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**THE CONNECTICUT SUPREME COURT**

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S.C. 17789

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STATE OF CONNECTICUT  
*Appellee*

v.

GABRIEL P. HEINEMANN  
*Appellant*

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**BRIEF OF JUVENILE LAW CENTER AND NATIONAL  
JUVENILE DEFENDER CENTER AS *AMICI CURIAE*  
IN SUPPORT OF THE DEFENDANT-APPELLANT**

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## STATEMENT OF INTEREST

*Amici Curiae* Juvenile Law Center and National Juvenile Defender Center work on issues of child welfare, juvenile justice and children's rights. *Amici* have a unique perspective on the constitutional rights and developmental psychology of youth involved in the juvenile and criminal justice systems.<sup>1</sup>

This Court has never squarely set forth the role of age in a determination of duress. State law, constitutional principles, and adolescent development research, however, all make clear that courts must consider a defendant's age when deciding whether he or she would have been able to resist coercion and withstand duress. *Amici* write to express a deep concern that the lower court's interpretation of how age factors into duress decisions, if left to stand, would not only misapply the law, it would hold adolescents to developmentally inappropriate standards.

*Amici* support the Appeal of Gabriel Heinemann, Defendant-Appellant.

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<sup>1</sup> *Amici* file this brief with the consent of counsel for Defendant, Gabriel Heinemann. Appellee has not granted consent. 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. A brief description of all *Amici* appears at Appendix A.

## SUMMARY OF ARGUMENT

This case calls upon the Court to clarify the role of age in the duress defense. The jury repeatedly asked the trial court for direction as to whether it should consider Gabriel Heinemann's age in determining whether he acted under duress. The lower court misread state law when it instructed the jury that age mattered to the duress defense only in relative terms – that is, only to the extent that the coercers were older than the coerced. Connecticut law does establish the relevance of age to the duress defense; nowhere does the law suggest that age should be considered only in relative terms.

Both constitutional law and adolescent development research make clear that age matters categorically to the determination of culpability. Adolescents differ from adults cognitively, emotionally, and neurologically. Indeed, the area of the brain tied to risk assessment and self-regulation continues to develop throughout adolescence.

At the time of the incidents in question, defendant Gabriel Heinemann was just 16 years old. Connecticut law, federal Constitutional law and adolescent development research all dictate that the jury should have been instructed to consider his young age – regardless of the age of his coercers – in determining whether he was under duress.

## ARGUMENT

### I. The Court's Jury Instructions Misled the Jury about the Role of Age in the Duress Defense

When challenging a jury instruction, the standard is “whether it is reasonably possible that the jury [was] misled. ... The charge is to be read as a whole and individual instructions are not to be judged in artificial isolation from the overall charge. ...” State v. Aponte, 784 A.2d 991, 1001 (Conn. App. 2001), *quoting* State v. Reid, 757 A.2d 482, 493 (Conn. 2000). Taken as a whole, it is reasonably possible that the court's instructions as to

the defense of duress misled the jury because the court muddled the explanation of the applicable standards.

In Connecticut's duress defense, the reasonable person standard has both an objective and a subjective component. Connecticut law states:

In any prosecution for an offense, it shall be a defense that the defendant engaged in the proscribed conduct because he was coerced by the use or threatened imminent use of physical force upon him or a third person, **which force or threatened force a person of reasonable firmness in his situation would have been unable to resist.**

C.G.S. § 53a-14 (emphasis added). The duress defense's objective/subjective standard allows for a consideration of subjectivity in evaluating the "situation" of the defendant, but objectivity as to the defendant's ability to respond. The Explanatory Note for the Model Penal Code section on Duress, upon which Connecticut's duress defense is based, explains that, "The standard is thus **partially** objective; the defense is not established simply by the fact that the defendant was coerced; he must have been coerced in circumstances under which a **person of reasonable firmness in his situation** would likewise have been unable to resist." Explanatory Note to M.P.C., Part I, Art. 2 § 2.09 (emphasis added). Thus, the standard is how another in the defendant's subjective position would objectively respond. Read together, the court's jury instructions effectively eliminated the subjective element of the duress defense.

The Model Penal Code explicitly recognizes age as a factor affecting an actor's "situation" for the purpose of applying the duress defense. The commentary to the Model Penal Code indicates that,

[A]ccount is taken of the actor's 'situation,' a term that should here be given the same scope it is accorded in appraising recklessness and negligence. Stark, tangible factors that differentiate the actor from another, like his size, strength, **age**,

or health, would be considered in making the exculpatory judgment.

M.P.C., Part I, Art. 2 § 2.09, pg. 375 (emphasis added). In weighing a duress defense, the jury must decide how a person of reasonable firmness in the defendant's situation – a reasonably firm 16-year-old – would react to the coercion. Because age affects a defendant's situation, a proper jury instruction would factor the defendant's age into the defense, regardless of the ages of the coercers.

Courts have applied a subjective standard to the "situation" of a particular defendant asserting a duress defense. For example, in United States v. Johnson, the Ninth Circuit extended the "stark tangible factors" that increase an individual's subjective vulnerability beyond "size, strength, age, or health" to include gender. 956 F.2d 894, 898 (9th Cir. 1992). Johnson held that battered women's "special vulnerability" to coercion could be considered for their duress defenses. 956 F.2d at 897-908. Similarly, in United States v. Sachdev, the First Circuit conceded that the particular vulnerabilities of defendants may be considered in determinations of duress. 279 F.3d 25, 29 n.2 (1st Cir. 2002).

In the instant matter, the court inaccurately instructed the jury to consider age only as a relative factor between the coercers (Unique and Tec in Gabe Heinemann's case) and the defendant (Gabe himself). Specifically, the court instructed the jury that they "can take into account age as one of the tangible factors that go into assessing the situation; that is, the comparative situation between the two actors or the three actors, the defendant on the one hand and those threatening on the other." (Transcript 4/19/05, at 23.) This instruction – along with the rest of the jury instructions – inaccurately states the role of a subjective consideration of age in the defense of duress. The instruction should have explained that age affects a defendant's "situation," regardless of the actors' comparative ages.



## II. Constitutional Law Required the Court to Instruct the Jury about the Role of Age in the Duress Defense

The principle that youth are “different” from adults permeates our law. As Justice Frankfurter so aptly articulated, “[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a state’s duty towards children.” May v. Anderson, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring). Indeed, for the last sixty years, the United States Supreme Court has consistently considered the developmental and social differences of youth in measuring the scope and breadth of minors’ constitutional rights.<sup>1</sup> State law across jurisdictions has similarly distinguished between youth and adults.<sup>2</sup>

In its brief, Appellee asserted that, “There was absolutely no evidence presented by the defendant for the jury’s consideration during the trial as to the mental vulnerability of the defendant.” (Brief for Appellee, at 19.) No such evidence is necessary; rather, the defendant’s age alone is enough to trigger age-appropriate legal treatment.

This Court has recognized that duress “may be seen as removing the very basis of criminal culpability.” State v. Rouleau, 528 A.2d 343, 350 (Conn., 1987) (internal citations omitted). The Supreme Court has established that age, as a categorical distinction, is relevant to the determination of criminal culpability. In Roper v. Simmons, the Supreme Court sanctioned the use of a categorical rule that prohibits the death penalty for those aged 18 or younger at the time of the offense. 543 U.S. 551 (2005). The Court explained,

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<sup>1</sup> See, e.g., Haley v. Ohio, 332 U.S. 596 (1948).

<sup>2</sup> See Roper v. Simmons, 543 U.S. 551, 569 (2005) (“In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.”)

Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. ... The age of 18 is the point where society draws the line for many purposes between childhood and adulthood.

Roper, 543 U.S. at 574. The Court sanctioned this bright line rule even though capital cases already used age as a mitigating factor. The Court reasoned that

It is 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. ... [T]his difficulty underlies the rule forbidding psychiatrists from diagnosing any patient under 18 as having antisocial personality disorder, a disorder also referred to as psychopathy or sociopathy, ... . If trained psychiatrists with the advantage of clinical testing and observation refrain, despite diagnostic expertise, from assessing any juvenile under 18 as having antisocial personality disorder, we conclude that States should refrain from asking jurors to issue a far graver condemnation – that a juvenile offender merits the death penalty.

Roper, 543 U.S. at 573 (internal citations omitted). Because case-by-case determinations of mental culpability might not adequately take into account the decreased developmental abilities of youth as compared with adults, the Court required that youth, as a class, be treated differently from adults for the purposes of determining criminal culpability. Under similar reasoning, the fact that Gabe Heinemann was 16 years of age at the time of the incident – in and of itself – constituted sufficient evidence of his “situation” for the duress defense. Accordingly, defense counsel did not need to present evidence at trial about the defendant’s specific mental vulnerability due to his age.

### III. Adolescents are More Vulnerable to Duress than Adults

Gabriel Heinemann may prove duress if a reasonable adolescent would have been “unable to resist” the force or threats he faced. C.G.S. § 53a-14. Two significant characteristics make it more difficult for adolescents to resist such pressure: their limited decision-making capacity, and their susceptibility to outside influences.

a. Adolescents’ Difficulties in Decision-Making Impede their Ability to Exit Coercive Situations

The Supreme Court has held that adolescents’ difficulty in making decisions is relevant to the determination of their criminal responsibility. According to the Court,

as any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, [a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.

Roper, 543 U.S. at 569 (citations and quotes omitted). The Court further explained that “[J]uveniles have less control, or less experience with control, over their own environment.” Id.; see also Laurence Steinberg & Elizabeth S. Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003) (“[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting”).

Experts in adolescent development further explain children’s immature decision-making capabilities. First, youth may lack the ability to exercise sufficient impulse control. “The teen years are periods when self-control issues are confronted on a series of distinctive new battlefields. ... New domains. ... require not only the cognitive appreciation of the need for self-control in a new situation but also its practice.” Franklin E. Zimring, Penal Proportionality for the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility in Youth on Trial: A Developmental Perspective on Juvenile

Justice 280 (Thomas Grisso and Robert G. Schwartz eds., 2000) [hereinafter Youth on Trial]. A child faced with a new type of situation may therefore have more difficulty exercising the necessary self-control than a more experienced adult. Similarly, while adults may perceive multiple options in a particular situation, adolescents may perceive only one, further limiting their understanding of how to escape a coercive situation. Marty Beyer, Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases, 15 Crim. Just. 27, 27 (2000) [hereinafter Immaturity]; Marty Beyer, Recognizing the Child in the Delinquent, 7 Ky. Child Rts. J. 16, 17-18 (1999) [hereinafter Recognizing the Child]. Finally, because adolescents tend to discount the future and weigh more heavily the short-term risks and benefits, they may experience heightened pressure from the immediate coercion they face. See Elizabeth S. Scott, N. Dickon Reppucci & Jennifer L. Woolard, Evaluating Adolescent Decision Making in Legal Contexts, 19 L. & Hum. Behav. 221, 231 (1995) [hereinafter Decision Making].

Recent research on brain development demonstrates that structural distinctions between the adult and adolescent brain account for differences in how adolescents evaluate risks and rewards. Nina Chernoff & Marsha Levick, Beyond the Death Penalty: Implications of Adolescent Development Research for the Prosecution, Defense and Sanctioning of Youthful Offenders, Clearinghouse Rev. J. of Poverty L. & Pol'y 209, 210 (2005) [hereinafter Beyond the Death Penalty]. Specifically, the prefrontal cortex which manages long-term planning, self-regulation, and the assessment of risk "continues to develop and change through the course of adolescence."<sup>36</sup> Id. at 210. Adolescent decision making is therefore distinguished by not only cognitive and psychosocial, but also neurological deficits. Id.

These developmentally normal impairments in making decisions can be exacerbated when adolescents are under stress. Because adolescents have less experience with stressful situations than adults, they have a lesser capacity to respond adeptly to such situations. See Laurence Steinberg & Robert G. Schwartz, Developmental Psychology Goes to Court in Youth on Trial (explaining that even when older adolescents attain raw intellectual abilities comparable to those of adults, their relative lack of experience may impede their ability to make sound decisions) [hereinafter Developmental Psychology]. Additionally, adolescents' tendency to process information in an "either-or" capacity is exacerbated in stressful situations. See Immaturity at 27; Recognizing the Child, at 17-19. Thus a young person experiencing coercion may have particular difficulties recognizing the option of exiting the situation.<sup>3</sup>

b. Adolescents' Susceptibility to Peer Pressure Impedes their Ability to Exit Coercive Situations.

Adolescents' heightened susceptibility to peer pressure is also relevant to the determination of their criminal responsibility. "[J]uveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." Roper, 543 U.S. at 569. Indeed, youth "is a time and condition of life when a person may be most susceptible to influence and to psychological damage." Eddings v. Oklahoma, 455 U.S. 104, 115 (1982). Thus, while peer pressure alone does not constitute duress, the Supreme Court has concluded that adolescent's susceptibility to such pressure means that "juvenile

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<sup>3</sup> While *Amici* have focused here on the importance of age as a categorical distinction, it is worth noting that adolescents, like Gabriel Heinemann, arriving in new locations and confronting discord in their families are likely to be more susceptible to negative influences than children in more stable environments. See James Garbarino, Lost Boys: Why Our Sons Turn Violent and How We Can Save Them 40 (1999); Jeffrey Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 Developmental Rev. 339, 362 (1992).



desire for increased autonomy and independence. Developmental Psychology, at 26-27. As a consequence, many adolescents challenge or even oppose the influence of adults whose opinions they value, and focus their attention on the approval of their peers. *Id.*

Researchers have established a significant relationship between adolescent crime and peer pressure. See Scott, Criminal Responsibility at 304. Research demonstrates that, “most adolescent decisions to break the law take place on a social stage where the immediate pressure of peers is the real motive for most teenage crime.” Juvenile Justice. Indeed, “group context” is the single most significant characteristic of adolescent criminality. Id. at 61. Although a young person may be able to discriminate between right and wrong while alone, resisting temptation in the presence of others requires social experience; it is a distinctive skill that many adolescents have not yet fully developed. See id. at 60. Children “who do not know how to deal with such pressure lack effective control of the situations that place them most at risk of crime in their teens.” Id. at 61. Thus, until adolescents reach a stage of development in which they are adept at resisting peer pressure, they are more susceptible to group offending than are adults. While peer pressure alone does not constitute duress, an adolescent’s difficulty in withstanding peer pressure can make exiting a highly coercive and stressful situation even more difficult than it would be for an adult. The determination of the pressure a reasonable person in Gabriel Heinemann’s situation would have been “able to resist” must therefore take into account Gabriel’s age.

### **CONCLUSION**

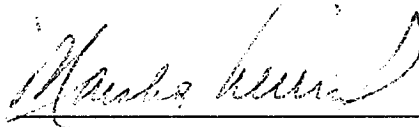
For the foregoing reasons, *Amici Curiae* respectfully request that this court grant Gabriel Heinemann’s appeal.

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Adolescence: A Developmental Perspective, 12 *Developmental Rev.* 339, 354-355 (1992); Decision Making.

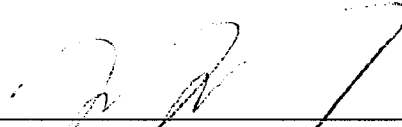


Respectfully Submitted,



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## APPENDIX A

### IDENTITY OF AMICI CURIAE

**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.

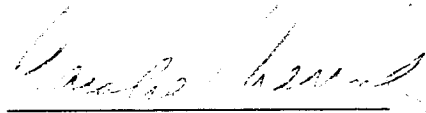
The **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Center provides support to public defenders, appointed



**CERTIFICATION**

Pursuant to Connecticut Practice Book § 62-7 the undersigned certifies that the foregoing was mailed first class postage prepaid this 1<sup>st</sup> day of February to: John P. Gravalec-Pannone, Senior Assistant State's Attorney, Judicial District of New London, 70 Huntington Street, New London, CT 06320, Tel (860) 443-2835, Fax (860) 442-3019; and to Alice Osedach, Assistant Public Defender, Office of the Chief Public Defender, 2911 Dixwell Ave, 4<sup>th</sup> floor, Hamden, CT 06518, Tel (203) 867-6150, Fax (203) 867-6157; and to the defendant-appellant, Gabriel P. Heinemann, # 307783, Radgowski Correctional, 982 Norwich-New London Tpke, Uncasville, CT 06382; Honorable Elaine Gordon, Superior Court Judge, Judicial District Courthouse, 70 Huntington Street, New London, CT 06320 Tel (860) 442-2977; Fax (860) 447-8701.

It is also certified that the undersigned's brief complies with all the provisions of Conn. Practice Book § 67-2.



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