

IN THE JUVENILE COURT FOR TUSCALOOSA COUNTY, ALABAMA

In re the matter of:

XXXXXXXXXXXXXXXXXX,
[d.o.b.: XXXXXXXXXXXXX]
a child under the age of eighteen years.

§
§
§
§
§

Case No. JU-201X-XXXX.XX

REQUEST FOR CHILD-CENTERED MENS REA ANALYSIS

Comes now the child’s appointed defense counsel of record for [JUVENILE’S NAME], and hereby respectfully requests that this court utilize a child-centered *mens rea* analysis in adjudicating the delinquency of [JUVENILE’S NAME]. A child-centered *mens rea* standard acknowledges the well-recognized differences between adolescent and adult thought processes, and the effect that such differences have on an actor’s state of mind. Such a child centric *mens rea* standard is appropriate in this case because it is consistent with the underlying concept and purported role of *mens rea* in assessing the culpability of the accused. The use of such a standard is also supported by Alabama’s own differentiation between adult and child actors as well as recent United States Supreme Court decisions recognizing and endorsing this distinction. Accordingly, in assessing the culpability of [JUVENILE’S NAME], this court must utilize a *mens rea* standard that reflects his/her subjective/objective state of mind as required under [Section of Code Juvenile is charged under] upon which the charge before this court is based. In support thereof, counsel avers the following:

I. The Role of *Mens Rea*

Conceptually, *mens rea* plays a critical role in criminal law, differentiating levels of culpability based on varying levels of intent. See Jenny E. Carroll, *Brain Science and the Theory of Juvenile Mens Rea*, 64 N.C. L. REV. ____ (forthcoming 2016) (describing the history of *mens rea* as a means of differentiating culpability and so appropriate punishment). Commenting on the significance of *mens rea* in assessing blame, Justice Holmes famously remarked “[e]ven a dog distinguishes between being stumbled over and being kicked.” OLIVER WENDELL HOLMES, THE COMMON LAW 3 (Dover Publishing 1991). Modern criminal statutes divide *mens rea* into subjective and objective categories. See Model Penal Code §2.02 (defining the state of mind element). Regardless of this division, however, the law relies on the defendant’s own thoughts as the touchstone for his/her state of mind, with even objective *mens rea* elements requiring an evaluation of the defendant’s actions in light of his/her situation or understanding of that situation. In this regard, the Alabama Criminal Code does not diverge significantly from the Model Penal Code. See Ala. Code 1975 §13A-2-2 (defining culpable mental states).

[JUVENILE’S NAME] is charged under [Section of ALA Code]. Under this provision, the State must prove that [JUVENILE’S NAME] acted _____ [fill in intentionally, knowingly, recklessly, or with criminal negligence based on the offense requirement]. IF CHARGED WITH INTENTIONAL CONDUCT: Section 13A-2-2 (1) provides that “[a] person acts intentionally with respect to a result or to conduct described by a statute defining an offense, when his purpose

is to cause that result or to engage in that conduct.” IF CHARGED WITH KNOWING CONDUCT: Section 13 A-2-2(2) provides that “[a] person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of that nature or that the circumstance exists.” IF CHARGED WITH RECKLESS CONDUCT: Section 13A 2-2(3) provides that “[a] person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates a risk but is unaware thereof solely by reason of voluntary intoxication, as defined in subdivision (e)(2) of Section 13A-3-2, acts recklessly with respect thereto.” IF CHARGED WITH CRIMINAL NEGLIGENCE: Section 13A 2-2 (4) provides that “[a] person acts with criminal negligence with respect to a result or to a circumstance which is defined by statute as an offense when he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence.”

The mental state of intentionally/knowingly contemplate a subjective analysis based on the accused's *actual* understanding of his/her own acts and the projected consequences of such acts./ The mental state of recklessness contemplates a mixed subjective and objective analysis based both on the defendant's *actual* awareness of the risk his/her conduct poses and the reasonableness of the defendant's decisions compared to other like situated actors./ The mental state of criminal negligence contemplates an objective analysis that includes the reasonableness of defendant's actions in comparison to those in a like situation. Even in this purely objective analysis, the defendant's culpability is assessed in relation to his/her peers – considering the reasonableness of his/her decisions based on those of others similarly situated actors.

II. Children Are Different

The law has long recognized, in a variety of arenas, that children are fundamentally different from adults. Children as a class cannot consume alcohol, vote, alienate property, enter into binding contracts enforceable against them, or marry without parental consent. The United States Supreme Court acknowledges this long-standing legal differentiation, noting “that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.” *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011) (citing 1 W. Blackstone, *COMMENTARIES ON THE LAWS OF ENGLAND* 464-65 for common law and historical context). Time and again the Court has noted that a child's age is “more than a chronological fact”; it is a tell for the child's lack of experience and mature judgment. *See Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982); *Gall v. United States*, 552 U.S. 38, 58 (2007); *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Johnson v. Texas*, 509 U.S. 350, 367 (1993); *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (plurality opinion).

In several recent cases, the Court has relied on burgeoning neuroscience to support the proposition that adolescents engage in a different thought process than their adult counterparts. *See Roper v. Simmons*, 543 U.S. 551, 569-70, 575 (2005); *Graham v. Florida*, 560 U.S. 48

(2010); *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (all referring to scientific studies finding that adolescent brain development influenced decision-making processes and calculation of risk differently than adults). Most recently, the Court recognized that an adolescent's underdeveloped brain may perceive custody differently than an adult and that such a difference in perception must be considered in the context of *Miranda*. See *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011).

While the Court consistently characterized this acknowledged of difference between juvenile and adult judgment as "common sense," see *J.D.B. v. North Carolina*, 131 S. Ct. 2394, ___, its recent reliance on scientific evidence supporting this conclusion is not surprising. Indeed in the past two decades neuroscience has advanced significantly, providing new insights into adolescent brain development and the decision making capabilities it fosters. See Carroll, *Brain Science and Juvenile Theory of Mens Rea*, at 45-50 (summarizing recent scientific literature). Using longitudinal fMRI studies and brain imagery, scientists can now offer a neuro-biological explanation for adolescents' failure to comprehend risks, their willingness to engage in dangerous behavior, and their susceptibility to peer influence. See Carroll at 45-47; National Youth Risk Behavior Survey (Center for Disease Control, 2013)(available at: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>); B.J. Casey, et al., *The Adolescent Brain*, 1124 ANNALS N.Y. ACAD. SCI. 111, 119-121 (2008). Such studies note that this behavior is not unique to a particular individual, but rather is shared by all adolescents. In short, the immaturity and poor decision-making the Court described in its holdings is the norm for adolescents and it is distinct from an adult's understanding of risks and/or consequences.

Emerging scientific evidence supports the Court's conclusions in two regards. First, it confirms the Court's assessment that adolescents engage in a "different" thought process than adults – particularly when it comes to an understanding of risk and long term consequences. Unlike adults, adolescents tend to be reward centered. See Beatriz Luna, David J. Paulsen, Aarthi Padanabhan & Charles Geir, *The Teenage Brain: Cognitive Control and Motivation*, 22 CURRENT DIRECTION IN PSYCHOLOGICAL SCIENCE 94, 99 (2013). In short, they tend to discount risks and focus on potential benefits, even if the likelihood of acquiring that benefit is remote. See ADOLESCENT RISK TAKING (Nancy J. Bell & Robert W. Bell eds., 1993); Elizabeth S. Scott et al., *Evaluating Adolescent Decision-Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 223 (1995); Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339 (1992); Laurence Steinberg & Elizabeth Cauffman, *Maturity in Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making*, 20 L. & HUM. BEHAV. 249, 267-68 (1996). As a result, behavior that might seem disproportionately dangerous from an adult perspective, might seem entirely appropriate from a adolescent's reward centric perspective.

This is not to say that the adolescent's risk-seeking behavior eradicates his/her culpability or excuses the harm created, but it is to say that as fact-finders assess the adolescent's culpability based on evidence of his/her actions and reactions, these must be viewed through a lens that differentiates between an adult's perception of risk, and potential harm, and an adolescents. Beyond this, an adolescent's willingness to engage in risky behavior is enhanced by the mere presence of peers. See Dustin Albert, Jason Chein & Laurence Steinberg, *The Teenage Brain: Peer Influences on Adolescent Decision Making*, 22 CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE 114, 114-15 (2013); Leah H. Somerville, *The Teenage Brain: Sensitivity to Social Evaluation*, 22 CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE 121 (2013). When placed in a social setting in which other adolescents are present, the likelihood that a juvenile will engage in

risky behavior and not understand the potential consequences of his/her actions increases significantly.

Beyond its confirmation of a different thought process among adolescents, emerging scientific research endorses the Court's conclusion that such thought processes are endemic to youth as a class and therefore do not require evidence of individual abnormality or even conformity.

Both conclusions are critical to assessments of *mens rea* because they speak to the heart of the standard contained in the statutory definition of mental states: the actor's understanding of the risk presented by his/her behavior and his/her ability to make a causal connection between his/her own behavior and the resulting harm.

III. The Need for a Child-Centric *Mens Rea* Analysis

Given the role of *mens rea* in defining the defendant's *actual* culpability based on his/her perception of risk and consequences, and the acknowledged and well-documented differentiation between adolescent and adult thought processes, it is clear that this court must consider a *mens rea* standard that contemplates [JUVENILE'S NAME]'s youth and the effect that his age and correspondingly incomplete development would have on his ability to form the required mental state.

In determining whether or not [JUVENILE'S NAME] was in fact delinquent, this court will inevitably examine evidence of [JUVENILE'S NAME]'s behavior before, during and after the alleged offense. From this examination, this court will draw conclusions regarding what [JUVENILE'S NAME] understood of the consequences of his actions to be (and, if there is an objective component to the *mens rea*, the reasonableness of both his understanding and actions compared to like situated individuals). In making this assessment, the court must consider [JUVENILE'S NAME]'s actions through the lens of his/her actual decision-making processes and capacities as recognized by the Supreme Court and illuminated by neuroscience evidence. In short, the court must adopt an adolescent-centric model for the *mens rea* element.

[FACT SECTION]

[IF CALLING AN EXPERT] Accordingly, the defense seeks to present the testimony of XXXXX, a developmental psychologist familiar with the facts of this case. XXXXX will not only testify to the significance of [JUVENILE'S NAME]'s actions with regard to their indicia of a particular mental state, but will provide testimony regarding adolescent brain development in support of this conclusion. In addition, the defense will request a jury instruction informing the jury that they are to weigh proof of Henry's mental state in light of his youth, utilizing an adolescent centric approach.

[IF NOT CALLING AN EXPERT] Accordingly, the defense seek a jury instruction informing the jury that they are to weigh proof of [JUVENILE'S NAME]'s mental state in light of his youth, utilizing an adolescent centric approach.

This the ____ day of _____ 2015.

CERTIFICATE OF SERVICE

I hereby certify that I have served the above and foregoing upon the assigned Assistant District Attorney _____ by placing a true and correct copy of the same in her Juvenile Court courthouse box on this the ____ day of _____ 2015.
