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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable W. Greg Seigler, Family Court Judge
Honorable Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2023-001588

THE STATE ....*Respondent*,

v.

NAZARETH N. SANCHEZ-PERALTA. ....*Appellant*.

BRIEF OF JUSTICE 360 AND CORNELL JUVENILE JUSTICE PROJECT AS *AMICI CURIAE* IN SUPPORT OF THE APPELLANT

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici are advocates and academics who work on behalf of juveniles in South Carolina. Justice 360 is a nonprofit organization based in Columbia, South Carolina, whose mission is to promote fair and just process for individuals facing extreme sentences. As part of that mission, Justice 360 represents juvenile clients statewide in criminal proceedings and has been involved in litigation and criminal justice reform efforts on behalf of juvenile clients since the United States Supreme Court's decision in *Miller v. Alabama,* 567 U.S. 460 (2012). Additionally, Justice 360 gathers data, develops trainings, and serves as resource counsel to court-appointed attorneys in cases where juveniles are at risk of being or have been sentenced to life sentences or a functional equivalent.

The Cornell Juvenile Justice Project is a program housed at Cornell Law School in Ithaca, New York. Over the last twenty years, the Juvenile Justice Project has been actively involved in academic research, legislative reform efforts, and individual case representation in South Carolina and other jurisdictions.

Justice 360 and the Juvenile Justice Project work on individual cases of juveniles facing waiver on serious charges, as well as juvenile clients facing life without parole and sentences that are the functional equivalent of life without parole. Accordingly, *amici* have a vested interest in promoting a legal system in South Carolina that incorporates our modern legal and scientific understanding of juveniles, their criminal culpability, and their capacity for change.

INTRODUCTION

South Carolina Family Courts have exclusive jurisdiction over children facing criminal charges. S.C. Code Ann. § 63-3-510(A)(1)(d). Family Court judges can waive their jurisdiction and transfer certain cases to the Court of General Sessions. *Id.* § 63-19-1210. Since at least the 1990s, the Family Courts have relied on the eight *Kent* factors, set forth below, to make the waiver determination. *See, e.g.*, *State v. Kelsey*, 331 S.C. 50, 65, 502 S.E.2d 63, 70 (1998); *State v. Avery*, 333 S.C. 284, 289, 509 S.E.2d 476, 479 (1998). The South Carolina Supreme Court later recognized that it had "implicitly approved" the *Kent* factors as "appropriate criteria." *State v. Corey D.*, 339 S.C. 107, 118, 529 S.E.2d 20, 26 (2000). The Court formally adopted the factors in *State v. Pittman* with little discussion, holding that Family Court judges "must consider eight factors, as approved by the United States Supreme Court in *Kent v. United States*, in making [the waiver] determination." 373 S.C. 527, 558, 647 S.E.2d 144, 160 (2007). Those factors, as adopted in *Pittman*, are:

> "(1) The seriousness of the alleged offense.
>
> (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
>
> (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
>
> (4) The prosecutive merit of the complaint.
>
> (5) The desirability of trial and disposition of the entire offense in one court.
>
> (6) The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
>
> (7) The record and previous history of the juvenile, including previous contacts with law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation, or prior commitments to juvenile institutions.

> (8) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available."

Id. at 559, 647 S.E.2d at 160 (quoting *Kent v. United States*, 383 U.S. 541, 566–67 (1966)).

The consequences of a waiver decision are profound. If retained in the Family Court, a child can be detained until their twenty-second birthday; if transferred to General Sessions, juveniles face mandatory minimums, the possibility of a life without parole sentence, and the lifelong collateral consequences of a felony conviction. This state's Supreme Court recognized that "in practical effect, the decision to remove a juvenile from the protection of the family court may be of greater significance to the juvenile than an actual adjudicatory proceeding in the family court." *In re Shaw*, 274 S.C. 534, 542, 265 S.E.2d 522, 526 (1980). Put simply, for most juveniles charged with a serious crime, waiver is the most consequential stage of their case.

Given the stakes of the waiver determination, it should be based on factors that reflect what we now know to be true about juveniles. The *Kent* factors no longer do that. This Court must update the *Kent* factors and the waiver determination to reflect our modern understanding of juveniles, their criminal culpability, and their capacity for change.

ARGUMENT

I. The *Kent* Factors No Longer Serve the Purpose of Reflecting Contemporary Societal Understanding of Childhood and Adolescence.

A. At the time of their adoption, the *Kent* factors reflected an improvement on existing waiver practices.

In *Kent v. United States*, the United States Supreme Court held that juveniles were entitled to a modicum of due process in their waiver proceedings. 383 U.S. at 562. The waiver procedure that Morris Kent faced would be unrecognizable today. He was transferred to adult court without a hearing, with no statement of reasons, with his retained counsel unable to present arguments, and

without access to the records relied on by the Juvenile Court. *Id.* at 546. The Supreme Court held that a waiver hearing "must measure up to the essentials of due process and fair treatment." *Id.* at 562. There was "no place in our system of law for reaching a result of such tremendous consequences" without basic procedural protections: a hearing, effective assistance of counsel, and a statement of reasons. *Id.* at 554.

What we now know as the *Kent* factors were cited in the appendix to the Court's opinion. *Id.* at 565–67. The factors were initially articulated in a policy memorandum to the District of Columbia Juvenile Court, although the memorandum was rescinded prior to the *Kent* decision. *Id.* at 546 n.4. The memorandum recognized waiver as an "important discretionary act," and that "knowledge of the Judge's criteria" was important to the child, his family, his attorney, judges, and other institutional actors. *Id.* at 566. The factors were developed through consultation with the district's judges, prosecutors, bar representatives, and other "groups concerned," and intended to be "consistent with the basic aims and purpose of the [District of Columbia] Juvenile Court Act." *Id.* That statute, and the factors, were rooted in "society's special concern for children," and proceedings under the statute were "theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct." *Id.* at 554.

Kent came in the midst of the first juvenile criminal law revolution: the expansion of traditional constitutional criminal procedure guarantees to juvenile courts. Juvenile courts had existed since the late 19th century, and were intended to offer a rehabilitative alternative for children, with the state acting in their interests. *In re Gault*, 387 U.S. 1, 15–17 (1967). But as the Supreme Court recognized in *Kent*, in practice a juvenile court system that lacked basic constitutional rights often meant "that the child receives the worst of both worlds," where they were afforded "neither the protections accorded to adults nor the solicitous care and regenerative

treatment postulated for children." 383 U.S. at 556. The Supreme Court held in the decade after *Kent* that juveniles in commitment proceedings have constitutional rights to counsel, confrontation, cross-examination, notice of charges, and to the privilege against self-incrimination; that a juvenile's delinquency must be proven beyond a reasonable doubt; and that double jeopardy protections apply to juvenile proceedings. *See Gault*, 387 U.S. at 31–57 (1967); *In re Winship*, 397 U.S. 358, 368 (1970); *Breed v. Jones*, 421 U.S. 519, 541 (1975).

In 1966, both *Kent* and the *Kent* factors represented a step forward for juveniles facing transfer. They provided juveniles with the fundamentals of due process, an opportunity to be heard, access to the evidence in their case, and effective assistance of counsel. The *Kent* factors introduced standardization to the waiver determination. They recognized that juveniles are a product of their circumstances by directing judges to consider the juvenile's home and environmental situation. The factors included not only backwards-looking, retributive assessments of the alleged offense and the juvenile's prior record, but also a forward-looking consideration of the juvenile's capacity for rehabilitation. Judges were to practically assess the "procedures, services and facilities" available to the Family Court and what effect those might have on the juvenile's rehabilitation. *Kent*, 383 U.S. at 567. Each of these changes made waiver decisions more individualized, standardized, and reliable.

B. Science, society, and the law have changed since *Kent* was decided.

In the six decades since the Supreme Court cited the *Kent* factors, our understanding of juveniles, and crimes committed by juveniles, has been transformed. At the same time, the law has moved in the opposite direction—charging more juveniles with crimes that are eligible for waiver, prosecuting more juveniles as adults, and sentencing more juveniles to lengthy adult sentences.

The *Kent* factors, which once reflected a modicum of rationality and process in an otherwise standardless system, have not withstood the test of time.

First came the trend of overcriminalization. In the late 1960s and 1970s, states began to take a more punitive approach towards children accused of criminal behavior. These states started to limit the discretion of juvenile courts and corrections officials to sentence juveniles to non-punitive facilities for shorter terms, and many states began introducing mandatory minimum sentences for juveniles. Jeffrey Fagan, *The Contradictions of Juvenile Crime & Punishment*, DAEDALUS, Summer 2020, at 43, 45; Benjamin Steiner, *The Effects of Juvenile Transfer to Criminal Court on Incarceration Decisions*, 26 JUST. Q. 77, 77 (2009). More than forty states passed laws that made it easier to prosecute juveniles as adults in the 1990s. David S. Tanenhaus & Steven A. Drizin, *"Owing to the Extreme Youth of the Accused": The Changing Legal Response to Juvenile Homicide*, 92 J. CRIM. L. & CRIMINOLOGY 641, 643 (2002). Waiver and exclusion (i.e. automatic waiver) statutes "increasingly emphasize[d] characteristics of the offense rather than the offender." Barry C. Feld, *Juvenile and Criminal Justice Systems' Responses to Youth Violence*, 24 CRIME & JUST. 189, 190 (1998).

As juvenile prosecution and sentencing became more punitive, science, society, and finally the law have moved in the opposite direction. In the sixty years since *Kent*, society's understanding of brain development, neurobiology, and criminal culpability assessments for children has changed dramatically. The South Carolina and United States Supreme Courts embraced these advancements in scientific knowledge in a series of cases prohibiting draconian punishments for juvenile offenders. This second juvenile criminal law revolution has reshaped the legal framework governing juvenile offenders over the last thirty years. At the heart of the United States Supreme

Court's juvenile sentencing decisions is the principle that "children are constitutionally different from adults." *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

In 2005, the Court held in *Roper v. Simmons* that juvenile offenders cannot receive the death penalty because of class-wide traits that categorically diminish their culpability. 543 U.S. 551 (2005). Three key differences between juveniles and adults "render suspect any conclusion that a juvenile falls among the worst offenders." *Id.* at 570. Those differences were a "lack of maturity and an underdeveloped sense of responsibility," susceptibility "to negative influences and outside pressures," and a character that "is not as well formed as that of an adult." *Id.* at 569–70 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

Then, in a series of cases building on *Simmons*' reasoning, the Court extended the principle that children are constitutionally different to juveniles facing sentences less than death. First, the Court barred life without parole sentences for juvenile non-homicide offenders because, due to their diminished moral culpability, the punishment lacked "any legitimate penological justification." *Graham v. Florida*, 560 U.S. 48, 71–72 (2010). Two years later, the Court held in *Miller v. Alabama* that the Eighth Amendment prohibits the mandatory imposition of life without the possibility of parole for juvenile offenders, again because their diminished culpability made the punishment disproportionate for all but the rarest of children. 567 U.S. at 480. The Court then held in *Montgomery v. Louisiana* that *Miller* applied retroactively, effectively ordering new sentencing proceedings for hundreds of juvenile offenders across the country. 577 U.S. 190, 206 (2016). Two years before *Montgomery*, the South Carolina Supreme Court held in *Aiken v. Byars* that *Miller* applied retroactively and granted new sentencing hearings to all juveniles serving life without parole in South Carolina. 410 S.C. 534, 765 S.E.2d 572 (2014).

Both courts' legal conclusions were supported by a constantly expanding body of social science and neurological research. This research confirms "what 'any parent knows'": young people's brains are physiologically different from the brains of adults in ways that make them less morally culpable for their actions. *Miller*, 567 U.S. at 471 (citing *Simmons*, 543 U.S. at 569). Those differences hinder juveniles' abilities to control their impulses, plan ahead, and avoid risks. *Id.* at 472 n.5.

That combination of lessened culpability and increased capacity for change means that nobody, not even trained experts, can reliably predict whether and when a juvenile will be rehabilitated. *See Graham*, 560 U.S. at 68. Both courts therefore held that courts must conduct a searching, individualized inquiry into the unique characteristics of a juvenile defendant before imposing an extreme sentence. The same scientific and social understandings that compelled those decisions extend to the *Kent* factors but have yet to be acknowledged in the waiver process.[1]

II. The *Kent* Factors Treat Juveniles as Presumptively Guilty Based on Unreliable Evidence.

A. The *Kent* factors give outsized weight to the alleged facts of the offense, contravening Supreme Court precedent that juvenility matters, even in cases involving serious crimes.

The first four of the eight *Kent* factors relate to the facts of the offense: the seriousness of the alleged offense; whether the alleged offense was committed in an aggressive, violent,

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[1] This brief addresses the Juvenile Justice Code's definition of a juvenile as "a person less than eighteen years of age." S.C. Code Ann. § 63-19-20. However, scientific and social scientific evidence shows that individuals' brains, and their functioning, continue to develop into their early adult years. *See, e.g.*, Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEV. REV. 78, 83 (2008) ("[T]he brain's *cognitive control* system – changes which improve individuals' capacity for self-regulation…[changes] gradually and over the course of adolescence and young adulthood…and is not complete until the mid-20s."); *see also Commonwealth v. Mattis*, 224 N.E.3d 410, 421 (Mass. 2024) ("[T]he scientific record strongly supports the contention that emerging adults [eighteen, nineteen, and twenty-year-olds] have the same core neurological characteristics as juveniles have."). In *amici*'s experience, Family Court judges frequently treat sixteen or seventeen-year-olds, or those who have turned eighteen while a waiver motion is pending, as though their maturity and corresponding capacity for rehabilitation is complete. Doing so contradicts the same evidence that justifies treating juveniles differently in the first place.

premeditated, or willful manner; whether the alleged offense was against persons or property; and the prosecutive merit of the complaint. The vast majority of waiver petitions are sought in murder cases or other statutorily violent crimes, such as armed robbery or criminal sexual conduct. In those cases, the first and third factors are automatically satisfied. The state can meet the low bar of probable cause and allege facts supporting a conclusion that the offense "was committed in an aggressive, violent, premeditated, or willful manner," *Kent*, 383 U.S. at 567, using unreliable and inadmissible evidence that could not be used to convict. *See infra* II.B.

Because the *Kent* factors disproportionately focus on the nature of the offense, South Carolina courts have followed the factors' lead in putting undue weight on the statutory category and the alleged facts of the offense. The state Supreme Court has held that "[t]he serious nature of the offense is a major factor in the transfer decision," and on appellate review courts uphold waiver decisions by reference to the charged offense and alleged facts. *See, e.g.*, *Avery*, 333 S.C. at 292, 509 S.E.2d at 481 (1998); *Kelsey*, 331 S.C. at 65, 502 S.E.2d at 71 (1998); *Sanders v. State*, 281 S.C. 53, 56, 314 S.E.2d 319, 321 (1984). As a result, cases are waived based on the charge alone, even when there is compelling evidence that the Family Court system can rehabilitate the juvenile and protect the public. *See, e.g.*, *State v. Corey D.*, 339 S.C. 107, 116–17, 529 S.E.2d 20, 25 (2000) (reversing a Family Court's order retaining jurisdiction over a twelve-year-old child based solely on the alleged offenses, even when the Family Court had found that "there was time for respondent to be rehabilitated by the juvenile justice system," and that "protection of the public and appropriate punishment could be appropriately addressed under the juvenile system").

This emphasis on the alleged offense runs contrary to the waiver statute, which already accounts for the seriousness of the offense by making it eligible to be waived in the first place. The transfer statute relies on both the juvenile's age and the seriousness of the charged offense to

operate as a sliding scale: the more serious the charge, the lower the minimum age for waiver. *See* S.C. Code Ann. § 63-19-1210; *see also Waiver Under § 63-19-1210*, UNIV. OF S.C. JOSEPH F. RICE SCH. OF L., https://sc.edu/study/colleges_schools/law/centers/childrens_law/docs_general/juvenile_justice_publications/jj_waiver_chart.pdf. When the legislature intends to make adult prosecution automatic for a serious offense, it does so expressly. *See* S.C. Code Ann. § 63-19-20 (excluding seventeen-year-olds charged with certain felonies from the definition of "child" or "juvenile," and vesting automatic jurisdiction of those cases in adult criminal court). In contrast, the transfer statute contemplates that some cases eligible for waiver will remain in the Family Court. A waiver determination that elevates the seriousness of the alleged offense above all other factors fails to "ascertain and effectuate the intent of the legislature." *Davis v. Sch. Dist. of Greenville Cty.*, 374 S.C. 39, 45, 647 S.E.2d 219, 222 (2007) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

The *Kent* factors have, in effect, created a system of presumed waiver based on the charged offense and the facts as alleged by the state. The facts of the alleged offense are counted against the juvenile three times: First, because whether the juvenile faces waiver at all depends on the severity of the charge; second, because four of the eight *Kent* factors relate to the facts of the offense as alleged by the state and as demonstrated through unreliable and ordinarily inadmissible evidence; and third, because the South Carolina courts have followed the factors' lead in treating the alleged offense as the most important factor.

The circumstances of the offense, however, are not a reliable indicator of a child's capacity for rehabilitation in the Family Court's jurisdiction. To the contrary, "the vast majority of serious adolescent offenders desist from criminal behavior." Edward P. Mulvey et al., *Trajectories of*

Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders, 22 DEV. & PSYCHOPATHOLOGY 453, 472 (2010). This drop-off to "very low, almost near zero, levels of involvement in criminal activity" does not take decades of incarceration and incapacitation; it is evident in the data just two years after adjudication. *Id.* at 470. The Supreme Court in *Miller* recognized the reality that only a small class of juvenile offenders will go on to "develop entrenched patterns of problem behavior," and that it is exceptionally challenging for even expert psychologists to "distinguish[] at this early age" between a child "whose crime reflects unfortunate yet transient immaturity, and the *rare* juvenile offender whose crime reflects irreparable corruption." 567 U.S. at 479–80 (emphasis added).

A system of presumed waiver based on offense also disregards U.S. and South Carolina precedent that juveniles as a class are less culpable than adults, even in cases in which the charges and alleged facts are serious. The U.S. Supreme Court's juvenile jurisprudence began with the death penalty, whose imposition is confined to those individuals who commit "a narrow category of the most serious crimes." *Atkins v. Virginia*, 536 U.S. 304, 319 (2002). Those cases by definition involved serious, often horrifying, crimes. In *Simmons*, the Court concluded that class-wide differences between juveniles and adults made it "less supportable to conclude that even a *heinous* crime committed by a juvenile is evidence of irretrievably depraved character." 543 U.S. at 570 (emphasis added). The Court built on that holding in *Miller*, determining as a matter of constitutional law that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, *even when they commit terrible crimes*." 567 U.S. at 472 (emphasis added). It rejected arguments by the dissenting Justices that mandatory life without parole was justified when crimes were particularly heinous. *See id.* at 495 ("A mature society may determine that this requires removing those guilty of the most heinous murders from

its midst.") (Roberts, C.J., dissenting); *id.* at 513 (describing a juvenile "who committed a brutal thrill-killing just seven months shy of his 18th birthday") (Alito, J., dissenting). Instead, the *Miller* majority recognized that reality in its holding. *Id.* at 478 ("No one can doubt that [Miller]… committed a vicious murder.") (majority opinion). Even so, the signature qualities of youth warranted consideration.

The South Carolina Supreme Court then applied *Miller* to grant retroactive relief to an entire class of juvenile offenders and made clear that the decision was not restricted to those with reduced culpability. The factors cited in *Miller* were applicable both for those "found directly responsible for the relevant homicide "and those "convicted under a theory of accomplice liability." *Aiken*, 410 S.C. at 537, 765 S.E.2d at 573.

Each of these cases confronted some of the most serious charges in the criminal system—offenses eligible for the death penalty and life without parole sentences. But both courts emphasized that juvenility has relevance in all cases. Even when the charged offenses and alleged facts are serious, precedent instructs "that youth matters for purposes of meting out the law's most serious punishments." *Miller*, 567 U.S. at 483. The *Kent* factors as applied in South Carolina waiver hearings disregard that principle.

B. The first four *Kent* factors permit waiver based on evidence that will often be inadmissible at trial.

The strength of the state's case is artificially inflated at the waiver stage, because the state is permitted to introduce evidence that violates fundamental constitutional and evidentiary rules. Family Court judges are thus assessing a skewed pro-prosecution version of the case at the waiver stage, and cannot accurately determine whether the evidence would support a conviction either in a juvenile adjudication or in General Sessions. Alleged facts about the crime are treated as true and

held against the child, without any legal guardrails to ensure that the supporting evidence is admissible or even reliable.

Evidence admitted at waiver that would never pass muster at trial includes rank hearsay and testimony that violates the Sixth Amendment's Confrontation Clause. For example, the lead detective ordinarily testifies to the entirety of the state's case, and introduces statements made by co-defendants, witnesses, and other law enforcement as part of the case against the juvenile. Statements by adult co-defendants are particularly prejudicial, because those co-defendants are incentivized to minimize their own culpability when they will not be called to testify or cross-examined at a waiver hearing. *E.g. State v. Robinson*, 438 S.C. 421, 427–28, 882 S.E.2d 883, 886–87 (Ct. App. 2023) (adult co-defendant falsely claimed a juvenile co-defendant was the actual shooter, but recanted that statement after the Family Court waived the juvenile). Juvenile detention center records are admitted and read into the record, even though those records contain unreliable and unproven hearsay allegations from detention center staff and other juveniles. The juvenile is unable to confront witnesses or to cross-examine them about inaccuracies and inconsistencies in their statements.

Nor are other rights protected at the waiver stage. There is no on-point rule applying the Fifth Amendment privilege against self-incrimination at the waiver stage, and *amici* are aware of statements plainly obtained in violation of *Miranda* being admitted against a juvenile at a waiver hearing. These statements are not just unconstitutionally obtained, they are also unreliable, because juveniles are even more likely to falsely confess, in whole or in part, than adults. *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (highlighting the "all the more acute" risk of false confessions when juveniles are subjected to custodial interrogation).

Juveniles and their defense team cannot effectively refute this unreliable evidence and demonstrate that their version of events is more credible than the state's. Without the time, funding, and resources that are generally not made available to the juvenile until *after* a case is waived and they are facing trial, their defense team is often unable to investigate the facts, present contrasting evidence, and counter the state's narrative. *Amici* are also aware of cases in which Family Courts have refused to hear testimony rebutting the state's factual presentation.

The state is thus able to present an unreliable and unproven version of the crime as true at the waiver stage, and to have that version of the facts relied on by the Family Court to justify waiver. The child's guilt is treated as a foregone conclusion, depriving them of the basic procedural protection of the presumption of innocence. Once a case is waived, the state has the advantage of lengthy mandatory minimums and the possibility of a life without parole sentence to leverage a guilty plea, notwithstanding serious weaknesses with their case.

III. The *Kent* Factors Fail to Treat Children as Constitutionally Different than Adults.

A. The fifth *Kent* factor penalizes juveniles whose co-defendants are adults, disregarding our understanding of juvenile susceptibility to familial and peer pressure.

The fifth *Kent* factor considers "[t]he desirability of trial and disposition of the entire offense in one court." 383 U.S. at 567. This factor favors transfer for, and thus penalizes, juveniles who, as is often the case, are charged alongside adult or older co-defendants. It puts a thumb on the scale for waiver for those juveniles and exposes them to the consequences of a criminal conviction in General Sessions: lengthy mandatory minimum sentences, a possible life without parole sentence for certain charges, and a permanent criminal record.

This factor runs counter to our contemporary awareness that "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *Simmons*,

543 U.S. at 569; *see also Miller*, 567 U.S. at 471. Adolescents typically commit crimes in groups, in contrast to adults, and their tendencies to make risky and ill-considered decisions are exacerbated by their peers' presence. *See* Peter Ash, *But He Knew It Was Wrong: Evaluating Adolescent Culpability*, 40 J. AM. ACAD. PSYCHIATRY L. 21, 25 (2012). They are vulnerable not only to direct peer pressure but also more indirectly by fear of rejection and need for peer approval. Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence*, 58 AM. PSYCH. 1009, 1012 (2003). Juveniles' susceptibility to pressure is compounded by the fact that they "have less control, or less experience with control," over their own environment, and are less able than adults to extricate themselves from unhealthy settings and distance themselves from negative influences. *Simmons*, 543 U.S. at 569.

The fifth factor also makes an across-the-board judgment about the value of waiver for reasons irrelevant to the child. Transfer orders cite considerations of judicial economy, fairness to witnesses, and compilation of evidence in justifying waiver. *See, e.g.*, *Robinson*, 438 S.C. at 434, 882 S.E.2d at 890 (upholding a transfer order that relied on "the judicial economy of trying Robinson and his codefendants in one court"). Those considerations do not pertain to the "best interest of the child" assessment required for waiver, nor to the "specific and individualized inquiry" required for juvenile defendants facing the harshest penalties. *See State v. Mack*, 441 S.C. 526, 546, 894 S.E.2d 820, 830 (Ct. App. 2023). The efficiency value of trying all defendants in the same venue does not account for a juvenile defendant's unique needs, the circumstances of their case, and the role that peer or familial pressure may have played in their life and their alleged offense. But as *Miller* and *Aiken* make clear, all of that does matter.

This factor is used as a one-way ratchet toward severe punishment: It is only ever used to justify waiver, and never to retain jurisdiction in the Family Court. If the juvenile's co-defendants

are adults, the fifth factor weighs toward transfer. If the co-defendants are juveniles, the state is incentivized to file waiver petitions on all juveniles, regardless of relative culpability, and one juvenile's waiver to General Sessions prejudices all other juveniles in the case. And if there are no co-defendants, in *amici*'s experience Family Courts simply do not consider the fifth factor, instead noting in their transfer orders that the factor is "inapplicable" or "not relevant."

The *Miller* and *Aiken* factors weigh the existence of adult co-defendants and other forms of familial and peer pressure in favor of the juvenile, not against him. *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577 (holding that a sentencing court must consider "how familial and peer pressures may have affected" a juvenile offender); *Miller*, 567 U.S. at 477 (observing that when a juvenile defendant learned that his friend was carrying a gun on the way to rob a store, "his age could well have affected his calculation of the risk that posed, as well as his willingness to walk away at that point"). These cases recognize that juveniles are those "most susceptible to influence," and that susceptibility mitigates culpability. *See id.* at 476 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 114 (1982)). Those cases enable juveniles to present about the influence their co-defendant had and the pressures the juvenile felt, both of which can illuminate, and often mitigate, their actions.

The *Kent* factors penalize juveniles for some of the very qualities that define them—their susceptibility to others. The fifth *Kent* factor should no longer play any role in the waiver determination.

B. The sixth *Kent* factor excludes both class-wide traits of juvenility, and individualized mitigating evidence.

The sixth *Kent* factor requires the Family Court to assess "[t]he sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living." 383 U.S. at 567. It is this factor that comes closest to considering typical mitigating evidence, such as "the character and record of the individual offender or the

circumstances” and other “compassionate or mitigating factors.” *Miller*, 567 U.S. at 475 (quoting *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976)). This factor, however, excludes from consideration both categorically mitigating qualities of youth and meaningful individualized mitigation.

First, by calling for a case-by-case determination of the juvenile’s “sophistication and maturity,” *Kent*, 383 U.S. at 567, this factor ignores the “hallmark features” of youth that categorically “render juveniles less culpable than adults,” *Miller*, 567 U.S. at 477 (quoting *Graham*, 560 U.S. at 72). The U.S. and South Carolina Supreme Courts have endorsed the broad consensus that juveniles differ from adults in ways that reduce their culpability. The *Miller* Court cited science, social science, and common sense when it found that those class-wide differences include a “lack of maturity and an underdeveloped sense of responsibility.” *Id.* at 471 (quoting *Simmons*, 543 U.S. at 569). Those features manifest as “immaturity, impetuosity, and failure to appreciate risks and consequences.” *Id.* at 477. The Court cited the “ever-growing body of research in developmental psychology and neuroscience,” which made “increasingly clear that adolescent brains are not yet fully mature in regions and systems related to…impulse control, planning ahead, and risk avoidance.” *Id.* at 472 n.5 (quoting Brief for the Am. Psych. Ass’n et al. as *Amici Curiae* in Support of Petitioners at 3–4, *Miller*, 567 U.S. 460 (Nos. 10-9646 & 10-9647)). The *Aiken* Court adopted *Miller*’s holding that the same “hallmark features of youth” should be “carefully and thoughtfully considered.” 410 S.C. at 543–44, 765 S.E.2d at 577.

The sixth *Kent* factor asks Family Court judges to assess how sophisticated and mature a particular child is, without acknowledging that juveniles *as a class* differ from adults. Of course, juveniles can and do vary in their sophistication and maturity, as the Supreme Court recognized. *Simmons*, 543 U.S. at 572 (noting that “it can be argued…that a rare case might arise in which a

juvenile offender has sufficient psychological maturity" to warrant the death penalty). Nonetheless, "[t]he differences between juvenile and adult offenders are too marked and well understood" to permit only a case-by-case consideration of mitigating factors. *See id.* Family Courts should not solely assess how mature a particular juvenile appears at the waiver stage. Judges must instead consider that *all* juveniles have certain signature, mitigating qualities, the weight and import of which may vary in each case but whose existence must be addressed in the waiver decision.

Second, although the sixth *Kent* factor is the sole factor to consider the home and family life of the child facing waiver, it excludes meaningful relevant mitigation. A juvenile's family and home life are only relevant to the sixth factor insofar as they bear on his "sophistication and maturity." *Kent*, 383 U.S. at 567. But mitigation, particularly in juvenile cases, sweeps much more broadly. It encompasses "any aspect of a defendant's character or record and any of the circumstances of the offense." *Lockett v. Ohio*, 438 U.S. 586, 604 (1978). It accords significance to any fact "stemming from the diverse frailties of humankind," in order to treat defendants "as uniquely individual human beings." *Woodson*, 428 U.S. at 304. Although initially developed as a constitutional matter in capital sentencing, *Miller* and *Aiken* linked that type of mitigating evidence to juvenile sentencing. 567 U.S. at 475–76; 410 S.C. at 544–45, 765 S.E.2d at 577.

Under *Miller* and *Aiken*, juveniles are entitled to a holistic assessment of their family and home environment. That evidence can be both mitigating and relevant beyond determining the juvenile's maturity. For example, a juvenile "cannot usually extricate himself" from his family and home environment, "no matter how brutal or dysfunctional." *Miller*, 567 U.S. at 477. A brutal or dysfunctional home environment can help a Family Court elucidate a juvenile's participation and contextualize the facts of that crime. *See, e.g.*, *id.* at 479 ("And if ever a pathological background

might have contributed to a 14-year-old's commission of a crime, it is here."). Childhood trauma and poverty can be relevant to understanding a juvenile's prior record in the juvenile justice system, the seventh *Kent* factor. A juvenile's cognitive, intellectual, and social capabilities can explain the influence of co-defendants, addressed in the fifth *Kent* factor. And finally, mitigating evidence can shed light on the possibility of rehabilitation, the eighth *Kent* factor.

A blinkered consideration of the juvenile's background and life circumstances that is solely used to determine their "sophistication and maturity" deprives the juvenile of the opportunity to present, and the Family Court to consider, mitigation that pertains to multiple *Kent* factors. Juveniles are entitled to individualized consideration at the waiver stage. The sixth *Kent* factor does not permit that consideration.

C. The *Kent* factors give no consideration to a juvenile's limited ability to navigate the criminal system at the waiver stage.

Juveniles are "at a significant disadvantage in criminal proceedings." *Graham*, 560 U.S. at 78. The same advancements in scientific knowledge that reshaped our knowledge of their decision making and culpability have informed our understanding of these limitations. The features that distinguish them from adults—their immaturity and inability to comprehend risks and consequences—hinder them in dealing with the criminal system's institutional actors. Those disadvantages, as we now know, begin with the juvenile's first contact with the criminal system, and have profound consequences at the waiver stage.

Begin with police interactions. Children experience police questioning differently than adults, and are more vulnerable to the pressures of interrogation. *J.D.B.*, 564 U.S. at 272 (noting that "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go"). Even when informed of their legal rights, most juveniles do not comprehend a *Miranda* warning well enough to invoke or waive their rights, nor

do they understand the concept of rights more generally as an absolute entitlement rather than something an adult or authority permits. Barry C. Feld, *Juveniles' Competence to Exercise* Miranda *Rights: An Empirical Study of Policy and Practice*, 91 MINN. L. REV. 26, 41, 43 (2006). Juveniles are also more likely to involuntarily confess. Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 19 (2010). Class-wide juvenile traits, including suggestibility, obedience to authority, and under-developed decision-making abilities, combined with psychological interrogation tactics, exacerbate these risks. *Id.* Consequently, juveniles who are arrested (or suspected of involvement) in cases involving serious crimes frequently make statements to law enforcement without invoking their rights or the advice of counsel. Those statements can and are later used against them at waiver hearings.

These disadvantages persist even when the juvenile receives counsel. Juveniles are reluctant to answer questions from all adults, and more likely than adult clients to refuse to speak to their own lawyers. Theresa Hughes, *A Paradigm of Youth Client Satisfaction*, 40 COLUM. J. L. & SOC. PROBS. 551, 566–67 (2007). They frequently do not comprehend that counsel is 'on their side,' especially when counsel is appointed. Patricia Puritz & Katayoon Majd, *Ensuring Authentic Youth Participation in Delinquency Cases*, 45 FAM. CT. REV. 466, 474 (2007). Black juvenile defendants are consistently less likely than White juvenile clients to trust their defense attorneys. *Id.* at 472. That poses an acute problem in South Carolina, where the vast majority of juveniles facing waiver are Black.[2] Juveniles also do not comprehend that conversations are confidential, making them even more reluctant to disclose sensitive information about either the alleged offense or their own background. *See* Thomas Grisso, *The Competence of Adolescents as Trial Defendants*, 3 PSYCH., PUB. POL'Y, & L. 3, 15 (1997).

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[2] According to data shared with *amici* by the South Carolina Juvenile Defender Advocate, as of November 2025, forty-nine of the fifty-eight juveniles with pending waiver cases were Black.

All of these barriers impede effective representation at the waiver stage, because so much of the waiver determination, and the sixth, seventh, and eighth *Kent* factors, require detailed social history information about, for example, the juvenile's home life, childhood trauma, and mental health needs. This is information that only the juvenile can provide. The attorney and other members of the defense team must discuss painful, personal facts with their client. Their representation is limited by the class-wide juvenile traits that hamper development of a trusting attorney-client relationship.

Finally, juveniles are disadvantaged in their dealings with prosecutors at the waiver stage, where they must make decisions about whether to cooperate and plea bargain. Because juveniles are influenced and motivated by their peers' opinions, they are reluctant to be forthcoming about the facts of the alleged offense to their own counsel, let alone the state, for fear of being labeled a "snitch." JULIE C. WHITMAN & ROBERT C. DAVIS, SNITCHES GET STITCHES: YOUTH, GANGS, AND WITNESS INTIMIDATION IN MASSACHUSETTS 47 (2007) (finding that youth genuinely fear retaliation, but also "do not want to be labeled and rejected by their neighbors or peers for snitching"). That reticence can hurt their own case, especially when they are being charged alongside older co-defendants that are willing to cooperate. Juveniles also struggle to comprehend the risks and lengths of the sentences they are facing, and the impact of what a particular sentence will mean for their life experiences. These deficits are enormously consequential at the waiver stage, given the dramatic disparity between the longest sentence available in the Family Court system, and the mandatory minimums for certain offenses in General Sessions.

Plea bargaining can therefore be critical at the waiver stage. Juvenile cases sometimes resolve in pleas to lesser offenses in exchange for consent to waiver. Deciding whether to engage in plea bargaining, and what offer to accept, requires a juvenile and their counsel to assess the

strength of their waiver case (i.e., how likely the juvenile is to remain in Family Court); the strength of the *admissible* evidence against them, should their case be transferred to General Sessions; and the likely sentence if convicted, which on a murder charge can range from thirty years day-for-day to life without parole. Juveniles' decision making in plea bargaining is affected by their tendencies to comply with authority figures' suggestions and to fail to see risks and long-range consequences. Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCH. 459, 476–77 (2009). Quite simply, it is impossible for the vast majority of children to competently assess these tradeoffs. They rely on the advice of counsel, but may not seek or accept it without a trusting relationship.

For all these reasons, *Miller* and *Aiken* require a consideration of the "incompetencies associated with youth," such as a juvenile's inability to deal with police officers, prosecutors, and their own attorneys. 410 S.C. at 544, 765 S.E.2d at 577. The *Kent* factors ignore these incompetencies, only compounding these disadvantages.

IV. This Court Should Ensure That the Waiver Decision Reflects U.S. and South Carolina Supreme Court Precedent.

This Court should update the *Kent* factors to ensure that they align with judicial precedent and incorporate a legally recognized modern understanding of youth. There are several ways for this Court to lend clarity and guidance to Family Court judges in waiver determinations, each of which would lead to a more educated and constitutionally sound waiver decision.

A. The primary focus of the waiver determination should be on the sixth, seventh, and eighth *Kent* factors, and should exclude the fifth factor.

Presently, the waiver determination largely turns on the first four *Kent* factors, and especially the first one. That status quo flies in the face of both the statutory scheme, which contemplates that some juveniles will remain in Family Court even on statutorily serious charges;

and juvenile sentencing's constitutional principles, which make clear that the "hallmark features of youth" deserve consideration even when juveniles are accused of serious crimes.

Instead, the waiver analysis should give the most weight to the sixth, seventh, and eighth *Kent* factors: "The sophistication and maturity of the juvenile as determined by his home, environmental situation, emotional attitude and pattern of living," "[t]he record and previous history of the juvenile," and "[t]he prospects for adequate protection of the public and the likelihood of reasonable rehabilitation." *Kent*, 383 U.S. at 567. Each of these factors, when considered in the context of applicable precedent, incorporates relevant, forward-looking evidence to answer whether it is in the best interests of the child and the public for the case to proceed in Family Court. These factors allow the juvenile to present mitigating evidence of their background and life circumstances, provide context for any prior record, and most importantly to demonstrate that they are capable of rehabilitation with the Family Court's services.

The fifth factor, the "desirability of trial and disposition of the entire offense in one court" when the juvenile has adult co-defendants, should play no role in the waiver determination, because it penalizes juveniles for youthful qualities that mitigate their culpability.

B. The *Aiken/Miller* factors should instead be considered at the waiver stage.

The factors first enumerated in *Miller v. Alabama* and subsequently adopted in *Aiken v. Byars* should be addressed at the waiver stage in lieu of the *Kent* factors. Those factors are: "(1) the chronological age of the offender and the hallmark features of youth, including 'immaturity, impetuosity, and failure to appreciate the risks and consequence'; (2) the 'family and home environment' that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the 'incompetencies associated with youth—for example,

[the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys'; and (5) the 'possibility of rehabilitation.'" *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577.

These factors "take into account how children are different," *Miller*, 567 U.S. at 480. They are rooted in contemporary science, social science, and legal precedent. *Id.* at 472. The factors do not suffer from the *Kent* factors' deficiencies. They give appropriate weight to the seriousness of the offense and to the juvenile's role, they encompass relevant individualized and class-wide mitigating evidence, and they consider the juvenile's systematic disadvantages in the criminal system. Although initially crafted for juvenile sentencing in life without parole cases, the factors are plainly applicable to the waiver stage. There, as with sentencing, the court is tasked with making an individualized determination as to whether the child should be treated any differently than an adult.

Incorporating the *Aiken/Miller* factors at waiver stage has the added advantage of serving judicial economy interests. A juvenile waived and sentenced in General Sessions is entitled to consideration of the *Miller/Aiken* factors. *Jones v. State*, 440 S.C. 14, 29, 889 S.E.2d 590, 589 (2023) (directing circuit courts to "consider the mitigating factors of youth in sentencing juveniles" in General Sessions). If those same factors are addressed at the waiver stage, the juvenile's attorneys, investigators, and experts, as well as the state, can focus time and resources on one set of criteria, rather than two.

C. The State should be required to meet its burden with admissible evidence.

Evidence obtained in violation of constitutional criminal procedure protections, and that violates the Confrontation Clause and hearsay rules, should not be used to waive a case to General Sessions. This evidence is often unreliable and will be inadmissible at any subsequent criminal

trial. Nonetheless, it is regularly used at waiver and unjustifiably treated as proven, particularly with respect to the first four *Kent* factors.

This evidence is inadmissible at trial because it is either unreliable, or because its use violates fundamental constitutional norms. *See Crawford v. Washington*, 541 U.S. 36, 61–62 (2004) (noting that the Confrontation Clause's "ultimate goal is to ensure reliability of evidence…by testing it in the crucible of cross-examination"); *Miranda v. Arizona*, 384 U.S. 436, 457–58 (1966) (holding that existing interrogation practices were "at odds with one of our Nation's most cherished principles—that the individual may not be compelled to incriminate himself"). Those same values apply at waiver hearings, given their "tremendous consequences." *See Kent*, 383 U.S. at 553.

The *Kent* factors direct the Family Court to consider "the prosecutive merit of the complaint." *Pittman*, 373 S.C. at 559, 647 S.E.2d at 160. Any assessment of the prosecutive merit of a case must be based on admissible evidence, so that a juvenile cannot be transferred to General Sessions based on weak evidence that could not support a subsequent conviction.

D. The Court should reaffirm a presumption against waiver, and hold that the state must prove a waiver case by clear and convincing evidence.

Because the state brings the petition to transfer the juvenile's case to Family Court, the state bears the burden of persuading the Family Court that waiver is "in the best interest of both the child and the community." *State v. Pittman*, 373 S.C. 527, 558, 647 S.E.2d 144, 160 (2007). Even experts struggle to identify the small class of juveniles whose criminal offenses reflect "irreparable corruption." *Graham*, 560 U.S. at 73. Family Court judges face an even steeper challenge in making the waiver decision. But because, as the Supreme Court has recognized, it is only "the rarest of juvenile offenders…whose crimes reflect permanent incorrigibility," a child

facing waiver is entitled to a presumption that they are one of the majority of juveniles "whose crimes reflect transient immaturity." *Montgomery*, 577 U.S. at 209.

Waiver is presumptively not in the best interest of the child, because it exposes them to lengthier sentences, less rehabilitative programming, and a permanent criminal conviction. *See Kent*, 383 U.S. at 556 (noting that Family Court jurisdiction "confers special rights and immunities," including confidentiality, shorter sentences, and immunity from some of the consequences of an adult conviction). Though in some cases the Family Court may decide that the interests of the community outweigh the child's interests, this Court should clarify a presumption against waiver that must be overcome by sufficient evidence

Given the stakes of a waiver decision, due process requires that the state prove its case by clear and convincing evidence. The standard of proof "in any given proceeding" should reflect "not only the weight of the private and public interests affected," but also reflect "a societal judgment about how the risk of error should be distributed between the litigants." *Santosky v. Kramer*, 455 U.S. 745, 755 (1982). Courts must weigh three factors: the private interest; the risk of any erroneous deprivation, and the probable value of additional procedural safeguards; and the state's countervailing interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also Anonymous (M-156-90) v. State Bd. of Medical Examiners*, 329 S.C. 371, 376, 496 S.E.2d 17, 19 (1998). Those factors justify a heightened evidentiary burden for waiver.

Waiver exposes the child to lengthy incarceration, intense pressure to plead guilty, the lifelong stigma of a felony conviction, and the risk of a life without parole sentence, the harshest penalty available to a juvenile. In light of the dramatic sentencing disparity, the waiver decision "may be of greater significance to the juvenile than an actual adjudicatory proceeding in the family

court." *Shaw*, 274 S.C. at 542, 274 S.E.2d at 542. The juvenile's private interest is therefore immense.

There is also a substantial risk of an erroneous deprivation, because the current waiver scheme, which relies on a multifactor analysis and an uncertain burden of proof, "employ[s] imprecise substantive standards that leave determinations unusually open to the subjective values of the judge." *Santosky*, 455 U.S. at 762. Family Courts are making assessments about a child's capacity for rehabilitation that even experts cannot reliably make. *Graham*, 560 U.S. at 72–73. Juveniles facing waiver "are often poor, uneducated, or members of minority groups," and the Supreme Court has recognized that those parties "are often vulnerable to judgments based on cultural or class bias." *Santosky*, 455 U.S. at 763.

An erroneous, adverse waiver can almost never be corrected. If the judge orders that jurisdiction be retained by the Family Court, the state can appeal the decision. S.C. Code Ann. § 63-19-1210(6). But if the juvenile is transferred, there is no equivalent appeal. *State v. Lockhart*, 275 S.C. 160, 161 267 S.E.2d 720, 720 (1980). A heightened standard of proof would encourage Family Courts to assess the strength and weaknesses of the state's case, give appropriate weight to all factors, and reduce the likelihood of waiver decisions based on factual or legal error. *Santosky*, 455 U.S. at 764–65.

Nor does the state have a countervailing interest in a waiver decision that is incorrect or lacks support in the record. While the juvenile remains within the jurisdiction of the Family Court, the state acts as *parens patriae* and is responsible for safeguarding the welfare of the children. *In re Kevin R.*, 409 S.C. 297, 304, 762 S.E.2d 387, 390–91 (2014). The state's countervailing interest is not in a lower evidentiary burden, but in a system that ensures waiver decisions are made based on the entirety of the record and a weighing of relevant factors. This standard is also administrable,

as Family Court judges regularly apply the clear and convincing standard in termination of parental rights proceedings. *See S.C. Dep't of Soc. Servs. v. Sarah W.*, 402 S.C. 324, 335, 741 S.E.2d 739, 745 (2013). The state's interests likewise favor increased procedural protections.

A clear and convincing evidentiary standard is required "when the individual interests at stake in a state proceeding are both 'particularly important' and 'more substantial than mere loss of money.'" *Santosky*, 455 U.S. at 756 (quoting *Addington v. Texas*, 441 U.S. 418, 424 (1979)). This standard properly addresses the "tremendous consequences" of waiver as a "critically important action." *Kent*, 383 U.S. at 556. This Court should hold that due process mandates the state show that waiver is justified by clear and convincing evidence.

CONCLUSION

The *Kent* factors have not withstood the test of time. The factors systematically discount our modern legal, scientific, and social understanding of juveniles. This Court should update the *Kent* factors, either by adopting the *Miller/Aiken* factors to guide the waiver decision, or by clarifying that the waiver decision should turn primarily on the sixth, seventh, and eighth *Kent* factors and give no weight to the fifth factor in cases involving adult co-defendants. This Court should also hold that the waiver decision must be based on admissible evidence, and that the state bears the burden of disproving a presumption against waiver by clear and convincing evidence.

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May 7, 2026

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable W. Greg Seigler, Family Court Judge
Honorable Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2023-001588

THE STATE ....*Respondent*,

v.

NAZARETH N. SANCHEZ-PERALTA. ....*Appellant*.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Brief of Justice 360 and the Cornell Juvenile Justice Project as *Amici Curiae* in Support of the Appellant to *State v. Sanchez-Peralta*, No. 2023-001588, and the Motion for Leave to File *Amici Curiae* Brief, were served by email at the following primary email addresses listed in the Attorney Information System (AIS), this 7th day of May, 2026. A copy of that email is attached to this certificate.

Gary Howard Johnson II: ghjohnson@sccid.sc.gov
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May 07 2026

SC Court of Appeals

2023-001588: State v. Sanchez-Peralta amicus

1 message

Leah Smith <leah@justice360sc.org> Thu, May 7, 2026 at 10:35 AM
To: ghjohnson@sccid.sc.gov, agwilson@scag.gov, mbrown@scag.gov, brandonlarrabee@scag.gov, dzelenka@scag.gov, rhubbard@lexingtoncounty.sc.gov
Cc: Allison Franz <allison@justice360sc.org>, "John H. Blume" <jb94@cornell.edu>

Good morning,
Attached for service is a motion for leave to file an *amici curiae* brief in the above-captioned case, and a copy of the brief to be conditionally filed. Please let me know if there are any issues accessing either of the files.

Best,
Leah Smith
Legal Fellow
Justice 360

2 attachments

Sanchez-Peralta amicus_motion for leave.pdf
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