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SUPREME COURT  
STATE OF WASHINGTON

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NO. 78606-2

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CLERK  
SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

MITIA MARIE DION,

Petitioner.

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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**A. ISSUE PRESENTED**

1. Whether "proceedings are pending seeking the adjudication of a juvenile offense" when the superior court holds a post-arrest probable cause hearing before charges have been filed.

**B. STATEMENT OF THE CASE**

The facts of the case are set forth in the Brief of Appellant filed with the Court of Appeals and briefly summarized here.

The State has alleged that on Wednesday, July 28, 2004, three days before she turned 18, Mitia Dion entered a department store, stole clothing, and then punched and kicked a loss prevention officer who attempted to stop her. CP 2. She was arrested and booked into the juvenile detention center. CP 2; 1RP 3.

On Friday, July 30, 2004, Superior Court Judge Harry McCarthy held a probable cause hearing. CP 59-60; 1RP 3. At that time, the prosecuting attorney did not have the police reports and had not made a charging decision. 1RP 3,18. After reviewing a statement of probable cause, the court found there was probable cause to detain Dion for the crime of second-degree robbery. 1RP 3.

Dion moved the court to extend juvenile court jurisdiction for six months. 1RP 4. Though the State objected and argued that the court did not have the authority to do so until the charges were filed, the court granted the motion. 1RP 5; CP 60. The court then ordered Dion's release from custody after her father indicated that he would maintain constant supervision over her during the upcoming weekend. 1RP 5-11. The court set a filing deadline for Monday, August 2, 2004. 1RP 8.

The State did not file charges against Dion within this deadline. On September 30, 2004, the State charged her with second-degree robbery in adult criminal court. CP 1. Dion moved to dismiss the adult criminal case, claiming, among other things, that that the case belonged in juvenile court because of the court's earlier order extending jurisdiction.<sup>1</sup> CP 5-10.

Superior Court Judge Julie Spector first heard the motion to dismiss and agreed with the State that the court did not have the authority to extend juvenile court jurisdiction at the probable cause

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<sup>1</sup> Dion also claimed that the case should be dismissed because of the filing delay. CP 7-9, 27-28. She later admitted that the State had not intentionally delayed filing charges. Defense counsel stated, "There 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.

hearing. 2RP 26-27. However, Judge Spector declined to formally rule on the issue and referred the motion to Judge McCarthy, who had ordered the extension of juvenile court jurisdiction. 2RP 27.

Subsequently, Judge McCarthy reaffirmed his order extending jurisdiction and dismissed the adult criminal case.<sup>2</sup> CP 55-58. The State timely appealed this ruling, arguing that the Superior Court did not have the authority to extend juvenile court jurisdiction at the probable cause hearing. CP 61. The Court of Appeals agreed and reversed the order dismissing the adult criminal case, holding:

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.

.... [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.

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<sup>2</sup> While this appeal has been pending, the juvenile court has extended jurisdiction over Dion multiple times. The most recent order extends jurisdiction until July 31, 2007, when Dion turns 21. Upon that date, the juvenile court can no longer exercise jurisdiction over her. See RCW 13.40.300(3).

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 Wash.App. 529, 878 P.2d 1255 (1994)....

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.

State v. Dion, 131 Wn. App. 729, 733-34, 129 P.3d 805 (2006), rev. granted, \_\_\_ Wn.2d \_\_\_ (2007).

**C. ARGUMENT**

**1. A PROBABLE CAUSE HEARING, HELD PRIOR TO THE FILING OF CHARGES, DOES NOT QUALIFY AS A PROCEEDING SEEKING THE ADJUDICATION OF A JUVENILE OFFENSE**

The sole authority for the superior court's order extending juvenile court jurisdiction is RCW 13.40.300(1)(a),<sup>3</sup> the statute governing the extension of juvenile court jurisdiction. By its plain terms, that statute requires that proceedings be pending seeking the adjudication of a juvenile offense before there can be an extension of jurisdiction. A probable cause hearing, held before charges are filed, is not a proceeding seeking the adjudication of an offense. This Court should affirm the Court of Appeals' decision reversing the trial court's dismissal of the adult criminal case.

**a. Under The Plain Terms Of The Statute, Juvenile Court Jurisdiction Can Be Extended Only After Charges Have Been Filed.**

The question before this Court is purely one of statutory interpretation. The juvenile court is a creature of statute; 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). Statutory interpretation

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<sup>3</sup> RCW 13.40.300 was amended after the superior court ordered the extension of jurisdiction in this case. However, subsection (1)(a) was not affected. See Laws of 2005, ch. 238 § 2.

is a question of law, subject to de novo review. City of Spokane v. County of Spokane, 158 Wn.2d 661, 672-73, 146 P.3d 893 (2006).

The court's primary objective is to ascertain and give effect to the intent of the legislature. Scoccolo Const., Inc. ex rel. Curb One, Inc. v. City of Renton, 158 Wn.2d 506, 515, 145 P.3d 371 (2006).

When interpreting a statute, the court first looks to the ordinary meaning of the words used by the legislature. Thurston County ex rel. Bd. of County Com'rs v. City of Olympia, 151 Wn.2d 171, 175, 86 P.3d 151 (2004). "Where the language of a statute is plain and unambiguous, the court ascertains the statute's meaning from the statute itself." Lewis v. Dep't of Licensing, 157 Wn.2d 446, 465, 139 P.3d 1078 (2006). "A statute is ambiguous only if it can be reasonably interpreted in more than one way, not merely because other possible interpretations exist." Pacific Northwest Shooting Park Ass'n v. City of Sequim, 158 Wn.2d 342, 354, 144 P.3d 276 (2006).

Here, the relevant statute governing the extension of juvenile court jurisdiction is not ambiguous. It 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).

The language used in RCW 13.40.300(1)(a) is clear: there must be proceedings pending seeking the adjudication of an offense. "Adjudication" means "[t]he legal process of resolving a dispute; the process of judicially deciding a case." Black's Law Dictionary 45 (8<sup>th</sup> ed. 2004); see In re Dalluge, 152 Wn.2d 772, 779-80, 100 P.3d 279 (2004) (citing to Black's Law Dictionary when interpreting the "plain language" of a provision of the Basic Juvenile Court Act).<sup>4</sup> 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).

These plain words require an action seeking a guilty verdict on a charged offense. When the probable cause hearing was held on July 30, 2004, there was no pending action against Dion. She had been arrested and detained in a juvenile detention facility. The

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<sup>4</sup> In 1997, the legislature provided a specific definition of "adjudication" consistent with the common understanding. RCW 13.04.011(1).

prosecutor had not made a filing decision. In fact, the prosecutor did not even have the police reports necessary to make such a decision. Instead, the purpose of the hearing was to determine whether there was probable cause to believe that Dion had committed an offense and whether it was appropriate to continue to detain her.

Judge McCarthy held that he had the authority to extend jurisdiction because "preliminary proceedings bearing upon probable cause issues, conditions of release and detention review hearings... are conducted toward the ultimate objective of an adjudication." CP 57. This conclusion mischaracterizes the nature and purpose of the probable cause hearing.

Under the Fourth Amendment, an individual who is arrested and 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, 114, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975); Westerman v. Cary, 125 Wn.2d 277, 293, 892 P.2d 1067 (1995). The probable cause hearing must be held within 48 hours. County of Riverside v. McLaughlin, 500 U.S. 44, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991). The court's Fourth Amendment probable cause determination is identical to that required before the court

approves an arrest warrant. The question before the court is whether there is probable cause that the individual has committed a crime.

The probable cause 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). After the probable cause hearing, the detained individual is entitled to release without conditions if no charges are filed within 72 hours after the individual was taken into custody. See JuCR 7.3(c); CrR 3.2.1(f)(1). Holding that there was no Sixth Amendment right to counsel at such hearings, the Hawaii Supreme Court elaborated on the nature of this hearing:

The prosecution does not initiate charges against a defendant at a JDPC [Judicial Determination of Probable Cause], a non-adversarial proceeding which serves only to determine if further incarceration is warranted. The JDPC is a constitutional procedural safeguard required by the fourth amendment. Adversarial proceedings, such as a formal felony prosecution, preliminary hearing, indictment, information, or arraignment, usually commence after a JDPC, and it is only during these "critical stages" that the sixth amendment right to counsel is triggered.

State v. Luton, 83 Hawai'i 443, 449-50, 927 P.2d 844 (1996).

At the time of the probable cause hearing, the prosecutor, defense counsel and the court often have limited information about

the suspect and the crime.<sup>5</sup> The prosecutor typically does not have the police reports detailing the facts of the crime. Instead, the arresting police agency provides a probable cause statement, sometimes referred to as "Suspect Information Report" (SIR). See 1RP 18. Given the timing of this hearing and its limited purpose and focus, it does not qualify as a proceeding seeking the adjudication of an offense.

Moreover, the fact that an individual has been arrested and the court has found probable cause does not mean that future charges are inevitable.<sup>6</sup> The "probable cause" standard is much lower than the "beyond a reasonable doubt" standard that the State must satisfy once it files charges. The prosecutor makes a filing decision only after having an opportunity to carefully review the reports and evidence collected by the police. As the Court of Appeals recognized, "A plethora of reasons exist to justify a

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<sup>5</sup> For example, here, defense counsel and the prosecutor erroneously represented to the court that Dion had no criminal history. 1RP 4-6. In fact, she had a prior misdemeanor adjudication from Snohomish County. CP 4.

<sup>6</sup> Of course, the prosecuting attorney does not file criminal charges in every case referred to it by the police. See Washington State Juvenile Justice Report 2005 Data Analysis, available at <http://www.juvenilejustice.dshs.wa.gov/PDFfiles/AnnualReport2005/GJJAC06-Data%20Analysis.pdf> (last visited January 30, 2007) (reporting that approximately 50% of juvenile cases referred to the King County Prosecuting Attorney's Office ultimately were filed).

prosecutor's discretionary decision to decline to file charges, notwithstanding the existence of probable cause." Dion, 131 Wn. App. at 733-34. Proceedings seeking the adjudication of an offense begin only after the prosecutor makes a charging decision and files charges. These steps had not occurred at the time of the probable cause hearing in this case.

When previously discussing this statute, this Court appeared to recognize that filed charges were a prerequisite before the extension provision in RCW 13.40.300(1)(a) applied:

Juvenile court jurisdiction attaches only until the juvenile is 18, although before the juvenile reaches that age, the court may extend jurisdiction until the age of 21. RCW 13.40.300(1)(a). This extension can be granted at arraignment. Thus, under normal procedures, juvenile court jurisdiction is lost unless the defendant is arraigned before he turns 18.

State v. Lidge, 111 Wn.2d 845, 847 n.1, 765 P.2d 1292 (1989).

While an extension of jurisdiction was not at issue in Lidge, the Court's summary of the law is consistent with the plain language of the statute requiring a proceeding where an adjudication on an offense is sought.

The case primarily relied upon by Dion, State v. Gilman, 105 Wn. App. 366, 19 P.3d 1116 (2001), supports this plain reading of RCW 13.40.300(1)(a). In Gilman, the issue concerned the proper

interpretation of a court rule governing juvenile capacity hearings. 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 concluded 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. The Gilman court's focus on the plain language is consistent with the Court of Appeals' decision in this case. If RCW 13.40.300(1)(a) used the wording of JuCR 7.6(e) and provided for extension of jurisdiction at “the juvenile's first court appearance,” Dion would have a much better claim that the Superior Court had the power to extend jurisdiction in this case. However, RCW 13.40.300(1)(a) does not contain that language. Instead, it expressly requires a pending action “seeking the adjudication of a juvenile offense.” This Court should affirm the Court of Appeals' decision in this case.

b. The Requirement That Charges Be Filed Is Consistent With Other Provisions Concerning Juvenile Court Jurisdiction.

When a statute is clear and unambiguous on its face, statutory inquiry ends with the plain language of the statute and the court assumes that the legislature “means exactly what it says.”

State v. Delgado, 148 Wn.2d 723, 727-28, 63 P.3d 792 (2003) (quoting Davis v. Dep't of Licensing, 137 Wn.2d 957, 964, 977 P.2d 554 (1999)). Here, RCW 13.40.300(1)(a) is clear and unambiguous. Nonetheless, it is worth noting that the statute's requirement that there be a pending juvenile case before juvenile court jurisdiction can be extended is consistent with other statutes and rules governing adult criminal court and juvenile court jurisdiction.

It is well-settled that a criminal action is commenced by the filing of an indictment or information. CrR 2.1(a); see Const. art. I, § 25. Similarly, the juvenile rules provide that “[j]uvenile court jurisdiction is invoked over a juvenile offense proceeding by filing an information.” JuCR 7.1; see also RCW 13.40.070(3).<sup>7</sup>

Whether a case should be filed in the adult criminal court or the juvenile court is determined by (1) the precise charges filed and

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<sup>7</sup> Contrary to Dion's suggestion, the State has not argued that the juvenile court did not have jurisdiction at the probable cause hearing. See Petition for Review at 10. The court certainly had the power and authority to make the probable cause determination. See RCW 13.40.040(2); JuCr 7.3(c); see also State v. Werner, 129 Wn.2d 485, 493-94, 918 P.2d 916 (1996). However, the notion that RCW 13.40.300(1)(a) only requires that the juvenile court have initial jurisdiction before it can extend jurisdiction, would read out of the statute the requirement that there be a proceeding seeking the adjudication of a juvenile offense. An appellate court cannot construe statutes so as to render language meaningless. State v. Haddock, 141 Wn.2d 103, 112, 3 P.3d 733 (2000).

(2) the age of the individual. See RCW 13.04.030(1). The age *at the time of the filing* of the charge, not the age at the time of the offense, controls whether jurisdiction is in the adult criminal court or juvenile court. State v. Calderon, 102 Wn.2d 348, 350-52, 642 P.2d 1293 (1984). Accordingly, though the individual may have been a juvenile when the crime was committed, the charges are properly brought in adult criminal court if, at the time of filing, the individual is 18 years or older. Id. This has long been the rule in Washington. State v. Melvin, 144 Wash. 687, 258 P. 859 (1927).

In addition, there are a number of possible charges, both minor and serious, where the adult criminal court has jurisdiction when the juvenile is 16 years or older. The juvenile court does 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). Similarly, if the juvenile is sixteen or seventeen years old, and the offense charged is a serious violent offense or, under certain circumstances, a violent offense, the adult criminal court has jurisdiction. RCW 13.04.030(1)(e)(v). Under these provisions, it is the age of the individual at the time of filing, not the age at the time that the crime was committed, that controls

where the action should be filed. See State v. Salavea, 151 Wn.2d 133, 141-42, 86 P.3d 125 (2004).

Accordingly, until the prosecutor has made a charging decision, the superior court does not know whether the case will ultimately be filed in juvenile court or adult criminal court. These provisions are consistent with the legislature's requirement in RCW 13.40.300(1)(a) that there must be an active pending case before jurisdiction is extended. Otherwise, the court could be extending jurisdiction over cases where it never would have had jurisdiction over the filed charge in the first place.

- c. An Individual Who Commits A Crime Shortly Before His Or Her 18<sup>th</sup> Birthday Has Always Risked Prosecution As An Adult.

When ruling that he had authority to extend juvenile court jurisdiction, Judge McCarthy acknowledged that he was influenced by the notion that, because Dion committed the crime when she was still 17, she was entitled to the benefits of juvenile court jurisdiction. 1RP 5; CP 57. In a similar vein, Dion begins her

petition with a discussion of the benefits of the juvenile justice system. Petition for Review at 6-7.<sup>8</sup> These concerns, however, do not justify departing from the plain language of the statute. The court does not have the authority to rewrite a statute to express what it thinks the law should be. State v. Groom, 133 Wn.2d 679, 689, 947 P.2d 240 (1997). "This is true even if the results appear unduly harsh." Id.

As discussed above, the long-standing rule in Washington is that the offender's age at the time charges are filed determines whether the case is filed in adult criminal court or juvenile court. In contrast, some states' juvenile statutes provide that the age at the time of the offense, not at the time of filing, controls. See H.D. Warren and C.P. Jhong, Age of Child at Time of Alleged Offense or Delinquency, or at Time of Legal Proceedings, as Criteria of Jurisdiction of Juvenile Court, 89 A.L.R. 2d 506 (1963 & supp. 2006).

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<sup>8</sup> In this vein, Dion claims that the Court of Appeals' decision "will deny countless children the benefit of juvenile court jurisdiction...." Petition for Review at 6. Of course, the issue presented only arises because the individual is no longer a child, but has become an adult. Instead, it would be more accurate for Dion to say that the Court of Appeals' decision might deny some *adults* the benefits of juvenile court jurisdiction.

As a consequence of this policy choice by the legislature, an individual who commits a crime shortly before his or her 18<sup>th</sup> birthday may face prosecution as an adult. See State v. Kramer, 72 Wn.2d 904, 435 P.2d 970 (1968) (individual arrested and detained six weeks before 18<sup>th</sup> birthday properly prosecuted as an adult); State v. Setata, 13 Wn. App. 604, 536 P.2d 176 (1975) (individual arrested and detained ten days before 18<sup>th</sup> birthday properly prosecuted as an adult). Moreover, historically, if charges were filed in juvenile court but the juvenile turned 18 before the case was resolved, the juvenile court lost jurisdiction, and the prosecutor could pursue charges in adult criminal court. See State v. Brewster, 75 Wn.2d 137, 449 P.2d 685 (1969); State v. Ring, 54 Wn.2d 250, 253-54, 339 P.2d 461 (1959); State v. Thomas, 16 Wn. App. 1, 14, 553 P.2d 1357 (1976); see also former RCW 13.04.260.

The provision at issue, RCW 13.40.300(1)(a), was added in 1979 as part of a large number of amendments to the Juvenile Justice Act. See Laws of 1979, ch. 155 § 73. For the first time, it allowed the juvenile court to extend jurisdiction before there was an adjudication. Yet it is clear that when the legislature added this provision, it did not intend or anticipate that all cases first filed in juvenile court would remain there after the individual's 18<sup>th</sup> birthday.

Instead, the legislature required the court to enter an order with reasons justifying the extension of juvenile court jurisdiction. If the court failed to enter an order extending jurisdiction prior to the juvenile's 18<sup>th</sup> birthday, even if such a failure was inadvertent, the juvenile court lost jurisdiction. State v. Nicholson, 84 Wn. App. 75, 925 P.2d 637 (1996).

Subsequently, the legislature has amended RCW 13.40.300 a number of times, allowing for *automatic* extensions of juvenile court jurisdiction under a variety of circumstances. See RCW 13.40.300(1)(b), (c), and (d). The juvenile court is not required to enter any order or justify an extension under these provisions. Yet the legislature has not extended these automatic provisions to RCW 13.40.300(1)(a). Instead, if there is a pending juvenile case and the juvenile has not yet pled or been found guilty, the juvenile court must take affirmative steps and explain its reasoning before it can extend jurisdiction over a juvenile who has turned 18.

Accordingly, an individual who commits a crime shortly before his or her 18<sup>th</sup> birthday runs the risk of prosecution as an adult. This is not to suggest, as Dion does, that it is simply "up to prosecutors to decide whether the offender is best dealt with in the adult court," and that a prosecutor could "simply choos[e] not to file

an information in the juvenile court where an offender is about to celebrate his or her eighteenth birthday." See Petition for Review at 8. It is well-established that a prosecutor who improperly delays the filing of a case, resulting in the loss of juvenile court jurisdiction, runs the risk that the case will be dismissed, barring prosecution in any court. When a delay in filing a case results in a loss of juvenile court jurisdiction, the court presumes prejudice. Dixon, 114 Wn.2d at 860-61. A deliberate delay by the State to circumvent the juvenile justice system violates due process. Dixon, 114 Wn.2d at 865; Lidge, 111 Wn.2d at 848. Even a negligent delay may support dismissal of the case. State v. Frazier, 82 Wn. App. 576, 918 P.2d 964 (1996).

The superior court's interpretation in this case has the odd and unintended effect of providing the possibility of extended juvenile court jurisdiction for a select class of individuals -- those who are arrested, detained and subject to probable cause hearings. If Dion had not immediately been caught, she would not have been in a position to have juvenile court jurisdiction extended. Similarly, after her initial arrest, had the police released her to her parents, she never would have had a probable cause hearing before her

18<sup>th</sup> birthday.<sup>9</sup> The more serious offenders, who happen to be apprehended, are those who potentially stand to benefit if Dion's interpretation of RCW 13.40.300(1)(a) is accepted. Instead, this Court should adopt and affirm the well-reasoned decision of the Court of Appeals.

**D. CONCLUSION**

For all the foregoing reasons, this Court should affirm the Court of Appeals' decision in this case.

DATED this 2<sup>nd</sup> day of February, 2007.

Respectfully submitted,

NORM MALENG  
King County Prosecuting Attorney

By:   
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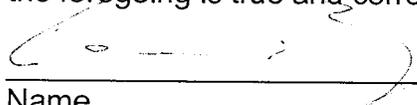
<sup>9</sup> The police do not book every juvenile arrested for an offense into the detention facility. For example, the King County juvenile detention facility has documented intake criteria, based upon the possible charge and past history, that must be satisfied before it will accept a juvenile arrested by the police. See King County Superior Court Juvenile Detention Intake Criteria, available at [www.metrokc.gov/kcsc/juv/detention\\_criteria.htm](http://www.metrokc.gov/kcsc/juv/detention_criteria.htm) (last visited January 30, 2007). Here, had Dion not assaulted the loss prevention officer and, instead, been arrested only for theft, she would not have satisfied this criteria.

Certificate of Service by Mail

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Today I deposited in the mail of the United States of America postage 2001 FEB 5 P 2:44  
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  
Supplemental Brief of Respondent, in STATE V. MITIA DION, Cause No.  
78606-2, in the Supreme Court 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

  
\_\_\_\_\_  
Date