

**IN THE SUPREME COURT
OF THE
STATE OF CONNECTICUT**

S.C. 17374

ROBIN LEDBETTER

V.

COMMISSIONER OF CORRECTION

**Brief of Juvenile Law Center as
AMICUS CURIAE
In Support of Petitioner-Appellant**

**Marsha L. Levick, Esq.*
*Counsel of Record
Lourdes M. Rosado, Esq.
Juvenile Law Center
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551**

Counsel for *Amicus Curiae*

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STATEMENT OF THE ISSUES

Amicus adopts the statement of the issues as articulated in the brief of Petitioner-Appellant Robin Ledbetter.

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INTEREST OF THE *AMICUS*

Juvenile Law Center (“JLC”) works on behalf of adolescents who become involved in the juvenile justice and child welfare systems. JLC works to create laws and policies that promote the fair treatment and well-being of youth in these systems. JLC respectfully submits this brief to assert that a holding by the Court that Article 1, § 8 of the Connecticut Constitution requires a 14 year-old suspect be informed prior to police questioning that she will be tried, convicted and sentenced as an adult is well-supported and necessitated by psychological and neurological research demonstrating distinct differences between adults and youth that, in turn, are relevant in the interrogation setting.

IDENTITY OF THE *AMICUS*

JLC is one of the oldest legal service firms for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. JLC works to ensure children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. We believe the juvenile justice and child welfare systems should be used only when necessary, and work to ensure that the children and families served by those systems receive adequate education, and physical and mental health care. JLC is a non-profit public interest firm. Legal services are provided at no cost to our clients.

STATEMENT OF FACTS AND PROCEEDINGS

Amicus adopts the statement of facts and proceedings as articulated in the brief of Petitioner-Appellant Robin Ledbetter.

ARGUMENT

The Petitioner-Appellant [hereinafter “Petitioner”] raises one issue on appeal of the denial of her writ of *habeas corpus*: whether trial counsel provided ineffective assistance when he conceded the voluntariness of Petitioner’s confession. Specifically, Petitioner argues that trial counsel was ineffective because he conceded Petitioner’s claim, after first advancing it in a suppression motion, that Article 1, § 8 of the Connecticut Constitution mandates suppression of the Petitioner’s confession because police failed to advise Petitioner, who was then 14 years of age, that she would be prosecuted in adult court as an adult offender.

Amicus urges the Court to find that the state constitution requires that 14-year-old youth be so warned prior to interrogation, because the developmental and neurobiological differences between adults and minors demonstrate that minors require greater due process protections to ensure the voluntariness of their confessions. Scholarship on adolescent development in the realms of cognition and decision-making, as well as emerging research on the structure of the teenage brain, establish that adolescents, particularly younger adolescents such as Petitioner, are at a disadvantage in the interrogation setting as compared to adults. Courts have consistently relied on research regarding the developmental differences of youth in determining the scope and breadth of

their constitutional rights, the most recent example being the United States Supreme Court's opinion in *Roper v. Simmons*, 125 S.Ct. 1183 (2005). The *Simmons*' holding that the United States Constitution prohibits execution of juvenile offenders is based in part on research demonstrating the developmental differences of youth that make them less culpable for their criminal conduct than adults. *Id.* at 1195-96. *Amicus* presents for this court's consideration research on the developmental and neurobiological characteristics of adolescents that bears directly on the question before the Court in this appeal.

I. Research confirms that children and adolescents are developmentally distinct from adults in their cognitive capacity, decision-making, knowledge and experience, differences that are particularly relevant to the issue of whether a confession is voluntary under the Connecticut Constitution's due process clause

Developmental psychologists have long recognized that adolescence is a period of major development across many domains, including the realm of cognition. During the teenage years, youth begin to develop the abilities to abstract, to think of the possible (including alternative possibilities) and not just the real, and to form and test hypotheses about the world around them. Stanley I. Greenspan & John F. Curry, *Extending Piaget's Approach to Intellectual Functioning*, in 1 COMPREHENSIVE TEXTBOOK OF PSYCHIATRY 402, 406-07 (Harold I. Kaplan & Benjamin J. Sadock eds., 7th ed. 2000) (providing an overview of Jean Piaget's cognitive development model, which remains an important theoretical work in the child development field).¹ These cognitive capacities progressively become part of

¹ See also KIDS ARE DIFFERENT: HOW KNOWLEDGE OF ADOLESCENT DEVELOPMENT THEORY CAN AID DECISION-MAKING IN COURT 7 (L. Rosado ed., 2000) [hereinafter KIDS ARE DIFFERENT]; Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A*

an adolescent's repertoire; however, this development rarely follows a straight line during adolescence, as periods of progress alternate with periods of regression. Laurence Steinberg and Robert Schwartz, *Developmental Psychology Goes to Court* in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 9, 24 (Thomas Grisso & Robert Schwartz, eds.) (2000).

Developmental psychologists also recognize that adolescents do not utilize these developing cognitive capacities consistently over time or across a variety of situations. Other non-cognitive, "psychosocial factors," including the external environment, impact adolescent perceptions, judgment and decision-making and limit their capacity for autonomous choice. Elizabeth Cauffman and Laurence Steinberg, *Researching Adolescents' Judgment and Culpability*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 325, 327-29 (Thomas Grisso & Robert G. Schwartz eds., 2000).² As one developmental psychologist has observed, "During the time these processes are developing, it doesn't make sense to ask the average adolescent to think or act like the average adult, because he or she can't – any more than a six-year-old child can learn

Developmental Perspective on Juvenile Justice Reform, 88 J. CRIM. L. & CRIMINOLOGY 137, 157 (1997) [hereinafter Scott & Grisso, *The Evolution of Adolescence*]; R. Murray Thomas, COMPARING THEORIES OF CHILD DEVELOPMENT 273-318 (3d ed. 1992); Committee on Child Psychiatry, Group for the Advancement of Psychiatry, *How Old is Old Enough? The Ages of Rights and Responsibilities* 20-35 (1989) [hereinafter *GAP*].

² See also KIDS ARE DIFFERENT at 8-10; Scott & Grisso, *The Evolution of Adolescence* at 157, 161-64; Laurence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision-Making*, 20 LAW & HUM. BEHAV. 249, 250 (1996); Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 222-23 (1995) [hereinafter Scott, *Evaluating Adolescent Decision Making*]; *GAP* at 28 .

calculus.” Laurence Steinberg, *Juveniles on Trial*, 18 CRIM. JUST. 20, 22 (Fall 2003). As described in more detail below, limits on cognitive capacity and decision-making powers, in combination with these psychosocial factors, explain why juveniles need greater protections than adults to ensure that their confessions are truly voluntary.

To begin, adolescents have a different perception of time as compared to adults. Adolescents exhibit present-oriented thinking and have difficulty thinking beyond the present. Generally, they seem unable to think about the future or they discount it. Marty Beyer, *Recognizing the Child in the Delinquent*, 7 KY. CHILD. RTS. J. 16, 17 (Summer 1999) [hereinafter Beyer, *Recognizing the Child*].³

Young teens such as Petitioner simply demonstrate immature decision-making processes. As compared to adults, juveniles have a limited time perspective, a tendency to emphasize short-term benefits versus long-term benefits, and a greater willingness to take risks, Thomas Grisso & Laurence Steinberg *et al.*, *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents and Adults’ Capacities as Trial Defendants*, 27 LAW & HUMAN BEH. 333, 353-56 (2003),⁴ that makes them particularly ill-suited to engage in high stakes risk-benefits analysis. Thus, a young teenager in Petitioner’s position would not be able to fully appreciate the full range of possible consequences of confessing to felony murder, as

³ See also KIDS ARE DIFFERENT at 9; Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 591-92 (2000) [hereinafter Scott, *Legal Construction*]; Scott & Grisso, *The Evolution of Adolescence* at 164.

⁴ See also Beyer, *Recognizing the Child* at 17; KIDS ARE DIFFERENT at 9; Scott, *Legal Construction* at 591-92 (2000); Scott & Grisso, *The Evolution of Adolescence* at 164; Elizabeth S. Scott and Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 816 (2003) [hereinafter, Scott & Steinberg, *Blaming Youth*].

compared to an adult. A young adolescent also tends to put more value on the immediate consequences of an action (in this case, confessing so that the interrogation will end) than on the long-term consequences of the action (being prosecuted and sentenced as an adult for felony murder). See also *Simmons*, 125 S.Ct. at 1195 (noting that teenager’s “lack of maturity” often results in “impetuous and ill-considered actions and decisions,” including engaging in high risk behavior) (Internal quotations and citations omitted).

Moreover, it must be emphasized that the utilization of cognitive skills is context-specific during adolescence. Kurt W. Fischer *et al.*, *The Development of Abstractions in Adolescence and Adulthood*, in BEYOND FORMAL OPERATIONS: LATE ADOLESCENT AND ADULT COGNITIVE DEVELOPMENT 43, 57 (Michael L. Commons *et al.* eds., 1984); *GAP* at 34. For example, stress and fear greatly impact adolescent cognition; in stressful situations, adolescents often will not use the highest level of cognitive reasoning of which they may be capable in non-stressful scenarios. Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 *Crim. Just.* 27, 27 (Summer 2000) [hereinafter Beyer, *Immaturity*]; *Kids are Different* at 10; Fischer at 70.

Youth simply have less experience, including interpersonal experience, to draw on than adults, and so on average they have a lesser capacity to respond and react in new and stressful situations. Steinberg & Schwartz, *Developmental Psychology* at 26.⁵ Adolescents generally process information less effectively than adults and instead exhibit “either-or” thinking, again particularly when under stress. Adolescents will typically perceive

⁵ See also Scott & Grisso, *The Evolution of Adolescence* at 164; Scott, *Evaluating Adolescent Decision Making* at 224-27; *GAP* at 30.

only one option when adults in similar situations would see multiple possibilities. Beyer, *Immaturity* at 27; Beyer, *Recognizing the Child* at 17-18. Thus, a youth in Petitioner's position, who was never told during her interrogation that she could be prosecuted as an adult and instead was advised by her father that her case would be handled in juvenile court and she could only be held until her 18th birthday, see Memorandum of Decision, May 12, 2004, pp. 3-4, Appendix to Brief of Petitioner-Appellant pp. A3-A4, would be less likely than an adult to know and perceive that, in fact, there are other, much more severe consequences to giving a statement to police.

These conclusions about the limits in knowledge and cognitive capacities of young adolescents such as Petitioner are borne out by the 2003 MacArthur Adjudicative Competence Study. That study, involving 900 youths and 450 adults, found that juveniles 15 years old and younger were three times more likely than young adults to have serious deficiencies in their understanding or reasoning about trial processes and defendant decisions. Thomas Grisso, DOUBLE JEOPARDY: ADOLESCENT OFFENDERS WITH MENTAL DISORDERS 107 (2004) [hereinafter Grisso, DOUBLE JEOPARDY]. Similarly, in a study on minor's comprehension of waiving their right to trial, a group of 50 juveniles, with an average age of 15 years, could correctly define only 5.5% of the common legal terms used in the plea colloquy. Barbara Kaban & Judith C. Quinlan, *Rethinking A "Knowing, Intelligent, and Voluntary Waiver" in Massachusetts' Juvenile Courts*, 5 JOURNAL OF THE CENTER FOR FAMILIES, CHILDREN & THE COURTS 8 (2004).

The tendency to engage in either-or thinking also affects adolescents' interactions with others. An important developmental "task" of adolescence is "negotiating about power

and control in the context of changing relationships with peers and parents.” Scott, *Evaluating Adolescent Decision Making* at 230 (citations omitted). But in the process of forming more complex relationships with adults, adolescents regress; teenagers will “polarize” their characterization of adults, or overgeneralize or stereotype a trait in a particular person, instead of seeing people as having mixed motives or agendas. Peter Blos, *THE ADOLESCENT PASSAGE: DEVELOPMENTAL ISSUES* 152, 156 (1979); Howard Lerner, *Psychodynamic Models* in *HANDBOOK OF ADOLESCENT PSYCHOLOGY* 53, 66 (Vincent B. Van Hasselt & Michel Hersen eds., 1987) (citation omitted); Robert L. Selman, *THE GROWTH OF INTERPERSONAL UNDERSTANDING: DEVELOPMENTAL AND CLINICAL ANALYSES* 134 (1980). A youth in Petitioner’s situation, for example, is less likely to contemplate that the police have an interest antithetical to her own interests to withhold information from her with regard to the consequences of confessing.

Scholarship on moral development in adolescence also explains why a juvenile would be more inclined than an adult to acquiesce to the demands of a parent or other adult authority figure. Adolescence is marked by “conventional morality” – “conforming to and upholding the rules and expectations and conventions of society or authority just because they are society’s rules, expectations, or conventions.” Lawrence Kohlberg, *THE PSYCHOLOGY OF MORAL DEVELOPMENT: THE NATURE AND VALIDITY OF MORAL STAGES* 172-73 (1984). Most people who reach the “postconventional level of morality” – where they grapple with the moral principles underlying these rules before deciding to accept them as their own values – only do so in their twenties. *Id.* at 172-73. The conformity characteristic of adolescence means that teenagers in general are more compliant when confronted by

authority figures. Adolescence is a time when the gradual transition to becoming a self-governing, autonomous individual begins. KIDS ARE DIFFERENT at 16. But adolescents like Petitioner remain emotionally dependent on other people, specifically their parents and peers, throughout this development process; they are thus less capable of independent, self-directed action than adults who have achieved a greater sense of identity and autonomy. They are vulnerable to influences from both peers and parents. *Id.* at 16-17. See also *Simmons*, 125 S.Ct. at 1195 (noting that “the character of a juvenile is not as well-formed as an adult.”)

Thus, adolescents in general are more likely to comply with their parent’s wishes and conform to societal expectations. These distinctive adolescent attributes are particularly relevant to Petitioner’s interrogation: not only did her father misinform her about the likely consequences of confessing, he also encouraged her confess, advising her that it was in her best interest and it was the “Christian thing to do.” Memorandum of Decision, May 12, 2004, pp. 3, Appendix to Brief of Petitioner-Appellant p. A3.

II. New and emerging studies of the teenage brain demonstrate that areas of the brain are still developing into the late teens and early twenties, such that youth are disadvantaged in the interrogation setting

New research into the structure and function of the teenage brain suggests that immature brain development among adolescents contributes to the poor decision making capacity of juveniles. THOMAS GRISSO, DOUBLE JEOPARDY, at 105. Such research gives a medical and “hard evidence” edge to the information above describing the distinct psychological development of teens and underscores the need for greater due process

protections for youth in the interrogation context.

This research on the adolescent brain, made possible by new technologies such as magnetic resonance imaging (MRI), allows scientists to study images of the brain, and suggests that the teenage brain is structurally still growing, beginning its final push around the age of 16 or 17, and not fully developing until the early 20's. Mary Beckman, *Crime, Culpability and the Adolescent Brain* 305 SCIENCE 596 (July 30, 2004); D.P. Keating, *Cognitive and Brain Development* in HANDBOOK OF ADOLESCENT PSYCHOLOGY, 45-84 (R. Lerner & L. Steinberg, eds. 2004); Elizabeth R. Sowell *et al.*, *Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Post-Adolescent Brain Maturation*, 21 J.NEUR.SCI. 8819, 8828 (2001) [hereinafter Sowell, *Mapping Continued Brain Growth*].

Most importantly, the research suggests that the last areas of the brain to develop are the frontal lobes, specifically the pre-frontal cortex, which governs decision-making, foresight, judgment, and impulse control. NITIN GOGTAY *et al.*, *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 Proceedings of the National Academy of Sciences in the United States of America, National Institute of Mental Health, Number 21 (May 25, 2004); Sowell, *Mapping Human Brain Growth*, at 8828.

As this area of the brain develops, young adults become more reflective and deliberate decision makers, thus honing the very skills which they would need to make critical decisions such as the one Petitioner faced during her interrogation. See David E. Arredondo, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14.1 STAN. L. & POL'Y REV. 13, 15 (2003) (*citing*

NAT'L RES. COUNCIL & INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE 16 (Joan McCord *et al.* eds., 2001); Scott & Steinberg, *Blaming Youth* at 816 (*citing* Patricia Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCIENCE & BIOBEHAVIORAL REVIEWS 417, 421-23 (2000); National Institute of Mental Health, *Teenage Brain: A Work in Progress* (NIH Publication No. 01-4929, January 2001); *see also In re Stanford*, 537 U.S. 968, ___, 123 S.Ct. 472, 474 (2002) (Stevens, J., dissenting) (noting that “[n]euroscientific evidence of the last few years has revealed that adolescent brains are not fully developed” and “use of magnetic resonance imaging – MRI scans – have provided valuable data that serve to make the case even stronger that adolescents are more vulnerable, more impulsive, and less self-disciplined than adults”) (internal quotations omitted) (citations omitted).

CONCLUSION

For the foregoing reasons, *Amicus Curiae* Juvenile Law Center respectfully requests that this Court grant Petitioner’s writ of *habeas corpus*, and remand her case for a new trial in which her confession is suppressed.

Respectfully submitted,

Marsha L. Levick, Esq.
Lourdes M. Rosado, Esq.
JUVENILE LAW CENTER
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551
(215) 625-2808 (fax)

Counsel for Amicus Curiae

Martha Stone, Esq.
Juris No. ???????
Center for Children's Advocacy
University of Connecticut Law School
65 Elizabeth Street
Hartford, CT 06105
(860) 570-5327
(860) 570-5256 (fax)

***Sponsor of attorneys Levick and Rosado
to appear Pro Hac Vice in this matter***

DATED: April 1, 2005

CERTIFICATION

I, Lourdes M. Rosado, Esq., do hereby certify, this 1st day of April 2005, that this brief complies with all provisions of Rule of Appellate Procedure § 67-2.

Lourdes M. Rosado, Esq.