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CIRCUIT COURT OF
TUSCALOOSA COUNTY, ALABAMA
MAGARIA HAMNER BOBO, CLERK

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

STATE OF ALABAMA

V.

D [REDACTED] B [REDACTED] T [REDACTED]
Defendant.

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Case No.: CC-2017-003009.00

**ORDER OF DISMISSAL AND
ORDER DECLARING §12-15-204(a)(4) UNCONSTITUTIONAL**

This case comes before the court via Defendant's *Motion to Dismiss Indictment and Motion to Declare §12-15-204 Unconstitutional*. The Court considered the arguments set forth by counsel for the state and counsel for B.T.D. during the June 25, 2018 hearing on the motion as well as parties' briefs filed with the Court in advance of the hearing. The state was represented by Assistant District Attorney Katherine Furek and the Defendant was represented by his counsel of record, Gary L. Blume, of Blume & Blume, Attorneys at Law, PC. Following the hearing, the Court allowed both parties an additional week to submit briefs and exhibits. After considering the filings of the parties, arguments of counsel and facts that are not in dispute, the Court deems that the Defendant is entitled to the following relief:

- I. The Court finds that the provisions of §12-15-204(a)(4), Ala. Code 1975, are unconstitutional as that subsection violates the Due Process Clauses of the 5th and 14th Amendments of the U.S. Constitution, as well as the Constitution of Alabama of 1901 Article I, §6. The Court's reasoning in

reaching this conclusion is set out below.

- II. The single count indictment in this case is hereby dismissed and the Defendant is discharged from this case, upon this order becoming final.
- III. The Defendant's request that the Court declare §12-15-204, Ala. Code 1975 unconstitutional in its entirety is denied.

FINDINGS OF RELEVANT FACTS THAT ARE NOT IN DISPUTE

The allegations in this case involve a fight in the parking lot of the Northport Walmart on Sunday, July 16, 2017. As a result of the altercation, the alleged victim sustained a broken leg. At the time of the incident, B.T.D. (D.O.B. June 9, 2000), was 17 years of age.

Pursuant to a juvenile delinquency petition issued on July 17, 2017, B.T.D. was charged in the Juvenile Court of Tuscaloosa County, Alabama. That matter was assigned case number JU-2014-773.03.

B.T.D. has no prior or subsequent juvenile delinquency adjudications. B.T.D. has no other presently pending juvenile delinquency or adult criminal charges. The delinquency case was dismissed upon motion of the state on September 19, 2017, after the state unilaterally elected to automatically transfer the case against B.T.D. to adult court, pursuant to §12-15-204(a)(4), Ala. Code 1975.

The one-count indictment in this case is dated August 25, 2017, charging B.T.D. with Assault in the Second Degree, under §13A-6-21, Ala. Code 1975.

B.T.D. filed a Youthful Offender Application on November 30, 2017, which the

Court has held in abeyance, pending consideration of his *Motion to Dismiss Indictment and Motion to Declare §12-15-204 Unconstitutional*.

STATUTORY PROVISIONS

The *Juvenile Justice Act of 2008* provides two statutory mechanisms for transfer of a child under the age of 18 years from juvenile court to adult court for prosecution. The statutory provision at issue in this case is §12-15-204, Ala. Code 1975, which provides for the automatic transfer of a 16- or 17-year-old without a hearing. Under §12-15-204, a child's case is automatically placed in the jurisdiction of adult criminal court upon the issuance of a warrant or indictment, in accordance with the statutory provisions. The statutory provision not at issue in the instant case is §12-15-203, Ala. Code 1975, which prescribes the procedure for discretionary transfer of a child 14-17 years old. Under this provision, transfer is permitted only after a hearing that requires proof by clear and convincing evidence of a myriad of factors, to be determined by a juvenile court judge.

Specifically, B.T.D.'s case was automatically transferred by the state, pursuant to §12-15-204(a)(4), which applies to "a felony which has as an element thereof the causing of death or serious physical injury."

INTRODUCTORY CONSIDERATIONS

In considering the Defendant's motion, the Court reflects on a body of juvenile caselaw that informs its decision-making. In 1967, the United States Supreme Court held that the guarantees of Due Process apply to children and adults alike. *In re Gault*, 387 U.S. 1, 30-31 (1967); *In re Winship*, 397 U.S. 358, 362 (1970).

More recently, in a series of decisions issued between 2005-2016, the Supreme Court has recognized that youth are developmentally different from adults and that these differences warrant distinct treatment under the U.S. Constitution. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (holding that imposing the death penalty on individuals convicted as juveniles violates the Eighth Amendment's prohibition against cruel and unusual punishment); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (holding that imposing life without parole sentences on juveniles convicted of non-homicide offenses is unconstitutional); *J.D.B. v. North Carolina*, 564 U.S. 261, 271-72 (2011) (holding that a child's age must be taken into account for the purposes of the Miranda custody test); *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (holding that a mandatory life without parole sentence for a juvenile convicted of homicide is unconstitutional); and *Montgomery v. Louisiana*, __ U.S. __, 136 S. Ct. 718, 733, 193 L. Ed. 2d 599 (2016) (holding that *Miller* established a new rule of constitutional law which must be applied retroactively to individuals mandatorily sentenced to life without parole for crimes they committed as juveniles).

"[Y]outh is more than a chronological fact;" it is a "time and condition of life" marked by particular behaviors, perceptions, and vulnerabilities. *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982). These observations, which compel a distinctive application of the Constitution to youth, are supported by a significant body of developmental research and neuroscience demonstrating the significant psychological and neurological differences between youth and adults. See, e.g., *Graham*, 560 U.S. at 68

("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.").

Relying on this research, the United States Supreme Court has identified three key developmental traits of youth which warrant distinctive treatment: (1) lack of maturity, (2) susceptibility to outside influences, and (3) capacity for change. See *Montgomery*, 136 S. Ct. at 733 (quoting *Miller*, 567 U.S. at 471).

First, "children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking." *Montgomery*, 136 S. Ct. at 733 (quoting *Miller*, 567 U.S. at 471). The immaturity "often result[s] in impetuous and ill-considered actions and decisions." *Roper*, 543 U.S. at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367, 113 S. Ct. 2658, 125 L. Ed. 2d. 290 (1993)).

Second, youth are highly susceptible to external pressures. As the Supreme Court has explained, "children 'are more vulnerable . . . to negative influences and outside pressures,' including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller*, 567 U.S. at 471, (alterations in original) (quoting *Roper*, 543 U.S. at 569).

Finally, children have a greater capacity for change than adults because adolescence is a transitional phase. "[A] child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].'" *Id.* (second and third alterations in original) (quoting

Roper, 543 U.S. at 570). As a result, "a greater possibility exists that a minor's character deficiencies will be reformed." *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 570). These attributes are not limited solely to sentencing; youths' ability to reform shows that they are particularly amenable to the rehabilitative goals of the juvenile justice system. Each of these developmental characteristics leads to the diminished culpability of juvenile defendants; their "conduct is not as morally reprehensible as that of an adult." *Roper*, 543 U.S. at 570 [quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (plurality opinion)].

PROCEDURAL DUE PROCESS ANALYSIS

The United States Supreme Court cases establish that children cannot automatically be treated like their adult counterparts. Indeed, as the Court observed in *Graham*, "criminal procedure laws that fail to take defendants' youthfulness into account at all [are] flawed," 560 U.S. at 76, thus extending the rationale of *Roper* and *Miller* beyond the sentencing context and the proscriptions of the Eighth Amendment. Section 12-15-204(a)(4) is unconstitutional because it mandatorily treats youth like B.D.T. as adults.

The unique traits of children and adolescents necessitate an individualized assessment of "an offender's age and the wealth of characteristics and circumstances attendant to it" before exposing youth to the punishments of the adult criminal justice system. *Miller*, 567 U.S. at 476. The Supreme Court's decisions mandate an individualized approach before youth may be subjected to adult consequences. In

Miller, the Court specifically noted six such characteristics that should be considered during sentencing in light of the differences between children and adults: (1) the youth's chronological age related to "immaturity, impetuosity, and failure to appreciate risks and consequences," (2) the juvenile's "family and home environment that surrounds him," (3) the circumstances of the offense, including extent of participation in the criminal conduct, (4) the impact of familial and peer pressures, (5) the effect of the offender's youth on his ability to navigate the criminal justice process, and (6) the possibility of rehabilitation. 567 U.S. at 477-78.

The same requirement for individual consideration of childhood characteristics must apply throughout a child's involvement in the criminal justice system. For example, in *J.D.B. v. North Carolina*, the Supreme Court relied on its earlier findings regarding the immaturity and vulnerability of children to hold that a child's age must be considered in determining whether they are in custody for purposes of the administration of *Miranda* warnings. 564 U.S. at 272-4.

Courts have similarly used this reasoning to invalidate mandatory sentencing schemes that automatically sentence children as adults without appropriate consideration of youth and its hallmark characteristics. In *State v. Houston-Sconiers*, 391 P.3d 409, 420 (Wash. 2017), the Washington Supreme Court held that, pursuant to *Miller*, courts sentencing juveniles must have discretion to consider mitigating circumstances regarding youth and impose sentences below statutorily mandated sentencing ranges. The Court explained that because "children are different," . . .

'criminal procedure laws' must take the defendants' youthfulness into account." *Id.* at 413-14. In Iowa, the State Supreme Court similarly invalidated all mandatory minimum sentences for young offenders because they are too punitive considering the developmental characteristics of children. *State v. Lyle*, 854 N.W.2d 378, 400 (Iowa 2014). The Iowa Court found it was an "irrational exercise" to punish a child "irrespective of an individualized analysis of the juvenile's categorically diminished culpability." *Id.* at 399. In each of these cases, the courts reasoned that because state statutes did not allow for an individualized assessment of the characteristics of childhood before subjecting young people to the same punishments as adults, they ran afoul of the principles espoused by *Miller* and the United States Supreme Court's juvenile justice jurisprudence that children cannot automatically be treated as adults.

The decision to prosecute a child in the adult criminal justice system is one of the most "critically important" steps that children face, with profound and potentially life-altering consequences. *Kent v. U.S.*, 383 U.S. 541, 556 (1966). The distinct attributes of childhood underlying the Supreme Court's sentencing decisions are no less relevant at the transfer stage. Section 12-15-204(a)(4), which forecloses any consideration of the child's developmental attributes and individual characteristics by mandating prosecution as an adult, contravenes the foundational principles of the Supreme Court's jurisprudence.

The *Kent* decision directs that a series of factors must be considered by a juvenile court in the process of a discretionary transfer proceeding. To implement *Kent's*

holding, the Alabama legislature enacted a discretionary transfer statute in 1982. As the Court held in *Kent*, a transfer proceeding must provide due process protections commensurate with the critical nature of the proceedings, because "there is no place in our system of law for reaching a result of such tremendous consequences without ceremony - without hearing, without effective assistance of counsel, without a statement of reasons." *Kent v. U.S.*, 383 U.S. at 554. The Supreme Court in *Kent* listed several factors that should be considered before a child may be transferred to adult criminal court:

1. The seriousness of the offense and whether the protection of the community requires transfer;
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
3. Whether the offense was against persons or property;
4. The "prosecutive merit" of the complaint;
5. The desirability of trial and disposition in one court if there are adult associates of the crime;
6. The sophistication and maturity of the child as determined by consideration of her/his home, environmental situation, emotional attitude and pattern of living;
7. The record and previous history of the juvenile; and
8. The prospects for adequate protection of the public and the likelihood of

reasonable rehabilitation.

383 U.S. at 565-67.

Alabama appellate courts have endorsed the importance of *Kent*. *Ex parte W.T.K.*, 586 So.2d 850, 851 (Ala. 1991) ("A transfer hearing 'must measure up to the essentials of due process and fair treatment.'" quoting *Kent*); *O.M. v. State*, 595 So.2d 514, 517 (Ala. Crim. App. 1991) (quoting *Ex parte W.T.K.*, quoting *Kent*).

Section 12-15-204(a)(4), Ala. Code 1975, does not allow for consideration of any of the *Kent* factors. The mandatory prosecution of certain classes of children as adults without a hearing runs afoul of the state and federal due process clauses. Section 12-15-204(a)(4) violates due process by mandating that certain children automatically be treated as adults, thereby foreclosing any consideration of their individual attributes and circumstances. The statute subjects children, like B.D.T. to the harsh consequences of the adult criminal justice system, and denies them the benefits of the juvenile justice system, without any individualized determination of the child's suitability for prosecution as an adult. The statute contravenes due process principles by creating an unconstitutional presumption that children are as morally culpable as adults—contrary to *Roper*, *Graham* and *Miller*—and thus failing to comply with the due process requirements of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), and *Kent v. U.S.*, 383 U.S. at 554.

In *Mathews v. Eldridge*, 424 U.S. 319 (1976), the U.S. Supreme Court outlined a three-part test to analyze the sufficiency of procedural protections under the due

process clause. A court must examine:

1. "the private interest that will be affected by the official action;"
2. "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and
3. "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Id., 424 U.S. at 335. This Court applies the same three-part test below.

1. The Private Interest

Significant procedural protections are required where a person would "suffer grievous loss" upon deprivation of the individual interest or right at stake. *Goldberg v. Kelly*, 397 U.S. 254, 263 (1970). As *Kent* noted, the liberty interests at stake in the transfer of a child from juvenile to adult criminal court are "critically important" and call for heightened protections before a child can be prosecuted in the adult system. *Kent*, 383 U.S. at 553-554.

As he was of juvenile age and the charges in this case originated in the Juvenile Court of Tuscaloosa County, this Court finds that B.T.D. had a constitutionally protected liberty interest in his status as a juvenile and all of its attendant and consequential benefits. In juvenile court, B.T.D. faced the deprivation of his liberty at a therapeutic facility for a maximum of less than 4 years with others his age. In adult

court, he could be incarcerated in an adult facility for up to 10 years. Juvenile court delinquency records are not a matter of public record – not open to examination by any one not involved in the case. §12-15-133, Ala. Code 1975. Adult criminal records are open to one and all. While an individual who was adjudicated delinquent may later petition the court to seal and destroy juvenile delinquency records, §§ 12-15-136 & 12-15-137, Ala. Code 1975, an individual with an adult criminal conviction has no such option. Juvenile court fines may not exceed \$250. §12-15-215(a)(4), Ala. Code 1975. An adult charge of Assault Second Degree, a Class C felony, carries a fine of up to \$15,000. §13A-5-11(a)(3), Ala. Code 1975. Court costs, fees and assessments are similarly substantially less in Juvenile Court.

2. The Risk of Erroneous Deprivation of the Liberty Interest

The second prong of the *Mathews* test requires that courts review the “fairness and reliability” of the existing procedures in place to determine whether additional procedural safeguards such as a hearing are necessary. *Mathews*, 424 U.S. at 343. An essential procedure required before deprivation of a significant interest is “notice and opportunity for hearing appropriate to the nature of the case.” *Cleveland Bd. Of Educ. V. Loudermill*, 470 U.S. 532, 542 (1985), citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

Section 12-15-204(a)(4) makes the prosecutor’s charging decision dispositive and provides no inquiry into whether prosecution in the adult system is appropriate under the circumstances for this particular child. Without any procedural protections, the risk

of error is manifest.

3. The Governmental Interest

The final *Mathews* inquiry looks to the government and public interests implicated in providing due process. *Mathews*, 424 U.S. at 347. Such interests include the administrative burden and societal costs associated with additional hearings. This Court finds that providing an individualized transfer hearing places minimal burden on the state. Alabama already provides for a hearing regarding the discretionary transfer of children to the adult criminal system. See §12-15-203, Ala. Code 1975. Providing a similar hearing to all youth subject to mandatory transfer pursuant to §12-15-204(a)(4), like B.D.T, imposes a limited additional burden on the state. Additional costs incurred to protect the due process rights of children cannot excuse the state from meeting those constitutional requirements. Further, the hearings will ensure that any decision to transfer is made by an impartial judicial decision-maker after a fully informed adversarial hearing. These informed decisions will substantially increase the accuracy of determining which child should remain in juvenile court or be prosecuted in adult criminal court and will further serve the public interest by decreasing recidivism and violence against juveniles.

VAGUENESS AND OVERBREADTH

The prohibition of vagueness in criminal statutes is an essential element of due process, required by both “ordinary notions of fair play and the settled rules of law.” *Johnson v. United States*, 576 U.S. ____ (2015), quoting *Connally v. General Constr. Co.*, 269

U.S. 385, 391 (1926). The void-for-vagueness doctrine guards against arbitrary or discriminatory law enforcement by insisting that a statute provide standards to govern the actions of police officers, and prosecutors. *See, Kolender v. Lawson*, 461 U.S. 352, 357-358 (1983).

The Court finds that the language of §12-15-204(a)(4) is vague and overly-broad: "a felony which has an element thereof the causing ... serious physical injury."

Although serious physical injury is defined in §13A-1-2(14), Ala. Code 1975, the statute has been construed to not include:

1. A gunshot wound to the chest. *Cowan v. State*, 540 So.2d 99 (Ala. Crim. App. 1988).
2. A gunshot wound to the arm. *Ky Van Vo v. State*, 612 So.2d 1323 (Ala. Crim. App. 1992).
3. A gunshot wound to the shoulder. *M.T.R. v. State*, 620 So.2d 753 (Ala. Crim. App. 1993).
4. A knife attack to the neck. *Saylor v. State*, 719 So.2d 266 (Ala. Crim. App. 1998).
5. A gunshot wound to the abdomen. *Westbrook v. State*, 722 So.2d 788 (Ala. Crim. App. 1998).
6. A gunshot wound to the leg. *Lee v. State*, 727 So.2d 887 (Ala. Crim. App. 1998).
7. Separate gunshot wounds to the hand and the arm. *Davis v. State*, 467 So.2d 265 (Ala. Crim. App. 1985).

Because of the overly broad language of §12-15-204(a)(4), a child can be deprived

of her/his liberty interest in remaining in juvenile court without due process in virtually every circumstance involving allegations of a felony with an injury. In B.T.D.'s case, the uncontroverted facts are that the alleged victim sustained a broken leg. The notion that the determination that a broken leg constitutes a serious physical injury can unilaterally be determined by the state at the charging stage, is inconsistent with due process.

CONSIDERATION OF PRICE v. STATE

The State relies upon a decision of the Court of Criminal Appeals in *Price v. State*, 683 So.2d 44 (Ala. Crim. App. 1996), which briefly addressed the constitutionality of a prior Alabama automatic transfer statute. Upon review of the *Price* decision, it is clear the trial court was unable to address the constitutional arguments because they were not presented to the court by defense counsel. As such, those issues could not be considered by the appellate court. Moreover, the *Price* decision makes no mention of *Kent v. United States*, decided 30 years earlier and which lays out the constitutional importance of a juvenile's interest in juvenile court prosecution. The *Price* decision similarly made no mention of Alabama appellate courts endorsing and applying the *Kent* decision. *Ex parte W.T.K.*, 586 So.2d 850 (Ala. 1991); *O.M. v. State*, 595 So.2d 514 (Ala. Crim. App. 1991). Rather, the *Price* court made a very cursory review of some constitutional protections and affirmed Price's murder conviction.

More importantly, *Price* was decided more than 20 years before the current automatic transfer provision, §12-15-204, was even adopted, and without the Supreme

Court's current doctrinal view of children's constitutional rights under the Constitution. See, e.g., *Roper v. Simmons*, *Graham v. Florida*, *J.D.B. v. North Carolina*, *Miller v. Alabama*, and *Montgomery v. Louisiana*. The Price decision is not surprisingly bereft of any reference to more contemporary research that has informed the Supreme Court's jurisprudence since 2005. See, *id.*

CONCLUSION

Based on the foregoing and this Court's determination and finding that §12-15-204(a)(4), Ala. Code 1975 is unconstitutional, this case is hereby DISMISSED. Costs are waived.

DONE this 30th day of August, 2018.

/s/ JAMES H. ROBERTS JR.
CIRCUIT JUDGE