**STATE OF MICHIGAN**

**IN THE SUPREME COURT**

**PEOPLE OF THE STATE OF MICHIGAN**

Plaintiff-Appellee,

-vs-

**KEMO KNICOMBI PARKS**

Defendant-Appellant
_____/

**Supreme Court No.:** 162086

**Court of Appeals No.** 346587

**Lower Court No**. 17-40829 FC

**GENESEE COUNTY PROSECUTOR**
Attorney for Plaintiff-Appellee
_____

**ANGELES R. MENESES (P80146)**
Attorney for Defendant-Appellant
_____

# SUPPLEMENTAL BRIEF ON APPEAL

**STATE APPELLATE DEFENDER OFFICE**

**BY: Angeles R. Meneses (P80146)**
**Garrett Burton**
Assistant Defenders
**Jessica Zimbelman (P72042)**
Managing Attorney
3031 W. Grand Blvd, Ste 450
Detroit, MI 48202
(313) 256-9833

# Table of Contents

ARM* Supp MSC Brief w trim.docx*31534
Kemo Knicombi Parks

# Index of Authorities

## Cases

**Constitutions, Statutes, Court Rules**

**Other Authorities**

## Statement of Question Presented

**I. Should the United States Supreme Court's decisions in M*iller v Alabama* and *Montgomery v Louisiana* be applied to people who are 18 to 25 years old at the time they commit a crime and who would otherwise be subject to mandatory life without the possibility of parole?**

Court of Appeals answers, "No."

Kemo Knicombi Parks answers, "Yes."

# Statement of Facts

## Introduction

On October 5, 2016, Dequavion Harris[1] shot and killed Darnyreouc Jones-Dickerson in the parking lot of the Kingwater Market. As a result, he was convicted of first-degree premeditated murder, and sentenced to mandatory life in prison without the possibility of parole. His younger cousin, 18-year-old Kemo Knicombi Parks, was also convicted of first-degree premeditated murder, under an aiding and abetting theory. He too was sentenced to mandatory life in prison without parole.

The sole piece of evidence connecting Mr. Parks to the murder was the testimony of Deantanea Ratcliff, who said she saw Mr. Parks give a gun to Mr. Harris in the backseat of her car. Ms. Ratcliff had not always described the interaction between Mr. Harris and Mr. Parks as "passing a gun;" she had previously described it to police as "tussling" and did not indicate that a gun was involved. Appendix I, p. 560a. During his four interviews with police, Mr. Parks denied ever passing a gun to Mr. Harris. No other witnesses saw a gun in the car at any point.

No witnesses heard any conversation between Mr. Parks and Mr. Harris regarding Mr. Jones-Dickerson, or any supposed plan to murder him. Witnesses saw Mr. Parks inside of the store at the time of the shooting in the parking lot, and although Mr. Harris was seen fleeing the scene, Mr. Parks was not with him.

[1] Mr. Harris' nickname was "Quay[;]" although he will generally be referred to as "Mr. Harris" throughout this brief, he will occasionally be referred to as "Quay" when directly quoting Mr. Parks.

In sentencing Mr. Parks, the trial court was not permitted to consider any mitigating factors – his immaturity at the time of the time of this offense; his vulnerability to negative influences including, but not limited to, his cousin and the shooter Mr. Harris; his chaotic home life, his struggles with behavioral disorders; and his potential for rehabilitation. The court was constrained to sentence Mr. Parks to die in prison, solely because he was over the age of 17 at the time of this incident and therefore not subject to the analysis required by *Miller v Alabama*, 567 US 460, 473 (2012) (citing *Graham,* 560 US at 74).

**Events of October 5, 2016**

On October 5, 2016, Deantanea Ratcliff drove herself and Laniya Sublett to the Villa[2] apartment complex in Mount Morris, to meet up with Mr. Harris. Appendix I, p. 535a-536a.

The group sat in Ms. Ratcliff's vehicle "talking" and "socializing" for "a while[.]" Appendix I, p. 538a, 565a. Ms. Ratcliff was sitting in the driver's seat, Ms. Sublett was sitting in the passenger's seat, and Mr. Harris and Mr. Fordham were in the backseat. Appendix I, p. 538a-539a. According to Ms. Ratcliff, Mr. Parks then came along and asked if she could take him to the store. Appendix I, p. 540a. She eventually agreed, and Mr. Parks got into the backseat of the car between Mr. Fordham and Mr. Harris. Appendix I, p. 465a-466a, p. 540a-543a. During the car ride, Mr. Fordham could not hear any conversation between Mr. Parks and Mr. Harris. Appendix I, p.

[2] At one point, the Villa was known as "the Amy Jo apartments," and is sometimes referred to that way in the trial transcripts.

17a. Ms. Ratliff testified that she did not see a gun at this point, and no one was discussing guns. Appendix I, p. 565a.

The group went to Kingwater Market.[3] Appendix A, p. 632a. There was a store closer to the Villa; although Ms. Ratliff and Ms. Sublett did not remember why they did not go there instead, Ms. Ratcliff heard Mr. Harris saying "no[.]" Appendix I, p. 543a, 632a. When they first arrived, there were a "couple" of other cars in the parking lot. Appendix I, p. 633a. A red truck was parked next to them; it belonged to Darnyreouc Jones-Dickerson, who had come to the market with three other people. Appendix I, p. 633a, p. 873a. Everyone inside the red truck except for Mr. Jones-Dickerson got out of the truck and went into the store. Appendix I, p. 718a.

Mr. Fordham got out of the car and went into the market. Appendix I, p. 11a-12a, 547a. According to Ms. Ratcliff, Mr. Parks and Mr. Harris remained in the backseat; however, Mr. Fordham testified that Mr. Parks came into the market behind him. Appendix I, p. 11a-12a. Danny Gordon, who was in the truck with Mr. Jones-Dickerson, also saw Mr. Parks come into the store after Mr. Fordham.[4] Appendix I, p. 1146a. A couple of minutes later, Ms. Sublett went to get out of the car and Mr. Harris told her, "when we get out, you drive off." Appendix I, p. 636a.

Ms. Ratcliff testified that after Mr. Fordham got out of the car, while Mr. Harris and Mr. Parks were still in the backseat, she turned on the radio. Appendix I,

[3] Kingwater Market is sometimes referred to as "Monear's" in the trial transcripts.
[4] Danny Gordon also saw Mr. Harris come in after, wearing a "full Spiderman mask." Appendix I, p. 1146a-1147a. He knew it was Mr. Harris because he rolled the mask up to his hairline. Appendix I, p. 1147a. Mr. Harris poked his head in, looked around, and took a step back outside and pulled his head back out. Appendix I, p. 1151a.

p. 547a-548a. She said she looked in the backseat and saw Mr. Parks give a gun to Mr. Harris. Appendix I, p. 548a. Ms. Ratcliff just saw the "handle" of the gun but described it as a black handheld pistol. Appendix I, p. 548a, 567a-568a. Mr. Harris put the gun "up under his shirt[.]" Appendix I, p. 568a. At the time, Mr. Harris and Mr. Parks were speaking to one another in a "whisper" or "low voice[.]" Appendix I, p. 592a. According to Ms. Ratcliff, after the gun was passed and Mr. Parks was getting out of the car, Mr. Harris then said, "when we get out pull off[.]" Appendix I, p. 551a, 556a.

Ms. Ratcliff had not always described the interaction between Mr. Harris and Mr. Parks as "passing a gun[.]" Appendix I, p. 559a. In a statement to Detective Clay Hite, she had previously described it as "tussling[,]" with no mention of a gun Appendix I, p. 560a. Ms. Sublett testified that she did not see a firearm "of any kind" in the car. Appendix I, p. 646a.

Ms. Ratcliff left the parking lot of the Kingwater Market. Appendix I, p. 550. Only Ms. Sublett was in the car with her, in the passenger's seat. Appendix I, p. 554a, 557a. They pulled into the parking lot of the Family Dollar next door to the market because it was raining and in case Mr. Fordham, Mr. Harris, and Mr. Parks needed a ride back. Appendix I, p. 550a, 553a-554a.

Ms. Ratcliff and Ms. Sublett's accounts of what happened next differ somewhat. According to Ms. Ratcliff, a couple of minutes later, she heard gunshots and then saw the red truck hit a tree. Appendix I, p. 555a. She saw Mr. Harris run across the street but could not remember if it was before or after she saw the red

truck pass them. Appendix I, p. 554a-555a. Ms. Ratcliff and Ms. Sublett left. Appendix I, p. 554a. At trial, Ms. Ratcliff testified that she did not see Mr. Harris shoot anyone and did not recall whether she told police that she thought Mr. Harris shot anyone. Appendix I, p. 568a, 581a.

According to Ms. Sublett, Ms. Ratcliff stopped and when Ms. Sublett asked her why, she said, "I just heard gunshots." Appendix I, p. 638a. Although Ms. Sublett did not hear the gunshots, she did hear a "second set" of gunshots. Appendix I, p. 651a. Ms. Ratcliff then said, "let's see if they need a ride back." Appendix I, p. 639a. Ms. Sublett saw the red truck reverse, trying to get out of the parking lot. Appendix I, p. 639a-641a. She saw Mr. Harris shooting at the truck; although she did not see him holding anything, she saw that his hand was up and following the direction of the red truck. Appendix I, p. 640a-641a. Mr. Harris ran across the street, and the red truck crashed into a tree across the street from Family Dollar. Appendix I, p. 641a. Ms. Sublett did not see anyone else in the parking lot, including Mr. Parks. Appendix I, p. 657a.

Paramedics arrived on scene and transferred Mr. Jones-Dickerson to the hospital, where he was ultimately pronounced dead from "multiple gunshot wounds[.]" Appendix I, p. 752a, 1078a.

**Interactions Between Mr. Parks and Police**

Mr. Parks spoke with police on four separate occasions before trial. First, he spoke with Special Agent David Dwyre on September 26, 2017. Appendix I, p. 966a. Mr. Parks told Agent Dwyre that Mr. Jones-Dickerson had been in the parking lot of

the Kingwater Market that day, and "somebody" thought he had something to do with killing Mr. Parks' and Mr. Harris' cousin Dominique. Appendix I, p. 970a. Mr. Harris showed Mr. Parks part of the gun and told him that he was going to kill Mr. Jones-Dickerson. Appendix I, p. 970a. Mr. Parks told Agent Dwyre that he knew that Mr. Harris had a "silver gun" and that he had touched it a couple of times.[5] Appendix I, p. 969a. Mr. Parks went into the Kingwater Market and later heard gunshots. Appendix I, p. 970a. During this interview, Mr. Parks denied passing a gun to Mr. Harris "[s]everal times[.]" Appendix I, p. 969a.

Mr. Parks spoke with Detective Clay Hite on October 7 and 8, 2016. Appendix I, p. 932a; 977a. He spoke with Lieutenant Matthew Lasky on November 8, 2016, for about two hours. Appendix I, p. 953a. Mr. Parks' statement to Lieutenant Lasky was "somewhat similar" to the one he gave Detective Hite. Appendix I, p. 954a. The only difference was that Mr. Parks admitted for the first time that there was "some sort of hand to hand exchange" between himself and Mr. Harris; Mr. Harris gave Mr. Parks "a dollar or something or some sort of currency" for some cigarettes. Appendix I, p. 954a. In both interviews, Mr. Parks denied passing a gun to Mr. Harris, and "adamantly" denied possessing a weapon at all on the date in question. Appendix I, p. 956a-957a. Mr. Parks "knew that something was up" on that date with Mr. Harris but did not say that he knew Mr. Harris was going to get out of the car and shoot Mr. Jones-Dickerson or at the red truck. Appendix I, p. 956a-957a

[5] When Mr. Parks touched this gun was not put into context during the interview. Appendix I, p. 970a.

**Mr. Parks' Background and Relationship with Mr. Harris**

At the time of this homicide, Mr. Parks was 18 years old, with a ninth-grade education. Presentence Investigation Report (PSIR), filed separately p. 12. He had two prior juvenile convictions.[6] PSIR, p. 9. Mr. Parks struggled in school with behaviors such as "follow[ing] directions, displaying angry outbursts, and cussing at school staff" and a psychological evaluation concluded that he had "strong indicator precursors" for Conduct Disorder and that he likely had attention-deficit hyperactivity disorder (ADHD). Mr. Parks' behavioral issues caused him to be removed from his mother's home and placed with his aunt when he was only 13 years old; two years later, his aunt requested that he be removed from her home, and he went to live with his mother once again. PSIR, p. 9-10.

Mr. Parks had a close relationship with his older cousin, Mr. Harris. When asked by police how he came to be "involved" with this incident, he answered, "Because of my cousin. That's the person I'm always with." Appendix I, p. 1567a. When police initially assumed that Mr. Parks was the shooter, he acknowledged that this belief was likely based on his association with Mr. Harris. "[I]f they don't like Quay, you know they not gonna like me 'cause when you hear Quay, you hear Kemo, you hear Kemo, you hear Quay." Appendix I, p. 1361a. Mr. Parks acknowledged that his relationship with Mr. Harris could lead him down a path to trouble, stating, "[our family] would always say you the dumb one, Quay's gonna do the stuff and you gonna be the one that gets killed." Appendix I, p 1343a.

[6] These convictions were for home invasion in the second degree and malicious destruction of property. PSIR, p. 8-9.

**Verdict, Sentencing, and Post-Conviction Proceedings**

After an eight-day jury trial, Mr. Parks was convicted of first-degree premeditated murder, carrying a concealed weapon, and felony firearm, and he was sentenced to mandatory life in prison without parole for first-degree murder, to be served consecutively to two years for felony firearm and concurrently to a lesser term for carrying a concealed weapon. Appendix I, p. 1253a-1254a, 1270a-1272a.

On appeal, Mr. Parks challenged, in part, the constitutionality of his mandatory life without parole sentence under *Miller* and the Michigan and United States Constitutions. The court affirmed Mr. Parks' convictions and sentences. However, in addressing the constitutionality of Mr. Parks' sentence, it noted that this Court "may choose to review this issue and provide guidance to the bench and bar[.]" Appendix I, p. 1285, n 4.

Mr. Parks filed an application for leave to appeal with this Court. This Court directed mini-oral argument on the application (MOAA) to address "whether the United States Supreme Court's decisions in *Miller*[, *supra*] and *Montgomery v Louisiana*, 577 US 190 (2016), should be applied to defendants who are over 17 years old at the time they commit a crime and who are convicted of murder and sentenced to mandatory life without parole, under the Eighth Amendment to the United States Constitution or Const 1963, art 1, § 16, or both." Appendix I, p. 1288a.[7]

[7] The legal argument in this brief is substantially similar to Part II of the argument in the supplemental brief in *People v Poole*, __ Mich __, 960 NW2d 529 (2021). The questions presented by this Court are the same.

## I. The United States Supreme Court's decisions in *Miller v Alabama* and *Montgomery v Louisiana* should be applied to people who are 18 to 25 years old at the time they commit a crime and who would otherwise be subject to mandatory life without the possibility of parole.

**Issue Preservation and Standard of Review**

Mr. Parks preserved this issue by concurrently filing a motion to remand with his brief on appeal in the Court of Appeals under MCR 7.211(C). This Court reviews constitutional questions de novo. *People v Kennedy*, 502 Mich 206, 213 (2018). This Court is the ultimate authority on the meaning and application of the Michigan Constitution. *People v Bullock*, 440 Mich 15, 27 (1992).

**Discussion**

Mr. Parks was only eight months past his 18th birthday when Mr. Harris shot and killed Mr. Jones-Dickerson. PSIR, p. 1, 3. Mr. Parks' involvement in the offense was, at most, passing a gun to Mr. Harris in the backseat of Ms. Sublett's car. Mr. Parks did not shoot Mr. Jones-Dickerson, nor was he present in the parking lot when Mr. Jones-Dickerson was shot. He was convicted as an aider and abettor. Yet, Mr. Parks was sentenced to life without the possibility of parole – a sentence automatically mandated by statute. Mandatory LWOP for individuals 18-25 years old is unconstitutional, both generally and as applied to Mr. Parks, given his brain at 18 is functionally no different than that of a juvenile under the age of 18.

Proportionality is central to the Michigan Constitution's prohibition against cruel or unusual punishment. *Bullock*, 440 Mich at 32-33; *People v Lorentzen*, 387 Mich 167, 176 (1972). If a sentence is disproportionate, it is unconstitutional. *Id*. See

also *People v Steanhouse*, 500 Mich 453, 459 (2017), citing *People v Milbourn*, 435 Mich 630, 636 (1990).

Like our state constitution, the Eighth Amendment to the federal constitution requires a sentence to be proportionate. "Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the manner of determining a defendant's sentence." *Montgomery*, 577 US at 206. See also *Roper v Simmons,* 543 US 551, 560 (2005), citing *Weems v United States*, 217 US 349, 367 (1910); *Atkins v Virginia*, 536 US 304, 311 (2002); *Solem v Helm*, 463 US 277, 284 (1983); *Rummel v Estelle*, 445 US 263, 271-274 (1980) (acknowledging the proportionality rule applies to both death penalty cases and non-death cases). The harshest penalty must be reserved for the most culpable people who commit the most serious offenses. *Miller*, 567 US 460, 474-475 (2012); *Graham v Florida*, 560 US 48, 69 (2010).

The characteristics of youth mitigate culpability and weaken rationales for the most severe forms of mandatory punishment. *Miller*, 567 US at 472-473. Specifically, young people exhibit "diminished culpability and a heightened capacity for change." *Jones*, 141 S Ct at 1316, citing *Miller*, 567 US at 479. Therefore, in cases involving a person under the age of 18, a sentencing court must "follow a certain process—considering an offender's youth and attendant characteristics—before imposing" either LWOP or a term of years. *Jones*, __ US __; 141 S Ct 1307, 1316 (2021), quoting *Miller,* 567 US at 489. During that process, "the sentencer affords individualized

'consideration' to, among other things, the defendant's 'chronological age and its hallmark features.'" *Id.,* quoting *Miller,* 567 US at 477.

The Court's reasoning in *Miller* and *Montgomery* should apply to young adults[8]. Because young adults' brains are not fully developed, they share key characteristics with those under age 18. Society recognizes that young adults are vulnerable and deserve protection. Mandatory LWOP is disproportionate for young adults and the *Miller* sentencing process should apply instead.

**Mandatory LWOP for young adults is disproportionate and violates the Michigan Constitution.**

Michigan's test for proportionality evaluates (1) the severity of the sentence imposed compared to the gravity of the offense, (2) the penalty imposed for the offense compared to penalties imposed on other offenders in the same jurisdiction, (3) the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states, and (4) whether the penalty imposed advances the penological goal of rehabilitation. *Bullock,* 440 Mich at 33-34, citing *Lorentzen,* 387 Mich at 176-181.

**1. Mandatory LWOP for young adults is too severe, even given the gravity of first-degree murder.**

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[8] For the purposes of this brief, people age 18 to 25 will be referred to as "young adults". The scientific literature cited *infra* in Section I(a)(1)(i) describes this age group using various terms. For example, the National Academies of Sciences, Engineering, and Medicine refer to people age 18 to 25 as "older adolescents." Drs. Jennifer Tanner and Jeffrey Arnett describe the same group as "emerging adults." In his book, *Age of Opportunity*, Dr. Laurence Steinberg uses the term "adolescence" to refer to the period from age 10 until 25.

The first *Bullock* factor compares the severity of the sentence to the gravity of the offense. 440 Mich at 33. Young adults convicted of first-degree murder in Michigan receive the harshest penalty available to anyone in the state. "Imprisoning an offender until he dies alters the remainder of his life 'by a forfeiture that is irrevocable.'" *Miller*, 567 US at 475, quoting *Graham*, 560 US at 69.

A sentence of LWOP requires a young person to serve "more years and a greater percentage of his life in prison than an adult offender." *Id*., quoting *Graham*, 560 US at 70. "The penalty when imposed on a teenager, as compared with an older person, is therefore 'the same . . . in name only.'" *Id*., quoting *Graham*, 560 US at 70.

While first-degree murder is an extremely grave offense, for many young adults, LWOP is excessive punishment.

**a) Young adults' brains are not fully developed. Their culpability is diminished and they are more capable of rehabilitation than older adults.**

A 2019 Consensus Study Report from the National Academies of Science explains, "[T]he unique period of brain development and heightened brain plasticity . . . continues into the mid-20s," and therefore it would be "arbitrary in developmental terms to draw a cutoff line at age 18."[9]

Dr. Laurence Steinberg is a developmental psychologist who specializes in adolescence. Dr. Steinberg served as the lead scientist on the American Psychological Association's amicus briefs in *Roper* and *Graham*. His work was cited in both *Miller*

[9] National Academies of Sciences, Engineering, and Medicine at 22. See Index of Authorities, *supra*, for full citations. Contained in Appendix II.

and *Roper*. Since *Miller*, Dr. Steinberg has published numerous articles concluding that the relevant parts of the brain—i.e., the regions and functions relevant to risky behavior and susceptibility to outside influences—are still developing past age 18.[10]

Dr. Steinberg has testified about recent, substantial advances in adolescent brain development research.[11] In the mid to late 2000s, "virtually no research . . . looked at brain development during late adolescence or young adulthood. People began to do research on that period of time toward the end of that decade and as we moved into 2010 and beyond, there began to accumulate some research on development in the brain beyond age 18, so we didn't know a great deal about brain development during late adolescence until much more recently."[12] Now, based on current research, Dr. Steinberg is "[a]bsolutely certain" that the developmental characteristics underpinning *Roper*, *Miller*, and *Graham* also apply beyond age 17.[13]

Likewise, Dr. BJ Casey, an expert on adolescent brain development and self-control at Yale University, explains, "The decisions made in *Roper* and *Miller* were based largely on behavioral evidence of differences between youths and adults, with little knowledge or appreciation of the functionally significant and legally relevant brain changes throughout adolescence and into young adulthood. That evidence is now available and further confirms the behavioral science. Not only do these findings

[10] See, e.g., Scott, Bonnie, & Steinberg, 85 Fordham L Rev 641; Steinberg et al., 21 Dev Sci e12532; Steinberg, 38 J Med & Phil 256.
[11] See also Spear & Silveri (compiling contemporary research on the adolescent brain and noting the ten-fold increase in the number of publications on the topic since the year 2000).
[12] *Cruz v United States*, No. 11-CV 787, 2018 WL 1541898, at *25 (D Conn, 2018), (quoting transcript of Dr. Steinberg's testimony during September 13, 2017 Hearing), vacated and remanded, 826 F Appx 49 (CA 2, 2020).
[13] *Id.* at *16.

apply to *Roper*, *Miller*, and *Montgomery* but they also inform the extension of these decisions beyond 18 years."[14]

The conclusion that youth are constitutionally different for purposes of sentencing is based "not only on common sense—on what 'any parent knows'—but on science and social science as well." *Miller*, 567 US at 471, quoting *Roper*, 543 US at 569.

Children under 18 are less deserving of the harshest penalties due to "three significant gaps between juveniles and adults." *Id*. Those are:

> (1) Youth display "a lack of maturity and an underdeveloped sense of responsibility, leading to **recklessness, impulsivity, and heedless risk-taking**."
>
> (2) They "are more **vulnerable** . . . **to negative influences and outside pressures**, including from their family and peers; . . . and lack the ability to extricate themselves from horrific, crime-producing settings."
>
> (3) They are "less fixed" in their character and **more capable of change** than adults.

*Id.* (emphasis added) (internal citations omitted).

These three significant gaps persist after an individual turns 18 and into the person's mid-twenties. Young adults are neurobiologically much more like teenagers than previously thought, particularly in terms of their limited ability to exercise self-

[14] Casey et al., 5 Ann Rev Criminal 7.1, 7.14; see also American Bar Association, *ABA Resolution 111* at 6 ("[R]esearch has consistently shown that [brain] development actually continues beyond the age of 18" and that "the line drawn by the U.S. Supreme Court no longer fully reflects the state of the science on adolescent development.").

control, their vulnerability to outside influences, and their capacity for rehabilitation.[15] These 'three gaps' are discussed in turn.

*(1) Young adults exhibit recklessness, impulsivity, and risk-taking.*

Young adults' brains are very similar to early adolescents' brains— and very different from fully developed brains. In particular, the brain systems responsible for self-control, planning, and resistance to outside pressure are not fully developed until the mid-twenties.[16]

The Court in *Miller* described the "failure to appreciate risks and consequences" as one of the "hallmark features" of youth that renders mandatory LWOP unconstitutional. *Miller*, 567 US at 477. Risky decision-making is most common among those in their late teens and early twenties.[17] Deaths from drunk driving, unintended pregnancies, binge drinking, and arrests all peak during this period.[18] This is because the brain systems that regulate impulse control are not fully developed until one's twenties.[19]

From puberty through the mid-twenties, the brain essentially "rewires"

[15] National Academies of Sciences, Engineering, and Medicine at 22; Sawyer et al., 2 Lancet Child Adolesc Health 223.
[16] National Academies of Sciences, Engineering, and Medicine at 51-54.
[17] Gardner & Steinberg, 41 Dev Psychol 625, 631; Scott, Bonnie, & Steinberg, 85 Fordham L Rev 641, 656-657; Braams et al., 35 J Neuroscience 7226, 7235-7236; Shulman & Cauffman, 50 Dev Psychol 167, 172, 174
[18] Willoughby et al., 89 Brain Cogn 70, 76-78; Weigard et al., 17 Dev Sci 71, 72.
[19] Scott, Bonnie, & Steinberg, 85 Fordham L Rev 641, 647; Icenogle et al., 43 Law Hum Behav 69, 83.

itself.[20] Areas of the brain rewire at different paces, causing a delay in young adults' social and emotional maturity as compared to their intellectual maturity.[21] The parts of the brain responsible for logical reasoning and basic information processing mature earlier than the parts of the brain responsible for weighing risks and consequences.[22]

The prefrontal cortex is the principal area of the brain in charge of cognitive and executive functions, including impulse control, weighing risks and rewards, and decision-making in complex situations.[23] The prefrontal cortex is the last region of the brain to develop—its construction is not complete until age 25.[24]

The limbic system, which drives emotion and governs sensation- and reward-seeking, develops well before the prefrontal cortex.[25] Until the prefrontal cortex is fully developed, it cannot effectively counterbalance the limbic system.[26] This results in heightened and uninhibited "sensation-seeking" until the mid-twenties.

Sensation-seeking is the pursuit of "novel, varied, and highly stimulating experiences and the willingness to take risks in order to attain them."[27] It is characterized by over-focusing on rewards at the expense of an accurate estimation

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[20] Arain et al., 9 Neuropsych Disease and Treatment 449, 452; Otero & Barker, "The Frontal Lobes and Executive Functioning" at 29, 33; Giedd, 1021 Ann NY Acad Sci 77; Marek et al., 13 PLoS Biol e1002328; Blakemore, 61 Neuroimage 397, 398; Ernst, 89 Brain Cogn 104, 105; Lebel & Beaulieu, 31 J Neurosci 10937.
[21] Steinberg et al., 64 Am Psychol 583, 586-587, 590-591, figures 1-2.
[22] Steinberg et al., *Are Adolescents Less Mature Than Adults?*, p 592.
[23] National Academies of Sciences, Engineering, and Medicine at 51.
[24] Arain et al., 9 Neuropsych Disease and Treatment 449, 450, 453; Dosenbach et al., 329 Sci 1358; Casey, 66 Ann Rev Psychol 295, 303.
[25] Van Leijenhorst et al., 51 Neuroimage 345, 346; National Academies of Sciences, Engineering, and Medicine at 54, 62.
[26] Arain et al., 9 Neuropsych Disease and Treatment 449, 453; Shulman et al., 17 Dev Cogn Neurosci 103, 113; Casey et al., 52 Dev Psychobiol 225, 226. For a summary of several current neurodevelopmental models, see Demidenko et al., 44 Dev Cogn Neurosci 100798.
[27] Steinberg et al., 44 Dev Psychol 1764, 1765.

of costs.[28] In addition, changes in the levels of certain neurotransmitters and hormones during young adulthood contribute to heightened impulsivity and emotional volatility at the same time the prefrontal cortex's governing capabilities are limited.[29]

The result is that young adults are less able than older adults to anticipate the consequences of their actions and exercise impulse control.[30] Young adults are more short-sighted and less capable of planning.[31] They are more prone than older adults to engage in immature decision-making and to pursue rewarding, immediately gratifying, socially encouraged, and risky activities.[32]

The condition of young adults' brains (developed limbic system but underdeveloped prefrontal cortex), which makes them especially attracted to impulsive and risky behavior, helps to contextualize Mr. Parks' behavior. Although Mr. Parks was aware that his association with Mr. Harris could get him into trouble (Interrogation II, p. 55), he was "always with[]" him anyway (Interrogation I, p. 145; Interrogation II, p. 73). Although Mr. Parks did not participate in the shooting of Mr. Jones-Dickerson and was not even present in the parking lot when it took place (III

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[28] *Id.* at 1764.
[29] Arain et al., 9 Neuropsych Disease and Treatment 449, 450; National Academies of Sciences, Engineering, and Medicine at 44-45; Lopez et al., 29 J Primary Prevent 5, 22.
[30] Steinberg et al., 80 Child Dev 28, 35, 40; Arain et al., 9 Neuropsych Disease and Treatment 449, 453, figure 3.
[31] Steinberg et al., 80 Child Dev 28, 40-41; Steinberg et al., 44 Dev Psychol 1764, 1776; Arnett, 12 Dev Rev 339, 352-353.
[32] Icenogle et al., 43 Law Hum Behav 69, 72, 84-85; Steinberg & Icenogle, 1 Ann Rev Dev Psychol 21, 32; Cohen et al., 28 J Cogn Neurosci 446; Cohen et al., 27 Psychol Sci 549; Cohen et al., 88 Temple L Rev 769, 786-787; Rudolph, 24 Dev Cogn Neurosci 93; Blakemore & Robbins, 15 Nature Neurosci 1184.

189), he admitted that he was aware that Mr. Harris planned on killing Mr. Jones Dickerson, ostensibly as revenge for killing his cousin Dominique. Appendix I, p. 970a. Even if Mr. Parks had a gun and gave it to Mr. Harris, it is unclear why he had the gun in the first place or what led him to engage in the risky behavior of carrying a gun, let alone possibly handing it to Mr. Parks, knowing he might have wanted to harm Mr. Jones Dickerson. Mr. Parks' young brain was ill-equipped to evaluate the risks and consequences of spending time with Mr. Harris, particularly when he planned on killing Mr. Jones-Dickerson.

There is scientific consensus that young adults like 18-year-old Mr. Parks demonstrate the same traits "recklessness, impulsivity, and heedless risk-taking" that render mandatory LWOP unconstitutional for younger teenagers. *Miller*, 567 US at 471, quoting *Roper*, 543 US at 570. The fact that young adults' brains are still developing lessens their culpability and weakens the rationale for mandatory LWOP. See *Miller*, 567 US at 471-472, citing *Graham*, 560 US at 68, 71-72. Because young adults are less able to consider the potential consequences of their actions, they are also less likely to be deterred by a mandatory LWOP sentence. *Id.*

*(2) Young adults are vulnerable to negative influences.*

Young adults "are more vulnerable [than adults] to negative influences and outside pressures, including from their family and peers." *Miller*, 567 US at 472 (quotations and internal citations omitted). Research demonstrates that, like their younger counterparts, individuals age 18 to 25 are more susceptible than older adults

to pressure from peers and elders.[33]

The presence of peers increases young adults' risk-taking tendencies by heightening their emotions and exacerbating their deficiencies in judgment.[34] In the presence of peers, young adults are more sensitive to the potential rewards than the potential costs of a decision.[35] Individuals in their late teens are acutely sensitive to the potential of social rejection, which increases conformity with their peers.[36] Antisocial peer pressure is a highly significant predictor of reckless behavior.[37] After age 24, however, adults are less likely to make risky decisions in the presence of their peers.[38]Young adults' vulnerability to outside influence makes them less culpable and less worthy of retribution. *Miller*, 567 US at 471-472, citing *Graham*, 560 US at 68, 71-72.

Mr. Harris, although not much older than Mr. Parks, was essentially the only constant male figure Mr. Parks had in his life. He only had "periodic" contact with his father. PSIR, p. 10. Although Mr. Parks lived primarily with his mother, this was not a stable setting, as he was recommended for placement at Wolverine Human Services and later was sent to live with his aunt for two years due to disciplinary issues and being placed on probation. PSIR, p. 10. Mr. Parks lacked consistent

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[33] Gardner & Steinberg, 41 Dev Psychol 625, 631-634; Knoll et al., 60 J Adolesc 53, 59 (2017).
[34] Smith et al., 11 Dev Cogn Neurosci 75, 76; Scott, Bonnie, & Steinberg, 85 Fordham L Rev 641, 649; Michaels, 40 NYU Rev L and Soc Change 139, 163; Steinberg, 28 Dev Rev 78, 90-91; Albert & Steinberg, "Peer influences on adolescent risk behavior", p 211.
[35] O'Brien et al., 21 J Rsch on Adolesc 747; Weigard, 17 Dev Sci 71.
[36] Blakemore, 9 Nature Revs Neurosci 267, 269.
[37] Michaels, *A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty*, 40 NYU Rev L & Soc Change 139, 163 (2016)
[38] Gardner & Steinberg, 41 Dev Psychol 625.

guidance and support, particularly from any male authority figures. This was the backdrop for Mr. Parks' close relationship with Mr. Harris, his cousin and an influential figure in Mr. Parks' life. And, there were a total of five people in the car that day, so Mr. Parks was surrounded by peers. The Court in *Miller* recognized the power of family and peers in influencing a child's negative behavior. *Miller*, 567 US at 472. Here, Mr. Parks had both in one car: family and peers, with the presence of either one being a mitigating factor, let alone both.

In this situation, Mr. Parks' 18-year-old brain prioritized his cousin's approval over long-term consequences. This is also shown after he was arrested and facing life in prison: he refused to talk to the police about his cousin's role in the offense, regardless of the potential consequences he faced as a result. Mr. Parks was unable to adequately weigh the costs of being closely involved with his cousin Mr. Harris, both leading up to and involving the killing of Mr. Jones-Dickerson, and after. Even if Mr. Parks handed Mr. Harris a gun, it was Mr. Parks' inability to make thoughtful decisions and his relationship with Mr. Harris and the presence of other peers that influenced him be involved in the crime for which he will die in prison.

*(3) Young adults are more capable of change than older adults.*

Like juveniles, young adults have a heightened capacity for change and rehabilitation. "Neuroplasticity" or "neuronal plasticity" is the potential of the brain's neuronal circuits to be modified by experience. The brain exhibits especially high levels of plasticity during the first two decades of life. Recent research confirms that

young adults exhibit high potential for change[39] and that identity formation continues well into young adulthood.[40]

From age 18 to 25, individuals become more assertive and decisive, show increases in self-control and ability to resist outside influence, become more reflective, deliberate and planful, and demonstrate decreases in aggressiveness and alienation.[41] Past the age of 22, for example, individuals exhibit substantial increases in conscientiousness characterized by discipline[42] and emotional stability.[43]

These developments correspond to desistance from crime.[44] Research shows that criminal offending wanes as youth mature.[45] The "age-crime curve" holds that crime generally peaks in the late teen years and declines dramatically after age 25."[46]

Research also shows that those 18 to 25 are highly amenable to intervention and rehabilitation.[47] Even those who exhibit callous, unemotional traits demonstrate less of those traits with age.[48]

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[39] Aoki, Romeo, & Smith, 1654 Brain Rsch 85, 85-86; Steinberg, *Age of Opportunity*, pp 21-22; Kays, Hurley, & Taber, 24 J Clin Neuropsych & Clin Neurosci 118.
[40] Steinberg, Steinberg, *Age of Opportunity*, p 26; Roberts, Walton, & Viechtbauer, 132 Psychol Bull 1 (2006); Arnett, "Identity Development from Adolescence to Emerging Adulthood", p 53.
[41] Tanner & Arnett, "The Emergence of 'Emerging Adulthood' ", pp 39, 42; Steinberg, *A Social Neuroscience Perspective on Adolescent Risk- taking*, pp 97-98; Shulman & Cauffman, 50 Dev Psychol 167, 173; Weigard et al., 17 Dev Sci 71.
[42] Roberts & Mroczek, 17 Curr Dirs Psychol Sci 31, 33.
[43] Cohen et al., *When Is an Adolescent an Adult?*, 27 Psychol Sci 549, 559-560
[44] Sweeten, Piquero, & Steinberg, 49 J Youth and Adolesc 921; Monahan, Steinberg, & Cauffman, 45 Dev Psychol 1520.
[45] Steinberg et al., *Psychosocial Maturity and Desistance from Crime*, pp 3, 7-8; Monahan et al., 45 Dev Psychol 1654, 1665.
[46] Monahan et al., 25 Dev and Psychopathology 1093; Mulvey et al., 22 Dev and Psychopathology 453, 471; see, e.g., United States Department of Justice, *Crime in the United States*: *2019*, Table 38.
[47] Tanner & Arnett, "The Emergence of 'Emerging Adulthood'", p 42 ; Dahl et al., 554 Nature 441.
[48] Casey et al., 5 Ann Rev Criminal 7.1, 7.14; Baskin-Sommers, 3 J Abnorm Child Psychol 1529; Hawes, Price, & Dadds, 17 Clin Child Fam Psychol Rev 248 (2014).

The United States Supreme Court has recognized a child's character is not as "well formed" as an adult's, his traits are "less fixed", and his actions are less likely to be "evidence of irretrievably depraved character." *Roper*, 543 US at 570. This is also true of young adults: a key hallmark of the young adult brain is its high level of neuroplasticity, or ability to change.

With proper treatment and programming, Mr. Parks can – and will – rehabilitate. According to a psychological evaluation of Mr. Parks when he was 14 years old, he had "strong indicator precursors" for "[c]onduct [d]isorder[,]" likely had ADHD and "learning disabilities[,]" and also suffered from "[c]annabis [a]buse[.]" PSIR, p. 10. These, along with his unstable home life, caused behavioral issues, namely "school truancy, failure to comply with household rules, disrespect for authority figures and numerous suspensions for failure to follow rules, angry outbursts and disrespectful and threatening behavior toward school staff." PSIR, p. 9, 12. They are also the likely impetus for Mr. Parks dropping out of high school, leaving him with a ninth-grade education. PSIR, p. 12.

While some of Mr. Parks' difficulties as a child may, at first, be alarming to a sentencing court, there are resources available in prison and in the world that can ensure Mr. Parks is given every opportunity to succeed—opportunities he was not given as a child. He can take programs to address his past abuse of marijuana. He can take medication and receive psychological services for any diagnosed mental health conditions. He can be connected with community resources to find stable

housing and employment. All of these things would allow Mr. Parks to demonstrate his change to the Parole Board and to one day re-enter society as a rehabilitated older adult. However, a mandatory life without parole prison sentence prevents Mr. Parks from doing this and fails to consider the neuroplasticity of his young brain.

There is societal consensus that young adults exhibit youthful immaturity and deserve protection.

Punishment schemes must keep pace with society's evolving standards of decency. *Miller*, 567 US at 469-70; *Lorentzen,* 387 Mich at 178-179. This relates to *Bullock*'s first factor, since harsh sentences that do not comport with society's standards are too severe. Society has recognized that youthful immaturity, impulsivity, and vulnerability persist even after a person turns 18 years old. Therefore, many laws protect young adults even after they reach the age of majority.[49] For instance:

- All fifty states require a person to be 21 years old to purchase alcohol. See 23 USC 158 (National Minimum Drinking Age Act). See also MCL 436.1109(6).
- The federal minimum age for sale of tobacco is now 21. 21 USC 387f. Prior to the federal increase, 19 states and Washington, DC, as well as at least 540 localities, had already raised the legal age to purchase tobacco to 21.[50]
- In Michigan, a general education student may attend public high school up to age 20. MCL 388.1606(4)(l).

[49] Ryan, 97 Wash U L Rev 1131, 1137-1141.
[50] Campaign for Tobacco Free Kids.

This upper age limit increases to 22 for a general education student who is homeless and is in a program focused on educating students with extreme barriers to education and increases to 26 for a special education student. MCL 388.1606(l)(i)-(ii).

- Twenty-eight states, including Michigan, the District of Columbia, and nine Tribes allow young people to remain in foster care beyond the age of 18.[51]

- A range of state laws provide for extension of parental support obligations past a child's 18th birthday.[52]

- An individual under age 21 cannot open a credit card without a cosigner. 15 USC 1637(c)(8).

- Consumer reporting agencies are prohibited from furnishing non- consumer-initiated reports on those under age 21, unless the underage consumer consents. 15 USC 1681b(c)(1).

- The Affordable Care Act allows dependent children to remain covered by their parents' health insurance until age 26. 42 USC 300gg-14.

- For purposes of federal student aid, the federal government considers those under age 24 to be legal dependents of their parents. [53]

- Michigan law prohibits a person under 21 from obtaining a concealed carry permit. MCL 28.425b(7)(a).
- Federal law prohibits federally licensed firearms

[51] National Conference of State Legislatures, *Older Youth in Foster Care*; MCL 400.647 (providing that "[a] youth who exited foster care after reaching 18 years of age but before reaching 21 years of age may reenter foster care and receive extended foster care services").
[52] Ryan, 97 Wash U L Rev 1131, 1150 (compiling support laws).
[53] United States Department of Education Office of Federal Student Aid, *Dependency Status*, available at <https://studentaid.ed.gov/sa/fafsa/filling-out/dependency> (accessed October 13, 2021).

> sellers from selling any firearm or ammunition, other than a shotgun or rifle, to anyone who is under 21 years old. 18 USC 922(b)(1).

In enacting 18 USC 922(b)(1), Congress cited the "causal relationship between the easy availability of firearms" and "youthful criminal behavior," and noted that firearms had been widely sold to "emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior."[54]

Eighteen states, including Michigan, recently defended 18 USC 922(b)(1) in an amicus brief filed in the United States Court of Appeals for the Fourth Circuit in September 2021.[55] The States explained that brain science supports limiting young adults' access to firearms: "Contemporary scientific evidence explains why this conclusion was a reasonable one for Congress to draw: Because the human brain does not fully develop until one's mid-to-late twenties, young people tend to have lower self-control and make more impulsive decisions."[56]

In the criminal context, many states define "youthful offender" to include those up to age 21, 26, or some age in between, and afford leniency and protection to these individuals. For example: Alabama, Ala Code § 15-20A-4, § 15-19-1 *et seq*. (up to 21);

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[54] Omnibus Crime Control and Safe Streets Act of 1968, Pub L No 90- 351, § 901, 82 Stat 197, 225-26 (1968).

[55] Brief of Amici Curiae Illinois, California, Connecticut, Delaware, the District of Columbia, Hawaii, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington in Support of Defendants-Appellees' Petition for Rehearing or Rehearing En Banc, *Hirschfeld v Bureau of Alcohol, Firearms, Tobacco, & Explosives*, No. 3:19-cv-05106-JCC, September 3, 2021, appended hereto.

[56] *Id*. at 17. The States' amicus brief cites to pages 16-20 of the amicus brief filed in the same case by the Giffords Law Center to Prevent Gun Violence. The Giffords Brief is appended to this brief.

California, Cal Penal Code § 3051(a)(1) (up to 26); Colorado, Colo Rev Stat § 18-1.3-407(1)(c)(2) (up to 25); Florida, Fla Stat § 958.04 (up to 21); Georgia, Ga Code § 42-7-2(7) (up to 25); Hawai'i, Haw Rev Stat § 706-667(1), 712-1256(1) (up to 22); Indiana, Ind Code § 11-14-1-5 (up to 21); New Jersey, NJ Stat § 2C:43-5 (up to 26); North Carolina, NC Gen Stat § 15A-145.2 (up to 22); New York, CPL § 720.10 (up to 19); Oklahoma, 22 Okla Stat § 996.1 (up to 26); South Carolina, SC Code § 24-19-10(d)(ii) (up to 25); Virginia, VA Code § 19.2-311(B)(1) (up to 21); Vermont (extended juvenile court jurisdiction up to age 21, effective July 1, 2022). This demonstrates widespread recognition that youth matters beyond age 17 in adjudicating criminal cases.

These many examples demonstrate consensus that people do not become fully mature adults on their eighteenth birthday. Society treats young adults as more vulnerable and more deserving of protection than older adults. Mandatory LWOP for young adults does not meet society's evolving standards of decency and is too severe, even given the gravity of the offense.

**b) Mandatory LWOP is too severe because it does not allow a sentencing court to consider a young adult's individual circumstances.**

This Court has determined that, "[t]o be constitutionally proportionate, punishment must be tailored to a defendant's personal responsibility and moral guilt." *Bullock*, 440 Mich at 39 (quotation marks and citation omitted). Yet Michigan courts automatically sentence every young adult convicted of first-degree murder to LWOP without any opportunity to account for the mitigating properties of youth.

Further, the most severe sentence is disproportionate where individual factors reduce a young adult's blameworthiness. For example, devastating life and family

circumstances, past trauma, or influence by other parties to engage in criminal activity may mitigate a young adult's culpability. See *Miller*, 567 US at 477-478, 489; *People v Skinner*, 502 Mich 89, 114-115 (2018). Each of these factors is relevant to Mr. Parks and weighs against an LWOP sentence. But the sentencing court could not consider Mr. Parks' circumstances; it was required to impose LWOP. This resulted in a disproportionate and unconstitutional sentence.

This Court held that a 20-year mandatory minimum punishment for selling marijuana was too severe, in part because it applied equally to "a first offender high school student as it [would] to a wholesaling racketeer." *Lorentzen*, 387 Mich at 176. There, the Court acknowledged a young person without a significant criminal history—like Mr. Parks— is less deserving of a harsh penalty than a career criminal.

Even considering the gravity of first-degree murder, mandatory LWOP is too severe for young adults. It does not account for factors that diminish a young adult's "personal responsibility and moral guilt." *Bullock*, 440 Mich at 39. *Bullock*'s first factor therefore disfavors mandatory LWOP for young adults.

**2. Mandatory LWOP for young adults is disproportionate compared to penalties imposed on other people in Michigan.**

The second *Bullock* factor compares mandatory LWOP to the penalty for other people in the same jurisdiction. *Bullock*, 440 Mich at 33. Mandatory LWOP for young adults convicted of first-degree murder stands in stark contrast to the sentencing options for 17-year-olds convicted of the same crime. Expansion of both Michigan's Holmes Youthful Trainee Act (HYTA) and juvenile court jurisdiction also provide apt comparisons.

***(Re)sentencing following* Miller *and* Montgomery**: People who were under the age of 18 at the time of their crimes may not be sentenced to mandatory LWOP. *Miller*, 567 US at 465. In Michigan, unless the prosecutor files a motion for LWOP and the sentencing court determines the unique circumstances warrant a sentence of LWOP, a 17-year-old convicted of first-degree murder shall be sentenced to a minimum term of not less than 25 years to more than 40 years. MCL 769.25. Those whose LWOP sentences were already final when *Miller* was decided are entitled to a resentencing hearing where the same provisions apply. *Montgomery*, 577 US at 206; see MCL 769.25.

By contrast, even very young adults like Mr. Parks are subject to mandatory LWOP. Mr. Parks turned 18 eight months prior to this offense and was therefore developmentally indistinguishable from a 17-year-old. If this offense had happened three months earlier, when Mr. Parks was 17 rather than 18 years old, he may well be serving 25 years in prison rather than LWOP. This is particularly so given Mr. Parks' mitigating circumstances: his unstable home life; his father's non-presence in his life; his lack of support and guidance; his behavioral and learning disabilities; his limited criminal history; the presence and influence of peers; and this status as an aidor and abettor.

**HYTA expansion to age 26:** The Michigan Legislature recently relied on scientific research to expand HYTA to allow even more young adults to avoid a criminal record. See MCL 762.11. In 2015, the Legislature increased the HYTA eligibility cutoff from 21 to 24 years old. 2015 PA 0031. In 2020, the Legislature further

expanded eligibility, raising the cutoff age to 26 years old. 2020 PA 1049. During the Michigan House Judiciary Committee's hearing on the latest HYTA expansion bill, legislators cited developments in brain science in support of including 24- and 25-year-olds.[57]

**Raise the Age:** In 2019, Governor Gretchen Whitmer signed a package of bills to raise the age of adult prosecutions from 17 to 18 years old.[58] At the time, Michigan was one of just four states that automatically prosecuted 17-year-olds as adults.[59] In support of the Raise the Age legislation, Genesee County Prosecutor David Leyton said, "We might have a separate court for young people say between the ages of 18 and 24 because they're still not fully developed. The whole idea of making 17- year-olds juveniles is because they're not fully developed[.]"[60] Likewise, in considering the bill, the Michigan Legislature reviewed that research "overwhelmingly documents that adolescent brains do not fully develop until closer to 25 years of age."[61]

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[57] House Judiciary Committee, December 16, 2020, at 30:05-40:20, <https://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=JUDI-121620.mp4> (accessed October 12, 2021).
[58] *Governor Whitmer Signs Bipartisan Bills to Raise the Age for Juvenile Offenders*, Michigan.gov (October 31, 2019), available at <https://www.michigan.gov/whitmer/0,9309,7-387-90487-511513--,00.html> (accessed October 12, 2021); See MCL 712A.1(1)(i), amended effective October 1, 2021, by 2019 PA 109.
[59] *Id.*
[60] Ramey, *Michigan's 'Raise the Age' Law Effective in 2021, Not Retroactive*, ABC 12 News (October 31, 2019), available at <https://www.abc12.com/content/news/Michigans-Raise-the-Age-law-effective-in-2021-not-retroactive-564187811.html> (accessed October 12, 2021).
[61] House Fiscal Agency, *Legislative Analysis: Raise the Age*, p 2, December 20, 2019, available at <https://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-4133-67514053.pdf> (accessed October 12, 2021).

***Mandatory LWOP for other offenses*:** There are only a handful of offenses in Michigan for which LWOP is mandatory. See MCL 791.234(6) (providing that persons sentenced to mandatory life for the following offenses are not eligible for parole: first-degree murder; possession of explosives or other injurious substances with malicious intent causing death; selling adulterated drugs with the intent to kill or cause serious impairment of two or more individuals, resulting in death; several felonies that involve intent to kill or cause serious impairment and result in death; several felonies that involve possession of harmful biological or chemical substances and results in death; and recidivist first-degree criminal sexual conduct against a child). Of course, individuals under age 18 do not face mandatory LWOP for these offenses. *Miller*, 567 US at 465; *Graham*, 560 US at 74.

Aside from first-degree murder, the crimes for which Michigan mandates LWOP involve repeat sexual assaults of children under 13 or conduct that endangers the lives of many people and results in death— for example, possession of explosives with intent to intimidate, injure, or kill, causing death, MCL 750.210(2)(e). Mandatory LWOP is rare.

For a young adult like Mr. Parks, a sentencing court should consider mitigating evidence of youth and use that evidence to fashion a proportionate sentence. The second *Bullock* factor weighs in favor of striking down mandatory LWOP for young adults.

### 3. Only 17 other states automatically sentence young adults to LWOP for premeditated murder.

*Bullock*'s third factor compares Michigan's penalty to penalties imposed for the same offense in other jurisdictions. *Bullock*, 440 Mich at 33-34. Michigan's LWOP mandate is a minority position: 32 states take a contrary approach.

Twenty-six states and the District of Columbia do not mandate LWOP for premeditated murder.[62] A person convicted of premeditated murder in these states can present mitigating evidence to the sentencer and/or the parole board. Six more states mandate LWOP for premeditated murder only where aggravating circumstances are proven.[63]

The United States Supreme Court prohibited LWOP for juvenile nonhomicide offenders where 39 jurisdictions permitted that sentence. *Graham*, 560 US at 62. Similarly, the Court banned mandatory LWOP for juveniles even though 29 jurisdictions permitted it. *Miller*, 567 US at 482. *Currently*, only 18 states, including Michigan, impose mandatory LWOP on young adults.

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[62] The following 26 states never mandate LWOP for premeditated murder: Alaska, Alaska Stat § 12.55.125; District of Columbia, DC Code § 22-2104; Georgia, Ga Code § 16-5-1; Idaho, § 18-4004; Illinois, 720 Ill Comp Stat § 5/5-4.5-20(a); Indiana, Ind Code § 35-50-2-3; Kentucky, Ky Rev Stat § 532.030; Maine, 17-A Me Rev Stat § 1603; Maryland, Md Code Crim Law § 2-201; Montana, Mont Code § 45-5-102(2); Nevada, Nev Rev Stat § 200.030; New Jersey, NJ Stat § 2C:11-3; New Mexico, § 31-18-14; New York, NY Penal Law § 70.00; North Dakota, ND Cent Code § 12.1- 32-01; Ohio Rev Code § 2929.02; Oklahoma, 21 Okla Stat § 701.9; Oregon, Or Rev Stat § 163.115; Rhode Island, RI Gen Laws § 11-23-2; South Carolina, SC Code § 16-3-20; Tennessee, Tenn Code § 39-13-202; Utah, Utah Code § 76-5-203; Virginia, Va Code § 18.2-10; Washington*; West Virginia, W Va Code § 61-2-1; Wisconsin, Wis Stat § 939.50; Wyoming, Wy Stat § 6-2-101.

[63] The following six states mandate LWOP for premeditated murder only where aggravating circumstances are proven: California, Cal Penal Code § 190.2; Connecticut, Conn Gen Stat § 53a-35a, § 53a-54b; Hawai'i, Haw Rev Stat § 706-656, § 706-657; Kansas, Kan Stat § 21-6620, § 21- 5401(a)(6), § 21-6617; Texas, Tex Penal Code § 12.31, § 12.32; Vermont, 13 Vt Stat § 2303, 13 Vt Stat § 2311.

A person convicted of first-degree murder who was under 18 at the time of the crime is most likely not serving LWOP. Nationwide, following *Miller*, just 3.2% of people who were serving mandatory LWOP for crimes committed before age 18 were resentenced to LWOP.[64] By contrast, 73.6% received a term-of-years sentence, i.e., LWOP was not reimposed.[65] The median term-of-years sentence is 25 years.[66] The remaining 23.2% are still awaiting resentencing.[67] Where only 3.2% of those under 18 have been resentenced to LWOP, it is disproportionate to sentence 100% of young adults 18 and older to LWOP.

The Washington Supreme Court recently held that mandatory LWOP is unconstitutional for people who were under 21 years old at the time of their offenses.[68] The young adults before the Washington Supreme Court were 19 and 20 years old at the time of their crimes; therefore, the Court did not address whether the same constitutional rule applies to those age 21 or older. The Washington Supreme Court ordered the trial courts to conduct resentencing hearings at which the court must consider the mitigating qualities of youth and determine whether LWOP is a proportionate sentence. *Id.*

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[64] Campaign for the Fair Sentencing of Youth, *National Trends in Sentencing Children to Life Without Parole*, February 2021, available at <https://cfsy.org/wp-content/uploads/CFSY-National-Trends-Fact-Sheet.pdf> (accessed October 13, 2021).
[65] *Id.*
[66] Campaign for the Fair Sentencing of Youth, *Montgomery v Louisiana Anniversary*, January 25, 2020, p 3, available at <https://cfsy.org/ wp-content/uploads/Montgomery-Anniversary-1.24.pdf> (accessed October 13, 2021).
[67] Campaign for the Fair Sentencing of Youth, *National Trends*, *supra* n 58.
[68] *Matter of Monschke/Matter of Bartholomew*, 197 Wash2d 305, 329 (2021).

In *State v Norris*, the Appellate Division of the Superior Court of New Jersey remanded for resentencing where Mr. Norris, who was 21 at the time of the crime, was sentenced to 80 years in prison.[69] The court, citing *Miller*, instructed the trial court to "consider at sentencing a youthful offender's failure to appreciate risks and consequences as well as other factors often peculiar to young offenders." *Id*. at *5.

In *Sharp v State*, the Indiana Court of Appeals deemed an 18-year- old a youthful offender and applied the reasoning of *Graham* and *Miller* to vacate his 55-year sentence for felony-murder.[70]

California expanded its youth offender parole hearings to include those who were under the age of 26 at the time of their offense.[71] At a youth offender hearing, the hearing panel is "required to give great weight to the diminished culpability of juveniles, the hallmark features of youth," and to the individual's "subsequent growth and increased maturity."[72] "The idea of a youth offender parole hearing is based on scientific evidence showing that parts of the brain involved in behavior control continue to mature through late adolescence and that adolescent brains are not yet fully mature until a person is in their mid-to-late 20s. Specifically, the area of the

[69] *State v Norris*, unpublished opinion of the Superior Court of New Jersey Appellate Division, issued May 15, 2017 (2017 WL 2062145).
[70] *Sharp v State*, 16 NE3d 470 (Ind App, 2014), opinion vacated on other grounds, 42 NE2d 512 (Ind, 2015).
[71] California Department of Corrections and Rehabilitation, *Youth Offender Parole Hearings*, available at <https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/> (accessed October 6, 2021).
[72] *Id.*

brain responsible for impulse control, understanding consequences, and other executive functions is not fully developed until that time."[73]

Illinois has a similar youthful offender parole system.[74] A person who was under 21 years of age at the time of commission of first-degree murder is eligible for parole review after serving 20 or more years of their sentence, except in certain cases of aggravated murder.[75]

Other developed nations protect young adults from the harshest punishments. In Sweden, young adults can be tried in juvenile court until age 25 and courts cannot impose mandatory minimum sentences on those under 21.[76] In Switzerland, young adults up to 25 can be treated as juveniles.[77] The Netherlands extends juvenile alternatives to young adults until they turn 23.[78] Japan treats those under age 20 as children.[79] In Germany, all young adults from age 18 to 21 are tried in a specialized youth court and judges have discretion to impose either a juvenile or adult sentence, depending on an individual's circumstances.[80] The vast majority of young adults

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[73] *Id.*
[74] Youthful Parole Bill, Illinois Public Act 100-1182, available at <https://www.ilga.gov/legislation/publicacts/100/100-1182.htm> (accessed October 12, 2021).
[75] In April 2021, the Illinois House passed HB 1064, which would prohibit LWOP sentences for young adults under the age of 21 who are convicted of non-aggravated first-degree murder. Illinois General Assembly, *Bill Status of HB 1064*, available at <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=1064&GAID=16&DocTypeID=HB&SessionID=110&GA=102> (accessed October 13, 2021); Ill House Bill 1064, available at <https://www.ilga.gov/legislation/102/HB/PDF/10200HB1064lv.pdf> (accessed October 13, 2021).
[76] Ishida, *Young Adults in Conflict with the Law* at 3.
[77] Transition to Adulthood Alliance, *Young Adults and Criminal Justice* at 3.
[78] Matthews, Schiraldi, and Chester, 1 Justice Evaluation J 59.
[79] Ishida, *Young Adults in Conflict with the Law* at 4.
[80] Matthews, Schiraldi, and Chester, 1 Justice Evaluation J 59.

convicted of homicide, rape, and other serious bodily injury crimes in Germany are sentenced as juveniles—over 90% in 2012.[81]

Michigan's mandatory LWOP sentence for young adults is more severe than the penalties in 32 states. Many other jurisdictions protect young adults from harsh criminal penalties. The third *Bullock* factor supports a finding that mandatory LWOP is a disproportionate punishment for young adults.

#### 4. Mandatory LWOP does not advance the penological goal of rehabilitation.

The fourth and final *Bullock* factor requires the Court to consider the relationship between mandatory LWOP and rehabilitation. *Bullock*, 440 Mich at 34. "Michigan has long recognized rehabilitative considerations in criminal punishment." *Lorentzen*, 387 Mich at 179.

Mandatory LWOP does not seek to rehabilitate troubled young adults. On the contrary, it "'forswears altogether the rehabilitative ideal.'" *Miller*, 567 US at 473, quoting *Graham*, 560 US at 74. See also *People v Carp*, 496 Mich 440, 520-21 (2016), judgment vacated on other grounds by *Carp v Michigan*, 577 US 1186 (2016) (recognizing that LWOP "does not serve the penological goal of rehabilitation").

Any person older than 17 who is convicted of first-degree murder in this state is automatically condemned to die in prison. This disregards that young adults have a unique capacity for change—a fact supported not only by common sense, but by scientific evidence. As young adults' brains fully develop, they have great potential for rehabilitation. See Section I(a)(1)(i), *supra*.

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[81] *Id.*

In passing the Raise the Age legislation discussed in Section I(a)(2), *supra*, the Michigan Legislature considered that "[m]ost juvenile offenders are victims of trauma such as abuse and/or neglect, been in foster care, and/or have mental health issues or developmental disabilities. All of these are known to increase the risk of being involved in the criminal justice system, but timely and appropriate age-related services and support can turn lives around."[82]

A mandatory LWOP sentence is an "irrevocable judgment" about a young person's "value and place in society". *Miller*, 567 US at 473, quoting *Graham*, 560 US at 74. It makes youth and rehabilitative potential irrelevant to the imposition of the harshest prison sentence. But a young adult's youthful characteristics must be considered to satisfy our state's proportionality rule. A sentence must be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Steanhouse*, 500 Mich at 459, citing *Milbourn*, 435 Mich at 636. The circumstances of a young adult offender include a heightened capacity for change. Mandatory LWOP for young adults is at odds with Michigan's emphasis on rehabilitation. Mr. Parks has tremendous capacity for rehabilitation and slamming the prison door shut on the chance to demonstrate that to the Parole Board and reenter society is unconstitutional.

Each of the four *Bullock* factors counsels against mandatory LWOP for young adults. Mandatory LWOP (1) poses too great a risk of disproportionate punishment because neither the individual's level of culpability nor the circumstances of the

[82] House Fiscal Agency, *Legislative Analysis: Raise the Age* at p 17, *supra* n 54.

offense are considered; (2) is disproportionate when automatically imposed on young adults who the law protects from harsh penalties in other criminal contexts; (3) is imposed by a minority of states; and (4) does not advance the goals of rehabilitation.

**a) The Michigan Constitution offers broader protection than the Eighth Amendment and prohibits mandatory LWOP for young adults.**

The Michigan Constitution's prohibition of cruel or unusual punishments is interpreted more expansively than the United States Supreme Court interprets the Eighth Amendment. *Bullock*, 440 Mich at 30. The *Bullock* Court emphasized the textual variance between the Michigan Constitution ("cruel *or* unusual") and the Eighth Amendment ("cruel *and* unusual"). *Id.*; Const 1963, art 1, § 16; US Const, Am VIII. The Court concluded that "this difference in phraseology. . . might well lead to different results with regard to allegedly disproportionate prison terms." *Id.* at 31, citing *Lorentzen*, 387 Mich at 171-172. Indeed, in *Bullock*, this Court struck down a mandatory LWOP sentence on state constitutional grounds, though that same sentence had survived an Eighth Amendment challenge in the United States Supreme Court. 440 Mich at 27, 37.

The *Bullock* Court examined the history of the ban on excessive punishments in Michigan. *Bullock*, 440 Mich at 32-35. At the time the Michigan Constitution was ratified in 1963, both the United States Supreme Court and the Michigan Supreme Court had held that grossly disproportionate sentences were constitutionally forbidden. *Id.*, citing *Weems*, 217 US at 366-367; *Harmelin v Michigan*, 501 US 957, 1009-1010 (1991) (White, J., dissenting); *People v Mire*, 173 Mich 357, 361- 362 (1912).

The Court cited this as one reason for adopting a "broader view of state constitutional protection". *Bullock*, 440 Mich at 32-33. The framers of Michigan's Constitution understood the protection against cruel or unusual punishments to prohibit grossly disproportionate sentences, and therefore Const art 1, § 16 does just that, independent of federal courts' interpretation of Eighth Amendment. *Id*. at 32.

The Michigan Constitution prohibits cruel punishment, even if it is not unusual. See also *Harmelin*, 501 US at 995 ("Severe, mandatory penalties may be cruel, but they are not unusual in the constitutional sense, having been employed in various forms throughout our Nation's history."). Likewise, Const art 1, § 16 prohibits unusual punishment even if it is not cruel. "'The prohibition of punishment that is unusual but not necessarily cruel carries an implication that unusually excessive imprisonment is included in that prohibition.'" *Bullock*, 440 Mich at 31, quoting *Lorentzen*, 387 Mich at 172. A punishment that is either cruel or unusual may pass federal constitutional muster, but it must fall under the Michigan Constitution.

It is cruel to sentence someone like Mr. Parks to die in prison without considering that his brain was not yet fully developed at the time of the crime. Section I(a)(1)(i), *supra*. It is also cruel to sentence a young adult to mandatory LWOP where he exhibits both the hallmark features of youth and great capacity for rehabilitation. It is cruel to sentence a young aider and abettor to mandatory LWOP. Many areas of law recognize that young adults are not as responsible for their actions as older adults. See Section I(a)(1)(ii), *supra*.

Mandatory LWOP is also unusual. Michigan is one of only 18 states that impose mandatory LWOP on young adults who commit premeditated murder regardless of the facts and circumstances. See Section II(a)(3), *supra*. The United States Supreme Court struck down LWOP sentences where 39 and 29 states, respectively, permitted them. *Graham*, 560 US at 62; *Miller*, 567 US at 482.

Finally, our state constitution requires sentences to comport with the evolving standards of decency. *Lorentzen,* 387 Mich at 178-179. See also *People v Coles*, 417 Mich 523, 530 (1990), overruled on other grounds by *People v Milbourn*, 435 Mich 630 (1990) and by *People v Lockridge*, 498 Mich 358 (2015); *Bullock*, 440 Mich at 34 ("*Lorentzen*'s analysis, although relying in the alternative on the Eighth Amendment, was firmly and sufficiently rooted in Const 1963, art 1, § 16."). Because mandatory LWOP for young adults is an uncommon punishment in other states and because it is excessive in many cases, it does not pass *Lorentzen*'s "decency test." *Lorentzen*, 387 Mich at 179.

States are free to afford protections to young adults beyond what federal law requires. *Jones*, 141 S Ct at 1323. The Michigan Constitution demands that a sentencing court account for youth and its mitigating properties when sentencing a young adult. This Court should find that mandatory LWOP for young adults aged 18 to 25 is cruel, unusual, or both, and is therefore prohibited by Const 1963, art 1, § 16.

**A mandatory LWOP sentence is unconstitutional as applied to Mr. Parks under the Michigan Constitution.**

Mr. Parks' sentence is disproportionate to him and unconstitutional as applied. Const 1963, art 1, § 16. Eighteen-year-old Mr. Parks' immaturity, the lack of guidance

and resources available to him, his vulnerability to influence by others, his role as an aider and abettor, and the extremely difficult family and home environment from which he could not extricate himself provide important context for his offense and demonstrate that he is not deserving of the harshest punishment available under the law. See *Miller*, 567 US at 477-478; *People v Dipiazza*, 286 Mich App 137, 153- 157 (2009) (holding that sex offender registration was cruel and unusual punishment as applied to an 18-year-old defendant).

Mr. Parks' childhood occurred amidst the backdrop of a tumultuous home life. His parents separated when he was just a baby, and he was raised primarily by his mother with "periodic contact" from his father. PSIR, p. 12. When Mr. Parks was just 12 years old, in 2011, he was involved in an incident of malicious destruction of property. PSIR, p. 9. He was placed on probation, which required him to attend school and receive passing grades, and to "comply with [the] rules of home, court, and school." PSIR, p. 9. He was also ordered to complete a psychological evaluation, which indicated that while he did not have "a serious mental condition[,]" there were "strong indicator precursors for Conduct Disorder" and some likely learning disabilities, such as ADHD, "[a]cademic [p]roblems[,] . . . [p]oor [j]udgment and [p]oor [i]nsight." PSIR, p. 9-10. Mr. Parks also struggled with "[c]annabis [a]buse." PSIR, p. 10.

Without the proper guidance and tools to address his learning disabilities and behavioral issues, Mr. Parks struggled to overcome them. He was suspended from school "numerous times" for "failing to follow directions, displaying angry outbursts, . . . cussing at school staff[, and] threatening [school] staff." PSIR, p. 9. He also tested

positive "numerous times" for marijuana. PSIR, p. 9. Mr. Parks' mother said she was "unable to control his behavior" and he was sent to live with his aunt. PSIR, p. 9. Approximately one year later, Mr. Parks' aunt requested that he be removed from her home and he was placed back with his mother. PSIR, p. 10. Amidst his unstable living situation, Mr. Parks was moved back and forth from "traditional" to "intensive" probation, and in May of 2012, his probation was eventually continued for another year. PSIR, p. 10. The probation department recommended that Mr. Parks be placed at Wolverine Human Services, and he was also sent to tour the Ryan Correctional Facility. PSIR, p. 10. In December of 2013, when Mr. Parks was 15 years old, his case was closed. PSIR, p. 10. Around this time, Mr. Parks dropped out of high school, leaving him with a ninth-grade education. PSIR, p. 12.

While the killing of Mr. Jones-Dickerson was grave, Mr. Parks' youth, difficult life circumstances, and issues with behavior, learning, and marijuana use reduce his culpability. At age 18, his brain was not fully developed and therefore his ability to assess risks and consequences was limited. On top of Mr. Parks' typical youthful immaturity, the turbulence of his home life - combined with his learning and behavioral disabilities and marijuana use - hindered the development of his brain and inhibited his ability to regulate his emotions and his behavior.[83]

Further, Mr. Parks' involvement in this offense was due at least in part to the influence of Mr. Harris, his older cousin with whom he had a close relationship and the presence of multiple peers in the car before the homicide. An absent father and

[83] Tottenham & Galvan, 70 Neurosci Biobehav Rev 217, 220-222.

lack of present male authority figures life further fostered Mr. Harris' influence in Mr. Parks' life. Mr. Harris was the perpetrator of this offense – he was the person who pulled the trigger and killed Mr. Jones-Dickerson, and in fact was the only one present in the parking lot at the time of the homicide. Mr. Parks' involvement was, at most, passing a gun to Mr. Harris in the backseat of Ms. Ratcliff's car. Mr. Parks' status as an aider and abettor further diminishes his culpability.

Mr. Parks' youth, his circumstances, the influence of his cousin and peer Mr. Harris, and his role as an aider and abettor mitigate his culpability and makes mandatory LWOP disproportionate.

Mr. Parks' potential for rehabilitation also renders his LWOP sentence excessive. Mr. Parks' 2012 psychological evaluation indicated that conduct disorder, ADHD and "learning disabilities[.]" and "[c]annabis [a]buse" were the likely impetus not only for his behavioral outbursts and difficulties with following rules, but also for his eventual decision to leave high school after the ninth grade. PSIR, p. 9-10, 12. Addressing these issues with medication, psychological services, and treatment would allow the Parole Board to consider whether Mr. Parks can re-enter society as a rehabilitated older adult. However, Mr. Parks' LWOP sentence does not allow for review of his rehabilitation. No matter how great his progress, no matter how much he grows and matures, and no matter how much he accomplishes, he will die in prison unless this Court intervenes.

The law's harshest penalty is unconstitutional as applied to Mr. Parks. See *Bullock*, 440 Mich at 32-33; *Lorentzen*, 387 Mich at 176. See also *Steanhouse*, 500

Mich at 459, citing *Milbourn*, 435 Mich at 636. His sentence is disproportionate and violates our state constitution's ban on cruel or unusual punishment. Const 1963, art 1, § 16.

**c) Mandatory LWOP for young adults is disproportionate and violates the Eighth Amendment.**

Michigan's current sentencing scheme makes youth irrelevant to the imposition of the harshest possible penalty on young adults. This poses "too great a risk of disproportionate punishment" and is thus cruel and unusual. *Miller*, 567 US at 211; US Const, Ams VIII and XIV.

The concept of Eighth Amendment proportionality is viewed "less through a historical prism than according to the evolving standards of decency that mark the progress of a maturing society." *Miller*, 567 US at 469-70, quoting *Estelle v Gamble*, 429 US 97, 102 (1976). "Time works changes" upon the Eighth Amendment, bringing into existence "new conditions and purposes." *Weems*, 217 US at 373. The protections of the Eighth Amendment are not static; rather, "evolving standards of decency. . . mark the progress of a maturing society[.]" *Miller*, 567 US at 469-70 (quotation marks and citations omitted).

Brain development research, which evolves over time, informs the constitutionality of punishment. Evolving standards of decency require the law to keep pace with the evolving science of brain development. See *Roper*, 543 US at 563, 569; *Atkins*, 536 US at 311. As discussed above, current scientific research demonstrates the "distinctive attributes of youth" that formed the basis for the Court's decision in *Miller* exist until one's mid-twenties. *Miller*, 567 US at 472.

The United States Supreme Court has made clear that a person's chronological age is not the only factor that can render unconstitutional the imposition of the harshest penalty. Limited ability to control one's impulses, engage in logical reasoning, and weigh the potential consequences of one's actions reduce culpability independent of chronological age. *Atkins*, 536 US at 316. And youth itself "is more than a chronological fact." *Eddings v Oklahoma*, 455 US 104, 115 (1982). Where research shows young adults have underdeveloped brain systems like their 17-year-old counterparts, imposition of the harshest penalty on them without consideration of youth and its mitigating properties is unconstitutional.

## Conclusion

Our state constitution prohibits punishment that is cruel, unusual, or both. This Court should rule that, under Const 1963, art 1, § 16, mandatory LWOP is unconstitutional for young adults between the ages of 18 and 25. Because their brains are less developed than older adults', they are less blameworthy and more capable of rehabilitation. Given what science and society know about young adults, mandatory LWOP is disproportionate for them, just as it is for 17-year-olds.

Mandatory LWOP is unconstitutional for young adults as a category and as applied to Mr. Parks. When sentencing a young adult like Mr. Parks, a court must account for mitigating characteristics and have discretion to determine whether the harshest possible penalty is warranted. Mr. Parks' difficult life and family circumstances, struggles with substance abuse and learning and behavioral issues, lack of guidance, vulnerability to negative peer influences, and his status as an aider and abettor mitigate his culpability.

## Relief Requested

For the reasons set forth above, Kemo Parks respectfully requests this Court:

a. Remand for resentencing on Mr. Parks' first-degree murder conviction, where the sentencing court shall consider Mr. Parks' youth and attendant characteristics and shall have discretion to impose a term-of-years sentence or LWOP.

b. Hold that, when a person was 18 years to 25 years old at the time of their crime, the sentencing court must consider their youth and attendant characteristics before deciding whether to impose a term-of-years sentence or LWOP.

Respectfully submitted,

**STATE APPELLATE DEFENDER OFFICE**

/s/ Angeles R. Meneses
BY:_____

**Angeles R. Meneses (P80146)**
**Garrett Burton**
Assistant Defenders
**Jessica Zimbelman (P 72042)**
Managing Attorney
3031 W. Grand Blvd, Ste 450
Detroit, Michigan 48202
(313) 256-9833

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