No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

MELISSA POCOPANNI,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the Florida First District Court of Appeal

PETITION FOR WRIT OF CERTIORARI

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A. QUESTION PRESENTED FOR REVIEW

Whether a sentence of life imprisonment without the possibility of parole on a nineteen-year-old defendant convicted as a principal to second-degree murder – and who, as specifically acknowledged by the trial court, had no intent to commit murder and who was held criminally responsible solely because she agreed to loan her car to others who planned to commit a robbery – violates the prohibition of cruel and unusual punishment of the Eighth Amendment to the Constitution.

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

C. TABLE OF CONTENTS AND TABLE OF AUTHORITIES

1. TABLE OF CONTENTS

2. TABLE OF CITED AUTHORITIES

a. Cases

b. Statutes

c. Other Authority

The Petitioner, MELISSA POCOPANNI, requests the Court to issue a writ of certiorari to review the judgment of the Florida First District Court of Appeal entered in this case on October 2, 2020 (A-4)[1] (rehearing denied on October 21, 2020 (A-3)).

D. CITATION TO ORDER BELOW

Pocopanni v. State, 304 So. 3d 760 (Fla. 1st DCA 2020).[2]

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257 to review the final judgment of the Florida First District Court of Appeal.

F. CONSTITUTIONAL PROVISION INVOLVED

The Eighth Amendment to the Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

G. STATEMENT OF THE CASE

In 2017, the Petitioner was charged in Florida state court with one count of second-degree murder and two counts of attempted second-degree murder. The

[1] References to the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

[2] Because the state appellate court did not issue a written opinion, the Petitioner was not entitled to seek review in the Florida Supreme Court. *See Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980).

offenses occurred on February 4, 2017. At the time of the offenses, Appellant Pocopanni was only nineteen years old. Thomas Buckhalter died as a result of the offenses and Ashley Johns and Jermun Nair were injured. The State charged Appellant Pocopanni as a principal pursuant to its theory that she allowed the codefendants (Kyehem Johnson, Dedric Davis, and Walter Ford) to use her car – and they (the codefendants) ultimately drove her car (with her in the backseat) to a party and shot the victims.

The case proceeded to trial in November of 2018. At trial, defense counsel argued that the State's evidence failed to prove that Appellant Pocopanni knew (or was told) that the codefendants would *shoot* into a crowd at the party until she was already in the car on the way to the scene of the incident. In denying the motion for a judgment of acquittal after the State rested its case, the trial court acknowledged that the Petitioner had no intent to commit murder (and that she was being held criminally responsible because she agreed to loan her car to others who planned to commit a robbery):

> THE COURT: All right. Well, the evidence shows that the defendant was very eager to participate in what she called a sweet lick with the co-defendants which she said meant robbery of money or drugs. The evidence shows that these individuals were armed.
>
> In fact, she indicated in her statements as I recall that they always had guns, and so she got in the car or she actually loaned them her car, which I think is very significant because without the car there could be no crime. No car. No crime. No crime. No murder.
>
> And she could have got out of the car at any time before they got to the scene of the crime, just like RJ Green got out of the car. She could have changed her mind and refused to let them use the car.
>
> She also indicated that she was aware that one of them had a beef with somebody else because of Facebook posts so I think the jury can

> infer the defendant was a willing participant in a crime of violence that was going to take place, even though she may have thought it was going to be a robbery, and it turned out to be a murder. I think that's a question for the jury so therefore the motion is denied.

(A-14-15). At the conclusion of the trial, the jury returned a verdict of guilty as charged for all three counts.

The Petitioner was sentenced in January of 2019. During the sentencing hearing, at sentencing, the trial court stated:

> *She may not have known they were going to shoot somebody in a driveby shooting*, but she knew that her codefendants were armed with firearms.

(A-112) (emphasis added). The trial court further stated:

> [A lot of people] don't understand felony murder.
>
> I've had cases where somebody commits – admits to participating in the underlying felony and they think that they're not guilty of the murder, because they didn't commit the murder. So it's not unusual for a defendant to not know the legal consequences of their admissions to the police.
>
> I do find that from the evidence in this case the codefendants were confident that the defendant would assist them in hitting a lick by letting them use her car. They knew they could depend on her.

(A-110-111). Ultimately, the trial court sentenced the Petitioner to a total sentence of life imprisonment without the possibility of parole. (A-6-9).

On direct appeal, the Petitioner argued that her sentence violates the prohibition of cruel and unusual punishment of the Eighth Amendment to the Constitution. The Florida First District Court of Appeal affirmed the sentence without explanation. (A-4).

H. REASON FOR GRANTING THE WRIT

The question presented is important.

The Petitioner was convicted as a *principal* to one count of second-degree murder and two counts of attempted second-degree murder. As acknowledged by the trial court, the Petitioner had *no intent* to commit *murder* (and she was held criminally responsible because she agreed to loan her car to others who planned to commit a robbery). At the time of the offenses, the Petitioner was only nineteen years old. Nevertheless, the Petitioner was sentenced to life imprisonment *without the possibility of parole*. The Petitioner submits that a sentence of life imprisonment without the possibility of parole on any teenage defendant violates the prohibition of cruel and unusual punishment of the Eighth Amendment of the United States Constitution.

This Court's decision in *Graham v. Florida*, 560 U.S. 48 (2010), highlighted the differences between an adult with a fully-developed brain and a person who has yet to achieve adulthood – whose brain has not fully developed. In *Graham*, the Court held that a sentence of life imprisonment without the possibility of parole for juvenile offenders who did not commit homicide is categorically barred by the Eighth Amendment. To support this holding, the Court relied on the data demonstrating differences between the adult brain and the non-adult brain:

> *Roper* [*v. Simmons*, 543 U.S. 551 (2005),] established that because juveniles have lessened culpability they are less deserving of the most severe punishments. 543 U.S., at 569. As compared to adults, juveniles have a "'lack of maturity and an underdeveloped sense of responsibility'"; they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and their characters are "not

> as well formed." *Id.*, at 569-570. These salient characteristics mean that "[i]t is difficult even for expert psychologists 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 573. Accordingly, "juvenile offenders cannot with reliability be classified among the worst offenders." *Id.*, at 569. A juvenile is not absolved of responsibility for his actions, but his transgression "is not as morally reprehensible as that of an adult." *Thompson* [*v. Oklahoma*, 487 U.S. 815,] 835 [(1988)] (plurality opinion).
>
> No recent data provide reason to reconsider the Court's observations in *Roper* about the nature of juveniles. As petitioner's amici point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. *See* Brief for American Medical Association *et al.* as Amici Curiae 16-24; Brief for American Psychological Association *et al.* as Amici Curiae 22-27. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults. *Roper*, 543 U.S., at 570. It remains true that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." *Ibid.* These matters relate to the status of the offenders in question; and it is relevant to consider next the nature of the offenses to which this harsh penalty might apply.

Graham, 560 U.S. at 68-69. Undersigned counsel acknowledges that in *Graham*, the Court was focusing on juveniles (i.e., those defendants who had not yet achieved the age of eighteen). However, in one of the amicus briefs considered by the Court in *Graham*, it was pointed out that the human brain does not fully develop until the age of *twenty-five*. Specifically, in the amicus brief submitted by the American Medical Association (No. 08–7412, 2009 WL 2247127 at *13-31 – hereinafter "*Graham* AMA Brief"), it was explained that structural differences between adolescent and adult brains, confirmed by recently developed brain imagery technology, demonstrate that

critical regions of the brain responsible for controlling thoughts, emotions, impulsivity, and actions continue to develop through age *twenty-five*.[3]

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[3] There are two ways in which the adolescent's prefrontal cortex is physically underdeveloped, affecting brain functioning: pruning and myelination. *See Graham* AMA Brief at 18-19. Pruning refers to the process of decreasing gray matter in the brain as it matures. *Id.* at 19 ("[P]runing of excess neurons and connections which make up the gray matter leads to greater efficiency of neural processing and strengthens the brain's ability to reason and consistently exercise good judgment. Thus, pruning establishes some pathways and extinguishes others, enhancing overall brain functions."). MRI technology has allowed for a better understanding of the pruning process and its impact on brain maturation:

> Gray matter volumes peak during the ages from 10-20 years, and the prefrontal cortex is one of the places where gray matter increases – before adolescence – and then gets pruned over time, beyond adolescence. The prefrontal cortex is also one of the last regions where pruning is complete and this region continues to thin past adolescence.

Graham AMA Brief at 20-21. Pruning is one measure of brain maturity. One of the last regions of the brain to reach full maturity in the pruning process in the pre-frontal cortex – "the region most closely associated with risk assessment, impulse control, emotional regulation, decision-making, and planning . . . ." *Id.* at 21. During adolescence, "white matter" in the brain increases by a process called "myelination." "The presence of myelin makes communication between different parts of the brain faster and more reliable." Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* 144 (2001). The increase in "white matter" or myelination "continues through adolescence into adulthood." *Graham* AMA Brief at 22, n.68. A longitudinal MRI study at the National Institute of Mental Health documented an increase in white matter continuing through the teenage years to at least age 22. *See* Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 Nature Neurosci. 861, 861-62 (1999). Late maturation of the frontal lobes is also consistent with electroencephalogram (EEG) research showing that the frontal executive region matures from ages 17-21 – after maturation appears to cease in other brain regions. William J. Hudspeth & Karl H. Pribram, *Psychophysiological Indices of Cerebral Maturation*, 21 Int'l J. Psychophysiology 19, 26-27 (1992). *See also* Mark Hanson, *What's the Matter with Kids Today*, ABA Journal, July 2010, at 50 (discussing scientific research that suggests psychosocial development continues into early adulthood resulting in shortsighted decisions, poor impulse control, and increased vulnerability to peer pressure during adolescence); Richard Knox, *The Teen Brain: It's Just Not grown Up Yet*, Nat'l Pub. Radio (March 1, 2010),

As explained above, the criminal incident in the instant case occurred when the Petitioner was just nineteen years old. The human brain development research relied upon by the Court in *Graham* applies equally to the Petitioner's case.

In support of her argument that it is unconstitutional (both facially and as applied to the Petitioner) to impose a sentence of life imprisonment without the possibility of parole on a nineteen-year-old defendant, the Petitioner relies on the Illinois appellate court's decision in *People v. House*, 2015 WL 9428803 (Ill. App. Ct. Dec. 24, 2015). In *House*, the court held that the imposition of a mandatory natural life sentence on a nineteen-year-old defendant convicted of murder and aggravated kidnapping violated the Eighth Amendment:

> While defendant was not a juvenile at the time of the offense, his young age of 19 is relevant in consideration under the circumstances of this case. As in [*People v.*] *Miller*[, 781 N.E.2d 300 (2002)], defendant's sentence involved the convergence of the accountability statute and the mandatory natural life sentence. We acknowledge that the offender in *Miller* was 15, never handled a firearm, and had less than a minute to consider the implications of his participation. In the present case, the State's evidence at trial established that defendant was not present at the scene of the murder, but merely acted as a lookout near the railroad tracks. There was no evidence that defendant helped to plan the commission, but instead took orders from higher ranking UVL members. While defendant had a greater involvement in the commission of the offenses than the defendant in *Miller*, after considering the evidence and defendant's relevant culpability, we question the propriety of mandatory natural life for a 19 year old defendant convicted under a theory of accountability. Although defendant acted as a lookout during the commission of the crime and was not the actual shooter, he received a

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http://www. npr.org/ templates/story/story.php?story ID= 124119468 (interview of Harvard University scientists and expert on epilepsy, Frances Jensen) ("Recent studies show that neural insulation [which connects the frontal lobes to the rest of the brain] isn't complete until the mid–20's.").

mandatory natural life sentence, the same sentence applicable to the person who pulled the trigger.

We also observe that the Supreme Court in *Miller* [*v. Alabama*, 567 U.S. 460 (2012)], *Graham* and *Roper* considered the continuing brain development in adolescents.

> "Because juveniles have diminished culpability and greater prospects for reform, we explained, 'they are less deserving of the most severe punishments.' *Graham*, 560 U.S. at 68. Those cases relied on three significant gaps between juveniles and adults. First, children have a "'lack of maturity and an underdeveloped sense of responsibility,"' 'leading to recklessness, impulsivity, and heedless risk-taking. *Roper*, 543 U.S. at 569. Second, children 'are more vulnerable . . . to negative influences and outside pressures,' including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings. *Ibid.* And third, a child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].' *Id.* at 570.
>
> Our decisions rested not only on common sense – on what 'any parent knows' – but on science and social science as well. *Id.* at 569. In *Roper*, we cited studies showing that "'[o]nly a relatively small proportion of adolescents"' who engage in illegal activity "'develop entrenched patterns of problem behavior."' *Id.* at 570 (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity*, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003)). And in *Graham*, we noted that 'developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds' – for example, in 'parts of the brain involved in behavior control.' 560 U.S. at 68 . . . . We reasoned that those findings – of transient rashness, proclivity for risk, and inability to assess consequences – both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his "'deficiencies will be reformed."' *Id.* at 68 (quoting *Roper*, 543 U.S. at 570).

Miller, 567 U.S. at 471-472.

As the *Graham* Court noted, "[e]ven if the punishment has some

connection to a valid penological goal, it must be shown that the punishment is not grossly disproportionate in light of the justification offered." *Graham*, 560 U.S. at 72. The *Roper* Court stated, "it is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Roper*, 543 U.S. at 573 (citing Lawrence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014-16 (2003)).

"It is widely recognized by many legal scholars that the United States Supreme Court is moving rather quickly towards abolishing life without parole sentences for juvenile offenders entirely." Maureen Dowling, *Note Juvenile Sentencing in Illinois: Addressing the Supreme Court Trend Away From Harsh Punishments for Juvenile Offenders*, 35 N. Ill. U. L. Rev. 611, 619 (2015).

> "There are several parts of the analyses of each case that point to this inevitable shift. First, each case acknowledges that the decisions are directly contrary to our historical understanding of juvenile sentencing. The Court rejects the notion of looking at sentencing 'through a historical prism' in favor of the evolving moral and ethical standards of society. This opens up the Court to abolish life without parole sentences for juveniles, even though traditionally it is a widely practiced and accepted sentence. Second, each opinion makes it clear that simply because a majority of state sentencing statutes do not currently agree with the decisions, this will not affect the outcome. This argument goes hand-in-hand with the Court's rejection of historical sentencing standards. Again, the Court has left open the possibility of abolishing the harshest sentence available to juveniles. Finally, the Court repeatedly emphasizes the differences between juveniles and adults as an explanation for why each should be sentenced differently. The continued focus on these differences further bolsters the argument for abolishing life sentences without the possibility of parole for juveniles."

Id. at 619-20.

"The Supreme Court has followed a clear path away from life without parole sentences. Following the reasoning laid out by the Court in these three cases, it can easily be seen how the Court would deal with

abolishing the sentence entirely." *Id.* at 627. As this note observes, several states have responded to *Miller* by imposing "*de facto*" life sentences through lengthy term-of-years sentences. *Id.* at 620. However, "These *de-facto* life sentences are not consistent with the language or analysis found in both *Miller* and *Graham*. A prison sentence that will last sixty or more years does not allow courts to show juvenile offenders any clemency. Furthermore, despite the lengthy discussion about the differences between adults and juveniles, *de-facto* life sentences do not give courts any opportunity to take the differences into account when determining a sentence." *Id.* at 621. We also observe that the Iowa Supreme Court in *State v. Null*, 836 N.W.2d 41 (Iowa 2013) expanded the principles of *Miller* to hold mandatory minimum sentences for juvenile offenders to be unconstitutional. The *Null* court believed that

> "while a minimum of 52.5 years imprisonment is not technically a life-without-parole sentence, such a lengthy sentence imposed on a juvenile is sufficient to trigger *Miller*-type protections. Even if lesser sentences than life without parole might be less problematic, we do not regard the juvenile's potential future release in his or her late sixties after a half century of incarceration sufficient to escape the rationales of *Graham* or *Miller*. The prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a 'meaningful opportunity' to demonstrate the 'maturity and rehabilitation' required to obtain release and reenter society as required by *Graham*, 560 U.S. at 75."

Id. at 71.

Although the Court in *Roper* delineated the division between juvenile and adult at 18, we do not believe that this demarcation has created a bright line rule. *See Roper*, 543 U.S. at 574 ("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 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.").

Rather, we find the designation that after age 18 an individual is a mature adult appears to be somewhat arbitrary, especially in the case at bar. Recent research and articles have discussed the differences

between young adults, like defendant, and a fully mature adult. "Research in neurobiology and developmental psychology has shown that the brain doesn't finish developing until the mid-20s, far later than was previously thought. Young adults are more similar to adolescents than fully mature adults in important ways. They are more susceptible to peer pressure, less future-oriented and more volatile in emotionally charged settings." Vincent Schiraldi & Bruce Western, *Why 21 year-old offenders should be tried in family court*, Wash. Post (Oct. 2, 2015), available at www.washingtonpost.com/opinions/time-to-raise-the-juvenile-age-limit/2015/10/02/948e317c-6862-11e5–-9ef3-fde182507eacstory.html.

> "The young adult brain is still developing, and young adults are in transition from adolescence to adulthood. Further, the ongoing development of their brains means they have a high capacity for reform and rehabilitation. Young adults are, neurologically and developmentally, closer to adolescents than they are to adults. Prosecuting and sentencing young adults in the adult criminal justice system deprives them of their chance to become productive members of society, leads to high recidivism rates, and high jail and prison populations, and increased costs to society through subsequent incarceration and unemployment."

Kanako Ishida, *Young Adults in Conflict with the Law: Opportunities for Diversion, Juvenile Justice Initiative*, at 1 (Feb. 2015), available at jjustice.org/wordpress/wp-content/uploads/Young-Adults-in-Conflict-with-the-Law-Opportunities-for-Diversion.pdf.

The thesis of these articles is to illustrate the need to expand juvenile sentencing provisions for young adult offenders. Both articles noted that several European countries have already extended juvenile justice to include young adults. In Germany, all young adults ages 18 to 21 have been tried in juvenile court and the judges have an option to sentence them as a juvenile, if a consideration of the offender's personality and environment indicate that his psychological development was as a juvenile. *Id.* at 2. Sweden allows for young adults to be tried in juvenile court until their 25th birthday, and young adults 18 to 24 receive different treatment than adults. "For instance, statutory minimum sentences cannot be applied for young people age 20 or under." *Id.* at 3. The Netherlands has extended juvenile alternatives for young adults ages 18 to 21. *Id.*

We also point out that Illinois raised the age for a delinquent minor. Prior to January 1, 2014, a person who committed a felony prior to his or her 17th birthday was considered a delinquent minor. *See* 705

ILCS 405/5–105(3) (West 2012). However, Public Act 98-61 changed the definition of a delinquent minor to be, "any minor who prior to his or her 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance." Pub. Act. 98–61, § 5 (eff. Jan. 1, 2014) (amending 705 ILCS 405/5-105(3) (West 2012)).

As discussed in the Northern Illinois University Law Review note, the Supreme Court of Wyoming compiled a list of factors taken from *Miller* to consider in sentencing juveniles.

> "During a postconviction sentencing hearing, a trial court should scrutinize the following factors before sentencing a juvenile offender: (a) the character and history of the juvenile offender and the specific circumstances of the crime; (b) the background and emotional and mental development of the juvenile offender; (c) the offender's age and characteristics that go along with it including immaturity and ability to appreciate risks; (d) the juvenile's family and home environment; (e) the circumstances of the crime, the extent to which the juvenile was involved, and the extent to which peer or familial pressure may have factored into the juvenile's participation; (f) 'the juvenile's relative inability to deal with police and prosecutors or to assist his own attorney'; and (g) the offender's potential for rehabilitation."

Dowling, *supra* at 634 (citing *Bear Cloud v. State*, 2013 WY 18, ¶ 42, 294 P.3d 36, 47 (Wyo. 2013), quoting *Miller*, 567 U.S. at 475-477).

"'[J]ust as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered' in assessing his culpability." *Miller*, 567 U.S. at 476 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 116 (1982)). As the Supreme Court observed in *Graham*, "Life without parole is an especially harsh punishment for a juvenile. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only." *Graham*, 560 U.S. at 70.

"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." *Miller*, 567 U.S. at 479. Under Illinois law, the harshest form of punishment is a mandatory life

sentence. *See* 730 ILCS 5/5-8-1(a) (West 2014). The trial court is not afforded any discretion if an offender is found guilty of triggering offenses, such as, the death of more than one person. *See* 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2014). However, when the death penalty still existed in Illinois, there were several statutory guidelines that had to be met before such a sentence could be imposed. *See* 720 ILCS 5/9-1 (West 2010). The lack of discretion afforded the trial court for the imposition of a mandatory life sentence is especially relevant when the defendant is a young adult, over 18, but still not considered a fully mature adult.

These considerations are significant in the instant case and support defendant's argument that the mandatory natural life sentencing statute is unconstitutional as applied to him. Turning to the case at bar, while clearly no longer a juvenile, defendant, at age 19 years and 2 months, was barely a legal adult and still a teenager. His youthfulness is relevant when considered alongside his participation in the actual shootings. Defendant's presentence investigation report showed that his only prior offenses were possession of a controlled substance with intent to deliver. Defendant did not have a criminal history of violent crimes. The sentencing hearing also disclosed that defendant never knew his father, he was raised by his maternal grandmother, and that his mother died when he was 18. Defendant attended high school through the twelfth grade, however, he never graduated. At the time defendant was sentenced, the death penalty was still in place in Illinois. Although the trial judge found defendant eligible for the death penalty, he concluded that there were "sufficient mitigating factors to preclude the imposition of the death penalty." While some of these mitigating factors were before the trial court when it declined to impose the death penalty, they were not available to be considered before imposing a mandatory natural life sentence. The court's ability to take any factors into consideration was negated by the mandatory nature of defendant's sentence. The trial court was also precluded from considering the goal of rehabilitation in imposing the life sentence, which is especially relevant in defendant's case. 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.

Our conclusion is not meant to diminish in any way of the seriousness of the crimes, specifically two convictions for murder and two convictions for aggravated kidnapping. We recognize defendant remains culpable for his participation. However, we believe that defendant is entitled to a new sentencing hearing in which the trial court has the ability to consider the relevant mitigating factors prior to imposing a

> sentence of such magnitude. Accordingly, we hold that defendant's sentence violates the proportionate penalties clause of the constitution as applied to him. We vacate defendant's sentence of natural life and remand for a new sentencing hearing.

House, 2015 WL 9428803 at *22-28.

The Petitioner requests the Court to adopt the Illinois court's well-reasoned opinion in *House* and thereafter conclude that the life without parole sentence in this case is unconstitutional. As explained in *House*, excluding the Petitioner from the reasoning of the Court's opinion in *Graham* simply because the offense in this case occurred shortly after she turned eighteen years old is arbitrary. And as explained above, recent research and studies into the human brain has now clearly established that young adults are more similar to adolescents than fully mature adults.

Like *House*, there are mitigating circumstances in this case. Most notably, the Petitioner was convicted as a *principal.* Undersigned counsel recognizes that – from a conviction standpoint – Florida law treats a principal as if s/he has committed all of the acts of the other codefendants. However, from a sentencing standpoint, the Petitioner – who was *not* the trigger person – is *less culpable* than someone who actually fires a gun and kills another person. Additionally, during the sentencing hearing, the Petitioner presented several mitigating circumstances – including mental health disorders (i.e., bipolar disorder and borderline personality disorder) and assistance provided to law enforcement. (A-16-109; A-12-13).

Recently, courts in other states have expanded the rationale behind the *Graham* decision and applied it to teenagers above the age of seventeen (i.e., defendants who

were eighteen or nineteen). For example, in the case of Travis Bredhold – an eighteen-year-old defendant charged with murder – a Kentucky judge ruled that the death penalty is unconstitutional for defendants under the age of twenty-one. *See* http://www.kentucky.com/news/local/crime/article165492482.html. In reaching this conclusion, the judge

> cited research showing that 18- to 21-year-olds are less culpable for the same reasons that the U.S. Supreme Court found teens under 18 to be. The age group lacks maturity to control their impulses and fully consider risks, making them unlikely to be deterred by knowledge of likelihood and severity of punishment, the judge wrote.

Id. Similarly, in *Matter of Light-Roth*, 2017 WL 3473644 (Wash. Ct. App. Aug. 14, 2017), a Washington appellate court held that a nineteen-year-old defendant convicted of second-degree murder in 2004 was entitled to resentencing so that he could present evidence of his "youthfulness" as a mitigating factor. Most recently, the Washington Supreme Court relied upon the reasoning in *Graham* and held that it is unconstitutional to impose mandatory life-without-parole sentences on defendants between the ages of eighteen and twenty-one. *See Matter of Monschke*, 2021 WL 923319 (Wash. Mar. 11, 2021). Based on these decisions from Illinois, Kentucky, and Washington, there appears to be an emerging trend in this country to extend the *Graham* rationale to teenagers older than seventeen.

In 2014, the Florida Legislature responded to the Court's decision in *Graham* and the Florida Legislature adopted criteria for a sentencing court to consider when sentencing a defendant with a less-than fully formed brain. *See* § 921.1401, Fla. Stat.

Section 921.1401 states in relevant part

> (2) In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:
>
> (a) The nature and circumstances of the offense committed by the defendant.
>
> (b) The effect of the crime on the victim's family and on the community.
>
> (c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
>
> (d) The defendant's background, including his or her family, home, and community environment.
>
> (e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
>
> (f) The extent of the defendant's participation in the offense.
>
> (g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.
>
> (h) The nature and extent of the defendant's prior criminal history.
>
> (i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
>
> (j) The possibility of rehabilitating the defendant.

However, *none of the factors* set forth in section 921.1401 were considered by the sentencing court in the Petitioner's case because the Petitioner was over the age of eighteen at the time of the criminal incident. Undersigned counsel submits that the appropriate remedy in this case is to remand this case with directions that the state trial court conduct a resentencing hearing so that the state trial court can properly apply the factors set forth in section 921.1401 in order to determine an appropriate sentence in this case – a sentence that takes into consideration the Petitioner's age, maturity, intellectual capacity, and mental and emotional health at the time of the

offenses.

By granting the petition for writ of certiorari in the instant case, the Court will have the opportunity to consider the question of whether a sentence of life imprisonment without the possibility of parole on a nineteen-year-old defendant convicted as a *principal* to second-degree murder – and who, as specifically acknowledged by the trial court, had *no intent to commit murder* and who was held criminally responsible solely because she agreed to loan her car to others who planned to commit a robbery – violates the prohibition of cruel and unusual punishment of the Eighth Amendment to the Constitution. The question in this case has the potential to impact hundreds – if not thousands – of cases nationwide. The Petitioner urges the Court to exercise its discretion to hear this important question.

I. CONCLUSION

The Petitioner requests the Court to grant his petition for writ of certiorari.

Respectfully Submitted,

/s/ Michael Ufferman

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