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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

No. 32956-9-III

IN THE COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ROBERT C.,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF

THE STATE OF WASHINGTON FOR YAKIMA COUNTY

AMICI CURIAE BRIEF OF JUVENILE LAW CENTER IN SUPPORT OF APPELLANT, ROBERT C.

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IDENTITY AND INTEREST OF *AMICI*

The identity and interest of *Amici* are set forth in *Amici's* Motion for Leave to File *Amici Curiae* Brief, filed herewith.

STATEMENT OF THE CASE

Amici curiae adopt the Statement of the Case set forth in Appellant's Opening Brief.

INTRODUCTION

Washington Courts and the United States Supreme Court are clear that age is "far more than a chronological fact," and that adolescent development is relevant to legal interpretation. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403, 180 L. Ed. 2d 310 (2011). Washington Courts have also been clear that emerging research about adolescent decision-making should be taken into account even when applying laws that went into effect years ago. *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015) (en banc). This jurisprudence highlights the importance of Washington's law establishing that a child between the ages of 10 and 12 is presumed to lack capacity to commit a crime, RCW 9A.04.050. It also clarifies the significant weight courts should give to the child's age and maturity when assessing capacity.

The trial court recognized Robert C.'s youth and immaturity; it erred when it failed to find that he lacked capacity. Moreover, Robert was

an abused child reacting to a threatening adult. When assessing whether Robert understood the wrongfulness of his actions, the trial court failed to adequately take into account the research on childhood stress disorders and the evidence of Robert's PTSD. Because Robert lacked capacity, the court should have ended the inquiry and dismissed the case. If this Court holds otherwise, however, the case should be remanded for a new adjudicatory hearing because Robert's counsel was ineffective by failing to raise self-defense. *Amici* write separately to explain why the "reasonable child" standard must be applied when a child like Robert C. raises self-defense.

ARGUMENT

I. THE STATE FAILED TO OVERCOME THE PRSUMPTION THAT ROBERT C. LACKED CAPACITY TO COMMIT A CRIME.

Washington recognizes the distinct characteristics of youth in its laws governing criminal responsibility. Children age seven and younger lack the capacity to commit a crime; children between the ages of eight and twelve are presumed to lack the capacity to commit a crime. RCW 9A.04.050; *see also State v. Erika D.W.*, 85 Wn. App. 601, 605, 934. P.2d 704 (1997). The State can only overcome this presumption by presenting clear and convincing evidence that the child understood the wrongfulness of his actions. RCW 9A.04.050.

A. Research and Law Underscore the Importance of Taking Child Development Into Account

There are seven factors used to analyze whether the State successfully rebutted the incapacity presumption: (1) the nature of the crime; (2) the child's age and maturity; (3) whether the child evidenced a desire for secrecy; (4) whether the child told the victim not to tell; (5) prior conduct similar to the conduct charged; (6) any consequences that attached to that prior conduct; and (7) whether the child has made an acknowledgement that the behavior is wrong and could lead to detention. *State v. J.P.S.* 135 Wn.2d 34, 38-9, 954 P.2d 894 (1998). While no single factor is dispositive in deciding capacity, emerging research on adolescent development, recognized by the Washington Supreme Court and the United States Supreme Court, underscores the unique importance of taking into account a young person's age and maturity.

As the United States Supreme Court has recognized, a youth's age "is far more than a chronological fact[;]...[i]t is a fact that generates commonsense conclusions about behavior and perception" that are "self-evident to anyone who was a child once himself" and are "what any parent knows—indeed, what any person knows—about children generally." *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403, 180 L. Ed. 2d 310 (2011) (citations and internal quotations omitted). In the last ten years, the United

States Supreme Court has issued four decisions that reinforce the primacy of this principle. *See id; Miller*, 132 S. Ct. at 2475 (holding that a mandatory sentence of life without the possibility of parole for a minor violates the Eighth Amendment); *Graham v. Florida*, 560 U.S. 48, 82, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) (ruling that the imposition of life without the possibility of parole on juveniles for non-homicide crimes violates the Eighth Amendment); *Roper v. Simmons*, 543 U.S. 551, 575, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (holding that the imposition of the death penalty on minors violates the Eighth Amendment). The United States Supreme Court's conclusions about adolescents' decreased maturity, decision-making capacity, and culpability, as well as their greater capacity for change, are buttressed by both developmental research and neuroscience. *J.D.B*, 131 S. Ct. at 2403. Three characteristics, recognized by the Supreme Court and supported by science, distinguish young offenders from their adult peers: they are more impulsive, more susceptible to outside pressures, and also more capable of change than adults.

As the Supreme Court has repeatedly acknowledged, "children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking." *Miller*, 132 S. Ct. at 2464 (internal citations and quotations omitted). *Accord Graham*,

560 U.S. at 68; *Roper*, 543 U.S. at 569. Research confirms that adolescents, as compared to adults, are generally less capable of making reasoned decisions and exercising judgment, particularly in stressful situations. Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008). These problems emerge in part because youth are heavily influenced by social and emotional factors, which may limit their capacity for autonomous choice. *See* Dustin Albert & Laurence Steinberg, *Judgment and Decision Making in Adolescence*, 21 J. RES. ON ADOLESCENCE 211, 217 (2011). Adolescent decision-making is also characterized by increased impulsivity, which may stem from adolescents' inability to fully anticipate the consequences of decisions or to weigh future consequences over present gratification. *See, e.g.*, Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, 29-30 (2009). Advances in neuroscience help explain adolescent impulsivity. The parts of the brain controlling higher-order functions—such as reasoning, judgment, and inhibitory control—develop after other parts of the brain controlling more basic functions (*e.g.*, vision, movement), and do not fully develop until individuals are in their early twenties. Specifically, the prefrontal cortex—the brain's "CEO" that controls important decision making processes—is

the last to develop. Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS NAT'L ACAD. SCI. 8174, 8177 (2004). Because the prefrontal cortex governs so many aspects of complex reasoning and decision making, researchers hypothesize that adolescents' undesirable behavior—risk-taking, impulsivity, and poor judgment—may be significantly influenced by their incomplete brain development. Laurence Steinberg, *A Dual Systems Model of Adolescent Risk-taking*, 52 DEV. PSYCHOBIOL. 216, 217 (2010).

Youth are also distinct from adults because of their greater susceptibility to outside pressures. "[C]hildren 'are more vulnerable . . . to negative influences and outside pressures,' including from their family and peers; they have limited 'control[] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller*, 132 S. Ct. at 2464 (alteration in original) (quoting *Roper*, 543 U.S. at 569). *Accord Graham*, 560 U.S. at 68. These findings, too, are widely confirmed in the social science literature. Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1012 (2003); Richard J. Bonnie et al., *Reforming Juvenile Justice: A Developmental Approach* 91, 91 (2013).

Finally, children are uniquely capable of growth and change. "[A] child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].'" *Miller*, 132 S. Ct. at 2464 (*citing Roper*, 543 U.S. at 570) *See also Graham*, 560 U.S. at 68 (as a consequence of their unique developmental attributes, "juveniles have lessened culpability" and "are less deserving of the most severe punishments."). Research likewise supports these conclusions. It is well known that "[adolescence] is transitional because it is marked by rapid and dramatic change within the individual in the realms of biology, cognition, emotion, and interpersonal relationships." Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 32 (2008). "Most teenagers desist from criminal behavior . . . [as they] develop a stable sense of identity, a stake in their future, and mature judgment." Scott & Steinberg, *supra*, at 53. *See also* Bonnie et al., supra, at 90 ("the period of risky experimentation does not extend beyond adolescence, ceasing as identity becomes settled with maturity.").

Ten-year-olds like Robert are especially unable to engage in the types of reasoning contemplated by the criminal justice system, such as rational decision-making and anticipation of consequences. Researchers have found that even children ages 11-13 are "as impaired in capacities relevant to adjudicative competence as are seriously mentally ill adults"

who would not be found competent to stand trial. Younger children are less likely to recognize risks and long-range future consequences than teenagers only a few years older. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants,* 27 L. & HUM. BEHAV. 333, 356 (2003).

B. In Light of the Differences Between Children and Adults, this Court Should Weigh Factors Relating to Age and Maturity Heavily in Evaluating Capacity

In *State v. O'Dell,* the Washington Supreme Court relied upon recent United States Supreme Court jurisprudence to conclude that adolescent development should be taken into account in sentencing, even for a defendant who had just turned 18. *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015) (en banc). The Court emphasized the legal relevance of the "fundamental differences between adolescent and mature brains" in risk assessment, impulse control, tendency toward antisocial behaviors, and susceptibility to peer pressure. *Id. See also State v. S.J.C.*, 183 Wn.2d 408, 428, 352 P.3d 749 (2015).

The Court made clear that even pre-existing legislation must be interpreted in light of new research and case law on adolescent development. According to the Court, because the statute predated *Roper* by 25 years, the legislature "did not have the benefit of psychological and neurological studies showing that the 'parts of the brain involved in

behavior control' continue to develop well into a person's 20s." when it enacted the sentencing law at issue. *O'Dell*, 183 Wn.2d at 680. (internal citations omitted). The Court concluded that

> [i]t is precisely these differences [between youth and adults] that might justify a trial court's finding that youth diminished a defendant's culpability, and there was no way for our legislature to consider these differences when it made the SRA sentencing ranges applicable to all offenders over 18 years of age.

Id.

The incapacity statute here, RCW 9A.04.050, did recognize developmental differences between youth and adults, even when first enacted in 1975. Indeed, the Washington Supreme Court has long made clear that the purpose of the statute is "to protect from the criminal justice system those individuals of tender years who are less capable than adults of appreciating the wrongfulness of their behavior." *State v. Q.D.*, 102 Wn.2d 19, 23, 685 P.2d 557, (1984) (en banc). Recent Washington and United States Supreme Court case law highlighting the importance of adolescent development, however, clarify that the question of a child's maturity is of utmost importance in this analysis. Thus, the maturity prong in the seven factor capacity test should be weighted heavily. In addition, the child's age and developmental maturity should be considered, when relevant, in assessing the other factors.

1. Evidence that Robert C. had the Maturity of an Average Ten-Year-Old Weighs Heavily Against a Finding of Capacity

Washington law presumes that children under the age of 12 lack criminal capacity. In order to overcome this presumption, the State must present clear and convincing evidence that the child understood the wrongfulness of his conduct; therefore, the child must have a greater level of understanding of the wrongfulness of his conduct than would be typical of a child under the age of 12. In this case, the trial court correctly found that Robert did, in fact, have a maturity level "right on for a ten year old." RP 46. In addition, the State's expert witness stated he "d[i]dn't know any ten year olds that are mature." RP 31.

Given the emphasis on adolescent development recognized in Washington and United States Supreme Court law, and the stark differences between 10 year olds and adults recognized in the research, the inquiry into Robert C's capacity should have ended there, and the case should have been dismissed. The court mistakenly utilized the State's arguments on the other six factors to overcome the presumption of incapacity. As discussed below, all of the factors in this case, when considered in light of research and jurisprudence on child development, weigh against the court's finding of capacity.

2. Evidence that Robert C. was a Traumatized Child Weighs Against a Finding of Capacity

Robert's trauma history and symptoms are relevant to assessing four of the factors the State needed to prove to overcome the presumption of incapacity: the nature of the crime, prior conduct similar to the conduct charged, any consequences that attached to that prior conduct, and any acknowledgement of wrongdoing. *J.P.S.*, 135 Wn.2d at 38-9. The "perpetrator" of the charged assaults in this case was a severely traumatized and abused ten-year-old child, and the "victims" were his abusive adult relatives. Not one of the alleged victims was harmed, and there was no evidence of premeditation or a plan. Robert's brandishing of a small paring knife was an impulsive reaction of an abused child responding to a threatening adult.

The record reflects Robert's long history of exposure to complex trauma. Robert was constantly beaten by his father, as confirmed by his mother, Tina Collins. RP 106. Robert's mother emphasized the scope of the abuse: "[Robert's father] . . . abused him in all ways that—some things we don't even know went on with [Robert] and his father." RP 106. Robert's aunt, Karissa Ratcliff confirmed this, describing Robert's father as "an abusive jerk." RP 139. Robert's aunt Karissa, with whom Robert lived and an alleged victim in this incident, also verbally and physically

abused Robert. Karissa herself testified that just before the alleged assault, Karissa knocked the bucket he was sitting on "out from under him," causing Robert to fall on the ground. RP 123. She then told Robert to "get off your ass," RP 123, told him he needed to "get [his] fucking ass outside," RP 125, and "[got] in his face." RP 126.

Robert suffered from post-traumatic stress disorder caused by his history of abuse. RP 33. Robert's mother testified to Robert's tendency to become aggressive when physically abused or disciplined "because he's trying to protect himself." RP 107. Another aunt and complaining witness who was present, Irene Smith, explained Robert's behavior by saying Robert "thought I was going to hit him." RP 84. The State's expert witness confirmed this explanation for Robert's anger and behavior, stating that he believed it was "spot on" that Robert's anger was a result of the abuse Robert suffered by his family. RP 29.

Emerging bodies of research show that childhood and adolescent exposure to trauma, and especially repeated exposure to serious harm, such as witnessing or being a victim of violence or physical abuse, can cause changes to both brain and body, and can dramatically affect adolescent behavior. *See* Sandra L. Bloom, M.D., *Laying the Groundwork: The Impact of Trauma on Brain Development, Presentation to the Juvenile Law Center Trauma and Resilience Convening* (Jan. 28,

2013). *See also* Danya Glaser, *Child Abuse and Neglect and the Brain—A Review*, 41 J CHILD PSYCHOL. & PSYCHIATRY 97 (2000) (examining impairments of the developing brain attributable to, or caused by, abuse and neglect). Children who have been exposed to significant trauma, particularly those like Robert who have suffered ongoing trauma at the hands of their caregivers, may have trouble assessing and interpreting another individual's emotions. They often misread cues and incorrectly believe that another person is angry or threatening even when they are not. This, in turn, leads to behavior problems as they attempt to protect themselves from perceived threats. *Id.*; *see, e.g.*, Bessel van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* (2014) (explaining how trauma literally "rewires" the brains of children as to fear, trust, self-control, and other emotions and reactions). Moreover, all children, even those with no history of trauma, may act out in emotionally charged situations. Bonnie et al., *supra*, at 91.

The "nature of the crime" in this case was a child's frightened reaction to both physical and verbal abuse. His reaction was typical of children in his situation. To the extent that Robert had engaged in similar behavior while living in Montana – which has not been proven by clear

and convincing evidence[1]– this, too, is consistent with the demonstrated heightened arousal and reactivity of abused children, rather than the knowing behavior that would overcome a presumption of incapacity. Further, research has shown that children age 13 and under have great difficulty understanding the legal process and legal consequences. Grisso et al., *supra*, at 357. This developmental fact undermines the trial court's reliance on Robert's past court involvement to show that he understood the wrongfulness of his actions.

Robert's trauma history is also relevant to the analysis of whether Robert was taught such conduct was wrong, and whether he acknowledged that it was wrong. As Robert's brief makes clear, there was no clear and convincing evidence that Robert was previously taught that his behavior was wrong, Appellant's Opening Brief at 18-19, 21-22, or that he made an admission of wrongdoing.[2] Where children have not been taught to appreciate the wrongfulness of their conduct, a higher degree of proof is required to show the children understand the wrongfulness of their acts. *See, e.g.*, *State v. Ramer*, 151 Wn. 2d 106, 115, 86 P.3d 132 (2004). Indeed, even an admission by a child that an action is "bad" does not

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[1] No evidence of the specific nature or circumstances of the prior incidents or of the court process was introduced, Appellant's Opening Brief at 21.
[2] "I don't think in reading the police reports or anything in this particular instance there was a direct admission." RP at 49.

overcome the presumption of incapacity. *See, e.g.*, *J.P.S.,* 135 Wn.2d at 44. Moreover, for a traumatized child, even evidence that the child had an abstract understanding of right and wrong, should not necessarily support a finding of capacity. A child who has experienced traumatic stress will typically have trouble understanding such ideals of right or wrong at a moment of heightened stress unless he or she is provided with safety from abuse, and the tools to appropriately manage behavior and cope with symptoms of PTSD and hyper-arousal. *See, e.g.*, The National Child Traumatic Stress Network, *Effective Treatments for Youth Trauma* (2003), available online at http://nctsn.com/sites/default/files/assets/pdfs/effective_treatments_youth_trauma.pdf.

In light of adolescent development, and in particular, the development of a child exposed to trauma, factors (1) (the nature of the crime), (5) (prior similar conduct), (6) (consequences attached to prior conduct), and (7) (acknowledgement of the wrongfulness of the behavior) all weigh against a finding that Robert understood the wrongfulness of his actions. [3]

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[3] The court was required to examine and weigh seven factors. While it is beyond the scope of this brief to explore each factor in detail, the only factors not discussed above are (3) whether the child evidenced a desire for secrecy, and (4), whether the child admonished the victim not to talk. This case is clearly distinct from the type of

II. THE "REASONABLE CHILD" STANDARD MUST BE APPLIED TO A JUVENILE RAISING SELF-DEFENSE.

Even if this Court finds that Robert did have capacity, the case must be remanded for a new adjudicatory hearing because Robert's counsel provided ineffective assistance of counsel by failing to raise the issue of self-defense. *See* Appellant's Opening Brief at 23. *Amici* write separately to explain why the "reasonable child" standard must be applied when a child like Robert C. raises self-defense.

A. Washington's Self-Defense Standard Emphasizes the Juvenile's "Reasonable Belief" That He is Threatened

Washington law recognizes self-defense as a complete and affirmative defense to offenses against other persons. The use of force is justified "[w]henever used by a party about to be injured . . . in preventing or attempting to prevent an offense against his or her person" and when "the force is not more than is necessary." RCW 9A.16.020. The defendant

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premeditated attempts at secrecy the Washington Supreme Court has held persuasive in overcoming the presumption of incapacity. For example, the Court has found sufficient evidence of capacity where an 11-year-old child committed indecent liberties on a 4-year-old. The court held that the juvenile respondent understood the act of indecent liberties and knew it to be wrong based in part on the fact that the respondent waited until she and the victim were alone, and then admonished the victim not to tell anyone what happened. *See State v. Q.D.*, 102 Wn.2d 19, 27, 685 P.2d 557 (1984) (en banc). In contrast, simply taking a younger child to a private location before a sexual assault, without admonishing the victim to remain silent about it, is not sufficient evidence of an attempt at secrecy to overcome the presumption. *See, e.g.*, *J.P.S.*, 135 Wn.2d at 43. Robert C. did not seek secrecy after the crime. He did not hide the alleged weapon, or tell anyone not to mention the incident. RP 47. Therefore, the secrecy factors also point against a finding of capacity.

must be reasonable in (1) the belief that force is needed to protect the defendant from injury; and (2) the amount of force used. *See State v. L.B.*, 132 Wn. App. 948, 953, 135 P.3d 508 (2006). Once the defendant raises "credible evidence tending to prove self-defense," the burden "shifts to the State to prove the absence of self-defense beyond a reasonable doubt." *State v. Graves*, 97 Wn. App. 55, 61-2, 982 P.2d 627 (1999).

To raise the issue of self-defense, "a defendant must produce evidence showing that he or she had a good faith belief in the necessity of force and that that belief was objectively reasonable." *State v. Dyson,* 90 Wn. App. 433, 438–39, 952 P.2d 1097 (1997). Evidence of self-defense is viewed "from the standpoint of a reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees." *State v. Janes*, 121 Wn.2d 220, 238, 850 P.2d 495 (1993) (*see also State v. Allery,* 101 Wn.2d 591, 594, 682 P.2d 312 (1984) ("The justification of self-defense must be evaluated from the defendant's point of view as conditions appeared to [him] at the time of the act.") Washington law is clear that "[n]ecessity must . . . be considered by the jury standing in the shoes of the defendant." *State v. Fischer*, 23 Wn. App. 756, 759, 598 P.2d 742 (1979) (quoting *State v. Bailey*, 22 Wn. App. 646, 591 P.2d 1212 (1979)).

"This approach incorporates both subjective and objective characteristics." *Graves*, 97 Wn. App. at 62 (*citing Janes*, 121 Wn.2d at

238). On this basis, Washington courts have held that evidence of battered women's syndrome and battered child syndrome are generally admissible in self-defense cases "to illustrate and explain the reasonableness of the defendant's actions. The testimony may serve to explain a defendant's perception of threat and the reasonableness of the force employed in self-defense against that threat." *State v. Hendrickson*, 81 Wn. App. 397, 402, 914 P.2d 1194 (1996) (internal citations omitted). *See also Janes*, 121 Wn.2d at 238-39 ("the jury is to consider the defendant's actions in light of *all* the facts and circumstances known to the defendant, even those substantially predating the killing. . . [T]he jury is to inquire whether the defendant acted reasonably, given the defendant's experience of abuse.... [I]t can then properly assess the reasonableness of the defendant's perceptions of imminence and danger.").

The decision to act in self-defense involves exactly the type of decision-making most challenging to adolescents: decisions made in a split-second during a time of stress and fear. While an adult might identify additional options in such a stressful situation, a young person may not have the capacity to do so. Because the defense rests on the juvenile's "reasonable belief" that he needed to act to protect himself, it is inextricably intertwined with his immature judgment and decision-making

capabilities. Therefore, the "reasonableness" of a child defendant's actions must be measured against the standard of other children, not of adults.

B. The "Reasonable Child" Standard Applied by the U.S. Supreme Court and Washington Case Law in Other Criminal Law Contexts Should Inform the Standard for Self-Defense

In *J.D.B. v. North Carolina,* the U.S. Supreme Court held that courts must apply a "reasonable child" standard when determining whether a juvenile suspect would "have felt he or she was. . . at liberty to terminate the interrogation and leave" for purposes of *Miranda v. Arizona*. *J.D.B.*, 131 S. Ct. at 2404, 2407 (quoting *Thompson v. Keohane*, 516 U.S. 99, 112, 116 S. Ct. 457, 133 L. Ed. 2d 383 (1995)). The broad applicability of the holding is supported by the Court's recognition of the longstanding legal distinctions between children and adults. The Court noted, for example, that "the legal disqualifications placed on children as a class—*e.g.*, limitations on their ability to alienate property, enter a binding contract enforceable against them, and marry without parental consent—exhibit the settled understanding that the differentiating characteristics of youth are universal." *J.D.B.*, 131 S. Ct. at 2403-04. The Court also observed that "'[a]ll American jurisdictions accept the idea that a person's childhood is a relevant circumstance' to be considered" in the context of tort law, *id.* at 2404 (quoting Restatement (Third) of Torts § 10, cmt. *b,* p. 117 (2005)); in fact, a child is defined as "a person of such immature years

as to be incapable of exercising the judgment, intelligence, knowledge, experience, and prudence demanded by the standard of the reasonable man applicable to adults." Restatement (Second) of Torts § 283A cmt. *a* (1965).

Washington first recognized the "reasonable child" standard decades before *J.D.B.* In *State v. Marshall*, the Court of Appeals held that the statute defining criminal culpability unambiguously used the standard of "reasonable man 'in the same situation,'" and that "the juvenile status of a defendant is part of his situation and relevant to a determination of whether he acted reasonably." *State v. Marshall*, 39 Wn. App. 180, 183, 692 P.2d 855 (1984) (applying the reasonable child standard to find that a 15-year-old convicted of first-degree manslaughter acted recklessly.). The use of the "reasonable child" standard has been affirmed by Washington courts, particularly when determining whether the behavior of a juvenile was negligent or reckless. *See, e.g.*, *Bauman by Chapman v. Crawford*, 104 Wn.2d 241, 248, 704 P.2d 1181 (1985) (en banc) ("violation of a relevant statute [by a minor] may be considered as evidence of negligence only if the jury finds that a reasonable child of the same age, intelligence, maturity and experience as [minor] would not have acted in violation of the statute under the same circumstances."). It follows logically that the same standard must be applied in the context of self-defense, which also

concerns the reasonableness of the individual's actions. As *J.D.B.* explained, to ignore the defendant's age when applying a reasonable person standard would be "nonsensical." *J.D.B.*, 131 S. Ct. at 2405.

J.D.B.'s "reasonable child" approach is part of a broader recognition by the United States Supreme Court that adolescence is relevant to culpability. *See supra*, Section I.A.1.a. *See also Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005); *Miller v. Alabama,* 132 S. Ct. 2455 (2012). Washington courts have similarly recognized the diminished decision-making capacity of juveniles. *See, e.g.*, *State v. Ronquillo*, No. 71723-5-I, 2015 WL 6447740, at *3 (Wash. Ct. App. Oct. 26, 2015) ("The constitutional difference [between juveniles and adults] arises from a juvenile's lack of maturity, underdeveloped sense of responsibility, greater vulnerability to negative outside influences, including peer pressure, and the less fixed nature of the juvenile's character traits."). In fact, the Supreme Court of Washington has gone even further than the U.S. Supreme Court in recognizing that youth age 18 and above continue to display the "distinctive attributes of youth" rather than the characteristics of mature adults. *State v. O'Dell*, 183 Wn.2d 680.

"[C]riminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham,* 560 U.S. at

76. Because "children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them," *J.D.B.*, 131 S. Ct. at 2403, failure to account for such categorical distinctions could lead to highly problematic results. A reasonable *blind* suspect cannot be expected to analyze a situation based on visual cues he cannot see. Similarly, a reasonable *child* cannot be expected to make a decision to act in self-defense based on decision-making skills he has not yet developed. *See Yarborough v. Alvarado*, 541 U.S. 652, 674, 124 S. Ct. 2140, 158 L. Ed. 2d 938 (2004) (Breyer, J., dissenting).

In this case, ten year old Robert reasonably believed he was in danger from his aunt: he was a child who only moments before had been slapped by one of his adult relatives, RP 60, and had a bucket knocked out from under him, RP 123, and who had suffered years of physical abuse. RP 106. [4] Robert was caught in a situation in which his developmental status was key; being threatened and assaulted by his aunt "overwhelmed" him and plainly affected his decision-making process. Decades ago, the United States Supreme Court admonished that "[a child] cannot be judged by the more exacting standards of maturity. That which would leave a man

[4] Robert C.'s extensive history of physical abuse can also be considered as a factor in analyzing his claim of self-defense. *Janes*, 121 Wn.2d at 238-39.

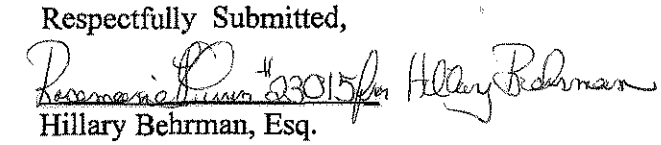
cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces." *Haley v. Ohio,* 332 U.S. 596, 599, 68 S. Ct. 302, 92 L. Ed. 224 (1948) (plurality opinion). Failure to take Robert's age and immaturity into account would itself lead to a crisis of extreme proportions in our justice system.

CONCLUSION

Robert C. is a ten-year-old child who is presumptively without capacity to commit a crime under Washington law. The state failed to overcome this presumption with clear and convincing evidence. Given federal and Washington state jurisprudence, common law tradition, and the settled research concerning adolescent development, this Court should find that Robert lacked capacity to commit a crime. Even if this Court finds otherwise, the failure of Robert's counsel to raise self-defense constituted ineffective assistance of counsel, which requires that Robert's case be remanded for a new adjudicative hearing with competent counsel and where self-defense must be analyzed under the standard of a "reasonable juvenile." To do otherwise would be to disregard the Court's admonition that the difference between children and adults is "a reality that courts cannot simply ignore." *J.D.B.,* 131 S. Ct. at 2406. Therefore, *amici* respectfully request that this Court dismiss this case or, in the

alternative, reverse and remand for a new adjudicatory hearing in keeping with these legal standards.

Respectfully Submitted,



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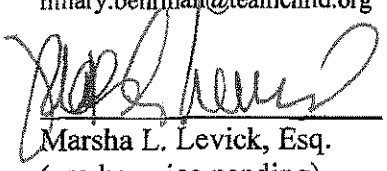

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Dated: December 8th, 2015

DECLARATION OF DOCUMENT FILING AND SERVICE

I, Hillary Behrman, declare that on this 8th day of December, 2015, I caused the original *AMICI CURIAE* BRIEF OF JUVENILE LAW CENTER to be hand delivered to the Court of Appeals, Division III, of the State of Washington, and a true copy of the same to be served by email on the following:

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