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King County Prosecutor
Appellate Unit

SUPREME COURT NO. _____
COA NO. 55739-4-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
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CLERK OF SUPREME COURT
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MITIA DION,

Appellant.

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

The Honorable Harry J. McCarthy, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Mitia Dion, the respondent below, asks this Court to review the Court of Appeals published decision, referred to in Section B.

B. COURT OF APPEALS DECISION

Dion requests review of the Court of Appeals decision in State v. Mitia Dion, Court of Appeals No. 55739-4-I, filed February 27, 2006. The decision is attached as an appendix.

C. ISSUES PRESENTED FOR REVIEW

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

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

- the juvenile court ordered Dion to make another appearance a few days later?

2. Division One held that a proceeding seeking the adjudication of a juvenile offense is not pending unless and until the State chooses to file an information in the case. Only then can a juvenile court extend its jurisdiction. In State v. Gilman,¹ however, Division Three expressly rejected the notion that juvenile court jurisdiction is tied to the filing of an information. Given this split between the divisions, is review appropriate under RAP 13.4(b)(2)?

3. Division One's published opinion leaves jurisdiction to the State's discretion based on when it chooses to file an information. The impact on juvenile offenders approaching their 18th birthdays will be profound. Is review appropriate under RAP 13.4(b)(4) because this case involves an issue of substantial public interest that should be decided by this Court?

D. STATEMENT OF THE CASE

1. Juvenile Court Proceedings

Earl Edmonds is a loss prevention officer for Macy's at Bellevue Square. On July 28, 2004, Edmonds watched 17-year-old Mitia Dion

¹ State v. Gilman, 105 Wn. App. 366, 19 P.3d 1116, review denied, 144 Wn.2d 1011 (2001).

remove a t-shirt from a sales rack and leave the store without making any attempt to pay for it. CP 2. Edmonds followed Dion, grabbed her by the arm, and identified himself as security. Dion punched Edmonds. After Edmonds fell to the ground, Dion also kicked him. With the assistance of another security officer, Edmonds placed Dion in handcuffs. CP 2.

Bellevue Police responded to the scene and informed Dion that she was under arrest for robbery. Dion received Miranda² warnings and provided a statement. She was then transported to the Bellevue Police Department booking facility. CP 2.

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

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

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

Defense counsel informed Judge McCarthy that Dion would turn eighteen the next day, July 31, and requested a six-month extension of juvenile court jurisdiction. 1RP 4-5. Over the prosecutor's objection (that jurisdiction did not begin until the filing of an information), the motion was granted.³ 1RP 5; CP 42-43.

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

Although Judge McCarthy's order extending juvenile jurisdiction was still in effect, on September 30, 2004, the State filed an information charging Dion with second-degree robbery in adult court. CP 1. Judge McCarthy granted a defense motion to dismiss that information. CP 38-58. He reasoned that the extension of juvenile court jurisdiction in Dion's

³ Judge McCarthy extended jurisdiction again to ensure it did not lapse while the State's appeal was pending. It currently lapses June 1, 2006. Slip Op., at 2 n.2. Undersigned counsel will be seeking an additional extension to make sure it does not lapse while this Petition is pending.

case had been consistent with the goals of the Juvenile Justice Act and met RCW 13.40.300's requirement of a pending proceeding:

A proceeding may . . . be pending in juvenile court before an information is filed. The preliminary proceedings bearing upon probable cause issues, conditions of release and detention review hearings all invoke the court's jurisdiction and all appear to be proceedings which are conducted toward the ultimate objective of an adjudication. It is also apparent that when the filing of an information may be delayed by necessary investigation, the court's jurisdiction remains actively engaged.

CP 57.

The State appealed.

2. The Court of Appeals

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

Relying on the plain language of RCW 13.40.300, which does not premise (but could have premised) extended jurisdiction on the filing of an information, Dion argued that the State was seeking to rewrite the statute. Consistent with Judge McCarthy's decision below, Dion argued that proceedings seeking the adjudication of a juvenile offense were indeed pending where, as here, the juvenile was arrested for a criminal offense, the juvenile was held in confinement, the matter was assigned a juvenile

court cause number, the State argued for and obtained a finding of probable cause, the State sought continued incarceration, and the juvenile was released only under strict conditions and required to make a subsequent appearance in juvenile court. Brief of Respondent, at 5-6.

Division One agreed with the State. It held that juvenile court jurisdiction is invoked upon the filing of an information and nothing else triggers RCW 13.40.300. Slip Op., at 4. Even the arrest of a juvenile, a finding of probable cause, and detention for a suspected criminal offense falls short of that necessary for an extension of juvenile court jurisdiction. Slip Op., at 3-4.

Dion now seeks review in this Court.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Division One's opinion, which ties juvenile court jurisdiction to the filing of an information, conflicts with RCW 13.40.300 and Division Three's opinion in State v. Gilman. RAP 13.4(b)(2). Moreover, Division One's decision will deny countless children the benefit of juvenile court jurisdiction based solely on the State's decision not to file, or its inability to file, an information by the child's eighteenth birthday. Therefore, this case involves an issue of substantial public interest that should be decided by this Court. RAP 13.4(b)(4).

The Juvenile Justice Act (JJA) differs significantly from the adult sentencing scheme. With its lesser penalties and greater rehabilitative purpose, the JJA allows juvenile courts to respond to the unique needs of juvenile offenders. State v. J.H., 96 Wn. App. 167, 172-73, 978 P.2d 1121, review denied, 139 Wn.2d 1014 (1999), cert. denied, 529 U.S. 1130 (2000). RCW 13.04.030(1)(e) gives juvenile courts “exclusive original jurisdiction over all proceedings . . . [r]elating to juveniles alleged or found to have committed offenses”

In recognition of the many advantages to youthful offenders in the juvenile system, the Legislature has provided juvenile court judges the authority to extend their jurisdiction beyond the offender’s eighteenth birthday. In pertinent part RCW 13.40.300 provides:

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

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

RCW 13.40.300(1)(a).⁴

⁴ RCW 13.40.300 was recently amended. But the pertinent portion of the statute remains the same. See 2005 Wash. Legis. Serv. Ch. 238 (S.H.B. 2061)(West).

Contrary to Division One's published opinion in Dion's case, RCW 13.40.300 does not premise extensions of jurisdiction on the filing of an information. Instead, the Legislature merely requires "pending [proceedings] seeking the adjudication of a juvenile offense." And clearly that standard is met where, as here, the juvenile was arrested, booked, and held in confinement, and the juvenile court assigned a cause number to the matter, found probable cause supporting the arrest, and ordered release conditioned upon strict supervision and another appearance in that court.

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

But there was good reason not to tie jurisdiction to an information. To do so would leave it up to prosecutors to decide whether the offender is best dealt with in the adult court. It could accomplish that goal by simply choosing not to file an information in the juvenile court where an offender is about to celebrate his or her eighteenth birthday.

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

The filing of an information in juvenile court certainly does convey jurisdiction over the matter. See CrR 7.1 ("Juvenile Court jurisdiction is invoked over a juvenile offense proceeding by filing an information."). But consistent with the language of RCW 13.04.030(1)(e) and RCW 13.40.300(1)(a), neither this Court nor any other Washington appellate court has ever held that the filing of an information is the *sole* means by which jurisdiction is obtained. See, e.g., State v. Salavea, 151 Wn.2d 133, 141, 86 P.3d 125 (2004) ("the age of the individual at the time of the proceedings is the controlling age"; emphasis added); State v. Calderon, 102 Wn.2d 348, 351-52, 684 P.2d 1293 (1984) ("jurisdiction over offenses

committed by a juvenile is to be determined at the time proceedings are instituted against the offender”; emphasis added).

In fact, Division Three has already rejected the State’s argument that juvenile court jurisdiction depends upon the filing of an information. In State v. Gilman, 105 Wn. App. 366, 19 P.3d 1116, review denied, 144 Wn.2d 1011 (2001), the State argued that JuCR 7.6(e), which requires a capacity hearing for any child under 12 within 14 days of his first court appearance, could not apply prior to the filing of charges because the juvenile court lacks jurisdiction until that time. Gilman, 105 Wn. App. at 369.

In rejecting that claim, Division Three recognized that RCW 13.04.030(1) “gives juvenile courts broad and exclusive jurisdiction over juveniles who have allegedly committed a crime.” Gilman, 105 Wn. App. at 369. So long as the child is under eighteen at the time the offense allegedly occurred, the juvenile court has both subject matter and personal jurisdiction to hear and decide issues in the case with or without an information filed. Gilman, 105 Wn. App. at 369 (citing State v. B.P.M., 97 Wn. App. 294, 982 P.2d 1208 (1999), and State v. Werner, 129 Wn.2d 485, 918 P.2d 916 (1996)).

Gilman really does no more than state the obvious. In Dion’s case, it is difficult to conceive that the juvenile court did not have subject matter

and personal jurisdiction given the several discretionary rulings it made at the *State's* request. These included finding probable cause to detain, establishing conditions of release, and demanding that Dion appear again the following week. And given that jurisdiction, it certainly had the authority to extend it.

In ruling for the State in Dion's case, Division One cited RCW 13.04.030(1)(e)(iii) and (v), the automatic decline statute, noting that for some sixteen and seventeen year olds, it will not be known whether the juvenile or adult court is the proper forum until an information is filed. Slip Op., at 4. But this is not a reason to deviate from the plain language of RCW 13.40.300. Indeed, in State v. Mora, 138 Wn.2d 43, 49-50, 977 P.2d 564 (1999), this Court recognized that the filing of charges under the automatic decline statute simply results in a "transfer" of jurisdiction to the adult court. And, of course, there can only be a transfer if the juvenile court has jurisdiction at the outset. Juvenile court jurisdiction at the beginning of a case does not turn on what charge the State may ultimately choose to file. Yet this is the rule in Division One.

Finally, Division One notes that after the juvenile court's August 3, 2004, order vacating Dion's conditions of release (based upon the State's failure to file an information in juvenile court), "there was no 'proceeding' pending." Slip op., at 4. But the *relevant* issue is whether there was a

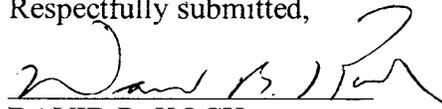
proceeding pending in the juvenile court when that court extended jurisdiction prior to Dion's eighteenth birthday (July 30, 2004). For that is all RCW 13.30.400 required. And Judge McCarthy properly found that standard met.

F. CONCLUSION

For the reasons stated above, Dion respectfully requests that this Court grant review of her case, reverse the decision of the Court of Appeals, and reinstate the juvenile court's order dismissing the information charging her with second-degree robbery in adult court.

DATED this 29th day of March, 2006.

Respectfully submitted,



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APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 55739-4-I
Appellant,)	
)	
v.)	DIVISION ONE
)	
MITIA MARIE DION,)	PUBLISHED OPINION
)	
Respondent.)	FILED: February 27, 2006

DWYER, J. – The State of Washington appeals from an order dismissing second degree robbery charges against respondent Mitia Marie Dion. The order dismissing this adult criminal charge was premised upon an earlier order which purported to extend juvenile court jurisdiction over Dion. The State argues that the order extending juvenile court jurisdiction was entered without statutory authority, thus rendering erroneous the subsequent entry of the dismissal order. We agree and, accordingly, reverse.

The facts of this case are easily stated. The State contends that on Wednesday, July 28, 2004, three days before her eighteenth birthday, Dion entered a store and took clothing without paying for it. The State further alleges that Dion pushed and kicked a security officer who attempted to detain her. Ultimately, Dion was subdued, arrested at the scene by police, and booked into the King County juvenile detention facility.

On Friday, July 30, 2004, the day before her eighteenth birthday, Dion was brought to court for a probable cause and detention hearing. After determining that probable cause existed to support the warrantless arrest, the judge presiding authorized Dion's release from custody, subject to her father's supervision, and ordered her to

return to court on Tuesday, August 3, 2004.¹ Upon learning that Dion would turn 18 on July 31, 2004, the judge entered a written order extending juvenile court jurisdiction until January 31, 2005, over the State's objection.

On September 30, 2004, the prosecutor filed an information in King County Superior Court charging 18-year-old Dion as an adult with one count of second degree robbery. Dion moved to dismiss the charge, arguing that it was violative of the order extending juvenile court jurisdiction. The matter was referred for decision to the judge who had entered that order. After hearing, the order dismissing the second degree robbery charge was entered.²

The determinative question on appeal is whether statutory authority existed to support the juvenile court's July 30, 2004 order extending juvenile court jurisdiction.

The relevant statute reads, in pertinent part:

(1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. 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 The prosecutor was required to file an information by Monday, August 2, 2004, in order for Dion to be either detained or released on conditions past that date. JuCR 7.3(c). Inasmuch as no information was filed, the judge vacated the condition of release and released Dion unconditionally at the August 3 hearing.

² Subsequent orders have been entered purporting to extend juvenile court jurisdiction until June 1, 2006, in order to facilitate resolution of this appeal.

In this case, the required written order was entered. The sole question is whether a probable cause and detention hearing, held pursuant to JuCR 7.3(a), (b), and (c), constitutes “[p]roceedings ... pending seeking the adjudication of a juvenile offense,” within the meaning of RCW 13.40.300(1)(a). The answer is no.

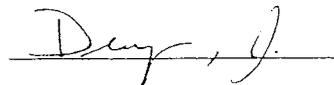
As our Supreme Court has noted, “[t]echnically speaking, juveniles are not ‘convicted’ of crimes, but rather ‘adjudicated’ to have committed offenses.” In re Juveniles A, B, C, D, E, 121 Wn.2d 80, 87, 847 P.2d 455 (1993). Thus, a pending proceeding “seeking the adjudication of a juvenile offense” is an ongoing proceeding, the ultimate aim of which is a determination of guilt, or absence of guilt, as to a charged offense.

A probable cause hearing is not such a proceeding. Following a warrantless arrest, the Fourth Amendment requires a judicial determination of probable cause within 48 hours. County of Riverside v. McLaughlin, 500 U.S. 44, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991). The determination of probable cause is not an adversarial proceeding. State v. K.K.H., 75 Wn. App. 529, 878 P.2d 1255 (1994). The sole focus of the inquiry is whether probable cause exists to justify both the warrantless arrest and resultant detention “pending further proceedings.” K.K.H., 75 Wn. App. at 535 (citing Gerstein v. Pugh, 420 U.S. 103, 120, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975)). Indeed, the judge making the probable cause determination need not be sitting in a court with “the power to hear and determine the charges” ultimately brought, if any. State v. Werner, 129 Wn.2d 485, 494, 918 P.2d 916 (1996).

As the State correctly points out, a judicial determination that probable cause exists does not mandate that any criminal charge will actually be filed. A plethora of reasons exist to justify a prosecutor's discretionary decision to decline to file charges, notwithstanding the existence of probable cause. Moreover, in many circumstances wherein a charge is ultimately filed the juvenile court is not the proper forum for the resolution of the dispute. See, e.g., RCW 13.04.030(1)(e)(iii) and (v) (establishing the district court or adult superior court as the proper forum for certain offenses). Notably, in this case, after the court's August 3, 2004 order vacating conditions of release, the authority of the juvenile court was in no way being exercised as to Dion personally or over the subject matter of this dispute. At that time, there was no "proceeding" pending.

We have previously noted that "juvenile court jurisdiction is invoked over a juvenile offense proceeding by filing an information." State v. Nicholson, 84 Wn. App. 75, 78, 925 P.2d 637 (1996) (quoting JuCR 7.1). Upon such filing, a "proceeding" is "pending seeking the adjudication of a juvenile offense." Because no such proceeding was pending at the time of the juvenile court's July 30, 2004 order, we conclude that the order was entered without statutory authority.

Accordingly, we reverse and remand to the King County Superior Court for further proceedings consistent with this opinion.



WE CONCUR:

