

**STATE OF MICHIGAN**  
**IN THE SUPREME COURT**

Appeal from the Court of Appeals  
Stephen L. Borrello, PJ, Jane E. Markey, and Michael J. Riordan, JJ

**PEOPLE OF THE STATE OF MICHIGAN**

Plaintiff-Appellee

-VS-

**IHAB MASALMANI,**

Defendant-Appellant.

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**Supreme Court No. 154773**

**Court of Appeals No. 325662**

**Circuit Court No. 09-5244FC**

**MACOMB COUNTY PROSECUTOR**  
Attorney for Plaintiff-Appellee

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**STATE APPELLATE DEFENDER OFFICE**  
Attorney for Defendant-Appellant

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**Defendant-Appellant's Appendix**

**STATE APPELLATE DEFENDER OFFICE**

**BY: Tina N. Olson (P82299)**  
Juvenile Lifer Unit Manager  
**Erin Van Campen (P76587)**  
Assistant Defender  
3300 Penobscot Building  
645 Griswold  
Detroit, MI 48226  
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Circuit Court Docket Entries  
1a

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Case Details - CourtView Justice Solutions

**2009-005244-FC PEOPLE vs. MASALMANI, IHAB DMD**

- Case Type:
  - FC-CAPITAL FELONIES
- Case Status:
  - Closed
- File Date:
  - 11/19/2009
- DCM Track:
  -
- Action:
  - MURDER FIRST DEGREE-FELONY
- Status Date:
  - 11/19/2009
- Case Judge:
  - DRUZINSKI, DIANE M
- Next Event:
  -

[All Information](#) [Docket](#) [Party](#) [Charge](#) [Ticket/Citation #](#) [Event](#) [Financial](#) [Receipt](#) [Disposition](#)

**Docket Information**

<a href="#">Date</a>	<a href="#">Description</a>	<a href="#">Docket Text</a>	<a href="#">Amount Owed</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Amount Due</a>
11/19/2009	DISTRICT COURT BINDER	DISTRICT COURT BINDER			
11/19/2009	DOCUMENT FILED:	NO BOND SET			
11/20/2009	ARRAIGNMENT/CONFERENCE SCHEDULED	ARRAIGNMENT/CONFERENCE SCHEDULED Event: ARRAIGNMENT/CONFERENCE Date: 11/23/2009 Time: 1:30 pm Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: HELD-CRIMINAL			
11/20/2009	RANDOM JUDGE ASSIGNMENT OVERRIDE DUE TO PRIOR ACTION #	RANDOM JUDGE ASSIGNMENT OVERRIDE DUE TO PRIOR ACTIONS #09-4832-FC AND 09-5144-FC ASSIGNED TO JUDGE DRUZINSKI			
11/23/2009	HELD:	HELD: PLACED ON RECORD The following event: ARRAIGNMENT/CONFERENCE scheduled for 11/23/2009 at 1:30 pm has been resulted as follows:  Result: HELD, SET P/TR 1/25/10 AT 8:30AM, MTN TO BE FILED BY 1/11/10 BY DEFENSE, PROS TO FILE RESPONSE THEREAFTER SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: SMITH, ROBERT Certification Number: CSR-5098			
11/23/2009	ARRAIGNMENT WAIVED: RDG WVD, STD MTE, DEFENSE ATTY PROVIDED WITH COPY OF INFO,	ARRAIGNMENT WAIVED			

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
11/23/2009	PRETRIAL CONFERENCE SCHEDULED	PRETRIAL CONFERENCE SCHEDULED  The following event: ARRAIGNMENT/CONFERENCE scheduled for 11/23/2009 at 1:30 pm has been rescheduled as follows:  Event: PRETRIAL CONFERENCE Date: 01/25/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: HELD-CRIMINAL			
11/23/2009	INFORMATION	INFORMATION			
11/23/2009	LIST OF KNOWN WITNESSES	LIST OF KNOWN WITNESSES			
01/11/2010	TRANSCRIPT OF:	TRANSCRIPT OF: PRELIMINARY EXAMINATION VOL I OR II BEF HON CARL F GERDS III DTD 11-12-09 R/F IN FILE 09-5243-FC			
01/11/2010	TRANSCRIPT OF:	TRANSCRIPT OF: PRELIMINARY EXAMINATION VOL II OR II BEF HON CARL F GERDS III DTD 11-19-09 R/F IN FILE 09-5243-FC			
01/11/2010	ORDER SIGNED:	S/O EXTENSION OF MTN CUTOFF TO 1/19/10 SGD			
01/19/2010	JA-TRANSCRIPT FEE	JA-TRANSCRIPT FEE 262 PAGES @ .30 \$78.60 HEARING DATE 11/12/09, 11/19/09	\$0.00		\$0.00
01/19/2010	JA-TRANSCRIPT FEE	JA-TRANSCRIPT FEE 180 PAGES @ .30 \$54 (SPLIT WITH CO-DEFENDANT) HEARING DATE 11/19/09	\$0.00		\$0.00
01/25/2010	MOTION:	MOTION FOR FUNDS TO HIRE PRIVATE INVESTIGATOR			
01/25/2010	PROOF OF SERVICE	PROOF OF SERVICE			
01/25/2010	HELD:	HELD: PLACED ON RECORD The following event: PRETRIAL CONFERENCE scheduled for 01/25/2010 at 8:30 am has been resulted as follows:  Result: HELD, HRG ON MTNS & P/TR SET 3/8/10 AT 8:30AM, TR 5/18/10 AT 10:30AM SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO			
01/25/2010	PRETRIAL CONFERENCE SCHEDULED	PRETRIAL CONFERENCE SCHEDULED  The following event: PRETRIAL CONFERENCE scheduled for 01/25/2010 at 8:30 am has been rescheduled as follows:  Event: PRETRIAL CONFERENCE Date: 03/08/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: HELD-CRIMINAL			
01/25/2010	TRIAL SCHEDULED	TRIAL SCHEDULED Event: TRIAL Date: 05/18/2010 Time: 10:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: ADJOURNED-OTHER REASONS			
01/25/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM MACOMB DAILY			
01/25/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WDIV-TV			

**Circuit Court Docket Entries**  
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<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
03/01/2010	HEARING: MTN TO QUASH SCHEDULED	HEARING: MTN TO QUASH SCHEDULED Event: MTN TO QUASH Date: 03/08/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  MACHASIC  Result: HELD-CRIMINAL			
03/01/2010	MOTION:	MOTION: TO QUASH			
03/01/2010	PROOF OF SERVICE	PROOFS OF SERVICE (TWO)			
03/01/2010	BRIEF IN SUPPORT	BRIEF IN SUPPORT			
03/05/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM CHANNEL 7 FOR 3/8/10			
03/05/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM CHANNEL 7 FOR 5/18/10			
03/08/2010	HELD:	HELD: PLACED ON RECORD The following event: PRETRIAL CONFERENCE scheduled for 03/08/2010 at 8:30 am has been resulted as follows:  Result: HELD, DEFTS MTN TO QUASH FELONY MURDER & KIDNAPPING CHARGES 1&4 -DENIED, FUNDS FOR PRIVATE INVESTIGATOR -GRTD, \$500 TO START & CAN BE RE-REVIEWED, FUNDS FOR INDEPENDENT MEDICAL EXAM -GRTD IN AMT OF \$1,500 TO START, PEOPLES MTNTO CONSOL HLD IN ABEYANCE UNTIL CRT RULED ON CO-DEFTS WALKER HRG, DEFT TO FILE OWN MTN TO QUASH CONSPIRACY CHARGE, P/TR ADJ TO 4/21/10 AT 8:30AM SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:			
03/08/2010	PRETRIAL CONFERENCE SCHEDULED	PRETRIAL CONFERENCE SCHEDULED  The following event: PRETRIAL CONFERENCE scheduled for 03/08/2010 at 8:30 am has been rescheduled as follows:  Event: PRETRIAL CONFERENCE Date: 04/21/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: HELD-CRIMINAL			
03/08/2010	HELD:	HELD: PLACED ON RECORD The following event: MTN TO QUASH scheduled for 03/08/2010 at 8:30 am has been resulted as follows:  Result: HELD, DEFTS MTN TO QUASH FELONY MURDER & KIDNAPPING CHARGES 1&4 -DENIED, FUNDS FOR PRIVATE INVESTIGATOR -GRTD, \$500 TO START & CAN BE RE-REVIEWED, FUNDS FOR INDEPENDENT MEDICAL EXAM -GRTD IN AMT OF \$1,500 TO START, PEOPLES MTNTO CONSOL HLD IN ABEYANCE UNTIL CRT RULED ON CO-DEFTS WALKER HRG, DEFT TO FILE OWN MTN TO QUASH CONSPIRACY CHARGE, P/TR ADJ TO 4/21/10 AT 8:30AM SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:			
03/29/2010	MOTION:	MOTION FOR RECONSIDERATION			

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
03/29/2010	BRIEF IN SUPPORT OF MOTION	BRIEF IN SUPPORT OF MOTION			
03/29/2010	PROOF OF SERVICE	PROOF OF SERVICE			
04/09/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WXYZ-TV FOR 4/21/10			
04/09/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WXYZ-TV FOR 5/18/10			
04/21/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WDIV-TV 4			
04/21/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM MACOMB DAILY			
04/21/2010	HELD:	<p>HELD: PLACED ON RECORD The following event: PRETRIAL CONFERENCE scheduled for 04/21/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD, ADJ TO 6/9/10 AT 8:30AM, TR ADJ FROM 5/18/10 TO 9/8/10 AT 8:30AM SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
04/21/2010	PRETRIAL CONFERENCE SCHEDULED	<p>PRETRIAL CONFERENCE SCHEDULED</p> <p>The following event: PRETRIAL CONFERENCE scheduled for 04/21/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: PRETRIAL CONFERENCE Date: 06/09/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
04/21/2010	ADJOURNED - OTHER REASONS	<p>ADJOURNED - OTHER REASONS, NOT PLACED ON RECORD The following event: TRIAL scheduled for 05/18/2010 at 10:30 am has been resulted as follows:</p> <p>Result: ADJOURNED-OTHER REASONS TO 9/8/10 AT 8:30AM SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
04/21/2010	TRIAL SCHEDULED	<p>TRIAL SCHEDULED</p> <p>The following event: TRIAL scheduled for 05/18/2010 at 10:30 am has been rescheduled as follows:</p> <p>Event: TRIAL Date: 09/08/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
04/28/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WXYZ-TV FOR 9/8/10 - CRT MAY BE ORDERING VIDEO/AUDIO GUIDELINES/PRACTICES FOR TRIAL, MEDIA WILL BE NOTIFIED			
04/28/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WXYZ-TV FOR 6/9/10			

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<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
05/11/2010	OPINION & ORDER SIGNED	OPINION & ORDER DENYG DFTS MTN FR RECONSIDERATION-DMD SGD			
06/09/2010	HELD:	HELD: PLACED ON RECORD The following event: PRETRIAL CONFERENCE scheduled for 06/09/2010 at 8:30 am has been resulted as follows:  Result: HELD, SCHED CNF SET 6/25/10 AT 8:30AM W/O DEFTS PRESENCE, JURY QUESTIONNAIRE DEADLINE 7/8/10, TR REMAINS 9/8/10 AT 10:30AM SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:			
06/09/2010	SCHEDULING CONFERENCE SCHEDULED	SCHEDULING CONFERENCE SCHEDULED  The following event: PRETRIAL CONFERENCE scheduled for 06/09/2010 at 8:30 am has been rescheduled as follows:  Event: SCHEDULING CONFERENCE Date: 06/25/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: ADJOURNED-BY COURT			
06/09/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE			
06/11/2010	DOCUMENT FILED:	DEFTS SUPPLEMENTAL TO HIS ANSWER TO MOTION TO CONSOLIDATE JURY TRIALS			
06/11/2010	PROOF OF SERVICE	PROOF OF SERVICE			
06/21/2010	ADJOURNED-BY COURT	ADJOURNED-BY COURT, NOT PLACED ON RECORD The following event: SCHEDULING CONFERENCE scheduled for 06/25/2010 at 8:30 am has been resulted as follows:  Result: ADJOURNED-BY COURT Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:			
06/21/2010	SCHEDULING CONFERENCE SCHEDULED	SCHEDULING CONFERENCE SCHEDULED  The following event: SCHEDULING CONFERENCE scheduled for 06/25/2010 at 8:30 am has been rescheduled as follows:  Event: SCHEDULING CONFERENCE Date: 07/02/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: HELD-CRIMINAL			
07/02/2010	HELD:	HELD: NOT PLACED ON RECORD The following event: SCHEDULING CONFERENCE scheduled for 07/02/2010 at 8:30 am has been resulted as follows:  Result: HELD, CRT TO RELEASE WRITTEN DECISIONS ON PENDING MTNS AS SOON AS POSSIBLE, STATUS CNF CONDUCTED, DEFTS PRESENCE WAIVED, ADJ TO 7/9/10 AT 8:30AM SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:			

**Circuit Court Docket Entries**  
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<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
07/02/2010	SCHEDULING CONFERENCE SCHEDULED	<p>SCHEDULING CONFERENCE SCHEDULED</p> <p>The following event: SCHEDULING CONFERENCE scheduled for 07/02/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: SCHEDULING CONFERENCE Date: 07/09/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
07/02/2010	OPINION & ORDER SIGNED	<p>OPINION &amp; ORDER GRNTG PROS MTN TO CONSOLIDATE JURY TRIALS IN CASES AGNST MASALMANI &amp; TAYLORS MTN TO SEVER HIS TRIAL FROM THAT OF MASALMANI IS GRNTD. THE CRT WILL TRY DFT MASALMANI'S 3 CASES ON 9/8/2010 AND PEO V TAYLOR CASE 09-5243 FC WILL BE TRIED ON 10/26/2010-DMD SGD</p>			
07/09/2010	HELD:	<p>HELD: NOT PLACED ON RECORD</p> <p>The following event: SCHEDULING CONFERENCE scheduled for 07/09/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD-CRIMINAL, STATUS CONF CONDUCTED, DFTS PRESENCE WAIVED, SET FOR NXT STATUS CONF ON 7/16/10 @ 8:30 AM, JURY QUESTIONNAIRE, PRESscreen JURY QUESTIONNAIRE, JUDGE INSTRUCTIONS AND S/O FOR JURY SELECTION TO ALL BE COMPLETED BY NXT CONF DATE--SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
07/09/2010	SCHEDULING CONFERENCE SCHEDULED	<p>SCHEDULING CONFERENCE SCHEDULED</p> <p>The following event: SCHEDULING CONFERENCE scheduled for 07/09/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: SCHEDULING CONFERENCE Date: 07/16/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
07/16/2010	HELD:	<p>HELD: NOT PLACED ON RECORD</p> <p>The following event: SCHEDULING CONFERENCE scheduled for 07/16/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD, SET P/TR 7/30/10 AT 8:30AM, DEFT TO BE PRESENT SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
07/16/2010	PRETRIAL CONFERENCE SCHEDULED	<p>PRETRIAL CONFERENCE SCHEDULED</p> <p>The following event: SCHEDULING CONFERENCE scheduled for 07/16/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: PRETRIAL CONFERENCE Date: 07/30/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			



**Circuit Court Docket Entries**  
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<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
07/30/2010	HELD:	HELD: PLACED ON RECORD The following event: PRETRIAL CONFERENCE scheduled for 07/30/2010 at 8:30 am has been resulted as follows:  Result: HELD, TR REMAINS 9/8/10 AT 8:30AM, JURY QUESTIONNAIRE/ORD APPROVED SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:			
08/19/2010	PRETRIAL CONFERENCE SCHEDULED	PRETRIAL CONFERENCE SCHEDULED Event: PRETRIAL CONFERENCE Date: 08/25/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: HELD-CRIMINAL			
08/25/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM MACOMB DAILY			
08/25/2010	HELD:	HELD: PLACED ON RECORD The following event: PRETRIAL CONFERENCE scheduled for 08/25/2010 at 8:30 am has been resulted as follows:  Result: HELD, ADJ TO 9/1/10 AT 8:30AM, DNA ON BULLET REPORTS TO BE TURNED OVER WHEN RECVD SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:			
08/25/2010	PRETRIAL CONFERENCE SCHEDULED	PRETRIAL CONFERENCE SCHEDULED  The following event: PRETRIAL CONFERENCE scheduled for 08/25/2010 at 8:30 am has been rescheduled as follows:  Event: PRETRIAL CONFERENCE Date: 09/01/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: HELD-CRIMINAL			
09/01/2010	HELD:	HELD: PLACED ON RECORD The following event: PRETRIAL CONFERENCE scheduled for 09/01/2010 at 8:30 am has been resulted as follows:  Result: HELD, ALL MTNS BY BOTH PARTIES TO BE FILED IMMED & SCHEDULED TO BE HRD ON 9/7/10 AT 11:00AM SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:			
09/02/2010	MISCELLANEOUS MOTION HEARING SCHEDULED	MISCELLANEOUS MOTION HEARING SCHEDULED Event: MISCELLANEOUS MOTION HEARING TO EXCLUDE DNA EVIDENCE Date: 09/07/2010 Time: 11:00 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  KOSMALA  Result: HELD-CRIMINAL			
09/07/2010	ORDER SIGNED:	ORD REGARDING TRIAL PROCEDURE SGD			

**Circuit Court Docket Entries**  
**8a**

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<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
09/07/2010	HELD:	<p>HELD: PLACED ON RECORD The following event: MISCELLANEOUS MOTION HEARING scheduled for 09/07/2010 at 11:00 am has been resulted as follows:</p> <p>Result: HELD, DEFTS MTN TO SUPPRESS PROJECTILE DNA -GRTD, DEFTS PRESENCE WAIVED, BI-POLAR MTN STIPULATED TO, NO QUESTION ON TOPIC, PEOPLE W/DRAW MARIJUANA MTN, DEFNS W/DRAWS REQ FOR ADJMT, DEFNS W/DRAWS REQ FOR EXPERT ON DNA, DNA ON CIGARETTE BUTTS IS IN EVIDENCE SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
09/07/2010	OPINION & ORDER SIGNED	OPINION & ORDER GRANTING DEFTS MTN TO EXCLUDE EVID SGD (DOES NOT DISPOSE)			
09/08/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM THE DETROIT NEWS FOR OBSERVATION OF JURY INSTRUCTION - NO VIDEO, PICTURES OR AUDIO - OBSERVATION ONLY ALLOWED			
09/08/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WXYZ-TV FOR 9/8/10 RECVD AFTER PROCEEDINGS WERE COMPLETE FOR DAY			
09/08/2010	HELD:	<p>HELD: PLACED ON RECORD The following event: TRIAL scheduled for 09/08/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD, JURORS GIVEN PRELIMINARY INSTRUCTIONS AND QUESTIONNAIRE IN THE 5TH FLOOR JURY ROOM, ADJ TO 9/9/10 AT 1:30PM FOR CONT'D JURY SELECTION Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: ELIZABETH RUSSETTE CSR 8304</p>			
09/08/2010	CONTINUED JURY TRIAL	<p>CONTINUED JURY TRIAL</p> <p>The following event: TRIAL scheduled for 09/08/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: CONTINUED JURY TRIAL Date: 09/09/2010 Time: 1:30 pm Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
09/09/2010	HELD:	<p>HELD: PLACED ON RECORD The following event: CONTINUED JURY TRIAL scheduled for 09/09/2010 at 1:30 pm has been resulted as follows:</p> <p>Result: HELD, JURY SELECTION BEGAN, ADJ TO 9/10/10 AT 8:30AM FOR CONT'D JURY SELECTION Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			

**Circuit Court Docket Entries**  
**9a**

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
09/09/2010	CONTINUED JURY TRIAL	<p>CONTINUED JURY TRIAL</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/09/2010 at 1:30 pm has been rescheduled as follows:</p> <p>Event: CONTINUED JURY TRIAL Date: 09/10/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
09/10/2010	HELD:	<p>HELD: PLACED ON RECORD</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/10/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD, CONT'D JURY SELECTION, ADJ TO 9/13/10 AT 8:30AM FOR SAME Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p>			
09/13/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	<p>REQUEST &amp; NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WJBK FOX 2 FOR 9/13/10 - NO VIDEO OR AUDIO FOR JURY SELECTION</p> <p>Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
09/13/2010	CONTINUED JURY TRIAL	<p>CONTINUED JURY TRIAL</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/10/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: CONTINUED JURY TRIAL Date: 09/13/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
09/13/2010	HELD:	<p>HELD: PLACED ON RECORD</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/13/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD, CONT'D JURY SELECTION, ADJ TO 9/14/10 AT 8:30AM Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
09/14/2010	CONTINUED JURY TRIAL	<p>CONTINUED JURY TRIAL</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/13/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: CONTINUED JURY TRIAL Date: 09/14/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
09/14/2010	HELD:	<p>HELD: PLACED ON RECORD</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/14/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD, CONT'D JURY TRIAL, ADJ TO 9/21/10 AT 8:30AM FOR CONT'D JURY SELECTION Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
09/14/2010	CONTINUED JURY TRIAL	<p>CONTINUED JURY TRIAL</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/14/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: CONTINUED JURY TRIAL Date: 09/21/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
09/21/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM THE DETROIT NEWS FOR 9/21/10			
09/21/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM THE FREE PRESS FOR 9/21/10			
09/21/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM C&G NEWSPAPERS FOR 9/22/10			
09/21/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WWJ RADIO FOR 9/21/10			
09/21/2010	HELD:	<p>HELD: PLACED ON RECORD</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/21/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD, CONT'D JURY SELECTION, JURY DRAWN &amp; SWORN AT 9:50AM, OPENING ARGS, TESTIMONY TKN, ADJ TO 9/22/10 AT 8:30AM FOR CONT'D TESTIMONY Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
09/22/2010	CONTINUED JURY TRIAL	<p>CONTINUED JURY TRIAL</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/21/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: CONTINUED JURY TRIAL Date: 09/22/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
09/22/2010	HELD:	<p>HELD: PLACED ON RECORD</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/22/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD, CONT'D TESTIMONY, ADJ TO 9/23/10 AT 8:30AM FOR CONT'D TESTIMONY Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			

**Circuit Court Docket Entries**  
**11a**

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
09/22/2010	CONTINUED JURY TRIAL	<p>CONTINUED JURY TRIAL</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/22/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: CONTINUED JURY TRIAL Date: 09/23/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
09/23/2010	HELD:	<p>HELD: PLACED ON RECORD</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/23/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD-CRIMINAL, CONTD TESTMNY TKN, ADJ TO 9/24/10 @ 8:30 AM Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
09/23/2010	CONTINUED JURY TRIAL	<p>CONTINUED JURY TRIAL</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/23/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: CONTINUED JURY TRIAL Date: 09/24/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
09/24/2010	WRIT OF HABEAS CORPUS - SGD	WRIT OF HABEAS CORPUS - SGD			
09/24/2010	HELD:	<p>HELD: PLACED ON RECORD- CONT TESTIMONY TKN, CONT TRIAL ON 9-28-10 @ 8:30AM</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/24/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD-CRIMINAL Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
09/24/2010	CONTINUED JURY TRIAL	<p>CONTINUED JURY TRIAL</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/24/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: CONTINUED JURY TRIAL Date: 09/28/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
09/28/2010	WRIT OF HABEAS CORPUS - SGD	WRIT OF HABEAS CORPUS - SGD			

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<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
09/28/2010	HELD:	<p>HELD: PLACED ON RECORD The following event: CONTINUED JURY TRIAL scheduled for 09/28/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD, CONT'D TESTIMONY, ADJ TO 9/29/10 AT 8:30AM FOR CONT'D TESTIMONY Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
09/29/2010	CONTINUED JURY TRIAL	<p>CONTINUED JURY TRIAL</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/28/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: CONTINUED JURY TRIAL Date: 09/29/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result: HELD-CRIMINAL</p>			
09/29/2010	HELD:	<p>HELD: PLACED ON RECORD The following event: CONTINUED JURY TRIAL scheduled for 09/29/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD, CONT'D TESTIMONY, ADJ TO 9/30/10 AT 8:30AM FOR CONT'D TESTIMONY Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
09/30/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WMYD-TV 20 FOR 9/30/10			
09/30/2010	CONTINUED JURY TRIAL	<p>CONTINUED JURY TRIAL</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/29/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: CONTINUED JURY TRIAL Date: 09/30/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result: HELD-CRIMINAL</p>			
09/30/2010	HELD:	<p>HELD: PLACED ON RECORD The following event: CONTINUED JURY TRIAL scheduled for 09/30/2010 at 8:30 am has been resulted as follows:</p> <p>Result: HELD, CONT'D TESTIMONY, PRFS CLOSED 10:30AM, CLOSING ARGS, JURY INSTRUCTIONS, JUROR #'S 301 &amp; 328 EXCUSED BY RANDOM DRAW, JURY BEGAN DELIBERATIONS AT 4:10PM, ADJ TO 10/1/10 AT 9:00AM FOR CONT'D DELIBERATIONS Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			

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**13a**

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
09/30/2010	CONTINUED JURY TRIAL	<p>CONTINUED JURY TRIAL</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 09/30/2010 at 8:30 am has been rescheduled as follows:</p> <p>Event: CONTINUED JURY TRIAL Date: 10/01/2010 Time: 9:00 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
10/01/2010	HELD:	<p>HELD: PLACED ON RECORD</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 10/01/2010 at 9:00 am has been resulted as follows:</p> <p>Result: HELD, CONT'D DELIBERATIONS, JURY RETURNED AT 5:45PM W/VERDICT OF GLTY ON ALL CHARGES, JURY POLLED UNANIMOUS, SENT 11/4/10 AT 8:30AM SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:</p>			
10/01/2010	JURY VERDICT FORM	JURY VERDICT FORM			
10/01/2010	JURY PANEL SHEET	JURY PANEL SHEET			
10/01/2010	DOCUMENT FILED:	TRIAL EXHIBIT LOG			
10/04/2010	CRIMINAL SENTENCING SCHEDULED	<p>CRIMINAL SENTENCING SCHEDULED</p> <p>The following event: CONTINUED JURY TRIAL scheduled for 10/01/2010 at 9:00 am has been rescheduled as follows:</p> <p>Event: CRIMINAL SENTENCING Date: 11/04/2010 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: SENTENCE HELD</p>			
10/04/2010	IMAGE OF:	<p>IMAGE OF:</p> <p>IN JAIL-CIRCUIT COURT HEARING DISPOSITION Sent on: 10/04/2010 08:25:12</p>			
10/28/2010	JUDICIAL AIDE OFFERS RECOMMENDATION FOR DEFENSE COSTS (NOT IN FILE): \$	<p>JUDICIAL AIDE OFFERS RECOMMENDATION FOR DEFENSE COSTS (NOT IN FILE): \$187.50</p> <p>(NEW) RECOMMENDATION OF DEFENSE COSTS Sent on: 10/28/2010 09:38:43</p>			
11/04/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WXYZ TV FOR 11/4/10			
11/04/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM THE DETROIT NEWS FOR 11/4/10			
11/04/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WDIV CH 4 FOR 11/4/10			
11/04/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WJBK FOX 2 FOR 11/4/10			
11/04/2010	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM THE MACOMB DAILY FOR 11/4/10			

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
11/04/2010	DOC JUDGMENT OF SENTENCE - SGD	JUDGMENT OF SENTENCE SIGNED/DMD R/F 11-4-10 Result Staff: Staff: COURT REPORTER: VIDEO Certification Number:			
11/04/2010	JUDGMENT OF SENTENCE DELIVERED TO SHERIFF	JUDGMENT OF SENTENCE DELIVERED TO SHERIFF			
11/04/2010	SENTENCE HELD	SENTENCE HELD, PLACED ON RECORD The following event: CRIMINAL SENTENCING scheduled for 11/04/2010 at 8:30 am has been resulted as follows:  Result: SENTENCE HELD, CT 1 LIFE W/O PAROLE, ZERO CREDIT, CTS 2,3,4&5 - 25 YRS TO 50 YRS MDOC, 449 DAYS CREDIT, CT 6 - 5 YRS TO 10 YRS MDOC, 449 DAYS CREDIT, CT 7 - 2 YRS MDOC, 449 DAYS CREDIT CONSEC & PRIOR TO CT 1, CTS 2,3,4,5&6 CNCRNT TO EA OTHER, \$60 CVRS, \$408 STATE COSTS, REPAY JA \$24,500 SGD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR			
11/04/2010	NOTICE OF RIGHT TO TIMELY APPEAL	NOTICE OF RIGHT TO TIMELY APPEAL			
11/04/2010	CVRS FELONY \$60	CVRS FELONY \$60	\$60.00		\$0.00
11/04/2010	STATE MINIMUM COSTS ASSESSED	STATE MINIMUM COSTS ASSESSED	\$408.00		\$0.00
11/04/2010	JA-DEFENSE ATTORNEY FEE	JA-DEFENSE ATTORNEY FEE Attorney: KOSMALA, JOSEPH R. (23010)	\$24,500.00		\$24,500.00
11/05/2010	ORDER TO REMIT PRISONER FUNDS SGD	ORDER TO REMIT PRISONER FUNDS SGD  ORDER TO REMIT PRISONER FUNDS Sent on: 11/05/2010 09:10:00			
11/08/2010	CERTIFICATE OF MAILING	CERTIFICATE OF MAILING			
11/09/2010	JA-DEFENDANT IS INCARCERATED	JA-DEFENDANT IS INCARCERATED MDOC#783743 LIFE			
11/29/2010	ORDER APPOINTING APPELLATE ATTORNEY AND CERTIFICATE OF MAILING- SGD BY JB2 / ATTORNEY:	ORDER APPOINTING APPELLATE ATTORNEY SIGNED BY MSS R/F ATTY SADO APT'D			
11/29/2010	CERTIFICATE OF MAILING	CERTIFICATE OF MAILING			
12/02/2010	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL			
12/21/2010	LETTER	MEMO DATED 12-21-10 TO REBECCA RUSSELL FROM J PEROGLIO RE: REQUEST OF TRANSCRIPTS, R/F IN FILE			
12/22/2010	DOCUMENT FILED:	LTR FROM APPT ATTY (JONATHAN SACKS) DTD 12/17/10, R/F IN FILE. SENT COMPLETE FILE, DOCKET ENTRIES AND TRANS IN FILE (NONE WERE ON SHELF)			
12/22/2010	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL			
01/07/2011	CERTIFICATE OF MAILING	CERTIFICATE OF MAILING			
01/11/2011	ORDER APPOINTING APPELLATE ATTORNEY AND CERTIFICATE OF MAILING- SGD BY JB2 / ATTORNEY:	ORDER APPOINTING APPELLATE ATTORNEY TO REFLECT COURT REPORTER			
01/20/2011	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE	REPORTER'S NOTICE OF FILING TRANSCRIPT			
02/07/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PRELIMINARY JURY INSTRUCTIONS BEFORE DMD DATED 09-08-10 R/F IN FILE 09-4832-FC			
02/10/2011	JA-TRANSCRIPT FEE	JA-TRANSCRIPT FEE 13 PAGES @ 2.35 HEARING DATE 9/8/10	\$30.55		\$30.55



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<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
02/15/2011	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE	REPORTER'S NOTICE OF FILING TRANSCRIPT			
02/15/2011	CERTIFICATE OF SERVICE	CERTIFICATE OF SERVICE			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 9-9-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 8-25-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD 3-8-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD 4-21-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 7-30-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 10-1-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 11-4-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 6-9-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 9-1-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 9-7-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 9-30-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 9-29-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 9-28-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 9-24-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 9-23-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 9-22-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 9-14-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 9-13-10 R/F ON SHELF			
02/15/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 9-13-10 R/F ON SHELF			
02/28/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEFORE JUDGE DIANE M DRUZINSKI DATED 09/21/10, R/F ON SHELF.			
02/28/2011	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE	REPORTER'S NOTICE OF FILING TRANSCRIPT			
02/28/2011	CERTIFICATE OF SERVICE	CERTIFICATE OF SERVICE			
02/28/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS (VOL I) BEFORE JUDGE DIANE M DRUZINSKI DATED 09/10/10, R/F ON SHELF.			
03/04/2011	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE	REPORTER'S NOTICE OF FILING TRANSCRIPT			
03/04/2011	CERTIFICATE OF SERVICE	CERTIFICATE OF SERVICE			

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<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
03/04/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS (VOLUME 2) BEFORE JUDGE DIANE DRUZINSKI DATED 09/10/10, R/F IN FILE.			
03/22/2011	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE	REPORTER'S NOTICE OF FILING TRANSCRIPT			
03/22/2011	TRANSCRIPT OF:	TRANSCRIPT OF: ARRAIGNMENT BFR DMD ON 11/23/09 R/F IN FILE			
04/21/2011	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE	REPORTER'S NOTICE OF FILING TRANSCRIPT			
04/21/2011	CERTIFICATE OF SERVICE	CERTIFICATE OF SERVICE			
04/21/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEFORE HON DIANE DRUZINSKI DTD 1-25-10 R/F IN FILE			
05/23/2011	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE	REPORTER'S NOTICE OF FILING TRANSCRIPT			
05/23/2011	TRANSCRIPT OF:	TRANSCRIPT OF: PROCEEDINGS BEF HON DMD DTD 1-25-10 R/F IN FILE			
05/26/2011	JA-TRANSCRIPT FEE	JA-TRANSCRIPT FEE - HEARNIG DATE 11/23/09	\$16.45		\$16.45
06/07/2011	JA-TRANSCRIPT FEE	JA-TRANSCRIPT FEE: (SEE 2009-4832-FC FOR IMAGE) 1/25/10, 9/9/10, 9/10/10, 9/13/10, 9/14/10, 9/21/10, 9/22/10, 9/23/10, 9/24/10, 9/28/10, 9/29/10, 9/30/10, 10/1/10, 3/8/10, 4/21/10, 6/9/10, 7/30/10, 8/25/10, 9/1/10, 9/7/10 2835 PGS @ \$2.35 = \$6662.25	\$6,662.25		\$6,662.25
12/15/2011	SENT TO COURT OF APPEALS	SENT TO COURT OF APPEALS: CERT DCKT, COMPLETE ONE VOLUME FILE, TRANS DTD 3/8/10, 4/21/10, 6/9/10, 7/30/10, 8/25/10, 9/1/10, 9/7/10, 9/9/10, 9/10/10, 9/13/10 VOL I & II, 9/14/10, 9/21/10, 9/22/10, 9/23/10, 9/24/10, 9/28/10, 9/29/10, 9/30/10, 10/1/10, 11/4/10 AND OTHER TRANS INCLUDED IN FILE, & REC			
12/15/2011	USPS TRACKING RECEIPT R/F IN FILE	UPS GROUND RECEIPT R/F IN FILE			
01/10/2012	RECEIPT RETURNED FRM COURT OF APPEALS	RECEIPT RETURNED FRM COURT OF APPEALS			
10/19/2012	DOCUMENT FILED:	BRIEF COVER PAGE R/F			
10/19/2012	DOCUMENT FILED:	PLTF APPELLEE RESPONSE TO DEFT APPELLANT SUPP ISSUE IV ON APPEAL W/ATTACHMT A-C			
10/19/2012	PROOF OF SERVICE	PROOF OF SERVICE			
03/21/2013	COPY OF ORDER FROM COURT OF APPEALS RECEIVED/FILED	COPY OF ORDER FROM COURT OF APPEALS RECEIVED/FILED			
06/05/2013	DOCUMENT FILED:	COPY OF PLTF APPELLEES ANSWER TO DEFTS APPLICATION FOR LEAVE TO APPEAL; PROOF OF SERVICE R/F IN FILE 09-4832-FC ***PREVIOUSLY FILED IN THE MI COA***			
06/19/2013	ORDER SIGNED:	ORDER OF THE COURT DSMSSG DFTS IN PRO PER MTN FOR SUSPENSION/MODIFICATION OF COURT COSTS/RESTITUTION/FEEES-DMD SGD (COPY OF DFTS IN PRO PER MTN ER:SAME)			
09/13/2013	CIRCUIT COURT FILE RETURNED FROM MICHIGAN SUPREME COURT	CIRCUIT COURT FILE RETURNED FROM MICHIGAN SUPREME COURT CERT DCKT, COMPLETE ONE VOLUME FILE, TRANS DTD 3/8/10, 4/21/10, 6/9/10, 7/30/10, 8/25/10, 9/1/10, 9/7/10, 9/9/10, 9/10/10, 9/13/10 VOL I & II, 9/14/10, 9/21/10, 9/22/10, 9/23/10, 9/24/10, 9/28/10, 9/29/10, 9/30/10, 10/1/10, 11/4/10. TRANS INCLUDED IN FILE DTD 1/25/10, 11/23/09			
09/13/2013	COPY OF SUPREME COURT RECEIPT	COPY OF SUPREME COURT RECEIPT R/F IN FILE			

**Circuit Court Docket Entries**  
**17a**

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8/29/2019

Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
09/16/2013	COPY OF ORDER FROM SUPREME COURT RECEIVED/FILED	COPY OF ORDER FROM SUPREME COURT RECEIVED/FILED			
10/01/2013	PRETRIAL CONFERENCE SCHEDULED	PRETRIAL CONFERENCE SCHEDULED Event: PRETRIAL CONFERENCE Date: 10/24/2013 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: ADJOURNED-OTHER REASONS			
10/01/2013	IMAGE OF EVENT NOTICE SENT	IMAGE OF EVENT NOTICE SENT  (N) HEARING NOTICE Sent on: 10/01/2013 11:13:24.19			
10/18/2013	ADJOURNED - OTHER REASONS	ADJOURNED - OTHER REASONS The following event: PRETRIAL CONFERENCE scheduled for 10/24/2013 at 8:30 am has been resulted as follows:  Result: ADJOURNED-OTHER REASONS (ALL COUNSEL REQUESTED TO MOVE P/T TO WED., 10/23/13) Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR			
10/18/2013	PRETRIAL CONFERENCE SCHEDULED	PRETRIAL CONFERENCE SCHEDULED  The following event: PRETRIAL CONFERENCE scheduled for 10/24/2013 at 8:30 am has been rescheduled as follows:  Event: PRETRIAL CONFERENCE Date: 10/23/2013 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: HELD-CRIMINAL			
10/22/2013	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WDIV FOR 10/23/13			
10/23/2013	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM MACOMB DAILY			
10/23/2013	HELD:	HELD: EVID HRG 2/19/14 & 2/20/14 AT 8:30AM, WITN & EXHIB LISTS DUE 1/10/14, EVID BRFS & STIPULATED SET OF FACTS DUE 2/12/14, PEOPLE TO WRIT DEFT FOR 2/21/14 SGD The following event: PRETRIAL CONFERENCE scheduled for 10/23/2013 at 8:30 am has been resulted as follows:  Result: HELD-CRIMINAL Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  HELD ON THE RECORD COURT REPORTER: LITTLE, ANGELA Certificate #: CSR-6444			
10/23/2013	EVIDENTIARY HEARING SCHEDULED	EVIDENTIARY HEARING SCHEDULED  The following event: PRETRIAL CONFERENCE scheduled for 10/23/2013 at 8:30 am has been rescheduled as follows:  Event: EVIDENTIARY HEARING Date: 02/19/2014 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: ADJOURNED-STIPULATION & ORDER			

**Circuit Court Docket Entries**  
**18a**

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
10/23/2013	EVIDENTIARY HEARING SCHEDULED	EVIDENTIARY HEARING SCHEDULED Event: EVIDENTIARY HEARING Date: 02/20/2014 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: ADJOURNED-STIPULATION & ORDER			
11/22/2013	ADJOURNED - STIPULATION & ORDER	ADJOURNED - STIPULATION & ORDER ADJ TO 6/24/14 AT 8:30AM, PRIOR FILING DEADLINES TO BE DISREGARDED, CRT WILL SET NEW FILING DEADLINES AT NEXT HRG SGD The following event: EVIDENTIARY HEARING scheduled for 02/19/2014 at 8:30 am has been resulted as follows:  Result: ADJOURNED-STIPULATION & ORDER Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR			
11/22/2013	EVIDENTIARY HEARING SCHEDULED	EVIDENTIARY HEARING SCHEDULED  The following event: EVIDENTIARY HEARING scheduled for 02/19/2014 at 8:30 am has been rescheduled as follows:  Event: EVIDENTIARY HEARING Date: 06/24/2014 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: ADJOURNED-OTHER REASONS			
11/22/2013	ADJOURNED - STIPULATION & ORDER	ADJOURNED - STIPULATION & ORDER The following event: EVIDENTIARY HEARING scheduled for 02/20/2014 at 8:30 am has been resulted as follows:  Result: ADJOURNED-STIPULATION & ORDER Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR			
12/16/2013	MOTION:	MOTION: FOR APPOINTMENT OF EXPERT WITNESS, BRIEF IN SUPPORT W/ATTACHMENT, & CERT OF SVC			
04/08/2014	MOTION:	MTN PURSUANT TO MCL 769.25(3) REQUESTING IMPOSITION OF SENTENCES OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, PROOF OF SERVICE			
04/09/2014	MISCELLANEOUS MOTION HEARING SCHEDULED	MISCELLANEOUS MOTION HEARING SCHEDULED Event: MISCELLANEOUS MOTION HEARING Date: 04/28/2014 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  ABBOTT - LIFE IMPRISONMENT  Result: MOTION HEARING ADJOURNED			
04/09/2014	MOTION HEARING ADJOURNED	MOTION HEARING ADJOURNED (ADJ PER PROSECUTOR) The following event: MISCELLANEOUS MOTION HEARING scheduled for 04/28/2014 at 8:30 am has been resulted as follows:  Result: MOTION HEARING ADJOURNED Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR			

**Circuit Court Docket Entries**  
**19a**

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
04/09/2014	MISCELLANEOUS MOTION HEARING SCHEDULED	<p>MISCELLANEOUS MOTION HEARING SCHEDULED</p> <p>The following event: MISCELLANEOUS MOTION HEARING scheduled for 04/28/2014 at 8:30 am has been rescheduled as follows:</p> <p>Event: MISCELLANEOUS MOTION HEARING Date: 05/12/2014 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>ABBOTT - LIFE IMPRISONMENT</p> <p>Result: HELD-CRIMINAL</p>			
04/18/2014	DOCUMENT FILED:	RESP TO PROSECUTORS MTN REQUESTING IMPOSITION OF LIFE SENTENCE			
04/18/2014	PROOF OF SERVICE	PROOF OF SERVICE			
05/12/2014	HELD:	<p>HELD: CRT ACKNOWLEDGES TIMELY FILING OF PROS' MTN REQUESTING IMPOSITION OF LIFE IMPRISONMENT SENTENCES W/O THE POSSIBILITY OF PAROLE &amp; THE TIMELY FILING OF DEFTS' RESPONSES, STATUS CNF ADJ FROM 6/24/14 TO 7/2/14 AT 8:00AM SGD</p> <p>The following event: MISCELLANEOUS MOTION HEARING scheduled for 05/12/2014 at 8:30 am has been resulted as follows:</p> <p>Result: HELD-CRIMINAL Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>HELD ON THE RECORD COURT REPORTER: LITTLE, ANGELA Certificate #: CSR-6444</p>			
05/12/2014	ADJOURNED - OTHER REASONS	<p>ADJOURNED - OTHER REASONS</p> <p>The following event: EVIDENTIARY HEARING scheduled for 06/24/2014 at 8:30 am has been resulted as follows:</p> <p>Result: ADJOURNED-OTHER REASONS Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p>			
05/12/2014	EVIDENTIARY HEARING SCHEDULED	<p>EVIDENTIARY HEARING SCHEDULED</p> <p>The following event: EVIDENTIARY HEARING scheduled for 06/24/2014 at 8:30 am has been rescheduled as follows:</p> <p>Event: EVIDENTIARY HEARING Date: 07/02/2014 Time: 8:00 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: ADJOURNED-OTHER REASONS</p>			
05/30/2014	ADJOURNED - OTHER REASONS	<p>ADJOURNED - OTHER REASONS</p> <p>The following event: EVIDENTIARY HEARING scheduled for 07/02/2014 at 8:00 am has been resulted as follows:</p> <p>Result: ADJOURNED-OTHER REASONS Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p>			

**Circuit Court Docket Entries**  
**20a**

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
05/30/2014	EVIDENTIARY HEARING SCHEDULED	<p>EVIDENTIARY HEARING SCHEDULED</p> <p>The following event: EVIDENTIARY HEARING scheduled for 07/02/2014 at 8:00 am has been rescheduled as follows:</p> <p>Event: EVIDENTIARY HEARING Date: 07/30/2014 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: SCHEDULED EVENT CANCELLED</p>			
07/15/2014	SCHEDULED EVENT CANCELLED	<p>SCHEDULED EVENT CANCELLED</p> <p>The following event: EVIDENTIARY HEARING scheduled for 07/30/2014 at 8:30 am has been resulted as follows:</p> <p>Result: SCHEDULED EVENT CANCELLED Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p>			
07/15/2014	STATUS CONFERENCE SCHEDULED	<p>STATUS CONFERENCE SCHEDULED</p> <p>Event: STATUS CONFERENCE Date: 07/30/2014 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR (APA CATALDO COMFIRMED W/APPELL CNSL)</p> <p>Result: HELD-CRIMINAL</p>			
07/30/2014	HELD:	<p>HELD: PARTIES SHALL FILE P/TR STMT BY 10/1/14, RESENTENCING SET 10/21/14 &amp; 10/22/14 AT 8:30AM, PROS SHALL WRIT DEFT SO THAT DEFT ARRIVES AT MCJ APPROX 1 WK PRIOR TO RESENTENCING SGD</p> <p>The following event: STATUS CONFERENCE scheduled for 07/30/2014 at 8:30 am has been resulted as follows:</p> <p>Result: HELD-CRIMINAL Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p>			
07/30/2014	RESENTENCE SCHEDULED	<p>RESENTENCE SCHEDULED</p> <p>The following event: STATUS CONFERENCE scheduled for 07/30/2014 at 8:30 am has been rescheduled as follows:</p> <p>Event: RESENTENCE Date: 10/21/2014 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: HELD-CRIMINAL</p>			
07/30/2014	RESENTENCE SCHEDULED	<p>RESENTENCE SCHEDULED</p> <p>Event: RESENTENCE Date: 10/22/2014 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p> <p>Result: SCHEDULED EVENT CANCELLED</p>			
09/11/2014	SCHEDULED EVENT CANCELLED	<p>SCHEDULED EVENT CANCELLED</p> <p>The following event: RESENTENCE scheduled for 10/22/2014 at 8:30 am has been resulted as follows:</p> <p>Result: SCHEDULED EVENT CANCELLED (THI DATE IS CANCELLED PER AGREEMNT OF ALL COUNSEL INVOLVED) Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR</p>			
09/23/2014	WRIT OF HABEAS CORPUS - SGD	WRIT OF HABEAS CORPUS - SGD			
10/14/2014	ORDER SIGNED:	S/O RE JAIL VISITATION AS TO DR LYLE DANULOFF SGD			

**Circuit Court Docket Entries**  
**21a**

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
10/14/2014	ORDER SIGNED:	S/O RE JAIL VISITATION AS TO DR DESMOND PATTON SGD			
10/14/2014	ORDER SIGNED:	S/O RE JAIL VISITATION AS TO NICOLE GEORGE MSW SGD			
10/21/2014	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WDIV-TV			
10/21/2014	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM FOX 2 NEWS WJBK			
10/21/2014	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM MACMOB DAILY			
10/21/2014	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM DETROIT FREE PRESS			
10/21/2014	HELD:	HELD: TESTIMONY TKN, CONTD TO 10/24/14 AT 8:30AM The following event: RESENTENCE scheduled for 10/21/2014 at 8:30 am has been resulted as follows:  Result: HELD-CRIMINAL Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  HELD ON THE RECORD COURT REPORTER: LITTLE, ANGELA Certificate #: CSR-6444			
10/21/2014	SHERIFF DEPARTMENT NOTIFIED	SHERIFF DEPARTMENT NOTIFIED			
10/21/2014	RESENTENCE SCHEDULED	RESENTENCE SCHEDULED  The following event: RESENTENCE scheduled for 10/21/2014 at 8:30 am has been rescheduled as follows:  Event: RESENTENCE Date: 10/24/2014 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: HELD-CRIMINAL			
10/24/2014	HELD:	HELD: CONT'D TESTIMONY, CLOSING ARGS, SENTENCING BRFS DUE 12/12/14, RE-SENT SET FOR 1/6/15 AT 8:30AM, RE-REFER TO PROB FOR UPDATED PSR SGD The following event: RESENTENCE scheduled for 10/24/2014 at 8:30 am has been resulted as follows:  Result: HELD-CRIMINAL Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  HELD ON THE RECORD COURT REPORTER: HUNTER, TRINIA Certificate #: CSR-7835			
10/24/2014	SHERIFF DEPARTMENT NOTIFIED	SHERIFF DEPARTMENT NOTIFIED			
10/24/2014	RESENTENCE SCHEDULED	RESENTENCE SCHEDULED  The following event: RESENTENCE scheduled for 10/24/2014 at 8:30 am has been rescheduled as follows:  Event: RESENTENCE Date: 01/06/2015 Time: 8:30 am Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  Result: SENTENCE HELD			

**Circuit Court Docket Entries**  
**22a**

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
10/24/2014	REFERRED TO CIRCUIT COURT PROBATION	REFERRED TO CIRCUIT COURT PROBATION			
10/30/2014	DOCUMENT FILED:	MEMO DATED 10/25/14 TO COURT REPORTER REQUESTING TRANSCRIPT, R/F IN FILE.			
10/30/2014	DOCUMENT FILED:	MEMO DATED 10/25/14 TO COURT REPORTER REQUESTING TRANSCRIPT, R/F IN FILE.			
10/30/2014	DOCUMENT FILED:	MEMO DATED 10/25/14 TO COURT REPORTER REQUESTING TRANSCRIPT, R/F IN FILE.			
10/30/2014	DOCUMENT FILED:	MEMO DATED 10/28/14 TO COURT REPORTER REQUESTING TRANSCRIPT, R/F IN FILE.			
11/03/2014	WRIT OF HABEAS CORPUS - SGD	WRIT OF HABEAS CORPUS - SGD			
11/05/2014	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL TO COURT OF APPEALS			
11/05/2014	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE			
11/07/2014	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE	REPORTER'S NOTICE OF FILING TRANSCRIPT AND CERTIFICATE OF SERVICE			
11/07/2014	E-FILED TRANSCRIPT OF:	E-FILED TRANSCRIPT OF: PROCEEDINGS BEFORE JUDGE DIANE M. DRUZINSKI DATED 10/21/14			
11/07/2014	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE	REPORTER'S NOTICE OF FILING TRANSCRIPT AND CERTIFICATE OF SERVICE			
11/07/2014	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL			
11/07/2014	E-FILED TRANSCRIPT OF:	E-FILED TRANSCRIPT OF: JURY TRIAL BEFORE DIANE M. DRUZINSKI DATED 10/23/14			
11/07/2014	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL			
11/12/2014	JA-TRANSCRIPT FEE	JA-TRANSCRIPT FEE (SEE 09-5243-FC FOR IMAGE) 179 PAGES @ \$2.35 = \$420.65 HEARING DATES 10/21/14, 10/23/14	\$420.65		\$420.65
12/01/2014	E-FILED TRANSCRIPT OF:	E-FILED TRANSCRIPT OF: RESENTENCING BEFORE THE HONORABLE DIANE M DRUZINSKI DTD 10-24-14			
12/01/2014	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE			
12/01/2014	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE	REPORTER'S NOTICE OF FILING TRANSCRIPT AND CERT OF SRVC			
12/01/2014	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE			
12/12/2014	DOCUMENT FILED:	SENTENCING MEMORANDUM RE MILLER V. ALABAMA W/ PROOF OF SERVICE			
01/02/2015	ORDER SIGNED:	ORD TRANSPORTING DEFT FROM MDOC TO MCJ ON 1/2/15 AWAITING RESENTENCING ON 1/6/15 SGD			
01/02/2015	SHERIFF DEPARTMENT NOTIFIED	SHERIFF DEPARTMENT NOTIFIED			



**Circuit Court Docket Entries**  
**23a**

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Case Details - CourtView Justice Solutions

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
01/06/2015	SENTENCE HELD	RE-SENTENCE HELD, CT 1 - LIFE W/O PAROLE, 1,254 DAYS CREDIT, \$306 RESTITUTION TO LANDRY FAMILY, \$68 STATE MIN COSTS, \$130 CVRS, REPAY JA \$31,629.90, DEFT OBJECTS TO JA FEES, THE SENTENCE ON ALL OTHER CTS REMAIN UNCHANGED, OTE The following event: RESENTENCE scheduled for 01/06/2015 at 8:30 am has been resulted as follows:  Result: SENTENCE HELD Judge: DRUZINSKI, DIANE M Location: COURTROOM 2SE - 2ND FLOOR  HELD ON THE RECORD COURT REPORTER: LITTLE, ANGELA Certificate #: CSR-6444			
01/06/2015	NOTICE OF RIGHT TO TIMELY APPEAL	NOTICE OF RIGHT TO TIMELY APPEAL			
01/06/2015	PRISON-JUDICIAL SECRETARY NOTIFICATION TO PREPARE JOS	PRISON-JUDICIAL SECRETARY NOTIFICATION TO PREPARE JOS			
01/06/2015	SHERIFF DEPARTMENT NOTIFIED	SHERIFF DEPARTMENT NOTIFIED			
01/06/2015	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM MACOMB DAILY FOR 1/6/15 R/F IN FILE			
01/06/2015	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM DETROIT FREE PRESS FOR 1/6/15 R/F IN FILE			
01/06/2015	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE	REQUEST & NOTICE FOR ELECTRONIC MEDIA COVERAGE FROM WDIV-TV FOR 1/6/15 R/F IN FILE			
01/06/2015	VICTIM RESTITUTION OWED:	VICTIM RESTITUTION OWED: (V50364 AC:01) Receipt: 1064766 Date: 11/03/2017	\$306.00		\$187.56
01/06/2015	OPINION & ORDER SIGNED	OPINION & ORDER RE:RESENTENCING HRG-CRT FINDS DFT IS PROPERLY SENTENCED TO LIFE WITHOUT POSSIBILITY OF PAROLE-DMD SGD			
01/06/2015	STATE MINIMUM COSTS ASSESSED	STATE MINIMUM COSTS ASSESSED	\$476.00		\$476.00
01/06/2015	CVRS-FELONY \$130.00	CVRS-FELONY \$130.00	\$130.00		\$130.00
01/07/2015	DOC JUDGMENT OF SENTENCE - SGD	AMENDED DOC JUDGMENT OF SENTENCE - SGD (RESENTENCE ON CT 1 ONLY)  AMENDED DOC - JUDGMENT OF SENTENCE FORM W/SIGNATURE Sent on: 01/07/2015 10:51:25.50			
01/09/2015	DISPOSITION OF CRIMINAL CHARGES ENTERED	DISPOSITION OF CRIMINAL CHARGES ENTERED			
01/13/2015	ORDER TO REMIT PRISONER FUNDS SENT TO COURT	ORDER TO REMIT PRISONER FUNDS SENT TO COURT  (N) ORDER TO REMIT PRISONER FUNDS Sent on: 01/13/2015 15:15:00.98			
01/15/2015	IMAGE OF JA-INITIAL BILL	IMAGE OF JA-INITIAL BILL  JA-INITIAL BILLING NOTICE Sent on: 01/15/2015 08:14:24.48			
01/15/2015	ORDER APPOINTING APPELLATE ATTORNEY AND CERTIFICATE OF MAILING-SGD BY JB2 / ATTORNEY:	ORDER APPOINTING APPELLATE ATTORNEY SIGNED BY JCF R/F ATTY SADO APT'D			
01/16/2015	ORDER TO REMIT PRISONER FUNDS SGD	ORDER TO REMIT PRISONER FUNDS SGD			
01/21/2015	CERTIFICATE OF MAILING	CERTIFICATE OF MAILING - ORDER TO REMIT PRISONER FUNDS			

**Circuit Court Docket Entries**  
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<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>File Ref Nbr.</u>	<u>Amount Due</u>
01/23/2015	JA-TRANSCRIPT FEE	JA-TRANSCRIPT FEE: 98 PAGES @ \$2.35 = \$230.30 HEARING DATE 10/24/14	\$230.30		\$230.30
01/23/2015	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL	REPORTER/RECORDER'S CERTIFICATE OF ORDER OF TRANSCRIPT ON APPEAL TO COURT OF APPEALS			
02/13/2015	E-FILED TRANSCRIPT OF:	E-FILED TRANSCRIPT OF: RESENTENCING BEFORE THE HONORABLE DIANE M DRUZINSKI DTD 01-06-15			
02/13/2015	REPORTER'S NOTICE OF FILING TRANSCRIPT; CERTIFICATE OF SERVICE	REPORTER'S NOTICE OF FILING TRANSCRIPT AND CERT OF SRVC			
06/15/2015	DOCUMENT FILED:	COPY OF STIPULATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE APPELLEES BRIEF ON APPEAL FILED AT COURT OF APPEALS R/F			
08/07/2015	DOCUMENT FILED:	COPY OF MTN TO EXTEND TIME TO FILE BRF FILED W/ THE MICHIGAN COURT OF APPEALS. R/F IN FILE			
10/13/2015	DOCUMENT FILED:	COPY OF PLTF APPELLEES BREIF ON APPEAL ORAL ARGUMENT REQUESTED FILED AT THE COURT OF APPEALS			
10/13/2015	DOCUMENT FILED:	COPY OF PLTF APPELLEES PRF OF SVC FILE AT THE COURT OF APPEALS			
10/16/2015	SENT TO COURT OF APPEALS	SENT TO COURT OF APPEALS: CERTIFIED REGISTER OF ACTIONS, COMPLETE ONE VOLUME FILE, TRANSCRIPT DTD 11/23/09, 11/12/09 VOL 1, 11/12/09 VOL 2, 1/25/10, 1/25/10, 3/8/10, 4/21/10, 6/9/10, 7/30/10, 8/25/10, 9/1/10, 9/7/10, 9/8/10, 9/9/10, 9/10/10 VOL 1, 9/10/10 VOL 2, 9/13/10 VOL 1, 9/13/10 VOL 2, 9/14/10, 9/21/10, 9/22/10, 9/23/10, 9/24/10, 9/28/10, 9/29/10, 9/30/10, 10/1/10, 11/4/10 IN FILE, E-TRANSCRIPTS DTD 10/21/14, 10/23/14, 10/24/14, 1/6/15 SENT THROUGH FTP SERVER, RECEIPT			
10/16/2015	USPS TRACKING RECEIPT R/F IN FILE	USPS TRACKING #9114 9999 9170 3133 1588 64 RECEIPT R/F IN FILE			
10/29/2015	RECEIPT RETURNED FRM COURT OF APPEALS	RECEIPT RETURNED FRM COURT OF APPEALS			
11/12/2015	DOCUMENT FILED:	PLTF-APPELLEE'S ANSWER TO SUPPLE BRIEF ON APPEAL, ORAL ARGUMENT REQUESTED			
11/12/2015	PROOF OF SERVICE	PROOF OF SERVICE			
04/13/2016	JA-DEFENDANT IS INCARCERATED	JA-DEFENDANT IS INCARCERATED MDOC #783743 ERD LIFE MAX LIFE			
09/29/2016	COPY OF ORDER FROM COURT OF APPEALS RECEIVED/FILED	COPY OF ORDER FROM COURT OF APPEALS RECEIVED/FILED			
11/21/2016	CERTIFICATE OF SERVICE	CERTIFICATE OF SERVICE			
12/09/2016	DOCUMENT FILED:	COPY OF STATE OF MI SUPREME COURT PEOPLES ANSWER TO DEFTS APPLICATION FOR LEAVE TO APPEAL; PRF OF SVC			
07/30/2018	DOCUMENT FILED:	COPY OF PLAINTIFF/APPELLEES ANSWER TO DEFENDANT/ APPELLANTS MOTION TO REMAND W/ PROOF OF SERV.			

8/29/2019

Case Search

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# Case Search

*Case Docket Number Search Results - 154773*

Appellate Docket Sheet

**COA Case Number: 325662**

**MSC Case Number: 154773**

PEOPLE OF MI V IHAB MASALMANI

1	PEOPLE OF MI Oral Argument: Y Timely: Y	PL-AE	PRS	(53528) <b>ABBOTT JOSHUA D</b>
2	MASALMANI IHAB Oral Argument: Y Timely: Y	DF-AT	SAD	(47291) <b>NEWMAN VALERIE R</b>

**COA Status:** Case Concluded; File Open

**MSC Status:** Pending on Application

**Related Cases:**

301378 PEOPLE OF MI V IHAB MASALMANI (Case Concluded; File Archived)

**Submit With Cases:**

325834 PEOPLE OF MI V ROBERT TAYLOR (Case Concluded; File Open)

- 01/22/2015 1 Claim of Appeal - Criminal
  - Proof of Service Date: 01/15/2015
  - Register of Actions: Y
  - Fee Code: I
  - Attorney: 1284 - STATE APPELLATE DEFENDER
- 01/07/2015 2 Order Appealed From
  - From: MACOMB CIRCUIT COURT
  - Case Number: 2009-005244-FC
  - Trial Court Judge: 48507 DRUZINSKI DIANE M
  - Nature of Case:
    - Felony Murder
    - Carjacking
    - Kidnapping
    - Larceny
    - Felony Firearm
  - Comments: judgment dated 1/6/15 but entered in register of actions on 1/7/15
- 01/22/2015 4 Transcript Ordered By Trial Court
  - Date: 01/15/2015
  - Timely: Y
  - Reporter: 6444 - LITTLE ANGELA M
  - Hearings:
    - 01/06/2015
  - Comments: transcript request attached to claim-see event 1
- 01/22/2015 5 LCt Document
  - Date: 01/06/2015
  - For Party: 2 MASALMANI IHAB DF-AT
  - Attorney: 1284 - STATE APPELLATE DEFENDER
  - Comments: request for appointment of counsel

Court of Appeals Docket Entries  
26a

RECEIVED by MSC 9/6/2019 11:09:33 AM

8/29/2019

Case Search

01/23/2015 6 Steno Certificate - Tr Request Received  
Date: 01/16/2015  
Timely: Y  
Reporter: 6444 - LITTLE ANGELA M  
Hearings:  
01/06/2015

02/13/2015 7 Notice Of Filing Transcript  
Date: 02/12/2015  
Timely: Y  
Reporter: 6444 - LITTLE ANGELA M  
Hearings:  
01/06/2015

04/09/2015 8 Motion: Extend Time - Appellant  
Proof of Service Date: 04/09/2015  
Filed By Attorney: 47291 - NEWMAN VALERIE R  
For Party: 2 MASALMANI IHAB DF-AT  
Fee Code: I  
Requested Extension: 06/04/2015  
Answer Due: 04/16/2015

04/21/2015 9 Submitted on Administrative Motion Docket  
Event: 8 Extend Time - Appellant  
District: T  
Item #: 14

04/22/2015 10 Order: Extend Time - Appellant Brief - Grant  
View document in PDF format  
Event: 8 Extend Time - Appellant  
Panel: ELG  
Attorney: 47291 - NEWMAN VALERIE R  
Extension Date: 06/04/2015

06/04/2015 11 Motion: Extend Time - Appellant  
Proof of Service Date: 06/04/2015  
Filed By Attorney: 47291 - NEWMAN VALERIE R  
For Party: 2 MASALMANI IHAB DF-AT  
Fee Code: I  
Requested Extension: 06/10/2015  
Answer Due: 06/11/2015

06/09/2015 12 Submitted on Administrative Motion Docket  
Event: 11 Extend Time - Appellant  
District: T  
Item #: 7

06/10/2015 13 Order: Extend Time - Appellant Brief - Grant  
View document in PDF format  
Event: 11 Extend Time - Appellant  
Panel: ELG  
Attorney: 47291 - NEWMAN VALERIE R  
Extension Date: 06/10/2015

06/10/2015 14 Brief: Appellant  
Proof of Service Date: 06/10/2015  
Oral Argument Requested: Y  
Timely Filed: Y  
Filed By Attorney: 47291 - NEWMAN VALERIE R  
For Party: 2 MASALMANI IHAB DF-AT

Court of Appeals Docket Entries  
27a

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Case Search

06/11/2015 15 Presentence Investigation Report - Confidential  
Date: 06/11/2015  
For Party: 2 MASALMANI IHAB DF-AT  
Attorney: 47291 - NEWMAN VALERIE R

06/16/2015 16 Stips: Extend Time - AE Brief  
Extend Until: 08/12/2015  
Filed By Attorney: 53528 - ABBOTT JOSHUA D  
For Party: 1 PEOPLE OF MI PL-AE

08/03/2015 17 Motion: Extend Time - Appellee  
Proof of Service Date: 08/03/2015  
Filed By Attorney: 53528 - ABBOTT JOSHUA D  
For Party: 1 PEOPLE OF MI PL-AE  
Fee Code: EPAY  
Requested Extension: 10/07/2015  
Answer Due: 08/10/2015

08/11/2015 18 Submitted on Administrative Motion Docket  
Event: 17 Extend Time - Appellee  
District: T  
Item #: 7

08/12/2015 19 Order: Extend Time - Appellee Brief - Grant  
View document in PDF format  
Event: 17 Extend Time - Appellee  
Panel: ELG  
Attorney: 53528 - ABBOTT JOSHUA D  
Extension Date: 10/07/2015

10/05/2015 20 Brief: Supplemental Auth`y  
Proof of Service Date: 10/05/2015  
Timely Filed: Y  
Filed By Attorney: 47291 - NEWMAN VALERIE R  
For Party: 2 MASALMANI IHAB DF-AT

10/05/2015 21 Brief: Appellee  
Proof of Service Date: 10/05/2015  
Oral Argument Requested: Y  
Timely Filed: Y  
Filed By Attorney: 53528 - ABBOTT JOSHUA D  
For Party: 1 PEOPLE OF MI PL-AE

10/06/2015 22 Noticed  
Record: REQST  
Mail Date: 10/07/2015

10/07/2015 23 Motion: Supplemental Brief  
Proof of Service Date: 10/07/2015  
Filed By Attorney: 47291 - NEWMAN VALERIE R  
For Party: 2 MASALMANI IHAB DF-AT  
Fee Code: I  
Answer Due: 10/14/2015  
Comments: Proposed supplemental brief filed with motion

10/07/2015 30 Brief: Supplemental Brief - AT  
Proof of Service Date: 10/07/2015  
Filed By Attorney: 47291 - NEWMAN VALERIE R  
For Party: 2 MASALMANI IHAB DF-AT

10/14/2015 24 Answer - Motion  
Proof of Service Date: 10/14/2015

Court of Appeals Docket Entries  
28a

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8/29/2019

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Event No: 23 Supplemental Brief  
For Party: 1 PEOPLE OF MI PL-AE  
Filed By Attorney: 53528 - ABBOTT JOSHUA D

10/20/2015 25 Submitted on Administrative Motion Docket  
Event: 23 Supplemental Brief  
District: T  
Item #: 6

10/20/2015 26 Record Filed  
Comments: 1 BOX- 1 LCF (TRN INC); 27 TRN; TRN LINKED TO MAPPIS - MACOMB CIRCUIT

10/21/2015 29 Order: Supplemental Brief - Grant  
View document in PDF format  
Event: 23 Supplemental Brief  
Panel: ELG  
Attorney: 47291 - NEWMAN VALERIE R  
Comments: Brief filed on 10/7/15 accepted, AE may file responsive brief within 21 days of order.

10/21/2015 28 Electronic Transcript Filed

11/06/2015 31 Brief: Supplemental Brief - AE  
Proof of Service Date: 11/06/2015  
Filed By Attorney: 53528 - ABBOTT JOSHUA D  
For Party: 1 PEOPLE OF MI PL-AE

04/26/2016 35 Submitted on Administrative Motion Docket  
District: T  
Item #: 2

04/27/2016 36 Order: Abeyance - Administrative  
View document in PDF format  
Event: 35 Submitted on Administrative Motion Docket  
Panel: MJC  
Attorney: 47291 - NEWMAN VALERIE R  
Comments: On Court's mtn, HELD IN ABEYANCE pending 323454, 323876, 325741.

07/25/2016 37 Abeyance Concluded  
Date: 07/25/2016

07/25/2016 38 Correspondence Sent  
For Party: 2 MASALMANI IHAB DF-AT  
Attorney: 47291 - NEWMAN VALERIE R  
Comments: Letter advising that appeal has been removed from abeyance status

09/13/2016 42 Submitted on Case Call  
District: D  
Item #: 1  
Panel: SLB,JEM,MJR

09/13/2016 49 Oral Argument Audio

09/22/2016 52 Opinion - Per Curiam - Unpublished  
View document in PDF format  
Pages: 8  
Panel: SLB,JEM,MJR  
Result: L/Ct Judgment/Order Affirmed

09/22/2016 53 Opinion - Concurrence  
View document in PDF format  
Pages: 1  
Author: SLB

11/17/2016 55 SCt: Application for Leave to SCt  
Supreme Court No: 154773

Court of Appeals Docket Entries  
29a

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8/29/2019

Case Search

Answer Due: 12/15/2016

Fee: State

For Party: 2

Attorney: 47291 - NEWMAN VALERIE R

11/21/2016 56 Other

Date: 11/17/2016

For Party: 2 MASALMANI IHAB DF-AT

Attorney: 47291 - NEWMAN VALERIE R

Comments: Notice of filing application for leave to appeal in the Supreme Court.

11/29/2016 57 Supreme Court - File & Record Sent To

File Location: Z

Comments: sc#154773 box case\*\* lcf;27 tr

11/30/2016 58 SCt: COA and TCt Received

27 tr; 1 files

12/08/2016 59 SCt: Answer - SCt Application/Complaint

Filing Date: 12/08/2016

For Party: 1 PEOPLE OF MI PL-AE

Filed By Attorney: 53528 - ABBOTT JOSHUA D

05/02/2017 62 SCt Order: Abeyance - Grant

View document in PDF format

Comments: Hold application in abeyance pending decisions in MSC #152448, People v Skinner, and #153081, People v Hyatt.

07/16/2018 64 SCt Motion: Remand to COA

Party: 2

Filed by Attorney

07/23/2018 65 SCt: Answer to SCt Motion

Filing Date: 07/23/2018

For Party: 1 PEOPLE OF MI PL-AE

Filed By Attorney: 53528 - ABBOTT JOSHUA D

Comments: Answer to motion to remand to COA

04/05/2019 66 SCt Order: Application - Grant

[View document in PDF format](#)

Comments: 20-min arguments. Invited AC=CDAM & PAAM. Deny motion to remand.

04/22/2019 67 SCt Motion: Housekeeping

Party: 2

Filed by Attorney: 76587 - VANCAMPEN ERIN RENEE

Comments: Motion to extend time to 8-9-2019 to file AT brief

04/25/2019 68 SCt Order: Chief Justice - Grant

View document in PDF format

Comments: Grant DFAT motion to extend time for filing brf to 8-9-19.

07/08/2019 69 SCt Motion: Housekeeping

Party: 2

Filed by Attorney: 76587 - VANCAMPEN ERIN RENEE

Comments: Motion to extend time to 9-6-2019 to file AT brf

07/10/2019 70 SCt Order: Chief Justice - Grant

View document in PDF format

Comments: Grant DFAT second motion to extend time for filing brf to 9-6-19.

Case Listing Complete

<b>STATE OF MICHIGAN</b> <b>16TH JUDICIAL CIRCUIT</b> <b>MACOMB COUNTY</b>	<b>JUDGMENT OF SENTENCE</b> <b>COMMITMENT TO</b> <b>DEPARTMENT OF CORRECTIONS</b>	<b>CASE NO.</b> 2009-005244-FC			
ORI MI-500015J      Court address: Macomb County Circuit Court 40 N. Main, Mt. Clemens, MI 48043      Court telephone number 586-469-5208 Police Report No. 50 EPPD 09-17523					
THE PEOPLE OF THE STATE OF MICHIGAN	v	Defendant's name, address, and telephone no. <b>IHAB MASALMANI</b> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">CTN 50-09010309-01</td> <td style="width:33%;">SID 3030458M</td> <td style="width:33%;">DOB 12/25/1991</td> </tr> </table>	CTN 50-09010309-01	SID 3030458M	DOB 12/25/1991
CTN 50-09010309-01	SID 3030458M	DOB 12/25/1991			
Prosecuting attorney name <b>WILLIAM CATALDO P 37673</b>	Bar no.	Defendant attorney name <b>JOSEPH R. KOSMALA</b>			
		Bar no. <b>P23010</b>			

1. The Defendant, was found guilty on 11/4/2010 of the crime(s) stated below:

Count	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC Code
	Plea	Court	Jury			
1			G		MURDER FIRST DEGREE-FELONY	750.316-B
2			G		CARJACKING	750.529A
3			G		CONSPIRACY-CARJACKING	750.529A[C]
4			G		KIDNAPPING	750.349
5			G		CONSPIRACY KIDNAPPING	750.349 ( C )
6			G		LARCENY FROM THE PERSON	750.357
7			G		WEAPONS FELONY FIREARM	750.227 B-A

\*For Plea: insert "G" for guilty plea; "NC" for nolo contendere; "MI" for guilty but mentally ill. \*For dismissal: insert "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

- ☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b). Defendant's driver license number: \_\_\_\_\_  
☐ 3. HIV testing and sex offender registration is completed.  
☐ 4. The defendant has been fingerprinted according to MCL 28.243.

**IT IS ORDERED**

- ☐ 5. Probation is revoked.  
 6. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.  
 7. Defendant is sentenced to custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM		DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Months	Days	Years	Months		Months	Days	
1	11/4/2010	Life with out parole	-0-	-0-	-0-	-0-	11/4/2010	-0-	-0-	CT 7 CONSECUTIVE TO CT 1 & CONCURRENT W/COUNTS 2-3-4-5-6
2	11/4/2010	25	-0-	-0-	50	-0-	11/4/2010	-0-	449	THIS FILE CONCURRENT WITH 09-4832 FC & 09-5144 FC
3	11/4/2010	25	-0-	-0-	50	-0-	11/4/2010	-0-	449	
4	11/4/2010	25	-0-	-0-	50	-0-	11/4/2010	-0-	449	
5	11/4/2010	25	-0-	-0-	50	-0-	11/4/2010	-0-	449	
6	11/4/2010	5	-0-	-0-	10	-0-	11/4/2010	-0-	449	
7	11/4/2010	2	-0-	-0-	-0-	-0-	11/4/2010	-0-	449	

- ☐ 8. Sentence(s) to be served consecutively to: (if this item is not checked, the sentence is concurrent)  
☐ each other ☐ case numbers \_\_\_\_\_

9. Defendant shall pay: (specify fine and minimum state costs for each count; restitution; assessments for crime victim rights fund; reimbursement; attorney fees; and other costs.)

State Minimum	Crime Victim	Restitution	Court Costs	Attorney Fees	Fine	Other Costs	Total
\$ 408.00	\$ 60.00	\$ 306.00 Landry Family	\$ -0-	\$ 24,500.00	\$ -0-	\$ -0-	\$

The due date for payment is the date of sentencing. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

- ☐ 10. The concealed weapon board shall ☐ suspend for \_\_\_\_\_ days ☐ permanently revoke the concealed weapon license, permit number \_\_\_\_\_, issued by \_\_\_\_\_ County.  
☐ 11. The defendant is subject to lifetime monitoring under MCL 780.520n.  
 12. Court recommendation:

Date 11/4/2010

Judge **DIANE M DRUZINSKI** Bar. no. P48507

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver the defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy court clerk



**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IHAB MASALMANI,

Defendant-Appellant.

---

UNPUBLISHED

March 19, 2013

No. 301376

Macomb Circuit Court

LC No. 09-004832-FC

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IHAB MASALMANI,

Defendant-Appellant.

---

No. 301377

Macomb Circuit Court

LC No. 09-005144-FC

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IHAB MASALMANI,

Defendant-Appellant.

---

No. 301378

Macomb Circuit Court

LC No. 09-005244-FC

Before: JANSEN, P.J., and FITZGERALD and K. F. KELLY, JJ.

PER CURIAM.

A jury convicted defendant of 18 total charges, arising from three separate cases that were consolidated for trial. In LC No. 09-004832-FC, the jury convicted defendant of two counts of armed robbery, MCL 750.529, kidnapping, MCL 750.349, bank robbery, MCL

750.531a, and four counts of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent prison terms of 15 to 50 years each for the bank robbery, armed robbery, and kidnapping convictions, to be served consecutive to four concurrent two-year terms of imprisonment for the felony-firearm convictions. In LC No. 09-005144-FC, the jury convicted defendant of carjacking, MCL 750.529a, receiving or concealing firearms, MCL 750.535b, and felony-firearm. The trial court sentenced defendant to concurrent prison terms of 15 to 50 years for the carjacking conviction, and 5 to 10 years for the receiving or concealing conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. In LC No. 09-005244-FC, the jury convicted defendant of first-degree felony murder, MCL 750.316(1)(b), carjacking, conspiracy to commit carjacking, MCL 750.529a and MCL 750.529, kidnapping, conspiracy to commit kidnapping, MCL 750.349 and MCL 750.529, larceny from a person, MCL 750.357, and felony-firearm. The trial court sentenced defendant to concurrent prison terms of mandatory life without parole for the murder conviction, 25 to 50 years each for the carjacking, kidnapping, and conspiracy convictions, and 5 to 10 years for the larceny conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right in all three cases, and the appeals have been consolidated for this Court's consideration. We affirm defendant's convictions in all three cases, but vacate his mandatory life sentence for first-degree felony murder in Docket No. 301378 and remand for resentencing on that offense.

Defendant's convictions arise from three criminal episodes that occurred during a three-day crime spree from August 9, 2009, until defendant's arrest on August 11, 2009. The prosecutor's theory was that on the afternoon of August 9, 2009, defendant, acting in concert with codefendant Robert Taylor, both of whom were juveniles, carjacked and abducted Matt Landry from outside an Eastpointe restaurant, held Landry captive for several hours, stole his money by using his ATM card, and later murdered him by shooting him in the head and leaving his body at an abandoned burnt-out house in a drug-infested neighborhood. The next day, defendant, using Landry's vehicle and now acting alone, robbed a Flagstar Bank, during which he pointed a gun and threatened several people inside the bank, temporarily abducted customer Sarah Maynard, and stole money from both the bank and a customer before fleeing in Landry's vehicle. Defendant continued his crime spree on August 11, 2009, by carjacking David Hassroune at gunpoint in a Walmart parking lot before being arrested. Surveillance videotape from several locations depicted defendant committing many of the offenses. At trial, the defense focused on contesting the charges that defendant shot Landry and kidnapped Maynard.

#### I. SUFFICIENCY OF THE EVIDENCE

Defendant argues that his conviction for first-degree felony murder must be vacated because the evidence failed to establish that he was the person who shot and killed Landry and also failed to establish the necessary element of malice beyond a reasonable doubt. When ascertaining whether sufficient evidence was presented at trial to support a conviction, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

#### A. IDENTITY

First-degree felony murder requires proof that the defendant killed the victim with malice while committing, attempting to commit, or assisting in the commission of a felony specifically enumerated in MCL 750.316(1)(b). *People v Gayheart*, 285 Mich App 202, 210; 776 NW2d 330 (2009). Identity is also an essential element in a criminal prosecution, *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976), and the prosecution must prove the identity of the defendant as the perpetrator of a charged offense beyond a reasonable doubt. *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967).

Defendant asserts that the prosecution failed to present credible evidence that he was the person who killed Landry. We disagree. Although there were no witnesses to the actual shooting, defendant's identity as the killer properly could be established through circumstantial evidence. The deferential standard of review "is the same whether the evidence is direct or circumstantial," and it is well established that "circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *Nowack*, 462 Mich at 400 (citation omitted); see also *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). The credibility of identification testimony is for the trier of fact to resolve and this Court will not resolve it anew. *Nowack*, 462 Mich at 400.

The defense did not dispute the evidence that defendant carjacked and kidnapped Landry outside a Quiznos restaurant in Eastpointe on the afternoon of August 9, 2009. Two witnesses, Lawrence Wata and Carol Santangelo, observed defendant and codefendant Taylor acting aggressively toward Landry during the initial contact. While Taylor, who Wata believed was armed with a weapon, acted as a lookout, defendant grabbed Landry by the neck, dragged him to the rear of his vehicle, and attempted to push Landry in the trunk. Defendant then forced Landry back inside the car, punched Landry, who had his hands up, and signaled for Taylor to join them. Defendant drove away in Landry's vehicle with both Landry and Taylor inside. Evidence was presented that over the next several hours defendant continued to drive Landry's vehicle, hold Landry captive, and steal money from Landry's bank account.

About an hour after defendant abducted Landry, defendant was captured on videotape using Landry's ATM card at a gas station on the east side of Detroit, making three separate withdrawals, totaling more than \$300. Soon thereafter, in a Detroit neighborhood near the gas station, a resident viewed defendant and another male standing behind Landry's Honda and looking into the trunk. There was no sign of Landry. However, a cigarette butt later found in the truck revealed the presence of Landry's DNA. Defendant was thereafter captured on another Detroit area gas station security video, still driving Landry's green Honda, with Taylor and two women, and no sighting of Landry. Defendant was also captured on an Eastland mall clothing store's videotape, shopping with two other men and spending a large sum of money.

Seven hours after Landry was abducted, defendant and Taylor drove Landry's Honda to a heavily drug-infested area in Detroit where they parked outside a vacant, burnt-out drug house at 14703 Maddelein. According to Frederick Singleton, Taylor was driving the vehicle and defendant was in the back seat with Landry. Through Singleton, defendant arranged to purchase crack cocaine, after which defendant, Taylor, and Landry went inside the drug house. As defendant smoked the crack cocaine inside the house, Landry, who Singleton described as silent

and "out of place," sat motionless on the couch next to Taylor. When Singleton spoke to Landry, defendant referred to Landry as his "home boy" and stated, "He doesn't get high, don't worry about him." Defendant purchased and smoked another round of crack cocaine and, at one point, two males came to the house and gave defendant a gas can. According to Singleton, after defendant smoked the second round of crack cocaine, he began to "tweak," which Singleton described as becoming "very paranoid," "antsy," and "amped up." Landry was last seen alive at about 10:00 p.m. inside the vacant house with defendant and Taylor. The next day, defendant used Landry's Honda to commit a bank robbery. Defendant was armed during that offense, attempted to kidnap a patron, and threatened to kill the people inside the bank. Two days later, Landry's significantly decomposed body was found inside a vacant, burnt-out house at 14711 Maddelein, only a few houses from the location where Landry was last seen alive with defendant and Taylor. Landry had been shot in the back of the head and the bullet path was consistent with Landry having been shot while kneeling.

Viewed in a light most favorable to the prosecution, the evidence that (1) defendant, in conjunction with Taylor, brazenly and forcibly carjacked and kidnapped Landry, (2) defendant held Landry captive for at least seven hours, during which time he dragged Landry by the neck, punched Landry, stole money from Landry's bank account, and took Landry to a drug house where defendant smoked cracked cocaine to the point of becoming paranoid and amped up, (3) Landry was last seen alive with defendant and Taylor at the drug house, (4) Landry was shot in the back of the head, (5) Landry's body was found on the same street just a few houses from the location where he was last seen alive with defendant and Taylor, at which time defendant was described as "antsy," "paranoid," and "amped up," and (6) that the day after Landry was last seen alive, defendant was still in possession of Landry's car, which he used to commit another violent crime while armed with a firearm, was sufficient to enable a rational trier of fact to determine beyond a reasonable doubt that defendant was the person who killed Landry during the criminal episode.

Although defendant argues that there were other people at the vacant house who could have killed Landry, and that Singleton's testimony was not credible, these challenges are related to the weight of the evidence rather than its sufficiency. *People v Scotts*, 80 Mich App 1, 9; 263 NW2d 272 (1977). These same challenges were presented to the jury during opening statement, cross-examination, and closing argument. This Court may not interfere with the jury's role of determining issues of weight and credibility. *Wolfe*, 440 Mich at 514.

#### B. MALICIOUS INTENT

Defendant also argues that, even if his identity as the shooter was established, there was insufficient evidence that he acted with malice. "Malice is defined as 'the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.'" *People v Werner*, 254 Mich App 528, 531; 659 NW2d 688 (2002) (citation omitted). Malice may be inferred from facts in evidence, including the use of a dangerous weapon. *People v Bulls*, 262 Mich App 618, 627; 687 NW2d 159 (2004). "[M]inimal circumstantial evidence will suffice to establish the defendant's state of mind[.]" *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

Viewed in a light most favorable to the prosecution, the evidence that Landry was forcibly abducted, held captive for several hours, and shot in the back of his head in a manner consistent with an execution, after which his body was left inside a vacant, burnt-out house in a highly drug-infested area, was sufficient to permit a rational trier of fact to infer beyond a reasonable doubt that defendant possessed the requisite malicious intent for felony murder. Thus, the evidence was sufficient to support defendant's conviction of first-degree felony murder.

## II. THE PROSECUTOR'S CONDUCT

Defendant next argues that misconduct by the prosecutor during closing and rebuttal arguments denied him a fair trial. Because defendant did not object to the prosecutor's conduct at trial, this issue is unpreserved and our review is limited to plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). This Court will not reverse if the alleged prejudicial effect of the prosecutor's conduct could have been cured by a timely instruction upon request. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

### A. DENIGRATED DEFENDANT'S CHARACTER

Defendant argues that the prosecutor denigrated his character during closing and rebuttal arguments by comparing him to the gangster character "Tony Montana" from the movie *Scarface*. A prosecutor may not denigrate a defendant with prejudicial or intemperate comments. *People v Bahoda*, 448 Mich 261, 283; 531 NW2d 659 (1995). However, prosecutors have great latitude when arguing at trial. *People v Fyda*, 288 Mich App 446, 461; 793 NW2d 712 (2010). They may argue the evidence and all reasonable inferences that arise from the evidence in relationship to their theory of the case, and they need not state their inferences in the blandest possible language. *Bahoda*, 448 Mich at 282; *People v Dobek*, 274 Mich App 58, 66; 732 NW2d 546 (2007).

Relying on *Bahoda*, 448 Mich at 267, defendant asserts that the prosecutor injected the inflammatory references to Tony Montana with no apparent justification except to arouse prejudice. We disagree. During trial, Hassroune, the Walmart carjacking victim, testified that he observed several tattoos on defendant's hands while observing defendant holding a gun. Defendant had the word "Bad" tattooed on his left hand, and the word "Guy" tattooed on his right hand, and the number "5" was tattooed on each of his ten knuckles. The jury was shown photographs of defendant's hands depicting the tattoos. Police Detective Brian McKenzie testified that he asked defendant about the tattoos as he was photographing defendant's hands. Defendant stated that the tattoos "were a reference to the movie *Scarface*." Thus, the connection to "bad guy" Tony Montana from the movie *Scarface* originated from defendant himself, as opposed to the prosecutor making a baseless reference. Viewed in this context, the prosecutor's remarks do not rise to the level of plain error.

Moreover, a timely objection to the challenged remarks could have cured any perceived prejudice by obtaining an appropriate cautionary instruction. See *Watson*, 245 Mich App at 586. And even though defendant did not object, the trial court instructed the jury that the lawyers' statements and arguments are not evidence, that the jury was to decide the case based only on the



properly admitted evidence, and that the jury was to follow the court's instructions. These instructions were sufficient to dispel any possible prejudice and to protect defendant's substantial rights. *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001). It is well established that jurors are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

#### B. VOUCHING FOR FREDERICK SINGLETON'S CREDIBILITY

Defendant next argues that the prosecutor improperly vouched for the credibility of Frederick Singleton by stating that "Singleton is a very credible witness." As defendant correctly notes, a prosecutor may not vouch for the credibility of a witness by conveying that he has some special knowledge that the witness is testifying truthfully. *People v Knapp*, 244 Mich App 361, 382; 624 NW2d 227 (2001). But a prosecutor is free to argue from the facts and testimony that a witness is credible or worthy of belief. *Dobek*, 274 Mich App 66.

Here, the prosecutor did not suggest that he had some special knowledge that Singleton was credible. Rather, the prosecutor's remark was made in the context of providing reasons, grounded in the evidence, why Singleton should be believed. Defense counsel repeatedly asserted throughout the trial that Singleton was untrustworthy and not credible. In his closing argument, the prosecutor urged the jury to evaluate Singleton's testimony and demeanor, discussed the reliability of his testimony, and argued that there were reasons from the evidence to conclude that Singleton was credible. The prosecutor noted that Singleton made no effort to conceal his criminal and drug-related history. He further noted that Singleton could have exaggerated defendant's actions by stating that he observed him with a gun and observed him beating Landry, which clearly would have been more detrimental to the defense. Throughout closing and rebuttal arguments, the prosecutor explained several connecting events involving defendant, Landry, and Landry's vehicle, which supported Singleton's testimony. Because the prosecutor's remark was based on the evidence at trial, there was no plain error. Moreover, in its final instructions, the trial court instructed the jury that it was the sole judge of witness credibility, thereby protecting defendant's substantial rights. *Long*, 246 Mich App 582, 588; *Graves*, 458 Mich at 486.

For these reasons, defendant has not established any basis for relief based on the prosecutor's conduct at trial.

#### III. EFFECTIVE ASSISTANCE OF COUNSEL

Defendant alternatively argues that defense counsel was ineffective for failing to object to the prosecutor's comments. Because defendant did not raise an ineffective assistance of counsel claim in the trial court, our review of this issue is limited to mistakes apparent on the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). Effective assistance of counsel is presumed and defendant bears a heavy burden of proving otherwise. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, defendant first must show that counsel's performance was below an objective standard of reasonableness. In doing so, defendant must overcome the strong presumption that counsel's assistance was sound trial

strategy. Second, defendant must show that, but for counsel's deficient performance, it is reasonably probable that the result of the proceeding would have been different. *People v Armstrong*, 490 Mich 281, 289-290; 806 NW2d 676 (2011).

Because the prosecutor's remarks were not improper, defense counsel's failure to object was not objectively unreasonable. Further, because the trial court's jury instructions were sufficient to dispel any possible prejudice, defendant cannot demonstrate that there is a reasonable probability that, but for counsel's failure to object, the result of the proceeding would have been different. Consequently, defendant cannot establish a claim of ineffective assistance of counsel.

#### IV. DEFENDANT'S SUPPLEMENTAL BRIEF

Defendant has filed a supplemental brief in which he seeks relief from his mandatory life sentence for his first-degree murder conviction. Defendant was a juvenile at the time he committed the felony-murder offense. Under *Miller v Alabama*, 567 US \_\_; 132 S Ct 2455; 183 L Ed 2d 407 (2012), and *People v Carp*, \_\_ Mich App \_\_; \_\_NW2d \_\_ (Docket No. 307758, issued November 15, 2012), lv pending, defendant's sentence of mandatory life imprisonment without parole violates the Eighth Amendment ban on "cruel and unusual" punishment. US Const, Amend VIII. Accordingly, we vacate defendant's mandatory life sentence for first-degree murder and remand for resentencing on that offense consistent with *Miller* and *Carp*.<sup>1</sup> See *Carp*, slip op at 24, 40.

Affirmed in part, vacated in part, and remanded for resentencing consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly

---

<sup>1</sup> In *Carp*, slip op at 31-41, this Court provided guidelines for trial courts to follow until the Legislature adopts new sentencing standards for juvenile offenders. The trial court shall reconsider defendant's sentence for first-degree felony murder under those guidelines, rather than wait until the Legislature acts. *Carp*, slip op at 31.

25199, 200, 201  
VRN

# Order

Michigan Supreme Court  
Lansing, Michigan

September 3, 2013

Robert P. Young, Jr.,  
Chief Justice

147102-4

Michael F. Cavanagh  
Stephen J. Markman  
Mary Beth Kelly  
Brian K. Zahra

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

Bridget M. McCormack  
David F. Viviano,  
Justices

v

SC: 147102-4  
COA: 301376; 301377; 301378  
Macomb CC: 09-004832-FC;  
09-005144-FC;  
09-005244-FC

IHAB MASALMANI,  
Defendant-Appellant.

On order of the Court, the application for leave to appeal the March 19, 2013 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

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SEP 05 2013

APPELLATE DEFENDER OFFICE



p0826

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

September 3, 2013

Clerk

RECEIVED by MSC 9/6/2019 11:09:33 AM



STATE OF MICHIGAN COUNTY OF MACOMB CIRCUIT COURT	<b>REQUEST FOR HEARING ON A MOTION NOTICE OF HEARING PROOF OF SERVICE</b>	Circuit Court No: 2009-5244-FC 2009-5243-FC
Plaintiff Name: Eric Smith Prosecuting Attorney	v	Defendant Name: Ihab Masalmani; Robert Taylor

1. Motion(s): Motion requesting imposition of sentences of Life Imprisonment without the possibility of parole

RECEIVED

2. Relief sought: Life Imprisonment without the possibility of parole

APR 11 2014

3. Moving Party: Eric Smith Prosecuting Attorney

APPELLATE DEFENDER OFFICE

Attorney for moving party: Joshua Abbott

(P34395 )

Phone Number of Attorney/Moving Party: ( 586 ) 469-7767

4. Responding parties/attorneys (include Bar No.(s))

Valerie Newman (PP7291 )

(P )

Jonathan B.D. Simon (P35596 )

(P )

(P )

(P )

5. ☐ I certify that I made personal contact with the individual(s) listed below requesting concurrence in the relief sought but it was denied:

☒ I certify that I made reasonable and diligent efforts to contact the individual(s) listed below but was unable to do so:

Robert Taylor

Individual(s) contacted

April 8, 2014

Date(s)

6. NOTICE OF HEARING: The above motion(s) will be heard as follows:

Judge Diane Druzinski	Date April 28, 2014	Time 830
--------------------------	------------------------	-------------

Please note: Per LCR 2.119 and MCR 2.116(G)(1)(c) and MCR 2.119(A)(2), a copy of a motion or response must be provided to the office of the judge hearing the motion! Judge's copy must be clearly marked "JUDGE'S COPY."

Joshua D. Abbott  
Signature of moving attorney or party

4/8/14  
Date

☐ Motion Fee Paid **FOR COURT USE ONLY**

Adj to: ☐ THIS MOTION IS REFERRED TO A FRIEND OF THE COURT REFEREE

7. PROOF OF SERVICE:

I certify that I mailed a copy of this document and the motion(s) referred to in paragraph 1 to the attorneys or parties of record by ordinary mail addressed to their last known addresses. I declare that the statements above are true to the best of my information, knowledge and belief.

Signature of person serving document

Date

**STATE OF MICHIGAN**

**IN THE 16<sup>TH</sup> CIRCUIT COURT**

**PEOPLE OF THE STATE OF MICHIGAN,**

Plaintiff,

Vs.

Hon. Diane M. Druzinski

Macomb CC No. 09-5244-FC

**IHAB MASALMANI,**

Defendant.

**PEOPLE OF THE STATE OF MICHIGAN,**

Plaintiff,

Vs.

Hon. Diane M. Druzinski

Macomb CC No. 09-5243-FC

**ROBERT TAYLOR,**

Defendant.

\_\_\_\_\_  
Macomb County Prosecutor's Office  
By: William L. Cataldo (P37673)  
Joshua D. Abbott (P53528)  
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\_\_\_\_\_

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APR 11 2014

APPELLATE DEFENDER OFFICE

**MOTION PURSUANT TO MCL § 769.25(3) REQUESTING IMPOSITION  
OF SENTENCES OF LIFE IMPRISONMENT WITHOUT THE  
POSSIBILITY OF PAROLE**

The plaintiff, the People of the State of Michigan, by Eric J. Smith, through his assistant prosecuting attorneys, William L. Cataldo and Joshua D. Abbott, for its Motion Pursuant to MCL § 769.25(3) Requesting Imposition of Sentences of Life Imprisonment Without the Possibility of Parole, states as follows:

1. After a lengthy trial before this Court in September of 2010, a jury convicted Defendant Masalmani in Macomb CC No. 09-5244-FC of First-Degree Felony Murder (MCL § 750.316(1)(b), Carjacking (MCL § 750.529a), Conspiracy to Commit Carjacking (MCL § 750.157a), Kidnapping (MCL § 750.349), Conspiracy to Commit Kidnapping, Larceny from the Person (MCL § 750.357), and Felony Firearm (MCL § 750.227b) arising of the abduction and brutal murder of 21-year-old Matthew Landry on August 9, 2009.
2. On November 14, 2010, this Court sentenced Defendant Masalmani to a term of life imprisonment without the possibility of parole on his First-Degree Felony Murder conviction.
3. On December 1, 2010, Defendant Masalmani filed a claim of appeal with the Michigan Court of Appeals ("Court of Appeals").

4. After a lengthy trial before this Court in December of 2010, a jury convicted Defendant Taylor in Macomb CC No. 09-5243-FC of First-Degree Felony Murder, Carjacking, Conspiracy to Commit Carjacking, Kidnapping, and Felony Firearm, also arising out of the abduction and brutal murder of 21-year-old Matthew Landry.
5. On February 3, 2011, this Court sentenced Defendant Taylor to a term of life imprisonment without the possibility of parole on his First-Degree Felony Murder conviction.
6. On March 25, 2011, Defendant Taylor filed a claim of appeal with the Court of Appeals.
7. In mid-2012, while these appeals were pending, the United States Supreme Court decided *Miller v. Alabama*, 576 US \_\_\_, 132 S Ct 2455; 183 LEd2d 407 (2012), holding that mandatory life sentences without the possibility of parole for juveniles such as Defendants Masalmani and Taylor violated the Eighth Amendment and were unconstitutional.
8. On March 21, 2013, the Court of Appeals affirmed Defendants Masalmani and Taylor's convictions, but, in light of *Miller*, vacated this Court's sentences on

their First-Degree Felony Murder convictions and remanded for resentencing.

9. On September 3, 2012, the Michigan Supreme Court denied Defendant Masalmani's application for leave to appeal.
10. Before this Court conducted a resentencing hearing, the Michigan Supreme Court, on November 6, 2013, granted leave to appeal in *People v. Carp*, *People v. Eliason*, and *People v. Davis* to resolve a number of legal quandaries created by *Miller*, including the issue of retroactivity and whether a trial court is strictly limited to sentencing a defendant impacted by *Miller* to either life imprisonment or life imprisonment without the possibility of parole or can impose an indeterminate term of years sentence.
11. Given the circumstances, the parties and this Court agreed to hold the resentencing hearing in abeyance until the Michigan Supreme Court decided these cases. The Michigan Supreme Court heard oral argument on these cases in March of 2014 but has not yet reached a decision.

12. Currently, the cases at bar are scheduled for a status conference before this Court on June 24, 2014, at 8:30 a.m.
13. In the interim, in early 2014, the Legislature passed MCL § 769.25 (Criminal defendant less than 18 years old; circumstances; imprisonment for life without the possibility of parole; violations; motion; response; hearing; record; sentence), which took effect of March 4, 2014.
14. The statute, in part, applies to criminal defendants who were less than 18 years of age at the time he or she committed an offense punishable by life imprisonment without the possibility of parole before the act's effective date and "[o]n June 25, 2012 the case was pending in the trial court or the applicable time periods for direct appellate review by state or federal courts have not expired." MCL § 769.25(1)(b)(ii).
15. Moreover, the statute provides that "[i]f the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described under subsection (1)(b), the prosecuting attorney shall file the motion within 90

days after the effective date of the amendatory act that added this section.” MCL § 769.25(3).

16. Further, the statute indicates that if the assistant prosecuting attorney files such a motion, “the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, the trial court shall consider the factors listed in *Miller v. Alabama*, 576 US \_\_\_, 133 L Ed 2d 407; 132 S Ct 2455 (2012), and may consider any other criteria relevant to its decision, including the individual’s record while incarcerated.” MCL § 769.25(6).
17. Finally, the statute states that at the sentencing hearing, “the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court’s reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing.” MCL § 769.25(7).
18. In filing this motion, the prosecution requests pursuant to MCL § 769.25(3) that this Court impose sentences of life imprisonment without the possibility of parole on the defendants’ convictions for First-Degree Felony Murder.

19. Here, the unchallenged trial testimony demonstrated that the defendants abducted Mr. Landry outside a Quizno's in Eastpointe at gunpoint at 2:30 p.m. on August 9, 2009, and sped away in Mr. Landry's green Honda. By 3:30 p.m., Defendant Masalmani used Mr. Landry's ATM card at a Sunoco gas station on the east side of Detroit, making over \$300.00 in withdrawals. Soon thereafter, in a Detroit neighborhood near the gas station, a resident viewed Defendant Masalmani standing behind Mr. Landry's green Honda looking into the trunk. In the next several hours, Defendant Masalmani stopped at a Marathon gas station on the east side of Detroit in Mr. Landry's green Honda and at Eastland Mall, where he went on a spending spree for clothing at Jimmy Jazz.
20. At 9:30 p.m., Mr. Landry's green Honda appeared in front of a vacant drug house at 14703 Maddelein in Detroit. Defendant Masalmani was in the back seat with Mr. Landry, with Defendant Taylor driving the vehicle. Defendant Masalmani arranged for two separate purchases of crack cocaine, which he smoked inside 14703 Maddelein. As he did so, Mr. Landry sat on the couch with Defendant Taylor. At one point, two



male individuals stopped by the house and gave Defendant Masalmani a gas can. When Mr. Landry was last seen alive, he was with the defendant at about 10:00 p.m. on August 9, 2009. Defendant Masalmani was “tweaking” on crack cocaine and acting “paranoid.”

21. Detectives from the Roseville Police Department found Mr. Landry’s badly decomposed body a little more than three days later. Mr. Landry had been shot in the back of the head, execution style, inside a burn-out style at 14711 Maddelein, a few houses away from where he was last seen with the defendants. Between August 9 and August 12, Defendant Masalmani committed two more violent crimes, one employing Mr. Landry’s green Honda as the getaway vehicle. Defendant Masalmani used a firearm stolen from a car parked outside a Detroit nightclub during the early morning hours of August 10.
22. As set forth in more detail in the prosecution’s COUNTERSTATEMENT OF FACTS in its briefs on appeal, the defendants brazenly kidnapped and carjacked Mr. Landry in broad daylight and, several

hours later, brutally executed him inside a burn-out drug den.

23. In August of 2009, Defendant Masalmani was only four months short of his 18<sup>th</sup> birthday. Defendant Taylor was 16 years old.
24. The aggravating circumstances surrounding these vicious crimes, along with both defendants' proximity to the age of 18, support a sentence of life imprisonment without the possibility of parole.
25. Although it acknowledges that these cases are already pending before this Court for a resentencing under *Miller* as directed by the Court of Appeals, the prosecution files this motion pursuant to MCL § 769.25(3) to preserve any and all rights set forth in this new statute.

WHEREFORE, the People of the State of Michigan respectfully request pursuant to MCL § 769.25(3) that this Court impose sentences of life imprisonment without the possibility of parole on the defendants' convictions for First-Degree Felony Murder.

BY: Joshua P. Abbott  
William L. Cataldo (P37673)  
Joshua D. Abbott (P53528)  
Attorneys for Plaintiff

Macomb County Prosecuting Attorney  
Macomb County Administration Building  
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Mount Clemens, MI 48043  
(586) 469-5350

Dated: April 8, 2014

**STATE OF MICHIGAN**

**IN THE 16<sup>TH</sup> CIRCUIT COURT**

**PEOPLE OF THE STATE OF MICHIGAN,**

Plaintiff,

Hon. Diane M. Druzinski

Vs.

Macomb CC No. 09-5244-FC

**IHAB MASALMANI,**

Defendant.

**PEOPLE OF THE STATE OF MICHIGAN,**

Plaintiff,

Hon. Diane M. Druzinski

Vs.

Macomb CC No. 09-5243-FC

**ROBERT TAYLOR,**

Defendant

**PROOF OF SERVICE**

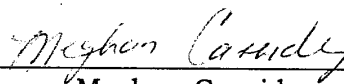
I certify that on April 8, 2014, I mailed a copy of:

**Document: MOTION PURSUANT TO MCL 769.25(3) REQUESTING  
IMPOSITION OF SENTENCES OF LIFE  
IMPRISONMENT WITHOUT THE POSSIBILITY OF  
PAROLE**

**To: Jonathan B.D. Simon  
Attorney for Defendant Taylor  
P O Box 2373  
Birmingham, MI 48012**

**Valerie R. Newman  
Attorney for Defendant Masalmani  
645 Griswold St. Suite 3300  
Detroit, MI 48226**

by first-class mail.

  
Meghan Cassidy

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

THE PEOPLE OF THE STATE OF  
MICHIGAN,

Plaintiff,

Case No. 2009-5243-FC

vs.

IHAB MASALMANI,

Defendant.

PROCEEDINGS

BEFORE THE HONORABLE DIANE M. DRUZINSKI, CIRCUIT JUDGE  
Mount Clemens, Michigan - Tuesday, 21st of October, 2014

APPEARANCES:

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REPORTED BY:

ANGELA M. LITTLE, CSR-6444, RPR  
Certified Court Reporter  
(586) 469-5832

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None.

WITNESSES: DEFENDANT

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1 Mount Clemens, Michigan

2 Tuesday, 21st of

3 October, 2014

4 At about 9:11 a.m.

5 — — —  
6 (Court, Counsel and parties present)

7 THE CLERK: People versus Masalmani.

8 THE COURT: Good morning, counsel. This  
9 is docket 09-5244-FC, date and time set for a hearing. Your  
10 appearances.

11 MR. CATALDO: For the record, your Honor,  
12 William Cataldo, appearing on behalf of the People.

13 MR. ABBOT: Joshua Abbot, appearing on  
14 behalf of the People, your Honor.

15 MS. NEWMAN: Valerie Newman, State  
16 Appellate Defender Office, on behalf of Ihab Masalmani.

17 MS. VAN CAMPEN: Erin Van Campen also from  
18 the State Appellate Defender Officer on behalf of Ihab  
19 Masalmani.

20 THE COURT: Good morning.

21 MS. NEWMAN: We're waiting for our client,  
22 Judge.

23 THE COURT: Okay. Today is the date and  
24 time set for resentencing per MCL 769.25. The prosecution has  
25 sought a nonparolable sentencing and, per the statute, the

1 Court is required to conduct a hearing as part of the  
2 sentencing process and consider the *Miller* factor.

3 *Miller v Alabama* provides substantial  
4 detail regarding what must be considered as part of an  
5 individualized sentencing before a sentence of life without  
6 parole can be imposed on a juvenile.

7 Mandatory life without parole for a  
8 juvenile precludes consideration of his chronological age and  
9 its hallmark features, among them, immaturity, impetuosity,  
10 and failure to appreciate risks and consequences. It prevents  
11 taking into account the family and home environment that  
12 surrounds him, from which he cannot usually extricate himself  
13 no matter how brutal or dysfunction. It neglects the  
14 circumstances of the homicide offense, including the extent of  
15 his participation in the conduct and the way family and peer  
16 pressures may have affected him. Indeed, it ignores that he  
17 might have been charged and convicted of a lesser offense if  
18 not for the incompetencies associated with youth, for example,  
19 his inability to deal with police officers or prosecutors,  
20 including on a plea agreement, or his incapacity to assist his  
21 own attorneys. And finally, this mandatory punishment  
22 disregards the possibility of rehabilitation even when the  
23 circumstances most suggest it.

24 And that's a quote from *Miller v Alabama*.  
25 So today we're going to begin the hearing on Mr. Masalmani

1 regarding these factors as they existed at the time of the  
2 offense on this docket. I think before we begin, though,  
3 counsel have stipulated to the admission of certain exhibits  
4 and I'll put those on the record, and then my court reporter  
5 will mark those as exhibits during this matter. And, counsel,  
6 if I misspeak, please let me know. Exhibit A is going to be  
7 the CV of Lyle D. Danuloff. Exhibit B is going to be the CV  
8 of Daniel Keating. Exhibit C is going to be Dr. Keating's  
9 report. Exhibit D is going to be the CV of Desmond Patton.  
10 Exhibit E is going to be the CV of Frank Vandervort, and  
11 Exhibit F is going to be the Stipulated Statement of Facts for  
12 the purposes of the sentencing hearing.

13 Mr. Cataldo, is that your understanding of  
14 the stipulated exhibits?

15 MR. CATALDO: Yes, your Honor.

16 THE COURT: Ms. Newman, is that your  
17 understanding of the stipulated exhibits?

18 MS. NEWMAN: Yes, your Honor.

19 THE COURT: Okay. We can mark them when  
20 we take a break then. Ms. Newman, do you have any brief  
21 opening remarks?

22 MS. NEWMAN: I do, Judge. Good morning,  
23 Judge. You've correctly cited the major factors for *Miller*,  
24 so I'm not going to repeat any of that. What I would like to  
25 do is sort of give a little bit of setup for this hearing.

1 THE COURT: Okay.

2 MS. NEWMAN: You know, when I think of  
3 Ihab's life, I think of like an opera. And when you go to an  
4 opera and imagine an opera without subtitles, you would  
5 understand basically what's going on. You would get the gist,  
6 the major things, but you'd miss a lot of nuances and a lot of  
7 other -- the fine details of what's going on. And, Ihab came  
8 over here as a young child. He was only nine-years old. Upon  
9 arrival in the United States, he was promptly placed into the  
10 immigration detention and after that he was sent to a  
11 relative's home in California where at least his sister, if  
12 not both of them, were abused. They were removed from that  
13 home and sent with relatives in Michigan where they were again  
14 abused, not fed, not put in school, made to work in the family  
15 restaurant until the aunt abandoned both Ihab and his sister  
16 Torpha. They came to the attention of CPS workers when  
17 Torpha, his sister, caught a cab to go to the hospital because  
18 she was so sick, and that's when the intervention of the  
19 authorities came. And at this point, they already been in the  
20 county a little while and had been hopped around from  
21 basically by themselves cross country. And then CPS was  
22 involved, and so, for Ihab, he bounced around between foster  
23 homes. It'll come out that he ran away from some placements.  
24 He had some trouble sort of integrating into life here in the  
25 United States. It's also going to come out that he was an

1 extremely likable child. He wanted to please people. He  
2 wanted to get along, and he often told his social workers and  
3 others who were involved with him that he didn't understand  
4 why he did the things that he did. And you'll hear a lot of  
5 this. We're going to set the groundwork through Dr. Keating.

6 So, our first witness today is going to be  
7 Dr. Keating and he's going to talk a little bit about the  
8 science that involved in underpins not only the *Miller*  
9 decision but the U.S. Supreme Court's decisions prior to  
10 *Miller*, *Roper*, and *Graham* and other decisions that have been  
11 building over the last decade or so where U.S. Supreme Court  
12 has more and more adopted the brain science to make the points  
13 that you make about youths and how youths have a greater  
14 capacity for rehabilitation and they have a lessened  
15 culpability and largely that's because of what anyone who's  
16 ever dealt with a child knows. You're a parent, grandparent,  
17 niece, aunts, any contact with a child, you know that children  
18 are impulsive and they often make rash decisions and don't  
19 think about the consequences. And we now have science to help  
20 us understand why that happens and where the line is that when  
21 you sort of your brain develops into a mature individual. And  
22 so, that's basically the outlines for today's event is going  
23 to be the brain science that's behind a little bit about the  
24 brain science. It's very complicated. I'll do my best to  
25 keep it understandable. Dr. Keating will do his best to keep

1 it understandable. And we'll hear from the social worker and  
2 a lawyer who had extensive contact with Mr. Masalmani, as well  
3 as an expert who can talk about cultural violence and what  
4 happens to youths. So with that brief opening remark, I  
5 don't know if the prosecutor has any opening, but I'm ready to  
6 call my first witness.

7 THE COURT: And I think just for purposes  
8 of those that are here our, tentative schedule on this today  
9 Dr. Keating, witness Jennifer Keller, witness William Ladd and  
10 Dr. Patton. We're not going to be conducting the hearing  
11 tomorrow because Ms. Newman is going to be otherwise occupied.  
12 We're going to start Thursday morning, I think we'll be able  
13 to start and conclude Thursday morning with the evidentiary  
14 hearing regarding co-defendant Taylor, and then we will  
15 conclude with your client and the remaining witnesses on  
16 Friday; is that correct?

17 MS. NEWMAN: That's correct, your Honor.

18 THE COURT: Okay. Mr. Cataldo, any brief  
19 remarks on behalf of the prosecution?

20 MR. CATALDO: Yes, your Honor. If this  
21 case or this hearing is going to be described as an opera,  
22 then I would say it's a tragedy. And I would say it's a  
23 tragedy for the Landry family, for Matt Landry. If science  
24 tells us, as Dr. Keating is going to testify, as the other  
25 experts will testify, that now we have objective findings to

1 support that rehabilitation works, that same science will also  
2 tell us that there is a certain percentage of youths who are  
3 incorrigible and simply cannot be fixed.

4 Our position is going to be that Mr.  
5 Masalmani fits into that latter category based on many of  
6 things that Ms. Newman just stated, including the fact that  
7 when he was brought over there were four foster placements  
8 that he ran from. Then you got truancies, you got seven AWOLs  
9 from the juvie detention system. It was on that seventh one  
10 that ten weeks later he murders, executes Matt Landry. During  
11 the time he's in juvie detention, during one of the AWOLs,  
12 he's running while he's handcuffed and in shackles like he is  
13 here. That during many of the times he ran, he picked up an  
14 additional seven criminal charges that were filed as petitions  
15 in the juvenile court, and this behavior then culminates with  
16 the execution of Matt Landry, a potential kidnapping, and bank  
17 robbery, and carjacking in a three-day crime spree in Macomb  
18 County and then includes in the four years that he's been at  
19 the Department of Corrections, 22 major misconducts to show  
20 that the criminal pattern has started from age nine or ten and  
21 has continued through now. Therefore, that's the evidence that  
22 we're going to present to this court to ask the Court to base  
23 its decision to maintain the mandatory life sentence.

24 THE COURT: Thank you, counsel. Your first  
25 witness, Ms. Newman.



1 MS. NEWMAN: We'd call Dr. Keating.

2 THE COURT: Sir, come across the  
3 courtroom, up this ramp. I'll swear you in and then you can  
4 have a seat in the witness stand. Good morning.

5 DR. KEATING: Good morning.

6 THE COURT: Will you please raise your  
7 right hand. Do you swear or affirm that the testimony you are  
8 about to give will be the truth?

9 THE WITNESS: I do so swear.

10 THE COURT: Your name, sir.

11 THE DEFENDANT: Daniel P. Keating.

12 THE COURT: Please have a seat and make  
13 sure you speak into the microphone for us. Okay.

14 DANIEL P. KEATING,  
15 after having been first duly sworn to tell the truth the whole  
16 truth and nothing but the truth, was examined and testified as  
17 follows:

18 DIRECT EXAMINATION

19 BY MS. NEWMAN:

20 Q Good morning, Dr. Keating. Could you please state your name  
21 for the record?

22 A Daniel P. Keating.

23 Q All right.

24 MS. NEWMAN: And, Judge, this is  
25 Dr. Keating's curriculum vitae was already admitted into the

1 record as --

2 THE COURT: That is exhibit --

3 MS. NEWMAN: Exhibit B. I'll still go  
4 over some of the qualifications just so we have --

5 MR. CATALDO: Not to cut you off, can I  
6 ask if can move the podium over. It sits so low I have a hard  
7 time because I'm short seeing over the podium to actually see  
8 Dr. Keating?

9 BY MS. NEWMAN:

10 Q All right. So, Dr. Keating, you have a 19-page CV, so we're  
11 not going to go through the whole thing. And the judge has  
12 it, but I'd like to hit some of the highlights for the judge.  
13 So can you first explain what your title is?

14 A I'm a Professor of Psychology, Psychiatry and Pediatrics at  
15 the University of Michigan and also a research professor in  
16 the Survey Research Center at the Institute for Social  
17 Research also at the University of Michigan.

18 Q All right. And what degrees do you hold?

19 A I have a bachelor's degree from College of Holy Cross in  
20 Massachusetts and a masters and a Ph.D. from the Johns Hopkins  
21 University in New Baltimore.

22 Q All right. I just want to highlight some of your current  
23 professional positions if you could of what --

24 A I'm not sure beyond just the titles or?

25 Q Sure. It look likes -- you did give the titles. I apologize.

1 So also you're currently doing some funded research. Can you  
2 explain what funded research means?

3 A Sure. The funded research is essentially having entities  
4 provide money to do various kinds of research. In some cases  
5 it's from the federal government in the form of an NIH or NSF  
6 grant. Sometimes it's from organizations that provide  
7 research funding to carry out various kinds of activities.

8 Q Is it difficult to obtain this type of funding?

9 A Yes. Well, particularly from NIH in recent years it's become  
10 particularly difficult. I think the success rate at NIH is  
11 around 10 to 12 percent these days.

12 Q All right. And what is your current funded research project?

13 A So the current funded -- my main current funded research  
14 project is from NIH that we began in June of this year and  
15 focuses on the neurodevelopmental pathways underlining  
16 adolescent health risk behavior, and we will be doing a  
17 variety of studies looking at a large sample of adolescents in  
18 terms of their self reports about risk behavior and various  
19 kinds of personality and other characteristics and then we  
20 will be doing some brain imagining from the subset of those as  
21 high and average risk adolescents.

22 Q And do you have other funded research?

23 A Yes. So a relatively small grant from the Society Research in  
24 Child Development which is actually it's just completed --  
25 well, I have to send the final report in but it's just been

1 completed, where we organized a conference last May with a  
2 variety of people internationally to look at an attempt to  
3 bring together population science and neuroscience. So the  
4 issue is that we would like to have a much more representative  
5 set of brains to be able to try and make our inferences from  
6 and so, there are a variety of efforts around the world and  
7 probably launching here in the US to try to do that, so that  
8 was a conference for those purposes.

9 A third funded research project is I'm the  
10 principal investigator for a project that's funded by the  
11 University Research Corridor, which involves Michigan State  
12 University, Michigan and Wayne State University on newborn  
13 blood spots, not particularly relevant to today but we're  
14 looking at a variety of things having to do with being able to  
15 use the archive dried newborn blood spots to go backwards in  
16 time to see what sorts of things were going on in -- during  
17 the fetal period in terms of what's going on.

18 Q All right. And did you also have a -- okay. That's fine.  
19 And then in terms of publications, you want -- anything in  
20 particularly relevant to what we're talking about here today?  
21 You have pages and pages of publications but highlight the  
22 most relevant.

23 A The ones that are probably the most relevant are obviously the  
24 ones that focus on adolescent developmental in particularly to  
25 adolescent cognitive and brain development. Among the recent

1 publications, kind of started from the most recent and going  
2 back, there's a paper in a French journal called "Enfance,"  
3 which is on the title Cognitive and Brain Development, and  
4 it's a shorter paper but it's an overview where the current  
5 state plays. I have a chapter in the Encyclopedia of  
6 Adolescence on cognitive development from a couple of years  
7 back. I have a chapter in Scholarly Collection called  
8 "Adolescent, Minds in the Making," which is a kind of a  
9 historical overview. It's a book of sort of understanding  
10 adolescent development through the scientific autobiography of  
11 a variety of people who contributed to the field. Going back  
12 even further in time, I did prepare for the senate of Canada a  
13 report on the use of criminal justice system and the issues of  
14 cognitive and brain development as they pertain to that.

15 There are others I could probably mention,  
16 but those are the ones that come most readily to mind as  
17 directly on point.

18 Q All right. And in terms of scholarly and professional  
19 activities, again you have a multitude, but anything that's  
20 particularly relevant to these proceedings?

21 A Probably the one most relevant for today is that I was a  
22 member of -- there was a MacArthur Foundation Research Network  
23 on Adolescent Development in Juvenile Justice that I  
24 participated in for a number of years. My good friend and  
25 colleague Dr. Larry Steinberg, Temple University, was the head

1 of that research network and a variety of these issues we  
2 spent a fair bit of time discussing and trying to understand  
3 in terms of that research foundation enterprise.

4 MS. NEWMAN: Judge, and I know the  
5 prosecutor has stipulated to Dr. Keating's qualifications, but  
6 I'd like to specifically ask that he be recognized as an  
7 expert in cognitive and brain development in adolescents?

8 MR. CATALDO: Oh, absolutely, your Honor.  
9 No objection.

10 THE COURT: The Court does recognize him  
11 under the appropriate rules of evidence as an expert in that  
12 field.

13 MS. NEWMAN: Thank you, your Honor.

14 BY MS. NEWMAN:

15 Q Sir, I want to turn now to sort of the question at hand. And  
16 are you familiar with the United States Supreme Court case of  
17 *Miller* versus Alabama?

18 A I am.

19 Q And how are you familiar with that case?

20 A I'm most familiar with it through reading carefully the brief  
21 that was submitted by the American Psychological Association,  
22 the American Psychiatric Association, and the National  
23 Association of Social Workers. A lot of material that is in  
24 that brief were topics that we discussed in our MacArthur  
25 Research Foundation Network at some length and many of the

1 folks that are cited as authorities in there are -- were  
2 members of that network and their work is a primary focus of  
3 what we were talking about at the time. So, although I was no  
4 longer working with the network when *Miller* was before the  
5 court, I was, of course, remained very interested  
6 professionally to see what was going on, and so that part of  
7 *Miller* I'm quite familiar with. The overall ruling and the  
8 full opinion, I have not reviewed in any detail.

9 Q All right. And did you have anything to do with the briefs  
10 that were submitted on behalf of those associations?

11 A No, not directly. It was the material that had been generated  
12 the by network was then used by the folks who were preparing  
13 the brief.

14 Q So you were involved?

15 A In the discussions leading up to it in that some of my work is  
16 cited in it and so forth.

17 Q Okay. And then you prepared a report that we submitted to the  
18 Court?

19 MS. NEWMAN: Judge, that's Exhibit C or  
20 three that the Court should have and the prosecutor has.

21 BY MS. NEWMAN:

22 Q Underlining the brain science, right, with regard to the  
23 *Miller* decision. So, before we get to the brain science, I  
24 want to ask you just a couple of questions. You're familiar  
25 with the cutoff, the age cutoff that the U.S. Supreme Court



1 has in the *Miller* decision?

2 A I am.

3 Q Okay. And what is that age cutoff?

4 A Age 18.

5 Q Okay. And what do you think about that cutoff?

6 A I think it's a legal bright-line that is not particularly well  
7 based in science. Presumably there were reasons to draw that  
8 line but it would not be -- if one were drawing the line on  
9 the basis of the existing evidence at this point in time, one  
10 would probably not choose -- one would not choose the age of  
11 18.

12 Q Okay. Is there an age that would be chosen based on the  
13 science?

14 A Based on the science, I think the science doesn't give us  
15 exact precise ages for these sort of things. It's a  
16 continuum, but I would think that the scientific consensus now  
17 would place that age somewhere in the mid-20s, the 23 to  
18 25-year old age range generally speaking on average.  
19 Certainly not 18.

20 Q Thank you. And I think we're going to ask how you got that  
21 way?

22 MS. NEWMAN: Judge, I'm not sure the best  
23 way to do this. I'm sorry, but I intended to have a much  
24 bigger blowup than that and I don't know if you can see it. I  
25 thought it would be helpful -- I don't know. It's so small.

1 THE COURT: I can see it.

2 BY MS. NEWMAN:

3 Q All right. So, let's start off in very general terms.

4 A Okay?

5 Q Can you explain to us the different parts of the brain and  
6 what they do?

7 A Sure. Well, I'll restrict myself to the parts of the brain  
8 that are relevant to *Miller* because obviously there are many  
9 parts of the brain. But just to orient folks if you're not  
10 familiar with it, we're basically looking at a slice of the  
11 brain kind of from the middle going out. This of course is  
12 the prefrontal cortex, the frontal lobes, which is kind of in  
13 this part of -- this part of the head. Down here, of course,  
14 is the brainstem where the brain connects to the spinal cord.  
15 What we see, of course, is the cortex because that's the top  
16 layer of the brain. The ones that are most particularly  
17 relevant here are two circuit structures and circuits. The  
18 first is what we refer to as the prefrontal cortex, right up  
19 here (indicating) in the front of brain, or the PFC is the  
20 sort of way it gets referred to usually, and we can talk more  
21 about this, but the prefrontal cortex is essentially the place  
22 where executive functions happen. Very simple ones like  
23 working memory and so forth, but also more complex ones like  
24 judgment, decision-making, impulse control and so forth.

25 The second, for our purposes, most

1 important part of the brain is what's known as the limbic  
2 system and it's several different pieces of the brain. But  
3 basically what the limbic system does, it's an arousal system,  
4 it's an incentive system, and a reward system. And so it's  
5 how those various pieces come together. The one key part of  
6 it is down here, this little thing here (indicating) is the  
7 amygdala. And that's the trigger for a lot of emotional  
8 reactions. When we confront something particularly that's  
9 alarming or fearful or arousing really in anyway, it's the  
10 amygdala tends to fire off first and it creates a cascade of  
11 activity. The cascade goes through kind of this section of  
12 the brain (indicating). We can't see all of it because it's  
13 subcortical, but it goes through this section of brain  
14 (indicating). And in simple terms, that linkage from the  
15 amygdala is what's known as the ventral striatum. And the  
16 ventral striatum essentially is the regulator of a variety of  
17 these kinds of responses. Ultimately, the ventral striatum  
18 interfaces with the prefrontal cortex, particularly in what's  
19 known as the ventromedial prefrontal cortex, and various kinds  
20 of action plans, so it's another kind of a simplified version.  
21 But if we think of it really as the colloquial expression is  
22 that we think of often as the top brain, which is the judgment  
23 decision-making governance, and the limbic system all through  
24 here (indicating) is really kind of the arousal, reward, and  
25 incentive system. The one thing that I should mention is this

1 is also an area that's been filled with a lot of dopamine  
2 receptors, which are the things that give us a trigger for  
3 pleasure. When those are stimulated, that's the area that  
4 gets stimulated.

5 Q All right. So can we try and break this down a little bit.  
6 So if I'm, you know, an adolescent, you know, how does my  
7 brain function differ from that of someone who's more mature?

8 A Okay. So there are two --

9 Q Sort of step-by-step if you could.

10 A Sure. Yeah. So there are two, two very big differences in  
11 that respect what's known as this bottom brain or the limbic  
12 system which comprises the amygdala, the ventral striatum  
13 connecting to the cortex, that limbic system around early to  
14 mid-adolescence, around 13 or 14 on average, it becomes much  
15 more activated. It becomes much more arousal. In fact, it  
16 goes to a level of activation that's generally higher than a  
17 an adult will experience. So the speed of arousal, the level  
18 of arousal, as well as the responsiveness to incentives. So  
19 the other thing that happens at around that period of time,  
20 actually a little bit earlier, is what's known as  
21 synaptogenesis, which means that we have this huge new  
22 proliferation of possible brain circuit wiring cells. These  
23 are synapses. So we have a huge new rebirth of these synapses  
24 just before this period of time. Among them are a whole set  
25 of a surge of dopamine receptors. You have many more dopamine

1 receptors in adolescents than we will eventually have as  
2 adults. They tend to die off over time.

3 Q Can you explain what does that mean?

4 A So, the dopamine receptors essentially mean that the things  
5 that, the dopamine system is the thing that signals to our  
6 body that was a good thing, that was a pleasurable thing, I  
7 would like to have more of that. It's a way of marking our  
8 memory to tell us what things we want to do to get that good  
9 thing to happen. Now it's a dumb system, right. So if you  
10 take drugs, the dopamine system goes into high gear and it  
11 tells you taking drugs is a good thing because your body likes  
12 the feeling, right. Positive social interactions in a more a  
13 healthy fashion also gives us a big dopamine surge and that  
14 feels very positive and that marks that as something we should  
15 also want to do. So it's not a system that discriminates  
16 among good pleasure givers and bad pleasure givers. Okay. It  
17 just simply tells us that was something we want to try to do  
18 again because we like the feeling that it's giving us. Those  
19 are elevated in by early adolescence. Those are very  
20 evaluated.

21 So basically what you're talking about  
22 here then is a level of activity and receptivity of the limbic  
23 or bottom brain system that is higher during early to mid  
24 going into late adolescence that it will be at any other point  
25 in life. Much higher than in childhood, higher than in

1 adulthood. So that's one system.

2 Q All right. Is there any brake on that system?

3 A Well, the brake on the system would be the top brain. So the  
4 brake on the system, if we think of that as an accelerator,  
5 which is a metaphor that's often used, the brake in the system  
6 would be in the prefrontal cortex. So the prefrontal cortex  
7 is, as I mentioned, it's the decision -- it's a decision  
8 maker, it's an executive. You can think of it as the CEO of  
9 the brain. It's the one that decides what things will get  
10 done and won't get done and how to organize those various  
11 sorts of activities.

12 Q So how do those two work together? So that if you're  
13 mid/early adolescence, you're getting this rise and  
14 pleasurable, this is a good thing, I like it, how does that  
15 executive function break down?

16 A The executive function, the prefrontal cortex, is designed as  
17 the brake on the system but it develops much more slowly than  
18 the limbic system. So as the limbic system, we have a big  
19 surge and then it tails off. The prefrontal cortex just kind  
20 of keeps going along on a linear path and doesn't reach full  
21 maturity until the mid-20s. Hence, my earlier answer I doubt  
22 if you were going by the science. So there are two things  
23 about the prefrontal cortex: One is this decision-making  
24 integration of information decision-making and the other  
25 important thing about the prefrontal cortex is that over that

1 same period of time it will project to the rest of the brain,  
2 not just to the limbic system but to the rest of the brain so  
3 that more and more of the activity of the brain is being  
4 governed by the prefrontal cortex. And we know that from a  
5 variety of things that are known as white matter increases,  
6 white matter means that's a physical indicator of strong  
7 connections between different parts of the brain. The biggest  
8 growth in white matter is between the prefrontal cortex and  
9 the rest of brain during the period from early adolescence  
10 into the mid-20s.

11 Q And, so, because that prefrontal cortex is your brakes on this  
12 surge of pleasurable things going on --

13 A That's right.

14 Q -- it's developing slower, is it fair to say that's probably  
15 reached -- that that's the crux of the brain science of why  
16 adolescents are getting this enormous surge of pleasurable  
17 things and they don't have a lot to put the brakes on?

18 A And so the term in the literature at the moment that's used to  
19 describe that is what's called a "developmental maturity  
20 mismatch." You have a very fast maturing bottom brain limbic  
21 system going to a quite high level and you have a slower  
22 developing top brain system, and so the difference between the  
23 fast developing limbic system and the slower developing  
24 prefrontal cortex system is really the crux of the matter with  
25 respect to what's called a developmental maturity mismatch,

1 which is associated with a lot of behaviors that show that  
2 same age curve; that show an increase in mid to early  
3 adolescence. In the work that we're doing, particularly  
4 looking at health risk behaviors, which is known as behavioral  
5 misadventure, it is attributed to that developmental maturity  
6 mismatch.

7 Q All right. Sir, I'm just going to ask you, can you give us  
8 some very specific examples to make this a little more  
9 concrete in terms of what -- how this works in adolescents and  
10 what it really means?

11 A Sure. So one of the ways you can think there are several  
12 different ways that adolescence behavior will differ because  
13 of attributable to this what we know about the brain. One is  
14 that in arousing situations or high emotion situations, what  
15 we call often call hot cognition, impulsivity is more likely  
16 to prevail than good judgment. So individuals will be making  
17 choices that are not particularly good choices. So they're  
18 invited to come over to somebody's house and somebody has a  
19 case of beer and do you want to sit down and drink a case of  
20 beer. They have some marijuana, how about sharing. So they  
21 kind of impulsively go along for a whole variety of reasons.  
22 So in a sense they're on the train and it's moving before  
23 they've even thought about is it a good idea to get on that  
24 train, right. So, it's moving along. Another way is that  
25 once engaged in an activity, so they're now carrying out this



1 plan, you know, a plan that would generally be thought of as  
2 not a good thing to do, they are then kind of fully absorbed  
3 in executing that plan, so what limited prefrontal cortex  
4 abilities they have are engaged in carrying out the plan  
5 they're engaged in. They have very little left over to think  
6 about, "Gee, should I get off this train," or "Maybe I should  
7 get off this train but I have no idea how to get off this  
8 train," right. So the ability both to resist getting onto a  
9 path that is not -- that is bad, right, so that it reflects  
10 poor impulsive judgment, or having the capacity to change that  
11 path, get off the train at some later point, is another  
12 version of that developmental maturity mismatch.

13 Q All right. So these would be the hallmarks of youth that the  
14 United States Supreme Court refers to and the Judge referred  
15 to when she first gave her remarks in terms of that  
16 impetuosity, that immaturity, and the value to appreciate the  
17 risks and consequences, they are all explained by this --

18 A Yes.

19 Q -- mismatch in terms of the bottom brain and the top brain?

20 A That's correct.

21 Q So you've talked about the behavioral misadventure. Can you  
22 explain what that means?

23 A Well, this is -- it's generally true at adolescent development  
24 but it's particularly relevant in health risk behavior, risk  
25 behaviors of all kinds. We see it in the epidemiology in the

1 study of large populations and their health and problems with  
2 health, so behavioral misadventure essentially identifies the  
3 reality that the period of adolescence generally speaking is  
4 the physiologically most healthy part of the life-span. The  
5 childhood immune responses have been tuned up so there are  
6 very few of those that are new to the body so the body's  
7 prepared to deal with a variety of those things. From the  
8 mid-20s on, we have a slow steady slide in terms of the  
9 physiology of our body, some of us faster than others, but for  
10 everyone it kind of goes down. So this is a period where you  
11 have in a sense the most physiologically healthy period of the  
12 life-span. Nevertheless, we have much higher rates of  
13 morbidity and mortality than we ought to expect given that  
14 physiological integrity during that period of time. The  
15 reason is --

16 Q Can I stop you --

17 A Yeah. Sure.

18 Q -- I just want to make sure that we're understanding.

19 A Right.

20 Q So you're saying during your high adolescence, right, I'll  
21 call that 15 to mid-20s.

22 A Thirteen to mid-20s.

23 Q Thirteen to mid-20s, your body's in peak condition?

24 A On average that's true.

25 Q On average you're in peak condition and everything is the best

1 shape you're going to be in for the rest of your life?

2 A Right.

3 Q But, yet, you're saying that there's a high incidence of  
4 morbidity, meaning there's a lot of death?

5 A Illness --

6 Q And illness --

7 A Morbidity, illness, injury, and mortality deaths that you  
8 would not expect to have. Above what you would expect to have  
9 given the physiology of the --

10 Q Okay. And then you were going to explain why?

11 A And so basically the reason is what's known as behavioral  
12 misadventure. Behavioral misadventure is essentially all of  
13 the risky stuff that individuals do during this period of time  
14 for the reasons that we've just been talking about. And those  
15 would include things like drinking and other substance use and  
16 exploration for which the individual is more likely to proceed  
17 towards abuse and eventually perhaps even addiction. That is  
18 an area. Unsafe sexual practices are another area that lead  
19 to STDs and STI. Just generally reckless behavior, taking  
20 risks when you don't need to that could lead to serious  
21 injury. Driving and driving recklessly is another area. So  
22 in a sense all of the things that we know from common sense  
23 and the observation of our own past and our own kids, those  
24 are the things that kids do and all of them on a population  
25 level add up to a much higher level of morbidity and mortality

1       than we ought to expect.

2       Q     All right. And, again, that's all based on the brain science?

3       A     It is entirely consistent with the brain science. It conforms  
4       also with a lot of detailed behavioral science, cognitive  
5       science, and health science.

6       Q     All right. So I want to move now to -- so I think we have a  
7       pretty good understanding of the brain, how it works and the  
8       challenges of being an adolescent and controlling everything.  
9       Now, if you have an adolescent who's not been on a good path,  
10      whether it's any of these risk-taking behaviors, what about  
11      the capacity for rehabilitation. I mean, what explains in the  
12      brain science how that works?

13      A     Sure. So I mentioned earlier this process that's known as  
14      synaptogenesis where you get a whole lot of extra potential --  
15      a lot of synapses get created, get born during this particular  
16      period of time. What follows that period of synaptogenesis is  
17      what's known as synaptic pruning. So if you can imagine a  
18      bush and you got a whole lot of extra growth all of a sudden,  
19      you're going to trim that bush back in order to make it a  
20      functional bush. The synaptic pruning that happens during the  
21      period again roughly from 12, 13 to mid-20s is driven to a  
22      very large extent by the experiences that the individual has  
23      during that period of time.

24                               Another way of thinking about this is  
25      what's known as neural plasticity; that you have a relatively

1 more plastic brain. So the two periods in life where you have  
2 a very plastic brain; that is, it can be shaped by experience,  
3 are from the fetal period through early childhood and then  
4 again during the adolescent period. What that means is what  
5 you experience during that period of time is going to reshape  
6 the brain in a particular way based on those experiences. The  
7 particular mechanism through which this happens, the simple  
8 term that's used -- has been used for decades is what's known  
9 as fire together, wire together. The things that happen  
10 together get wired up. That's the white matter I talked  
11 about. Those things that become well worth circuits it's  
12 white because it's -- when you look at it in a brain image,  
13 it's white because it's covered with a layer of fat which  
14 means that those circuits are highly insulated and much faster  
15 and much more accurate than those areas that are not  
16 insulated. And so this synaptic pruning, the shaping of this  
17 plastic brain, is going on very assertively during this period  
18 of development, and so that the individual there are various  
19 ways that that brain can get reshaped during that period of  
20 time.

21 We retain neural plasticity throughout  
22 life, so let's be clear about that, but at a much lower rate  
23 and not in a variety of the areas that we would be the most  
24 concerned about. So the synaptogenesis and neural plasticity  
25 of the prefrontal cortex is heightened. It's very substantial

1 during the adolescent period and in other areas as well. As  
2 older adults generally speaking, the primary site of neural  
3 plasticity is what's known as hippocampal synaptogenesis,  
4 which basically means you're getting new nerves are born and  
5 will get wired up to your learning system. You can learn new  
6 things throughout life, because you're continually getting new  
7 things that you could wire up. But, you only -- it's use it  
8 or lose it. If you don't fire it together, it doesn't wire  
9 together and they just die off. So basically the particular  
10 thing about adolescence is that there's a lot of neural  
11 plasticity and a lot of it particularly in the prefrontal  
12 cortex.

13 Q All right. And the U.S. Supreme Court has referred to a great  
14 capacity for rehabilitation in, you know, in adolescents. And  
15 the Court also references, you know, people that have been in  
16 very traumatic upbringings from which they can't extricate  
17 themselves, again from the Judge's quote that she read at the  
18 beginning. Does that have an influence on this fire/wire  
19 synaptic pruning process if you're in a stable home with, you  
20 know, people who are there consistently for you and love you  
21 and give you guidance and try to help you learn and grow  
22 versus, you know, a chaotic environment or an abusive  
23 environment or changing environment, how would those make a  
24 difference?

25 A Right. So this synaptic pruning is not just a characteristic

1 of adolescences. Of course, it begins in the wound, right,  
2 and so it carries on throughout life. So the early  
3 experiences prior to adolescence, depending on what those have  
4 been, harsh versus gentle environments is a general way of  
5 describing that, will have an impact on how the brain is  
6 shaped. It will obviously have an impact on how the brain is  
7 shaped. Some systems are very much more dramatically effected  
8 than others. Our stress response system is particularly  
9 sensitive to harsh environments and we'll develop in a way  
10 that we become hyperresponsive to various kinds of the things  
11 that are going on. Other parts of the brain retain a lot more  
12 plasticity. So is the case that the prospects for  
13 rehabilitation are going to be associated with that  
14 developmental history. There's -- it's clear that there are  
15 various things that will make it harder or easier for changes  
16 to occur at a later point in development. What went on before  
17 adolescence can make it harder or easier for things to change  
18 during adolescence.

19 Q And then what would be -- so let's talk a little bit then  
20 about, about age.

21 A Okay.

22 Q Because we've already -- we started off talking about the  
23 18-year old cutoff and how that's not based on science --

24 A Right.

25 Q -- but it's a cutoff the court chose.

1 A Right.

2 Q Is there a way that you can look at -- so, let me back up one  
3 second.

4 Have you ever met Mr. Masalmani?

5 A I have not.

6 Q Okay. You've not interviewed him?

7 A I have not.

8 Q All right. Have I shared any documents with you about his  
9 prison record or anything?

10 A No.

11 Q Okay. So you're just talking about generic brain science?

12 A Yes.

13 Q So, Mr. Masalmani was 17 years and eight months at the time  
14 that these crimes were committed. And, of course, we know we  
15 have an -- a very close to what would be the 18-year old  
16 cutoff?

17 A Right.

18 Q Is there a way that you can say that his 17-year old and  
19 eight-month brain is significantly different than an 18-year  
20 old, you know, that four months would have made a significant  
21 difference in his development?

22 A No. Our evidence is not that fine grain. What we're talking  
23 about are obviously sort of to the extent we have the data  
24 population averages and this is a process that goes on as  
25 we've talked about into the mid-20s. So dividing between this



1 spot and another spot is not a thing that we're able to do.  
2 An analogy would be, you know, I mean, you know, in forensic  
3 pathology if you have a skeleton that you think is a minor and  
4 you want to know how old it is, one of the things you can do  
5 certain bones, particularly in the wrist, you can measure to  
6 see whether how close they are to being closed or not closed.  
7 With that information, you can say a range that this  
8 individual was, you know, between eight and ten or something  
9 like that, but you're not going to be able to make  
10 differentiations as fine grain as that for that. You  
11 certainly can by a similar reasoning you can't make that kind  
12 of fine grain distinction with respect where the brain science  
13 is.

14 Q So you can't say that this 17-year or that there's any -- you  
15 couldn't look at a brain and say that this is a 17-year old or  
16 an 18-year old or an 19-year old?

17 A No, you could not.

18 Q Okay. And then would you consider it significant enough that  
19 Michigan Department of Corrections has a cutoff of age 26  
20 where they consider that a positive factor in security  
21 classifications. Would that be significant to you?

22 A Well, 26 seems a lot closer to what the science would suggest  
23 for you to reach full maturity, which is in the mid-20s and,  
24 again, with the range, but probably by mid-20s, so that -- to  
25 the extent that I don't know whether that's part of their

1 reasoning but it certainly would be consistent with the  
2 evidence that we know about.

3 Q All right. So if you have a youth who had -- who's had some  
4 -- been in trouble with the law and has exhibited basically  
5 every single one of the hallmarks that the U.S. Supreme Court  
6 references, how do you make -- how would you or can you is it  
7 possible I guess, to make a determination. I mean, the  
8 Supreme Court has said it's going to be the very rare juvenile  
9 offender or the irreparable corruption, I guess, incorrigible,  
10 can't be rehabilitated, deserving of a life sentence?

11 A Right.

12 Q So is there a way that you can --

13 A If I understand, you're asking can you discriminate between at  
14 that younger age between an individual who is likely not to be  
15 rehabilitated compared to an individual who is likely to be  
16 rehabilitated. Is that a fair --

17 Q That's fair. Yup.

18 A To my knowledge there is no way that you could determine that  
19 on the basis of brain evidence at this point in time; that is,  
20 the potential for rehabilitation was found, as I understand  
21 it, in *Miller* as a general characteristic of individuals in  
22 this age range. The specific predictions of a person, a  
23 person's probability of rehabilitation 25 years from now, it  
24 seems to me is not -- claims to not effect, I think would not  
25 be consistent with the brain science; that you could not make

1 that level of specific prediction. Others may deal with  
2 predictions based on other kinds of research that are beyond  
3 my area of expertise.

4 Q All right. But not from a brain science perspective?

5 A Right. Or from general developmental brain science.

6 Q Okay. I think that's all I have, Dr. Keating. I'll turn you  
7 over to the prosecutor. Thank you.

8 THE COURT: Thank you, counsel.

9 Mr. Cataldo.

10 CROSS-EXAMINATION

11 BY MR. CATALDO:

12 Q Good morning, Dr. Keating.

13 A Good morning.

14 Q I don't know if these are really questions or we're just  
15 having a conversation on this topic, so I may not phrase  
16 everything in the form of a question but more in the form of a  
17 statement and ask for your response as we go through and I  
18 guess you're educating the public as well as the Court as well  
19 as me in terms of what this science is all about.

20 A Okay.

21 Q But from what I can tell, your group of scientists, the field,  
22 which has been established for many, many years, sort of  
23 became alarmed when there was this push I guess in the 90s and  
24 early 2000s to make life offenders or move juveniles to adult  
25 court at earlier and earlier ages. Would that be fair to say?

1 A Yes.

2 Q In fact, some states allow I think I read one in the newspaper  
3 a couple weeks ago a nine-year old girl to be charged as an  
4 adult for a murder case for a murder that was committed.

5 A Mm-hmm.

6 Q You have to say yes or no simply because she's taking it down.

7 A I'm not familiar with the case but, yes, that reflects a trend  
8 that -- one of trends that has been out there.

9 Q And that became concerning to you because based on the  
10 information that you're aware of and based on your studies  
11 that just seems I guess inherently unfair based on the  
12 development of the person that was actually being charged?

13 A I think that there -- I think there are three major reasons.  
14 One is that given what we know, I'm talking now from a  
15 developmental neuroscience and developmental science would  
16 generally tell us, that there is the issue of mitigation of  
17 culpability that is attributable to immaturity. Related to  
18 that would be proportionality of sentencing that would reflect  
19 that mitigation culpability. And the third would be the issue  
20 around rehabilitation, the potential for the rehabilitation of  
21 the individual. I think the final not directly related to  
22 those particular sorts of things but there is a good deal of  
23 empirical evidence that suggests that waivers to adult court  
24 have generally had bad consequences, not just for those  
25 individuals, but in terms of recidivism and so forth. Classic

1 study by Jeffrey Fagan who had pointed to that controlling for  
2 a whole host of other factors you, of course, you have no  
3 control for.

4 Q In fact, doctor, I guess I sort of thought you would know who  
5 Dr. Lawrence Steinberg is and it appears that you've worked  
6 with him at the MacArthur Foundation because I did pull some  
7 articles down from that and we're going to talk about in a few  
8 minutes. I mean, even Dr. Steinberg, yourself, people in your  
9 field indicated that not only do we not have a developed  
10 brain at nine, ten or eleven, you might also have a person who  
11 is in terms of competency not capable of fully understanding  
12 just what happens in a courtroom like this and what my role  
13 and what the Judge's role is or what your role would be?

14 A Correct.

15 Q And that causes you, I would assume, some pain as a  
16 professional knowing what you know to see -- I don't want to  
17 use the term railroaded, that seems more like southern  
18 justice, but what we have is a situation in which your science  
19 has shown that people at that age might not be able to help  
20 themselves; and therefore, if they can't help themselves, the  
21 system putting in the system becomes an atrocity?

22 A I think the judicial system itself has made a variety of  
23 decisions that suggest that you need to think of the  
24 competency participating in one's own defense as a necessary  
25 component. Obviously, the judicial system working individuals

1 not competent to participate, then you can't proceed with  
2 trial. And that has been well-known, of course, for mental  
3 health issues for a very long period of time. By analogy, the  
4 same sort of thing would apply for reasons of immaturity. The  
5 individual is not sufficiently mature to be competent to  
6 participate in those proceedings, that becomes an issue. It's  
7 obviously particularly an issue in an adult criminal trial.

8 Q Just so that we're on the same basis, we're going to eliminate  
9 the issues right now someone of IQ and mental retardation.  
10 That's not part of what you have spoken of?

11 A No.

12 Q That's a whole different group of studies?

13 A Right.

14 Q From what I've read, from what you've testified to, from what  
15 I've seen in your article, it would be safe for me to say that  
16 the concerns are magnified in your field the younger the age  
17 of the juvenile. Therefore, somebody who is 12 or 13 going  
18 into an adult system you would have more concern with -- not  
19 that you don't have concern, but you would have more concern  
20 with 12 or 13 than you would somebody who's 17 or 18?

21 A I would say that the probability of some miscarriages are  
22 likely to increase with the youth going down.

23 Q Yes. But you would also have to admit the science shows  
24 studies -- well, I guess everybody matures at a different  
25 level?

1 A Yes. There's a lot of individual differences in maturity.

2 Q So some people or kids or youths at 15, 16, 17 may be more  
3 mature than kids at 18, 19 or 20. We all develop differently?

4 A That's an accurate generalization.

5 Q And we're talking in an spectrum or continuum here?

6 A Right.

7 Q And really you're not a clinician. You're a researcher?

8 A Correct.

9 Q Many of the things that you testified to here go to  
10 generalities, go to the norm?

11 A Correct.

12 Q And there are always then even as a scientist you recognize  
13 exceptions to that norm?

14 A Yes.

15 Q I listen to what you talk about -- first of all, let's go to  
16 age cutoff. Just, I mean, everything I've read from  
17 Dr. Steinberg and MacArthur Foundation, your studies, this  
18 developmental phase starts at an early age and extends I guess  
19 into the 20s?

20 A Mm-hmm.

21 Q Is that a yes?

22 A Yes. Yes.

23 Q We treat you like a defendant. I have to do that.

24 A Yes, that's correct.

25 Q And as I guess you sort of in your field have to live with the

1 law. Would that be safe to say?

2 A I'm not sure I understand the question.

3 Q In a perfect world, in a Stepford world, if you were in charge  
4 like Alexander Haig, and scientist -- you're about one of the  
5 only people that might understand that reference -- and  
6 science were to then determine development and timing, you  
7 wouldn't put a black and white number on it. You would go on  
8 a case-by-case basis?

9 A It would be -- there would be no basis on which to make a  
10 black and white distinction on the general developmental  
11 science or neuroscience, that's correct.

12 Q And that's part of what is difficult for the researchers like  
13 yourself and Dr. Steinberg, you then have to come into a  
14 courtroom like this where we sort of operate in the world of  
15 black and white. Would that be safe to say?

16 A I'm not sure how your world operates, but --

17 Q I think the perfect example is what was I'm going to raise  
18 which is what Ms. Newman raised: Mr. Masalmani at the time of  
19 this crime is 17-years and eight months old. You talked about  
20 the fact and we've indicated that there is that bright line of  
21 18 years of age; yet, you've indicated there really isn't a  
22 whole lot of difference. That four months of development  
23 isn't going to change him at all, is it? Or, the development  
24 of the prefrontal cortex isn't going to change that greatly in  
25 that time period?



1 A I guess two things: One is that I don't know Mr. Masalmani or  
2 his situation, so whether a four month difference would matter  
3 in his particular case, I wouldn't be able to say.

4 Q In general then?

5 A In general, it would depend what happens in that four month  
6 period. There are certainly things like pathway effects where  
7 things can happen and move things along. The other thing I  
8 just want to clarify is when talking about the bright line at  
9 18, that's a legal line. That's not a scientific line.

10 Q And that's the problem I guess that's what I'm getting to. In  
11 your world that's hard -- I mean, you're coming in here to  
12 testify when we want bright-line rules --

13 A Right.

14 Q -- but the studies that you are talking about, your whole  
15 life's work, is not really based on a bright-line  
16 establishment like that?

17 A Right. The science does not support that kind of bright line  
18 divisions.

19 Q And so you come and you give us the wealth of your knowledge  
20 from your research, you're also I guess asked to put a square  
21 peg in a round hole in terms of making it fit within the --  
22 what happens before 18 and what happens after 18. Because  
23 actually what happens after 18 is still part of your study  
24 because your studies and all the studies I see show that the  
25 development goes on into the 20s?

1 A Correct.

2 Q But if, in fact, this had happened four months later at 18  
3 years or 18 months, you wouldn't be here because the  
4 bright-line law would not consider I guess your field of  
5 research?

6 A If I understand your question correctly, yes, I would agree  
7 with that. I mean, the -- may I expand a little bit?

8 Q Yes. Certainly.

9 A And so the point I guess that I would make about this is that  
10 the 18 bright-line division is a legal distinction, not a  
11 scientific distinction. With respect to *Miller*, it seems to  
12 me that it has to do with one of the key issues is the  
13 prospects for rehabilitation. And what we are not, in my  
14 view, able to do is to make accurate predictions that far into  
15 the future with respect to the prospects for rehabilitation.  
16 What we do know is there is a lot of plasticity even at 18,  
17 19, 20, 21 and into the mid-20s. What happens with that  
18 plasticity obviously depends on what happens out to that  
19 individual in the world, but that the reason I think that we  
20 would be reluctant to talk about 17 versus 18 is that there  
21 would be no known reasons to assume significant difference  
22 between the rehabilitative prospects between 17 and 18.

23 Q I guess that's what ultimately all this means that law makes  
24 law is the 18-year old as the bright line, but science  
25 18-years old is not a bright line, science doesn't deal with

1 bright lines?

2 A Not in this respect.

3 Q Okay. You indicate in your report, Dr. Steinberg, MacArthur  
4 Foundation indicates in their reports that when you reach the  
5 age of adolescence at the age of say 16 or 17, you in fact  
6 know the difference between right and wrong?

7 A Yes.

8 Q Almost an adult's perspective of right and wrong but what  
9 you're talking about with the PFC and being the CEO is that  
10 the risk reward situation isn't as developed as our sense of  
11 knowing right from wrong?

12 A The knowing right from wrong is typically assessed in what's  
13 called a "cold cognition" situation where we say do you know  
14 the difference. That is different from an acting it in the  
15 world and acting not understanding in the world.

16 Q I see in the studies they talk about -- and in your  
17 statements, the examples you give are like substance abuse,  
18 drinking beer at a party, unsafe sex practices, generally  
19 reckless behavior, driving recklessly, but in this arena I  
20 guess we're talking about murder. Something would you admit  
21 is significantly greater than the type of behaviors that --  
22 and I'm not saying you intentionally did that. I'm just  
23 simply saying those are the examples that you gave?

24 A Right. I was referring to the behavioral misadventure with  
25 respect to the health risks to the individual. The risk

1 behavior profile would extend beyond that into things like  
2 well known age-crime curve that follows a similar pattern to  
3 risk behavior in general that tends to peak in the  
4 mid-adolescence or early 20s and then drop-off as population  
5 levels. So if we're talking about risk behavior more  
6 generally, then certainly criminal activity would fit that  
7 profile as well.

8 Q In our Christian upbringing, our moral upbringing, even at 16,  
9 17, would you assume most young adults have had the lecture on  
10 the difference between right and wrong and sins and murder and  
11 how drastic murder is compared to, say, stealing meat from a  
12 store?

13 A Sure.

14 Q Even in our public education system, our civic classes at the  
15 time where I guess the PFC is not dopaminized up, not excited,  
16 not in that risk reward decision-making situation that you  
17 talked about before. That individuals are in fact given  
18 information that murder is a heinous crime and murder is  
19 probably the most serious crime that can be committed in an  
20 orderly society?

21 A I think individuals would have a general understanding of  
22 that, yes.

23 Q Even -- I don't want to get into the whole TV and video games,  
24 but I mean there is mass media also so, though, maybe  
25 portraying it with less fear, there is still that information.

1 I mean, all these crime shows talk about the ultimate goal is  
2 punishing somebody who has committed a major crime. And you  
3 would also probably expect that these same kids when we're  
4 talking about the prefrontal cortex and the dopamine and all  
5 that, would know the difference between, say, lying to their  
6 parents would get a particular punishment. Hitting your  
7 sister might get slightly greater punishment. Stealing from  
8 school might get a slightly greater punishment. I mean, even  
9 at that age, 16 and 17, we're talking about an understanding  
10 cognitively that there is an escalation of punishment in terms  
11 of the escalation of the behavior?

12 A If you ask adolescents to analyze situations with respect to  
13 severity of consequences and severity of risks, their  
14 responses would reflect the understanding that you're talking  
15 about.

16 Q Looking at the development of *Miller*, which you have indicated  
17 that you have read, I mean, we've all sort of read it. Only a  
18 handful of people like Ms. Newman actually studied the case  
19 and all of the legal ramifications of it. But, is it  
20 important to the science that was presented through your  
21 research and Dr. Steinberg's research the fact that, and I  
22 guess maybe the fear of *Miller*, individuals' roles in big  
23 crimes vary?

24 A Yes.

25 Q I mean, I guess are you more afraid of somebody being punished

1 for life who is the driver or a lookout in a robbery that goes  
2 bad and somebody gets murdered, the convenient store clerk  
3 gets murdered, versus the person who actually is the one with  
4 the gun making the decision to pull the trigger?

5 A I think I would have to say that my preferences are not sort  
6 of really what I'm here to talk about.

7 Q But I'm asking you about them. You're an expert. I say  
8 you're an expert, but what is your research show? What does  
9 --

10 A Based on the expertise, I would say that it is -- it would be  
11 a higher concern for a nonparticipant to do this, but what I  
12 want to make clear is that I'm not talking about what the  
13 consequences of that difference might be. So it very well  
14 could be a distinction that doesn't make a difference with  
15 respect to what *Miller* has to say.

16 Q But what you've talked here about consequences and kids  
17 involved in big crimes not knowing the consequences.

18 A Right.

19 Q Would you say as an example it might be lesser to a person who  
20 simply going to act as the driver when they go in to rob 711  
21 is going to think less about the fact that somebody's going to  
22 go in and actually shoot somebody versus the kid who's jumping  
23 out the car with the weapon, going in and putting it at  
24 somebody's face. You talked about not being able to, when  
25 you're all dopaminized up, recognize consequences but isn't

1       there really a division in terms of what consequences he might  
2       be thinking of based on the role that he selected at the start  
3       of that crime?

4   A    I would have to say that I think that that would require  
5       digging into the particular individual's -- the particulars of  
6       a particular case. I don't think you can generalize on the  
7       basis of brain science. That is, the individual carrying the  
8       gun may not have had any intention to use that gun until all  
9       of a sudden they did. So whether or not the individual who  
10      abetted that individual to get into that situation is more or  
11      less culpable than the individual who is carrying the gun who  
12      may well not had an intention to do it, I would not be able to  
13      judge that. That really is a basis for looking at the  
14      particular areas of a case that would be more appropriate for  
15      a clinical or a forensic psychologist to address.

16   Q   But you've indicated that -- you used the term of "on the  
17       train." When you're on the train and that train is moving,  
18       they become more fully involved in executing the plan, little  
19       room is left in that front cortex for someone to actually look  
20       at the consequences. So I'm using that as the basis for that  
21       question, because I'm thinking if the person is just simply  
22       driving, he's just waiting -- I mean, his pathways are to look  
23       for where is going to be the escape route, when are they  
24       coming out, are we going to be caught, all of that fear, all  
25       of that anxiety that's going on versus the person who actually

1 has the gun who's now involved with the gun and the person  
2 individually and what's going to happen. You would have to  
3 admit, at least based on your knowledge, that those could be  
4 two different pathways taken for the same exact set of  
5 factors?

6 A I would recognize that there are different situations. The  
7 ramifications between the situations I wouldn't be able to  
8 address without knowing more.

9 Q How long I guess in your studies does that -- when you talk  
10 about being on a train and not being able to get off the  
11 train, how long does that high last? How long does that  
12 dopamine go? Is there just even a general norm for it?

13 A No, because it depends on what the circumstances are. So the  
14 context can continue to support that arousal situation or can  
15 amplify the arousal situation when you're in the middle of it,  
16 or the context could change in a way that would dampened that  
17 arousal.

18 Q In manslaughter cases we have a defense called "heat of  
19 passion," where I come in. My spouse is having sex with  
20 somebody else. I become angered. And in that period of time,  
21 the law indicates that even as an adult I could be clouded and  
22 make a judgment not fully recognizing the consequences. And  
23 that time period can be really determined I guess by the jury.  
24 There is no set of time. But based on what you're talking  
25 about with young adults, could that sort of dopamine high last



1 for days where you're making brash decisions for days, when in  
2 fact you actually have to go to sleep. You have to eat. You  
3 have to stop. You have to do normal activities that are not  
4 involved in that immediate intenseness where you sort of like  
5 get up the next day and the whole thing just simply starts  
6 over again. I guess, can you talk, speak to that as to what  
7 the science says about that behavior?

8 A Yeah. So it would be the case that sort of what you're  
9 talking about is sort of a heat of passion sort of thing which  
10 is actually would be a combination of the dopamine receptors  
11 incentive system in as you've described it would also involve  
12 the cortisol system, the stress responses, the PA axis system,  
13 as you described it, those do have a cyclical component to  
14 them, an elevation and a return. On the other hand, depending  
15 on the context, they're easily reaminated. So the way to  
16 think about this is that you can be having been in such a  
17 situation you can be primed to return to that situation. So  
18 let's assume that you're being, I don't know, if I may, may I  
19 use sort of an animal example. You're being -- for early  
20 human example, right. You're being chased by a predator,  
21 right. You detect that predator, right. And so your cortisol  
22 and your whole limbic system, which involves not just pleasure  
23 but also fear stressors, gets kicked into gear, right. So  
24 you're at a super high level.

25 Q Is this flight or fight?

1 A This is the fight or flight response, right. That has a  
2 natural life course. I mean, it'll keep going as long as  
3 you're engaged in the activity. But, let's assume then to get  
4 away from this predator you climb a tree, right. And you're  
5 up the tree; the predator is waiting for you at the bottom.  
6 Well, your system's going to come back down, right, while  
7 you're up there, but it's going to reanimated as soon as you  
8 realize I've got to do something here as long as that predator  
9 is hanging around. You might even fall asleep if you've built  
10 yourself a little nest up in that tree and waiting for things  
11 to improve. When you wake up and you see that the predator is  
12 still there, your system is going to kick off because you're  
13 primed to be worried about the things that is going on. So a  
14 particular heat of passion or cortisol activation will have a  
15 time course with a drop-off, but it will remain primed as long  
16 as the circumstances that are associated with that present  
17 themselves. Now what those circumstances might be in any  
18 particular situation, you know, you'd have to look at that  
19 particular situation. But, it's not as though your system  
20 goes offline when the immediate, the immediacy of the heat of  
21 passion is gone. Does that make sense?

22 Q Yeah, it does. That makes sense if we're talking about one  
23 continuous style of incidents, such as being chased by an  
24 animal, being in fear for my life. I mean, I guess when you  
25 watch the old westerns, or you watch Apocalypso, how far can

1 you run before you rest not knowing whether or not the people  
2 behind you are still chasing you or whether they have rested  
3 or not. But let's talk about something different. Let's talk  
4 about three mutually exclusive incidents, three different  
5 days, three different places, three different participants,  
6 everything different. Nothing that's in that continuous line  
7 that you've talked about, how does that play into then whether  
8 or not it's a dopamine situation or if it's just a personality  
9 disorder that that's the thrill that you seek, regardless of  
10 the emotion or the risk-reward-consequence thought?

11 A Right. So in the premise of the question that everything is  
12 changed is one that I would need to know the specifics about  
13 and I would not be actually in the position, the person, who  
14 would make that judgment not having that particular kind of  
15 expertise, but the notion that everything would have changed  
16 depends on what your judgment and decision-making is about  
17 what the context is. It is not given in the context. We also  
18 as humans have the capability to imagine other kinds of things  
19 going on, so if we imagine a stressor, it has the same  
20 physiological response as if we actually experienced that  
21 stressor. So is situation A, B and C entirely different from  
22 each other, is to some extent would require an understanding  
23 of what's going on in the mind of the actor who is in  
24 situation A, B and C. But, I guess my point would be is that  
25 it is plausible that depending what's going on in the mind of

1 that individual that it remains one continuous situation  
2 depending on what they were thinking at the time that they  
3 were engaged in these activities.

4 Q I guess as we look at the developmental prefrontal cortex and  
5 a lot of what you've talked about, you indicate a lot of times  
6 these kids don't recognize the rewards or the risks and all of  
7 that, how does using an alias sort of fit into that whole  
8 mindset? I mean, because to me that looks a little bit like I  
9 knew I'm in trouble. I knew I could be in bigger trouble so I  
10 know enough to know to use a different name so that maybe it  
11 gets passed onto somebody else. How does that whole thing fit  
12 in?

13 A So just to clarify, it is not the case that kids don't  
14 understand that there are risks. They do understand that  
15 there is and they are actually under nonstressed  
16 circumstances. You know, by age 16 or 17 they're as good as  
17 adults at understanding the probabilities of risks. If you  
18 ask the rate what's the chance of this happening to you or  
19 that happening to you, adults and adolescents aren't  
20 particularly different in that. What's different is there are  
21 several things. One, is that they may evaluate the benefits  
22 relative to the risks. They may evaluate benefits relatives  
23 to risks differently. They have a poorer understanding of the  
24 future consequences of the various risks that they may be  
25 undertaking, so that in a sense they may recognize that there

1 is a risk to this particular kind of activity but not  
2 understand that the consequence of that risk is likely to  
3 actually adhere to them.

4 And the sense of using an alias, again,  
5 the particulars of the case would determine what relevant  
6 parts of developmental science or neuroscience are applicable  
7 here, one could imagine that it is a planning activity to  
8 mitigate consequences. One could intend to mitigate  
9 consequences as one reason that one might do that. There may  
10 be other reasons as well. But, I mean, there are a variety of  
11 things in this complex  
12 risk-benefit-ratio-assessment-reward-arousal-incitement thing  
13 where one would need to know the specifics to have any real  
14 sensible thing to say about it.

15 Q In your studies you look at kids who are repeat offenders.  
16 You look at the brain and the science as to what makes them I  
17 guess repeat offenders?

18 A I don't personally don't do that work but I'm familiar with  
19 the work that people have done.

20 Q All right. I guess in the research that you're talking about  
21 with the development of the brain and when maturity begins to  
22 set in, I mean -- so what you're saying is with each  
23 experience, after we have walked through that experience and  
24 we have realized the risks, then we choose to engage in that  
25 behavior again at a different time, maybe 24-hours later,

1 maybe two months later, and then there is the fallouts from  
2 that and then we do it yet again, I mean, can there be  
3 something said from your studies that the more often you do  
4 it, despite knowing that it's bad, the less likely you are to  
5 actually cognitively understand that you shouldn't be doing  
6 it?

7 A It is certainly the case that patterns of behavior are  
8 predictive. Whether they're predictive with any certainty in  
9 a particular case is something that would be much harder to  
10 say. So it's certainly the case just like the more risks  
11 there are or the more negative experiences that an individual  
12 has had during their developmental period, on average that  
13 will indicate a higher risk for not good outcome for that  
14 individual, but the distinction between those individuals who  
15 will potentially rise above those early very serious  
16 difficulties and those who don't is very hard to discern at  
17 that point in time. That's always a retrospective thing. So  
18 the area of literature in this respect is what's known as the  
19 resilience literature. Resilience indicates that individuals  
20 who have had very negative experiences and themselves have  
21 been involved in a variety of negative kinds of behaviors, the  
22 prediction on average is that there is a lower probability  
23 that they will in fact be able to succeed. Nevertheless,  
24 there's always a percentage of such individuals who do,  
25 nevertheless, succeed. The distinction between resilient and

1 nonresilient individuals, the resilient individuals would be a  
2 minority, the nonresilient individuals would be the majority,  
3 and the more exposures to bad stuff or bad actions the  
4 individual has committed are -- increases the percentage of  
5 nonresilient versus resilient, right. But, there will always  
6 under all circumstances that we know of there will be the  
7 possibility of resilience for some proportion of those  
8 individuals.

9 The point that I would like to make is  
10 that I don't know of any science that will allow us to say  
11 clearly during the adolescence period where there is neural  
12 plasticity that we can accurately distinguish between the  
13 nonresilient and the resilient individual. That's a  
14 distinction -- and this is not, I'm not a clinical or forensic  
15 psychologist, but to my knowledge there is no science that  
16 would say you can make that accurate prediction going forward  
17 from this point in time. You can say the probabilities are  
18 lower, but you can't say that it's a zero probability, or even  
19 a trivially dismissible probability based on the science that  
20 I know.

21 Q So what you've just said there is always going to be a  
22 percentage of the people that just don't work, they don't  
23 change?

24 A Sure. And the worse the circumstances, the more likely it is  
25 for the nonresilience to be the case. But, again, on a

1 probabilistic basis.

2 Q Right. Right. Again, we're speaking in generalities?

3 A Yes.

4 Q Based on a lot of what you just said, how does the -- let me  
5 ask this first. When I look through, then, the DSM when we're  
6 talking about antisocial personalities, that's not an area  
7 that you're qualified to speak so I'm going to save those  
8 questions now. Is that an area --

9 A I'm not qualified on the DSM or a clinical psychologist.

10 Q Right. And that's just so the clinical psychology is where it  
11 typically talks about antisocial personalities and that sort  
12 of thing?

13 A Right. I'm not qualified to do diagnosis.

14 Q Okay. In that context of what we just talked about, how does  
15 escalation of activities play into somebody that starts  
16 younger as just either being mouthy, or assaultive or  
17 threatening and then culminating in more serious crimes over a  
18 period of time that you studied, because I noticed  
19 Dr. Steinberg quote studies and then MacArthur Foundation  
20 quote studies, there's a study out of Pittsburgh that I saw.  
21 It was like New York, Denver, Rochester, Denver and Pittsburgh  
22 --

23 A The --

24 Q -- it was over years --

25 A Right.



1 Q -- so I'm sure that you're familiar with those studies, may  
2 have participated in those studies, what is -- how does that  
3 fit into that science that you talk about?

4 A Right. So that particular set of studies, the Desistance  
5 Studies, that Professor Mulvey in Pittsburgh was the lead  
6 investigator on, looked at along the longitudinal experience  
7 of individuals who were incarcerated for serious offenses at a  
8 relatively young age. I don't remember what the start age  
9 was, 16, 17, I think, probably something like that. Followed  
10 those groups of individuals I think was a 10-year, 10-year  
11 study or at least the date that I'm familiar with was for a  
12 10-year period of time. My recollection of those results,  
13 though I haven't looked at it very carefully very recently, is  
14 that the general picture is that on average what you see is  
15 desistance; that is, what you would see even among this  
16 relatively limited group of individuals who were incarcerated  
17 for serious crimes at a relatively early age, the majority of  
18 them desist from criminal behavior later on in life. Some do  
19 not, right. Again, just reiterating what I said, from my  
20 understanding, the ability to predict from data that you had  
21 on those individuals at 16, 17, and 18, which of them would  
22 desist and which of them would not desist was not good  
23 prediction. I mean, it was not a prediction that we would  
24 want to rely on. I don't remember the exact numbers, but it's  
25 not a prediction that we would have confidence in.

1 Q But it was, you know --

2 A It's not a strong prediction.

3 Q No. So, but in that you're talking about being able to  
4 characterize future but what about just that period where  
5 there was the escalation, what does that say about the science  
6 of that individual? I mean --

7 A The period during which their behavior was escalating --

8 Q Trying to --

9 A -- right. Being terminated by arrest or whatever?

10 Q Right.

11 A I don't really -- I don't know that there is a huge -- I just  
12 have to say I don't know, because I don't that there's a  
13 literature that predicts the course of escalation prior to  
14 becoming incarcerated as it relates to the probability of  
15 desistance later on. I know that methodological it would be  
16 complicated because individuals are more or less likely to be  
17 apprehended for various kinds of things so individuals who  
18 look like they have a relatively cleaner record may have just  
19 simply not been apprehended at various points of time. So the  
20 answer I guess, shorter, I don't know that there is a  
21 prediction from history prior to that. I do know that from  
22 the point of becoming incarcerated that it's hard to -- the  
23 majority of desist it's hard to separate the desisters from  
24 non-desisters given the information at that moment in time.  
25 And that's, I mean, that is as opposed to look at it from a

1 forensic perspective.

2 Q Now, peer pressure seems to be an important factor in a lot of  
3 these studies that you've participated in?

4 A Mm-hmm.

5 Q Is that yes?

6 A Yes, yes. I'm sorry.

7 Q In class that might work.

8 A Yeah, I know. I do apologize. I'll try to avoid seminar  
9 demeanor.

10 Q All right. You've talked about repressive backgrounds, chaotic  
11 backgrounds, I think was the term that you used. But, let's  
12 say somebody comes from a chaotic background but is acting  
13 alone in heinous crimes, is peer pressure then really matter?

14 A Well, certainly not all circumstances with bad behavior are  
15 peer related. They --

16 Q Okay. So because most of the examples that you gave were peer  
17 pressure related. I go to a party. I'm 16, I go to a party,  
18 there's beer. I start drinking. I'm with my friends. I  
19 start driving fast. I think there was that one study in  
20 MacArthur where it was more likely that a young driver would  
21 drive recklessly if his friends were present. The model or  
22 model testosterone thing which is another provision in one of  
23 the studies talking about peers and testosterone and your  
24 likelihood do something dumber with others around watching.  
25 What I guess then just indicate for clarity for me is that

1 sometimes individuals can act alone and peer pressure is not a  
2 part of it, and that's so we can eliminate all crime -- peer  
3 pressure from all cases that you've been researching?

4 A Correct. The focus on peers is largely because that is the  
5 more common experience but certainly it's not the exclusive  
6 experience.

7 Q Okay. Let me ask a specific question in an odd way if I  
8 could. From Dr. Steinberg's paper, which you probably  
9 familiar with the State of Wisconsin when they were  
10 determining ages for --

11 A I don't know that specific paper, no, but --

12 Q But I think you won't disagree with this. In some, although  
13 by age 16 adolescents reach adult levels of intellectual  
14 maturity, psycho-social maturity continues to develop into  
15 early adulthood, this is what you've testified to, adolescents  
16 do not put facts together and draw conclusions the way adults  
17 do.

18 So would that be the same I guess for  
19 levels of behavior? Would that statement, which you agree  
20 with, which you studied, which you have found, agree with a  
21 16-year old walking into a store and stealing a six pack for  
22 the party versus a 17-year old going up to somebody and  
23 murdering them? Does that same process -- the point of the  
24 question is when we look at the type of crime from a minimal  
25 type of what I would consider a typical 16-year old crime to a

1 nontypical 16-year old crime but it's a much more serious  
2 crime, theft at a retail fraud, you know, retail fraud, 711  
3 versus murder?

4 A So the quote that you read from Dr. Steinberg's paper there is  
5 really talking about something else.

6 Q Okay.

7 A When he says intellectual maturity is peaking at around 16 or  
8 17, that intellectual maturity is measured in a variety of  
9 ways, where, as the phrase I've used before, when we're  
10 talking about the cold cognition where we're just simply  
11 saying do you understand this or that; can you reason about  
12 this or that. That tends to peak around that period of time.  
13 What does not peak until later is a sufficient level of  
14 psycho-social maturity to make use of those sorts of things  
15 and that those are particularly, those capacities are  
16 particularly those capacities of judgment, executive  
17 functioning, and decision-making are particularly diminished  
18 under circumstances of high arousal, peers being one  
19 possibility but there are other reasons why high arousal might  
20 occur, that those intellectual understandings of the world  
21 become less relevant to the behavior that will ensue. And so  
22 the intellectual distinctions become much subsumed to the kind  
23 of bottom brain limbic demands that are going on. So, his  
24 particular discussion there would be about -- was about the  
25 fact that you see this what he's referring to intellectual

1 maturity is the ability to perform well on a whole range of  
2 cognitive tasks that we might give to individuals. That is --  
3 that is true and a lot of my research was around that  
4 particular point but that does not necessarily say what the  
5 individual's thinking processes will be when they're in a  
6 particular situation. If I can expand just a little bit?

7 Q This is not cross-examination in front of a jury, so.

8 A So, I mean, the classic terminology in this and the classic  
9 work on this are what are known as "dual-process models" in  
10 cognitive activity. Dual-process models are roughly you can  
11 think as hot or cold cognition. It's not perfect, right. So  
12 in most of the time we are operating in what's known as a  
13 heuristic or intuitive or gut feeling or an automated system.  
14 So when we get up in the morning, we don't analyze, Gee,  
15 should I use, you know, Colgate or some other toothpaste this  
16 morning. It's there. We use it. We get on. We do all sorts  
17 of things on automatic pilot. When we get excited about  
18 something we often wind up going on automatic pilot. What  
19 feels right at the time, right. So there is that system which  
20 we often then think of as the default system. This is the one  
21 doesn't take any effort, right. Doesn't require that we think  
22 about it. The other system is known as the analytic system,  
23 right, as opposed to the heuristic or intuitive system. The  
24 analytic system essentially says, Wait a second. I should try  
25 to understand what's going on here. There may be an issue

1 here I should pay attention to. I should try to reason my way  
2 through what's going on here to try to make some sort of a  
3 good decision. For everyone, not just adolescents, but for  
4 everyone that's a much less used system. It's much less used  
5 because it's much more effortful. We have to put our minds to  
6 it, right. We have to take time away from whatever else we're  
7 doing and think about that issue.

8 What adolescents, among other things, are  
9 not very good at is distinguishing is this a circumstance  
10 where I ought to activate that effortful analytic cognitive  
11 system or should I just go with my gut. And when there's high  
12 arousal, the opportunity or the propensity to veer off into  
13 that analytic rational system where you elicit that  
14 intellectual maturity and understanding of the world and so on  
15 so on, can get diminished virtually to zero because you're  
16 running entirely on gut instinct, intuition, you know,  
17 automatic behaviors and so on and so forth. Is that helpful?

18 Q Yes. So basically we might spend very little time other than  
19 to tell our kids not to steal and we may spend greater time  
20 telling them not to kill, which goes to, you know, what we  
21 talked about before, church, school, television, upbringing,  
22 but regardless of the level of the crime, you're saying that  
23 at 16 or 17 that prefrontal cortex is shut down to a point  
24 where they don't consider any consequences despite the number  
25 of years and the number of times they've been told something?

1 A What I'm saying is that the context can drive that system into  
2 inactivity, or severely diminished activity.

3 Q Okay. But when we talk again about figuring out  
4 rehabilitation, is it more a concern to you in the science  
5 somebody at that age with that background that has that  
6 information is capable of pulling a trigger versus somebody at  
7 that age who is just simply stealing a six pack of Bell's  
8 Brewery beer?

9 A I think the rehabilitation challenges are certainly higher in  
10 the former.

11 Q And I guess in your studies, in your science, there are groups  
12 of individuals that simply are incorrigible is the term that I  
13 guess we've used here in court, not rehabilitatable despite  
14 the science, despite all that you've seen, there are just some  
15 people wired differently?

16 A The literature on psychopathy would suggest that that's true.  
17 I'd like to expand on that just a little bit if I may? The  
18 literature on psychopathy says that that's true. The  
19 literature on adolescent psychopathy, to ability to detect  
20 psychopathy in adolescents, is not part of the clinical  
21 science, right, so I'm not speaking to how you would like, you  
22 know, various persons might attempt to diagnosis that. But,  
23 my understanding of the general literature on adolescent  
24 psychopathy is that it is fraught with difficulties, because  
25 many of the things that we would use to diagnosis psychopathy



1 for adults are not really very -- not as relevant for  
2 adolescence.

3 Q Right. That's that Hare --

4 A The whole Hare thing, right. And so the downward extension of  
5 the Hare methodology for diagnosing psychopathy and applying  
6 it to adolescent psychopathy is at least under a significant  
7 challenge at this point in time.

8 Q That was a long night of reading. Adult was a lot easier than  
9 using these factors as an adolescent to determine when you get  
10 to an adult?

11 A Correct.

12 Q Okay. In your scientific studies does it -- did you delineate  
13 between the people that you have studied? I mean, I  
14 understand many of these studies you're asking kids to self  
15 report?

16 A Correct.

17 Q And I would assume in some of the studies you actually then do  
18 have the opportunities to get court records for those that  
19 have picked up those sort of cases. Is there a difference in  
20 your science between those who have never been in the system  
21 versus those who were doing criminal acts that were still  
22 actually in the system?

23 A I'm sorry. Difference with respect to?

24 Q The findings of maturation. The findings of the inability to  
25 make these decisions, maturity, things like that?

1 A If one equates for the probability or the history of having  
2 committed the act as opposed to having been apprehended for  
3 the act. So essentially you have a group that's been  
4 apprehended for whatever behaviors.

5 Q Correct. And those are still important to your studies?

6 A Right. And then you have another group of individuals who  
7 have essentially the same behavioral profile as those that  
8 have not been apprehended or have not been, you know, sort of  
9 incarcerated or whatever, the distinctions between those two  
10 groups are not huge. Is that what you're asking?

11 Q Yes. I guessing I'm asking that.

12 A Right.

13 Q Because I guess I'm expecting at some point maybe in this  
14 process to hear that, okay. You know, kids that have had bad  
15 upbringings but have never been busted before are just as  
16 likely to rehabilitate effectively as those who have been in  
17 the system their whole life. I'm trying to figure out if  
18 there is in your science a difference between those who have  
19 in fact spent ten years in the system failing versus those who  
20 have not been in the system and have had some failures?

21 A Right. So, so my understanding and the literature that I  
22 would know about this I think is this desistance study and the  
23 ability to predict which individuals are going to be good  
24 candidates for rehabilitation, so far as I know there were no  
25 general factors either length of time, you know, history of

1 earlier incarcerations and so forth that were very good  
2 predictors of desisters versus nondesisters. That's my  
3 understanding of that literature.

4 Q But, what would you say, I guess, to the fact that those who  
5 are not in the system and who are self-reporting versus those  
6 who are in the system who are being given help, who are being  
7 given therapy, who are being given information, who are being  
8 given structure and love and the other things that the system  
9 tries to do but continuing that behavior. I mean, isn't there  
10 is a difference to you between somebody who's never had that  
11 opportunity and somebody who's repeatedly given that  
12 opportunity but fails on that opportunity?

13 A If I understand your question is, is it a stronger risk  
14 profile for individuals who have multiple fail rehabilitation  
15 attempts versus individuals who have not had rehabilitation  
16 efforts made on their behalf. Is that accurate?

17 Q Thank you. Yes, that's it.

18 A So I think the answer to that it would depend on the quality  
19 of the rehabilitation efforts. I mean, I think it depends on  
20 what it is that you're doing during that period of time. I  
21 mean, and that -- never mind.

22 Q But wouldn't that be blaming the system as opposed to the  
23 individual who -- you know, I mean what you're saying is,  
24 okay, the system really is trying to do this, but what about  
25 the person who's, you know, there and is just simply then -- I

1 guess I would blame the person more than the system. Is that  
2 -- I mean, because I deal with black and white, I deal with  
3 the law, but somebody takes blame, it seems to me and go into  
4 Tunesley, and say you're the bad guy versus we're trying to  
5 help you and you're not listening, I mean...

6 A Well, I guess I would be reluctant to assign single  
7 culpability to either the system or to the individual. I  
8 think the other thing that one would want to look at, and this  
9 is an area of the literature I'm not an expert on, I know a  
10 little bit about it, is that rehabilitation efforts vary  
11 pretty dramatically in their effectiveness, so one would want  
12 to know what kind of rehabilitation efforts there were. For  
13 early rehabilitation efforts, that's before things have  
14 escalated, generally tend to have a higher sort of thing. But  
15 access to them, of course, is also determined. When I talk  
16 about this to, you know, a big class of students,  
17 undergraduate students in adolescent psychology I often talk  
18 about the fact that we have a whole host of differences by,  
19 you know, sort of social circumstances for individuals who get  
20 caught up in the system versus not.

21 I remember talking about this on one  
22 occasion and the student came up to me after class who is  
23 clearly from one of the more advantage groups, a young woman,  
24 who was from a good background and so forth, and who  
25 essentially said, Well, you know, I did, I did get apprehended

1 for one of these fairly significant sorts of things, but it  
2 resulted in a conversation between the police and my dad and  
3 that was the end of it, right. So in that circumstance, you  
4 got a situation where the behavior -- and in that case in a  
5 sense rehabilitation occurred because the person had all sorts  
6 of good diversionary opportunities, specifically diversion  
7 before anything goes on the record, right. And so you need,  
8 from my point of view, to understand or say what kind of  
9 rehabilitation and what are the prospects for the future  
10 success of rehabilitation you would need to know a lot more  
11 about the specifics of a particular instance. What I think  
12 the science does tell us is that it is very difficult to  
13 predict from this point in time out to the distant future  
14 whether there's zero or non-zero prospect of rehabilitation.

15 Q The science isn't there?

16 A I do not believe that the science can make that distinction  
17 effectively in the adolescence period I'm talking about.  
18 Adult psychopathy is a different topic.

19 Q Just your science is -- I have lots of material and I'm trying  
20 to tailor it so that I don't ask you questions in an area that  
21 you are not skilled in. So when we talk about developmental  
22 pathways that's for the psychologist as opposed to the  
23 researcher? Or is that something that you deal with also?

24 A Well, no. That's something we deal with on the population  
25 level all the time.

1 Q Okay. I mean, I understand there are three. There's the  
2 authority conflict pathway, covert pathway, and overt pathway?

3 A Could you give me more context for that distinction? I use a  
4 different set of terminology but it may mean the same thing.

5 Q Okay. Studies delineate in pathways juveniles take to problem  
6 behaviors and serious violent chronic offending. The  
7 following developmental pathways were identified in the  
8 Pittsburgh study?

9 A Right.

10 Q So authority conflict pathway starting with stubborn behavior,  
11 followed by defiance and subsequently followed by authority  
12 avoidance, staying out late and truancy, running away from  
13 home. Is that something in your field you look at as you're  
14 going through the science?

15 A That would be one of the pathways that one would want to take  
16 a look at, right.

17 Q And then a covert pathway we would be starting with minor  
18 covert behaviors, followed by property damage, subsequently  
19 followed by moderate to serious delinquency, which includes  
20 burglary, fraud, car theft?

21 A Mm-hmm.

22 Q Yes?

23 A Yes.

24 Q And then the overt pathway, which is starting with minor  
25 aggression followed by fighting, subsequently followed by more

1       serious violence, attacks, rape?

2   A     Right.   Okay.

3   Q     And is it true then that an individual might have more than  
4       one of those pathways as you're looking at them?

5   A     Yes.   Those would be, those would be constructive pathways --  
6       I'm trying to figure out how deep into we need to get here.  
7       What we're talking about --

8   Q     Superficially so we understand, sir.

9   A     So the distinction between those pathways would those be  
10       would, those are essentially pathways which means the same  
11       individuals followed over time.   In this case, these are  
12       individuals who have desistance and psychopath.   You know, we  
13       have some notion of their history and what happens as we're  
14       observing them, right.   And, so, this would be what's known as  
15       clusters of growth curve models.   So you plot each  
16       individual's pathway and then you say what individuals look  
17       more like each other in their pathways than this group looks  
18       more like each other and they're different from this and then  
19       they're different from this.   So generally the methodology to  
20       do this would be to try to maximize the differences between  
21       them, so essentially saying are there individuals who have  
22       crossovers between those pathways in a sense the methodology  
23       that identifies the pathways would be aimed to try to  
24       eliminate such crossovers.   You're trying to purify those  
25       paths.

1 Q And in using those terms, then, obviously there are some  
2 people who are less violent than others and that these  
3 pathways help you to categorize the group, the kids, the  
4 individuals in that group study?

5 A Right. So if you're talking about the future riskiness by  
6 pathways, that would be one of the reasons to try to look at  
7 those pathways.

8 Q I guess, then, maybe I'm wrong in this, but would it then be  
9 that it says the overt pathway is the most violent. Is that  
10 to your science means more likely to be a recidivist or less  
11 likely to be rehabilitated, or does it just simply talk in  
12 terms of the violent act?

13 A My understanding is that for recidivism, the overt pathway  
14 would be a somewhat riskier path on average than the other  
15 paths. It's certainly more clearly future riskiness of  
16 violence would attach to that overt pathway, particularly if  
17 it extends very early into childhood.

18 Q So there is an escalation of the three. I mean, there is a  
19 lesser category, a medium category, and a darker I guess  
20 category?

21 A Conditioned by the fact that some of them worry us more than  
22 others, right. So we would be less concerned about -- I mean,  
23 yeah. So someone who goes on a covert pathway and becomes a  
24 computer hacker feels like less of a risk to society than  
25 someone who's overtly aggressive.



1 Q Okay. Okay. In your studies do you look at the level of crime  
2 or just crime in general? Do you look at I guess I think  
3 hackers is a great example of a group of individuals who feel  
4 that they're not doing anything wrong because they're not  
5 hurting anybody directly, more paper crime I guess?

6 A Right. So the studies that I'm most familiar with are the  
7 ones that were associated with the MacArthur Foundation and  
8 for individuals who were incarcerated, the studies generally  
9 focused on individuals who were incarcerated for relatively  
10 more serious offenses.

11 Q Okay. So when you say you address some of the cases, you're  
12 less concerned with them?

13 A Yes. And partly they just have not been studied as much  
14 because they have been less of a concern.

15 Q Thank you very much, doctor.

16 THE COURT: Okay. Thank you, Mr. Cataldo.  
17 Any follow-up, Ms. Newman?

18 MS. NEWMAN: No, your Honor. The witness  
19 can be excused.

20 THE COURT: You can step down, sir. Thank  
21 you.

22 THE WITNESS: Thank you.

23 (At 10:56 a.m., witness was excused)

24 THE COURT: You have your next witness? Do  
25 we have our next witness, Ms. Newman?

MS. NEWMAN: Yes.

THE COURT: And who would that be?

MS. NEWMAN: Jennifer Keller.

THE COURT: Ms. Jennifer Keller. You're  
Jennifer Keller?

MS. KELLER: Yes.

THE COURT: Before you have a seat, I'm  
going to swear you in. Please raise your right hand. Do you  
swear or affirm that the testimony you are about to give will  
be the truth.

THE WITNESS: Yes.

THE COURT: Your name, please?

THE WITNESS: Jennifer Keller.

THE COURT: Please have a seat.

JENNIFER KELLER,  
after having been first duly sworn to tell the truth the whole  
truth and nothing but the truth, was examined and testified as  
follows:

DIRECT EXAMINATION

BY MS. NEWMAN:

Q Good morning, Ms. Keller.

A Good morning.

THE COURT: Go ahead, counsel.

MS. NEWMAN: Thank you, your Honor.

BY MS. NEWMAN:

1 Q I know you already stated your name, but please state your  
2 name for the record?

3 A Jennifer Keller.

4 Q All right. And Ms. Keller, can you -- I'm going to start a  
5 little bit with your -- what's your occupation?

6 A I'm a social worker.

7 Q And can you us give a little bit about your background, your  
8 education, starting with your education?

9 A I have an undergrad in Criminal Justice and I have a masters  
10 in Professional Counseling.

11 Q And then you're a social worker with what agency?

12 A Wolverine Human Services.

13 Q And how long have you been with them?

14 A Fourteen-and-a-half years.

15 Q Did you work with any other agencies prior to Wolverine?

16 A One agency, Vista Maria for a year.

17 Q Very good. And are you familiar with Ihab Masalmani?

18 A Yes.

19 Q And how is that?

20 A I was his foster care worker.

21 Q Okay. So before we get into the specifics of his case, can  
22 you -- I'd like to set the stage a little with some  
23 background. Can you go over a little bit what happens when  
24 Child Protective Services gets involved or gets a call? Can  
25 you sort of take us through the process?

1 A When Child Protective Services gets involved if the children  
2 or child is removed, they look for a viable placement either  
3 with a relative, in a foster home or sometimes in a shelter.

4 Q Are there different reasons why children get removed?

5 A Yes.

6 Q Okay. And what would those reasons be?

7 A It could be abuse, neglect, medically neglect.

8 Q Okay. And then are there also delinquency cases?

9 A Yes.

10 Q All right. And what's the difference between those two?

11 A There is status for children for abuse or neglect from the  
12 parents or the guardian. Delinquency could be from the child  
13 committing a crime or...

14 Q Okay. Are there differences in the way those children are  
15 treated in the system? So if you remove -- if you're involved  
16 in a delinquency case versus removed from abuse or neglect, is  
17 there a difference in how the child moves through the system?

18 A It could be. You could have a child that's also a dual  
19 wardship. You could have both, so it depends on the  
20 circumstances.

21 Q Okay. And then once the child is removed, then what happens?

22 A Depending on the placement.

23 Q How do you determine a placement?

24 A Protective Services will investigate as far as trying to find  
25 either a relative, if there's a relative available. If there

1 is a foster home that's available, or if not, then they go to  
2 a temporary shelter.

3 Q Okay. And then are there screening processes in place for  
4 foster care parents?

5 A Yes.

6 Q Okay. Can you just take us through that a little bit?

7 A They go through an extensive home study and part of that home  
8 study they have criminal background checks, they attend a lot  
9 of training. Their home is studied as far as what's  
10 appropriate and, you know, depending on what their needs are,  
11 requesting for a child, you know, based on the child's needs.

12 Q Does every foster parent, does every foster parent want to be  
13 an adoptive parent?

14 A No.

15 Q Okay. Can you explain that, how that works?

16 A Some foster parents just want to foster. They don't want to,  
17 you know, look at any other permanency plan for the child's  
18 adoption. They just want to foster until the child can be  
19 reunited with the parents or whatever their goal is.

20 Q Okay. So are those considered temporary? Fair to say that's  
21 like a temporary placement for a child?

22 A Yes.

23 Q Okay. Let's move to your specific work with Ihab. Do you  
24 remember when you started working with him?

25 A In November of 2001.

1 Q Okay. Do you remember how old he was?

2 A He would have been about nine-years old.

3 Q Okay. And can you talk to us about what your work with him  
4 consisted of?

5 A Primarily I did case management and so I arranged services,  
6 whether he needed counselling or educational services, medical  
7 services. I was the case manager for him.

8 Q And so, when you first get it does it just work like a case  
9 file. Here, this is a case file put on your desk and now this  
10 is, this child becomes someone that is part of your caseload?

11 A Yes.

12 Q And what would be in that file typically when you get it or if  
13 you remember specifically to this case, what information did  
14 you have about him?

15 A I would have had information from where that he came from the  
16 shelter so I would have if they had any reports on him while  
17 he was -- that was completed while he was at the shelter, I  
18 would have had that information.

19 Q Okay. I'm sorry. I didn't mean to cut you off.

20 A Any medical information, any dental, psychological,  
21 educational reports, I would have had that information.

22 Q Okay. And are those -- I mean, is there an assessment that is  
23 supposed to be done before a child is placed in the foster  
24 care system?

25 A Typically yes.

1 Q Okay.

2 A So in this case he, you know, received medical, dental, and  
3 educational because his shelter had its own school, on-ground  
4 school.

5 Q And what was that shelter like? Do you know if -- do you know  
6 which shelter he came from?

7 A Yes.

8 Q What shelter was that?

9 A It was our Wolverine shelter.

10 Q Oh, it was your Wolverine shelter?

11 A Yes.

12 Q All right. And can you just describe the living situation  
13 there? So if I've never been there, look, give me a picture  
14 of what it was like?

15 A It was like a short-term facility where we would have kids  
16 that, you know, we couldn't find -- CPS couldn't find a  
17 possible placement for them so they would reside there  
18 temporarily until another placement could be found. There  
19 could be other children there as well. And, so, they would  
20 typically would share a room. If the shelter, depending on  
21 how many kids were at the shelter at the time, would share a  
22 room.

23 Q All right. And was this the kids come and go at will? I  
24 mean, how did it operate? Was it a locked facility?

25 A It wasn't a locked facility. The children, you know, can walk

1 out if they wanted to. I mean, the staff would go after them,  
2 but it wasn't necessarily a locked facility.

3 Q Okay. But they were not supposed to leave?

4 A Correct.

5 Q Okay. And so he -- so you have his case, he's in the  
6 Wolverine shelter and then -- so what happened next?

7 A I worked in our foster care department so the foster care  
8 department gets their referral for his foster care case and  
9 his case was assigned to me.

10 Q All right. So you had this nine-year old boy. What do you  
11 know about him when you're trying to find foster placement for  
12 him?

13 A Well, he already had the placement. When I received his case,  
14 he was already in his foster home.

15 Q Okay. And who was he living with?

16 A Her name was Christine Day.

17 Q Okay. And was this in a pre-adoptive home or a pure foster  
18 home?

19 A To my knowledge it was just a pure foster home.

20 Q Okay. And do you know how he was placed with Ms. Day?  
21 Anything about the procedure that got him there?

22 A That would be something the shelter would have arranged as far  
23 as transporting him to her home, making those arrangements.

24 Q All right. And then how much time did you spend with Ihab  
25 during the time that you were supervising his case?



1 A I would see him at least weekly.

2 Q Okay. For how long?

3 A As -- what do you mean?

4 Q Was it a 15-minute meeting? Was it a three-hour meeting?

5 A Depends on --

6 Q -- was it spend a day with him?

7 A It depends on what was the appointment for. Sometimes I was  
8 with him up at school, sometimes I went to the home. I took  
9 him to some of his medical appointments, so I saw him  
10 frequently.

11 Q All right. So did you have a good sense of who he was as a  
12 kid?

13 A Yes.

14 Q All right. And so what was your impression of him at that  
15 time?

16 A That he was a scared boy. He didn't quite know what was going  
17 on. You know, this was the first time in the foster care so  
18 he was scared.

19 Q Did you know anything about his background about how he  
20 arrived here in Michigan?

21 A Through reports, yes. How he came to the United States and  
22 how he eventually came to Michigan.

23 Q All right. And how would you characterize his background,  
24 that background?

25 A Chaotic. Traumatic.

1 Q And how was his language skills at that time?

2 A Not very good. He -- there was definitely a language barrier  
3 with him.

4 Q And was that being addressed?

5 A Trying to. I know at the shelter they were trying to arrange  
6 some interpretation services and -- but he struggled.

7 Q All right. Were there other agencies involved in his care in  
8 addition to you, in addition to Wolverine?

9 A Yes. He was attending Access in Dearborn for counseling  
10 services.

11 Q Was Family Independence Agency or Department of Human Services  
12 or any of those -- were there multiple agencies involved in  
13 the process?

14 A Yes. At the time, FIA, Family Independence Agency, was also  
15 involved.

16 Q Okay. And how would you describe your working relationship  
17 with them on this particular case with the FIA case workers?

18 A Medium, I guess. At times, you know, had moments but, you  
19 know, we worked with FIA as best as we can.

20 Q All right. Does that mean you didn't always agree on what was  
21 best for Ihab?

22 A Yes.

23 Q Okay. So, at the age of 10, from the court records, it  
24 appears that Ihab was given the opportunity to return to his  
25 mother in Lebanon; is that accurate?

1 A Yes.

2 Q Okay. And what happened at that time?

3 A He was given the choice to whether or not he could remain here  
4 or go back.

5 Q He was personally given the choice?

6 A Yes.

7 Q Okay. And so obviously he decided to stay here?

8 A Yes.

9 Q Now, can you talk a little bit about how a case works through  
10 the system. I mean, because it's a child is there one judge  
11 that's assigned in the Family Court that sort of sees the case  
12 through or one referee?

13 A Sometimes. I mean, that could happen, but in my experience  
14 that doesn't always happen.

15 Q Okay. And in this case what's your recollection of --

16 A He had multiple jurists.

17 Q Okay. And then what -- did he eventually move to a placement  
18 away from Ms. Day?

19 A Yes.

20 Q Okay. And what happened? Well, how long was he with Ms. Day,  
21 if you -- an approximation?

22 A About three years.

23 Q Okay. And during that time how would you describe the  
24 relationship? How was he settling in there?

25 A He loved his placement. He loved Ms. Day. He did struggle in

1 the placement but he was well bonded.

2 Q How did he struggle?

3 A Academically, behaviorally, he struggled while in this  
4 placement.

5 Q And was that something you worked on with him?

6 A Yes.

7 Q Okay. And do you have any -- was there any diagnoses made or  
8 medical testing done or other things done to try and figure  
9 out what was going on?

10 A Yes.

11 Q What was done?

12 A He was diagnosed with ADHD and depression. And, he also was  
13 diagnosed with pediatric seizures.

14 Q And was he medicated for those things?

15 A Yes.

16 Q And do you remember his medications that were administered?

17 A Wellbutrin, Risperdal and he was taking Depakote for the  
18 seizures.

19 Q Okay. So things didn't work out with Ms. Day but that was not  
20 a permanent placement anyway, right? So was it -- can you  
21 describe why he left Ms. Day? Was it --

22 A When things didn't work out was because we found a  
23 pre-adoptive home for him.

24 Q Okay. So it's not that Ms. Day said get rid of him?

25 A Right.

1 Q You found a pre-adoptive home?

2 A Right.

3 Q All right. And that pre-adoptive home was with whom?

4 A The Jaweds.

5 Q Okay. And how did that work out?

6 A Not very well.

7 Q Okay. What happened there?

8 A He was there for about two weeks and just his behaviors  
9 clearly showed that he didn't want to be there. He wanted to  
10 go back to Ms. Day.

11 Q Okay. And was that possible for him to go back to Ms. Day?

12 A No.

13 Q Okay. So then what happened?

14 A So he was there for about two weeks and the foster parents put  
15 in their notice they wanted him removed due to his behaviors  
16 and he was moved to another foster home, a pre-adoptive. At  
17 the time, it was a pre-adoptive. It was just a regular foster  
18 home.

19 Q A regular foster home?

20 A Yes.

21 Q All right. And who was that with?

22 A Jawanda Thomas.

23 Q Okay. And what happened in that home? Well, first, how long  
24 was he in that home, in that placement?

25 A About a year-and-a half.

1 Q Okay.

2 A Give or take.

3 Q And that was not a pre-adoptive placement?

4 A In the beginning it was not.

5 Q Okay. Did it turn into a --

6 A Over time she had expressed that she wanted to adopt him.

7 Q Okay. And then what happened in that placement?

8 A To my knowledge, because at that time I transitioned from his  
9 case and this is based on reports that I've read, while with  
10 his worker he did struggle in school again. Academically he  
11 was, you know, struggling. Getting, you know, getting into  
12 fights. You know, walking out the classroom, being  
13 disrespectful to teachers. So -- and then after I  
14 transitioned off of the case, it's my understanding that there  
15 were some things going on in the home that Ihab never shared  
16 with workers.

17 Q Can you -- things that were -- he was removed?

18 A He was removed.

19 Q I think everyone can make assumptions but we'd rather hear it  
20 from you?

21 A Yeah. From what I read, he was removed due to he was smoking  
22 marijuana with the foster mother. He was witnessing the  
23 foster mother having inappropriate sexual actions in front of  
24 him.

25 Q Things that a foster parent should not be doing safe to say?

1 A Correct. Yes.

2 Q All right. And then you're no longer the case worker but are  
3 you aware of his next placement?

4 A No.

5 Q No. Okay. So for all of these placements -- well, not all of  
6 them. So Ms. Day, can you just describe the household. Was  
7 she a single parent? Were there two parents?

8 A She was a single mother. She did have an adult son that lived  
9 in the home, but other than that it was just her.

10 Q Okay. And where did she live? What city? I don't want an  
11 address, just the city?

12 A In Inkster.

13 Q Okay. And was it a predominately African American community?

14 A Yes.

15 Q And was this school that he attended predominately African  
16 American?

17 A Yes.

18 Q Okay. And was there any efforts since Ihab came from an  
19 Arabic, you know, came from Lebanon, to place him with an  
20 Arabic family?

21 A It's my understanding that prior to his placement with Ms. Day  
22 that what's they were trying to do. The shelter, the staff  
23 there in corroboration with FIA, they were trying to find an  
24 Arabic foster home for him.

25 Q Okay.

1 A And that was unsuccessful.

2 Q Okay. And then the Jaweds, what kind of home was that? Is  
3 that a single parent? Two parent?

4 A It was a two parent home.

5 Q Okay. And were they Arabic?

6 A Yes.

7 Q Okay. And how about Ms. Thomas. What kind of home was that?

8 A She was a single mother, African American.

9 Q Okay. And what city?

10 A Detroit.

11 Q Okay. So predominantly African American area?

12 A Yes.

13 Q And the same for the schools?

14 A Yes.

15 Q So you say he had challenges at school. Did he ever receive  
16 an individualized educational plan to help him?

17 A He did eventually in the beginning an IUP was requested for  
18 him and the school district for whatever reason felt that he  
19 didn't qualify for an IUP. But after persistence and he  
20 started struggling in school, requested another IUP, then he  
21 received one.

22 Q All right. Did he also -- you said you took him to  
23 appointments. What kind of appointments? You said something  
24 about Access?

25 A I took him to his therapy appointments. I took him to his



1 medical appointments. I was -- went to a lot of his school  
2 appointments.

3 Q Okay. Were there outside school appointments? Was there -- I  
4 mean, he was having trouble in school. Were there any  
5 services offered for that?

6 A Yeah. I was able to secure some state monies to send him to a  
7 private I guess, per se, Sylvan Learning Center for him to  
8 help with reading and English so.

9 Q All right. And how did he -- how was he with that?

10 A He, I mean, he enjoyed it. He complied and I don't remember  
11 how many sessions that we had, but every session that we had  
12 he wanted to go.

13 Q Okay. And what were the kind of -- you mentioned some of them  
14 already but just to be specific, the behavioral problems in  
15 the classroom setting, in a full classroom setting?

16 A He, you know, was aggressive towards peers and towards  
17 teachers. He would walk out of class. Fight. Would walk  
18 around the classroom just when, you know, wouldn't sit still,  
19 you know.

20 Q All right. Had hard time sitting still?

21 A Yes.

22 Q Okay. And would you talk about these things with him?

23 A Yes.

24 Q Okay. And would he express any remorse? I mean, how would he  
25 react when you talked to him about it?

1 A He was remorseful. He would, you know, tell me he didn't know  
2 why he was doing these things. Why he couldn't control his  
3 behavior. So he was -- when I would talk to him or his foster  
4 mother would talk to him, he was very remorseful.

5 Q And based on your experience, do you have any thoughts about  
6 why, you know, he was acting in this manner?

7 A I think that, you know, he was struggling. You know, number  
8 one, being away, just being away from his family. He, you  
9 know, was a minority. He was trying to fit in. And so, yeah,  
10 he didn't know how to do those things so this is how he -- how  
11 he acted out.

12 Q All right. And in terms of him as a nine-year old boy, what  
13 was his physical appearance? Was he a big kid, small kid,  
14 describe him for us?

15 A He wasn't a big kid. He was, you know, maybe average to maybe  
16 a little bit more scrawny kid. You know, he was lanky. He  
17 wasn't big by any means.

18 Q Okay. And then how many you said you've been 14 years. Is  
19 that what you said?

20 A Fourteen-and-a-half years.

21 Q How many children have you worked with over that 14-and-a-half  
22 year period would you estimate?

23 A Directly and indirectly as a supervisor, hundreds of children.

24 Q And what percentage would you say show this sort of  
25 impulsivity?

1 A A high amount. Ninety percent of our kids in foster care,  
2 yeah.

3 Q Okay. And have you seen children that when you've worked with  
4 them or that you thought, boy, at this very young age this  
5 child is already hardened?

6 A Have I?

7 Q Yeah.

8 A No.

9 Q No?

10 A Uh-uh.

11 Q Okay. Did Ihab stand out to you in any particular way? I  
12 mean, you don't have one note in front of you and this was a  
13 long time ago?

14 A Yeah. I worked with him extensively. I mean, you know,  
15 weekly if not more I was with him, working with him.

16 Q Did he exhibit appropriate emotions, empathetic? I mean, did  
17 you see anything that worried you in the way he reacted to  
18 things and when you talked with him or the way he acted  
19 towards you?

20 A He was always appropriate towards me. You know, I was  
21 concerned about some of the behaviors, you know. You know,  
22 which I, you know, would talk to him about. But, you know, he  
23 was nine-years old and I was working with him, so ...

24 Q When you worked with him over the next --

25 A To about 13. He was almost 13-years old I think.

1 Q All right. And, so, did you see any changes? Did you see any  
2 -- I mean, can you describe like from nine to 13. Did you see  
3 a development?

4 A He's always had, you know, he's always struggled I guess, and  
5 as far as development, I don't know. I mean, he's always had  
6 behavioral problems and so whether they worsened or not or  
7 they got -- they were kind of -- it was constant I guess, so.

8 Q Okay. And when he was on the Depakote, Wellbutrin and, I  
9 forgot the other drug already, were his behaviors any better?

10 A Sometimes. I mean, he would do well and, you know, in the  
11 beginning when he would start taking the medication and then  
12 we would kind of see, you know, the behaviors creeping back  
13 in. He tried. You know, he's always had a, you know, you can  
14 see he's trying, you know, to, you know, do the best that he  
15 can, so.

16 Q And how did you first find out about the crimes that he was  
17 convicted of in this case?

18 A Well, I don't -- that's where I don't know if it was in the  
19 media or if it's -- I do remember getting a phone call from  
20 Ms. Day. She still had, you know, our agency's information.  
21 She had long stopped being a foster parent of ours, but I  
22 can't remember if it was from her, getting a phone call from  
23 her, or I saw it in the media.

24 Q And what was your thought?

25 A I was shocked. Very, very much shocked.

1 Q Because?

2 A I couldn't think that he would have done this.

3 MS. NEWMAN: All right. I have no  
4 questions at this time.

5 THE COURT: Thank you, Ms. Newman.  
6 Mr. Cataldo.

7 CROSS-EXAMINATION

8 BY MR. CATALDO:

9 Q Ms. Keller?

10 A Yes.

11 Q Mr. Masalmani's own estimations he had seven different foster  
12 placements. Is that about right to you?

13 A I've only known him for three.

14 Q Okay. And does this surprise you to note that when he speaks  
15 to a psychologist that he blames you for not doing your job  
16 and getting him the right placement?

17 A Does that surprise me?

18 Q Yes.

19 A Yes.

20 Q Does it surprise you that he shows little remorse for all the  
21 things that he did during all those placements?

22 A Yes.

23 Q He, Mr. Masalmani indicated that he didn't trust that you  
24 would place him in a stable environment and that he learned to  
25 use this problematic behavior to have navigate the foster care

1 system admitting that when he wanted to leave a placement he  
2 would not up to get out of there. He blames you for that.

3 "She won't listen to me." "She won't do her job." Does that  
4 surprise you?

5 A Yes.

6 Q Disappoint you?

7 A Yes.

8 Q It's consistent then with a lot of the other kids that you see  
9 that blame everybody else for their trouble and don't take  
10 responsibility for themselves?

11 A Yes.

12 Q I mean, you're aware that he ran away from a number of those  
13 placements?

14 A I have heard that, yes.

15 Q If I could, you have him from nine to 13, so you had 2001 to?

16 A 2005.

17 Q 2005. Okay. So a lot of the information I have goes from  
18 2006 forward. You had him before he was placed in the  
19 juvenile system itself?

20 A Did I?

21 Q Yes.

22 A No.

23 Q Okay. Maybe I lack clarity because I don't do a lot of  
24 juvenile work. You're a foster care, you're a -- what  
25 department is that? DHS you work for?

1 A We contract with Department of Human Services.

2 Q Okay. You work on foster care placement?

3 A We don't work on the actual placement. I mean, we provide  
4 foster care services.

5 Q Services, okay. And I guess that's what I'm trying to  
6 understand. You're assisting him in ways at that time that  
7 were before he was actually placed into the Juvenile Justice  
8 System, into Holy Cross, into Don Bosco, all those placements  
9 were after your efforts?

10 A Yes.

11 Q So one would have to say that your efforts failed because the  
12 foster care system didn't work for him and he ended up being a  
13 ward of the juvenile detention system?

14 A I would not agree to that wholeheartedly.

15 Q Okay. Then how does he end up in there unless he's not  
16 listening to foster -- I mean, were you around when the foster  
17 care parent that he said that told the court that he put his  
18 finger to her head like a gun and he was going to shoot her?

19 A I have not heard that.

20 Q So when she tells the court system that you don't believe it.  
21 You don't think he was capable of it. I mean, you're here to  
22 kind of say he's a nice guy, he's mal-adapted but I was really  
23 surprised that he would do this, but while you're supposedly  
24 overseeing him he's physically violent with his foster care  
25 mothers. Are you saying to this court you had no clue?

1 A Yes.

2 Q So is he self-reporting a lie or is it just that because  
3 you're not there everyday maybe he's acting on his best  
4 behavior with you?

5 A It could be true, yes.

6 Q But, in fact, his best behavior still didn't net anything. He  
7 nutting up ended up putting him in the juvenile system?

8 A Yes.

9 Q And you would have to admit being placed in the juvenile  
10 system, Don Bosco, Holy Cross, whatever those, are far more  
11 structured environments for kids with more trouble than simply  
12 a foster care mom or a foster care mom and dad?

13 A Yes.

14 MR. CATALDO: I have no further questions.

15 THE COURT: Any follow-up, Ms. Newman?

16 MS. NEWMAN: Can I have one moment, your  
17 Honor, I'm trying to figure out where Mr. Cataldo is getting  
18 some of his stuff from?

19 THE COURT: Sure.

20 MR. CATALDO: It's all in the notebook  
21 there.

22 REDIRECT EXAMINATION

23 BY MS. NEWMAN:

24 Q All right. Ms. Keller, were you a social worker in 2007?

25 A No.



1 Q So the comments that the prosecutor was making with reference,  
2 he's referencing something in 2007. That would be a different  
3 case worker?

4 A Yes.

5 Q Okay. And then he talked about Mr. Masalmani's placements a  
6 bit and that they were all with, all, except the Jaweds, were  
7 African-American single women, single parents?

8 A Yes.

9 Q How did Ihab self identify? I mean, was he attached to his  
10 culture?

11 A No.

12 Q All right. Did he talk to you about how he thought of  
13 himself?

14 A He would self identify as being African American.

15 Q Okay. And did you try to take steps to him connect with his  
16 culture?

17 A I did.

18 Q And were those steps successful?

19 A No.

20 Q And think I didn't ask my question on direct very well before  
21 so I want to clarify when I talked about kids being hardened.  
22 Are there some -- one of the things we were talking about here  
23 is capacity for rehabilitation. Are there some children that  
24 you've dealt with that you just sort of looked at them and  
25 said, Someday I'm looking you up on OTIS, you know?

1 A Yes.

2 Q Okay. And was Ihab one of those kids?

3 A No.

4 Q All right. Thank you very much.

5 MS. NEWMAN: No further questions, Judge.

6 THE COURT: Thank you.

7 RECROSS-EXAMINATION

8 BY MR. CATALDO:

9 Q Well, was that then before the seven AWOL petitions from  
10 juvenile detention?

11 A Yes.

12 Q Was that before the seven petitions for criminal acts that he  
13 committed while he was on detention?

14 A Yes.

15 Q Was that prior to going to Holy Cross where he assaulted five  
16 kids in seven different days?

17 A Yes.

18 Q Was that before the day that he kidnapped, executed Matt  
19 Landry, robbed Flag Star Bank, and attempted a kidnapping at  
20 -- and a carjacking at Wal-Mart?

21 A Yes.

22 Q Yes. Thank you.

23 MS. NEWMAN: Nothing further, Judge.

24 THE COURT: You can step down. Thank you.

25 (At 11:33 a.m., witness was excused)

1 THE COURT: Counsel, do you want to start  
2 your next witness? Ms. Newman, you want to start your witness  
3 before lunch? We have to break at 12 o'clock, so lunch is  
4 from 12 to about 1:30 or 1:40.

5 MS. NEWMAN: Judge, before Mr. Ladd starts  
6 his testimony, I'd like to get a formal waiver of the  
7 attorney/client privilege on the record for my client while  
8 he's in the room, so he knows that he's able to, because he  
9 represented him both as a guardian ad litem and as a lawyer?

10 THE COURT: Okay.

11 MS. NEWMAN: Make sure that there is no --

12 THE COURT: Mr. Ladd, come up the aisle  
13 there, across the courtroom here, up this ramp. I will swear  
14 you in. Before you sit down, would you please raise your  
15 right hand,

16 MR. LADD: Yes.

17 THE COURT: Do you swear or affirm that  
18 the testimony you are about to give will be the truth.

19 THE WITNESS: I do.

20 THE COURT: Your name, please?

21 THE WITNESS: William Ladd.

22 THE COURT: L-A-D-D?

23 THE WITNESS: Yes.

24 THE COURT: Please have a seat.

25 Ms. Newman, do you want to voir dire your client?

1 MS. NEWMAN: Okay. Before we begin, we're  
2 just going to get a quick waiver of the attorney/client  
3 privilege because Mr. Ladd both represented Ihab as his  
4 guardian ad litem and as the attorney in the juvenile  
5 delinquency proceedings and do you want to swear him?

6 THE COURT: Mr. Masalmani, would you  
7 please raise your right hand.

8 THE DEFENDANT: All right.

9 THE COURT: Do you swear or affirm that  
10 the testimony you are about to give will be the truth?

11 THE DEFENDANT: Yes.

12 THE COURT: Go ahead, counsel.

13 MS. NEWMAN: Thank you, Judge. Ihab, have  
14 we discussed the fact that you have an attorney/client  
15 privilege with Mr. Ladd?

16 THE DEFENDANT: Yes.

17 MS. NEWMAN: And do you understand that by  
18 calling him as a witness we're waiving that privilege?

19 THE DEFENDANT: Yes.

20 MS. NEWMAN: And so that means that  
21 anything, any conversations that you had with Mr. Ladd he will  
22 be allowed to talk about if either the prosecutor or I ask him  
23 questions?

24 THE DEFENDANT: Yes.

25 MS. NEWMAN: That's acceptable?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay.

3 MS. NEWMAN: All right. Thank you, Judge.

4 THE COURT: You're in agreement with  
5 waiving your privilege?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. Go ahead, Ms. Newman.

8 MS. NEWMAN: Thank you, Judge.

9 WILLIAM LADD,  
10 after having been first duly sworn to tell the truth the whole  
11 truth and nothing but the truth, was examined and testified as  
12 follows:

13 DIRECT EXAMINATION

14 BY MS. NEWMAN:

15 Q Start from the beginning. State your name, again?

16 A William Ladd.

17 Q And your occupation?

18 A I'm an attorney.

19 Q And how long have you've been an attorney, Mr. Ladd?

20 A Since November of 1979.

21 Q All right. And can you talk a little bit about your  
22 background for us so we know what kind of law you've been  
23 practicing?

24 A As an attorney I have been practicing representing children in  
25 the Wayne County Juvenile courts since January of 1981. I've

1 worked for the Juvenile Defenders Office, it's a division of  
2 Legal Aid and Defender from 1981 until 2006. Since then, I've  
3 worked for the Michigan Childrens Law Center representing  
4 children in the Wayne County Juvenile Court, and I also  
5 represent children primarily on appeal, appellate cases from  
6 the Wayne County Juvenile Court.

7 Q All right. And does that representation is that both abuse  
8 and neglect cases as well as juvenile delinquency cases?

9 A Yes.

10 Q So all aspects?

11 A That's correct.

12 Q Very good. And do you know Ihab Masalmani?

13 A Yes, I do.

14 Q Okay. And can you -- do you recall when you were first  
15 appointed to his case?

16 A I believe I was assigned to his case in 2001.

17 Q All right. Do you remember the circumstances?

18 A As an attorney at the Legal Aid I would be assigned  
19 essentially on a rotating basis new cases and I was assigned  
20 his case as well as his sister's case as an abuse and neglect  
21 case.

22 Q Okay. And can you explain what that means?

23 A Well, I was assigned and my office would have been appointed  
24 to represent the two children as what's called the lawyer  
25 guardian ad litem.

1 Q Okay.

2 A And my responsibilities at that point were to represent as an  
3 attorney the childrens' best interest.

4 Q And do you recall where they were living at the time?

5 A They were originally placed in what's called shelter care,  
6 which means it would be a temporary emergency shelter, kind of  
7 group home and they were placed separately.

8 Q Okay. And do you remember why -- were they living somewhere  
9 before they were placed into the group home?

10 A Before they had been placed in the group home, they had been  
11 living with their aunt in Dearborn. That was the reason why  
12 the case came to court because there were allegations of abuse  
13 and neglect involving both of the children.

14 Q Okay. Do you remember what those allegations were?

15 A They were allegations, initially the allegations were  
16 regarding Ihab's sister Torpha, who had essentially there were  
17 allegations of medical neglect and believe that she had  
18 serious diabetes and that was not being treated. She  
19 eventually went I believe on her own to the hospital and there  
20 was a referral made by the hospital based on that failure to  
21 treat her. Then subsequently there were allegations of  
22 physical abuse and sexual abuse and neglect involving both of  
23 the children.

24 Q Okay. And were they going to school at the time?

25 A No.

1 Q Why is that?

2 A I believe that Torpha was being used as an employee or was  
3 working in a family business or restaurant and Ihab I believe  
4 was simply left at home.

5 Q And how old was Ihab at the time?

6 A Well, he was born in 1991, so he was probably nine or ten.

7 Q All right. And how old was Torpha?

8 A She was a couple years older, so 11 or 12.

9 Q All right. And can you walk us through a little bit about  
10 Ihab's history, how he got to the United States?

11 A My understanding is that he had been sent by the family and  
12 along with his sister to essentially this country but that he  
13 had entered the United States through the Bahamas and he came  
14 to Miami from the Bahamas where I believe that they were both  
15 detained by the immigration authorities for a period of time.  
16 I don't believe it was very long. And then they were released  
17 to go live with the relatives in California.

18 Q Okay. And do you know what happened in California?

19 A Well, I believe that there were problems with mistreatment  
20 there and the relatives no longer wanted to or should care for  
21 them and they were sent to Dearborn to relatives here.

22 Q Okay. And then -- so then a complaint. You said Torpha took  
23 herself to the hospital, CPS gets involved?

24 A That's correct.

25 Q And it comes into court and you get involved?



1 A That's correct.

2 Q What other agencies were involved?

3 A Well, the case at that point would have been responsibility  
4 it's call the Department of Human Services now. I think it  
5 was the Family Independence Agency at that time and their  
6 division, the Protective Services Division, would have been  
7 responsible for doing an investigation of the case and  
8 bringing the case to court.

9 Q Okay. And do you recall what the reaction of those folks were  
10 when the kids came to court?

11 A The Family Independence Agency was not particularly  
12 sympathetic to either of the children and they wanted both of  
13 the children to be sent back to their country of origin.

14 Q Okay. And why didn't that happen?

15 A It did not happen because the court couldn't determine that  
16 there was a safe and suitable home for the parents wherever  
17 they were. It was difficult to determine the circumstances of  
18 the mother in particular and the court was left with really no  
19 option other than to proceed on the case in the juvenile court  
20 here.

21 Q So how did that case proceed?

22 A Well, because the department was reluctant to proceed on the  
23 case, I had to file a petition myself as the childrens' lawyer  
24 requesting that the court take temporary jurisdiction over the  
25 children.

1 Q And is that what prevented them from being sent back to  
2 Lebanon?

3 A They would have been a dependent at that point to be honest  
4 because there was no real plan, so the court would have had to  
5 proceed probably regardless.

6 Q Okay. And do you know where the mom -- do you recall at that  
7 time where the mother -- were you able to locate their mother?

8 A The mother was finally contacted and I believe that she was in  
9 Lebanon. She was going back and forth between Lebanon and  
10 Syria.

11 Q But did she want the children back?

12 A She at some point and it was later in the case expressed an  
13 interest in having the children returned to her.

14 Q All right. And then let's switch gears a little bit to Ihab  
15 personally. How many years were you involved with his case?

16 A I represented him as his both lawyer-guardian ad litem and in  
17 the neglect case and later as his attorney also in his  
18 delinquency case from 2001 I believe until 2009 I believe,  
19 whenever he would -- my involvement was not dismissed and the  
20 case was not dismissed until he was convicted in this case.

21 Q Okay. So how would you describe him?

22 A I always found him fun to be with him as a client. He was  
23 always responsive to me and he listened to me. Frequently,  
24 that involved my advising him or counseling him about problems  
25 that he might be having, but he was always very easy to deal

1 with.

2 Q How about when he was getting in trouble?

3 A Well, from my point of view he was still easy to deal with.  
4 He would be responsive to me in that particular circumstance  
5 but, again, I think that he was the kind of kid that needed  
6 constant direction, and I saw him intermittently.

7 Q Okay. Well, let's talk about that. How often would you see  
8 him? I mean, is there a protocol for being in court when  
9 you're a ward of the state like this?

10 A As a lawyer-guardian ad litem in the neglect get case, my  
11 responsibility was to have contact with him before each court  
12 hearing, which was normally on a schedule of approximately  
13 every three months. And obviously I would see him frequently  
14 in the earlier years he would not be in court. And as the  
15 case progressed, Ihab had a delinquency case also he  
16 frequently appeared in court much more frequently and I would  
17 also see him there, but I saw him at various placements where  
18 he was.

19 Q How would you describe his maturity level?

20 A He was immature. He was kind of a young kid when I first got  
21 him and even in the later years he was still an immature kid.

22 Q Okay. And how many kids do you think you've dealt with in  
23 your decades of experience?

24 A I thought about this. I think between 5 and 8,000.

25 Q Wow. All right. And where would he fit in if you had to put

1 a spectrum of the kids and maturity levels and easy to get  
2 along with. I mean, sort of where would he fall?

3 A Two things. Again, all of the children that I represented  
4 have been kids who were involved or trouble kids or are in  
5 difficult circumstances based upon their home situations. So  
6 they haven't had positive family experiences. In terms of  
7 maturity, Ihab was probably in the middle. That's not very  
8 mature compared to the general population. And in terms of  
9 being able to deal with them, he was one of the easiest kids  
10 to deal with from my point of view.

11 Q All right. Even if he wasn't all that -- he didn't appear to  
12 be all that compliant with the rules that were --

13 A Well, that depends. He was very sporadic is true. Sometimes  
14 he was, sometimes he wasn't. Then I think it was very  
15 situational.

16 Q Okay. And what was his response when you talked to him about  
17 it? I think you said, you know, he responded to you.

18 A Well, I think that it meant that I tried to be realistic with  
19 him about the circumstances. If there were reports and  
20 problems in one of the placements he was in, I would talk to  
21 him about that, and he was good about recognizing that there  
22 were certain problems. Sometimes he had explanations for  
23 those problems and we would deal with them as best we could.

24 Q All right. Was he getting services to try and help him with  
25 some of these things?

1 A Well, he was supposed to be involved in various forms of  
2 therapy throughout the case and those would -- those were  
3 individual therapy. He would receive group therapy.  
4 Sometimes he had the individual therapy. He also had very  
5 minimal forms of substance abuse treatment and those were  
6 kinds of constants throughout the case.

7 Q Okay. But constants in terms of he was getting a lot of help  
8 or just it would come up in terms of needing the help?

9 A Well, when he was in foster homes in the community it would be  
10 periodic assistance, periodic counselling. It could be once a  
11 week. It was frequently much less than that. When he was in  
12 placement, he was supposed to be receiving intensive therapy  
13 and treatment of some sort and part of the problem was that  
14 frequently my job was to identify where I thought that was not  
15 productive or was inappropriate, things like that. But, those  
16 were in place.

17 Q Okay. And how about educationally?

18 A Educationally was another question because he was in and out  
19 of Special Education Services and I was never convinced that  
20 he was in an appropriate educational program. I always  
21 thought that he needed appropriate intensive special  
22 education. He never received that. He was progressively  
23 further and further behind.

24 Q And did you try and obtain that for him?

25 A At various times I requested that he be given special

1 education services and some point the court refused to order  
2 that.

3 Q And was there a reason why the court refused to order that?

4 A The court's position was that putting kids in Special  
5 Education Services was labeling them. And while that's in a  
6 sense true, it's counterproductive because it's a  
7 self-defeating situation where they don't receive appropriate  
8 services.

9 Q Okay. So you fought for it and were just unsuccessful?

10 A That's correct.

11 Q Were you aware -- so you worked with him throughout his  
12 various placements?

13 A Yes.

14 Q And what did you think of his placements? Well, let me back  
15 up for a second. Did you ever meet any of the foster mothers  
16 that he was placed with?

17 A Yes. I would visit him in his foster homes.

18 Q Okay. So you were aware of the home, the environment?

19 A Yes.

20 Q Would the foster parent be present when you met with him?

21 A Yes.

22 Q Okay. And what's your opinion then on anything that you --

23 A In terms of the foster homes, they were okay or kind of  
24 borderline. Frequently foster homes are not the best homes,  
25 but the foster parents are well meaning in their trying to do

1 the best they can for kids, but frequently the living  
2 situation, the community and things are not very good.

3 Q And do you have an opinion about the change in placement and  
4 its effect on Ihab?

5 A He was in a number of placements, at least ten and I think  
6 progressively it made it worse and worse for him. Kids have  
7 difficulties with having a sense of stability and having a  
8 sense of belonging and having a sense of attachment. If they  
9 keep being moved, then they have no sense of security. And he  
10 kept being moved. He had, essentially he had a whole  
11 childhood of disappointments and the disappointments were  
12 frequently those moves from his placements or the placements  
13 were not appropriate.

14 Q Okay. As he got older then and he was sort of straddling the  
15 foster care system, the juvenile delinquency system, what kind  
16 of changes did you start seeing in him?

17 A Well, I think he became more and more oriented towards being  
18 with kids on the street and the only place I think that he saw  
19 where he felt that he belonged.

20 Q Was he involved in any gangs?

21 A I believe that he was on the east -- northeast side of  
22 Detroit.

23 Q All right. So once he started getting into that, do you  
24 remember what first started the juvenile -- you know, the  
25 juvenile delinquency cases?

1 A He had had delinquency cases I believe for assault and battery  
2 in I believe in 2008, if I recall correctly, and I believe  
3 that that case was dismissed because he had a neglect case.  
4 Subsequently, in I believe later in 2008, he had a drug  
5 offense I think involved possession with intent to deliver  
6 marijuana and cocaine.

7 Q And what happened as a result of those, getting arrested?

8 A At that point he was adjudicated, which meant that in fact he  
9 pled guilty to misdemeanors as it related to that and he was  
10 what's called committed to at that point it was the Department  
11 of Children and Family Services, which would be the Wayne  
12 County program or agency that had supervision of all kids who  
13 were delinquent court wards in Wayne County.

14 Q Okay. And what does that entail?

15 A Well, they had responsibility for determining and supervising  
16 placement of delinquent kids and providing services to those  
17 kids and then reporting to the court about the kids status.

18 Q All right. So are those placements --

19 MS. NEWMAN: You want me to stop?

20 THE COURT: You can ask one more question  
21 or is this the end of your--

22 MS. NEWMAN: This is a good stopping  
23 point.

24 THE COURT: Okay. All right. We'll stop  
25 now then. Ladies and gentlemen, it's 12 o'clock. We're going



1 to resume probably about 1:40. I have drug court during lunch  
2 hour so I have to take care of that. And, sir, if you would  
3 be kind enough to return at 1:40, we will finish your  
4 testimony then. Okay.

5 THE WITNESS: Okay. Thank you, Judge.

6 THE COURT: You're very welcome.

7 THE BAILIFF: All rise, please.

8 (At 11:57 a.m., court recessed)

9 (At 1:56 p.m., back on the record)

10 THE COURT: We're back on the record on  
11 People versus Masalmani, docket 09-5244-FC in continuing  
12 hearing regarding sentencing consistent with *Miller* v Alabama.  
13 The People ready to proceed?

14 MR. CATALDO: Yes.

15 THE COURT: Defense ready?

16 MS. NEWMAN: Yes, your Honor.

17 THE COURT: Is Mr. Ladd here?

18 MS. NEWMAN: He is.

19 THE COURT: Mr. Ladd, come on up to the  
20 witness stand, please. You're still under oath, sir. Okay?

21 THE WITNESS: Yes.

22 THE COURT: Okay. We'll resume your  
23 direct examination.

24 BY MS. NEWMAN:

25 Q All right. Thank you, your Honor. I think where we left off

1 we were talking about various placements that Ihab had had, so  
2 I want to be a little more specific.

3 So we talked about how he was with Ms. Day  
4 and he was removed from Ms. Day's home to go to an adoptive  
5 home, which I think is sort of where we left off. So can you  
6 tell us what happened at that second placement?

7 A Well, he had been with Ms. Day for more than four years and he  
8 was clearly attached to her in that he was placed with the  
9 other family, the Jaweds, for the express purpose of adoption  
10 and that was because Ms. Day had not been interested in  
11 adopting Ihab, which I believe was very difficult for him.

12 Q And was that -- we heard earlier testimony that there's  
13 certain foster parents who just foster and then there are  
14 certain people are in pre-adoptive placement. So Ms. Day was  
15 a foster placement?

16 A Yes.

17 Q And he was moved because this was a pre-adoptive placement; is  
18 that correct?

19 A Yes. And she expressed that she would not adopt him.  
20 Sometimes foster parents will adopt kids in their home but  
21 there are a number of them that just have kids as foster  
22 parents. The problem is the kids don't understand that.

23 Q Okay. And what happened with the Jawed family placement?

24 A Ihab was there for a very short period of time, two or three  
25 weeks, and I think that like many of my clients they think

1 that if they misbehave somewhere they'll get what they want,  
2 and presumably he wanted to go back to the Days but instead --  
3 to Ms. Days, but instead he was removed from that home and  
4 placed in another foster home.

5 Q Okay. And that with Ms. Thomas?

6 A That's correct.

7 Q And then what happened in the Thomas home?

8 A Well, he was there for an extended period of time but he had  
9 -- there were substantiated allegations of abuse and/or  
10 neglect in that home.

11 Q All right. And what was the next step?

12 A So, then, he had to be moved again. I believe he was moved to  
13 another foster home.

14 Q All right. And the records indicate that maybe there was a  
15 placement in between to St. Jude Home for Boys?

16 A Yes. And that's a residential placement.

17 Q Meaning?

18 A Well, residential placement St. Jude probably had 12 to 25  
19 kids in the placement and they would be required to follow the  
20 routine of that particular placement. And all too often what  
21 happens is that kids, Ihab was getting older, he was 12 or 13,  
22 and for kids that are older there are fewer and fewer foster  
23 homes available so those kids end up being placed in  
24 residential purely because of their age and it becomes  
25 difficult for lots of kids to adjust to those placements.

1 Q All right. And then the next placement after the Home for  
2 Boys it appears he was placed in the home with Ms. Davis?

3 A Yes. And I believe that was just for a short period of time.

4 Q All right. Do you have any recollection of why he was there a  
5 short period of time?

6 A I believe that there were just difficulties. They had  
7 difficulties getting along. Again, he was getting older and  
8 think for lots of people, foster parents in particular, older  
9 kids are difficult for them to deal with just purely because  
10 of their age.

11 Q Okay. And so that didn't last very long. And then it looks  
12 like he went to a juvenile detention facility after that?

13 A And he I believe -- well, the problem was that I believe that  
14 he started, because there were problems in the foster home --  
15 he started leaving the foster home. And they called that  
16 AWOL, Absent Without Leave. And, the court had a practice of  
17 locking up kids who were neglect wards who had left their  
18 placements. And that practice was not stopped until the state  
19 made an agreement with the -- in federal court not do that but  
20 that was years later.

21 Q So it's not necessarily that he was arrested or gotten in any  
22 specific trouble, but if he wasn't AWOL it was treated --

23 A Right. There was no crime and that's part of the problem. He  
24 had not committed any criminal offense. He just wasn't where  
25 he was supposed to be, and as a result of that he would be

1       picked up.

2       Q     Okay. And then it looks like that's repeated. He goes to  
3       Karen Hughey during that again couple of months?

4       A     Yes. And there were similar issues with him not being able to  
5       adjust to that placement. Again, he's starting to get into  
6       this cycle of multiple placements.

7       Q     Okay. And is that a common cycle?

8       A     For many kids it's very common where the more placements they  
9       have the less ability they have to adjust and adapt to the  
10      particular placement and they'll use the only kind of tool  
11      that they have to get out of a situation they have trouble  
12      coping with by misbehaving and that essentially builds on  
13      itself.

14      Q     All right. And so it looks like goes to Don Bosco and Elliot  
15      Detention Center, Holy Cross. Can you describe what some of  
16      these placements are like, the atmosphere in them?

17      A     Don Bosco is a smaller residential placement. Again, most of  
18      the residential placements are not very good at all. Don  
19      Bosco is a good example, and it's not very well structured  
20      within the program so it's difficult for kids to adjust to  
21      being in Don Bosco. And it's in the community and kids  
22      frequently misbehaved. They wouldn't get a lot of direction  
23      and it's a kind of place when there are problems that kids  
24      will just leave and he ended up going to the Holy Cross  
25      placement called Queen of Angels, which was in Saginaw, which

1 was a much bigger placement. And that was a structured  
2 placement or had much more structure than Don Bosco, but Ihab  
3 had great difficulties there because the program would use the  
4 other kids to exercise control and discipline over them. They  
5 would call it -- they called it a Group Restraint, which meant  
6 that essentially the staff would tell the other kids to make  
7 this kid behave and then to hold him until he stops  
8 misbehaving and that's essentially caused lots of -- lots of  
9 fights amongst the kids, which the staff set up.

10 Q And then after that it looks like he went to a supervised  
11 dependent living. Can you tell us what that is?

12 A Supervised Independent Living would be either somewhat like a  
13 foster home. It would be an adult who is usually in-resident  
14 and the kids would have some responsibilities in that home.  
15 So it's a little more unstructured than a foster home.

16 Q All right. And then how did you feel about -- who placed him  
17 in semi-independent living? I mean, who makes that decision?

18 A Well, the agency can make the decision about it, but the court  
19 can authorize that decision. So it's essentially with the  
20 approval of the court. The agency would make recommendations  
21 and the court would make a decision whether or not  
22 semi-independent living is an appropriate plan for a  
23 particular kid.

24 Q And how did you feel about a placement in semi-independent  
25 living at that point?

1 A At that point it was both good and bad. It was something that  
2 Ihab appreciated in having more freedom and being in a non-  
3 institutional setting. To be honest, it was also somewhat  
4 problematic because those placements are frequently less  
5 supervised by the agency as well as less supervised by the  
6 caretaker so that the kids frequently would have not enough  
7 supervision and there would not be enough checks and balances  
8 on that particular placement.

9 Q All right. And at that time, it appears that you were his  
10 attorney as opposed to his guardian and litem?

11 A At this point or that point, I was both, because in I believe  
12 it was in 2008 Ihab had been adjudicated as a delinquent. And  
13 because of his circumstances because he was a permanent court  
14 ward, did not have anyplace else to go in the community, he  
15 was what's called committed to the Department of Children and  
16 Family Services.

17 Now, as his attorney I had different  
18 responsibilities and I did as his lawyer/guardian and litem.  
19 My responsibility is a classic lawyer role to represent what  
20 he wanted and still have responsibilities to advise him, but I  
21 was essentially the classic defense attorney.

22 Q All right. So if you had thought it was in his best interest  
23 to not have that, that would be something you wouldn't be able  
24 to advocate unless your client wanted to?

25 A That's correct. That would not be proper.

1 Q All right. And then how did you hear about the case that  
2 we're here on today, the series of crimes that occurred in  
3 2009?

4 A Ihab had been in various placements as a delinquent. He had  
5 been getting delinquency proceedings. He was released from  
6 the detention facility when the court ordered that he be  
7 placed in semi-independent living and he essentially left  
8 right away before he actually got in that house for the  
9 semi-independent living. And he was absent without leave or  
10 not in placement for a period of a few months when I learned  
11 from his delinquency worker that he had been arrested.

12 Q And did you see him after he was arrested?

13 A I saw him a number of times at the Macomb County Jail. We  
14 were still doing proceedings on his case, both in the  
15 delinquency, they were essentially combined, and the neglect  
16 case because he was a permanent court ward so we would do  
17 those cases together.

18 Q All right. And what was your reaction to what he was accused  
19 of and now convicted of?

20 A Well, I was very, very upset. It was clearly a very sad  
21 situation that he had gotten himself into.

22 Q All right.

23 MS. NEWMAN: I don't think I have any  
24 further questions at this time.

25 THE COURT: Thank you, Ms. Newman.



1 Mr. Cataldo.

2 MR. CATALDO: Yes, your Honor.

3 CROSS-EXAMINATION

4 BY MR. CATALDO:

5 Q From what I can tell, Mr. Ladd, you represented Mr. Masalmani  
6 from 2001 until 2009, which is the time that he had gone AWOL  
7 and murdered Matt Landry and then you continued to represent  
8 him until because he was in an adult court in Macomb County,  
9 they eliminated his delinquency and his juvenile stuff in  
10 Wayne County?

11 A No. I continued to represent him until and I don't recall, I  
12 believe it was until the sentencing in the adult case.

13 Q Okay. So there was an open matter still in Wayne County?

14 A That's correct.

15 Q Which was superfluous compared to the charges that he had out  
16 here. I mean, it meant nothing?

17 A It meant something because the court had to take note of what  
18 had happened with one of its wards who is very important.

19 Q In a sense for a statistical purposes or in a sense that they  
20 wanted to acknowledge the complete failure in having attempted  
21 to house him or keep him or teach him or train him or do  
22 anything?

23 A The court has some responsibility to receive reports about its  
24 wards and make decisions based upon their circumstances, the  
25 juvenile court has that. And until the juvenile court

1 dismisses the case, it has that continuing responsibility.

2 Q So essentially even though he was beyond the age of 18 at the  
3 time the hearings and proceedings out here concluded, they  
4 don't close those files until these files here are completed?

5 A The case, a juvenile court case for a kid like Ihab because he  
6 was a permanent court ward normally they would not close it  
7 until they turn 19 and unless there was some other reason to  
8 close the case.

9 Q Would you explain again for me this process where he's moved  
10 from foster care to delinquency status. I do apologize, sir.  
11 I do not practice in the area of juvenile law so there are  
12 some aspects of it that I don't have a grasp on. But, I get  
13 the sense that he started out first with various families, as  
14 you indicated you were his GAL. And then some criminal  
15 activities began, truancies began, things like that at which  
16 point then he becomes I guess a ward of -- he's a ward of the  
17 state in foster care; is he not?

18 A Correct. He was -- to begin with for the first I believe five  
19 and a half, six years he was what's called an neglect ward.  
20 Then he was adjudicated or found responsible for the offense,  
21 the delinquency offense, he was also made a delinquent ward,  
22 so he was a what's called a dual ward so the court could --  
23 was dealing with him under both of those circumstances.

24 Q You seem to indicate when he hits the age of 12 or 13 foster  
25 care is no longer an option because many foster care parents

1 in the system do not wish to I guess take in kids of that age?

2 A It becomes more and more difficult to find foster homes for  
3 kids and in particular becomes more and more difficult to find  
4 adoptive homes for kids that age.

5 Q Is that the goal of the foster care system is to find adoptive  
6 parents, or is the goal of the foster care system is to  
7 provide a roof, a family-type environment, some feedback,  
8 love, things like that to hopefully nurture a young person into  
9 a successful adulthood?

10 A Well, it's all of those things. It's also the responsibility  
11 of the system to provide permanency for kids so that they are  
12 -- the preference would be, again, it could be reunification  
13 with the family, which was not available here, so we in Ihab's  
14 case what had happened he was made a permanent court ward with  
15 the goal of in what's called the Permanent Plan of Adoption  
16 and that was the preferred plan. And, the agency would have a  
17 responsibility to try to accomplish that and that continuing  
18 responsibility throughout the case while he was a permanent  
19 court ward, which was essentially four, at least four years.

20 Q Did he fail the system or did the system fail him?

21 A Well, again, what happens is, is that the system has a  
22 responsibility to make what's called reasonable efforts to  
23 accomplish that plan to do the best that it can with the kid.  
24 And in Ihab's place, a number of missteps took place in trying  
25 to accomplish that. The placements that they made, the

1 placement decisions that they made essentially sabotaged his  
2 ability to have a meaningful permanent plan.

3 Q So in other words, the system put him with bad families --

4 A In some --

5 Q -- and, therefore, your premonition is that, okay. He's with  
6 that family. He had foster care parents; therefore, he didn't  
7 have a chance. Is that what I see with that response, or --

8 A Well, I wouldn't call -- and they could be bad. I would be  
9 more willing to say that some of the institutional placements  
10 were bad. The family became more and more borderline or  
11 marginal and that unfortunately can happen, but at the very  
12 least some of the placements were inappropriate for him for  
13 various reasons and one of them there were findings of abuse  
14 and neglect, so I guess you could say that that's a bad  
15 family, but.

16 Q I get the sense from what you're telling me, it's not Ihab's  
17 fault. It's "We had bad placements." "We had bad families."  
18 I was taken aback by your statement here that it seemed to be  
19 Don Bosco's fault because it's smaller, it's residential, it's  
20 not very good, it's not well structured. You know, it's  
21 difficult to adjust. He had difficult adjusting. You  
22 essentially blamed that placement and his going AWOL from that  
23 placement on Don Bosco without seemingly placing any  
24 responsibility on Mr. Masalmani for making a real effort to  
25 adjust?

1 A Well, I think in circumstances with the placement like that,  
2 that if you have a bad placement and the placement isn't doing  
3 effectively with the kids, what happens unfortunately is that  
4 you increase the likelihood that they are going to have  
5 problems in that placement. And the thing that I found, and I  
6 represented way too many kids who left their placement and  
7 invariably it's because they had problems in the particular  
8 placement. And, if the thing is, is that it's not necessarily  
9 a good decision by the kid. They're kids. They make lots of  
10 bad decisions, but it's understandable when we put them in  
11 that circumstance. That's what I'm saying.

12 Q But it was the same thing then with Holy Cross. You indicated  
13 that Holy Cross had a punishment system based on the fact that  
14 it was the kids who would make that determination. And from  
15 what I see in the reports, Ihab's response to that was to feel  
16 that he was being disrespected so, therefore, he acted out, so  
17 that was a bad placement again for Mr. Masalmani because that  
18 somebody should have known that structure wasn't going to work  
19 with somebody who hates authority, much less somebody who is  
20 now going to be ruled on by authority that's the same age as  
21 he is. So why is it Holy Cross' fault, I guess, and not  
22 Mr. Masalmani's fault?

23 A Well, again, Holy Cross is an institution of adults and they  
24 have the responsibility to provide appropriate and responsible  
25 services to kids. Again, what I said was that is that kids'

1 reactions to circumstances like that may be improper but they  
2 also are understandable. In the situation with the placement  
3 at Queen of Angels, he was removed from that placement at my  
4 request because I kept trying to get them to deal with the  
5 fact they had inappropriate discipline practices so that no  
6 kid should be in that particular placement. And the fact that  
7 he had an inappropriate reaction to that, again he had some  
8 responsibility for that but the placement created that  
9 situation.

10 Q I guess, that's what I'm getting to. We had a foster care  
11 mother who's smoking dope with him, another one who's  
12 physically abusing him, two facilities that he just doesn't  
13 fit well, and Matt Landry's dead, and all of a sudden all I'm  
14 hearing hear here is that, Well, he just never real had a  
15 chance. Mr. Masalmani, he just wasn't in the right place and  
16 I don't see anybody here saying that maybe he doesn't take  
17 responsibility because of his anger issues and because as he  
18 indicated to one prior therapist, which is what you indicated,  
19 any time many of the kids that you represent don't like a  
20 placement, they act up. He specifically indicated to a  
21 therapist, Juanita Moore, who did a psych eval for him, you  
22 must have a copy of it for the court --

23 A She was the foster care worker. She didn't do an evaluation.

24 Q Okay. Yes, she did. Oh, yes, she did.

25 A She requested --

1 Q Okay. No. Yeah, she did request one that was done by --  
2 let's see. Hold on a second. Monda Moore, Ph.D.. No, PSYD,  
3 psychologist. Where he indicated very opening that he nuts  
4 up, makes trouble, gets out of it, goes to the next one. That  
5 he continues to do that if he doesn't like the placement. So  
6 at what point is it the placement or at what point is it  
7 Mr. Masalmani I guess I'm asking you in this continuum of  
8 efforts made to help him?

9 A Well, again, as adults we have responsibility for putting kids  
10 in the best circumstance that we possibly can. And as kids  
11 get older, they have more and more responsibility for their  
12 actions, which is quite true, but we have to look at the  
13 institutional circumstances also. Essentially -- and you're  
14 right. He was in a kind of a vicious cycle but it was to a  
15 certain extent we have control over the institutional  
16 responsibility for that, and he has responsibility for his  
17 actions but his actions in certain ways were understandable in  
18 terms how he acted out in placements, how he acted out in the  
19 foster homes.

20 Q Understandable and his responsibility. I mean, are you -- I  
21 get if we're -- let's take a scale of one to ten here. You  
22 talked about adults have a responsibility, you had a  
23 responsibility, you doing what you could for him to put him in  
24 the proper placement so that he could flourish. What we have  
25 is here is a series of placements that he's left, upwards of

1 five or seven foster care placements, at least three  
2 delinquency placements. On a scale of one to ten, what's  
3 Mr. Masalmani's responsibility to try to work through it, be a  
4 man, grow up and try to live within that system versus the  
5 easy opportunity to simply act up and get out?

6 A Well, again, I think that he was making periodic efforts to  
7 adapt to situations. He was always responsive to me. He was  
8 always responsive to various workers on the case. In certain  
9 situations where he was in a program that was effective and  
10 appropriate, such as the Boysville program, he did quite well.  
11 He completed that program, so he was able to show that he was  
12 responsible in some circumstances. Unfortunately, if we  
13 create situations that make it more likely for kids to fail,  
14 it's more likely they're going to fail. And unfortunately,  
15 that's what had happened with Ihab, and he's responsible  
16 ultimately for what happened but we're responsible for the  
17 process that got him there.

18 Q So the system failed him at a better, at a higher percentage  
19 than he failed himself or he failed the system?

20 A During the time that he was in a number of placements, there  
21 were decisions that were problematic for him. That's true.  
22 And to some extent that's a failure. And there are various  
23 explanations for that but that's a failure as it relates to  
24 this particular kid. The ultimate result for that and the  
25 ultimate actions, clearly Ihab has responsibility for his



1 actions but we have to look back and see to how he got there.

2 Q I mean, you indicated that you found him fun as a client, but  
3 you have to admit that that's the exact opposite of how a lot  
4 of other people found him. So, for example, Ms. Moore  
5 indicate that he had a problem with authority. The FIA reports  
6 in February of 2007 and this August of 2007, 2008 indicate  
7 that he's incorrigible and rude. The therapist from the I  
8 think Holy Cross indicate, or wherever he was in 2008, that he  
9 had a problem with authority. The individual team reports  
10 indicate that he won't follow authority. I mean, so that's to  
11 me under antisocial personality disorder very manipulative.

12 A Well, again --

13 Q Hold on. Hold on. Hold on. Here he is being really nice to  
14 you because here you are trying to help him, but the moment  
15 you leave, the moment you're not there, he becomes  
16 incorrigible and rude, assaultive and inappropriate.

17 A Well, again, with kids, and it starts when they're younger,  
18 the idea in kids that are troubled, and clearly Ihab was  
19 troubled from his earlier years, he had a very difficult  
20 younger childhood, the important thing with them is constant,  
21 constant of response to their behavior and being able to be  
22 consistent and firm without being as the adult inappropriate  
23 with them or overly punitive with them. As a kid is what they  
24 need to be able to learn how to be more responsible.  
25 Unfortunately, because he kept being moved around, he had

1 various patterns of treatment, he had various people that were  
2 dealing with him, he had more and more difficulty responding  
3 to people. I was a constant in his life. He knew that I was  
4 always there and he knew that I would be responsive to him and  
5 listen to him so he was responsive to me. Other people he had  
6 more difficulty trusting them and that was understandable.

7 Q I guess when you say that you indicate that you would like  
8 give him advice and he would recognize his faults to you, but  
9 during this time that you are representing him he goes AWOL  
10 seven times. During the time he's AWOL he picks up seven new  
11 criminal charges, mostly felonies in juvenile court. Theft,  
12 drugs, drug sales. He assaults a principal at a school that  
13 he's at. He's truant. He assaults the foster care parents.  
14 He assaults other kids at Holy Cross. He assaults staff at  
15 Holy Cross. He assaults police. So would you be willing to  
16 say that he's only smiling at you, telling you what you want  
17 to hear because the moment you leave, you leave him on his  
18 own, you leave him without the structure that you provide in  
19 that small setting, back to his on devices, it's wild in the  
20 streets?

21 A No, I don't think that's true.

22 Q Are you going to tell me that of all the kids you have, kids  
23 constantly under your care, your tutelage, your GAL, your  
24 defense support, continue to commit a number of crimes like  
25 that? I mean every time he goes AWOLs, he commits a crime. I

1 mean, so AWOL isn't a crime in itself, right?

2 A That's correct.

3 Q But he committed at least I've got five petitions, crimes  
4 while he was AWOL?

5 A That's correct. Clearly --

6 Q So explain to me the difference between do you think that he  
7 operates well and when he's not in structure?

8 A I think that he had he could do well in structure in a home if  
9 it was a caring and consistent home. Clearly that was true in  
10 Ms. Day's home. It was true that he was able to do well in a  
11 structured and appropriate institutional placement such as in  
12 Boysville, so I think it depends upon the circumstance and I  
13 think it's the question of consistency. And the fact that he  
14 had difficulties even as a younger kid controlling his  
15 behavior is something that very unfortunately you're going to  
16 see with lots of kids in the population that I dealt with for  
17 30 years.

18 Q I get a sense by you having dealt with it for 30 years it just  
19 it becomes normal. I mean, it's normal to see failure. It's  
20 normal to see kids act out. It's normal to see kids not  
21 respond to the proper juvenile placements because we obviously  
22 have a primary foundational disagreement on responsibility,  
23 because he's had between 10 and 11 settings. He's done well  
24 in two, and you blame not him but the adults for the other  
25 nine settings because they didn't meet his needs as opposed to

1 his efforts to meet the needs of the program that he was in?

2 A Well, first of all, kids that have deficits are going to have  
3 difficulties dealing with various kinds of circumstances and I  
4 think Ihab all along had deficits and required people that  
5 knew how to deal with it for him to be successful.

6 Q So again, it's we didn't catch the deficits, therefore he is  
7 who he is?

8 A To some extent that's true. We didn't deal effectively with  
9 those deficits. That's true. He's responsible for his  
10 actions. We're responsible for our actions in the extent to  
11 which we would make efforts to rehabilitate and to habilitate  
12 kids when we have that opportunity. And those are different.  
13 And I have to say that my sense of kids like Ihab and my  
14 clients is that behaviors like this are normal. They are all  
15 too often common with kids that are in foster care. And you,  
16 you know, I don't know how you define normal. I don't think  
17 it is necessarily normal. The biggest problem is that in  
18 those circumstances all too often that's something that you  
19 can sadly expect to happen and that's kind of the  
20 responsibilities of the people in the juvenile system to try  
21 to alleviate.

22 Q So Mr. Masalmani would be responsible for his actions, the  
23 system may be responsible for the deficits that he suffers  
24 that then led to the action --

25 A Or the deficits that weren't appropriately dealt with because

1 he came with deficits.

2 Q You have seen a percentage of the kids you have worked with  
3 has grown into adults change?

4 A Yes. Yes.

5 Q You have seen a percentage of children you've dealt with not  
6 change?

7 A That's correct.

8 Q So it goes both ways?

9 A Right. Yes.

10 Q Even though you have represented between 5 and 8,000 young  
11 adults and that's a very heavy case load. That's a lot of  
12 children.

13 A Well, it's 30 years, so.

14 Q Yes, but it's still a lot of children. You would also  
15 probably mirror what Dr. Keating had said and, that is, even  
16 with all that experience you might not be able to tell anybody  
17 who's going to make it and who's not going to make it?

18 A That's true. That's true. The thing that you do is that you  
19 keep doing the best you can in the circumstances to put kids  
20 in the best place to succeed. That's all that you can really  
21 do.

22 Q You never gave up on Mr. Masalmani. Your job was to more or  
23 less to continue to try to find placements, continue to try to  
24 work with him --

25 A No, that's important. That's the essence of what I'm supposed

1 to do and I always hope either that the system will do it or  
2 that I can get them to do it regardless of what they really  
3 want to do.

4 MR. CATALDO: Thank you, Mr. Ladd. I have  
5 no further questions.

6 THE COURT: Thank you, Mr. Cataldo. Any  
7 follow-up, Ms. Newman?

8 MS. NEWMAN: No, your Honor. The witness  
9 can be excused.

10 THE COURT: You can step down, Mr. Ladd.

11 (At 2:35 p.m., witness was excused)

12 MS. NEWMAN: Judge, may I have a five  
13 minute recess?

14 THE COURT: Sure.

15 MS. NEWMAN: Thank you.

16 THE COURT: All right. We'll take five  
17 minutes, ladies and gentlemen.

18 (At 2:35 p.m., court recessed)

19 (At 2:48 p.m., back on the record)

20 THE COURT: We're back on the record on  
21 People versus Masalmani. And we had one more witness that  
22 defense was going to call today, Dr. Keating, is that correct?

23 MS. NEWMAN: Dr. Patton.

24 THE COURT: Dr. Patton. I'm sorry. And  
25 you're not going to call him now?

1 MS. NEWMAN: That's correct. We are not  
2 going to be calling Dr. Patton as a witness.

3 THE COURT: Okay. So we're all done with  
4 our hearing for today then?

5 MS. NEWMAN: We're all done with our  
6 hearing for today, and we'll have two witnesses on Friday,  
7 Dr. Vandervort and Dr. Danuloff.

8 THE COURT: Okay. I know you're not  
9 involved in Mr. Taylor's hearing on Thursday, but we're going  
10 to start the same hearing on People versus Taylor on Thursday  
11 at 8:30. And, I think that's just going to take the morning  
12 and then we'll finish Mr. Masalmani's up on Friday morning at  
13 8:30, correct?

14 MS. NEWMAN: Yup, that's correct.

15 MR. CATALDO: Your Honor, may we approach  
16 on a procedural matter that I forgot to discuss in chambers?

17 THE COURT: Sure.

18 (At 2:48 p.m., bench conference held)

19 (At 2:50 p.m., back on the record)

20 THE COURT: Okay. We're all done for  
21 today on this matter. Thank you, counsel. We'll resume on  
22 Friday.

23 (Defendant's Exhibit A was marked for  
24 identification)

25 (Defendant's Exhibit B was marked for

identification)

(Defendant's Exhibit C was marked for  
identification)

(Defendant's Exhibit D was marked for  
identification)

(Defendant's Exhibit E was marked for  
identification).

(Defendant's Exhibit No. F was marked for  
identification)

(At 2:50 p.m., proceedings concluded)

\* \* \*



1       STATE OF MICHIGAN       )  
2                                       )       SS  
3       COUNTY OF MACOMB       )  
4

5                                       CERTIFICATE OF COURT REPORTER  
6

7                       I, Angela M. Little, Certified Court Reporter in the  
8       State of Michigan, do hereby certify that the foregoing pages,  
9       1 through 138, inclusive, comprise a full, true, and correct  
10      transcript of the proceedings had in the matter of THE PEOPLE  
11      OF THE STATE OF MICHIGAN, Plaintiff, versus IHAB MASALMANI,  
12      Defendant, Case No. 2009-5243-FC, on Tuesday, 21st of  
13      October, 2014.  
14

15                                       /s/ Angela M. Little  
16                                       ANGELA M. LITTLE - CSR-6444, RPR  
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18      DATED: 11/6/14  
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STATE OF MICHIGAN  
  
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB  
  
PEOPLE OF THE STATE OF MICHIGAN,  
  
vs. Civil Action No.  
2009-5244-FC  
Honorable Diane Druzinski.  
  
IHAB MASALMANI,  
  
Defendant.

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RESENTENCING  
  
BEFORE THE HONORABLE DIANE M. DRUZINSKI.  
  
Mt. Clemens, Michigan - Friday, October 24, 2014.

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1 Mt. Clemens, Michigan

2 Friday, October 24, 2014

3 8:51 a.m.

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5 THE CLERK: People versus Masalmani.

6 MR. CATALDO: For the record, your Honor,  
7 William Cataldo appearing on behalf of the People.

8 MR. ABBOTT: Josh Abbott, appearing --

9 THE COURT: I'm sorry, what? We have a new  
10 court reporter today.

11 MR. ABBOTT: Josh Abbott here today appearing  
12 on behalf of the People, your Honor.

13 MS. NEWMAN: Valerie Newman, State Appellate  
14 Defender Office on behalf of Mr. Masalmani who is  
15 present in the courtroom with us.

16 MS. VAN CAMPEN: And Erin Van Campen with the  
17 State Appellate Defender Office, also on behalf of  
18 Mr. Masalmani.

19 THE COURT: Thank you, counsel. Please be  
20 seated.

21 This is Docket 09-5244-FC. It's the  
22 continuing hearing regarding resentencing.

23 Is your first witness ready this morning,  
24 Ms. Newman?

25 MS. NEWMAN: Yes, your Honor. We would call

1 to the stand Frank Vandervort.

2 THE COURT: Sir, come on up over this way, up  
3 this ramp, and then I'll swear you in and then you can  
4 have a seat.

5 Good morning.

6 THE WITNESS: Good morning.

7 THE COURT: Will you please raise your right  
8 hand. Do you swear or affirm that the testimony you're  
9 about to give will be the truth?

10 THE WITNESS: I do.

11 (At 8:52 a.m., witness sworn.)

12 THE COURT: And your name and if you would be  
13 kind enough to spell it for us.

14 THE WITNESS: Sure. My name is Frank,  
15 F-R-A-N-K, Vandervort. V as in Victor,  
16 A-N-D-E-R-V-O-R-T.

17 THE COURT: Thank you, sir. Please have a  
18 seat.

19 Go ahead, counsel.

20 **DIRECT EXAMINATION**

21 BY MS. NEWMAN:

22 Q Good morning, Mr. Vandervort.

23 A Good morning.

24 MS. NEWMAN: Judge, we submitted  
25 Mr. Vandervort's curriculum vitae to the Court as an

5

1 exhibit. I'm not sure which exhibit it is but I know  
2 it's already been labeled as an exhibit.

3 THE COURT: It has. And we're going to have  
4 to take out the exhibits from the one gentleman that we  
5 didn't call the other day.

6 MS. NEWMAN: Right. That was Dr. Patton.

7 BY MS. NEWMAN:

8 Q So the Court has your curriculum vitae, Mr. Vandervort,  
9 but I'd like to go through just some of the basics with  
10 you.

11 So can you start by telling us your  
12 educational background?

13 A Yes. I have an associates degree from the Northwestern  
14 Michigan Community College. I have a bachelors degree  
15 from Michigan State University in criminal justice and  
16 psychology and I have a law degree from the university  
17 -- from Wayne State University.

18 Q Okay. And what's your current occupation?

19 A I'm a clinical professor of law at the University of  
20 Michigan Law School.

21 Q All right. And what do you teach?

22 A I teach in two clinics there. I teach in the Child  
23 Advocacy Clinic and I teach in the Juvenile Justice  
24 Clinic. In the Child Advocacy Clinic we do child abuse  
25 and neglect-related litigation. And in the Juvenile

1 Justice Clinic we do delinquency cases.

2 Q Okay. Can you explain -- can you break those two  
3 different categories of cases down a bit for us? What  
4 do they entail?

5 A Sure. So the child protection cases that we do in the  
6 Child Advocacy Clinic are cases of alleged child abuse  
7 or neglect. In which, generally speaking, the Michigan  
8 Department of Human Services has filed a petition  
9 alleging that a parent is abusive or neglectful to a  
10 child.

11 In that clinic we may represent the child, we  
12 may represent the parent or we may represent the state  
13 agency. We do that in different counties.

14 Q And how would it be determined who you represent?

15 A Generally speaking, by county. We represent children  
16 in Genesee County. We represent parents in Washtenaw  
17 County and then we sometimes represent the state agency  
18 in Monroe County.

19 Q So you have a full overview of this system --

20 A Yes.

21 Q -- component of it?

22 A Right.

23 Q All right. How about in delinquency cases, what -- can  
24 you describe what a delinquency case is and what --

25 A Sure. A delinquency case is where the prosecutor's

7

1 office has filed a petition alleging that a particular  
2 juvenile has committed a crime. So the substantive law  
3 is criminal law and most of the criminal procedure that  
4 you see in an adult cases are some differences in  
5 juvenile cases, but it applies to children, juveniles,  
6 and they are civil proceedings rather than criminal  
7 proceedings in the juvenile court.

8 Q Okay. Do you work with students --

9 A I do.

10 Q -- in all of this?

11 A I do.

12 Q So in addition to this representation you teach?

13 A That's correct. So I teach in a classroom setting,  
14 trial skills, so things such as how to develop a theory  
15 of a case, how do present the case in Court, opening  
16 statements, closing arguments, direct and  
17 cross-examination. We also teach clinical skills as we  
18 call them, which are things such as interviewing  
19 clients, interviewing witnesses, those sorts of tasks  
20 that a lawyer undertakes.

21 Q And prior to teaching at the University of Michigan did  
22 you have other child welfare experience?

23 A Yes.

24 Q Can you tell us what that was?

25 A Sure. So after I graduated from college in 1985 I



8

1 began my career in child welfare working in, first, a  
2 residential treatment facility with emotionally  
3 impaired adolescent boys. Those kids were generally  
4 between the ages of 10 and 17. Most of them had been  
5 the victims of child abuse or negligent.

6 I, about three months after I began that job,  
7 I then took a position at a psychiatric facility on an  
8 adolescent unit where I continued to work with children  
9 in a clinical setting while between college and law  
10 school. And then while I was in law school I continued  
11 to work in a psychiatric facility. So I worked there  
12 for about four years.

13 After graduating from law school I began my  
14 career in -- as a lawyer representing children in abuse  
15 and delinquency cases in the Wayne County Juvenile  
16 Court with Legal Aid and Defender Association of  
17 Detroit. And then I did that for six years. And then  
18 I was hired to be the executive director of the  
19 Childrens Law Center in Grand Rapid, Michigan, which I  
20 did for two years. In that position I represented kids  
21 in delinquency cases, abuse cases and also in high  
22 conflict divorce cases and in guardianship cases.

23 Then I did that for two years and then I was  
24 recruited to come to the University of Michigan to run  
25 a continuing legal education program. And that office

1 was called the Michigan Child Welfare Law Resource  
2 Center.

3 Q Okay. So you have decades of experience, basically, is  
4 that fair to say, in all aspects of child welfare work?

5 A Approximately 30 years.

6 MS. NEWMAN: Judge, I would move to qualify  
7 Mr. Vandervort as an expert in the areas of child  
8 welfare and juvenile delinquency proceedings. I don't  
9 think there's any objection.

10 MR. CATALDO: No objection.

11 THE COURT: Under 702, the Court recognizes  
12 him as an expert.

13 MS. NEWMAN: Thank you, your Honor.

14 BY MS. NEWMAN:

15 Q So can you give us an overview. We've talked a lot  
16 about abuse and negligent proceedings here, but can you  
17 just sort of give us an overview of how all of this  
18 works?

19 A Sure. So a child protection case, a child abuse or  
20 neglect case begins typically when someone calls the  
21 Michigan Department of Human Services to report their  
22 concerns about a child's well-being. So there are a  
23 number of professionals, doctors, nurses, teachers,  
24 psychologists, social workers, that are mandated by the  
25 law to report. So any time they have suspicion that a

10

1 child is abused or neglected, the law requires that  
2 they file a report with the Michigan Department of  
3 Human Services.

4 Q And do you have any, and if you don't have personal  
5 knowledge obviously just say you don't, but do you have  
6 any idea of how many of these petitions are -- or how  
7 many of these reports are made each year or on average?

8 A Sure. In 2012, which is the last year for which we  
9 have numbers, the Michigan Department of Human Services  
10 received approximately 134,000 reports --

11 Q Wow.

12 A -- of suspected abuse or negligent.

13 Q And then what happens after a report is made? What  
14 would be the next step?

15 A So the first thing that happens, is there is a  
16 screening function. So you -- an individual calls the  
17 hotline, and then the person who's working on the  
18 hotline screens the case, as we call it. So they go --  
19 they walk through, basically, a questioning outline to  
20 see if the case meets criteria for further  
21 investigation.

22 And so in Michigan, in 2012, there is 134,000  
23 reports, 91,000 were actually investigated, the others  
24 were screened out. Which, if my math is correct, is  
25 somewhere around 43,000 were screened out.

11

1 Q Okay. And then so those get screened out and you're  
2 still left with what seems to be a very large amount of  
3 cases that are being investigated. How does that work?

4 A So these cases receive what we refer to as a field  
5 investigation, which means the Children's Protective  
6 Services worker, a person trained to investigate child  
7 abuse and neglect, goes into the field, meets with the  
8 child, meets with the family, typically does an  
9 investigation, may speak with other professionals.

10 For example, if the child has appeared at a  
11 hospital and is injured they may speak with doctors,  
12 they may speak with the nurses and that sort of thing.  
13 They then make a determination about whether the child  
14 has, in fact, been abused or neglected.

15 Q All right. And then what would happen -- so do you  
16 have any numbers for what percentage then goes onto  
17 that next step? It sounds like that's sort of a  
18 substantiation step?

19 A Yes. That's the term that the federal government would  
20 use is substantiation. So in Michigan there were  
21 21,000 substantiated cases in 2012. There were a few  
22 -- there is an additional approximately 10,000 that  
23 were, what the federal government characterized as  
24 indicated.

25 In Michigan we have an unusual statute so

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1 that after the investigation, there is a categorization  
2 process that takes place and cases are categorized into  
3 one of five categories. So category three in Michigan  
4 means that there is evidence of child abuse or neglect  
5 but there is a low or a moderate risk of future harm to  
6 that child. So while they -- the agency finds that  
7 there is a preponderance of the evidence that there has  
8 been abuse or neglect, that's not considered a quote,  
9 unquote, substantiated case.

10 So substantiated in Michigan means the two  
11 highest category or most severe cases, which would be  
12 category two and category one. So in a category two  
13 case the agency is required to provide services to the  
14 family. If the family does not cooperate, the agency  
15 is required to re-evaluate and determine whether or not  
16 the children are safe in that home.

17 A category one case is any case that the  
18 child is deemed to be unsafe or certain cases are  
19 required either by federal or state law to be filed.  
20 For example, a sexual abuse case that involves  
21 penetration or a case where a child has died as a  
22 result of child abuse or neglect, that case must come  
23 to court if they have to file a petition.

24 Q So do you have any numbers for what percentage of those  
25 cases fall into that category one and two?

1 A So, the category one and two would be the 21,000  
2 number. Of those, a smaller number, although I can't  
3 tell you exactly what the number is, get filed actually  
4 in court.

5 So overall, it's about 20 percent of cases,  
6 we think, that get filed in court that -- from the  
7 91,000, approximately something like 20 percent of  
8 those end up in court.

9 Q Sounds like it starts out a wide thing and then it  
10 funnels down to the most serious cases, are the ones  
11 that end up in court?

12 A That's correct. And you can think of it as a funneling  
13 system to screen out cases.

14 Q All right. And then once a case ends up in court what  
15 is, you know, what is, in an ideal world, what's  
16 supposed to happen or under the law what's supposed to  
17 happen?

18 A So when a case is filed in court there is a hearing,  
19 which we call in juvenile court an adjudication. The  
20 parent -- there is a petition filed. So there is, just  
21 as in a criminal case, there is a complaint that's  
22 filed, a similar process in a child protection case.

23 So the state agency files a complaint, a  
24 petition. The parent is given a lawyer,  
25 court-appointed, if need be, and then there is a,

14

1 essentially, a trial to determine whether or not that  
2 abuse or neglect that is alleged actually took place.  
3 If the -- in most of the cases, similar to our criminal  
4 and our delinquency systems, in most of the cases the  
5 parents admit some act of abuse or neglect to resolve  
6 the case.

7 Q Okay. So then what happens with the child? I mean, is  
8 the child evaluated in some -- or the child or children  
9 that are the subject of the abuse and neglect?

10 A Right. So the children should be evaluated in a  
11 comprehensive fashion. They typically are not. One of  
12 the real weaknesses of the child welfare system is our  
13 failure to implement a law that's been on the books  
14 since the mid-1980s.

15 In Michigan we're -- we have a law that says  
16 that the state agency must maintain regionally-based  
17 multi-disciplinarian teams to do assessments of  
18 children and families. An early comprehensive  
19 multi-disciplinary assessment gives you the opportunity  
20 to really analyze what the situation is with the child  
21 and the family. And we don't do that in Michigan  
22 despite the fact that we have a law that requires it.

23 Q Can you explain what -- I mean, I think we probably all  
24 can guess what that means based on the  
25 multi-disciplinary but can you be more specific? Break

15

1           that down for us?

2       A     Sure. A multi-disciplinarian team would include  
3           members from social work, hopefully somebody who is  
4           both an advanced -- has an advanced degree so they have  
5           additional social work education as well as substantial  
6           experience in working in child abuse and neglect. It  
7           would include, typically, psychologists who do  
8           psychological testing, it would include a psychiatrist  
9           or at the very least, have access to psychiatry,  
10          because in some cases medication is a helpful tool for  
11          children or for their parents. It would include  
12          educational specialists. It might include a  
13          neurologist or have access to neurology. And it would  
14          include, typically, legal professionals so that you  
15          would be able to discuss what legal options are  
16          available. And so that team would do a comprehensive  
17          assessment from their particular disciplinary  
18          perspective.

19       Q     And then, this might sound silly, but what's the focus  
20           of that multi-disciplinary assessment? I mean, what  
21           are you trying to achieve?

22       A     So the focus or the purpose of it would be to get a  
23           sort of comprehensive understanding of the functioning  
24           of the child as an individual, the parent or parents as  
25           individuals and then the family as a unit. How does



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1           this family function, is the basic question. And what  
2           is necessary to make this family function in a way that  
3           would be safe and healthy for the children.

4       Q     All right. How about in cases where there is no  
5           family?

6       A     In that kind of a situation you would, at the very  
7           least, want to have a comprehensive assessment of the  
8           child so that you would understand what's going on with  
9           the child from a number of different perspectives and  
10          then you would be able to develop a plan. What comes  
11          out of that, hopefully, is a plan for that individual  
12          child or family to be able to provide for services, to  
13          be able to provide a place -- you know, what's the  
14          appropriate placement for this particular child, given  
15          his or her needs, as we try to work with the family.  
16          Again, in the child welfare system the general goal is  
17          to try to reunify the child with the parents.

18       Q     And if there are no parents, what is the general goal?

19       A     In that situation, you are going to look at the  
20          individual child. But the -- generally speaking, the  
21          system then looks at adoption as being the next best  
22          option to reunification.

23                       So under our system it's driven by federal  
24          funding statutes. And the sort of three basic pillars  
25          that we think of in child welfare are: Safety, that's

17

1 first. You have got to have kids that are safe.  
2 Permanency, so that children have permanent homes with  
3 adults who are going to be able to provide for them and  
4 care for them, and well-being. So you are going to  
5 look at the child's overall functioning, which you want  
6 to do is have a child who if they are not functioning  
7 well, is receiving the services necessary so that they  
8 can become at some point, a productive, self-governing  
9 member of our society. That's the idea.

10 Q And did you review any documents related specifically  
11 to Mr. Masalmani?

12 A I did.

13 Q Okay. What documents did you review?

14 A I received a number of documents from the foster care  
15 files. I had reports of foster care agencies, there  
16 were medical reports, psychological reports and so  
17 forth.

18 Q I would like to now turn to, specifically, to Ihab's  
19 case. And can you -- did you identify any issues when  
20 you were going through the file?

21 A Yes. So this young man, whom I don't know, I haven't  
22 met him, but he never received the sort of  
23 comprehensive assessment that would have been  
24 appropriate in this case to be able to make a solid  
25 plan for his future and for his treatment.

1                   There were a number of services that were  
2                   provided, including medical services, psychological  
3                   services, but they were provided in a very fragmented  
4                   way. In some ways they don't mesh together. And so  
5                   there was never really a single comprehensive plan that  
6                   could have been made and should have been made.

7       Q       And do you notice in the plans -- I mean, do you have  
8                   an opinion, in reviewing the plans, in terms of their  
9                   -- the depth of the work that was done in this case?

10      A       I do. My opinion is that they are not comprehensive  
11                   and they are not in depth. And that the individual  
12                   professionals who were working with this young man  
13                   didn't ever talk to each other. There was never -- the  
14                   medical people who were working -- for example, at one  
15                   point he was diagnosed with epilepsy.

16                   There was concern in his psychological that  
17                   he had brain damage or potentially had brain damage.  
18                   And he was seen by a neurologist and eventually was  
19                   diagnosed with epilepsy. That individual never spoke  
20                   back with the psychologist, as far as I could tell from  
21                   the records. And so, again, there was no comprehensive  
22                   plan put in place to address his specific needs.

23                   Now he was about nine years old when he  
24                   entered the foster care system and by that time he had  
25                   experienced a number of traumatic experiences in his

19

1 life, according to the records. And he -- so he was a  
2 child, a little boy, who had a number of needs and  
3 those needs were not apparently met.

4 He was placed into a foster home which was  
5 quite stable for four years. Unfortunately, at that  
6 point, the records reflect that the agency's general  
7 policy of trying to put children in permanent homes  
8 overrode his concerns or considerations about his  
9 individual needs. We see this in the child welfare  
10 system quite regularly because the system is driven by  
11 these three pillars, that I had mentioned, and  
12 permanency in particular is one that we try to get  
13 kids, if you can't go back to your family the next best  
14 option, the gold standard option would be adoption.  
15 And in this case, because the foster parent would not  
16 adopt him, wasn't interested in adopting him, they  
17 decided, the agency did, to remove him, to place him  
18 into a different home environment.

19 So the problem with that, at that time, he  
20 was a 13-year-old boy who already had serious,  
21 emotional and behavioral problems. And kids who are 13  
22 with that kind of constellation of problems are  
23 tremendously difficult to adopt. And so I think this  
24 is a situation where what makes sense is at policy  
25 level, that we try to get kids into permanent adoptive

20

1 homes, in individual cases may not make sense.

2 For this young man it may well have been a  
3 much better option to leave him in what we would  
4 consider a temporary foster home placement, even though  
5 it had been four years at that point. And there was --  
6 it was unlikely to be a permanent adoptive situation  
7 that we could -- it would likely have been better for  
8 him to maintain that temporary sort of somewhat  
9 unstable placement as opposed to seeking adoption.

10 So in this case, in my view, the, you know,  
11 the perfect option, the perfect outcome of adoption  
12 trumped what was a very good option for this particular  
13 young man.

14 Q So you're talking about the perfect conceptual --

15 A Correct.

16 Q -- option of adoption?

17 A Uhm-hmm.

18 Q And that -- that the agency then, because Ms. Day had  
19 made it clear when she took Ihab into her home that --  
20 we heard a little bit in prior testimony about some  
21 foster parents or foster parents they don't want to  
22 adopt, they want to foster. And then there's what they  
23 call preadoptive placement; is that accurate?

24 A Yes. That is --

25 Q Can you talk about that a little bit?

21

1 A Sure.

2 Q I want to make it clear that there was a long narrative  
3 so I want to try to break it down --

4 A Sure.

5 Q -- about Ms. Day.

6 A Sure. So part of this is, we have to understand  
7 history. So we're talking about the early 1990s to the  
8 mid-1990s here. And so at that time the State of  
9 Michigan, we did not do something that we would do  
10 today, which we would call concurrent planning. So at  
11 the time that this boy came into the foster care system  
12 we put children into foster homes and we didn't ask the  
13 question of the foster parent before we put the child  
14 there, if this child can't go home are you going to be  
15 interested in or willing to permanently care for this  
16 child until he's an adult? Today we would ask that  
17 question but we didn't do that back then.

18 Just, in fact, last week the director of the  
19 Department of Human Services has, you know, had held a  
20 press conference and announced that we were going to be  
21 much more aggressive in doing that, particularly with  
22 young children, asking if this child is placed in your  
23 home as a foster parent, are you going to be willing to  
24 care for this child permanently, to adopt this child.

25 Q And what's the goal? And why is that a better policy?

22

1 A It's a better policy because the -- you have to have  
2 children be stable. That has to be -- that is --  
3 that's a critically important part of their  
4 development. There is this notion of attachment, that  
5 you may have heard about.

6 And so attachment is a particular  
7 psychological relationship between a child and a parent  
8 or an adult, usually a parent, in which the child  
9 develops an intimate psychological relationship with  
10 the adult who is caring for them on a day-to-day basis  
11 and through that relationship learns about being a  
12 functioning adult. They become well-adjusted. They  
13 learn how to deal with the world. They see the world  
14 as either protective and safe or dangerous,  
15 essentially. And in this particular case this boy had  
16 already had fractures of those kinds of relationships.

17 So generally speaking, a child, the person  
18 that they would attach to or the people would be their  
19 parents. In his case his father was not with the  
20 family, as I understand it from the records, that his,  
21 you know, his father was apart from his mother. And  
22 then he was sent by his mother to the United States.

23 So he lost the attachments that he had with  
24 the primary caregivers that he had. And then he was in  
25 a series of homes. It's my understanding he was with

23

1 an uncle for a period of time in California and that he  
2 was with relatives here in Michigan and Dearborn for a  
3 period of time and then he goes into the foster care  
4 system.

5 One of the reasons that I think you see that  
6 his first foster placement is stable for four years is  
7 because he's still able to develop attachment. I  
8 sometimes use the analogy when I'm talking about  
9 attachment, so if you imagine taking a piece of tape or  
10 maybe a sticky note and you stuck it to the back of  
11 your hand, it would stick fairly well. It would  
12 attach, right? But if you then took it off and put it  
13 back on and then took it off, put it back on again,  
14 took it off and put it back on again, eventually it  
15 would simply stop sticking.

16 And this is the kind of thing that happens  
17 with children. This boy was able to attach to Ms. Day  
18 because he had had a couple of breaks in attachment but  
19 he still had the capacity. It seems at that point,  
20 when he was taken from Ms. Day, that that capacity may  
21 have been overwhelmed, essentially, and he could no  
22 longer do that. And so you see him move through a  
23 series of foster homes. I believe he ended up having  
24 something on the order of 13 or 14 placements while he  
25 was in the foster care system before he sort of



24

1 matriculated into the delinquency system.

2 Q Although he -- one of those placements was with  
3 Ms. Thomas and that was also for an extended period of  
4 time, correct?

5 A Uhm-hmm. I believe so, yes.

6 Q And he was removed for -- because she was smoking  
7 marijuana with him?

8 A Right.

9 Q And so some of it was --

10 A Some of it, right, is beyond the system's control. I  
11 mean, the system licenses foster parents.  
12 Unfortunately, some of them are not model parents,  
13 obviously.

14 Q And how about why is it that if we have a law that  
15 requires for a multi-disciplinary approach and it seems  
16 common sense that you would want to fully know about  
17 the child so you could make appropriate -- take  
18 appropriate action, why is that it doesn't that happen?

19 A I think it doesn't happen largely for economic reasons.  
20 That the state doesn't feel it has the money to  
21 actually fund these programs. Although the money for  
22 that program is supposed to come from the federal  
23 government. It doesn't -- the system just doesn't --  
24 it's underfunded. They don't have the capacity to do  
25 it, would be, I think, their position.

25

1 Q And how about the challenges that Ihab might have faced  
2 coming from another country with limited, you know, if  
3 any when he came in, understanding of English? Is this  
4 a common thing we see?

5 A It's -- I would say it's an extremely uncommon thing.  
6 In my 25 years of practicing law in the child welfare  
7 system in Michigan, I've had two cases in which a child  
8 was, you know, from another country and was here, as  
9 this boy was, without appropriate documentation.

10 So I've only seen it twice in 25 years. And,  
11 again, I've worked in Wayne County which is the largest  
12 metropolitan area in this state and then I worked in  
13 Grand Rapids. So I've worked in the large counties and  
14 it's just a rare experience. And so what I think  
15 happens is that people don't exactly know how to handle  
16 these cases when they come up.

17 Q Do they present other special challenges? I mean --

18 A Sure.

19 Q Does the DHS look for a family that would be culturally  
20 compatible?

21 A Not necessarily and usually not at all. Under the  
22 federal -- so there is a federal law called the  
23 Multi-Ethnic Placement Act which prohibits the agency  
24 from considering race, color or national origin in  
25 making foster care placements if this will delay the

1 foster care placement at all.

2 So what the agency cannot do is say we have a  
3 child who has certain cultural needs, certain language  
4 needs, we need to match that child with a family that  
5 can meet those cultural and language needs. So the  
6 agency is oftentimes prohibited from doing that under  
7 the federal law. If they violate that law they run the  
8 risk of losing substantial amounts of the federal  
9 funding that helps to support the child protection  
10 system and the foster care system.

11 Q So it would be in the best interest of the child to  
12 hold off and wait to put them in a home or if he or she  
13 can understand the language or understand the cultural  
14 issues, that's just not allowed?

15 A That's not something that they can routinely do, that  
16 is right.

17 There is a second sort of element of that  
18 which is, it's oftentimes very difficult to get  
19 services that are what we would call culturally  
20 appropriate. So to provide, for example, therapy in  
21 his native language might be very difficult in the  
22 system. Interestingly in this situation and in  
23 Southeast Michigan, we have a large Middle Eastern  
24 population. And in Dearborn we have an agency that's  
25 dedicated to working with Middle Eastern families

27

1 called ACCESS. There was at least some contact in this  
2 case with ACCESS but most of the services were not  
3 provided through ACCESS.

4 The child welfare agency, the Department of  
5 Human Services, if they don't have a contract with the  
6 agency that might be the best agency to provide the  
7 services, they don't provide it through that agency,  
8 they go to a different agency. They go to one of their  
9 contract agencies, again, because of funding concerns.  
10 So they develop contracts and by, you know, they  
11 required, as I understand their policy, to go to  
12 agencies who provide the service at the lowest bid.

13 So you, in a case like this where the child  
14 has really unique cultural and language issues, you may  
15 not be able to go to ACCESS, which would be the better  
16 agency or the best agency to get those services from,  
17 to get all of the services that he would need. And so  
18 you see that in this case.

19 Q What about the effect of, you know, he came here with  
20 his sister and his sister returned --

21 A Sure.

22 Q -- to their home country. And it appears from the  
23 records that Ihab was, at a very young age, was  
24 personally allowed to make a decision about whether or  
25 not to stay.

28

1 A Yeah. So first of all, his sister going back home to  
2 the country of origin is, again, it's a fracture. It's  
3 a loss of a significant relationship.

4 These children traveled here to the United  
5 States together, they went through this process of  
6 going to their uncle's home in California and ended up  
7 living with relatives here in Southeast Michigan  
8 together. And so that is a factor that would help a  
9 child be resilient.

10 If two children or siblings go through  
11 similar experiences they can support one another  
12 emotionally in that type of thing. In this particular  
13 case his sister going back leaves him all by himself.  
14 It's a loss of another significant relationship. He's  
15 not going to see her on a day-to-day basis, in the same  
16 way he's not going to see his mother or his father on a  
17 day-to-day basis.

18 The sort of second part of that is -- I've  
19 lost my train of thought. I'm sorry.

20 Q I was asking you about your opinion on the Court  
21 allowing Ihab --

22 A Oh, yeah.

23 Q -- at nine years old to personally make --

24 A Make the decision.

25 The second part of that, what I would say is

29

1 that this is not a decision that we typically allow  
2 children to make. Probably the most famous case in the  
3 sense of child law is the case of a boy called -- named  
4 Walter Palecek from the 1970s.

5 So Walter came to the United States with his  
6 family from Russia. After being here a couple of years  
7 his parents decided that they wanted to go back to  
8 Russia. Walter then was about 15, decided that he  
9 didn't want to go back. And there was a federal  
10 lawsuit filed over whether he would have to go back or  
11 not. And ultimately the Supreme Court declined hearing  
12 the case and the Seventh Circuit Court of Appeals in  
13 Chicago's opinion stood and he was made to go back with  
14 his parents to Russia because the court said this is  
15 not a decision that we let children make. Children are  
16 in the custody and the care of their parents and their  
17 parents make decisions about them. So it struck me as  
18 very odd that this child was allowed to make this  
19 decision.

20 Q Did the record indicate that his mother wanted him  
21 back?

22 A There are a number of indicators in the record that his  
23 mother wanted him to come back. At one point the Red  
24 Crescent in Lebanon did a home investigation of the  
25 mother's home and found it appropriate. She had two

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1 other children there at the time that that  
2 investigation took place. His sister was also here.  
3 And so they found the home to be appropriate. They  
4 found her to be an effective parent and she indicated  
5 that she would want to have him back.

6 Q I think that's all I have for now. Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: Thank you, Ms. Newman.

9 Mr. Cataldo.

10 **CROSS-EXAMINATION**

11 BY MR. CATALDO:

12 Q When you indicate -- may I call you professor? It just  
13 makes my life easier.

14 A Sure.

15 Q Thank you, sir.

16 When you indicate that there didn't appear to  
17 be communication between the individuals, Mr. Ladd who  
18 was the guardian ad litem and the attorney -- the  
19 guardian ad litem most of the times that you're talking  
20 about, and the individuals that were making the  
21 determination, like a psychiatrist, the neurologist,  
22 the therapist, that sort of stuff, I get a sense that  
23 when that doesn't happen it could leave permanent  
24 scars, emotional scars?

25 A I would not say that the failure to communicate leaves

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1 the scars, I would say the failure to communicate  
2 results in a plan that doesn't meet the child's needs,  
3 which in turn, can result in poor decision-making and  
4 could scar the child if the child doesn't get what he  
5 or she needs.

6 Q And that's, I guess, that's my point. Thank you very  
7 much for making it more eloquently than I did.

8 There is always the possibility, as a result  
9 of all those failures, that there is something  
10 permanent that happens because what was available, what  
11 could have been available, what could have been done in  
12 an early age to change a course was, in fact, then not  
13 done?

14 A Yes. That can happen. I would -- I'm not entirely in  
15 agreement with the permanent nature of that, certainly  
16 over a period of time. But most of the concerns that  
17 we're talking about are treatable if the child receives  
18 appropriate, quality services, quality mental health  
19 treatment, quality medical treatment, and so forth,  
20 most of these problems would be -- they are certainly  
21 overcomeable.

22 Q With the proper treatment, if you're willing to engage  
23 in that treatment?

24 A Sure.

25 Q And what you could see in Mr. Masalmani's reports, up



1           until 2009, is that he was not willing to engage in  
2           that treatment?

3       A     I don't think that I would characterize it in that way.  
4           I think that certainly it's not unusual for a child of  
5           that age not to be able or willing to engage in the  
6           services.

7                     One of the problems in this case, for  
8           example, there was a psychological evaluation that was  
9           done. The psychological found that he had a  
10          performance IQ that was substantially higher than his  
11          verbal IQ. And the psychologist indicated that this  
12          was an indicator that he may have some brain damage,  
13          and, ultimately, he was diagnosed with epilepsy. So  
14          there was some malfunctioning in his brain. I'm not a  
15          physician so I'm not the one to really talk about that  
16          beyond saying that I know that he had a -- had been  
17          diagnosed with epilepsy.

18                    So with this child, to send a child who's got  
19          a low verbal IQ to a mental health professional for  
20          talk therapy is really not going to be effective. It's  
21          like saying that you are going to take a double amputee  
22          and you're going to treat the double amputee by  
23          training them to run long distances, right? It's  
24          unlikely to be successful. And so, again, if there had  
25          been the appropriate early multi-disciplinary

1 assessment, if that fact had been figured out early on  
2 in the case, the treatment plan would have been  
3 developed that would have been able to address that in  
4 a more concrete, hands-on-kind-of-way.

5 Q And from what you can see in the record, there's never  
6 really been any cogent manner, coherent manner,  
7 organized manner in which they have dealt with the  
8 issues that that psychologist Ms. Moore talked about,  
9 which would be low self-esteem, a lack of  
10 self-confidence, anger, aggression, a depression,  
11 incorrigibility, those issues?

12 A I would say -- I would describe it as being fragmented,  
13 the services and provision of those services.

14 Q Those services were fragmented. But, again, it does  
15 not appear then that as a result of those services  
16 being fragmented he was effectively placed into a  
17 therapeutic environment that would have helped him  
18 address those issues?

19 A I would agree with that. It was not effective.

20 Q And when you talk about using the analogy of a sticky  
21 note, the ability to be able to connect, to be able to  
22 stick, to be able to stabilize, though you are not a  
23 psychologist, you certainly work with kids that you've  
24 seen this happen repeatedly. That it's not necessarily  
25 something you simply grow out of without some sort of

1 assistance, therapy, inward soul searching,  
2 psychoanalytical assistance, things like that?

3 A The best option for overcoming those concerns,  
4 certainly would be effective mental health treatment,  
5 absolutely.

6 Q Not likely, even though we talk about with Dr. Keating  
7 and Dr. Rickman, all these studies that come up --  
8 Dr. Steinberg, I meant, that talk about growth from  
9 adolescence into adulthood and decision-making  
10 abilities, that sort of stuff.

11 All that, though, clearly the studies show  
12 that in situations where you're talking about, kids  
13 that you deal with, delinquency cases, there's a better  
14 chance of that happening with professional help than  
15 just simply the growth into maturity when you're  
16 talking about issues that you've discussed that are  
17 created when they are misdiagnosed or they're not  
18 handled -- kids aren't handled proper early enough in  
19 the system?

20 A Right. So what I would say is that there is a layering  
21 effect.

22 Q Okay.

23 A So what Dr. Steinberg and Dr. Keating are talking  
24 about, normal or typical adolescent development. That  
25 is to say, if you have a child who is in a home where

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1           they are well-attached to the parent, they are in a,  
2           what we would describe colloquially say a good home,  
3           right? The parents are attentive, they take care of  
4           the child, they meet the child's mental and emotional  
5           needs, the child has access to healthy food, you know,  
6           good medical care, right? So you're sort of a kind of,  
7           what we would think in America as a typical middle  
8           class family.

9       Q     Andy in Mayberry?

10      A     Yes, exactly.

11                       So that child is going through a process in  
12           adolescence. Their brain is developing, right? So all  
13           children who are adolescents are not fully developed in  
14           terms of their brain. And this is what you see in the  
15           kind of Roper, Graham, Miller series of cases from the  
16           United States Supreme Court. In RE: J.D.B is another  
17           case that somewhat relies on this brain science. So  
18           that's going on.

19                       In this particular case wherein a child abuse  
20           and neglect case, like a situation like you have here,  
21           you have another layer of complication, which is you  
22           have a child that's clearly had a substantially  
23           imperfect early childhood which impairs that child's  
24           development that much more. And so you have a child  
25           who is, you know, he's sort of got the kind of double

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1 layering of the normal developmental processes and then  
2 the impaired developmental processes as a result of his  
3 personal individual experience.

4 MR. CATALDO: Thank you. I have no further  
5 questions.

6 THE COURT: Any follow up, Ms. Newman?

7 MS. NEWMAN: No further questions, your  
8 Honor.

9 THE COURT: You can step down, sir. Thank  
10 you.

11 THE WITNESS: Thank you, your Honor.

12 (At 9:35 a.m., witness dismissed.)

13 THE COURT: Your next witness will be?

14 MS. NEWMAN: Dr. Danuloff.

15 THE COURT: Okay. Ladies and gentlemen, you  
16 can stand up and stretch, if you want, for a minute  
17 while we get our next witness.

18 THE COURT: Ms. Newman, is he here?

19 MS. NEWMAN: He is, your Honor. He just came  
20 into the courtroom.

21 THE COURT: Okay. Please be seated.

22 Dr. Danuloff, come on across the middle of  
23 the courtroom, up this ramp. I will swear you in and  
24 then you can have a seat in the witness stand.

25 Good morning.

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1 THE WITNESS: Good morning.

2 THE COURT: Will you please raise your right  
3 hand. Do you swear or affirm that the testimony you're  
4 about to give will be the truth?

5 THE WITNESS: Yes, ma'am.

6 (At 9:37 a.m., witness sworn.)

7 THE COURT: Your name, please?

8 THE WITNESS: Lyle Danuloff.

9 D-A-N-U-L-O-F-F.

10 THE COURT: Thank you, sir. Please have a  
11 seat.

12 MR. CATALDO: And, Judge, we've submitted the  
13 curriculum vitae of Dr. Danuloff and we've admitted  
14 that as an exhibit.

15 THE COURT: Correct.

16 You have that, Mr. Cataldo?

17 MR. CATALDO: Yes.

18 THE COURT: Okay. It's been previously  
19 admitted and agreed to. Go ahead.

20 **DIRECT EXAMINATION**

21 BY MS. NEWMAN:

22 Q Good morning, Dr. Danuloff.

23 A Good morning.

24 Q Can we start off with your educational background?

25 A I have a bachelor of arts degree in psychology from the

1 University of Michigan. A masters degree in clinical  
2 psychology from the University of Missouri and a  
3 doctorate in clinical psychology from the University of  
4 Michigan which I obtained in 1972.

5 Q All right. And as a result of that education, was  
6 there also clinical training involved?

7 A Yes.

8 Q And can you describe that for us?

9 A Well, the psychotherapy, psychological evaluation,  
10 psychodiagnosis, abnormal psychology, etcetera, and  
11 after that, my tour at the University of Michigan and  
12 Missouri I had one-year internship at Lafayette Clinic  
13 in downtown Detroit which was a year of very intensive  
14 clinical training.

15 Q And then do you have specific areas of expertise?

16 A Well, I would think that probably 70 to 75 percent of  
17 my practice is in psychotherapeutic endeavor,  
18 individuals, adolescents and marital work. The rest of  
19 it is in forensic work, such as this kind of work. I  
20 used to do family work. I found that to be less than  
21 satisfying, so I don't do that any more, so I do  
22 criminal work and I do a great deal of work with  
23 various police departments and fire departments in my  
24 role as a consultant.

25 Q And are you licensed?

1 A I'm a fully licensed psychologist.

2 Q When were you licensed?

3 A I was licensed the year the licensing law came in,  
4 which I think is 1979. Before that, I was called a  
5 certified consulting psychologist.

6 Q Okay. Very good.

7 And then do you have -- you talked a little  
8 bit about consulting with police agencies and fire  
9 departments?

10 A That's correct.

11 Q Can you explain what that involves?

12 A That work involves pre hiring, psychological  
13 evaluations, fitness for duty evaluations,  
14 consultations with the departments regarding officers  
15 who may be having some difficulties and also critical  
16 incident stress debriefing.

17 Q All right. And then you said fitness for duty. Do you  
18 ever find that people are not fit to go back to duty?

19 A Yes.

20 Q Okay. And then are there some that are not fit at a  
21 moment in time but then become fit later on?

22 A Well, some that are not fit at a moment of time and  
23 could become fit if certain conditions are met, and  
24 those conditions are specific to whatever the  
25 circumstance is at the time.



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1 Q Okay. And was there a time when you have done work in  
2 criminal cases? I understand you did some work for  
3 Judge Bucci at some time?

4 A I did. I did some work for the late Judge Bucci. And  
5 I don't remember when -- I don't remember when Judge  
6 Bucci passed away, but I did probably about 20 to 25  
7 presentencing evaluations for him.

8 Q All right. Did he ask you to do those? I mean, how  
9 exactly did that work?

10 A Well, I don't remember that he asked me personally, but  
11 people from his court contacted me and would ask me to  
12 do these evaluations in which I would do -- I would do  
13 the evaluations, submit the report to the court and  
14 that was that.

15 Q All right. And now what is your practice?

16 A Well, I'm in full-time clinical practice in Farmington  
17 Hills, Michigan. And as I say, probably about 70  
18 percent of my practice, give or take, is clinical. And  
19 at any given time the rest of it is what I call  
20 forensic, the application psychological knowledge and  
21 principles to matters of the law.

22 Q All right. So in terms of the clinical work, can you  
23 explain what that involves a little bit for people who  
24 are not familiar?

25 A Right now my caseload is probably 60 to 70 percent

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1 individual psychotherapy and some marital work. I also  
2 deal with adolescence. So I will also be involved with  
3 that. And that frequently requires involvement with  
4 the entire family.

5 Q Okay. And as a psychologist, what are you -- when you  
6 assess people, what are you looking for in working with  
7 them?

8 A Well, it depends on the issues. When someone is  
9 referred to me for an evaluation, the question is  
10 always, what's the referral question? What's the  
11 issue? And my responsibility is to try to address that  
12 issue with as much skill and knowledge as I can so that  
13 I can answer that question.

14 Q Okay. And I know it seems a little basic but -- for  
15 someone who has never been to a psychologist before.  
16 So can you just walk us through the process?

17 A You mean for an evaluation or psychotherapy?

18 Q Yeah --

19 A I'm sorry.

20 Q Well, you evaluate someone, you decide -- you determine  
21 that they need some assistance and then what kind of  
22 things do you work with them on? I don't mean specific  
23 -- like, not a specific case or if it would help you,  
24 to do a hypothetical.

25 A Well, it's not often that I will do an evaluation and

1 the evaluatee turns into a patient. I try to keep  
2 those two clinical hats separate. And, again, with an  
3 evaluation, the question is, what is the clinical  
4 question from the referring source? Sometimes that  
5 might be parents, frequently it's the court, sometimes  
6 it's a police department or a fire department.

7 In terms of psychotherapy and clinical  
8 treatment, my responsibility in the first two or three  
9 visits, or whatever it takes, is to understand what  
10 pain and issues the patient comes in with. Listen, get  
11 an -- have an opportunity to explain back to the  
12 patient what I've heard, and always begin to develop  
13 what I call a treatment alliance, because psychological  
14 treatment doesn't occur the same way it occurs in a  
15 dentist office.

16 In a dentist office you sit in the chair, you  
17 open your mouth and the dentist works on you. In  
18 psychological treatment you team up with your patient  
19 so not only am I listening to what the issues are but  
20 also seeing if I can develop an ongoing treatment  
21 alliance. And if we do that, we then go onto the work  
22 that's necessary.

23 Q Okay.

24 A I tell my patients, those that are able to do this,  
25 that my responsibility to you is to throw as much light

1           into your head as we can, because the more you know  
2           about yourself and the more you understand yourself,  
3           the wiser the decisions you can make. That depends on  
4           whether or not an individual has the capacity to  
5           observe themselves.

6                     The technical term, if I may, is observing  
7           ego. Can an individual observe themselves objectively  
8           to the degree that they can do that or to the degree to  
9           which I can develop that with them or help them foster  
10          that, is a degree that they can explore themselves and  
11          understand themselves to the degree that they cannot.  
12          And my responsibility is to maintain a relationship, a  
13          trusting relationship and sometimes tell them what to  
14          do and tell them why. So my approach to a patient all  
15          depends on what clinical resources the patient brings  
16          to the hour.

17       Q       Okay. And so someone who has that ability, I'll use a  
18               different word, if this is accurate, to be  
19               introspective?

20       A       Introspective.

21       Q       Is that okay?

22       A       Yes. Introspective, self-observe, yes.

23       Q       And so those are the people that would have -- I mean,  
24               would you characterize that as those are the people  
25               that you can help move forward in terms of --

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1 A Those are the people that you are going to say, what's  
2 your understanding of. Or when this happened what do  
3 you remember your thoughts were? I'm going to ask them  
4 to go into their inner life with me and explore it  
5 together.

6 With someone who doesn't have that capacity I  
7 would say, listen. Here's what I want you to do. The  
8 next time you're in this kind of situation, instead of  
9 doing X I want you to think about not doing X and I  
10 want you to do Y.

11 Q All right.

12 A The next time your boss is irritating you, I don't want  
13 you to walk out of his office and slam the door behind  
14 you. See the difference?

15 Q Yes.

16 And so someone who is introspective you can  
17 help them change and you're not having to direct them,  
18 they can think about it and come to that change?

19 A That is right.

20 Q They can change their behavior with your help. For  
21 someone who doesn't have that ability, they still might  
22 have the capacity to change but they would have to be  
23 directed?

24 A That is right. Self-directed change is always more  
25 influential and more -- it has a -- it sticks more. It

1 has more power. It's coming from within.

2 Q Okay. And now have you personally met Ihab?

3 A Yes, ma'am. I have.

4 Q All right. And have you worked with him as a clinical  
5 psychologist?

6 A Well, I've evaluated him. I have not treated him but  
7 I've evaluated him, yes. And I've evaluated him in  
8 terms of one issue which has to do with whether or not  
9 at this point, according to my understanding of the  
10 law, is he an incorrigible individual or is there some  
11 possibility for rehabilitation.

12 Q All right. And how much time have you spent --

13 How many times have you met with Ihab?

14 A I've met with him three -- a total of three times.

15 Q Okay. Where did those meetings take place?

16 A Two of those meetings were in Ionia State Prison and  
17 the third one was in the Macomb County Jail.

18 Q Okay. And approximately how many, you know,  
19 quantitatively how much time did you spend with him?

20 A A little over four hours.

21 Q All right. And did you review records in this case?

22 A Did I review -- yes, ma'am. I reviewed a lot of  
23 records.

24 Q So was that juvenile history?

25 A Juvenile history, his --

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1 Q The adolescent delinquency records. Did you review his  
2 Michigan Department of Corrections file?

3 A Yes, ma'am, I did.

4 Q And can you talk to us a little bit about what you have  
5 seen in your evaluation of Ihab?

6 A Yes. Do you want me to --

7 Q Yes.

8 A -- expound about that?

9 Q Please.

10 A Well, this is a 22-year-old now adult who, as a 17 year  
11 old, committed heinous acts, absolutely heinous acts,  
12 for which he is where he is now. He was though,  
13 through my understanding of his history and my  
14 understanding of how he was compared to who he is, he  
15 committed those acts while, basically, unsocialized,  
16 unattached, unattached in any kind of substantial way  
17 in human relationships to basically lived on the  
18 street, lived unattached and lived not so much in an  
19 immoral life, although he certainly committed immoral  
20 behavior, but lived in amoral life. He didn't live  
21 with a sense of mortality, he lived with the sense of  
22 what do I need and what do I need to do to get my needs  
23 met. He lived in the moment and did not live with any  
24 sense of right or wrong.

25 And at the time, I believe from my

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1 conversations with him, my examinations of the records  
2 when he was AWOL from his last placement, I don't  
3 remember when he went AWOL but he certainly was at the  
4 time of committing the crimes. He was running the  
5 streets with other young people and committing acts  
6 that helped him meet his needs.

7 He was also regularly, as I understand it,  
8 consuming marijuana and selling drugs, etcetera, but in  
9 terms of his state of mind he was, not every day, but  
10 he was always associated with, if not actually  
11 consuming marijuana.

12 So this was a young man who -- he didn't have  
13 any -- at the time that he committed these horrendous  
14 acts he didn't have, even for a 17 year old, any kind  
15 of personhood, defined as: An ability to relate to  
16 other people as people, an ability to understand  
17 themselves them -- other people, I'm sorry, and an  
18 ability to relate to them other than under the  
19 influence of his impulses at the moment. So people  
20 weren't necessarily fellow human beings, they were  
21 objects to meet his needs or not.

22 Q And then what about -- so that's based on the  
23 information from the records and from speaking with him  
24 and what about -- that was at that moment in time.  
25 What about now?



1 A Well, now, is a different story, I believe. The Ihab  
2 Masalmani that I've interviewed and spent time with is  
3 a young man who got lucky. He got lucky in two ways:  
4 One, in terms of prison, he was placed in segregation.  
5 And, again, I sometimes use that word incorrectly.

6 So what I mean by that is that he is in his  
7 cell 23 hours a day and one hour a day, and I don't  
8 know if it's seven days a week, but one hour a day he's  
9 let out of his cell to associate with other prisoners,  
10 work out, however he has, but he's basically by  
11 himself. He has become -- he lives his life in his  
12 cell. That was part of the luck.

13 The other part of the luck is that he was  
14 told about the juvenile life without possibility of  
15 parole project and he was told about Miller versus  
16 Alabama. When he was told about Miller versus Alabama  
17 and realized that there is somewhere out there the  
18 possibility, not of parole, but of a parole hearing,  
19 that gave him hope.

20 Q And how do you classify those two?

21 A I'm sorry?

22 Q Would you classify those as sort of turning points in  
23 his development?

24 A Yes.

25 Q Okay.

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1 A Turning points in the sense that something happened to  
2 Ihab. He began to conceive of the idea of hope.

3 Now I don't know exactly the sequence, but  
4 while in that cell he began to read. And he began to  
5 read a lot of important books to him. And, if I may,  
6 should I share with you --

7 Q Please.

8 A -- may I share some of what those books are?

9 Q Yes, please.

10 A Well, first of all, he began to read the Bible, but not  
11 from a religious standpoint. As he said to me a couple  
12 of times, I read it so that I can learn how people  
13 treat one another.

14 It wasn't that, with all due respect, he  
15 found God. It wasn't that kind of religious epiphany.  
16 He began to read the Bible to learn the stories. He  
17 read other books such as The Secret, which you might  
18 know has to do with the law attraction. That book that  
19 was very, very popular for quite a while. He has read  
20 Rule by Secrecy, Make War and Keep Peace, The Art of  
21 Thinking, Jesus and Muhammad Walking Side by Side. And  
22 although he was not able to specifically tell me the  
23 names of them he said to me, I've read a lot of Buddha  
24 books. I asked him what was he learning from these  
25 books? And he said he was learning about people, he

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1 was learning about how people should treat one another  
2 and he was learning about the difference between being  
3 righteous and being evil.

4 He basically said to me, as a youngster who  
5 is enthusiastic about something, when I get a book I  
6 tear through it. That reading in a closed, confined  
7 environment, a cell 23 hours a day, fueled by the hope  
8 or the possibility of a parole hearing in who knows  
9 when, motivated him to begin to explore himself and  
10 begin to try to understand who he is, what he did and  
11 why he did it.

12 In my conversations with Ihab it became clear  
13 to me that he was beginning to have, again, this is  
14 very primitive. This is embryonic, it's embryonic. He  
15 was beginning to have the capacity to self-explore,  
16 like I talked about earlier in my testimony with you.  
17 He was beginning to ask himself questions about  
18 himself.

19 I also asked him, well, as a psychologist, as  
20 a clinical psychologist, you've got to work in two  
21 fields. You've got to work in the individual's  
22 interlife and whether or not that changes their  
23 behavior. The old saying I think in addiction work is  
24 you can talk the talk but can you walk the walk. So I  
25 needed to understand if Ihab was capable of walking the

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1 walk.

2 Well, what he told me he was beginning to do  
3 was stop getting tickets, although it didn't stop cold.  
4 I think his last ticket was in August of 2013, but his  
5 rate of getting tickets, i.e., misconducts, plunged.  
6 He said to me that when he's out with fellow inmates he  
7 thinks before he acts. He tries to stay in a way of  
8 talking with people or avoiding people, but he does the  
9 best he can to stay in his head and think which is  
10 quite different than the young man who was out on the  
11 streets who -- the only thinking that he did then in  
12 that amoral way was, what do I need and how do I get  
13 it.

14 In my second -- in my first visit with Ihab  
15 was on September 19th, 2000 -- nope, I'm sorry. I  
16 apologize. February 21st, 2014. I then saw him on  
17 September 19th, 2014. And that's a good stretch of  
18 time and I wanted to understand how he was doing. And  
19 as I was told and shown to me about his records, he had  
20 not had a ticket, no misconducts, he was doing well.

21 He became the unit housing representative.  
22 And as I understand it from him, although I have no way  
23 -- I did not find a way to independently verify this,  
24 that he's -- he's the unit housing representative which  
25 means that he and other housing representatives, I

1 guess, in the institution meet with the warden or  
2 deputy warden and discuss housing needs. That's an  
3 elected position, as he told me, and he told me that he  
4 got the most votes for it.

5 In addition to that he's also the unit  
6 barber. And as he said he can do 15 heads in eight  
7 hours. I asked him, well, what do you have? What do  
8 you do as a barber because the first thing I thought  
9 naively was barber? Scissors? No way. Well, no,  
10 there are no scissors. He uses clippers, he uses a  
11 brush and he uses a comb. I asked him how he thought  
12 he was doing as barber, he said he thought he was doing  
13 pretty good. His only competition is another guy who  
14 he thinks does better than he does.

15 In addition to that, he told that me he's  
16 taking some GED classes. Again, classes, I don't mean  
17 necessarily that he's leaving his cell but he's getting  
18 literature, etcetera, and apparently is taking some  
19 tests and he said he's doing well.

20 So, the young man that I saw in February was  
21 a young man who was beginning to tell me that something  
22 was happening inside of him as a result of what I just  
23 described.

24 Q Okay.

25 A His luck being segregated in Miller versus Alabama.

1 Well I wanted to know what was going on six months,  
2 seven months later. And seven months later, from a  
3 psychological standpoint, what happened was that  
4 indications of change in his interlife was beginning to  
5 filter up to his behavior. The end of misconducts,  
6 essentially, unit representative, a barber and more  
7 reading.

8 If I may, what was also important, especially  
9 -- well, it was important because I wanted to  
10 understand if Ihab was beginning to have the  
11 rudimentary development of conscience. Because when  
12 you grow up the way I believe he grew up and behaved  
13 the way he behaved, you don't have conscience.

14 Conscience requires an assessment of right  
15 and wrong. It requires an assessment of whether you  
16 feel good about yourself or ashamed and it requires an  
17 emotional attachment to people. Without emotional  
18 attachment you don't have conscience.

19 Q Okay.

20 A So as -- if you remember a couple of minutes ago I told  
21 you that he told me that he was learning about the  
22 differences between righteous and evil. So I asked him  
23 some more about that. And I said to him, tell me what  
24 evil means to you. And these are his words: Evil is  
25 misusing people. Evil is in your heart. You have bad

1 intentions. You are not righteous and you act out of  
2 your evilness. You hurt people. A Godly person is one  
3 who is caring and loving. Even a Godly person can  
4 punish people who bring harm to them. Even God did  
5 this.

6 And then I asked him what he thought  
7 righteous meant. And he said, righteous is doing right  
8 by people. You don't mislead them, you don't misuse  
9 them.

10 And then I said, Ihab, I don't want to go  
11 over with you what you did. We're not going to waste  
12 time on that on however your thoughts are about that.  
13 Did what you do -- is what you did righteous or evil?  
14 And he said, well, it was a little bit of both. And I  
15 said, tell me about that. And what he said was, well,  
16 I didn't have any choice. It's how I was, it's how I  
17 lived, it's how I behaved. It's kind of like if you're  
18 in a house that's on fire and you're standing near the  
19 door. You leave the house. You don't have any other  
20 choices. You leave the house, you get out.

21 And then, of course, I asked him, well, tell  
22 me about how it was evil and he said, I hurt people. I  
23 hurt people badly.

24 Again, it tells me that from a clinical  
25 standpoint there is the embryonic development of

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1 personhood. And at the risk of being hyperbolic, the  
2 risk of being melodramatic, I apologize in advance for  
3 this, it appears to me that this young man is in the  
4 early rudimentary stages of growing himself up because  
5 he's using people like Jesus and Muhammad and  
6 individuals that he reads about, again, not as  
7 religious objects, but as his teachers. I believe he's  
8 beginning to internalize what he's reading.

9 Q And what about your meeting with him at the jail?

10 A Well, I met with him at the jail on October 17th, just  
11 about a month later, and he was still the unit barber.  
12 That's when he told me he can do 15 heads in eight  
13 hours. And we talked more about this choice option  
14 business, about righteous versus evil. And, again,  
15 it's where he said I couldn't think of anything else to  
16 do. I was in a situation and I had to get -- and I had  
17 to take care of the situation I was in.

18 Q And based on what you've seen in terms of this  
19 introspection -- I mean, well, first of all, can you  
20 predict where he'll be a year from now?

21 A Absolutely not.

22 Q Ten years from now?

23 A Absolutely not.

24 Q Twenty years from now?

25 A Absolutely not. I can't tell you where I'm going to be



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1 a year from now or how I'm going to be behaving a year  
2 from now.

3 Q There is no way to predict --

4 A No.

5 Q -- what will happen?

6 A No. And any psychologist who says I can predict how  
7 this individual is going to be in a year, ten years,  
8 however, know something I don't.

9 Q At this moment in time though it sounds like you are  
10 beginning to see growth, personal growth, introspection  
11 in the things that lead -- you said earlier what you  
12 look for in patients, people who can learn from events?

13 A But it's very, very rudimentary but it's there, in my  
14 opinion, yes.

15 Q And so, in your opinion, if he were evaluated for  
16 parole one day, someone would look at all these  
17 factors, correct?

18 A Yes.

19 Q So do you --

20 A Can I stop you for one second? This cup is leaking. I  
21 apologize. And there is no tissue.

22 Q Dr. Danuloff, are you familiar with the United States  
23 Supreme Court's decision in Miller versus Alabama?

24 A I am.

25 Q And are you familiar with the factors that the court

1 has to consider -- that this Court has to consider  
2 under that decision?

3 A If you ask me to tell you those, I'm --

4 Q In general, are you --

5 A Yes, ma'am, I am.

6 Q -- familiar with them?

7 All right. And so one of the -- one of the  
8 factors is whether or not that Judge Druzinski will  
9 have to take a look at is whether or not Ihab is one of  
10 the rare juvenile offenders whose crime reflects  
11 irreparable correction?

12 A Irreparable correction.

13 Q Do you have an opinion about the irreparable  
14 corruption?

15 A Yes, I do.

16 Q Will you share that with us?

17 A Yes. I think before he got lucky he may have been  
18 irreparably corrupt but he got lucky. And that luck  
19 allowed this potential in him that had no way to  
20 develop, to begin to embryonically bubble to the  
21 surface.

22 So I believe, and, again, I'm postdicting,  
23 that's just as difficult as predicting, but if I  
24 postdict his behavior at the time that he did what he  
25 did, he was essentially, from society's standpoint, a

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1 predator. End of story. And at that point in time he  
2 was, in that moment, irreparable. Irreparably corrupt.  
3 Is that the term?

4 Q Yes.

5 A The individual I saw, by the luck of those two  
6 circumstances, allowed this potential in him to begin  
7 to surface every slightly.

8 Q So does that speak to the Court when they talk about  
9 heightened capacity for change in adolescence and that  
10 is why, you know, generally they should not be given a  
11 mandatory life sentence? Would that, what you're  
12 seeing, speak to that heightened capacity for change?

13 A Yes, ma'am.

14 Q Okay.

15 MS. NEWMAN: I have no further questions at  
16 this time.

17 THE COURT: Thank you, Ms. Newman.

18 Mr. Cataldo.

19 **CROSS-EXAMINATION**

20 BY MR. CATALDO:

21 Q Dr. Danuloff, are you surprised that I am offended that  
22 you would use the term lucky when Matt Landry was  
23 executed by Mr. Masalmani and you're calling him lucky  
24 and maybe Matt Landry was not so lucky?

25 A Mr. Masalmani committed a horrendous act.

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1 Q Right. And you're saying he's now lucky? Do you  
2 understand my distress with that? Can you understand  
3 that as a psychologist?

4 A No, sir, I don't understand it.

5 Q Okay. Can you understand this family's distress that  
6 they're sitting there watching you call Mr. Masalmani  
7 lucky when he brutally murdered their son?

8 A I'm, as I said in my testimony, I was talking about  
9 lucky in terms of the circumstances that developed,  
10 this embryonic potential for change. I think that what  
11 his family must be feeling sitting here, and I've never  
12 talked to them, must be horrendous.

13 Q And this is what I don't get because you have got a  
14 Ph.D here. The term irreparable means not fixable.

15 A Correct.

16 Q You've used the term irreparable. He was irreparable  
17 and now you're saying he's fixable. Do you not  
18 understand the term or is it that you're being paid to  
19 make this analysis, you're willing to then change the  
20 Webster's definition of irreparable?

21 A No, sir. Number one, I'm nobody's whore. Number two,  
22 someone could be irreparable when at one point and not  
23 in another, if certain potentials have never been  
24 examined or haven't surfaced. So at one point in time,  
25 especially with adolescents, especially with

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1 adolescents, an adolescent can certainly be irreparably  
2 corrupt, if that's the right term at a moment in time,  
3 but if certain circumstances have happened to occur  
4 then perhaps the irreparable incorrigibility issue  
5 could use a second examination.

6 Q So, basically, your definition of irreparable is on a  
7 sliding scale based on circumstances, not based on the  
8 word itself. So wouldn't you be likely to find a  
9 better word than irreparable?

10 A Well, that's the law's word. I think that from a  
11 clinician standpoint what I would say, if I may, is  
12 that at the time that he committed these horrendous  
13 acts his prognosis was absolutely as black and negative  
14 as you could possibly make it. So when I hear  
15 irreparable as a clinician, I think prognosis.

16 Q Let's talk about the whole statement for just a second.

17 A I'm sorry, the what?

18 Q Let's talk about the whole statement for just a second.

19 A Uhm-hmm.

20 Q You had been an expert witness in a number of family  
21 matters in Oakland Circuit?

22 A Yes, sir.

23 Q And you wrote reports and you had to do family  
24 evaluations. And then you would come to conclusions  
25 and then you would turn those reports over to the

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1 necessary parties that were involved in that  
2 litigation?

3 A Yes, sir.

4 Q In fact, I think the first time you testified in an  
5 insanity case was a case I had with you --

6 A Yes, sir.

7 Q -- a couple years ago.

8 A I think a little longer than that, but, yes, I think  
9 so, sir.

10 Q You wrote a report in that one and submitted that  
11 report for review and analysis prior to testifying?

12 A Correct.

13 Q But here you are testifying in a heinous case, a very  
14 important case and I didn't get a report of what your  
15 testimony was going to be. Even Ms. Schaffer did a  
16 report, Dr. Keating did a report. And I know from your  
17 reputation you're not lazy.

18 Was there a specific reason why I wasn't  
19 given any information to help me prepare one of the  
20 most important cases in my life and in the State  
21 because this is one of the first major hearings on this  
22 issue of what your findings were so that I could  
23 actually have a chance to look at it, to compare it, to  
24 look at the notes and challenge your conclusions as  
25 opposed to having to simply stand up and do this off

1 the tip of my head?

2 A I think you'd have to speak to opposing counsel about  
3 that.

4 Q Did she ask you not to write a report so that I  
5 wouldn't have that information?

6 A Opposing counsel said that she thought my testimony  
7 would be sufficient.

8 Q As a professional, you know I'm not a psychologist, and  
9 I'll tell you if you don't know, I'm not a  
10 psychologist. Do you think it's fair for somebody  
11 who's not trained in the area of psychology to be able  
12 to stand here when you're giving a psychological  
13 conclusion and challenge that because the rest of your  
14 life has been spent not being afraid of your  
15 conclusions. That's why I don't get why in this case I  
16 don't get that opportunity.

17 A Mr. Cataldo, I do not know how to answer your question.  
18 I understand your concern, I do not understand how to  
19 answer your question. And with all due respect, I am  
20 not afraid of my conclusions. If I was, I wouldn't be  
21 sitting here.

22 Q Right. I mean, I know your reputation from Oakland  
23 County. I know your reputation when you did stuff  
24 here. That's why I guess I was very surprised and  
25 disappointed.

1 THE COURT: Do you want a continuance,  
2 Mr. Cataldo, to review the testimony?

3 MR. CATALDO: You know, your Honor, I trust  
4 this Court very much to see what it needs to see and  
5 I'll develop the information I think is important --

6 THE COURT: Okay.

7 MR. CATALDO: -- and I'll go from there.

8 BY MR. CATALDO:

9 Q Let's talk a little bit about psychotherapy.

10 A Psychotherapy?

11 Q Yes. In fact, from what I understand you are a  
12 psychotherapist?

13 A Primarily my work is psychotherapy, yes, sir.

14 Q In your practice there are a number of people that come  
15 to you with low self-esteem, issues of self-worth. And  
16 part of what you talked about is there is that  
17 introductory process where you need to have them talk  
18 at you for a period of time for you to actually  
19 understand exactly what they are saying?

20 A Yes, sir.

21 Q I mean, my wife is a physician and all the time she has  
22 people coming in off the Internet saying I must have  
23 this. And I'm assuming that happens. People come in  
24 saying I have this and you need to help me fix it?

25 A Sometimes.



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1 Q Right. And they are not always right. You help them  
2 by asking the right questions so that the two of you  
3 can form your, more or less, your alliance?

4 A Correct.

5 Q And then when you form your alliance, psychotherapy  
6 helps you then to work on those issues over a period of  
7 time?

8 A Correct.

9 Q When people come in with low self-esteem or other  
10 significant issue as a result of issues earlier in  
11 their life, would you say most the time it's not  
12 something somebody can fix themselves?

13 A Most of the time it's not something that people can fix  
14 themselves, I would say that's true.

15 Q I mean, that's what you make a living doing?

16 A Right.

17 Q And, in fact, you'll have some patients who appear with  
18 you more than one time a week. Sometimes two or three  
19 times a week because it's that intense therapy, two or  
20 three days in a row that sometimes helps you further,  
21 helps a person that is on a roll and introspection come  
22 up with those ideas and better understand themselves?

23 A Yes, sir.

24 Q There are some people who simply do one time a week,  
25 that's the best they can do. Anything is better than

1 nothing.

2 A Well, and it might be that that's what they can use.  
3 That's what they need. That's the dose that works.

4 Q Right. And sometimes when people start with intense  
5 therapy then they may be released a little bit and  
6 then, you know, you are just doing some sort of  
7 maintenance?

8 A Yes, sir.

9 Q There is no time or deadline or amount of therapy that  
10 you can say at that first couple of meetings that it's  
11 going to take for an individual to understand and grow  
12 from the issues that they are suffering from?

13 A In my experience, I've never been able to say we can  
14 get this done in three months or ten visits or  
15 whatever.

16 Q Right. And that's critical to what psychotherapy is  
17 all about, isn't it? It really is intense work.  
18 You've already touched on the fact that it also  
19 includes introspection but it also includes the  
20 willingness of that person to work on themselves?

21 A Absolutely.

22 Q And you have patients that probably come in at seven o'  
23 clock in the morning or 7:30, religiously, whether it's  
24 sunny or whether it's snow because they want to be  
25 there and they need to work on that and so they are

1 dedicated to it?

2 A Yes, sir.

3 Q You also know a little bit as a clinical psychologist  
4 or a psychotherapist about ASPD, which is Antisocial  
5 Personality Disorder?

6 A Yes, sir.

7 Q You know that that disorder under DSM 4 and 5 includes  
8 a diagnosis, I guess is the right word, maybe it's not,  
9 that a person like that is manipulative?

10 A Yes, sir.

11 Q You would also understand that many times people with  
12 ASPD that go through psychoanalysis need intense  
13 psychoanalysis. It has to be something that's done,  
14 both parties have to participate and you can't tell  
15 when it's going to end, but it's not something that, as  
16 you said with a dentist filling a cavity, that's done  
17 in a short period of time?

18 A It's also not my experience that folks with that  
19 diagnosis willingly come in for psychotherapy either.  
20 People like that are usually mandated and the prognosis  
21 for mandated treatment is less than rosy, in my  
22 experience.

23 Q Would you agree with me that being in prison, being in  
24 lockdown 23 hours a day -- I do apologize if I'm not  
25 speaking loudly. You're leaning forward --

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1 A I'm good.

2 Q -- like I'm not speaking loud enough. I'm never  
3 accused of --

4 A I just want to understand what you're saying. Go  
5 ahead. I'm good.

6 Q All right. You've indicated that Mr. Masalmani is in a  
7 lockdown situation for a significant period of time and  
8 that's where you said that it may have started, that he  
9 began to work on self-improvement?

10 A Yes, sir.

11 Q I'm not going to use the term that I talked about  
12 before and I do apologize for that. It's just that  
13 it's not part of how I can paraphrase this.

14 Would you consider that then to be a severely  
15 structured environment?

16 A Severely structured --

17 Q Well, how about structured environment?

18 A Well, it's a confined environment.

19 Q Okay.

20 A Structured to me means something different. If I may?

21 Q Yes, please.

22 A It's certainly confined. Yeah, this is where you are  
23 for 23 hours a day. I don't know how much structure is  
24 within that time. I would say to them, what are you  
25 doing in there? I read, I work out, I do pushups, I do

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1           this, I do that. So I don't know if you can call it  
2           structure. I have no motive here to argue with you.

3       Q     No --

4       A     Confined to me is better than structured but --

5       Q     I guess I look at prison as a structure because you are  
6           here, you are in this place, you eat at this time. You  
7           are given recreation at this time, you get to do this  
8           and then you get back here, lights off at this time.  
9           The next day we start the same cycle over.

10      A     That's pretty structured, yes. That to me is  
11           structured.

12      Q     What you talk about being inside the cell itself, being  
13           confined, then that's up to him to decide what  
14           activities he participates in so that's --

15      A     Yes, sir.

16      Q     -- that's his own internal structure?

17      A     Yes, sir.

18      Q     You know from the reports and from what you've read and  
19           from the facts of this case, that when Mr. Masalmani  
20           was on the streets there was no structure?

21      A     I believe there was no structure.

22      Q     But the Mr. Masalmani you're seeing is four years later  
23           in a prison environment where there is sort of  
24           structure or at least there's basic structure that we  
25           discussed.

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1 A Yes, sir.

2 Q You would not be willing to make any statements about  
3 what you would see if there -- if Mr. Masalmani were to  
4 be released and, again, have no structure?

5 A I would not -- am I willing to make a statement about  
6 that at --

7 Q Yes. At this point in time.

8 A -- this point in time? The only statement I could make  
9 is that I couldn't make a statement.

10 Q Okay. Because the Mr. Masalmani that you interviewed,  
11 you interviewed in that environment, a confined  
12 structured environment?

13 A Yes, sir.

14 Q Okay.

15 A If I may, Mr. Cataldo?

16 Q Yes, please.

17 A When I do pre hiring evaluations for police and fire,  
18 sometimes a chief will say to me, so doctor, what do  
19 you think this guy is going to be like in a year? And  
20 I say, chief, I can't tell you. I can only tell you  
21 whether or not he's a good candidate for hiring. I  
22 have no way of telling you what's going to happen with  
23 him and his FTOs, field training officer. I don't know  
24 what he's going to be like in a month. The question  
25 is, is he a viable candidate for hiring. I'm reminded

1 of that because I couldn't possibly tell you what  
2 Mr. Masalmani is going to be like.

3 Q When you met with him I see that you have, like, some  
4 notes there, I don't wish to see them.

5 A Yes, sir.

6 Q Did you perform an IQ test?

7 A I did no formal psychological testing on him.

8 Q You are, I would assume based on your position, you are  
9 qualified to do like the MMPI, the PL, the PCL --

10 A Yes, sir.

11 Q -- R and the TATs and the IQs and all that, you did not  
12 do any of it as part of your preparation for testimony  
13 today?

14 A That's correct.

15 Q This just may be something for my own well-being. Is  
16 narcissism the same as manipulation? Is there --

17 A Narcissists can be manipulative but is not the same.  
18 You mentioned that people with Antisocial Personality  
19 Disorder can be manipulative. I'm reminded of the  
20 following problem: George Washington had white hair.  
21 I have white hair, therefore, I am George Washington.  
22 There is a problem there, right?

23 Q Sort of.

24 A Kind of sort of. Because someone is manipulative  
25 doesn't mean they have an antisocial personality or

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1           that they are narcissist. Manipulativeness is a facet  
2           of human functioning that can occur in a variety of  
3           diagnostic classifications.

4       Q     In the DSM it's in a number of them. And that's really  
5           part of the issue with your field of study. It's not  
6           always black and white?

7       A     It's an inexact science.

8       Q     Right. And as you read Miller versus Alabama you know  
9           what this Judge's responsibilities are. You know that  
10          the State of Michigan and federal law is, you know, the  
11          age of 18 is this age now that we don't have to have  
12          this hearing. But in your field that bright-line is  
13          unmanageable because there really is no bright-line  
14          time of development. It's a broad brush that happens  
15          over time?

16      A     On a personal level, that's what fascinates me about  
17          forensic psychology because you're absolutely right.  
18          There is no bright-line.

19      Q     And you've learned from -- you've been in the court  
20          system a lot of years, sir, that sometimes you're  
21          trying to put a square peg into a round hole with what  
22          the law requires but yet what your field requires and  
23          what you think would be the best for the family that's  
24          in front of the divorce judge and all that stuff that  
25          you did for so many years.



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1 A For someone who is not a psychologist, you understand,  
2 yes, sir.

3 Q I've had a lot of psycho --

4 A It's shows.

5 MR. CATALDO: Thank you very much, Doctor. I  
6 have no further questions.

7 THE COURT: Any follow up, Ms. Newman?

8 MS. NEWMAN: Yes, your Honor.

9 **REDIRECT EXAMINATION**

10 BY MS. NEWMAN:

11 Q If brother counsel had called you and asked to speak  
12 with you prior to your testimony, would you have spoken  
13 with him?

14 A Yes.

15 Q Okay. You talked about not administering any psych  
16 assessment, which is the MMI. Can you explain why you  
17 did not do that?

18 A The MMPI.

19 Q MMPI.

20 A Because psychological testing at this point in time  
21 isn't relevant. If Mr. Masalmani was headed for a  
22 parole hearing right now and the question was whether  
23 or not he should be released into society and under  
24 what conditions, psychological testing would be almost  
25 mandatory. But psychological testing accomplished now

1 in 2014 has no relevance to whether or not in 10 years,  
2 20 years, 30 years or whenever the Department of  
3 Corrections or the Court determines that he'd be  
4 eligible for a parole hearing.

5 Just in terms of developmental psychology,  
6 and I apologize, psychological testing just isn't -- it  
7 was a waste of time. If I was doing a parole hearing  
8 you bet there would be an MMPI and there would be other  
9 psychological tests that I felt was relevant.

10 Q Are there other psychological tests that are available  
11 at that moment in time, like, say it's 30, 25 years  
12 from now, 30 years from now, that would be able to be  
13 administered to -- that are predictive in terms of  
14 behavior once released into society?

15 A Yes. And, of course, let's just call it for the sake  
16 of answering your question, 30 years from now there may  
17 be new ones. There may be new instruments.

18 Q Okay. But that would be available at that time --

19 A Yes, ma'am.

20 Q -- for someone to make that determination?

21 A And if a psychologist who is, for some reason, asked by  
22 a parole board to do an evaluation and doesn't do that,  
23 is not doing a sufficient job.

24 Q Okay. In fact, have you done that kind of work before?

25 A Yes, ma'am.

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1 MS. NEWMAN: Okay. I don't have any further  
2 questions, your Honor.

3 THE COURT: Mr. Cataldo?

4 MR. CATALDO: No, your Honor. Thank you.

5 THE COURT: You can step down, sir. Thank  
6 you.

7 THE WITNESS: Thank you.

8 (At 10:26 a.m., witness excused.)

9 THE COURT: Will counsel approach for just a  
10 moment, please.

11 Ladies and gentlemen you can stand up and  
12 stretch.

13 (At 10:27 a.m. - 10:32 a.m., bench  
14 conference.)

15 (People's Exhibit One, marked for identification.)

16 THE COURT: Thank you, counsel.

17 Please be seated, ladies and gentlemen.

18 Ms. Newman, my understanding from our  
19 conversation at the bench is that you have no more live  
20 witnesses but you have an affidavit that you want  
21 admitted on behalf of Mr. Masalmani, correct?

22 MS. NEWMAN: That's correct, your Honor.  
23 It's an affidavit of David Kowis (ph.), who is Mr.  
24 Masalmani's immigration attorney also included in the  
25 prosecution's exhibit as well.

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1 THE COURT: That will be marked as Exhibit F.

2 MS. NEWMAN: Thank you, your Honor.

3 (Exhibit F, marked for identification.)

4 THE COURT: Okay. So then the exhibits  
5 marked on behalf of Mr. Masalmani are A, which is the  
6 Danuloff CV; B, which is the Keating CV; C, which is  
7 the Keating report; D, we had previously marked was the  
8 affidavit -- or the CV of Desmond Patton, correct?

9 MS. NEWMAN: Correct. And that's been  
10 removed.

11 THE COURT: That will be removed because he  
12 did not testify. Then Exhibit E is Vandervort's CV; F,  
13 is the affidavit, and then G is the stipulated  
14 statement of facts, correct?

15 MS. NEWMAN: That's correct, your Honor. And  
16 I have all the -- I have all the original exhibits and  
17 I will maintain those as original exhibits.

18 THE COURT: Okay. And that's it for  
19 Mr. Masalmani, correct, in terms of witnesses and  
20 exhibits?

21 MS. NEWMAN: That is correct, yes. That's  
22 correct.

23 THE COURT: And then Mr. Cataldo, on behalf  
24 of the People, the Exhibit Number One is the, I've  
25 called it People's Exhibit Notebook but that contains

1           some documents and reports that you've referred to  
2           through the course of this hearing, correct?

3                   MR. CATALDO:   That's correct, your Honor.  
4           Being this is a sentencing hearing, many of the  
5           documents that were developed during the preparation  
6           from juvenile records and others, which most of the  
7           experts I referred to are already in here as well the  
8           PSI which just makes -- I think the Court already has  
9           the psychological reports from the preparation,  
10          criminal responsibility, and that sort of stuff.

11                   And all reports that I was using to  
12          cross-examine specifically this is on  
13          significant issues, so I felt it would be better to put  
14          them all in one notebook and with the Court's, once the  
15          defense rests, with the Court's permission we're not  
16          going to call any witnesses, I would just like to spend  
17          less than five minutes pointing out a couple of, I  
18          think, very important notes in here for the Court's  
19          attention. I'm sure we will reference them in the  
20          brief also.

21                   THE COURT:   Okay. You've gotten a copy of  
22          the notebook, Ms. Newman? No objection?

23                   MS. NEWMAN:   There is no objection, your  
24          Honor.

25                   Yes, Mr. Cataldo kindly gave me a copy of the

1 notebook prior to the start of this hearing.

2 THE COURT: Okay. One is admitted on behalf  
3 of the People.

4 (At 10:35 a.m., Exhibit One admitted.)

5 THE COURT: So Ms. Newman, you officially  
6 formally rest?

7 MS. NEWMAN: Yes, I rest.

8 THE COURT: Okay. Mr. Cataldo, anything else  
9 on behalf of the People then?

10 MR. CATALDO: Your Honor, I just would like  
11 to -- people have no witnesses but I would like to  
12 spend a couple of minutes with highlights, some notes,  
13 inside the notebook. The Court's notebook is tabbed  
14 also, so I would ask the Court to go to the first tab  
15 which is under Section B, forensic reports.

16 Mr. Kosmala, who was the original trial  
17 attorney submitted Mr. Masalmani to the Forensic Center  
18 for a determination of criminal responsibility.  
19 Richard L. Rickman, Ph.D, licensed psychologist and  
20 consulting forensic examiner, at the end of the  
21 evaluation for criminal responsibility stated something  
22 that's very important. He said, moreover, there was no  
23 data to indicate that at the time of these crimes  
24 alleged occur -- wait.

25 Moreover, that there was no data to indicate

1 that he has ever had any difficulty controlling his  
2 behavior with the exception of criminal behavior that  
3 appears to be due to a major personality disorder such  
4 as Conduct Disorder or Antisocial Personality Disorder.  
5 That was his finding there.

6 Under the Section C, your Honor, which would  
7 be the clinical reports, and I'm sure that we've heard  
8 statements made by Professor Vandervort this morning as  
9 well as Mr. Ladd, talking about these placement  
10 reports. It shows on page three at the bottom that  
11 Mr. Masalmani showed little remorse for his behaviors,  
12 as he needed to survive.

13 The second to the next page, number four, the  
14 court will see in the bottom of the couple of  
15 paragraphs, that he has trouble with authority figures.

16 And this is the section where I was able to  
17 use, when Mr. Ladd and others testified that  
18 individuals in this situation learn how the system  
19 operates and when they don't like the placement they  
20 manipulate the placement. They, according to him, nut  
21 up, to get out of there, were Mr. Masalmani's exact  
22 words. And there they are to show that that was the  
23 behavior that he was exhibiting.

24 Under Section F, your Honor, which are court  
25 hearing reports, it continues to show that in

1       placements Mr. Masalmani's behavior was disruptive and  
2       disrespectful to peers and staff. That he would be  
3       determined to be a delinquent, I guess in that whole  
4       cross section which I talked to Mr. Ladd about where  
5       all the reports in there indicate the number of fights  
6       that he was in.

7               THE COURT: Okay.

8               MR. CATALDO: And I would indicate, your  
9       Honor, that under Section I, additional Family  
10      Independence Agency reports, two reports in a row, that  
11      describe him as incorrigible and rude.

12              And then, your Honor, under K, the  
13      team-decision making activity reports show a number of  
14      things that even Dr. Danuloff talked about, how  
15      truancy, which requires a secure placement, he needs to  
16      learn to follow the rules, he needs academic  
17      assistance, he needs anger management, he needs  
18      substance treatment, and he needs to follow the oral  
19      and written directives, he needs to work on his  
20      self-esteem and self-respect, he needs to improve on  
21      his decision-making, he requires psychological and  
22      psychiatric evaluations. Those reports are consistent  
23      with that.

24              And the final one, your Honor, is, I guess,  
25      before he had his epiphany, in 2008 here, it appears



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1 that they were attempting to give him individual  
2 therapy, because we have a report from an Arabic  
3 therapist whose name I cannot pronounce but it's  
4 spelled, A-B-D-E-K-H-A-L-E-Q, where he did sort of  
5 three days in a row and show -- three week in a row one  
6 time. Showed a lack of self-esteem, a lack of insight,  
7 a lack of self-concept, anger issues and it was the day  
8 after the third therapy session that he escaped.

9 THE COURT: That's Exhibit L, right?

10 MR. CATALDO: Correct.

11 That's what I wanted to indicate to the Court  
12 in People's Exhibit 1. Thank you, your Honor.

13 THE COURT: You're welcome, sir.

14 Brief closing remarks, counsel.

15 MS. NEWMAN: Thank you, your Honor.

16 THE COURT: You're welcome. Go ahead.

17 CLOSING ARGUMENT

18 MS. NEWMAN: You know, these cases are never  
19 easy and they are never going to be easy in any of the  
20 juvenile sentencing cases because there is, by  
21 definition, it's a murder case and someone has lost  
22 their life at the hands of the defendant that's before  
23 the Court. And so by definition it makes it a very  
24 emotional and difficult and sad situation for everybody  
25 involved. And I think it's really important to keep in

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1 mind that this is not a weighing of -- this has nothing  
2 to do with culpability.

3 Mr. Masalmani has been found guilty of these  
4 crimes and this is not an insanity -- you know, we're  
5 not in trial. We're not trying to say he's not  
6 responsible. He's been found responsible. He is  
7 responsible and we accept that.

8 The key here is that the United States  
9 Supreme Court for a number of years has been engaging  
10 in discussions and issuing decisions that recognize and  
11 reinforce the concept of mens rea and culpability so we  
12 stopped executing people who were mentally ill.  
13 Because on a culpability scale, as a society, we're not  
14 going to execute people who can't fully understand what  
15 they are doing. So we've had these progression of  
16 cases. Then we stopped imposing, you know, life  
17 sentences on people who are not a principle in the  
18 crime. And now we have Miller versus Alabama where  
19 we're looking at principles or aiders and abettors,  
20 anyone who is sort of, you know, actually involved in a  
21 crime when the crime was committed prior to that  
22 person's 18th birthday.

23 And the key here, the key with Miller really  
24 is culpability and capacity for change. So in the  
25 Miller case, Mr. Miller who was 14 years old and his

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1 co-defendant beat a man, set a house on fire. It was a  
2 neighbor of theirs and he died. It was a very brutal  
3 crime. So keeping in mind that the United States  
4 Supreme Court had before it, you know, it was, I guess  
5 on the scheme of things, some cases you might say are  
6 worse than others but they are all bad.

7 And in Mr. Jackson's case, which is the  
8 companion case, he and two others tried to rob a store  
9 and a clerk was killed. While Mr. Jackson didn't have  
10 a weapon he knew that his co-defendant had a weapon and  
11 that they were going into the store.

12 So the key for this Court, as you started out  
13 -- as you stated when we started out this hearing, is  
14 we were looking at the hallmark features of youth and  
15 we've heard about all of that today or throughout this  
16 hearing from Dr. Keating, from Jennifer Keller, from  
17 Bill Ladd, people who have had a -- not Dr. Keating,  
18 but Bill Ladd and Jennifer Keller who had a lot of  
19 experiences with Mr. Masalmani.

20 Jennifer Keller only had experiences for a  
21 few years. She met him right when he came into the  
22 system when he was nine years old and she said that he  
23 was just a scared kid. What nine year old wouldn't be  
24 when they are plucked from their home, flown thousands  
25 of miles to a country where they don't speak the

1 language, don't know what's going on, then removed from  
2 the first home -- the thing they do when they get here  
3 is put him in detention because they are -- immigration  
4 detention, then sent to live with relatives who abused  
5 them, removed from that home in California, flown all  
6 the way to Michigan to be sent with more relatives who  
7 are supposed to take care of you. And they are not  
8 sent to school, they are not fed, they are not taken  
9 care of, removed from that home and then finally ends  
10 up with Ms. Day.

11 He has problems with Ms. Day, there is no  
12 question. There's no way he's not going to have  
13 problems, under the circumstances, but he's with her  
14 for four years. But then you have an agency who says,  
15 well because she never wanted to be an adoptive parent.  
16 It was always considered as temporary placement. So  
17 even though he was doing well, we're going to rip him  
18 out of that and we're going to place him with a  
19 preadoptive family.

20 Is it any wonder that he sabotages that next  
21 placement. At this point he's all of -- you know, at  
22 this point about 12 years old and he's now attached to  
23 someone very strongly. He likes being with her. In  
24 fact, the reason in the court records that he did not  
25 return to his mother was because he liked Ms. Day so

1 much and he enjoyed being with her so much.

2 So all the testimony that we've presented in  
3 terms of the failures of the system are not to say in  
4 any, shape or form, excusing the conduct or led to the  
5 conduct, all of that, your Honor, are context to  
6 understand that the AWOLs and the leaving of placements  
7 and the history that this young man had is very  
8 explainable, psychologically, in terms of what was  
9 going on in his life and is not a pattern that shows  
10 incorrigibility or an inability to conform his conduct  
11 or an unwillingness to conform his conduct. But given  
12 his brain developing, given the trauma that he had  
13 experienced, this was the way that he coped.

14 He coped by going where he felt familiar.  
15 And once they removed him from Ms. Day you can watch  
16 those records as his life tumbles out of control  
17 because he lost the only placement where he had someone  
18 he thought loved him, cared about him, he respected and  
19 he was -- he was, you know, putting his life together.

20 We've heard about the fragmented care that  
21 was delivered to him and the problems that caused. The  
22 fact that he wasn't fully looked at from a  
23 multi-disciplinary team approach to address the  
24 language proficiency issues, the educational issues. I  
25 mean, you heard Jennifer Keller say I could see that he

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1 needed special education. I fought for it but it took  
2 me a long time to get someone to make that happen.

3 So all along the way, even when he had good  
4 social workers like Ms. Keller who were fighting to  
5 really help him, there is this antagonism going on  
6 between the multiple agencies that are going on. And  
7 Mr. Vandervort sort of explained it. A lot of it  
8 really is about money. If it costs more money and  
9 don't have a contract with a certain agency, they are  
10 not going to give the child the services he needs.

11 And so we talk about how a child's brain  
12 forms. And Dr. Keating talked a lot about hot  
13 cognition and cold cognition when the prosecutor was  
14 asking questions about right and wrong. And he said  
15 there is a huge difference between cold cognition,  
16 between sitting somebody down when there's nothing  
17 going on, there's no stressors, there's no excitement,  
18 and talking about right and wrong and being in the  
19 moment and living in the moment.

20 Like Dr. Danuloff said, Mr. Masalmani got to  
21 a point where he was most comfortable in the streets.  
22 That's where he was most comfortable. He knew how to  
23 survive. From our perspective, I think from most  
24 people's perspective, it's not much of a life,  
25 especially for a child, but given all the trauma that

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1 he had, it was a place at that point in time because of  
2 all the things that had happened which he felt  
3 comfortable.

4 And you've heard from Dr. Danuloff, I think  
5 the most -- that's sort of a key part of this, a lot of  
6 this is background and leading up to it. But as  
7 Dr. Keating and Dr. Danuloff, they sort of put the  
8 aspects of Miller into perspective, right? Because  
9 it's the brain development and where it is. And it's  
10 what Miller talks about as, you know, these transient  
11 qualities, you do -- adolescents do mature and they  
12 grow out of these transient qualities of immaturity  
13 impetuosity and his failure to understand the risks and  
14 consequences. And Dr. Danuloff has seen that  
15 first-hand. He's spent a number of hours with Ihab  
16 over the period leading up to this hearing. So he's  
17 been able to see the growth. But also we have  
18 objective evidence of that.

19 We have no misconducts from the Michigan  
20 Department of Corrections in over a year where we had a  
21 pattern of a lot of misconducts when he first came into  
22 the system. I'm sure -- I don't have to tell your  
23 Honor, you know that there is no real structure in a  
24 high-level security facility like Ihab is in.  
25 Everything he's doing he's doing on his own. He's left

1 in a cell 23 hours a day. He's not getting  
2 programming, there is nothing available to him other  
3 than some classes for his GED. So the reading, the  
4 introspection, the things that he's doing, they are  
5 truly, truly internal.

6 Now, is he getting some help? Sure. Do I  
7 meet with him? I do. Has a social worker met with  
8 him? She has. I mean, he's, on some level, very  
9 fortunate to have the State Appellate Defender Office  
10 as his attorney because we have resources and we put  
11 the time in to really get to know him and see what he  
12 needs and try and help him with that. But if he had no  
13 capacity for change, it wouldn't matter what we did.  
14 It wouldn't matter if I went to see him every day  
15 because if there was no capacity for change it would be  
16 meaningless, right? He wouldn't respond to it.

17 He responds like -- he really responds like a  
18 child. He's thirsty for the knowledge. He wants to  
19 learn and grow. And I can tell you personally that the  
20 change that I've seen in him is dramatic from day one  
21 when I met him to now. And that can't -- that's not a  
22 manipulation. You would have to be pretty brilliant to  
23 go through that kind of manipulation. And if he was a  
24 sociopath or incorrigible, he wouldn't do that. I  
25 mean, it is what it is and we've seen -- I've certainly



1           seen clients that are like that.

2                       So I think I'm probably near the end of my  
3           ten minutes. I don't want to try the Court's patience.

4                       THE COURT: You're not.

5                       MS. NEWMAN: The key here, I think the record  
6           fully supports that this is not one of those rare cases  
7           where Mr. Masalmani should be resentenced to life  
8           without the possibility of parole.

9                       Keep in mind here that he's serving multiple  
10          sentences of 25 to 50 years already on a carjacking,  
11          kidnapping, conspiracy to kidnap, as well as 15 to 50  
12          year sentences on the other crimes. Under the statute,  
13          your Honor has flexibility in terms but the minimum  
14          could not be any less than 25 years. So -- and even at  
15          that point it's 25 to 50 or up to 60 years, you know, a  
16          maximum of 60 years. So you have a wide range for the  
17          parole board to, you know, look at him in that time.

18                      And like Dr. Danuloff said at that time  
19          someone is going to be administering these tests. And  
20          if he's a danger to society in the least he will not be  
21          released. And the other aspect in this case is, even  
22          if he is released, if they find he is not a danger and  
23          he should be paroled, he's going to be deported. So he  
24          will not remain in the United States at the point in  
25          time down the road, many years, many decades down the

1 road, if he is eventually released.

2 So I would -- I know we're going to be  
3 submitting briefings but obviously I'm asking this  
4 Court to impose a term of years when it actually does  
5 the resentencing. And at that time, one thing, your  
6 Honor, my client really wanted to say something and I  
7 want to make it clear, I'm not allowing him to do so at  
8 this time because I think allocution is for sentencing.  
9 So I don't want that to be viewed in any way as any  
10 kind of a negative because he really -- he, you know,  
11 he would like to address the Court and the family for  
12 what's happened here and I'm just -- I think that time  
13 will come later.

14 THE COURT: Okay.

15 MS. NEWMAN: All right. Thank you, your  
16 Honor.

17 THE COURT: Thank you, Ms. Newman.

18 Mr. Cataldo.

19 MR. CATALDO: Your Honor, in Miller, the  
20 Supreme Court left open the option of considering life  
21 without parole even in juvenile sentencings,  
22 indicating: We do not foreclose the sentencer's  
23 ability to make that judgment in homicide cases.

24 The court simply requires them to consider  
25 the factors that we've listened to first here. So I'm

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1 not going to go into the Miller facts. The Court is  
2 very well-aware of the Miller factors. But what I want  
3 to do is, one of the Miller factors is the facts of the  
4 case. And I want to remind the Court, not that I  
5 necessarily need to, but we are creating a record of  
6 what the facts of this case were and what  
7 Mr. Masalmani's role was. We've gone through three  
8 days of woe-is-me-sensy-feely testimony about how poor  
9 his childhood was. I'm offended that Dr. Danuloff uses  
10 the term that he's lucky in front of the Landry family  
11 who is not particularly lucky.

12 But this is a case, if we all recall, they  
13 had this whole community on edge during that crime  
14 spree. Had all of us asking, what would I have done in  
15 that situation? Why didn't Matt run? My, God, I am  
16 lucky that I wasn't the one at that place, at that  
17 time, walking out of the Quiznos restaurant, and it was  
18 that randomness that created this stress. That he was  
19 kidnapped, tried to be forced into the trunk,  
20 physically assaulted, thrown into the back seat of that  
21 car, taken to Detroit.

22 And it's not bad enough that he was taken to  
23 Detroit, your Honor, but you have to remember, he was  
24 paraded around. He was forced to remain in the back  
25 seat of that car for hours as they went to drug -- one

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1 drug house to another drug house, to another drug  
2 house. A number of witnesses testified they saw this  
3 scared white kid sitting in the back seat of this car.  
4 They had him for ten hours making it worse.

5 And then they walked him into that abandoned  
6 house, Taylor punches him and Masalmani puts him on his  
7 knees and puts the gun in the back of his head. We  
8 would have had a second one out of the Flagstar Bank if  
9 that young lady hadn't just simply fallen to the  
10 ground, refused to be taken hostage. And the only  
11 reason the carjacking wasn't successful on his third  
12 day is because he couldn't drive a clutch. He picked  
13 the wrong car. Those are important when we talk about  
14 depravity, when we talk about what's going on in the  
15 system.

16 Ladd and even Vandervort, they come here and  
17 they blame the system. The psychologists come in and  
18 they blame the parents. I didn't hear anything about  
19 their responsibility. Dr. Danuloff says, okay, well,  
20 he was amoral at the time. He was irreparable at the  
21 time. But I see this really, really small hint. But,  
22 Judge, let's talk about what Dr. Danuloff talked about  
23 when it comes to these deep-seated issues and  
24 psychoanalysis.

25 You do not get past those issues sitting in a

1 jail cell, reading the Bible and reading a book called  
2 Secrets. If anybody in this building knows that, it's  
3 you, because you're a Drug Court judge and a successful  
4 one. And you understand the value of therapy, you  
5 understand the need for therapy to get past these  
6 childhood issues of self-esteem and everything else.  
7 And it takes more than just sitting by yourself. It  
8 can't be done, as Dr. Danuloff will tell you, without  
9 help. He's not getting that help. He's not getting  
10 that help when Val goes to visit him, when the social  
11 worker says, hey, how you doing? It's intense therapy.

12 The problem with this whole matter is the  
13 Miller court is asking you to use a crystal ball to  
14 figure out, will society be safe when he's released or  
15 will they not be safe when he's released? Even  
16 Dr. Danuloff tells you he's not going to predict the  
17 future. He's not even going to take -- does he see  
18 this very embryonic thing. Well, Dr. Rickman told you  
19 he's got ASPD. He's got Antisocial Disorder and that  
20 is one of the biggest factors of his manipulation.

21 When Dr. Danuloff says, well, about a year  
22 ago it started to change because he realized he might  
23 have a chance to get out. Isn't that the whole issue  
24 of manipulation? I have a chance to get out so I'm  
25 going to do what is necessary to manipulate those who

1 are going to advocate on my behalf, the potential early  
2 release. It's a classic sign. But we know all of  
3 those problems that started with him at two and three  
4 and five and seven and ten, and the placements have  
5 left what are probably lifelong scars that can't be  
6 healed. That this Court can't trust to just simply  
7 allow him to be released.

8 And this whole issue of deportation. Okay.  
9 Well, just in case, don't worry he's not going to harm  
10 anybody, yet we're sending him back to, I don't know,  
11 Lebanon, Libya. He doesn't even know. He told three  
12 different stories as to how he got here and why he got  
13 here. And, in fact, there were a couple of individuals  
14 who couldn't confirm that he made that choice.

15 I guess if it comes down to the questions  
16 that Dr. Keating indicated that and even Dr. Danuloff,  
17 can we determine if a person can be rehabilitated? And  
18 everybody except, you know, Schaffer and I don't even  
19 know if she's qualified to give the opinion, she says  
20 yes, everybody else says no.

21 Dr. Keating also indicated that some of  
22 Dr. Steinberg's studies from Rochester, from  
23 Pittsburgh, from New York and New Jersey, indicate that  
24 at least up to 15 to 30 percent of all people in his  
25 position are chronic, repeat offenders and is lifelong.

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1 It doesn't change. So all we really have to look at is  
2 what has he done.

3 You see that he's got seven juvenile contacts  
4 as a delinquent, to truancies and car theft and drugs.  
5 We have seven escapes. He was on escape status when  
6 Matt Landry was murdered. We have now, I thought it  
7 was seven placements, we have 13 to 14 placements.  
8 Seven times he went AWOL from those placements  
9 committing a new crime.

10 And when he got to prison in the last four  
11 years up until the news that the Supreme Court, how  
12 convenient, came up with Miller and they stopped, 23  
13 major misconduct violations, continuing the pattern of  
14 what it was like out on the streets with him. Giving  
15 you no sense of hope prior to the manipulation that he  
16 had even learned.

17 And when he talks to Dr. Danuloff about what  
18 has he learned, what does he feel about the murder, he  
19 says, well, it was part righteous and part evil. Even  
20 that definition given a week ago doesn't indicate he's  
21 sorry for what he did or that he realizes it was wrong.  
22 All he does is realize his place and where he is and he  
23 has now a chance to get out. And that's different than  
24 true understanding and something as psychoanalytical  
25 that therapy would give him. And you know as well as I

1 do, in prison you don't get therapy even when you're  
2 convicted of guilty but mentally ill. You get a single  
3 psychological evaluation a year and that's it. No  
4 help. Nothing to make you better.

5 That's the problem that I have with all of  
6 this. I'm not saying it's not a bad childhood and all  
7 those issues, it's just those issues aren't going to be  
8 fixed. They can't be fixed under the situation they  
9 are in and therefore, you can't take the risk of giving  
10 them a number of years and ever having them out in  
11 public again.

12 I would ask you, your Honor, to maintain the  
13 sentence that you did the first time and that's  
14 mandatory life without parole. Thank you.

15 THE COURT: Thank you, Mr. Cataldo.

16 That concludes the sentencing hearing on  
17 People versus Masalmani. And I think we had discussed  
18 with counsel they both wanted to submit sentencing  
19 memorandums or briefs.

20 MS. NEWMAN: Yes, your Honor. After we  
21 obtain the transcript.

22 THE COURT: After you obtain the transcripts.

23 I suspect that it's -- well, I'm just going  
24 to give you a date because I don't think the  
25 transcripts are going to be extraordinarily lengthy or



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1           difficult for Angela to do the first couple of days and  
2           then Trinia will have to do today.

3                   I would like, unless it becomes impossible  
4           with your schedules, to have your briefs submitted by  
5           December 12th.

6                   MS. NEWMAN: That should be fine, your Honor.

7                   MR. ABBOTT: That's fine, your Honor.

8                   THE COURT: Okay? And then I'm going to  
9           schedule sentencing for the first of the year, if  
10          that's okay with counsel. January 6th.

11                  MS. NEWMAN: I'm sorry. When, Judge?

12                  THE COURT: January 6th.

13                  MS. NEWMAN: That should be fine.

14                  THE COURT: Is that okay, Mr. Cataldo?

15                  MR. CATALDO: Yes, your Honor.

16                  THE COURT: And that would be at 8:30 for the  
17          sentencing.

18                  Have your briefs to me by December 12th.

19                  MS. NEWMAN: And so, just for the record, we  
20          would like him -- if we could do the same thing we did  
21          this time, have Mr. Masalmani brought ahead of that  
22          sentencing hearing so I can have some time with him in  
23          the Macomb County Jail before sentencing, that would be  
24          appreciated.

25                  THE COURT: A day ahead of time?

1 MS. NEWMAN: Several days.

2 MR. CATALDO: I failed to have him here when  
3 I assured the Court I would have him here a week  
4 beforehand. With Mr. Abbott's assistance this time, we  
5 will have him here probably before New Years, the  
6 latter part of December.

7 THE COURT: I don't think we need him before  
8 January 2nd. That's Friday, Saturday --

9 MS. NEWMAN: That's fine, your Honor.

10 THE COURT: -- Sunday and Monday. That's  
11 fine for a sentencing.

12 MS. NEWMAN: That works.

13 THE COURT: Okay?

14 MS. NEWMAN: Thank you.

15 THE COURT: So if you could do the writ --

16 MR. CATALDO: We will, your Honor.

17 THE COURT: -- that allows him to be here by  
18 January 2nd, I'd appreciate it.

19 THE COURT: Okay. We're all set with  
20 Mr. Masalmani's matter then. We'll take a five minute  
21 break. I think I saw Mr. Simon walk in.

22 (At 11:04 a.m., proceeding concluded.)  
23  
24  
25

CERTIFICATION OF COURT REPORTER

I, Trinia K. Hunter, hereby certify that  
this transcript is a complete, true and correct  
transcription of my stenographic notes in the case of the  
People of the State of Michigan vs. Ihab Masalmani, Case No.  
2009-5244-FC, on Friday, October 24, 2014.

/s/: Trinia Hunter

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TRINIA K. HUNTER, CSR-7835

Certified Shorthand Reporter

Telephone: (810) 338-5639



## Summary of Adolescent Developmental Science in re Juvenile Life Without Parole

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University of Michigan

In a series of US Supreme Court decisions, evidence from the developmental science of adolescence, including developmental neuroscience, has been cited in support of decisions eliminating capital punishment for juveniles and restricting the use of mandatory sentencing to life without parole for juveniles. This summary is intended to provide a brief descriptive overview of the developmental science cited in those decisions, and of the continuing scientific progress in the relevant fields of research.<sup>1</sup> The overview covers six topics: immaturity of the prefrontal cortex and executive functions; the elevation of socioemotional and incentive systems; the developmental maturity mismatch between those two brain systems; the implications of current research for the prospects of rehabilitation among juvenile offenders; the issue of age cutoffs; and a note on scientific methodology.

- **Immaturity of Prefrontal Cortex (PFC) and Executive Function (EF)**
  - *Executive Function, judgment, and decision making.* The prefrontal cortex of the brain (the PFC) has long been understood to have the principal function of carrying out what are known as the “executive functions” (EF). These included basic functions such as working memory and planning, as well as the direction of cognitive resources (known as “effortful control”) and, especially relevant here, impulse control (also known as the “inhibition of prepotent responses”) and

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<sup>1</sup> A recent summary of the developmental science used in *Thompson v. Oklahoma* (1988), *Roper v. Simmons* (2005), *Graham v. Florida* (2010), and *Miller v. Alabama* (2012) can be found in L. D. Steinberg, (2013): *The influence of neuroscience on US Supreme Court decisions about adolescents' criminal culpability*, *Nature/Neuroscience*, 14, pp. 513-518. This summary draws on that and its citations, along with other publications, including: Keating, D. P. (2012). *Cognitive and brain development, Enfance*, 3, 267-279; Keating, D. P. (2014). Adolescent thinking in action: Minds in the making. In J. Brooks-Gunn, R. M. Lerner, A. C. Petersen, & R. K. Silbereisen (Eds.), *The developmental science of adolescence: History through autobiography*. NY: Psychology Press. (Pp. 257-266).

decision-making in complex situations. The PFC is known to begin developing in early childhood and to continue that development through the childhood, adolescent, and early adult years, showing full adult maturity in the early to mid-20s.<sup>2</sup> It is the functioning, and especially its immaturity, that is referenced in discussions of suboptimal adolescent judgment, especially in complex decision-making contexts that include competing demands. Another key aspect of the PFC is that it has limited capacity. When fully engaged in one task involving effortful control, it has limited or no capacity to undertake additional tasks that require judgment. This has two implications: (1) having embarked on a plan to undertake a risky behavior, the execution of that plan may use up available PFC resources, compromising the individual's ability to adjust behavior when circumstances warrant; (2) engagement with other activities that demand PFC resources, such as maintaining status among peers, may make the limited PFC resource unavailable.

- *Governance of other brain systems.* In addition to the EF developments just described, the PFC shows development in a related function, the governance of other brain systems. This is also a gradual series of developments, as peripheral systems are brought more fully under the direction of the PFC. (This is the basis of the colloquial designation of the PFC and its projections to other brain regions as the “top brain.”) It is not until the early to mid-20s that the ability to delegate tasks efficiently to other brain systems, relieving the PFC of its role to maintain effortful control and freeing up PFC space for other demands.
- **Elevation of Socioemotional and Incentive Systems**
  - *Incentive systems:* Beginning in early to mid-adolescence, there is a sharp increase in what are termed “incentive systems” that entail complex neural circuitry, including emotional arousal (associated most strongly with the amygdala), sensation seeking (mediated by activity in the ventral striatum), and the heightened experience of rewards (mediated by a sharp increase in dopamine

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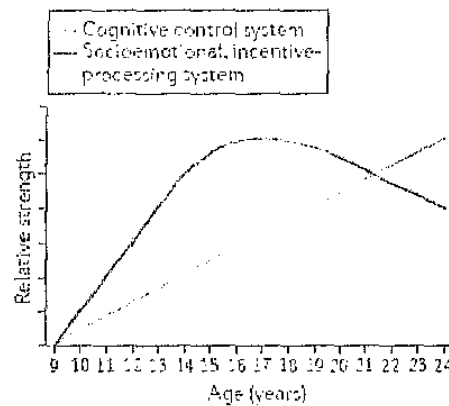
<sup>2</sup> This is found in research on the structure of neural circuitry, in neuroimaging in active performance situations, and in cognitive and behavioral evidence. The last section of this overview provides a brief description of the scientific methods used in the research described here and throughout the summary.

receptors) – a coordinated limbic system often referred to colloquially as the “bottom brain”. These developments also coincides with (and may be partially explained by) significant changes in the hormonal balance associated with pubertal shifts, principally as an activation of the HPG-axis (hypothalamic-pituitary-gonadal) whose endpoint is the production of the steroids testosterone and estrogen (among others). These developments are observed behaviorally and cognitively as a significant increase in exploratory and sensation seeking behaviors during this same period of development when the governing capabilities of the PFC are limited (a mismatch described further below).

- *Benefits over risks.* There is substantial evidence that the factors above lead adolescents to focus more heavily on the benefits of risky behavior than on the possible negative consequences of their actions. This is not because adolescents are incapable of understanding or evaluating possible consequences of risky behavior, which under conditions of “cold cognition” (where nothing arousing or incentivizing is activated) is roughly the same as adults. Rather, they value the potential benefits of the behavior more highly than adults, altering the risk/benefit ratio in favor of undertaking unwise risks.
- *Peer susceptibility.* Among the most incentivizing and arousing contexts for adolescent risk behavior is the susceptibility to peers, sometimes in response to pressure (to maintain social status) but also because of the rewards (both behavioral and brain-activated) associated with peer influence. Under experimental conditions of peer presence, different neural circuits are activated than when performing a judgment task on one’s own. In combination with the limited PFC capabilities noted above, the impact of peers is substantially higher for adolescents than for adults.
- **Developmental Maturity Mismatch (DMM) (dual process models)**
  - *Divergent developmental pathways:* The developmental pathways of the “top” and “bottom” brain diverge, with the limbic system advancing rapidly from early adolescence while the prefrontal system continues to grow, but at a slower pace, not reaching adult levels until the mid-20s. The term used to describe this is a “developmental maturity mismatch” (DMM), with significant consequences for



the levels of all kinds of risk behaviors during the adolescent period. A schematic figure illustrates this<sup>3</sup>



The behavioral and cognitive evidence converges with the developmental neuroscience evidence here, with highly similar age-risk behavior profiles for a number of areas, including crime (the age-crime curve), accidental injuries, serious driving mishaps, and so on. All show peaks by mid-adolescence, with gradual drop-offs until an asymptote in the mid-20s or so.

- *Dual process models:* The DMM is one version of a more general finding, known as dual process models. The research here is that when performing a complex decision making task, there are two systems functioning. One is a rational, judgment based system that takes considerable cognitive effort. The second is a more automatic, “intuitive”, non-analyzed system that is accessed more often (because it requires less time and energy). This occurs for automated tasks (especially in domains where expertise is high) but also for “hot” cognition where there are competing demands – for example, from arousal and incentive systems.

#### • **Rehabilitative Prospects**

In addition to mitigation of sanctions owing to diminished culpability by reason of developmental immaturity, another implication of the developmental neuroscience evidence is that there are increased prospects for change among juveniles. This is supported by the evidence above that major changes continue during this period. In

<sup>3</sup> This version is from Steinberg (2013, see fn 1), although it has appeared in several publications.

addition, there is very substantial evidence for neural plasticity by way of “synaptic pruning.” Simply put, neural circuitry is shaped by the individual’s experiences, such that the resulting mature circuitry is not settled until the mid-20s. (Some plasticity continues throughout life, but never again as strongly as in adolescence.) This potential for positive change was noted as a significant factor in recent Supreme Court decisions.

- **Age Cutoffs**

The evidence above, and additional developmental science evidence, point to the difficulty of identifying strict age cutoffs for various levels of maturity or for resolution of the DMM. The evidence does support the view that full maturity on average is likely to occur by the mid-20s. Clearly, the bright line of 18-years of age is a necessary legal definition, as it jibes more readily with common sense views of maturity and resulting culpability. But it does not suggest a line of argument that 17 is nearly 18, so the evidence does not really apply.

- **Note on Scientific Methodology**

The evidence above is an integration of several kinds of research methodologies, and it is useful to understand the sources of evidence.

- *Structural neuroscience*: This refers to evidence on the changing structure of the “static” brain, that is, when it is not performing a task. There are several methods for this, but the most prominent currently is diffusion tensor imaging (DTI), collected during a session of magnetic resonance imaging (MRI). This allows the characterization of the size of various parts of the brain, how they differ with age, and how they are connected with each other.
- *Functional neuroscience*: This assesses how the brain is working while it is engaged in a task, most prominently in functional MRI (fMRI) and various forms of electrical encephalography (EEG), such as evoked response potential (ERP). These use different physical methods (blood flow in fMRI, electrical signals in ERP), but they have the same goal, to elucidate the time and location of brain activity.
- *Cognitive and behavioral evidence*: In addition to the brain imaging evidence above, there are large amounts of behavioral and cognitive evidence that are relevant to the DMM, including self-reports of sensation seeking, impulsivity,



and risk judgments, among others, as well as performance on cognitive tasks that assess EF, risk-reward trade-offs, and others.

- *Convergence of findings:* With respect to the confidence that is warranted with respect to the findings described above, one of the most important criteria (used in this summary) is to focus on findings where there is a convergence of methods across methods and content. Specifically, where the same developmental pattern emerges from structural brain imaging, functional brain imaging, cognitive and behavioral evidence, and the epidemiology of risk behavior, we can have strong confidence in the major findings.



STATE OF MICHIGAN  
IN THE MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-VS-

IHAB MASALMANI

Defendant-Appellant.

MACOMB COUNTY PROSECUTOR  
Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE  
Attorney for Defendant-Appellant

Hon. Diane M. Druzinski

Lower Court Nos. 09-4832FC  
09-5144 FC, 09-5244FC

***STIPULATED STATEMENT OF FACTS FOR PURPOSES OF SENTENCING HEARING***

Following a jury trial, Defendant-Appellant Ihab Masalmani was convicted as charged, in three separate cases, of 18 charges, the most serious of which was first-degree murder. The cases involved three separate episodes: (1) the kidnapping and death of Matthew Landry, (2) a bank robbery of a Flagstar bank, and (3) an unsuccessful carjacking in the parking lot of a Wal-Mart.

**August 9, 2009 - Quizno's and Matt Landry**

On August 9, 2009, *Michael Sawyer* and *Jessica McKinney* were working at the Quizno's when Mr. Masalmani entered the store and asked for some water. 9/23/10 at 120, 122, 175, 178-181. Mr. Sawyer had seen Mr. Masalmani and a black male riding their bikes in the parking lot across the street from the store. *Id.* at 125

F.

Matt Landry entered the store shortly after Mr. Masalmani and his companion left the store. *Id.* at 144; 191-192. Approximately 30 minutes after all three had left the store the police arrived and asked if the employees had seen anything. *Id.* at 159-160.

**Carol Santangelo**, a hairdresser who worked in a salon across from the Quizno's, noticed three boys pushing each other around near a green car.<sup>1</sup> It looked like two of the guys were against the third one. She later saw police cars at the Quizno's. 9/23/10 at 214-221, 225.

**Lawrence Wata** and his wife and daughter were in their car near Quizno's. *Id.* at 243-244. Mr. Wata saw three guys by a green car and thought something was amiss. He also thought one of the guys had a gun. *Id.* at 247-260; 9/28/10 at 9. He later identified Mr. Masalmani and Mr. Taylor as two of the guys he saw, and Mr. Taylor as the one he believed had a gun. 9/28/10 at 14-16. Mr. Wata saw Mr. Masalmani put Mr. Landry in a headlock and attempt to get him into the trunk of the car. Eventually, the three guys all drove off in the car. 9/28/10 at 26-40. Mr. Wata called the police. *Id.* at 49.

**Essa Rahime** worked at a gas station located at 7 Mile and Hayes in Detroit. 9/24/10 at 98-101. He knew Mr. Masalmani and identified him as coming into the store on August 9, 2009, using the ATM machine and buying a white t-shirt that he changed into in the store. *Id.* at 102-106. Surveillance cameras captured the activity and he shared those with the police. *Id.* at 108.

**Detective Blackwell** reviewed surveillance video from two different gas stations. Mr. Masalmani was seen using Mr. Landry's ATM card, 9/28/10 at 106-107, and exiting Mr. Landry's car with two women. *Id.* at 118-122.

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<sup>1</sup> Matt Landry had left his mom's house in his green Honda the day prior to his disappearance. 9/24/10 at 54.

*Eddie Collins* lived in Detroit and saw a green car with nice rims parked in front of his house on August 9. He noticed two men, one of whom he identified as Mr. Masalmani, looking in the trunk of the car. 9/28/10 at 153-155, 157-160.

*Frederick Singleton*, a state prisoner with a number of convictions dating back 20 years, testified that he would hang out in the area where Mr. Landry's body was found and knew Mr. Masalmani and the co-defendant, whose family lived in the area. 9/29/10 at 197, 201-202, 208, 210. According to Singleton, he saw Mr. Masalmani, the co-defendant, and Matt Landry arrive in Detroit in a green car on August 9 at approximately 9:00 pm. *Id.* at 215-216.

According to Singleton, the three men and two women went with him into a house. In the house Mr. Masalmani gave Singleton \$100 to buy drugs. *Id.* at 217-220. Then Singleton, the women and Mr. Masalmani smoked crack cocaine. *Id.* at 221.

Singleton left to get more drugs, and when he returned two other people were present and one handed Mr. Masalmani a gas can. *Id.* at 229-230. Singleton left around 10:00pm. He never saw anyone with a gun, *id.* at 232, although Mr. Taylor was known to carry a gun and Mr. Masalmani had the reputation for doing so. *Id.* at 238-239.

On August 11, two days after Mr. Landry's disappearance, the police started searching for Mr. Landry in Detroit. 9/28/10 at 220. The police found his body <sup>2</sup> in a burned out home. 9/29/10 at 18-20. From the position of the body the police surmised that Mr. Landry was kneeling when he was shot in the back of the head. *Id.* at 26-27.

When Mr. Landry's body was discovered there had been extensive decomposition of the body and especially the head. 9/24/10 at 128. The cause of death was a gunshot wound to the head. *Id.* at 132, 140. The manner of death was determined to be homicide. *Id.* at 140-141.

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<sup>2</sup> The identification was stipulated to and made via dental records. 9/29/10 at 108-110

Bullet casings were recovered from the house<sup>3</sup> and street; none matched the gun recovered from Mr. Masalmani at the time of his arrest. 9/29/10 at 138.

**August 10, 2009 - The Bank Robbery**

On August 10, 2009, Mr. Masalmani walked into a Flagstar bank, put a gun to the head of customer *Sarah Maynard* and demanded \$50,000 from the teller under threat that he would kill Ms. Maynard if he did not receive the money. 9/21/10 at 105, 108 (testimony of *Jessica Reeber*); 146-147 (testimony of *Sarah Maynard*); 167-168 (testimony of *Walter Stepanenko Jr.*); 191-192 (testimony of *Kristin Sarti*). The teller was unable to open the safe and handed over the money from her drawer, approximately \$6000.000, which included bait money. 9/21/10 at 109-110, 117, 134, 136, 138-139.

Mr. Masalmani was in the bank for approximately 3-4 minutes. *Id* at 136. During that time he pointed the gun at each of the 2 employees and 2 customers in the bank, *id.* at 111, 119, 169, 194, took money from customer Stepanko's wallet, *id.* at 173, and went through customer Maynard's purse but did not take anything. *Id.* at 149, 157.

Following the robbery *Stephanie Stewart*, who lived near the Flagstar Bank, saw Mr. Masalmani get in a green Honda, which she noticed because it was out of place in the neighborhood, and drive off after picking himself up from having fallen in a ditch. 9/22/10 at 14-21.

Following the robbery and media coverage, *Stacey Edwards* called the police because she recognized the bank robber as a customer from the clothing store she managed. 9/22/10 at 34, 37-38.

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<sup>3</sup> One bullet was found by Christopher Manning who returned to the house when he heard it was scheduled for demolition. 9/29/10 at 192, 170-172, 174-175

**August 11, 2009 - The Car Jacking at the Wal-Mart**

The day after the bank robbery, *David Hassroune* stopped to shop at a Wal-Mart. While sitting in his car in the parking lot, Mr. Masalmani, armed with a gun, approached and told him to get out of the car. 9/22/10 at 55, 59, 63-65. The incident was captured on a surveillance camera. *Id.* at 74-79. Upon arrest, a gun, a gun clip and other items were recovered from Mr. Masalmani and the surrounding area. 9/22/10 at 104-106 (*Officer Kleinedler*); 143-154 (*Officer Berger*); 166, 171, 172-173 (*Officer Lukasavage*); 176, 185-186 (*Officer Otto*).

This stipulated Statement of Facts is designed to obviate the need to call any witnesses from trial at the re-sentencing hearing and the parties agree that the Court may rely on any portions of the trial transcripts in the re-sentencing of the defendant.

Respectfully submitted,

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Dated: October 1, 2014

STATE OF MICHIGAN  
IN THE MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-VS-

IHAB MASALMANI

Defendant-Appellant.

Hon. Diane M. Druzinski

Lower Court Nos. 09-4832FC  
09-5144 FC, 09-5244FC

MACOMB COUNTY PROSECUTOR  
Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE  
Attorney for Defendant-Appellant

**IHAB MASALMANI'S RESENTENCING MEMORANDUM**

Ihab Masalmani is being resentenced pursuant to the United States Supreme Court decision in *Miller v Alabama*, 132 S Ct 2455, 2468; 183 L Ed 2d 407 (2012) and in accordance with MCL 769.25.

*Miller* requires this Court to carefully consider the juvenile's "lessened culpability" and "greater capacity for change," *Id.* at 2460, by evaluating the following factors:

- "...[C]hronological age and its hallmark features..."
- "...[T]he family and home environment that surrounds him..."
- "...[T]he circumstances of the homicide offense ..."
- "...[T]he possibility of rehabilitation..."

(Resentencing, 10/21/14 4-5); *Miller v Alabama*, 132 S Ct at 2468.

At its core, *Miller* establishes that "...a judge or jury must have the opportunity to consider *mitigating* circumstances before imposing the harshest possible penalty for juveniles." *Id.* at 2476 (emphasis added). Thus, each of the *Miller* factors must be considered for its *mitigating* effect and should not be viewed as an aggravating factor. *Id.* at 2467, 2476.

Here, the *Miller* factors show that Mr. Masalmani is not the "rare" or "uncommon" incorrigible youth for whom a sentence of life in prison without the possibility of parole is appropriate. *Miller*, 132 S Ct at 2469. Rather, the record indisputably establishes that Mr. Masalmani not only has the capacity for rehabilitation, but has made progress towards that end. Further, while not part of the testimonial record, Counsel has been witness to Mr. Masalmani's progress, which includes his acceptance of responsibility for his criminal acts and expressions of remorse for the pain and loss he has caused<sup>1</sup>. For the reasons explained in further detail below, Mr. Masalmani respectfully requests this Court impose a term of years, specifically a term of 25 to 60 years.<sup>2</sup>

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<sup>1</sup> Mr. Masalmani has both in writing and in verbal communications conveyed to Counsel the details of the crime and how Mr. Taylor was neither involved with, nor aware of, what was going to happen to Mr. Landry. He has repeatedly expressed remorse for his actions, as well as, sympathy and empathy for the Landry family. Mr. Masalmani has consented to Counsel including aspects of their privileged communications in this pleading with full knowledge of the potential repercussions it could have for him with respect to further appeals, the possibility of parole and this proceeding.

<sup>2</sup> MCL 769.25(9) provides, "If the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years."



**The Circumstances of Mr. Masalmani's Childhood**

Mr. Masalmani's family and home environment shaped his early mental and emotional development. He suffered a series of abandonments by his family and those who came to be like family to him during his childhood. (Resentencing, 10/21/14 87, 105, 112; Resentencing, 10/24/14 22-23, 28). Mr. Masalmani was exposed to drugs, sex, and gangs from a young age. (Resentencing, 10/21/14 87, 112-113; Resentencing, 10/24/14 24). As described by Professor Frank Vandervort, an expert in child welfare and juvenile delinquency proceedings, a great deal of this trauma was inflicted while he was in the foster care system. (Resentencing, 10/24/14 9-29). These mitigating circumstances of Mr. Masalmani's family and home environment, which *Miller* requires this Court to duly consider, provide context to his behaviors. *Miller*, 132 S Ct at 2467, citing *Eddings*, 455 US at 116. This evidence shows that Mr. Masalmani's behaviors are not evidence of incorrigibility, but rather reflected his efforts to cope with very difficult circumstances in the only way he knew how.

The Court heard extensive testimony about the circumstances of Mr. Masalmani's family and home environment from Mr. Masalmani's former social worker, Jennifer Keller, and his guardian ad litem, William Ladd. (Resentencing, 10/21/14 76-99, 102-135). This testimony established that despite the lack of stability throughout his teenage years, Mr. Masalmani was able to maintain long-term attached relationships with positive guardian figures, such as his first foster mother, Christine Day, his longtime social worker, Ms. Keller, and his guardian ad litem, Mr. Ladd. (Resentencing, 10/21/14 92, 107; Resentencing, 10/24/14 53). The fact that Mr. Masalmani had these enduring relationships show that Mr. Masalmani had, and continues to have, the ability to form positive relationships under healthy circumstances.

The circumstances of Mr. Masalmani's childhood and the characteristics of youth more generally, are significant for two reasons. First, just as described by the Court in *Miller*, the circumstances of Mr. Masalmani's family and unstable home environments are relevant *mitigating* factors that weigh against a sentence of lifetime incarceration, just like chronological age and its attendant characteristics. *Miller*, 132 S Ct at 2467-2468. Second, this testimony objectively shows that Mr. Masalmani's criminal behaviors were not evidence of incorrigibility or irreparable corruption, but rather reflected Mr. Masalmani coping with incredibly difficult living situations in the only manner he knew.

Mr. Masalmani Arrives in the United States

Mr. Masalmani first came to the United States after his mother sent him, along with his sister, from Lebanon to live in the United States with relatives. (Resentencing, 10/24/14 105, 107). At that time, Mr. Masalmani was around eight years old and did not speak English or have any personal connection to anyone living in the United States. (Resentencing, 10/24/14 82-83, 104-106; Resentencing, 10/24/14 24-25). He and his sister were first held at an immigration detention center, and then bounced around various relatives' homes, from Florida to California, eventually ending up in Michigan. (Resentencing, 10/24/14 104-106).

In Michigan, Mr. Masalmani and his sister were removed from a relative's care after a court found they were being abused and neglected. (Resentencing, 10/24/14 104-106). Ms. Keller, first met Mr. Masalmani as a child, she had the impression "[t]hat he was a scared boy. He didn't quite know what was going on." (Resentencing, 10/21/14 82). Ms. Keller characterized Mr. Masalmani's background up until that point as "[c]haotic," and "[t]raumatic." (Resentencing, 10/21/14 82).

Mr. Masalmani Enters Foster Care and Becomes a Permanent Ward of the Court

From the outset, Mr. Masalmani's experiences in the child welfare system were traumatic. When Mr. Masalmani was about 10 years old, his sister and only known relative in the United States was sent back to Lebanon, while Mr. Masalmani remained in the United States. (Resentencing, 10/24/14 27-28). This separation represented the loss of a significant relationship for Mr. Masalmani. (Resentencing, 10/24/14 28). Further, this loss came about as result of a system that allowed a nine-year-old child to make a decision no child that young should ever be asked to make, namely whether he wanted to remain in the United States in his then-current foster placement, or return home to his mother in Lebanon<sup>3</sup>. (Resentencing, 10/21/14 83-84; Resentencing, 10/24/14 28-29). According to Professor Vandervort, this is normally "not a decision that we let children make." (Resentencing, 10/24/14 29).

Realities of the Foster Care System Results in Fragmented, Inadequate Care and Services

As Mr. Masalmani grew up in the foster care system, he never received the comprehensive needs assessment or service plan required by law, instead receiving piecemeal services that were incomplete and inadequate. (Resentencing, 10/24/14 18-19). This was especially critical in Mr. Masalmani's case because his needs were unique and so specific to his background. (Resentencing, 10/24/14 24-25). Mr. Masalmani experienced a language barrier and faced additional challenges because he was in the United States without appropriate

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<sup>3</sup> Professor Vandervort testified:

There are a number of indicators in the record that his mother wanted him to come back. At one point the Red Crescent in Lebanon did a home investigation of the mother's home and found it appropriate. She had two other children there at the time that that investigation took place. His sister was also here. And so they found the home to be appropriate. They found her to be an effective parent and she indicated that she would want to have him back. (Resentencing, 10/24/14 29-30).

documentation or any family connections. (Resentencing, 10/21/14 83; Resentencing, 10/24/14 24-25). Further, the Department of Human Services (DHS)<sup>4</sup> was precluded by federal law from considering race or national origin in placing Mr. Masalmani in a foster home if consideration of such factors would delay his placement. (Resentencing, 10/24/14 25-26). As a result, the majority of Mr. Masalmani's foster parents were single African American women, living in predominantly African American communities, where he had little, if any exposure to the Arab American community. (Resentencing, 10/24/14 88-89, 98).

At times, Mr. Masalmani's caseworker, Ms. Keller, disagreed with DHS or service providers about what was best for him. (Resentencing, 10/21/14 83, 89). For example, Ms. Keller repeatedly requested Mr. Masalmani receive an individualized educational plan (IEP) to help with his struggles in school, but the school district decided Mr. Masalmani did not qualify for an IEP. (Resentencing, 10/21/14 89). Only after Mr. Masalmani continued to struggle in school and Ms. Keller persisted in her requests, did Mr. Masalmani get the IEP he needed. (Resentencing, 10/21/14 89). When special education services, such as tutoring through the Sylvan Learning Center, were made available to Mr. Masalmani, he enjoyed them and wanted to go. (Resentencing, 10/21/14 90).

During his early teenage years, DHS made placement decisions for Mr. Masalmani based upon the agency's general policies favoring adoptive homes, rather than making placement decisions based upon his specific needs. (Resentencing, 10/24/14 19-22). This included permanently removing Mr. Masalmani from the long-term, non-adoptive foster home of Ms. Day, with whom he had bonded, because her home was not a pre-adoptive placement.

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<sup>4</sup> At the time DHS was called the Family Independence Agency (FIA). (Resentencing, 10/21/14 83). For ease of reference, both FIA and DHS shall be referred to as DHS throughout this memorandum.

(Resentencing, 10/21/14 114-116; Resentencing, 10/24/14 19-22). Professor Vandervort testified, "For this young man it may well have been a much better option to leave him in what we would consider a temporary foster home placement...it would likely have been better for him to maintain that temporary sort of somewhat unstable placement as opposed to seeking adoption." (Resentencing, 10/24/14 20). This is because Mr. Masalmani had spent four years in foster placement with Ms. Day, where he adjusted fairly well and had formed a significant attachment to Ms. Day. (Resentencing, 10/21/14 112; Resentencing, 10/24/14 21-22).

Mr. Masalmani was also affected by the quality of some of his foster placements. During his early teenage years, he spent a year and a half living in a foster home where the foster mother used marijuana with him and had sexual relations in his presence. (Resentencing, 10/21/14 87, 116). During this time, Mr. Masalmani was living on the northeast side of Detroit and became involved with gangs as he became "more and more oriented towards being with kids on the street." (Resentencing, 10/21/14 112, 116).

Mr. Masalmani Consistently Expresses a Desire to Better Himself and Forms Bonds with Positive Figures

Notwithstanding the considerable trauma, ineffective parenting, and chaotic home situations Mr. Masalmani endured throughout his childhood, Mr. Masalmani was able to form attachments with positive people in his life, including Ms. Day, Ms. Keller and Mr. Ladd.

Ms. Keller testified that she worked extensively with Mr. Masalmani for years, during which time she saw him weekly, if not more. (Resentencing, 10/21/14 92). Mr. Masalmani "always" exhibited appropriate emotions towards Ms. Keller. (Resentencing, 10/21/14 92). Ms. Keller would talk to him about his behaviors when he acted out in negative ways. (Resentencing, 10/21/14 90, 92). Mr. Masalmani "was very remorseful" and would tell her that

he did not understand why he acted that way or why he could not control his behavior. (Resentencing, 10/21/14 91). Ms. Keller worked with Mr. Masalmani extensively and during that time could always see that Mr. Masalmani was trying the best he could to change his behaviors. (Resentencing, 10/21/14 93). In her experience as a children's case worker, Ms. Keller has come across kids where she felt it was inevitable that the child would end up in the criminal justice system, but Mr. Masalmani was not one of those kids. (Resentencing, 10/21/14 98-99).

Mr. Ladd worked with Mr. Masalmani from 2001 through 2009. (Resentencing, 10/21/14 107). He found Mr. Masalmani to be immature for his age, even into his teenage years. (Resentencing, 10/21/14 108). Mr. Ladd testified:

[A]ll of the children that I represented have been kids who were involved or trouble kids or are in difficult circumstances based upon their home situations. So they haven't had positive family experiences. In terms of maturity, Ihab was probably in the middle. That's not very mature compared to the general population. And in terms of being able to deal with them, he was one of the easiest kids to deal with from my point of view.

(Resentencing, 10/21/14 109). Like Ms. Keller, Mr. Ladd would confront Mr. Masalmani when he acted out and Mr. Masalmani was "good about recognizing that there were certain problems." (Resentencing, 10/21/14 109). Mr. Masalmani made efforts to adapt to the difficult situations he was in and was successful when the circumstances were right, such as in the Boysville program, which Mr. Masalmani successfully completed. (Resentencing, 10/21/14 129-130). Further, Mr. Ladd found that what Mr. Masalmani really needed was consistency:

Unfortunately, because he kept being moved around, he had various patterns of treatment, he had various people that were dealing with him, he had more and more difficulty responding to people. I was a constant in his life. He knew that I was always there and he knew that I would be responsive to him and listen to him so he was responsive to me. Other people he had more difficulty trusting them and that was understandable.

(Resentencing, 10/21/14 130-131).

The attachments Mr. Masalmani formed with Ms. Keller, Mr. Ladd, and Ms. Day, along with Mr. Masalmani's demonstrated ability to engage in introspection during his teenage years show that he is not "the rare juvenile offender whose crime reflects irreparable corruption."<sup>5</sup> *Miller*, 132 S Ct at 2469, citing *Roper v Simmons*, 543 US 551, 573; 125 S Ct 1183 (2005).

### **Adolescent Brain Development**

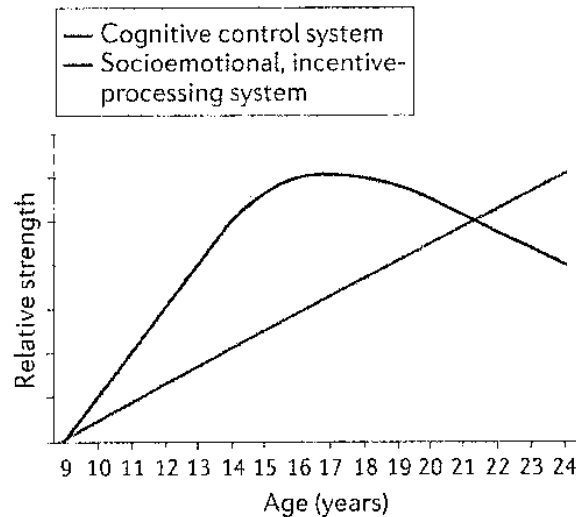
Mr. Masalmani was 17 years old at the time he committed the offenses in this case. Dr. Daniel Keating, a neuroscientist and expert in adolescent brain development, testified at length about how the brain develops and the differences between the adolescent brain and a mature adult brain. (Resentencing, 10/21/14 16-35). The limbic system (or "bottom brain"), which includes the brain's arousal, incentive, and reward systems, functions as the trigger for a lot of emotional reactions. (Resentencing, 10/21/14 19-20). The bottom brain develops and becomes much more activated around the ages of 13 or 14, at a level that is generally higher than a mature adult will ever experience. (Resentencing, 10/21/14 21). The only brake on the bottom brain is the prefrontal cortex (or "top brain"), which controls higher level brain functions like judgment, decision-making, and impulse control. (Resentencing, 10/21/14 19, 22-23). However, the top brain develops in a linear fashion and does not reach full maturity until the mid-20s. (Resentencing, 10/21/14 23-24). The difference between the fast developing bottom brain and

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<sup>5</sup> At the resentencing hearing, Dr. Lyle Danuloff, a forensic psychologist, opined that Mr. Masalmani is not the rare juvenile offender whose crime "reflects irreparable corruption" warranting a sentence of life without the possibility of parole. (Resentencing, 10/24/14 57). Dr. Danuloff suggested that Mr. Masalmani might have been "irreparably corrupt" at one point in time, but no longer is. (Resentencing, 10/24/14 57). He clarified that he was not saying Mr. Masalmani was in fact irreparably corrupt, but rather was "postdict[ing] his behavior...from society's standpoint." (Resentencing, 10/24/14 57-58). He further clarified that he was not using the term as a clinician, but rather was speaking to the acts Mr. Masalmani committed and acknowledged he was not using the term in the legal sense. (Resentencing, 10/24/14 60).



slower developing top brain is called a developmental maturity mismatch, (Resentencing, 10/24/14 24-25), and is depicted in the following figure:



(Defense Exhibit C, Report of Dr. Daniel Keating 4).

The adolescent development maturity mismatch manifests itself in several different ways that lead youth to behave differently from mature adults. (Resentencing, 10/21/14 25). For example, when adolescents are in arousing or high emotion situations, impulsivity is more likely to prevail than good judgment, leading adolescents to make poor choices. (Resentencing, 10/21/14 25). Once engaged in negative activities, adolescents become fully absorbed and lack the capacity to reflect on how or whether they should cease those negative activities. (Resentencing, 10/21/14 25). Dr. Keating explained how one bad decision by an adolescent can have a devastating spiraling effect:

So in a sense [the adolescent is] on the train and it's moving before they've even thought about is it a good idea to get on that train, right...once engaged in an activity...they are then kind of fully absorbed in executing that plan, so what limited prefrontal cortex abilities they have are engaged in carrying out the plan they're engaged in. They have very little left over to think about, "Gee, should I get off this train," or "Maybe I should get off this train but I have no idea how to get off this train," right. So the ability both to resist getting onto a path that is not -- that is bad, right, so that it reflects poor impulsive judgment, or having



the capacity to change that path, get off the train at some later point, is another version of that developmental maturity mismatch.

(Resentencing, 10/21/14 25-26).

The pattern of criminal acts Mr. Masalmani committed over a three-day span in this case exemplifies the impulsivity, lack of capacity for self-reflection, and lack of judgment that “render juveniles less culpable than adults.” *Miller*, 132 S Ct at 2465, citing *Graham v Florida*, 560 US 48, 70-71; 130 S Ct 2011 (2010). Using Dr. Keating’s analogy, from the time Mr. Masalmani kidnapped Mr. Landry in order to use his car and take his money, until he was captured by police, Mr. Masalmani lacked the capacity to “get off the train,” or to even reflect on whether he should “be on the train” in the first place. (Resentencing, 10/21/14 25). That three-day period remained one continuous situation, during which Mr. Masalmani made a series of impulsive decisions for the moment, without reflecting upon whether they were right or wrong in the moral sense. This is because he was driven by his overactive incentive and arousal systems, without the benefit of the brakes, or the fully developed prefrontal cortex, a mature adult would have. (See Resentencing, 10/21/14 50-52). Thus, Mr. Masalmani’s criminal behaviors exemplified the characteristics of youth that *Miller* requires this Court to consider for its mitigating effect. *Miller*, 132 S Ct at 2467, 2476; (Resentencing, 10/21/14 26).<sup>6</sup>

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<sup>6</sup> This Court must consider the hallmark characteristics of youth, and how they weigh *against* a sentence of lifetime imprisonment, *Miller*, 132 S Ct at 2469, rather than simply considering how close Mr. Masalmani was to his 18<sup>th</sup> birthday at the time of the offenses. This is consistent with Dr. Keating’s testimony that there is no scientific basis supporting the bright-line legal rules that treat a 17-year-old as a juvenile and an 18-year-old as an adult. (Resentencing, 10/21/14 32-35). In contrast, the science suggests that the developmental maturity mismatch continues through the early-20s, and that full developmental maturity is not reached until the mid-20s. (Resentencing, 10/21/14 32-35).

**The Sentencing Offense**

Mr. Masalmani does not make any effort to minimize the role he played in the kidnapping and murder of Mr. Landry or the effect that his actions have had on the Landry family. See, FN 1, *infra*; (Social Worker's Sentencing Report, attached as Appendix A 7-8, 9-10).<sup>7</sup> He takes full responsibility for the offense and expresses remorse for his actions. *Id.*

One of the considerations for this Court is the nature of the offense, however, *Miller* does not suggest that this Court should consider the nature of offense for its aggravating effect. *Miller*, 132 S Ct at 2468. Rather, *Miller* instructs the sentencing court to consider the nature of the offense with special regard for the "...incompetencies associated with youth—for example...[the juvenile's] incapacity to assist his own attorneys." *Id.* This is because "...the features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings." *Graham*, 560 US at 78.

To suggest the facts underlying the homicide conviction alone are sufficient to support a sentence of life without the possibility of parole for a juvenile homicide offender is contrary to the clear mandate of the *Miller* decision. *Miller*, 132 S Ct at 2468.<sup>8</sup> Individualized sentencing for juveniles requires a careful consideration of all the mitigating factors, described in detail in

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<sup>7</sup> SADO employs a staff social worker, Nicole George, MSW. Ms. George evaluates clients and prepares reports detailing her findings for consideration at resentencing proceedings. Ms. George met with Mr. Masalmani to evaluate him for this resentencing. She has prepared a report of her observations and findings, which is appended to this memorandum for the Court's consideration. (See Appendix A).

<sup>8</sup> This is why states are not free to develop criminal statutes making a sentence of life without the possibility of parole mandatory for juvenile homicide offenders where the offense involves specific, particularly heinous factual predicates. *Miller*, 132 S Ct at 2469 ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders.")

*Miller* and the prior Supreme Court decisions that underlie *Miller's* mandate. *Id.*; E.g. *Graham*, 560 US at 67-69, 72-75.

**Mr. Masalmani's Continued Efforts and Progress Towards Rehabilitation**

Children's unique capacity for rehabilitation is at the heart of the *Miller* decision and so necessarily is central to this Court's analysis. This is because a sentence of life without parole "forfeits altogether the rehabilitative ideal...[and]... reflects an irrevocable judgment about an offender's value and place in society..." *Miller*, 132 S Ct at 2465, citing *Graham* (internal quotation marks omitted). Mr. Masalmani, through his long-term positive relationships, has long exhibited the capacity for rehabilitation. (See, e.g. Resentencing, 10/21/14 107). Over the past few years, Mr. Masalmani has taken advantage of the limited resources available to him and made demonstrable progress towards rehabilitation. (Resentencing, 10/24/14 53). All of this evidence objectively shows that Mr. Masalmani is not the incorrigible youth who should be sentenced to die in prison. *Miller*, 132 S Ct at 2469.

As discussed throughout, Mr. Masalmani was able to maintain healthy, long-term relationships with the stable, authoritative-type figures in his life, including Christine Day, Jennifer Keller, and William Ladd. (Resentencing, 10/21/14 92, 107; Resentencing, 10/24/14 53). Not only was Mr. Masalmani able to form these significant attachments, but with assistance he engaged in self-reflection. (Resentencing, 10/21/14 90-93). For example, when confronted about his misbehavior as a child, Mr. Masalmani would reflect that he did not want to misbehave and did not understand why he did. (Resentencing, 10/21/14 91). Mr. Ladd, who worked with Mr. Masalmani throughout his childhood and teenage years, observed that Mr. Masalmani responded well to consistency and stability. (Resentencing, 10/21/14 130-131). Mr.

Masalmani's ability to form and maintain attachments and his ability to engage in introspection are early indicators that he has always had a capacity for rehabilitation.

Mr. Masalmani had a rough start when he first arrived in the Department of Corrections, which is not uncommon for young men who are incarcerated in prison for the first time. (Appendix A 5). Over the years, Mr. Masalmani has made significant progress. (Resentencing, 10/24/14 51). Some of this is the result of Mr. Masalmani's maturation consistent with his chronological age and natural brain development. (Resentencing, 10/21/14 32-35). Some of Mr. Masalmani's progress is due to his own self-help efforts and the time he has spent incarcerated. (Resentencing, 10/24/14 50-52).

At the time of resentencing, Mr. Masalmani will have been incarcerated for over five years and it appears he has used his incarceration as an opportunity to focus on gaining tools for continued rehabilitation.<sup>9</sup> (Resentencing, 10/24/14 50-52). For example, Mr. Masalmani made it a goal for himself to avoid getting misconducts in prison. (Resentencing, 10/24/14 50-51). Toward that end, he makes an active effort to exercise self-control when interacting with other prisoners, in order to give himself space to think before acting. (Resentencing, 10/24/14 51). Using these techniques, Mr. Masalmani has avoided getting any misconducts for well over a year, showing that not only is he making active efforts towards rehabilitation, but that those efforts are working. (Resentencing, 10/24/14 51). Dr. Danuloff observed, "he does the best he can to stay in his head and think which is quite different than the young man who was out on the

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<sup>9</sup> Although the testimony at the resentencing proceedings clearly established that it is impossible to predict whether a juvenile will in fact be rehabilitated at some future point in time, (Resentencing, 10/21/14 35-36), due to the unusual procedural posture of this case, this Court does not have to guess. Mr. Masalmani has spent over five years in prison since the time of the sentencing offense, during which time the objective evidence shows he has always exhibited the capacity for rehabilitation and has in fact made progress towards that end.

streets who -- the only thinking that he did then in that amoral way was, what do I need and how do I get it." (Resentencing, 10/24/14 51).

Mr. Masalmani is working as the barber for the other prisoners in his cell block. (Resentencing 10/24/14 52). He is also participating in GED programming and serves as the representative for his cell block, which requires regular meetings with the warden of his facility. (Resentencing 10/24/14 51-52). While his criminal history is wrought with non-compliance, his incarceration has shown him to be more compliant as he ages and matures. (Appendix A 2, 5-6). Mr. Masalmani indicates that his current incarceration has had a significant impact on him and how he thinks about the world, himself, and how he makes choices. (Appendix A 2).

In addition to the positive impact incarceration has had on Mr. Masalmani's development and maturity, Mr. Masalmani has benefitted from his own self-help efforts. During the extensive time Mr. Masalmani spent in segregation, or solitary confinement, he began to read a lot of books, such as the Bible and other books about religion, morality, and how people relate to one another. (Resentencing, 10/24/14 49-50). Dr. Danuloff testified:

That reading in a closed, confined environment, a cell 23 hours a day, fueled by the hope or the possibility of a parole hearing in who knows when, motivated him to begin to explore himself and begin to try to understand who he is, what he did and why he did it. In my conversations with Ihab it became clear to me that he was beginning to have, again, this is very primitive. This is embryonic, it's embryonic. He was beginning to have the capacity to self-explore...

(Resentencing, 10/24/14 50).

Through these efforts, Mr. Masalmani has further developed his ability to self-reflect. (Resentencing, 10/24/14 50). This skill set is important because the ability to self-reflect is part of the executive brain functions that do not fully develop until the early to mid-20s (Resentencing, 10/21/14 32-35), and because self-directed change like this is always more influential on individuals because "[i]t's coming from within," (Resentencing, 10/24/14 44-45).

Mr. Masalmani has shown insight into his choices, the seriousness of his offense, and his destructive behaviors, as discussed with Counsel and fully outlined in Ms. George's report. (Appendix A 8). With acknowledgement of his personal legal consequences, he described the circumstances of his offense, taking responsibility and showing appropriate remorse. (Appendix A 7-8, 9-10). He has repeatedly expressed his desire to apologize to the people hurt by his crimes, while simultaneously recognizing that there are no words he could say that would ever make up for the life he took. (Appendix A 9-10). This insight is the direct result of his capacity for and progress towards rehabilitation, and shows that Mr. Masalmani is capable of consistent, lasting change. (Appendix A 2-3).

Dr. Danuloff evaluated Mr. Masalmani for the purpose of this resentencing. (Resentencing, 10/24/14 44-45). It is undisputed that Dr. Danuloff concluded that Mr. Masalmani has a capacity for rehabilitation that warrants a term of years.<sup>10</sup> (Resentencing, 10/21/14). Not only did Dr. Danuloff conclude that Mr. Masalmani has that capacity, but he also concluded that Mr. Masalmani has demonstrated progress towards rehabilitation. Dr. Danuloff testified that Mr. Masalmani has exhibited early signs of personal growth and introspection, which is critical to rehabilitation. (Resentencing, 10/24/14, 56). In Dr. Danuloff's words, Mr. Masalmani has started to "grow himself up" and internalize. (Resentencing, 10/24/14 55).

These internal changes have positively affected Mr. Masalmani's behavior. (Resentencing, 10/24/14 52-53). Dr. Danuloff described the difference he saw in Mr. Masalamni from the time of their first meeting to their second in objective terms, "And seven months later, from a psychological standpoint, what happened was that indications of change in his inner life was beginning to filter up to his behavior: the end of misconducts, essentially, unit

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<sup>10</sup> Ms. George concurs in Dr. Danuloff's conclusion. (Appendix A).

representative, a barber and more reading.” (Resentencing, 10/24/14 52-53). It is undisputed that Mr. Masalmani has exhibited a transformation in his conduct during his incarceration, as he has aged over the past five years.

### **Conclusion**

“[T]he distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Miller*, 132 S Ct at 2469. To sentence Mr. Masalmani to lifetime imprisonment would disregard the extent to which he, as a youth, is less culpable than a mature adult. Not only is a sentence of life without the possibility of parole the same sentence this Court would impose for a mature adult who committed the very same crimes, as applied to Mr. Masalmani it would be “especially harsh...because he will almost inevitably serve more years and a greater percentage of his life in prison than an adult offender.” *Miller*, 132 S Ct at 2466, citing *Graham*, 560 US at 70-71 (internal quotation marks omitted).


A sentence of lifetime incarceration represents a judgment that the “juvenile offender forever will be a danger to society” and “forswears altogether the rehabilitative ideal.” *Miller*, 132 S Ct at 2465 (internal citations omitted). That is why the appropriate occasions for such sentences are necessarily uncommon. *Id* at 2469. The record before this Court demonstrates that Mr. Masalmani is less culpable than a mature adult who committed the same offenses would be, because his crimes reflect the impulsivity, impetuosity, and lack of judgment that is characteristic of the adolescent maturity mismatch experienced by youths. Further, his criminal behaviors began and escalated in the context of a traumatic and unstable childhood characterized by repeated abandonments and exposure to negative influences from which Mr. Masalmani could not remove himself.



Finally, and most importantly, the evidence introduced at the resentencing proceedings in this case establishes unequivocally that Mr. Masalmani has the capacity for rehabilitation and has made active efforts and progress towards that end. He has been evaluated by two experts, both of whom concluded that Mr. Masalmani has actively engaged in self-help efforts and that those efforts are working. On this record, there is no basis to conclude that Mr. Masalmani is beyond rehabilitation. For these reasons, Mr. Masalmani respectfully requests this Honorable Court sentence him to a term of 25 to 60 years.

Respectfully submitted,

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Dated: December 11, 2014



# Appendix A

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December 5, 2014

Honorable Diane M. Druzinski  
16<sup>th</sup> Judicial Circuit Court  
Macomb County Court Building  
40 N. Main St., 2nd Floor  
Mount Clemens, Michigan 48043

Re: **People v Ihab Masalmani, MDOC #783743**  
Circuit Court No.2009-5243-FC  
Miller Hearing Decision Date: Tuesday January 6<sup>th</sup>, 2015 at 8:30am

### **Social Worker's Supplemental Report: Sentence Mitigation**

Dear Judge Druzinski,

Ihab Masalmani is before this Honorable Court for a *Miller v. Alabama* (2012) decision sentencing hearing Tuesday January 6<sup>th</sup>, 2015. I am a social worker employed by the State Appellate Defender Office since 2011.<sup>1</sup> I have been asked by SADO attorneys Valerie Newman and Erin Van Campen to comprehensively assess Ihab's case and his efforts at rehabilitation since he was last before this Court for sentencing. Toward that end I have had numerous contacts with Ihab and I have thoroughly reviewed Ihab's MDOC file and the Court records.<sup>2</sup>

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<sup>1</sup> *Relevant Professional & Education Summary: Master's Degree in Social Work from University of Michigan 2008, Bachelors of Arts in Psychology 2005, Trained in Hakomi Somatic Trauma Release Techniques and Attachment Theory, Case Management at Wolverine Human Services Working with Abused, Neglected and Sexually Re-Active Young Men, Consultant at Professional Probation & Parole Consulting from 2008-2011. There I was trained in the practices and policies of the MDOC under 26-year employee of the MDOC, Kathleen Schaefer. I have worked with and represented clients for Parole Board Hearings, Sentencing, Commutations and Lifer Interviews. Have attended and presented at numerous trainings which included topics covering policies and practices of the MDOC, sentence mitigation, mental health, attachment theory, child development, trauma, risk and habilitation, re-entry, leadership, communication and community safety. I currently serve as an associate member of the State Bar Prisons & Corrections section, a member of MDOC MPRI Re-Entry Work Group and CAPPs. Résumé available upon request.*

<sup>2</sup> Documents Reviewed & Interviews Conducted To Prepare Report, attached on Page 13

Ihab was referred to me for evaluation of his rehabilitative efforts and potential. Prior to beginning our first meeting, I explained to Ihab the nature and purpose of my involvement with his case and that I would be working with his attorneys and I might be asked to share relevant personal information, otherwise considered privileged without his consent. He indicated that he understood this information and would provide consent when necessary, and he participated in subsequent interviews and correspondences accordingly.

In *Miller*, The Court was clear that discretionary life without parole sentences should be rare. Justice Kagan wrote, "Given all that we have said in *Roper*, *Graham*, and this decision about children's diminished culpability, and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon."

In my opinion, I do not believe Ihab is one of those rare cases demanding of a discretionary life without parole sentence.

Ihab, in my opinion is not irreparable or incapable of rehabilitation and to the contrary has, as consistent with the brain science informing the *Miller* decision, matured in a trajectory appropriate to his brain development, situation and resources currently available to him. Ihab is an example of the young being less culpable than the average offender and simultaneously having the likelihood of reforming.

Through his own self-help efforts and our work together Ihab indicates that his current incarceration has had a significant impact on him and how he thinks about the world and himself. Furthermore, Ihab reports and MDOC records reflect that the self-awareness he is gaining through his self-help efforts has been a major turning point in his behavior.

At the time of re-sentence, Ihab will have credit for 1974 days or just short of 5 ½ years. Ihab has used his incarceration as an opportunity to focus on gaining tools for continued rehabilitation. Ihab's current sentence of life without the possibility of parole precludes him from most programming available at the MDOC, yet despite this he has acted as a unit representative and has obtained a MDOC job detail and GED programming (discussed within). While his criminal history is wrought with non-compliance, his incarceration has shown him to be more compliant as he ages and matures, even more so, pro-active regarding his rehabilitation as he has continued to age. Additionally, he has been pro-active and thoughtful in his future planning, understanding he will need skills, positive relationships and a life plan should he ever be released.

Ihab has shown insight into his choices, the seriousness of his offense and his destructive behaviors. With acknowledgement of his personal legal consequence, he described the circumstances of his offense taking responsibility, showing appropriate remorse and showing no sign of manipulation.

This insight paired with his current rehabilitative efforts and structured plan for prolonged growth would continue to provide him with the tools and resources he needs to make consistent lasting change.

## FACTORS TO CONSIDER IN RE-SENTENCING

### I. Personal History

#### *Chronological Age, Developmental Attributes, Family and Home Environment*

Ihab is a 22-year-old Arab American male. Ihab was 17 years old at the time of his offenses. Included here is a short history from Ihab's perspective, as reported to me through numerous client communications<sup>3</sup> which adds to the testimony received during the *Miller* hearing. I concur in summary that his childhood is marked by considerable trauma, ineffective parenting, numerous life changes in short periods of time, chaotic home situations, substance abuse and uniquely challenging life circumstances.

Ihab reports his early childhood was chaotic and he did not feel he fit into a safe place in his family home. He reports that the strictness of his father and other caregivers left him feeling alone and scared. Ihab also reports memories of stress do to civil and religious conflict within his countries of residence during that time in his life. Notably, Ihab shared a story of seeing a man fall from a tall building and die in front of him. He reports that the man almost landed on him and to this day he doesn't know why that man fell from the building and what the circumstances were. He also reported remembering having to move because of his father's involvement in religious conflict.

Ihab was primarily raised by his parents in Lebanon and Libya prior to being sent to the United States with his sister Torfa when he was 8 years old. Ihab's sister was ill and they were in the United States illegally. They were briefly housed in federal custody until they were granted refugee status.

The years that followed Ihab's arrival, included brief stays with family in Florida and California until they arrived in Michigan. Torfa and Ihab lived with family, who reports indicate were neglectful causing Torfa to take herself to the hospital to treat her symptoms of diabetes.

Ihab reports feeling scared and ashamed when the police came to retrieve him from his family's home after the hospital reported their abuse and neglect. As testified to in Court by numerous

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<sup>3</sup> References to and excerpts from privileged client communication are included throughout this document with permission from Mr. Ihab Masalmani. All content was obtained through correspondence or interview between January 13<sup>th</sup>, 2011 and the date of this report. Content is chosen for its potential relevance and importance in considering re-sentence.

witnesses, Ihab's life continued to be marked by foster home and group placements in which he grappled with his self-identification and place in his communities.

Positively Ihab has a history of creating long-term securely attached relationships with positive guardians such as his child welfare attorney William Ladd, his primary childhood foster care social worker Jennifer Keller and his first foster mother Christine Day. The existence of these relationships and the fact that these individuals report continued concern and care for Ihab are testament to his ability to form positive secure relationships under healthy circumstances. In his relationships with his legal team at SADO he has continued to show an ability to connect and relate in appropriate ways suitable to context and relationship.

As discussed below, Ihab has made significant efforts towards his rehabilitation and has shown he is able to apply what he has learned to his choices and behavior. Ihab has extensive plans for continued personal growth. He has shown to be resourceful in his ability to obtain resources to learn from.

## **II. Factors of Offense**

### *Circumstances of the Offense, Juvenile's Lack of Sophistication in Dealing with a Criminal Justice System Designed for Adults*

I concur with the general theory consistent with the *Miller* factors as referenced by the defense witnesses that Ihab's actions were a combination of his life circumstance at the time and his developmental maturity. At the time of the offense Ihab had truant from his current placement, was homeless and living in a vacant home in Detroit by himself. He had little education, limited language abilities and no history of legal employment.

Ihab's offenses were a result of escalating behavior of impulse and present circumstance. In line with his history of making adult decisions at youthful ages<sup>4</sup> he had truant from the system that painstakingly tried to provide for him. At the time, he decided to take his life into his own hands, surviving in each moment as it presented itself. His actions were marked by exaggerated characteristics common among youth including; impulsiveness self-centeredness and present need decision making without appreciation for long-term consequences.

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<sup>4</sup> Examples of Ihab being asked to make adult decisions as a child include: His mother sending him and his sister to the United States at the age of 8, for medical care for his sister and to gain an education in English. Ihab's family court Judge asking him at the age of 10 whether he wanted to go back to Lebanon or if he wanted to go stay in Michigan. His caseworkers, per protocol, continually asking him what his housing and care goals were starting at the age of 10.

### III. MDOC Conduct, Rehabilitation & Programming

Ihab has a history of non-compliance. However, recent records indicate significant efforts and successes regarding his risk, treatment and programming.<sup>5</sup>

Ihab's first years incarcerated were marked with erratic behavior and numerous and varied misconducts, some minor and some which are similar in nature to his criminal history. His initial adjustment to prison life was poor. Through the years his maturity and insight are reflected not only in his words, but his MDOC record as well. Ihab's last known misconduct per his MDOC counselor file received 9/25/2014 was in August of 2013. In my opinion, this is a reflection of both his ability to learn new skills and apply them, as well as his developmental maturity. It is of great consequence that we can look at Ihab's behavior and as his age increases and his skills improve his misconducts decrease. He has shown an ability to learn from his destructive thinking and behaviors and reform his choices and actions accordingly.

His lack of misconduct in the last 1 ½ years is indicative that his coping skills are working, as he has shown improvement since his early incarceration.

In MDOC behavior reviews Officer Maurer described Ihab as "Quiet, Compliant" with staff And that he "Meets Expectations" and "Follows Rules".

At this time, Ihab impresses as motivated to gain the skills and tools to help him not only survive as a law-abiding citizen, but to thrive as a productive positive member of whatever community he may a part of.

*"I've took time to truly sit down and to try to find my purpose, to try and find my self. I wanted to be more in tune with my self. I felt like it was some thing that was out there that I needed to know, I needed to learn. I needed to have. I just felt like it was something that was missing so I started to question who I am as a person and what's going on in this world that we're living in. I wanted to have an understanding on all these things so I started reading books searching for the truth and the understanding of many different things that go on in life. Reading is what helped me grow and understanding has given me many ways to learn to be a better man and what it means to be a good man."*

Ihab Masalmani, Client Communication

Ihab's actions have reflected that of a person sincere regarding their rehabilitation. Ihab reported several incidents in which he was able to use what he has learned to choose to avoid negative peers and situations.

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<sup>5</sup> MDOC Institutional Counselor Files Received 10/4/2012, 1/27/2014 and 9/25/2014



Ihab's sentence of Mandatory Life precludes him from much available programming. Per MDOC Policy Directive 05.03.100 only prisoners in levels I-IV shall be permitted to participate in programming.

If Ihab's sentence of mandatory life remains, it will be more difficult and take many more years for him to obtain any form of rehabilitative programming within the MDOC. Rehabilitative programming is meaningful for Ihab, but just as important increases the safety and security of the prison and its employees. Prisoners with hope and purpose are safer prisoners with less misconduct. MDOC prioritizes available programming based on the Earliest Release Date (ERD) of each prisoner. As stated on their website:

MDOC Website retrieval 12/3/14

[http://www.michigan.gov/corrections/0,4551,7-119-68854\\_68856\\_63694-201919--,00.html](http://www.michigan.gov/corrections/0,4551,7-119-68854_68856_63694-201919--,00.html)

### **Programming - Prisoner Referral and Placement Process**

Prisoners are considered for Correctional Facility Administration (CFA) programming while incarcerated based on their assessed risk and need level and are prioritized by their Earliest Release Date (ERD). Prisoners cannot elect or self-refer into CFA programming in which they do not meet the referral criteria. Completion of group does not guarantee positive Parole Board action.

- CFA Programs for male prisoners include: Thinking for a Change (T4C), Cage Your Rage, Substance Abuse Education and/or Outpatient, Violence Prevention Program (VPP) High or Moderate track, Bridges, Sex Offender Programming (SOP), and Pre-Release.
- CFA Programs for female prisoners include: Moving On, Voices, Seeking Safety, Substance Abuse Education and/or Outpatient, Beyond Violence, Meridians, Sex Offender Programming (SOP), and Pre-Release.

There are elective programs available to prisoners as well. In addition to the below list, there may be additional elective programs available depending on where the prisoner is incarcerated. Information regarding placement and availability into elective programming can be gathered from the RUM, ARUS, or Prison Counselor at the facility in which they are incarcerated.

- Elective Programs for male prisoners include: InsideOut Dad, Family Preservation, Alcoholics Anonymous (AA), and Narcotics Anonymous (NA);
- Elective Programs for female prisoners include: Parenting Inside Out (PIO), Alcoholics Anonymous (AA), and Narcotics Anonymous (NA).

Per Ihab's MDOC initial Program Classification Report dated January 26<sup>th</sup>, 2011 and his program classification report dated May 5<sup>th</sup>, 2012, he was classified to complete four required programs. These programs are Substance Abuse Education, Violence Prevention Programming (VPP), a routine work assignment and General Equivalency Degree (GED) Programming. At his time of arrival Ihab was immediately placed on the waiting list for his GED and VPP, was deferred for job placement until completion of GED and was placed on hold for substance abuse programming.

Per his March 19<sup>th</sup>, 2014 MDOC Classification report, Ihab was moved onto the waiting list for substance abuse programming (inclusion into program based on earliest release date -ERD), he was taken off of the required list for VPP because he "*does not meet criteria*" based on the fact that he is a "*lifer*" and he is active in meeting criteria for both work and education requirements.

Ihab is currently working towards his GED<sup>6</sup> and was employed as a barber as of March 20<sup>th</sup>, 2014. Prior to this, per his October 22<sup>nd</sup>, 2013 Program Classification Report, Ihab was only eligible to attend school and was not yet eligible for a job or other programming. Ihab has been active in completing and meeting the program requirements of his incarceration as set forth by the MDOC to the best of his ability. Due to Ihab's current location and security status, voluntary programming is not available to him, however as referenced throughout this report he has made pro-active self-help efforts.

#### **IV. Rehabilitative Progress & Potential**

Contacts with Ihab and MDOC records indicate evidence of maturity, insight, responsibility, remorse and personal growth. This represents a significant change from the time at which the within offense occurred.

Ability to accept responsibility, sincere shame, genuine remorse, insight, substantive redemptive efforts and empathy are factors indicative of rehabilitative progress and potential. Ihab's words and actions have to varying extents reflected each of these rehabilitative factors as set forth here.

##### **Responsibility & Acceptance**

In contrast to his trial and first years of incarceration, Ihab has come to a place in which he has tapped into his capacity to face the shame of his choices and behaviors and is able to articulate acceptance of responsibility.

In early communication with Ihab he argues the inconsistencies and injustices of his case. He goes as far as to state in a 2011 letter that "*I'm an innocent man, I'm just misunderstood.*" He uses language indicating that there were lies told during his trial and injustices that occurred. Since we have been working together and throughout the progression of his correspondence over the last 3 years his letters have included less language minimizing his role and more focus on holding himself accountable, taking full responsibility, concern for his victim and his victim's family, concern for his co-defendant and the importance of his focus on growing and learning so that he can live a positive life. More so, his external behaviors reflect that he is able to implement what he has learned to make better choices and avoid misconduct.

Ihab accepts full responsibility for Matt Landry's death and for the harm and pain he has caused Matt Landry, the Landry family, co-defendant Robert Taylor and the community. Ihab has

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<sup>6</sup> As reflected in Educational Program Plans dated 6/30/2014, 2/21/2014, 11/14/13



conveyed details indicating that he alone is responsible for the kidnapping and death of Matt Landry. Ihab reports that Robert Taylor went along with the kidnapping of Matt Landry but that was not planned. Things spiraled when Robert Taylor failed to tackle Matt Landry so that Ihab could get his keys and take the car. Per Ihab's admissions Robert Taylor was not present during the murder of Matt Landry, nor was he aware that Matt Landry's life was ever in danger. Ihab has expressed remorse for his criminal conduct and recognizes the harsh reality and seriousness of the distorted thinking and behavior that led to where he is today. Ihab is 22 years old and has been incarcerated since 2009. After initial difficulties adjusting, Ihab's recent behavior is indicative of a more positive prison adjustment. While Ihab has just recently been able to come to terms with the consequences of his actions, his ability to face the weight and seriousness of his actions is testament to his potential for continued growth and acceptance.

*"I have come to a more honest place in myself and am more able to take responsibility. I take full responsibility of my own actions and cannot allow anyone to be blamed or to be held accountable for my wrong doings.*

*I have caused irreparable harm to a family's lives and hurt them and many others."*

Ihab Masalmani, Client Communication

### **Insight & Turning Point**

Throughout the years Ihab has become more open to looking at himself and his place in the world. As he has grown up in prison he has found a way to seek answers through reading. We have discussed at length many of the books that have had the biggest effect on Ihab as he has searched for meaning for his life and reconciliation with the shame of his past. Among these texts is 'The Secret' by Rhoda Byne, 'Emotional Intelligence' by Daniel Goleman, 'Training the Samurai Mind' by Thomas Clearly, 'Way of the Peaceful Warrior' by Dan Millman, 'Jesus and Muhammed' by Marie A Garbiel and the Bible. In addition to these works and others Ihab has been studying Arabic language text books.

*"Through knowledge and understanding of my self the truth has helped me re-direct my thoughts, feelings and my behavior."*

*"I've gained high awareness of my self of my emotions, thoughts and my behavior. I have become aware of the effect my actions could have on others, I was not aware of this. I have taken a vow to never allow my selfish or inconsiderate motives to dictate my behavior or my way of thinking."*

Ihab Masalmani, Client Communication

### **Redemption**

Ihab's words and actions reflect that of a person working towards personal redemption. Ihab impresses as uniquely motivated to learn and understand himself, so he can understand the world and how to best be in it.

*"Your honor I am not to try and use my past to justify my sins, but my past their was no structure, my life was unstable and no understanding of who I was or who I am. But this is no longer the past, I am no longer that kid that I once was. Im on a new journey. Im on a new path for knowledge, wisdom and understanding."*

Ihab Masalmani, Letter to Judge June 2014

*"I am truly trying to take all the necessary steps to better myself as a person. Physically by taking good care of my body by working out and eating right and being as healthy as I can. Mentally I'm reading books to redirect my thoughts to many different positive things. I am learning to be in control of my thoughts and aware of my thoughts and I am becoming aware of what is right and wrong. Emotionally, I am learning how to truly express myself in a positive healthy way and becoming aware of my emotions to be accountable to them in positive ways."*

Ihab Masalmani, Client Communication

### **Remorse & Empathy**

Communications with Ihab indicate that with increased ability to accept responsibility for his choices he has increased his capacity to accept the influence his actions have on others. He has expressed remorse for Matt Landry and his family. Most notably, Ihab's concern for the Landry family was particularly pronounced as we approached the dates of the October *Miller* decision hearing. He became very concerned that they would have to re-live this experience. Throughout the hearing our communications consistently began with Ihab's concerns for Matt Landry's family and their well-being.

*"I've come to understand and feel the terrible pain I have caused. I have come to see all my wrong doings has taken peace and comfort from many people and it's all because of my inconsiderate, selfish, reckless and sinful way of thinking. My distrustful ways only to pursue my selfish wants and needs. It's something that I've grown to realize about my old ways. My wrong doings have has an effect on many people emotionally, mentally and physically. It is something that I wish that I could bring peace and comfort to. It's something that I wish I could give back."*

Ihab Masalmani, Client Communication

*"I feel and think that what I did has caused the loss of my victim and my victim's family to lose their peace and comfort. I can only imagine how they may be emotionally troubled and physically ill from my wrong doing. I think of the pain that they carry because I took a life from them."*

Ihab Masalmani, Client Communication

### **Apology**

Ihab has communicated sentiments and letters of apology to both the Landry family and the Taylor family. Per the direction of his legal team he has been directed to not communicate with either family. However, his ability to face the shame and weight of his choices that resulted in the death of another human being are testament to his ability to grow and mature. Ihab's ability

to put words to his remorse and direct it to those who carry the greatest burden of his decisions is reflective of his efforts at rehabilitation and his potential for continued personal growth.

*"To the family of Matt Landry, I Ihab Masalmani am responsible for the murder of Matt Landry. And I know I am wrong, I have taken life from you, I have taken peace, comfort and love from you. It's something that I truly think about everyday and its something I wish I could give back. I understand there is no amount of words or no amount of justice that could change how you feel inside and because of this I am truly and sincerely sorry."*

Ihab Masalmani, Client Communication

At the time of this report, Ihab continues to be receptive to rehabilitative efforts through the MDOC and through our work together. He continues to be receptive of and partake in self-help efforts.

#### **V. Term of Years, Parole & Deportation**

Should Ihab receive a term of years, at the minimum of 25-60 years he is unlikely to obtain parole at his first eligibility. While we cannot predict the makeup of the policies and people of the future parole process, historically and at present, lifer and long-term sentences are rarely paroled at their earliest release date. At this time the parole board depending on the severity of the convictions has the ability and reputation of conducting a lengthy review and assessment process for those eligible for parole, including that of psychological testing, review of behavior throughout incarceration and a personal interview. The Parole Board also, at this time, has the ability to conduct public hearings, which they have done for lifer cases and commutation purposes.

Assessments at the time at which Ihab would be first eligible for release will also likely be more advanced and more accurate in their abilities to assess Ihab's risk, rehabilitation and eligibility for parole.

At this time the parole board considers each inmate's personal history, the circumstances of his offense and the circumstances of his incarceration. If he makes no progress regarding his behavior, it is not a far stretch to believe that the future parole board will account for any misbehavior on the part of Ihab. At this time, major class I misconducts are considered in weighing a prisoner's risk to society. Should the parole board refuse his parole and max him out, he would be 77 years old on a 60 year max. This is a generous life span for a healthy adult male in the community and considerably more generous for an incarcerated individual, as they have lesser access and quality of health care, food quality and general quality of life.

In summary, based on current standards set by the Michigan Department of Corrections and INS, should Ihab receive a term of years and live to his earliest release date he will have further

accountability throughout his incarceration, at the time of his earliest date and all potential follow up parole hearings. Ihab will need to do well while incarcerated, pass assessment and review of the parole board and upon release will be deported per deportation detainers dated November of 2010.<sup>7</sup>

During a guided exercise in hypotheticals and possible outcomes, Ihab talked at length about how he can spend his time incarcerated to prepare for potential release, specifically how he can continue to grow as a person, work to obtain and maintain pro-social relationships outside the prison and how he can develop himself as a person so that he can support himself should he be released in his later years of life. Ihab is aware that he has a deportation detainer and has taken it upon himself to learn Arabic in an effort to make the best use of his time and to connect to his culture of origin.

#### IN CONCLUSION & RECOMMENDATION

After a comprehensive assessment of Ihab's case and meaningful contacts with him, I respectfully ask this Court to consider Ihab's personal rehabilitative accomplishments, insight, recent history of compliance and personal growth thus far, when considering options for re-sentence.

Ihab has taken full responsibility for his actions having somberly reviewed each moment of his offense in detail without minimization and without showing signs of manipulation. He has shown insight into the seriousness of his actions and remorse and empathy for the pain his behaviors have caused. Contacts and records reflect that Ihab has made significant efforts and shows unique motivation for redemption and rehabilitation.

There is no question the seriousness of Ihab's offense is deserving of being addressed judiciously and that a significant period of rehabilitation is needed. Additionally, after numerous visits, correspondence and extensive review there is evidence enough to show that Ihab has shown maturity and growth enough deserving consideration of a term of years in lieu of mandatory life.

*"I am taking necessary steps to better myself. I am truly dedicated to this cause. And as a person I know that there is so much more for me to work on and so much more for me to do before I can even say that I am a better person within myself and that I am a better person with others. It is something that I will forever be working on, but I won't give up."*

Ihab Masalmani, Client Communication

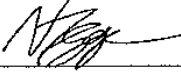
Thank you for your time and consideration in this very important matter. Please feel free to contact me should the Court have any questions or concerns.

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<sup>7</sup> U.S. Department of Homeland Security Notice of Action and Immigration Detainer dated November 15th, 2010 and November 18th, 2010 respectively.

Respectfully submitted,

**State Appellate Defender Office**

By:   
\_\_\_\_\_  
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Attachments:

**PAGE 13** Documents Reviewed and Interviews Conducted to Prepare Report

**Documents Reviewed & Interviews Conducted to Prepare Report:**

RE: Ihab Masalmani, MDOC 783743

*Including, but not limited to:*

- Interviews and Letters of Correspondence with Client, Ihab Masalmani *\*As of The Date of this Report*
  - Correspondence from Mr. Masalmani Received 1/13/2011, 5/4/2011, 7/28/2011, 10/24/2011, 3/1/2012, 9/21/2012, 3/27/2013, 4/4/2013, 5/17/2013, 5/17/2013, 9/12/2013, 9/20/2013, 9/25/2013, 11/4/2013, 1/30/2014, 8/7/2014, 8/18/2014, 9/5/2014, 9/11/2014, 10/14/2014, 11/6/2014, 11/26/2014 and 12/1/2014
  - Visits with Mr. Masalmani lasting 1 to 6 hours conducted on 9/23/2014, 10/6/2014, 10/20/2014, 10/23/2014, 11/7/2014 and 11/20/2014
- Court Orders and Opinions
- Defense Counsel Communications, Files and Records
- MDOC Counselor File Records Received 10/4/2012, 1/27/2014 and 9/25/2014
- Court Files
- Presentence Investigation Reports Received 10/27/10
- Support Network Contacts, including Defense Witnesses
- Court Transcripts, Pleadings and Motions

**STATE OF MICHIGAN**

**IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Macomb CC No. 09-5244-FC

Vs.

IHAB MASALMANI,

Hon. Diane M. Druzinski

Defendant.

\_\_\_\_\_  
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**RECEIVED**

DEC 17 2014

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APPELLATE DEFENDER OFFICE

**SENTENCING MEMORANDUM RE: MILLER V. ALABAMA**

**I. FACTS**

After a lengthy trial before this Court in September of 2010, a jury convicted the defendant in Macomb CC No. 09-5244-FC of First-Degree Felony Murder (MCL § 750.316(1)(b)), Carjacking (MCL § 750.529a), Conspiracy to Commit Carjacking (MCL § 750.157a), Kidnapping (MCL § 750.349), Conspiracy to Commit Kidnapping, Larceny from the Person



(MCL § 750.357), and Felony Firearm (MCL § 750.227b) arising out of the abduction and brutal murder of 21-year old Matthew Landry ("Mr. Landry") on August 9, 2009.

The unchallenged testimony demonstrated the defendant and co-defendant abducted Mr. Landry outside a Quizno's in Eastpointe at gunpoint at 2:30 p.m. on August 9, 2009, and sped away in Mr. Landry's green Honda. By 3:30 p.m., the defendant used Mr. Landry's at a Sunoco gas station on the east side of Detroit, making over \$300.00 in withdrawals. Soon thereafter, in a Detroit neighborhood near the gas station, a resident viewed the defendant standing behind Mr. Landry's green Honda looking into the trunk. In the next several hours, the defendant stopped at a Marathon gas station on the east side of Detroit in Mr. Landry's green Honda and at Eastland mall, where he went on a spending spree for clothing at Jimmy Jazz.

At 9:30 p.m., Mr. Landry's green Honda appeared in front of a vacant drug house at 14703 Maddelein in Detroit. The defendant was in the back seat with Mr. Landry, with the co-defendant driving the vehicle. The defendant arranged for two separate purchase of crack cocaine, which he smoked inside 14703 Maddelein. As he did so, Mr. Landry sat on the couch with the co-defendant. At one point, two male individuals stopped by the house and gave the defendant a gas can. When Mr. Landry was last seen alive, he was with the defendant at about 10:00



p.m. on August 9, 2009. The defendant was “tweaking” on crack cocaine and acting “paranoid.”

Detectives from the Roseville Police Department found Mr. Landry’s badly decomposed body a little more than three days later. Mr. Landry had shot in the back of the head execution style, inside a burned-out house at 14711 Maddelein, a few houses away from where he was last seen with the defendants. Between August 9 and August 12, the defendant committed two more violent crimes, one employing Mr. Landry’s green Honda as the getaway vehicle. The defendant used a firearm stolen from a car parked outside a Detroit nightclub during the early morning hours of August 10.

On November 14, 2010, this Court sentenced the defendant to a term of life imprisonment without parole on his First-Degree Felony Murder conviction. On December 1, 2010, the defendant filed a claim of appeal with the Michigan Court of Appeal (“Court of Appeals”).

In mid-2012, while this appeal was pending, the United States Supreme Court decided *Miller v. Alabama*, 576 US \_\_; 132 S Ct 2455; 183 L Ed 2d 407 (2012), holding that mandatory life sentences without the possibility of parole for juveniles such as the defendant violated the Eighth Amendment and were unconstitutional. On March 21, 2013, the Court of Appeals affirmed the defendant’s convictions, but, in light of *Miller*, vacated this Court’s sentence on their First-Degree Felony Murder convictions and remanded for resentencing. On September 3, 2012, the

Michigan Supreme Court denied the defendant's application for leave to appeal.

In early 2014, the Legislature passed MCL § 769.25 (Criminal defendant less than 18 years old; circumstances; imprisonment for life without the possibility parole; violations; motion; response; hearing; record; sentence), which took effect on March 4, 2014. The statute, in part, applies to criminal defendants who were less than 18 years of age at the time he or she committed an offense punishable by life imprisonment without the possibility of parole before the act's effective date and "[o]n June 25, 2012 the case was pending in the trial court or the applicable time periods for direct appellate review by state or federal courts have not expired." MCL § 769.25(1)(b)(ii). Moreover, the statute provides that "[i]f the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described under subsection (1)(b), the prosecuting attorney shall file the motion within 90 days after the effective date of the amendatory act that added this section." MCL § 769.25(3).

Further, the statute indicates that if the assistant prosecuting attorney files such a motion, "the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, the trial court shall consider the factors listed in *Miller v. Alabama*, 576 US \_\_; 132 S Ct 2455; 183 L Ed 2d 407 (2012), and may consider any other criteria relevant to its decision, including the individual's record while

incarcerated.” MCL § 769.25(6). Finally, the statute states that at the sentencing hearing, “the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court’s reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing.” MCL § 769.25(7).

In April of 2014, the prosecution filed a motion pursuant to MCL § 769.25 requesting that this Court impose a sentence of life imprisonment without the possibility of parole on the defendant’s conviction for First-Degree Felony Murder. This Court held an evidentiary hearing envisioned by the statute regarding the defendant on October 21, 2014, and October 24, 2014, and subsequently requested that the parties file briefs to inform its ultimate decision

## **II. LAW AND ARGUMENT**

As indicated, the pertinent statute, MCL § 769.25(6), instructs the trial court to consider the factors listed in *Miller v. Alabama*, 576 US \_\_; 132 S Ct 2455; 183 L Ed 2d 407 (2012), as well as any other criteria relevant to its decision, including the defendant’s record while incarcerated. The *Miller* Court wrote:

So *Graham* and *Roper* and our individualized sentencing cases alike teach that in imposing a State’s harshest penalties, a sentencer misses too much if he treats every child as an adult. To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity,

impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which the cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures might have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officer or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See e.g., *Graham*, 560 U.S. at ----, 130 S.Ct., at 2032 (“[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings”); *J.D.B. v. North Carolina*, 564 U.S. ----, ----, 131 S.Ct. 2394, 2400-2401, 190 L.Ed.2d 310 (2011). And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it. *Id.* at 2468.

### **Chronological Age and Its Hallmark Features**

The *Miller* Court provided a bright line age for consideration and analysis of the juvenile psychological predisposition. It is 18 years of age. Current psychological studies and expert testimony in this case indicate 18 years of age is a legal definition not one the developmental experts prefer. Studies show prefrontal cortex development continues in adolescents well into their twenties. Regardless, the standard is set. At the time of the murder, Ihab Masalmani was 17 years and eight months old. In another four months, this hearing would not have been conducted. At the time of this hearing, he was 22 years and 10 months

old, which is important when you consider the expert testimony was Masalmani showed an almost utter and complete lack of psychological progress. "Embryonic" was the term. And, when placed in context with Masalmani having been previously diagnosed with Anti Social Personality Disorder, other than his ability to manipulate, there is a complete lack of proof he has progressed psychologically. Plus, in Michigan, at the time of the crime, the age to be tried as an adult was seventeen. The whole age setting exercise is arbitrary and capricious.

**The Family and Home Environment**

Masalmani never had a family and home environment and there is absolutely no chance he will have one if released. Testimony from his former social worker and juvenile attorney clearly established Masalmani had no family support and was an abject failure in the foster care system. The documentation verified their testimony. In summary, Masalmani had between four and seven state placements after he was initially sent to the United States by his mother to live with an uncle in California (who allegedly physically and psychologically abused him before sending him to live with distant relatives in Dearborn); he learned to "nut up" when he was dissatisfied with a placement so he would be moved; he fought with and physically assaulted other juveniles during his placements; he had seven escapes or AWOLs from juvenile detention, which doesn't include the number of times he escaped from foster care; during the time he was AWOL, Masalmani picked up seven new

misdemeanor and felony criminal charges; the criminal charges escalated from stolen cars to drug possession and sales, then to assaults that led to the crime spree that included Matt Landry's murder in Macomb County.

Masalmani has no family in this area and his only friends were known gang members from the Seven Mile Bloods. There is no proof he has formed attachments while in prison. The proof is to the contrary (23 hour lock down for the last couple of years), and there will be no persons, no place, and no job skills to provide otherwise.

Much of the expert testimony placed blame for Masalmani's behavior at the feet of the Michigan juvenile and foster care systems. The systems failed him because "he never received the sort of comprehensive assessment that would have been appropriate that would have been able to make a solid plan for his future and his treatment." Dr. Vandervoort did state the defendant was provided a number of services, including medical and psychological but in such a fragmented way, it did not benefit him.

Dr. Vandervoort claims early on it was discovered by a neurologist that Masalmani suffered from epileptic seizures but there was no coordinated aftercare provided. Epilepsy, combined with other traumatic childhood experiences, created what he is today. But, that is the past (or an excuse). This Court, under *Miller*, needs to look not only at the defendant, but whether there is the opportunity for the behavior not to

repeat itself. What is done is done. The psychological damage created by whatever missteps taken by the state earlier in his life have left him with permanent issues. The point isn't whether or not he is damaged, by all accounts and all experts, he is. The point is, how severe is this damage and whether he can reverse it. That answer, based on the studies, reports, and his own expert's testimony, is No.

A rough childhood doesn't change or excuse what he did. We can't change the past. We can't create a new person with the knowledge things could have been done differently. The experts and the studies agree that at 17 years and 8 months, Masalmani knows the difference between right and wrong. *Miller* does not eliminate the option of life in prison. The Court simply is asked to look at those factors when considering punishment. Saying adolescents at that age are more likely to take chances and be impacted by peer pressure, is a far cry from the heinous crimes committed against a number of innocent people in Macomb County by the defendant. Dr. Keating was clear that studies on adolescents committing acts of drinking, driving recklessly or stealing carry a different impact than the types of crimes being discussed here. The impression is as the seriousness of the crime increases, so usually did the information available to the adolescent about the consequences of the act. This case should not be about the system having failed Masalmani up to the time he committed the crimes, but the person he was as a result of the systemic failures that committed the crimes. Has

any information been presented to the court to mitigate against life in prison based on who was at the time of the crimes and who he is now? As we can't ignore the missteps taken by the state that lead Masalmani to be the person he is today, we also can't simply accept who he is and trust releasing him back into society since nothing about him has changed.

Dr. Keating stated "the more negative experiences that an individual has during their developmental period, on average, will indicate a higher risk for not good outcome for that individual, but the distinction between those individuals who will potentially rise above those very early serious difficulties and those who don't is very hard to discern at this time...Resilience indicates that individuals who have had very negative experiences and themselves have been involved in a variety of negative kinds of behaviors, the prediction on average is that there is a lower probability that they will in fact be able to succeed." At page 55. He goes on to say there are no tests to determine whether any adolescent is a resilient or non resilient person and no science that would allow you to make a prediction about person's behavior in the future. At page 56. But he does speculate the worse the person's circumstances, the more likely it is for nonresilience to be the case. At page 56. This bodes poorly for the defendant that spent the majority of time during this hearing showing this court just how bad his upbringing was. Dr. Keating's final opinion was "that science does tell us that it is very difficult to predict



from this point in time out to the distant future whether there's a zero or non-zero prospect of rehabilitation...I do not believe science can make that distinction effectively in the adolescence period I am talking about.”  
At page 70.

**The Circumstances of the Homicide Offense**

The facts of this case are well known to this court and need not be repeated here.

**Charge and Conviction of a Lesser Offense**

The record does not suggest in any way that the defendant could have been charged and convicted of a lesser offense if not for his age and the defense did not make this argument at the evidentiary hearing.

**The Possibility of Rehabilitation**

At the outset of the criminal case against Ihab Masalmani, he was sent to the forensic center for a full evaluation of his mental status. Both the competency and criminal responsibility evaluations were performed by Dr. Richard L. Rickman, PhD. He deemed Masalmani to be both competent and criminally responsible, diagnosing Masalmani with Anti Social Personality Disorder (ASPD). As stated in the DSM – V and agreed to by Dr. Danuloff, ASPD is considered to be among the most difficult personality disorders to treat. Because of their very low or absent capacity for remorse, individuals with ASPD often lack sufficient motivation and fail to see the costs associated with antisocial acts. They may only simulate remorse rather than truly commit to change: they can

be seductively charming and dishonest, and may manipulate staff and fellow patients during treatment. Studies have shown outpatient therapy not likely to be successful.

This is the crux of the whole reason to continue the life sentence for this defendant. First, at best, Dr. Danuloff testified if the defendant has an understanding of what he did, it was "very primitive...embryonic, early rudimentary stages" At page 50. Masalmani was just starting to "self explore." But, the critical information is whether, without professional help and the proper support and structure, could Masalmani show true change? Dr. Danuloff said it was unlikely that changes necessary to impact a person with the issues Masalmani has could be made without professional help. At page 64. Dr. Danuloff clearly indicated in his private practice, he meets at a minimum of three times with a patient to get an understanding of their issues, then formulate a therapeutic plan to assist them in making these changes. He admits a number of patients must be seen several times a week over a period of years to sometimes make the changes necessary.

The thrust of this whole hearing was to show how psychologically impacted the defendant was as a result of his experiences with his family, with foster care and in the juvenile system. Yet, it is clear one can not overcome these hurdles without intense therapy, none of which he will get in prison. Once SADO stops representing him, there will be no visits from the social worker or any health care professional. He will

not and does not receive any mental health treatment in prison. Since this is not a psychological condition that one can cure through self exploration, there is absolutely no chance Masalmani can be rehabilitated. Dr. Danuloff also stated when asked about therapy and ASPD; "It is also not my experience that folks with that diagnosis willingly come in for psychotherapy either. People like that are usually mandated and the prognosis for mandated treatment is less than rosy in my experience." At page 66. If he can't fix himself and he isn't receiving treatment, there is no chance he overcomes his past. That is why he can't be trusted to be released. Add to that he will have no support system outside of parole when released, and it is known MDOC doesn't watch over parolees night and day, there is no chance he overcomes his past and avoids falling back in to old patterns of behavior.

In fact, Dr. Danuloff was clear there are no tests or tools available that can predict how this individual will be one, five, ten or twenty years from now. At page 55. Combine that with no professional guidance, intense or otherwise, a diagnosis of ASPD and his own expert opining these changes can't be made through self exploration, there is no reason to believe he could change to a point where society would be safe with him back in it.

Dr. Keating agreed with the studies that showed a large proportion of those involved with violent behavior at an early age eventually become

chronic violent offenders and that there are no valid tests to determine the long term probability of recidivism or rehabilitation.

The DSM – V lists ASPD as being characterized by both emotional detachment and psychopathic behavior. It states psychopaths are typically charismatic individuals who readily manipulate others and engage in risky behaviors designed to satisfy their own personal needs. Their lack of conscience leaves them with little or no concern for the welfare of others. Their propensity for violence is high and their amenability to treatment low.

Per his own testimony, Dr. Danuloff did not perform any tests on the defendant. Though qualified and capable of administering them, no IQ, MMPI, T.A.T. or Psychopathy tests were performed. At page 70.

Even at this late date, Masalmani has shown no remorse for his actions. If it appears in his brief that he is sorry, it would have to be viewed with extreme skepticism for its timing and nature.

#### **The Defendant's Record While Incarcerated**

Masalmani's record adjusting to prison speaks for itself. A copy of it was provided to the Court at the time of the hearing. He has been convicted of 13 Class I Major Misconduct violations and 11 Class II Major Misconduct violations. It must be pointed out since given information he could possibly be granted a term of years, there have been no violations in the last year. The People would say this is the manipulation of Anti Social Personality Disorder at its best. When asked to behave because

that is what is required of you, he could not do it. But, if there is a way to manipulate the way a person looks at you, then he can conform. It isn't true change. It is manipulation.

### III. CONCLUSION

Given the foregoing, the prosecution respectfully requests pursuant to MCL § 769.25 that this Court impose a sentence of life imprisonment without the possibility of parole on the defendant's conviction for First-Degree Felony Murder.

Dated: December 12, 2014

Respectfully submitted,

ERIC J. SMITH (P46186)  
PROSECUTING ATTORNEY  
MACOMB COUNTY  
BY: William Cataldo

William Cataldo  
William Cataldo (P37673)  
Assistant Prosecuting Attorney

#### PROOF / CERTIFICATE OF SERVICE

I certify that a copy of this/these papers were served on all parties, or their attorneys, at their address of record, with postage or other fees fully prepaid, on 12/12/14, 2014

☒ First Class U.S. Mail    ☐ Federal Express  
☐ Certified U.S. Mail    ☐ Overnight Mail  
☐ Fax    ☐ Hand Delivery  
☐ Other

I declare that the statements above are true to the best of my information, knowledge, and belief.

Signature Tom Pedraza

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

THE PEOPLE OF THE STATE OF  
MICHIGAN,

Plaintiff,

Case No. 2009-5244-FC

vs.

IHAB MASALMANI,

Defendant.

/

RE-SENTENCING

BEFORE THE HONORABLE DIANE M. DRUZINSKI, CIRCUIT JUDGE  
Mount Clemens, Michigan - Tuesday, 6th of January, 2015

APPEARANCES:

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REPORTED BY: ANGELA M. LITTLE, CSR-6444, RPR  
Certified Court Reporter  
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WITNESSES: PLAINTIFF

None.

WITNESSES: DEFENDANT

None.

EXHIBITS

ADMITTED

None offered.

Mount Clemens, Michigan

Tuesday, 6th of January, 2015

— — —

(Court, Counsel and parties present.)

THE CLERK: People versus Masalmani.

THE COURT: This is docket number  
2009-5244-FC, date and time set for resentencing. Counsel,  
your appearances?

MR. CATALDO: William Cataldo appearing on  
behalf of the People.

MS. NEWMAN: Valerie Newman on behalf of  
Mr. Masalmani, who's present and seated with me in the  
courtroom.

THE COURT: Thank you, counsel.

This matter is before the Court following  
a resentencing hearing. I have prepared an opinion, which I  
am going to read. I will not be reading the citations or the  
references to the hearing transcripts into the record. That  
information will be contained in the written opinion, which  
will be available to all counsel following the Court's  
resentencing.

This matter is before the Court following  
a resentencing hearing.

The Factual and Procedural Background:



1 Following a jury trial, the defendant was convicted of 18  
2 total charges and three consolidated cases. Pertinent to the  
3 pending matter, the jury convicted the defendant of one count  
4 of first-degree felony murder. The Court sentenced defendant  
5 to what was, at that time, a mandatory sentence of life  
6 without parole on his murder conviction. After the trial and  
7 sentencing, but before his appeal was final, the United States  
8 Supreme Court issued *Miller v Alabama*, holding that a  
9 mandatory life sentence cannot be imposed on a juvenile  
10 defendant and that a trial court must instead consider several  
11 factors in deciding whether to sentence a juvenile to life or  
12 to some term of years. Given the holding in *Miller*, the Court  
13 of Appeals remanded this case for resentencing.

14 The Court conducted a resentencing hearing  
15 on October 21st and 24th of 2014. The Court has carefully  
16 considered the arguments presented at that hearing. The Court  
17 indicated that if parties wished to submit sentencing  
18 memoranda or briefs, they would be due on December 12, 2014.  
19 Defendant submitted an additional sentencing brief, as well as  
20 the prosecutor, and the Court has reviewed both of those.

21 The Law: As a preliminary matter, the  
22 Court finds that it's prudent to quote the Supreme Court's  
23 decision in *Miller* at some length, in order to clarify the  
24 factors which must be considered by a trial court in  
25 sentencing a juvenile convicted of first degree murder:

1 Mandatory life without parole for a  
2 juvenile precludes consideration of his chronological age and  
3 its hallmarks features, among them, immaturity, impetuosity,  
4 and failure to appreciate risks and consequences. It prevents  
5 taking into account the family and home environment that  
6 surrounds him, and from which he cannot usually extricate  
7 himself, no matter how brutal or dysfunctional. It neglects  
8 the circumstances of the homicide offense, including the  
9 extent of his participation in the conduct and the way family  
10 and peer pressures may have affected him. Indeed, it ignores  
11 that he might have been charged and convicted of a lesser  
12 offense if not for incompetencies associated with youth. For  
13 example, his inability to deal with police officers or  
14 prosecutors, including on a plea agreement, or his incapacity  
15 to assist his own attorney. And finally, this mandatory  
16 punishment disregards the possibility of rehabilitation even  
17 when the circumstances may most suggest it.

18 Ultimately, the United States Supreme  
19 Court concluded that the Eighth Amendment forbids a sentencing  
20 scheme that mandates life in prison without the possibility of  
21 parole for juvenile offenders. The Court declined to consider  
22 Jackson's and Miller's alternative argument that the Eighth  
23 Amendment requires a categorical ban on life without parole  
24 for juveniles or at least those 14 years or younger. That  
25 said, the Court opined that appropriate occasions for

1 sentencing juveniles to this harshest possible penalty will be  
2 uncommon. While the Supreme Court did not foreclose a  
3 sentencer's ability to make that judgement in homicide cases,  
4 the Court required the sentencer to take into account how  
5 children are different, and how those differences counsel  
6 against irrevocably sentencing them to a lifetime in prison.

7 The analysis: The first factor,  
8 chronological age and hallmark features. With the relevant  
9 law in mind, the Court shall now discuss each of the factors  
10 set forth in *Miller* in turn, as they apply to this case. The  
11 first factor is defendant's chronological age and its hallmark  
12 features. Defendant was 17 years and eight months old at the  
13 time of his offense. Had he committed this offense four  
14 months later, life without parole would be mandatory and  
15 resentencing would be impermissible. Defendant's own expert  
16 witness, Dr. Daniel Keating, a neuroscientist and expert in  
17 adolescent brain development, testified that there's would be  
18 no known reasons to assume significant difference between the  
19 rehabilitative prospects between 17 and 18.

20 The Court must also consider the hallmark  
21 features of the defendant's age, including immaturity,  
22 impetuosity, and failure to appreciate risks. Dr. Keating  
23 testified that the limbic system, which serves as an arousal  
24 system, an incentive system, and a reward system, is much more  
25 active during one's teenage years than as an adult. Dr.

1 Keating further testified that the prefrontal cortex governs  
2 executive function and is designed as a brake on the limbic  
3 system but it develops much more slowly than the limbic  
4 system. He explain that there is a developmental maturity  
5 mismatch between the limbic system and the prefrontal cortex.  
6 He explained that the prefrontal cortex doesn't reach full  
7 maturity until the mid-20s. As a result, teenagers tend to  
8 engage in generally reckless behavior.

9 Defendant's guardian ad litem opined that  
10 in terms of maturity, defendant was probably in the middle out  
11 of the 5,000 to 8,000 children he had represented over the  
12 years. However, the guardian ad litem opined that's not very  
13 mature compared to general population.

14 In light of the foregoing, the Court finds  
15 that the defendant's chronological age and its hallmark  
16 features do not justify sentencing defendant differently than  
17 an 18-year old criminal defendant. *Miller* dealt with juvenile  
18 defendants who were a mere 14-years old at the time of their  
19 offenses, a far cry from this case. Defendant was only four  
20 months away from being an adult. Moreover, while the  
21 testimony established that the prefrontal cortex continues to  
22 develop into one's mid-20s, the Court is not free to take this  
23 developmental disconnect into consideration when a criminal  
24 defendant is over 18. To the contrary, the Court is required  
25 to impose mandatory life without parole in first-degree murder

1 cases for defendants who are only four months older than the  
2 defendant was when he committed his crime. There was nothing  
3 in the testimony or the evidence presented which suggests that  
4 treating defendant differently from an 18-year old would be  
5 warranted in this case. Defendant did exhibit some level of  
6 maturity. There was no impulsiveness or failure to appreciate  
7 risks when he kidnapped and kept Mr. Landry alive for at least  
8 eight hours before killing him. Upon careful consideration,  
9 the Court finds that this factor favors imposing sentence of  
10 life without the possibility of parole.

11 The defendant's family and home  
12 environment: There was essentially uncontroverted evidence  
13 that defendant's family and home environment were terrible.  
14 Defendant came to the United States from Lebanon as a child  
15 and initially lived with relatives in California, but there  
16 were problems with mistreatment there and the relatives no  
17 longer wanted to or should care for him. He and his sister  
18 were staying with an aunt in Dearborn and there were  
19 allegations of physical abuse, sexual abuse, and neglect  
20 involving both the children. Defendant first came into the  
21 foster system based on an abuse and neglect case. According  
22 to his case worker, there was definitely a language barrier.  
23 However, child-placing agencies do not consider the cultural  
24 and language needs of the child, and are oftentimes prohibited  
25 from doing that under federal law.

1 Defendant's guardian ad litem estimated  
2 that he was in at least ten different foster homes, and opined  
3 that progressively it made it worse and worse for him.  
4 Defendant was smoking marijuana with one foster mother and  
5 witnessing the foster mother having inappropriate sexual  
6 actions in front of him. At some point, defendant stopped  
7 developing attachments to other.

8 Defendant was aggressive towards peers and  
9 towards his teachers. He would walk out of class. He would  
10 fight. His involvement with the juvenile justice system began  
11 in 2008, with assault and battery and a drug offense.  
12 Defendant's guardian estimated that there were at least five  
13 juvenile petitions concerning defendant during periods that he  
14 AWOL from his placement. His guardian opined that defendant  
15 became more and more oriented towards being with kids on the  
16 street and that was the only place that he felt he belonged.  
17 It is also worth nothing that defendant was diagnosed with  
18 ADHD, depression, and pediatric seizures. There was also  
19 testimony that he was diagnosed with epilepsy.

20 Given this testimony, there is no question  
21 that defendant's family and home environment again were  
22 terrible. He lacked stability, was abused, and eventually  
23 stopped forming attachments with others altogether. As such,  
24 this factor likely weighs in defendant's favor against a life  
25 sentence without the possibility of parole.

The Circumstances of the Homicide Offense:

The next factor concerns the circumstances of the homicide offense, the extent of defendant's participation, and the family and peer pressure. Although testimony regarding the homicide offense is not specifically presented during the resentencing hearing, the circumstances of the offense were established during the trial in this matter. Defendant and his co-defendant, Robert Taylor, abducted Matthew Landry at gunpoint outside a sandwich shop in Eastpointe around 2:30 p.m. on August 9, 2009. Defendant used Landry's debit card to make over \$300 in withdrawals, drove to a gas station on the east side of Detroit, and went shopping for clothes at Eastland Mall. Around 9:30 p.m., Taylor drove defendant and Landry to a drug house in Detroit. Defendant purchased crack cocaine, and smoked it on the couch next to Landry. Landry was last seen alive at 10:00 p.m. Sometime thereafter, defendant shot Landry in the back of the head in a vacant home. Over the next several days, defendant committed additional violent crimes, employing Landry's vehicle as a getaway car. There was no evidence that any of defendant's criminal activity was precipitated by peer or family pressure.

Accordingly, this factor weighs heavily in favor of finding that a sentence of life without the possibility of parole is appropriate. Defendant had numerous opportunities to abandon his plan, and instead dove with his

1 co-defendant and Matthew Landry around town for hours before  
2 killing Landry in cold blood execution style in a vacant home.  
3 There is nothing in the facts and the circumstances of the  
4 crime which would warrant anything less than life in prison  
5 without the possibility of parole.

6 The incapacities of youth: There was no  
7 evidence that at the incapacities of youth caused defendant to  
8 be unable to participate in his defense. Nor is there any  
9 evidence that he implicated himself due to youthful  
10 incapacities. As such, this favors sentencing defendant to  
11 life without the possibility of parole on this factor.

12 The possibility of rehabilitation: The  
13 final factor to consider is the possibility of rehabilitation.  
14 Dr. Keating testified that it is very difficult to predict  
15 from this point in time out to the distance future whether  
16 there is a zero or non-zero prospect of rehabilitation.  
17 Nevertheless, he acknowledged that the rehabilitation  
18 challenges are certainly higher in the case of a juvenile who  
19 is capable of pulling a trigger. Moreover, patterns of  
20 behavior are predictive. In short, the worse the  
21 circumstances, the more likely it is for nonresilience, no  
22 rehabilitation to be the case.

23 Dr. Danuloff, a clinical psychologist who  
24 evaluated defendant, testified that he cannot predict a future  
25 outcome with respect to defendant. He acknowledge that



1 defendant was basically unsocialized, unattached, unattached  
2 in any kind of substantial way involving the human  
3 relationships, and viewed other people as objects to meet his  
4 needs or not at the time of the offense. He opined that  
5 defendant may have been irreparably corrupt, but got lucky.  
6 He testified that the defendant had many misconducts towards  
7 the beginning of his incarceration, but that the last  
8 misconduct was in August of 2013. He testified that  
9 circumstances since defendant's incarceration, specifically  
10 solitary confinement and the *Miller* decision, have caused  
11 defendant to begin to conceive the idea of hope. This has led  
12 to his reading books and beginning to have the capacity to  
13 self-explore, although Dr. Danuloff stressed that this is very  
14 primitive, it is embryonic.

15 Dr. Danuloff also testified concerning  
16 several conversations he had with defendant since his  
17 incarceration. For instance, he testified that defendant told  
18 him that "even a Godly person can punish people who bring harm  
19 to them. Even God did this." Danuloff further testified that  
20 he asked defendant whether his crime was righteous or evil,  
21 and defendant responded, "Well, it was little bit of both."  
22 And what he said was, "Well, I didn't have any choice."

23 Having carefully reviewed all the  
24 testimony and the exhibits in this matter, the Court finds  
25 that this factor favors a sentence of life without the

1 possibility of parole. The very difficulty of defendant's  
2 upbringing, the only factor which could be said to weigh in  
3 favor of an indeterminate sentence, also suggests that  
4 defendant's prospects for rehabilitation are minimal. None of  
5 the experts presented by defendant were ready to testify that  
6 defendant has undergone anything more than the first embryonic  
7 stirrings of moral sensibility. The Court finds it rather  
8 telling that defendant only began to avoid misconducts once  
9 the possibility of parole became a reality with the Supreme  
10 Court's decision in *Miller*. Moreover, the Court finds it  
11 incredibly troubling that defendant continues to believe that  
12 his cold-blooded murder of Matthew Landry was partially  
13 righteous. Finally, the Court notes that even if defendant is  
14 experiencing the embryonic development of a rudimentary moral  
15 sensibility, it is implausible that he will experience full  
16 rehabilitation without intensive professional assistance,  
17 assistance which he is very unlikely to receive in prison. For  
18 all of these reasons, the Court concludes that defendant's  
19 prospects for rehabilitation are negligible.

20 In summary, the Court has carefully  
21 considered the various factors set forth in the Supreme  
22 Court's decision in *Miller*. Having reviewed the testimony  
23 presented at the resentencing hearing and the exhibits, the  
24 Court is satisfied that defendant's case presents precisely  
25 what the Supreme Court characterized as the "rare juvenile

1 offender whose crime reflects irreparable corruption." Based  
2 on the foregoing, the Court finds that the defendant is  
3 properly sentenced to life in prison without the possibility  
4 of parole.

5 Counsel, accordingly on Count 1 of docket  
6 09-5244, the defendant is sentenced to the Department of  
7 Corrections for a period of life in prison without the  
8 possibility of parole. As of today, he has credit for  
9 1,254 days. He owes restitution of \$306 to the Landry family,  
10 \$68 in state cost, \$130 crime victims fee, and his attorney  
11 fee thus far is \$31,629.90.

12 MS. NEWMAN: Judge, for the record, we  
13 object to the attorney fees. They're not articulated why  
14 they're there. I know it's sort of a moot point because he  
15 has already on the other judgement of sentence for the other  
16 crimes, but I just wanted to make a record of it that for  
17 someone who's in prison and at best might earn a dollar a day,  
18 or a couple dollars a day, it's an amount that he'll never be  
19 able to pay back. And under *Bearden v Georgia* and a U.S.  
20 Supreme Court case on ability to pay, he clearly is never  
21 going to have the ability to pay that and, therefore, it  
22 should not be imposed upon him. The other fees, of course,  
23 are mandatory assessments. The \$306 to the Landry family,  
24 we're not going to object to that either, but the \$31,000 for  
25 someone who's indigent and has appointed counsel is being

1 asked to pay that, we would strenuously object and ask that  
2 that be omitted from the judgement of sentence.

3 THE COURT: Well, sometimes we don't know  
4 what the future holds. Five years ago we didn't know we would  
5 be sitting here.

6 MS. NEWMAN: That is true, your Honor.

7 THE COURT: Your client has the right to  
8 file a claim of appeal.

9 MS. NEWMAN: We're going to fill out the  
10 paperwork and we would ask that the State Appellate Defender  
11 Officer be re-appointed on this appeal so that we can  
12 continue. And if I could just ask my client on the record  
13 because we've talked about this, my office prefers that new  
14 counsel generally be appointed just in case there's an  
15 ineffectiveness claim that can be raised, but I've discussed  
16 this with Mr. Masalmani and he strenuously objects to anybody  
17 other than myself continuing as his counsel. So I've agreed  
18 to do that, but I just want to make clear that he understands  
19 that there is a potential -- and it might be better if new  
20 eyes looked at the case rather than someone who's already been  
21 litigating it and that we discussed that and he understands  
22 that and he would prefer that my office continues as counsel.

23 THE COURT: Is that correct, Mr.  
24 Masalmani?

25 THE DEFENDANT: Yes.

1 MS. NEWMAN: All right. Just for the  
2 record, we are filling out. He will sign the request for  
3 counsel. We'll submit it to the Court before I leave today,  
4 and we'll also sign the other documents requesting appellate  
5 counsel and make sure it gets returned to the Court today.

6 THE COURT: And should defendant -- and he  
7 has requested, decided to pursue his right to file a claim of  
8 appeal, the Court has no objection to your office continuing  
9 to represent him.

10 MS. NEWMAN: All right. Thank you, your  
11 Honor.

12 THE COURT: Mr. Cataldo, anything on  
13 behalf of the People?

14 MR. CATALDO: No, your Honor.

15 THE COURT: Mr. Duggan, anything on behalf  
16 of probation.

17 MR. DUGGAN: Nothing, your Honor. Thank  
18 you.

19 THE COURT: Thank you, counsel. We'll  
20 take a five-minute break and then we will proceed with People  
21 versus Taylor.

22 (Proceedings concluded)

23 \* \* \*

1 STATE OF MICHIGAN )  
2 ) SS  
3 COUNTY OF MACOMB )  
4

5 CERTIFICATE OF COURT REPORTER  
6

7 I, Angela M. Little, Certified Court Reporter in the  
8 State of Michigan, do hereby certify that the foregoing pages,  
9 1 through 17, inclusive, comprise a full, true, and correct  
10 transcript of the proceedings had in the matter of THE PEOPLE  
11 OF THE STATE OF MICHIGAN, Plaintiff, versus IHAB MASALMANI,  
12 Defendant, Case No. 2009-5244-FC, on Tuesday, 6th of  
13 January, 2015.  
14

15 /s/ Angela M. Little  
16 ANGELA M. LITTLE - CSR-6444, RPR  
17

18 DATED: 2/12/15  
19  
20  
21  
22  
23  
24  
25

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

Case No. 2009-5244-FC

IHAB MASALMANI,

Defendant.

OPINION AND ORDER

This matter is before the Court following a resentencing hearing.

**I. Factual and Procedural Background**

Following a jury trial, defendant was convicted of 18 total charges in three consolidated cases. Pertinent to the pending matter, the jury convicted defendant of one count of first-degree felony murder, contrary to MCL 750.316(1)(b). The Court sentenced defendant to what was – at the time – a mandatory sentence of life without parole on his murder conviction. After the trial and sentencing, but before his appeal was final, the United States Supreme Court issued *Miller v Alabama*, 576 US \_\_\_\_; 132 S Ct 2455; 183 L Ed 2d 407 (2012), holding that a *mandatory* life sentence cannot be imposed on a juvenile defendant and that a trial court must instead consider several factors in deciding whether to sentence a juvenile to life or to some term of years. Given the holding in *Miller*, the Court of Appeals remanded this case for resentencing.

This Court conducted a resentencing hearing on October 21 and 24, 2014. The Court has carefully considered the arguments presented at this hearing. The Court indicated that if the

parties wished to submit sentencing memoranda or briefs, they would be due on December 12, 2014. Defendant submitted an additional sentencing brief, which this Court has reviewed.

## II. Law

As a preliminary matter, the Court finds that it is expedient to quote the Supreme Court's decision in *Miller* at some length, in order to clarify the factors which must be considered by a trial court in sentencing a juvenile convicted of first degree murder:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

*Miller*, 132 S Ct at 2468 (emphasis added).<sup>1</sup>

Ultimately, the United States Supreme Court concluded that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders. *Id.* The Court declined to consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical ban on life without parole for juveniles or at least for those 14 years and younger. *Id.* That said, the Court opined that appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. *Id.* While the Supreme Court did not foreclose a sentencer's ability to make that

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<sup>1</sup> It is worth noting that the Michigan Supreme Court's decision in *People v Carp*, 496 Mich 440, 465; \_\_\_ NW2d \_\_\_ (2014), lists the factors to be considered under *Miller* by block quoting this portion of *Miller*. See *supra*.



judgment in homicide cases, the Court required the sentencer to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison. *Id.*

### III. Analysis

#### A. Chronological Age and Hallmark Features

With the relevant law in mind, the Court shall now discuss each of the factors set forth in *Miller* in turn, as they apply to the facts of this case. The first factor is defendant's chronological age and its hallmark features. Defendant was 17 years and eight months old at the time of his offense. Had he committed his offense four months later, life without parole would be mandatory and resentencing would be impermissible. Defendant's own expert witness, Dr. Daniel Keating, a neuroscientist and expert in adolescent brain development, testified that "there would be no known reasons to assume significant difference between the rehabilitative prospects between 17 and 18." Trans. of 10/21/14 at 43 (Keating).

The Court must also consider the "hallmark features" of the defendant's age, including immaturity, impetuosity, and failure to appreciate risks. Dr. Keating testified that the limbic system – which serves as "an arousal system, . . . an incentive system, and a reward system" – is much more active during one's teenage years than as an adult. *Id.* at 20-21 (Keating). Dr. Keating further testified that the prefrontal cortex governs "executive function" and "is designed as a brake on the [limbic] system but it develops much more slowly than the limbic system." *Id.* at 23 (Keating). He explained that there is a "developmental maturity mismatch" between the limbic system and the prefrontal cortex. *Id.* at 24-25 (Keating). He explained that "[t]he prefrontal cortex . . . doesn't reach full maturity until the mid-20s." *Id.* at 23 (Keating). As a result, teenagers tend to engage in "generally reckless behavior." *Id.* at 28 (Keating).

Defendant's guardian ad litem opined that in terms of maturity, defendant "was probably in the middle" out of the 5,000 to 8,000 children he had represented over the years. *Id.* at 108-109 (Ladd). However, the guardian ad litem opined that "[t]hat's not very mature compared to the general population." *Id.* at 109 (Ladd).

In light of the foregoing, the Court finds that defendant's chronological age and its hallmark features do not justify sentencing defendant differently than an 18 year old criminal defendant. *Miller* dealt with juvenile defendants who were a mere 14 years old at the time of their offenses – a far cry from this case. Defendant was only 4 months away from being an adult. Moreover, while the testimony established that the prefrontal cortex continues to develop into one's mid-twenties, the Court is not free to take this developmental disconnect into consideration when a criminal defendant is over 18. To the contrary, the Court is *required* to impose mandatory life without parole in first degree murder cases for defendants who are only 4 months older than defendant was when he committed his crimes. There was nothing in the testimony or evidence presented which suggests that treating defendant differently from an 18 year old would be warranted in this case. Upon careful consideration, the Court finds that this factor favors imposing a sentence of life without the possibility of parole.

#### **B. Family and Home Environment**

There was essentially uncontroverted evidence that defendant's family and home environment was terrible. Defendant came to the United States from Lebanon as a child and initially lived with relatives in California, but "there were problems with mistreatment there and the relatives no longer wanted to or should care for [him]." See Trans. of 10/21/14 at 105 (Ladd). He and his sister were staying with an aunt in Dearborn and "there were allegations of physical abuse and sexual abuse and neglect involving both of the children." *Id.* at 104 (Ladd).

Defendant first came into the foster care system based on an abuse and neglect case. *Id.* at 103 (Ladd). According to his case worker, “there was definitely a language barrier. . . .” *Id.* at 83 (Keller). However, child-placing agencies do not consider the cultural and language needs of the child, and are “oftentimes prohibited from doing that under the federal law.” Trans. of 10/24/14 at 26 (Vandervort).

Defendant’s guardian ad litem estimated that he was in at least ten different foster homes, and opined that “progressively it made it worse and worse for him.” Trans. of 10/21/14 at 112 (Ladd). Defendant “was smoking marijuana” with one foster mother, and “witnessing the foster mother having inappropriate sexual actions in front of him.” *Id.* at 87 (Keller). At some point, defendant stopped developing attachments to others. Trans. of 10/24/14 at 23 (Vandervort).

Defendant was “aggressive towards peers and towards teachers. He would walk out of class. Fight.” Trans. of 10/21/14 at 90 (Keller). His involvement with the juvenile justice system began in 2008, with assault and battery and a drug offense. *Id.* at 113 (Ladd). Defendant’s guardian ad litem estimated that there were at least five juvenile petitions concerning defendant during periods that he was AWOL from his placements. *Id.* at 132 (Ladd). His guardian ad litem opined that defendant “became more and more oriented towards being with kids on the street and [that was] the only place . . . where he felt that he belonged.” *Id.* at 112 (Ladd). It is also worth noting that defendant was diagnosed with ADHD, depression, and pediatric seizures. *Id.* at 85 (Keller). There was also testimony that defendant was diagnosed with epilepsy. Trans. of 10/24/14 at 18 (Vandervort).

Given this testimony, there is no question that defendant’s “family and home environment” was terrible. Defendant lacked stability, was abused, and eventually stopped

forming attachments with others altogether. As such, this factor likely weighs in defendant's favor.

**C. Circumstances of the Homicide Offense,**

**Extent of Participation, and Familial and Peer Pressure**

The next factor concerns the circumstances of the homicide offense, the extent of defendant's participation, and familial and peer pressure. Although testimony regarding the homicide offense was not specifically presented during the resentencing hearing, the circumstances of the offense were established during the trial in this matter. Defendant and his co-defendant, Robert Taylor, abducted Matthew Landry at gunpoint outside a sandwich shop in Eastpointe around 2:30 p.m. on August 9, 2009. Defendant used Landry's debit card to make over \$300 in withdrawals, drove to a gas station on the east side of Detroit, and went shopping for clothes at Eastland Mall. Around 9:30 p.m., Taylor drove defendant and Landry to a drug house in Detroit. Defendant purchased crack cocaine, and smoked it on the couch next to Landry. Landry was last seen alive at 10:00 p.m. Sometime thereafter, defendant shot Landry in the back of the head in a vacant house. Over the next several days, defendant committed additional violent crimes, employing Landry's vehicle as a getaway car. There was no evidence that any of defendant's criminal activity was precipitated by peer or family pressure.

Accordingly, this factor weighs heavily in favor of finding that a sentence of life without the possibility of parole is appropriate. Defendant had numerous opportunities to abandon his plan, and instead drove with his co-defendant and Matthew Landry around town for hours before killing Landry in cold blood. There is nothing in the facts and circumstances of the crime which would warrant anything less than life in prison without the possibility of parole.

**D. Incapacities of Youth**

Next, there was no evidence that the incapacities of youth caused defendant to be unable to participate in his defense. Nor is there any evidence that defendant implicated himself due to youthful incapacities. As such, this factor favors sentencing defendant to life without the possibility of parole.

#### **E. Possibility of Rehabilitation**

The final factor to consider is the possibility of rehabilitation. Dr. Keating testified that “it is very difficult to predict from this point in time out to the distant future whether there’s a zero or non-zero prospect of rehabilitation.” Trans. of 10/21/14 at 70 (Keating). Nevertheless, he acknowledged that “the rehabilitation challenges are certainly higher” in the case of a juvenile who “is capable of pulling a trigger.” *Id.* at 65 (Keating). Moreover, “patterns of behavior are predictive.” *Id.* at 55 (Keating). In short, “the worse the circumstances, the more likely it is for . . . nonresilience [i.e., no rehabilitation] to be the case.” *Id.* at 56 (Keating).

Dr. Danuloff, a clinical psychologist who evaluated defendant, testified that he cannot predict a future outcome with respect to defendant. Trans. of 10/24/14 at 55 (Danuloff). He acknowledged that defendant was basically “unsocialized, unattached, unattached in any kind of substantial way human relationships,” and viewed other people as “objects to meet his needs or not” at the time of his offense. *Id.* at 47 (Danuloff). He opined that defendant “may have been irreparably corrupt, but got lucky.” *Id.* at 57 (Danuloff). He testified that defendant had many misconducts towards the beginning of his incarceration, but that the last misconduct was in August of 2013. *Id.* at 51 (Danuloff). He testified that circumstances since defendant’s incarceration – specifically, solitary confinement and the *Miller* decision – have caused defendant to begin “to conceive of the idea of hope.” *Id.* at 48-49 (Danuloff). This has led to his

reading books and beginning “to have the capacity to self-explore,” although Dr. Danuloff stressed that “[t]his is very primitive. This is embryonic. . . .” *Id.* at 50 (Danuloff).

Dr. Danuloff also testified concerning several conversations he has had with defendant since his incarceration. For instance, he testified that defendant told him that “[e]ven a Godly person can punish people who bring harm to them. Even God did this.” *Id.* at 53 (Danuloff). Danuloff further testified that he asked defendant whether his crime was “righteous or evil,” and defendant responded “well, it was a little bit of both. . . . And what he said was, well, I didn’t have any choice.” *Id.* at 54 (Danuloff).

Having carefully reviewed all of the testimony and exhibits in this matter, the Court finds that this factor favors a sentence of life without the possibility of parole. The very difficulty of defendant’s upbringing – the only factor which could be said to weigh in favor of an indeterminate sentence – also suggests that defendant’s prospects for rehabilitation are minimal. None of the experts presented by defendant were ready to testify that defendant has undergone anything more than the first “embryonic” stirrings of moral sensibility. The Court finds it rather telling that defendant only began to avoid misconducts once the possibility of parole became a reality with the Supreme Court’s decision in *Miller*. Moreover, the Court finds it incredibly troubling that defendant continues to believe that his cold-blooded murder of Matthew Landry was partially “righteous.” Finally, the Court notes that even if defendant is experiencing the embryonic development of a rudimentary moral sensibility, it is implausible that he will experience full rehabilitation without intensive professional assistance – assistance which he is very unlikely to receive in prison. For all of these reasons, the Court concludes that defendant’s prospects for rehabilitation are negligible.

#### **IV. Summary of the Court’s Decision**

The Court has carefully considered the various factors set forth in Supreme Court's decision in *Miller*. The Court has reviewed the testimony presented at the resentencing hearing, and the exhibits presented. Having done so, the Court is satisfied that defendant's case presents precisely what the Supreme Court characterized as the "rare juvenile offender whose crime reflects irreparable corruption." *Roper v Simmons*, 543 US 551, 573; 125 S Ct 1183; 161 L Ed 2d 1 (2004). Based on the foregoing, the Court finds that defendant is properly sentenced to life in prison without the possibility of parole.

#### V. Conclusion

For the reasons set forth above, the Court finds that defendant is properly sentenced to life without the possibility of parole. Pursuant to MCR 2.602(A)(3), this Opinion and Order resolves the last pending claim and closes this case.

IT IS SO ORDERED.

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Hon. Diane M. Druzinski, Circuit Court Judge

Date: January 6, 2015

DMD/ac

cc: William L. Cataldo, Asst. Prosecuting Attorney  
Joshua D. Abbott, Asst. Prosecuting Attorney  
Valerie R. Newman, Esq.

DIANE M. DRUZINSKI

---

CIRCUIT JUDGE

JAN - 6

A TRUE COPY

CARMELLA SABAUGH, COUNTY CLERK

BY: Patricia K. Jones Court Clerk

Original - Court; 1st copy - Corrections; 2nd copy - Corrections (for return); 3rd copy - State Police CJIC; 4th copy - Defendant; 5th copy - Prosecutor

STATE OF MICHIGAN 16TH JUDICIAL CIRCUIT MACOMB COUNTY	AMENDED (RESENTENCE AS TO CT 1) JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS	CASE NO. 2009-005244-FC
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Address: Macomb County Circuit Court, 40 N. Main, Mt. Clemens, MI 48043  
ORI: MI - 500015J

Court telephone number: 586-469-5208  
Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN



Defendant name, address, and telephone no. IHAB MASALMANT		
CTN / TCN 500901030901 /	SID 3030458M	DOB 12/25/1991

Prosecuting attorney's name  
WILLIAM CATALDO P37673

Defendant's attorney name Bar no.  
VALERIE R. NEWMAN P47291

1. The defendant found guilty **RE-SENTENCE 1/6/2015 on Ct 1 only. Sentence on all other Cts remain unchanged** of the crime(s) stated below:

Count	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC Code
	Plea*	Court	Jury			
1			G		MURDER FIRST DEGREE-FELONY	750.316-B
2			G		CARJACKING	750.529A
3			G		CONSPIRACY-CARJACKING	750.529A[C]
4			G		KIDNAPPING	750.349
5			G		CONSPIRACY-KIDNAPPING	750.349[C]
6			G		LARCENY FROM THE PERSON	750.357
7			G		WEAPONS FELONY FIREARM	750.227B-A

\*For Plea: Insert "G" for guilty plea; "NC" for nolo contendere; or "MI" for guilty but mentally ill. \*For dismissal: insert "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff

2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).

3. HIV testing and sex offender registration has been ☒ completed ☐ ordered.

4. DNA ordered.

5. The defendant has been fingerprinted according to MCL 28.243.

IT IS ORDERED: 6. Probation is revoked

7. Participating in a special alternative incarceration unit is

☐ prohibited. ☐ permitted.

8. Defendant is sentenced to custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM		DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.		Mos.	Days	
1	1/06/2015	Life with out parole	0	0	0	0	1/06/2015	0	1254	Ct 7 consecutive to Ct 1 & concurrent with counts 2-3-4-5-6
2	11/4/2010	25	0	0	50	0	11/4/2010	0	449	This file is concurrent with 09-4832 FC & 09-5144FC
3	11/4/2010	25	0	0	50	0	11/4/2010	0	449	Deft objects to JA fees
4	11/4/2010	25	0	0	50	0	11/4/2010	0	449	
5	11/4/2010	25	0	0	50	0	11/4/2010	0	449	
6	11/4/2010	5	0	0	10	0	11/4/2010	0	449	
7	11/4/2010	2	0	0	0	0	11/4/2010	0	449	

9. Sentence(s) to be served consecutively to: (If this item is not checked, the sentence is concurrent)

☐ each other ☒ case numbers: CTS 2-3-4-5 & 6 CONCURRENT TO EACH OTHER

10. Defendant shall pay:

State Minimum	Crime Victim	Court Costs	Fine	Other Costs	Drug Court Fee	Bond Forfeiture Fees	Oversight Fee
\$408.00 & \$68.00 on Ct 1	\$130.00	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Total Defense Costs	Additional Defense Costs	20% Late Fee	Victim Restitution				
\$ 31,629.90	\$	\$ 0	\$ 306.00 Landry Family				

The due date for payment is date of sentencing. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

11. The concealed weapon board shall ☐ suspend for \_\_\_ days ☐ permanently revoke the concealed weapon license, permit number \_\_\_, issued by \_\_\_ County.

12. The defendant is subject to lifetime monitoring pursuant to MCL 780.520n. 13. Court recommendation:

JANUARY 6, 2015

*DIANE M DRUZINSKI*

Sentence Date

Judge DIANE M DRUZINSKI, Circuit Court Judge Bar. no. P48507

(12/13) - DOCJOS

RECEIVED by MSC 9/6/2019 1:09:33 AM



STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

Case No. 2009-5243-FC

ROBERT TAYLOR,

Defendant.

\_\_\_\_\_ /

OPINION AND ORDER

This matter is before the Court following a resentencing hearing.

**I. Factual and Procedural Background**

Following a jury trial, defendant was convicted of 6 total charges. Pertinent to the pending matter, the jury convicted defendant of one count of first-degree felony murder, contrary to MCL 750.316(1)(b). The Court sentenced defendant to what was – at the time – a mandatory sentence of life without parole on his murder conviction. After the trial and sentencing, but before his appeal was final, the United States Supreme Court issued *Miller v Alabama*, 576 US \_\_\_\_; 132 S Ct 2455; 183 L Ed 2d 407 (2012), holding that a *mandatory* life sentence cannot be imposed on a juvenile defendant and that a trial court must instead consider several factors in deciding whether to sentence a juvenile to life or to some term of years. Given the holding in *Miller*, the Court of Appeals remanded this case for resentencing.

This Court conducted a resentencing hearing on October 23 and 24, 2014. The Court has carefully considered the arguments presented at this hearing. The Court indicated that if the parties wished to submit sentencing memoranda or briefs, they would be due on December 12, 2014. Defendant submitted a sentencing memoranda which this Court considered.

## II. Law

As a preliminary matter, the Court finds that it is expedient to quote the Supreme Court's decision in *Miller* at some length, in order to clarify the factors which must be considered by a trial court in sentencing a juvenile convicted of first degree murder:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

*Miller*, 132 S Ct at 2468 (emphasis added).<sup>1</sup>

Ultimately, the United States Supreme Court concluded that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders. *Id.* The Court declined to consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical ban on life without parole for juveniles or at least for those 14 years and younger. *Id.* That said, the Court opined that

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<sup>1</sup> It is worth noting that the Michigan Supreme Court's decision in *People v Carp*, 496 Mich 440, 465; \_\_\_ NW2d \_\_\_ (2014), lists the factors to be considered under *Miller* by block quoting this portion of *Miller*. See *supra*.

appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. *Id.* While the Supreme Court did not foreclose a sentencer's ability to make that judgment in homicide cases, the Court required the sentencer to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison. *Id.*

### III. Analysis

#### A. Chronological Age and Hallmark Features

Having set forth the relevant legal principles, the Court must now apply these principles to the facts of this case. The Court shall first address defendant's chronological age and its hallmark features. Defendant was 16 years and 10 months old at the time of his offense. While defendant was thus about 10 months younger than co-defendant Masalmani, he was still much older than the 14 year old defendants in *Miller*.

With respect to the "hallmark features" of the defendant's age, including immaturity, impetuosity, and failure to appreciate risks, defendant's attorney indicated that defendant would rely on the testimony of Masalmani's expert, Dr. Daniel Keating. See Trans. of 10/24/14 at 3-4 (Simon). Dr. Keating testified that the limbic system – which serves as "an arousal system, . . . an incentive system, and a reward system" – is much more active during one's teenage years than as an adult. Trans. of 10/21/14 at 20-21 (Keating). Dr. Keating further testified that the prefrontal cortex governs "executive function" and "is designed as a brake on the [limbic] system but it develops much more slowly than the limbic system." *Id.* at 23 (Keating). He explained that there is a "developmental maturity mismatch" between the limbic system and the prefrontal cortex. *Id.* at 24-25 (Keating). He explained that "[t]he prefrontal cortex . . . doesn't reach full

maturity until the mid-20s.” *Id.* at 23 (Keating). As a result, teenagers tend to engage in “generally reckless behavior.” *Id.* at 28 (Keating).

In light of the foregoing, the Court finds that defendant’s chronological age and its hallmark features do not significantly mitigate defendant’s culpability. This pending case is readily distinguishable from *Miller*, since *Miller* dealt with juvenile defendants who were 14 years old at the time of their offenses – roughly two years younger than defendant. While the testimony established that the prefrontal cortex continues to develop into one’s mid-twenties, the Court is not free to take this developmental disconnect into consideration when a criminal defendant is over 18. Defendant was a mere 14 months shy of his 18th birthday at the time of his offense, suggesting that this developmental disconnect between his prefrontal cortex and his limbic system was not much more pronounced than that of an 18 year old. In short, while this factor does not weigh as heavily against defendant as it did against his co-defendant, Masalmani, the Court is not convinced that this factor mitigates against a sentence of life without the possibility of parole.

#### **B. Family and Home Environment**

Defendant’s mother was 13 years old when she had her first child. Trans. of 10/23/14 at 16 (Schaefer). He “grew up in a very unstable and unsafe environment. He was born in 1992 and his family had an active child protective care record that went back to 1998.” *Id.* (Schaefer). “There was a lack of discipline and rules. He was exposed . . . to physical neglect and violence in the home. . . . There was significant exposure to substance abuse.” *Id.* (Schaefer). Defendant’s father abused alcohol and crack cocaine. *Id.* (Schaefer). Additionally, “his father was not present” and he “did not receive any emotional or physical support from his father of

any kind.” *Id.* (Schaefer). His mother “did not provide adequate food and shelter at times. . . .” *Id.* at 17 (Schaefer).

Given the undisputed testimony, there is no question that defendant’s family and home environment was far from optimal. Accordingly, this factor could arguably favor some leniency for defendant.

### **C. Circumstances of the Homicide Offense,**

#### **Extent of Participation, and Familial and Peer Pressure**

The next factor concerns the circumstances of the homicide offense, the extent of defendant’s participation, and familial and peer pressure. Although testimony regarding the homicide offense was not specifically presented during the resentencing hearing, the circumstances of the offense are well established based on the trial in this matter. Defendant and his co-defendant, Ihab Masalmani, abducted Matt Landry at gunpoint outside a sandwich shop in Eastpointe around 2:30 p.m. on August 9, 2009. Masalmani used Landry’s debit card to make over \$300 in withdrawals, they drove to a gas station on the east side of Detroit, and went shopping for clothes at Eastland Mall. Around 9:30 p.m., defendant drove Masalmani and Landry to a drug house in Detroit, where Masalmani purchased crack cocaine. Defendant sat on the couch with Landry while Masalmani smoked. Landry was last seen alive at 10:00 p.m. Sometime thereafter, Masalmani shot Landry in the back of the head in a vacant house. Defendant’s expert on probation, Kathleen Schaefer, declined to testify regarding “the details about the specifics of the case,” but testified that “in general, . . . peer pressure is an issue for children.” *Id.* at 18. That said, there was no evidence or testimony tying any of defendant’s criminal activity to direct peer or family pressure.

In short, this factor weighs in favor of finding that defendant's sentence of life without the possibility of parole is appropriate. Defendant drove Matt Landry around town for hours and facilitated his murder in cold blood. While the evidence did not establish that defendant literally pulled the trigger, his actions were still quite culpable. There is no evidence that defendant did not expect the murder to occur, or that he attempted to remove himself from the situation or dissuade his codefendant from his course of action. To the contrary, the evidence suggests that defendant was willfully engaged in the criminal activity which led to Matthew Landry's death. Simply put, the Court finds that there is nothing in the facts and circumstances of the crime which would warrant anything less than life in prison without the possibility of parole.

#### **D. Incapacities of Youth**

Next, there was no evidence that the incapacities of youth caused defendant to be unable to participate in his defense. Nor is there any evidence that defendant implicated himself due to youthful incapacities. Accordingly, this factor favors sentencing defendant to life without the possibility of parole.

#### **E. Possibility of Rehabilitation**

The last factor which this Court shall consider is the possibility of rehabilitation. Dr. Keating testified that "it is very difficult to predict from this point in time out to the distant future whether there's a zero or non-zero prospect of rehabilitation." Trans. of 10/21/14 at 70 (Keating). Nevertheless, he acknowledged that "the rehabilitation challenges are certainly higher" in the case of a juvenile who "is capable of pulling a trigger." *Id.* at 65 (Keating). Moreover, "patterns of behavior are predictive." *Id.* at 55 (Keating). In short, "the worse the circumstances, the more likely it is for . . . nonresilience [i.e., no rehabilitation] to be the case."

*Id.* at 56 (Keating). Defendant's own witness, Kathleen Schaefer, agreed that there is no test that can indicate whether a person can be rehabilitated. Trans. of 10/23/14 at 21 (Schaefer).

Upon careful consideration, the Court finds that this factor favors a sentence of life without the possibility of parole. The difficulty of defendant's upbringing is the only factor which could be said to weigh in favor of an indeterminate sentence, but this factor also suggests that defendant's prospects for rehabilitation are minimal. It is particularly telling that there was no testimony or evidence suggesting that defendant has shown any signs of rehabilitation to date. Nor is there even any evidence that defendant has accepted any responsibility for his part in the offense. This notwithstanding the fact that approximately five years have passed since defendant committed his crime. Consequently, the Court concludes that defendant's prospects for rehabilitation are negligible.

#### **IV. Summary of the Court's Decision**

The Court has carefully considered the various factors set forth in Supreme Court's decision in *Miller*. The Court has reviewed the testimony presented at the resentencing hearing, and the exhibits presented. Having done so, the Court is satisfied that defendant's case presents precisely what the Supreme Court characterized as the "rare juvenile offender whose crime reflects irreparable corruption." *Roper v Simmons*, 543 US 551, 573; 125 S Ct 1183; 161 L Ed 2d 1 (2004). Based on the foregoing, the Court finds that defendant is properly sentenced to life in prison without the possibility of parole.

#### **V. Conclusion**

For the reasons set forth above, the Court finds that defendant is properly sentenced to life without the possibility of parole. Pursuant to MCR 2.602(A)(3), this Opinion and Order resolves the last pending claim and closes this case.

IT IS SO ORDERED.

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Hon. Diane M. Druzinski, Circuit Court Judge

Date: January 6, 2015

DMD/ac

cc: William L. Cataldo, Asst. Prosecuting Attorney  
Joshua D. Abbott, Asst. Prosecuting Attorney  
Jonathan B.D. Simon, Esq.

DIANE M. DRUZINSKI

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CIRCUIT JUDGE

JAN - 6 2015

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GARMELLA SABAUGH, COUNTY CLERK

BY: Patricia K. Jones Court Clerk



STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IHAB MASALMANI,

Defendant-Appellant.

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UNPUBLISHED

September 22, 2016

No. 325662

Macomb Circuit Court

LC No. 2009-005244-FC

Before: BORRELLO, P.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Defendant was convicted at a jury trial of first-degree felony murder, MCL 750.316(1)(b), carjacking, MCL 750.529a, conspiracy to commit carjacking, MCL 750.529a; MCL 750.157a, kidnapping, MCL 750.349, conspiracy to commit kidnapping, MCL 750.349; MCL 750.157a, larceny from the person, MCL 750.357, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was originally sentenced to mandatory life imprisonment without the possibility of parole for the first-degree felony murder conviction, 25 to 50 years' imprisonment each for the carjacking, conspiracy to commit carjacking, kidnapping, and conspiracy to commit kidnapping convictions, 5 to 10 years' imprisonment for the larceny from the person conviction, and two years' imprisonment for the felony-firearm conviction.<sup>1</sup> On defendant's appeal by right, this Court affirmed defendant's convictions but vacated his mandatory sentence of life imprisonment without the possibility of parole for the first-degree felony murder conviction and remanded for resentencing on that offense in accordance with *Miller v Alabama*, 567 US \_\_; 132 S Ct 2455; 183 L Ed 2d 407 (2012). *People v Masalmani*, unpublished opinion per curiam of the Court of Appeals, issued March 19, 2013 (Docket Nos. 301376, 301377, 301378), p 7. The trial court on remand resentenced defendant to life imprisonment without the possibility of parole for the first-degree

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<sup>1</sup> Defendant was also convicted of and sentenced for numerous other charges in two other cases that were consolidated for trial with the instant case, and this Court affirmed those convictions and sentences. See *People v Masalmani*, unpublished opinion per curiam of the Court of Appeals, issued March 19, 2013 (Docket Nos. 301376, 301377, 301378), pp 1-2. Those two cases that were consolidated with the instant case are not presently before this Court, and we therefore do not list those convictions and sentences.

felony murder conviction. Defendant now appeals by right the sentence imposed on remand. We affirm.

Defendant argues that the trial court erred in imposing a life without parole sentence on remand. We disagree. “[T]he appropriate standard of review in cases where a judge imposes a sentence of life without parole on a juvenile defendant is a common three-fold standard . . . .” *People v Hyatt*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2016) (Docket No. 325741); slip op at 25. The trial court’s findings of fact are reviewed for clear error, questions of law are reviewed de novo, and the court’s ultimate determination as to an appropriate sentence is reviewed for an abuse of discretion. *Id.*

In *Miller*, 132 S Ct at 2460, the United States Supreme Court held that a sentence of “mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on ‘cruel and unusual punishments.’ ”

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. . . . And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it. [*Id.* at 2468.]

“By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment.” *Id.* at 2469. The Supreme Court declined to consider the defendants’ arguments for a categorical prohibition of life without parole sentences for juveniles but stated that “appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” *Id.* The Supreme Court noted that it was difficult to distinguish “at this early age between the juvenile offender whose crimes reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Id.* (quotation marks and citations omitted). “Although we do not foreclose a sentencer’s ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.*

Following the issuance of *Miller*, our Legislature enacted MCL 769.25, which became effective on March 4, 2014. See 2014 PA 22. The statute applies to a defendant who was less than 18 years old at the time he or she committed the offense. MCL 769.25(1). The prosecutor may file a motion to sentence a defendant convicted of first-degree murder to life without parole. MCL 769.25(2) and (3). If the prosecutor files such a motion in conformance with the statutory requirements, the trial court must conduct a hearing at which the court considers the factors listed

in *Miller* and any other relevant criteria, including the defendant's prison record. MCL 769.25(6). At the hearing, the trial court must specify the aggravating and mitigating circumstances and the reasons for the sentence imposed; the court may consider evidence presented at trial and evidence presented at the sentencing hearing. MCL 769.25(7). If the trial court declines to impose a life without parole sentence, the court must impose a sentence in which the maximum term is at least 60 years and the minimum term is between 25 and 40 years. MCL 769.25(9).

Although the trial court's ultimate determination of the appropriate sentence is reviewed for an abuse of discretion, "the imposition of a juvenile life-without-parole sentence requires a heightened degree of scrutiny regarding whether a life-without-parole sentence is proportionate to a particular juvenile offender, and even under this deferential standard, an appellate court should view such a sentence as inherently suspect." *Hyatt*, \_\_\_ Mich App at \_\_\_; slip op at 26. "[A]ppellate review of a juvenile life-without-parole sentence cannot be a mere rubber-stamping of the penalty handed out by the sentencing court." *Id.* Although such a sentence is not presumed to be unconstitutional, a searching inquiry into the record must be undertaken with "the understanding that, more likely than not, the sentence imposed is disproportionate." *Id.* A sentencing court abuses its discretion if it " 'fails to consider a relevant factor that should have received significant weight, gives significant weight to an improper or irrelevant factor, or considers only appropriate factors but nevertheless commits a clear error of judgment by arriving at a sentence that lies outside the limited range of choice dictated by the facts of the case.' " *Id.* at 27, quoting *United States v Haack*, 403 F3d 997, 1004 (CA 8, 2005).

In *Hyatt*, \_\_\_ Mich App at \_\_\_; slip op at 27-28, this Court concluded that the trial court had failed to adhere to the directives in *Miller* and its progeny "about the rarity with which a life-without-parole sentence should be imposed." Although the trial court in *Hyatt* focused on the *Miller* factors, "the court gave no credence to *Miller*'s repeated warnings that a life-without-parole sentence should only be imposed on the rare or uncommon juvenile offender." *Hyatt*, \_\_\_ Mich App at \_\_\_; slip op at 28. Moreover, the trial court in *Hyatt* had emphasized a psychologist's opinion that the defendant's prognosis for change in the next five years was poor; the focus on a five-year period was inconsistent with the holding in *Miller* "that a life-without-parole sentence will be proportionate for the juvenile who is irreparably corrupt and incapable of change – not one who is incapable of change within the next five years." *Id.* This Court therefore remanded the case for resentencing and directed the trial court "to not only consider the *Miller* factors, but to decide whether this individual is the truly rare juvenile mentioned in *Miller* who is incorrigible and incapable of reform." *Id.*

In the present case, the trial court did not err in analyzing each of the *Miller* factors and finding that defendant is the rare juvenile offender who is irreparably corrupt. The trial court expressed full appreciation of the rarity of the circumstances in which a juvenile offender will be deemed incapable of reformation. The court quoted and discussed relevant portions of the holding and analysis in *Miller*, and noted the admonition in *Miller* that appropriate occasions to sentence juveniles to life without parole will be uncommon. Then, after analyzing the *Miller* factors, the trial court concluded "that defendant's case presents precisely what the Supreme Court characterized as the 'rare juvenile offender whose crime reflects irreparable corruption.' " Accordingly, the trial court accorded appropriate recognition and made pertinent findings

regarding the rarity of circumstances warranting a life without parole sentence for a juvenile offender.

Moreover, the trial court's conclusion that defendant is the rare juvenile offender for whom a life without parole sentence is warranted was supported by the court's accurate analysis of the *Miller* factors. We will now discuss each of the *Miller* factors.

The first factor concerns defendant's age and its hallmark features. *Miller*, 132 S Ct at 2468. Defendant was 17 years and 8 months old when he committed the offenses (in marked contrast to the 14-year-old defendants in *Miller*, 132 S Ct at 2460<sup>2</sup>). The record refutes any claim that the hallmark features of adolescence identified in *Miller*, 132 S Ct at 2468, including immaturity, impetuosity, and a failure to appreciate risks and consequences, played any role in defendant's crimes. This was not, as in *Miller*, 132 S Ct at 2465, a mere botched robbery that turned into a killing. Defendant engaged in an unusually horrific, disturbing, and violent crime spree that extended over a three-day period. Defendant, aided by codefendant Robert Taylor, brazenly and forcibly kidnapped and carjacked Matt Landry in broad daylight outside a restaurant, punched and dragged him by the neck, drove his car, held him captive for at least seven hours, used his ATM card to steal his money and buy numerous items. He then took Landry to a drug house where defendant bought and consumed crack cocaine. Finally, defendant took Landry to a nearby vacant house where he killed him in a brutal execution style by shooting him in the back of the head. Defendant then committed additional violent crimes over the next two days, including robbing a bank and its customers, kidnapping a bank customer, and another carjacking. Landry's significantly decomposed body was found two days later inside the vacant burned out house where he had been shot in the back of the head. From the position of the body, it appeared that Landry had been kneeling at the time of his murder. Defendant's criminal actions over an extended period of time are not reflective of a merely immature or impetuous adolescent who fails to appreciate risks and consequences.

Defendant relies on testimony by Dr. Daniel P. Keating, defendant's expert in cognitive and brain development in adolescents, about a developmental maturity mismatch in which an adolescent's limbic system matures more quickly than the prefrontal cortex. This testimony has minimal bearing on these facts, and Dr. Keating did not meet or interview defendant. He was

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<sup>2</sup> The Supreme Court in *Miller* indicated that it is appropriate to take into account the differences between juveniles of different ages. In particular, when explaining the flaws of a scheme of mandatory life imprisonment without parole for juveniles, the *Miller* Court said: "Under these schemes, every juvenile will receive the same sentence as every other—the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one." *Miller*, 132 S Ct at 2467-2468. The *Miller* majority criticized the dissents in *Miller* for repeatedly referring to 17-year-olds who have committed heinous offenses and comparing those defendants to the 14-year-old defendants in *Miller*. The *Miller* majority explained: "Our holding requires factfinders to attend to exactly such circumstances – to take into account the differences among defendants and crimes. By contrast, the sentencing schemes that the dissents find permissible altogether preclude considering these factors." *Id.* at 2469 n 8.



only addressing generic brain science. Defendant's reliance on Dr. Keating's testimony that the prefrontal cortex is not fully developed until a person reaches his or her middle twenties fails to consider that an offender who is only four months older than defendant is subject to a *mandatory* life without parole sentence. Dr. Keating acknowledged that a person who is 17 years and 8 months old is not significantly different in brain development from an 18-year-old person. Also, William Ladd, who was defendant's lawyer guardian ad litem (LGAL) for many years, testified that defendant fell within the middle range in terms of maturity of the 5,000 to 8,000 children with whom Ladd had worked in his 30 years of experience. In sum, defendant's chronological age and its hallmark features do not weigh in favor of mitigation.

The next factor concerns defendant's family and home environment. *Miller*, 132 S Ct at 2468. The trial court correctly noted that there was uncontroverted testimony that defendant had a terrible family and home environment, having been subjected to abuse and neglect by relatives in the United States after having been sent here from Lebanon as a child. Defendant was placed in at least 10 foster homes. He was diagnosed with ADHD, depression, and pediatric seizures. Services meant to address his special needs were not continuously provided. Further, cultural and linguistic considerations were not adequately taken into account. As defendant was moved from one foster care placement to another, he lost the ability to form attachments with parental figures and became more oriented toward being out on the streets, eventually becoming involved in gangs. In school, defendant struggled academically and began getting into fights and exhibiting disrespect to his teachers. Defendant had juvenile delinquency cases for assault and drug offenses; he pleaded guilty to misdemeanors and became a delinquent court ward. In light of the terrible circumstances of defendant's family and home environment, the trial court properly weighed this factor in favor of defendant and against a life without parole sentence.

The next factor is "the circumstances of the homicide offense, including the extent of [defendant's] participation in the conduct and the way familial and peer pressures may have affected him." *Miller*, 132 S Ct at 2468. As discussed, defendant actively participated in the crimes. There is no indication that any family or peer pressure led defendant to commit the crimes. Defendant held Landry captive for at least seven hours, used his ATM card to obtain Landry's money, purchased multiple items with that money, took Landry to a drug house where defendant consumed crack cocaine, and then took Landry to a nearby vacant house where defendant shot Landry in the back of the head in a cold-blooded execution-style murder. Defendant then committed additional violent crimes over the next two days and used Landry's vehicle as a getaway car. Defendant had more than ample opportunity to abandon his criminal acts during the many hours that he held Landry captive and used his money before killing him in a brutal fashion. Given defendant's extensive participation in these disturbing criminal acts and the absence of any family or peer pressure on defendant, the trial court did not err in heavily weighing this factor against defendant and concluding that it did not favor mitigation.

The next *Miller* factor is whether defendant "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys." *Miller*, 132 S Ct at 2468. The trial court correctly noted that there is no evidence of any incapacities of youth that rendered defendant unable to participate in his defense or that led him to implicate himself. This factor therefore did not weigh in favor of mitigation.

The final factor is the possibility of rehabilitation suggested by the circumstances. *Miller*, 132 S Ct at 2468. Dr. Keating explained that a person's prospects for rehabilitation are associated with his or her developmental history. Negative experiences and behaviors during a person's developmental period increase the probability that the person will not succeed in rising above difficulties. Some people do not change; the worse the circumstances, the more likely that the person will not overcome their circumstances. Greater rehabilitation challenges exist for someone who purposely shot another.

Dr. Lyle Danuloff, a clinical psychologist who met with defendant for more than four hours over three different visits, explained that when defendant committed the crimes in this case, he was unattached in human relationships, living on the streets, and living an amoral life "with the sense of what do I need and what do I need to do to get my needs met. He lived in the moment and did not live with any sense of right and wrong." When defendant committed the crimes, he was AWOL from his last placement, running the streets with other young people, consuming marijuana, selling drugs, and lacking any personhood in terms of relating to other people as fellow human beings rather than objects to meet his needs. Dr. Danuloff thinks that defendant has experienced turning points in his development. Defendant "got lucky" because he was placed in segregation where he is alone in his cell 23 hours a day and because he learned about the *Miller* decision, so he now has a hope of someday obtaining a parole hearing. While alone in his cell, defendant began to read the Bible and other books to learn how people treat one another and the difference between righteousness and evil. Dr. Danuloff opined that the possibility of a parole hearing motivated defendant to begin to explore himself and try to understand who he is, what he did, and why he did it. In Dr. Danuloff's view, defendant is beginning to have a very primitive and embryonic capacity to explore himself and ask questions about himself. Defendant stopped getting misconduct tickets in prison. Defendant also became a prison barber and a representative of his prison housing unit.

Dr. Danuloff testified that defendant said that "[e]ven a Godly person can punish people who bring harm to them. Even God did this." When asked whether what he did in this case was righteous or evil, defendant said that "it was a little bit of both." Defendant explained, "[W]ell, I didn't have any choice. It's how I was, it's how I lived, it's how I behaved." Defendant said, "I couldn't think of anything else to do. I was in a situation and I had to get—and I had to take care of the situation I was in." When asked how his actions were evil, defendant said that he hurt people badly, which indicates to Dr. Danuloff "the embryonic development of personhood." Dr. Danuloff thinks defendant is in the rudimentary stages of growing up by using people like Jesus and Muhammad as teachers and internalizing what he reads. Dr. Danuloff indicated that there is no way for a psychologist to predict how a person will behave in the future.

On cross-examination, Dr. Danuloff acknowledged that people normally cannot fix psychological problems by themselves and that psychotherapy is needed. Psychotherapy requires introspection and a willingness to work on oneself. Dr. Danuloff agreed that he saw defendant in the structured prison setting years after the crimes were committed and that he cannot say what defendant would be like if released.

The trial court correctly concluded that this factor did not favor mitigation. Although the difficulty of defendant's upbringing weighs in his favor, it also indicates that he faces significant challenges in improving himself, as reflected in the testimony of Dr. Keating and Dr. Danuloff.

We share the trial court's concern about defendant's comments to Dr. Danuloff reflecting that defendant thinks his actions in this case were partially righteous and that he did not have a choice. As discussed, defendant had more than ample opportunity to abandon his criminal activity in the many hours that he held Landry captive before brutally killing him. Hence, defendant's abhorrent belief that his actions were partially righteous and that he had no choice but to behave as he did, despite the horrific nature of his criminal acts committed over an extended period of time, indicates that defendant's prospects for rehabilitation are extremely remote or nonexistent. Defendant continued engaging in assaultive behavior after being incarcerated for the present offenses. He assaulted or attempted to assault staff personnel at the Macomb County Jail several times. After being transferred to prison, defendant incurred 23 misconduct tickets. Four of the tickets were for fighting, two were for engaging in threatening behavior, two were for possessing a weapon, one was for assault and battery of another prisoner, and another one was for assault resulting in serious physical injury to another prisoner. The fact that defendant stopped misbehaving in prison after learning of *Miller* does not necessarily reflect a rudimentary moral awakening, as Dr. Danuloff claimed. Defendant's improved behavior is just as, if not more, likely to reflect manipulation designed to obtain a lesser sentence, as the trial court found. This conclusion is also consistent with defendant's earlier diagnosis of antisocial personality disorder and the manipulative behaviors associated with that condition. Dr. Danuloff testified that persons diagnosed with antisocial personality disorder do not generally participate in psychotherapy unless mandated to do so and that the prognosis for such mandatory treatment is not positive. Moreover, even if defendant is beginning to exhibit a very rudimentary or embryonic capacity for self-exploration, we note Dr. Danuloff's testimony supports the trial court's conclusion that defendant is unlikely to make significant progress without intensive professional assistance, and no basis exists to conclude that he will receive intensive professional assistance in prison and achieve full rehabilitation. The trial court properly concluded that defendant's prospects for rehabilitation are negligible.

Overall, our review of the record indicates that the trial court accurately analyzed each of the *Miller* factors and correctly concluded that defendant is the rare juvenile offender whose crime reflects irreparable corruption. The trial court therefore did not abuse its discretion in determining that defendant should be sentenced to life imprisonment without parole.

Defendant next argues that the trial court erred in failing to empanel a jury at the *Miller* resentencing hearing. We disagree. This issue presents a question of law, which is reviewed de novo. *Hyatt*, \_\_\_ Mich App at \_\_\_; slip op at 2. Because defendant failed to preserve this issue by raising it below, *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007), our review is for plain error affecting substantial rights, *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

In *People v Skinner*, 312 Mich App 15, 20; 877 NW2d 482 (2015), rejected by *Hyatt*, \_\_\_ Mich App at \_\_\_; slip op at 21, the majority of a panel of this Court held "that the Sixth Amendment mandates that juveniles convicted of homicide who face the possibility of a sentence of life without the possibility of parole have a right to have their sentences determined by a jury." In *People v Perkins*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2016) (Docket Nos. 323454, 323876, 325741); vacated in part by *People v Perkins*, unpublished order of the Court of Appeals, entered February 12, 2016 (Docket Nos. 323454, 323876, 325741), and superseded in part by *Hyatt*, \_\_\_ Mich App at \_\_\_; slip op at 1, 21, another panel of this Court followed

*Skinner* only because it was obligated to do so, MCR 7.215(J)(2), and stated its opinion that *Skinner* was wrongly decided. In *Hyatt*, \_\_\_ Mich App at \_\_\_; slip op at 21, a conflict panel of this Court<sup>3</sup> rejected the analysis in *Skinner* and expressed agreement with the original panel in *Perkins*. The *Hyatt* conflict panel summarized its analysis as follows:

In sum, we find that *Miller*'s individualized sentencing mandate, as incorporated by MCL 769.25, does not run afoul of Sixth Amendment precedent. A judge, not a jury, is to make the determination of whether to impose a life-without-parole sentence or a term-of-years sentence under MCL 769.25. Accordingly, we reject the result reached in *Skinner* and conclude that the prior panel in this case was correct in its analysis. [*Hyatt*, \_\_\_ Mich App at \_\_\_; slip op at 21.]

Therefore, the trial court in this case did not err by failing to empanel a jury at the *Miller* hearing because the conflict panel in *Hyatt* rejected the portion of *Skinner* on which defendant relies.

We affirm.

/s/ Jane E. Markey  
/s/ Michael J. Riordan

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<sup>3</sup> Before the issuance of the conflict panel's opinion in *Hyatt*, the conflict panel issued an order vacating an earlier order that had consolidated *Perkins*, *Hyatt*, and another case, so that only *Hyatt* proceeded before the conflict panel. See *People v Perkins*, unpublished order of the Court of Appeals, issued April 26, 2016 (Docket Nos. 323454, 323876, 325741). That is why the conflict panel's opinion was decided under a different case name.



STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IHAB MASALMANI,

Defendant-Appellant.

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FOR PUBLICATION  
September 22, 2016

No. 325662  
Macomb Circuit Court  
LC No. 2009-005244-FC

Before: BORRELLO, P.J., and MARKEY and RIORDAN, JJ.

BORRELLO, P.J. (*concurring*).

I concur in the result reached by my colleagues solely because I am bound by this Court's flawed reasoning in *People v Hyatt*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2016). I write separately this one time to briefly express my belief that contrary to the flawed analysis contained throughout *Hyatt* and for the reasons set forth in *People v Skinner*, 312 Mich App 15, 20; 877 NW2d 482 (2015), defendant possesses a Sixth Amendment right to choose whether he will be sentenced by a judge or a jury. However, recognizing that I am bound by *Hyatt*, I therefore must concur with the decision reached by my colleagues in this matter.

/s/ Stephen L. Borrello

# Order

April 5, 2019

154773 & (64)

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

IHAB MASALMANI,  
Defendant-Appellant.

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STATE APPELLATE  
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SC: 154773  
COA: 325662  
Macomb CC: 2009-005244-FC

28199 EVC  
Michigan Supreme Court  
Lansing, Michigan

Bridget M. McCormack,  
Chief Justice

David F. Viviano,  
Chief Justice Pro Tem

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

By order of May 2, 2017, the application for leave to appeal the September 22, 2016 judgment of the Court of Appeals was held in abeyance pending the decisions in *People v Skinner* (Docket No. 152448) and *People v Hyatt* (Docket No. 153081). On order of the Court, the cases having been decided on June 20, 2018, 502 Mich 89 (2018), the application is again considered, and it is GRANTED, limited to the issue whether, in exercising its discretion to impose a sentence of life without parole (LWOP), the trial court properly considered the “factors listed in *Miller v Alabama*, [567 US 460] (2012)” as potentially mitigating circumstances. MCL 769.25(6). See also *Skinner*, 502 Mich at 113-116. In particular, the parties shall address: (1) which party, if any, bears the burden of proof of showing that a *Miller* factor does or does not suggest a LWOP sentence; (2) whether the sentencing court gave proper consideration to the defendant’s “chronological age and its hallmark features,” *Miller*, 567 US at 477-478, by focusing on his proximity to the bright line age of 18 rather than his individual characteristics; and (3) whether the court properly considered the defendant’s family and home environment, which the court characterized as “terrible,” and the lack of available treatment programs in the Department of Corrections as weighing against his potential for rehabilitation. The time allowed for oral argument shall be 20 minutes for each side. MCR 7.314(B)(1). The motion to remand is DENIED.

The Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



10329

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

April 5, 2019

Clerk