

No. 08-25-00259-CR

IN THE COURT OF APPEALS

FOR THE EIGHTH JUDICIAL DISTRICT

OF TEXAS AT EL PASO

State of Texas

v.

MICHAEL ANTHONY HOWARD

APPEAL FROM CAUSE NO. 22DCR85949

IN THE 426TH JUDICIAL DISTRICT COURT

BELL COUNTY, TEXAS

BRIEF FOR APPELLEE

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June 5, 2026

ORAL ARGUMENT NOT REQUESTED

State of Texas
v.
MICHAEL ANTHONY HOWARD

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No. 05-25-01669-CR

IN THE COURT OF APPEALS

FOR THE EIGHTH JUDICIAL DISTRICT

OF TEXAS AT EL PASO

State of Texas

v.

MICHAEL ANTHONY HOWARD

APPEAL FROM CAUSE NO. 22DCR85949

IN THE 426TH JUDICIAL DISTRICT COURT

BELL COUNTY, TEXAS

BRIEF FOR APPELLEE

TO THE HONORABLE JUDGES OF THE COURT OF APPEALS:

COMES NOW THE STATE OF TEXAS, Appellee herein, and submits this brief in opposition of Appellant's appeal from a jury trial which resulted in a conviction for the offense of Murder, Honorable Steven J. Duskie presiding, in the 426th Judicial District Court of Bell County, Texas, Cause No. 22DCR85949.

Oral argument is not requested.

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STATEMENT OF THE CASE

This is an appeal from a jury trial which resulted in Appellant's conviction for the offense of murder. On May 31, 2021, Appellant was indicted for the felony offense of murder pursuant to Texas Penal Code 19.02(b)(1). (CR 1:5) No enhancement paragraphs were included or referenced in said indictment. Appellant—age 15 at the time—was certified for transfer on April 6, 2022 (CR 1:7) Jury trial began on August 18, 2025. (RR 4:1) Appellant plead not guilty to the allegations contained within the indictment. (RR 4:149) After the conclusion of evidence, a jury eventually found Appellant guilty of the allegation contained within said indictment. (RR 8:72; CR 1:137) Appellant requested that the jury assess punishment. (CR 1:102) Thereafter, the jury assessed his punishment at 70 years in the Texas Department of Criminal Justice. (RR 8:72, CR 1:137) It is from this judgment of conviction which Appellant now appeals.

ISSUES PRESENTED FOR REVIEW

Issue No. 1: Whether the evidence is legally insufficient to sustain the conviction.

Issue No. 2: Whether the de facto life sentence of 70 years violates the Eighth Amendment to the United States Constitution.

Issue No. 3: Whether the de facto life sentence of 70 years violates Article 1, Section 13 of the Texas Constitution.

Issue No. 4: Whether the mandatory requirement of 30 years before parole consideration for life sentences and de facto equivalents, as required by Texas Government Code Section 508.145(d)(1)-(2), is unconstitutional as applied to Appellant, and similarly situated juveniles, under Article 1, Section 13 of the Texas Constitution.

STATEMENT OF FACTS

The jury found Appellant guilty of murder as charged in the indictment for the May 31, 2021 shooting death of J.D. (hereafter “Victim”), a sixteen-year-old male, (RR 5:31), in Bell County. CR 1:149.

Guilt/Innocence Summary:

Givonchie Emeanar was the initial responding officer. When he arrived on scene, he found the victim with gunshot wounds, bleeding profusely from the upper and lower torso. RR 5:12. He testified that in order for the shell casings to land on top of the body, somebody would have to be standing over the top of the victim for that to occur. *Id.* Jill Urban identified a total of six gunshot wounds during her autopsy of the Victim and determined that he died as a result of gunshot wounds. RR 5:40. Nine cartridges of shell cases were eventually recovered and were determined to have been fired from the same unknown firearm, and that the firearm was most like a Glock handgun. RR 7:33-36. No weapon was found on or near the Victim.

During guilt innocence, the State outlined the timeline and progression of the investigation. The investigation began with a 911 call and proceeded through the

testimony of multiple witnesses and ring-cam videos who identified a person running from the scene, with a neon-lined jacket, black pants and black mask. Eliecer Rosario testified he saw a young man running from the Westcliff side where the incident happened. RR 5:63-64. Swayzee Rook saw the suspect holding something on the left side of his waistband across his body, which she believed to be a handgun. RR 5:97 Around the time of the shooting, Joey Cumbee heard a voice yell, “You are not going to do shit,” which concerned him enough to check on his wife. RR 5:54,56. With each witness, the State introduced a series of maps to show Appellant’s progression from location of the murder to the home where Appellant was eventually found. Each witness identified the progression of the runner/Appellant through demonstrative maps in the neighborhood. CR 1:366-379. This included the runner/Appellant entering the tree line toward Long Branch Park; later sightings of a male wearing only orange shorts; resulting in Appellant found hiding under a barbecue pit cover. Appellant was found and detained in the same area where the runner had been spotted within roughly 30 minutes of the original shooting. RR 6:76. When Appellant was located, he was wearing minimal clothing, bright orange shorts/boxers. CR 1:61. When John Hollman saw Appellant, he looked like he was very tired, sweaty, like he had been running, consistent with the history described by the prior witnesses. RR 6:10.

Along the path where Appellant was seen running, multiple items of clothing were found that matched the description of the runner: black pants, a black hoodie, and black mask. RR 6:22 Christopher Ache testified that, based on the alerts from his trained K-9, that the hoodie had been placed there shortly before he found it. RR 6:58.

Appellant was detained and questioned. Appellant claimed he had merely been sleeping prior to his detention and that he had just texted his girlfriend. RR 6:76. Law enforcement did not find a cellphone that Appellant used to text his girlfriend. RR 6:76. Appellant claimed that he only had underwear/boxers on because his mother had recently kicked him out with no clothing. RR 6:79. His mother testified that when he left her home, that she did not know why he had left home, but confirmed that when he left, he did have clothing. RR 6:135 Appellant told law enforcement he wore a 30/32 or 31/32 pant size. RR 6:80; CR 1:375. The pants that were recorded were also a size 30/32. RR 6:80. The interview of Appellant was concluded after he offered to play a game of rock paper scissors with the interviewing officers. RR 6:82

The recovered black pants, a black hoodie, and black mask were submitted to testing. Gunshot primer residue particles were confirmed on the hoodie/jacket. RR 7:14. Presence of the GSR on the hoodie demonstrated the wearer had to be in the immediate proximity of a weapon that's been fired. RR 7:15. Appellant's DNA was

found to be a contributor on the black mask and the hoodie. RR 7:51-52 When Appellant was taken into custody, his hands were covered so that they could be subject to GSR testing as well. RR 5:21. The results of said testing confirmed the presence of GSR, which is consistent with a person recently having fired a weapon or come in immediate proximity of a weapon being fired. RR 7:13; CR 1:81.

The State called a total of twenty-three witnesses and presented just over 100 exhibits, and after approximately two hours of deliberation, the jury returned a guilty verdict.

Punishment Summary:

Appellant elected for the jury to assess punishment. (CR 1:102) The State sought a life sentence based on the combination of factors including risk, retribution, and the lack of potential for rehabilitation. (RR 8:70) To demonstrate the lack of rehabilitative potential, the State proffered the testimony of and records of Jail Records from Bell County. Katie Nottingham, a Bell County detention officer, testified that she entered a cell to conduct a head count and found him masturbating. (RR 8:21) She asked that he stop. He failed to comply with her direction, proceeded to pull out his penis, and then continued to masturbate openly in front of her. (RR 8:21) She also testified she rarely had to write up or discipline inmates often for this infraction. *Id.* Cheyanne Marcus testified she too had to seek disciplinary action

against Appellant while he was incarcerated for taking a food tray that wasn't his. (RR 8:25) Sergeant Eddie Thompson, another Bell County detention employee, testified he sought disciplinary action against Appellant after Appellant was found admitting that Appellant colluded with another inmate, to extort another inmate. (RR 8:29) The State offered and entered into evidence State's Exhibit 85, (RR 10:338), which comprised of over twenty disciplinary actions against Appellant while incarcerated, including disciplinary findings for: (1) assault on November 17, 2022, (2) coercion on May 2, 2023, (3) fighting on August 24, 2023 (RR 10:340), (4) assault on September 28, 2023, (5) interference with security operations and refusal to follow directives on November 13, 2023, (6) assault on November 16, 2023, (7) violation of feeding procedures and disrespecting staff on February 28, 2024, (8) interference with security operations and threatening on March 7, 2024, (9) assault and threatening on March 28, 2024, indecent exposure on April 11, 2024, (10) interference with security operations and impeding the security of housing unit on August 1, 2024, (11) hoarding medication on September 19, 2024, (12) possession/manufacture of alcoholic beverage on September 26, 2024, (13) interference with security operations and possession of stolen property on October 3, 2024, (14) disruption of institutional activities on November 1, 2024, (15) interference with security operations, coercion, and tampering on November 2, 2024 (16) tampering and refusal to follow directions on December 9, 2024, (16)

interference with security operations, assault, and threatening on January 3, 2025, (17) destruction of property and interference with security operations on January 7, 2025, (18) refusal to follow directives on March 13, 2025, (19) throwing objects and disrespecting staff on March 27, 2025 (20) indecent exposure on July 24, 2025 (21) interference with security operations on August 6, 2025. (RR 10:338-363)

The State also directed the jury to the conclusions in Defendant's Exhibit 4, which noted Appellant was found to have little to no compassion for others and lacked empathy. (RR 8:68) Defendant's Exhibit 4 concluded that Appellant was high risk to reoffend and that he was not receptive to discipline from his mother. (RR 10:613) The report also detailed incidents where Appellant threw a knife at her 7-year-old son when she tried to discipline Appellant and where his mother had to choke Appellant after being "pushed around" by Appellant. (RR 10:613) Appellant was often disciplined by school officials for disrespectful conduct and failing to follow instructions. (RR 10:614) Said report stated that Appellant had no history of mental health issues. (RR 10:614). Overall, the State argued that Appellant had little to no promise for rehabilitation based on the nature of the underlying offense, the evaluation contained with Defendant's Exhibit 4, and his conduct while incarcerated. (RR 8:68-69)

Appellant's counsel pled for leniency citing Appellant's age and maturity. To support the objective of "justice tempered by mercy", Appellant's counsel proffered

the testimony of Appellant's mother and a diagnostic study of Appellant, Defendant's Exhibit 4, (RR 8:34; RR 10:612) Appellant's mother testified that even though she believed he had potential as a "child", that he was still prone to throwing tantrums and disobeying rules, so much so that she had to eject him from her home. (RR 8:44,45) She acknowledged her inability to direct him and his history of running away from home. (RR 8:48) He had problems with truancy at school. (RR 8:49) She had no explanation for his sexual behavior in jail and agreed it was not appropriate. (RR 8:44) She continued to communicate with him during his incarceration via video conferencing and permitted his siblings to do the same. (RR 8:40) Appellant's counsel contended that Defendant's Exhibit 4 and the testimony of his mother demonstrated that Appellant's conduct while incarcerated were signs of a scared, reactive, immature mind of a child (e.g. mere "tantrums") which lacked full growth or cognitive ability and therefore warranted a more lenient sentence. (RR 8:60-61) Appellant's counsel argued a lesser sentence was warranted because of Appellant's age, the experiences in his childhood, his now limited connections to family, his future parole eligibility, and his potential for a future as a person. (RR 8:62)

Appellant had no objections to the jury charge, which instructed the jury on the proper range and method of punishment options. (RR 8:50) After a review of all

the factors proffered by both sides, the jury sentenced Appellant to 70 years in the Texas Department of Justice, but declined to assess a fine. (RR 8:72)

SUMMARY OF THE ARGUMENT

Under *Jackson* and *Brooks*, the evidence—viewed in the light most favorable to the verdict and measured by a hypothetically correct charge under *Malik*—amply supports identity and intent, notwithstanding the absence of a firearm or a direct eyewitness to the shooting. DNA on the mask, jacket, and jeans strongly linked Appellant to the clothing abandoned along the precise flight path of the shooter. GSR on Appellant’s hands and on the jacket further corroborated use or proximity to the firearm. K9 tracking, video, and eyewitness descriptions fit Appellant, who was found hiding nearby and matched the pants size recovered, such that a jury could have concluded that he was, in fact, the person responsible for the death of the Victim.

Appellant’s Eighth Amendment challenge fails under controlling authority cited in his own brief. His state-constitutional and parole-eligibility challenges likewise fail under Texas authority identified in the record; any reliance on other states’ decisions is not controlling.

ARGUMENT & AUTHORITIES

Issue No. 1: Whether the evidence is legally insufficient to sustain the conviction.

Legal sufficiency asks whether, viewing all evidence in the light most favorable to the verdict, any rational juror could find each element beyond a reasonable doubt.

a. Standard of Review:

Legal sufficiency of the evidence standard of review asks whether, after viewing all the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Brooks v. State*, 323 S.W.3d 893, 902 (Tex. Crim. App. 2010). Elements of such a review are measured by a hypothetically-correct jury charge. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). The facts need not point directly and independently to the guilt of a defendant, but the cumulative force of all the incriminating circumstances must be sufficient to support the conviction. *Jones v. State*, 458 S.W.3d 625 (Tex. App. 2015). Circumstantial evidence is as probative as direct evidence in establishing an actor's guilt, and an actor's guilt can be established with circumstantial evidence alone. *Davis v. State*, 413 S.W.3d 816 (Tex. App.—Austin 2013, pet. ref'd). Texas law

firmly establishes that evidence of flight is admissible to show consciousness of guilt. *Carranza v. State*, 499 S.W.2d 140 (1973); *Bigby v. State*, 892 S.W.2d 864 (Tex. Crim. App. 1994) This principle applies to various forms of evasive conduct, including fleeing from police, hiding from officers, and attempting to avoid arrest. *Jacobs v. State*, No. 06–03–00205–CR (Tex. App. –Texarkana 2004). (Evidence of defendant fleeing or hiding under mobile home was quasi-admission of guilt.); *Louis v. State*, 61 S.W.3d 593 (Tex. App. – Amarillo 2001)(flight is evidence of guilt and *mens rea*.) Similarly, the proffer of false information during an investigation is also evidence of guilt and intent. *Burns v. State*, 2017 WL 6062132 (Tex. App. – Beaumont 2017)(Giving of the wrong name and date of birth was relevant and admissible to show that defendant was conscious of his guilt.) Consciousness of guilt and attempts to conceal evidence have consistently been held to be one of the strongest indicators of guilt. *Jones v. State*, 722 S.W.3d 317 (Tex. App. – Corpus 2025); *Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004), *Hance v. State*, 714 S.W.3d 775, 816 (Tex. App.—Fort Worth 2025, no pet.)).

In reviewing the sufficiency of the evidence, the Court should look at events occurring before, during and after the commission of the offense and may rely on actions of the defendant which show an understanding to commit the alleged offense. *Hammack v. State*, 622 S.W.3d 910 (Tex. Crim. App. 2021) Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative

force of all the incriminating circumstances is sufficient to support the conviction. *Id.* Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Id.*

Appellant correctly identifies the elements required to support a conviction in this cause as: (1) Appellant, (2) on or about the 31st day of May, 2021; (3) in Bell County, Texas; (4) intentionally or knowingly (5) caused the death of J.D. (6) by shooting him with a firearm. (See Appellant's Brief at 31)

b. Evidence is legally sufficient to support conviction:

The crux of Appellant's argument is that because no witness actually saw him shoot the Victim, then the remainder of the evidence is merely circumstantial, and cannot legally support a conviction for murder. The State agrees that limited evidence would not otherwise support a conviction. However, the evidence presented at trial in this case clearly demonstrated Appellant's guilt and should be affirmed.

The community where this murder took place was actively involved in the events that immediately followed the shooting. The community of witnesses provided eyewitness testimony and their person ring cam information to provide law enforcement a trail of DNA and GSR crumbs to find Appellant. Appellant's argument effectively ignores the litany of physical evidence recovered which connects Appellant to the events during and immediately after the murder.

Sergeant Tremaine Jenkins summarized the full tracing of this testimony for the jury: “And on the map, there is words on the map that say Long Branch. I know there is a Long Branch creek. I can see the tree line. And I can see the area where the suspect discarded his clothing or clothing was located. I can see the there is a car wash where one of the witnesses parked and observed the suspect run out the wooded area in his underwear. I can see the school where the suspect was observed sitting and climbing a fence running to the back area. And I can see a portion of the neighborhood where the suspect was apprehended.” RR 6:86 The clothing found was not random clothing. The clothing items matched the description of the alleged shooter. (wearing black hoodie with neon liner) RR 5:65; (assailant wearing black pants and black shirt) RR 5:89; (assailant where black mask, black hoodie or sweater, and black pants) RR 5:96; (assailant wearing hoodie and black jeans seen approaching victim few minutes prior to the shooting) RR 5:46-47, 49; (immediately saw assailant wearing black hoodie, with neon, running from the shooting similar in likeness to Appellant) RR 5:63-64. Even though law enforcement did not have a specific description of the shooter, the community was able to provide consistent descriptions of the assailant and the travel pattern of the assailant. Using this information, law enforcement utilized various search techniques including K-9 support and metal detectors to locate items consistent with these descriptions. RR 6:58.

As a result of these efforts, law enforcement recovered a black hoodie, a black mask, and black pants. Scientific testing eventually confirmed the community testimony and linked Appellant directly to the offense. The pants matched the clothing size provided by Appellant. RR 6:80; CR 1:375. Appellant's DNA was found to be a contributor on the black mask and the hoodie. RR 7:51-52 The hoodie was also subject to GSR (gunshot residue testing) which confirmed the presence of GSR worn by Appellant on the hoodie demonstrating Appellant had to be in the immediate proximity of a weapon that's been fired. RR 7:15. When Appellant was taken into custody, his hands were covered so that they could be subject to GSR testing as well. RR 5:21. The results of said testing also confirmed the presence of GSR, which is consistent with a person recently having fired a weapon or come in immediate proximity of a weapon being fired. RR 7:13; CR 1:81. Swayzee Rook saw the suspect holding something on the left side of his waistband across his body, which she believed to be a handgun. RR 5:97. Thus, the GSR evidence confirmed her testimony that a weapon was connected to the assailant.

The evidence developed was not a singular piece of circumstantial evidence but instead was literally a trail of DNA and GSR crumbs pointing directly and clearly at Appellant's guilt as the shooter. However, the evidence was not limited to the scientific evidence. The jury was free to consider Appellant's conduct after he was located.

Appellant was found hiding under a BBQ pit cover wearing only a pair of bright orange shorts/boxers. (RR 5:111-112) The jury was free to believe that Appellant was running and shedding his regular clothing in an effort to avoid detection and apprehension, as most persons do not routinely hide under BBQ pit covers, partially clothed, *unless* they are trying to avoid apprehension. Flight and avoidance of apprehension are direct evidence of consciousness of guilt. See *Jones; Guevara; Hance*. The jury was free to believe that Appellant's attempts to dispose of his clothing were also attempts to conceal evidence and determine that his actions as evidence of consciousness of guilt, as opposed to general prep for a nap. *Id.* The State concedes that no gun was found. However, the jury was free to believe that Appellant had taken measures to dispose of the weapon as he had done with his articles of clothing. Law enforcement testified that sometimes people conceal weapons by putting them in garbage cans or dumpsters and on the day of the murder, it also appeared to be garbage day. RR 6:88

Appellant's conduct while interviewed further demonstrated efforts to mislead law enforcement. Appellant claimed he had merely been sleeping prior to his detention and that he had just texted his girlfriend. RR 6:76. However, law enforcement did not find a cellphone that Appellant supposedly used to text his girlfriend. RR 6:76. Appellant claimed that he only had underwear/boxers on because his mother had recently kicked him out with no clothing. RR 6:79. However,

with a great deal of remorse and reluctance, his mother testified that when Appellant left her home, that she did not know why he had left home, but confirmed that when he left, he did, in fact, have clothing. RR 6:135. Appellant claimed that he had been staying under the BBQ Pit cover, but the homeowner confirmed that he had not been staying there, that she had frequently been in the area where he was found, and that she had not permitted him access to the area. RR 6:38-40. *Jacobs v. State*, No. 06–03–00205–CR (Tex. App. –Texarkana 2004). (Evidence of defendant fleeing or hiding is quasi-admission of guilt.) Appellant showed a lack of surprise and concern that someone was hurt, and instead, suggested the officers play a game of rock, paper, scissors with him. RR 6:126. *Burns v. State*, 2017 WL 6062132 (Tex. App. – Beaumont 2017)(Providing false information shows conscious of his guilt.)

“Conscious of guilt” has consistently been held to be one of the strongest indicators of guilt. The State and the jury did not merely rely on indirect evidence; they also relied on the direct actions and statements of Appellant which graphically demonstrated his consciousness of guilt.

c. Application of Evidence to Legal Sufficiency.

Hammack v. State, 622 S.W.3d 910 (Tex. Crim. App. 2021) clarified that each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction. *Id.* Circumstantial evidence is as probative as direct evidence in

establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Id.* In this matter, direct evidence linked Appellant to a shooting, namely the DNA and GSR evidence on his hands and his clothing. Direct evidence linked Appellant to the offense as evidence by his efforts to hide evidence, avoid apprehension, and his deceptive statements to law enforcement. The cumulative force of all the incriminating circumstances and evidence in this cause is sufficient to support Appellant's conviction.

d. Appellant's arguments are misplaced.

Appellant's authorities and arguments relying on *Hooper* and *Winfrey* are misplaced. Unlike speculative-link cases, the State in this trial adduced powerful DNA likelihood ratios, corroborative GSR, route-consistent recovery of clothing, and Appellant's own statements tying him to the discarded items. Much of the case law relied upon Appellant involves facts patterns where evidence was developed at a later date, after the commission of an offense. The evidence described above demonstrates that was not the case in Appellant's trial. The community and law enforcement quickly engaged to locate the shooter. Appellant was found, located, and apprehended within roughly 30 minutes of the murder after following the clear trail of items left by Appellant. RR 6:76. Appellant further conceded that Witness Rosario testified that he had an 85 percent degree of confidence that he could identify

Appellant as the shooter. RR 5:64. The timing, the identification of the clothing, the DNA evidence, and Appellant's conduct support a finding of guilt.

Appellant claims there is an absence of "motive", though Appellant also concedes that motive is not an element required to support a conviction. Regardless, evidence of conflict as the motive was proffered. Joey Cumbee heard a voice yell, "You are not going to do shit," immediately before the shooting. RR 5:54,56. Prior to the verbal altercation, his wife saw two men approaching each other, with one matching Appellant's description, in such a way that she had a "vibe" that made her feel like she needed to stay away from the situation. R 5:46-47

e. Jury verdict was based on evidence.

Appellant also contends that the conviction should not stand because of alleged conflicts in the evidence presented and that some of the evidence was compromised. Allegations that the evidence is contradictory or compromised are insufficient to set aside a conviction. *Lancon v. State*, 253 S.W.3d 699 (Tex. Crim. 2008) explained that the jury is the sole judge of what weight to give such testimony citing to Tex. Crim. Proc. Code Ann. art. 36.13 and 38.04(stating that the jury is the exclusive judge of the facts and of the weight given to testimony). Texas courts have consistently held that it is the province of the jury to resolve conflicts in the evidence. *Chambers v. State*, 805 S.W.2d 459 (Tex. Crim. App.1991). Reviewing courts are required to defer to the jury's credibility and weight determinations when reviewing

challenges to the sufficiency of evidence. *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010) This principle recognizes the jury's unique position as the factfinder who observes witnesses firsthand and evaluates their demeanor and credibility.

Appellant concedes the jury was correctly instructed on presumption of innocence and the State's beyond-a-reasonable-doubt burden, and its role in evaluating all of the evidence presented. Based on a review of all the evidence and after hearing arguments about any potential conflicts in the evidence, the jury returned a unanimous guilty verdict. The State respectfully requests this Court to honor that determination.

Issue No. 2: Whether the de facto life sentence of 70 years violates the Eighth Amendment to the United States Constitution.

The Eighth Amendment to the United States Constitution provides in full that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const. amend. XIII. Appellant claims that his sentence of 70 years with the opportunity for parole violates such constitutional punishment boundaries. Appellant does not contend or argue that the sentencing statutes in Texas are facially invalid or run afoul of the Eighth Amendment right against cruel and unusual punishment. Instead, Appellant alleges that the punishment scheme, and his resulting sentence, as applied to him violated his Eighth

Amendment and Constitutional right against cruel and unusual punishment. State and federal law is well settled that a punishment range for juveniles that do offer the ability for parole are constitutionally valid and should be upheld.

a. Standard of Review:

For “as-applied” challenges, appellate courts review the constitutionality of a criminal statute under a de novo standard of review. *Modarresi v. State*, 488 S.W.3d 455, 465 (Tex. App.—Houston 2016, no pet.); *Guzman v. State*, 539 S.W.3d 394 (Tex. App. – Houston 2017) When presenting an “as-applied” challenge, a defendant “concedes the general constitutionality of the statute but asserts it is unconstitutional as applied to [his] particular facts and circumstances.” *Id.* “The burden rests on appellant to establish the statute's unconstitutionality as applied to him.” *Rodriguez v. State*, 93 S.W.3d 60, 69 (Tex.Crim.App.2002); *Eugene v. State*, 528 S.W.3d 245, 249 (Tex. App.—Houston 2017, no pet.); *Denson v. State*, No. 01-23-00743-CR (Tex. App. – Houston 2025)

After the Supreme Court's ruling in *Miller v Alabama*, 567 U.S. 460, 479; 132 S.Ct. 2455; 183 L.Ed.2d 407 (2012), (wherein the Supreme Court found that mandatory ‘life without parole’ sentences for juvenile offenders run afoul of the prohibition against cruel and unusual punishment), Texas amended its capital felony sentencing statute. However, non-capital offenders, juvenile or adult, still have the opportunity for parole. Considering this change and the reduced sentencing options

applicable in Appellant’s punishment trial, Appellant is required to show that his sentence, as applied to him, violated the Eighth Amendment to the United States Constitution as cruel and unusual punishment inflicted. Appellant has failed to meet this burden.

b. Application of Texas sentencing range to Appellant.

Appellant was not charged with or convicted of a capital offense. Instead, Appellant was indicted and eventually convicted for the felony offense of murder pursuant to Texas Penal Code 19.02(b)(1). (CR 1:5, 160) As a result of said conviction, Appellant will become eligible for parole after 30 years. Vernon's Ann. Texas C.C.P. Art. 37.07. Though Appellant will be eligible for parole after 30 years, Appellant claims that his sentence of 70 years violates the Eighth Amendment to the United States Constitution.

Gross disproportionality review is reserved for the “extraordinary case.” *Lockyer v. Andrade*, 538 U.S. 63, 77 (2003). This is not a case of gross disproportionality. Appellant’s sentence fell within the range of punishment for the offense of murder. It is well settled within Texas jurisprudence that punishment falling within the limits prescribed by a valid statute, as in this case, is not excessive, cruel, or unusual. *Harris v. State*, 656 S.W.2d 481, 486 (Tex.Crim.App.1983); *Trevino v. State*, 174 S.W.3d 925, 928 (Tex. App.—Corpus Christi—Edinburg 2005,

pet. ref'd) *Ex parte Chavez*, 213 S.W.3d 320, 323–24 (Tex. Crim. App. 2006); and *Kim v. State*, 283 S.W.3d 473 (Tex. App.-- Fort Worth 2009).

c. Application of Miller Standards to Texas sentencing range and Appellant's sentence.

Appellant concedes that his sentence was not an actual “life without parole” sentence. Regardless, he requests the Court to apply the *Miller* and similar precedents addressing “life without parole” to his case contending that a 30-year parole eligibility requirement is a *de facto* life sentence.

A 30-year parole eligibility requirement does not constitute a *de facto* life sentence. This position already has been consistently rejected by the Texas Court of Criminal Appeals and Texas appellate courts. *McCardle v. State*, 550 S.W.3d 265 (Tex. App. – Houston 2018), citing *Lewis v. State*, 428 S.W.3d 860, 863–64 (Tex. Crim. App. 2014). (Holding in *Miller* was “limited to a prohibition on mandatory life without parole for juvenile offenders; *Miller* did not prohibit a mandatory sentence of life with the possibility of parole.)

However, even if the Court were to assume that Appellant's sentence was a *de facto* life sentence, said sentence would not run afoul of the Supreme Court's analysis in *Miller*. *Miller* explained that a state is permitted to impose a sentence of life without parole upon a juvenile homicide offender only when the sentencer is first given an opportunity to “tak[e] account of an offender's age and the wealth of

characteristics and circumstances attendant to it.” *Id.* at 476, 132 S.Ct. 2455. *Miller* also set forth circumstances that a trial court should consider before concluding that it is appropriate to sentence a juvenile offender to die in prison. *Id.* at 477-478, 132 S.Ct. 2455. Those circumstances include: (1) the juvenile's "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile's family and home environment; (3) 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; (4) "the incompetencies of youth," which affect whether the juvenile might have been charged with and convicted of a lesser crime; and (5) the juvenile's possibility of rehabilitation. *Id.* Essentially, an automatic life sentence deprives the trier of fact from receiving, considering, or evaluating said factors when determining an appropriate sentence. An automatic ‘life without parole’ guideline also deprives a defendant from developing or presenting any such mitigating factors. Appellant was not deprived of such an opportunity.

Appellant *elected* for the jury to assess punishment. (CR 1:102) He was afforded the opportunity to present all of the mitigating factors discussed in *Miller*. Appellant’s counsel argued a lesser sentence was warranted because of Appellant’s age, the experiences in his childhood, his now limited connections to family, his future parole eligibility, and his potential for a future as a person. (RR 8:62) Though

a defendant always hopes that a jury will accept their pleas for leniency, there is no requirement for a jury to adopt a lenient approach. There is no evidence that the jury did not consider Appellant's pleas for leniency. The State was afforded the same opportunity to address the factors discussed in *Miller*. The State argued that a life sentence was appropriate because Appellant had little to no promise for rehabilitation based on the nature of the underlying offense (multiple gunshot wounds directed an unarmed 16 year old victim), the evaluation contained with Defendant's Exhibit 4 that he was a risk as a repeat offender, and his disturbing, assaultive, and pervasive conduct while incarcerated. (RR 8:68-69). Despite the State's plea that Appellant receive a life sentence, the jury assessed a lesser sentence of 70 years, with no fine. The jury was instructed to consider all of the evidence presented. (CR 1:134-135) Appellant did not object to the instructions provided for the jury and did not ask for any specific "mitigating instructions" to be included for review. (RR 8:50-51) The jury as the sentencing body was free to believe that Appellant's propensity for violence (as evidenced by the underlying offense and his assaultive and threatening conduct while incarcerated) would affect his rehabilitative efforts, thus warranting a longer sentence.

Appellant's claim is *functionally* an untimely challenge to the jury charge. *Igo v. State*, 210 S.W.3d 645 (Tex. Crim. App. 2006) (Texas has a policy of encouraging the timely correction of errors, including jury charge errors.); *State v. Simpson*, 488

S.W.3d 318,324 (Tex. Crim. App. 2016) (To the degree that there was additional evidence that could have persuaded the trial court to assess a lesser sentence, it was incumbent upon Simpson to present that evidence during the punishment hearing, not at a subsequent hearing on a motion for new trial.) Thereafter, he claims that because the sentencing process was flawed, he was harmed by an unconstitutional sentence. Appellant presents no evidence, arguments, or authority to rebut the presumption that the jury's conduct was proper. The trier of fact is presumed to have considered the full range of punishment. Reviewing courts must presume that a jury followed the trial court's instructions as set forth in the charge. *Resendiz v. State*, 112 S.W.3d 541, 546 (Tex.Crim.App.2003), cert. denied, 541 U.S. 1032, (2004) Under these circumstances, the Court must presume that the factfinder resolved any conflicting inferences in favor of the verdict and defer to that resolution. *Johnson v. State*, 370 S.W.3d 100 (Tex. App. – Forth Worth 2012)

In *Miller*, the Supreme Court encouraged the development and presentment of multiple factors in sentencing. The punishment scheme in a trial before a jury specifically affords any defendant in Appellant's shoes that opportunity. As such, Appellant constitutional rights were not offended because he had the opportunity expressly directed by the Supreme Court. If additional evidence was available which would have otherwise mitigated his sentence, he waived such an error by failing to proffer the same to the jury as the sentencing body.

d. Reliance on authority from other jurisdictions is misplaced.

Appellant invites this court to rely on authority from other jurisdictions as support that other states are trending towards findings that state constitutions provide greater protections against grossly disproportionate sentences. (See Appellant Brief at 44-46) This court is bound in criminal cases to follow decisions of the Court of Criminal Appeals. *McCardle v. State*, 550 S.W.3d 265 (Tex. App. – Houston 2018), *Mason v. State*, 416 S.W.3d 720, 728 n.10 (Tex. App.—Houston 2013, pet. ref'd).

Even if this Court were to consider authority from other states, Appellant's reliance on this authority is misplaced as said cases are inapplicable to the punishment range in this cause.

c.1 Analysis of Michigan Authority: In *People v. Parks*, 510 Mich. 225, 232; 987 N.W.2d 161 (2022), the Supreme Court of Michigan found that the Michigan State Constitution bars a mandatory LWOP (life without parole) sentence for an offender who was 18 years old at the time of their offense. *Parks* is inapplicable because the focus of their ruling was the *mandatory* imposition of a life sentence *without* parole. Appellant was not subject to a mandatory life sentence or the potential for parole.

If this Court decides to incorporate the analysis of *Parks*, then the Court should conduct a full review of *Parks*. *Parks* reviewed similar factors in considering

the range of punishment as Texas jurisprudence. *Parks* suggested an analysis of four factors:

“(1) the severity of the sentence relative to the gravity of the offense; (2) sentences imposed in the same jurisdiction for other offenses; (3) sentences imposed in other jurisdictions for the same offense; and (4) the goal of rehabilitation.” *Id.* At 242.

Michigan’s sentencing scheme actually permits a life without parole sentence for a juvenile offender. *People v. Taylor*, 510 Mich. 112, 987 N.W.2d 132 (2022) (“As in *Miller*, our decision today does not foreclose a sentencing court’s ability to sentence a juvenile offender to LWOP if it is determined that, considering all the information before it, LWOP is a constitutionally proportionate sentence.”) Michigan, instead, focused on whether the *procedure* to impose a life sentence without parole violated their constitution. *Parks* at 272. An automatic, non-discretionary procedure which imposed a life sentence on an 18-year-old defendant was found to be unconstitutional. *Id.* The Michigan Supreme Court requires the trier of fact to review a series of factors prior to the imposition of a life sentence for young offenders. *Id.* Michigan has not made a blanket finding that the imposition of a life sentence, with or without parole, violated their state constitution. Instead, they simply ordered a *procedure* to ensure that all factors were considered prior to the imposition of a life sentence. Much like the Texas Court of Appeals in *Lewis*, *Parks*

explained that the Supreme Court's substantive holding in *Miller* was limited to cases where an automatic 'life without parole' scheme is an excessive sentence for juvenile offenders.

Appellant was not subject to an automatic life sentence. Instead, as discussed above, both Appellant and the State were permitted to argue a range of punishment, to address mitigating factors, and to address egregious factors. The trier of fact is presumed to have considered the full range of punishment. Thereafter, the Appellant was sentenced within that range of punishment after the review of all permissible factors. This procedure and the resulting sentence do not offend the Texas Constitution, the Michigan constitution, or the U.S. Constitution.

c.2 Analysis of North Carolina Authority: In *State v. Kelliher*, 873 S.E. 2d. 366, 381 N.C. 558 (N.C. 2022), the North Carolina Supreme Court focused more on the factors necessary to determine what is, in fact, a *de facto* life sentence. They noted that United States Supreme Court decisions addressing juvenile offenders up until this point drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption. They also recognized that the United States Supreme Court, in *Miller* "squarely rejected" the argument that a sentencing court "must also make a separate factual finding of permanent incorrigibility before sentencing a murderer under 18 to life without parole." *Id.* Such an approach is similar to the punishment scheme in Texas

which permits a trier of fact to consider a punishment range, mitigating circumstances, and egregious circumstances when assessing punishment, but does not require specific findings.

Additionally, Supreme Court of North Carolina conducted a detailed review of the multi-state parole laws, the consequences of juvenile incarceration, and the eventual goals of society in assessing an appropriate punishment scheme to identify an appropriate “bright line” for a *de facto* life sentence for juvenile offenders. They explained that a “genuine opportunity” requires both some meaningful amount of time to demonstrate maturity while the juvenile offender is incarcerated and some meaningful amount of time to establish a life outside of prison should he or she be released.

They determined that a majority of jurisdictions only considered *de facto* ‘life without parole’ sentences as cognizable under the Eighth Amendment only where parole eligibility *exceeded* forty to fifty years. After conducting balancing test of the needs of the juvenile offender and the goals of the sentencing scheme, the North Carolina Supreme Court established the “bright line” that a forty-year maximum term before parole eligibility also supports the rehabilitative goal of criminal punishment. They reasoned that juvenile offenders "must be given the opportunity to show their crime did not reflect irreparable corruptions; and, if it did not, their hope for some years of life outside prison walls must be restored."

If this Court were to leverage the insight and analysis of the North Carolina Supreme Court, then Appellant's sentence would not violate the prohibitions against disproportionate sentencing as he is eligible for parole after thirty years, far less than the "bright line" number of forty years set by the North Carolina Supreme Court. Using the *Kelliher* reasoning, Appellant will have "a realistic hope of meaningful years of life outside prison walls."

e. Reversal is not warranted.

Whether this Court relies on well settled law in Texas or the authority cited by Appellant from other jurisdiction, reversal is not warranted under these circumstances as his 70-year sentence, with parole eligibility after 30 years, falls within the legislative range. The burden was on Appellant to proffer sufficient evidence that his sentencing was constitutionally invalid. Appellant failed to proffer any evidence or authority which demonstrates his sentence violates the Eighth Amendment of the United States Constitution's prohibition on cruel and unusual punishment as it is grossly disproportional to the offense. The State also incorporates, by reference, the discussion regarding facial constitutional challenges, set out in response to Point of Error No. 4, later in this brief.

Issue No. 3: Whether the de facto life sentence of 70 years violates Article 1, Section 13 of the Texas Constitution.

Appellant claims that his sentence of 70 years with the opportunity for parole also violates the Texas Constitution. Appellant also contends that the Texas Constitution affords more protections than the United States Constitution. Because the sentence is within the legislatively authorized range for murder, and because the record supports the jury's punishment decision, Appellant has not shown a violation of Article I, § 13 of the Texas Constitution.

a. Texas provides same protection as U.S. Constitution.

Appellant claims the Texas Constitution provides greater protections against cruel and unusual punishments. Despite the slight wording differences between the United States Constitution and the Texas Constitution, Texas courts have consistently held that there is no significant difference, in the protections afforded by either constitutional protection. See *Cantu v. State*, 939 S.W.2d 627, 645 (Tex. Crim. App. 1997); *Duran v. State*, 363 S.W.3d 719, 723 (Tex.App.–Houston [1st Dist.] 2011, pet. ref'd); *Reyes v. State*, 557 S.W.3d 624 (Tex. App. – El Paso 2017).

b. Threshold Review:

In *Lewis v. State*, two juvenile defendants were convicted of capital murder, and each was mandatorily assessed a sentence of life imprisonment without the possibility of parole. *Lewis v. State*, 428 S.W.3d 860, 863–64 (Tex. Crim. App.

2014). The Texas Court of Appeals determined *Miller* did not prohibit a mandatory sentence of life with the possibility of parole. When a defendant alleges a grossly disproportionate sentence, Texas utilizes a series of factors before assessing the validity of such a claim. The threshold factors include comparing the gravity of the offense and the severity of the sentence, consideration of the harm caused or threatened to the victim or society, the culpability of the offender, and the offender's prior adjudicated and unadjudicated offenses. *Simpson v. State*, 488 S.W.3d 318 (Tex. Crim. App. 2016) *Reyes v. State*, 557 S.W.3d 624, 633 (Tex. App. – El Paso 2017) Appellant failed to demonstrate that the sentence here is one of those “exceedingly rare” and “extreme” cases for which gross disproportionality should apply. Appellant committed the offense of murder, which is an egregious factor by itself. Appellant repeatedly shot the victim even after the victim was down on the ground, helpless, and unarmed. RR 5:12. Nine casing were recovered and the autopsy confirmed that the victim was shot 6 times, with multiple shots occurring from “front to back”. RR 5:12, CR 1:298 Prior to his arrest for murder, he committed the offense of assault by throwing a knife at a seven-year-old child. (RR 10:613) After his arrest, and while incarcerated, Appellant was disciplined for over twenty incidents by jail staff, including multiple threatening, assaultive, and sexual incidents. (RR 10:338-363) Defendant’s Exhibit 4 noted Appellant had little to no compassion for others and lacked empathy. (RR 8:68) Defendant’s Exhibit 4 also

concluded that Appellant was at high risk to reoffend and that he was not receptive to discipline from his mother. (RR 10:613) Even when interviewed by law enforcement, Appellant's demeanor was concerning and disturbing. He showed no remorse, but instead, invited the officers to play a game of rock, paper, scissors with him. RR 6:82 The jury was permitted to find that Appellant is a threat to society and has little respect for its rules because his conduct was severe and persistent, even in structured and controlled environments like school or jail. The evidence proffered at trial underscored the harm Appellant's crimes inflicted, the grave danger he posed to society, and that Appellant was incapable of conforming to the norms of society. In light of such evidence, the initial threshold for a disproportionate punishment claim fails. The mere existence of some mitigating evidence does not invalidate the threshold factors. Evidence that a sentence may be harsh is also insufficient. *Simpson v. State*, 488 S.W.3d 318 (Tex. Crim. App. 2016)(Even when the trial court assesses the sentence, it abuses its discretion by granting a motion for new trial without requiring a showing that the original punishment hearing was seriously flawed.)

Even though Appellant did not satisfy the "threshold" factors, Appellant requests the Court to compare his sentence here with other juvenile sentences. Because Appellant failed to overcome the threshold factors, there is no reason to

compare Appellant's sentence to those in other reported assault cases in Texas or elsewhere. *Simpson*, 488 S.W.3d at 323; *Reyes* at 635.

c. Comparative Review by Appellant Insufficient.

Only in the rare case in which the threshold comparison leads to an inference of gross disproportionality, the court should then compare the defendant's sentence with the sentences received by other offenders in the same jurisdiction and with the sentences imposed for the same crime in other jurisdictions. *Trevino v. State*, 676 S.W.3d 726 (Tex. App. – Corpus 2023) If the Court were to move past the threshold factors in this cause, the Court should find that the data presented is insufficient to warrant reversal.

The witnesses proffering the comparator data Appellant presented only limited information regarding the other defendants in a limited region. Appellant's experts were not able to discern which cases were plea bargained cases, which cases involved a defendant being personally culpable (as opposed to an accessory), or similar evidence which would otherwise affect sentencing for a defendant. RR 9:65. Witnesses presented uncertain testimony, rather than carefully tailored comparator data, for example:

- 1) RR 9:27-28: "So I feel -- I don't want to say an exact number and be incorrect.")
- 2) RR 9:28: "But I don't think I tried a murder there [Bell County] yet."

3) RR 9:46: “I want to be clear, I am not an expert on Bell County.”

4) RR 9:65: “Q. Do you know how many of those they pled not guilty and went to the jury for punishment? A. I do not. Q. Do you know anything about the facts of the case of any of those cases? A. I do not.”

5) RR 9:63: “I am like a dangerous statistician, I can do 50 percent of this myself.”

6) RR 9:70: “You are not personally familiar with standard sentencing in Bell County, correct? A. Correct.”

Appellant’s experts lacked any knowledge of the details of the underlying offense or punishment evidence so as to develop accurate comparative information, including: “Q. And, obviously, you haven't been able to read the transcript for it? A. Correct. Q. You don't know what evidence was presented at punishment? A. Correct. Q. Did you read the psychological report in the case? A. I did not. Q. Do you know anything about the facts of the case, itself? A. No -- I know we got simple murder and 70 years.” RR 9:64.

Appellant’s experts testified that other juvenile offenders did, in fact, receive higher or comparable sentences: “Two were given a 99-year sentence. One was given a 90-year sentence. One was given 80. Three were given 75 years. One was given 70. Six were given 60.” RR 9:44. Approximately 460 juveniles are serving life sentences, according to Appellant’s own expert. RR 9:66.

Appellant's arguments and data presented at the new trial hearing did not demonstrate a national consensus. Conclusory statements and incomplete comparative data are insufficient to support the constitutional challenges asserted by Appellant.

However, comparator data rebuts Appellant's disproportionate sentencing claims. The Court of Criminal Appeals upheld other actual life sentences for juveniles in the State of Texas. In *Lewis*, two juvenile defendants were convicted of capital murder, and each was mandatorily assessed a sentence of life imprisonment without the possibility of parole. *Lewis v. State*, 428 S.W.3d 860, 863–64 (Tex. Crim. App. 2014) (Sixteen-year-old, certified to be tried as an adult.) The State admitted evidence that other adult and juvenile offenders (who have been certified as an adult and convicted of murder) in Bell County over the last ten years have likewise received comparable sentences to Appellant's sentence. (CR 1:229-397; RR 9:73-80) Appellant's brief actually demonstrates a national trend approving sentences *similar* to Appellant's. Michigan (within *People v. Parks*, 510 Mich. 225, 232; 987 N.W.2d 161 (2022)) and North Carolina (within *State v. Kelliher*, 873 S.E. 2d. 366, 381 N.C. 558 (N.C. 2022)) actually approve life sentences for juvenile offenders as long as there is *some potential* for parole in under forty years.

d. Texas sentencing statute does not offend federal protections for juveniles.

Every defendant, including juvenile offenders, are afforded the opportunity to present evidence, mitigating factors, and information unique to their sentence. In this cause, Appellant's range of punishment fell from five years to 99 years or Life in the Texas Department of Justice, with the eligibility for parole based on the resulting sentence. This wide range of punishment and the open door to present any mitigating evidence complies with the Supreme Court's mandate for fair sentencing of juveniles and should therefore be affirmed. The State also incorporates, by reference, the discussion regarding facial constitutional challenges, set out in response to Point of Error No. 4, later in this brief.

Issue No. 4: Whether the mandatory requirement of 30 years before parole consideration for life sentences and de facto equivalents, as required by Texas Government Code Section 508.145(d)(1)-(2), is unconstitutional as applied to Appellant, and similarly situated juveniles, under Article 1, Section 13 of the Texas Constitution.

Appellant continues his points of error with a similar, "as-applied" challenge to § 508.145(d)(1)-(2), Tex. Gov. Code. Much of the authority cited by Appellant is the same or similar to his claims as to his Points of Error No. 2 and 3, and similarly has not met his as-applied burden. Without objection, the jury received the standard parole instruction. The jury was admonished not to consider how parole law would apply to Appellant in assessing punishment.

a. Standard of Review; Statute is not facially unconstitutional.

None of Appellant's points of error specifically assert that Appellant's claims are facially unconstitutional. However, if the Court determines that Appellant's Point of Error No. 4 (or prior points of error, as referenced above), are facially constitutional challenges to Texas sentencing rules and procedures, then said arguments are unsupported by well settled jurisprudence in Texas. Texas Courts presume that a statute is valid and the legislature did not act arbitrarily or unreasonably in enacting it. *Guzman v. State*, 539 S.W.3d 394, 403 (Tex. App. – Houston 2017). To prevail on a facial challenge to a statute, the challenging party must establish that no set of circumstances exists under which the statute would be constitutionally valid. *Id.* The burden to establish the statute's unconstitutionality rests upon the party mounting the challenge.

The court of criminal appeals has specifically held that a juvenile offender sentenced to life with the possibility of parole is not entitled to individualized sentencing under the Eighth Amendment. *Turner v. State*, 443 S.W.3d 128, 128–29 (Tex. Crim. App. 2014); *Maxwell v. State*, No. 03-14-00586-CR, 2016 WL 4177233, at *2-3 (Tex. App.—Austin 2016, no pet.) (Sentence that allows for the possibility of parole does not offend the Eighth Amendment prohibition against cruel and unusual punishment.); *Shalouei v. State*, 524 S.W.3d 766 (Tex. App. – Houston 2017) (Texas cases no longer fall within the scope of the narrow holding in *Miller*

because juvenile offenders in Texas do not now face life without parole at all; 40 year parole eligibility for juvenile is not a de facto life sentence.) When the Court of Criminal Appeals has deliberately and unequivocally interpreted the law in a criminal matter, the Court must adhere to its interpretation under the dictates of vertical stare decisis. *Mason v. State*, 416 S.W.3d 720, 728 n.10 (Tex. App.—Houston 2013, pet. ref'd). The cornerstone case for Appellant’s overall arguments is *Miller v. Alabama*, 567 U.S. 460, 465, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). Even though *Miller* is a 2012 case, Texas has not modified its approach to juvenile sentencing for non-capital, juvenile offenders. This creates the presumption that the legislature and the citizens of the State of Texas approve the sentencing and parole procedures, even as they apply to juvenile offenders.

b. Review of Factors Supports finding that Texas punishment scheme is constitutional.

Appellant encourages the Court to review the factors set forth in *Glover v. State*, 406 S.W.3d 343, 347 (Tex. App.—Amarillo 2013, pet. ref'd) to find that his “categorical” challenges to the Texas punishment scheme is unconstitutional. *Glover* actually supports a finding that the punishment scheme in Texas is not unconstitutional as applied to Appellant, and similarly situated juveniles, under Article 1, Section 13 of the Texas Constitution.

Glover explained that punishment schemes considering the nature of the offense, the vulnerability of the victims, and the repetitive nature of the offense, the moral culpability factor weighs in favor of the constitutionality of a *no parole* sentencing scheme for the offense. *Id.* at 349. Retribution, deterrence, incapacitation and rehabilitation are all legitimate punishment goals.

Texas has consistently upheld harsher punishment statutes. *Shalouei v. State*, 524 S.W.3d 766,769 (Tex. App. – Houston 2017) (“We likewise reject appellant's contention that requiring a juvenile convicted of capital murder to serve 40 years in prison before becoming eligible for parole is unconstitutional as a “de facto life sentence.”) The court in *Shalouei* specifically addressed section 508.145(b): “Having already determined that the mandatory nature of the 40–year minimum amount of time served required by section 508.145(b) is not unconstitutional as applied to juveniles, we likewise reject appellant's contention that the shorter mandatory minimum required by a deadly weapon finding is unconstitutional.”

c. Parole eligibility is not automatically set at 30 years.

Appellant contends that “a mandatory minimum period of 30 years in jail - with no discretion for a court to assess the details of the offense or the circumstances of the juvenile – does not reflect contemporary standards of decency.” (Appellant’s Brief at 55) As set out earlier, *Miller* encouraged the development and presentment of multiple factors in sentencing. The punishment scheme in a trial before a jury

specifically affords any defendant in Appellant's shoes that opportunity. As such, Appellant constitutional rights were not offended because he had the opportunity expressly directed by the Supreme Court. Furthermore, the jury did have the absolute discretion to consider additional factors which would have affected Appellant's parole eligibility.

Appellant's argument implies and assumes that juveniles are subject to a mandatory requirement of 30 years before parole consideration for all sentences. This is not a correct statement or assessment of Texas Government Code Section 508.145(d)(1)-(2). Instead, juvenile offenders are *only* subject to 30 years sentences when factors are presented that are so egregious that would warrant the imposition of a higher sentence. If a juvenile offender does not have a history of assaultive conduct, does demonstrate remorse for their actions, and demonstrates a potential for rehabilitation, then a trier of fact is permitted to consider a range of punishment far less than 70 years, thereby also reducing the time required for their parole eligibility. The jury in Appellant's case was specifically instructed that a lower sentence would result in a lower number of years required for parole eligibility. (CR 1:135). The jury DID have the discretion to influence Appellant's parole eligibility. The jury heard evidence of the nature of his offense, his prior assaultive history, and that he was a high risk for re-offending. Retribution, deterrence, incapacitation and rehabilitation are all legitimate punishment goals which the jury were invited to

consider by both the State and Appellant. Whether lodged as a categorical challenge or a facial constitutional challenge, Appellant's sentence is constitutionally permissible because the jury appropriately considered all the factors proffered by Appellant. He cannot now claim on appeal that his rights were offended.

d. National trend does not support finding that *de facto* life sentences are unconstitutional.

Appellant again invites this court to rely on authority from other jurisdictions as support that other states are trending towards findings that state constitutions provide greater protections against grossly disproportionate sentences for this point of error. The State will direct the Court to its arguments earlier in this brief, (c. Reliance on authority from other jurisdictions is misplaced), and incorporate the same arguments by reference. This court is bound in criminal cases to follow decisions of the Court of Criminal Appeals. *McCardle v. State*, 550 S.W.3d 265 (Tex. App. – Houston 2018), *Mason v. State*, 416 S.W.3d 720, 728 n.10 (Tex. App.—Houston 2013, pet. ref'd).

Even if this Court were to consider authority from other states, Appellant's reliance on this authority is misplaced and misstated as said cases demonstrate a national trend approving sentences similar to Appellant's. Michigan (within *People v. Parks*, 510 Mich. 225, 232; 987 N.W.2d 161 (2022)) and North Carolina (within *State v. Kelliher*, 873 S.E. 2d. 366, 381 N.C. 558 (N.C. 2022)) actually approve life

sentences for juvenile offenders as long as there is some potential for parole in under forty years. According to *State v. Lyle*, 854 N.W.2d 378, 401 (Iowa 2014), cited by Appellant, “Most states permit or require some or all juvenile offenders to be given mandatory minimum sentences.” North Carolina specifically endorses a forty-year maximum term before parole eligibility for juvenile offenders explaining that such a requirement (1) supports the rehabilitative goal of criminal punishment, (2) gives juvenile offenders the opportunity to show their crime did not reflect irreparable corruptions; (3) preserves a realistic hope of a meaningful opportunity for reentry into society. *Kelliher* at 390.

e. Texas provides same protection as U.S. Constitution.

Appellant again claims the Texas Constitution provides greater protections against cruel and unusual punishments. The State simply refers this Court to its prior arguments, incorporated by reference herein, that Texas provides the same or substantially the same protections as the United States Constitution.

CONCLUSION

Overall, Appellant’s arguments fail because they fail to recognize the broad and discretionary nature of sentencing of juvenile inherent within the punishment scheme in Texas. Appellant was not “automatically sentenced” and required to serve 30 years prior to parole eligibility. A jury found a 70-year sentence was appropriate after a review of all of the evidence, thereby affecting and capping his parole

eligibility under current parole laws. Had evidence been presented that demonstrates other factors, a jury had the discretion to assess punishment at twenty years, as suggested by Appellant's counsel, and he would have been eligible for parole after serving ten years of his sentence. Discretion is the key element. The jury exercised the discretion permitted and encouraged by *Miller* and the litany of Texas jurisprudence to render a sentence which balanced all of the factors for Appellant and against Appellant. Such a sentence should be affirmed on appeal.

PRAYER

The State is not insensitive to the effect of the criminal justice system on juveniles. However, justice and mercy naturally involve the protection of the community, the needs of the victim and their family to feel safe, and the goal to rehabilitate defendants as they work through the criminal justice process, in the hope that they will one day re-enter society as a productive citizen. Appellant's history demonstrated a past riddled with conflict, lack of remorse, and a propensity of violence. This is the juvenile offender that should remain in a more structured environment so as to provide the additional time needed for reflection and rehabilitation. As such, the State respectfully requests and prays this Court to affirm Appellant's convictions and honor the wisdom of the jury in this cause.

Respectfully submitted,

/s/ Stephanie Newell

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CERTIFICATE OF COMPLIANCE

I certify that this document was produced on a computer using Microsoft Word 2007 and contains 11402 words, as determined by the computer software's word-count function, excluding the sections of the document listed in Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ Stephanie Newell

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CERTIFICATE OF SERVICE

I certify that a copy of Appellee's Brief was served on the State of Texas by and through his counsel of record, by electronic transmission on June 5, 2026.

/s/ Stephanie Newell
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