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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**NO. 43356**
	)	
v.	)	**JEROME COUNTY NO. CR 2014-5846**
	)	
DANIEL JENSEN,	)	**REPLY BRIEF**
	)	
Defendant-Appellant.	)	
_____	)	

_____

REPLY BRIEF OF APPELLANT

_____

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

_____

HONORABLE JOHN K. BUTLER
District Judge

_____

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STATEMENT OF THE CASE

Nature of the Case

Due to the automatic waiver provision in I.C. § 20-509, seventeen-year-old Daniel Jensen was prosecuted as an adult for attempted first degree murder. He entered a conditional guilty plea to a reduced charge, reserving his right to appeal the district court's denial of his motion to declare I.C. § 20-509 unconstitutional and his motion to suppress evidence. Mr. Jensen challenged both rulings on appeal. (App. Br., pp.5–28.) In response to Mr. Jensen's challenge to I.C. § 20-509, the State argues the automatic waiver provision was neither "punishment" under the Eighth Amendment nor a denial of due process. (Respt. Br., pp.6–16.) The State's arguments are misguided and unpersuasive. The automatic waiver provision imposes cruel and unusual punishment on juvenile defendants, and it violates their due process rights.

Statement of Facts and Course of Proceedings

The statement of facts and course of proceedings were previously articulated in Mr. Jensen's Appellant's Brief. (App. Br., pp.1–3.) They are not repeated in this Reply Brief, but are incorporated herein by reference.

ISSUES

1. Did the district court err by denying Mr. Jensen's motion to declare automatic waiver provision of a juvenile into adult court unconstitutional?

2. Did the district court err by denying Mr. Jensen's motion to suppress?

ARGUMENT

I.

The District Court Erred By Denying Mr. Jensen's Motion To Declare The Automatic Waiver Provision Of A Juvenile Into Adult Court Unconstitutional

A. Introduction

The State takes issue with both of Mr. Jensen's constitutional challenges to Idaho's automatic waiver provision, I.C. § 20-509. This statute mandates the transfer of juvenile defendants (age fourteen to eighteen) accused of certain crimes into adult court—with no regard to the juvenile's individual characteristics or the circumstances of the alleged offense and no mechanism to transfer the juvenile back to juvenile jurisdiction ("JCA jurisdiction"). As argued in Mr. Jensen's Appellant's Brief, I.C. § 20-509 violates the Eighth Amendment as well as due process clause of the Fourteenth Amendment. (*See* App. Br., pp.5–19.) This Reply Brief responds to, and refutes, the State's arguments.

B. Idaho's Automatic Waiver Provision Violates The Eighth Amendment

The State presents three arguments in opposition to Mr. Jensen's contention that I.C. § 20-509 violates the Eighth Amendment. The State's first argument does not address the merits of Mr. Jensen's position, but rather claims that Mr. Jensen waived the issue. (Respt. Br., pp.7–8.) Specifically, the State alleges that the Eighth Amendment prohibits cruel and unusual "punishment," and since Mr. Jensen failed to cite any legal authority that I.C. § 20-509 is "punishment," his argument is waived pursuant to *State v. Zichko*, 129 Idaho 259 (1996) (appellant waives an issue not supported by argument and authority). This allegation is belied by Mr. Jensen's

Appellant's Brief. (*See* App. Br., pp.5–14 (citing to the United States Supreme Court, Idaho appellate courts, two cases from other jurisdictions, and secondary authorities).) Simply put, Mr. Jensen argued for the good faith extension or modification of existing case law to a certain statute. This type of argument is an incontrovertible pillar of appellate law. New case law is developed through this practice. If the State's position prevails, no future case law could be created because any argument to change or expand the existing law would be met with an objection that it is not supported by a citation to authority directly on point. This position essentially eliminates the role of the appellate courts with respect to questions of law. Indeed, the seminal case on judicial review, *Marbury v. Madison*, 5 U.S. 137 (1803), would not exist under the State's vision of appellate review. Mr. Jensen asserts that he provided ample authority for his argument and thus respectfully requests that this Court consider the merits of this issue on appeal.

Second, turning to the merits of Mr. Jensen's argument, the State claims that I.C. § 20-509 does not constitute "punishment" under Eighth Amendment. (Respt. Br., pp.8–10.) The State's reasoning is "overly simplistic, and evaluates form over substance." *People v. Patterson*, 25 N.E.3d 526, 557 (Ill. 2014) (Theis, J., dissenting). The Eighth Amendment "proscribes more than physically barbarous punishments. The Amendment embodies 'broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . . ,' against which we must evaluate penal measures." *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (alteration in original) (quoting *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968)). "Determination of whether [a] statute is a penal law requires careful consideration," not simply an "inspection of the labels pasted

on them." *Trop v. Dulles*, 356 U.S. 86, 95 (1958). Thus, the purpose, not the label, of a statute determines whether it is penal. *Id.* at 96.

Here, the purpose of I.C. § 20-509 is to allow for harsher adult penalties for juveniles. The automatic waiver provision operates by

> mandatorily placing juveniles in criminal court based only on their offenses, and thereby exposing them to vastly higher adult sentences and, in effect, punishing them. "[T]he true impact and frequently articulated goal of transfer proceedings" is "to subject the juvenile offender to the harsher sentencing scheme only available in the adult justice system."

Patterson, 25 N.E.3d at 557 (Theis, J., dissenting) (quoting Jenny E. Carroll, *Rethinking the Constitutional Criminal Procedure of Juvenile Transfer Hearings*: Apprendi*, Adult Punishment, and Adult Process*, 61 HASTINGS L.J. 175, 180–81 (2009)). In fact, this Court plainly articulated this goal in *State v. Burnight*, 132 Idaho 654 (1999):

> By giving the sentencing judge the power to sentence a juvenile automatically waived into adult jurisdiction as a juvenile, the underlying assumption of the statute is that the judge has the power to, *in every respect*, sentence the juvenile as an adult. . . . Sentencing as a juvenile, once the juvenile is under adult jurisdiction, *is the exception, not the norm*.

Id. at 659 (emphasis added). Moreover, this Court held in *State v. Broadhead*, 120 Idaho 141 (1991), that the district court is prohibited from giving any "special consideration" to the unique characteristics of a juvenile defendant once the juvenile is designated an "adult" for sentencing. *Id.* at 146, *overruled on other grounds in State v. Brown*, 121 Idaho 385, 394 (1992). Thus, "[w]hile the language of the transfer statute itself may not impose a punishment," I.C. § 20-509 is "indisputably penal in nature" and "subject to Eighth Amendment scrutiny." Katherine I. Puzone, *An Eighth Amendment Analysis of Statutes Allowing or Mandating Transfer of Juvenile Offenders to Adult*

Criminal Court in Light of the Supreme Court's Recent Jurisprudence Recognizing Developmental Neuroscience, 3 VA. J. CRIM. L. 52, 84 (2015).

I.C. § 20-509 removes "youth from the balance" and imposes Idaho's "most severe penalties on juvenile offenders . . . as though they were not children." *Miller v. Alabama*, 567 U.S. ---, 132 S. Ct. 2455, 2466 (2012). "This is inconsistent with the Eighth Amendment." *Graham v. Florida*, 560 U.S. 48, 76 (2010). "[A]n offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Id.* The mandatory and inflexible nature of the automatic waiver provision is flawed for this very reason. This Court should declare it unconstitutional under the Eighth Amendment.

The State's third and final argument against Mr. Jensen's challenge to I.C. § 20-509 is that, again, Mr. Jensen presented no authority for the "notion" that the district court was permitted to sentence him without consideration of his "youth and attendant characteristics." (Respt. Br., pp.10–11.) As discussed above, *Broadhead* and *Burnight* stand for this precise "notion." (*See* App. Br., pp.12–14.) The automatic waiver provision exists for district courts to impose adult penalties on juveniles without any limitation, such as the juvenile's youth and attendant characteristics. *Broadhead*, 120 Idaho at 146; *Burnight*, 132 Idaho at 659; *State v. Moore*, 127 Idaho 780, 784–85 (Ct. App. 1995). The State's assertion that Mr. Jensen failed to present authority to preserve this argument is baseless.

Moreover, to the extent that the State argues Mr. Jensen was afforded consideration of his "youth and attendant circumstances," (*see* Respt. Br., pp.10–11), that argument is beside the point. Whether Mr. Jensen was afforded "special

consideration" of his juvenile characteristics at sentencing does not insulate the automatic waiver provision from constitutional challenges. "The constitutional infirmity with the statute is not that it exposes juveniles to adult sentences, but that it operates automatically for those juveniles charged with certain offenses." *Patterson*, 25 N.E.3d at 587 (Theis, J., dissenting). In short, the Eighth Amendment violation is the automatic transfer, not the sentencing. The State also seems to argue that any constitutional violation was harmless for the same reason—the district court considered Mr. Jensen's juvenile characteristics because it imposed a "blended sentence." (Respt. Br., pp.10–11; *see also* R., pp.197–203); *see* I.C. §§ 19-2601A, 20-509(4)(b). That, too, is beside the point. If Mr. Jensen were not automatically transferred to adult jurisdiction, he may have remained in JCA jurisdiction where a blended sentence is not even an option. I.C. § 20-520(1) (juvenile sentencing options). At the very least, without the automatic transfer, the district court would have had the discretion to determine if it was appropriate to transfer Mr. Jensen to adult jurisdiction. I.C. § 20-508 (discretionary waiver after a full investigation, notice, and hearing). Thus, the constitutional violation is not harmless. The automatic waiver provision did not merely contribute to the sentence imposed; it set the foundation for the entire criminal process.

C. Idaho's Automatic Waiver Provision Violates The Due Process Clause

The State asserts that Mr. Jensen's arguments do not warrant the reexamination of *State v. Anderson*, 108 Idaho 454 (Ct. App. 1985), and its progeny, which repeatedly held that I.C. § 20-509 does not violate the due process rights of juvenile defendants. (Respt. Br., pp.12–16.) As noted by the State, the rule of stare decisis dictates that the Court follow controlling precedent "unless it is manifestly wrong, unless it has proven

over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice." *State v. Clontz*, 156 Idaho 787, 789 (Ct. App. 2014) (quoting *State v. Humpherys*, 134 Idaho 657, 660 (2000)). Mr. Jensen submits that the United States Supreme Court's decisions in *Roper*,[1] *Graham*, and *Miller* prove that *Anderson* and its progeny have become unjust and unwise over time. The Court of Appeals last reviewed whether I.C. § 20-509 comports with the due process clause in 1995,[2] well before the United States Supreme Court issued *Roper* (2005), *Graham* (2010), and *Miller* (2012). The most recent case regarding juvenile defendants, *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), solidifies the United States Supreme Court's view that "children are constitutionally different from adults for purposes of sentencing." *Id.* at 733. To this end, *Montgomery* held that "*Miller* announced a substantive rule of constitutional law." *Montgomery*, 136 S. Ct. at 734. In light of drastic evolution of the treatment of juveniles in the criminal justice system, Mr. Jensen contends that *Anderson* and its progeny also must evolve. The Court should reexamine the constitutionality of I.C. § 20-509 and hold that it violates the due process rights of juvenile defendants.

As argued in Mr. Jensen's Appellant's Brief, I.C. § 20-509 violates the due process clause of the Fourteenth Amendment because it deprives juveniles of their liberty interest in JCA jurisdiction without any procedural safeguards before the transfer to adult court or safety mechanisms to return to JCA jurisdiction. (App. Br., pp.16–18.) In light of *Roper*, *Graham*, and *Miller*, all juvenile defendants are entitled to the "advantaged position" provided by JCA jurisdiction. *Anderson*, 108 Idaho at 458.

[1] *Roper v. Simmons*, 543 U.S. 551 (2005).

Further, I.C. § 20-509 bears no rational relationship to the legislative purpose because, except for the "rare juvenile offender," there are no penological justifications for subjecting juveniles to harsh adult penalties. *Miller*, 132 S. Ct. at 2465; *see also Montgomery*, 136 S. Ct. at 733–34. (*See* App. Br., pp.18–19.)

II.

The District Court Erred By Denying Mr. Jensen's Motion To Suppress

Mr. Jensen respectfully refers the Court to his arguments in his Appellant's Brief on the issue of whether the district court erred by denying his motion to suppress statements made during a police interview at his home and an interrogation in jail after his arrest. (*See* App. Br., pp.19–28.) He maintains that he was subject to a custodial interrogation without the requisite *Miranda*[3] warnings during the home interview. (App. Br., pp.20–25.) Likewise, he continues to assert that he did not knowingly, voluntarily, and intelligently waive his *Miranda* rights during the jail interrogation. (App. Br., pp.20–21, 25–28.) Due to these violations of his right against self-incrimination, Mr. Jensen contends that the district court erred by denying his motion to suppress.

[2] *State v. Espinoza*, 127 Idaho 194 (Ct. App. 1995).
[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

CONCLUSION

Mr. Jensen respectfully requests that this Court reverse the district court's order denying his motion to declare I.C. § 20-509 unconstitutional and vacate his judgment of conviction. In the alternative, Mr. Jensen requests that this Court reverse the district court's order denying his motion to suppress, vacate his judgment of conviction, and remand this case for further proceedings

DATED this 5th day of July, 2016.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of July, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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