Appeal No. 2022AP000161-CR

STATE OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAMIAN L. HAUSCHULTZ,

Defendant-Appellant-Petitioner.

Request for Review of an Unpublished Decision by the Court of Appeals, District II, on Appeal from an Order Denying Suppression and from a Judgment of Conviction, both entered in the Manitowoc County Circuit Court, the Honorable Jerilyn M. Dietz, presiding.

NON-PARTY BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER AND THIRTEEN JUVENILE JUSTICE, CRIMINAL JUSTICE, CHILD WELFARE SYSTEMS, AND ADOLESCENT DEVELOPMENT EXPERTS IN SUPPORT OF PETITION FOR REVIEW

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INTEREST OF *AMICI CURIAE*

Juvenile Law Center; Barton Child Law and Policy Center, Emory Law School; Center on Wrongful Convictions; Children and Family Justice Center; The Gault Center; Human Rights for Kids; Mid-Atlantic Region of the Gault Center; National Center for Youth Law; Wisconsin Innocence Project; Youth Law Center; Dr. Arielle Baskin-Sommers, Yale University;* BJ Casey, PhD, Professor of Neuroscience, Barnard College of Columbia University;* Issa Kohler-Hausmann, Professor of Law, Yale University;* and Kristin Henning, Director, Georgetown Juvenile Justice Clinic and Initiative and Blume Professor of Law* are experts on the juvenile and criminal legal systems and the impacts of adolescent brain development on behavior and decision-making. *Amici* urge this Court to grant review to integrate research on the impacts of adolescent brain development into its interrogation analysis for adolescents.

ARGUMENT

The United States Supreme Court has long recognized that children must be afforded special consideration during interrogations because they are more vulnerable to the pressures of interrogation than adults. *See Haley v. Ohio*, 332 U.S. 596, 599 (1948). Since then, Supreme Court jurisprudence has increasingly recognized the significance of social science research and adolescent brain development, including in the context of interrogations. *See J.D.B. v. North Carolina*, 564 U.S. 261, 272-73 (2011); *see also Roper v. Simmons*, 543 U.S. 551, 569-70 (2005); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Miller v.*

* Participating in their individual capacity, not as representatives of their institutions. Institutions are listed for affiliation purposes only.

Alabama, 567 U.S. 460, 471-72 (2012); *Montgomery v. Louisiana*, 577 U.S. 190, 206-08 (2016); *Jones v. Mississippi*, 593 U.S. 98, 108-09 (2021).

In upholding the trial court's denial of the motion to suppress Damian's statements to the police, the appellate court failed to treat "age [a]s far 'more than a chronological fact.'" *J.D.B.*, 564 U.S. at 272 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). While the appellate court acknowledged that "courts have long recognized the importance of age in determining both whether a person is in custody, and whether a confession is voluntary," it failed to contend with the actual effects of Damian's age during the interrogations. *See State v. Hauschultz*, No. 2022AP161-CR, unpublished slip op., ¶44 (WI App Mar. 13, 2024) (first citing *J.D.B.*, 564 U.S. at 265; and then citing *State v. Jerrell C.J.*, 2005 WI 105, ¶25, 283 Wis. 2d 145, 699 N.W.2d 110). To date, no published Wisconsin appellate opinions on youth interrogations apply the holding in *J.D.B.*[1] As a result, the appellate court in this case failed to properly account for how age impacts the outcome. *See J.D.B.* 564 U.S. at 272 ("[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.").

Amici write to urge this Court to grant review to instruct lower courts on the impact of age on custody and interrogation analyses.

[1] This Court decided *State v. Stevens* after *J.D.B.* but the majority opinion does not address *J.D.B.*, and only mentions the case in a concurrence footnote. *See* 2012 WI 97, ¶136 n.18, 343 Wis. 2d 157, 822 N.W.2d 79 (Abrahamson, C.J., concurring in part and dissenting in part).

I. ADOLESCENT BRAIN DEVELOPMENT MUST PLAY A SIGNIFICANT ROLE IN CUSTODY AND VOLUNTARINESS ANALYSIS

While the impact of age is "common sense," *J.D.B.* 564 U.S. at 280, social science and neuroscience research further explain the nature of youth vulnerability during interrogations. During adolescence, youths prefrontal cortexes develop gradually, affecting their ability to make measured decisions, while their more-rapidly developing subcortical systems cause a spike in risk-taking and emotional reactivity. B.J. Casey et al., *The Adolescent Brain*, 28 Developmental Rev. 62, 65 (2008). This mismatch in brain development drives the hallmarks of adolescence: impulsivity, risk-taking, and vulnerability to outside pressures. *See Miller*, 567 U.S. at 471 (citing *Roper*, 543 U.S. at 569).

A. Youth Are Vulnerable To Adult Pressure And Unlikely To Feel They Can End A Police Encounter

The U.S. Supreme Court has long recognized that youth are more susceptible to pressure during interrogation than adults. *J.D.B.*, 564 U.S. at 275 (noting youth's susceptibility to influence and pressure (first citing *Eddings*, 455 U.S. at 115; and then citing *Roper*, 543 U.S. at 569)). Research confirms that adolescents under age fifteen are more compliant with adults than older adolescents and young adults. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333, 353 (2003). Their eagerness to please adults and obey adults' perceived desires contributes to their compliance. *See* Naomi E.S. Goldstein et al., *Waving Good-Bye to Waiver: A Developmental Argument Against Youth's Waiver of* Miranda *Rights*, 21 N.Y.U. J. Legis. & Pub. Pol'y 1, 26-27 (2018) [hereinafter Goldstein (2018)]. Further,

"[y]outh, who are socialized to comply with adult authority figures, are . . . likely to interpret [questions or suggestions] as orders." Kristin Henning & Rebba Omer, *Vulnerable and Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 Ariz. St. L.J. 883, 900 (2020) (citing Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 Law & Psych. Rev. 53, 62 (2007)).

"In the interrogation context, the roles of *adult* and *authority* figure are indivisible, as are the roles of *youth* and *suspect*." Hayley M.D. Cleary, *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations: New Directions for Research, Policy, and Practice*, 23 Psych. Pub. Pol'y & L. 118, 122 (2017) [hereinafter Cleary (2017)]. As a result, "the interrogation interaction itself—by virtue of the process and the social and legal roles of those involved—likely fosters perceived compulsory compliance with authority." *Id.* Younger adolescents' tendencies to comply with authority figures make them unlikely to feel they can end an encounter with police or refuse to answer questions regardless of an officer's assurance to the contrary. *See* Saul M. Kassin et al., *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73 Am. Psych. 63, 64 (2018). Children with abuse histories are particularly likely to defer to adults, including their abusers. *See* Hayley M.D. Cleary et al., *How Trauma May Magnify Risk of Involuntary and False Confessions Among Adolescents*, 2 Wrongful Conviction L. Rev. 173, 186-87 (2021) [hereinafter Cleary (2021)].

B. Youth Cannot Effectively Weigh The Risks And Benefits Of Answering Police Officers' Questions

The prefrontal cortex, which does not finish developing until young adulthood, regulates decision-making, enabling the brain to "overrid[e] inappropriate choices and actions in favor of goal-directed ones." Casey et

al., *supra*, at 65; Goldstein (2018), *supra*, at 20-21. Meanwhile, risk-taking behaviors spike in adolescence as reward centers in the brain rapidly develop. *See* Goldstein (2018), *supra*, at 21-22. These centers make youth more responsive to potential rewards and bias youth to "seek immediate, rather than long-term gains." Casey et al., *supra*, at 68.

As a result, youth tend to make more impulsive decisions than adults, especially in emotionally charged or stressful ("hot") contexts, where youth "discount the potential for negative consequences and weigh the potential for reward more heavily than adults do." Goldstein (2018), *supra*, at 23-24. Importantly, youth may experience a situation as a hot context when an adult would not. *See* Cleary (2017), *supra*, at 121. During an interrogation, "[a]nticipating a parent's reaction, the worry of 'getting in trouble,' mounting pressure from police, or simply being [in] an unfamiliar environment without a support system could all contribute to feelings of stress." *Id.* This stress may be amplified for youth with trauma histories who, for example, may view interrogators' faces as angry when others would not. *See* Cleary (2021), *supra*, at 184-85. Further, because adolescents lack future orientation, "even shorter interrogations may seem painfully long to an adolescent." Cleary (2017), *supra*, at 121.

A youth's confession must not be "coerced or suggested," nor the product "of adolescent fantasy, fright, or despair." *In re Gault*, 387 U.S. 1, 55 (1967). Youth require "special care" to ensure that incriminating statements are not obtained in violation of their due process rights. *See Haley*, 332 U.S. at 599 ("[W]hen . . . a mere child—an easy victim of the law—is before us, special care . . . must be used. . . . That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens."). Youths' impulsivity and difficulty weighing risks impact their ability to choose

freely and deliberately to make a statement to police. Youth tend to over-value the chance that giving police information will get them out of the interrogation quickly. *See* Goldstein (2018), *supra*, at 42-43. Youths' compliance with and desire to please adults also makes them likely to cede to pressure or persuasion from police. *See supra* Section I.A.

II. THE COURT OF APPEALS IGNORED AND MISUNDERSTOOD THE IMPACTS OF DAMIAN'S AGE

Age is a vital consideration in assessing the constitutionality of interrogations. *See Gallegos v. Colorado*, 370 U.S. 49, 54 (1962); *Haley*, 332 U.S. at 599-600; *J.D.B.*, 564 U.S. at 277. Despite this, after acknowledging the relevance of Damian's youth, the appellate court focused on Damian and his parents' consent to the interrogations, his evident intelligence, and the seemingly relaxed or cordial nature of the interrogations. *See Hauschultz*, slip op. at ¶¶45-64.

A. That Damian's Parents Gave Police Permission To Interrogate Him Weights In Favor Of A Custody Finding

In analyzing the first two interrogations, the appellate court emphasized that Damian's parents consented to each of the interviews, suggesting that their permission weighed *against* a finding that Damian was in custody. *See id.* at ¶¶50, 59, 61. However, parental consent should weigh in *favor* of a finding that a reasonable child would not feel free to leave an interrogation. Parents frequently pressure their child to cooperate with police even when it is not in the child's interest to do so. *See* 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, 467-69 (2006). Parents may also have conflicting interests with their child, *id.* at 469, as is true in this case, where Tim abused Damian

and had imposed the punishment that led to Ethan's death. (Pet. for Review 8-9). A reasonable child whose parent has consented to police questioning will not likely feel free to terminate the conversation, regardless of the setting.

This is especially true for Damian's second interrogation where Tim gave Bessler permission to transport Damian to the police station for questioning. *Hauschultz*, slip op. at ¶¶60-61. In this circumstance, a reasonable child would likely act as Damian did—complying with Bessler's wishes. *See supra* Section I.A. A child like Damian, who learned that failure to comply with adult authority will result in harsh or abusive punishment, would likely be even more compliant. That the interrogation only ended when Tim stopped it, *Hauschultz*, slip op. at ¶¶65, demonstrates that a child may not feel able to end an interrogation even when an adult would. That Damian was able to leave with Tim also has little bearing on the custody analysis. *See J.D.B.*, 564 U.S. at 267.

B. While Damian Is Intelligent, He Was Still Fourteen

"[A] 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police." *Gallegos*, 370 U.S. at 54; *see also* Goldstein (2018), *supra*, at 22-24 (describing the difference between cognitive development and emotional regulation). The appellate court reasoned that Damian "did not appear confused or have difficulty understanding what was going on." *Hauschultz*, slip op. at ¶49. It highlighted the "irony" that Damian had just learned about constitutional rights in his eighth-grade social studies course and suggested that Damian clearly understood Tim's advisement to not say anything else without speaking with an attorney. *Id.* at ¶¶10, 23.

While Damian is intelligent, his willingness to answer Bessler's questions demonstrates that he could not appreciate the gravity of the situation or that he risked criminal charges. Research shows that younger children—even those who are highly intelligent—cannot fully appreciate legal rights. Research demonstrating that comprehension of *Miranda* rights "may be a developmental skill beyond the capacity of young adolescents," Naomi E. Sevin Goldstein et al., *Juvenile Offenders'* Miranda *Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 Assessment 359, 366 (2003) [hereinafter Goldstein (2003)], sheds light on brain development and interrogations more generally. Decades of research show that younger adolescents misunderstand *Miranda* rights. *See generally id.*; Henning & Omer, *supra*, at 897-99. For example, youth often do not understand that they are "entitled to consult with an attorney before interrogation and to have an attorney present during interrogation." Goldstein (2003), *supra*, at 366. Further, youth frequently misunderstand the words, "interrogation" and "consult," believing the "former to be analogous with a court hearing." Youth also have difficulty appreciating the future consequences of decisions regarding their rights. *Id.*

Damian's evident confusion and inability to enforce his rights to remain silent and to an attorney during the third interrogation contradict the court's assertion that he was able to navigate the interrogations. As Damian tried to follow Tim's instructions, he repeatedly expressed confusion about staying silent and demonstrated a lack of understanding about the role of an attorney. (Int. 3 at 2:43am, 2:46-47am, 2:49am, 3:07-08am, 3:11am, 3:18-19am). Despite learning about his rights in social studies and being instructed to enforce those rights by Tim, at the age of fourteen, Damian could not understand or enforce those rights or adequately weigh

the risks of speaking to the police. The devastating result in this case is a child serving a twenty-year prison sentence. (*See* Pet. for Review 20).

C. Police Exploited Damian's Adolescent Vulnerabilities By Obtaining Confessions Through Minimization Tactics

"[I]t seems probable that where children are induced to confess by 'paternal' urgings on the part of officials and the confession is then followed by disciplinary action . . . the child may well feel that he has been led or tricked into confession." *Gault*, 387 U.S. at 51-52. The appellate court reasoned that the first interrogation was, "calm, conversational, and pleasant," the second was, "congenial, calm and at times even lively," and only raised concerns about the third interrogation which it described as having a "more accusatory tone." *Hauschultz*, slip op. at ¶¶53, 63, 71. In the first interrogation, Remiker assured Damian that he was not in trouble, (*see* Pet. for Review at 11), and in the second, Bessler claimed Damian had nothing to fear from her, *see Hauschultz*, slip op. at ¶62. During the second and third interrogations, Damian was in a "comfortable room with furniture," was seated on a couch and was given coffee and breaks. *Id.* ¶¶62, 64.

While adolescents already struggle to weigh risks, *see* Section I.B, these "comforts" and Remiker's and Bessler's reassurance instead minimized the seriousness of the situation and conveyed that there was little or no risk in continuing to answer questions. In fact, "[p]olice are trained to establish strong rapport during a nonaccusatory interview so that the suspect comes to 'trust the investigator's objectivity and sincerity,' which may be even more persuasive with children and adolescents than with adults." Emily Haney-Caron & Erika Fountain, *Young, Black, and Wrongfully Charged: A Cumulative Disadvantage Framework*, 125 Dickinson L. Rev. 653,

682 (2021) (footnote omitted) (quoting Fred E. Inbau et al., *Criminal Interrogations and Confessions* 6 (2013)). This tactic undermines adolescents' already limited ability to adequately weigh the risks of answering police questions and "effectively 'penalizes' adolescents for making poor decisions influenced by [adolescent brain development]." Cleary (2017), *supra*, at 120. "The tendencies that render juvenile suspects in need of additional protections—compliance with authority, self-regulation difficulties, limited future orientation, poor rights comprehension—are not always readily observable on camera." *Id.* at 127.

The appellate court declined to determine whether Damian was in custody for the third interrogation and therefore entitled to *Miranda* warnings, reasoning that, because the information he provided was largely duplicative of the earlier interrogations, any error in the failure to suppress the statements was harmless. *Hauschultz*, slip op. at ¶71-76. The court did, however, concede that whether Damian was in custody for the interrogation was "a much closer question." *Id.* at ¶71. The Supreme Court has repeatedly emphasized concern about rules or practices that allow law enforcement to circumvent *Miranda*'s protections. *See, e.g.*, *J.D.B.*, 564 U.S. at 280 (rejecting a brighter line for custody analysis, "recognizing that it would simply 'enable the police to circumvent the constraints on custodial interrogations established by *Miranda*'" (quoting *Berkemer v. McCarty*, 468 U.S. 420, 441 (1984))); *Missouri v. Seibert*, 542 U.S. 600, 613, 617 (2004) ("Upon hearing warnings only in the aftermath of interrogation and just after making a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again.").

The appellate court reasoned that Damian was not in custody during the first two interrogations because he and his parents consented to the interrogations, the interrogation room was "comfortable," the doors were cracked, Damian was not physically restrained, and Bessler assured Damian that he could end the interrogation. *Hauschultz*, slip op. at ¶¶50-64. Research shows that police officers view *Miranda* protections as a barrier to obtaining evidence and "therefore, use a wide variety of approaches to circumvent *Miranda* and reduce the likelihood of invocation." Sydney Baker et al., *A Critical Discussion of Youth* Miranda *Waivers, Racial Inequity, and Proposed Policy Reforms*, 29 Psych. Pub. Pol'y & L. 320, 325 (2023) (citing Fiona Brookman et al, *Dancing Around* Miranda, 55 Crim. L. Bull. 725 (2019)). The police practices here are deliberate choices that seek to circumvent the requirements of *Miranda*. As explained above, each of these practices played on Damian's vulnerabilities and unconstitutionally circumvented his *Miranda* rights.

CONCLUSION

For these reasons, *Amici Curiae* respectfully request this Court grant review.

Respectfully submitted,

Electronically signed by
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Dated: April 24, 2024

CERTIFICATION REGARDING FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Section 809.19(8)(b), (bm), and (c) for a brief produced using a proportional serif font. The length of this brief is 2,980 words.

Dated this 24th day of April, 2024.

Electronically signed by
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