NO. 92605-1

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ZYION HOUSTON-SCONIERS and TRESON ROBERTS, APPELLANTS

Review of Court of Appeals # 45374-6-II (consolidated case),

Appeal from the Superior Court of Pierce County
The Honorable John Hickman

No. 12-1-04161-1

SUPPLEMENTAL BRIEF OF RESPONDENT

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B. STATEMENT OF THE CASE.

1. Procedure

On November 5, 2012, the State charged Zyion Dontice Houston-Sconiers and Treson Lee Roberts by Information in counts I through V with first degree robbery, in count VI with conspiracy to commit first degree robbery, and in count VIII with first degree unlawful possession of a firearm. CP 1-4, 269-72. Counts I through V also alleged a firearm sentence enhancement. CP 1-4, 269-72. See 11/05/12 RP 3-5; RP 3-6.

Houston-Sconiers was 17 (DOB 4/30/1995), and Roberts 16 years (DOB 5/8/1996) old when the crimes were committed. CP 1, 269. Pursuant to RCW 13.04.030(1)(e)(v), the defendants were charged and tried in adult criminal court. Houston-Sconiers was 18 years old by the time the case went to trial.

On May 2, 2013, the State filed an amended Information in both cases, which added a count of second degree assault as count VI, and two counts of first degree robbery as counts VIII and IX. CP 17-22, 283-88. *See* RP 158-62, 1943-45. Counts I through X of the amended information included firearm sentence enhancements. CP 17-22, 283-88.

On August 2, 2013, the jury found Houston-Sconiers guilty as charged, and returned special verdicts indicating that he was armed with a firearm at the time of his commission of the crimes charged in counts I through VI and X. RP 2368-82; CP 206-21. The jury was apparently not given a special verdict form as to count IX for Houston-Sconiers, RP 2381-82, 2390-91.

The jury found Roberts not guilty of first degree robbery as charged in counts I and II and the first degree unlawful possession of a firearm charged in count XI, but guilty of the crimes charged in counts III, IV, V, VI, IX, and X, and returned special verdicts indicating that he was armed with a firearm at the time of his commission of the crimes charged in counts III, IV, V, VI, IX, and X. RP 2372-77; CP 404-20.

On September 13, 2013, the court sentenced both defendants. RP 2385-2419. The court adopted the State's recommendation and sentenced Houston-Sconiers to an exceptional sentence below the standard range on all counts to zero months for the underlying sentence, but imposed the statutorily-required minimum of 372 months for the seven firearm sentence enhancements. RP 2385-2407; CP 232-46.

The court also adopted the State's recommendation with respect to Roberts and imposed an exceptional sentence below the standard range on all counts to zero months for the underlying sentence, though, again, it imposed the statutorily-required minimum of 312 months for the six firearm sentence enhancements. RP 2407-19; CP 428-42.

2. Facts

A detailed account of the substantive facts can be found in the Court of Appeals opinion #45374-6-II, and discussed later herein regarding sufficiency of the evidence. In brief, on October 31, 2012, the defendants, at gunpoint, robbed children and their companions of Halloween candy, cash, and cell phones. *See*, slip op. at 10-13. The defendants were on foot. The robberies occurred in separate, but nearby, neighborhoods of the Hilltop and North End in Tacoma. *Id.*

C. ARGUMENT.

1. THE STATE ADDUCED SUFFICIENT EVIDENCE OF THE ASSAULT OF A.G., INCLUDING ACTUAL APPREHENSION AND FEAR.

In a challenge to the sufficiency of the evidence, the appellate court determines whether any rational fact finder could have found the essential elements of the charged crime beyond a reasonable doubt, viewing the trial evidence in the light most favorable to the State. ***State v. Brockob***, 159 Wn.2d 311, 336, 150 P.3d 59 (2006). An insufficiency claim "admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." ***State v. Salinas***, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); *see also* ***State v. Kintz***, 169 Wn.2d 537, 551, 238 P.3d 470 (2010). Direct and circumstantial evidence are equally reliable. ***State v. Thomas***, 150 Wn.2d 821, 874, 83 P. 3d 970 (2004). The

Court defers to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of evidence. ***Thomas***, at 874-875; ***State v. Delmarter***, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The presence of contrary or countervailing evidence is irrelevant to a sufficiency-of-the-evidence challenge because the evidence is viewed in the light most favorable to the State. ***State v. Ibarra–Cisneros***, 172 Wn.2d 880, 896, 263 P.3d 591 (2011).

RCW 9A.36.021(1)(c) provides, in pertinent part, that "[a] person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree... [a]ssaults another with a deadly weapon[.]" *See* CP 136-95.

The jury was correctly instructed that:

> An assault is an act done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

CP 183.

The necessary intent for assault may be inferred from pointing a gun at a victim. ***State v. Eastmond***, 129 Wn.2d 497, 500, 919 P.2d 577 (1996), citing ***State v. Miller***, 71 Wn.2d 143, 146, 426 P.2d 986 (1967). The gravamen of assault is putting another in apprehension of harm, whether or not the actor actually intends to inflict or is incapable of

inflicting that harm. *See* ***State v. Byrd***, 125 Wn.2d 707, 712-713, 887 P. 2d 396 (1995).

A.G. testified that three masked males approached her and her friends. RP 819. The one with a white mask told them "this is a stickup." RP 820, 822. She and her friends "froze." RP 820. *See* RP 781, 785-86. One, later identified as Houston-Sconiers, then pointed a small silver gun at her and her friends, and told them to give them everything. RP 785-86, 821-822, 850, 872-73, 900, 954. A.G. hid her backpack which contained her candy. RP 821. On cross-examination, when asked about the gun, she testified that she did not know if it was real. RP 859. She admitted that she had not been hurt, but that she was "really scared." RP 859.

A.G. testified that, after D.P.M. surrendered her candy to the three assailants, she and D.P.M. went to a corner house "to get some help." RP 778, 826, 852-853. I.G. also testified that the girls left to get help. 961-962. A.G. asked the homeowner to call the police, because she and her friends had been robbed. RP 853. The girls departed so quickly that they left their three male friends behind to deal with the robbers. RP 837, 961.

A.G. recognized the voice of the person with the gun as that of a young man she knew as "Tiny." RP 824. She identified "Tiny" as Houston-Sconiers. *Id.*; 788-789, 848-849.

By challenging the sufficiency of the evidence, the defendants admit the truth of all of this evidence. Most significantly, the defendants admit that A.G. was "really scared" when Houston-Sconiers pointed a gun

at her. All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant: A.G. hid her bag of candy because she was in apprehension of the implied threat of violence - the gun pointed at them - which had caused her friends to surrender their belongings; she ran because she was scared; she sought shelter and protection in a stranger's home because she was scared; she asked the strangers to call the police because she was scared. *See* ***Salinas***, 119 Wn.2d at 201.

There is more than sufficient evidence to prove beyond a reasonable doubt that A.G. in fact had "a reasonable apprehension and imminent fear of bodily injury." CP 183. The Court of Appeals correctly held that the State adduced sufficient evidence to support the convictions for second degree assault of A.G, as charged in count VI of the respective amended Informations. CP 17-22, 283-88.

2. THE STATE ADDUCED SUFFICIENT EVIDENCE TO PROVE THE NEXUS TO ROBBERY CONSPIRACY FOR THE FIREARM ENHANCEMENT.

Conspiracy to commit first degree robbery is a class B violent offense. RCW 9A.56.200(2); RCW 9A.28.040(3)(b); RCW 9.94A.030(54)(a)(ii). RCW 9.94A.533(3) provides that additional time "shall be added to the standard range for" conviction of this offense "if the

offender or an accomplice was armed with a firearm as defined in RCW 9.41.010."

"'[A] person is 'armed' if [1] a weapon is easily accessible and readily available for use, either for offensive or defensive purposes.'" ***State v. Eckenrode***, 159 Wn.2d 488, 493, 150 P.3d 1116 (2007)(quoting ***State v. Valdobinos***, 122 Wn.2d 270, 282, 858 P.2d 199 (1993)), *see also* ***State v. Easterlin***, 159 Wn.2d 203, 206, 149 P.3d 366 (2006), and [2] there is "some nexus between the defendant, the weapon, and the crime." ***Eckenrode***, 159 Wn.2d at 493. *See* ***Easterlin***, 159 Wn.2d at 206; ***State v. Barnes***, 153 Wn.2d 378, 383, 103 P.3d 1219 (2005).

In the present case, the court correctly instructed the jury, in relevant part, that:

> For purposes of a special verdict, the State must prove beyond a reasonable doubt that the defendant was armed with a firearm at the time of the commission of the crimes of robbery in the first degree, conspiracy to commit robbery in the first degree, and assault in the second degree.
>
> A person is armed with a firearm if, at the time of the commission of the crime, the firearm is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the firearm and the defendant or an accomplice. *The State must also prove beyond a reasonable doubt that there was a connection between the firearm and the crime.* In determining whether these connections existed, you should consider, among other factors, the nature of the crime and the circumstances surrounding the commission of the crime.

> If one participant in a crime is armed with a firearm, all accomplices to that participant are deemed so armed, even if only one firearm is involved.

CP 195 (court's instruction no. 44) (emphasis added).

The record shows that a firearm was "easily accessible and readily available for use, either for offensive or defensive purposes" at the time of the conspiracy. A single agreement to commit a one or more crimes by the same conspirators is an independent crime, in addition to the crimes committed during the conspiracy. *See* ***State v. Bobic***, 140 Wn.2d 250, 266, 996 P.2d 610 (2000); *see also* ***State v. Knight***, 162 Wn.2d 806, 174 P. 3d 1167 (2006). A conspiracy may span a period of time to include several criminal acts, or a criminal enterprise. *Id.* Thus, as in ***Bobic*** which involved acts of theft and trafficking in stolen property, several acts of robbery might be committed during a conspiracy.

Houston-Sconiers, Roberts, L.A., Z.J., and A.T. had been at Roberts' residence on the evening of October 31, 2012, smoking marijuana, drinking vodka, and playing basketball. RP 1436-40, 1478-81, 1536-40, 1788-89, 1794, 1816. They decided to go to Stanley Elementary school, apparently hoping to find other people. RP 1440-41.

However, when the group arrived at Stanley and discovered that no one else was there, their plans changed. *See* RP 1441. Two of them, L.A. and A.T., went to several restaurants and stores for food. RP 1441-47, 1484-99, 1540-47. Roberts and Houston-Sconiers went in a different

direction and engaged in the first two robberies. RP 788-89, 808, 824-25, 848, 993. Two of the victims, D.P.M. and A.G., recognized Houston-Sconiers as a person they knew as "Tiny." RP 789, 824.

As pointed out above in section 1, the defendants' challenge to the sufficiency of the evidence admits the truth of all this evidence and all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant, ***Salinas***, 119 Wn.2d at 201. When it is, there is more than sufficient evidence to prove that the defendants were "armed with a firearm" when they "agree[d] with one or more persons to engage in or cause the performance of [first degree robbery], and any one of the persons involved in the agreement did take a substantial step in pursuance of the agreement." CP 195.

The State was required to show the requisite nexus connecting the defendants, the gun, and the robbery conspiracy. Evidence showing the nexus between the firearm and the charged crime is often circumstantial. The jury considers the totality of the circumstances: "the nature of the crime, the type of weapon, and the circumstances under which the weapon is found." ***State v. Schelin***, 147 Wn.2d 562, 570, 575, 55 P.3d 632 (2002).

The jury could reasonably conclude or infer from this evidence that Roberts and Houston-Sconiers agreed to engage in first degree robbery sometime after they arrived at Stanley, but before walking north several blocks where they robbed the first victims at gunpoint. RP 992-993. They walked north several more blocks where Houston-Sconiers held the gun

on a group of young men and women during the robbery. RP 788, 820. They then walked several blocks back south, where they met up with L.A. and completed the final robbery. RP 1454-55.

Viewing this evidence in the light most favorable to the State, the weapon was easily accessible and readily available for offensive or defensive use during the time of the crime. The defendants agreed that they would commit at least one robbery that night; the gun was to be used for the robbery; Houston-Sconiers had the firearm. Here, as a necessary implement or factor in the planned robbery, it had an offensive purpose. It was not necessary for the defendants to complete the planned crimes to be guilty of conspiracy, nor was a completed crime necessary for the firearm enhancement. During all this time, one of the defendants was in personal possession of the firearm. It was "easily accessible and readily available for use, either for offensive or defensive purposes." Whether to use as a means of force to rob persons, or to protect their loot from others. Possession of the firearm enabled them to formulate a plan to commit robberies they may have been reluctant to plan to commit in the absence of that firearm.

The Court of Appeals correctly held there was sufficient evidence of "some nexus between the defendant, the weapon, and the crime," and therefore, sufficient evidence to support the firearm enhancement to count X, conspiracy to commit first degree robbery. There was no error.

3. RCW 13.04.030(1)(e)(v), WHICH ASSIGNS EXCLUSIVE ORIGINAL JURISDICTION OF THE CRIMES AT ISSUE TO ADULT SUPERIOR COURT; AND RCW 9.94A.533, WHICH ALLOWS FOR THE FIREARM SENTENCE ENHANCEMENTS, COMPLY WITH THE EIGHTH AMENDMENT AS APPLIED BY RECENT DECISIONS SUCH AS ***MILLER v. ALABAMA*** AND ***MONTGOMERY v. LOUISIANA***.

The Eighth Amendment to the United States Constitution prohibits the infliction of "cruel and unusual punishments." *See also* Washington Const. Art. I, § 14 (prohibiting infliction of "cruel punishment"); ***State v. Witherspoon***, 180 Wn.2d 875, 887-91, 329 P.3d 888 (2014). The Eighth Amendment applies to the states through the Fourteenth Amendment. ***In re Boot***, 130 Wn.2d 553, 569, 925 P.2d 964 (1996) (quoting ***State v. Dodd***, 120 Wn.2d 1, 13 n. 2, 838 P.2d 86 (1992) (citing ***Robinson v. California***, 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962)). The Washington State constitutional provision is more protective than the Eighth Amendment in prohibiting cruel punishment. ***Witherspoon***, *supra*, at 887; *see also* ***State v. Fain***, 94 Wn.2d 387, 617 P.2d 720 (1980).

Generally, the determination of penalties or punishments for criminal offenses is a legislative function, and the power of the legislature in that respect is plenary and subject only to constitutional provisions. ***State v. Thorne***, 129 Wn.2d 736, 767, 921 P.2d 514 (1996)(persistent offenders)(citing ***State v. Mulcare***, 189 Wash. 625, 628, 66 P.2d 360 (1937)); ***State v. Ammons***, 105 Wn.2d 175, 181, 713 P.2d 719, 718 P.2d

796, *cert. denied*, 479 U.S. 930, 107 S. Ct. 398, 93 L. Ed. 2d 351 (1986)(Sentencing Reform Act).

In recent cases, the United States Supreme Court has examined the application of the Eighth Amendment to punishment for juveniles tried as adults. ***Roper v. Simmons***, 543 U.S. 551,568-75, 568-125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), held that the Eighth Amendment prohibits "the imposition of the death penalty on juvenile offenders under 18." ***Graham v. Florida***, 560 U.S. 48, 67-75, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2011), held that "the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender." ***Miller v. Alabama***, 132 S. Ct. 2455, 2469, 183 L. Ed. 2d 407 (2012), held that the "Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders" regardless of their crimes of conviction.

The federal courts have read ***Miller*** as prohibiting only *mandatory* life sentences for juveniles. In ***United States v. Jefferson***, 816 F.3d 1016 (8th Cir. 2016) the appeals court affirmed a 600-month sentence challenged under ***Miller***. The 8th Circuit pointed out that the sentence was imposed after the trial court considered the factors discussed in ***Roper***, ***Graham***, and ***Miller***. ***Jefferson***, at 1019, 1020. The court went on to recognize that the federal courts had "declined to apply *Miller's* categorical ban to discretionary life sentences." *Id.*, citing ***Davis v. McCollum***, 798 F.3d 1317, 1321–22 (10th Cir.2015); ***Croft v. Williams***,

773 F.3d 170, 171 (7th Cir.2014); ***Evans–Garcia v. United States***, 744 F.3d 235, 240–41 (1st Cir.2014); ***Bell v. Uribe***, 748 F.3d 857, 869 (9th Cir.2013), *cert. denied*, —— U.S. ——, 135 S. Ct. 1545 (2015).

In ***Roper***, ***Graham***, and ***Miller***, the U.S. Supreme Court established limits for punishment of juvenile offenders. However, none of these cases reversed or even criticized state or federal statutes assigning jurisdiction over serious crimes committed by juveniles to adult court. These decisions concern only the punishment imposed by a court, not the jurisdiction of the court imposing such punishment. Therefore, none of them erode this Court's holding in ***In re Boot***, 130 Wn.2d 553, 570, 925 P.2d 964 (1996) that "the Eighth Amendment is not violated if a youthful offender is tried as an adult[.]"

Other states also assign exclusive jurisdiction over serious crimes committed by older juveniles to adult court. *See, e.g.* Indiana (IC 31-30-1-4); Michigan (MCL 600.606); Ohio (Rev. Code 2152.10A); Wisconsin (W.S. 938.183, 970.032). In New York (Fam. Ct. Act §§301.2, 302.1) and North Carolina (NCGS §7B-1501(7), juvenile offenders over the age of 16, by definition, are excluded from juvenile court. However, the Supreme Court has neither found these statutes unconstitutional, nor criticized them.

In ***State v. Posey***, 174 Wn.2d 131, 135-136, 272 P. 3d 840 (2012)(***Posey*** II), this Court explained the "difference" and origin of the procedures and assignments of adult and juvenile courts. Under article IV,

§ 6 of the Washington State Constitution, the Superior Court has original jurisdiction over all felony cases. But, under Wash. Const. art. IV, § 5 the Legislature could promulgate laws that govern procedures and assignments or types of cases as to which "sessions" of the superior court will hear the matter. Therefore, the Legislature could create juvenile court. ***Posey*** II, at 136.

Where the Legislature has the power to create a special division or assign tasks in superior court, it may do the reverse. The Legislature may remove or re-assign cases to adult court.

Assignment of jurisdictional authority over a juvenile offender is a matter of legislative discretion. *Id.*; *see also* ***State v. Posey***, 161 Wn.2d 638, 167 P.3d 560 (2007)(***Posey*** I).

This Court has recognized the Legislature's intent in removing/vesting jurisdiction over juvenile offenders who commit violent crimes was to increase the potential punishment for certain offenders. ***Posey***, at 644, citing ***State v. Mora***, 138 Wn.2d 43, 50, 977 P.2d 564 (1999). This change came in 1994, where, in response to a perceived increase in violent crime, the Legislature decided to "get tough on crime," including older juveniles committing violent crime. *See* Laws of 1994, chapter 7, § 519 (S.S.H.B. 2319) Part I. Intent. Indeed, one of the primary "reforms" of the Juvenile Justice Act of 1977 was to remedy a perceived systemic laxity with juvenile offenders; that they be held "accountable." *See* RCW 13.40.010(2).

Although RCW 13.04.030(1)(e) is often referred to as the "automatic decline" statute, there is no "decline", but rather a specific assignment of jurisdiction. It provides, in relevant part:

> (1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:
> ...
> (e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:
> ...
> (v) The juvenile is sixteen or seventeen years old on the date the alleged offense is committed and the alleged offense is:
>
> (A) A serious violent offense as defined in RCW 9.94A.030;
>
> (B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately;
>
> (C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;
>
> (D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or
>
> (E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

> (I) In such a case the *adult criminal court* shall have *exclusive original jurisdiction*, except as provided in (e)(v)(E)(II) and (III) of this subsection.

RCW 13.04.030(1)(e)(v) (emphasis added).

In this case, both defendants, given the charged offenses, were subject to the exclusive original jurisdiction of the adult criminal court under RCW 13.04.030(1)(e)(v). *See* CP 1-4, 269-72.

In ***Boot***, 130 Wn.2d at 570-572, the Washington Supreme Court held that this original jurisdiction system does not violate the Eighth Amendment or due process protections. Indeed, as a number of Washington Supreme Court cases have held, a juvenile does not have a constitutional right to be tried in juvenile court. *See* ***State v. Salavea***, 151 Wn.2d 133, 140, 86 P.3d 125 (2004)(citing ***Boot***, 130 Wn.2d at 570–571 and other cases.) It found that "the Eighth Amendment is not violated if a youthful offender is tried as an adult or receives a sentence in adult criminal court extending beyond the offender's twenty-first birthday." ***Boot***, at 570.

In ***Montgomery v. Louisiana***, 577 U.S. ——, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016), the United States Supreme Court held that ***Miller*** announced a substantive rule of constitutional law that must be applied retroactively. While the Court did not completely exclude such sentences under the Eighth Amendment, the Court explained that ***Miller*** barred imposition of a sentence of life without parole, even for homicide

offenses, with the exception of "the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." ***Montgomery***, at 734. The Court went on to point out that:

> A State may remedy a ***Miller*** violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. *See, e.g.*, Wyo. Stat. Ann. § 6–10–301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.

Montgomery, 136 S. Ct. at 736.

Assignment of certain older juveniles who are charged with violent or other serious crimes to adult court is not punitive in nature. It dictates the forum and procedure to be utilized to determine the culpability of juvenile offenders charged with that class of crimes. The fact that the adult criminal court has exclusive original jurisdiction does not necessarily mean that rehabilitation or release will be denied. The same judges sitting as adult criminal court are just as capable of following the mandates of the United States Supreme Court as they are sitting as juvenile division. A judge sitting as adult criminal court must comply with the principles discussed and holdings of ***Roper***, ***Graham***, and ***Miller***. Here, in consideration of these factors and the age of the defendants, the trial court imposed a mitigated exceptional sentence of zero months, reasoning that the time required by the firearm enhancements was sufficient punishment.

The Legislature responded to these recent Supreme Court cases with RCW 9.94A.730(1), which permits the offender to petition for release after 20 years. The statute also requires the Department of Corrections (DOC) and the Indeterminate Sentence Review Board (ISRB) to examine the sentences and provide rehabilitative services "[n]o later than five years prior to the date when the offender will be eligible to petition for release" i.e. before the offender is 15 years into a sentence. The Legislature further modified the mandatory nature of the FASE and DWSE by amending RCW 9.94A.533 to permit early release under 9.94A.730. Section .728, regarding early release in general, was likewise amended.

The mandates of ***Graham***, ***Miller***, and ***Montgomery*** were not violated in this case through the imposition of the 312-month or 372-month sentences imposed by the trial court. CP 232-46, 428-42. RCW 9.94A.730 specifically complies with the requirements of ***Miller***, as explained in ***Montgomery***.

Because ***Boot*** remains good law, "the Eighth Amendment is not violated if a youthful offender is tried as an adult or receives a sentence in adult criminal court extending beyond the offender's twenty-first birthday." ***Boot***, 130 Wn.2d at 570.

Given this, and the fact that the sentences at issue here are consistent with the Eighth Amendment to the United States Constitution as interpreted by ***Roper v. Simmons***, 543 U.S. 551,568-75, 568-125 S. Ct.

1183 (2005), ***Graham v. Florida***, 560 U.S. 48, 67-75, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2011), and ***Miller v. Alabama***, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the defendant's convictions and sentences should be affirmed.

D. CONCLUSION.

In this case, while the juvenile defendants were sentenced to lengthy terms for the violent crimes they committed, the trial court considered the ages and total length of the potential incarceration before imposing the actual sentence. The defendants can petition for release after 20 years. DOC must assess the defendants and provide rehabilitative programming and services while they are incarcerated. It is fair to say that the trial court here and the statutory scheme in Washington complied with the letter and spirit of ***Roper***, ***Graham***, ***Miller***, and ***Montgomery***.

The State respectfully requests that the judgments, and the opinion of the Court of Appeals, be affirmed.

DATED: August 31, 2016.

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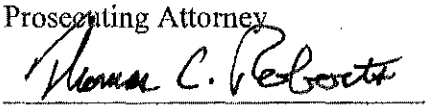

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Sent: Wednesday, August 31, 2016 2:02 PM
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Attached please find the Supplemental Brief of Respondent.