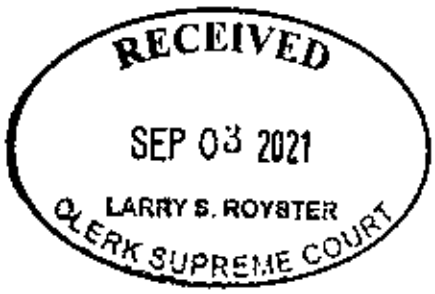
STATE OF MICHIGAN

IN THE SUPREME COURT



Appeal from the Michigan Court of Appeals

PEOPLE OF THE STATE OF MICHIGAN.
Plaintiff-Appelle,
-vs-

Supreme Ct. No. 161529
CoA No 352569
Wayne CC. 02-000893-FC

JOHN ANTONIO POOLE
Defendant-Appellant
_____/

Amicus Curiae Roberto Casanova Jr.
_____/

MOTION FOR LEAVE TO FILE

AMICUS CURIAE BRIEF IN SUPPORT OF

JOHN ANTONIO POOLE

NOW COMES, Amici Curiae Roberto Casanova Jr. (interested prisoner) pursuant to MCR 7.312(H)(1) and hereby moves this Honorable Court for permission to file an amicus curiae brief in support of Defendant-Appellant John Antonio Poole. In support of this motion, amici curiae states: Appellant Poole was convicted of First Degree Murder, Felony Firearms. As a result of the conviction, Appellant Poole was

sentenced to a mandatory Life Without Parole sentence. In 2012, the United States Supreme Court changed how sentencing judges should impose sentences on those under the age of 18. The Supreme Court concluded that "[t]hat mandatory life without parole for those under 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishment." Miller v Alabama 567 US 460 (2012). In 2016, the United States Supreme Court applied Miller retroactively, Montgomery v Louisiana,136 SCt. 718, 736 (2016). The Michigan Legislature enacted MCL 769.25 and MCL 769.25a to address Life Without Parole sentences committed by minors and gave trial judges the discretion to impose sentences ranging from 25years to 40 year terms with a maximum term of 60 years if the prosecuting attorney had moved the court to reinstate a life sentence after conducting a Miller Hearing. In 2017 Dr, Lawrence Steinberg, an expert in adolescent brain development and a professor at Temple University, testified at a federal evidentiary hearing that the same brain development and characteristic hallmarks of juveniles under 18 also apply to all teenagers and late adolescents with equal force. Subsequently, Appellant Poole filed a successive 'motion for relief from judgment' based on new scientific evidence and the retroactive application of Miller, supra, as announced in Montgomery, supra. On June 23, 2021, the Michigan Supreme Court considered leave in People v Poole limited to two separate questions:

1) Whether Defendant's successive motion for relief from judgement is "based on a retroactive change in law," MCR 6.502(G)(2), where the law relied upon does not automatically entitle him to relief, and:

2) If so, whether the United States Supreme Courts decisions in Miller v. Alabama, 567 US460 (2012), and Montgomery v Louisiana, 577 US 190 (2016) should be applied to defendants who are over 17years old at the time they commit a crime and who are convicted of murder and sentenced to mandatory life without parole, under the Eighth Amendment to the United States Constitutions or Const 1963, art 1, § 16, or both.

JURISDICTION

On June 23, 2021 this Court considered leave to appeal in People v Poole. The court also invited "other persons or groups interested in the determination should move for permission to file briefs amicus curiae". Amici Roberto Casanova Jr is interested in this Courts determination. Therefore, pursuant to MCR 7.312(H)(1) and MCR 7.305(H)(1), this Court has jurisdiction to entertain an Amicus Curiae brief in support of Defendant Appellant John Antonio Poole.

INTEREST AND IDENTITY OF AMICUS CURIAE

Amici Roberto Casanova Jr., an interested party in support of Appellant Poole is a prisoner currently housed at the Lakeland Correctional Facility, prisoner No. 241866. Casanova is currently serving a Life Without Parole sentence imposed when he was just 21 years old. Casanova verifies that no person, individual corporation, counsel or any other entity has made any financial or other contribution to fund or prepare submission of pleadings in this matter. The concerns being addressed are of great importance to the state's Eighth and Fourteenth Amendment Jurisprudence in relation to cruel and unusual punishment and Equal Protection Clauses, providing guidelines on how the "retroactive change in law" exception to MCR 6.502(G)(2) regarding successive

motions applies. This motion has been formulated by Amici Roberto Casanova Jr to support this court in endorsing, through its ruling, the science of several expert doctors specializing in neuroscience and Adolescent Development. Amici Casanova urges this court to require trial courts to take into account and consideration the mitigating factors of youth for all persons convicted of first degree murder who's brain development and characteristics are represented in the characterization of juvenile and late adolescents age 18 up to and including those 23 years of age, where the decision could impact upon the difference between spending life in prison or having the ability to demonstrate maturity and rehabilitation after serving 25 to 40 years in prison. Any ruling less than what is outlined in Miller's brain science will only result in more challenges before this court based on the same scientific data presented here.

WHEREFORE, based on the above and reasons outlined in the amicus brief attached, this Honorable Court should grant Amici Curiae Roberto Casanova's motion to file briefs consistent with the Appellant Poole's application for leave to appeal.

Date: 8-31-2021

Respectfully Submitted,

Roberto Casanova Jr.

Roberto Casanova Jr.

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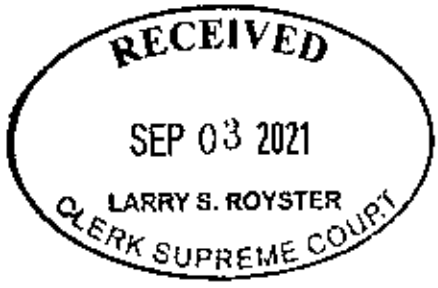

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AMICUS ARGUMENT

1) Whether Defendant's successive motion for relief from judgement is "based on a retroactive change in law," MCR 6.502(G)(2), where the law relied upon does not automatically entitle him to relief, and:

Under Michigan Court Rules, MCR 6.500 et seq., set forth the process for post-appeal review of a defendant's judgement or sentence in criminal cases, MCR 6.501 A defendant is entitled to file only one motion for relief from judgment. MCR 6.502 (G) (1).

There are two exceptions to this rule. One being a defendant may file a successive motion if it is "based on a retroactive change in law that occurred after the first motion for relief from judgment and second being a claim of new evidence that was not discovered before the first such motion. MCR 6.502 (G)(2).

Miller constitutes a "retroactive change in law"—the U.S. Supreme Court has expressly said so. See Montgomery v. Louisiana, 136 S Ct 718; 193 L Ed 2d 599 (2016). Justice Clement acknowledges this in her concurring opinion in People v Manning, 502 Mich 1033; 951 NW2d 905 (2020) (Clement, J., Markham and Zahra, JJ., join the statement of Clement):

> The most relevant exception is that a defendant may file a successive motion if it is "based on a retroactive change in that law occurred atter the first motion for relief from judgment..." MCR 6.502 (G)(2). There is clearly a retroactive change in law here, Montgomery v Louisiana, 577 US__; 136 S Ct 718; 193 L Ed 2d 599 (2016), held that Miller announced a new rule that applies retroactively. Id. at__: 136 S Ct 732 ("Miller announced a substantive rule that is retroactive in cases on collateral review.")

Michigan Court Rule 6.502 (G)(2) and 6.508 (D) has two distinct questions. First, MCR 6.502(G)(2) presents a "gateway" question that effectively opens the door to successive motion: is the motion based on a retroactive change in law or newly-discovered evidence? Once successive motion is filed, MCR 6.508 (d) goes on to ask a second question: is the defendant entitle to relief?

A defendant who established an exception to the successive motion bar under MCR 6.502 (G)(2) is not automatically entitled to relief, he merely proceeds past the filing stage and moves on the next stage of review.

A defendant who presents an argument regarding the constitutionality of his sentence under the retroactive rule announced in Miller, should not be prevented from filing or appealing it. Any other reading of MCR 6.502(G)(2) would not only be inconsistent with the plain language of the rule, it would deprive Mr. Poole of an opportunity to be heard on his constitutional rights claims.

Mr. Poole has presented his argument under the retroactive rule in Miller and Montgomery v Louisiana. Regardless of the ultimate merits of that claim. His successive motion is "based on a retroactive change in the law" and he should not be prevented from filing or appealing it.

ARGUMENT

2) If so, whether the United States Supreme Courts decisions in Miller v. Alabama, 567 US460 (2012), and Montgomery v Louisiana, 577 US 190 (2016) should be applied to defendants who are over 17years old at the time they commit a crime and who are convicted of murder and sentenced to mandatory life without parole, under the Eighth Amendment to the United States Constitutions or Const 1963, art 1, § 16, or both.

Under The "As-Applied" Doctrine Of Unconstitutionality, Imposition Of A Life Without the Opportunity for Parole (LWOP) Sentence On Casanova, a 21- Year-Old, With An Underdeveloped Juvenile Mentality, Convicted Of Homicide Violates The Eighth And Fourteenth Amendment's Prohibition Against Cruel And Unusual Punishment.

On August 24, 2020, the Sixth Circuit Court of Appeals, United States v Sherrill, 2020 U.S. App LEXIS 26828 at **43-44, 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, as well as scientific and social research indicating that those into their mid-twenties retain the defining characteristics of youth.

Casanova proffers that Sherrill, although not binding, still extends permission to meaningfully analyze his "as-applied" challenge without the previous "no exception" limitations imposed in United States v. Marshall, 736 F3d 492, 500 (6th Cir. 2013).

Casanova is entitled to relief on the merits of his claim. The statute that mandated Life Without Parole for Casanova, MCL 750.316, is unconstitutional as applied to him under Article 1§ 16, of Michigan's 1963 Constitution and the Eighth Amendment to the United States Constitution. This Court reviews questions of constitutional law de novo. People v Kennedy, 502 Mich 206, 213 (2018.) Decisions involving the meaning and scope of pleadings are reviewed for abuse of discretion. Taxpayers of Mich. Against Casinos v State, 478 Mich 99 (2007), quoting Deacon v Transue, 441 Mich 315, 328 (1992). Miller Reaffirmed That Children Are Categorically Less Culpable Than Adults For Purposes Of Sentencing. The United States Supreme Court–RELYING ON SCIENTIFIC EVIDENCE--has made clear time and time again that children are "constitutionally different from adults for the purpose of sentencing" and are categorically "less deserving of the most severe punishments." Miller, 567 U.S. at 471. In Roper v. Simmons, 543 U.S. 551 (2005), the Court held that imposing the death penalty on children violates the Eighth Amendment's prohibition on cruel or unusual punishments. 543 U.S. at 568 and in Miller, it held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." 567 U.S. at 479.

Each of these cases adopted "categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty." Id. at 470. The Court grounded its conclusions on scientific research establishing "three significant gaps between juveniles and adults." Id. at 471; see also Graham, 560 U.S. at 68 (noting that "developments in psychology and brain science continue to show fundamental differences between juveniles and adult minds").

FIRST, children lack maturity and have an "underdeveloped sense of responsibility," which leads to "recklessness, impulsivity, and heedless risk-taking." Miller, 567 US at 471. SECOND, they are "more vulnerable ... to negative influences and outside pressures," including from their family and peers, and "lack the ability to extricate themselves from horrific, crime-producing settings." FINALLY, they are "less fixed" in their character and more capable of change than adults. These "distinctive attributes of youth" make children less culpable, more capable of reform, and "diminish the penalogical justification for imposing the harshest sentences" on them, "even when they commit terrible crimes." Id. at 472. In invalidating mandatory LWOP sentences for children, Miller reaffirmed that "youth matters" for the purpose of sentencing. Id. at 473. Specifically, these mandatory sentences "preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it," including the following "mitigating qualities of youth":

"Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features–among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him–and from which he cannot usually extricate himself–no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way his familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lessor offense if not for the INCOMPETENCIES ASSOCIATED WITH YOUTH–for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it." Id. at 476-77 (emphasis added; citations omitted). "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence," the Court explained, mandatory LWOP sentences for children "pose too great a risk of disproportionate punishment" and violates the Eighth Amendment. Id. at 479.

Unlike Graham and Roper, Miller did not impose a categorical ban on LWOP for juvenile homicide offenders. Instead, it requires sentencing courts to consider "the distinctive attributes of youth" before imposing the harshest punishments on children. Id. at 472. Miller announced a substantive rule barring LWOP "for all but the rarest juvenile offenders, those whose crimes reflect permanent incorrigibility," which must be applied retroactively, Montgomery, 136 S Ct at 734. In the wake of Miller, Michigan now provides a process for resentencing juvenile defendants when a prosecutor seeks LWOP and resentencing defendants whose mandatory LWOP sentences were rendered unconstitutional by Miller. See MCL 769.25a.

Since Miller, Montgomery, and Michigan's capitulation, the science and social science distinguishing juveniles from adults has accumulated. However, in Cruz, supra, an extensive analysis of the validity of why Miller's chronological age line was employed to exclude those age 18 and above revealed: "...the Miller Court merely adopted without analysis the line at age 18, drawn seven years earlier by the Roper Court, because the facts before the Court did not require it to reconsider that line. See Miller, 567 U.S. at 471-80. As evidence of this, when the Supreme Court asked counsel for Miller where to draw the line, rather than pointing to any scientific evidence, counsel answered, 'I would draw it at 18 ... because we've done that consistently." Miller, Oral Argument, at 10, available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2011/10-9646.pdf"

Furthermore, the Cruz court determined: "The court does not infer by negative implication that the Miller Court also held that mandatory life without parole is necessarily constitutional as long as it is applied to those over the age of 18. The Miller opinion contains no statement to that effect. Indeed, the Government recognizes that, 'The Miller Court did not say anything about exceptions for adolescents, young adults, or anyone else unless younger than 18.' Post-Hr'g Member. in Opp. at 8. NOTHING IN MILLER THEN STATES OR EVEN SUGGESTS THAT COURTS ARE PREVENTED FROM FINDING THAT THE EIGHTH AMENDMENT PROHIBITS MANDATORY LIFE WITHOUT PAROLE FOR THOSE OVER THE AGE OF 18. Doing so would rely on and apply the rule in Miller to a different set of facts not contemplated by the case, but it

would not be contrary to that precedent." Id at 31 (emphasis added). Also, unlike the focus in Marshall, where "Dr. Forgac's observations that Marshall functioned as a juvenile is clearly belied by a reality that Marshall attended college, worked a full time job, and owned a car and credit card," and that "Marshall functioned as a normal 20-year-old, not a 15-year-old," the unique facts and circumstances of Casanova's case actually commensurate with Miller's required "characteristics of youth" that distinguish between juvenile and adult.

Moreover, to set off Cruz from Marshall's rather weak attempt to manipulate the Court with Dr. Forgac's misrepresentation of Marshall's immaturity, the Cruz court rationally relied on testimony from Dr. Laurence Steinberg, a prominent expert in adolescence and the lead scientist on the amicus curiae brief filed by the American Psychological Association in Roper, Graham, and Miller. Dr. Steinberg's testimony demonstrates a clear shift in his own scientific knowledge and opinions from the Miller trilogy that qualifies as "Newly Discovered Evidence," to support an As-Applied challenge. Dr. Steinberg testified that "we didn't know a great deal about brain development during late adolescence until much more recently." Cruz v. United States, Steinberg Transcript Excerpts, at 14:20-25. He testified that those in late adolescence "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." Id. at19:20-25. In addition, "[s]usceptibility to peer pressure is higher during late adolescence than in adulthood." Id. at 20:24-25. Late adolescents also are "more capable of change" than adults. Id. at 21:7-9. He identified 18, 19, 20 and 21-YEAR-OLDS UP TO 23 YEARS OLD as falling within his definition of late adolescences. Finally, Dr. Steinberg testified that the science underpinning the U.S. Supreme Court's decisions, he would have, with certainty, raised the age in Graham. Id. at 70: 12-25; 71;1-4.

Therefore, through the pillars erected by Cruz and United States v Sherrill, 2020 U.S. App LEXIS 26828 **43-44, Casanova--presenting an inescapable conclusion of his hallmark characteristics of adolescences at the time of the offense--now has solid ground to approach this Court for equal protection, guaranteed by the U.S. Const. Am.

XIV; Plyler v. Doe, 457 U.S. 202, 216-17 (1982), to demonstrate that as-applied to him Miller's sentencing protection is being unconstitutionally withheld.

Casanova's Mandatory LWOP Sentence Violates The 1963 Michigan Constitution's Ban On Cruel Or Unusual Punishment. Given all that the U.S. Supreme Court has said about youth, imposing a mandatory LWOP sentence on a 21-year-old Casanova is disproportionately severe under Const 1963, art 1, § 16. Michigan has a long history of leading the nation when it comes to proportionate sentencing. Our state constitution contains a broad prohibition on "cruel or unusual punishment," providing in full: "Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained." Const 1963, art 1, § 16. The Court has confirmed that our constitution is "worded differently from, and was ratified more than 171 years after," the Eighth Amendment to the U.S. Constitution. People v Bullock, 440 Mich 15, 27 (1992).

Whereas the Eighth Amendment prohibits "cruel and unusual punishments," our constitution bans "cruel or unusual punishment." Id. At 30. This textual difference is neither "accidental" nor "inadvertent." Thus, the Court has held that our state constitution "provides greater protection against certain punishments than its federal counterpart" and has adopted a "broader test for proportionality" than the U.S. Supreme Court employs when interpreting the Eighth Amendment. People v Carp, 496 Mich 440, 519 (2016), cert granted, judgment vacated by Carp v Michigan, 136 S Ct 1355 (2016); see also Bullock, 440 Mich at 30. As set forth in Bullock, this test considers the following factors: (1) the severity of the sentence imposed compared to the gravity of the offense; (2) the penalty imposed for the same jurisdiction; (3) the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states; and (4) whether the penalty imposed advances the penological goal of rehabilitation. Bullock, 440 Mich at 33-34; see also Carp, 496 Mich at 520.

Under the Bullock test, a mandatory LWOP sentence for a 21-year-old is so disproportionate as to be "cruel or unusual." Const 1963, art 1, § 16. Because Casanova shares the same qualities of youth as younger teenagers, the severity of mandatory LWOP sentences for a 21-year old outweighs the gravity of his offense. The

first Bullock factor is the severity of the sentence imposed compared to the gravity of the offense. There is no question that Casanova received the harshest penalty available to anyone in this state--juvenile or adult. No sentence is more severe. As the Miller Court observed, "[i]mprisoning an offender until he dies alters the remainder of his life 'by a forfeiture that is irrevocable:'" Miller, 567 U.S. at 475, quoting Graham, 560 US at 69. And mandatory LWOP is an "especially harsh punishment" for a 21-year-old, just as it is for someone younger. In both cases, the sentence necessarily requires the defendant to serve "more years and a greater percentage of his life in prison than an adult offender." quoting Graham, 560 US at 70. "The penalty when imposed on a teenager, as compared with an older person, is therefore 'the same ... in name only.'" quoting Graham, 560 US at 70. Moreover, although first-degree murder is one of the most serious offenses a person can commit in this state, it cannot justify such a severe sentence for a 21-year-old without any individualized consideration from youth. As the Court explained, "'[t]o be constitutionally proportionate, punishment must be tailored to a defendant's personal responsibility and moral guilt.'" Bullock, 440 Mich at 39, quoting Harmelin v Michigan, 501 US 957, 1023 (1991) (White, J., dissenting).

In Miller, the U.S. Supreme Court recognized that the fundamental differences between children and adults—"transient rashness, proclivity for risk, and inability to access consequences"--lessen a child's moral culpability" and enhance the prospect that, "as the years go by and neurological development occurs, his deficiencies will be reformed." Miller, 567 US at 472 (quotation marks omitted). The same underlying rationale applies here: based on an emerging scientific and societal consensus, 21-year-olds share these same qualities of youth and therefore have the same "diminished culpability and greater prospects for reform." Id. at 471. Thus, just as a mandatory LWOP sentence for a 17-year-old cannot be constitutionally tailored to his "personal responsibility and moral guilt," Bullock, 440 Mich at 39, the same is true for a 21-year-old. The scientific consensus on adolescent development has determined there is no meaningful scientific difference between 21-year-olds and younger adolescents.

The Miller Court rested on its decision not only on "common sense--'on what any parent knows'--but on science and social science as well." Miller, 567 U.S. at 471,

quoting Roper, 543 U.S. at 569. There is now a growing scientific consensus confirming what any parent knows: youth does not magically end at 18 nor 21 or even up to age 23. In recent years, empirical research in neurobiology and developmental psychology has shown that the "hallmark features of youth" continue beyond the age of 18 and into a person's mid-twenties. Scott et al., Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy, 85 Ford L Rev 641, 653 (2016) ("It is clear that the psychological and neurobiological development that characterizes adolescence continues into the mid-twenties."); see also Beaulieu & Libel, Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood, 27 J Neuroscience 31 (2011).

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. Dosenbach Prediction of Individual Brain Maturity Using fMRI, 329 Sci 1358, 1359 (2010). In particular, the development of the prefrontal cortex--which plays a key role in "higher-order cognitive functions" such as "planning ahead, weighing risks and rewards, and making complicated decisions"--continues into a person's early twenties. Monahan et al., Juvenile Justice Policy and Practice: A Developmental Perspective, 44 Crime J 557, 582 (2015); 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) (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 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.")

This research confirms that 21-year-olds are more akin to children than they are to fully mature adults. They "are more likely than somewhat older adults to be impulsive, sensation seeking, and sensitive to peer influence in ways that influence their criminal conduct." Icenogle et al., Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a "Maturity Gap" in a Multinational, Cross-Sectional Sample, 43 L & Hum Beh 69, 83 (2019); see also, e.g., Michaels, A Decent

Proposal: Exempting Eighteen to Twenty-Year-olds From the Death Penalty, 40 NYU Rev L & Soc Change 139, 163 (2016) (noting that "peer pressure towards antisocial behaviors continue[s] to have an important influence" in emerging adults ages 18- 25). 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, 88 Temple L Rev 769, 786 (2016). And the period of "emerging adulthood" is a time of peak risk behavior. Arnett, Emerging Adulthood: A Theory of Development From Late Teens Through the Twenties. 55 Am Psychol 469, 475 (2000); see also, e.g., Gardener & Steinberg, Peer Influence and Risk Taking, Risk Preference, and Risky Decision Making, 41 Dev Psychol 625, 631-32 (2005) (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 as compared to adults); Pimentel, The Widening Maturity Gap: Trying and Punishing Juveniles as Adults in an Era Extended Adolescence, Tex Tech L Rev 71, 83-84 (2013) ("Neuroscience tells us that we should expect same irrational, emotion-driven behavior from emerging adults, those ages eighteen to twenty-five, and that it 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."); Davis, The Brain Defense (New York: Penguin Press, 2017), p 97. ("[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."

Also relied on by the United States Supreme Court was the research of neuroscientist B.J. Casey. Her work has shown that the control exercised by eighteen-to-twenty-one-year-olds in emotionally-charged situations was "not much better than those of the thirteen-to-seventeen-year- olds." Id. at 112). The very same kind of scientific research that led the Miller Court to conclude that children are categorically less culpable for their crimes likewise applies to Dean. See, e.g., Young Adulthood as a Transitional Legal Category, 85 Ford L Rev at 662 (noting that developmental scientific research supports "a presumption that mandatory minimum adult sentencing regimes should exclude young adult offenders"); Adolescents' Cognitive Capacity, 43 L & Hum

Beh at 83 (noting that "teens--and young adults--are relatively less likely to have the self restraint necessary to deserve the privileges and penalties we reserve for people we judge to be fully responsible for their behavior").

Indeed, the American Bar Association has recognized in death penalty context that drawing the constitutional line at 18 "no longer fully reflects the state of the science on adolescent development." American Bar Association, ABA Resolution 111: Death Penalty Due Process Review Project Section of Civil Rights and Social Justice Report to House Delegates (February 2018), p 6; Also, the Department of Justice funded a study that "focused on ages approximately 15-29.... The authors concluded that 'young adult offenders age 18-24 are more similar to juveniles than to adults with respect to their offending maturation, and life circumstances," Loeber, R., D. P. Farrington, and D. Petechuk. 2013. Bulletin 1: From juvenile delinquency to young adult offending (study group on the transitions between juvenile delinquency and adult crime). https://ncjrs.gov/pdffiles1/nij/grants/242931.pdf (last accessed July 15, 2019).

Clearly, the federal-level consensus is that late adolescents are categorically different from adults. There is an emerging national consensus that 21-year-olds should not be treated as fully mature adults. State and federal legislators have increasingly recognized that the unique characteristics of youth extend beyond age 18. In fact, the age of majority at common law was always 21, and "it was not until the 1970s that States enacted legislation to lower [it] to 18." National Rifle Association of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms and Explosives, supra, at 201. This was prompted not by an evolving societal consensus on adolescent maturity, but "largely as a result of the Vietnam War," the military draft for men age 18 and up, and the subsequent decrease in the voting age from 21 to 18. Barnes, Arrested Development: Rethinking the Contract Age of Majority for the Twenty-First Century Adolescent, 76 Md L Rev 405, 406--07 (2017).

The law continues to recognize--especially in light of the developing scientific evidence--that 21-year-olds should not be treated the same as fully mature adults in many contexts. Among other things:

* All fifty states require a person to be 21 years old to purchase alcohol. See 23 U.S.C.

158 (National Minimum Drinking Age Act); see also MCL 436.1109(6) (defining "minor" for the purpose of Michigan Liquor Control Code as "an individual less than 21 years of age").

* As of December 2019, the federal minimum age for sale of tobacco is now 21 instead of 18. Prior to the federal increase, 19 states and Washington, DC., as well as at 540 localities, had already raised the legal age to purchase tobacco to 21. See Campaign for Tobacco Free Kids, States and Localities That Have Raised the Minimum Legal Sale Age for Tobacco Products to 21, < https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issuessales_21states_localities_MLSA_21. PDT>(accessed March 9, 2020)

* Federal law prohibits federal firearms licensees from selling any firearm or ammunition, other than a shotgun or a rifle, to anyone who is under 21. 18 U.S.C. 922(b)(1). In enacting this law, Congress cited the "casual relationship between the easy availability of firearms" and "juvenile and youthful criminal behavior" and noted that firearms had been widely sold to "emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior." Omnibus Crime Control and Safe Streets Act of 1968, Pub L No 90-135, § 901, 82 Stat 197, 225-26 (1986). Similarly, Michigan law prohibits a person under 21 from obtaining a concealed carry permit. See MCL 28.425b (7)(a).

* For the purpose of federal student aid, the federal government considers those under age 23 to be legal dependents of their parents. Federal Student Aid, <https://studentaid.end.gov/sa/fafsa/filling-out/dependency> (accessed March 9, 2020).

* The Affordable Care Act allows dependent children to remain on their parent's health insurance until age 26. 42 U.S.C. 300gg-14.

* The Michigan Department of Corrections, for purposes of security classification, recognizes age 26 as a positive standard in reducing classification points,

* Approximately 25 states, including Michigan, have extended foster care beyond the age of 18. See National Conference of State Legislatures, Extending Foster Care Beyond 18,
< https:www.ncsl.org/research/human-services/extending-foster-care-to-18.aspx> (accessed March 9, 2020); see also MCL 400.647 (providing that "[a] youth who exited

foster care after reaching 18 years of age but before reaching 21 years of age may reenter foster care and receive extended foster care services").

* Michigan considers adjudicated delinquents as juveniles until age 21 (MCL 712A.2a).

* Michigan classifies a teenager still in high school until age 19.5 year as a child (MCL 722.3 (1)), referencing MCL 552.605b (2)).

* Michigan prohibits all persons under age 21 from entering a gambling casino because they can't be trusted to not illegally consume the free alcohol provided to patrons (MCL 432.209).

* Car rental companies in Michigan were prohibited from renting to persons under age 21(1976 Mich AG LEXIS 91), but now do so at different rates depending upon whether the renter is age 18-20, 21-24, or 25 and up.

* It is important to note that even car insurance rates begin dropping after the age of 23 as an indication on maturity and decreased risk-taking behaviors.

Importantly, Michigan's legislature recently relied upon scientific research to amend the Holmes Youthful Trainee Act—which allows young adults convicted of certain offenses to avoid a criminal record--to include 21, 22, and 23-year-olds. See MCL 762.11. This change was made specifically "to recognize recent research indicating that the human brain doesn't fully mature until closer to the mid-20s." House Legislative Analysis, HB 4069 (July 20, 2016). This decision--made by a representative body of Michigan's own state government--confirms that young adolescents are less culpable for their crimes. Sentencing 21-year-old Casanova to mandatory LWOP is disproportionate compared to other sentences under Michigan law. The second Bullock factor is a comparison of the punishment at issue to penalties for other crimes under Michigan law. As discussed above, Casanova received the harshest penalty available to anyone under Michigan law for a crime he committed at the age of 21. There are only a handful of offense in Michigan that made such an extreme sentence without any discretion or individualized consideration by the sentencing court. See MCL 791.234 (6) (providing that defendants sentenced to mandatory life for first-degree murder, and few other serious felonies resulting in death, and first-degree criminal sexual conduct are not eligible for parole). For any other offense in Michigan, a 21-year-old would have the opportunity to present mitigating evidence--including evidence relating to the mitigating

factors of youth--before the court imposed a sentence. Indeed, defendants ages 17 through 23 have the opportunity to keep many offenses off their records entirely under Michigan's Holmes Youthful Trainee Act. MCL 762.11. In addition, defendants who are a matter of months, days, or even hours younger than 18 at the time of their crimes cannot constitutionally face mandatory LWOP in this state for the very same conviction Casanova received. Instead, a defendant who commits first-degree murder one day shy of his 18th birthday must receive consideration of the Miller factors--including his youth and capability for rehabilitation-before the court can impose a sentence. Yet a defendant who commits the same offense just a day later, on his 18th birthday, automatically receives mandatory LWOP--the same sentence that a 70-year old defendant would receive for committing the same offense. Given that mitigating factors of youth do not disappear at the stroke of midnight on a person's 18th birthday, such disparity is profoundly unfair. But is exactly what happed here. Many states do not allow mandatory LWOP sentences for 21-year-olds.

The third Bullock factor is the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states. Only a handful of states and the federal government impose a mandatory sentence of LWOP on defendants age 18 and over, with a few states requiring such a sentence under aggravating circumstances. (Cruz v United States, Excerpt from Brief of United States). Similarly, in Miller, the Court banned mandatory LWOP sentences for juvenile homicide offenders even though 29 jurisdictions permitted that sentence. Miller, 567 US at 482. In addition, several states have enacted laws providing greater protections to adolescent and young-adult offenders. At least 16 states, including Michigan, recognize an intermediate classification of "youthful offenders" between juveniles and adults, who are entitled to special protections within the criminal justice system. Cruz v United States, Excerpts from Appellant's Appendix). Mandatory LWOP will never advance the penological goal of rehabilitation.

The fourth Bullock factor in the state constitutional analysis is whether imposing mandatory LWOP on a 21-year-old advances the penological goal of rehabilitation. "Michigan has long recognized rehabilitative considerations in criminal punishment." People v Lorentzen, 387 Mich 167, 179 (1972). Yet mandatory LWOP "forswears

altogether rehabilitative idea." Miller, 567 US at 473, quoting Graham, 550 US at 74; see also Carp, 496 Mich at 520-21(agreeing that LWOP "does not serve the penological goal of rehabilitation"). "It reflects 'an irrevocable judgment about [a defendant's] value and place in society,' at odds with a child's capacity for change." Miller, 567 US at 473, quoting Graham, 560 US at 74. Because a 21-year-old shares the same qualities of youth as younger teenagers, they have a similar capacity for change. Accordingly, the fourth factor of the Bullock test supports a finding that a mandatory LWOP sentence for a 21-year-old is disproportionate. For all these reasons, as applied to Casanova, a 21-year-old is categorically less culpable than adults.

This reduced culpability mitigates the gravity of his offense–even when convicted of committing the most terrible crime and considering the profound severity of the punishment, mandatory LWOP sentence for a 21-year-old is disproportionately harsh. As with teenagers under 18, though, courts must consider the "mitigating qualities of youth" before imposing this state's harshest sentence on a 21-year old. As this Court knows, Michigan "alone is the ultimate authority with regard to the meaning and application of Michigan law." Bullock, 440 Mich at 27. Ultimately, the Court is free to draw its own line between childhood and adulthood under our own constitution--one that is even broader than federal law.

Alternatively, Casanova's Mandatory LWOP Sentence Violates The Eighth Amendment To The U.S. Constitution because the Michigan Constitution provides "greater protection" than the Eighth Amendment, this Court only need rely on state law to find that Casanova is entitled to relief. Even if the Court chooses to evaluate the merits of Casanova's claim under the Eighth Amendment. However, Miller's rationale applies equally to a 21-year-old like him as a matter of federal constitutional law. Just as there is no meaningful scientific difference between a 21-year-old youth and one under 18, the is no meaningful constitutional difference between them.

The Eighth Amendment's prohibition on cruel and unusual punishment "guarantees individuals the right not to be subjected to excessive sanctions." Roper, 543 U.S. at. 560. This right "flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense." Miller, 567 US at 469 (internal quotation marks omitted). The U.S. Supreme Court has

made clear that the "concept of proportionality is central to the Eighth Amendment." To determine whether a sentencing practice is cruel and unusual, the Court looks to "the evolving standards of decency that mark the progress of a maturing society." Graham, 560 US at 58. It considers "objective indicia of society's standards, as expressed in legislative enactments and state practice," but ultimately "must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution." Id. at 61. This "requires consideration of the culpability of the offender at issue," "the severity of the punishment," and "whether the challenged sentencing practice serves legitimate penological goals." Id. at 67. A "sentence lacking any legitimate penological justification is by its nature disproportionate to the offense." Id. at 71.

In light of the evolving scientific and societal consensus that 21-year-olds are just as immature, reckless, and impulsive as younger adolescents, the reasoning of Miller applies equally to Casanova. Like younger adolescents, 21-year-olds have "diminished culpability and greater prospect for reform." Miller, 567 at 471. Their "distinctive attributes of youth diminish the penological justification for imposing the harshest sentences" on them, "even when they commit terrible crimes." Id. at 472. "Because [t]he heart of the retribution rationales relates to an offender's blameworthiness, the case for retribution is not as strong as with a minor as an adult." quoting Graham, 560 US at 71 (quotation marks omitted; alterations in original). A 21-year-old, who shares the same qualities of youth as a younger teenagers likewise has diminished culpability and blameworthiness. Nor does deterrence justify a mandatory LWOP sentence for a 21-year-old, because "the same characteristics that render [them] less culpable than [older] adults--their immaturity, recklessness, and impetuosity--make them less likely to consider potential punishment." quoting Graham, 560 US at 72 (quotation marks omitted).

Similarly, incapacitation requires a determination of incorrigibility, which "is inconsistent with youth." Id. at 473, quoting Graham, 560 US at 72-73. And a LWOP sentence "forswears altogether the rehabilitative idea." quoting Graham, 560 US at 74. Finally, because LWOP sentence "shares some characteristics with death sentences that are shared by no other sentences," Graham US at 69, individualized consideration

of a defendant's "age and the wealth of characteristics and circumstances attendant to it." Miller, 567 US at 476, is just as important for a 21-year-old as it was in Miller. The Eighth Amendment requires courts to consider the scientific consensus on adolescent development in determining the constitutionality of mandatory LWOP for a 21-year-old.

However, homicide offenders below age 18 undergo a case-by-case analysis to determine the rare exclusions from Miller's sentencing protection (People v Skinner, 2018 Mich LEXIS 1150) (those who are under age 18 but function as responsible adults, lacking the characteristics of youth); see also People v Woolfolk, 304 Mich 450 (2014) (where the defendant committed homicide an hour before his 18th birthday and was resentenced under Miller). While teenage offenders over age 18--presenting youthful character traits like Casanova--are denied a case-by-case analysis simply because of the scientifically baseless presumption that chronological age alone is the only measuring stick of maturity. These factors do not medically or scientifically nullify, or even diminish Casanova's textbook-characteristics of youth.

Compare constitutionally complicit examples where cases involving inherently subjective inquiries into medical and psychological issues must be determined on a case-by-case basis, because what may seem a trivial bodily or mental function for most people may be subjectively important to some, depending on the relationship of that person's life. See e.g., 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) (Individuals with disabilities must be treated on a case-by-case basis consistent with facts and objective evidence); Toyota Motor Mfg., Ky v. Williams, 534 U.S. 184, 198-99 (2002) (The determination of whether an individual is substantially limited in a major life activity must be made on a case-by-case basis).

Accordingly, justice, fairness, truth seeking, even common sense remove the distinction between a 17-year-old and Casanova's underdeveloped portion of his brain that controls his emotional and cognitive responses to situations in life-effecting ways. In fact, maintaining the distinction of why Casanova should die in prison—meting out Eighth Amendment protection as a birthright mirrors the very polarity between the foul ideologies and morality that the U.S. Supreme Court stood on when it outlawed the death penalty and LWOP.

Against that backdrop, the notion of not providing justice to one simply because it would have to be applied to another (drawing an arbitrary line to close the door) is so fundamentally flawed that it's irrational. It sinks beneath this Country's evolving standards of decency. Certainly, social mores have evolved enough in this area to know that although discrimination still plagues many facets of our society, IT HAS NO PLACE IN OUR COURTHOUSES, where there remains a judiciary obligation to strike down laws/bright lines that provoke serious constitutional questions that, as-applied to Casanova, render SUSPECT the Court's limited application of the actual science and social sciences presented in Roper, Graham, and Miller. See e.g., United States v. C.R., 972 F. Supp. 2d. 457, 458 (EDNY 2013).

For these reasons, as the U.S. Supreme Court has instructed, the Eighth Amendment "acquire[s] meaning as public opinion becomes enlightened by a humane justice." Hall v. Florida, 527 U.S. 701, 708 (2014). In Atkins v. Virginia, 536 US 304 , 321 (2002), the Supreme Court held that the Eighth Amendment prohibits imposition of the death penalty on an intellectually disabled individual. 536 U.S. at 321. In Hall v. Florida, 572 U.S. 701, the U.S. Supreme Court invalidated a Florida statute requiring an IQ score of 70 or lower before permitting a capital defendant to present evidence of an intellectual disability to avoid the death penalty. The Court noted that the Florida statute was inconsistent with "established medical practice" because it took an IQ score as conclusive evidence of intellectual disability "when experts in the field would consider other evidence." Id. at 712. The Court further noted that "[i]n determining who qualifies as intellectually disabled, it is proper to consult the medical community's opinion." Id. at 710; see also Moore v Texas, 173 S Ct 1039, 1053, (2017) (holding that in determining whether an offender has an intellectual disability for the purpose of the Eighth Amendment, States must defer to the "medical community's current standards" that reflect "improved understanding over time" and that the Texas court's consideration of the issue "deviated from prevailing clinical standards").

Similarly, where the law must follow the science and recognize that 21-year-olds are entitled to the constitutional protections afforded to youth, this principle applies all the more to Casanova. For just as "[i]ntellectual disability is a condition, not a number," Hall, 572 U.S. at 723, " youth is more than a chronological fact," Miller, 567 U.S. at 476,

quoting Eddings v. Oklahoma, 455 U.S. 104, 115 (1982), which the record clearly demonstrates regarding Casanova. Pennsylvania federal district court recently apprehended this position in United States v Shore, 2020 U.S. Dist. LEXIS 118400 at *9, 2020 WL 3791550, where in an AS-APPLIED challenge, Shore, a 33-year-old male with Autism Spectrum Disorder (ASD), convicted of three counts of manufacturing child pornography: "shares the same characteristics with juveniles whom the Supreme Court has found are 'constitutionally different from adults for purposes of sentencing.' Miller v Alabama. These include immaturity, impulsiveness, and failure to appreciate the risks and consequences of their actions. The same analysis applies here." Given this structure, it stands to reason that when an IQ score--acting as a bright line--used to justify or evade a sentence of death is inconsistent with an established medical practice, there too can be no other inference drawn regarding the chronological age bright line determining maturity/immaturity for the same purpose. Especially when a teenager's underdeveloped portion of his brain (the prefrontal cortex circuitry), responsible for controlling emotional and cognitive responses to situations, equally fails him as a 21-year-old in life-effecting ways, particularly when homicide is the end result of his inability to think, rationalize, and control his thoughts as an adult.

Due to the current scientific and social consensus, the U.S. Supreme Court's observation fifteen years ago that "[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood, Roper, 543 U.S. at 574, is outdated. Although the Eighth Amendment standard remains the same, "its applicability must change as basic mores of society change." Graham, 560 U.S. at 58. Roper itself is proof that lines between childhood and adulthood are not etched in stone. In 1988, the U.S. Supreme Court held that the death penalty was unconstitutional for children under age 16 at the time of their crimes. Thompson v. Oklahoma, 487 U.S. at 838 (plurality opinion). The Court reasoned that "[i]nexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult." Id. at 835. Seventeen years later, the Roper Court concluded that "[t]he logic of Thompson extends to those who are under 18." 543 U.S. 574.

There is nothing in Roper, Graham, or Miller that prohibits this Court from holding that mandatory LWOP sentence is unconstitutional as-applied to him. Indeed, Roper involved a state supreme court's exercise of its own independent judgment in extending the holding of Thompson to those under 18. The case began as a successive habeas petition filed in the Missouri state court, arguing that the "reasoning of Atkins, established that the Constitution prohibits the execution of a juvenile who was under 18 when the crime was committed." Roper, 543 U.S. at 559. The Supreme Court of Missouri agreed, holding that, in the fifteen years since the U.S. Supreme Court had last addressed the question, "a national consensus ha[d] developed against the execution of juvenile offenders." Id. at 559-60, quoting State ex rel Simmons v Roper, 112 SW3d 397, 399 (Mo 2003) (en banc). Notwithstanding that it had previously drawn the line at age 16 in Thompson, the U.S. Supreme Court affirmed the Missouri Supreme Court's decision. Id. at 560.

Ultimately, it would be cruel and unusual to cling to an arbitrary line at age 18 for purposes of imposing the harshest possible prison sentence when scientific and societal mores have shifted toward the recognition that 21-year-olds are not truly adults. Imposing a mandatory LWOP sentence on a 21-year-old "poses too great a risk of disproportionate punishment" and violates the Eighth Amendment. Miller, 567 U.S. at 479.

Several Other States and Federal Courts Have Applied Miller To Those Over Age 18. People v Savage IL APP (1st) 173135 No. 1-17-3135 opinion filed September 30, 2020, after a bench trial, defendant age 22 was convicted of first degree murder and attempted first degree murder. He was sentenced to a total of 85 years with the Illinois Department of Corrections. Defendant alleges that the sentencing court failed to consider his drug addiction, particularly in conjunction with his young age. Defendant alleges that his long-term addiction and his young age left him more susceptible to peer pressure and more volatile in emotionally charged settings. Defendant claims that he could not have made these arguments prior to the decisions in People v House, 2019 IL APP (1st) 110580-B, appeal allowed, No. 125124 (Ill. Jan. 29, 2020), and People v Harris, 2018 IL 121932. Defendant argues that his sentence does not take into account

whether he could be restored to useful citizenship, thereby violating the constitution as applied to him.

The court concluded that Miller protection applied to Savage. In addition to Cruz, supra, and Shore, supra, a number of state and federal courts have determined that the evolving scientific and societal consensus that teenager above 17-year-olds are just as immature, reckless, and impulsive as younger adolescents, means that the reasoning and sentencing protection of Miller applies equally to Casanova.

A Kentucky court considering similar scientific evidence held that the death penalty is unconstitutional for 18-to 21-year olds. Commonwealth v Bredhold, unpublished opinion of the Circuit Court of Kentucky, issued August 1,2017 (Case No. 14-CR-161) The court noted that "[f]urther study of the brain development conducted in the past ten (10) years has shown that these key brain systems and structures actually continue to mature well into the mid-twenties (20s); this notion is now widely accepted among neuroscientists." Id. at 7; see also

Pike v. Gross, 936 F3d 372, 383-86 (CA6, 2019) (Stranch J., concurring) (concluding that "society's evolving standards of decency likely do not permit the execution of individuals who were under 21 at the time of their offense"); see also, United States v. Laford, 692 Fed Appx. 242 (2017) (Honorable Merritt, concurring, with, "I found no legal authority recognizing scientific studies and authority about where the line should be drawn in sentencing these young adults. But recent literature shows that the plasticity of the young adult brain (age 18-21) is almost as great as the child's brain.

Clearly mandatory 30-year sentences should not be used. See Laurence Steinberg, Age of Opportunity: Lessons from New Science of Adolescence (2015). A report by the McArthur Foundation Research Network on Law and Neuroscience, How Should Justice Policy Treat Young Offenders? (February 2017) says: 'Young adults do commit a disproportionate amount of the nation's crime. In fact, arrests and recidivism peak in this group. Yet we know relatively little about the developmental factors that may contribute to this phenomenon.'"

Other courts have applied the principles announced in Miller to late adolescents and considered youth as a mitigating factor in sentencing. See, e.g., People v. House,

2015 IL App (1st) 110580 (Illinois extended Miller's sentencing protection to a 19-year-old double homicide offender); State v Norris, 2017 NJ Super. LEXIS 1170, unpublished opinion of the Superior Court of New Jersey, Appellate Division, issued May 15, 2017 (case No. A-3008-15T4) (remanding for resentencing in light of Miller where 21-year-old was sentenced to de facto life in prison); United States v Walters, unpublished opinion of the United States District for the Eastern District of Wisconsin, issued May 30, 2017 (Case No. 16-CF-198) (imposing below-guidelines sentence of time served on 19-year-old in part because "[c]ourts and research have recognized that given the immaturity and underdeveloped sense of responsibility, teens are prone to doing foolish and impetuous things"); State v. O'Dell, 183 Wash 2d 680, 696; 358 P3d 359 (2015) (holding that "a trial court must be allowed to consider youth as a mitigating factor when imposing sentence on an offender ... who committed his offense just a few days after he turned 18"); In re Pers. Restraint of Light-Roth, 200 Wn App. 149 (2017) (Since O'Dell, that court's rationale has been used to provide Miller's protection to a 19-year-old); Sharp v State,16 NE3d 470 (Ind Ct App 2014), vacated on other grounds by Sharp v State, 42 NE3d 512 (Ind 2015) (finding 55-year sentence for felony murder inappropriate where defendant was "just three months past turning eighteen years of age at the time of the crime"); United States v. Howard, 773 F3d 519, 532 (CA4, 2014) (finding district court's upward-departure life sentence substantively unreasonable because it "failed to appreciate" that the three predicated convictions occurred when the defendant was between 16 and 18 years old, and that "youth is a mitigating factor derive[d] from the fact that the signature qualities of youth are transient").

Furthermore, in Burgie v State, 2019 Ark 185 (Dissent) (Honorable Hart penned that the law in this area--referencing Miller's protection to those over age 18--is by no means settled as to make such an argument frivolous.) Similarly, the Sixth Circuit Court of Appeals, In United States v Sherrill, 2020 U.S. App LEXIS 26828 at **43-44, 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-five retain the defining characteristics of youth. The Sixth Circuit's new stance on the issue clearly extends permission to Michigan to meaningfully analyze Casanova's as-applied challenge without the previous "no exception" limitations imposed in United States v. Marshall, 736 F3d 492, 500 (6th Cir. 2013).

Also, in upholding a federal prohibition of certain sales of handguns to 18-to-20-year old "minors," the Fifth Circuit citing to the science supporting Miller, reasoned: Modern scientific research supports the commonsense notion that 18-to-21-year-olds tend to be more impulsive than older adults. Miller's three significant character gaps distinguishing juveniles from adults, as applied to Casanova's singular facts and circumstances, entitle him to Miller's sentencing protection:

The FIRST character gap: Children lack maturity and have an "underdeveloped sense of responsibility," which leads to "recklessness, impulsivity, and heedless risk-taking." Miller v. Alabama, 567 U.S. 460, 471 (2012).

Decades before Miller's brain science, Casanova displayed several of the characteristics of youth identified in Miller v. Alabama, 657 U.S. 460, 471 (2012), and the research relied upon, "lack of maturity", "underdeveloped sense of responsibility", leading to Casanova's "recklessness, impulsivity and heedless risktaking. The significance of which reverberated through his behaviors, actions, and the judge's issuance of LWOP upon Casanova. Evidenced by Casanova's disciplinary problems in school, including truancy, fighting, suspensions, lack of focus in school and the work assigned to him. In fact, the last grade Casanova actually completed was 7th. While attending 8th grade Casanova barely attended. At one point in 1984 when Casanova was 13 years old his own mother, Darlene Thomas, took him to the North Las Vegas Hospital ER to have him drug tested, believing him to be on drugs. When it was determined that he was not on drugs, recommendation was made that he see a psychiatrist or psychologist. That recommendation was ignored by his mother. Casanova continued to be an angry teenager, ditching school in the 8th grade and not doing assignments until he was suspended for the rest of that school year. By this time his mother had moved to Muskegon while he remained in Las Vegas with relatives. After being suspended in the 9th grade, his girlfriend became pregnant with their first of

three children. They both were afraid of what would happen when their family found out and did not know what to do so Casanova took his aunt's vehicle and they both ran away, driving to Muskegon where his mother lived. It was a miracle they made it. Shortly after their arrival, his girlfriend was returned to Las Vegas to her parents and Casanova was enrolled in school for the 10th grade. Casanova struggled with his grades and got into fights until being suspended again and sent to an alternative school. A school counselor stated that Casanova lived in a "Bugs Bunny and Bubble Gum World." After being sent to the alternative school Casanova began ditching again until he just stopped going. He continued to have problems with any authority figures. Casanova would just wander by himself. At one point his girlfriend flew back to Muskegon bringing his one month old daughter back. She became pregnant again and they argued and fought until she left for Vegas without their first daughter, which Casanova's mother cared for, as Casanova was not employed. He was only 15yrs old. In many ways Casanova was a misfit, a loner and left to his own devices until he committed the crime for which he is presently incarcerated. Casanova made suicide attempts to end his own life believing death would be better than the continued misery he endured mentally and emotionally. He has been sent to Huron Valley twice and placed in Residential Treatment Program.

He has been on and off of medication for his diagnosis of Major Clinical Depression, Post Traumatic Stress Disorder, Anxiety, Seasonal Affective Disorder and sleep problems since 1994. Casanova was never seen by mental health staff during his youth, nor was he sent for a forensic examination prior to his trial. His first evaluation and treatment for his mental health issues was in 1994 while incarcerated in Nevada awaiting extradition. There was a break in treatment until his incarceration in the Michigan Department of Corrections.

Casanova had been identified by school officials at a young age as a very troubled young man who is quite immature, impulsive, and irresponsible. During Casanova's youth, he declined to cooperate with school rules and principal/teacher imposed standards of conduct. Casanova began skipping school, breaking curfew, running away, and using illicit substances. He also befriended other adolescent youth with similar immature actions and thought patterns. He had left his mother's residence

to live with friends on several occasions to the extent that he even left the state where his mother resided and had to be brought back multiple times. Student transcripts reveal average grades, and general academic apathy as evidenced by having dropped out of the 8th grade and was subsequently graduated to the 9th grade where he continued to drop out and stopped attending any further schooling in the 10th grade, The last full year of school that he attended was the 7th grade. He was in and out (mostly out) of school throughout his youth including not graduating from high school. He had problem with attendance, studies, grades and teachers. He states, "I didn't like being told what to do.'

In many ways, Casanova reportedly felt like a misfit who was ostracized from the larger community around him, at home, at school, and in his neighborhood. He was routinely demonstrating numerous signs of having an antisocial personality, conduct disorder, attention deficit hyperactivity disorder dysgraphia. Society and its institutions were simply not afforded the luxury of timely, meaningful intervention, nor did his family seek this out or pursue this even after being a recommendation from school officials that Casanova should obtain a psychiatric evaluation. When Casanova was 13yrs old the North Las Vegas Emergency Department also recommended further psychiatric evaluation which his mother disregarded. Casanova was described as quite impulsive, immature, and irresponsible. He had not functioned well in the home, community or school. He resented adult authority and does have a history of substance use that further impaired his brain development, growth and maturity.

Casanova's serious antisocial personality disorder impaired his ability with respect to cooperating with his attorney in his defense. Casanova also had serious suicide attempts and was determined to kill himself. In fact the night of his crime witnesses have testified that he had tried to kill himself. During the early part of his incarceration Casanova also tried to commit suicide and he was placed under observation and eventually sent to Huron Valley Center for more intensive therapeutic intervention and then placed in Residential Treatment Program at Huron Valley Men's and has been receiving mental health treatment ever since. This is demonstrative of his impulsivity and inability to accurately access consequences of his actions. Casanova's

irrational suicidal ideology demonstrates his unrealistic expectation of what suicide involves, as many people in this age group do.

Casanova further demonstrated irrational and impulsive decision making when at 14 years of age he got his girlfriend pregnant and they both ran away from home only to be brought back by family. Casanova had a total of 3 children by the age of 18 and was not involved in raising them or being responsible for their care as he was not mature enough to act as an adult parent.

To summarize of all related facts respective to this gap: As-applied, there exists no possibility that Casanova achieved adulthood on his 18th birthday, or even demonstrated the facets of adulthood well into his 21st year. To be clear, Casanova's lack of maturity and underdeveloped sense of responsibility, recklessly and impulsively led him to make the heedless risk-taking decision to commit his crime, instead of taking the responsible and rational route that most mature adults would have chosen.

The SECOND character gap: Children are "more vulnerable ... to negative influences and outside pressures," including from their family and peers, and "lack the ability to extricate themselves from horrific, crime-producing settings." Miller U.S. at 471.

Not unexpectedly, Casanova lacked the ability to extricate himself from the horrific, crime-producing settings that made him vulnerable to the negative influences. Casanova had a tumultuous childhood punctuated by a mother who was a typical woman without resources or belief in her ability to take her children and flee from the following horrific existence, which left Casanova unable to cope with life as a normal child. Casanova's overall inadequate socialization history and experiences, certainly contributed towards his gradual development into a very troubled and maladjusted young adult."

During ages 3-14 of Casanova's life, and from the ages of 15-16 he was powerless as a child to protect himself from the physical assaults and to shield himself from its effects. And therefore, without the benefit from a positive nurturing home/family environment, where parental or maternal discipline, guidance and control were present. Casanova had succumbed to his environment, which led to many behavioral and

developmental issues outlined. His own alcohol and substance abuse addictions and his involvement and association with a deviant subculture that rejected societal values and accepted behavioral expectations and ultimately the tragic loss of James and Linda Crew's lives. Casanova's child development was essentially forged in the furnace of violence, terror and distrust of the adult authority that stripped him of a normal childhood by never stopping the violence described above. Casanova irrationally believed that his own children were better off without him in their lives.....better off than having to live a childhood under his underdeveloped juvenile mind would not allow him to see his actions. Unsurprisingly, Casanova lacked the wherewithal and trust in adult authority.

Casanova grew up in a broken home with a very dysfunctional family, and no stability. His mother and father were divorced when he was only 3 years old. He remained with his mother and she remarried. Casanova grew up with three siblings of which he was the oldest. His stepfather was more of a stranger to him than a father figure. Casanova was physically, mentally and emotionally abused growing up. He also was sexually abused when he was just 7 years old. His family moved at least sixteen times between 3 years and 13 years of age. He had to go to fourteen different schools during that time period.

Casanova's grandfather on his mother's side attempted to murder his grandmother twice, once when his mother was pregnant with him and another time when he was 4 years old and actually lived in the home. Two of his uncles shot guns at each other and Casanova's grandmother on his mother's side spent time incarcerated in at least three states and would take him on shoplifting sprees and stealing sprees when he was only 4 years old until he was 11years old. The last of which he was in the car when they were apprehended by police.

Additionally, Casanova suffered several concussions during his childhood, the first one he remembers was on his fifth birthday. Others were when he was 7 years, 10 years, 11, years, and 4 separate times when he was 13 years and more concussions at 17 years and even one while incarcerated within the MDOC. Casanova has also seen his mother beaten by his stepfather on three occasions. Generally, his family was not very affectionate or expressive with their love. Due to his age and circumstances he

was not able to extricate himself from these situations which negatively impacted on is brain development.

The THIRD character gap: Children are "less fixed" in their character and more capable of change than adults. Miller, US at 471.

In addition to the record, Casanova has presented further information herein that fills in the blanks to a 28 year old homicide. Casanova's terrible crime was something he did but it is not who he is now. Casanova has taken the opportunity that prison has provided and learned the coping skills and life skills he lacked throughout his early childhood, adolescents and last adolescents (0 years to 25 years old) Prison did not rehabilitate him,but provided the means for him to rehabilitate himself as evidenced by completing a multitude of groups, college courses and home study courses and involvement in mental health services offered. It is one of the many regrets he has that he didn't get some help sooner. See Attachments A-E as evidence of rehabilitation.

The difference between a "facial challenge" and an "as-applied challenge," and why Casanova is entitled to his presented as-applied challenge. When an as-applied challenge is presented, a court is not precluded from addressing the issue before actual injuries or loss have developed. AFSCME Counsel 25 v. State Temples. Ret. Sys., 294 Mich App 1, 7 (2011). "There are two ways in which to challenge the constitutionality of an ordinance: a 'facial' challenge and an 'as-applied' challenge." Bruley v. Bringham, 259 Mich App 619, 629 (2004), quoting Lincoln v Viking Energy of Lincoln, 2004 Mich App LEXIS 2237, at 2, "As the terms imply, a 'facial' challenge is based upon the mere existence of an ordinance, while an 'as-applied' challenge alleges a particular injury based upon the actual enforcement of the doctrine." The "as-applied" doctrine of unconstitutionality has been summarized in United States v. C.R., 792 F. Supp. 2d. 343, 509 (2011), as: "In an as-applied challenge, the question is whether the statute would be unconstitutional if applied to the facts of the case. Cf. Field Day LLC v. County of Suffolk, 463 F. 3d. 167, 174 (2nd Cir. 2006). Factual context and defendant's circumstances are critical. See Arzberger 592 F. Supp. 2d. at 599.

A sequential analysis, putting off facial challenges, permits the court to protect the constitutional rights of individual defendants in particular situations, while avoiding

the unnecessary striking down of a congressional enactment. See Washington State Granger v. Washington State Republican Party, 522 U.S. 422, 450, 128 S Ct 1148, 170 LEd 2d 151 (2008) noting that facial invalidation contrives 'the fundamental principle that courts ... should [not] formulate a rule of constitutional law broader than is required by the precise facts to which it is applied.' United States v. Polovizzi, 697 F. Supp. 2d. 381, 387 (EDNY 2010)." see also People v Wilder, 307 Mich App 546, 556 (2014), and In re Jackson, 503 Mich 851 (2018).

Casanova has a procedural and substantive due process right to have this Court conduct a meaningful as-applied challenge to resolve the legal and factual issue presented. Due process is a fluid concept depending on the circumstances. Morrissec v. Brewer, 408 U.S. 471 (1972). One constant of procedural due process, under even minimal of circumstances, is the opportunity to be heard. Id. at 488. Principles of substantive due process provides a second basis in support of this position. The due process clause provides protection to the individual from arbitrary exercise of the powers of government. Daniel v. Williams, 474 U.S. 327, 331 (1986) (quoting Hurtado v. California, 110 U.S. 516, 527 (1884) (holding that due process clause bar[s] certain government actions regardless of the fairness of the procedures to implement them). See also County of Sacramento v. Lewis, 523 U.S. 833, 845 (1988).

The Supreme Court has also repeatedly affirmed that the First and Fourteenth Amendments are themselves violated when a plaintiff is thwarted from presenting assertions of the violation of his fundamental constitutional rights to the judiciary. Christopher v Harbury, 536 U.S. 403, 412-22 (2002); Wolff v. McDonnell, 418 U.S. 539, 579 (1974); Procunier v. Martinez, 416 U.S. 396 (1974). See also In re Justin, 490 Mich 394, 414, 416 (2012) ("The fundamental purpose in resolving controversies is quite simple: the fair ascertainment of the truth." "[D]ismissing cases after having a discussion with only one side of the controversy is not a valid exercise of judicial power; rather, it is a perversion of judicial power."

Logically, to just accept the bright line recognition in the case at bar without conducting a meaningful as-applied analysis is indeed similar to a one-sided conversation. Moreover, to conduct a facial challenge analysis in lieu of the required

analysis for the presented as-applied challenge in this case is parallel to further abandoning this Country's doctrines of law involving "The Presumption of Innocence" and "Reasonable Doubt" standards where the scales of justice make it preferable to let 10 guilty men go free than to convict one innocent man. United States v. Doyle, 130 F.3d 523 (1997).

This rationale actually comports perfectly with the as-applied doctrine of law and is necessary because at the time of the offense, the record demonstrates Casanova displayed the indistinguishable, if not worse, juvenile character traits than those less than age 18, rendering the Miller trilogy brain science applicable to him, which if denied would be a travesty of justice in that it would be condemning Casanova to death in prison undeservingly. Moreover, an as-applied analysis is the only way to ensure Casanova does not remain condemned to die in prison--not because of guilt or innocence--due to his brain's failure to have fully developed on the State and Federal government's schedule.

Accordingly, it only makes sense that, "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 United States v. Carter, 2019 U.S. Dist. LEXIS 187015 at *30.

CONCLUSION/ RELIEF SOUGHT

After Miller and Montgomery, Mr. Poole should be given the opportunity to explain why sentences must take into account how late adolescents ages 18 through 23 like him "are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Miller. 657 US at 480. This court should grant Mr. Poole's application for leave to appeal, vacate the decision of the circuit court and remand for further proceedings in the circuit court regarding the merits of Mr. Poole's constitutional challenge to his mandatory life without parole sentence.

Furthermore, Roberto Casanova Jr. requests that this Honorable Court grant his Amicus Curiae brief and grant appropriate relief applying Miller protections to Casanova.

Date, 8-31-2021

Submitted By,
Roberto Casanova Jr.

Roberto Casanova Jr. #241866
Amici Curiae,
Lakeland Correctional Facility
141 First Street
Coldwater, MI 49036

PROOF OF SERVICE

I hereby certify that on the below listed date, served by US Postal Service via first Class mail to the following parties of record:

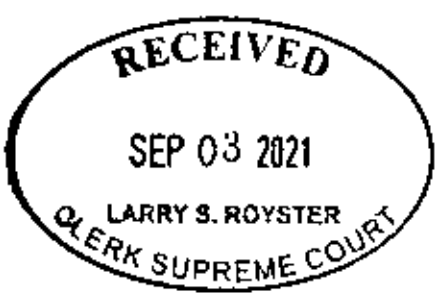
WAYNE COUNTY PROSECUTORS OFFICE
1441 St. Antoine St
Detroit, MI 48226

State Appellate Defender's Office
Attorney for Appellant John Antonio Poole
645 Griswold Street
Suite 3300
Detroit, MI 48226

I declare that the aforementioned is true and correct.

8-31-2021
Date

Robert Casanova
Roberto Casanova #241866
(Amicus Curiae-Party)
Lakeland Correctional Facility
141 First Street
Coldwater MI 49036



IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

John Antonio Poole
(Print your name)

Defendant-Appellant.

Supreme Court No. 161529 (Leave blank)

Court of Appeals No. 352569 (See Court of Appeals decision)

Trial Court No. 02-000893-FC (See Court of Appeals brief or PSIR)

PROOF OF SERVICE

On August 31, 2021, I mailed by U.S. mail 1 copy of the documents checked below:

- ☐ Application for Leave to Appeal
- ☐ Copy of Trial Court decision being appealed
- ☐ Copy of Court of Appeals decision being appealed
- ☐ PSIR (required **only** if you are raising an issue related to the sentence imposed on your conviction and the PSIR was not previously filed with the Court of Appeals)
- ☐ Transcript of jury instructions (required **only** if you are raising an issue related to a jury instruction at trial **and** the transcript was not previously filed with the Court of Appeals)
- ☒ Motion to Waive Fees / Affidavit of Indigency
- ☒ Proof of Service
- ☒ Other: Amicus Curiae Brief in Support of Poole

You do not have to provide any briefs or other documents filed in the trial court or Court of Appeals

TO: Wayne County (Name of county) County Prosecutor

1441 St. Antoine St. (Street address)

Detroit (City), MI 48226 (Zip Code)

I declare that the statements above are true to the best of my knowledge, information and belief.

Robert Casanova (Sign your name)

8-31-2021 (Today's date)

Roberto Casanova #241586 (Print your name and, if incarcerated, MDOC number)

Lakeland Correctional Facility (Print name of correctional facility if incarcerated)

141 First St. (Print your address or address of correctional facility)

Cold Water MI 49036

RECEIVED
SEP 03 2021
LARRY S. ROYSTER
CLERK SUPREME COURT

IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

John Antonio Poole
(Print your name)

Defendant-Appellant.

Supreme Court No. 161529 (Leave blank)

Court of Appeals No. 352569 (See Court of Appeals decision)

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You do not have to provide any briefs or other documents filed in the trial court or Court of Appeals

TO: State Appellate Defenders Office ~~County Prosecutor~~
(Name of county)

645 Griswold St. Suite 3300
(Street address)

Detroit, MI 48226
(City) (Zip Code)

I declare that the statements above are true to the best of my knowledge, information and belief.

Robert Casanova
(Sign your name)

8-31-2021
(Today's date)

Roberto Casanova #241866
(Print your name and, if incarcerated, MDOC number)

Lakeland Correctional Facility
(Print name of correctional facility if incarcerated)

141 First St.
(Print your address or address of correctional facility)

Coldwater MI 49036

RECEIVED
SEP 03 2021
LARRY S. ROYSTER
CLERK SUPREME COURT

COVER LETTER

8-31-2021
(Date of mailing to the Supreme Court)

Clerk's Office
Michigan Supreme Court
Hall of Justice
P.O. Box 30052
Lansing, MI 48909

RE: PEOPLE OF THE STATE OF MICHIGAN v John Antonio Poole
(Print your name)

Supreme Court No. 161529 (Leave blank - the Clerk will assign a number for you.)
Court of Appeals No. 352569 (Get this number from the Court of Appeals decision.)
Trial Court No. 02-000893-FC (Get this number from Court of Appeals brief or the PSIR.)

Dear Clerk:

Enclosed please find the originals of the documents checked below. (Put a check mark in the boxes of the documents you are sending.) I am indigent and cannot provide four copies.

- ☐ Application for Leave to Appeal
- ☐ Copy of Trial Court decision
- ☐ Copy of Court of Appeals decision
- ☐ PSIR (required only if you raise an issue related to the sentence imposed on your conviction and the PSIR was not previously filed with the Court of Appeals)
- ☐ Transcript of jury instructions (required only if you are challenging an instruction on appeal and the transcript was not previously filed with the Court of Appeals)
- ☒ Motion to Waive Fees / Affidavit of Indigency
- ☒ Proof of Service
- ☒ Other Amicus Curiae in Support of Poole

You do not have to provide any briefs or other documents filed in the trial court or Court of Appeals

Roberto Casanova
(Sign your name)

Roberto Casanova #241866
(Print your name and, if incarcerated, MDOC number)

Lakeland Correctional Facility
(Print name of correctional facility if incarcerated)

141 First St.
(Print your address or address of correctional facility)

Coldwater MI 49036

Copy sent to:
Wayne County Prosecutor Office
State Appellate Defenders Office

INSTRUCTIONS

1. You will need 2 copies and the originals of this letter and the pleadings listed above.
2. Mail the originals of this letter and the pleadings to the Supreme Court Clerk.
3. Mail 1 copy of this letter and the pleadings to the prosecutor.
4. Keep 1 copy of this letter and the pleadings for your file.

Roberto Casanova #241866
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

Clerk of the Court
MICHIGAN SUPREME COURT
P.O. Box 30052
Lansing Michigan, 48906

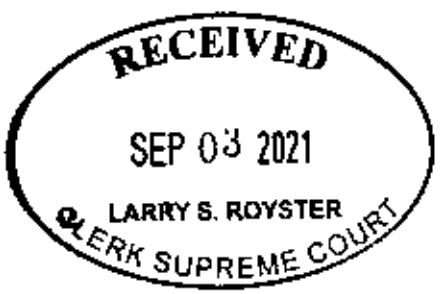
Date: 8-31-2021

Re: People v John Antonio Poole
Case No. 161529
Amicus Curiae

Dear Clerk:

Enclosed for filing for permission to file Amicus Curiae briefing, please find the following: Motion for Permission to file Amicus Curiae brief, Amicus-brief in support, Motion to Waive Fee/Costs, Accompanying Affidavit of Indigent Status. And Proof of Service.

Thank you in advance for your cooperation to this matter. If you have any concerns or comments please feel free to contact me at the above listed address.



Respectfully Submitted,

Roberto Casanova Jr.

Roberto Casanova Jr.-Amicus Curiae