STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT I

Case No. 2024AP2585-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

NOAH Q. MANN-TATE,

Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING A MOTION TO DISMISS CHARGES AND AN ORDER DENYING REVERSE WAIVER INTO JUVENILE COURT ENTERED IN THE MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE JANE CARROLL, PRESIDING

BRIEF OF THE PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

1. Has Defendant-Appellant Noah Q. Mann-Tate met his heavy burden to show beyond a reasonable doubt that Wis. Stat. § 970.032, the statute allowing a circuit court presiding over a juvenile under Wis. Stat. § 938.183 to "reverse waive" the juvenile into juvenile court, is facially unconstitutional?

The circuit court rejected Mann-Tate's constitutional challenges to the procedure and denied his motion to dismiss the complaint, though he raised different arguments there than he does here.[1]

This Court should affirm.

2. Did the circuit court erroneously exercise its discretion when it found Mann-Tate did not meet his burden under the statutory criteria in Wis. Stat. § 970.032(2) and declined to waive Mann-Tate into juvenile court?

After multiple days of hearings the circuit court found that Mann-Tate did not show that he could not receive adequate treatment in the criminal justice system or that transferring the case would not depreciate the seriousness of the offense.

This Court should affirm the circuit court.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument. Mann-Tate is incorrect, however, that this "case is statutorily ineligible for publication" under Wis. Stat. § (Rule) 809.23(1)(b)4. (Mann-Tate's Br. 8.) This is not a one-judge case proceeding

[1] The State recognizes that facial constitutional challenges to a statute cannot be forfeited and therefore does not advance that as a basis for denying Mann-Tate's claim. *State v. Bush*, 2005 WI 103, ¶ 19, 283 Wis. 2d 90, 699 N.W.2d 80.

under Chapter 938, it is a three-judge-panel criminal homicide case. If this Court addresses Mann-Tate's arguments on the merits, the State requests publication, as it will clarify existing law in light of Supreme Court decisions that have been decided in recent years. Wis. Stat. § (Rule) 809.23(1)(a)1.

STATEMENT OF THE FACTS

As Respondent, pursuant to Wis. Stat. § (Rule) 809.19(3)(a)2. and to avoid repetition, the State omits a full statement of the facts. Facts will be introduced as needed in the appropriate argument section.

ARGUMENT

I. Mann-Tate has not met his burden to show beyond a reasonable doubt that the "reverse waiver" procedure for juveniles under original adult court jurisdiction is facially unconstitutional as a matter of due process.

A. Standard of Review

The constitutionality of a statute is a question of law this Court reviews de novo. *State v. Barrett*, 2020 WI App 13, ¶ 14, 391 Wis. 2d 283, 941 N.W.2d 866.

Statutes enjoy a strong presumption of constitutionality, meaning this Court "indulges every presumption to sustain the law if at all possible, and if any doubt exists about a statute's constitutionality," this Court "must resolve that doubt in favor of constitutionality." *State v. Cole*, 2003 WI 112, ¶ 11, 264 Wis. 2d 520, 665 N.W.2d 328 (citations omitted). Accordingly, a person "seeking to prove a statute unconstitutional faces a heavy burden." *Id.* "[I]t falls to the party challenging the constitutionality of a statute to prove that the statute is unconstitutional beyond a reasonable doubt." *Id.* "'It is insufficient to merely establish doubt as to

an act's constitutionality nor is it sufficient to establish the act is probably constitutional.' If any doubt remains, this [C]ourt must uphold the statute as constitutional." *Id.* (citation omitted).

"Challenges to the constitutionality of a statute are generally defined in two manners: as-applied and facial." *Serv. Emps. Int'l Union, Loc. 1 v. Vos*, 2020 WI 67, ¶ 37, 393 Wis. 2d 38, 946 N.W.2d 35, *overruled in part on other grounds by Evers v. Marklein*, 2025 WI 36, ¶ 38, 22 N.W.3d 789. "As-applied challenges address a specific application of the statute against the challenging party" and "the reviewing court considers the facts of the particular case in front of it to determine" whether the way the law was applied in that particular situation violated the constitution. *Id.*

"In a facial challenge, however, the challenging party claims that the law is unconstitutional on its face—that is, it operates unconstitutionally in all applications." *Id.* ¶ 38. "Proving a legislative enactment cannot ever be enforced constitutionally 'is the most difficult of constitutional challenges' and an 'uphill endeavor.'" *Id.* ¶ 39 (citations omitted). "Parties casting the widest possible net and seeking the broadest possible remedy must make the maximum possible showing." *Id.* ¶ 43. To succeed on such a challenge, then, "the challenging party must show that the statute cannot be enforced 'under any circumstances.'" *Id.* ¶ 38 (citation omitted). "If a law can only be applied unconstitutionally, it is [the court's] duty to say so. But if it can be applied constitutionally, it would be an overstep on [the court's] part to strike down a legislative enactment with constitutional applications." *Id.* ¶ 42.

With certain exceptions not relevant here, constitutional challenges are reviewed under one of two tests. If the legislative enactment implicates a suspect class or "impermissibly interferes with the exercise of a fundamental right," strict scrutiny review applies. *State v. Knipfer*, 2014

WI App 9, ¶ 10, 352 Wis. 2d 563, 842 N.W.2d 526 (citation omitted). If neither is at issue, rational basis review applies. *Mayo v. Wis. Injured Patients and Fams. Comp. Fund*, 2018 WI 78, ¶ 36, 383 Wis. 2d 1, 914 N.W.2d 678. Under that test, "the statute 'must be sustained unless it is "patently arbitrary" and bears no rational relationship to a legitimate government interest.'" *Id.* ¶ 40 (citation omitted). Courts "are not concerned with the merits of the legislation under attack," nor "concerned with the wisdom of what the legislature has done. We are judicially concerned only when the statute clearly contravenes some constitutional provision" and serves no legitimate purpose. *State ex rel. Hammermill Paper Co. v. LaPlante*, 58 Wis. 2d 32, 47, 205 N.W.2d 784 (1973).

B. Mann-Tate has not met his heavy burden to show that the original jurisdiction and reverse waiver statutes can never be constitutionally applied.

1. This Court should reject Mann-Tate's arguments as insufficiently developed.

As a preliminary matter, Mann-Tate never articulates whether he is raising facial or as-applied challenge to Wis. Stat. § 970.032. (Mann-Tate's Br. 8–41.) He does not develop any argument that the reverse waiver statute is constitutional generally but unconstitutional as applied to him. (Mann-Tate's Br. 27–41.) He seems to argue that the statute is unconstitutional as to all juveniles because it does not require the type of specific factfinding he envisions before the criminal court in an original jurisdiction case may retain jurisdiction over the juvenile. (Mann-Tate's Br. 27–41.) That makes this a facial challenge with the accompanying high burden to show that it can never be constitutionally applied in any circumstance. *Evers*, 2025 WI 36, ¶ 26.

Mann-Tate also never articulates whether he is raising a substantive or procedural due process challenge. (Mann-Tate's Br. 34–41.) He instead refers collectively to "fundamental . . . . substantive and procedural due process rights" (Mann-Tate's Br. 34–35), but never identifies any right beyond generic "fairness" at issue, and never engages in either the strict scrutiny or rational basis test but simply summarily declares the reverse waiver statute "unconstitutional beyond a reasonable doubt" because it does not explicitly mandate consideration of what he believes it should (Mann-Tate's Br. 34–41).

Indeed, Mann-Tate does not even articulate what he would ask this Court to require of circuit courts conducting reverse waiver hearings. (Mann-Tate's Br. 27–41.) He seems to be asking for some sort of "magic words" requirement lifted from the Supreme Court's Eighth Amendment cases regarding juveniles but fails to explain what type of evidence or factfinding he would require of circuit courts assessing reverse waiver. (Mann-Tate's Br. 40.) He also fails to show that the circuit court did not consider those things in his case. (Mann-Tate's Br. 27–41.)

Mann-Tate's failure to appropriately develop these arguments alone should dispose of his claim. *State v. Pettit*, 171 Wis. 2d 627, 646–47, 492 N.W.2d 633 (Ct. App. 1992). The two due process interests are not the same and have vastly different requirements and implications. Likewise, review under strict scrutiny and review under the rational basis test impose very different burdens for upholding the statute. As this Court has explained, "[a] party must do more than simply toss a bunch of concepts into the air with the hope that either [this Court] or the opposing party will arrange them into viable and fact-supported legal theories." *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). This is especially true with constitutional claims like the ones Mann-Tate raises: "[c]onstitutional claims are very complicated from

an analytic perspective, both to brief and to decide." *Cemetery Servs., Inc. v. DRL*, 221 Wis. 2d 817, 831, 586 N.W.2d 191 (Ct. App. 1998). Arguments raising "the specter of such claims [are] insufficient to constitute a valid appeal of these constitutional issues to this [C]ourt." *Id.* This Court should affirm the circuit court on the ground that Mann-Tate's argument is inadequately briefed.

Mann-Tate's failure to develop appropriate arguments on these concepts also means he has not approached meeting his heavy burden to prove the reverse waiver procedure facially unconstitutional beyond a reasonable doubt. Because these independent concepts and tests cannot be conflated the way Mann-Tate has done, the State addresses each separately.

2. Mann-Tate has no substantive due process right to participation in the juvenile court system.

The substantive due process guarantees of the United States and Wisconsin Constitutions forbid governments "from exercising 'power without any reasonable justification in the service of a legitimate governmental objective.'" *State v. Quintana*, 2008 WI 33, ¶ 80, 308 Wis. 2d 615, 748 N.W.2d 447 (citation omitted).[2] "The right to substantive due process addresses 'the content of what government may do to people under the guise of the law.'" *State v. Wood*, 2010 WI 17, ¶ 17, 323 Wis. 2d 321, 780 N.W.2d 63 (citation omitted). "An individual's substantive due process rights protect against a state action that is arbitrary, wrong, or oppressive, without

[2] The Fourteenth Amendment to the United States Constitution provides in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Wisconsin Constitution provides equivalent guarantees in Art. I, § 1 and Art. I, § 8. *See State v. Radke*, 2003 WI 7, ¶¶ 6, 12 n.15, 259 Wis. 2d 13, 657 N.W.2d 66.

regard for whether the state implemented fair procedures when applying the action." *Id.*; *see also, State v. Schulpius*, 2006 WI 1, ¶ 33, 287 Wis. 2d 44, 707 N.W.2d 495.

"The Supreme Court of the United States 'has always been reluctant to expand the concept of substantive due process because guideposts for reasonable decision making in this unchartered area are scarce and open-ended.'" *Black v. City of Milwaukee*, 2016 WI 47, ¶ 47, 369 Wis. 2d 272, 882 N.W.2d 333 (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 126 (1992)). This is so because "extending constitutional protection to an asserted right or liberty interest . . . place[s] the matter outside the arena of public debate and legislative action." *Id.* (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)). Thus, courts exercise judicial self-restraint when determining what is a "fundamental" liberty interest as "the Fourteenth Amendment 'forbids the government to infringe . . . "fundamental" liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.'" *Glucksberg*, 521 U.S. at 721 (alteration in original) (citation omitted).

"Fundamental rights are those which are either explicitly or implicitly based in the Constitution." *State v. Martin*, 191 Wis. 2d 646, 652, 530 N.W.2d 420 (Ct. App. 1995). The Supreme Court's "established method" to evaluate a substantive due process claim is two-fold. *Glucksberg*, 521 U.S. at 720. First, the court carefully describes the asserted fundamental liberty interest. *Id.* at 721–23.[3] Second the Court determines if the carefully described interest is a fundamental right or liberty "objectively, 'deeply rooted in

[3] While the Court labels "careful description" as its second "primary feature[]" of a "substantive-due-process analysis," it is actually the first step in the analysis. *Washington v. Glucksberg*, 521 U.S. 702, 720–23 (1997).

this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Id.* at 720–21 (citations omitted).

"The mere novelty of . . . a claim is reason enough to doubt that 'substantive due process' sustains it." *Id.* at 723 (citation omitted). "[T]he outlines of the 'liberty' specially protected by the Fourteenth Amendment—never fully clarified, to be sure, and perhaps not capable of being fully clarified—have at least been carefully refined by concrete examples involving fundamental rights found to be deeply rooted in our legal tradition." *Id.* at 722.

In an equal protection challenge to the portion of the statute making battery on correctional staff an original criminal court jurisdiction crime and imposing a mandatory minimum sentence, this Court has already rejected the heart of Mann-Tate's argument: that he has some kind of fundamental liberty interest in "individualized treatment either in the 'reverse waiver' procedure or in sentencing because it is neither explicitly nor inherently found in the Constitution." *Martin*, 191 Wis. 2d at 655. "The kind and nature of considerations adherent to waiver and sentencing are historically for the legislature to determine." *Id.* at 655–66. After observing that the Supreme Court denied a claim that there is a substantive liberty interest in individualized sentencing,[4] this Court held:

[4] None of the juvenile sentencing cases on which Mann-Tate attempts to rely changed this holding, even related to juveniles. The State discusses those cases more thoroughly in Part I.B.4.a., but they all held that certain punishments were categorically prohibited for juveniles. Only in making life-without-parole decisions is individualized sentencing required for juveniles. *Miller v. Alabama*, 567 U.S. 460, 477–78 (2012). These cases in no way prohibited lesser mandatory minimum sentences for juveniles,

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> Thus, not only is there no fundamental right to individualized sentencing and, by extension, to waiver hearings, but, historically and traditionally, the right to classify crimes and enact procedures that travel to 'deterrability' and 'depreciation' are for society. The voice of society in this country is the legislature. It follows that the legislature has the responsibility for enacting laws reflecting society's appreciation of the seriousness of one crime as opposed to another. The legislature also has the obligation to measure the kinds of sanctions that will, in society's judgment, best deter future criminality.

Id. at 656. "Thus, the State may classify different groups of citizens and ascribe certain procedures to those groups which may be different than other groups. That includes the narrowing or broadening of factors to consider in waiver, reverse waiver and sentencing." *Id.* at 657.

Likewise, the Wisconsin Supreme Court has unequivocally held that "there exists no fundamental right to be treated as a juvenile nor is there a fundamental right not [to] be incarcerated for criminal behavior." *State v. Annala*, 168 Wis. 2d 453, 468, 484 N.W.2d 138 (1992). This Court cannot overrule or ignore *Martin* or *Annala*. *Cook v. Cook*, 208 Wis. 2d 166, 189–90, 560 N.W.2d 246 (1997).

More broadly, substantive due process rights do not arise from procedural statutes like the reverse waiver procedure. Liberty interests "entitled to substantive due process protection . . . are 'created only by the Constitution.'" *Hawkins v. Freeman*, 195 F.3d 732, 748 (4th Cir. 1999)

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mandated that courts make individualized sentencing decisions in every juvenile case, nor dictated the grounds on which courts must sentence juvenile offenders. *See (Brett) Jones v. Mississippi*, 593 U.S. 98, 104–05, 107–18 (2021) (holding that a discretionary sentencing scheme is sufficient without more to constitutionally impose a life-without-parole sentence on a juvenile homicide offender, and neither specific factfinding nor a written explanation of reasons are required).

(quoting *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 229 (1985) (Powell, J., concurring)). Mann-Tate has no constitutional right to be treated as a juvenile in any court system. *Annala*, 168 Wis. 2d at 468; *see also Stokes v. Fair*, 581 F.2d 287, 289 (1st Cir. 1978). States providing for non-criminal treatment of juveniles who commit crimes is not "objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Glucksberg*, 521 U.S. at 720–21 (citation omitted). The United States and Wisconsin Constitutions do not recognize a right to different treatment as a juvenile by the court system. Nor does either set forth a liberty interest in participation in Wisconsin's procedures created for its juvenile court system. Mann-Tate does not have a fundamental due process right to participation in Wisconsin's juvenile court procedures.

3. There is a rational basis for the reverse waiver procedure.

Because Mann-Tate has no fundamental right to juvenile court jurisdiction, his substantive due process challenge is subject to rational basis review. *State v. Radke*, 2003 WI 7, ¶ 12, 259 Wis. 2d 13, 657 N.W.2d 66. Under that demanding standard, this Court "will sustain a statute against a constitutional challenge if there is 'any reasonable basis' for the statute." *Id.* ¶ 11 (citation omitted). This Court has already held that the former (though functionally identical) versions of Wis. Stat. §§ 938.183 and 970.032 survive rational basis review. *Martin*, 191 Wis. 2d at 657–63. And while the *Martin* court was addressing an equal protection challenge to original criminal jurisdiction for juveniles who commit assaults on juvenile corrections staff, original jurisdiction in the adult criminal court for first-degree intentional homicide offenders easily survives rational basis review as well.

The Juvenile Justice Code was enacted in 1995 upon recommendation of the Juvenile Justice Committee and in response to a sharp increase in juvenile crime, and in particular juvenile violent crime, between 1988 and 1993. (R. 80:37–38); Juvenile Justice Study Committee, *Juvenile Justice: A Wisconsin Blueprint for Change* 4 (Jan. 1995), https://files.eric.ed.gov/fulltext/ED384129.pdf (hereinafter "Report"). The committee "recognize[d] the obvious differences between child victims of circumstances outside of their control and young people who choose to violate society's laws," and sought to address the two differently. (Report at 13.) Previously, only juveniles alleged to have committed battery or aggravated assault while in a secure facility were subject to criminal court and adult sentencing. (Report at 17.) Juvenile confinement for first-degree intentional homicide ended at age 25, and for first-degree reckless homicide, at age 21. (Report at 17.) Combined with Wisconsin's high lower age threshold for delinquency at age 12, waiver at age 14 for homicides, and criminal jurisdiction beginning at age 18, that meant that juveniles committing the most severe and irrevocable violent crimes were nevertheless subject to minimal dispositions. (Report at 16–18.) The committee thus recommended that "the most serious of criminal behavior, homicide, should be under the original jurisdiction of the adult court" for increased accountability and recognition that the behavior is wrong, as well as protection of the public. (Report at 4–5, 16–19.)

Protection of the public and reducing juvenile violent crime are plainly legitimate state interests. *Cf. State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The Legislature could reasonably conclude that intentional and first-degree reckless homicide are such grave crimes, considering the irrevocable harm they inflict and the callous disregard for another person they require, that release at age 21 or 25 was not an acceptable outcome. It could also

reasonably conclude from the rise in juvenile violent crime that the prospect of a juvenile disposition for these crimes did not create enough of a deterrent to youth to refrain from such behavior. The Legislature did not have to choose the best or wisest means to achieve its goals for the statute to pass rational basis review. *City of Milwaukee v. Piscuine*, 18 Wis. 2d 599, 606, 119 N.W.2d 442 (1963). All that matters is that it had a rational relationship to a legitimate government interest. The Legislature had a rational basis for determining that these cases should originate in criminal court evidenced by the rise in juvenile violent crime and the recommendations of the Juvenile Justice Committee on steps to reduce it and increase accountability for juvenile offenders.

4. The reverse waiver procedure does not violate procedural due process in any application, let alone in all of them.

"[S]tate statutes may create liberty interests that are entitled to the procedural protections of the Due Process Clause of the Fourteenth Amendment." *Vitek v. (Larry) Jones*, 445 U.S. 480, 488 (1980). "In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law*." *Casteel v. McCaughtry*, 176 Wis. 2d 571, 579, 500 N.W.2d 277 (1993) (quoting *Zinermon v. Burch*, 494 U.S. 113, 125 (1990)).

To establish a procedural due process violation, a litigant must show that: (1) he or she "has been deprived of a recognized right," and (2) he or she "has not been afforded process commensurate with the deprivation." *Milewski v. Town of Dover*, 2017 WI 79, ¶ 20, 377 Wis. 2d 38, 899 N.W.2d 303 (citation omitted). A court may dispose of a procedural due process claim under either step without reaching the other one. *See Adams v. Northland Equip. Co.*, 2014 WI 79,

¶ 67, 356 Wis. 2d 529, 850 N.W.2d 272 (first step); *(Barbara) Jones v. Dane County*, 195 Wis. 2d 892, 914, 918–19, 537 N.W.2d 74 (Ct. App. 1995) (second step).

a. The Supreme Court's Eighth Amendment cases on what sentencing practices are categorically cruel and unusual punishment for juveniles have no bearing on whether the reverse waiver procedure violates procedural due process.

Mann-Tate attempts to dodge *Martin* and other cases holding original criminal jurisdiction constitutional by basing his argument on inapposite law. Relying on dicta from the United States Supreme Court decisions regarding why the *Eighth Amendment* imposes constitutional constraints on certain *punishments* for juveniles as a class, and its decision in *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), holding that a juvenile's age must be considered when assessing whether a juvenile is in custody for *Miranda* purposes, Mann-Tate contends that these decisions establish certain *procedural due process* requirements under the *Fourteenth Amendment* for how States must structure their juvenile court system. (Mann-Tate's Br. 29, 34–41.) He asks this Court to interpret these cases as prohibiting original criminal jurisdiction for juvenile offenders unless the criteria for sending the case to juvenile court is changed to consider the "characteristics of youth" described in them. (Mann-Tate's Br. 36–41.) Mann-Tate's argument is deeply misplaced.

Mann-Tate does not cite a single case that was actually decided on, or that even discussed, procedural due process under the Fourteenth (or Fifth) Amendment. (Mann-Tate's Br. 36–41.) He cannot rely on dicta from decisions interpreting one constitutional provision to establish the violation of an entirely different one, especially those so vastly

different in scope and purpose as the Eighth Amendment's prohibition on cruel and unusual punishment and the Fourteenth Amendment's due process requirement of fundamental fairness in procedure.[5] The Supreme Court itself has rejected this type of argument, and it has done so repeatedly. "In the few cases where the Court has had occasion to confront claims that impositions outside the criminal process constituted cruel and unusual punishment, it has had no difficulty finding the Eighth Amendment inapplicable." *Ingraham v. Wright*, 430 U.S. 651, 668–69 (1977). "We shall not . . . stretch the specific claims made under the Eighth Amendment to cover those that might arise under the Due Process Clause as well." *Browning-Ferris Indus. of Vt., Inc., v. Kelco Disposal, Inc.*, 492 U.S. 257, 277 n.23 (1989); *cf. Premo v. Moore*, 562 U.S. 115, 128 (2011) ("[A]djudication of the performance of counsel under the Sixth Amendment cannot be 'contrary to' *Fulminante*, for *Fulminante*—which involved the admission of an involuntary confession in violation of the Fifth Amendment—says nothing about the *Strickland* standard of effectiveness.").

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[5] *J.D.B. v. North Carolina* is not a constitutionally-based decision and thus has even less relevance to the question presented here. It is an extension of *Miranda v. Arizona*, 384 U.S. 436, 467 (1966), and *Miranda* is a prophylactic rule not required by the Constitution but designed to prevent defendants from being compelled to incriminate themselves in the inherently coercive environment of questioning while in police custody. *See Vega v. Tekoh*, 597 U.S. 134, 149–50 (2022) (holding that a *Miranda* violation "does not constitute 'the deprivation of [a] right . . . secured by the Constitution'"); *New York v. Quarles*, 467 U.S. 649, 654 (1984). The question in *J.D.B.* was whether considering the suspect's age was proper as part of the objective totality of the circumstances for determining whether the juvenile was in custody when questioned. *J.D.B. v. North Carolina*, 564 U.S. 261, 275–77 (2011). That has no bearing at all on what procedures are required before proceeding in criminal court when the offender is a juvenile.

Additionally, the Court has never been willing to interpret the Due Process Clause as dictating to the States how they must structure their judicial proceedings beyond fair notice and opportunity for a meaningful hearing. "[T]he Due Process Clause guarantees the fundamental elements of fairness in a criminal trial. But it has never been thought that such cases establish [the Supreme Court] as a rule-making organ for the promulgation of state rules of criminal procedure." *Spencer v. Texas*, 385 U.S. 554, 563–64 (1967) (citations omitted).

> It has been so often pointed out in the opinions of this [C]ourt that the Fourteenth Amendment is concerned with the substance and not with the forms of procedure as to make unnecessary any extended discussion of the question here presented. The due process clause does not guarantee to a citizen of a state any particular form or method of state procedure. Its requirements are satisfied if he has reasonable notice, and reasonable opportunity to be heard and to present his claim or defense; due regard being had to the nature of the proceedings and the character of the rights which may be affected by it.

Missouri ex rel. Hurwitz v. North, 271 U.S. 40, 42 (1926).

The Court has been unequivocally clear on this point. "[N]o single model of procedural fairness, let alone a particular form of procedure, is dictated by the Due Process Clause." *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 483 (1982). "The state has full control over the procedure in its courts, both in civil and criminal cases, subject only to the qualification that such procedure must not work a denial of fundamental rights, or conflict with *specific and applicable* provisions of the Federal Constitution." *Brown v. New Jersey*, 175 U.S. 172, 175 (1899) (emphasis added). Accordingly, "the due process clause of the 14th Amendment . . . does not control mere forms of procedure in state courts or regulate practice therein. All its requirements are complied with . . . [if] the person condemned has had sufficient notice,

and adequate opportunity . . . to defend." *Jordan v. Massachusetts*, 225 U.S. 167, 176 (1912). Quite obviously, the reverse waiver procedure under Wis. Stats. §§ 938.183 and 970.032 do not impose any punishment; they provide a procedure for sending a case originating in the criminal court to the juvenile court. The Court's Eighth Amendment jurisprudence explaining what sentencing practices constitute cruel and unusual punishment for juveniles and why that is so did not transform the Court into a rule-making organ dictating how States must organize their courts to handle juvenile offenses at the outset.

Even the cases Mann-Tate attempts to invoke do not support his argument. "*Roper*[6] established that because juveniles have lessened culpability they are less deserving of the most severe *punishments*." *Graham v. Florida*, 560 U.S. 48, 68 (2010) (emphasis added). *Miller* made clear that "children are constitutionally different from adults *for purposes of sentencing*." *Miller v. Alabama*, 567 U.S. 460, 471–77 (2012) (emphasis added). It is precisely because of the "unique . . . severity and irrevocability" of death and life-without-parole sentences that the Court was willing to impose categorical limitations on the states under the Eighth Amendment when it comes to capital and juvenile life-without-parole sentencing. *Miller*, 567 U.S. at 471; *Gilmore v. Taylor*, 508 U.S. 333, 342 (1993); *Gregg v. Georgia*, 428 U.S. 153, 187 (1976). It has been unwilling to use its Eighth Amendment jurisprudence to police State procedure in other contexts—even in other *sentencing* contexts. *See Lockett v. Ohio*, 438 U.S. 586, 603–04 (1978) ("legislatures remain free to decide how much discretion in sentencing should be reposed in the judge or jury in noncapital cases"). Even when juvenile sentencing was at issue, the Court was unwilling to

[6] *Roper v. Simmons*, 543 U.S. 551 (2005) (holding that the Eighth Amendment prohibits the death penalty for juvenile criminals).

dictate to the States what facts the sentencer must find or factors it must consider before imposing a life-without-parole sentence on a juvenile homicide offender. *(Brett) Jones v. Mississippi*, 593 U.S. 98, 105–18 (2021) (holding that the bare existence of discretion in the sentencing authority whether to impose life without parole is constitutionally sufficient). *J.D.B.* is even further off-point. It had nothing to do with State court procedures at all. *J.D.B.*, 564 U.S. at 277.

And in fact, the *Miller* court discussed transfer proceedings and distinguished them from sentencing. It explained that requiring discretionary sentencing for juvenile homicide offenders was constitutionally necessary even though there may be mechanisms to transfer a juvenile from criminal court to juvenile court when proceedings are initiated because "the question at transfer hearings may differ dramatically from the issue at a post-trial sentencing." *Miller*, 567 U.S. at 488. "[T]ransfer decisions often present a choice between extremes: light punishment as a child or standard sentencing as an adult." *Id.* "Discretionary sentencing in adult court would provide different options . . . it is easy to imagine a judge deciding that a minor deserves a (much) harsher sentence than he would receive in juvenile court, while still not thinking life-without-parole appropriate." *Id.* at 489. Mann-Tate makes no mention of this discussion.

In reality, these cases undermine Mann-Tate's argument rather than support it. *J.D.B.* did not touch on anything close to the question of what type of procedure is categorically required for juvenile offenders, at any stage of proceedings. *J.D.B.*, 564 U.S. at 268–77. *Roper v. Simmons*, 543 U.S. 551, 575 (2005), *Graham*, 560 U.S. at 79, and *Miller*, 567 U.S. at 489, held that certain sentences are unconstitutional for juveniles. *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016), did no more than make *Miller* retroactive. *Brett Jones*, 593 U.S. at 106. And *Brett Jones* held

that courts sentencing juvenile killers to life without parole did not need to make any particularized findings about the attributes of youth. *Id.* at 118. If the constitution does not demand that a sentencer make any particular findings about the attributes of youth before sentencing a juvenile to life without parole, it certainly does not demand that a criminal court make such findings before simply retaining jurisdiction over a juvenile offender. More to the point, the underlying thread connecting these five cases is that all presuppose that juveniles will sometimes be subject to criminal convictions. In none of these cases did the Court remotely suggest that doing so is constitutionally prohibited unless the State adopts the type of pretrial procedure Mann-Tate requests. *See, e.g.*, *Miller*, 567 U.S. at 479–80, 488–89.

Finally, every State court to consider the argument Mann-Tate now makes has rejected it. *See, e.g.*, *Zaragoza v. State*, No. 0844, 2021 WL 5296889, at *9–*10 (Md. Ct. Spec. App. Nov. 15, 2021) (unpublished); *State v. B.T.D.*, 296 So. 3d 343, 358–62 (Ala. Crim. App. 2019); *State v. Watkins*, 423 P.3d 830, 838–39 (Wash. 2018); *State v. Crooks*, 911 N.W.2d 153, 163–70 (Iowa 2018); *State v. McKinney*, 46 N.E.3d 179, 187 (Ohio Ct. App. 2015); *People v. Patterson*, 25 N.E.3d 526, 549–50 (Ill. 2014); *State v. Jensen*, 385 P.3d 5, 10–11 (Idaho Ct. App. 2016); *State v. Fussell*, 286 So. 3d 1011, 1015–16 (La. 2019); *(Anthony) Jones v. State*, 889 S.E.2d 590, 596–97 (S.C. 2023) (denying Eighth Amendment claim on the merits). The dicta from the cases on which Mann-Tate relies simply has no bearing whatsoever on whether the reverse waiver procedure passes constitutional muster as a matter of procedural due process. *Ingraham*, 430 U.S. at 671.

In short, Mann-Tate's argument that procedural due process prohibits the State from proceeding in criminal court against a juvenile unless certain criteria unenumerated in the "reverse waiver" statute are considered—what he terms the

"impact of youthfulness"[7]—based entirely on the Supreme Court's Eighth Amendment and *Miranda* jurisprudence, relies on the wrong law and is thus fundamentally flawed. This Court must reject it.

b. *Kent v. United States* does not assist Mann-Tate because due process requires only what the reverse waiver statutes already provide.

Mann-Tate's implied argument that the criminal court must consider something different than what the Legislature has provided when deciding whether to waive jurisdiction based on *Kent v. United States*, 383 U.S. 541, 557 (1966), while closer to the mark than his argument based on the Eighth Amendment case law, still misses it—and by a wide margin. *Kent* is readily distinguishable and actually shows that the reverse waiver procedure comports with due process.

In *Kent*, a District of Columbia statute entitled the "Juvenile Court Act" provided that juveniles 16 and under were "subject to the 'exclusive jurisdiction' of the Juvenile Court." *Kent*, 383 U.S. at 543. It contained a discretionary waiver provision that stated:

> If a child sixteen years of age or older is charged with an offense which would amount to a felony in the case of an adult, or any child charged with an offense which if committed by an adult is punishable by death or life imprisonment, the judge may, after full investigation, waive jurisdiction and order such child held for trial under the regular procedure of the court which would have jurisdiction of such offense if committed by an adult; or such other court may exercise the powers conferred upon the juvenile court in this subchapter in conducting and disposing of such cases.

[7] (Mann-Tate's Br. 40.)

Kent, 383 U.S. at 547–58 (quoting D.C. Code § 11–914 (1961)).

Fourteen-year-old Kent was apprehended in connection with several robberies and was placed on probation by the Juvenile Court of the District of Columbia. *Kent*, 383 U.S. at 543. Juvenile officials accumulated a Social Service file on Kent through contacts with him over the probation period. *Id.* Two years later when Kent was "16 and therefore subject to the 'exclusive jurisdiction' of the Juvenile Court," he was arrested for the rape and robbery of a woman after breaking into her home. *Id.* 543–44. Kent's counsel arranged for several psychiatric examinations of Kent, requested a hearing on the question of waiver of juvenile jurisdiction, and offered to prove that Kent would be suitable for rehabilitation in the juvenile system if given adequate treatment. *Id.* at 545. Counsel also requested access to the Social Service file, representing that access "was essential to his providing petitioner with effective assistance of counsel." *Id.* at 546.

The juvenile court judge ignored the motions, held no hearing, and did not confer with Kent, his counsel, or his parents. *Id.* Instead the court entered a summary order stating "that after 'full investigation, I do hereby waive' jurisdiction of petitioner" and sent the case to the U.S. District Court for the District of Columbia for criminal prosecution. *Id.* The court "made no findings. . . . did not recite any reason for the waiver," and "made no reference to the motions filed by petitioner's counsel." *Id.*

The Supreme Court noted that the portion of the act governing waiver "does not state standards to govern the Juvenile Court's decision as to waiver" and found the court's order summarily waiving jurisdiction invalid. *Id.* at 547, 552. The statute vested "original and exclusive jurisdiction" over the juvenile with the Juvenile Court, and "[t]his jurisdiction confers special rights and immunities" enumerated in the Juvenile Court Act to which Kent was statutorily entitled. *Id.* at 556–57. While the waiver statute contemplated that "the

Juvenile Court should have considerable latitude" when considering waiver into criminal court, that "does not confer upon the Juvenile Court a license for arbitrary procedure." *Id.* at 552–53.

The Court did not consider on the merits whether Kent should have been waived into criminal court, but held "that, as a condition to a valid waiver order, petitioner [w]as entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court's decision." *Id.* at 557. "We believe that this result is required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel." *Id.*

Mann-Tate received everything he was due under *Kent*. First, *Kent* was a case where the juvenile court had exclusive jurisdiction at the outset and thus Kent was entitled to the statutory protections it conferred on juveniles that could not be denied without due process. *Kent*, 383 U.S. at 556–57. Mann-Tate's argument thus fails to leave the gate on the first step of the procedural due process analysis, as it is premised on his contention that "once the right to be treated as a juvenile is provided by statute, due process demands that a court conduct a 'meaningful review' prior [to] waiving a child to adult court," which, according to Mann-Tate, requires consideration of specific attributes of youth described in the Court's Eighth Amendment cases. (Mann-Tate's Br. 35–41.) But unlike Kent, Mann-Tate never had any "right to be treated as a juvenile" that was "provided by statute." (Mann-Tate's Br. 35.) As this Court has previously observed, Wis. Stat. § 938.183[8] "automatically grants the criminal court

[8] This Court was addressing a due process challenge to the predecessor statute, Wis. Stat. § 48.183, in the *Hazen* case, but the differences in the two are immaterial for these purposes.

jurisdiction in certain circumstances." *State v. Hazen*, 198 Wis. 2d 554, 561, 543 N.W.2d 503 (Ct. App. 1995). One of those circumstances is if (as here) the juvenile is alleged to have attempted or committed first-degree intentional homicide and the offense was committed on or after the juvenile's 10th birthday. Wis. Stat. § 938.183(1)(am). "[C]ourts of criminal jurisdiction have exclusive original jurisdiction" over such proceedings. Wis. Stat. § 938.183(1). There is no constitutional right to juvenile court jurisdiction, *Annala*, 168 Wis. 2d at 468, and no statutory right to juvenile court jurisdiction to which Mann-Tate was ever entitled.

Accordingly, Mann-Tate has not "been deprived of a recognized right" by the Legislature's designation of the criteria a court should consider when deciding whether to retain criminal jurisdiction in an original criminal jurisdiction case. *Milewski*, 377 Wis. 2d 38, ¶ 20. He never had a recognized statutory right to any proceeding in juvenile court nor any of the other statutory procedures for juvenile dispositions for this crime to begin with. Wis. Stat. § 938.183(1)(am); *cf. Kent*, 383 U.S. at 556–57; *Armstrong v. Bertrand*, 336 F.3d 620, 627–28 (7th Cir. 2003) (observing that there is "no case law suggesting that the state does not have authority to impose adult sentences on *all* juveniles charged with intentional homicide *without* a hearing to determine whether the juvenile should instead be given a juvenile disposition"). The Legislature was not constitutionally required to provide a process to send an original criminal jurisdiction case to the juvenile court at all, let alone constitutionally required by the Due Process Clause to instruct the criminal court to consider the criteria Mann-Tate suggests when deciding whether to do so.

Second, *Kent* makes clear that if the Legislature vests a court with discretion to decide on proceeding in juvenile versus criminal court, all due process requires is non-arbitrary decision-making, a meaningful hearing with

counsel, and an explanation of the court's reasons for its decision. *Kent*, 383 U.S. at 557. There is nothing arbitrary, standardless, or summary about the reverse waiver procedure. *See State v. Armstead*, 220 Wis. 2d 626, 639–40, 583 N.W.2d 444 (Ct. App. 1998) (rejecting a vagueness challenge to the reverse waiver criteria). It is dictated by statute, requires a hearing, requires the juvenile to be represented by counsel at the hearing, explains what criteria the court should consider, and mandates an explanation for the decision. *State v. Adams*, 2024 WI App 44, ¶¶ 16–17, 29–30, 413 Wis. 2d 202, 11 N.W.3d 190. When the Legislature created the reverse waiver procedure, it was for the Legislature to determine what criteria a court must consider when assessing whether an original criminal jurisdiction case should proceed in juvenile court instead. It has provided that the criminal court,

> shall retain 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 [juvenile court] 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 under the circumstances specified in s. 938.183(1)(a), (am), (ar), (b) or (c), whichever is applicable.

Wis. Stat. § 970.032(2). Unlike the directionless statute in *Kent*, "[t]he terms provide trial courts with standards to use in deciding whether to retain jurisdiction, and do not require or allow trial courts to create their own standards." *Armstead*, 220 Wis. 2d at 640.

The vague "impact of youthfulness" Mann-Tate insists a court must consider when deciding whether to send an original criminal case to the juvenile court was not mandated to be considered by the *Kent* Court under the Due Process Clause. (Mann-Tate's Br. 35–41.) It has not been mandated to be considered as part of pretrial procedure by any court under any constitutional provision. In fact, it was not even mandated to be determinative (or even explicitly discussed) in the adult sentencing courts under the Eighth Amendment in the cases on which Mann-Tate attempts to rely. *Brett Jones*, 593 U.S. at 105 (again, holding that the bare existence of discretion in sentencing is constitutionally sufficient).

All Mann-Tate was constitutionally due under the Due Process Clause once the Legislature provided a statutory process for sending an original criminal case to juvenile court is a hearing at which he has a meaningful opportunity to be heard through counsel on the statutorily proscribed criteria and at which the criminal court exercised its discretion over retaining or transferring the case using the criteria established by the Legislature and explained its reasons for its decision. *Kent*, 383 U.S. at 557. That is what he was undisputedly afforded. Far from the summary and arbitrary decision made in *Kent*, here, the trial court held *seven days* of evidentiary hearings wherein Mann-Tate, through counsel, was first able to attempt to challenge probable cause that he committed first-degree intentional homicide, and then presented testimony from three doctors, a human services worker, four Department of Corrections staff, his own father, and a professor on Criminal Justice in the School of Social Welfare at University of Wisconsin-Milwaukee, along with letters from his family, to attempt to meet the waiver criteria—all of which were considered by the court. (R. 66:23–44, 47–50, 56–61; 73:31–105, 148–54, 158–72, 179–80; 74:4–95, 154–65, 169–177; 87:6–28, 42–44; 88:15–26, 30–31, 33–60, 65–69; 92; 93; 94; 110:4–59, 78–80.) That was in all

probability a longer hearing than the actual trial on the underlying crime will be. This procedure cannot possibly be viewed as a lack of due process. And the court issued a thorough decision explaining its reasoning. (R. 111.) Mann-Tate's own case disproves his claim that the reverse waiver procedure does not afford what the due process clause demands. He has failed to meet his burden.

c. The Legislature has recognized that children are different than adults; that recognition does not mean that every juvenile is entitled to consideration of the criteria Mann-Tate requests before original criminal jurisdiction comports with due process.

Even if Mann-Tate's reliance on the Supreme Court's Eighth Amendment jurisprudence were on-point, his myopic focus on the criteria listed in Wis. Stat. § 970.032(2) in the abstract and in isolation misses the forest for the trees. *Cf. Lakeland Area Prop. Owners Ass'n, U.A. v. Oneida County*, 2021 WI App 19, ¶¶ 13, 36, 44, 396 Wis. 2d 662, 957 N.W.2d 605 (statutes must be interpreted as a whole and in context with related statutes and chapters). He has not shown that courts can never consider the "impact of youthfulness," including a juvenile's capacity for reform and rehabilitation and their criminal culpability, under the statutorily enumerated reverse waiver criteria before retaining original jurisdiction. (Mann-Tate's Br. 39.) He thus cannot show that the reverse waiver statute can never be constitutionally applied.

The Legislature has recognized that "children are different." *Miller*, 567 U.S. at 480. It has enacted an entire chapter of statutes dedicated to dealing with juvenile crime through treatment and resources outside of the adult criminal

justice system to the extent possible that is still consistent with protection of the community, accountability by the juvenile, and the rights of victims. Wis. Stat. ch. 938; Wis. Stat. § 938.01(2). The Legislature did so with an express focus on, where appropriate, diverting juveniles from the criminal justice system through early intervention, providing an "individualized assessment of each alleged and adjudicated delinquent juvenile," and responding "to a juvenile offender's needs for care and treatment" and to "each juvenile's best interest and protection of the public, by allowing the court to utilize the most effective dispositional option." Wis. Stat. § 938.01(2)(c), (e), (f).

To those ends, the Legislature has recognized that some crimes are so grave and dangerous that the adult criminal court is the more appropriate venue for handling them. Wis. Stat. § 938.183; *see also Miller*, 567 U.S. at 488–89. But even then, the juvenile is treated very differently than an adult offender would be. An offense-specific preliminary hearing is required, if requested by the juvenile, at which the State must prove probable cause that the juvenile committed the particular offense subjecting the juvenile to criminal court jurisdiction. Wis. Stat. § 970.032(1); *State v. Toliver*, 2014 WI 85, ¶ 9, 356 Wis. 2d 642, 851 N.W.2d 251. If it does not, the juvenile is discharged for proceedings under the juvenile code. Wis. Stat. § 970.032(1). Again unlike an adult offender, for a juvenile, if probable cause is found, the court must hold the reverse waiver hearing to consider whether the criminal justice system can appropriately meet the juvenile's needs while simultaneously not depreciating the seriousness of the offense or depreciating specific or general deterrence. *Adams*, 413 Wis. 2d 202, ¶ 16; Wis. Stat. § 970.032(2).

The Wisconsin Supreme Court has interpreted the criteria for reverse waiver in Wis. Stat. § 970.032(2) as encompassing the waiver criteria contained in Wis. Stat. § 938.18(5). *State v. Kleser*, 2010 WI 88, ¶¶ 77–84, 328 Wis. 2d

42, 786 N.W.2d 144. In particular, it has held that the very things Mann-Tate claims the court *cannot* consider in an original criminal jurisdiction case—the facts of the offense and the juvenile's circumstances, amenability to rehabilitation, culpability, and immaturity—are things that speak to the assessment of whether the juvenile can receive adequate treatment in the criminal justice system and whether juvenile disposition would depreciate the seriousness of the offense. *Id.* ¶¶ 80–84. Courts necessarily must consider these things to make appropriate findings under Wis. Stat. § 970.032(2). *Id.*

It would not make any sense for a court *not* to consider the "impact of youthfulness" when determining whether the juvenile could receive adequate treatment in the criminal justice system and whether a juvenile disposition would depreciate the seriousness of the offense.[9] Wis. Stat. § 970.032(2). Part of what makes an offense "serious" are the facts surrounding its commission and the juvenile's upbringing, personality, level of maturity, understanding, and culpability in committing it. *Kleser*, 328 Wis. 2d 42, ¶¶ 80, 84; *see also Miller*, 567 U.S. at 478–79. The court considered those things here, noting that Mann-Tate had some behavioral problems that his mother attempted to get diagnosed and resolved, but there was no identifiable medical explanation for them and they worsened. (R. 111:4–5.) Multiple mental health professionals evaluated him and could not agree on whether he had a diagnosable psychological issue affecting his behavior. (R. 111:3–9.) His family loved and

[9] The State does not dispute the circuit court's finding that in these circumstances a juvenile disposition would not serve general or specific deterrence. (R. 111:17–18.) This Court's discussion in *Martin* explains why that criterion is sometimes appropriate: the original criminal jurisdiction statute was first enacted to deter a rising number of assaults on juvenile corrections staff by youth in the juvenile institutions. *State v. Martin*, 191 Wis. 2d 646, 658–60, 530 N.W.2d 420 (Ct. App. 1995).

supported him, but the offense took preplanning, Mann-Tate was not in circumstances a child would find difficult to manage, and the offense was "extremely, extremely aggravated and dangerous and violent conduct." (R. 111:16.) In short, the court recognized that the "impact of youth" and all of the juvenile's attendant circumstances is often what differentiates between a very serious offense and a less serious one.

The "impact of youthfulness" also makes a difference in whether a juvenile can receive adequate treatment in the criminal justice system and is thus necessarily a component of this criterion. The needs of a younger juvenile will be different than those of an older one. Where a juvenile commits a particularly grave offense, the juvenile system may not be adequate to address the juvenile's needs either because the services available are not sufficient to address issues affecting the juvenile's behavior or because the juvenile will age out of the system before there is enough time to address it. *Cf. Miller*, 567 U.S. at 488–89. Here, Mann-Tate's youth was part of the reason the court found that he could receive adequate treatment in the criminal justice system. He was too young for mental health professionals to assess whether he had a developing mental illness that needed treatment, and under a criminal disposition he would be reassessed at age 18 and sent to an institution with appropriate programming rather than simply released into the community. (R. 111:14–15.) And because of his young age, he would spend at least eight years in the juvenile correctional system receiving all of the same programming and treatment he would receive under a juvenile disposition before being transferred to the adult correctional system and reassessed at a time when his brain will have matured sufficiently. (R. 111:11–13.)

Finally, Mann-Tate cannot even show that he will actually be deprived of a juvenile disposition. The Legislature has provided that juveniles over whom the court has original

criminal jurisdiction may still adjudge the juvenile delinquent and enter a juvenile disposition if the court finds the juvenile guilty of certain lesser crimes instead of the original jurisdiction crime. Wis. Stat. § 938.183(1m)(c)3. That assessment, like Wis. Stat. § 970.032(2), requires consideration of the waiver criteria in Wis. Stat. § 938.18(5) and the best interests of the juvenile, and it encompasses all of the considerations Mann-Tate requests.

In sum, Mann-Tate's argument fails under its own weight even if he were relying on the correct law. The Juvenile Justice Code is designed to consider the particular attributes of youth at nearly every point in the proceedings. Courts conducting reverse waiver hearings necessarily must consider the specific attributes of the juvenile in front of it, including all the characteristic attributes of youth Mann-Tate claims are required, to make appropriate and supportable findings on the seriousness of the offense and the adequacy of the treatment options in the criminal justice system. (Mann-Tate's Br. 40–41.) At the very least, he has failed to show that a court can *never* consider these things as part of the statutory criteria when determining whether to retain jurisdiction, as would be required to prove the reverse waiver statute facially unconstitutional beyond a reasonable doubt (again, even if the law supported his basic argument). Mann-Tate has failed to prove that "no set of circumstances exists under which the [law] would be valid," and therefore this Court must affirm. *United States v. Salerno*, 481 U.S. 739, 745 (1987).

II. The circuit court properly exercised its discretion in retaining its original criminal court jurisdiction.

Mann-Tate next alleges that the circuit court erroneously exercised its discretion in retaining criminal jurisdiction over his case. (Mann-Tate's Br. 41–49.) He has not

met his burden on this claim, either, because he has ignored this Court's standard of review.

A circuit court's decision to retain original criminal jurisdiction is reviewed for an erroneous exercise of discretion. *Kleser*, 328 Wis. 2d 42, ¶ 37. This Court will affirm the circuit court's decision if it "examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." *Id.* This Court "will defer to the circuit court's findings of fact unless they are clearly erroneous," meaning "it is against the great weight and clear preponderance of the evidence." *State v. Grady*, 2025 WI 22, ¶ 17, 416 Wis. 2d 283, 21 N.W.2d 353 (citation omitted). This Court "independently review[s] whether the circuit court applied the proper standard of law." *Kleser*, 328 Wis. 2d 42, ¶ 38.

A. The circuit court's finding that Mann-Tate's mental health needs were undetermined was not clearly erroneous and it appropriately weighed the available treatment options.

Mann-Tate contends the circuit court failed to balance the treatment available in the adult system against the treatment available in the juvenile system and that its finding that no treatment need had been clearly identified was erroneous. (Mann-Tate's Br. 41–42.) Not so.

First, the circuit court's finding that it was undeterminable at this time whether Mann-Tate needed mental health treatment was far from clearly erroneous. (Mann-Tate's Br. 43.) The circuit court noted that in 2021 Mann-Tate began to have behavioral problems that continued to worsen after a head injury. (R. 111:4.) No physical medical cause could be found. (R. 111:4.) Then, a doctor diagnosed him with an adjustment disorder and began experiencing symptoms of depression, anxiety, and aggression. (R. 111:4–

5.) After his arrest he was put under "significant psychological scrutiny by four doctors, three of whom testified at the waiver hearing. And what is striking is that there are three different diagnoses that came as a result." (R. 111:5.) Dr. Gust-Brey diagnosed Mann-Tate with oppositional defiant disorder. (R. 111:6.) Dr. Caldwell disagreed because Mann-Tate was currently doing well in the institution and showing no defiant behaviors, though he was still showing symptoms of anxiety and depression. (R. 111:7, 9.) He diagnosed Mann-Tate with schizophreniform disorder, a possible precursor to schizophrenia. (R. 111:7.) However, he also said this could simply dissipate as Mann-Tate matured into adolescence, which Dr. Caldwell opined was "very likely." (R. 111:7–8.) Dr. Gust-Brey disagreed with the schizophreniform diagnosis because he "did not appear to be responding to internal stimuli." (R. 111:8–9.)

The court found that both doctors were "extremely well educated; they simply cannot agree on a diagnosis" though neither agreed with the earlier attachment disorder diagnosis. (R. 111:9.) And it found each doctor's refutation of the other as "completely reasonable." (R. 111:9.) And while Dr. Dykstra explained that children's thinking patterns and perception change as they age, that merely compounded the problem. (R. 111:10.) That "would apply to any youth that we see, and really does go to . . . the underlying policy question" of having children in the adult system, which was for the Legislature. (R. 111:10–11.) And Dr. Dykstra reached an entirely different diagnosis. He believed Mann-Tate had attenuated psychosis syndrome. (R. 111:11.)

So, as the circuit court aptly observed, there were four different diagnoses in terms of Mann-Tate's mental health needs. (R. 111:11.) "[S]uffice to say that after undergoing very significant psychological testing, there is no clear treatment need that has been identified." (R. 111:11.) "His behavior, his actions in causing the death of his mother make us wonder

about what his mental health treatment needs are, but, at this point, we don't know." (R. 111:11.) That finding is amply supported by the record and therefore cannot be clearly erroneous. Four qualified doctors assessed Mann-Tate. None of them reached the same conclusion, and they all disagreed with each other. The circuit court was not required to unilaterally accept Dr. Caldwell's diagnosis and opinion, as Mann-Tate has done in his brief. (Mann-Tate's Br. 42–44.) With four qualified doctors all reaching different conclusions, the circuit court was perfectly justified in finding that Mann-Tate's mental health treatment needs were opaque at this point.

Second, the circuit court also appropriately acknowledged that the burden was on Mann-Tate to show that he *could not receive adequate treatment* in the criminal justice system if the criminal court retains jurisdiction. (R. 111:3.) That does not ask whether the juvenile could be appropriately treated in the juvenile system, it asks whether the juvenile can be appropriately treated if kept in the adult system. While that necessarily involves comparing the available services (Mann-Tate's Br. 41), the court also recognized what Mann-Tate has glossed over: he will receive all the benefits of the juvenile system, including the educational and mental health treatment available in it, until he turns 18 and is transferred to an adult facility. (R. 111:12); (Mann-Tate's Br. 46). The only difference between services available in the juvenile system and the adult system is that in the adult system there is no option to place Mann-Tate in a non-secure treatment setting, which Dr. Dykstra pointed out he would likely not receive in the juvenile system, anyway, due to the offense. (R. 111:12–13.) The circuit court was entitled to credit that opinion over Casey Gerber's testimony. (Mann-Tate's Br. 45.)

Far from showing that Mann-Tate could not receive adequate treatment for his current mental health needs if he

remains in the adult system, the evidence here supports the circuit court's finding that he will. (R. 111:12–13.) His treatment course will be identical whether he remains in the adult system or is transferred to the juvenile system, and unlike older juveniles he will have spent at least eight years receiving it. Mann-Tate's contention that it will therefore "likely be years before [he] received any services at all" is false. (Mann-Tate's Br. 47.) And as the circuit court noted, his needs will be reassessed at 18, and then he will be transferred to an appropriate facility to meet them, but they "are really not known as he sits here at age 12," and he will receive all the benefits of the juvenile system until then. (R. 111:14–15.)

It therefore does not matter that there are different dispositions that could occur if he were placed in the Serious Juvenile Offender category, or what kinds of waiting lists there currently are for programming in the adult institutions. (Mann-Tate's Br. 42–47.) Six years from now when Mann-Tate is 18, those may not even be concerns anymore. The circuit court reasonably found that what mental health services he may need when he has been through adolescence, which is when many mental disorders begin to emerge, was impossible to determine at this juncture. Leaving Mann-Tate in the juvenile system could mean releasing him within a year, as he recognizes, or at the latest, at the precise moment any mental health issues he may have begin to crystalize. Or he may need no mental health services then at all, and the availability of them in the adult institutions will be of no moment.

So the court examined the relevant facts and reasonably "decide[d] under the specific facts and circumstances of the case which treatment will better benefit" Mann-Tate. *State v. Dominic E.W.*, 218 Wis. 2d 52, 56, 579 N.W.2d 282 (Ct. App. 1998). He displayed some symptoms that could be indicative of a potential mental health problem down the line or that could dissipate with age. The circuit

court therefore appropriately found that the adult system would afford him proper treatment, because he would receive all the benefits of the juvenile system while he was under 18 and then be reassessed at a time when his needs would likely be clearer.

B. The circuit court's finding that transferring jurisdiction would depreciate the severity of the offense was appropriate and not clearly erroneous.

Mann-Tate's next contention, that the circuit court erroneously exercised its discretion when concluding he did not meet his burden to show that transferring the case to juvenile court would not depreciate the seriousness of the offense, warrants little discussion. (Mann-Tate's Br. 48–49.) Mann-Tate takes the circuit court to task for receiving input from the victims, his family members, on what effect the crime had on them. (Mann-Tate's Br. 49.) Because Wis. Stat. § 970.032(2) does not require victim input, so the argument goes, the circuit court erroneously exercised its discretion because it said it "*could not*" determine that without it. (Mann-Tate's Br. 48–49 (emphasis added).) This argument is frivolous.

The circuit court's wording that it did not "know how a court can judge the seriousness of the offense that involves the loss of life without considering the effects on the victim" was plainly its colloquial explanation of the broad universe of facts it was considering when assessing the seriousness of the offense. (R. 111:16.) It was not a statement that it could never possibly do so without it, nor was it contrary to the statute. (Mann-Tate's Br. 48–49.) Wisconsin Stat. § 970.032(2) places no restrictions on what the circuit court can consider in determining the severity of the offense. And at any rate, Mann-Tate did not object to the court's seeking the victims' input (R. 87:54; 111:16), the court received the family's input, they all supported him, and the court made factual findings

related to their feelings and the other factors it was considering (R. 111:16–17). Mann-Tate fails to explain how this possibly could have negatively affected him even if the court did mean what Mann-Tate pretends it meant. (Mann-Tate's Br. 48–49.)

Mann-Tate's final argument seems to be that all first-degree intentional homicides are created equal, and the Legislature made this crime subject to potential waiver to juvenile court so for some unexplained reason the circuit court therefore erroneously exercised its discretion in denying his waiver motion, apparently simply because the statute permits waiver into juvenile court but the court retained jurisdiction here. (Mann-Tate's Br. 49.) This deserves rejection out of hand.

While of course all first-degree intentional homicides are serious, they are not all "aggravated, dangerous, and violent." (Mann-Tate's Br. 49.) The circuit court found that this case was aggravated, dangerous, and violent because "there was preplanning in this offense." (R. 111:16.) The testimony at the preliminary hearing established that Mann-Tate got into an argument with his mother the night before the murder about buying him a virtual reality headset on Amazon. (R. 66:12.) He took her keys with the key to her gun safe and hid them in his nightstand. (R. 66:13.) She woke him up a half an hour early the next morning, which irritated him, and he unlocked the gun safe, took the gun, went downstairs to the basement, took a shooter's stance, and shot her in the face from a distance of roughly three feet away. (R. 66:14, 63.) He knew it was a real gun and that guns kill people. (R. 66:16.)

That is a premeditated, cold, calculated event, and it is a vast departure from the type of facts that are often at issue when youthful lack of foresight and bad circumstances may mitigate a juvenile committing intentional homicide. Take, for example, the facts of the two cases before the Supreme

Court in *Miller*.[10] In *Jackson*, the 14-year-old defendant did not fire the shot that killed the victim, and his "conviction was . . . based on an aiding-and-abetting theory" after he and his friends committed an armed robbery of a video store. *Miller*, 567 U.S. at 478. Jackson did not know his friend had a gun until they were on the way to the store, and Jackson stayed outside for most of the episode. *Id.* at 465–66. His family background was also steeped in violence that could have clouded his judgment on risk. *Id.* at 478. In *Miller*, the 14-year-old defendant was abused, neglected, and used drugs and alcohol throughout his childhood, and he tried to commit suicide four times, the first time when he was only six years old. *Id.* at 467. He and his friend were doing drugs and drinking alcohol with an adult man whom they beat in an attempt to steal his wallet. *Id.* at 468. The man woke up during the attempt, though, and grabbed Miller by the throat. *Id.* The boys beat the man with a baseball bat and then fled. *Id.* They later returned and set the trailer on fire, and the man died of a combination of smoke inhalation and his injuries. *Id.*

While both cases involve a needless loss of life, neither showed a premeditated calculation to commit murder. Unlike here, in both cases, there was no violence planned in advance: the situations went awry, and the victims were killed as a result. While one could certainly say that joining a group planning on robbing a store when someone has a gun or beating someone with a baseball bat is certainly dangerous and in the latter case violent behavior, neither presents the kind of aggravating circumstances that are present here. Mann-Tate planned this offense. He went out of his way to take the keys to his mother's gun safe and hide them the night before the shooting, and he shot her at close range the next

[10] *Miller v. Alabama* was before the court with a companion case, *Jackson v. Arkansas*.

morning on the barest of provocations when she was doing laundry.

The circuit court properly examined the relevant facts and reasonably explained why it believed sending this case to the juvenile court would depreciate the seriousness of the offense. It properly exercised its discretion in doing so.

CONCLUSION

This Court should affirm the decision of the circuit court.

Dated this 12th day of September 2025.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 10,847 words.

Dated this 12th day of September 2025.

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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 Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 12th day of September 2025.

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