IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVON RAY HOCKEMIER,
Appellant,

v.

RENEE BAKER, WARDEN LOVELOCK CORRECTIONAL CENTER (LLC),
Respondent.

CASE NO. 83147

Appeal from the Order Denying Petitions for Writ of Habeas Corpus
Fourth Judicial District Court, County of Elko
The Honorable Kriston N. Hill, District Court Judge, Dept. 1

APPELLANT'S REPLY BRIEF

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ARGUMENT

(1) The State's analysis as to NRS 62B.330(3)(e) is flawed.

The State cites NRS 62B.330(3)(e) in its Answering Brief and claims that "even if Hockemier had been identified by Detective Hessing on November 21, 2013, 3 days before Hockemier's 21th birthday, the juvenile court still would not have jurisdiction. This is because, under subsection (1) of NRS 62B.330(3)(e), Hockemier would still not have been identified by law enforcement as having committed the offense before he was at least 20 years, 3 months of age. Further, charges would also have been filed before he was at least 20 years, 3 months of age."

The "subsection (1)" that the State references does not require that charges be filed before Mr. Hockemier is 20 years, 3 months of age. The prerequisites for that subsection to apply would be that Mr. Hockemier "is **not** identified by law enforcement as having committed the offense **and charged** before the person is at least 20 years, 3 months of age, but less than 21 years of age." (Emphasis added.)

The emphasis must be on the phrase "and charged." Does the State believe that Mr. Hockemier was charged before his 21st birthday? If so, there is no evidence in the joint appendix to support that. This "subsection (1)" covers persons identified **and charged** in a 9-month window. Mr. Hockemier was identified before his 21st birthday but was not charged before his 21th birthday. As such, "subsection (1)" is inapplicable to the instant case.

The State cites George J. v. State (In re George J.), 128 Nev. 345, 279 P.3d 187 (2012). In that case, this Court's majority cited NRS 62B.330(3)(e)(1) in stating that said statute "provides that the act is not a 'delinquent act' and divests the juvenile court of jurisdiction if the person is identified and charged between the ages of 20 years, 3 months and 21 years." Id. at 347, 188.

In re George J. does not buttress the State's position. Mr. Hockemier was not identified **and** charged in that 9-month window. While he was identified during the 9-month window, he was not charged until after his 21st birthday. As such, the defense questions why this case was cited in the first place.

Yet despite the plain language of the preliminary hearing transcript, the State tries to label the phrase "that day" as being a "vague reference." Specifically, Detective Hessing was asked who he talked to "on that day" and he responded that he spoke to all parties involved "except for Devon." *Joint Appendix 819.* The only date mentioned by Deputy District Attorney Jonathan Schulman during the direct examination of Detective Hessing at that point was November 21, 2013." *Joint Appendix 819.* As such, there is nothing vague about "that date" because it was November 21, 2013 and that was before Mr. Hockemier's 21th birthday.

Detective Hessing testified that he began his investigation on November 21, 2013 and that "was . . . dealing with a Devon Hockemier." *Joint Appendix 819.* How can someone be investigating a matter dealing with a Devon Hockemier and not know who Devon Hockemier is? That is a bizarre argument.

The State claims "that even if Mr. Macfarlan had lodged an objected [*sic*] based on the vague testimony, it would have been quickly resolved by a few clarifying questions and at most Dectective Hessing

refreshing his recollection with his report." The problem with that assertion is that there was zero vagueness in the first place. A vagueness objection would not have been the proper objection.

The State believes it was proper for Mr. Macfarlan to avoid altogether the jurisdictional issue because he thought the matter "was moot." There is no support in the joint appendix for the idea that the jurisdictional issue was "moot." In fact, given the plain language of the testimony at the preliminary hearing, this issue of transferring the case out of adult court was anything but moot.

The State cited NRS 62B.335(1), which states in its entirety:

> If:
> (a) A person is charged with the commission of a delinquent act that occurred when the person was at least 16 years of age but less than 18 years of age;
> (b) The delinquent act would have been a category A or B felony if committed by an adult;
> (c) The person is identified by law enforcement as having committed the delinquent act before the person reaches 21 years of age; and
> (d) The person is apprehended by law enforcement after the person reaches 21 years of age,
> the juvenile court has jurisdiction over the person to conduct a hearing and make the determinations required by this section in accordance with the provisions of this section.

This statute, rather than bolstering the position of the State, undermines it. This is the precise statute that would have sent Mr. Hockemier to juvenile court instead of justice court. As such, it would have been incumbent on the juvenile court to gauge the "interests of justice and the need for protection of the public" before sending this case to justice court or potentially dismissing the case outright. NRS 62B.335(4). For the defense to extinguish this avenue for a dismissal was ineffective given the mitigating factors that have already been identified in the presentence investigation report as well as the sentencing hearing.

Since the State opened the door to notions of vagueness, there is not a lot that carries a higher level of vagueness than Mr. Macfarlan stating that the jurisdictional issue was moot but stating that he did not have enough of a recollection to testify as to why that was. The fact that the motion's hearing on the transfer to juvenile court was not transcribed gives the State virtually no leverage to defend Mr. Macfarlan's inaction.

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CONCLUSION

The State's version of events that occurred on the date of the preliminary hearing must be rejected. Detective Hessing started his investigation of Devon Hockemier before his 21st birthday. As such, this matter should have been sent to the juvenile court.

As to the provision of NRS 62B.330(3)(e)(1), the State cites it but misapplies it to the facts of the instant case. Mr. Hockemier was not identified **and** charged between the ages of 20 years, 3 months and 21 years. It is baffling that the State believes that this subsection has any cogency to the analysis of jurisdiction.

Likewise, the holding in George J. v. State (In re George J.) does not apply for the very same reason.

DATED this 2nd day of March, 2022.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Reply 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 Reply Brief has been prepared in a proportionally spaced typeface using Microsoft Word in size 14 Century Schoolbook font.

2. I further certify that this Reply Brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[x] Proportionately spaced, has a typeface of 14 points or more, and contains 1,105 words; or

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3. 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

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 the applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is found.

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 2nd day of March, 2022.

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CERTIFICATE OF SERVICE

(a) I hereby certify that this document was electronically filed with the Nevada Supreme Court on the 2nd day of March, 2022.

(b) I further certify that on the 2nd day of March, 2022, electronic service of the foregoing document shall be made in accordance with the Master Service List to Aaron Ford, Nevada Attorney General; and Tyler J. Ingram, Elko County District Attorney; and Jeffrey C. Slade, Deputy Elko County District Attorney.

(c) I further certify that on the 2nd day of March, 2022, this brief shall be mailed with postage prepaid to Devon Ray Hockemier, NDOC # 1140743, Lovelock Correctional Center, 1200 Prison Road, Lovelock, NV 89419.

DATED this 2nd day of March, 2022.

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