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**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**

NO. A-25-137, A-25-138, A-25-139, A-25-140, A-25-141

IN THE COURT OF APPEALS FOR THE STATE OF NEBRASKA

IN RE INTEREST OF JOHNNY HARVEY
A Child Under Eighteen Years of Age

APPEAL FROM THE DISTRICT COURT OF
SARPY COUNTY, NEBRASKA

Honorable Jonathon Crosby, Juvenile Court Judge
Juvenile Court Case JV22-313, JV24-99, JV24-421, JV24-470, JV24-
505

BRIEF OF APPELLANT

Submitted by:
TODD A. WEST #24261, Public Defender

DENNIS P. MARKS, #18364 Deputy Sarpy County Public Defender
1210 Golden Gate Dr.
Papillion, NE 68046
(402) 593-5933

ATTORNEYS FOR APPELLANT

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STATEMENT OF JURISDICTION

The Appellant, Johnny H., hereinafter “Johnny”, appeals the Order entered against him by the Separate Juvenile Court of Sarpy County, Nebraska on January 31, 2025, finding that Johnny was non-amenable to the rehabilitative services of the Nebraska Case pursuant to Neb. Rev. Stat §43-2, 106.03 and then terminating jurisdiction as unsuccessful in JV22-313, JV24-99, JV24-421, JV24-470 and JV24-505. (A-25-137, T88-91; A-25-138, T56-59; A-25-139, T40-43; A-25-140, T27-30; A-25-141, T39-42)

These Orders dated January 31, 2025 are final Orders.

The Notices of Appeal, Applications to Proceed in Forma Pauperis with supporting Financial Affidavits were each timely filed with the Court of Appeals on February 26, 2025. An Order to Proceed in Forma Pauperis was granted on February 27, 2025. (A-25-137, T92-93; A-25-138, T60-61; A-25-139, T-58-59; A-25-140, T44-45; A-25-141, T49-50)

This appeal is authorized by the Constitution of the State of Nebraska, Article I, Section 23, Neb. Rev. Stat. §25-1902(1)(b), Neb. Rev. Stat. §43-2, 106.01 (Reissue 2010).

STATEMENT OF THE CASE

A. NATURE OF THE CASE

Johnny was placed on probation on each of his Juvenile Dockets, (Ex 25:5; 12, 19, 26, 32) A Probation Review hearing was scheduled for March 25, 2025, on each docket in an Order dated December 19, 2024. (Ex 25, 19, 26, 32) In the interim, the State filed a Motion for Finding of Non-Amenability to Rehabilitative Services and Termination of Jurisdiction on January 8, 2025. (A-25-137, T86-87; A-25-138, T52-54; A-25-139, T36-37; A-25-140, T23-24; A-25-141, T39-41) This motion was set for hearing on January 31, 2025.

An Evidentiary Hearing was held on January 31, 2025. Probation Officer Nathan Bohy testified on behalf of the State.

Probation Officer Bohy testified, in relevant part, about services the court ordered Johnny to complete while on probation and his completion of those services. (11-28)

At the conclusion of the hearing, the Juvenile Judge immediately ruled that Johnny was non-amenable to rehabilitative services. (A-25-137, T 88-90; A-25-138, T56-58; A-25-139, T40-42; A-25-140, T27-29; A-25-141, T39-41) The Court considered the allegation in adult court stating that Johnny had been charged with robbery, a second robbery. (40:22-25; 41:1-19) Exhibit 28 clearly evidences that Johnny was charged with a Criminal Attempt-Robbery, not Robbery. (Ex 28 p.1)

The Juvenile Judge stated reliance at the hearing included a psychological evaluation Johnny participated in with Dr. Gard as ordered by the Juvenile Court for purposes of developing a treatment plan. (36:10-14; 41:18-21) The Judge also stated that he was not convinced that any decision-making class would have any impact on Johnny. (42:20-21)

The Judge further stated that Johnny has consistently demonstrated that he is going to do what he wants to do whether he is on CARE or at home. (42:21-24) “So based on your age, being 17 and a half years old, based on your prior adjudications in this Court, based on the services we’ve already used, and based on the totality of the circumstances, I’m going to find that you’re non-amenable to services in the Juvenile Court. I’m going to terminate your probation, terminate this case unsuccessfully.” (43:4-10)

In the written order, the Juvenile Judge relied on information contained in the record and his recollection in reaching the conclusion that Johnny was non-amenable to rehabilitative services justifying the termination of his Juvenile Dockets.

B. ISSUES TRIED IN DISTRICT COURT

Whether the Juvenile Judge erred in concluding that Johnny was non-amenable to rehabilitative services justifying the termination of each of his Juvenile Dockets.

C. HOW THE ISSUES WERE DECIDED

Johnny had each Juvenile Docket terminated based on non-

amenability to rehabilitative services.

D. SCOPE OF REVIEW

An Appellate Court reviews Juvenile cases *de novo* on the record and reaches a conclusion independently of the Juvenile Court's findings. In re Int. of Noah B., 295 NEB. 764, 773, 891 N.W. 2d 109, 118(2017)

ASSIGNMENTS OF ERROR

1. The Juvenile Judge erred in concluding that Johnny was non-amenable to rehabilitative services justifying the termination of each of his Juvenile Dockets.
2. The Juvenile Judge committed plain error by relying on his recollection in concluding that Johnny was non-amenable to rehabilitative services justifying the termination of each of his Juvenile Dockets.

PROPOSITIONS OF LAW

I.

Any time after the Disposition of a Juvenile described in subsection (1), (2), (3)(b), or (4) of section 43-247, upon the motion of any party of the court on its own motion, a hearing may be held regarding the amenability of the Juvenile to rehabilitative serves that can be provided under the Nebraska Juvenile Case. Section 43-2106.03 Neb. Rev. Stat.

II.

The Court may enter an order, based upon evidence presented at the hearing, finding that a Juvenile is not amenable to rehabilitative services that can be provided under the Nebraska Juvenile Case. Section 43-2106.03 Neb. Rev. Stat.

III.

Plain error is error plainly evidence from the record and of such nature that to leave it uncorrected would result in damage to the integrity, reputation, or fairness of the Judicial Process. *State v. Pauley* 311 Neb. 418, 973 N.W. 2d 907 (2022). See also *In re Interest of D.W.*, 249 Neb. 133, 542 N.W. 2d 407 (1996). Plain error may be asserted for the first time on appeal or be noted by an appellate court on its own motion. *Law Offices of Ronald J. Palagi v. Dolan* 251 Neb. 457, 558 N.W. 2d 303 (1997)

STATEMENT OF FACTS

JV 22-321. On August 29, 2024, Johnny was adjudicated on Truancy from School at JV22-313. (A-25-137, T8-11) The Judge ordered Johnny to complete a WISC-V evaluation. (A-28-137, T8, 14) This evaluation was completed, and a report generated by Dr. Kelly Tamayo dated September 22, 2022.

On October 26, 2025, Johnny was placed on probation on this docket (Ex. 29 p. 5-7) He was ordered to participate in rehabilitative services to include individual therapy, cooperate with a Community Youth Coach at the discretion of probation, and participate in prosocial activities. (A-25-137, T20-21)

In addition, a condition of probation required Johnny to “attend school daily without unexcused absences or tardies, work to his potential, display appropriate behavior and cooperate with informal supports the faculty find necessary to help him be successful.” (A-25-137, T20)

Roughly twenty-three months later, on September 9, 2024, a Detention Review/Placement hearing was held. In relevant part, Johnny was again ordered to participate in a psychological evaluation with WISC-V testing. (A-25-137, T59)

JV24-99. On February 27, 2024, Johnny was subsequently adjudicated on a Theft by Unlawful Taking <\$500.00 in the Separate Juvenile Court of Douglas County, and the matter transferred to the Separate Juvenile Court of Sarpy County, Nebraska for disposition. (A-25-138, T18-19)

On May 13, 2024, Johnny was placed on probation for this offense at JV24-99. (A-25-138, T22-23) He was ordered to complete the previous orders at JV22-313. An additional condition requiring Johnny to complete summer school and completion of an additional rehabilitative service, the ART Program, were ordered. (A-25-138, T22) A Probation Review hearing was set for September 9, 2024. (Ex. 29 p. 13)

JV24-505. On October 29, 2024, Johnny was adjudicated on a Third-Degree Assault-Mutual Consent in Douglas County Separate Juvenile Court and had the matter transferred to Sarpy County for disposition (A-25-141, T20, 24-25)

On December 19, 2024, a disposition order was issued on this offense at JV24-505 in the Separate Juvenile Court of Sarpy County, Nebraska. No additional rehabilitative services or conditions were added to his term of probation. (A-25-141, 31-33)

JV24-421. On August 27, 2024, Johnny was charged with Burglary and Theft by Unlawful Taking >\$500.00<\$1500.00. A Detention Hearing was held, and Johnny was ordered, in relevant part, to complete a co-occurring evaluation. (A-25-139, T5) This evaluation was completed on September 11, 2025, with Krysti Eggert.

On November 14, 2024, Johnny was adjudicated on the misdemeanor theft offense at JV24-421 (A-25-139, T24-26) On December 19, 2024, Johnny was placed on probation on this docket with no additional rehabilitative services or conditions added to his

term of probation and a Probation Review hearing was set for March 24, 2024. (A-25-139, T27-28)

JV24-470. On October 7, 2024, a Juvenile Petition was filed charging Johnny with Robbery. (A-25-140, T2-3) He was adjudicated on this offense on November 14, 2024. (A-25-140, T11-13) In addition, a Detention/Placement Review hearing was held at the same time. Johnny was released from staff secure detention at the Juvenile Justice Center and allowed to go home on the CARE Program. (A-25-140, T20)

He was placed on probation on this docket on December 19, 2024, with no additional rehabilitative services or conditions of probation added to his term of probation. A Review hearing was set for March 24, 2025. (A-25-140, T15-16)

On January 3, 2025, a Criminal Complaint was filed in the County Court of Sarpy County, Nebraska alleging that Johnny committed a Criminal Attempt-Robbery. (Ex. 28 p. 1)

On January 8, 2025, the State filed a Motion for Finding of Non-Amenability to Rehabilitative Services and Termination of Jurisdiction. (A-25-137, T86-87; A-25-138, T52-53; A-25-139, T36-37; A-25-140, T23-24)

An Evidentiary Hearing was held on January 31, 2025. Probation Officer Nathan Bohy testified on behalf of the State. Probation Officer Bohy testified, in relevant part, about services the court ordered Johnny to complete while on probation and his completion of those services. (11-28)

At the conclusion of the hearing, the Juvenile Judge immediately ruled that Johnny was non-amenable to rehabilitative services. (A-25-137, T88-90; A-25-138, T56-58; A-25-139, T40-42; A-25-140, T27-29; A-25-141, T39-41) The Court considered allegation in adult court stating that Johnny had been charged with robbery, a second robbery. (40:22-25; 41:1-19) Exhibit 28 clearly evidences that Johnny was charged with Criminal Attempt-Robbery, not Robbery. (Ex 28 p. 1)

The alleged facts that form the basis of Criminal Attempt-Robbery citation involves a demand for twenty dollars and then property items from another seventeen-year-old male. When the alleged demands by Johnny were rejected by this youth, a physical altercation ensued between the two. The purported victim was shoved down and then several others subsequently jumped in and started kicking him. (Ex. 28 p. 6-8)

SUMMARY OF THE ARGUMENT

The Juvenile Judge erred in concluding that Johnny was non-amenable to rehabilitative services justifying a termination as unsuccessful of each of his Juvenile Dockets. The facts in the record overwhelmingly demonstrate that Johnny completed, or was in the process of completing, every rehabilitative service and condition ordered by the court as part of his probation.

The Judge committed plain error by relying on his recollection of the facts from these dockets. This recollection included inaccurate information.

ARGUMENT

I.

THE JUVENILE JUDGE ERRED IN CONCLUDING THAT JOHNNY WAS NON-AMENABLE TO REHABILITATIVE SERVICES JUSTIFYING THE TERMINATION OF HIS JUVENILE DOCKETS

The State asked Probation Officer Bohy if he believed “there are any services that we can offer that Johnny would be amenable to?” In response, Probation Officer Bohy responded, “Not that comes to mind.” (Ex. 13 p. 23-25) This assertion contradicts the evidence and testimony in this matter.

Johnny was originally adjudicated on Truancy from school at JV22-313. At this hearing he was ordered to participate in a WISC-V

evaluation. (A-25-137, T7-9) He completed this evaluation (Ex. 26 p. 12-16)

Johnny was placed on probation in an order dated October 26, 2022. (Ex. 29 p. 5-7) He was ordered to participate in rehabilitative services to include individual therapy, cooperate with a Community Youth Coach at the discretion of probation, and participate in prosocial activities. (Ex. 29 p. 6)

In addition, a condition of probation included “attend school daily, without unexcused absences or tardies, work to his potential, display appropriate behavior and cooperate with informal supports the faculty find necessary to help him be successful” was ordered. (Ex. 29 p. 6)

Johnny was later placed on probation for a misdemeanor theft offense at JV24-99 on May 13, 2024. He was ordered to complete the previous orders at JV22-313. An additional rehabilitative service, the ART Program, and additional condition requiring Johnny to complete summer school were ordered as well. (Ex. 29 p. 12)

Johnny was also placed on probation on three other Juvenile Dockets, but no additional rehabilitative services or conditions were ordered as part of his probation (Ex. 29 p. 19-20, 26-27, 32-33)

In a detention hearing on August 27, 2024, Johnny was ordered to participate in a co-occurring evaluation. This condition was completed on September 11, 2024, with Krysti Eggert. (Ex. 24 p. 25, Ex. 25 p. 1-5)

In a detention hearing on September 9, 2024, Johnny was again ordered to participate in a WISC-V evaluation. This evaluation was completed on August 24, 2024. (Ex. 27 p. 1-5, Ex. 25 p. 6-11)

As such, the rehabilitative services Johnny was ordered to complete include individual therapy, cooperate with a Community Youth Coach at the discretion of probation, participate in prosocial activities pursuant to JV22-313 (Ex. 29 p. 5-6) and complete the ART Program. (Ex. 29 p.12)

As for therapy, Bohy testified that Johnny had three different therapists while on probation. These counselors included Krysti

Eggert, Kara Abbott and Anita Akers. Attendance may have been sporadic at times, but that was attributed to transportation issues and perhaps his counselors canceling sessions as well. (Ex. 15 p. 3-25, Ex. 16 p. 1-25, Ex 17 p. 1-6)

Johnny was also required to participate and engage with a Community Youth Coach (CYC) at the discretion of his probation officer. Pursuant to the testimony of Probation Officer Nathan Bohy, Johnny completed this requirement on two separate occasions. The CYC worked well with Johnny and the family which shows that Johnny was amenable to this service as well. (20:16-25, 21:1-15)

Johnny was also ordered to participate in prosocial activities. Bohy testified that sometimes this activity is secondary to credit recovery and bringing up grades. (21:16-25) But Johnny did participate in football at Millard South and was active in sports. (23:10-13) Johnny also participated in competitive boxing four to five times per week. He boxed in the Midwest Golden Gloves tournament in May of 2024. (22:1-13)

Probation Officer Bohy also testified about the ART Program. Johnny was assigned to complete ART in 2024 but was discharged due to a lack of attendance. Like attendance at the Day Reporting Center, Johnny relied on others for transportation. (24:5-8) Transportation issues, “a hard time with rides”, also impacted Johnny’s ability to report to drug testing. (28:2-4) Nevertheless, Bohy testified that Johnny was scheduled to start ART again in February of 2025. (10:19-24, 32:22-25)

Probation Officer Bohy testified that the ART Program is a decision-making program that works on coping skills, skill building for the youth, problem solving decision making, the impact of peers on decision making and the impact that emotions have on decision making. (33:2-4, 18-25, 34:1-17)

Johnny also had other conditions ordered as part of his probation. Although not rehabilitative services, Johnny was compliant in completing these conditions too.

Pursuant to JV22-313, Johnny was ordered to “attend school

daily, without unexcused absences or tardies, work to his potential, display appropriate behavior and cooperate with informal supports the faculty find necessary to help him be successful.” (Ex. 29 p. 6)

Bohy testified when he first started supervising Johnny in 2022, Johnny was severely credit deficient. (21:23-25, 23:14-25) When terminated in January 2025, Johnny was actually on track to graduate which was definitely not the case in 2022. (24:9-20)

In JV24-99, Johnny was required to complete summer school. (A-25-138, T21) In JV22-313, Johnny was to attend the Day Reporting Center in a detention order entered on October 7, 2024. (A-25-137, T68-69)

Although the record is silent as to Johnny’s summer school attendance, Probation Officer Bohy did testify about Johnny attending the Day Reporting Center (DRC). Officer Bohy stated Johnny has good attendance at the DRC but has a hard time getting there because he relies on others for transportation. (24:1-8)

As previously discussed, Johnny also participated in evaluations ordered by the court. This included two psychological evaluations and a co-occurring evaluation.

On October 7, Johnny was also ordered to complete the CARE Program. (A-25-137, T67; A-25-138, T31; A-25-139, T20) (11:14-20) The CARE Program is a four-level program. Criteria must be met to move from one level to the next. These criteria involve passing all classes, providing negative UAs and doing well in the home. It is designed to be an eight-week program but may last longer. Johnny successfully completed the program on December 2, 2025, the first time. (17:22-25, 18:1-25, 19:1-21)

The second time that Johnny was placed on CARE was as an alternative to detention. Johnny was keeping his battery charged and did not receive any complaints from CARE. (20:1-11) Johnny was discharged from CARE when his dockets were terminated in the order issued on January 31, 2025.

The only time Johnny was ordered to provide random UAs was in the arraignment order involving JV22-313 at the predisposition

level on August 29, 2022. (A-25-137, T9) Nonetheless, Johnny cooperated and provided UAs to the probation officer. (27:21-25, 28:1-6)

Also absent from every probation order was the requirement to not violate the laws of any municipality or state. Hypothetically, had such language been contained in the orders, any violation would have involved a condition of probation, not a rehabilitative service. Section 43-2106.03 is laser focused on “amenability to rehabilitative services”.

As the foregoing demonstrates, Johnny would have been amenable to completing ART. He also would have been amenable to completing in-home services which would include MST (Multisystemic Therapy).

The MST Program consists of a “therapist and skill builder that comes into the home, works with the family, works with the youth, a kind of last effort to keep the youth in the community and in the home environment”. (13:3-12)

II.

THE JUVENILE JUDGE COMMITTED PLAIN ERROR BY RELYING ON INFORMATION BASED ON HIS RECOLLECTION IN CONCLUDING THAT JOHNNY WAS NON- AMENABLE TO REHABILITATIVE SERVICES JUSTIFYING THE TERMINATION OF EACH OF HIS JUVENILE DOCKETS

Plain error is error plainly evidenced from the record and of such nature that to leave it uncorrected would result in damage to the integrity, reputation, or fairness of the Judicial Process. *State v. Pauley*, 311 Neb. 418, 973 N.W. 2d 907 (2022) See also *In re Interest of D.W.*, 249 Neb. 133, 542 N.W. 2d 407 (1996) Plain error may be asserted for the first time on appeal or be noted by an appellate court on its own motion. *Law Offices of Ronald J. Palagi v. Dolan*, 251 Neb. 457, 558 N.W. 2d 303 (1997)

The Juvenile Judge issued several findings in concluding that Johnny was non-amenable to rehabilitative services pursuant to section 43-2106.03 thereby terminating jurisdiction in his juvenile

dockets. Many of these findings were based on inaccurate or mischaracterized information.

Findings 9, 10, 12, 21 and 23. That many of the Juvenile's adjudicated offenses included acts of violence including Robbery and Assault; The Juvenile continues to violate the law with violent criminal behavior; that the Juvenile has been adjudicated on misdemeanor charges in Juvenile Court involving violence; that the Court has made extensive efforts to rehabilitate the Juvenile; however, the Juvenile continued to engage in criminal activity to include violent and felony level offenses; that the public safety of the community and the safety of the Juvenile requires intervention and services not available to the Juvenile Court. (A-25-137, T88-90; A-25-138, T56-58; A-25-139, T40-42; A-25-140, T27-29; A-25-141, T39-41)

Johnny has one adjudication for Robbery (A-25-140, T11-13) and one adjudication for a Third-Degree Assault that was by mutual consent (A-25-141, T20, 24-25). The other offenses involved a status offense (A-25-137, T7-9) and two misdemeanor theft offenses. (A-25-138, T18-19; A-25-139, T24-26)

Further, the Court in issuing its decision from the bench on January 31 noted, inaccurately, that Johnny had a burglary charge and two felony Robbery charges. (41:16-20) For the record, as previously argued, he has one adjudication for Robbery. The second Robbery is a Criminal Attempt-Robbery in adult court and the Burglary charge was dismissed.

Extensive efforts have not been completely made. Johnny was set to complete the ART Program in February 2025, as previously stated. Instead, he had his case terminate as non-amenable to rehabilitative services. In-home services, which involves family engagement, were never attempted. Research shows that family engagement helps reduce the risk to re-offend. These are services available to the Juvenile Court but were not utilized.

Finding 15. That the Juvenile has had numerous periods of detention. Johnny was originally detained on August 27, 2024, at JV24-431, after being charged with Burglary and a misdemeanor theft

charge. (A-25-139, T1-6) From detention, Johnny was subsequently placed in a shelter for crisis stabilization. (A-25-139, T15)

Johnny subsequently lost that shelter placement and was detained with a Detention/Placement Review hearing held on September 30, 2024. (A-25-139, T17-18) At the Placement Review hearing on October 7, 2024, Johnny was released home on the CARE Program. (A-25-139, T20-21)

These periods of detention are all related. After being released home on CARE, Johnny successfully completed this CARE Program in the minimum eight weeks on December 2, 2024. (19:20-22)

He was never detained after that.

Finding 16. That the Juvenile has a new felony Robbery case in adult court involving allegations of violence that occurred on December 31, 2024. For the Record, it is a Criminal Attempt-Robbery. (Ex. 28 p.1)

This may seem like quibbling, but this finding is significant for two reasons. One, it is just an example of a decision being made based on reliance involving inaccurate information, or in this case a faulty memory.

Two it is irrelevant. As of the hearing, it was an allegation. Furthermore, the allegation has nothing to do with the State's motion that Johnny was non-amenable to rehabilitative services. Non-amenable to services and new law violations are two different things and are handled differently in two different types of hearings.

Finding 17. That the Sarpy County Separate Juvenile Court has utilized numerous resources for more than two years in an attempt to rehabilitate the Juvenile and those efforts have not been successful. (A-25-137, T89; A-25-138, T57; A-25-139, T41; A-25-140, T28; A-25-141, T40)

Rehabilitation was not the issue in this hearing. The issue is whether Johnny was amenable to services as stated in section 43-2106.03 Neb. Rev. Stat. As previously argued, Johnny has completed the rehabilitative services as well as conditions ordered by this court.

Finding 19. That the Juvenile has been denied out of home

placement options due to his continued violent behaviors and criminal activity. (A-25-137, T89; A-25-138, T57; A-25-139, T41; A-25-140, T28; A-25-141, T40)

This is a mischaracterization of the testimony. Probation Officer Bohy testified that Johnny has been denied multiple shelters and Boys Town Group Home “because of his charges and the past of being aggressive”. (11:24-25, 12:1-6)

The continued characterization of continued violent behavior seems like an attempt to stretch and justify a decision not supported by the record. Again, the issue is whether Johnny is amenable to rehabilitative services. This is another example of where the focus on the issue of amenability to services is lost and the focus is instead shifted to rehabilitation, which is a different issue neither entrenched nor contained in section 43-2106.03 Neb. Rev. Stat.

CONCLUSION

In the Motion for Finding of Non-Amenability, the State alleges that Johnny’s “non-compliance with Juvenile Court Orders... demonstrate his unwillingness to participate or otherwise comply with rehabilitative services at the Juvenile Court level.” (A-25-137, T86-87; A-25-138, T52-53; A-25-139, T36-37; A-25-140, T23-24)

For the reasons asserted in the Appellant brief, the record supports the conclusion that Johnny was amenable to services, complied with the orders of the court contained in the record and his dockets should not have been terminated due to non-amenability.

Appellant is asking this court to find that the Juvenile Judge erred when finding Johnny non-amenable to services and terminating jurisdiction in his dockets.

RESPECTFULLY SUBMITTED,
JOHNNY HARVEY, Appellant,

By: DENNIS P. MARKS

Dennis P. Marks, #18364
Deputy Sarpy County Public Defender
1210 Golden Gate Dr.
Papillion, NE 68046
(402) 593-5933

CERTIFICATE OF WORD COUNT

I certify that the accompanying brief complies with Neb. Ct. R. § 2-103(C), in that it was prepared using Century Schoolbook 12-point typeface and contains 4,269 words, excluding this certificate. This certificate was prepared in reliance on the word-count function of Microsoft Word, part of Microsoft Office Professional Plus 2016.

DATED this 16th day of May 2025.

Certificate of Service

I hereby certify that on Friday, May 16, 2025 I provided a true and correct copy of this *Brief of Appellant Johnny H* to the following:

State of Nebraska represented by Andrew Tadd Erickson (26568) service method: Electronic Service to **attynotice@sarpy.com**

Brian Harvey (Self Represented Litigant) service method: **No Service**

Danielle Harvey (Self Represented Litigant) service method: **No Service**

Signature: /s/ Marks,Dennis,P (18364)