

Competency to Stand Trial in Preadjudicatory Juveniles and Adults

Geoffrey R. McKee, PhD

This study compared the competency to stand trial (CST) of 108 juveniles (ages 7 to 16 years) and 145 adults (17 years or older) undergoing pretrial, court-ordered forensic psychiatric evaluations. Adults were superior on both global and specific competency abilities ($p < .001$). Clustered by age (<13, 13 and 14, 15 and 16 years old), preteens accused of crimes failed to meet a *Dusky v. United States* standard, while 13- and 14-year-olds displayed an equal mix of abilities and deficits. Mid-adolescents (ages 15 and 16) were equivalent to adults in CST abilities except in their knowledge about plea bargaining elements. The ramifications of CST in felony juvenile transfer to adult court as well as the needs for ecologically valid, empirically based CST research on adolescents is discussed.

Every defendant facing criminal charges has a constitutional right to be competent to stand trial; that is, he must have a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and have a "rational as well as factual understanding of the proceedings against him" (p. 402).¹ Competency to stand trial (CST) has been among the most thoroughly researched psycholegal issues in the past 20 years.²⁻⁴ Certain studies have focused on the characteristics of competent and incompetent defendants,⁵ while others have studied states' administrative systems for assess-

ment of defendants whose CST is questioned.⁶ More recently, research has centered on factors predicting restoration to competency of defendants who were judicially determined to be incompetent to stand trial (IST).^{7, 8}

The most extensive research has been on the development of psychometric measures of CST, which have attempted to translate the criteria in *Dusky v. United States*¹ into psychological and behavioral "functions" or "competency abilities."⁹ A number of quantitative tests for CST have been developed such as the Competency Screening Test,¹⁰ Georgia Court Competency Test (GCCT),¹¹ and the Computer-Assisted Determination of Competence to Proceed inventory (CADCOMP).¹² The instruments have received mixed reviews.^{13, 14} Critics¹⁵ have suggested that

Dr. McKee, to whom correspondence should be addressed, is affiliated with the Division of Forensic Psychiatry Services, William S. Hall Psychiatric Institute, Columbia, SC 29202. E-mail address: grm70@wshpi.dmh.state.sc.us

such devices fail to adequately address defendants' decisional capacities, while others^{4, 14, 16} have advocated for a new generation of instruments with carefully standardized administration and objective scoring criteria. These criticisms have prompted a new wave of psychometric research, most notably the MacArthur Competency Assessment Tool-Criminal Adjudication (MacCAT-CA),¹⁷ in which the examiner assesses the defendant's factual and reasoning processes through a series of decisions regarding a hypothetical criminal case.

The most systematic translation of the *Dusky*¹ standard into a CST device was developed by McGarry¹⁸ and his colleagues following review of all appellate cases in which CST was raised. The authors isolated 13 different "functions" of CST described by Grisso⁹ as an ability (or deficit) to: (1) consider realistically the possible legal defenses; (2) manage one's own behavior to avoid trial disruptions; (3) relate to one's attorney; (4) participate with the attorney in planning legal strategy; (5) understand the roles of various participants in the trial; (6) understand court procedure; (7) appreciate the charges; (8) appreciate the range and nature of possible penalties; (9) perceive realistically the likely outcome of the trial; (10) provide the attorney with available pertinent facts concerning the offense; (11) challenge the prosecution witnesses; (12) testify relevantly; and (13) be motivated to self-defense. McGarry¹⁸ and Guthiel and Appelbaum¹⁹ have listed sample questions for each function as a semi-structured interview instrument, the most common method of assessment of CST.²⁰

Although adult pretrial defendants have been extensively studied, little attention has been given to CST in juveniles facing delinquency or criminal proceedings.^{4, 21} The paucity of research on juveniles' CST is likely due to many factors. First, CST of juveniles in family court is not recognized by statute in a majority of states.²² Second, CST is raised infrequently because family courts have been structured as therapeutic rather than adversarial proceedings;²³ as a result, the lawyers representing juveniles are often uncertain whether their role is that of an advocate identical to a criminal defense attorney or less-adversarial guardians *ad litem*.²⁴ Third, few juvenile delinquency proceedings are appealed because the juvenile is usually released well before the issues are heard by appellate courts.²⁵ Fourth, many juveniles whose CST should be in question simply go through the court system unrecognized, a problem of "under-identification."²⁶ Finally, most juvenile cases remain in family courts because states have historically placed the burden of proof on the prosecution to transfer juveniles to adult criminal court.²⁷

The reviews published by Cooper and Grisso²¹ and Grisso⁴ of CST research with juveniles cite only one conceptual paper and only three empirical studies of this population. The Grisso *et al.*²² review of juvenile justice law outlined the demographic and psychological variables implied in family courts' decisions of juveniles' incompetence to stand trial: (1) age 12 or younger; (2) prior diagnosis of major mental illness or mental retardation; (3) history of poor intellectual or aca-

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demic ability; and (4) preadjudication reports by attorneys or other court personnel of the juvenile's deficits in memory, attention, or contact with reality.

Only three empirical studies of juvenile CST exist in the current literature. Employing age-stratified samples of nonarrested 12-year-olds, 15- to 17-year-olds, and adults, Savitsky and Karras²⁸ found significant differences among each group on the Competency Screening Test and concluded that neither 12-year-olds nor 15- to 17-year-olds were equivalent to adults in understanding trial proceedings. Cowden and McKee,²⁵ in a study of 136 juveniles, ages 9 to 16, undergoing court-ordered CST evaluations, found that age, severity of current diagnosis, and history of remedial education differentiated incompetent from competent juveniles. In their study, less than 60 percent were judged clearly competent to stand trial by their psychiatric and psychological examiners in contrast to a greater than 90 percent CST rate found in adult defendants.³ Cooper²⁹ found that, among adjudicated delinquents, 13-year-olds performed significantly worse on a juvenile court-modified version of the GCCT than 14-, 15-, or 16-year-olds; however, all juveniles' understanding of court increased after specific group-based training. She also found that full scale IQ positively correlated with competency.

Current reforms focusing on the severity of determinant penalties for adolescent offenders²⁷ highlight the importance of empirical studies of juveniles' understanding of legal proceedings. Many states have altered their statutes governing "waiver" or transfer of juveniles from

family court to be tried as adult criminal defendants. The rise of public concern with violence by adolescents has resulted in significant changes in the prosecution of juveniles charged with felony acts. The shift from therapeutic to adversarial proceedings against juveniles is illustrated by some states having "automatic transfer" for certain violent offenses^{30, 31} or requiring the defense to show why the juvenile should *not* be transferred to adult court.³² In many states, the age at which a juvenile may be transferred to adult court has been lowered.^{33, 34} Some states authorize transfer of juveniles of any age for certain charges.³² The consequences of transferring juveniles to adult court, including the possibility of the death penalty,³⁵ warrant careful assessment of their CST based on empirical research.

The present study is a descriptive comparison of preadjudicatory juveniles and adults trial competency abilities and deficits as rated by their examining psychiatrists following court-ordered CST evaluation.

Method

Subjects The juvenile sample comprised 108 consecutively registered pre-trial defendants evaluated for CST between January 1994 and June 1996. Twenty (18.5%) were Caucasian and 88 (81.5%) were African-American; 101 (93.5%) were male and 7 (6.5%) were female. The juvenile sample had a mean age of 14.2 years (SD = 1.8) comprising 14 (13.0%) age 12 or younger, 15 (13.8%) that were 13 years old, 23 (21.3%) 14 years old, 29 (26.9%) 15 years old, and 27 (25.0%) 16 years old.

Adolescents older than 16 at the time of offense are considered adult defendants by South Carolina law. The juvenile sample had an average of 7.1 years of education ($SD = 2.5$). Thirteen (12.0%) had no diagnosis on Axis I, 4 (3.7%) were diagnosed with a major mental illness (organic disorder, psychosis, pervasive developmental disorder), 25 (23.1%) were diagnosed with either a depressive, anxiety, or adjustment disorder, and 66 (61.2%) were given a diagnosis of either substance abuse, conduct disorder, oppositional disorder, or attention deficit disorder. Sixteen (14.8%) were diagnosed as mentally retarded, and 27 (25.0%) were evaluated as having borderline intellectual functioning. The juveniles had a mean number of charges of 3.1 ($SD = 3.8$) with 70.3 percent having 3 or fewer charges. The most serious charges, for 48 (44.4%) of the juveniles, were murder, attempted murder, kidnapping, criminal sexual conduct, or armed robbery; 49 (45.3%) were charged with arson, burglary, drug possession, grand larceny or other property felony; and 7 (6.5%) were charged with a misdemeanor. Only 1 juvenile (1.0%) faced a status offense (e.g., truancy, curfew violation).

The adult sample consisted of a year-stratified random sample of 145 adult pre-trial defendants evaluated for CST within the same time period. One hundred twenty-nine (89.0%) were male, 16 (11.0%) were female. Fifty-six (39.4%) were Caucasian, 86 (60.6%) were African-American. The adult sample had an average age of 32.7 years ($SD = 10.1$) with 67.4 percent between ages 17 and 36 years. Years of education were not reliably re-

corded in the adult sample's reports. Twenty-three (16.0%) had no diagnosis on Axis I, while 30 (20.8%) were diagnosed as organic or psychotic. Twenty-eight (19.5%) were diagnosed with either a depressive, anxiety, or adjustment disorder, 56 (38.9%) were diagnosed with substance abuse, and the remaining 7 adults (4.9%) were given other diagnoses (e.g., malingering, paraphilia, etc.). Sixteen (11.2%) were diagnosed with mental retardation and 17 (11.9%) with borderline intellectual functioning. The adults had a mean number of charges of 2.2 ($SD = 1.7$) with 87.4 percent having 3 or fewer charges. The most serious charges, for 70 adults (49.0%), were murder, attempted murder, kidnapping, criminal sexual conduct, or armed robbery; 67 (46.8%) faced arson, burglary, drug possession, grand larceny, or other felony property charges; 6 (4.2%) faced misdemeanor charges as their most serious crime.

Procedure All examinations were completed under court order at the state's only forensic hospital, a university-based facility authorized by state statute to conduct evaluations for CST and criminal responsibility. Each juvenile and adult was examined individually by a team that comprised a board-certified psychiatrist and staff MSW social worker. Each evaluation consisted of: (1) a preinterview review of legal records including the authorizing court order, police incident report(s), warrant(s), and if applicable, witness and defendant statements; (2) a preinterview review of any available medical, school, or other records; (3) an interview by the social worker with one

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Table 1
Description and Sample Interview Questions of Competency Abilities^a

Competency Ability	Description
Charges	
Knows all charges	The accused can cite every charge against him. ("What are the charges against you?")
Defines charges	The accused can describe charges in layman's terms. ("What do the police mean by armed robbery?")
Knows penalties	The accused can describe possible legal consequences if convicted. ("If you are found guilty, what could happen to you?")
Court procedures	
Knows court officers	The accused can describe the role of the defense attorney, judge, and prosecutor. ("What is your attorney's job in your case?")
Knows court adverse	The accused can convey the degree of distress resulting from his legal situation. ("Do you think you are in serious trouble? Why or why not?")
Appropriate behavior	The accused appreciates the need to control his conduct in court. ("What would happen if you began yelling at a witness in court?")
Knows pleas	The accused can at least define pleas of guilty and not guilty. ("What does a plea of guilty, not guilty mean?")
Can testify	The accused conveys capacity and willingness to testify in court. ("Do you think you could tell your side of the story in court; how would you feel answering questions?")
Challenge witnesses	The accused understands what to do if an adverse witness testifies. ("What would you do if a witness told lies about you in court?")
Assist attorney	
Trusts attorney	The accused conveys satisfaction with his attorney's preparation of his case. ("Do you think your attorney is doing a good job for you? Why or why not?")
Discloses case facts	The accused is able to describe the circumstances leading to the alleged offenses and his arrest. ("Why do the police think you did these crimes; what were you doing on the day these things happened?")
Asks attorney	The accused understands that his attorney is a resource for answering questions about his case. ("Who would you ask if you did not know something about your case?")
Knows plea bargaining	The accused can describe the basic elements of plea arrangements. ("What is a plea bargain? How would one work in your case?")
Self-serving motive	The accused has wish to be acquitted or get the lightest penalty if convicted. ("How do you hope your case will turn out?")

^a Adapted from McGarry,¹⁸ Gutheil and Appelbaum,¹⁹ and Grisso.⁹

of the juvenile's parents or of the adult's family members; (4) a one- to two-hour psychiatric interview including a formal mental status examination and assessment of CST based on the McGarry¹⁸ "functions" as a semistructured instrument, as

illustrated in Table 1; (5) referral for psychological testing at the psychiatrist's discretion; and (6) a forensic psychiatric report, which included the diagnosis of the defendant, description of competency abilities and deficits, and opinion regard-

ing competency to stand trial.³⁶ A total of 11 board-certified psychiatrists, 7 of whom have added qualifications in forensic psychiatry, evaluated subjects from both groups of this study; no juvenile or adult was evaluated more than once.

From the evaluation report, the listed CST abilities and deficits of each accused juvenile or adult were tabulated dichotomously in accordance with the functions described in Table 1. No psychiatrist cited every competency ability in every report. Any competency ability not cited by the examining psychiatrist was treated statistically as missing data. To reflect levels of CST, a summary competency (SC) score was computed for each subject by dividing the number of cited competency abilities by the total number of cited competency abilities and deficits. SC score values would thus range from 0 (only deficits cited) to 100 (only abilities cited); a report citing six abilities and four deficits would result in a score of 60. On the basis of the SC score, each juvenile and adult was categorized into one of three groups: (1) competent to stand trial (CST), comprising subjects with a SC score equal to 100; (2) minimally competent (MC), comprising subjects with a SC score lower than 100 but higher than 80; and (3) incompetent (IST), comprising subjects with a SC score lower than 80.

Results

Global Competency Ninety-two juveniles (85.2%), in contrast to 139 adults (95.9%), were reported by their psychiatric examiners to be competent to stand trial. The adults' mean SC score of 92.3 (SD = 20.2) was significantly higher than

the juveniles' mean SC score of 81.3 (SD = 28.7), $H(1, 253) = 17.1$ ($p < .001$). SC scores and clinical judgments of CST were highly correlated ($r = .92$). When categorized into CST, MC, and IST groups on the basis of SC score, the juveniles were significantly more likely to fall into the IST group (26.8%) than adults (4.1%) ($\chi^2(2, N = 254) = 35.42$; $p < .001$).

Previous research has demonstrated a relationship between age and competency to stand trial.^{25, 29} In light of these findings and of recent recommendations for age-based cross-sectional research in psycholegal studies of adolescents,³⁷ juveniles were clustered into three age groups: 12 years and younger, ages 13 and 14, and ages 15 and 16. Adults were categorized as a single age group.

Compared with 95.9 percent of the adults, 7 (50%) of those 12 years old and younger, 32 (84.2%) of those 13 and 14 years old, and 53 (94.6%) of those 15 and 16 years old were judged CST by their psychiatric examiners ($\chi^2(3, N = 253) = 35.42$; $p < .001$). A similar developmental progression was observed when CST was measured by each age groups' mean SC score. Against a mean SC score for adults of 92.3 (SD = 20.2), a mean SC score of 51.1 (SD = 37.9) was found for those 12 years old and younger; 78.1 (SD = 30.4) for 13 and 14 years old; and 90.0 for 15 and 16 years old ($H(3, N = 253) = 43.4$; $p < .001$).

The differences in CST across age groups were most apparent when a SC cutoff score of 80 was used to identify subjects that were not at least minimally competent. Of 145 adults, only 6 (4.1%)

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Table 2
Frequency (%) of Competency Abilities
Cited in Examiner's Report for Juvenile
(n = 108) and Adult (n = 145) Subjects

Competency Ability	Group	
	Juvenile	Adult
Charges		
Knows all charges	97.2	86.2
Defines charges	59.3	54.5
Knows penalties	76.9	79.3
Court procedures		
Knows court officers	97.2	86.2
Knows court is adversarial	58.3	42.1
Knows appropriate behavior	53.7	50.3
Knows pleas	63.9	76.6
Can testify	20.4	5.5
Challenges witnesses	11.1	5.5
Assisting attorney		
Trusts attorney	67.6	87.6
Discloses case facts	71.3	69.0
Asks attorney	22.2	32.4
Knows plea bargaining	58.3	71.7
Has self-serving motive	53.7	57.2

achieved a SC score lower than 80. In contrast, 9 (64.3%) of those 12 years old and younger, 13 (34.2%) of those 13 and 14 years old, and 8 (14.3%) of those 15 and 16 years old had SC scores lower than 80 ($\chi^2 (3, N = 253) = 54.2 (p < .001)$).

Specific Competency Abilities Table 2 displays the frequency of the competency abilities cited in the examining psychiatrists' reports of juveniles and adults. Inspection of Table 2 suggests that, in general, the same competency abilities are cited for adults and juveniles. Some CST abilities (to testify, to challenge witnesses, and to ask attorney questions), however, are listed in less than one-third of each groups' reports. Table 3 compares the specific competency abilities cited in

Table 3
Percentage of Juvenile and Adult Defendants Possessing Competency Ability as Judged by
Psychiatric Examiner^a

Competency Ability	Age Group (years)				χ^2
	<13 ^b	13 to 14 ^c	15/16 ^d	Adult ^e	
Knows charges	33.3 ^c	73.0 ^c	96.2 ^b	96.9 ^b	61.3 ^{**}
Defines charges	25.0 ^c	68.2 ^c	96.8 ^b	96.8 ^b	55.4 ^{**}
Knows penalties	80.0 ^b	79.3 ^b	85.4 ^b	87.4 ^b	11.9
Knows officers	46.2 ^c	68.6 ^c	96.2 ^b	96.1 ^b	49.2 ^{**}
Court adversarial	37.5 ^c	72.7 ^c	96.9 ^b	98.4 ^b	36.7 ^{**}
Proper behavior	100.0 ^b	100.0 ^b	90.9 ^b	96.1 ^b	2.7
Knows pleas	80.0 ^b	100.0 ^b	100.0 ^b	100.0 ^b	3.4
Trusts attorney	33.3 ^c	84.6 ^b	90.0 ^b	96.2 ^b	20.4 ^{**}
Discloses facts	42.9 ^c	89.3 ^b	94.7 ^b	87.5 ^b	14.7 [*]
Plea bargaining	50.0 ^c	56.8 ^c	63.9 ^c	81.5 ^b	18.5 ^{**}
Self-serving	100.0 ^b	95.5 ^b	100.0 ^b	98.8 ^b	2.1

^a Competency abilities cited in less than 40 percent of reports (see Table 2) had too few observations for meaningful comparisons. Comparisons are corrected for family-wise error (.05/11 = .0045). Groups with common subscripts are not significantly different at $p < .05$.

^b $n = 14$.

^c $n = 38$.

^d $n = 56$.

^e $n = 145$.

* $p < .01$; ** $p < .001$.

the examining psychiatrist's report for each juvenile and adult age group.

Discussion

In the present study, juveniles did share equivalence to adult defendants on some specific, simple competency abilities. Adolescents were equal to adult defendants in their knowledge of detention as a possible consequence, the importance of proper conduct in court, the difference between a plea of guilty and not guilty, and their wish for a positive, self-serving outcome to their case. However, the data suggested that preteen, early adolescents, and mid-adolescents are not equivalent to each other nor to adult defendants in global trial competency abilities. When CST was measured as a ratio of competency abilities to deficits, preteens were 16 times more likely than adults, 13- and 14 year-olds 8 times more likely than adults, and 15- and 16-year-olds 3.5 times more likely than adults to be incompetent to stand trial.

Within juvenile age groups, those 15 and 16 years old were more likely than younger adolescents to have the factual understanding and rational ability to work productively with counsel. These mid-adolescents were more likely to be able to understand and define each of the charges against them, to understand the role of the prosecuting attorney, and to appreciate the court as an adversarial environment for their case. Although they demonstrated higher levels of legal comprehension than other juveniles, they were not equivalent to adults in their knowledge of the basic elements of plea bargaining. This deficit is particularly critical with

mid-adolescents whose transfer to adult court for prosecution of their felony charges might be one of the options they must consider in a plea arrangement. If the juvenile is transferred, understanding plea bargaining is still important because well over 90 percent of all criminal cases are resolved through guilty pleas to reduced charges.³

The 13- and 14-year-old adolescents in this study presented a mix of competencies and deficits. Although equivalent to mid-adolescents and adults on many trial functions, they were not equal to older persons in their competency to cite and define all the charges against them, to know the responsibilities of the prosecuting attorney, nor to appreciate the adversarial nature of court proceedings. This adolescent groups' variable performance during their competency evaluations reinforces the "case by case" consideration of psycholegal issues recommended in juvenile delinquency hearings.^{38, 39}

Preteens facing criminal proceedings are at a significant disadvantage as "defendants." In this sample, only one (7%) was judged to be without a definable trial competency deficit. As a group, these children clearly failed to meet the *Dusky* standard of an ability to consult with counsel and have an understanding of legal proceedings arrayed against them. At the most elemental level, preteens were seen as being less able to disclose the facts of their case to counsel, the basic foundation of a defense. Further, their inability, relative to older adolescents, to appraise the quality of their attorney's representation might make them more susceptible to others' influence on the

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decisions that only the accused can decide, such as whether to testify, what plea to enter, and whether to accept diversion with conditions.²⁵ The preteens' extensive trial competency deficits clearly challenge the law's presumption of CST in persons facing criminal charges.⁴⁰

This study indicates that experienced forensic psychiatrists do not consider all CST functions as of equal importance for their opinions of the trial competency of juveniles and adults. An accused person's ability to challenge testimony, use his attorney as a resource, and give testimony were cited in less than 21 percent of the juveniles' reports and less than one-third of the adults' reports. The data suggest that, in the opinion of these forensic examiners, an accused person's ability during the trial process is less important to global CST than his pretrial factual and rational understandings.

It is important to note that the present study employed very simplistic, dichotomous (ability or deficit) categories of competency functions. Further, all competency functions were considered to have equal weight, when in reality, an ability to comprehend plea bargaining is much more significant to CST than knowing the precise definition of a particular charge. Although older adolescents were similar to adults on many competency abilities, the study's quantification of CST did not fully measure the complexity of an accused person's legal decisions. Consider, for example, the options facing a 14-year-old charged with assault and battery with intent to kill, a major felony punishable by up to 20 years in prison. The adolescent could (1) allow waiver of

transfer to adult court where his/her chances of acquittal may be better with a jury trial; (2) allow transfer, plead guilty to a lesser charge with a 10-year sentence (e.g., aggravated assault and battery), but give up the right to appeal; (3) testify in either family or adult court and face a vigorous prosecution cross-examination that might increase the likelihood of conviction; or (4) contest transfer and remain in family court with the certainty of being sentenced to a secure juvenile facility until age 21. Before choosing, the adolescent may seek extensive assistance from counsel, parents, other family, or friends; however, only he alone can make the decision.⁴¹ Although Cooper²⁹ has demonstrated that adolescents are capable of increasing their court knowledge through specific training, it is unlikely that any competency education program will be able to fully address these difficult, yet realistic dilemmas, especially if the juvenile is of low intellectual functioning or otherwise developmentally immature.

Future CST research with juveniles (and adults) must consider the complexity of legal proceedings within ecologically valid designs. There is little known about CST in juveniles. Indeed, we have little empirical knowledge about the comparability of adolescent and adult decision-making in many legal contexts.²⁷ Comparative studies of preadjudicatory and nonarrested samples of adults and age-stratified juveniles employing instruments such as the MacCAT-CA may more realistically assess these legal judgments. Although use of instruments such as the Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR),⁴² a quantitative

CST device for use with mentally retarded adults, may hold promise for CST assessment of juveniles, such measures must be used judiciously. Simplifying the court process for mentally retarded and developmentally immature defendants might lower the threshold for CST: every accused person needs to be judged against the presumptive CST standard for all adult defendants.

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