In The

Court of Appeals of Maryland

No. 65

September Term, 2017

BRIAN TATE,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

On Writ Of Certiorari To
The Court Of Special Appeals Of Maryland

BRIEF AMICUS CURIAE OF THE JUVENILE LAW CENTER IN SUPPORT OF PETITIONER

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STATEMENT OF THE CASE

At age 17, having dropped out of school at the start of 11th grade, E. 73, petitioner Brian Tate pleaded guilty to murder. E. 86. As an adolescent, "the features that distinguish juveniles from adults" put him "at a significant disadvantage in [the] criminal proceedings" against him. *Graham v. Florida,* 560 U.S. 48, 78 (2010). He also

suffered from "severe behavioral disorders" that caused "diminished mental capacity" which "impaired" his ability to "decide what to do under certain circumstances," E. 437, had a history of steroid abuse, E. 224, and had been under the care of a mental health professional. E. 74. Though aware that Mr. Tate was "under 18" at the time of the plea, E. 80, and that pre-plea psychiatric and psychological examinations had diagnosed Mr. Tate as suffering from mental disabilities, E. 48-52 & 73-74, the Circuit Court for Anne Arundel County accepted Mr. Tate's plea without determining whether his age, limited education, or mental impairments affected the voluntariness of that plea. E. 69-86. The court later sentenced Mr. Tate to life in prison. E. 162.

Twenty years after, the Circuit Court for Howard County granted Mr. Tate post-conviction relief, E. 455-456, in part because Mr. Tate's age and mental disabilities at the time of his sentencing raised serious questions as to whether he had voluntarily pleaded guilty. E. 432-439. The Court of Special Appeals reversed in an unpublished opinion that never addressed the impact of Mr. Tate's age or limited education on his guilty plea, E. 463-481, and totally discounted the evidence as to his mental impairment on the issue of voluntariness. E. 480.

This Court granted Mr. Tate's timely petition for a writ of certiorari. *Tate v. State,* 456 Md. 524, 175 A.3d 151 (2017) (Table).

The Due Process Clause of the Fifth Amendment to the United States Constitution, applicable to the States through the Fourteenth Amendment, required the court that accepted Mr. Tate's plea, given Mr. Tate's young age, limited education, and mental impairments, to conduct a searching inquiry on the record to determine whether Mr. Tate pleaded guilty voluntarily in a constitutional sense. Because the Circuit Court for Anne Arundel County had failed to undertake this inquiry, the Court of Special Appeals erred in reversing the post-conviction relief that the Circuit Court for Howard County had afforded Mr. Tate. Juvenile Law Center, as *amicus curiae,* respectfully urges this Court to reverse the judgment of the Court of Special Appeals and remand the case for further proceedings.[1]

[1] The parties' written consents to the filing of this brief *amicus curiae* 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 briefs addressing this issue in numerous state and federal courts, including in the Supreme Court in *J.D.B. v. North Carolina,* 564 U.S. 261, 272 (2011), and most recently in the Oregon Supreme Court, the Illinois Appellate Court, and the Washington Court of Appeals, as well as in this Court. *E.g., Carter v. State,* No. 54 (September Term, 2017).

QUESTION PRESENTED

DID THE COURT OF SPECIAL APPEALS ERR IN HOLDING THAT MR. TATE HAD VOLUNTARILY PLEADED GUILTY DESPITE THE CIRCUIT COURT'S FAILURE TO CONDUCT AN INQUIRY ON THE RECORD INTO THE SPECIFIC EFFECTS THAT MR. TATE'S AGE, LIMITED EDUCATION, AND MENTAL IMPAIRMENTS HAD ON THE VOLUNTARINESS OF HIS PLEA, IN VIOLATION OF THE DUE PROCESS CLAUSE?

STANDARD OF REVIEW

This Court reviews the judgment of the Court of Special Appeals *de novo*. *Jones v. State,* 343 Md. 448, 457, 682 A.2d 248, 253 (1996); *United States v. Preston,* 751 F.3d 1008, 1020 (CA9 2014) (en banc).

ARGUMENT

THE DUE PROCESS CLAUSE REQUIRED THE CIRCUIT COURT TO CONDUCT A SEARCHING INQUIRY INTO WHETHER MR. TATE'S JUVENILE STATUS, LIMITED EDUCATION, AND MENTAL IMPAIRMENTS AFFECTED THE VOLUNTARINESS OF HIS GUILTY PLEA.

I. THE DUE PROCESS CLAUSE REQUIRED THE CIRCUIT COURT TO CONDUCT A VOLUNTARINESS INQUIRY THAT FOCUSED ON MR. TATE'S AGE, LIMITED EDUCATION, AND MENTAL IMPAIRMENTS.

"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." *State v. Daughtry,* 419 Md. 35, 59, 18 A.3d 60, 74 (2011) (internal quotation marks omitted). "The purpose of the 'knowing and voluntary' inquiry . . . is to determine whether the defendant actually *does* understand the significance and consequences of a particular decision and whether the decision is uncoerced." *Godinez v. Moran*, 509 U.S. 389, 401 n. 12 (1993) (emphasis in original). To meet this constitutional standard, a defendant's plea must be "entered with the requisite knowledge of the nature and elements of the crime." *Daughtry,* 419 Md., 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).

Because limited experience and judgment put juveniles at a disadvantage in criminal proceedings, the Due Process Clause requires a court accepting a juvenile's guilty plea to make a determination on the record of the effect the juvenile's age has had on the voluntariness of that plea. It also requires the court to inquire into the effect on voluntariness of a defendant's limited education. And when a juvenile

entering a guilty plea suffers from mental impairments, the court must take special care to ensure that the plea truly was voluntary. *E.g., Gallegos v. Colorado,* 370 U.S. 49, 53 (1962); *Preston,* 751 F.3d, at 1020-1029; *Daughtry*, 419 Md., at 73, 18 A.3d, at 83.

An established and growing body of medical and social science research backs up the "commonsense conclusions" upon which these Due Process requirements rest. *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*").

A. DUE PROCESS REQUIRES THAT COURTS TREAT AGE AS THE "CRUCIAL FACTOR" IN DETERMINING WHETHER A JUVENILE'S PLEA IS VOLUNTARY

Both this Court and the United States Supreme Court have held that Due Process "mandates . . . evaluation of [a] juvenile's age . . . and intelligence" as part of this constitutional voluntariness analysis. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979). Indeed, this Court has held that in determining whether a juvenile's guilty plea is "voluntary, not only in a colloquial sense, but in a constitutional sense," *Daughtry,* 419 Md., at 48, 18 A.3d, at 67, a court must focus on the juvenile defendant's

age as the "crucial factor," and that the evaluation of the impact of this crucial factor requires "special caution." *Moore v. State,* 422 Md. 516, 532, 30 A.3d 945, 955 (2011) (internal quotation marks omitted).

This approach gives constitutional dimension to the "limited experience and education" of juveniles that, when coupled with their "immature judgment," present "special concerns" that can affect the voluntariness of a juvenile's guilty plea. *Fare*, 442 U.S., at 725. For these reasons, the Due Process Clause recognizes that minors often are "easy victim[s] of the law," *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (plurality), because at their age they "lack the experience, perspective, and judgment to . . . avoid choices that could be detrimental to them." *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (plurality opinion). *E.g., Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990) (The "immaturity, inexperience, and lack of judgment" of young people "may sometimes impair their ability to exercise their rights wisely."). The Supreme Court accordingly has emphasized that "when, as here, a mere child" appears before a court, that court must use "special caution," *In re Gault,* 387 U.S. 1, 45 (1967) (internal quotation marks omitted), "to assure that [a waiver of constitutional rights] was voluntary, in the

sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescence fantasy, fright, or despair." *Id.,* at 55.

In determining voluntariness of a juvenile's plea, a court must do more than simply acknowledge the defendants' age. Rather, it must evaluate voluntariness in the context of 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, 602 (1979), such that "even in adolescence" they "simply are not able to make sound judgments concerning many decisions." *Id.*, at 603. Courts accordingly must treat a juvenile's age as far "more than a chronological fact," *Eddings v. Oklahoma,* 455 U.S. 104, 115 (1982), and cannot treat juveniles "simply as miniature adults" for the purposes of implementing constitutional guarantees. *J.D.B.,* 564 U.S., at 274. The Court has stressed "that children 'generally are less mature and responsible than adults,' *Eddings,* 455 U.S., at 115–116; . . . that they 'are more vulnerable or susceptible to . . . outside pressures' than

adults, *Roper* [*v. Simmons*], 543 U.S. [551,] 569 [(2005)]; and so on." *J.D.B.*, 564 U.S., at 272.

For these reasons, the Supreme Court has found that juveniles suffer "a significant disadvantage in criminal proceedings." *Graham v. Florida,* 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 LAW REVIEW 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 facing criminal charges. *Graham,* 560 U.S., at 78. "These factors," the Court has held, "are likely to impair the quality of a juvenile defendant's representation." *Ibid.*

The Due Process Clause requires "that a guilty plea must be voluntary, not only in a colloquial sense, but 'in a constitutional sense.' "

Daughtry, 419 Md., at 48, 18 A.3d, at 67 (quoting *Henderson v. Morgan,* 426 U.S. 637, 645 (1976)). To satisfy Due Process in making this voluntariness determination, a court take express account of the age of a juvenile offender by conducting a searching inquiry that ensures that the juvenile defendant's plea, in light of "the features that distinguish juveniles from adults" and "put them at a significant disadvantage in criminal proceedings," *Graham,* 560 U.S., at 78, is truly voluntary and knowing. The inquiry must address the factors that the Supreme Court has identified as carrying constitutional significance when dealing with juveniles, as set out in the decisions cited above, 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, 618, 526 A.2d 30, 35 (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 a waiver was voluntary under the Due Process Clause in connection with a juvenile's confession. *McIntyre* cited to the Supreme Court's decisions in *Haley v. Ohio* and *Gallegos v.*

Colorado, both of which considered the role age plays in assessing the constitutional voluntariness of a juvenile's confession.

Addressing the voluntariness of a confession by a 15 year-old, the plurality opinion in *Haley* recognized that "[a]ge 15 is a tender and difficult age for a boy," and that a waiver of constitutional rights by a defendant of that age "cannot be judged by the more exacting standards of maturity." 332 U.S., at 599. "That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens," the opinion stated, because "[t]his is the period of great instability which the crisis of adolescence produces." *Ibid.* The opinion rejected the state's argument that the juvenile's confession had been voluntary because the boy had been advised of his rights before he confessed, finding that it "cannot give any weight to recitals which merely formalize constitutional requirements." *Id.,* at 601. "Formulas of respect for constitutional safeguards," the opinion concluded, "cannot prevail over the facts of life which contradict them," *ibid.,* 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. "That is to say," the Court continued, that "a 14-year old boy, no matter how sophisticated," does not "know how to protest [*sic*] his own interests or how to get the benefits of his constitutional rights." *Ibid.* Indeed, in *McIntyre*, this Court found the fact that the juvenile defendant had "requested to speak with his mother" to be "very important," underscoring the importance of age to the voluntariness determination. *Ibid.,* 30 A.3d, at 954.

In a related context, that of evaluating whether a juvenile reasonably perceived himself to be in custody for purposes of *Miranda v. Arizona,* 384 U.S. 436 (1966), *J.D.B* held that a defendant's age presents "a reality that courts cannot simply ignore." *J.D.B.,* 564 U.S., at 277. *J.D.B.* stressed that the test for whether a person is in custody for *Miranda* purposes" is "an objective inquiry," *id.,* at 270, with the result that courts are required to treat a defendant's age not just as a personal characteristic, but as an "objective fac[t] related to the

interrogation itself." *Id.,* at 278 (internal quotation marks omitted). The Court accordingly directed the state court on remand specifically to take into account "J.D.B.'s age at the time." *Id.,* at 281. *E.g., In Re Joshua David C.,* 116 Md. App. 580, 594, 698 A.2d 1155, 1162 (1997) (in determining whether a juvenile could "reasonably" believe he was in custody for purposes of *Miranda,* "the court must consider additional factors, such as the juvenile's education, age, and intelligence").[2]

In the same way, Mr. Tate's age at the time he pleaded guilty was an "objective fac[t] related to the [plea proceeding] itself," an objective fact the Due Process Clause required the circuit court to treat as the crucial factor in determining whether Mr. Tate's plea was voluntary. For this reason, the judgment of the Court of Special Appeals should be reversed.

[2] *Daughtry* recognized that MARYLAND RULE 4-242(c) sets forth a procedure for ensuring that the circuit court meets the strictures of the Due Process Clause when determining whether a guilty plea is voluntary in a constitutional sense. 419 Md., at 58, 18 A.3d, at 73 (quoting MARYLAND RULE 4-242(c)).

B. DUE PROCESS REQUIRES THAT COURTS ALSO CONSIDER THE EFFECT OF MENTAL DISABILITIES AND LIMITED EDUCATION IN DETERMINING WHETHER A PLEA IS VOLUNTARY

The Supreme Court has made it clear that "mental condition" is likewise a "significant factor in the 'voluntariness' calculus." *Colorado v. Connelly*, 479 U.S. 157, 164-165 (1986). *E.g., Culombe v. Connecticut,* 367 U.S. 568, 602 (1961) ("mental state" part of voluntariness analysis); *Spano v. New York,* 360 U.S. 315, 322 (1959) ("history of emotional instability" factor in voluntariness analysis); *Fikes v. Alabama,* 352 U.S. 191, 196 (1957) (that defendant "of low mentality, if not mentally ill" part of voluntariness analysis). A defendant's limited education also has relevance to the voluntariness issue, because it is indicative of cognitive and intellectual abilities. *E.g., Spano,* 360 U.S., at 322 (fact that defendant "had progressed only one-half year into high school" relevant to voluntariness). *E.g., Preston,* 751 F.3d, at 1020-1029.

This Court has also emphasized the importance of mental disability in the voluntariness determination. In *Daughtry,* for example, this Court held that in deciding whether to accept a guilty plea as voluntary, a court must "tak[e] into account" (among other things) "*the personal characteristics of the accused,*" 419 Md., at 72-73,

18 A.3d, at 82-83 (internal quotation marks omitted, emphasis in original), "as one with a diminished mental capacity is less likely to be able to understand the nature of the charges against him than one with normal mental faculties." *Id.,* at 73, 18 A.3d, at 83. *E.g., In Re Joshua David C.,* 116 Md. App., at 594, 698 A.2d, at 1162 (juvenile's "intelligence" among factors to be considered in determining whether juvenile "reasonably" believed he was in custody).

Just like his age, Mr. Tate's mental disabilities and limited education constituted "objective circumstances" relating to the voluntariness of his plea. *J.D.B.,* 564 U.S., at 279. The Due Process Clause required the circuit court to conduct a searching inquiry on the record into those objective facts in determining the voluntariness of Mr. Tate's waiver of his constitutional rights. For this additional reason, independent of the effect of Mr. Tate's age, the judgment of the Court of Special Appeals should be reversed.

II. SCIENTIFIC RESEARCH CONFIRMS THAT CHILDREN AND YOUTH ARE ESPECIALLY VULNERABLE DURING PLEA NEGOTIATIONS

J.D.B. v. North Carolina observed that "[a]lthough citation to social science and cognitive science authorities is unnecessary to establish th[e] commonsense propositions" regarding juveniles that the

Court outlined, *id.,* at 273 n. 5, "the literature confirms what experience bears out." *Ibid.* The Court referred to " '[d]evelopments in psychology and brain science [that] continue to show fundamental differences between juvenile and adult minds.' " *Ibid.* (quoting *Graham*, 560 U.S., at 68). *Graham* held that scientific research demonstrated that the "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, as juveniles, for purposes of the Court's constitutional analysis. 560 U.S., at 68.

An established and growing body of scientific literature continues to "bear out" these "commonsense conclusions" regarding adolescents, establishing that teenagers are uniquely vulnerable during plea negotiations. As a group, adolescents make decisions in ways that differ from adults, and those distinctions result at least in part from developmental differences in a number of brain regions. L. Steinberg, *A Social Neuroscience Perspective On Adolescent Risk-Taking*, 28 DEVELOPMENTAL REVIEW 78, 83-92 (2008). These developmental differences affect an adolescent's capacity to understand his or her rights, appreciate the benefits and consequences of exercising or

waiving those rights, and make reasoned and independent decisions about the best course of action. *E.g.,* L. Steinberg, *The Influence Of Neuroscience On US Supreme Court Decisions About Adolescents' Criminal Culpability*, 14 NATURE REVIEWS NEUROSCIENCE 513 (2013); R. Bonnie & E. Scott, *The Teenage Brain: Adolescent Brain Research and the Law,* 22 CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE 158 (2013); K. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail To Protect Children From Unknowing, Unintelligent, And Involuntary Waivers Of* Miranda *Rights*, 2006 WISC. LAW REVIEW 431, 432 (2006) (youth must "reason about what happens right now and in the future if she does or does not answer questions").

Research has demonstrated that the prefrontal cortex develops late. This region of the brain is associated with "the capacity . . . to control and coordinate our thoughts and behavior" and with higher-order cognitive functions, such as using foresight, exercising judgment, weighing risks and rewards, controlling impulses, and making decisions that require the simultaneous consideration of multiple sources of information. S. Blakemore & S. Choudhury, *Development Of The Adolescent Brain: Implications For Executive Function And Social*

Cognition, 47 JOURNAL OF CHILD PSYCHOLOGY & PSYCHIATRY 296, 301 (2006); Terry A. Maroney, *The Once and Future Juvenile Brain*, CHOOSING THE FUTURE FOR AMERICAN JUVENILE JUSTICE 189, 193 (Franklin E. Zimring, *et al.* eds., 2014); N. Gogtay, *et al., Dynamic Mapping Of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA 8174 (2004). One leading study detailed some of the consequences of this late development of the prefrontal cortex:

> "Compared with adults, adolescents are more sensitive to immediate rewards and less sensitive to long-term negative consequences. . . . [J]uveniles exhibit less legal competence than adults: They often fail to fully understand their legal rights. . . . Consequently, juveniles' legal decisions, including those related to admissions of guilt, may reflect poor legal abilities/understanding, inappropriate reasoning (e.g.: failure to consider the strength of evidence against them), and/or developmental immaturity." L. Malloy, *et al., Interrogations, Confessions, And Guilty Pleas Among Serious Adolescent Offenders*, 38 LAW AND HUMAN BEHAVIOR 2, 182 (2014) (citations omitted).

The developmental literature explains how the unique qualities of adolescent decision-making are relevant to the voluntariness determin-

ation. For example, leading researcher Thomas Grisso has 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." *Grisso,* at 357. Thus, 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 concluded 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.*

E.g., J. Owen-Kostelnik, *et al*., *Testimony And Interrogation Of Minors: Assumptions About Maturity And Morality*, 61 AMERICAN PSYCHOLOGIST 286, 292-293 (2006); E. Cauffman & L. Steinberg, *(Im)maturity Of Judgment In Adolescence*, 18 BEHAVIORAL SCIENCE & LAW 741, 744-745 (2000) (concluding that immature judgment engenders impulsiveness, pursuit of immediate gratification, and difficulty perceiving long-term consequences, hampering the decision-making of minors).

This research 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.*

Studies on juvenile false confessions provide insight into how adolescent decision-making may influence guilty pleas. 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 substantial. 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. Thus "youthful status may … be a risk factor for false admissions in the form of false guilty pleas." 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). There exists "strong evidence" that minors are more likely to confess falsely than adults. S. Kassin, *et al*., *Police-Induced Confessions, Risk Factors, And Recommendations: Looking Ahead*, 34 LAW & HUMAN BEHAVIOR 3, 19 (2010).

Much of the research on juvenile false confessions 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." A. Redlich, 62 RUTGERS LAW REVIEW, at 950-951 (internal quotation marks omitted). Another noted that juveniles are more susceptible than adults to external influences, and more complaint toward authority figures. C.

Scott-Hayward, *Explaining Juvenile False Confessions*, 31 LAW & PSYCHOLOGY REV. 53, 69 (2007). *E.g.,* E. Scott & L. Steinberg, RETHINKING JUVENILE JUSTICE, at 440 (Harvard University Press, 2008) (concluding that adolescents have "a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures" than do adults.) Indeed, studies suggest that juveniles acquiesce more readily to suggestion during questioning by authority figures, seek interviewers' approval, and when under the stress of a lengthy interrogation may impulsively confess—even falsely—rather than consider the consequences. B. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL JOURNAL OF LAW & PUBLIC POLICY 395, 411 (2013).

Another study 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." A. Redlich, 62 RUTGERS LAW REVIEW, at 953. These characteristics of juveniles help explain why "[j]uveniles are over-represented in proven false confession cases." *Id.*, at 952. *E.g.,* J.

Owen-Kostelnik, *et al.*, 61 AMERICAN PSYCHOLOGIST, at 292-293; E. Cauffman & L. Steinberg, 18 BEHAVIORAL SCIENCE & LAW, at 744-745 (concluding that immature judgment that engenders impulsiveness, pursuit of immediate gratification, and difficulty perceiving long-term consequences also hampers the decision-making of minors.) Youth often react emotionally and impulsively in such circumstances without engaging in a measured decision-making process, and succumb to perceived pressure from adults. L. Malloy, *et al.*, 38 LAW AND HUMAN BEHAVIOR, at 181; E. Cauffman & L. Steinberg, *Emerging Findings From Research On Adolescent Development And Juvenile Justice*, 7 VICTIMS & OFFENDERS 428, 438 (2012). Even adolescents in their late teens are less capable of using "their cognitive capacities as effectively as adults" in emotionally and socially charged environments. *Id.,* at 434. These traits are all equally relevant in the context of decision-making relating to pleas in criminal cases.

Researchers have focused specifically on guilty pleas, highlighting how adolescent decision-making can lead even innocent young people to plead guilty. Indeed, studies have found that "[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. A. Redlich, 62 RUTGERS LAW REVIEW, at 953. One study concluded:

> "[J]uveniles' deficits in legal knowledge and understanding, willingness and abilities related to participating in their own defense, the heavy reliance on pleas in juvenile courts, 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.*

The distinctions between adolescent and adult decision-making may be even more profound because of the high-stress nature of plea deals. Numerous studies have found that stressful situations can further compromise a youth's reasoning skills. Emotional and social factors have particular influence on adolescent decision-making. S. Blakemore & T. Robbins, *Decision-Making In The Adolescent Brain*, 15 NATURE NEUROSCIENCE 1184, 1184-1188 (2012). Because of the way the brain develops, adolescents have difficulty tempering strong feelings, lack impulse control, have difficulty planning for the future, and lack the ability to compare costs and benefits of alternative courses of action. L. Steinberg, *The Science of Adolescent Brain Development And Its*

Implication For Adolescent Rights And Responsibilities, in HUMAN RIGHTS AND ADOLESCENCE 59, 64-65 (Jacqueline Bhabha ed., 2014).

Adolescence may also compromise the attorney-client relationship. In one study examining how 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 also lack the real-world information–and often even the vocabulary–to understand the terms of plea deals. 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.*

Research likewise demonstrates that minors rarely comprehend abstract rights, such as those they must relinquish when pleading guilty. B. Feld, *Police Interrogation Of Juveniles*, 97 JOURNAL OF LAW & CRIMINOLOGY 219, 228-233 (2006). Similarly, intellectually-disabled persons frequently cannot communicate or process information quickly enough to advocate for themselves during legal proceedings. S. Drizin & R. Leo, *The Problem Of False Confessions In The Post-DNA World*, 82 N.C. LAW REVIEW 891, 919-920 (2004). Such persons also display an "exaggerated tendency . . . to try to accommodate the perceived wishes of authority figures." M. Cloud, *et al*., *Words Without Meaning: The Constitution, Confessions, And Mentally Retarded Suspects,* 69 U. CHI. LAW REVIEW 495, 515 (2002).

Adolescents involved in the criminal justice system are particularly vulnerable to coercion during plea negotiations because they have a much higher incidence of "mental impairments" than the general population, impairments of the type "known to impede legal comprehension." A. Redlich, 62 RUTGERS LAW REVIEW, at 949.

"Summarizing the evidence regarding how the intellectually impaired respond to contemporary police interrogation methods, several scholars have listed 'seven common characteristics' of such people," including:

> "1) 'unusual[ ] susceptib[ility] to the perceived wishes of authority figures'; (2) 'a generalized desire to please'; (3) difficulty discern[ing] when they are in an adversarial situation, especially with police officers,' who they generally are taught exist to provide help; (4) 'incomplete or immature concepts of blameworthiness and culpability'; (5) '[d]eficits in attention or impulse control'; (6) 'inaccurate views of their own capacities'; and (7) 'a tendency not to identify themselves as disabled' and to 'mask[ ] their limitations.' " *Preston,* 751 F.3d, at 1022 (quoting M. Cloud, 69 U. CHI. LAW REVIEW, at 511-513).

These characteristics apply equally to false guilty pleas. Indeed, these same researchers and scholars have further concluded "that the increased vulnerability of a mentally disabled suspect, and his or her naiveté, ignorance, confusion, suggestibility, delusional beliefs, extraordinary susceptibility to pressure, and similar considerations may make it possible for law enforcement officers to induce an involuntary" waiver of constitutional rights "by using techniques that would be acceptable in cases involving mentally typical suspects." M. Cloud, 69

U. CHI. LAW REVIEW, at 509 (internal quotation marks and citation omitted).

Over fifty years of research has demonstrated that the "common-sense conclusions" of this Court and of the Supreme Court have a strong basis in medical, psychological, and scientific fact: Adolescents like Mr. Tate, by their age alone, are prone to plead guilty without making a knowing and intelligent decision to waive their constitutional rights. An adolescent's limited education and mental disabilities exacerbate this effect.

III. MR. TATE'S PLEA HEARING DID NOT MEET THE REQUIREMENTS OF DUE PROCESS

The circuit court's failure to conduct a searching inquiry into the voluntariness of Mr. Tate's plea violated the Due Process Clause. The Circuit Court for Anne Arundel County made no attempt to determine how Mr. Tate's age and limited education affected his decision to plead guilty. It restricted its voluntariness inquiries to a few basic questions, and made no further attempt to probe whether, given Mr. Tate's age and limited education, he actually understood the rights he was waiving and the consequences of that waiver. Though that court also knew when it accepted Mr. Tate's plea that psychiatrists had diagnosed him

as suffering from serious mental disorders, it also failed to probe how those disorders affected the voluntariness of Mr. Tate's plea.

The circuit court should have questioned Mr. Tate with a focus on the "crucial factor"–Mr. Tate's age–to determine whether Mr. Tate's plea was truly voluntary in light of the "commonsense conclusions," *J.D.B.,* 564 U.S., at 272, that put him, as a juvenile, "at a significant disadvantage" in his criminal proceeding. *Graham,* 560 U.S., at 78. Specifically, the court should have questioned Mr. Tate to determine whether he, like most young persons, had "[d]ifficulty in weighing long-term consequences," suffered from "a corresponding impulsiveness," or had a "reluctance to trust defense counsel, seen as part of the adult world a rebellious youth rejects." *Ibid.* It should have inquired into whether Mr. Tate's "immaturity, inexperience, and lack of judgment," typical of young people his age, had "impair[ed his] ability to exercise [his] rights wisely." *Hodgson,* 497 U.S., at 444. It should have probed whether Mr. Tate "lack[ed] the experience, perspective, and judgment," as youth his age typically do, to be able to "avoid choices that could be detrimental to" himself. *Bellotti,* 443 U.S., at 635. It should have found out whether Mr. Tate "mistrust[ed] adults," had a "limited

understandin[g] of the criminal justice system and the roles of the institutional actors within it," or was "less likely than adults to work effectively with [his] lawyers to aid in [his] defense." *Graham, 5*60 U.S., at 78. The court should have determined if Mr. Tate, like most juveniles, "lack[ed the] maturity, experience, and capacity for judgment required for making life's difficult decisions," *Parham,* 442 U.S., at 602, and whether he, again, like most juveniles, "simply [was] not able to make sound judgments concerning many decisions." *Id*., at 603.

The Due Process Clause required the circuit court to inquire into these matters with "special caution" and "special care," *In re Gault,* 387 U.S., at 45 (internal quotation marks omitted)–indeed, with "the greatest care"–so as "to assure that [Mr. Tate's waiver of constitutional rights] was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright, or despair." *Id,* at 55. The Circuit Court for Anne Arundel County failed to do so.

In addition, given that "*the personal characteristics of the accused,*" *Daughtry,* 419 Md., at 73, 18 A.3d, at 83 (internal quotation marks omitted, emphasis in original), included Mr. Tate's limited

education, the circuit court should have considered how this factor affected Mr. Tate's waiver of his rights. *In Re Joshua David C.,* 116 Md. App., at 594, 698 A.2d, at 1162 ("the court must consider additional factors, such as the juvenile's education" in determining whether juvenile reasonably believed he was in custody for purposes of *Miranda*.) Limited education, like age, is not just a personal characteristic: it is an "objective fac[t] related to the [proceeding] itself," one which Due Process requires a court to evaluate in determining voluntariness. *J.D.B.,* 564 U.S., at 278 (internal quotation marks omitted).

Evidence that Mr. Tate introduced at his sentencing hearing, held within a few weeks after the plea hearing, included the testimony of a psychiatrist who had examined Mr. Tate prior to his plea. Brief Of Petitioner, at 16 n. 8. That psychiatrist had concluded that Mr. Tate 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." E. 125-126. The psychiatrist also concluded that Mr. Tate "[r]eads hidden meaning or threatening meaning" into things, E. 128, and diagnosed him with oppositional defiant disorder, adjustment

disorder with mixed emotional features, and personality disorder. E. 123. A psychologist who had performed a comprehensive psychological assessment of Mr. Tate prior to the plea hearing also testified, giving his opinion that Mr. Tate suffered from "a serious, significant mental disorder" and a "multitude of problems," which he characterized as "narcissistic personality disorder." E. 109.

The record here demonstrates that the Circuit Court for Anne Arundel County knew of these diagnoses before the guilty plea. The record contains, for example, a copy of a letter to the court from the State's Attorney requesting that the court order a "mental evaluation of the Defendant," E. 48, referring to an evaluation of Mr. Tate by defense experts, and transmitting a copy of a letter from Mr. Tate's counsel referring to Mr. Tate's "lack of maturity even for his age" and "his psychological and psychiatric testing disclosing manifestations of narcissistic and passive,- [*sic*] aggressive personality disorders." E. 51-52. A constitutionally-appropriate inquiry into the voluntariness of Mr. Tate's guilty plea would have addressed how these mental impairments, quite apart from his age and level of education, affected Mr. Tate's decision to plead guilty.

The Circuit Court for Howard County granted Mr. Tate post-conviction relief in part because of Mr. Tate's age and medical condition. E. 432-439. But the Court of Special Appeals, in reversing, never addressed Mr. Tate's age or education at all, and discounted the medical testimony in its entirety as it related to the voluntariness of Mr. Tate's guilty plea. It concluded that this psychiatric testimony "never directly addressed the issue of the voluntariness of Tate's plea, but, in fact, was only presented to provide support for Tate's admission to Patuxent." E. 480.

The Court of Special Appeals never addressed the fact that, regardless of Mr. Tate's purpose in introducing this psychiatric evidence at the sentencing hearing, the circuit court knew before it accepted Mr. Tate's guilty plea that Mr. Tate had been under the care of mental health professionals, that a defense psychiatrist and psychologist had examined him, that the State had requested its own mental examination of him, and that this testing had revealed that Mr. Tate suffered from serious mental disabilities. E. 11; E. 48-52. The testimony at sentencing did no more than echo or amplify what the circuit court already knew when it accepted the plea. That knowledge

required the circuit court to make a determination of voluntariness that expressly took Mr. Tate's mental disabilities, as well as his age and limited education, into account.

CONCLUSION

This Court should reverse the judgment of the Court of Special Appeals.

Respectfully submitted,

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

1. This brief contains 6,427 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.

/s/ WAMcDaniel, 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.

/s/ WAMcDaniel, Jr.
William Alden McDaniel, Jr.

APPENDIX
(WRITTEN CONSENT OF THE PARTIES)

Tate v. State of Maryland, No. 65 (September Term, 2017) (Maryland Court of Appeals)

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* on the merits in support of petitioner in the above matter.

By: _____

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Nathans & Biddle, LLP
Suite 1800
120 East Baltimore Street
Baltimore, Maryland 21202

Date: 2/8/18

Counsel for Petitioner, Brian Tate

Tate v. State of Maryland, No. 65 (September Term, 2017) (Maryland Court of Appeals)

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* on the merits in support of petitioner in the above matter.

By: _____

~~Mary Ann Ince, Esquire~~ Carrie Williams, Esquire
~~Deputy Counsel~~ Division Chief
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Date: 2/8/18

Counsel for Respondent, the State of Maryland

DMEAST #33249894 v1

CERTIFICATE OF SERVICE

COURT OF APPEALS OF MARYLAND
No. 65, September Term,-2017
----------)
BRIAN TATE,
Petitioner,
v.
STATE OF MARYLAND,
Respondent.
----------)

I, John C. Kruesi, Jr., being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by BALLARD SPAHR LLP, counsel for Amicus Curiae to print this document. I am an employee of Counsel Press.

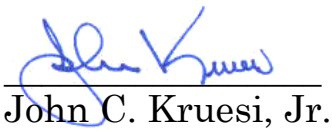
On the **6th Day of March, 2018**, the within **Brief Amicus Curiae of the Juvenile Law Center in Support of Petitioner** has been filed and served electronically via the Court's MDEC system. Additionally I will serve paper copies upon:

Edward J. Kelley Office of the Attorney General Criminal Appeals Division 200 Saint Paul Street Baltimore, MD 21202 410-576-6970 ekelley@oag.state.md.us Counsel for Appellee	Booth M. Ripke Nathans & Biddle LLP 120 E. Baltimore Street Suite 1800 Baltimore, MD 21202 410-783-0272 bripke@nathanslaw.com Counsel for Appellant

via Express Mail, by causing 2 true copies of each to be deposited, enclosed in a properly addressed wrapper, in an official depository of the United States Postal Service.

Unless otherwise noted, 8 copies of the brief have been sent to the Court on this day.

March 6, 2018



John C. Kruesi, Jr.
Counsel Press