No. 121932

IN THE
ILLINOIS SUPREME COURT

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-14-1744
Plaintiff-Appellant,	)	
v.	)	There on Appeal from the Circuit Court of Cook County, Illinois No. 11 CR 11184
DARIEN HARRIS,	)	The Honorable Nicholas R. Ford, Judge Presiding.
Defendant-Appellee.	)	

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

When he was eighteen years old, defendant Darien Harris shot Rondell Moore and Quincy Woulard. R.BB49-50.[1] Moore died; Woulard suffered great bodily harm and permanent disfigurement. C136-38, 144, 84-86, 237; R.BB49-50, CC9-12. Following a bench trial in the Circuit Court of Cook County, defendant was convicted of first degree murder, attempted first degree murder, and aggravated battery with a firearm. C237; R.AA4, BB49-50. The trial court sentenced defendant to the mandatory aggregate minimum prison term of seventy-six years. C237; R.CC9-12. On appeal, the Illinois Appellate Court, First District, found that application of this legislatively mandated aggregate minimum term to defendant violates Article I, section 11 of the Illinois Constitution, vacated defendant's sentence, and remanded for resentencing. A58, 64, 77. The People appeal that determination. No question is raised on the pleadings.

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[1] Citations to the common law record, report of proceedings, People's trial exhibits, and this brief's appendix appear as "C__," "R.__," "Exh. __," and "A__," respectively.

Pursuant to Rule 318(c), the People asked the Appellate Court to certify copies of the appellate court briefs for this Court. Citations to defendant's opening brief, the People's brief, and defendant's reply brief appear as "Def. App. Ct. Br. __," "Peo. App. Ct. Br. __," and "Def. App. Ct. Reply Br. __," respectively.

ISSUE PRESENTED

Whether applying the legislatively mandated aggregate minimum prison term of seventy-six years to defendant violates Article I, section 11 of the Illinois Constitution.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b). On May 24, 2017, this Court allowed the People's petition for leave to appeal.

CONSTITUTIONAL PROVISION INVOLVED

Article I, section 11 of the Illinois Constitution (1970), provides, in relevant part: "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship."

STATEMENT OF FACTS

I. Trial Court Proceedings

Around 8:00 p.m. on June 7, 2011, Quincy Woulard was helping Rondell Moore fix his car at a gas station. R.AA11-14, AA62, AA74, AA83-87, AA91-92. Woulard and Rondell stood outside the car looking under its hood, while Rondell's brother, Ronald Moore, and friend, Marcus Diggs, sat inside. R.AA13-14, AA84-87. After asking an acquaintance to drive him to the gas station, defendant directed the driver to pass the gas station entrance in front of Rondell's car and stop at the next entrance. R.AA91-98, BB11-12, BB19-20, BB46-47; Exh. 40 at 6-7. Defendant then approached Rondell and

Woulard from behind and fired a gun at them at least six times, R.AA18-19, AA62-66, AA157-59, AA171-72. When Diggs ran from the car, defendant shot at him. R.AA19-21. Upon seeing Ronald in the car, defendant pointed the gun at him and pulled the trigger but the gun fired no bullets. R.AA20-22. Defendant then fled on foot. R.AA21-22, AA65-66. Rondell suffered three gunshot wounds to the back and died from those injuries. R.AA157-61. Woulard suffered three gunshot wounds and survived, R.AA171-72; one bullet remained lodged in his back, causing nerve damage to his feet and chronic back problems, R.AA88-89.

A grand jury returned an eighty-one-count indictment, charging defendant with (1) multiple counts of first degree murder for Rondell's death, C66-134; 720 ILCS 5/9-1(a) (2011); (2) multiple counts of attempted murder against Woulard, Ronald, Diggs, and Craig Knowles,[2] C135-43; 720 ILCS 5/8-4(a) (2011); 720 ILCS 5/9-1(a) (2011); (3) one count of aggravated battery with a firearm against Woulard, C144; 720 ILCS 5/12-4.2(a)(1) (2011); and (4) two counts of aggravated discharge of a firearm against Diggs and Knowles, C145-46; 720 ILCS 5/24-1.2(a)(2) (2011). At the ensuing bench trial, the People proceeded on (1) two counts of first degree murder, both alleging that during the offense, defendant personally discharged a firearm that proximately caused Rondell's death (counts 19 and 20), C84-85; (2) three counts of attempted first degree murder, alleging that defendant took a

[2] The record reveals no further information about Knowles.

substantial step toward the first degree murder of Woulard and during the offense (a) personally discharged a firearm (count 71), C136, (b) personally discharged a firearm that proximately caused great bodily harm (count 72), C137, and (c) personally discharged a firearm that proximately caused permanent disfigurement (count 73), C138; and (3) one count of aggravated battery with a firearm against Woulard (count 79), C144. *See* R.AA4. In April 2014, the trial court convicted defendant of all counts, finding, among other things, that defendant fired his gun "numerous times" towards Rondell and Woulard, and that he attempted to shoot Ronald. R.BB49-50.

Defendant's crimes subjected him to prison terms of (1) twenty to sixty years for first degree murder, plus a mandatory firearm enhancement of twenty-five years to life, 730 ILCS 5/5-4.5-20(a) (2011); 730 ILCS 5/5-8-1(d)(iii) (2011); (2) six to thirty years for attempted murder, plus mandatory firearm enhancements of twenty years for count 71 and twenty-five years to life for counts 72 and 73, 720 ILCS 5/8-4(c)(1) (2011); 730 ILCS 5/5-4.5-25(a) (2011); and (3) six to thirty years for aggravated battery with a firearm, 720 ILCS 5/12-4.2(b) (2011); 730 ILCS 5/5-4.5-25(a) (2011). The statutory scheme mandated that the attempted murder and aggravated battery sentences be served consecutively to the first degree murder

sentence. 730 ILCS 5/5-8-4(d)(1) (2011). Thus, defendant's minimum aggregate sentence was seventy-six years.[3]

A presentence investigation report (PSI) detailed defendant's background. Before his crimes, defendant lived at home in a "nice and quiet" community with his married parents and three of his five siblings. C199-200. Defendant had a "good" childhood with no physical abuse or family history of alcohol or substance abuse. C199. Defendant's parents "spoiled" him, and his relationship with them remained "good" after his crimes. *Id.* Defendant has one child and was in a serious relationship at the time of his crimes. C200. Defendant denied any gang affiliation. C201. He reported having twenty friends that he saw once every other week; two friends had been arrested. *Id.* Defendant never drank alcohol or used illegal drugs. *Id.* In December 2013, defendant saw a psychologist for depression "due to this case." *Id.* Although defendant had no prior juvenile delinquency or criminal history, C198, he had received a juvenile station adjustment after being arrested for criminal trespass to property, C217. In February 2013, defendant obtained his general education diploma (GED). C200, 227.

At the sentencing hearing, the People asked for a sentence "well over the minimum." R.CC6-7. In support, the People emphasized the seriousness

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[3] Defendant must serve approximately seventy-one years and four months before he is eligible for release. *See* 730 ILCS 5/3-6-3(a)(2) (2011) (prisoners serving sentences for first degree murder not eligible for good conduct credit; those serving sentences for attempted murder eligible to earn up to four and one half days of credit per month of imprisonment).

of defendant's crimes, including that he had acted with premeditation, and the lack of mitigating circumstances, such as a turbulent social or family history. R.CC5-6. Defense counsel asked the trial court to "give [defendant] the minimum" sentence, stating that defendant "is remorseful and just very sad to be sitting here." R.CC8-9. Defendant also submitted five letters from family and church members asking the court for mercy and leniency in sentencing. R.CC7-8; C218-22. One aunt's letter described defendant as "a structured young man that comes from a loving and caring family." C222. Defendant's mother noted that he had attended his senior prom shortly before the crimes and was looking forward to graduating from high school. C220. She stated, "[Defendant] was raised in a two parent family home where we tried our best to instill the upmost [sic] morals and values in our children and pray that they make the best decisions in life." *Id.* A church member noted that defendant had been a role model for his siblings. C219. Defendant also submitted two educational achievement certificates he obtained in January and December 2013 while in prison. C223-26. Defendant declined to provide a statement in allocution. R.CC9.

After considering all the statutory aggravating and mitigating factors, the trial evidence, and defendant's mitigation evidence, the trial court imposed the minimum sentence for each offense, resulting in an aggregate minimum prison term of seventy-six years. R.CC9-13. The court explained:

> I have passion for the circumstance, but I don't know how this happened, Mr. Harris. I don't know what was the impetus for this.
>
> But in the Court's viewpoint, which is what is most important to you, you were found guilty of first degree murder with a handgun and attempt first degree murder. You basically shot up a gas station and in the process killed one man and nearly killed another. The second one having had nothing to do with whatever it was, the grievance that caused the fight originally.
>
> This is a serious case. I am sorry that the sentencing parameters are such that my options are somewhat limited. Although, I do feel you should be treated seriously.

R.CC9.

II. Appellate Court Proceedings

On appeal, defendant argued that the evidence was insufficient to support his convictions; that application of the mandatory aggregate minimum sentence to him violates the Eighth Amendment and Article I, section 11 of the Illinois Constitution because it precludes the trial court from considering mitigating factors; and that under the one-act, one-crime doctrine, the mittimus should be corrected to reflect only one count of attempted murder. A2, 4-12; Def. App. Ct. Br. 28-31. The appellate court rejected the sufficiency and Eighth Amendment claims and ordered the clerk to correct the mittimus. A4-6.

The appellate majority further found that applying the mandatory aggregate minimum sentence of seventy-six years to defendant violates Article I, section 11 of the Illinois Constitution, vacated defendant's sentence, and remanded for resentencing. A1, 6-12. The majority believed that the

record contained sufficient facts to consider whether the reasoning of *Miller v. Alabama*, 567 U.S. 460 (2012) — holding that the Eighth Amendment bars mandatory life-without-parole sentences for juvenile offenders — applied to defendant's state constitutional claim. A10. The majority acknowledged that it could not "extend *Miller*'s holding directly, but f[ound] that [*Miller*'s] analysis applies with equal force under the Illinois Constitution to a[n 18]-year-old like [defendant]." *Id.* Agreeing with the reasoning of *People v. House*, 2015 IL App (1st) 110580, the majority found that defendant was "more similar to a juvenile than a full-grown adult," and that "his sentencing should have been similarly specific to his own circumstances[] to effectuate the constitutional mandate of restoring [him] to useful citizenship." A10-11. Because defendant was young, had no criminal history, grew up in a stable and supportive family environment, was finishing high school when he committed the crimes, and obtained his GED while in pretrial custody, the majority found that defendant "might be able to rehabilitate himself if given the opportunity." A10. The majority thus concluded that defendant's *de facto* life without parole sentence was contrary to article I, section 11's objective of restoring offenders to useful citizenship. A10-11.

The dissent "disagree[d] with the majority's extension of *Miller* beyond juveniles to young adults," finding that as in *People v. Thompson*, 2015 IL 118151, the record was insufficient to consider defendant's as-applied challenge because he "did not introduce evidence in the trial court that the

evolving science on juvenile maturity and brain development" applied to him. A13 (quotation marks and citations omitted). Further, the dissent believed that the majority had usurped the legislature's role in determining mandatory minimum sentences for adult offenders because its rationale rested on only two factors — defendant's age and lack of criminal background — thus opening the door to similar arguments from any young adult sentenced to life imprisonment. A13-14.

STANDARD OF REVIEW

Defendant must overcome the presumption that applying the legislatively mandated sentence to him is constitutional. *People v. Rizzo*, 2016 IL 118599, ¶ 23; *People v. Leon Miller*, 202 Ill. 2d 328, 335 (2002). Defendant's constitutional challenge is reviewed *de novo*. *Leon Miller*, 202 Ill. 2d at 335.

ARGUMENT

I. Defendant's As-Applied Claim Is Procedurally Defaulted.

Defendant failed to preserve and develop his as-applied constitutional claim in the trial court.[4] At no time did he raise an as-applied challenge to his sentence. Moreover, defendant's failure to assert the factual and legal

[4] The People's appellate court brief did not assert procedural bars to reviewing defendant's as-applied claim. *See* Peo. App. Ct. Br. 30-46. However, "[w]hen the appellee in the appellate court appeals to this court, it may raise any question properly presented by the record to sustain the judgment of the trial court, even though those questions were not raised or argued in the Appellate Court." *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004) (quotation marks and citations omitted).

bases for his constitutional claim deprived the trial court the opportunity to address any alleged error and the parties the opportunity to develop an evidentiary record on the claim. Thus, defendant's as-applied constitutional claim is procedurally defaulted.

A. Defendant forfeited appellate review of his as-applied claim.

Defendant forfeited his as-applied challenge by not raising it at the sentencing hearing and in a written motion to reconsider sentence. Sup. Ct. R. 605(a)(3) (defendant seeking to challenge correctness of sentence must raise all claims of error in written motion to reconsider sentence and any claim not raised in motion "shall be deemed waived" on appeal); *People v. Hillier*, 237 Ill. 2d 539, 547-49 (2010) (defendant forfeits appellate review of constitutional claim by not objecting at sentencing hearing and not raising issue in postsentencing motion).

B. The appellate court erred in considering defendant's as-applied claim because he failed to develop its factual and legal bases in the trial court.

Forfeiture aside, the appellate court should not have addressed defendant's as-applied challenge because he failed to develop the factual and legal bases for the claim in the trial court. *See* A13 (dissent, finding record insufficient to address as-applied claim). "By definition, an as-applied constitutional challenge is dependent on the particular circumstances and facts of the individual defendant[.]" *Thompson*, 2015 IL 118151, ¶ 37. It is therefore "paramount that the record be sufficiently developed in terms of

those facts and circumstances for purposes of appellate review." *Id.* (citation omitted).

In the appellate court, defendant claimed that the Illinois Constitution precluded the legislature from mandating a *de facto* life-without-parole sentence. Defendant supported this claim with three assertions: (1) that science concerning juvenile maturity and brain development — which the United States Supreme Court cited in categorically precluding certain types of punishment for juvenile offenders under the Eighth Amendment, *Miller*, 567 U.S. at 460; *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005) — applies equally to young adults like him; (2) the differences between "young adults" and older adults undermine the penological justifications for imposing life without parole on "young adult" offenders; and (3) that the mandatory sentence precluded the trial court from considering possible mitigating factors. Def. App. Ct. Br. 28-31 (defendant's actions "may have" resulted from "youthful pressures"). But as in *Thompson*, the record reveals "nothing about how th[e] science [concerning juvenile development] applies to the circumstances of defendant's case, the key showing for an as-applied constitutional challenge. Nor does the record contain any factual development on the issue of whether the rationale of *Miller* should be extended beyond minors under the age of 18." *Thompson*, 2015 IL 118151, ¶ 38. Indeed, in the appellate court, defendant recognized that the record was factually insufficient to assess whether sentencing him to

life in prison violates the Illinois Constitution. *See* Def. App. Ct. Br. 31 ("Whether, and to what extent, any such youthful pressures influenced Darien to commit these offenses is an inquiry that must be pursued at a new sentencing hearing.").

Here, as in *Thompson*, "the trial court [wa]s the most appropriate tribunal for the type of factual development necessary to adequately address defendant's as-applied challenge." 2015 IL 118151, ¶ 38. Yet in the trial court, defendant failed to raise an as-applied claim, let alone develop a record upon which a reviewing court could evaluate the claim's merits. *See, e.g.*, *Haughey v. Comm'r of Corr.*, __ A.3d __, 2017 WL 2350677, at **3 (Conn. App. Ct. June 6, 2017) (defendant supported Eighth Amendment claim with his own testimony about his childhood, drug use, history of abuse and neglect; and expert testimony that described brain development during young adulthood, how substance abuse impacts that development, and the specific circumstances of defendant's development). Thus, the appellate court erred in reaching the merits of the as-applied challenge. *Rizzo*, 2016 IL 118599, ¶ 26 (absent trial court evidentiary hearing and factual findings, as-applied sentencing claim must be rejected).

II. Defendant's Legislatively Mandated Aggregate Minimum Prison Term Is Constitutional.

A. Legal standards and principles

Article I, section 11 of the 1970 Illinois Constitution provides, in relevant part: "All penalties shall be determined both according to the

seriousness of the offense and with the objective of restoring the offender to useful citizenship." The first requirement — that penalties shall be determined "according to the seriousness of the offense" — is often described "as the 'proportionate penalties clause,' a reference to the language contained in . . . earlier state constitutions." *People v. Clemons*, 2012 IL 107821, ¶ 37 (citations omitted). The relationship between the proportionate penalties clause and the Eighth Amendment "is not entirely clear." *Id.*, ¶ 40.

The second requirement (the rehabilitation clause) — that penalties must be determined "with the objective of restoring the offender to useful citizenship" — was new to the 1970 Illinois Constitution. *Clemons*, 2012 IL 107821, ¶ 39. The rehabilitation clause directs the sentencer and the legislature to "'look at the person who committed the act and determine to what extent he can be restored to useful citizenship.'" *Id.*, ¶¶ 29, 39 (citation omitted)). "[T]he limitation of penalties set forth in th[is] second clause . . . went beyond the framers' understanding of the eighth amendment and is not synonymous with that provision." *Id.*, ¶ 40. Thus, the rehabilitation clause "provide[s] a limitation on penalties beyond those afforded by the eighth amendment." *Id.*, ¶ 39; *Rizzo*, 2016 IL 118599, ¶ 4 n.3.

Article I, section 11 is directed at both the judiciary and the legislature. *Clemons*, 2012 IL 107821, ¶ 29; *People v. Wooters*, 188 Ill. 2d 500, 506-07 (1999). It requires that sentencing judges not abuse their discretion in imposing sentences within the legislative framework. *Clemons*, 2012 IL

107821, ¶¶ 29-30; *People v. Taylor*, 102 Ill. 2d 201, 205-06 (1984). And it "requires the legislature, in defining crimes and their penalties, to consider the constitutional goals of restoring an offender to useful citizenship and of providing a penalty according to the seriousness of the offense." *Taylor*, 102 Ill. 2d at 206; *Clemons*, 2012 IL 107821, ¶ 29. However, in fixing a penalty, the legislature is not required to give greater weight or consideration to the possibility of rehabilitating an offender than to the seriousness of the offense. *Rizzo*, 2016 IL 118599, ¶ 39; *Taylor*, 102 Ill. 2d at 206. And legislative enactments determining the penalties for criminal conduct are presumed constitutional. *People v. Dunigan*, 165 Ill. 2d 235, 244 (1995).

This Court recognizes only two grounds for challenging a legislatively mandated sentence under article I, section 11: "that the penalty for a particular offense is too severe under the 'cruel or degrading' standard *or* that the penalty is harsher than the penalty for a different offense that contains identical elements." *Rizzo*, 2016 IL 118599, ¶ 28 (quotation marks and citation omitted) (emphasis in original). Here, defendant's challenge lies under the "cruel or degrading" standard, Def. App. Ct. Br. 26-27, under which defendant must demonstrate that, as applied to his circumstances, the legislatively authorized punishment "'is so wholly disproportioned to the offense committed as to shock the moral sense of the community,'" *Rizzo*, 2016 IL 118599, ¶¶ 28, 33, 36-38, 41 (quoting *Leon Miller*, 202 Ill. 2d at 339); *People v. Huddleston*, 212 Ill. 2d 107, 141 (2004). This standard defies

precise definition because "as our society evolves, so too do our concepts of elemental decency and fairness which shape the 'moral sense' of the community." *Rizzo*, 2016 IL 118599, ¶ 38 (quotation marks and citation omitted). Although objective evidence may be considered in this inquiry, it does not wholly determine the controversy because this Court must bring its own judgment to bear on the question. *Id.*

In evaluating a challenge under the "cruel or degrading" standard, this Court generally reviews "'the gravity of the defendant's offense in connection with the severity of the statutorily mandated sentence within our community's evolving standard of decency.'" *Id.* (citation omitted). For an as-applied challenge, this Court also considers the particular offender and whether it shocks the moral sense of the community to apply the legislatively mandated minimum punishment to him, bearing in mind that the legislature constitutionally may consider the severity of an offense and determine that no set of mitigating circumstances could permit an appropriate punishment of less than the minimum. *Dunigan*, 165 Ill. 2d at 245 (quoting *Taylor*, 102 Ill. 2d at 206); *see also Rizzo*, 2016 IL 118599, ¶ 39; *Huddleston*, 212 Ill. 2d at 141-45; *Leon Miller*, 202 Ill. 2d at 339-43; *Wooters*, 188 Ill. 2d at 508-10.

At issue here is whether the legislature's determination that defendant's crimes warrant an aggregate prison sentence of seventy-six years violates article I, section 11. This Court has never addressed an as-applied challenge under article I, section 11, to a mandatory aggregate minimum

term-of-years sentence for two or more offenses committed during a single course of conduct. *Cf. Huddleston*, 212 Ill. 2d at 110-11, 140-45 (rejecting as-applied challenge to statute mandating natural-life sentence when a person is convicted of predatory criminal sexual assault of a child against two or more persons); *Taylor*, 102 Ill. 2d at 204-10 (rejecting facial challenge to statute requiring natural-life sentence for person convicted of more than one murder). In other contexts, this Court has observed that "consecutive sentences do not constitute a single sentence and cannot be combined as though they were one sentence for one offense. Each conviction results in a discrete sentence that must be treated individually." *People v. Carney*, 196 Ill. 2d 518, 530 (2001) (addressing Sixth Amendment claim and citing statutory interpretation cases). Relying in part on precedent interpreting the 1870 Constitution, *Carney* stated that the proportionate penalties clause "does not apply to the aggregate of the punishments inflicted for different offenses." *Carney*, 196 Ill. 2d at 529 (citing *People v. Elliot*, 272 Ill. 592, 600 (1916)). This statement accurately reflects the analysis under the proportionate penalties clause, where the court focuses on the severity of each offense and assesses whether the penalty is proportionate to that offense.[5] *Rizzo*, 2016 IL 118599, ¶ 38; *cf. Harmelin v. Michigan*, 501 U.S.

[5] *Carney*'s statement also accurately represents the analysis for a challenge under the proportionate penalties clause to a statutory scheme that fixes two different penalties for offenses with identical elements. *Clemons*, 2012 IL 107821, ¶ 30 (identical elements test gives effect to plain language of proportionate penalties clause).

957, 997-1005 (1991) (Kennedy, J., concurring in part and concurring in judgment) (employing similar approach under Eighth Amendment).

However, defendant's challenge arises under article I, section 11, as a whole. Thus, both the proportionate penalties clause — which focuses on the severity of the offense — and the rehabilitation clause — which looks at the particular offender — must be considered. *Clemons*, 2012 IL 107821, ¶¶ 37-40. Where the legislature has determined that offenses require mandatory consecutive sentences, the question for an as-applied challenge should be whether the legislature's determination as to the mandatory aggregate minimum prison term, applied to the specific defendant, is "so wholly disproportionate to the offense[s] committed as to shock the moral sense of the community[.]" *Huddleston*, 212 Ill. 2d at 141.

B. Defendant's mandatory minimum sentence does not shock the moral sense of the community.

1. This Court has never held that applying a legislatively mandated prison term to an adult homicide offender violates article I, section 11, under the "cruel or degrading" standard.

The legislative judgment as to mandatory minimum sentences for adult homicide offenders is virtually unassailable under the "cruel or degrading" standard. The legislature enjoys broad discretion in setting criminal penalties, and courts generally defer to legislative determinations in this area. *Rizzo*, 2016 IL 118599, ¶ 36. This is because the legislature is institutionally better equipped and more capable than the judiciary to

identify and remedy the evils confronting our society, gauge the seriousness of various offenses, and fashion sentences accordingly. *Id.*; *People v. Hill*, 199 Ill. 2d 440, 454 (2002). In fixing a penalty, the legislature may consider myriad factors, including the degree of harm inflicted, the frequency of the crime, and the high risk of bodily harm associated with it. *Hill*, 199 Ill. 2d at 454. Or it "may perceive a need to enact a more stringent penalty provision in order to halt an increase in the commission of a particular crime." *Id.* (citations omitted).

Article I, section 11 does not require the legislature to give greater weight to the possibility of rehabilitation than to the seriousness of the offense. *Rizzo*, 2016 IL 118599, ¶ 39. And this Court is reluctant to overturn a legislatively designated penalty as "cruel or degrading" because the legislative judgment itself "'represents the general moral ideas of the people.'" *Id.*, ¶ 37 (citation and emphasis omitted). For these reasons, this Court has consistently rejected facial and as-applied challenges under the "cruel or degrading" standard to statutes that mandate minimum sentences for adult offenders, including statutes that lengthen aggregate sentences through application of mandatory firearm enhancements or consecutive sentencing provisions. *Id.*, ¶ 39; *see People v. Sharpe*, 216 Ill. 2d 481, 524-27 (2005); *Huddleston*, 212 Ill. 2d at 129-45; *People v. Morgan*, 203 Ill. 2d 470, 487-89 (2003), *overruled on other grounds*, *Sharpe*, 216 Ill. 2d at 519; *Hill*, 199 Ill. 2d at 451-54; *Wooters*, 188 Ill. 2d at 505-10; *People v. Arna*, 168 Ill. 2d 107, 114

(1995), *abrogated on other grounds*, *People v. Castleberry*, 2015 IL 116916, ¶¶ 13, 19; *Dunigan*, 165 Ill. 2d at 244-48; *Taylor*, 102 Ill. 2d at 204-10.

In fact, in only one instance has this Court found it cruel or degrading to apply the legislatively mandated minimum penalty to a particular offender. *Leon Miller*, 202 Ill. 2d at 340-43. There, the convergence of three statutes — the Juvenile Court Act's automatic transfer statute, the accountability statute, and the multiple-murder sentencing statute — required a natural-life sentence for Leon Miller, "a 15-year-old with one minute to contemplate his decision to participate in the incident and [who] stood as a lookout during the shooting, but never handled a gun." *Leon Miller*, 202 Ill. 2d at 340-41. Upholding the trial court's finding of unconstitutionality, this Court concluded that the mandatory natural-life sentence "grossly distort[ed] the factual realities of the case and d[id] not accurately represent [Leon]'s personal culpability such that it shock[ed] the moral sense of the community" to apply it to him. *Id.* at 341. The Court explained that subjecting Leon — "'the least culpable offender imaginable'" — to "the same sentence applicable to the actual shooter" was "particularly harsh and unconstitutionally disproportionate." *Id.*

Two factors were essential to the Court's holding: (1) Leon was a juvenile; and (2) his degree of participation in the offenses was minimal. *Id.* at 340-43. As to age, the Court noted "the longstanding distinction made in this state between adult and juvenile offenders," including the societal

recognition that "young defendants have greater rehabilitative potential." *Id.* at 341-42 (citations omitted). This "'marked distinction between persons of mature age and those who are minors'" is reflected in both nature and law, and grounded in the presumption that "'[t]he habits and characters of [minors] are . . . to a large extent as yet unformed and unsettled.'" *Id.* at 342 (citation omitted). Sentencing courts therefore often have discretion to grant leniency to juveniles. *Id.* Likewise, sentencing courts may grant leniency to offenders guilty by accountability. *Id.* The Court explained that although a natural-life sentence might be appropriate for a juvenile homicide offender who actively participated in the planning of a crime, Leon's degree of participation was minimal. *Id.* at 341-43. Thus, the Court held that applying the statutorily mandated natural-life sentence to Leon violated article I, section 11. *Id.* at 343.

2. The legislative judgment as to defendant's aggregate sentence is reasonable.

The legislative judgment here — mandating an aggregate prison term of *de facto* life without parole for a young adult who personally discharges a firearm that proximately causes the death of one person and severe bodily injury or permanent disfigurement to another — does not shock the moral sense of the community. In sharp contrast to Leon Miller, defendant was not a juvenile when he committed his crimes, and he was the principal offender, not an accomplice. *See Huddleston*, 212 Ill. 2d at 130-31 (distinguishing *Leon*

Miller on these grounds). Thus, neither factor crucial to the holding in *Leon Miller* is present here.

Nor does this case warrant departure from this Court's established precedent refusing to invalidate as cruel or degrading legislative minimum prison terms for adult offenders. Both this Court and the United States Supreme Court have upheld mandatory minimum natural-life sentences for adults who commit crimes less serious than murder, a crime that is "unique in its severity and irrevocability," *Coker v. Georgia*, 433 U.S. 584, 598 (1977) (plurality op.), and "in terms of moral depravity and of the injury to the person and to the public" cannot be compared to other serious violent offenses, *Graham*, 560 U.S. at 69 (quotation marks and citations omitted). *See, e.g.*, *Huddleston*, 212 Ill. 2d at 110-11, 130-31, 140-45 (rejecting as-applied challenge to mandatory natural-life sentence for person convicted of predatory criminal sexual assault of a child against two or more persons); *Harmelin*, 501 U.S. at 1002-05 (Kennedy, J., concurring in part and concurring in judgment) (upholding mandatory life-without-parole sentence for possession of large quantity of cocaine where offender had no prior felony convictions); *see also People v. Brown*, 811 N.W.2d 531, 540 (Mich. Ct. App. 2011) (collecting cases from other jurisdictions upholding mandatory life without parole for certain sex offenses). This Court has also upheld mandatory minimum natural-life sentences imposed on (1) a juvenile offender convicted of two murders that "occurred virtually simultaneously,"

Wooters, 188 Ill. 2d at 508 (citing *Taylor*, 102 Ill. 2d at 204);[6] and (2) a twenty-year-old with no criminal history convicted of the murder of a child under twelve years old, *Wooters*, 188 Ill. 2d at 502-03, 505-09. Therefore, it is not shocking to the moral sense of the community that the legislature requires life in prison for a young adult who personally discharges a firearm that proximately causes the death of one person and severe bodily injury or permanent disfigurement to another, even though the offender has no prior convictions. *See id.* at 508 (because article I, section 11, directs the legislature to consider the seriousness or nature of offenses, the "frequency of criminal conduct cannot be the only factor that determines whether an offender is capable of rehabilitation"); *People v. Thomas*, 2017 IL App (1st) 142557, ¶¶ 1, 16, 19, 47-48 (upholding mandatory *de facto* natural-life sentence for eighteen-year-old who "lacked a lengthy criminal history" and personally discharged a firearm that killed one person and severely injured another), *PLA pending*, No. 122101 (filed Apr. 6, 2017).

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[6] *Taylor* involved two defendants, an adult and a juvenile. *Taylor*, 102 Ill. 2d at 204. The Court upheld both sentences under article I, section 11. *Id.* at 204-10. The juvenile defendant's mandatory natural-life sentence is now unconstitutional under the Eighth Amendment. *Miller*, 567 U.S. at 478-80 (Eighth Amendment precludes legislature from mandating life without parole for persons who were under eighteen years of age at the time of the crimes). Under *People v. Davis*, however, *Taylor* remains good law as to the principles that govern defendant's article I, section 11, challenge. *See Davis*, 2014 IL 115595, ¶ 45 (mandatory natural-life sentence for juvenile offender does not violate article I, section 11, even after *Miller*).

Indeed, the legislative judgment here rests on deliberate policy choices made to address specific dangers and balance society's goals and interests in punishment. First, as this Court has explained, given "the significant danger posed when a firearm is involved in a felony," it is not shocking to the conscience of the community that the legislature requires an additional penalty when murder or attempted murder is "committed with a weapon that not only enhances the perpetrator's ability to kill the intended victim, but also increases the risk that grievous harm or death will be inflicted upon bystanders." *Sharpe*, 216 Ill. 2d at 524-25 (citing *Morgan*, 203 Ill. 2d at 488-89, and *Hill*, 199 Ill. 2d at 452-53). The additional penalty was unanimously passed by our legislature to combat this "pervasive and enhanced danger," protect society, deter others from using firearms to commit serious felonies, and penalize the illegal use of firearms. *Hill*, 199 Ill. 2d at 457-59; *see Sharpe*, 216 Ill. 2d at 524-25, 531-32. At the same time, as this Court has explained, by reserving application of the enhancements to "persons who commit some of the most serious felonies," the legislature determined that the seriousness of those offenses in particular warrants the additional penalty and outweighs the objective of rehabilitating that offender. *Sharpe*, 216 Ill. 2d at 525-26 (rejecting defendant's argument that "the legislature did not take into account rehabilitative potential when making the[] enhancements applicable to first degree murder").

Second, the legislature required consecutive sentences for certain triggering offenses to "punish the commission of t[hose] offenses more harshly than the commission of other crimes." *People v. Curry*, 178 Ill. 2d 509, 538 (1997). In other words, the legislature sought to ensure that the triggering offense was separately punished from other offenses, thereby eliminating any possibility of giving the defendant a "free crime." *Id.* The legislature also sought to deter the commission of additional offenses once an initial offense has been completed. *People v. Toliver*, 251 Ill. App. 3d 1092, 1100-01 (2d Dist. 1993); *cf. People v. Petrenko*, 237 Ill. 2d 490, 506 (2010) (within legislative purview to determine that imposition of consecutive natural-life sentences serves legitimate public policy goal, even if its effect is purely symbolic). As with the firearm enhancements, by reserving mandatory consecutive sentencing for persons who commit some of the most serious felonies, the legislature determined that the seriousness of the triggering offenses warrants separate punishment and outweighs the objective of rehabilitating the offender. *See* 730 ILCS 5/5-8-4(d) (2011) (consecutive sentences mandatory for, among other offenses, first degree murder and class X or class 1 felonies where the defendant inflicted severe bodily injury); *Arna*, 168 Ill. 2d at 114 (not shocking to the moral sense of the community for legislature to mandate consecutive terms for certain crimes).

Finally, our legislature recently reaffirmed that for purposes of criminal punishment a person is an adult when he turns eighteen years old.

In 2015, the legislature passed a separate sentencing provision for "individuals under the age of 18 at the time of the commission of an offense," which, among other things, removed the mandatory firearm enhancements for that category of offenders. 730 ILCS 5/5-4.5-105 (eff. Jan. 1, 2016) (capitalization omitted). In 2013, the legislature amended the Juvenile Court Act to raise the age of juvenile court jurisdiction from persons under seventeen years old to persons under eighteen years old. *People v. Richardson*, 2015 IL 118255, ¶¶ 1-3 (describing 705 ILCS 405/5-120 (2012 & 2014)). Both changes reflect a deliberate, legislative choice to mark the line between childhood and adulthood at age eighteen. *See Roper*, 543 U.S. at 574 ("The age of 18 is the point where society draws the line for many purposes between childhood and adulthood" and it is "the age at which the line for death eligibility ought to rest."). The legislature could have applied these changes to, or enacted separate sentencing provisions for, older individuals, as it has done in other contexts. *See, e.g.*, 325 ILCS 40/2(d) (2017) ("child" defined as "a person under 21 years of age" in Intergovernmental Missing Child Recovery Act of 1984); 750 ILCS 5/513 (2017) (specific provision concerning distribution of educational expenses for "non-minor child" in marriage dissolution proceedings). But the legislature chose to draw the line at age eighteen — the same age that our legislature marks as the line for adulthood in many areas. *See, e.g.*, 10 ILCS 5/3-6 (2017) (eligible to vote in general or consolidated election at age eighteen); 105 ILCS 5/14-6.10 (2017)

(in School Code provision governing transfer of parental rights, "age of majority" is eighteen years); 705 ILCS 305/2 (2017) (eligible to serve on jury at age eighteen); 735 ILCS 5/13-211 (2017) (Code of Civil Procedure defines "minor" as person under eighteen years of age); 755 ILCS 5/11-1 (2017) (same under Probate Act). In fact, age eighteen is the dividing line that most, if not all, jurisdictions continue to draw for purposes of sentencing.[7] This legislative judgment — that youth-related considerations generally warrant lesser sentences only for offenders under eighteen years of age — reflects the community's general moral sense concerning the treatment of "young adults" at sentencing. *See Rizzo*, 2016 IL 118599, ¶ 37; *Thomas*, 2017 IL App (1st) 142557, ¶¶ 46-47; *cf. Miller*, 567 U.S. at 481-82 ("children are different" and our history is replete with legal rules that differentiate between adults and children).

Accordingly, given the seriousness of the offenses of murder and attempted murder, the unique dangers presented by firearms, the deterrent and retributive purposes of consecutive sentencing, and the widespread societal recognition that legal adulthood begins at age eighteen, it is not

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[7] *See, e.g.*, *United States v. Marshall*, 736 F.3d 492, 497-500 (6th Cir. 2013); *People v. Argeta*, 149 Cal. Rptr. 3d 243, 244-46 (Ct. App. 2012); *Haughey*, 2017 WL 2350677, at **4-6; *State v. Lyle*, 854 N.W.2d 378, 403 (Iowa 2014); *Crawley v. State*, 895 N.W.2d 922, 2017 WL 108298, at *2-3 (Iowa Ct. App. Jan. 11, 2017) (non-precedential); *State v. Ruggles*, 304 P.3d 338, 344-46 (Kan. 2013); *Commonwealth v. Colton*, 73 N.E.3d 783, 798 (Mass. 2017); *State v. Perdomo-Paz*, 471 S.W.3d 749, 764-66 (Mo. Ct. App. 2015); *State v. Nitsche*, 66 N.E.3d 135, 151-53 (Ohio Ct. App. 2016); *Nicodemus v. State*, 392 P.3d 408, 413-17 (Wyo. 2017).

shocking that the legislature determined that no mitigating evidence could justify returning an adult offender to society after he personally discharges a firearm that proximately causes the death of one person and severe bodily injury or permanent disfigurement to another. *Wooters*, 188 Ill. 2d at 509.

Additional facts make defendant's sentence especially appropriate. Defendant armed himself with a firearm, solicited a ride to the victims' location, directed the driver to stop at a particular position to avoid detection, approached Rondell and Woulard from behind, fired his gun at them at least six times, shot at Diggs when he ran, unsuccessfully shot at Ronald, and fled the scene. Defendant's premeditated surprise attack killed one person, severely wounded another, and narrowly avoided injuring two others. Thus, defendant's offenses were especially egregious and his *de facto* natural-life sentence is proportionate to his culpability.

Moreover, the only mitigating factors present on this record — defendant's age and lack of prior criminal convictions — do not lessen his culpability such that his sentence is cruel or degrading. Defendant was raised in a supportive and stable family environment, and was a role model for his younger siblings. C199-201, 219-22. Further, at the time of his offenses, defendant was, at most, two weeks away from graduating high school and was in the process of choosing a college. C176, 220-21. Despite these positive influences and circumstances, defendant devised and carried

out a criminal plan to use a firearm to kill Rondell and anyone else within Rondell's vicinity.

Contrary to the appellate court's analysis, A10, that defendant completed his GED while in pretrial custody, that he came from a supportive and stable family environment, and that he had no prior criminal convictions are not facts that mitigate defendant's culpability or establish that this an exceptional case for which the legislatively mandated term is shocking to the moral sense. Defendant was just two weeks shy of graduation and his decision to obtain his GED while awaiting trial, though laudable, does not establish rehabilitative potential sufficient to override the legislative judgment. *Cf. In re Addison R.*, 2013 IL App (2d) 121318, ¶ 30 (receiving certificates in prison, "'while commendable, is not a difficult task and does not show rehabilitation'").

Nor does defendant's stable and supportive family background mitigate his culpability for his offenses, or necessarily show rehabilitative potential. As the Iowa Supreme Court observed, it is unclear what significance a court should attach to a juvenile offender's stable home environment. *State v. Sweet*, 879 N.W.2d 811, 838 (Iowa 2016) (citing *State v. Seats*, 865 N.W.2d 545, 561-62 (Iowa 2015) (Hecht, J., concurring)). On the one hand, an offender from a stable family environment might be considered more culpable than the offender whose family life was characterized by chaos and deprivation, *Seats*, 879 N.W.2d at 561; or the fact that the offender failed

to benefit from the positive environment might show that he is irredeemable and an unlikely candidate for rehabilitation, *Sweet*, 879 N.W.2d at 838. On the other hand, a stable family environment could suggest that the offender's character and personality have not been irreparably damaged such that he has greater rehabilitative prospects. *Id.* In the end, no reliable predictions regarding rehabilitative potential can be drawn from this fact, *id.*, and the appellate court improperly relied on it to overturn the presumptively constitutional mandatory sentence.

Likewise, that defendant had no prior criminal convictions is not a reliable predictor of his rehabilitative potential. Despite the lack of a criminal history, defendant decided to commit these ruthless acts. Further, the record reveals no clear motive or negative influences that would explain defendant's actions. R.CC9. To the contrary, defendant disclaimed any gang affiliation and his background indicates that he was raised in a family that "instil[led] the upmost [sic] morals and values." C201, 220.

But even if defendant's lack of prior criminal convictions supports a finding that defendant "might be able to rehabilitate himself if given the opportunity," A10, the legislature acted within its authority in concluding that, due to the gravity of defendant's offenses and the harm he inflicted, the societal interests in retribution, deterrence, and incapacitation outweigh any rehabilitative potential that defendant's individual circumstances may

suggest. Thus, defendant's lack of prior criminal convictions does not render his sentence unconstitutional.

In the end, given defendant's callous and reprehensible crimes, and the further injuries he could have caused with his firearm, the legislature's determination that defendant must be imprisoned for life because the seriousness of his offenses outweighs any possibility of restoring him to useful citizenship is reasonable and comports with article I, section 11. *See Huddleston*, 212 Ill. 2d at 140-48 (mandatory natural-life term for predatory criminal sexual assault against two children not cruel or degrading; according "*significant* weight to the seriousness of defendant's conduct" and finding that rehabilitative potential did not outweigh harm to victims) (emphasis in original); *People v. McKee*, 2017 IL App (3d) 140881, ¶¶ 35-36 (upholding mandatory natural-life sentence for eighteen-year-old guilty by accountability for actively participating in planning of two first degree murders, notwithstanding that defendant had "significant mental health issues and at least two extended and extremely tragic and traumatizing experiences as a 14-year-old"), *PLA pending*, No. 122468 (Ill.) (filed July 13, 2017). For these reasons, defendant's as-applied challenge fails.

3. The appellate court's analysis disregards this Court's precedent, usurps the legislature's authority to fix punishment, and creates a new sentencing scheme for "young adult" offenders.

The appellate court's analysis is flawed in several respects. At a fundamental level, the appellate court failed to give any weight or

consideration to the seriousness of defendant's offenses, an integral part of the "cruel or degrading" analysis. *Compare, e.g.*, *Leon Miller*, 202 Ill. 2d at 340 ("We review the gravity of the defendant's offense in connection with the severity of the statutorily mandated sentence within our community's evolving standard of decency."), *with* A9-12 (finding only that defendant's sentence violates rehabilitation clause, with cursory references in paragraphs 64 and 69 to defendant's offenses and his role in those offenses). Further, the appellate court disregarded this Court's precedent establishing that the legislature does not violate the rehabilitation clause when mandating lifetime imprisonment for an adult who commits certain offenses. *Compare, e.g.*, *Rizzo*, 2016 IL 118599, ¶ 39 (legislature has considered objective of restoring offender to useful citizenship when it mandates lengthy minimum sentences) (citing *Sharpe*, 216 Ill. 2d at 525, and *Taylor*, 102 Ill. 2d at 206); *Wooters*, 188 Ill. 2d at 509 (legislature "could conclude that no mitigating evidence would justify a sentence less severe than life imprisonment for an offender guilty of" a certain crime), *with* A7 (rehabilitation clause "has yet to receive the scrutiny and attention it properly deserves as a distinctive component of Illinois's constitution"); A10 (statutory scheme mandating natural-life sentence "is absolutely contrary to th[e] constitutional objective of the rehabilitation clause"); A11 (defendant's "sentencing should have

been . . . specific to his own circumstances, to effectuate the constitutional mandate of restoring [him] to useful citizenship").

Relatedly, the appellate court improperly premised its decision on the legislature's failure to provide the trial court with sufficient sentencing discretion. *See* A10 (statutory scheme unconstitutional as applied because it precludes court from imposing lesser sentence based on case-specific information, including defendant's rehabilitative potential); A11 (defendant's sentence unconstitutional because it is not "specific to his own circumstances"); A12 ("trial court could not tailor the sentence to fit [defendant]'s particular circumstances"); *id.* (mandatory firearm enhancements "prevented the trial court from constructing a sentence that had any chance of returning [defendant] to society, even if the court thought that [defendant] was a good candidate to rehabilitate himself"); *id.* ("our criminal justice system would be better served by a case-by-case analysis in which the sentence imposed is individualized to the offender and the offense"). However, this Court has repeatedly held that the Illinois Constitution provides the legislature the power to determine the nature and extent of criminal sentences that are required to protect society, and that this legislative power "necessarily includes the authority to establish mandatory minimum sentences, even though such sentences, by definition, restrict the inquiry and function of the judiciary in imposing sentence." *Hill*, 199 Ill. 2d at 447-48 (citing *Taylor*, 102 Ill. 2d at 208, and *People ex rel. Carey v.*

Cousins, 77 Ill. 2d 531, 549 (1979)). Although the Eighth Amendment mandates individualized sentencing for offenders under eighteen years of age subject to natural life imprisonment, *Miller*, 567 U.S. at 478-80, as the appellate court recognized, A9, it does not require such sentencing for adult offenders. And this Court has never interpreted the Illinois Constitution as categorically requiring individualized sentencing for a particular type of offender or offense. *See Davis*, 2014 IL 115595, ¶ 45 (even after *Miller*, mandatory natural-life sentence for juvenile offender does not violate article I, section 11); *Leon Miller*, 202 Ill. 2d at 341-42 (refusing to categorically prohibit mandatory life imprisonment for all juvenile homicide offenders guilty by accountability); *Hill*, 199 Ill. 2d at 448-49 (individualized sentencing is matter of public policy for legislature, not constitutional requirement).

Yet the appellate court granted to an undefined class of "young adults" the same protections that the United States Supreme Court expressly limited to offenders under eighteen years of age. *Miller*, 567 U.S. at 471-80; *Roper*, 543 U.S. at 574. And it did so on a record devoid of any evidence that might support extending *Miller*'s rationale beyond minors under the age of eighteen, directly contrary to *Thompson*, 2015 IL 118151, ¶ 38. Instead, the appellate court relied on a newspaper opinion, a publication from an advocacy organization, and the fact that some other countries structure their juvenile court provisions to include certain categories of young adult offenders. A11 (citing *House*, 2015 IL App (1st) 110580, ¶ 95); *House*, 2015 IL App (1st)

110580, ¶¶ 95-96. But these secondary sources hardly support usurping our legislature's rational policy decision to draw the line for criminal sentencing and juvenile court treatment at age eighteen. *Cf. Blumenthal v. Brewer*, 2016 IL 118781, ¶ 82 (secondary sources are not binding on this Court and are unpersuasive when they do not adequately consider deeply rooted public policy in Illinois); *Marshall*, 736 F.3d at 500 ("[c]onsiderations of efficiency and certainty require a bright line separating adults from juveniles" and for Eighth Amendment purposes, "an individual's eighteenth birthday marks that bright line").

Nor does *Roper* justify supplanting this legislative determination. In support of its decision, the appellate court cited a single sentence from *Roper*: ""The qualities that distinguish juveniles from adults do not disappear when an individual turns 18."" A11 (quoting *Roper*, 543 U.S. at 574). But when that sentence is read in context, it is clear that *Roper* substantiates our legislature's decision:

> Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.

543 U.S. at 574. The United States Supreme Court continues to adhere to this bright line, and no other court appears to have extended that line.[8] Accordingly, the legislature's decision to draw the same line and sentence defendant like other adult offenders is by no means shocking.

Although the appellate court purported to rest its decision on facts specific to defendant, A10-11, as discussed *supra*, Part I.B, the record reveals "nothing about how th[e] science [concerning juvenile development] applies to the circumstances of defendant's case, the key showing for an as-applied constitutional challenge," *Thompson*, 2015 IL 118151, ¶ 38. Nor does the record contain any evidence suggesting that defendant's actions resulted from relative immaturity, impetuosity, negative influences, a brutal or dysfunctional family and home environment, or intoxication; or that defendant's role in his crimes was minimal. *Cf. Miller*, 567 U.S. at 477-79 (listing mitigating factors that lessen a juvenile offender's culpability and diminish justification for imposing life without parole on that offender).

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[8] *See supra*, Part II.B.2, n.7 (citing cases); *see also United States v. Williston*, 862 F.3d 1023, 1039-40 (10th Cir. 2017); *United States v. Bernard*, 762 F.3d 467, 482-83 (5th Cir. 2014); *State v. Endreson*, 2016 WL 5073985, at *1-2 (Ariz. Ct. App. Sep. 20, 2016) (non-precedential); *Fatir v. State*, 140 A.3d 1142, 2016 WL 3525273, at **2 (Del. May 24, 2016) (order); *Hill v. State*, 921 So. 2d 579, 584 (Fla. 2006); *State v. Wells*, 203 So. 3d 233, 308 n.18 (La. Ct. App. 2016); *People v. Adamowicz*, 2017 WL 2704900, at *8 (Mich. Ct. App. June 22, 2017) (non-precedential); *State v. Nolan*, 870 N.W.2d 806, 828 (Neb. 2015); *State v. Garcell*, 678 S.E.2d 618, 645-47 (N.C. 2009); *Pike v. State*, 2011 WL 1544207, at *67 (Tenn. Crim. App. Apr. 25, 2011); *Martinez v. State*, 2016 WL 4447660, at *13-16 (Tex. App. Aug. 24, 2016) (not designated for publication).

Thus, despite its attempt to limit its analysis to the facts of this case, the appellate court in effect precluded mandatory minimum life-without-parole sentences for all "young adult" offenders, or at least required critical appellate review of every such sentence.

Indeed, the appellate court overturned defendant's mandatory sentence based in part on its belief that the trial court was "dissatisf[ied] with the high sentence it was required to give." A11. Yet the trial judge's statements were equivocal at best on whether the sentence was appropriate for defendant. *See* R.CC9 (stating that defendant inexplicably "shot up a gas station" and needed to be "treated seriously," but also that he was "sorry that the sentencing parameters [we]re such that [his] options [we]re somewhat limited"). Even if the appellate court's characterization were accurate, a particular sentencing judge's "dissatisfaction" with the legislatively mandated sentence does not make the sentence shocking to the moral sense of the community. The appellate court's rationale implies that a "young adult" offender can constitutionally be sentenced to mandatory life without parole only if the sentencing court independently finds that the sentence is "satisfactory," or in other words, that the offender cannot be rehabilitated. *See* A11 (distinguishing *People v. Ybarra*, 2016 IL App (1st) 142407, based on sentencing court's "outright" finding that "Ybarra had no rehabilitative potential"). But *Miller* does not mandate this type of express finding for juvenile offenders sentenced to life without parole, *Montgomery v. Louisiana*,

136 S. Ct. 718, 735 (2016), and the Illinois Constitution does not require it for any sentence, *People v. La Pointe*, 88 Ill. 2d 482, 493 (1981); *People v. Meeks*, 81 Ill. 2d 524, 534 (1980); *People v. Bartik*, 94 Ill. App. 3d 696, 702 (2d Dist. 1981).

In sum, this Court should reject the appellate court's unprecedented reasoning. To hold otherwise would require this Court to radically depart from years of precedent interpreting article I, section 11, as authorizing the legislature to give greater weight to the seriousness of crimes than the possibility of restoring an offender to useful citizenship, and to prescribe lengthy mandatory minimum penalties in accordance with the evils it seeks to remedy. *See supra*, Parts II.A & II.B.1 (discussing cases). Although the appellate majority would have Illinois adopt a sentencing scheme where the judiciary has greater discretion, such a scheme is not constitutionally required. *Hill*, 199 Ill. 2d at 448-49. Instead, whether such a scheme is warranted is a policy decision that rests properly with the legislature. *Id.* In fact, when it enacted the new juvenile sentencing provision — which applies to *all* juvenile offenders sentenced in criminal court, not just those whose mandatory minimum sentences would be unconstitutional under *Miller*, *see* 730 ILCS 5/5-4.5-105 (eff. Jan. 1, 2016) — the legislature balanced the competing interests and provided the judiciary with greater sentencing discretion for juvenile offenders. But whether those or similar protections should be afforded to an undefined class of "young adults" is a legislative, not

constitutional, judgment. Accordingly, this Court should hold that defendant's sentence comports with article I, section 11.

CONCLUSION

This Court should reverse the appellate court's judgment.

September 6, 2017

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RULE 341(c) CERTIFICATE OF COMPLIANCE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 38 pages.

/s/ Gopi Kashyap
GOPI KASHYAP
Assistant Attorney General

APPENDIX

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Illinois Official Reports

Appellate Court

***People v. Harris*, 2016 IL App (1st) 141744**

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DARIEN HARRIS, Defendant-Appellant.
District & No.	First District, Second Division Docket No. 1-14-1744
Filed Rehearing denied	December 27, 2016 January 19, 2017
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 11-CR-11184; the Hon. Nicholas Ford, Judge, presiding.
Judgment	Affirmed in part, vacated in part, and remanded; mittimus corrected.
Counsel on Appeal	Michael J. Pelletier, Patricia Mysza, and David M. Berger, of State Appellate Defender's Office, of Chicago, for appellant. Anita M. Alvarez, State's Attorney, of Chicago (Alan J. Spellberg, Joseph Alexander, and Christopher Miller, Assistant State's Attorneys, of counsel), for the People.
Panel	PRESIDING JUSTICE HYMAN delivered the judgment of the court, with opinion. Justice Neville concurred in the judgment and opinion. Justice Mason concurred in part and dissented in part, with opinion.

OPINION

¶ 1 On June 7, 2011, Rondell Moore and Quincy Woulard were each shot several times at a Chicago gas station. Moore died of his wounds, after fleeing the station on foot. Woulard survived. After a bench trial, the court convicted defendant Darien Harris of first degree murder in Moore's death and attempted first degree murder of Woulard, and sentenced Harris to an aggregate term of 76 years of imprisonment.

¶ 2 On appeal, Harris argues that the evidence was insufficient to support his convictions, but we find that a reasonable trier of fact could credit the eyewitnesses who saw Harris shoot Moore and Woulard. He also raises an as-applied challenge to his sentence, contending that it contravenes the Illinois Constitution. Ill. Const. 1970, art. I, § 11. We agree. Without diminishing the seriousness of Harris's crimes, we believe it shocks the moral sense of the community to impose what amounts to a life sentence on Harris, who turned 18 just a few months before the shooting, thereby eliminating any chance of Harris becoming a contributing member of society. Finally, we direct the clerk of court to correct the mittimus to reflect Harris's conviction for only one count of attempted first degree murder.

¶ 3 BACKGROUND

¶ 4 Ronald Moore testified that on June 7, 2011, he and his younger brother Rondell Moore drove into a BP gas station at the corner of Stony Island and Marquette on the south side of Chicago. Rondell was having car trouble. He put up the car's hood and a local mechanic, Quincy Woulard, arrived on his bike and was helping Rondell with the car's engine. Ronald stayed in the backseat.

¶ 5 Ronald saw a black Lexus pull into the gas station parking lot from Marquette. Ronald had seen the car on Cottage Grove a few days before, and recognized the driver from the neighborhood of 65th and Minerva (though Ronald did not know the driver's name). The Lexus drove around the station office until Ronald could not see it. Ronald then heard a number of gunshots—more than five. Ronald looked out the back passenger's side window and saw Harris shooting a chrome handgun at Rondell. Ronald recognized Harris from the Minerva neighborhood, but did not know his name. Harris was only a few feet away from Ronald during the shooting.

¶ 6 Rondell ran, hopped over a fence along the gas station's property, and went toward the parking lot of a Chase Bank situated next door to the gas station. Harris continued shooting as Rondell fled. Ronald was unable to leave the car through the passenger's side door, so he scooted across the seat toward the driver's side. Harris was still shooting at Woulard, and suddenly pointed the gun at Ronald and pulled the trigger. Ronald heard a click, but the gun did not fire. Harris then ran toward Stony Island.

¶ 7 Ronald got out of the car, chased Harris a few feet, and turned to find his brother. Meanwhile, the Lexus drove through the Chase Bank parking lot and Ronald could only see one person (the driver).

¶ 8 When the police arrived, Ronald heard a message over a police radio that the Lexus had been found at a Walgreens drug store, across the street from the Chase Bank. Ronald ran to the Walgreens and recognized the Lexus. He told police the driver killed Rondell, but

testified at trial that the driver was not actually the shooter. He did not see Harris in the Lexus at that time.

¶ 9 A couple days after the shooting, a neighborhood acquaintance showed Ronald a YouTube video of a black Lexus. Ronald recognized both the Lexus's driver and the shooter, though he did not know their names. He informed police, and eight days after the shooting, at a lineup, Ronald identified Harris as the shooter.

¶ 10 Dexter Saffold testified that he used his scooter to go to a restaurant in the neighborhood that evening. He was rolling northbound on Stony Island in front of the BP station when he heard gunshots. Saffold froze, and saw the shooter from about 18 feet away. The shooter was holding a dark handgun, and Saffold could see the muzzle flashes and heard more than two gunshots. Saffold could see the shooter aiming the gun at a person near a car with its hood up, and another man on a bicycle in the same area. The shooter ran past Saffold, bumping into him, and almost dropped the gun while trying to put it into his pocket. Saffold saw another person running behind the fence, which had some openings in it. The shooter ran behind the Chase Bank, out of Saffold's view. Saffold went to the gas station to call 911 and saw a man lying on the ground by the car and bicycle. Saffold spoke to the police when they arrived, and on June 15, 2011, identified Harris in a lineup as the shooter.

¶ 11 Quincy Woulard testified that he often assisted people with car repairs at the BP station. He saw his friend "Blink" (Rondell Moore) at the station, who asked Woulard to look at his car because it was overheating. While Woulard was looking under the hood, he heard three shots and then fell to the ground. Someone said, "he running down the alley," and Woulard saw someone was running in the alley. Woulard had been shot three times, but did not see who shot him.

¶ 12 Aaron Jones testified that on June 7, 2011, he was driving a black Lexus in the area of Minerva, Stony Island, and 65th, selling marijuana. A man he knew as "Chucky" (Harris) waved at him to stop and asked Jones for a ride to the gas station. Jones drove "Chucky" to the BP station at 66th and Stony Island, and dropped him off in the parking lot. Jones then left and headed home, but then backtracked to buy cigarettes at a drugstore at 67th and Stony Island. Before he could reach the store, Jones was pulled over by police. He later identified Harris to police.

¶ 13 During his testimony, Jones recanted his statement to police, now testifying that Harris had not been in Jones's car and that the police had coerced Jones into making the statement and identification by threatening him with jail. Police officers testified that they had not pressured Jones to identify Harris.

¶ 14 During closing argument, the State noted that it was not required to prove motive, but theorized that there was "some sort of beef" between Harris and the Moore brothers. The trial court found Harris guilty of Rondell Moore's murder, basing its guilty verdict on Saffold's testimony: "among all the witnesses that I heard from, his testimony was unblemished by any of the cross-examination," and he corroborated Ronald Moore's and Jones's testimony. The trial court indicated that some "inconsistencies" in the testimony did not create a reasonable doubt. The court said Jones's recantation might have been motivated by fear due to his own involvement in the crime. The trial court also found Harris guilty of the attempted first degree murder of Woulard.

¶ 15 Before sentencing, Harris's counsel presented evidence of his lack of prior criminal record, supportive family, and educational achievements while in prison. After stating it had

considered all the appropriate factors, the trial court commented, "I am sorry that the sentencing parameters are such that my options are somewhat limited. Although, I do feel you should be treated seriously." The trial court sentenced Harris to 45 years of imprisonment on the murder conviction: 20 years for the offense plus 25 years for the mandatory firearm enhancement. The trial court also sentenced Harris on three counts of attempted murder: 26 years for count LXXI (6 years plus 20 years for the mandatory firearm enhancement); 31 years for count LXXII (6 years plus 25 years enhancement); and 31 years for count LXXIII (6 plus 25). The attempted murder counts were to run concurrently with each other, but consecutively to the murder sentence. Finally, the court sentenced him to 20 years for aggravated battery, concurrent with the attempted murder sentences. Harris's aggregate sentence was 76 years.

¶ 16 ANALYSIS

¶ 17 Evidence Sufficient to Prove Harris Guilty Beyond a Reasonable Doubt

¶ 18 The relevant inquiry when challenging the sufficiency of the evidence involves, after viewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). As a reviewing court, we will not substitute our judgment for that of the trier of fact on questions concerning the weight of the evidence or the credibility of the witnesses. *Id.* at 375. And, we will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Id.*

¶ 19 First Degree Murder

¶ 20 Harris argues that there was insufficient evidence to convict him of first degree murder of Rondell. A person commits first degree murder if, in performing the acts that cause a death, he or she either intends to kill or do great bodily harm to the victim or another individual, knows that the acts will cause the victim's or another's death, or knows the acts create a strong probability of death or great bodily harm to the victim or another. 720 ILCS 5/9-1(a)(1), (a)(2) (West 2008).

¶ 21 According to Harris, Rondell was not shot at the gas station, but rather in the Chase Bank parking lot, and that this is shown by the lack of a blood trail from the gas station to the bank, and the possibility that two different firearms were used in the crime. Since no witnesses were there, and no evidence tied Harris to a gun, there must have been a second shooter at the bank, and Harris could not be proven guilty of Rondell's murder.

¶ 22 The problem with Harris's theory is that it is not supported by evidence in the record. Harris states that, since Rondell managed to flee from the gas station to the bank parking lot, he could not have been shot until he reached the bank (based on the injuries he suffered). But neither party at trial presented evidence as to what physical feats Rondell would, or would not, have been capable of after being shot at the gas station. Harris is merely asking us to speculate on the stipulated medical evidence. But even if we were to accept Harris's theory that Rondell was not shot until after he fled to the Chase Bank parking lot, a reasonable trier of fact could conclude that the man who shot Woulard in the BP parking lot and chased Rondell to the Chase Bank parking lot was the same man who shot Rondell in the Chase Bank parking lot. Thus, the lack of a blood trail does not exculpate Harris. Similarly, even if

Rondell was shot with a different gun than Woulard, there was nothing preventing Harris from carrying two firearms during the crime.

¶ 23 The lack of evidence tying Harris to a gun does not change this conclusion. Both Ronald Moore and Dexter Saffold identified Harris as the man who fired a gun in the BP parking lot. Though Ronald Moore's credibility could be challenged based on his apparent animosity toward Harris (and others from Harris's neighborhood), Dexter Saffold had no connection to either the victims or Harris, and the trial court found Saffold credible. *People v. Petermon*, 2014 IL App (1st) 113536, ¶ 30 (testimony of single eyewitness sufficient to convict if eyewitness credible and able to view defendant under conditions permitting positive identification). (This leaves aside Aaron Jones who recanted.) Harris's citation to *In re Nasie M.*, 2015 IL App (1st) 151678, does not help his cause; in *Nasie M.*, the evidence was insufficient to support Nasie's conviction because there was no medical or forensic evidence, and also no eyewitnesses. *Id.* ¶ 37.

¶ 24 Moore's and Saffold's credibility also finds support in the surveillance video from the gas station, which depicts a sequence of events in line with their descriptions: the victims' arrival at the gas station by car and bike; a black Lexus dropping off a passenger on the other side of the gas station; the shooter walking toward the victims; and the victims' attempts to flee. (The angle of the video camera prevented the shooting from being captured on tape.) From this evidence, a reasonable trier of fact could conclude that Harris was the man who shot Rondell Moore, whether those shots were fired in the BP parking lot, during the flight from there, or in the Chase Bank parking lot.

¶ 25 Attempted First Degree Murder

¶ 26 Harris also challenges his convictions for the attempted murder of Quincy Woulard. A person commits attempted murder when, with intent to commit murder, he or she takes any substantial step toward committing murder. 720 ILCS 5/8-4(a), 9-1 (West 2008). Harris argues that Woulard was an "unintended" victim because Rondell was the actual target, and thus there was no evidence that Harris had the specific intent to kill Woulard.

¶ 27 Harris is incorrect. Since defendants rarely admit it explicitly, their specific intent may be shown by surrounding circumstances, including "the character of the assault [and] the use of a deadly weapon." *People v. Migliore*, 170 Ill. App. 3d 581, 586 (1988). Woulard testified that he was looking at a car's engine when he heard gunshots and fell to the ground; he suffered three gunshots wounds. A reasonable trier of fact could infer that shooting a defenseless person multiple times evinces a specific intent to kill that person. See *id.* (intent may be inferred if defendant performs an act with direct and natural consequence of destroying another's life).

¶ 28 But Harris argues that the State is precluded from arguing this theory of intent because at trial, it argued only that Rondell was the target and Woulard was merely an innocent bystander. Harris relies primarily on *People v. Homes*, 274 Ill. App. 3d 612 (1995). In *Homes*, the State explicitly and consistently argued that Homes intended to kill Shelly, but missed and shot another person, Moore, by accident. *Id.* at 620-21. Homes was acquitted of the attempted murder of Shelly but convicted of the attempted murder of Moore. *Id.* The Homes court held that this legally inconsistent verdict could not stand, and the State could not change its theory from one of "transferred intent" at trial to arguing that Homes intended to kill Moore all along. *Id.*

¶ 29 But *Homes* differs significantly from this case. The State did not limit itself to arguing that Rondell was the intended victim and Woulard was an innocent bystander. In its opening argument, the State asserted that Harris had shot both Rondell and Woulard; in closing argument, the State argued that it did not need to prove motive behind the shootings (but theorized "some sort of beef" had arisen between Harris and the Moore brothers). Nor did Harris's trial produce the type of legally inconsistent verdicts present in *Homes*. Moreover, the evidence showed Harris approach the unsuspecting victims and fire multiple times, hitting two people. An intent to kill the intended victim can be transferred to another person also harmed where the defendant uses a deadly weapon "indiscriminately" against a group of people. *People v. Ephraim*, 323 Ill. App. 3d 1097, 1108-09 (2001).

¶ 30 Harris's 76-Year Sentence Violates the Illinois Constitution.

¶ 31 Harris challenges his 76-year sentence under both the eighth amendment and Illinois's "proportionate penalties" clause. The sentencing statutes mandated that the trial court add firearm enhancements to his sentences for murder and attempted murder; that his murder and attempted murder sentences be served consecutively; and that he must serve the entire murder sentence and 85% of the attempted murder sentence. See 735 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2008) (25 years to be added to murder sentence if firearm used proximately causes death); 720 ILCS 5/8-4(c)(1)(D) (West 2008) (25 years to be added to attempted murder sentence if firearm used proximately causes great bodily harm); 730 ILCS 5/5-8-4(d)(1) (West 2008) (murder and attempted murder sentences to be served consecutively); 730 ILCS 5/3-6-3(a)(2)(i)-(ii) (West 2008) ("truth in sentencing" mandates defendant must serve 100% of murder sentence and 85% of attempt murder sentence).

¶ 32 Even though the trial court sentenced Harris at the bottom of the applicable ranges, his aggregate sentence totals 76 years (of which Harris must serve at least 71 years). Harris alleges that this lengthy term is actually a "mandatory *de facto* life sentence," and the interaction of these statutes prevented the trial court from exercising any discretion or taking into account his youth or rehabilitative potential. This statutory scheme, according to Harris, violates both the federal and state constitutions as applied to him.

¶ 33 We presume that statutes are constitutional and will uphold them whenever reasonably possible. *People v. Patterson*, 2014 IL 115102, ¶ 90. Harris has the burden of rebutting this presumption; we will review his constitutional challenge *de novo*. *People v. Aikens*, 2016 IL App (1st) 133578, ¶ 29.

¶ 34 The Illinois Constitution and the Eighth Amendment

¶ 35 Harris challenges these statutes under both the eighth amendment of the federal constitution and the "proportionate penalties" clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). As an initial matter, the parties disagree whether the so-called proportionate penalties clause is more protective of a defendant's rights than the eighth amendment. Both parties support their arguments with precedent from the Illinois Supreme Court as well as the appellate court.

¶ 36 In *People v. Clemons*, the Illinois Supreme Court explained that, while there is a connection between the "proportionate penalties" clause and the eighth amendment, the proportionate penalties clause "went beyond the framers' understanding of the eighth amendment and is not synonymous with that provision." 2012 IL 107821, ¶ 40. *Clemons*

came to this conclusion after examining the more expansive language of the proportionate penalties clause and the legislative history of the Illinois constitutional convention that drafted the clause. *Id.* ¶¶ 36-39. The language requiring penalties to be determined "with the objective of restoring the offender to useful citizenship" (Ill. Const. 1970, art. I, § 11) was specifically added in 1970 to bring the constitution in line with modern thinking on penology. *Clemons*, 2012 IL 107821, ¶ 39.

¶ 37 Two years later, however, the Illinois Supreme Court stated that the proportionate penalties clause is "co-extensive" with the eighth amendment (although it did so without discussing *Clemons*). *Patterson*, 2014 IL 115102, ¶ 106. Some appellate courts have followed *Clemons*, while others have relied on *Patterson*. Compare *People v. Gipson*, 2015 IL App (1st) 122451, ¶¶ 69-70 (following *Clemons*), with *Aikens*, 2016 IL App (1st) 133578, ¶ 23 (following *Patterson*).

¶ 38 We agree with *People v. Pace*, 2015 IL App (1st) 110415, ¶¶ 136-39, that *Patterson* did not abrogate *Clemons* and that the proportionate penalties clause is more expansive than its federal counterpart. See also *People v. Wilson*, 2016 IL App (1st) 141500, ¶ 38 (following *Pace*).

¶ 39 The eighth amendment prohibits "cruel and unusual punishments." U.S. Const., amend. VIII. This applies to the states through the fourteenth amendment. *Roper v. Simmons*, 543 U.S. 551, 560 (2005).

¶ 40 The Illinois Constitution provides, "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. This clause is generally referred to as the "proportionate penalties" clause, but the second half of the section would be better considered as its own concept: the "rehabilitation" clause. See *Clemons*, 2012 IL 107821, ¶ 37 (noting difference between two clauses of section 11). The mandate that all criminal penalties be determined "with the objective of restoring the offender to useful citizenship" is no less a requirement than the rest of the section, and has yet to receive the scrutiny and attention it properly deserves as a distinctive component of Illinois's constitution.

¶ 41 Harris may show a violation of this clause if his sentence is "cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community." (Internal quotation marks omitted.) *Aikens*, 2016 IL App (1st) 133578, ¶ 33. As society evolves, "so too do our concepts of elemental decency and fairness which shape the moral sense of the community." (Internal quotation marks omitted.) *People v. Miller*, 202 Ill. 2d 328, 339 (2002). So we must consider objective evidence and "the community's changing standard of moral decency." (Internal quotation marks omitted.) *Aikens*, 2016 IL App (1st) 133578, ¶ 33.

¶ 42 We will first consider the constitutionality of the individual statutes affecting Harris's sentence before turning to the overall effect of the statutory scheme.

¶ 43 Firearm Enhancements

¶ 44 When a firearm is involved in the commission of certain felonies, the Illinois legislature has "add[ed] a mandatory additional term of years to whatever sentence would otherwise be imposed." *People v. Sharpe*, 216 Ill. 2d 481, 484-85 (2005). The legislature intended to impose a greater penalty when firearms are used or discharged to "deter the use of dangerous

weapons and firearms during the commission of a felony offense." *People v. Guyton*, 2014 IL App (1st) 110450, ¶ 58; see 720 ILCS 5/33A-1(b) (West 2008) (discussing legislative intent). In accordance with this goal, the statute adds a mandatory minimum 25-year enhancement to the sentence if, during the commission of a specified offense, the offender personally discharged a firearm that proximately caused great bodily harm or death. 730 ILCS 5/5-8-1(1)(d)(iii) (West 2008).

¶ 45 Illinois courts have repeatedly upheld the constitutionality of the mandatory firearm enhancement statute when reviewing adult defendants' sentences. *Sharpe*, 216 Ill. 2d at 519-21; *Guyton*, 2014 IL App (1st) 110450, ¶ 62. In *Sharpe*, the Illinois Supreme Court stated that "it would not shock the conscience of the community to learn that the legislature has determined that an additional penalty ought to be imposed when murder is committed with a weapon that not only enhanced the perpetrator's ability to kill," but also increased the risk that bystanders would suffer grievous harm or death. *Sharpe*, 216 Ill. 2d at 519; see also *Pace*, 2015 IL App (1st) 110415, ¶ 141. This statute is not unconstitutional as applied to Harris.

¶ 46 Consecutive Sentencing

¶ 47 The consecutive sentencing statute also is not unconstitutional as applied to Harris. Illinois courts have repeatedly upheld the constitutionality of consecutive sentences. See, *e.g.*, *People v. Wagener*, 196 Ill. 2d 269, 285-86 (2001) (because each individual sentence is within statutory range, sentences running consecutively does not render an aggregate sentence unconstitutional). Illinois courts have found the consecutive sentencing statute to be constitutional, even applied to juvenile defendants, because a "defendant's aggregate prison term was different from a sentence of life without parole because a life sentence is '[n]ot an accumulation of sentences,' but rather 'is tied to a single conviction and is absolute in its duration for the offender's natural life.' " *Pace*, 2015 IL App (1st) 110415, ¶ 131 (quoting *People v. Gay*, 2011 IL App (4th) 100009, ¶ 23).

¶ 48 Truth in Sentencing

¶ 49 The "truth in sentencing" statutes mandate that Harris serve all of his murder sentence and at least 85% of the attempted murder sentence. These statutes "[do] not change the sentence actually imposed ***. [Citation.] Rather, [they] determine[ ] the percentage to be actually served, which in turn depends upon the conduct of the defendant while serving that sentence." *People v. Harris*, 2012 IL App (1st) 092251, ¶ 24. Because the statutes do not affect the sentencing ranges for each crime, they do not violate the proportionate penalties clause (*id.* ¶¶ 19, 25), and are not unconstitutional as applied to Harris.

¶ 50 Harris's Aggregate Sentence Equates to a *De Facto* Life Sentence.

¶ 51 Beyond each individual component, Harris argues that the overall effect of the sentencing scheme left the trial court with no choice but to give him a "mandatory *de facto* life sentence."

¶ 52 Recently, Illinois courts have explored this concept in the context of juvenile sentencing. In *People v. Reyes* (which was issued after the parties briefed Harris's appeal), the Illinois Supreme Court accepted the State's concession that a 97-year sentence for a 16-year-old was

a *de facto* life sentence because such a sentence is "unsurvivable" and "cannot be served in one lifetime." 2016 IL 119271, ¶¶ 8-9. See also *People v. Sanders*, 2016 IL App (1st) 121732-B, ¶¶ 25-27 (finding that 100-year sentence for juvenile was effectively life sentence); *People v. Nieto*, 2016 IL App (1st) 121604, ¶ 42 (78-year sentence for juvenile that would keep him imprisoned until age 94 is effective life sentence). Our appellate courts have split on this question, and whether it is even appropriate for a court of review to wade into a question of biology and statistics: "Is it simply a certain age upon release? If so, is it age 65, as defendant seems to argue for in his appellate brief, or 90? Should the age vary by ethnicity, race or gender? If we are going to consider more than age, what societal factors or health concerns should impact our assessment of a de facto life sentence[?] These are policy considerations that are better handled in a different forum." *People v. Jackson*, 2016 IL App (1st) 143025, ¶ 57.

¶ 53 In *Gipson*, the court did grapple with these questions before concluding that since a 52-year sentence would allow the juvenile Gipson to be released at age 60, which was lower than his average life expectancy, the sentence was not a life sentence. 2015 IL App (1st) 122451, ¶¶ 65-67. In *Sanders*, the court noted that incarceration itself reduces life expectancy. 2016 IL App (1st) 121732-B, ¶¶ 25-27 (quoting study showing that each year in prison results in two-year decline in life expectancy). Not surprising, given the harshness of a lifetime spent in a state penitentiary. See *People v. Collins*, 2015 IL App (1st) 131145, ¶¶ 52-53 (Hyman, J., dissenting in part).

¶ 54 We conclude that Harris's 76-year sentence is a *de facto* life sentence; at best, he would be released at age 89. See *People v. Decatur*, 2015 IL App (1st) 130231, ¶ 18 (105-year sentence for 19-year-old, resulting from mandatory firearm enhancements, mandatory consecutive sentencing, and truth in sentencing laws, is "*de facto* life sentence," though not excessive).

¶ 55 Harris's Sentence Does Not Violate the Eighth Amendment.

¶ 56 In recent years, the United States Supreme Court has held that the eighth amendment protects juvenile offenders from capital punishment or mandatory life imprisonment without parole. *Roper*, 543 U.S. at 578-79; *Graham v. Florida*, 560 U.S. 48, 82 (2010); *Miller v. Alabama*, 567 U.S. 460, ___, 132 S. Ct. 2455, 2475 (2012). These holdings were grounded in the Court's concern, based on scientific research about adolescent brain development, that juveniles lack maturity, are more vulnerable to bad influences, and are more amenable to rehabilitation. *Roper*, 543 U.S. at 570. But the Court drew a line between juveniles and adults at the age of 18 years; while it acknowledged that the line was arbitrary, it "must be drawn." *Id.* at 574. Harris falls on the adult side of that line; therefore, the eighth amendment does not protect Harris from what it is effectively a life sentence and we reject any challenge on this ground.

¶ 57 Harris's Sentence Violates the Rehabilitation Clause.

¶ 58 We hold that Harris's 76-year sentence violates article I, section 11, of the Illinois Constitution, with its language mandating that penalties should have "the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11.

¶ 59 As early as 1899, Illinois recognized the inherent and fundamental differences between juveniles and adults when it passed the Illinois Juvenile Court Act, which created a separate juvenile court system. 1899 Ill. Laws 130. In response to *Miller*, Illinois enacted a new

sentencing scheme for juveniles. Pub. Act 99-69 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105). This statute requires the sentencing trial court judge to consider several mitigating factors when determining the appropriate sentence for those under 18. *Reyes*, 2016 IL 119271, ¶ 11. The trial court may decline to impose otherwise-mandatory sentencing enhancements based on the possession or use of a firearm during the commission of the offense. Pub. Act 99-69 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105(b)).

¶ 60 The section 5-4.5-105 new statutory language and *Roper*, *Graham*, and *Miller* "stand for the proposition that a sentencing body must have a chance to take into account mitigating circumstances, *i.e.*, a juvenile's age and attendant circumstances, before sentencing the juvenile to the harshest possibility penalty." (Internal quotation marks omitted.) *Wilson*, 2016 IL App (1st) 141500, ¶ 27. The new statutory scheme and the preceding case law incorporate the separation of powers doctrine and reinstate judicial discretion in juvenile sentencing.

¶ 61 The Illinois Supreme Court has recognized that research on juvenile maturity and brain development might also apply to young adults. The 19-year-old defendant in *People v. Thompson* argued, for the first time on appeal, that *Miller* should apply with equal force to him. 2015 IL 118151, ¶¶ 18-21. The Illinois Supreme Court noted that in as-applied challenges, "it is paramount that the record be sufficiently developed" and that Thompson's record failed to contain any information regarding how the " 'evolving science' on juvenile maturity and brain development" should apply to the circumstances in the case. *Id.* ¶ 38. Though the Illinois Supreme Court did not extend *Miller* to young adults in *Thompson*, it did open the door for that argument.

¶ 62 Unlike the dissent, we believe the record contains sufficient facts to consider *Miller*'s applicability. We cannot extend *Miller*'s holding directly, but find that its analysis applies with equal force under the Illinois Constitution to a 19-year-old like Harris.

¶ 63 We agree with the analysis of *People v. House*, 2015 IL App (1st) 110580. House was 19 years old when he acted as a lookout during two killings; he was convicted of both murders and aggravated kidnapping on an accountability theory. *Id.* ¶¶ 24, 82. These convictions mandated a sentence of natural life imprisonment. *House* found that this "shock[ed] the moral sense of the community," because although House was young, lacked any prior violent convictions, and acted only as a lookout during the murders, the trial court was prevented from taking any of this information into account in sentencing him. *Id.* ¶ 101.

¶ 64 All sentencing cases are fact-specific, but Harris is similar to *House* in some important ways. Like House, Harris was young (although neither qualifies as a juvenile) when he committed his crimes. Like House, Harris had no violent criminal history; in fact, Harris had no criminal history at all. Harris's responsibility for his crimes was much greater than House's, but Harris has additional attributes arguing for his rehabilitative potential. Harris had grown up in a stable family environment, and those family members continued to support him through his sentencing. Harris was finishing high school when he committed the murders and completed his GED while in pretrial custody. The dissent rightly argues that Harris's stable home life is not a mitigating factor; however, that evidence, along with his educational achievements, does support the notion that Harris might be able to rehabilitate himself if given the opportunity. Or, in the words of our constitution, might be able to restore himself to "useful citizenship." The confluence of sentencing statutes, which the trial court was required to apply, is absolutely contrary to that constitutional objective of the rehabilitation clause.

¶ 65 The dissent argues that Harris is more similar to the defendant in *People v. Ybarra*, 2016 IL App (1st) 142407. The 20-year-old Ybarra was convicted of murdering three teenagers; while yelling racial slurs, Ybarra opened fire from a moving car as the victims left their high school. *Id.* ¶¶ 7-10. At sentencing, Ybarra's counsel presented evidence that Ybarra's upbringing included extreme poverty, physical abuse, and drug use by both parents, and that Ybarra himself had a low IQ with developmental disabilities. *Id.* ¶ 17. The *Ybarra* court refused to apply *House*'s analysis because Ybarra had been the shooter. *Id.* ¶ 27.

¶ 66 Like Ybarra, Harris shot the victims. But the record shows that Harris has rehabilitative potential (as explained). The trial court sentencing Ybarra stated outright that Ybarra had no rehabilitative potential. *Id.* ¶ 32. The trial court here expressed its dissatisfaction with the high sentence it was required to give. The trial court sentencing Ybarra characterized his actions as "incomprehensible," "antisocial," and "evil," before stating that "[e]ven if the statute *** allowed me to give some discretion, you would get a sentence of life imprisonment from me" because "you should never be free." (Internal quotation marks omitted.) *Id.*

¶ 67 Though House was over 19 years old at the time of the offense, the *House* court based much of its analysis on the idea that, as a teenager, House was more similar to a juvenile than a full-grown adult. The court further noted that "[r]esearch in neurobiology and developmental psychology has shown that the brain doesn't finish developing until the mid-20s, far later than was previously thought. Young adults are more similar to adolescents than fully mature adults in important ways. They are more susceptible to peer pressure, less future-oriented and more volatile in emotionally charged settings." (Internal quotation marks omitted.) *House*, 2015 IL App (1st) 110580, ¶ 95; see also *Roper*, 543 U.S. at 574 ("The qualities that distinguish juveniles from adults do not disappear when an individual turns 18.").

¶ 68 The same reasoning applies to Harris. And many of the concerns and policies underlying our juvenile court system apply with equal force to a person of Harris' age. The dissent argues that, if we hold Harris's sentence unconstitutional based on his youth, there will be no way to differentiate between him and other offenders who are older but might have a plausible argument of immaturity. This is a red herring. Again, all as-applied challenges are necessarily fact-specific; in upholding Harris's constitutional challenge, we are merely saying that his sentencing should have been similarly specific to his own circumstances, to effectuate the constitutional mandate of restoring Harris to useful citizenship.

¶ 69 While we do not minimize the seriousness of Harris's crimes, we believe that it shocks the moral sense of the community to send this young adult to prison for the remainder of his life, with no chance to rehabilitate himself into a useful member of society. The dissent argues that the remedy to Harris's sentence should lie only in the legislature. But regardless of legislative action (or inaction), the judiciary has the function, and, unquestionably, the responsibility to strike down a sentence when it violates the Illinois Constitution. See *People v. Miller*, 202 Ill. 2d 328, 336 (2002) (legislature's power to prescribe mandatory sentences "not without limitation; the penalty must satisfy constitutional constrictions").

¶ 70 We have upheld Harris's constitutional challenge, but we would be remiss not to look at the larger picture. The legislature has the authority to "establish mandatory minimum sentences, even though such sentences, by definition, restrict the inquiry and function of the judiciary in imposing [a] sentence." (Internal quotation marks omitted.) *Pace*, 2015 IL App

(1st) 110415, ¶ 142. Over the course of decades, our legislature has responded to crime by toughening sentencing statutes; the length of a sentence grows ever-higher and yet crime does not disappear.

¶ 71 Further, the trial court could not tailor the sentence to fit Harris's particular circumstances; the statutes did not merely restrict the trial court's discretion, but rather eliminated it. The statutes hemmed the trial court in, particularly the firearm enhancements, which had an outsized effect on the length of the sentence. For example, the mandated 20-year firearm enhancement was over three times the length of the penalty for the attempt murder sentence; in a juvenile case, we found such a proportion "unsettling." *Gipson*, 2015 IL App (1st) 122451, ¶ 76. Similarly, the 25-year firearm enhancement for murder was longer than the actual murder sentence. Our new juvenile sentencing scheme specifically allows trial courts discretion whether to impose these enhancements. Pub. Act 99-69 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105(b)).

¶ 72 We realize that if the firearm enhancements had not applied, the trial court might well have sentenced Harris above the minimum for both murder and attempted murder. But the application of these enhancements prevented the trial court from constructing a sentence that had any chance of returning Harris to society, even if the court thought that Harris was a good candidate to rehabilitate himself.

¶ 73 We urge the legislature to consider the research regarding brain development in young adults who are not legally juveniles when analyzing the sentencing statutes for adults, including consecutive sentencing, truth in sentencing, and mandatory sentencing enhancements. See *Decatur*, 2015 IL App (1st) 130231, ¶ 18 (urging legislature to improve sentencing schemes—including mandatory firearm enhancements, consecutive sentencing, and truth in sentencing—that result in lengthy sentences without allowing trial courts to consider mitigation, including youth). These statutory provisions strip judicial discretion when our criminal justice system would be better served by a case-by-case analysis in which the sentence imposed is individualized to the offender and the offense.

¶ 74 Correction of Mittimus

¶ 75 Finally, Harris argues that the trial court should not have convicted and sentenced him on three separate counts of attempted first degree murder, as this violated the "one act, one crime" doctrine. The State agrees. We direct the clerk to correct the mittimus to reflect only one count of attempted first degree murder (count LXXII). *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 84.

¶ 76 Harris's convictions are affirmed. We vacate his 76-year sentence and remand for resentencing. The clerk must correct the mittimus to reflect Harris's conviction for count LXXII, attempted first degree murder.

¶ 77 Affirmed in part, vacated in part, and remanded; mittimus corrected.

¶ 78 JUSTICE MASON, concurring in part and dissenting in part.

¶ 79 I concur in the majority's determination that the evidence was sufficient to convict Harris of first degree murder and attempted first degree murder, but I respectfully dissent from the

majority's further determination that Harris's 76-year sentence violated the proportionate penalties clause of the Illinois Constitution.

¶ 80 Initially, I disagree with the majority's extension of *Miller* beyond juveniles to young adults. The majority correctly notes that in *Thompson*, the supreme court declined to address the 19-year-old defendant's argument for *Miller*'s extension due to the insufficiency of the record, while leaving open the possibility it would consider the argument in an appropriate case. *Thompson*, 2015 IL 118151, ¶¶ 38-39. But the record is similarly insufficient in this case. Harris raises the argument that *Miller*'s reasoning should be applied to him for the first time on appeal. Just like *Thompson*, Harris did not introduce evidence in the trial court that the " 'evolving science' on juvenile maturity and brain development" on which the court's opinion rested in *Miller* (*id.* ¶ 38), applied to him. See also *People v. Rizzo*, 2016 IL 118599, ¶ 26 ("A court is not capable of making an 'as applied' determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact. [Citation.] Without an evidentiary record, any finding that a statute is unconstitutional 'as applied' is premature." (quoting *People v. Mosley*, 2015 IL 115872, ¶ 47)). Given the supreme court's admonishment that the record must be "sufficiently developed" to mount an as-applied challenge (*Thompson*, 2015 IL 118151, ¶ 37), I believe we should reject Harris's argument for this reason alone.

¶ 81 More importantly, I believe the majority usurps the legislature's role in concluding that the consecutive sentencing and mandatory enhancement sentencing statutes are unconstitutional as applied to Harris. This court has routinely acknowledged that the convergence of these sentencing statutes often operates to produce *de facto* life sentences. See *Decatur*, 2015 IL App (1st) 130231, ¶ 18; *Gipson*, 2015 IL App (1st) 122451, ¶ 61. But it is for the legislature, and not the courts, to revisit the sentencing scheme and afford greater discretion to trial judges. *People v. Huddleston*, 212 Ill. 2d 107, 129 (2004) (recognizing the legislature's power to prescribe mandatory sentences).

¶ 82 Harris's 76-year sentence was the minimum sentence that the trial court could impose: 20 years for first degree murder (730 ILCS 5/5-4.5-20(a) (West 2008) (providing for a sentencing range of 20 to 60 years)); plus the mandatory enhancement for personally discharging a firearm (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2008) (25 years to life)); 6 years for attempt first degree murder (730 ILCS 5/5-4.5-25(a) (West 2008) (providing for a sentencing range of 6 to 30 years)); plus the minimum 25-year enhancement, to run consecutively (730 ILCS 5/5-8-4(d)(1) (West 2008)). The trial court could have imposed a life sentence, but exercised its discretion to instead impose the minimum term authorized by law. The trial court is simply not at liberty to impose a lesser sentence on remand. And while I share the majority's concern over the length of Harris' minimum prison sentence, the remedy lies with the legislature, not in *ad hoc* determinations made by this court or by trial judges.

¶ 83 I find the majority's reliance on *House* inapposite. In *House*, the defendant was found guilty of first degree murder under a theory of accountability. In finding defendant's mandatory sentence of natural life unconstitutional, this court stated: "Given [the] defendant's age, his family background, his actions as a lookout as opposed to being the actual shooter, and lack of any prior convictions, we find that defendant's mandatory sentence of natural life shocks the moral sense of the community." *House*, 2015 IL App (1st)

110580, ¶ 101. The court noted that the defendant never knew his father, was raised by his grandmother and that his mother died when he was 18, about a year before his offenses.

¶ 84 The same author distinguished *House* in *People v. Ybarra*, 2016 IL App (1st) 142407, a case more factually similar to this case. In *Ybarra*, the court sentenced the 20-year-old defendant to a mandatory term of natural life imprisonment after a jury convicted him of three counts of first degree murder. *Id.* ¶ 1. This court rejected the defendant's claim that his sentence violated the proportionate penalties clause and distinguished its decision in *House*. Specifically noting that the defendant in *House* was found guilty under a theory of accountability, the court observed that a "significant difference" in *Ybarra* was that defendant pulled the trigger. *Id.* ¶ 27. Thus, even though defendant's presentence investigation report indicated that he grew up in extreme poverty, his father was a gang member and abused drugs, and defendant had a low IQ and developmental disabilities, the court nevertheless concluded that his sentence did not violate the proportionate penalties clause. *Id.* ¶ 30.

¶ 85 Like the defendant in *Ybarra*, Harris fired the weapon that killed Moore and injured Woulard. That alone distinguishes this case from *House*. Further, based on the presentence investigation report in the record, Harris's upbringing and family background are not mitigating factors. Harris was raised in a two-parent household, reported no mental health issues (except depression over his pending case), and disclaimed any use of drugs or alcohol. Further, unlike *Gipson*, also cited by the majority, it is not readily apparent that Harris's conduct was the product of "rash decision making." *Gipson*, 2015 IL App (1st) 122451, ¶ 73. According to the evidence, Harris requested a ride to the BP station from Aaron Jones and when he arrived there, exited the car and immediately began shooting. Such evidence implies premeditation rather than a spur-of-the-moment decision.

¶ 86 The majority's rationale is based on two factors: Harris's age and his lack of any criminal background. But as the Supreme Court recognized in *Roper v. Simmons*, 543 U.S. 551, 574 (2005):

> "Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. *** [H]owever, a line must be drawn. *** The age of 18 is the point where society draws the line for many purposes between childhood and adulthood."

If Harris's sentence violates the proportionate penalties clause, then there is no line to be drawn for sentencing purposes. The same proportionate penalties clause argument could be advanced by a 20-year-old, a 25-year-old or a 30-year-old defendant who had no prior criminal convictions. And while a compelling argument can be made that vesting greater sentencing discretion in trial courts would result in fewer *de facto* life sentences for young offenders, the legislature has not chosen to do so.

¶ 87 Because I do not believe Harris has established a violation of the proportionate penalties clause, I would affirm his sentence.

IN THE CIRCUIT COURT OF COOK COUNTY

CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, vs. HARRIS, DARIEN Defendant-Appellant.	IND./INF. No. 11 CR 11184 Trial Judge: Nicholas R. Ford Trial Atty: . Type of Trial: Bench

NOTICE OF APPEAL

An appeal is taken to the Appellate Court, First Judicial District:

Appellant(s) Name:	Darien Harris M44963
Appellant's Address:	Stateville Correctional Center
Appellant(s) Attorney:	Office of the State Appellate Defender
Address:	First Judicial District 203 N. LaSalle, 24th Floor Chicago, IL 60601 (312) 814-5472
Offense of which convicted:	First Degree Murder, 3 counts Attempt Murder, Aggravated Battery/with Firearm/Person
Date of Judgment or Order:	May 07, 2014 ✓
Sentence:	76 years

If appeal is not from a conviction, nature of order appealed:

ALAN D. GOLDBERG
Deputy Defender
COUNSEL FOR DEFENDANT-APPELLANT

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Exhibit 5: Line-up photograph

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Exhibit 40: Grand Jury transcript (Aaron Jones's testimony)

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Defense Exhibits

Exhibits 1 & 2: Crime scene photographs

Stipulations (one through nine)

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 6, 2017, the **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail 13 copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Gopi Kashyap
GOPI KASHYAP
Assistant Attorney General

E-FILED
9/6/2017 11:10 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK