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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2023AP218-CR

*In the interest of Jayden Adams, a person under the
age of 17:*

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JAYDEN ADAMS,

Defendant-Appellant.

On Appeal from an Order Denying a Transfer of
Jurisdiction to Juvenile Court, Entered in the
Milwaukee County Circuit Court, the Honorable
Laura Gramling Perez Presiding.

REPLY BRIEF OF
DEFENDANT-APPELLANT

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TABLE OF CONTENTS

	Page
ARGUMENT	3
I. Jayden was entitled to discovery before his preliminary hearing in order to protect his right to challenge the criminal court’s original jurisdiction.	3
II. The circuit court erroneously exercised its discretion when it denied Jayden’s reverse waiver motion.....	6
CONCLUSION.....	8
CERTIFICATION AS TO FORM/LENGTH.....	9

CASES CITED

<i>State v. Kleser</i> , 2010 WI 28, 328 Wis. 2d 42, 786 N.W.2d 144	3, 4, 6
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STATUTES CITED

<u>Wisconsin Statutes</u>	
809.50	4
809.50(3)	4
970.032(1)	4
970.032(2)	4, 7

ARGUMENT

I. Jayden was entitled to discovery before his preliminary hearing in order to protect his right to challenge the criminal court's original jurisdiction.

In preliminary hearings held in connection with motions to transfer jurisdiction to juvenile court, juveniles are entitled to enhanced “latitude in attacking the specific offense charged if a successful attack would alter the crime charged or negate the exclusive original jurisdiction of the criminal court.” *State v. Kleser*, 2010 WI 28, ¶ 65, 328 Wis. 2d 42, 786 N.W.2d 144. Based on *Kleser*’s mandate for enhanced latitude, Jayden was entitled to discovery before his preliminary hearing because it was impossible to know of all potential challenges to probable cause without access to police reports, medical reports, and the recorded statements of witnesses, the alleged co-actors, and Jayden. Without this information, Jayden could not meaningfully exercise “the right to attempt to negate [the] specific offense” and the right “to introduce evidence in an effort to get the charge reduced.” *Id.*, ¶¶ 60-62.

The State asserts that this Court lacks jurisdiction to address Jayden’s right to discovery, and suggests that the issue is outside the scope of his petition for leave to appeal. (Response Br. at 9). In fact, trial counsel for Jayden expressly petitioned for leave to appeal this issue. (Pet. at 4). And in its response

opposing the petition for leave to appeal, the State failed to develop any procedural or substantive argument in regards to discovery. (Response to Pet. at 13). This Court subsequently entered an order granting Jayden's petition, and thus has jurisdiction to address this issue. *See* Wis. Stat. § 809.50(3).

The State further argues that this Court lacks jurisdiction because there is no written order denying Jayden's request for discovery, but the circuit court entered a written order retaining adult court jurisdiction, and this order was included with the petition for leave to appeal. (49:1; App. 26; Pet. Exhibit 1). The State cites no case from this Court nor the Wisconsin Supreme Court requiring multiple written orders for each issue presented in a petition for leave to appeal. Likewise, nothing in the text of Wis. Stat. § 809.50 imposes this requirement. Moreover, in cases in which a juvenile is subject to original adult court jurisdiction, the preliminary hearing functions as part one of a two-part process that concludes with the reverse waiver hearing. *See* Wis. Stat. 970.032(1)-(2). Since both hearings are necessary components of an adult court's decision to retain jurisdiction, a court's written order to retain jurisdiction encompasses the issues raised at both hearings.

Turning to the merits of the discovery issue, the State concedes that *Kleser* mandates enhanced latitude for the defense at reverse waiver preliminary hearings. (Response Br. at 13). According to the State, allowing the defense greater latitude in calling and questioning witnesses should be sufficient to comply

with *Kleser's* mandate. However, Jayden's case highlights the inadequacy of this approach. The State called a single detective as its only witness at the preliminary hearing, and much of his testimony consisted of reciting what he had read in the criminal complaint. (15:17-22; 16:28-38). Thus, when defense counsel asked about Jayden's and two of the alleged co-actors' recorded police statements, the detective advised that he could not discuss the specifics of these statements because he had only reviewed "bits and pieces of them." (17:14, 19-20). The detective further testified that because he had not reviewed Jayden's statement, he could not confirm whether Jayden became emotionally distraught in the immediate aftermath of the victim's death. (17:19-20). This gap in the evidence presented at the preliminary hearing underscores that the defense was in no position to introduce evidence and negate probable cause for the utter-disregard-for-life element of first-degree reckless homicide without access to discovery.

The State also argues that Jayden's trial counsel received "numerous pages of police reports" before the preliminary hearing (Response Br. at 13), but this ignores all of the discovery that the State refused to provide. As noted above, the State refused to provide full police reports, as well as medical reports and the recorded statements of witnesses, the alleged co-actors, and Jayden. It was uncontroverted in circuit court proceedings that this discovery was within the exclusive possession of the State prior to the preliminary hearing, and that Jayden's trial counsel had no ability to obtain this discovery due to the

State's decision to withhold it. (13:3; 18:12-23; 19:2-3). Jayden was only 13 years old at the time of his preliminary hearing, and thus had a limited ability to provide pertinent factual information to his counsel. (13:3). Without this information, Jayden could not meaningfully exercise his rights to introduce evidence and negate probable cause for the charge that made him subject to the criminal court's original jurisdiction. Thus, pursuant to *Kleser*, Jayden was entitled to this information prior to his preliminary hearing.

II. The circuit court erroneously exercised its discretion when it denied Jayden's reverse waiver motion.

The circuit court erroneously exercised its discretion when it based its decision on a misstatement of the evidence concerning Jayden's ability to get treatment in the adult prison system. The court twice misstated the evidence presented at the reverse waiver hearing when it claimed that there was "a very good chance" that Jayden would transfer to the Racine Youthful Offender Correctional Facility (RYOC) upon turning 18. Contrary to this assertion, there was no evidence presented at the hearing as to the likelihood that Jayden would transfer to RYOC. The DOC's director of program services was the only witness to testify in regards to this issue, and she merely testified that it is "possible" for a child serving an adult sentence at Lincoln Hills to transfer to RYOC upon turning 18. (59:173-74).

The State does not identify any testimony from any witness indicating that Jayden, or a similarly situated child, would most likely transfer to RYOC upon turning 18. Instead, the State claims that the circuit court appropriately exercised its discretion because there was generic testimony about RYOC at the reverse waiver hearing. (Response Br. at 17). But generic testimony about RYOC does not support the circuit court's assertion that Jayden had "a very good chance" of transferring there. Consequently, the court erroneously exercised its discretion when concluding that Jayden would "receive substantially the same services at *the* adult facility as are available at Lincoln Hills." (52:5; App. 13) (emphasis added).

The court also misused its discretion when it cited the presence of the victim's family in court proceedings as a basis for retaining jurisdiction. In response, the State minimizes the court's statement by suggesting that it merely provided context for the court's broader findings. (Response Br. at 19). However, the court clearly linked the presence of the victim's family to the need to retain jurisdiction. (52:10-11; App. 18-19). And in doing so, the court implied that a victim with no family is somehow less entitled to having a case prosecuted in adult court. Nothing in the text of Wis. Stat. § 970.032(2) endorses this reasoning as a relevant criterion on which to deny a reverse waiver motion. Moreover, the victim's family did not testify, did not take a position on Jayden's reverse waiver motion, and did not present any information upon which the court could base its decision. Accordingly, there was no basis for the court

to infer that the presence of the victim's family supported retaining Jayden in criminal court, and the court erroneously exercised its discretion in concluding otherwise.

CONCLUSION

For the reasons stated in Section I, Jayden moves this Court to remand to the circuit court with instructions to vacate its reverse waiver order and hold a new preliminary hearing. For the reasons stated in Section II, Jayden moves this Court to remand to the circuit court with instructions to vacate its reverse waiver order and hold a new reverse waiver hearing.

Dated this 31st day of August, 2023.

Respectfully submitted,

Electronically signed by

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 1,303 words.

Dated this 31st day of August, 2023.

Signed:

Electronically signed by

David Malkus

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