Electronically RECEIVED on May 29, 2025
Appellate Court Clerk

Electronically FILED on June 04, 2025
Appellate Court Clerk

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE AT JACKSON

No. W2025-00039-CCA-R3-PC

DONAVAN DANIEL,
Appellee,
v.
STATE OF TENNESSEE,
Appellant.

On Appeal as of Right from the Judgement
of the Weakly County Circuit Court

BRIEF OF JUVENILE LAW CENTER AND CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH AS *AMICI CURIAE* IN SUPPORT OF APPELLEE DONAVAN DANIEL

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STATEMENT OF INTEREST OF AMICUS CURIAE

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

The Campaign for the Fair Sentencing of Youth (CFSY) envisions the United States becoming a society that respects all children's human rights and nurtures their capacity to thrive, responding to harm they cause in ways that are rooted in their dignity and unique potential for change. The CFSY believes children should be held accountable in age-appropriate ways that are conscientious of childhood traumas, restorative and empowering to all parties, and equitable, especially with regard to race and ethnicity. Founded in February 2009, the CFSY utilizes a multipronged approach to reform that includes coalition-building; public education; advocacy; and litigation; and builds strategic partnerships to increase access to resources and opportunities for returning individuals and their families to prosper. The CFSY has

gathered and analyzed comprehensive data regarding juvenile life-without-parole sentences and resentencings from across the country.

SUMMARY OF ARGUMENT

Donovan Daniel was just 17 years old when he committed the underlying offense that led to a life without parole sentence. If his sentencing were held today, he would have a hearing where his youth and its attendant characteristics would be presented by expert testimony and evidence, and a series of youth specific factors enumerated by the United States Supreme Court in *Miller v. Alabama*, 567 U.S. 460 (2012), and the Tennessee Supreme Court in *State v. Booker*, 656 S.W.3d 49 (Tenn. 2022), would be evaluated to determine if his crime reflected transient immaturity. If Mr. Daniel's crime was found to reflect transient immaturity, he could not be sentenced to life without parole. However, in 2000, at the time of his trial and sentencing, Mr. Daniel's youth received hardly any mention. The trial court refused to permit a mitigation expert to testify and his defense counsel failed to offer any justification for the expert or any evidence about his youth. Not only were the mitigating qualities of youth ignored, but Mr. Daniel's youth was likely used against him due to the racist "superpredator" myth that led to the disproportionate punishment of Black youth like Mr. Daniel in Tennessee and throughout the country in the 1990s and early 2000s. Recognizing the clear failures of Mr. Daniel's sentencing, the Circuit Court granted relief in accordance with *Booker*. This Court should affirm that decision.

ARGUMENT

I. ADOPTING ESTABLISHED SCIENCE, THE SUPREME COURT REQUIRES CONSIDERATION OF THE HALLMARK CHARACTERISTICS OF YOUTH BEFORE A SEVENTEEN-YEAR-OLD CAN BE SENTENCED TO LIFE WITHOUT PAROLE

The United States Supreme Court has established as a matter of settled constitutional law that children are developmentally different from adults and require individualized consideration of their youthful characteristics before receiving the harshest adult punishments. *See Roper v. Simmons*, 543 U.S. 551, 569-70 (2005) (striking down the juvenile death penalty as unconstitutional); *Graham v. Florida*, 560 U.S. 48, 75, 82 (2010) (striking down life without parole sentences for juveniles convicted of nonhomicide offenses and requiring "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation"); *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (striking down mandatory imposition of life without parole sentences for juveniles convicted of homicide). *See also Montgomery v. Louisiana*, 577 U.S. 190, 205-09 (2016) (holding *Miller* retroactive on collateral review); *Jones v. Mississippi*, 593 U.S. 98, 106 n.2 (2021) (upholding the requirement of individualized sentencing determinations that account for youth). In striking down extreme adult penalties that fail to take the mitigating effects of youth into account, the Supreme Court has looked to a now well-established body of scientific research distinguishing adolescents from adults.

A. Children's Developmental Differences Make Them Categorically Less Deserving Of The Law's Harshest Penalties

In its Eighth Amendment jurisprudence, the U.S. Supreme Court has repeatedly emphasized three characteristics that distinguish children from adult offenders: 1) they lack "maturity" and have an underdeveloped sense of responsibility which results in "impetuous and ill-considered actions and decisions," *Roper*, 543 U.S. at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)); 2) they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure" and have limited control over their environment; and 3) their character is "not as well formed as that of an adult" making their personality traits "more transitory," "less fixed," and, most importantly, uniquely capable of change, *id.* at 569-71. These characteristics mean that, compared with adults, children "have diminished culpability and greater prospects for reform" that make them categorically "less deserving of the most severe punishments." *Miller*, 567 U.S. at 471 (quoting *Graham*, 560 U.S. at 68). The Supreme Court made these findings based on settled research demonstrating the distinct emotional, psychological, and neurological attributes of youth.

The developmental research relied on by the Supreme Court has shown that although reasoning improves throughout adolescence and into adulthood, it is tied to and limited by the adolescent's psychosocial immaturity. *See* Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psych. 1009, 1011-13 (2003). Accordingly, personality traits change significantly

during the period of transition from adolescence to adulthood, and in fact the identity-formation process often continues until at least the early twenties.[1] *See* Amicus Br. for Am. Psych. Ass'n et al., at 20, *Miller v. Alabama*, 567 U.S. 460 (2012) (Nos. 10-9646 & 10-9647) (citing, among others, Alan Waterman, *Identity Development from Adolescence to Adulthood*, 18 Developmental Psych. 341, 355 (1982); Brent Roberts et al., *Patterns of Mean-Level Change in Personality Traits Across the Life Course*, 132 Psych. Bull. 1, 14-15 (2006)). During this developmental period, teens may experiment with risky or illegal conduct, but the vast majority outgrow this behavior and desist from crime as they mature. Steinberg & Scott, *Less Guilty by Reason of Adolescence*, *supra*, at 1014-15. Neuroscience has reinforced these key findings that adolescents

[1] In fact, the parts of the brain associated with impulse control, propensity for risky behavior, vulnerability, and susceptibility to peer pressure are still developing well into late adolescence and into the twenties. Elizabeth S. Scott, Richard J. Bonnie & Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 642 (2016) (citing Laurence Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence* 5 (2014)) ("Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties, well beyond the age of majority."). *See also* Laurence Steinberg, *Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?*, 38 J. Med. & Phil. 256, 263-64 (2013). In recent years, several state supreme courts have applied this research to their own state constitution's punishment clauses and found that *Miller* proscribes mandatory life without parole for offenders up to age 21. *See In re Monschke*, 482 P.3d 276, 284-88 (Wash. 2021); *Commonwealth v. Mattis*, 224 N.E.3d 410, 415 (Mass. 2024); *People v. Taylor*, Nos. 166428 & 166654, 2025 WL 1085247, at *1 (Mich. 2025).

possess a "transient immaturity" that distinguishes them from adults. *See Roper*, 543 U.S. at 573 (citing Steinberg & Scott, *Less Guilty by Reason of Adolescence*, *supra*, at 1014-16). As the Court noted in *Graham*, the "parts of the brain involved in behavior control continue to mature through late adolescence." 560 U.S. at 68 (citations omitted); *see also* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 Future of Children 15, 20 (2008) ("Considerable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices.").

Research confirms that adolescents are uniquely vulnerable in highly stressful or emotional settings. Even if an adolescent has "adult-like" cognitive capacity to apply in certain "cold" decision making contexts, the adolescent's sense of time, lack of future orientation, pliable emotions, calculus of risk and gain, and vulnerability to pressure will often drive the teen to make very different decisions than an adult would make in emotionally stressful or "hot" situations. *See* Scott & Steinberg, *Regulation of Youth Crime*, *supra*, at 20-22; Alexandra O. Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 Psych. Sci. 549, 559 (2016); Grace 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 Law & Hum. Behav. 69, 71 (2019).

Adolescents also have "heightened sensitivity to anticipated rewards," meaning that they may "engage in acts, even risky acts, when

the potential for pleasure is high." Laurence Steinberg, *The Science of Adolescent Brain Development and Its Implications for Adolescent Rights and Responsibilities*, in Human Rights and Adolescence 59, 64-65 (Jacqueline Bhabha ed., 2014). The combination of sensitivity to rewards and limited behavior control leads to the impetuosity and impulsiveness that characterize this developmental period. *See* Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 72 Brain & Cognition 160, 161-62 (2010) (noting that "middle adolescence (roughly 14-17) should be a period of especially heightened vulnerability to risky behavior, because sensation-seeking is high and self-regulation is still immature").

Substantial research has also confirmed adolescents' vulnerability to outside pressures, particularly peer pressure. Exposure to peers has been shown to double the amount of risky behavior engaged in by adolescents, while it has much less effect on adults. Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Marking in Adolescence and Adulthood: An Experimental Study*, 41 Developmental Psych. 625, 626-34 (2005). Neuroimaging studies have demonstrated that adolescents have greater activation in brain areas associated with reward processing when told that their peers are watching. Jason Chein et al., *Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry*, 14 Developmental Sci. F1, F5-F8 (2011). It is therefore unsurprising that studies of youthful offending show that teens are "far more likely than adults to commit crimes in groups." Elizabeth S. Scott & Laurence Steinberg, Rethinking Juvenile Justice 39 (2008).

Research also demonstrates that young people, particularly under stress, have trouble understanding their legal rights, and are far more likely to be persuaded or manipulated by authority figures like police and prosecutors. *See, e.g.*, Lindsay C. Malloy et al., *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 L. & Hum. Behav. 181, 181-82 (2014). Indeed, as one researcher concluded, "[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent." Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333, 357 (2003). *See also* Rethinking Juvenile Justice, *supra,* at 440 (concluding that adolescents have "a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures" than do adults).

In short, a substantial and well-established body of scientific research undergirds the U.S. Supreme Court's conclusion that adolescence is a period marked by "transient rashness, proclivity for risk, and inability to assess consequences." *Miller*, 567 U.S. at 472. Notably, these "distinctive attributes of youth" must be taken into account "even when [children] commit terrible crimes." *Id.* As the Court explained in *Miller*, the hallmark characteristics of youth "are evident in the same way, and to the same degree" even when youth commit serious crimes, including homicide. *Id.* at 473. Regardless of offense, these well-established characteristics of youth weaken the penological justifications for imposing severe sentences on youth offenders. *See id.* at 473-74.

B. *Miller* And *Booker* Require That A Sentencing Court Consider These Developmental Differences Before Imposing An Extreme Sentence

In 2005, adopting the above scientific research, the Supreme Court in *Roper* first found that the developmental differences that distinguish youth from adults "render suspect any conclusion that a juvenile falls among the worst offenders," and that a youth's "diminished culpability" means "that the penological justifications for the death penalty apply to them with lesser force than to adults." 543 U.S. at 570-71. Accordingly, the Court categorically barred the death penalty for all youth under 18 rather than permit youth and its attendant characteristics to merely be considered as mitigating factors because the Court found an unacceptable risk "that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity" should require a less severe sentence. *Id.* at 573. Importantly, the Court recognized that ***"[i]n some cases a defendant's youth may even be counted against him"*** despite everything science tells us about youth's diminished culpability. *Id.* (emphasis added).

Five years later the Court found no "reason to reconsider [its] observations in *Roper* about the nature of juveniles" when it decided that the Eighth Amendment also categorically barred the imposition of life without parole sentences for youth under 18 who commit non-homicide offenses:

Juveniles are more capable of change than are adults, and

> their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults. *Roper*, 543 U.S., at 570, 125 S.Ct. 1183. It remains true that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

Graham, 560 U.S. at 68 (alteration in original). The Court reiterated that due to the salient characteristics of youth—immaturity, susceptibility to negative influences, and capacity for change—"juvenile offenders cannot with reliability be classified among the worst offenders." *Id.* (quoting *Roper*, 543 U.S. at 569). The Court imposed a categorical ban recognizing that life without parole "alters the offender's life by a forfeiture that is irrevocable" and is "an especially harsh punishment for a juvenile" who "will on average serve more years and a greater percentage of his life in prison than an adult offender." *Id.* at 69-70.

In *Miller*, after acknowledging that the same observations about the unique developmental characteristics of youth recognized in *Roper* and *Graham* apply equally to homicide offenders, the Court barred mandatory life without parole sentences for youth under 18 who commit homicide offenses, explaining that such sentences were constitutionally flawed because they "prevent the sentencer from taking account" of the mitigating effects and hallmark characteristics of youth. 567 U.S. at 474 ("By removing youth from the balance—by subjecting a juvenile to the same life-without-parole sentence applicable to an adult—these laws prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender.") The Court, in finding mandatory life without parole violates

the Eighth Amendment, described what have become known as the *Miller* factors:

> [mandatory life without parole] precludes consideration of [a child's] 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 familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for 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 477-78 (internal citations omitted). The Court thus made consideration of these factors mandatory before any extreme sentence is imposed for an offender under 18 like Mr. Daniel.

Four years later, when the Supreme Court ultimately determined that *Miller*'s ban on mandatory life without parole was retroactive, the Court found that *Miller* "did more than require a sentencer to [merely] consider a juvenile offender's youth before imposing life without parole." *Montgomery*, 577 U.S. at 208. The Supreme Court found that ***"[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'"*** *Id.* (emphasis added). *Miller* preserved life without parole for only "***the rarest***

of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Id.* at 209 (emphasis added). To "give[] effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity," the Court required a "hearing where 'youth and its attendant characteristics' are considered as sentencing factors" to differentiate "those juveniles who may be sentenced to life without parole from those who may not." *Id.* at 210. Alternatively, the Court found that an unconstitutional life without parole sentence – *e.g.*, one that did not issue after a hearing to distinguish crimes reflecting transient immaturity from irreparable corruption – could be cured by "[e]xtending parole eligibility to juvenile offenders." *Id.* at 212.

While the Supreme Court in *Jones* ultimately held that *Miller* does not require a sentencing court to make a specific finding of irreparable corruption in order to sentence a juvenile offender to life without parole, the Court maintained that *Miller* nevertheless "does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Jones*, 593 U.S. at 106 n.2. Accordingly, it remains necessary for a sentencer to take the mitigating characteristics of youth into account before imposing life without parole so as not to impose an unconstitutional and disproportionate sentence on a child in violation of the Eighth Amendment. Further, the Court expressly found that a sentencer "who refuses as a matter of law to consider the defendant's youth" or "[i]f defense counsel fails to make the sentencer aware of the defendant's

youth," then a juvenile life without parole sentence would be unconstitutional. *Id.* at 114-15 nn.6-7.

In *Booker*, the Supreme Court of Tennessee for the first time adopted the research and reasoning of *Roper*, *Graham*, and *Miller*, and ultimately held that sentencers must "take the mitigating qualities of youth into account" in order to minimize the risk that a juvenile will receive a disproportionate sentence when facing the possible imposition of the state's harshest punishments, including life without parole. *State v. Booker*, 656 S.W.3d 49, 60 (Tenn. 2022). The Court required that sentencers specifically consider, among other factors: "(a) the juvenile's 'lack of maturity' and 'underdeveloped sense of responsibility,' which can lead to 'recklessness, impulsivity, and heedless risk-taking'; (b) the juvenile's vulnerability and susceptibility to negative influences and outside pressure, as from family and peers; and (c) the fluidity of the development of the juvenile's character and personal traits." *Id.* (citing *Miller*, 567 U.S. at 471 (quoting *Roper*, 543 U.S. at 569–70)).

Despite being 17 at the time of his offense, none of these factors were considered in Mr. Daniel's case. Based in part on a series of errors, both by the trial court and by defense counsel, the jury was unable to and did not determine whether Mr. Daniel's crime reflected transient immaturity or irreparable corruption before it sentenced him to life without parole. There is accordingly a strong probability that he received a disproportionate sentence in violation of the Eighth Amendment.

II. MR. DANIEL DID NOT RECEIVE AN INDIVIDUALIZED SENTENCING HEARING IN COMPLIANCE WITH SUPREME COURT PRECEDENT OR *BOOKER*

A. Mr. Daniel's Age And The Unique Qualities Of Youth Were Not Considered Before He Was Sentenced To Life Without Parole

When Mr. Daniel was sentenced by a jury to life without parole, Tennessee law permitted but did not require the sentencer to consider whether "[t]he defendant, because of youth or old age, lacked substantial judgment in committing the offense." Tenn. Code Ann. § 40-35-113(6). The Tennessee Supreme Court had previously found that when determining the applicability of this mitigating factor, the sentencer should consider "the defendant's age, education, maturity, experience, mental capacity or development, and any other pertinent circumstance tending to demonstrate the defendant's ability or inability to appreciate the nature of his conduct." *State v. Adams,* 864 S.W.2d 31, 33 (Tenn. 1993). Nevertheless, as the court below found, and as the record supports, there was no meaningful evidence or argument presented, and therefore no consideration given, to Mr. Daniel's youth at the time of his offense.

In 2000, when Mr. Daniel was sentenced, the U.S. Supreme had only banned the death penalty for youth under 16. *See Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988). That same year this Court found that two defendants who were ages 15 and 17 respectively were not entitled to consideration of their youth as a mitigating factor under Section 40-35-113(6). *See State v. Turner*, 41 S.W.3d 663, 673–75 (Tenn. Crim. App. 2000). It would be another five years before the Supreme Court in *Roper* adopted established developmental science to extend its

death penalty ban to youth under 18; and it was twelve years before the Supreme Court in *Miller* found, based on the same developmental science, that life without parole was only constitutionally permissible for the rare youth under 18 whose crime reflected irreparable corruption after their age and the transient characteristics of youth were taken into account.

Meanwhile, the facts of Mr. Daniel's case, albeit horrific, suggest some indicia of transient immaturity consistent with the developmental literature. On the day of the crime, he was at the victim's home with two friends, smoking marijuana, and drinking alcohol. *State v. Daniel*, No. W2000-00981-CCA-R3-CD, 2001 WL 1690196, at *2 (Tenn. Crim. App. Dec. 28, 2001). After a day of smoking and drinking, Mr. Daniel confessed that he was "starting to feel crazy" and that he tried to "get with" one of the girls. *Id.* He ultimately shot the first victim after picking up the victim's own gun from the kitchen counter, and shot the second victim after she "startled" him in the apartment. *Id.* Mr. Daniel ultimately confessed to the crime after his mother drove him to the police station for questioning and then only after almost twelve hours of overnight questioning without rest or sleep and after the police found some incriminating evidence. *Id.* at *7-8.

Mr. Daniel's actions show signs of recklessness, impulsivity, and pleasure/reward seeking, as well as inability to assess the consequences of his actions. In initially talking to the police at the direction of his mother and ultimately in confessing he showed an immature deference to authority figures that is indicative of youth. Many of the circumstances of his crime reflect impulsivity and irrationality suggestive of transient

immaturity rather than irreparable corruption and a depraved heart.

Unfortunately, there was no evidence presented to the jury for it to assess these factors or to ascertain whether Mr. Daniel was the rare juvenile offender for whom *Miller* preserved life without parole. The Court refused to allow a mitigation expert to testify, and his lawyer failed to offer any further evidence about his youthfulness and immaturity. Both the Court's and his attorney's failures, according to *Jones*, are sufficient to establish that Mr. Daniel's life without parole sentence is unconstitutional. *Jones*, 593 U.S. at 114-15 nn. 6-7.

While there was no basis for the jury to assess Mr. Daniel's youth and its related mitigating attributes, of equal constitutional concern is that, as the Supreme Court recognized in *Roper*, his youth may have actually been counted against him.

B. The Moral Panic And "Get Tough On Crime" Narratives That Defined The Super-Predator Era Informed Mr. Daniel's Sentence

1. The superpredator myth that gripped the nation falsely portrayed Black men and boys as predisposed to violence and criminality

In the 1980s and 90s, increasing crime rates were used to frame Black and Brown youth as morally impoverished monsters deserving of harsh punishments and laid the foundation for a moral panic about "superpredators." *See* John Dilulio, *The Coming of the Super-Predators*, Wkly. Standard, Nov. 27, 1995, https://www.washingtonexaminer.com/magazine/1558817/the-coming-of-the-super-predators/. Headlines during that time period depicted youth from "inner-cities" as "radically

impulsive, brutally remorseless youngster[s] . . . who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders." William J. Bennett, John J. Dilulio, Jr. & John P. Walters, *Body Count: Moral Poverty—And How to Win America's War Against Crime and Drugs* 27 (1996). *See also* Carroll Bogert and Lynnell Hancock, *Superpredator: The Media Myth That Demonized a Generation of Black Youth*, Marshall Project (Nov. 20, 2020), https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth/ (providing examples and analysis of media headlines about youth crime in the late twentieth century). Scholars like political scientist John J. Dilulio Jr. made false predictions of an impending rash of crime and violence committed by youth "who have absolutely no respect for human life and no sense of the future." Dilulio, *supra*. He claimed this wave of "super-predators" was coming to commit "the most heinous acts of physical violence for the most trivial reasons." *Id.* These so-called "superpredators" were characterized as "merciless criminals," who were coming to prey on businesses, schools, and neighborhoods, leaving "maimed bodies, human carnage and desecrated communities." Vincent M. Southerland, *Youth Matters: The Need to Treat Children Like Children*, 27 J. C.R. & Econ. Dev. 765, 778–79 (2015) (first quoting *Dole Seeks to Get Tough on Young Criminals*, L.A. Times, July 7, 1996, at A16, https://www.latimes.com/archives/la-xpm-1996-07-07-mn-22017-story.html, then quoting *The Violent and Hard-Core Juvenile Offender Reform Act: Hearing before the Subcomm. on Youth Violence* (May 9, 1996) (statement of John Ashcroft, Att'y Gen. of the United States)).

Of course, as we now know, the predicted onslaught of youth violence never materialized. Instead, youth arrest rates for violent crimes dropped by almost half between 1994 and 2009. Office of Juvenile Justice and Delinquent Prevention, *Juvenile Arrest Rate Trends: Violent Crimes*, Statistical Briefing Book (Nov. 16, 2020), https://ojjdp.ojp.gov/statistical-briefing-book/crime. Youth arrested for murder and non-negligent manslaughter dropped from 12.3 per 100,000 youth in 1994 to 3.5 per 100,000 youth in 2009. *Id.* While Dilulio later tried "to put the breaks on the suprepredator theory," Elizabeth Becker, *As Ex-Theorist on Young 'Super-predators,' Bush Aide Has Regrets*, N.Y. Times, Feb. 9, 2001, https://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html, the damage had been done.

2. Tennessee made changes to its juvenile and criminal laws that disproportionately impacted Black youth

In the 1990s, responding to superpredator-induced fears, almost all states—Tennessee included—made it easier to transfer youth to adult court. *See* Howard N. Snyder & Melissa Sickmund, National Center for Juvenile Justice, *Juvenile Offenders and Victims: 1999 National Report* 89 (1999), https://files.eric.ed.gov/fulltext/ED435888.pdf; Patricia Torbet et al., National Center for Juvenile Justice, *State Responses to Serious and Violent Juvenile Crime* 56 (1996), https://www.ojp.gov/pdffiles/statresp.pdf. Tennessee amended its transfer statute in 1994 by adding a "once an adult, always an adult" provision and permitting youth of any age to be transferred to adult criminal court for certain offenses, including first- and second-degree murder, rape, and kidnapping. 1994

Tenn. Laws Pub. Ch. 895 (S.B. 1681); 1994 Tenn. Laws Pub. Ch. 823 (S.B. 2850) (both amending Tenn. Code Ann. § 37-1-134).[2]

In the second half of the decade, Tennessee continued to crack down on youth crime—or as one headline put it, "Tenn. Declares War on Juvenile Crime." Michael Finn, Tenn. *Declares War on Juvenile Crime*, Chattanooga Times Free Press, Feb. 7, 1997, at A3. In 1995, the legislature added new sentencing enhancement factors allowing delinquency adjudications for felonies and "criminal street gang" connections to enhance adult sentences. 1995 Tenn. Laws Pub. Ch. 302 (S.B. 1758); 1995 Tenn. Laws Pub. Ch. 322 (S.B. 798) (both adding a new factor to Tenn. Code Ann. § 40-35-114). Three years later in 1998, the year prior to Daniel's offense, the legislature added a criminal gang factor to its list of what the court must consider when determining whether to transfer a child to adult criminal court. 1998 Tenn. Laws Pub. Ch. 782 (H.B. 2517). In the previous year, then-Governor Don Sundquist reflected concerns about youth gang violence:

> We've looked at what's happened and talked to law-enforcement agencies and the whole question of youth gangs becoming more and more active in communities. It's not just big cities, it's small towns, rural communities where youth gangs live. . . . The value of human life is not near what it was, and the whole crime question involving young people is more complicated.

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[2] That same year, the state legislature also removed confidentiality protections for juvenile offenses by making petitions and delinquency orders open to the public. 1994 Tennessee Laws Pub. Ch. 998 (H.B. 2808) (adding new statutory language to Tenn. Code Ann. §§ 37-1-153, 154).

Tough on crime, Chattanooga Times Free Press, Apr. 15, 1997, at C1. In addition to enacting laws directly targeting youth offenders, the legislature also passed laws that would impact youth for decades to come, including extending the maximum number of years that someone must serve before being eligible for parole from 25 to 51 years. 1995 Tenn. Laws Pub. Ch. 492 (H.B. 1762) (adding a new subsection to Tenn. Code Ann. § 40-35-501).

As with legislators, Tennessee judges were also not immune to the superpredator rhetoric. Looking back to the time period of Mr. Daniel's case, it is not unusual to find dehumanizing descriptions about children and young adults in judicial opinions that often viewed youth as an aggravating rather than mitigating factor. *See, e.g.*, *State v. Blocker*, No. 03C01-9803-CR-00120, 1999 WL 124223, at *9 (Tenn. Crim. App. 1999) (describing the defendant as "'streetwise,' and therefore 'considerably older' than seventeen"); *Dumas v. State,* No. W2000-01814-CCA-R3PC, 2001 WL 912774, at *7 (Tenn. Crim. App. Aug. 9, 2001) (describing the defendant, who was "almost eighteen years old," as "a streetwise criminal."); *State v. Kelley*, 34 S.W.3d 471, 481–82 (Tenn. Crim. App. 2000) (affirming trial court's denial of youth as a mitigating factor for 20-year-old "streetwise" defendant); *State v. Elder*, 982 S.W.2d 871, 879 (Tenn. Crim. App. 1998) (affirming trial court's denial of youth as a mitigating factor because 20-year-old defendant was "extremely street wise, extremely street experienced").

Indeed, the trial court in Mr. Daniel's case was not immune from such biased rhetoric. At the suppression hearing addressing the admissibility of his confession, the Court stated that Mr. Daniel's was

"street smart" and accordingly, despite his age, "[t]here is nothing in the record to suggest that he was too immature . . . ." *State v. Daniel*, No. W2000-00981-CCA-R3CD, 2001 WL 1690196, at *8 (Tenn. Crim. App. Dec. 28, 2001).

Tennessee's swift and stern response to violent youth crime disproportionately impacted Black youth in Tennessee. In 1997, three years after Tennessee amended its transfer statute, 182 youth across five select counties (Davidson, Montgomery, Shelby, Rutherford, and Washington) were transferred to adult criminal court. Tennessee Bureau of Investigations, *An Analysis of Juvenile Court Practices in Selected Counties* 7 (1999), https://www.tn.gov/content/dam/tn/tbi/documents/1999%20An%20Analysis%20of%20Juvenile%20Court%20Practices%20in%20Select%20Counties.PDF. Black youth accounted for 83% (151) of those transfers while white youth made up only 16% (29). *Id.* Across the state, Black children continued to be transferred at higher rates than their white peers in the years that followed. In 1999, of the 325 children transferred to adult court, 67% (219) were Black males and 26% (84) were white males. David Lewis, Beverly Edmonds & Shirley Hudson, *Tennessee Annual Juvenile Court Statistical Report* 49, Tenn. Council of Juv. & Fam. Court Judges (1999), https://www.tncourts.gov/sites/default/files/docs/1999_tcjfcj_annual_report_0.pdf. At the start of the new millennium, the trend was the same: of the 303 children transferred to adult court in 2000, 68% (205) were Black males and 26% (80) were white males. David Lewis, Beverly Edmonds & Shirley Hudson, *Tennessee Annual Juvenile Court Statistical Report* 47, 49, Tenn. Council of Juv. & Fam. Court Judges (2000), https://www.tncourts.gov/sites/default/files/

docs/2000_tcjfcj_annual_report_0.pdf. Today, while Black people account for only 17% of the state's population, they make up a significant proportion of the prison population: 989 per 100,000 Black adults are incarcerated in Tennessee compared to 296 per 100,000 white adults. Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* 7, app. tbl.5, The Sentencing Project (2021), https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf. Of the 4,018 people serving a life sentence in Tennessee, roughly 60% are Black. Ashley Nellis & Celeste Barry, *A Matter of Life: The Scope and Impact of Life and Long Term Imprisonment in the United States* 14, The Sentencing Project (2025), https://www.sentencingproject.org/app/uploads/2025/01/A-Matter-of-Life-The-Scope-and-Impact-of-Life-and-Long-Term-Imprisonment-in-the-United-States.pdf.

Given the impact of the superpredator myth on Tennessee's legal and judicial systems in the 1990s, resulting in harsh and disproportionate punishment for Black youth, it is improbable that Mr. Daniel's case and sentence were immune from its effects. What is abundantly clear, however, is that Mr. Daniel's youth and its mitigating qualities were not adequately and constitutionally considered before he was sentenced to life without parole.

CONCLUSION

WHEREFORE, for the foregoing reasons, we urge this Court to affirm the Circuit Court's order finding Mr. Daniel's life without parole sentence unconstitutional in violation of the Eighth Amendment and

applying *Booker* to grant earlier parole eligibility.

Respectfully submitted,

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Dated: May 29, 2025

CERTIFICATE OF COMPLIANCE

This brief consists of 5,616 words and complies with Rule 30 of the Tennessee Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served via the electronic filing system on all parties.

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