No. 24-

IN THE

Supreme Court of the United States

QUIOTIS C., JR.,

Petitioner,

v.

STATE OF NEBRASKA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEBRASKA APPELLATE COURT

PETITION FOR A WRIT OF CERTIORARI

TIMOTHY L. ASHFORD
Counsel of Record
TIMOTHY L. ASHFORD PC LLO
1603 Farnam Street
P.O. Box 386
Omaha, Nebraska 68101
(402) 660-5544
tash178346@aol.com

Counsel for Petitioner

117107

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether all juveniles are guaranteed the Sixth Amendment right to a jury trial in the Constitution regardless of their geographic location when the prosecutor can unilaterally deny the juvenile a jury trial by filing felony criminal charges in juvenile court to intentionally deny the juvenile the Sixth Amendment right to a jury trial when the juvenile has a strong defense or the prosecutor has a weak case.

2. Whether the Constitution guarantees all juveniles and this African American juvenile, who was intentionally denied his *Batson* and Sixth Amendment right to a jury trial because the prosecutor unilaterally filed the case in juvenile court, are guaranteed their Sixth Amendment right to a jury trial in either juvenile court or adult court because after the case was filed the prosecutor received evidence that the juvenile would be acquitted and was acquitted of manslaughter because of self defense so the prosecutor, six months after the manslaughter case was filed, added additional charges upon which the juvenile was subsequently convicted in a bench trial in juvenile court based upon the contradictory testimony of the state witnesses which was not beyond a reasonable doubt.

3. Whether the Sixth Amendment right to a jury trial and *Batson*, which is mandatory, guarantees African Americans juveniles in the U.S. a jury trial which does not purposely "exclude members of his own race" from the fact-finding decision in a juvenile bench trial.

4. Whether the Sixth Amendment right to a jury trial applies to all juveniles in the U.S., when the juvenile is charged with a felony crime because the prosecutor has concurrent jurisdiction to deny a jury trial by filing the case in juvenile court instead of adult court where the juvenile is guaranteed a jury trial for serious felony charges.

5. Whether the Sixth Amendment right to a juvenile jury trial when they are charged with a felony applies to all juveniles in the same manner the constitutional criminal rights apply to all juveniles to remain silent in *Miranda*, the right to an attorney in *Gideon* and proof beyond a reasonable doubt in *Winship* which applies to all juveniles in the U.S.

6. Whether *Neb. Rev. Stat. § 43-279(1)*, which denies juveniles a jury trial, is unconstitutional because it violates the Nebraska Constitution 1-6, the U.S. Constitution, the Fifth Amendment, the Sixth Amendment, Eighth Amendment, Fourteenth Amendment, Equal Protection of the Law, Due Process and *Batson v. Kentucky* and was timely asserted by the juvenile.

7. Whether the Nebraska structural juvenile court system which denies jury trials to an African American Juvenile is unconstitutional because it excludes the jury by allowing an all-white court system of a prosecutor, a juvenile court judge and a Nebraska Supreme Court which excludes blacks and black jurors from the process in the fact-finding decision of his guilt beyond a reasonable doubt of the charges.

8. Whether any rational trier of fact could have found beyond a reasonable doubt and not by the preponderance of the evidence the essential elements of the crime of Tampering, because the juvenile did not hide or destroy the gun, and Minor in Possession, because the juvenile did not possess the gun prior to the self defense shooting, based upon the contradictory testimony of an eight year old white witness and a 63 year old white witness for the state who the judge ruled credible and the uncontradicted testimony of the three black defense witnesses for the juvenile who were not ruled credible.

9. Whether the court's refusal to cite, mention or refer to relevant witnesses, U.S. Supreme court case law and relevant Nebraska Statutes is unconstitutional and violates the juvenile's constitutional rights.

10. Whether the codification of the Fifth, Sixth, Eighth, Fourteenth and Sixth Amendment right to a jury trial in every state constitution in the U.S. should grant every juvenile in the U.S. a Sixth Amendment right to a petit juvenile jury trial in every state in the U.S.

11. Whether the constitutional rights of the juvenile were violated because the conviction was clear error, the evidence was insufficient to convict the juvenile and the constitutional guarantees of a jury trial and the incidents thereto are applicable to a juvenile proceeding.

RELATED PROCEEDINGS

IN RE: Interest of Quiotis C., Jr. In the Separate Juvenile Court for Douglas County, Nebraska JV 22 1132 (June 8, 2023)

State v. Quiotis C., Jr., --- N.W.3d ----32 Neb. App. 932 (June 4, 2024) (WL 2821617)

State v. Quiotis C., Jr., --- N.W.3d ----32 Neb. App. 932 (June 4, 2024) (WL 2821617)

(The Nebraska Supreme court opinion denying petition for further review August 29, 2024 is not reported)

TABLE OF CONTENTS

Table of Contents

Page

Table of Contents

Page

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Cited Authorities

Page

Constitutional Provisions

Statutes

PETITION FOR A WRIT OF CERTIORARI

Petitioner Quiotis C., Jr. a juvenile, respectfully petitions for a writ of certiorari to review the judgment of the Nebraska Supreme Court and the opinion of the Nebraska Court of Appeals in this case.

DECISIONS BELOW

On August 29, 2024, the Nebraska Supreme Court text order denied the Petition for Further Review *State v. Quiotis C., Jr., --- N.W.3d ----32 Neb. App. 932* (June 4, 2024) (WL 2821617) in case number A-24-495 and this is not reported.

The opinion of the Nebraska Appellate Court case A 23 495 is reported at *State v. Quiotis C., Jr., --- N.W.3d ----32 Neb. App. 932 (June 4, 2024)* (WL 2821617). On July 24, 2024 the Nebraska Court of Appeals text order Motion of Petitioner for rehearing was overruled.

The juvenile court's decision was issued on June 8, 2023 In the Separate Juvenile Court for Douglas County, Nebraska in the juvenile court bench trial in Quiotis C., Jr. case number JV 22 1132.

JURISDICTION

The judgment of the Nebraska Supreme Court was issued on August 29, 2024 in A-23-000495. The jurisdiction of this Court is invoked under *28 U.S.C. § 1257*. The statute of *28 U.S.C. § 2403(b)* applies and Petitioner's Brief shall be served on the Attorney General of Nebraska.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment provides: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . nor be deprived of life, liberty, or property, without due process of law." *U.S. Const. amend. V.*

The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." *U.S. Const. amend. VI.*

The Seventh Amendment: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Eighth Amendment: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Fourteenth Amendment Section 1: " . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

INTRODUCTION

The Prosecutors, and not the states, make the unilateral decision in filing each juvenile case to intentionally deny juveniles their Sixth Amendment right to a jury trial by intentionally filing the charges, which in this case was Manslaughter, in juvenile court in states such as Nebraska which automatically deny juveniles a right to a jury trial because the juvenile has a strong self defense argument.

This case presents a critically important question of constitutional law with only one answer- that all juveniles in the U.S. should be granted a Sixth Amendment right to a jury trial and *McKeiver* should be overturned.

The Sixth Amendments grants "a jury trial" to anyone charged with a crime and they must be "found guilty beyond a reasonable doubt," instead of the "preponderance of evidence standard" oftentimes used in Nebraska juvenile court bench trials. *DeBacker v. Brainard, 90 S.Ct. 163 (1969); In the Matter of Samuel Winship, 90 S.Ct. 1068 (1970).*

In this case, the court of appeals and the Nebraska Supreme Court denied Petitioner's constitutional right to a jury trial based upon *McKeiver.*

The denial of the right to a juvenile jury trial has been repeated in case after case across the nation for decades—despite the state's acknowledgment in this case and other cases that the Juvenile has a Sixth Amendment right to a jury which is codified in their state statute and juries should decide factfinding questions.

The state courts have made it clear that they do not intend to grant all juvenile's a jury trial in serious felonies without this Court's direction, intervention and overturning of *McKeiver*. In the Interest of: *E.M.L v. Juvenile Officer, 671 S.W.3d 853 (2023)* (Juvenile not entitled in juvenile court to a first-degree murder and armed criminal jury trial under the Missouri and U.S. Constitution.) Different states have different rules allowing or denying the juvenile the right to a jury trial which creates chaos in the judicial system and the constitutional rights for some juveniles and not other juveniles.

The unwarranted disparities of the *McKeiver* decision and the denials of the Sixth Amendment right to a petit juvenile jury trial warrants this Court's review which has resulted in disorder, confusion, chaos and unfairness to juveniles throughout the nation-especially in this case.

The state courts refuse to accord juveniles their constitutional right to a jury because it is much easier to convict a juvenile in a juvenile bench trial if they do not have a jury trial based upon a preponderance of the evidence standard which was done in this case.

Only this Court can establish national case law on this important question of constitutional law by overturning *McKeiver* and granting the Sixth Amendment right to a petit juvenile trial for all juveniles in the U.S.

The Court should grant review to address this Sixth Amendment issue.

In our case, the prosecutor filed manslaughter charges in juvenile court in order to avoid a jury trial

because the juvenile had a strong self-defense argument to Manslaughter and he was acquitted of Manslaughter in the bench trial. After the prosecutor knew based upon the testimony in the depositions, which are allowed in criminal cases in Nebraska, which were taken in February 2023 six months after the September 7, 2022 filing of the Manslaughter charges, that the juvenile would be acquitted of the Manslaughter and Use of a Weapon charges in a bench trial to the juvenile judge, the prosecutor amended the charges on March 6, 2023 to add Tampering and Minor in Possession. The juvenile objected to the amended charges of Tampering and Minor in Possession added March 6, 2023 but it was granted on March 8, 2023.

The Douglas County Prosecutor filed the Manslaughter and Use of a Weapon charges in juvenile court, where the juvenile was automatically denied a jury trial, to intentionally deny this juvenile a jury trial because the juvenile had a strong self defense case.

The court decision was based upon the two white witnesses' contradictory testimony which the white judge ruled was credible. The judge ruled the uncontradicted testimony of the three black witnesses who testified for the defense that the juvenile did not have a gun prior to the shooting was not credible without any judicial explanation.

The judge ignored and the appellate courts ignored the credible testimony of the two white defense witnesses on the Minor in Possession and the two Omaha Police Officers who testified the elements of Tampering were not met beyond a reasonable doubt in this adjudication because the gun was not hidden or destroyed.

The juvenile court granted and allowed a preliminary hearing but not a jury trial.

The trial began on May 9, 2023 and ended on June 8, 2023. The juvenile was acquitted of the manslaughter and use of a weapon charges which were filed September 7, 2022 but was convicted of the charges of Tampering and Minor in Possession which were found to be true.

The courts ignored *Batson v. Kentucky* and other U.S. Supreme Court case law, Nebraska Case law, Nebraska Statutes, the justification statute and the testimony of the seven defense witnesses in rendering the opinion.

STATEMENT

On September 6, 2022, African American Juvenile Petitioner Quiotis C. Jr. was charged in juvenile court in the shooting death of an individual Mr. Parker in Count I *Neb. Rev. Stat. § 28-305* Manslaughter and Count II *Neb. Rev. Stat. § 28-1205* Use of a Weapon to Commit a Felony.

On September 7, 2022, the Douglas County Prosecutor intentionally and unilaterally decided to file the manslaughter charge in juvenile court to automatically deny the Petitioner his Sixth Amendment right to a jury trial instead of filing the charge in District Court (Adult) which guarantees Petitioner a Sixth Amendment *Batson* right to a jury trial "which does not purposely exclude members of his own race" because the juvenile had a strong self defense argument to Manslaughter and Use of a Weapon of which he was acquitted. (T1).

Neb. Rev. Stat. § 43-246.01(3)(c) (Reissue 2016) grants concurrent jurisdiction when a juvenile is fourteen years

of age for the Prosecutor to unilaterally and intentionally decide to file the alleged Manslaughter and Use of a Weapon criminal offenses punishable as a Class II or IIA felony in district court which automatically grants a jury trial or juvenile court which automatically denies a juvenile a jury trial pursuant to *Neb. Rev. Stat. § 43-279(1).*

Only the Prosecutor has the power to remove the case from the juvenile court to district court for a jury trial. *Neb. Rev. Stat. § 43-276(1).*

After the manslaughter charge was filed September 7, 2022 and only after the prosecutor knew based upon the testimony in the depositions which were completed on February 21, 2023, on March 6, 2023 the Respondent Prosecutor clearly understood the state could not convict Petitioner on the current Manslaughter and Use of a Weapon charges so Respondent filed a Motion for Leave to Amend the Complaint to add the charges of Count III *Neb. Rev. Stat. § 28-922* Tampering and Count IV *Neb. Rev. Stat. § 28-1204* Minor in Possession which was granted on March 8, 2023 over the objection of the Petitioner.

The Nebraska Appellate Court summarizes the facts in their opinion:

> Robert Stolinski hosted a pool party at his residence on September 5, 2022. Among the group of attendees were Mister Parker; Brandon Butler; Quiotis C., Sr. (also known as Tiger); Tiger's 14-year-old son, Quiotis C., Jr. (Quiotis); and Quiotis' 8-year-old cousin, R.S. *State v. Quiotis C., Jr., --- N.W.3d ----32 Neb. App. 932 (2024).*

PARKER AND TIGER'S ALTERCATION

Tiger, Quiotis, and R.S. were outside the Stolinski residence when Parker went to get money from his car. While walking back to the residence, Parker and Tiger exchanged words. Parker punched Tiger in the face, causing him to collapse and knocking him unconscious. *Id. at 935*.

Parker continued to approach Tiger after rendering him unconscious. At some point during the altercation, Quiotis gained possession of a handgun. Witness testimony reported hearing four shots that were fired. According to Quiotis, the first two shots were warning shots; the other two shots struck Parker, one in the shoulder and one in the back. The gunshot wounds caused Parker to retreat to the Stolinski residence where partygoers called the 911 emergency dispatch service. Parker later died. Quiotis fled the scene. *Id. at 935*.

A neighbor, Lawrence Summers, also called the 911 dispatch service to report a disturbance shortly after he heard gunshots nearby. He reported to the 911 dispatcher that he saw a "kid" hiding in the field along the ridgeline. He described the kid as running south on the street that ran the length of the field. Summers relayed that the kid had "something in his hand but it didn't look like a gun or anything." Summers would later identify Quiotis as the kid he witnessed in the field. *Id. at 935*.

Officers arrested both Tiger and Quiotis. **Tiger and Quiotis were transported to police headquarters where they both invoked their right to remain silent and their right to counsel.** Photographs were taken of Tiger, who

had a swollen lip and discoloration on the left side of his face. Tiger testified at trial that he sustained a severe concussion and a black eye as a result of the altercation. Quiotis had no physical injuries. *Id. at 935*.

Summers DIRECTED them (police) to the area where he had seen Quiotis the day before. Through their search, officers were able to locate five pieces of a handgun, all within 10 feet of one another. *Id. at 935*.

On September 7, 2022, the State filed a petition in the separate juvenile court of Douglas County, alleging under count I that Quiotis had committed manslaughter and under count II that Quiotis had used a firearm to commit a felony. At the detention hearing, Quiotis entered a plea of denial to both counts, and the court ordered that Quiotis be detained in the Douglas County Youth Center until further order. *Id. at 935*.

After the depositions were taken in February, "On March 6, 2023, the State filed an amended petition. In addition to the original two counts of manslaughter and use of a deadly weapon (firearm) to commit a felony, it added two additional counts: count III, tampering with physical evidence, and count IV, possession of a handgun by a minor." *Id. at 935*.

(b) Motion for Juvenile Jury Trial and Motion to Declare Statutes Unconstitutional.

On April 12, 2023, Quiotis filed numerous motions, including a motion for a juvenile jury trial, and a motion to declare numerous statutes unconstitutional, specifically, *Neb. Rev. Stat. §§ 28-305* (Reissue 2016), *28-922* (Cum.

Supp. 2022), *28-1204* (Reissue 2016), and *28-1205* (Reissue 2016). He subsequently filed a motion to dismiss/demurrer. *Id. at 937.* A request for bond review was also filed. *Id. at 937.*

The court addressed all motions at one hearing and, in a written order, denied all of them. It denied his motion for a jury trial pursuant to *Neb. Rev. Stat. § 43-279(1)* (Reissue 2016), which provides that "[t]he adjudication portion of hearings shall be conducted before the court without a jury, applying the customary rules of evidence in use in trials without a jury." It found the motion to declare statutes unconstitutional was untimely because Quiotis entered denials to both the petition and amended petition prior to filing the motion, thereby waiving all defects. *Id. at 932*.

THE TWO WHITE WITNESSES FOR THE STATE HAD CONTRADICTORY STORIES REGARDING THE EXISTENCE OF A FANNY PACK IN WHICH THE JUVENILE ALLEGEDLY POSSESSED WHICH CONTAINED A GUN BEFORE THE SHOOTING WHICH SUSTAINED THE MINOR IN POSSESSION CHARGE

The eight-year-old white witness for the state: R.S. first testified that Quiotis picked up the gun after it fell out of Tiger's pocket when he collapsed from the punch. R.S. testified that he had not seen the handgun before. The State then reminded R.S. that at his forensic interview, he told the interviewer that Quiotis had the gun in a fanny pack that he was wearing draped across his shoulder. R.S. confirmed that earlier in the day on September 5, 2022, he saw the handle of a pistol in Quiotis' fanny pack while they were inside the Stolinski residence. R.S. admitted

he saw only a portion of the handgun, as it was inside the fanny pack that Quiotis was wearing. *In re Quiotis C., — N.W.3d — 32 Neb. App. 932, 938 (2024).*

The adjudication testimony is different than the reported opinion as stated:

R.S. initially remember talking to the lady at Project Harmony and he does not remember stating something about a fanny pack until the prosecutor telling him about a fanny pack. (364: 4-15) Q. Okay. And you had mentioned something—do you remember talking to the lady at Project Harmony? (364:5) A. Yes. (364:6). And you said something about a fanny pack? (364:7) Do you remember that? (364:8)A. No. (364:9).

The prosecutor asked R.S. in the adjudication and he testified to the court that the fanny pack fell from the Dad (Tiger) as he fell and R.S. testified as follows from the adjudication transcript:

R.S. testified that: Q. And you're pointing to your shoulder; so it was one of those kinds of fanny packs. (365:1) Q. Okay. And is that where the gun was? (365:4) A. No. It fell out of, like, Tiger's, like, pocket when the guy knocked him out. Because, like, he fell and then the gun fell out. (365:5-7) Q. Okay. And where did you get that information? (365:8) COURT : "Who told you that?" (365:14) THE WITNESS (R.S.): Who told me what? (365:14) Q. Who told you that? (365:16-17) A. I seen it. (365:18).

R.S. then testified that he just saw the handle of it inside the fanny pack earlier, but he only saw part of it. (373:11-20).

In the adjudication, R.S. testified that he did not remember the color of the fanny pack, how big was the fanny pack, at what point he saw the gun that day, and he did not notice what was in the fanny pack when he was in the room with Quiotis playing before the shooting (428:2-3) (428:4) (428:5) (428:6) Q. (428:7) (430:24) (430:25) R.S. didn't tell anybody about the gun before the shooting, (431:1-2) (431:3) (431:4) R.S. did not tell anyone about the fanny pack after the shooting. (431:5-7) (431:7-8) (431:9) (431:10).

On cross-examination, R.S. admitted that in his deposition, he testified that he did not see Quiotis with a gun prior to the shooting. R.S. maintained at trial, however, that he did see Quiotis with the gun prior to the shooting, and Tiger did not have the gun. R.S. testified he was telling the truth at trial despite his prior inconsistent statement in his deposition. *Id. at 938*.

State witness Lawrence Summers could not tell what was in Quiotis hands in the bench trial. (474:1-14)(475:1-18) (514:2-17) (518:20-25) (519:1-12) (525:2-25) **(526:20-22)** (531:14-16) (E125)(E126).

> Q. Now, did you tell the 911 operator on September 5, 2022, that the juvenile running did have something in his hands; it did not appear to be a gun?
>
> A. Yes.
>
> Q. And that's different than your prior testimony in this court, correct?

> A. Yeah. I guess I said it was a bag before, yeah.
>
> Q. But you said in this court it was a bag, but then you told them it appeared to be something in the—in his hands, correct?
>
> A. Yes. (525:10-20).

State witness Lawrence Summers was asked about the fanny pack during the trial, "You didn't tell them about the fanny pack in the 911 call? (526:20) A. I guess not. I guess I didn't, no. (526:22) Did you at any point tell anyone when you contacted them during the time of September 5 to May the 9th (trial)—I'm talking about police officers or officials—did you tell anyone to look for a fanny pack during that time (533:22-25) period? (534:1) A. No. (534:1-2)."

The court first writes in their opinion that "Summers **DIRECTED** them (police) to the area where he had seen Quiotis the day before. Through their search, officers were able to locate five pieces of a handgun, all within 10 feet of one another." *Id. at 938*.

Without explanation or commenting on the evidence of the trained Omaha police officers the court embellishes the Summers testimony by changing the word DIRECT to REDIRECT in the opinion: The difficulty in finding the pieces of the handgun is highlighted by the fact that officers had to be **REDIRECTED** by Summers to the proper area to search. Quiotis did not merely abandon the handgun; he removed it from the crime scene, altered its appearance, and scattered the pieces underneath 10 to 15 feet of tree line. *Id. at 950*.

No testimony or evidence supports the court's assertion that the officers had difficulty in finding the pieces of the gun. *Id. at 950.* **No testimony or evidence supports the court opinion that Summers REDIRECTED the officers during their search.**

THE COURT IGNORED THE THREE BLACK WITNESSES AND TWO WHITE WITNESSES FOR THE DEFENSE REGARDING THE EXISTENCE OF A FANNY PACK WHICH THE JUVENILE ALLEGEDLY POSSESSED WHICH CONTAINED A GUN BEFORE THE SHOOTING WHICH SUSTAINED THE MINOR IN POSSESSION CHARGE.

The court ignored the three Black witnesses, the two white witness and the court omitted key important relevant facts from the adjudication in their opinion as follows:

Quiotis testified the firearm a Glock 22 .40 cal. fell from his waist (dad) when he (dad) was punched. (903:1-2) Quiotis testified that Mr. Parker was approximately 6' and definitely over 200 pounds. (911:18-22) Quiotis testified there's no way that I can manhandle a grown man, in general. (911:23) R.S. was maybe 70 pounds and his dad was about 180 pounds, 190 pounds. (912:15-18).

Quiotis thought that, by the end of the day, he would be back at home and find out for sure if my dad was still alive and be able to go home to my siblings and dogs because I didn't do anything wrong. (926:8-14) Although Quiotis did not try to hide the gun he could have thrown it into a nearby sewer or bury it. (926:17-19)Q. (926:20-21) **The only reason Quiotis possessed that gun on September 5,**

2022 was to defend his father and the life of his father and R.S. or anyone else in that house. (939: 9-12).

Quiotis had gun training at a gun range. (915:2-6) Quiotis knew how to safely disassemble the gun, and he knew that that gun had no manual safety or any locks on it or anything. So he knew that to disassemble the gun was the best way to make it safe at that time. (1012:4-7).

Quiotis left because he felt it was not safe not to return to the scene of the home after the shooting because he didn't know who was there and if they could have wanted to hurt him. (1011:7-14).

Quiotis Cross, Sr. who is the dad of Quiotis is called Tiger. He testified on that day that he kept a gun in his clothes on his right hip the 22 Glock .40 (450:16-25) He testified that on that day he possessed the gun. (451:2-3) That was his gun. (451: 11-12) He had the gun there. (451:13-14) He was knocked out and when they woke him up, he was looking for his son. (451:15-18) The gun was gone and his son was gone and everybody was gone. (451: 20-21) His son has been familiar with guns since he was nine and he has known how to use a gun when he started at age nine. (456: 9-14).

THE THREE BLACK WITNESSES AND THE ONE WHITE WITNESS WHO TESTIFIED THERE WAS NO FANNY PACK WITH A GUN IN IT WERE NOT DEEMED CREDIBLE.

Jennifer Cross testified that she is his mother, he is 15 and she has two other children. (609:11-13) Quiotis has

gone to the gun range with his father for at least four years. (611: 20-23) Quiotis would shoot at the gun range a few times a month, he is familiar with guns, he knows everything that a person should know about guns, he had to learn gun safety, how to take a gun apart, put it together, and how to clean it.

Cross further testified that on that day, Quiotis had on gray shorts, a dry-fit, he didn't take anything with him and he does not own a fanny pack. (619:17) (619:18-19) She testified that he did not have a fanny pack that day because he had nothing with him that day. (619:20-21) (619:22) He called me that day and he said, "I just shot someone." (621:10-11).

THE COURT OPINION OMITTED TESTIMONY FROM THE WHITE HOME OWNER THAT THE JUVENILE NEVER CARRIED A GUN PRIOR TO THE SHOOTING.

The court erred in their opinion by ignoring the fact the white home owner Robert Stolinski testified Quiotis Sr. has carried guns and he has never seen Petitioner with a gun. (Petitioner Brief P. 31)(419:19-22) (420:2-3).

Stolinski testified that Quiotis' dad also known as Tiger has brought a gun over to his house before but it is not an everyday thing. (419:19-22) Stolinski testified that he has never known the juvenile Quiotis to carry a gun, he has never seen him with a gun and Stolinski testified that during that summer Quiotis pretty much almost lived there at his house and he never had any concern with his kids with Quiotis (420:2-3) (420:4) (420:5-9).

THE TWO CREDIBLE OMAHA POLICE OFFICERS TESTIFIED THE ELEMENTS OF TAMPERING WERE NOT MET BECAUSE THE GUN WAS NOT DESTROYED, MUTILATED, NOT HIDDEN AND "IT IS POSSIBLE" THE JUVENILE DISASSEMBLED THE GUN FOR SAFETY REASONS WHILE RUNNING ACROSS THE FIELD AFTER THE SHOOTING AND NO BAG OR FANNY PACK WAS EVER FOUND AT THE SCENE.

The court should review this case because the Nebraska Appellate Court decision did not cite, mention or refer to the relevant testimony of any of the credible Omaha Police Department Officers.

Omaha Police Officer Detective Michael Young testified for the prosecution that all of the gun items were within ten feet of each other, that kind of general area. (201:21-22) The gun had been dismantled or taken apart and he is familiar with the 22 Glock .40 Caliber. (201:5) (204:24-25) (205:1-3) None of the pieces appeared to be damaged and they used the serial number to trace that to the owner from the Glock 22—from the 22 Glock .40-caliber. (205:4-9) Q. (208:18-21) (208:22).

Young further testified that the gun pieces were found in a straight line, NOTHING WAS HIDDEN and they were all in a straight line. (206:17-19)(206:20-21) The pieces were on top and we didn't have to move anything to see them and the gun could be reassembled because all of the pieces were there. (206:22-23) (207:3)(207:4-5) The gun was later reassembled to be test-fired afterwards the way the manufacturer had intended it to be fired when it was reassembled. (207:6-7) (207:8) (207:18-21) (207:22-24).

Young testified when they searched the area that we were able to find all of the pieces of the firearm. (192:13-21).

Young testified they did not find nothing else of evidentiary value other than the five items of the gun found in that area where Mr. Larry Summers took them to look for items. (207:25)(208:1-17) No bag or fanny pack was recovered by the Omaha Police.

Omaha Police Officer Jordan Brandt, who was called by the defense because the prosecution did not call this investigating officer, testified in the bench trial as follows:

Q. Okay. To your knowledge, that gun can be reassembled; is that correct? (653:20-21) A. Yes. (653:22).

Officer Brandt further testified THE GUN WAS NOT DESTROYED OR MUTILATED IN ANY WAY. (653:23-24) (653:23-25) He testified individuals can employ self-defense and defense of third persons by shooting the aggressor in the back. (699:6-11) The person shooting makes the observation of what deadly force is at that time that they are shooting. (709:2-3) (743:12-16) An aggressor, like Mr. Parker, can charge or attack an individual after he's been shot. (714:2-3) (744:5-8) A gun can be disassembled for safety reasons and it could be possible that it was done in this case. (729:8-13)(758:15-18).

Omaha Police Officer Brandt also testified to that which follows: The gun was disassembled, it was "field stripped" which is it's broken down. (653:10-12) (653:12-13) (653:10-14) (653:15-17) It's broken down into

the main components of the lower receiver, the upper receiver, the barrel, the recoil spring and the magazine. (653:15-17) (653:18) The magazine was broken down and THE GUN CAN BE REASSEMBLED. (653:18) (653:19) (653:20-21) (653:22).

THE JUVENILE QUIOTIS TESTIFIED THAT HE ABANDONED THE GUN.

Quiotis crossed the street of 72nd and then there's a treeline and that's when Quiotis knew that he could not have that firearm anymore because if the cops saw him with it, they would shoot him. (922:16-22) And then, also, Quiotis didn't want anyone that shouldn't be able to use that firearm to be able to use it; so Quiotis disassembled it to make it safe. (922:19-21) And then Quiotis kept running down the treeline and went into the neighborhood—(922:22-23).

Quiotis didn't just take the bullets out of the gun and throw them on the ground because that's a very common firearm, and anyone that doesn't even have too much knowledge on a firearm could easily put a magazine back in that one and use it in a bad way. (924:14-19) Quiotis would be able to reassemble that gun based upon the parts he had. (925:10-12).

Quiotis was asked: Q. Where would you have tossed that gun if you wanted to hide it? (926:15-16) A. I don't really, like, think about hiding guns, but if I was a person trying to hide one, maybe a sewer or burying it. (926:17-19) Q. Were there any sewers, and how many, in that neighborhood, if you know? (926:20-21) A. I'm pretty sure that there is at least one there. I'm pretty sure there's

multiple sewers in that neighborhood that I ran through. (926:22-24) All of the pieces were thrown into the treeline within fifteen square feet. (935:1-10) There is no safety feature mechanism you can use on the Glock to keep—prevent people from firing because anyone can still pick it up and shoot it. (937:12-18).

The gun parts were found in a 15 square feet area because if Quiotis didn't want them to find any of the pieces he would have scattered it farther, thrown it in a sewer or buried it. (1010:15-20) Quiotis felt it was not safe not to return to the home which was the scene of the crime because he didn't know who was there and that they could have wanted to hurt him. (1011:7-14) Quiotis didn't leave the gun in the area or just drop it on the ground because it could be used against his dad or anybody else. (1011:18-25) Quiotis knew how to safely disassemble the gun, and he knew that that gun had no manual safety or any locks on it or anything so he knew that to disassemble the gun was the best way to make it safe at that time. (1012:4-7).

There is no evidence in the record that an official proceeding was pending on September 5 which is an element of Tampering. *Neb. Rev. Stat. § 28-922* Tampering. *Neb. Rev. Stat. § 28-916.01(7) (defines official proceeding)* **(Petitioner Brief p. 28).**

The court opinion stated that "Second, regardless of Quiotis' possession of the fanny pack, Quiotis admits in his brief that he possessed the handgun "to defend his father and the life of his father." Brief for Petitioner at 30. This admission satisfies one of the elements of § 28-1204, that Quiotis possessed a handgun, and his admission at trial that he is under the age of 18 satisfies

the other element. Therefore, Quiotis' arguments fail." ***State v. Quiotis C., Jr., --- N.W.3d ----32 Neb. App. 932, 951 (2024)***. **The judge and the court opinion ignored** ***Neb. Rev. Stat. § 28-1407*** **Justification; choice of evils. (This section reflects the Nebraska Legislature's policy that certain circumstances legally excuse conduct that would otherwise be criminal.** ***State v. Mowell, 267 Neb. 83, 672 N.W.2d 389 (2003).*****) The court erroneously held that the juvenile cannot possess the gun to save his father's life! Petitioner was acquitted of manslaughter and the Petitioner will request the court take judicial notice of the justification statute which allows use of the weapon to save his father's life.** ***Neb. Rev. Stat. § 28-1407.***

Petitioner appealed the denial of the Motion for a Jury Trial which was denied on April 7, 2023. (T201) On April 7, 2023 the Juvenile filed a Notice of Unconstitutionality of Statute *Neb. Rev. Stat. § 43-279* which was ruled untimely. A Motion to Dismiss/Demurrer was filed on the 3rd day of May, 2023. (T230)(259).

On June 8, 2023, the juvenile court judge's finding in the adjudication was that the youth was guilty beyond a reasonable doubt of Count III ***Neb. Rev. Stat. § 28-922*** **Tampering** and Count IV ***Neb. Rev. Stat. § 28-1204*** **Minor in Possession** and those allegations were true. On June 8, 2023 due to insufficient evidence, the Court dismissed Count I ***Neb. Rev. Stat. § 28-305*** **Manslaughter** and Count II ***Neb. Rev. Stat. § 28-1205*** **Use of a Weapon to Commit a Felony** in the Amended Petition because of the use of self-defense and defense of third person by the juvenile Quiotis C.

In the proceedings below when the constitutionality of the statute *Neb. Rev. Stat. § 43-279(1)* was first raised is the court erred in the law on the timeliness of the motions because on September 7, 2022, the juvenile was arraigned on the juvenile Petition to the criminal charges and a detention hearing was held where current Counsel was not the attorney of record. On April 12, 2023, "Quiotis filed numerous motions including a motion for a juvenile jury trial," *Id. at 938*. The court stated "We further note that the juvenile court never addressed the constitutionality of these statutes on the merits because it found the motion challenging them was untimely." *Id. at 943*. As stated in Boche, the Nebraska Supreme Court held: "**We conclude Boche did not waive an as-applied Eighth Amendment challenge to the constitutionality of these statutes by entering a no contest plea to the charge of first degree sexual assault." *State v. Boche, 294 Neb. 912, 920 (2016)*.**

Just as in Boche, the constitutional challenge to the denial of the jury trial *Neb. Rev. Stat. § 43-279(1)* was not directed to the statutes upon which the juvenile was ultimately convicted Tampering and Minor in Possession but was a violation of the constitution and *Batson* because of the denial of a jury trial so the challenge was timely preserved for appeal. Boche *Id. at 920*.

The constitutional rights of the juvenile were violated because the evidence was insufficient to convict the juvenile based upon the contradictory testimony of the two state witnesses.

The constitutional guarantees of a jury trial and the incidents thereto are applicable to a juvenile proceeding

and the doctrine of parens patriae was not properly applied in this case where the prosecutor kept overreaching by bringing charges until he obtained a conviction. The doctrine of parens patriae does not apply when the prosecutor overreaches in the prosecution of the juvenile as was the facts in this case.

REASONS FOR GRANTING THE WRIT

This Court's review is warranted because Petitioner respectfully requests this Court resolve the constitutional conflict that some states grant the Sixth Amendment right to a trial in juvenile court to juveniles and some states, which includes Nebraska, deny the sixth amendment right to juveniles charged with serious felony crimes pursuant to *McKeiver* in which prosecutors can manipulate the denial of a juvenile jury trial by filing the case in juvenile court which automatically denies juveniles a jury trial.

As Justice Gorsuch recently recognized in Erlinger,

> "BY REQUIRING THE EXECUTIVE BRANCH TO PROVE ITS CHARGES TO A UNANIMOUS JURY BEYOND A REASONABLE DOUBT, THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT AND THE SIXTH AMENDMENT SEEK TO MITIGATE THE RISK OF PROSECUTORIAL OVERREACH AND MISCONDUCT, INCLUDING THE PURSUIT OF PRETENDED OFFENSES AND ARBITRARY CONVICTIONS. *Erlinger v. United States*, *144 S.Ct. 1840 (2024)*. JUDGES MAY NOT ASSUME THE

JURY'S FACTFINDING FUNCTION FOR THEMSELVES, LET ALONE PURPORT TO PERFORM IT USING A MERE PREPONDERANCE-OF-THE-EVIDENCE STANDARD. *Id.*

The review by this court is of public importance because the question presented is that all juveniles in the U.S. have a constitutional right to a Sixth Amendment right to a jury trial is nationally important—for juvenile courts, juveniles, the government, and the administration of justice.

Just as the prosecutor has concurrent jurisdiction to file this case in juvenile court to deny this juvenile his Sixth Amendment right to a jury trial because he had a strong self-defense argument, prosecutors in states where juvenile trials are not permitted pursuant to *McKeiver* file cases in juvenile court to obtain a conviction in a bench trial or a plea without a jury trial based solely on the fact-finding of the judge.

The public importance is the majority of states deny juveniles their Sixth Amendment right to a jury trial in states which have concurrent jurisdiction.

PROSECUTORS CONTROL THE FILING OF CRIMINAL CHARGES WHICH CAN DENY THE JUVENILE A JURY TRIAL IN MOST STATES!

The rational trier of fact or any jury would not have found the Tampering and Minor in Possession true beyond a reasonable doubt based upon the testimony and the PROSECUTORIAL OVERREACH AND

MISCONDUCT, INCLUDING THE PURSUIT OF PRETENDED OFFENSES AND THIS ARBITRARY CONVICTION by adding these charges, upon which he was convicted by the judge, after the Prosecutor realized the juvenile would be acquitted of manslaughter.

THE JUDGE AND THE APPELLATE COURT ASSUMED THE JURY'S FACTFINDING FUNCTION FOR THEMSELVES AND PERFORMED IT USING A MERE PREPONDERANCE-OF-THE-EVIDENCE STANDARD. *State v. Quiotis C., Jr., — N.W.3d — 32 Neb. App. 932, 938 (2024).*

The review should occur because the judge and the appellate courts ignored the testimony of the two credible police officers, the two white defense witnesses and the three black witnesses in reaching their preponderance of the evidence conviction.

This case should be reviewed because the Court erred in denying the black juvenile a jury trial because if black adults in Nebraska are guaranteed a jury trial under *Batson* from which members of his race have not been purposely excluded then a black juvenile has a constitutional right to a jury trial under *Batson* from which members of his race have not been purposely excluded for the same serious manslaughter charges as an adult under the Equal Protection of the Law, Due Process and the Fifth, Sixth, Eighth and the Fourteenth Amendment. *Batson v. Kentucky, 106 S.Ct. 1712 (1986).*

Just as a state denies a black defendant equal protection when it puts him on trial before a jury from which members of his race have been purposely excluded

the state denies the black juvenile defendant equal protection when he is charged with the same charges as an adult. *Batson v. Kentucky, 106 S.Ct. 1712 (1986).*

Neb. Rev. Stat. § 43-279(1) is unconstitutional because it violates the Nebraska Constitution 1-6, the U.S. Constitution, the Fifth, Sixth, Eighth and the Fourteenth Amendment, Equal Protection of Law and Due Process.

The Nebraska Constitution guarantees trials to citizens under Section I-6 states Trial by jury. The right of trial by jury shall remain inviolate, . . . *Neb. Const. art. I, sec. 6 (1875)*; Amended 1920, Constitutional Convention, 1919-1920, No. 1. The Sixth Amendment to the U.S. Constitution states, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, . . . The Fourteenth Amendment to the U.S. Constitution guarantees citizens due process of law and the equal protection of the laws." The Nebraska Constitution holds that 'No legislative act shall be held unconstitutional except by the concurrence of five judges' *(Neb. Const. art. V, sec. 2).*

Since *McKeiver* was decided denying juveniles jury trials, *Roe v. Wade, 93 S.Ct. 705 (1973)* has been overturned and more importantly *Batson v. Kentucky* was decided which guarantees African Americans the constitutional right to a jury trial from which members of his race have not been purposely excluded which was denied this African American Juvenile.

Just as the Supreme Court held that mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's

prohibition on cruel and unusual punishments mandatory incarceration of a juvenile without a jury trial which does not purposely exclude members of his own and the denial of a bond violates the Eighth Amendment and the constitution. *Graham v. Florida, 130 S.Ct. 2011 (2010); Miller v. Alabama, 132 S.Ct. 2455 (2012).*

In *Brown*, desegregation was applied to both adults and juveniles. *Brown v. Board of Education, 74 S.Ct. 686 (1954).*

In *Gideon*, *Miranda* and *Winship* both juveniles and adults were granted a constitutional right to a court appointed attorney, the right to remain silent and a conviction beyond a reasonable doubt. *Gideon v. Wainwright, 372 U.S. 335 (1963). In the Matter of Samuel Winship, 90 S.Ct. 1068 (1970); Miranda v. Arizona, 384 U.S. 436 (1966).*

Neb. Rev. Stat. § 43-279(1) is unconstitutional because it violates the Nebraska Constitution, the U.S. Constitution and *Batson*. (1) The adjudication portion of hearings shall be conducted before the court without a jury . . .

The court should review this case because on April 7, 2023, the Juvenile filed a Motion for a Jury Trial which was denied. (T201) (T259) The court erred in denying a Motion to Allow Court Payment for an Expert and a motion for a bond review in violation of U.S. Supreme Court case law. (T211)(T163) *Batson v. Kentucky, 106 S.Ct. 1712 (1986) Ake v. Oklahoma, 105 S.Ct. 1087 (1985). Gideon v. Wainwright, 372 U.S. 335 (1963). Neb. Const. art. I, sec. 9 (1875)* Eighth Amendment Excessive bail shall not be required, I-9. Bail; fines; imprisonment; cruel and unusual punishment. All

persons shall be bailable by sufficient sureties . . . On April 7, 2023 the Juvenile filed a Notice of Unconstitutionality of Statute. A Motion to Dismiss/Demurrer was filed on the 3rd day of May, 2023. The court erred in denying the motions. (T230)(259).

The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial, and, thus, the defining feature of a structural error is that it affects the framework within which the trial proceeds, rather than being simply an error in the trial process itself. *Weaver v. Massachusetts, 137 S.Ct. 1899 (2017).*

The Constitution requires this case is reviewed because "Structural errors," which are subject to automatic reversal on appeal, are errors that affect the entire conduct of the proceeding from beginning to end. *Greer v. United States, 141 S.Ct. 2090 (2021)* Where provision of Bill of Rights of federal Constitution is fundamental and essential to fair trial, it is made obligatory on states by Fourteenth Amendment. *Gideon v. Wainwright, 372 U.S. 335 (1963).*

The court erred and committed constitutional structural error by denying the black juvenile a jury trial by subjecting the black juvenile to an all-white juvenile decision making structure of a white prosecutor and a white judge without the right to a jury trial from which members of his race have not been purposely excluded. *Weaver v. Massachusetts, 137 S.Ct. 1899 (2017).* The court erred in denying the black juvenile a jury trial because the Nebraska structural juvenile court system allows an

all-white court system of a prosecutor, a juvenile court judge and a Nebraska Supreme Court when it denies the Juvenile a jury trial from which members of his race have been purposely excluded which excludes blacks and black jurors from the process in the decision of his guilt beyond a reasonable doubt of the charges and if he was an adult *Batson v. Kentucky* holds a state denies a black defendant equal protection when it puts him on trial before a jury from which members of his race have been purposely excluded. *Batson v. Kentucky, 106 S.Ct. 1712 (1986).*

The court erred in violating the constitutional rights of the juvenile by denying the juvenile a jury trial because the juvenile who has been incarcerated for more than 10 months has the same constitutional right to a jury trial and a bond as adults who face the possibility of incarceration when they are charged with manslaughter and use of a weapon. *Weaver v. Massachusetts, 137 S.Ct. 1899 (2017), Batson v. Kentucky, 106 S.Ct. 1712 (1986).*

This court should review this case because *McKeiver* was wrong when it was decided. The arguments in the dissent in *McKeiver* is the argument for all Juveniles " . . . the Juvenile has been charged with an adult crime the Juvenile should receive a jury trial is the argument of the Juvenile which was stated by:

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK and MR. JUSTICE MARSHALL concur, dissenting. . . . **I believe the guarantees of the Bill of Rights, made applicable to the States by the Fourteenth Amendment, require a jury trial.** . . . The trial judge stated that the hearings were juvenile hearings, not criminal trials. But the issue in each case

was whether *Page 403 U.S. 559* they had violated a state criminal law. The trial judge found in each case that the juvenile had committed "an act for which an adult may be punished by law," and held in each case that the acts of the juvenile violated one of the criminal statutes cited above. **We held in *In Re Gault, 387 U.S. 1, 387 U.S. 13*, that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."**

As MR. JUSTICE BLACK said in *In Re Gault, supra, at 387 U.S. 61* (concurring): "**Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the States by the Fourteenth Amendment. Undoubtedly this would be true of an adult defendant, and it would be a plain denial of equal protection of the laws—an invidious discrimination . . . *Page 403 U.S. 560* to hold that others subject to heavier punishments could, because they are children, be denied these same constitutional safeguards." The Fourteenth Amendment, which makes trial by jury provided in the Sixth Amendment applicable to the States, speaks of denial of rights to "any person," not denial of rights to "any adult person," and we have held, indeed, that, where a juvenile is charged with an act that would constitute a crime if committed by an adult, he is entitled to be tried under a standard of proof beyond a reasonable doubt. *In re Winship, 397 U.S. 358.* *Page 403 U.S. 561* I added that, by reason of the Sixth and Fourteenth Amendments, the juvenile is entitled to a jury trial "as a matter of right where the**

delinquency charged is an offense that, if the person were an adult, would be a crime triable by jury. Such is this case, for behind the facade of delinquency is the crime of forgery." *Id. at 396 U.S. 35*.

The court erred in denying the Juvenile his constitutional right to a jury trial as guaranteed in the U.S. Constitution, the Fourteenth Amendment which requires a trial by jury as provided in the Sixth Amendment which is applicable to the States.

Some constitutional requirements attendant upon state criminal trial have equal application to that part of state juvenile proceeding that is adjudicative in nature, including rights to appropriate notice, to counsel, to confrontation and to cross-examination and the privilege against self-incrimination and the standard of proof beyond reasonable doubt. *McKeiver v. Pennsylvania, 91 S.Ct. 1976 (1971).*

McKeiver was in error in ruling "In adjudicative stage of state juvenile court delinquency proceeding, if, in its wisdom, any state feels jury trial is desirable in all cases, or in certain kinds, there is no impediment to it installing a system embracing that feature but such is the state's **privilege** and not its obligation." *McKeiver v. Pennsylvania, 91 S.Ct. 1976 (1971).*

The case is important to the public because there is a disagreement in the Sixth Amendment right to juvenile jury trials.

The case is important to the public because prosecutors across the nation can manipulate the filing decisions of a

serious felony charge by filing in juvenile court to have the case heard in front of only a juvenile court judge when they believe a jury would acquit a juvenile so that only a juvenile court judge is the factfinding decision maker of the guilt of the juvenile which, in this case, the judge decided the case on a preponderance of the evidence standard.

The Nebraska Supreme Court and the Nebraska Court of Appeals refused to cite, mention or address the decision of the *Batson* Sixth Amendment right to a jury trial although the issue was presented to the courts in the Appellant brief and the Appellee brief.

The public importance of this case is it affects the Sixth Amendment right of African American juveniles to have a jury trial which does not purposely exclude members of their own race pursuant to *Batson v. Kentucky*.

The public importance of this case is it affects the Sixth Amendment right of juveniles to have a jury trial for the same felony charges as adults in juvenile court.

The public importance of this case is just as *Miranda*, *Gideon* and *Winship* apply to juveniles the Sixth Amendment right to a petit jury trial of six members of the community for serious felonies should apply in juvenile court.

Prosecutors should no longer forum shop to decide to deny the juvenile the Sixth Amendment right to a jury trial by filing it in juvenile court to deny the juvenile a petit jury when the prosecutor has a weak case or the juvenile will be acquitted by a jury.

It is easier to convict a juvenile in a bench trial without a jury than it is to convict a juvenile in a petit jury trial of felony charges.

The petit jury is not affiliated with the judicial system and it is free to render a verdict based upon the evidence without the influence of the judicial system.

Since *McKeiver* was decided *Batson* was decided which guarantees African Americans a jury which does not "purposely exclude members of their own race in the decision" of guilt or innocence.

The structural error doctrine occurred, which is in our case a white prosecutor filed the charges in juvenile court pursuant to *Neb. Rev. Stat. § 43-279(1)* to deny the African American a jury trial which does not "purposely exclude members of his own race" pursuant to *Batson*, a white judge decided the adjudication based upon the contradictory improbable testimony of an eight year old white witness, a white Nebraska Appellate Court confirmed the conviction and a white Nebraska Supreme Court confirmed the conviction.

This court must review this case because prosecutors can not manipulate the court filings to deny an adult charged with manslaughter their Sixth Amendment right to a jury trial but the Prosecutor can manipulate the court filings to deny a juvenile his Sixth Amendment right to a jury trial when he has a strong defense by filing it in juvenile court which automatically denies the juvenile a jury trial instead of adult court which guarantees the juvenile a jury trial.

The Nebraska Supreme Court ignored *Batson* and the Sixth Amendment in their opinion.

This court should review the lower court opinion because the Nebraska Supreme Court ignored facts and misstates facts from the record to affirm the juvenile court.

This case should be reviewed because the opinion indicates the court was going to convict the juvenile once it was filed in juvenile court. A jury would have acquitted the juvenile of tampering with evidence based upon the police officer's testimony and minor in possession based upon the fact the weapon was used to save his father's life.

This case should be reviewed because the lower court ignored the definition of official court proceeding, the definition of justification in the Nebraska statutes to affirm the juvenile court, it was clear error, the gun was merely abandoned and the gun was legally possessed for self-defense.

A petit jury pursuant to *Batson* which would not "purposely exclude members of his own race" in the adjudication of the facts in this case would have acquitted the juvenile.

The appellate court erroneously ruled that the 14 year old African American was not justified in possession of gun by stating that the juvenile's picking up the gun and shooting it to defend his father's life was a violation of minor in possession.

The codification of the federal Sixth Amendment right to a jury trial in every state constitution in the U.S. should

grant every juvenile in the U.S. a Sixth Amendment right to a petit juvenile jury trial in every state in the U.S.

The antiquated *McKeiver* language which mandates that the Sixth Amendment right to a juvenile jury trial is a "privilege" to be granted by each state to juveniles and the states can allow an "advisory jury" in juvenile court should become a "real" petit juvenile jury trial because each state has codified the Sixth Amendment in their state constitutions.

Just as this court held *Roe v. Wade* was constitutionally flawed and was overturned by *Dobbs*, *McKeiver* must be overturned by this case because it is antiquated with "privilege" and "advisory juries for juveniles" which it is constitutionally flawed because each state has the Sixth Amendment right to a jury trial codified in their state constitutions which guarantees all citizens "regardless of age" a right to a jury trial.

The court should hear this case because the prosecutor manipulated the filing to automatically deny the juvenile his *Batson* Sixth Amendment right to a jury trial and the evidence was insufficient to sustain the charges in a bench trial before a juvenile court judge.

This case is the vehicle to grant all juveniles in the U.S. their Sixth Amendment right to a jury trial.

The national importance is only this court can close the legal loophole created by *McKeiver* which allows Prosecutors the unilateral decision to deny juveniles their Sixth Amendment Right to a petit juvenile jury trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

TIMOTHY L. ASHFORD
Counsel of Record
TIMOTHY L. ASHFORD PC LLO
1603 Farnam Street
P.O. Box 386
Omaha, Nebraska 68101
(402) 660-5544
tash178346@aol.com

Counsel for Petitioner

APPENDIX

TABLE OF APPENDICES

Page

APPENDIX A — OPINION OF THE NEBRASKA COURT OF APPEALS, FILED JUNE 4, 2024

NEBRASKA COURT OF APPEALS

No. A-23-495

IN RE INTEREST OF QUIOTIS C., JR.,
A CHILD UNDER 18 YEARS OF AGE.
STATE OF NEBRASKA,

Appellee,

v.

QUIOTIS C., JR.,

Appellant.

Filed June 4, 2024

1. **Appeal and Error.** An alleged error must be both specifically assigned and specifically argued in the brief of the party asserting error to be considered by the appellate court.

2. **____.** In appellate proceedings, the examination by the appellate court is confined to questions which have been determined by the trial court.

3. **Courts: Appeal and Error.** An appellate court will not consider an issue on appeal that was not passed upon by the trial court.

4. **Constitutional Law: Criminal Law: Jury Trials.** Both the Nebraska and the U.S. Constitutions mandate a right to a jury trial for criminal trials.

5. **Constitutional Law: Juvenile Courts: Jury Trials.** A jury trial is not required under the U.S. Constitution in a juvenile court's adjudication.

6. **Constitutional Law: Statutes: Juvenile Courts: Jury Trials.** Under Nebraska statutes, a juvenile court proceeding is a civil proceeding, and under the doctrine of parens patriae, the constitutional guarantees of a jury trial and the incidents thereto are not applicable to a juvenile proceeding.

7. **Constitutional Law: Criminal Law.** The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial.

8. **Juvenile Courts: Appeal and Error.** The standard of review for juvenile cases is de novo on the record; however, when evidence is in conflict, the appellate court may give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other.

9. **Witnesses: Evidence: Appeal and Error.** An appellate court will not reevaluate the credibility of witnesses or reweigh testimony but will review the evidence for clear error.

10. **Juvenile Courts: Proof.** When an adjudication is based upon Neb. Rev. Stat. § 43-247(1), (2), (3)(b), or (4) (Reissue 2016), the allegations must be proved beyond a reasonable doubt.

11. **Criminal Law: Evidence: Police Officers and Sheriffs.** The crime of tampering with physical evidence, as defined by Neb. Rev. Stat. § 28-922(1)(a) (Cum. Supp. 2022), does not include mere abandonment of physical evidence in the presence of law enforcement.

12. **Criminal Law: Evidence.** To "conceal" or "remove" physical evidence, in the context of Neb. Rev. Stat. § 28-922(1)(a) (Cum. Supp. 2022), is to act in a way that will prevent the evidence from being disclosed or recognized.

13. **Motions for Mistrial: Prosecuting Attorneys: Waiver: Appeal and Error.** A party who fails to make a timely motion for mistrial based on prosecutorial misconduct waives the right to assert on appeal that the court erred in not declaring a mistrial due to such prosecutorial misconduct.

Appeal from the Separate Juvenile Court of Douglas County: Matthew R. Kahler, Judge. Affirmed.

Pirtle, Chief Judge, and Riedmann and Bishop, Judges.

Riedmann, Judge.

Appendix A

I. INTRODUCTION

This appeal raises the issue of a juvenile's rights when adjudicated in the juvenile court for violation of criminal statutes. At the heart of the juvenile's argument is his contention that he was entitled to a jury trial. He also argues the evidence was insufficient to support his adjudication. Following our review of the record, we affirm.

II. BACKGROUND

Robert Stolinski hosted a pool party at his residence on September 5, 2022. Among the group of attendees were Mister Parker; Brandon Butler; Quiotis C., Sr. (also known as Tiger); Tiger's 14-year-old son, Quiotis C., Jr. (Quiotis); and Quiotis' 8-year-old cousin, R.S.

1. Parker and Tiger's Altercation

Tiger, Quiotis, and R.S. were outside the Stolinski residence when Parker went to get money from his car. While walking back to the residence, Parker and Tiger exchanged words. Parker punched Tiger in the face, causing him to collapse and knocking him unconscious.

Parker continued to approach Tiger after rendering him unconscious. At some point during the altercation, Quiotis gained possession of a handgun. Witness testimony reported hearing four shots that were fired. According to Quiotis, the first two shots were warning shots; the other two shots struck Parker, one in the shoulder and one in

the back. The gunshot wounds caused Parker to retreat to the Stolinski residence where partygoers called the 911 emergency dispatch service. Parker later died. Quiotis fled the scene.

A neighbor, Lawrence Summers, also called the 911 dispatch service to report a disturbance shortly after he heard gunshots nearby. He reported to the 911 dispatcher that he saw a "kid" hiding in the field along the ridgeline. He described the kid as running south on the street that ran the length of the field. Summers relayed that the kid had "something in his hand but it didn't look like a gun or anything." Summers would later identify Quiotis as the kid he witnessed in the field.

Officers arrested both Tiger and Quiotis. Tiger and Quiotis were transported to police headquarters where they both invoked their right to remain silent and their right to counsel. Photographs were taken of Tiger, who had a swollen lip and discoloration on the left side of his face. Tiger testified at trial that he sustained a severe concussion and a black eye as a result of the altercation. Quiotis had no physical injuries.

2. Locating Evidence After Shooting

The day after the shooting, officers fanned out throughout the neighborhood and nearby field to locate additional evidence. Summers directed them to the area where he had seen Quiotis the day before. Through their search, officers were able to locate five pieces of a handgun, all within 10 feet of one another.

Witnesses detailed they heard multiple shots on September 5, 2022, but the physical evidence only evinced two shots were fired. Officers located only one shell casing at the scene. The officer that collected the individual pieces of the firearm from the field tested each piece for fingerprints, then reassembled the handgun. The reassembled handgun was delivered to the forensics investigation unit where it was tested and determined to be functional. Ballistics matched the shell casing to the handgun.

On September 7, 2022, the State filed a petition in the separate juvenile court of Douglas County, alleging under count I that Quiotis had committed manslaughter and under count II that Quiotis had used a firearm to commit a felony. At the detention hearing, Quiotis entered a plea of denial to both counts, and the court ordered that Quiotis be detained in the Douglas County Youth Center until further order.

3. Pretrial Motions

Prior to trial, Quiotis filed a series of motions with the juvenile court. On October 14, 2022, Quiotis filed a motion for request for bond review. The juvenile court denied the motion and instead ordered that Quiotis be released to the custody of juvenile probation once placement at the juvenile justice center was secured. Subsequently, on January 11, 2023, the court entered a release order directing that Quiotis be placed at the Douglas County Youth Center but ordering that he be rescreened for the "HOME Program," and if accepted, to reside in the home of his mother.

On January 16, 2023, Quiotis motioned for placement in the "H.O.M.E. Program." The juvenile court dismissed the motion as moot. It explained it previously ordered the H.O.M.E. Program to screen Quiotis and for Quiotis to be released to the H.O.M.E. Program if he was accepted. Because Quiotis' placement in the H.O.M.E. Program was contingent upon his acceptance into the program and not subject to court order, the court stated it had addressed Quiotis' motion to the fullest extent possible.

On March 6, 2023, the State filed an amended petition. In addition to the original two counts of manslaughter and use of a deadly weapon (firearm) to commit a felony, it added two additional counts: count III, tampering with physical evidence, and count IV, possession of a handgun by a minor.

On March 12, 2023, Quiotis filed a motion to appoint an expert. The juvenile court denied Quiotis' motion. At a preliminary hearing on the amended petition on March 13, Quiotis entered a plea of denial to all four counts.

(a) Amended Plea in Abatement

On March 26, 2023, Quiotis filed an amended plea in abatement. He claimed that he did not have a meaningful preliminary hearing for counts I and II when the juvenile court held the preliminary hearing for counts III and IV. Quiotis also requested to take the depositions of Officer Jordan Brandt and Omaha Police Chief Todd Schmaderer.

The juvenile court denied Quiotis' amended plea in abatement. It explained there is no procedure in the

Nebraska Juvenile Code to allow for a plea in abatement and a plea in abatement "typically involves a review by the District Court of a finding of probable cause by the County Court." It noted that Quiotis had also already entered a plea of denial as to the amended petition on March 13, 2023. It granted Quiotis' request to take the deposition of Brandt but denied his request to depose Schmaderer because he was not listed as a witness and there was no evidence that he was directly involved in any aspect of the investigation for this matter.

(b) Motion for Juvenile Jury Trial and Motion to Declare Statutes Unconstitutional

On April 12, 2023, Quiotis filed numerous motions, including a motion for a juvenile jury trial, a motion to allow court payment for an expert, and a motion to declare numerous statutes unconstitutional, specifically, Neb. Rev. Stat. §§ 28-305 (Reissue 2016), 28-922 (Cum. Supp. 2022), 28-1204 (Reissue 2016), and 28-1205 (Reissue 2016). He subsequently filed a motion to dismiss/demurrer.

The court addressed all motions at one hearing and, in a written order, denied all of them. It denied his motion for a jury trial pursuant to Neb. Rev. Stat. § 43-279(1) (Reissue 2016), which provides that "[t]he adjudication portion of hearings shall be conducted before the court without a jury, applying the customary rules of evidence in use in trials without a jury." It found the motion to declare statutes unconstitutional was untimely because Quiotis entered denials to both the petition and amended petition prior to filing the motion, thereby waiving all defects. It

denied his motion to allow court payment for an expert because it did not contain evidence or argument that Quiotis was indigent and lacked the financial resources to retain an expert. It denied Quiotis' motion to dismiss/demurrer for lack of argument consistent with Neb. Rev. Stat. § 29-1810 (Reissue 2016) and for raising defenses that could be asserted at the adjudication hearing.

4. Adjudication

(a) R.S. and Summers' Testimony

At the adjudication, R.S., who was 9 years old at the time of trial, testified to his memory of the altercation between Parker and Tiger. R.S. testified that Parker punched Tiger and knocked him to the ground. Parker was going to punch Tiger again, but then Quiotis shot Parker. R.S. was sitting on the ground next to Quiotis during the altercation. After the shooting, R.S. ran inside to alert his mother.

R.S. first testified that Quiotis picked up the gun after it fell out of Tiger's pocket when he collapsed from the punch. R.S. testified that he had not seen the handgun before. The State then reminded R.S. that at his forensic interview, he told the interviewer that Quiotis had the gun in a fanny pack that he was wearing draped across his shoulder. R.S. confirmed that earlier in the day on September 5, 2022, he saw the handle of a pistol in Quiotis' fanny pack while they were inside the Stolinski residence. R.S. admitted he saw only a portion of the handgun, as it was inside the fanny pack that Quiotis was wearing.

On cross-examination, R.S. admitted that in his deposition, he testified that he did not see Quiotis with a gun prior to the shooting. R.S. maintained at trial, however, that he did see Quiotis with the gun prior to the shooting, and Tiger did not have the gun. R.S. testified he was telling the truth at trial despite his prior inconsistent statement in his deposition.

Summers also testified about his recollection of the events that occurred on September 5, 2022, and the following day. Summers was asked a variety of questions regarding what he observed in Quiotis' hands when Summers made his 911 call. He first testified that Quiotis was carrying "some kind of bag, a dark-colored backpack or fanny pack or something. It could have been a grocery sack or something. It was kind of a darkcolored bag." He was asked to describe the bag he saw, and he answered that "[i]t had a strap but I couldn't tell if it was a fanny pack or a backpack [or] something."

(b) Quiotis' Recollection of Shooting

Quiotis disputed much of the testimony about his possession of the handgun and the events that followed the shooting. Quiotis testified that he did not own a fanny pack. When he left his house on September 5, 2022, the only thing he took with him was his phone. At the Stolinski residence, Tiger and Quiotis were about to leave when Parker and Tiger got into the altercation. According to Quiotis, when Parker struck Tiger and knocked him unconscious, a handgun fell from Tiger's waist and landed approximately 2 feet from Quiotis. Quiotis disputed that Tiger had been hit only once; instead, Quiotis testified,

"I'm not sure how many times Mister Parker hit my dad, but he definitely hit him more than one time."

Quiotis recalled that he picked up the gun, then yelled, "'Stop.'" Quiotis explained that when Parker did not stop, he fired two warning shots. Because Parker did not seem to notice, Quiotis fired one shot at Parker's back. Parker was on top of Tiger at this point. Quiotis testified the one shot did not seem to affect Parker, so he then fired a second time.

After Parker retreated inside the house, Quiotis checked on Tiger to make sure he was alive. He then called his mother and began to run home, which was not far. Quiotis testified that he feared if the police found him with a handgun, they would shoot him. He did not want to dispose of a functional gun because he did not want another person to find the gun and use it. So Quiotis disassembled the pistol into five pieces and scattered the pieces throughout the tree line, all within 15 feet of each other. When asked what he thought was going to happen, Quiotis responded that he believed he would be home later that night, as he did not think he had done anything wrong.

Quiotis acknowledged that he possessed the gun that night to protect Tiger. He acknowledged he did not tell police about the handgun or where it could be found, despite officers' asking multiple times where he had discarded it.

Quiotis' mother testified that when Quiotis left the house on September 5, 2022, he brought only his phone

with him. She claimed he did not own a fanny pack, much less have one the last time she saw him before the shooting. Butler also testified that on September 5, he never saw Quiotis with any kind of bag.

5. Juvenile Court Adjudication Order

After the adjudication hearing, the juvenile court issued a written order finding that there was insufficient evidence to find that Quiotis violated the statutes for manslaughter and use of a deadly weapon to commit a felony. Because Quiotis raised the affirmative defense of defense of others, the juvenile court found it was the State's burden to show that Quiotis' actions did not fall under the guidelines of Neb. Rev. Stat. §§ 28-1409 and 28-1410 (Reissue 2016). It found the State failed to meet this burden and dismissed the charges for manslaughter and use of a deadly weapon to commit a felony. Because Quiotis was not adjudicated on these charges, we need not discuss them further, or the facts upon which they were based. Rather, we focus our analysis on the two violations found by the juvenile court: tampering with physical evidence and unlawful possession of a handgun.

As it relates to these two violations, the juvenile court found that following the shooting, Quiotis ran from the area, hid, then disassembled the handgun "into several pieces and threw each piece under separate trees." It explained that the evidence showed Quiotis' actions of disassembling the weapon was an attempt to conceal the weapon from discovery and render it unrecognizable as individual parts because he was concerned that he would encounter law enforcement.

The juvenile court ordered that Quiotis undergo a psychological evaluation arranged by juvenile probation, participate in individual therapy, and abide by the rules of his "shelter care placement." It placed him under the supervision of a probation officer subject to the terms and conditions of his probation. It ordered Quiotis to remain in such placement until further order by the juvenile court. Quiotis appeals.

III. ASSIGNMENTS OF ERROR

Quiotis' 25 assignments of error can be grouped into five categories, including the juvenile court erred in (1) denying him a jury trial, (2) denying his numerous pretrial motions, and (3) finding the evidence sufficient to support an adjudication for tampering and minor in possession of a firearm. He also (4) challenges the constitutionality of several statutes and (5) asserts the prosecutor engaged in misconduct.

IV. STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Interest of Zoie H.*, 304 Neb. 868, 937 N.W.2d 801 (2020). When the evidence is in conflict, however, an appellate court may give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other. *In re Interest of Elijahking F.*, 313 Neb. 60, 982 N.W.2d 516 (2022).

Appendix A

V. ANALYSIS

1. Compliance with Appellate Rules

[1] As a preliminary issue, Quiotis' brief fails to comply with the appellate court rules. He assigns that the juvenile court abused its discretion by denying his motion to appoint an expert, granting the State's motion to amend, denying his motion to dismiss/demurrer, denying his motion for placement in the H.O.M.E Program, denying his plea in abatement, denying his subpoena for the Omaha police chief, denying his motion for bond review, and denying his motion for payment for an expert. None of these assignments of error are argued. An alleged error must be both specifically assigned and specifically argued in the brief of the party asserting error to be considered by the appellate court. *State v. Sundquist*, 301 Neb. 1006, 921 N.W.2d 131 (2019). Because his assignment of error related to the denial of his pretrial motions is not argued, we do not review it.

Quiotis asserts a facial and as an applied challenge to the constitutionality of §§ 28-305, 28-922, 28-1204, and 28-1205. The only portion of his brief addressing this assignment of error provides

> The Court erred because [Quiotis] asserts a facial challenge that the statutes are unconstitutional and the statutes as applied to [Quiotis] are unconstitutional because when a criminal-law term is used in the criminal-law statutes . . . that, in and of itself, is a good clue

> that it takes its criminal-law meaning and is not civil.

Brief for appellant at 27. Quiotis does not specifically address why each statute is unconstitutional. As stated above, an alleged error must be both specifically assigned and specifically argued in the brief of the party asserting error to be considered by the appellate court. *State v. Sundquist, supra.* An argument that does little more than restate an assignment of error does not support the assignment, and an appellate court will not address it. *Id.* Here, Quiotis' argument regarding the constitutionality of the criminal statutes does little more than restate his assignment of error. Without analysis, his assigned error evades review.

[2,3] We further note that the juvenile court never addressed the constitutionality of these statutes on the merits because it found the motion challenging them was untimely. In appellate proceedings, the examination by the appellate court is confined to questions which have been determined by the trial court. *Maxwell v. Montey*, 262 Neb. 160, 631 N.W.2d 455 (2001). An appellate court will not consider an issue on appeal that was not passed upon by the trial court. *J.B. Contracting Servs. v. Universal Surety Co.*, 261 Neb. 586, 624 N.W.2d 13 (2001). The Nebraska Supreme Court has held that a constitutional issue not presented to or passed upon by the trial court is not appropriate for consideration on appeal. See *In re Adoption of Luke*, 263 Neb. 365, 640 N.W.2d 374 (2002).

This leaves Quiotis with three assigned errors: The juvenile court erred in denying him a jury trial and

in finding the evidence sufficient to adjudicate him for tampering and being a minor in possession of a firearm, and the prosecutor engaged in misconduct.

2. Right to Jury Trial

Quiotis raises three arguments to support his assignment of error that the juvenile court erred by denying him a jury trial. First, he argues it violates the Nebraska and U.S. Constitutions that mandate the right to a jury trial for criminal proceedings. Second, he argues that § 43-279 is unconstitutional. Finally, he argues that denying him a jury trial is a structural error, which he claims rendered his trial fundamentally unfair. We address each of his arguments separately.

(a) Constitutional Guarantees

[4,5] Both the Nebraska and the U.S. Constitutions mandate a right to a jury trial for criminal trials. See *In re Interest of Zoie H.*, 304 Neb. 868, 937 N.W.2d 801 (2020). In *McKeiver v. Pennsylvania*, 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971), the U.S. Supreme Court held that a jury trial is not constitutionally required in a juvenile court's adjudication. *McKeiver* emphasized that if a state decides to offer jury trials in juvenile adjudications that it would be the state's privilege and not its obligation. After *McKeiver*, a minority of states extended the right to a jury trial in juvenile adjudications if certain circumstances are met. See, e.g., Kan. Stat. Ann. § 38-2357 (2021) (granting juveniles right to request jury trial); Mass. Gen. Laws Ann. ch. 119, § 55A (West 2017) (requiring trial by jury

unless waived); *RLR v. State*, 487 P.2d 27 (Alaska 1971) (holding Alaska constitution guarantees juvenile's right to jury trial). However, Nebraska is not one of those states.

[6] The Nebraska Supreme Court has held that a juvenile court proceeding, under the controlling statute in the State of Nebraska, is a civil proceeding, and under the doctrine of parens patriae, the constitutional guarantees of a jury trial and the incidents thereto are not applicable to a juvenile proceeding. *In re Interest of Zoie H., supra.* Under § 43-279(1), "[t]he adjudication portion of hearings shall be conducted before the court without a jury, applying the customary rules of evidence in use in trials without a jury." A juvenile adjudication does not result in a conviction and sentence; instead, when a juvenile is adjudicated for acts which would constitute a felony, Neb. Rev. Stat. § 43-286 (Cum. Supp. 2020) sets out the dispositional options available to the juvenile court. *In re Interest of Zoie H., supra.* Even when the disposition is similar to that imposed as punishment for a crime, the Supreme Court has not found the disposition to be punishment. *Id.*

Here, Quiotis argues that because a juvenile is charged with a felony, there is no real distinction between charging a defendant criminally and in a juvenile adjudication; rather, the distinction is made purely on the "basis of labels." Brief for appellant at 27. But it has long been held that a juvenile adjudication is not a criminal proceeding, so there is no constitutional right to a jury trial. *In re Interest of Zoie H., supra.* See, also, *McKeiver v. Pennsylvania, supra; McMullen v. Geiger*, 184 Neb. 581, 169 N.W.2d 431

(1969). Furthermore, there are many distinctions between a criminal trial and a juvenile adjudication beyond just labels. For example, juvenile adjudications are civil in nature, and dispositions of juvenile adjudications are not punishment. See *In re Interest of Zoie H., supra.* The purpose of these statutes for juvenile adjudication is the education, treatment, and rehabilitation of the child, rather than retributive punishment, which is why the proceedings are described as civil instead of criminal. *In re Interest of Laurance S.*, 274 Neb. 620, 742 N.W.2d 484 (2007). Quiotis' argument that the denial of a jury trial violates his constitutional rights fails.

(b) Unconstitutionality of § 43-279

Quiotis assigns that § 43-279 is unconstitutional because it violates his constitutional right to a trial by jury under the Nebraska and U.S. Constitutions. However, Quiotis never challenged the constitutionality of this statute in the juvenile court. Although he argued a denial of a jury trial violated his constitutional rights, he did not specifically challenge § 43-279 as unconstitutional, nor did he include it in the list of statutes whose constitutionality he challenged in his motion to declare statutes unconstitutional. Thus, the issue was not presented to the juvenile court and the juvenile court did not address the statute's constitutionality.

When an issue is raised for the first time in an appellate court, it will be disregarded inasmuch as a lower court cannot commit error in resolving an issue never presented and submitted to it for disposition. See, *V.C. v. Casady*,

262 Neb. 714, 634 N.W.2d 798 (2001); *Maxwell v. Montey*, 262 Neb. 160, 631 N.W.2d 455 (2001). Accordingly, we do not consider Quiotis' constitutional challenge to § 43-279.

(c) Structural Error Doctrine

[7] Quiotis' argument that the juvenile court's denial of a jury trial is structural error fails for the same reasons his claim that he has a constitutional right to a jury trial fails. The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. *Weaver v. Massachusetts*, 582 U.S. 286, 137 S. Ct. 1899, 198 L. Ed. 2d 420 (2017). Because the structural error doctrine applies to criminal proceedings and a juvenile adjudication is a civil proceeding, Quiotis' argument is inapplicable. Therefore, the juvenile court did not err by denying Quiotis a jury trial.

3. Sufficiency of Evidence

Quiotis attacks the juvenile court's finding that the evidence was sufficient to find he tampered with evidence and was a minor in possession of a firearm. Within his argument, he attacks both witness credibility and the sufficiency of the underlying facts.

(a) Witness Credibility

Quiotis assigns the juvenile court was clearly erroneous in finding R.S.' and Summers' testimony credible. He argues that R.S. and Summers did not tell

"officials that a fanny pack existed after the incident." Brief for appellant at 29. He contends that Quiotis' mother, Butler, and Quiotis all testified that Quiotis did not have a fanny pack that day. He concludes that R.S. and Summers were impeached, so the juvenile court clearly erred in finding their testimony credible.

[8,9] The standard of review for juvenile cases is de novo on the record; however, when evidence is in conflict, the appellate court may give weight to the fact that the trial court observed the witnesses and accepted one version of the facts over the other. *In re Interest of Gunner B.*, 312 Neb. 697, 980 N.W.2d 863 (2022). An appellate court will not reevaluate the credibility of witnesses or reweigh testimony but will review the evidence for clear error. *Eicher v. Mid America Fin. Invest. Corp.*, 275 Neb. 462, 748 N.W.2d 1 (2008).

Here, the juvenile court's finding that R.S. and Summers were credible witnesses was not clearly erroneous. It found Quiotis "brought a firearm to the home of Robert Stolinski. This finding of fact was based on the testimony of the minor child R.S., . . . Summers, and other evidence received during the adjudication." It also found that Quiotis "used the firearm he possessed to fire at least two shots." R.S. acknowledged his prior inconsistent deposition testimony but assured the court that he was testifying truthfully. The juvenile court did not err in finding his testimony credible. And Summers' testimony that Quiotis may have had a fanny pack was not inconsistent with his prior report that he had "something" in his hand. The court did not err in determining that

Summers' credibility was not impeached. See *State v. Stevens*, 290 Neb. 460, 472, 860 N.W.2d 717, 729 (2015) (providing trial court "considerable discretion in determining whether testimony is inconsistent with prior statements").

R.S. testified he observed Quiotis with a fanny pack the day of the shooting. Quiotis' counsel challenged R.S.' testimony based on the testimony R.S. provided in a previous deposition. When asked about the differences, R.S. acknowledged the discrepancy but maintained that he witnessed Quiotis with a fanny pack earlier in the day and saw the handle of a handgun in it. The juvenile court was in the best position to judge R.S.' credibility, and we will not second guess it.

Summers reported in his 911 call that the individual hiding in the field was "running [with] something in his hands," but it did not appear to be a gun. Summers told officers during a followup call on September 19, 2022, that he believed the person in the field was holding "a bag or something." Although Quiotis argues on appeal that Summers testified that he saw Quiotis "with a fanny pack," the record adds additional context to show why Quiotis' claim does not accurately reflect Summers' testimony. Summers testified that he saw Quiotis in the field with "some kind of bag, a dark-colored backpack or fanny pack or something. It could have been a grocery sack or something." Summers described the item "had a strap but I couldn't tell if it was a fanny pack or a backpack [or] something." The juvenile court's finding of Summers' credibility was not clearly erroneous.

(b) Evidence Regarding Underlying Violations

[10] When an adjudication is based upon Neb. Rev. Stat. § 43-247(1), (2), (3)(b), or (4) (Reissue 2016), the allegations must be proved beyond a reasonable doubt. § 43-279(2). *In re Interest of Gabriel P.*, 29 Neb. App. 431, 954 N.W.2d 305 (2021). Although an adjudication is not a criminal proceeding, we take guidance from the criminal laws of this state. *Id.*

(i) Tampering With Physical Evidence

Quiotis assigns the juvenile court erred in finding sufficient evidence to support a violation of the tampering with physical evidence statute. See § 28-922. He argues that the State failed to establish each element of the violation, namely, there was no official proceeding initiated on September 5, 2022, and the gun was not destroyed, mutilated, defaced, or in any way altered when abandoned.

Under § 28-922(1):

> A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:
>
> (a) Destroys, mutilates, conceals, removes, or alters physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding[.]

Physical evidence is defined under § 28-922(2) as "any article, object, document, record, or other thing of physical substance." Because we determine that the juvenile court did not err in finding sufficient evidence that Quiotis violated the unlawful possession of a handgun statute as explained below, Quiotis did not have legal right or authority to dispose of physical evidence.

Quiotis first argues that there was no pending official proceeding when he discarded the gun; therefore, the requirements of § 28-922(1) cannot be met. However, Quiotis testified that he did not want the police to find him with the handgun so he disassembled it and concealed its pieces in the tree line. Contrary to Quiotis' argument, the statute does not require that there be a pending proceeding. It is sufficient if the defendant believes that an official proceeding is about to be instituted. In *State v. Lasu*, 278 Neb. 180, 768 N.W.2d 447 (2009), the Supreme Court stated that the fact that a defendant discarded a bag of marijuana while being followed by police was sufficient to determine the defendant did so because he believed an official proceeding was about to be instituted. It concluded, "It is reasonable to infer that [the defendant] threw away his marijuana because he was afraid of being arrested and searched. . . . " *Id.* at 184, 768 N.W.2d at 451.

Quiotis recognized that police involvement was likely, and he did not want them to discover the gun in his possession. Although he testified he was afraid of being shot by police, it is reasonable to infer that he was afraid of being arrested and searched. The evidence was sufficient to find that he believed an official proceeding was about to be instituted.

Quiotis also argues the evidence was insufficient to find that he destroyed, mutilated, concealed, removed, or altered physical evidence with the intent to impair its availability. He testified that he did not want to leave the handgun at the scene of the crime, nor did he want another person to be able to use the handgun after he disposed of it. His solution was to disassemble the handgun and leave the pieces scattered underneath trees, thus removing the handgun from the scene of the crime. He asserts that his actions are comparable to the defendant's actions in *State v. Lasu, supra.* We disagree.

[11,12] In *Lasu*, the defendant had been the victim of an assault. After responding officers arrived at the gas station where the assault occurred, the defendant asked to use the restroom. On his way, he discarded a bag of marijuana into a large cardboard bin of snack foods, where it landed on top. The officers immediately retrieved the bag and arrested him. The Supreme Court distinguished between discarding, concealing, or removing evidence with the intent to impair its availability and merely abandoning evidence. It held that the crime of tampering with physical evidence, as defined by § 28-922, does not include mere abandonment of physical evidence in the presence of law enforcement. *State v. Lasu, supra.* It explained that to "conceal" or "remove" physical evidence, in the context of § 28-922, is to act in a way that will prevent the evidence from being disclosed or recognized. *State v. Lasu, supra.* A person is not guilty of tampering with evidence when the evidence at issue is made more apparent, rather than less apparent. See *id.* Because the defendant did not attempt to conceal the bag, but, rather,

attempted to conceal his possession of the bag, his actions did not constitute tampering.

Unlike the defendant in *Lasu*, Quiotis removed the handgun from the scene, outside of the presence of law enforcement, disassembled it, and scattered the pieces underneath the trees, making the possibility of finding the evidence less apparent. (Contrast *State v. Lasu*, 278 Neb. at 185, 768 N.W.2d at 452, in which court stated it was not "a case in which the defendant placed evidence where it was unlikely to be discovered"). The difficulty in finding the pieces of the handgun is highlighted by the fact that officers had to be redirected by Summers to the proper area to search. Quiotis did not merely abandon the handgun; he removed it from the crime scene, altered its appearance, and scattered the pieces underneath 10 to 15 feet of tree line.

The juvenile court did not err in finding sufficient evidence that Quiotis violated the tampering with physical evidence statute.

(ii) Unlawful Possession of Handgun

Quiotis assigns the juvenile court erred in finding sufficient evidence that he violated the unlawful possession of a handgun statute. See § 28-1204. He argues that any rational trier of fact could not have found the essential elements were met to find Quiotis was unlawfully in possession of a handgun.

Under § 28-1204(1), "any person under the age of eighteen years who possesses a handgun commits the

offense of unlawful possession of a handgun." Subsection (2) provides exceptions for certain situations in which subsection (1) does not apply; however, none of those exceptions apply to this case. Black's Law Dictionary 1407 (11th ed. 2019) defines "possess" as "[t]o have in one's actual control; to have possession of." Essentially there are two elements to prove that a person violated § 28-1204, which are that the person (1) was under the age of 18 and (2) had a handgun in their actual control.

Here, there was sufficient evidence to find Quiotis violated § 28-1204, as both elements were met. Quiotis testified that he was 15 years old at the time of trial, which means he was a person under the age of 18 at the time of the shooting. There is no dispute that Quiotis shot Parker, which meant he possessed the handgun. Quiotis testified that he possessed the handgun to protect his father. Furthermore, the juvenile court specifically found that Quiotis brought the handgun to the pool party. Both elements of unlawful possession of a firearm were satisfied; thus, there was sufficient evidence to find that Quiotis violated § 28-1204.

Quiotis argues on appeal that there was not sufficient evidence at trial to show that he carried around a fanny pack with a handgun inside; thus, he cannot be convicted of unlawful possession of a handgun. This contention is misguided for two reasons.

First, as described above, Quiotis failed to show that the juvenile court's finding of R.S.' and Summers' credibility was clearly erroneous. Because the juvenile

court was not clearly erroneous in finding R.S. and Summers credible, we will not reevaluate their credibility. See *Eicher v. Mid America Fin. Invest. Corp.*, 275 Neb. 462, 748 N.W.2d 1 (2008). The juvenile court's finding of fact that Quiotis brought the handgun to the party based on R.S.' and Summers' testimony is enough evidence to show that Quiotis possessed the handgun prior to the shooting.

Second, regardless of Quiotis' possession of the fanny pack, Quiotis admits in his brief that he possessed the handgun "to defend his father and the life of his father." Brief for appellant at 30. This admission satisfies one of the elements of § 28-1204, that Quiotis possessed a handgun, and his admission at trial that he is under the age of 18 satisfies the other element. Therefore, Quiotis' arguments fail.

4. Prosecutorial Misconduct

Quiotis assigns that the prosecutor committed misconduct by allowing Summers to testify that he observed Quiotis with a fanny pack, despite telling the 911 operator that he did not know what was in Quiotis' hand. This alleged error has been waived.

[13] Quiotis never moved for a mistrial or claimed that the prosecutor committed misconduct in the juvenile court. A party who fails to make a timely motion for mistrial based on prosecutorial misconduct waives the right to assert on appeal that the court erred in not declaring a mistrial due to such prosecutorial misconduct. *State v.*

Mrza, 302 Neb. 931, 926 N.W.2d 79 (2019). Because Quiotis did not move for a mistrial, this alleged error is waived.

VI. CONCLUSION

For the foregoing reasons, we affirm.

AFFIRMED.

APPENDIX B — ORDER OF THE SEPARATE JUVENILE COURT FOR DOUGLAS COUNTY, NEBRASKA, FILED JUNE 8, 2023

IN THE SEPARATE JUNVENILE COURT
FOR DOUGLAS COUNTY, NEBRASKA

IN THE INTEREST OF

CROSS, QUIOTIS N., JR.
A JUVENILE

Doc. JV 22 No. 1132

ADJUDICATION ORDER;
DISPOSITION ORDER;
ORDER ADDING JUVENILE
PROBATION AS A PARTY

Filed: June 8, 2023

This matter came on for in-person hearing regarding the adjudication in this matter and proceeded to immediate disposition hearing on this 8th of June, 2023 before the Honorable Matthew Kahler, with a record of the proceedings kept by Lisa Porter.

Present in Court were said child; Laura Lemoine, Deputy County Attorney; Brenda Beadle, Deputy County Attorney; Timothy Ashford, counsel for the minor child; Jennifer Cross, mother; Quiotis Cross, Sr., father; Claire Bin, mother-in-law; Shawn Bina, father-in-law; Mimi Safeeullah, Juvenile Probation; Kathy Howard,

observing; Curtis Cross, Curshaun Cross, Cyre Cross, and Kimberly Cross, family; Danya Parker, victim's wife; Jess Parker; McKenna Parker; Ronalee Parker, victim's sister; Shaina Parker; Chanel Appleton; Leonard Plater, child's grandfather; Lilianna Brown.

An adjudication on the Amended Petition took place on May 9, 2023, May 10, 2023, May 24, 2023, May 31, 2023, June 1, 2023, and June 5, 2023. Following the conclusion of the adjudication, the Court took the matter under advisement. The Court, having now reviewed the exhibits and testimony in this matter, finds as follows:

1. That notice, service and the jurisdiction of the Court in this matter are proper;

2. That the Court finds the testimony of Danya Parker, Lawrence Summers, Officer Menephee, Officer Seitzer, Nicole Okon, Michael Young, Dr. Erin Linde, Amanda Cooley, Kyle Drews, Katie Satriano, Matei Jackson, minor child R.S., Andrew Freeman, Amanda Kuszak, and Officer Brandt to be credible;

3. That on September 5, 2023 Quiotis Cross, Jr. brought a firearm to the home of Robert Stolinski. This finding of fact is based on the testimony of the minor child R.S., Lawrence Summers, and other evidence received during the adjudication;

4. That Mister Parker and the father of the minor child, Quiotis Cross, Sr., exited the residence onto the driveway of Robert Stolinski;

5. That Mister Parker struck Quiotis Cross, Sr. in the head once, knocking him down and rendering him unconscious;

6. That the only two identified witnesses to this incident between Mister Parker and Quiotis Cross, Sr., were the minor children R.S. and Quiotis Cross, Jr.;

7. That there was uncontroverted testimony that Mister Parker continued to approach the unconscious Quiotis Cross, Sr. and appeared to the witnesses to intend to continue striking Quiotis Cross, Sr. while unconscious and unable to defend himself;

8. That at that time the minor child Quiotis Cross, Jr. used the firearm he possessed to fire at least two shots, causing the death of Mister Parker;

9. Following the shots being fired, Quiotis Cross, Jr. ran from the area and hid nearby, where he was observed by Lawrence Summers;

10. That the minor child Quiotis Cross, Jr. then disassembled the firearm into several pieces and threw each piece under separate trees;

11. That the evidence shows these actions were done in an attempt to hide and conceal the weapon from discovery, and also to render it unrecognizable as individual parts;

12. That law enforcement officers were not initially able to locate the firearm after searching the area, and did in fact locate the parts under different trees only once Mr. Summers directed law enforcement to the exact location where he observed Quiotis Cross, Jr. with a bag or fanny pack on the night of September 5, 2022;

13. That the minor child expressed concern during his testimony that he would come into contact with law enforcement;

14. That the minor child raised the affirmative defense of defense of others pursuant to Neb. Rev. Stat. § 28-1410;

15. That the State has failed to meet their burden to show that the minor child's actions in using the firearm to cause the death of Mister Parker do not fall under the guidelines of Neb. Rev. Stat. § 28-1409 and§ 28-1410;

16. Accordingly, Count I and Count II of the Amended Petition are hereby dismissed due to insufficient evidence;

17. That the Court finds that the affirmative defense of defense of others only properly applies to Count I and Count II of the Amended Petition, and that the minor child's actions that satisfy the elements of Count III and Count IV of the Amended Petition are not justified or otherwise excused

as a result of this Court's finding of insufficient evidence as to Count I and Count II;

18. That Count III and Count IV of the Amended Petition filed herein are true by proof beyond a reasonable doubt;

19. That the child herein is a child as described in Subdivision (1) and (2) Section 43-247, R.S. Nebraska 1943 Reissue of 2016 on proof beyond a reasonable doubt;

20. That this matter proceeded to immediate disposition hearing;

21. That a predisposition investigation shall be conducted by Juvenile Probation;

22. That the minor child shall remain as placed in shelter care placement until further order of the Court;

23. That the best interests of the child herein would be served by placing the said child under the supervision of a Probation Officer for an open ended period of time.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Quiotis Cross, Jr., child herein, is a child as described in Subdivision (1) and (2) Section 43-247, R.S. Nebraska 1943 Reissue of 2016 on proof beyond a reasonable doubt.

IT IS FURTHER ORDERED that Count I and Count II of the Amended Petition are hereby dismissed due to insufficient evidence.

IT IS FURTHER ORDERED that a predisposition evaluation shall be conducted by a Juvenile Probation Officer.

IT IS FURTHER ORDERED that Quiotis Cross, Jr., child herein, is placed under the supervision of a Probation Officer subject to certain terms and conditions of probation listed herein below for an open ended period of time and at that time the child's records will be sealed if the child has successfully completed probation unless sooner extended or revoked for cause by the Court, or unless a capias has been issued herein during the term of this probation.

IT IS FURTHER ORDERED that the minor child, Quiotis Cross, Jr., shall remain as placed in shelter care placement until further order of the Court.

IT IS FURTHER ORDERED that the Office of Probation Administration shall provide notice to the Foster Care Review Office (FCRO) that this youth, who is being served by the Office of Probation Administration, is placed in out of home care. Such notice shall include basic identifying information about the youth and the case number.

IT IS FURTHER ORDERED that the court records referenced in Section 43-2,108(2) R.R.S. shall be open to review by the FCRO for this youth.

IT IS FURTHER ORDERED that the minor child, Quiotis Cross, Jr., shall:

1. Undergo a psychological evaluation as arranged by Juvenile Probation;

2. Participate fully in individual therapy;

3. Abide by the rules of his shelter care placement.

IT IS FURTHER ORDERED that the parent(s) shall notify the Court, all counsel in this matter, and the Probation Officer of any change of address and phone number within 48 hours of said change.

IT IS FURTHER ORDERED that the probation office and/or probation officer is hereby authorized to release the completed evaluation in this case, as well as any other psychiatric or psychological information, social history or information relating to chemical usage to Magellan Behavioral Health or any other relevant assessment agency for the limited purpose of determining an appropriate placement for the juvenile.

IT IS FURTHER ORDERED that in the event that the above captioned juveniles, while under any form of supervision by the Office of Juvenile Probation, has a report pursuant to Neb. Rev. Stat. §43-4318(1) or is the subject of an investigation pursuant to §43-4318(1)(a)(ii), the Office of Probation Administration shall provide to the Office of the Inspector General of Nebraska Child Welfare and individualized probation records referenced

in §43-2, 108(2). This order remains in full force and effect until it is vacated or otherwise modified in the manner provided by law.

IT IS FURTHER ORDERED that **notice was given on the record that this matter shall be set for continued disposition hearing on July 25, 2023 at 2:30 p.m.** unless application is made for a hearing prior thereto or the matter is brought before the Court by stipulation of counsel. **(Counsel shall notify client of scheduled hearing date and time)**

IT IS FURTHER ORDERED that any reports to be submitted at the next hearing (i.e., disposition, review or check hearings) shall be made available to counsel and presented to the Court at least three business days prior to the hearing.

FAILURE TO ABIDE BY THE COURT ORDERED PROBATION TERMS COULD RESULT IN REVOCATION OF YOUR PROBATION. See Neb. Rev. Stat. §43-286 (Reissue 2016).

IT IS FURTHER ORDERED that detention in a secure facility may occur if the physical safety of persons in the community would be seriously threatened, or that detention is necessary to secure the presence of the juvenile at the next hearing, as evidenced by a demonstrable record of willful failure to appear at a scheduled hearing within the last twelve months. See Neb. Rev. Stat. §43-253 (5) (Reissue 2019).

Appendix B

Dated this 8th day of June, 2023.

BY THE COURT:

/s/ Matthew Kahler
Matthew Kahler
Juvenile Court Judge

Appendix B

CERTIFICATE OF SERVICE

I, the undersigned, certify that on June 12, 2023, I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Quiotis Cross
7919 Kansas Ave
Omaha, NE 68134

Jordan Brandt
505 S 15th St
Omaha, NE 68102

Timothy L Ashford
tash178346@aol.com

Jennifer Cross
7919 Kansas Ave Omaha, NE 68134

Laura E Lemoine
laura.lemoine@douglascounty-ne.gov

District 4 Juvenile Probation
nsc.probationDIST4JsupStaff@nebraska.gov

Date: June 12, 2023

BY THE COURT: /s/_____
CLERK

APPENDIX C — ORDER OF THE NEBRASKA COURT OF APPEALS, FILED JULY 24, 2024

CLERK OF THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
2413 State Capitol, P.O. Box 98910
Lincoln, Nebraska 68509-8910
(402) 471-3731

July 24, 2024

Timothy L Ashford
tash178346@aol.com

IN CASE OF: A-23-000495, In re Interest of Quiotis C.
TRIAL COURT/ID: Douglas County Juvenile Court JV22-1132

The following filing: Motion of Appellant for Rehearing
Filed on 06/11/24
Filed by appellant Quiotis N Cross Jr

Has been reviewed by the court and the following order entered:

Motion of Appellant for rehearing overruled.

Sincerely,
Joshua R. Shasserre
Clerk

APPENDIX D — ORDER OF THE NEBRASKA SUPREME COURT, FILED AUGUST 29, 2024

CLERK OF THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
2413 State Capitol, P.O. Box 98910
Lincoln, Nebraska 68509-8910
(402) 471-3731

August 29, 2024

Timothy L Ashford
tash178346@aol.com

IN CASE OF: A-23-000495, In re Interest of Quiotis C.
TRIAL COURT/ID: Douglas County Juvenile Court JV22-1132

The following filing: Petition Appellant for Further Review
Filed on 08/08/24
Filed by appellant Quiotis N Cross Jr

Has been reviewed by the court and the following order entered:

Petition of Appellant for further review denied.

Sincerely,
Joshua R. Shasserre
Clerk

APPENDIX E — APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE, NEBRASKA SUPREME COURT, DATED AUGUST 16, 2024

IN THE SUPREME COURT
FOR THE STATE OF NEBRASKA

CASE NO. A 23-495

THE STATE OF NEBRASKA,

Appellee,

v.

QUIOTIS CROSS, JR.,

Appellant.

STATE'S MOTION FOR SUMMARY AFFIRMANCE AND BRIEF IN SUPPORT

The Appellee moves for summary affirmance of the judgment of the juvenile court in accordance with Neb. Ct. R. App. P. 2-107(B)(2) because the questions present for review are so unsubstantial as not to require argument. In support of this motion, the undersigned states as follows:

Appendix E

STATEMENT OF THE CASE

Nature of the Case:

On March 6, 2023, the State of Nebraska filed an Amended Petition alleging: Count I Manslaughter Class IIA Felony, Count II Use of a Deadly Weapon (Firearm) to Commit a Felony Class IC Felony, Count III Tampering with Physical Evidence Class IV Felony, and Count IV Possession of a Handgun by a Minor.

The Issues Tried to the Court:

The issues presented to the court at the time of the trial on the Amended Petition were as follows: whether the State proved beyond a reasonable doubt that (1) said juvenile killed Mr. Parker without malice, either intentionally upon a sudden quarrel or unintentionally while in the commission of an unlawful act; (2) said juvenile used a firearm to commit any felony; (3) said juvenile, believing that an official proceeding was pending or about to be instituted and acting without legal right or authority, destroyed, mutilated, concealed, removed, or altered physical evidence with the intent to impair its verity or availability in the pending or prospective official proceedings; or knowingly made, presented, or offered any physical evidence with intent that it be introduced in the pending or prospective official proceeding; and (4) said juvenile, being under the age of eighteen, unlawfully possessed a handgun.

Appendix E

How Issues Were Decided:

In an order dated June 8, 2023, the Separate Juvenile court of Douglas County Nebraska ruled on the State's petition. The court found that the State failed to meet their burden for Counts I and II, and those counts were therefore dismissed. (T289). The court found that Counts III and IV were true by proof beyond a reasonable doubt. (*Id.*). On June 29, 2023, Appellant filed a Notice of Appeal. (T294, 296, 306). On June 4, 2024, The Court of Appeals issued an order finding that Appellant was not entitled to a jury trial and that there was sufficient evidence to support Counts III and IV of Appellant's adjudication. On July 1, 2024, Appellant filed his brief in support of the motion for rehearing and on July 11, 2024, the State of Nebraska filed a brief in opposition to the motion for rehearing. On July 24, 2024, the Appellate Court overruled Appellant's motion for rehearing.

STANDARD OF REVIEW

The standard of review for juvenile proceedings involving an adjudication is de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Zoie H.*, 304 Neb. 868 (2020). In reviewing questions of law arising under the Nebraska Juvenile Code, an appellate court reaches conclusions independent of the lower court's ruling. *In re Interest of Ty M. & Devon M.*, 265 Neb. 150, 655 N.W.2d 672 (2003). Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court. *Id.* The review of constitutional standards is a question

of law and is reviewed independently of the trial court's determination. *Id.*

STATEMENT OF FACTS

On September 7, 2022, the State filed a petition as to Cross Jr., (hereinafter, "Appellant"). (T1). The petition alleged: Count I Manslaughter Class IIA Felony: On or about the 6th day of September 2022, in Douglas County, Nebraska, said juvenile did then and there kill Mr Parker without malice, either intentionally upon a sudden quarrel, or unintentionally while in the commission of an unlawful act, in violation of *Neb. Rev. Stat.* § 28-305(1) a Class IIA Felony. Count II Use of a Deadly Weapon (Firearm) to Commit a Felony Class IC Felony: On or about the 6th day of September 2022, in Douglas County, Nebraska, said juvenile did then and there use a firearm to commit any felony which may be prosecuted in a court of this state in violation of *Neb. Rev. Stat.* § 28-1205(1)(a)&(c), a Class IC felony. (*Id.*).

On March 6, 2023, the State filed a Motion for Leave to Amend, a Notice of Additional Witnesses, and an Amended Petition. (T138, 140, 144). The petition alleged: Count I Manslaughter Class IIA Felony: On or about the 5th day of September 2022, in Douglas County, Nebraska, said juvenile did then, and there kill Mr. Parker without malice, either intentionally upon a sudden quarrel, or unintentionally while in the commission of an unlawful act, in violation of *Neb. Rev. Stat.* § 28-305(1) a Class IIA Felony. Count II Use of a Deadly Weapon (Firearm) to Commit a Felony Class IC Felony: On or about the 5th day

of September 2022, said juvenile did then and there use a firearm to commit any felony which may be prosecuted in a court of this state in violation of *Neb. Rev. Stat.* § 28-1205(1)(a)&(c), a Class IC felony. Count III Tampering with Physical Evidence Class IV Felony: On or about the 5th day of September 2022, said juvenile did then and there believing that an official proceeding was pending or about to be instituted and acting without legal right or authority, Quiotis Cross Jr. destroyed, mutilated, concealed, removed, or altered physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding; or knowingly made, presented, or offered any false physical evidence with intent that it be introduced in the pending or prospective official proceeding in violation of *Neb. Rev. Stat.* § 28-922 a Class IV Felony. Count IV Possession of a Handgun by a Minor: On or about the 5th day of September 2022 within Douglas County, Nebraska, contrary to the Statutes of the State of Nebraska and against the peace and dignity of the State, did, being under eighteen years of age, unlawfully possess a handgun. (Penalty: § 28-104 Class I Misdemeanor). (T144-145).

On April 12, 2023, Appellant filed a Motion for a Juvenile Jury Trial. (T201, 211, 220). The adjudication began on May 9, 2023. (T259). At the start of the adjudication, the court heard arguments for Appellant's Motion for a Juvenile Jury Trial. (*Id.*). This motion was not formally filed until May 18, 2023. (T52). A court order, which was filed on May 18, 2023, denied Appellant's Motion for a Juvenile Jury Trial. (T259). On June 8, 2023, the court issued an adjudication order. (T287). The court found

that the State failed to meet their burden for Counts I and II, and those counts were therefore dismissed. (T289). The court found Counts III and IV true by proof beyond a reasonable doubt. (*Id.*).

On June 29, 2023, Appellant filed a Notice of Appeal. (T294, 296, 306). On June 4, 2024, the Court of Appeals issued an order finding that Appellant was not entitled to a jury trial and that there was sufficient evidence to support Counts III and IV of Appellant's adjudication. On June 11, 2024, Appellant filed a motion for rehearing and a motion to extend the brief in support of the motion for rehearing. On June 12, 2024, the Court of Appeals sustained the motion of Appellant to extend the brief in support of the motion for rehearing. Appellant filed his brief in support of the motion for rehearing on July 1, 2024. On July 11, 2024, the State of Nebraska filed a brief in opposition to the motion for rehearing. On July 24, 2024, the Court of Appeals overruled Appellant's motion for rehearing. On August 8, 2024, Appellant filed a petition for further review.

ARGUMENT

I. SUMMARY AFFIRMANCE IS PROPER AS THE QUESTIONS PRESENTED FOR REVIEW IN APPELLANT'S BRIEF ARE UNSUBSTANTIAL AND DO NOT REQUIRE FURTHER ARGUMENT.

Under Neb. Ct. R. App. P. § 2-107, "a motion to affirm on the ground that the questions presented for review are so unsubstantial as not to require argument may be filed

after the appellant's brief has been filed or the time for filing has expired." The moving party must document the claimed lack of substance of the questions by including citations to the dispositive portions of the record and the controlling statutory and case law.

A. APPELLANT'S ASSERTIONS THAT THERE WAS INSUFFICIENT EVIDENCE LACK SUBSTANCE.

Cases arising under the Nebraska Juvenile Code are reviewed de novo on the record, and an appellate court is required to reach conclusions independent of the trial court's findings. *State v. K.M. (In re K.M.)*, 299 Neb. 636, 641, 910 N.W.2d 82, 86-87 (2018). Where the evidence is in conflict, an appellate court considers and may give weight to the juvenile court's observation of the witnesses and acceptance of one version of the facts over another. *Id.*

Appellant's assertions that there was insufficient evidence lack substance as he does not point to any specific errors in the record or the Appellate Court's opinion. The Appellate Court found that the juvenile court did not err in finding that the evidence was proper and supported the finding that Count III and Count IV were true beyond a reasonable doubt. The Appellate Court found no instance where the juvenile court's findings regarding the evidence were clearly erroneous. Appellant contends that the elements of tampering were not met because "the gun pieces were found in a straight line, nothing was hidden, the pieces were on top, they didn't have to move anything to see them, [and] the gun could be reassembled because

all of the pieces were there[.]" (Appellant's Brief at 8). This is the same argument that Appellant made on appeal that the Appellate Court directly addressed in their opinion. *In re Interest of Quiotis C.*, 32 Neb. App. 932, 947–950 (2024). The Appellate Court found that Appellant took the gun from the scene, away from the presence of law enforcement, took the gun apart, and dispersed the pieces under multiple trees. *Id.* At 949. These actions by Appellant made the likelihood of finding the gun "less apparent." *Id.* The Appellate Court analyzed and decided that the evidence was sufficient to meet the elements of tampering. *Id.* At 950.

With respect to Count IV, Possession of a Handgun by a Minor, the Appellate Court found that both elements of unlawful possession of a firearm were satisfied. *Id.* At 950-951. Appellant admits that he possessed the gun and that he was fifteen years old at the time of the trial, making him a person under the age of eighteen at the time the shooting occurred. *Id.* The Appellate Court ultimately decided that the juvenile court did not err in finding sufficient evidence to support Count IV.

Appellant's assertions lack substance as he asserts no factual errors and points to nothing in the record that would indicate such. Appellant simply alleges that "this court erred in upholding the decision of the white court judge's finding the testimony of three black witnesses not credible and the contradictory improbable testimony of the two white witnesses credible based on the observations of the white judge" as well as other factual testimony that the "appellate court erred" in finding to be sufficient.

(Appellant's Brief at 7). There is no evidence in the record to support Appellant's factual assertions. Further, Appellant makes no citations to the record. The facts are well settled by testimony adduced, and the Appellate Court found no instance where the facts were so clearly erroneous. Therefore, Appellant's factual assertions are so unsubstantial that they do not require argument before this Court.

B. THE MISTAKES OF LAW PRESENTED LACK SUBSTANCE AND ARE ADDRESSED BY DISPOSITIVE STATUTORY AND CASE LAW.

On his petition for further review, Appellant argues that this Court erred as a matter of law when it denied him a jury trial in the juvenile court. Appellant also contends that he is guaranteed this right under *Batson*, the Nebraska Constitution, and the U.S. Constitution, all of which are incorrect. In Appellant's petition for further review, he misinterprets the opinion from *Batson v. Kentucky* and the law established by the Court. (Appellant's Brief at 7). In *Batson*, the U.S. Supreme Court expanded on a criminal defendant's right to have a jury of their peers. 476 U.S. 79 (1986). The Court in *Batson* established that while a defendant is not entitled to a "petit jury composed in whole or in part of persons of his own race," the defendant does have a right to be tried by a jury that has been selected by nondiscriminatory criteria. *Id*. at 85. In short, the ruling in *Batson* established that prosecutors may not strike someone on the basis of race and that doing so would violate the Equal Protection

Clause of the Fourteenth Amendment. *Id.* In Appellant's brief, he asserts that African American juveniles are entitled to a jury trial, and *Batson* is the mandatory case law that supports his proposition. (Appellant's Brief at 7). As noted above, this is not what the Court established in the opinion issued for *Batson*, and *Batson* only applies in instances where the right to a jury trial can be exercised.

It is well established by both case law and Nebraska Statute that there is no right to a jury trial in Nebraska juvenile court cases. As the Appellate Court stated in its opinion, in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), the U.S. Supreme Court opined that a jury trial is not constitutionally required in a juvenile court's adjudication. *In re Quiotis C.*, 32 Neb. App. 932, 943 (2024). It is further emphasized in the Appellate Court's opinion that *McKeiver* established it would be the state's privilege and not its obligation to offer jury trials in juvenile adjudications. *Id.* While some states have adopted the right to jury trials in juvenile court, the State of Nebraska explicitly has not. Under *Neb. Rev. Stat.* § 43-279(1), "The adjudication portion of hearings shall be conducted before the court without a jury, applying the customary rules of evidence in use in trials without a jury." Likewise, the Nebraska Supreme Court has held that Nebraska juvenile court proceedings are civil in nature, and under the doctrine of *parens patriae*, the constitutional guarantees of a jury trial and the incidents thereto are not applicable to a juvenile proceeding. *In re Interest of Quiotis C.*, 32 Neb. App. 932, 943 (2024) (citing *In re Interest of Zoie H.*, 304 Neb. 868, 881 (2020)). The Nebraska Supreme Court held that *Neb. Rev. Stat.* § 43-286 and the available dispositional

options in juvenile court are not punishments as the adjudications are civil in nature, even when a disposition is similar to that imposed as punishment for a crime. *In re Zoie H.*, 304 Neb. 868, 877 (2020).

Therefore, the Appellate Court did not err in excluding the mention of *Batson* from its opinion as it is not applicable law here. As emphasized above, there is no right to a jury trial in Nebraska juvenile court proceedings, rendering Appellant's argument about *Batson* meritless. Likewise, there was no violation of Appellant's constitutional rights because the Court has made clear that state's are not obligated to allow jury trials in juvenile court adjudications. It is the state's decision whether to allow jury trials in juvenile proceedings, and the State of Nebraska has come to the reasoned legislative judgment that juries ought not be utilized in such circumstances. In addition, as laid out above and emphasized in the Appellate Court's opinion, juvenile court proceedings are civil in nature, so the structural error doctrine does not apply. *In re Interest of Quiotis C.*, 32 Neb. App. 932, 945 (2024).

Lastly, none of the questions of law presented for review by Appellant hold water. Appellant asserts that there is a mistake of law because the court failed to consider *Batson*, which, as noted above, was incorrectly applied and is without merit. Appellant also claims a mistake of law because the court failed to apply the structural error doctrine, which, as noted above, does not apply to juvenile court cases. Therefore, all of the questions of law presented by Appellant are unsubstantial and do not require argument before this Court.

Appendix E

CONCLUSION

For the reasons stated above, the Appellee respectfully requests that this Court summarily affirm the judgment of the juvenile court.

DATED this 16th day of August, 2024.

STATE OF NEBRASKA, Appellee,

/s/ Laura E. Lemoine
LAURA E. LEMOINE #26596
Deputy County Attorney
1717 Harney St, Ste 600 Omaha, NE 68183
402-444-7051
laura.lemoine@douglascounty-ne.gov

APPENDIX F — APPELLANT'S MOTION IN OPPOSITION TO APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE, NEBRASKA SUPREME COURT, DATED AUGUST 26, 2024

IN THE SUPREME COURT
FOR THE STATE OF NEBRASKA

CASE A 23 495

IN THE INTEREST OF

QUIOTIS N. CROSS, JR.,

Appellant,

v.

STATE OF NEBRASKA,

Appellee.

APPELLANT'S MOTION IN OPPOSITION TO SUMMARY AFFIRMANCE AND BRIEF IN SUPPORT

The Appellant files this motion in opposition to the Appellee's Motion for Summary Affirmance in accordance with Neb. Ct. R. App. P. 2-107(B)(2) because the factual testimony does not support the convictions and the Appellant requests argument on the unconstitutionality of the denial of a jury trial. In support of this Motion, the undersigned states as follows:

Appendix F

STATEMENT OF THE CASE

Nature of the Case:

In the Separate Juvenile Court for Douglas County, Nebraska African American Juvenile Quiotis C. was charged in the shooting death of an individual Mr. Parker on September 5, 2022, in Count I Neb. Rev. Stat. § 28-305 Manslaughter and Count II Neb. Rev. Stat. § 28-1205 Use of a Weapon to Commit a Felony. After the depositions were completed on February 21, 2023, on March 6, 2023 the State filed a Motion for Leave to Amend the Complaint which was granted to amend the charges to Count III Neb. Rev. Stat. § 28-922 Tampering and Count IV Neb. Rev. Stat. § 28-1204 Minor in Possession which was granted on March 8, 2023.

On June 8, 2023 due to insufficient evidence, the Court dismissed Count I and Count II. The Juvenile was convicted of Count III and Count IV which were found to be true in the Amended Petition.

The Issues Tried to the Court:

The issues tried to the Court were Count I, Count II, Count III Tampering and Count IV.

How Issues Were Decided:

In an order dated June 8, 2023, the court dismissed Counts I and II because the State failed to meet their burden.(T289). The court found that Counts III and IV

were true by proof beyond a reasonable doubt. (T289). On June 29, 2023, Appellant filed a Notice of Appeal. (T294, 296, 306). On June 4, 2024, The Court of Appeals issued an order finding that Appellant was not entitled to a jury trial and that there was sufficient evidence to support Counts III and IV of Appellant's adjudication. On July 1, 2024, Appellant filed his brief in support of the motion for rehearing. On July 11, 2024, the State of Nebraska filed a brief in opposition to the motion for rehearing. On July 24, 2024, the Appellate Court overruled Appellant's motion for rehearing. On August 8, 2024 Appellant filed a Petition of Appellant for Further Review. On August 16, 2024, Appellee filed a Motion for Summary Affirmance.

STANDARD OF REVIEW

All challenges to the constitutionality of a statute should be heard by a full Supreme Court, and a supermajority is required to declare any statute unconstitutional, without regard to whether the challenge is facial or as-applied. Neb. Sup. Ct. & Ct. App. R. 2–109(E). State v. Boche, 294 Neb. 912 (2016).

An appellate court will sustain a conviction in a bench trial of a criminal case if the properly admitted evidence, viewed and construed most favorably to the State, is sufficient to support that conviction; in making this determination, the appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, evaluate explanations, or reweigh the evidence presented, which are within a fact finder's province for disposition, and instead the relevant question is whether,

after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Montoya, 304 Neb. 96 (2019).

Batson is mandatory case law which requires a jury trial for African American juveniles just as Miranda, Gideon, Winship, Brown and Gault are mandatory case law for juveniles. (Opinion P. 942)

Batson v. Kentucky holds a state denies a black defendant equal protection when it puts him on trial before a jury from which "members of his race have been purposely excluded." Batson v. Kentucky, 106 S. CT. 1712 (1986) (T201) (T259))(13:4-5)(13:13-24)(14:9-10)

The Nebraska Constitution 1-6, the U.S. Constitution, the Sixth Amendment, Eighth Amendment, Fourteenth Amendment, Equal Protection of the Law, and Due Process requires a jury trial for those charged with a crime.

McKeiver does not deny juveniles a jury trial. (Opinion P. 942)

The court erred in ruling their unconstitutional violation of the structural error doctrine does not apply in denying the Black juvenile a jury trial because the Nebraska structural juvenile court system allows an all-white court system of a prosecutor, a juvenile court judge and a Nebraska Appellate Court which excludes blacks and black jurors from the process in the decision of his

guilt beyond a reasonable doubt of the charges which affects the constitutional framework of the adjudication. (Opinion P. 942)

In reviewing questions of law arising under the Nebraska Juvenile Code, an appellate court reaches conclusions independent of the lower court's ruling. In re Interest of Ty M. & Devon M., 265 Neb. 150, 655 N.W.2d 672 (2003).

The review of constitutional standards is a question of law and is reviewed independently of the trial court's determination. Id.

"Structural errors," which are subject to automatic reversal on appeal, are errors that affect the entire conduct of the proceeding from beginning to end. Greer v. United States, 141 S.Ct. 2090 (2021)

To conceal or remove physical evidence, within the meaning of subdivision (1)(a) of this section, is to act in a way that will prevent it from being disclosed or recognized. State v. Lasu, 278 Neb. 180, 768 N.W.2d 447 (2009).

STATEMENT OF FACTS

On September 6, 2022, African American Juvenile Quiotis C. was charged in juvenile court in the shooting death of an individual Mr. Parker in Count I Neb. Rev. Stat. § 28-305 Manslaughter and Count II Neb. Rev. Stat. § 28-1205 Use of a Weapon to Commit a Felony.

Appendix F

On September 7, 2022, the State decided to file the petition in juvenile court which denies Appellant a jury trial as opposed to county (Adult) court which guarantees Appellant a jury trial (T1). The petition alleged: Count I Manslaughter Class IIA Felony: On or about the 6th day of September 2022, in Douglas County, Nebraska, said juvenile did then and there kill Mr Parker …in violation of Neb. Rev. Stat. § 28-305(1) a Class IIA Felony. Count II Use of a Deadly Weapon (Firearm) to Commit a Felony Class IC Felony: …which may be prosecuted in a court of this state in violation of Neb. Rev. Stat. § 28-1205(1)(a)&(c), a Class IC felony. (*Id.*).

Neb. Rev. Stat. § 43-246.01(3)(c) (Reissue 2016) grants concurrent jurisdiction to the district court and the juvenile court as to any juvenile described in § 29-1816(1)(a)(ii), which section states (1)(a) The accused may be arraigned in county court or district court:…(ii) If the accused was younger than eighteen years of age and was fourteen years of age or older when an alleged offense punishable as a Class II or IIA felony was committed;

Appellant was 14 at the time of the offense.

The white Douglas County prosecutor could have filed the Appellant's case in county court which would have guaranteed the Appellant a right to a jury trial pursuant to Batson.

The Douglas County Prosecutor made the decision to file the charge in the Douglas County Juvenile Court which denied the Appellant his Sixth Amendment right to

a jury trial. The Appellant had no choice in the decision to file in Juvenile Court.

The unconstitutional juvenile statute states Neb. Rev. Stat. § 43-279 …(1) The adjudication portion of hearings shall be conducted before the (Juvenile) court without a jury,…

After the manslaughter was filed in September and only after the depositions were completed on February 21, 2023, on March 6, 2023 the Appellee understood they could not convict Appellant on the current charges so they filed a Motion for Leave to Amend the Complaint to add the charges of Count III Neb. Rev. Stat. § 28-922 Tampering and Count IV Neb. Rev. Stat. § 28-1204 Minor in Possession which was granted on March 8, 2023. The Appellant had a strong self-defense case because he was acquitted on the manslaughter and use of a weapon charges.

On April 7, 2023, the Juvenile filed a Motion for a Jury Trial which was denied. (T201) On April 7, 2023 the Juvenile filed a Notice of Unconstitutionality of Statute Neb. Rev. Stat. § 43-279. A Motion to Dismiss/Demurer was filed on the 3rd day of May, 2023. (T230)(259)

The contradictory trial testimony of the white eight-year-old R.S. was the testimony that "the gun fell from Tiger's (dad's) waist…I seen it" (365:1-18) and he later stated the Appellant had the gun in the funny pack prior to the shooting. The changing testimony of white witness Lawrence Summers was he could not tell what was in

Appellant's hands which changed from "something" to a "bag" to a "fanny pack" in trial testimony. (526:20-22) (525:2-25) (531:14-15)(518:20-24)(514:2-15)(474:1-14)(475:1-18)(E125)(E126).

On June 8, 2023 due to insufficient evidence, the Court dismissed Count I and Count II. The Juvenile was convicted of Count III and Count IV which were found to be true. (T287)

ARGUMENT

The Appellant's Sixth Amendment Right to a jury trial pursuant to Batson was denied by the Appellee Douglas County Prosecutor who decided to file the case in the juvenile court which automatically denied the Appellant a jury trial for manslaughter and the use of a weapons charge pursuant to Neb. Rev. Stat. § 43-279. (T1)

The Prosecutor could have filed the charges in county court which would have guaranteed the Appellant his Batson Sixth Amendment Right to a jury trial but he did not file it in the county court because the Appellant had a strong case of self-defense. As a direct result the Appellee's filing decision Appellee argues Appellant does not have a right to a jury trial.

Six months after the charges were filed in September and only after the depositions were completed on February 21, 2023, on March 6, 2023 the Appellee amended the Petition to add Count III and Count IV because the Appellee understood they could not convict on the manslaughter/use of a weapon charge.

Appendix F

Although the Appellee argued "It is the state's decision whether to allow jury trials in juvenile proceedings,..." Appellee Brief Page 7

No! It was solely the decision of the Appellee to file the charge in Juvenile Court to deny the Appellant a jury trial pursuant to Batson because the Appellant had a strong self-defense case and the Appellant had no choice in the filing decision. (T1)

Appellant's manslaughter/use of a weapon self-defense evidence was strong because he was acquitted in juvenile court of manslaughter.

Further review must be granted because a Black juvenile has the same constitutional right to a jury trial under Batson from which blacks have not been "purposely excluded from the jury" for the same serious charges as an adult under the Constitution, the Sixth Amendment, Fourteenth Amendment, Equal Protection of the Law and Due Process. The Court erred by denying Appellant a jury trial. (Opinion P. 942) (T201) (T259))(13:4-5)(13:13-24)(14:9-10) (T220)(15:20-21)(16:2-12) (19:5-6) (T287)

Further review must be granted because the Court of Appeals did not cite or refer to Batson in the opinion. The Court of Appeals erred in the application of the law because the Nebraska Constitution 1-6, the U.S. Constitution, the Sixth Amendment, Eighth Amendment, Fourteenth Amendment, Equal Protection of the Law, and Due Process guarantee applies to defendants and guarantees a juvenile a jury trial.

Appendix F

Further review must be granted because of the insufficiency of the evidence in that the testimony of the eight-year-old R.S. in the adjudication that "the gun fell from Tiger's (dad) waist…I seen it" which directly contradicts the fanny pack story in the R.S. testimony. (Appellant's Reply Brief Page 1) (365:1-18) Witness R.S. acknowledged his prior inconsistent deposition testimony but assured the court that he was testifying truthfully. (Opinion P. 946) White witness Summers improbable testimony improved regarding his initial "something in his hand" to a bag on September 19, 2022 to a "fanny pack" in his trial testimony on May 9, 2023. (Appellant Reply Brief P. 1) (526:20-22)(525:2-25) (531:14-15)(518:20-24) (514:2-15)(474:1-14)(475:1-18)(E125)(E126). Summers did not tell anyone to look for a fanny pack. (Appellant Brief P. 19) (526:20) (526:22) (533:22) (534:1) (535:2) The police did not find a fanny pack. (Appellant Brief P. 22)(207:25) (208:1-17).

Further review must be granted because the white judge abused his discretion in ruling the two white witnesses, R.S. and Summers, who had contradictory conflicting improbable testimony, were credible and the three black witnesses were not credible. The improbable contradictory conflicting testimony of the two white witnesses was insufficient in the light most favorable to the prosecution to sustain a conviction and after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could not have found the essential elements of the crimes beyond a reasonable doubt based upon their testimony. (Appellant Brief P. 21-22)

Appendix F

The Appellee claims there is no evidence in the record to support Appellant's factual assertions of their race.

Quiotis Cross, Sr. is black (E, 115-122, P. 108) Appellant is black (E,33-39, P. 12) Appellant requests this court pursuant to Neb. Rev. Stat. § 27-201 take judicial notice judge Matthew Kahler is white. The Nebraska Rules of Professional Conduct § 3-508.4 prevents dishonesty, fraud, deceit or misrepresentation any in statements in this motion; therefore, it is the ethical duty of the Appellee to state in any future writings that the Appellant's factual information in this brief regarding the race of individuals is incorrect. R.S. and Summers are white. Brandon Butler is black

Further review is required because the elements of tampering were not met because the highly trained Omaha Police Officers testified that the gun pieces were found in a straight line, nothing was hidden, the pieces were on top, they didn't have to move anything to see them, the gun could be reassembled because all of the pieces were there, it was test fired afterwards, there is no evidence of any intent to destroy the gun and Appellant knew that he could not have that firearm because if the cops saw a gun in his hands they would shoot to kill him. (Appellant Brief P. 21-22) (206:17-19) (206:20-21) (206:22-23) (207: 3) (207:4-5) (922: 16-22) An Omaha Police Officer called by the defense testified a gun can be disassembled for safety reasons and it could be possible that it was done in this case. (Appellant Brief P. 21-22)(653: 23-25) (729: 8-13) (758:15-18)

Appendix F

Since McKeiver was decided denying juveniles jury trials, Batson v. Kentucky was decided which guarantees African Americans the constitutional right to a jury trial from which members of his race have not been purposely excluded which was denied this African American Juvenile by the Prosecutor filing the case in juvenile court.

Batson is mandatory case law which requires a jury trial for African American juveniles just as Miranda v. Arizona, 384 U.S. 436 (1966) (fifth amendment right to remain silent), Gideon v. Wainwright, 372 U.S. 335 (1963) (guarantees juveniles a right to an attorney), In the Matter of Samuel Winship 90 S. Ct. 1068 (1970) (juveniles, like adults, are constitutionally entitled to proof beyond a reasonable doubt when they are charged with a violation of a criminal law), Brown v. Board of Education, 74 S.Ct. 686 (1954). (desegregation was applied to both adults and juveniles) and In re Gault, 387 U.S. 1 (1967) (right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to privilege against self-incrimination) are mandatory case law for juveniles.

We held in In re Gault, 387 U. S. 1, 387 U. S. 13, that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."

Further review is required because the court erred in the application of the law since McKeiver does not deny juveniles a jury trial. Colorado and Michigan allow juvenile jury trials although Nebraska does not follow the mandatory precedent of Batson in allowing a juvenile jury trial.

Appendix F

Further review is required because the Court of Appeals erred in ruling the structural error doctrine does not apply because the juvenile court case is civil. The structural error doctrine in Weaver and Greer apply just as the criminal standards in Miranda, Gideon, Winship, Gault and Batson apply to juveniles.

The court erred because the structural error doctrine which defines a structural error as that which affects the constitutional framework within which the trial proceeds rather than being simply an error in the trial process itself in this all-white system which excludes blacks and black jurors. The unconstitutional structural error doctrine framework is the white prosecutor filed manslaughter and use of a weapon charges in juvenile court to deny Appellant a jury trial for the incident on September 5, 2022 upon which the Appellant was acquitted. Only after the depositions were completed on February 21, 2023, the white prosecutor realized they could not win a conviction on manslaughter. On March 6, 2023, which is six months after the initial charges, the Prosecutor filed a motion to amend the complaint to tampering and minor in possession upon which Appellant was convicted.

Further review is required in upholding the decision of the white court judge's finding the testimony of three black witnesses not credible and the contradictory improbable testimony of the two white witnesses credible based on the observations of the white judge. (365:1-18)

Further review is required for the refusal to address the Batson issue in the opinion and ruling that the

observation of the white judge of the two white witnesses is the standard to affirm instead of the standard that the contradictory testimony evidence regardless of the observations of the judge is that a rational trier of fact would not have found the evidence sufficient to convict beyond a reasonable doubt.

Further review is required on the timeliness of the motions because on September 7, 2022, the juvenile was arraigned on the juvenile Petition to the criminal charges and a detention hearing was held where current Counsel was not the attorney of record. On April 12, 2023, "Quiotis filed numerous motions including a motion for a juvenile jury trial,"(Opinion P. 938) (T210) (T211)(T163)(11:1-2) (13:3), (T138)(T165)(17:14-16) (T230)(259) (19:7-8) (T66) (T71)(T99)(T105) (T178)(T198)(18:4) (T173)(T192)(T270) (T274) (22:6)(24:13). (T220)(15:20-21)(16:2-12) (19:5-6) The court stated "We further note that the juvenile court never addressed the constitutionality of these statutes on the merits because it found the motion challenging them was untimely." (Opinion P. 943) As stated in Boche, the constitutional challenge to the statute prohibiting juvenile jury trials was timely preserved on appeal because it was not directed to the statutes upon which the juvenile was ultimately convicted but was a violation of the constitution.

THE MISTAKES OF LAW

The Appellee argues Batson only applies in instances where the right to a jury trial can be exercised. (Appellee Brief Page 6) The Appellee cites that Mckeiver "… established it would be the state's privilege and not its

obligation to offer jury trials in juvenile adjudications. (Appellee Brief Page 7). Therefore, the Appellate Court did not err in excluding the mention of Batson from its opinion as it is not applicable law here. (Appellee Brief Page 8).

Batson applies.

Neb. Rev. Stat. § 43-279 should be declared unconstitutional because the Appellee manipulated the case to deny the Appellant a jury trial by filing the case in juvenile court and after six months adding tampering and minor in possession upon which Appellant was convicted.

The structural error doctrine applies because the constitutional framework, which is the denial of a jury trial, of this case was affected by the Appellee's decision to file it in Juvenile Court.

The Prosecutor manipulated the denial of the Appellant's Sixth Amendment Right to exercise his right to a jury trial by filing the case in juvenile court because of the strong evidence of self-defense to the manslaughter charge. The Appellant was acquitted on the charge of manslaughter.

Based upon the contradictory impeached testimony of the two state witnesses, the Appellee convicted the Appellant of the tampering and minor in possession charges which were added six months after the case was filed to convict the Appellant after the Prosecutor understood he could not convict on the manslaughter charges.

The Appellee cannot argue that Batson does not apply when the Prosecutor decided to file the case in juvenile court to specifically deny the juvenile the Sixth Amendment Right to a jury trial because the juvenile had a strong self-defense argument. The Appellant was acquitted of the manslaughter/use of a weapon based on self-defense and he was convicted on the charges of tampering and minor in possession.

Batson and the Sixth Amendment right to a jury trial applies because the Appellee manipulated this case to deny the Appellant a jury trial by filing the case in juvenile court to deny a jury trial instead of filing the case in county court where a jury trial is required. Neb. Rev. Stat. § 43-279 is unconstitutional.

The Appellee filed the case in juvenile court to deny the Appellant a jury trial and then argues Batson does not grant the African American Appellant a right to a jury trial.

The Appellee knew after the depositions that they could not win on manslaughter so six months later they add tampering and minor in possession upon which the Appellant was ultimately convicted.

Appellant should have a Sixth Amendment Right to a jury trial whether he is charged in juvenile court or county court.

This case has national importance because the Prosecutor in states such as Nebraska can manipulate

the denial of the Sixth Amendment Right to a juvenile jury trial by filing the manslaughter case in juvenile court, when there is strong self-defense evidence, to deny Appellant a juvenile jury trial to convict instead of filing the case in adult court where the African American juvenile is guaranteed a jury trial pursuant to Batson.

CONCLUSION

For the foregoing reasons, Appellant requests that this Court overrule the motion for summary affirmance and grant further review.

Quiotis C., Appellant
Timothy L. Ashford
By: /s/ Timothy L. Ashford, #19687
P.O. Box 386
Omaha, Nebraska 68101
(402) 660-5544
Tash178346@aol.com
Attorney for Appellant