

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

Supreme Court No. 161529

-vs-

JOHN ANTONIO POOLE,  
Defendant-Appellant.

---

Amicus Curiae Justin Schneider  
Amicus Curiae Eric P. Tamlin  
Amicus Curiae Joseph Richmond  
Amicus Curiae Michael Tubbs  
Amicus Curiae Darnell Bates

Brief of Amicus Curiae  
in Support of John Antonio Poole

By: Justin Schneider #477972  
Muskegon Correctional Facility  
2400 S. Sheridan Dr.  
Muskegon, Michigan 49442



Table of Contents

Index of Authorities.....i

Statement of Questions Presented.....iii

Interest & Identity of Amicus Curiae.....1

Argument I. Mandatory life without parole is an unconstitutional sentence for individuals 17 years-old and younger. Because there is no meaningful distinction between the brain development of a 17 year-old and late adolescent between the ages of 18-21 years-old, proportionality demands that the holdings of 'Miller' and 'Montgomery' be applied to this distinct age group.....2

Conclusion.....11

## Index of Authorities

<u>CASES</u>	<u>PAGE</u>
Commonwealth v Brehold, NO. 14-CR-161 (2017).....	10
Cruz v U.S., NO. 11-CV-787 (JCH) (2018).....	10
Estelle v Gamble, 429 U.S. 97, 102 (1976).....	3
Graham v Florida, 560 U.S. 48 (2010).....	2
Miller v Alabama, 560 U.S. 467 (2012).....	2,6,11
Moore v Texas, 581 U.S. _____, 137 S.Ct. 1039, 1053 (2017).....	4
Roper v Simmons, 543 U.S. 551 (2005).....	2,3
Trop v Dulles, 356 U.S. 86, 101 (1958).....	3

### CONSTITUTION

Eighth Amendment, U.S. Const.....	3
Fourteenth Amendment, U.S. Const.....	3

### LITERATURE & POLICY

A Decent Proposal: Exempting 18-to-20 Year Olds from Death Penalty; 40 NYU Rev. Law and Social Change 139, 161 (2016)

A Social Neuroscience Perspective on Adolescent Risk-Taking (Dr. Laurence Steinberg) (2008)

Age and Explanation of Crime, Revisited (2013)

Age of Opportunity: Lessons from the New Science of Adolescence (2014)

American Bar Association Resolution 111 (2018)

At Risk of Being Risky: The Relationship Between "Brain Age" under Emotional State and Risk Preference

Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation 21(2) Developmental Science 1,2 (2017)

Deciding in the Dark: Age Differences in Intuitive Risk Judgment, E.R. Shulman et. al. (2014)

Developmental Changes in Real Life Decision Making (2004)

Issues in Science and Technology (Spring 2012)

Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making In Adolescence and Adulthood: An Experimental Study (2005)

LITERATURE & POLICY (con't.)

Should the Science of Adolescent Brain Development Inform Public Policy?  
by Dr. Laurence Steinberg

When Does A Juvenile Become An Adult? Implications for Law and Policy, 88  
Temple L. Rev. 769, 786 (2016)

When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and  
Non-Emotional Contexts -- Alexandra O. Cohen, et. al.

Young Adulthood as a Transitional Legal Category: Science, Social Change, and  
Justice Policy (2015)

## Statement of Questions Presented

- I. Is mandatory life without parole an unconstitutional sentence for individuals 17 years-old and younger? Because there is no meaningful distinction between the brain development of a 17 year-old and late adolescent between the ages of 18-21 years-old, does proportionality demand that the holdings of 'Miller' and 'Montgomery' be applied to this distinct age group?

Amicus answers: "Yes."

### Interest and Identity of Amicus Curiae

Justin Schneider is serving a mandatory life sentence in the Michigan Department of Corrections (MDOC). His conviction and subsequent sentence arose from criminal circumstances that occurred when he was twenty-one years-old.

Eric Tamlin is serving a mandatory life sentence in the MDOC. His conviction and subsequent sentence arose from criminal circumstances that occurred when he was twenty-one years-old.

Joseph Richmond is serving a mandatory life sentence in the MDOC. His conviction and subsequent sentence arose from criminal circumstances that occurred when he was twenty years-old.

Michael Tubbs is serving a mandatory life sentence in the MDOC. His conviction and subsequent sentence arose from criminal circumstances that occurred when he was twenty years-old.

Darnell Bates is serving a mandatory life sentence in the MDOC. His conviction and subsequent sentence arose from criminal circumstances that occurred when he was nineteen years-old.

Each of the above-listed amicus curiae will be impacted by the outcome of the present case and, therefore, have a significant interest in how the Court will rule in this matter.

1. Mandatory life without parole is an unconstitutional sentence for individuals 17 years-old and younger. Because there is no meaningful distinction between the brain development of a 17 year-old and late adolescent between the ages of 18-21 years-old, proportionality demands that the holdings of 'Miller' and 'Montgomery' be applied to this distinct age group.

In the past it has often been accepted that the age of the defendant does not relate to the crime. However, due to an abundance of research on adolescent brain development and related issues, society's understanding has broadened based on the consensus that late adolescents are largely indistinguishable from their juvenile counterparts, at least in terms of the three attributes that make children "different:" (1) they make impulsive and poorly considered choices; (2) they are influenced by others and their environment; and (3) they have great capacity for change. This newly acquired perspective is rooted in neuroscience and reflects society's evolving standards of decency.

The United States Supreme Court decisions in *Roper v Simmons*, 543 U.S. 551 (2005); *Graham v Florida*, 560 U.S. 48 (2010); and *Miller v Alabama*, 560 U.S. 467 (2012) were all premised on advances in the fields of developmental psychology and neuroscience showing fundamental differences between adolescent and adult minds. The 'Miller' court explained that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds," including "in parts of the brain involved in behavior control." *Miller*, supra, at 567 U.S. 471-72.

### A. The Evolving Standards of Decency

It is presumed the State might argue that this Court should not grant relief to Mr. John Antonio Poole. However, for this Court to rule against Mr. Poole it would entirely disregard and eradicate the "evolving standards of decency" by making the cruel and unusual punishment clauses of the Constitutions entirely static.

The concept of proportionality is central to the Eighth Amendment. And courts view that concept less through a historical prism than according to the evolving standards of decency that mark the progress of a maturing society." *Estelle v Gamble*, 429 U.S. 97, 102 (1976) (Quoting *Trop v Dulles*, 356 U.S. 86, 101 (1958)). Thus, late adolescents like Poole whose brains are on a developmental continuum should not be subjected to the harshest adult penalty of life without parole (LWOP).

### B. The Creation of a New Set of Sentencing Rules for Juveniles Does Not Constitute a Refusal To Apply Those Rules to Late-Adolescents.

While the "children are different" cases create exemptions for juveniles, those decisions do not reject similar rules for late adolescents. Courts decide the issue presented. In *Roper*, for example, the Court described the issue before the Court as "whether it is permissible under the Eighth and Fourteenth Amendments to the Constitution of the United States to execute a juvenile offender who was older than 15 but younger than 18 when he committed a capital crime." *Roper*, 543 U.S. at 555-56.

Likewise, while the scientific research provided strong



support for the reviewing courts' observations about juveniles, that research did not support treating a defendant's eighteenth birthday as the neurodevelopmental line between children and adults. See, e.g., Laurence Steinberg, "Should the Science of Adolescent Brain Development Inform Public Policy?", *Issues in Science and Technology* (Spring 2012) (noting "there is no simple answer to the question of when an adolescent brain becomes an adult brain.") See also *Moore v Texas*, 581 US \_\_\_, 137 S.Ct. 1039, 1053 (2017) (holding that when determining whether an inmate's execution would violate the Eighth Amendment due to intellectual disability, states must give proper deference to the "medical community's current standards" that reflect "improved [scientific] understanding over time").

**C. There is a Scientific Consensus that Late Adolescents Share the Class Characteristics That Make Children Different.**

There is no empirical justification for limiting the application of the new scientific research on brain development to offenders under the age of eighteen. Rather -- as the American Bar Association recognized in a recent resolution calling for the elimination of the death penalty for offenders who were 18-21 at the time of their crimes -- a large body of scientific research conducted over the past decade has "demonstrate[d] that 18 to 21 year olds have a diminished capacity to understand the consequences of their actions and control their behavior in ways similar to youth under 18." American Bar Association Resolution 111 (2018). See also Andrew Michaels, "A Decent Proposal:

Exempting Eighteen-to-Twenty-Year-Olds from Death Penalty," 40 N.Y.U. Rev. Law and Social Change 139, 161 (2016).

"Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties." Elizabeth S. Scott et al., Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy, 85 Fordham L. Rev. 641, 642 (2016). This research confirms that 18-21 year olds "are not fully mature adults" but rather are more like adolescents under the age of eighteen in the precise three ways the courts found to be of central importance to the constitutional analysis in Miller, supra.

First, the research has established that late adolescents, like juveniles, are prone to risk-taking and impulsivity and are not yet mature enough to fully anticipate the future consequences of their actions. Researchers have found that young people develop "basic intellectual abilities" (a measure of working memory, capacity to solve academic problems, and verbal fluency) much earlier than they develop "psychosocial maturity" (a measure of impulsivity, risk perception, sensation-seeking, future orientation, and resistance to peer influence). Laurence Steinberg, "A Social Neuroscience Perspective on Adolescent Risk-Taking, 28(1) Dev. Rev. 78-106 (2008). While "basic intellectual abilities reach adult levels around age 16," the "process of psychosocial maturation is not complete until "well into the young adult years." Id. While adolescents tend toward heightened sensation seeking due to "hormonal changes of puberty,"

their "brain systems that regulate impulse control" are not yet developed. Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, at 656, 657. This "maturational imbalance" results in "a period of vulnerability to risky behavior," including "criminal offending." *Id.*, at 647.

To understand how this phenomenon works in real-life situations, psychologists distinguish between two different decision-making processes: "cold cognition," which refers to "judgment in situations that permit unhurried decision making and consultation with others," and "hot cognition," which refers to "judgment in situations characterized by emotional arousal, time pressure, or the potential for social coercion." Laurence Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence* 202 (2014). For some time, scientists have understood that adolescents, as a result of their stage of neurodevelopment, make poorer decisions, take more risks, and act more impulsively when they are emotionally aroused and relying on hot cognition. See, e.g., Eveline Crone et al., *Developmental Changes in Real Life Decision Making*, 25 *Developmental Psychology* 251, 252 (2004).

It was this body of research that led courts to find that adolescents, because of their stage of neurodevelopment, are more prone than adults to "recklessness, impulsivity, and heedless risk-taking." Miller, *supra*, 567 U.S. at 461 (internal quotation marks omitted).

Recent research has demonstrated that this phenomenon continues past adolescents' eighteenth birthdays. Scientists

have found that, "relative to adults over twenty-one," young people between the ages of eighteen and twenty-one "show diminished cognitive capacity, similar to that of adolescents, under brief and prolonged negative emotional arousal." Alexandra O. Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 *Temple L. Rev.* 769, 786 (2016). This research has also linked the 18-21-years olds' diminished cognitive capacity under emotionally charged circumstances to "decreased activity in the [brain's] cognitive-control circuitry." Alexandra O. Cohen et al., *When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, *supra*, 559.

In another study, researchers used functional imaging technology to observe young people's brains as they were exposed to emotionally neutral and emotionally charged stimuli. Marc D. Rudolph et al., *At Risk of Being Risky: The Relationship Between "Brain Age" under Emotional State and Risk Preference*, 24 *Developmental Cognitive Neuroscience* 93, 94-96 (2017) . The researchers found that the brains of 18-21-year olds performed and looked like adult brains when exposed to the neutral stimulus but performed and looked like younger adolescents' brains when exposed to the emotionally charged stimulus. *Id.* at 102.

Scientists have also found that these phenomena appear to be universal. In a recent study of 5,000 people between the ages of ten and thirty from eleven culturally and economically diverse countries, researchers found that "sensation seeking is higher during adolescence -- peaking at age 19 -- than before or after,

whereas self-regulation continues to develop into the mid-20s." Laurence Steinberg et al., *Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation*, 21(2) *Developmental Science* 1, 2 (2017). And the researchers found that "[t]hese patterns are strikingly similar across the 11 countries studied," despite great cultural and economic differences between those countries. *Id.*

This body of research demonstrates that a key characteristic of adolescence found to be of constitutional significance by this court--a propensity to recklessness, impulsivity, and heedless risk-taking-- is present in late adolescents. And this characteristic is "now viewed as normative, driven by processes of brain maturation that are not under the control of young people," and typical of normally developing brains. Elizabeth S. Scott et al., *Young Adulthood as a Transitional Category*, *supra*, 647.

Second, the research has shown that, like younger adolescents, late adolescents are more vulnerable to negative outside influences than their adult counterparts. In one study, researchers examined a sample of 306 individuals in three age groups--adolescents (thirteen to sixteen), youths (eighteen to twenty-one), and adults (twenty-four and older)--and determined that "the presence of peers makes adolescents and youth, but not adults, more likely to take risks and more likely to make risky decisions." Margo Gardner et al., *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 *Dev. Psychology* 625,

632, 634 (2005). And the research has identified an apparent link between peer influence on risk taking and increased activity in the brain's socio-emotional network, a part of the brain that does not begin to mature until the early twenties. *Id.*

Third, late adolescents, like younger adolescents, have greater prospects for rehabilitation than their older adult counterparts. Researchers have found that the propensity to engage in risky behavior peaks at age twenty. E.P. Shulman et al., *Deciding in the Dark: Age Differences in Intuitive Risk Judgment*, 50(1) *Developmental Psychology* 167-177 (2014). These risk-taking behaviors, and corresponding rates of criminality, then drop off dramatically as young people move from late adolescence and early adulthood into their mid to late twenties. See Gary Sweeten et al., *Age and the Explanation of Crime, Revisited*, 42(6) *Journal of Youth and Adolescence* 921-938 (2013). Thus, while all adolescents are more prone to risk-taking and criminality, most will grow out of it and stop offending by the time they leave their twenties.

This desistance trajectory is consistent with what scientists now know about neurodevelopment in late adolescence. Adolescence is a "remarkable period of brain reorganization and plasticity," Laurence Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence*, *supra*, 22. During this time of heightened neuroplasticity, adolescents are able to learn new information and strengthen basic and advanced abilities to a greater degree than later in life. *Id.* at 24-34.

In sum, current scientific research demonstrates that in

all ways that were significant to the Miller Court's constitutional analysis, late adolescents are much more like younger adolescents than they are to older adults.

#### **D. Science Informs the Law.**

Considering these recent scientific advances, courts have begun to recognize that late adolescents cannot be treated the same as older, more fully developed adults when they are subjected to harsh criminal sanctions. See, e.g., *Cruz v United States*, No. 11-CV-787 (JCH), 2018 WL 1541898, at \*16 (D. Conn. Mar. 29, 2018) (unpublished decision holding that, in light of recent scientific developments, "Miller applies to 18-year-olds," and "the Eighth Amendment [thus] forbids a sentencing scheme that mandates life in prison without possibility of parole for offenders who were 18 years old at the time of their crimes" (citation and internal quotation marks omitted)); *Commonwealth v Bredhold*, No. 14-CR-161, 2017 WL 8792559 at \*1 (Ky. Cir. Ct. 2017) (holding that Kentucky death penalty statute is unconstitutional as applied to individuals under the age of twenty-one in light of recent research demonstrating that those individuals are "psychologically immature in the same way that individuals under the age of 18 were deemed immature, and therefore ineligible for the death penalty").

Today, there is no justifiable basis for excluding late adolescents from the protection of the state and federal constitutions. The science now shows that, in all the ways that mattered to this Court's analysis in its recent juvenile


sentencing cases, there is no constitutionally significant difference between late adolescents and seventeen year-old offenders.


CONCLUSION

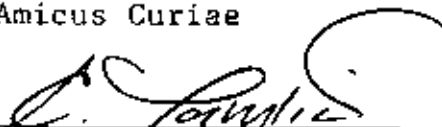
Just as the "distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes," (Miller, 567 U.S. at 472), the same distinctive attributes applicable to late adolescents similarly diminish the penological justification of making this State's most single-most serious punishment mandatory, precluding any consideration of facts which diminish culpability, including the neurodevelopmental truths discovered long after the passage of such legislation.

This Court should rule in favor of Mr. John Antonio Poole.


Respectfully submitted,

  
Justin Schneider #477972  
Amicus Curiae

  
Michael Tubbs #212375  
Amicus Curiae

  
Eric Tamlin #195194  
Amicus Curiae

  
Darnell Bates #180982  
Amicus Curiae

  
Joseph Richmond #253417  
Amicus Curiae





August 12, 2021

Justin Schneider #477972  
Muskegon Corr. Facility  
2400 S. Sheridan Dr.  
Muskegon, MI 49442

Michigan Supreme Court  
Attn: Clerk of the Court  
P.O. Box 30052  
Lansing, MI 48909

RE: People v John Antonio Poole, SC No. 161529  
Amicus Brief Filing

Dear Clerk:

Enclosed please find the following for filing:

Motion to Waive Fees & Costs

Affidavit in Support of Motion to Waive Fees & Costs


Motion to File Amicus Curiae Brief

Brief of Amicus Curiae in Support of John Antonio Poole

Proof of Service

Thank you kindly in advance. Have a blessed day!

Sincerely,

  
Justin Schneider

