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NO. 55739-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Appellant,

v.

MITIA DION,

Respondent.

---

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HARRY McCARTHY

---

**REPLY BRIEF OF APPELLANT**

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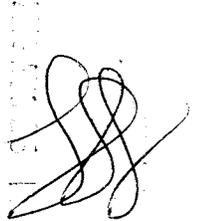


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**A. ARGUMENT**

**1. THERE WAS NO PROCEEDING PENDING  
SEEKING THE ADJUDICATION OF AN OFFENSE  
WHEN THE TRIAL COURT EXTENDED JUVENILE  
COURT JURISDICTION.**

The gist of Dion's argument is that because the court had jurisdiction to preside over the probable cause hearing, it had the authority to extend juvenile court jurisdiction. However, RCW 13.40.300(1)(a) requires more than subject matter or personal jurisdiction before the court can extend juvenile court jurisdiction; it requires that "[p]roceedings are pending seeking the adjudication of a juvenile offense...." Here, no charging decision had been made. No charge had been filed. There was no proceeding pending seeking the adjudication of an offense when the court extended juvenile court jurisdiction.

Dion primarily relies upon State v. Gilman, 105 Wn. App. 366, 19 P.3d 1116 (2001), a case that does not involve the extension of jurisdiction. At issue in Gilman was when a capacity hearing was required to be held under the relevant juvenile rule. JuCR 7.6(e) provides that a capacity hearing "shall be held within 14 days from the juvenile's first court appearance, separate from and prior to arraignment." The Court of Appeals found this

language to be unambiguous and that the time to hold the capacity hearing began to run after the juvenile's first court appearance – his detention hearing. 105 Wn. App. at 368.

Gilman is instructive in that the Court appropriately focused on the plain language of the rule in reaching its decision. Here, the plain language of RCW 13.40.300(1)(a) does not support Dion's position. The rule requires that there is a "proceeding pending seeking the adjudication of an offense." Under the juvenile code, an "offense" is an "act designated a violation or a crime if committed by an adult...." RCW 13.40.020(19). The term "adjudication" has the same meaning as "conviction" and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty. See RCW 13.04.011; RCW 9.94A.030(11). The plain words of the statute clearly require that there be a pending proceeding seeking a guilty verdict on a charged offense.

To accept Dion's interpretation would be to render the qualifying phrase "seeking the adjudication of an offense" meaningless. However, a settled rule of statutory construction is that "[w]henver possible, statutes are construed so that no portion is superfluous." State v. Espinosa, 47 Wn. App. 85, 89, 733 P.2d 1010 (1987); see also State v. J.P., 149 Wn.2d 444, 450, 69 P.3d

318 (2003) (holding that statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous). Had the Legislature intended to provide the authority to extend juvenile court jurisdiction before the filing of any charges, it would have worded the statute to allow for that possibility. It did not. And given that juvenile court jurisdiction is strictly construed, there is no justification for ignoring the plain language of the statute. See State v. Alvarez, 128 Wn.2d 1, 25, 904 P.2d 754 (1995); State v. Nicholson, 84 Wn. App. 75, 77, 925 P.2d 637 (1996).

Dion makes much of the Court of Appeals' rejection in Gilman of an argument that the trial court had no jurisdiction to hold a capacity hearing prior to the filing of charges. Here, no one claims that the trial court lacked personal or subject matter jurisdiction to hold the probable cause hearing. The question is whether that hearing qualifies as a proceeding seeking the adjudication of an offense. It clearly does not. In his responsive brief, Dion fails to even address the authorities recognizing that the probable cause hearing is not even considered an *adversary* proceeding. See State v. K.K.H., 75 Wn. App. 529, 535, 878 P.2d 1255 (1994) ("because of the limited function and nonadversary

character of the probable cause determination, it is not a critical stage of the prosecution that requires counsel"); Gerstein v. Pugh, 420 U.S. 103, 122, 95 S. Ct. 854, 43 L .Ed. 2d 54 (1975).

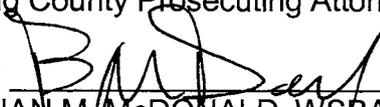
The Legislature's requirement that proceedings seeking the adjudication of an offense be pending is understandable given the various rules governing juvenile court jurisdiction. See RCW 13.40.030. At the probable cause hearing with no filed charges, the court does not necessarily know, if charges are subsequently filed, whether the juvenile court, the adult criminal court or the district court will have jurisdiction over the case. Indeed, the fact that a probable cause hearing is held is no guarantee that charges will even be filed.

The court erred in extending juvenile court jurisdiction at the probable cause hearing. The State respectfully requests that this Court reverse the order dismissing the adult criminal case.

DATED this 26<sup>th</sup> day of August, 2005.

Respectfully submitted,

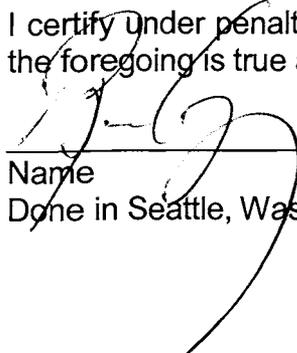
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Certificate of Service by Mail

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, David Koch, Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Reply 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

08/26/05  
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Date

CHIEF CLERK