IN THE

MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

JOHN ANTONIO POOLE,

Defendant-Appellant.

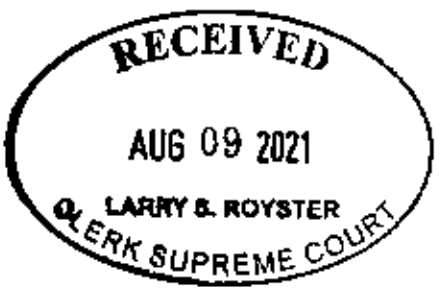
Supreme Court No. 161529

Court of Appeals No. 352569

Wayne County CC: 02-000893-FC

On Appeal from the Court of Appeals

BRIEF OF AMICI CURIAE CHARLES SELBY IN SUPPORT OF DEFENDANT-APPELLANT JOHN POOLE



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INTEREST AND IDENTITY OF AMICI CURIAE

Charles Selby is a prisoner within the Michigan Department of Corrections. He was a newly minted 18 year old for 192 hours when he committed 1st degree murder in 1986. Since then, he has spent most of his life in prison, where he has truly struggled to understand why and how he could have not only taken a human at such a young age, but also why he failed, at the time, to think he had done anything wrong--or how he could have actually bragged about doing it shortly afterwards. Decades have passed without answers, leaving him without an axis from which to calibrate his direction in life. That was until Dr. Laurence Steinberg, a prominent expert in adolescences and the lead scientist on the amici curiae briefs filed by the American Psychological Association in Roper, Graham, and Miller, radically changed Selby's life--with the premise of self-rehabilitation through the course of natural brain development--when declaring his medical findings in the science of juvenile brain development. Since then, Selby has absorbed every Law Review and neuroscientific report on the topic that he can get his hands on. Not only does Selby now have the self-esteem, confidence, purpose, and hope (whether incarcerated or a free man), he fully understands how and why he--depite the vicious nature of prison--has been able to achieve true remorse for his actions and to live a violent-free life since the incident. Furthermore, an aspect of Selby's rehabilitation has been the study of law, through which he has become acutely aware that he remains condemned to die in prison--not because of guilt or innocence--due to his god-given-brain's inability to have fully developed within mere days of the State and Federal government's schedule.

For these reasons, Selby currently has a pending criminal appeal before this Court (Docket No. 159976), where--though an "as-applied" challenge of MCL 750.316 accompanied with a court record replete with demonstrated hallmark characteristics of youth--he vigorously demonstrates that he is an exception to the law created for true adult homicide offenders. Accordingly, commonsense, everyday life experiences in prison, knowledge in the consistently evolving developmental brain science, and moral obligations, impel Selby to oppose the notion that other exceptions to Miller's arbitrarily placed line are nonexistent, especially when Selby has encountered several exceptions like himself, who have also worked very hard to rehabilitate themselves when the prison system neither required it nor fostered it. Those prisoners at the time of their offenses range in ages from 18 to 23.

Against that backdrop and consistent with Selby's extensive research on the issue, he offers his perspective and insight to assist this Court in its truth seeking, regardless of who it supports or who it does not support.

Lastly, Selby does not know defendant John Antonio Poole, nor has Selby received any money or any benefits from writing this brief for which he is the sole author.

INTRODUCTION AND SUMMARY OF ARGUMENT

Much of what judicial history on this issue relates ... chills, shames, and disgusts us. This aversion caused the guardians or our national conscience to strike down laws that permit the execution of children under age 16. 1 Seventeen years later, the logic of Thompson was extended to those under 18. 2 A few years following, the Eighth Amendment categorically "prohibited the imposition of a life sentence on a juvenile offender who did not commit homicide." 3 These holdings of course then led to "the Eighth Amendment forbid[ing] a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders. 4

Accordingly, since children and adolescents have reduced cognitive, interpersonal, and emotional capabilities, they are less blameworthy than mature adults when they engaged in criminal behavior. And therefore it was only logical for the Court to decree teenage homicide offenders permission to mitigate penalties for their offenses.

The focal point here is that Dr. Steinberg and his renowned colleagues are the very medical experts in whom the foundation of the above Miller trilogy lays. Therefore, for purposes of the Eighth Amendment, states must defer to the "medical community's current standards that reflect improved understanding overtime"; they cannot "deviate from prevailing clinical standards," 5 nor should this Court continue such a course. In fact, the Sixth Circuit Court of Appeals recently demonstrated a willingness to meaningfully approach this issue with the sincerity of judicial truth seeking, after many years of outrightly denying medical science to aver that "[f]or the purposes of the Eighth Amendment, an individuals birthday marks that bright line [distinguishing between juvenile and adult]. We decline to create exceptions, even for offenders with rare physiological conditions." 6

The Sixth Circuit's new stance came from Sherill, 7 where the Court fairly reasoned that while it has historically declined to extend Miller's reasoning to those over age 18, it must now look beyond historical conceptions to the evolving standards of decency that mark the progression of a maturing society--noting that members of its court have already begun to consider whether the line separating childhood and adulthood has shifted, pointing to various contexts in which it considers twenty-one the age of majority, as well as scientific and social research indicating that those under twenty-one retain the defining characteristic of youth.

Similarly, it is well past time for Michigan to dovetail the law with the medical science and empirical evidence that unequivocally supports the extension of Miller to those whom qualify from ages 18 to 25.

ARGUMENT

MANDATORY IMPOSITION OF LIFE WITHOUT PAROLE FOR THOSE AGE 18 AND ABOVE IS UNCONSTITUTIONAL FOR THE SAME REASONS THE MILLER COURT BARRED SUCH SENTENCES FOR YOUTH UNDER AGE 18

The Court explicitly explained that children are constitutionally different from adults not because they are under 18 years of age, but because they have not attained a level of adult mentation. 8 The underpinning of this landmark decision came from Dr. Laurence Steinberg. Five years after Dr. Steinberg testified in Miller, he testified in the Cruz case 9 that "we didn't know a great deal about brain development during late adolescences until much more recently." 10 He further testified that those in late adolescences "still show problems with impulse control and self-regulation and heightened sensation seeking which would make them in those respects more similar to somewhat younger people than older people." 11 In addition, "[s]usceptibility to per pressure is higher during late adolescences than in adulthood." 12 Late adolescences are also "more capable of change than adults." 13 Finally, although Dr. Steinberg testified that he was "[a]bsolutely certain" that the science in which the US Supreme Court's decision rested applies equally to 18-year-olds, 14 he also testified "that the same things were true about people who are younger than 21." 15

Again, for purposes of the Eighth Amendment, states must defer to the "medical community's current standards that reflect improved understanding overtime"; they cannot "deviate from prevailing clinical standards," 16

A. Why the line in Miller should be extended to those age 18 and above.

The Eighth Amendment requires courts to consider the scientific consensus on adolescent development in determining the constitutionality of mandatory life without parole for those ages 18 and above. As the US Supreme Court has instructed, the Eighth Amendment "acquire[s] meaning as public opinion becomes enlightened by humane justice." 17

Against that backdrop, the medical community has spoken and a standard set. First, in addition to Dr. Steinberg's testimony in Cruz, supra, we look at various other reports by world renown neurobiologists and medical experts who demonstrate that it is now widely accepted that the characteristics cited by the US Supreme Court and this Court in youth sentencing cases persist "far later than was previously thought," and certainly beyond 18. Schiraldi & Western, Why 21-Year-Old Offenders Should Be Tried In Family Court. 18 See e.g., Scott et al., Young Adulthood As A Transitional Legal Category: Science, Social Change, and Justice Policy, ("It is clear that the psychological and neurobiological development that characterizes adolescence continues into the mid twenties.") 19 ; see also Beaulieu & Libel, Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood. 20 One widely cited study tracked the brain development of 5,000 children and found that their brains were not fully mature until they were at least 25 years old. Dorenbach et al., Prediction of Individual Brain Maturity Using fMRI. 21 In particular, the development of the prefrontal cortex which plays a key role in "higher-order continues into a person's early twenties. Further, a comprehensive 2019 report from the National Academies of Science explains this shift in understanding of adolescence, noting that "the unique period of brain development and heightened brain plasticity ... continues into the mid-20s," and that "most 18-25 year olds experience a prolonged period of transition to independent adulthood, a worldwide trend that blurs the boundary between adolescence and 'young adulthood,' developmentally speaking." National Academies of Science, The Promise of Adolescence: Realizing Opportunity For All Youth 22 (2019). The report concludes it would be "arbitrary in developmental terms draw a cutoff line at age 18." 22 Dr. Ruben C. Gur, Director of the Brain Behavior Laboratory at the Neuropsychiatry Section of The University of Pennsylvania School of Medicine, has stated "[t]he evidence is strong that the brain does not cease

to mature until 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." 23 ; see also e.g., Michaels, A Descent Proposal: Exempting Eighteen to Twenty-Year-Olds From The Death Pentalty, (noting that "peer pressure towards antisocial behavior continues to have important influence" in emerging adults ages 18-25). 24 They show "diminished cognitive capacity, similar to that of adolescents, under brief and prolonged negative emotional arousal." Cohen et al., When Does A Juvenile Become An Adult? Implications for Law and Policy. 25 And the period of "emerging adulthood" is a time of peak risk behavior. Arnett, Emerging Adulthood: A Theory Of Development from Late Teens through Through The Twenties. 26 ; see also e.g., Gardener & Steinberg, Peer Influence And Risk Taking, Risk Preference, And Risky Decision Making, (finding that adolescents (ages 13-16) and youths (ages 18-22) "were more oriented towards risk than were adults" and that "peer pressure had a greater impact on risk orientation" among both groups a s compared to adults.) 27 ; Pimentel, The Widening Matuiry Gap: Trying And Pushing Juveniles As Adults In An Era Extended Adolescence, ("Neuroscience tells us that we should expect same irrational, emotion-driven behavior from emerging adults, those ages eighteen to twenty-five, and that is not until their late twenties that it is reasonable to expect them to have the brain development necessary to behave like fully rational adults." 28 ; Davis, The Brain Defense, ("[A] growing number of research has shown that adolescent brain is not fully developed until a person is about twenty-five, and that as it's developing, many things can go wrong that lead to psychiatric and behavior disorders." 29

In short, the Court simplified all the above information as "what any parent knows...." 30

Directly on point with the marriage of law and medical science, Honorable Wood, 31 stated the obvious:

"As the Miller Court noted, these decisions [involving the Miller trilogy] are grounded in science. Courts have paid heed to 'developments in psychology and brain science that show fundamental differences between juvenile and adult minds' including the 'parts of the brain involved in behavior control.' For now, they are using the age of 18 as the relevant cut-off point, largely because of the scientific community's assessments regarding the length of the developmental period in the human brain.

But science does not stand still, and there is no reason to think it will do so moving forward. The scientific community's views on the development of the brain evolve all the time. One of the medical authorities on which the Supreme Court has relied most heavily on questions of neurological development is the American Association on Intellectual and Developmental Disabilities (AAIDD). Since Atkins v Virginia, 536 US 304 (2002), nearly every Supreme Court case concerning intellectual and developmental disabilities has drawn significantly from the medical conclusions set forth in the AAIDD's treatise, INTELLECTUAL DISABILITY DEFINITION, CLASSIFICATION, AND SYSTEMS OF SUPPORTS (11th ed. 2010). See Moore v Texas, 137 S Ct 1039, 1048-53 (2017); Brumfield v Cain, 576 US 305, 308, 315, 319, 320 (2015) (citing the 10th ed.); Hall v Florida, 572 US 701, 713 (2014); Akins v Virgina, 536 US 304, 308 n.3, 317 n.22, (2002) (citing the 9th ed). Just this year, the AAIDD released the 12th edition of its

treatise. See INTELLECTUAL DISABILITY DEFINITION, CLASSIFICATION, AND SYSTEMS OF SUPPORTS (12th ed. 2021). In it, the Association defines the end of human intellectual developmental period as 'the age of 22'—not 18. See id. at 1, 13, & 32. [...] Interestingly enough, this harmonizes the judgment of the scientific community with the federal law, which since 2000 has recognized 22 as the age at which neurological development ends. See 42 USC sec. 15002 (8) (definitions for programs for individuals with developmental disabilities).

Given the heavy emphasis the Supreme Court has placed on the scientific evidence in this corner of its jurisprudence, the scientific community's evolving views on the neurological developmental period may prove to have wide ranging effects on the law. It is not fanciful to think that, at some point in the not-to-distant future, the Court might revise the Miller line of cases and push the relevant age at which the Eighth Amendment prohibits mandatory life sentences without parole to 22."

This very colloquial played out at oral arguments during the Manning case, when prosecutor Williams stated not once but twice that it was in her opinion nothing has justified moving the Miller line AT THIS TIME, which of course implied the obvious existence of a justified reason to extend Miller's line (although Ms. Williams is one trained in arguing the law orally, sometimes parental truths slip out of one's mouth at the most inopportune moments). In fact, Justice Cavanagh quickly sought clarification by asking "what would support moving the line at a particular time?" Justice Clement even went as far as to recognized that the constantly evolving scientific data continues to support the extension of Miller's line past age 18, which is what Manning sought, to those age 22 or older.

Although, this truth was ignored by four of this Court's seven Honorable Justices in the Manning case, the writing is nevertheless on wall about the existence of overwhelming support to move the Miller line, and NOW being the time.

In addition to the copious amounts of empirically supported brain science, this Court is aware that the Legislatures in Michigan both recognize and utilize the Miller brain science, which has amounted to conflicting state laws. For example, the Miller brain science was intended for only 1st degree homicide offenders, yet legislators used it to increase its application to a second chance law specifically for non-violent offenders to age 26.[32] Yet the Michigan's court of appeal refused to apply Miller's sentencing protection to a juvenile offender convicted of 2nd degree murder. 33 Meanwhile Michigan raised the age to obtain a license to carry a concealed pistol from 18 to 21. 34 Also, prior to the Miller brain science, Michigan legislators enacted laws recognizing that children who are adjudicated delinquent or dependant prior to age 18 possess characteristics justifying their continued recognition as children under the law. 35 Of course Michigan does not entrust those under the age of 21 to purchase alcohol and for good reason. The same rationale prohibits persons under age 21 from entering a Gambling Casino. 36 Also, a person still in high school until

age 19.5 is defined as child. 37 And we cannot leave out that those under 21 are prohibited from purchasing cigarettes and marijuana because "the parts ofthe brain responsible for decision making, impulse control, sensation seeking, future perspective taking, and peer susceptibility and conformity continue to develop and change through young adulthood." Institute of Medicine of the National Academies of Sciences, Public health Implications of Raising the Minimum Age of Legal Access to Tobacco Products (March 2015). 38 In 2019, consistent with this scientific recommendation, Congress raised the national age to purchase tobacco from 18 to 21. 39

The inconsistent use of the Miller brain science by Michigan's legislators is not unexpected--given their often highly motivated political agendas. But for this very reason, this Court is entrusted with power to strike down laws that are wrong, as are all courts. 40 Yet this Court remains divided on accepting empirical medical evidence that is so basically understood that it is what any parent knows. Thus, this writer is led to surmise that over half of the Honorable Justices of this Court in the Manning case incorporated political loyalties into their opinions, whether writing the opinion or concurring with it, which is wrong. And for that reason--respectfully submitted--Senior Judge Jack B. Weinstein boldly reminds fellow judges about their duties to judicial integrity to NOT impede the evolution of the law in our constantly evolving and maturing society, when the science is empirically supported: 41

"an important duty of an Article III district judge is to prevent injustices by government in individual cases. See United States v Ingram, 721 F3d 35, WL 2666281, at *14 n.9 (2nd Cir. 2013) (Calabresi, J. Concurring) ("[W]e judges have a right--a duty even--to express criticism of legislative judgments that require us to uphold results we think are wrong." (footnotes and citations omitted)); Charles E. Wyzanski, Jr., A Trial Judge's Freedom and Responsibility, 65 Harv. L. Rev. 1281, 1303 (1952) ("clearly ethical in nature")/ Jack B. Weinstein, Every Day is a Good Day For A Judge To Lay Down His Professional Life for Justice, 32 Fordham Urb. L.J. 131, 155 (2004) ("The judge must decide: does this law violate the essence of my duty to ... humanity."). Where, as here, in the option of a ruling appellate court, the trial court has exceeded its power, at least the matter has been brought to the government's and public's attention, so that in due course, in our caring democracy, future injustices of this kind will be avoided."

Undoubtedly, Honorable Weinstein's words may make one or four of this Court's Justices stick to his or her guns even more in belief that an honest review of the law regarding the issue here is in fact based upon what the law actually is rather than what it could be. This premise, however, fails because an honest review of the law reveals the mandatory support of Miller's extension to those age 21, perhaps even 25.

You see, prior to 1970, the age of majority was 21. That was the law for centuries, and it was so because those under that age displayed the same youthful characteristic outlined in Miller

(WHAT ANY PARENT KNOWS). The law was ONLY changed to lower the age of majority to 18 simply because of a brief but tumultuous time of political and social upheaval in America in the 1960s and 1970s, largely as a result of the Vietnam War and the involuntary military draft that ensued for those age 18 and up. Thus, passage of the Twenty-Sixth Amendment to the United States Constitution resulted in the decrease of voting age from 21 to 18. 42 Once this happened, Michigan lowered its age of adulthood for most legal categories from 21 to 18. And with as mismatched as they remain, it does not appear that a great deal of independent analysis and thought went into lowering the age for each of the various legal categories at that time, but rather something on the order of "an adult for one purpose, a adult for all purposes." In other words, if the age for adulthood was 18 for purposes of serving time in the military and voting, then 18-year-olds must be sufficiently "adult-like" for all legal purposes, including governmental execution and to serve life without parole sentences in prison.

Forty years have elapse since this arbitrary and sudden change in law, and this brief raises the question—with the benefit of hindsight and upon observing the maturity level of typical 18 to 21 year olds in the United States today 43 —Does justice permit minors, who can establish at the time of their offenses the same youthful characteristic traits than 17-year-olds, to be condemned to suffer the remainder of their lives in prison for the same offenses 17-year-olds are issued mercy?

There is undoubtedly a rich plethora medical evidence supporting the extension of Miller's reason to those age 18 and above. Moreover, experience has taught us through hindsight that those between age 18 and 21 can still be deemed children by raising the age of majority back to 21, while at the same time enjoying the privilege of voting. Clearly, the existing scientific research also addresses differences in brain development with respect to specific actives, suggesting more delayed development in brain functions related to impulse control, hot cognition, and susceptibility to peer pressure than for activities involving informed decision-making and logical reasoning, such as voting. Thus the legal age of "adulthood" may vary depending on the particular context. 44

Respectfully, for those Honorable Justices who want to cling to the notion that their roles are to determine what the law is--not what it should be--then in this instance that sword cuts both ways as it requires you to change the age of majority back to what it was before a terrified group of minors under the age of 21 were permitted to vote in hopes of controlling whether they were forced to kill or be killed in wars in which they did not condone—wars in which grown adults lacked the courage

to enlist thereby forcing the draft. But for you to do nothing, as research grows, it becomes indefensible to exclude young adults, who share the identical attributes of younger teens, from the individualized sentencing and consideration of the mitigating qualities of youth. Doing nothing also contravenes the Court's basic principle, specifically when dealing with Eighth Amendment claims, as here, where the law is fluid and to be "viewed less through a historical prism than according to the evolving standards of decency that mark the progress of a maturing society." 45

Lastly, I implore you to consider the applicable connection between the above outlined history of the law's need to stop executing children and to cease sentencing them to the harshest sentences in the nation, and the well recognized fundamental that it is better that ten guilty men escape than one innocent man suffer. 46 Because now that it has been established that there remain true exceptions to the current cut-off line, it becomes more crucial to not allow truly rehabilitated prisoners to die in prison, when at the time of their offenses--although ages 18-25--not only satisfied the required Miller factors, but in many cases were far worse than 17-year-olds now being resentenced for the same offenses.

a) Charles Selby's spirited interest in the extension of Miller's sentencing protection to those age 18 and above.

Selby was 18-years-old for 192 hours when he pulled the trigger that ended the life of Walter F. Tittle. That tragedy occurred 35 years ago. Entering the prison at such a young age, and excluded from rehabilitative programming due to the sentence of death issued upon him, the decades passed struggling in many ways, but particularly with how he could have not only taken a human life, but also with how he did not think he had done anything wrong, at the time--or how he could have actually bragged about committing the homicide shortly thereafter. The lack of answers left him without an axis from which to calibrate direction for life.

It was not until Dr. Laurence Steinberg testified in the Cruz case with absolute certainty about the juvenile brain science applying to offenders Selby's age. That testimony encouraged Selby to absorbed every law review and scientific report dealing with the brain science that applies to him. Not only has this knowledge saved Selby's life through understanding how he could have thought so little about taking a human life at such a young age, it has also silenced the screams of doubt and

self-loathing--despite having grown up in this cruel environment to become nothing like the child he was entering, and while living a violence free life since the incident. He also has a clear understanding about remaining condemned to die in prison--not because of guilty or innocence--due to his god-given brain's inability to have fully developed on the state and federal government's schedule. Which is a true travesty of justice, given the singular facts and circumstance of his case.

You see, briefly, decades prior to the Miller brain science, the very cover of Selby's PSI alerts the court that he is a very troubled young man who is impulsive, immature, and irresponsible. Even worse, his PSI details that he never learned right from wrong, and that, more alarming, that mere months before the homicide we was in a juvenile detention center serving a 90-day sentence, where after 30 days he was evaluated and determined to be a deeply troubled child who would no doubt hurt himself or someone else in the near future. But rather than the state exercising wardship over him until trusted professionals could help him, he was released the next day, and nobody thought to inform his mother that he was in dire need of crisis counseling--NOBODY CARED THAT A LIFE WOULD BE LOST. Selby was, for all intents and purposes, discarded as a child throwaway. He was a child who should have never been thrust into the darkness, especially when "responsible" adults could have saved his and prevent a tragic, unnecessary death.

Selby shares a glimpse of his case here because through hindsight it becomes evident that he alone rehabilitated himself in prison when it was neither required or fostered by the MDOC, but more importantly he has accomplished this simply through his brain having the time to fully develop.

Furthermore, these truths are shared because Selby does not know defendant Poole's situation. All Selby knows is that his case, along with a dozen other cases, have been held in abeyance pending Poole's case. And, respectfully, after this Court's willingness in Manning--save three Justices--to so easily dismiss medical science, more needs to be said, perhaps with the tone from a personal perspective, because the Manning Court has essentially tossed the lives of an entire class of redeemable children into the darkness just as the juvenile detention center had done to Selby. Which is utterly alarming given the overwhelming amount medical science and national consensus provided to support the extension of Miller to those 18 and above .

It has yet to be said, but extending Miller to those 18 and above, who can demonstrate the same characteristic traits as 17 year old, is not merely about issuing mercy to homicide offenders.

Conversely, the family members of their victims (who are victims as well) need the ability to heal, to gain closure through learning why their loved one's lives were taken. Selby cannot speak to Poole's rehabilitation, but Selby's life is spent writing books that are dispersed nationwide as free public services to help families on the verge of preventable tragedies. In addition, he preaches the gospel of Christ and spend his life mentoring fellow prisoners. The depths of remorse that he has achieved fuels his purpose in life to ensure that Mr. Tittle's life was not taken in vain--he is determined to make everything he has experienced matter by helping other people, especially trouble teens, their parents, and their potential victims avoid the path in life that has brought suffering to his victims, his family, and himself. But this pleading is not just about Selby's contrition, there are many like minded, similarly situated homicide offenders who want to help make a positive difference in society if just given the chance.

Lastly, marrying the medical science with the law would not be jeopardizing public safety. Remorse and rehabilitation are self-evident Miller factors that are carefully analyzed by trial judges as well as prosecutors and the Parole Board. Rarely, if ever, does a juvenile lifer live 60 years in prison,47. but a 25 to 60-year sentence, as issued to 17-year-olds, provides a lifetime to demonstrate either rehabilitation or irretrievable depravity.

B. Where Miller's line should be extended to.

Contrary to popular belief, Miller's line placement is not nearly as complicated as made to appear.

Raising the age of majority to age 21 for purposes of criminal culpability establishes a workable line to prevent injustice. Increasing the age, however, does not mean every 18, 19, or 20-year-old would be able to establish the five, set Miller factors entitling him or her to relief. In fact, a large number, if not most, may not be able to establish entitlement to Miller's relief. Nevertheless, the very purpose of the Miller brain science is to enable those who can establish entitlement to do so. It would be no different than current Miller hearings for those under age 18, who undergo the process of individualized sentencing assessments to sift incarcerated children with underdeveloped brains from the irretrievably depraved.

However, given that the ever-evolving medical brain science clearly makes Miller's extension

applicable to those between ages 21 and 25, extension should be afforded to them as well, via Motion for Relief From Judgment or such successive motions, under the "as-applied" doctrine of law. When a trial judge determines merit to the claim, through a prima facie showing (similar to petitioning our federal appellate court for leave to file a successive habeas corpus), 48 an attorney could be appointed to gather further facts and evidence for a full-blown Miller hearing. When those between the ages of 21 and 25 are pending jury or bench trials, then they should be afforded the benefit of doubt to present mitigating fact and evidence to support an underdeveloped brain, which can be determined with scientific certainty by submitting the results of an MRI of the defendant's brain.

Certainly, this Court and other equally brilliant legal experts can pull together a meeting of the minds to create a workable scheme to ensure justice is not denied to those currently left behind for no other reason than their god-given brains' inabilities to fully develop on the State and federal governments schedule. Further support and insight for this issue can be found throughout the pages of Tirza A. Mullin's NOTE: EIGHTEEN IS NOT A MAGIC NUMBER: WHY THE EIGHTH AMENDMENT REQUIRES PROTECTION FOR YOUTH AGED EIGHTEEN TO TWENTY-FIVE. 49

The two States in the nation that have engineered perfect post conviction remedies to plead Miller's extension to those ages 18 and above via the "as-applied" doctrine of law are Illinois and Washington. They have no problems permitting Miller's extension to those applicable while at the same time fairly excluding the extension of Miller when inapplicable. For example, Illinois began its extension of Miller to a 19-year-old double homicide offender, 50 and its lists of other applications as well as its denials are too lengthy to list herein. Similarly, Washington state's stats on this issue are also too lengthy to report herein, but it began its extension of Miller to a newly minted 18-year-old non-homicide offender. 51 Not long afterwards a 19-year-old homicide offender was granted Miller's extension. 52

In addition to those States, New Jersey Superior Court extended Miller to a 21-year-old who was serving a de facto life sentence 53 ; Indiana extended Miller to an 18-year-old 54 ; A federal district court extended Miller to a 33-year-old male with Autism Spectrum Disorder (ADA), convicted of three counts of manufacturing child pornography. 55

Again, it must be emphasized that even the harshest court in the land, when considering the extension of Miller, has finally concluded--after having declared "no exceptions" to Miller's application to those age 18 and above 56 --that while it has historically declined to extend Miller's reasoning to

those above 18, it must now look beyond historical conceptions to the evolving standards of decency that marked the progression of a maturing society, noting members of its court have already begun to consider whether the line separating childhood and adulthood has shifted, pointing to various context in which it considers 21 the age of majority, as well as scientific and social research that those under 21 retain the defining characteristics of youth. 57

In conclusion, the "as-applied" doctrine of law allows judges to utilize experts in the medical field of juvenile brain science to assist with determining where justice must permit Miller's extension to lay on an individual, case-by-case basis. It is the same principle of law 58 used by this Court when cases involving inherently subjective inquiries into medical and psychological issues must be determined on a case by case basis, because what may seem trivial bodily or mental function for most people may be subjectively important to some, depending on the relationship of that person's life. 59 This rationale has obvious intrinsic value to Miller's extension when the underdeveloped portion of a person's brain that controls emotional and cognitive responses to situations in life-effecting ways results in the loss of life.

Against this backdrop, this Court must prevent the continued injustice of allowing exceptions to Miller's arbitrary line suffer life without parole sentences in prison undeservingly.

CONCLUSION

WHEREFORE, amici curiae respectfully request that this Honorable Court grant Mr. Poole's application for leave to appeal, vacate his sentence of life without the possibility of parole, and remand for resentencing.

VERIFICATION

I, Charles Selby, state under the penalty of perjury that the facts related within this amici brief are true to the best of my knowledge, information, and belief.

Charles Selby

Charles Selby. August 4, 2021

Respectfully submitted,

Charles Selby

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Dated: August 4, 2021

Endnotes:

1. Thompson v Oklahoma, 487 US 815, 838 (1988).
2. Roper v Simmons, 543 US 551, 574 (2005).
3. Graham v Florida, 560 US 48, 82 (2010).
4. Miller v Alabama, 567 US 460,479 (2012).
5. Moore v Texas, 137 S Ct 1039, 1050, 1053 (2017); Hall v Florida, 572 US 701, 710, 712 (2014).
6. United States v Marshall, 736 F. 3d 492, 500 (2013) (the Court reasoned that "The legal system that would emerge from Marshall's proposed approach that defines a juvenile by factors other than chronological age would be essentially unmanageable. Before a court impose on a defendant over 18 those punishments constitutionally barred from being imposed on juveniles, it would first have to wade through tedious expert testimony to determine whether the defendant's mental age was commensurate with his chronological age. We refuse to impose such a difficult and time-consuming requirement on the district courts." Cf. Concurring in judgment, District Judge Lawson, "I do not find that his chronological age presents an unmanageable if courts look behind chronological age on a case-by-case basis to assess those factors that render juveniles 'constitutionally different from adults for purposes of resentencing.'"
7. United States v Sherill, 2020 US App LEXIS 26828 at **43-4.
8. Miller v Alabama, 567 US 460, 471-72 (2012)
9. Cruz v United States, 2018 US Dist LEXIS 52924
10. Cruz v United States, Steinberg Transcript Excerpts, at 14:20-25. See Appendix A
11. Id. at 19: 20-25
12. Id. at 20: 24-25
13. Id. at 21: 7-9
14. Id. at 71: 5-6
15. Id. at 22: 21-25
16. Moore v Texas, 137 S Ct 1039, 1050, 1053 (2017)
17. Hall v Florida, 572 US 701, 708 (2014)
18. Washington Post (October 2, 2015)>https://www.washingtonpost.com/opinions/time-to-raise-the-juvenile-age-limit/2015/10/02/948e317c6862-11e5-9ef3-fde182507 eac_story.html?utm_term=.82fc4353830d>
19. 85 Ford L Rev 641, 653 (2016)
20. 27 J Neuroscience 31 (2011)
21. 329 Scl 1358, 1359 (2010)
22. Id. Monahen et al., Juvenile Justice Policy and Practice: A Developmental Perspective, 44 Crime J 557, 582 (2015)
23. Patterson v Texas,, Petition for Writ of Certiorari to the United States Supreme Court (2002)

24. 40 NYU Rev L & Soc Change 139, 163 (2016)

25. 88 Temple L Rev 769, 786 (2016)

26. 55 Am Psychol 469, 475 (2000)

27. 41 Dev Psychol 625, 631-32 (2005)

28. Tex Tech L Rev 71,83-84 (2013)

29. New York Penguin Press, 2017, p 97

30. Miller, 567 US at 471, quoting Roper, 543 US at 569

31. Ruiz v United States, 2021 US App LEXIS 6971 at **33-35

32. MCL 762.11

33. People v Johnson, 2019 Mich App LEXIS 3166

34. MCL 28. 425b (7)(a); also in NRA of Am. v Bureau of Alcohol, 700 F3d 185, 207-209 (2012), the court found "at a hearing held in connection with Congress's inquiry, a law enforcement official reported, 'The greatest growth of crime today is in the area of young people, juveniles and young adults. The easy availability of weapons makes their tendency toward wild, and sometimes irrational behavior that much more violent, that much more deadly." Federal Firearms Act Hearing Before the Subcomm. to Investigate Juvenile Delinquency of the Sen. Comm. on the Judiciary, 90th Cong. 57 (1967) (testimony of Sheldon S. Cohen).

The legislative record illustrates that Congress was concerned not only with 'juveniles' under the age of 18, but also with 'minors' under the age of 21.

Overall, the government has marshaled evidence showing that Congress was focused on a particular problem: young persons under 21, who are immature and prone to violence, easily accessing handguns, which facilitate violent crime, primarily by way of FFLs. Accordingly, Congress restricted the ability of young persons under 21 to purchase handguns from FFLs. See 18 USC sec. 922(b)(1)."

35. MCL 712A.2a

36. MCL 432.209

37. MCL 722.3 (1), referencing MCL 552.605b (2)

38. >https://www.nap.edu/read/18997/chapter/2>

39. MCL 333.27955

40. United States v Carter, 2019 US Dist LEXIS 187015 at *30 ("at a policy level, a flexible, case-by-case approach advances two ends--the need to meet new circumstances as they arise, and the need to prevent injustice."; see also Tyler v Hillsdale Cnty. Sheriff Dept, 837 F3d 678 (216) ("the mere fact that Congress created a categorical ban does not give the government a free pass; it must still be shown that the presumption applies in the instant case."

41. United States v C.R., 972 F. Supp 2d 457, 458 (2013)

42. ARTICLE: ARRESTED DEVELOPMENT: RETHINK THE CONTRACT AGE OF MAJORITY FOR THE TWENTY-FIRST CENTURY ADOLESCENT, 76 Md. L. Rev. 405, at *407

43. NRA of Am, 700 F3d at 209, ("Indeed, the most frequent age of crime gun possession was 19 years of age, and the second most frequent was 18 years of age. At the same time, according to the Uniform Crime Reports, the most frequent age arrested for murder was 18 years of age, and the second most frequent was 19 years of age. Those aged 18-20 accounted for 22 percent of all arrests for murder in 1997.

44. Although states continue to set 18 as the relevant age marker for certain other regulated activities--including voting, marrying without consent, entering the military and serving on juries--the rationales sustaining those laws are based on different characteristics than those underpinning the US Supreme Court's decision in Miller. For example, voting, marrying without consent, and serving on juries are not activities that are highly susceptible to impulsive behavior: they allow a person time to make a decision, and center on characteristics of "logical reasoning,"which society and the medical community explain develop at a much earlier age. Steinberg, A 16-year-old Is as Good as an 18-year-old—or a 40-year -old---at Voting, Los Angeles Times (November 3, 2014) <http://www.latimes.com/opinion/op-ed/ /la-oe-steinberg-lower-voting-age-201441104-story.html> (explains that there is a difference when considering laws such as "voting or granting informed consent for medical procedures" where "[a]dolescents can gather evidence, consult with others and take time before making a decision" because while "[a]dolescents may make bad choices ... statistically speaking, they won't make them any more often than adults"). By contrast, the purchase or use of tobacco or alcohol, firearm and explosive use, and motor vehicle operation are all potentially emotionally arousing activities where maturity, vulnerability and susceptibility to influence, and underdeveloped character come into play--much as they do when young people engage in criminal acts. Thus, the fact that legal boundary for adulthood remains 18 in some instances does not undercut the trend toward raising the age of majority, but instead reflects the growing national census that the line for adulthood should be set at 18 (or lower) for activities characterized by considered, logical decision-makng, and should be raised above age 18 for circumstances characterized by "emotionally arousing conditions." Scott et al supra, at 652.

45. Miller, at 469-70

46. In re Fegler, 36 F. Supp 88, 89 (1940)

47. Kelly v Brown, 851 F3d 686 (2017) (A national census conducted by the ACLU of Michigan reveals that the average life expectancy of juvenile homicide offenders is 50.5 years in prison. (quoting Michigan Life Expectancy Data for Youth Serving Natural Life Sentences, April, 2013)

48. 28 USC sec. 2244

49. See App. B

50. People v House, 2015 IL App (1st) 110580

51. State v O'Dell, 183 Wash 2d 680, 696 (2015) (En Banc)

52. Restraint of Light-Roth, 200 Wash App 149 (2017)

53. State v Norris, 2017 NJ Super LEXIS 1170

54. Sharp v State, 16 NE3d 470 (Ind Ct App 2014)

55. United States v Shore, 2020 US Dist LEXIS 118400 at *9

56. United States v Marshall,, 736 F3d492, 500 (6th Cir. 2013)

57. United States v Sherrill, 2020 US App LEXIS 26828 at **43-44

58. In re Smith, 806 Fed Appx 462, 464 (2020); N. Ohio Coal. for the Homeless v Hustled, 831 F3d 686, 720-21 (6th Cir. 2016)

59. Kreiner v Fischer, 471 Mich 109, 145 (2004); McCormick v Carrier, 487 Mich 180, 199 (2010); In re Hicks, 315 Mich App 251, 273 (2016)

IN THE

MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

JOHN ANTONIO POOLE,

Defendant-Appellant.

Supreme Court No. 161529
Court of Appeals No. 352569
Wayne County CC: 02-000893-FC

PROOF OF SERVICE

Charles Selby, being first duly sworn, deposes and says that on August 4, 2021, he mailed a copy of the following to the Wayne county Prosecutor, 1441 St. Antoine St, Detroit, MI 48226, and John Poole's attorney of record , State Apellate Defender's Office, 645 Griswold St., Ste 3300, Detroit, MI 48226:

1. MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF DEFENDANT-APPELLANT JOHN POOLE.
2. BRIEF OF AMICI CURIAE CHARLES SELBY IN SUPPORT OF DEFENDANT-APPELLANT JOHN POOLE.
3. PROOF OF SERVICE

Respectfully Submitted,

Charles Selby

Charles Selby #192800
McComb Correctional Facility
34625 26 Mile Rd.