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KING COUNTY SUPERIOR COURT  
APPELLATE DIVISION

NO. 55739-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

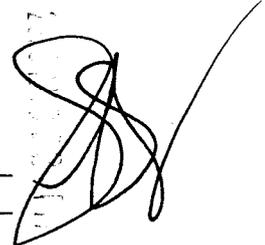
STATE OF WASHINGTON,

Appellant,

v.

MITIA DION,

Respondent.



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

The Honorable Harry McCarthy, Judge

BRIEF OF RESPONDENT

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A. ISSUE IN RESPONSE

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?

B. STATEMENT OF THE CASE

Earl Edmonds is a loss prevention officer for Bon Macy's at Bellevue Square. On July 28, 2004, Edmonds watched 17-year-old Mitia Dion remove a t-shirt from a sales rack and leave the store without making any attempt to pay for the shirt. CP 2. Edmonds followed Dion, grabbed

her by the arm, and identified himself as security. Dion punched Edmonds in the face. After falling 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 Miranda<sup>1</sup> 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 hold Dion for robbery in the second degree. Judge McCarthy agreed. 1RP<sup>2</sup> 3.

The State argued for Dion's continued detention on that charge. 1RP 5, 10. Instead, Judge McCarthy temporarily released Dion to her

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<sup>1</sup> Miranda v. Arizona, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966).

<sup>2</sup> This brief follows the State's designation of the transcripts: 1RP refers to the proceedings before Judge McCarthy on July 30, 2004, and January 20, 2005; 2RP refers to the proceedings before Judge Spector on November 16 and December 21, 2004.

father under strict, 24-hour supervision. The court also ordered that Dion return to court on Tuesday, August 3, the deadline for the State to file charges against her in light of her conditional release. 1RP 8-11.

Defense counsel informed Judge McCarthy that Dion would turn 18 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. 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 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 has now appealed.

C. ARGUMENT

THE JUVENILE COURT PROPERLY EXTENDED ITS JURISDICTION PRIOR TO DION'S EIGHTEENTH BIRTHDAY.

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 of dealing with 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).<sup>3</sup>

In Dion's case, the juvenile court extended jurisdiction by written order and prior to her eighteenth birthday. These requirements are not at issue. CP 42-43. On appeal, however, the State claims that there were no proceedings pending because it had not yet filed an information formally charging Dion in juvenile court. Brief of Appellant, at 5-6.

The State is mistaken. 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

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<sup>3</sup> 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).

juvenile offense." And clearly that standard was met where, as here, the juvenile was arrested, the juvenile was held in confinement, the court assigned a cause number to the matter, the State argued for (and obtained) a finding of probable cause and sought continued detention, and the juvenile was released under strict conditions and required to make a subsequent appearance.

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 have based jurisdiction on 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), no Washington 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 of this Court has already rejected the State's argument that juvenile court jurisdiction begins with 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 18 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.

In Dion's case, the State does not discuss Gilman. It does, however, cite State v. Nicholson, 84 Wn. App. 75, 78, 925 P.2d 637 (1996), review denied, 131 Wn.2d 1025 (1997), for the proposition that "the filing of an indictment or information charging the defendant commences a criminal action . . . ." Brief of Appellant, at 9. But neither Nicholson, nor any of the other cases upon which the State relies in its brief, involved an extension of jurisdiction prior to the juvenile's eighteenth birthday under RCW 13.40.300(1)(a). Rather, Nicholson involved an alleged deliberate delay that led to the filing of charges after the defendant's eighteenth birthday. Nicholson, 84 Wn. App. at 352. The Nicholson Court was never asked to contemplate what *other* activities, beyond the filing of an information, might commence the proceedings in juvenile court. There is simply nothing in Nicholson that contradicts the correct jurisdictional analysis in Gilman.

The State also points out that under RCW 13.04.030(1)(e)(iii) and (v), the juvenile court does not have jurisdiction for certain offenses where the juvenile is sixteen or seventeen. "Accordingly," argues the State, "the juvenile court can only determine whether it has jurisdiction over a matter when charges are filed." Brief of Appellant, at 8.

However, in State v. Mora, 138 Wn.2d 43, 49-50, 977 P.2d 564 (1999), the Washington Supreme 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. Contrary to the State's argument, juvenile court jurisdiction at the beginning of a case does not turn on what charge the State may ultimately choose to file.

In those cases where a juvenile offender is ultimately charged with an offense for which adult court jurisdiction is mandatory, that case will simply be transferred to adult court at that time and the juvenile will have no grounds to complain. The extension of juvenile jurisdiction will likely become moot. If, however, that charge is later amended to one that would have brought the juvenile under the exclusive original jurisdiction of the juvenile court, juvenile jurisdiction will have been preserved. Mora, 138 Wn.2d at 45 (once charge is filed under automatic decline statute, juvenile is automatically subject to adult court jurisdiction, but if charge is later amended to one outside that statute, exclusive original jurisdiction returns to juvenile court). The source of the State's concern over this approach is not clear.

Finally, in its concluding remarks, the State points out that if anything short of filing an information conveys juvenile court jurisdiction, only those arrested prior to their eighteenth birthday will have the option of seeking an extension of jurisdiction. Those who are not hailed into court prior to the filing will not. Brief of Appellant, at 11.

While the State's concern over the potential loss of juvenile jurisdiction for those in the latter group is laudable, its solution is not -- it would simply deny *all* juveniles the opportunity to seek extended jurisdiction until the information is filed. That would certainly be the simplest approach. But it would violate the relevant statutes, established precedent, and the goals of the JJA.

D. CONCLUSION

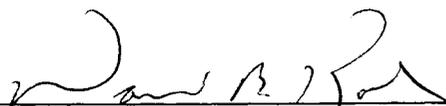
Should the State ultimately choose to charge Dion with robbery in the second-degree, the juvenile court has exclusive jurisdiction over the

matter. Judge McCarthy correctly dismissed the information improperly filed in adult court.

DATED this 22<sup>nd</sup> day of August, 2005.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "David B. Koch", is written over a horizontal line.

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