No. 121932

IN THE
ILLINOIS SUPREME COURT

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-14-1744
Plaintiff-Appellant,	)	
v.	)	There on Appeal from the Circuit Court of Cook County, Illinois No. 11 CR 11184
DARIEN HARRIS,	)	The Honorable Nicholas R. Ford,
Defendant-Appellee.	)	Judge Presiding.

REPLY BRIEF OF PEOPLE OF THE STATE OF ILLINOIS.
RESPONSE TO CROSS-RELIEF REQUEST

LISA MADIGAN
Attorney General of Illinois

DAVID L. FRANKLIN
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

GOPI KASHYAP
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-4684
eserve.criminalappeals@atg.state.il.us

Counsel for Plaintiff-Appellant
People of the State of Illinois

ORAL ARGUMENT REQUESTED

E-FILED
4/24/2018 4:49 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

POINTS AND AUTHORITIES

SUMMARY OF THE ARGUMENT

Defendant forfeited his sentencing challenges by not raising or developing the claims in the trial court, and the plain-error rule does not excuse the forfeiture. Forfeiture aside, defendant's aggregate sentence is constitutional. As the People's opening brief established, applying the legislatively mandated sentence to defendant — an eighteen-year-old whose premeditated surprise attack killed one person, severely wounded another, and narrowly avoided injuring two others — is consistent with Article I, section 11 of the Illinois Constitution and the moral sense of our community. Defendant fails to show otherwise.

Instead, defendant asks this Court to reject its established understanding of article I, section 11, the trial court's factual findings, and our widespread societal recognition that eighteen-year-olds are adults. Similarly, his Eighth Amendment argument asks this Court to extend United States Supreme Court precedent and constitutionalize an ill-defined distinction between young adults and adults based solely on nascent and ambiguous scientific research. Defendant's requests have no basis in law.

Finally, viewed in the light most favorable to the People, the evidence — including testimony from three witnesses and a corroborating surveillance video — proved defendant guilty of Rondell Moore's first degree murder beyond a reasonable doubt. Accordingly, this Court should affirm defendant's convictions and sentences.

ARGUMENT

I. Defendant Forfeited His As-Applied Claims and the Plain-Error Rule Does Not Excuse the Forfeiture.

A. Defendant forfeited appellate review of his claims.

By failing to challenge the constitutionality of his mandatory sentence in the trial court, defendant forfeited his claims. Peo. Br. 10;[1] 730 ILCS 5/5-4.5-50(d) (2011) (written post-sentencing motion requirement). Although the People did not assert forfeiture in the appellate court, the dissent below found that defendant's failure to raise and develop his Illinois constitutional claim was "reason alone" to reject his claim, A13, and the People's forfeiture argument is properly raised before this Court. Peo. Br. 9 n.4 (citing *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004)). Thus, defendant's forfeiture provides a sufficient basis to uphold the trial court's judgment.

B. The trial court's imposition of the legislatively mandated aggregate minimum prison term is not clear or obvious error under current law.

Defendant cannot excuse his forfeiture under the plain-error rule because he fails to satisfy — indeed, does not even attempt to satisfy — his initial burden of establishing a "clear" or "obvious" error "under current law."

---

[1] Citations to the common law record, report of proceedings, and the People's trial exhibits appear as "C__," "R.__," and "Exh. __," respectively. Citations to the People's opening brief, the People's appendix, defendant's brief, and defendant's appendix appear as "Peo. Br. __" "A__," "Def. Br. __," and "DA__," respectively.

.

People v. Givens, 237 Ill. 2d 311, 329 (2010) (citing *In re M.W.*, 232 Ill. 2d 408, 431 (2009), and *United States v. Olano*, 507 U.S. 725, 734 (1993)).

1. The lack of a sufficient evidentiary record precludes any finding of plain error.

Defendant's failure to develop the factual and legal bases for his as-applied challenges in the trial court, *see* Peo. Br. 10-12, is alone sufficient to defeat a finding of plain error.

"All as-applied challenges are, by definition, reliant on the application of the law to the *specific* facts and circumstances alleged by the challenger." *People ex rel Hartrich v. 2010 Harley-Davidson*, 2018 IL 121636, ¶ 31 (emphasis in original). Thus, this Court has long required a party to develop the factual bases for an as-applied constitutional challenge in the trial court, regardless of whether the case is on direct or collateral review. *See, e.g.*, *id.*, ¶¶ 29-35 (direct review); *People v. Minnis*, 2016 IL 119563, ¶ 19 (direct); *People v. Rizzo*, 2016 IL 118599, ¶¶ 23-26, 48 (direct); *People v. Thompson*, 2015 IL 118151, ¶¶ 36-44 (collateral review); *People v. Mosley*, 2015 IL 115872, ¶¶ 47-49 (direct). Reviewing courts "are not arbiters of the facts," *In re Parentage of John M.*, 212 Ill. 2d 253, 268 (2004), and "without an evidentiary hearing and sufficient factual findings, a court cannot properly conclude that a statute is unconstitutional as applied," *2010 Harley-Davidson*, 2018 IL 121636, ¶ 32 (citation omitted). Because defendant did not develop the facts necessary to support his claims, his plain-error argument fails at the threshold. *See Thompson*, 2015 IL 118151, ¶ 38.

Defendant responds that no factual development is necessary because the trial court received evidence at the sentencing hearing and secondary sources provide support for his claims. Def. Br. 30-31. But *Thompson* rejected this notion and refused to consider a young adult offender's defaulted as-applied Eighth Amendment claim because the record "contain[ed] nothing about how th[e] [pertinent] science applie[d] to the circumstances of defendant's case," or "any factual development on the issue of whether the rationale of [*Miller v. Alabama*, 567 U.S. 460 (2012)] should be extended beyond minors under the age of 18." *Thompson*, 2015 IL 118151, ¶ 38; *cf. People v. Holman*, 2017 IL 120655, ¶¶ 30-32 (reaffirming *Thompson*, but recognizing "a very narrow exception" for juvenile offender's claim that sentencing hearing did not comply with *Miller*). The lack of an adequate factual record alone precludes a finding of plain error. *See* A13.

2. Defendant fails to show that his sentence amounts to clear or obvious error under current law.

Insufficient factual development aside, the record before this Court fails to establish that defendant's mandatory aggregate minimum prison term "amount[s] to obvious error controlled by clear precedent." *Givens*, 237 Ill. 2d at 326, 329. No precedent from this Court or the United States Supreme Court establishes beyond "reasonable dispute" that mandating life imprisonment for defendant is unconstitutional, *Puckett v. United States*, 556 U.S. 129, 135 (2009); *see* Peo. Br. 17-30 (showing that defendant's sentence is constitutional under existing precedent), thus foreclosing a finding of plain

error, *see, e.g.*, *United States v. Carlile*, 884 F.3d 554, 558 (5th Cir. 2018) (error not plain where no controlling precedent "directly support[ed]" defendant's claim). The Appellate Court has largely rejected as-applied challenges to mandatory sentences of life imprisonment imposed on young adult offenders.[2] And every other reviewing court in the country to have considered the Eighth Amendment question has declined to extend the pertinent precedent to young adult offenders.[3]

---

[2] *See People v. Pittman*, 2018 IL App (1st) 152030, ¶¶ 1, 20-42 (upholding eighteen-year-old's mandatory natural-life sentence under article I, section 11, and Eighth Amendment), *PLA pending*, No. 123410 (Ill.) (filed Mar. 30, 2018); *People v. McKee*, 2017 IL App (3d) 140881, ¶¶ 22-36 (same), *PLA pending*, No. 122468 (Ill.) (filed July 13, 2017); *People v. Thomas*, 2017 IL App (1st) 142557, ¶¶ 1, 21-48 (same for *de facto* natural-life sentence), *PLA pending*, No. 122101 (Ill.) (filed Apr. 6, 2017); *People v. Ybarra*, 2016 IL App (1st) 142407, ¶¶ 22-34 (upholding twenty-year-old's mandatory natural-life sentence under article I, section 11), *PLA denied*, No. 121587 (Ill. Jan. 25, 2017). *But see People v. House*, 2015 IL App (1st) 110580, ¶¶ 80-104 (nineteen-year-old's mandatory natural-life sentence unconstitutional under article I, section 11), *PLAs pending*, Nos. 122134 & 122140 (Ill.) (filed Apr. 14 & June 1, 2017).

[3] In addition to those cited in the People's opening brief, Peo. Br. 26 n.7, 35 n.8, the following appellate decisions have declined to extend the holdings of *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), or *Miller*, 567 U.S. at 460, to young adult offenders: *Doyle v. Stephens*, 535 Fed. App'x 391, 395-96 & n.3 (5th Cir. 2013) (nonprecedential); *People v. Windfield*, 208 Cal. Rptr. 3d 47, 68-70 (Ct. App. 2016), *review granted*, 386 P.3d 796 (Cal. Jan. 11, 2017); *People v. Perez*, 208 Cal. Rptr. 3d 34, 37-38 (Ct. App. 2016); *Romero v. State*, 105 So. 3d 550, 552-54 (Fla. Dist. Ct. App. 2012); *State v. Caesar*, __ So. 3d __, 2018 WL 1082436, *2 (La. Ct. App. Feb. 28, 2018); *State v. Bates*, 464 S.W.3d 257, 266-69 (Mo. Ct. App. 2015); *State v. Phipps*, 2016 WL 715722, at *7-9 (Ohio Ct. App. Feb. 23, 2016) (unreported); *Commonwealth v. Furgess*, 149 A.3d 90, 93-94 (Pa. Super. Ct. 2016); *State v. Hart*, 353 P.3d 253, 257-58 (Wash. Ct. App. 2015).

Moreover, to find error under the Illinois Constitution would require this Court to radically depart from established precedent. *See* Peo. Br. 17-37; *infra*, Part II.A. Likewise, to sustain defendant's Eighth Amendment challenge, the Court would need to extend Supreme Court precedent by applying it to a new class of offenders. *See* Peo. Br. 33-35; *infra*, Part II.B. However, alleged errors about which courts are divided or that require departure from or extension of existing precedent are not clear or obvious errors under current law. *Givens*, 237 Ill. 2d at 326, 329; *see, e.g.*, *United States v. McCarty*, 612 F.3d 1020, 1026 (8th Cir. 2010) (alleged errors relying "upon presumptions contrary to our precedent" "neither clear nor obvious"); *United States v. Trejo*, 610 F.3d 308, 319 (5th Cir. 2010) (error "not plain under 'current law'" if "'theory requires the extension of precedent'"); *United States v. Walton*, 537 Fed. App'x 430, 437 (5th Cir. 2013) (nonprecedential) (no plain error where sustaining juvenile's Eighth Amendment challenge required extension of *Miller* and/or *Graham*). Thus, defendant's plain error argument fails. *See, e.g.*, *Pittman*, 2018 IL App (1st) 152030, ¶¶ 21-22 (sentencing eighteen-year-old to mandatory natural life not plain error).

3. Defendant is not entitled to a remand to develop facts he should have presented in the first instance.

Defendant had every opportunity and incentive to raise and develop the factual bases for his claims in the trial court. He was sentenced in May 2014, R.CC1, about nine years after *Roper*, four years after *Graham*, and two years after *Miller*. And the principle that a litigant must develop an

evidentiary record to support an as-applied challenge is well established. *See, e.g.*, *Parentage of John M.*, 212 Ill. 2d at 268 (citing cases). These facts distinguish this case from others in which the Court has retained jurisdiction and remanded for factual development. *See* Def. Br. 31 (citing cases). Moreover, prolonging this appeal to litigate claims neither presented in the trial court nor adequately supported by the record would defeat the purposes of the procedural rules that defendant neglected to follow. *See People v. Baez*, 241 Ill. 2d 44, 129-130 (2011). Thus, this Court should affirm defendant's sentence and decline to remand for further proceedings.

II. Forfeiture Aside, Defendant's Sentence Is Constitutional.

A. Applying the mandatory prison term to defendant comports with the Illinois Constitution.

1. This Court's precedent defeats defendant's article I, section 11 challenge.

Defendant fails to show that his aggregate sentence is "'*clearly* in excess of the general constitutional limitations on'" the legislature's authority to fix penalties. *Rizzo*, 2016 IL 118599, ¶ 42 n.5 (emphasis in original) (citation omitted).[4]

[4] Contrary to defendant's assertion, the People do not argue that a defendant cannot raise an article I, section 11 challenge to an aggregate prison term. Def. Br. 32-34 (citing Peo. Br. 16). Indeed, the People presented the following issue: "Whether applying the legislatively mandated *aggregate* minimum prison term of seventy-six years to defendant violates Article I, section 11 of the Illinois Constitution." Peo. Br. 2; *see id.* at 15-17 (concluding that proper inquiry is whether legislatively mandated aggregate minimum prison term, as applied to defendant, is so wholly disproportionate to offenses committed as to shock moral sense of community). And as the People's

Defendant's argument refuses to acknowledge controlling precedent interpreting article I, section 11 and establishing that the legislature presumptively does not violate the rehabilitation clause when it mandates life imprisonment for adult offenders. As this Court has repeatedly held, article I, section 11 does not require the legislature in fixing a penalty to give greater consideration or weight to the possibility of rehabilitating an offender than to the seriousness of the offenses. Peo. Br. 14-15, 17-18 (citing cases). Legislative enactments determining penalties for criminal conduct are presumed constitutional because the legislative judgment itself represents the general moral consensus of the People. *Id.* (citing cases). Thus, the rehabilitation clause "does not prevent the legislature from fixing mandatory minimum penalties where it has been determined that no set of mitigating circumstances could allow a proper penalty of less than" the designated minimum for the particular offenses. *People v. Taylor*, 102 Ill. 2d 201, 206 (1984); *see* Peo. Br. 15, 21-27, 30-31.

To be sure, a "rare convergence" of "several unusual circumstances," *People v. Huddleston*, 212 Ill. 2d 107, 130-31 (2004), might arise where the mandatory sentence does not reflect "the factual realities of the case and does not accurately represent [the] defendant's personal culpability such that it shocks the moral sense of the community," *People v. Leon Miller*, 202 Ill. 2d

---

opening brief established, defendant's aggregate prison term is constitutional. *Id.* at 17-38.

328, 341 (2002). In this Court, that has happened only once, where the legislative scheme subjected "a 15-year-old with one minute to contemplate his decision to participate in the incident and stood as a lookout during the shooting, but never handled a gun," to the same mandatory natural-life sentence as an adult who personally discharges a firearm that results in multiple murders. *Id.* at 341. This Court has since limited *Leon Miller* to its unique factual circumstances, explaining that Leon's "age and level of culpability" were crucial to its holding. *Huddleston*, 212 Ill. 2d at 131.

And post–*Miller v. Alabama*, this Court has maintained the distinction between passive and active participation under article I, section 11. In *Davis*, this Court rejected a fourteen-year-old's challenge to his mandatory natural-life sentence on *res judicata* grounds, even though the original judgment was issued before *Roper* and *Leon Miller*. *People v. Davis*, 2014 IL 115595, ¶¶ 4, 45 (citing *Leon Miller*'s recognition of the special status of juveniles). *Davis* explained that under *Leon Miller*, if the evidence shows that the juvenile offender actively participated in the planning of a crime that resulted multiple murders, then his mandatory natural-life sentence does not violate article I, section 11. *Davis*, 2014 IL 115595, ¶ 45.

Disregarding this precedent, defendant relies on articles from scientific journals and law reviews to argue that although he was (1) four years older than Davis, (2) a legal adult, and (3) convicted as the principal offender, his *de facto* natural-life sentence violates article I, section 11. But this Court's

refusal to re-litigate Davis's Illinois constitutional claim underscores the conclusion that *Roper*, its progeny, and new research concerning juvenile development do not necessarily make even a *juvenile*'s mandatory life-without-parole sentence shocking to the moral sense under article I, section 11.[5] Thus, even assuming that the same science applies here, imposing a mandatory *de facto* life-without-parole sentence on defendant — an eighteen-year-old who fired a gun at four unsuspecting individuals trying to fix a car at a gas station, killing one, severely injuring a second, and miraculously missing the remaining two — *a fortiori* does not violate article I, section 11. *See* Peo. Br. 20-38; *infra*, Part II.A.3.

Defendant insists that the rehabilitation clause independently requires individualized sentencing, Def. Br. 37-40, relying on this Court's holding that the clause "provide[s] a limitation on penalties beyond those afforded by the eighth amendment." *People v. Clemons*, 2012 IL 107821, ¶ 39. But this Court has never interpreted article I, section 11 as defendant proposes.

Article I, section 11 is directed at both the judiciary and legislature. Courts must sentence the offender with the dual objectives of protecting the public *and* restoring him to useful citizenship. *Id.*, ¶¶ 29-30; *Taylor*, 102 Ill.

---

[5] Of course, even though there was no article I, section 11 violation, the Supremacy Clause required this Court to invalidate Davis's sentence under the Eighth Amendment. U.S. Const., art. VI, cl. 2; *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1383 (2015) (States "must not give effect to state laws that conflict with federal laws"). Here, no federal law precludes defendant's sentence.

2d at 205-06; *see People v. Maldonado*, 240 Ill. App. 3d 470, 485-86 (1st Dist. 1992) (article I, section 11, requires courts to balance retributive and rehabilitative goals when imposing sentences). In this way, article I, section 11's protections exceed those afforded by the Eighth Amendment. *Lockyer v. Andrade*, 538 U.S. 63, 71-73 (2003) (Eighth Amendment's "narrow proportionality principle" applies only in the "exceedingly rare" case where penalty is so harsh that it is "grossly disproportionate" to gravity of offense); *United States v. Vanhorn*, 740 F.3d 1166, 1169-70 (8th Cir. 2014) (sentence within statutory range does not violate Eighth Amendment).

However, as to the legislature, article I, section 11, requires only that it consider both objectives when defining crimes and their penalties. *Taylor*, 102 Ill. 2d at 206. Thus, although the legislature must balance the goals of punishment, it is not required to give greater weight to the rehabilitative objective, and may instead consider the severity of an offense and determine that no set of mitigating circumstances could permit an appropriate punishment less than the minimum. Peo. Br. 14-15, 17-18 (citing cases); *cf. People v. Hill*, 199 Ill. 2d 440, 447-49 (2002) (individualized sentencing is matter of public policy for legislature, not constitutional requirement). For that reason, mandatory minimum penalties are presumptively consistent with the rehabilitation clause, even if they otherwise violate the Eighth Amendment's categorical rules. *See supra* n.5. In short, article I, section 11

is not synonymous with the Eighth Amendment and the protections afforded by each provision differ. *Clemons*, 2012 IL 107821, ¶¶ 35-42.

2. Defendant may not prove his constitutional claim by mischaracterizing the facts and minimizing his role in the offenses.

Unlike *Leon Miller*, this record does not present a rare situation where several unusual circumstances have converged to mandate a sentence that fails to reflect "the factual realities of the case" or "accurately represent [the] defendant's personal culpability." 202 Ill. 2d at 341; Peo. Br. 19-30. Defendant was neither a fifteen-year-old nor "the least culpable offender imaginable," *Leon Miller*, 202 Ill. 2d at 341, when he "shot up a gas station and in the process killed one man and nearly killed another," R.CC9. Murder is the most serious crime in terms of moral depravity, and defendant's actions reveal a callous disregard for the value of human life. Peo. Br. 21, 26-27. That he had no prior arrests for violence against others in no way diminishes his culpability for arming himself with a uniquely dangerous weapon and carrying out a preconceived plan to commit the most serious crimes. *Id.* at 22-30. And even if the lack of a criminal history suggests a potential for rehabilitation, the legislature reasonably could determine on the facts here that society's interest in retribution, deterrence, and incapacitation

outweighs any rehabilitative potential that defendant's individual circumstances may suggest. *Id.*

Defendant counters with a fanciful "second-shooter" theory, Def. Br. 23-24, which is contradicted by both the evidence and the trial court's factual findings. The evidence supports the trial court's findings that defendant fired a weapon directly at Quincy Woulard and Rondell, killing Rondell and nearly killing Woulard, and further that defendant tried to shoot Ronald Moore. R.BB42-50, CC9; *infra*, Part III. Although the trial court speculated that the driver, Aaron Jones, may have been more involved "in this case" than he admitted, it expressly declined to make any finding on that point. R.BB48 ("not for this Court to decide" Jones's "level of involvement"). Thus, this Court should reject defendant's attempt to minimize his role in the offenses.

However, even if Jones ultimately fired the shot that killed Rondell, defendant's culpability remains the same. As explained *infra*, Part III, under this theory, defendant and Jones participated in a criminal design to kill Rondell, and Jones succeeded in killing Rondell after defendant failed. But defendant still fired a gun at the victims. That defendant missed Rondell would make him no less culpable for the murder, and thus, the legislature's judgment as to his *de facto* life-without-parole sentence is not shocking.

Nor does defendant's second-shooter theory establish that he "succumbed to youthful pressures in participating in" the shootings. Def. Br. 24. As the trial court noted, the record revealed no "impetus" for defendant's

actions. R.CC9. In his presentence interview, defendant cited no negative influences and instead described a good family life with positive influences. C199-201. Although defendant's aunt believed that he "looked for love in the wrong place and fell in the hands of the enemy," C218, defendant denied any gang affiliation and presented no evidence identifying this alleged enemy or how it influenced his actions, C199-201.

And even if defendant was influenced by others, the legislature reasonably chose to treat him as the adult that he is. As the People's opening brief demonstrated, given the seriousness of the offenses (murder and attempted murder), the unique dangers presented by firearms, the deterrent and retributive purposes of consecutive sentencing, and the widespread societal recognition that legal adulthood begins at age eighteen, it is consistent with our community's moral sense to mandate life imprisonment for this defendant. Peo. Br. 17-38.

3. Unlike with juveniles, there exists no widespread societal or legal recognition of the special status of young adults; thus, there is no basis to override the legislative judgment here.

Faced with this contrary precedent, defendant asks this Court to recognize a new class of young adult offenders, or at least equate eighteen-year-olds with juveniles, even though our legislature — presumably aware of the scientific research cited in *Roper* and its progeny — declined to do so as recently as 2013 and 2015. Peo. Br. 24-26. But unlike the distinction between juveniles and adults, and as our legislature's recent enactments

demonstrate, our community's moral sense does not reflect a widespread recognition that young adults are categorically different from older adults. Instead, for sentencing purposes, our legislature, this Court, the Supreme Court, and every other reviewing court in the country have drawn the line between childhood and adulthood at age eighteen. *Id.* at 24-26 & n.7, 34-35 & n.8; *supra*, Part I.B.2 & nn.2-3. That line is dispositive here.

The constitutional holdings of this Court and the Supreme Court are primarily grounded in the special status that juveniles have attained in our society, "what any person knows" about juveniles, and what our laws have long reflected in relation to that special class. *Montgomery v. Louisiana*, 136 S. Ct. 718, 732-33 (2016); *J.D.B. v. North Carolina*, 564 U.S. 261, 273 (2011) (citing *Roper*, 543 U.S. at 569); *Holman*, 2017 IL 120655, ¶ 44 (citing *People v. McWilliams*, 348 Ill. 333, 336 (1932)); *Davis*, 2014 IL 115595, ¶ 45; *see Thompson v. Oklahoma*, 487 U.S. 815, 823-29 & n.23, 833-38 (1988) (plurality op.) (relying in part on "experience of mankind" and "long history of our law" distinguishing children from adults); *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)) ("Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults."). Indeed, the "idea that childhood has constitutional import did not originate with" *Roper*; the Supreme "Court has recognized childhood in and of itself as constitutionally significant" since the mid-1900s, and its "rationale in these early cases mirrors the scientific

advances in development," even though that research was not yet available. Beth A. Colgan, *Constitutional Line Drawing at the Intersection of Childhood & Crime*, 9 Stan. J. Civ. Rts. & Civ. Liberties 79, 90-91 (2013). Thus, although scientific developments confirm or explain why our nation favors distinguishing children from adults, they are neither necessary nor sufficient to support the constitutional holdings. *See J.D.B.*, 564 U.S. at 272-73 & n.5 (although citation to "science authorities is unnecessary to establish the[] commonsense propositions" that children are less mature and responsible than adults, "the literature confirms what experience bears out"); Jamie D. Brooks, *"What Any Parent Knows" But the Supreme Court Misunderstands: Reassessing Neuroscience's Role in Diminished Capacity Jurisprudence*, 17 New Crim. L. Rev. 442, 444 (2014) (studies establishing neurobiological underpinnings of juvenile characteristics "only confirm behavioral propensities that would be obvious to any parent").

Notwithstanding that brain development is ongoing and that the qualities of youth do not disappear on one's eighteenth birthday, both society and our constitutional rules draw the line at age eighteen. *Roper*, 543 U.S. at 573-74 (observing that psychiatrists begin diagnosing antisocial personality disorder at age eighteen); Peo. Br. 24-26 & n.7, 34-35 & n.8; *see* United Nations Convention on the Rights of the Child, Art. 1, Nov. 20, 1989, 28 I.L.M. 1448, 1459 (entered into force Sept. 2, 1990) ("a child means every human being below the age of eighteen years unless, under the law

applicable to the child, majority is attained earlier"). At age eighteen, the person attains a legal status that brings with it rights and responsibilities that previously were altogether withheld or subject to adult consent; in other words, society no longer considers the person a child because he assumes legal control over his person, actions, and decisions. *See* Peo. Br. 24-26; *Roper*, 543 U.S. at 579, App'x B-D (citing statutes and constitutional provision drawing line at age eighteen for attaining right to vote, serve on jury, and marry without parental or judicial consent); *Thompson*, 487 U.S. at 825 & n.23 ("'[c]hildren, by definition, are not assumed to have the capacity to take care of themselves[,]'" and "'[i]t is only upon such a premise . . . that a State may deprive children of other rights–the right to marry, for example, or the right to vote–deprivations that would be constitutionally intolerable for adults'"); Elizabeth S. Scott, *et al.*, *Young Adulthood as a Transitional Legal Category: Science, Social Change, & Justice Policy*, 85 Fordham L. Rev. 641, 642-43 (2016) (default age of majority is "natural dividing line between adult and juvenile status in the justice system," and justified in part by public safety concerns: "individuals between the ages of eighteen to twenty-one commit a large portion of serious offenses and have high recidivism rates"). Whatever scientific merit there is to this line, it is the one that our society currently draws. And as *Roper* explained, it is this societal line that is dispositive for purposes of determining whether a punishment is cruel and unusual. 543 U.S. at 574; *cf.* Kelsey B. Shust, Comment, *Extending*

Sentencing Mitigation for Deserving Young Adults, 104 J. Crim. L. & Criminology 667, 689 (2014) (*Roper* and its progeny "suggest[] that [the] developmental analysis for punishment applies only within the bounds of previously existing legal conceptions of childhood and adulthood"); Jay D. Aronson, *Neuroscience & Juvenile Justice*, 42 Akron L. Rev. 917, 927 (2009) (although *Roper* "took notice" of scientific evidence, it mentioned such evidence "only in passing," instead focusing on emergence of national consensus against capital punishment for juvenile offenders).

Underscoring this conclusion is "the scientific impossibility of identifying a precise age at which characteristics of youthfulness cease." Shust, *supra*, at 670, 679.[6] Although the brain continues to mature after age eighteen, "neuroimaging research is in its infancy" and "do[es] not [yet] allow a chronological cut-point for behavioral or cognitive maturity at either the individual or population level." Sara B. Johnson, *et al.*, *Adolescent Maturity & the Brain: The Promise & Pitfalls of Neuroscience Research in Adolescent Health Pol'y*, J. Adolesc. Health 45: 216-221 (2009), http://www.jahonline.org/

[6] *Cf.* Stephen J. Morse, *Criminal Law & Common Sense: An Essay on the Perils and Promise of Neuroscience*, 99 Marq. L. Rev. 39, 43-45, 69 (2015) ("Given how little we know about the brain-mind and brain-mind-action connections, to claim that we should radically change our conceptions of ourselves and our legal doctrines and practices based on neuroscience is a form of 'neuroarrogance.'"); *cf. generally* Andreas Kuersten, *When a Picture Is Not Worth a Thousand Words*, 84 Geo. Wash. L. Rev. Arguendo 179 (2016) (discussing potential negative effects of neuroimaging evidence in assessing individual criminal responsibility).

article/S1054-139X(09)00251-1/pdf (last visited Apr. 24, 2018), at 218.[7] Instead, the neuroscientific and legal communities continue to debate the limitations of neuroimaging and its implications for criminal justice and other areas of the law.[8]

What *is* clear is that "it is virtually impossible to parse the role of the brain from other biological systems and contexts that shape human behavior." *Id.* at 219. "Behavior in adolescence, and across the lifespan, is a function of multiple interactive influences including experience, parenting,

---

[7] *See* Johnson, *supra*, at 219 ("Linking brain scans to real-world functioning is hampered by the complex integration of brain networks involved in behavior and cognition."); Aronson, *supra*, 917 (although "slow maturation process that plays out in the social context is mirrored by a slow maturation process at the neural level," neuroscientists "do not yet understand the actual link between brain structure and behavior").

[8] *See* Paul S. Davies & Peter A. Alces, Book Review, *Neuroscience Changes More Than You Can Think*, 2017 U. Ill. J.L. Tech. & Pol'y 141, 154-55 (2017) (discussing whether and how neuroscientific research should alter our understanding of morality and law, including its limits on predicting any individual's neurological and social maturity due to other influences such as nature and nurture, and noting disagreement among neuroscientists as to impact of that research); Owen D. Jones, *et al.*, *Brain Imaging for Legal Thinkers: A Guide for the Perplexed*, 2009 Stan. Tech. L. Rev. 5, 9 & n.18 (2009) (observing that neuroimaging is often misunderstood and citing "cautionary and explanatory articles" that discuss its limits); Aronson, *supra*, at 922, 927-30 (science concerning "violent and impulsive behavior in adolescents" is "ambiguous and experts cannot yet come to a consensus about what it means"); *see also* Johnson, *supra*, at 219 (contrary to popular belief, neuroimaging studies involve "an element of subjectivity"); Jones, *supra*, at 17 n.23, 30 (similar); Aronson, *supra*, at 924-26 (discussing "severe limitations" of neuroimaging research, including small sample size, selection biases, and methodology flaws); Deborah W. Denno, *The Scientific Shortcomings of Roper v. Simmons*, 3 Ohio St. J. Crim. L. 379 (2006) (identifying flaws in research).

socioeconomic status, individual agency and self-efficacy, nutrition, culture, psychological well-being, the physical and built environments, and social relationships and interactions." *Id.* And "the relationships among these variables are complex, and they change over time and with development." *Id.* However, the simple fact that "the vast majority of [young persons] do not commit violent crimes and are able to control their impulses when it matters most" supports the reality "that factors other than myelination and pruning [in the brain] are equally, if not more important than biology in determining why some subset of [young persons] commit violent crimes." Aronson, *supra*, at 929-30. Thus, it is unclear what conclusions about young adult behavior and criminal responsibility can be drawn from neuroscience alone.

Likewise, psychological and sociological research on young adults is in its early stages and experts continue to debate what conclusions should be drawn from it. *See* Scott, *supra*, at 643. The available research fails to "indicate that individuals between the ages of eighteen and twenty are indistinguishable from younger adolescents in attributes relevant to criminal offending and punishment." *Id.* at 643-44 (expressing skepticism on both scientific and pragmatic grounds about proposals to categorically extend juvenile court treatment to age twenty-one). And the research supporting a lenient, rehabilitative approach for juveniles is "weaker for young adults"; "in some regards, young adults are more like older adults than teenagers." *Id.* at 664. Thus, although the research may support policy-based reforms in

sentencing and corrections programs for young adults, "[t]his does not mean . . . that eighteen- to twenty-one-year-olds generally should be reclassified as juveniles or that their crimes should be adjudicated in the juvenile court." *Id.* at 657. In the end, the "scientific evidence is simply not robust enough to support a response of categorical leniency toward young adult offenders." *Id.* at 664.

For these reasons, it makes sense that the constitutional line for sentencing is based primarily on society's widespread recognition of the special status of juveniles, rather than on nascent scientific research that is (1) subject to varying interpretations and (2) insufficient to supplant the truism that "[v]iolence and criminality, like all human actions and attributes, are irreducibly complicated products of the interaction of the biological and the social." Aronson, *supra*, at 929. Although defendant disagrees with our legislature's definition of adulthood, his request that this Court reject the community's moral sense as reflected in that legislation and recognize an age of adulthood based solely on undeveloped and ambiguous scientific research constitutionalizes a slippery slope that arguably has no end, and certainly not at age twenty-one, as he proposes. *Cf.* Colgan, *supra*, at 85 (frontal cortex not fully formed until mid-twenties; research does not "provide a precise answer to when transformation [from childhood to adulthood] is complete"); Debra Bradley Ruder, *A Work in Progress: The Teen Brain*, Harvard Magazine (Sept.-Oct. 2008), http://harvardmag.com/pdf/2008/09-pdfs/0908-8.pdf (last

visited Apr. 24, 2018), at 8 (frontal lobe does not fully mature "until somewhere between ages 25 and 30," much later than neurologists previously thought). Whether our societal norms should change to include a broader definition of childhood, or create a separate class for emerging adults, is a policy matter that our country's legislatures must address. *Cf. People v. Pepitone*, 2018 IL 122034, ¶ 24 ("regardless of how convincing th[e] social science may be, 'the legislature is in a better position than the judiciary to gather and evaluate data bearing on complex problems'"); Scott, *supra*, at 642 (extending juvenile protections to young adults would constitute "[m]ajor reform" and "substantial departure from" the "commonly recognized boundary in the justice system between juveniles and adults, marked by the age of majority"); Jones, *supra*, at 28 ("Norms, though influenced by biology, can never be justified by biology alone."). Until then, the legislature is within its constitutional authority to define adulthood at age eighteen for purposes of mandatory sentencing, and defendant's sentence thus comports with the Illinois Constitution.

B. The Eighth Amendment does not bar defendant's sentence.

As the People's opening brief established, the Supreme Court's limitations on mandatory life-without-parole sentencing apply only to persons under age eighteen. Peo. Br. 33-36. And as discussed *supra*, Part II.A.3, that Court's precedent is grounded in the widespread and longstanding societal and legal recognition that juveniles are different from

adults. But there simply is no comparable recognition of young adults as a separate class, and inconclusive scientific research alone is an insufficient basis on which to extend the Supreme Court's established line. *See supra*, Part II.A.3.

Contrary to defendant's position, Def. Br. 52-53, the legislature's refusal to extend juvenile court jurisdiction to eighteen-year-old offenders corroborates the societal judgment that such offenders should not be treated like juveniles. Additionally, our legislature's effort to prevent eighteen-year-olds from engaging in certain harmful activities, Def. Br. 53, does not demonstrate a national consensus against treating such offenders as adults for purposes of sentencing. *Cf. Montgomery*, 136 S. Ct. at 733 (*Miller*'s starting premise is the established principle that "'children are constitutionally different from adults for purposes of sentencing'"). Nor does the judgment of a handful of other countries' legislatures, Def. Br. 52, establish that consensus; our laws reflect our moral standards and are not always aligned with that of other countries. *See, e.g.*, Global Status Report on Alcohol & Health, World Health Organization (2014), http://www.who.int/substance_abuse/publications/global_alcohol_report/msb_gsr_2014_1.pdf (last visited Apr. 24, 2018), at 74 (only thirteen other countries set age limit for alcohol purchases at age twenty-one; 115 countries set it at age eighteen). More importantly, while relevant, international practice is never dispositive in determining the constitutionality of this country's sentencing practices.

Compare Montgomery, 136 S. Ct. at 734 (reaffirming that Eighth Amendment does not bar life without parole for all persons under age eighteen), *with Graham*, 560 U.S. at 81 (noting that "every nation except the United States and Somalia" has ratified the United Nations Convention on the Rights of the Child, Art. 37(a), 28 I.L.M. at 1470, which prohibits life without parole for persons under age eighteen).

Furthermore, defendant does not dispute that every reviewing court to have considered the question has concluded that the Eighth Amendment does not preclude mandatory life-without-parole sentences for young adult offenders. *See* Peo. Br. 25-26 & n.7, 34-35 & n.8; *supra*, Part I.B.2 & nn.2-3. As one court explained:

> Making an exception for a defendant who committed a crime just five months past his 18th birthday opens the door for the next defendant who is only six months into adulthood. Such arguments would have no logical end, and so a line must be drawn at some point. We respect the line our society has drawn and which the United States Supreme Court has relied on for sentencing purposes, and conclude [the defendant]'s sentence is not cruel and/or unusual[.]

People v. Argeta, 149 Cal. Rptr. 3d 243, 246 (Ct. App. 2012). This Court should likewise find no Eighth Amendment infirmity here.

In sum, there exists no widespread societal recognition of the special status of young adults. And until the Supreme Court says otherwise, whether there should be different punishments for subsets of legally defined adults is a question for the legislature. *Cf. Holman*, 2017 IL 120655, ¶ 51 (refusing to bar life-without-parole sentences for juveniles because Supreme

Court has not barred them and whether such sentences "are advisable is a question for legislators"). Accordingly, this Court should reject the Eighth Amendment arguments of both defendant and *amicus curiae*.

IV. The Evidence Was Sufficient to Find Defendant Guilty Beyond a Reasonable Doubt of First Degree Murder.

A. Standard of review

Under *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), a challenge to the sufficiency of the evidence fails if, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Citation omitted) (emphasis in original). In reviewing a sufficiency challenge, a court does not "retry the defendant," *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009) (citations omitted), but asks whether the finding of guilt "was so insupportable as to fall below the threshold of bare rationality," *Coleman v. Johnson*, 566 U.S. 650, 656 (2012) (per curiam). The reviewing court may not "substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses." *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009) (citations omitted). Rather, "a reviewing court 'faced with a record of historical facts that supports conflicting inferences must presume — even if it does not affirmatively appear in the record — that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.'" *McDaniel v. Brown*, 558 U.S. 120, 133 (2010) (quoting *Jackson*, 443 U.S. at 326) (remaining citation omitted). This

standard "gives 'full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *Jackson*, 232 Ill. 2d at 281 (citations omitted). Thus, "[a] reviewing court will not reverse a conviction simply because the evidence is contradictory or because the defendant claims that a witness was not credible." *Siguenza-Brito*, 235 Ill. 2d at 228 (internal citations omitted).

B. Compelling evidence proved beyond a reasonable doubt that defendant intentionally killed Rondell Moore.

This Court has long held that "the testimony of a single witness, if positive and credible, is sufficient to convict." *Siguenza-Brito*, 235 Ill. 2d at 228 (citations omitted); *People v. Brown*, 29 Ill. 2d 375, 378 (1963). Here, three witnesses (Jones, Dexter Saffold, and Ronald) placed defendant at the gas station; two of those witnesses (Saffold and Ronald) identified defendant as the person who fired a gun at the victims; a surveillance video substantially corroborated the witnesses' accounts; and medical evidence established that defendant died from multiple gunshot wounds. Thus, as the trial court observed, "[t]his case was not a particularly close one," R.BB49, and the evidence was sufficient to convict defendant of Rondell's murder.

Consistent with the video evidence, Jones testified that he dropped off defendant at the gas station and drove away. R.AA91-98, BB11-13, BB19-20, BB46-49; Exh. 16 at 20:27:13-20:27:49; Exh. 40 at 6-17. Saffold testified that while it was still light outside, and from less than twenty feet away, he saw

defendant fire a gun multiple times at two people standing near a bike and a car with its hood up. R.AA62-71; R.BB47-49 (trial court finds that Saffold "was an honest witness," provided "unblemished" testimony, and had been "in an excellent position to observe and identify those responsible for the shooting"); R.AA68-71 (within one month of crimes, Saffold identified defendant as the gas station shooter from lineup, and told police and grand jury the same). Corroborating this testimony, R.BB48-49, Ronald testified that from his vantage point inside the car he saw defendant shoot Rondell and Woulard, R.AA18-21. *See* R.AA18-19 ("[defendant] was shooting my brother"); AA21 ("[defendant] was standing behind my brother, shooting him"); *id.* ("[defendant] kept shooting" after Rondell ran); *id.* (defendant "was still shooting in the direction of [Rondell] after he ran"); R.AA26-34 (within one month of crimes, Ronald identified defendant as shooter). And it is undisputed that Rondell died from multiple gunshot wounds. Exh. 38 at 7. Based on this evidence, at least one rational factfinder could find, as the trial judge did, that defendant shot and killed Rondell. *Cf. People v. Fields*, 135 Ill. 2d 18, 40-49 (1990) (eyewitnesses' testimony sufficient to support murder convictions, even though they had motives to lie and gave inconsistent and contradictory testimony).

Notwithstanding this strong evidence proving that defendant alone fired a gun toward Rondell from a short distance and that Rondell died from multiple gunshot wounds, defendant theorizes that no rational factfinder

could conclude that some of the bullets from defendant's gun actually struck Rondell. Def. Br. 44-46. But a factfinder "is not required to disregard inferences which flow normally from the evidence before it." *Jackson*, 232 Ill. 2d at 281 (citations omitted). And the most obvious and rational inference from the evidence here is that defendant, intending to kill Rondell, fired a gun directly at him and succeeded in killing him. *See generally People v. Teague*, 2013 IL App (1st) 110349, ¶¶ 24-27. Thus, defendant does not show that his conviction is "so insupportable as to fall below the threshold of bare rationality." *Coleman*, 566 U.S. at 656.

C. Defendant's arguments disregard the standard of review, are based on pure conjecture, and fail to undermine the strong evidence establishing his guilt.

Relying solely on alleged evidentiary gaps, defendant proposes a second-shooter theory and then leaps to the conclusion that no rational factfinder could have found that he shot Rondell. This Court should reject defendant's request to second-guess the verdict and retry him on appeal. *People v. Villarreal*, 198 Ill. 2d 209, 231 (2001) ("It is not our province to second-guess the verdict or to retry defendant on appeal.").

To be consistent with the surveillance video and his conviction for Woulard's attempted murder, defendant's second-shooter theory must be as follows: although Woulard was injured by the multiple bullets defendant intentionally fired, Rondell escaped unscathed; Jones then shot Rondell in the bank parking lot, went home, disposed of the gun (but not the twenty-two

bags of cannabis found in his car upon his apprehension), and returned to the crime scene. *See* R.AA100-04, 125, 133-34, 167, 171-73; Exh. 16 at 20:27. Putting aside the logical flaws in this theory, defendant's speculation that Jones fired the fatal shots does not itself "raise reasonable doubt as to [defendant's] guilt." *See People v. Herrett*, 137 Ill. 2d 195, 206 (1990) (citation omitted). Nor was the trial court "required to accept any possible explanation [arguably] compatible with the defendant's innocence and elevate it to the status of reasonable doubt." *Id.* (citation omitted).

To the contrary, a factfinder "presented with conflicting versions of events" is "entitled to choose among those versions" and "need not accept the defendant's version of events." *Villarreal*, 198 Ill. 2d at 231 (citations and quotation marks omitted). Indeed, it is the factfinder's responsibility to weigh and resolve any conflicts in the evidence. *Jackson*, 232 Ill. 2d at 281. Here, the trial court acknowledged that there were evidentiary inconsistencies, but found that "none . . . r[o]se to the level of raising doubt" as to defendant's guilt. R.BB47-48.

This finding is amply supported by the record. Defendant's primary contention is that no rational factfinder could believe that a 5′10″, 143-pound, 23-year-old man, Exh. 38 at 1, who suffered three gunshot wounds and was running for his life, would be capable of scaling a fence that was allegedly "several feet high," Def. Br. 45. However, Ronald testified that defendant continued to shoot at Rondell as he ran away, R.AA21, and thus, it is not

clear when the bullets hit Rondell. Moreover, as the appellate court correctly observed, the record contains no medical testimony as to Rondell's physical abilities following his injuries. A4; *cf., e.g.*, *State v. Harris*, 90 N.E.3d 342, 352 (Ohio. Ct. App. 2017) (doctor testifies that gunshot wound to victim's lungs, heart, diaphragm, and liver was fatal, but victim "would have been able to walk a distance before going into shock and collapsing"); *United States v. Helton*, 32 Fed. App'x 707, 711 (6th Cir. 2002) (nonprecedential) (victim who suffered collapsed lung from bullet that pierced three ribs, diaphragm, and left lung, "walked several miles through the woods" before being airlifted to hospital and surviving injuries). Nor does the record establish the fence's actual height; instead, a photograph shows a guardrail in front of the fence that Rondell could have stepped on to assist his jump. Exhs. 9 & 10. Thus, absent any evidence suggesting that Rondell was incapable of doing what two eyewitnesses testified he did, there is no basis on which to overturn the trial court's finding that defendant fired the bullets that killed Rondell.

Similarly, the absence of corroborating photographic and bullet evidence does not make the evidence insufficient. The prosecution was not required to provide direct physical evidence connecting "each link in the chain of circumstances" to prove defendant guilty beyond a reasonable doubt. *Jackson*, 232 Ill. 2d at 281. And "any alleged discrepancy between [the eyewitness] testimony and the photographic and forensic evidence was for the

trier of fact to resolve." *People v. Perez*, 2018 IL App (1st) 153629, ¶ 28 (citing *People v. Williams*, 193 Ill. 2d 306, 338 (2000)).

In any event, defendant's speculative inferences from the missing evidence do not undermine the strong evidence establishing his guilt. First, defendant's assertion that Rondell must have been shot at the bank because there was no blood trail from the gas station to the bank parking lot, Def. Br. 45, is pure conjecture. The photographs upon which defendant relies depict only nighttime views of the gas station and bank parking lot, and include no close-up views of the pavement, fence, or other relevant areas. *See* Exhs. 6-12. Thus, the photographs neither prove nor disprove the existence of a blood trail. And to the extent that the photos depict blood evidence, they confirm the State's theory: one photograph shows "a light blue bath towel with apparent blood" on the ground near the gas station fence, R.AA162-63, Exh. 9; the surveillance video shows Rondell with a similar towel around his neck before the murder, Exh. 16 at 20:24:14-20:24:52; and no towel was in Rondell's belongings at time of the autopsy, Exh. 38 at 1. Viewed in the light most favorable to the prosecution, this evidence corroborates the testimony that defendant shot Rondell at the gas station.

Likewise, the bullet evidence, when properly viewed in the light most favorable to the prosecution, does not undercut the eyewitness accounts. Rondell and Woulard suffered three gunshot wounds each. R.AA87-89, 171-72; Exh. 38 at 2-3. The parties stipulated that a total of five fired bullets

were recovered after the shootings, four from the gas station and one from Rondell's abdomen; one bullet was a "22 caliber," two bullets were "380/38 caliber," and two bullets were "9mm/38 class caliber." Konior Stip.; R.AA159-61, 163, 165-67. But the parties' stipulations do not specify which of the five bullets was found in Rondell, as defendant claims. *See* Konior Stip.; R.AA159-61, 163, 165-67; Def. Br. 45-46 (citing stipulations). In fact, defendant conceded in his posttrial motion that "there was no testimony as to the caliber and type of bullet that was found to have wounded [Rondell]." C235. Moreover, Woulard suffered three, not four, gunshot wounds; no weapon was recovered; no bullets or casings were found at the bank parking lot; and no evidence was presented as to the location of the bullets found at the gas station or the caliber(s) of the bullets that injured the victims. Thus, the bullet evidence is inconclusive at best and does not undermine the trial court's verdict.

But even if this evidence raised a conflict, the trial court is presumed to have resolved it in the prosecution's favor. *McDaniel*, 558 U.S. at 133. Here, as the appellate court explained, "there was nothing preventing [defendant] from carrying two firearms during the crime." A5. And although they took different paths, both defendant and Rondell ran south toward the bank after the gas station shooting. R.AA52, 65-67, 75; Exh. 16 at 20:27; DA1. Thus, defendant could have shot Rondell at the bank as well. Accordingly, the alleged evidentiary inconsistencies provide no basis for

reversing defendant's conviction. *Siguenza-Brito*, 235 Ill. 2d at 228 (this Court "will not reverse a conviction simply because the evidence is contradictory"); *Villarreal*, 198 Ill. 2d at 232 (evidence sufficient where it is "not so one-sided as to compel reversal of the jury's measured judgment").

D. Even assuming defendant's second-shooter theory is true, he is legally accountable for Rondell's murder and his conviction should be affirmed.

Even assuming that Jones shot and killed Rondell, defendant is accountable for the murder. 720 ILCS 5/5-2 (2011). Under this version of events, defendant and Jones — along with other unidentified persons who yelled that Rondell was "running down the alley," Def. Br. 42, 46-47 (citing R.AA87) — made a plan to kill Rondell and then worked together to accomplish that goal: Jones dropped defendant off at the gas station, defendant shot at Rondell but missed, someone alerted Jones to Rondell's location, and moments later, Jones finished the job. Therefore, even if Jones ultimately succeeded in killing Rondell, defendant is guilty of first degree murder, and this Court should affirm his conviction. *See People v. Ceja*, 204 Ill. 2d 332, 361 (2003) (accountability not a separate offense and need not be charged in indictment); *People v. Frieberg*, 147 Ill. 2d 326, 363 (1992) (conviction properly affirmed where evidence proved defendant accountable, even if it did not prove guilt as principal).

CONCLUSION

This Court should reverse the part of the appellate court's judgment that vacated defendant's sentences, deny defendant's request for cross-relief, and affirm the trial court's judgment.

April 24, 2018

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

DAVID L. FRANKLIN
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

GOPI KASHYAP
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-4684
eserve.criminalappeals@atg.state.il.us

Counsel for Plaintiff-Appellant
People of the State of Illinois

RULE 341(c) CERTIFICATE OF COMPLIANCE

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. I certify that this brief conforms to the requirements of Rules 341(a) and (b), and this Court's April 24, 2018 order. The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) 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(a), is 8,472 words.

/s/ Gopi Kashyap
GOPI KASHYAP
Assistant Attorney General

PROOF OF SERVICE

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 April 24, 2018, the "**Reply Brief of People of the State of Illinois. Response to Cross-Relief Request**" was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email addresses:

Michael J. Pelletier
Patricia Mysza
Lauren A. Bauser
Office of the State Appellate Defender
First Judicial District
203 North LaSalle Street, 24th Floor
Chicago, Illinois 60601
1stdistrict.eserve@osad.state.il.us

Counsel for Defendant-Appellee

Shobha L. Mahadev
Scott F. Main
Children and Family Justice Center
Bluhm Legal Clinic
Northwestern Pritzker School of Law
375 East Chicago Avenue
Chicago, Illinois 60611
scott.main@law.northwestern.edu

Counsel for Amicus Curiae

Alan J. Spellberg
Assistant State's Attorney
Richard J. Daley Center, 3rd Floor
Chicago, Illinois 60602
eserve.criminalappeals@cookcountyil.gov

Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail 13 copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Gopi Kashyap
GOPI KASHYAP
Assistant Attorney General