

STATE OF MICHIGAN
IN THE 30th CIRCUIT COURT FOR THE COUNTY OF INGHAM

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff

Circuit Court No. 10-01-DJ
COA: 337716

v

Hon. R. George Economy
CHARLES KUNTA LEWIS, JR.,
Defendant.

Elizabeth L. Allen (P75179)
Assistant Prosecuting Attorney
Ingham County Prosecuting Attorney
303 W. Kalamazoo Street
Lansing, MI 48933

Mary Chartier (P65327)
Attorney for Defendant
1905 Abbott Road, Suite 1
East Lansing, MI 48823

ORDER ON DEFENDANT'S MOTION FOR RESENTENCING

At a session of said Court, held in the City of Lansing,

County of Ingham and State of Michigan

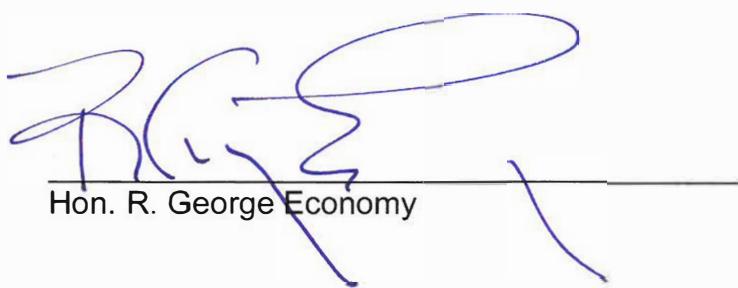
On: APR 06 2018

Present: Hon: R. GEORGE ECONOMY
CIRCUIT COURT JUDGE

This matter having come before the Court on Defendant's Motion for Resentencing, this Court having entertained oral argument and being otherwise fully advised of the premises:

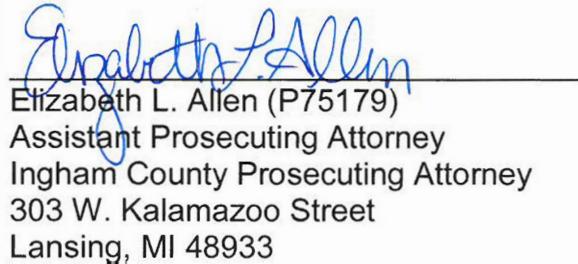
IT IS HEREBY ORDERED that Defendant's Motion for Resentencing is DENIED in accordance with the reasons stated on the record.

IT IS SO ORDERED.

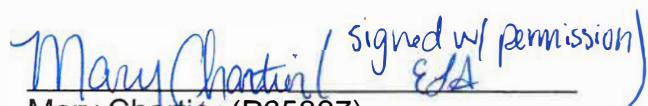


Hon. R. George Economy

Approved as to form:



Elizabeth L. Allen (P75179)
Assistant Prosecuting Attorney
Ingham County Prosecuting Attorney
303 W. Kalamazoo Street
Lansing, MI 48933



Mary Chartier (P65327) (signed w/ permission)
Mary Chartier (P65327)
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1905 Abbott Road, Suite 1
East Lansing, MI 48823

Exhibit B

PSYCHIATRIC EVALUATION - CHARLES LEWIS JR. (BD [REDACTED])

DATE OF SERVICE: October 21, 2016

START TIME: 12: 20 PM

END TIME: 2:35 PM

INDIVIDUALS SEEN: Charles Lewis Jr. was evaluated by Dr. Atkins and Dr. Natala at the Ingham County Jail on the above date.

STATEMENT OF NON-CONFIDENTIALITY: Prior to the interview, Charles was informed of the purpose of the evaluation, the fact that a report would be issued according to legal requirements, and that the examiner might be subpoenaed to testify about the report or anything else related to the examination. Charles conveyed an understanding of the limits of confidentiality, which pertain to this examination and participated willingly and openly in the interview.

IDENTIFYING INFORMATION: Charles Lewis Jr. is a 20-year old African-American male with no formal past psychiatric history who was charged with felony murder at age 13 and given a delayed sentence. He is currently residing at the Ingham County Jail awaiting sentencing next month.

SOURCE OF INFORMATION: Charles Lewis Jr. and prior psychiatric evaluation completed March 14, 2012 by Drs. Atkins, Blackwood and Fluent.

CLINICAL PRESENTATION:

Charles has been incarcerated since age 13 when he was arrested and charged with felony murder. During an attempted robbery and kidnapping a 19-year-old woman named Shayla Johnson was murdered. He reported that his life was "ruined" the night he went along with his father and 6 other men to break into a house where there was reported to be cash and marijuana. At the time, he had recently been reunited with his father who had been in prison from the time Charles was 4 days old until a few weeks before the crime occurred.

During this time, Charles recalls being "very excited to have a father" and that he was "feeling good just to be with him." He felt happy when his dad would introduce him as his son. However, now he realizes that, "He wasn't a dad - he treated me like his friend. I know that now because I processed my life story." His father gave him a gun and told him it "was a gift for his protection." He reported it was the only gift his father ever gave him. He stated that Charles Sr. also exposed Charles to "criminal things" and "would bring me with him to be around things I shouldn't be around." Looking back, he wishes his dad would have been a "positive influence" and someone "who could have helped me get my life back on track." Charles reported he can see this clearer now that he has been through rehabilitation programs. He still wishes he had a positive dad, one more like his maternal Uncle, but is angry and resentful of his father's "bad judgment."

On the night of the crime Charles articulated that he was playing video games at his father's friend's house, while overhearing his father and other men discussing a robbery. He reported that he wasn't really paying attention but felt uneasy when his father turned to him and said, "let's go." Charles stated he went along with his father because he felt uncomfortable staying behind in a stranger's home and was unable to get back to his mom's house on his own. Charles reflected, "A real father would have at least dropped his kid off at home before something like this." Charles stated he did not know what was going to happen beyond the planned robbery before leaving but he did know the men had guns. Charles reported he did not have his gun on him during the crime but that it was left in the car. He described entering the house with the others but states, "once I saw how they were treating the girl, I was upset, scared, and walked out of the house." He recalls that as he walked to the bottom of the driveway the others exited the house. He turned onto the sidewalk when he heard gunshots, immediately felt panicked and ran to his cousin's house.

He reports that he found out later on the news that Shayla had died and remembers being "just in shock." He still struggles to understand why his father shot the girl saying "all that could have been avoided...he changed everyone's life. I still think, why did he do that." He empathized with the victim's mother saying "I feel the same anger that she feels" towards his father while clarifying that his frustrations are different and not "as strong as her's." He has seen the victim's mother in court and has wrote a letter he read in court; however, wishes she and everyone could better understand him and maybe "talk to him in person." He described feeling misunderstood and misrepresented in the media. "The news paints a picture of me that I'm a person who can't' function in society and is all bad. I'm not that type of person who they say I am, I'm not a murderer, not a teen killer. They paint me as a young monster. I never understood why." Charles states that he thinks about the events of July 23, 2010 every day and feels regret, sadness, and anger (towards his father).

Since the crime, Charles states he has had very limited contact with his father (father wrote him an apology letter after crime) but has been strongly supported by his family, especially his mother and older sister. He has spent the last few years "trying to make my life better." He was in W.J. Maxey juvenile corrections facility until it closed in Oct 2015. Charles described several of the programs he completed and the lessons he learned from them. For example, Charles stated that the "Change Program" taught him how to make careful decisions based on evaluating the "pro's and con's of a situation." The "Manhood Program" helped him deal with his "abandonment issues" and see his relationship with his father more clearly. He also achieved many significant educational goals. He graduated with a high school diploma as valedictorian of his class. Charles states that graduating from high school as valedictorian was the proudest and happiest day of his life. He remembers how good it felt to walk across the stage and give the class speech while seeing his mom cry tears of joy. He received a degree in Cosmetology and continued online Community College classes while still at Maxey. Charles also had weekly visits from a U or M student and mentor at the Maxey facility. Charles states that conversations with his

mentor and staff helped him solidify his goals and change his perspective. Charles stated he is appreciative that Judge Economy gave him the opportunity to go to Maxey. He feels the treatment he received helped him become a better person and understand his past better.

This summer Charles was allowed by the Judge Economy to participate in a reintegration program at a group home in Macomb county where he was doing “real good,” working at McDonalds and taking classes at a local community college. On September 4th, he was working when he received a call from his older sister. She told him that his mom had been placed on life support and could die at any time. He was aware that a pass could be arranged but worried that there may not be time to wait. He received the phone call on a Sunday and the next day was Labor Day. At the time, he reports contemplating the consequences of leaving without permission to go see his mom; however, felt overwhelmed by the possibility of “doing things the right way” and missing the chance to see his mother for the last time. He described his mom as “my best support my whole life” and that “she always encouraged me.” He decided to call an Uber and went to the hospital to see his mom. During this time, he spent “as much time as I could with family.” His mother’s health continued to decline and he was present when she died on September 11th. He planned to attend his mother’s funeral on September 19th and turn himself in; but, was found by police at his cousin’s house on September 16th and has since been detained in the Ingham County Jail. He regrets leaving without permission. He feels he should have worked with his lawyer and Judge Economy to see his mom. Charles wonders if he could have made it to her funeral if he “did things the right way.” Charles is disappointed in himself because leaving ended up jeopardizing all the progress he has made.

Since his mom’s death in early September, Charles has been “kinda struggling,” feeling more overwhelmed, anxious and depressed. He has been worrying excessively about his upcoming sentencing and the outcome. He states he let himself and his family down and ruminates about his decision to leave. Charles fears going to prison because he has goals and wants to be a part of society. Charles stated that he will often tear up and sometimes feels so overwhelmed that he feels shaky or short of breath. Charles knows that his worries about his future have not allowed him to grieve his mom’s death. Charles is unable to look at the newspaper clipping he has of his mom’s obituary because he “can’t process it” and it confirms she is gone. Some nights, he struggles to fall asleep and has very little appetite. He denies other depressive symptoms such as worthlessness or any suicidal ideation. He has been coping with stress by praying, reading the Bible, and talking to his sister. These coping skills are effective for Charles and sometimes he is able to feel hopeful that things may turn out in his favor and allow him to have a productive life in the community.

PSYCHIATRIC REVIEW OF SYSTEMS: Charles denies past or present delusions, hallucinations, or manic symptoms. He does not have symptoms consistent with social phobia, obsessive-compulsive disorder, or specific phobias. In the past he has had nightmares and flashbacks that relate to the night of the crime but now he has only

occasional nightmares and daily memories of the crime. He denies major traumatic events prior to the night of the crime.

PSYCHIATRIC TREATMENT HISTORY:

Charles has had a few mental health evaluations over the years, all completed in conjunction with legal issues. Last known psychiatric evaluation completed 3/14/12 by Drs. Atkins, Blackwood and Fluent at which point he was diagnosed with Disruptive Behavior Disorder NOS. He has had access to psychiatric services at various points but never been on any psychiatric medications or felt he needed them. He denies past psychiatric diagnoses or past symptoms suggestive of persistent or problematic depression or anxiety stating that he had been coping well up until mom's death. Has been involved in counseling as part of rehabilitation which he has found useful.

He denied past history of psychiatric hospitalization, self-injurious behaviors such as cutting or burning and suicidal behavior.

MEDICAL HISTORY:

He denied a history of known drug allergies, acute/chronic medical illnesses, major surgical intervention, or medical hospitalization for any reason.

FAMILY (PSYCHIATRIC/MEDICAL) HISTORY:

Charles denied known history of mental illness, substance dependence, or suicidal behavior on either side of his family. States that his mother smoked marijuana but never had a "drug problem." His father was in prison for 12 years up until his release in 2010 when he was convicted of murder as outlined above. Father is currently serving a life in prison sentence. His mother spent some time in jail for identity theft. His older brother James remains in prison.

SOCIAL HISTORY:

Charles reports that he was born in Lansing, Michigan and spent the majority of his life there. His biological mother raised him and his 3 other siblings "by herself." Charles is second youngest in family. He grew up close to his siblings, mom and mom's side of the family. When his mom went to jail or when he was removed by CPS, there were grandparents, aunts, and uncles around that cared for him. dad's relatives all live in Detroit and Charles rarely saw them. Up until July of 2010, his relationship with his father consisted of a monthly phone call because he went to prison when he was 4 days old for assault and gun charges. He was released about 13 yrs later in April of 2010. At the time of his father's release, Charles was in juvenile detention. As previously reported his dad came to visit him in detention the first day he was released. During the summer of 2010, he spent about 3 weeks with his dad. Charles was still sleeping at mom's house but she did not know details of what his father was exposing him to or that he had given Charles a gun. As above, described the 3 weeks with his dad as emotionally fulfilling and he wanted to be with him "all the time."

He lived with the father of his younger brother for a number of years, but did not have a close relationship with him. One of his mom's live-in boyfriend was dealing drugs out of the home and he reports the house was raided by police twice. He was removed from the home both times by CPS, placed with family and returned to his mother's care within three months. Charles reports having a positive relationship with family currently, especially his older sister. His maternal uncle was his most positive male role model in his family partly because he has "never been in trouble." Charles denies history of physical, emotional, sexual abuse or neglect as a child.

In 2012 Charles discussed his childhood behavior as "running around Lansing" and "doing things I wasn't supposed to." In review today he stated he mostly did "stupid things." Charles denied a history of cruelty to animals or fire starting. Charles denies that he ever confronted a victim with a weapon. Charles was involved in physical altercations ("fist fights") with peers but they never resulted in injuries that needed medical attention and he denied premeditated violence toward others. In 2012 stated, "they say I am a member of Block Burners" (reportedly a gang in the Lansing area), but he denied several times being a part of that gang. He was in juvenile detention prior to arrest in July 2010. Charles denies that he stole a truck or engaged in any other criminal activity while AWOL at the end of his mother's life. Charles did admit to using his friend's urine when called for a random drug test after drinking EtOH at the Macomb group home.

When 15, Charles said his goal was to be an NFL running back. Today, said his goals are to be a motivational speaker to help kids that get in to trouble when they are young. He wants to send the message that "it might start with throwing snowballs but it can get serious real quick." Charles would like to continue to study business at community college with his ultimate goal to open a barber shop and "earn money the right way." Charles reports that he is good at sports (football, basketball), cutting hair, and writing poems.

EDUCATIONAL HISTORY:

Charles has an extensive history of behavioral issues in school prior to 2010. He was suspended multiple times and previously expelled. Most suspensions were for not following directions, talking back to teachers or skipping school. He has no known history of learning disorders. He finished 7th grade in public school. Afterwards, was educated while incarcerated. In 2012 the teacher working with him at Ingham County Jail reported that he was a very appreciative and enthusiastic student and that he finished "all the work she could give him." Charles was valedictorian when he earned his high school diploma at Maxey Boy Training School. Charles has taken some community college classes and has a certificate in cosmetology that allows him to cut hair.

SUBSTANCE ABUSE HISTORY:

Charles stated he smoked marijuana prior to 2010 rarely. In 2012, reported smoking "every once and awhile, about twice every other week." He drank alcohol on one

reported occasion while at the group home. Charles denied regular use of cigarettes, or other illicit or prescription drugs.

MENTAL STATUS EXAM:

Appearance: Charles presented as an African-American male who appears older than age 20. He was of average height and appeared healthy. Hair was clean but long and unkempt, also Bearded. Wearing a black and white stripped jump suit, off white undershirt and orange crocks.

Behavior: Charles was tearful for the first 30 minutes of the interview. He sat slumped back in a plastic chair throughout visit. Movements were slow, consistent with reported depressed mood. Established good eye contact but was avoidant and tearful when talking about his mom and stress related to upcoming sentencing. He was polite, pleasant and cooperative with all questioning. Easily engaged in interview and provided lengthy, thoughtful responses in contrast to prior interview

Speech: Speech was of normal to slowed rate and monotone. Appropriate volume.

Mood: "kinda struggling"

Affect: Restricted and depressed appearing. Seemed more anxious and depressed at certain points during interview but appropriate to topics discussed.

Thought Process: Linear and goal oriented; there was no loosening of associations.

Thought Content: Past, recent or current suicidal or homicidal ideation was denied. He denied auditory or visual hallucinations. There was no evidence of delusional beliefs, other perceptual disturbances or gross impairments of reality testing.

Cognitive:

Sensorium: Charles was conscious and fully aware of his surroundings. He knew who he was, where he was, why he was there, and the current date. He was alert and attentive throughout the entire interview.

Intelligence: Informal assessment of intelligence and performance on Montreal Cognitive Assessment suggested he was functioning in the low-average to average range. His general fund of information appeared fair.

Memory: His performance on rudimentary tasks of immediate, short-term, and delayed memory appeared grossly within normal range.

Attention: Sustained attention appeared within a normal range.

Insight/Judgment: Insight regarding consequences of his actions, current emotional behavioral state and ability to critically assess recent actions which lead to detainment in jail was overall good and appropriate. Compared to previous assessment, insight is markedly improved. Judgement appears to be overall fair as

demonstrated by good behavior prior to recent events and the complexity of his recent decisions.

RATING SCALES:

MONTREAL COGNITIVE ASSESSMENT: 25 out of 30 possible points. Score of 26 or above is considered normal

FORMULATION:

Charles Lewis Jr. is a 20-year-old African American male with no formal psychiatric history but a childhood notable for misconduct, exposure to criminal behavior and inconsistent parenting prior to being convicted with felony murder for his involvement in a crime at age 13 during which his father committed murder.

Based on reported symptoms and clinical presentation, Charles meets criteria for an adjustment disorder with mixed anxiety and depressed mood in reaction to his mother's death and recent consequences and regrets following his decision to take flight from court ordered placement. His reaction to his mother's death is appropriate but exacerbated by current legal issues. His prognosis for remission is good as he denies previous psychiatric symptoms and demonstrates positive coping strategies. As symptoms are closely linked to current stressors and likely to improve with distance from stressors, psychiatric medications are not indicated at this time but therapeutic interventions could be beneficial if available. Though he readily acknowledged a long history of school suspensions and delinquent behaviors that led to placement in juvenile detention on more than one occasion, he consistently denied episodes of unprovoked aggression or behaviors consistent with conduct disorder or antisocial personality disorder.

Charles' positive description of his relationship with his mother, older sister and larger family demonstrates that he has the capacity to feel connected to and care for others. Although the history suggests that his mother was not always a positive parent model due to her personal struggles with the law and temporary loss of parental rights, Charles maintains that she was a consistent loving support for him and fulfilled her caregiving role until her death last month. His positive and strong sense of self along with ability to maintain relationships further demonstrates that he formed a healthy attachment to his mother early in life.

Our brief assessment of cognitive functioning and intelligence demonstrates that he likely has low average intelligence. Our assessment is based on the mental status exam, use of language, level of education and performance on Montreal Cognitive Assessment. Deficits were most notable in executive functioning which could be partially explained by his emotional state (depression can be associated with lower cognitive functioning). We did not conduct formal neuropsychological testing however our interview with Charles is consistent with age appropriate cognitive development.

Charles' ability to navigate childhood stressors and cope with a significant number of highly emotional and difficult circumstances including his life following this crime

highlights his resilience. He has remained hopeful and used religion, writing poetry and contact with family as effective tools to manage emotions and external stressors.

DIAGNOSIS:

Axis I: Adjustment disorder

Axis II: Deferred

Axis III: None

Axis IV: Severe stressors which include: Chronic institutionalization, pending sentencing for felony murder, limited access to supports and recent death of mother

Axis V: Global Assessment of Functioning Scale: 55

DISCUSSION OF MITIGATING FACTORS:

In the Alabama versus Miller Supreme Court decision written by Justice Kagan, she states that mitigating evidence must include a review of:

1. The youth's "chronological age;"
2. Hallmark features of youth—"among them, immaturity, impetuosity, and failure to appreciate risks and consequences;"
3. "The family and home environment that surrounds the child, and from which she cannot usually extricate himself no matter how brutal or dysfunctional;"
4. Circumstances of the homicide offense, including the extent of the youth's participation in the conduct.
5. The way familial and peer pressures may have affected him
6. The possibility that the child might have been charged and convicted of a lesser offense, if not for the incompetencies associate with youth—for example, the inability to deal with police officers or prosecutors (including on a plea agreement) or the Inc. capacity to assist his or her own attorneys
7. The possibility of rehabilitation

Miller, 123 S Ct at 2468.

Charles was approximately 13 years and 11 months old at the time of Shayla Johnson's murder. There are several neurobiological characteristics of an adolescent brain that affect their ability to make mature decisions and appreciate the risks and consequences of their behavior.

The development and functioning of the adolescent brain has major impacts on behavior. The changes that occur in the brain in adolescence result in the emotional areas of the brain being more developed than the regulating parts of the brain when compared to adult brains. Prior to puberty, there is a surge in nerve cell growth and connections within the brain. This surge results in an increase in gray matter and "potential thinking power;" however, the new gray matter is poorly organized. From the onset of puberty until the early 20s, the brain "rewires" or reorganizes itself using

two mechanisms. Connections in nerve cells that are not often used are “pruned” or die off in a process called neural pruning. In a second process called myelination, nerves and nerve connections that fire together are selectively covered in a fatty material called Myelin. Myelin strengthens the connection between nerves and strengthens the transmission of information. This process occurs at a slow and steady rate, starting at the back of the brain and working towards the prefrontal cortex (part of the brain located behind the forehead). There are consequences to having the prefrontal cortex be the last region of the brain to fully mature. The prefrontal cortex allows the brain to process more complex information, exercise better judgment, problem solve, and regulate behavior. These processes collectively are called executive functions.

This normal but uneven maturation process leaves young people (approximately ages 12-22) vulnerable to being overly influenced by other parts of the brain. For example, the reward seeking circuitry of the brain, influenced by increasing dopamine receptors and hormones, is very active and results in riskier and more “thrill seeking” behavior. Young people are still capable of sound decision making but it takes more concentration and energy. Environmental distraction, such as the presence of peers, can often make the required level of concentration for proper executive functioning unobtainable.

Charles’ prefrontal cortex was developing through this uneven maturation process at the time of Shayla’s murder and undoubtedly played a role in his behavior that night. When he was 13, he was infatuated with his father, excited that he was finally a part of his life and fixated on forming a relationship with him. Spending all his time with his dad was novel and emotionally satisfying. His more emotional brain was not well regulated by his underdeveloped prefrontal cortex which would have helped him better assess the risks and identify his dad’s behavior patterns as dangerous.

Charles describes only one positive male role model in his life (maternal uncle) prior to his incarceration. He grew up knowing his father was in prison and in an environment surrounded by peers, adults, siblings and caretakers who engaged in criminal behavior. We strongly believe that these childhood experiences impacted his social development and normalized criminal behavior for him. These circumstances conditioned Charles to be more tolerant of criminal behavior and placed him in a position of little power or influence on the night of the crime. That night, Charles was the only child present among 7 men including his father. Charles was being told to go somewhere by his long absent father; a man with whom Charles was desperate to please and establish a relationship with. Charles was too young and immature to extricate himself from the situation. He could not speak against what little he knew about his father’s plan, he could not get himself safely back to his mother’s house, nor could he stay behind at a stranger’s house alone. Charles indicated that he was repulsed and frightened by the way Shayla was treated and, despite his powerless situation and young age, chose to leave the house alone. Charles reports having had no knowledge of a kidnapping plan or the atrocity that was about to occur and yet he

had already decided to separate himself from the group. At the time of Shayla's death Charles states he was panicked and running away.

At the time of the murder and initial sentencing, Charles was not old enough to be a reliable witness and was less likely to be offered an acceptable plea agreement. Additionally, his age was largely responsible for his distorted and idealized view of his father. This distortion and his immaturity caused him to focus primarily on protecting his father rather than thinking about the consequences the murder would have on his own future.

Charles has demonstrated a strong ability to use healthy coping skills to deal with adverse situations and an exceptional ability to grow through the rehabilitation programs offered to him. He has remained hopeful and resilient through the use of religion, writing poetry and contact with family. Charles now has the ability to critically reflect on the antecedents and consequences of the crime including his feelings of remorse and the emotional impact the murder had on victim's mother. He also described how his environment and newly formed relationship with his father influenced his decisions. During the past assessment, Charles seemed to idealize his father as a "good guy" despite much evidence to the contrary. With rehabilitation and a more mature brain, he now understands the consequences associated with being around his dad and assesses his relationship with his dad more realistically then he did when he was 13. He is now angry, sad, and resentful for what his father has done to Shayla Johnson, her family, and himself.

Charles was sincere in his recount of his impulsive decision to leave his job after receiving a call that his mother was dying. Charles is able to describe, with regret, that he acted impulsively and desperately when faced with the likelihood of his mom's imminent death. Given that his mom provided essential support throughout his life, we assert that the fear of losing her temporarily impacted his judgement. With time to reflect, he now easily acknowledges his mistake and is angry with himself for compromising the progress he has made.

Charles was far more engaged and analytical today than he was when interviewed four and half years ago. Judge Economy gave him the opportunity to benefit from a robust rehabilitation program. Charles gratefully and enthusiastically participated in this opportunity. Even several years later, he can recall and use the lessons taught to him in rehabilitation programs and his insight and judgment have progressed substantially. Charles is also altruistic and wants young people to learn from his story. He has solidified his love of learning; testimony from his teacher, his graduation as valedictorian, his cosmetology certificate, and his continued college education all attest to that. Charles has realistic goals and believes that if given the chance, education and skill will allow him to live a productive and peaceful life in society.

RECOMMENDATIONS:

Based on the above formulation and mitigating factors, we believe Charles Lewis Jr. is capable of successful rehabilitation. It is our professional opinion that he should continue to receive support to help him reintegrate into society. The mitigating factors outlined by the supreme court have strong implications in the case of Charles Lewis Jr. Our analysis of these mitigating factors clearly demonstrate that sentencing him as an adult would go against the principle of graduated and proportioned justice.

Respectfully Submitted,

Thomas L. Atkins, M.D.
Board Certified Child and Adolescent Psychiatrist
Board Certified Adult Psychiatrist
Pediatrician
University of Michigan Department of Psychiatry, Adjunct Clinical Professor
Sole Proprietor, Thomas L. Atkins, M.D. PLLC

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Fellow

STATE OF MICHIGAN
COURT OF APPEALS

In re CHARLES KUNTA LEWIS, JR., Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

CHARLES KUNTA LEWIS, JR.,

Respondent-Appellant.

UNPUBLISHED

July 9, 2019

No. 337716

Ingham Circuit Court

Family Division

LC No. 10-000001-DJ

Before: TUKEL, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

Charles Kunta Lewis, Jr., appeals as of right the February 15, 2017 sentences imposed for his convictions by a jury in 2012 of first-degree felony murder, MCL 750.316(1)(b); first-degree home invasion, MCL 750.110a(2); conspiracy to commit first-degree home invasion, MCL 750.110a(2) and MCL 750.157a(a); assault with intent to rob while armed, MCL 750.89; conspiracy to commit assault with intent to rob while armed, MCL 750.89 and MCL 750.157a(a); and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. For the reasons provided below, we affirm.

The convictions arose from the assault and killing of Shayla Johnson in Lansing in 2010. At trial, the prosecution presented testimony that (1) Lewis had joined a Lansing gang called the Block Burners in July 2010; (2) on July 23, 2010, the gang formulated a plan to commit an armed robbery and kidnapping against Johnson and her boyfriend; (3) members of the gang gathered several guns; (4) Lewis, who had a gun, and others proceeded into Johnson's home; (5) one of the assailants hit Johnson with a gun and she started bleeding profusely; (6) the assailants,

including Lewis's father,¹ carried Johnson to a car trunk; (7) Johnson maneuvered her leg to keep the trunk from closing; and (8) Lewis's father shot and killed Johnson. Evidence showed that Lewis specifically asked for a gun before the crime, that he was part of the group that surrounded Johnson's bed before the assault and killing, and that he had intimidated one of the adult members of the group of assailants.

Lewis was a minor, just shy of turning 14, at the time of the crimes but was tried and convicted as an adult. In April 2012, the court initially imposed a delayed sentence and probation, as allowed for juveniles by MCL 712A.18(1)(m). In February 2017, the court revoked the juvenile sentence and, in accordance with MCL 769.25(9), sentenced Lewis to 25 to 60 years' imprisonment for murder. The court also sentenced Lewis to a consecutive term of two years' imprisonment for felony-firearm and to four terms of 10 to 20 years' imprisonment for the remaining four convictions.

Although a sentence of life without the possibility of parole for Lewis's murder conviction under MCL 769.25 was a possibility at the initial sentencing, the prosecutor did not seek such a sentence and instead argued for a delayed sentence under MCL 712A.18(1)(m), whereby the court could exercise jurisdiction over Lewis until he reached the age of 21. See MCR 3.945(B)(1) and MCL 712A.18i(4); see also, generally, *In re Juvenile Commitment Costs*, 240 Mich App 420, 431-433; 613 NW2d 348 (2000). By imposing a delayed sentence, the court could, during or toward the end of the juvenile probationary period, sentence Lewis as an adult if such a sentence was warranted. MCL 712A.18i. As noted, the court did impose a delayed sentence, and for multiple years Lewis performed exceptionally well at his juvenile-justice facilities. However, in April 2016 he was transferred from a "lockdown" facility to the Martin Luther King House (MLK House), where he was given the freedom to interact with the outside community. He violated various rules of this facility, and in September 2016, he absconded from the facility and was apprehended by police approximately 10 days later. Evidence showed that he was involved in the theft of a vehicle in Grand Ledge and that he fled from the police when they stopped this stolen vehicle. As a result, the court imposed an adult sentence. MCL 769.25(9) mandates that a minimum sentence of 25 years applies when (1) a juvenile convicted of first-degree murder is being sentenced as an adult and (2) a sentence of life imprisonment without the possibility of parole is not imposed. The principal argument on appeal is that this 25-year mandatory minimum sentence is unconstitutional.

I. IMPOSITION OF AN ADULT SENTENCE

Lewis first argues that the trial court, at the second sentencing in February 2017, should not have imposed an adult sentence. "In reviewing a trial court's decision to sentence a minor as a juvenile or as an adult, this Court applies a bifurcated standard of review." *People v Cheeks*, 216 Mich App 470, 474; 549 NW2d 584 (1996). "We review the trial court's findings of fact

¹ Lewis's father had been released from prison approximately a month before the crimes; he had been in prison for most of Lewis's life.

under the clearly erroneous standard and the ultimate decision to sentence the minor as a juvenile or as an adult for an abuse of discretion.” *Id.*

MCL 712A.18i(3) states:

If the court entered an order of disposition under section 18(1)(n)^[2] of this chapter delaying imposition of sentence, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. If the court determines that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued or the court may impose sentence. In making this determination, the court shall consider the following:

- (a) The extent and nature of the juvenile’s participation in education, counseling, or work programs.
- (b) The juvenile’s willingness to accept responsibility for prior behavior.
- (c) The juvenile’s behavior in his or her current placement.
- (d) The prior record and character of the juvenile and his or her physical and mental maturity.
- (e) The juvenile’s potential for violent conduct as demonstrated by prior behavior.
- (f) The recommendations of any institution or agency charged with the juvenile’s care for the juvenile’s release or continued custody.
- (g) Other information the prosecuting attorney or juvenile may submit.

MCL 712A.18i(7) states:

The court shall conduct a final review of the juvenile’s probation not less than 3 months before the end of the probation period. If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose the sentence. In making its determination, the court shall consider the criteria specified in subsection (3) and all of the following criteria:

- (a) The effect of treatment on the juvenile’s rehabilitation.

² At the time MCL 712A.18i was enacted, the pertinent provision for a delayed sentence was located at MCL 712A.18(1)(n). See 1996 PA 244. However, since then, the provisions of MCL 712A.18(1)(n) have been relocated to MCL 712A.18(1)(m). But MCL 712A.18i has not yet been amended since its enactment and therefore still refers to the outdated “section 18(1)(n).”

- (b) Whether the juvenile is likely to be dangerous to the public if released.
- (c) The best interests of the public welfare and the protection of public security.

MCL 712A.18i also states, in part:

(9) If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation by being convicted of a felony or a misdemeanor punishable by imprisonment for more than 1 year, or adjudicated as responsible for an offense that if committed by an adult would be a felony or a misdemeanor punishable by imprisonment for more than 1 year, the court shall revoke probation and sentence the juvenile to imprisonment for a term that does not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation.

(10) If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation other than as provided in subsection (9), the court may impose sentence

In sentencing Lewis as an adult, the court mentioned that Lewis had hidden urine in his pants in an attempt to falsify the results of a substance-use test at MLK House. This finding by the court was not clearly erroneous, given the testimony about the incident by juvenile-justice specialist Angelo Flowers and by MLK House therapist Alexis Terry. The court also mentioned that Lewis had absconded from MLK House, and this finding, again, was amply supported by the testimony of Flowers and Terry. Finally, the court mentioned the incident involving the vehicle from Grand Ledge, and Lewis's involvement in this incident was supported by the testimony of Lansing Police Department Detective Lee McCallister. Although additional misbehavior was not explicitly delineated by the trial court, evidence supported that Lewis also had violated MLK House rules by having a cellular telephone and a Facebook account and by being in Lansing multiple times without authorization. Lewis also had appeared in photographs with what appeared to be gang signs.³

Victor Bozzo, another juvenile-justice specialist, thought that Lewis could be rehabilitated, but he admitted that his hope was "not as strong as it once was . . . due to the fact of the things that have transpired." Flowers testified that the only realistic option for further treatment for Lewis would be the Shawano Center in Grayling, but Lewis already had completed the treatments at Shawano before transferring to MLK House. Additionally, at the time of sentencing, Lewis would be turning 21 in approximately six months, so if sentenced as a juvenile he would only have six more months of treatment available to him.

Lewis abandoned his job, see MCL 712A.18i(3)(a), disobeyed multiple rules of MLK House, see MCL 712A.18i(3)(c), demonstrated a regression in his rehabilitation efforts, see

³ Lewis's crimes in July 2010 were related to gang membership.

MCL 712A.18i(7)(a), and demonstrated a risk to public security by fleeing police in a stolen vehicle, see MCL 712A.18i(7)(c). In addition, given his multiple recent transgressions, it was unlikely that in only six months he would be rehabilitated. Lewis contends on appeal that his recent transgressions were minor and were, in part, precipitated by the illness and death of his mother, but it is important to remember that the court was sentencing Lewis not based solely on his recent actions but for his extremely serious crimes of July 2010. After these crimes, Lewis received years of intensive treatment, but he was still demonstrating flagrant violations of rules and violations of societal norms. He absconded from MLK House for approximately 10 days before being apprehended by police. Under all the circumstances, the trial court did not abuse its discretion by sentencing Lewis as an adult instead of continuing with Lewis's treatment as a juvenile.

Lewis argues that regardless of the constitutionality of MCL 769.25(9), the decision to sentence him as an adult violated his right to due process because the court did not individualize its decision by taking into account his youth. While Lewis did make a due-process argument below, this was made in the context of arguing that MCL 769.25(9) was unconstitutional—not in the context of arguing that the trial court should have sentenced Lewis as a juvenile instead of as an adult. Accordingly, because Lewis did not make his appellate due-process argument below, it is not preserved. See *People v Hanks*, 276 Mich App 91, 95; 740 NW2d 530 (2007). This Court reviews unpreserved issues for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

In support of his argument, Lewis cites *People v Adams*, 430 Mich 679, 701; 425 NW2d 437 (1988). In *Adams*, the Court stated that during sentencing, the “focus [is] on the defendant.” *Id.* Lewis also cites *Miller v Alabama*, 567 US 460, 465; 132 S Ct 2455; 183 L Ed 2d 407 (2012), for the proposition that youth must be taken into account in fashioning an individualized sentence. Lewis has failed to establish a clear or obvious error with respect to his unpreserved due-process issue. The court very clearly took Lewis's youth into account and individualized his sentence by (1) affording him years of intensive treatment in juvenile-justice facilities; (2) initially disregarding his attempt to falsify the results of a substance abuse test, and by then giving Lewis more time to demonstrate progress; and (3) then, after learning of further transgressions, sentencing Lewis, for his murder conviction, to the lowest possible term under MCL 769.25(9). That statute provides that “[i]f the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment for which the maximum terms shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years.”

II. CONSTITUTIONALITY OF MCL 769.25(9)

Lewis contends that the mandatory minimum sentence of 25 years' imprisonment in MCL 769.25(9) is unconstitutional because it violates the precepts of *Miller* and related cases involving juvenile justice. We review issues of constitutional law de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

In *Miller*, two 14-year-old defendants were convicted of murder and given mandatory sentences of life imprisonment without the possibility of parole. *Miller*, 567 US at 465. The Court concluded that this mandatory sentencing

prevents those meting out punishment from considering a juvenile's "lessened culpability" and greater "capacity for change," *Graham v Florida*, 560 US 48, 68, 74, 130 S Ct 2011, 2016-2027, 2029-2030; 176 L Ed 2d 825 (2010),^[4] and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties. 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." [Miller, 567 US at 465.⁵]

The *Miller* Court added:

We . . . hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. Cf. *Graham*, 560 US at 75 ("A State is not required to guarantee eventual freedom," but must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation"). By 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. Because that holding is sufficient to decide these cases, we do not consider [the] . . . alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger. [Miller, 567 US at 479.]

In *People v Skinner*, 502 Mich 89, 114-115; 917 NW2d 292 (2018), quoting *Miller*, 567 US at 477-478, the Michigan Supreme Court set forth the various attributes of youth that the *Miller* Court found important in considering a juvenile's sentence:

(1) his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional; (3) the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him; (4) whether he might have been charged [with] and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys; and (5) the possibility of rehabilitation [Quotation marks omitted; brackets added by *Skinner*.]

Lewis essentially contends that these various attributes of youth must be considered in every sentencing decision involving juveniles and that MCL 769.25(9) is unconstitutional

⁴ The United States Supreme Court ruled in *Graham* "that life without parole violates the Eighth Amendment when imposed on juvenile nonhomicide offenders." *Miller*, 567 US at 466-467.

⁵ *Miller* applies retroactively. *People v Skinner*, 502 Mich 89, 106; 917 NW2d 292 (2018).

because it does not allow for such individualized sentencing, does not provide a meaningful opportunity for release, results in cruel or unusual punishment,⁶ and violates due process.

Miller, by its own terms, however, is limited to its facts—it dealt only with sentences of *life imprisonment without the possibility of parole* that are imposed *mandatorily*, without consideration of the attributes of youth. In finding a constitutional violation regarding such sentencing schemes, the *Miller* Court discussed the imposition of “the harshest sentences on juvenile offenders” and noted that a sentence of life without parole disregards the possibility for rehabilitation and change. *Miller*, 567 US at 472-473. *Graham*, too, was focused on life-without-parole sentences, *Graham*, 560 US at 69-70, 74, 82, and the *Miller* Court, after discussing *Graham*, stated, “*Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole,” *Miller*, 567 US at 473. The *Miller* Court stated that “the mandatory penalty schemes at issue here prevent the sentence from taking account of [characteristics of youth]” and “prohibit a sentencing authority from assessing whether the law’s harshest term of imprisonment proportionately punishes a juvenile offender.” *Id.* at 474. The Court added that this “contravenes . . . [the] principle[] that imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” *Id.* The Court noted that a sentence of life without parole, as applied to juveniles, was akin to the death penalty. *Id.* at 474-475. It reiterated that “in imposing a State’s harshest penalties, a sentencer misses too much if he treats every child as an adult.” *Id.* at 477.

Although *Graham* and *Miller* were concerned with a categorical Eighth Amendment violation, see *Miller*, 567 US at 465; *Graham*, 560 US at 53, it is clear that *Graham* and *Miller* considered that Eighth Amendment argument in the context of *life-without-parole* sentences without consideration of the attributes of youth. But, as the prosecution correctly notes, Lewis is attempting to expand these cases beyond their holdings. Lewis also argues that MCL 769.25(9) violates the constitutional guarantees of due process. See US Const, Am XIV, and Const 1963, art 1, § 17. But Lewis’s cited authority for this due-process argument is *Miller*. Lewis’s attempt to reframe this issue fails because *Miller* simply is not apposite to Lewis’s situation; MCL 769.25 does not implicate life-without-possibility-of-parole sentences.

In addition, this Court in *People v Wines*, 323 Mich App 343, 352; 916 NW2d 855 (2018), held that “there is no *constitutional* mandate requiring the trial court to specifically make findings as to the *Miller* factors except in the context of a decision of whether to impose a sentence of life without parole,” which is inapplicable here because the prosecutor in this case did not seek a life-without-parole sentence. Thus, when imposing a sentence, other than one for

⁶ “[T]he Eighth Amendment of the United States Constitution prohibits ‘cruel and unusual punishments,’ US Const, Am VIII, [and] the Michigan Constitution prohibits ‘cruel or unusual punishment,’ Const 1963, art 1, § 16.” *People v Payne*, 304 Mich App 667, 674 n 2; 850 NW2d 601 (2014). Lewis does not make any argument on appeal that the holdings of the United States Supreme Court should be expanded in Michigan based on this difference in wording.

life without parole, the failure of MCL 769.25(9) to allow consideration of these factors cannot form the basis of a constitutional violation.⁷

⁷ Under the Michigan Constitution, the prohibition against cruel or unusual punishment includes a prohibition on grossly disproportionate sentences. *People v Bullock*, 440 Mich 15, 32; 485 NW2d 866 (1992). To the extent that defendant makes an argument that his sentence is grossly disproportionate, such an argument is foreclosed by *Bullock*, under which we employ a three-part test that considers (1) the severity of the sentence imposed and the gravity of the offense, (2) a comparison of the penalty to penalties for other crimes under Michigan law, and (3) a comparison between Michigan's penalty and penalties imposed for the same offense in other states. *Id.*

As to the first question: Defendant was convicted of first-degree felony murder, which is defined to be first-degree murder, the most serious offense there is, see MCL 750.316(b), and which, except in the case of a juvenile, would be punishable by life imprisonment without possibility of parole. “Rather than imposing fixed sentences of life without parole on all defendants convicted of [first-degree murder], MCL 769.25 now establishes a default sentencing range for individuals who commit first-degree murder before turning 18 years of age. Pursuant to the new law, absent a motion by the prosecutor seeking a sentence of life without parole, the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years.” *Skinner*, 502 Mich at 102-103. Thus, under the statute, the sentence applicable to a juvenile is significantly *less* than is called for by the severity of the offense.

As to the second question: The sentence applicable in Michigan is lower than that for other serious and violent offenses, such as certain degrees of criminal sexual conduct, which are punishable by up to life imprisonment, see MCL 750.520(b)(a), and some of which provide for a mandatory minimum 25-year sentence, see MCL 750.520(b)(2)(b). Armed robbery is punishable by imprisonment for life or for any term of years, see MCL 750.529.

And finally, as to the third question, other states punish murder committed by a juvenile at least as severely as Michigan. In Ohio, for example, which does not appear to have a statute enacted in light of *Miller*, its intermediate appellate court has upheld a sentence of life with parole eligibility after 30 years. See *State v Jones*, 2015-Ohio-3506, ¶ 12 (Ohio App, 2015). As of 2014, 12 other states had passed statutes addressing sentences for juveniles convicted of murder; none provided for a sentence of less than 25 years, and minimum sentences ranged all the way up to 40 years. See The Sentencing Project, *Slow to Act: State Responses to 2012 Supreme Court Mandate on Life Without Parole*, <<https://www.sentencingproject.org/publications/slow-to-act-state-responses-to-2012-supreme-court-mandate-on-life-without-parole/>> (accessed May 31, 2019). Michigan is thus at the low end of the post-*Miller* legislative responses. Thus, there is no basis for a claim that MCL 769.25(9) provides for a grossly disproportionate sentence.

Affirmed.

/s/ Jonathan Tukel
/s/ Deborah A. Servitto
/s/ Michael J. Riordan

Order

Michigan Supreme Court
Lansing, Michigan

April 29, 2020

Bridget M. McCormack,
Chief Justice

160113

David F. Viviano,
Chief Justice Pro Tem

In re CHARLES KUNTA LEWIS, JR., Minor

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Petitioner-Appellee,

v

SC: 160113
COA: 337716
Ingham CC: 10-000001-DJ

CHARLES KUNTA LEWIS, JR.,
Respondent-Appellant.

/

On order of the Court, the application for leave to appeal the July 9, 2019 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



t0420

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 29, 2020


Clerk