FILED
05-12-2023
CLERK OF WISCONSIN
COURT OF APPEALS

Appeal No. 2022AP000161-CR

STATE OF WISCONSIN
COURT OF APPEALS – DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAMIAN L. HAUSCHULTZ,

Defendant-Appellant.

On appeal from an order denying suppression
and from a judgment of conviction, both entered
in the Manitowoc County Circuit Court,
the Honorable Jerilyn M. Dietz, presiding.

NON-PARTY BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER AND FOURTEEN JUVENILE JUSTICE, CRIMINAL JUSTICE, CHILD WELFARE SYSTEMS, AND ADOLESCENT DEVELOPMENT EXPERTS IN SUPPORT OF DEFENDANT-APPELLANT DAMIAN L. HAUSCHULTZ

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INTEREST OF *AMICI CURIAE*

Juvenile Law Center; Barton Child Law and Policy Center, Emory Law School; The Gault Center; Center on Wrongful Convictions, Northwestern University Pritzker School of Law; Children and Family Justice Center; Issa Kohler-Hausmann, Professor of Law, Yale University; Kristin Henning, Director, Georgetown Juvenile Justice Clinic & Initiative; Youth Law Center; National Center for Youth Law; BJ Casey, PhD, Professor of Neuroscience, Barnard College - Columbia University; Dr. Arielle Baskin-Sommers, Associate Professor of Psychology and Psychiatry, Yale University; Mid-Atlantic Region of the Gault Center; Human Rights for Kids; Center for the Study of Social Policy; and Children's Defense Fund are experts on the juvenile and criminal legal systems, the impacts of adolescent brain development on behavior and decision-making, and the prevalence and impact of trauma on justice-involved youth. *Amici* urge this Court to integrate research on the impacts of adolescent brain development and trauma into its interrogation analysis for adolescents.

ARGUMENT

Decades ago, the United States Supreme Court recognized that children must be afforded special consideration during interrogations because they are more vulnerable to the pressures of interrogation than adults. *See Haley v. Ohio*, 332 U.S. 596, 599 (1948). Since then, Supreme Court jurisprudence has increasingly recognized the significance of adolescent brain development, including in the context of interrogations. *See J.D.B. v. North Carolina*, 564 U.S. 261, 272-73 (2011); *see also Roper v. Simmons*, 543 U.S. 551, 569-70 (2005); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Miller v. Alabama*, 567 U.S. 460, 471-72 (2012); *Montgomery v. Louisiana*, 577 U.S. 190, 206-208 (2016); *Jones v. Mississippi*, 141 S. Ct. 1307, 1316 (2021).

In denying the motion to suppress Damian's statements to the police, the trial court failed to recognize that "age is far 'more than a chronological fact.'" *J.D.B.*, 564 U.S. at 272 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). Damian was 14 years old during the interrogations in April 2018. (Hauschultz's Br. 10). Upheaval marked Damian's early years. Damian's biological parents separated, his mother married Tim Hauschultz, and foster siblings entered their home. (*Id.* at 8–10). Tim used abuse as discipline—forcing Damian to stand barefoot in the snow, kneel on a paint tray in the driveway, or carry logs for hours in the snow—for minor behaviors. (*Id.* at 9).

Damian's brief explains why this Court should find that Damian was in custody during the interrogations and was therefore entitled to *Miranda* warnings, and why his statements to the police were involuntary. This brief builds on Damian's brief to emphasize the impacts of Damian's brain development and trauma on the interrogations.

I. ADOLESCENT BRAIN DEVELOPMENT IMPACTS YOUTHS' DECISION-MAKING ABILITIES

During adolescence, youths' brains undergo transformative change. Adolescents' gradually developing prefrontal cortex affects decision-making, while more-rapidly developing subcortical systems cause a spike in risk-taking and emotional reactivity. B.J. Casey et al., *The Adolescent Brain*, 28 Developmental Rev. 62, 65 (2008). This mismatch in brain development drives the hallmarks of adolescence: impulsivity, risk-taking, and vulnerability to outside pressures. *See Miller*, 567 U.S. at 471 (citing *Roper*, 543 U.S. at 569).

A. Impulsive Decision-Making

The prefrontal cortex, which develops into young adulthood, regulates decision-making. Naomi Goldstein et al., *Waving Good-Bye to Waiver: A Developmental Argument Against Youth's Waiver of* Miranda *Rights*, 21 N.Y.U. J. Legis. & Pub. Pol'y 1, 20-21 (2018) [hereinafter Goldstein (2018)]. A developed prefrontal cortex enables the brain to "overrid[e] inappropriate choices and actions in favor of goal-directed ones." Casey et al., *supra*, at 65. Moreover, youth are most likely to make impulsive decisions in emotionally charged ("hot") contexts. *See* Goldstein (2018), *supra*, at 23.

B. Bias For Immediate Rewards

Risk-taking behaviors spike in adolescence as reward centers in the brain rapidly develop. Goldstein (2018), *supra*, at 21-22. These centers make youth more responsive to potential rewards and bias youth to "seek immediate, rather than long-term gains." Casey et al., *supra*, at 68. In hot contexts, youth "discount the potential for negative consequences and weigh the potential for reward more heavily than adults do, impacting their decision-making abilities." Goldstein (2018), *supra*, at 23-24.

C. Vulnerability To Adult Pressure

Research shows that adolescents ages 15 and under are more compliant with adults than are older adolescents and young adults. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333, 353 (2003). Their eagerness to please adults and obey adults' perceived desires contributes to this compliance. *See* Goldstein (2018), *supra*, at 26-27. More specifically, youth are "more easily intimidated by police power, persuasion, or coercion." Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 944 (2004).

II. TRAUMA COMPOUNDS ADOLESCENT VULNERABILITIES

"[T]rauma can exacerbate developmentally driven vulnerabilities in unique ways." Hayley M. D. Cleary et al., *How Trauma May Magnify Risk of Involuntary and False Confessions Among Adolescents*, 2 Wrongful Conviction L. Rev. 173, 177 (2021) (citing John A. Fairbank et al., *Child Traumatic Stress: Prevalence, Trends, Risk, and Impact*, in *Handbook of PTSD: Science and Practice* 121 (Matthew J. Friedman et al., eds., 2d ed. 2014)). Over 90 percent of youth involved in the justice system report having experienced trauma, with the majority reporting repeated exposures to traumatic events. *Id.* at 174 (first citing Karen M. Abram et al., U.S. Dep't of Just., *PTSD, Trauma, and Comorbid Psychiatric Disorders in Detained Youth* (2013), https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/239603.pdf; and then citing Carly B. Dierkhising et al., *Trauma Histories Among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network*, 4 Eur. J. Psychotraumatology 20274 (2013)).

Trauma can have life-long impacts on youths' brain development, functioning, and mental health. *See id.* at 174-75; *see also generally* Michael De

Belis & Abigail Zisk, *The Biological Effects of Childhood Trauma*, 23 Child & Adolescent Psychiatric Clinics N. Am. 185 (2015) (identifying the ways trauma affects brain structures and development).

A. Attention And Resilience

Research shows that "adolescents impacted by trauma experience impairments in attention, abstract reasoning, working memory, processing speed, inhibitory control, and academic abilities." Cleary et al., *supra*, at 187 (citing Helen Z. MacDonald et al., *Neuropsychological Underpinnings of PTSD in Children and Adolescents*, in *Post-Traumatic Syndromes in Childhood and Adolescence: A Handbook of Research and Practice* 113 (M.J. Friedman et al., eds., 2d ed. 2011)). During interrogations, youth with trauma histories may become inattentive and hyperactive, "impair[ing] cognitive abilities and decreas[ing] capacity to attend to and effectively process information." *Id.* at 178 (citing Mandy Habib & Victor Labruna, *Clinical Considerations in Assessing Trauma and PTSD in Adolescents*, 4 J. Child & Adolescent Trauma 198 (2011)).

Youth with trauma histories "are likely to have decreased resiliency in the interrogation room; thus, their 'breaking point'—the point at which they have become so hopeless that they will accept any escape offered by police—may come sooner and be achieved more easily by law enforcement." *Id.* at 183. Trauma may also make youth more reactive to, and more quickly depleted by environmental stressors of interrogations such as isolation and deprivation of food and sleep, regardless of the police's intent to use these stressors as interrogation tactics. *Id.* at 184.

B. Dissociation And Trauma Cues

Youth with trauma histories may respond to stress by dissociating. Bruce D. Perry, ChildTrauma Academy, *The Ten Tips Series: Understanding Dissociation* 1 (2017), https://www.azafap.org/wp-content/uploads/2019/02/Dissociation.pdf. Dissociated individuals retreat into "a disengaged, time-distorted, and pain-insensitive state." *Id.* For sensitized youth, "the simple task of getting face to face to ask them simple questions or give simple commands . . . will push them further down the dissociative continuum." *Id.* at 2. When dissociated, youth may look engaged "and act as if they are hearing, processing and ready to act on . . . instructions" but may "tune out and inefficiently process information." *Id.*

Youth with trauma histories may also experience trauma cues—"reminder[s] of a past trauma, including situations, places, people, conversations, sounds, smells, or even internal body states (like fear or tension) that bring to mind a prior traumatic event." Cleary et al., *supra*, at 182 (citing Suzanne L. Pineles et al., *Psychophysiologic Reactivity, Subjective Distress, and Their Associations with PTSD Diagnosis*, 122 J. Abnormal Psych. 635 (2013)). A trauma cue may cause "psychological distress, physiological reactions (such as shaking or nausea), intrusive memories, or even flashbacks and may respond with dramatic, unexpected behaviors." *Id.* (footnote omitted) (first citing John Briere et al., *Peritraumatic and Persistent Dissociation in the Presumed Etiology of PTSD*, 162 Am. J. Psychiatry 2295 (2005); and then citing Nnamdi Pole, *The Psychophysiology of Posttraumatic Stress Disorder: A Meta-Analysis*, 133 Psych. Bull. 725 (2007)).

C. Compliance

Youth with trauma histories may be especially compliant. *Id.* at 185-86. "[C]hronically abused children may have learned to respond to threat with 'mechanistic compliance or resigned submission,' absent other effective options to help them escape past abuse." *Id.* at 186 (quoting Bessel A. Van der Kolk, *Clinical Implications of Neuroscience Research in PTSD*, 1071 Annals N.Y. Acad. Scis. 277, 283 (2006)).

D. Perceived Threat

Youth with trauma histories may have "exaggerated reactions to perceived threat." *Id.* at 184. Because these youth may more readily read faces as angry than youth without such backgrounds, "a judge or jury viewing a videotaped confession may perceive interrogating officers as relatively benign, while the trauma-exposed adolescent may have perceived those officers as intensely angry and threatening." *Id.* at 185.

III. DAMIAN'S AGE AND TRAUMA HISTORY MADE HIS INTERROGATIONS UNCONSTITUTIONAL

Accounting for the impacts of both adolescent brain development and trauma, the court should find that (1) Damian was in custody during the interrogations and was therefore entitled to *Miranda* warnings, (2) he could not understand, appreciate, and enforce his *Miranda* rights and, therefore could not give a voluntary and informed waiver, and (3) because youths' faculties are so easily overborne by police, especially when they have a trauma history, Damian's statements to police were involuntary.[1] *See In re*

[1] While beyond the scope of this brief, research shows that time spent with an attorney is "strong predictor of [youths'] legal capacities relevant to police interrogation." Jodi L.

Jerrell C.J., 2005 WI 105, ¶101, 283 Wis.2d 145, 699 N.W.2d 110 (Abrahamson, C.J., concurring) (noting that youth under age "16 are less capable than adults of understanding their *Miranda* rights, have a propensity to confess to police, and are less capable than adults of making long range decisions." (footnotes omitted)).

A. Damian Was In Custody During The Interrogations And Entitled To *Miranda* Warnings

Under the *Miranda* custody analysis for youth, the court must ask whether a reasonable minor in the suspect's position would feel free to leave. *J.D.B.*, 564 U.S. at 275-77. Younger adolescents' tendencies to comply with authority figures, *see supra* Section I.C, make them unlikely to feel they can leave an encounter with police. *See* Saul M. Kassin et al., *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73 Am. Psych. 63, 64 (2018).

Youth with trauma histories may be even more compliant than a typical adolescent. *See supra* Section II.C. Given the prevalence of trauma among justice system-involved youth, a reasonable child in the *J.D.B.* analysis has a trauma history making them less likely to feel free to leave a police encounter.

Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact and Psychological Symptoms*, 29 L. & Hum. Behav. 723, 737 (2005). The research on justice-involved youth indicates the need for a non-waivable right for youth to speak with an attorney prior to any interrogation by police. *See* Goldstein (2018), *supra*, at 45 (identifying professional organizations that have called for youth to have an attorney present during interrogations). Three states require some or all youth be represented by counsel during interrogation. *See* 705 Ill. Comp. Stat. Ann. 405/5-170; Cal. Welf. & Inst. Code § 625.6; Md. Code Ann., Cts. & Jud. Proc. § 3-8A-14.2.

B. Damian Could Not Appreciate And Enforce His *Miranda* Rights

Even if the police had Mirandized him, Damian could not appreciate or validly waive his rights. A valid *Miranda* waiver must be knowing and intelligent. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Youth must understand and appreciate their rights and the "potential consequences of waiving those rights." Kristin Henning & Rebba Omer, *Vulnerable and Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 Ariz. St. L.J. 883, 898 (2020). Waiver must also be voluntarily— "youth must be able to overcome the inherent coerciveness of the custodial interrogation context and make a decision that is not the produce of an overborne will." *Id.* at 899. Valid waiver requires youth to simultaneously "pay attention . . ., to process and retain the warnings, to decipher the meaning of the warnings, to evaluate the significance and consequences of waiving rights, and to make a final decision about whether or not to waive the *Miranda* rights." Goldstein (2018), *supra*, at 24 (quoting Naomi E. S. Goldstein et al., *Potential Impact of Juvenile Suspects' Linguistic Abilities on* Miranda *Understanding and Appreciation*, in *The Oxford Handbook of Language and Law* 299, 307 (Lawrence M. Solan & Peter M. Tiersma eds., 2012)).

Decades of research show that younger adolescents do not understand or misunderstand their *Miranda* rights. *See generally* Naomi E. Sevin Goldstein et al., *Juvenile Offenders'* Miranda *Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 Assessment 359 (2003) [hereinafter Goldstein (2003)]; Henning & Omer, *supra*, at 897-99. For example, youth often do not understand that they are "entitled to consult with an attorney before interrogation and to have an attorney present during interrogation." Goldstein (2003), *supra*, at 366. Further, youth frequently misunderstand the words, "interrogation" and "consult,"

believing the "former to be analogous with a court hearing," and the latter to be "a simple conversation." *Id.* These misunderstandings persist despite increased depictions of *Miranda* warnings in media, suggesting "that Miranda comprehension may be a developmental skill beyond the capacity of young adolescents." *Id.*

Even older youth with a factual understanding of their rights may have "developmentally based decision-making deficits in hot contexts" that preclude intelligent waiver. Goldstein (2018), *supra*, at 26. Further, youths' susceptibility to pressure from adults heightens the chance of an involuntary waiver. *Id.* at 26-27; *see supra* Section I.C.

Trauma may further impact youths' attention, ability to process information, and tolerance for stressful situations. *See supra* Section II.A. If a young person dissociates or experiences a trauma cue during interrogation, they may not process the *Miranda* warnings. *See supra* Section II.B. Accordingly, youths' affirmative responses reflecting understanding and waiver of *Miranda* rights may not be the product of knowing and intelligent choice. Damian's youth, his history of experiencing abuse, and his trauma-related diagnosis are all consistent with difficulty understanding, appreciating, and enforcing *Miranda* rights.

C. Damian's Statements To The Police Were Involuntary

A youth's confession must not be "coerced or suggested," nor the product "of adolescent fantasy, fright, or despair." *In re Gault*, 387 U.S. 1, 55 (1967). Wisconsin courts consider the totality of the circumstances of an interrogation, "weighing the suspect's personal characteristics against the actions of the police." *State v. Moore*, 2015 WI 54, ¶56, 363 Wis.2d 376, 864 N.W.2d 827 (citing *State v. Lemoine*, 2013 WI 5, ¶18, 345 Wis.2d 171, 827 N.W.2d 589). Youth require "special care" to ensure that incriminating

statements they make during questioning are not obtained in violation of their due process rights. *See Haley*, 332 U.S. at 599 ("[W]hen . . . a mere child—an easy victim of the law—is before us, special care . . . must be used. . . . That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.").

Youths' inherent impulsivity and difficulty weighing risks impact their ability to freely and deliberately choose to make a statement to police. Youth are likely to over-value the chance that giving police information will get them out of the interrogation quickly. Goldstein (2018), *supra*, at 43; *see also supra* Section I.B. Youths' compliance with and desire to please adults also makes them likely to cede to pressure from police. *See supra* Section I.C. Further, inherently coercive and emotionally charged interrogation tactics degrade youths' ability to control their impulses, making them more likely to give involuntary statements. *See* Goldstein (2018), *supra*, at 23; *supra* Sections I.A-B.

This Court should also consider the impact of trauma history on the youth's personal characteristics and the actions of police. A significant mental health diagnosis and police exploitation of a suspect's mental state may provide a basis for a finding of involuntariness. *See Blackburn v. Alabama*, 361 U.S. 199, 207-08 (1960). Damian has a trauma and stress related disorder because of the abuse he experienced, (*see* Hauschultz's Br. 48), which impact the voluntariness of his statements.

Youth with trauma histories may be less resistant to police interrogation tactics and be overcome more easily, particularly in a stressful interrogation environment. *See supra* Section II.A. Moreover, youth with trauma histories may perceive police officers' actions as more threatening

than intended and react more strongly to that perceived threat. *See supra* Section II.D.

Finally, youths' trauma reactions may also affect how police read and respond to youth during interrogations. Trauma can make youth over- or under-reactive to interrogation tactics, leading police to misread the reactions as deception or lying and push harder. Cleary et al., *supra*, at 180-82. Interrogation techniques may cause youth to dissociate or cue past trauma, making them appear attentive and compliant even when their "processing of interactions is . . . slower, less efficient and distort[ed]." Perry, *supra*, at 2; *supra* Section II.B. Throughout his interrogations, Damian displayed signs of stress, emotional distress, and disengagement consistent with his age and trauma history. (*See* Hauschultz's Br. 13-20). In this emotionally charged state, Damian's decision-making skills and his ability to withstand pressure were significantly diminished, increasing the likelihood that his statements were involuntary in violation of due process.

CONCLUSION

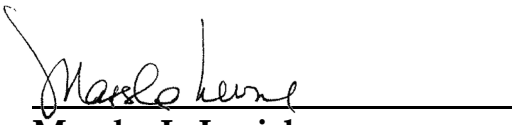
Amici respectfully request this Court reverse the circuit court's decision denying suppression of the statements Damian made in his first three interrogations.

Respectfully submitted,

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Dated: May 12, 2023

CERTIFICATION REGARDING FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Section 809.19(8)(b), (bm), and (c) for a brief produced using a proportional serif font. The length of this brief is 3,000 words.

Dated this 12th day of May, 2023.

Electronically signed by
Matthew S. Pinix

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