No. 125124

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- ANTONIO HOUSE, Defendant-Appellee.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-11-0580. There on appeal from the Circuit Court of Cook County, Illinois , No. 93 CR 26477 (04). Honorable Kenneth J. Wadas, Judge Presiding.

BRIEF OF APPELLEE
CROSS-RELIEF REQUESTED

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NATURE OF THE CASE

Antonio House, petitioner-appellant, appeals from a 2010 judgment granting the State's motion to dismiss his 2001 petition for post-conviction relief at the second stage. The appellate court reversed the circuit court's second-stage dismissal, finding that Antonio had established that his mandatory natural life sentence violated Illinois' proportionate penalties clause, and remanded for a new sentencing hearing. *People v. House*, 2015 IL App (1st) 110580. This Court vacated the appellate court's judgment and remanded for reconsideration in light of *People v. Harris*, 2018 IL 121932. The appellate court again concluded that Antonio's mandatory natural life sentence violates Illinois' proportionate penalties clause, and remanded for a new sentencing hearing. *People v. House*, 2019 IL App (1st) 110580-B, ¶¶ 32, 63.

An issue is raised concerning the sufficiency of the post-conviction pleadings.

ISSUES PRESENTED FOR REVIEW

I. As applied to 19-year-old Antonio House, who was convicted under an accountability theory as a teenage lookout, does the mandatory natural life sentencing statute for multiple murders shock the conscience under evolving standards of decency and violate Illinois' proportionate penalties clause, such that the appellate court's remand for a new sentencing hearing is warranted?

II. Did Antonio House make a substantial showing of actual innocence based on the newly-discovered evidence that the State's key witness recanted her trial testimony and attested in a sworn affidavit that she was present at the time of the kidnapping of decedents and never saw Antonio there? (Cross-Relief Requested).

STATEMENT OF FACTS

Antonio House and three others were charged with the murder and kidnapping of Stanton Burch and Michael Purham. (TC. 26)[1]. Antonio was 19 years old at the time of the offense and was tried under a theory of accountability. He was found guilty by a jury and the trial court sentenced him to the mandatory term of natural life. (TR. H14).

In 2001, Antonio filed a *pro se* post-conviction petition that was advanced to second-stage review. (PC1 C. 46-59). In his *pro se* petition and amended petition, Antonio alleged: his actual innocence based on newly discovered evidence from the State's main witness, Eunice Clark;; newly discovered evidence of police misconduct showing that his statement to police was coerced; and, his mandatory-life sentence was unconstitutional. (PC2 C. 70-410). The court granted the State's motion to dismiss, Antonio appealed, and while the appellate court affirmed his convictions, it remanded for a new sentencing hearing after finding a mandatory natural life sentence as-applied to Antonio violated the eighth amendment and the proportionate penalties clause of the Illinois constitution. *People v. House*, 2015 IL App (1st) 110580; (PC2 C. 70-410). Dissenting Justice Gordon agreed with the majority's remand for a new sentencing hearing, but would also have found that Antonio made a substantial showing of actual innocence. *House*, 2015 IL App (1st) 110580, ¶¶ 106-111.

Both parties filed petitions for leave to appeal. This Court denied both parties respective petitions, but entered a supervisory order remanding the case to the appellate court to consider the effect of *People v. Harris*, 2018 IL 121932 on the issue of whether Antonio's sentence

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[1]Citation to the report of proceedings and common law records from House's trial, (No. 98-4324), and are referred to as: (TR. _) for report of proceedings, and (TC. _) for the common law record. Post-conviction appeal No. 1-02-0346 will be cited as (PC1 C.__)and (PC1 R.__). Post-conviction appeal No. 1-11-0580 will be cited as (PC2 C.__) and (PC2 R.__).

violates the proportionate penalties clause. *People v. House*, 122134 (Ill. Nov. 28, 2018) (supervisory order). The appellate court affirmed its original opinion, holding that, under *Harris*, the record was sufficiently developed for the court to conclude that the mandatory natural life sentencing statute for double murder violated Illinois' proportionate penalties clause as applied to Antonio. *People v. House*, 2019 IL App (1st) 110580-B,¶¶ 32, 63. The court again vacated Antonio's sentence remanded for a sentencing hearing wherein the sentencing judge has discretion not to impose a natural-life sentence. *Id.* at ¶¶71-72.

In doing so, the appellate court denied the parties' proposed agreed motion seeking further second-stage proceedings, concluding that it was not bound by the parties' negotiated agreement. *Id.* at ¶ 70. It concluded that there was no legal basis under the Post-Conviction Hearing Act to repeat the second-stage of proceedings and have further proceedings on Antonio's post-conviction claims of actual innocence and that his confession was coerced because those claims had already been fully and finally decided. *Id.* at ¶¶ 2-3, 69.

JURY TRIAL PROCEEDINGS

The State's case against Antonio was based on Antonio's statement, made after 36 hours in police custody, that he acted as a lookout while Artez "Ted" Thigpen and Tyrone Williams shot the two victims. At trial, Antonio denied the truth of this statement, explaining that it was coerced. (TR.G98-99, 102). The State also presented the testimony of Eunice Clark and her boyfriend Barry "Smurf" Williams, who claimed to have seen Antonio among a group of men who forced the two victims at gunpoint into a car with Thigpen and Williams.

Prior to trial, Antonio filed a motion to suppress the statements he gave to Chicago Police Detectives Kato, Cronin, Chambers and Perez. (TC. 65-70). His motion asserted that his statement was not voluntary because the detectives subjected him to coercion and intimidation,

refused to honor his right to remain silent, and he never received his *Miranda* rights. Antonio alleged that he was handcuffed to a wall and left for long periods of time and he was denied food. He stated that Detective Kato brought rival gang leader Willie Lloyd into his interview room and Lloyd threatened to harm Antonio and his family if he did not give a statement. He also said that Detective Perez struck him in the forehead. (TC. 57-63). Detectives Chambers and Perez testified at the suppression hearing and denied all of Antonio's allegations. (TR. C21-23; 28). The court denied Antonio's motion to suppress his statement. (TR. C45); (TR. A65-66).

At trial, Antonio testified that on September 13, 1993, he drove to Springfield and Filmore to a drug spot operated by Ted (one of the leaders of the Unknown Vice Lords) to sell drugs. (TR.G69, G109, G156). Antonio, who was then 19 years old, had been in the gang practically his whole life. When he arrived, Eunice Clark, a 16-year-old fellow gang member and drug dealer, told him that Fred, "Fat Face" and Ted took somebody "to be violated," which meant someone was "beat up, shot, killed anything, any range of bodily harm." (TR.G70, 76, 114). As Antonio was walking back to his car, he encountered Fred and O.J. and was told they needed a ride. (TR.G74). Fred's rank in the gang was "[s]omething similar to chief enforcer." (TR.G75). Antonio drove Fred and O.J. to a railroad track viaduct where two cars were parked with their hoods up. (TR. G78). Antonio let Fred and O.J. out of his car. As he was driving away, he heard about eight gunshots and saw a number of people coming down off the railroad tracks. (TR. G78-80). He continued driving.

On October 27, 1993, police arrested Antonio. While being held in police custody, Detective Kato came into the interrogation room alone and told Antonio that if he did not make a statement about "Baby Tye and Ted" that he alone would "go down" for the killings. (TR.

G90). Antonio testified to the same facts as were alleged in his motion to suppress his statement about the detectives' coercion and intimidation during his interrogation, including Kato's bringing rival gang leader Lloyd into the interrogation room. (TR. G85-95). Antonio specifically testified that he "signed the statement because I feared for my life, I feared for my family's life and I was emotionally stressed." (TR. G98-99, 102).

Antonio's statement related that on September 13, 1993, Fred and O.J. asked him to give them a ride to meet Ted, who was at the railroad tracks with "two of Willie's boys and they were going to be violated." Antonio drove Fred and O.J., parked his car near some other Unknown Vice Lords, and acted as a look out for the police. He heard about eight shots that came from the railroad tracks, after which he drove away from the area with Fred and O.J. knowing that "Willie's boys had been killed." (TR. F38-40).

Eunice Clark was the State's key witness at Antonio's trial. In her initial statement to the police, Clark told the police that there were "[s]pecifically 2 offenders," Fred and Ted involved in the armed kidnapping of Burch and Purham. (TR. G38-41). She never told the officers that Antonio was present or involved. (TR. G41).

Between the time then 16-year-old Clark first spoke with police and when she testified before the Grand Jury, she was interviewed by Detective Kato. (TR. F96). When she then testified before the Grand Jury, Clark increased the number of individuals involved in the kidnapping of Stanton and Michael from two to seven, including "Fats, House, Odog, O.J., Derrick, Harvey and Chicago." (TR. F122). Immediately thereafter Clark was given $750 by the State's Attorney's Office to relocate to a new apartment. (TR. F123)

Clark later called Kato and told him that Antonio and "Fat Face" jumped her the day before and the ASA gave another $1,150 in relocation money. (TR. F102, F124-126). Clark

admitted that she lied about using the money to relocate and had intended to use the money for new clothes, not a new apartment. (TR. F128-129).

At the time of Antonio's trial, Clark was serving two 11-year sentences for two different attempt murders to which she pled guilty. (TR. F70, F130). She also admitted that while in prison, she extorted money from Ted to "testify in a certain way." (TR. F135)

At trial, Clark testified that, around 10 a.m. on September 12, 1993, she was at the corner of South Springfield Avenue and West Fillmore Street in Chicago. She was at that location to sell drugs for "Ted" Thigpen and "Tyrone" Williams with several other drug dealers, including her boyfriend"Smurf." That day, Clark saw Willie Lloyd and his bodyguards call over one of the drug dealers, "Larry." Lloyd and his bodyguards beat up Larry and took Larry's drugs and money. (TR. F70-73).

The next day, on September 13, 1993, Clark was on the same corner with other dealers waiting to sell drugs. Lloyd drove up and dropped off Michael Burch and Stanton Purham. Burch and Purham began selling drugs. Later, Thigpen and Williams drove by the corner. They returned a short time later with two additional people in the car. Clark testified that several other men ran over from nearby railroad tracks. She stated that all of the men were armed with handguns. Clark identified Antonio as one of those men. Thigpen and the men surrounded Burch and Purham and forced them into Thigpen's vehicle at gunpoint. Clark heard a loud noise inside the car, but was not positive if it was a gunshot. (TR. F74-81).

Clark also testified that on October 12, 1993, she was walking near 18th Street and St. Louis Avenue when she saw Antonio and another individual in a gray vehicle. They pulled the car over and asked her to get into the car. She refused, and the men tried to force her into the car with one man striking her in the back of the neck. When the men let go, Antonio told

her that he did not want her to testify. Clark said she told them that she had to testify. (TR. F98-101).

Clark's boyfriend at the time, Barry "Smurf" Williams, also testified. (TR. F152-53). At the time of trial, Smurf was serving a six-year sentence for a narcotics conviction and had four previous felony narcotics convictions. (TR. F152). Smurf admitted that before being questioned, he and Clark talked about what they were going to tell the police about the murders. (TR. F187). Smurf admitted that he knew that as long as they cooperated with the State they could get money. (TR. F188) Smurf was held by the police for almost a day and told that if he did not cooperate that he "would face charges in the case." (TR. F189). Smurf told the police the same story as Clark, but when questioned at Antonio's trial, Smurf contradicted some of the allegations and denied making others that related to Antonio. Specifically, he testified that he did not remember telling the ASA that the individuals who came with Ted had guns in their hands. Neither did he recall these people doing anything. (TR. F162). Smurf testified that he did not know who forced Burch and Purham in the car and that he did not remember seeing any weapons. (TR. F163).

In closing argument, the State relied primarily on Clark's testimony and stressed that she and Smurf had corroborated one another's testimony about the events leading up to Ted, Fred and Tyrone shooting Burch and Purham. (TR. G177, G183).

The jury convicted Antonio of two counts of first degree murder and two counts of aggravated kidnaping.

SENTENCING

At sentencing, the court found Antonio was "not the shooter in this case," that his "role was different" and concluded that there were "sufficient mitigating factors to preclude the

imposition of the death penalty." (TR. H14). The court imposed the mandatory sentence of natural life on each murder count, as statutorily required, and an extended term of 60 years on each charge of aggravated kidnaping to run consecutively. (TR. H15); 720 ILCS 5/5-8-1(a)(1)(c)(ii) (1992).

DIRECT APPEAL

Antonio argued, *inter alia*, that the trial court erred when it: 1) quashed his subpoena requesting OPS complaints for the four interrogating officers; 2) concluded that his statement was voluntarily given; and 3) sentenced him to consecutive and extended-term sentences. The appellate court affirmed Antonio's convictions, vacated his aggravated kidnapping sentences and remanded the matter for resentencing. *People v. House*, Rule 23 Order, No. 98-4324 (December 21, 2001). On remand, the court reduced Antonio's sentence for each aggravated kidnapping conviction to 30 years.

ANTONIO'S POST-CONVICTION PETITION

In 2001, Antonio filed a *pro se* post-conviction petition alleging that newly discovered evidence proved his innocence. (PC1 C. 46-59) He attached an affidavit from Eunice Clark, dated June 12, 2001, in which she stated that she never saw Antonio the morning of the kidnapping, she never saw him with a weapon, he never threatened to harm her in anyway, and she thinks that he was only named because he worked for "Ted." (PC2 C. 226). The petition was advanced to the second stage of post-conviction proceedings and the Cook County Public Defender was appointed.

Antonio's post-conviction counsel filed an amended petition alleging, *inter alia*: newly-discovered evidence of police misconduct proved Antonio's claim that his statement was coerced by Kato; and, Antonio's mandatory life sentence as applied in this case, was unconstitutional.

(PC2 C. 70-410). Relying on *People v. Leon Miller*, 202 Ill. 2d 328 (2002), Antonio argued that where he was prosecuted for murder on an accountability theory, the mandatory natural-life sentence imposed without any consideration of his age or attendant circumstances was unconstitutional as applied to him. (PC2 C. 95-96).

The State filed a motion to dismiss the petition, arguing that *Leon Miller* did not apply because Antonio was 19, whereas Leon Miller was 15 at the time of the offense and that Antonio was a more active participant than Leon Miller. (PC2 C. 427). It did not argue that the record was insufficiently developed to address Antonio's proportionate penalties challenge. In 2010, the circuit court granted the State's motion to dismiss the petition. (PC2 C. 411-451; PC2 R. V130).

APPEAL FROM THE SECOND-STAGE DISMISSAL OF ANTONIO'S POST-CONVICTION PETITION

Antonio raised the following issues on appeal from the second-stage dismissal: actual innocence based on the newly discovered evidence of Clark's recantation of her trial testimony identifying Antonio as having been present during the kidnaping; evidence of a pattern of abuse and misconduct by Detective Kato created a substantial showing that Antonio's confession was coerced, and that his trial counsel was ineffective for not presenting evidence supporting his coercion claim; circuit court erred in denying the request to obtain OPS records; trial and appellate counsel were ineffective; and, Antonio's mandatory-life sentence was unconstitutional.

The appellate court affirmed Antonio's convictions, but remanded his case for a new sentencing, concluding that a mandatory-life sentence for Antonio, a 19-year-old accomplice, violated the proportionate penalties clause of the Illinois Constitution. *People v. House*, 2015 IL App (1st) 110580, at ¶¶80-104. Justice Gordon concurred with the majority "that we must vacate [Antonio's] mandatory sentence of natural life without parole." *Id*. at ¶107. However,

he dissented from the decision to affirm the trial court's dismissal and would instead "remand for a third-stage evidentiary hearing on [Antonio's] claim of actual innocence," as Clark's newly-discovered affidavit made the substantial showing of actual innocence. *Id*. at ¶¶108-112.

The State sought rehearing on Antonio's constitutional challenge to his sentence, arguing that Antonio had not made the requisite showing to support the court's finding. It argued that "at best, the case should be remanded for a third-stage evidentiary hearing where defendant could establish his constitutional violation by a preponderance of the evidence and where the [State] would be able to introduce evidence proving otherwise." (State Petition for Rehearing, January 14, 2016).

Antonio also sought rehearing on his claim of actual innocence based on the newly-discovered evidence of Clark's affidavit recanting her claim that she saw Antonio participating in the kidnaping and murder. He argued that the appellate court used an improper legal standard – total vindication or exoneration – in evaluating whether Antonio made a substantial showing of actual innocence, as that standard was rejected by this Court in *People v. Ortiz*, 235 Ill. 2d 319 (2009). (Defense Petition for Rehearing, January 14, 2016).

The appellate court denied both parties' petitions for rehearing and both parties filed petitions for leave to appeal. This Court denied the parties' respective petitions, but entered a supervisory order remanding the case to the appellate court to consider the effect of *People v. Harris*, 2018 IL 121932 on the issue of whether Antonio's sentence violated the proportionate penalties clause. *People v. House*, 122134 (Ill. Nov. 28, 2018) (supervisory order).

Upon remand, Antonio and the State negotiated and submitted to the appellate court a proposed agreed motion for summary disposition. The parties sought to have the case remanded for further second-stage post-conviction proceedings, including the appointment of counsel

and compliance with Illinois Supreme Court Rule 651(c), which would give Antonio the opportunity to develop and present evidence to the trial court in support of his constitutional claims. (St. Br. Appendix A38-41).

The appellate court affirmed its original opinion and held that, under *Harris*, the record was sufficiently developed for the court to conclude that the mandatory natural-life sentencing statute for double murder violated Illinois' proportionate penalties clause as applied to Antonio. *People v. House*, 2019 IL App (1st) 110580-B, ¶¶ 32, 63. The court again remanded for a new sentencing hearing. *Id.* at ¶¶71-72. The court concluded that, given that Antonio's claim had been raised in post-conviction proceedings, unlike in *Harris*, any questions about how scientific research about youth brain development applied to a teenager like Antonio would necessarily be resolved by the trial court in the course of determining whether to sentence him to less than natural life. *Id.* at ¶ 72.

In denying the parties' agreed motion, the appellate court stated that it was not bound by the parties' negotiated agreement. *Id.* at ¶ 70. It concluded that there was no legal basis under the Post-Conviction Hearing Act to repeat the second-stage of proceedings and have further proceedings on Antonio's other post-conviction claims because those claims had already been fully and finally decided. *Id.* at ¶¶ 2-3, 69.

This Court allowed the State's petition for leave to appeal.

ARGUMENT

I. As applied to Antonio House, a teenage accomplice, the mandatory natural life sentencing statute for multiple murders shocks the conscience and violates Illinois' proportionate penalties clause. Consistent with the appellate court's decision, remand for a new sentencing hearing is therefore appropriate.

As applied to Antonio House, the multiple murder sentencing statute that requires a natural-life sentence is unconstitutional under the proportionate penalties clause of the Illinois Constitution. *People v. House*, 2019 IL App (1st) 110580-B; 730 ILCS 5/5-8-1(a)(1)(c)(ii)(1993); Ill. Const., art I, § 11. The appellate court has now twice ruled Antonio's mandatory-life sentence unconstitutional, recognizing that Antonio "acted as a lookout during the commission of the crime and was not the actual shooter," but " received a mandatory natural-life sentence, the same sentence applicable to the person who pulled the trigger." *House*, 2019 IL App (1st) 110580-B, ¶ 46. Due to the mandatory legislative enactment, the sentencing court lacked the discretion to impose anything less than life in prison for a teenage lookout. Because the appellate court determined that no further development of the record was necessary to find a violation of the Illinois proportionate penalties clause, it remanding the case for a new sentencing hearing in which the trial court would have the ability to consider how the evolving science on the young adult brain relates to the facts of Antonio's case and would have the discretion to impose a sentence of a term of years. *Id*. at ¶ 72.

Before this Court, both the State and Antonio agree that this Court's decision in *People v. Harris,* 2018 IL 121932 requires remand to the circuit court for a hearing on Antonio's post-conviction sentencing claim, wherein the court will consider how evolving research on brain and social development of emerging adults applies to the facts and circumstances of Antonio's case. (St. Br. 14–15). It is the State's position that the appellate court was premature in ordering that these factors be considered in the course of a new sentencing hearing rather than first in

further post-conviction proceedings. (St. Br. 12-15). However, as will be discussed below, remand for a new sentencing hearing is proper under *Harris* where the record in this case is sufficiently developed to conclude that sentencing Antonio to die in prison without any consideration of the facts and circumstances of his case is the kind of sentence that "shocks the moral sense of the community." *House,* 2019 IL App (1st) 110580-B at ¶ 64; *People v. Leon Miller,* 202 Ill. 2d 328, 340 (2002).

This Court's decision in *Leon Miller* guides the analysis here. In *Leon Miller*, this Court recognized that the mandatory imposition of a lengthy sentence can violate the proportionate penalties clause, as applied, depending on the individual culpability and rehabilitative potential of a particular defendant; there a teenage accomplice. In the two decades since this Court's decision in *Leon Miller* the United States Supreme Court jurisprudence has recognized a national consensus against the imposition of mandatory life sentences for juveniles. See *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Graham v. Florida*, 560 U.S. 48, 82 (2010); *Miller v. Alabama*, 567 U.S. 460, 489 (2012). Moreover, both scientific advances in brain research as well as advances in the law demonstrate that these evolving societal standards relating to sentencing of juveniles also apply equally to older teenagers like 19-year-old Antonio.

Further, like the juvenile defendant in *Leon Miller*, Antonio was convicted as a teenage accomplice. The State's evidence was clear, Antonio was not one of the shooters or even present at the scene of the actual shooting of the two decedents. (TR. H14). In fact, he had no participation in the commission of the offense after the victims were put into Ted Thigpen's car by multiple Unknown Vice Lord gang members, except for, according to his statement to the police, being a lookout. He was certainly not the mastermind, but at best, he merely relayed orders from the gang's leaders, Fred Weatherspoon and Ted Thigpen. (TR. G75). In addition to a very limited

involvement in the commission of the offense and his young age, 19-year-old Antonio had other mitigating factors that weighed against the imposition of a mandatory natural life sentence. He had no prior violent convictions, either juvenile or adult, where his criminal background consisted solely of drug offenses. (TC. 126). Antonio had a tumultuous upbringing where he never knew his father, was raised by his maternal grandmother, not long before the commission of this crime, when Antonio was just 18, his mother passed away. (TR. H6). The trial court found that there was sufficient mitigation in Antonio's case to preclude the imposition of the death penalty. (TR. H14).

Under *Harris*, the record in this case is sufficiently developed to conclude that the mandatory life sentence imposed on Antonio without any consideration of his youth or limited role in the offense shocks the conscience. Accordingly, this Court should affirm the appellate court's remand for a new sentencing hearing. *Harris* did not alter the appellate court's original conclusion that Antonio's mandatory life sentence was unconstitutional because: 1) Antonio was a mere accomplice who acted as a lookout at the direction of gang leaders, whereas the defendant in *Harris* had personally shot two people; 2) even in the two years since this Court decided *Harris*, our laws have further evolved to recognize the lessened culpability of those under 21 like Antonio; and, 3) unlike the *Harris* defendant who challenged his sentence for the first time on direct appeal, Antonio had expressly raised the proportionate penalties clause challenge to his sentence in his post-conviction petition, which justifies the appellate court's remand for a new sentencing hearing. *House,* 2019 IL App (1st) 110580-B, ¶¶ 32, 61-62.

Because the record is sufficiently developed to conclude that Antonio's mandatory life sentence shocks the conscience and violates Illinois' proportionate penalties clause, the proper remedy is to remand for a new sentencing hearing in which the circuit court is given the discretion

to weigh all of these factors in determining whether a sentence less than natural life is warranted. Alternatively, if this Court agrees with the State's position that additional factual development must take place on remand *prior* to the new sentencing hearing, this Court should order a third-stage evidentiary hearing under the Post-Conviction Hearing Act. The State concedes that further proceedings on Antonio's sentencing claim are warranted under *Harris*, but it has not provided any legal authority for its request that this Court remand for a second round of second-stage proceedings under the Act. Accordingly, Antonio House respectfully requests that this Court affirm the appellate court's remand for a new sentencing hearing or, at a minimum, remand for an third-stage post-conviction evidentiary hearing.

A. Legal Principles Relevant to the Sentencing of Youth

Article I, Section 11 of the Illinois Constitution provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. 1, sec. 11. This constitutional provision prohibits punishments that are "cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community * * *." *Leon Miller*, 202 Ill. 2d at 338. This constitutional mandate provides a check on both the judiciary and legislature. *People v. Clemons*, 2012 IL 107821, ¶29. The legislature's power to prescribe mandatory sentences is "not without limitation; the penalty must satisfy constitutional constrictions." *Leon Miller*, 202 Ill. 2d at 336. In conducting an analysis under this constitutional provision, this Court reviews the gravity of the defendant's offense in connection with the severity of the statutorily mandated sentence "within our community's evolving standard of decency." *Id*. at 340

This Court has previously acknowledged that the provision of Article I, Section 11 requiring that penalties be determined with the objective of restoring the offender to useful citizenship

– "the rehabilitation clause" – went beyond the framers' understanding of the eighth amendment. *Clemons*, 2012 IL 107821 at ¶38; U.S. Const., amends. VIII. As this Court has recognized, it is within the power of the judiciary to intervene wherever the application of a sentencing statute violates the rights of Illinois citizens under the Illinois constitution. See e.g., *Leon Miller*, 202 Ill. 2d at 336. There is a clear trend in our nation and in our State legislature towards more leniency and sentencing discretion in cases involving youthful offenders, informed by ever-accumulating scientific evidence. The rehabilitation clause of this Illinois constitutional provision is designed precisely to accommodate such trends, by looking to society's "evolving concepts of elemental decency and fairness" to define the bounds of what punishments are unconstitutionally cruel and degrading, such that the punishment shocks the moral sense of the community. *Id.*

In *Leon Miller*, this Court's key decision applying the rehabilitation component of the proportionate penalties clause, Your Honors concluded that depending on the individual culpability and rehabilitative potential of a particular defendant, the imposition of a lengthy sentence can violate the proportionate penalties clause as applied to that person. The trial judge in *Leon Miller* refused to impose a mandatory natural life sentence on a juvenile offender, finding that it violated the eighth amendment and Illinois' proportionate penalties clause. *Id*. at 332. This Court affirmed, emphasizing Illinois's "evolv[ing] . . . concepts of elemental decency and fairness," "the longstanding distinction made in this state between adult and juvenile offenders," and the fact that "as a society we have recognized that young defendants have greater rehabilitative potential." *Leon Miller*, 202 Ill. 2d at 341-42. Because the mandatory sentence in *Leon Miller* "eliminate[d] the court's ability" to consider the juvenile's "age or degree of participation in the crime" (defendant was a 15-year old lookout who had one minute to contemplate his decision), this Court found that a mandatory-life sentence violated Illinois' proportionate penalties clause as applied to that

defendant. *Leon Miller*, 202 Ill. 2d at 340-41, 343.

In the nearly two decades since *Leon Miller* was decided, there has been a growing national consensus reflecting society's increasing disapproval of lengthy incarceration for young or minor offenders. This national consensus supports the individualized consideration of an offender's youth and rehabilitative potential before imposing a criminal sentence that is a *de facto* or near life prison term. In recent years, the United States Supreme Court has radically altered the calculus to be used in sentencing youth under the eighth amendment, by restricting the punishments that may be meted out to juveniles because of the lack of development in their brains. See *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Graham v. Florida*, 560 U.S. 48, 82 (2010); *Miller v. Alabama*, 567 U.S. 460, 489 (2012). *Roper*, *Graham*, and *Miller* require a sentencing court to consider the signature qualities of youth when sentencing a juvenile in adult court. *Roper* explained that "the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate the younger years can subside." 543 U.S. at 570 (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)). These signature qualities diminish the penological justifications that undergird our adult sentencing regime. *Miller*, 567 U.S. at 472. Because youth are less blameworthy than adults, retribution cannot serve as a motivation for sentencing. *Id.* Deterrence also does not work because youth's "immaturity, recklessness, and impetuosity make them less likely to consider potential punishment." *Id.* Incapacitation diminishes as a justification because the signature qualities of youth are transient, and "'incorrigibility is inconsistent with youth.'" *Id.*, quoting *Graham*, 560 U.S. at 73. Because of their lack of development, juveniles have "greater prospects for reform" than adults. *Id.*, 567 U.S. at 471.

Importantly, the United States Supreme Court has long acknowledged that the "qualities

that distinguish juveniles from adults do not disappear when an individual turns 18." *See Roper*, 543 U.S. at 574. Since *Roper, Graham* and *Miller* were decided in 2005, 2010, and 2012, respectively, there has been endorsement within the scientific community that the brain research on which these cases relied has itself evolved to demonstrate that the brains of young adults continue to develop into their mid-20s. Dr. Ruben C. Gur, Director of the Brain Behavior Laboratory at the Neuropsychiatry Section of the University of Pennsylvania School of Medicine, has stated that "[t]he evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable." Ruben C. Gur, *Declaration of Ruben C. Gur, Ph.D., Patterson v. Texas, Petition for Writ of Certiorari to the United States Supreme Court (2002)*; Andrea MacIver, *The Clash Between Science and the Law, 35 Northern Illinois University Law Review* (Fall 2014), 15-24 ("New science shows the brains continues to develop until one's early twenties")[2].

In *People v. Harris*, Your Honors recognized that the categorical line the United States

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[2]See also Andrew Michaels, *A Decent Proposal: Exempting Eighteen-to-Twenty-Year-Olds From The Death Penalty*, 40 N.Y.U. Rev. L. & Soc. Change 139, 161-179 (2016) ("Evolving standards of decency – shaped by the modern cultural norm of extended adolescence and informed by scientific insights into the neurology and psychology of young adults – now ought to spare eighteen-to-twenty-year-olds as well."); Kevin J. Holt, *The Inbetweeners: Standardizing Juvenileness and Recognizing Emerging Adulthood For Sentencing Purposes After Miller*, 92 Wash. U. L. Rev. 1393, 1411-1413 (2015) ("If 'children are different' because the human brain does not fully develop until around age twenty-three to twenty-five, then basing the cutoff for the purposes of the Eighth Amendment at eighteen makes little sense."); Kelsey B. Shust, *Extending Sentencing Mitigation For Deserving Young Adults,* 104 J. Crim. L. & Criminology 667, 677 (2014) ("Drawing a bright line at eighteen and disregarding the characteristics of older youthful defendants fails to serve any of the penological justifications that the Supreme Court has ruled imperative for harsh and irrevocable sentences."); *Andrea MacIver, The Clash Between Science and the Law*, 35 Northern Illinois University Law Review, 15-24 (New science shows the brains continues to develop until one's early twenties).

Supreme Court drew at age 18 with respect to juvenile sentencing under the eighth amendment is "imprecise" and based more on "where society draws the line ... between childhood and adulthood" than "scientific research." 2018 IL 121932 at ¶ 60. Accordingly, *Harris* acknowledged the possibility that an emerging adult might be able to show that legislatively-mandated sentencing schemes are unconstitutional as applied under the proportionate penalties clause based on brain research and his individual circumstances. *Harris*, 2018 IL 121932 at ¶48; see also *People v. Thompson*, 2015 IL 118151, ¶ 44.

B. Pursuant to these legal principles and the ongoing evolution of our laws' treatment of emerging adults, the record is sufficiently developed to conclude that imposing a mandatory life sentence on then-19-year-old Antonio without any consideration of his age or role a mere lookout shocks the moral conscience of the community.

In consideration of *Leon Miller*, the *Roper*, *Graham*, *Miller* line of cases, and this Court's decision in *Harris,* the appellate court found that the record in this case is sufficiently developed to conclude that Antonio's mandatory natural-life sentence violates the proportionate penalties clause as-applied to him, because it "shocks the moral sense of the community." *House,* 2019 IL App (1st) 110580-B, ¶ 64. The appellate court emphasized that because Antonio, at 19 years and 2 months, "was barely a legal adult and still a teenager," his "youthfulness [was] *relevant when considered alongside his participation in the actual shootings*." *Id*. (emphasis added). As to the offense itself, the appellate court stressed that evidence presented at trial only placed Antonio at the scene of the kidnapping, and as a lookout during the commission of the crime. *Id.* at ¶ 46. Although finding that, "[d]efendant's role made him accountable for the murders and cannot be discounted," the court explained that the sentencing judge's hands were tied:

> The [trial] court's ability to take any factors into consideration was negated by the mandatory nature of defendant's sentence. The trial court was also precluded from considering the goal of rehabilitation in imposing the life sentence, which is especially relevant in defendant's case.

Id. at ¶ 64. Given Antonio's age, his family background, his actions as a lookout as opposed to being the actual shooter, and lack of any prior violent convictions, the appellate court concluded that Antonio's mandatory sentence of natural life shocks the moral sense of the community. *Id.*

The evolution of our laws' treatment of emerging adults since *Leon Miller* – which has continued even since *Harris* – reflects an ongoing acceptance of scientific advancements in this area. As this Court reaffirmed in *People v. Rizzo*, the *Leon Miller* court never defined what kind of punishment qualifies as "cruel" and "degrading" or "so wholly disproportioned to the offense as to shock the moral sense of the community," 2016 IL 118599, ¶ 38. Citing *Leon Miller*, this Court emphasized that "because, as our society evolves, so too do our concepts of elemental decency and fairness which shape the 'moral sense' of the community" *Rizzo*, 2016 IL 118599, ¶ 38. citing *Leon Miller*, 202 Ill. 2d at 339. Consistent with this Court's explanation in *Rizzo*, in weighing whether *Leon Miller's* age-related reasoning should apply in Antonio's case, the appellate court considered the advances in society's understanding of youth sentencing in the nearly two decades since *Leon Miller* was decided.

Indeed, the Cook County State's Attorney, who prosecuted Antonio's case, now publicly recognizes as a part of its policy priorities that "[b]rain science tells us that juveniles and emerging adults are developmentally different than adults, with cognitive skills that process risk and decision-making differently in ways that have profound implications for the justice system.[3]" Yet here, the sentencing court had no discretion to sentence Antonio to anything other than natural

[3] Available at: https://www.cookcountystatesattorney.org/about/policy-priorities/juveniles-and-emerging-adults (last accessed December 9, 2020).

life, despite the general acceptance that scientific research about youth brain development applies to a 19-year-old like Antonio.

While the State argues that the additional consideration and special application of laws applied to juveniles have not and should not be extended to emerging adults (St. Br. 18-20), the appellate court aptly observed that the legal landscape over the nearly two decades since *Leon Miller* have demonstrated an inevitable shift towards relaxing the punishments for juveniles *and* young adults. *House*, 2019 IL App (1st) 110580-B, ¶¶ 51-56. The trend away from harsh punishments for juveniles is largely due to the continuing research regarding brain development in adolescents; which, the appellate court took note of in its decision. *Id.* at ¶¶ 55-56. Consistent with the Illinois Constitution's mandate to consider evolving standards of decency, this evolution in our understanding of the brain development of youth is already being reflected in our laws. *Id.* at ¶¶ 57-58.

The research regarding the brain development of emerging adults applies to the facts and circumstances of Antonio's case. While the State asserts that there is not universal consensus that emerging adults share brain development characteristics with juveniles (St. Br. 14), the reality is that this research is widely, if not universally accepted, and its general application to young adults cannot be ignored. *House*, 2019 IL App (1st) 110580-B, ¶¶ 55-56. Consistent with the United States Supreme Court's recognition that, despite the need for categorical rules, the qualities that distinguish juveniles from adults do not disappear when an individual turns 18. *Id*. at ¶ 54; see also, Karen U. Lindell & Katrina L. Goodjoint, *Rethinking Justice for Emerging Adults: Spotlight on the Great Lakes Region*, The Juvenile Law Center (2020) (the continuing maturation of young—or "emerging"—adults beyond age 18 is now supported by a growing body of research, ranging from neuroscience research demonstrating that our brains retain their adolescent

"imbalances" until our mid-to late-twenties, to studies showing that the classic social markers of adulthood—marriage, parenthood, and financial independence—now occur later than at any point in history).

The legislature has shown us the myriad of ways in which our laws already recognize the developmental differences of young adults like Antonio. *House*, 2019 IL App (1st) 110580-B at ¶ 56. Under Illinois law, a person between the ages of 18 and 21 may still be legally considered a minor. The Juvenile Court Act of 1987 (Act) defines a "[m]inor" as "a person under the age of 21 years subject to this Act" (705 ILCS 405/1-3(10), 5-105(10) (West 2018)), while an " '[a]dult means a person 21 years of age or older." 705 ILCS 405/1-3(2) (West 2018). A minor may receive certain benefits, such as a station adjustment –("[a] minor arrested for any offense" may receive "a station adjustment"). A station adjustment occurs when a juvenile officer determines that there is probable cause to believe that a minor committed an offense and imposes "reasonable conditions," such as a curfew or community service.705 ILCS 405/5-301(1)(a), (e) (West 2018); see also 705 ILCS 405/5-305 (West 2018) (probation adjustment); 705 ILCS 405/5-310 (West 2018) (eligible for community mediation programs). Therefore, consistent with the evolving science, our legislature already accords different treatment to emerging adults up to 21.

Notably, Illinois law has progressed even further in favor of sentencing leniency for emerging adults even in the two years since this Court's decision in *Harris*, reflecting a still-ongoing evolution in our standards of decency. The Illinois General Assembly passed Public Act 100-1182, which established a parole review for persons under the age of 21 at the time of the commission of an offense in section 5-4.5-110 of the Unified Code of Corrections. Pub. Act 100-1182 (eff. June 1, 2019) (amending 730 ILCS 5/5-4.5-110). Under the new statute, a person under 21 years of age at the time of commission of first degree murder and is sentenced on or after the effective

date of the act shall be eligible for parole review after serving 20 or more years of his or her sentence, excluding those subject to a sentence of natural life. *Id.* Although the murder of two individuals is not included in the new legislation, this public act supports the appellate court's reasoning and follows the recent trends discussed in its analysis that an individual under 21 years of age should receive consideration for their age and maturity level when receiving harsh sentences. See *House,* 2019 IL App (1st) 110580-B, ¶ 62.

This new statute for 18-21 year olds evinces our current moral sense about all emerging adults, even if it limits its application by a certain effective date or the ultimate sentence. And that's the key change for our purposes: the enactment of this new standard of moral decency. See *Leon Miller*, 202 Ill. 2d at 339, quoting *People ex rel. Bradley v. Illinois State Reformatory*, 148 Ill. 413, 421-22 (1894) (noting "[w]hen the legislature has authorized a designated punishment for a specified crime, it must be regarded that its action represents the general moral ideas of the people"). A community that approves of parole after 20 years for a 19-year-old who kills someone would be shocked by a mandatory life sentence for a 19-year-old who, though convicted of murder, was not the one doing the killing.

Illinois also treats under-21-year-olds differently in other ways, such as prohibiting sales to them of alcohol (235 ILCS 5/6-16(a)(I) (West 2018)), cigarettes (Pub. Act 101-2, § 25 (eff. July 1, 2019) (amending 720 ILCS 675/1), and wagering tickets (230 ILCS 10/18(b)(1) (West 2018)), requiring parental permission to legally own a firearm (430 ILCS 65/4(a)(2)(I) (West 2018)), and limiting Class X sentencing for recidivist offenders to those offenders "over the age of 21 years." 730 ILCS 5/5-4.5-95(b) (West 2018); see also *People v. Mosley*, 2015 IL 115872, ¶ 36 (a ban on handgun possession by "minors" under 21 does not violate the second amendment); 760 ILCS 20/2(1) (West 2018) (Illinois Uniform Transfers to Minors Act defines an adult as

one "21 years of age" or older). All of these restrictions in Illinois on 18-to-21-year-olds intended to prevent them from engaging in risky behavior or undertaking certain responsibilities in the apparent believe that at age 18, 19 or 20 they are not sufficiently mature and responsible underscores that "the designation that after age 18 an individual is a mature adult appears to be somewhat arbitrary." *House*, 2019 IL App (1st) 110580-B, ¶55; see also *People v. Minniefield*, 2020 IL App (1st) 170541, ¶¶ 41-42 (recognizing Illinois laws that treat those individuals under 21 as minors).

Indeed, most jurisdictions also treat emerging adults above age 18 differently in the criminal law context. Thirty-six states—including Illinois—permit juvenile courts to retain some jurisdiction over youth until age 21. Alex A Stamm,Young Adults are Different, too: Why and How We Can Create a Better Justice System for Young People Age 18 to 25, 95 Tex. L. Rev. See also 72, 89 (2017). Six states set the limit between age 22 and 25. *Id.* In eleven states, there exists some type of court or diversion program for young adults over the age of 18. *Id.* California, Indiana, and Nebraska all have special Young Adult Courts that serve offenders up to 25, 24, and 22, respectively. *Id.* In addition to this widespread legislative recognition of the need for differing treatment of young adults in the criminal justice system, the extension of the considerations in *Miller* to young adults 18 and older has come through some court decisions as well. See, e.g., *State v. O'Dell*, 692, 695 (2015) (Washington Supreme Court relying on *Roper*, *Miller*, and *Graham*, to find a sentence below the statutory range was needed for an 18 year old); see also *Commonwealth v. Watt*, 484 Mass. 742, 755-56 (2020) (Massachusetts Supreme Court concluded that advances in brain development research justified revisiting the court's prior refusal to extend the prohibition on mandatory natural life for young adults 18 and older and remanding for the development of an updated record reflecting the latest advances in scientific research on adolescent

brain development and its impact on behavior). .

Additionally, across the globe, several European countries have already extended juvenile justice to include young adults: Germany – all young adults ages 18-21 are tried in juvenile court and judges have the option to sentence them as a juvenile with the consideration of the offender's personality and environment; Sweden – young adults are tried in juvenile court until their 25th birthday, and young adults 18-24 receive different treatment than adults; and lastly, the Netherlands – extends juvenile alternatives for young adults ages 18-21. *House*, 2015 IL App (1st) 110580, ¶ 96. It has been a longstanding practice to look to the global consensus of the sentencing practice such as the one in question here. See *e.g.*, *Roper*, 543 U.S., at 575–578, 125 S. Ct. 1183; *Atkins v. Virgina*, 122 S. Ct. 2242, 2249 fn. 21 (2002); *Thompson v. Oklahoma*, 108 S. Ct. 2687, 2296 (1988) (plurality opinion); *Enmund v. Florida,* 102 S. Ct. 3368, 3376 fn. 22 (1982); *Coker v. Georgia*, 97 S. Ct. 2861, 2268 fn. 10 (1977)(plurality opinion); *Trop v. Dulles*, 78 S. Ct. 590, 599 (1958) (plurality opinion).

Significantly, the United States Supreme Court in *Graham* explicitly looked beyond our country's jurisprudence:

> The judgments of other nations and the international community are not dispositive as to the meaning of the Eighth Amendment. But " '[t]he climate of international opinion concerning the acceptability of a particular punishment' is also 'not irrelevant.'" *Enmund*, 458 U.S., at 796, n. 22, 102 S. Ct. 3368. The Court *has looked beyond our Nation's borders* for support for its independent conclusion that a particular punishment is cruel and unusual.

Roper, 543 U.S., at 575–578 (emphasis added). The recognition of other countries' practices with regard to sentencing young adults is therefore an important one, and serves as further evidence of the shift in thinking with regards to sentencing youths.

Thus, given the evolution of our societal understanding of youth brain development and our laws' increasing recognition of that distinction in the 20 years since *Leon Miller* was

decided all justify extending *Leon Miller*'s reasoning about the rehabilitative potential of a 15-year-old teenager to a 19-year old teenager like Antonio. While the State asserts that Antonio's case "stands alone," his case is simply the first to grapple with the question since this Court's recognition in *Harris* and *Thompson* that mandatory sentences for emerging adults might offend Illinois' proportionate penalties clause. (St. Br. 23); *Harris*, 2018 IL 121932 at ¶48.

To that end, where much of the State's brief is spent discussing cases rejecting constitutional sentencing challenges that have nothing to do with our society's evolution in thinking about youth brain development and rehabilitation, they are of little value to the question presented in this case. (St. Br. 18-19, 23-24); see e.g. *People v. Coty*, 2020 IL 123972, ¶¶ 37-39 (rejecting an as-applied proportionate penalties challenge to the sentence of an intellectually-disabled repeat child-sex offender on the basis that his mental condition was fixed, unlike with youth brain development, and therefore diminished his prospects for rehabilitation); *Rizzo*, 2016 IL 118599, ¶ 41 (rejecting the notion of any societal "evolution" in favor of sentencing leniency for repeat violations of traffic laws); *People v. Taylor*, 102 Ill. 2d 201, 206-07 (1984) (upholding a proportionate penalties challenge to a mandatory natural life sentence for the principal offender in a double murder decades before the *Miller* decision).

The State also includes a footnote containing a string citation of other jurisdictions upholding mandatory life without parole sentences for young adult homicide offenders. (St. Br. 24, fn 3). Yet, each of the cases cited in the State's footnote rejected a *facial challenge* asking for a categorical extension of *Miller* under the eighth amendment. None involve the type of as-applied challenge at issue here that requires the court to look beyond the legislature's authority for creating a categorical rule and consider the application of that rule to an individual's specific circumstances. Further, none of these out-of-jurisdiction cases addressing categorical rules

under the eighth amendment speak to whether it was proper for the appellate court to extend the principles underlying the *Miller* decision to 19-year-old Antonio based on the greater protections provided to Illinois citizens under the rehabilitation language of the proportionate penalties clause. *Clemons*, 2012 IL 107821 at ¶40 (rehabilitation clause's mandate that sentences in Illinois be determined with the objective of restoring the offender to useful citizenship provides greater protections than the eighth amendment). The fact that many jurisdictions have been unwilling to categorically extend the eighth amendment constitutional jurisprudence beyond the line drawn by the United States Supreme Court does not apply to the legal framework relevant to this case; an as-applied challenge implicating the greater protections of the rehabilitation clause of our State constitution. See *Harris*, 2018 IL 121932 at ¶48 (recognizing the viability of an as-applied constitutional challenge based on the *Miller* principles for those 18 and older).

C. Because no further record development is necessary to conclude that the mandatory sentencing statute shocks the conscience as-applied to Antonio, the appellate court properly remanded the case for a new sentencing hearing. *Harris* does not compel a different outcome.

The State argues that the appellate court "exceeded its authority" in addressing and granting relief to Antonio on his proportionate penalties clause challenge. (St. Br. 12-15). Yet, the appellate court's decision was grounded in an analysis of this Court's two key decisions on the rehabilitation provision of the Illinois proportionate penalties clause, *Leon Miller* and *Harris*. The State cites nothing to support its assertion on appeal that the appellate court exceeded its authority by considering *all* of this Court's authority on age-related proportionate penalties clause sentencing challenges, and weighing the exact factors that have been considered by this Court. (St. Br. 12-15).

The State suggests that the determination of Antonio's proportionate penalties claim should have been guided solely by *Harris* and *Thompson*, but wholly fails to explain why the appellate court was not also correct to rely on *Leon Miller* and its reliance on *two* important

factors; 1) the defendant's lack of personal culpability as mere lookout, 2) as well as the defendant's status as a juvenile. *Leon Miller*, 202 Ill. 2d at 341. While this Court's subsequent decisions in *Harris* and *Thompson* provide further guidance on whether Illinois courts can extend the "age" prong of *Leon Miller's* reasoning to young adults who are no longer technically juveniles, those decisions do not render the portion of *Leon Miller's* reasoning related to the lack of personal culpability of the young defendant irrelevant or inapplicable.

Harris did not alter the appellate court's original conclusion that Antonio's mandatory life sentence was unconstitutional as his case differs from *Harris* in three important ways. *House,* 2019 IL App (1st) 110580-B, ¶32. First, the appellate court looked to the evolution of the law on youth sentencing since Antonio was originally sentenced more than two decades ago, and recognized even in the two years since this Court decided *Harris*, our laws have further evolved to recognize the lessened culpability of those under 21 like Antonio. *Id.* at ¶¶ 61-62. Second, Antonio was a mere accomplice who acted as a lookout at the direction of higher ranking gang leaders, whereas the defendant in *Harris* had personally shot two people. *Id.* Finally, unlike the *Harris* defendant who challenged his sentence for the first time on direct appeal, Antonio had expressly raised the proportionate penalties clause challenge to his sentence in his post-conviction petition, which justifies the appellate court's remand for a new sentencing hearing. *Id.*

Pursuant to *Leon Miller*, the appellate court properly placed significant weight on Antonio's limited role in the offense as a mere lookout. In finding a proportionate penalties clause violation in *Leon Miller,* this Court looked not only at the defendant's age, but also at his personal culpability and the fact that his role in the offense was solely that of a lookout. *Leon Miller*, 202 Ill. 2d at 341. Consistent with *Leon Miller,* the appellate court found it significant that Antonio was a mere accomplice who acted as a lookout during the shooting, unlike the *Harris* defendant,

who was the actual shooter. *House*, 2019 IL App (1st) 110580-B, at ¶34. The court stressed that Antonio's conviction under the theory of accountability weighed heavily in its conclusion that his sentence shocks the moral conscience of the community. *Id.*

As such, the appellate court did not conclude that *Harris* or *Thompson* were "limited" to cases in which the defendant was the principal, as the State suggests. (St. Br. 13). Rather, the appellate court looked to the same considerations as this Court did in *Leon Miller*, and concluded that Antonio's role as an accountable lookout presented an important distinction between him and the *Harris* defendant. Under the reasoning of *Leon Miller*, it was *both* defendant's young age and his guilt by accountability that led to the appellate court's conclusion that the multiple-murder sentencing statute was particularly harsh and unconstitutionally disproportionate as applied.

This Court reiterated in *Harris* that "[a]ll as-applied constitutional challenges are, by definition, dependent on the specific facts and circumstances of the person raising the challenge." *Harris,* 2018 IL 121932, at ¶ 39. Where the *Harris* defendant was a principal who shot two people, his constitutional challenge to his sentence was entirely based on his young age. Thus the need for the *Harris* defendant to develop the record to show that the science concerning juvenile brain development was applicable beyond age 18 was paramount to the proportionate penalties challenge under the particular facts of his case. Here, the fact that Antonio's personal culpability in the case aligns much more closely with that of *Leon Miller* than with the *Harris* or *Thompson* defendants was a proper consideration for the appellate court in finding that there was enough in the record before it to conclude that Antonio's natural-life sentence was unconstitutionally shocking.

Indeed, since *Harris*, several Illinois appellate court decisions considering constitutional challenges by young adults under the proportionate penalties clause have also recognized this

important distinction between accomplices and principal offenders for sentencing purposes. See *People v. White*, 2020 IL App (5th) 170345, ¶¶ 27-28(distinguishing itself from *House* on the grounds that the 20-year-old defendant was not convicted on a theory of accountability); *People v. Pittman*, 2018 IL App (1st) 152030, ¶¶ 37-40 (distinguishing itself from *House* on the grounds that the 18-year-old defendant was not convicted on a theory of accountability); *People v. Green*, 2020 IL App (5th) 170462, ¶ 37 (distinguishing itself from *House* where the 22-year-old defendant was convicted of directly participating in the murder for which he was convicted); *People v. Ramsey*, 2019 IL App (3d) 160759, ¶¶ 4 (no prejudice to file successive petition raising constitutional challenge where 18-year-old offender, unlike *House*, was an active participant in the crime); *People v. Handy*, 2019 IL App (1st) 170213, ¶¶ 3, 40-41 (same); but see *People v. Ruiz*, 2020 IL App (1st) 163145, ¶ 39 (noting that the degree to which a defendant participated in an offense will remain a consideration during sentencing but "[t]o prevent young adult offenders from relying on the mitigating circumstance of their youth simply because they more directly participated in the offense would be error").

The State drops a lengthy footnote to support its claim that the appellate court has uniformly upheld mandatory life sentences for young adults, even where they were guilty as accomplices. (St. Br. 24, fn 2). However, the only case cited in that footnote that addresses a post-*Miller* youth-based sentencing challenge by an *accountable* defendant is *People v. McKee*, 2017 Ill. App 3d 140881. Indeed, the court in *McKee* distinguished both *Leon Miller* and *House* on the basis that McKee's participation in the double murder was far more significant than either Leon Miller or Antonio's. 2017 Ill. App 3d 140881 ¶¶ 27-29. The *McKee* court recognized that, while McKee did not personally participate in the two murders in that case, she actively participated in the planning of the crimes; she was not just complicit, she was an instigator. She helped formulate a plan to lure the two victims to a house to rob and kill them, took part in the distribution

of the robbery proceeds and took part in the discussion of options for dismembering and disposing of the bodies. *Id.* The court concluded that "McKee's factual culpability for these crimes was much greater than that of House." *Id.* at ¶ 29. *McKee* thus refutes the State's suggestion that *House* "effectively precludes mandatory life-without-parole sentences for an undefined class of young adult offenders who are convicted as accomplices." (St. Br. 32). As *McKee*'s discussion of *House* demonstrates, as-applied challenges will always necessarily be evaluated on a case-by-case basis on their own unique facts.

Antonio does not dispute the State's recitation of the principle from *Harris* that a litigant must develop a sufficient evidentiary record to support an as-applied challenge. However, the record here is sufficiently developed to mandate remand for a new sentencing hearing. By ignoring *Leon Miller* in Issue I of its brief, the State wrongly concludes that the appellate court could *only* find that the record was sufficient to address Antonio's constitutional challenge if it contained a specific set of factual findings by the trial court about scientific research. (St .Br. 14). However, *Leon Miller* makes clear that this is not so. The distinction between a defendant's conviction of a double murder as the principal offender rather than as a merely accountable lookout is not an irrelevant consideration under this Court's proportionate penalties clause jurisprudence. The appellate court was correct to consider Antonio's role as a mere lookout as a separate part of its analysis from whether developments in brain science support extending *Leon Miller's* age-related reasoning from a 15-year-old teenager to a 19-year-old teenager. This Court should reject the State's suggestion that the appellate court exceeded its authority by considering Antonio's minor role in the offense. (St. Br. 14).

The State contends that *Harris* stands for the proposition that reliance on scientific articles alone is not enough and a conclusion about these general scientific principles cannot be reached without factual findings being made *first* by the trial court about that scientific research, any

limits to that research, and how it applies to a defendant's facts and circumstances. (St. Br. 14). However, the appellate court correctly recognized that any questions about the limits of this scientific research and how it applies to Antonio's circumstances will necessarily be considered by the trial court during a sentencing hearing guided by the *Miller* factors, where the court can consider a defendant's "age, impetuosity, and level of maturity at the time of the offense, including the ability to consider risks and consequences of behavior, and the presence of any cognitive or developmental disability, or both, if any." 730 ILCS 5/5-4.5-105(a)(1) (2017); see *infra* at p. 19-20. In other words, just as in resentencing cases involving juveniles, the sentencing court must still consider how the brain science applies to that individual juvenile, and the circumstances of his individual case. See *People v. Holman*, 2017 IL 120655, ¶ 37 (*Miller* "mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing [life without parole]"). The appellate court therefore rightfully concluded that a further post-conviction hearing was not necessary for the trial court to make these particular factual findings about the application of these scientific principles, because they will inherently be part of the new sentencing hearing ordered by the appellate court. *House*, 2019 IL App (1st) 110580-B at ¶ 72.

Nor is there is there any merit to the State's claim that the appellate court improperly considered the fact that Antonio's 17-year-old co-defendant, Fred Weatherspoon received a new sentencing hearing pursuant to *Miller*, and has since been released. (St. Br 33-35). The State frames the appellate court's consideration of this fact as an improper "disparate sentencing claim." (St. Br. 33-34)[4]. However, the appellate court indicated that it was considering the fact of 17-year-old Weatherspoon's subsequent resentencing and release only as evidence that "the

[4] Antonio's amended post-conviction petition that is the subject of the instant appeal was dismissed in 2010. Weatherspoon's re-sentencing from natural life to a term of 44-years did not occur until 2016, while this appeal has remained pending.

sentencing for young adults has evolved considerably over the last 20 years" since Weatherspoon, like Antonio, was originally required to be sentenced to mandatory life in prison. *House*, 2019 IL App (1st) 110580-B, at ¶ 76. As made clear by this Court in *Leon Miller*, it is proper to consider specific examples of advances in the application of our sentencing laws when examining society's evolving standards of decency in the context of a constitutional challenge under the proportionate penalties clause. *Leon Miller*, 202 Ill. 2d at 340; *House*, 2019 IL App (1st) 110580-B, at ¶ 76.

Under the reasoning of *Harris* and *Leon Miller*, the record here is sufficiently developed to conclude that Antonio's mandatory natural-life sentence shocks the conscience. Critically, unlike the *Harris* defendant who raised his proportionate penalties challenge for the first time on direct appeal, Antonio's constitutional challenge to his sentence was included in the post-conviction petition which is the subject of the appeal before this Court. *House*, 2019 IL App (1st) 110580-B at ¶¶ 66, 74.

Antonio's post-conviction petition was initially filed *pro se* in 2001 and the amended post-conviction petition was filed in 2010. *House*, 2019 IL App (1st) 110580-B at ¶ 71; 725 ILCS 5/122 (West 2016). Antonio has been imprisoned for more than 26 years. Given the passage of nearly two decades in ongoing review of Antonio's *initial* post-conviction, and the fact that second-stage proceedings have already taken place on his sentencing claim, the appellate court the interests of judicial economy and fundamental fairness support remanding the case directly for a new sentencing hearing wherein Antonio can present all of the information relevant to his request for a new sentence. *House*, 2019 IL App (1st) 110580-B at ¶ 71, citing *Buffer*, 2019 IL 122327, ¶ 47; see also 725 ILCS 5/122-5 (the Act provides for a court, in its discretion, to allow amendment of petitions "as shall be appropriate, just and reasonable and as is generally provided in civil cases).

In *Buffer*, this Court affirmed that relief for post-conviction *Miller* claims differs from

other claims because, unlike most post-conviction claims, "[a]ll of the facts and circumstances to decide [a postconviction *Miller* sentencing] claim are already in the record" and thus the "the proper remedy is to vacate defendant's sentence and to remand for a new sentencing hearing." 2019 IL 122327 at ¶¶ 46-47, citing *Holman*, 2017 IL 120655, ¶ 32, and *Davis*, 2014 IL 115595, ¶ 1 (reversing the circuit court's denial of leave to file a successive post-conviction petition raising a *Miller* claim and remanding directly for resentencing). Accordingly, because the record in Antonio's case was sufficiently developed to conclude that his mandatory life sentence shocks the conscience, under this Court's guidance in *Buffer and Davis,* remand for resentencing rather than further post-conviction proceedings is the proper remedy.

Notably, while Antonio's sentencing judge had no discretion other than to impose a sentence of natural life, he made an explicit finding that mitigating factors existed, specifically noting Antonio's age and limited participation in the offense. (R. H14). As such, the record demonstrates that this is not a case where remand for a new sentencing hearing would serve no purpose because the sentencing judge already found a lack of mitigation. See e.g., *People v. Lusby,* 2020 IL 124046*,* ¶¶ 50-52 (reversing the lower court's remand for a new sentencing hearing on juvenile's eighth amendment *Miller* claim on the basis that sentencing judge found no mitigating evidence in imposing the life sentence). Under our evolving standards of decency, the appellate court correctly concluded that Antonio's sentencing judge must be given the opportunity to weigh how those factors in mitigation might justify a sentence of less than natural life.

D. The State provides no legal basis for its request that this Court remand the case for second-stage post-conviction proceedings.

While the State argues that further post-conviction proceedings are needed for the trial court to make specific factual findings about the scientific research on the brain development of youth and how that research applies to a defendant's particular facts and circumstances, (St.

Br. 14) those matters will be directly addressed by the circuit court at a new sentencing hearing, as they will be relevant to its sentencing decision. *House*, 2019 IL App (1st) 110580-B at ¶ 72. While the appellate court opined in *dicta* that Antonio might be entitled to immediate release upon resentencing, it correctly recognized that is a question for the trial court to decide *after* a consideration of the evidence presented by Antonio in support of his request for a sentence of less than natural life. *Id.* The State provides no compelling reason why such fact finding on the relevance of brain research to an individual defendant's circumstances should require the trial judge to conduct distinct, yet likely duplicative hearings. Accordingly, this Court should affirm the appellate court's remand for a new sentencing hearing, in which the judge will have discretion to determine whether the now well-established scientific research on the brain development of youth, along with Antonio's rehabilitation warrant a sentence of less than natural life.

The State's request that this Court remand the case for further second-stage proceedings appears to be premised entirely on the parties' attempt to resolve the case by summary disposition in the appellate court. (St. Br. 12-13). Despite asserting that a remand for second-stage proceedings would be consistent with the parties' request below, the State does not challenge the appellate court's conclusion that it was not bound by the parties proposed motion for a summary disposition. (St. Br. 15). Nor does its brief contain any legal analysis of why a repetition of the second stage of post-conviction proceedings would be proper under the Act.

It is a well-established legal principle in both civil and criminal cases that parties are not bound by offers to compromise or settlement negotiations to resolve the case. See generally Illinois Rule of Evidence 408 (conduct or statements made in compromise negotiations regarding the claim not admissible to impeach through a prior inconsistent statement or contradiction); Illinois Supreme Court Rule 402(f) (if plea discussions do not result in a plea of guilty, or if

a plea of guilty is not accepted or is withdrawn, or if judgment on a plea of guilty is reversed on direct or collateral review, neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible against the defendant in any criminal proceeding). Ill. R. Evid. 408 (effective January 1, 2011); Ill. S. Ct. R. 402(f). While these legal provisions apply to the admissibility of such negotiations at trial, their legal underpinnings are equally applicable to the parties attempts at negotiating a resolution of the case on appeal.

Here, upon this Court's denial of both parties' respective petitions for leave to appeal and remand for reconsideration in light of *Harris*, Antonio offered to proceed by way of agreed motion, and have the case remanded "for further second-stage post-conviction proceedings, including compliance with [Supreme Court] Rule 651(c)." The State accepted this offer. (R. A38-41). The inclusion of a provision for renewed 651(c) compliance was an important part of Antonio's offer to proceed by way of agreed order. Post-conviction counsel's duties under this rule include "making any amendments to the *pro se* petition that are necessary for an adequate presentation of petitioner's contentions." Ill. S. Ct. R. 651(c); *People v. Turner*, 187 Ill. 2d 406, 412 (1999); *People v. Johnson*, 154 Ill. 2d 227, 238 (1993). This would include amending the petition to include any additional information or affidavits related to Antonio's actual innocence claim that he might have obtained in the decade since the circuit court dismissed his actual innocence claim originally premised solely on Eunice Clark's 2001 affidavit. Ill. S. Ct. Rule 651(c).

Thus, where the agreement between the parties explicitly provided for new compliance with Rule 651 (c) on remand, this would allow Antonio to further develop and present evidence related, not only to his sentencing challenge, but also to his actual innocence claim that was accepted by one justice of the appellate court. See Argument II, *infra*; *People v. House*, 2015 IL App 110580, ¶¶38-46. This agreement would also have allowed for a prompt resolution

to his appeal upon remand, which had already been pending for nearly a decade at the time of this Court's remand to reconsider in light of *Harris*. See *People v. Donelson*, 2013 IL 113603, ¶ 18 (recognizing benefit that plea bargaining leads to prompt disposition of cases).

The appellate court declined to accept the parties' negotiated agreement. The court concluded that there was no legal authority under the Act to remand for a second round of post-conviction proceedings. 2019 IL App 110580-B at ¶ 69. Further, the court also noted the parties' request in the proposed summary remand was contrary to both of their earlier positions taken in the appeal, where Antonio did not seek rehearing on the court's order of a new sentencing hearing and where the State's rehearing suggested that third-stage proceedings were the appropriate remedy. *Id.* at ¶ 70. As such, the appellate court concluded that there was no legal basis to proceed in the manner requested by the parties, and that the court was not bound by their agreement. *Id.*, citing *People v. Horrell*, 235 Ill. 2d 235, 241 (2009). Accordingly, the parties' attempt below to negotiate a summary resolution cannot be construed as an admission by either party on the underlying merits and has no binding effect on this Court – particularly where Antonio did not receive a key benefit of the proposed agreement; a prompt disposition to his appeal without delay occasioned by further State appeals. Accordingly, the prior negotiations in the appellate court have no import to this Court's disposition of the instant appeal.

This Court should reject the State's request that it remand the case for second-stage post-conviction proceedings. Where second-stage proceedings have already taken place, there is no reason to needlessly duplicate them. *House*, 2019 IL App (1st) 11058, ¶ 68. If this Court concludes that further record development must take place prior to the grant of a new sentencing hearing, then remand for a third-stage evidentiary hearing is appropriate. It is the State's position on appeal that factual findings by the trial court on scientific research are still needed. (St. Br. 14). Under the Act, factual development occurs at the third stage of the post-conviction process,

where the circuit court "may receive proof by affidavits, depositions, oral testimony, or other evidence." *People v. Gaultney*, 174 Ill. 2d 410, 418-19 (1996). As such, where the State concedes that *Harris* provides for factual development of Antonio's sentencing claim (St. Br. 13), at a minimum, a third-stage evidentiary hearing is required.

Conclusion

In sum, the multiple murder sentencing statute that tied the hands of the sentencing court by mandating a natural- life sentence, as applied to 19-year-old Antonio, is unconstitutional under the proportionate penalties clause of the Illinois Constitution. *People v. House*, 2019 IL App (1st) 110580-B, ¶ 32. Consistent with this Court's jurisprudence, a remand for "a new sentencing hearing in which the trial court has the ability to consider the relevant mitigating factors prior to imposing a sentence of such magnitude," is required. *Id*. at ¶ 72. Contrary to the State's claim, the appellate court did not "exceed its authority" following this Court's remand for reconsideration, and properly determined that the record in this case was sufficiently developed for to conclude under the facts of this case that to mandatorily sentence Antonio to die in prison is the kind of sentence, which "shocks the moral sense of the community." *Id.* at ¶ 64; *Leon Miller,* 202 Ill. 2d at 340.

Consequently, this Court should affirm the appellate court's decision to vacate Antonio's natural-life sentence and remand for a new sentencing hearing wherein the circuit court can consider all of the facts and evidence relevant to his claim that he does not deserve a mandatory sentence of natural life in prison for acting as a teenage lookout. *Id.* at ¶ 65.

II. Antonio House has made a substantial showing of actual innocence based on the newly discovered evidence of a key State witness' recantation of her trial testimony and attesting that she was present at the time of the kidnapping leading to the murders and never saw Antonio there. (Cross-Relief Requested).

Antonio House was convicted of the aggravated kidnapping and first degree murders of Stanton Burch and Michael Purham based in large part on the testimony of 16-year-old Eunice Clark. Although Clark never mentioned Antonio when she first gave a statement to the police immediately after the incident occurred, Clark later testified at the grand jury and at Antonio's trial that Antonio was with the group of other Unknown Vice Lord gang members who kidnapped Burch and Purham. (TR. F82). Attached to Antonio's 2001 post-conviction petition was a sworn affidavit from Clark, in which she swears that she "never saw Antonio House kidnap or conspire to kidnap Stan Burch and Michael Purham nor did I see Antonio House with a weapon." (PC2 C. 226). In her affidavit, Clark also recants her trial testimony that Antonio threatened her approximately a month after the incident, and she asserts "to my personal knowledge Antonio House[']s name was only mention[ed] because he was a worker for Ted." (PC2 C. 226). Antonio has long maintained his innocence. (TR. G101-02). This newly-discovered evidence supports Antonio's claim of actual innocence as it shows that Antonio was not present when Burch and Purham were kidnapped or killed.

Pursuant to your Honors' decision in *Robinson*, Antonio has made a substantial showing of actual innocence based on the newly-discovered evidence in Clark's affidavit. *People v. Robinson*, 2020 IL 123849, ¶ 55. Thus, this Court should reverse the appellate majority's conclusion that Antonio's petition failed to make a substantial showing of actual innocence, where the appellate majority improperly relied on the legal standard of "total exoneration or vindication" that your Honors disavowed in *Robinson*.[5] *Robinson*, 2020 IL 123849, ¶ 55 (rejecting

[5]The appellate court did not discuss the merits of Antonio's actual innocence claim in its 2019 opinion on remand. In evaluating the discrete issue of Antonio's proportionate

the total exoneration or vindication standard); *People v. House*, 2015 IL App (1st) 110580, ¶ 41. Supreme Court Rule 318 allows that upon review in this Court from the appellate court, an appellee may seek relief on any issue warranted by the record on appeal. Ill. S. Ct. R. 318(a) (eff. Feb 1, 1994); *People v. Hopkins*, 235 Ill. 2d 453, 467 (2009). Thus, Antonio now seeks cross-relief from this Court on his claim of actual innocence based on the newly-discovered evidence in Clark's affidavit.

A. Relevant Legal Standards under the Post-Conviction Hearing Act

The purpose of the second stage of the post-conviction process is to determine whether the defendant is entitled to an evidentiary hearing on his petition. *People v. Coleman*, 183 Ill. 2d 366, 381 (1998). The dismissal of the petition is warranted only when the defendant's allegations of fact, liberally construed in the defendant's favor and in light of the original record, fail to make a substantial showing of a violation of a federal or state constitutional right. *Id*. The trial court must assume the truth of the allegations contained in the petition and the attached documentation. *People v. Ward*, 187 Ill. 2d 249, 255 (1999). Factual disputes raised by the pleadings that require determination of the truth or falsity of the supporting documents cannot be made at a hearing on a motion to dismiss at the second stage, and can only be resolved by an evidentiary hearing. *Coleman*, 183 Ill. 2d at 381, citing *People v. Caballero*, 126 Ill. 2d 248, 259 (1989). The dismissal of the petition at the second stage of the post-conviction proceedings is subject to *de novo* review. *Coleman*, 183 Ill. 2d at 388.

A free-standing claim of innocence based on newly-discovered evidence is a constitutional

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penalties claim, the appellate court stated that its "analysis in its previous decision as to the other issues stands." See *People v. House*, 2019 IL App (1st) 110580-B, ¶ 3. Citation to the appellate court's discussion of Antonio's actual innocence claim is taken from its original opinion. 2015 IL App (1st) 110580.

issue under the due process clause of the Illinois Constitution, and is therefore cognizable under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122 *et seq.* (West 2010)). *Robinson*, 2020 IL 123849 at ¶ 42; *People v. Washington*, 171 Ill. 2d 475, 489-90(1996); *People v. Morgan*, 212 Ill. 2d 148, 154 (2004). Ill. Const. Art. I, §2. Newly-discovered evidence is evidence that was unavailable at trial and that could not have been discovered through due diligence. *People v. Burrows*, 172 Ill. 2d 169, 180 (1996). In order to obtain relief when raising a claim of actual innocence, the supporting evidence must be material, non-cumulative, and of such a conclusive character that it would "probably change the result on retrial." *Robinson*, 2020 IL 123849, ¶ 47; *Washington*, 171 Ill. 2d at 489; *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009).

This Court has held that, ultimately, the question is whether the evidence supporting the post-conviction petition places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt. *Robinson*, 2020 IL 123849, ¶ 48, citing *Coleman*, 2013 IL 113307, ¶ 97. The new evidence need not be entirely dispositive to be likely to alter the result on retrial. *Id.* Probability, rather than certainty, is the key in considering whether the fact finder would reach a different result after considering the prior evidence along with the new evidence. *Id.*

B. New Evidence of Antonio's Innocence in Clark's affidavit

Clark's affidavit presents new evidence that places the trial evidence in a different light, and undermines confidence in the guilty verdict. (PC2 C. 226). First, her statement is newly discovered. Her affidavit is dated June 12, 2001, long after Antonio's trial, conviction, and initial direct appeal was filed. There is no evidence in the record that Clark was willing to recant her trial testimony and admit to committing perjury at any time before she provided Antonio with the 2001 affidavit. See *People v. Harper,* 2013 IL App (1st) 102181, ¶ 42 ("due diligence

could not have compelled [the witness] to testify truthfully at the first trial"); *Morelli v. Ward*, 315 Ill. App. 3d 492, 499 (3d Dist. 2000) (even with due diligence, counsel could not have obtained the recantation of the State's witness where there was no indication in the record that the witness was willing to recant her prior statements to the police and grand jury). Thus, the new evidence presented in Clark's affidavit could not have been discovered by due diligence.

Second, Clark's statement is material to the case, as it states that Antonio was *not* present when Burch and Purham were kidnapped and ultimately murdered. (PC2 C. 226); See *People v. Williams*, 2012 IL App (1st) 111145, ¶ 41 (newly-discovered evidence was clearly material where it weakened or contradicted the State's case against the defendant). Clark's testimony was critical to the State's case. As the State acknowledged at trial, Antonio's murder convictions were premised entirely on an accountability theory, based on his presence during the kidnaping and murder. (TR. G247; H14).

Third, the statement is not cumulative. Evidence is cumulative if that evidence adds nothing to what is already before the jury. *People v. Molstad*, 101 Ill. 2d 128, 135 (1984). The jury did not hear that Clark, who was present and an eyewitness to the incident, would later attest that she did *not* see Antonio on September 13, 1993, with a weapon and assisting other Unknown Vice Lords in forcing Burch and Purham into a car. (PC2 C. 226). Therefore, the information contained in Clark's affidavit is not cumulative of evidence presented at trial.

Finally, Clark's statement would probably change the outcome of a retrial. *See Ortiz*, 235 Ill. 2d at 333 ("the evidence in support of the claim must be . . . of such conclusive character that it would probably change the result on retrial"). As this Court recently held in *Robinson,* the new evidence supporting an actual innocence claim need not be entirely dispositive to be likely to alter the result on retrial. 2020 IL 123849, ¶ 56. Rather, "the conclusive-character element

requires only that the petitioner present evidence that places the trial evidence in a different light and undermines the court's confidence in the guilty verdict. *Id.* At the second stage, "the circuit court is concerned merely with determining whether the petition's allegations sufficiently demonstrate a constitutional infirmity which would necessitate relief under the Act." *Coleman*, 183 Ill. 2d at 380. The allegations in the petition must be supported by the trial record or by accompanying affidavits. *Id.* at 381. When a petitioner supports his claim with evidence outside the record, "it is not the intent of the [A]ct that [such] claims be adjudicated on the pleadings." *Id*. at 381-82, quoting *People v. Airmers*, 34 Ill.2d 222, 226 (1966); see also *People v. Clements*, 38 Ill. 2d 213, 216 (1967). Clark's recantation meets this burden.

Clark's affidavit swears that her identification of Antonio was false as she "never saw Antonio House kidnap or conspire to kidnap Stan Burch and Michael Purham nor did I see Antonio House with a weapon." (PC2 C. 226). Indeed, she even admits that she identified Antonio only because "he was a worker for Ted," whom she originally named as the person she witnessed kidnap Burch and Purham. (PC2 C. 226). Notably, Clark never named Antonio as one of the kidnappers of Burch and Purham when initially speaking with police. It was not until after she was interviewed by Detective Kato that she then increased the number of individuals allegedly involved in the kidnapping and killing to include other Unknown Vice Lords, and for the first time named Antonio. (TR. F122). Significantly, after testifying to this new set of facts regarding the incident, the 16-year-old Clark was given a total of $1,900 by the ASA's office. (TR. F123-29)

This Court has held that in determining whether an evidentiary hearing is warranted, the court must take these attestations as true and must construe them liberally in petitioner's favor. *Coleman*, 183 Ill. 2d at 382, 388; *Childress*, 191 Ill. 2d at 174. Taking these facts as true, Antonio made a substantial showing that Clark's recantation would place the trial evidence

in a different light and undermine confidence in the guilty verdict. Specifically, there was no physical evidence linking Antonio to the crimes, and no eyewitness placed him at the scene of the murders. See *People v. Almodovar,* 2013 IL App (1st) 101476, ¶ 79 (newly discovered evidence warranted evidentiary hearing where no physical evidence linked defendant to the shooting and the State relied on questionable eyewitness identification).

Although Antonio told the police that he acted as a lookout by the railroad tracks knowing Burch and Stanton were "going to be violated" by three other gang members, both before and at trial, Antonio claimed that this statement that he acted as a lookout had been coerced by wrongdoing on the part of the interrogating detectives. At trial, Antonio denied any prior knowledge or participation in the murders. (TR. G78-80). The State heavily relied on Clark's testimony throughout their closing arguments to the jury and stressed that she was a credible witness who had not been impeached, arguing "for once in her life, she did the right thing." (TR. G220-24). The State stressed that Clark's 11-year plea for two unrelated attempt murder convictions had nothing to do with her testimony in this case. (TR. G229-30). It further argued that the jury should find her credible because she made the difficult decision to testify against her own fellow gang members. (TR. G230). Clark's testimony was undisputedly critical to the State's case. The only other State occurrence witness was Clark's boyfriend "Smurf," who admitted that he discussed with Clark what they were going to tell the police, and who also recanted at trial his pre-trial statements identifying Antonio as someone who participated in the kidnaping. (TR. F162-63). Thus, Antonio has made a substantial showing that Clark's recantation would undermine confidence in the guilty verdict.

In analyzing Antonio's actual innocence claim, the appellate majority's decision relied on an improper legal standard that contradicts this Court's precedent. *House*, 2015 IL App (1st)

110580, ¶46. In rejecting Antonio's claim that Clark's affidavit supported his claim that he is actually innocent, the appellate majority held that, "Clark's affidavit fails to exonerate [Antonio]." *People v. House*, 2015 IL App (1st) 110580, ¶46. The majority repeatedly cited to *People v. Barnslater,* 373 Ill. App. 3d 512, 520 (2007), for the proposition that an actual innocence claim requires an "assertion of total vindication or exoneration." *Id*. at ¶¶ 37-38, 46.

Yet *Robinson* rejected the lower courts' repeated reliance on *Barnslater*, and reiterated that under Illinois law, "total vindication or exoneration" is *not* the applicable standard for reviewing an actual innocence claim. *Robinson,* 2020 IL 123849, ¶ 55. This Court reiterated that for an actual innocence claim to survive, the new evidence supporting an actual innocence claim need not be entirely dispositive to be likely to alter the result on retrial. *Robinson,* 2020 IL 123849, ¶ 55, citing *Coleman*, 2013 IL 113307, ¶ 97. Rather, the conclusive-character element requires only that the petitioner present evidence that places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt. The new evidence need only "directly contradict[]" the evidence at trial, such that evidence of innocence "would be stronger" when weighed against the State's evidence. *Ortiz*, 235 Ill. 2d at 337; *Coleman*, 2013 IL 113307, ¶97; see also *People v. Willingham*, 2020 IL App (1st) 162250 ¶ 28 (remanding actual innocence claim for an evidentiary hearing, finding that *Robinson* rejected the "total vindication or exoneration" standard); *People v. Fields*, 2020 IL App (1st) 151735, ¶ 32, fn.7 (same). Because *Robinson* recently reaffirmed that "total vindication or exoneration" is not the applicable standard for reviewing an actual innocence claim, this Court should reverse the majority's dismissal of Antonio's actual innocence claim based on that erroneous standard. *Robinson,* 2020 IL 123849, ¶ 55; citing *Coleman*, 2013 IL 113307, ¶ 97.

Moreover, this Court has repeatedly stressed that credibility determinations are not proper at the second-stage of post-conviction proceedings, and can only happen at a third-stage evidentiary hearing. *People v. Coleman,* 183 Ill. 2d 366, 388 (1998); *People v. Childress*, 191 Ill. 2d 168, 174 (2000). Thus, the appellate majority also misapplied this Court's precedent by evaluating the truthfulness and reliability of the newly-discovered evidence presented by Antonio when it rejected his claim at the second-stage. The appellate majority asserted that even, "*if* we assume [Clark's] statements in the affidavit are true," an evidentiary hearing was not warranted because she was not "a trustworthy eyewitness account," and it was not "reliable evidence" that could support his actual innocence claim. *House*, 2015 IL App (1st) 110580, ¶ 42. However, as this Court has recognized, at the second-stage of post-conviction proceedings, credibility determinations are improper, and the truth of the allegations *must* be accepted as true. *Coleman*, 183 Ill. 2d at 388; *Childress*, 191 Ill. 2d at 174. Where the appellate majority's holding treads into the territory of evaluating witness credibility, which can only occur at a third-stage evidentiary hearing, the majority's analysis is flawed. See *People v. Pendleton*, 223 Ill.2d 458, 473 (2006).

When applying the proper standard at the second-stage of post-conviction proceedings, as did Justice Gordon in his dissent, Clark's "affidavit makes the substantial showing needed to proceed to a third-stage evidentiary hearing." *House*, 2015 IL App (1st) 110580, ¶111. Clark was the State's key witness at trial, and the cornerstone of the State's prosecution of Antonio. *House*, 2015 IL App (1st) 110580, ¶110. Clark's sworn affidavit disavows her identification of Antonio as one of the kidnappers; the State's key piece of evidence that Antonio was accountable for the murders. The affidavit demonstrates that her testimony at trial was false as she "never saw Antonio House kidnap or conspire to kidnap Stan Burch and Michael Purham nor did I see Antonio House with a weapon." (PC2 C. 226).

Assuming the truth of the petition's allegations, the newly-discovered evidence in this case established: (1) Clark did not see Antonio present with the group that kidnapped Burch and Purham; (2) Antonio never threatened her a month after the incident; and (3) she only mentioned Antonio's name because he was a worker for Ted. (PC2 C. 226). Because Clark's affidavit, recanting her identification of Antonio at the scene of the kidnappings directly contradicts the evidence presented at trial, makes the evidence of Antonio's innocence stronger, and weakens the State's case, Antonio made a substantial showing of his actual innocence. *Ortiz*, 235 Ill. 2d at 337.

In affirming the circuit court's dismissal of Antonio's claim of actual innocence, the appellate majority relied on the incorrect legal standard of "total exoneration or vindication" that your Honors rejected in *Robinson,* 2020 IL 123849, ¶ 55. Pursuant to *Robinson*, Antonio's petition therefore made a substantial showing of actual innocence meriting an evidentiary hearing. Thus, Antonio respectfully requests that this Court vacate the appellate court's ruling affirming the second-stage dismissal of Antonio's actual innocence claim and remand to the appellate court for reconsideration in light of *Robinson*, or alternatively, remand for a third-stage evidentiary hearing.

CONCLUSION

For the foregoing reasons, Antonio House, defendant-appellee, respectfully requests that this Court affirm the appellate court's judgment granting sentencing relief and remand the case for a new sentencing hearing. Antonio also asks that this Court vacate the appellate court's ruling affirming the second-stage dismissal of Antonio's actual innocence claim and remand to the appellate court for reconsideration in light of *Robinson*. Alternatively, remand for a third-stage evidentiary hearing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 48 pages.

/s/Lauren A. Bauser
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No. 125124

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- ANTONIO HOUSE, Defendant-Appellee.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-11-0580. There on appeal from the Circuit Court of Cook County, Illinois , No. 93 CR 26477 (04). Honorable Kenneth J. Wadas, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 11, 2020, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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