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JUVENILES

J.D.B. v. North Carolina: The U.S. Supreme Court Heralds The Emergence of the 'Reasonable Juvenile' in American Criminal Law

By Marsha Levick

In just six years, the U.S. Supreme Court has gone from an expected hard sell on the elimination of the juvenile death penalty to a ready willingness to ground constitutional principles in well-established scientific knowledge. Indeed, in its decision this past term in *J.D.B. v. North Carolina*,[1] the court reduced the vast body of research on the distinctive characteristics between juveniles and adults that had informed its decisions in the past to a one-sentence footnote,[2] all but signaling the end of the debate about whether youth status matters in American constitutional law. Stating ''we cannot agree'' with North Carolina's assertion that a child's age has no relevance to the *Miranda v. Arizona*[3] custody analysis, the majority, in an opinion written by Justice Sonia Sotomayor, waved away the doubters and said, in essence, ''Duh!''

Beginning with its 2005 decision in *Roper v. Simmons*,[4] the court has issued three landmark decisions in the past six years that profoundly alter the status and treatment of children in the justice system. *Roper* abolished the juvenile death penalty under the Cruel and Unusual Punishments Clause of the Eighth Amendment. In 2010, in *Graham v. Florida*,[5] the court declared that a sentence of life without parole imposed on a juvenile convicted of a nonhomicide offense was likewise unconstitutional under the Eighth Amendment. And this past term, the court ruled that the *Miranda* custody test can readily include consideration of a child's age without remaking or undermining the ''objective'' nature of that test, which has been used by law enforcement for more than 40 years.

[1] 131 S. Ct. 502, 89 CrL 463 (2011).

[2] Id., slip op. at 9, n. 5 (2011).
[3] 384 U.S. 436 (1966).
[4] 543 U.S. 551, 76 CrL 407 (2005).
[5] 130 S. Ct. 2011, 87 CrL 195 (2010).

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While the road looks smooth in retrospect, the rapid transformation of the justice system reflected in these three decisions was hardly a foregone conclusion.

Unexpected Turn of Events

In 2004, advocates who were both preparing for legal arguments before the Supreme Court in *Roper v. Simmons* and coordinating a media campaign in advance of the arguments had a to-do list. At or near the top of that list was the need to demonstrate a solid research foundation for the seemingly obvious argument that ''kids are different.'' Obtaining a reversal of the court's 1989 decision in *Stanford v. Kentucky*,[6] where the court last rejected a challenge to the death penalty for 16- and 17-year-old youth, would likely stand or fall on two key factors: movement in the state legislatures in the 15 years since *Stanford* had been decided and the growing body of research on adolescent development that showed pronounced differences between juveniles and adults with respect to psychosocial development, among other things.

Well-crafted briefs by the medical, scientific, advocacy, and international law communities, as well as others, led to the court's stunning reversal of *Stanford* in *Roper*, declaring an end to the imposition of the death penalty on offenders who committed their crimes before reaching 18. The Supreme Court was explicit in its reliance on developmental research. Citing studies referenced in amicus briefs of both the American Medical Association and the American Psychological and Psychiatric Associations, the court noted three characteristics of youth that supported its rejection of the juvenile death penalty:

- youth are immature and fail to demonstrate mature judgment;
- youth are more susceptible to peer pressure, particularly negative peer pressure; and
- youth is a transient characteristic, providing adolescent offenders with a greater capacity than adult offenders for rehabilitation and reformation of their characters.

Five years after *Roper*, the Supreme Court ruled in *Graham* that juvenile offenders convicted of nonhomicide offenses may not be sentenced to life without parole. Again declaring an adult sentence imposed on juveniles violative of the Eighth Amendment ban on cruel and unusual punishment, the court reiterated its findings about youth in *Roper* and noted that the developmental research cited there was now corroborated by neuroscientific research that graphically illustrated, through brain imaging techniques, the continuing development of key parts of the human brain throughout adolescence and into young adulthood.

Science was building on its base of knowledge about adolescents, and the research was pointing in only one direction: Youths' judgment is inherently compromised by their age and place along the developmental continuum, and their immaturity, while leading to impulsivity, also indicates their ability to grow and mature in the future.

This past term in *J.D.B.*, the court was presented with a question it was asked to consider in 2004 in *Yarborough v. Alvarado*[7] about the relevance of age to the *Miranda* custody analysis. *Alvarado* came to the court on a writ of certiorari by the state of California from a decision of the U.S. Court of Appeals for the Ninth Circuit. The court of appeals had ruled, in a federal habeas proceeding under the Antiterrorism and Effective Death Penalty Act of 1996, that the state courts had wrongly concluded that Alvarado's age at the time of his police interrogation was irrelevant to the determination of whether he would have felt free to terminate the questioning, and it ordered the state court to reconsider its ruling on Alvarado's motion to suppress.

Alvarado was 17 at the time of the interrogation. During the course of the interrogation he confessed to his participation in a homicide but was not given *Miranda* warnings prior to making a statement to the police.

In overruling the Ninth Circuit, the Supreme Court held that a state court decision that failed to take account of the juvenile's age as part of the *Miranda* custody analysis was not ''objectively unreasonable'' under the deferential standard of AEDPA. ''Whether the [state court] was right or wrong is not the pertinent question under AEDPA,'' it said, citing *Renico v. Lett*.[8] While the court in *Alvarado* acknowledged that accounting for a juvenile's age under *Miranda* ''could be viewed as creating a subjective inquiry,'' the court did not address whether such a view ''would be correct under law.'' Indeed, Justice Sandra Day O'Connor, in her concurrence, acknowledged that a suspect's age might indeed be relevant to the ''custody'' inquiry.

While *Alvarado* has been mistakenly cited by some commentators as a decision on the merits in which the court definitively declined to count age among *Miranda*'s objective factors, the court in *J.D.B.* made clear it was considering the issue de novo this past term.

In-School Interview

J.D.B., a 13-year-old middle school student in Chapel Hill, N.C., was removed from his classroom by a uniformed police officer and escorted to a conference room. There he was interrogated by the uniformed officer, a school resource officer, the assistant principal, and an adult administrative intern for approximately 30 to 45 minutes. The door to the conference room was

[6] 492 U.S. 361 (1989).

[7] 541 U.S. 652, 75 CrL 191 (2004).

[8] 130 S. Ct. 1855, n. 3, 87 CrL 139 (2010).

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closed. J.D.B. was questioned about recent break-ins in his neighborhood in which some items were taken. J.D.B. was not advised that he was free to leave the room or end the interrogation, nor was he advised of his *Miranda* rights at the outset of the interview. During the course of the interrogation, the assistant principal urged J.D.B. to ''do the right thing,'' warning him that ''the truth always comes out in the end.''

As J.D.B. became increasingly aware through the officer's questions and comments that he might be placed in juvenile detention, he confessed to the officer that he and a friend were responsible for the break-ins. Only at this point did the officer tell J.D.B. he did not have to answer the officer's questions and he was free to leave. J.D.B. indicated he understood his rights, provided further details to the officer, and ultimately drafted a written statement. J.D.B. was permitted to return home at the end of the school day.

J.D.B. was charged in juvenile court with breaking and entering and larceny. His lawyer moved to suppress his statement to the officer obtained during the interrogation at school, arguing that J.D.B. had been interrogated in a custodial setting without being first provided *Miranda* warnings. The juvenile court denied the motion, finding J.D.B. was not ''in custody'' for purposes of *Miranda* during the interrogation at school.

A divided panel of the North Carolina Court of Appeals affirmed.[9] The North Carolina Supreme Court likewise affirmed, over two dissents, adopting the lower court's finding that J.D.B. was not in custody and expressly ''declin[ing] to extend the test for custody to include consideration of the age . . . of an individual subject to questioning by police.''[10]

The U.S. Supreme Court reversed. The court held that ''so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test.'' The court was emphatic in its assessment of youth as a fact that ''generates commonsense conclusions about behavior and perception,''[11] and it said such ''conclusions'' are ''self-evident to anyone who was once a child himself, including any police officer or judge.'' The court wrote:

> In short, officers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age. They simply need the common sense to know that a 7-year-old is not a 13-year-old and neither is an adult.

Importantly, the court wrapped its ''commonsense'' approach in both the research that had guided its prior rulings in *Roper* and *Graham* and the preceding decades of Supreme Court caselaw that has consistently recognized the link between juvenile status and legal status. Referencing these prior decisions, the majority reminded us that '' '[o]ur history is replete with laws and judicial recognition' that children cannot be viewed simply as miniature adults.''[12]

The court's observation that age yields ''objective conclusions'' about youth's susceptibility to influence or outside pressures was drawn directly from cases like *Roper* and *Eddings*, cases that relied on research that confirmed widely held assumptions about youth. As the court noted:

> The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them . . . (citations omitted). . . . Like this Court's own generalizations, the legal disqualifications placed on children as a class . . . exhibit the settled understanding that the differentiating characteristics of youth are universal.

Underscoring the relevance of these demonstrated differences, the court rejected the arguments of the state and the dissent that allowing consideration of age to inform the custody analysis would undercut the intended ''clarity'' of the *Miranda* test. Instead, the majority noted that ''ignoring a juvenile defendant's age will often make the [*Miranda*] inquiry more artificial . . . and thus only add confusion.'' The court faulted the state's and the dissenters' argument that *Miranda* works only with a ''one size fits all'' analysis, and it insisted that age is both a relevant and an objective circumstance that cannot be excluded from the custody analysis ''simply to make the fault line between custodial and non-custodial 'brighter.' ''

The court recognized, as it did in *Miranda*, that ''the inherently coercive nature of custodial interrogation 'blurs the line between voluntary and involuntary statements,' ''[13] and that *Miranda* offers ''a set of prophylactic measures designed to safeguard the constitutional guarantee against self-incrimination.'' The *Miranda* custody test is necessary ''precisely because the voluntariness test is an inadequate barrier when custodial interrogation is at stake,'' it said, citing *Miranda*.[14]

The court was plainly mindful that custodial interrogation can be so coercive as to ''induce a frighteningly high percentage of people to confess to crimes they never committed.''[15] The need for heightened concern for safeguarding the rights of juvenile suspects in particular informed the court's opinion. As the court stated, ''The risk is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile.''[16]

Lastly, the court tied its ruling to the accepted view in ''[a]ll American jurisdictions . . . that a person's childhood is a relevant circumstance'' in ascertaining what the so-called reasonable person would have done in the particular circumstance at issue.[17] The court noted that the common law has reflected the reality that children are not adults and that questions of liability routinely take proper account of age. The court distinguished age from ''other personal characteristics that, even when known to police, have no objectively discernible relationship to a reasonable person's understanding of his freedom of action.'' The court concluded:

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[9] *In re J.D.B.*, 674 S.E.2d 795 (2009).
[10] *In re J.D.B.*, 686 S.E.2d 135, 140 (2009).
[11] Quoting *Alvarado*, 541 U.S. at 674 (Breyer, J. dissenting).
[12] Citing *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982).
[13] Citing *Dickerson v. United States*, 530 U.S. 428, 435, 67 CrL 455 (2000).
[14] 384 U.S. at 458.
[15] Citing *Corley v. United States*, 131 S. Ct. 2139, 85 CrL 35 (2009).
[16] Citing Brief for Center on Wrongful Convictions of Youth et al. as Amici Curiae 21-21.
[17] Citing *Restatement (3d) of Torts* § 10, Comment b., p. 117 (2005).

> To hold, as the State requests, that a child's age is never relevant to whether a suspect has been taken into custody—and thus to ignore the very real differences between children and adults—would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults.

Ramifications of *Roper*, *Graham*, and *J.D.B.*

The *J.D.B.* court thus opened the door to a broader examination of age in other contexts, with potentially far-reaching implications for children involved in the justice system.

There are many other situations in which a ''reasonable person'' or ''reasonableness'' test is used to determine either the legality of the conduct or the blameworthiness of the individual in the criminal law. The degree to which these determinations must now yield to consideration of the age of the individual in question is likely to be one of the next frontiers in the shifting boundaries between children and adults in American law generally and in criminal law specifically.

Historically, questions of ''reasonableness'' have served to either excuse criminal conduct or mitigate criminal conduct. Self-defense may be an absolute defense to criminal responsibility; on the other hand, ''heat of passion'' may mitigate and reduce the degree of homicide with which an individual is charged, but it does not eliminate criminal liability entirely.[18] The developing body of Supreme Court jurisprudence on youth status suggests that age—or youth—should also serve to excuse or mitigate criminal responsibility, consistent with empirical research about certain categorical assumptions we may legitimately make about children and adolescents.

Examples abound where the characteristics of youth might dictate a different view of the ''reasonableness'' of the defendant's conduct, his capacity or mental state, or otherwise require different treatment of youth. These include such matters as self-defense, duress, provocation, negligent or reckless homicide, voluntariness of waivers of rights, arrest and intent generally, strict liability and accomplice liability, and jury instructions. Many of these purport to ascribe blame or degree of blame, or to determine outcomes, on the basis of either an objective test or a test with both subjective and objective components.

In any case, unless courts adopt a test or measure that accounts for the settled characteristics of youth, children ''will be denied the full scope'' of the safeguards these defenses or factors are intended to provide.

For youth prosecuted as adults in the criminal justice system, this question cannot be avoided. The Supreme Court's acceptance of the concept that ''kids are different'' precludes uniform treatment of juvenile and adult defendants on issues where youth's categorical understanding, responses, or mental state are dictated by their place along the developmental continuum.

In the juvenile justice system, courts should likewise not ignore relevant characteristics of youth in deciding such fundamental questions as the scope of a child's blameworthiness, the voluntariness of a child's confession, the reasonableness of the child's belief that he was threatened with or subject to force, or the reasonableness of his belief that he could not extricate himself from peers or circumstances resulting in otherwise criminal conduct.

The assertion of duress as a defense to criminal conduct is an example of how changing views of adolescence can inform a court's—or a jury's—consideration of this defense. Typically, a criminal defendant may prove duress if a ''reasonable person'' would have been ''unable to resist'' the force or threats he faced.[19] As research has demonstrated and the Supreme Court has recognized, two significant characteristics make it more difficult for adolescents to resist such pressure: their limited decisionmaking capacity and their susceptibility to outside influences.

The Supreme Court has held that adolescents' difficulty in making decisions is relevant to the determination of their criminal responsibility. As the court wrote in *Roper*:

> As the scientific and sociological studies . . . tend to confirm, [a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.[20]

The court further explained that ''juveniles have less control, or less experience with control, over their own environment.''[21]

A child faced with a new type of situation may therefore have more difficulty exercising the necessary self-control than a more experienced adult. Additionally, because adolescents tend to discount the future and weigh more heavily the short-term risks and benefits, they may experience heightened pressure from the immediate coercion they face.[22] As noted above, the developmental research has been corroborated by recent advances in neuroscientific brain imaging; adolescent decisionmaking is therefore distinguished by not only cognitive and psychosocial but also neurological deficits.

These developmentally normal impairments in making decisions can be exacerbated when adolescents are under stress.[23] Additionally, adolescents' tendency to

[18] See generally, Peter Westen, *Individualizing the Reasonable Person in Criminal Law*, 2 J. Crim. Law and Philosophy 137-162 (2008).

[19] See, e.g., Conn. Gen. Stat. § 53a-14.

[20] *Roper*, 543 U.S. at 569 (citations and quotes omitted).

[21] Id.; see also Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003) (''As legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting''). See also Franklin E. Zimring, *Penal Proportionality for the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility* in *Youth on Trial: A Developmental Perspective on Juvenile Justice* 280 (Thomas Grisso and Robert G. Schwartz eds., 2000) (''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.'').

[22] See Elizabeth S. Scott, N. Dickon Reppucci & Jennifer L. Woolard, *Evaluating Adolescent Decision Making in Legal Contexts*, 19 L. & Hum. Behav. 221, 231 (1995).

[23] See Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court* in *Youth on Trial* (explaining that even when older adolescents attain raw intellectual abilities comparable to those of adults, their relative lack of experience may impede their ability to make sound decisions).

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process information in an ''either-or'' capacity is exacerbated in stressful situations.[24] Thus a young person experiencing coercion may have particular difficulties recognizing the option of exiting the situation.

Adolescents' heightened susceptibility to peer pressure is relevant to the determination of their criminal responsibility. Researchers have established a significant relationship between adolescent crime and peer pressure.[25] Research demonstrates that ''most adolescent decisions to break the law take place on a social stage where the immediate pressure of peers is the real motive for most teenage crime.''[26] Indeed, ''group context'' is the single most significant characteristic of adolescent criminality.[27] Although a young person may be able to discriminate between right and wrong when alone, resisting temptation in the presence of others requires social experience; it is a distinctive skill that many adolescents have not yet fully developed.[28] Children ''who do not know how to deal with such pressure lack effective control of the situations that place them most at risk of crime in their teens.''[29]

Thus, until adolescents reach a stage of development in which they are adept at resisting peer pressure, they are more susceptible to group offending than are adults. An adolescent's difficulty in withstanding peer pressure can make exiting a highly coercive and stressful situation even more difficult than it would be for an adult. The determination of the pressure a reasonable *juvenile* would have been ''able to resist'' must therefore take into account the juvenile's developmental traits.[30]

As the court acknowledged and indeed relied upon in *J.D.B.*, our civil law already '' 'accept[s] the idea that a person's childhood is a relevant circumstance' to be considered.'' *J.D.B.*, *Roper*, and *Graham* all give momentum to extending this principle to the criminal law, where personal traits should be considered for purposes of both mitigation and culpability. The court's refusal in *J.D.B.* to ignore age in the context of the *Miranda* custody analysis heralds adoption of youth status as a relevant consideration elsewhere in the justice system. The court wrote, ''The State and its amici offer numerous reasons that courts must blind themselves to a juvenile defendant's age. None is persuasive.''

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[24] See Steinberg & Scott, *Less Guilty*, at 27.
[25] See Scott, *Criminal Responsibility* at 304.
[26] *Juvenile Justice*.
[27] Id. at 61.
[28] Id. at 60.
[29] Id. at 61.

[30] The Model Penal Code explicitly recognizes age as a factor affecting an actor's ''situation'' for the purpose of applying the duress defense. The commentary to the Model Penal Code indicates: ''[A]ccount is taken of the actor's 'situation,' a term that should here be given the same scope it is accorded in appraising recklessness and negligence. Stark, tangible factors that differentiate the actor from another, like his size, strength, **age**, or health, would be considered in making the exculpatory judgment.'' M.P.C., Part I, Art. 2 § 2.09, p. 375 (emphasis added).

See also Jeffrey Fagan, *Contexts of Choice by Adolescents in Criminal Events*, in Grisso and Schwartz, eds., YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE (Chicago 2000), 389 et seq.