E-FILED
Court of Appeals
Bessie Decker
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IN THE
COURT OF APPEALS OF MARYLAND

BRIAN TATE,	)	
	)	
Petitioner,	)	Sept. Term 2017
	)	
v.	)	
	)	Petition Number: 0310-2017
STATE OF MARYLAND,	)	
	)	
Respondent.	)	
	)	

BRIEF *AMICUS CURIAE* OF JUVENILE LAW CENTER IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

This case presents the question whether the Due Process Clause of the Fifth Amendment, applicable to the states through the Fourteenth Amendment, and MARYLAND RULE 4-242(c) require a circuit court, before accepting a guilty plea from a juvenile defendant, to conduct an enquiry on the record into the specific effects that the juvenile's age, mental health, and developmental characteristics have had on the voluntariness of his decision to plead guilty—with a focus on age as the crucial factor.

The circuit court that sentenced Petitioner, Brian Tate, failed to conduct a sufficient enquiry into these matters when it accepted Mr.

Tate's guilty plea, though good reason existed for it to have done so: Mr. Tate was 17 years old, and in addition to "the features that distinguish juveniles from adults" which "put them at a significant disadvantage in criminal proceedings," *Graham v. Florida,* 560 U.S. 48, 78 (2010), suffered from "severe behavioral disorders" that caused "diminished mental capacity," which "impaired" his ability to "decide what to do under certain circumstances." Petn. Ex. 2, at 62.

The Due Process Clause requires that "[i]n making [the] constitutionally independent evaluation of the 'totality of the circumstances' " when examining the voluntariness of a juvenile defendant's waiver of his Constitutional rights, the circuit court must treat the defendant's age as the "crucial factor." *Moore v. State,* 422 Md. 516, 531, 30 A.3d 945, 954 (2011) (internal quotation marks omitted). This entails an enquiry into the voluntariness of the juvenile defendant's plea that focuses on the "commonsense conclusions," *J.D.B. v. North Carolina,* 564 U.S. 261, 272 (2011), that minors "lack [the] maturity, experience, and capacity for judgment required for making life's difficult decisions," *Parham v. J.R.,* 442 U.S. 584, 603 (1979), such that "even in adolescence" they "simply are not able to make sound

judgments concerning many decisions." *Ibid.* A growing body of social science research backs up these "commonsense conclusions." *E.g.,* T. Grisso, *et al., Juveniles' Competence To Stand Trial: A Comparison Of Adolescents' And Adults' Capacities As Trial Defendants,* 27 LAW & HUMAN BEHAVIOR 333 (2003) ("*Grisso*").

The circuit court that accepted Mr. Tate's plea in this case failed to follow this Constitutional mandate. Had that court done so, it would have discovered the diminished mental capacity that impaired Mr. Tate's ability voluntarily to waive his Due Process rights in connection with his plea of guilty. Mr. Tate's diminished mental capacity, along with the pronounced lack of experience, understanding, perspective, and judgment common to all juveniles, raises serious doubts as to the voluntariness of Mr. Tate's guilty plea in this case. Juvenile Law Center, as *amicus curiae,* respectfully urges this court therefore to grant the petition for a writ of certiorari to review the judgment of the Court of Special Appeals.[1]

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[1] The parties' written consents to the filing of this brief are attached, pursuant to MARYLAND RULE 8-511(a)(1). *Amicus,* Juvenile Law Center, works to ensure that the criminal justice system considers the unique developmental differences between youth and adults. It has filed *amicus* briefs addressing this issue in numerous state and federal courts, including

Reasons For Granting The Writ

1. Requirements Of Due Process

The Supreme Court has repeatedly held that the Due Process Clause requires state courts, in evaluating a juvenile defendant's waiver of his Constitutional rights, to take into account that a juvenile's age is far "more than a chronological fact," *Eddings v. Oklahoma,* 455 U.S. 104, 115 (1982), and that courts cannot treat juveniles "simply as miniature adults" for the purposes of implementing Constitutional guarantees. *J.D.B.,* 564 U.S., at 274. The Supreme Court has stressed "that children 'generally are less mature and responsible than adults,' *Eddings,* 455 U.S., at 115–116; that they 'often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,' *Bellotti v. Baird,* 443 U.S. 622, 635, (1979) (plurality opinion); that they 'are more vulnerable or susceptible to . . . outside pressures' than adults, *Roper* [*v. Simmons*]*,* 543 U.S. [551,] 569 [(2005)]; and so on." *Id.,* at 272. *J.D.B.* went on to analyze various aspects of the law that have "historically reflected the same assumption

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in the Supreme Court in *J.D.B. v. North Carolina* and most recently in the Oregon Supreme Court, the Illinois Appellate Court, and the Washington Court of Appeals.

that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them." *Id.,* at 273. *E.g., id., at* 273 n. 6.

As *Graham* recognized, juveniles are "at a significant disadvantage in criminal proceedings." 560 U.S., at 78. "Juveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it. They are less likely than adults to work effectively with their lawyers to aid in their defense." *Ibid.* (citing K. Henning, *Loyalty, Paternalism, And Rights: Client Counseling Theory And The Role of Child's Counsel In Delinquency Cases,* 81 NOTRE DAME L.REV. 245, 272–273 (2005)). A juvenile's "[d]ifficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel, seen as part of the adult world a rebellious youth rejects, all can lead to poor decisions by" a juvenile defendant. *Ibid.* All "[t]hese factors," the Court has held, "are likely to impair the quality of a juvenile defendant's representation." *Ibid.*

As this court re-emphasized in *State v. Daughtry,* 419 Md. 35, 18 A.3d 60 (2011), " '[a] guilty plea operates as a waiver of important

rights, and is valid only if done voluntarily, knowingly, and intelligently, with sufficient awareness of the relevant circumstances and likely consequences.' " 419 Md., at 59, 18 A.3d, at 74 (quoting *Bradshaw v. Stumpf,* 545 U.S. 175, 182 (2005) (internal quotation marks in quote omitted)). The Due Process Clause requires "that a guilty plea must be voluntary, not only in a colloquial sense, but 'in a constitutional sense.' " *Id.,* at 48, 18 A.3d, at 67 (quoting *Henderson v. Morgan,* 426 U.S. 637, 645 (1976)). "That is, a 'plea c[annot] be voluntary in th[at] sense [unless] it constitute[s] an intelligent admission that he committed the offense unless the defendant received 'real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.' " *Ibid.,* 18 A.3d, at 68 (quoting *Henderson,* 426 U.S., at 645 (internal quotation marks in quote omitted) (brackets by quoting court)). To meet this Constitutional standard, a defendant's plea must be "entered with the requisite knowledge of the nature and elements of the crime." *Id.,* at 58, 18 A.3d, at 74. A plea is not voluntary in this Constitutional sense if "[i]gnorance, incomprehension, coercion, terror, inducements, [or]

subtle or blatant threats" influence it. *Boykin v. Alabama,* 395 U.S. 238, 242-243 (1969).

Daughtry recognized that MARYLAND RULE 4-242(c) sets forth a procedure for ensuring that the circuit meets these Constitutional strictures when determining whether a guilty plea is voluntary. That rule provides that the circuit court " 'may accept a plea of guilty only after it determines, upon an examination of the defendant on the record in open court' " that " 'the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea.' " 419 Md., at 58, 18 A.3d, at 73 (quoting RULE 4-242(c)).

The Due Process Clause requires that, in conducting this voluntariness enquiry in connection with a guilty plea, the circuit court take express account of the status of a juvenile offender by conducting a searching enquiry that ensures that the defendant's plea is indeed voluntary and knowing, focusing its enquiry on the "the features that distinguish juveniles from adults" and "put them at a significant disadvantage in criminal proceedings." *Graham,* 560 U.S., at 78. The enquiry must address the factors that the Supreme Court has identified as carrying Constitutional significance when dealing with juveniles:

that they “mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it,” are “less likely than adults to work effectively with their lawyers to aid in their defense,” have “[d]ifficulty in weighing long-term consequences,” suffer from “a corresponding impulsiveness,” and have a “reluctance to trust defense counsel, seen as part of the adult world a rebellious youth rejects,” all of which “can lead to poor decisions by” a juvenile navigating the criminal justice system. *Ibid.*

As this court noted in *McIntyre v. State,* 309 Md. 607, 526 A.2d 30 (1987), the Supreme Court has repeatedly “found that the youth of the juvenile was a crucial factor in determining, in the totality of the circumstances” whether the youth made a knowing and voluntary waiver of his Constitutional rights in an analogous context, that involving the evaluation “whether the [juvenile’s] confession was voluntary under the due process clause of the Fourteenth Amendment.” *Id.,* at 618, 526 A.2d, at 35. In *Moore,* this court reaffirmed that “[i]n making [the] constitutionally independent evaluation of the ‘totality of the circumstances’ ” when evaluating the voluntariness of a juvenile’s confession, the “***crucial factor*** [is] Petitioner’s age,” while another age-

related factor, whether the defendant "requested to speak with his mother," was held also to be "very important." *Id.,* at 531, 30 A.3d, at 954 (internal quotation marks omitted) (emphasis added).

This court's decision in *McIntyre* cited to the Supreme Court's decisions in *Haley v. Ohio,* 332 U.S. 596 (1948), and *Gallegos v. Colorado,* 370 U.S. 49 (1962). In *Haley,* the Supreme Court considered the voluntariness of a confession by a 15 year old. The Court held that "when, as here, a mere child—an easy victim of the law—is before [a court], special care in scrutinizing the record must be used." 332 U.S., at 599. It noted that "[a]ge 15 is a tender and difficult age for a boy," and that his waiver of his Constitutional rights therefore "cannot be judged by the more exacting standards of maturity." *Ibid.* The Court noted the state's contention that the defendant's confession had been voluntary because "this boy was advised of his constitutional rights before he signed the confession," and "knowing them, he nevertheless confessed." *Id.,* at 601. The Court rejected this contention, finding that it "cannot give any weight to recitals which merely formalize constitutional requirements," because "[f]ormulas of respect for constitutional safeguards cannot prevail over the facts of life which

contradict them," *ibid.,* facts of life such as "[t]he age of petitioner." *Id.,* at 600.

Gallegos similarly held that the Due Process Clause requires the states, when determining voluntariness, to focus on "the youth and immaturity of the petitioner," 370 U.S., at 54, who was 14 in that case. *Id.,* at 53. The actions of a young boy, the Court said, "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions." *Id.,* at 54. The Court held:

> "But a 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protest [*sic*] his own interests or how to get the benefits of his constitutional rights." *Ibid.*

This court in *McIntyre* noted that "[i]n both *Gallegos* and *Haley,* the Supreme Court found the confessions involuntary based on the totality of the circumstances surrounding the making of the statement," with "the youth of the juvenile" operating as "a crucial factor in determining, in the totality of the circumstances, whether the

confession was voluntary under the due process clause of the Fourteenth Amendment." 309 Md., at 618, 526 A.2d, at 35.

In a closely-related context, the Court of Special Appeals has held that, "[i]n regard to juveniles," courts should "apply a wider definition of custody for *Miranda* purposes." *In Re Joshua David C.,* 116 Md. App. 580, 594, 698 A.2d 1155, 1162 (1997). That court held that "[i]ndeed, in determining whether a juvenile's statement was made while in custody, the court must consider additional factors, such as the juvenile's education, age, and intelligence." *Ibid.,* 116 Md. App., at 1162.

In so holding, the Court of Special Appeals anticipated the Supreme Court's holding in *J.D.B.* The Supreme Court in *J.D.B.* held that, because of "commonsense conclusions" that the Court's cases had drawn about the nature of juveniles—their lack of maturity, of a sense of responsibility, and of the "experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," 564 U.S., at 272 (internal quotation marks omitted)—a defendant's age presented "a reality that courts cannot simply ignore" in evaluating whether the juvenile was in custody for purposes of *Miranda v. Arizona,* 384 U.S. 436 (1966). *Id.,* at 277. *In Re Joshua David C.* and *J.D.B.*

have special force, in that the test for whether a person is in custody for *Miranda* purposes" is "an objective inquiry." *Id.,* at 270. *J.D.B.* held that the defendant's age was not just a personal characteristic, but an "objective fac[t] related to the interrogation itself." *Id.,* at 278 (internal quotation marks omitted). The Court directed the state court, in determining on remand whether the minor was in custody when questioned, specifically to take into account "J.D.B.'s age at the time." *Id.,* at 281.

2. Developmental Research

The Court in *J.D.B.* noted that "[a]lthough citation to social science and cognitive science authorities is unnecessary to establish th[e] commonsense propositions" regarding juveniles that the Court's opinion outlined, *id.,* at 273 n. 5, it recognized that "the literature confirms what experience bears out." *Ibid.* The Court noted that " '[d]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.' " *Ibid.* (quoting *Graham*, 560 U.S., at 68). *Graham* had also found that scientific developments showed that "parts of the brain involved in behavior control continue to mature through late adolescence," and that

"[t]hese matters relate to the status of the offenders in question," that is, juveniles, for purposes of the Court's Constitutional analyses. 560 U.S., at 68.

A growing body of scientific literature continues to "bear out" these "commonsense conclusions" about adolescents, establishing that teenagers are uniquely vulnerable during plea negotiations. For example, *Grisso* found that "[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent or accepting a prosecutor's offer of a plea agreement." *Id.,* at 357. That study concluded that in "evaluating a plea agreement, younger adolescents are less likely, or perhaps less able, than others to recognize the risks inherent in the various choices they face or to consider the long-term, and not merely the immediate, consequences of their legal decisions." *Ibid.* *Grisso* found that "psychosocial immaturity may affect a young person's decisions, attitudes, and behavior in the role of defendant in ways that do not directly implicate competence to stand trial, but that may be quite important to how they make choices,

interact with police, relate to their attorneys, and respond to the trial context." *Id.*, at 361. The study continued:

> "In general, those who deal with young persons charged with crimes—and particularly their attorneys—should be alert to the impact of psychosocial factors on youths' attitudes and decisions, even when their understanding and reasoning appear to be adequate. Deficiencies in risk perception and future orientation, as well as immature attitudes toward authority figures, may undermine competent decision making in ways that standard assessments of competence to stand trial do not capture." *Ibid.*

The study's conclusion has direct relevance to Mr. Tate's case: "In the plea agreement context, judicial inquiry that goes beyond the standard colloquy may be needed when courts are presented with a guilty plea by a young defendant." *Ibid.*

Numerous studies have found that "the problem of innocent, juvenile defendants pleading guilty in the juvenile justice system may be even greater than in the adult system," where the problem is a substantial one. A. Redlich, *The Susceptibility Of Juveniles To False Confessions And False Guilty Pleas*, 62 RUTGERS LAW REVIEW 943, 944 (2010). These studies show that, "even with the assistance of effective counsel, it is questionable whether juveniles truly understand and

participate in their cases, and follow the advice of or listen to counsel." *Id.,* at 950.

Much of the research highlights the susceptibility of adolescents to coercion in the justice system. One study of juvenile offenders "concluded that almost all of the youths were viewed as too acquiescent, passive, or naïve—compared to most adults—in their approach to decisions about pleas." *Id.,* at 950-951 (internal quotation marks omitted). Another found that "[m]any traits of adolescence, such as a foreshortened sense of future, impulsiveness, and other defining characteristics of youth that help to explain why juveniles falsely confess to police, will also be present for juveniles deciding whether to take a plea." *Id.,* at 953. These characteristics of juveniles help explain why "[j]uveniles are over-represented in proven false confession cases." *Id.*, at 952. Other studies have found that factors such as "[l]imited one-time plea offers, the authority of prosecutors, and other social influence compliance-gaining tactics" in plea negotiations increase the likelihood that a juvenile will plead guilty even if innocent. *Id.,* at 953. These studies have concluded:

> "[J]uveniles' deficits in legal knowledge and understanding, willingness and abilities related

> to participating in their own defense, the heavy reliance on pleas, . . . ineffective juvenile representation, and increased likelihood compared to adults of pleading guilty when guilty—suppor[t] the notion that innocent youths may also be more likely to falsely plead guilty than innocent adults." *Ibid.*

Adolescence may also interfere with the attorney-client relationship. In one study of the ways juvenile and adult detainees approached their attorneys, researchers found that "juveniles were more likely than adults to suggest not talking to their attorney and to recommend denying involvement in the crime, and less likely to recommend honest communication with one's attorney." *Id.,* at 951.

Adolescents involved in the criminal justice system are particularly vulnerable to coercion during plea negotiation because they have a much higher incidence of "mental impairments" than the general population, impairments "known to impede legal comprehension." *Id.,* at 949. A study of court-involved juveniles revealed that they understood very few of the words commonly used on tender-of-plea forms and in guilty-plea colloquies. In this study, half the group had been instructed in the meaning of thirty-six such words; the other half had not. "The results were striking." *Id.,* at 948. "On average,

members of the uninstructed group defined only ***two*** of thirty-six words correctly, and members of the instructed group, only ***five*** words correctly." *Ibid.* (emphasis added). The study gave "examples of incorrect answers, such as 'presumption of innocence' being defined as '[i]f your attorney feels you didn't do it' (age fifteen) and 'disposition' repeatedly defined as 'bad position' (age sixteen)." *Ibid.* Other studies bear these findings out. *E.g.,* A. Redlich & R. Shteynberg, *To Plead Or Not To Plead: A Comparison Of Juvenile And Adult True And False Plea Decisions*, 40 LAW & HUMAN BEHAVIOR 611, 623 (2016). ("Findings from the present research indicate that youthful status may also be a risk factor for false admissions in the form of false guilty pleas.")

3. MR. TATE'S CASE

The decisions of this court and of the Supreme Court of the United States, borne out by current social science research, mandate that when a juvenile pleads guilty, the court accepting the plea must conduct a searching enquiry into whether that plea is "voluntary, not only in a colloquial sense, but in a constitutional sense," *Daughtry,* 419 Md., at 48, 18 A.3d, at 67, focusing on the juvenile defendant's age as the "crucial factor." *Moore,* 422 Md., at 531, 30 A.3d, at 954. Because of the

“commonsense conclusions” about juveniles that this court and the Supreme Court have drawn, that enquiry must probe more deeply into the juvenile’s understanding of the charges against him and of his comprehension of the ramifications of his decision to plead guilty than the circuit court did with regard to Mr. Tate.

An examination of the cases cited above addressing the voluntariness of juvenile confessions demonstrates that, when attempting to determine whether a juvenile had voluntarily waived his right to be free from self-incrimination, this court, like the Supreme Court, has carefully scrutinized the record to determine whether, given the young age of the defendant, his confession can be said to be voluntary in the Constitutional sense. Each of these cases focused the voluntariness analysis on the “crucial factor,” the juvenile defendant’s age, and evaluated the confession in light of those “commonsense conclusions” that put young persons “at a significant disadvantage in criminal proceedings”—their “[d]ifficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel, seen as part of the adult world a rebellious youth rejects,” *Graham,* 560 U.S., at 78; their difficulty in comprehending the

legal system and its terminology, their "lack [of] experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," and their susceptibility to outside pressure and subservience to authority figures. *J.D.B.,* 564 U.S., at 272 (internal quotation marks omitted). And the record required by RULE 4-242(c) must reflect this focus on the juvenile's age as the critical factor.

Evidence that Mr. Tate introduced at his sentencing hearing, held within a few weeks of the plea hearing, included the testimony of a psychiatrist who had examined Mr. Tate and concluded that he was "emotionally underdeveloped," did not "have the development of a 16 year old," and was "at least a couple of years behind in emotional development." Petn., at 1 n. 1. The psychiatrist also concluded that Mr. Tate "[r]eads hidden meaning or threatening meaning" into things, and diagnosed him with adjustment disorder with mixed emotional features, personality disorder, and oppositional defiant disorder. *Ibid.* A psychologist who had performed a comprehensive psychological assessment of Mr. Tate also testified, giving his opinion that Mr. Tate suffered from "narcissistic personality disorder," which he described as "a serious, significant mental disorder." Petn. Ex. 2, at 10.

The Court of Special Appeals discounted this medical testimony, stating that Mr. Tate had introduced it "merely . . . to provide support to the defense's assertion that Tate would benefit from treatment at Putuxent, not to cast doubt on the validity of Tate's plea." Petn. Ex. 3, at 16.

Regardless of Mr. Tate's purpose in introducing this evidence at the sentencing hearing, it is relevant to show that, had the circuit court conducted the appropriate enquiry into whether Mr. Tate's plea was voluntary given his age, it would have found grounds to doubt Mr. Tate's mental capacity and understanding of reality, grounds casting doubt on the voluntariness of his plea. This is precisely the reason the Due Process Clause requires such an enquiry in connection with a juvenile's plea of guilty.

The circuit court that accepted Mr. Tate's plea should have conducted a more detailed enquiry to determine whether, given Mr. Tate's age and mental impairment, he pleaded guilty voluntarily. The Court of Special Appeals erred in holding to the contrary.

Conclusion

The Court should grant the Petition For Writ Of Certiorari.

Respectfully submitted,

William Alden McDaniel, Jr.

William Alden McDaniel, Jr.
Client Protection Fund ID 8406010245

Ballard Spahr, LLP
Suite 1800
300 East Lombard Street
Baltimore, Maryland 21202
Tel.: (410) 528-5600
Fax: (410) 528-5650
Email: mcdanielw@ballardspahr.com

Attorneys for Amicus Curiae, *Juvenile Law Center*

OF COUNSEL:

Marsha Levick, Esquire
Deputy Director and Chief Counsel
Juvenile Law Center
The Philadelphia Building
Suite 400
1315 Walnut Street
Philadelphia, Pennsylvania 19107
Tel.: (215) 625-0551, ext. 105
Fax: (215) 625-2808
Email: mlevick@jlc.org

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH MARYLAND RULE 8-503

1. This brief contains 3,892 words, exclusive of those parts of the Brief exempted from the word count by MARYLAND RULE 8-503.

2. This Brief complies with the font, spacing, and type size requirements of MARYLAND RULE 8-112. The font is 14 pt. Century Schoolbook, except for the footnotes, which are in 13 pt. Century Schoolbook font.

William Alden McDaniel, Jr.
William Alden McDaniel, Jr.

CERTIFICATION REGARDING RESTRICTED INFORMATION

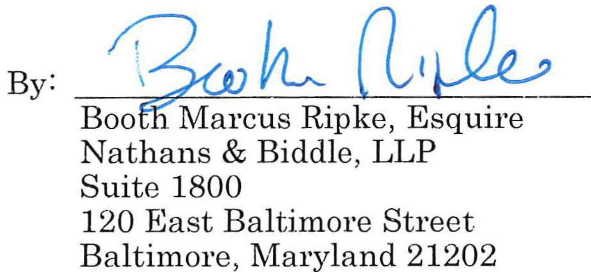
PURSUANT TO MARYLAND RULE 20-201(f)(1), I hereby certify that the submission to which this Certification is attached does not contain any restricted information.

William Alden McDaniel, Jr.
William Alden McDaniel, Jr.

Tate v. State of Maryland, **No. 0301-2017 (Maryland Court of Appeals) (on petition for writ of certiorari)**

Consent Of Petitioner, Brian Tate, To Filing Of Brief *Amicus Curiae*:

Pursuant to MARYLAND RULE 8-511(a)(1), Petitioner, Brian Tate, by his undersigned attorney, hereby consents to the filing by the Juvenile Law Center of a brief *amicus curiae* in support of Mr. Tate's petition for a writ of certiorari to the Maryland Court of Appeals in the above matter.



By: ______________________

Booth Marcus Ripke, Esquire
Nathans & Biddle, LLP
Suite 1800
120 East Baltimore Street
Baltimore, Maryland 21202

Date: 10/2/17

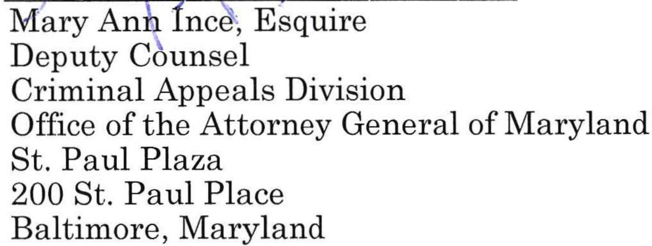
Counsel for Petitioner, Brian Tate

Tate v. State, **No. 0310-2017 (Maryland Court of Appeals) (on petition for writ of certiorari)**

Consent Of Respondent, the State of Maryland, To Filing Of Brief *Amicus Curiae*:

Pursuant to MARYLAND RULE 8-511(a)(1), Respondent, the State of Maryland, by the Office of the Attorney General, hereby consents to the filing by the Juvenile Law Center of a brief *amicus curiae* in support of the petition for a writ of certiorari to the Maryland Court of Appeals in the above matter.

By: ______________________



Mary Ann Ince, Esquire
Deputy Counsel
Criminal Appeals Division
Office of the Attorney General of Maryland
St. Paul Plaza
200 St. Paul Place
Baltimore, Maryland

Date: 10.4.17

Counsel for Respondent, the State of Maryland

Certificate Of Service

I Hereby Certify that on this 17th day of October, 2017, I caused a copy of the attached Brief *Amicus Curiae* Of Juvenile Law Center In Support Of The Petition For Writ Of Certiorari to be served by electronic filing through MDEC; and two copies thereof to be served by first-class mail, postage prepaid, on:

Booth Marcus Ripke, Esquire
Nathans & Biddle, LLP
Suite 1800
120 East Baltimore Street
Baltimore, Maryland 21201

Counsel for Petitioner, Brian Tate

And

Carrie Williams, Esquire
Criminal Appeals Division
Office of Attorney General
Of Maryland
200 Saint Paul Place
Baltimore, Maryland 21202

Counsel for Respondent, the State of Maryland

William Alden McDaniel, Jr.
William Alden McDaniel, Jr.