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**COURT OF APPEALS**

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2024AP002585-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

NOAH Q. MANN-TATE,

Defendant-Appellant.

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On Appeal from an Order Denying a Transfer  
of Jurisdiction to Juvenile Court, Entered in the  
Milwaukee County Circuit Court, the Honorable  
Jane Vinopal Carroll, Presiding

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REPLY BRIEF OF  
DEFENDANT-APPELLANT

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## ARGUMENT

**I. The reverse waiver statute is unconstitutional because the criteria do not require the court to consider juveniles' reduced culpability and potential for rehabilitation in making the reverse waiver determination.**

Noah argued in his opening brief that: (1) the reverse waiver statute created a constitutionally protected interest for juveniles to have their case heard in juvenile court, and (2) the current reverse waiver statute violates due process because the criteria do not require a circuit court to consider the unique attributes of youth identified by the United States Supreme Court. (Noah's br. at 28, 34-41). Noah disputes the State's assertion that his argument was undeveloped and that he is asking for only a "magic words" requirement. (State's br. at 14). As explained in his opening brief, in order to be constitutionally sound, the reverse waiver hearing must provide a meaningful opportunity for a juvenile to demonstrate that his case should be heard in juvenile court; in order to be meaningful, the statutory criteria must acknowledge characteristics unique to youth identified by the United States Supreme Court. (Noah's br. at 34-41).

It is well settled that there is no fundamental right to juvenile court. (State's br. at 17-18; Noah's br. at 31). But as this court has recognized, "[t]he due process clause protects interests in life, liberty and property, and state laws can create additional interests protected by the due process clause." *State v. Hazen*, 198 Wis. 2d 554, 889, 543 N.W.2d 503 (Ct. App.

1995), citing *Kentucky Dept. of Correcs. v. Thompson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 1908, 104 L.Ed.2d 506 (1989)). For example, our Legislature created a liberty interest in being treated as a juvenile by having a separate Juvenile Justice Code. See *Miller v. Quatsoe*, 348 F. Supp. 764, 765 (E.D.Wis. 1972)(when a state “operates a dual criminal justice system with one set of procedures and penalties for juveniles and another for adults . . . constitutional safeguards attach to a determination that a juvenile offender should be treated as an adult.”).

The State argues that Noah “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” and that “[t]he 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.” (State’s br. at 31).

Noah agrees that the Legislature was not constitutionally mandated to provide a reverse waiver procedure. But it did. Our Legislature created a statute that entitles juveniles to have their case heard in juvenile court if they prove the statutory criteria by a preponderance of the evidence. Wis. Stat. § 970.032(2). This created a liberty interest in juvenile court for youth subject to original adult court jurisdiction, and *Kent* requires a meaningful hearing before a juvenile may be stripped of that interest. *Kent v. United States*, 383 U.S. 541, 557 (1966).

The State argues that due process requires only “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.” (State’s br. at 33).

But “the concern of due process is fundamental fairness.” *State ex rel. Lyons v. De Valk*, 47 Wis. 2d 200, 205, 177 N.W.2d 106 (1970). “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Gilbert v. Homar*, 520 U.S. 924, 930, 117 S.Ct. 1807 (1997) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593 (1972)). For juveniles attempting to have their cases heard in juvenile court, due process requires a meaningful opportunity to demonstrate that they should be in juvenile court. A statute that does not include actual characteristics of youth, particularly those that are directly relevant to the seriousness of the offense, cannot meet due process requirements because it denies juveniles a fundamentally fair hearing by excluding the relevant characteristics of youth. (Noah’s br. at 37-38).

The State argues that the Supreme Court’s jurisprudence regarding the sentencing of children is irrelevant to the reverse waiver statute. (State’s br. at 22-27). The State notes that the Court included a “discussion” of transfer hearings in *Miller*. (State’s br. at 26). In *Miller*, the State argued that a juvenile’s age, background, and circumstances of the offense were sufficiently considered by prosecutors and courts in determining whether a juvenile should be tried as an adult. *Miller v. Alabama*, 567 U.S. 460, 487-488

(2012). The Court explained that any discretion available to a court at the transfer stage could not substitute for the discretion needed at the post-trial sentencing stage. *Id.* The Court did not say that the court should not consider these factors at the transfer stage; that question was not before the court. The Court held that the sentencing court must be able to consider mitigating circumstances before imposing the harshest penalty available in adult court. *Id.* at 489.

While it is true that the Court has generally limited these characteristics of youth to the sentencing context, it also noted their importance in *J.D.B. v. North Carolina*, 564 U.S. 261 (2011). Noting the fact that children’s age is more than a “chronological fact,” the court explained that “[s]uch conclusions apply broadly to children as a class.” *Id.* at 272. The Court continued:

Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children “generally are less mature and responsible than adults,” *Eddings*, 455 U.S., at 115–116, 102 S.Ct. 869; that they “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,” *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979) (plurality opinion); that they “are more vulnerable or susceptible to ... outside pressures” than adults, *Roper*, 543 U.S., at 569, 125 S.Ct. 1183; and so on.

*Id.* at 272. It defies logic to assume that these attributes are unique to all children but only for purposes of sentencing and interrogating them.

The State argues that “every State court to consider the argument Mann-Tate now makes has rejected it.” (State’s br. at 27). But not one of the cases



the State cites involved the type of reverse waiver process challenged here. *See Zaragroza v. State*, No. 0844, 2021 WL 5296889 (no right to transfer from adult court to juvenile court for youth under statute); *State v. B.T.D.*, 296 So.3d 343 (Ala. Crim. App. 2019)(no procedural due process violation where the legislature has not provided liberty interest in juvenile court for certain youth); *State v. Watkins*, 423 P.3d 830 (Wash. 2018)(automatic adult court jurisdiction for enumerated offense did not violate right to procedural due process); *State v. Crooks*, 911 N.W.2d 153 (Iowa 2018)(waiver statute did not violate prohibition on cruel and unusual punishment). *State v. McKinney*, 46 N.E.3d 179 (Ohio Ct. App. 2015)(mandatory waiver for crimes involving firearms did not violate juvenile's due process rights); *People v. Patterson*, 25 N.E.3d 526 (Ill. 2014)(mandatory juvenile transfer statute was not constitutionally invalid) *State v. Jensen*, 385 P.3d 5 (Idaho Ct. App. 2016) (automatic waiver to adult court did not violate juvenile's due process rights); *State v. Fussell*, 286 So.3d 1011 (La. 2019) (automatic waiver of juvenile for first degree rape not unconstitutional); *Jones v. State*, 889 S.E.2d 590 (S.C. 2023) (statute excluding certain youth from definition of "juvenile" and thus subjected juvenile to adult sentencing did not violate Eighth Amendment).

And, even the decisions in these cases have not been unanimous. In *Watkins*, a dissenting justice noted that "our understanding of juvenile culpability has changed dramatically over the last 20 years" and would hold that the transfer decisions should be made by a juvenile court judge who should consider "the juvenile's age, maturity, and offender history," among other factors. *Watkins*, 423 P.3d at 840 (Yu, J., dissenting). In *Fussell*, the chief justice, joined by two

other justices, noted the relevance of the Supreme Court cases:

The majority finds these decisions inapplicable because they involve sentencing issues under the Eighth Amendment. The majority fails to acknowledge that a law mandating adult court jurisdiction, such as Article 305(A), necessarily exposes juveniles to more severe punishment and longer sentences, thus implicating Eighth Amendment concerns and making these Supreme Court decisions directly relevant. Moreover, while *Roper*, *Graham* and *Miller* concern Eighth Amendment issues, these decisions, as well as *J.D.B.*, *supra*, are rooted in the Court's acknowledgment of the special status of juveniles based on documented differences between children and adults. The mandatory nature of the Article 305(A) precludes consideration of a host of characteristics and circumstances attendant to the juvenile's age. The need to recognize the unique characteristics of youthful offenders is inconsistent with a statute that mandates a transfer of jurisdiction to adult court—based solely on age and the offense charged—without giving the juvenile a right to a hearing. In my view, these incremental cases from the Supreme Court have prompted the need to reevaluate the constitutionality of Article 305(A). It would be nonsensical to recognize the significance and necessity of considering juvenile characteristics solely in the context of sentencing.

*Fussell*, 286 So.3d at 1022 (Johnson, J. dissenting).

The State argues that the “heart” of Noah’s argument has already been rejected by this court in *State v. Martin*, 191 Wis. 2d 646, 530 N.W.2d 420 (Ct. App. 1995) and the Wisconsin Supreme Court in *State v. Annala*, 168 Wis. 2d 453, 468, 484 N.W.2d 138 (1992). (State’s br. at 17). Noah does not argue that a juvenile has a substantive due process right to individualized treatment either in the reverse waiver

procedure or in sentencing; nor does he argue that he has fundamental right to be treated as a juvenile. (State's br. at 17). The state explains that this court cannot overrule *Martin* or *Annala*; Noah does not ask this court to do so. He asks this court to hold that, because the Legislature created a liberty interest in juvenile court when it created the reverse waiver statute, the hearing must be fundamentally fair as required by *Kent* and that fundamental fairness requires the court to consider the unique attributes of youth identified by the Supreme Court.

The State argues that the reverse process is fair because our 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's br. at 35, citing *State v. Kleser*, 2010 WI 88, 238 Wis. 2d 43, 786 N.W.2d 144). Nothing in *Kleser* indicates that a court making a reverse waiver determination should consider the criteria in Wis. Stat. § 938.18(5).

In *Kleser*, the Court considered what evidence should be admissible at a reverse waiver hearing, and, specifically, whether a juvenile could provide evidence relevant to the seriousness of the offense at the reverse waiver hearing. *Kleser* at ¶7. The Court compared the reverse waiver and waiver procedures because the waiver statute appeared to be a model for the reverse waiver statute. *Kleser* at ¶73. As a result, the Court held that “the juvenile must be given reasonable latitude to offer admissible evidence for the purpose of meeting his burden to prove the three elements for reverse waiver under Wis. Stat. § 970.032(2).” Stated another way, as the Court explained, this meant the

juvenile could provide additional factual evidence to put the offense in context. ¶84.

The Court never indicated that a court should consider the waiver criteria from Wis. Stat. § 938.18 in making the reverse waiver decision under Wis. Stat. § 970.032(2). In Noah's case, the circuit court specifically asked the parties whether they believed it was required under *Kleser* to consider the waiver factors under Wis. Stat. § 938.18. (110:87). The State explained, "I don't think there's any basis to say that the Court should be broadening the reverse waiver decision beyond the three factors from...the supreme court's perspective in *Kleser*." (110:112).

The State then argues the court did consider the impact of Noah's youthfulness, but the examples it provides did not relate to the impact of Noah's very young age on whether he could prove the three criteria under Wis. Stat. § 970.032(2). (State's br. at 36-37).

The State also argues that Noah "cannot even show that he will actually be deprived of a juvenile disposition" because he could be found guilty of certain lesser offenses and receive a juvenile disposition under Wis. Stat. § 938.183(1m)(c)3. (State's br. at 37). The State explains that the court's assessment under that statute, "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." This is simply wrong. First, the circuit court's determination of whether it should waive jurisdiction under Wis. Stat. § 970.032(2) does not require consideration of the waiver factors under Wis. Stat. § 938.18(5). Second, instead of being found

guilty of a lesser offense, Noah might be found not guilty after a jury trial, but either outcome would deny him the opportunity to have his case heard in juvenile court.

The State then argues:

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.

(State's br. at 38). Noah agrees that the courts *should* be required to consider the attributes of youth to make supportable findings, but the statute does not require the court to do so. While the Juvenile Justice Code is designed to consider the particular attributes of youth, the criminal code, where the reverse waiver statute is housed, is not. Because the reverse waiver hearing statute is designed to determine whether a juvenile should have his case heard in juvenile court, it should require courts to consider the recognized attributes of juveniles.

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

The court erred when it concluded that no clear treatment need had been identified for Noah. (Noah's br. at 43; 111:11; App. 28). While the circuit court was not required to unilaterally accept Dr. Caldwell's

diagnosis and opinion, as the State argues (State's br. at 41), it was not allowed to ignore the clear treatment needs that had been identified by him and others. Noah was in treatment prior to his mother's death to address his emotions and behavior. (46:4). Noah needed to continue this treatment so that he could "develop additional coping strategies for dealing with his emotions constructively." (60:23).

In addition, Dr. Caldwell noted that any progress Noah might make while in a juvenile facility would be lost when he went to an adult facility. (60:24-25). In addition, Alisha Kraus explained there were 11,000 people on the waiting list for the type of treatment Noah was likely to need and Dr. Dykstra explained that there was a significant wait for services. (74:78). In short, Noah could not receive adequate treatment in the criminal justice system.

The State argues that it does not matter what kind of waiting lists exist for treatment because Noah will get the same treatment he would in the juvenile system and then when Noah turns 18 they may no longer be concerns. (State's br. at 42). But the statute does not require the juvenile to prove, or the court to find, whether the juvenile's treatment needs can be met *while he is under 18*, but in the adult system *generally*. Noah proved that, whatever his treatment needs are, they will not be adequately addressed in the adult criminal justice system because approximately half of all individuals leaving the system have not had the appropriate intervention. (Noah's br. at 46-47). The court erred in concluding that Noah did not prove he could not receive adequate treatment in the criminal justice system.

The State concludes that the circuit court's statement that it could not determine the seriousness of the offense without considering the effects on the victim "was plainly its colloquial explanation of the broad universe of facts it was considering." (State's br. at 43). But of the 37 lines in the transcript dedicated to explaining why Noah did not prove that transferring jurisdiction would not depreciate the seriousness of the offense, 13 of them are dedicated to the family's input, which is significant given the court's limited explanation for its decision regarding this factor. (111:15-17).

Noah did not argue that all first-degree homicides are equally serious. (State's br. at 44). They obviously are not. As the State notes, the circuit court found that the case was aggravated, dangerous, and violent. (State's br. at 44). But the court's explanation for why Noah failed to prove this criterion was, while recognizing it was challenging to rely only on the preliminary hearing testimony, was:

That testimony demonstrates that there was preplanning in this offense, that Noah took the keys to the gun safe, unlocked the gun, retrieved the gun, went downstairs to confront his mother and shot her at very close range. It's extremely, extremely aggravated and dangerous and violent conduct.

(111:15). The court never explained why transferring jurisdiction to the juvenile court would depreciate the seriousness of the offense, and in doing so it erroneously exercised its discretion.

## CONCLUSION

For the reasons stated above, Noah asks that this court: (1) find that Wis. Stat. § 970.032(2) is unconstitutional and (2) reverse the order denying his motion that the circuit court waives its jurisdiction.

Dated this 29<sup>th</sup> day of September, 2025.

Respectfully submitted,

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**CERTIFICATIONS**

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 2,995 words.

Dated this 29<sup>th</sup> day of September, 2025.

Signed:

*Electronically signed by*

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