IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON, Plaintiff-Relator, v. LAURIE ANN BENOIT, Defendant-Adverse Party.	Multnomah County Circuit Court. Case No. 111051946 SC S060858

BRIEF OF *AMICUS CURIAE* OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF DEFENDANT ON REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF THE CASE

Amicus curiae Oregon Criminal Defense Lawyers Association ("OCDLA") writes in support of the statutory interpretation of Judge Albrecht in *State v. Benoit*. Amicus agrees with the statement of the case as set out in the respondent's brief.

Interest of *amicus curiae*

OCDLA is a 1,246-member non-profit organization of private criminal defense attorneys, public defenders, investigators and others engaged in criminal and juvenile defense. OCDLA works to improve the quality of the defense function in the juvenile and adult justice systems, protect the constitutional and statutory rights of those accused and convicted of crimes, and educate the public, the courts, and the legislature about the defense function.

Question presented

Does a criminal prosecution transform into a violation proceeding when, at arraignment, the prosecutor reduces the charge to a violation?

Proposed Rule of Law

The plain text of the statute makes clear that a violation proceeding is limited to those instances initiated by citation. Proceedings initiated by

means other than citation, ie arrest, can never be “violation proceedings” under the statute.

Summary of Argument

ODCLA writes to encourage this court to dismiss this case, as well as *State v. Fuller*, as improvidently allowed. The issue in both is purely statutory, and the statutes are clear and unambiguous. There is no statutory uncertainty justifying this court’s time. Further, the state has already approached the legislature to amend the statutory scheme.

Argument

It is the position of OCDLA that the question before the court in this case is purely statutory. Any attempts to go to the quasi-constitutional analysis of *Brown v. Multnomah County Dist. Court*, 280 Ot 95, 570 P2d 52 (1977), ignores the plain and unambiguous text of the statutory scheme.

The legislature has made clear that "[e]xcept as specifically provided in [Chapter 153], the criminal procedure laws of this state applicable to crimes also apply to violations." ORS 153.030(1).

ORS 153.076(1), (2) and (5) limit the criminal procedure rights in a “violation proceeding” including the right to jury, the right to proof beyond a

reasonable doubt, and the right to counsel at public expense. ORS 153.076(1), (2), (5). Absent that statute, defendant in violation proceedings would be entitled to the same rights as defendants charged with misdemeanors or felonies.

The statutory scheme differentiates between the term "violation" and "violation proceeding." When the legislature utilizes different terms, this court will interpret those terms to have different meanings. *State v. Guzek*, 322 Or 245, 265, 906 P2d 272 (1995). Here, the legislature sets forth the distinction by limiting the criminal procedure rights attendant to "violation proceedings," but giving no limitation to "violations" generally.

Thus framed, the only question before this court is whether these cases are "violation proceedings" or merely "violations." And again, the answer is clear from the plain text of the statute.

A "violation proceeding" is limited to "a judicial proceeding initiated by issuance of a citation that charges a person with commission of a violation." The record in this case, as well as *State v. Fuller*, shows that the defendants were arrested, the proceedings were not initiated by citation, and the proceedings alleged crimes listed in the Oregon Criminal Code. Under the unambiguous wording of the statute, the cases were not violation

proceedings, and as such, there was no statutory authority to limit the criminal procedure rights involved.

What the statutory scheme also makes clear is that the legislature specifically has refused to delegate to the executive branch the power to extinguish criminal procedure rights unless the case meets the limited definition of "violation proceeding." It is not within the power of the District Attorney to reduce a case to a violation later in time, and thereby eliminate jury trial rights, or the right to counsel. Any claims by the state of efficiency and economy are misplaced. The issue is one of delegated power, and the legislature has unambiguously denied that power to prosecutors.

OCDLA notes for this court that the state appears to view this issue as a purely statutory question as well. In the 2013 Oregon Legislative Session the Oregon District Attorneys Association, along with the Oregon Attorney General's Office submitted House Bill 3184, which was drafted to alter the statutory scheme. Testimony on that bill specifically called it the "Fuller fix."

Daina Vitolins, on behalf of the Oregon District Attorney's Association testified as follows:

> "This bill comes out of the case of State v. Fuller where a judge in Multnomah County essentially said that even though a District

> Attorney elects to treat a case as a violation the defendant was entitled to counsel, jury trial, so it just really avoided – the decision avoided all the reasons why a District Attorney would want to reduce a case from a misdemeanor to a violation.
>
> "And so, um, we asked the Oregon Department of Justice Appellate Division to take a look at House Bill 3184 and here is what their recommendation was, it was Tim Sylwester and I spoke to him this morning. Essentially there are two cases that are pending before the Supreme Court, an appeal of Fuller and another mandamus, that will essentially answer the question about whether or not the circuit court was correct and so we're requesting that you wait and take no action on this House Bill. If we win at the Supreme Court then the problem is solved. If not we can come back."

Oregon House Judiciary, April 8, 2013, 1:00 pm.

The statutes involved in this case are clear and unambiguous on their face. This is a simple *PGE/Gains* analysis. Because of the plain text of the statutes, OCDLA is uncertain if either this case, or *State v. Fuller*, necessitates the time and attention of this court. Further, the state has made clear to the legislature that if this court issues an opinion upholding the plain wording of the statute, it will immediately seek to reactivate HB3184 and amend the statutory scheme. So in effect, the state is asking this court to issue an opinion with a potentially very limited shelf life.

CONCLUSION

This case involves a statutory question, and the statute is clear. No clarification on the statute is required. If the state wants to alter the outcome in similar cases, it should approach the legislature, *as it has already done*. OCDLA recommends that this court dismiss the mandamus, and dismiss *State v. Fuller* as improvidently allowed.

Respectfully Submitted,

/s/ Bronson James

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CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)

Brief length

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 1,034 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

NOTICE OF FILING AND PROOF OF SERVICE

I certify that I directed the original Brief of *Amicus Curiae* to be filed with the Appellate Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301, on May 7, 2013.

I further certify that, upon receipt of the confirmation email stating that the document has been accepted by the eFiling system, this Brief of *Amicus Curiae* will be eServed pursuant to ORAP 16.45 (regarding electronic service on registered eFilers) on Anna Joyce, #013112, Solicitor General, attorney for Petitioner on Review and Bruce Tarbox, #001181, attorney for Respondent on Review.

Respectfully Submitted,

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_____

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