No. 121932

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE.
CROSS-RELIEF REQUESTED.

MICHAEL J. PELLETIER
State Appellate Defender

PATRICIA MYSZA
Deputy Defender

LAUREN A. BAUSER
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLEE

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

ISSUE PRESENTED FOR REVIEW

1. The confluence of several sentencing statutes deprived the sentencing judge of any discretion to consider Darien Harris' youthful age of 18, his lack of any adult or juvenile criminal background, and his potential for rehabilitation before imposing a mandatory *de facto* life sentence. As applied to Darien, does this sentencing scheme violate the rehabilitation clause of Art. 1, Sec. 11 of the Illinois Constitution?

CROSS-APPEAL ISSUES

2. Did the State fail to prove beyond a reasonable doubt that Darien Harris was guilty of Rondell Moore's murder where there were no occurrence witnesses, physical evidence, or inculpatory statements tying Darien to Rondell's shooting; and unlike Darien, other individuals, including State's witness Aaron Jones were actually seen in the bank parking lot where the decedent was found shot?

3. In light of the emerging scientific consensus on the ongoing neurological development of young adults, does it violate the Eighth Amendment of the United States Constitution to sentence individuals under the age of 21 to mandatory *de facto* life imprisonment without giving the sentencing judge the opportunity to consider the transient signature qualities of those defendants' youth – their reduced culpability, reduced susceptibility to deterrence, and their enhanced amenability to rehabilitation?

STATEMENT OF FACTS

Darien Harris was convicted after a bench trial of the first-degree murder of Rondell Moore, and the attempted murder and aggravated battery with a firearm of Quincy Woolard. The trial court sentenced Darien, who was three months past his 18th birthday at the time of the events and who had no criminal record, to the minimum aggregate term of 76 years in prison.

Bench trial

The State's theory of prosecution was that Darien intentionally shot Rondell and Quincy at a BP gas station on Stony Island in the evening of June 7, 2011. (R. AA5-AA8, BB24-BB25, BB38-BB39). Rondell, his brother Ronald Moore, and Marcus Diggs had stopped at the gas station to meet Quincy, a local mechanic, because their car was overheating. (R. AA11-AA15, AA55). The State's evidence showed that Quincy was shot at the gas station while working on the car. (R. AA87). He sustained three gunshot wounds and spent five days in the hospital. (R. AA171-AA173).

Rondell ran from the gas station after the first shots were fired. He climbed over a fence and into the alley immediately west of the gas station, which runs parallel to Stony Island and leads toward a Chase bank, south of the gas station across 66th Place. (R. AA19). The fence, which is several feet high, is depicted in State's Exhibits 9-11. Shortly thereafter, Ronald found his brother collapsed in the bank parking lot. (R. AA22). The medical examiner determined that Rondell was shot three times in the back. There were two exit wounds, including one from a bullet that pierced his right lung and pulmonary artery. The third bullet lodged

in his anterior abdominal wall. The cause of death was multiple gunshot wounds. (R. AA156-AA161).

The Illinois State Police crime lab determined that the bullet recovered from Rondell's abdomen, lab exhibit 12, was a 22 caliber. (R. AA161-AA162, AA165-A166). Four fired bullets were recovered from the gas station. (R. AA165). Two of the bullets, lab exhibits 8 and 11, were 380/38 class caliber and were fired from the same firearm. The other two bullets, lab exhibits 9 and 10, were 9mm/38 class caliber. The lab could not determine whether exhibits 9 and 10 were fired from the same firearm, and it could not determine whether exhibits 9 and 10 were fired from the same firearm as exhibits 8 and 11. (R. AA165-AA167).

A gas station security video was introduced as State's Exhibit 16. (R. AA42-AA46). The State conceded it "does not show the shooting and it does not show the face of the person who shoots," but it does show some of the surrounding events. (R. BB38). The video shows a black Lexus enter the gas station and circle the building. An individual gets out of a passenger's side door and the Lexus leaves the station. The passenger walks out of frame toward the building. Seconds later, starting at 20:27:16 on the video, an individual emerges from around the side of the building, and again walks out of frame as he approaches Rondell's and Ronald's car, which is largely obscured by the gas pumps. Ronald identified that individual as the shooter at trial. (R. AA44). Seconds later, Marcus runs north toward Marquette, and the shooter runs southeast through the gas station and onto Stony Island. Ronald runs after him for a few feet and then turns around and heads in the opposite direction, towards the alley.

Responding officer Mostowski testified that he received a description of a black Lexus leaving the scene of the shooting. (R. AA124-AA125, AA133). He saw a vehicle matching the description and curbed it in a Walgreens parking lot about two blocks from the gas station. (R. AA125-AA126). At that time, Ronald ran up to the Lexus and yelled "you killed my brother." (R. R. AA23-AA24, AA126). Officer Mostowski detained the driver and later learned that his name was Aaron Jones. (R. AA126). The parties stipulated that Aaron had eleven baggies containing 10.6 grams of cannabis at the time of his arrest. (R. AA167-AA168). There were no other passengers in the car. (R. AA130).

Ronald, Quincy, Aaron, and an individual named Dexter Saffold all testified for the State as occurrence witnesses. Ronald testified that he, his brother Rondell and Marcus Diggs stopped at the BP gas station on Stony Island on June 7, 2011 to meet Quincy to work on their car (R. AA5-AA8, BB24-BB25, BB38-BB39). They parked at a pump near the Marquette entrance, on the north side of the station. (R. AA15). A black Lexus soon entered the station from Marquette, went around the building toward the Stony Island exit, on the east side of the station, and stopped in the parking lot. (R. AA13-AA15, AA17-AA18). Ronald recognized the Lexus and the driver from the neighborhood, but he did not know the driver personally. (R. AA15-AA17, AA24-A25, AA48-AA49). Ronald did not see anyone else in the Lexus. (R. AA16).

Ronald heard several gunshots. At the time, Ronald was in the car, Quincy was working under the hood, and Rondell was standing near Quincy. (R. AA14-AA15, AA18). Ronald looked out the window from the rear passenger's seat. Qunicy's

shooter, whom Ronald identified in court as Darien, was standing behind Rondell with a gun, between the gas pump and the driver's side of the car. (R. AA18-AA21, AA54, AA59).

Quincy testified that he heard three gunshots while he worked under the hood. He tried to run, but he fell down. (R. AA87). He heard someone say, "He runnin down the alley, he runnin down the alley." Quincy did not recognize the speaker's voice, and he did not see the shooter. (R. AA87, AA89-AA90).

Ronald tried but could not get out of the car. (R. AA20). He saw his brother Rondell run from the gas station after the first shots were fired. Rondell climbed over a fence and into the alley immediately west of the gas station, which runs parallel to Stony Island and leads toward the Chase bank, south of the gas station across 66th Place. (R. AA19). When the State asked Ronald what Darien did after Rondell started to run, Ronald initially testified that Darien shot Quincy and shot at Marcus. (R. AA21). The State then posed a series of more pointed questions, and in response, Ronald said that Darien kept shooting at Rondell as he ran toward the alley. (R. AA21). According to Ronald, when Darien stopped shooting at Rondell, he turned and shot at Marcus, who was running north toward the McDonald's across Marquette. (R. AA19, AA21). Darien then turned again and aimed at Ronald, who was trying to get out of the car, but Darien appeared to be out of bullets and ran away. (R. AA20-AA21). Ronald got out of the car, chased him five or ten feet, and then turned and ran to Rondell. (R. AA21-AA22). Ronald related that Rondell and Darien ran in different directions. (R. AA22)

Ronald found Rondell collapsed in the bank parking lot. (R. AA22). The

same black Lexus drove through that lot while he was there. Ronald did not see anyone except the driver in the Lexus at that time. (R. AA25).

Shortly after the incident, Ronald overheard a police broadcast on an officer's radio that the police had stopped a black Lexus in a nearby Walgreens's parking lot. (R. AA23-AA24). He ran to the Walgreens and yelled that the driver just killed his brother. (R. AA26, AA55). However, on the stand Ronald clarified that the driver was not the gas station shooter. (R. AA26).

Ronald described the gas station shooter to the police as a thinner, dark skinned black male with a mohawk. (R. AA50). A couple days later, Ronald saw a rap video on You Tube in which he recognized the shooter, the Lexus, and the driver. (R. AA27-AA28, AA56-AA57). He showed the video to a detective. (R. AA29). The video was introduced at trial as State's Exhibit 15. Ronald identified an individual sitting on the hood of a black Lexus as the driver, and an individual with a mohawk as the gas station shooter. (R. AA41-AA42). There was no dispute that the individuals Ronald identified in the video were Aaron Jones and Darien, respectively. (R. AA18).

Aaron, who testified for the State, was a drug dealer who lived in the neighborhood and drove a black Lexus. (R. AA91-AA94). He was familiar with Darien from selling marijuana and knew of him as "Slim" or "Chucky," but he did not know Darien personally. (R. AA92-AA94, AA102-AA104). Aaron testified both that he saw Darien, and that he did not see Darien, on the evening of the shooting.

Initially, Aaron testified that he was driving around the neighborhood when

Darien stopped him; asked him for a ride to the BP station, about a quarter-mile away; and got into the back seat of his car. (R. AA92-AA94). Aaron did not recall talking to Darien on the way to the gas station and did not see Darien with a gun. (R. AA95-AA96; AA118-AA119).

Aaron drove into the BP parking lot from Marquette. (R. AA96). Darien exited the rear passenger's door somewhere on the Stony Island side of the gas station. (R. AA97-AA98). Aaron immediately drove out of the gas station and did not see or hear the shooting. (R. AA98-AA99, AA118-AA119). He briefly stopped at his house and then went to the Walgreens on 67th Place. Within minutes of leaving the gas station, he was stopped by the police and taken into custody. (R. AA98-AA103).

Detectives Jones and Lambert interviewed Aaron several times over the course of two days. (R. AA103-AA104, AA115-AA116). During one of the interviews, the detectives showed Aaron a You Tube video. Aaron recognized Darien in the video and later identified Darien in a photo array and in a lineup. (R. AA103-AA105, AA109).

Midway through his testimony, Aaron recanted his identification of Darien. Aaron now testified that Darien was never in his car; that he had no recollection of giving the police any identifying information about Darien; and that the detectives threatened him with life imprisonment if he did not testify to their satisfaction to the grand jury and at trial. (R. AA114-AA117). After Aaron became belligerent, the trial judge threatened to hold him in contempt but ultimately decided not to. (R. AA115). On redirect, Aaron testified that it was not Detectives Lambert

and Jones who threatened him, but rather the officers at the district station where he was initially taken after his arrest. (R. AA120-AA121). After Aaron recanted, the recordings of his custodial interviews were introduced as State's Exhibit 26 and considered by the trial court for both impeachment and substantive purposes. (R. AA150-AA151, AA174-AA175).

Detectives Jones and Lambert interviewed Aaron several times of the course of two days after his arrest. Detective Jones denied threatening, or witnessing any other officers threaten, Aaron. (R. AA142-AA144, AA146).

Detective Jones testified that during an interview, Aaron told the detectives that the person he dropped off had a mohawk or a hairstyle that was shorter on the sides and taller on the top. (R. AA137). On the first day of interviews, Aaron did not give the detectives any further identifying information about his passenger; but on the second day, Aaron said the passenger was known as "Chucky" or "King Chucky." (R. AA139, AA144-AA145). Officers found MySpace and Facebook profiles created under the name King Chucky. (R. AA144-AA145, AA147-AA148). After seeing those profiles, Detective Jones looked for an individual named Darien Harris and compiled a photo array that included Darien. (R. AA148-AA149). Aaron identified Darien from the photo array, and again in a lineup on June 14, 2011. (R. AA138-AA139, AA141, AA149, AA151).

Seeking a grand jury indictment, Assistant State's Attorney Sise met with Aaron alone in her office. He told her that the police treated him well, did not make any threats or promises, and did not force him to say anything. (R. BB9-BB10). ASA Sise presented Aaron to the grand jury, and he testified similarly. (R. BB10-

BB11). After Aaron recanted his trial testimony, the transcript of his grand jury testimony, State's Exhibit 40, was introduced as both impeachment and substantive evidence. (R. BB11-BB12).

Detective Jones had the front interior area of Aaron's Lexus dusted for fingerprints. Darien's prints were not found. (R. AA155-AA156, AA168-AA169). The parties also stipulated that Darien could be excluded from the DNA profile recovered from a buccal swab of the front passenger area. (R. AA162-AA164, AA169-AA171). Detective Jones testified that he did not know Darien allegedly sat in the back seat of Aaron's car. (R. AA155-AA156).

The State called Dexter Saffold, who was passing by the gas station on a scooter at the time of the shooting. He was on the west side of Stony Island heading north. (R. AA60-AA62). Dexter has diabetes, and he has needed the scooter since having a stroke; he denied, however, that he has any vision problems as a result of his disease. (R.AA78). As he passed by the gas station entrance, he heard gunshots and saw flashes; he looked around and saw an individual in the gas station holding a gun. (R. AA62-AA64). He didn't see exactly where the gun was pointed, but it was in the general direction of two individuals, a blue car parked next to a pump with the hood up, and a bicycle. (R. AA65-AA66, AA73).

Dexter testified that the shooter ran out of the gas station toward Stony Island–*i.e.*, away from the alley–and bumped into him. (R. AA66, AA74, AA76). The shooter still had his gun in his hand and almost dropped it while trying to put it in his pocket. (R. AA66). The shooter ran behind the bank and out of his view. (R. AA67). Another person jumped a fence and ran into an alley toward the

bank. (R. AA75).

Dexter went into the gas station and called 911. (R. AA67). The parties stipulated that at 8:35 p.m. on June 7, 2011, a 911 caller relayed that "a male black, dreads, skinny build just shot off several shots." (R. BB30). Dexter identified Darien as the shooter in a lineup on June 15, 2011, and again in court. (R. AA63, AA69-AA70).

Findings

The trial court found Darien guilty of the first-degree murder of Rondell, and the attempted murder and aggravated battery with a firearm of Quincy. (R. BB49).

Sentencing

At the time of the offenses, Darien was 18 years and 3 months of age. (C.195) The State acknowledged at sentencing that Darien had no adult or juvenile background. (R. CC5-CC6; C.198) In mitigation, the defense presented Darien's GED certificate, and several certificates of achievement awarded for his noteworthy strides in reading and math, all of which were earned during his time in pretrial custody. (C.223-C.230; R. CC8) The defense also presented letters to the court from several witnesses attesting to Darien's normally kind, caring, and gentle disposition, and describing him as a "kid who looked for love in the wrong place and fell into the hands of the enemy," as he sought to learn "how to survive, how to fit in, how not to be bullied, how to be cool * * *." (C.218-C.222; R. CC7)

Before sentencing Darien to the minimum aggregate term of 76 years in prison, the judge lamented, "I am sorry that the sentencing parameters are such

that my options are somewhat limited." (R. CC9).

The judge imposed the minimum sentence of 20 years for the first-degree murder of Rondell, plus the minimum firearm enhancement of 25 years, for a combined sentence of 45 years. (C.84-C.85, C.237; R. CC9-CC10, CC12). The judge sentenced Darien to the minimum term of 6 years for two counts of attempt murder of Quincy, plus the firearm enhancement alleging personal discharge of a firearm causing great bodily harm, for combined sentences of 31 years on each count. (C.136-C.138, C. 237; R. CC10). Darien was also sentenced to a concurrent 20-year term for the aggravated battery with a firearm of Qunicy. (C. 144, C. 237; R.CC11). Accordingly, Darien was sentenced to an aggregate term of 76 years. (C. 237).

Direct Appeal

On appeal, Darien challenged the sufficiency of the State's evidence for each of the offenses, argued that his mandatory *de facto* life sentence violated the Eighth Amendment and the proportionate penalties clause ,and that his multiple sentences for attempt murder and aggravated battery of Quincy violated the one act, one crime rule.

The appellate court held that the State proved Darien guilty both of Rondell's murder and the attempt murder of Quincy. *People v. Harris*, 2016 IL App (1st) 141744 at ¶¶23, 28. The court agreed that Darien's multiple convictions with respect to Quincy's shooting violated the one act, one crime rule, and directed the clerk to correct the mittimus to reflect only one count of attempted first degree murder. *Harris*, 2016 IL App (1st) 141744 at ¶75 28. It further concluded that Eighth Amendment rule of *Miller v. Alabama,* 567 U.S. 460 (2012) did not extend to Darien,

who was 18 at the time of the offense. *Harris*, 2016 IL App (1st) 141744 at ¶56. The majority, however, held that the confluence of sentencing statutes that the trial court was required to apply in this case was contrary to the objective of rehabilitation within Illinois' proportionate penalties clause. *Harris*, 2016 IL App (1st) 141744 at ¶64. Accordingly, the court vacated Darien's 76-year sentence and remanded the case for a new sentencing hearing where the application of the firearm enhancements, the truth in sentencing and the consecutive sentencing statutes would not be mandatory so that the court could give Darien's potential for rehabilitation individualized consideration. *Harris*, 2016 IL App (1st) 141744 at ¶¶72-73. This Court granted the State's petition for leave to appeal.

ARGUMENT

I. The confluence of several sentencing statutes deprived the judge of discretion to consider Darien Harris' youthful age of 18, his lack of any adult or juvenile background, and his potential for rehabilitation before imposing a mandatory *de facto* life sentence. As applied to Darien, this sentencing scheme violates the rehabilitation clause of Art. 1, Sec. 11 of the Illinois Constitution.

When it sentenced 18-year old Darien Harris to a mandatory *de facto* life sentence, the trial court in this case had no opportunity to consider any factors, such as Darien's age, his lack of criminal history, or as our constitution expressly mandates, "the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. 1, sec. 11 ("the rehabilitation clause"). Accordingly, the confluence of the operative sentencing statutes in this case violates the rehabilitation clause of the Illinois Constitution when applied to Darien. At the time of the offenses, Darien was barely 18 years old and had no adult or juvenile background. (C.195, C.198). Yet, the convergence of two mandatory firearm enhancements, the consecutive sentencing statute, and the truth-in-sentencing statute nonetheless required the sentencing judge to impose a mandatory *de facto* life sentence. The judge expressly lamented his lack of discretion. (R. CC9).

Accordingly, Darien requests that this Court affirm the appellate court's determination that sentencing Darien to die in prison shocks the moral sense of the community, and remand for a new sentencing hearing at which the judge will be afforded the discretion to consider Darien's youth and potential for rehabilitation and to impose a sentence based on these mitigating factors that fulfills the express Illinois constitutional mandate of restoring Darien to useful citizenship.

Because statutes are presumed constitutional, "the party challenging the statute bears the burden of showing its invalidity." *People v. Leon Miller*, 202 Ill. 2d 328, 335 (2002). Although a facial challenge requires a showing that the statute is invalid under any set of facts, an as-applied challenge, which Darien asserts here, merely "requires defendant to show the statute violates the constitution as it applies to him." *People v. Garvin*, 219 Ill. 2d 104, 117 (2006). A challenge to a statute's constitutionality is reviewed *de novo*. *People v. McCarty*, 223 Ill. 2d 109, 123, 135 (2006).

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

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

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

A. The operative sentencing statutes combined to produce a mandatory *de facto* life sentence. As applied to Darien, that sentencing scheme violates the rehabilitation clause of Article I, Section 11.

Darien Harris was sentenced to mandatory *de facto* life imprisonment despite the trial court's apparent discomfort with the severity of that sentence. In this case, it was the confluence of the operative sentencing statutes – two firearm enhancements, the consecutive sentencing statute, and the truth-in-sentencing statute – that combined to produce Darien's *mandatory* 76-year minimum sentence of *de facto* life imprisonment. For the reasons that follow, this sentencing scheme, as applied to Darien, violates the rehabilitation clause of Article I, Section 11 of the Illinois Constitution, because it precluded the trial judge from considering the signature qualities of Darien's youth in fashioning his sentence.

In this case, the sentencing judge imposed the minimum terms for murder and attempt murder. 720 ILCS 5/8-4(c)(1) (2011); 730 ILCS 5/5-4.5-20(a) (2011), 5/5-4.5-25(a) (2011). The two 25-year firearm enhancements imposed by the judge, also the minimum terms, were mandatory. 720 ILCS 5/8-4(c)(1)(D) (2011), 730 ILCS 5/5-8-1(d)(iii) (2011); see *People v. Gipson*, 2015 IL App (1st) 122451, ¶74 (finding the mandatory firearm enhancements of 25 years to life "unsettling" when applied to juveniles). Consecutive sentencing was mandatory since murder is a triggering offense. 730 ILCS 5/5-8-4(d)(1) (2011). As a result, the judge had no discretion to consider Darien's "youth and attendant characteristics" before imposing a *de facto* life sentence.

This mandatory sentencing scheme is shocking in light of evolving societal standards of decency. There is clear trend in the jurisprudence of this country, grounded in ever-accumulating scientific evidence, towards more leniency and sentencing discretion in cases involving young offenders. See *Roper v. Simmons*, 543 U.S. 551 (2005)(prohibiting death penalty for juvenile offenders), *Graham v. Florida*, 560 U.S. 48 (2010)(prohibiting life without the possibility of parole for juvenile non-homicide offender), and *Miller v. Alabama*, 567 U.S. 460 (2012)(prohibiting mandatory sentences of life without parole for juveniles).

In reaching these decisions, the United States Supreme Court in *Miller, Graham,* and *Roper* considered the continuing brain development in adolescents, and concluded that youth are more immature and irresponsible than adults, more vulnerable to negative influences and pressures from family and peers than adults; and, more malleable than adults—their characters are less fixed and their

malfeasance is less indicative of irretrievable depravity. *Miller*, 567 U.S. at 471, citing *Roper,* 543 U.S. at 569. Each of these cases were grounded in the conclusion that juveniles are less deserving of the most severe punishments because they have lessened culpability as compared to adults. *Graham*, 560 U.S. at 58. Accordingly, under the reasoning of these cases, individualized consideration is necessary because juveniles have "distinctive (and transitory) mental traits and environmental vulnerabilities[,]" which render them more amendable to rehabilitation. *Miller*, 132 S. Ct. at 2465. Moreover, as the Court in *Miller* pointed out, the qualities that render juveniles more amenable to rehabilitation are not crime, or punishment, specific. *Id*.

While *Roper, Graham* and *Miller* limited their applications of these principles to youth under 18 years old, in the time since these decisions have come down, a wealth of further research in neurobiology and developmental psychology has shown that young adults are more similar to adolescents than fully mature adults in important ways. "Research in neurobiology and developmental psychology has shown that the brain doesn't finish developing until the mid-20s, far later than was previously thought. Young adults are more similar to adolescents than fully mature adults in important ways. They are more susceptible to peer pressure, less future-oriented and more volatile in emotionally charged settings." Vincent Schiraldi & Bruce Western, Why 21 year-old offenders should be tried in family court, Wash. Post (Oct. 2, 2015)[1]; Dr. Ruben C. Gur, Director of the Brain Behavior

[1]available at www.washingtonpost.com/opinions/time-to-raise-the-juvenile-age-limit/2015/10/02/948e317c-6862-11e5-9ef3-fde182507eac_story.html.

Laboratory at the Neuropsychiatry Section of the University of Pennsylvania School of Medicine, has declared that "[t]he evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable." Ruben C. Gur, *Declaration of Ruben C. Gur, Ph.D., Patterson v. Texas, Petition for Writ of Certiorari to the United States Supreme Court (2002)*[2].

Most notably, teenagers like Darien with developing brains are highly amenable to rehabilitation and to being restored to useful citizenship:

> The young adult brain is still developing, and young adults are in transition from adolescence to adulthood. Further, the ongoing development of their brains means they have a **high capacity for reform and rehabilitation**. Young adults are, neurologically and developmentally, closer to adolescents than they are to adults. Prosecuting and sentencing young adults in the adult criminal justice system **deprives them of their chance to become productive members of society**, leads to high recidivism rates, and high

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

> jail and prison populations, and increased costs to society through subsequent incarceration and unemployment.

Kanako Ishida, Young Adults in Conflict with the Law: Opportunities for Diversion, Juvenile Justice Initiative, at 1 (Feb. 2015)(emphasis added),available at http://jjustice.org/wordpress/wp-content/uploads/Young-Adults-in-Conflict-with-the-Law-Opportunities-for-Diversion.pdf.

As this Court recently recognized in *People v. Holman*, 2017 IL 120655 ¶¶35-36, 38, the United States Supreme Court's decision in *Miller* contains language regarding youthful offenders that is significantly broader than its core holding that mandatory natural-life sentences for teenagers under the age of 18 violate the Eighth Amendment. Specifically, this Court quoted from *Miller*:

> Given all we have said in *Roper* and *Graham* and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles **to this harshest penalty [mandatory natural life in prison] will be uncommon.** That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immunity, and the rare juvenile offender whose crime reflects irreparable corruption.'

Holman, 2017 IL 120655 ¶36, quoting *Miller*, 567 U.S. at 479 (emphasis added). It makes little logical sense to conclude that a life sentence for a teenager just under 18 should be "rare" and "uncommon," but a life sentence for a teenager like Darien, who was 18 years and 3 months old, should be mandatory and wholly devoid of any review of that teenager's youth and attendant characteristics. See *Roper*, 543 U.S. at 574 ("the qualitites that distinguish juveniles from adults do not magically disappear when an individual turns 18").

The State argues that it was improper for the appellate court to rely on

scientific articles about youth brain development that were not presented to the trial court in order to second-guess the legislature's rational policy decision to draw the line for criminal sentencing and juvenile court treatment at age 18. (St. Br. 33-34). However, this argument is misplaced. In Illinois, reviewing courts may consider not only the record, but also "sources outside the record, including legal and scientific articles, as well as court opinions from other jurisdictions." *People v. McKown*, 226 Ill. 2d 245, 272 (2007). Scientific writings are routinely relied upon by Illinois reviewing courts. See, e.g., *People v. Huddleston*, 212 Ill. 2d 107, 134-35 (2004).

Therefore, given that society has increasingly come to accept that the brain science underlying *Roper, Graham* and *Miller* is applicable well into an individual's early twenties, prohibiting either a sentencing or a reviewing court from considering the principles of these cases when sentencing an individual like Darien, who was a mere three months past his 18th birthday, shocks the moral sense of the community. Yet, that is exactly what the State asks this Court to do by asserting that the legislative judgment when it comes to the sentences of those older than 18 is "virtually unassailable" because the legislature is better equipped than the judiciary. (St. Br. 17).

Rather, Darien's sentencing judge should have been required to consider 18-year-old Darien's youth and how his ongoing neurological development might indicate a great capacity for restoration to useful citizenship, in light of our emerging societal consensus about the high capacity of rehabilitation of young adults. The sentencing court's inability to do so is squarely *contrary* the plain language of

Article I, Section 11 that requires that his penalty be imposed with the objective of restoring Darien to useful citizenship. Indeed, sentencing judges should not be forced to ignore socially accepted scientific or medical principles when imposing sentence.

The United States Supreme Court has explicitly acknowledged that it is appropriate for courts to rely on the medical community's assessment of evolving standards. *Hall v. Florida*, ___U.S.___,134 S. Ct. 1986, 1993 (2014). In updating the definition of intellectually disabled persons in light of society's and the medical community's evolving standards in Eighth Amendment death penalty jurisprudence, the *Hall* Court observed:

> That this Court, **state courts, and state legislatures** consult and are informed by the work of medical experts in determining intellectual disability is unsurprising. Those professionals use their learning and skills to study and consider the consequences of the classification schemes they devise in the diagnosis of persons with mental or psychiatric disorders or disabilities. Society **relies upon medical and professional expertise** to define and explain how to diagnose the mental condition at issue.

Hall, 134 S. Ct. at 1993 (emphasis added). *Hall* thus reaffirms the importance of considering the expertise of the relevant scientific and medical communities when making determinations about evolving standards that define certain classifications of defendants. In addition, *Hall* makes clear that it is appropriate for state courts — in addition to state legislatures — to rely on the professional judgment of such experts. *Hall*, 134 S. Ct. at 1993. Accordingly, a sentencing judge's duty under the Illinois the constitution *should* be informed and impacted by the medical and scientific community's diagnostic framework. See e.g. *State v. Lyle*, 854 N.W.2d 378, 398 (Iowa 2014) (relying on the prevailing medical consensus

to inform and influence the reviewing court's opinion under a constitutional analysis of juvenile sentencing laws); see also *People v. House*, 2015 IL App (1st) 110580, ¶¶ 94-95 (relying on research in neurobiology and developmental psychology establishing that the ongoing development of the young adult brain means they have a high capacity for reform and rehabilitation before concluding it would be arbitrary to find that "after age 18 an individual is a mature adult.").

Yet, the convergence of mandatory sentencing statutes applicable in Darien's case wholly prevented his sentencing judge from considering or applying this research establishing an emerging national consensus on the rehabilitative potential of an 18-year-old like Darien. It also prevented the judge from considering the specific facts of Darien's case that gave clear indications of his capacity for reform and rehabilitation. Notably, the trial judge specifically lamented at the sentencing hearing, "I am sorry that the sentencing parameters are such that my options are somewhat limited." (R. CC9). Indeed, the judge's hands were tied: there was no way to impose a sentence that would not require Darien to spend the rest of his expected life in prison.

Specifically, Darien did not have any prior adult or juvenile convictions in his background. (C. 198). Yet the judge could not utilize any mitigation from Darien's lack of prior convictions or adjudications of delinquency (C.198); even though his otherwise unblemished record provided strong evidence that Darien was not the "rare" youth whose offenses reflected the "irreparable corruption" needed to justify his lifelong exclusion from society, rather than his "unfortunate yet transient immaturity." See *Miller*, 132 S. Ct. at 2469 (quoting *Roper*, 543 U.S.

at 573; *Graham*, 130 S. Ct. at 2026-27).

Further, the judge below could not consider mitigation in Darien's continued commitment to his education. Darien completed his GED while in custody and earned several certificates of achievement for making notable improvements in his reading and math skills. (C.223-C.230). These accomplishments speak clearly to his capacity for rehabilitation.

Nor did the judge have any discretion to consider the extent to which Darien's offenses may have been the products of his youthful susceptibility to peer pressure and desire for peer approval. In letters to the court, several witnesses attested to Darien's normally kind, caring, and gentle disposition. Specifically, witnesses described him as a "kid who looked for love in the wrong place and fell into the hands of the enemy," as he sought to learn "how to survive, how to fit in, how not to be bullied, how to be cool." (C.218 -C.222). A significant body of empirical research in developmental psychology has shown precisely that these youthful traits greatly increase the chance that an adolescent like Darien will engage in conduct promoted by others that he would not otherwise engage in. See *e.g.*, MacArthur Foundation Research Network on Adolescent Dev. & Juvenile Justice, *Issue Brief 3: Less Guilty by Reason of Adolescence* (September 2006), at 3.

As to the offense itself, the evidence, when viewed in the light most favorable to the State, fails to show that Darien shot Rondell, whose body was found in a bank parking lot. As explained in Issue II, (*infra* pp. 44-50), the bullet recovered from Rondell's body *did not match* the bullets recovered from the gas station; there was no testimony that Darien had a second gun; Aaron Jones and various

unidentified individuals were actually seen in the bank parking lot immediately after the shooting; and someone yelled "He runnin' down the alley, he runnin' down the alley" at the gas station, indicating that other unknown individuals in the immediate vicinity may have been poised to kill Rondell.

In fact, the trial judge explicitly voiced his belief that the State's key witness, Aaron Jones, was more involved in the shootings than he admitted. (R. BB48). The involvement of other individuals–including Aaron, who very likely shot Rondell–not only raises the possibility that Darien succumbed to youthful pressures in participating in these tragic events, but also directly and significantly diminishes Darien's culpability for the offenses. This Court in *Leon Miller* found the defendant's life sentence in that case unconstitutional in part because he was not the actual shooter. *People v. Leon Miller*, 202 Ill. 2d 328, 343 (2002) (life sentence for juvenile murder defendant convicted on accountability theory violated proportionate penalties clause); see also *House*, 2015 IL App (1st) 110580, ¶101 (life sentence for 19-year-old murder defendant convicted on accountability theory violated the proportionate penalties clause). Thus, while the State attempts to distinguish this case from both *Leon Miller* and *House* on the basis that Darien was the principal offender (St. Br. 20-21), a reasonable doubt exists that Darien actually shot Rondell. See Issue II (*infra*, pp. 44-50).

Finally, Darien's sentence amounts to *de facto* life imprisonment. See *People v. Reyes*, 2016 IL 119271 ¶ 9. His aggregate term of 76 years comprises consecutive terms of 20 years for murder, 6 years for attempt murder, and two 25-year sentencing enhancements for the use of a firearm in committing the offenses. (C.237;

R. CC12-CC13). Under the truth-in-sentencing statute, Darien must serve 100 percent of the 45 years imposed for murder and 85 percent of the 31 years imposed for attempt murder. 730 ILCS 5/3-6-3(a)(2)(I)-(ii) (2011). Darien therefore would have to serve a minimum of approximately 71 years before he could first become eligible for mandatory supervised release at the age of 89.

Darien's sentence exceeds his life expectancy. For the average male in the United States, the life expectancy is 76 years. United States Department of Health and Human Services, Centers for Disease Control and Prevention, National Vital Statistics Reports, Vol. 62, No. 7 (January 6, 2014); see *People v. Flowers*, 132 Ill. App. 3d 939, 941 (1st Dist. 1985) (court can take judicial notice of vital statistics published by federal agency). To be sure, the life expectancy of an individual serving a lengthy prison term is significantly shorter than average; for example, data from Michigan show that the life expectancy for juveniles sentenced to life in prison is only 50.6 years. *Casiano v. Comm'r of Correction*, 115 A.3d 1031, 1046 (Conn. 2015) (citing secondary authorities, and applying *Miller* to juvenile's sentence of 50 years without possibility of parole). Darien's release from prison and reintegration into society is therefore highly unlikely. The State does not dispute that Darien's sentence will likely result in his dying in prison.

Accordingly, this Court should affirm the appellate court's decision that Darien's case be remanded so that the question of whether Darien's sentence should be reduced can be fully pursued at a new sentencing hearing. There is an emerging consensus in neurobiology and developmental psychology that the parts of the brain that govern judgment and other characteristics that make people morally

culpable do not mature until the early 20s. Thus, condemning a Darien to die in prison for a crime he committed as a teenager shocks the moral sense of our community under advancing standards of decency. This mandatory *de facto* life sentence fails to meet Illinois' constitutional objective of restoring 18-year-old Darien to useful citizenship. The circuit court was prohibited from even considering at sentencing Darien's complete lack of criminal history, his stable home environment and continued family support, and continued educational achievements. As such, Darien's case should be remanded for a new sentencing hearing wherein the judge can consider how these important factors contribute to the constitutionally mandated objective of restoring Darien to useful citizenship, that it previously could not consider as a result of the mandatory sentencing scheme applicable to Darien in this case.

B. Darien's as-applied challenge to the constitutionality of his sentence is appropriately raised on direct appeal.

This Court can address Darien's constitutional challenge to his sentence raised for the first time on direct appeal, and conclude that Darien's *de facto* life sentence shocks the moral sense of the community and does not adequately meet the Illinois Constitutional mandate that his sentence be determined with the objective to restore him to useful citizenship. In Illinois, when a direct appeal is taken constitutional claims of record must be raised on direct appeal. See generally *People v. Veach*, 2017 IL 120649, ¶47.

The State argues for the first time in its brief to this Court that Darien forfeited review of his constitutional claim by failing to raise an as-applied challenge to his sentence in the circuit court. (St. Br. 9). The State has waived this forfeiture

argument by failing to raise it in the appellate court or in its petition for leave to appeal to this Court. *People v. Williams*, 193 Ill. 2d 306, 348 (2000) ("The rules of waiver are applicable to the State as well as the defendant in criminal proceedings, and the State may waive an argument that the defendant waived an issue by failing to argue waiver in a timely manner."); *People v. Whitfield,* 228 Ill. 2d 502, 509 (2007) (The State's forfeiture argument must be properly preserved). This Court should therefore honor the State's forfeiture. See e.g., *People v. Holman*, 2017 IL 120655, ¶27 (State forfeited its argument that defendant had 'thrice-forfeited' his postconviction challenge to his murder sentence, where State raised argument for the first time in its response brief in the Supreme Court, and State should have made argument during supplemental briefing on remand when defendant originally presented that claim).

Moreover, this Court can address Darien's direct appeal constitutional claim that the confluence of mandatory sentencing statutes that the judge was required to apply resulted in an unconstitutional sentence under either prong of plain review. *Williams,* 193 Ill. 2d at 347-48 (defendant need only argue plain error once the State has asserted forfeiture). The plain error doctrine permits a court on direct appeal to take notice of plain errors and defects affecting substantial rights which were not brought to the attention of the trial court. *People v. Herron*, 215 Ill. 2d 167, 186–87 (2005); Ill. Sup. Ct. Rule 615(a). "In the sentencing context, a defendant must then show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Here, both prongs of plain

error review are satisfied.

First, Darien's right to be sentenced in compliance with Illinois' constitutional mandate that his sentence meet the objective to restoring him to useful citizenship implicates his right to a fair sentencing hearing under the Illinois Constitution. See e.g., *People v. Brown*, 225 Ill. 2d 188, 203 (2007) (defendant can always challenge a sentence that violates the constitution). Second, the evidence at Darien's sentencing hearing was closely-balanced where the judge expressly lamented that he was sorry that his sentencing options were limited by law and imposed the mandatory minimum. (R. CC9). The judge's comments evidence that he would have given Darien a lower sentence had he not been constrained by the conflux of the three mandatory sentencing schemes that the judge was required by law to impose on Darien. Accordingly, plain error review is appropriate in this case.

Citing this Court's decision in *People v. Thompson*, 2015 IL 118151, at ¶¶37, the State contends that the appellate court should have declined to adjudicate Darien's as-applied constitutional challenge because the record in his case does not contain the necessary factual development of his claim. (St. Br. 11-12). The State's reliance on *Thompson* is misplaced. In *Thompson*, the defendant raised his as-applied challenge under the principles of *Milller,* 567 U.S. at 469, for the first time on appeal from the dismissal of an untimely 2-1401 petition. The *Thompson* Court concluded that the record was insufficiently developed to adjudicate the defendant's claim. Critically, *Thompson* did not involve a direct appeal and the *Thompson* defendant's collateral petition notably did not raise any issue relating to his sentence. *Thompson*, 2015 IL 118151, at ¶¶14, 25; see *People v. Jones*, 213

Ill.2d 498, 506-09 (2004) (appellate courts cannot address issues on appeal from the denial of a post-conviction petition that were not contained in the petition). Thus, the *Thompson* Court to refused to entertain the defendant's as-applied *Miller* challenge.

In contrast to the *Thompson* defendant, Darien is raising his as-applied constitutional challenge to his sentence on *direct appeal*, not on appeal from a collateral proceeding. "[U]nder the Illinois Constitution the right to appeal a criminal conviction is fundamental," *People v. Ross,* 229 Ill.2d 255, 268-69 (2008), whereas a postconviction proceeding is a collateral attack upon a finalized prior conviction and affords only limited review of constitutional claims not presented at trial. *People v. Greer*, 212 Ill. 2d 192, 203 (2004). This Court has long recognized a critical distinction between direct appeal and collateral review postures when addressing claims that were not presented to the trial court; while the plain error doctrine permits a court on direct appeal to take notice of plain errors and defects affecting substantial rights that were not brought to the attention of the trial court, the plain error rule may not be invoked to save procedurally defaulted claims in post-conviction proceedings. *People v. Owens*, 129 Ill.2d 303, 316–17(1989), citing *People v. Free*, 122 Ill.2d 367, 377–78 (1988); *People v. Davis*, 156 Ill. 2d 149, 159 (1993). Thus, because Darien's unconstitutional sentence constitutes plain error, this Court can address his as-applied constitutional challenge on direct appeal.

Indeed, this Court has repeatedly considered as-applied constitutional challenges raised for the first time on direct appeal. See *In re J.W.,* 204 Ill.2d 50, 61-62 (2003); *In re M.A.*, 2015 IL 118049, ¶¶39-41; *In re Jonathon C.B.*, 2011 IL

107750, ¶¶43; *People v. Johnson*, 225 Ill.2d 573, 577-78, 586, 592 (2007); *People v. Gray*, 2017 IL 120958, ¶¶27, 58 (all addressing as-applied constitutional challenges on direct appeal that were not raised in the trial court). Because *Thompson* involved collateral proceedings where the defendant's as-applied challenge was raised for the first time on appeal from dismissal of his collateral-based petition, nothing in *Thompson* implicates this Court's longstanding practice of addressing as-applied constitutional challenges raised for the first time on direct appeal. Thus, the State's reliance on the procedural bars in *Thompson's* collateral proceedings have no bearing on this case. (St. Br. 10-11).

Moreover, the record in Darien's case does contain all the facts necessary to conclude that his mandatory life sentence shocks the moral sense of the community. See, e.g., *People v. Holman*, 2017 IL 120655, ¶32 (adjudicating the defendant's claim that his sentencing hearing did not comport with *Miller*, 567 U.S. at 469, raised for the first time on appeal from the dismissal of a successive post-conviction petition because all of the facts and circumstances to decide the defendant' s claim were already in the record). As discussed *supra*, at pp. 24-26, Darien's argument that his sentence fails to meet the objective of restoring him to useful citizenship specifically relies on the particular facts that were adduced at his sentencing hearing about Darien's age, his lack of criminal background, his educational history, his family support and his susceptibility to peer pressure that his sentencing judge was unable to consider. (C. 198, 218-230). All of this factual development about Darien's personal history and capacity to be restored to useful citizenship is sufficient to allow this Court to consider whether the

emerging consensus on neurology and psychology of young adults should be applicable to him, rendering his mandatory life sentence for a crime committed when he was only three months past the age of 18 shocking to the moral sense of the community. See e.g., *Harris*, 2016 IL App (1st) 141744 at ¶61 (concluding that the record in Darien's case contains the facts necessary to consider how the evolving science on juvenile maturity and brain development should apply to the circumstances of his case).

However, if *arguendo*, this Court concludes that further factual development of the record is needed, as the State asserts (St. Br. 11), Supreme Court Rule 615 expressly allows for further clarification of factual matters on which the record in unclear. *People v. Garrett*, 139 Ill. 2d 189, 195 (1990) ("The appellate court is empowered under Rule 615(b) to remand a cause for a hearing on a particular matter while retaining jurisdiction"); Ill. Sup. Ct. R. 615(b). Remand for an evidentiary hearing on direct appeal from a criminal conviction is a long-approved method of resolving a factual matter left unclear by the record on appeal. See *People v. Hampton,* 225 Ill.2d 238, 245 (2007) (remanding for evidentiary hearing on forfeiture by wrongdoing of confrontation clause claim); *People v. Houston*, 226 Ill.2d 135, 153 (2007) (remanding to reconstruct *voir dire* record where necessary to resolve ineffectiveness claim); *People v. Kuntu*, 188 Ill.2d 157, 162 (1999) (remanding for evidentiary hearing on juror misconduct claim); *People v. Goins*, 119 Ill.2d 259, 268 (1988) (remanding for evidentiary hearing on speedy trial claim).

As discussed above, there was significant factual development at Darien's sentencing hearing about Darien's personal history and capacity to be restored

to useful citizenship from which this Court can adjudicate his claim. However, if further factual clarification is needed at the circuit court level, as the State claims, about how the science concerning juvenile development applies to the circumstances of Darien's case, and whether the rationale of *Miller* should be extended beyond minors under the age of 18 (St. Br. 11), this Court should remand Darien's case for an evidentiary hearing, while retaining jurisdiction. *Garrett* ,139 Ill.2d at 195; Ill. Sup. Ct. R. 615(b).

C. Article I, Section 11 of the Illinois Constitution allows for judicial determinations that a legislatively-mandated sentence is unconstitutional.

In arguing that Darien's sentence does not violate the rehabilitation clause of the Illinois Constitution, the State takes the position that this Court should categorically reject all facial and as-applied challenges brought under the clause by defendants over the age of 18. (St. Br. 17-18). The State is essentially asking this Court to create a bright line rule that constitutional challenges under Article 1, Section 11's rehabilitation clause are limited to defendants under the age of 18. In other words, the State would have this Court add a restrictive age-limit into a provision of the Illinois constitution where none exists. Yet the State cites no authority that courts can make such an addition.

The State initially contends that Darien may not raise a proportionate penalties challenge to his aggregate sentence for these crimes, despite their commission during "a single course of conduct." (St. Br. 16). However, in *People v. Reyes*, 2016 IL 119271, ¶¶ 6, 9, this Court recently considered the aggregate length of the defendant's consecutive sentences imposed for a single course of conduct

in determining whether such a sentence violated the Eighth Amendment. This Court confirmed "the practical effect" of the consecutive sentences upon the young defendant, which is that the defendant would be forced to spend the rest of his life in prison. *Reyes*, 2016 IL 119271, ¶9.

While this Court in *Reyes* was evaluating the defendant's aggregate sentence under the Eighth Amendment, there is no practical justification for not applying this same reasoning to a sentence under Illinois' proportionate penalties clause. Indeed, this Court has previously considered whether the convergence of various sentencing statutes operate to mandate a lengthy sentence that violates the proportionate penalties clause. See *People v. Leon Miller*, 202 Ill. 2d 328, 342-43 (2002) (evaluating "the convergence of the Illinois transfer statute, the accountability statute, and the multiple-murder sentencing statute"); see also *People v. Gipson*, IL App (1st) 122451, ¶78, (concluding that 15-year-old defendant's aggregate 52-year sentence violated the proportionate penalties clause).

The State's reliance on *People v. Carney*, 196 Ill. 2d 518, 529 (2001), for its contention that aggregate sentences may not be reviewed under the proportionate penalties clause is misplaced. (St. Br. 16). At issue in *Carney* was whether the due process rule of *Apprendi* applied to consecutive sentences, and the court held that it did not. 196 Ill. 2d at 524-25. In answering that question, the court cited a case from the early 20th century, *People v. Elliott*, 272 Ill. 592 (1916), in which the defendant's 70 individual sentences were treated separately for purposes of the proportionate penalties analysis. Importantly, *Elliott* interpreted the previous Illinois Constitution, which did not contain the rehabilitation clause that is a

"distinctive component" of the current constitution. *People v. Clemons*, 2012 IL 107821, ¶¶36-37. Thus, neither *Elliott* nor *Carney*, which cites it, are instructive in evaluating the current Illinois Constitution's requirement that society' advancing standards, in this case, for youthful offenders, be considered in imposing a sentence.

The State insists that this Court has never found it cruel and degrading to apply the legislatively-mandated minimum penalty to an adult offender, that life sentences for all offenders over the age of 18 are inherently reasonable, and that any legislative determinations with respect to adult sentencing schemes are unassailable. (St. Br. 17, 20, 13). Yet, the premise on which the State's arguments are based is flawed, and should be rejected. The crux of the State's position is that the judiciary has no power under the rehabilitation clause of Article I, Section 11 to act as a check on the legislative branch. (St. Br. 30-36). However, this Court has long rejected that notion and has explicitly declared that "the legislature's power to prescribe mandatory sentences is not without limitation and that the penalty must satisfy constitutional constrictions." *Leon Miller*, 202 Ill. 2d at 336. Critically, the State fails to give any meaningful consideration to this Court's recognition that the rehabilitation clause of Article I, Section 11 provides greater protections than the Eighth Amendment. *Clemons*, 2012 IL 107821, at ¶¶36-37

In support of its position that Illinois courts have no power to review an individual's adult sentence under the rehabilitation clause, the State's brief contains lengthy recitations to cases where courts have: upheld natural life sentences for adult offenders (St. Br. 21-22, 26); upheld additional penalties for murder committed with a firearm (St. Br. 23); and upheld consecutive sentencing (St. Br. 24). The

State, thus, concludes from these findings that it would improperly "usurp[] the legislature's authority to fix punishment" for courts to grant relief under the clause. (St. Br. 30-31).

Yet, Your Honors in *Leon Miller* already rejected this notion and made clear that judges have a duty to review challenges to the legislature's sentencing schemes to ensure that they comply with constitutional directives. 202 Ill. 2d at 336; see generally *People v. Holman*, 2017 IL 120655, at ¶51 (the question of whether a particular sentence is advisable is a question for legislators; whether or not such sentence is constitutional is a question for judges). While the State acknowledges this Court's decision in *Leon Miller*, it would limit the outcome in that case to its facts (St. Br. 18-19), and ignore the key component of *Leon Miller* that Illinois Courts *do* have the responsibility, under Article 1, Section 11 of the Illinois constitution, to invalidate legislatively-mandated minimum sentences that are cruel and degrading, and shock the moral sense of the community. *Leon Miller*, 202 Ill. 2d at 336-37; see also *People v. Joseph*, 113 Ill.2d 36, 40-41 (1986)(invalidating legislative enactment of Section 122-8 of the Post-Conviction Hearing Act, finding that it violated the separation of powers clause of the Illinois constitution).

The State distinguishes *Leon Miller* on the basis that the defendant in that case was only 15 and was not the principal offender. (St. Br. 19). It urges that the reasoning of *Leon Miller* should not ever be applied beyond the circumstances of that case. (St. Br. 19). Yet in doing so, the State fails to account for this Court's entrenched recognition that proportionate penalties clause analysis must adapt

along with our society's concepts of "elemental decency and fairness." (St. Br. 15). As this Court stressed in *People v. Rizzo*, 2016 IL 118599, ¶38, the *Leon Miller* court never defined what kind of punishment qualifies as "cruel" and "degrading" or "so wholly disproportioned to the offense as to shock the moral sense of the community," ... "because, as our society evolves, so too do our concepts of elemental decency and fairness which shape the 'moral sense' of the community," citing *Leon Miller*, 202 Ill. 2d at 339.

The State's contention that Darien's case is sufficiently distinct from *Leon Miller*'s case fails to recognize how the law and our understanding of fairness in the sentencing of young adults has expanded in the 15 years since *Leon Miller* was decided. The State, in its brief, does not engage in any meaningful discussion about how society and the court's growing understanding of the advances in research about brain science, and the rehabilitative potential of young adults in their late teens to early twenties has changed societal perceptions about what is considered "shocking" to us. (St. Br. 13-15); see e.g. *People v. Harris*, 2016 IL App (1st) 141744 at ¶¶61, 68 (concluding that the "evolving science" on juvenile maturity and brain development and many of the concerns and policies underlying our juvenile court system apply with equal force to a person of Harris' age and to the circumstances of his case). The State does not address how this growing consensus should play into a court's evaluation of whether an individual defendant's sentence reflects the mandated objective of restoring him to useful citizenship under Article I, Section 11. Must judges blindly ignore what they increasingly understand to be true?

Despite acknowledging that Article I, Section 11 is directed at *both* the

judiciary and the legislature (St. Br. 13), the State ultimately maintains that the legislature is the only proper place for consideration of evolving societal standards to occur. (St. Br. 25). To the contrary, the United States Supreme Court *expressly* recognized in *Hall v. Florida* the propriety and importance of both state courts and state legislatures relying on the expertise of the relevant scientific and medical communities when making determinations about progressing standards that define certain classifications of defendants. *Hall*, 134 S. Ct. at 1993, *supra,* at p. 23.

The State cites to recent legislative changes affirming that the age of "adulthood" is 18 as evidence that the Illinois legislature has definitively rejected any notion that our growing understanding of the greater rehabilitative potential of young adults should apply beyond the age of 18. (St. Br. 25); 705 ILCS 405/5-120 (2012 & 2014); 730 ILCS 5/5-4.5-105 (eff. Jan 1, 2016). However, these changes merely reflected the legislature's reactive incorporation of the teachings of *Roper, Graham*, and *Miller* into a comprehensive set of additional factors to be considered at sentencing. See *People v. Cole*, 2017 IL 120997, ¶30 ("It is well settled that when statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law). In other words these legislative changes were made only in *response* to judicial recognition of these progressing societal norms.

In seeking a bright line rule that violations of the rehabilitation clause can never be cognizable for defendants over the age of 18, the State is essentially asking this Court to import lockstep Eighth Amendment jurisprudence to a rehabilitation clause analysis. However, where this Court has previously concluded

that the rehabilitation clause's mandate that sentences in Illinois be determined with the objective of restoring the offender to useful citizenship provides greater protections than the Eighth Amendment, any age-related limitations of the Eighth Amendment need not and should not apply to the proportionate penalties clause of the Illinois constitution. *Clemons*, 2012 IL 107821 at ¶40. There is simply no basis in the plain language of the rehabilitation clause that the citizens of Illinois intended to limit the application of this constitutional provision to the small number of its citizens who are under 18.

In its argument to the appellate court in this case, the State disputed the notion that Article I, Section 11's rehabilitation clause provides greater protection than the Eighth Amendment. (St. App. Ct. Br. 33-34). The State now acknowledges that this Court has recognized that the specific language in the Illinois Constitution that a penalty must be determined "with the objective of restoring the offender to useful citizenship" provides protections beyond those afforded by the Eighth Amendment. (St. Br. 13). Yet, despite this acknowledgment, the remainder of the State's brief is spent urging this Court to place the exact limitations on the proportionate penalties clause as have been placed on the Eighth Amendment and to limit its application to those defendants under the age of 18. (St. Br. 24-26, 33).

As such, the State asserts that the very act of a court applying the rehabilitation clause to any young defendant over the age of 18 in order to invalidate his or her legislatively-mandated sentence would amount to the creation of a "new sentencing scheme" for young adults that would usurp the legislature's authority

to fix punishment. (St. Br. 30-31). The State claims that the appellate court in this case granted "to an undefined class of young adults the same protections that the United States Supreme Court expressly limited to offenders under eighteen years of age." (St. Br. 33). However, that is simply incorrect; it is only the State that is seeking a categorical rule – a categorical rule *against* any judicial application of the rehabilitation clause to non-juveniles.

This Court should do nothing more than adhere to the plain language of the rehabilitation clause of Article I, Section 11, and conclude that, under the facts of Darien's case, his particular life sentence does not meet the Illinois constitutional mandate that his sentence be designed to restore him to useful citizenship. And indeed, Darien is merely asking this Court to affirm its longstanding acknowledgment that Article I, Section 11 of the Illinois constitution does allow the judiciary to provide a check on the legislature when an individual's legislatively-mandated sentence fails to meet the requirements of this constitutional provision. *Clemons*, 2012 IL 107821, ¶39; *Leon Miller*, 202 Ill. 2d at 336.

Darien's condemnation to die in prison for a crime he committed a mere three months past his 18th birthday shocks the moral sense of the community under the facts of his specific case. That the plain language of the rehabilitation clause itself directs its determination be made with respect to "the offender," rather than to a "class of offenders" confirms that the clause's directive requires individualized determinations and its direction is not limited to the imposition of large class-based prohibitions on who can invoke review under the clause, as the State requests here. (St. Br. 30-31). As this Court discussed in *Clemons*, Delegate

Leon Forster, the architect of the amendment to Article I, Section 11, explained the purpose behind the rehabilitation clause: "in addition to looking to the act that the person committed, we also should look at *the person who committed the act* and determine to what extent he can be restored to useful citizenship." 2012 IL 1078213, ¶39, citing 3 Proceedings 1391 (statements of Delegate Foster) (emphasis added).

The fact that reviewing courts have begun to invalidate youthful defendants' sentences under this clause is a clear *reflection* of a growing consensus regarding youth within our society. Specifically, the recognition that the areas of the teenage brain "that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable" do not finish maturing until the early 20s, and that our society's concept of elemental decency and fairness which is evolving to recognize this reality. See *Harris*, 2016, IL App (1st) at ¶69; *House*, 2015 IL App (1st) 110580, ¶101; *Gipson*, 2015 IL App (1st) 122451, ¶61; *People v. Thomas*, 2017 IL App (1st) 142557, ¶59 (Mikva, J., dissenting). This Court should reaffirm that the protections afforded to all Illinois citizens by our constitution's rehabilitation clause remain intact and exist precisely to accommodate shifts of this nature that reflect the changing values and concerns of our society.

Until the legislature acts to update our current sentencing laws to more accurately reflect this growing recognition in our society, it is the duty of the courts to protect young defendants against cruel, degrading, and shocking sentences. To that end, judicial findings invalidating certain young adult sentences under

the rehabilitation clause may become more frequent than such findings were in the last 15 years since this Court's decision in *Leon Miller*. (St. Br. 19). However, that fact does not alter the constitutional framework set forth by the citizens of Illinois when they added the rehabilitation clause to our constitution in 1970. Ill. Const. 1970, art. 1, sec. 11.; *Clemons*, 2012 IL 107821 at ¶38. Nor should the legislature's failure to keep current on evolving brain science impede judges from fulfilling their sworn obligation to ensure that criminal penalties in the State of Illinois satisfy the constitution.

In sum, the rehabilitation clause of Article I, Section 11 was added to the Illinois Constitution to require that sentences "look at the person who committed the act to determine to what extent he can be restored to useful citizenship." *Clemons,* 2012 IL 1078213, ¶39, (citing statements of constitutional delegates). It is within your Honors' authority and within the power of the judiciary to invalidate an individual's legislatively-mandated sentence if that sentence fails to meet the constitutional objective of restoring him to useful citizenship, and is cruel and degrading to the moral sense of the community based on evolving societal standards of elemental decency. Applying these standards to the instant case, the operative sentencing scheme in this case violates the rehabilitation clause of the Illinois Constitution, as applied to Darien and in light of our growing recognition of the rehabilitative capacity of teenagers. Accordingly, Darien Harris respectfully requests that this Court affirm the appellate court's decision vacating Darien's sentence and remanding his case for a new sentencing hearing, free from the mandatory minimums.

II. The State failed to prove beyond a reasonable doubt that Darien Harris was guilty of Rondell Moore's murder. There were no witnesses, physical evidence, or inculpatory statements tying Darien to the shooting; and unlike Darien, State's witness Aaron Jones was actually seen in the bank parking lot where Rondell was found shot. (Cross-Relief Requested).

Rondell Moore was shot in the parking lot of a Chase bank at some point after a shooting at a BP gas station a block away. The State's witnesses identified Darien Harris as the shooter at the gas station, but there were no witnesses to the shooting in the bank parking lot, no physical evidence tying Darien to that shooting, and no inculpatory statements by Darien. (R. AA30-AA34, AA69). The State presented conflicting evidence about whether Darien ran in the direction of the bank after the shooting at the gas station. (R. AA22, AA66-AA67, AA75-AA76). The physical evidence pointed firmly to another shooter in the bank parking lot: the bullet recovered from Rondell's body *did not match* the bullets recovered from the gas station; there was no testimony that Darien had a second gun; and, unlike Darien, various other people–including the State's dubious witness, Aaron Jones–were actually seen in the bank parking lot. (R. AA25, AA159-AA167). Quincy Woolard's testimony also indicated that there were other individuals in the immediate vicinity of the gas station who knew that Rondell was running down the alley toward the bank. (R. AA87). Because the State failed to prove beyond a reasonable doubt that Darien shot and killed Rondell, Darien's conviction for first-degree murder should be reversed.

Due process requires the State to prove every element of a charge, including the identity of the offender, beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970); *People v. Ash*, 102 Ill. 2d 485, 492-93 (1984); see U.S. CONST.,

amend. XIV; Ill. Const. 1970, art. I, § 2. A conviction should be overturned on appeal if the evidence, viewed in the light most favorable to the State, would not allow a rational trier of fact to find that the elements of the offense were proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Hopkins*, 201 Ill. 2d 26, 40 (2002). A reviewing court has a duty to carefully consider the evidence and to reverse the judgment if the evidence is not sufficient to remove all reasonable doubt of the defendant's guilt. *Ash*, 102 Ill. 2d at 492–93; *People v. Smith*, 185 Ill. 2d 532, 541 (1999). While the court must allow all reasonable inferences in favor of the State, it may not allow unreasonable inferences. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

Rondell, his brother Ronald, and Marcus Diggs stopped at the BP gas station on Stony Island Avenue, between 66th Place and Marquette Drive, to meet a mechanic named Quincy Woolard. (R. AA13-AA15, AA55). While Rondell and Quincy worked under the hood of the car, Aaron drove his car into the gas station, dropped off a passenger, and drove away. (R. AA13-AA18, AA92-AA99). Before recanting at trial, Aaron asserted that the passenger was Darien. (R. AA92-AA94, AA102-AA104). Ronald, who was still in his car, testified that Darien approached the car and shot at Rondell. (R. AA14-AA15, AA18-AA21, AA54, AA59). Quincy was shot three times and immediately fell to the ground when he tried to run. (R. AA87, AA171-AA173). Ronald further testified that, while at the gas station, Darien had aimed his gun at Ronald and pulled the trigger, but he was out of bullets. (R. AA20-AA21). Four fired bullets were later recovered from the gas station, which were two 380/38 class caliber and two 9mm/38 caliber bullets. (R. AA165-AA167).

No evidence establishes that Rondell was shot at the gas station. Rather, evidence demonstrating that he was not struck by bullets at the gas station was the fact that he fled the gas station, jumped over a fence, and ran down an alley. (R. AA18-21). To facilitate the Court's understanding of the testimony, a Google Maps image of the gas station and relevant surroundings is included in the appendix[3]. As depicted in the Google Maps image, the alley leads toward the Chase bank, which was across 66th Place, about a block south of the gas station. (R. AA19). Ronald testified that he briefly chased Darien, who ran south on Stony Island, away from the alley. When Ronald reached the bank, he found Rondell collapsed in the bank parking lot. (R. AA21-AA22). Dexter Saffold, a witness who was passing by the gas station testified that Darien ran in the direction of the bank, while another individual jumped over the fence and into an alley that leads toward the bank. (R. AA66-AA67, AA74-AA76).

When viewing the State's evidence in the light most favorable to the State, the State failed to prove beyond a reasonable doubt that Darien was Rondell's shooter. Although the testimony presented by the State arguably showed that Darien was the gas station shooter, it did not show beyond a reasonable doubt that Darien was guilty of Rondell's murder.

Contrary to the State's theory of prosecution, Rondell was not shot at the gas station. (R. AA5-AA8, BB24-BB25, BB38-BB39). Unlike Quincy, who immediately fell to the ground after gunshots were fired at the gas station, Rondell

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[3]See *People v. Crawford*, 2013 Ill. App. (1st) 100310, n.9 (courts may take judicial notice of information on Google Maps, whether or not it was included in the record on appeal).

ran away from the car that was parked at a pump, and scaled a fence at the outer perimeter of the gas station. (R. AA19, AA87). As depicted in State's Exhibits 9-11, that fence was several feet high. Rondell ran down the alley for a full block, across 66th Place, and into the bank parking lot. (R. AA22). It defies common sense that such a physical feat would have been possible if Rondell had already been shot three times, with one of the bullets piercing his right lung and pulmonary artery. (R. AA157-AA159).

Significantly, the State presented *no evidence* of Rondell's blood anywhere between the gas station and the bank parking lot. The State did not present any evidence of blood on the fence, in the alley, or on 66th Place. The crime scene photos of the relevant areas, State's Exhibits 9-11, do not depict blood spots or a blood trail. The police collected a blood sample from the gas station pavement, but there was no testimony or stipulation that the sample was tested–and therefore no evidence that it came from Rondell rather than Quincy, who fell to the gas station pavement with multiple gunshot wounds. (R. AA87, AA163).

In addition, there was no evidence linking Darien to the gun used to shoot Rondell. In fact, the evidence showed that the gun used to shoot Rondell was *not* the gun fired at the gas station. All of the bullets recovered from the gas station were 380 class caliber; the bullet recovered from Rondell's abdomen, however, was a 22 caliber. (R. AA159-AA161, AA165-AA167). There was no testimony that Darien was ever seen with more than one gun. Notably, Darien was never seen in the bank parking lot and, as Ronald testified, Darien ran out of bullets at the gas station. (R. AA20).

Thus there was no physical evidence linking the shots fired by Darien at the gas station to Rondell's murder. To the contrary, the evidence pointed squarely to a different shooter in the bank parking lot, one block away, who fired the bullets that actually struck and killed Rondell.

Moreover, none of the State's witnesses saw who shot Rondell, and there was no footage from the bank's security cameras showing what happened in the bank parking lot. With no eyewitnesses to Rondell's shooting, no physical evidence linking Darien to the murder weapon, and no inculpatory statement by Darien, the State's evidence boils down to mere testimony that Darien ran south on Stony Island, toward the bank, when he left the gas station. (R. AA22, AA66-AA67, AA75-AA76).

Viewing this evidence in the light most favorable to the State, that testimony does not prove that Darien shot Rondell. No witness testified that Darien was ever in the bank parking lot. Notably, the State's own evidence showed that various other individuals were. In rendering its judgment, the trial court noted the suspicious, indeed, glaring, possibility that Aaron's involvement in the shooting "transcended that which he admitted to." (R. BB48). Ronald testified that Aaron's Lexus was in the bank parking lot when Ronald ran to Rondell immediately after the gas station shooting. (R. AA25) The police did not recover a gun from Aaron's Lexus, but there was no indication that they searched Aaron's house–even though Aaron stopped at home "very briefly" between leaving the gas station and going back out to the Walgreens, where he was arrested within minutes of the shootings. (R. AA98-AA100).

For his part, Aaron admitted to the detectives during a recorded interview that he was in the bank parking lot immediately after the gas station shooting. Notably, Aaron also saw several other people in the lot at that time. (State's Exhibit 26, Disk 6 at 16:00:29-16:02:17). Although Aaron told the detectives that he could not remember who they were, he did say that numerous people from the neighborhood routinely hang out and buy drugs from him there. (State's Exhibit 26, Disk 6 at 16:00:29-16:02:17).

Quincy testified that someone at the gas station yelled, "He runnin down the alley, he runnin down the alley." (R. AA87). Evidently, some unknown number of other unidentified individuals in the immediate vicinity of the gas station knew exactly where Rondell was heading, suggesting another possible shooter.

Here, the State's evidence that Darien shot Rondell was unsatisfactory and defies common sense. See *Cunningham*, 212 Ill. 2d at 280 (if only one conclusion may reasonably be drawn from the record, a reviewing court must draw it even if it favors the defendant). The State therefore failed to prove beyond a reasonable doubt that Darien is guilty of the first-degree murder of Rondell Moore. This Court should reverse Darien's conviction and vacate his 45-year sentence for that offense.

III. In light of the emerging scientific consensus on the ongoing neurological development of young adults, it is a violation the Eighth Amendment to sentence individuals under the age of 21 to mandatory life imprisonment without giving the sentencing judge the opportunity to consider the transient signature qualities of those defendants' youth – their reduced culpability, reduced susceptibility to deterrence, and their enhanced amenability to rehabilitation.

A consensus continues to emerge within the scientific community that brains of young adults continue to mature into their early 20s. This consensus has fueled a growing legal and societal understanding that sentencing schemes that draw a bright line at 18 and disregard the characteristics of older, youthful defendants fails to serve valid penological objectives. Indeed, Illinois has already recognized the age of 21 as an important milestone in other legal contexts. Accordingly, in recognition of the emerging neurology on the development and psychology of young adults, this Court should conclude that it violates the Eighth Amendment to impose a mandatory *de facto* sentence of life imprisonment upon young adult defendants like Darien Harris who were under the age of 21 when the offense was committed.

The Eighth Amendment prohibits governments from imposing "cruel and unusual punishments" for criminal offenses. U.S. CONST., AMEND VIII. This prohibition "guarantees individuals the right not to be subjected to excessive sanctions." *Miller v. Alabama*, 567 U.S. 460, 469 (2012) (quoting *Roper v. Simmons*, 543 U.S. 551, 560 (2005)). This right "flows from the basic precept of justice that punishment for the crime should be graduated and proportioned to both the offender and the offense." *Id*. (internal quotations omitted). "The concept of proportionality is central to the Eighth Amendment," and is viewed "according to the evolving standards of decency that mark the progress of maturing society." *Id.* (internal

citations omitted).

In recent years, the United States Supreme Court has radically altered the calculus to be used in sentencing youth under the Eighth Amendment, and restricting the punishments that may be meted out to youth because of the lack of development in their brains. See *Roper*, 543 U.S. 551; *Graham v. Florida*, 560 U.S. 48 (2010); *Miller*, 567 U.S. 460. *Roper*, *Graham*, and *Miller* require a sentencing court to consider the signature qualities of youth when sentencing a juvenile in adult court. *Roper* explained that "the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate the younger years can subside." 543 U.S. at 570 (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)). These signature qualities diminish the penological justifications that undergird our adult sentencing regime. *Miller*, 567 U.S. at 472. Because youth are less blameworthy than adults, retribution cannot serve as a motivation for sentencing. *Id*. Deterrence also does not work because youth's "immaturity, recklessness, and impetuosity make them less likely to consider potential punishment." *Id.* Incapacitation diminishes as a justification because the signature qualities of youth are transient, and "incorrigibility is inconsistent with youth." *Id.* (quoting *Graham*, 560 U.S. at 73). Because of their lack of development, youth have "greater prospects for reform" than adults. *Id.*

Since *Graham, Roper* and *Miller* were decided in 2002, 2005, and 2010, respectively, there has been an emerging consensus that the brain research on which these cases relied has itself evolved to demonstrate that the brains of young

adults continue to develop into their mid-20s. Dr. Ruben C. Gur, Director of the Brain Behavior Laboratory at the Neuropsychiatry Section of the University of Pennsylvania School of Medicine, has stated that "[t]he evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable." Ruben C. Gur, *Declaration of Ruben C. Gur, Ph.D., Patterson v. Texas, Petition for Writ of Certiorari to the United States Supreme Court (2002)*; Andrea MacIver, *The Clash Between Science and the Law, 35 Northern Illinois University Law Review* (Fall 2014), 15-24 ("New science shows the brains continues to develop until one's early twenties").

As there is now evidence that a teenager's brain continues to mature past the age of 20, it is unconscionable to apply the same mandatory life sentence to all offenders, regardless of age. In the instant case, Darien was only three months past his 18th birthday at the time of the offense. According to scientific evidence and the advent of the functional MRI, his brain was still continuing to mature. See MacIver, at 21 (Amicus brief submitted by the American Medical Association in *Roper* makes clear that advances in brain imaging studies have allowed scientists to demonstrate, "to a degree never before understood," that adolescents are immature in the very fibers of their brain). The biological data is consistent with findings concerning the psychological development of young people. Research from the MacArthur Foundation demonstrates that teenage offenders are often unable to make, and act upon, proper autonomous judgments. Youths are particularly susceptible to peer pressure, the fear of rejection and the desire for peer approval,

all of which increase the likelihood that they will commit conduct promoted by others that they would not normally commit on their own. MacArthur Foundation Research Network on Adolescent Dev. & Juvenile Justice, *Issue Brief 3: Less Guilty by Reason of Adolescence*, at 3; *See also*, Barry Feld, *The Transformation of the Juvenile Court*, 84 Minn. L. Rev. 327, 386 (1999). Thus, young offenders cannot fairly be expected to be capable of the same level of control over, or responsibility for, their own behavior as adult offenders, and should be viewed as having more rehabilitative potential than adult offenders.

With this advancing scientific consensus that the brains of 18-21 year olds are not fully developed has come a legal and societal determination that young adults in their late teens and early twenties should be given sentencing consideration similar to those of juveniles. Analyzing the current neuroscience research, scholars have recently called for policies that account for the brain development of young adults. *See* Elizabeth S. Scott et. al., *Young Adulthood As a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641 (2016)("age has long been a basis for sentencing mitigation, and"relative youth [of young-adult offenders] should be considered in sentencing."); see also, Andrew Michaels, *A Decent Proposal: Exempting Eighteen-to-Twenty-Year-Olds From The Death Penalty*, 40 N.Y.U. Rev. L. & Soc. Change 139, 161-179 (2016) ("Evolving standards of decency compel sparing eighteen-to-twenty-year-olds from death sentences as well."); Kevin J. Holt, *The Inbetweeners: Standardizing Juvenileness and Recognizing Emerging Adulthood For Sentencing Purposes After Miller*, 92 Wash. U. L. Rev. 1393, 1411-1413 (2015) (because the human brain does not fully

develop until around age 23 to 25, basing the cutoff for the purposes of the Eighth Amendment at 18 makes little sense."); Kelsey B. Shust, *Extending Sentencing Mitigation For Deserving Young Adults,* 104 J. Crim. L. & Criminology 667, 677 (2014) ("Drawing a bright line at 18 and disregarding the characteristics of older youthful defendants fails to serve any of the penological justifications that the Supreme Court has ruled imperative for harsh and irrevocable sentences.").

Indeed, several European countries have already extended juvenile justice to include young adults. Kanako Ishida, Young Adults in Conflict with the Law: Opportunities for Diversion, Juvenile Justice Initiative, at 2 (Feb. 2015)[4]. In Germany, all young adults ages 18 to 21 have been tried in juvenile court and the judges have an option to sentence them as a juvenile, if a consideration of the offender's personality and environment indicate that his psychological development was as a juvenile. *Id*. Sweden allows for young adults to be tried in juvenile court until their 25th birthday, and young adults 18 to 24 receive different treatment than adults. *Id.* at 3. The Netherlands has extended juvenile alternatives for young adults ages 18 to 21. *Id.*; *People v. House*, 2015 IL App (1st) 110580, ¶95, citing Ishida.

Indeed, although this brain research is new, Illinois law already recognizes that 18 is not the bright line for determining the rights and obligations associated with adulthood in other contexts. Most tellingly in this context, the Juvenile Court Act permits, and in some cases requires, sentences of probation and commitment

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[4]available at http://jjustice.org/wordpress/wp-content/uploads/Young-Adults-in-Conflict-with-the-Law-Opportunities-for-Diversion.pdf.

to the Department of Juvenile Justice until the age of 21. See 705 ILCS 405/5–715 (2016) (probation); 705 ILCS 405/5–750 (2016) (commitment to DJJ); 705 ILCS 405/5–820 (2016) (commitment of violent juvenile offenders). Another notable example is the prohibition on alcohol consumption by anyone younger than twenty-one. See 235 ILCS 5/6-20(e) (2016). In another example, Illinois limits the Second Amendment rights of young people. Applicants under the age of 21 cannot obtain a Firearms Owners Identification Card without parental permission. 430 ILCS 65/4(a)(2)(I) (2016). If their parents are barred from owning a firearm under a litany of disqualifying factors, those applicants cannot get a FOID card at all, and they are completely banned from owning a firearm. 430 ILCS 65/4(a)(2)(I). All of these restrictions on 18-to-21-year-old ostensible adults underscore that "the designation that after age 18 an individual is a mature adult appears to be somewhat arbitrary." *House*, 2015 IL App (1st) 110580 at ¶95.

To that end, this Court need not wait for the United States Supreme Court to extend the bright line rule of *Miller* to young adults ages 18-21. See e.g., *People v. Reyes*, 2016 IL 119271, ¶10 (extending *Miller* rule to *de facto* life sentences for juveniles); *People v. Holman*, 2017 IL 120655, ¶40 (extending *Miller* rule to discretionary life sentences for juveniles). Traditionally, Illinois has been at the forefront of juvenile reform. See *People v. Patterson*, 2014 IL 115102, ¶177 (Theis, J., dissenting), and Illinois has already, in many ways, recognized that additional protections and limitations are needed for young adults between the 18 and 21 years of age. This Court should conclude that the Eighth Amendment requires that this same group of young adults be protected against mandatory life sentences

that do not recognize their unique status under the law as young adults, who are still uniquely protected but not yet entitled to the full rights available to those adults over the age of 21. Accordingly, Darien Harris respectfully requests this Court find that sentencing him to die in prison for a crime he committed three months after his 18th birthday violates the Eighth Amendment.

CONCLUSION

For the foregoing reasons, Darien Harris, defendant-appellee, respectfully requests that this Court remand reverse his conviction for first-degree murder and, alternatively, remand his case for a new sentencing hearing.

Respectfully submitted,

PATRICIA MYSZA
Deputy Defender

LAUREN A. BAUSER
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

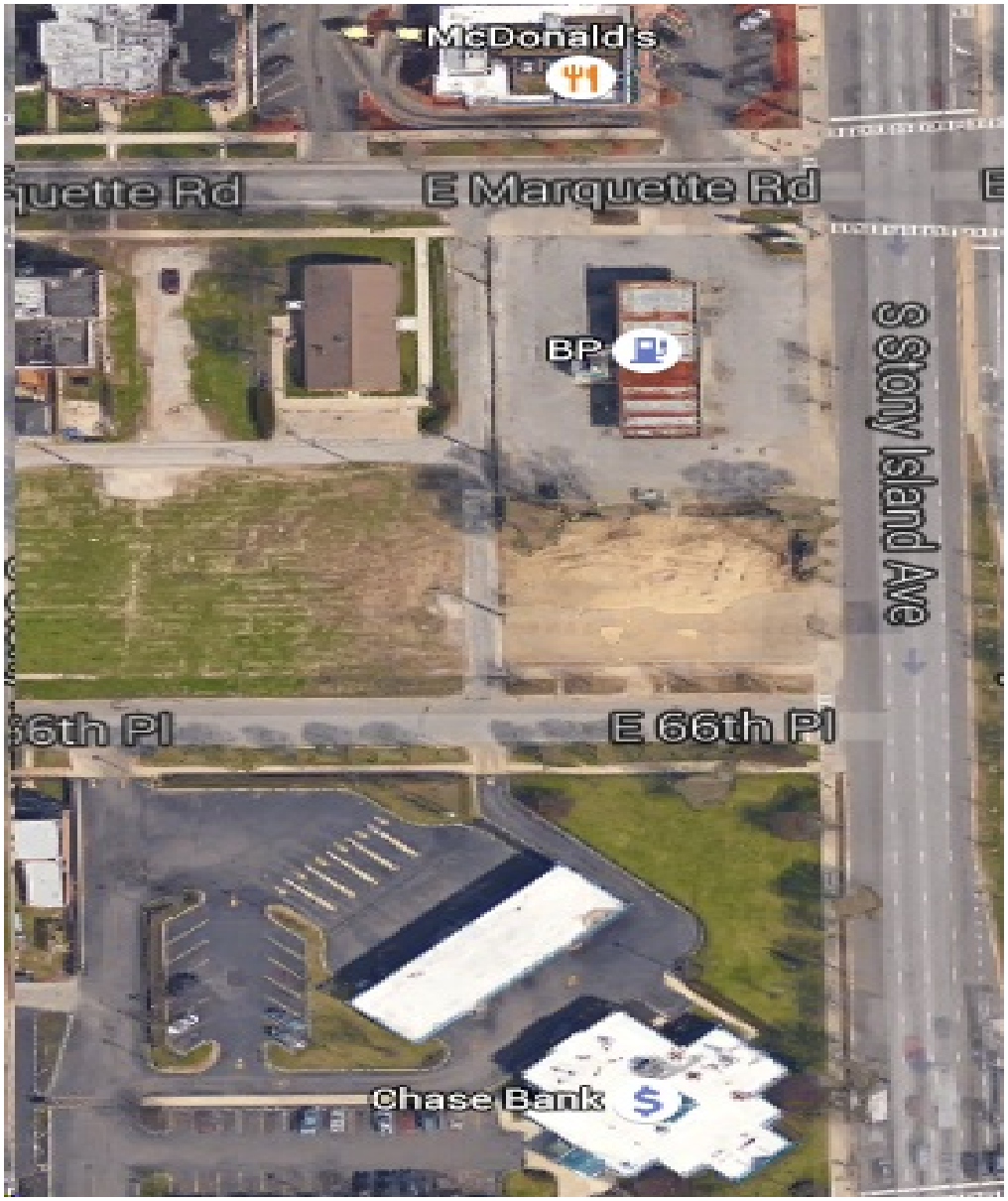
COUNSEL FOR DEFENDANT-APPELLEE

CERTIFICATE OF COMPLIANCE

I, Lauren A. Bauser, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding 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 14,951 words.

/s/Lauren A. Bauser
LAUREN A. BAUSER
Assistant Appellate Defender

APPENDIX TO THE BRIEF



No. 121932

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

Ms. Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601, mglick@atg.state.il.us, cc: twhatley-conner@atg.state.il.us, jescobar@atg.state.il.us, lbendik@atg.state.il.us;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602, eserve.criminalappeals@cookcountyil.gov;

Mr. Darien Harris, Register No. M44963, Stateville Correctional Center, PO Box 112, Joliet, IL 60434;

Ms. Shobha L. Mahadev, Mr. Scott F. Main, Children & Family Justice Center Bluhm Legal Clinic, Northwestern Pritzker School of Law, 375 E. Chicago Ave, Chicago, IL 60611, scott.main@law.northwestern.edu

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 January 11, 2018, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Carol Chatman
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us