

IN THE SUPREME COURT

STATE OF GEORGIA

State of Georgia,

Appellee,

v.

Jonas Brinkley,

Appellant.

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Case No. S12A0137

**BRIEF OF JUVENILE LAW CENTER ET AL. AS *AMICI CURIAE*
IN SUPPORT OF APPELLANT**

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INTEREST OF THE *AMICI CURIAE*

The organizations submitting this brief work with, and on behalf of, adolescents in a variety of settings at every stage of the juvenile and criminal justice process. *Amici* have a wealth of experience and unique expertise in the constitutional protections for youth in the juvenile and adult justice systems. *Amici* also have expertise in the application of adolescent development research to Constitution analyses. *Amici* recognize that adolescent immaturity often affects youth's understanding of and participation in proceedings, and immaturity is particularly relevant when youth face charges within the exclusive jurisdiction of adult court. *Amici* therefore write here that youth's developmental competency must be given appropriate consideration in adult court.

STATEMENT OF ISSUES

Amici adopted the statement of issues presented by appellant.

STATEMENT OF THE CASE

Amici adopted the statement of the case presented by appellant.

STATEMENT OF THE FACTS

Amici adopt the statement of facts presented by appellant.

SUMMARY OF THE ARGUMENT

By ignoring settled research on adolescent and child development, the superior court failed to adequately protect the due process rights of Jonas Brinkley. Since Brinkley's offenses were in the exclusive jurisdiction of the adult criminal court, the failure of the court to raise on its own or otherwise address the issue of his competency violates the due process clause of the United States Constitution as well as Georgia law. This failure resulted in fundamentally unfair proceedings that can only be remedied by granting the appellant a new trial.

ARGUMENT

I. Children's Distinct Developmental Characteristics Must Be Accounted For In The Court's Determination Of Whether Due Process Requires That A Child Be Competent At All Stages of Proceedings.

A. The Law Recognizes That Children Are Fundamentally Different Than Adults.

The United States Supreme Court has repeatedly recognized that juvenile status drives legal status, and that abundant research on child development supports children's distinct status under law. Children's immaturity and lack of experience hinder their ability to protect and exercise their rights. In *Gallegos v. Colorado*, a case involving the admissibility of a juvenile's statement, the Court observed that an adolescent "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions.

Without some adult protection against this inequality, a 14-year-old boy would not

be able to know, let alone assert, such constitutional rights as he had." 370 U.S. 49, 54 (1962). In *Roper v. Simmons*, 543 U.S. 551 (2005) and *Graham v. Florida*, the Court also recognized that a youth's immaturity and vulnerability impact their decision making as well as their culpability. 130 S. Ct. 2011, 2026 (2010) (quoting *Roper*, 543 U.S. at 569-70). Most recently in *J.D.B. v. North Carolina*, the Court emphasized the importance of age and youth in ensuring adequate protection of children's due process rights. 131 S. Ct. 2394 (2011) (finding that a juvenile's age is a factor that must be considered under the *Miranda* analysis). Children "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *Id.* at 2397 (quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979)) "events that 'would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.'" *Id.* (quoting *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (plurality opinion)). These cases support the application of rigorous scrutiny when considering the impact of immaturity and youth on due process protections for children, including requiring competency at all stages of proceedings.

B. Research Confirms That Young Teens Lack Adjudicative And Decisional Competency Necessary To Ensure Fundamental Fairness In The Justice System.

As discussed in detail below, establishing competency is a cornerstone of due process. Social science research establishes that age and competency are

directly related. While children's incompetence may be a result of mental illness, upon which much of the case law in Georgia focuses¹, current research demonstrates that it can also result from developmental delays in adults or from children's inherent developmental immaturity.² Laurence Steinberg, *Juveniles on Trial: MacArthur Foundation Study Calls Competency Into Question*, 18 CRIM. JUST 20, 21 (2003). In fact, the most current research suggests that courts' recognition of incompetency based on mental disease or defect needs to be revised to include the effects of normal developmental immaturity. Aaron John Kivisto, *Juvenile Competence to Stand Trial: An Examination of the Effects of Cognitive Ability, Psychiatric Symptomatology, and Psychosocial Maturity*. PhD diss., pg. 83 University of Tennessee, 2011. Normal developmental immaturity can exert a negative influence on an adolescent's ability to reason, similar to the effect mental disease or defect has on appreciation and understanding of a trial. *See id.*

For fifteen year old Brinkley, charged kidnapping with bodily injury, rape and armed robbery, questions of his incompetence due to developmental immaturity should have been obvious, given his age, the basic spelling errors in his written statement and his misunderstanding that he was being sentenced to a

¹ *See, e.g., Collins v. State*, 259 Ga. App. 587 (2003).

² Georgia's juvenile code recognizes this fact. GA. CODE ANN. § 15-11-151 (West 2011) ("The child's age or immaturity may be used as the basis for determining the child's competency."). Florida, for example, distinguishes incompetence due to "age or immaturity" from incompetence that may result from mental illness. FLA. STAT. ANN. § 985.223 (West 2011).

probational offense. (Sent. T. 11:25-12:1). When young children are subject to prosecution in criminal court, the justice system must recognize the strong likelihood of incompetence, not because of mental illness or cognitive delays, but simply because of their age-appropriate immaturity. *See e.g.*, Elizabeth Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice Policy*, 83 N.C.L. REV. 793 (2005). “Maturity might exert the greatest impact on adolescent’s ability to discern the potential legal relevance of information and to reason about specific choices that confront a defendant in the course of adjudication.” Aaron John Kivisto, *Juvenile Competence to Stand Trial: An Examination of the Effects of Cognitive Ability, Psychiatric Symptomatology, and Psychosocial Maturity*. PhD diss., pg. 72 University of Tennessee, 2011. Intellectual ability also serves a protective function for youth involved in the legal system as youth showed “improved competency-related abilities as their intellectual abilities increased.” *Id.* at 81.

As research confirms, youth fifteen and younger are not legally competent to understand legal proceedings and participate in their defense, which are the benchmarks of competency. The MacArthur Juvenile Competency Study found that one fifth of 14 to 15 year olds are as impaired in their capacities relevant to adjudicative competency as are seriously mentally ill adults likely to be found incompetent to stand trial in adult court. *See* Thomas Grisso et al., *Juveniles’*

Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants, 27 LAW & HUM. BEHAV. 333 (2003) (summarizing the MacArthur Study). Adolescents' understanding of important legal principles, such as a legal right, is highly impaired. This lack of capacity and understanding puts a youth's due process rights in jeopardy:

Understanding the legal process and one's choices in it requires knowing not only that one has certain rights, but also knowing what a right is. Defendants' decisions about waiving the right to avoid self-incrimination (for example, in the context of a guilty plea) or waiving the right to a jury trial will be ill informed if they do not conceptualize a right as a legal entitlement, providing protection that authorities in the justice system cannot arbitrarily set aside.

Thomas Grisso, *What We Know about Youths' Capacities as Trial Defendants*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 139, 148 (Thomas Grisso & Robert G. Schwartz eds. 2000).

Neuroscientific research likewise confirms that many youth, but young teens especially, do not have the capacity to adequately understand the legal process and assist in their own defense. This is in part because the area of the brain responsible for reasoning and problem solving is the last to develop in the brain. See Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROC. OF THE NAT'L ACAD. OF SCI. 8174 (2004) (study by National Institute of Mental Health). Brain imaging shows that areas of the brain associated with impulse control, judgment, and the

rational integration of cognitive, social, and emotional information do not fully mature until early adulthood. Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 46-68 (2008). This research provides overwhelming support for presuming that adolescents lack the developmental capacities necessary for adjudicative competence.³

II. Due Process Requires That The Court Inquire Into The Competency Of A Fifteen Year Old Child During Criminal Proceedings.

A. Supreme Court Jurisprudence And Georgia Law Make Clear That Due Process Protections Must Be Provided To Children At All Critical Stages Of Proceedings.

Both the Supreme Court and Georgia law's emphasis on the need for due process in juveniles' transfer hearings to adult court demonstrates the necessity for comparable protections for juveniles at all critical stages of proceedings, including sentencing in adult court. Over four decades ago, the United States Supreme Court established that transfer from juvenile to adult court is a pivotal decision that has significant impact on the liberty, rights and future of a child. *Kent v. United States*, 383 U.S. 541, 546 (1966) (finding that transfer is a "critically important" action determining vitally important statutory rights of the juvenile"). Consequently, transfer proceedings must provide due process protections commensurate with the

³ This research led the ABA Task Force on Youth in the Criminal Justice System to recommend that courts order competency evaluations for any youth. See *Youth in the Criminal Justice System: An ABA Task Force Report* 4 (Feb 2002). Available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_jjpolices_YCJSReport.authcheckdam.pdf.

critical nature of the proceedings. *Id.* at 553. *See also In Interest of C.M.M.*, 244 Ga. 787 (1979); *R.S. v. State*, 156 Ga. App. 460 (1980). The Georgia legislature also has extended key due process protections to children during transfer proceedings, GA. CODE ANN. §15-11-30.2 (West 2011), stating that the child is entitled to the right to counsel, GA. CODE ANN. §15-11-6; § 15-11-39 (West 2011), the opportunity to introduce evidence and otherwise be heard in his or her own behalf, and to cross examine adverse witnesses, GA CODE ANN. § 15-11-7 (West 2011).

In the decades since *Kent*, states have enacted laws that expose more and younger children to criminal court prosecution. *See e.g.*, Patricia Torbert et al., *State Responses to Serious and Violent Juvenile Crime*, Washington, D.C., Office of Juvenile Justice and Delinquency Prevention (1996). Rigorous protection of children's due process is even more critical today than it was at the time of *Kent*. Fundamental fairness requires that courts consider the competency of young teens at all stages of proceedings, and is especially important in the less protective atmosphere of criminal courts. Like transfer, sentencing in adult court is a critical stage of proceedings that will have tremendous consequences for the juvenile, and so must also satisfy due process requirements. *See, eg. Garner v. Florida*, 430 U.S. 349, 358 (1977); *Robertson v. State*, 280 Ga. 885, 886 (2006).

B. Establishing Competency Prior To Facing Criminal Charges Is Fundamental To Providing Children Due Process Protections.

Assuring the competency of a criminal defendant is essential to maintaining the legitimacy, fairness, and dignity of the judicial process. “It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.” *Drope v. Missouri*, 420 U.S. 162, 171 (1975). The minimum legal requirements for adjudicative competence were established in *Dusky v. United States*, 362 U.S. 402 (1960). These are “whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceeding against him.” *Id.* An individual’s ability to assist counsel and make rational decisions are key components of the *Dusky* standard.⁴

In criminal proceedings in this state, the trial court is required “to inquire into competency, even where state procedures for raising competency are not followed, if evidence of incompetence comes to the court’s attention.” *Baker v.*

⁴ Experts have broken the *Dusky* standard into three measurable capacities: (1) the ability to understand the nature and possible consequence of charges, the trial process, the participants’ roles, and the accused’s rights; (2) the ability to participate with and meaningfully assist counsel in developing and presenting a defense; and (3) the ability to make decisions to exercise or waive important rights. Richard Bonnie, *The Competence of Criminal Defendants: A Theoretical Reformulation*, 10 BEHAV. SCI. & L., 291 (1992).

State, 250 Ga. 187-90 (Ga.1982). With respect to the competency of juveniles in transfer hearings, the Georgia Juvenile Code takes into consideration not only the child's mental competency, but also establishes that "the child's age or immaturity may be used as the basis for determining the child's competency." This provision allows for recognition of an adolescent's insufficient developmental competency to understand and assist in proceedings against him, which the Supreme Court and social science research have acknowledged.

Facing criminal charges in superior court requires juveniles to understand the legal process, the value and consequences of exercising legal rights, and an ability to communicate with counsel about these concepts. A 15-year old defendant under the superior court's exclusive jurisdiction should benefit from this state's acknowledgement that his age and immaturity may affect his competency. The superior court should extend Georgia's recognition of juveniles' developmental incompetency in juvenile court to child-defendants in the criminal justice system given the severity of the sentence immature juveniles may face in adult court.

C. Developmental Competency Of The Juvenile To Participate In Criminal Court Must Be Considered At Trial.

Sentencing is a particularly critical stage of proceedings in which the defendant's life and liberty may be lost, and must satisfy due process requirements. *See, e.g. Garner v. Florida*, 430 U.S. at 358; *Robertson v. State*, 280 Ga. at 886. In addition to violating basic principles of due process, sentencing an incompetent

child in criminal court serves no legitimate policy interest.

Placing certain offenses within the exclusive jurisdiction of the superior court allows for harsher sentences for children than those available in juvenile court without allowing them the benefit of incapacity due to developmental immaturity. As GA. CODE ANN. § 15-11-151 (West 2011) codifies, a juvenile's developmental competency to stand trial is as relevant as a determination of incompetency by mental disease or defect. Under Georgia law, if a child is found mentally incompetent, he or she is declared dependent and will be given the necessary treatment, habilitation, support or supervision while the juvenile remains incompetent. Ga. Juv. Prac. & Proc. § 3:1 (5th ed.). Yet where incompetency is based on a child's immaturity, the child's 'competency' cannot be restored. Because juveniles' developmental immaturity contributes to deficits in their competency, "the notion of competency restoration becomes a misnomer." Kivisto, *Juvenile Competence to Stand Trial* at 85. "Immaturity-based incompetence based on the child's limited understanding and decision making capacity often can be remedied only through the maturation process. If this process extends into the future for a year or more, *Jackson's*⁵ due process concerns are implicated."

Elizabeth Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and*

⁵ In *Jackson v. Indiana*, 406 U.S. 715 (1972), the Court held that due process requires a person "committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future."

Juvenile Justice Policy, 83 N.C.L.Rev. 793, 829 (2005).

In *Tate v. State*, a Florida appeals court held that due process mandates a competency evaluation of a twelve year old transferred to adult court based on a murder charge “due to his extremely young age and lack of previous exposure to the judicial system.” 864 So. 2d 44, 48 (2003). The court held that a competency hearing was necessary

in light of Tate’s age, the facts developed pre-trial and post-trial, and his lack of previous exposure to the judicial system...particularly given the complexity of the legal proceedings....

Id. at 50. The serious nature of the charges also impacted the competency analysis:

“...[I]t cannot be determined, absent a hearing, whether Tate could meet competency standards incident to facing a first-degree murder charge involving profound decisions regarding strategy, whether to make disclosures, intelligently analyze plea offers, and consider waiving important rights.” *Id.*

In superior court, it was obvious that Brinkley lacked the maturity and developmental capacity for competence during his hearing. At the sentencing hearing, Brinkley addressed the trial court and asked the judge for “10 to 15 years probation,” (Sent. T. 11:25-12:1), even though Brinkley was convicted of kidnapping with bodily injury, a crime that carries a mandatory life sentence. His attorney informed the Court that “Mr. Brinkley [was] still under the assumption that it’s a probation sentence,” (*Id.* at 13:5-6). Brinkley’s exchange with the judge

demonstrated that Brinkley lacked a basic understanding of the judicial process and was unable to communicate with and assist his lawyer. The Court also received information from Brinkley's attorney himself that Brinkley did not understand the legal process.

The Court also had evidence of Brinkley's intellectual deficiencies, which social science research shows correlate to competency-related ability. *See Kivisto, Juvenile Competence to Stand Trial*. Brinkley's written statement contained obvious spelling and grammatical errors, which should have been indicative of his more limited intellectual functioning. Given these significant indicia of incompetency, Brinkley's young age, the lack of a meaningful colloquy, and the settled research, the court should grant Brinkley a new trial.

CONCLUSION

For the foregoing reasons, *Amici* respectfully requests that appellant be granted a new trial.

Respectfully submitted, this 26th day of January, 2012,

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APPENDIX

IDENTITY OF *AMICI* AND STATEMENTS OF INTEREST

Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm 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. JLC also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

The **Center for Children and Families (CCF)** at Fredric G. Levin College of Law is based at University of Florida, the state's flagship university. CCF's mission is to promote the highest quality teaching, research and advocacy for children and their families. CCF's directors and associate directors are experts in children's law, constitutional law, criminal law, family law, and juvenile justice, as well as related areas such as psychology and psychiatry. CCF supports interdisciplinary research in areas of importance to children, youth and families, and promotes child-centered, evidence-based policies and practices in dependency and juvenile justice systems. Its faculty has many decades of experience in advocacy for children and youth in a variety of settings, including the Child Welfare Clinic and Gator TeamChild juvenile law clinic.

The **Southern Juvenile Defender Center (SJDC)** works to ensure excellence in juvenile defense and secure justice for children in delinquency and criminal proceedings in the southeastern United States. SJDC provides training and resources to juvenile defenders, and advocates for systemic reforms designed to give children the greatest opportunities to grow and thrive. Through public education and advocacy, SJDC encourages attorneys and judges to rely upon scientific research concerning adolescent brain development in cases involving youthful defendants. SJDC is based at the **Southern Poverty Law Center (SPLC)**

in Montgomery, Alabama. Founded in 1971, SPLC has litigated numerous civil rights cases on behalf of incarcerated children and other vulnerable populations.

Founded in 1971, the **Southern Poverty Law Center** (“The Center”) is a nationally recognized leader in the area of civil rights litigation. The Center has litigated numerous pioneering civil rights cases on behalf of children in the juvenile and criminal justice systems, children in foster care, racial and ethnic minorities, low-income people in need of health care, mentally ill persons, prisoners facing barbaric conditions of confinement and many other victims of injustice. Although the Center's work is concentrated in the South, its attorneys appear in courts throughout the country to ensure that all people receive equal and just treatment under federal and state law.