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THE SUPREME COURT  
OF THE STATE OF WASHINGTON

Supreme Court Case No. 97071-8

Court of Appeals Division III Case No. 359662

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STATE OF WASHINGTON,  
Respondent,

v.

STEVENS COUNTY DISTRICT COURT JUDGE,  
Petitioner.

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**SUPPLEMENTAL BRIEFING OF THE STATE OF WASHINGTON**

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## I. STATEMENT OF THE CASE

Petitioner to the Court of Appeals was the State of Washington (hereinafter the “State”). Respondent to the Court of Appeals was the Stevens County District Court Judge, a judge in a court of limited jurisdiction, by and through Judge Gina Tveit (hereinafter “District Court” or “District Court Judge”). Petitioner to this Court is the District Court Judge. Respondent to this Court is the State.

On January 29, 2018, the Stevens County Superior Court (hereinafter the “Superior Court” or “Superior Court Judge”), through its Administrator, Evelyn Bell, ordered that all in-custody first appearances for Stevens County Superior Court and District Court criminal cases would be heard by the Superior Court in a Superior Courtroom at noon, on Monday through Friday. CP 002, 008.

In-custody first appearances in this combined format were set to commence in the Superior Courtroom on February 5, 2018. CP 002. The procedure ordered by the Superior Court was that, from Monday through Friday, a Superior Court Judge or Commissioner would hear all in-custody first appearances for all crimes, including misdemeanors and gross misdemeanors. CP 002. The Superior Court Judge and Commissioner reviewed the allegations for probable cause and determined release

conditions for each defendant. CP 002.

The procedure would mean that the judicial official determining probable cause would review and sign a “Rule 3.2 Hearing Order Conditions of Release” (hereinafter “3.2 Hearing Order”). CP 002, 012-014. The 3.2 Hearing Order used by the Superior Court was the same order used by the District Court. CP 002. The intended result was that the 3.2 Hearing Order would be signed by a Superior Court Judge or Commissioner and filed in the District Court Clerk’s Office. CP 002. The misdemeanor or gross misdemeanor criminal case was then supposed to proceed in the same manner as all other misdemeanor or gross misdemeanor criminal cases filed in District Court. CP 002.

On February 2, 2018, the Stevens County District Court Judge, Gina Tveit, ordered the Stevens County District Court, clerked by Nadine Borders, to refuse to file all orders “...in a District Court case unless it has been signed by a District Court Judge or District Court Judge pro tem.” CP 002, 010.

The State filed its Verified Petition for Writ of Mandamus against the District Court Judge on February 8, 2018, in Stevens County Case No. 18-2-00062-7. CP 001. The Petition for Writ of Mandamus was in direct response to the District Court Judge’s refusal to file any document signed by a Superior Court Judge or Commissioner. CP 001-014. The Honorable Patrick

A. Monasmith and the Honorable Jessica T. Reeves, Superior Court Judges, recused themselves. CP 068, 071. The Honorable John F. Strohmaier, Lincoln County Superior Court Judge, was appointed *nunc pro tunc* to preside over the writ proceedings. CP 070.

On February 8, 2018, Judge Strohmaier granted an Alternative Writ of Mandamus, commanding the District Court Judge to, among other things, order the Clerk of District Court to accept for filing district court documents signed by a Superior Court Judge or Commissioner. CP 062-063. The Alternative Writ of Mandamus, Verified Petition for Writ of Mandamus (hereinafter “Petition for Writ of Mandamus”), Memorandum in Support of Writ of Mandamus, and Affidavit for Writ of Mandamus were served personally on District Court Judge on February 8, 2018. CP 064-067.

The District Court Judge refused to do as the Alternative Writ commanded. CP 072-121. The District Court Judge refused to file any 3.2 Hearing Orders signed by a Superior Court Judge, including a 3.2 Hearing Order pertaining to a Mr. Carl McCrea. CP 072-119.

The District Court Judge appeared and claimed in her Answer to Writ of Mandamus, “that there is not a single instance in which an order of a Superior Court judge was ever filed in District Court except when that Superior Court judge was acting as a judge pro-tempore of the district court or was acting in the capacity of an appellate court on matters appealed from

the District Court to the superior Court,” but was unable to provide any evidence of her claim. CP 129-36. In fact, the evidence was quite to the contrary; the District Court Judge had permitted the filing of 3.2 Hearing Orders signed by a Stevens County Superior Court Judge. CP 072-114.

In July of 2016, Mr. Carl McCrea was charged with Assault 4<sup>th</sup> Degree—Domestic Violence and appeared before Superior Court Judge Monasmith. CP072-114. The Superior Court entered a 3.2 Hearing Order and Domestic Violence No-Contact Orders. CP 072-114. The orders were filed by the District Court and Superior Court Judge Monasmith was not acting as judge *pro-tempore* of the District Court. CP 072-114.

Over one year later, on February 9, 2018, Mr. McCrea appeared yet again before the Superior Court, in-custody, and yet again charged with Assault 4<sup>th</sup> Degree—Domestic Violence. CP072-114. Once again, a 3.2 Hearing Order and Domestic Violence No-Contact Orders were entered. CP 072-114. This time, the District Court Judge refused to file the 3.2 Hearing Order and Domestic Violence No-Contact Orders. CP 072-114, 117-19.

On February 9, 2018, Stevens County Deputy Prosecuting Attorney Erika George was requested to appear in District Court to cover a special hearing. CP 117. The hearing was for release conditions for Mr. McCrea. CP 117. The hearing had been specially set by the District Court, in spite of the fact that the Superior Court had already held Mr. McCrea’s in-custody

first appearance and had ordered his release. CP 117. In fact, the Superior Court entered a 3.2 Hearing Order which required the Stevens County Jail to release Mr. McCrea. CP 120-121.

Prior to the hearing, Ms. Nadine Borders, the District Court Clerk, called the Stevens County Jail Commander, Mr. Loren Hartman, asking Commander Hartman to ignore the Superior Court's order and hold Mr. McCrea in custody until he could be seen by a District Court Judge. CP 121. Ms. George appeared in District Court and was advised by District Court Judge *Pro Tempore* Nichols that the District Court would not honor the 3.2 Hearing Order. CP 118. Not only would the District Court not honor the 3.2 Hearing Order, it would refuse to process the Domestic Violence No-Contact Order signed by the Superior Court, thereby leaving alleged victims without legal protection. CP 118. The sworn affidavits and declarations containing the above-cited facts were personally served on the District Court Judge on February 14, 2018. CP 122-25.

Hearing on the Petition for Writ of Mandamus was held on February 28, 2018, before the Honorable John Strohmaier. RP 3. On March 7, 2018, Judge John Strohmaier denied the grant of a peremptory writ of mandamus. CP 172-78. The State moved for reconsideration on March 16, 2018. CP 179-83. Judge Strohmaier summarily denied reconsideration on March 26, 2018. CP 184-85.

The State appealed to the Court of Appeals, Division III. The Court of Appeals reversed Judge Strohmaier and held that the District Court Judge did not have the authority to deny the filing of preliminary appearance orders signed by a Superior Court Judge. State of Washington v. Stevens County District Court Judge, 7 Wash.App.2d 927, 436 P.3d 430 (Div. III, 2019).

The District Court Judge sought review by this Court. The State responded by pointing out that the District Court Judge did not comply with WA RAP 13.4(b). The District Court Judge then filed Respondent's Motion for Leave to File Amended Petition for Review by The Supreme Court (hereinafter "Motion"). This Court permitted the District Court Judge to file her proposed amended petition for review. The District Court Judge filed Petitioner's Amended Petition for Review by The Supreme Court of Washington (hereinafter "Amended Petition") on April 19, 2019.

This Court granted the Amended Petition on July 10, 2019, and permitted supplemental briefing on the issues.

## II. ARGUMENT

### **1. THE STEVENS COUNTY DISTRICT COURT HAD NO LEGAL AUTHORITY TO REFUSE TO FILE THE PRELIMINARY APPEARANCE ORDERS OF THE SUPERIOR COURT.**

The District Court Judge's refusal to file 3.2 Hearing Orders, signed by a Superior Court Judge or Commissioner, is patently unconstitutional.

The Washington State Constitution explicitly denies district courts exclusive jurisdiction over misdemeanors and gross misdemeanors: “*Provided*, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns.” Article IV, § 10 (emphasis in original) (error in original).

“The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court....” Article IV, § 6. Superior courts also have power to issue writs of mandamus. Id. “The superior court shall have original jurisdiction in...all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law....” Id.

The statutory scheme regarding jurisdiction of the superior and district courts is substantially the same. RCW 2.08.010 is a mirror of Article IV, § 6, and states, “[t]he superior court shall have original jurisdiction in...all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court....”

“Unlike the inferior courts, the jurisdiction of the superior court is established by the state constitution and it extends to all misdemeanors unless otherwise provided by law.” State v. Davidson, 26 Wash.App. 623, 627, 613 P.2d 564, 566 (Div. I, 1980) (citing Const. art. IV, § 6); See also

State v. Fields, 85 Wash.2d 126, 530 P.2d 284 (1975). Superior court jurisdiction flows from a constitutional mandate and gives the superior courts universal original jurisdiction. See Ledgerwood v. Lansdowne, 120 Wn.App. 414, 419, 85 P.3d 950 (Div. III, 2004).

Jurisdiction is a fundamental building block of the law. See ZDI Gaming Inc. v. State ex rel. Washington State Gambling Comm'n, 173 Wash.2d 608, 616, 268 P.3d 929, 933 (2012). “Our state constitution uses the term ‘jurisdiction’ to describe the fundamental power of courts to act. Id. “Our constitution defines the **irreducible** jurisdiction of the supreme and superior courts. It also defines and confines the power of the legislature to either create or limit jurisdiction.” Id. (emphasis added) (See also Wash. Const. art. IV, § 4 (defining the power of the Washington Supreme Court), § 6 (defining the power of the superior courts), § 30(2) (explicitly giving the legislature the power to provide for jurisdiction of the court of appeals)). “Superior courts have original jurisdiction in the categories of cases listed in the constitution, which the legislature cannot take away.” Id. “As we ruled long ago, ‘Any legislation, therefore, the purpose or effect of which is to divest, in whole or in part, a constitutional court of its constitutional powers, is void as being an encroachment by the legislative department upon the judicial department.’” Id. (quoting

Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 63 P.2d 397, 415, 63 P.2d 397 (1936)).

The Stevens County District Court is a court of limited jurisdiction, not original jurisdiction. “The jurisdiction of courts of limited jurisdiction must clearly appear in a statute.” State v. Davidson, 26 Wash.App. at 626. RCW 3.66.060 provides for the criminal jurisdiction of district courts: “The district court shall have jurisdiction: (1) Concurrent with the superior court of all misdemeanors and gross misdemeanors committed in their respective counties and of all violations of city ordinances....” Neither state statute nor the Washington Constitution confers any further criminal jurisdiction on the district courts. More importantly, any statute that would purport to confer criminal jurisdiction to the district courts at the expense of our superior courts is in instant contravention of the Washington Constitution.

Superior court jurisdiction over criminal cases is original, which means that it flows from a constitutional mandate and is undeniably superior to that of the district court. The Superior Court has original jurisdiction and needs no authorization to hear in-custody first appearances. The issue is not where a file is located or where a charge is filed; the issue is whether the Superior Court has jurisdiction to hear in-custody first appearances on misdemeanor and gross misdemeanor cases. The question in

this case begins and ends with jurisdiction, not location of a particular file or in which court the charges were first filed.

In State v. Werner, the Washington Supreme Court held that the question is always jurisdiction, not where a case was filed. In Werner, a superior court judge sitting as a juvenile court judge, granted an arrest warrant for an individual who was not a juvenile. State v. Werner, 129 Wash.2d 485, 918 P.2d 916 (1996). The superior court found that it erred when it issued an arrest warrant for an adult. Id. at 491. The superior court concluded that in order to have legally issued the arrest warrant, it should have issued the arrest warrant under a superior court case caption, not a juvenile court case caption. Id. The Court of Appeals upheld and the Supreme Court reversed:

We believe the trial court and the Court of Appeals were **too narrow in their focus**. In looking only at RCW 13.04.030, the statutory conferral of “exclusive original jurisdiction over all proceedings” by the Legislature on the juvenile court, both courts overlooked a more fundamental authority. **Superior court jurisdiction flows from constitutional mandate.**

Id. at 492 (emphasis added) (quotation marks in original). “Jurisdiction means the power to hear and determine.” Id. at 493. “In order to acquire complete jurisdiction, so as to be authorized to hear and determine a cause or proceeding, the court necessarily must have jurisdiction of the parties thereto and of the subject matter involved.” Id. “There are in general three

jurisdictional elements in every valid judgment, namely, jurisdiction of the subject matter, jurisdiction of the person, and the power or authority to render the particular judgment.” Id. (see also ZDI Gaming, Inc., 173 Wash.2d at 616-19).

The District Court Judge claims that the Superior Court, “...usurped the jurisdiction of the District Court, which was created by the Legislature based upon Wash. Const. Art. IV, § 12.” Amended Petition at 6. However, the District Court Judge acknowledges that “District Courts are created by statute.” Amended Petition at 8. It is axiomatic that it is impossible for a superior court to usurp power when that power originates within it.

## **2. THE COURT OF APPEALS PROPERLY LOOKED TO AND ANALYZED THE PRIORITY OF ACTION DOCTRINE IN ITS DECISION.**

The District Court Judge takes issue with two aspects of the Court of Appeals’ analysis of the Priority of Action Doctrine (hereinafter “the Doctrine”).

First, in examining and declining to apply the Doctrine as a bar to the exercise of concurrent jurisdiction, the Court of Appeals decided the case by avoiding the underlying constitutional issue and the direct confrontation of superiority of criminal jurisdiction. Instead of creating and deciding a showdown of two constitutional provisions, Article IV, § 6

and Article IV § 10, the Court of Appeals decided the issue on rules of procedure and upon caselaw developed “[t]o guard against misuse of concurrent jurisdiction....” State of Washington v. Stevens County District Court Judge, 7 Wn.App.2d 927, 933-34, 436 P.3d 430, 434 (Div. III, 2019).

The Doctrine generally provides, “the court which first gains jurisdiction of a cause retains the exclusive authority to deal with the action until the controversy is resolved.” Id. The Doctrine is embodied in our State’s court rules. Id. at 934 (citing WA CrRLJ 5.3 (refereeing priority to try the case)). The Court of Appeals analogized the facts in this case to cases involving issuance of search warrants. Id. More specifically, the Court of Appeals decided the inapplicability of the Doctrine by examining caselaw, thereby avoiding the temptation to first turn to a potential constitutional showdown. In its reliance on caselaw, court rules, and interpretation of the Doctrine, the Court of Appeals deftly avoided deeper constitutional conflict.

Second, the Court of Appeals concluded that a preliminary appearance was not a critical stage in a criminal case. The marrow of the Court of Appeals’ decision is that in absence of the applicability of the Doctrine, there is nothing that would bar the Superior Court from exercising its concurrent original jurisdiction over preliminary appearances.

The District Court Judge claims error because “[t]he issuance of search warrants by the District Court in Superior Court cases are specifically authorized by statute. Preliminary appearances have no similar authorization.” Amended Petition for Review at 10. The District Court Judge once again confuses the inherently different power sources of our superior and district courts with the statutorily guided exercise of concurrent jurisdiction. The Court of Appeals used the issuance of search warrants as an analogy of when the Doctrine does not operate to bar exercise of concurrent jurisdiction, not as a statutory grant of authority.

The District Court Judge’s position is that the Doctrine **always** applies and that there can never be exercise of concurrent jurisdiction by a superior court once an action is filed in a district court. Amended Petition for Review at 13. That position is, as argued *infra*, contrary to the framework established by this Court for the exercise of concurrent jurisdiction. The Court of Appeals rightly concluded that the District Court Judge’s position is legally erroneous.

**3. THE RULES CREATED BY THIS COURT EMBODY THE PROPER EXERCISE OF CONCURRENT JURISDICTION.**

This Court has created a framework for superior courts and district courts to administer justice in criminal cases. The framework is embodied in Washington Criminal Rules of Limited Jurisdiction (hereinafter “Rules of

Limited Jurisdiction”) and the Washington Criminal Rules (hereinafter “Criminal Rules”).

It is surely not by accident that the myriad of rules applicable for each court appear to work together, such that there is continuity of purpose and reflection of constitutional, statutory, and jurisprudential commands. That continuity does not lend itself to a district court refusing to honor and recognize the orders of a superior court. Thus, not only does the district court’s refusal contradict well-settled law, it disrupts the machinery that allows our courts to function in an expedient and effective manner.

One need look no further than WA CrR 1.2 and WA ARLJ 2, for guidance on how the court rules provide the mesh of procedure. “These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expense and delay.” WA CrR 1.2. It should be no surprise that WA CrRLJ 1.2 is identical. Turning to rules of administration, “[t]hese rules shall govern the procedure of civil, criminal, and infraction cases in **all courts of limited jurisdiction inferior to the superior court**. They shall be construed to secure the just, speedy, and inexpensive determination of every action....” WA ARLJ 2 (emphasis added).

This Case concerns first appearances and first appearances only. There are clearly defined rules in place. WA CrRLJ 3.2, 3.2.1 & WA CrR 3.2, 3.2.1. This Court has specifically addressed how and when first appearances should occur. See *exempli gratia* WA CrRLJ 3.2 (“If the court does not find, or a court has not found, probable cause, the accused shall be released without conditions.”); WA CrRLJ 3.2.1 (“Unless an accused has appeared **or will** appear before the superior court for a preliminary appearance, any accused detained in jail must be brought before a court of limited jurisdiction.....”) (emphasis added); WA CrR 3.2 (“If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.”); and WA CrR 3.2.1 (“Unless a defendant has appeared or will appear before a court of limited jurisdiction for a preliminary appearance pursuant to CrRLJ 3.2.1(a), any defendant whether detained in jail or subject to court-authorized conditions of release shall be brought before the superior court as soon as practicable.....”).

When the Constitution provides the grant of jurisdiction and our court rules provide the mechanism by which a defendant may appear in **either** court, without one court losing jurisdiction, then the path is clear and the District Court Judge’s obligations were clear.

To be sure, court rules do not answer the question of jurisdiction; they set out the procedural framework of how the jurisdiction is exercised.

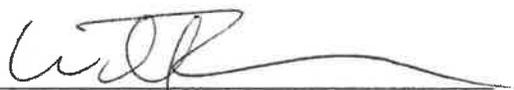
If a superior court wants to hold first appearances for misdemeanor and gross misdemeanors filed in district court, it has the jurisdiction; it has the authority. Just **how** the superior court goes about exercising that jurisdiction is controlled by the procedural rules.

The District Court Judge's refusal to honor orders signed by a Superior Court Judge disregarded the framework clearly laid out before her.

### III. CONCLUSION

This Court should affirm the decision of the Court of Appeals. The District Court Judge's refusal to honor orders signed by the Superior Court Judges violates the Washington Constitution, caselaw, and the very framework of the administration of justice.

Dated this 9th day of August, 2019.



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**Affidavit of Certification**

I certify under penalty of perjury under the laws of the State of Washington, that I electronically filed a true and correct copy of the Supplemental Briefing of Respondent to the Supreme Court of the State of Washington, and e-mailed a true and correct copy to Jerry Moberg at [jmoberg@jmlawps.com](mailto:jmoberg@jmlawps.com) and James Baker at [jbaker@jmlawps.com](mailto:jbaker@jmlawps.com) on August 9, 2019.



Michele Lembcke, Legal Assistant  
for Will Ferguson

# STEVENS COUNTY PROSECUTOR'S OFFICE

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