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NO. 55739-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

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COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Appellant,
v.
MITIA DION,
Respondent.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE HARRY McCARTHY

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it extended juvenile court jurisdiction over Mitia Dion at the probable cause hearing on July 30, 2004.

2. The trial court erred when it entered subsequent orders extending juvenile court jurisdiction over Mitia Dion on January 27, 2005 and May 23, 2005.

3. The trial court erred when it dismissed the adult criminal case filed against Mitia Dion.

B. ISSUE PRESENTED

1. RCW 13.40.300(1) provides that the Superior Court may extend juvenile court jurisdiction if the juvenile has not yet turned eighteen and proceedings are pending seeking the adjudication of a juvenile offense. At the probable cause hearing, one day before Mitia Dion turned eighteen, the court extended juvenile court jurisdiction over her for six months. At that time, no charges had been filed against Dion. Did the court err in extending juvenile court jurisdiction given that there were no proceedings pending seeking the adjudication of a juvenile offense? Did the court then compound this error by dismissing the adult criminal case subsequently filed against Dion?

C. STATEMENT OF THE CASE

This is a State's appeal of a court order extending juvenile court jurisdiction and subsequently dismissing a case filed in adult criminal court.

The State has alleged that, on July 28, 2004, three days before her eighteenth birthday, Mitia Dion entered the Bon Macy's in Bellevue and stole clothing. CP 2-4. When a security officer attempted to detain her, Dion punched and kicked him. CP 2. Another security officer arrived, and they were able to restrain Dion. CP 2. Dion was arrested and detained in the juvenile detention center in King County.

On July 30, 2004, Superior Court Judge Harry McCarthy held a probable cause hearing. CP 59-60; 1RP 3.¹ The court found there was probable cause to detain Dion for the crime of second-degree robbery. 1RP 3. Dion informed the court that she was turning eighteen years old the following day and moved the court to extend juvenile court jurisdiction for six months. 1RP 4. The State objected and argued that the court did not have the

¹ There are two volumes that constitute the report of proceedings. 1RP contains the hearings held before the Honorable Harry McCarthy on July 30, 2004 and January 20, 2005. 2RP contains the hearings held before the Honorable Julie Spector on November 16, 2004 and December 21, 2004.

authority to extend jurisdiction because no case had been filed.

1RP 5. The court held that it had the authority to extend jurisdiction and extended juvenile court jurisdiction until January 31, 2005.

CP 60. After first ruling that Dion would be detained, the court heard further argument and released her from custody. 1RP 5-11.

Two months later, on September 30, 2004, the State charged Dion with second-degree robbery in adult criminal court.

CP 1. Dion subsequently moved to dismiss the case, claiming (i) unreasonable charging delay, (ii) governmental mismanagement and (iii) that the case belonged in juvenile court because of the extension of jurisdiction. CP 5-10.²

The Honorable Julie Spector rejected the defense claim that there had been an unreasonable charging delay or governmental mismanagement. 2RP 9, 26; CP 24. Judge Spector further opined that the court did not have the power to extend juvenile court jurisdiction at the probable cause hearing, though she declined to formally rule on the issue and referred the motion to Judge

² Dion later admitted that the State had not intentionally delayed filing charges and that the two-month time period between the crime and the filing was reasonable. Defense counsel stated, “[t]here is no claim by defense that the State intentionally delayed filing or that it did anything to deceive or prejudice my client by not filing charges until September 30. That actually is very quick for charges to be filed.” 1RP 27.

McCarthy, who had entered the order extending juvenile court jurisdiction. 2RP 26.

I don't think he [Judge McCarthy] had jurisdiction to extend once the filing period runs.... Once you extend jurisdiction you have to have a case upon which to extend jurisdiction. If the state has not filed anything or the filing period has expired... that's the end of the case.

....

I think it needs to go back to Judge McCarthy because that's his opinion. That's his original ruling that he believed he has the authority. That's not the way I read Title 13. This issue came up many times in juvenile court, when I was up in juvenile court, and I do not believe he has the authority to extend it.

2RP 26-27.

On January 20, 2005, Judge McCarthy heard Dion's motion to dismiss and took the matter under advisement. 1RP 12, 30. A week later on January 27, 2005, Judge McCarthy entered a written order dismissing the adult criminal case and extending juvenile court jurisdiction until June 30, 2005.³ CP 55-58. He held that under RCW 13.40.300(1), he had authority at the probable cause hearing to extend jurisdiction on the basis that proceedings were

³ Juvenile Court jurisdiction has since been extended until June 1, 2006. Supp. CP ____ (Sub No. 39).

pending seeking adjudication of a juvenile offense. In pertinent part, he held:

A proceeding may also 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 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 filed a timely notice of appeal. Supp. CP ____
(Sub. No. 34).

D. ARGUMENT

1. THE TRIAL COURT ERRED IN EXTENDING JUVENILE COURT JURISDICTION AND DISMISSING THE ADULT CRIMINAL CASE.

The trial court erred in extending juvenile court jurisdiction at the probable cause hearing. The court's determination that it had authority to extend juvenile court jurisdiction prior to the filing of any charges is inconsistent with the law governing juvenile court jurisdiction and the express terms of the statute governing extension of juvenile court jurisdiction. It is well-settled that juvenile

court jurisdiction is invoked by the filing of an information. Pursuant to statute, such jurisdiction can only be extended if there is a pending proceeding seeking the adjudication of a juvenile offense. Here, at the time of the probable cause hearing, there was no proceeding seeking adjudication of a juvenile offense; the prosecutor had not yet determined whether and what charges to file. The sole purpose of the probable cause hearing was to determine whether there was probable cause to continue to detain Dion. The trial court erred when it extended jurisdiction over a case that had not been filed.

Juvenile court jurisdiction is strictly construed. State v. Nicholson, 84 Wn. App. 75, 77, 925 P.2d 637 (1996). There is no constitutional right to be tried in a juvenile court. State v. Dixon, 114 Wn.2d 857, 860, 792 P.2d 137 (1990).

Juvenile court jurisdiction is determined at the time charges are filed. The Washington Supreme Court has consistently and repeatedly ruled that jurisdiction over offenses committed by a juvenile is to be determined at the time proceedings are instituted against the offender. State v. Salavea, 151 Wn.2d 133, 141-42, 86 P.3d 125 (2004); State v. Calderon, 102 Wn.2d 348, 351-52, 684 P.2d 1293 (1984). Consistently, the Juvenile Rules provide that

“Juvenile court jurisdiction is invoked over a juvenile offense proceeding by filing an information.” JuCR 7.1.

Indeed, under the controlling statute, juvenile court jurisdiction is determined not only by the age of the individual at the time of filing but also by the precise charges filed. The jurisdictional statute provides that “the juvenile courts shall have exclusive original jurisdiction over all proceedings... (e) Relating to juveniles alleged or found to have committed offenses....” RCW 13.04.030(1). “Juvenile” is defined as “any individual who is under the chronological age of eighteen years.” RCW 13.04.011(2). In determining jurisdiction, the age at the time of the filing of the charge, not at the time of the offense, governs whether jurisdiction is in the adult criminal court or juvenile court. Calderon, 102 Wn.2d at 351-52. This has long been the rule in Washington. State v. Ring, 54 Wn.2d 250, 253-54, 339 P.2d 461 (1959); State v. Melvin, 144 Wash. 687, 258 P. 859 (1927).

The jurisdictional statute lists a number of exceptions to juvenile court jurisdiction based upon the precise charges filed. For example, when the juvenile is sixteen or seventeen years old, there is no juvenile court jurisdiction if the offense charged is a serious violent offense or, under certain circumstances, a violent offense.

RCW 13.04.030(1)(e)(v). Similarly, the juvenile court may not have jurisdiction if the alleged offense is a traffic, fish, boating, or game offense committed by a juvenile sixteen years of age or older.

RCW 13.04.030(1)(e)(iii).

Accordingly, the juvenile court can only determine whether it has jurisdiction over a matter when charges are filed. The statute governing extension of juvenile court jurisdiction recognizes this fact and requires that proceedings be pending seeking the adjudication of a juvenile offense at the time that the court extends jurisdiction. This statute provides in pertinent part:

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).

In State v. Nicholson, 84 Wn. App. 75, 78, 925 P.2d 637 (1996), the Court of Appeals addressed this statute and held that “[t]wo conditions are necessary, therefore, to extend juvenile jurisdiction: (1) proceedings pending seeking the adjudication of a

juvenile offense; and (2) the entry of a written order.” With respect to the first requirement, the Court held that “the filing of an indictment or information charging the defendant commences a criminal action.... The State had charged Nicholson, age 17, with six counts of burglary and two counts of theft, and the criminal proceedings on these charges were still pending when he turned 18.” 84 Wn. App. at 78.

Here, the trial court relied upon this same statute in extending jurisdiction over Dion at the probable cause hearing. However, in contrast with Nicholson, proceedings were not pending against Dion seeking the adjudication of a juvenile offense. Dion had been arrested and detained. The prosecutor had not decided whether to file any charges, let alone what charges were appropriate.

The fact that a probable cause hearing is held does not establish that proceedings are pending seeking the adjudication of an offense. Under the Fourth Amendment, an individual detained as the result of a warrantless arrest is entitled to a prompt judicial determination of probable cause. Gerstein v. Pugh, 420 U.S. 103, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975). Both the Constitution and relevant court rules require that whenever a person is taken into

custody, a probable cause hearing must be held within 48 hours. Riverside v. McLaughlin, 500 U.S. 44, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991); CrR 3.2.1(a); JuCR 7.3(a). This hearing is not considered an adversary proceeding, and there is no right to representation by counsel. Gerstein, 420 U.S. at 121-22; State v. K.K.H., 75 Wn. App. 529, 534-36, 878 P.2d 1255 (1994).

The fact that a juvenile (or adult) is arrested and detained does not necessarily mean that charges will even be filed. At that point, a police officer has only arrested and detained an individual suspected of committing a crime. The prosecutor still must make a determination whether to file charges and what charges to file. The probable cause standard, employed by the court in determining whether continued detention is allowed, is substantially lower than the State's burden of proving the charge beyond a reasonable doubt.

Here, the trial court erred by extending juvenile court jurisdiction at the probable cause hearing. No proceeding was

pending seeking the adjudication of an offense. The trial court simply was required to determine whether there was probable cause and set conditions for release. There was no authority to extend jurisdiction over a juvenile who was not charged with an offense.

E. CONCLUSION

A juvenile who commits a crime shortly before her eighteenth birthday runs the risk that she will be prosecuted as an adult. That has always been the case in this State. The trial court's ruling in this case has the odd effect of expanding the juvenile court's jurisdiction over juveniles whom the police detain, typically the more serious offenders, while those juveniles who are not detained and then turn eighteen are not subject to juvenile court jurisdiction. Not only is it unlikely that the Legislature would have intended such a result, the precise statute governing juvenile court jurisdiction does not support it.

The State respectfully requests that this Court reverse the trial court's orders extending jurisdiction and dismissing the adult criminal case.

DATED this 22^d day of June, 2005.

Respectfully submitted,

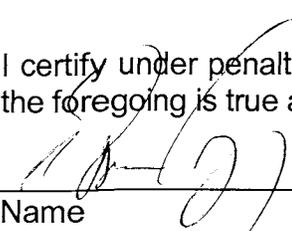
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to the attorney for the appellant, Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Appellant, in STATE V. MITIA DION, Cause No. 55739-4-I, in the Court of Appeals, Division I, for the State of Washington.

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



Name
Done in Seattle, Washington

06/22/05

Date

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