No. 18-9451

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Denzel Pittman — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Appellate Court of Illinois, First District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Denzel Pittman #M52471
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N/A
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QUESTIONS PRESENTED FOR REVIEW

I.

Whether certiorari should be granted to determine if a defendant, whose age falls on the adult side of the *Miller* bright line rule is entitled, under the Eighth Amendment to the United States Constitution to the same considerations as juveniles identified in *Miller* where, this Court does not address constitutional questions not before it and the plethora of scientific evidence this Court utilized in its *Miller* analysis indicates the brain does not reach maturity until the mid twenties with no distinction in brain development between 17-year old juveniles and 18-year old young adults.

II

Whether certiorari should be granted to determine if Article I, section 11 of the Illinois State Constitution which, is at least co-extensive with the Eighth Amendment to the United States Constitution violates the cruel and unusual punishments clause, where judges are not allowed to consider a defendant's chronological age and its hallmark features -- among them, immaturity, impetuosity, and failure to appreciate risks and consequences before sentencing an 18-year old young adult to a lifetime in prison without the possibility of parole.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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II

Certiorari should be granted to determine if Article I, section 11 of the Illinois State Constitution which is at least co-extensive with the Eighth Amendment

to the United States Constitution violates the cruel and unusual punishments clause, where judges are not allowed to consider a defendants chronological age and its hallmark features -- among them, immaturity, impetuosity, and failure to appreciate risks and consequences before sentencing an 18-year old young adult to a lifetime in prison without the possibility of parole. 28

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[X] reported at 2018 IL App (1st) 152030; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Illinois Supreme Court court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was November 28, 2018. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. ___A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 1, Section 11 of the Illinois Constitution which provides that all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.

The Eighth Amendment of the United States Constitution which Provides that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

STATEMENT OF THE CASE

Petitioner, Denzel Pittman was 18 years old when he was charged with three counts of first degree murder for the murders of Stacy Cochran, Jade Hannah, and Joi Cochran, who was stabbed to death. After a bench trial, petitioner was found guilty and sentenced to three concurrent terms of natural life in prison. Petitioner's presentence investigation report revealed a troubled upbringing and ongoing mental health problems that petitioner struggled with.

At the sentencing hearing, no facts, youth related or otherwise, about petitioner's social and family background, nor his physical or mental health, were discussed. Trial counsel, the State, and the trial court acknowledged and agreed that a natural life sentence was mandatory pursuant to 730 ILCS 5/5-8-1 (a)(1)(c)(ii), because there was more than one person murdered and Joi Cochran (11) was under the age of 12 at the time of the offense.

REASONS FOR GRANTING CERTIORARI

I

Certiorari should be granted to determine if a defendant, whose age falls on the adult side of the Miller bright line rule is entitled under the Eighth Amendment to the United States Constitution to the same consideration as juveniles identified in Miller where, this Court does not address constitutional questions not before it and the plethora of scientific evidence this Court utilized in its Miller analysis indicates the brain does not reach maturity until the mid-twenties with no distinction in brain development between 17-year old juveniles and 18-year old young adults.

In June 2012, this Court decided Miller v Alabama, 567 U.S. 460 (2012), which held that imposing on a juvenile offender a mandatory sentence of life without the possibility of parole, without consideration of the defendant's youth and its attendant characteristics, violated the eighth amendment.

Petitioner asserts that the national consensus disfavors applying mandatory life imprisonment without parole to 18-year olds and that the science indicates that the same indicia of youth that made mandatory imprisonment for life without parole unconstitutional for those under the age of 18 in Miller also applies to 18-year olds.

While this Court is bound by stare decisis petitioner

asserts that the application of Miller to an 18-year old is not contrary to Supreme Court precedent. As noted previously, Miller states, "[w]e therefore hold that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Miller, 567 U.S. at 465. Petitioner does not infer by negative implication that the Miller Court also held that mandatory life without parole is necessarily constitutional as long as it is applied to those over the age of 18. The Miller opinion contains no statement to that effect. "The Miller Court did not say anything about exceptions for adolescents, young adults, or anyone else unless younger than 18." Nothing in Miller states or even suggests that courts are prevented from finding that the Eighth Amendment prohibits mandatory life without parole for those over the age of 18. Doing so would rely on and apply the rule in Miller to a different set of facts not contemplated by the case, but it would not be contrary to that precedent. Cruz v United States, 2018 WL 1541898 at *14, N.15.

Such a reading of Miller is consistent with this Court's traditional "reluctance to decide constitutional questions unnecessarily." See Bowen v United States, 422 U.S. 916, 920 (1975). In Miller, it was unnecessary for this Court to address the constitutionality of mandatory life imprisonment for those over the age of 18 because both defendants in Miller were 14-years old. See Miller, 567 U.S. at 465. Therefore, the question of whether mandatory life imprisonment without parole

is constitutional for an 18-year old was not before this Court in Miller, and it would be contrary to this Court's general practice to opine on the question unnecessarily.

While it is true that this Court drew a bright line at 18-years old, which "theoretically" prevents courts from applying the rule in Miller to an 18-year old. See Roper v Simmons, 543 U.S. 551, 574 (2005) (recognizing that the line may be over- and under-inclusive, but stating nonetheless that "a line must be drawn"). However, when mandating lines, this Court has drawn different kinds of lines. By way of illustration, in Thompson v Oklahoma, 487 U.S. 815 (1988), this Court held that the death penalty was unconstitutional for offenders under the age of 16. Id. at 838. It was not until Stanford v Kentucky, 921 U.S. 361 (1989), rev'd by Roper, 543 U.S. at 574, however, that this Court held that the Eighth Amendment did not prohibit the execution of offenders ages 16 to 18. Id. at 380. In Stanford, this Court did not say that the ruling it set forth was found in the Thompson holding.

> "Indeed, Stanford was not redundant of Thompson because the line drawn in Thompson looked only in the direction of offenders under the age of 16 and found them to be protected by the Eighth Amendment. Thompson's line did not simultaneously apply in the other (i.e. older) direction to prohibit the Eighth Amendment from protecting those over the age of 16. In contrast, Stanford's line did." Leue, 2018 WL 1541898 at * 15.

This distinction between the type of line drawn in Thompson and the type of line drawn in Stanford is reflected in the difference in this Court's treatment of these two cases in Roper v Simmons.

"In deciding that the death penalty was unconstitutional as applied to offenders under the age of 18, the Roper Court considered itself to be overturning Stanford, but not Thompson. Compare Roper, 548 U.S. 551, 574 (Stanford v Kentucky should be deemed no longer controlling on this issue.") with id. ("In the intervening years the Thompson plurality's conclusion that offenders under 16 may not be executed has not been challenged. The logic of Thompson extends to those who are under 18.") If [Illinois'] argument that the line drawn in Miller prevents the [State] court from applying its rule to an 18-year old were correct, the same logic applied to the line drawn in Thompson would have required Roper to overturn Thompson rather than relying on and endorsing it. The language in Roper, however, makes clear that the Court endorsed, rather than overturned, Thompson. See Roper, 548 U.S. at 574.

In drawing the line at 18 then, Roper, [Graham v Florida, 560 U.S. 48 (2010)], and Miller drew lines similar to that in Thompson, protecting offenders that fall under the line while remaining silent as to offenders that fall above the line. In the case of mandatory life imprisonment without parole, no Supreme Court precedent draws a line analogous to that in

Stanford. Therefore, while [petitioner] recognizes that [the state court] is undoubtedly bound by Supreme Court precedent, [petitioner] identifies no Supreme Court precedent that would preclude [the state court] from applying the rule in Miller to an 18-year old defendant." Cruz, 2018 WL 1541898, at * 15.

The Eighth Amendment's prohibition of cruel and unusual punishment requires that "punishment for crime should be graduated and proportioned to [the] offense." Roper, 543 U.S. at 560 (internal quotation marks omitted). This proportionality principle requires the court to evaluate "the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual." Id. at 561 (quoting Trop v Dulles, 356 U.S. 86, 100-01 (1958)).

In 2005, the Roper Court held the death penalty unconstitutional for persons under the age of 18 and, in drawing that line, stated:

"Drawing the line at 18-years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. The plurality in Thompson drew the line at 16. In the intervening years the Thompson

plurality's conclusion that offenders under 16 may not be executed has not been challenged. The logic of Thompson extends to those who are under 18. The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude the age at which the line for death eligibility ought to rest."

Cruz, 2018 WL 1541898 at *17, quoting Roper, 543 U.S. at 574. The Roper Court relied on national consensus and the diminished penological justification resulting from the hallmark characteristics of youth. See id. at 567, 572-73. In Roper, the defendant was 17-years and five-months old at the time of the murder. Id. at 556, 618.

In 2010, this Court in Graham v Florida extended the reasoning in Roper to find that life imprisonment without parole is unconstitutional for juvenile nonhomicide offenders. See Graham v Florida, 560 U.S. 48, 74 (2010). Like the Roper Court, the Graham Court again considered national consensus and the fact that the characteristics of juveniles undercut the penological rationales that justified life without parole sentences for nonhomicide offenses. See id. at 62-69, 71-74. In Graham, the defendant was 16 at the time of the crime. See id. at 53. Thus, the Graham Court did not need to reconsider the line drawn at age 18 in Roper, but rather adopted that line without further analysis, quoting directly from Roper. See id. at 74-75 ("Because '[t]he age of 18 is the point where society draws the line

for many purposes between childhood and adulthood, 'those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime.'" (quoting Roper, 543 U.S. at 574)).

In 2012, this Court further extended Graham to hold that mandatory life imprisonment without parole is unconstitutional for juvenile offenders, including those convicted of homicide. See Miller, 567 U.S. at 465. The defendants in Miller were 14 years old at the time of the crime, and the Miller Court, like the Graham Court, adopted the line drawn in Roper at age 18 without considering whether the line should be moved or providing any analysis to support that line. See id. at 465 ["We therefore hold that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'"]

In the cause sub judice, petitioner was 18 years and 30 weeks old at the time of the murders and this Court is now presented with a set of facts it has not yet had need to consider -- whether the new rule in Miller can be applied to an 18-year old. In considering this question, this Court should look to the same factors it considered in Roper, Graham, and Miller -- national consensus and developments in the scientific evidence on the hallmark characteristics of youth. Petitioner asserts that this Court need only decide whether the rule in Miller applies to an 18-year old. On the facts of this case, it need not decide whether Miller also applies

to a 19-year old or a 20-year old, as petitioner was 18-years old at the time of his crime. See Bowen, 422 U.S. at 920 [the Supreme Court traditionally is "reluctan[t] to decide constitutional questions unnecessarily."]

i. National Consensus

The decisions in Roper, Graham, and Miller all address "whether 'objective indicia of society's standards, as expressed in legislative enactments and state practice,' show a 'national consensus' against a sentence for a particular class of individuals." Miller, 567 U.S. at 482 (quoting Graham, 560 U.S. at 61). In Roper, this Court identified three "objective indicia of consensus" in determining that societal standards considered the juvenile death penalty to be cruel and unusual: (1) "the rejection of the juvenile death penalty in the majority of states;" (2) "the infrequency of its use even where it remains on the books;" and (3) "the consistency in the trend toward abolition of the practice." Roper, 543 U.S. at 562.

a. Legislative Enactments

"[T]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." Graham, 560 U.S. at 62 (internal quotation marks and citation omitted).

However, this Court in both Graham and Miller indicated that merely counting the number of states that permitted the punishment was not dispositive. See Graham, 560 U.S. at 62 ("The evidence of consensus is not undermined by the fact that many jurisdictions do not prohibit life without parole for ju-

venile nonhomicide offenders."); Miller, 567 U.S. at 485 (relying on reasoning in Graham and Thompson to "explain[] why simply counting [the statutes] would present a distorted view").

The reasoning of this Court in Miller that the tally of legislative enactments is less significant than other considerations to its ultimate conclusion is also applicable to the current issue before this Court. The Miller Court reasoned:

> "For starters, the cases here are different from the typical one in which we have tallied legislative enactments. Our decision does not categorically bar a penalty for a class of offenders or type of crime -- as for example, we did in Roper or Graham. Instead, it mandates only that a sentence follow a certain process -- considering an offender's youth and attendant circumstances -- before imposing a particular penalty. And in so requiring, our decision flows straightforwardly from our precedents: specifically, the principle of Roper, Graham, and our individualized sentencing cases that youth matters for purposes of meting out the law's most serious punishments. When both of those circumstances have obtained in the past, we have not scrutinized or relied in the same way on legislative enactments.

Miller, 567 U.S. at 483. Because the issue before this Court now is whether to apply Miller to an 18-year old, the same circumstances identified above in Miller are necessarily also true here, so the Court need not rely too heavily on legislative enactments. Petitioner asks this Court to rule that the mandatory

aspect of the sentences applied to him be held to be unconstitutional. He does not seek a ruling that would prevent such a sentence from being applied in the discretion of the sentencing judge, after consideration of a number of sentencing factors, including his youth, immaturity, and mental health problems at the time of the offense.

Additionally, it should be noted that since the Miller Court's decision, a number of states have enacted a number of statutes providing greater protections to offenders ages 18 into the early 20's than to adults. A number of states now recognize an intermediate classification of "youthful offenders" applicable to some other crimes -- 18 year olds are classified as "youthful offenders" in California, Colorado, Florida, New Mexico and New York. Additionally, 16 states provide protections, such as expedited expungement, youth offender programs, separate facilities, or extended juvenile jurisdiction, for offenders who are 18 years old up to some age in the early 20's, depending on the state. Petitioner asserts these statutes indicate a recognition of the difference between 18 year olds and offenders in their mid-twenties for purposes of criminal culpability.

Petitioner acknowledges that these statutes are not persuasive of a national consensus because the question is not whether there is a national consensus that the adolescent brain is not mature until the mid 20's, but rather whether there is a national consensus about the sentencing practice at issue. See Graham, 560 U.S. at 61 (describing the inquiry as whether "there is a national consensus against the sentencing practice at issue").

while this is a correct representation of the national consensus at issue, petitioner asserts that this Court should also consider other evidence of line drawing between juveniles and adults to still be relevant. In drawing the line at age 18 the Roper Court pointed to evidence beyond the strict context of the death penalty. See Roper, 543 U.S. at 574 ("The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.") Petitioner acknowledges this Court places greater weight on national consensus about mandatory life imprisonment without parole, this Court, like the Roper Court, should also consider "where society draws the line for many purposes between childhood and adulthood" to be a relevant consideration. Id.

b. Actual Use

In finding the government's reliance on counting to be "incomplete and unavailing," the Graham Court emphasized the importance of actual sentencing practices as part of the Court's evaluation of national consensus. Graham, 560 U.S. at 62. To this extent petitioner directs the Court's attention to a 2017 Report by the United States Sentencing Commission on offenders ages 25 or younger who were sentenced in the federal system between 2010 and 2015. See United States Sentencing Commission, Youthful Offenders in the Federal System, Fiscal Years 2010 to 2015 ("Youthful Offenders"). Although the Sentencing Commission's findings are imperfectly tailored to the question before the Court, they nonetheless indicate the rarity with which life

sentences are imposed on 18-year olds like petitioner, at least in the federal system. The Graham Court was faced with this same situation and stated: "Although it is not certain how many of these numerous juvenile offenders were eligible for life without parole sentences, the comparison suggests that in proportion to the opportunities for its imposition, life without parole sentences for juveniles convicted of nonhomicide crimes is as rare as other sentencing practices found to be cruel and unusual." Graham, 560 U.S. at 66; see also Roper, 543 U.S. at 567 (including as a separate indicia of consensus "the infrequency of [the punishment's] use even where it remains on the books," independent of the indicia for legislative enactments or directional trends). Thus, while certainly not dispositive of national consensus, the Sentencing Commission's Report is relevant evidence this Court should consider on that issue. To that end, the Report clearly indicates the extreme infrequency of the imposition of life sentences on 18-year olds in the federal system.

c. Directional Trends

There exists evidence of trends since Roper indicating a direction of change toward recognizing that "late adolescents require extra protections from the criminal law" and more generally that society "treats eighteen- to twenty-year olds as less than fully mature adults." Cruz, 2018 WL 1541898, *21. Again, petitioner recognizes the issue is whether "there is a national consensus against the sentencing practice at issue," not whether there is a national consensus that adolescent brains are not fully mature until the mid 20's. Graham, 560 U.S. at 61

The most persuasive evidence of a directional trend would be changes in state legislation prohibiting mandatory life imprisonment without parole for 18-year olds. This Court should look for guidance on this issue to the Roper Court, which drew the line at age 18 based on "where society draws the line for many purposes between childhood and adulthood." Roper, 543 U.S. at 574. Thus, trends as to where society draws that line are relevant, and this Court is not confined to consider only evidence in the strict context of mandatory life imprisonment without parole. Cruz, 2018 WL 1541898 at *21.

While Roper emphasized that society draws the line at age 18 for many purposes, including voting, serving on juries, and marrying without parental consent, there are now other important societal lines that are drawn at age 21, such as drinking. Roper, 543 U.S. at 587. Some lines originally drawn at age 18 have also begun to shift to encompass 18- to 20-year olds. For example, a Kentucky state court in Bredhold v Kentucky declared the state's death penalty statute unconstitutional as applied to those under the age of 21 based on a finding of a "consistent direction of change" that "the national consensus is growing more and more opposed to the death penalty as applied to defendants (18) eighteen to twenty-one (21)." Bredhold v Kentucky, [Doc No. 115-5] at 6. The Kentucky court cited the fact that, in the 31 states with a death penalty statute, a total of only 9 defendants under the age of 21 at the time of the offense were executed

between 2011 and 2016. Cruz, 2018 WL 1541898, at *21.

Likewise, recognizing the same directional trend, the American Bar Association ("ABA") issued a resolution in February 2018, "urg[ing] each jurisdiction that imposes capital punishment to prohibit the imposition of a death sentence on or execution of any individual who was 21-years old or younger at the time of the offense. id. citing ("ABA Resolution"). In doing so, the ABA considered both increases in scientific understanding of adolescent brain development and legislative developments in the legal treatment of individuals in late adolescence. Cruz, 2018 WL 1541898 at *21, citing Petitioner's Notice of Supplemental Authority (Doc. No. 121-1) at 6-10. For example, it recognized "a consistent trend toward extending the services of traditional child-serving agencies, including the child welfare, education, and juvenile justice systems, to individuals over the age of 18. id. at 10.

Additionally, between 2016 and 2018, 5 states and 285 localities raised the age to buy cigarettes from 18 to 21. Cruz, 2018 WL 1541898 at *22, citing Campaign for Tobacco-Free Kids, States and Localities That Have Raised the Minimum Legal Sale Age for Tobacco Products to 21. Furthermore, as of 2016, all fifty states and the District of Columbia recognized extended age jurisdiction for juvenile courts beyond the age of 18, in comparison to only 35 states in 2003. id. citing National Center for Juvenile Justice, U.S. Age Boundaries of Delinquency, 2016; Elizabeth Scott, Richard Bonnie & Laurence Steinberg, Young Adulthood as a Traditional Legal Category, 85 Fordham L. Rev.

641, 646 N. 156 (2016).

While there is no doubt that some important societal lines remain at age 18, the changes discussed above reflect an emerging trend towards recognizing that 18-year olds should be treated different from fully mature adults.

2. Scientific Evidence

"Community consensus, while entitled to great weight, is not itself determinative of whether a punishment is cruel and unusual." Graham, 560 U.S. at 62 (internal quotation marks omitted). The court retains the responsibility of interpreting the Eighth Amendment. Id. (citing Roper, 543 U.S. at 575). To that end, "[t]he judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question." Id. at 67.

This Court in Roper, Graham, and Miller thus looked to the available scientific and sociological research at the time of the decisions to identify differences between juveniles under the age of 18 and fully mature adults -- differences that undermine the penological justifications for the sentences in question. See Roper, 543 U.S. at 569-72; Graham, 560 U.S. at 68-75; Miller, 567 U.S. at 471 ("Our decisions rested not only on common sense -- on what "any parent knows" -- but on science and social science as well.") This Court, in these cases identified "[t]hree general differences between juveniles under 18 and adults": (1) that juveniles have a "lack of maturity and an underdeveloped sense of responsibility,"

often resulting in "impetuous and ill-considered actions and decisions;" (2) that juveniles are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;" and (3) that "the character of a juvenile is not as well formed as that of an adult." Roper, 543 U.S. at 569-70; see also Graham, 560 U.S. at 68; Miller, 562 U.S. at 471-72.

Because of these differences, this Court concluded that juveniles are less culpable for their crimes than adults and therefore the penological justifications for the death penalty and life imprisonment without the possibility of parole apply with less force to them than to adults. See Roper, 543 U.S. at 570-71; Graham, 560 U.S. at 69-74; Miller, 562 U.S. at 472-73. Retribution is less justifiable because the actions of a juvenile are less morally reprehensible than those of an adult due to diminished culpability. See Graham, 560 U.S. at 72. Likewise, deterrence is less effective because juveniles' "impetuous and ill-considered actions" make them "less likely to take a possible punishment into consideration when making decisions." Id. at 72. Nor is incapacitation applicable because juveniles' personality traits are less fixed and therefore it is difficult for experts to "differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." Id. at 72-73 (quoting Roper, 543 U.S. at 573). Finally, rehabilitation cannot be the basis for life imprisonment without parole because that "penalty altogether forswears the

rehabilitative ideal" by "denying the defendant the right to reenter the community." Id. at 74.

In reaching its decision, the Roper Court relied on the Court's prior decision in Thompson v Oklahoma, 487 U.S. 815 (1988), which held that the Eighth Amendment prohibited the execution of a defendant convicted of a capital offense committed when the defendant was younger than 16-years old. See Roper, 543 U.S. at 570-71. The Roper Court pointed to the Thompson Court's reliance on the significance of the distinctive characteristics of juveniles under the age of 16 and stated, "We conclude the same reasoning applies to all juvenile offenders under 18." Id. This Court should now look to the Roper Court's reliance on these same characteristics and conclude that scientific developments since Roper indicate that the same reasoning also applies to an 18-year old. Cruz, 2018 WL 1541898 at * 23 citing Dr. Steinberg's testimony; TR. at 70-71 (stating that he is "absolutely certain" that the scientific findings that underpin his conclusions about those under the age of 18 also apply to 18-year olds); Alexandra Cohen, et. al., When does a Juvenile Become an Adult? Implications for Law and Policy, 88 Temple L. Rev. 769 (2016); Laurence Steinberg, et. al., Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self Regulation, Developmental Science 00 (2017).

As to the first characteristic identified by the Roper Court -- "lack of maturity and an underdeveloped sense of responsibility" as manifested in "impetuous and ill considered actions and decisions" -- the scientific evidence presented in

Cruz, according to the court, "clearly establishes that the same traits are present in 18-year olds." Cruz, 2018 WL 1541898 at *23, citing Roper, 543 U.S. at 569. Cruz's evidence consisted of the expert testimony of Dr. Laurence Steinberg and scientific articles offered as exhibits. See e.g. Cohen et. al., When does a Juvenile Become an Adult?; Steinberg, et. al., Around the World.[1]

In his testimony, Dr. Steinberg defined early adolescence as occurring between the ages of 10 and 13, middle adolescence between the ages of 14 and 17, and late adolescence between the ages of 18 and 21. Cruz, 2018 WL 1541898 at *23 citing Steinberg testimony, Tr. at 11. Steinberg distinguished between two different decision-making processes: cold cognition, which occurs when an individual is calm and emotionally neutral, and hot cognition, which occurs when an individual is emotionally aroused, such as in anger or excitement. Steinberg Tr. 9-10. Cold cognition relies mainly on basic thinking abilities while hot cognition also requires the individual to regulate and control his emotions. Steinberg Tr. at 10. While the abilities required for cold cognition are mature by around the age of 16, the emotional regulation required for hot cognition is not fully mature until the early or mid 20's. Steinberg Tr. at 10, 70; see also, Cohen et al, When does a Juvenile Become an Adult?, at

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[1] In Cruz the Government did not challenge Dr. Steinberg's expertise or his "scientific opinion on these matters." Cruz, N. 21

780 (finding that "relative to adults over twenty-one, young adults show diminished cognitive capacity, similar to that of adolescents, under brief and prolonged negative emotional arousal").

Dr. Steinberg also testified that late adolescents "still show problems with impulse control and self-regulation and heightened sensation-seeking, which would make them in those respects more similar to somewhat younger people than to older people. Steinberg Tr. at 19. For example, he testified that impulse control is still developing during the late adolescent years from age 10 to the early or mid-20s. Steinberg Tr. at 20; Cohen et al. at 780. Additionally, late adolescents are more likely to take risks than either adults or middle or early adolescents. Steinberg Tr. at 20. According to Dr. Steinberg, risk-seeking behavior peaks around ages 17 to 19 and then declines into adulthood. See id.; Steinberg et al., Around the world, at 10 (graphing the trajectory of sensation-seeking behavior as related to age, as an upside-down "U" with the peak at age 19). The scientific evidence therefore reveals that 18-year olds display similar characteristics of immaturity and impulsivity as juveniles under the age of 18. See Cruz, 2018 WL 1541898 at *23.

The same conclusion can be drawn for susceptibility of 18-year olds to outside influences and peer pressure, the second characteristic of youth identified in Roper. Cruz, at *24. Dr. Steinberg testified that the ability to resist peer pressure is still developing during late adolescence. See Steinberg Tr. at 20-21. Therefore, susceptibility to peer pressure is higher in late adolescence than in adulthood, but slightly

lower than in middle adolescence. See id. According to Dr. Steinberg's research, up until the age of 24, people exhibit greater risk-taking and reward-sensitive behavior when in the presence of their peers. See id., at 24-25. Adults after the age of 24 do not exhibit this behavior, but rather perform the same whether they are by themselves or with their peers. See id. Therefore, like juveniles under the age of 18, 18-year olds also experience similar susceptibility to negative outside influences. Cruz, 2018 WL 1541898 at *24.

Finally, on the third characteristic of youth identified by Roper -- that a juvenile's personality traits are not as fixed -- Dr. Steinberg testified that people in late adolescence are, like 12-year olds, more capable of change than are adults. Cruz, 2018 WL 1541898 at *24; citing Steinberg Tr. at 21.

In sum, Dr. Steinberg testified that he is "absolutely confident" that development is ongoing still in late adolescence. See Steinberg Tr. at 62. In 2003, Dr. Steinberg co-wrote an article, the central point of which was that adolescents were more impetuous, were more susceptible to peer pressure, and had less fully formed personalities than adults. See id. at 22; see also Laurence Steinberg & Elizabeth Scott, Less Guilty By Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychol. 1009 (2003). Although the article focused on people younger than 18, Dr. Steinberg testified that, if he were to write the article today, with the developments in scientific knowledge about late adolescence, he would say "the same things are true about people who are

younger than 21." Steinberg Tr. at 22.

The issue petitioner is presenting to the Court is whether the conclusions of Miller can be applied to the petitioner, an 18-year old. Dr. Steinberg testified that he was not aware of any statistically significant difference between 17-year olds and 18-year olds on issues relevant to the three differences identified by this Court in Roper, Graham, and Miller. See id. at 69; see also supra, at 48-49. When asked whether he could state to a reasonable degree of scientific certainty that the findings that underpinned his conclusions as to the defendants in Graham and Miller, who were under the age of 18, also applied to an 18-year old, Dr. Steinberg answered that he was "[a]bsolutely certain." See id. at 70-71.

The Government did not contest Dr. Steinberg's scientific opinion or with Cruz's presentation of the scientific findings. To be clear, the Government did not, and has not taken issue with Professor Steinberg's scientific opinion on these matters. Cruz, 2018 WL 1541898 at *24. Rather, the Government argues only that the court has before it the same scientific evidence that was before this Court in Miller, so the court should draw the same line at age 18 as did the Miller Court. id. at *24.

The Government's comparison is misguided, however, be this Court in Miller did not have occasion to consider whether the indicia of youth applied to 18-year olds. As discussed above, this Court has historically been "reluctan[t] to

decide constitutional questions unnecessarily." See Bowen, 422 U.S. at 920. In Miller, both defendants were 14-years old at the time of their crimes. See Miller, 567 U.S. at 465. The issue before this Court in Miller was whether mandatory life imprisonment without the possibility of parole was unconstitutional for juvenile offenders who committed homicides. See id. Thus, the Miller Court merely adopted without analysis the line drawn at age 18, drawn seven years earlier by the Roper Court, because the facts before the Court did not require it to reconsider that line. See Miller, 567 U.S. at 471-480. As evidence of this, when this Court asked counsel for Miller where to draw the line, rather than pointing to any scientific evidence, counsel answered, "I would draw it at 18... because we've done that previously; we've done that consistently." Cruz, 2018 WL 1541898 at *25; citing Miller, oral argument transcript at 10.

The Cruz court contends that a more appropriate comparison, then, would be the evidence before court today and the evidence before the Roper Court in 2005. id. at *25. Dr. Steinberg testified that, in the mid- to late-2000s, "virtually no research... looked at brain development during late adolescence or young adulthood." Steinberg Te. at 14. He stated:

> People began to do research on that period of time toward the end of that decade and as we moved into 2010 and beyond, there began to accumulate some research on development in the brain beyond age 18, so we didn't know a great deal about brain

development during late adolescence until much more recently.

Id. Therefore, when the Roper Court drew the line at age 18 in 2005, this Court did not have before it the record of scientific evidence about late adolescence that is now available. Cruz, 2018 WL 1541898 at *25.

Thus, relying on both the scientific evidence and the societal evidence of national consensus, the court concludes that the hallmark characteristics of juveniles that make them less culpable also apply to 18-year olds. Id. As such, the penological rationales for imposing mandatory life imprisonment without the possibility of parole cannot be used as justification when applied to an 18-year old. Id.

The Cruz court held, "that Miller applies to 18-year olds and thus that 'the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole' for offenders who were 18-years old at the time of their crimes." Id., citing Miller, 567 U.S. at 479. As applied to 18-year olds as well as to juveniles, "[b]y making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." Id. citing Miller, 567 U.S. at 479.

This Court should grant certiorari to determine if Miller, based on the plethora of recent scientific evidence applies to 18-year olds.

CONCLUSION

For the foregoing reasons, Denzel Pittman, petitioner, respectfully requests that a Writ of Certiorari be issued to the Appellate Court of Illinois, First Judicial District.

Respectfully submitted,
Denzel Pittman Pro-se.
Denzel Pittman, PRO-SE.
P.O. Box 1000, # M-52471
Menard, Illinois 62259-0100

Date: May 13, 2019

Punjabi

Received 11/28/18

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November 28, 2018

In re: People State of Illinois, respondent, v. Denzel Pittman, petitioner.
Leave to appeal, Appellate Court, First District.
123410

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 01/02/2019.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

Appx. [C]

FOURTH DIVISION
March 15, 2018

No. 1-15-2030

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 00155
	)	
DENZEL PITTMAN,	)	Honorable
	)	Timothy J. Joyce,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court, with opinion.
Presiding Justice Burke and Justice Gordon concurred in the judgment and opinion.

OPINION

¶ 1 Following a bench trial, defendant Denzel Pittman was found guilty of the first degree murders of his girlfriend Jade Hannah, age 17; her mother Stacy Cochran, age 43; and her younger sister Joi Cochran, age 11. The trial court subsequently sentenced defendant to a mandatory term of natural life in prison. On appeal, defendant does not challenge his conviction but argues that the imposition of the mandatory natural life sentence violates the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution because he was 18 years old at the time of the murders.

¶ 2 Because defendant does not challenge his conviction, we will discuss the evidence presented at defendant's March 2015 bench trial only as necessary to understand the facts of the case to consider his sentencing claims.

¶ 3 Defendant was arrested and charged with the stabbing deaths of Jade Hannah, Stacy Cochran, and Joi Cochran at their residence, located at 11106 South Bell Avenue in Chicago.

Appx [A]
Pages 1-20

The victims lived in a second floor apartment of a multiunit building comprised of six apartments, with two apartments on each floor. The family moved into the building in approximately August 2010. Linda Abraham lived on the second floor across the hall from the victims. The Thompson family, comprised of Arthur and Sherry Thompson, their daughter Courtney, and Courtney's son, lived in the first floor unit underneath Abraham's apartment.

¶ 4 On November 29, 2010, at approximately 9:40 p.m., Courtney Thompson arrived home from work and observed Jade sitting on the steps between the first and second floors with defendant. Courtney went into her apartment and heard Jade and defendant talking, but could not understand what they were saying. She began to work on a computer near the front door of the apartment. Her parents were in their bedroom watching television. A short time later, all three heard screams and a female child calling for her mother. Arthur got out of bed and opened the front door to the apartment. The screams had stopped when he opened the door. He immediately directed his wife to call 911. All three came into the hall and observed Jade lying face down on the landing between the first and second floors. Sherry was a nurse, and she attempted to resuscitate Jade after determining that Jade did not have a pulse. When Sherry turned Jade over, she observed stab wounds in her neck and chest. As she attempted CPR, Sherry noticed air coming from the stab wounds.

¶ 5 As Sherry was working on Jade, defendant came out of the victims' apartment and closed the door. He asked Sherry if the police had been called and if they saw who did it. He said he was going to find the offender. Courtney and Arthur observed blood on defendant's clothing. As he was leaving, he came back to retrieve his jacket, which was on the banister in the hallway. The Thompsons gave a description of the offender to police. Courtney and Arthur subsequently

identified defendant as the individual leaving the victims' apartment in separate viewings of a lineup.

¶ 6 Abraham testified that she heard screams in her apartment and thought it was children playing. She went to her door and looked out her peephole. She observed a young man from the side with his fist moving rapidly up and down. She stated that it looked like the man was punching someone, but she was unable to see who or what he was punching. Abraham said the young man was holding up the person with his other hand. She did not observe a knife. She described the young man as African-American and medium height. As she watched, she observed the young man move out of sight into the apartment. She stepped away from the door to change into clothing from nightwear. While she changed, she heard screaming from the back of the victims' apartment. She then looked through the peephole and saw the young man and did not hear any screaming. She testified that she was "distraught." She waited to open the door until it was quiet. When she opened the door, she heard voices that she recognized as the Thompsons. She came out and observed blood on the wall. She also observed Sherry attempting to resuscitate Jade. When the police arrived, they directed the officers to the apartment.

¶ 7 Lieutenant Michael Ryan arrived on the scene right behind the paramedics. The paramedics immediately began to work on Jade but indicated to him that she was deceased. He went to the apartment and knocked. When he received no response, he entered the unit. He observed Stacy "laying in a pool of blood" just inside the unit. There were crutches nearby, which was later explained was due to Stacy's recent surgery. He went to the back of the apartment and observed Joi's legs also "in a pool of blood." He and an officer went through the apartment and determined that no one else was present. He stationed officers outside the apartment to keep the scene secure until the forensic team arrived. He then responded to a radio

call of a sighting of the suspect. A forensic officer testified that the back door to the unit was closed and locked, stating that one of the locks required a key to open and the key was not present to open the door. He subsequently found a key and observed no damage to the door.

¶ 8 Joseph Banks testified that he lived about three blocks from the scene. On November 29, 2010, at around 10:30 p.m., he was watching television with his wife when defendant walked up to their house and knocked on the door. He opened the inner door but left the outer door closed. He observed defendant as dirty, shaking, and out of breath. Defendant told Banks that he had lost his keys and asked to use their phone to make a call. Banks passed a phone to defendant on the porch. He heard defendant tell his mother to come and get him. Defendant then handed the phone back to Banks. Banks did not observe any blood on the phone. Defendant left. Banks hit redial on the phone and the call was answered by a person who identified herself as defendant's mother. Banks then observed several police cars speed past his house. He called 911 to report his encounter with defendant.

¶ 9 At approximately 10:30 p.m., police officers received call with a description of the offender on the radio. One officer testified that he and his partner observed an individual matching the description. They pulled over, announced their office, and asked defendant to come over, but defendant fled on foot. The officer's partner gave chase on foot, but they did not take him into custody. The officer radioed that defendant was running. Another officer testified that he received the description and toured the area. He observed defendant behind some bushes near a retirement home. When the officer announced his office, defendant fled around the building. Lieutenant Ryan then arrived at the scene. Defendant was taken into custody by the officer, and Lieutenant Ryan read defendant his *Miranda* rights. Defendant told Lieutenant Ryan that he was

coming from his girlfriend's house on Bell, and when asked what happened, defendant said he was "just defending myself."

¶ 10 Forensic scientists testified that DNA samples were taken from defendant's pants and compared to DNA profiles of the victims. The scientist testified that a DNA profile taken from one clipping of defendant's pants matched Stacy's DNA profile within a reasonable degree of scientific certainty. This DNA profile would be expected to occur in approximately 1 in 11 quadrillion black, 1 in 210 quadrillion white, or 1 in 15 quadrillion Hispanic unrelated individuals. A second clipping from defendant's pants matched Joi's DNA profile within a reasonable degree of scientific certainty. This DNA profile would be expected to occur in approximately 1 in 6.7 quadrillion black, 1 in 220 quadrillion white, or 1 in 100 quadrillion Hispanic unrelated individuals. A third mixed sample from defendant's pants could not exclude Jade, but could exclude Stacy and Joi. The DNA profile could be expected to occur in approximately 1 in 520 million black, 1 in 1.7 billion white, or 1 in 700 million Hispanic individuals. The medical examiner testified that all victims suffered multiple stab wounds, which were fatal, and the manner of death was homicide. Specifically, he testified that Jade suffered 22 stab wounds, Stacy suffered 38 wounds, and Joi suffered 12 wounds. He also stated that Jade had ligature marks around her neck where she was wearing a chain and her jaw bone was fractured.

¶ 11 Thomas Johnson testified that in December 2010, he was an inmate in the Cook County jail with pending cases and was assigned to a cell with defendant for four days. Johnson stated that defendant initially told him he was charged with a shooting but later said he was charged with three murders. According to Johnson, defendant told him that his girlfriend was cheating on him and he "lost it." Defendant said that if he could not have her, then he did not want anyone to have her. Defendant stabbed her with a pocket knife. While he was stabbing Jade, her mother

came out with a knife. Defendant then stabbed Stacy and then looked for Joi and stabbed her because he did not want her to identify him. He worried that the neighbors saw him, and he had blood on his clothing. Defendant said he threw away the knife. He told Johnson that he did not feel bad about killing Jade and Stacy, but he felt bad about killing Joi.

¶ 12 Johnson testified that he discussed defendant's defense. Johnson told defendant to plead insanity, but defendant wanted to claim self-defense since Stacy cut his hand. Johnson admitted that he planned to use his testimony to benefit his pending criminal cases, but he did not receive any benefit for his testimony.

¶ 13 A Park Forest police officer testified that in May 2010, he was assigned as a juvenile officer to a domestic battery case involving defendant, who was under 18 at that time, and Jade. After defendant was read his *Miranda* rights, defendant stated that he and Jade had an argument at his house and he prevented her from leaving by grabbing her shirt and he pushed her. The officer observed Jade with a red mark on the right side of her face and a scratch on her neck.

¶ 14 After the State rested, defendant moved for a directed finding, which the trial court denied. Defendant rested without presenting any evidence. Following arguments, the trial court observed that the evidence was "overwhelming" and found defendant guilty of the first degree murders of Jade, Stacy, and Joi.

¶ 15 Subsequently, defendant reported having psychological issues and requested a fitness examination. Defendant was found fit for sentencing. Defendant filed a motion for a new trial, which the trial court denied.

¶ 16 At sentencing, the State presented defendant's birth certificate, showing that he was 18 years old at the time of the murders, and Joi's birth certificate, showing she was 11 years old at the time of her death. The State presented victim impact statements from family members, two of

the statements were read before the court. Defendant submitted letters from his mother, grandmother, and grandfather. The State argued for consecutive sentences. Defense counsel conceded that the case required a sentence of natural life and argued for the sentences to run concurrently.

¶ 17 The trial court stated that it reviewed the presentence investigation report and listened to arguments of the attorneys as well as the evidence in aggravation and mitigation. The court then made the following findings.

> "The Court would note, as the State has clearly proved, that [defendant] was 18 years old at the time of the commission of these offenses. Consequently, the application of cases such as [*Miller v. Alabama*, 567 U.S. 460 (2012)] out of the United States Supreme Court, [*People v. Davis*, 2014 IL 115595], perhaps even [*People v. Miller*, 202 Ill.2d 328 (2002)], two latter cases from our Illinois Supreme Court, are not by their terms applicable because [defendant] was not a juvenile at the time of this offense, but had attained his majority and was 18 years old when he murdered Jade, Stacy, and Joi.
>
> As both sides point out, there is only one sentence that could be pronounced, configured in one way or another, and that's a sentence of natural life. The Court has no discretion in that regard as required by Section 5-8-1(a)(1)(c)(2) of the Unified Code of Corrections [(730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2014))] which requires the Court to sentence someone to natural life when they are found guilty of murdering someone under the age of 12, which applies with respect to Joi Cochran, and if they

are found guilty of murdering more than one individual, which again is certainly the case here. But beyond pronouncing any sentence, it flows automatically or I should suppose mandatorily under the law, there's still a couple of facts and circumstances that bear noting.

The facts of this case are beyond disquieting. They show a course of conduct that began with what [defendant] did to Jade Hannah, a 17-year-old girl who was stabbed 19 times, was strangled, her jaw fractured while obviously in connection with this incident because when the family from the apartment below saw her minutes earlier she was just fine. The circumstances then show quite clearly that after killing Jade in this manner, after murdering her, [defendant] then stabbed Stacy Cochran, Jade's mother, numerous times close inside the door of the apartment where Stacy lived with her children at 111th and Bell. Stacy sustained 29 stab wounds, 11 incised wounds, which the State pointed out, a total of 38 wounds, an horrific attack. And on top of the horrid nature of that attack, it cannot be ignored, cannot be not noted [*sic*] that at the time she was attacked in this manner she was literally hobbled; she was on crutches; she was lamed in some manner ***. But she was on crutches and had no more ability to defend herself and her children from [defendant's] attack against them than I do not right now to fly to the moon. Unspeakably cowardly.

And following the vicious assault, the vicious fatal assaults upon Jade and upon Stacy, it is clear from the circumstances of the *** physical evidence that [defendant] then turned his attention to Joi Cochran, 11

> years old, 4-foot, 11 inches tall, 98 pounds, as evinced by the testimony of the medical examiner, who then suffered nine stab wounds, three incised wounds. A course of conduct that is beyond craven, it is beyond my ability to express with any accuracy the horror inflicted on those ladies, those women, those children at that time and that lingers forever after in the hearts and minds of their loved ones, their family, and their friends.
>
> It has to be said, [defendant], that what you did on November 29, 2010 reveals with certainty and without exception the depth and breadth of the darkness of your heart, your extraordinary narcissism, and the criminal selfishness that more than justifies the sentence that is required by the law, a sentence of natural life."

¶ 18 The trial court then sentenced defendant to a term of natural life on each of the counts of murder, to run concurrently.

¶ 19 This appeal followed.

¶ 20 On appeal, defendant argues that his mandatory natural life sentence as applied in his case violates the eighth amendment of the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11) because the sentence was mandated without a consideration of defendant's age and other mitigating factors. Pursuant to section 5-8-1(a)(1)(c)(ii) of the Unified Code of Corrections, defendant was subject to a mandatory term of natural life imprisonment under two bases: he was over the age of 17 and was found guilty of murdering an individual under the age of 12, and that he was found guilty of murdering more than one victim. 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2014).

¶ 21 Initially, the State asserts that defendant failed to preserve his sentencing challenges and is forfeited from raising them before this court. "It is well settled that, to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required." *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Defendant did not object or file a postsentencing motion. Therefore, we review defendant's claims under plain error.

¶ 22 Illinois Supreme Court Rule 615(a) provides that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). "In the sentencing context, a defendant must then show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Hillier*, 237 Ill. 2d at 545. Defendant bears the burden of persuasion under both prongs. *Id.* For the reasons that follow, we find no clear or obvious error occurred in imposing defendant's sentence.

¶ 23 The eighth amendment to the United States Constitution, applicable to the states via the fourteenth amendment, bars cruel and unusual punishment, namely punishment that is "inherently barbaric" or is disproportionate to the offense. *Graham v. Florida*, 560 U.S. 48, 59 (2010). The proportionate penalties clause requires that sentences should be determined " 'both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.' " *People v. Rizzo*, 2016 IL 118599, ¶ 28 (quoting Ill. Const. 1970, art. I, § 11).

¶ 24 " 'Constitutional challenges carry the heavy burden of successfully rebutting the strong judicial presumption that statutes are constitutional.' " *Id.* ¶ 23 (quoting *People v. Patterson*, 2014 IL 115102, ¶ 90). "That presumption applies with equal force to legislative enactments that

declare and define conduct constituting a crime and determine the penalties imposed for such conduct." *Id.* " 'To overcome this presumption, the party challenging the statute must clearly establish that it violates the constitution.' " *Id.* (quoting *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005)). "Courts have a duty to uphold the constitutionality of a statute whenever reasonably possible, resolving any doubts in favor of the statute's validity." *Id.* " 'An as-applied challenge requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party. [Citation.] In contrast, a facial challenge requires a showing that the statute is unconstitutional under any set of facts, *i.e.*, the specific facts related to the challenging party are irrelevant.' " *Id.* ¶ 24 (quoting *People v. Thompson*, 2015 IL 118151, ¶ 36).

¶ 25 Defendant first contends that his mandatory natural life imprisonment violates the eighth amendment's prohibition of cruel and unusual punishment based on recent United States Supreme Court cases analyzing the evolution in the imposition of harsh punishments for minors. See *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham*, 560 U.S. 48, *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. ____, 136 S. Ct. 718 (2016).

> "In *Roper*, the Supreme Court held that the eighth amendment prohibits the death penalty for juvenile offenders. *Roper*, 543 U.S. at 568. The Court reasoned that the 'death penalty is reserved for a narrow category of crimes and offenders,' and that 'juvenile offenders cannot with reliability be classified among the worst offenders.' *Id.* at 569. In *Graham*, the Supreme Court held that the eighth amendment forbids a sentence of life without the possibility of parole for juveniles who did not commit homicide. *Graham*, 560 U.S. at 74 ***. The Court said that, although the

> state is not required to release a juvenile during his natural life, the state is forbidden 'from making the judgment at the outset that those offenders never will be fit to reenter society.' *Id.* at 75 ***. *** In *Miller*, the Supreme Court held that the eighth amendment prohibits a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders, including those convicted of homicide. *Miller*, 567 U.S. at [479-80]. The Court stated that a judge must have the opportunity to look at all of the circumstances involved before determining that life without the possibility of parole is the appropriate penalty. See *id.* at [479-80]." *People v. Harmon*, 2013 IL App (2d) 120439, ¶ 48.

¶ 26 More recently, in *Montgomery*, the Supreme Court clarified its holding in *Miller*, finding that *Miller* "announced a substantive rule that is retroactive in cases on collateral review." *Montgomery*, 577 U.S. at ___, 136 S. Ct. at 732.

> "The [*Montgomery*] Court asserted that '*Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge take into account "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." ' *Id.* at ___, 136 S. Ct. at 733 (quoting *Miller*, 567 U.S. at [480]). The Court repeated that '*Miller* requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence.' *Id.* at ___, 136 S. Ct. at 734. According to the Court, '[a] hearing where "youth and its attendant characteristics" are considered as sentencing factors is necessary to separate those juveniles

who may be sentenced to life without parole from those who may not.' *Id.* at ____, 136 S. Ct. at 735 (quoting *Miller*, 567 U.S. at [465])." *People v. Holman*, 2017 IL 120655, ¶ 38.

¶ 27 The Illinois Supreme Court in *Holman* considered the applicability of *Miller* and *Montgomery* in Illinois.

> "Under *Miller* and *Montgomery*, a juvenile defendant may be sentenced to life imprisonment without parole, but only if the trial court determines that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation. The court may make that decision only after considering the defendant's youth and its attendant characteristics. Those characteristics include, but are not limited to, the following factors: (1) the juvenile defendant's chronological age at the time of the offense and any evidence of his particular immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile defendant's family and home environment; (3) the juvenile defendant's degree of participation in the homicide and any evidence of familial or peer pressures that may have affected him; (4) the juvenile defendant's incompetence, including his inability to deal with police officers or prosecutors and his incapacity to assist his own attorneys; and (5) the juvenile defendant's prospects for rehabilitation." *Id.*¶ 46 (citing *Miller*, 567 U.S. at 477-78).

¶ 28 In the present case, it is uncontested that defendant was 18 and was not a minor at the time of the murders. Nevertheless, he asserts that the trial court should have been given the

opportunity to consider mitigating factors in imposing the sentence of natural life. Specifically, defendant argues that the trial court was precluded from considering mitigating factors in addition to his youthfulness. He sets forth several claimed mitigating factors, which were included in his presentence investigation, but no testimony was presented nor was any specific argument advanced regarding these factors. According to defendant, the trial court should have been permitted to consider his mental health, including a diagnosis for bipolar disorder, the fact that he had been shot in the chest by a police officer in 2010 during an arrest for aggravated unlawful use of a weapon unrelated to the present case, his history of domestic violence by his father and maternal grandfather in his childhood, exposure to domestic violence against his mother by his father, and no prior criminal convictions before this offense. Defendant contends that the imposition of a mandatory natural life sentence is unconstitutional as applied to his case without considering any of his numerous youth-related mitigating factors. Defendant maintains that his requested relief "does not require this Court to hold that mandatory life sentences is *always* unconstitutional when imposed upon defendants under the age of 21." (Emphasis in original.) We disagree.

¶ 29 There is one significant difference between the imposition of defendant's sentence and the holdings in *Miller* and *Montgomery*, defendant was not a juvenile when he committed the murder of three individuals. Defendant attempts to extend the holdings to "youthful" offenders, but fails to cite any authority in which an eighth amendment violation has been found for an adult offender. Those cases, by their own terms, apply to juvenile offenders, not "youthful" offenders.

¶ 30 Recently, the First Division of this court considered a similar as-applied eighth amendment challenge by an 18-year-old offender in *People v. Thomas*, 2017 IL App (1st)

142557. In that case, the defendant was convicted of first degree murder while using a firearm, attempted first degree murder, and attempted armed robbery. The defendant received a total sentence of 80 years for all offenses. *Id.* ¶ 1. On appeal, the defendant argued that his 80-year sentence represented a *de facto* life sentence in violation of the eighth amendment and the proportionate penalties clause. *Id.* After considering *Roper*, *Graham*, and *Miller* in an as-applied eighth amendment challenge, the reviewing court concluded that the defendant "cannot demonstrate" how his challenge implicated the eighth amendment as an adult defendant. *Id.* ¶ 28. In reaching its conclusion, the court reviewed the Illinois Supreme Court's holding in *People v. Reyes*, 2016 IL 119271, in which the supreme court found that a mandatory 97-year term for a juvenile offender operated as a *de facto* life sentence and implicated *Miller* protections. *Thomas*, 2017 IL App (1st) 142557, ¶ 26 (citing *Reyes*, 2016 IL 119271, ¶¶ 9-10). The *Thomas* court noted that the Illinois Supreme Court had not indicated that it would extend *Miller* to adult offenders. *Id.* See also *People v. Harris*, 2016 IL App (1st) 141744, ¶ 56, *petition for leave to appeal allowed*, No. 121932 (Ill. May 24, 2017) (finding that the eighth amendment did "not protect" the defendant from a *de facto* life sentence because he was over 18 at the time of the subject offense).

¶ 31 We agree with the court's conclusion in *Thomas* that *Miller* protections under the eighth amendment are not implicated in cases of adult offenders. We find the reasoning equally applicable in this case involving a mandatory sentence of natural life and find no basis to depart from the court's finding. Since defendant has failed to provide any authority to support his assertion that an eighth amendment as-applied challenge under *Miller* can be extended to an adult offender, we reject his constitutional challenge.

¶ 32 Next, we turn to defendant's argument that his sentence should be vacated based on a violation of the proportionate penalties clause of the Illinois Constitution.

¶ 33 The proportionate penalties clause of the Illinois Constitution provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. "While courts of review are generally reluctant to override the judgment of the General Assembly with respect to criminal penalties [citation], it is also true that when defining crimes and their penalties, the legislature must consider the constitutional goals of restoring an offender to useful citizenship and of providing a penalty according to the seriousness of the offense [citation]." (Internal quotation marks omitted.) *People v. Miller*, 202 Ill. 2d 328, 338 (2002). "With regard to the statute at issue, we have recognized that the legislature considered the possible rehabilitation of an offender who commits multiple murder[s], and the seriousness of that offense, in determining that a mandatory minimum sentence of natural life imprisonment is appropriate for the offense of multiple murders." *Id.*

> "We have recognized three different forms of proportionality review. A statute may be deemed unconstitutionally disproportionate if (1) the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community; (2) similar offenses are compared and the conduct that creates a less serious threat to the public health and safety is punished more harshly; or (3) identical offenses are given different sentences." *Id.*

¶ 34 Defendant asserts that the imposition of a mandatory natural life sentence in his case shocks the moral sense of the community. In support, defendant relies on this court's decision in

People v. House, 2015 IL App (1st) 110580, and the Second Division's decision in *Harris*, 2016 IL App (1st) 141744. The State, on the other hand, argues that this case is more analogous to this court's decision in *People v. Ybarra*, 2016 IL App (1st) 142407. We agree with the State for the following reasons.

¶ 35 In *House*, the defendant was 19 years old with no history of violent crimes and was found guilty under a theory of accountability for the murder of two victims. *House*, 2015 IL App (1st) 110580, ¶ 101. Accordingly, the defendant was sentenced to a mandatory term of natural life under the same statute as defendant in this case, section 5-8-1(a)(1)(c)(ii). 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1998). We found significant that the defendant's sentence involved the convergence of the accountability statute and the mandatory natural life sentence. *House*, 2015 IL App (1st) 110580, ¶ 89. We analyzed the reasoning behind the Supreme Court's recent decisions involving youthful offenders, as well as articles discussing the differences between youth and adults. *Id.* ¶¶ 90-100.

¶ 36 After considering the facts of the case, the recent Supreme Court decisions, and research on youthful offenders, we concluded that the defendant's sentence was unconstitutional as applied to his case. *Id.* ¶ 101. "Given defendant's age, his family background, his actions as a lookout as opposed to being the actual shooter, and lack of any prior violent convictions, we find that defendant's mandatory sentence of natural life shocks the moral sense of the community." *Id.*

¶ 37 In contrast, the defendant in *Ybarra* was convicted of the shooting deaths of three teenagers and was subsequently sentenced to a mandatory natural life sentence. The only issue raised on appeal was whether the defendant's sentence violated the proportionate penalties

clause. *Ybarra*, 2016 IL App (1st) 142407, ¶ 1. Like defendant in the present case, the defendant in *Ybarra* contended that *House* was applicable in his case. We rejected that contention.

> "We find the instant case distinguishable from *House* based on one significant difference. The defendant in *House* did not pull the trigger, but acted as a lookout and was found guilty under a theory of accountability. Our analysis specifically considered the union of mandatory sentencing with guilt under a theory of accountability. No such union exists in this case. While he was also a young adult at 20 years old, defendant was the person who pulled the trigger repeatedly and killed three teenagers on the street as they left school one afternoon. We cannot equate defendant's actions with our analysis in *House*. For this reason, we find our reasoning in *House* to be inapplicable to defendant's case." *Id.* ¶ 27.

¶ 38 We see no reason to depart from this conclusion in the present case. As in *Ybarra*, defendant was the perpetrator in the violent stabbing deaths of Jade, Stacy, and Joi. For that reason, the holding in *House* is inapplicable.

¶ 39 We acknowledge that the reviewing court in *Harris* reached a different result and concluded that the defendant's *de facto* life sentence violated the proportionate penalties clause. *Harris*, 2016 IL App (1st) 141744, ¶¶ 68-69. There, the defendant received a total sentence of 76 years for first degree murder and attempted first degree murder, where 50 years of the sentence was due to mandatory firearm enhancements. *Id.* ¶ 15. In considering the defendant's proportionate penalties challenge, the majority found the case more factually similar to *House* (*id.* ¶¶ 63-64), while the dissent concluded *Ybarra* was more on point (*id.* ¶¶ 83-85 (Mason, J., dissenting)). The majority reasoned that the record showed the defendant's rehabilitative

potential and that the trial court expressed "dissatisfaction" with the required minimum sentence to be imposed. *Id.* ¶ 66 (majority opinion). The majority further discussed the effect of the applicable statutes as eliminating the trial court's discretion to construct a sentence with a chance to return the defendant to society. *Id.* ¶¶ 71-72. The dissent maintains that "it is for the legislature, and not the courts, to revisit the sentencing scheme and afford greater discretion to trial judges." *Id.* ¶ 81 (Mason, J., dissenting). The dissent shared the majority's concern over the length of the minimum prison sentence, but found that "the remedy lies with the legislature, not in *ad hoc* determinations made by this court or by trial judges." *Id.* ¶ 82. As noted above, People v. Harris is currently pending in the Illinois Supreme Court. See *People v. Harris*, No. 121932 (Ill. May 24, 2017) (petition for leave to appeal allowed).

¶ 40 Further, as we did in *Ybarra*, we have reviewed defendant's claims of mitigating factors, including a diagnosis with bipolar disorder, experiencing and witnessing domestic violence, and suffering a gunshot wound to the chest in the course of an arrest. We appreciate defendant's struggles with mental illness, but we note that defendant was evaluated and found fit to be sentenced. Defendant was a legal adult when he strangled and stabbed his girlfriend Jade, then stabbed her mother Stacy, who was on crutches, and then stabbed her 11-year-old sister. Given the violent and serious nature of these murders, a mandatory sentence of natural life does not shock the moral sense of the community and does not violate the proportionate penalties clause of the Illinois Constitution.

¶ 41 Additionally, the trial court findings suggest that the court would have imposed the same sentence if it had discretion. During sentencing, the trial court stated:

> "what you did on November 29, 2010 reveals with certainty and without exception the depth and breadth of the darkness of your

> heart, your extraordinary narcissism, and the criminal selfishness that *more than justifies the sentence that is required by the law, a sentence of natural life*." (Emphasis added.)

¶ 42 The trial court's finding further supports our conclusion that defendant's mandatory natural life sentence does not shock the moral sense of community and does not violate the proportionate penalties clause. Until we receive further guidance from the Illinois Supreme Court or the legislature amends the sentencing statutes, we must affirm the imposition of a natural life sentence in this case.

¶ 43 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 44 Affirmed.