

No. 18-5239

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IN THE  
**Supreme Court of the United States**

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DESHAWN T. TERRELL,  
*Petitioner,*

v.

STATE OF OHIO,  
*Respondent.*

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On Petition For Writ Of Certiorari To  
The Court of Appeals of Ohio, Cuyahoga County

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**BRIEF OF AMICI CURIAE JUVENILE LAW  
CENTER, CENTER ON WRONGFUL  
CONVICTIONS OF YOUTH, AND CENTER FOR  
LAW, BRAIN AND BEHAVIOR IN SUPPORT  
OF PETITIONER**

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MARSHA L. LEVICK\*

\*Counsel of Record for *Amici*

RIYA SAHA SHAH

DANIELLE WHITEMAN

JUVENILE LAW CENTER

1315 Walnut Street, 4th Floor

Philadelphia, PA 19107

Telephone: (215) 625-0551

Facsimile: (215) 625-2808

Email: mlevick@jlc.org

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## INTEREST OF AMICI<sup>1</sup>

**Juvenile Law Center** advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values. Juvenile Law Center has represented hundreds of young people and filed influential amicus briefs in state and federal cases across the country.

**The Center for Law, Brain and Behavior** (CLBB) of the Massachusetts General Hospital is a nonprofit organization whose goal is to provide responsible, ethical and scientifically sound translation of neuroscience into law, finance and public policy. Research findings in neurology, psychiatry, psychology, cognitive neuroscience and neuroimaging are rapidly affecting our ability to understand the relationships between brain functioning, brain development and behavior. Those findings, in turn, have substantial implications for the

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<sup>1</sup> Pursuant to Rule 37.2 counsel of record received timely notice of the intent to file this brief. Written consent of all parties has been provided. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

law in general, and criminal law, in particular, affecting concepts of competency, culpability and punishment, along with evidentiary questions about memory, eyewitness identification and even credibility. The Center, located within the MGH Department of Psychiatry, seeks to inform the discussion of these issues by drawing upon the collaborative work of clinicians and researchers, as well as a board of advisors comprising representatives from finance, law, academia, politics, media and biotechnology. It does so through media outreach, educational programs for judges, students and practitioners, publications, a “Law and Neuroscience” course at the Harvard Law School, and amicus briefs. A particular focus of CLBB has been the question of what constitutes responsible and legal behavior in children and adolescence.

**The Center on Wrongful Convictions of Youth** (CWCY) operates under the auspices of the Bluhm Legal Clinic at Northwestern University School of Law. A joint project of the Clinic’s Center on Wrongful Convictions and Children and Family Justice Center, the CWCY was founded in 2009 with a unique mission: to uncover and remedy wrongful convictions of youth and promote public awareness and support for nationwide initiatives aimed at preventing wrongful convictions in the juvenile justice system. In recognition of the reality that juvenile’s interactions with the criminal justice system increasingly begin with events at school, the CWCY urges courts to safeguard juvenile’s constitutional rights within the schoolhouse. Since its founding, the CWCY has filed amicus briefs in jurisdictions across the country, ranging from state trial courts to the U.S. Supreme Court.

## SUMMARY OF THE ARGUMENT

Deshawn Terrell was convicted of one count of murder with a three-year firearm specification and one count of aggravated robbery arising from a robbery he was involved in when he was seventeen years old. Mr. Terrell received a sentence of 21 years to life, including a mandatory sentence of 15 to life arising from the murder conviction. There is no evidence that demonstrates Mr. Terrell killed or intended to kill the victim: in fact, video evidence showed that he ran outside before his co-defendant shot the victim. This case raises fundamental questions about the fairness of sentencing juveniles to harsh and lengthy sentences under theories of imputed or transferred intent in light of the developmental and neuroscientific findings that led this Court to determine that juvenile offenders are less culpable than their adult counterparts. The impropriety of Mr. Terrell's sentence is further magnified because it was imposed due to a mandatory prosecution in the adult court, which led to a mandatory sentence. This sentencing scheme precluded the sentencing court from giving any weight to Mr. Terrell's youth or diminished culpability, as required by this Court.

*Amici* support Mr. Terrell's principal argument that any mandatory sentence imposed on a young person is unconstitutional if the defendant is not afforded the protections set forth by this Court in *Miller v. Alabama*. *Amici* write separately to underscore Mr. Terrell's assertion that juveniles must not be sentenced to lengthy or life terms under a conviction for felony murder. We urge this court to remand this case because evidence, rooted in law and

science, demonstrates that young people should not be held liable under the theory of felony murder.

## ARGUMENT

### I. CONVICTING JUVENILE OFFENDERS OF MURDER UNDER A THEORY OF TRANSFERRED OR IMPUTED INTENT CONTRAVENES THIS COURT'S JUVENILE JURISPRUDENCE

Broadly defined, felony murder is the killing of another person during the commission of a felony. Emily Keller, *Constitutional Sentences for Juveniles Convicted of Felony Murder in the Wake of Roper, Graham & J.D.B.*, 11 CONN. PUB. INT. L.J. 297, 302 (2012). Felony murder liability is not dependent on an intent to kill: a person can be convicted of felony murder even if the killing was “accidental, unforeseeable, or committed by another participant in the felony.” *Id.* at 302-03. Liability is justified by a theory of “transferred intent” because a reasonable person would know that death is a possible result of engaging in dangerous felonious activities, the intent to kill is inferred from an individual’s intent to commit the underlying felony. *Id.* at 305. However, as Justice Breyer explained in his concurring opinion in *Miller v. Alabama*, this rationale fails when applied to juveniles.

At base, the theory of transferring a defendant’s intent is premised on the idea that one engaged in a dangerous felony should understand the risk that the victim of the felony could be killed,

even by a confederate. Yet the ability to consider the full consequences of a course of action and to adjust one's conduct accordingly is precisely what we know juveniles lack capacity to do effectively.

567 U.S. 460, 492 (2012) (Breyer, J., concurring) (citations omitted). Although Ohio has limited application of the official felony murder rule to involuntary manslaughter per Ohio Rev. Code Ann. § 2903.04, the state still holds accomplices liable for the acts of their confederates under a theory of transferred intent known as imputed intent. *See State v. Doty*, 113 N.E. 811 (Ohio 1916). Under Ohio law, if a person joins another in committing a violent crime, he or she is presumed to have agreed to all acts necessary to carry out the crime even if they weren't present for or did not have knowledge of the murder. *See id.* at 812 (finding that it was an error to charge the jury that it must acquit if it found that the shot was fired by the principal offender without the knowledge, connivance, or assent of the defendant). The court reasoned that all parties participating in the act are equally guilty if the act was reasonably likely to produce death. The court specifically stated that even if an individual was not present nor had knowledge of the killing or the weapon used, he must still be equally liable. *Id.* at 812-13.

This Court forbade the imposition of life without parole sentences on juveniles “who do not kill, intend to kill, or foresee that life will be taken” because they “are categorically less deserving of the most serious forms of punishment than are murderers.” *Graham v. Florida*, 560 U.S. 48, 69 (2010). “[W]hen compared to

an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability.” *Id.* The reasoning in *Graham* builds on this Court’s felony murder jurisprudence in the death penalty context, which recognizes that the diminished culpability of non-principals precludes the application of the most extreme sentencing schemes to individuals who may have participated in, but did not commit, a murder. *See Tison v. Arizona*, 481 U.S. 137, 158 (1987) (upholding defendant’s death sentence when he acted with “reckless disregard” and participation in the crime was “major”); *Enmund v. Florida*, 458 U.S. 782, 801 (1982) (reversing death sentence where defendant’s culpability as an accomplice who did not kill or intend to kill was less than that of his accomplices who participated directly in the killing).

**A. This Court Has Established That Children Are Categorically Less Deserving Of The Harshest Forms Of Punishment**

In *Roper*, *Graham*, and *Miller*, this Court recognized that children are fundamentally different from adults and categorically less deserving of the harshest punishments. Relying on *Roper*, this Court cited three essential characteristics which distinguish youth from adults for culpability purposes:

[a]s compared to adults, juveniles have a “lack of maturity and an underdeveloped sense of responsibility”; they “are more vulnerable or susceptible to negative influences and outside pressures,

including peer pressure”; and their characters are “not as well formed.”

*Graham*, 560 U.S. at 68 (citing *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005)). *Miller* emphasized that “those [scientific] findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed.’” 567 U.S. at 472 (quoting *Graham*, 560 U.S. at 68-69); *Roper*, 543 U.S. at 570. As “[j]uveniles are more capable of change than are adults, . . . their actions are less likely to be evidence of ‘irretrievably depraved character’ than are the actions of adults.” *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 570).

In *Miller*, this Court reiterated that children are fundamentally different from adults and held that a sentencing scheme that mandates life without parole for juvenile offenders violates the Eighth Amendment, as the sentencer must take into account the juvenile’s “lessened culpability,” “greater ‘capacity for change,’” and individual characteristics before imposing this harshest available sentence. *Miller*, 567 U.S. at 465 (quoting *Graham*, 560 U.S. at 68, 74). This Court found that none of what *Graham* “said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is *crime-specific*.” 567 U.S. at 473 (emphasis added). Rather, “the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Id.* at 472. Because of youths’ unique capacity for change, this Court found

that it would be “difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.’ Accordingly, ‘juvenile offenders cannot with reliability be classified among the worst offenders.’” *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 569, 573). Justice Sotomayor recently underscored *Miller*’s mandate when this Court required judges to make specific findings to determine “whether the petitioner was among the very ‘rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.’” *Tatum v. Arizona*, 137 S. Ct. 11, 12 (2016) (mem.) (Sotomayor, J., concurring) (quoting *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016)).

It would be inconsistent with the logic of *Graham* and *Miller*—which mandate proportionality and gradation of sentences based on culpability and the nature of the offense—to give a juvenile accomplice who did not kill, intend to kill, or foresee that life would be taken the same sentence as a principal who actually killed or intended to kill the victim. *Graham*, 560 U.S. at 59. (“Embodied in the Constitution’s ban on cruel and unusual punishments is the ‘precept of justice that punishment for crime should be graduated and proportioned to [the] offense.’” (alteration in original) (citing *Weems v. United States*, 217 U.S. 349, 367 (1910))). Moreover, *Miller* requires individualized consideration of a juvenile’s “distinctive (and transitory) mental traits and environmental vulnerabilities,” see *Miller*, 567 U.S. at 473, as well as a consideration of the circumstances of the offense and the precise nature of the youth’s involvement, are constitutionally required to ensure



that the punishment fits both the offense and the offender. In the instant case, Mr. Terrell was subject to mandatory prosecution in the adult system, which led to a mandatory 15 years to life sentence. At no point was the sentencing court given the authority to examine Mr. Terrell's individual and distinct characteristics of youth.

### **B. Neuroscientific Research Weighs Against Imposing Liability On Young People For Felony Murder**

This Court has relied on an increasingly settled body of research finding that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.” *Graham*, 560 U.S. at 68. These scientific studies have helped to “explain salient features of adolescent development, and point[] to the conclusion that children do not think and reason like adults because they cannot.” 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, 434-35 (2006).

#### **1. Underdevelopment of the pre-frontal cortex leads to crucial deficiencies in adolescent decision-making**

One significant difference between youth and adult brains is in the prefrontal cortex, the brain region implicated in complex cognitive behavior,

personality expression, decision-making and moderating social behavior, which undergoes crucial changes during adolescence. See Sara M. Szczepanski & Robert T. Knight, *Insights into Human Behavior from Lesions to the Prefrontal Cortex*, 83 NEURON 1002, 1002 (2014) (stating that the frontal lobes “play an essential role in the organization and control of goal-directed thought and behavior,” and that these functions are collectively referred to as cognitive or executive). See also Erin H. Flynn, *Dismantling the Felony-Murder Rule: Juvenile Deterrence and Retribution Post-Roper v. Simmons*, 156 U. PA. L. REV. 1049, 1070 (2008). As a result of myelination, the process through which nerve fibers become sheathed in myelin (a white fatty substance that facilitates faster, more efficient communication between brain systems), adolescents experience an increase of “white matter” in the prefrontal cortex as they age. Laurence Steinberg, *The Science of Adolescent Brain Development and Its Implication for Adolescent Rights and Responsibilities*, in HUMAN RIGHTS AND ADOLESCENCE 59, 64 (Jacqueline Bhabha ed., 2014) [hereinafter Steinberg, *The Science of Adolescent Brain Development*]. See also Terry A. Maroney, *The Once and Future Juvenile Brain*, in CHOOSING THE FUTURE FOR AMERICAN JUVENILE JUSTICE 189, 194 (Franklin E. Zimring & David S. Tanenhaus eds., 2014). The creation of more efficient neural connections within the prefrontal cortex is critical for the development of “higher-order cognitive functions [that are] regulated by multiple prefrontal areas working in concert—functions such as planning ahead, weighing risks and rewards, and making complicated decisions.” Steinberg, *The Science of Adolescent Brain Development*, *supra*, at 64.

Compared to the brain of a young teenager, the brain of a young adult displays “a much more extensive network of myelinated cables connecting brain regions,” *id.*, and evidence shows that adolescents become better at completing tasks that require self-regulation and management of processing as they age. Deanna Kuhn, *Do Cognitive Changes Accompany Developments in the Adolescent Brain?*, 1 PERSPEC. ON PSYCH. SCI. 59, 60-61 (2006) (stating that inhibition comprises two components: “resistance to interfering stimuli and inhibitory control of one’s own responses.” There is more evidence available on situations when individuals are instructed to inhibit their responses than when individuals make their own choice to self-inhibit).

**2. Because the parts of the brain responsible for more “top-down” control are among the last to mature, youth have difficulty planning ahead and controlling impulses**

Neuroscientists have also observed that different parts of the cortex mature at different rates. Myelination and pruning start at the back of the brain and spread toward the front, Maroney, *supra*, at 193, which means that areas involved in more basic functions, such as those involved in processing information from the senses and in controlling movement, develop first, while the parts of the brain responsible for more “top-down” control, such as controlling impulses and planning ahead, are among the last to mature. *The Teen Brain: Still Under Construction*, National Institute of Mental Health (2011),

<https://infocenter.nimh.nih.gov/pubstatic/NIH%2011-4929/NIH%2011-4929.pdf>. See also Joseph M. Peraino & Patrick J. Fitz-Gerald, *Psychological Considerations in Direct Filing*, 40 COLO. LAW. 41, 43 (2011). Developmental psychology has shown that though reasoning improves throughout adolescence and into adulthood, it is always tied to and limited by the adolescent's psychosocial immaturity. See *King, supra*, at 436. Even if an adolescent has an "adult-like" capacity to make decisions, the adolescent's sense of time, lack of future orientation, pliable emotions, calculus of risk and gain, and vulnerability to pressure will often drive him or her to make very different decisions than an adult would make in a comparable situation. *Id.*

The structural and biochemical changes that occur in adolescent brains are highly relevant in showing why youth who did not kill, intend to kill, or foresee that death could occur cannot be held liable under theories of transferred or imputed intent. See Donna M. Bishop & Hillary B. Farber, *Joining the Legal Significance of Adolescent Developmental Capacities with the Legal Rights Provided by in Re Gault*, 60 RUTGERS L. REV. 125, 152-54 (2007). Changes in the prefrontal and parietal cortices, the portions of the brain responsible for foresight, planning, strategic thinking, and self-regulation, help account for the apparent gap in understanding and adolescent behavior. Antonio R. Damasio & Steven W. Anderson, *The Frontal Lobes*, in CLINICAL NEUROPSYCHOLOGY, 404, 433-34 (Kenneth M. Heilman & Edward Valenstein eds., 4th ed. 2003). While juveniles may be able to understand the same information as adults, research indicates that juveniles lack sound judgment and are less able to

account for possible negative outcomes. Alison Burton, *A Commonsense Conclusion: Creating A Juvenile Carve Out to the Massachusetts Felony Murder Rule*, 52 HARV. C.R.-C.L. L. REV. 169, 183 (2017) (citing Elizabeth S. Scott & Laurence Steinberg, Rethinking Juvenile Justice 36-37 (2008)). See also Elizabeth Cauffman et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Task*, 46 DEV. PSYCH. 193, 204-05 (2010). Accordingly, this Court has noted that adolescents have “[d]ifficulty in weighing long-term consequences” and “a corresponding impulsiveness.” *Graham*, 560 U.S. at 78. See also Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008). Thus it has been proven that possessing an “adult-like” capacity is not the same as *actually* possessing an adult capacity—adolescents are not simply miniature adults.

**C. The Unique Developmental Attributes Of Youth Are Context Specific And Counsel Against The Imposition Of Harsh and Lengthy Sentences**

What is “reasonably foreseeable” to an adult cannot be presumed to be what is “reasonably foreseeable” to a child. See *J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011) (“Indeed, even where a ‘reasonable person’ standard otherwise applies, the common law has reflected the reality that children are not adults.”). See also Marsha L. Levick & Elizabeth-Ann Tierney, *The United States Supreme Court Adopts A Reasonable Juvenile Standard in J.D.B. v. North Carolina for Purposes of the Miranda Custody*

*Analysis: Can A More Reasoned Justice System for Juveniles Be Far Behind?*, 47 HARV. C.R.-C.L. L. REV. 501, 506 (2012) (“The qualities that characterize the reasonable person throughout the common law—attention, prudence, knowledge, intelligence, and judgment—are precisely those that society fails to ascribe to minors.”). Thus, presuming that a youth who agrees to engage in a dangerous felony, such as a robbery, also agrees to any action taken by their confederates, including murder, and imputing an intent to kill from their mere participation in the underlying felony ignores precedent and scientific findings underscored by this Court. As this Court held that sentencers must take a juvenile’s ‘lessened culpability’ and individual characteristics into account, theories of liability that preclude individualized consideration of the *setting* in which adolescents make decisions are constitutionally flawed.

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

Adolescents’ risk assessment, decision-making capacities, and future orientation differ from those of adults in ways that are particularly relevant to felony murder cases. *See Keller, supra*, at 312-16. As this Court has observed, adolescents “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.” *J.D.B.*, 564 U.S. at 272 (quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979)). *See also* Scott & Steinberg, *supra*, at 20. (“Considerable evidence supports the

conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices.”). Although adolescents may possess the capacity to reason logically, they “are likely less capable than adults are in *using* these capacities in making real-world choices, partly because of lack of experience and partly because teens are less efficient than adults at processing information.” Scott & Steinberg, *supra*, at 20.

As adolescents attach different values to rewards than adults do, they often exhibit sensation-seeking characteristics that reflect their need to seek “varied, novel, [and] complex . . . experiences [as well as a] willingness to take physical, social, legal and financial risks for the sake of such experience.” MARVIN ZUCKERMAN, BEHAVIORAL EXPRESSIONS AND BIOSOCIAL BASES OF SENSATION SEEKING 27 (1994). The need for this type of stimulation often leads adolescents to engage in risky behaviors, and as they have difficulty suppressing action toward emotional stimulus, they often display a lack of self-control. Scott & Steinberg, *supra*, at 20. This Court has recognized this, stating that adolescents “have a ‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking.” *Miller*, 567 U.S. at 471 (quoting *Roper*, 543 U.S. at 569). As a result, it is not surprising that “adolescents are overrepresented statistically in virtually every category of reckless behavior.” *Roper*, 543 U.S. at 569 (quoting Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEV. REV. 339, 339 (1992)).

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

Adolescents' willingness to act as accomplices in "inherently dangerous" felonies more accurately reflects their impulsiveness, failure to exercise good judgment, and inability to accurately assess risks—characteristics this Court has recognized are common to adolescents—than a reflection of a malicious intent to kill. *See Miller*, 567 U.S. at 471; *see also Roper*, 543 U.S. at 569. Holding an adolescent liable for murder because he or she should have been able to "reasonably foresee" the same risks as an adult is nonsensical, and the theory of "imputed intent" is unjustifiable when juveniles are not found to have



killed, intended to kill, or foreseen that life would be taken. *See Graham*, 560 U.S. at 69.

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

This Court has recognized that “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure” than adults. *Roper*, 543 U.S. at 569 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). As “[m]id-adolescence is marked by decreased dependency on parental influence and increased dependency on peer influence,” an adolescent’s decision to participate in a felony is more often driven by fear of social ostracism than rational thinking. *Burton*, *supra*, at 186-87 (citing Laurence Steinberg & Susan B. Silverberg, *The Vicissitudes of Autonomy in Early Adolescence*, 57 CHILD DEV. 841, 848 (1986)). When adolescents are pressured by their peers to participate in a criminal act, they may do so out of a misplaced concern about fitting in, even if they do not condone or want to participate in the criminal activity. *Id.* (citing DAVID MATZA, *DELINQUENCY AND DRIFT* 57 (1964)); *see* Jacob T.N. Young & Frank Weerman, *Delinquency as a Consequence of Misperception: Overestimation of Friends’ Delinquent Behavior and Mechanisms of Social Influence*, 60 SOC. PROBS. 334, 337 (2013) (citing Tamar Breznitz, *Juvenile Delinquents’ Perceptions of Own and Others’ Commitment to Delinquency*, 12 J. RES. CRIME & DELINQ. 124 (1975)); *see also* M.D. Buffalo & Joseph W. Rodgers, *Behavioral Norms, Moral Norms, and Attachment: Problems of Deviance and Conformity*, 19 SOC. PROBS. 101 (1971); *see also* Mark Warr &

Mark Stafford, *The Influence of Delinquent Peers: What They Think or What They Do?*, 29 CRIMINOLOGY 851 (1991).

[The youth] may assume that his friends will reject him if he declines to participate—a negative consequence to which he attaches considerable weight in considering alternatives. He does not think of ways to extricate himself, as a more mature person might do. He may fail to consider possible options because he lacks experience, because the choice is made so quickly, or because he has difficulty projecting the course of events into the future. Also, the “adventure” of the [crime] and the possibility of getting some money are exciting. These immediate rewards, together with peer approval, weigh more heavily in his decision than the (remote) possibility of apprehension by the police.

Scott & Steinberg, *supra*, at 22. This concern about ‘fitting in’ is one of the main reasons why juveniles are far more likely to participate in group crimes than adults are. Burton, *supra*, at 187 (citing FRANKLIN E. ZIMRING, AMERICAN YOUTH VIOLENCE 29 (1998)). One study found that over half of all violent crimes committed by individuals under the age of 16 involve multiple offenders. *Id.* The study also found that approximately 51% of the homicides committed by juveniles involve multiple offenders, as compared to only 23% of homicides committed by adults. *Id.* These studies confirm that because juveniles are

particularly susceptible to peer pressure and groupthink, they are more likely than adults to be talked into participating in a felony.

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

[I]n hot, high-arousal contexts, adolescents have difficulty relying on objective information to make rational decisions. . . . When emotionally aroused, adolescents discount the potential for negative consequences and weigh the potential for reward more heavily than adults do, impacting their decision-making abilities. Additionally, adolescents experience some situations as hot contexts that adults experience as cold contexts, such as the presence of peers. This means that adolescents may have even greater difficulty with decision making when peers are present than when they are not, as adolescent behavior in these subjectively hot situations tends to be driven more by the socioemotional parts of the brain than by the cognitive and executive controls.

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

Scientific evidence shows demonstrable and replicable increases in risk-taking that are highly context-dependent for adolescents. A theory of criminal liability that fails to take that context into account runs afoul of *Miller*. Individualized consideration of a juvenile's "distinctive (and transitory) mental traits and environmental vulnerabilities," *see Miller*, 567 U.S. at 473, such as peer pressure, social context, and stress, in general, and the setting in which those deficits are exacerbated, is constitutionally required to ensure that a punishment fits both the offense and the offender.

**CONCLUSION**

For the foregoing reasons, *amici* respectfully request that this Court grant the petition for a *writ of certiorari*.

Respectfully Submitted,

MARSHA L. LEVICK\*

*\*Counsel of Record*

RIYA SAHA SHAH

DANIELLE WHITEMAN

JUVENILE LAW CENTER

1315 Walnut St., 4<sup>th</sup> Floor

Philadelphia, PA 19107

(215) 625-0551

mlevick@jlc.org

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