hug. RP 26. M.L.B. didn't think anything of it because they were friends. RP 26. She gave him a hug back. RP 26. Mr. Frazier then kissed her on the lips and she "kind of pulled away". RP 26, 59. Mr. Frazier responded by saying, "Okay, fine". RP 26. She did not kiss him back. RP 27. M.L.B. told Mr. Frazier that she was interested in another boy and she knew Mr. Frazier was dating someone else. RP 59. She then got into her car and left for work. RP 27.

Later that night, Mr. Frazier sent M.L.B. more messages through Snapchat. RP 27. Mr. Frazier was asking her to come back and "hang out" with Mr. Frazier and S.B. after she got off work at the theater. RP 27. M.L.B. later met them at the fire hall in Okanogan at approximately 9:00 p.m.. RP 28, 31. M.L.B.'s intention was not to stay very long. RP 80. "...that's what my intention was, I was just going to say hi, hey, and go home". RP 80. M.L.B. knew she would be in trouble with her curfew otherwise. RP 80. She had no interest in pursuing any type of dating relationship with anyone present at the fire hall. RP 80.

Upon meeting Mr. Frazier and S.B., the three sat in M.L.B.'s car, a 2004 Ford Focus, while they waited for "Woody" to open the fire hall so they could play a game of pool. RP 29. When "Woody" arrived, S.B. went into the fire hall with him, leaving M.L.B. and Mr. Frazier in her car alone. RP 20. M.L.B. was in the driver's seat and Mr. Frazier was in her passenger seat. RP 29-30. Mr. Frazier asked M.L.B. if she would drive him to the nearby Food Depot parking lot so that they could talk. RP 30. M.L.B. agreed. RP 30. Food Depot is a business that has been vacant and closed for several years. RP 31. It was dark outside. RP 32. There wasn't anyone else in the parking lot. RP 31.

When Mr. Frazier and M.L.B. first arrived in the Food Depot parking lot they were sitting in her car talking about "winter break and stuff like that". RP 32. Mr. Frazier then turned the overhead light off and turned the music down. RP 32. Mr. Frazier then put his hand on her leg multiple times. RP 32-33. M.L.B. said "no" and pushed his hand away each time. RP 32-33. Mr. Frazier refused to stop and each time placed his hand higher on her leg. RP 33. Mr. Frazier then put his hand on M.L.B.'s vagina, over her clothing, by using a cupping motion with his hand. RP 33-34. M.L.B. grabbed his hand and "threw it back at him" and said, "Stop it!". RP 34. Mr. Frazier, however, refused to stop and then grabbed her face and was trying to kiss her. RP 34. She kept turning her head away and he would miss, kissing her on her jawline. RP 34.

After Mr. Frazier tried to kiss M.L.B., a struggle ensued and M.L.B. found herself turned toward Mr. Frazier with her back toward the driver's door. RP 34-35. M.L.B. was kicking at him, trying to kick him away. RP 74-75. Mr. Frazier was "kind of on top" of her and she wasn't able to move. RP 35. Mr. Frazier is much taller and stronger than M.L.B. RP 48. Mr. Frazier was 6'4", while M.L.B. was only 5'3". RP 48. Mr. Frazier's left hand was wrapped around her back and he kept trying to pull M.L.B. closer. RP 35. M.L.B. tried to

push him away multiple times and was telling him to stop over and over, however Mr. Frazier refused and M.L.B. was not able to get away. RP 36. During this time, Mr. Frazier touched M.L.B. a total of four times on her vagina, at one point touching her vagina under her clothing. RP 38. She could feel his hand touching her directly on her vagina, however there was no penetration. RP 38. Mr. Frazier also touched M.L.B. on her breast underneath her shirt but over her bra. RP 39. He pushed her breast upward and bit her breast, causing her pain. RP 40.

During this entire incident, M.L.B. was telling Mr. Frazier to stop and get off of her, however he refused multiple times. RP 41. M.L.B. was yelling at Mr. Frazier. RP 76. Mr. Frazier said, "Everything is going to be okay" and told M.L.B. to calm down. RP 41. Mr. Frazier told her that no matter how many times she said his name, he wasn't going to stop. RP 41. When M.L.B. asked her why he was doing this, he responded because he wanted her too much and he told her to "give him that night, to just give him that night". RP 41. M.L.B. was crying and eventually got Mr. Frazier to stop touching her. RP 42. She ordered him out of her car, however, he refused and demanded that she drive him back to the fire hall, where their other friends were. RP 42.

After this incident, M.L.B. was left with bruising to both of her legs from Mr. Frazier putting his elbows into her legs to hold her down. RP 45-46. She was also left with a bite mark on her breast, and a bite mark on her neck. RP 45-46, 74. M.L.B. also suffered many emotional consequences including severe mood swings. RP 46. M.L.B. testified, "I would be fine one minute and start, and start crying or I'd be mad. I felt really disgusted with myself and I felt really dirty, and so I take multiple showers a day." RP 46.

M.L.B. confided in her friend C.F. and her school counselor about what happened with Mr. Frazier. RP 46-47. Two weeks later, she finally told her grandmother, Vicky B. RP 47. She waited to tell her grandmother because she was "embarrassed" and "scared" and she knew that she had broken her grandmother's rules by not going home right after work. RP 47.

After M.L.B. told her grandmother, Vicky B., her grandmother called law enforcement to report the incident. RP 87. Vicky B., is a clinical therapist and she also testified about the changes she noted in M.L.B.'s behavior around the time of this incident, "Well, … she was coming home and she was going right downstairs and taking a shower when she got home, and then she'd take another shower in the evening time and she was complaining

about not being able to sleep and that she was having nightmares and having a lot of problems with her school work and being able to concentrate. She was fairly emotional." RP 85.

C.F., who attends school with M.L.B. and Mr. Frazier, also testified. RP 114-129. C.F. has been "really good friends" with M.L.B. since the first grade. RP 116. The first day of school after winter break, M.L.B. confided in C.F. about what happened with Mr. Frazier. RP 117. C.F. then confronted Mr. Frazier about the incident during a class they had together in the school gym. RP 118. C.F. told Mr. Frazier that he heard what he had done to M.L.B. RP 119. Mr. Frazier responded, "Yeah, I feel bad about it." RP 119. C.F. then said, "Were you just thinking with your dick?" RP 120. Mr. Frazier responded, "Yes, I was just thinking with my dick." RP 120. C.F. asked if M.L.B. told him to stop and Mr. Frazier admitted that she told him to stop four or five times. RP 121.

D. ARGUMENT

1. The State proved all elements of Indecent Liberties with Forcible Compulsion beyond a reasonable doubt.

Mr. Frazier committed the offense of Indecent Liberties with Forcible Compulsion on or about December 29, 2014. CP 23. Mr. Frazier was 15 years-old at the time of this offense. CP 54-60. The appellant argues that Mr. Frazier could not have possibly known it was wrong to grope and bite M.L.B. in her most intimate places while she was trapped underneath him kicking and begging him to stop, because he was only 15 years-old. Brief of Appellant, 7-16. This argument is without merit.

The infancy defense is not available to Mr. Frazier because he was over the age of 12 at the time of this offense. The State is not required to prove capacity for youth over 12. RCW 9A.04.050. Because the State proved all elements of Indecent Liberties with Forcible Compulsion beyond a reasonable doubt, Mr. Frazier's appeal must be denied.

A. <u>The "infancy defense" does not apply to youth over the age of 12.</u>

Mr. Frazier cites numerous capacity cases and other cases that are inapplicable to this analysis to support the proposition that Mr. Frazier did not "knowingly" commit this offense. RCW 9A.04.050 is

the statute that codifies what is known as the "infancy defense". *State v. Ramer*, 151 Wash. 2d 106, 114, 86 P.3d 132 (2004). "The purpose of the infancy defense is 'to protect from the criminal justice system those individuals of tender years who are less capable than adults of appreciating the wrongfulness of their behavior.'" *Id.* (citing *State v. Q.D.*, 102 Wash. 2d 19, 23, 685 P.2d 557 (1984)). RCW 9A.04.050 provides: "Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong." Because Mr. Frazier was 15 years-old at the time of this offense, the infancy defense from RCW 9A.04.050 does not apply to him.

Mr. Frazier argues, "Our courts have correctly recognized it is more difficult to prove a child knew a sex offense was a crime than other offenses such as stealing or setting a fire". Brief of Appellant, p. 10. Mr. Frazier also argues that age must be examined, especially in "sex offenses because they are the types of crimes where youthfulness plays an especially important role". Brief of Appellant, p. 10. Mr. Frazier cites the following cases to support these

propositions: (1) *State v. J.P.S.*, 135 Wash. 2d 34, 39, 954 P.2d 894 (1998); (2) *State v. Linares,* 75 Wn.App. 404, 414, n. 12, 880 P.2d 550 (1994); (3) *State v. J.F.,* 87 Wn.App. 787, 790, 943 P.2d 303 (1997); and (4) *State v. Erika D.W.,* 85 Wn.App. 601, 607, 934 P.2d 704 (1997). All of the above-listed cases, however, are capacity cases, which are inapplicable to Mr. Frazier, who was 15 at the time of this offense.

The Court in *State v. J.P.S.* dealt with an 11 year-old Respondent charged with Rape of a Child in the First Degree. In *J.P.S.,* testimony reflected that he was in special education and at times had the mental capacity of a three year-old. Even when dealing with youth under 12, the Court in *State v. J.P.S.* acknowledged that the State need not prove that the child understands the illegality or the legal consequences of his act. The appropriate analysis is whether the child had the sufficient capacity to: (1) understand the act, and (2) know it was wrong. *State v. J.P.S.*, 135 Wash. 2d at 38. The reason that the Court in *J.P.S.* and the other cases listed above, go through the analysis of *age* and the *type of offense* is because this analysis is required to establish capacity.

The capacity determination factors were outlined in *J.P.S.* as follows, "The following factors may be relevant in determining

whether a child knew the act he or she committed was wrong: (1) the nature of the crime; (2) the child's age and maturity; (3) whether the child showed a desire for secrecy; (4) whether the child admonished the victim not to tell; (5) prior conduct similar to that charged; (6) any consequences that attached to the conduct; and (7) acknowledgement that the behavior was wrong and could lead to detention." *Id.* at 38-39. Because Mr. Frazier is over the age of 12, this capacity analysis, including the analysis regarding Mr. Frazier's *age* and the *nature of the offense*, is not applicable and need not be proven by the State.

Only children under the age of 12 are presumed incapable of committing an offense. RCW 9A.04.050. There is a presumption of capacity for youth over the age of 12, and thus, this analysis is completely inapplicable to Mr. Frazier. RCW 9A.04.050. Further, it is the *chronological* age, and not the *mental* age which determines the appropriate presumption as to capacity to commit a crime. *State v. Jamison,* 23 Wash. App. 454, 597 P.2d 424 (1979). Mr. Frazier's chronological age was 15 at the time of this offense, and thus any further capacity determination is unnecessary.

If Mr. Frazier had some type of mental disorder that rendered him otherwise incapable of the commission of an offense, the

remedy would be to argue the appropriate mental defense at trial, such as diminished capacity. This issue, however, was not raised during Mr. Frazier's trial, nor was there any evidence to support such a claim from the record below. Generally, an issue cannot be raised for the first time on appeal, unless it is a manifest error affecting a constitutional right. RAP 2.5(a).

Mr. Frazier cites other cases that are misplaced for the proposition that Mr. Frazier "lacks the maturity and experience of an adult", Mr. Frazier cites *J.D.B. v. North Carolina,* 564 U.S. 261, ___, 131 S. Ct. 2394, 2493, 180 L. Ed. 2d 310 (2011); Brief of Appellant, p. 7. *J.D.B. v. North Carolina*, however, is a case that addresses custodial interrogation of a thirteen year-old, where age is, of course, appropriate to the analysis. *J.D.B.* is inapplicable to the issue at hand, which is whether the State proved all elements of this offense beyond a reasonable doubt.

Mr. Frazier also cites *State v. O'Dell* for the proposition that Mr. Frazier "has less ability to control his emotions, identify consequences and make reasoned decisions about his actions". *State v. O'Dell*, 183 Wash. 2d 680, 88, 358 P.3d 359 (2015), Brief of Appellant, p. 7. The Court in *State v. O'Dell,* however, is an adult case dealing with possible mitigating factors justifying an

exceptional sentence downward. Sentencing issues are also inapplicable to Mr. Frazier and the issues raised in this appeal. *O'Dell* does not require that the State prove any additional elements of an offense at trial, as Mr. Frazier would suggest. *O'Dell* merely stands for the proposition that youthfulness *may be* a mitigating factor at *sentencing*.

Mr. Frazier cites other sentencing cases for the proposition that "Michael's youthfulness must be taken into account in determining whether he had the knowledge to commit indecent liberties." Brief of Appellant, p. 8. In arguing this proposition, Mr. Frazier cites the following cases: (1) *Miller v. Alabama*, 567 U.S. _____, 132 S. Ct 2455, 2464, 183 L. Ed. 2d 407 (2012); (2) *Graham v. Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); and (3) *Roper v. Simmons,* 543 U.S. 551, 569, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). These cases considered youth who were sentenced to life imprisonment without the possibility of parole or death, where age was appropriately considered as a factor. These cases are also misplaced in the context of appellant's arguments, where the appellant is challenging whether the State proved the elements beyond a reasonable doubt, not issues pertaining to Mr. Frazier's disposition.

Mr. Frazier appears to take the position that a court must consider age in any case prior to a finding of guilt. Mr. Frazier argues, "Because he was a child, this Court should find Michael did not knowingly commit the crime of indecent liberties." Brief of Appellant, p. 16. In effect, the appellant appears to argue that no youth under 18 should ever be found guilty of an offense without the court first going through a capacity analysis. Capacity of child to commit an offense, however, is not an element of such offense. *State v. Q.D.,* 102 Wash.2d at 24. Thus, M.F.'s arguments that the court should have considered M.F.'s age prior to a finding of guilt are without merit. The State has no additional burden to prove capacity, because M.F.'s capacity is presumed due to his chronological age. RCW 9A.04.050. The only burden on the State is to prove the elements of the charged offense beyond a reasonable doubt.

B. The State proved all elements of Indecent Liberties with Forcible compulsion beyond a reasonable doubt.

"The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wash. 2d 192, 201, 829 P.2d 1068, 1068 (1992) (citing *State v. Green*, 94 Wash. 2d 216, 220-222,

616 P.2d 628 (1980)). "When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.* (citing *State v. Partin*, 88 Wash. 2d 899, 906-907, 567 P.2d 1136 (1977)). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Id.* (citing *State v. Theroff*, 25 Wash. App. 590, 593, 608 P.2d 1254 (1980)). Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wash. 2d 634, 638, 618 P.2d 99 (1980) (citing *State v. Gosby*, 85 Wash. 2d 758, 539 P.2d 680 (1975)).

Mr. Frazier argues that the trial court committed error in failing to consider his "youthfulness" in determining whether he had the knowledge to commit the offense of indecent liberties. Brief of Appellant, p. 8. "Youthfulness" is not an element of the offense of Indecent Liberties with Forcible Compulsion. "A person is guilty of indecent liberties when he or she knowingly causes another person to have sexual contact with him or her or another by forcible compulsion." RCW 9A.44.100(1)(a).

The definition of "knowingly" is found in RCW 9A.08.010(b), which provides: "A person knows or acts knowingly

or with knowledge when: he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute as defining an offense." Knowingly is a less serious form of mental culpability than intent. *City of Spokane v. White*, 102 Wash. App. 955, 10 P.3d 1095 (2000). Whether a person acted "knowingly" may be inferred from the evidence. *State v. Castillo*, 144 Wash. App. 584, 590, 183 P.3d 355 (2008).

While Mr. Frazier is correct, the Court in *State v. Marshall* did determine that age is a *relevant factor* in determining whether a person "acted reasonably" when employing the "reasonable person" standard in a manslaughter case, the Court also noted that "[b]y implication, children over 12 years have criminal capacity". *State v. Marshall*, 39 Wash. App.180, 692 P.2d.855 (1984) (discussing the "infancy defense" found in RCW 9A.04.050); Brief of Appellant, p. 12. The Court in *State v. Marshall* also determined that "...the Legislature intended the reasonable man standard of RCW 9A.08.010(1)(c) apply to juveniles over 12". *Id.* at 183. The Court in *State v. Marshall* further determined that expert testimony is not required to determine the standard of conduct of a reasonable 15-

year-old because such standard "…is an objective standard, within the ken of the average factfinder…." *Id.* at 184.

The reasonable person standard, is an *alternative means* of proving that a person acted "knowingly". Absent some form of mental health based defense, however, the Court must go through this analysis with a presumption of capacity for youth over 12 pursuant to RCW 9A.04.050. Mr. Frazier did not present any evidence or argument regarding the fact that he did not act "knowingly", nor was there any form of mental defense raised. Mr. Frazier's entire defense was based on a general denial that the incident occurred RP 150-168. Generally, an issue cannot be raised for the first time on appeal, unless it is a manifest error affecting a constitutional right. RAP 2.5(a).

The trial court properly considered the testimony of all witnesses in reaching its decision. CP 22. The Court took into consideration the demeanor of the witnesses as they testified and the delivery of the testimony of each witness. CP 24. The Court weighed the credibility of each witness and found that the testimony of the victim, M.L.B., to be more credible than the testimony of Mr. Frazier. CP 24. The Court considered all of the evidence presented in determining that Mr. Frazier did act "knowingly" when committing

this offense. CP 23.

Included in the evidence considered by the trial court was that M.L.B. told Mr. Frazier "no" and "stop" over and over. RP 32-33. M.L.B. was kicking at him trying to get him off of her. RP 32-33. Despite her continued pleas and physical resistance, Mr. Frazier refused to stop and continued groping her in her most intimate of places, while she was trapped underneath him. RP 35. It would seem difficult for any court to find that Mr. Frazier did not act "knowingly" under all of the facts presented at trial in this case, especially when all evidence is to be viewed in the light most favorable to the State, as required here. Any rational trier of fact could have found guilt beyond a reasonable doubt. Thus, Mr. Frazier's appeal must be denied because the State proved all elements of Indecent Liberties with Forcible Compulsion beyond a reasonable doubt.

2. Mr. Frazier was not denied the right to a jury trial because such right does not exist for juveniles under the Washington State Constitution or the United States Constitution.

The appellant argues that he should have been afforded a jury trial and the trial court's failure to provide for a trial by jury violated his rights under the Sixth Amendment to the United States Constitution and Article 1, §21 and §22 of the Washington State

Constitution. Mr. Frazier further argues that because the juvenile system is becoming more and more akin to our adult system the right to a jury trial for juveniles should be restored. These arguments have been made at both the state and federal levels for literally decades and have consistently been denied throughout history. These arguments are contrary to long-standing precedent and they are without merit. Mr. Frazier's appeal should be denied.

A. RCW 13.04.021(2) does not violate the Sixth Amendment to the United States Constitution.

The Sixth Amendment to the United States Constitution provides that, "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury…" U.S. Const. amend. VI. Juvenile court proceedings, however, are not *criminal prosecutions* within the "meaning and reach of the Sixth Amendment" and therefore the Sixth Amendment right to a jury trial does not apply to juvenile proceedings. *McKeiver v. Pennsylvania*, 403 U.S. 528, at 541, 91 S. Ct 1976, 29 L. Ed. 2d 647 (1971). The Washington State Supreme Court has since held that *McKeiver v. Pennsylvania* is controlling as to the federal constitution and declined to adopt a more stringent rule under the Washington State Constitution. *State v. Lawley*, 91 Wash. 2d 654, 659, 591 P.2d 772

(1979). Thus, RCW 13.04.021(2), which provides that, "cases in the juvenile court shall be tried without a jury" does not violate the Sixth Amendment to the United States Constitution.

"The applicable due process standard in juvenile proceedings is fundamental fairness as developed by *In re Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 [1967], and *In re Winship*, 397 U.S. 358, 90 S. Ct.1068, 25 L. Ed. 2d 368 [1970], which emphasized factfinding procedures, but in our legal system the jury is not a necessary component of accurate factfinding." *McKeiver v. Pennsylvania,* 403 U.S. at 528. "We would not assert.... that every criminal trial—or any particular trial—held before a judge alone is unfair or that a defendant may never be as fairly treated by a judge as he would be by a jury." *Id.* at 543 (citing *Duncan v. Louisiana*, 391 U.S. 145, 158, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968)).

This issue of jury trials for juvenile offenders has also been analyzed in numerus Washington State cases, as well. These cases are summarized chronologically in the next section of this brief to demonstrate the historical context of the evolution of juvenile justice in our state. Despite many changes to the law over time, our Courts in Washington State have consistently found that no right to a jury trial exists for juveniles. Thus, Mr. Frazier was not denied such right,

because it does not exist in juvenile proceedings. Mr. Frazier's adjudication must be affirmed.

B. RCW 13.04.021(2) does not violate Article 1, §21 or § 22 of the Washington State Constitution.

Mr. Frazier argues that "the jury trial guarantees of the State Constitution provide juveniles with the right to a jury." Brief of Appellant, p. 29. As Mr. Frazier points out, Article 1, § 21 of the Washington State Constitution provides, "The right of a trial by jury shall remain inviolate…" Wash. Const. art. I, § 21. Article 1, § 22 also provides, "[i]n criminal prosecutions the accused shall have the right…to have a speedy public trial by an impartial jury..." Wash. Const. art. I, § 22. This right to a jury trial, however, does not apply to juveniles. Thus, RCW 13.04.021(2), which provides that, "[c]ases in the juvenile court shall be tried without a jury" does not violate Article 1, § 21 or § 22 of our Washington State Constitution.

This issue has been analyzed repeatedly throughout the history of juvenile court proceedings in Washington State and our courts have repeatedly rejected arguments that are identical to Mr. Frazier's. Mr. Frazier does not provide a sufficient basis to overrule long-standing precedent in Washington State. A review of the evolution of this argument throughout history is especially

persuasive, particularly in light of the changes to the law being considered in each case.

In 1968, the Washington State Supreme Court held that jury trials in juvenile proceedings is not a constitutional requisite. *In re the Welfare of Estes v. Hopp,* 73 Wash. 2d 263, 438 P.2d 205 (1968). The Court recognized, "Since the adoption of the first juvenile court act in 1899 in the State of Illinois, the concept of juvenile courts has been that a child who has committed a criminal offense who is wayward, incorrigible, or ungovernable, is to be recognized as 'delinquent' and subject to treatment under a system of probation and rehabilitation, rather than as a criminal". *Id.* at 265-266. The Court in *Estes v. Hopp*, however, was asked to reexamine the right to jury trials as they pertain to juveniles given the United States Supreme Court's 1967 decision in *In re Gault.*

The Court in *Estes v. Hopp* considered the decision of *In re Gault*, which extended many rights held by adults to juveniles. The Court, however, clarified that the Supreme Court was quite careful to narrowly define both the scope of its inquiry and the effect of its holding. *Id.* at 267. The Court in *Estes v. Hopp* thus concluded:

> We do not believe that the Supreme Court's opinion in *Gault*, supra, is to be considered as a mandate to abandon this beneficial concept of the juvenile court system. Rather, it is a

> direction that the juvenile be offered the benefits of an informal hearing at which rules of fairness and basic procedural rights are to be observed. Such results can be obtained without the formality of a jury trial. One of the substantial benefits of the juvenile process is a private, informal hearing conducted outside the presence of the jury. *Id.* at 268.

This rationale is still applicable today, in modern times, when the substantial benefits of the informal juvenile process are still recognized.

The Supreme Court of Washington was again asked to reconsider jury trials for juvenile delinquent youth in 1979 after sweeping legal changes were made via the 1977 Juvenile Justice Act (hereinafter J.J.A.). The Court held that a juvenile charged with an offense under the J.J.A. is not constitutionally entitled to a jury trial. *State v. Lawley*, 91 Wash. 2d 654, 591 P.2d 772, 654 (1979). In *Lawley*, the argument was almost identical to Mr. Frazier's. In *Lawley* the appellant argued that the changes made via the J.J.A. altered the law's focus from concern for treatment and rehabilitation to punishment. While the Court in *Lawley* recognized that when comparing the 1977 J.J.A. with the prior juvenile law the legislature "substantially restructured the manner in which juvenile offenders are to be treated" (*State v. Lawley*, 91 Wash.2d at 656), the Court rejected the invitation to extend jury trials to juvenile proceedings.

The Court in *Lawley* concluded:

> In summary, the legislature has changed the philosophy and methodology of addressing the personal and societal problems of juvenile offenders, but it has not converted the procedure into a criminal offense atmosphere totally comparable to an adult criminal offense scenario. We find *McKeiver v. Pennsylvania*, supra, to be controlling as to the federal constitution and decline to adopt a more stringent rule under our state constitution. Because the Juvenile Justice Act of 1977 measures up to the 'essentials of due process,' jury trials are not necessary in juvenile adjudicatory proceedings. *Id.* at 659.

This question was again raised in 1987, in the Supreme Court of Washington's decision in *State v. Schaaf*, 109 Wash. 2d 1, 743 P.2d 240 (1987). Like Mr. Frazier argues here, in *Schaaf* the appellants argued that recent developments in the law mandate granting juvenile offenders jury trials. Considering amendments to the J.J.A. that increased emphasis on punishment of juveniles, the Court in *Schaff* held that despite such amendments, juvenile proceedings remained rehabilitative in nature and they were distinguishable from adult criminal proceedings. Thus, the Court determined that such amendments created no right to a trial by jury. The Court in *Schaaf* recognized that while the United States Supreme Court in *McKeiver v. Pennsylvania* declined to require jury trials for juveniles under the federal constitution, the Court recognized that states were free to utilize a juvenile justice system with a right to a

jury trial. "That, however, is the State's privilege and not its obligation." *Id.* at 13 (quoting *McKeiver v. Pennsylvania,* at 547).

The Court in *Schaaf,* then went through the *Gunwall* analysis established in *State v. Gunwall,* 108 Wash. 2d 54, 720 P.2d 808 (1986), to determine whether our state constitution extends broader rights to citizens than does the federal constitution. Despite this analysis, the Court in *Schaaf* concluded:

> After full consideration of all aspects of the matter, new and previously raised, we conclude that we should remain with the majority of states which deny jury trials in juvenile cases. Our examination of the *Gunwall* factors leaves us convinced that juvenile offenders are not entitled to jury trials under our state constitution. This is particularly true with respect to the preexisting state law factor, and the statutory insistence of long standing that there be a unique juvenile justice system in this state. Weighted with our consideration of this longstanding precedent is our previous discussion of the current state of the law governing juvenile offenders, under which juvenile proceedings are still distinguishable from adult criminal prosecution, both in terms of procedure and result. We conclude that jury trials are not necessary to fully protect a juvenile offender's rights. *Schaaf,* 109 Wash. 2d at 16-17.

Mr. Frazier argues that *State v. Smith,* 150 Wash. 2d 135, 75 P.3d 934 (2003) should be persuasive regarding the analysis of the *Gunwall* factors. Mr. Frazier argues that because the Court in *Smith* based its conclusion that there is no right to a jury trial on facts of prior convictions on the finding that there was no provision for *jury*

sentencing at the time the State constitution was enacted, this naturally applies to this very different issue of juveniles and jury trials. Mr. Frazier argues that "[b]because a juvenile in 1889 had the right to a jury, a juvenile in 2016 has the right to a jury trial." Brief of Appellant, p. 32.

The Court in *Smith*, however, did not consider whether a juvenile offender has a right to a jury trial under the *Gunwall* analysis. The Court in *Schaaf* did. Thus, *Schaaf* is controlling precedent as to this issue. Interestingly, *Schaaf* did consider this same argument made by Mr. Frazier:

> This court has said that section 21 preserves the right to a jury trial as that right existed at common law in the territory when section 21 was adopted. Based thereon, defendants claim that section 21 guarantees them jury trials since juveniles charged with criminal acts would have been guaranteed a jury trial at the time this state was a territory. This latter argument, however, overlooks the salient fact that territorial lawmakers did not anticipate the enactment of a separate juvenile justice system. Washington did not create a separate juvenile court system until 1905, and did not pass comprehensive legislation concerning the juvenile justice system until 1913. It does no violence to our state's common law history to give credence to a 70-year old legal system that was nonexistent in our territorial days. *State v. Schaaf*, 109 Wash.2d at 14.

The Court further opined: "We are not impressed by the implicit suggestion that the state of Washington should regress to territorial days and adopt a system where juveniles are treated like adult

criminals and are afforded no special protections." *State v. Schaaf*, 109 Wash.2d at 15.

Later, in 1999, the Court of Appeals, Division I, was asked to reconsider this issue. This came after the 1997 amendments to the juvenile justice code in *State v. J.H.*, 96 Wash. App. 167, 976 P.2d 1121(1999). The Court in *J.H.* was asked to consider the same issue raised in this appeal, which is whether changes to the law have made juvenile proceedings so similar to adult criminal proceedings, that juvenile offenders should be entitled to a jury trial under the United States or Washington State constitutions. After a lengthy analysis of this issue, the Court concluded:

> The penalties and procedures under the juvenile system thus remain significantly different from those under the adult criminal system after the 1997 amendments. While those amendments somewhat increased its punishment aspect, they also increased its rehabilitative scope. The juvenile system continues to focus to a greater degree on the needs of the offender and on the goal of rehabilitation, rather than on punishment, which is the primary focus of the adult system. The continued existence of these differences compels us to conclude that the right to a jury trial does not apply to juvenile proceedings. *Id.* at 182.

More recently, the Washington State Supreme Court was asked to reconsider jury trials for juvenile offenders charged with serious violent offenses in 2008 in *State v. Chavez*, 163 Wash. 2d 262, 180 P.3d 1250 (2008). Chavez, who was found guilty of three

counts of attempted first degree murder, robbery in the first degree, assault in the second degree while armed with a firearm, and other serious felony offenses, argued that the right to jury trials should be extended to those charged with serious violent offenses even if other juveniles do not have such right.

The Court in *Chavez* rejected this argument and in reviewing the history of this argument over the past several decades, determined: "This court has consistently concluded that because of well-defined differences between Washington's juvenile justice and adult criminal systems, the JJA does not violate these constitutional provisions." *Id.* at 267. The Court held "that the juvenile justice system has not been so altered that juveniles charged with violent and serious violent offenses have the right to a jury trial". *Id.* at 272.

A review of the history of the juvenile jury trial issue is more than persuasive. In his appeal, Mr. Frazier's asks this Court to completely disregard long-established precedent in the State of Washington. The appellants arguments are without merit and this appeal should be denied.

C. The juvenile justice system and adult system in Washington State still retain significant differences in purpose, procedure and result.

As the Court in *Lawley* aptly noted, "…the pivotal question is whether the juvenile proceedings are so akin to an adult criminal prosecution that the constitutional right to a jury trial is necessary." *State v. Lawley*, 91 Wash. 2d at 656. Mr. Frazier argues that because the juvenile system is becoming sufficiently like the adult criminal system, the right to a jury trial for juveniles should be restored. Brief of Appellant, p. 17-34. Many of the arguments posed by the appellant have been considered and rejected by our courts. Juvenile courts and adult courts in Washington State still retain very significant differences at all levels and thus, jury trials are not necessary to protect the rights of youth accused of offenses.

i. The primary purpose of the J.J.A. remains rehabilitation of youthful offenders, which is in contrast to the adult system.

As Mr. Frazier points out several times in his brief, children *are* different than adults. The Respondent agrees. But these differences demand a unique system tailored to the needs of our youth, with the goal of rehabilitation. The J.J.A. provides the necessary tools to accomplish these goals.

The primary purpose of the adult system remains

punishment, while the primary purpose of the juvenile system is still rehabilitation of our delinquent youth. *State v. Rice*, 98 Wash. 2d 384, 393, 655 P.2d 1145 (1982). This is clear from a comparison of RCW 9.94A.010, which sets forth the purposes of the Sentencing Reform Act (hereinafter S.R.A.), with RCW 13.40.010, which sets forth the purposes of the J.J.A. The first three prongs of RCW 9.94A.010, still use the term "punishment". In addition, one of the primary purposes of the Sentencing Reform Act generally is to "Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history". RCW 9.94A.010(1)

RCW 13.40.010(2), however, provides, "It is the intent of the legislature that a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders…" Under the J.J.A. the Legislature sets standard ranges with the understanding that the time frame would address the needs of youthful offenders and that rehabilitation take place in Juvenile Rehabilitation under the Rehabilitation Administration of the Washington State Department of Social and Health Services.

Even since the filing of Mr. Frazier's brief, Engrossed Substitute House Bill 2906, was passed. E.S.H.B. 2906 even further

clarifies the intent of the Legislature with regard to rehabilitation of juvenile offenders within the juvenile justice system in our State. Engrossed Substitute H.B. 2906, 64th Leg., Reg. Sess., Chapter 136 (Wash. 2016). This act is known as S.O.A.R. (Strengthening Opportunities and Rehabilitation for Reintegration of Juvenile Offenders). Several changes were made to the J.J.A., Title 13, as well as related laws affecting juvenile offenders.

In Section 1, E.S.H.B. 2906 amends RCW 13.40.010, to provide an additional purpose of the J.J.A. which adds subsection (f), to "Provide for the rehabilitation and reintegration of juvenile offenders". *Id.* at 2. In Section 2, RCW 13.40.020 is amended to add restorative justice programs to the definition of "community-based rehabilitation." *Id.* at 3. In Section 3, E.S.H.B. 2906, amends RCW 13.40.127, which sets forth the criteria for deferred dispositions by adding the following language: "In all cases where the juvenile is eligible for a deferred disposition, there shall be a strong presumption that the deferred disposition will be granted." *Id.* at 8. Prior to this amendment, the court was simply to consider whether the offender and the community would benefit from a deferred disposition. This language has been stricken. *Id.* at 8.

ii. <u>The J.J.A. has become even less punitive since this issue was last addressed in *State v. Chavez.*</u>

In addition to the above amendments, E.S.H.B. 2906, amended several laws, removing some of the punitive effects of juvenile adjudications. These amendments are as follows: (1) Section 4 amends RCW 13.40.308 by removing all mandatory minimum fines for motor vehicle crimes (*Id.* at 12-13); (2) Section 5 amends RCW 10.99.030 to allow for prosecutorial discretion in charging domestic violence for family members (*Id.* at 16); and (3) Sections 6-12 amends RCW 13.40.265 and related statutes providing that Department of Licensing notification for youth adjudicated of unlawful possession of alcohol, drugs, and firearms be done only on the second or subsequent offense, rather than on a first offense. (*Id.* at 17-25). Previously under these statutes, Department of Licensing notification was required on first offenses, which triggered license suspension even if the matter were diverted. Diversion also no longer reports these offenses to the Department of Licensing, as required prior to these amendments.

The Legislature has made it abundantly clear, in the passing of E.S.H.B. 2906, that the purpose of the juvenile justice system remains rehabilitative in nature, rather than punitive. There are

clearly significant differences between the adult and juvenile systems which still affords juveniles a multitude of special protections not offered to adults. E.S.H.B. 2906 will be effective on June 9, 2016. *Id.*

Significant changes were also made in 2014 and 2015, which lessened potential consequences of juvenile adjudications for our youth. Juvenile sealing laws under RCW 13.50.260 were amended in 2014 to make it much easier for juvenile offenders to seal their records. RCW 13.50.260, now requires that administrative sealing hearings be set for most offenses and allows for sealing when youth turn 18 and have completed the terms of supervision. In 2015, many laws were amended to reduce mandatory fees and costs for juveniles. RCW 7.68.035 was amended to eliminate the previously mandatory Crime Victim's Compensation in most cases. In addition, RCW 13.40.127 was amended in 2015, allowing for dismissal of a deferred disposition, even with unpaid restitution.

iii. Adult scoring of juvenile offenses does not require jury trials for juvenile offenders.

Mr. Frazier argues that the right to jury trials for juveniles should be restored because he will never be able to remove his adjudication from his record and his juvenile history may be counted in his adult score. This issue has been addressed by our courts

previously.

The use of juvenile offenses in adult scoring is not a novel concept. This practice has been in place even prior to the implementation of the S.R.A. in 1981 and survived with the implementation of the S.R.A. scoring. *State v. JH.*, 96 Wash. App. at 177; *State v. Schaaf*, 109 Wash. 2d at 11. "The fact that juveniles are accountable for criminal behavior does not erase the differences between adult and juvenile accountability." *Id.* at 7. "Changes in the way juvenile offenses are treated as prior offenses under the S.R.A. do not affect the punishment imposed upon the juvenile for the juvenile offense, and so do not support a conclusion that juveniles are entitled to jury trials. *State v. JH.*, 96 Wash. App at 178.

In addition, "While the goal of juvenile adjudication is rehabilitation, our State's system anticipates that individuals who are not rehabilitated and who reoffend as adults may be punished in a manner that considers their preceding juvenile criminal behavior." *State v. Weber*, 159 Wash. 2d 252, 264, 149 P.3d 646 (2006). Thus, as the Court in *Weber* points out, if juvenile offenders are rehabilitated and do not re-offend as adults, there is no further punishment imposed. Again, the use of adult scoring of *juvenile offenses* does not affect the punishment imposed upon the *juvenile*

for the *juvenile offense*. *State v. JH.*, 96 Wash. App at 178.

Mr. Frazier, however, argues that recent changes to the law requires this Court to reconsider this issue. Mr. Frazier cites *Apprendi v. New Jersey*, 530 U.S. 466, 494, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); and their progeny. Brief of Appellant, pages 24-25. These arguments were also made by the appellant in *State v. Chavez,* 163 Wash. 2d. at 262, and the Court declined to entertain them. *Blakely, Apprendi*, and other cases cited by Mr. Frazier to support this argument, however, do not discuss the subject of jury trials for juveniles.

Because juveniles have no right to a jury trial under the J.J.A., *Blakely's* rule designed to protect the right to a jury trial under the Sixth Amendment, does not apply. *State v. Meade*, 129 Wash. App. 918, 925, 120 P.3d 975 (2005). "The *Blakely* Court showed no intention... to overrule its well-established holding that the right to a jury does not attach to the traditional juvenile justice system." *Id.* at 925-926 (citing *McKeiver v. Pennsylvania*, 403 U.S. at 543). "Blakely did not alter long-standing rules regarding when the right of a jury attaches, it merely broadened and delineated the scope of that right when it does attach." *Id.* at 926 (citing *United States v. Mora*,

293 F.3d 1213, 1219 (10th Cir.), cert. denied, 537 U.S. 961, 154 L. Ed. 2d 315, 123 S. Ct.388 (2002)). Because the right to a jury trial does not attach to juvenile proceedings, then *Blakely*, *Apprendi*, and their progeny clearly do not apply.

This issue was also addressed by Division I in *State v. Tai N.*, 127 Wash. App. 733, 113 P.3d 19 (2005). The Court in *State v. Tai N.* was asked to reexamine the right to jury trials post-*Apprendi* and *Blakely*. The Court reiterated that "Juvenile adjudicatory proceedings have never been equated with 'criminal prosecution' for purposes of the Sixth Amendment" *Id.* at 738 (citing *McKeiver v. Pennsylvania*, 403 U.S. at 541). The Court held that "recent decisions do not compel a change to well-established precedent holding that non-jury trials of juvenile offenders are constitutionally sound." *Id.* at 740.

The Washington State Supreme Court also addressed this issue in *State v. Weber* and held that the Sixth Amendment right to a jury trial is not violated by the use of juvenile adjudications in adult scoring:

> While a goal of juvenile adjudication is rehabilitation, our State's system anticipates that individuals who are not rehabilitated and who reoffend as adults may be punished in a manner that considers their preceding juvenile criminal behavior. In the absence of authoritative instruction from the United States Supreme Court, that juvenile adjudications are not prior convictions, and in light of the aforementioned

> strong state indicators, we hold that juvenile adjudications are convictions for the purposes of *Apprendi's* prior conviction exception. Therefore, we affirm the Court of Appeals determination that Weber's due process and jury trial rights are not violated by including Weber's juvenile adjudication in his offender score. *State v. Weber*, 159 Wash. 2d 264-265.

Thus, this argument raised by Mr. Frazier has been addressed previously by our courts. The use of juvenile adjudications in adult scoring is constitutionally sound and does not require this Court to overturn well-established precedent by inserting jury trials into the juvenile justice system.

iv. <u>The requirement of sex offender registration does not mandate jury trials for juvenile offenders.</u>

Mr. Frazier argues that his potential for lifetime sex offender registration requires that he be afforded a jury trial. RCW 9A.44.143, however, provides juveniles with relief from the duty to register. Our Washington State Supreme Court concluded that although registration may be a burden on an offender, such burdens are a collateral consequence of the underlying conviction. *State v. Ward*, 123 Wash. 2d 488, 511, 869 P.2d 1062 (1994). The Court in *Ward* also concluded that, "The Legislature's purpose was regulatory, not punitive; registration does not affirmatively inhibit or restrain an offender's movement or activities; registration per se is not

traditionally deemed punishment; nor does registration of sex offenders necessarily promote the traditional deterrent function of punishment." *Id.*

v. The potential for civil involuntary commitment does not require jury trials for juvenile offenders.

Mr. Frazier argues that he may be involuntarily committed, under RCW 71.09, without ever committing an adult offense, thus entitling him to a jury trial. Brief of Appellant, p. 20. RCW 71.09.030(1)(c), however, allows for a petition to be filed for involuntary commitment without even a conviction or adjudication. After such petition is filed, a judge is required to determine whether probable cause exists to believe that the person is a sexually violent predator. RCW 71.09.040. Thus, a jury finding is not required for involuntary commitment under RCW 71.09, or generally under 71.05 (see RCW 71.05.240).

vi. Other collateral consequences of juvenile adjudications do not mandate jury trials for juvenile offenses.

Mr. Frazier makes many other arguments that were all considered and rejected by *State v. Chavez*: (1) "adjudication" and "conviction" have the same meaning under RCW 13.40.011(1);

(2) He must provide a DNA sample under RCW 43.43.754; (3) He must submit to fingerprinting and photographing pursuant to RCW 43.43.735; (4) He has the possibility of being transferred to adult prison to complete his sentence, RCW 13.40.280; and (5) Mr. Frazier's record will never be sealed, pursuant to RCW 13.50.260, or destroyed. Brief of Appellant, p. 19-21; *State v. Chavez*, 163 Wash. 2d at 268.

While considering these same arguments posed by Mr. Frazier, the Court in *State v. Chavez* held that the reasoning in *State v. Schaff* still applies. Enough distinctions still exist between juvenile court proceedings and adult proceedings to justify denying juvenile offenders the right to a jury trial. *State v. Chavez*, 163 Wash.2d at 269. The Court in *Chavez* also determined, "Indeed, the claim that changes to the juvenile justice system make its focus punitive and no longer rehabilitative has been posited and consistently rejected by this court." *Id.* at 269-270 (discussing *State v. Weber*, 159 Wash. 2d at 264).

The Court in *Monroe v. Soliz* also considered RCW 13.40.280, which allows juvenile offenders to be transferred to the Department of Corrections if they are determined to be a "continuing and serious threat to the safety of others". "The Court emphasized

that a criminal conviction carries far more serious ramifications than a juvenile adjudication regardless of where the juvenile serves his or her time, and, applying the reasoning in *Schaaf*, concluded the amendment did not create a right to a jury trial." *State v. JH*, 96 Wash. App at 171-172 (discussing *Monroe v. Soliz,* 132 Wash.2d 414, 420, 939 P.2d 205 (1997).

The Court in *State v. JH* also considered these arguments, regarding the collateral consequences of a juvenile adjudication, and reached the same conclusion as the Court in *State v. Chavez*. The Court in *J.H.* determined that amendments to the J.J.A, which "may have increased the stigma of a juvenile adjudication does not by itself compel the conclusion that the juvenile system is no longer more rehabilitative in its treatment of offenders or more responsive to the needs of offenders than the adult criminal system." *Id.* at 177.

vii. The vast differences in penalties in adult court and juvenile court continue to demonstrate their unique purposes and results.

The penalty, rather than the act committed is yet another factor that distinguishes the juvenile code from the adult criminal system. *State v. Chavez*, 163 Wash.2d at 271 (citing *State v. Schaaf,* 108 Wash.2d at 7-8). While Mr. Frazier was ordered to serve a range of 15-36 *weeks* in Juvenile Rehabilitation (formerly J.R.A.) pursuant

to RCW 13.40.0357, he would have faced 51-68 *months* in the adult criminal system for the same offense under the S.R.A. and RCW 9.94A.507. This further emphasizes the rehabilitative vs. punitive results of the juvenile and adult systems.

The Court in *State v. Chavez* analyzed this issue by reviewing *State v. JH*:

> In *J.H.* the Court of Appeals noted that the juvenile code provides for much more lenient penalties, a difference that weighs heavily in the balance between the two systems for purposes of a juvenile's right to a jury trial. The Court suggested that such lenience and access to programs available only through the JRA were reasons why none of the 12 juveniles involved in the appeal requested the juvenile court decline jurisdiction and transfer the matter to the adult criminal system where a jury trial would have been available. We agree. *Id.* at 271 (citing *State v. J.H.*, 96 Wash.App. at 182).

The Court in *Chavez* also found persuasive the differences in serving a disposition at Juvenile Rehabilitation (formerly J.R.A.) and noted that, "Though several of Chavez's offenses made him ineligible for alternative dispositions, the State correctly notes that rehabilitative services in incarceration are still available and include education services, treatment options, and spiritual and cultural programs." *Id.* at 272. And this remains true in 2016.

The Washington State Supreme Court recently recognized in *State v. Maynard*, 183 Wash. 2d 253, 351 P.3d 159 (2015), that there

are still many important benefits for youth in juvenile court when compared to adult criminal proceedings. In *State v. Maynard*, the Washington State Supreme Court determined that the remedy for ineffective assistance of counsel, which caused the loss of juvenile court jurisdiction, was a remand to juvenile court for proceedings consistent with the J.J.A. The Court in *Maynard* determined:

> Although a defendant has no constitutional right to be tried as a juvenile, we have recognized that juvenile court offers an offender important benefits. See *State v. Dixon*, 114 Wash. 2d 857, 860, 792 P.2d 137 (1990). For example, an adjudication as a juvenile avoids the stigma of an adult criminal conviction. *Id.* It also provides less harsh penalties. *Id.* By statute, a juvenile defendant loses the benefits of the JJA if the court does not extend jurisdiction before the defendant turns 18. RCW 13.40.300(1)(a). *State v. Maynard*, 183 Wash. 2d at 259-260.

viii. Practical reasons dictate retaining our current system of informal juvenile proceedings.

While the juvenile and adult systems not only retain unique qualities, there are also many practical reasons that the courts have declined to extend the right to a jury trial to juvenile proceedings. "If the jury trial right were to be injected into the juvenile court system as a matter of right, it would bring with it into that system the traditional delay, the formality, and the clamor of the adversary system..." *McKeiver v. Pennsylvania,* 403 U.S. at 550. Injecting the jury trial right into the juvenile system would most likely also have

unintended consequences, such as an inevitable amendment of JuCR 7.8(b), which currently provides for a speedy factfinding within 30 days of youth held in detention and 60 days to youth not held in detention. This rule would most likely be amended to be consistent with CrR 3.3(b), which would lengthen the amount of time the State has to bring juvenile offenders to factfinding hearing.

The prospect of other unintended consequences, which would inevitably make the juvenile system more akin to the adult system is concerning, especially for youth in desperate need of a rehabilitative system responsive to their needs. As the Court in *State v. Schaff* aptly determined, "Juvenile offenders are afforded special protections under the present system, and we perceive no valid reason to jeopardize those protections by making juvenile proceedings fully akin to adult proceedings". *State v. Schaff*, 96 Wash. App. at 181. Injecting a jury trial into juvenile proceedings as a matter of right would bring into the juvenile system delay, informality, and an adversarial system that would have many unintended consequences for our youth.

E. CONCLUSION

The State proved all elements of Indecent Liberties with Forcible Compulsion beyond a reasonable doubt. Mr. Frazier was not denied a right to a jury trial because such right does not exist in juvenile proceedings. The juvenile justice system in the State of Washington still retains significant differences from the adult criminal system which offers substantial benefits to our youth, with the goal of rehabilitation. Mr. Frazier cites no authority which would justify a change to well-established precedent holding that non-jury trials of juvenile offenders are constitutionally sound. Thus, Mr. Frazier's appeal must be denied.

DATED this 26th day of May, 2016.

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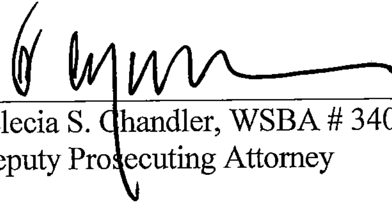

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PROOF OF SERVICE

I, Shauna Field, do hereby certify under penalty of perjury that on the 27th day of May, 2016, I provided service to the following via email, a true and correct copy of the Brief of Respondent:

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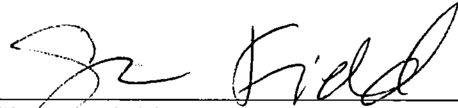

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