

STATE OF MICHIGAN  
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

- VS -

CIR. CT. NO. 84-000574-FC  
C.D.A. NO. 345268  
M.S.C. NO. ~~34888~~  
160034

ROBIN RICK MANNING  
Defendant-Appellant /

\* \* \* AMICUS CURIAE BRIEF \* \* \*

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**ISSUE.**

**WHETHER THE DEFENDANT'S SUCCESSIVE MOTION FOR RELIEF FROM JUDGMENT IS "BASED ON A RETROACTIVE CHANGE IN THE LAW, MCR 6.502(G)(2)," WHERE THE LAW RELIED UPON DOES NOT AUTOMATICALLY ENTITLE HIM TO RELIEF; AND IF SO, WHETHER THE UNITED STATES SUPREME COURT'S DECISIONS IN MILLER V. ALABAMA, 567 US 469; 132 S. Ct. 2455; 183 L. Ed 2d. 407 (2012), AND MONTGOMERY V. LOUISIANA, 136 S. Ct. 718; 193 L. Ed. 2d. 599 (2016), SHOULD BE APPLIED TO 18 YEAR OLD DEFENDANTS CONVICTED OF MURDER AND SENTENCED TO MANDATORY LIFE WITHOUT PAROLE, UNDER THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION OR CONST. 1963, ART 1, § 16, OR BOTH.**

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STATEMENT OF JURISDICTION

This court has jurisdiction over this AMICUS CURIAE ACTION in the captioned case of "People v. Manning, 2019 Mich LEXIS 2320," where on Order of the Court, the application for leave to appeal the February 21, 2019 order of the Court of Appeals is considered, And by invitation is this brief submitted.

QUESTION(S) INVOLVED

I. WHETHER THE DEFENDANT'S SUCCESSIVE MOTION FOR RELIEF FROM JUDGMENT IS "BASED ON A RETROACTIVE CHANGE IN LAW," MCR 6.502(G)(2), WHERE THE LAW RELIED UPON DOES NOT AUTOMATICALLY ENTITLE HIM TO RELIEF, AND IF SO, WHETHER THE UNITED STATES SUPREME COURT'S DECISIONS IN MILLER V. ALABAMA, 567 US 460; 132 S. CT. 2455; 183 L. Ed 2d. 407 (2012), AND MONTGOMERY V. LOUISIANA, 136 S. CT. 718; 193 L. Ed. 2d. 599 (2016), SHOULD BE APPLIED TO 18 YEAR OLD DEFENDANTS CONVICTED OF MURDER AND SENTENCED TO MANDATORY LIFE WITHOUT PAROLE, UNDER THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION OR CONST 1963, ART 1, § 16, OR BOTH.

\* \* \* STATEMENTS OF FACTS \* \* \*

These are the stories of some of the other "Robin Rick Manning's" of the world, who were convicted of murder at the age of eighteen (18), and sentenced to life without the possibility of parole. A group of "late adolescent" teens who were raised in brutal, dysfunctional, high poverty environments. A group whose trauma preceded their juvenile experiences and through time and correctional programming, matured from the behavior that configured their incarceration.

\* \* \* \* \*

\* \* \* Terico Allen, Case No: 87-010096-FC \* \* \*

On October 2, 1987, at approx. 7:00 pm, an argument occurred between Tanisha Brown and Myiesha Cole at Mc Dougall's Coney Island restaurant located at 3121 Gratiot Street in Detroit, Michigan. Following the altercation, Ms. Cole left the restaurant and returned with a black male known as "Cornell." The incident began to escalate once "Cornell" slapped David Allen (the defendant's brother) who was accompanied by Tanisha Brown. David and Ms. Brown left the restaurant and took a cab to 3309 E. Forest. They exited the cab, asking the cab driver to wait, while they entered the E. Forrest residence.

David told his brother (Terico Allen) that a man slapped him at the restaurant. Terico and his friend (Antonio Lewis) armed with guns, exited the home and entered the cab with his brother and Ms. Brown. Returning to the restaurant, Terico pulled open the door, yelled something, and fired four (4) shots. Vincent Wims; age 16, was struck in the chest and died upon arriving at the hospital. Marvin Spencer and John Woodfox also suffered injuries behind this scene. Terico Allen was charged and convicted of first degree murder, two (2) counts of assault with intent to murder and felony firearms.

### Synopsis of Terico Allen's History

Terico L. Allen was born September 8, 1969 to David Allen and Chresandria Allen in Detroit, Michigan. He is the eldest of six children. Both his parents struggled with drug addictions. As a result of his parents drug use, the environment he grew up in was surrounded with crime. David was never around leaving Chresandria to raise her children by herself. Whenever Terico would act out, his punishment was handed down with belts and extension cords. With all the neglect, Terico began having trouble in school and started stealing and selling drugs at the age of 11.

Terico attended Detroit Public Schools but dropped out in the 10th grade. Terico was later arrested for Aggravated Assault, Robbery Unarmed, Assault and Battery, Possession of Heroin & Marijuana and Larceny from a Vehicle. He was then sent to juvenile detention for those crimes and became a ward of the state placed on intensive probation. Terico eventually dropped out of high school his sophomore year and started using drugs with his neighborhood peers. This behavior continued until the day of his current conviction.

### \* \* \* Ceko McDonald & Richard Ingram, Case NO: 90-0743-02-FC \* \* \*

On November 19, 1989, Ceko McDonald, Richard Ingram and several co-defendants met up at Richard's house on the west side of Detroit with the purpose of going to the east side to rob people of their jackets. Two of the co-defendants were armed with guns. While a crew of the co-defendants drove in a stolen vehicle, McDonald assisted another in robbing Mr. Larry Petton of his vehicle.

As the group traveled to the east side, in the vicinity of the City Airport,

one of the co-defendants robbed a man of his jacket. On returning to the westside, McDonald observed Mr. Raheem Wells jogging through a parking lot. The group approached Mr. Wells and robbed him of his jacket.

Returning to their vehicles, Ingram called out to one of the co-defendants to "come on, Lamar, come on." At that point, the co-defendant stated, "he heard my name, and I got to kill him." The co-defendant shot Mr. Wells four times and he died as a result of those gunshot wounds. Both McDonald and Ingram was charged and convicted of first degree felony murder, armed robbery, and conspiracy to commit unarmed robbery.

#### Synopsis of Ceko McDonald's History

Ceko McDonald was born September 8, 1971, to Thomas Earl and Mae Julia McDonald in Detroit, Michigan. Ceko was one of five children by the McDonald's. His father Thomas worked in a Automobile factory and his mother Mae worked as a assembly line worker at a packaging plant. Ceko's father Thomas was an alcoholic who assaulted his mother regularly.

As a youth, Thomas disciplined his children sternly with belts and sometimes his hands. Ceko never really started having trouble in school until he became a teenager. Ceko began affiliating with the neighborhood gang and started using drugs, alcohol, and carrying guns. At 16, Ceko was arrested several times for possession of cocaine and sent to the juvenile detention center. Ceko was later suspended from school for fighting and carrying a concealed weapon. This behavior continued until the day of his conviction.

### Synopsis of Richard Ingram's History

Richard Ingram was born November 8, 1971 to Edward Richard Ingram and Linda Ingram in Mobile, Alabama. The Ingram's moved to Detroit in 1973. Edward was a Vietnam Veteran and Mrs. Ingram was a "stay at home" mom. Edward was diagnosed with "PTSD" and physically abused Richard's mom. Edward later died and Linda met Johnny who took on the task as "father." Johnny abused alcohol and drugs. Linda started using drugs and Johnny would physically abuse her.

As things grew worse, Richard experienced corporal punishment whenever he misbehaved. Richard began having trouble in school and started using and selling drugs. Richard was arrested for possession of cocaine at 16 and curfew, then later larceny from a building and possession of cocaine again. Placed in juvenile detention and on probation. Richard's behavior continued until the day of his current conviction.

#### \* \* \* Shaun Scott, Case No: 92-779-FC \* \* \*

On October 17, 1991, Nathaniel McCormick, was walking on Norfolk between Livernois and Stoppel in Detroit, Michigan. At which time, Shaun Scott and Clifford Brazille exited a Pontiac Gram Am. Both Scott and Brazille confronted Mr. McCormick. Scott was in possession of a baseball bat. He was heard to say, "where's my money."

Scott struck Mr. McCormick on the head with the bat. Nathaniel McCormick fell to the ground and Scott struck him several more times. Brazille was seen firing a shot from a handgun in the direction where Mr. McCormick fell. Scott and Brazille entered the Gram Am and fled the scene. The following day, Nathaniel McCormick died at Receiving Hospital as a result of those injuries. The case

against Clifford Brazille was dismissed and Shaun Scott was charged and convicted of first degree murder.

### Synopsis of Shaun Scott's History

Shaun Scott was born on December 14, 1972 to a Leroy Thomas and Alneta Scott in Detroit, Michigan. He was the youngest of her four children. Leroy Thomas was a Vietnam Veteran who took no role in the parenting of Shaun. Alneta was married to Morte Scott, Sr. who loved and cared for Alneta and her children. Morte was a maintenance worker by day and criminal by night. He robbed, stole, gambled, and did whatever he could to put food on the table. Morte would have his run in with the law and found himself in the MDOC numerous times.

As a youth, Shaun witnessed this behavior by the only man he knew as his father. Shaun attended Public Schools and was expelled almost always for fighting. School eventually took a back seat and Shaun dropped out in the 11th grade and began running the streets, using and selling drugs and abusing alcohol. Shaun was arrested and charged with assault with intent to do Great Bodily Harm, carrying a concealed weapon, violating probation, minor in possession of Alcohol, Home Truancy and assault and battery incidents. This behavior continued until the day of his current conviction.

### \* \* \* Jermaine Stevenson, Case No: 92-000249-01-FC \* \* \*

On November 15, 1991, at approx. 10:35 pm, Westland Police Officers were responding to a report of a man shot. The officers went to 33570 Berville in Westland, Michigan, where they found Everette Bowen laying face down on the porch of that residence. Mr. Bowen was found to be suffering from a gunshot wound to the back and appeared dead. He was transported to the hospital and was pronounced dead at 11:00 pm.

A witness observed Bowen being chased by Jermaine Stevenson who shot Bowen twice as he fled. During a search for defendant Stevenson, David Adkins was found laying unconscious in the football field of Adams Jr. High School in Westland. Adkins survived the attack. Based on information from Adkins, witnesses, and other investigation, Jermaine Stevenson and several teens were all arrested in connection with these crimes. One co-defendant was acquitted, two others placed on juvenile probation until the age of 21, and defendant Stevenson was charged and convicted of first degree murder, assault with intent to murder, and felony firearms.

#### Synopsis of Jermaine Stevenson's History

Jermaine Stevenson was born August 23, 1973 to Suzette Stevenson who was 14 years of age when she had him. He was the eldest of six children by Ma. Stevenson. With no knowledge of his father, his mother dated and brought home men who abused her physically. Suzette neglected her children and was swallowed up in a world of drugs and prostitution. At age 14, Jermaine and his siblings became Ward of the State and entered the Foster Care System as a result of parental neglect. Jermaine bounced from various group homes. Jermaine was still under the jurisdiction of the juvenile Foster Care System at the time of his current conviction.

\* \* \* Andrew Jackson Lambert, Jr., No: 95-06237-01-FC \* \* \*

On May 9, 1995, the defendant, Andrew J. Lambert, Jr, was let into the 12234 Evanston residence in Detroit, Michigan by Anthony Sutton. According to Mr. Sutton, Lambert asked to see the homeowners Latanya Hannah and Jerome McClendon.

Mr. Sutton went upstairs to get Ms. Hannah who had a brief inquiry with Lambert before entering the kitchen for a beverage.

While at the location, the defendant Andrew J. Lambert, Jr. sat in the living room watching television with Kelvin Murphy and Michael James. By defendant's own admission, he and Mr. Murphy had a dispute over money for selling drugs. During that altercation, Kelvin reached in the couch cushion, then Lambert shot Kelvin and Michael and fled the scene to his residence. Andrew Jackson Lambert, Jr, was charged and convicted of first degree murder, assault with intent to murder, and felony firearms.

#### Synopsis of Andrew Jackson Lambert, Jr's History

Andrew Jackson Lambert, Jr. was born on August 13, 1976 to a Andrew Jackson Lambert, Sr. and Deborah Jean Lambert. He was the third of his parent's children. His father, Andrew, Sr, served in the U.S. Armed Services and was employed by City of Detroit as water meter mechanic but became disabled in 1987 and began receiving disability payments. Andrew, Sr. abused drugs and alcohol throughout his life time. He also gambled which caused the family financial problems and resulted in the family having to move from rental home to rental home during Andrew, Jr's childhood.

Both parents were stern disciplinarians and regularly inflicted corporal punishment on Andrew, Jr. and his siblings. Andrew, Sr. favored lashings with an extension cord, while Mrs. Lambert preferred a belt. At age 14, Andrew, Jr, started having trouble in school. He joined the neighborhood gang and started using and selling drugs, drinking alcohol and stealing. As a youth, he was arrested for shoplifting and concealing a starter pistol. The Juvenile Division of the Wayne County Probate Court disposed of the matter with a warning.

Andrew, Jr. dropped out of school altogether and was arrested again for Unlawfully Driving Away an Automobile, Malicious Destruction of Personal Property, Fleeing and Eluding, and Curfew. He was sent to the juvenile detention center and placed on probation. As the Probate Court terminated Lambert's probation, ten months later he was arrested for carrying a concealed weapon. Being placed on bond, the behavior continued until the day of his current conviction.

\* \* \* \* \*

### TRAUMA

Childhood trauma is overwhelmingly common. Through an influential long term study of over 17,000 people, researchers found that almost half of the youth reported serious adverse childhood experiences ("ACEs") such as abuse, violence, or abandonment. Further research has shown a clear link between the number of ACE's a child has experienced and the likelihood of difficulty in school or entry into the juvenile system.

Many people convicted of crime including those convicted of the most violent offenses, have been exposed to trauma. Forty percent of youths in the United States have been exposed to family violence by the time they reach adolescence. However, by some estimates, up to 75% of incarcerated men and women have experienced interpersonal violence, abuse, or childhood neglect. See, Robert L. Listenbee, Jr; et al; Report of the Attorney General's Taskforce on Children Exposed to Violence (2012); [http:// www.justice.gov/defending-childhood/ cav-rpt-full.pdf](http://www.justice.gov/defending-childhood/cav-rpt-full.pdf); Lauris Whitten, Addressing Trauma Among Incarcerated People, National Institute of Corrections.

Exposure to violence damages the behavioral domains that are centrally relevant to an assessment of a person's blameworthiness. The principle is firmly established in social science and child welfare circles. The adverse impact of early lifetime exposure to violence do not vanish when a child reaches to age of eighteen. In this respect, trauma influences behavior relevant to culpability. Article: In Defense Of The Injured: How Trauma Informed Criminal Defense Can Reform Sentencing 45 Am. J. Crim. L. 1, 6, 7 (2018), by Miriam S. Gohara. (Appendix "A") (Attached).

Neuroscientists have demonstrated that trauma alters the brain's pathways that govern: cognition; judgment; impulse control; empathetic understanding; regulation of emotions; perception of threat; ability to differentiate past, present, and future; and the filtering of information. Early lifetime exposure to trauma activates the brain's stress response in ways that affect brain development. Thus, trauma affects human behavior by altering Neuroanatomy. In Defense Of The Injured, at 20.

\* \* \* \* \*

In this Amicus Brief we intend to present information for this court to take into consideration in the determination of the issues presented. Additionally, how childhood trauma affects brain development and plays a major role in culpability. As a result, mitigation should be apart of the sentencing procedure in reflection of culpability for this class of offenders (18 year olds) who demonstrate the same characteristics of the offenders announced in Miller.

WHETHER THE DEFENDANT'S SUCCESSIVE MOTION FOR RELIEF FROM JUDGMENT IS "BASED ON A RETROACTIVE CHANGE IN LAW," MCR 6.502(G)(2), WHERE THE LAW RELIED UPON DOES NOT AUTOMATICALLY ENTITLE HIM TO RELIEF; AND IF SO, WHETHER THE UNITED STATES SUPREME COURT'S DECISIONS IN MILLER V. ALABAMA, 567 US 460; 132 S. CT. 2455; 183 L. Ed. 2d 407 (2012), AND MONTGOMERY V. LOUISIANA, 136 S. CT. 718; 193 L. Ed. 2d 599 (2016), SHOULD BE APPLIED TO 18 YEAR OLD DEFENDANTS CONVICTED OF MURDER AND SENTENCED TO MANDATORY LIFE WITHOUT PAROLE, UNDER THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION OR CONST. 1963, ART 1, § 16, OR BOTH.

#### STANDARD OF REVIEW

Whether a statute is constitutional is a question of law this Court reviews de novo. Hunter v. Hunter, 484 Mich 247, 257; 771 NW2d 694 (2009). When the constitutionality of a statute is brought into question, [t]he party challenging [i]t has the burden of proving its invalidity. People v. Thomas, 201 Mich App 111, 117; 505 NW2d 873 (1993).

#### Analysis:

A party challenging a statute must overcome the presumption that a statute is constitutional, and the statute "will not be declared unconstitutionally unless clearly so, or so beyond a reasonable doubt." Cady v. Detroit, 259 Mich 499, 505; 286 NW 805 (1939). Furthermore, a "party challenging the facial constitutionality of a statute faces an extremely rigorous standard, and must show that no set of circumstances exists under which the [a]ct would be valid. In Re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71, 479 Mich 1, 11; 740 NW2d 444 (2007).

#### DISCUSSION/ARGUMENT:

Defendants seeking to advance a successive Motion For Relief From Judgment based on retroactive change in law, MCR 6.502(G)(2), under these circumstances should be allowed to challenge the constitutionality of the statute rendered

unconstitutional in Miller. Specifically, where eighteen (18) year old defendants display similar characteristics as that of the class of offenders announced in Miller. This new rule of constitutional law was made retroactive by Montgomery on collateral review.

Accordingly, given the relevance of defendants who are eighteen (18) years of age culpability being established through scientific evidence and the sentence imposed, due process may even require the appointment of expert assistance. See, People v. Kennedy, 502 Mich 206, 207; 917 N2d 355 (2018). In general, defendants should be allowed to present their claim(s) within the adversarial system and have the ability to marshal their defense(s) against what may be an otherwise unconstitutional sentence.

In sum, either as a case of "First Impression" or a direct Successive Relief from Judgment Motion invoking the "Retroactive Exception," the Court Rule MCR 6.502(G)(2) is vague as to whether the law must automatically entitle to relief in order to file one. Therefore, trial courts should have discretion to review claims that may have merit in accord with due process of law.

Further, the United States Supreme Court held in Miller v. Alabama, 567 US 460; 132 S. Ct. 2455; 183 L. Ed 2d 407 (2012), that, mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments. Id at 465. Miller requires a sentencing court "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id at 480. This rationale of Miller demarcating children from adults derived from the percepts of not only on common sense - on what any parent knows - but on science and social science.

In addition, the Miller court relied on three significant gaps that distinguish juveniles from adults. First, children have a lack of maturity and an underdeveloped sense of responsibility leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as "well-formed" as an adult's; his traits are "less fixed" and his actions less likely to be evidenced of irretrievable depravity. *Id.* at 471.

In this respect, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds" - for example, in parts of the brain involved in behavior control." Thus, the United States Supreme Court reasoned that those findings of transient rashness, proclivity for risk, and inability to assess consequences - both lessened a child's "moral culpability" and enhanced the prospect that, as the years go by and neurological development occurs, his deficiencies will be reformed." Miller, *Id.* at 419.

These distinct attributes of youth diminish the penological justifications for imposing the harshest sentences on juveniles offenders, even when they commit terrible crimes. See, Cruz v. United States, 2018 U.S. Dist. LEXIS 52924, WL 1541898 at \*25 (D. Conn; March 29, 2018) (holding that Miller applies to 18-year olds). Respectively, the Cruz Court relied on both the scientific evidence and societal evidence of national consensus, and concluded that "the hallmark characteristics of juvenile that make them less culpable also apply to 18 year olds." *Id.* at 22.

With respect to the science of adolescent brain development and the impact of trauma, we urge that this court consider such evidence on whether Miller should apply to 18 year olds.

\* \* \* \* \*

\* \* \* TRAUMA AND THE SCIENCE OF BRAIN DEVELOPMENT \* \* \*

To understand trauma's impact on the brain and the body, it is important to understand that trauma is a type of stress and that stress itself exists on a spectrum. Positive stress exists at one end of the spectrum and refers to "moderate, short-lined stress responses, such as brief increases in heart rate or mild changes in the body's stress hormone levels." Positive stress tends to be milder and more predictable than other forms of stress. Transformation Through Accommodation: Reforming Juvenile Justice By Recognizing And Responding To Trauma, 53 Am. Crim. L. Rev. 549, 563, (2016), by Eduardo R. Ferrer. (Appendix "A")

Adverse events that provoke positive responses tend to be those that a child can learn to control and manage well with the support of caring adults, and which occur against the backdrop of generally safe, warm and positive relationships. Positive stress is a critical part of the normal process of child development, Id at 563.

Toxic stress exists at the other end of the stress spectrum and refers to "strong", frequent, or prolonged activation of the body's stress management system." Toxic stress tends to be unpredictable, severe, and/or experienced without having access to support from caring adults. Causes of toxic stress include "extreme poverty in conjunction with continuous family chaos, recurrent

physical or emotional abuse, chronic neglect, severe and enduring maternal depression, persistent parental substance abuse, or repeated exposure to violence in the community or within the family. Id. at 563, 564.

In contrast to positive stress, which is essential to healthy development, toxic stress can adversely affect development in a number of ways, including altering brain architecture or recalibrating an individual's stress response system to become more sensitive and over responsive. Id. at 564.

Youth who have experienced toxic stress are inclined to have (1) decrease volume in the corpus callosum, which is the brain region responsible for communication between the two brain hemispheres, as well as a number of other processes including arousal, emotion, and higher cognition; (2) decreased volume in the cerebellum, which helps coordinate motor skills and executive function; (3) decreased electrical activity, which can result in difficulties with attention and learning. Youth who have experienced toxic stress also can have decreased volume in the prefrontal cortex, which is critical to "working executive functioning and self regulation." Id. at 569.

In this regard, adverse childhood experiences are especially harmful because they are experienced during the period of development plasticity when the youth is particularly sensitive to the experiences and environment. As a result, it should come as no surprise that toxic stress has significant negative effects on the developing brain and body.

Just as recent psychological and neurological research regarding normative adolescents development has confirmed that adolescents generally are less mature and more vulnerable than adults, recent research regarding the impact of adverse

childhood experiences has demonstrated that traumatized youth generally are less mature than average adolescents as a direct result of their vulnerability and inability to extricate themselves from environments full of toxic stress.

In other words, while adolescents already typically suffer deficiencies in decision making relative to adults, childhood toxic stress appears to amplify the difference in decision-making ability between a youth who has experienced trauma and the average adult through no fault of the traumatized child. Thus, just as age must be accommodated, so must trauma. *Id.* at 573.

In addition, trauma is frequently an underlying cause of offending behavior. A traumatic experience is one that threatens a person's life, safety, and well being, overwhelming the sufferer's ability to cope. Trauma ranges in types and can include being the victim of physical or sexual abuse, observing violence perpetrated against someone close, experiencing a deprivation of needs, witnessing community violence, to something as commonplace as being involved in a car accident. Trauma Informed Juvenile, 53 *Am. Crim. L. Rev.* 641, 645, (2016), by Samantha Buckingham (Appendix "B") (attached).

Trauma may result from a single event or from repeated exposures to multiple types of trauma. Some common symptoms of trauma exposure are nightmares, flashbacks, the inability to cope, hyper-arousal, misinterpretations of cues, overreaction, self-harm, fight or flight, and dissociation. Trauma exposures may lead to development of PTSD, chronic trauma, or complex trauma. *Id.* at 646. Furthermore, economically disadvantage children are more likely to suffer the stress of exposure to community and family violence and poverty contributing to maladaptive development and social functioning. *Id.*

In sum, as each developmental stage is important to one's ability to understand choices and consequences, the part of the brain directly related to this understanding plays a direct role in culpability. Studies in neurology has concluded that the human brain does not fully develop until the mid-twenties, thus, trauma even impacts maturation in other degrees.

EIGHTH AMENDMENT JURISPRUDENCE:

In this respect, Robin Rick Manning and all other similarly situated eighteen (18) year olds convicted of murder and sentenced to the harshest sentence available under Michigan Law may have suffered from some form of trauma. This intrapersonal deficiency is critical to the developing stages leading to maturation. Thus, a mandatory scheme without taking into account such factors may constitute fundamental unfairness.

Pointedly, in comparison with every other offense under Michigan Law, trial courts are allowed to depart from the sentencing guidelines, MCL 769.34, upward or downward based on offense an offender's characteristic, or if the "court finds from the facts, including presentence investigation report," that the characteristics has been given inadequate or disproportionate weight. However, this statute does not apply for a mandatory penalty of life imprisonment. Nevertheless, mitigating circumstances are allowed for certain crimes. See People v. Fields, 448 Mich 58, 78-79, 528 Nw2d 176 (1995), also, People v. Daniel, 462 Mich 1, 7, 609 Nw2d 557 (2000). (objective and verified factors trial courts may consider).

Further, in comparing Michigan's mandatory statute of life without parole for first degree murder against every other state, out of the 21 states that do

not allow the death penalty, only 43 percent of the states have mandatory life without parole<sup>1</sup>. The other 29 states that allow the death penalty, 48 percent of those states<sup>2</sup> has LWOP as an alternative sentence to a death sentence when the jury cannot unanimously agree upon such sentence in a separate sentencing hearing. Totalling to 46 percent of the States holding first degree murder sentences mandatory.

The other states that do not allow the death penalty which do not hold mandatory LWOP for first degree murder, including D.C.<sup>3</sup> the possible sentence for this crime varies in ranges. For example, in Alaska, the sentence for first degree murder carries not less than 20 years to life for that offense; in D.C; not less than 30 years nor more than LWOP.

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<sup>1</sup> Delaware, 11 Del.C § 4209; Illinois, 720 ILC 5/9 - 1; Iowa, Iowa Code § 902.1; Massachusetts, ALM GL Ch. 265 § 2; Minnesota, Minn. Stat § 609.185; New Hampshire, RSA 63:05; West Virginia, W. VA. Code § 61-2-2; Washington, Rev. Code Wash (ARCW) § 10.95.030; Wisconsin, Wis. Stat § 940.01;

<sup>2</sup> Alabama, Code of Ala. § 13A-5-45; Arizona A.R.S. § 13-110, § 13-751, § 13-752; Arkansas, A.C.A. § 5-4-615; Colorado, C.R.S. 18-1.3-401; Florida, Fla. Stat. § 775.802; Louisiana, La. R.S. § 14-30; Missouri, § 565.020 R.S.MO; Nebraska, R.R.S. Neb. § 28.303; North Carolina, N.C. Gen. STAT. Sec. 15A-2002; Oklahoma, 21 OKL. St § 701.10; Pennsylvania, 42 Pa. C.S. § 9711; South Dakota, S.D. Cod. Laws 23A-27A-4; Texas, Tex Penal Code Ann § 12.31; Virginia, Va. Code Ann Sec. 18.2-31;

<sup>3</sup> Alaska, Alaska Stat. § 11. 15. 010, AS 12.55; Connecticut, Conn. Gen. Stat. § 53a-35a; District of Columbia, D.C. Code § 22-2104.01; Hawaii, HRS § 706-656; Maine, ME. Rev. Stat § 902.1; Maryland, Md. Cr. L. Code Ann. § 2.304; New Jersey, N.J. Stat § 2c:11-3; New York, NYCLS CPL § 400.27; New Mexico, N.M. Stat. Ann. § 200.030; Rhode Island, R.I. Gen. L. Sec. 11-23-2.2; Vermont, 13 V.S.A. Sec. 2303;

<sup>4</sup> California, Cal Pen. Code § 190; Georgia, O.C.G.A Sec. 16-5-1; Idaho, Idaho Code Sec. 18-4004; Indiana, Burns Ind. Code Ann § 35-50-2-9; Kansas, K.S.A § 21-6620; Kentucky, KRS § 532.025; Montana, 45-5-102 MCA; Nevada, Nev. Rev. Stat. Ann. § 200.030; Ohio, ORC Ann. 2929.02, 2929.03(A)(1); Oregon, ORS § Ann. South Carolina, S.C. Code Ann. § 16-3-20; Tennessee, Tenn. Code Ann. § 76-3-206; Utah, Utah Code Ann. § 76-3-206; Wyoming, Wyoming Stat. § 6-2-101.

In the State of Connecticut, LWOP or 25 years nor more than Life; Maine, Life or any term of years not less than 25 years; New York, LWOP or any term of years; New Mexico, LWOP of Life; New Jersey, 30 years to Life w/parole eligibility after 30 years; Rhode Island, Life w/parole eligibility after 15 years; Vermont, LWOP or a minimum term of 35 years with a maximum of Life, unless the jury finds that there are aggravating or mitigating factors that would justify a different minimum term.

As to the other States that allow the death penalty and do not hold mandatory LWOP as an alternative sentence for first degree murder,<sup>4</sup> a separate sentencing hearing is held when the death penalty is sought. In which case, if the jury does not unanimously agree upon a death sentence, an alternative sentence is given.

For example, in California, the trial court has discretion if the jury is unable to agree then to impose LWOP or 25 years to Life. In Idaho, either LWOP or Life with a fixed term of not less than 10 years; Indiana, LWOP or term of years; Kansas, if capital murder is not sought, then the sentence is LWOP with parole eligibility prior to serving 25 years; Kentucky, LWOP with a minimum of 25 years; Nevada, LWOP, LWOP minimum 20 years, or 50 years with parole eligibility after 20 years; Ohio, LWOP or when death penalty is not sought, LWOP after 20, 25, or 30 years or LWOP; Oregon LWOP or Life with 30 year minimum; LWOP or mandatory minimum of 30 years to Life; Utah, LWOP or indeterminate term of not less than 25 years to Life. Georgia, Tennessee, and Wyoming, LWOP or Life.

Hawaii is the only State that allows LWOP but as a part of the sentence,

the court shall order the director of public safety and the Hawaii paroling authority to prepare an application for the governor to commute the sentence to life with parole at the end of serving 20 years.

In Colorado, if the felony for which the person was convicted is murder in the first degree as described in section 18-3-102 (1)(b), ~~the~~ the district court, after holding a hearing, finds extraordinary mitigating circumstances, may sentence the person to a determined sentence within the range of 30 to 50 years in prison.

In sum, almost 50 percent of the States carry a alternative discretionary sentence for first degree murder, some even with separate sentencing hearings conducted by a jury. At those hearings, mitigation is highly considered before a defendant sentence is determined.

In this respect, although the jurisdictions in these States vary as to first degree murder and the sentences it carries, simply counting these statutes may present a distorted view. See, Miller at 484. This did not prevent the Miller court from holding the mandatory scheme of these statutes unconstitutional. Thus, Miller did not categorically bar a penalty for a class of offenders or type of crime. *Id.* at 483.

The mandate of Miller was that "a sentencer follow a certain process - - considering an offender's youth and attendant characteristics -- before imposing a particular penalty. And in so requiring, specifically the principles of Roper v. Simmons, 543 U.S. 551, 560, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005); Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d. 825 (2010), and individualized sentencing cases influenced the decision in Miller

that "youth matters for purposes of meting out the law's most serious punishments."

Therefore, the Miller court without analysis adopted the line drawn in Roper. However, as noted in Cruz, "the evidence before the Roper court did not extend beyond that line because no research looked at brain development in late adolescent or young adulthood at that time according to Dr. Laurence Steinberg. See, Cruz, supra, at 21. In this regard, maturation has been defined as a developmental period and not a chronological fact.

In both contexts, the Eighth Amendment's jurisprudence evolving standard of decency should beckon a closer view at all the evidence defining maturation. More importantly, criminal procedural laws that restricts judiciaries of discretion under these circumstances may have constitutional implications which bears upon disproportionality.

The nexus between each group members trauma and offending behavior, even like the other Robin Rick Manning's of the world, where the deficiency of trauma have impeded their brains development in the commission of the most serious offense. This evidence by no means absolve of guilt and punishment, however, trial courts should be given discretion to determine whether mandatory LWOP would be cruel and/or unusual under these circumstances.

Moreover, at the time MCL 750.316 was enacted or any other first degree murder statute in the United States, legislatures may not have had the wealth of information that is now before this court that may cause for mitigation for this class of offenders. Especially, where their hallmark features and attendant characteristics are impetuous and transient.

Collectively, this group has spent over 178 years of incarceration with an average of 29.7 years per member. During that time, each class member entered prison without an education and has successfully obtained a G.E.D. with certificates in Vocational Training classes such as, Television Productions, Culinary Arts, Custodial Maintenance, and Business Education & Technology (BET) courses.

In addition, each class member has completed Substance Abuse courses, Anger Management, Impulse Control, earned college credits, and has maintained employment within the facility. There are other self-help programs not mentioned for the sake of space. However, like Robin Rick Manning, the sentence LWOP forswears the rehabilitative ideal altogether but the potential for rehabilitation is possible as you can see, although barred by the mandatory statute.

Therefore, in light of what we now understand scientifically about brain development, this class culpability sits at the boundary line of "one second before the clock strikes twelve." In concert, there is no scientific evidence to support the conclusion that at age 18, a defendant's brain is magically transformed to maturity such that it is different than it was the day before his eighteenth birthday.

In closing, youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole. An offender's age is relevant to the Eighth Amendment, and so criminal procedure laws that fail to take this class of offenders (18 year olds) youthfulness into account at all would be flawed.

Just as chronological age of a juvenile is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of an 18 year old be duly considered in assessing his culpability. Miller, at 477.

RELIEF REQUESTED

WHEREFORE, Movants request that this Honorable court take into consideration the aforementioned information contained within this Brief in determining the Constitutional question before this Court.

Dated: 3/24/, 2020.

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STATE OF MICHIGAN  
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN  
Plaintiff-Appellee,

- VS -

ROBIN RICK MANNING  
Defendant-Appellant, /

CIR. CT. NO. 84-000574-FC  
C.O.A. NO. 345268  
M.S.C. NO. 160034

PROOF OF SERVICE

I, Andrew J. Lambert, a non-party to this action, do certify on 3, 24, 2020, that a true copy of movent's Motion for Leave to file Amicus Curiae Brief, Amicus Curiae Brief, Supporting Documents/Appendixes and Motion to waive fees, was forwarded to: CLERK OF THE COURT, MICHIGAN SUPREME COURT, P.O. Box 30052, Lansing, Michigan, 48909, by Institutional Mailbox, via "Legal Expedited Mail" through designated staff, RUM/ARUS/PC located in the Housing Unit.

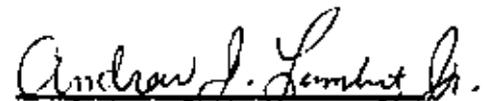
I certify under the penalty of perjury that the foregoing is true and correct.

Notary Public

  
subscribed and sworn to  
before me on 3, 24, 2020

My Commission Expires: 8/3/2020

CONNIE MARIE THOMPSON  
Notary Public, State of Michigan  
County of Chippewa  
My Commission Expires: 08/03/2020  
Acting in the County of Chippewa

  
Andrew J. Lambert, Jr.  
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FROM THE DESK OF:  
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Clerk of the Court  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, Michigan 48909

RE: People v Robin Rick Manning, 160034

Dear Clerk of the Court,

Please find enclosed (1) true copy of Movant's MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF, AMICUS CURIAE BRIEF, SUPPORTING DOCUMENTS/APPENDIXES, for filing before the Chief Justices of this Court. Thank you very much.

Date: 3/24, 2020

Respectfully Submitted

*Andrew J. Lambert, Jr.*

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CC: M.S.C.  
Personal File

