No. _____

IN THE

Supreme Court of the United States

ANTONIO LEBARON MELTON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Florida

PETITIONER'S APPENDIX

CAPITAL CASE

ALICE B. COPEK
Counsel of Record
DREW A. SENA
Office of the Capital Collateral Regional Counsel—North
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Alice.Copek@ccrc-north.org
Drew.Sena@ccrc-north.org

INDEX TO APPENDIX

Exhibit	Description
1	Florida Supreme Court Order Denying Rehearing (July 12, 2023)
2	Florida Supreme Court Opinion (May 4, 2023)
3	Escambia County Circuit Court Order Denying Successive Motion for Postconviction Relief (August 17, 2022)
4	Defendant's Successive Motion for Postconviction Relief Based on Newly Discovered Evidence (June 29, 2022)

Respectfully submitted,

/s/ Alice B. Copek
ALICE B. COPEK
Counsel of Record
DREW A. SENA
Office of the Capital Collateral
Regional Counsel—North
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Alice.Copek@ccrc-north.org
Drew.Sena@ccrc-north.org

EXHIBIT 1

Florida Supreme Court Order Denying Rehearing

(July 12, 2023)

2023 WL 4485398
Only the Westlaw citation is currently available.
Supreme Court of Florida.

Antonio Lebaron MELTON, Appellant(s)
v.
STATE of Florida, Appellee(s)

SC2022-1394
|
July 12, 2023

Lower Tribunal No(s).: 171991CF000373XXXBXX

Opinion

***1** Appellant's Motion for Rehearing is hereby denied.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, and FRANCIS, JJ., concur.

SASSO, J., did not participate.

All Citations

Not Reported in So. Rptr., 2023 WL 4485398

End of Document

EXHIBIT 2
Florida Supreme Court Opinion
(May 4, 2023)

367 So.3d 1175
Supreme Court of Florida.

Antonio Lebaron MELTON, Appellant,
v.
STATE of Florida, Appellee.

No. SC2022-1394
|
May 4, 2023

Synopsis

Background: After affirmance, 638 So.2d 927, of death-row inmate's murder conviction and death sentence for a murder committed at age of 18 years and 25 days, inmate filed sixth successive motion for postconviction relief. The Circuit Court, 1st Judicial Circuit, Escambia County, W. Joel Boles, J., summarily denied the petition. Inmate appealed.

[Holding:] The Supreme Court held that inmate was not diligent in raising as putatively newly-discovered evidence a consensus of majority of neuroscientific community that the human brain was not fully developed until late adolescence.

Affirmed.

Procedural Posture(s): Appellate Review; Post-Conviction Review.

West Headnotes (3)

[1] Criminal Law Time for proceedings

Death-row inmate failed to diligently raise as putatively newly-discovered evidence, for purposes of timeliness of successive motion for postconviction relief after affirmance of death sentence, his claim that declaration from neurodevelopmental psychologist, and resolution from national association of psychologists, showed that there was scientific consensus that the brain did not fully develop until at least age 21, so that execution of inmate, who committed murder at age of 18 years and 25 days, would violate Eighth Amendment; claim depended on a consensus of neuroscientific community that had been accepted for more than seven years. U.S. Const. Amend. 8; Fla. R. Crim. P. 3.851.

[2] Criminal Law Time for proceedings

New opinions or research studies based on a compilation or analysis of previously existing data and scientific information are not generally considered newly discovered evidence, for purposes of diligence requirement for timeliness of successive motion for postconviction relief after affirmance of death sentence. Fla. R. Crim. P. 3.851.

[3] Sentencing and Punishment Juveniles
Sentencing and Punishment Age

Eighth Amendment's prohibition of execution of juvenile homicide offenders did not extend to an offender who committed murder at age of 18 years and 25 days. U.S. Const. Amend. 8.

An Appeal from the Circuit Court in and for Escambia County, W. Joel Boles, Judge, Case No. 171991CF000373XXXBXX

Attorneys and Law Firms

Robert Friedman, Capital Collateral Regional Counsel, Alice B. Copek, Assistant Capital Collateral Regional Counsel, and Drew A. Sena, Assistant Capital Collateral Regional Counsel, Northern Region, Tallahassee, Florida, for Petitioner

Ashley Moody, Attorney General, and Charmaine M. Millsaps, Senior Assistant Attorney General, Tallahassee, Florida, for Respondent

Opinion

PER CURIAM.

Antonio Lebaron Melton, a prisoner under sentence of death, appeals the circuit court's order summarily denying his sixth successive motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.851. We affirm. [1]

In 1994, this Court affirmed Melton's first-degree felony murder and armed robbery ***1176** convictions for the robbery and murder of George Carter. *Melton v. State*, 638 So. 2d 927, 928 (Fla. 1994). Melton was 18 years and 25 days old at the time of Carter's murder. The trial judge sentenced Melton to death in accordance with the jury's eight-to-four recommendation for the murder and to life imprisonment for the robbery. *Id.* His convictions and sentences became final in 1994 when the United States Supreme Court denied certiorari review. *Melton v. Florida*, 513 U.S. 971, 115 S.Ct. 441, 130 L.Ed.2d 352 (1994).

We have since affirmed the denial of Melton's initial postconviction motion and his second, third, fourth, and fifth successive postconviction motions [2] and denied his initial and successive habeas petitions. *See Melton v. State*, 949 So. 2d 994, 999 (Fla. 2006); *Melton v. State*, 55 So. 3d 1287 (Fla. 2011); *Melton v. State*, 88 So. 3d 146 (Fla. 2012); *Melton v. State*, 193 So. 3d 881, 884 (Fla. 2016); *Melton v. Jones*, No. SC2017-2032, 2018 WL 566451, at *1 (Fla. Jan. 26, 2018); *Melton v. State*, 236 So. 3d 234, 235 (Fla. 2018).

Months before Melton was apprehended for Carter's murder, he murdered Ricky Saylor. *Melton*, 949 So. 2d at 1000. Melton was 17 years old at the time of the Saylor murder. He was convicted of armed robbery and first-degree felony murder and was sentenced to life imprisonment with the possibility of parole after twenty-five years. *Melton v. State*, 304 So. 3d 375, 376 (Fla. 1st DCA 2020). The convictions served as the basis for the trial court's finding of the prior violent felony aggravator in the Carter murder case. *Melton*, 949 So. 2d at 1000.

In 2022, Melton filed the sixth successive postconviction motion at issue, contending that two pieces of alleged newly discovered evidence—a declaration from a neurodevelopmental psychologist and a resolution from the American Psychological Association (APA)—show that there is a scientific consensus that the brain does not fully develop until at least 21 years old. Melton argues that this new evidence requires extending the rationale in *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), for barring the execution of persons under the age of 18 at the time of the offense to bar the execution of persons under the age of 21. In the alternative, he argues that the alleged newly discovered evidence negates the two aggravating factors [3] that the trial court found in imposing his death sentence and therefore would probably yield a less severe sentence on retrial. *See Dailey v. State*, 329 So. 3d 1280, 1285 (Fla. 2021) (explaining that to obtain relief where alleged newly discovered evidence relates to the penalty phase, "a defendant must establish: (1) that the newly discovered evidence was unknown by the trial court, by the party, or by counsel at the time of trial and it could not have been discovered through due diligence, and (2) that the evidence is of such a nature that it would probably ... yield a less severe sentence on retrial").

The circuit court summarily denied relief, finding that Melton's claim was untimely and that his request to extend *Roper* is meritless. We agree. *See* Fla. R. Crim. P. 3.851(f)(5)(B) ("If the motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing.").

[1] **[2]** Melton's motion is not timely because it was not filed within one year of ***1177** the date upon which the claim became discoverable through due diligence. *See Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008) ("To be considered timely filed as newly discovered evidence, the successive rule 3.851 motion was required to have been filed within one year of the date upon which the claim became discoverable through due diligence."). The declaration and resolution that Melton argues are newly discovered evidence largely rely on pre-2021 studies and, in fact, the declaration recognizes that in 2015 the majority of the neuroscientific community accepted that the human brain was not fully developed until late adolescence. " '[N]ew opinions or research studies based on a compilation or analysis of previously existing data and scientific information' are not generally considered newly discovered evidence." *Dillbeck v. State*, 357 So. 3d 94, 99 (Fla. 2023) (alteration in original) (quoting *Henry v. State*, 125 So. 3d 745, 750 (Fla. 2013)); *see also Foster v. State*, 132 So. 3d 40, 72 (Fla. 2013) ("[N]ew research studies are not recognized as newly discovered evidence."). But even if they could be, because Melton's claim depends on a consensus that has been accepted since 2015, the record conclusively establishes that he failed to diligently raise it.

[3] We also agree with the circuit court that Melton's request to extend *Roper* lacks merit. We have repeatedly held that "unless the United States Supreme Court determines that the age of ineligibility for the death penalty should be extended, we will continue to adhere to *Roper*." *Branch v. State*,

236 So. 3d 981, 987 (Fla. 2018); *see also* *Foster v. State*, 258 So. 3d 1248, 1253 (Fla. 2018) (reaffirming this Court's adherence to *Branch* and *Roper*). Melton, who relies on evidence that is not newly discovered evidence and advances the same reasoning for extending *Roper* that we have previously rejected, has not persuaded us that our precedent is "clearly erroneous." *State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020).

Accordingly, we affirm the circuit court's summary denial of Melton's sixth successive postconviction motion.

It is so ordered.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, and FRANCIS, JJ., concur.

All Citations

367 So.3d 1175, 48 Fla. L. Weekly S71

Footnotes

1 We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const.

2 Melton appealed the denial of his first successive postconviction motion, but voluntarily dismissed the appeal before the Court ruled on the merits.

3 The two aggravating factors are: (1) prior violent felony (first-degree murder and robbery of Saylor) and (2) pecuniary gain. *Melton*, 638 So. 2d at 929.

EXHIBIT 3

Escambia County Circuit Court Order Denying Successive Motion for Postconviction Relief (August 17, 2022)

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

ANTONIO LEBARON MELTON,

Defendant.
_____/ Case No.: 1991 CF 000373 B Div.: K

ORDER DENYING SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF

THIS MATTER came before the Court upon Defendant's Successive Motion for Postconviction Relief Based on Newly Discovered Evidence, brought pursuant to Florida Rule of Criminal Procedure 3.851 and filed on June 29, 2022. On August 3, 2022, a case management conference pursuant to rule 3.851(f)(5) was held on the motion.

Having reviewed Defendant's motion, exhibits, and supplemental authority, the State's response and supplemental authority, the record; and case law, and having heard and carefully considered argument of counsel, the Court finds the motion can be denied without need of an evidentiary hearing.[1]

PROCEDURAL HISTORY

On January 30, 1992, Defendant was convicted of the January 1991 first-degree felony murder of George Carter and the armed robbery of Carter's pawn shop. On May 19, 1992, Defendant was sentenced to death. Defendant's convictions and sentences were affirmed on

[1] Having considered Defendant's Motion to Strike State's Supplemental Authority of Eleventh Circuit Prior Decision, filed on August 4, 2022, the Court will consider the case provided by the State without considering any argument made in the document titled "Supplemental Authority of Eleventh Circuit Prior Decision," filed by the State on August 4, 2022. *See Florida Dept. of Health & Rehab. Services v. Martin*, 563 So. 2d 1124, 1125 (Fla. 1st DCA 1990).

direct appeal. *Melton v. State,* 638 So.2d 927 (Fla. 1994). The United States Supreme Court denied certiorari review on October 31, 1994. *Melton v. Florida,* 513 U.S. 971, 115 S.Ct. 441, 130 L.Ed.2d 352 (1994).

Defendant filed an initial postconviction motion on January 16, 1996, which was denied after an evidentiary hearing in an order entered on March 23, 2004. The Florida Supreme Court affirmed the denial on appeal in *Melton v. State*, 949 So. 2d 994 (Fla. 2006). Defendant also filed a petition for writ of habeas corpus in the Florida Supreme Court, and the petition was denied. *Id.*

Defendant filed a petition for writ of certiorari from his postconviction proceedings in the United States Supreme Court, which denied the petition on October 1, 2007. *Melton v. Florida*, 552 U.S. 843 (2007).

Defendant filed a successive motion for postconviction relief on February 28, 2006. That motion was denied on January 3, 2008. The appeal of the denial was voluntarily dismissed on October 3, 2008. *Melton v. State*, 994 So. 2d 305 (Fla. 2008).

Another successive motion for postconviction relief, filed on March 9, 2009, was dismissed without prejudice on October 21, 2009. The appeal of the dismissal was affirmed on February 9, 2011. *Melton v. State*, 55 So. 3d 1287 (Fla. 2011).

A third successive motion for postconviction relief was filed on November 29, 2010. The Court denied Defendant's motion on April 11, 2011. The denial was affirmed by the Florida Supreme Court on April 26, 2012. *Melton v. State*, 88 So. 3d 146 (Fla. 2012).

On May 31, 2013, the federal district court denied Defendant's March 3, 2008, petition for writ of habeas corpus. *Melton v. Tucker*, 1:08cv34/RS, 2013 WL 11326076 (N.D. Fla. May 31, 2013). The Eleventh Circuit Court of Appeals affirmed the denial of a certificate of

appealability. *Melton v. Sec'y, Florida Dept. of Corr.*, 778 F.3d 1234 (11th Cir. 2015). On October 13, 2015, the United States Supreme Court denied Defendant's petition for wit of certiorari. *Melton v. Jones*, 136 S. Ct. 324 (2015).

On June 11, 2014, Defendant filed a fourth successive motion for postconviction relief concerning newly discovered evidence. The December 15, 2014, order denying the motion was affirmed on appeal on May 26, 2016. *Melton v. State*, 193 So. 3d 881 (Fla. 2016).

The order of April 3, 2017, denying Defendant's fifth successive motion for postconviction relief was affirmed on appeal. *Melton v. State*, 236 So. 3d 234 (Fla. 2018).

Defendant filed another petition for habeas corpus relief with the federal district court, and the order of March 18, 2015, denying the petition was affirmed on appeal. *Melton v. Attorney Gen.*, 769 Fed. Appx. 803 (11th Cir. 2019). On January 13, 2020, the United States Supreme Court denied Defendant's petition for wit of certiorari. *Melton v. Inch*, 140 S. Ct. 885 (2020).

DEFENDANT'S CLAIM

Defendant claims newly discovered evidence demonstrates that the death penalty is a categorically unconstitutional punishment for individuals who committed offenses when they were between the ages of 18 to 21. He alleges that in 2021, counsel for Defendant contacted Dr. Laurence Steinberg, Ph.D., who issued a report on June 30, 2021, summarizing the current scientific understanding of the brain development of individuals between the ages of 18 to 21. Defendant asserts that the continued study of brain maturation over the past decade has shown that several aspects of brain development, including the brain regions that determine character, judgment, and decision-making, continue to develop until at least the age of 21 and that this view is now widely accepted among neuroscientists and the legal community. Defendant further

alleges he was 18 years of age at the time of the offense, and the current understanding and consensus of the science in support of his claim was not available during his trial in 1992. Defendant argues the report and this current understanding are newly discovered evidence.

In support of his motion, Defendant relies in large part upon *Roper v. Simmons*, 543 U.S. 551 (2005). In *Roper*, the United States Supreme Court held the Eighth Amendment prohibits the death penalty for juveniles under the age of 18. *Id.* at 567.

ANALYSIS

The Steinberg report submitted by Defendant describes a "growing consensus" based on further study of brain maturation conducted during the past decade and states that "by 2015 the notion that brain maturation continues into late adolescence became widely accepted among neuroscientists." The report cites one publication from 2021 and cites a 2020 statistic from the U.S. Department of Justice regarding arrest rates as a function of age. Otherwise, the weight of authority relied upon in the report predates 2020 and goes back to 2003.

New opinions and new research studies have been routinely rejected as newly discovered evidence. *See Asay v. State*, 210 So. 3d 1, 22–23 (Fla. 2016). Obtaining a new expert and report based on information that has been available for more than that time period is not the basis for newly discovered evidence. *See Booker v. State*, 336 So. 3d 1177, 1181–82 (Fla. 2022); *Howell v. State*, 145 So. 3d 774, 775 (Fla. 2013).

A successive motion for relief under rule 3.851 must be filed "within one year of the date upon which the claim became discoverable through due diligence." *See Dillbeck v. State*, 304 So. 3d 286, 288 (Fla. 2020). The idea that the brain is not fully formed as a young adult has been known for some time. In *Roper*, it was recognized "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." 543 U.S. at 574. Studies from 2004

showing the human brain development is not complete until the age of 25 have been cited in previous case law, including challenges to the death penalty. *See Gall v. United States*, 552 U.S. 38, 57–58 (2007); *Lebron v. State*, 135 So. 3d 1040, 1067 (Fla. 2014); *Morton v. State*, 995 So. 2d 233, 245 (Fla. 2008); *Farina v. State*, 992 So. 2d 819 (Fla. 2008).

Defendant also alleges that the scientific consensus regarding adolescent brain development and the research supporting it are now widely accepted among neuroscientists and the legal community, and he argues this consensus constitutes newly discovered evidence. In addition to the Steinberg report and other sources cited in the motion, Defendant has provided the American Psychological Association's recent document issued in 2022 indicating its intention to adopt a resolution similar to one adopted by the American Bar Association in 2018 in support of a bar on the execution of individuals under 21 at the time of the offense. Similar reliance on the 2018 ABA resolution in prior cases has failed to warrant relief. *See Foster v. State*, 258 So. 3d 1248, 1253 (Fla. 2018); *Branch v. State*, 236 So. 3d 981, 986 n. 5 (Fla. 2018).

The Court notes that Defendant raised a claim under *Roper* in federal court in which he contended "his death sentence violates the Eighth Amendment because he had an emotional and mental age of less than eighteen years at the time of the Carter murder." *See Melton v. Tucker*, 1:08CV34/RS, 2013 WL 11326076, at *56 (N.D. Fla. May 31, 2013). The district court denied this claim, finding that because Defendant was 18 at the time of the offense, *Roper* did not apply to him. *Id.* Defendant also raised this issue before the Eleventh Circuit Court of Appeals, which also denied relief, noting the bright line of 18 years of age drawn by *Roper*. *See* 778 F.3d at 1237.

Defendant could have brought his claim in the years prior to the filing of the instant motion or the issuance of the Steinberg report. Thus, the science alleged and referenced by Defendant does not qualify as newly discovered evidence, and the motion is untimely.

Regardless of the alleged newness of Defendant's evidence, his claim fails under *Roper*. Defendant argues that neurobiolgical and psychological research now shows the rationale underlying *Roper* applies to late adolescents bewween the ages of 18 and 21, so that the Eighth Amendment principle of *Roper* should apply to him. However, *Roper* establishes a bright line rule that the age of 18 is the age at which the individual is eligible for the death penalty. *See* 543 U.S. at 574. Extension of *Roper* to those over 17 has also been repeatedly rejected by the Florida Supreme Court. *See* 258 So. 3d at 1254; 236 So. 3d at 987.

This Court must construe the prohibition against cruel and unusual punishment in conformity with decisions of the United States Supreme Court. *See Correll v. State*, 184 So. 3d 478, 489 (Fla. 2015); *Farmer v. State*, 268 So. 3d 1009, 1010 (Fla. 1st DCA 2019). In light of the decision in *Roper*, this Court declines to propose a modification of the bright line of *Roper*.

Accordingly, it is

ORDERED AND ADJUDGED Defendant's Successive Motion for Postconviction Relief Based on Newly Discovered Evidence is **DENIED**. Defendant has the right to appeal within 30 days of the rendition of this Order.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida.

eSigned by CIRCUIT COURT JUDGE W. JOEL BOLES
on 08/17/2022 13:10:30 Niz0tvwg

WJB/ awg

Service of the Order Denying Successive Motion for Postconviction Relief is to be made by the Clerk of Court upon:

Alice B. Copek, Assistant Capital Collateral Regional Counsel, Northern Region;
Alice.Copek@ccrc-north.org

Drew A. Sena, Assistant Capital Collateral Regional Counsel, Northern Region;
Drew.Sena@ccrc-north.org

Charmaine M. Millsaps, Senior Assistant Attorney General;
capapp@myfloridalegal.com; charmaine.millsaps@myfloridalegal.com

Adrienne L. Emerson, Assistant State Attorney; aemerson@osa1.org

Antonio Lebaron Melton (DC# 217358)
Union Correctional Institution
P.O. Box 1000
Raiford, FL 32083

EXHIBIT 4

Defendant's Successive Motion for Postconviction Relief Based on Newly Discovered Evidence (June 29, 2022)

Filing # 152433366 E-Filed 06/29/2022 02:26:50 PM

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 91-373-B
Division: K

ANTONIO LEBARON MELTON,

Defendant.
_____/

DEFENDANT'S SUCCESSIVE MOTION
FOR POSTCONVICTION RELIEF
BASED ON NEWLY DISCOVERED EVIDENCE[1]

COMES NOW the Defendant, Antonio LeBaron Melton, by and through undersigned counsel, and respectfully requests that this Court vacate his convictions and sentences, including his sentence of death pursuant to Florida Rule of Criminal Procedure 3.851, based on newly discovered mitigating evidence.

Facts and Procedural History

1. On February 5, 1991, Mr. Melton was charged with first-degree murder and armed robbery with a firearm for a murder that occurred when he was 18 years and 25 days old (R. 1117).[2]

[1] Mr. Melton has been without state postconviction counsel for nearly two and a half years. Undersigned counsel was just appointed to this case two weeks ago and have not had an opportunity to review the record of prior proceedings or consult with their client. We have made formal requests to obtain the records from prior counsel and the Repository. Mr. Melton's prior registry counsel, and current federal counsel, has assisted with the preparation of this motion in order to ensure the motion is timely under the rules governing newly discovered evidence claims. Undersigned counsel has fully reviewed the motion and believes it is a valid and proper claim. However, given the unusual circumstances stated herein, counsel reserves the right to amend or withdraw the motion once they have an opportunity to fully understand the case and consult with Mr. Melton.

[2] Citations in this motion are as follows: References to the direct appeal record to the Florida Supreme Court are designated as "R. ___". References to the record on appeal after postconviction

After pleading not guilty to both counts, Mr. Melton was tried before a jury, which returned guilty verdicts as to both first-degree felony murder and armed robbery on January 30, 1992 (R. 895-6, 1275-6). The mitigating value of Mr. Melton's youth was not explored at the sentencing proceedings.

2. Following the penalty phase, the jury recommended death by a vote of eight to four (8-4) (R. 1112, 1285). On May 19, 1992, the trial court imposed a death sentence for the murder and life imprisonment for the armed robbery (R. 1380-1401, 1413-22).

3. In the process of sentencing Mr. Melton, the court found that two aggravating factors and two nonstatutory mitigating factors had been established. The aggravators were that Mr. Melton had previously been convicted of a violent felony and that he had committed the homicide for financial gain. The two nonstatutory mitigating factors were that Mr. Melton exhibited good conduct while awaiting trial and that he had a difficult family background. *Melton v. State*, 638 So. 2d 927, 929 (Fla. 1994).

4. On direct appeal, the Florida Supreme Court affirmed Mr. Melton's convictions and sentences. *Melton*, 638 So. 2d 927.[3] He then filed a petition for writ of certiorari in the United

---

proceedings are designated as "PCR. ___". All other references are self-explanatory or otherwise explained herewith. References to the 2002 evidentiary hearing transcript are designated as "PCR2. ___". References to the 2012 evidentiary hearing transcript are designated as "PCR3. ___". References to the 2014 evidentiary hearing transcript are designated as "PCR4. ___".

[3] Mr. Melton raised the following four issues on direct appeal: 1) he was entitled to separate guilt- and penalty-phase juries so he could conduct an effective voir dire about prospective jurors' opinions on imposing the death penalty if a defendant has a prior murder conviction; 2) this Court erred in not declaring a mistrial after the prosecutor made several improper comments to the jury; 3) this Court erred in instructing the jury on, and later finding, the aggravating circumstance that the homicide was committed for pecuniary gain; and 4) his death sentence was disproportionate. The Florida Supreme Court denied all issues.

States Supreme Court, which was denied on October 31, 1994. *Melton v. Florida*, 513 U.S. 971 (1994).

5. Mr. Melton's initial 3.850 motion was filed on January 16, 1996 (PCR. 74-200). On February 11, 2002, Mr. Melton amended his Rule 3.850 motion (PCR. 1365-1558). This Court held an evidentiary hearing from February 13-15, 2002. On March 23, 2004, this Court issued an order denying relief (PCR. 1937-2018).

6. Mr. Melton appealed that denial to the Florida Supreme Court and on November 30, 2006, that Court affirmed the denial of Mr. Melton's claims. *Melton v. State*, 949 So. 2d 994 (Fla. 2006).[4] Mr. Melton also filed a petition for writ of habeas corpus in the Florida Supreme Court, which the court denied. *Id.*[5]

7. On February 28, 2006, Mr. Melton filed a successive Rule 3.851 motion. This Court denied Mr. Melton's motion on January 31, 2008. Mr. Melton appealed the denial to the Florida Supreme Court, but on August 13, 2008, voluntarily dismissed his appeal.

---

[4] Mr. Melton raised the following issues on appeal: 1) ineffective assistance of counsel during both the guilt and penalty phase of his trial; 2) the State withheld material, exculpatory evidence and presented misleading evidence at trial; 3) newly discovered evidence; 4) prosecutorial misconduct throughout the case rendered Mr. Melton's conviction and sentence fundamentally unfair and unreliable; 5) there was unconstitutional systematic exclusion of a significant portion of the nonwhite population from the jury pool; 6) this Court improperly considered "lack of remorse" in its order denying relief. The Florida Supreme Court denied all issues.

[5] Mr. Melton raised the following issues in his petition, that appellate counsel was ineffective for failing to raise the following claims during his direct appeal: 1) that the State engaged in prosecutorial misconduct when it introduced testimony regarding his prior murder conviction as an aggravating factor; 2) prosecutorial misconduct renders his death sentence fundamentally unfair and unreliable; and 3) that the jury was improperly instructed on the pecuniary gain aggravator. Mr. Melton also argued: 4) that Florida's capital sentencing scheme is unconstitutional in light of *Ring v. Arizona*, 536 U.S. 584 (2002); and 5) that his conviction violates *Roper v. Simmons*, 543 U.S. 551 (2005). The Florida Supreme Court denied all issues.

8. On March 9, 2009, Mr. Melton filed a second successive Rule 3.851 motion raising a claim of newly discovered evidence. On October 21, 2009, this Court dismissed the motion without prejudice. Mr. Melton appealed to the Florida Supreme Court, which affirmed the dismissal in an order dated February 9, 2011. *See Melton v. State*, 55 So. 3d 1287 (2011).[6]

9. On November 29, 2010, Mr. Melton filed a third successive Rule 3.851 motion concerning the validity of his death sentence. On April 11, 2011, this Court denied the motion. Mr. Melton appealed that denial to the Florida Supreme Court, which affirmed the denial of relief on April 26, 2012. *Melton v. State*, 88 So. 2d 146 (Fla. 2012).[7]

10. On June 11, 2014, Mr. Melton filed a fourth successive Rule 3.851 motion. This Court denied the motion on December 15, 2014. Mr. Melton appealed the denial to the Florida Supreme Court, which affirmed the denial of relief on May 26, 2016. *Melton v. State*, 193 So. 3d 881 (Fla. 2016).[8]

11. On December 16, 2016, Mr. Melton filed a fifth successive Rule 3.851 motion. This Court denied the motion on April 13, 2017. Mr. Melton appealed that denial to the Florida Supreme

---

[6] Mr. Melton raised the following two issues on appeal: 1) this Court improperly dismissed the motion; and 2) Mr. Melton was denied the effective assistance of counsel at his capital penalty phase and newly discovered evidence of innocence as to the conviction used as an aggravator entitled him to relief. The Florida Supreme Court denied both issues.

[7] Mr. Melton raised the following issue on appeal: the United States Supreme Court's decision in *Porter v. McCollum*, 558 U.S. 30 (2009), demonstrates that his death sentence is unconstitutional. The Florida Supreme Court denied the issue.

[8] On appeal, Mr. Melton raised claims of 1) newly discovered evidence regarding the circumstances leading up to the murder and that Mr. Melton's co-defendant, Bendleon Lewis, reached a plea agreement before testifying at Mr. Melton's trial; and 2) *Brady* and *Giglio* claims regarding the prosecution's failure to disclose that it had reached a plea agreement with the co-defendant.

Court, which affirmed the denial of relief on February 2, 2018. *Melton v. State*, 236 So. 3d 234 (Fla. 2018).[9]

12. Additionally, Mr. Melton initiated federal-court proceedings in the United States District Court for the Northern District of Florida on March 3, 2008. On May 31, 2013, the federal district court denied Mr. Melton's petition for a writ of habeas corpus under 28 U.S.C. § 2254(d). *See Melton v. Tucker*, 1:08cv34/RS, 2013 WL 11326076 (N.D. Fla. May 31, 2013).

13. The Eleventh Circuit Court of Appeals affirmed the denial of a certificate of appealability, and on October 13, 2015, the United States Supreme Court denied Mr. Melton's petition for a writ of certiorari. *Melton v. Jones*, 136 S. Ct. 324 (2015); *Melton v. Sec'y, Fla. Dep't of Corr.*, 778 F.3d 1234 (11th Cir. 2015).

14. Mr. Melton now files this successive motion under Rule 3.851 requesting that this Court vacate his convictions and sentences based on the following newly discovered evidence demonstrating that the death penalty is an unconstitutional punishment for late adolescents under age 21.

Ground for Relief

I. NEWLY DISCOVERED SCIENTIFIC EVIDENCE DEMONSTRATES THAT THE DEATH PENALTY IS A CATEGORICALLY UNCONSTITUTIONAL PUNISHMENT FOR INDIVIDUALS WHO COMMITTED OFFENSES WHEN THEY WERE BETWEEN THE AGES OF EIGHTEEN TO TWENTY-ONE.

Timeliness and Cognizability of New Evidence

[9] On appeal, Mr. Melton raised three claims, which argued that his death sentence was unconstitutional in light of 1) *Hurst v. Florida*, 577 U.S. 92 (2016), and 2) *Hurst v. State*, 202 So. 3d 40 (Fla. 2016); and 3) that the new legal developments requiring a jury to unanimously vote for a death sentence must be taken into account when considering the prejudice prong of Mr. Melton's previously raised claims.

15. In light of the developing scientific understanding of how age affects maturity; Mr. Melton's young age at the time of the crime; and the limited role his age played at trial; counsel for Mr. Melton contacted Dr. Laurence Steinberg, Ph.D., regarding Mr. Melton's case in 2021.

16. Dr. Steinberg is a developmental psychologist who specializes in the study of adolescence, which is defined as the developmental period from ages 10 to 20. Dr. Steinberg serves as the Laura H. Carnell Professor of Psychology and Distinguished University Professor at Temple University in Philadelphia, Pennsylvania.

17. After reviewing materials in Mr. Melton's case, Dr. Steinberg provided a report summarizing the current state of the scientific literature on brain and psychological development during late adolescence (which spans from ages 18 to 21), in addition to outlining the current understanding of neurobiological and psychological development during adolescence, the ways in which neurobiological immaturity impacts adolescent behavior and psychosocial development, and the basis for and evolution of the understanding of ongoing behavioral development during adolescence.

18. Specifically, Dr. Steinberg was asked to address whether an 18-year-old individual will typically share the same characteristics of a person under the age of 18, such that the constitutional protections that the United States Supreme Court has recognized must be afforded to adolescents under age 18 in criminal sentencing proceedings extend to individuals, like Mr. Melton, who committed their offenses when they were 18 years old.

19. On June 30, 2021, Dr. Steinberg issued his final written report regarding the current scientific understanding of adolescent brain development, particularly as it pertains to individuals between the ages of 18 to 21.

20. In his report, Dr. Steinberg describes how, over the past two decades, considerable

scientific evidence has accumulated demonstrating that, compared to adults, adolescents are more impulsive, prone to engage in risky behavior, and motivated more by perceived present rewards than by future negative consequences. Ex. A at 3. Such characteristics in adolescents, including those who are between ages 18 to 21, are now viewed as commonplace and widespread, driven by processes of brain maturation that are not under the adolescent's control. They typically persist throughout adolescence in normally developing individuals between the ages of 10 to 20. Ex. A at 3-4.

21. In several landmark cases decided between 2005 and 2016, the United States Supreme Court held that these characteristics of juvenile immaturity mitigate criminal responsibility in ways that must be accounted for in sentencing decisions. These cases include *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012); and *Montgomery v. Louisiana*, 577 U.S. 190 (2016). Ex. A at 4.

22. Dr. Steinberg described how, in the past ten years, additional scientific evidence has continued to accrue indicating that many aspects of psychological and neurobiological immaturity that typify early adolescents and middle adolescents are also characteristic of late adolescents between the ages of 18 to 21. Ex. A at 4.

23. Dr. Steinberg's report concluded that the same sort of immaturity with respect to juvenile psychology and neurobiology also can typically be found in individuals between the ages of 18 to 21. This indicates that the rationale behind the United States Supreme Court's decisions in *Roper*, *Graham*, *Miller*, and *Montgomery* equally applies to late adolescents—between the ages of 18 to 21—including Mr. Melton, who was 18 years and 25 days old when he committed his offense. Ex. A at 4.

24. These developments in the understanding of adolescent brain development,

including the United States Supreme Court's 2005 landmark decision in *Roper* and the continued study of late-stage adolescence that the case inspired in the scientific community, occurred after Mr. Melton's trial in 1992 and, as a result, were not known or discoverable by counsel previously through the exercise of due diligence.

25. New scientific advancements, including new scientific reports, can form the basis for a claim of newly discovered evidence. *Duncan v. State*, 232 So. 3d 450, 453 (Fla. 2nd DCA 2017); *see also Clark v. State*, 995 So. 2d 1112, 1113 (Fla. 2nd DCA 2008) (holding that scientific evidence in the form of medical studies, reports, and articles could be considered newly discovered evidence) (cited with approval in *Smith v. State*, 23 So. 3d 1277, 1278 (Fla. 2nd DCA 2010)).

26. Under Florida Rule of Criminal Procedure 3.851, a successive motion for postconviction relief based on newly discovered evidence must be filed within one year of discovery of the new claim. *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008). This motion is timely filed within one year of Dr. Steinberg's report, which was completed on June 30, 2021.

27. To support relief, newly discovered evidence must be of such a nature that it would probably produce an acquittal on retrial or, in the context of sentencing, would probably result in a life sentence rather than the death penalty. *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991). The new evidence presented here establishes that Mr. Melton's youth at the time of the crime renders him categorically ineligible for the death penalty. Alternatively, and at a minimum, had this evidence been presented, it likely would have altered the balance between the aggravating and mitigating factors in favor of a life sentence. *Cf. Hall v. State*, 212 So. 3d 1001, 1030 (Fla. 2017).

28. A summary of Dr. Steinberg's report is provided in the remaining pages below. His report, including the scientific research and studies upon which he based his conclusions, is submitted together with this motion, and Dr. Steinberg is available to testify under oath at an

evidentiary hearing to fully explain his findings and opinions. Mr. Melton's federal counsel is also available to testify under oath at an evidentiary hearing regarding this newly discovered evidence. Per Rule 3.851(e)(2)(C)(i), the witness contact information is:

a. Linda McDermott, Capital Habeas Unit, Federal Public Defender's Office for the Northern District of Florida, 227 N. Bronough St., Ste. 4200, Tallahassee, FL 32301; (850) 942-8818; linda_mcdermott@fd.org.

b. Dr. Laurence Steinberg, Ph.D., Temple University, Weiss Hall, 1701 N. 13th Street, Philadelphia, PA 19122; (215) 204-7485; lds@temple.edu.

Non-exhaustive Summary of the New Evidence

29. For most of the twentieth century, scientists believed that brain maturation ended in late childhood. This conclusion was based on the observation that the brain reached its adult size and volume by the age of 10. Research that examined the brain's internal anatomy and brain activity patterns, rather than solely focusing on the brain's appearance, started challenging this widely held belief in the late 1990s. Ex. A at 4-5.

30. The advent of functional Magnetic Resonance Imaging (fMRI) permitted scientists and researchers to observe living individuals' brains and examine their responses to various stimuli and activities. The results of these examinations demonstrated that key brain systems and structures, especially the ones involved in self-regulation and higher-order cognition, continue to mature until at least the age of 21, and likely beyond. Ex. A at 5.

31. The continued study of brain maturation over the past decade has shown that several aspects of brain development, including the brain regions that determine character, judgment, and decision-making, continue to develop until at least age 21. Although the scientific consensus and the research supporting it did not exist at the time of Mr. Melton's trial and sentencing in 1992,

this view is now widely accepted among neuroscientists and the legal community. Ex. A at 6-7. In 2018, the American Bar Association adopted a resolution supporting a categorical bar on the execution of individuals under age 21 at the time of the offense. The American Psychological Association intends to adopt a similar resolution this summer.[10]

32. As a result of the adolescent brain's continuing development, individuals up until at least age 21 remain amenable to change and rehabilitation. Any predictions about an adolescent's *future* character and behavior based on assessments made *prior* to brain maturation at 21 are merely speculative, particularly since research has demonstrated that adolescents engage in less misconduct as they transition to adulthood—a trend that holds true even for adolescents with histories of delinquent behavior. Ex. A at 7. This is because individuals in their late teens and early 20s are less mature than older individuals in several legally relevant ways. Ex. A at 8.

33. First, adolescents are more likely than adults to underestimate the risks presented by a course of action, the chances of negative consequences occurring as a result, and the degree to which they could be harmed. Ex. A at 9.

34. Second, adolescents are more likely than older individuals to engage in "sensation-seeking," which is the pursuit of new experiences that seem exciting or rewarding. Adolescents are more likely to overestimate the possible rewards of these experiences and underestimate their potential costs and consequences. This tendency is particularly prominent among adolescents between ages 18 to 21. Ex. A at 9-10.

35. Third, adolescents are less capable of controlling their impulses and considering

---

[10] *See* American Bar Association, Resolution (2018), https://www.americanbar.org/content/dam/aba/administrative/crsj/policy/2018_mm_111.pdf; American Psychological Association, Draft for Public Comment (2022), Site98_Document for Comment - Resolution relating to the Adolescent Death Penalty.pdf (apa.org).

the future consequences of their actions and decisions, because adolescents tend to be short-sighted and less inclined to think about future risks as opposed to present rewards. Importantly, however, the adolescent brain undergoes significant gains in impulse control beyond age 18 and into the early 20s, which reduces this tendency. Ex. A at 10.

36. Fourth, the development of basic cognitive abilities, including memory and logical reasoning, finishes before emotional maturity has fully developed. Emotional maturity allows an individual to exercise self-control, conduct a cost-benefit analysis of a given course of action, and resist peer pressure. As a result of the disjunctive development of cognition and emotional maturity, a young person who seems *intellectually* mature will likely still be socially and emotionally immature, more focused on rewards rather than risks, more impulsive, and more myopic. These traits are exacerbated when an adolescent is in a situation that causes strong negative emotions such as fear, anger, or anxiety. Ex. A at 10-11.

37. Fifth, adolescents' deficiencies in judgment are increased by the presence and influence of peers. A disproportionate amount of adolescent risk-taking occurs when peers are present, likely because when an adolescent is in a group, he or she will pay more attention to the potential rewards of a course of action, rather than its risks. Scientific research has shown that the mere presence of peers activates an adolescent's "reward center" in the brain, regardless of the number present or how well they know each other. Brain imaging studies show that adolescents are especially sensitive to rejection from their peers, which makes gaining peer approval particularly important to adolescents. The same does not hold true once an individual reaches the mid-to-late 20s and beyond. Ex. A at 11-12.

38. The combination of heightened attentiveness to rewards and still-maturing impulse control makes late adolescence a time of greater risk-taking than any other stage of development,

which has been demonstrated both in controlled scientific studies and in data analysis on real-world behavior. Ex. A at 12-13. The studies have shown that the peak time for risky decision-making is in the late teens and early 20s, which is consistent with the real-world data showing that during this age range, adolescents are most likely to engage in risky behaviors that result in deaths while driving, unintended pregnancies, criminal arrests, and binge drinking. Ex. A at 13.

39. In neurobiological terms, the primary underlying cause of adolescent psychological immaturity is the different timetables along which two important brain systems change: the limbic system and the prefrontal cortex. Ex. A at 13-14.

40. The limbic system is responsible for the increase in sensation- and reward-seeking that has been observed during adolescence. That system dramatically changes around the time of puberty, which typically occurs in early adolescence, and the increased attentiveness to rewards remains high throughout late adolescence. Ex. A at 13-14.

41. The prefrontal cortex is what primarily regulates impulse control, planning ahead, weighing the costs and benefits of a given course of action, and resisting peer pressure. Unlike the limbic system, the prefrontal cortex continues to significantly mature well into an individual's mid-20s. Ex. A at 14.

42. The differing developmental rates of the limbic system and the prefrontal cortex create a "maturational imbalance," where adolescents will have an increased desire to seek rewards and new sensations without a corresponding ability to control this impulse or to weigh the potential risks of engaging in such novel, thrill-seeking behavior. Ex. A at 14.

43. This maturational imbalance between the limbic system and prefrontal cortex diminishes in an individual's mid-20s, and leads to improvements in impulse control, resisting peer pressure, and anticipating and analyzing the consequences of a course of action. Ex. A at 14.

44. Research on neurobiological development supports this conclusion, showing that the brain regions that govern self-regulation and higher-order cognitive function continue to mature well into an individual's 20s. These changes are both structural (in the brain's anatomy) and functional (in the brain's activity), and particularly occur in the prefrontal and parietal cortices, and the limbic system. Ex. A at 14.

45. The structural changes largely result from the processes of synaptic pruning and myelination. Synaptic pruning, which eliminates unnecessary connections between neurons, allows the brain to transmit information more efficiently. Myelination is a process in which protective sheaths form around the connections between neurons, allowing the brain to transmit information more quickly. Ex. A at 14-15.

46. Synaptic pruning—which permits efficient information transmission—is finished by age 16. By contrast, myelination—which permits rapid information transmission—continues through at least age 20. The result is that the brain has not fully developed the ability to both quickly and efficiently communicate information to different brain regions until the age of 21. This inefficiency, coupled with the maturational imbalance between the limbic system (which drives an adolescent towards risky behavior) and the prefrontal cortex (which checks this impulse), leads adolescents, particularly in the age range of 18 to 21, to have difficulty controlling their impulses, especially in emotionally heightened situations. Ex. A at 15.

47. Scientific studies have shown that under emotionally heightened circumstances, late adolescents between 18 to 21 demonstrated levels of impulsivity and patterns of brain activity comparable to younger juveniles in their mid-teens. The conclusion was that, at least under some circumstances—particularly situations of heightened distress—the brain of an 18- to 21-year-old

functions more like that of a younger teenager, rather than like an older adult's brain. Ex. A at 15-16.

48. Importantly, though, an adolescent brain will eventually mature into an adult brain. That psychological maturing process is a key factor in desistance from crime. Research conducted by Dr. Steinberg and others has demonstrated that the normative maturation process, common to the experience of adolescents transitioning to adulthood, widely leads to improvements in self-control, the ability to resist peer pressure, and the ability to focus on future consequences rather than strictly on present rewards. Together, these developments result in the desistance from crime for the vast majority of individuals once they reach their mid-20s and beyond. Ex. A at 16.

49. Relatedly, scientists have also demonstrated the neuroplasticity of the human brain. Neuroplasticity is the potential, and ability, of the brain to be changed by experience. Certain periods in a person's development have been shown to be times of greater neuroplasticity than others, and scientific consensus considers adolescence to be one of those times. One effect of neuroplasticity is that there is a greater opportunity and likelihood that an individual can learn from and change his or her behavior. Ex. A at 16.

50. The United States Supreme Court recognized the concept of neuroplasticity and its implications for adolescent brain development in its opinion in *Graham*, which held that the Eighth Amendment prohibited sentences of life without the possibility of parole for individuals under age 18 who committed non-homicide offenses. *Graham*, 560 U.S. at 82. In so holding, the Supreme Court acknowledged that the adolescent brain is not fully developed, which contributes to an individual's immaturity but also leaves open the possibility of growth and rehabilitation. Those same factors hold true for individuals between the ages of 18 to 21. Ex. A at 16-17.

51. These findings from scientific studies are borne out by the real-world data: very few individuals—fewer than 10%—who commit crimes as juveniles continue to do so after they reach their mid-20s. These studies are also consistent with other evidence documenting the relationship between age and crime. Ex. A at 17.

52. Research in the field of developmental psychology has allowed for further understanding of the ways in which the typical maturation process from adolescence to adulthood contributes to a desistance from crime. Scientific studies have shown that, generally, self-control, resistance to peer pressure, and the ability to Lindaully consider future consequences of a given action—all of which help a person desist from crime—improve during late adolescence and young adulthood. Ex. A at 17-18.

53. To summarize, there is strong scientific evidence that:

a. Most adolescent crime reflects temporary, typical developmental immaturity, rather than a permanently incorrigible character;

b. This developmental immaturity has been linked to commonplace patterns of brain development that occur during adolescence;

c. Adolescent brain development continues through the late teens and into the early 20s;

d. The adolescent brain is especially "plastic," or susceptible to environmental influence, which makes adolescents more capable of rehabilitation; and,

e. The vast majority of adolescent offenders will desist from crime as they mature into their 20s and beyond.

Ex. A at 18.

54. These scientific observations are consistent with studies that have demonstrated that neurobiological development is ongoing throughout the teenage years and into the early 20s. Due to this development, adolescents—even those who are legally considered adults at age 18—continue to have difficulties in exercising self-restraint, controlling their impulses, considering the consequences of their actions, and making independent decisions free from peer influences. This is particularly true in situations that are highly emotional or stressful. In this way, the brain of an individual between the ages of 18 to 21 is developmentally similar to the brain of someone under 18 years old. Ex. A at 18-19.

55. In light of this understanding of adolescent brain development, the sentences for crimes committed by adolescents between the ages of 18 to 21 should reflect the mitigating circumstance of neurobiological and psychological immaturity. An adolescent who commits a particular criminal act does not share the same degree of culpability as a fully mature (at least over the age of 21) adult who commits the same offense. Ex. A at 19.

56. The United States Supreme Court has recognized that adolescent development should play a role in determining criminal culpability and has incorporated this recognition in its line of cases holding that juvenile sentencing procedures should be conducted differently in order to take into account a juvenile's lesser degree of culpability and greater likelihood of rehabilitation. Ex. A at 19.

57. For example, the *Roper* decision delineated three characteristics of juveniles that reflected their diminished criminal culpability: impetuosity; susceptibility to peer influence; and potential for rehabilitation. The Court later noted in *Graham* and *Miller* that the growing scientific consensus was that juveniles are inherently less mature than adults due to their neurobiological

and psychological immaturity and that their criminal culpability was correspondingly diminished. Ex. A at 19.

58. Although the United States Supreme Court's holdings in *Roper*, *Graham*, *Miller*, and *Montgomery* extended only to individuals under the age of 18, neurobiological and psychological research into adolescent development now shows that the rationale underlying those decisions also applies to late adolescents between the ages of 18 to 21. *Roper*'s holding that the death penalty is a categorically unconstitutional sentence for those under age 18 because of their diminished culpability and greater capacity for change is equally true for those under age 21. Ex. A at 19.

59. Mr. Melton's case exemplifies the prototypical adolescent crime: It was impulsive and motivated by the hope of receiving an immediate reward (money); it was committed with a peer, Bendleon Lewis; and was committed under emotionally charged, stressful circumstances. It is precisely in such circumstances that the late adolescent brain most closely resembles that of a younger teenager, rather than that of an older adult. Ex. A at 20.

Probable Effect on the Outcome of the Penalty Phase

60. As discussed above, the new evidence regarding the current understanding of adolescent brain development supports a *categorical* bar on the imposition of the death penalty on individuals between the ages of 18 through 20. At a minimum, this evidence shows the need for resentencing in Mr. Melton's case. Mr. Melton was only 18 years and 25 days old at the time he committed the crime. The mitigating value of new evidence explaining that his brain functioning most closely resembled that of a young teenager's rather than of an older adult's shifts the balance of aggravating and mitigating factors and makes it reasonably probable that his jury, who voted 8-4 for death, would vote for a life sentence at a retrial.

Age as a Mitigating Factor

61. The new evidence supports a finding of age as a mitigating factor under § 921.141(7)(g), even if this Court disagrees that Mr. Melton's young age at the time he committed the crime renders him categorically ineligible for the death penalty. That is because the normative developmental process of the adolescent brain renders individuals under age 21 particularly susceptible to committing criminal offenses. Yet, it is this same maturation process that will lead well over 90% of individuals to *desist* from committing further crime once they have reached their later 20s. *See, e.g.*, Ex. A at 7, 9-10, 12.

62. Dr. Steinberg's report outlines the reasons this is so. Developments in the neurobiological study of adolescent brain maturation have shown that the adolescent brain does not develop uniformly. Instead, different regions and functions of the brain mature along different timetables. *See* Ex. A at 13-16.

63. This disjointed development leads to a "maturational imbalance" in how the brain of an adolescent under age 21 works. The system that drives someone to look for new experiences and rewards develops faster than the system that regulates self-control, planning ahead, and evaluating the costs and benefits of an action. This means that an 18-to-20-year-old person is going to have an increased desire to engage in novel, and potentially risky, behaviors, but will lack the corresponding ability to control that impulse or consider its long-term consequences. Ex. A at 13-14.

64. As an adolescent matures into a young adult in their mid-to-late 20s, their brain continues to develop and mature, and their ability to weigh the future consequences of engaging in risky behaviors against the perceived present rewards significantly improves. This leads to a widespread desistance from crime, particularly once an individual reaches age 21. *See* Ex. A at 16-

17.

65. The Florida Supreme Court has long recognized the relevance of youth as a mitigating factor in capital sentencing, and that "[t]here is no per se rule which pinpoints a particular age as an automatic factor in mitigation." *Peek v. State*, 395 So. 2d 492, 498 (Fla. 1980) (citing trial-court order with approval). Nearly a decade before the United States Supreme Court's holding in *Roper* that discussed the characteristics of adolescent brain development, the Florida Supreme Court acknowledged that "age is an extremely weighty mitigator." *Urbin v. State*, 714 So. 2d 411, 418 (Fla. 1998). The Court noted that "it is the patent lack of maturity and responsible judgment that underlies the mitigation of young age, [and therefore] *the closer the defendant is to the age where the death penalty is constitutionally barred, the weightier this statutory mitigator becomes.*" *Id.* (emphasis added).

66. In the time following the United States Supreme Court's *Roper* holding in 2005, the Florida Supreme Court has incorporated neurobiological and psychological research of adolescent brain development into its decisions discussing juvenile sentencing procedures. For example, it has endorsed the United States Supreme Court's conclusion that "children are 'constitutionally different'" from adults, because their crimes typically will reflect "transient immaturity" rather than "irreparable corruption." *Landrum v. State*, 192 So. 3d 459, 466 (Fla. 2016) (citing *Miller*, 567 U.S. at 471, and *Montgomery*, 577 U.S. at 208).

67. The new evidence presented to this Court demonstrates that the same considerations the Florida Supreme Court has noted, and which the United States Supreme Court adopted in *Roper*, apply equally to an individual who is between the ages of 18 to 21. Indeed, the "general differences" between juveniles and adults that the *Roper* Court pointed to are more acutely present in those individuals, owing to the maturational imbalance typified by adolescent brain

development that Dr. Steinberg's report outlines. *Roper*, 543 U.S. at 569.

68. Mr. Melton's offense occurred a mere 25 days past his 18th birthday—the current constitutional limit on imposing the death penalty. The research and scientific consensus regarding adolescent brain development, which did not exist at the time of Mr. Melton's trial in 1992, would provide the jury with a scientific foundation with which to consider the mitigating impact of Mr. Melton's youth at the time of the crime, an "extremely weighty" mitigating factor that was not considered at trial. *Urbin*, 714 So. 2d at 418.

Good Behavior While Incarcerated as Non-statutory Mitigation

69. The new evidence bolsters the weight of the non-statutory mitigating factor that Mr. Melton exhibited good behavior while awaiting trial. *Melton*, 638 So. 2d at 929. At Mr. Melton's 1992 sentencing, the judge assigned this factor little weight, and the Florida Supreme Court found it was "not compelling." *Id.* at 930.

70. The modern consensus regarding adolescent brain development, which was not recognized in law or science in 1992, strengthens this mitigation evidence because by placing both Mr. Melton's offense and his subsequent good behavior while incarcerated into a broader developmental timeline, it indicates that Mr. Melton's offense "reflect[ed] unfortunate yet transient immaturity" rather than "irreparable corruption." *Roper*, 543 U.S. at 573. As Dr. Steinberg's report outlines, late adolescence is when the "maturational imbalance" in the adolescent brain is at its peak—yet the normal process of brain development leads over 90% of individuals who committed crimes in that age range to desist as they enter their 20s. Ex. A at 13, 17. Mr. Melton's good behavior while awaiting trial indicates that he was on track to follow that same trajectory of desisting from risky behavior, including crime, and that he would have successfully adjusted to prison life. Dr. Steinberg's report provides key neurobiological and psychological findings to

support this commonplace understanding, strengthening its compelling value as a mitigating factor.

Mitigating Effect on Aggravating Circumstances

71. The new evidence reduces the aggravating effect of the prior violent felony and pecuniary gain aggravators. Those aggravators were based on Mr. Melton's conviction for a murder he committed when he was 17 years old, and that the death-eligible murder occurred during the commission of a robbery.

72. Both aggravating factors are diminished when viewed in light of the new evidence. First, the murder that was used as a prior violent felony occurred when Mr. Melton was only 17 years old—well below the developmental point at which the adolescent brain has transitioned to adulthood.

73. Second, the fact that Mr. Melton was found to have committed the murder for pecuniary gain, along with the other circumstances of the crime, precisely typifies the transient immaturity of the late adolescent brain that Dr. Steinberg discusses in his report. The crime was committed with a peer (co-defendant Bendleon Lewis), under emotionally charged circumstances (during a robbery), and in the hope of obtaining a short-term reward (money). Ex. A at 9-11. Under these circumstances, "[a]dolescents' deficiencies in judgment and self-control, relative to adults, are greater." Ex. A at 11. The new evidence demonstrates that Mr. Melton's actions, while inexcusable and tragic, were an extreme manifestation of the "deficiencies" in the adolescent brain under emotionally stressful circumstances.

74. Had this evidence been known, the aggravating factors based on the prior conviction and pecuniary gain would have been less weighty.

Cumulative Review

75. In *Jones*, 591 So. 2d at 915, the Florida Supreme Court explained that if the defendant is seeking to vacate a sentence, the second prong requires that the newly discovered evidence would probably yield a less severe sentence. Further, in determining whether the evidence compels a new trial, the postconviction court must "consider all newly discovered evidence which would be admissible" and must "evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." *Id.* at 916.

76. Throughout Mr. Melton's prior proceedings, he has presented a plethora of evidence relevant to whether his sentence of death is reliable. At trial, he presented evidence from Bendleon Lewis's attorney, who swore that the State had not offered Lewis a plea deal to testify against Mr. Melton (R. 979). He offered testimony from a clinical psychologist who talked to Mr. Melton about his background and found that, although Mr. Melton had dropped out of high school, he completed his GED while incarcerated at the Escambia County Jail (R. 995). He believed Mr. Melton could make important contributions in prison if given a life sentence (R. 997-98).

77. Several of Mr. Melton's family members, including his parents, also testified to describe his upbringing and background. His parents admitted that they had been absent and neglectful of what was in his best interest. His father acknowledged that he had been uninvolved in Mr. Melton's upbringing, something that bothered him because he felt that if he had been around during Mr. Melton's childhood, he might have been able to stop Mr. Melton from ending up where he was (R. 1002-03). Mr. Melton's mother said that she had him removed from high school because she felt "maybe he could do something else," but that it was a bad decision that only made things worse (R. 1032).

78. In 2002, at his first evidentiary hearing, Mr. Melton provided further mitigating evidence, including an expanded picture of his troubled home life and an expert evaluation that

showed that, due to the cumulative effect of Mr. Melton's experiences growing up, he had developed into an immature youth who was highly susceptible to peer pressure.

79. Mr. Melton also presented the testimony of six individuals who were incarcerated at the Escambia County Jail with Mr. Melton's co-defendant, Bendleon Lewis. All six testified to statements Lewis made to them regarding the "taxicab murder," which occurred when Mr. Melton was 17 years-old and which was used to establish the prior-violent-felony aggravator at Mr. Melton's capital trial for the "pawnshop murder."

80. All six men agreed that Lewis had bragged about committing the taxicab murder and said that Mr. Melton was not involved at all, but that Lewis planned to pin the murder on him so that Lewis could get a lesser sentence for the pawnshop murder (PCR2. 487-88, 508). The sole detail on which the six witnesses differed was whether Lewis told them he had acted by himself in the taxicab murder, or if he had done it with Tony Houston (PCR2. 453, 593). Lewis did not implicate Melton in any of his inculpatory statements.

81. Lewis also discussed the pawnshop murder. Lewis told one of his fellow inmates that he, Mr. Melton, and the victim were struggling over the gun when it went off and killed the victim (PCR2. 635). Lewis said he would pin Mr. Melton as the triggerman in the pawnshop murder (PCR2. 636).

82. At the 2012 evidentiary hearing, Mr. Melton presented newly discovered evidence from Jamel Houston regarding his brother, Tony Houston, who had recently died (PCR3. 224). Mr. Houston testified that his brother told him that he was the shooter in the taxicab murder, not Mr. Melton (PCR3. 225). In fact, Tony had forced Mr. Melton to get out of the cab at gunpoint before Tony committed the murder, and Mr. Melton did not know what was going to happen (PCR3. 227-28). Afterwards, Tony and Bendleon Lewis decided to "blame everything on" Mr.

Melton (PCR3. 228).

83. At Mr. Melton's 2014 evidentiary hearing, he presented testimony from two defense investigators who had interviewed Lewis. Lewis discussed his role in the pawnshop murder (PCR4. 113). He admitted that there had been a struggle during the pawnshop murder and that it was during that struggle that the gun accidentally discharged (PCR4. 114, 193).

84. Lewis also acknowledged to the investigators that he had made a deal with the State in exchange for his testimony against Mr. Melton in the pawnshop murder (PCR4. 114, 194). He would plead no contest to the pawnshop murder and not be charged at all in the taxicab murder. Without that deal, he would not have testified against Mr. Melton (PCR4. 129-31).

85. When Mr. Melton's newly discovered evidence regarding adolescent brain development is reviewed cumulatively with all of the previously presented evidence regarding Mr. Melton's role in the pawnshop and taxicab murders, a new penalty phase is required. Together, all of the newly discovered evidence demonstrates that Mr. Melton was not involved in the taxicab murder used for the prior-violent-felony aggravator; that the pawnshop murder was the result of an accidental discharge during a struggle for the gun; and that he was unlikely to commit further offenses as he aged into adulthood.

86. Finally, Mr. Melton's jury only recommended death by a vote of 8-4. There is a reasonable probability that the mitigating effects of the newly discovered evidence set forth herein, when reviewed cumulatively with the rest of the previously presented evidence, is of such a nature as to probably produce a life sentence at retrial.

Conclusion

Based on the foregoing, Mr. Melton requests the following relief:

(1) conduct an evidentiary hearing on this motion and allow Mr. Melton to introduce testimony in support of his allegations;

(2) vacate the sentence of death previously imposed; and

(3) conduct a new penalty phase/sentencing proceeding.

Respectfully submitted,

ROBERT S. FRIEDMAN
Capital Collateral Regional Counsel – North

/s/ Alice Copek
ALICE COPEK
Assistant CCRC-North
Florida Bar Number 25475
1004 DeSoto Park Drive
Tallahassee, FL 32301
850-487-0922 x. 129
Alice.Copek@ccrc-north.org
Counsel for Defendant, Antonio Melton

Drew A. Sena
Assistant CCRC-North
Florida Bar Number 1023218
850-487-0922 x 115
Drew.Sena@ccrc-north.org
Counsel for Defendant, Antonio Melton

Certification of Counsel

Pursuant to Fla. R. Crim. P. 3.851(e), the undersigned counsel certifies that the Defendant, Antonio Melton, has been apprised of the contents of this motion and that he consents to its filing.[11] Counsel further certifies that the motion is filed in good faith, and counsel has complied with Rule 4-1.4 of the Rules of Professional Conduct.

/s/ Alice B. Copek
Alice B. Copek

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Kenneth Ridlehoover, the State Attorney's Office of the First Judicial Circuit at kridlehoover@sa01.org; and Charmaine Millsaps and Jason Rodriguez, the Office of the Attorney General at charmaine.millsaps@myfloridalegal.com, jason.rodriguez@myfloridalegal.com, and capapp@myfloridalegal.com on June 29th, 2022.

/s/ Alice B. Copek
Alice B. Copek

---

[11] As stated previously, counsel has not had an opportunity to consult with Mr. Melton at the time of this filing. Based on conversations with Mr. Melton's prior registry and current federal counsel, we understand that Mr. Melton has been fully apprised of the substance of the motion and consents to its filing, to include consent to filing prior to consultation with new state counsel.

EXHIBIT A

DECLARATION OF LAURENCE STEINBERG

I, Laurence Steinberg, declare as follows:

1. My name is Laurence Steinberg. My address is 1924 Pine Street, Philadelphia, Pennsylvania, 19103, USA.

2. I hold the degrees of A.B. in Psychology from Vassar College (Poughkeepsie, New York) and Ph.D. in Human Development and Family Studies from Cornell University (Ithaca, New York).

3. I am a developmental psychologist specializing in adolescence, broadly defined as the second decade of life. Throughout this document, "adolescence" refers to the period of development from age 10 to age 20. Adolescence can be further divided into three phases: "early adolescence" (10 through 13), "middle adolescence" (14 through 17) and, "late adolescence" (18 through 20).

4. I am on the faculty at Temple University, in Philadelphia, Pennsylvania, USA, where I am a Distinguished University Professor and the Laura H. Carnell Professor of Psychology. I am a Fellow of the American Psychological Association, the Association for Psychological Science, and the American Academy of Arts and Sciences. I was a member of the National Academies' Board on Children, Youth, and Families and chaired the National Academies' Committee on the Science of Adolescence. I was President of the Division of Developmental Psychology of the American Psychological Association and President of the Society for Research on Adolescence.

5. I received my Ph.D. in 1977 and have been continuously engaged in research on adolescent development since that time. I am the author or co-author of approximately 450 scientific articles and 17 books on young people. Prior to my appointment at Temple University, where I have been since 1988, I was on the faculty at the University of Wisconsin—Madison (1983-1988) and the University of California, Irvine (1977-1983). From 1997-2007, I directed the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development

and Juvenile Justice, a national multidisciplinary initiative on the implications of research on adolescent development for policy and practice concerning the treatment of juveniles in the legal system. I also was a member of the MacArthur Foundation Research Network on Law and Neuroscience, a national initiative examining the ways in which neuroscientific research may inform and improve legal policy and practice.

6. Since 1997, I have been studying the implications of research on adolescent development for legal decisions about the behavior of young people. More specifically, my colleagues and I have been examining whether, to what extent, and in what respects adolescents and adults differ in ways that may inform decisions about the treatment of adolescents under the law.

7. I have been qualified as an expert witness in state courts in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, the District of Columbia, Florida, Indiana, Kentucky, Massachusetts, Missouri, Nevada, Ohio, Oregon, Pennsylvania, and Wisconsin, as well as the United States District Courts for the Southern District of New York, the Eastern District of New York, and the District of Connecticut. I have also been deposed as an expert in cases in California, Colorado, Florida, Michigan, North Carolina, Pennsylvania, Rhode Island, and Wisconsin; in U.S. District Courts in the Eastern District of Michigan, the Western District of Washington and the District of Colorado; and in the Military Court of Commission Review in Guantanamo Bay, Cuba. In addition, I was the lead scientific consultant for the American Psychological Association (APA) when the Association filed Amicus Curiae briefs in *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2011); and *Roper v. Simmons*, 543 U.S. 551 (2005). One of my articles, "Less Guilty by Reason of Adolescence," (co-authored with Elizabeth Scott),[1] was cited in the Court's majority opinion in *Roper* and in *Miller*, as was the APA amicus brief that I helped draft.

[1] Steinberg, L., & Scott, E. (2003). Less guilty by reason of adolescence: Developmental immaturity, diminished responsibility, and the juvenile death penalty. *American Psychologist, 58*, 1009-1018.

REFERRAL QUESTION

8. Ms. Linda McDermott, an attorney representing Antonio Melton, requested that I outline the current understanding of neurobiological and psychological development during adolescence, the ways in which neurobiological immaturity impacts behavior and psychosocial development during this period, and the basis for and evolution of the understanding of ongoing behavioral development during these years. I have been specifically asked to summarize the state of the scientific literature on brain and psychological development during late adolescence. The scientific question I have been asked to address is whether individuals who are 18 years old also share the attributes of adolescents under 18 that trigger the constitutional protections the Supreme Court has already recognized for juveniles. Mr. Melton was convicted of murder and received the death penalty. He was 18 years old at the time of the capital crime of which he was convicted, in 1991, and for which he was sentenced, at age 19, in 1992. He is now seeking review of his death sentence.

MATERIALS RECEIVED

9. I reviewed a set of materials (285 pages), including statements, depositions, and/or excerpts of trial testimony of the three co-defendants, Antonio Melton, Ben Lewis, and Phillip Parker; the narrative accounts and/or depositions of Officers Gaudet and Sievers, and Detective Ordonia; statements and depositions of two witnesses, Klaus Groeger and Jackson Wills; a psychological evaluation of Mr. Melton conducted by Dr. Lawrence Gilgun; and the Appellant brief and the Appellee Reply brief filed with the Florida State Supreme Court in 1994. All materials were provided to me by counsel for Mr. Melton.

OVERVIEW OF EXPERT OPINION

10. Over the past two decades, considerable scientific evidence has accumulated demonstrating that, compared to adults, adolescents are more impulsive, prone to engage in risky and reckless behavior, motivated more by reward than punishment, and less oriented to the future and more to the present. These characteristics of adolescents are now viewed as normative, driven

by processes of brain maturation that are not under the young person's control, and typically persist throughout adolescence in normally developing individuals ages 10 through 20 years.

11. In several landmark cases decided between 2005 and 2016, **the U.S. Supreme Court held that these aspects of juvenile immaturity mitigate criminal responsibility in ways that must be taken into account in sentencing decisions.**[2]

12. In the past ten years, additional scientific evidence has accrued indicating that **many aspects of psychological and neurobiological immaturity characteristic of early adolescents and middle adolescents are also characteristic of late adolescents.**

13. Although late adolescents are in some ways similar to individuals in their mid-20s, in other ways, and under certain circumstances, they are more like individuals in early and middle adolescence in their behavior, psychological functioning, and brain development. **Developmental science does not support the bright-line boundary observed in criminal law under which 18-year-olds are categorically deemed adults.**[3]

14. The recognition that the same sort of psychological and neurobiological immaturity characteristic of juveniles also describes individuals who are between 18 and 21 years old suggests that the logic reflected in the U.S. Supreme Court decisions in *Roper*, *Graham*, *Miller*, and in *Montgomery v. Louisiana*, applies with equal force to late adolescents, like the defendant in this case, who was 18 years old at the time of the offense of which he was convicted and 19 when he was sentenced to death.

BRAIN DEVELOPMENT CONTINUES BEYOND THE TEEN YEARS

15. For most of the 20th century, scientists believed that brain maturation ended sometime during late childhood, a conclusion based on the observation that the brain reached its adult size and volume by age 10. Research examining the brain's internal anatomy and brain

---

[2] Steinberg, L. (2013). The influence of neuroscience on U.S. Supreme Court decisions involving adolescents' criminal culpability. *Nature Reviews Neuroscience, 14,* 513-518.

[3] Scott, E., Bonnie, R. & Steinberg, L. (2016). Young adulthood as a transitional legal category, *Fordham Law Review*, *85*, 641-666.

activity patterns – instead of focusing solely on the brain's appearance – started challenging this widely held belief in the late 1990s.[4]

16. The advent of functional Magnetic Resonance Imaging (fMRI) permitted scientists and researchers to actually observe living individuals' brains and examine their responses to various stimuli and activities. The results of these examinations demonstrated that key brain systems and structures – especially those involved in self-regulation and higher-order cognition – continue to mature throughout adolescence, until at least the age of 21, and likely beyond in some areas of function.[5]

17. In response to these revelations about ongoing brain maturation, researchers began to focus on the ways that adolescent behavior is more accurately characterized as reflecting psychological and neurobiological immaturity.[6] The results of many of these studies and descriptions of adolescent behavior were used by the U. S. Supreme Court, first in *Roper v. Simmons*, and later in *Graham v. Florida, Miller v. Alabama*, and *Montgomery v. Louisiana*, as the foundation for the high court's conclusions that adolescents younger than 18 should not be treated as adults by the criminal justice system. The Court, consistent with the prevailing science and the consensus among researchers in this field, reasoned that because the adolescent brain is still developing, adolescents' often impulsive and ill-considered behavior is not fully mature, and their culpability cannot be compared to and should not be equated with that of presumptively mature

---

[4] Gogtay, N., et al. (2004). Dynamic mapping of human cortical development during childhood through early adulthood. *Proceedings of the National Academies of Sciences, 101*, 8174–8179; Giedd, J., Blumenthal, J., Jeffries, N., Castellanos, F., Liu, H., Zijdenbos, A., . . . Rapoport, J. (1999). Brain development during childhood and adolescence: a longitudinal MRI study. *Nature Neuroscience.* 2, 861–863; Sowell, E., Thompson, P., Leonard, C., Welcome, S., Kan, E., & Toga, A. (2004). Longitudinal mapping of cortical thickness and brain growth in normal children. *Journal of Neuroscience, 24*, 8223–8231.

[5] Casey, B. J., Tottenham, N., Liston, C., & Durston, S. (2005). Imaging the developing brain: What have we learned about cognitive development? *Trends in Cognitive Science, 9,* 104–110.

[6] Steinberg, L., & Scott, E. (2003). Less guilty by reason of adolescence: Developmental immaturity, diminished responsibility, and the juvenile death penalty. *American Psychologist, 58*, 1009-1018.

adults.[7] In addition, the Court noted that because psychological and neurobiological development are still ongoing in adolescence, individuals are still amenable to change and able to profit from rehabilitation.

18. Further study of brain maturation conducted during the past decade has revealed that several aspects of brain development affecting judgment and decision-making are not only ongoing during early and middle adolescence, but continue at least until age 21. As more research confirming this conclusion accumulated, by 2015 the notion that brain maturation continues into late adolescence became widely accepted among neuroscientists.[8] This contemporary view of

---

[7] The American Psychological Association filed briefs as amicus curiae in *Roper*, *Graham*, and *Miller*, outlining the state of neuropsychological and behavioral research on adolescent brain development and behavior for the Court. *See* Brief for the American Psychological Association, American Psychiatric Association, and National Association of Social Workers as Amici Curiae in Support of Petitioners, *Miller v. Alabama*, 567 U.S. 460 (2012) (No. 10-9646); Brief for the American Psychological Association, American Psychiatric Association, National Association of Social Workers, and Mental Health America as Amici Curiae Supporting Petitioners, *Graham v. Florida*, 560 U.S. 48 (2010) (No. 08-7412), *Sullivan v. Florida*, 560 U.S. 181 (2010) (No. 08-7621); Brief for the American Psychological Association, and the Missouri Psychological Association as *Amici Curiae* Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633).

[8] Dosenbach, N., et al. (2011). Prediction of individual brain maturity using fMRI. *Science*, *329*, 1358–1361; Fair, D., et al. (2009). Functional brain networks develop from a "local to distributed" organization. *PLoS Computational Biology*, *5*, 1–14; Hedman A., van Haren N., Schnack H., Kahn R., & Hulshoff Pol, H. (2012). Human brain changes across the life span: A review of 56 longitudinal magnetic resonance imaging studies. *Human Brain Mapping, 33*, 1987-2002; Pfefferbaum, A., Rohlfing, T., Rosenbloom, M., Chu, W., & Colrain, I. (2013). Variation in longitudinal trajectories of regional brain volumes of healthy men and women (ages 10 to 85 years) measured with atlas-based parcellation of MRI. *NeuroImage, 65*, 176-193; Simmonds, D., Hallquist, M., Asato, M., & Luna, B. (2014). Developmental stages and sex differences of white matter and behavioral development through adolescence: A longitudinal diffusion tensor imaging (DTI) study. *NeuroImage*, *92*, 356-368. Somerville, L., Jones, R., & Casey, B.J. (2010). A time of change: behavioral and neural correlates of adolescent sensitivity to appetitive and aversive environmental cues. *Brain & Cognition, 72*, 124-133; Tamnes, C., Herting, M., Goddings, A., Meuwese, R., Blakemore, S., Dahl, R., . . . Mills, K. (2017). Development of the cerebral cortex across adolescence: A multisample study of inter-related longitudinal changes in cortical volume, surface area, and thickness. *Journal of Neuroscience, 37*, 3402-3412; Whitaker, K., Vértes, P., Romero-Garcia, R., Váša, F., Moutoussis, M., Prabhu, G., . . . Bullmore E. (2016). Adolescence is associated with genomically patterned consolidation of the hubs of the human brain connectome. PNAS, 113, 9105-9110.

brain development as ongoing at least until age 21 stands in marked contrast to the view held by scientists as recently as 16 years ago. **This research was not available at the time of Mr. Melton's trial or sentencing.**

19. We now know that, in many respects, **individuals between 18 and 21 are more neurobiologically similar to younger teenagers than had previously been thought, their character has not yet been fully formed (as those brain regions most determinant of character are the last to mature), they remain amenable to change, and they are able to profit from rehabilitation. Accordingly, predictions about adolescents' future character and behavior based on assessments made prior to maturation amount to little more than speculation.** The APA's observation in its brief in *Roper* therefore applies to individuals who are younger than 21: "The absence of proof that assessments of adolescent behavior will remain stable into adulthood invites unreliable capital sentencing based on faulty appraisals of character and future conduct."[9]

20. Although mental health professionals are able to characterize the functional and behavioral features of an individual adolescent, their ability to reliably predict future character formation, dangerousness, or amenability to rehabilitation is inherently limited. This is true even for adolescents with histories of delinquent behavior, because misconduct diminishes at a high rate between adolescence and adulthood.[10] Thus, mental health professionals' ability to reliably distinguish between the relatively few adolescents who will continue as career criminals and the vast majority of adolescents who will, as adults, "repudiate their reckless experimentation is limited. As a general matter, litigating maturity on a case-by-case basis is likely to be an error-prone undertaking, with the outcomes determined by factors other than

---

[9] Brief for the American Psychological Association, and the Missouri Psychological Association as *Amici Curiae* Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633), p. 24. The APA Amicus brief in *Roper*, for which I was the lead scientific consultant, and which I helped draft, did not address the death penalty for persons aged 18-20 because this issue was not before the court.

[10] Sweeten, G., Piquero, A., & Steinberg, L. (2013). Age and the explanation of crime, revisited. *Journal of Youth and Adolescence, 42,* 921-938.

psychological immaturity—such as physical appearance or demeanor . . . immaturity is often ignored when the facts of a particular case engender a punitive response; indeed, immaturity is likely to count as mitigating only when the offender otherwise presents a sympathetic case."[11]

21. Although various measures of antisocial character, including widely used measures of psychopathy, may aid in making short-term predictions of violent behavior in adolescence, "they provide little support for the argument that psychopathy during adolescence is a robust predictor of future violence, particularly violence that occurs beyond late adolescence. . . . Because most adolescents manifest some 'traits' and behaviors during this period that may be phenotypically similar to symptoms of psychopathy, adolescence may be the most difficult stage of life in which to detect this personality pattern."[12]

PSYCHOLOGICAL IMMATURITY IN ADOLESCENCE

22. Research conducted during the past 15 years also has led scientists to revise longstanding views of psychological development during adolescence. Conclusions drawn from this psychological research parallel those drawn from recent studies of brain development and indicate that **individuals in their late teens and early 20s are less mature than their older counterparts in several important and legally-relevant ways.**[13] The results of these psychological studies, including many that have been conducted by my research group, have been

---

[11] Scott, E., & Steinberg, L. (2008). *Rethinking juvenile justice*. Cambridge, MA: Harvard University Press, pp. 140-141.

[12] Edens, J., Skeem, J., Cruse, K., & Cauffman, E. (2001). Assessment of "juvenile psychopathy" and its association with violence: A critical review. *Behavioral Science and the Law*, *19*, 53-80.

[13] Scott, E., Bonnie, R. & Steinberg, L. (2016). Young adulthood as a transitional legal category, *Fordham Law Review*, *85*, 641-666 and Steinberg, L. (2014). *Age of opportunity: Lessons from the new science of adolescence*. New York: Houghton Mifflin Harcourt.

found not only in the United States, but around the world.[14] **This research was not available at the time of Mr. Melton's trial or sentencing**.

23. First, adolescents are more likely than adults to underestimate the number, seriousness, and likelihood of risks involved in a given situation. When asked to make a decision about a course of action, compared to adults, adolescents have more difficulty identifying the possible costs and benefits of each alternative, underestimate the chances of various negative consequences occurring, and underestimate the degree to which they could be harmed if the negative consequences occurred.[15]

24. Second, adolescents and people in their early 20s are more likely than older individuals to engage in what psychologists call "sensation-seeking," the pursuit of arousing, rewarding, exciting, or novel experiences. [16] As a consequence of this, young people are more apt to focus on the potential rewards of a given decision than on the potential costs. Other studies have indicated that heightened risk taking among adolescents is due to the greater attention they pay to

---

[14] Duell, N., Steinberg, L., Chein, J., Al-Hassan, S., Bacchini, D., Chang, L, . . . Alampay, L. (2016). Interaction of reward seeking and self-regulation in the prediction of risk taking: A cross-national test of the dual systems model. *Developmental Psychology*, *52*, 1593-1605; Duell, N., Steinberg, L., Icenogle, G., Chein, J., Chaudary, N., Di Giunta, L., . . . Chang, L. (2018). Age patterns in risk taking around the world. *Journal of Youth and Adolescence*, *47,* 1052-1072; Steinberg, L., & Icenogle, G. (2019). Using developmental science to distinguish adolescents and adults under the law. *Annual Review of Developmental Psychology*, *1*, 21-40. Steinberg, L., Icenogle, G., Shulman, E., Breiner, K., Chein, J., Bacchini, D., . . . Takash, H. (2018). Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation. *Developmental Science*, *21*, 1-13.

[15] Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., Lexcen, F., Reppucci, N., & Schwartz, R. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior*, *27*, 333-363.

[16] Steinberg, L., Albert, D., Cauffman, E., Banich, M., Graham, S., & Woolard, J. (2008). Age differences in sensation seeking and impulsivity as indexed by behavior and self-report: Evidence for a dual systems model. *Developmental Psychology*, *44*, 1764-1778.

the potential rewards of a risky choice relative to the potential costs. This tendency is especially pronounced among individuals between the ages of 18 and 21.[17]

25. Third, adolescents and individuals in their early 20s are less able than older individuals to control their impulses and consider the future consequences of their actions and decisions. In general, adolescents are more short-sighted and less likely to plan ahead than adults. Adolescents have more difficulty than adults in foreseeing the possible outcomes of their actions and regulating their behavior accordingly. **Importantly, significant gains in impulse control continue to occur beyond age 18 and into the early 20s.**[18]

26. Fourth, the development of basic cognitive abilities, including memory and logical reasoning, matures before the development of emotional maturity. Emotional maturity includes the ability to exercise self-control, rein in sensation seeking, properly consider the risks and rewards of alternative courses of action, and resist coercive pressure from others. A young person who appears to be intellectually mature may be socially and emotionally immature.[19]

---

[17] Cauffman, E., Shulman, E., Steinberg, L., Claus, E., Banich, M., Graham, S., & Woolard, J. (2010). Age differences in affective decision making as indexed by performance on the Iowa Gambling Task. *Developmental Psychology, 46*, 193-207; Steinberg, L., Icenogle, G., Shulman, E., Breiner, K., Chein, J., Bacchini, D., . . . Takash, H. (2018). Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation. *Developmental Science, 21*, 1-13.

[18] Steinberg, L., Graham, S., O'Brien, L., Woolard, J., Cauffman, E., & Banich, M. (2009). Age differences in future orientation and delay discounting. *Child Development, 80*, 28-44); Steinberg, L., Albert, D., Cauffman, E., Banich, M., Graham, S., & Woolard, J. (2008) Age differences in sensation seeking and impulsivity as indexed by behavior and self-report: Evidence for a dual systems model. *Developmental Psychology, 44*, 1764-1778; Steinberg, L., Icenogle, G., Shulman, E., Breiner, K., Chein, J., Bacchini, D., . . . Takash, H. (2018). Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation. *Developmental Science, 21*, 1-13.

[19] Icenogle, G., Steinberg, L., Duell, N., Chein, J., Chang, L., Chaudary, N., . . . Bacchini, D. (2019). Adolescents' cognitive capacity reaches adult levels prior to their psychosocial maturity: Evidence for a "maturity gap" in a multinational sample. *Law and Human Behavior, 43*, 69-85; Steinberg, L., Cauffman, E., Woolard, J., Graham, S., & Banich, M. (2009). Are adolescents less mature than adults? Minors' access to abortion, the juvenile death penalty, and the alleged APA "flip-flop". *American Psychologist, 64*, 583-594.

27. A consequence of this gap between intellectual and emotional maturity is that the tendencies of adolescents and people in their early 20s, relative to individuals in their mid- or late 20s, are more focused on rewards, more impulsive, and more myopic. These tendencies are exacerbated when adolescents are making decisions in situations that are emotionally arousing, including those that generate or are characterized by strong negative emotions, such as fear, threat, anger, or anxiety.[20] Psychologists distinguish between "cold cognition" – which refers to the thinking abilities used under calm circumstances – and "hot cognition" – which refers to the thinking abilities used under emotionally arousing ones. **Adolescents' deficiencies in judgment and self-control, relative to adults, are greater under "hot" circumstances in which emotions are aroused than they are under calmer, "cold" circumstances.**[21]

28. Fifth, **adolescents' deficiencies in judgment are exacerbated by the presence of peers, a factor that often arouses emotions**. It is well established that a disproportionate amount of adolescent and young adult risk taking occurs in the presence of peers.[22] Scientists believe that this is because, when they are with their peers, young people pay relatively more attention to the potential rewards of a risky decision than they do when they are alone, and when they are with their peers they are especially drawn to immediate rewards, including both material rewards (e.g.,

---

[20] Dreyfuss, M., Caudle, K., Drysdale, A. T., Johnston, N. E., Cohen, A. O., Somerville, L. H., Galvan, A., Tottenham, N., Hare, T. A., & Casey, B. J. (2014). Teens impulsively react rather than retreat from threat. *Developmental Neuroscience, 36,* 220-227.

[21] Cohen, A., Breiner, K., Steinberg, L., Bonnie, R., Scott, E., Taylor-Thompson, K., . . . Casey, B.J. (2016). When is an adolescent an adult? Assessing cognitive control in emotional and non-emotional contexts. *Psychological Science*, *4*, 549-562; Steinberg, L. (2014). *Age of opportunity: Lessons From the New Science of Adolescence*. New York: Houghton Mifflin Harcourt; Steinberg, L., Cauffman, E., Woolard, J., Graham, S., & Banich, M. (2009). Are adolescents less mature than adults? Minors' access to abortion, the juvenile death penalty, and the alleged APA "flip-flop". *American Psychologist*, *64*, 583-594; Steinberg, L., & Icenogle, G. (2019). Using developmental science to distinguish adolescents and adults under the law. *Annual Review of Developmental Psychology*, *1*, 21-40.

[22] Albert, D., & Steinberg, L. (2011). Peer influences on adolescent risk behavior. In M. Bardo, D. Fishbein, & R. Milich (Eds.), *Inhibitory control and drug abuse prevention: From research to translation*. (Part 3, pp. 211-226). New York: Springer.

money, drugs) as well as social rewards (e.g., praise, the admiration of others).[23] In our research lab, we have shown that the mere presence of peers activates the brain's "reward center" among adolescents and people in their early 20s, but has no such effect on adults.[24]

29. My colleagues and I have found that these peer effects on risk taking and attentiveness to rewards occur regardless of the number of peers present, their degree of familiarity with one another, and whether the peers are real or illusory. Brain imaging studies show that adolescents are especially sensitive to social rejection, which may make conforming to one's peers especially important.[25] That a much greater proportion of juvenile crimes, compared to adult crimes, occur when individuals are in groups is consistent with these data.[26]

30. The combination of heightened attentiveness to rewards and still-maturing impulse control makes middle and late adolescence a time of greater risk-taking than any other stage of development. This has been demonstrated both in studies of risk-taking in psychological

---

[23] O'Brien, L., Albert, D., Chein, J., & Steinberg, L. (2011). Adolescents prefer more immediate rewards when in the presence of their peers. *Journal of Research on Adolescence*, *21*, 747-753; Silva, K., Patrianakos, J., Chein, J., & Steinberg, L. (2017). Joint effects of peer pressure and fatigue on risk and reward processing in adolescence. *Journal of Youth and Adolescence*, *46*, 1878-1890; Weigard, A., Chein, J., Albert, D., Smith, A., & Steinberg, L. (2014). Effects of anonymous peer observation on adolescents' preference for immediate rewards. *Developmental Science*, *17*, 71-78.

[24] Chein, J., Albert, D., O'Brien, L., Uckert, K., & Steinberg, L. (2011). Peers increase adolescent risk taking by enhancing activity in the brain's reward circuitry. *Developmental Science*, *14*, F1–F10; Smith, A., Steinberg, L., Strang, N., & Chein, J. (2015). Age differences in the impact of peers on adolescents' and adults' neural response to reward. *Developmental Cognitive Neuroscience*, *11*, 75-82.

[25] Andrews, J., Ahmed, S., Blakemore, S-J. (2021). Navigating the social environment in adolescence: The role of social brain development. *Biological Psychiatry*, *89*, 109-118; Blakemore, S-J. (2008). The social brain in adolescence. *Nature Reviews Neuroscience*, *9*, 267-277; Somerville, L. (2013). The teenage brain: Sensitivity to social evaluation. *Current Directions in Psychological Science*, *22*, 121-127.

[26] Zimring, F., & Laquear, H. (2015). Kids, groups, and crime: In defense of conventional wisdom. *Journal of Research in Crime and Delinquency*, *52,* 403-415.

experiments (when other factors, such as outside influences, can be controlled) and in the analysis of data on risky behavior in the real world.[27]

31. In recent experimental studies of risk-taking, the peak age for risky decision-making has been determined to be in the late teens and early 20s.[28] This age trend is consistent with epidemiological data on age trends in risky behavior, which show peaks in the adverse outcomes of risk-taking in the late teens and early 20s in a wide range of behaviors, including driver deaths, unintended pregnancy, arrests for violent and non-violent crime, and binge drinking.[29]

NEUROBIOLOGICAL ACCOUNTS OF ADOLESCENT IMMATURITY

32. Many scientists, including myself, believe that the main underlying cause of psychological immaturity during adolescence and the early 20s is the different timetables along which two important brain systems change during this period, sometimes referred to as a "maturational imbalance."[30]

33. The system that is responsible for the increase in sensation-seeking and reward-seeking that takes place in adolescence, which is localized mainly in the brain's limbic system, undergoes dramatic changes very early in adolescence, around the time of puberty. Attentiveness

---

[27] Duell, N., Steinberg, L., Icenogle, G., Chein, J., Chaudary, N., Di Giunta, L., . . . Chang, L. (2018). Age patterns in risk taking around the world. *Journal of Youth and Adolescence*, *47*, 1052-1072.

[28] Braams, B., van Duijvenvoorde, A., Peper, J., & Crone, E. (2015). Longitudinal changes in adolescent risk-taking: A comprehensive study of neural responses to rewards, pubertal development and risk taking behavior. *Journal of Neuroscience, 35*, 7226-7238; Shulman, E., & Cauffman, E. (2014). Deciding in the dark: Age differences in intuitive risk judgment. *Developmental Psychology*, *50,* 167-177.

[29] Willoughby, T., Good, M., Adachi, P., Hamza, C., & Tavernier, R. (2013). Examining the link between adolescent brain development and risk taking from a social-developmental perspective. *Brain and Cognition*, *83*, 315-323.

[30] Casey, B. J., et al. (2010). The storm and stress of adolescence: Insights from human imaging and mouse genetics. *Developmental Psychobiology*, *52*, 225-235; Shulman, E., Smith, A., Silva, K., Icenogle, G., Duell, N., Chein, J., & Steinberg, L. (2016). The dual systems model: Review, reappraisal, and reaffirmation. *Developmental Cognitive Neuroscience, 17*, 103-117.

to rewards remains high through the late teen years and into the early 20s. But the system that is responsible for self-control, regulating impulses, thinking ahead, evaluating the rewards and costs of a risky act, and resisting peer pressure, which is localized mainly in the prefrontal cortex, is still undergoing significant maturation well into the mid-20s.[31]

34. Thus, during middle and late adolescence there is an imbalance between the reward system and the self-control system that inclines adolescents toward sensation-seeking and impulsivity. As this "maturational imbalance" diminishes, during the mid-20s, there are improvements in such capacities as impulse control, resistance to peer pressure, planning, and thinking ahead.[32]

35. Studies of structural and functional development of the brain are consistent with this view. Specifically, **research on neurobiological development shows continued maturation into the early or even mid-20s of brain regions and systems that govern various aspects of self-regulation** and higher-order cognitive function. These developments involve structural (i.e., in the brain's anatomy) and functional (i.e., in the brain's activity) changes in the prefrontal and parietal cortices, as well as improved structural and functional connectivity between the limbic system and the prefrontal cortex. **This research was not available at the time of Mr. Melton's trial or sentencing.**

36. The structural changes are primarily the result of two processes: synaptic pruning (the elimination of unnecessary connections between neurons, which allows the brain to transmit information more efficiently), and myelination (the growth of sheaths of myelin around neuronal

---

[31] Shulman, E., Harden, K., Chein, J., & Steinberg, L. (2015). Sex differences in the developmental trajectories of impulse control and sensation-seeking from early adolescence to early adulthood. *Journal of Youth and Adolescence*, *44*, 1-17; Steinberg, L. (2008). A social neuroscience perspective on adolescent risk-taking. D*evelopmental Review*, *28*, 78-106; Van Leijenhorst, L., Moor, B. G., Op de Macks, Z. A., Rombouts, S. A. R. B., Westenberg, P. M., & Crone, E. A. (2010). Adolescent risky decisionmaking: Neurocognitive development of reward and control regions. *NeuroImage, 51*, 345–355.

[32] Albert, D., & Steinberg, L. (2011). Judgment and decision making in adolescence. *Journal of Research on Adolescence*, *21*, 211-224; Blakemore, S-J., & T. Robbins, T. (2012). Decision-making in the adolescent brain. *Nature Neuroscience*, *15*, 1184-1191.

connections, which functions as a form of insulation that allows the brain to transmit information more quickly).

37. Although the process of synaptic pruning is largely finished by age 16, myelination continues into the late teens and throughout the 20s.[33] Thus, although the development of the prefrontal cortex is largely complete by the end of middle adolescence, the maturation of connections between this region and regions that govern self-regulation and the brain's emotional centers, facilitated by the continued myelination of these connections, continues into late adolescence (at least through age 20) and may not be complete until the mid-20s.[34] As a consequence, late adolescents often have difficulty controlling their impulses, especially in emotionally arousing situations.

38. Recent studies that my colleagues and I conducted, of middle adolescents, late adolescents, and individuals in their mid-20s, illustrate this point. We assessed individuals' impulse control and brain activity while experimentally manipulating their emotional state. Under conditions during which individuals were not emotionally aroused, individuals between 18 and 21 exhibited impulse control and patterns of brain activity comparable to those in their mid-20s. But under emotionally arousing conditions, 18- to 21-year-olds demonstrated levels of impulsive behavior and patterns of brain activity that were comparable to those in their mid-teens.[35] In other

---

[33] For reviews of changes in brain structure and function during adolescence and young adulthood, see Blakemore, S-J. (2012). Imaging brain development: The adolescent brain. *Neuroimage, 61*, 397-406; Engle, R. (2013). The teen brain. *Current Directions in Psychological Science, 22 (2)* (whole issue); and Luciana, M. (Ed.) (2010). Adolescent brain development: Current themes and future directions. *Brain and Cognition, 72* (2), whole issue; and Spear, L., & Silveri, M. (2016). Special issue on the adolescent brain. *Neuroscience and Biobehavioral Reviews, 70* (whole issue).

[34] Khundrakpam, B, Lewis, J., Zhao, L., Chouinard-Decorte, F., & Evans, A. (2016). Brain connectivity in normally developing children and adolescents. *NeuroImage, 134*, 192-203.

[35] Cohen, et al. (2016). When is an adolescent an adult? Assessing cognitive control in emotional and non-emotional contexts. *Psychological Science, 4*, 549-562; Rudolph, M., Miranda-Dominguez, O., Cohen, A., Breiner, K., Steinberg, L., . . . Fair, D. (2017). At risk of being risky: The relationship between "brain age" under emotional states and risk preference. *Developmental Cognitive Neuroscience, 24*, 93-106.

words, **under some circumstances, the brain of an 18- to 21-year-old functions in ways that are similar to that of a 16- or 17-year-old**.

DESISTANCE FROM CRIME AFTER YOUNG ADULTHOOD

39. Research in developmental psychology has produced a growing understanding of the ways in which normative psychological maturation contributes to desistance from crime. My colleagues and I have shown that normal and expected improvements in self-control, resistance to peer pressure, and future orientation, which occur in most individuals, are related to desistance from crime during the late adolescent and young adult years.[36]

40. Scientists have also shown that the human brain is malleable, or "plastic." Neuroplasticity refers to the potential for the brain to be modified by experience. Certain periods in development appear to be times of greater neuroplasticity than others. There is growing consensus that there is considerable neuroplasticity in adolescence, which suggests that during those time periods, there are greater opportunities for individuals to change.[37] In *Graham*, the United States Supreme Court recognized that adolescents' brains are not fully developed, and their

---

[36] Monahan, K., Steinberg, L., & Cauffman, E. (2009). Affiliation with antisocial peers, susceptibility to peer influence, and desistance from antisocial behavior during the transition to adulthood. *Developmental Psychology, 45*, 1520-1530; and Monahan, K., Steinberg, L., Cauffman, E., & Mulvey, E. (2009). Trajectories of antisocial behavior and psychosocial maturity from adolescence to young adulthood. *Developmental Psychology, 45*, 1654-1668). This observation is consistent with findings from developmental neuroscience, noted earlier (for example, Liston, C., Watts, R., Tottenham, N., Davidson, M., Niogi, S., Ulug, A., & Casey, B.J. (2006). Frontostriatal microstructure predicts individual differences in cognitive control. *Cerebral Cortex, 16*, 553-560).

[37] For a discussion of adolescent neuroplasticity, see Aoki, C., Romeo, R., & Smith, S. (2017). Adolescence as a critical period for developmental plasticity. *Brain Research,* 1654, 85-86; Guyer, A., Peréz-Edgar, K., & Crone, E., (2018). Opportunities for neurodevelopmental plasticity from infancy through early adulthood. Child Development, 89, 687-297; Kays, J., Hurley, R., Taber, K. (2012). The dynamic brain: Neuroplasticity and mental health. *Journal of Clinical Neuropsychiatry and Clinical Neuroscience, 24*, 118-124; Steinberg, L. (2014). *Age of Opportunity: Lessons From the New Science of Adolescence.* New York: Houghton Mifflin Harcourt; and Thomas, M., & Johnson, M. (2008). New advances in understanding sensitive periods in brain development. *Current Directions in Psychological Science,* 17, 1-5.

lack of maturity and capacity for growth led the Court to hold that youth who commit serious crimes must have an opportunity for release based on demonstrated maturity and rehabilitation.

41. Very few individuals who have committed crimes as juveniles continue offending beyond their mid-20s. My colleagues and I have found, as have other researchers, that approximately 90 percent of serious juvenile offenders age out of crime and do not continue criminal behavior into adulthood.[38]

42. Longitudinal studies documenting this pattern of desistance are consistent with epidemiological evidence on the relation between age and crime. In general, sociological studies demonstrate what scientists describe as an "age-crime curve," which shows that, in the aggregate, crime peaks in the late teen years, and declines during the early 20s.[39] For example, according to recent data from the United States Federal Bureau of Investigation, on arrest rates as a function of age, arrests for property crime and for violent crime increase between 10 and 19 years, peak in the late teens or early 20s, and decline most dramatically after 25.[40] This is a robust pattern observed not only in the United States, but across the industrialized world and over historical time.[41]

43. Research in developmental psychology has produced a growing understanding of the ways in which normative psychological maturation contributes to desistance from crime. My

---

[38] Monahan, K., Steinberg, L., Cauffman, E., & Mulvey, E. (2013). Psychosocial (im)maturity from adolescence to early adulthood: Distinguishing between adolescence-limited and persistent antisocial behavior. *Development and Psychopathology*, 25, 1093–1105; and Mulvey, E., Steinberg, L., Piquero, A., Besana, M., Fagan, J., Schubert, C., & Cauffman, E. (2010). Trajectories of desistance and continuity in antisocial behavior following court adjudication among serious adolescent offenders. *Development and Psychopathology*, *22*, 453-475.

[39] Sweeten, G., Piquero, A., & Steinberg, L. (2013). Age and the explanation of crime, revisited. *Journal of Youth and Adolescence*, *42,* 921-938.

[40] U.S. Department of Justice. (2020). *Crime in the United States*, 2019.

[41] Farrington, D. (1986). Age and crime. In M. Tonry & N. Morris (Eds.), *Crime and justice: An annual review of research, vol. 7* (pp. 189-250). Chicago: University of Chicago Press; Hirschi, T., & Gottfredson, M. (1983). Age and the explanation of crime. *American Journal of Sociology, 89*, 552-84; and Piquero, A., Farrington, D., & Blumstein, A. (2007). *Key issues in criminal careers research: New analysis from the Cambridge study in delinquent development*. Cambridge: Cambridge University Press.

colleagues and I have shown that normal and expected improvements in self-control, resistance to peer pressure, and future orientation, are related to desistance from crime during the late adolescent and young adult years.[42] This observation is consistent with findings from developmental neuroscience, noted earlier.[43]

44. In summary, there is strong scientific evidence that (1) most adolescent offending reflects transient developmental immaturity rather than irreparably bad character; (2) this developmental immaturity has been linked to predictable patterns of structural and functional brain development during adolescence; (3) this process of brain maturation continues through the late teens and into the early 20s; (4) the adolescent brain is especially "plastic," or susceptible to environmental influence, which makes juveniles more amenable to rehabilitation; and (5) the vast majority of adolescent offenders age out of crime as they mature into their mid-20s.

CONCLUSION

45. Extensive studies demonstrate that important neurobiological development is ongoing throughout the teenage years and continues into the early 20s. As a result of neurobiological immaturity, young people, even those past the age of majority, continue to demonstrate difficulties in exercising self-restraint, controlling impulses, considering future consequences, making decisions independently from their peers, and resisting the coercive influence of others. Heightened susceptibility to emotionally laden and socially charged situations renders adolescents more vulnerable to others' influence, and in such situations young people are even less able to consider and weigh the risks and consequences of a chosen course of action.[44]

---

[42] Monahan, K., Steinberg, L., & Cauffman, E. (2009). Affiliation with antisocial peers, susceptibility to peer influence, and desistance from antisocial behavior during the transition to adulthood. *Developmental Psychology*, *45*, 1520-1530; Monahan, K., Steinberg, L., Cauffman, E., & Mulvey, E. (2009). Trajectories of antisocial behavior and psychosocial maturity from adolescence to young adulthood. *Developmental Psychology*, *45*, 1654-1668.

[43] For example, see Liston, C., Watts, R., Tottenham, N., Davidson, M., Niogi, S., Ulug, A., & Casey, B.J. (2006). Frontostriatal microstructure predicts individual differences in cognitive control. *Cerebral Cortex*, *16*, 553-560.

[44] Scott, E., Duell, N., & Steinberg, L. (2018). Brain development, social context, and justice policy. *Washington University Journal of Law and Policy*, *57*, 13-74.

Many of the same immaturities that characterize the brains of individuals younger than 18, and that have been found to mitigate their criminal culpability, are characteristic of the brains of individuals between 18 and 21. As I noted earlier, this research was not available at the time of Mr. Melton's trial or sentencing.

46. **Criminal acts committed by adolescents, even those who have turned 18, are best considered in light of their neurobiological and psychological immaturity. For this reason, it is inappropriate to assign the same degree of culpability to criminal acts committed at this age to that which would be assigned to the behavior of a fully mature and responsible adult.**

47. In his majority opinion in *Roper v. Simmons*, Justice Kennedy noted three characteristics of juveniles that diminish their criminal responsibility: their impetuosity, their susceptibility to peer influence, and their capacity to change. In Justice Kennedy's opinion in *Graham v. Florida*, as well as Justice Kagan's opinion in *Miller v. Alabama*, the Court noted that the characterization of juveniles as inherently less mature than adults, and therefore less responsible for their crimes, was supported by a growing scientific literature affirming adolescents' neurobiological as well as psychological immaturity.[45] In the nine years that have elapsed since *Miller*, scientific evidence consistent with these arguments has continued to accrue.

48. Recent discoveries in psychological science and in brain science, as well as societal changes, should urge us to rethink how we view people in late adolescence and young adulthood in terms of their treatment under the law. It is now clear that neurobiological and psychological immaturity of the sort that the Supreme Court referenced in its opinions on juveniles' diminished culpability is also characteristic of individuals in their late teens and early 20s. **For the very same reason that the Supreme Court found capital punishment in cases involving defendants under the age of 18 to be unconstitutional, this penalty should be prohibited in all cases involving defendants who are under the age of 21.**[46] Individualized assessments of adolescents

---

[45] Steinberg, L. (2017). Adolescent brain science and juvenile justice policymaking. *Psychology, Public Policy, and Law*, *23*, 410-420.

[46] This view is consistent with that recently adopted by the American Bar Association ("The American Bar Association, without taking a position supporting or opposing the death penalty,

conducted for the purpose of predicting future offending are unreliable, influenced by factors that have nothing to do with future criminal behavior (such as a defendant's physical appearance), and easily tainted by conscious and unconscious biases.[47]

49. In short, "the likelihood of error in ascertaining putatively enduring features of an adolescent's behavior is high. The fundamental problem is found in the inability to distinguish in a reliable way between the few adolescent offenders who may not be amenable to rehabilitation and the many who will spontaneously desist or who will respond to sanction or intervention."[48]

50. Attempts to predict at capital sentencing an adolescent offender's character formation and dangerousness in adulthood are inherently prone to error and create an obvious risk of wrongful execution. **The same evidence which could be used to argue that a death sentence is warranted in a case of an adult defendant may, in an adolescent, may very well reflect transitory behavior that would not support such an argument**. A strong presumption that mitigation applies categorically to individuals under 21 avoids both innocent errors and more pernicious influences that may distort individualized determinations.

51. In my opinion, this scientific evidence should be taken into account with respect to Mr. Melton's request for review of his death sentence. Mr. Melton's offense was characterized by many quintessentially juvenile featrures: it was an impulsive act motivated by the prospect of an immediate reward, committed with a peer and under the sort of "hot" circumstances that have been shown to impair adolescent decision making.

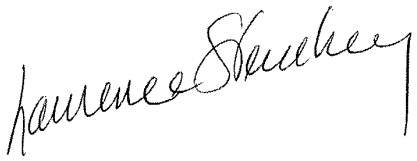
---

urges each jurisdiction that imposes capital punishment to prohibit the imposition of a death sentence on or execution of any individual who was 21 years old or younger at the time of the offense," Resolution, Death Penalty Due Process Review Project, Section of Civil Rights and Social Justice, American Bar Association, February, 2018).

[47] Tonry, M. (2019). Predictions of dangerousness in sentencing: Déjà vu all over again. *Crime and Justice: A Review of Research, 48*, 439-482.

[48] Brief for the American Psychological Association, and the Missouri Psychological Association as *Amici Curiae* Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633).

52. I believe that the facts I have stated in this report are true and that the opinions I have expressed are within a reasonable degree of scientific certainty.



Laurence Steinberg, Ph.D.
Philadelphia, PA
June 30, 2021

EXHIBIT B

ERNIE LEE MAGAHA, CLERK
CIRCUIT COURT &
COUNTY COURT
ESCAMBIA COUNTY, FLORIDA

May 19 3 28 PM '92

FILED & RECORDED

OR BOOK 3186 PAGE 519

☐ PROBATION VIOLATOR
(Check if Applicable)

IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT, IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA

DIVISION B

CASE NUMBER 91-373CFB3-01

—vs—

ANTONIO LEBARON MELTON
Defendant

JUDGMENT

The Defendant, ANTONIO LEBARON MELTON, being personally before this Court represented by S. Hall, Asst. Public Defender, his attorney of record, and having:

(Check if Applicable)

☒ Been tried and found guilty of the following crime(s)
☐ Entered a plea of guilty of the following crime(s)
☐ Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	CASE NUMBER
1	FIRST DEGREE MURDER	782.04, 775.087	CF	
2	ARMED ROBBERY	812.13(2)(a), 775.087(2)	Fl life	

nd no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is herel ADJUDICATED GUILTY of the above crime(s).

The Defendant is hereby ordered to pay the sum of ten dollars ($10.00) pursuant to F.S. 960.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of two dollars ($2.00) as a court cost pursuant to F.S. 943.25(4).

(Check if Applicable)

☐ The Defendant is further ordered to pay an additional two ($2.00) pursuant F.S. 943.25(8) (This provision is optional; not applicable unless checked).

☐ The Court hereby imposes a fine in the sum of $

NOTE: This page is to be compl[illegible] ONLY where sentence is stayed a[illegible] withheld or deferred until a later da

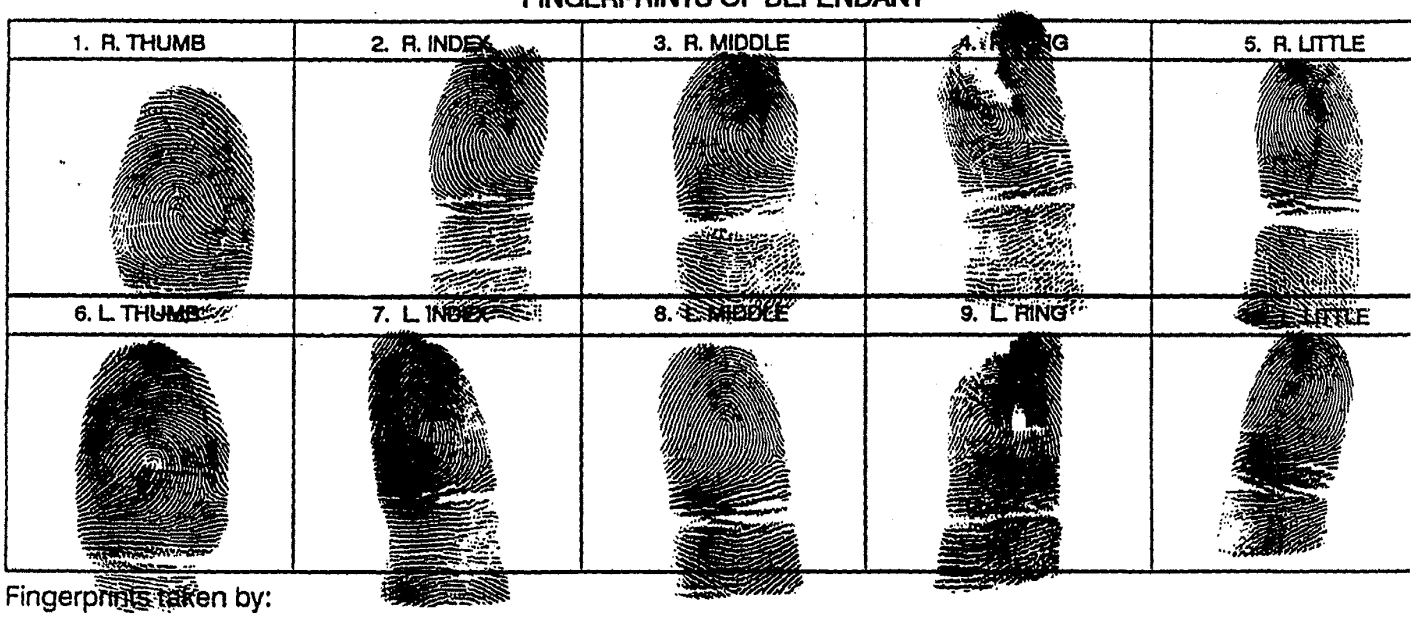
Imposition of Sentence Stayed and Withheld (Check if Applicable) ☐ The Court hereby stays and withholds the imposition of sentence and places the defendant on probation for a period of _____ under th[illegible] supervision of the Department of Corrections (conditions of probation set forth in seperate order).

Sentence Deferred (Check if Applicable) ☐ The Court hereby defers impostion of sentence until _____ (DATE)

The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appea within thirty days from this date with the Clerk of this Court, and the Defendant[s entitlement to the assistance of counsel in taking said appeal at the expense of the State upon showin of indigency.

_____
JUDGE

FINGERPRINTS OF DEFENDANT



Fingerprints taken by:

Deputy R E Blackburn 632
Name and Title

DONE AND ORDERED in Open Court at Escambia County, Florida, this 19th da of MAY A.D., 19 92. I HEREBY CERTIFY that the above and foregoing fingerprints a the fingerprints of the Defendant, ANTONIO LEBARON MELTON and that they were placed thereon t said Defendant in my presence in Open Court this date.

William H. Anderson
JUDGE

Defendant ANTONIO LEBARON MELTON

Case Number 91-373

SENTENCE

(As to Count 1)

The Defendant, having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and t offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by Law, and no cause being shown.

(Check either provision if applicable)

☐ and the Court having on _____ (date) deferred imposition of sentence until this date.

☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein,

IT IS THE SENTENCE OF THE LAW that the Defendant be committed to the custody of:

☒ The Department of Corrections of the State of Florida, or
☐ The Sheriff* of ESCAMBIA County, Florida
*(Name of Local Corrections Authority to be inserted at printing if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

☐ For a term of Natural Life
☒ For a term of DEATH SENTENCE IMPOSED
☐ For an indeterminate period of 6 months to _____ years.

If "split" sentence complete either of these 2 paragraphs

☐ Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

•••••• SPECIAL PROVISIONS ••••••

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm—3 year mandatory minimum

☐ It is further ordered that the 3 year minimum provisions of 775.087(2) are hereby imposed for the sentence specified in this count, as the defendant possessed a firearm.

Drug Trafficking—mandatory minimum

☐ It is further ordered that the _____ year minimum provisions of 893.135(1)( )( ) are hereby imposed for the sentence specified in this count.

Retention of Jurisdiction

☐ The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender

☐ The defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit

☒ It is further ordered that the Defendant shall be allowed a total of 1 yr. & 117 days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Consecutive/Concurrent

It is further ordered that the sentence imposed for this count shall run ☐ consecutive ☐ concurrent (check one) to the sentence set forth in count _____ above.

Defendant ANTONIO LEBARON MELTON

Case Number 91-373

SENTENCE

(As to Count 2)

The Defendant, having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by Law, and no cause being shown.

(Check either provision if applicable)

☐ and the Court having on _____ (date) deferred imposition of sentence until this date.

☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein,

IT IS THE SENTENCE OF THE LAW that the Defendant be committed to the custody of:

☒ The Department of Corrections of the State of Florida, or
☐ The Sheriff* of ESCAMBIA County, Florida
*(Name of Local Corrections Authority to be inserted at printing if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

☐ For a term of Natural Life
☒ For a term of LIFE IMPRISONMENT
☐ For an indeterminate period of 6 months to _____ years.

If "split" sentence complete either of these 2 paragraphs

☐ Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

•••••• SPECIAL PROVISIONS ••••••

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm—3 year mandatory minimum

☐ It is further ordered that the 3 year minimum provisions of 775.087(2) are hereby imposed for the sentence specified in this count, as the defendant possessed a firearm.

Drug Trafficking—mandatory minimum

☐ It is further ordered that the _____ year minimum provisions of 893.135(1)( )( ) are hereby imposed for the sentence specified in this count.

Retention of Jurisdiction

☐ The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender

☐ The defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit

☐ It is further ordered that the Defendant shall be allowed a total of _____ credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Consecutive/Concurrent

It is further ordered that the sentence imposed for this count shall run ☒ consecutive ☐ concurrent (check one) to the sentence set forth in count 1 above.

1390

Defendant ANTONIO LEBARON MELTON

Case Number 91-373

Consecutive/Concurrent (AS to other convictions)

it is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run _____ consecutive to _____ concurrent with (check one) the following:

___ Any active sentence being served.

___ Specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of ESCAMBIA County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court further recommends _____

FILED IN OFFICIAL RECORDS OF ESCAMBIA COUNTY, FLORIDA
JUN 8 12 18 PM '92
JOE A. FLOWERS, COMPTROLLER
BY _____ D.C.

96 2774

DONE AND ORDERED in Open Court at ESCAMBIA County, Florida, this 19th of MAY A.D., 19 92.

William H. Anderson
JUDGE