

IN THE
SUPREME COURT OF INDIANA

COURT OF APPEALS CASE NO. 20A04-1310-CR-518

BLAKE LAYMAN)	Appeal from the
Appellant/Defendant)	Elkhart County Circuit Court
)	
v.)	Cause No. 20C01-1210-MR-7
)	
STATE OF INDIANA)	The Honorable Terry C. Shewmaker,
Appellee)	Judge
)	
LEVI SPARKS)	Appeal from the
Appellant/Defendant)	Elkhart County Circuit Court
)	
v.)	Cause No. 20C01-1210-MR-5
)	
STATE OF INDIANA)	The Honorable Terry C. Shewmaker,
Appellee)	Judge

**APPELLANT BLAKE LAYMAN'S
PETITION TO TRANSFER**

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QUESTIONS PRESENTED ON TRANSFER

Sixteen-year-old Blake Layman and four of his friends decided to burglarize a home they believed was unoccupied. The homeowner shot and killed one of the boys. Layman and the remaining friends were convicted of felony murder.

- I. Whether this Court should grant transfer and hold that the plain language of Indiana's felony murder statute does not permit a conviction where a co-felon was killed by a non-participant?
- II. Alternatively, if Indiana's felony murder statute does apply to such a situation, whether the statute should apply to a juvenile, who is incapable of foreseeing all the potential consequences of his actions?
- III. Whether Indiana's direct-filing statute violated Layman's federal and state constitutional rights to due process of law and to equal protection?
- IV. Whether the imposition of a mandatory minimum sentence of 45 years on juveniles convicted of felony murder is cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution?

V. Whether imposition of a sentence of 45 years is a disproportionate penalty in violation of Article 1, Section 16 of the Indiana Constitution considering Layman's *mens rea* and conduct?

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BACKGROUND AND PRIOR TREATMENT OF ISSUES ON TRANSFER

Danzele Johnson (age 21), Anthony Sharp (age 18), Levi Sparks (age 17), and Blake Layman and Jose Quiroz (both age 16), decided to burglarize a home they thought was unoccupied. Johnson kicked in the door, and the boys (minus Sparks) entered the house. The homeowner, awakened from his afternoon nap by the commotion, ran downstairs and shot at the boys, killing Johnson and injuring Layman.

The State charged the boys with felony murder. Consequently, Layman, Quiroz, and Sparks were automatically waived into adult court. Quiroz pleaded guilty, and the other boys were tried jointly. The jury found them guilty of felony murder, and they appealed.

On appeal, Layman raised several issues. Layman argued that Indiana's felony murder statute does not permit a conviction where a co-felon was killed by a non-participant; or, stated differently, a plain reading of the statute indicates that our Legislature has adopted the "agency approach" to applying the felony murder doctrine. In the alternative, Layman argued that even if our Legislature intended for the felony murder doctrine to apply where the co-felon's death by a non-participant was reasonably foreseeable (the "mediate proximate cause" approach), this Court should adopt the agency approach for juveniles.

With respect to Layman's automatic waiver into adult court, he raised two challenges to the direct-filing statute: that it was unconstitutional both on

its face and as applied because it violated his federal and state constitutional right to due process of law; and that it denied him equal protection under the law.

Finally, Layman raised three claims related to his sentence: Indiana's mandatory minimum sentence for felony murder constitutes cruel and unusual punishment for juveniles under the Eighth Amendment; the penalty range for murder violates the Proportionality Clause of the Indiana Constitution as applied in this case; and Layman's 55-year-sentence was inappropriate.¹

The Court of Appeals affirmed Layman's conviction in a plurality decision in which all three judges wrote separately. *See generally Layman v. State*, ___ N.E.3d ___ (Ind. Ct. App. Sep. 12, 2014).² Judge Bailey chose not to address Layman's constitutional issues related to waiver from juvenile court, cruel and unusual punishment, and the Proportionality Clause, holding that Layman had waived review of those issues by failing to raise them in a pretrial motion to dismiss. *Layman*, ___ N.E.3d ___, slip op. at 5-7.

¹ Sparks' appeal was consolidated with Layman's. Sparks raised identical issues on appeal and added a sufficiency-of-the-evidence claim. In a separate appeal, Sharp raised a similar claim as Layman's regarding the applicability of the felony murder statute to this case, as well as a sufficiency-of-the-evidence claim and an inappropriate sentence claim. *See Sharp v. State*, ___ N.E.3d ___ (Ind. Ct. App. Sep. 12, 2014).

² The Court of Appeals revised Layman's sentence by suspending 10 years of his 55-year-sentence to probation. *Layman*, ___ N.E.3d ___, slip op. at 11. The court of Appeals also revised Sparks' sentence by suspending 5 years of his 50-year-sentence to probation. *Id.* slip op. at 11. The executed portion of Sharp's sentence was likewise reduced to the minimum sentence of 45 years. *See Sharp*, ___ N.E.3d ___, slip op. at 15-19.

With respect to Layman's claim that as a matter of law the killing of a co-felon by a non-participant in the crime does not constitute felony murder under Indiana law, Judge Bailey instead analyzed the argument as a sufficiency-of-the-evidence claim and rejected it.³ *Layman*, ___ N.E.3d ___, slip op. at 7-9. He did not address Layman's alternative claim as to whether Indiana should adopt the agency approach to the felony murder doctrine for juveniles given what we now know about adolescent brain development and its effects on foreseeability.

In a concurring opinion, Judge May acknowledged that she had to follow this Court's precedent in *Palmer v. State*, 704 N.E.2d 124 (Ind. 1999) in this case but indicated that this Court should revisit *Palmer*. *Layman*, ___ N.E.3d ___, slip op. at 14-16. Judge May also indicated that even if *Palmer* is not overruled, applying the agency approach to felony murder for juveniles would be more consistent with U.S. Supreme Court precedent and with this Court's reasoning in *Brown v. State*, 10 N.E.3d 1 (Ind. 2014) and *Fuller v. State*, 9 N.E.3d 653 (Ind. 2014). *Layman*, ___ N.E.3d ___, slip op. at 17-24. With respect to the constitutional issues, Judge May concluded that Layman had not forfeited these challenges and that they should have been decided on their merits. *Id.*, slip op. at 16-17.

In a dissenting opinion, Judge Kirsch was silent regarding waiver. As for the felony murder doctrine, he distinguished this Court's decisions in *Palmer* and in *Jenkins v. State*, 726 N.E.2d 268 (Ind. 2000) from this case, because the

³ Layman has always acknowledged on appeal that if the killing of a co-felon by a non-participant can be considered felony murder under Indiana law, sufficient evidence was presented to support his conviction.

defendants in *Palmer* and *Jenkins* were armed and committed dangerously violent felonies. Judge Kirsch noted that unlike the defendants in those cases, Layman was unarmed and committed a non-violent crime when the unforeseeable tragedy of his friend's death occurred. Thus, Judge Kirsch concluded that the felony murder doctrine did not apply here. *Layman*, ___ N.E.3d ___, slip op. at 25-27.⁴ Layman now seeks transfer.

ARGUMENT

I. The Plain Language of Indiana's Felony Murder Statute Does Not Permit a Conviction Where a Co-Felon was Killed by a Non-Participant

This Court's decisions in *Palmer* and *Jenkins v. State*, 726 N.E.2d 268 (Ind. 2000) should be overruled because Indiana's felony murder statute expressly applies only to those killings actually committed by a felon or one of his co-felons. Indiana Code section 35-42-1-1 provides, in relevant part, "A person who . . . kills another human being while committing or attempting to commit . . . burglary . . . commits murder, a felony." Indiana's accomplice liability statute provides that a person who knowingly or intentionally aids, induces, or causes another person to commit an offense can be held equally culpable for the offenses. Ind. Code § 35-41-2-4. This is true even for felony murder. *See Wieland v. State*, 736 N.E.2d 1198, 1202-03 (Ind. 2000).

⁴ In Sharp's appeal, Senior Judge Darden and Judges Pyle and Brown held that Sharp had waived review of his claim regarding application of the felony murder doctrine to his case because he failed to raise it in a pretrial motion to dismiss. *Sharp*, ___ N.E.3d ___, slip op. at 11-12. Waiver notwithstanding, the panel held that it was bound by this Court's precedent in *Palmer*.

Under a plain reading of these statutes, however, Layman was not guilty of felony murder because neither he nor his accomplices actually killed anyone.

Application of the felony murder doctrine in this case is inconsistent with its legislative intent. Had our legislature intended to include a killing by a non-participant to the crime, it would have crafted the statutory language to define felony murder as follows: “A person commits murder, a felony, if the commission or attempted commission of . . . burglary . . . contributes to the death of any person.” See, e.g., Ind. Code § 35-43-2-1 (elevating burglary to a Class A felony “if it results in bodily injury or serious bodily injury to any person other than a defendant.”)

For these reasons, this Court should revisit and overrule *Palmer* and its progeny.

II. Alternatively, If *Palmer* and Its Progeny Remains, Indiana Should Nevertheless Apply the Agency Approach to Juvenile Offenders

In the companion cases *Brown* and *Fuller*, this Court summarized recent U.S. Supreme Court precedent that establishes that juveniles engage in risky behavior, are less capable of controlling their impulses, and do not have the capacity to foresee the potential negative consequences of their actions like adults do. See *Brown*, 10 N.E.3d at 7-9. Waiving a juvenile into adult court and imposing upon him a foreseeability standard with respect to the felony murder doctrine is problematic, given what has now been proven about juveniles’ inability to foresee potential consequences at the same level that adults do. Thus, application of the felony murder doctrine in general to juveniles is of great concern.

But particularly problematic is applying the doctrine and, consequently, a reasonable foreseeability standard appropriate for adult offenders, to juveniles who neither killed nor intended to kill anyone. Not only is the juvenile in adult court held to the same foreseeability standard as an adult offender with respect to his own behavior and to the behavior of his co-felons but with respect to the possible behavior of non-participants as well.

This contradicts what we now know about adolescent brain development and the impact it has on a juvenile's susceptibility to engaging in risky behaviors, to improperly weighing the risks and benefits of those behaviors, and to foreseeing potential negative consequences of those behaviors. Adopting the agency approach would be more in line with U.S. Supreme Court precedent and with this Court's rationale in *Brown* and *Fuller*.

III. The Application of Indiana's Direct-Filing Statute Violated Layman's Federal and State Constitutional Rights to Due Process of Law and Equal Protection

A. *Layman's Claims Attacking the Subject Matter Jurisdiction of the Trial Court Were Not Waived for Appeal*

Layman could not have waived his claims challenging prosecution in adult court as they are a challenge to the subject matter jurisdiction of the trial court. *Gingerich v. State*, 979 N.E.2d 694, 704 (Ind. Ct. App. 2012), *trans. denied*; *Roberson v. State*, 903 N.E.2d 1009, 1009 (Ind. Ct. App. 2009) (“[O]ne may challenge a waiver into adult court at any time, as it involves a question of subject matter jurisdiction.”) Further, Layman's challenge to the application of the direct-filing statute (Indiana Code section 31-30-1-4) was based upon his

arguments that application of that statute was unconstitutional. Constitutional challenges to statutes may be raised at any stage of the proceeding, including *sua sponte* by appellate courts. *Morse v. State*, 593 N.E.2d 194, 197 (Ind. 1992), *cert. denied sub nom. Morse v. Hanks*, 528 U.S. 851 (1999). Therefore, Layman's claims regarding waiver to adult court are properly raised on direct appeal and should be decided on their merits.

B. The Use of Indiana's Direct-Filing Statute to Prosecute Layman as an Adult Without the Protections of a Judicial Waiver Hearing Violated Layman's Indiana and Federal Constitutional Rights

Indiana Code Section 31-30-1-4 is unconstitutional on its face and as applied because it violates the Due Process Clause contained in the Fourteenth Amendment to the U.S. Constitution and the Due Course of Law Clause contained in Article 1, Section 12 of the Indiana Constitution. The juvenile justice system is based on the belief that juveniles are inherently less culpable than adult offenders and are more amenable to rehabilitation. The transfer of juvenile offenders to adult court, however, is based on the opposite belief: that some offenders are beyond rehabilitation.

But the recent U.S. Supreme Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012) hold otherwise: even some juveniles who have committed the most heinous of offenses are not beyond rehabilitation. This new understanding of adolescent brain development now debunks the myth that some juveniles are no longer deserving of the reformative services offered

in the juvenile justice system. Consequently, Indiana's direct-filing statute, which automatically denies certain juveniles the ability to remain in juvenile court, is unconstitutional on its face, especially in light of the U.S. Supreme Court's decisions in *Roper*, *Graham*, and *Miller*.

Indiana Code section 31-30-1-4 is also unconstitutional as applied to Layman in particular. Layman was prosecuted in adult court because he was 16 years of age and charged with murder, an offense that the State's pleadings demonstrate he neither intended to commit, nor actually committed.⁵ Moreover, Layman's transfer to adult court happened without any due process protections, although the offense which he intended to commit—burglary—typically requires a judicial waiver hearing. See Ind. Code §§ 31-30-1-4, 31-30-3.

The primary purpose of the juvenile justice system is to identify and reform those juveniles that have committed a delinquent act. Rehabilitation necessarily involves addressing why the juvenile behaved badly so that he will learn not to engage in that behavior in the future. Here, however, the State directly filed Layman's case in adult court based not on Layman's bad intent (to commit a residential burglary) and not on Layman's bad behavior (committing a residential burglary), but on consequences that occurred as a result of Layman's behavior that Layman lacked the capacity to foresee.

⁵ The State's charging Information alleges that Layman's *mens rea* was to commit the offense of burglary. [App. 9]. Further, the probable cause affidavit alleged that Rodney Scott fired the shots that killed Johnson.

Even more troubling is that had Layman been only 15 years of age and committed an intentional murder, he would have been afforded procedural protections of a waiver hearing where he could have presented evidence showing that he was still deserving of reformatory services offered in the juvenile justice system. Again, our new understanding of the impact brain development has on a juvenile's behavior, even at ages 16 and 17, shows that juveniles at that age are not beyond rehabilitation.⁶ As the Supreme Court made clear, "criminal procedural laws that fail to take a defendant's youthfulness into account at all would be flawed." *Graham*, 130 S. Ct. at 2031.

Indiana's direct-filing statute fails to properly take into consideration 16- and 17-years-olds' youthfulness and subjects them to adult treatment. This is particularly true here, given that Layman never intended and did not actually kill anyone. By filing the case directly in adult court, the State failed to afford Layman due process.

Indiana's direct-filing statute also violated Layman's right to equal protection under the Equal Protection Clause of the Fourteenth Amendment and under Article 1, Section 23 of the Indiana Constitution. The Equal Protection Clause of the Fourteenth Amendment provides that, "No state shall

⁶ "The qualities that distinguish juveniles from adults do not disappear when an individual turns 18." *Roper*, 543 U.S. at 574. "Scientists have found that adolescents as a group, even at later stages of adolescence, are more likely than adults to engage in risky, impulsive, and sensation-seeking behavior." Brief of the American Medical Ass'n et al. as Amici Curiae in Support of Neither Party, at 2 (cited with approval by *Graham*, 130 S. Ct. 2026).

... deny to any person within its jurisdiction the equal protection of the laws.” Article 1, Section 23 of the Indiana Constitution provides that, “The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.” The inquiry under our Privileges and Immunities Clause is whether “the disparate treatment . . . [i]s reasonably related to inherent characteristics which distinguish the unequally treated classes.” *Ind. High Sch. Ath. Ass’n v. Carlberg*, 694 N.E.2d 222, 239 (Ind. 1997) (quoting *Collins v. Day*, 644 N.E.2d 72 (Ind. 1994)). The challenger to a statute bears the burden to negate every reasonable basis for the classification. *Id.*

Indiana’s direct-filing statute has no rational basis, and its disparate treatment has no reasonable relation to inherent characteristics of the unequally treated classes. The classification created by Indiana Code section 31-30-1-4 is a subset of juveniles: those who are subjected to having their cases directly filed into adult court. This classification applies only to 16- and 17-year-old juveniles who are alleged to have committed one of the several offenses enumerated in Indiana Code section 31-30-1-4. This is juxtaposed with other juveniles, who may commit these same offenses, but simply by virtue of being chronologically younger are afforded at least a chance to remain in juvenile court.

The government objective in support of direct-filing statutes is the protection of society from dangerous youthful offenders who might be released

early. However, this objective is not a reasonable or legitimate basis for the unequal treatment because every juvenile in the classification created by Indiana Code section 31-30-1-4 would be subject to judicial waiver proceedings upon motion by the prosecution. *See* Ind. Code ch. 31-30-3. Further, direct-filing into adult court is suspect in light of the recent developments that show that the juvenile brain is not fully developed until after the age of 18. Therefore, the concept that all juveniles age 16 to 17 that commit the offenses listed in our direct-filing statute are beyond rehabilitation is a fallacy. Furthermore, as discussed above, *Roper*, *Graham*, and *Miller* hold that a distinction between 16- and 17-year-olds, and their 14- and 15-year-old contemporaries is not supported by prevailing scientific evidence.

The only remaining arguable interest is judicial economy (or the avoidance of providing procedural safeguards). However, judicial economy should not outweigh the fundamental rights espoused in *Kent v. United States*, 383 U.S. 541 (1966):

[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony – without a hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society's special concern for children, as reflected in the District of Columbia's Juvenile Court Act, permitted this procedure.

Id. at 554.

For these reasons, Indiana's direct-filing statute denies Layman and other similarly-situated juveniles equal protection under both the Federal and State Constitutions.

IV. The Imposition of Indiana's Mandatory Minimum Sentence on Juveniles Convicted of Felony Murder is Cruel and Unusual Punishment

Because Layman was convicted as an adult of felony murder, he was required to serve a minimum sentence of at least 45 years, none of which can be suspended. See Ind. Code §§ 35-50-2-2, -3. The Eighth Amendment to the U.S. Constitution prohibits the imposition of cruel and unusual punishments. In *Roper*, the High Court held that the Eighth Amendment's prohibition on cruel and unusual punishment forbids the imposition of the death penalty for juveniles. In *Graham*, the Supreme Court forbade the imposition of life without parole for juveniles convicted of a non-homicide crime. Finally, in *Miller*, the High Court held that imposition of life without parole for juveniles was prohibited under the Eighth Amendment, even if the juvenile committed the most heinous of offenses.

The U.S. Supreme Court reached its decision in those cases by relying upon research proving that juveniles are less blameworthy than adults and are more amenable to rehabilitation. In fact, "when compared to an adult murderer, a juvenile who did not kill or intend to kill has a twice diminished moral culpability." *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 2027 (2010).

Thus, in each of those cases the Court held that a mandatory sentence that does

not allow consideration of the juvenile's youthful characteristics as it related to his culpability constituted cruel and unusual punishment.

Likewise, a mandatory minimum term-of-years sentence does not allow the trial court to consider the juvenile's level of culpability, including his actions, whether he intended to kill, etc. Considering that Layman never intended to kill Johnson, or anyone for that matter, the imposition of a mandatory minimum sentence of 45 years constituted cruel and unusual punishment in violation of the Eighth Amendment.

V. The Treatment of Blake's Conduct as Murder is a Disproportionate Penalty that Violates the Indiana Constitution

The Proportionality Clause of Article 1, Section 16 of the Indiana Constitution provides that "[a]ll penalties shall be proportioned to the nature of the offense." Where a criminal sanction is so severe and entirely out of proportion to the gravity of the offense committed that it shocks the public sentiment and violates the judgment of reasonable people, the sanction runs afoul of the Proportionality Clause. *Pritscher v. State*, 675 N.E.2d 727, 731 (Ind. Ct. App. 1996). Simply because a sentence falls within the range set by the General Assembly does not relieve courts of their duty to review the length of the sentence under the Proportionality Clause; it is possible for a statute to be constitutional on its face but unconstitutional as applied in some cases. See *Conner v. State*, 626 N.E.2d 803, 806 (Ind. 1993); *Clark v. State*, 561 N.E.2d 759, 765 (Ind. 1990).

There is no dispute in this case that Blake committed an unarmed burglary of a home when he believed the homeowner was away. Blake's actions, while possibly reckless, were certainly not akin to a knowing or intentional murder. Reckless homicide and involuntary manslaughter, both Class C felonies, punish reckless behavior that results in death. See Ind. Code §§ 35-42-1-4, -5. Any sentence above the Class C felony range of 2 to 8 years is disproportionate.

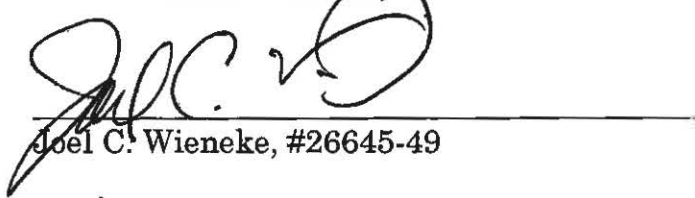
CONCLUSION

Based on the foregoing arguments and authority, Layman respectfully requests that this Court grant transfer.

Respectfully submitted,



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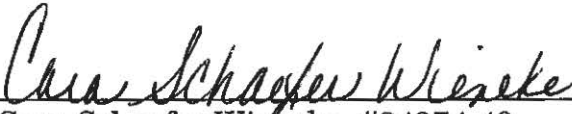


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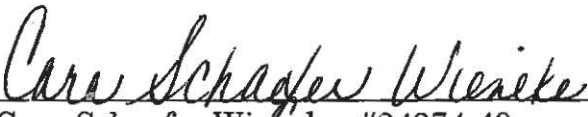
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