

IN THE SUPREME COURT OF THE STATE OF NEVADA		
B.T.,)	
)	CASE NO. 83122
Appellant,)	
)	D.C. CASE NO.: J-21-352754-D1
v.)	Electronically Filed Feb 22 2022 02:15 p.m.
)	Elizabeth A. Brown
)	Clerk of Supreme Court
THE STATE OF NEVADA,)	
)	
Respondent,)	
_____)	

**APPEAL FROM ORDER CERTIFYING APPELLANT AS AN ADULT FOR
CRIMINAL PROSECUTION
EIGHTH JUDICIAL DISTRICT COURT (JUVENILE DIVISION)
THE HONORABLE JUDGE WILLIAM O. VOY**

APPELLANT'S REPLY BRIEF

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I. The Juvenile Court Abused its Discretion in Certifying Appellant as an Adult for Criminal Prosecution

A. The State's delay in seeking certification of Appellant is a jurisdictional issue, and the Juvenile Court abused its discretion in certifying Defendant as an adult.

Preliminarily, it must be noted that the State's citation to *Marvin v. State*, 95 Nev. 836, 842, 603 P.2d 1056, 1060 (1979), *overruled in part by In re William M.*, 124 Nev. 1150, 196 P.3d 456 (2008) is misplaced.

The two specific issues in *Marvin* were: “(1) Whether the district court erred in basing in part its determination to certify appellant as an adult on statements allegedly obtained in violation of appellant's fifth amendment right to silence; and (2) Whether the juvenile probation department conducted the required ‘full investigation’ precedent to such certification.” *Marvin*, at 95 Nev. 836, 838, 603 P.2d at 1057-1058.

The State acknowledges that in *In re William M.*, “*Marvin* was overruled in part because that defendant made statements against his Fifth Amendment rights, and those statements could have been used against him in criminal court.” *See* Response at p. 12. However, the State argues “[t]hat issue is not relevant here, as Appellant can allege no harm, other than being held to account for his crimes, by appearing in adult court. *See id.*

Moreover, the State argues that:

The portion of *Marvin* in which “the juvenile court determined that [the defendant] was not amenable to juvenile treatment, *particularly within the period remaining before the juvenile court’s jurisdiction is terminated*,” was not overruled. *Id.* at 844, 603 P.2d at 1061 (emphasis added). The *Marvin* Court found nothing unusual about certifying to adult court when the defendant was about to age out of the juvenile system.

See Response at p. 12 (emphasis added in Response brief).

First, Appellant has alleged prejudicial harm as a result of adult certification. Specifically, Appellant is now facing life in adult prison if convicted, as well as possibly having to register as an adult sex offender. Clearly, this is substantial prejudice.

Next, the State’s comparison to *Marvin* is misplaced because the circumstances in this case are not factually analogous. In *Marvin*, the defendant was nearly eighteen years of age when he was arrested for burglary and possession of burglary tools.

This Honorable Court further stated the following regarding the procedural history in *Marvin*:

Shortly thereafter, an arraignment was held before a magistrate in Carson City resulting in appellant's being transferred to the Washoe County Juvenile Detention Center at Wittenberg Hall in Reno. A Carson City probation officer attempted to contact appellant's parents, but found that they were out of town. Subsequently Washoe County juvenile probation officer, Gordon Woodard, in an unsuccessful attempt to

contact the parents, left a message with appellant's sister that appellant was being detained at Wittenberg Hall.

After being advised of his rights, the appellant made several inculpatory statements incriminating not only himself, but several adult persons in relation to a number of burglaries of residences and businesses. Additionally, he directed the police to several items of stolen property products of the burglaries.

Although they arrived home on Monday, October 3, appellant's parents did not go to Wittenberg Hall until Tuesday, October 4. They were not permitted to visit appellant at that time because he was being questioned regarding the admitted burglaries by a Washoe County Sheriff's detective. Appellant was also denied use of the telephone during his detention. A detention hearing was eventually held and on Thursday, October 6, appellant was released to his parents.

The Carson City charges were dismissed, but appellant was charged by Washoe County authorities on October 5, 1977, as a result of the information derived from appellant's statements. On October 13, a petition was filed in the Juvenile Department of the District Court, charging appellant with fifteen felony counts consisting primarily of burglary and grand larceny. NRS 205.060, 205.220. A motion was also filed requesting that appellant be ordered to stand trial as an adult. The judge then ordered that the Washoe County Juvenile Probation Department conduct an investigation and submit a report to the court pursuant to NRS 62.080.

Following the investigation, a report consisting of a study and analysis of appellant's home life, school and offense record and other relevant background information was submitted by the Juvenile Probation Department. The report was based largely upon information obtained from appellant during his confinement at Wittenberg Hall.

A hearing on the motion for certification was held December 21, 1977, appellant being represented by retained counsel, after which the court in a detailed order waived its "exclusive original (juvenile) jurisdiction,"

NRS 62.040, requiring that appellant stand trial as an adult. Although testimony of appellant's admissions was not the sole evidence incriminating appellant, it played a major role in the lower court's determination to waive its juvenile jurisdiction.

Marvin, at 95 Nev. 836, 838-841, 603 P.2d at 1058-1059 (internal footnotes omitted).

In contrast to *Marvin*, in the case at bar, the State did not file a certification petition until April 6, 2021, and the conduct at issue was alleged to have occurred between May 1, 2015 and August 15, 2015. Furthermore, not only was there extensive delay in the case at bar, but Appellant was only 15-16 years old at the time of the alleged conduct, and nearly 21 years old at the time of the filing of the certification petition.

Additionally, this Honorable Court in *Marvin* noted that “the trial court found that appellant evidenced maturity and sophistication, the crimes were committed with obvious premeditation and deliberation; appellant’s associates in crime are adults; and appellant is not inexperienced in delinquency arrest procedures, reliability at this procedural stage is apparent.” *Marvin*, at 95 Nev. 836, 843, 603 P.2d at 1061.

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Accordingly, the facts in *Marvin* are distinguishable. The State's argument that in *Marvin*, "the juvenile court determined that [the defendant] was not amenable to juvenile treatment, particularly within the period remaining before the juvenile court's jurisdiction is terminated,' was not overruled" (Response at p. 12 (citing *Marvin*, at 844, 603 P.2d at 1061), fails to acknowledge the different procedural postures of the cases.

Again, the certification petition in the case at bar noted that Appellant had no prior criminal history and that "the offense(s) allegedly committed by the subject minor are not subject to presumptive certification to the adult criminal process." A.A. Vol. 1, at page 5 (emphasis added).

Moreover, at the certification hearing, the court noted:

the Court does note for example the Court's -- from a community safety standpoint the ability of the Court to exercise this jurisdiction ***and this matter is severely curtailed due to the statute that terminates this Court's jurisdiction on 6/29 of this year as it relates to this young man.*** Therefore, the Court does find that the -- the matter of public safety and the Subject -- and then the public safety's best interest in this matter, the Court finds that the State has met its burden by clear and convincing evidence that transfer to the adult system for resolution of this matter is warranted.

A.A. Vol. 1, at page 61 (emphasis added).

In addition, the certification to Adult Status Order stated in part:

The subject minor argued timing of the investigation but this Court finds the matter before the Court is that of jurisdiction, the appropriateness of transfer, and whether the State met its burden with clear and convincing evidence.

A.A. Vol. 1, at page 66.

Significantly, there was no evidence presented by the State that Appellant posed a danger to anyone within the nearly six years after the alleged conduct. To the contrary, the State did not dispute that since the alleged offense, Appellant graduated from High School in 2018 and worked at McDonald's right after graduation. A.A. Vol. 1, at page 17. Appellant then joined the Reserved National Guard in November 2018 and he was in training until July 2019. *See id.* He continued training at the Silverado Ranch Military Base, not far from the South Point Hotel and Casino, on the weekends twice a month. *See id.* Appellant held a few jobs for a couple of months before working for his father at the family-owned limo business in February 2021. *See id.* His capacity in this work is like an office manager. His goal is to remain working for his father. *See id.*

Thus, the State's argument, and the Juvenile Court's finding that certification was warranted in the interest of public safety, is belied by the record and the procedural history in the case.

Not only did the record before the Juvenile Court not support that Appellant was a danger to public safety, but if the State was concerned for public safety and felt that Appellant was a clear and present danger, why did the State wait nearly three years to file the certification petition after the alleged victim identified Appellant to law enforcement? Accordingly, the State's arguments should be rejected, and the Juvenile Court's certification should be reversed.

It is respectfully submitted that but for the prejudicial delay, the Juvenile Court would have retained jurisdiction of this case, as the Court would not have been "severely curtailed" by the fact that Appellant was about to turn twenty-one years old.

In its Response, the State further argues that "[t]he issue of investigative delay and all other affirmative defenses remain in Appellant's arsenal as he begins his defense in criminal court." See Response at p. 13. However, in making this argument, the State significantly downplays the impact of Appellant facing criminal prosecution in the adult system for conduct that allegedly occurred approximately seven years ago. The State also argues in part that:

[b]ecause investigatory delay is not a factor to consider in determining whether the juvenile court ought to cede jurisdiction to the criminal court, the issue was inappropriately raised below and should not be considered on appeal. Appellant has cited no legal authority demonstrating that investigative delay may be considered in a *Seven Minors* analysis. As such, this naked argument should be summarily rejected.

Response, at p. 13.

It is respectfully submitted that this argument must be rejected. Appellant clearly has a constitutional right to due process. With the delay of the investigation and prosecution in this matter, Appellant's rights have been violated. The Juvenile Court in this case, while considering the factors in *Seven Minors*, considered subjective factors and found that the age of Appellant, and the alleged interest of public safety, warranted certification.¹ However, but for the delay, the Juvenile Court could have, and should have, maintained jurisdiction. The unexplained delay clearly impacted the certification decision of the Juvenile Court, and the order was an abuse of discretion and should be reversed.

¹ The State claims that "Appellant does not complain that the juvenile court improperly applied the *Seven Minors* factors in considering whether to certify him to the adult court." See Response at p. 23. However, the State ignores that Appellant expressly challenged the Juvenile Court's order with regard to balancing the factors in *Seven Minors*. See, e.g., Opening Brief at pp. 16-17. Furthermore, contrary to the State's argument, Appellant has not argued that the Juvenile Court should have applied the "best interests of the minor child analysis." Appellant has challenged the Juvenile Court's certification order including the court's application of the *Seven Minors* factors. As such, the State's arguments on these points should be summarily rejected.

B. Appellant has established prejudice and he should not have been certified for prosecution as an adult.

In its Response, the State argues in part that “Appellant cannot show prejudice because he is not entitled to be tried in juvenile court.” Response at p.

13. Additionally, the State argues that Appellant “claims the State gained a ‘clear tactical advantage’ in its ability to prosecute him, but does not say how.”

Response at p. 14.

It is respectfully submitted that Appellant has made clear that as a result of the Juvenile Court certification, he now faces criminal prosecution as an adult with a sentence of life in prison with the possibility of parole after 35 years if convicted. *See* Opening Brief at pp. 10, 21.

Accordingly, if convicted as an adult, Appellant’s sentence would be strictly punitive in nature. In contrast, Appellant could have been supervised by the Juvenile Court had the allegations been addressed by the State without prejudicial delay. Furthermore, if convicted, Appellant will have to register as an adult sex offender, which is another significant consequence as result of the certification. The tactical advantage of prosecuting Appellant as an adult is evident, as Appellant faces much harsher consequences in the adult criminal justice system.

The State significantly downplays that even though a certification hearing is not a final adjudication of guilt, the California Supreme Court has recognized that “the certification of a juvenile offender to an adult court has been accurately characterized as ‘the worst punishment the juvenile system is empowered to inflict.’” *Ramona R. v. Superior Court (People)*, 37 Cal.3d 802, 210 Cal.Rptr. 204, 693 P.2d 789, 795 (1985) (quoting Note, Separating the Criminal from the Delinquent: Due Process in Certification Procedure, 40 So. Cal. L.Rev. 158, 162 (1967)).

This Honorable Court has also noted that “[t]he juvenile court’s decision to retain jurisdiction or certify for criminal proceedings is a much more momentous and life-changing event for a juvenile than is an adjudication of delinquency.” *Anthony Lee R., A Minor v. State*, 113 Nev. 1406, 1410 n. 1, 952 P.2d 1, 4 n. 1 (1997).

Accordingly, the Juvenile Court’s Order certifying Appellant as an adult for criminal prosecution has resulted in actual, substantial prejudice.

The State further argues that “[w]here juvenile court jurisdiction is unavailable due to the defendant’s age, as here, the case defaults to the district court.” *See* Response at p. 15 (citing *State v. Barren*, 128 Nev. 337, 340, 279 P.3d 182, 184 (2012)).

The State also argues that “[t]here exists no scenario in which a defendant can fall between the adult and juvenile systems, thus evading accountability for his crimes.” *See id.* By making this assertion, the State ignores the material fact that the State did not attempt to certify Appellant until just prior to his twenty-first birthday.

Again, on September 29, 2018 the alleged victim identified Appellant as the alleged perpetrator. In addition, there was nothing in the record regarding what occurred between that interview and April 6, 2020, where law enforcement completed an audio recorded photo-lineup with the alleged victim (in which she again allegedly identified Appellant). Then, even after the additional investigation, the Delinquency Petition was not filed by the State until April 6, 2021, when Appellant was nearly 21 years old.

As such, the State’s argument that this case should “default to the district court” ignores the procedural history and that the Juvenile Court’s order did not rest on this premise.

Furthermore, *Barren* is distinguishable. In *Barren*, this Honorable Court addressed the applicability of NRS 62B.330(3)(e)(2), a statutory provision that divests a juvenile court of jurisdiction over a person who commits a class A or B felony between 16 and 18 years of age but is not identified until after reaching 21

years of age. In *Barren*, this Honorable Court concluded that said statutory provision governs jurisdiction over any proceedings initiated after the provision went into effect on October 1, 2009, regardless of when the offense was committed.

In the case at bar, Appellant was identified by the alleged victim on September 29, 2018. It was only until nearly three years later (and just prior to Appellant's twenty-first birthday) that the State filed its certification petition. As such, the State's suggestion that *Barren* supports the Juvenile Court's certification order should be rejected.

C. The State's argument that even "if there had been no delay in charging Appellant, he would have been subject to certification" must be rejected.

In its Response, the State also alleges that Appellant "makes no showing that the juvenile court would have retained jurisdiction over this series of serious crimes." Response at p. 17. It is respectfully submitted that the State has ignored the record and the Juvenile Court's reasoning for granting certification. As stated above, the certification petition in the case at bar noted that Appellant had no prior criminal history and that "the offense(s) allegedly committed by the subject minor are not subject to presumptive certification to the adult criminal process." A.A. Vol. 1, at page 5 (emphasis added).

As such, the matter was not subject to presumptive certification as a result of the alleged conduct. Again, the Juvenile Court stated at the certification hearing that:

the Court does note for example the Court's -- from a community safety standpoint the ability of the Court to exercise this jurisdiction ***and this matter is severely curtailed due to the statute that terminates this Court's jurisdiction on 6/29 of this year as it relates to this young man.*** Therefore, the Court does find that the -- the matter of public safety and the Subject -- and then the public safety's best interest in this matter, the Court finds that the State has met its burden by clear and convincing evidence that transfer to the adult system for resolution of this matter is warranted.

A.A. Vol. 1, at page 61 (emphasis added).

Accordingly, the Juvenile Court expressly recognized that the timing of the certification petition impacted the court's decision. There was no clear indication from the Juvenile Court that had the State sought the certification petition sooner, Appellant would have still been certified. As such, the State's attempt to argue that certification would have occurred irrespective of the delay is misplaced.

In support of its argument, the State cites to a case from the Washington Court of Appeals entitled, *State v. Salavea*, 115 Wash. App. 52, 60 P.3d 1230 (2003). However, *Salavea* is distinguishable.

In *Salavea*, the court recognized that “though Salavea was 15 when he committed his crimes, the investigation did not conclude before he turned 16; thus, the automatic decline statute, RCW 13.04.030, was in effect. The earliest that the State could have charged Salavea was after he turned 16; and he committed his crimes after July 1, 1997. Thus, he could not avoid being tried as an adult.” *Salavea*, 115 Wash. App. at 52.

The State argues that “[l]ike *Salavea*, Appellant was subject to a statute, here NRS 62B.410(2), that removed jurisdiction from the juvenile court near the time he was charged. If Appellant had been charged at age eighteen, as soon as the victim disclosed, he would likely have been subject to certification anyway under NRS 62B.390, based on the *Seven Minors* factors.” Response at p. 18.

In the case at bar, Appellant was identified by the alleged victim approximately three years prior to the certification petition being filed, and unlike *Salavea*, there was no “automatic decline statute” in place. Accordingly, the State’s attempt to compare the two cases is misplaced.

Rather, in contrast, the case of *Moore v. State*, 532 S.W.3d 400 (Tex. Crim. App. 2017) is more persuasive. In *Moore*, the defendant was charged with aggravated sexual assault of a child. *See id.* at 401-402. The defendant was alleged to have committed the offense when he was 16 years of age.

Due to a heavy caseload and an error in one of the police reports, the detective did not send the case to the District Attorney's Office until after Moore had turned 18 years old. *See id.* The prosecutor filed a certification petition in the case over a year later when Moore was 19 years old. The juvenile court transferred the case to district court. Moore pled in adult court and received 5 years' probation on a deferred adjudication. Moore then appealed and claimed that the juvenile court lacked the jurisdiction to transfer the case because the State did not prove that the delay in filing the case was beyond its control. *See id.* at 402.

In *Moore*, the State first claimed that law enforcement should not be considered "the State" under Section 54.02(j) of the Texas Family Code. *See generally id.* at 402-404. The State then argued that the court should consider whether the reasons for the delay were unconstitutional. *See also id.*

First, the Texas Court of Criminal Appeals held that the term "the State" included law enforcement and prosecutors collectively. *See id.* at 403-404.

The Texas Court of Criminal Appeals further stated in *Moore* that Section 54.02(j)(4) "is meant to limit the prosecution of an adult for an act he committed as a juvenile if his case could reasonably have been dealt with when he was still a juvenile." *Id.* at 405.

The court held that the State had the burden under Section 54.02(j)(4), and the State's "failure to get around to this case in time [does] not meet that burden." *Id.*

Likewise, here, the errors and delay of law enforcement should be imputed to the prosecuting agency. *See Aguilar v. Woodford*, 725 F.3d 970, 982, 2013 WL 3870727, at *13 (9th Cir. 2013); *United States v. Wood*, 57 F.3d 733 (9th Cir. 1995) (holding that in prosecution for conspiracy to defraud Food and Drug Administration, prosecutor was required to disclose information known to FDA even though unknown to prosecutor because, as agency interested in the prosecution, FDA was "part of the prosecution" for *Brady* purposes); *Odle v. Calderon*, 65 F.Supp.2d 1065, 1071-72 (N.D.Cal. 1999); *United States v. Steel*, 759 F.2d 706 (9th Cir. 1985); *Jackson v. Brown*, 513 F.3d 1057 (9th Cir. 2008). *See also Horton v. U.S.*, 983 F.Supp. 650 (E.D.Va. 1997) (citing *United States v. Sutton*, 542 F.2d 1239, 1241 n. 2 (4th Cir. 1976) (imputing F.B.I. agent's knowledge to federal prosecutor for *Giglio* purposes (quoting *Barbee v. Warden*, 331 F.2d 842, 846 (4th Cir. 1964) ("The police are also part of the prosecution, and the taint on the trial is no less if they, rather than the [prosecutor], were guilty of the nondisclosure."); *Stano v. Dugger*, 901 F.2d 898, 903 (11th Cir. 1990) (if detective was part of prosecution team, his knowledge would be imputed to

prosecutor's office); *cf. United States v. Antone*, 603 F.2d 566, 569 (5th Cir. 1979) (declining “to draw a distinction between different agencies under the same government,” and extending scope of duty when “state and federal [agencies have] pooled their investigative energies to a considerable extent”).

Furthermore, it is respectfully submitted that the delay of the State in seeking adult certification was not justified and constitutes a due process violation. While Nevada does not have a specific statute that is identical to Section 54.02(j) of the Texas Family Code, it is respectfully submitted that this Honorable Court should reverse the Juvenile Court’s certification order as the State failed to explain its delay in seeking certification.

It should be noted that while the court in *Moore* did not base its ruling on a speedy trial, statute of limitations, or due-process analysis, it is respectfully submitted that the underlying reasoning behind the court’s decision is applicable in the case at bar. Moreover, like in *Moore*, even if law enforcement had a heavy caseload or made an error in one of the police reports (no evidence was presented regarding such), it is respectfully submitted that does not constitute a valid excuse for the delay in seeking to certify Appellant as an adult.

D. Appellant's due process claim due to pre-charging delay is meritorious and warrants reversal of the Juvenile Court's certification order.

In its Response, the State further argues that "Appellant did not correct the court with an assertion that the district attorney's office, rather than law enforcement, was responsible for the delay." *See* Response at p. 28.

However, as stated above, the errors of law enforcement are imputed to the State. *See* sources cited *supra*. As such, the State's argument that errors of law enforcement should not be imputed to the prosecution must be rejected. The State further claims that Appellant's due process claim fails because "Appellant points to no prejudice he suffered by living from ages eighteen to twenty years without criminal sexual assault charges hanging over his head." *See* Response at p. 32 (citing *Wyman v. State*, 125 Nev. 592, 217 P.3d 572 (2009)). As stated herein, Appellant has established clear prejudice.

Furthermore, *Wyman* is distinguishable because that case did not involve an alleged offense against a juvenile. Moreover, in *Wyman*, the defendant's adult daughter waited over 30 years to report the matter to law enforcement.

Here, law enforcement was aware that Appellant was identified as the alleged perpetrator for nearly three years prior to a certification petition being filed. Moreover, this Honorable Court in *Wyman* noted that the defendant “failed to specifically demonstrate how the unavailability of the lost or deceased witnesses prejudiced her defense, or how testimony from such witnesses would have benefited her defense.” *Wyman*, 125 Nev. at 601.

As stated above, Appellant has established prejudice as a result of being certified as an adult. Moreover, in *Wyman*, this Honorable Court found that the defendant had not established that the State used the delay to gain a tactical advantage or delay the indictment in bad faith. *See id.* at 601.

In the case at bar, the State provided no response to the argument that law enforcement delayed the investigation and certification process in order to avoid the jurisdiction of the Juvenile Court. Moreover, there was no good faith reason for the delay. At a minimum, the State’s gross negligence has resulted in substantial prejudice to Appellant which warrants reversal. The Ninth Circuit Court of Appeals has indicated that pre-indictment delay that results from negligence or worse may violate due process. *See U.S. v. Swacker*, 628 F.2d 1250, 1254 n. 5 (9th Cir. 1980) (some government culpability must be shown to prove a deprivation of due process).

Whether due process has been violated is decided under a balancing test and “[i]f mere negligent conduct by the prosecutors is asserted, then obviously the delay and/or prejudice suffered by the defendant will have to be greater.” *U.S. v. Moran*, 759 F.2d 777, 782 (9th Cir. 1985) (as amended).

In light of the foregoing, Appellant has established that his due process rights were violated as a result of the Juvenile Court’s certification order, and reversal is warranted. If said order is not reversed, the State will be incentivized to delay certification proceedings prior to a minor’s 21st birthday without any consideration for a defendant’s due process rights. While the State has an interest in prosecuting alleged crimes, the State should not be permitted to violate due process, and prosecute individuals such as Appellant, as an adult, under these unique circumstances.

E. The Juvenile Court erred in certifying B.T. as an adult for criminal prosecution without first conducting an evidentiary hearing or ordering discovery.

In its Response, the State goes to great lengths to argue that the Juvenile Court did not abuse its discretion by failing to order discovery as well as an evidentiary hearing to further examine the facts regarding prejudicial delay in this case.

The State argues that the Juvenile Court conducted a full investigation, and that an evidentiary hearing and discovery was not warranted.

Despite its adamant contentions, the State fails to sufficiently address that there was no explanation for the delay between the alleged victim's interview in September 29, 2018 where she identified Appellant as the alleged perpetrator, and April 6, 2020, where law enforcement completed an audio recorded photo-lineup with the alleged victim (in which she again allegedly identified Appellant). Again, even after the additional investigation, the petition was not filed by the State until April 6, 2021, when Appellant was nearly 21 years old.

In its Response, the State argues that Appellant would have been certified as an adult even if the certification petition had been filed sooner, yet the State does not sufficiently recognize that Appellant requested discovery and an evidentiary hearing to support the contention that on information and belief, there were other cases where defendants of a similar age (and with similar charges) were not sought to be certified by the State.

Again, prior to, and at the certification hearing, Appellant requested that the Juvenile Court order discovery including five years of cases handled by the District Attorney's Juvenile Division wherein a defendant was charged with a sexual offense and the decisions by both the District Attorney's office to seek certification versus not seeking certification (and the Court's granting certification versus denying certification). *See A.A. Vol. 1, at page 27, 52-53.*

Appellant argued that on information and belief such discovery would establish that the sole basis for the request for certification was the Appellant's age and the jurisdictional issue that existed as a result of the prosecutorial delay.

The State further argues that:

The juvenile court would not have been able to adjudicate Appellant's broad discovery demands in the short time available before NRS 62B.410(2) mooted the issue. If Appellant believes the State intentionally violated his due process rights by delaying prosecution, he will have a full and fair opportunity to litigate his discovery demands in adult court. The district court will have ample time to carefully adjudicate this issue without facing the deadline NRS 62B.410(2) imposed on the juvenile court.

Response at p. 37.

Essentially, the State concedes that Appellant was prejudiced by the delay and that Appellant should be relegated to the adult system to raise these issues. The substantial prejudice that Appellant now faces cannot be cured without a reversal of the Juvenile Court's certification order.

It is respectfully submitted that the State ignores the magnitude of the issue and that Appellant has been harmed by the certification and the order denying Appellant's request for discovery and an evidentiary hearing. Accordingly, the Juvenile Court's Order should be reversed on this premise as well.

II. Conclusion

In light of the foregoing, the Juvenile Court's Order certifying Appellant as an adult for criminal prosecution should be reversed, and the matter should be remanded back the Juvenile Court.

Dated this 22nd day of February, 2022.

Respectfully Submitted:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using 14 point font of the Times New Roman style.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7). Pursuant to NRAP 32(a)(7), this appellate brief complies because excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not contain more than 7,000 words, to wit approximately 5,015.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this Dated this 22nd day of February, 202.

/s/ Richard A. Schonfeld

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on this 22nd day of February, 2022 to all parties on the Electronic Case Filing service list, including:

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