

NO. A10-1686

State of Minnesota
In Supreme Court

STATE OF MINNESOTA,

Respondent,

vs.

WILLIAM HENRY GRIGSBY, JR.,

Appellant.

BRIEF OF AMICUS CURIAE JUVENILE LAW CENTER

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INTEREST OF *AMICUS CURIAE*¹

Founded in 1975, Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm for children in the United States. Juvenile Law Center works generally to advance the rights and well-being of children in jeopardy. JLC works to ensure children are treated fairly by systems that are supposed to help them. JLC also works to ensure that children's due process rights are protected at all stages of juvenile court proceedings, and that the laws policies and practices which govern the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults.

ARGUMENT

At the heart of due process is the notion that an individual may not be deprived of life, liberty, or property without the opportunity to be heard in a meaningful way about the matter. *Armstrong v. Manzo*, 340 U.S. 545, 552 (1965). For a juvenile, being heard in a meaningful way in a certification determination requires that the court consider the role of adolescent development in the youth's culpability and amenability to treatment. The Supreme Court has long recognized that adolescents are not simply miniature adults, and that the distinction is legally relevant in a variety of constitutional contexts, including assessing juvenile culpability, *Graham v. Florida*, 130 S.Ct. 2011, 2027 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005) and ensuring due process *In re Gault*, 387 U.S. 1 (1967),

¹ Pursuant to Rule 129.03 of the Minnesota Rules of Appellate Procedure, the undersigned certifies that no counsel for a party authored this brief in whole or in part and that no one made a monetary contribution to the preparation or submission of this brief other than the *amici curiae* and their counsel.

443 U.S. 622, 635 (1979). The Court has recognized, and adolescent development research confirms, that a central difference between adolescents and adults is their still-developing capacity to make decisions, based in part in their high levels of impulsivity and susceptibility to pressure. *Graham*, 130 S.Ct. at 2026 (2010); *Roper*, 543 U.S. at 569-70 (2005). These characteristics play a particularly strong role in unintentional killings. Grigsby's certification hearing, which assessed his culpability and amenability to treatment only in the context of intentional killing, and not as it related to the unintentional killing of which he was convicted, did not adequately consider his offense or developmental status. It therefore deprived him of due process.

I. Due Process Requires that a Court Fully Consider a Child's Case Before Transferring him to Adult Court.

Over four decades ago, the Supreme Court held that the transfer from juvenile court to adult criminal court imposes a significant deprivation of liberty and therefore warrants protection under the Due Process Clause of the Fourteenth Amendment. *Kent v. United States*, 383 U.S. 541, 546 (1966) (finding that transfer is a "critically important" action determining vitally important statutory rights of the juvenile"). In the decades since *Kent*, states have enacted laws that expose more and younger children to criminal court prosecution. See e.g., Patricia Torbert et al., *State Responses to Serious and Violent Juvenile Crime*, Washington, D.C., Office of Juvenile Justice and Delinquency Prevention (1996). Rigorous protection of children's due process is even more critical today than it was at the time of *Kent*.

Kent made clear that transfer proceedings to adult court must provide due process protections commensurate with the critical nature of the proceedings as “there is no place in our system of law for reaching a result [waiver of juvenile court jurisdiction] of such tremendous consequences without ceremony – without hearing, without effective assistance of counsel, without a statement of reasons.” *Kent*, 383 U.S. at 553. The statement of reasons, counsel, and hearing required by *Kent* would be rendered meaningless if the hearing focused solely on a charge for which the juvenile is acquitted, without providing a certification hearing for the charge upon which the juvenile would ultimately be convicted.

Implicit in the requirement of due process and fundamental fairness is that the court consider the relevant charge and the precise facts at issue. The *Kent* court made this clear, explaining:

‘What is required before a waiver is, as we have said, ‘full investigation.’ * * * It prevents the waiver of jurisdiction as a matter of routine for the purpose of easing the docket. It prevents routine waiver in certain classes of alleged crimes. It requires a judgment in each case based on ‘an inquiry not only into the facts of the alleged offense but also into the question whether the *parens patriae* plan of procedure is desirable and proper in the particular case.’ (internal citations omitted).

Id. at 553 n. 5. See also *McKeiver v. Pennsylvania*, 403 U.S. 528, 543 (1971)

(Observing that “All the litigants here agree that the applicable due process standard in juvenile proceedings, as developed by *Gault* and *Winship*, is fundamental fairness. As that standard was applied in those two cases, we have an emphasis on fact finding procedures.”).

This conclusion is further underscored by Supreme Court case law on due process in other contexts. The Due Process Clause ensures that an individual facing a potential deprivation of liberty be assured of appropriate procedural protections. It “forbids arbitrary deprivations of liberty. ‘Where a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him,’ the minimal requirements of the Clause must be satisfied.’ *Goss v. Lopez*, 419 U.S. 565, 574 (1975), citing *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971); *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972).

At minimum, the process due includes a meaningful opportunity to be heard on the matter at issue. As the Supreme Court explained in *Goss v. Lopez*, ‘(m)any controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing *appropriate to the nature of the case.*’ ‘The fundamental requisite of due process of law is the opportunity to be heard[.]’”*Id.* at 579 (internal citations omitted, emphasis added). Moreover, the Court has made clear that the opportunity to be heard must be “granted at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 340 U.S. at 552 (holding that a father was deprived of due process when he received no notice or opportunity to be heard before his daughter’s adoption, and that providing a later hearing in which he was required to meet a higher burden did not remedy the deprivation).

See also In re Gault, 387 U.S. 1, 20 (1967 (internal citations omitted) (“It is these instruments of due process which enhance the possibility that truth will emerge from the

confrontation of opposing versions and conflicting data. ‘Procedure is to law what ‘scientific method’ is to science.’”)

Moreover, the vital nature of the liberty interest at issue calls for heightened procedural protections. The Supreme Court has underscored that “ ‘(d)ue process,’ unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.’ ‘(D)ue process is flexible and calls for such procedural protections as the particular situation demands.’” *Mathews v. Eldridge*, 424 U.S. 319 (1976) (citing *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961) and *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).² Indeed, the Court has made clear that “The extent to

² The Supreme Court has not applied the *Mathews* balancing test in juvenile rights due process cases, but instead has looked to the touchstone of “fundamental fairness.” Nonetheless, the *Mathews* test would also support the conclusion that Grigsby was deprived of due process when the certification hearing failed to address the facts surrounding an unintentional killing. Under *Mathews*, a Court determining whether an individual has been deprived of his or her due process rights must consider the private interest that will be affected by official action; the risk of erroneous deprivation of such interest through procedures used, and probable value, if any, of additional or substitute procedural safeguards; and government's interest, including function involved and fiscal and administrative burdens that additional or substitute procedural requirements would entail. *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). As discussed below, the private interest in personal liberty this case presents is clearly significant. The risk of erroneous deprivation of liberty is high when the Court fails to consider the relevant facts, but instead considers a different set of facts when making the certification determination. The value of additional safeguards is high - simply considering the appropriate facts would drastically diminish the chance of improper certifications. Finally, while there may be some cost to providing a certification hearing on the relevant facts, the government also has a strong interest--both moral and financial--in ensuring that the adult system and adult sentences are imposed on juveniles only when appropriate. Indeed, given the profoundly consequential nature of the transfer decision as compared to types of civil matters to which the *Mathews* test is typically applied, the denial of due process is particularly pronounced here.

which procedural due process must be afforded the recipient is influenced by the extent to which he may be ‘condemned to suffer grievous loss.’” *Goldberg v. Kelly*, 397 U.S. 254, 262-263 (1970). As *Kent* has recognized, waiver to adult court is an action of “tremendous consequence.” Ultimately, Grigsby received a 15 year adult sentence. Brief of Appellant at 3. Had he remained under juvenile court jurisdiction, he would have had the opportunity for release on his 21st birthday if not sooner. MN ST JUV DEL Rule 19.01 subd. 2. As the Supreme Court has explained, freedom from confinement is

“ the most elemental of liberty interests—the interest in being free from physical detention by one's own government. *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992) (“Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action”); see also *Parham v. J. R.*, 442 U.S. 584, 600, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979) (noting the “substantial liberty interest in not being confined unnecessarily”). “In our society liberty is the norm[....]” *Salerno, supra*, at 755, 107 S.Ct. 2095. “We have always been careful not to ‘minimize the importance and fundamental nature’ of the individual's*530 right to liberty,” *Foucha, supra*, at 80, 112 S.Ct. 1780 (quoting *Salerno, supra*, at 750, 107 S.Ct. 2095), and we will not do so today.

Hamdi v. Rumsfeld, 542 U.S. 507 (2004).

Grigsby was deprived of due process when he was convicted of unintentional murder without having received a certification hearing on that offense. The certification order describes Grigsby as firing the shots without provocation. Adult Certification Order, para. 23 (“No witnesses provided any information that JAW-S was the instigator or aggressor prior to WHG pulling the handgun.) It fails to mention anything about

Grigsby's fear of gang violence, or the fact that he was not aiming at the victim but rather shot toward the floor. Appellant's Br. 7.³

The facts regarding intentionality—or the lack thereof, omitted from the court's consideration, are highly salient to the certification determination. Minn. Stat. § 260B.125 subd. 2(6)(ii) requires the state to prove by clear and convincing evidence that retaining the proceeding in juvenile court would not serve public safety. To make this determination, the court must consider the following factors: (1) “the seriousness of the alleged offense in terms of community protection, including ... the use of a firearm, and the impact on any victim”; (2) the child's culpability; (3) the child's prior record of delinquency; (4) the child's programming history; (5) the adequacy of punishment or programming available in the juvenile system; and (6) the available dispositional options. Minn. Stat. § 260B.125, subd. 4. The intentionality of the killing bears directly on as many as four of these factors: the seriousness of the offense, the child's culpability, the adequacy of punishment in the juvenile system and the available disposition options. As a result, had the certification determination been made regarding the actual crime of which Grigsby was convicted, unintentional killing. Grigsby might have remained in juvenile court.

³ From the Appeal to the MN Court, p. 7: “Devion, an East Side Boys member, tried to get behind Appellant. (T8 127-28; T9 7) Appellant was “positive” that he was going to be attacked. (T8 128) In order to avoid being attacked, Appellant pulled out a gun from his waistline and discharged the firearm. (T2 48; T8 128) Appellant testified that the first shot appeared to hit the ground and “lit everything up for a second”. (T8 128-29) After the first shot, Appellant stated that he was forced to take a “big step back” and closed his eyes because of the flash of the gun. (T8 129) The gun “just kept going off.” (T8 129) Appellant testified that he did not intend to hurt or kill anyone. (T8 129)”

The first two factors, the seriousness of the offense and culpability of the offender, clearly require the judge to consider whether the killing was intentional. Although Grigsby used a firearm, the Court could have concluded that because he did not intend to kill, the offense was less serious and/or that Grigsby was less culpable. Only the third and fourth factors, regarding programming history and prior record, would remain unchanged regardless of the crime at issue. In Grigsby's case, however, these factors weighed in favor of juvenile court jurisdiction. *See In re W.H.G.*, 2009 WL 1684487, *3-4; Adult Certification Order, para. 78. The fifth factor, regarding the adequacy of programming or punishment in the juvenile system may also have been influenced by the judge's understanding that the killing was intentional. Indeed, in his certification order reviewing this factor, the judge referred to Grigsby's "violent nature," and concluded that the juvenile system could not adequately serve him. Adult Certification Order, para. 100. Had the judge considered the possibility that the killing was unintentional, he might have reached a different conclusion. Finally, in considering the sixth factor, whether there are appropriate dispositional options in the juvenile system, the Court considered Grigsby's therapeutic needs. This, too, may have been influenced by the understanding of the facts by the judge and assessing psychologist. If they understood Grigsby to be callously shooting at the victim, they would have evaluated his therapeutic needs differently than if he shot out of fear. Thus, all four of the factors the judge used to support the certification determination rested on the incorrect assumption that Grigsby had been involved in an intentional killing.

II. Supreme Court Jurisprudence on Adolescent Culpability, Supported by Social Science Research, Further Underscores the Importance of Providing a Hearing on the Relevant Facts when Certifying a Juvenile to Adult Court.

A. The Supreme Court has Established that Constitutional Analyses Must Account for Age

The juvenile court conducted the certification hearing under the assumption that Grigsby had been involved in intentional killing. Ultimately, however, Grigsby was convicted of an unintentional killing. The Supreme Court has recognized key distinctions between juveniles and adults which make them less culpable generally, but which are particularly important in the context of unintentional killings.

In *Graham v. Florida*, the United States Supreme Court held that the sentence of life without parole was unconstitutional under the Eighth Amendment’s ban on “cruel and unusual punishment” as applied to a juvenile convicted of violating his probation by committing an armed home invasion robbery, possessing a firearm, and associating with persons engaged in criminal activity. The Court’s analysis rested heavily on the principle that such a severe and irrevocable punishment was not appropriate for a juvenile offender who did not “kill or intend to kill.” *Graham v. Florida*, 130 S.Ct. at 2027. The Court emphasized that case law, developmental research and neuroscience all recognize that children are different from adults – they are less culpable for their actions and at the same time have a greater capacity to change and mature, and that a juvenile who doesn’t intend to kill cannot be equated with a more culpable adult murderer. *Id.* at 2026.

The *Graham* decision was rooted in the Court’s earlier analysis in *Roper v. Simmons*, 543 U.S. 551 (2005), which had held the death penalty unconstitutional as applied to juveniles. The *Graham* Court echoed the reasoning in *Roper* that three essential characteristics distinguish youth from adults for culpability purposes: youth lack maturity and responsibility, they are vulnerable and susceptible to peer pressure, and their characters are unformed. *Graham*, 130 S. Ct. at 2026 (quoting *Roper*, 543 U.S. at 569-70). Both *Roper* and *Graham* made clear that courts must give weight to these distinctions between juveniles and adults; *Graham* made explicitly clear that these distinctions were particularly salient in the context of a teenager who did not intend to kill. *Id.* at 2028 (“The case becomes even weaker with respect to a juvenile who did not commit homicide. *Roper* found that “[r]etribution is not proportional if the law’s most severe penalty is imposed” on the juvenile murderer. *Ibid.* The considerations underlying that holding support as well the conclusion that retribution does not justify imposing the second most severe penalty on the less culpable juvenile non-homicide offender.”). *See also id.* at 2027 (noting that “when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability”). Indeed, the impulsivity and susceptibility to pressure central to the *Roper* and *Graham* decisions are key to the definition of unintentional murder. Thus, an adequate certification hearing must take into account both the age of the offender and the type of offense. As the *Graham* Court explained, “It remains true that “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” *Ibid.* These matters relate to

the status of the offenders in question; and it is relevant to consider next the nature of the offenses to which this harsh penalty might apply.” *Id.* at 2027.

While *Roper* and *Graham* involved the constitutionality of the system’s harshest sentences, the death penalty and life without parole, the Supreme Court has made clear that the distinction between adolescents and adults is constitutionally relevant in a variety of contexts. In *J.D.B. v. North Carolina*, the Supreme Court explained:

Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children “generally are less mature and responsible than adults,” *Eddings*, 455 U.S., at 115–116, 102 S.Ct. 869; that they “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,” *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979) (plurality opinion); that they “are more vulnerable or susceptible to ... outside pressures” than adults, *Roper*, 543 U.S., at 569, 125 S.Ct. 1183; and so on. See *Graham v. Florida*, 560 U.S. —, —, 130 S.Ct. 2011, 2026, 176 L.Ed.2d 825 (2010) (finding no reason to “reconsider” these observations about the common “nature of juveniles”). [...] Describing no one child in particular, these observations restate what “any parent knows”—indeed, what any person knows—about children generally. *Roper*, 543 U.S., at 569, 125 S.Ct. 1183.

J.D.B. v. North Carolina, 131 S.Ct. 2394, 2403 (2011) (holding that age is relevant to the *Miranda* custody determination). More specifically, the Court has recognized these distinctions as central to questions of due process. *In re Gault*, 387 U.S. 1 (1967)..

B. Immature Decision Making May Play a Particularly Strong Role in Unintentional Killings by Adolescents.

Research on adolescent development, including both behavioral and brain imaging studies,⁴ demonstrates not only that youth make decisions differently than adults, but that the hallmarks of their decision-making impairments – impulsivity, improper calculation of risks and benefits, and heightened susceptibility to pressure – may be particularly important in the context of unintentional killings. This research further highlights the constitutional weakness in a certification hearing that failed to consider that Grigsby was convicted of unintentional killing.

Adolescent decision-making is characterized by impulsivity. A youth faced with a new type of situation may have more difficulty exercising the necessary self-control than a more experienced adult. “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*

⁴ Research on brain development demonstrates that structural distinctions between the adult and adolescent brain reflect the 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). 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.” *Id.* at 210. Adolescent decision making is therefore distinguished by not only cognitive and psychosocial, but also neurological deficits. *Id.*

Developmental Perspective on Juvenile Justice 280 (Thomas Grisso and Robert G. Schwartz eds., 2000).

Impulsivity declines steadily throughout adolescence and early adulthood, with appreciable declines evident into the mid-20s. Laurence Steinberg, *A Dual Systems Model of Adolescent Risk-Taking*, 52 DEVELOPMENTAL PSYCHOBIOLOGY 216, 220-221 (2010). Adolescent impulsivity may emerge partly in adolescents' tendency to place greater weight on immediate rewards as opposed to long-term consequences. Indeed, researchers believe that the tendency to choose small immediate rewards over larger delayed rewards declines steadily throughout adolescence. Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, 36 (2009). Adolescents are also less future-oriented than adults, exhibiting significant age differences in planning ahead (e.g., adolescents are more likely to think that planning ahead is a "waste of time"), time perspective (e.g., adolescents are more likely to report that they "would rather be happy today than take their chances on what might happen in the future), and anticipation of future consequences (e.g., adolescents are more likely to report that they "don't think it's necessary to think about every little possibility before making a decision"). *Id.* at 34. Adolescents, as a group, may therefore be less able than adults to delay gratification and consider the future, tendencies that can contribute to the performance of impulsive behaviors. 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); Marty Beyer, *Recognizing the Child in the Delinquent*, 7 Ky. Child Rts. J. 16, 17-18 (1999). These problems can be exacerbated by adolescents' unique vulnerability to pressures, including direct and indirect peer pressure. Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEVELOPMENTAL PSYCHOL. 625, 629-30 (2005). Such impulsive behaviors are logically particularly relevant to unintentional killings, conducted in the heat of the moment, as opposed to premeditated offenses.

Adolescents also lack a fully developed ability to regulate emotions. Adolescents tend to demonstrate difficulties recognizing and expressing feelings, managing their emotions, and coping with undesirable feelings. Kathleen Kemp et al., *Characteristics of Developmental Immaturity: A Cross-Disciplinary Survey of Psychologists at 15* (under review). Adolescents who suffer consistent or chronic exposure to stressful stimuli tend to demonstrate even more limited abilities to regulate emotions. Factors such as childhood maltreatment, maternal depression, exposure to violence, and economic deprivation are associated with poor emotion regulation in children and adolescents. See, e.g., Angeline Maughan & Dante Cicchetti, *Impact of Child Maltreatment and Interadult Violence on Children's Emotion Regulation Abilities and Socioemotional Adjustment*, 73 CHILD DEVELOPMENT 1525, 1534 (2002); Angeline Maughan et al, *Early-occurring Maternal Depression and Maternal Negativity in Predicting Young Children's Emotion Regulation and Socioemotional Difficulties*, 35 J. ABNORMAL CHILD PSYCHOL. 685, 695 (2007); Maughan & Cicchetti, *supra* note xxx, at 1534-35; Jungmeen Kim & Dante

Cicchetti, *Longitudinal Pathways Linking Child Maltreatment, Emotion Regulation, Peer Relations, and Psychopathology*, 51 J. CHILD PSYCHOL. & PSYCHIATRY 706, 711 (2009).

Adolescents with poor emotion regulation often demonstrate both internalizing (e.g., depression, anxiety) and externalizing (e.g., aggressive behaviors) symptoms. Kim & Cicchetti, *Longitudinal Pathways* at 2011.

Even developmentally normal impairments in decision-making--those that are typical of all adolescents--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: A Developmental Perspective on Juvenile Justice* 9-31 (Thomas Grisso and Robert G. Schwartz eds., 2000) (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). Additionally, adolescents' tendency to process information in an "either-or" capacity is exacerbated in stressful situations. See Beyer, *Immaturity, Culpability & Competency in Juveniles* at 27. Finally, because adolescents tend to discount the future and weigh more heavily the short-term risks and benefits, they may experience heightened pressure in an immediately stressful situation. See Elizabeth S. Scott, N. Dickon Reppucci & Jennifer L. Woolard, *Evaluating Adolescent Decision Making in Legal Contexts*, 19 L. & Hum. Behav. 221, 231 (1995). This susceptibility to pressure under stress is particularly relevant to Grigsby's conviction of unintentional

killing, which recognized that he reacted on impulse to a threatening situation, rather than planning an intentional killing.

Although adolescence is marked by what can be characterized as deficits in decision-making skills and emotional regulation, it is inherently transitory; this period ultimately ends as do the deficits that are uniquely associated with developmental immaturity. “The period is transitional because it is marked by rapid and dramatic change within the individual in the realms of biology, cognition, emotion, and interpersonal relationships. . . . Even the word ‘adolescence’ has origins that connote its transitional nature: it derives from the Latin verb *adolescere*, to grow into adulthood.” Elizabeth Scott & Laurence Steinberg, *RETHINKING JUVENILE JUSTICE* 31 (2008). As youth grow, so do their self-management skills, long-term planning, judgment and decision-making, regulation of emotion, and evaluation of risk and reward. Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *AM. PSYCHOL.* 1009, 1011 (2003); Thus, many of the factors associated with antisocial, risky, or criminal behavior lose their intensity as individuals become more developmentally mature.

Empirical evidence further supports this point. Psychological literature identifies a clear distinction between the many adolescence-limited offenders and the few life-course-persistent offenders. Terrie E. Moffitt, *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 *PSYCHOL. REV.* 674,

675 (1993). A recent study followed over 1000 serious male adolescent offenders (i.e., those who had committed felony offenses with the exception of less serious property crimes, and misdemeanor weapons or sexual assault offenses) over the course of three years and revealed that only 8.7% of participants were found to be “persisters.” Edward P. Mulvey et al., *Trajectories of Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, 22 DEV. PSYCHOL. 453, 462 (2010). The vast majority of youth who engage in delinquent acts desist, and “the typical delinquent youth does not grow up to become an adult criminal.” Steinberg & Scott, *Less Guilty by Reason of Adolescence* at 1015. Juveniles, even those who engage in violent crime, are capable of the rehabilitation that lies at the core of the juvenile system.⁵ Particularly in a case like Grigsby’s, his unintentional killing, despite

⁵ Although the mere process of physiological and psychological growth will rehabilitate most adolescents, more than fifteen years of research on interventions for juvenile offenders has yielded rich data on the effectiveness of programs to reduce recidivism and cut costs, underscoring rehabilitation as a realistic goal for the overwhelming majority of juvenile offenders, including violent and repeat offenders. Examples of programs shown to be effective with violent and aggressive youth include Functional Family Therapy (FFT), Multidimensional Therapeutic Foster Care (MTFC), and Multi-Systemic Therapy (MST). See Peter W. Greenwood, *Changing Lives: Delinquency Prevention as Crime-Control Policy* 70 (2006). All three have been shown to reduce recidivism rates significantly, even for serious violent offenders. See Charles M. Borduin et al., *Multisystemic Treatment of Serious Juvenile Offenders: Long-Term Prevention of Criminality and Violence* 63 J. CONSULTING & CLINICAL PSYCHOL. 569, 573 (1995) (describing the effectiveness of MST in reducing recidivism rates even for serious offenders with histories of repeat felonies); Carol M. Schaeffer and Charles M. Borduin, *Long-term follow-up to a randomized clinical trial of multisystemic therapy with serious and violent juvenile offenders*, 73 J. CONSULTING & CLINICAL PSYCHOL. 445, 449-452 (2005) (finding that the benefits of MST often extend into adulthood); W. Jeff Hinton et al., *Juvenile Justice: A System Divided*, 18 *Crim. Just. Pol’y Rev.* 466, 475 (2007) (describing FFT’s success with drug-abusing youth, violent youth, and serious juvenile offenders.); J. Mark Eddy et al., *The Prevention of Violent Behavior by Chronic*

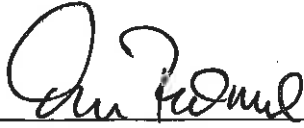
its tragic consequences, may not indicate a lack of amenability to treatment in the juvenile system. It is this determination that the Court should have provided to Grigsby to comport with the requirements of due process.

CONCLUSION

Grigsby never received a certification hearing on the facts relevant to his ultimate conviction. This deprived him not only of a chance to have the court consider the facts at issue, but also for the court to consider the relevance of his developmental stage as it relates to his amenability to treatment and culpability. Because of this denial of due process, *amicus curiae* requests that the court vacate Grigsby's conviction.

and Serious Male Juvenile Offenders: A 2-Year Follow-up of a Randomized Clinical Trial, 12 J. EMOTIONAL & BEHAV. DISORDERS 2, 2-7 (2004) (describing reduced recidivism rates for violent and chronically offending youth who participated in MTFC).

Respectfully Submitted, this 9th day of December, 2011,



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CERTIFICATE OF WORD COUNT

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The word length of this brief is 5,873 words. This brief was prepared using Microsoft Word 2010.

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APPENDIX A

Identity of Amici and Statements of Interest

Founded in 1975, **Juvenile Law Center (JLC)** is the oldest multi-issue public interest law firm for children in the United States. Juvenile Law Center works generally to advance the rights and well-being of children in jeopardy. JLC works to ensure children are treated fairly by systems that are supposed to help them. JLC also works to ensure that children's due process rights are protected at all stages of juvenile court proceedings, and that the laws policies and practices which govern the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults.

The **Campaign for Youth Justice (CFYJ)** is a national organization created to provide a voice for youth prosecuted in the adult criminal justice system. The organization is dedicated to ending the practice of trying, sentencing, and incarcerating youthful offenders under the age of 18 in the adult criminal justice system; and is working to improve conditions within the juvenile justice system. CFYJ raises awareness of the negative impact of prosecuting youth in the adult criminal justice system and of incarcerating youth in adult jails and prisons and promotes researched-based, developmentally-appropriate rehabilitative programs and services for youth as an alternative. CFYJ also provides research, training and technical assistance to juvenile and criminal justice system stakeholders, policymakers, researchers, nonprofit organizations, and family members interested in addressing the unique needs of youth prosecuted in the adult system.

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 Juvenile Defender Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. The National Juvenile Defender Center also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.