

No. 57689-9-II

COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

RYAN CORDELL GATES,

Appellant.

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On Appeal from the Pierce County Superior Court  
Cause No. 20-1-02042-9  
The Honorable Jerry Costello, Judge  
The Honorable Timothy Ashcraft, Judge

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OPENING BRIEF OF APPELLANT

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## **I. SUMMARY OF THE CASE**

In 2011, the Pierce County Prosecutor considered an allegation of child molestation against Ryan Gates, but decided not to file charges after determining that they could not prove the accusations in court. In 2019, a Thurston County Deputy Prosecutor who was hoping to gain a tactical advantage in her prosecution of Ryan Gates began pressuring Pierce County to file charges against Gates. Prosecutors from the two counties discussed how new Pierce County charges might dissuade Gates from going to trial in Thurston County or compel him to seek a global plea deal, or might result in previously-inadmissible ER 404(b) bad acts evidence becoming admissible. So in 2020, without any further investigation or new evidence, the Pierce County Prosecutor filed child molestation charges against Gates. The trial court should have granted Gates' subsequent motion to dismiss for prosecutorial vindictiveness

because Gates established that Pierce County's decision to file charges was retaliation for Gates' decision to exercise his constitutional right to a jury trial in Thurston County.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred in denying Ryan Gates' motion to dismiss for prosecutorial vindictiveness.
2. The Pierce County Prosecutor's decision to file charges against Ryan Gates was actually vindictive.
3. The Pierce County Prosecutor's decision to file charges against Ryan Gates was presumptively vindictive and the State did not rebut this presumption.

## **III. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR**

1. Whether the Pierce County Prosecutor acted vindictively by filing charges almost nine years after initially determining that it would be unable to prove the underlying allegations, but just weeks before

Ryan Gates planned to exercise his right to trial on similar charges in Thurston County Superior Court, and after a Thurston County Deputy Prosecuting Attorney requested that charges be filed in Pierce County in order to pressure Gates to plead guilty in Thurston County instead? (Assignments of Error 1, 2, and 3)

2. Did the trial court err in failing to dismiss this case where the circumstances established actual vindictive prosecution? (Assignments of Error 1 and 2)
3. Did the trial court err in failing to dismiss this case where the circumstances established a presumption of vindictive prosecution and the State failed to rebut that presumption? (Assignments of Error 1 and 3)

#### **IV. STATEMENT OF THE CASE**

##### **A. INVESTIGATION AND CHARGING DECISION**

Troy Bernritter and Kelly Hull married in 1995 or 1996. (TRP 436)<sup>1</sup> Their daughter, T.B., was born in February 1998. (TRP 436-37) Bernritter and Hull amicably divorced in 2000 and shared custody of T.B. (TRP 437, 438) When T.B. was six years old, Bernritter moved to California and married a woman named Jannette White. (TRP 437, 479)

Hull married Ryan Gates in 2008. (TRP 438-39) In December 2010, when T.B. was 12 years old, she told her mother that Gates had touched her inappropriately. (TRP 372, 444-45) Hull took no action at the time, and two days later T.B. left for California to spend Christmas with Bernritter and White. (TRP 352, 445, 449)

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<sup>1</sup> The consecutively-paginated trial transcripts labeled volumes I through IX will be referred to as TRP. The remaining transcripts will be referred to by the date of the proceeding.



While she was there, T.B. made the same statement to Bernritter and White. (CP 1; TRP 374, 445, 487-88) Bernritter contacted the police. (CP 1) A few months later, T.B. returned to Washington for a forensic interview. (CP 1; TRP 375, 583) T.B. said Gates

would carry her from her bed to his bed in the morning when her mother was in the shower. She said sometimes there would be no touching. She said the touching started when she was 9 or 10 years old. When he was carrying her, his hand would touch her vagina and then move back to her leg.

(CP 1) She at first thought the touching was accidental but then “realized it was on purpose.” (CP 1)

Once she was in the bed, Gates would massage her starting with her legs and working his way to her vagina. She claimed:

He would be rubbing circles with his thumb on her vagina while his other fingers were rubbing her leg. His hand would stay there on the top part of her vagina and then his hand would move towards where the pee comes out. She would try to leave and he would pull her closer.

(CP 1) She stated the last time this happened, in December 2010, he said they would “do this again” and asked her if she knew what sex was. (CP 2)

The police also interviewed Gates in 2011. (CP 2) He denied the touching but admitted that T.B. would cuddle in bed with him. (CP 2) He said he massaged her legs because they were sore from swim class. (CP 2) When the interviewer asked Gates if he ever got close to her vaginal area, he stated that he “[n]ever got that close.” (CP 2)

Hull was uncooperative and stated she would testify for the defense if the prosecution brought charges. (CP 33) She also expressed a suspicion that T.B. was fabricating the allegation so that Hull would leave Gates, or so that T.B. could move to California to live with her father full-time. (TRP 532-33, 600)

A year after T.B.’s original disclosure, the Pierce

County Prosecutor's office decided not to charge Gates. (CP 21) Deputy Prosecutor Heather Demaine wrote T.B.'s mother a letter in December 2011, explaining that they did not believe the State could prove T.B.'s accusations in court. (CP 21) Later, the prosecutor's office notified the investigating officer that it was not filing charges because it could not prove "the touching was done for sexual gratification." (CP 27)

No additional investigation was undertaken with respect to this allegation. (CP 6, CP 21) But after a similar allegation against Gates lead to a child molestation charge in Thurston County, the Pierce County prosecutor reopened the case. (CP 2, 32, 155) In August 2020, the State filed an Information charging Gates with one count of first degree child molestation and one count of second degree child molestation. (CP 3-4)

## B. MOTION TO DISMISS

Gates filed a motion to dismiss for prosecutorial misconduct and vindictive prosecution. (CP 5-71) Gates asserted that the Pierce County Prosecutor only filed charges in order to aid Thurston County in its prosecution of Gates, or to put pressure on Gates to seek a global resolution plea bargain. (CP 14) In deciding the motion, the trial court considered evidence in the form of documents submitted by the parties and testimony given at an evidentiary hearing, which established the following.

Hull and Gates divorced in 2012, and Gates later married a woman named Charity.<sup>2</sup> (RP 448) In June 2017, Charity went to the Thurston County Sherriff's office and reported allegations that Gates had engaged in inappropriate touching with his 11-year-old biological

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<sup>2</sup> Because Charity Gates shares a last name with Ryan Gates, for the sake of clarity she will be referred to by her first name in this brief.

niece, M.E., in February 2017. (CP 29) Charity had also recently filed for divorce from Gates. (CP 30)

The assigned detective researched Gates' criminal history and found information relating to the Pierce County investigation. (CP 32) He contacted T.B. and encouraged her to cooperate in the prosecution of Gates should Pierce County re-open her case. (CP 35) The detective also documented that he would provide T.B.'s current contact information to Pierce County. (CP 35) On January 26, 2018, the detective referred the case to the Thurston County Prosecutor's Office for a charging decision. (CP 29, 35) Eleven months later, in December 2018, the Thurston County Prosecutor's Office charged Gates with child molestation in the first degree. (CP 7, 155)

The Thurston County Prosecutor reached out to T.B. and her mother and instructed them to contact the Pierce County Prosecutor and ask them to reconsider

their charging decision. (12/10/20 RP 31; CP 99)  
Thurston County also faxed their discovery to the Pierce  
County Prosecutor in April 2019. (CP 37; 12/10/20 RP  
24)

In March 2019, Hull contacted a victim's advocate  
with the Pierce County Prosecutor's office and asked the  
office to reconsider its non-charging decision from 2011.  
(12/10/20 RP 15) T.B. also contacted the Pierce County  
Prosecutor's Office directly and stated that she was  
willing and eager to testify. (CP 100; 12/10/20 RP 27)  
They informed the Pierce County Prosecutor that they  
were potential "ER 404(b) witnesses" in the Thurston  
County case. (CP 97, 99)

In the written motion, Gates' defense counsel states  
that:

During the course of counsel's representation  
of Mr. Gates in the Thurston County matter,  
several discussions were had with respect to  
the admissibility of the 2010 allegation out of  
Pierce County, and the inability of the State to

prove the acts occurred, a prerequisite of their admission at trial as prior bad acts under ER 404(b). The State acknowledged an inability to meet its burden.

(CP 7) The written motion continues:

On December 2, 2019, Mr. Gates' Thurston County case was called for trial before Judge Lanese. Counsel for Mr. Gates filed a motion to exclude the 2010 Pierce County allegation pursuant to ER 404(b). The State conceded an inability to meet the requisite hurdle of establishing the prior allegation occurred. The Court excluded the incident in its entirety. On December 2, 2019, the Thurston County case was continued due to an insufficient number of jurors to conduct the jury trial. On February 20, 2020, Mr. Gates' Thurston trial was continued to May 18, 2020, because counsel for Mr. Gates was in a murder trial in Thurston County. On May 12, 2020, his Thurston County trial was continued due to COVID-19, and trial was set for August 31, 2020.

(CP 8)

In July 2020, Thurston County Deputy Prosecutor Megan Winder exchanged several emails with the Pierce County Prosecutor's Office about Gates. Winder wrote deputy prosecuting attorney Scott Harlass, saying:

Hi Scott - Just checking in with you about Ryan Gates . . . I expect my case is going to get pushed out a bit; [defense counsel] would like it to go, but my court isn't doing special questioning or large veneer jury trials yet... Please let me know when you get the chance.

(CP 42) Harlass forwarded the email to DPA Scott Peters. (CP 41) Peters then replied:

I have reviewed our case and the Thurston County case. I believe ours is chargeable. I think yours is the strongest case. I will charge mine. I don't know if that will change [defense counsel's] or the defendant's outlook on your case.

(CP 39) On July 23, 2020, Winder responded:

I agree that I have the stronger case; my victim was amazing in the defense interview. I hope that she will be great on the stand as well, even with this much time between then and now.

Hopefully it will push him to seek a global [plea agreement.]

(CP 39) On August 12, 2020, nearly 10 years after T.B.'s father reported her allegation, and just 19 days before Gates' Thurston County trial was set to begin, Peters charged Gates with first and second degree child



molestation. (CP 1, 3-4, 8)

Peters testified at the evidentiary hearing. He acknowledged that the case was “put on the back burner” with no action taken between March 2019 when Thurston County first reached out, and July 2020 when Winder contacted his office again. (12/10/20 RP 32-33) Once she inquired about the status, he realized he “should have gotten to it,” so he pulled the case and filed charges within two weeks. (12/10/20 RP 33)

Peters asserted that the Pierce County Prosecutor’s Office will “occasionally” review prior charging decisions for “various reasons.” (12/10/20 RP 20-21) He acknowledged that no new investigation had been conducted and no new facts had come to light in the 10 years between the two charging decisions. (12/10/20 RP 26-27, 28, 29) Instead, he claimed that the change was based on Hull’s new willingness to cooperate and that T.B. would now make a better witness. (12/10/20 RP 27,

50)

The trial court denied Gates' motion to dismiss. (CP 144-48) It found that Gates did not show that Peters' decision to file charges was actually vindictive, and that the State rebutted any presumption of vindictiveness that might be found. (CP 144-48) The court did conclude that Peters mismanaged the case and acted negligently by neglecting the case. (CP 144)

#### C. TRIAL AND SENTENCING

T.B. testified that Gates began touching her inappropriately when she was about 10 or 11 years old. (TRP 377) At first the contact seemed to occur unintentionally when Gates would carry or hold her in an odd way, but then it "escalated" and did not seem accidental any more. (TRP 380-81) T.B. testified that Gates would wake her up in the morning while her mother showered, and would carry her into the bed he shared with Hull to "cuddle." (TRP 364) Sometimes they would

go back to sleep, but sometimes he would molest her by rubbing her legs and her pubic area. (TRP 366, 368) Usually his fingers would stay on the outside of her clothing, but occasionally a finger would slip under her clothing and touch her vagina. (TRP 370, 371)

T.B. recalled a specific incident in December 2010, a few days before she left to visit her father for Christmas in California. (TRP 352, 359, 367, 444) According to T.B., the incident occurred while Hull was in the shower, and that was one occasion where Gates' finger touched T.B. under her clothing. (TRP 368, 370, 371) Gates stopped when Hull turned off the water and got out of the shower. (TRP 372) Gates got dressed and told T.B., "We'll do this again sometime." (TRP 372) As soon as Gates left the house, T.B. told Hull what he had been doing. (TRP 372)

T.B. spent the next two nights at a friend's house, then left to visit her father and stepmother in California.

(TRP 352) T.B. had been wanting to move to California to live with her father and stepmother. (RP 394-95) After T.B. told them what had happened, her father let her stay and live with them. (TRP 374)

Hull confirmed that T.B. disclosed the inappropriate touching to her a few days before she left for California. (TRP 444-45) At the time of the disclosure, Hull and Gates were having marital issues and T.B. had asked her mother to leave Gates. (TRP 460-61, 462-63) T.B. had also asked on multiple occasions to go live with her father because she thought it would be fun to live in California. (TRP 466) She was not allowed to move there until after she made the disclosure about Gates. (TRP 467)

The jury found Gates not guilty of count one, first degree child molestation, but guilty of count two, second degree child molestation. (CP 207-08; TRP 757-58) Gates has an offender score of zero, and a standard range of 15-20 months. (TRP 777, 786; CP 51) The trial

court imposed a sentence of 20 months. (TRP 792; CP 55) Gates filed a timely Notice of Appeal. (CP 271)

## **V. ARGUMENT AND AUTHORITIES**

The trial court should have granted Gates' motion to dismiss for prosecutorial vindictiveness. The timing and circumstances surrounding Pierce County's decision to charge Gates showed both actual vindictiveness and a presumption of vindictiveness that the State failed to rebut.

Constitutional due process principles prohibit prosecutorial vindictiveness. U.S. Const. amend. 14; Wash. Const. art. 1, § 3; *United States v. Goodwin*, 457 U.S. 368, 372-85, 102 S. Ct. 2485, 73 L. Ed. 2d 74 (1982); *State v. Korum*, 157 Wn.2d 614, 627, 141 P.3d 13 (2006). Prosecutorial vindictiveness occurs when "the government acts against a defendant in response to the defendant's prior exercise of constitutional or statutory rights." *Korum*, 157 Wn.2d at 627 (citing *United States v.*

*Meyer*, 810 F.2d 1242, 1245 (D.C. Cir. 1987)). There are two kinds of prosecutorial vindictiveness, actual vindictiveness and a presumption of vindictiveness. *Korum*, 157 Wn.2d at 627.

A trial court's ruling on a motion to dismiss for vindictive prosecution is reviewable only for abuse of discretion. *State v. Miller*, 92 Wn. App. 693, 702, 964 P.2d 1196 (1998). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *Miller*, 92 Wn. App. at 702. "Discretion is abused only where it can be said that no reasonable person would take the view adopted by the court." *State v. Lewis*, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990). The trial court here abused its discretion when it denied Gates' motion to dismiss because the facts established both actual and presumptive vindictiveness by the Pierce County Prosecutor's

charging deputy.<sup>3</sup>

A. ACTUAL VINDICTIVENESS

Actual vindictiveness occurs when there is “direct evidence of an expressed hostility or threat to the defendant for having exercised a constitutional right.” *United States v. Gallegos Curiel*, 681 F.2d 1164, 1168 (9th Cir., 1982); *Meyer*, 810 F.2d at 1245. Actual vindictiveness must be shown by the defendant through objective evidence that a prosecutor acted in order to punish him for standing on his legal rights. *Korum*, 157

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<sup>3</sup> Gates previously sought discretionary review of this issue in this Court, but the Commissioner denied review. (CP 150, 151-62) However, Gates may still raise this issue on direct review because the denial of discretionary review “does not affect the right of a party to obtain later review of the trial court decision or the issues pertaining to that decision.” RAP 2.3(c); see also *Ollie v. Highland School Dist. No. 203*, 50 Wn. App. 639, 641, 749 P.2d 757 (1988) (“[g]enerally, denial of discretionary review does not preclude later review”); *Fluke Capital and Management Services v. Richmond*, 106 Wn.2d 614, 620, 724 P.2d 356 (1986) (the “law of the case” doctrine only applies to issues actually decided in a prior appellate decision).

Wn.2d at 627 (quoting *Meyer*, 810 F.2d at 1245).

It is clear from the record that the Pierce County Prosecutor's Office filed charges against Gates at the request of Thurston County, and in order to pressure Gates to give up his right to trial and plead guilty. Nearly nine years had elapsed without any effort to investigate or follow up on charges that Pierce County already concluded they could not prove at trial. An objective review of the sequence of events shows no interest in further review until cajoled into doing so by Thurston County DPA Winder. Even then, Pierce County waited more than 16 months after receiving the discovery related to the Thurston County allegation to charge Gates. Pierce County clearly did not find the information provided by Thurston County to be valuable and/or relevant to its case since no immediate charges were filed against Gates. Pierce County did nothing until the Thurston County Prosecutor's Office all but begged Pierce County



to file charges, which it finally did on the eve of Gates' Thurston County trial.

The record is clear and establishes actual vindictiveness. Winder faxed discovery to Pierce County on April 5, 2019, and Pierce County did nothing. (CP 37; 12/10/20 RP 24) After stipulating to an inability to offer the Pierce County allegation as ER 404(b)/prior bad act evidence in December of 2019, Winder again reached out to Pierce County to urge them to act, as evidenced by the July 2020 email correspondence. (CP 39-42) In her first email to Pierce County, Winder in no uncertain terms tells Pierce County, that defense counsel "would like it to go [to trial]." (CP 42) Pierce County DPA Peters responded: "I will charge mine. I don't know if that will change [defense counsel's] or the defendant's outlook on your case." (CP 39) Peters is clearly responding to Winder's assertion that counsel for Gates intends to proceed to trial in Thurston County. Winder's response leaves no doubt

the State's action was intended to retaliate for Gates' intent to proceed to trial in Thurston County, or at a minimum put pressure on Gates to plead guilty. Winder's immediate response to Peters' email states, "Hopefully it will push him to seek a global." (CP 39) The term "global" is obviously referring to a global plea resolution.

The trial court acknowledged that Peters was motivated to help Winder:

DPA Winder wanted Pierce County to file the case because it might prompt a plea bargain and might provide admissible evidence under ER 404(b)...DPA Peters surely knew this [and] was a knowing participant in this tactical effort; he was motivated to assist DPA Winder[.]

(CP 145) Yet the trial court determined that this was not evidence of actual vindictiveness. (CP 146) But this is the definition of actual vindictiveness. These charges were filed to either pressure Gates into an unwanted plea agreement instead of exercising his constitutional right to trial, or to give a tactical advantage to a fellow DPA by

creating a basis to argue its admissibility under ER 404(b) in another trial. The Pierce County charges were not based on any further investigation or review of the evidence, but in retaliation for the exercise of constitutional rights by Gates. The trial court's view that Peters' actions did not show actual vindictiveness was a clear abuse of discretion.

#### B. PRESUMPTIVE VINDICTIVENESS

A presumption of vindictiveness arises when "all of the circumstances, when taken together, support a realistic likelihood of vindictiveness." *Korum*, 157 Wn.2d at 627 (quoting *Meyer*, 810 F.2d 1246). The prosecution must then rebut the presumption by presenting "objective evidence justifying the prosecutorial action." *Korum*, 157 Wn.2d at 627-28 (quoting *Meyer*, 810 F.2d 1245). "[T]he mere appearance of vindictiveness is enough to place the burden on the prosecution." *United States v. Ruesga-Martinez*, 534 F.2d 1367, 1369 (9th Cir. 1976).

The presumption of vindictiveness may arise pretrial based on charging decisions. See also *United States v. Krezdorn*, 718 F.2d 1360, 1364 (5th Cir. 1983) (“[t]he proper solution is not to be found by classifying prosecutorial decisions ... as being made pre- or post-trial”); *United States v. Suarez*, 263 F.3d 468, 479 (6th Cir. 2001) (“prosecutorial vindictiveness can potentially be found in the pre-trial addition of charges following pre-trial assertions of protected rights”); *United States v. Barner*, 441 F.3d 1310, 1317 (11th Cir. 2006) (concluding that prior case law did not rule out “the possibility that a case could present additional factors that would make it appropriate to use the presumption in a pre-trial setting”).

Washington’s legislature has given prosecutors great latitude in determining what charges to file against a defendant. *Lewis*, 115 Wn.2d at 229. “Nonetheless, the Legislature did not leave the prosecutors’ discretion unbridled.” *State v. Korum*, 120 Wn. App. 686, 701, 86

P.3d 166 (2004).<sup>4</sup> For example, in certain circumstances it is improper for a prosecutor to file new or additional charges in order to apply pressure on a defendant to plead guilty. See RCW 9.94A.411(2)(a)(ii).<sup>5</sup> In addition to legislative limits, there are constitutional limits on a prosecutor's charging discretion; once a prosecutor exercises their discretion to bring or not bring certain charges against a defendant, "neither [they nor their] successor may, without explanation, increase the number of or severity of those charges in circumstances which suggest that the increase is retaliation for the defendant's assertion of statutory or constitutional rights." *Hardwick v. Doolittle*, 558 F.2d 292, 301 (5th Cir. 1997). And a prosecutor may not threaten or file charges solely to gain

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<sup>4</sup> Aff'd in part, rev'd in part, 157 Wn.2d 614, 141 P.3d 13 (2006).

<sup>5</sup> "The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes: (A) Charging a higher degree; (B) Charging additional counts." RCW 9.94A.411(2)(a)(ii).

advantage in another proceeding. *Blackledge v. Perry*, 417 U.S. 21, 94 S. Ct. 2098, 40 L. Ed. 2d 628 (1974); *United States v. DeMarco*, 550 F.2d 1224, 1227 (9th Cir. 1977).

There can be no question the sequence of events outlined above establishes a presumption of vindictiveness. The timing of the charges, coupled with the obvious knowledge and intent that such action would assist Thurston County's prosecution of Gates and pressure Gates to relinquish his right to a jury trial, all support a realistic likelihood of vindictiveness.

And the evidence presented by the State to rebut this presumption does not objectively justify Peters' charging decision. There was no new investigation into T.B.'s allegations. There was no new evidence that had come to light in the previous 9 years. Instead, Peters claimed that the passage of time made his case stronger because T.B. was now an adult. (12/10/20 RP 50; CP

145) This flies in the face of logic, which tells us that the passage of time diminishes memory and credibility. See *Tyson v. Tyson*, 107 Wn.2d 72, 76, 727 P.2d 226 (1986) (evidence becomes less trustworthy as time passes and witnesses' memories fade or are colored by intervening events and experiences); *Dowell Co. v. Gagnon*, 36 Wn. App. 775, 776, 677 P.2d 783 (1984) (explaining the purpose of the statute of limitations is to force cases to trial "while witnesses are still available and memories are still clear").

Peters also claimed that Hull's newfound cooperation influenced his decision to file charges. (12/10/20 RP 27) But Hull did not witness any of the alleged incidents between Gates and T.B., and her testimony provided little added value at trial.

The trial court found that any presumed vindictiveness was "rebutted in this case by [T.B.'s] forceful request that the case be filed and DPA Peters'

decision to honor that request.” (CP 147) But the record does not show that T.B. made a “forceful” request. Instead, T.B. was contacted by the Thurston County detective, who states that:

I asked [T.B.] if she would be willing to cooperate with the Pierce County authorities if they were able to reopen the case and file charges against [Gates]. **After a long pause, she replied “yes”.**

(CP 35, emphasis added). This clearly sounds like a reluctant agreement to cooperate, not a “forceful” request to file charges. And DPA Winder “instructed” T.B. to ask the Pierce County Prosecutor to file charges. (CP 144; 12/10/20 RP 31) The record simply does not support Peters’ claim that he was motivated to file the charges because of T.B.’s and Hull’s independent desire to reopen the case.

Whether to facilitate a successful trial in Thurston County by strengthening the previously excluded 404(b) evidence, or to force a global plea resolution, Peters’



motivation was a retaliatory and improper response to Gates exercising his constitutional rights. The filing of the charges against Gates was presumptively vindictive, and the trial court abused its discretion when it found that the State rebutted this presumption.

## **VI. CONCLUSION**

The record clearly establishes both actual and presumptive vindictiveness by the Pierce County Prosecutor's Office, and the State did not rebut the presumption of vindictiveness. As a result, Gates' conviction must be reversed and dismissed with prejudice. *Meyer*, 810 F.2d at 1249 (the remedy for prosecutorial vindictiveness is dismissal of the charges).

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DATED: June 26, 2023



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