IN THE SUPREME COURT OF FLORIDA

Case No. SC22-1394
Lower Case No. 1991-CF-00373

ANTONIO LEBARON MELTON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, STATE OF FLORIDA

INITIAL BRIEF OF APPELLANT

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REQUEST FOR ORAL ARGUMENT

Mr. Melton is facing a sentence of death for a crime he committed when he was only 18 years old. The issue he raises before this Court challenges the constitutionality of his death sentence under the state and federal Cruel and Unusual Punishments clauses, and if this Court finds his claim meritorious, Mr. Melton's execution will be prohibited. Oral argument is appropriate here given the constitutional questions inherent in Mr. Melton's claim and the life-or-death stakes it presents.

This Court has not hesitated to allow oral argument in other capital cases in the identical procedural posture to Mr. Melton's. *See, e.g.*, *Smith v. State*, 75 So. 3d 205 (Fla. 2011) (remanding for an evidentiary hearing on a successive postconviction motion following oral argument), *Rivera v. State*, 995 So. 2d 191 (Fla. 2008) (same), *Johnson v. State*, 44 So. 3d 51 (Fla. 2010) (remanding for resentencing on a successive postconviction motion following oral argument). Accordingly, Mr. Melton respectfully requests that the Court permit oral argument in this case.

STATEMENT OF THE CASE AND FACTS[1]

On January 23, 1991, Mr. Melton and Bendleon Lewis were arrested for shooting pawnshop owner George Carter. Mr. Melton was 18 years and 25 days old on the day of the homicide. He was subsequently indicted for first-degree murder and armed robbery with a firearm (DA-R. 1117).

Lewis, Mr. Melton's co-defendant, gave a statement implicating Mr. Melton and another man in an earlier homicide of a taxicab driver, Ricky Saylor (T. 54, 57-58, 203). The State first tried Mr. Melton for the murder and armed robbery of Saylor, for which he was convicted and received two life sentences (DA-R. 924). Mr. Melton was 17 years old at the time of the Saylor homicide, which took place on November 17, 1990.

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[1] References to the record on appeal in this case are designated as "ROA. ." References to the record on direct appeal are designated as "DA-R. ." References to the initial postconviction record on appeal are designated as "PC-R. ." References to the successive postconviction record on appeal are designated as "PCR2. ." References to the successive postconviction record on appeal for the 2012 evidentiary hearing are designated as "PCR3. ." References to the successive postconviction record on appeal for the 2014 evidentiary hearing are designated as "PCR4. ." References to the trial transcript are designated as "T. ." All other references are self-explanatory or otherwise explained herewith.

Mr. Melton was then tried for the murder and armed robbery of Carter, with the State seeking the death penalty. Mr. Melton and Lewis were found exiting Carter's pawnshop shortly after Carter was shot (DA-R. 501-02). Mr. Melton stated that Carter was accidentally killed when his own gun went off during a struggle over the weapon (DA-R. 691-95). The State claimed that Mr. Melton intentionally killed Carter based on the location of the fatal gunshot wound (DA-R. 1397-99). Mr. Melton was convicted of first-degree murder and armed robbery for his role in Carter's death. (DA-R. 895-96, 1275-76).

At the penalty phase, the jury recommended a death sentence by a non-unanimous vote of eight to four (8-4) (DA-R. 1112, 1285). At sentencing, the court found that two aggravating factors had been established: (1) that the Carter murder had been committed for pecuniary gain; and (2) that Mr. Melton had a prior violent felony conviction, namely, his conviction for the Saylor murder.[2] The court

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[2] It should be noted that Mr. Melton has consistently denied any involvement in the Saylor homicide and that his conviction in that case did not rest on any physical evidence or independent eyewitness testimony from the crime scene. The only testimony implicating Mr. Melton in the Saylor homicide came from Lewis, who was never charged in that homicide, and from Tony Houston, Mr. Melton's co-defendant in the case. And, indeed, the only physical evidence linking anyone to the Saylor crime scene was a fingerprint from **Houston**

also found that two non-statutory mitigating factors had been established: (1) Mr. Melton exhibited good conduct while awaiting trial; and (2) Mr. Melton had a difficult family background. *Melton v. State*, 638 So. 2d 927 (Fla. 1994). Finding that the aggravating factors outweighed the mitigation evidence, the trial court followed the jury's recommendation and imposed a death sentence for the murder and life imprisonment for the armed robbery (DA-R. 1380-1401, 1413-22). Mr. Melton's co-defendant, Lewis, received a twenty-year sentence for second-degree murder.

On direct appeal, this Court affirmed Mr. Melton's convictions and sentences. *Melton*, 638 So. 2d 927. He then filed a petition for writ of certiorari in the United States Supreme Court, which was denied. *Melton v. Florida*, 513 U.S. 971 (1994).

Mr. Melton filed his first motion for postconviction relief under Florida Rule of Criminal Procedure 3.850 in 1996 in the First Judicial Circuit in and for Escambia County. After an evidentiary hearing on the motion, the circuit court denied relief in 2004 (PC-R. 1937-2018).

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found on the door of Saylor's cab. Houston pled guilty to second-degree murder and received a twenty-year sentence for his role in the Saylor homicide (DA-R. 337).

Mr. Melton appealed the denial of relief and also filed a petition for writ of habeas corpus in this Court. The Court denied Mr. Melton relief on all grounds. *Melton v. State*, 949 So. 2d 994 (Fla. 2006).

Mr. Melton filed a successive postconviction motion under Florida Rule of Criminal Procedure 3.851, which the circuit court denied. Mr. Melton appealed that denial to this Court, but then voluntarily dismissed the appeal on August 13, 2008.

In 2009, Mr. Melton filed a second successive Rule 3.851 motion raising a newly-discovered-evidence claim. The circuit court dismissed the motion, and this Court affirmed the dismissal. *Melton v. State*, 55 So. 3d 1287 (Fla. 2011).

In 2010, Mr. Melton filed a third successive Rule 3.851 motion challenging the validity of his death sentence. The circuit court denied relief, which this Court affirmed. *Melton v. State*, 88 So. 2d 146 (Fla. 2012).

Mr. Melton filed a new motion under Rule 3.851 regarding newly discovered evidence concerning the circumstances of co-defendant, Bendleon Lewis's, involvement in the Carter murder and his plea agreement with the State to testify against Mr. Melton. The circuit

court denied the motion, and this Court affirmed. *Melton v. State*, 193 So. 3d 881 (Fla. 2016).

In 2017, Mr. Melton filed a Rule 3.851 motion in light of the then-recent *Hurst* decisions issued by the United States Supreme Court and this Court. After the circuit court denied relief, this Court affirmed. *Melton v. State*, 236 So. 3d 234 (Fla. 2018).

Mr. Melton initiated federal-court proceedings in the United States District Court for the Northern District of Florida in March 2008. In May 2013, the federal district court denied Mr. Melton's petition for a writ of habeas corpus. *See Melton v. Tucker*, 1:08cv34/RS, 2013 WL 11326076 (N.D. Fla May 31, 2013). The Eleventh Circuit Court of Appeals affirmed the denial of a certificate of appealability, with Judge Beverly Martin dissenting from the panel's denial. *See Melton v. Sec'y, Fla. Dep't of Corr.*, 778 F.3d 1234 (11th Cir. 2015). The United States Supreme Court denied Mr. Melton's petition for a writ of certiorari. *Melton v. Jones*, 136 S. Ct. 324 (2015).

On June 29, 2022, Mr. Melton filed a Rule 3.851 motion for postconviction relief in the Escambia County Circuit Court based on two pieces of newly discovered evidence. The first was a report from

the developmental psychologist, Dr. Laurence Steinberg (hereinafter the Steinberg report). Dr. Steinberg is the Distinguished University Professor and the Laura H. Carnell Professor of Psychology at Temple University. He is also a Fellow of the American Psychological Association, the Association for Psychological Science, and the American Academy of Arts and Sciences. Previously, he was the President of the Division of Developmental Psychology of the American Psychological Association (ROA. 72).

The Steinberg report explained that what was originally an ongoing debate among the psychological, neurobiological, and legal communities had since crystallized into nearly undisputed agreement that individuals who were under age 21 at the time of their offenses should not be sentenced to death because the logic underpinning *Roper v. Simmons*, 543 U.S. 551 (2005) (categorically prohibiting the death penalty for those under age 18 at the time of their crime), is now known to extend to members of the late-adolescent class, or those under age 21.[3]

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[3] As shorthand, consistent with the neurobiological terminology, this brief will refer to individuals between the ages of 18 through 20 as members of the "late adolescent class." Individuals under age 18 will be referred to as "juveniles." Individuals over age 21 will be

As such, the Steinberg report concluded that "[f]or the very same reason that the [United States] Supreme Court found capital punishment [for juveniles] to be unconstitutional, this penalty should be prohibited in all cases involving defendants who are under the age of 21" (ROA. 90). The report also noted that the Carter homicide was "characterized by many quintessentially juvenile features," thus exemplifying the disproportionality of the death sentence in Mr. Melton's case (ROA. 91).

In addition to the Steinberg report, Mr. Melton's motion submitted as newly discovered evidence the then-pending proposal by the American Psychological Association (APA) to adopt a resolution calling for a categorical ban on the execution of those under 21 at the time of their offense.[4] As Mr. Melton explained, the APA's proposed resolution was a turning point in the scientific community's understanding of adolescent brain development owing to the

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referred to as "adults." *See* ROA. 72 (defining the three developmental stages of adolescence).

[4] The APA subsequently adopted the proposed resolution on August 3, 2022. Mr. Melton submitted the final text of the resolution to the circuit court as supplemental authority a day later, August 4. *See* ROA. 141-98.

prominence and leadership of the APA in the neurobiological community generally, and on the issue of adolescent brain development specifically (ROA. 53-54).

On August 17, 2022, the circuit court summarily denied the postconviction motion. The court found that "[t]he idea that the brain is not fully formed as a young adult has been known for some time" (ROA. 216). Thus, the court ruled that "the science alleged and referenced by [Mr. Melton] does not qualify as newly discovered evidence, and the motion is untimely" (ROA. 218). The court further held that the claim failed on the merits because "*Roper* establishes a bright line rule that the age of 18 is the age at which [an] individual is eligible for the death penalty" and the circuit court would not "propose a modification" of what it considered to be *Roper*'s core holding (ROA. 218).

On September 1, 2022, Mr. Melton moved for rehearing in the circuit court (ROA. 220-30), which that court denied on September 16 (ROA. 231-32).

On October 14, 2022, Mr. Melton timely filed a notice of appeal as to the circuit court's summary dismissal of his motion for postconviction relief (ROA. 233). This appeal follows.

SUMMARY OF ARGUMENT

Newly discovered evidence of the definitive consensus regarding adolescent brain development demonstrates that the death penalty is a categorically unconstitutional punishment for individuals who committed their offenses when they were between the ages of 18 to 21 (late adolescence), under the Eighth Amendment of the United States Constitution and Article 1, § 17 of the Florida Constitution.

Neurobiological and psychological research has found that the brains of members of the late-adolescent class are developmentally and functionally identical to juvenile brains, particularly in situations involving risky decision-making and short-term rewards. As such, the United States Supreme Court's rationale in *Roper*, which barred death sentences as disproportionate for individuals who committed capital crimes when they were juveniles, must be applied to members of the late-adolescent class, which includes Mr. Melton.

Even if this Court declines to adopt a categorical prohibition, the death penalty is a constitutionally disproportionate punishment in Mr. Melton's case. Mr. Melton's crime, which occurred when he was 18 years and 25 days old, demonstrates the hallmarks of "unfortunate yet transient immaturity" that the Supreme Court

found made juvenile death sentences unconstitutional. *Roper*, 543 U.S. at 573.

The circuit court erroneously denied the claim on the grounds that it was untimely. As Mr. Melton explained, however, he presented evidence that what had previously been an emerging consensus in scientific communities disfavoring death sentences for late adolescents has become nearly universal agreement, which was cemented by the APA's overwhelming adoption of a resolution calling for an end to the practice in August 2022.

Finally, the Constitutional Conformity Clause does not prevent this Court from granting relief on Mr. Melton's claim, for two separate reasons. First, the Conformity Clause applies only to claims that the United States Supreme Court has squarely decided on the merits. *See Howell v. State*, 133 So. 3d 511, 516 (Fla. 2014). The Supreme Court has not addressed whether *Roper*'s holding protects members of the late-adolescent class. Therefore, there is no on-point precedent to which this Court may conform. Second, the Conformity Clause states that the prohibitions against cruel and unusual, or cruel or unusual, punishments, "shall be construed in conformity with" the United States Supreme Court's Eighth Amendment decisions. If this

Court determines that *Roper* is the governing precedent for this claim, the Supreme Court made clear that its decision rested on the scientific understanding *at the time*, and that the proportionality principle on which it was based is an elastic, evolving standard. *See Roper*, 543 U.S. at 560-61. As Mr. Melton's claim demonstrates, that evolving understanding has significantly shifted in the seventeen years since *Roper* and warrants relief here.

Because the circuit court erroneously dismissed Mr. Melton's claim despite the substantial constitutional questions it raises, this Court should reverse and order sentencing relief or, at a minimum, an evidentiary hearing.

STANDARD OF REVIEW

Because the circuit court denied postconviction relief without an evidentiary hearing, this Court must accept the factual allegations presented in Mr. Melton's motion and in this appeal as true to the extent they are not conclusively refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). Further, this Court "review[s] the trial court's application of the law to the facts *de novo*." *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008). A postconviction court's decision whether to grant an evidentiary hearing is likewise subject to *de novo* review. *Rose v. State*, 985 So. 2d 500, 505 (Fla. 2008).

ARGUMENT

NEWLY DISCOVERED SCIENTIFIC EVIDENCE ESTABLISHES THAT THE DEATH PENALTY IS A CATEGORICALLY UNCONSTITUTIONAL PUNISHMENT FOR INDIVIDUALS, LIKE MR. MELTON, WHO COMMITTED THEIR OFFENSES WHEN THEY WERE BETWEEN THE AGES OF EIGHTEEN TO TWENTY-ONE.

I. Introduction

Antonio Melton is the youngest person on Florida's death row, when ranked by age at the time of the offense. Mr. Melton was 18 years and 25 days old when he committed the first-degree murder for which he now faces execution—a mere 25 days beyond the constitutional bar that prohibits individuals who were juveniles at the time of their offenses from being sentenced to death. In many states today, Mr. Melton's age at the time would restrict him from buying cigarettes or signing up for a credit card (ROA. 146). Indeed, if the homicide in this case had taken place a month earlier, Mr. Melton would be serving, at worst, a life-without-parole sentence that the judge had discretion to impose. *See Miller v. Alabama*, 567 U.S. 460, 465 (2012).

Instead, Mr. Melton sits on death row. His case vividly illustrates the "arbitrary and capricious" nature of capital sentencing, particularly when the defendant is an adolescent. *See Gregg v.*

Georgia, 428 U.S. 153, 188 (1976). For Mr. Melton, and individuals like him who were under age 21 when they committed their offenses, capital punishment is a manifestly disproportionate punishment that violates society's "evolving standards of decency" and contravenes the Eighth Amendment's Cruel and Unusual Punishments Clause and Article 1, § 17 of the Florida Constitution. *Trop v. Dulles*, 356 U.S. 86, 101 (1958). This Court's holding should reflect what the scientific evidence has now firmly established: that sentencing late adolescents to death is a disproportionate, cruel and unusual punishment under both state and federal constitutional principles.

II. Sentencing individuals to death who were under 21 at the time of their offense is a disproportionate punishment that violates the Eighth Amendment.

In 2005, the United States Supreme Court held in *Roper* that the Eighth Amendment categorically prohibited juveniles from being sentenced to death. *Roper*, 543 U.S. at 575. The Court found that a categorical exclusion was necessary because there are "general differences between juveniles . . . and adults [which] demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders." *Id.* at 569. Those differences "are too marked and well understood to risk allowing a youthful person to receive the

death penalty despite insufficient culpability." *Id.* at 572-73. As such, the Court held that "the death penalty is disproportionate punishment for [juvenile] offenders." *Id.* at 575.

The Court's concern for proportionality reflected what had by then become a settled proposition in capital sentencing: that a death sentence should be reserved exclusively for those whom society had deemed the "'worst of the worst.'" *Stephens v. State*, 787 So. 2d 747, 763 (Fla. 2003) (Anstead, J., partially concurring); *see also Roper*, 543 U.S. at 568 ("Capital punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'"). Almost immediately after the Supreme Court reinstated the death penalty in 1976, it began carving out exclusions on the basis that either the offense was not sufficiently serious, or the offender not sufficiently culpable, to deserve death. *See, e.g.*, *Coker v. Georgia*, 433 U.S. 584, 599 (1977) (death penalty for rape of an adult woman disproportionate); *Kennedy v. Louisiana*, 554 U.S. 407, 413 (2008) (death penalty for rape of a child disproportionate); *Enmund v. Florida*, 458 U.S. 782, 797 (1982) (death penalty for aiding and abetting a felony but with no action or intent to kill

disproportionate); *Ford v. Wainwright*, 477 U.S. 399, 410 (1986) (barring execution of an individual who is insane); *Atkins v. Virginia*, 536 U.S. 304, 321 (2002) (barring execution of an individual who is intellectually disabled).

The *Roper* decision stressed that a juvenile defendant could never be considered the worst of the worst under the Eighth Amendment proportionality principle—and that that held true even when the crime was particularly gruesome. *See generally Roper*, 543 U.S. at 555-57 (describing the *Roper* petitioner's murder, which involved several juveniles kidnapping and tying up a woman with duct tape and throwing her off a bridge so that she could not identify them, and the petitioner bragging that he had killed her and that he would get away with it because he was a minor). In so holding, the Court outlined three key differences between juvenile and adult behavior: (1) juveniles were more likely to engage in "impetuous and ill-considered actions and decisions" owing to their "lack of maturity and [] underdeveloped sense of responsibility"; (2) juveniles "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; (3) the "personality traits of juveniles are more transitory" and therefore, "the impetuousness and

recklessness that may dominate in younger years can subside" as they mature. *Id.* at 569-70.

As a result of these differences, neither of the primary penological justifications for capital punishment, retribution and deterrence, supported imposing the death penalty on juveniles. On the one hand, the retributive aspect was disproportionate because "the law's most severe punishment is imposed on one whose culpability or blameworthiness is diminished . . . by reason of youth and immaturity." *Id.* at 571. As for deterrence, the Court questioned "whether the death penalty [had] a significant or even measurable deterrent effect on juveniles," which was "of special concern because the same characteristics that render juveniles less culpable than adults suggest . . . that juveniles will be less susceptible to deterrence." *Id.*

The *Roper* Court's legal conclusion that there was a categorical distinction between juveniles and adults rested in large part on the significant body of scientific research that had been conducted into adolescent brain development, including references to work done by Dr. Steinberg and the APA, which submitted an amicus brief to the Court. *See, e.g.*, *id.* at 569, 570, 572, 573, 576 (references to Dr.

Steinberg's research and to the APA's amicus brief). The APA's position supporting a ban on the juvenile death penalty was a key component to the Court's holding, because the organization "is dedicated to . . . the improvement of the human condition overall, . . . through the development and application of the psychological sciences," but does not take a position on the use of capital punishment as a general matter (ROA. 143). As the preeminent "scientific and professional organization" of psychologists in the United States, its resolutions are regularly cited by the United States Supreme Court because they indicate near-universal consensus in the psychological community has been reached on the matter in question. *See Graham*, 560 U.S. at 68 (referencing the APA's amicus brief); *Miller*, 567 U.S. at 472 n.5 (citing the APA's amicus brief for the proposition that "the science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger").

In August 2022, the APA overwhelming voted to adopt a resolution barring the death penalty for late adolescents, or those under 21 at the time of their offenses. *See* ROA. 142-54 (text of resolution); *APA calls for extending ineligibility for the death penalty to adolescent offenders younger than age 21*, American Psychological Association,

Aug. 4, 2022 (noting that the APA voted by 161 – 7 to adopt the resolution). [5] This resolution, together with the Steinberg report, furnish the basis for Mr. Melton's newly-discovered-evidence claim in the circuit court.

1. The Steinberg report and the APA resolution establish that *Roper's* holding equally applies to members of the late-adolescent class because the distinctions the Court highlighted between adults and juveniles persist until at least age 21.

In his report, Dr. Steinberg described the scientific community's understanding of how the adolescent brain developed, and outlined how, post-*Roper*, scientific evidence has continued to accrue indicating that many aspects of psychological and neurobiological immaturity that typify juveniles are also characteristic of late adolescents (ROA. 75).

As Dr. Steinberg explained, for most of the twentieth century, scientists believed that brain maturation ended in late childhood. This conclusion was based on the observation that the brain reached its adult size and volume by the age of 10. Research that examined the brain's internal anatomy and brain activity patterns, rather than

[5] https://www.apa.org/news/press/releases/2022/08/limiting-death-penalty

solely focusing on the brain's appearance, started challenging this widely held belief in the late 1990s (ROA. 75-76).

The advent of functional Magnetic Resonance Imaging (fMRI) permitted scientists and researchers to observe living individuals' brains and examine their responses to various stimuli and activities. The results of these examinations demonstrated that key brain systems and structures, especially the ones involved in self-regulation and higher-order cognition, continue to mature until at least the age of 21, and likely beyond (ROA. 76).

The continued study of brain maturation over the past decade has shown that several aspects of brain development, including the brain regions that determine character, judgment, and decision-making, continue to develop until at least age 21. Although the scientific consensus and the research supporting it did not exist at the time of Mr. Melton's trial and sentencing in 1992, this view is now widely accepted among neuroscientists and the legal community (ROA 77-78).

As a result of the adolescent brain's continuing development, individuals up until at least age 21 remain amenable to change and rehabilitation. Any predictions about an adolescent's *future* character

and behavior based on assessments made *prior* to brain maturation at 21 are merely speculative, particularly since research has demonstrated that adolescents engage in less misconduct as they transition to adulthood—a trend that holds true even for adolescents with histories of delinquent behavior (ROA. 78). This is because individuals in their late teens and early 20s are less mature than older individuals in several legally relevant ways (ROA. 79).

First, adolescents are more likely than adults to underestimate the risks presented by a course of action, the chances of negative consequences occurring as a result, and the degree to which they could be harmed (ROA. 80).

Second, adolescents are more likely than older individuals to engage in "sensation-seeking," which is the pursuit of new experiences that seem exciting or rewarding. Adolescents are more likely to overestimate the possible rewards of these experiences and underestimate their potential costs and consequences. This tendency is particularly prominent among adolescents between ages 18 to 21 (ROA. 80-81).

Third, adolescents are less capable of controlling their impulses and considering the future consequences of their actions and

decisions, because adolescents tend to be short-sighted and less inclined to think about future risks as opposed to present rewards. Importantly, however, the adolescent brain undergoes significant gains in impulse control beyond age 18 and into the early 20s, which reduces this tendency (ROA. 81).

Fourth, the development of basic cognitive abilities, including memory and logical reasoning, finishes before emotional maturity has fully developed. Emotional maturity allows an individual to exercise self-control, conduct a cost-benefit analysis of a given course of action, and resist peer pressure. As a result of the disjunctive development of cognition and emotional maturity, a young person who seems *intellectually* mature will likely still be socially and emotionally immature, more focused on rewards rather than risks, more impulsive, and more myopic. These traits are exacerbated when an adolescent is in a situation that causes strong negative emotions such as fear, anger, or anxiety (ROA. 80-81).

Fifth, adolescents' deficiencies in judgment are increased by the presence and influence of peers. A disproportionate amount of adolescent risk-taking occurs when peers are present, likely because when an adolescent is in a group, he or she will pay more attention

to the potential rewards of a course of action, rather than its risks. Scientific research has shown that the mere presence of peers activates an adolescent's "reward center" in the brain, regardless of the number present or how well they know each other. Brain imaging studies show that adolescents are especially sensitive to rejection from their peers, which makes gaining peer approval particularly important to adolescents. The same does not hold true once an individual reaches the mid-to-late 20s and beyond (ROA. 81-82).

The combination of heightened attentiveness to rewards and still-maturing impulse control makes late adolescence a time of greater risk-taking than any other stage of development, which has been demonstrated both in controlled scientific studies and in data analysis on real-world behavior (ROA. 83-84). The studies have found that the peak time for risky decision-making is in the late teens and early 20s, which is consistent with the real-world data showing that during this age range, adolescents are most likely to engage in risky behaviors that result in deaths while driving, unintended pregnancies, criminal arrests, and binge drinking (ROA. 84).

The Steinberg report outlined how, in neurobiological terms, the primary underlying cause of adolescent psychological immaturity is

the different timetables along which the limbic system and the prefrontal cortex develop (ROA. 84-85).

The limbic system is responsible for the increase in sensation- and reward-seeking that has been observed during adolescence. That system dramatically changes around the time of puberty, which typically occurs in early adolescence, and the increased attentiveness to rewards remains high throughout late adolescence (ROA. 84-85).

The prefrontal cortex is what primarily regulates impulse control, planning ahead, weighing the costs and benefits of a given course of action, and resisting peer pressure. Unlike the limbic system, the prefrontal cortex continues to significantly mature well into an individual's mid-20s (ROA. 85).

The differing developmental rates of the limbic system and the prefrontal cortex create a "maturational imbalance," where adolescents will have an increased desire to seek rewards and new sensations without a corresponding ability to control this impulse or to weigh the potential risks of engaging in such novel, thrill-seeking behavior (ROA. 85).

This maturational imbalance between the limbic system and prefrontal cortex diminishes in an individual's mid-20s, and leads to

improvements in impulse control, resisting peer pressure, and anticipating and analyzing the consequences of a course of action (ROA. 85).

Research on neurobiological development supports this conclusion, showing that the brain regions that govern self-regulation and higher-order cognitive function continue to mature well into an individual's 20s. These changes are both structural (in the brain's anatomy) and functional (in the brain's activity), and particularly occur in the prefrontal and parietal cortices, and the limbic system (ROA. 85).

The result of this delayed maturation is that the brain has not fully developed the ability to both quickly and efficiently communicate information to different brain regions until the age of 21. This inefficiency, coupled with the maturational imbalance between the limbic system (which drives an adolescent towards risky behavior) and the prefrontal cortex (which checks this impulse), leads late-stage adolescents to have difficulty controlling their impulses (ROA. 86).

Scientific studies have shown that, particularly in emotionally heightened circumstances, late adolescents demonstrate levels of

impulsivity and patterns of brain activity comparable to juveniles in their mid-teens. Those studies concluded that, at least under some circumstances—particularly situations of heightened distress—the brain of an 18- to 21-year-old functions more like that of a younger teenager, rather than like an older adult's brain (ROA. 86-87).

Importantly, though, an adolescent brain will eventually mature into an adult brain. That psychological maturing process is a key factor in desistance from crime. Research conducted by Dr. Steinberg and other scientists has demonstrated that the normative maturation process, common to the experience of adolescents transitioning to adulthood, almost universally leads to improvements in self-control, the ability to resist peer pressure, and the ability to focus on future consequences rather than strictly on present rewards. Together, these developments result in the desistance from crime for the vast majority of individuals once they reach their mid-20s and beyond (ROA. 87).

Relatedly, scientists have demonstrated the neuroplasticity of the human brain. Neuroplasticity is the potential, and ability, of the brain to be changed by experience. Certain periods in a person's development have been shown to be times of greater neuroplasticity

than others, and adolescence is one of those times. One effect of neuroplasticity is that there is a greater opportunity and likelihood that an individual can learn from and change his or her behavior (ROA. 87).

The United States Supreme Court highlighted the concept of neuroplasticity and its implications for adolescent sentencing in its opinion in *Graham*, which held that the Eighth Amendment prohibited life-without-parole sentences for juveniles who committed non-homicide offenses. *Graham*, 560 U.S. at 82. In so holding, the Supreme Court acknowledged that the adolescent brain is not fully developed, which contributes to an individual's immaturity but also leaves open the possibility of growth and rehabilitation. The neurobiological research now conclusively demonstrates that those same factors hold true for members of the late-adolescent class (ROA. 87-88).

These findings from scientific studies are borne out by the real-world data: very few individuals—fewer than 10%—who commit crimes as juveniles continue to do so after they reach their mid-20s. These studies are also consistent with other evidence documenting the relationship between age and crime (ROA. 88).

Research in the field of developmental psychology has allowed for further understanding of the ways in which the typical maturation process from adolescence to adulthood contributes to a desistance from crime. Scientific studies have shown that, generally, self-control, resistance to peer pressure, and the ability fully consider future consequences of a given action—all of which help a person desist from crime—improve during late adolescence and young adulthood (ROA. 88-89).

These scientific observations are consistent with studies that have demonstrated that neurobiological development is ongoing throughout the teenage years and into the early 20s. Due to this development, adolescents continue to have difficulties in exercising self-restraint, controlling their impulses, considering the consequences of their actions, and making independent decisions free from peer influences. This is particularly true in situations that are highly emotional or stressful. In this way, the late-adolescent brain is developmentally similar to the juvenile brain, and developmentally distinct from the adult brain (ROA. 89-90).

As research into adolescent brain development continued in the post-*Roper* era, it has consistently shown that late adolescents are

neurobiologically closer to juveniles than to adults. In recognition of this consensus, the APA proposed a resolution prohibiting the executions of individuals under age 21 in May 2022 (ROA. 155-60). That resolution is the other component of Mr. Melton's newly-discovered-evidence claim.

In its resolution, the APA explained that though *Roper*'s core holding regarding juvenile immaturity continued to be supported by the scientific data, **"there is no neuroscientific bright line regarding brain development that indicates the brains of 18-to-20-year-olds differ in any substantive way from those of 17-year-olds"** (ROA. 144). That is because continuing research into developmental neuroscience has established that

> significant maturation of the brain continues through at least age 20, especially in the key brain systems implicated in a person's capacity to evaluate behavioral options, make rational decisions about behavior, meaningfully consider the consequences of acting and not acting in a particular way, and to act deliberately in stressful or highly charged emotional environments, as well as continued development of personality traits (e.g., emotional stability and conscientiousness) and what is popularly known as "character."

(ROA. 145). As a result, "the same youthful and immature characteristics that apply" to juveniles "are similarly present in [late adolescents], rendering them less culpable and less susceptible to

any deterrent value of the death penalty" (ROA. 144). Indeed, it is precisely in the capital context where this neurobiological immaturity is most exposed, because those offenses "tend[] to involve crimes that have occurred in situations of high emotional arousal," where the "late adolescent class responds more like younger adolescents than like adults" (ROA. 145).

The APA went on to describe how this neurobiological reality has increasingly been reflected in the social, legal, and political spheres. For example, in 2021 the manual published by the American Association of Intellectual and Developmental Disabilities "increased the age of onset criterion for the diagnosis of intellectual disability . . . from age 18 to age 22" (ROA. 144). Additionally, there are a wide variety of laws in many states restricting the behavior of individuals under 21, particularly issues implicating "decision-making in highly stressful and extremely arousing circumstances," while such restrictions are frequently absent in "other matters that need not [] be made, and typically are not made, rashly in emotionally volatile circumstances" (ROA. 146). This distinction tracks the scientific understanding of the developmental limitations of the late-adolescent brain.

As such, "determining whether the nature of the crimes committed by members of the late adolescent class and the level of culpability that should be ascribed to them truly constitutes the 'worst of the worst' is inherently unreliable" and "predictions about their rehabilitation potential and likely future actions are equally unreliable" (ROA. 145-46). This unreliability increases the risk that the jury will consider constitutionally impermissible factors in determining whether a late adolescent should receive a death sentence. One example of such an impermissible factor is a capital's defendant's race.

2. As the APA noted and further recent research has explored, the late-adolescent death penalty is disproportionately used on Black capital defendants.

Although research has been done into whether racial disparities exist in capital sentencing generally, *see, e.g.*, *McCleskey v. Kemp*, 481 U.S. 279 (1987), few studies had looked at racial disparities with respect to capital sentencing outcomes of late adolescents in particular. Yet this is a critical factor in determining whether sentencing late adolescents to death is constitutionally acceptable, because a death sentence may not be "wantonly [or] freakishly imposed," *Furman v. Georgia*, 408 U.S. 238, 310 (1972) (Stewart, J.,

concurring) or, certainly, imposed due to the defendant's race, *cf. Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 867 (2017) (grounding its holding that a jury verdict may be impeached when there is evidence that racial animus tainted the conviction in the principle that there is an "imperative to purge racial prejudice from the administration of justice").

As the APA noted in its resolution, research has indicated that "Black youth are punished more harshly than Whites and significantly more likely to be perceived incorrectly as older and more responsible." These propositions have repeatedly been borne out in their real-world context. *See, e.g.*, "Powder Cocaine and Crack Use in the United States," Drug Alcohol Depend. 2015 Apr 1; 149: 108–116 (discussing the 18:1 sentencing disparity between crack cocaine and powder cocaine possession convictions and observing that black individuals tend towards crack cocaine while whites use powder cocaine)[6]; "Union: Police not told boy's gun might be fake," The Associated Press (Dec. 12, 2014) (officers who fatally shot 12 year-old Tamir Rice, who was Black, "believed they were confronting

[6] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4533860/

someone around 20 years old" because "[t]hat's what they [saw], right there, right then")[7]; "Man calls police on 9-year-old Black girl spraying bugs," WMTV (Nov. 21, 2022) (9-year-old Black girl spraying lanternflies in her neighborhood with water was identified as a "little Black woman" by her neighbor in a verbal police report).[8]

This same pattern of disparate treatment recurs in late-adolescent capital sentencing. Indeed, the sentencing decision is merely the culmination of a series of decisions, many of which likely were tainted by racial bias, including the prosecution's decision to seek a death sentence and the jury's willingness to impose it. [9]

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[7] https://apnews.com/article/b4dfb61acd424a35bc54ae964db17657

[8] https://www.nbc15.com/2022/11/21/man-calls-police-9-year-old-black-girl-spraying-bugs/

[9] Furthermore, prospective jurors who are minorities will disproportionately be stricken from the jury pool because such jurors are less likely to be willing to impose the death penalty and to therefore be death qualified. *See, e.g.*, "Motion to Declare Death Disqualification Unconstitutional," Exh. B at 8, *State v. Glover*, 16-2012-CF-6463 (Duval Cnty. Cir. Ct. Feb. 17, 2022) (challenging the death-disqualification process in part through a study of its use in Duval County which concluded that "death disqualification is a significant barrier to jury service for racial minorities" and that "people of color in venires are less likely overall to ultimately be selected as jurors").

Dr. Craig Haney, Distinguished Professor of Psychology at the University of California-Santa Cruz, recently published a paper on "where there are racial/ethnic disparities in the application of the death penalty that are or would be affected by age-based prohibitions, including those affected by . . . the proposed exclusion of late adolescent class members [from being sentenced to death]." "*Roper* and Race: The Nature and Effects of Death Penalty Exclusions for Juveniles and the 'Late Adolescent Class,'" p.10, Craig Haney, Frank R. Baumgartner, Karen Steele, Forthcoming, 2023, *Journal of Pediatric Neuropsychology* (hereinafter "*Roper* and Race").[10] Dr. Haney "conducted an analysis of a comprehensive dataset of all death penalty verdicts" from 1972 through 2021. *Id.* at 12. He then "examined whether and how defendants' race/ethnicity and their age were related to the distribution of the death sentences rendered in capital cases over this 50-year time period." *Id.*

His findings were striking. He noted that prior to *Roper*, fewer than 3% of all death sentences were for juvenile offenders. *See id.* at 13-14. However, over 60% of those sentences were imposed on minority

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10 https://fbaum.unc.edu/articles/RoperAndRace-JPR-2022.pdf

defendants, and nearly half on Black defendants alone. *Id.* at 14. That trend was amplified for late adolescents. First, many more members of that group were sentenced to death—roughly 15%, or about 1 in 7 death sentences. *Id.* at 13-14. And of those sentences, **"fully 61.33% [were] meted out to defendants of Color and, again, nearly half (48.52%) to Black defendants alone."** *Id.* at 14. As individuals aged into adulthood, "death sentences were more evenly distributed across race and ethnicity," as nearly half (48.14%) of all adult sentences were imposed on white defendants, and only 46.64% on defendants of color. *Id.*

In the post-*Roper* era, "the racial/ethnic disproportions were especially pronounced for members of the late adolescent class." *Id.* at 15. Over half (51.41%) of all late-adolescent death sentences were imposed on Black individuals, compared to only 20.42% for white defendants. *Id.* In discussing this data, Dr. Haney noted that "[i]t is difficult to envision a plausible explanation for this pattern . . . that is based on the objective characteristics of the crimes or the defendants in question. . . . In sum, it may be easier to dehumanize [young minority defendants]—an important element in convincing a jury that death is an appropriate punishment." *Id.* at 18-19.

Additionally, the transitional stage that late-adolescent individuals occupy renders them uniquely vulnerable given their lack of legal protections in capital sentencing. Many late adolescents will have a "more adult-like outward physical appearance" because the *physical* maturation process of the body has largely ceased. *Id.* at 20. Black adolescents in particular are more likely to be seen both as being older than their actual chronological age, and as being more culpable than white adolescents of the same age. *See* "The Essence of Innocence: Consequences of Dehumanizing Black Children" at 531-32 (Feb. 24, 2014), Journal of Interpersonal Relations and Group Processes. [11] That outward appearance "masks [the] underlying, non-obvious developmental and neurological immaturity" that is due to the *neurobiological* maturation process continuing on until at least age 21. *Id.*

Given this confluence of factors, Dr. Haney reasoned that a categorical ban on imposing the death penalty on late adolescents is necessary. A case-by-case analysis merely "amplif[ies] pre-existing biases against [disadvantaged] groups" and "the risk is too great that

[11] https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf

the death penalty will be unreliably imposed on [late-adolescent] class members." "*Roper* and Race," p.2.

The Supreme Court concluded its opinion in *Pena-Rodriguez* by noting that "[i]t is proper to observe . . . that there are standard and existing processes designed to prevent racial bias in jury deliberations. . . . It is the mark of a maturing legal system that seeks to understand and to implement the lessons of history." 137 S. Ct. at 871. Here, the research relied upon by the APA in its resolution, and the even more recent studies conducted by Dr. Haney, show that race is a substantial factor—even if an implicit one—in deciding which late adolescents are sentenced to death.

A bulwark principle of the Supreme Court is that "'[d]iscrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice. Relying on race to impose a criminal sanction poisons public confidence in the judicial process." *Buck v. Davis*, 137 S. Ct. 759, 778 (2017) (internal quotation marks omitted). Already, in *Roper*, the Court recognized that while it generally favored "individualized consideration" in sentencing, a categorical rule was necessary because

> [t]he differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability. An unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death.

543 U.S. at 572-73. As the Steinberg report, the APA resolution, and Dr. Haney's study all show, a categorical bar on the execution of adolescents under age 21 is both supported by the neurobiological science and constitutionally required by the law. Courts, responding to the changed scientific landscape, have begun to take up the duty to protect late adolescents from unduly harsh sentences, as demonstrated by several recent decisions from state courts across the country.

3. Recent opinions from Washington, Massachusetts, and Michigan have implemented the neurobiological evidence regarding late adolescents' diminished culpability.

Although *Roper* was a United States Supreme Court decision based on the federal Constitution, it is always a state court's prerogative to define rights as being more protective of that state's citizens under state law. *See Danforth v. Minnesota*, 552 U.S. 264,

289 (2008) ("While [the Supreme Court has] ample authority to control the administration of justice in the federal courts—particularly in their enforcement of federal legislation—[it has] no such comparable supervisory authority over the work of state judges.").

In 2021 and 2022, several state courts held that it is constitutionally required under state law to extend the holding of *Miller*, which banned mandatory life-without-parole sentences for juveniles, to individuals over 18. Their rationales for so doing dovetail with the neurobiological conclusions outlined above.

First, in March 2021, the Washington Supreme Court decided *Matter of Monschke*, 482 P.3d 276 (Wash. 2021). *Monschke* involved two separate adolescent defendants: a 20-year-old and a 19-year-old. Both men had originally received mandatory life-without-parole sentences for their first-degree murder offenses. *Id.* at 277-78. In *Monschke*, the court extended *Miller*'s holding, which prohibits mandatory life-without-parole sentences for juveniles, to individuals under age 21.

The *Monschke* opinion extensively recounted the changing views about juvenile punishment from the time of the Founding until 2021,

and noted that "[w]hile the United States Supreme Court has drawn bright lines between various ages and types of defendants, **those bright lines have shifted over time.**" *Id.* at 281 (emphasis added). The clear trend, however, was for sentencing to take account of the distinctions between juveniles and adults in sentencing decisions.

The Washington Supreme Court then questioned whether a bright-line rule was appropriate, because "some bright statutory lines fail to comply with the Eighth Amendment." *Id.* at 283. For example, in *Hall v. Florida*, 572 U.S. 701 (2014), the United States Supreme Court found the "rigid bright line of an IQ of 70" to be unconstitutional insofar as it "'fail[ed] to account for other factors'" and treated the IQ score as a "strict cutoff." *Id.* (quoting *Hall*, 572 U.S. at 722). The state court analogized *Hall* and its state statutory analogue to *Miller*, which set "a flat cutoff line in determining a defendant's sentence: age 18." *Id.* The court believed that, under its state constitution, a sentencing court must be allowed to account for a late-adolescent defendant's young age when sentencing him or her. *Id.*

Then, in July 2022, a Massachusetts Superior Court judge similarly held that "mandatory sentences of life without the

possibility of parole for defendants [under age 21]" violate the Massachusetts state constitution. *See Commonwealth v. Robinson* at 2, No. 84CR10975 (July 20, 2022).[12]

The *Robinson* opinion heavily relied on expert testimony, including that of Dr. Steinberg, regarding the neuroscience of the adolescent brain. *See generally id.* at 15-18, 20-23. After reviewing that testimony, the court concluded that "there is a mismatch between the culpability of [late adolescents] as a class and mandatory life-without-parole sentences." *Id.* at 20.

Nor was the Superior Court deterred by the fact that the United States Supreme Court had not yet extended its holdings in *Roper* or *Miller*, in part because the Superior Court did not believe the Supreme Court's "decisions are fixed in stone, and their conclusions may change as the science changes." *Id.* at 23.

The Superior Court recognized that adolescents may commit terrible crimes, and those offenses should not be excused merely due to a defendant's young age. Nonetheless, the court believed that "[i]n

[12] https://media.wbur.org/wp/2022/07/Robinson-Jason-Finding-of-Facts-on-Brain-Development-and-Social-Behavior-07-20-22-1.pdf

deciding what constitutes cruel or unusual punishment, a court should consider the systemic impact of its ruling, particularly where the ruling involves a class of persons who, based on their age, have greater capacity than older persons to change." *Id.* at 31. Many of the perpetrators of violent crimes are the same individuals most likely to be victimized by it, and the circumstances leading to that situation, the court found, are "largely beyond the control of any 18 through 20-year-old." *Id.* at 31. Therefore, the fact that neurobiology alone likely cannot explain why certain adolescents commit violent crime did not alter the court's constitutional analysis. *Id.* at 30.

Finally, only a week after the Massachusetts Superior Court opinion, the Michigan Supreme Court issued its decision extending *Miller*'s holding to those under age 19. In *People v. Parks*, the Michigan court "was left with the inescapable conclusion that mandatorily condemning 18-year-olds to die in prison, without consideration of the attributes of youth that 18-year-olds and juveniles share, no longer comports with the 'evolving standards of decency that mark the progress of a maturing society.'" --- N.W.2d ---, 2022 WL 3008548 at *10 (July 28, 2022). Although "line-drawing

is difficult, [the state] Constitution compels us to make these difficult choices." *Id.*

Though *Parks* was grounded in the state constitution, it heavily drew from the United States Supreme Court's *Roper* line of cases and followed the Court's lead by considering neuroscience as a permissible basis to inform its holding. The court walked through the neuroscience of adolescent brain development—which the state did not dispute—and acknowledged that **"[t]he ongoing neurodevelopment described in scientific and medical literature, characterized by neuroplasticity and its attendant characteristics, blurs the already thin societal line between childhood and young adulthood."** *Id.* at *14. The court concluded that "[o]verall, late-adolescent brains are far more similar to juvenile brains . . . than to the brains of fully matured adults." *Id.* at *14.

In conducting proportionality review under state law, the Michigan Supreme Court was particularly concerned with the effects of long-term imprisonment on the developing brain, and on the mature individual who will eventually emerge:

> And, beyond the condemnation to spend nearly the entirety of one's adulthood behind bars, the unique characteristics of 18-year-old brains make this penalty even more severe. **Because**

> **of the dynamic neurological changes that late adolescents undergo as their brains develop over time and essentially rewire themselves, automatic condemnation to die in prison at 18 is beyond severity—it is cruelty.** The brains of 18-year-olds, just like those of their juvenile counterparts, transform as they age, allowing them to reform into persons who are more likely to be capable of making more thoughtful and rational decisions. This means that 18-year-olds, as they age, are likely to begin to take fewer risks, further understand consequences, become less susceptible to peer pressure, and have decreased aggressive tendencies. All of this suggests that **18-year-olds, much like their juvenile counterparts, are generally capable of significant change and a turn toward rational behavior that conforms to societal expectations as their cognitive abilities develop further.**

Id. at *16 (emphasis added). While the court "emphatically [did] not minimize the gravity and reprehensibility of [late-adolescent violent crime], it would be profoundly unfair to impute full personal responsibility and moral guilt to those who are likely to be biologically incapable of full culpability." *Id.* at *17. Therefore, mandatory life-without-parole sentences for those under age 19 were "unconstitutionally excessive and cruel." *Id.*

Monschke, *Robinson*, and *Parks* illustrate two principles. First, that the findings in the Steinberg report Mr. Melton submitted as one component of his newly-discovered-evidence claim are not controversial—indeed, the states did not even dispute the scientific evidence. All three state-court opinions relied heavily on the work of

neurobiologists and psychologists. Yet, as Mr. Melton will discuss further below, the circuit court erroneously dismissed this evidence out of hand.

Second, all three opinions relied on state law and state constitutional principles to ground their holdings. While Mr. Melton believes his newly discovered evidence raises a claim under the Eighth Amendment, this Court has the ability to interpret Article 1, § 17 of the Florida Constitution more broadly than the Eighth Amendment.[13] Under either the federal or state constitution, the result is the same: as a categorical matter, individuals who were under age 21 when they committed their offense cannot be sentenced to death.

III. The death penalty is a constitutionally disproportionate punishment as to Mr. Melton, who was 18 years and 25 days old at the time of the crime.

For the reasons described above, the death penalty is a categorically disproportionate punishment for members of the late-adolescent class. At a minimum, however, the death penalty is

[13] Mr. Melton will discuss the circuit court's erroneous ruling that the Constitutional Conformity Clause prevented it from granting relief in Issue IV(3) of this Brief.

certainly disproportionately cruel and unusual punishment as applied to Mr. Melton, and his death sentence must be vacated. Alternatively, this Court should remand for a new penalty phase or evidentiary hearing for the resentencing court, or a jury, to evaluate the impact of this newly discovered evidence on his sentence. In the post-*Roper* era, there is a reasonable likelihood of a different sentencing outcome for Mr. Melton at a new penalty phase.

1. The lack of aggravation established by the State shows the disproportionality of Mr. Melton's sentence.

First, Mr. Melton shot Mr. Carter when he was 18 years and **25 days** old. He is the youngest person sentenced to death currently sitting on Florida's death row. His proximity to the constitutional cutoff renders the neurobiological evidence outlined by Dr. Steinberg, Dr. Haney, and the APA even more applicable to him. As a young, Black 18-year-old at the time of trial, all of the figures driving his capital trial—including the judge, the prosecutor, and the jurors—likely considered him an adult, and possibly even older than he actually was. Yet, neurobiologically, Mr. Melton's brain was still on essentially the same level as a juvenile's brain.

At any age, Mr. Melton's capital crime could not be considered highly aggravated. In fact, as Dr. Steinberg noted, the Carter homicide "was characterized by many quintessentially juvenile features" that the Supreme Court outlined in *Roper*: (1) "it was an impulsive act motivated by the prospect of an immediate reward"; (2) "committed with a peer"; and (3) "under the sort of 'hot' circumstances that have been shown to impair adolescent decision making" (ROA. 91). According to Mr. Melton, the victim died from a gunshot wound to the head when his gun went off during a struggle (DA-R. 691-95). Even if this Court discredits Mr. Melton's facts and assumes the murder was intentional, there was no indication that Mr. Melton extensively planned it out before going into the pawnshop, as opposed to reacting in the spur of the moment to Carter's efforts to defend himself.

Significantly, the sentencing court did **not** find that the "especially heinous, atrocious, and cruel" aggravator, which "has been held to be one of the weightiest aggravating circumstances in Florida," had been established. *Jeffries v. State*, 222 So. 3d 538, 550 (Fla. 2017). That is because there was no indication that Mr. Melton was attempting to "inflict a high degree of pain" on Mr. Carter, or that the

murder was "conscienceless or pitiless." *Diaz v. State*, 860 So. 2d 960, 966 (Fla. 2003) (quoting the standard jury instruction for the HAC factor). Rather, the Carter homicide was an extreme example of how multiple factors, including youth, can culminate in a tragedy.

Of the two aggravators the sentencing court *did* find, both had significant problems. The first, conviction for a prior violent felony, was established on the basis of the Saylor homicide, which occurred when Mr. Melton was only 17 years old (DA-R. 1395). Mr. Melton has consistently challenged the constitutionality of that aggravator as applied to his case in light of *Roper*. *See Melton*, 949 So. 3d at 1020 (describing Mr. Melton's *Roper* claim as "stand[ing] for the proposition that the Eighth Amendment precludes reliance upon criminal acts committed before the age of eighteen from serving as a basis for the imposition of the death penalty"); *Melton v. Sec'y, Fla. Dep't of Corr.*, 778 F.3d at 1236-37 (describing Mr. Melton's certificate of appealability to the Eleventh Circuit as raising "two new issues, each based on *Roper*").

The second aggravator, that the murder was committed for pecuniary gain, has not been found to be particularly weighty. Indeed, this Court has held several times that the pecuniary-gain

aggravator, standing alone, is insufficient to sustain a death sentence. *See, e.g.*, *Williams v. State*, 707 So. 2d 683, 684, 686 (Fla. 1998); *Sinclair v. State*, 657 So. 2d 1138, 1140 n.1, 1142-43 (Fla. 1995). When these two flawed aggravators are removed from the equation, Mr. Melton's case is no longer death-eligible, and his death-sentence is invalid.

Mr. Melton's jury verdict of 8-4 reflects, on the one hand, the cumulative disproportionality of his death sentence. Many death row prisoners who, like Mr. Melton, had non-unanimous advisory jury verdicts, obtained sentencing relief in light of *Hurst v. Florida*, 577 U.S. 92 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). But because Mr. Melton's conviction was final before the Supreme Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002), he did not receive the benefit of *Hurst*. *See Asay v. State*, 210 So. 3d 1, 11 (Fla. 2016); *Schriro v. Summerlin*, 542 U.S. 348, 358 (2002) (holding that *Ring* was not retroactive to cases on collateral review).

On the other hand, it also reveals the State's limited case in aggravation against Mr. Melton. Even before the Supreme Court's line of cases increasing protections in juvenile sentencing, or the increased research into adolescent brain development, a third of Mr.

Melton's jury voted for life. Now, with the benefit of the newly discovered evidence highlighting the deficiencies in adolescent decision-making due to normative developmental processes, it is reasonably likely that he would receive a life sentence.

2. Under cumulative review, the wealth of mitigating evidence available for a new penalty phase would tip the balance in favor of a life sentence.

Mr. Melton has extensive mitigation on multiple themes available to present at a resentencing.[14] As discussed above, the new evidence regarding adolescent brain development supports a categorical bar on the imposition of the death penalty on individuals between the ages of 18 through 20. At a minimum, it shows the need for resentencing in Mr. Melton's case. Mr. Melton was only 18 years and 25 days old at the time he committed the crime.

The new evidence regarding brain development supports a finding of age as a mitigating factor under § 921.141(7)(g), even if this Court disagrees that Mr. Melton's young age at the time he committed the

[14] In Mr. Melton's 3.851 motion that preceded this appeal, he discussed the available mitigation evidence that could be presented at a resentencing hearing. *See* ROA. 61-68. The State did not contest the substance of this mitigation in its answer, and the circuit court did not address it in its order.

Carter homicide renders him categorically ineligible for the death penalty. That is because the normative developmental process of the adolescent brain renders individuals under age 21 particularly susceptible to committing criminal offenses. Yet, it is this same maturation process that will lead well over 90% of individuals to desist from committing further crime once they have reached their later 20s, as the Steinberg report describes (*See, e.g.*, ROA. 78, 80-81, 83, 84-87).

This disjointed development leads to a "maturational imbalance" in how the brain of an adolescent under age 21 works. The system that drives someone to look for new experiences and rewards develops faster than the system that regulates self-control, planning ahead, and evaluating the costs and benefits of an action. This means that an 18-to-20-year-old person is going to have an increased desire to engage in novel, and potentially risky, behaviors, but will lack the corresponding ability to control that impulse or consider its long-term consequences. In that sense, **late adolescents are uniquely vulnerable to the trajectory of their neurobiological development** (ROA. 84-85).

This Court has long recognized the relevance of youth as a mitigating factor in capital sentencing, and that "[t]here is no per se rule which pinpoints a particular age as an automatic factor in mitigation." *Peek v. State*, 395 So. 2d 492, 498 (Fla. 1980) (citing trial-court order with approval). Nearly a decade before the United States Supreme Court discussed the characteristics of adolescent brain development in *Roper*, this Court acknowledged that "age is an extremely weighty mitigator." *Urbin v. State*, 714 So. 2d 411, 418 (Fla. 1998). The Court noted that "it is the patent lack of maturity and responsible judgment that underlies the mitigation of young age, [and therefore] **the closer the defendant is to the age where the death penalty is constitutionally barred, the weightier this statutory mitigator becomes.**" *Id.* (emphasis added).

Since *Roper*, this Court has incorporated neurobiological and psychological research of adolescent brain development into its decisions discussing juvenile sentencing procedures. For example, it has endorsed the Supreme Court's conclusion that "children are 'constitutionally different'" from adults, because their crimes typically will reflect "transient immaturity" rather than "irreparable

corruption." *Landrum v. State*, 192 So. 3d 459, 466 (Fla. 2016) (citing *Miller*, 567 U.S. at 471, and *Montgomery*, 577 U.S. at 208).

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

The new evidence also bolsters the non-statutory mitigating factor that Mr. Melton exhibited good behavior while awaiting trial. *Melton*, 638 So. 2d at 929. At Mr. Melton's 1992 sentencing, which occurred when he was 19, the judge assigned this factor little weight, and this Court found it was "not compelling." *Id.* at 930.

The modern consensus regarding adolescent brain development, which was not recognized in law or science in 1992, strengthens this mitigation evidence because, by placing both Mr. Melton's offense and his subsequent good behavior while incarcerated into a broader developmental timeline, it shows that Mr. Melton's offense "reflect[ed]

unfortunate yet transient immaturity" rather than "irreparable corruption." *Roper*, 543 U.S. at 573. As the Steinberg report outlines, late adolescence is when the "maturational imbalance" in the adolescent brain is at its peak—yet the normal process of brain development leads over 90% of individuals who committed crimes in that age range to desist as they enter their 20s (ROA. 84, 88). Mr. Melton's good behavior while awaiting trial demonstrates that he was on track to follow that same trajectory of desisting from risky behavior, including crime, and that he would successfully adjust to prison life. The Steinberg report provides key neurobiological and psychological findings to support this commonplace understanding, strengthening its compelling value as a mitigating factor.

The new evidence also reduces the aggravating effect of the prior violent felony and pecuniary gain aggravators. As described above, those aggravators were based on (1) Mr. Melton's conviction for a murder that occurred when he was 17 years old; and (2) that the death-eligible murder occurred during the commission of a robbery.

Both aggravating factors are diminished in light of the new evidence. First, the murder that was used as a prior violent felony occurred when Mr. Melton was only 17 years old—well below the

developmental point at which the adolescent brain has transitioned to adulthood. Even assuming the use of that offense was constitutional—a point Mr. Melton contests, as he argued above—the same neurobiology that resulted in his diminished culpability as an 18-year-old for the Carter homicide, applies even more strongly to the Saylor homicide, which occurred when he was a juvenile.

Second, the fact that Mr. Melton was found to have committed the murder for pecuniary gain, along with the other circumstances of the crime, precisely typifies the transient immaturity of the late adolescent brain that Dr. Steinberg discusses in his report. The crime was committed with a peer (co-defendant Bendleon Lewis), under emotionally charged conditions (during a robbery), and in the hope of obtaining a short-term reward (money) (ROA. 80-82). Under these circumstances, "[a]dolescents' deficiencies in judgment and self-control, relative to adults, are greater" (ROA. 82). The new evidence demonstrates that Mr. Melton's actions, while inexcusable and tragic, were an extreme manifestation of the "deficiencies" in the adolescent brain under emotionally stressful circumstances.

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

Additionally, in *Jones v. State*, 591 So. 2d 911, 916 (Fla. 1991), this Court explained that a postconviction court deciding a newly-discovered-evidence claim must "consider all newly discovered evidence which would be admissible" and must "evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial" in determining whether the evidence would probably yield a less-severe sentence.

Throughout Mr. Melton's prior proceedings, he has presented a plethora of evidence relevant to whether his sentence of death is reliable. At trial, he presented evidence from his co-defendant, Bendleon Lewis's, attorney, who swore that the State had not offered Lewis a plea deal to testify against Mr. Melton, an assertion later proven false (R. 979). He offered testimony from a clinical psychologist who talked to Mr. Melton about his background and found that, although Mr. Melton had dropped out of high school, he completed his GED while incarcerated at the Escambia County Jail (R. 995). The psychologist testified that he believed Mr. Melton could

make important contributions in prison if given a life sentence (R. 997-98).

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

In 2002, at his first evidentiary hearing, Mr. Melton provided further mitigating evidence, including an expanded picture of his troubled home life and an expert evaluation that showed that, due to the cumulative effect of Mr. Melton's experiences growing up, he had developed into an immature youth who was highly susceptible to peer pressure.

Mr. Melton also presented the testimony of six individuals who were incarcerated at the Escambia County Jail with Mr. Melton's co-

defendant, Bendleon Lewis. All six testified to statements Lewis made to them regarding the Saylor homicide which occurred when Mr. Melton was 17 years-old and which was used to establish the prior-violent-felony aggravator at Mr. Melton's capital trial for the Carter homicide.

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

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

At the 2012 evidentiary hearing, Mr. Melton presented newly discovered evidence from Jamel Houston regarding his brother, Tony

Houston, who had recently died (PCR3. 224). Mr. Houston testified that his brother told him that he was the triggerman in the Saylor homicide, not Mr. Melton (PCR3. 225). In fact, Tony had forced Mr. Melton to get out of the cab at gunpoint before Tony committed the homicide, and Mr. Melton did not know what was going to happen (PCR3. 227-28). Afterwards, Tony and Bendleon Lewis decided to "blame everything on" Mr. Melton (PCR3. 228).

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

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

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

Finally, even without the benefit of this newly discovered evidence, Mr. Melton's jury only recommended death by a vote of 8-4. There is a reasonable probability that the mitigating effects of the newly discovered evidence set forth herein, when reviewed cumulatively with the rest of the previously presented evidence, is of such a nature as to probably produce a life sentence at retrial.

IV. The circuit court erroneously dismissed Mr. Melton's claim without holding an evidentiary hearing.

In its August 17 order, the circuit court summarily denied Mr. Melton's motion (ROA. 213). This Court has stressed that, in a

successive postconviction motion, a trial court must follow Florida Rule of Criminal Procedure 3.850(d) and hold an evidentiary hearing unless "'the motion, files, and records in the case conclusively show that the movant is entitled to no relief.'" *Tompkins v. State*, 872 So. 2d 230, 238 (Fla. 2003) (quoting Fla. R. Crim. P. 3850(d)). Because Mr. Melton has demonstrated that he is entitled to sentencing relief, the circuit court erroneously dismissed the claim.

1. The circuit court overlooked the significance of the APA's August 2022 resolution in dismissing the claim as untimely.

The circuit court's ruling that Mr. Melton's claim was untimely erroneously overlooked the importance of the APA's resolution, which called for an end to the late-adolescent death penalty, to Mr. Melton's claim. As Mr. Melton discussed above, the APA has played a crucial leadership role in shaping sentencing policy for juveniles and adolescents. Its policy positions and amicus briefs have been cited in multiple cases by the Supreme Court to support extending more protection to juveniles, including *Roper*, *Graham*, and *Miller*. Mr. Melton expressly cited the APA's then-pending proposal to adopt the resolution in his 3.851 motion and filed a notice of supplemental authority the day after the APA overwhelmingly voted to adopt it. *See*

ROA. 54; ROA. 141-98; *see also* ROA. 123-26 (discussion of the APA's then-pending proposal at the case management conference).

In its order, however, the circuit court's sole reference to the APA resolution was to analogize it to "one adopted by the American Bar Association in 2018 in support of a bar on [late adolescents] at the time of the offense. Similar reliance on the 2018 ABA resolution in prior cases has failed to warrant relief" (ROA. 217). But the circuit court's comparison to the ABA resolution is inapt, because although the policy goal expressed by the two resolutions is the same, a comparison of their rationales shows why the APA resolution is of greater constitutional relevance.

The ABA resolution discusses several broad reasons for endorsing a bar on the death penalty for individuals under age 21. The first one listed is the United States Supreme Court's preference, as expressed in its recent decisions, for greater latitude and individualized sentencing for juveniles. See American Bar Association, Resolution (2018) at 4.[15] Others include legislative developments in adolescent

15 https://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/2018_my_111.pdf

sentencing, *id.* at 8; and the limited penological value of incarcerating individuals under age 21, *id.* at 11. The scientific understanding of adolescent brain development is mentioned only briefly. *Id.* at 6. The ABA resolution synthesized various strands of the then-ongoing conversation regarding the appropriateness of sentencing late-adolescent individuals to death, but did not provide an independent analysis of the issue.

By contrast, the APA resolution exclusively focuses on the psychological and neurobiological realities of late adolescence—the APA's subject matter of expertise. The APA resolution does not merely reflect an ongoing debate that is happening among others, but actively inserts its own perspective into the conversation. Given the weight that courts, including the United States Supreme Court, have given to the APA's policy statements in the past, this is significant.

Additionally, the APA resolution highlights the core concern that lies at the heart of *Roper* and its progeny: whether society's standards of decency have evolved to the point that executing individuals who were under age 21 at the time of their offense would violate the Eighth Amendment. *Roper*, 543 U.S. at 561 (quoting *Trop*, 356 U.S. at 100-01). As the Supreme Court has long recognized, "the words of the

[Eighth] Amendment are not precise, and [] their scope is not static." *Trop*, 356 U.S. at 100-01. The APA resolution indicates that executing an individual under age 21 is not only questionable—it is flat-out unconstitutional, because "there is no neuroscientific bright line regarding brain development that indicates the brains of 18-to-20-year-olds differ in any substantive way from those of 17-year-olds" (ROA. 144). Notably, the three studies cited by the APA to support that point were published in 2021 and 2022, reflecting the recency of this breakthrough in understanding the adolescent brain.

The scientific debate about whether individuals under age 21 are constitutionally prohibited from being sentenced to death reached its conclusive tipping point with the APA's adoption of its resolution endorsing such a policy statement on August 4, 2022. Mr. Melton's motion, filed on June 29, 2022, referenced the then-pending resolution before the APA, and he filed the resolution itself in the circuit court as supplemental authority the day after the APA adopted it. Mr. Melton could not have brought the claim earlier because key

pieces of its evidentiary support—including the APA's resolution—did not exist until recently. The motion is therefore timely.[16]

2. The circuit court treated *Roper's* holding as fixed, instead of dynamic and evolving under the proper Eighth Amendment analysis.

The circuit court found that, on the merits, Mr. Melton's claim failed because "*Roper* establishes a bright line rule that the age of 18 is the age at which the individual is eligible for the death penalty . . . . Extension of *Roper* to those over 17 has also been repeatedly rejected by the Florida Supreme Court" (ROA. 218). Yet *Roper*'s holding is far broader, and more elastic, than the court acknowledged in its order, as it is based on the Eighth Amendment's proportionality principle.

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[16] It should be noted that the circuit court does not clarify when Mr. Melton *should* have brought his claim for it to be timely in the court's view, beyond saying that "[t]he idea that the brain is not fully formed as a young adult has been known for some time" (ROA. 216). The circuit court points to several cases from 2007, 2008, and 2014 to suggest that "[s]tudies from 2004 showing the human brain development is not complete until the age of 25 have been cited in previous case law, including challenges to the death penalty" (ROA. 216-17). Even granting the assumption that these studies are analogous to the evidence Mr. Melton is presenting in 2022, it is unclear in which year or years, within that 7-year timeframe, Mr. Melton could have filed a timely claim.

The *Roper* Court overturned what had been a well-settled precedent: *Stanford v. Kentucky*, 492 U.S. 361 (1989), which had held that individuals over the age of 15 could be sentenced to death. The year before *Stanford*, the Court had decided *Thompson v. Oklahoma*, 487 U.S. 815 (1988), which established that no individual under the age of 16 at the time of their offense could be executed.

The *Roper* Court explained:

> 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 plurality opinion in *Thompson* drew the line at 16. **In the intervening years the *Thompson* plurality's conclusion that offenders under 16 may not be executed has not been challenged. The logic of *Thompson* extends to those who are under 18. 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.

Roper, 543 U.S. at 574 (emphasis added). The circuit court placed great weight on the *Roper* Court's observation that, necessarily "a line must be drawn," but divorced that statement from its context. The question is not *whether* a line must be drawn but *where* it should be drawn. To that end, the Supreme Court noted that 18 was an

appropriate age to draw the line **at that time** because, broadly speaking, those under age 18 are more similar to those under 16 than they are to adults, and because 18 marks the societal transition point from childhood to adulthood—or at least it did in 2005, when *Roper* was decided.

Precisely the same point can be made regarding Mr. Melton's argument that *Roper* should be extended to late adolescents. As described above, neurobiological research has shown, and social reality reflects, that individuals under age 21 share more similarities with those under age 18 than they do with adults. While 18 may have been the demarcation point between childhood and adulthood in 2005, in 2022 the age has shifted to 21. As a result, there is no distinction between the language and rationale the Supreme Court used in *Roper*, and what Mr. Melton is asking this Court to do here: recognize that the principle expressed in *Roper* is a broad standard meant to evolve as societal norms change. The Eighth Amendment's evolving-standards-of-decency metric requires as much. The circuit court's ruling to the contrary was erroneous.

3. The Constitutional Conformity Clause does not prevent this Court from granting relief.

Finally, the circuit court "decline[d] to propose a modification of the bright line of Roper" because it "must construe the prohibition against cruel and unusual punishment in conformity with decisions of the United States Supreme Court" (ROA. 218). However, for two reasons, the Constitutional Conformity Clause does not stop this Court from granting relief on Mr. Melton's claim.

First, the text of the Conformity Clause reads, in relevant part, that "[t]he prohibition[s] against cruel [and/or] unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret [the analogous provision] in the Eighth Amendment. Article 1, § 17, Fla. Const. This Court has noted that the Conformity Clause applies only to claims that the Supreme Court has squarely decided on the merits. *See Howell*, 133 So. 3d at 516. The Supreme Court has not addressed whether *Roper*'s holding extends to members of the late-adolescent class. Therefore, there is no on-point precedent to which this Court may conform.

However, even if this Court determined that *Roper* is an on-point precedent governing this claim, the language of *Roper*'s decision

makes clear that it is meant to be read as an expansive inquiry into whether a sentence is disproportionate, an answer that will necessarily change over time as society's standards of decency evolve. Complying with the Conformity Clause in Mr. Melton's case simply means recognizing that what the United States Supreme Court once wrote regarding 18-year-old individuals now applies to those under age 21: "The age of [21] is the point where society draws the line for many purposes between childhood and adulthood." *Roper*, 543 U.S. at 574. This factual reality, for which Mr. Melton has provided abundant evidence, prohibits imposing the death penalty in his case.

CONCLUSION

Mr. Melton presented newly discovered evidence regarding the now nearly universally accepted proposition that individuals under age 21 are more similar to, and should be treated like, juveniles. That evidence was timely and disturbed the foundation on which his death sentence is based. Mr. Melton's claim challenges his death sentence as prohibited under the Eighth Amendment, both categorically and as applied to him, which necessarily warrants sentencing relief. At a minimum, the newly discovered evidence of adolescent neurobiology, when combined with Mr. Melton's extensive mitigation evidence, would probably yield a less severe sentence at a new penalty phase.

In light of the foregoing arguments, Mr. Melton requests this Court reverse the circuit court and grant sentencing relief or, alternatively, remand the cause for an evidentiary hearing on the claim.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been furnished by electronic service to all counsel of record on this 19th day of December, 2022.

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