REL: May 24, 2019

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-17-1171

State of Alabama

v.

B.T.D.

B.T.D.

v.

State of Alabama

Appeal from Tuscaloosa Circuit Court
(CC-17-3009)

McCOOL, Judge.

The State of Alabama appeals a judgment of the Tuscaloosa Circuit Court dismissing an indictment charging B.T.D. with second-degree assault, see § 13A-6-21, Ala. Code 1975, based on the circuit court's conclusion that § 12-15-204, Ala. Code 1975, is unconstitutional. B.T.D. cross-appeals. For the reasons set forth herein, we reverse the judgment and remand the cause for further proceedings.

Facts and Procedural History

On August 25, 2017, a Tuscaloosa County grand jury returned an indictment charging B.T.D. with the second-degree assault of C.H. Although B.T.D. was 17 years old at the time of the alleged assault, in which C.H. allegedly suffered a broken leg, § 12-15-204 required that B.T.D. be tried as an adult for the alleged assault. Specifically, § 12-15-204(a) provides:

> "(a) Notwithstanding any other provision of law, any person who has attained the age of 16 years at the time of the conduct charged and who is charged with the commission of any act or conduct, which if committed by an adult would constitute any of the following, shall not be subject to the jurisdiction of juvenile court but shall be charged, arrested, and tried as an adult:
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> "(1) A capital offense.
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> "(2) A Class A felony.

"(3) A felony which has as an element thereof the use of a deadly weapon.

"(4) A felony which has as an element thereof the causing of death or serious physical injury.

"(5) A felony which has as an element thereof the use of a dangerous instrument against any person who is one of the following:

"a. A law enforcement officer or official.

"b. A correctional officer or official.

"c. A parole or probation officer or official.

"d. A juvenile court probation officer or official.

"e. A district attorney or other prosecuting officer or official.

"f. A judge or judicial official.

"g. A court officer or official.

"h. A person who is a grand juror, juror, or witness in any legal proceeding of whatever nature when the offense stems from, is caused by, or is related to the role of the person as a juror, grand juror, or witness.

> "i. A teacher, principal, or employee of the public education system of Alabama.
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> "(6) Trafficking in drugs in violation of Section 13A-12-231, or as the same may be amended.
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> "(7) Any lesser included offense of the above offenses charged or any lesser felony offense charged arising from the same facts and circumstances and committed at the same time as the offenses listed above. Provided, however, that the juvenile court shall maintain original jurisdiction over these lesser included offenses if the grand jury fails to indict for any of the offenses enumerated in subsections (a)(1) to (a)(6), inclusive. The juvenile court shall also maintain original jurisdiction over these lesser included offenses, subject to double jeopardy limitations, if the court handling criminal offenses dismisses all charges for offenses enumerated in subsections (a)(1) to (a)(6), inclusive."

(Emphasis added.)

On December 6, 2017, B.T.D. filed a motion seeking to have the circuit court dismiss the indictment and to declare § 12-15-204 unconstitutional. According to B.T.D., § 12-15-204 violates the Due Process Clauses of the Fourteenth Amendment to the United States Constitution and Art. I, § 6, of the Alabama Constitution of 1901. In support of that argument, B.T.D. cited Kent v. United States, 383 U.S. 541

(1966), in which, he said, the United States Supreme Court "held that the transfer of a child from juvenile to adult court imposes a significant deprivation of liberty" and therefore "made clear that a transfer proceeding must provide due process protections." (C. 44.) Specifically, B.T.D. contended that Kent requires the juvenile court to make a "full investigation ... into the facts of the alleged offense" and consider certain factors before a juvenile offender can be tried as an adult. (C. 45.) Thus, B.T.D. argued, § 12-15-204, which automatically requires that certain juvenile offenders be tried as an adult, "lacks the core requirements of Kent" (C. 45) because "procedural protections ... [are] nonexistent." (C. 49.) In further support of his due-process claim, B.T.D. also argued that juveniles have "a substantive due process right to have their youthfulness and its attendant characteristics considered as a mitigating factor at every stage of delinquency and criminal proceedings, ... especially regarding automatic transfer." (C. 55.) In support of that argument, B.T.D. cited Roper v. Simmons, 543 U.S. 551 (2005); Graham v. Florida, 560 U.S. 48 (2010); J.D.B. v. North Carolina, 564 U.S. 261 (2011); Miller v. Alabama, 567 U.S. 460

(2012); and Montgomery v. Louisiana, 577 U.S. ___, 136 S. Ct. 718 (2016). According to B.T.D., in those cases, the United States Supreme Court "repeatedly emphasized the importance of the hallmark features of adolescence to our laws of criminal procedure" (C. 42) and "demanded individualized consideration of those features before children can be exposed to the harshest consequences of the adult criminal justice system." (C. 42-43.)

B.T.D. also argued that § 12-15-204 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.[1] In support of that argument, B.T.D. noted that, under § 12-15-203, Ala. Code 1975, a juvenile offender who is 14 or 15 years old can be tried as an adult, regardless of the offense, only after a hearing at which the

[1]Although the Alabama Constitution does not contain an equal-protection clause, B.T.D. also argued that § 12-15-204 violates equal-protection guarantees that, he said, are guaranteed collectively by Art. I, §§ 1, 6, and 22, of the Alabama Constitution. However, although that proposition was once recognized in Alabama, see, e.g., Cooley v. Knapp, 607 So. 2d 146, 148 n.5 (Ala. 1992), the Alabama Supreme Court has since held that those sections do not guarantee equal protection of the laws. See Ex parte Melof, 735 So. 2d 1172, 1181-86 (Ala. 1999).

juvenile court must consider certain factors.[2] However,

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[2]Section 12-15-203 provides, in part:

"(a) A prosecutor, before a hearing on a delinquency petition on its merits and after notifying, verbally or in writing, the juvenile probation officer, may file a motion requesting the juvenile court judge to transfer a child for criminal prosecution to the circuit or district court, if the child was 14 or more years of age at the time of the conduct charged and is alleged to have committed an act which would constitute a criminal offense as defined by this code if committed by an adult.

"(b) The juvenile court judge shall conduct a hearing on all motions for the purpose of determining whether it is in the best interests of the child or the public to grant the motion.

"....

"(d) Evidence of the following and other relevant factors shall be considered in determining whether the motion shall be granted:

"(1) The nature of the present alleged offense.

"(2) The extent and nature of the prior delinquency record of the child.

"(3) The nature of past treatment efforts and the nature of the response of the child to the efforts.

"(4) Demeanor.

"(5) The extent and nature of the physical and mental maturity of the child.

B.T.D. noted, a juvenile who has attained the age of 16 years and is charged with an offense enumerated in § 12-15-204 is automatically prosecuted as an adult. Relying on Roper, Graham, J.D.B., Miller, and Montgomery, B.T.D. argued that "no ground can be conceived to justify the distinctions drawn between older and younger children" in § 12-15-204. (C. 57.)

Finally, B.T.D. argued that § 12-15-204(a)(4) -- the specific paragraph of § 12-15-204 mandating that he be tried as an adult -- is unconstitutionally vague and overly broad. As noted, § 12-15-204(a)(4) requires that a juvenile offender who has attained the age of 16 years be tried as an adult for committing "[a] felony which has as an element thereof the causing of death or serious physical injury." According to B.T.D., however, the phrase "serious physical injury" lacks sufficient clarity and is "so broad and vague that it invites arbitrary ... prosecution." (C. 54.)

The State filed a response to B.T.D.'s motion in which it argued that this Court has already decided the

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> "(6) The interests of the community and of the child requiring that the child be placed under legal restraint or discipline."

constitutionality of § 12-15-34.1, Ala. Code 1975 -- the predecessor to § 12-15-204 -- in Price v. State, 683 So. 2d 44 (Ala. Crim. App. 1996).[3] On June 25, 2018, the circuit court heard oral arguments from the parties regarding B.T.D.'s due-process and equal-protection challenges to § 12-15-204 and his vagueness and overbreadth challenges to § 12-15-204(a)(4).

On August 30, 2018, the circuit court entered a judgment dismissing the indictment against B.T.D. based on the court's findings that § 12-15-204 violates a juvenile offender's due-process rights and that § 12-15-204(a)(4), specifically, is unconstitutionally vague and overly broad. In support of its conclusion that § 12-15-204 violates due-process principles, the circuit court relied on Roper, Graham, J.D.B., Miller, and Montgomery to find that a juvenile has "a constitutionally protected liberty interest in his status as a juvenile." (C. 1248.) (For ease of reference in this opinion, we hereinafter refer to Roper, Graham, J.D.B., Miller, and Montgomery as "the Roper line of cases.") In reaching that conclusion, the

[3]Section 12-15-34.1 was amended and renumbered as § 12-15-204 by Act No. 2008-277, Alabama Acts 2008. The provisions of § 12-15-34.1 relevant to this case remained the same in § 12-15-204.

circuit court reasoned that the Roper line of cases "recognized that youth are developmentally different from adults" (C. 1241) and therefore "mandate[s] an individualized approach before youth may be subjected to adult consequences." (C. 1243.) Specifically, the circuit court contended that Kent "listed several factors that should be considered before a child may be transferred to adult criminal court." (C. 1246.) Thus, the circuit court concluded, because § 12-15-204 "does not allow for consideration of any of the Kent factors," the statute "violates due process by mandating that certain children automatically be treated as adults, thereby foreclosing any consideration of their individual attributes and circumstances."[4] (C. 1247.) As to § 12-15-204(a)(4), specifically, the circuit court concluded that the legislature's use of the phrase "serious physical injury" renders § 12-15-204(a)(4) unconstitutionally "vague and overly-broad." (C. 1251.) According to the circuit court,

[4]Although the circuit court interpreted Kent to provide that there are eight factors a juvenile court must consider in a Kent hearing, Kent does not set forth any particular factors to consider in such a hearing but, rather, merely generally provides that a Kent hearing "must measure up to the essentials of due process and fair treatment." Kent, 383 U.S. at 562.

under § 12-15-204(a)(4), "[a] child can be deprived of her/his liberty interest in remaining in juvenile court ... in virtually every circumstance involving allegations of a felony with an injury." (C. 1251-52.) Finally, the circuit court rejected the State's argument that this Court upheld the constitutionality of § 12-15-204 in Price. According to the circuit court, this Court did not address the appellant's due-process arguments in Price because those arguments had been waived for appellate review. The circuit court also noted that Price "makes no mention of Kent" and "was decided ... 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." (C. 1252-53.)

The State filed a timely notice of appeal in which it argues that the circuit court erred by holding that § 12-15-204 violates due-process principles and by holding that § 12-15-204(a)(4) is vague and overly broad. B.T.D. filed a cross-appeal in which he argues that the circuit court erred by refusing to find § 12-15-204 unconstitutional in its entirety. However, B.T.D.'s cross-appeal is due to be dismissed because

there is no adverse ruling to B.T.D. from which he can appeal. It is true that B.T.D. requested the circuit court find § 12-15-204 unconstitutional in its entirety, and it is also true that, in the introductory paragraph of its judgment, the circuit court stated that § 12-15-204(a)(4) violates due-process principles but that the court was denying B.T.D.'s request to declare § 12-15-204 unconstitutional in its entirety. (C. 1238-39.) However, it is evident from the substance of the circuit court's judgment that, although the court's vagueness and overbreadth analysis is specific to § 12-15-204(a)(4), its due-process analysis is applicable to § 12-15-204 in its entirety. That is to say, if § 12-15-204(a)(4) "violates due process by mandating that certain children automatically be treated as adults" (C. 1247), as the circuit court concluded, then § 12-15-204 in its entirety violates due-process principles for the same reason. Thus, because the circuit court's statement that it did not find § 12-15-204 unconstitutional in its entirety is inconsistent with the court's due-process analysis, that statement constitutes dicta. See Brookwood Health Servs., Inc. v. Affinity Hosp., LLC, 101 So. 3d 1221, 1224 (Ala. Civ. App.

2012). As a result, B.T.D. received the relief he sought -- a judgment declaring § 12-15-204 unconstitutional -- and therefore did not receive an adverse ruling from which he can appeal. Id. Accordingly, we dismiss the cross-appeal and proceed with a discussion of the constitutionality of § 12-15-204.

Standard of Review

> "The Alabama Supreme Court has discussed the principles applicable to a challenge to the constitutionality of a statute, noting first that review of a challenge is de novo. State ex rel. King v. Morton, 955 So. 2d 1012, 1017 (Ala. 2006). The Court stated:
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> > "'[A]cts of the legislature are presumed constitutional. State v. Alabama Mun. Ins. Corp., 730 So. 2d 107, 110 (Ala. 1998). See also Dobbs v. Shelby County Econ. & Indus. Dev. Auth., 749 So. 2d 425, 428 (Ala. 1999) ("In reviewing the constitutionality of a legislative act, this Court will sustain the act '"unless it is clear beyond reasonable doubt that it is violative of the fundamental law."'" White v. Reynolds Metals Co., 558 So. 2d 373, 383 (Ala. 1989) (quoting Alabama State Fed'n of Labor v. McAdory, 246 Ala. 1, 9, 18 So. 2d 810, 815 (1944))). We approach the question of the constitutionality of a legislative act "'"with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of the government."'" Monroe v. Harco, Inc., 762 So. 2d 828, 831 (Ala. 2000) (quoting Moore

> v. Mobile Infirmary Ass'n, 592 So. 2d 156, 159 (Ala. 1991), quoting in turn McAdory, 246 Ala. at 9, 18 So. 2d at 815).
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> "'Moreover, in order to overcome the presumption of constitutionality, ... the party asserting the unconstitutionality of the Act ... bears the burden "to show that [the Act] is not constitutional." Board of Trustees of Employees' Retirement Sys. of Montgomery v. Talley, 291 Ala. 307, 310, 280 So. 2d 553, 556 (1973). See also Thorn v. Jefferson County, 375 So. 2d 780, 787 (Ala. 1979) ("It is the law, of course, that a party attacking a statute has the burden of overcoming the presumption of constitutionality ....").'
>
> "955 So. 2d at 1017."

State v. Worley, 102 So. 3d 435, 448-49 (Ala. Crim. App. 2011).

Discussion

The issues before this Court are whether § 12-15-204 violates due-process and equal-protection principles and whether § 12-15-204(a)(4), specifically, violates the doctrines of vagueness and overbreadth.[5]

[5]Although the circuit court did not conclude that § 12-15-204 violates equal-protection principles, B.T.D. asserted that argument below and has asserted it on appeal as a basis for this Court to conclude that the statute is unconstitutional. With certain exceptions not applicable here, an appellate court may affirm a judgment for any valid reason. Fowler v. Johnson, 961 So. 2d 122, 135 n.12 (Ala. 2006). Thus, we

I. Due Process and Equal Protection

"The Due Process Clause of the Fourteenth Amendment prohibits state governments from depriving 'any person of life, liberty, or property, without due process of law ....' U.S. Const. amend. XIV, § 1. This clause has two components: the procedural due process and the substantive due process components." Singleton v. Cecil, 176 F.3d 419, 424 (8th Cir. 1999). Although procedural and substantive due process "are not mutually exclusive" doctrines, Becker v. Kroll, 494 F.3d 904, 918 n.8 (10th Cir. 2007) (quoting Albright v. Oliver, 510 U.S. 266, 301 (1994) (Stevens, J., dissenting)), "[t]he two components are distinct from each other because each has different objectives, and each imposes different constitutional limitations on government power." Howard v. Grinage, 82 F.3d 1343, 1349 (6th Cir. 1996).

"'[P]rocedural due process, protected by the Constitutions of the United States and this State, requires notice and an opportunity to be heard when one's life, liberty, or property interest are about to be affected by governmental action.'" Ex parte Fountain, 842 So. 2d 726, 729

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include an equal-protection discussion in our analysis.

(Ala. 2001) (quoting Brown's Ferry Waste Disposal Ctr., Inc. v. Trent, 611 So. 2d 226, 228 (Ala. 1992)). Thus, the essential threshold inquiry in a procedural due-process claim is whether the claimant can establish governmental interference with a protected liberty or property interest. See Stephenson v. Lawrence Cty. Bd. of Educ., 782 So. 2d 192, 200 (Ala. 2000) (noting that a "protected property interest" is "an essential threshold requirement for establishing a claim based on an alleged deprivation of procedural due process"); and Crawford v. State, 92 So. 3d 168, 171 (Ala. Crim. App. 2011) (noting that, "[t]o prevail on a procedural-due-process claim," the claimant "must show that the [government] deprive[d] him of a protected liberty interest"). In the absence of a protected liberty or property interest, procedural due process is not required in conjunction with government interference. See Stephenson, 782 So. 2d at 201 (holding that the appellant was not entitled to procedural due process because she did not have a "protectable property interest" in her employment); and Crawford, 92 So. 3d at 172 (considering whether the appellant satisfied "the first prong of the procedural due-process analysis," i.e.,

establishing a "protected liberty interest," before considering "whether the procedure accompanying the deprivation of his liberty interest was constitutionally adequate"). See also Rezaq v. Nalley, 677 F.3d 1001, 1017 (10th Cir. 2012) (holding that, because the appellants "lack a cognizable liberty interest" in avoiding transfer between prisons, "no due process protections were required before they were transferred"); and Cucciniello v. Keller, 137 F.3d 721, 724 (2d Cir. 1998) ("Since no protected liberty interest is being impaired, no due process is required.").

The substantive due-process component of the Fourteenth Amendment, on the other hand, "protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them.'" Collins v. City of Harker Heights, Texas, 503 U.S. 115, 125 (1992) (quoting Daniels v. Williams, 474 U.S. 327, 331 (1986) (emphasis added)). It prohibits governmental interference with individual liberty that is "unreasonable, arbitrary, or capricious," Walter v. City of Gulf Shores, 829 So. 2d 181, 186 (Ala. Crim. App. 2001), by "forc[ing] courts to step beyond merely assuring ... that a state actor fairly followed

a particular procedure (procedural due process) and to examine whether the particular outcome was itself 'fair' or whether it was impermissibly 'arbitrary or conscience shocking.'" Alabama Republican Party v. McGinley, 893 So. 2d 337, 344 (Ala. 2004) (quoting Waddell v. Hendry Cty. Sheriff's Office, 329 F.3d 1300, 1305 (11th Cir. 2003)). In doing so, substantive due process "protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" Washington v. Glucksberg, 521 U.S. 702, 720-21 (1997) (citations omitted). Of course, substantive due process is not an absolute prohibition of governmental interference with individual liberty but, rather, requires courts to balance the sanctity of individual liberty against the necessity of the government's interference with that liberty. Hernandez v. Foster, 657 F.3d 463, 478 (7th Cir. 2011); Norris v. Engles, 494 F.3d 634, 638 (8th Cir. 2007). Similarly, although the Equal Protection Clause provides, as its name implies, that the government shall not "deny to any person within its

jurisdiction the equal protection of the laws," U.S. Const., Amend. XIV, § 1, the right to equal protection of the laws is not absolute. See Wilkins v. Gaddy, 734 F.3d 344, 347 (4th Cir. 2013) (noting that the right to equal protection of the laws "is not and cannot be absolute" (citing Romer v. Evans, 517 U.S. 620, 631 (1996))); and Ross v. Moffitt, 417 U.S. 600, 612 (1974) (noting that "there are obviously limits beyond which the equal protection analysis may not be pressed"). As in a substantive due-process analysis, courts addressing an equal-protection claim must weigh competing interests, i.e., the burden imposed by the discriminatory classification against the government's justification for the discrimination. Van Allen v. Cuomo, 621 F.3d 244, 248 (2d Cir. 2010).

With these general principles in mind, we turn to a discussion of whether § 12-15-204 violates due-process or equal-protection principles.

A. Procedural Due Process

As noted, the threshold question in addressing a procedural due-process claim is whether the claimant has been deprived of a protected liberty or property interest. In concluding that § 12-15-204 violates due process, the circuit

court relied on Kent and the Roper line of cases to conclude that juvenile offenders have "a constitutionally protected liberty interest in [their] status as a juvenile" and, as a result, are entitled to the procedural due process set forth in Kent before they can be prosecuted in "adult court." However, the circuit court's reliance on Kent and the Roper line of cases is misplaced.

We begin by noting that, contrary to the circuit court's conclusion, it is widely recognized that "treatment as a juvenile is not an inherent right but one granted by the state legislature[;] therefore, the legislature may restrict or qualify that right as it sees fit, as long as no arbitrary or discriminatory classification is involved." Woodard v. Wainwright, 556 F.2d 781, 785 (5th Cir. 1977). See, e.g., C.B. v. State, 406 S.W.3d 796, 800 (Ark. 2012) (same, quoting Woodard); Brazill v. State, 845 So. 2d 282, 287 (Fla. Dist. Ct. App. 2003) (noting that "there is no absolute right conferred by common law, constitution, or otherwise, requiring children to be treated in a special system for juvenile offenders"); State v. B.B., 300 Conn. 748, 752-53, 17 A.3d 30, 33-34 (2011) ("Any liberty interest in status as a defendant

on the youthful offender docket ... results only from statutory authority. 'Any [special treatment] accorded to a juvenile because of his [or her] age with respect to proceedings relative to a criminal offense results from statutory authority, rather than from any inherent or constitutional right.'" (footnote and citation omitted)); Cuvas v. State, 306 Ga. App. 679, 683, 703 S.E.2d 116, 120 (2010) (noting that there is "no inherent right to be treated as a juvenile"); State v. Coleman, 271 Kan. 733, 735, 26 P.3d 613, 616 (2001) (noting that "adjudication as a juvenile is not a fundamental interest" and that the "special treatment of juvenile offenders on account of age is not an inherent or constitutional right but rather results from statutory authority, which can be withdrawn"); Stout v. Commonwealth, 44 S.W.3d 781, 785 (Ky. Ct. App. 2000) ("It is axiomatic that a juvenile offender has no constitutional right to be tried in juvenile court."); and In re J.F., 714 A.2d 467, 472 (Pa. 1998) (recognizing that there is "no constitutional right to treatment as a juvenile").

Of course, as some of those cases note, a state's legislature can choose to provide juvenile offenders with a

statutorily protected liberty interest in juvenile-court adjudication. "If the Legislature provides a juvenile with a statutory right to 'exclusive' juvenile court jurisdiction, ... the juvenile does have a protectable liberty interest in a juvenile adjudication, which attaches when the juvenile court attains jurisdiction." State v. Grigsby, 818 N.W.2d 511, 517 (Minn. 2012). However, "[a]bsent a statutory right to 'exclusive' juvenile court jurisdiction, a child does not have any recognized protectable liberty interest in a juvenile adjudication." Id.

The Alabama Juvenile Justice Act, § 12-15-101 et seq., Ala. Code 1975, provides, in pertinent part:

> "(a) This chapter shall be known as the Alabama Juvenile Justice Act. The purpose of this chapter is to facilitate the care, protection, and discipline of children who come under the jurisdiction of the juvenile court, while acknowledging the responsibility of the juvenile court to preserve the public peace and security."

§ 12-15-101(a) (emphasis added). Section § 12-15-204 provides, in pertinent part:

> "(a) Notwithstanding any other provision of law, any person who has attained the age of 16 years at the time of the conduct charged and who is charged with the commission of any act or conduct, which if committed by an adult would constitute any of the following, shall not be subject to the jurisdiction

> of juvenile court but shall be charged, arrested, and tried as an adult:
>
> "....
>
> "(4) A felony which has as an element thereof the causing of death or serious physical injury."

(Emphasis added.)

Thus, our legislature has expressly provided that not all juveniles will "come under the jurisdiction of the juvenile court." § 12-15-101(a). Specifically, juvenile offenders who have attained the age of 16 years and who are charged with an offense enumerated in § 12-15-204 are not subject to the jurisdiction of the juvenile court but, instead, are automatically to be tried in "adult court." Consequently, our legislature has not provided such juvenile offenders with a statutorily protected liberty interest in juvenile-court adjudication but, in fact, has expressly denied them such a liberty interest. Accordingly, in Alabama, juveniles who have attained the age of 16 years and who are charged with an offense enumerated in § 12-15-204 have neither a constitutionally nor statutorily protected liberty interest in juvenile-court adjudication that would entitle them to procedural due process before they can be subjected to the

jurisdiction of the "adult court." Contrary to the circuit court's conclusion, Kent and the Roper line of cases do not conflict with this conclusion.

In Kent, the United States Supreme Court considered a challenge to a District of Columbia statute under which the juvenile court had exclusive jurisdiction over juvenile offenders but could, "'after full investigation,'" waive its jurisdiction over a juvenile who had attained the age of 16 years and who was charged with certain enumerated offenses and could transfer the juvenile to "adult court" for prosecution as an adult. Kent, 383 U.S. at 547. Thus, unless and until the juvenile court elected to waive its jurisdiction, a juvenile offender had a "statutory right to the 'exclusive' jurisdiction" of the juvenile court. Id. at 557 (emphasis added). Given that juveniles had been provided with a statutory right to juvenile-court adjudication, the Court held that the "full investigation" required by the statute must include certain procedural safeguards, including a hearing that "must measure up to the essentials of due process," id. at 562, before the juvenile court could waive its jurisdiction and transfer a juvenile offender to "adult court."

Accordingly, the holding in Kent was clearly based on the existence of a statutory right to juvenile-court adjudication and thus cannot be interpreted as recognizing a constitutional right to juvenile-court adjudication. Furthermore, because the procedural due process required by Kent was based on the existence of a statutory right, such process is not required in jurisdictions where the legislature has denied certain juvenile offenders a statutory right to juvenile-court adjudication and has instead vested the "adult court" with exclusive jurisdiction over such juveniles. Multiple jurisdictions have considered and rejected such an extension of Kent.

The United States Court of Appeals for the District of Columbia Circuit first addressed this issue in United States v. Bland, 472 F.2d 1329 (D.C. Cir. 1972). At issue in Bland was a statute that defined a "child" as an individual under 18 years of age but excluded from the definition of "child" an individual who had attained the age of 16 years and who was charged by the United States Attorney with certain enumerated offenses. Id. at 1330. The court rejected the argument that Kent had rendered the statute unconstitutional, stating:

> "Appellee's attempt to equate the United States Attorney's decision in the case at bar with the transfer of an individual from the jurisdiction of the juvenile court to that of adult court is unavailing. In contrast to such a situation, the case at bar involves no initial juvenile court jurisdiction; the United States Attorney's decision to charge an individual sixteen years of age or older with certain enumerated offenses operates automatically to exclude that individual from the jurisdiction of the Family Division. The cases cited by the appellee[, including Kent,] are equally inapposite."

Bland, 472 F.2d at 1336 n.26 (some emphasis added).

The Connecticut Supreme Court addressed this issue in further detail in State v. Angel C., 245 Conn. 93, 715 A.2d 652 (1998), in which the appellants relied on Kent to challenge the constitutionality of a statute "mandating an automatic transfer to the regular criminal docket ... for any individual who has attained the age of fourteen years and is charged with certain enumerated offenses." 245 Conn. at 96, 715 A.2d at 656. In upholding the constitutionality of the statute, the court stated:

> "The defendants rely heavily upon Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966), arguing that it mandates a hearing prior to any transfer of a juvenile to the criminal docket. We conclude, however, that the defendants misinterpret the scope of Kent. Kent simply stands for the proposition that if a statute vests a juvenile with the right to juvenile status, then

that right constitutes a liberty interest, of which the juvenile may not be deprived without due process, i.e., notice and a hearing. Id., at 556–58, 86 S. Ct. at 1054–55. If the statute at issue does not create a liberty interest, Kent is inapposite.

"The statutory scheme in Kent was far different from that of Connecticut. In Kent, the statute vested 'original and exclusive jurisdiction' in the juvenile court; id., at 556, 86 S. Ct. at 1054–55; and permitted the juvenile court to waive jurisdiction only after 'full investigation.' Id., at 558, 86 S. Ct. at 1055. The court noted that the 'Juvenile Court Act confers upon the child a right to avail himself of that court's exclusive jurisdiction .... [I]t is implicit in [the juvenile court] scheme that non-criminal treatment is to be the rule -- and the adult criminal treatment, the exception which must be governed by the particular factors of individual cases.' (Internal quotation marks omitted.) Id., at 560–61, 86 S. Ct. at 1057. It went on to conclude that by placing jurisdiction over all juveniles initially, and presumptively permanently, in the juvenile court, and permitting the court to waive its jurisdiction only after a full investigation, the statute created a substantial and vested liberty interest in juvenile status. Id., at 561, 86 S. Ct. at 1057. That liberty interest could be divested by means of transfer to the criminal docket, but only after the requirements of procedural due process were met. Id.

"Conversely, § 46b–127(a)[, Conn. Gen. Stat. Ann.,] does not provide for exclusive jurisdiction in the juvenile court or a waiver of that jurisdiction by the court. A juvenile who has reached the age of fourteen and is charged with one or more of the enumerated offenses has no right to avail himself of juvenile court jurisdiction because the statute expressly precludes the exercise of

> jurisdiction by the juvenile court .... Moreover, it is implicit in § 46b-127(a), unlike the statute in Kent, that adult treatment is the rule for such juveniles and that juvenile treatment is a narrow exception. The applicability of Kent cannot be expanded, therefore, beyond the scope of discretionary transfer statutes to mandatory transfer statutes. Section 46b-127 (a) is a mandatory, not discretionary, transfer statute. It is an automatic, mandatory transfer statute with the transfer based exclusively on the age of the defendant and the offense charged. ... We conclude, therefore, that Kent does not require the conclusion that § 46b-127(a) violates the defendants' rights to due process."

Angel C., 245 Conn. at 106-08, 715 A.2d at 661-62 (some emphasis added; footnotes omitted).

The Utah Supreme Court reached the same conclusion in State v. Angilau, 245 P.3d 745 (Utah 2011), in which the appellant challenged the constitutionality of a statute providing that "'[t]he district court has exclusive original jurisdiction over all persons 16 years of age or older charged with ... an offense which would be murder or aggravated murder if committed by an adult.' Utah Code Ann. § 78A-6-701(1) (Supp. 2010)." Id. at 749. The court concluded, however, that the appellant had no liberty interest in juvenile-court adjudication and thus was not entitled to procedural due process,

> "because he was never entitled to juvenile jurisdiction once he met the criteria in the automatic waiver statute. See Utah Code Ann. § 78A-6-701(1)(a). One cannot hold an interest in something to which one was never entitled. Just as a person who allegedly commits a crime at the age of 18 cannot hold an interest in being tried in juvenile court, neither can someone who meets the qualifications outlined in the automatic waiver statute."

Angilau, 245 P.3d at 750 (emphasis added; internal citation omitted). The court was unpersuaded by the appellant's argument that Kent requires "that all juveniles must first receive some procedural due process in the juvenile court before they may be prosecuted as adults," id.:

> "The critical difference between Kent and Kelley [v. Kaiser, 992 F.2d 1509 (10th Cir. 1993)], and this case, is that in the federal cases the juvenile court was at least initially presumed to have proper jurisdiction over the minors involved and transfer to adult court was at issue. See Kent, 383 U.S. at 552, 86 S. Ct. 1045; Kelley, 992 F.2d at 1511. Thus, the minors in those cases possessed a liberty interest created by statute that they were in danger of losing.
>
> "....
>
> "By contrast, in Utah's statutory scheme, the legislature has bypassed the juvenile system entirely, giving original jurisdiction to adult courts under certain circumstances .... Because Mr. Angilau was sixteen years old and was charged with murder, he fell under Utah's automatic waiver statute and was immediately subject to the district court's jurisdiction. See Utah Code Ann. §

> 78A-6-701(1)(a). He did not possess any initial statutory rights associated with juvenile court protections and thus could not be deprived of rights he never held.
>
> "Because Mr. Angilau held no initial right (statutory or constitutional) to be brought before a juvenile court, there was no need for a hearing before charging him in adult court. The automatic waiver statute, therefore, does not violate procedural due process."

245 P.3d at 751 (emphasis added; footnotes omitted).

More recently, the Washington Supreme Court addressed this issue in State v. Watkins, 191 Wash. 2d 530, 423 P.3d 830 (2018), in which the appellant relied on Kent to challenge the constitutionality of a statute providing "that juvenile courts must automatically decline jurisdiction over 16 and 17 year olds charged with enumerated offenses." 191 Wash. 2d at 533, 423 P.3d at 832. The court succinctly stated, however, why the holding in Kent is inapplicable in jurisdictions with such statutes:

> "Careful consideration of the statutory framework underlying the Kent decision suggests that Kent's holding is limited to circumstances where a juvenile court has statutory discretion to retain or transfer jurisdiction. The statute in Kent provided the juvenile court with jurisdiction over all juvenile proceedings and the discretion to waive jurisdiction over a particular class of juvenile defendants. In contrast, former RCW 13.04.030(1) (2009) precludes our juvenile courts from presiding

> over a particular class of juveniles. Kent's hearing requirement makes sense in the context of the D.C. statute because the juvenile court was vested with discretion to make a jurisdictional decision. But a hearing requirement would be absurd under Washington law because our juvenile court is statutorily precluded from presiding over this type of case. Thus, Kent's holding must be limited to circumstances where a juvenile court has statutory authority to hear a particular case. Because Kent is distinguishable on statutory grounds, its holding has no bearing on the constitutionality of former RCW 13.04.030(1) (2009)."

Watkins, 191 Wash. 2d at 540-41, 423 P.3d at 835-36 (emphasis added; footnotes and internal citation omitted). Other jurisdictions have similarly distinguished Kent in upholding the constitutionality of statutes that automatically exclude certain juvenile offenders from the jurisdiction of the juvenile court and instead vest jurisdiction in the "adult court." See, e.g., Woodard, supra; Russell v. Parratt, 543 F.2d 1214 (8th Cir. 1976); Cox v. United States, 473 F.3d 334 (4th Cir. 1973); State v. Aalim, 150 Ohio St. 3d 489, 83 N.E.3d 883 (2017); People v. Salas, 356 Ill. Dec. 442, 961 N.E.2d 831 (Ill. App. Ct. 2011); State v. Perique, 439 So. 2d 1060 (La. 1983); People v. Thorpe, 641 P.2d 935 (Colo. 1982); Vega v. Bell, 47 N.Y.2d 543, 419 N.Y.S.2d 454, 393 N.E.2d 450 (1979); and State v. Berard, 401 A.2d 448 (R.I. 1979).

We need not belabor the point further. Although the above-cited cases are not binding on this Court, we find them persuasive in concluding that the procedural due process required by Kent is applicable only in jurisdictions where the legislature has granted juvenile offenders a statutory right to juvenile-court adjudication, subject to discretionary waiver by the juvenile court. In such jurisdictions, a hearing is necessary to protect a juvenile offender's statutory right by ensuring that a juvenile court does not arbitrarily exercise its discretion in determining whether to retain jurisdiction over the juvenile or to transfer the juvenile to "adult court." In Alabama, however, juveniles who have attained the age of 16 years and who are charged with an offense enumerated in § 12-15-204 do not have a statutory right to juvenile-court adjudication, and there is no jurisdictional determination for the juvenile court to make because the legislature has already settled that issue by statutorily vesting the "adult court" with exclusive jurisdiction over such juveniles. Thus, a Kent hearing is not required. Indeed, as the Washington Supreme Court concluded, it "would be absurd" to require a juvenile court to hold a

hearing to determine whether to waive jurisdiction it is statutorily precluded from exercising in the first place. Watkins, 191 Wash. 2d at 541, 423 P.3d at 836. Accordingly, we hold (1) that Kent does not recognize a constitutionally protected right to juvenile-court adjudication and (2) that the procedural due process required by Kent is not applicable in jurisdictions such as Alabama, where the legislature has statutorily precluded certain juvenile offenders from the jurisdiction of the juvenile court.

Likewise, the Roper line of cases does not recognize a constitutionally protected liberty interest in juvenile-court adjudication. To be sure, as the circuit court noted, the United States Supreme Court has recognized

> "that 'children are constitutionally different from adults for purposes of sentencing.' [Miller,] 567 U.S., at 460, 132 S .Ct., at 2464 (citing Roper, supra, at 569–570, 125 S. Ct. 1183; and Graham, supra, at 68, 130 S. Ct. 2011). These differences result from children's 'diminished culpability and greater prospects for reform,' and are apparent in three primary ways:
>
> > "'First, children have a "lack of maturity and an underdeveloped sense of responsibility," leading to recklessness, impulsivity, and heedless risk-taking. Second, children "are more vulnerable to negative influences and outside pressures," including from their family and peers; they

> have limited "control over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. And third, 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 irretrievable depravity."' 567 U.S., at 471, 132 S. Ct., at 2464 (quoting Roper, supra, at 569–570, 125 S. Ct. 1183; alterations, citations, and some internal quotation marks omitted)."

Montgomery, 577 U.S. at ___, 136 S. Ct. at 733.

However, although the United States Supreme Court has unquestionably recognized certain differences between juveniles and adults, the Court did not hold in the Roper line of cases, nor has it held in any other case, that a juvenile offender has a constitutionally protected liberty interest in juvenile-court adjudication. In Roper, the Court held that the Eighth Amendment prohibits the imposition of the death penalty for juvenile offenders. Roper, 543 U.S. at 578. In Graham, the Court held that the Eighth Amendment prohibits the imposition of a sentence of life imprisonment without the possibility of parole for a juvenile offender who did not commit homicide. Graham, 560 U.S. at 82. Similarly, in Miller, the Court held that the Eighth Amendment prohibits a sentencing scheme that mandates a sentence of life

imprisonment without the possibility of parole for a juvenile offender, Miller, 567 U.S. at 479, and in Montgomery, the Court held that Miller announced a substantive rule of constitutional law that applies retroactively to cases on collateral review. Montgomery, 577 U.S. at ___, 136 S. Ct. at 734. In J.D.B., the Court addressed "whether the age of a child subjected to police questioning is relevant to the custody analysis of" Miranda v. Arizona, 384 U.S. 436 (1966), J.D.B., 564 U.S. at 264, and held that "so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test." 564 U.S. at 277.

Although those cases recognize, and are grounded upon, the differences between juveniles and adults, each of those cases, with the exception of J.D.B., is grounded upon the Eighth Amendment prohibition of cruel and unusual punishment and addresses the significance of considering juvenile characteristics in sentencing; J.D.B. merely holds that a juvenile's age is relevant in making a custody determination

for purposes of Miranda. None of those cases hold that a juvenile offender has a constitutionally protected liberty interest in juvenile-court adjudication that requires the protections of procedural due process before he or she can be subjected to the jurisdiction of the "adult court." Although the circuit court interpreted the Court's recognition of the differences between juveniles and adults as an implicit acknowledgment of a constitutionally protected liberty interest in juvenile-court adjudication, at least two state supreme courts have rejected that proposition.

In People v. Patterson, 388 Ill. Dec. 834, 25 N.E.3d 526 (Ill. 2014), the Illinois Supreme Court stated:

> "We first address defendant's due process claim. As both parties recognize, this court rejected a similar claim challenging the predecessor to section 5–130 in People v. J.S., 103 Ill. 2d 395, 83 Ill. Dec. 156, 469 N.E.2d 1090 (1984). In that consolidated case, the three defendants were each 16 years old when the offenses were committed, and they were automatically transferred to criminal court under the statute. The trial court in each case found the transfer statute unconstitutional, and on direct appeal to this court, the defendants argued it violated both procedural and substantive due process. J.S., 103 Ill. 2d at 402, 83 Ill. Dec. 156, 469 N.E.2d 1090.
>
> "In rejecting that claim, this court distinguished Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966), where the

United States Supreme Court invalidated a District of Columbia statute allowing minors to be tried as adults, potentially exposing some of them to the death penalty or life imprisonment, if the trial court determined that juvenile court jurisdiction should be waived after a 'full investigation.' Kent, 383 U.S. at 547, 86 S. Ct. 1045. The Court held that due process was violated because the statute did not provide sufficient guidance in deciding when waiver was proper, permitting potentially arbitrary rulings, and because the statute did not provide juveniles with a hearing before that determination was made. Kent, 383 U.S. at 561–62, 86 S. Ct. 1045. We concluded in J.S. that Illinois's automatic transfer statute did not suffer from the same failing because it required all 15- and 16-year-olds charged with the listed offenses to be transferred to criminal court, thus eliminating the potential for the use of unguided discretion in the juvenile court that was found to be unconstitutional by the Supreme Court. J.S., 103 Ill. 2d at 405, 83 Ill. Dec. 156, 469 N.E.2d 1090. ...

"....

"Here, however, defendant asserts that J.S. is no longer valid law in light of the United States Supreme Court's subsequent rulings in Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), and Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). Defendant argues that this court's reliance on the absence of any statutory judicial discretion in J.S. to uphold the transfer statute supports his allegation of a due process violation in this case because those Supreme Court decisions emphasized a need to recognize the unique characteristics of youthful offenders that is inconsistent with an automatic transfer.

> "As previously discussed, in J.S., the defendant unsuccessfully attempted to support his due process argument by distinguishing the Supreme Court's due process analysis in Kent. J.S., 103 Ill. 2d at 404-05, 83 Ill. Dec. 156, 469 N.E.2d 1090. In contrast, here defendant is attempting to support his due process argument by relying on the Supreme Court's eighth amendment analysis in Roper, Graham, and Miller. Defendant's constitutional argument is crafted from incongruous components. Although both the Supreme Court and defendant have emphasized the distinctive nature of juveniles, the applicable constitutional standards differ considerably between due process and eighth amendment analyses. A ruling on a specific flavor of constitutional claim may not justify a similar ruling brought pursuant to another constitutional provision. See People v. Davis, 2014 IL 115595, ¶ 45, 379 Ill. Dec. 381, 6 N.E.3d 709 (finding the juvenile defendant's sentence violated the eighth amendment but declining to consider his state due process and proportionate penalties challenges). In other words, a constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision. United States v. Lanier, 520 U.S. 259, 272 n.7, 117 S. Ct. 1219, 137 L. Ed. 2d 432 (1997). Accordingly, we reject defendant's reliance on the Supreme Court's eighth amendment case law to support his procedural and substantive due process claims."

Patterson, 388 Ill. Dec. at 856-57, 25 N.E.3d at 548-49 (emphasis added).

Similarly, in Watkins, supra, the Washington Supreme Court addressed the appellant's argument that Roper, Graham, J.D.B., and Miller "require more than simply taking into account a defendant's youthfulness at sentencing -- he argues

that they establish a substantive due process right to a Kent hearing before being transferred to adult court." Watkins, 191 Wash. 2d at 546, 423 P.3d at 838. However, the court rejected that argument:

> "The principle that juveniles are developmentally different from adults factors into a court's decision regarding a youthful defendant's culpability, like in Roper, Miller, and Graham, or a youthful defendant's subjective mental state, like in J.D.B. That principle does not factor into our determination of whether a jurisdictional statute like former RCW 13.04.030 (2009) is constitutional because resolving this issue does not require us to assess a youthful defendant's culpability or subjective mental state. To resolve this issue we need decide only whether the legislature has the authority to define the scope of juvenile court jurisdiction. The answer is yes -- the legislature can define the scope of juvenile court jurisdiction because the legislature itself created the juvenile court system and there is no constitutional right to be tried in juvenile court."

Watkins, 191 Wash. 2d at 546, 423 P.3d at 838-39 (emphasis added; emphasis omitted).[6] See also State v. Jensen, 385 P.3d 5 (Idaho Ct. App. 2016) ("Jensen had no statutory right and no expectation, from either legislation or state conduct, that he

[6]In fact, the Washington Supreme Court noted that, in Miller, the United States Supreme Court "discussed automatic adult court statutes ... and made no indication that the statutes are unconstitutional." Watkins, 191 Wash. 2d at 540 n.9, 423 P.3d at 835 n.9. See Miller, 567 U.S. at 487-88.

could be proceeded against as a minor. Consequently, since he was never entitled to be charged or tried as a juvenile, he never had a liberty interest in being placed in the juvenile court system. Without a liberty interest deprivation, the Fourteenth Amendment is not implicated. Further, [Roper, Graham, and Miller] dealt with sentences of life without parole or capital punishment and are not directly relevant to a determination whether the automatic waiver violates due process. The cases, while dealing with the importance of youthful considerations in sentencing, do not support a claim of a liberty interest in being charged and tried as a juvenile." (emphasis added; internal citation omitted)).

Once again, we find the above-cited cases persuasive. A juvenile offender does not have a constitutionally protected liberty interest in juvenile-court adjudication, and the narrow holdings in the Roper line of cases do not provide otherwise. To hold that those cases recognized such a right would require us to expand the narrow holdings of those cases to issues the United States Supreme Court did not expressly address in them, and state courts should "be very careful when considering new constitutional interests and remain reluctant

to deviate from United States Supreme Court determinations of what are, and what are not, fundamental constitutional rights." Morris v. Brandenburg, 356 P.3d 564, 578 (N.M. Ct. App. 2015).

To date, the Court has not recognized a constitutionally protected liberty interest in juvenile-court adjudication. Thus, because juveniles do not have a constitutionally protected liberty interest in juvenile-court adjudication and because our legislature has not statutorily provided such a liberty interest for juveniles who have attained the age of 16 years and who are charged with an offense enumerated in § 12-15-204, such juveniles cannot point to a protected liberty interest in juvenile-court adjudication that entitles them to procedural due process. Stephenson, supra; and Crawford, supra. Accordingly, we hold that § 12-15-204 does not violate procedural due-process principles, a holding consistent with the well-settled rule that this Court will not hold a legislative act unconstitutional unless it is clear beyond a

reasonable doubt that it violates fundamental law.[7] Worley, supra.

B. Substantive Due Process and Equal Protection

As noted previously, in addressing a substantive due-process or equal-protection challenge to a statute, the reviewing court must balance the challenger's alleged liberty interest against the government's justification for the statute. Norris, supra; Hernandez, supra. To balance these competing interests, courts employ one of three tests.

> "'The United States Supreme Court has established two tests to determine whether a statute draws a classification which violates the Equal Protection Clause of the Fourteenth Amendment or whether that statute denies a person substantive due process of law. The Court applies the "strict scrutiny

[7]After concluding that juvenile offenders have a constitutionally protected liberty interest in juvenile-court adjudication, the circuit court analyzed § 12-15-204 pursuant to Mathews v. Eldridge, 424 U.S. 319 (1976), which provides three factors to consider in determining whether the government has provided adequate procedures once a procedural-due-process claimant has demonstrated the existence of a protected interest. Id. at 335. Because juvenile offenders who have attained the age of 16 years and who are charged with an offense enumerated in § 12-15-204 do not have a protected liberty interest in juvenile-court adjudication, the Mathews test is inapplicable.

> test" where the classification is based on "suspect criteria" or affects some fundamental right. ... [When the] case involves neither a "suspect class" nor a "fundamental right," the rational basis test is the proper test to apply to either a substantive due process challenge or an equal protection challenge.'
>
> "Gideon v. Alabama State Ethics Comm'n, 379 So. 2d 570, 573-74 (Ala. 1980). See also Hutchins v. DCH Reg. Med. Ctr., 770 So. 2d 49 (Ala. 2000)."

Herring v. State, 100 So. 3d 616, 622 (Ala. Crim. App. 2011) (footnote omitted).

> "A fundamental right has been defined as one which has its origins in the constitution. Scott v. Dunn, 419 So. 2d 1340 (Ala. 1982). A suspect class was defined by the United States Supreme Court in San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 28, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973), as a class 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.'"

State v. C.M., 746 So. 2d 410, 414 n.6 (Ala. Crim. App. 1999). "Between these extremes of rational basis review and strict scrutiny lies a level of intermediate scrutiny, which generally has been applied to discriminatory classifications based on sex or illegitimacy." Clark v. Jeter, 486 U.S. 456,

461 (1988). See also Glenn v. Brumby, 663 F.3d 1312, 1315 n.4 (11th Cir. 2011) (noting that intermediate scrutiny "applies to classifications based on sex or illegitimacy").

Because § 12-15-204 is not a classification based on sex or illegitimacy, it must be tested for purposes of substantive due process and equal protection under either the strict-scrutiny test or the rational-basis test. This Court has already determined in Price, supra, that § 12-15-34.1 -- the predecessor to § 12-15-204 -- "is scrutinized under the 'rational review' standard." Price, 683 So. 2d at 45. That was so, and remains true today, because, as we have already noted, juvenile offenders do not have a fundamental right to juvenile-court adjudication, and neither the United States Supreme Court nor Alabama has recognized juveniles as a suspect class. See Gregory v. Ashcroft, 501 U.S. 452, 470 (1991) ("This Court has said repeatedly that age is not a suspect classification under the Equal Protection Clause."); and C.M., 746 So. 2d at 415 (noting that juveniles are not a suspect class). Thus, § 12-15-204 must satisfy only the rational-basis test to survive a substantive due-process or equal-protection challenge.

"'Under the rational basis test the Court asks: (a) Whether the classification furthers a proper governmental purpose, and (b) whether the classification is rationally related to that purpose.'" Northington v. Alabama Dep't of Conservation & Natural Res., 33 So. 3d 560, 564 (Ala. 2009) (quoting Gideons v. Alabama State Ethics Comm'n, 379 So. 2d 570, 574 (Ala. 1980)). Thus, a statute survives the rational-basis test "if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." St. Clair Cty. Home Builders Ass'n v. City of Pell City, 61 So. 3d 992, 1011 (Ala. 2010) (quoting Heller v. Doe, 509 U.S. 312, 320 (1993)).

> "Under rational basis review, we apply 'a strong presumption of validity,' Heller v. Doe by Doe, 509 U.S. 312, 319, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993), and narrowly inquire if the 'enacting government body could have been purs[u]ing' 'a legitimate government purpose,' United States v. Ferreira, 275 F.3d 1020, 1026 (11th Cir. 2001) (quoting Joel v. City of Orlando, 232 F.3d 1353, 1358 (11th Cir. 2000)). If we discern a legitimate goal, we then ask only 'whether a rational basis exists for the enacting governmental body to believe that the legislation would further the hypothesized purpose.' Id. (quoting Joel, 232 F.3d at 1358). This inquiry occurs entirely in the abstract because '[t]he actual motivations of the enacting governmental body are entirely irrelevant,' as is whether the legitimate 'basis was actually considered by the legislative body.' Id. (quoting

> Joel, 232 F.3d at 1358). Indeed, the government 'has no obligation to produce evidence to sustain the rationality of a statutory classification,' Heller, 509 U.S. at 320, 113 S. Ct. 2637, and the complaining party has the burden to 'negat[e] every conceivable basis which might support it,' id. (quoting Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 364, 93 S. Ct. 1001, 35 L. Ed. 2d 351 (1973)). Unsurprisingly, '[a]lmost every statute subject to the very deferential rational basis standard is found to be constitutional.' [Doe v.] Moore, 410 F.3d [1337,] 1346–47 [(11th Cir. 2005)] (alteration adopted) (quoting Williams v. Pryor, 240 F.3d 944, 948 (11th Cir. 2001))."

United States v. Castillo, 899 F.3d 1208, 1213 (11th Cir. 2018).

This Court has already concluded that the predecessor to § 12-15-204 "has a rational basis relating to a legitimate governmental interest, i.e., retribution for serious crimes in addition to having the deterrent effect that facing an adult trial would have on juveniles ...." Price, 683 So. 2d at 45. See also Perkins v. Commonwealth, 511 S.W.3d 380, 388 (Ky. Ct. App. 2016) (noting that there is "an obvious legitimate governmental interest in curtailing violent crimes by juveniles and protecting the public from harm"). Although that statement was made in the context of addressing only an equal-protection claim, both an equal-protection claim and a substantive due-process claim, if neither involves a

fundamental right or a suspect class, are subject to the same rational-basis test. See Leib v. Hillsborough Cty. Pub. Transp. Comm'n, 558 F.3d 1301, 1308 (11th Cir. 2009) ("Since the Commission's rules survived rational basis review for purposes of Leib's equal protection claim, it follows a fortiori that the rules survive rational basis review [for substantive due process] as well."); Executive Air Taxi Corp. v. City of Bismarck, N.D., 518 F.3d 562, 569 (8th Cir. 2008) ("A rational basis that survives equal protection scrutiny also satisfies substantive due process analysis."); and Powers v. Harris, 379 F.3d 1208, 1215 (10th Cir. 2004) ("[B]ecause a substantive due process analysis proceeds along the same lines as an equal protection analysis, our equal protection discussion sufficiently addresses both claims."). Thus, our equal-protection analysis in Price adequately addresses a substantive due-process challenge to § 12-15-204 in that it concluded that § 12-15-204 is rationally related to the legitimate governmental interest of punishing and deterring the commission of serious offenses by juveniles who have attained the age of 16 years. We reiterate that conclusion today. As the Illinois Court of Appeals has concluded:

> "Almost 18 years ago, the Illinois Supreme Court addressed the issue of whether the automatic transfer provision contained in the Illinois Juvenile Court Act violates the constitutional guarantee of substantive due process that provides that the accused may not be deprived of liberty without due process of law in the case of People v. J.S., 103 Ill. 2d 395, 83 Ill. Dec. 156, 469 N.E.2d 1090 (1984). The supreme court applied the 'rational basis' test as the appropriate method to evaluate whether the automatic transfer provision comported with the defendant's substantive due process guarantee. People v. J.S., 103 Ill. 2d at 402–03, 83 Ill. Dec. 156, 469 N.E.2d 1090. ... In J.S., our supreme court held that because the automatic transfer provision included only the more heinous Class X felonies of murder, rape, deviate sexual assault and armed robbery with a firearm and limited its application to 15- and 16-year-old defendants, it was a rational classification because it was 'rationally based on the age of the offender and the threat posed by the offense to the victim and the community because of its violent nature and frequency of commission. People v. J.S., 103 Ill. 2d at 404, 83 Ill. Dec. 156, 469 N.E.2d 1090. The court held that the automatic transfer provision does not violate any due process requirements because it is reasonably drafted to remedy the evils that society has determined to be a threat to public health, safety and welfare due to the violent nature of the crimes."

People v. Jackson, 358 Ill. Dec. 552, 557-58, 965 N.E.2d 623, 628-29 (Ill. App. Ct. 2012) (emphasis added).

Similarly, the scope of § 12-15-204 includes only serious offenses -- i.e., capital offenses, Class A felonies, felonies that involve the use of a deadly weapon, felonies that cause

death or serious physical injury, felonies that involve the use of a dangerous instrument against a limited category of individuals, and trafficking in drugs -- and is limited to only those juvenile offenders who have attained the age of 16 years -- i.e., older juveniles who the legislature could have reasonably concluded are more culpable for, and more prone to and more capable of, committing such offenses. Thus, the Alabama Legislature drafted § 12-15-204 with a limited scope that is rationally related to a legitimate governmental interest: imposing retribution for, and deterring the commission of, serious offenses by ensuring that those juveniles who are most culpable and most likely to commit such offenses are prosecuted in "adult court," where they are subject to more severe punishments than they could receive in juvenile court. Accordingly, as this Court determined more than 20 years ago in Price, § 12-15-204 passes the rational-basis test and therefore does not violate substantive due-process principles.

Nevertheless, B.T.D. argues that § 12-15-204 violates the Equal Protection Clause and that its disparate treatment of juvenile offenders fails the rational-basis test because, he

says, there is no rational basis for making a distinction between those juveniles who have attained the age of 16 years and those who have not. Specifically, B.T.D. argues:

> "Alabama law does not treat similarly situated children alike; 16- and 17-year-old children like B.T.D. are afforded fewer rights than their 14- and 15-year-old peers charged with the same offenses. Under § 12-15-203, 14- and 15-year-old children may only be transferred to the adult court after a hearing that considers [certain] factors .... These factors are considered regardless of the child's alleged offense. A 14- or 15-year-old child that commits one or more of the same offenses delineated in [§] 12-15-204 receives a transfer hearing that would be denied to a child who may be only months, weeks, or days older. Under such a statutory scheme, two youth who engage in the same conduct and share similar developmental characteristics might be subject to entirely different legal outcomes; the one who receives the benefit of the individualized standard in § 12-15-203 might be rehabilitated through the juvenile system, while the youth who fell within § 12-15-204 would be transferred and subject to the harsh penalties and conditions of the adult criminal justice system ...."

(B.T.D.'s brief, at 28-29.)

As we have already noted, however, the State has a legitimate governmental interest in imposing retribution for, and deterring the commission of, serious offenses by juveniles who have attained the age of 16 years. Contrary to B.T.D.'s argument, making a distinction between older and younger juveniles is rationally related to the fulfillment of that

objective, because all juveniles are not the same. In reaching this conclusion, we find it helpful to look to the Ohio Court of Appeals, which has twice considered and rejected this specific argument.

In State v. McKinney, 46 N.E.3d 179 (Ohio Ct. App. 2015), the appellant, a 16-year-old offender, challenged an Ohio statute mandating that 16- and 17-year old offenders who are charged with certain enumerated offenses be tried as an adult. According to the appellant, the statute "violates his right to equal protection under the law by treating similarly situated minors differently based solely on their ages." Id. at 186. The Ohio Court of Appeals rejected that argument, however, noting that "the General Assembly's choice to 'single out older juvenile homicide offenders, who are potentially more street-wise, hardened, dangerous, and violent, is rationally related to this legitimate governmental purpose of protecting society and reducing violent crime by juveniles.'" Id. (citation omitted) The court again addressed this argument two years later in In re M.I., 88 N.E.3d 1276 (Ohio Ct. App. 2017), in which the appellant, a 16-year-old sex offender, challenged Ohio's juvenile-sex-offender laws, which provided

that "sex offenders 13 or younger may not be classified [as a juvenile offender registrant], classification is discretionary for 14- and 15-year-old sex offenders, and 16-and 17-year-old sex offenders must be classified." Id. at 1277. The appellant argued that Ohio's juvenile-sex-offender laws violated equal-protection principles because, he said, "there is no rational basis for treating juvenile sex offenders differently based on their ages." Id. In holding that there was no equal-protection violation, the court stated:

> "[T]he purpose of sex-offender registration is to protect the public. Those appellate courts finding no equal-protection violation have reasoned that the legislature's concerns for recidivism and public safety provide a rational basis for treating juvenile sex offenders differently based on their ages. The courts have reasoned that it is a core premise of the juvenile court system that as the juvenile ages, he is more responsible and accountable for his actions. A juvenile who is almost an adult has less time in the juvenile system to be rehabilitated and may be less responsive to rehabilitation. Therefore, more tracking is needed after the juvenile ages out of the system. It is not irrational to conclude that younger children are less culpable and accountable for their actions and less dangerous than older offenders. Younger children have more time in the juvenile system to be rehabilitated and may be more susceptible to rehabilitation than older children.
>
> "We agree with this reasoning and hold that the juvenile-sex-offender-classification system is rationally related to the legitimate governmental

> interest of protecting the public from sex offenders. Therefore, it does not violate M.I.'s right to equal protection of the law."

In re M.I., 88 N.E.3d at 1277-78 (emphasis added; internal citation omitted). See also State v. Mann, 602 N.W.2d 785, 793 (Iowa 1999) (noting that the legislature "could reasonably distinguish between juveniles of different ages based on their presumed maturity and judgment, according more severe punishment to older juveniles").

We agree with the Ohio Court of Appeals. Despite B.T.D.'s contention that all juveniles are "similarly situated," the legislature could have reasonably concluded that 16- and 17-year-olds are generally more dangerous and more culpable than younger juveniles; that 16- and 17-year-olds are therefore more likely to commit the type of serious offenses enumerated in § 12-15-204 and are more culpable if they do; and that, as a result, prosecuting and punishing those older juvenile offenders as adults serves the legitimate governmental interest of imposing retribution for, and deterring the commission of, serious offenses by ensuring that such juveniles are faced with the type of severe punishments they could not receive in juvenile court. Additionally, the

legislature could have reasonably concluded that 16- and 17-year-olds who commit the type of serious offenses enumerated in § 12-15-204 are less amenable than younger juvenile offenders to the rehabilitative aspects of juvenile court. As the Ohio Court of Appeals noted, a juvenile who is close to adulthood will have less time in the juvenile system and therefore might be less likely to respond to the rehabilitative aspects of that system. In re M.I., supra. Furthermore, § 12-15-204 operates equally upon all juvenile offenders falling within its purview; any individual who has attained the age of 16 years and who is charged with an offense enumerated in § 12-15-204 must be prosecuted as an adult. See Mann, 602 N.W.2d at 793-94 ("Moreover, section 232.8(1)(c) operates equally upon all persons similarly situated: juveniles sixteen and over who commit forcible felonies. Because the classification made by section 232.8(1)(c) is reasonable and operates equally upon all juveniles falling within the class, it does not violate the Equal Protection Clause." (internal citation omitted)).

Granted, as B.T.D. notes, drawing the line of demarcation at 16 years of age could result in a situation where a 15-

year-old juvenile who commits an offense enumerated in § 12-15-204 is adjudicated in juvenile court, while a 16-year-old juvenile, who theoretically might be only a few days older than the 15-year-old offender, will automatically be tried as an adult for committing the same offense. However, such situations alone do not render the legislature's classification irrational. As the Utah Supreme Court noted, "[a] line drawn based on age will necessarily appear somewhat arbitrary, because people close to the boundary on either side may be very similarly situated. But this court and 'the United States Supreme Court [have] held that age is a permissible method of classifying individuals where a rational basis exists.'" Angilau, 245 P.3d at 753 (citation omitted). Similarly, although the legislature's classification in § 12-15-204 might appear irrational to juvenile offenders who are "close to the boundary," id., we cannot say, for the reasons set forth above, that the classification is not rationally drawn to achieve the legislature's legitimate governmental purpose of imposing retribution for, and deterring the commission of, serious offenses by juveniles who have attained the age of 16 years, which is the only test it must meet to

withstand B.T.D.'s equal-protection challenge. Herring, supra. In fact, we note that B.T.D. has not cited a single case in which a court has held that a statute drawing a classification between older and younger juveniles violates equal-protection principles. See Worley, supra (noting that the party challenging the constitutionality of a statute has the burden of demonstrating that the statute is unconstitutional). Accordingly, we reiterate our holding from Price that the classification drawn in § 12-15-204 between older and younger juveniles is rationally related to a legitimate governmental purpose and therefore does not violate equal-protection principles.

II. Vagueness and Overbreadth

As to whether § 12-15-204(a)(4) is unconstitutionally vague and overly broad, we begin by noting that B.T.D. and the circuit court appear to have conflated the doctrines of vagueness and overbreadth.

> "While 'vagueness and overbreadth are related constitutional concepts, they are separate and distinct doctrines, subject in application to different standards and intended to achieve different purposes.' United States v. Morison, 844 F.2d 1057, 1070 (4th Cir. 1988). 'The vagueness doctrine is rooted in due process

> principles and is basically directed at lack of sufficient clarity and precision in the statute; overbreadth, on the other hand, would invalidate a statute when it infringes on expression to a degree greater than justified by the legitimate governmental need which is the valid purpose of the statute.' Id."

Willis v. Town of Marshall, N.C., 426 F.3d 251, 261 (4th Cir. 2005) (emphasis added).

> "[A] criminal statute that 'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,' United States v. Harriss, 347 U.S. 612, 617, 74 S. Ct. 808, 812, 98 L. Ed. 989 (1954), or is so indefinite that 'it encourages arbitrary and erratic arrests and convictions,' Papachristou v. Jacksonville, 405 U.S. 156, 162, 92 S. Ct. 839, 843, 31 L. Ed. 2d 110 (1972), is void for vagueness."

Colautti v. Franklin, 439 U.S. 379, 390 (1979). The overbreadth doctrine, on the other hand, prevents a statute that proscribes conduct from "casting a net so wide," Schultz v. City of Cumberland, 228 F.3d 831, 848 (7th Cir. 2000), that it "'sweep[s] unnecessarily broadly and thereby invade[s] the area of protected freedoms.'" Wallen v. City of Mobile, [CR-17-0286, August 10, 2018] ___ So. 3d ___, ___ (Ala. Crim. App. 2018) (quoting Ross Neely Express, Inc. v. Alabama Dep't of Evntl. Mgmt., 437 So. 2d 82, 85 (Ala. 1983)). Thus, in short, "vagueness concerns the lack of clarity in the language of a

statute, whereas overbreadth concerns the reach of a statute ...." People v. Graves, 368 P.3d 317, 326 (Colo. 2016) (emphasis added). Consequently, a statute with sufficient clarity to survive a vagueness challenge will still fail an overbreadth challenge if it impermissibly reaches protected conduct. State v. Adams, 254 Kan. 436, 439, 866 P.2d 1017, 1020 (1994). Likewise, a statute that does not encroach upon protected conduct will survive an overbreadth challenge but might still lack sufficient clarity to survive a vagueness challenge.[8] Florida Businessmen for Free Enter. v. City of Hollywood, 673 F.2d 1213, 1218 (11th Cir. 1982).

Here, the circuit court found that the phrase "serious physical injury" renders § 12-15-204(a)(4) both unconstitutionally vague and overly broad because, the circuit court found, "virtually every circumstance involving

[8]Generally, the overbreadth doctrine is limited to challenges alleging an infringement upon First Amendment freedoms. See United States v. Lebowitz, 676 F.3d 1000, 1012 n.6 (11th Cir. 2012). The Alabama Supreme Court, however, has "recognized a broader application of the overbreadth doctrine," noting that "'the overbreadth doctrine under the Alabama Constitution has been applied in due process cases not involving First Amendment freedoms.'" Scott & Scott, Inc. v. City of Mountain Brook, 844 So. 2d 577, 594 (Ala. 2002) (quoting Friday v. Ethanol Corp., 539 So. 2d 208, 215 (Ala. 1988) (emphasis added)).

allegations of a felony with an injury" will subject a 16- or 17-year-old offender to prosecution in "adult court." However, although couched in terms of both vagueness and overbreadth, that holding appears to be based solely on vagueness, as there can be no question that inflicting injury during the commission of a felony is not protected conduct. Regardless, we note that this Court has already rejected vagueness and overbreadth challenges to the predecessor to § 12-15-204 in Price, supra. See Price, 683 So. 2d at 45.

Furthermore, we now hold that § 12-15-204 is not subject to vagueness and overbreadth challenges. In Beckles v. United States, ___ U.S. ___, 137 S. Ct. 886 (2017), the United States Supreme Court noted that it "has invalidated two kinds of criminal laws as 'void for vagueness': laws that define criminal offenses and laws that fix the permissible sentences for criminal offenses." Id. at ___, 137 S. Ct. at 892. Thus, because the statute at issue in Beckles neither defined criminal offenses nor fixed permissible sentences, the Court held that the statute was not subject to a vagueness challenge. Id. See also State v. Roling, 191 Wis. 2d 754, 759, 530 N.W.2d 434, 436 (1995) (holding that a Wisconsin

statute that vested the "adult court" with jurisdiction over juveniles who had attained the age of 16 years and were charged with certain enumerated offenses was "a procedural, not a penal, statute and thus [was] not a proper subject for a 'void-for-vagueness' challenge"); Maun v. Department of Prof'l Regulation, 299 Ill. App. 3d 388, 395-96, 233 Ill. Dec. 726, 732-33, 701 N.E.2d 791, 797-98 (1998) (holding that a statute authorizing the suspension of a license to practice medicine was not subject to a vagueness challenge because the statute was not a penal statute); and People v. Lang, 113 Ill. 2d 407, 454, 101 Ill. Dec. 597, 618, 498 N.E.2d 1105, 1126 (1986) (holding, in a case where the appellant asserted a vagueness challenge to a statute authorizing the involuntary commitment of a person who is "mentally ill," that "[t]he vagueness doctrine's requirement of 'fair notice' does not apply ... since the statute does not proscribe any conduct").

Similarly, the overbreadth doctrine serves to ensure that the government, in proscribing conduct, does not "cast[] a net so wide" that it also prohibits protected conduct. Schultz, supra. Thus, if a statute does not proscribe any conduct whatsoever, it is not subject to an overbreadth challenge.

See Grayned v. City of Rockford, 408 U.S. 104, 114 (1972) (noting that a statute "may ... be 'overbroad' if in its reach it prohibits constitutionally protected conduct"); Maass v. Lee, 189 F. Supp. 3d 581, 586 (E.D. Va. 2016) (holding that "the overbreadth doctrine is inapplicable here ... because [the statute] ... does not prohibit or punish any conduct, let alone constitutionally protected conduct" (emphasis added)); and Enriguez v. State, 858 So. 2d 338, 341 (Fla. Dist. Ct. App. 2003) (noting that overbreadth "is an analysis that applies only to statutes that proscribe conduct" (emphasis added)).

Section 12-15-204 is not a penal statute; it does not define criminal offenses, proscribe conduct, or fix permissible sentences. Rather, when a 16- or 17-year-old is to be tried as an adult, the conduct for which he or she is arrested and charged is proscribed by a section of the Alabama Code other than § 12-15-204(a)(4). In this case, for example, it is § 13A-6-21, not § 12-15-204(a)(4), that proscribes the conduct with which B.T.D. was charged. Section 12-15-204 is merely a jurisdictional statute that sets forth which court has jurisdiction over juveniles who have attained the age of

16 years and who are charged with certain offenses proscribed by other sections of the Alabama Code. Thus, because § 12-15-204 is purely a jurisdictional statute that does not define criminal offenses, proscribe any conduct whatsoever, or fix permissible sentences, it is not subject to vagueness and overbreadth challenges.

Moreover, even if § 12-15-204 were subject to vagueness and overbreadth challenges, those challenges would fail. As noted, § 12-15-204(a)(4) encompasses any "felony which has as an element thereof the causing of death or serious physical injury." As a result, if a juvenile has attained the age of 16 years and is charged with an offense the Alabama Code (1) defines as a felony and (2) includes as an element the causing of death or serious physical injury, then the juvenile offender must be tried as an adult under § 12-15-204(a)(4); the statute is unequivocal in that regard. Thus, for example, if a 16- or 17-year-old is charged with second-degree assault in violation of § 13A-6-21, as B.T.D. was in this case, § 12-15-204(a)(4) mandates that he or she be tried as an adult because § 13A-6-21 provides that second-degree assault is a Class C felony and occurs when a person, "[w]ith intent to

cause serious physical injury to another person, ... causes serious physical injury to any person." § 13A-6-21(a)(1) (emphasis added). Likewise, as another example, if a 16- or 17-year-old is charged with second-degree elder abuse and neglect in violation of § 13A-6-193, Ala. Code 1975, § 12-15-204(a)(4) mandates that he or she be tried as an adult because § 13A-6-193 provides that second-degree elder abuse and neglect is a Class B felony and occurs, among other instances, when a person "[r]ecklessly abuses or neglects any elderly person and the abuse or neglect causes serious physical injury to the elderly person." § 13A-6-193(a)(2) (emphasis added). Thus, even if § 12-15-204(a)(4) were subject to vagueness and overbreadth challenges, the statute is not unconstitutionally vague given that it provides clear notice that it encompasses only those offenses that are felonies and have the specific element of causing "serious physical injury," which can be easily determined by referencing the charging statute, and it certainly is not overly broad given that no felonies are protected conduct.

We recognize that B.T.D. argued, and the circuit court concluded, that it is the definition of "serious physical

injury" that renders § 12-15-204(a)(4) unconstitutionally vague and overly broad. However, challenges to the clarity and reach of the definition of "serious physical injury" are challenges to the clarity and reach of a charging statute that includes the causing of serious physical injury as an element. As noted in the preceding paragraph, the enforcement of § 12-15-204(a)(4) merely requires a determination of whether the charged offense is classified as a felony and whether the elements of the offense include the causing of a serious physical injury. The definition of "serious physical injury" is not relevant to that determination. Indeed, to determine whether a 16- or 17-year-old offender charged with a felony must be tried as an adult under § 12-15-204(a)(4), one need not even be cognizant of the definition of "serious physical injury" but, instead, need only consult the charging statute itself to determine whether the elements of the offense include the causing of serious physical injury. Accordingly, the use of "serious physical injury" does not render § 12-15-204(a)(4) unconstitutionally vague or overly broad.[9]

[9]Although B.T.D. did not challenge the constitutionality of § 13A-8-61, which includes the causing of "serious physical injury" as an element of second-degree assault, we note that,

Conclusion

Section 12-15-204 does not violate due-process principles under either the United States Constitution or the Alabama Constitution, nor does it violate the Equal Protection Clause of the Fourteenth Amendment. Additionally, § 12-15-204(a)(4), which is a jurisdictional statute, is not subject to vagueness and overbreadth challenges but does not violate those doctrines even if it were subject to such challenges.

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to withstand a vagueness challenge, a statute must define a criminal offense "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Kolender v. Lawson, 461 U.S. 352, 357 (1983). The Alabama Legislature has defined "serious physical injury" as "[p]hysical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ." § 13A-1-2(14), Ala. Code 1975. That definition is sufficiently definite to give "ordinary people" notice of what conduct is prohibited and to prevent arbitrary and discriminatory enforcement. See Andrason v. Sheriff, Washoe Cty., 88 Nev. 589, 591, 503 P.2d 15, 16 (1972) ("The words 'serious physical injury' are words of ordinary significance and readily understood by men of ordinary intelligence. Accordingly, the statutory language accommodates constitutional commands." (internal citations omitted)); Lum v. State, 281 Ark. 495, 498-99, 665 S.W.2d 265, 267 (1984) (holding that a statutory definition of "serious physical injury" substantively identical to that of § 13A-1-2(14) was not unconstitutionally vague); and State v. Moyle, 299 Or. 691, 699-700, 705 P.2d 740, 746 (1985) (same).

Accordingly, we reverse the judgment of the circuit court and remand the case with instructions for the circuit court to reinstate the indictment against B.T.D.

APPEAL REVERSED AND REMANDED WITH INSTRUCTIONS; CROSS-APPEAL DISMISSED.

Windom, P.J., and Kellum, Cole, and Minor, JJ., concur.