NO. 94973-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TYLER WILLIAM WATKINS,

Petitioner.

ANSWER TO CORRECTED BRIEF OF AMICI CURIAE CREATIVE JUSTICE COMMUNITY PASSAGEWAYS GLOVER EMPOWER-MENTORING PROGRAM

MARK K. ROE
Prosecuting Attorney

KATHLEEN WEBBER
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, M/S #504
Everett, Washington 98201
Telephone: (425) 388-3333

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. ISSUES

1. Was the auto adult statute for certain juveniles enacted and applied on racially biased bases?

2. Do collateral consequences of the auto adult statute render that statute unlawful?

II. STATEMENT OF THE CASE

The statement of the case has been adequately set out in the Brief of Respondent.

III. ARGUMENT

A. THE STATUTE CONFERRING ADULT JURISDICTION ON CERTAIN OLDER JUVENILES DOES NOT VIOLATE THE CONSTITUTION.

Amici Creative Justice et. al. urge the Court to strike down RCW 13.04.030(1)(e)(v) on the basis that it is unconstitutional. It does not identify which constitutional provision is violated by the statute. Nor does it cite a single case that establishes that proposition. Instead Amici argues that it was enacted on a fallacious "super-predator" myth that carried racial undertones. Amici further argues that the statute is disproportionately imposed on juveniles of color. Amici fails to sustain the heavy burden to

prove the statute is unconstitutional beyond a reasonable doubt. State v. Leatherman, 100 Wn. App. 318, 321, 997 P.2d 929 (2000).

Whether a statute has a racially disparate impact generally raises a claim under the Equal Protection Clause. A law which is neutral on its face does not violate that provision just because it may affect a greater proportion of one race than another. Washington v. Davis, 426 U.S. 229, 242, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976). Instead, there must be proof of racially discriminatory intent or purpose to show a violation of the Equal Protection Clause. Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977).

When the statute was enacted the Legislature set forth its reasons for exempting older juveniles from juvenile court jurisdiction in its statement of intent. The statute was enacted to address a concern for the health and safety of citizens and social institutions threatened by an increase in youth violence "at an alarming rate." The statute was an effort at reducing that violence. It sought to

> (1) Prevent acts of violence by encouraging change in social norms and individual behaviors that have been shown to increase the risk of violence; (2)

> reduce the rate of at-risk children and youth, as defined in RCW 70.190.010; (3) increase the severity and certainty of punishment for youth and adults who commit violent acts; (4) reduce the severity of harm to individuals when violence occurs; (5) empower communities to focus their concerns and allow them to control the funds dedicated to empirically supported preventive efforts in their region; and (6) reduce the fiscal and social impact of violence on our society

Laws of Washington 1994 1st Sp. Session Ch. 7 §1.

Nothing in either the statement of intent or in the amendment to RCW 13.04.030 seeks to discriminate on the basis of race. Laws of Washington 1994 1st Sp. Session Ch. 7 §519. Rather the concerns expressed related to the unavailability of sentences in juvenile court that could adequately address the seriousness of the crime. Final Bill Report E2SHB 2319 pages 13-14 (1994).

Amici refers to a number of articles and reports to support its claim that the asserted justification for the statutory amendment was erroneous. It asserts the myth of the "super predator" has been debunked, and youth violence has actually gone down since 1993.

Nothing in either the legislative amendments or final bill report indicate that the Legislature was reacting to a so called mythical super predator. It never used that term in either document. The terms "tidal wave," "epidemic," and "unprecedented" were terms quoted from the media and other describing escalating

incidents of violence in the United States, particularly among juveniles. The Legislature was responding to the escalation in violence, not some mythical being that had appeared on the landscape.

Those articles were written in the years after the statutory amendment providing for adult jurisdiction for juveniles who committed certain violent offenses. The Legislature could only be aware of the rate of juvenile violent crimes up to 1993, the year before the amendment was enacted. Amici concedes that youth violence peaked in 1993. Thus the justification articulated by the Legislature was based on a response to actual events.

Amici also argues that the auto adult statute and the discretionary decline statute disproportionately affects youth of color. Since the issue in this case is limited to the auto adult statute, statistics related to discretionary declines are not relevant. Nor do the statistics cited by Amici support its claim that RCW 13.04.030(1)(e)(v) is unconstitutional. The disproportionate effect on one race does not of itself establish a discriminatory intent. Davis, 426 U.S. at 242. In the absence of any proof of discriminatory intent a claim that a statute violates the Equal

Protection Clause is foreclosed. City of Memphis v. Greene, 451 U.S. 100, 119, 101 S.Ct. 1584, 67 L.Ed.2d 769 (1981).

The statistics are not helpful for another reason as well. They do not represent a consistent disparate application to youth of color since the auto adult statute was enacted. The tables that were copied from the DSHS annual report on juvenile transfers to adult court[1] cover a period from 2010 to 2014. It indicates about twice as many "African American" juveniles as "Caucasian" juveniles were prosecuted in cases originally charged in adult court. A 2007 report from the Sentencing Guidelines Commission[2] showed an approximately equal number of African American and Caucasian juveniles were originally charged in adult court. A 2013 report from the Washington State Office of Financial Management reviewing the years 2007 through 2011 concluded that juveniles sentenced as adults are primarily 17 year old white males.[3]

Amici also argues that prosecutor's discretion to charge is used to disproportionately charge youth of color in adult court. The prosecutor's decision to prosecute a particular crime is guided by

---

[1] Set out on page 8 of Amici' brief

[2] Set out on page 9 of Amici' brief

[3] Washington State Office of Financial Management, Juveniles Setenced as Adults and Decline Hearings Keri-Anne Jetzer (2013) available at https://sac.ofm.wa.gov/sites/all/themes/wasac/assets/docs/brief072.pdf

statute. Crimes subject to the auto adult statute may be filed only if there is sufficient admissible evidence, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact finder. RCW 9.94A.411(2)(a). It is the evidence and the nature of the crime that it represents that determines what charges are filed. There is no equal protection violation when the prosecutor's discretion is guided by the requirements of proof and the State's ability to meet them. State v. Dictado, 102 Wn.2d 277, 297, 687 P.2d 172 (1984).

B. POLICY REASONS DO NOT RENDER THE STATUTE UNCONSTITUTIONAL.

Amici also urges the court to strike down RCW 13.04.030(1)(e)(v) on the basis of a variety of policy reasons. It cites a study concluding that juveniles tried as adults run the risk of increased recidivism. It also relies on the claim that youth have more trouble navigating the adult court system than the juvenile system, that there is fewer opportunities for rehabilitation in the adult system than the juvenile court, and there is a risk of negative psychological impact on juveniles tried as adults.

These are all collateral consequences of adjudicating older juveniles in the adult system. They represent policy arguments why the Legislature should reconsider exempting those juveniles committing violent crimes from juvenile court jurisdiction. Amici cites no authority for the proposition that these kinds of policy arguments alone invalidate a statute. Since the statute is presumed constitutional, and Amici fails to explain why those reasons should render the statute invalid, it has failed to show that the statute is invalid.

In addition some of the reasons cited by Amici do not necessarily support the arguments it makes. The claim that juveniles originally charged in adult court have a higher rate of recidivism is weakened by the admission that the authors were unable to distinguish why declined youth had higher rates of recidivism.[4] One reason the recidivism rate may be higher is that juveniles willing to commit the kinds of violent crimes that result in original adult court jurisdiction are the kinds of people who are not generally law abiding.

---

[4] Drake E. (2013) The effectiveness of declining juvenile court jurisdiction of youthful offenders (Doc. No. 13-12-1902) Olympia: Washington State Institute for Public Policy page 7 accessed at https://www.dshs.wa.gov/sites/default/files/JJRA/pcjj/documents/WsippJuvenileDeclineDecFinal.pdf

Housing for Juveniles adjudicated in the adult system is coordinated through the Department of Corrections and Department of Juvenile rehabilitation. Juveniles under the age of 18 are housed at DJR. Once a juvenile turns 18 he remains at DJR if his sentence is completed before he turns 21. If not, his ability to complete his sentence at DOC is evaluated.[5] The isolation leading to psychological disorders is presumably a result of the need to protect younger offenders from older offenders. Since the auto adult statute only affects 16 and 17 year old offenders, and those offenders would be housed at DJR until at least 18, the statute does not cause the type of isolation resulting in harmful psychological effects that Amici warns of.

Amici does not explain why it is harder for juveniles to function in adult courts with adult criminal procedure. Juveniles tried in adult court are afforded more constitutional protections than they have in juvenile court. In either court the juvenile has the right to an attorney and to resources necessary for his defense.

Finally, Amici argues that the opportunities for rehabilitation present in juvenile court are not present in adult court. Juveniles who are subject to original adult court jurisdiction have either

[5] Id. at page 3.

committed a serious violent offense, is a repeat offender who has committed a violent offense, a violent offense while armed with a firearm, or has committed first degree robbery, first degree rape of a child, drive by shooting, or a first degree burglary with a prior criminal conviction. RCW 13.04.030(1)(e)(v). A standard range for these offenses adjudicated in juvenile court typically would result in a term at DJR. RCW 13.40.0357. Since juveniles adjudicated in adult court are housed at DJR they would receive the same educational and rehabilitative services had they been adjudicated in juvenile court.

The auto adult jurisdiction statute was enacted for policy reasons related to the safety of the community. Policy reasons that make that statute no longer in the interest of the public should be brought to the Legislature. They do not constitute grounds for this Court to invalidate an otherwise constitutional statute.

IV. CONCLUSION

For the foregoing reasons, and the reasons argued in the Brief of Respondent, the State asks the Court to find RCW 13.04.030(1)(e)(v) is constitutional and affirm the defendant's conviction.

Respectfully submitted on February 23, 2018.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: Kathleen Webber

KATHLEEN WEBBER, WSBA #16040
Deputy Prosecuting Attorney
Attorney for Respondent

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. TYLER WILLIAM WATKINS, Petitioner.	No. 94973-5 DECLARATION OF DOCUMENT FILING AND E-SERVICE

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 23rd day of February, 2018, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

ANSWER TO CORRECTED BRIEF OF AMICI CURIAE
CREATIVE JUSTICE
COMMUNITY PASSAGEWAYS
GLOVER EMPOWER-MENTORING PROGRAM

I certify that I sent via e-mail a copy of the foregoing document to: The Supreme Court via Electronic Filing and Aimee Marie Sutton; aimee@marshalldefense.com; Vanessa Torres Hernandez; vhernandez@aclu-wa.org; Marsha L. Levick; mlevick@jlc.org; George Yeannakis; George.yeannakis@opd.wa.gov; Thomas E. Weaver, Jr.; tweaver@tomweaverlaw.com; Laurel Anne Jones Simonsen; LSimonsen@ccyj.org; Nikkita Oliver; nikkita.oliver@gmail.com; Travis Stearns; travis@washapp.org; James M. Whisman; Jim.Whisman@kingcounty.gov; Washington Appellate Project; wapofficemail@washapp.org; Sara Anne Zier; sara.zier@teamchild.org; Nicholas Brian Allen; nick.allen@columbialegal.org; Hillary Ann Behrman; hillary@defensenet.org;

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 23rd day of February, 2018, at the Snohomish County Office.

Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office

SNOHOMISH COUNTY PROSECUTOR'S OFFICE

February 23, 2018 - 1:52 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	94973-5
Appellate Court Case Title:	State of Washington vs. Tyler William Watkins
Superior Court Case Number:	16-1-02005-9

The following documents have been uploaded:

- 949735_Briefs_20180223135132SC297553_5043.pdf
  This File Contains:
  Briefs - Answer to Amicus Curiae
  The Original File Name was watkins answer amicus creative justice.rtf.pdf

A copy of the uploaded files will be sent to:

- Jim.Whisman@kingcounty.gov
- LSimonsen@ccyj.org
- aimee@marshalldefense.com
- george.yeannakis@opd.wa.gov
- hillary@defensenet.org
- mlevick@jlc.org
- nick.allen@columbialegal.org
- nikkita.oliver@gmail.com
- sara.zier@teamchild.org
- travis@washapp.org
- tweaver@tomweaverlaw.com
- vhernandez@aclu-wa.org
- wapofficemail@washapp.org

Comments:

State's Answer to Corrected Amici Creative Justice

Sender Name: Diane Kremenich - Email: diane.kremenich@co.snohomish.wa.us
Filing on Behalf of: Mary Kathleen Webber - Email: kwebber@co.snohomish.wa.us (Alternate Email: diane.kremenich@snoco.org)

Address:
3000 Rockefeller Avenue, M/S 504
Everett, WA, 98201
Phone: (425) 388-3333 EXT 3501

Note: The Filing Id is 20180223135132SC297553