

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

OCT 01 2015

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

THE STATE OF OKLAHOMA,

Plaintiff,

-vs-

ROBERT DAVIS BEVER,

and

MICHAEL JOHN BEVER,

Defendants.

No. CF-2015-3983

Judge Holmes

**DEMURRER TO THE JURISDICTION OF THE COURT BASED
ON THE UNCONSTITUTIONALITY OF STATE STATUTES
AND
APPLICATION FOR CERTIFICATION
AS A CHILD OR YOUTHFUL OFFENDER
AND
MOTION TO STAY PROCEEDINGS**

COMES NOW, the Defendant, MICHAEL JOHN BEVER, by and through his attorney of record, Robert R. Nigh, Jr., OBA #11686, and moves the Court to declare 10A O.S.2011 §2-5-205(B) unconstitutional and further requests a hearing pursuant to 10A O.S.2011 §2-5-206(F)(1). Defendant is, upon information and belief, an appropriate candidate for status as either a juvenile delinquent or Youthful Offender in accordance with the current Oklahoma Juvenile Code. The filing of this Application in no way recognizes the constitutionality of 10A O.S.2011 §2-5-206(F)(1).

STATEMENT OF FACTS

- 1) On July 31st, 2015, the State of Oklahoma filed the above-styled matter;
- 2) Defendant Michael John Bever was a minor child at the time of the alleged offenses;
- 3) Said Defendant had no juvenile history pursuant to JOLTS.

**PROPOSITION 1: DEMURRER TO THE JURISDICTION OF THE COURT
BASED ON THE UNCONSTITUTIONALITY OF STATE STATUTES**

ARGUMENT AND AUTHORITIES

An arbitrary designation of a minor child as an adult violates the Equal Protection Clause of the Fourteenth Amendment as the purposes of said subclass bears no rational connection to the objectives of the legislation. *Garner v. Oklahoma*, 430 F.Supp. 692 (W.D. Okla. 1975); *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 40 S.Ct. 560, 64 L.Ed. 989 (1920); *Stanton v. Stanton*, 421 U.S. 7, 95 S.Ct. 1373, 43 L.Ed.2d 688 (1975); *Craig v. Boren*, 439 U.S. 190, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976).

§10A O.S.2011 §2-5-205(B) creates an unconstitutional classification of adult status from the mere accusation by the state of murder in the first degree. This classification creates a presumption of sophistication that has no rational connection to the child's maturity level or other social information and denies the child the presumption of incompetency to stand trial which is otherwise guaranteed by legislative enactment. *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84(1966); *J.T.P. v. State*, 1975 OK CR 242, 544 P.2d 1270; *United States v. Gainey*, 380 U.S. 63, 85 S.Ct. 754, 13 L.Ed.2d 658 (1965); *Tot v. United States*, 319 U.S. 463, 63 S.Ct. 1241, 87 L.Ed. 1519 (1943); *State ex rel. M. Coats v. Johnson*, 1979 OK CR 58, 597 P.2d 328.

This Court has previously rejected the constitutional challenge that the reverse certification statutes¹ were unconstitutional because they vested the State with an "overbreadth of discretion" in that the State was given power to decide to either proceed in juvenile court or prosecute a defendant as an adult. *Jones v. State*, 1982 OK CR 196, ¶¶6-14, 654 P.2d 1080, 1082-84, *cited in M.A.W. v. State*, 2008 OK CR 16, ¶14, 185 P.3d

¹ 10A O.S. §2-5-205 was renumbered from 10 O.S. §7306-2.5 in 2009.

388, 392. But the *M.A.W.* court relied on previous decisions and did not fully consider the current statute. The cases cited in *MA.W.* discussed the constitutionality that all 16 and 17-year-old persons charged with felony offenses invidiously discriminates against this subclass and was in violation of the Equal Protection Clause of the Fourteenth Amendment by presuming them to be adults when charged with any of the enumerated crimes and requiring them to file a motion to be certified as juveniles. *Id.* at ¶14 and 392, citing *Trolinger v. State*, 1987 OK CR 71, ¶¶ 9–10, 736 P.2d 168, 170–71 (upholding constitutionality of reverse certification statute and rejecting equal protection challenge); *Jones v. State*, 1982 OK CR 196, ¶¶ 6–14, 654 P.2d 1080, 1082–84 (rejecting constitutional challenge that reverse certification statute vested prosecution with “overbreadth of discretion” because State was given power to decide to either proceed in juvenile court or prosecute defendant as adult); *State ex rel. Coats v. Rakestraw*, 1980 OK CR 24, ¶¶ 2–7, 610 P.2d 256, 258–59 (upholding constitutionality of reverse certification statute and rejecting equal protection challenge).

But the *M.A.W.* court did not consider that those cases discuss a statute where the defendants were at least *given the opportunity to request certification* as a child or a Youthful Offender. The statutes at issue now go beyond the constitutionally questionable shifting of burden of proof to a juvenile on the critical issue of certification. These statutes currently deny the child the ability to present a case for certification as a child under the Oklahoma Juvenile Code *at all*, which violates Due Process of the Fifth and Fourteenth Amendments. *J.T.P. v. State*, 1975 OK CR 242, 544 P.2d 1270. Thus, any decisions prior to 2007 addressing reverse certification are distinguishable by virtue of the fact that under the current statutes, the child is forbidden to even raise the issue of amenability to treatment as a juvenile or a Youthful Offender. A child has no avenue to

defend him/herself from this path to adult punishment and a court has no ability to review the appropriateness of same. This is a critical element of the statutes that the *M.A.W.* court overlooked.

The irreversible assignment of adult consequences regardless of a child's sophistication or other relevant factors also fails two of Justice Brennan's four principles of cruel and unusual punishment presented in *Furman v. Georgia*, 408 U.S. 238 at 271-279, 92 S.Ct. 2726 at 2742-2747, 33 L.Ed.2d 346 (1972). First, subjecting a child to any consequences reserved for adults who act willfully and intentionally is certainly severe. When subjecting a child to said consequences simply by virtue of charges filed by the State without any form of judicial review, said punishment is ultimately inflicted in a wholly arbitrary fashion. Also, said punishments are patently unnecessary. The Juvenile Code has several options for a court to direct appropriate dispositions that would provide for any rehabilitation of the child while preserving the safety of the public. As such, simply attributing a child who is not recognized as sophisticated enough to vote, hold public office, join the military, get married, enter into a contract or purchase an alcoholic beverage with the culpability of a full-grown adult is severe, arbitrary and unnecessary under the Eighth Amendment. *See also Miller v. Alabama*, 567 U.S. 183, 132 S.Ct. 2455, L.Ed.2d 407 (2012) (mandatory life without parole statutes forbidden by the Eighth Amendment because they precluded the court to take into account "how children are different" from adults who commit the same offenses).

PROPOSITION 2: APPLICATION FOR CERTIFICATION AS A JUVENILE OR YOUTHFUL OFFENDER SHOULD BE GRANTED AS CONSISTENT WITH CURRENT INTENT OF THE OKLAHOMA JUVENILE CODE AND RECOGNITION OF COMPETENCY ISSUES GERMANE TO JUVENILES.

ARGUMENT AND AUTHORITIES

One might argue in response to Proposition 1 that “(t)he power to define crime and punishment in this State lies with the legislature.” *State v. Young*, 1999 OK CR 14, ¶ 26, 989 P.2d 949, 955. But these statutes are antiquated and have no place in any modern proceeding pertaining to minors.

“[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly ‘during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment’ expected of adults.” *Eddings v. Oklahoma*, 455 U.S. 104, 115-16, 102 S. Ct. 869, 877, 71 L. Ed. 2d 1 (1982) citing *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 3044, 61 L.Ed.2d 797 (1979).

Children are simply not adults. As the Supreme Court stated, “...even where a ‘reasonable person’ standard otherwise applies, the common law has reflected the reality that children are not adults. In negligence suits, for instance, where liability turns on what an objectively reasonable person would do in the circumstances, ‘[a]ll American jurisdictions accept the idea that a person's childhood is a relevant circumstance’ to be considered.” *Restatement (Third) of Torts* § 10, Comment b, p. 117 (2005) cited in *J.D.B. v. N. Carolina*, 131 S. Ct. 2394, 2404, 180 L. Ed. 2d 310, 79 USLW 4504 (2011).

In *Roper v. Simmons*, the Supreme Court established three general differences between juveniles under 18 and adults. These differences demonstrate that juvenile

offenders cannot with reliability be classified among the worst offenders. 543 U.S. 551, 569-71, 125 S. Ct. 1183, 1195-96, 161 L. Ed. 2d 1 (2005):

- 1) "First, as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, '[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.' *Johnson, [v. Texas]*, 509 U.S. 350], at 367, 113 S.Ct. 2658 [125 L.Ed.2d 290]; see also *Eddings, supra*, at 115-116, 102 S.Ct. 869 ('Even the normal 16-year-old customarily lacks the maturity of an adult'). It has been noted that 'adolescents are overrepresented statistically in virtually every category of reckless behavior.' Arnett, 'Reckless Behavior in Adolescence: A Developmental Perspective,' 12 *Developmental Rev.* 339 (1992)." *Id.* at 569, 1195.
- 2) "The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *Id.*
- 3) "The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. See generally E. Erikson, *Identity: Youth and Crisis* (1968)." *Id.* at 570, 1195.

The Supreme Court found that these differences "render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means "their irresponsible conduct is not as morally reprehensible as that of an adult." *Thompson, v. Oklahoma* 487 U.S. 815 at 835, 108 S.Ct. 2687, 101 L.Ed. 702 (1987) (plurality opinion). Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. See *Stanford*, 492 U.S., at 395, 109 S.Ct. 2969 (Brennan, J., dissenting). *The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.*" *Id.* (emphasis added)

Although the law judges moral culpability, legal assessments based upon scientific knowledge are tempered with the restraint that informs a civilized society. Scientific evidence supports the Supreme Court's conclusion that a juvenile's "irresponsible conduct is not as morally reprehensible as that of an adult." *Id.* A plethora of scientific studies have established that an adolescent's brain differs from an adult's brain in significant ways. "Adolescents' behavioral immaturity mirrors the anatomical immaturity of their brains. To a degree never before understood, scientists can now demonstrate that adolescents are immature not only to the observer's naked eye, but in the very fibers of their brains." *Amici* Brief of the American Medical Association, American Psychiatric Association, American Society for Adolescent Psychiatry, American Academy of Child & Adolescent Psychiatry, American Academy of Psychiatry and the Law, National Association of Social Workers, Missouri Chapter of the National Association of Social Workers, and National Mental Health Association as *Amici Curiae* which was submitted to the Supreme Court for consideration in *Roper v. Simmons*, 543 U.S. 551, 543 U.S. 551, 125 S.Ct. 1183 (2005).

An excerpt from the *Amici Curiae* Brief of the American Psychological Association, comprised of 155,000 members, joined by other organizations which was submitted to the Supreme Court for consideration in *Roper v. Simmons*, 543 U.S. 551, 543 U.S. 551, 125 S.Ct. 1183 (2005) explains the anatomical differences between an adolescent's brain and that of an adult.

Advances in magnetic resonance imaging (MRI) technology have opened a new window into the differences between adolescent and adult brains. MRI technology produces exquisitely accurate pictures of the inner body and brain. Beginning in the 1990's, "functional" MRIs have allowed mapping not only of brain anatomy but observation of brain functioning while an individual performs tasks involving speech, perception, reasoning, and decision making. *See, e.g.,* Kenneth K. Kwong et al., *Dynamic Magnetic Resonance Imaging of Human Brain*

Activity During Primary Sensory Stimulation, 89 Proc. Nat'l Acad. Sci. 5675 (1992) (early use of functional MRI to image the brain). Longitudinal MRI studies have allowed researchers to track individual brains as they develop through adolescence by observing them at periodic intervals. See, e.g., Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 Nature Neuroscience 861, 861 (1999) (study of 145 children and adolescents scanned up to five times over approximately 10 years).

Of particular interest with regard to decision-making and criminal culpability is the development of the frontal lobes of the brain. The frontal lobes, especially the pre-frontal cortex, play a critical role in the executive or "CEO" functions of the brain which are considered the higher functions of the brain. See Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* 23 (2001). They are involved when an individual plans and implements goal-directed behaviors by selecting, coordinating, and applying the cognitive skills necessary to accomplish the goal. See *id.* at 24. Disruption of functions associated with the frontal lobes may lead to impairments of foresight, strategic thinking, and risk management. See M. Marsel Mesulam, *Behavioral Neuroanatomy*, in *Principles of Behavioral and Cognitive Neurology* 1, 47-48 (M. Marsel Mesulam ed., 2nd ed. 2000). Frontal lobe impairment has been associated with greater impulsivity, difficulties in concentration, attention, and self-monitoring, and impairments in decision-making. *Id.* At 42-45. One "hallmark of frontal lobe dysfunction is difficulty in making decisions that are in the long-term best interests of the individual." See Antonio R. Damasio & Steven W. Anderson, *The Frontal Lobes*, in *Clinical Neuropsychology* 404, 434 (Kenneth M. Heilman & Edward Valenstein eds., 4th ed. 2003)

Neurodevelopmental MRI studies indicate this executive area of the brain is one of the last parts to reach maturity. See Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 Proc. Nat'l Acad. Sci. 8174, 8177 (2004). In early adolescence, the proliferation of gray matter—consisting of neuron cell bodies and dendrites—peaks. See Giedd et al., *supra*, at 861-862. During adolescence, the size of the frontal lobes is not largely altered, but their composition, consisting of gray and white brain matter, undergoes dynamic change while functioning improves. One important change is that gray matter thins. See Elizabeth R. Sowell et al., *aping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation*, 21 J. Neurosci. 8819, 8821 (2001) (studying 7-11, 12-16, and 23-30 age groups). A contributing factor to the thinning of gray matter is thought to be "pruning" which strengthens the connections between the remaining neurons. See Peter

R. Huttenlocher, *Neural Plasticity: The Effects of Environment on the Development of the Cerebral Cortex* 41, 46-47, 52-58, 67 (2002).

MRI research reveals that in the same regions where gray matter thins, white matter significantly increases during adolescence, likely through a process called “myelination” in which a substance called myelin is wrapped around brain cell axons. Myelination improves the connectivity of neural tracts by insulating the axon thereby greatly speeding up the communication between cells, allowing the brain to process information more efficiently and reliably. See Goldberg, *supra*, at 144. In a study of minors ages 5-17, white matter within the prefrontal area of the frontal lobes steadily increased with age, likely reflecting the advances of myelination. Allan L. Reiss et al., *Brain Development, Gender and IQ in Children: A Volumetric Imaging Study*, 119 *Brain* 1763, 1767-1768 (1996). A longitudinal MRI study at the National Institute of Mental Health documented an increase in white matter continuing through the teenage years to at least age 22. Giedd et al., *supra*, at 861-862.

A recent longitudinal MRI study captured common patterns of development by rescanning the same children and adolescents ages 4 to 21 every two years over the course of a ten-year period. Nitin Gogtay et al., *supra*. Researchers found that the maturation of the brain cortex, or outer layer, followed “regionally relevant milestones in cognitive and functional development,” *id.* At 8177, with “[p]arts of the brain associated with more basic functions matur [ing] early.” *Ibid.* Again, the study confirmed that “[l]ater to mature were areas involved in executive function, attention, and motor coordination (frontal lobes).” *Ibid.*...Emerging from the neuropsychological research is a striking view of the brain and its gradual maturation, in far greater detail than seen before. **Although the precise underlying mechanisms continue to be explored, what is certain is that, in late adolescence, important aspects of brain maturation remain incomplete, particularly those involving the brain’s executive functions.** (Emphasis added) Brief of the American Psychological Association and the Missouri Psychological Association as Amici Curiae Supporting Respondent, at 16-18.

“Adolescents’ cognitive deficiencies are compounded by “deficiencies in adolescents’ social and emotional capability. One group of psychosocial researchers gauging these factors, along with cognitive development, “maturity of judgment,” or “psychological maturity,” as compared to adults’, has been able to draw conclusions about the adolescent in three respects: “responsibility” (including factors such as self-

reliance and independence); “perspective” (which covers the capacity to “consider situations from different viewpoints”); and “temperance” (encompassing the ability “to limit impulsivity”). Thus, **“observed differences in risky decision-making between adolescents and adults” reflect “differences in capabilities, and not simply priorities.”** (emphasis added) *Amici* Brief of the American Medical Association, American Psychiatric Association, American Society for Adolescent Psychiatry, American Academy of Child & Adolescent Psychiatry, American Academy of Psychiatry and the Law, National Association of Social Workers, Missouri Chapter of the National Association of Social Workers, and National Mental Health Association, 12-13, submitted in *Roper v. Simmons*, 543 U.S. 551, 543 U.S. 551, 125 S.Ct. 1183 (2005) The *Amici* Brief, went on to note that “Researchers have found that the deficiencies in the adolescent mind and emotional and social development are especially pronounced when other factors-such as stress, emotions, and peer pressure—enter the equation. These factors affect everyone’s cognitive functioning, but they operate on the adolescent mind differently and with special force.” *Id.* These scientific findings are relevant to the discussion below regarding the legislative intent under the Oklahoma Children and Juvenile Code.

The statutes at issue fall under 10A, Article 2 of the Oklahoma Children and Juvenile Code. The legislative intent of Article 2 was revised effective November 1st, 2013 and provides that the laws relating to juveniles, which would include the Youthful Offender Act, “be liberally construed, to the end that its purpose may be carried out.” Said purpose is defined as “to promote the public safety and reduce juvenile delinquency” through “means that are fair and just,” that:

1. Recognize the unique characteristics and needs of juveniles;

2. Give juveniles access to opportunities for personal and social growth;
3. Maintain the integrity of substantive law prohibiting certain behavior and developing individual responsibility for lawful behavior;
4. Provide a system relying upon individualized treatment and best practice for the rehabilitation and reintegration of juvenile delinquents into society;
5. Preserve and strengthen family ties whenever possible, including improvement of home environment;
6. Remove a juvenile from the custody of parents if the welfare and safety of the juvenile or the protection of the public would otherwise be endangered;
7. Secure for any juvenile removed from the custody of parents the necessary treatment, care, guidance and discipline to assist the juvenile in becoming a responsible and productive member of society; and
8. Provide procedures through which the provisions of the law are executed and enforced and which will assure the parties fair hearings at which their rights as citizens are recognized and protected.

10A O.S. §2-1-102

To that end, 10A O.S.2016 §2-2-401.1 et seq. will establish competency proceedings in actions that fall under the Oklahoma Juvenile Code. Effective January 1st, 2016, juvenile courts will be required, when the issue is properly raised, to consider developmental disabilities, developmental immaturity, intellectual disabilities and mental illness in determining whether a child is competent to have delinquency proceedings pursued at all. These mental health issues will bar a prosecution for a petit larceny charge in a therapeutic court, so it defies logic that a statute that mandates an arbitrary classification of that same child as an adult, regardless of the nature of the offense or unique needs of that child, still has a place in a modern proceeding.

Finally, 10A O.S.2011 §2-5-205(B) itself conflicts with the legislative intent of the Youthful Offender Act as found in 10A O.S. §2-5-202(B):

It is the purpose of the Youthful Offender Act to better ensure the public safety by holding youths accountable for the commission of serious crimes, while affording courts methods of rehabilitation for *those youths the courts determine, at their discretion, may be amenable to such methods*. It is the further purpose of the Youthful Offender Act to allow those youthful offenders whom the courts find to be amenable to rehabilitation by the methods prescribed in the Youthful Offender Act to be placed in the custody or under the supervision of the Office of Juvenile Affairs for the purpose of accessing the rehabilitative programs provided by that Office.

(emphasis added).

An arbitrary exclusion from a Juvenile Code action simply no longer comports with more recent legislation and recognition of evolving standards of humane justice by the courts. Children are not miniature adults. *Eddings v. Oklahoma*, 455 U.S., at 115–116, 102 S.Ct. 869, *cited in J.D.B. v. N. Carolina*, 131 S. Ct. 2394, 2397, 180 L. Ed. 2d 310 (2011). Merely allowing a child charged with murder in the first degree “all the statutory rights and protections of an adult accused of a crime” per 10A O.S.2011 §2-5-205(B) is woefully inadequate and represents a throwback to retribution over rehabilitation.

The Oklahoma Supreme Court has stated that the purpose of a juvenile system is to make good citizens of potentially bad ones. *Killian v. Burnham*, 1942 OK 294, 130 P.2d 538. Ergo, this court should not ascertain the meaning of a statute by its words alone, but should take all the provisions and read them as a whole so that the remedial purposes of a law may be preserved. *Melton v. Quality Homes*, 1957 OK 77, 312 P.2d 476. And applying the true purposes of the modern Oklahoma Juvenile Code requires that a court at least have the opportunity to consider a motion for certification as a

Youthful Offender or a Juvenile. As Justice Stevens noted in his concurring opinion in *Roper v. Simmons*, *supra*: “*If the meaning of [the Eighth] Amendment had been frozen when it was originally drafted, it would impose no impediment to the execution of 7-year-old children today. See Stanford v. Kentucky*, 492 U.S. 361, 368, 106 L. Ed. 2d 306, 109 S. Ct. 2969 (1989) (describing the common law at the time of the Amendment's adoption).” (*Roper v. Simmons*, *supra*, 543 U.S. at 587 [*emphasis added*].) Likewise, this Court should consider the recent re-evaluations of a child’s place in a criminal setting found in Supreme Court decisions as well as recent amendments to the Oklahoma Juvenile Code and the renewed focus on therapeutic jurisprudence for minor offenders in determining the applicability of mandatory adult consequences for *any* child, particularly in the absence of judicial review. Anger against the alleged offense is no longer recognized as grounds to abandon the rehabilitative processes of the juvenile court. The gravity of the alleged offense may be a factor, but it is hardly the *only* factor.

PROPOSITION 3: MOTION TO STAY PROCEEDINGS


ARGUMENT AND AUTHORITIES

Regardless of this Court’s ruling on Propositions 1 and 2, a stay of the proceedings in this case is necessary to enable counsel for Petitioner and the State to conduct the proper appellate processes and to address all issues raised in this Motion. Should this Motion be sustained, 22 O.S.2011 § 1053.1 provides for an automatic appeal. Should the motion be denied, the Defendant will request relief by either the Oklahoma Court of Criminal Appeals pursuant to 22 O.S.2011 §1051 or federal review (potentially in the form of a petition for certiorari to the United States Supreme Court) on the Constitutional issues (*see Bell v. Hood*, 327 U.S. 678 at 681, 66 S.Ct. 773 at 775, 90

L.Ed. 939). For these reasons, a stay of proceedings is necessary and proper in the interests of justice.

WHEREFORE, Michael John Bever seeks an order declaring 10A O.S.2011 §2-5-205(B) unconstitutional as violative of the Fifth, Eighth and Fourteenth Amendments of the Constitution of the United States. Further, the child requests a hearing pursuant to 10A O.S.2011 §2-5-206(F)(1) to present evidence that he should be certified as a juvenile delinquent or Youthful Offender. Finally, the child requests a stay of proceedings pending appellate review, together with any other relief deemed appropriate by this Court.

Respectfully submitted,



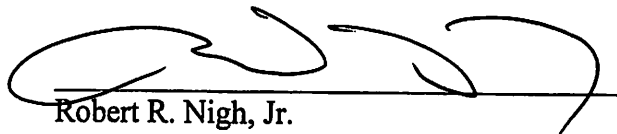
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CERTIFICATE OF MAILING

I hereby certify that on this 1 day of ^{October}~~September~~, 2015 a true and correct copy of the above and foregoing document was mailed and/or send via facsimile to the Tulsa County District Attorney's office.



Robert R. Nigh, Jr.