

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

TYLER WATKINS,
Appellant.

Supreme Court No. _____

COA No. 76205-2-I

**MOTION TO TRANSFER
CASE TO SUPREME
COURT**

I. IDENTITY OF MOVING PARTY

Appellant, TYLER WATKINS, moves this Court for a motion to transfer this case to the Supreme Court.¹

II. STATEMENT OF RELIEF SOUGHT

Tyler asks this Court to transfer this case from Division One of the Court of Appeals to the Supreme Court. RAP 4.4.

III. GROUNDS FOR RELIEF SOUGHT

1. Tyler is asking that this Court accept transfer of this case from Division One to the Supreme Court pursuant to RAP 4.4.

2. In *State v. Houston-Sconiers*, this Court was confronted with the issue of whether Washington's automatic decline rules for

¹ Tyler was sixteen years old when charges were filed against him, which is why he is referred to in this motion by his first name.

juveniles remains constitutional. 188 Wn.2d 1, 26, 391 P.3d 409 (2017).

3. This Court declined to reach the issue because the juveniles who were seeking relief were already adults and were only seeking relief in adult court. *Houston-Sconiers*, 188 Wn.2d at 26.

4. Tyler is not seeking remand to adult court, but is asking that this Court find due process requires a hearing before transfer can take place. As such, this case is in the correct posture for this Court to accept review of whether automatic decline violates due process.

5. Tyler was sixteen-years-old when he was charged with burglary in the first degree. CP 116. The nature of the charges and his age required mandatory decline of his case from juvenile to adult court. 10/20/16 RP 7.

6. Tyler objected to automatic transfer and asked the trial court to hold a hearing before he could be transferred. 10/20/16 RP 6; CP 10. The trial court denied his request. 11/20/16 RP 7; CP 88.

7. Tyler was found guilty after waving his right to a jury trial and stipulating to the police reports as competent evidence. 11/10/16 RP 2, 5.

8. This Court should accept transfer of this case from the Court of Appeals. In *Kent v. United States*, the Supreme Court held that “there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons” as the question of when a youth may be transferred to adult court. *Kent v. United States*, 383 U.S. 541, 554, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966).

9. This Court has held automatic decline to be constitutional, but recognizes that this holding stands in tension with United States Supreme Court precedence. *Houston-Sconiers*, 188 Wn.2d at 26, n. 11. It is clear that the Supreme Court recognizes that juveniles are entitled to greater constitutional protection than adults. *J.D.B. v. North Carolina*, 564 U.S. 261, 272-74, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011). This holding is in accord with a series of other United States Supreme Court holdings addressing the culpability of juvenile offenders and the due process they must be afforded because of their age. *Roper v. Simmons*, 543 U.S. 551; *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed.2d 825 (2010); *Miller v. Alabama*,

567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016).

10. Washington’s recent analysis of the due process rights of youth has also recognized that greater protections must be afforded to juvenile and youthful offenders than to adults. In *State v. S.J.C.* this Court recognized that Washington’s courts “have built a constitutional wall around juvenile justice; and while the dimensions of this wall have changed, its structural integrity has not.” *State v. S.J.C.*, 183 Wn.2d 408, 433, 352 P.3d 749 (2015). The greater protections afforded to juveniles provided them with sentencing rights adults do not enjoy. 183 Wn.2d at 428. These protections afford sentencing courts absolute discretion when they sentence youth in adult courts. *Houston-Sconiers*, 188 Wn.2d at 34. In addition, this Court has extended the special protections juveniles enjoy to young offenders, who are entitled to have their age considered as a mitigating factor at sentencing. *State v. O’Dell*, 183 Wn.2d 680, 698–99, 358 P.3d 359 (2015).

11. The question of whether automatic decline remains constitutional should be addressed by this Court. This Court found automatic decline to be constitutional when it decided *In Re Boot*. 130 Wn.2d 553, 571, 925 P.2d 964 (1996). Although the underpinnings of

In Re Boot are no longer good law, no court has yet addressed whether *In Re Boot* should also be abrogated. *Houston-Sconiers*, 188 Wn.2d at 26, n. 11. Because *In Re Boot* is a Supreme Court opinion, it is more appropriate to address the remaining viability of its holdings in this Court.

12. Additionally, Tyler remains a youth and can still take advantage of juvenile court jurisdiction. Should this Court decline to consider this case and allow it to be heard through the Court of Appeals, his remedy becomes more difficult. Regardless of which party prevails in the Court of Appeals, a petition for discretionary review is likely, meaning that the remedies available to Tyler should he ultimately prevail will be limited by his age.

13. Resolution of the important question of whether automatic decline remains constitutional requires resolution by this Court. The orderly administration of justice would be served by transferring this case from the Court of Appeals to this Court.

IV. CONCLUSION

For all these reasons, Tyler respectfully requests this Court order that this case should be transferred from the Court of Appeals to the Supreme Court pursuant to RAP 4.4.

DATED this 11th day of September 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

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APPENDIX A

NO. 76205-2-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TYLER WATKINS,

Appellant.

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

APPELLANT’S OPENING BRIEF

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A. INTRODUCTION

Sixteen-year-old Tyler Watkins, who had no criminal history or prior experiences with juvenile court, was charged in adult court with burglary in the first degree when the juvenile court automatically declined to take jurisdiction over his case. Tyler was entitled to a hearing before juvenile court jurisdiction was declined, and because he was deprived of the ability to present evidence of why he should remain in juvenile court, he was deprived of due process of law.

B. ASSIGNMENT OF ERROR

Tyler was deprived of his due process rights when juvenile court jurisdiction was automatically declined and no hearing was held to determine whether juvenile court should retain jurisdiction.

C. ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

Due process requires an individualized assessment of amenability to juvenile court jurisdiction before juvenile court jurisdiction may be declined and the charged youth may be prosecuted in adult superior court. Juvenile court jurisdiction is automatically declined when juveniles of a certain age are charged with particular offenses. Automatic declination offends due process. Was sixteen-year-old Tyler denied his due process rights where he was prosecuted in

adult court without a court first making an individualized assessment of whether juvenile court jurisdiction should be declined?

D. STATEMENT OF THE CASE

The prosecution charged sixteen-year-old Tyler with burglary in the first degree. CP 116. Because of the nature of the charges and his age, RCW 13.04.030 mandated automatic transfer of the case from juvenile to adult court without the hearing otherwise held to determine whether such transfer is appropriate. 10/20/16 RP 7.

Tyler objected to the automatic transfer and asked the trial court to find that a hearing was required before the juvenile court could decline jurisdiction. 10/20/16 RP 6; CP 10. The government opposed this motion and the court denied Tyler's request. 10/20/16 RP 7; CP 88.

Tyler waived his right to a jury trial and stipulated that the police reports could be used to find him guilty. 11/10/16 RP 2. The trial court found Tyler guilty as charged. 11/10/16 RP 5. He was sentenced to 16 months in prison, along with 18 months of community supervision. 11/17/16 RP 6. Because of Tyler's age and maturity, he was housed with juveniles until he was sent to prison. 11/17/16 RP 5. It was also likely he would serve his time in a juvenile facility once the Department of Corrections had classified him. 11/17/16 RP 4.

E. ARGUMENT

The United States Supreme Court explained that “there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons” as the question of when a youth may be transferred to adult court. *Kent v. United States*, 383 U.S. 541, 554, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966). The liberty interests at stake in the transfer of a youth from juvenile to adult criminal court are “critically important,” and they call for heightened procedural protections not provided under Washington’s automatic decline statute. *Id.* at 553-54.

In *State v. Houston-Sconiers*, Washington’s Supreme Court recognized that *In Re Boot*, which upholds the constitutionality of automatic decline in Washington, stands in “tension” with United States Supreme Court precedent. *State v. Houston-Sconiers*, ___ Wn.2d ___, 391 P.3d 409, 422 (2017) (referencing *In Re Boot*, 130 Wn.2d 553, 925 P.2d 964 (1996)). Indeed, automatic decline is inconsistent with due process. Because of the vital importance of the liberty interests at stake when juvenile court jurisdiction is declined, due process requires a hearing prior to transfer. At this hearing, the court

must conduct an individualized assessment of the youth's amenability to juvenile court jurisdiction. Because no such hearing was conducted here, Tyler's conviction should be reversed and his case remanded for a hearing.

1. It is no longer acceptable for courts to automatically treat youth like adults.

Procedures for adults do not automatically satisfy the constitutional requirements for youth. In *J.D.B. v. North Carolina*, the Supreme Court recognized that, because juveniles lack the maturity and experience of an adult, procedures put in place for adults must instead adapt to the attributes of youth. 564 U.S. 261, 272-74, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011). *J.D.B.* acknowledges a fact the non-judicial world had long understood: children do not have the education, judgment, and experience of adults and are not simply "miniature adults." *Id.* at 274. Likewise, the Washington Supreme Court has recognized the attributes of youth are legally significant and justify maintaining the longstanding rehabilitative purpose of juvenile court. *State v. S.J.C.*, 183 Wn.2d 408, 434, 352 P.3d 749 (2015).

Youth is now clearly recognized as a mitigating factor for culpability, based on the same legal principles relevant to a due process analysis. *Roper v. Simmons* established that because juveniles have

lessened culpability they are less deserving of the most severe punishments. 543 U.S. 551, 569, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). In *Graham v. Florida*, the Supreme Court held a life sentence could not be imposed without the creation of a procedure which would provide a meaningful opportunity for release. 560 U.S. 48, 75, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). These decisions incorporate both common sense – what “any parent knows” – and recent developments in brain science supporting the lesser culpability of youth. *Miller v. Alabama*, 567 U.S. 460, ___, 132 S. Ct. 2455, 2464, 183 L. Ed. 2d 407 (2012). The courts have made abundantly clear that the law can no longer simply assume adult sentences apply to youth; to the contrary, long adult sentences like those at issue here are presumptively invalid for youth unless “irreparable corruption” is proven. *Montgomery v. Louisiana*, __ U.S. ___, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016).

Likewise, Washington courts have recognized that because “children are different,” courts must take a defendant’s youthfulness into account and have absolute discretion to depart below otherwise applicable sentence ranges and sentencing enhancements when sentencing juveniles in adult court, regardless of how the juvenile got there. *State v. Houston-Sconiers*, 391 P.3d at 413.

Even when a young adult is convicted of a crime, the Washington Supreme Court has recognized that it must consider the person's lesser ability to control emotions, identify consequences and make reasoned decisions about actions, while at the same time having greater capacity for rehabilitation. *State v. O'Dell*, 183 Wn.2d 680, 692-93, 358 P.3d 359 (2015). Where these attributes are identified, a sentencing court must at least consider whether a sentence below the standard range is warranted for the young adult. *Id.*

Other courts have also found mandatory transfer rules unconstitutional. The Ohio Supreme Court recently found that mandatory transfer rules violated their state constitutional due process provisions, holding that all children, regardless of age, must have individual consideration of whether they should remain in juvenile court. *State v. Aalim*, ___ N.E.3d ___, 2015-0677, 2016 WL 7449237, at *9 (Ohio Dec. 22, 2016). New York has also just raised the age for when youth remain in the juvenile system, recognizing the benefits of expanding the role of juvenile courts. New York State, *Governor*

Cuomo Signs Legislation Raising the Age of Criminal Responsibility to 18-Years-Old in New York (April 10, 2017).¹

There are good reasons for this trend. Youth who remain in juvenile court are more likely to be rehabilitated. Those who are prosecuted in the adult system are thirty-four percent more likely to recidivate and with more violent offenses. Ziedenberg, J., *You're An Adult Now, Youth in the Criminal Justice System*, U.S. Dep't of Justice, National Institute of Corrections, 4 (2011).² Youth who are sentenced to adult facilities are also thirty-six times more likely to commit suicide and to be victims of physical and emotional abuse, including sexual assault. Campaign for Youth Justice, *The Impact of Mandatory Transfer Rules*, 1 (2016).³ It is counterproductive to transfer most youth to adult court. They are unable to access necessary services, are likely to be abused by adult prisoners, and are more likely to recidivate. Ziedenberg, at 4.

Without holding a hearing, juvenile court jurisdiction should not be declined. Because of the increased likelihood of rehabilitation within

¹ <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-raising-age-criminal-responsibility-18-years-old-new-york>

² <http://static.nicic.gov/Library/025555.pdf>

³ http://campaignforyouthjustice.org/images/factsheets/Mandatory_Transfer_Fact_Sheet_FINAL.pdf.

the juvenile system, courts should hold a hearing to determine amenability before declining a child to adult court. It is only by conducting an individualized assessment of whether a child should be transferred to adult court that due process can be satisfied. *See Kent*, 383 U.S. at 546; *Miller*, 132 S. Ct. at 2475.

2. Due process requires a hearing before juvenile jurisdiction may be denied to a youth charged with a crime.

Due process requires a hearing before juvenile court jurisdiction is declined for a youth charged with a crime. “[T]he Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures.” *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985). At a minimum, compliance with due process and fundamental fairness requires the court to identify the private interest affected by the official action, the risk of erroneous deprivation, the probable value of additional safeguards and, finally, the State’s interest. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). To satisfy this due process requirement, courts must conduct an inquiry into the youth’s needs, amenability to treatment, and the underlying

facts to determine whether decline is appropriate. *Kent*, 383 U.S. at 546; *Miller*, 132 S. Ct. at 2475; *see also In Re Gault*, 387 U.S. 1, 31, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

In *Kent*, the United States Supreme Court held that the transfer of a youth from juvenile court to adult criminal court imposes a significant deprivation of liberty and warrants substantial due process protection. *Kent*, 383 U.S. at 554. Juvenile court offers “special rights and immunities” to youth they lose upon transfer to the adult system. *Id.* at 556. For many youth, decline can mean the difference between confinement until the age of twenty-one and the harshest sentences imposed upon adults. *Kent*, 383 U.S. at 557. In light of those circumstances, the Court found it “clear beyond dispute that the waiver of jurisdiction is a ‘critically important’ action determining vitally important statutory rights of the juvenile,” and thus it must “satisfy the basic requirements of due process and fairness.” *Id.* at 553, 556.

3. Automatic decline fails to adequately protect the significant interests of juveniles charged with crimes.

For a youth like Tyler, the most important question is which court will hear the case. *State v. R.G.D.*, 108 N.J. 1, 4–5, 527 A.2d 834 (1987). Transfer of a juvenile to adult court is “the single most serious act that the juvenile court can perform.” *State in Interest of N.H.*, 226

N.J. 242, 252, 141 A.3d 1178, 1184 (2016) (quoting Hahn, P., *The Juvenile Offender and the Law*, 180 (3d ed.1984)). There is a “fundamental difference between juvenile courts and adult courts—unlike wholly punitive adult courts, juvenile courts remain ... rehabilitative.” *State v. Saenz*, 175 Wn.2d 167, 173, 283 P.3d 1094 (2012). Our Supreme Court has many times recognized the importance of this distinction. *State v. Rice*, 98 Wn.2d 384, 393, 655 P.2d 1145 (1982).

The Supreme Court has also recognized the important benefits a juvenile receives by remaining in juvenile court. *State v. Maynard*, 183 Wn.2d 253, 259, 351 P.3d 159 (2015). While the clearest difference between adult and juvenile court is the length of time a youth will serve if convicted of a crime, many other differences also exist. *See State v. Chavez*, 163 Wn.2d 262, 271, 180 P.3d 1250 (2008). Youth may seek a deferred disposition for eligible offenses. RCW 13.40.127. Most youth who remain in juvenile court are entitled to have their records sealed. RCW 13.50.260 (4); JuCR 7.12 (c)-(d). Legal financial obligations are mostly eliminated. RCW 7.68.035. Many evidence-based programs exist which seek to rehabilitate the youth and reduce recidivism. *See, e.g.,* Washington State Department of Social and Health Services,

Juvenile Justice Evidence Based Programs: Evidence Based Programs

– *Research Based Programs – Promising Practices* (2016).⁴

4. *In re Boot* is no longer good law, as it violates due process rights established by both the United States and Washington State Supreme Court.

Washington's courts have also long recognized the important benefits of juvenile court and applied due process principles to youth. *See Maynard*, 183 Wn.2d at 259 (citing *State v. Dixon*, 114 Wn.2d 857, 860, 792 P.2d 137 (1990)). Even prior to the United States Supreme Court ruling in *Kent* and *Gault* that juvenile offenders were entitled to fundamental due process, Washington's juvenile courts employed most of the required practices. *S.J.C.*, 183 Wn.2d at 424; *see also* Const. art. 1, § 3. Washington's courts "have built a constitutional wall around juvenile justice; and while the dimensions of this wall have changed, its structural integrity has not." *S.J.C.*, 183 Wn.2d at 417.

Despite the substantial due process required by *Kent* and recognized by the courts, the Washington Supreme Court held automatic decline constitutional in *Boot*, 130 Wn.2d at 557-58. The court relied upon *Stanford v. Kentucky* to justify automatic decline,

⁴ <https://www.dshs.wa.gov/ra/juvenile-rehabilitation/juvenile-justice-evidence-based-programs>.

arguing that since the Eight Amendment did not preclude the death penalty for sixteen and seventeen-year-old defendants, it did not require hearings for youth of the same age who were automatically declined to adult court. *Boot*, 130 Wn.2d at 571 (citing *Stanford v. Kentucky*, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989)).

Stanford has, of course, been abrogated by *Roper*. 543 U.S. at 574. Since *Roper*, the United States Supreme Court has consistently made clear that youth who are charged with crimes must be treated differently than adults. *Graham*, 560 U.S. 48; *Miller*, 132 S. Ct. 2455; *Montgomery*, 136 S. Ct. 718. These cases have overruled almost all of the cases relied upon to justify automatic decline, demonstrating that both the law and newer scientific information no longer support transferring youth to adult court without a hearing.

Likewise, Washington's Supreme Court has recognized the special status juveniles have in the criminal justice system. Most recently, the court recognized in *Houston-Sconiers* that "children are different." 391 P.3d at 413. The recognition led to the court to hold that sentencing courts must have absolute discretion in sentencing juveniles who have been declined to adult court. *Id.*

Houston-Sconiers is consistent with other recent opinions where the Washington Supreme Court has examined youthfulness. In *O'Dell*, the court held that a sentencing court may consider a defendant's youth as a mitigating factor justifying an exceptional sentence below the sentencing guidelines of the Sentencing Reform Act, even when the youth is over eighteen. 183 Wn.2d at 688-89. Likewise, in *Maynard*, the Washington Supreme Court required the prosecutor to reoffer a plea proposal only available to juveniles, even though juvenile court jurisdiction had lapsed before Maynard had attempted to take advantage of the offer. 183 Wn.2d at 264. No such disposition would have otherwise been available in adult superior court. *Id.*

While the Supreme Court did not reach the issue of whether automatic decline was constitutional in *Houston-Sconiers*, the court recognized that the cases on which the constitutionality of automatic decline was premised were no longer good law. 391 P.3d at 422. The court acknowledged that the holding in *Boot* "stands in tension" with United States Supreme Court holdings in *Roper*, *Graham*, and *Miller*. *Houston-Sconiers*, 391 P.3d at 422. As *Stanford* has been abrogated, there is no longer a basis to find automatic decline is still constitutional. *Boot* is no longer good law.

5. Tyler is likely to have remained in juvenile court if a decline hearing had been held.

Had the court held a hearing, it is likely Tyler would have remained in juvenile court. Since no hearing was held regarding Tyler's amenability to taking advantage of the resources available to a juvenile, there are clear factors which would have weighed in his favor.

In determining whether to decline jurisdiction, the juvenile court considers (1) the seriousness of the alleged offense and whether the protection of the community requires waiver; (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner; (3) whether the alleged offense was against persons or against property; (4) the prosecutive merit of the complaint; (5) the desirability of trial and disposition of the entire offense in one court when the juvenile's accomplices in the alleged offense are adults; (6) the juvenile's sophistication and maturity as determined by consideration of his or her home, environmental situation, emotional attitude, and pattern of living; (7) the juvenile's record and previous history; and (8) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile by the use of procedures, services, and facilities available in the juvenile court. *Kent*, 383 U.S. at 566-67; *State v. Williams*, 75 Wn.2d 604, 606-07, 453 P.2d

418 (1969); *see also State v. Furman*, 122 Wn.2d 440, 447, 858 P.2d 1092 (1993); *State v. Holland*, 98 Wn.2d 507, 515 n. 2, 656 P.2d 1056 (1983).

a. Seriousness of the alleged offense.

While all offenses subject to automatic decline are serious, the facts of the particular crime here make it less so. Tyler was accused of entering a house where he stole firearms. CP 116. Firearms were stolen from a house, but there do not appear to be any allegations they were ever used to commit other crimes. CP 113. No one was home when the burglary took place. CP 53. There was no evidence anyone was hurt or threatened. CP 53. The firearms appear to have been stolen and then stored at Tyler's house. CP 113-14. It is appropriate to factor in the seriousness of this crime, but to recognize the mitigating facts as well.

b. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.

This appears to have been a crime of opportunity committed by Tyler and his younger brother. It appears they came to the victim's home looking for an animal that had escaped. CP 111. There was no evidence in the police reports to suggest whether this was in fact true, or a ruse. The actual crime took place when there were no persons in

the home, as the home's occupant was at work when the break-in occurred. CP 53.

c. Whether the alleged offense was against persons or against property.

While burglary in the first degree is defined as a crime against persons, the facts of this case make clear this was a property offense. CP 53; RCW 9A.52.020(2); RCW 9.94A.411. No persons were in the house when it was burglarized and no persons were put into danger by the break-in. CP 53. The factor that makes this crime a burglary in the first degree is not related to any acts against a person, but the fact that firearms were stolen. CP 116; RCW 9A.52.020.

d. The prosecutive merit of the complaint.

Tyler stipulated to the police reports, making it impossible to evaluate the testimony had there been any. 11/10/16 RP 5. However, there do not appear to be any deficiencies in the government's ability to prove its case.

e. The desirability of trial and disposition of the entire offense in one court.

Tyler's brother was also prosecuted for this offense. CP 114. Because he was fourteen, Tyler's brother was prosecuted in juvenile

court. CP 72. This factor weighs in favor of retaining Tyler's case in juvenile court.

f. The juvenile's sophistication and maturity as determined by consideration of his or her home, environmental situation, emotional attitude, and pattern of living.

Because the court did not conduct a hearing, Tyler did not have an opportunity to present evidence of his lack of sophistication and his immaturity. The disposition was agreed to by the parties and it is clear the parties understood Tyler was still a youth. 11/17/16 RP 3. Both the prosecution and the defender hoped he would serve his sentence in a juvenile facility, suggesting he did not have the maturity to be housed with adult offenders. 11/17/16 RP 4. Even while he was waiting for transport, the prosecutor had agreed it was not appropriate for him to be in the adult jail. 11/17/16 RP 5.

Tyler acts like an adolescent who was still dependent upon his family. CP 105. Tyler had never been charged with a crime previously and had no history of working with the juvenile court to demonstrate his maturity and sophistication. CP 105. This factor also weighs in Tyler's favor.

g. Tyler's criminal history.

Tyler had no prior history and had never been given the opportunity to take advantage of the services provided to a youth through the juvenile courts. CP 105. This factor also weighs in Tyler's favor.

h. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile.

Tyler received a sentence of 16 months incarceration, followed by community custody. CP 9. Had he remained in juvenile court, he could have been under control of the juvenile court until his twenty first birthday. RCW 13.04.030. Given his age at the time of his conviction, there was no advantage to prosecuting him as an adult with respect to removing him from the community.

By keeping Tyler in juvenile court, the likelihood Tyler will commit a future crime is also reduced. Youth who are automatically declined have a higher rate of recidivism than those who are not. Washington Institution for Public Policy, *The Effectiveness of Declining Juvenile Court Jurisdiction of Youth*, 6 (2013). The findings of the Washington Institute for Public Policy are consistent with other studies regarding the likelihood a juvenile sent to adult court is likely to

reoffend. See, Drake, E., *The Effectiveness of Declining Juvenile Court Jurisdiction of Youthful Offenders* (2013); Fagan, J., Kupchick, A., & Liberman, A. (2007), *Be Careful What You Wish For: Legal Sanctions and Public Safety Among Adolescent Offender in Juvenile and Criminal Court*, Columbia Law School, (2007). In fact, the very act of sending a juvenile to adult court without a hearing may increase their likelihood to reoffend. Given that no one thought Tyler was mature enough to be housed with adults, this factor should be scored in Tyler's favor.

6. Tyler's conviction should be reversed and the trial court should be ordered to hold a decline hearing.

Tyler's matter should have been prosecuted in juvenile court rather than adult court. Many of the factors that would justify a juvenile court to retain jurisdiction weigh in Tyler's favor, even with the minimal record one would expect to have been created where no decline hearing was ever conducted and where the sentence recommendation to the court was agreed to after Tyler stipulated to the trial.

For all juveniles, including Tyler, due process requires a hearing before juvenile court jurisdiction is declined. The liberty interests at stake for Tyler are "critically important" and call for heightened procedural protections not provided to youth who are not provided a

hearing before juvenile court declines to take jurisdiction over their case. *Kent*, 383 U.S. at 553-54.

Boot is no longer good law. Its underpinnings have been overturned and it stands not only in “tension” with United States Supreme Court precedence, but in direct contradiction to the requirement that children are different and must be accorded individualized assessment of their amenability to juvenile court before they are declined to adult court. *Houston-Sconiers*, 391 P.3d at 422; *Miller*, 132 S. Ct. at 2475.

F. CONCLUSION

Automatic decline of juvenile court jurisdiction is inconsistent with due process. Due process requires a hearing prior to a juvenile court declining jurisdiction. Because Tyler was deprived of his due process rights, his conviction should be reversed and his matter remanded to juvenile court, where a hearing may be conducted.

DATED this 25 day of April 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

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APPENDIX B

NO. 76205-2-I

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I**

STATE OF WASHINGTON,

Respondent,

v.

TYLER WILLIAM WATKINS,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

1. RCW 13.04.030 sets out the exclusive original jurisdiction of the juvenile court. It exempts from the jurisdiction of the juvenile court minors between the ages of sixteen and seventeen who are charged with one or more enumerated serious violent and violent offense. Does this statute violate Due Process guarantees?

2. Should the Court speculate whether the defendant would have been retained in juvenile court had he not been subject to original adult court jurisdiction where there is no record that could guide the court in that analysis?

II. STATEMENT OF THE CASE

The defendant, Tyler Watkins, was charged with one count of First Degree Burglary on September 12, 2016. The charge was based on information that the defendant and his younger brother had knocked on the victim homeowner's door at 3:30 a.m. purportedly looking for a cat. They were refused entrance by the homeowner. Seven days later the homeowner discovered his house had been broken into and about nine firearms were stolen. Fingerprints at the scene matched the defendant's fingerprints. A search of the defendant's home located three of the nine guns stolen in the burglary. 1 CP 20, 111-114.

Watkins was 16 years old at the time he was charged. He had a prior convictions for harassment and theft of a firearm. Due to the nature of the charge and the defendant's prior criminal history the information was filed in Superior Court pursuant to the provisions of RCW 13.04.030(1)(e)(v)(D). 1 CP 111-112, 115.

Prior to trial the defendant filed a "Defense Motion Objecting to Auto-Declination" arguing that RCW 13.04.030(1) violated Due Process, the Eighth Amendment and Washington Constitution Art. 1, §14. He asked the court to refer his case to juvenile court for trial or for a decline hearing. 1 CP 102-110; 10/20/16 RP 6. The court denied the motion reasoning that it was bound by prior Supreme Court authority holding the statute did not violate either constitutional provision. 1 CP 86; 10/20/16 RP 7-9.

Thereafter the defendant stipulated to a bench trial on agreed documentary evidence. 1 CP 22-85. He was found guilty after bench trial. 1 CP 20-21. The defendant's standard range was 15-20 months confinement. He agreed to a recommendation of 16 months and in exchange the State agreed to dismiss other charges that were pending in juvenile court. 1 CP 8-9; 11/17/16 RP 2-3. The court accepted the recommendation and sentenced the defendant to 16 months confinement. 1 CP 10.

III. ARGUMENT

A. CASES DECIDED UNDER THE EIGHTH AMENDMENT DO NOT ESTABLISH STATUTES CONFERRING ADULT COURT JURISDICTION OVER JUVENILES WHO COMMIT CERTAIN OFFENSES VIOLATES DUE PROCESS.

Washington Constitution Art. 4, §6 grants superior courts original jurisdiction “in all criminal cases amounting to a felony...” The legislature may promulgate procedures directing which “sessions” of the superior court will hear certain types of cases. Washington Constitution Art. 4, §5. The juvenile court is one such session of the superior court created by the legislature to preside over juvenile cases. State v. Posey, 174 Wn.2d 131, 136-137, 272 P.3d 840 (2012).

The juvenile court has original jurisdiction over most criminal offenses committed by juveniles. RCW 13.04.030(e). It specifically exempts from the juvenile court’s exclusive jurisdiction certain crimes committed by persons who were sixteen or seventeen years old on the date the alleged offense was committed. RCW 13.04.030(e)(v).¹

¹ The defendant refers to this as the auto decline statute. Courts have likewise adopted this short-hand term. This term should be retired as it is misleading. “Auto-decline” suggests that at some point the juvenile court had jurisdiction before the case was transferred to adult superior court. Since RCW

The defendant argues RCW 13.04.030(e)(v) violates Due Process. A statute is presumed constitutional. State v. Jorgenson, 179 Wn.2d 145, 150, 312 P.3d 960 (2103). The party challenging the constitutionality of a statute has a 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). The constitutionality of a statute is reviewed de novo. If possible the Court will construe a statute so as to render it constitutional. Jorgenson, 179 Wn.2d at 150.

The Supreme Court considered a Due Process challenge to RCW 13.04.030(e)(v) in In re Boot, 130 Wn.2d 553, 925 P.2d 964 (1996). There the court held the statute did not violate due process principles. Id. at 570-572. The defendant argues that the authority Boot relied on to reach this conclusion has been overruled by Roper v. Simmons, 543 U.S. 551, 554, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), and Montgomery v. Louisiana, ___ U.S. ___, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016). He therefore

13.04.030 exempts certain 16 and 17 year olds from juvenile court jurisdiction no "decline" ever occurs. The State respectfully asks the Court to call the statute what it is – a statute that confers original adult jurisdiction on certain juveniles.

concludes that Boot is no longer good law. BOA at 12. The court should reject this argument because those cases were decided on the basis of a completely different constitutional provision. The analysis in those cases does not compel the conclusion that the Boot was incorrectly decided.

In Roper, the Court concluded that the Eighth Amendment categorically barred the death penalty for juvenile offenders. Roper, 543 U.S. at 569-575. It reached the same conclusion as applied to sentences of life without the possibility of parole for juvenile offenders who did not commit homicide in Graham, 560 U.S. at 82. For those offenders the Eighth Amendment required that juveniles be afforded a meaningful opportunity for release, although it did not foreclose the possibility that persons convicted of non-homicide offenses as juveniles could ultimately be incarcerated for life. Id. at 75. In Miller the Court held the Eighth Amendment mandated individualized sentencing for juveniles convicted of murder who were facing a potential sentence of life without possibility of parole. Miller, 567 U.S. at 479. The holding in Miller is applied retroactively to cases on collateral review. Montgomery, 136 S.Ct. at 736.

The holdings in each of these forgoing cases do not support the defendant's arguments because each of these cases was

decided on the theory that the Eighth Amendment barred a particular punishment. They did not address Due Process concerns regarding the jurisdiction of the court presiding over a juvenile defendant's case.

The framework for deciding cases under the Eighth Amendment is different from the framework for deciding whether a statute violates Due Process under the Fourteenth Amendment or Washington Constitution Article 1, §3. An Eighth Amendment analysis relates to punishment. The question there is whether the punishment is disproportionate to the crime. Under this analysis the Court developed certain categorical rules that consider the nature of the offense and the characteristics of the offender. Graham, 560 U.S. at 59-60.

In contrast Due Process encompasses procedural and substantive rights. The substantive component bars wrongful and arbitrary government action. State v. Beaver, 184 Wn.2d 321, 332, 358 P.3d 385 (2015). The analysis starts with identifying the interest affected by government action. If the interest is fundamental liberty interest the action is subject to strict scrutiny. That requires government action be narrowly tailored to serve a compelling state interest. Amunrud v. Board of Appeals, 158 Wn.2d

208, 220, 143 P.3d 571 (2006). If the interest does not fall within that category the inquiry is whether a rational relationship exists between the challenged law and a legitimate state interest. Id. at 222. If the substantive component of due process is satisfied procedural due process requires that government action be implemented in a fundamentally fair way. Beaver, 184 Wn.2d at 332.

These analytical differences reveal that each constitutional provision is designed to address distinct concerns. Roper, Graham, and Miller all dealt with punishment. Whether a punishment is disproportionate is concerned with the impact of the sentence on the defendant. In contrast RCW 13.04.030(e)(v) deals with the court's jurisdiction. Whether a juvenile's case should be processed in juvenile or adult court is a question that relates to both the public's interest and the youth's interests. State v. Furman, 122 Wn.2d 440, 447, 858 P.2d 1092 (1993); RCW 13.40.110(3).

Boot rejected an Eighth Amendment challenge to the statute because the defendants there had not yet been punished. No argument had been asserted that the jurisdiction of the court was itself was punishment. The adult court's ability to impose greater sentences than the juvenile court was not in and of itself a basis on

which to find that court's jurisdiction amounted to punishment for Eighth Amendment purposes. Boot, 130 Wn.2d at 569-570.

None of the Eighth Amendment cases that the defendant relies on address whether the jurisdiction of the court processing the juvenile's case is punishment in and of itself. Miller and Graham acknowledged the existence of statutes providing for exclusive jurisdiction in adult courts over juveniles throughout the country, but did not suggest those statutes were constitutionally infirm. Miller, 567 U.S. 478-489; Graham, 560 U.S. 66-67. Several cases support the conclusion that jurisdiction is not itself punishment. Those cases found that, where appropriate, a sentence authorized under the Juvenile Justice Act (JJA) may be imposed on a juvenile offender subject to adult court jurisdiction.

In Posey the defendant aged out of the juvenile system while his appeal was pending. At re-sentencing after his first appeal the trial court treated itself as a superior court, and sentenced the defendant to a standard range sentence according to the JJA. The Court affirmed this sentence holding that where a statute prohibited juvenile jurisdiction, the superior court retained constitutional jurisdiction over felony offenses. Posey, 174 Wn.2d at 135.

Similarly when the juvenile court lost jurisdiction due to counsel's failure to move for an extension of jurisdiction the appropriate remedy was to allow proceedings consistent with the JJA. In that regard the defendant was permitted an opportunity to accept a plea to a deferred disposition. State v. Maynard, 183 Wn.2d 253, 264, 351 P.3d 159 (2015).

Although a juvenile subject to superior court jurisdiction may be subject to a greater sentence than he would have been in juvenile court, the age of the offender is still a relevant sentencing consideration. For that reason mandatory provisions of the SRA do not apply to juveniles processed in adult court. State v. Houston-Sconiers, 188 Wn.2d 1, 9, 391 P.3d 409 (2017). Youth also plays a role in assessing an appropriate sentence for young offenders who are older than 18. Relying on the same reasoning that supported the holdings in Roper, Graham, and Miller the Court clarified that youth may establish diminished culpability justifying an exceptional sentence below the standard range. State v. O'Dell, 183 Wn.2d 680, 695-696, 358 P.3d 359 (2015).

The forgoing authorities demonstrate that the jurisdiction of the court is not in and of itself punishment. Depending on the circumstances the juvenile offender subject to the adult court

jurisdiction may face penalty consistent with the SRA, penalty consistent with the JJA, or a combination of both, wherein the individual characteristics of the juvenile offender guide whether he is subject to an otherwise mandatory sentencing provision or something less.

Three courts from other jurisdictions have recently addressed the same argument the defendant makes here in light of those state's statutes conferring adult jurisdiction on certain juvenile offenders. In People v. Patterson, 25 N.E.3d 526 (Ill. 2014) a fifteen year old was charged with three counts of aggravated criminal sexual assault. Pursuant to the Illinois automatic transfer statute his case was transferred from the juvenile court to the adult court where he was convicted. Like the defendant here, Patterson argued the Illinois automatic transfer statute violated due process, relying on Roper, Graham, and Miller. The court rejected the argument noting those cases were decided under an Eighth Amendment theory. "[A] constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision." Id. at 549.

The Idaho Supreme Court came to the same conclusion in State v. Jensen, 385 P.3d 5 (Idaho 2016). Jensen was seventeen

years old when he was charged with attempted murder, an offense that caused his case to be tried in adult court under I.C. §20-509. He argued that his Due Process right had been violated relying on Miller, Graham, and Roper. He claimed that juveniles had a liberty interest in not automatically being treated as adults in the criminal justice system. The Court rejected the argument finding the Eighth Amendment cases were not on point. Id. at 10.

Most recently the Ohio Supreme Court addressed the issue in State v. Aslim, __ N.E.3d __ (Ohio 2017 WL 2274997). (Aslim II)². Like Patterson and Jensen the Court in Aslim II found the cases decided under the Eighth Amendment were inapplicable to support the defendant's Due Process claim that he had a right to juvenile court jurisdiction. Aslim II, __ N.E.3d __ at ¶ 26.

The reasoning in Patterson, Jensen, and Aslim II applies equally to Washington's comparable statute conferring adult court

² The defendant cited Aslim I as a case in which the Ohio Court found a statute conferring adult court jurisdiction on certain juvenile offenders was unconstitutional. BOA at 6. State v. Aslim, __ N.E.3d __ (Ohio 2016 WL 7449237). After the defendant filed his opening brief the Ohio Supreme Court granted reconsideration and vacated that decision. The Court reconsidered its decision because it had failed to take into account that Article IV, §4(B) of the Ohio Constitution granted the General Assembly exclusive authority to define the jurisdiction of the courts of common pleas. Aslim __ N.E.3d __ at ¶3 (Aslim II). Washington Constitution Art. IV, §5 and §6 grants the Legislature the same authority to vest original jurisdiction in alternative forums. Posy, 174 Wn.2d at 136-137.

jurisdiction over sixteen and seventeen year old offenders who commit certain enumerated serious violent and violent offenses. Roper, Graham, and Miller do not support the defendant's Due Process challenge to the statute conferring adult court jurisdiction over his case.

B. THE STATUTE CONFERRING ADULT COURT JURISDICTION OVER JUVENILES WHO COMMITTED CERTAIN OFFENSES DOES NOT VIOLATE DUE PROCESS.

As noted above the court found RCW 13.04.030(1)(e)(v) does not violate due process principles in Boot. The court found that since "there is no constitutional right to be tried in a juvenile court" the defendants were not deprived of any constitutionally protected right when the statute conferred original jurisdiction on the superior court without a decline hearing. Thus there was no procedural due process violation. Boot, 130 Wn.2d at 571 quoting State v. Dixon, 114 Wn.2d 857, 860, 792 P.2d 137 (1990).

The Court also addressed the substantive Due Process argument that juveniles had "a constitutional right to punishment in accordance with one's culpability" which depended on the juvenile's ability to make reasoned decisions about the consequences of his actions. To support that argument the defendant relied on Thompson v. Oklahoma, 478 U.S. 815, 108 S.Ct. 2687, 101

L.Ed.2d 702 (1988). That case held that the Eighth and Fourteenth Amendment prohibited executing a person who was less than sixteen at the time of the offense. The Court rejected that argument because the defendant there was older than sixteen and not facing the death penalty. Boot, 130 Wn.2d at 572.

Nothing in the Eighth Amendment cases relied on by the defendant demands that Boot's Due Process analysis be overturned. No Washington court has yet overruled Boot or held that the Roper, Graham, Miller trilogy of Eighth Amendment cases abrogates the Court's Due Process analysis in Boot. In the wake of those cases the Supreme Court specifically refused to address whether to overrule Boot in Houston-Sconiers, 188 Wn.2d at 26-27.

Since Boot was decided the Court has reiterated that there is no constitutional right to be tried as a juvenile. State v. Maynard, 183 Wn.2d 253, 259, 351 P.3d 159 (2015), In re Dalluge, 152 Wn.2d 772, 783 n.8, 100 P.3d 279 (2004). The right attaches only if a court is given statutory discretion to assign juvenile or adult court jurisdiction. State v. Salavea, 151 Wn.2d 133, 140, 86 P.3d 125 (2004). Just as Boot found, the statute does not deprive juveniles subject to RCW 13.04.030(e)(v) of any constitutionally protected right. Boot 130 Wn.2d at 571. Conferring jurisdiction on sixteen

and seventeen year olds who commit certain crimes does not violate procedural due process.

The defendant's assertion that the Court's substantive Due Process analysis in Boot is no longer valid rests on the assertion that the court's reasoning relied on Stanford v. Kentucky, 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989) which was later abrogated in Roper, 543 U.S. at 574. That was not the sole basis for the court's reasoning however. Considering the interests at issue the statute satisfies substantive due process requirements.

The interest the defendant identifies is in JJA sentences. Not only do those sentences differ in length, but there are sentencing options and privacy protections for offenders processed in juvenile court that are not available in adult court. BOA at 10. He argues that the rational on which the Eighth Amendment cases were decided compels the conclusion that before the adult superior court can exercise jurisdiction over juveniles, Due Process requires the kind of hearing mandated in Kent v. United States, 383 U.S. 541, 554, 86 S.Ct. 1045, 16 L.E.2d 84 (1966). BOA at 8-9.

The statute should be strictly construed only if the court finds this identified interest is a fundamental liberty interest. Amunrud, 158 Wn.2d at 220. "Fundamental" liberty interests are those that

are deeply rooted in the Nation's history and tradition. Washington v. Glucksberg, 521 U.S. 702, 721, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997). "The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity." Albright v. Oliver, 510 U.S. 266, 272, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994). The Court has been reluctant to expand the concept of substantive due process beyond those limited concerns. District Attorney's Office of Third Judicial District v. Osborne, 557 U.S. 52, 72, 129 S.Ct. 2308, 174 L.Ed.2d 38 (2009).

The defendant's asserted interest in juvenile court jurisdiction is not one of those interest the court has traditionally considered "fundamental." Nor is it one that should be included in that class of interests. Both the Fourteenth Amendment and Art. 1, §3 were adopted before the first juvenile justice legislation was enacted. The first legislation establishing juvenile courts was not enacted until 1905. The JJA was originally enacted in 1977. State v. Saenz, 175 Wn.2d 167, 172, 283 P.3d 1094 (2012). The Washington constitution was adopted in 1889. The Fourteenth Amendment was ratified before that date. Given a similar timeline the Ohio Supreme Court held the Ohio statute conferring adult

jurisdiction on certain juveniles was not “deeply rooted in the Nation’s history and tradition” and therefore did not violate substantive due process. Aslim __ N.E.3d __ ¶17-20 (Aslim II).

Similarly the Idaho court found that a juvenile had no liberty interest in being placed in the juvenile court system. Since he had no “statutory right and no expectation, from either legislation or state conduct” to be initially processed in that court the Fourteenth Amendment was not implicated. Jensen, 385 P.3d at 11.

Like Ohio and Idaho, Washington has reaffirmed repeatedly that there is no constitutional right to be tried as a juvenile. Boot, 130 Wn.2d at 571; Maynard, 183 Wn.2d at 259. It should therefore not be treated as a “fundamental” liberty interest entitled to strict scrutiny. Analyzed under the rational relationship test, RCW 13.04.030(1)(e)(v) satisfies substantive due process requirements.

The 1994 amendment to RCW 13.04.030 conferring adult court jurisdiction on sixteen and seventeen year olds who committed certain offense was enacted as part of comprehensive changes to state law for the express purpose of deterring violent conduct. Boot, 130 Wn.2d at 560-561. The legislature found:

[T]he increasing violence in our society causes great concern for the immediate health and safety of our citizens and our social institutions. Youth violence is

increasing at an alarming rate and young people between the ages of fifteen and twenty-four are at the highest risk of being perpetrators and victims of violence. . . The legislature finds that violence is abhorrent to the aims of a free society and that it cannot be tolerated. State efforts at reducing violence must include changes in criminal penalties...it is the immediate purpose of this chapter ..., Laws of 1994 (this act) 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, ...(3) increase the severity and certainty of punishment for youth and adults who commit violent acts...

Laws of Washington 1st Sp. Sess. Ch 7, §1.

Deterrence is recognized as a legitimate state interest. Miller, 567 U.S. at 479 citing Ewing v. California, 538 U.S. 11, 25, 123 S.Ct. 1179, 155 L.Ed.2d 108 (2003). Deterrence relates to public safety, a goal achieved by reducing the rates at which violent crimes are committed. Providing for increased penalties is rationally related to that interest. Cf. State v. Manussier, 129 Wn.2d 652, 674, 921 P.2d 478 (1996) (Increased penalties under the three strikes law is rationally related to the legitimate state goal of public safety.) Conferring adult court jurisdiction on sixteen and seventeen year old juveniles who commit certain serious offenses allows for the potential for increased penalties on those juvenile

offenders. This it is rationally related to the goal of public safety and deterrence.

The reasoning of the Eighth Amendment cases the defendant relies on does not diminish this relationship. The court was skeptical of the deterrent effect of the death penalty or life without parole for non-homicide offenses on juvenile offenders. Roper 543 U.S. at 571; Graham, 560 U.S. at 72. It did not say that all juveniles were so immature that no penalty would have a deterrent effect. In fact in Miller the Court remarked “[t]hat Miller deserved severe punishment for killing Cole Cannon is beyond question.” Miller, 567 U.S. at 479.

Juveniles processed in the adult system can be subject to more severe penalties than they would otherwise face in juvenile court. There are sentencing options available in juvenile court that are not available under the Sentencing Reform Act. Compare RCW 13.40.127 providing for deferred dispositions with RCW 9.94A.575 abolishing the authority to defer sentences except for special sex offender sentencing alternative. However, the jurisdictional limitations of the juvenile court may also result in an older juvenile offender facing even less penalty than his younger counterpart if retained under the juvenile court’s jurisdiction. Before the 1994

amendment to RCW 13.04.030 was enacted the court found this limitation was an appropriate basis on which to transfer a defendant who had committed murder to adult court. Furman, 122 Wn.2d at 447-448. Placing older juveniles directly within the jurisdiction of the adult court eliminates this possibility. It is therefore also rationally related to the additional state interest in offender accountability. RCW 13.40.010(2) ("It is the further intent of the legislature that youth, in turn, be held accountable for their offenses..."), RCW 9.94A.010 (ensuring that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history).

Whether a juvenile will be subject to the penalty mandated by the legislature may depend on the trial court's findings regarding the individual characteristics of the juvenile offender. Houston-Sconiers, 188 Wn.2d at 9; O'Dell, 183 Wn.2d 695-696. Although that discretion has altered the certainty of the exact term of a sentence imposed in adult court, the potential for a more severe penalty remains a compelling incentive to deter violent offenses, either in the first instance or as a recidivist. It is therefore rationally related to the goal of accountability, public safety and decreasing the occurrence of violent crime.

C. THE COURT SHOULD NOT CONDUCT A KENT ANALYSIS.

The defendant next argues that had he been originally charged in juvenile court and the court had held a Kent hearing, the court would likely have retained juvenile court jurisdiction. Since he was never entitled to juvenile court jurisdiction this argument is irrelevant. Moreover, since a Kent analysis is highly fact specific, and those facts are not in the record, the court should refuse to accept the invitation to speculate what would have happened had the law been different.

A juvenile who is properly subject to juvenile court jurisdiction may be transferred to adult court upon motion of the prosecutor, the juvenile respondent, or the court. RCW 10.40.110. The court must hold a hearing before doing so. At that hearing the court must consider

(1) the seriousness of the alleged offense and whether the protection of the community requires declination; (2) whether the offense was committed in an aggressive, violent, premeditated or willful manner; (3) whether the offense was against persons or only property; (4) the prosecutive merit of the complaint; (5) the desirability of trial and disposition of the entire case in one court, where the defendant's alleged accomplices are adults; (6) the sophistication and maturity of the juvenile; (7) the juvenile's criminal history; and (8) the prospects for adequate protection of the public and rehabilitation of the juvenile through services available in the juvenile system

Furman, 122 Wn.2d at 447.

The decision whether to transfer a juvenile to adult court is based on a consideration of relevant reports, fact, opinion, and arguments presented by the parties. RCW 13.40.110(3). The defendant has presented argument, but the record contains no other materials from which the court could make a reasoned decision whether the defendant would have be transferred or not. The record that does exist includes the defendant's criminal history, and some information about the seriousness of the crime he committed, but no other information about the offense or the defendant that is relevant and must be weighed in a decline hearing. Since there is little basis on which to decide the defendant's claim, and any decision would be pure speculation based on incomplete information, the Court should not consider the defendant's argument that had he been entitled to a Kent hearing the court would have retained juvenile court jurisdiction.

IV. CONCLUSION

The statute conferring adult court jurisdiction over the defendant did not violate Due Process. For that reason the Court should affirm the defendant's conviction.

Respectfully submitted on July 7, 2017.

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APPENDIX C

NO. 76205-2-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent

v.

TYLER WATKINS,

Appellant.

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

APPELLANT'S REPLY BRIEF

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ARGUMENT IN REPLY

[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons. *Kent v. United States*, 383 U.S. 541, 554, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966).

Because of the vital importance of the liberty interests at stake when juvenile court jurisdiction is declined, due process requires a hearing before transfer to adult court can take place.¹ Denying Tyler Watkins this fundamental right deprives him of due process and requires a reversal of his conviction.

1. The United States Supreme Court’s recognition that children must be afforded special protections is not based solely on the Eighth Amendment, as the prosecutor suggests.

The prosecutor argues this Court should not rely on the Supreme Court’s consistent holdings that children must be afforded greater protections than adults because the Supreme Court’s holdings are limited to the Eighth Amendment. Brief of Respondent at 3. Neither the

¹ In a footnote, the government argues this Court should not use the term “decline.” Brief of Respondent at 3. While there are many terms used by other states to describe their decline procedures, no compelling reason exists for using a different term here. Washington’s court has always used this term and continues to do so. *See State v. Houston-Sconiers*, 188 Wn.2d 1, 12, 391 P.3d 409 (2017); *State v. Salavea*, 151 Wn.2d 133, 137, 86 P.3d 125 (2004). To describe decline otherwise only creates unnecessary confusion.

United States Supreme Court nor Washington's Supreme Court have, however, imposed such a limit. The prosecution's radical suggestion to the contrary is inconsistent with historical and developing jurisprudence.

The idea that children are entitled to special protections from the courts is not new. The protections for children are longstanding and extend well beyond criminal law. Contracts entered into by children are "voidable." E. Allan Farnsworth, *Farnsworth on Contracts* § 4.4, p. 379 and n. 1 (2nd ed. 1990). Children can own property but are considered incapable of property management. D. Kramer, *Legal Rights of Children* § 8.1, p. 663 (rev.2nd ed. 2005); J. Kent, *Commentaries on American Law* *78-*79, *90 (G. Comstock ed., 11th ed. 1867). Almost every state prohibits children from voting, jury duty, or marrying without parental consent. *Roper v. Simmons*, 543 U.S. 551, 596, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).

These protections have become the hallmark of modern juvenile law. In the last decade, the United States Supreme Court issued a series of decisions addressing the rights of children when they are accused of crimes. *Roper*, 543 U.S. 551; *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed.2d 825 (2010); *J.D.B. v. North Carolina*, 564 U.S.

261, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011); *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016).

These cases have consistently held that children are entitled to protections not afforded to adults.

These protections have not been limited to the Eighth Amendment, as the government suggests. Brief of Respondent at 5-6. In *J.D.B. v. North Carolina*, a case the government does not cite, the United States Supreme Court held juveniles are entitled to special protections when they are interrogated by the police. 564 U.S. at 272-74. Like all other cases the United States Supreme Court has issued in the last decade, *J.D.B.* recognizes juveniles lack the maturity and experience of an adult and that procedures put in place for adults must be adapted to the attributes of youth. 564 U.S. at 272-74. Like its other jurisprudence, *J.D.B.* acknowledges that age is “more than a chronological fact” and that children “generally are less mature and responsible than adults.” 564 U.S. at 727 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982)). It is the “common nature of juveniles” that requires courts to adapt procedures that are otherwise constitutional to the unique characteristics of youth.

J.D.B., 564 U.S. at 272 (citing *Graham*, 560 U.S. at 68). These unique characteristics entitle youth to protections not afforded to adults.

J.D.B., 564 U.S. at 272-74.

Likewise, Washington's courts have not limited the protections juveniles are entitled to when they are prosecuted by the government to the Eighth Amendment. In *State v. S.J.C.*, Washington's Supreme Court held that "the mind of a juvenile or adolescent is measurably and materially different from the mind of an adult, and juvenile offenders are usually capable of rehabilitation if given the opportunity." 183 Wn.2d 408, 433, 352 P.3d 749 (2015) (citing *Miller*, 567 U.S. at 471-72 & n. 5; Ashley Nellis, *Addressing the Collateral Consequences of Convictions for Young Offenders*, 35 *The Champion* 20, 24 (2011)). In holding juveniles were entitled to greater sealing rights than adults, our Supreme Court relied on "empirical data, common sense and evolving standards of justice." *S.J.C.*, 183 Wn.2d at 428 (citing as example, *Miller*, 567 U.S. at 471-72; *Graham*, 560 U.S. at 82; *Roper*, 543 U.S. at 578.) *S.J.C.* recognizes that Washington's courts "have built a constitutional wall around juvenile justice; and while the dimensions of this wall have changed, its structural integrity has not." *S.J.C.*, 183 Wn.2d at 417.

Washington also extended the protections of youth to young adult offenders who are no longer juveniles, which is also well beyond the Eighth Amendment. In *State v. O'Dell*, our Supreme Court held a defendant's youthfulness can support an exceptional sentence below the standard range for an adult defendant. 183 Wn.2d 680, 698–99, 358 P.3d 359 (2015). *O'Dell* is not analyzed under the Eighth Amendment, as Mr. O'Dell was an adult when he was sentenced and his sentence was not cruel and unusual. Washington's Supreme Court recognized in *O'Dell* that until full neurological maturity, young people have less ability to control their emotions, clearly identify consequences, and make reasoned decisions. *Id.* at 692. Like *S.J.C.*, Washington's Supreme Court applied the United States Supreme Court jurisprudence to a non-Eighth Amendment case to hold youthful offenders are entitled to have their youthfulness considered at sentencing. *Id.* at 696.

Likewise, in *State v. Houston-Sconiers*, Washington's Supreme Court recognized the constitutional importance of age when it held trial courts must have absolute discretion to depart from sentencing ranges and enhancements when sentencing juveniles in adult court. 188 Wn.2d at 9. While Washington's Supreme Court bases this decision on the Eighth Amendment, the decision also states that criminal procedure

laws must take a defendant's youthfulness into account. *Id.* at 8. Even when addressing the Eighth Amendment, the Washington Supreme Court has not adopted the restrictive approach the prosecution promotes.

2. A historical analysis of juvenile due process rights favors the elimination of automatic decline.

The prosecution argues a juvenile's interest in being tried in juvenile court has not traditionally been considered fundamental. Respondent's Brief at 15. This ignores the centuries of jurisprudence to the contrary, in addition to the clear holdings of Washington's courts that afford additional due process protections to juveniles that are not afforded to adults. *Houston-Sconiers*, 188 Wn.2d at 8; *State v. Maynard*, 183 Wn.2d 253, 259, 351 P.3d 159 (2015); *State v. Dixon*, 114 Wn.2d 857, 860, 792 P.2d 137 (1990). Depriving Tyler of his due process right to a hearing before being declined to adult court requires reversal of his conviction and a new trial.

While juveniles were considered to be miniature adults during the Renaissance, where little consideration was given to their mental capacity or culpability, this is no longer the case. *See* Barry Feld, *Bad Kids: Race and the Transformation of the Juvenile Court*, 17 (1999). By the nineteenth century, juveniles were believed to be fundamentally

different from adults. David S. Tanenhaus, *The Evolution of Transfer out of the Juvenile Court, in The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court* 13, 17 (Jeffrey Fagan & Franklin E. Zimring eds., 2000). Special protections were created for them, including child labor laws, mandatory schooling, and a separate court system.

The original juvenile courts were designed to be substantively and procedurally different from adult courts. *In Re Gault*, 387 U.S. 1, 15, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). These courts focused on rehabilitation rather than punishment, with the primary goal of helping troubled youth. Kelly Keimig Elsea, *The Juvenile Crime Debate: Rehabilitation, Punishment, or Prevention*, 5 Kan. J.L. & Pub. Pol'y 135, 137 (1995). These courts were largely unmonitored until the twentieth century when the Supreme Court began to grow increasingly concerned with the lack of due process being afforded to juveniles. The Supreme Court issued rules establishing due process rights for juveniles charged with crimes. In *Kent v. United States*, the Supreme Court held that prior to transfer to adult court, a juvenile must be granted a hearing that satisfies due process. 383 U.S. at 554. The next year, the Supreme Court held that a juvenile delinquency proceeding

that may lead to commitment in a state institution “must measure up to the essentials of due process and fair treatment.” *Gault*, 387 U.S. at 30. Scholars argue the United States Supreme Court never intended for juveniles to be deprived of their fundamental right to a hearing before they could be tried as adults. Sally T. Green, *Prosecutorial Waiver into Adult Criminal Court: A Conflict of Interests Violation Amounting to the States’ Legislative Abrogation of Juveniles’ Due Process Rights*, 110 Penn St. L. Rev. 233, 260 (2005).

Like many states, Washington’s automatic decline statute was born out of the misplaced fear engulfing the country that youth were becoming super-predators. Patrick Griffin, *Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform*, Nat’l Ctr. for Juvenile Justice (Nov. 2008).² In enacting Washington’s automatic decline statute, the legislature found “youth violence is increasing at an alarming rate.” Laws of Washington 1st Sp. Sess. Ch. 7, § 1. This fear has been debunked, as no such crime wave ever emerged. Clyde Haberman,

² Available at www.ncjj.org/PDF/MFC/MFC_Transfer_2008.pdf.

When Youth Violence Spurred “Superpredator” Fear, New York Times (April 6, 2014).³

Washington’s automatic decline rules were upheld by Washington’s Supreme Court, relying on the United States Supreme Court’s now abrogated case, *Stanford v. Kentucky*, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989). *In Re Boot*, 130 Wn.2d 553, 571, 925 P.2d 964 (1996). Washington’s Supreme Court has recognized this tension and, while not addressing the constitutionality of the automatic decline procedures, has recognized the deprivation of procedure for juveniles before juvenile court jurisdiction is taken away may no longer be constitutional. *Houston-Sconiers*, 188 Wn.2d at 27, n.11.

Many courts have recognized that the most important question for a youth is whether they will be tried as a juvenile or an adult. *State v. R.G.D.*, 108 N.J. 1, 4–5, 527 A.2d 834 (1987); *State in Interest of N.H.*, 226 N.J. 242, 252, 141 A.3d 1178, 1184 (2016). A historical analysis of the due process rights of juveniles makes it clear children are entitled to special protections not afforded to adults. *Houston-*

³ Available at https://www.nytimes.com/2014/04/07/us/politics/killing-on-bus-recalls-superpredator-threat-of-90s.html?mcubz=0&_r=0.

Sconiers, 188 Wn.2d at 8. Predominant in these fundamental due process rights are those first recognized in *Kent*: no transfer to adult court without a hearing, effective assistance of counsel, and a statement of reasons. *Kent*, 383 U.S. at 554. The failure to provide these basic due process rights to Tyler before he was declined to adult court is a violation of his due process and requires a reversal of his conviction.

3. *In Re Boot* should be recognized as inconsistent with federal and state jurisprudence and can longer be relied on as a justification for automatic decline.

Washington's Supreme Court found automatic decline to be constitutional in *In Re Boot*. 130 Wn.2d at 571. The prosecutor argues *In Re Boot* is still good law. Brief of Respondent at 4-5. This argument ignores the concerns of Washington's Supreme Court in *Houston-Sconiers* and the abrogation of *Stanford* by the United States Supreme Court, which *Boot* relies on to uphold the constitutionality of automatic decline. *Houston-Sconiers*, 188 Wn.2d at 27, n. 11. And while the prosecutor argues the Supreme Court refused to address the constitutionality of automatic decline, the court was instead clear its decision was not intended to foreclose argument on this issue, because the remedy the appellants sought did not require the constitutionality of automatic decline to be addressed. *Id.*; Brief of Respondent at 13.

Stanford, which *Boot* relied on to find automatic decline to be constitutional, is no longer good law. *Roper*, 543 U.S. at 574. *Stanford* held that the Eighth Amendment did not preclude the death penalty for sixteen and seventeen-year old defendants. *Stanford*, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989). *Boot* relies on the analysis in *Stanford* to uphold the constitutionality of automatic decline. *Boot*, 130 Wn.2d at 571. The Supreme Court's decision in *Roper* abrogates *Stanford*'s holding. *Roper*, 543 U.S. at 574. *Roper*, like all others following it, made clear youth must be treated differently. *Id.*; see also *Graham*, 560 U.S. 48; *Miller*, 567 U.S. 460; *Montgomery*, 136 S. Ct. 718. Despite the prosecutor's argument to the contrary, almost all of the cases relied on by the court to justify automatic decline in *Boot* have been overruled. Brief of Respondent at 15. With its underpinnings cases abrogated, there is no basis to follow *Boot* and this Court should decline to do so.

This Court should recognize Washington's Supreme Court has consistently held that the differences between juveniles and adults apply to criminal procedure and is not confined to punishment. *Houston-Sconiers*, at 8. This recognition, as argued above, applies to issues having nothing to do with sentencing, like the sealing of juvenile

court history. *S.J.C.*, 183 Wn.2d at 417. The special protections juveniles are entitled to require prosecutors to renew offers, even when they are no longer authorized by law. *Maynard*, 183 Wn.2d at 264. *Houston-Sconiers* makes clear its jurisprudence relies on the Eighth amendment its recognition criminal procedure laws must take a defendant's youthfulness into account. *Id.* at 8. *Boot* cannot be reconciled with these holdings.

Both the United States and Washington's Supreme Court have recognized children are entitled to due process rights not afforded to adults. *Boot* is inconsistent with this jurisprudence and can no longer be reconciled with the opinions of either court. This Court should adopt the analysis of both high courts with regard to the rights of juveniles and not the restrictive approach advocated for by the prosecution. *Boot* is not a barrier to this approach.

4. *Kent v. United States* and *In Re Gault* require juveniles be afforded the right to a hearing before juvenile jurisdiction is declined.

Washington's courts have long held juveniles have due process rights not afforded to adults. *Dixon*, 114 Wn.2d at 860. Even before additional rights were recognized to apply to juveniles in *Kent* and *Gault*, juveniles prosecuted in Washington enjoyed the protections of

fundamental due process. *S.J.C.*, 183 Wn.2d at 424; *see also* Const. art. 1, § 3. These rights, at a minimum, require a hearing before a juvenile may be declined to adult court where the court can make an individual assessment into whether juvenile court should decline jurisdiction. *Kent*, 383 U.S. at 554.

The prosecutor appropriately recognizes that three states have upheld their procedures for decline juvenile jurisdiction. Brief of Respondent at 10-11. But not all courts that have addressed automatic decline have found it to be constitutional. Delaware has long held that automatic decline is unconstitutional under both the Fourteenth Amendment and Delaware's constitution. *Hughes v. State*, 653 A.2d 241, 252 (Del. 1994). Nevada has held its decline procedures to be unconstitutional, because they require a juvenile to admit to a criminal act in order to remain in juvenile court, thereby violating the Fifth Amendment. *In re William M.*, 124 Nev. 1150, 1152, 196 P.3d 456, 457 (2008).

Other states have recently eliminated their automatic decline rules, obviating the need for their courts to address their constitutionality. Missouri now requires mandatory hearings for offenses that would qualify for automatic decline in Washington. Mo.

Rev. Stat. § 211,021 (2013). Delaware codified its court's holding and requires an amenability hearing before a juvenile alleged to have committed a crime may be declined to adult court. Del. Code Ann. Tit. 10 § 1010 (2012). Hawaii will only allow decline after a court determines that the juvenile cannot be treated in an institution designed for children. Haw. Rev. State. Ann. §571-22 (2014).

Kent is the only case the United States Supreme Court has ever heard regarding the transfer of a youth to adult court. *Kent's* requirement that children must be afforded due process that includes a hearing before they are transferred to adult courts can no longer be ignored. The United States Supreme Court never intended for juveniles to be deprived of this fundamental right without a hearing. Green, 110 Penn St. L. Rev. at 260. This Court should find it is no longer acceptable to allow decline youth to adult court without requiring the government to comply with these fundamental due process rights. The failure to do so requires reversal of Tyler's conviction.

A. CONCLUSION

The automatic decline of juvenile court jurisdiction is inconsistent with due process. Due process requires a hearing prior to a juvenile court declining jurisdiction. Because Tyler was deprived of his

due process rights, his conviction should be reversed and this matter remanded to juvenile court, where a hearing may be conducted.

DATED this 11th day of September 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

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