

No. 18-1184

IN SUPREME COURT OF TEXAS

IN THE MATTER OF S.T.,
Petitioner

On Petition for Review from Cause No. 04-18-00133-CV
in the Court of Appeals, Fourth District of Texas

BRIEF OF AMICUS CURIAE JUVENILE LAW CENTER IN SUPPORT OF PETITIONER

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INTEREST AND IDENTITY OF AMICUS CURIAE ¹

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children’s unique developmental characteristics, and reflective of international human rights values. Juvenile Law Center has represented hundreds of young people and filed influential *amicus* briefs in state and federal cases across the country. In the instant matter, Juvenile Law Center writes to urge this Court to interpret “sophistication and maturity” according to the vast adolescent development science and research when making a determination whether to transfer a juvenile case to criminal court.

SUMMARY OF THE ARGUMENT

Current scientific research informs how we view a child’s “sophistication and maturity” before prosecution as an adult under Texas law. Yet the lower courts’ interpretation of what constitutes “sophistication and maturity” amounts to little more

¹ Pursuant to Rule 11, TEX. R. APP. PROC., no person or entity, other than *Amicus*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

than an analysis of whether the young person has legal capacity to understand the difference between right and wrong. This case presents this Court with the opportunity to remedy that error and to advance the development of the law in the area of transfer from juvenile to adult criminal court by addressing the fundamental differences between children and adults who commit criminal acts. *See Kent v. United States*, 383 U.S. 541, 556 (1966) (finding that transfer is a critically important action determining vital statutory rights of the juvenile).

The phrase “sophistication and maturity” in Tex. Fam. Code § 54.02 is a ‘term of art.’ It should not be interpreted by referencing a test for adult criminal legal capacity, but rather informed by current research in the fields of adolescent development, neuroscience, and cognitive psychology. A plain-meaning interpretation of “sophistication and maturity” ignores the developmental science finding crucial differences between the ways adolescents and adults make decisions and understand consequences.

ARGUMENT

I. “Sophistication And Maturity” Is A Term Of Art That Must Be Interpreted In Light Of Scientific Research On Adolescent Development

The Texas Family Code authorizes the transfer of a child to adult court if it finds that “because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.” TEX. FAM. CODE §

54.02(a)(3). In making this determination, the court relies on “a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense,” TEX. FAM. CODE § 54.02(d), that consider:

- (1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;
- (2) the sophistication and maturity of the child;
- (3) the record and previous history of the child; and
- (4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

TEX. FAM. CODE § 54.02(f).

Amicus Curiae, Juvenile Law Center, urges this Court to accept review of S.T.’s transfer and incorporates the arguments set forth by Petitioner, but writes separately to address the lower courts’ misinterpretation of Section 54.02(f)(2). As set forth by Petitioner, in assessing S.T.’s “sophistication and maturity” the lower court considered S.T.’s legal capacity to understand the seriousness of the charges before him, the differences between the juvenile and adult justice systems, the difference between right and wrong, and whether he could aid in his own defense. (*See* Pet. for Review 19 (citing Slip Op. at 8.)) The trial court, using this analysis, determined that S.T. was “reasonably intelligent,” (*Id.* (citing CR 179)), and therefore met the standard of “sophistication and maturity” warranting transfer to the adult justice system. However, the trial court’s findings ignore the factors that psychologists assess to determine adolescents’ sophistication and maturity: specifically, their level of autonomy, cognitive capacity, and emotional maturity along with the context in which they make decisions.

Notwithstanding an ability to understand right from wrong, adolescents generally do not have the same capacity as an adult to appreciate the long-term consequences of their decisions and are easily influenced by their peers.

A. “Sophistication and Maturity” is a Term of Art

The Court of Appeals interpreted “sophistication and maturity” according to its plain meaning, when the phrase contains specialized terms that should be defined with reference to evolving adolescent science. Accordingly, this Court must look to current research to understand how the term of art “sophistication and maturity” should be applied to juveniles, like S.T., who are subject to transfer.

The United States Supreme Court held that a juvenile court could not waive a case to the adult system without “procedural regularity . . . to satisfy the basic requirements of due process and fairness” *Kent v. United States*, 383 U.S. 541, 553 (1966). The Court appended to its opinion a policy memorandum developed by the juvenile court judge for the District of Columbia, which included a set of factors for consideration in the transfer decision, including “[t]he sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.” *Id.* at 567. Since *Kent*, the majority of states have included a “sophistication and maturity” prong in their transfer statutes and judicial decisions. Christopher Slobogin, *Treating Kids Right: Deconstructing and Reconstructing Amenability to Treatment Concept*, 10 J. CONTEMP. LEGAL ISSUES 299, 319-20 (1999).

In the decades following *Kent* and the Texas legislature's subsequent adoption of this language in 1967, H.B. 780, 1967 Leg., 60th Reg. Sess. (Tex. 1967), the term had been widely used not only in other state laws but also in the professional fields of adolescent psychology and cognitive development, where well-accepted psychological testing had been developed and geared specifically to make that determination.

B. Established Developmental and Scientific Research Illustrate the Complex and Technical Nature of the “Sophistication and Maturity” Analysis

National scholars who have considered the “sophistication and maturity” language assert that the purpose of this threshold determination was to guide judges in identifying “certain youth, ‘described as chronic, serious, violent, sophisticated, mature or persistent [who] were thought to be out of the purview of the rehabilitative-oriented juvenile court.’” Catherine R. Guttman, *Listen to the Children: The Decision to Transfer Juveniles to Adult Court*, 30 HARV. C.R.-C.L. L. REV. 507, 525-26 (1995) (alteration in original).

Other jurisdictions have reinforced these goals. As an example, in Oregon, members of law enforcement who testified at committee hearings defined individuals of “sufficient sophistication and maturity” to warrant transfer as those being outside the realm of rehabilitation in juvenile court. *See, e.g.*, Testimony, Senate Committee on Judiciary, SB 414, April 25, 1985, Ex. G (statement of Keith Meisenheimer, Multnomah County District Attorney’s Office) (“My support for lowering the age of potential remand . . . centers on my belief that there are some 14 or 15 year-old juveniles who,

by reason of advanced maturity, sociopathic character, past record of failure in juvenile court programs, established history of criminal conduct, large size, independence of parental or other adult authority or influence, etc., are dangerous to the community and are not amenable to significant rehabilitation in juvenile programs.”); *see also Id.*, Ex. I (statement of Paul Lenarduzzi, the Director of the Lane County Juvenile Department) (noting that a juvenile who is “pathologically dangerous” can be transferred to the adult system to serve the balance of his or her sentence).²

Accordingly, because many states have included “sophistication and maturity” as a relevant factor in the transfer decision since *Kent*, forensic psychologists have developed guidelines on how to conduct such assessments to ensure that the assessments reflect current knowledge. *See* Anne-Marie R. Leistico & Randall T. Salekin, *Testing the Reliability and Validity of the Risk, Sophistication-Maturity, and Treatment Amenability Instrument (RST-i): An Assessment Tool for Juvenile Offenders*, 2 INT’L J. FORENSIC MENTAL HEALTH 101, 117, 102-03 (2003) (describing how psychologists developed a set of

² The United States Supreme Court has recognized the error that would be inherent in conflating seriousness of the offense with sophistication and maturity. *See Roper v. Simmons*, 543 U.S. 551, 570 (2005) (“The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.”); *see also Graham v. Florida*, 560 U.S. 48, 68-69 (2010); *Miller v. Alabama*, 567 U.S. 460, 479-83 (2012). In rejecting mandatory life without parole for juvenile nonhomicide offenders, *Graham* relied on the fact that “[a]s compared to adults, juveniles, [as a class, inherently] have a ‘lack of maturity,’” and “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Graham*, 560 U.S. at 68 (second alteration in original) (citing *Roper*, 543 U.S. at 569-70, 573). Consequently, juveniles must be given “a chance to demonstrate growth and maturity” as they grow and mature in adulthood, which underscores that they do not have such “maturity” as teenagers. *Id.* at 73.

guidelines for juvenile assessments “using the information cited in *Kent*,” including three core psychological constructs that are relevant to the assessment of juveniles facing transfer, including: risk, sophistication-maturity, and treatment amenability). Researchers and scholars agree that psychological assessments of “sophistication and maturity” depend on a comprehensive and nuanced understanding of adolescent development. A *legal* finding of sophistication and maturity should likewise depend on knowledge about adolescent development. Psychologists recognize that youth “mature” at different rates and that maturity may also depend upon context and circumstances. For example, youth might have mature cognitive capacities but limited emotional maturity, or they might have developed the ability to identify alternative choices but be incapable or limited in their ability to perceive the long-term consequences of each alternative. Thomas Grisso, *Clinicians’ Transfer Evaluations: How Well Can They Assist Judicial Discretion*, 71 LA. L. REV. 157, 183-84 (2010). Consequently, experts in the forensic assessment of juvenile defendants recommend that evaluators describe an individual youth’s development across several different dimensions. *Id.* at 184. *See also* Randall T. Salekin, Kimberly M. Price et al., *Evaluation for Disposition and Transfer of Juvenile Offenders*, in FORENSIC ASSESSMENTS IN CRIMINAL AND CIVIL LAW: A HANDBOOK FOR LAWYERS 255 (2013) (relating sophistication and maturity to legally relevant factors like juveniles’ culpability and their ability to plan and commit crimes); Randall T. Salekin & Ross D. Grimes, *Clinical Forensic Evaluations for Juvenile Transfer to Adult Criminal Court*, in LEARNING FORENSIC ASSESSMENT 313-46

(1st ed 2007) (emphasizing the need for contextual analyses of youth’s intelligence and maturity when assessing sophistication and maturity, and the need to keep up-to-date with advances in the research); Debra R. Chen & Randall T. Salekin, *Transfer to Adult Court: Enhancing Clinical Forensic Evaluations and Informing Policy*, in HANDBOOK OF JUVENILE FORENSIC PSYCHOLOGY AND PSYCHIATRY 114 (Elena L. Grigorenko ed., 2012) (suggesting that a juvenile’s emotional state and psychosocial development is an important part of the complex sophistication and maturity analysis).

Psychologists evaluating youth for transfer typically focus on three components of sophistication and maturity: autonomy, cognitive capacities, and emotional maturity. *See* Salekin & Grimes, *supra* at 314. Autonomy concerns a youth’s development of identity, self-reliance, and ability to make decisions; cognitive capacities include understanding of behavioral norms, awareness of the wrongfulness of crimes, ability to identify alternatives, and anticipation of short- and long-term consequences in decision making; and emotional maturity relates to a youth’s ability to delay gratification, self-regulate emotions, and control his or her impulses. Randall T. Salekin et al., *Juvenile Transfer to Adult Courts: A Look at the Prototypes for Dangerousness, Sophistication-Maturity, and Amenability to Treatment Through a Legal Lens*, 8 PSYCHOL. PUB. POL’Y & L. 373, 390-91 (2002). This comprehensive approach to assessing youth sophistication and maturity allows experts to identify the factors most relevant when youth are presented with a decision, including “the nature and degree of youths’ planning and foresight, their behavioral intentions, their understanding of societal norms and morals, and their

decision-making patterns.” Anne-Marie R. Iselin et al., *Maturity in Adolescent and Young Adult Offenders: The Role of Cognitive Control*, 33 L. & HUM. BEHAV. 455, 456 (2009).

C. The Unique Developmental Attributes of Youth Are Context Specific

Context also plays a crucial role in transfer evaluations, as it affects the way in which youth demonstrate their autonomy, cognitive capacity, and emotional maturity. See Salekin and Grimes, *Clinical Forensic Evaluations for Juvenile Transfer to Adult Criminal Court*, *supra*, at 327 (describing a model of maturity that includes youths’ “developmental status, the environment in which they currently live, any potential psychopathology, and the context or situation in which they make decisions”). The offenses that place young people, like S.T., within the jurisdiction of the adult court by TEX. FAM. CODE § 54.02 are likely to involve situations where “emotions run high” and, as in the instant case, are also likely to involve peers. Consequently, how minors process the social and emotional context of such situations is central to the “sophistication and maturity” analysis in the waiver decision. Imputing a level of “sophistication and maturity” that is based solely on the offense ignores the significant scientific research demonstrating how youth fundamentally differ from adults in context-specific ways.

1. Adolescents are more likely to engage in risky behaviors and less likely to appreciate potential long-term consequences

Adolescents’ risk assessment, decision-making capacities, and future orientation differ from those of adults. As the United States Supreme Court has observed, adolescents “often lack the experience, perspective, and judgment to recognize and

avoid choices that could be detrimental to them.” *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011) (quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979)). See also Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008). (“Considerable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices.”). Although adolescents may possess the capacity to reason logically, they “are likely less capable than adults are in *using* these capacities in making real-world choices, partly because of lack of experience and partly because teens are less efficient than adults at processing information.” Scott & Steinberg, *supra*, at 20.

As adolescents attach different values to rewards than adults do, they often exhibit sensation-seeking characteristics that reflect their need to seek “varied, novel, [and] complex . . . experiences [as well as a] willingness to take physical, social, legal and financial risks for the sake of such experience.” MARVIN ZUCKERMAN, BEHAVIORAL EXPRESSIONS AND BIOSOCIAL BASES OF SENSATION SEEKING 27 (1994). The need for this type of stimulation often leads adolescents to engage in risky behaviors, and as they have difficulty suppressing action toward emotional stimulus, they often display a lack of self-control. Scott & Steinberg, *supra*, at 20. The United States Supreme Court has recognized this, stating that adolescents “have a ‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking.” *Miller*, 567 U.S. at 471 (quoting *Roper*, 543 U.S. at 569). As a result,

it is not surprising that “adolescents are overrepresented statistically in virtually every category of reckless behavior.” *Roper*, 543 U.S. at 569 (quoting Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEV. REV. 339, 339 (1992)).

Adolescents also have difficulty thinking realistically about what may occur in the future. See Brief for the American Psychological Association *et al.* as *Amici Curiae* Supporting Petitioners at 11-12, *Graham v. Florida*, 560 U.S. 48 (2010) (Nos. 08-7412, 08-7621). This lack of future orientation means that adolescents are both less likely to think about potential long-term consequences, and more likely to assign less weight to those that they *have* identified, especially when faced with the prospect of short-term rewards. Scott & Steinberg, *supra*, at 20. These differences often cause adolescents to make different calculations than adults when they participate in criminal conduct. Some evidence suggests that adolescents who become involved crime may be even less future oriented than their peers who do not become involved in crime, even after accounting for a wide range of cognitive, familial and biological factors. Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 VICTIMS & OFFENDERS 428, 435 (2012).

2. Adolescents are more susceptible to the influence of their peers

In the instant case, S.T. was alleged to have participated in the actions with his peers. (Pet. for Review 6-9.) “[J]uveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure” than adults. *Roper*, 543 U.S. at 569 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). As “[m]id-adolescence is

marked by decreased dependency on parental influence and increased dependency on peer influence,” an adolescent’s decision to participate in a felony is more often driven by fear of social ostracism than rational thinking. Alison Burton, *A Commonsense Conclusion: Creating A Juvenile Carve Out to the Massachusetts Felony Murder Rule*, 52 HARV. C.R.-C.L. L. REV. 169, 186-87 (2017) (citing Laurence Steinberg & Susan B. Silverberg, *The Vicissitudes of Autonomy in Early Adolescence*, 57 CHILD DEV. 841, 848 (1986)). When adolescents are pressured by their peers to participate in a criminal act, they may do so out of a misplaced concern about fitting in, even if they do not condone or want to participate in the criminal activity. *Id.* (citing DAVID MATZA, *DELINQUENCY AND DRIFT* 57 (1964)); see Jacob T.N. Young & Frank Weerman, *Delinquency as a Consequence of Misperception: Overestimation of Friends’ Delinquent Behavior and Mechanisms of Social Influence*, 60 SOC. PROBS. 334, 337 (2013) (citing Tamar Breznitz, *Juvenile Delinquents’ Perceptions of Own and Others’ Commitment to Delinquency*, 12 J. RES. CRIME & DELINQ. 124 (1975)); see also M.D. Buffalo & Joseph W. Rodgers, *Behavioral Norms, Moral Norms, and Attachment: Problems of Deviance and Conformity*, 19 SOC. PROBS. 101 (1971); see also Mark Warr & Mark Stafford, *The Influence of Delinquent Peers: What They Think or What They Do?*, 29 CRIMINOLOGY 851 (1991).

[The youth] may assume that his friends will reject him if he declines to participate—a negative consequence to which he attaches considerable weight in considering alternatives. He does not think of ways to extricate himself, as a more mature person might do. He may fail to consider possible options because he lacks experience, because the choice is made so quickly, or because he has difficulty projecting the course of events into the future. Also, the “adventure” of the [crime] and the possibility of

getting some money are exciting. These immediate rewards, together with peer approval, weigh more heavily in his decision than the (remote) possibility of apprehension by the police.

Scott & Steinberg, *supra*, at 22. This concern about ‘fitting in’ is one of the main reasons why youth are far more likely to participate in group crimes than adults are. Burton, *supra*, at 187 (citing FRANKLIN E. ZIMRING, *AMERICAN YOUTH VIOLENCE* 29 (1998)). One study found that over half of all violent crimes committed by individuals under the age of 16 involve multiple offenders. *Id.* The study also found that approximately 51% of the homicides committed by juveniles involve multiple offenders, as compared to only 23% of homicides committed by adults. *Id.* These studies confirm that because juveniles are particularly susceptible to peer pressure and groupthink, they are more likely than adults to be talked into participating in a felony. This desire to please their peers and take part in risky activities further demonstrates juveniles’ lack of maturity.

Juveniles are also more likely than adults to take risks in emotionally-charged or exciting situations. *See, e.g.*, Alexandra Cohen et al., *When Is An Adolescent An Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 *PSYCHOL. SCI.* 549, 555-559 (2016); Bernd Figner et al., *Affective and Deliberative Processes in Risky Choice: Age Differences in Risk Taking in the Columbia Card Task*, 35 *J. EXPERIMENTAL PSYCHOL.* 709, 710 (2009).

[I]n hot, high-arousal contexts, adolescents have difficulty relying on objective information to make rational decisions. . . . When emotionally aroused, adolescents discount the potential for negative consequences and weigh the potential for reward more heavily than adults do, impacting their decision-making abilities. Additionally, adolescents experience some

situations as hot contexts that adults experience as cold contexts, such as the presence of peers. This means that adolescents may have even greater difficulty with decision making when peers are present than when they are not, as adolescent behavior in these subjectively hot situations tends to be driven more by the socioemotional parts of the brain than by the cognitive and executive controls.

Naomi E.S. Goldstein, Emily Haney-Caron, Marsha Levick & Danielle Whiteman, *Waving Good-Bye to Waiver: A Developmental Argument Against Youths' Waiver of Miranda Rights*, 21 N.Y.U. J. LEGIS. & PUB. POL'Y 1, 23-24 (2018). As adolescents are more likely to act based on impulses and emotions than rational thinking, they often fail to do a careful assessment of the risks to themselves or others, even when engaging in felonious activities.

Given the increased value adolescents place on peer approval, “hot” contexts often result in an overreliance on socio-emotional processing that cannot be regulated because of youths’ still-developing executive functioning abilities. See Sarah-Jayne Blakemore and Trevor W. Robbins, *Decision-Making in the Adolescent Brain*, 15 NATURE NEUROSCIENCE 1184 (2012).

Notably, this in-depth treatment of a youth’s sophistication and maturity is in contrast to psychologists’ assessment of criminal capacity in adults, which tends to focus on mental health and cognitive capacities rather than emotional capacity (*e.g.*, whether the individual is suffering from a mental illness or disorder, knows right from wrong, or has the ability to conform conduct to the law). See Alan M. Goldstein et al., *Evaluation*

of Criminal Responsibility, in HANDBOOK OF PSYCHOLOGY: FORENSIC PSYCHOLOGY 381-406 (Alan M. Goldstein and Irving B. Weiner eds., 2012).

Here, the Court of Appeals concluded that consideration of S.T.'s "sophistication and maturity" was simply a question of whether he had legal capacity. But, a determination of competence and capacity and an evaluation of a juvenile's maturity are qualitatively different analyses. Reducing the consideration of an adolescent's "sophistication and maturity" to participation in the physical act and knowing right from wrong ignores the complexity of the analysis as prescribed by psychologists and experts in the field of adolescent psychology. Moreover, it ignores the context that give rise to the "circumstances of the alleged offense" as required under law. TEX. FAM. CODE §54.02.

PRAYER

For these reasons, *Amicus* respectfully requests that this Court reverse the juvenile court's order to waive jurisdiction and remand this case back to the juvenile court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this brief was served on all parties by first class U.S. mail and/or electronic service on March 6, 2019 as follows:

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Rules 9.2 and 11, TEX. R. APP. PROC. It was prepared on a computer using 14-point Garamond type. It contains 3,841 words.

s/ Marsha L. Levick _____

Marsha L. Levick