STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable W. Greg Seigler, Family Court Judge
Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NAZARETH N SANCHEZ-PERALTA,

APPELLANT

APPELLATE CASE NO. 2023-001588

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

I. As to the constitutionality of juvenile waiver hearings conducted under the *Kent* factors.

Appellant's status as a juvenile creates unique protections afforded by the Due Process clause of the 14th Amendment to the United States Constitution as well as Article I, § 3 of the South Carolina Constitution. *See* Application of Gault, 387 U.S. 1, 57 (1967) ("We now hold that, absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements."); State v. Miller, 441 S.C. 106, 893 S.E.2d 306 (2023) (noting additional factors to be considered regarding confessions of juveniles); Jones v. State, 440 S.C. 14, 889 S.E.2d 590 (2023) (while upholding mandatory minimum sentences as applied, the Court reiterated that juveniles are entitled to careful sentencing using the mitigating factors of youth).

Under South Carolina law, a juvenile may be treated as an adult following a transfer hearing in Family Court under § 63-19-1210 (2019). This decision imposes a significant and meaningful change in the protected status of a juvenile, impacting due process rights. As our Supreme Court noted in Jones:

> [T]he important distinction between family court and circuit court pertains to sentencing discretion. The family court has broad discretion as to adjudication, which is expressly not a conviction. S.C. Code Ann. § 63-19-1410 (2010 & Supp. 2021). In contrast, a circuit court's discretion in sentencing is limited to statutorily created parameters.

Id., 440 S.C. at 29, 889 S.E.2d at 599.

The question before this Court is not whether appellant had rights that required due process protection during the transfer hearing under S.C. Code Ann. § 63-19-1210 (2019). By its

very wording, the statute protects a juvenile from such transfer by requiring a "full investigation" and considering both the "best interest of the child" and the public before such transfer. This protected interest has long been recognized as protected by due process. *See* Kent v. United States, 383 U.S. 541, 554 (1966) (holding with respect to waiver proceedings "there is no place in our system of law of reaching a result of such tremendous consequences without ceremony").

The question presented to this Court is whether factors originally developed in 1966 properly protect a juvenile's acknowledged due process rights, under both the United States and South Carolina constitutions. As argued in appellant's Brief, the landscape and knowledge surrounding juvenile development has changed since Kent was decided.

This change in landscape can be seen most clearly in sentencing challenges under the 8th Amendment. *See* Graham v. Florida, 560 U.S. 48, 71- 72 (2010) (barring sentences of life without parole for non-homicide offenders who were under 18 at the time of their crimes); Miller v. Alabama, 567 U.S. 460 (2012) (barring automatic imposition of life without paroles for juvenile offenders). Due process safeguards should likewise evolve. The continued reliance and use of the Kent factors fail to adequately protect the due process rights of juveniles during transfer hearings under S.C. Code Ann. § 63-19-1210 based upon an improper emphasis on the nature of the offense charged. S.C. Code Ann. § 63-19-1210 as applied in its current form, does not adequately weigh the factors of youth in determining if transfer is in the "best interest of the child" due to its overwhelming concern regarding the nature of the crime charged. Appellant would note this constitutional challenge is based not on the actual wording of the statute itself, but how our courts have applied the Kent factors as incorporated into the application of S.C. Code Ann. § 63-19-1210.

> The line between facial and as-applied relief is [a] fluid one, and many constitutional challenges may occupy an intermediate

> position on the spectrum between purely as-applied relief and complete facial invalidation." 16 C.J.S. *Constitutional Law* § 153, at 147 (2015). Further, "the distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010). Rather, "[t]he distinction is both instructive and necessary, for it goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint." *Id.*

Doe v. State, 421 S.C. 490, 502, 808 S.E.2d 807, 813 (2017).

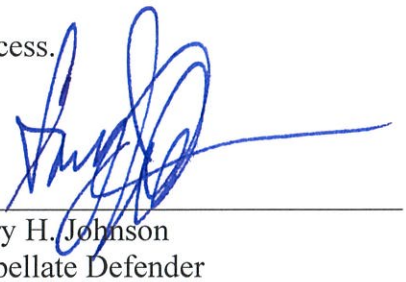
Here, the constitutional challenge focuses on the use of an outdated, judicially imposed set of factors to determine whether a "full investigation" that considers "best interest of the child" and the public has been applied to appellant and similarly situated children. It is not a technical facial invalidity challenge, but as to the process by which the statute has been implemented in transferring minors, including appellant, from Family Court to the Court of General Sessions to be tried as adults.

To the extent that Respondent asserts the continued hold of the Kent factors from a federal due process claim, our Courts have expressly acknowledged the South Carolina Constitution provides greater due process protections. *See* Moore v. Stirling, 436 S.C. 207, 223, 871 S.E.2d 423, 432 (2022) (noting "the Eighth Amendment is not controlling of a defendant's right to due process under our state constitution."); State v. Nelson, 431 S.C. 287, 308, 847 S.E.2d 480, 492 (Ct. App. 2020) (noting forcing a trial when a key witness is unavailable could deprive the defendant of his right to be fully heard); *see also* Planned Parenthood S. Atl. v. State, 438 S.C. 188, 199, 882 S.E.2d 770, 776 (2023) (holding South Carolinians enjoy "protection not found in the United States Constitution" to be secure from "unreasonable invasions of privacy"); State v. Counts, 413 S.C. 153, 174, 776 S.E.2d 59, 70 (2015) (holding police use of knock and

talk to target homeowners must satisfy "the heighten privacy protection afforded by the South Carolina Constitution").

CONCLUSION

Appellant asserts the application of the *Kent* factors in waiving a juvenile from Family Court to the Court of General Sessions violates due process.



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ATTORNEY FOR APPELLANT

This 25th day of September 2025.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Final Reply Brief of Appellant in the above-referenced case have been served upon Richard Brandon Larrabee, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 25th day of September 2025.

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