No. 09-11121

IN THE
Supreme Court of the United States

J. D. B.,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF NORTH CAROLINA

BRIEF OF CENTER ON WRONGFUL CONVICTIONS OF YOUTH, ET AL., AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE

The organizations and individuals submitting this brief are practitioners, law professors, and researchers from a variety of disciplines who are experts on the effects of custodial interrogations on juvenile suspects. Amici know from their combined experience that juveniles' immaturity, vulnerability to external pressure, and diminished ability to weigh risks and long-term consequences renders them uniquely susceptible to making false confessions and statements when interrogated in a custodial setting, especially those under the age of fifteen. Accordingly, Amici share a concern that the North Carolina Supreme Court's decision that *Miranda* custody decisions must be made without regard to age would harm the courts' truth-seeking function by increasing the likelihood of uncounseled and unreliable police-induced statements from juveniles. For these reasons, Amici assert that age should be considered a factor in the traditional *Miranda* custody determination so *Miranda* continues to stand as a safeguard against coerced and unreliable statements from children.[1]

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1. Blanket consent for Amici is on file with this Court for all parties. 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 intended to fund for the preparation or submission of this brief.

IDENTITY OF AMICI CURIAE

I. Organizations

The Center on Wrongful Convictions of Youth (CWCY) is part of Northwestern University School of Law's Bluhm Legal Clinic and is a joint project of two of the Clinic's highly acclaimed Centers: the Children and Family Justice Center and the Center on Wrongful Convictions. The CWCY's unique mission is to uncover and remedy wrongful convictions of children, as well as to promote public awareness and support for nationwide initiatives – such as efforts to reduce juvenile false confessions and increase reliability in the juvenile court system – aimed at preventing future wrongful convictions. In so doing, the CWCY works with experienced juvenile law attorneys and wrongful conviction experts across the nation on a daily basis. The founder of the CWCY, Steven Drizin, has recently been cited by the United States Supreme Court as an authority on false confessions and wrongful convictions. *Corley v. U.S.*, 129 S. Ct. 1558, 1570 (2009) (stating that "there is mounting empirical evidence that these pressures [associated with custodial police interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed") (citing Steven A. Drizin and Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N. C. L. Rev. 891, 906-07 (2004)).

The Northeast Juvenile Defender Center, a regional affiliate of the National Juvenile Defender Center, is dedicated to providing access to and enhancing the quality of representation afforded

children charged with juvenile delinquency in New York, New Jersey, Pennsylvania, and Delaware. The Center, which is housed jointly at the Defender Association of Philadelphia, Rutgers Law School-Newark, and Rutgers Law School-Camden, provides training, back-up support, and other assistance to juvenile defenders throughout the region. The Center also works to promote effective and rational juvenile justice policy.

The Rutgers Urban Legal Clinic, one of the oldest law school clinical programs in the country, was established in 1970 to provide legal representation to clients in matters arising out of or affected by urban poverty. Among other matters, the Clinic assists clients in juvenile delinquency and post-conviction and parole proceedings, with a particular focus on those convicted of serious felonies as teenagers.

II. Individuals

Tamar Birckhead is an assistant professor of law at the University of North Carolina at Chapel Hill where she teaches the Juvenile Justice Clinic and the criminal lawyering process. Her research interests focus on issues related to juvenile justice policy and reform, criminal law and procedure, and indigent criminal defense. Licensed to practice in North Carolina, New York and Massachusetts, Professor Birckhead has been a frequent lecturer at continuing legal education programs across the United States as well as a faculty member at the Trial Advocacy Workshop at Harvard Law School. She is vice president of the board for the North Carolina Center on Actual Innocence and has been appointed to the executive council of the Juvenile

Justice and Children's Rights Section of the North Carolina Bar Association. Professor Birckhead received her B.A. degree in English literature with honors from Yale University and her J.D. with honors from Harvard Law School, where she served as Recent Developments Editor of the Harvard Women's Law Journal. She regularly consults on matters within the scope of her scholarly expertise, including issues related to juvenile justice policy and reform, criminal law and procedure, indigent criminal defense, and clinical legal education.

Andrew Block is the Director of the Child Advocacy Clinic at the University of Virginia School of Law. From 1998 to the spring of 2010 he was the founder and Legal Director of the JustChildren Program of the Legal Aid Justice Center, a program that represents low-income children across the Commonwealth of Virginia, and started and co-supervised the Child Advocacy Clinic at the Law School as an adjunct professor. He received various awards for his work at JustChildren including the American Bar Association Young Lawyer's Division Child Advocacy Award, the Virginia State Bar's Legal Aid Lawyer of the Year, and the Virginia Bar Association's Robert F. Shepherd, Jr. Award for excellence in child advocacy. He graduated from Northwestern University School of Law in 1994 and started his legal career at the Seattle-King County Public Defender's office where the majority of his time was spent representing youth. He has conducted trainings for judges, lawyers, parents and child-serving professionals across Virginia, and indeed the county, and worked extensively with state policy makers on matters impacting children living in poverty. He is a co-editor of Juvenile Law and Practice in Virginia (Virginia CLE).

Michele Deitch teaches juvenile justice and criminal justice policy as a Senior Lecturer at the University of Texas School of Law and the Lyndon B. Johnson School of Public Affairs. An attorney by training, she is considered one of the country's leading experts on the treatment of juveniles as adults. She recently produced a major report, Michele Deitch et al., From Time Out to Hard Time: Young Children in the Adult Criminal Justice System (2009), which addressed the unique challenges faced by children aged 14 and under who are treated as adults for criminal justice purposes. The report has received extensive national attention and was endorsed by the New York Times in a lead editorial. She also served on the Blue Ribbon Task Force on the Texas Youth Commission, which issued a report in 2007 with numerous recommendations for improving the Texas juvenile justice system, and she is often invited to testify before the Texas Legislature on these issues.

Frank Furstenberg is Professor of Sociology at the University of Pennsylvania and an Associate of the Population Studies Center. He has been the Chair of the MacArthur Network on Adult Transitions and serves as a Senior Research Fellow at Bocconi University and an Adjunct Fellow at the Public Policy Institute of California.

Furstenberg has authored, co-authored, and edited 12 books and more than 200 published papers on children, youth, families, and public policy. His most recent books are Frank Furstenberg, Destinies of the Disadvantaged: The Politics of Teen Childbearing (2007), and On the Frontier of Adulthood: Theory, Research, and Public Policy (Richard A. Settersten, Frank F. Furstenberg Jr.,

& Ruben G. Rumbaut eds., The University of Chicago Press 2005). He is a fellow in the Institute of Medicine, The American Academy of Arts and Sciences, and The American Academic of Political and Social Sciences. Furstenberg has been a board member of the Juvenile Law Center and currently serves on the board of Chapin Hall and The Stoneleigh Foundation. In 2008, Furstenberg received The Distinguished Career Award of the Society for Research on Adolescence.

Brandon L. Garrett is a professor of law at University of Virginia Law School. Garrett attended Columbia Law School, where he was an articles editor of the Columbia Law Review and a Kent Scholar. After graduating, he clerked for the Hon. Pierre N. Leval of the U.S. Court of Appeals for the Second Circuit. He then worked as an associate at Neufeld, Scheck & Brustin LLP in New York City, before joining the law school in 2005. His research and teaching interests include criminal procedure, wrongful convictions, habeas corpus, corporate crime, civil rights, civil procedure and constitutional law. His book, Brandon L. Garret, Convicting the Innocent: Where Criminal Prosecutions Go Wrong (Harvard University Press, forthcoming April 2011) examines what went wrong in the cases of the first 250 people to be exonerated by DNA testing.

Naomi E. Goldstein is Associate Professor of Psychology at Drexel University and former co-Director of the J.D.-Ph.D Program in Law and Psychology at Villanova Law School and Drexel University. She received her Ph.D. in Clinical Psychology from the University of Massachusetts, Amherst and completed a

clinical internship at the University of Massachusetts Medical School. Dr. Goldstein specializes in juvenile forensic psychology, and she conducts research on adolescents' comprehension of *Miranda* rights and their likelihoods of offering true and false confessions during police interrogations. Dr. Goldstein[2] co-authored the *Miranda Rights Comprehension Instruments,* the revised version of the *Instruments for Assessing Understanding and Appreciation of Miranda Rights*. Dr. Goldstein's research team also created the *Miranda Rights Educational Curriculum* and is evaluating its effectiveness in teaching youth about legal rights and legal decision-making. Dr. Goldstein has authored numerous articles and book chapters on juveniles' Miranda comprehension and waiver capacities, and she is co-author of two books, *Juvenile Delinquency* and *Evaluating Capacity to Waive Miranda Rights*. Dr. Goldstein's research has been funded by grants and contracts from the National Institute of Mental Health, American Psychology - Law Society, American Academy of Forensic Psychology, Drexel University's Institute for Women's Health, and Philadelphia Department of Human Services.

Paul Holland is Associate Dean for Academic Affairs and Associate Professor at Seattle University School of Law where he teaches in the school's Youth Advocacy Clinic. Prior to his appointment as Associate Dean, in August 2009, he served as Director of the Ronald A. Peterson Law Clinic, the School of Law's in-house clinical program. Dean Holland's practice, teaching, and policy

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2. Dr. Goldstein's texts reported above are on file with counsel of record.

expertise lie in the area of juvenile justice and children's rights. Before joining the faculty at Seattle University, he taught in clinics representing youth at the University of Michigan, Loyola University Chicago, and Georgetown University Law Center. He has published articles and led trainings for new and experienced juvenile lawyers and clinical teachers across the country. He was appointed by Governor Gregoire to the Governor's Juvenile Justice Advisory Committee in 2005. He served on the Committee through June 2009, the last year as Chair. He is the author of *Schooling Miranda: Policing Interrogation in the Twenty-First Century Schoolhouse,* 52 Loyola L. Rev. 39 (2006).

Richard A. Leo, Ph.D., J.D., joined the law faculty of the University of San Francisco in 2006, after a decade as a tenured professor of Psychology and Criminology at the University of California, Irvine. Dr. Leo is nationally and internationally renowned for his pioneering empirical research on police interrogation practices, the impact of *Miranda*, psychological coercion, false confessions, and wrongful convictions. Dr. Leo has authored more than 70 articles in leading scientific and legal journals as well as several books, including the multiple award-winning book Richard A. Leo, Police Interrogation and American Justice (Elizabeth Knoll ed., Harvard University Press 2008), which is considered the definitive study of police interrogation and confessions in America. Dr. Leo has won achievement awards for research excellence from many national organizations, including the Academy of Criminal Justice Sciences, the American Psychological Association, the American Academy of Forensic Psychology, and the American Sociological Association.

His research has been cited by numerous appellate courts, including the United States Supreme Court. He is regularly invited to lecture and present training sessions to lawyers, judges, police, forensic psychologists and other criminal justice professionals. Dr. Leo also has served as a litigation consultant and/or expert witness in hundreds of high-profile cases involving false confessions. Dr. Leo's work is often featured in the media; most recently, his work on behalf of the Norfolk Four was the subject of a story in *The New Yorker* in 2009.

Edward D. Ohlbaum is Professor of Law and Director of Trial Advocacy and Clinical Legal Education at Temple Law School. He was awarded the prestigious Richard S. Jacobson Award, given annually by the Roscoe Pound Foundation to one professor for "demonstrated excellence in teaching trial advocacy" in 1997. The architect of Temple's unique L.L.M. in Trial Advocacy, his programs have won awards from the American College of Trial Lawyers and the Committee on Professionalism of the American Bar Association. The author of three books, Professor Ohlbaum is a frequent speaker on evidence and advocacy at key international and domestic conferences. He serves on the Board of the Support Center for Child Advocacy and is actively involved in representing children in termination of parental rights cases. He is a former senior trial lawyer with the Defender Association of Philadelphia.

N. Dickon Reppucci received his Ph.D. in Clinical Psychology from Harvard in 1968. He subsequently taught at Yale as Assistant and Associate Professor (1968-1976) and was appointed Professor of Psychology

at the University of Virginia in 1976. Since then, he has served as Director of its Community Psychology program, which emphasizes law and children and diversity. He has received the Distinguished Contributions in Research Award from the Society for Community Research and Action (1998) and the American Psychology/Law Society Mentoring Award (2007). He is author or co-author of four books and more than 150 articles and book chapters, including Jessica Owen-Kostelnik, N. Dickon Reppucci & Jessica R. Meyer, *Testimony and Interrogation of Minors: Assumptions of Immaturity and Immorality*, 61(4) Am. Psychologist 286 (2006), which won the Society for Research on Adolescence Social Policy Award for Best Article in 2008. His current research foci include police perceptions of juvenile interrogations; aggressive, violent female juvenile offenders; violence in teen dating behavior; and teen competence to consent to sexual activity.

Jeffrey Shook is Assistant Professor of Social Work and Affiliated Assistant Professor of Law at the University of Pittsburgh. His research focuses on the juvenile and criminal justice systems and he has published on issues involving the administration of juvenile justice, juveniles in the criminal justice system, and the drift of young people from the child welfare system to the justice systems. Dr. Shook has also worked extensively to improve policies and practices involving young people caught up in the justice system. His interest in this case stems from his desire to ensure that legal frameworks account for differences between juveniles and adults.

SUMMARY OF ARGUMENT

The *Miranda* rule is an important safeguard that was designed to protect against coerced and unreliable statements. Indeed, this Court created the now famous *Miranda* warnings to counteract the "inherently compelling pressures" that define a police interrogation. *Miranda v. Arizona*, 384 U.S. 436, 467 (1966). These pressures have proven to be so powerful that they can "induce a frighteningly high percentage of people to crimes they never committed." *Corley v. United States*, 129 S. Ct. 1558, 1570 (2009). Recent empirical and social science research only confirm what was stated by this Court forty-three years ago: when it comes to children and young adolescents, there may be even more reasons to "distrust" interrogation-induced confessions. *See In re Gault*, 387 U.S. 1, 48-52 (1967); *see also* Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 944-45 (2004), *cited in Corley, supra* (noting that 35 percent of 113 proven false confessions were made by individuals under the age of eighteen).

Where other briefs presented to this Court underscore why age must be a factor in the custody determination of *Miranda*, Amici submit this brief to emphasize that, if it is not, there will be an increase in uncounseled and potentially unreliable confessions from children. This is especially so in the context of an in-school interrogation, such as the one to which J.D.B. was subject, where children are already restricted in their freedom of movement and ordered to obey authority. *See* Paul Holland, *Schooling* Miranda*: Police Interrogation in the Twenty-First Century*

Schoolhouse, 52 Loy. L. Rev. 39, 85-86 (2006). To prevent such miscarriages of justice, the *Miranda* safeguards must be robust to assure that children understand their rights not to speak to the police.

ARGUMENT

Culminating earlier this year with the decision in *Graham v. Florida*, 560 U.S. ___, 130 S. Ct. 2011 (2010), this Court's jurisprudence has long recognized the common sense notion that children are different from adults and are in need of protections to account for those differences. Indeed, beginning with *Haley v. Ohio*, 332 U.S. 596 (1948) and continuing through *Gallegos v. Colorado*, 370 U.S. 49 (1962), and *In re Gault*, 387 U.S. 1 (1967), it has been understood that children are uniquely vulnerable to making coerced and unreliable statements during custodial interrogations. This case offers the Court an opportunity to ensure that children continue to benefit from the very safeguard it has long believed is necessary to dispel the coercion inherent in a custodial police interrogation: effective and timely warnings of the constitutional rights to silence and counsel.

Amici agree with the contention of J.D.B. and others groups filing supporting amicus briefs that age is an appropriate factor to be considered in determining whether J.D.B. was "in custody" for *Miranda* purposes. Adolescent developmental research and common sense tell us that children and teenagers are a class of individuals who lack the capacity and life experience to know that they have a right to refuse to speak to the police and to consult with an attorney when making such

life-altering decisions. While other briefs presented to this Court underscore the legal arguments as to why age must be a factor in the custody determination, we write separately to emphasize the practical results of omitting age from this calculus: an increase in false confessions and unreliable statements elicited from children by police in the stationhouse and the schoolhouse.

I. Juveniles, particularly those under the age of fifteen, are especially vulnerable to making false confessions and unreliable statements in response to police interrogation tactics like those used against J.D.B.

Empirical studies, developmental and behavioral research, police interrogation trainers, and this Court's decades-long juvenile jurisprudence recognize that juveniles are more likely than adults to respond to the pressures of custodial interrogation by falsely confessing to crimes they never committed. To protect children's liberty from unjustly being taken from them in this way, it is imperative that they receive the full benefit of available procedural safeguards. *See McNabb v. United States*, 318 U.S. 332, 347 (1943) ("The history of liberty has largely been the history of observance of procedural safeguards").

To be effective, a procedural safeguard must fit the threat to liberty posed by a given situation. The Court has the opportunity in this case to move one of those safeguards, the administration of *Miranda* rights to children, toward greater effectiveness by accounting for the special vulnerabilities of this class of accused. Doing

so will not only protect children's constitutional rights, but it will also mitigate the very real risk of unreliable statements – and, in turn, wrongful convictions – that is unavoidably present whenever children undergo the pressures of police interrogation. To prevent such miscarriages of justice, Amici urge this Court to adopt an objective test for the *Miranda* custody inquiry that includes a consideration of the youthfulness of the accused.

A. This Court created the *Miranda* rule to counterbalance the "inherently compelling pressures" present in any standard police interrogation and to mitigate the unreliable evidence and false confessions that these interrogations can produce.

This Court has long embraced the basic premise that police interrogations entail "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Miranda v. Arizona*, 384 U.S. 436, 467 (1966); *see also Dickerson v. United States*, 530 U.S. 428, 435 (2000) (stating that "custodial police interrogation, by its very nature, isolates and pressures the individual"). "[C]ustodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals." *Miranda*, 384 U.S. at 455. Accordingly, this Court established the now-famous *Miranda* warnings in 1966 to counteract that inherent coercion, under the view that the act of Mirandizing a suspect renders his constitutional rights to silence and counsel real and concrete – concepts that may otherwise

seem distant, abstract, and inaccessible to any frightened person, in an interrogation room, let alone a child without parent or counsel.

Custodial interrogations derive their coercive nature from the use of common and well-intended – but psychologically manipulative and pressure-filled – interrogation tactics. *See Miranda*, 384 U.S. at 448-454 (discussing the psychological pressures exerted by commonly used police interrogation tactics); Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3-38 (2010), *available at* http://www.williams.edu/Psychology/Faculty/Kassin/files/White%20Paper%20-%20LHB%20(2010).pdf. Most police departments follow a standardized set of interrogation procedures known as the Reid Technique, named after the firm that markets the procedures to police departments around the country. *See* Fred E. Inbau, John E. Reid, Joseph P. Buckley, & Brian C. Jayne, *Criminal Interrogation and Confessions* (4th ed. 2004). Under the Reid Technique, police interrogators begin by separating the suspect from his family and friends, often isolating the suspect in a small interrogation room specially designed to increase his anxiety and incentive to escape. Kassin, 34 L. & Hum. Behav. at 7. In the first stages of the interrogation, the questioners deploy a series of tools intended to shake the suspect's adherence to his claim of innocence. They repeatedly accuse the suspect of lying, refuse to listen to his claims of innocence, and exude unwavering confidence in his guilt. *See* Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 Denv. U. L. Rev. 979, 990 (1997). Police interrogators

also often inform a suspect that they possess physical evidence implicating him – fingerprints on a murder weapon, for example, or the statement of an eyewitness – even if such evidence does not actually exist. *See id.* This stage continues until the suspect feels thoroughly hopeless and trapped. *See id.*

After this is accomplished, police interrogators then switch to the second stage of interrogation by offering the suspect a way out of his predicament: confession. To communicate this message, they indicate that the benefits of confessing will outweigh the costs of continued resistance and denial. *See id.* Interrogators frequently minimize or rationalize the suspect's involvement in the crime, for instance, by telling the suspect that he must have been merely a witness or that the criminal act must have been unintentional, a mere accident, or an act of justifiable self-defense, all in an effort to make confessing seem less damaging. Steven A. Drizin & Richard A. Leo, *The Problem of False Confession in the Post-DNA World*, 82 N.C. L. Rev. 891, 916 (2004). They also assure the suspect that confessing is in his best interest and imply that he will receive leniency if he confesses. *See id.* By deploying these tactics at the right psychological pressure points, experienced interrogators can be extraordinarily effective in causing a suspect to produce self-incriminating information.

Sometimes, however, these potent tactics become far too effective: the psychological tricks and subtle coercion of custodial interrogation can cause not only the guilty, but also the innocent, to confess. To date, 261 individuals have been exonerated on the basis of DNA testing after having been convicted of crimes that

they did not commit, and approximately one-quarter of those individuals falsely confessed to the crimes in question under police interrogation.[3] *See* The Innocence Project, Understand the Causes: False Confessions / Admissions, http://www.innocenceproject.org/understand/False-Confessions.php (last visited Dec. 7, 2010). Police recognize the incidence of false confessions too. In a 2007 survey, law enforcement officers estimated that about 10 percent of all interrogations result in false confessions. Jessica R. Meyer & N. Dickon Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility*, 25 Behav. Sci. & L. 757, 770 (2007). These false confessions, in turn, lead to the wrongful prosecution and incarceration of the innocent, while the guilty remain at large. *See* Drizin & Leo, 82 N.C. L. Rev. 891 (examining 125 proven false confessions in the United States and concluding that 81 percent of false confessors whose cases went to trial were wrongfully convicted).

In recognition of this long-standing reality, this Court noted more than 40 years ago that the "heavy toll" of custodial interrogation has been known to result in false confessions. *Miranda*, 384 U.S. at 455, fn. 24. Last year, this Court continued to acknowledge the gravity of the problem, finding that "there is mounting

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3. This statistic does not include false confessors who have been exonerated on the basis of non-DNA evidence or false confessors who have yet to be exonerated. To date, scholars have uncovered at least 250 false confessions made over the last twenty years, and there are likely a great many more individuals who have falsely confessed whose stories are simply not known. *See* Richard A. Leo, *Police Interrogation and American Justice* 243 (2008).

empirical evidence that these pressures [associated with custodial police interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed." *Corley v. United States*, 556 U.S. ___, 129 S. Ct. 1558, 1570 (2009) (citing Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 907 (2004)).

Finally, the pressures of custodial interrogation pose a threat not only to the constitutional right to be free from coercion but also to public safety. When innocent people who falsely confess are wrongfully convicted, the real perpetrators are left on the street to continue their criminal activities or harm society.

B. Youthful suspects are particularly susceptible to react to the "inherently compelling pressures" of police interrogation by making false confessions.

Standard police interrogation tactics – which in all probability were designed with the hardened adult suspect in mind – are frequently deployed against far softer targets: children and adolescents. *See, e.g.*, Jessica R. Meyer & N. Dickon Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility*, 25 Behav. Sci. & L. 757 (2007). Despite their common use during interrogations of children, however, these tactics pose a particular risk to youthful suspects.

This Court's jurisprudence has long recognized that children are especially likely to react to the unavoidably coercive pressures of interrogation by falsely confessing.

In *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948), this Court suppressed a fifteen-year-old boy's confession given during a police interrogation, because a youth – an "easy victim of the law" – could easily succumb to coercion during the police interrogation process if he were left without adequate protections: "That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens." *Id.* at 599. Fourteen years later, in *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962), this Court again suppressed a boy's confession, this one given almost immediately after he had been taken into custody: "[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. . . . [W]e deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights." *Id.*

Significantly, this Court affirmed that the privilege against self-incrimination protects children in juvenile court in the case of *In re Gault*, 387 U.S. 1, 42-57 (1967). In so doing, this Court explained that "common observation and expert opinion" both compel the conclusion that one should "distrust" the interrogation-induced confessions of children and young adolescents. *Id.* at 48 (citing 3 Wigmore, Evidence § 822 (3d ed. 1940)). This Court continued by plainly stating: "[A]uthoritative opinion has cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children." *Id.* at 52.

More recent precedent from this Court only reinforces the conclusion that juveniles are uniquely susceptible to making unreliable statements during the pressure-cooker of police interrogation. In light of the developmental cognitive differences between youth and adults, this Court recently outlawed both the juvenile death penalty and juvenile life without parole for non-homicide offenses. *See Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Graham*, 130 S. Ct. at 2026. In so holding, this Court found that children are more vulnerable than adults to the application of external pressure: they are suggestible, impulsive, eager to please authority figures, and hampered by immature decision-making. *Roper*, 543 U.S. at 569; *Graham*, 130 S. Ct. at 2026, 2032. These same traits make juveniles particularly ill-suited to engage in the high-stakes risk-benefit analysis inherent in any police interrogation. Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3-38 (2010); *see also* Thomas Grisso et. al, *Juveniles' Competence to Stand Trial: A Comparison of Adolescents and Adults Capacities as Trial Defendants*, 27 Law & Hum. Behav. 333, 353-56 (2003) (noting that children fifteen years or younger are more likely than older teenagers to comply with authority and confess to an offense). Even the marketers of the Reid Technique have agreed that juveniles are at higher risk for false confessions than adults and advise interrogators to exercise "extreme caution and care" when interrogating them. John E. Reid & Associates, Inc., Critics Corner, http://www.reid.com/educational_info/criticfalseconf.html (last visited Dec. 7, 2010).

Empirical studies of false confessions further illustrate the heightened risk of false confessions from youth. The leading study of 125 proven false confessions that was cited by this Court in *Corley* found that 63 percent of false confessors were under the age of 25 and 35 percent were under 18. Drizin & Leo, 82 N.C. L. Rev. at 945. By way of comparison, juveniles make up only eight percent of individuals arrested for murder and 16 percent of individuals arrested for rape in the United States. *See* Howard N. Snyder, *Juvenile Arrests 2004*, U.S. Dep't of Just. Off. of Juv. Just. and Delinq. Prevention, Off. Just. Programs (Dec. 2006). In another respected study of 340 exonerations that have taken place since 1989, researchers found that juveniles under the age of 18 were three times as likely to falsely confess as adults; a full 42 percent of juvenile exonerees had falsely confessed, compared to only 13 percent of wrongfully convicted adults. Samuel R. Gross et al., *Exonerations in the United States, 1989 Through 2003*, 95(2) J. Crim. L. & Criminology 523, 523-53 (2005).

Yet another study revealed that juveniles between the ages of 12 and 16 years old were far more likely to falsely confess than young adults between the ages of 18 and 26 years old; astonishingly, a majority of the juvenile participants in that study complied with a request to sign a false confession without uttering a word of protest. *See* Allison D. Redlich & Gall S. Goodman, *Taking Responsibility For an Act Not Committed: Influence of Age and Suggestibility*, 27 L. & Hum. Behav. 141, 150-51 (2003). And the most recent study addressing the subject – an examination of 103 wrongful convictions of factually innocent teenagers and

children – found that a false confession contributed to 31.1 percent of the juvenile cases studied, as compared against only 17.8 percent of adult wrongful convictions. Joshua A. Tepfer, Laura H. Nirider & Lynda Tricarico, *Arresting Development: Convictions of Innocent Youth*, 62 Rutgers. L. Rev. 887, 904 (2010). The younger the accused, the more likely he or she was to falsely confess. *Id.* at 904-05. The study similarly found that youth are also particularly likely to respond to the pressures of interrogations by offering false information against another person; in over half of the cases studied, a demonstrably false statement made by a youth contributed to the wrongful convictions, whether that statement implicated himself or another person. *Id.* at 905-10.

The problems of youthful immaturity and inexperience, of course, are compounded when the youth being interrogated also has cognitive or intellectual disabilities, as J.D.B. does. *See Atkins v. Virginia*, 536 U.S. 304, 320 (2002) (finding unconstitutional the practice of executing people with mental retardation, in part because those individuals are particularly prone to make false confessions). People with mental impairments tend to rely on authority figures for solutions to problems, to want to please persons in authority, to seek out friends, to feign competence or knowledge, to exhibit a short attention span, to experience memory gaps, to lack impulse control, and to accept blame for negative outcomes. *See* Robert Perske, *Understanding Persons With Intellectual Disabilities in the Criminal Justice System: Indicators of Progress?*, 42 Mental Retardation 484, 484-87 (2004).

It is not difficult to understand why someone with a combination of these traits is likely to confess falsely. One certainly need not be mentally impaired, though, in order to be vulnerable to the "inherently compelling pressures" of police interrogation. It is enough simply to be young and scared.

In spite of judicial, medical, psychological, social science, and even law enforcement recognition of the susceptibility of juveniles to interrogation-induced false confessions, police officers routinely fail to take these differences into account in the interrogation room. *See e.g.*, Meyer & Reppucci, 25 Behav. Sci. & L. at 757. Instead, officers routinely interrogate juveniles using the same tactics they use on adults. Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 Rutgers L. Rev. 943, 952 (2010). As these tactics continue to be used, false confessions of juveniles, such as the ones described below, will continue to occur.

1. Levi Dunn's False Confession[4]

On February 20, 2008, Levi Dunn, a twelve-year-old student from Creswell, Oregon, confessed to shooting and killing a dog with his pellet gun. Levi confessed during an interrogation that took place in the office of Creswell Middle School Principal Shirley Burns and

4. The information from this narrative comes from the following article: Karen McCowan, *Lawsuit Alleges False Confession of Boy*, The Register Guard, Feb. 24, 2010, at A1, *available at* http://special.registerguard.com/csp/cms/sites/web/news/cityregion/24490071-41/levi-suit-lawsuit-alleges-dog.csp

outside the presence of his parents. Present during the interrogation were Pat O'Neill, a deputy sheriff from the Lane County Sheriff's Office, Principal Burns, and Will Davey, a campus supervisor at the school. According to a since settled civil lawsuit later filed by Levi's father against the school district,[5] Levi became a suspect when a deputy noticed a gun leaning against the back of Levi's house during a canvas of the neighborhood where the shooting took place. The lawsuit also alleges that Levi repeatedly denied involvement in the shooting, even agreeing to "pinkie swear" to Deputy O'Neill, but O'Neill would not take no for an answer and pressed Levi until he confessed. Charges were later dropped when the state police determined that the pellet recovered from the dog's body could not have been fired from Levi's gun.

2. Romarr Gipson and Elijah Henderson's False Confessions[6]

On July 27, 1998, eleven-year-old Ryan Harris disappeared during a bike ride in her neighborhood on the South Side of Chicago. Her body was found the next day behind a house among some weeds and shrubs. She had been badly beaten and her underwear had been

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5. Karen McCowan, *District Settles Its Part of* Suit, The Register *Guard*, Dec. 21, 2010, *available at* http://www.registerguard.com/csp/cms/sites/web/updates/25689197-55/neill-county-creswell-levi-case.csp.

6. The information in this narrative comes from Alex Kotlowitz,"The Unprotected," The New Yorker, Feb. 8, 1999, in *True Stories of False Confessions*, 175-92 (Rob Warden and Steven A. Drizin, eds., Northwestern University Press 2009) (adapted with permission).

ripped off and shoved into her mouth. Based on a tip that two neighborhood boys had thrown rocks at Ryan the day before her disappearance, Chicago police, on August 9, 1998, brought eight-year-old Elijah Henderson and his seven-year-old friend, Romarr Gipson, into the station for questioning.

Before speaking with the boys, detectives secured the permission of their parents, who also agreed to remain outside the room during the questioning. Elijah was questioned first. He told police that Romarr had brought him to Harris' body right after it was discovered and that Harris had been naked with something in her mouth. The detectives then moved on to Romarr. Before interrogating him about the murder, they told Romarr that good boys only spoke the truth and inquired if he was a good boy. "Each detective took one of Romarr's hands, and they told him they were his friends and asked if he'd taken his friend to Harris' body." Immediately thereafter, according to the police report:

> Romarr said in essence without further questioning . . . that he and Elijah were playing throwing rocks when they saw Ryan Harris riding her bicycle. Romarr said he threw a rock, hitting the girl in the head and knocking her off her bike. After she fell off the bicycle, she wasn't moving, so he and Elijah each took one of the girl's arms and moved her into the weeds by the railroad tracks. He said "someone must have come and taken the bike, because he never saw it again."

The detectives then went and spoke with Elijah, who – after being told Romarr's story was different from his – changed his story to confirm Romarr's description.

Four weeks after the boys were arrested, the charges against them were dropped because semen was found on Harris' panties. Medical experts had advised law enforcement that the possibility of semen coming from seven- and eight-year-olds was "highly remote." They were right. The boys were exonerated when DNA evidence matched Floyd Durr, an adult repeat sexual predator who had been free at the time of the crime.

C. The *Miranda* procedural safeguard is one of several essential protections against juvenile false confessions, particularly in the school setting where youth are unlikely to understand that they are permitted to decline to speak with police.

While *Miranda* by itself does not solve the problem of false confessions, it is one important safeguard that was designed to protect against coerced and unreliable statements. Given that children are particularly susceptible to falsely confessing during police interrogations generally, it would be folly to define custody in a way that enables police to question children without the benefit of *Miranda* in the quasi-custodial setting of a school. Instead, just as age is a factor considered in determining voluntariness under the *Miranda* totality of the circumstances test, *see Gallegos*, 370 U.S. at 52-53, it should also be a factor in the *Miranda* custody determination.

Miranda warnings are, if anything, particularly essential in a public school setting where the government is entrusted with the care of the child. *See Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 665 (1995). Children are required by law to attend school; they are restricted in their freedom of movement throughout the school; and they are more likely to be intimidated by authority than young adults. Paul Holland, *Schooling* Miranda: *Police Interrogation in the Twenty-First Century Schoolhouse*, 52 Loy. L. Rev. 39, 85-86 (2006). Against such a context, a thirteen-year-old student such as J.D.B. would have no reason to think that he has any right to defy his questioner by refusing to talk, to freely leave the room, or to demand the assistance of counsel when a police officer confronts him at school, unless he is specifically so told. Students do not have the right to walk out of a meeting with a principal, vice-principal, or other school officials regardless of whether it is a police interrogation. Given research on age-related suggestibility and deference to authority figures, it is certainly reasonable that a student would fail to understand his right to leave a meeting with a school authority figure. Given that police and public safety authorities often serve in a variety of roles within schools (including security officials, investigators, and probation officers), it is difficult for a youth to differentiate when he can leave a meeting with a police officer/security personnel without exposing himself to punishment.

Questions surrounding the constitutional implications of schoolhouse interrogations have taken on increased importance as law enforcement presence in schools has increased. School resource officers

number approximately 17,000 nationwide today, compared against just 2,000 fifteen years ago. Lisa H. Thurau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. Sch. L. Rev. 977, 978 (2009-2010); Josh Kagan, *Complexity of School-Police Relationships Challenge "Special Needs" Doctrine*, 19 A.B.A. Crim. Just. 36, 37 (2005). During the 2003-2004 school year, over 70 percent of students between the ages of twelve and eighteen reported some police presence at their school, which represented an increase of almost 30 percent from 1999. Peter Price, *When is a Police Officer an Officer of the Law?: The Status of Police Officers in Schools*, 99 J. Crim. L. & Criminology 541, 548 (2009) (citing National Center for Education Statistics, Indicators of School Crime and Safety, 63 fig.21.1 (2005)). Increasingly, school resource officers have assisted police with investigation of crimes that occur off-campus, including interrogations of child suspects. *See* Meg Penrose, *Miranda, Please Report to the Principal's Office*, 33 Fordham Urb. L. J. 775, 786 (2006). Giving officers *carte blanche* to confront suspected juveniles at school – the one place where children would have no logical reason to believe that they could leave or decline to answer an officer's questions – is an impermissible end-run around juveniles' constitutional rights.

At the same time, requiring officers to account for age as part of the *Miranda* custody determination puts no additional burden on police officers, as they must already account for age during the interrogation process. Many states require or allow parental presence or notification during an interrogation, warnings to a juvenile about the right to have a parent present during

the interrogation, parental consent in waiving *Miranda*, or even the right to counsel for some juveniles prior to a custodial interrogation. Brief for Petitioner, *J.D.B. v. North Carolina*, No. 09-11121 (filed Dec. 16, 2010); *see also* W. Va. Code § 49-5-2(l) (uncounseled statements made by juveniles under the age of fourteen are inadmissible); 705 Ill. Comp. Stat. § 405/5-170 (children under the age of thirteen must have the presence of counsel during any interrogation of a sexual assault or murder). In the context of this case – where the interrogation was conducted in a middle school – the suspect's minority status was a certainty. *See generally* Paul Holland, *Schooling* Miranda: *Police Interrogation in the Twenty-First Century Schoolhouse*, 52 Loy. L. Rev. 39, 85 (2006).

CONCLUSION

At thirteen years of age, J.D.B. is one of the youngest litigants in the history of United States Supreme Court criminal jurisprudence. This Court has always viewed juveniles, even ones without intellectual disabilities, as vulnerable to falsely confessing in the face of the inherent pressures of custodial police interrogations. To ensure that innocent youth are protected from incriminating themselves and that law enforcement purposes are met, the *Miranda* safeguards must be robust. Amici accordingly request that this Court acknowledge that the *Miranda* custody determination should include a commonsense consideration of the suspect's age and reverse the decision of the North Carolina Supreme Court.

Respectfully submitted,

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