

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Appellee,

v.

JOSE ADRIAN AGUNDEZ-
MARTINEZ,

Appellant.

CR-23-0053-PR

Court of Appeals

No. 1 CA-CR 21-0369

Yuma County Superior Court

No. CR2019-00622

AMICUS CURIAE BRIEF OF THE MARICOPA COUNTY ATTORNEY'S OFFICE

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I. STATEMENT OF INTEREST

The Maricopa County Attorney’s Office (“MCAO”) is authorized to file this amicus brief as an agency of an Arizona County. Ariz. R. Crim. P. 31.15(b)(1)(B). MCAO is the largest prosecuting agency in Arizona. It handles nearly all felony prosecutions in Maricopa County and misdemeanor filings in the county’s justice court system, and provides civil legal services to all county agencies. MCAO has an interest in upholding the laws within its jurisdiction and in maintaining criminal convictions; since the Court of Appeals published the decision underlying this matter (the “Opinion”), several defendants have relied on the Opinion to urge dismissal of the charges against them.

II. INTRODUCTION

When Agundez-Martinez was between 10 and 12 years old, he sexually assaulted and abused three victims younger than himself. *State v. Agundez-Martinez*, 254 Ariz. 452, ___, ¶¶ 3-6 (App. 2023). Ten years later, one of the victims disclosed the abuse to his mother, after which the other two victims made similar disclosures. *Id.* at ¶ 7. The State charged Agundez-Martinez, then 23 years old, with five dangerous crimes against children (“DCAC”) offenses: one count of sexual conduct with a minor, a class 2 felony; three counts of child molestation, class 2 felonies; and one count of attempted child molestation, a class 3 felony. *Id.* at ¶ 8. A jury convicted Agundez-Martinez as charged, and the trial court

sentenced him under the DCAC statute, A.R.S. § 13–705, to consecutive mitigated prison terms totaling 51 years. *Id.* at ¶¶ 10–11.

Agundez-Martinez appealed, arguing that Arizona law did not permit prosecution as an adult for crimes committed when he was 10-12 years old, and that his sentences violated the Eighth Amendment’s proscription against cruel and unusual punishment. *Id.* at ¶ 1. The Court of Appeals agreed with Agundez-Martinez on both accounts, and the State filed a petition for review with this Court.

III. THIS COURT SHOULD GRANT REVIEW BECAUSE ARIZONA LAW DOES NOT FORECLOSE PROSECUTION OF AGUNDEZ-MARTINEZ.

“Given the issues raised in the appellate briefs, [the court of appeals] ordered supplemental briefing on whether the State could prosecute adult criminal charges against Agundez-Martinez for acts committed when he was younger than 14 years old.” *Id.* at ¶ 12. Following that briefing, the court held the State could not. *Id.* at ¶ 25. Key to the court of appeals’ holding is its conclusion that “an offensive ‘act by a juvenile’ is a ‘delinquent act’ unless it is enumerated in A.R.S. § 13–501(A) or (B).” *Agundez-Martinez*, at ¶ 25. In other words, the Opinion concludes that there is a blind spot in Arizona law immunizing Agundez-Martinez from prosecution.

If correct, the court of appeals decision would preclude criminal prosecution of numerous offenses committed by juveniles. Take for example a 17-year-old on

the eve of his 18th birthday. That night, he lures a minor for sexual exploitation, an offense not covered by § 13–501(A) or (B). The next day police discover the offense. Now 18-years-old, the would-be defendant cannot be charged in juvenile court.¹ And based on *Agundez-Martinez*, he also could not be tried as an adult.

The above scenario is not just hypothetical. Defendants who committed criminal acts shortly before their 18th birthday and were charged just after turning 18 now assert that the *Agundez-Martinez* requires dismissal of their cases. For example, one defendant has argued that “delinquent acts may *only* be prosecuted in juvenile court or transferred to adult court via A.R.S. § 8–327” and because “the juvenile court lacks jurisdiction” over an eighteen-year-old, [the defendant] cannot be prosecuted for crimes committed even weeks before turning eighteen. (Appx. A, Motion to Dismiss in *State v. Trinity Jade Pariseau*, CR2022-148672-001, at 5–6)

¹ The court of appeals appears to have limited its holding to juveniles under the age of 14:

We, therefore, hold that any act committed by a juvenile under the age of 14 that if committed by an adult would be a criminal offense is, by definition, a delinquent act and thus not a criminal offense and may be prosecuted only in the juvenile court or transferred to adult court under A.R.S. § 8–327.

Agundez-Martinez, at ¶ 25; *id.* at ¶ 30 (“Our holding reflects that the legislature has excluded the acts of juveniles younger than 14 from those categorized as criminal for adult prosecution unless the case is transferred under A.R.S. § 8–327.”).

(quoting the Opinion at 9) (emphasis original). Another one has argued “the broad distinction between delinquent acts and criminal conduct applies” to all juveniles. (Appx. B, Motion to Dismiss in *State v. Johnny James Lindborg*, CR2022-142256-001 at 3); (*see also* Appx. A at 6) (“Although *Agundez-Martin*[ez] dealt with a pre-14 [y]ear old, the same reasoning applies to Trinity’s case”).²

The Opinion may require courts to agree with such defendants that “[o]nly the juvenile court had jurisdiction” over such criminal acts committed by seventeen-year-olds unless they fall under A.R.S. § 13–501. If they do not, those acts are delinquent acts beyond the reach of prosecution in adult court. Arizona law is not that shortsighted. This Court must address the analysis *Agundez-Martinez*.

1. *The Opinion relies on statutes dictating prosecution of juveniles in Arizona; but those laws do not control the prosecution of adults for acts committed when they were juveniles.*

The definition of “delinquent act” formed the foundation of the court of appeals’ analysis. A “delinquent act” is “an act by a juvenile that if committed by an adult would be a criminal offense.” A.R.S. § 8–201(12). Picking up on the conditional language in the definition, the court held that “delinquent acts are

² As of the date of this filing, the trial court denied the motion to dismiss in *Lindborg*. The motion to dismiss in *Pariseau* is under advisement.

different from criminal offenses” and “whether the conduct is a delinquent act depends on the offender’s age at the time of the conduct.” *Agundez-Martinez*, at ¶¶ 15-16. In other words, the court held that when a juvenile commits an act defined in Title 13, it is only a delinquent act and is not a criminal offense unless authorized for felony charging by § 13–501.

The court’s analysis, however, ignored that “criminal offenses” apply to all “persons” regardless of age. *See* A.R.S. § 13–201 (“The minimum requirement for criminal liability is the performance by a *person* of conduct which includes a voluntary act or the omission to perform a duty imposed by law which the *person* is physically capable of performing.”) (emphasis added); *see also* A.R.S. § 13–105(30) (“‘Person’ means a human being”). As it has been in Arizona for nearly 100 years, “a juvenile could commit a crime, and [the juvenile’s] age made it no less a crime.” *McBeth v. Rose*, 111 Ariz. 399, 402 (1975); *see Burrows v. State*, 38 Ariz. 99, 110 (1931) (overruled on other grounds) (“[T]he juvenile statute affected merely the treatment of the offender, and not his capacity for crime.”).

This Court has previously explained:

[T]he purpose of the Arizona juvenile law is not to attempt to establish an arbitrary age below which the child is presumed to be ignorant of the consequences of his acts, but rather to provide a special method of treatment for minors under the age of eighteen who have violated the criminal law.

Gammons v. Berlat, 144 Ariz. 148, 151 (1985) (quoting *Burrows* 38 Ariz. at 111). *Agundez-Martinez*, however, establishes an arbitrary age below which a child cannot commit certain criminal acts.

These cases were, of course, decided before the Juvenile Justice Initiative in 1996, as the Opinion finds material, ¶ 25, but there is no reason to conclude that an initiative designed to “respond more stringently to juvenile crime when appropriate” substantially lessened the culpability of juvenile offenders. See *In re Cameron T.*, 190 Ariz. 456, 461–62 (App. 1997). While the initiative required the State to direct file certain offenses for juveniles ages 15 and older in criminal court, Ariz. Const. art 4, pt. 2, § 22, it did not substantially alter other provisions of juvenile law. In fact, today’s juvenile code minimally differs from the code addressed by this Court in *McBeth* and *Gammons* before the electorate passed the Juvenile Justice Initiative.

Today, the juvenile capacity statutes in Title 8 and Title 13 are primarily structured around common law infancy defenses, as they have been in Arizona since statehood. At common law, children under the age of seven could not be prosecuted for a crime. *Gammons*, 144 Ariz. at 149. For children seven to 14, it created “a rebuttable presumption of incapacity.” *Id.* No defense was applicable to children 14 years and older. See *id.*

By 1985, § 13–501 had “codifie[d] a variant of the common law infancy defense to criminal prosecution,” which with “minor changes ha[d] been in place since 1887.” *Gammons*, 144 Ariz. at 149. It eschewed the common law’s absolute bar to criminal prosecution for those under the seven years old and read: “A person less than fourteen years old at the time of the conduct charged is not criminally *responsible* in the absence of clear proof that at the time of committing the conduct charged the person knew it was wrong.” A.R.S. § 13–501 (1996) (emphasis added); *see also Gammons*, 144 Ariz. at 149–50 (“Capacity to understand the wrongfulness of one’s behavior is a prerequisite to criminal liability under the criminal code when the age of the offender is less than fourteen years.”); *McBeth*, 111 Ariz. at 402 (“In effect, *Burrows* held that a juvenile could commit a crime, and his age made it no less a crime, but the law provided a special method of dealing with such a person by reason of his age.”). Assuming the State could rebut the presumption of no responsibility, it could charge any child in criminal court if the juvenile court approved a transfer. *See In re Appeal in Maricopa Cnty. Juvenile Act. No. J-93117*, 134 Ariz. 105, 107 (App. 1982) (“It has frequently been held that the juvenile court has the power to waive its jurisdiction to hold a child under the age of 18 years and to transfer him for trial in adult criminal court.”).

Today, the juvenile provisions in Title 8 impose the similar capacity requirements as it did in *McBeth* and *Gammons*. *See Gammons*, 144 Ariz. at 151

(stating “[w]e note that the juvenile code has its own capacity provision” and discussing the various juvenile capacity provisions). Children under the age of eight cannot be found delinquent. *See* A.R.S. § 8–2015(15)(a)(iv). Instead, they are considered “dependent children.” *Id.* Children who are at least eight but younger than 18, can be a “delinquent juvenile” if they “committed a delinquent act.” A.R.S. § 8–205(12)-(13). The juvenile court can transfer any juvenile offender to “to be prosecuted in the same manner as an adult” under A.R.S. § 8-327; *see* A.R.S. § 8-202(I)(1).

The criminal code is also consistent with the infancy defense. For some crimes, children 15 years or older must be tried in superior court “in the same manner as an adult.” A.R.S. § 13–501(A). And children ages 14 and older may be tried in criminal court “in the same manner as an adult.” A.R.S. § 13–501(B). The criminal court, however, has discretion to transfer juveniles charged under § 13-501(B) to juvenile court, thus recognizing difference in capacity. A.R.S. § 13–504(A). And the criminal code juvenile probation statute is not limited by the juvenile’s age. A.R.S. § 13-921.

All this leads to the straightforward conclusion that the Juvenile Justice Initiative did not change the State’s ability to charge juveniles in adult court following their 18th birthdays as *Agundez-Martinez* held. *See Agundez-Martinez*, at ¶ 22. And the Opinion’s corresponding reference to crimes charged under § 13–

501 in the definition of delinquent act confirms the juvenile court has no jurisdiction over that conduct if charged in criminal court. *See* A.R.S. § 8–201(12). As this Court has repeatedly held: “a defendant who had reached the age of eighteen, charged by information for a crime committed before his eighteenth birthday was nevertheless subject to prosecution, trial, and sentence as an adult.” *McBeth*, 111 Ariz. 401-02 (reciting the holding in *Burrows*).

The juvenile statutes apply when the person who committed the offense is presently a juvenile. In other words, the statute recognizes the juvenile court’s power to hear cases against a certain subset of minors *while they are still minors*—it is a jurisdictional carve-out from the criminal court’s per se jurisdiction over criminal offenses. The juvenile statutes do not preclude filing charges against *adults* for criminal acts committed when they were minors because the juvenile’s conduct always remained a criminal offense, subject to being charged in superior court if authorized by law.

2. *The Opinion relies on statutes dictating prosecution of juveniles in Arizona; but those laws do not control the prosecution of adults for acts committed when they were juveniles.*

MCAO understands the public policy concerns lurking in the periphery of *Agundez-Martinez*. *Agundez-Martinez* and similarly situated defendants were very young when they committed crimes, never had a chance for the rehabilitative benefits of juvenile court, and have had lengthy prison sentences imposed as

adults. As discussed above, the common law infancy defense seems likely to ameliorate these concerns, first by finding that juveniles under eight years old cannot commit felony offenses, and second by a rebuttable presumption of incapacity for juveniles ages eight to 14 years old.³ *Cf. Commonwealth v. Martz*, 118 A.3d 1175, 1181 (Pa. Super. Ct. 2015) (“[W]e hold that the common law defense of infancy remains applicable in criminal proceedings where a defendant is being prosecuted for conduct committed before the age of fourteen. To hold otherwise would subject individuals to retribution for conduct at an age where they were unable, or presumptively unable, to differentiate right from wrong.”)

With the passage of the legislation implementing the Juvenile Justice Initiative, however, the infancy defense is no longer codified in the criminal code. And as *Agundez-Martinez* recognizes, Arizona has abolished common law

³ “The weight of the presumption is said to decrease as the child approaches” 14 years old. Andrew Walkover, *The Infancy Defense in the New Juvenile Court*, 31 UCLA L. Rev. 503, 511 n.22 (1984). Rebutting the presumption is understandably difficult and will likely depend on psychological assessments or other evidence showing the juvenile’s capacity. *Id.* at n.24 (citing cases discussing methods to rebut the presumption); *see id.* at 556–62 (discussing the presumption).; *see also In re Joseph H.*, 237 Cal. App. 4th 517, 539 (2015) (referencing expert reports and stating that “[a] minor’s knowledge of his acts wrongfulness may be inferred from the circumstances, such as the method of its commission or its concealment”); Wayne R. LaFare, et al., *Substantive Criminal Law*, § 9.6(a) (3d ed. 2022) (reviewing methods to rebut the presumption).

affirmative defenses. *Agundez-Martinez*, at ¶ 14 A.R.S. § 13–103(A)). *Agundez-Martinez* ignores, however, § 13–103(B), which provides that “[a]ffirmative defense does not include. . . any defense that either denies an element of the offense charged or denies responsibility.”⁴

The infancy defense is not an affirmative defense. *See* A.R.S. § 13–103(B). Nor is an infancy defense the equivalent of diminished capacity. *See In re G.T.M.*, 222 P.3d 626, 629 (Mont. 2009) (“In fact, Montana law provides detailed procedures for determining incompetency based on mental disease or defect that are simply not applicable to youths claiming immaturity.”); *see also In re Devon T.*, 584 A.2d 1287, 1289 (Md. Ct. Spec. App. 1991) (“The case law and the academic literature alike conceptualize the infancy defense as but an instance of the broader phenomenon of a defense based upon lack of moral responsibility or capacity.”).

In this narrow and rare circumstance, the infancy defense should be available for juveniles who are charged in criminal court for conduct committed

⁴ A.R.S. § 13–103(B) was added in 1997, the same year the legislature passed implementing language for the Juvenile Justice Initiative that removed the infancy defense specified in § 13–501. *See* 1997 Ariz. Sess. Laws, ch. 136, § 3 (43d Leg. 1st Reg. Sess.) (adding § 13–103(B)); 1997 Ariz. Sess. Laws, ch. 220 (43d Leg. 1st Reg. Sess.) (Juvenile Justice Initiative implementation).

when they were under the age of 14. This may require the State to rebut, in such cases, the presumption that the juvenile was not “criminally liable” by showing that at the time the charged act was committed, the juvenile “knew it was wrong.” A.R.S. § 13–501 (1996) (previously codifying the infancy defense). This burden is appropriate, and certainly more sensible than the alternative proposed by the Opinion: absolute immunity. *See* A.R.S. § 13–104 (“The general rule that a penal statute is to be strictly construed does not apply to this title, but the provisions herein must be construed according to the fair meaning of their terms to promote justice and effect the objects of the law, including the purposes stated in section 13–101.”).

This narrow and unique defense should have applied here. First, Agundez-Martinez’ committed his acts when he was less than 14 years old. Second, he was tried in superior court. *Gammons*, 144 Ariz. at 151–52 (holding that “criminal code capacity requirements” do not apply to juvenile proceedings). This approach will permit prosecution for serious crimes such as those committed by Agundez-Martinez, but also fairly account for the defendant’s age at the time the crimes were committed. It will also ensure that the State is exceptionally careful before charging adults with offenses committed years earlier as very young children.

IV. EVEN IF THE COURT DENIES REVIEW OF THE STATUTORY QUESTION, IT SHOULD VACATE THE COURT OF APPEALS' DISCUSSION OF THE EIGHTH AMENDMENT.

Because it vacated Agundez-Martinez' convictions and sentences on statutory grounds, the Court of Appeals erred by addressing the Eighth Amendment question. "[C]ourts should not reach constitutional issues if the case can be fairly decided on other grounds." *Katherine S. v. Foreman ex rel. Cty. of Maricopa*, 197 Ariz. 371, 378, ¶ 16 (App. 1999) (citing *R.L. Augustine Constr. Co. v. Peoria Unified Sch. Dist. No. 11*, 188 Ariz. 368, 370 (1997)). Accordingly, even if this Court denies review of the statutory issue, it should vacate paragraphs 2 and 32 through 66 of the Opinion.

V. CONCLUSION.

The Court of Appeals erred by applying the terms and requirements of Title 8 and § 13-501(A) and (B) to the State's prosecution of an adult for crimes committed when he was a juvenile, and by failing to account for the defense of infancy. MCAO urges this Court to accept review and reverse the Opinion's statutory analysis or, alternatively, vacate the portions of the Opinion discussing the Eighth Amendment.

Submitted this 1st day of May, 2023.

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By: /s/_____
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APPENDIX A

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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

STATE OF ARIZONA,

Plaintiff,

v.

TRINITY JADE PARISEAU,

Defendant.

No. **CR2022-148672-001**

Motion to Dismiss Pursuant to *Agundez-Martinez*

(Honorable Kerstin LeMaire)

Trinity Pariseau, through counsel, requests that this Court dismiss all sixteen counts against her because the counts stem from delinquent acts, not criminal offenses, and are thus not eligible for adult criminal prosecution. This motion is made pursuant to *State v. Agundez-Martinez*, No. 1 CA-CR 21-0369 and A.R.S. § 13-501, and is supported by the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 17th day of March, 2023.

MARICOPA COUNTY PUBLIC DEFENDER

By /s/ZACHARY STERN
ZACHARY STERN
Deputy Public Defender

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual and Procedural History

On December 28, 2022, 8 days after Trinity turned 18, the state charged her with 16 counts of aggravated assault spanning multiple dates between October and December 2022, all when Trinity was incarcerated at the Department of Juvenile Corrections. All 16 counts were class 5 or class 6 level felonies. 15 counts allege Trinity committed assault against individuals she knew were employed by the Department of Juvenile Corrections pursuant to A.R.S. 13-1204(10 ii). 1 count alleges Trinity committed assault against an individual she knew was a healthcare worker, pursuant to A.R.S. 13-1204(8) e). Trinity was 17 years old at the time of all the alleged offenses. None of the alleged offenses were dangerous or violent, and none alleged a serious physical injury occurred. Trinity is not, and the state has not filed a notice claiming that, Trinity is a chronic felony offender. At her Initial Appearance, Trinity was held on a \$5,000 cash appearance bond and was later placed in solitary confinement for one month at Estrella Jail until her bond was paid.

Since the indictment was filed in Trinity's case, the Arizona Court of Appeals issued a published decision in *State v. Agundez-Martinez*, No. 1 CA-CR 21-0369.

There, the court vacated Agundez-Martinez's convictions and sentences, holding the state could not prosecute him in adult court for offenses that would be defined as "delinquent acts."

II. Law & Argument

The state violated Arizona law by charging Trinity as an adult for acts committed while she was a juvenile. The state was only able to initiate prosecution in adult court because it waited until Trinity turned 18 before charging her. Because Arizona law does not permit the state to bypass the law simply by waiting to file, as iterated in *Agundez-Martinez*, this Court should dismiss all counts.

The State lacks the authority to prosecute Trinity in adult court for acts committed when she was 17 and that do not qualify for adult prosecution under A.R.S. 13-501(A) or (B).

Whether the state may prosecute a person for offenses committed when they were a juvenile turns on whether the conduct is considered a delinquent act or a criminal offense. In *Agundez-Martinez*, the Court of Appeals explained the legislature chose to differentiate between the two. The court noted that under A.R.S. § 8-201(12), a "delinquent act" is defined as an act "that *would be* a criminal offense if committed by an adult." *Agundez-Martinez*, at 5 (internal citation omitted). Given the plain language of the statute, the court noted two things were clear: 1) that "[d]elinquent acts are thus not criminal offenses;" and 2) "whether the conduct is a

delinquent act depends on the offender's age at the time of the conduct.” *Id.* More specifically, “an offensive act by a juvenile is a delinquent act *unless* it is enumerated in A.R.S. § 13-501 A) or (B).” *Id.* at 9 (internal citations omitted and emphasis added). Once an offense is categorized as a delinquent act, the state lacks authority to initiate prosecution of the offense in adult court and can only prosecute the matter in juvenile court. *Id.*

In this case, Trinity was 17 years old at the time of the offenses. Therefore, the offenses are considered delinquent acts *unless* the offenses are such that the state could have initiated prosecution in adult court under A.R.S. § 13-501 A) or (B). Subsection A requires the state to file charges in adult court if the alleged offense was committed by a 15-17 year-old and is for first or second degree murder, forcible sexual assault, armed robbery, any other violent felony offense, or any felony offense committed by a chronic felony offender. The statute defines any other violent felony offense as: a) aggravated assault pursuant to section 13-1204, subsection A, paragraph 1; b) aggravated assault pursuant to section 13-1204, subsection A, paragraph 2 involving a deadly weapon; c) a drive by shooting; or, d) discharging a firearm at a structure. A.R.S. 13-501(H)(4) The statute further defines a chronic felony offender as “a juvenile who has had two prior and separate adjudications and dispositions for conduct that would constitute a historical prior

felony conviction if the juvenile had been tried as an adult.” A.R.S. 13-501(H)(2). Lastly, the statute requires the state to “file a notice stating that the juvenile is a chronic felony offender. . . *at the time the county attorney files a complaint or indictment.*” A.R.S. 13-501(D).

Subsection B also permits the state to file charges in adult court if the individual is at least 14 years old and: the offense is a class 1, 2 or 3 felony; or, the felony involves a dangerous offense.

Here, none of the sixteen counts alleged against Trinity are eligible for mandatory adult prosecution under § 13-501(A) and none of the counts are eligible for discretionary adult prosecution under § 13-501(B). Specifically, Trinity has been charged with all class 5 or 6 level felonies, none of which are alleged to be dangerous. Although they are aggravated assault charges, none of the charges are pursuant to section 13-1204(A)(1) or (A)(2); thus, none of the counts are violent felonies. And lastly, Trinity was never convicted of a felony as a juvenile and furthermore, the state has not filed a notice claiming Trinity is a chronic felony offender. As such, these offenses are considered delinquent acts. Further, “delinquent acts may *only* be prosecuted in juvenile court or transferred to adult court via A.R.S. § 8-327.” *Agundez-Marti* , at 9 (emphasis added). However, because Trinity is now over 18, the juvenile court lacks jurisdiction to hear these

matters in juvenile court. A.R.S. § 8-202(G). Therefore, the charges must be dismissed.

The Court of Appeals came to the same conclusion in *Agundez-Mart*. There, an individual committed illegal sex acts between the ages of 10 and 12. The state filed felony charges in adult court when the individual was 23, and he was subsequently convicted and sentenced to more than 50 years in prison. Finding error, the Court of Appeals vacated his convictions and sentences. The court held the state had no authority to bypass A.R.S. § 13-501 by merely waiting until the individual turned 18 or older to file the charges as argued by the state. The court noted the state offered no “statutory basis for its assertion” that delinquent acts could be prosecuted in adult court simply because the juvenile reached the age of majority. *Id.* at 2.

Although *Agundez-Martin* dealt with a pre-14 year old, the same reasoning applies to Trinity’s case. Trinity was under 18 at the time of the alleged acts and none of the acts were eligible for adult prosecution under § 13-501. Only the juvenile court had jurisdiction over Trinity at the time these acts were committed. Like in *Agundez-Martinez*, because Trinity allegedly committed delinquent acts, and not criminal offenses, the state cannot prosecute this case in adult court.

III. Conclusion

The state has tried to bypass A.R.S. § 13-501 by waiting until Trinity turned 18 to charge her in adult court, when they had no mechanism by which to initiate prosecution against her in adult court at the time of the offenses. Because *Agundez-Martinez* prohibits this practice, this Court should dismiss all sixteen counts with prejudice.

Copy of the foregoing e-filed/
delivered this 17th day of March, 2023 to:

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

Plaintiff,

v.

JOHNNY JAMES LINDBORG,

Defendant.

CR 2022-142256-001

MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION

(Honorable Gregory Gnepper)

Defendant Johnny James Lindborg, by and through undersigned counsel, asks this Court to dismiss the charge brought against him pursuant to A.R.S. §§ 8-202(H), 8-327, and 13-501, based on the Court's lack of jurisdiction over Mr. Lindborg, who was seventeen years old at the time of the alleged offense.

I. Constitutional and Statutory Authority

The superior court maintains original jurisdiction of felony criminal cases, and misdemeanor cases not otherwise provided for by law. Ariz. Const. art. VI, § 14. The superior court may exercise its power and issue all writs necessary to complete the exercise of its jurisdiction. A.R.S. § 12-123.

A.R.S. §8-202(I) states that a person under eighteen years of age can only be prosecuted as an adult pursuant to a transfer under §8-327 or based on the charge of a serious crime enumerated in §13-501. The crime charged in this case is not one enumerated in §13-501 and there has been no transfer pursuant to §8-327.

II. Case Law and Applicability

On February 7, 2023, the Arizona Court of Appeals, Division One, issued an opinion in *State v. Agundez-Martinez*. 2023 WL 1788423 (Div 1, filed 2/7/23). In the case, the court held that “because [the defendant’s] actions constituted delinquent acts, and he could not be prosecuted as an adult consistent with Arizona statutes,” his conviction must be reversed. *State v. Agundez-Martinez*, No. 1 CA-CR 21-0369, 2023 WL 1788423, at 1 (Ariz. Ct. App. Feb. 7, 2023). The court emphasized the distinction between “juvenile delinquencies” and “adult criminal offenses.” *Id.* at 5. With specific exceptions, a “delinquent act is an act by a juvenile that *if* committed by an adult *would* be a criminal offense.” *Id.* (internal quotations omitted) (emphasis added). “The specific exceptions apply only to offenders who are at least fourteen years of age at the time the alleged offense is committed.” *Id.* (internal quotations omitted).

The case affirms the distinction between delinquent acts and criminal offenses; “by statute, whether an act is a ‘delinquent act’ depends on the juvenile’s age at the time of the conduct.” *Id.* at 3. Defendants who are fifteen, sixteen, or seventeen years of age *at the time the alleged offense is committed* must be charged as adults pursuant to an enumerated list of offenses. A.R.S. § 13-501(A) (emphasis added). Defendants who are at least fourteen years old and under the age of eighteen years old *may* be charged as an adult pursuant to an enumerated list of offenses. A.R.S. § 13-501(B) (emphasis added).

Johnny James Lindborg was born on August 19th, 2004; the acts described in the complaint are alleged to have occurred on April 23, 2022, when Mr. Lindborg was seventeen. Mr. Lindborg is charged with Criminal Damage, a Class 4 Felony, and Disorderly Conduct, a

Class 1 Misdemeanor. Neither of these charges is specifically permitted by the above statute. “[b]ecause [the acts] were committed ‘by a juvenile’ and are not offenses under A.R.S. 13-501 (A) or (B), they are instead delinquent acts.” *Agundez-Martinez* at 11.


The *Agundez-Martinez* case is different in some ways than that of Mr. Lindborg, but the distinctions do not affect the necessary outcome of this case. The defendant in *Agundez-Martinez* was between ten and twelve years old at the time of the delinquent acts; Mr. Lindborg was seventeen years old. The age of the *Agundez-Martinez* defendant is discussed at length in the court of appeals’ opinion, but it is primarily referenced regarding the Eighth Amendment issues arising therein. Though Mr. Lindborg was seventeen at the time of the alleged offense, and the *Agundez-Martinez* defendant was between ten and twelve years old, the broad distinction between delinquent acts and criminal conduct applies to both.

III. Conclusion

Because Mr. Lindborg was seventeen years old at the time of the alleged offense, and neither offense alleged in the complaint falls under a specifically enumerated statutory exception, Mr. Lindborg respectfully requests the court dismiss these charges for lack of personal jurisdiction. A copy of Mr. Lindborg’s birth certificate is available upon request.

RESPECTFULLY SUBMITTED this 27th day of February, 2023.

MARICOPA COUNTY PUBLIC DEFENDER

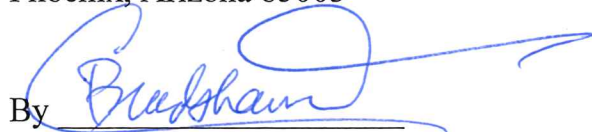
By: 
Catherine Bradshaw
Deputy Public Defender

Copy of the foregoing motion
delivered February 27th, 2023, to:

THE HONORABLE Gregory Gnepper
Commissioner of the Superior Court
South Court Tower, 2nd floor
175 W. Madison Street
Phoenix, AZ 85003

Neha Bhatia
Deputy County Attorney
301 West Jefferson Street
Phoenix, Arizona 85003

By



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