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SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

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-Petitioner.

RESPONSE TO PETITION FOR REVIEW

JOSHUA L. KAUL
Attorney General of Wisconsin

ABIGAIL C. S. POTTS
Assistant Attorney General
State Bar #1060762

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-7292
(608) 294-2907 (Fax)
pottsac@doj.state.wi.us

INTRODUCTION

Plaintiff-Respondent State of Wisconsin agrees with Defendant-Appellant-Petitioner Jayden Adams that this Court should accept review of this case, but the State believes that review is only warranted as to the aspect of the Wisconsin Court of Appeals' decision that created a right to certain pre-preliminary examination discovery in juvenile original jurisdiction cases such as this. *See State of Wisconsin v. Jayden Adams*, Appeal No. 2023AP218-CR (Ct. App. Dist. I, July 23, 2024).[1]

Adams' petition requests review of both aspects of the Court of Appeals' decision. It seeks review of the court of appeals' decision affirming the denial of Adams' discovery motion and the court of appeals' decision affirming the reverse waiver decision. (Pet. 3.) But only the former satisfies the criteria for review.

BACKGROUND

Adams was charged with six felonies for his involvement in a crime spree and hit and run that left a woman dead. Specifically, Adams was charged with first-degree reckless homicide as party to a crime, taking a vehicle without consent by use of force and as party to a crime, hit

[1] The manner in which the court of appeals resolved Adams' case precluded the State from petitioning this Court for review. Since the court of appeals ultimately affirmed the circuit court on both the discovery and reverse waiver decisions, the State didn't receive an "adverse decision" within the meaning of Wis. Stat. § (Rule) 809.62(1m). So, while the State disagrees with the court of appeals' conclusion that Adams had a right to certain discovery prior to the preliminary examination, the State could not petition for review on that issue. *See State v. Castillo*, 213 Wis. 2d 488, 491, 570 N.W.2d 44 (1997) ("A court's ultimate decision is separate from the court's opinion, however, and a party may not petition this court for review if it merely 'disagrees with the rationale expressed in the opinion.'").

and run resulting in death, driving without a license and causing death, unauthorized use of personal identifying information or documents as party to a crime, and fleeing an officer. (R. 5.)

The criminal complaint against Adams alleges that Adams, along with several friends, broke into a car in a motel parking lot with the intention of stealing it. The victim saw the suspects breaking into the car and confronted them. (R. 5:4–5.) The suspects stole some things from the car, including change and cash, and fled on foot. (R. 5:4–5.) The victim went into the hotel and notified the security guard of the break-in. (R. 5:5.) Then the victim got into her SUV, drove up next to the kids, got out, and confronted them again. One of the kids told Adams to take the SUV and then someone punched the victim in the face. (R. 5:9.) Adams got into the driver's seat of the victim's SUV, and when the victim tried to hold onto the door, Adams kicked the door into her face. (R. 5:9.) According to an eyewitness, Adams backed up the SUV and ran over the victim's head. (R. 5:5.) He then drove forward and reversed over her head a second time, shifted to drive, and dragged the victim forward. (R. 5:5.)

After killing the victim, Adams picked up the rest of his friends, drove to Walmart, and used the victim's credit card to buy nearly $100 worth of merchandise. (R. 5:8.) The suspects eventually abandoned the stolen SUV and were caught in the vicinity of where they left it. (R. 5:7.)

After being charged, Adams requested discovery prior to the preliminary examination. (R. 8.) Specifically, Adams requested "police reports, body worn camera and squad camera audio-visual recordings, surveillance video, photographs, audio-visual recordings of statements made by witnesses, alleged co-actors, and the child defendant, and Milwaukee County Medical Examiner reports." (R. 8:2.)

Adams filed his discovery motion on November 1, 2021. (R. 8.) On November 17, 2021, the circuit court issued an oral ruling, denying Adams' discovery motion. (R. 19.) The circuit court then held the preliminary hearing, where the court determined that there was probable cause that Adams had committed the original jurisdiction offense charged, namely first-degree reckless homicide as a party to a crime. (Pet-App. 6.)

Adams then requested a reverse waiver back to juvenile court, and the court held a reverse waiver hearing on December 29, 2022. (R. 60; 52.) Adams called six witnesses at the reverse waiver hearing. (Pet-App. 6–8.) After hearing the testimony and considering the record in the case, the circuit court denied Adams' request. (R. 52.) The court thoroughly discussed the legal standard for reverse waiver and the facts of Adams' case before concluding that Adams failed to meet his burden on two of the three requisite factors. (R. 52:17.) The court found that Adams had not shown that 1) if convicted, he could not receive adequate treatment in the criminal justice system; and 2) reverse waiver would not depreciate the seriousness of the offense. (R. 52:6–15.)

Adams appealed both the denial of discovery and the denial of reverse waiver. The Wisconsin Court of Appeals affirmed both decisions, but in so doing, concluded that juvenile defendants have a right to certain discovery prior to the preliminary examination. Relying on the language of Wis. Stat. § 970.032(1), and the case of *State v. Kleser*, 2010 WI 88, 328 Wis. 2d 42, 786 N.W.2d 144, the court of appeals said:

> [W]e conclude that defendants are entitled to evidence that the State intends to introduce at the § 970.032(1) preliminary examination to establish probable cause of the alleged jurisdictional offense. The State is required to produce this evidence at a reasonable time before the preliminary examination itself because this evidence is necessary for the right established in *Kleser* to be meaningful. Moreover, we

> conclude that circumstances may be such that other materials exclusively in the possession of the State may be discoverable by the defendant prior to a § 970.032(1) preliminary examination, provided he or she establishes a particularized need for the materials requested by showing that they are likely to be relevant to negate one of the elements of the charged jurisdictional offense.
>
> (Pet-App. 13.)

The court of appeals went on to address the reverse waiver decision and concluded that the circuit court did not abuse its discretion in denying Adams' request for reverse waiver. (Pet-App. 19.)

Adams now petitions this Court for review. The State agrees that the petition should be granted, but only as to the court of appeals' decision on the discovery motion.

ARGUMENT

I. The Court of Appeals' conclusion that juvenile defendants have a right to certain discovery prior to a Wis. Stat. § 970.032(1) preliminary examination is an issue warranting review.

The Wisconsin Court of Appeals was correct in affirming both the circuit court's decision on Adams' discovery motion and its decision on reverse waiver. However, in its published decision, the court of appeals improperly created a right to discovery that is not authorized by statute or case law. This Court should grant review to address this narrow aspect of the lower court's decision.

Wisconsin Stat. § (Rule) 809.62(1r) sets criteria that are relevant in determining whether a case or issue warrants review. Among the enumerated criteria are cases where "[a] decision by the supreme court will help develop, clarify or harmonize the law," and the case presents a novel legal question with potential statewide impact. Wis. Stat. § (Rule) 809.62(1r)(c), (1r)(c)2. The court of appeals' decision on pre-

preliminary examination discovery presents just such an issue.

Based on the language of Wis. Stat. § 970.032(1) and the *Kleser* case, the court of appeals concluded that defendants are entitled to evidence that the State intends to introduce at a Wis. Stat. § 970.032(1) preliminary examination. (Pet-App. 13.) The court also held that, in certain circumstances, "other materials exclusively in the possession of the State may be discoverable by the defendant prior to a § 970.032(1) preliminary examination." (Pet-App. 13.) Both of these conclusions go far beyond what can reasonably be drawn from the language in *Kleser* or Wis. Stat. § 970.032(1), and both warrant review.

While the statute governing preliminary examinations in cases like this—where the adult criminal court has exclusive original jurisdiction over a juvenile—differs slightly from the statute governing preliminary examinations in adult felony cases, the subtle difference in statutory language does not speak to a right to discovery, it merely alters the State's burden of proof.

Under Wis. Stat. § 970.03(1), the statutory purpose of the preliminary examination hearing for adults is to determine "if there is probable cause to believe a *felony* has been committed by the defendant." Wis. Stat. § 970.03(1). "In contrast, under § 970.032(1), the court must determine whether there is probable cause to believe that the juvenile has committed '*the* violation' of which he or she is accused in the criminal complaint." *Kleser*, 328 Wis. 2d 42, ¶ 57 (quoting Wis. Stat. § 970.032(1)).

The Court in *Kleser* explained that the more specific finding required under Wis. Stat. § 970.032(1) "is required not only to protect the juvenile from hasty, improvident, or malicious prosecution, but also to assure that the criminal court has 'exclusive original jurisdiction' of the juvenile by

virtue of the juvenile's probable violation of one of the [enumerated] offenses." *Kleser*, 328 Wis. 2d 42, ¶ 57. And the Court noted that the difference in the statutory language means that "the defendant *must* be given some 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." *Id.* ¶ 65.

Based on this language in *Kleser*, the court of appeals concluded that juvenile defendants under the original jurisdiction of the adult criminal court are entitled to certain discovery prior to the preliminary examination. (Pet-App. 13.) Specifically, the court held that a juvenile defendant is entitled to all evidence the State intends to introduce at the preliminary hearing, and, in certain circumstances, defendants are also entitled to other materials exclusively in possession of the State. (Pet-App. 13.) These aspects of the court of appeals' decision warrants review because they manufacture a right to discovery that is not expressly authorized by statute or case law.

Adams certainly does not have a right to discovery under Wis. Stat. § 970.03, which addresses preliminary examinations generally. The statute does not mention, let alone expressly authorize, discovery at the preliminary examination stage. And in *State v. Schaefer*, 2008 WI 25, 308 Wis. 2d 279, 746 N.W.2d 457, this Court expressly held that a defendant is not permitted to compel discovery in anticipation of the preliminary hearing.

While the language of Wis. Stat. § 970.032(1), which addresses preliminary hearings for juveniles under original adult court jurisdiction, differs slightly from Wis. Stat. § 970.03, it too does not mention any right to discovery. And this Court has not issued a decision expressly holding that juveniles have such a right.

Finally, the vague "some latitude" language in *Kleser* does not make any mention of a pre-preliminary examination right to discovery and is not a sufficient basis for the court of appeals to conclude that Adams had such a right. *Kleser*, 328 Wis. 2d 42, ¶ 65.

This Court should grant review to address this narrow issue.

II. The aspect of the Court of Appeals' decision affirming the circuit court's reverse waiver decision is not deserving of review because it does not satisfy the criteria in Wis. Stat. § (Rule) 809.62(1r).

Unlike the discovery decision, the court of appeals' conclusion that the circuit court reasonably denied Adams reverse waiver motion does not present a special or important reason for this Court's review.

Wisconsin Stat. § 970.032(2) provides that the court shall retain adult court jurisdiction unless the juvenile proves by a preponderance of the evidence all of the following:

> (a) That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.
>
> (b) That transferring jurisdiction to the court assigned to exercise jurisdiction under . . . [ch.] 938 would not depreciate the seriousness of the offense.
>
> (c) That retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the violation of which the juvenile is accused . . . .

See Kleser, 328 Wis. 2d 42, ¶¶ 51, 67–68.

Adams' petition asserts that the circuit court erroneously exercised its discretion in evaluating the three requisite elements, but Adams' arguments are merely disagreements with how the circuit court and court of appeals

weighed and interpreted the testimony at the hearing. (Pet. 25.)

For example, Adams argues that the circuit court erroneously determined that there was a likelihood that he would transfer to Racine Youthful Offender Correctional Facility (RYOC) upon turning eighteen years old. (Pet. 26–27.) But, as the court of appeals explained, Adams' argument misinterprets the circuit court's reasoning. (Pet-App. 18.)

The court of appeals noted that the circuit court heard evidence at the reverse waiver hearing that Adams would remain at Lincoln Hills until he was eighteen, regardless of whether he remained under the jurisdiction of the adult criminal court. (Pet-App. 18.) And there was testimony at the hearing that Adams "would receive the same services at Lincoln Hills as do the children placed there under juvenile delinquency orders, including DBT to treat his mental health issues." (Pet-App. 18.) Finally, as to the possibility of Adams transferring to RYOC, "the court heard evidence that DOC tries to place as many eighteen to twenty-four-year-old offenders at RYOC as possible, that a majority of the inmates at RYOC were there for violent offenses, and that RYOC offers the types of programs that were recommended by Dr. Kavanaugh to address Adams's mental health issues." (Pet-App. 18.)

Based on the evidence at the hearing, the court of appeals correctly determined that "it was reasonable for the circuit court to conclude that there was a 'very good chance,' though 'certainly not guaranteed' that Adams would be transferred to RYOC upon turning eighteen and that Adams failed to demonstrate that he could not receive adequate treatment in the criminal justice system." (Pet-App. 19.)

Adams does not contend that the lower courts decisions incorrectly apply or interpret the law. Instead, Adams merely urges this Court to step in and make a different decision. But

this Court is not an error-correcting tribunal. *State ex rel. DNR v. Wisconsin Court of Appeals, District IV*, 2018 WI 25, ¶ 43, 380 Wis. 2d 354, 909 N.W.2d 114. And Adams does not present any special or important issue for review of the reverse waiver decision.

Because the court of appeals' reverse waiver decision does not conflict with controlling precedent, this Court should deny the petition as to that issue. The court of appeals applied clearly established law to the facts and reasonably concluded that Adams failed to make the requisite showing.

CONCLUSION

This Court should deny Adams' petition for review as to the reverse waiver decision and grant review of the court of appeals' conclusion that Adams had a right to certain discovery prior to the preliminary examination.

Dated this 3rd day of October 2024.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Abigail C.S. Potts
ABIGAIL C. S. POTTS
Assistant Attorney General
State Bar #1060762

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-7292
(608) 294-2907 (Fax)
pottsac@doj.state.wi.us

FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a response produced with a proportional serif font. The length of this response is 2,499 words.

Dated this 3rd day of October 2024.

Electronically signed by:

Abigail C.S. Potts
ABIGAIL C. S. POTTS

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Supreme Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 3rd day of October 2024.

Electronically signed by:

Abigail C.S. Potts
ABIGAIL C. S. POTTS