Supreme Court No. ___
COA No. 59042-5-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

STEPHEN A. TAYLOR,

Petitioner.

PETITION FOR REVIEW

On Appeal From Pacific County Superior Court
The Hon. Donald Richter, Presiding

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A. IDENTITY OF PETITIONER

Stephen Aaron Taylor, the petitioner, asks this Court to accept review of the Court of Appeals' decision terminating review set out in Section B, *infra*.

B. COURT OF APPEALS' DECISION

Mr. Taylor seeks review of the unpublished opinion of the Court of Appeals, Division Two, in *State of Washington v. Stephen Aaron Taylor*, COA No. 59042-5-II, issued on May 20, 2025, attached in the Appendix.

C. ISSUES PRESENTED FOR REVIEW

1. Rules for Appeal of Decisions of Courts of Limited Jurisdictions ("RALJ") 2.2(c) sets out limited circumstances in which the State can appeal a criminal case originating in a court of limited jurisdiction.

a. Does RALJ 2.2(c) allow the State to appeal the denial of its own motion to dismiss a criminal charge without prejudice?

b. If, after a court denies a State's motion to dismiss, the defendant pleads guilty and is sentenced and the State fails to object to or appeal the final judgment, is the State's appeal of the earlier interlocutory order moot?

c. Can the State appeal an interlocutory order if the relief it seeks would violate statutory or constitutional provisions against double jeopardy?

2. The district court determined that the State withheld material evidence from Mr. Taylor in bad faith, thus interfering with his ability to plead guilty at arraignment. CP 52-55. Given the district court's authority to grant or deny a motion to dismiss, did it properly exercise its discretion when denying the State's motion?

3. The State has argued in this case both that district courts are not "constitutional courts" and that superior courts can decide appeals filed in violation of the RALJ rules. Where the prosecuting attorney of Pacific County makes such arguments,

should this Court accept review as a matter of substantial public interest?

D. STATEMENT OF THE CASE

By criminal citation filed in North District Court, Pacific County, No. 3A0328879, on May 3, 2023, the State charged Stephen Taylor with domestic violence assault in the fourth degree (RCW 9A.36.041). The State alleged that Taylor shoved his spouse into a wall during an argument. CP 11-18. Mr. Taylor had been booked into jail, but the district court judge (the Hon. Scott Harmer) released Taylor from custody on conditions and ordered him to appear for arraignment on May 9, 2023. 1-RP-5-9. Mr. Taylor obtained counsel and entered a "not guilty" plea at the arraignment. 1-RP-10-17.

Judge Harmer subsequently found, without contest by the State, that by May 5, 2023, the State had received x-ray evidence that arguably would support a felony charge of second degree assault (RCW 9A.36.021), but the State did not provide it to

Taylor's counsel. Finding of Fact ("FF") 3, CP 53. Also on May 5th, the State prepared, but did not file, a felony information. FF 2, CP 52. Judge Harmer would later conclude that the State withheld the x-ray evidence in "bad faith" and that Mr. Taylor entered his "not guilty" plea at the district court arraignment without knowledge either of the new evidence or of the State's plan to file a felony charge. Conclusions of Law ("CL") 11-13, CP 54.

A few hours after Mr. Taylor entered a "not guilty" plea at the district court arraignment, the State filed felony assault charges in superior court, summoning Mr. Taylor to appear on May 19, 2023. CP 29-30, 32. The State mailed the summons to Taylor at the address that he was barred from going to due to the no-contact order, and Taylor's attorney only found out about the felony charge by chance. CP 24. The felony arraignment was continued until June 2, 2023. CP 24-25, 53.

On May 22, 2023, the State asked the district court to dismiss the fourth degree assault charge without prejudice, stating that it was "by agreement of counsel." FF 7, CP 53.[1] The next day, in court, defense counsel indicated that he did not agree to the motion, never agreed to the entry of an order, and objected to dismissal. Counsel asked the court to allow Taylor to withdraw the plea of "not guilty" and to plead guilty to the gross misdemeanor. CP 22-27; 1-RP-18-28.

Judge Harmer heard argument on the competing motions -- the oral motion to dismiss and a written motion to plead guilty to fourth degree assault (CP 19-43) -- on June 13, 2023. Judge Harmer denied the State's motion to dismiss and ruled that Mr.

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[1] The initial motion does not appear to have been filed in writing into the record, the only written motion to dismiss being filed on June 16, 2023. CP 44; *see also* CP 97 (State notes it renewed its motion in writing). The State apparently orally stated that it was trying to schedule the May 23, 2023, hearing as an "agreed motion" when it was not in fact agreed. *See* 1-RP-18-19 (state apologizes if it "misinformed the court" regarding defense agreement).

Taylor had a right to plead guilty in district court. 1-RP-39-42. Judge Harmer later entered written findings and conclusions that the State had acted in bad faith when not informing Taylor's attorney of the evidence of a broken bone that was in its possession before the district court arraignment. CP 52-55.[2]

On June 16, 2023, the State moved for reconsideration, CP 44-45, which Taylor opposed on both substantive grounds and procedural grounds. CP 47-51. On June 27, 2023, Judge Harmer denied reconsideration. 1-RP-44-57.

Immediately after the denial of reconsideration Mr. Taylor pled guilty to fourth degree assault. The State's only asserted objection to the guilty plea was the wording of the defendant's statement as it related to self-defense and the offensiveness of the contact. 1-RP-58-59. The court went through the plea colloquy,

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[2] *See* CL 11, CP 54 ("The State willfully withheld evidence from the defendant and such withholding was done in bad faith.").

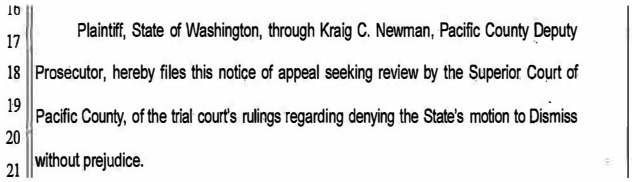
accepted the guilty plea, and found Mr. Taylor guilty, without objection by the State. 1-RP-59-62; CP 124-131. Sentencing was set over until July 17, 2023.

On that date, Judge Harmer formally entered written findings of fact regarding the State's motion to dismiss. CP 52-55. The State did not object to any of the findings ("I am not objecting to entry of these findings."). 1-RP-64.

The parties proceeded to sentencing. The State did not object to sentencing. After hearing from the victim, who opposed felony charges, Judge Harmer imposed 364 days in custody, with 363 days suspended, credit for the one day served, and probation. Without objection by the State, the court entered the final judgment and sentence. 1-RP-65-82; 1-CP-123, 132-136.[3]

[3] In the clerk's papers, the judgment's first page is separated from the remaining pages.

After sentencing, the State filed a notice of appeal seeking review only of the district court's "rulings regarding the denying the State's motion to Dismiss without prejudice":



Plaintiff, State of Washington, through Kraig C. Newman, Pacific County Deputy Prosecutor, hereby files this notice of appeal seeking review by the Superior Court of Pacific County, of the trial court's rulings regarding denying the State's motion to Dismiss without prejudice.

CP 2. The State did not appeal the final judgment or the guilty finding. *Id.*

On RALJ review, the briefing revolved around the State's power to move to dismiss a case in district court and whether the State violated any discovery rules when not disclosing the x-ray evidence. CP 95-100, 101-110.

On October 27, 2023, the superior court judge (the Hon. Donald Richter) orally stated he would reverse, but did not enter a written order. The State was to draft the final order. 2-RP-109-111. When Mr. Taylor's counsel asked when the judge's order

would become final, Judge Richter ruled: "It would be final on the -- on the signing of the order." 2-RP-111.

On November 7, 2023, before the final RALJ order was entered, Mr. Taylor filed a motion to dismiss the State's appeal on jurisdictional grounds because it was not authorized by RALJ 2.2(c). CP 114-138. The State opposed this motion. CP 141-143.

On November 14, 2023, Judge Richter orally ruled that there was no "mechanism" that existed so that he could reconsider his oral ruling, questioning even whether such a procedure existed in the Court of Appeals. He suggested that Mr. Taylor raise the issue in a motion for discretionary review or a Personal Restraint Petition. 2-RP-113-118.

On November 17, 2023, Judge Richter entered a written order reversing the district court on the dismissal issue, again ruling that there was no "legal mechanism" to hear the motion

regarding jurisdiction after an oral ruling but before entry of the final RALJ decision. CP 145-46.[4]

Mr. Taylor filed a notice for discretionary review. CP 148-151. Court of Appeals Commissioner Bearse granted review under RAP 2.3(d)(2), finding the State's arguments "somewhat circular" and noting that the State never addressed whether there was authority to appeal an interlocutory order denying a motion to dismiss. *Ruling Granting Discretionary Review*, February 13, 2024 at 5.

On May 20, 2025, Division Two affirmed the superior court. Mr. Taylor seeks review in this Court.

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[4] Taylor challenged this ruling in the Court of Appeals, Opening Brief of Petitioner at 38-41, but the Court of Appeals did not address it. Slip Op. at 9.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. *Introduction*

After the district court found the State acted in bad faith, it properly denied the State's motion to dismiss without prejudice. Contrary to the State's argument, the district court acted within its constitutional power to enter this order.

Mr. Taylor then pled guilty to a gross misdemeanor, and the court sentenced him. The State did not object to the acceptance of the guilty plea, failed to object to the sentencing and then did not appeal the final judgment. Rather, it appealed the order denying its motion to dismiss, an interlocutory order, not listed in the exclusive list of orders that the State can appeal under RALJ 2.2(c). Having appealed the wrong order, there was no authority for the superior court to issue an order of reversal, and the constitutional power of the superior court does not extend to entertain appeals filed in violation of this Court's rules.

The Court of Appeals incorrectly applied this Court's precedent to hold that the appeal of an order denying a motion to dismiss was a final order. It ignored the district court's findings of bad faith when it acted within its discretion to deny the State's dismissal motion. The Court of Appeals erroneously concluded that a plea of not guilty in a criminal case can be made without full information.

Review is proper under RAP 13.4(b)(1) and (2) because of the conflict between the Court of Appeals' decision and the precedent of this Court and the Court of Appeals. Review is proper under RAP 13.4(b)(3) both because of the constitutional issues involved in Mr. Taylor's initial plea to the gross misdemeanor and because of double jeopardy.

Finally, review is proper under RAP 13.4(b)(4) because of issues of substantial interest. Although not mentioned in the Court of Appeals' opinion, the State's argument previously in this case is that a district court does not have constitutional authority

and thus must defer to the will of the prosecuting attorney. Furthermore, the State argued that the superior court's constitutional authority meant that it could entertain appeals despite the lack of jurisdiction set out in this Court's rules. If the prosecuting attorney of Pacific County makes these arguments and the Court of Appeals does not mention and reject them, this Court needs to step in and make it crystal clear that district courts have constitutional powers and superior courts cannot ignore the rules and do whatever they want to do.

2. *The State Appealed the Wrong Order*

The State does not have either a constitutional or statutory right to appeal. RALJ 2.2(c) controls the State's ability to appeal in a criminal case originating in a court of limited jurisdiction. Like RAP 2.2(b), the rule "sets out an exclusive list of orders from which the State may appeal and limits even that list with the qualifier, 'only if the appeal will not place the defendant in

double jeopardy.'" *State v. Waller*, 197 Wn.2d 218, 225, 481 P.3d 515 (2021) (quoting RAP 2.2(b)).

RALJ 2.2(c)(2)-(4) do not apply in this case as those sections address the grant of a new trial, the arrest or vacation of a judgment, or suppression of evidence. The only basis for the State's appeal here could be RALJ 2.2(c)(1), involving final orders:

> (1) Final Decision, Except Not Guilty. A decision which in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing a complaint or citation and notice to appear, or a decision granting a motion to dismiss under CrRLJ 8.3(c).

In this case, the district court's order denying the motion to dismiss was not a final decision. It did not abate, determine, dismiss or discontinue the case. The order had the opposite effect and allowed the case to continue, such that Mr. Taylor pled guilty and was then sentenced for the charged offense.

In *State v. Taylor*, 150 Wn.2d 599, 80 P.3d 605 (2003), this Court held that a defendant could not appeal an order granting a State's motion to dismiss without prejudice because it was not a final order that ended the litigation. *Id*. at 601-04. "In a criminal proceeding, a final judgment 'ends the litigation, leaving nothing for the court to do but execute the judgment.'" *Id*. at 602 (quoting *In re Det. of Petersen*, 138 Wn.2d 70, 88, 980 P.2d 1204 (1999) (cleaned up)).[5]

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[5] *See also State v. Smith*, 117 Wn.2d 263, 270, 814 P.2d 652 (1991) ("As this court has stated many times, unless authorized by statute, the State may not appeal an order that does not abate or determine an action.") (citing cases); *State v. Siglea*, 196 Wash. 283, 285, 82 P.2d 583 (1938) ("As a prerequisite to an appeal in a criminal case, there must be a final judgment terminating the prosecution of the accused and disposing of all matters submitted to the court for its consideration and determination."); *State v. Liliopoulos*, 165 Wash. 197, 199, 5 P.2d 319 (1931) ("We agree that a final judgment is a prerequisite to an appeal. The judgment was final. It terminated the prosecution of the appellant by the state.").

In contrast, RALJ 2.2(c)(1) specifically authorizes the State to appeal "a decision *granting* a motion to dismiss under CrRLJ 8.3(c)." Emphasis added. This leads to the conclusion that there is a lack of authorization to appeal the *denial* of a motion to dismiss under CrRLJ 8.3(a) under the doctrine of *expressio unius est exclusio alterius. Magney v. Truc Pham*, 195 Wn.2d 795, 803, 466 P.3d 1077 (2020).

The Court of Appeals held that the order denying the dismissal motion "effectively determined the fourth degree assault case" by allowing Mr. Taylor to plead guilty. Slip Op. at 8 "And it was clear that the State intended to review the decision that terminated its case." *Id.* This is incorrect.

First, the trial judge's order did not "effectively determine" the fourth degree assault case because even though Mr. Taylor could then change his plea to "guilty," that was not the end of the matter. While it might be unusual in this situation, legally, the court had the power to reject Mr. Taylor's guilty plea. This might

be based on the fact that the plea was not knowing and voluntary. *See State v. Ford*, 125 Wn.2d 919, 924-25, 891 P.2d 712 (1995) (court could reject guilty plea without full discovery: "The court is part of the proceeding and is not a potted-palm functionary, with only the attorneys having a defined purpose."). A court also has the duty to insure the plea agreement is not based on fraud or misrepresentation. *See State v. Schaupp*, 111 Wn.2d 34, 39, 757 P.2d 970 (1988) (court is not "bound by a plea agreement procured through fraud or misrepresentation."), *superseded by statute as stated in State v. Barber*, 152 Wn. App. 223, 228, 217 P.3d 346 (2009), *aff'd* 170 Wn.2d 854, 248 P.3d 494 (2011). *See also* RCW 9.94A.431(1) ("The court, at the time of the plea, shall determine if the agreement is consistent with the interests of justice and with the prosecuting standards.").[6]

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[6] A divided panel in Division Three recently held that a judge's personal disagreement with the terms of a plea agreement was not a basis for rejecting a plea bargain.

(continued...)

Moreover, even the acceptance of a guilty plea is not a final order listed in RALJ 2.2 that can be appealed since it does not "end the litigation." *State v. Taylor*, 150 Wn.2d at 601 (cleaned up).[7] Under the Court of Appeals' reasoning every defendant who is found guilty could file a direct appeal even though they have not yet been sentenced. That is simply not correct.

As for the conclusion that the State intended to review the decision that terminated its case, Slip Op. at 8, the first problem

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[6](...continued)
Compare State v. Westwood, 10 Wn. App. 2d 543, 553, 448 P.3d 771 (2019) ("[T]he trial court here was no longer authorized to reject Mr. Westwood's plea based on disagreement with the terms of the plea agreement.") with *id*. at 561-62 (Korsmo, J., dissenting) (after arraignment, defendant "needed the trial court's consent to change that plea, just as the prosecutor needed the trial court's consent to amend the charging document. The trial court did not abuse its discretion when it declined to offer its consent.").

[7] This Court has made an exception to this rule for those who are convicted after a contested trial and receive a deferred sentence, but the right to appeal a guilty without a final judgment was based on the constitutional right to appeal in article I, section 22. *State v. McDonald*, 74 Wn.2d 563, 564, 445 P.2d 635 (1968).

is whatever the State may have "intended," it did not appeal the final judgment. Its notice of appeal designated (pursuant to RALJ 2.6(a)) the decision the Stated wanted reviewed and only specified the order denying the dismissal motion. CP 2.

RALJ 9.1(d) limits a court's ability to review orders not set out in the notice of appeal. While appeals of final judgments may sometimes bring up for review prior orders, *see Fox v. Sunmaster Prod., Inc.*, 115 Wn.2d 498, 505, 798 P.2d 808 (1990), the Court of Appeals cited no case allowing an appeal of an earlier interlocutory order to bring up for review a later final judgment.

This Court has repeatedly barred the State from appealing where it seeks review of the "wrong" order, making the appeal moot. *State v. Cruz*, 189 Wn.2d 588, 597, 404 P.3d 70 (2017) (appeal of suppression order, rather than dismissal order); *State v. Pam*, 101 Wn.2d 507, 510-11, 680 P.2d 762 (1984) (State appealed privilege ruling, but not dismissal); *State v. Fortun*, 94

Wn.2d 754, 756-57, 626 P.2d 504 (1980) (per curiam) (state appealed suppression order, but not dismissal order).

The Court of Appeals attempted to distinguish *Cruz*, stating "the State did object to the district court accepting Taylor's plea. And, as stated above, the order effectively ended the State's case." Slip Op. at 8. However, not only does that not excuse the State designating the wrong order in its notice of appeal, but the State did not object to the district court accepting the plea – the only asserted objection was to the wording of the defendant's statement. 1-RP-58-59. Then, there was no objection to sentencing or the entry of a final judgment. 1-RP-65-82.[8]

[8] The Court of Appeals, while acknowledging it was better practice for the State to renew it objections, ruled that here "continual objections were not required." Slip Op. at 9. Yet, this Court has held that even if there is an interlocutory ruling, a party still must object contemporaneously to preserve the issue for appeal. *See State v. Weber*, 159 Wn.2d 252, 272, 149 P.3d 646 (2006).

Once the final judgment was entered, and the State did not appeal it, double jeopardy precludes the State's appeal. RCW 10.43.020 &. 050; U.S. Const. amends. V & XIV; Const. art. I, § 9. In *State v. Tracer*, 173 Wn.2d 708, 272 P.3d 199 (2012), this Court rejected a double jeopardy argument where the State appealed a final judgment in a DUI case where there was an irregularity in the entry of the plea (the judge recruited a lawyer in the courtroom to act as an on-the-spot special deputy prosecutor). However, the appeal in *Tracer* did not violate double jeopardy because it was from the final judgment, not of an earlier interlocutory ruling, a ruling that the elected prosecutor was unaware of because of the irregularity of the appointment in the courtroom. *See Tracer*, 173 Wn.2d at 714-15. Here, there was no appeal of the final judgment so jeopardy in fact attached and then terminated with the imposition of sentence. *See State v. Ervin*, 158 Wn.2d 746, 752-53, 147 P.3d 567 (2006)).

There was no rule authorizing the State's appeal; it appealed the wrong order; and allowing the State's appeal to go forward violates double jeopardy. This Court should accept review under RAP 13.4(b)(1)-(3) and reverse.

3. *Review Should Be Granted as a Matter of Public Interest*

The State's position in this case is that the superior court had independent constitutional authority under article IV, section 6, to entertain its appeal even if it was not authorized by this Court's rules.

> Court rules do not vest the Superior Court with jurisdiction to hear this matter, the Washington State Constitution does. . . . The court rules do not vest a Superior Court with jurisdiction, the constitution does.

Brief of Respondent at 6.

Yet, a superior court's appellate jurisdiction is limited in article IV, section 6, "as may be prescribed by law." *See also* RCW 2.08.020. The "law" referred to are this Court's rules. *See*

Banowsky v. Backstrom, 193 Wn.2d 724, 740-41, 445 P.3d 543 (2019).

While the Court of Appeals ignored the State's blatantly wrong view of jurisdiction, the fact that the prosecuting attorney in Pacific County does not think that this Court's rules have the force of law and that a superior court judge could simply ignore them is very concerning. This is an issue of substantial public importance and review should be accepted under RAP 13.4(b)(4). As the Court of Appeals' Commissioner noted when accepting this case for review, "whether the superior court's power to 'determine all matters' includes the authority to hear a matter on appeal that may not actually be appealable under the RALJ rules has not been directly addressed by our courts." *Ruling Granting Discretionary Review* (2/13/2024) at 6.

The State also argued that district courts did not have constitutional authority. *See* Brief of Respondent at 6-7 ("The District Court has no constitutional authority . . . . . The District

Court is a creature of statute, and has no independent constitutional authority.").

The Washington Constitution vests the judicial power of the State of Washington not just in the Supreme Court and the superior courts, but also in justice of the peace courts and other inferior courts set up the by Legislature. Const. art. IV, § 1. District courts are "justice of the peace courts, simply renamed. RCW 3.30.015." *Banowsky*, 193 Wn.2d at 732 n.3. District courts are therefore constitutional courts. *See State ex. rel. Pacific Coast Adjust Co. v. Taggart*, 159 Wash. 201, 204, 292 P. 741 (1930) ("In this state a justice of the peace court is a constitutional court.") (quoted in *O'Connor v. Matzdorff*, 76 Wn.2d 589, 606, 458 P.2d 154 (1969)).

The Constitution also gives the Legislature the power to "prescribe by law the powers, duties and jurisdiction of justices of the peace." Const. art. IV, § 10. The Legislature gave district courts jurisdiction "[c]oncurrent with the superior court of all

misdemeanors and gross misdemeanors committed in their respective counties." RCW 3.66.060. Accordingly, a district court's power to adjudicate misdemeanor and gross misdemeanor cases is constitutionally based.

Again, while the Court of Appeals did not address the State's arguments, the fact that the prosecutor of Pacific County does not believe that district courts have constitutional authority is a basis for review under RAP 13.4(b)(4).

4. *The District Court Properly Denied the State's Motion to Dismiss*

The Court of Appeals held that the district court abused its discretion when denying the State's motion to dismiss. Finding that the State had no obligation under CrRLJ 4.7 to disclose evidence before arraignment, the Court of Appeals accused the district court of substituting its judgment for the prosecutor's. Slip Op. at 10-15. The Court should review this part of the decision as well.

The Court of Appeals rejected the district court's finding of intentional bad faith. Slip Op. at 14-15. But "bad faith" is a factual finding reviewed on appeal for substantial evidence. *In re Marriage of Rideout*, 150 Wn.2d 337, 351, 77 P.3d 1174 (2003). The Court of Appeals improperly substituted *its* judgment for the fact-finder in district court.

Here, the district court judge made a finding that the State did not disclose evidence as a matter of bad faith, a determination based not only on the cold facts presented to it before it ruled on the motions, but also upon the explanations given by the prosecutor in court, which, in many senses were based on an assessment of the prosecutor's credibility. *See United States v. Roberts*, 163 F.3d 998, 1000 (7th Cir. 1998) ("[D]istrict judges are much better situated than appellate judges to evaluate the

honesty of the lawyers who practice in district court.").[9] On appeal, this finding is binding unless not supported by substantial evidence. RALJ 9.1(b).

When a motion to dismiss is grounded in bad faith, the court has the authority to deny the motion. *See State v. Agustin*, 1 Wn. App. 2d 911, 913 & 922, 407 P.3d 1155 (2018). CrRLJ 8.3(a) specifically gives the district court the "discretion" to deny the State's motion if it acts in bad faith. This is a completely constitutional assertion of judicial power. *See State v. Haner*, 95 Wn.2d 858, 863-64, 631 P.2d 381 (1981) (while prosecutor has initial discretion to file charge, court has role when approving amendments or dismissal of charges). *See also State v. Rapozo*, 114 Wn. App. 321, 324, 58 P.3d 290 (2002) (no abuse of discretion to refuse to permit State to amend from a misdemeanor

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[9] The district court was aware of the game-playing of the prosecutor when he misrepresented that dismissal was an agreed order. *See* 1-RP-18-19.

to a felony: "Prejudice is not the standard; discretion is.") (cited with approval in *State v. Lamb*, 175 Wn.2d 121, 131, 285 P.3d 27 (2012)).

The bad faith here was intentionally withholding evidence so that Mr. Taylor would not plead guilty to fourth degree assault at arraignment. While CrRLJ 4.7 does not require that the State disclose evidence by arraignment, the rule not only imposes a "continuing duty to disclose" on the parties, CrRLJ 4.7(g)(2), but more importantly, this Court's jurisprudence requires disclosure of evidence before a plea is entered to fulfill the constitutional requirements that pleas be knowing and voluntary. *State v. Ford*, *supra*.

The Court of Appeals recognized *Ford*, but held Mr. Taylor "cites no case holding that a plea of *not* guilty must be knowing, intelligent, and voluntary." Slip Op. at 14 (emphasis in original). This is a distinction without a difference. The law is clear that criminal defendants have the constitutional right under the Sixth

and Fourteenth Amendments and article I, sections 3 and 22, to make the decision to plead "not guilty" and go to trial only if that decision is made knowingly, intelligently and voluntarily. The issue comes up frequently in the context of effective assistance of counsel. *See In re Pers. Restraint of Burlingame*, 3 Wn. App. 2d 600, 610, 416 P.3d 1269 (2018) (ineffective not inform defendant to plead guilty at arraignment);[10] s*ee also Lafler v. Cooper*, 566 U.S. 156, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012) (ineffective to advise client to go to trial with inflated estimate of chance of victory). The Court of Appeals was wrong when it ruled that the decision to plead "not guilty" does not have to be a knowing and voluntary decision.

The Court of Appeals' decision conflicts with decisions of this Court, those of other divisions of the Court of Appeals and

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[10] *Accord: State v. Franco*, 19 Wn. App. 2d 1029 (2021) (unpub.).

federal and state constitutional law. Review should be granted under RAP 13.4(b)(1)-(3).[11]

F. CONCLUSION

For the foregoing reasons, the Court should accept review and reverse.

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[11] The Court of Appeals also held: "Rather, if Taylor believed the State engaged in arbitrary action or misconduct, he was free to seek dismissal on that basis in superior court." Slip Op. at 15. This is an odd ruling that wastes judicial resources. There was already litigation in the district court over the issue of bad faith. It serves no purpose to require the parties to relitigate this issue in the superior court a second time.

DATED this 16th day of June 2025.

I certify that this pleading contains 4933 words plus 41 words from the inserted copy of notice of appeal, for a total of 4974 words (as calculated with the WordPerfect Word Count function), excluding the categories set out in RAP 18.17.

Respectfully submitted,

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APPENDIX

Filed
Washington State
Court of Appeals
Division Two

May 20, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. STEPHEN AARON TAYLOR, Petitioner.	No. 59042-5-II UNPUBLISHED OPINION

CRUSER, C.J.—Stephen Aaron Taylor shoved his wife into a wall, breaking her nose. The State initially charged Taylor with fourth degree assault in district court. Taylor pleaded not guilty. The State then charged Taylor with second degree assault in superior court and moved to dismiss the fourth degree assault charge. Taylor opposed the motion and also moved to withdraw his plea of not guilty to the fourth degree assault charge. The district court allowed Taylor to withdraw his not guilty plea and then plead guilty to fourth degree assault, because the State knew about X-rays showing that Taylor had broken his wife's nose before the district court arraignment but did not disclose those X-rays to Taylor.

The State appealed the order letting Taylor withdraw his not guilty plea and implicitly denying the State's motion to dismiss to superior court. The superior court reversed the district court, thereby vacating Taylor's guilty plea. After the superior court made its oral ruling, Taylor moved to dismiss the RALJ appeal for lack of jurisdiction. The superior court denied this motion

because it did not believe there was a mechanism for it to hear the motion after making its oral ruling.

Taylor appeals. He argues that the superior court did not have jurisdiction to hear the RALJ appeal and erred by not addressing the motion to dismiss the appeal, and that we should reverse the superior court. We affirm.

FACTS

I. BACKGROUND AND DISTRICT COURT PROCEEDINGS

During an argument, Taylor shoved his wife, causing her to fall face-first into a wall. One of the couple's children called the police. When an officer arrived, Taylor's wife, who is a nurse, stated that she believed her nose was broken. Taylor's wife "stated that she would get an X-Ray done at work tomorrow" and release her medical records to police. Clerk's Paper's (CP) at 13.

The State charged Taylor with fourth degree assault, a gross misdemeanor, in district court. The above information was included in the probable cause statement attached to the citation.

At an initial hearing, the district court found probable cause to charge Taylor with fourth degree assault and entered conditions of release including a no-contact order prohibiting Taylor from contacting or approaching his wife.

Several days later, after securing counsel, Taylor pleaded not guilty to fourth degree assault. That same day, the State charged Taylor with second degree assault, a felony, in superior court. The State then moved to dismiss the district court charge without prejudice under CrRLJ 8.3(a). At a hearing, the State explained that it initially charged Taylor with fourth degree assault because it did not have his wife's medical records, then decided to charge him with second degree assault after an X-ray confirmed that his wife's nose was broken. The prosecutor asserted, "the

dismissal is well within my prosecutorial discretion." 1 Verbatim Rep. of Proc. (VPR) at 19. The State also filed an order terminating the pretrial no-contact order alongside the motion to dismiss.

Taylor opposed the motion to dismiss and simultaneously moved to withdraw his not guilty plea, asking the district court to allow him to plead guilty to the fourth degree assault. Taylor argued that the State had an obligation to disclose the records showing that Taylor had broken his wife's nose, and that he could not have knowingly, intelligently, and voluntarily pleaded not guilty to fourth degree assault without knowing that he risked being charged for second degree assault if he did so. In opposition to this motion, the State explained that it held off on dismissing the fourth degree assault charge until the second degree assault charges were filed to avoid prematurely terminating the pretrial no-contact order. "And I think that is a proper exercise of my discretion to maintain that no-contact order, maintain the protection of the victim in this case." *Id.* at 34.

The district court orally granted Taylor's motion to withdraw his not guilty plea, implicitly denying the State's motion to dismiss. The district court found that because the State had evidence to support a charge for second degree assault and was "actively planning to purse a felony charge," it had an obligation to disclose the evidence to Taylor and his counsel pre-arraignment and withheld this evidence in bad faith. *Id.* at 40. As a remedy for this discovery violation, the district court stated that it would allow Taylor to withdraw his plea of not guilty and set a new arraignment for him to plead guilty.

The State moved for reconsideration, arguing that the district court's decision violated the separation of powers because the State did not offer an inappropriate reason for the motion to dismiss. The State also filed another motion to dismiss, this time "with prejudice because the Superior Court's authority supersedes this Court's." *Id.* at 44. At a hearing, the State explained

that it knew the X-ray existed before Taylor's district court arraignment, but did not acquire the X-ray until later. The State argued that the only information it withheld from Taylor was the prosecutor's decision to charge him with second degree assault if he did not plead guilty to the fourth degree assault. Taylor responded that the State's actions bordered on vindictive prosecution because the State told the victim that Taylor "could have entered a guilty plea or could have taken full responsibility at the time of arraignment; he didn't. And two and a half hours later they file[d] felony charges." *Id.* at 52.

The district court denied reconsideration. In a written ruling granting Taylor's motion, the district court concluded that "[t]he State has an ongoing duty to disclose evidence under the discovery rules and that duty applies regardless of when the State itself receives the evidence." CP at 54. The district court also concluded that "[a] defendant has a right to enter a not guilty plea at arraignment. However, such a plea must be made knowingly, intelligently, and voluntarily. The defendant's plea of not guilty in this case was based in part on the State's withholding of evidence from the defendant and his counsel." *Id.* The order stated that the remedy was that Taylor "must be allowed to withdraw his original plea of not guilty and be allowed the opportunity to enter a plea of guilty." *Id.*

The district court then allowed Taylor to plead guilty to fourth degree assault over the State's objection. The district court imposed a sentence of 364 days with 363 days suspended and gave Taylor credit for time served for one day.

II. RALJ APPEAL

The State filed a notice of appeal to superior court for the district court's "rulings regarding denying the State's motion to [d]ismiss without prejudice." *Id.* at 137. In its brief, the State asserted

that it was appealing the district court's decision which "ultimately allowed the defendant to plead guilty as charged." *Id.* at 97. The State emphasized the district court's ruling "that the defendant did not knowingly, intelligently, and voluntarily plead not guilty because the State failed to provide discovery prior to arraignment." *Id.* The State argued that it was "not required to provide discovery prior to arraignment" and that the district court's ruling violated the separation of powers. *Id.* at 98. At a hearing, the State emphasized that the probable cause statement indicated that Taylor's wife "probably had a broken nose." 2 VRP at 88. The State also contended that vacating Taylor's conviction on procedural grounds would prevent double jeopardy from applying.

In response, Taylor argued that the district court did not abuse its discretion because the State had an obligation to turn over information about the ramifications of a not guilty plea the "[s]ame day" that the State received the information. *Id.* at 106.

The superior court stated that prosecutors "have broad authority to dismiss cases and not prosecute through prosecutorial discretion, and . . . the court does have oversight to make sure that a case is not being dismissed" or that a "charging decision is not for an inappropriate reason." *Id.* at 110. But the superior court "could not find anything . . . that said failure to provide full discovery at the time of arraignment was an appropriate reason for the court to . . . refuse to dismiss a case." *Id.* The superior court found that the district court abused its discretion by denying the State's motion to dismiss and remanded for further proceedings.

Eleven days after the superior court's oral ruling, but before it entered its written order, Taylor moved to dismiss the State's RALJ appeal, arguing that the superior court "was without jurisdiction under RALJ 2.2 to hear the matter." CP at 114. Taylor argued that the State appealed

only the district court's denial of its motions to dismiss, which he contended was not a final order, and that the appeal placed him in double jeopardy in violation of RALJ 2.2(c).

At a hearing, the superior court asked, "Under what mechanism is this now back in front of this Court?" 2 VRP at 113. Taylor responded that the superior court's decision was not final because it had not entered a written order, so there was "gray area wiggle room to allow the Court to at least consider the merits of the motion." *Id.* at 114. The superior court disagreed and refused to reach the merits of the motion, stating, "I don't think there is a mechanism that exists to get it in front of me properly now." *Id.* at 116.

In its written ruling, the superior court stated, "Dismissal of the charge in district court was a proper exercise of prosecutorial discretion. It was an abuse of the lower court[']s discretion to deny the State's motion to dismiss." CP at 145. "The Court further denies the respondent's motion to dismiss for lack of jurisdiction as the Court finds no legal mechanism by which to hear such motion after the court's oral ruling on the merits of the appeal but prior to the entry of the Court's written decision." *Id.* Accordingly, the superior court remanded the case to the district court to grant the State's motion to dismiss.

Taylor sought discretionary review and a commissioner of this court granted review.

ANALYSIS

Taylor argues both that the superior court did not have jurisdiction over the RALJ appeal of the district court order and that the superior court erred by reversing the district court's order. We address each contention in turn.

I. SUPERIOR COURT JURISDICTION

As an initial matter, Taylor asks us to dismiss this appeal because he asserts that the superior court lacked jurisdiction to hear the State's RALJ appeal. Taylor advances several arguments in support of this contention. First, he argues that the district court's order denying the State's motion to dismiss was not appealable under RALJ 2.2(c) because it was not a final decision, "did not grant a new trial, did not arrest or vacate a judgment, and did not suppress evidence." Br. of Pet'r at 14. Second, he contends that the State's appeal was moot because it "failed to make substantive objections to the acceptance of a guilty plea and then the imposition of sentence, and did not appeal from those orders." Br. of Pet'r at 21. Third, he argues that the State's appeal implicated double jeopardy in violation of RALJ 2.2(c). Taylor also insists that the superior court erred by declining to address the merits of his motion to dismiss for lack of jurisdiction. We disagree.

RALJ 2.2(c) provides:

> The State or local government may appeal in a criminal case only from the following decisions of a court of limited jurisdiction and only if the appeal will not place the defendant in double jeopardy:
>
> (1) *Final Decision, Except Not Guilty.* A decision which in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing a complaint or citation and notice to appear, or a decision granting a motion to dismiss under CrRLJ 8.3(c).

The State may also appeal pretrial orders suppressing evidence, orders arresting or vacating a judgment, and orders granting a new trial. And "[t]he superior court will disregard defects in the form of a notice of appeal if the notice clearly reflects an intent by a party to seek review." RALJ 2.6(f).

Here, the district court's order concluded that Taylor "must be allowed to withdraw his original plea of not guilty and be allowed the opportunity to enter a plea of guilty." CP at 54. By directing that Taylor be allowed to plead guilty, the district court's order effectively determined the fourth degree assault case. And it was clear that the State intended to review the decision that terminated its case. Accordingly, the State properly sought review of an appealable order under RALJ 2.2(c).

Taylor also argues that the State's appeal was moot because the State failed to *substantively* object to Taylor's plea or sentence. He relies on *State v. Cruz*, where the supreme court held that an appeal was moot because the State appealed an order suppressing evidence but not the dismissal order ending the State's case. 189 Wn.2d 588, 597, 404 P.3d 70 (2017). First, the State did object to the district court accepting Taylor's plea. And, as stated above, the order effectively ended the State's case. Accordingly, the appeal was not moot.

Next, Taylor contends that the State's appeal violates double jeopardy, which would bar the appeal under RALJ 2.2(c). This argument rests on a contention that the State did not appeal Taylor's judgment and sentence or object to its entry, so there was an "expectation of finality." Br. of Pet'r at 26.

The double jeopardy clause of the Fifth Amendment "bars (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense." *State v. Tracer*, 173 Wn.2d 708, 723, 272 P.3d 199 (2012). "The double jeopardy considerations that bar reprosecution after an acquittal do not prohibit review of a sentence." *United States v. DiFrancesco*, 449 U.S. 117, 136, 101 S. Ct. 426, 66 L. Ed. 2d 328 (1980). "The defendant, of course, is charged with knowledge of . . . appeal

provisions, and has no expectation of finality in his sentence until the appeal is concluded or the time to appeal has expired." *Id.* When a "guilty plea was void, the trial court lacked authority to accept [the] plea and jeopardy did not attach." *Tracer*, 173 Wn.2d at 723. Here, the State properly appealed an order that effectively ended its case, so Taylor had no expectation of finality.[1] And the State challenged the procedural validity of Taylor's plea, so by reversing the district court, the superior court rendered Taylor's guilty plea void, which meant that jeopardy did not attach. Thus, the State's appeal was proper under RALJ 2.2(c) and we hold that the superior court had jurisdiction over the appeal.

Finally, Taylor argues that the superior court erred by ruling that it could not address Taylor's motion to dismiss for lack of jurisdiction, which he filed after oral argument but before the superior court entered its written order. The superior court denied the motion because it did not believe there was any mechanism for it to hear a motion to dismiss after it had ruled on the case. Assuming, without deciding, that the superior court's decision to not consider the merits of the motion to dismiss for lack of jurisdiction was erroneous, we hold that any error was harmless because the superior court had jurisdiction over the State's appeal.

Having rejected Taylor's argument that the superior court lacked jurisdiction over the RALJ appeal, we turn to the merits of the district court's decision.

[1] We acknowledge that the better practice would have been for the State to continually voice its objection at each stage of the district court guilty plea process to avoid any allegation of ambiguity. But under the facts of this case, where the State has appealed the initial order that effectively ended its case, continual objections were not required.

II. MERITS OF THE DISTRICT COURT'S DECISION

Taylor contends that we should reverse the superior court's ruling and affirm the district court's order denying the State's motion to dismiss. Taylor argues that the district court did not abuse its discretion in denying the State's motion to dismiss and forcing the State to prosecute the case against Taylor in district court rather than superior court. He relies on CrRLJ 8.3 to assert that the district court did not abuse its discretion by allowing him to withdraw his not guilty plea based on its finding that the State acted in bad faith by withholding the X-ray evidence. Taylor contends that the district court denied the State's motion to dismiss and allowed Taylor to plead guilty "not because of a policy disagreement about the proper charge or because of the application of an invalid local rule, but because of what it explicitly concluded to be 'bad faith' and the fact that Mr. Taylor's initial 'not guilty' plea was [not] knowing and intelligently made." Br. of Pet'r at 49. We disagree.

A. Legal Principles

" 'RALJ 9.1 governs appellate review of a superior court decision reviewing' a district court decision." *State v. Richards*, 28 Wn. App. 2d 730, 742, 537 P.3d 1118 (2023) (quoting *State v. Brokman*, 84 Wn. App. 848, 850, 930 P.2d 354 (1997)), *aff'd*, 4 Wn.3d 83, 559 P.3d 107 (2024). "When we grant discretionary review of a RALJ decision by the superior court, we "sit[] in the same position as the [prior] court in review of the [district] court decision." *City of Seattle v. Wiggins*, 23 Wn. App. 2d 401, 406, 515 P.3d 1029 (2022) (first and second alteration in original) (quoting *State v. Weber*, 159 Wn. App. 779, 787, 247 P.3d 782 (2011)).

"Pursuant to RALJ 9.1(a), an appellate court shall review the decision of the district court to determine whether that court has committed any errors of law." *Brokman*, 84 Wn. App. at 850.

" 'We review the record before the district court, reviewing factual issues for substantial evidence and legal issues de novo.' " *Wiggins*, 23 Wn. App. 2d at 407 (quoting *State v. Rosalez*, 159 Wn. App. 173, 178, 246 P.3d 219 (2010). And we "accept those factual determinations supported by substantial evidence in the record (1) which were expressly made by the court of limited jurisdiction, or (2) that may reasonably be inferred from the judgment of the court of limited jurisdiction." RALJ 9.1(b). Additionally, "[w]e review a trial court's decision on a prosecutor's motion to dismiss a criminal proceeding for abuse of discretion." *State v. Agustin*, 1 Wn. App. 2d 911, 916, 407 P.3d 1155 (2018). "Misapplying the law constitutes an abuse of discretion." *Id.*

"Under Washington's constitution, governmental authority is divided into three branches—legislative, executive, and judicial—and '[e]ach branch of government wields only the power it is given.' " *State v. Rice*, 174 Wn.2d 884, 900, 279 P.3d 849 (2012) (alteration in original) (quoting *State v. Moreno*, 147 Wn.2d 500, 505, 58 P.3d 265 (2002)). "The division of governmental authority into separate branches is especially important within the criminal justice system, given the substantial liberty interests at stake and the need for numerous checks against corruption, abuses of power, and other injustices." *Id.* at 901. "First, legislative authority must be exercised to define crimes and sentences; second, executive power must be applied to collect evidence and seek an adjudication of guilt in a particular case; and third, judicial power must be exercised to confirm guilt and to impose an appropriate sentence." *Id.* "The state constitution grants inherent powers to each separate branch to undertake these functions, including the distinct role of prosecuting attorneys within the executive branch." *Id.*

"A prosecuting attorney's most fundamental role as both a local elected official and an executive officer is to decide whether to file criminal charges against an individual and, if so,

which available charges to file." *Id.* "On numerous occasions, we have acknowledged the 'long-recognized' charging discretion of prosecuting attorneys, including discretion to determine the nature and number of available charges to file." *Id.* at 903 (quoting *State v. Lewis*, 115 Wn.2d 294, 299, 797 P.2d 1141 (1990)). And "a prosecutor's inherent charging discretion necessarily is broader than a mere consideration of sufficiency of evidence and likelihood of conviction." *Id.* at 902. "Exercise of this discretion involves consideration of numerous factors, including the public interest as well as the strength of the State's case." *Lewis*, 115 Wn.2d at 299.

" 'Judges are not free . . . to impose on law enforcement officials our personal and private notions of fairness and to disregard the limits that bind judges in their judicial function.' " *State v. Lidge*, 111 Wn.2d 845, 850, 765 P.2d 1292 (1989) (internal quotation marks omitted) (quoting *United States v. Lovasco*, 431 U.S. 783, 790, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977)). For example, the Washington Supreme Court has held that a prosecutor did not have to charge a defendant after the defendant's first delivery of drugs to an informant, and was instead free to have the informant conduct multiple controlled buys, resulting in a greater number of charges against the defendant. *Lewis*, 115 Wn.2d at 299.

CrRLJ 8.3(a) provides "The court may, in its discretion, upon motion of the prosecuting authority setting forth the reasons therefor, dismiss a complaint or citation and notice." Additionally, "The court, in the furtherance of justice after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial." CrRLJ 8.3(b) "[B]ecause a trial court's discretion to deny a prosecuting attorney's motion to dismiss under CrR 8.3(a) must be exercised with due regard for constitutional separation of

powers, a court may deny such a motion only when the prosecuting attorney offers an inappropriate reason." *Agustin*, 1 Wn. App. 2d at 921-22 (listing federal examples stating that a dismissal must be "clearly contrary to manifest public interest" for reasons such as " 'bribery, animus towards the victim, or a desire to attend a social event rather than trial' " for a court to deny a prosecutor's motion to dismiss (quoting *In re Richards*, 213 F.3d 773, 787 (3d Cir. 2000))).

B. The District Court Abused its Discretion

We begin by noting that the State's motion to dismiss in this case was a CrRLJ 8.3(a) motion. The district court effectively converted this into a CrRLJ 8.3(b) motion, but then ordered the *opposite* remedy of the one contemplated by that rule. And the district court's decision was based on its determination that the State withheld evidence from Taylor in bad faith because the district court decided that "[t]he State has an ongoing duty to disclose evidence under the discovery rules and that duty applies regardless of when the State itself receives the evidence," *including pre-arraignment*. CP at 54. But as the superior court observed, the relevant rule requires only that "discoverable materials shall be made available for inspection and copying within 21 days of arraignment or within 21 days of receipt of the demand by the prosecuting authority, whichever is later." CrRLJ 4.7(a)(2). Nothing in CrRLJ 4.7 requires disclosure of discovery before a defendant's arraignment. And the State explained that it waited to dismiss the fourth degree assault charge because it did not want to prematurely terminate the pretrial no-contact order protecting Taylor's wife. This was not an inappropriate reason clearly contrary to manifest public interest. *Agustin*, 1 Wn. App. 2d at 921-22. Imposing a pre-arraignment discovery obligation on the State was an error of law, and basing the denial of a CrRLJ 8.3(a) motion to dismiss on an erroneous interpretation

of the law, despite the State providing an appropriate reason for the dismissal, was an abuse of discretion. *Id.* at 916.

The district court also abused its discretion to the extent that it held a not guilty plea must be knowing, intelligent, and voluntary as a condition of its acceptance by the court, and that the State prevented Taylor from entering a lawful not guilty plea because it had not yet furnished full discovery. Neither Taylor nor the district court cited any authority for this novel contention. Moreover, such a holding on our part would be extraordinary. Because criminal defendants enjoy a presumption of innocence that is only overcome by a verdict of guilty predicated on proof beyond a reasonable doubt or a knowing, intelligent, and voluntary guilty plea, a plea of not guilty is the presumptive plea. Taylor cites no case holding that a plea of *not* guilty must be knowing, intelligent, and voluntary. *Cf. State v. Ford*, 125 Wn.2d 919, 925, 891 P.2d 712 (1995) (emphasizing the trial court's role in determining whether a guilty plea is knowing, intelligent, and voluntary); *State v. James*, 108 Wn.2d 483, 489, 739 P.2d 699 (1987) (explaining that defendants have a limited right to withdraw a not guilty plea based on later developments in the case).

Furthermore, Taylor and his counsel were on notice that the victim likely suffered a broken nose because she, a nurse, told the officer writing the probable cause statement that she believed her nose was broken and intended to get an X-ray the next day, which she agreed to release to police. By entering a plea of not guilty, Taylor, with the assistance of his counsel, elected to wait and see whether the victim had suffered a broken nose, thereby necessarily incurring the risk that she had. The State, for its part, told the victim that even in spite of her broken nose, if Taylor had elected to plead guilty and take responsibility for his actions during his district court arraignment, the State would have been willing to forego prosecuting the case in superior court despite there

being probable cause for assault in the second degree. There is no indication of bad faith on the State's part in making this decision.

Finally, we find nothing in CrRLJ 8.3(b) that authorizes a district court, upon finding of arbitrary action or governmental misconduct, to *prevent* the State from seeking dismissal of the case and forcing the State to prosecute the matter in district court when it had sufficient evidence to prosecute the case in superior court. Rather, if Taylor believed the State engaged in arbitrary action or misconduct, he was free to seek dismissal on that basis in superior court. Indeed, forcing the State to unwillingly proceed with a case in district court when the State had sufficient evidence of a different charge to proceed in a different court, disregards the separation of powers. *Agustin*, 1 Wn. App. 2d at 921-22.

In sum, we hold that the superior court did not err by concluding that the district court abused its discretion by denying the State's motion to dismiss the fourth degree assault charge.

We affirm the superior court's ruling.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

CRUSER, C.J.

We concur:

[illegible], J.

PRICE, J.

STATUTORY APPENDIX

CrRLJ 4.7 (attached)

CrRLJ 8.3 provides in part:

> (a) On Motion of Prosecution. The court may, in its discretion, upon motion of the prosecuting authority setting forth the reasons therefor, dismiss a complaint or citation and notice.
>
> (b) On Motion of Court. The court, in the furtherance of justice after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.
>
> (c) On Motion of Defendant for Pretrial Dismissal. The defendant may, prior to trial, move to dismiss a criminal charge due to insufficient evidence establishing a prima facie case of the crime charged. . . .

RALJ 2.2 provides:

> (a) Final Decision.
>
> (1) A party may appeal from a final decision of a court of limited jurisdiction to which these rules apply under rule 1.1(a), except a decision in a mitigation hearing under RCW 46.63.100 and

IRLJ 2.6(b), or a mitigation decision on written statement under IRLJ 2.6(c).

(2) For the purposes of these rules, a final decision includes (A) an order granting or denying a motion for new trial, reconsideration, or amendment of judgment, and (B) an order granting or denying arrest of a judgment in a criminal case.

(b) Amount in Controversy. Statutes control limitations on appeal based on the amount in controversy.

(c) Appeal by State or a Local Government in Criminal Case. The State or local government may appeal in a criminal case only from the following decisions of a court of limited jurisdiction and only if the appeal will not place the defendant in double jeopardy:

(1) Final Decision, Except Not Guilty. A decision which in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing a complaint or citation and notice to appear, or a decision granting a motion to dismiss under CrRLJ 8.3(c).

(2) Pretrial Order Suppressing Evidence. A pretrial order suppressing evidence, if the trial court expressly finds that the practical effect of the order is to terminate the case.

(3) Arrest or Vacation of Judgment. An order arresting or vacating a judgment.

(4) New Trial. An order granting a new trial.

(d) Errors Raised for First Time on Appeal. The superior court may refuse to review any claim of error that was not raised in the court of limited jurisdiction. However, a party may raise the following claimed errors for the first time on appeal: (1) lack of jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party may present a ground for affirming a decision of a court of limited jurisdiction that was not presented to that court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error that was not raised by the party in the court of limited jurisdiction if another party on the same side of the case raised the claim of error in that court.

RALJ 2.6 provides in part:

(a) Content of Notice of Appeal Generally. A notice of appeal should (1) be titled "Notice of Appeal", (2) identify the party or parties appealing, (3) designate each decision which the party wants reviewed, (4) name the court to which the appeal is taken, (5) provide the identifying material required by section (b), (6) state whether the case appealed is criminal (include charge description), civil, or an infraction, and (7) name

the court and cause number from which the appeal is taken.

RALJ 9.1 provides in part:

> (a) Errors of Law. The superior court shall review the decision of the court of limited jurisdiction to determine whether that court has committed any errors of law.
>
> (b) Factual Determinations. The superior court shall accept those factual determinations supported by substantial evidence in the record (1) which were expressly made by the court of limited jurisdiction, or (2) that may reasonably be inferred from the judgment of the court of limited jurisdiction. . . .
>
> . . .
>
> (g) Form of Decision. The decision of the superior court shall be in writing and filed in the clerk's office with the other papers in the case. The reasons for the decision shall be stated.

RAP 2.2 provides in part:

> (b) Appeal by State or a Local Government in Criminal Case. Except as provided in section (c), the State or a local government may appeal in a criminal case only from the following superior court decisions and only if the appeal will not place the defendant in double jeopardy:

(1) Final Decision, Except Not Guilty. A decision that in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing an indictment or information, or a decision granting a motion to dismiss under CrR 8.3(c).

(2) Pretrial Order Suppressing Evidence. A pretrial order suppressing evidence, if the trial court expressly finds that the practical effect of the order is to terminate the case.

(3) Arrest or Vacation of Judgment. An order arresting or vacating a judgment.

(4) New Trial. An order granting a new trial.

RAP 13.4 provides in part:

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RCW 2.08.020 provides:

> The superior courts shall have such appellate jurisdiction in cases arising in courts of limited jurisdiction in their respective counties as may be prescribed by law.

RCW 3.30.015 provides:

> All references to justices of the peace in other titles of the Revised Code of Washington shall be construed as meaning district judges. All references to justice courts or justice of the peace courts in other titles of the Revised Code of Washington shall be construed as meaning district courts.

RCW 3.66.060 provides:

> 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. It shall in no event impose a greater punishment than a fine of five thousand dollars, or imprisonment for one year in the county or city jail as the case may be, or both such fine and imprisonment, unless otherwise expressly provided by statute. It may suspend and revoke vehicle operators' licenses in the cases provided by law; (2) to sit as a committing magistrate and conduct preliminary hearings in cases provided by law; (3) concurrent with the superior court of a

proceeding to keep the peace in their respective counties; (4) concurrent with the superior court of all violations under Title 77 RCW; (5) to hear and determine traffic infractions under chapter 46.63 RCW; and (6) to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by other courts of limited jurisdiction when those courts are participating in the program established under RCW 2.56.160.

RCW 9.94A.431 provides:

> (1) If a plea agreement has been reached by the prosecutor and the defendant pursuant to RCW 9.94A.421, they shall at the time of the defendant's plea state to the court, on the record, the nature of the agreement and the reasons for the agreement. The prosecutor shall inform the court on the record whether the victim or victims of all crimes against persons, as defined in RCW 9.94A.411, covered by the plea agreement have expressed any objections to or comments on the nature of and reasons for the plea agreement. The court, at the time of the plea, shall determine if the agreement is consistent with the interests of justice and with the prosecuting standards. If the court determines it is not consistent with the interests of justice and with the prosecuting standards, the court shall, on the record, inform the defendant and the prosecutor that they are not bound by the agreement and that the defendant may withdraw the defendant's plea of guilty, if one has been made, and enter a plea of not guilty.

(2) The sentencing judge is not bound by any recommendations contained in an allowed plea agreement and the defendant shall be so informed at the time of plea.

RCW 9A.36.021 provides in part:

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or . . . .

(2)(a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

RCW 9A.36.041 provides in part:

(1) A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.

(2) Assault in the fourth degree is a gross misdemeanor, except as provided in subsection (3) of this section.

RCW 10.43.020 provides:

> When the defendant has been convicted or acquitted upon an indictment or information of an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment or information for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein.

RCW 10.43.050 provides:

> No order of dismissal or directed verdict of not guilty on the ground of a variance between the indictment or information and the proof, or on the ground of any defect in such indictment or information, shall bar another prosecution for the same offense. Whenever a defendant shall be acquitted or convicted upon an indictment or information charging a crime consisting of different degrees, he or she cannot be proceeded against or tried for the same crime in another degree, nor for an attempt to commit such crime, or any degree thereof.

U.S. Const. amend. V provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War

> or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. VI provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. XIV, § 1, provides in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wash. Const. art. I, § 3, provides:

> No person shall be deprived of life, liberty, or property, without due process of law.

Wash. Const. art. I, § 9, provides:

> No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

Wash. Const. art. I, § 22, provides in part:

> In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases . . . .

Wash. Const. art. IV, § 1, provides:

> SECTION 1 JUDICIAL POWER, WHERE VESTED. The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.

Wash. Const. art. IV, § 6, provides:

> Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. 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; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of

> mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days

Wash. Const. art. IV, § 10, provides:

> The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the peace: 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. Justices of the peace shall have original jurisdiction in cases where the demand or value of the property in controversy is less than three hundred dollars or such greater sum, not to exceed three thousand dollars or as otherwise determined by law, as shall be prescribed by the legislature. In incorporated cities or towns having more than five thousand inhabitants, the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use

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DISCOVERY

(a) Prosecuting Authority's Obligations.

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting authority shall, upon written demand, disclose to the defendant or the defendant's counsel the following material and information within the prosecuting authority's possession or control concerning:

(i) the names and addresses of persons whom the prosecuting authority intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses;

(ii) any written or recorded statements and the substance of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one;

(iii)any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and scientific tests, experiments, or comparisons;

(iv) any books, papers, documents, photographs, or tangible objects which the prosecuting authority intends to use in the hearing or trial or which were obtained from or belonged to the defendant;

(v) any record of prior criminal convictions known to the prosecuting authority of the defendant and of persons whom the prosecuting authority intends to call as witnesses at the hearing or trial;

(vi) any electronic surveillance, including wiretapping, of the defendant's premises or conversations to which the defendant was a party and any record thereof;

(vii) any expert witnesses whom the prosecuting authority will call at the hearing or trial, the subject of their testimony, and any reports relating to the subject of their testimony that they have submitted to the prosecuting authority;

(viii) any information indicating entrapment of the defendant;

(ix) specified searches and seizures;

(x) the acquisition of specified statements from the defendant; and

(xi) the relationship, if any, of specified persons to the prosecuting authority.

(2) Unless the court orders otherwise, discoverable materials shall be made available for inspection and copying within 21 days of arraignment or within 21 days of receipt of the demand by the prosecuting authority, whichever is later.

(3) Except as otherwise provided by protective orders, the prosecuting authority shall disclose to defendant's lawyer any material or information within the prosecuting authority's knowledge that tends to negate defendant's guilt as to the offense charged.

(4) The prosecuting authority's obligation under this section is limited to material and information within the actual knowledge, possession, or control of members of the prosecuting authority's staff.

(b) Defendant's Obligations.

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the defendant shall, upon written demand, disclose to the prosecuting authority the following material and information within the defendant's possession or control concerning:

(i) the names and addresses of persons whom the defendant intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses;

(ii) any books, papers, documents, photographs, or tangible objects which the defendant intends to use in the hearing or

(iii) any expert witnesses whom the defendant will call at the hearing or trial, the subject of their testimony, and any reports relating to the subject of their testimony that they have submitted to the defendant;

(iv) any claim of incompetency to stand trial;

(v) whether the defendant's prior convictions will be stipulated or need to be proved;

(vi) whether or not the defendant will rely on a defense of insanity at the time of the offense; and

(vii) the general nature of the defendant's defense.

(2) Unless the court orders otherwise, discoverable materials shall be made available for inspection and copying not later than 14 days prior to the date set for trial.

(3) References in this section to defendant shall be deemed to include the defendant's lawyer, where appropriate.

(c) Physical and Demonstrative Evidence.

(1) Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, the court on motion of the prosecuting authority or the defendant may require or allow the defendant to:

(i) appear in a lineup;

(ii) speak for identification by a witness to an offense;

(iii) be fingerprinted;

(iv) pose for photographs not involving reenactment of the crime charged;

(v) try on articles of clothing;

(vi) permit the taking of samples of or from the defendant's blood, hair, and other materials of the defendant's body, including materials under the defendant's fingernails, that involve no unreasonable intrusion thereof;

(vii) provide specimens of the defendant's handwriting; and

(viii) submit to a reasonable physical, medical, or psychiatric inspection or examination.

(2) Provisions may be made for appearance for the purposes stated in this section in an order for pretrial release.

(d) Material Held by Others. Upon defendant's request and designation of material or information in the knowledge, possession or control of other persons which would be discoverable if in the knowledge, possession or control of the prosecuting authority, the prosecuting authority shall attempt to cause such material or information to be made available to the defendant. If the prosecuting authority's efforts are unsuccessful and if such material or persons are subject to the jurisdiction of the court, the court shall issue suitable subpoenas or orders to cause such material to be made available to the defendant.

(e) Discretionary Disclosures.

(1) Upon a showing of materiality and if the request is reasonable, the court in its discretion may require disclosure of the relevant material and information not covered by sections (a) and (d).

(2) The court may condition or deny disclosure authorized by this rule if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals or unnecessary annoyance or embarrassment resulting from such disclosure, which outweigh any usefulness of the disclosure to the defendant.

(f) Matters Not Subject to Disclosure.

(1) *Work Product.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of investigating or prosecuting agencies except as to material discoverable under subsection (a)(1)(iii).

(2) *Informants.* Disclosure of an informant's identity shall not be required when the informant's identity is a prosecution secret and a failure to disclose will not infringe on the constitutional rights of the defendant. Disclosure of the identity of witnesses to be produced at a hearing or trial shall not be denied.

(g) Regulation of Discovery.

(1) *Investigations Not To Be Impeded.* Except as otherwise provided by protective orders or as to matters not subject to disclosure, neither the lawyers for the parties nor other prosecution or defense personnel shall advise persons, other than the defendant, who have relevant material or information to refrain from discussing the case with the opposing lawyer or showing the opposing lawyer any relevant material, nor shall they otherwise impede the opposing lawyers investigation of the case.

(2) *Continuing Duty To Disclose.* If, after compliance with this rule or orders pursuant to it, a party discovers additional material or information that is subject to disclosure, that party shall promptly notify the other party or counsel of the existence of such additional material. If the additional material or information is discovered during trial, the court shall also be notified.

(3) *Custody of Materials.* Any materials furnished to a lawyer pursuant to these rules shall remain in the exclusive custody of the lawyer and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the court, and shall be subject to such other terms and conditions as the parties may agree or the court may provide. Further, a defense lawyer shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions that are approved by the prosecuting authority or order of the court.

(4) *Protective Orders.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit the party's lawyer to make beneficial use of it.

(5) *Excision.* When some parts of certain material are discoverable under this rule and other parts are not discoverable, as much of the material shall be disclosed as is consistent with this rule. Material excised pursuant to judicial order shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(6) *In Camera Proceedings.* Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosure, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(7) *Sanctions.*

(i) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, or enter such other order as it deems just under the circumstances.

(ii) The court may at any time dismiss the action if the court determines that failure to comply with an applicable discovery rule or an order issued pursuant thereto is the result of a willful violation or of gross negligence and that the defendant was prejudiced by such failure.

(iii) A lawyers willful violation of an applicable discovery rule or an order issued pursuant thereto may subject the lawyer to appropriate sanctions by the court.

[Adopted effective September 1, 1987; Amended effective September 1, 2005; May 2, 2023; October 1, 2024; April 29, 2025.]

Certificate of Service

I, Neil Fox, certify that on June 16, 2025, I served the attached Petition for Review on counsel for the Respondent by filing it through the Portal, which will give notice to all parties.

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16th day of June 2025, at Seattle, Washington.

s/ Neil M. Fox
WSBA No. 15277
Attorney for Petitioner

LAW OFFICE OF NEIL FOX PLLC

June 16, 2025 - 11:12 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	59042-5
Appellate Court Case Title:	State of Washington, Respondent v Stephen A. Taylor, Petitioner
Superior Court Case Number:	23-1-00073-9

The following documents have been uploaded:

- 590425_Petition_for_Review_20250616111130D2116846_3379.pdf
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- bwalker@co.pacific.wa.us
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