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State of Michigan
In the Supreme Court

The People of the State of Michigan,

Plaintiff-Appellee,

v

Alexander Haupt,

Defendant-Appellant.

MSC Case No. 167315

COA Case No. 351593

Clare County Circuit Court
Case No. 17-005731

Amicus Curiae Brief of the Criminal Defense Attorneys of Michigan (CDAM) in Support of Alexander Haupt

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Bradley R. Hall, P68924
Nicholas Kozitza, Law Student Attorney
Alexander Short, Law Student Attorney
Katelyn E. Zaagman, Law Student Attorney
MSU College of Law Public Defender Clinic
PO Box 1570
East Lansing, MI 48826
Tel: 517.432.6952
Email: bhall@law.msu.edu

Christine A. Pagac, P67095
CDAM Amicus Advisor
10721 E. Jefferson Ave #14506
Detroit, MI 48214
Tel: 313.288.8555
Email: christine@pagaclaw.com

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Statement of Interest

CDAM is a 501(c)(3) non-profit organization with a purpose of promoting expertise in criminal law, constitutional law, and procedure. CDAM sponsors seminars, training conferences, and advocates for the criminal defense bar's views before state and legislative bodies. For more than forty years, CDAM has filed amicus briefs in the Michigan Supreme Court, the Michigan Court of Appeals, and the United States Supreme Court.

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Statement of Jurisdiction

This Court has jurisdiction under MCR 7.303.

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Questions Presented

I. Whether the Court's consideration of this case should be informed by its recent juvenile life without parole sentencing jurisprudence and the heightened protections for the right to counsel in delinquency proceedings.

CDAM answers: Yes.

II. Whether Alex validly waived his right to counsel following appointed counsel's withdrawal in June 2019.

CDAM answers: No.

III. Whether Alex forfeited his right to counsel through his conduct and remarks.

CDAM answers: No.

IV. Whether the periods for which Alex was without counsel were critical stages of the proceedings.

CDAM answers: Yes.

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Introduction

Alex Haupt did not validly waive his right to counsel for the 44 days before trial—when trial preparation was essential and critical motions were argued and decided. Even if his initial waiver was knowing and voluntary, it did not survive the eight months from when counsel was appointed until that attorney withdrew. As to the period in which Alex was *actually unrepresented*, the Court of Appeals was correct that Alex did not validly waive his right to counsel. And even if Alex's initial waiver could have survived until trial as the prosecution argues, MCR 6.005(E) would have required the trial court to "reaffirm" Alex's continued wish for self-representation at "each subsequent proceeding." That did not happen here.

Alex also did not forfeit the right to counsel through his conduct. Although he displayed immaturity and impulsivity, Alex's status as a late-stage adolescent—19 years old at the time of his alleged offense and 21 when he was thrust into representing himself—reinforces the importance of protecting his right to counsel, rather than inferring an unspoken waiver.

Finally, the 44-day period in which Alex was unrepresented by counsel was a critical stage of the proceedings because of the *potential* for substantial prejudice to his rights. By finding otherwise based on the perceived absence of *actual* prejudice, the Court of Appeals got it backwards.

In considering each of these questions, CDAM asks this Court not to lose sight of an important fact: Alex was barely an adult when all this happened. Just as youth enjoy greater protection of their right to counsel in delinquency proceedings, and just as late adolescents cannot be sentenced in the same manner as adults in certain cases, this Court should recognize that Alex's conduct may have been more a reflection of immaturity and impetuosity than the knowing, intelligent, and voluntary waiver of important rights.

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Statement of Facts

In the prosecution's view, Alexander Haupt "did everything in his power to delay his case and alienate those trying to help him." (Pros. Br. at 1.) As such, "not only did appointed counsel have enough, but so did the trial court," and Alex got what he deserved when he was left without counsel in the weeks before trial. (*Id.*)

But there is another way of looking at Alex's behavior: that of a headstrong but frightened 21-year-old who had not graduated high school, facing a potential prison sentence for conduct that allegedly took place during a tumultuous teenage romance. While Alex may not have been a model of wisdom or decorum as he struggled to navigate his way through the criminal justice system, that is no reason to relax the protections of his Sixth Amendment right to counsel.

1. Alex's retained counsel withdraws in June 2018.

Alex was charged with multiple felonies for conduct that occurred during a romantic relationship when he was 19 years old. (Haupt Appendix at 35, 106.) His family retained attorney Scott Grabel. (*Id.* at 55, 61.) Mr. Grabel was adamant that Alex take the prosecution's plea offer because he thought it would carry little to no jail time. (*Id.* at 76.) In April 2018, when Alex was 20, Mr. Grabel sought to withdraw based on a lack of communication with Alex, explaining that Alex's father "has kind of been almost a de facto client in this case." (*Id.* at 62). The judge denied that request, but Mr. Grabel renewed his request after claiming that Alex threatened his bar license. (*Id.* at 61, 78.) He told the judge, "I think [Alex is] insane not to take this deal, and I said he's going to end up in prison, in my opinion." (*Id.* at 77-78.) In June 2018, just three days after Alex turned 21, the judge granted Mr. Grabel's request and told Alex to find a new attorney. (*Id.* at 83.)

2. Alex waives his right to counsel in October 2018 but immediately requests appointed counsel.

About a month after Mr. Grabel withdrew, Alex appeared in court without counsel. (*Id.* at 90.) Alex indicated that money was tight because he had already paid Mr. Grabel $25,000. (*Id.* at 90.) The judge told Alex he could represent himself,

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but it would be wise to get counsel. (*Id.* at 90-91.) The judge, keen to get the case to trial, told Alex, "You better be prepared to go. I'm not going to do any more adjournments." (*Id.* at 91.)

At the next hearing in October 2018, Alex appeared again without counsel. (*Id.* at 100.) The judge engaged Alex in a waiver of counsel colloquy, finding that Alex made a knowing, intelligent, and voluntary waiver of counsel. (*Id.* at 104.) Alex explained that he had only completed up to the eleventh grade in high school, that he had never represented himself before, and that he wanted to represent himself because he could provide "better representation than a public defender can provide." (*Id.* at 100-101.)

It appears that Alex had an immediate change of heart, because three days later, the court appointed attorney Scott Moore to represent him. (*Id.* at 41.)

3. Alex's appointed counsel withdraws in June 2019 and the judge tells Alex to represent himself without engaging in a waiver colloquy.

In June 2019, Mr. Moore filed an ex parte motion to withdraw, which the judge denied. (*Id.* at 43). A few days later, Mr. Moore again sought to withdraw, claiming that Alex questioned his truthfulness and loyalty. (*Id.* at 121-122.) Apparently frustrated, the judge approved Mr. Moore's withdrawal as counsel but directed him to remain in an advisory role. (*Id.* at 123-124.)

Unlike when Mr. Grabel had withdrawn in 2018, the judge did not engage in a waiver of counsel colloquy. (*Id.* at 124.) Instead, the judge told Alex that "at this point, you are on your own, and you're going to have to represent yourself." (*Id.* at 124.) Noting that Mr. Moore was Alex's second attorney to withdraw, the judge lamented, "This case is old, and your actions have delayed this case; nobody else's actions but yours." (*Id.* at 124.) The judge set a "definite" trial date 44 days later. (*Id.* at 124.)

Alex represented himself for the next 44 days. He filed and argued his own motions to suppress and dismiss, and he filed his own witness and exhibit lists. (*Id.*

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at 128, 166.) Alex lost his motions. (*Id.* at 159-160.) The prosecution also filed a motion to strike defense witnesses and exhibits and a motion to use prior recorded testimony of the complainant. (*Id.* at 155, 166.) The prosecution won its motions. (*Id.* at 169, 176.)

Throughout the proceedings, Alex's father was deeply involved. The prosecution served Alex via his father. (*Id.* at 150.) On the first day of trial, the prosecution and judge noted that Alex's father was directing Alex what to say. (*Id.* at 179). The judge admonished Alex's father: "You don't get to help direct the case from the pews there." (*Id.* at 179). The judge also returned an unopened letter from Alex's father that Alex had tried to give to the judge. (*Id.* at 160.)

4. On the first day of trial, the judge reappoints Alex's standby counsel and adjourns the trial for one day.

On the first day of trial, after the judge admonished Alex's father, the prosecution brought a motion in limine. (*Id.* at 183.) When prompted to respond to the motion, Alex told the judge, "I'm going to stand mute from this point on . . . *I did not say I did not want an attorney*." (*Id.* at 183 (emphasis added).) The judge asked Alex if he wanted an attorney three times in a row; Alex responded, "Yes, I do." (*Id.* at 183.) The judge then reappointed Mr. Moore as counsel. (*Id.* at 183.)

Mr. Moore was frustrated with the circumstance he was thrust into and asked the judge for an adjournment. He told the judge that he was not prepared for trial, had not been in contact with Alex since he was appointed the first time around eight months ago, and did not want to be part of this. (*Id.* at 186-88.) With the prosecution's agreement, the judge adjourned the trial for one day, stating that Mr. Moore was familiar with the case and could go to trial the next day. (*Id.* at 188-90.) The jury trial started the next day, and Alex was convicted on all counts. (*Id.* at 55.)

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Argument

I. The Court's consideration of this case should be informed by its recent juvenile life without parole sentencing jurisprudence and the heightened protections for the right to counsel in delinquency proceedings.

CDAM asks this Court not to lose sight of Alex's age and immaturity. Only 19 years old at the time of the alleged offenses and 21 when he was supposed to have understood and waived his right to counsel, Alex was not the savvy and sophisticated litigant portrayed by the prosecution; he was a scared and confused kid. The law should not lose sight of that.

As scientific research and legal precedents recognize, the brains of late adolescents, defined as 18- to 25-year-olds, are neurologically more similar to those of juveniles than fully mature adults. See *People v Parks*, 510 Mich 225, 252 (2022). This is primarily because the prefrontal cortex, the area responsible for "executive functions" like impulse control, risk assessment, and complex decision-making, is one of the last regions of the brain to develop. Arain et al, *Maturation of the adolescent brain*, 9 Neuropsychiatric Disease and Treatment 449, 453 (2013)[1]; Keating, *Summary of Adolescent Developmental and Neurodevelopmental Science in re Juvenile Life Without Parole*, at 4 (Ann Arbor: University of Michigan, 2025).[2] During this window, the brain retains high levels of neuroplasticity, meaning it is still "rewiring" itself and has not yet reached full social and emotional maturity. *Parks*, 510 Mich at 250. Consequently, because the prefrontal cortex is not fully developed until age 25, late adolescents often exhibit behavioral immaturity and a reduced capacity for weighing consequences. *Maturation of the adolescent brain* at 453; *Parks*, 510 Mich at 250.

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[1] Available at https://www.dovepress.com/article/download/12651 (accessed February 10, 2026).
[2] Available at https://www.woodtv.com/wp-content/uploads/sites/51/2025/09/Adolescent-Neurodevelopment-re-JLWOP_-Dr.-Keating.pdf (accessed February 10, 2026).

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Under the Eighth Amendment's ban on cruel and unusual punishment, the United States Supreme Court has expanded the sentencing protections for adolescents in recent decades. For instance, in *Roper v Simmons*, 543 US 551, 578 (2005), the Court prohibited imposition of the death penalty on juvenile offenders. In *Graham v Florida*, 560 US 48, 82 (2010), the Court prohibited the sentencing of juvenile offenders to life without parole for non-homicide offenses. And in *Miller v Alabama*, 567 US 460, 465 (2012), the Court prohibited the mandatory imposition of life without parole sentences for juvenile offenders. See also *Montgomery v Louisiana*, 577 US 190, 212 (2016) (applying *Miller* retroactively).

Under the Michigan Constitution, this Court has gone even further. In the landmark case of *People v Parks*, the Court held that the 18-year-old defendant's "sentence of mandatory life without parole violates the Michigan Constitution's ban on 'cruel *or* unusual' punishment.'" 510 Mich at 232, citing Const 1963, art 1, § 16 (emphasis added). The Court explained that the sentence "lacks proportionality because *it fails to take into account the mitigating characteristics of youth, specifically late-adolescent brain development*." *Parks*, 510 Mich at 232 (emphasis added). "[T]he research indicates that late adolescents are hampered in their ability to make decisions, exercise self-control, appreciate risks or consequences, feel fear, and plan ahead." *Id.* at 250, citing National Academies of Sciences, Engineering, and Medicine, *The Promise of Adolescence: Realizing Opportunity for All Youth* (Washington, DC: The National Academies Press, 2019), at 37, 51-52.[3] See also *People v Boykin*, 510 Mich 171, 193 (2022) (holding that "[t]rial courts must consider youth as a mitigating factor[.]").

Based on the growing scientific research on adolescent brain development, this Court recently extended *Parks* to individuals aged 19 or 20 at the time of their offense because "as a class, 19- and 20-year-old late adolescents are more similar to juveniles in neurological terms than they are to older adults." *People v Taylor*, ___

[3] Available at https://www.ncbi.nlm.nih.gov/books/NBK545481/ (Accessed February 10, 2026).

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Mich ___, ___ (2025) (Docket Nos. 166428 and 166654); slip op at 14, 16. The Court cited several Michigan laws with varying age restrictions, thus showing the arbitrary role age plays in the law. For example, this Court noted that the Michigan Legislature "extended eligibility for the Holmes Youthful Trainee Act (HYTA) . . . to encompass adolescents between the ages of 18 and 26, when it previously was limited to ages 17 and 24." *Taylor*, ___ Mich at ___; slip op at 8, citing MCL 762.11 et seq.; *Parks*, 510 Mich at 253. The Court also noted that an individual must reach the age of 21 before they can: serve as an elected state legislator; purchase, possess or consume alcohol or cannabis; carry a concealed pistol; gamble; or become a Michigan State Police Trooper. *Taylor*, ___ Mich at ___; slip op at 8 (citations omitted). And at the federal level, an individual must be at least 25 to serve as a member of the House of Representatives; at least 30 to be a member of the Senate; and at least 35 to serve as President or Vice President. *Id.* (citations omitted).

While these inconsistent age limits support the outcomes in *Parks* and *Taylor*, they arguably call for even more reform. Concurring in *Parks*, Justice Bernstein wrote that "having a line in place does not mean that such a line should represent both the floor and ceiling of constitutional protections, especially when we already understand that such a line might not be sufficiently protective." *Parks*, 510 Mich at 275 (BERNSTEIN, J., concurring). And in *Taylor*, he expressed "disagree[ment] with a bright-line rule drawn at age 21" and highlighted "the problem of underinclusiveness that is associated with drawing a bright-line rule." *Taylor*, ___ Mich at ___; slip op at 17 (BERNSTEIN, J., concurring in part and dissenting in part). Justice Bernstein explained, "[I]f drawing any line were necessary, I would instead follow the consensus of the relevant scientific studies and draw such a line at age 25." *Id.*

Life without parole sentencing is not the only context in which immaturity matters—or even the most relevant to this case. Michigan and other states also provide enhanced protection of the right to counsel for youth in delinquency proceedings, and there are calls for even greater protections.

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In Michigan delinquency proceedings, a "best interests" standard governs the waiver of counsel. Under this standard, notwithstanding the expressed wishes of a youth or verbalized waiver of counsel, trial courts *must* appoint counsel if "the best interests of the juvenile or the public require appointment." MCR 3.915(A)(2)(e).

Other states also maintain a higher standard for waiver of counsel in delinquency proceedings. See generally Comment, *Loss of Innocence and of Protection: A Review of the Right to Counsel and Waiver Laws Across the United States,* 8 J Marshall LJ 101, 108-111 (2014). For instance, New York maintains a "best interests" standard like Michigan but requires a court to find by "clear and convincing evidence" that a waiver is in the minor's best interest. NY Fam Ct Act § 249-a (McKinney). Louisiana and Washington allow youth to waive the right to counsel only after consulting a parent or an "interested adult." *State in Interest of Jones*, 372 So 2d 779, 780 (La Ct App, 1979); Wash Rev Code Ann 13.40.140(11). Colorado uses an extensive multi-factor colloquy to ensure that juveniles are not compromised by their development maturity. Colo Rev Stat Ann 19-2.5-605. And Pennsylvania prohibits waiver of counsel altogether for youth in certain hearings. 14 Pa RJCP 152.

There is a commonsense reason to protect youth in delinquency proceedings with a heightened standard for waiving counsel: youth are particularly inept at representing themselves. Legal scholars have recognized that self-representation "almost always harms the youth's interest" on account of obvious "developmental immaturity." Scott, *Restating the Law in a Child Wellbeing Framework*, 91 U Chi L Rev 279, 293 (2024). The latest draft of the Restatement of Children and the Law similarly notes that youth are "strongly presumed to lack the capacity to waive representation of counsel and to undertake self-representation." Restatement Children and the Law § 13.31, TD 4. And as our Court of Appeals recently explained, "Given the pitfalls of self-representation even for adults, the circumstances under which self-representation will serve a child's best interests are likely to be extremely rare." *In re EE*, 346 Mich App 332, 352 (2023).

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Thus, it is not surprising to see calls for even greater protection of the right to counsel for youth. Concurring in *EE*, then-Chief Judge Elizabeth L. Gleicher criticized Michigan's "hodge-podge" of existing statutory protections and argued that "due process requires the appointment of counsel whenever a child's liberty may be threatened . . . and the family lacks the resources to retain counsel." 346 Mich App at 355-56 (GLEICHER, J., concurring). Pointing to Colorado's multi-factor inquiry as "a good starting point," she urged this Court to "consider the adoption of a court rule requiring judges to make specific inquiries and record findings before accepting a child's waiver of counsel." *Id*. at 357. See also *Loss of Innocence,* 8 J Marshall LJ at 112 (urging Georgia to require consultation with counsel, outside the presence of parents, before youth can waive counsel).

What does all this have to do with the instant case? Many of the same biological and developmental factors were at play when Alex was forced to represent himself in the six-plus weeks leading up to his trial. Had he been charged with first degree murder, he would have been entitled to *Taylor* sentencing protections because of his age at the time of the alleged offense. Had he been slightly younger and charged with a status or delinquency offense, he would not have been allowed to represent himself absent a "best interests" finding. While this is obviously not a murder case or delinquency proceeding, the considerations above should inform this Court's consideration of the three specific questions on which it directed argument. Just as the Court has rejected "arbitrary line-drawing" at the age of 18 in the juvenile lifer sentencing context, see *Parks*, 510 Mich at 262, it should not ignore the relevance of Alex's immaturity and impetuosity in this case.

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II. Alex did not validly waive his right to counsel following appointed counsel's withdrawal in June 2019.

The Sixth Amendment right to counsel is a fundamental right that applies to everyone charged with a crime in the United States. *Gideon v Wainwright*, 372 US 335, 340 (1963). The right to counsel is also found in the 1963 Michigan Constitution and Michigan statutes. Const 1963, art 1, § 20; MCL 763.1. While the Sixth Amendment also includes an implied right to represent oneself, see *Faretta v California*, 422 US 806, 807 (1975), representation by counsel is presumed, and can only be overridden by a valid waiver. *People v Spears (On Remand)*, 346 Mich App 494, 504-505 (2023). The court should "'indulge every reasonable presumption against waiver' of the right to counsel and should not allow a defendant to proceed pro se if any doubt casts a shadow on the waiver's validity." *In re EE*, 346 Mich App 332, 348 (2023), quoting *People v Williams*, 470 Mich 634, 641-642 (2004).

In a Michigan criminal prosecution, a valid waiver of counsel must comply with MCR 6.005(D) and *People v Anderson*, 398 Mich 361 (1976). Under MCR 6.005(D), the trial court must advise the defendant of the charges, the maximum and mandatory minimum prison sentences, the risks of self-representation, and the right to consult with retained or appointed counsel about self-representation. *Anderson* requires the court to determine whether (1) the request is unequivocal, (2) the request is made knowingly, intelligently, and voluntarily, and (3) self-representation "will not disrupt, unduly inconvenience and burden the court and the administration of the court's business." 398 Mich at 368. The court must substantially comply with these requirements, which it can do by engaging "in a short colloquy with the defendant." *People v Adkins*, 452 Mich 702, 726 (1996), rev'd on other grounds by *Williams*, 470 Mich at 646-47. Importantly, "the presence of standby counsel does not legitimize a waiver-of-counsel inquiry that does not comport with legal standards." *EE*, 346 Mich at 352, quoting *People v Dennany*, 445 Mich 412, 446 (1994).

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The Court of Appeals explained in this case that "[w]hen appointed counsel was allowed to withdraw . . . [t]he record indicates that the trial court failed to comply with the substance of *Anderson* and MCR 6.005(D)." *People v Haupt*, unpublished per curiam opinion of the Court of Appeals, issued April 25, 2024 (Docket No. 351593), p 1-2. This finding was correct; far from ensuring a knowing and voluntary wavier, the trial court told Alex, "[Y]ou are on your own, and you're going to have to represent yourself." (Haupt Appendix at 124.) The court recounted earlier events and lamented the age of the case, but failed entirely to comply with *Anderson* or MCR 6.005(D). (See *id.* at 123-124.)

To get around this reality, the prosecution argues that Alex's initial "waiver in October 2018 and/or in combination with [other] factors" should mean Alex also waived counsel in June 2019. (Pros. Br. at 20.) Not so.

First, Alex's October 2018 waiver was not nearly as unequivocal as the prosecution now suggests. Notwithstanding what appears in the colloquy transcript on October 23, it is counsel's understanding that Alex left the courtroom and walked directly to the clerk's office to request appointed counsel. This would explain why his request for appointed counsel and accompanying signed order were filed with the clerk on October 26. (See Haupt Appendix at 41.) Put differently, Alex said one thing while doing the opposite—and never actually represented himself based on the October 2018 colloquy. It was an aborted waiver suggesting confusion and indecision.

Second, after the initial colloquy, a full *eight months* passed during which Alex requested counsel and was represented by appointed counsel. Even if an argument could be made that a close-in-time colloquy should suffice to ensure a knowing and voluntary waiver of counsel at a subsequent court proceeding, this is not that case. During the eight-month period, Alex's counsel had the case remanded to district court for a preliminary exam and was preparing for trial. Alex had ample time to forget about or lose sight of the initial colloquy.

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Third, the prosecution's argument fails to account for MCR 6.005(E), which requires reaffirmation of a defendant's initial waiver of counsel on "the record of *each subsequent proceeding*," specifically including "hearings." (Emphasis added.) Under the rule, "[b]efore the court begins such proceedings . . . the defendant must reaffirm that a lawyer's assistance is not wanted" or be provided with appointed counsel or an opportunity to retain counsel. *Id*. This Court requires "substantial compliance" with the court rules. *Adkins*, 452 Mich at 726, rev'd on other grounds by *Williams*, 470 Mich at 646-47. The record does not support that the trial court substantially complied with MCR 6.005(E) at all.

The prosecution asks this Court to reject the requirement of MCR 6.005(E) based on Justice Boyle's opinion in *Dennany*, 445 Mich at 466 (BOYLE, J., concurring in part and dissenting in part), which argues that "[t]he formalistic waiver requirement of MCR 6.005(E) . . . does not serve to further any obvious policy." But there is a sound policy to keep this rule: to ensure that defendants knowingly and intelligently waived their right to counsel after the passage of time. This Court has not seen fit to rescind or abrogate MCR 6.005(E) in the three-plus decades since Justice Boyle expressed her views, and this case does not present an appropriate vehicle to do so.

Finally, for the reasons explained above, Alex's immaturity is relevant for purposes of the waiver analysis. Alex could not assist his own attorneys or defend himself because his prefrontal cortex was undeveloped. He lacked the literal capacity to provide a meaningful defense. Just as Alex could not be mandatorily sentenced to life without parole because of his "immaturity, impetuosity, and failure to appreciate risks and consequences," as well as his "incapacity to assist his own attorneys," these "hallmark features" of Alex's age should counsel against a finding that he knowingly and voluntarily waived his right to be represented by counsel in the weeks preceding his trial. See *Miller*, 567 US at 477.

Even assuming that the trial court was not required to conduct a full new colloquy in June 2019, it was at least required to reaffirm Alex's wishes under MCR

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6.005(E), particularly given the passage of time, the changed circumstances since Alex's initial (immediately aborted) waiver of counsel, and Alex's demonstrated confusion and immaturity.

III. Alex did not forfeit his right to counsel through his conduct and remarks.

The prosecution is also wrong to argue that Alex forfeited his right to counsel merely through his conduct. While the Court of Appeals has previously recognized such a doctrine, the facts of this case fall far short of justifying its application here, particularly given Alex's age and immaturity.

In *People v Kammeraad*, 307 Mich App 98, 130-132 (2014), the Court of Appeals recognized and applied the doctrine of forfeiture of counsel, which applies when a mentally competent defendant refuses counsel, refuses to represent himself, and engages in conduct that disrupts and delays court proceedings. *Kammeraad* involved a self-described citizen of "the Republic of Michigan . . . State of the Union" who denied the court's authority and refused to participate in any proceedings. *Id.* at 103. He was defiant from the get-go, appeared half-dressed in a wheelchair despite being able to walk, and unequivocally refused to accept representation by appointed counsel—or to represent himself. See *id.* at 102-106, 114-115. At multiple points, he was removed from the courtroom to avoid further disruptions. *Id.* at 103, 115-16. Under these circumstances, the Court of Appeals applied the doctrine of forfeiture because although the defendant did not explicitly waive the right to counsel, he continuously interrupted the proceedings with his words and conduct and refused to accept representation by appointed counsel. *Id.* at 133. The Court cautioned, however, that "a finding of forfeiture of this venerable constitutional right should only be made in the rarest of circumstances and as necessary to address exceptionally egregious conduct." *Id.* at 137.

Even assuming that the forfeiture doctrine remains appropriate in exceptionally egregious circumstances, this is not such a case. Alex did not disrupt the proceedings against him by interrupting the court, the prosecutor, or his

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counsel. He never had to be escorted from the courtroom to watch the proceedings remotely because of his behavior. He never appeared inappropriately clothed, or required involuntary transport by wheelchair. He was never warned that his conduct would be treated as a forfeiture of the right to counsel—much less reminded that he had such a right. While Alex may have demonstrated poor judgment and poor communication at times, his conduct bears no serious resemblance to *Kammeraad*. Alex did not forfeit his right to counsel.

Alex was a terrified 21-year-old facing a potential prison sentence because of a teenage romance gone bad. Evolving science and precedent indicate this Court's willingness to recognize the impact age can have on the intelligence and maturity of a late-adolescent navigating the criminal justice system. That impact is obvious here.

IV. The periods for which Alex was without counsel were critical stages of the proceedings.

Without a valid waiver, "deprivation of counsel during critical stages of the criminal proceedings is a structural error subject to automatic reversal, even when a defendant formally requests to represent themself." *People v King*, 512 Mich 1, 4 (2023). In this case, the six-plus weeks in which Alex lacked counsel prior to his trial—including the filing, argument, and disposition of critical defense and prosecution motions—was a critical stage of the proceedings, and automatic reversal is appropriate. See *id.* at 15-16.

Indeed, this Court recently said as much in *King*. There, the trial court neglected to obtain the defendant's waiver of the right to counsel before the defendant represented himself through multiple stages of the case: "(1) pretrial preparations, including at least one pretrial hearing, (2) jury selection, (3) opening statements, (4) judge's instructions, and (5) direct and cross-examination of key witnesses." *Id.* at 16. Under these circumstances, this Court had little difficulty finding that the "defendant was deprived of his right to counsel at critical stages of the criminal proceedings," and thus "the error is subject to automatic reversal." *Id.*

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(citations omitted). To be sure, this case involves the unwaived denial of counsel during only one of the critical stages listed in *King*—"pretrial preparations, including at least one pretrial hearing." *Id*. But one is enough.

Reaching a contrary result, the Court of Appeals followed an unpublished federal habeas corpus case, *Gomez v Thaler*, 526 F Appx 355, 359 (CA 5, 2013), in which the court declined to reverse the denial of federal habeas corpus relief based on the unwaived absence of counsel at a pretrial suppression hearing. Significantly, however, *Gomez* was decided under 28 USC 2254(D), which foreclosed habeas relief unless the Texas courts' decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States[.]" The Fifth Circuit concluded that "[b]ecause no decision of the Supreme Court has addressed the issue presented before us, it cannot be said that the state court [unreasonably applied] clearly established Federal law." *Gomez*, 526 F Appx at 359 (cleaned up).

The Court of Appeals followed *Gomez* over two other federal cases that were *not* subject to Section 2254(D)'s deferential standard. See *Haupt*, unpub op at 6. In *Henderson v Frank*, 155 F3d 159, 171-172 (CA 3, 1998), the Third Circuit had little difficulty finding that "the absence of counsel at Henderson's suppression . . . contaminated the entire criminal proceeding in this case" and was therefore a "procedural, structural defect." *Id*. at 171. And in *United States v Hamilton*, 391 F3d 1066 (CA 9, 2004), the Ninth Circuit agreed with and quoted an earlier case finding it "'quite clear that a pretrial motion to suppress evidence is a critical stage of the prosecution requiring the presence of counsel for the accused[.]'" *Id*. at 1070, quoting *Olney v United States*, 433 F2d 161, 163 (CA 9, 1970).

Notwithstanding the Court of Appeals' analysis below, this case is not subject to 28 USC 2254(D). Consistent with the federal decisions in *Henderson*, *Hamilton*, and *Olney*, as well as its own decision in *King*, this Court should make clear that a pretrial suppression hearing is a critical stage of the proceedings. The same is true

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of the six weeks immediately preceding trial—during which trial preparation was essential for untold reasons.

The reason is not that Alex was *actually* prejudiced by the absence of counsel—though he surely was, as his counsel aptly argues. The reason, rather, is that there existed the *inherent potential* for prejudice. Indeed, that is the whole point of the critical stage analysis. What matters is whether "[a]vailable defenses *may be* irretrievably lost," *Hamilton v Alabama*, 368 US 52, 53 (1961) (emphasis added), or "whether *potential* substantial prejudice to defendant's rights inheres in the . . . ability of counsel to help avoid that prejudice." *United States v Wade*, 388 US 218, 242 (1967) (emphasis added). By focusing instead on whether Alex was *actually* prejudiced by the absence of counsel in the weeks before trial, the Court of Appeals flipped the critical stage analysis on its head. Haupt, unpub op at 6.

The potential for prejudice from the absence of counsel in the six weeks before trial should be clear. Not only were critical motions argued and decided, but this was also the most important time for investigation and trial preparation. We cannot possibly know what might have gone differently if counsel had been engaged at this stage, and that is the point. The potential for prejudice should be obvious for any unrepresented defendant, and especially for a late adolescent such as Alex.

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Conclusion

For the reasons explained above, as well as those argued by counsel for Defendant Alex Haupt, this Court should reverse the Court of Appeals and order a new trial.

Respectfully submitted,

Bradley R. Hall, P68924
Nicholas Kozitza, Law Student Attorney
Alexander Short, Law Student Attorney
Katelyn E. Zaagman, Law Student Attorney
MSU College of Law Public Defender Clinic
PO Box 1570
East Lansing, MI 48826
Tel: 517.432.6952
Email: bhall@law.msu.edu

Christine A. Pagac, P67095
CDAM Amicus Advisor
10721 E. Jefferson Ave #14506
Detroit, MI 48214
Tel: 313.288.8555
Email: christine@pagaclaw.com

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Counsel certifies that this Brief contains 5,380 countable words in the Introduction, Statement of Facts, Argument, and Conclusion sections, including footnotes and text contained in embedded graphics. See MCR 7.212(B)(2), (3); MCR 7.312(A)(1). CDAM is a tax-exempt 501(c)(3) organization. See MCR 7.312(H)(2)(f).