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. S1400CR2019–00622

STATE OF ARIZONA'S RESPONSE TO AMICUS CURIAE BRIEFS

Kristin K. Mayes
Attorney General
(Firm State Bar No. 14000)

Alexander W. Samuels
Principal Deputy Solicitor General

Alice M. Jones
Deputy Solicitor General/
Section Chief of Criminal Appeals

Joshua C. Smith
Assistant Attorney General
Criminal Appeals Section
2005 N. Central Ave.
Phoenix, Arizona 85004
Telephone: (602) 542–4686
CADocket@azag.gov
(State Bar Number 030229)
Attorneys for Appellee

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ARGUMENT

The briefs of amici curiae Arizona Attorneys for Criminal Justice ("AACJ") and the Maricopa County Public Defender's Office ("MCPDO") suffer from several flaws. First, their briefs largely ignore that the State has not challenged the alternative Eighth Amendment holdings of the court of appeals' opinion. Those holdings ensure that offenders like Agundez-Martinez are not necessarily subject to the mandatory sentencing provisions for dangerous crimes against children ("DCAC"). And, importantly for present purposes, the unchallenged court of appeals holdings also require that a hearing be held to determine whether a preadolescent juvenile can be sentenced as an adult at all. That hearing will serve as a check on the parade of horribles proffered by amici.

Turning to the statutory scheme, amici gloss over the purpose of A.R.S. § 13–501 and ignore that offenses are committed by "persons," not just adults. Although many statutes limit the State's authority to prosecute juveniles while they are juveniles, no statute precludes prosecution of adults who committed their crimes as juveniles. This Court has held as much for nearly 100 years, and those cases remain good law. The rule of lenity does not dictate otherwise because the statutory scheme is clear and because, in any event, there is no dispute that Agundez-Martinez's conduct was clearly prohibited at the time it occurred.

Finally, amici vastly overstate the consequences of the State's position. Both amici spend substantial time detailing how the State's position will lead to gamesmanship in future cases, in which the State will intentionally delay prosecution to file adult charges. But, as the State has said in multiple prior briefs in this case, any such tactics would likely run afoul of a defendant's due process rights. The State is not saying that it may intentionally delay prosecution until a juvenile becomes an adult. It is saying that where, as here, a crime is not even reported until the offender is an adult, the offender may not escape all accountability by the mere passage of time.

I. Existing legal authority will prevent Amici's parade of horribles from coming to fruition.

Contrary to amici's claims otherwise, reversing the court of appeals' statutory construction would not allow the State to file charges against adults for juvenile conduct without any limitation. Nor would it permit the State to bypass the juvenile court procedures entirely by waiting for an offender to turn 18. Instead, these concerns are addressed by the unchallenged portions of the court of appeals' opinion and preexisting legal authority. The concerns expressed by amici thus do not warrant affirming the court of appeals' radical reinterpretation of §§ 8–201 and 13–501.

A. The court of appeals' Eighth Amendment holdings narrow the subset of juveniles who can face adult prosecution and place limits on the sentences that can be imposed.

In its brief, AACJ argues that adopting the State's statutory construction would lead to adults facing "mandatory, lengthy prison sentences for acts they committed when they were in elementary school." AACJ Br. at 13. AACJ further argues that "[c]hildren are different" and that "[t]he law's different treatment of children versus adults stems from a variety of considerations[.]" AACJ Br. at 4, 6. These arguments, however, ignore the portions of the court of appeals' opinion that are not contested.

For starters, AACJ is undoubtedly right that "children are different," and the unchallenged portions of the court of appeals' opinion ensure that the law recognizes that reality. The court of appeals held that the cumulative 51-year sentence imposed in this case violated the Eighth Amendment, a holding that will help mitigate AACJ's fear that offenders like Agundez-Martinez "may face mandatory, lengthy prison sentences[.]" AACJ Br. at 13; *see also State v. Agundez-Martinez*, 254 Ariz. 452, 524 P.3d 832, 844–46, ¶¶ 58–66 (App. 2023). That holding is not only unchallenged here, but is in accord with prior caselaw. *See State v. Kleinman*, 250 Ariz. 362, 365–66, ¶ 16 (App. 2020) (similarly concluding that application of DCAC sentencing to preadolescent juvenile violated the Eighth Amendment).

Going further, the court of appeals also held that "for a defendant who committed nonhomicidal acts when he was a preadolescent juvenile, the Eighth Amendment forbids the State from subjecting the defendant to the adult sentencing scheme only because he is an adult at the time of prosecution." *Agundez-Martinez*, 524 P.3d at 844, ¶ 56. Accordingly, even if this Court holds that offenders like Agundez-Martinez may statutorily be prosecuted, trial courts will be required to conduct "a hearing to determine whether there is a legitimate reason to punish [the offender] as an adult." *Id.* at 844, ¶ 57. And, presumably, the offender will have the opportunity to present evidence and argument at any such hearing that relate directly to many concerns identified by amici. *See, e.g.*, AACJ Br. at 6 (arguing that the law should consider several factors, including "(1) whether a child can form the sufficient *mens rea* for the act (2) whether a child can form the moral reasoning to be held responsible for the act [and] (3) whether a child can comprehend and participate in the attendant judicial process …."). It is thus simply untrue that "these offenders will not be able to marshal this type of juvenile-specific information at all to challenge their criminal prosecution." AACJ Br. at 18.

Whatever this Court decides here, the State will thus be limited in its ability to charge adults for crimes they committed as preadolescent juveniles. And if offenders like Agundez-Martinez can show that there is not "a legitimate reason to

punish [them] as an adult," *Agundez-Martinez*, 524 P.3d at 844, ¶ 57, the court of appeals' holding will act to prevent them from being punished in any way for their conduct.[1] Put differently, in order to impose adult sentencing, the State must first establish a legitimate reason to do so. There is thus no risk a defendant could receive *any* sentence, let alone a lengthy prison sentence, if the State cannot show a legitimate reason to punish a defendant as an adult for preadolescent juvenile conduct.[2]

These unchallenged parts of the court of appeals' opinion act to limit the State's ability to punish, and thereby prosecute, adult defendants for crimes they committed as juveniles.[3]

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[1] For this reason, the State noted in its supplemental brief that while it does not believe an immaturity or infancy defense remains in Arizona law, the court of appeals' constitutional holdings "resurrect something akin to the immaturity defense[.]" State's Supp. Br. at 16 n.4.

[2] Although the court of appeals' opinion does not clarify whether this hearing should occur before or after trial, the State presumes that any such hearing would likely be held before trial to preserve judicial resources.

[3] Relevant to AACJ's equal protection concerns, these provisions also afford adult defendants protections comparable to—and in some cases greater than—what they would have received had they been charged when they were juveniles. *See* AACJ Br. at 17–20. On the equal protection front, though, it is also worth noting that amici may not "create, extend, or enlarge the issues" on appeal. *Vangilder v. Ariz. Dep't of Rev.*, 252 Ariz. 481, 493, ¶ 46 (2022) (cleaned up).

B. An intentional delay in filing charges against juvenile offenders solely to avoid juvenile court procedures would violate due process if the defendant were prejudiced.

Both amici argue at length that the statutory interpretation urged by the State here will permit prosecutors to engage in gamesmanship by intentionally delaying prosecution until offenders reach adulthood. *See, e.g.*, MCPDO Br. at 8 ("The State essentially believes it can bypass the entire juvenile justice framework by merely waiting until the juvenile turns 18."); AACJ Br. at 14 ("One of the biggest concerns with the State's position is that it would allow a prosecutor to wait until a juvenile turned 18 years old to try them as an adult[.]"). But this is simply not true, as the State pointed out in both its petition for review and supplemental brief. *See* P.F.R. at 8, n.5; State's Supp. Br. at 17, n.5.

"To the extent this Court is concerned that the State may intentionally delay filing charges to avoid juvenile court procedures entirely, as noted in the State's petition for review, P.F.R. at 8, n.5, such action could violate due process." State's Supp. Br. at 17, n.5 (citing *United States v. Marion*, 404 U.S. 307, 324 (1971)). The United States Supreme Court has recognized that a delay in seeking an indictment could result in a violation of due process, although the Court "could not determine in the abstract the circumstances in which preaccusation delay would require dismissing prosecutions." *United States v. Lovasco*, 431 U.S. 783, 796 (1977). What is clear is "that the due process inquiry must consider the reasons for

the delay as well as the prejudice to the accused." *Id.* at 790. And setting aside the abstract, a preindictment delay that prejudices a defendant who becomes an adult in the meantime "would violate the Due Process Clause were it to be established that the delay was due to unjustifiable Government conduct or illegitimate prosecutorial motives." *United States v. Wai Ho Tsang*, 632 F. Supp. 1336, 1339 (S.D.N.Y. 1986) (citations and internal quotation marks omitted).

This Court, too, has recognized similar principles, stating that "[i]n order to establish … a denial [of due process] there must be a showing that the prosecution intentionally delayed the proceedings to gain a tactical advantage over the defendant or to harass such defendant and that the defendant has been actually prejudiced by such delay." *State v. Torres*, 116 Ariz. 377, 378 (1977); *see also State v. Lemming*, 188 Ariz. 459, 462 (App. 1997) ("Arizona courts have interpreted *Marion* and *Lovasco* to require that a defendant show intentional delay by the prosecution to obtain a tactical advantage, and actual and substantial prejudice as a result of the delay."). Applying these principles, the State would likely violate due process were it to prejudice a defendant by intentionally delaying the filing of charges against a juvenile offender *solely* to avoid juvenile court proceedings.

That is not to say every delay in filing charges against a juvenile violates the juvenile's due process rights. Delay resulting from "continued reasonable

investigation rather than any government misconduct," for example, is permissible. *United States v. Lopez*, 860 F.3d 201, 213 (4th Cir. 2017); *see also Lovasco*, 431 U.S. at 796 (holding that prosecuting a defendant "following investigative delay does not deprive him of due process"). So too is it permissible for delay to occur because, as here, the crimes are not reported to law enforcement until after the offender reaches adulthood. Amici go out of their way to disregard this scenario, noting only that it could "theoretically occur." MCPDO Br. at 14. But this case is not theoretical—it is undisputed that the State was unaware that Agundez-Martinez sexually abused his young victims until he was in 20s. Under such circumstances, prosecution is permissible.

Amici focus not on the situation actually present here, but instead on scenarios in which prosecutors delay prosecution solely for tactical advantage. If such delay prejudices a defendant, a due process violation will likely result. Thus, again, existing legal authority demonstrates that amici's concerns are unfounded.[4]

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[4] Of course, the statute of limitations will also often prevent the State from waiting years to file charges against a juvenile offender. *See* A.R.S. § 13–107(B) (limitations period for non-homicide offenses begins to run "after actual discovery by the state").

II. The juvenile statutes do not operate to prevent the State from filing charges against adults.

Turning to the statutory interpretation question in front of this Court, amici ignore that the purpose of § 13–501 is to allow the State to charge juveniles as adults without first filing charges in juvenile court; the statute is not concerned with filing charges against adults at all. Amici also gloss over the fact that delinquent acts are still public offenses when they are committed. As such, the State does not lose its authority to prosecute the offenses simply because the offender turns 18.

A. Section 13–501 focuses on the charging of juveniles.

Nothing in the plain language of § 13–501 refers to filing charges against adults. That statute does not set forth procedures related to charging adults for offenses committed as juveniles, nor does it limit the State's authority to do so. The statute instead focuses on how charges must or may be filed against juveniles. *See* A.R.S. § 13–501(A) ("The county attorney shall bring a criminal prosecution against *a juvenile* ….") (emphasis added), –501(B) ("[T]he county attorney may bring a criminal prosecution against *a juvenile* ….") (emphasis added).

Section 13–501, by its plain language, thus does not contemplate filing charges against adults at all. Nor does it purport to alter this Court's longstanding precedent holding that the State may charge adults for crimes they committed as juveniles. "This Court does not have the constitutional authority to construe a

statute so that it encompasses matters that were not covered or addressed by the legislature." *Silver v. Pueblo Del Sol Water Company*, 244 Ariz. 553, 564, ¶ 41 (2018). The court of appeals erred when it interpreted § 13–501 as implicitly limiting the State's authority to file charges against adults.

To the extent the language of § 13–501 is ambiguous, its title—"Persons under eighteen years of age; felony charging; definitions"—further reflects the statute's limited scope. *See State ex rel. Montgomery v. Harris*, 237 Ariz. 98, 102, ¶ 13 (2014) ("[A]lthough statutory title headings are not part of the law, they can aid it its interpretation."); *see also State v. Barnett*, 142 Ariz. 592, 597 (1984) (holding same and citing collected authority).

Recognizing that § 13–501 is concerned with charging juveniles only, and construing it consistent with that purpose, does not render "the intersecting provisions of Title 8 and Title 13 . . . superfluous," as AACJ argues. *See* AACJ Br. at 4. Rather, the State's ability to prosecute adults like Agundez-Martinez is grounded in Title 13. "Offenses defined in Title 13 criminal statutes are committed by 'persons,'" … defined as including 'a human being.'" *In re Cameron T.*, 190 Ariz. 456, 462–63 (App. 1997) (quoting A.R.S. §§ 13–105, 13–3102(A)). "Thus, as was true before Prop. 102 was adopted, no statute or constitutional provision precludes adult prosecution of a juvenile who is no longer under the jurisdiction of the juvenile court." *Id.* at 462.

The 2010 addition of the "at the time of the offense" language to § 13–501 does not alter this conclusion. In arguing to the contrary, MCPDO points to legislative history relating to the 2010 change, *see* MCPDO Br. at 10, but overlooks that the legislative history demonstrates that the change was focused on criminal prosecutions "against a juvenile." Ariz. S. F. Sheet, 2010 Reg. Sess. S.B. 1009; *see also* Ariz. H.R. B. Summ., 2010 Reg. Sess. S.B. 1009 (the bill "[r]equires a criminal charge brought *against a juvenile* to be based on the age of the juvenile at the time the offense was committed") (emphasis added). And this makes sense, since § 13–501 itself uses the phrase "against a juvenile" in both subsections (A) and (B). The amendment was focused not at all on prosecutions against adults like Agundez-Martinez, and the purpose of the amendment was consistent with the purpose of the statute itself—to regulate the State's authority to charge *juveniles* as adults, not limit the State's authority to file charges against adults.

The MCPDO's arguments take for granted that § 13–501 permits prosecutions against adults who were juveniles at the time of their offenses. Indeed, they argue *Burrows* is no longer good law because the defendant in that case could be charged as an adult under § 13–501 today. MCPDO Br. at 16. Section 13–501, however, speaks of prosecutions "against a juvenile," not prosecutions against adults who committed offenses as juveniles. It is thus not at

all clear that MCPDO's assumptions on this front are correct, and good reason exists to think that § 13–501 applies only to the charging of juveniles while juveniles, regardless of the crime committed.

This interpretation is supported by the fact that defendants charged under § 13–501(B) are entitled to a transfer hearing, A.R.S. § 13–504(A), and a transfer hearing is required if the offense was committed more than a year before charges were filed, A.R.S. § 13–504(B). As AACJ recognizes, these hearings cannot be conducted after a defendant turns 18. *See* AACJ Br. at 19, n. 12. That neither § 13–501 nor § 13–504 address what is to occur if an adult is charged for juvenile offenses reflects that the statutes apply only when a juvenile is charged.

Finally, MCPDO argues that § 8–202(H)—which permits the State to "file a notice of intent to retain jurisdiction over a juvenile who is seventeen years of age"—addresses the State's concerns about juvenile offenders evading prosecution. MCPDO Br. at 11–12. It does not. By its plain language, § 8–202(H) applies only when a case is already proceeding against a 17-year-old. Again, amici ignore the situation actually present here, where the State did not become aware of any crimes until after the defendant reached adulthood.

The plain language of the statutory scheme makes clear that this Court should not construe it as implicitly imposing a limitation on the State's authority to file charges against adults.

B. Delinquent acts are still public offenses.

Amici (like Agundez-Martinez and the court of appeals) also urge an overly narrow interpretation of the term "delinquent act" that cannot be reconciled with the broader statutory scheme. Delinquent acts are criminal in nature. A "delinquent act" is "an act by a juvenile that if committed by an adult would be a criminal offense."[5] A.R.S. § 8–201(12). In other words, a "delinquent act" is a criminal offense committed by a juvenile. *See State v. Malvern*, 192 Ariz. 154, 156, ¶ 5 (App. 1998) ("The distinction between a delinquent act and a felony or misdemeanor, therefore, is not the nature of the act but, rather, the status of the perpetrator. Although a juvenile's acts may be characterized as 'delinquent acts' … [they] are, nonetheless, criminal in nature."). The terms "delinquent act" and "criminal offense" are thus not mutually exclusive, as reference to other statutes makes even clearer.

An "offense" or "public offense" is "conduct for which a sentence to a term of imprisonment or of a fine is provided by *any law* of the state in which it occurred." A.R.S. § 13–105(27) (emphasis added). The juvenile code allows for sentences of imprisonment or fines for delinquent acts. *See* A.R.S. § 8–

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[5] "This definition is essentially unaltered from the original enactment of the juvenile code in 1912." *Gammons v. Berlat*, 144 Ariz. 148, 149 (1985); *see also* State's Supp. Br. at 7–8.

341(A)(1)(b), (e) (juvenile court may sentence a juvenile to probation or "the department of juvenile corrections"), –341(G) (juvenile court "shall order the juvenile to pay a reasonable monetary assessment if the court determines that an assessment is in aid of rehabilitation"), –341(S) (juvenile court "shall order the juvenile to pay a fine" if a juvenile is adjudicated delinquent of criminal damage). Delinquent acts, thus, qualify as offenses.

Similarly, a "felony" is "an offense for which a sentence to a term of imprisonment in the custody of the state department of corrections is authorized by any law of this state." A.R.S. § 13–105(18). This definition does not refer to the offender's age. And the juvenile code itself recognizes that a juvenile can commit a felony. *See* A.R.S. §§ 8–327(A) ("The state may request an order of the juvenile court transferring jurisdiction of the criminal prosecution of any *felony* filed in the juvenile court to the criminal division of the superior court.") (emphasis added); 8–341(D), (E) (disposition if a juvenile "is adjudicated as a repeat felony offender"). Felonies, thus, can be delinquent acts, which means delinquent acts are offenses.

This conclusion is supported by § 11–532, cited by AACJ. *See* AACJ Br. at 15. That statute delineates the "[p]owers and duties" of the county attorneys, including "all prosecutions for public offenses." A.R.S. § 11–532(A), (B). Nowhere does that statute provide separate authority to prosecute delinquent acts,

further confirming that the legislature intends for the term "public offenses" to include delinquent acts committed by juveniles.

Put simply, offenses in Arizona are committed by "persons." *See, e.g.,* A.R.S. § 13–1405(A) ("A *person* commits sexual conduct with a minor by ...") (emphasis added). Human beings, without regard to their age, are persons. A.R.S. § 13–105(30). Because juveniles are persons, they are capable of committing public offenses. *See In re Cameron T.*, 190 Ariz. at 462–63.

For all these reasons, delinquent acts are public offenses when they are committed. The overlap between these terms is made all the more obvious by the fact the statutory definition of "delinquent act" sometimes depends on whether the prosecutor decides to file a case in adult or juvenile court. *See* State's Supp. Br. at 8–10 ("Offenses chargeable under § 13–501(B) are thus not inherently delinquent or criminal at the time they are committed; the determination depends on the State's charging decision.").

The State has authority to prosecute public offenses. *See, e.g.*, A.R.S. § 11–532(A)(1) (county attorneys "shall … conduct … all prosecutions for public offenses"). The juvenile code simply "provide[s] a special method of dealing with [juveniles] by reason of [their] age" when they are juveniles. *McBeth v. Rose*, 111 Ariz. 399, 402 (1975). The State's authority to file charges does not vanish simply because an offender turns 18.

III. The rule of lenity does not apply.

Amici both argue that the rule of lenity should apply here. AACJ Br. at 14–15; MCPDO Br. at 8–9. "The rule of lenity, however, is a construction principle of last resort" and courts "only resolve ambiguity in favor of a defendant if the statutory language is unclear and other forms of statutory construction have failed to reveal the legislature's intent." *State v. Bon*, 236 Ariz. 249, 253, ¶ 13 (App. 2014); *see also Cicoria v. Cole*, 222 Ariz. 428, 432, ¶ 20 (App. 2009) ("The rule of lenity applies only if, after considering the plain language of the statute and employing recognized tools of statutory interpretation, the statute remains ambiguous.") (citing collected authority).

As argued in the State's supplemental brief, the statutes at issue here are not ambiguous and, to the extent any ambiguity exists, it is resolved in the State's favor after employing secondary methods of statutory interpretation. State's Supp. Br., at 6–16. The rule of lenity thus does not apply. *See* A.R.S. § 1–211(B) ("Statutes shall be liberally construed to effect their objects and to promote justice."). This conclusion is further bolstered by the fact that this Court has held for nearly 100 years that adults can be prosecuted for offenses they committed as juveniles. *See McBeth*, 111 Ariz. at 402–03; *Burrows v. State*, 38 Ariz. 99, 111 (1931); *see also In re Cameron T.*, 190 Ariz. at 462 ("[A]s was true before Prop.

102 was adopted, no statute or constitutional provision precludes adult prosecution of a juvenile who is no longer under the jurisdiction of the juvenile court.").

Moreover, this case does not present a situation in which the defendant would have had any question about the criminality of his conduct at the time of his offenses. The rule of lenity is applied in situations where a statute defining an offense or setting a punishment is ambiguous. *See, e.g., State v. Barnett*, 209 Ariz. 352, 355, ¶ 16 (App. 2004) (rule of lenity supported conclusion that § 13–3101(A)(6)(d) required a person "be 'serving a term' to be a prohibited possessor of a deadly weapon"); *see also* 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 § 13-101."). That is not the scenario presented in this case; rather, the issue here is whether the State can file charges for undisputedly illegal conduct.

IV. *Burrows* and *McBeth* remain good law.

Finally, amici both argue this Court should disregard *Burrows* and *McBeth*, asserting the decisions are "historical relic[s]," AACJ Br. at 17, and irrelevant, MCPDO Br. at 16–17. The cases, however, remain relevant to the issues before this Court and remain good law.

At the time the cases were decided, no "person under the age of eighteen [could] be prosecuted criminally unless, after hearing, the juvenile court transfer[red] the matter to the adult side of the law for criminal prosecution." *McBeth*, 111 Ariz. at 403. Thus, every juvenile offender, regardless of their age or charge, were in the same position Agundez-Martinez would have been in had he been charged as a juvenile—they could not be charged as an adult without first receiving a transfer hearing. This Court, nonetheless, concluded that the State could prosecute adults for conduct that, at the time they committed it, constituted delinquent acts. *McBeth*, 111 Ariz. at 402–03; *Burrows*, 38 Ariz. at 111.

The MCPDO argues *Burrows* is irrelevant because the defendant there was a 17-year-old charged with murder and could now be charged as an adult under § 13–501(A). MCPDO Br. at 16. But the fact that Burrows could not have been charged in adult court at the time he committed his offense makes his case more like Agundez-Martinez's case, not less so. *See Burrows*, 38 Ariz. at 106–07 (discussing juvenile statutes at the time). Further, two of the defendants in *McBeth*, 111 Ariz. at 400, were charged with "illegal possession of marijuana"—an offense that is generally not chargeable in adult court under § 13–501. The severity of the offense did not affect this Court's analysis. And the Legislature is presumed to have "approved of [this Court's] construction and intended that it remain a part of the statute[s]." *Galloway v. Vanderpool*, 205 Ariz. 252, 256, ¶ 17

(2003). *McBeth*'s and *Burrows*' holdings, therefore, remain good law notwithstanding the adoption of § 13–501.

CONCLUSION

For these reasons, amici's arguments are ultimately unpersuasive. This Court should affirm Agundez-Martinez's convictions and reverse the court of appeals' opinion insofar as it held that the State cannot charge adults for crimes committed as juveniles younger than 14.

Respectfully submitted,

Kristin K. Mayes
Attorney General

Alexander W. Samuels
Principal Deputy Solicitor General

Alice M. Jones
Deputy Solicitor General/
Section Chief of Criminal Appeals

/s/
Joshua C. Smith
Assistant Attorney General

Attorneys for Appellee