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IN THE
SUPREME COURT OF INDIANA

No. _____

Court of Appeals No. 19A-JV-255

C.J. Appellant/Respondent, v. STATE OF INDIANA Appellee/Petitioner.	Appeal from the Marion Superior Court Trial Court Cause No. 49D09-1810-JD-1192 The Honorable Geoffrey Gaither, Judge.

BRIEF OF AMICUS CURIAE JUVENILE LAW CENTER ON BEHALF OF APPELLANT

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INTEREST OF *AMICUS*

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.

SUMMARY OF ARGUMENT

The United States Supreme Court has long recognized that children require special protections to ensure the voluntariness of their confessions obtained during custodial police interrogations. *Haley v Ohio,* 332 U.S. 596 (1948); *Gallegos v Colorado,* 370 U.S. 49 (1962). Current developmental and neuroscientific research establishes that children generally are significantly impaired in their abilities to knowingly, voluntarily and intelligently waive their *Miranda* rights. Children and younger adolescents may lack the cognitive capacities to understand *Miranda* rights. A knowing and intelligent *Miranda* waiver requires cognitive capacities for information processing, which most youth are still developing, and their comprehension of *Miranda* warnings is likewise compromised by similarly under-developed abstract reasoning skills. The stress of the police interrogation further undermines children's abilities to comprehend and appreciate the risks and consequences of waiving their rights. Finally, the presence of a parent, as was the case here, does not enhance the validity of the *Miranda* waiver; parents are unlikely to serve as protective forces for several reasons, including potentially

divergent interests from their children, their own limited understanding of the *Miranda* warnings, and pressures parents themselves feel in the interrogation setting.

ARGUMENT

"Rights declared in words might be lost in reality." *Miranda v. Arizona*, 384 U.S. 436, 443 (1966) (quoting *Weems v. United States,* 217 U.S. 349, 373 (1910)).

The U.S. Supreme Court has repeatedly struggled to balance an individual's Fifth Amendment right against compelled self-incrimination with law enforcement's need to investigate and solve crimes. The prophylactic warnings adopted by the Court in *Miranda v. Arizona,* 384 U.S. 436 (1966), were intended to protect this Fifth Amendment right against self-incrimination from the "inherently compelling pressures" of questioning by the police. *Miranda*, 384 U.S. at 467.

In 2011, in *J.D.B. v. North Carolina*, the Supreme Court ruled that a child suspect's age was relevant to determining whether she has been taken into custody and therefore entitled to a *Miranda* warning. *J.D.B. v. North Carolina*, 564 U.S. 261, 277 (2011) ("[S]o long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test."). *J.D.B.* side-stepped the question about whether children actually understand the *Miranda* warnings such that they can effectively waive them once administered. *Id.* at 270 n.4. In the wake of *J.D.B.*, courts have continued to rely on the totality of circumstances test for determining the validity of a *Miranda* rights waiver.[1]

[1] This test "permits—indeed, it mandates—inquiry into all the circumstances surrounding the interrogation." *Fare v. Michael C.*, 442 U.S. 707, 725 (1979). "Only if the 'totality of the

Under the prevailing standard, a valid waiver must be both "voluntary" (i.e., the result of free choice) and "knowing and intelligent" (i.e., made with full awareness of the nature of the right being abandoned and the consequences of its abandonment). *Burbine*, 475 U.S. at 421. Consistent with current research, what constitutes "voluntary" or "knowing and intelligent" for a child may not be the same as it is for an adult. This case amply illustrates the need to adapt this test for children.

I. DEVELOPMENTAL RESEARCH SHOWS CHILDREN LACK ESSENTIAL CAPACITIES TO WAIVE THEIR MIRANDA RIGHTS

In *Miranda*, the Court held that a suspect could waive the right to silence, provided the waiver was "made voluntarily, knowingly and intelligently," *Miranda,* 384 U.S. at 444. With respect to youth, Dr. Thomas Grisso has explained:

> A suspect may understand that she has a right to speak with an attorney, as the *Miranda* warnings indicate; but she might not grasp the significance of being able to speak with an attorney (for example, might not know what an attorney is or does) and therefore be unable to "intelligently" decide to claim or waive the right.

THOMAS GRISSO, EVALUATING COMPETENCIES: FORENSIC ASSESSMENTS AND INSTRUMENTS 152 (2d ed. 2003).

A. Children Require Heightened Protections To Determine The Voluntariness Of Juvenile Confessions

The Supreme Court first expressed its concern for the protection of juveniles during custodial interrogation in 1948 in *Haley v. Ohio*, where the Court reversed the conviction of a

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circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." *Moran v. Burbine*, 475 U.S. 412, 421 (1986) (quoting *Fare*, 442 U.S. at 725).

fifteen-year-old "lad of tender years" who had been denied access to counsel, interrogated by police without interruption for five hours, and eventually confessed to murder. *Haley v. Ohio*, 332 U.S. 596, 598–601 (1948). The reversal was based on "undisputed evidence suggest[ing] that force or coercion was used to exact the confession." *Id*. at 599. The Court reiterated the need for "special caution" in analyzing juvenile waivers in *Gallegos v. Colorado*, 370 U.S. 49 (1962), where the Court reversed the conviction of a fourteen-year-old boy who was held in detention for five days and interrogated by police while deprived of contact with his mother, lawyer, or any "other friendly adult." *Id*. at 50.

In 1967, the Supreme Court decided *In re Gault*, 387 U.S. 1 (1967), which extended both the Sixth Amendment right to counsel and the Fifth Amendment privilege against self-incrimination to juveniles. *In re Gault*, 387 U.S. at 55. The Court explicitly recognized that "special problems may arise with respect to waiver of the privilege by or on behalf of children," and that those who administered the privilege to children may need to employ "some differences in technique . . . depending upon the age of the child and the presence and competence of parents." *Id.* The Court did not revisit the importance of a child's age in the *Miranda* analysis again until more than forty years later in *J.D.B. v. North Carolina*, where it held for the first time that a child's age is relevant to the analysis of whether an individual is in police custody and, therefore, entitled to *Miranda* warnings. *See generally J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

J.D.B relied on the series of United States Supreme Court decisions since 2005 in which the Supreme Court recognized that there are substantial developmental differences between youth and

adults[2] and that those structural and functional differences between adolescent and adult brains impact adolescent behavior. *See generally* Richard J. Bonnie & Elizabeth S. Scott, *The Teenage Brain: Adolescent Brain Research and the Law*, 22 CURRENT DIRECTIONS IN PSYCHOL. SCI. 158 (2013).

While the Supreme Court cases primarily examined the applicability of these developmental differences to youth sentencing under the Eighth Amendment, these attributes also impact adolescents' capacities to understand their *Miranda* rights, to appreciate the consequences of waiving those rights, and to make reasoned, independent decisions about waiving their rights to silence and counsel. Indeed, making a knowing, intelligent, and voluntary waiver of *Miranda* rights requires capacities most youth in early- and mid-adolescence do not adequately possess. As researchers have found, with respect to cognitive abilities,

> [V]erbal fluency, memory and learning, sustained attention, abstract thinking, and executive abilities . . . are [all] required for youth to pay attention during the administration of *Miranda* warnings, to process and retain the warnings, to decipher the meaning of the warnings, to evaluate the significance and consequences of waiving rights, and to make a final decision about whether or not to waive the *Miranda* rights.

Naomi E.S. Goldstein et al., *Potential Impact of Juvenile Suspects' Linguistic Abilities on Miranda Understanding and Appreciation*, *in* THE OXFORD HANDBOOK OF LANGUAGE AND LAW 299, 307 (Lawrence M. Solan & Peter M. Tiersma eds., 2012) (citations omitted). If youth are unable to

[2] *See Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016); *Miller v. Alabama*, 567 U.S. 460, 471–72 (2012); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *see also* Laurence Steinberg, *The Influence of Neuroscience on US Supreme Court Decisions About Adolescents' Criminal Culpability*, 14 NATURE REVIEWS NEUROSCIENCE 513, 513 (2013).

function sufficiently in any one of these domains, their ability to provide a valid *Miranda* waiver will be substantially compromised.

1. Children and younger adolescents may lack the cognitive capacities to understand *Miranda* rights

At the most basic level, a knowing and intelligent *Miranda* waiver requires cognitive capacities for information processing, which most youth are still developing. Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 VICTIMS & OFFENDERS 428, 433 (2012). A reasoned decision about whether to waive *Miranda* rights requires that the youth "have a working memory adequate to hold [all] components of the [*Miranda*] warning"—for example, that you have the right to remain silent, that anything you say can be used against you, that you have the right to counsel, that if you cannot afford an attorney one will be appointed for you, and that you have the right to stop answering questions at any time—"in mind while processing the meaning of the words and the concepts they express and calculating how to answer." Kenneth J. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights*, 2006 WIS. L. REV. 431, 431–432 (2006) (footnotes omitted).[3] A youth suspect also "must think through what questions

[3] *See also id.* at 432 n.4 ("To waive *Miranda* rights, a juvenile must: (1) understand the meaning of the words and concepts expressed, (2) understand how the warnings relate to the situation, and (3) use knowledge of the *Miranda* rights and of how courts function to make a choice about waiving or invoking the rights." (citing THOMAS GRISSO, FORENSIC EVALUATION OF JUVENILES 50–51 (1998)). "Working memory is 'the immediately accessible form of memory in which information is held in mind and manipulated.'" *Id.* at 432 n.3 (quoting Russell A. Poldrack & Anthony D. Wagner, *What Can Neuroimaging Tell Us About the Mind?*, 13 CURRENT DIRECTIONS IN PSYCHOL. SCI. 177, 177 (2004)).

will be asked, what facts are known or may be ascertained by the questioner, and why the questioner is interested in the answers." King, *supra*, at 432.

2. Underdeveloped abstract reasoning and decision-making skills may compromise adolescents' *Miranda* comprehension

Beyond basic information processing, an intelligent *Miranda* waiver also requires the juvenile suspect to imagine and reason about what will happen if she chooses to answer questions or remain silent. This requires an understanding of both short- and long-term consequences of a waiver and a deliberative decision-making process—but children and adolescents have difficulty effectively weighing behavioral options because they overemphasize the probability of short-term benefits over long-term consequences and are prone to act impulsively rather than make thought out decisions. *See* Cauffman & Steinberg, *supra*, at 433. Once a waiver is provided, these same developmentally-based limitations reduce the abilities of children and adolescents to manage decisions during police questioning, such as decisions regarding what questions to answer, what information to reveal, to whom they should speak, and whether to invoke the right to silence or counsel at a later stage in questioning.

3. Stressful situations—like police questioning—can further compromise youth reasoning about *Miranda*

In stressful situations, the hallmarks of child and adolescent decision making are amplified. "[A]dolescents are more susceptible to stress than are adults" and, under the stress of interrogation, "adolescents' already skewed cost-benefit analyses are vulnerable to further distortion." Jessica Owen-Kostelnik et al., *Testimony & Interrogation of Minors: Assumptions about Maturity and Morality*, 61 AM. PSYCHOL. 286, 295 (2006). The intelligent requirement

demands a more complex appreciation of the consequences of waiving the rights to silence and counsel and talking with police.

4. Children and adolescents are susceptible to adult pressure

Children and adolescents are also more suggestible than adults; they are more susceptible to having their thoughts, speech, and behaviors influenced by others. Fiona Jack et al., *Age-Related Differences in the Free-Recall Accounts of Child, Adolescent, and Adult Witnesses,* 28 APPLIED COGNITIVE PSYCHOL. 30, 30 (2014). This fact is pertinent to the question of waiver. Adolescents have "a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures" than do adults. Cauffman & Steinberg, *supra*, at 440. In situations where police officers present the waiver decision as an inconsequential formality or imply that waiver is in the youth's best interests, the youth may be ill-equipped to independently grasp the significance of waiving rights, and may also be less able to resist the perceived pressure to submit to the officers' continued questioning.

The Supreme Court acknowledged this in *J.D.B.*: "Neither officers nor courts can reasonably evaluate the [coercive] effect of objective circumstances that, by their nature, are specific to children without accounting for the age of the child subjected to those circumstances." *J.D.B.*, 564 U.S at 276.

B. Juveniles' *Miranda* Rights Comprehension Is Substantially More Impaired Than Adults

Decades of *Miranda* waiver research indicates that youth do not function at the same level as adults in navigating the waiver decision. First, around ninety percent of youth waive their *Miranda* rights, an alarming rate by itself but also much higher than the rate for adults. Barry

C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 429 (2013). Second, children and adolescents who waive their rights often do so with poor comprehension of what is at stake.

> Children may have many motivations for waiving *Miranda*: From childhood on, parents teach their children to tell the truth—a social duty and a value in itself. The compulsion inherent in the interrogation room amplifies social pressure to speak when spoken to and to defer to authority. Justice personnel suggested that juveniles waived to avoid appearing guilty, to tell their story, or to minimize responsibility. Some thought they waived because they did not expect severe sanctions or believed that they could mitigate negative consequences. Others ascribed waivers to naive trust and lack of sophistication. Others attributed waivers to a desire to escape the interrogation room—the compulsive pressures *Miranda* purported to dispel.

Id. at 429-30.

Forty years ago, Dr. Thomas Grisso developed a set of four measures to assess youth's understanding of the *Miranda* warnings and appreciation of the "function and significance" of the rights in interrogation situations. Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134, 1143–49 (1980) [hereinafter Grisso, *Juveniles' Capacities*].[4] In this study, Grisso found that comprehension of *Miranda* rights was related to age, with younger youth demonstrating poorer understanding than older youth or adults: 88% of ten- and eleven-year-olds, 73% of twelve-year-olds, 65% of thirteen-year-olds, and 54% of fourteen-year-olds had inadequate comprehension of at least one *Miranda* right. *Id*. at 1155. Separate from age, intelligence was also related to *Miranda* comprehension. Eighty-one percent of juveniles

[4] The first three of the four measures were designed to assess comprehension of vocabulary and phrases commonly used in *Miranda* warnings. The fourth measure used hypotheticals to assess whether participants understood how their rights functioned during interrogation scenarios.

with IQ scores below 70 demonstrated inadequate comprehension of at least one right, comparedto fifty-eight percent of juveniles with IQ scores between 81 and 90 and thirty-five percent of juveniles with IQ scores over 100. *Id.*

More recent research confirms that younger age, lower intelligence, lower academic achievement, lower socioeconomic status, and greater interrogative suggestibility predict poorer *Miranda* comprehension. Naomi E. Sevin Goldstein et al., *Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 ASSESSMENT 359, 365–66 (2003); Kaitlyn McLachlan et al., *Examining the Role of Interrogative Suggestibility in Miranda Rights Comprehension in Adolescents*, 35 L. & HUM. BEHAV. 165, 170–72 (2011); Allison D. Redlich et al., *Pre-Adjudicative and Adjudicative Competence in Juveniles and Young Adults*, 21 BEHAV. SCI. & L. 393, 400–04 (2003); Jennifer L. Woolard et al., *Examining Adolescents' and their Parents' Conceptual & Practical Knowledge of Police Interrogation: A Family Dyad Approach*, 37 J. YOUTH & ADOLESCENCE 685, 690–94 (2008); Heather Zelle et al., *Juveniles' Miranda Comprehension: Understanding, Appreciation, and Totality of Circumstances Factors*, 39 L. & HUM. BEHAV. 281, 287–88 (2015). Furthermore, this research shows that large numbers of juveniles have inadequate comprehension of at least one right. McLachlan et al., *supra*, at 170–72. A study of twelve- to nineteen-year-olds found substantial deficits in *Miranda* comprehension, with sixty-nine percent of youth demonstrating inadequate understanding of at least one *Miranda* right. NAOMI E. S. GOLDSTEIN ET AL., MIRANDA RIGHTS COMPREHENSION INSTRUMENTS (MRCI) 93 (2014). Another study in 2008 reported that 70% of eleven- to thirteen-year-olds, 48% of fourteen- to fifteen-year-olds, and 26% of sixteen- to seventeen-year-olds demonstrated impaired understanding of at least one right,

compared to 23% of adults. Woolard et al., *supra*, at 690–94. For those youth who do not understand the basic meaning of the rights to silence and to counsel, the ability to appreciate the significance of these rights to interrogations is even more difficult. This problem is even more severe for justice-involved youth, who tend to demonstrate lower average intelligence and academic achievement scores than youth in the general population. *See generally* Amy E. Lansing et al., *Cognitive and Academic Functioning of Juvenile Detainees: Implications for Correctional Populations and Public Health*, 20 J. CORRECTIONAL HEALTH CARE 18 (2014). Notably, because most research has been conducted in low-stress, research-based settings, it likely overestimates the abilities of children and adolescents to fully understand their rights during interrogation. *See* Grisso, *Juveniles' Capacities*, at 1165.

II. PARENTAL INVOLVEMENT DOES NOT ENHANCE THE RELIABILITY OF YOUTH'S WAIVER OF THEIR MIRANDA RIGHTS

C.J. and his mother were advised together of C.J.'s *Miranda* rights, and then C.J. and his mother consulted with one another for 23 seconds before advising the officer that C.J. understood his rights and would agree to be interrogated without his mother present. The circumstances of this case demonstrate the accuracy of research examining the efficacy of parental presence during police interrogations: Studies suggest that the presence of a parent does not mitigate the coercive circumstances inherent in police interrogations. Thomas Grisso & Carolyn Pomicter, *Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver*, 1 L. & HUM. BEHAV. 321, 340 (1997). Parents are unlikely to serve as protective forces for several reasons:

parents may have divergent interests from their children, may not fully understand *Miranda* warnings themselves, and may themselves be overwhelmed by police pressures.

First, parents may prioritize goals other than reducing the legal jeopardy their children may be facing, including insisting that a child should "confess" or "tell the truth," which emphasizes obedience to authority and assuming responsibility for the consequences of one's actions. Woolard et al., *supra*, at 695–96. Accordingly, "a good parent may be a lousy source of guidance for the protection of the child's constitutional rights." King, *supra*, at 468.

Even for parents whose primary motivation is to protect their children from legal consequences, failure to appreciate the consequences of waiving *Miranda* rights or holding onto the belief that confessing will result in more lenient treatment may make it difficult for parents to effectively advise youth. In a study of parents of eleven- to seventeen-year-olds, twenty-three percent of parents scored in the "clinically impaired" range when evaluated for *Miranda* comprehension,[5] and nearly all parents held certain misconceptions that might doom their provision of adequate advice to a child undergoing interrogation. Woolard et al., *supra*, at 694. ("Virtually all" parents believed police would inform them if their child was considered a witness or suspect; half believed police are not permitted to lie during interrogation, and a majority believed youth would have at least one type of protection not actually constitutionally required.). Many lay adults do not understand the complexities and dangers of the legal system

[5] Scores fell in the "clinically impaired" range when the participant received a score of zero on any item on the Comprehension of *Miranda* Rights scale of the Instruments for Assessing Understanding and Appreciation of Miranda Rights. This scale asks individuals to paraphrase each of the *Miranda* warnings in their own words; a score of zero on an item indicates the individual demonstrated *no* understanding of that warning. Woolard et al., *supra*, at 689.

and, thus, cannot properly help protect their children's *Miranda* rights, regardless of sincerity and motivation. Abigail Kay Kohlman, Note, *Kids Waive the Darndest Constitutional Rights: The Impact of* J.*D.B. v. North Carolina on Juvenile Interrogation,* 49 AM. CRIM. L. REV. 1623, 1639 (2012). Finally, given the familial relationship of C.J., the victim and C.J.'s mother, there was an inherent divergence of interests that impeded C.J.'s mother from providing unbiased guidance or protection.

CONCLUSION

In *Escobedo v. Illinois*, a case decided two years before *Miranda v. Arizona*, the Supreme Court barred the use of Escobedo's statement where he had repeatedly asked for the assistance of counsel and was not advised of his Fifth Amendment right against self-incrimination. *Escobedo v. Illinois*, 378 U.S. 478 (1964). As the Supreme Court stated:

> No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system.

Escobedo, 378 U.S. at 490.

The concerns expressed by the Court in *Escobedo* led, two years later, to the Court's explicit requirement of *Miranda* warnings to individuals subject to custodial interrogation by law enforcement. Aligning *Miranda v. Arizona* with *J.D.B. v. North Carolina* and current scientific research is essential if we are to give youth the full measure of the protections against self-incrimination that the Supreme Court first spelled out over fifty years ago. Knowing that youth are both more vulnerable and susceptible to the coercive pressures of a custodial law enforcement interrogation requires that we view their Fifth and Fourteenth Amendment rights through a

different lens than that commonly used for adult suspects. Scientific findings belie a one-size-fits-all totality of the circumstances test that simply takes the age of the suspect into account. A substantial number of young suspects lack the requisite skills to make a voluntary, knowing, and intelligent waiver of their rights, even with special protections; even youth with stronger skill sets still need special consideration given their reduced capacity to meet the requirements of a valid waiver. The Fifth and Fourteenth Amendment protections against compelled self-incrimination must likewise yield to the scientific reality that our understanding of youths' constitutional rights may need to be recalibrated to conform to recent research and related scientific findings.

This case comes before this Court on a request to transfer following the decision of the Court of Appeals that C.J.'s *Miranda* waiver was invalid under the totality of the circumstances test. In the event this Court concludes transfer is appropriate, *Amicus Curiae* respectfully requests that this Court affirm the ruling of the Court of Appeals, in accordance with both prevailing case law and current research.

Respectfully submitted, this the 9th day of April 2020.

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CERTIFICATE OF WORD COUNT

I verify that this brief contains no more than 4,200 words as calculated by the word processing software used to prepare this brief and excluding the parts of the brief excluded from length limits by Indiana Rule of Appellate Procedure 44(C).

/s/ Joel C. Wieneke
Joel C. Wieneke

CERTIFICATE OF SERVICE

I certify that the foregoing document was served through the IEFS upon Brian A. Karle, counsel for Appellant, and Curtis T. Hill, Jr., counsel for Appellee on April 9th, 2020.

/s/ Joel C. Wieneke
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