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EASTERN DISTRICT

IN THE SUPERIOR COURT OF PENNSYLVANIA

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COMMONWEALTH OF PENNSYLVANIA,
Appellee

v.

QU'EED BATTS,
Appellant

BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER *ET AL.*
ON BEHALF OF QU'EED BATTS

Appeal from the sentencing order of the Northampton County Court of
Common Pleas (CP-48-CR-0001215-2006) dated May 13, 2014

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I. IDENTITY OF AMICI

Juvenile Law Center, founded in 1975, is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Among other things, Juvenile Law Center works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and; that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights. Juvenile Law Center has worked extensively on the issue of juvenile life without parole, filing *amicus* briefs in the U.S. Supreme Court in both *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

The **Defender Association of Philadelphia** is an independent, non-profit corporation created in 1934 by a group of Philadelphia lawyers dedicated to the ideal of high quality legal services for indigent criminal defendants. Today approximately two hundred and fifteen full time assistant defenders represent clients in adult and juvenile, state and federal, trial and appellate courts, and at civil and criminal mental health hearings as well as at state and county violation of

probation/parole hearings. Association attorneys also serve as the Child Advocate in neglect and dependency court. More particularly, Association attorneys represent juveniles charged with homicide and facing life imprisonment without the possibility of parole. The Defender Association attorneys have had numerous juveniles given sentences of life imprisonment without parole. The constitutionality of such sentences has been challenged at the trial level and at the appellate level by Defender Association lawyers.

The **Pennsylvania Association of Criminal Defense Lawyers (PACDL)** is a professional association of attorneys admitted to practice before the Supreme Court of Pennsylvania and who are actively engaged in providing criminal defense representation. As *amici curiae*, PACDL presents the perspective of experienced criminal defense attorneys who aim to protect and ensure by rule of law those individual rights guaranteed by the Pennsylvania and United States Constitutions and work to achieve justice and dignity for defendants. PACDL's membership includes more than 800 private criminal defense practitioners and public defenders throughout the Commonwealth.

PACDL members have a direct interest in the outcome of this appeal because of their concern for ensuring that criminal defendants' constitutional

rights, including those of juveniles, are not abridged, and that established precedent protecting those rights is given all due consideration.

The **Youth Sentencing & Reentry Project (YSRP)** is a non-profit, non-partisan organization dedicated to supporting young people charged in the adult criminal justice system. YSRP is premised on the idea that charging and sentencing children as adults does not negate any of their youthful characteristics, and that children should be treated as children by the systems that are created to serve them. To this end, YSRP offers sentencing advocacy and reentry planning beginning as close to arrest as possible, for young people charged with crimes as if they were adults. A primary component of our sentencing advocacy work is developing mitigating information for each young person, in support of court-appointed and privately retained counsel. Utilizing the information developed during the mitigation investigation, YSRP begins planning for a young person's reentry into the community before a sentence is imposed and throughout their placement in either the juvenile or adult systems, to ensure a youth-specific and individualized reentry plan upon release, and to turn the contact with the justice system into as positive of an intervention as possible.

II. STATEMENT OF JURISDICTION

Amici incorporate by reference the statement of jurisdiction in the Appellant's opening brief.

III. ORDER OR OTHER DETERMINATION IN QUESTION

Amici incorporate by reference the order or other determination in question in the Appellant's opening brief.

IV. STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

Amici incorporate by reference the statement of scope and standard of review in the Appellant's opening brief.

V. STATEMENT OF THE QUESTIONS INVOLVED

Amici incorporate by reference the statement of the questions involved in the Appellant's opening brief.

VI. STATEMENT OF THE CASE

Amici incorporate by reference the statement of the case in the Appellant's opening brief.

VII. SUMMARY OF ARGUMENT

Miller v. Alabama, 132 S. Ct. 2455 (2012) held that mandatory life without parole sentences are unconstitutional for juvenile homicide offenders. Following the *Miller* decision, Appellant Qu'eed Batts' mandatory juvenile life without parole sentence was vacated. At Mr. Batts' resentencing, the sentencing court re-imposed life without parole. This second life without parole sentence fails to satisfy the holding and mandated considerations of *Miller*, however. It, too, must be vacated.

First, in concluding that juvenile life without parole sentences after *Miller* must be "uncommon," *Miller*, 132 S. Ct. at 2469, *Miller* adopts a presumption against imposing juvenile life without parole sentences. The imposition of *any* juvenile life without parole sentence is suspect because there is no reliable way to identify the rare juvenile whose crime demonstrates irreparable corruption and for whom a life without parole sentence might therefore be appropriate. Second, because life without parole for a juvenile is akin to the death penalty for an adult, this Court must look to death penalty jurisprudence that reserves the harshest available sentence for the most heinous and depraved homicide offenders. Objective guidance is necessary to ensure that this harshest sentence available for juvenile offenders, if ever imposed, is only imposed in the most egregious cases

and only upon irreparably corrupt individuals. Because no such guidance exists, the sentence was imposed in an arbitrary and capricious manner.

Finally, *Miller* requires that a sentencer examine specific factors and consider how those factors counsel against sentencing a juvenile to life without parole. *Miller*, *Graham v. Florida*, 560 U.S. 48 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005) collectively require that the circumstances of the offense – no matter how brutal or cold-blooded – not overpower evidence of mitigation based on youth. Moreover, the characterization of these factors themselves afford juveniles a presumption of immaturity. Application of these factors to Mr. Batts’ case, together with the adolescent development research at the core of *Miller*, demonstrate that Mr. Batts’ actions correlated closely with his age and psychosocial development, and therefore he should not receive the harshest available sentence.

Accordingly, this Court should vacate Mr. Batts’ juvenile life without parole sentence.

VIII. ARGUMENT

A. Introduction

Qu'eed Batts was 14 years old at the time he committed murder. While he initially received a mandatory life without parole sentence under Pennsylvania law, that sentence was vacated following the United States Supreme Court's decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), which held such mandatory sentences cruel and unusual when imposed on juveniles. *Miller* of course followed in the footsteps of *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 560 U.S. 48 (2010), two earlier juvenile sentencing cases which recognized that children are different for the purposes of the Eighth Amendment's proscription, and that their distinctive developmental attributes make them categorically less blameworthy for their criminal conduct than adults.

The U.S. Supreme Court's rulings in these three seminal cases offer clear instructions for state and federal courts charged with sentencing children presently, drastically limiting courts' discretion to impose life without parole on youth. In reiterating the relevance of the developmental differences between youth and adults to sentencing, the Court also declared its expectation that these sentences would be "uncommon." *Miller*, 132 S. Ct. at 2469. The strictures placed on sentencers thus arise not only from juveniles' reduced culpability as a class; these

cases also establish a presumption in favor of immaturity and against the imposition of life without parole. And these presumptions are not weakened in homicide cases – a heinous crime under any circumstances, but one that the Court has refused to let override its primary obligation to ensure that sentences imposed on juveniles be proportionate under the Eighth Amendment. The Court’s death penalty jurisprudence is particularly instructive here, as it has equated juvenile life without parole cases with its doctrinal analysis in death penalty cases. *See Miller*, 132 S. Ct. at 2466. In order to avoid the arbitrary imposition of the death penalty, the Court has required that sentencers consider only objective factors that separate the truly brutal and wanton murder from the terrible loss that is suffered in every homicide. For children convicted of homicide, the presumptions noted above in favor of immaturity and against life without parole must be afforded great weight lest the sentencer’s focus on the loss of life in each case render *Miller* meaningless. That is precisely what happened in Qu’eed Batts’ case. His sentence therefore must be vacated.

B. *Miller* Reaffirms The U.S. Supreme Court’s Recognition That Children Are Categorically Less Deserving Of The Harshest Forms Of Punishment

In *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the U.S. Supreme Court

recognized that children are fundamentally different from adults and categorically less deserving of the harshest forms of punishments.¹ Relying on *Roper*, the U.S. Supreme Court in *Graham* cited three essential characteristics that distinguish youth from adults for culpability purposes:

[a]s compared to adults, juveniles have a “lack of maturity and an underdeveloped sense of responsibility”; they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and their characters are “not as well formed.”

560 U.S. at 68 (quoting *Roper*, 543 U.S. at 569-70). *Graham* found that “[t]hese salient characteristics mean that ‘[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.’ Accordingly, ‘juvenile offenders cannot with reliability be classified among the worst offenders.’” *Id.* (quoting *Roper*, 543 U.S. at 569, 573). The Court concluded that “[a] juvenile is not absolved of responsibility for his actions, but his transgression ‘is not as morally reprehensible as that of an adult.’” *Graham*, 560 U.S. at 68 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988) (plurality opinion)).

¹ *Roper* held that imposing the death penalty on juvenile offenders violates the

The *Graham* Court found that because the personalities of adolescents are still developing and capable of change, an irrevocable penalty that afforded no opportunity for release was developmentally inappropriate and constitutionally disproportionate. The Court further explained that:

Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of “irretrievably depraved character” than are the actions of adults. *Roper*, 543 U.S. at 570. It remains true that “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” *Id.*

Id. The Court’s holding rested largely on the incongruity of imposing a final and irrevocable penalty on an adolescent, who has capacity to change and grow.

In reaching these conclusions about a juvenile’s reduced culpability, the Supreme Court has relied upon an increasingly settled body of research confirming the distinct emotional, psychological and neurological attributes of youth. The Court clarified in *Graham* that, since *Roper*, “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.” *Graham*, 560 U.S. at 68. Thus, the Court underscored that because juveniles are more likely to be reformed than adults, the

“status of the offenders” is central to the question of whether a punishment is constitutional. *Id.* at 68-69.

The U.S. Supreme Court in *Miller* expanded its juvenile sentencing jurisprudence, banning mandatory life without parole sentences for children convicted of homicide offenses. Reiterating that children are fundamentally different from adults, the Court held that, prior to imposing such a sentence on a juvenile offender, the sentencer must take into account the juvenile’s reduced blameworthiness. *Miller*, 132 S. Ct. at 2460. Justice Kagan, writing for the majority in *Miller*, was explicit in articulating the Court’s rationale for its holding: the mandatory imposition of sentences of life without parole “prevents those meting out punishment from considering a juvenile’s ‘lessened culpability’ and greater ‘capacity for change,’ and runs afoul of our cases’ requirement of individualized sentencing for defendants facing the most serious penalties.” *Id.* (quoting *Graham*, 560 U.S. at 68, 74). The Court grounded its holding “not only on common sense . . . but on science and social science as well,” *id.* at 2464, which demonstrate fundamental differences between juveniles and adults. The Court noted “that those [scientific] findings – of transient rashness, proclivity for risk, and inability to assess consequences – both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development

occurs, his ‘deficiencies will be reformed.’” *Id.* at 2464-65 (quoting *Graham*, 560 U.S. at 68-69); *Roper*, 543 U.S. at 570).

Importantly, *Miller* found that none of what *Graham* “said about children – about their distinctive (and transitory) mental traits and environmental vulnerabilities – is crime-specific.” 132 S. Ct. at 2465. The Court instead emphasized “that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Id.* As a result, the Court held in *Miller* “that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders,” *id.* at 2469, because “[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* at 2467.

C. *Miller* Establishes A Presumption Against Imposing Life Without Parole Sentences On Juveniles

Miller adopted a presumption against imposing life without parole sentences on juveniles. While the U.S. Supreme Court has left open the possibility that a trial court could impose a life without parole sentence on a child, the Court declared that “given all we have said in *Roper*, *Graham*, and [*Miller*] about children’s diminished culpability and heightened capacity for change, *we think appropriate*

occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” Miller, 132 S. Ct. at 2469 (emphasis added). See also Commonwealth v. Batts, 66 A.3d 286, 291 (Pa. 2013) (noting that Miller “stated that the occasion for [juvenile life without parole] would be ‘uncommon.’ and, in any event, must first ‘take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.’”) (quoting Miller, 132 S. Ct. at 2469)). Quoting Roper and Graham, Miller further noted that the “juvenile offender whose crime reflects irreparable corruption” will be “rare.” 132 S. Ct. at 2469.

Though *Miller* left open the possibility that discretionary juvenile life without parole sentences could still be imposed, *Miller* also, when read in combination with *Graham* and *Roper*, condemns the sentence for juveniles except in the rarest circumstances. The Court has found that “[i]t is difficult *even for expert psychologists* to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 573) (emphasis added). If expert psychologists cannot determine which juveniles may be “irreparably corrupt,” how can sentencing judges and juries accurately make such assessments? *See also* Brief for American Psychological

Association et al. as *Amici Curiae* Supporting Petitioners at 25, *Miller v. Alabama*, 132 S. Ct. 2455 (2012), (Nos. 10-9646, 10-9647) [hereinafter “APA *Miller Amicus*”] (“[T]here is no reliable way to determine that a juvenile’s offenses are the result of an irredeemably corrupt character; and there is thus no reliable way to conclude that a juvenile – even one convicted of an extremely serious offense – should be sentenced to life in prison, without any opportunity to demonstrate change or reform.”). Therefore, *Miller* establishes, at a minimum, a presumption against juvenile life without parole sentences.²

Moreover, without reliable guidance as to how to distinguish an “irreparably corrupt” juvenile from the typical juvenile offender who is capable of rehabilitation, life without parole sentences necessarily will be imposed arbitrarily. As discussed in Section VIII.D., *infra*, the arbitrary imposition of this harshest allowable sentence is unconstitutional.

² At least one state supreme court has found that the *state bears the burden of demonstrating, beyond a reasonable doubt*, that life without parole is an appropriate sentence. See *State v. Hart*, 404 S.W.3d 232, 241 (Mo. 2013) (“[A] juvenile offender cannot be sentenced to life without parole for first-degree murder unless the state persuades the sentencer beyond a reasonable doubt that this sentence is just and appropriate under all the circumstances.”).

D. Re-Sentencing Qu'eed Batts To Life Without Parole Was Unconstitutionally Arbitrary And Capricious

Because *Miller* and *Graham* explicitly view life without parole “for juveniles as akin to the death penalty,” *Miller*, 132 S. Ct. at 2466, this Court must look to death penalty jurisprudence to determine the constitutionality of Mr. Batts’ juvenile life without parole sentence. U.S. Supreme Court precedent establishes that “the penalty of death may not be imposed under sentencing procedures that create a substantial risk that the punishment will be inflicted in an arbitrary and capricious manner.” *Godfrey v. Georgia*, 446 U.S. 420, 427 (1980) (plurality opinion).

In *Godfrey*, the state of Georgia permitted the imposition of the death penalty when there was a finding that the homicide was “outrageously or wantonly vile, horrible and inhuman.” *Id.* at 428. The U.S. Supreme Court held that this finding was insufficient to warrant the death penalty because “[a] person of sensibility could fairly characterize almost every murder as ‘outrageously or wantonly vile, horrific and inhuman.’” *Id.* at 428-29. *See also Maynard v. Cartwright*, 486 U.S. 356, 363-64 (1988) (holding Oklahoma’s aggravating factor that a murder is “especially heinous, atrocious, or cruel” to be overbroad because “an ordinary person could honestly believe that every unjustified, intentional

taking of human life is ‘especially heinous.’”).³ Because every murder could be considered “outrageously or wantonly vile, horrific and inhuman,” *see Godfrey*, 446 U.S. at 428-29, or “especially heinous, atrocious, or cruel,” *see Cartwright*, 486 U.S. at 364, the Supreme Court requires more specific criteria in order to ensure that the harshest available sentence is only imposed in the most egregious and extreme cases.

The facts of *Godfrey* are significant. The defendant, Godfrey, had previously threatened his wife with a knife, after which his wife left the home and filed for divorce. *Godfrey*, 446 U.S. at 424. When his wife refused to reconcile, the defendant

got out his shotgun and walked with it down the hill from his home to the trailer where his mother-in-law lived. Peering through a window, he observed his wife, his mother-in-law, and his 11-year-old daughter playing a card game. He pointed the shotgun at his wife through the window and pulled the trigger. The charge from the gun struck his wife in the forehead and killed her instantly. He proceeded into the trailer, striking and injuring his daughter with the barrel of the gun. He then

³ Similarly, the sentencing court’s finding that Mr. Batts’ actions were “calculated, callous, and cold-blooded,” *see* 1925(a) Statement in Support of Order, Aug. 27, 2014 at 62 [hereinafter “1925(a) Statement”]), is not a sufficiently narrow criteria to allow the imposition of the harshest allowable sentence in his case since almost any first degree homicide could be considered “calculated, callous, and cold-blooded.”

fired the gun at his mother-in-law, striking her in the head and killing her instantly.

Id. at 425. He later informed police that he had “been thinking about [the crime] for eight years” and that he would “do it again.” *Id.* at 426.

By several key objective measures – including the level of planning, degree of premeditation, number of victims, and history of violence – Godfrey’s actions are more “vile” than those of Mr. Batts. However, even under these more extreme facts, the Court held that Godfrey’s “crimes cannot be said to have reflected a consciousness materially more ‘depraved’ than that of any other person guilty of murder.” *Id.* at 433. *See also Cartwright*, 486 U.S. at 363 (noting that *Godfrey* “plainly rejected the submission that a particular set of facts surrounding a murder, however shocking they might be, were enough in themselves, and without some narrowing principle to apply to those facts, to warrant the imposition of the death penalty”).

The Pennsylvania Supreme Court has noted that, in death penalty cases, “[i]t is the responsibility of the courts to ‘channel the sentencer’s discretion by clear and objective standards’ that provide ‘specific and detailed guidance,’ and that ‘make rationally reviewable the process for imposing a sentence of death.’” *Com. v. Nelson*, 523 A.2d 728, 737 (Pa. 1987) (quoting *Godfrey*, 446 U.S. at 428).

Similarly, in juvenile life without parole cases, the appellate courts must provide

specific and detailed guidance to ensure that juvenile life without parole sentences are not imposed arbitrarily and capriciously based on the subjective assessment of the sentencer.⁴ Even in Mr. Batts' case, in which the sentencing court considered 23 separate sentencing factors, the court's ultimate determination to impose life without parole rested on the court's subjective "balancing" of these factors. *See* 1925(a) Statement at 57-61. A different sentencing court could balance the same factors differently and impose a different sentence. Therefore, more guidance is needed in order to channel the sentencer's discretion with clear and objective standards.

The U.S. Supreme Court has found that "[i]t is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion." *Godfrey*, 446 U.S. at 433 (quoting *Gardner v. Florida*, 430 U.S. 349, 358 (1977)) (plurality

⁴ As discussed above, *Amici* are skeptical that appropriate guidance in juvenile cases could be developed since "[i]t is difficult *even for expert psychologists* to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 574) (emphasis added). This difficulty, however, does not absolve this Court of its responsibility to ensure that the imposition of juvenile life without parole is not arbitrarily imposed; if appropriate guidance is not feasible, this Court should hold that juvenile life without parole sentences cannot be lawfully imposed in the Commonwealth.

opinion)). This same standard must apply in juvenile life without parole cases. Because there were no objective criteria for demonstrating either that Mr. Batts' offense was more severe or egregious than any other first degree homicide offense or demonstrating his irreparable corruption, Mr. Batts and the community cannot be confident that the imposition of the harshest available penalty was based on "reason rather than caprice or emotion." *See id.*⁵ Therefore, this Court must vacate Mr. Batts' life without parole sentence.

⁵ Indeed, some of the statements made by the court at sentencing could cause the community or Mr. Batts to question whether the decision to impose life without parole was based on emotion rather than reason. For example, upon imposing Mr. Batts' life without parole sentence the sentencing court recalled his impromptu visit to the scene of the crime the previous night:

As I sat in front of [the scene of the murder] I imagined Qu'eed Batts wearing a mask and one glove, walking up the stairs and then shooting Corey Hilario in the back and Clarence Edwards twice in the head while Qu'eed Batts looked at Clarence's face. I imagined Delores Howell later coming outside and seeing her grandson dying on the porch with two gunshots in his head. But there was no need for me to imagine because this, in fact, happened. . . .

See 1925(a) Statement at 63. As the U.S. Supreme Court noted, even an *appearance* that a decision to impose the harshest available sentence was based on emotion or caprice is problematic. *See Godfrey*, 446 U.S. at 433.

E. The Imposition of Life Without Parole On Qu'eed Batts Is Inconsistent With *Miller v. Alabama*

Though the Court must impose standards to ensure that juvenile life without parole sentences are not imposed arbitrarily and capriciously, these standards cannot merely mirror the Commonwealth's death penalty jurisprudence. *Miller* imposes the additional requirement that the sentencer "take into account how children are different, *and how those differences counsel against irrevocably sentencing them to a lifetime in prison.*" 132 S. Ct. at 2469 (emphasis added). The sentencing court must not allow the nature of the homicide offense to overpower mitigating evidence based on the juvenile offender's young age and development. Indeed, in light of the established research on adolescent development that has been accepted by the Supreme Court, the sentencing court must presume that a juvenile offender is immature, impulsive, and an unsophisticated decision-maker, and these characteristics counsel against imposing the harshest available punishment. Finally, the sentencing court must consider five specific factors related to the juvenile's age and development prior to imposing a juvenile life without parole sentence. These factors are: 1) the child's age and developmental attributes, including immaturity, impetuosity, and failure to appreciate risks and consequences; 2) his family and home environment; 3) the circumstances of the offense, including the extent of his participation and the impact of familial or peer

pressure; 4) his lack of sophistication with the criminal justice system; and 5) his potential for rehabilitation. *Miller*, 132 S. Ct. at 2468.

1. In Determining A Proportionate Sentence For A Juvenile Homicide Offender, The Fact of The Homicide Must Not Overpower Evidence Of Mitigation Based On Youth

U.S. Supreme Court jurisprudence requires sentencers to separate the crime from the culpability of the offender. In the context of the juvenile death penalty, the U.S. Supreme Court found that “[a]n 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.” *Roper*, 543 U.S. at 573. This same “unacceptable likelihood” exists in juvenile life without parole cases; if the violent nature of the crime is permitted to overpower evidence of mitigation based on the juvenile’s youth, juvenile life without parole will not be “uncommon,” *see Miller*, 132 S. Ct. at 2469, since every homicide is a violent offense. Therefore, even were this Court to establish objective criteria reserving juvenile life without parole for the “worst of the worst” offenses and offenders, as required by Supreme Court death penalty jurisprudence, the sentencer must still look beyond the facts of the offense and consider how the youth’s age and development *counsel against* a life

without parole sentence. *See Miller*, 132 S. Ct. at 2469. Juvenile life without parole, if imposed at all, should only be imposed in exceptional cases in which both the circumstances of the offense *and* the particular characteristics of the juvenile offender suggest irreparable corruption.

In Mr. Batts' case, the sentencing court attached too much weight to the nature of the offense and resulting harm to the victims and the community. Of the nine factors that the sentencing court found weighed against leniency in Mr. Batts' case, six involved the circumstances of the offense or the impact on the victims⁶:

First is the nature and circumstances of your crimes. You executed a *cold-blooded murder* and attempted murder of *two defenseless boys* you did not know for the purpose of advancing your personal interests in the Bloods gang. It was a premeditated act. *It was brutal, unprovoked, and senseless. . . .*

Second is the extent of your participation in the crimes. Although Bradley invited you to commit these crimes, *you agreed to do the job, and you acted alone. . . .*

Third is *your lack of any justification for the crimes. . .*

Fourth is *the particular vulnerability of your victims. [The victims] were teenagers. They were unarmed, unprepared, and unsuspecting. . . .*

⁶ The other three factors were Mr. Batts' lack of cooperation with the authorities (discussed in Section VIII.E.3.d., *infra*), the uncertainty of his amenability to treatment (discussed in Section VIII.E.3.e., *infra*), and the related need to protect the public. 1925(a) Statement at 56-58.

Sixth is *the impact that your crimes have had on the victims and the community*. You attacked multiple victims. [One victim] was seriously injured by the bullet you fired into his back, and because of the placement of the bullet, it remains in his body to this day. [The other victim] was killed. He was his mother's only child, and she has now lost him forever. Edwards's grandmother, who had raised him since he was six years old, walked out the front door and saw her grandson lying on the porch with two bullet wounds to his head. She was not even allowed to touch him in his final moments.

Seventh is the need to avoid minimizing the seriousness of your crimes. *Compassion for you does not diminish the needs of the victims and the community to see that justice is done*.

1925(a) Statement at 56-58 (emphasis added). These factors convinced the sentencing court to impose life without parole – but many of them would be present in any first-degree homicide. Because the sentencing court assigned too much weight to the crime itself, and, as described below, too little weight to the mitigating attributes of youth, Mr. Batts' sentence should be vacated.

2. *Miller* Establishes A Presumption Of Immaturity For All Juvenile Offenders

As discussed in detail in Section VIII.B., *supra*, *Miller*, together with *Roper* and *Graham*, establish that “children are constitutionally different from adults for purposes of sentencing.” *Miller*, 132 S. Ct. at 2464. *Miller* emphasized that “children have a lack of maturity and an underdeveloped sense of responsibility,

leading to recklessness, impulsivity, and heedless risk-taking.” *Id.* (internal citation and quotation marks omitted). *Miller* noted that these findings about children’s distinct attributes are not crime-specific. *Id.* at 2465. “Those features are evident *in the same way, and to the same degree,*” whether the crime is “a botched robbery” or “a killing.” *Id.* (emphasis added).

Given the Supreme Court’s jurisprudence establishing that juveniles are developmentally different and less mature than adults, a sentencer must presume that a juvenile homicide offender lacks the maturity, impulse-control and decision-making skills of an adult. Indeed, it would be the unusual juvenile – and the truly exceptional 14-year-old – whose participation in criminal conduct is not closely correlated with his immaturity, impulsiveness, and underdeveloped decision-making skills. Therefore, absent expert testimony establishing that a particular juvenile’s maturity and sophistication were more advanced than a typically-developing juvenile, a sentencer must presume that the juvenile offender lacks adult maturity, impulse control, and critical decision-making skills, and treat this lack of maturity as a factor counseling against the imposition of a life without

parole sentence.⁷ Because Mr. Batts did not benefit from a presumption of immaturity, his sentenced should be vacated.

3. Even Absent A Presumption Of Immaturity, All Of The Factors Outlined In *Miller* Counsel Against Imposing A Life Without Parole Sentence On Qu’eed Batts

Miller sets forth specific factors that the sentencer, at a minimum, should consider: (1) the juvenile's “chronological age” and related “immaturity, impetuosity, and failure to appreciate risks and consequences;” (2) the juvenile’s “family and home environment that surrounds him;” (3) “the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him;” (4) the “incompetencies associated with youth” in dealing with law enforcement and a criminal justice system designed for adults; and (5) “the possibility of rehabilitation.” *Miller*, 132 S. Ct. at 2468. Prior to imposing a juvenile life without parole sentence, the

⁷ The risk of inaccurately assessing maturity and culpability based on implicit biases confirms the importance of the presumption of immaturity for all juvenile defendants. A recent study found that “Black boys were more likely to be seen as older and more responsible for their actions relative to White boys.” Phillip Goff, *et al.*, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 *Journal of Personality and Social Psychology* 526, 539 (2014). Specifically, “Black boys are seen as more culpable for their actions (i.e., less innocent) within a criminal justice context than are their peers of other races.” *Id.* at 540. Therefore, the presumption of immaturity should only be rebutted by expert evidence, rather than the independent assessment of sentencers or lay witnesses who may hold these implicit biases.

sentencer must consider how these factors impact the juvenile’s overall culpability. *Id.* at 2469. As described below, even absent a presumption of immaturity, each of these factors establish that Qu’eed Batts is not the “rare juvenile offender whose crime reflects irreparable corruption,” *Miller*, 132 S. Ct. at 2469, but rather a juvenile offender whose youthful attributes preclude the imposition of a life without parole sentence.

a. Mr. Batts’ Chronological Age And Its Hallmark Features At The Time Of The Offense Demonstrate That Life Without Parole Is Not An Appropriate Sentence

In *Miller*, the U.S. Supreme Court held that a factfinder must consider the offender’s “chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences.” 132 S. Ct. at 2468. The fact that Mr. Batts’ was only fourteen at the time of the offense strongly mitigates against imposing a life without parole sentence. In *Miller*, the U.S. Supreme Court suggested that 14-year-olds are not only less culpable than adults, but also less culpable than older adolescents. *See id.* at 2467 (“Under [mandatory life without parole] schemes, every juvenile will receive the same sentence as every other – the 17-year-old and the 14-year-old. . . . In meting out the death penalty, the elision of all these differences would be strictly forbidden. And . . . *Graham* indicates that a similar rule should apply when a juvenile confronts a

sentence of life (and death) in prison.”) (emphasis added); *id.* at 2469 n. 8 (noting the dissents’ “repeated references to 17-year-olds who have committed the ‘most heinous’ offenses, *and their comparison of those defendants to the 14-year-olds here*”) (emphasis added).

In spite of Mr. Batts’ young age, the sentencing court found that his “behavior was not the product of [the] youthful characteristics [that can impair the judgment of teenaged offenders].” 1925(a) Statement at 49. The sentencing court instead found:

Mr. Batts did not act on impulse. He was not caught up in youthful risk-taking behavior and lacked the ability to foresee how it might get out of control. Mr. Batts made a *purposeful choice* to move out of his parents’ home and commit himself to life in the Bloods gang. He *knew from prior experiences* and observation that the Bloods gang was a violent criminal organization and that he would be asked to commit violent criminal acts.

Id. at 49-50 (emphasis added).

The sentencing court’s determination that Mr. Batts made a “purposeful choice” to join a gang – meaning he fully understood and appreciated the possibility that, within days of moving out of his home, he would be expected to commit a murder – simply does not comport with adolescent development

research, or with the facts of this case.⁸ In its *amicus* brief in *Miller*, the American Psychological Association noted:

[J]uveniles differ from adults in their ability to foresee and take into account the consequences of their behavior. By definition, adolescents have less life experience on which to draw, making it less likely that they will fully apprehend the potential negative consequences of their actions. Moreover, adolescents are less able than adults to envision and plan for the future, a capacity still developing during adolescence.

APA *Miller Amicus* at 12 (internal citations omitted). *See also Miller*, 132 S. Ct. at 2468 (describing the “failure to appreciate risks and consequences” as one of the “hallmark features” of adolescence).

Adolescents, particularly young adolescents, are less able than adults to make rational, future-oriented decisions.

Studies of general cognitive capability show an increase from pre-adolescence until about age 16, when gains begin to plateau. By contrast, social and emotional maturity continue to develop throughout adolescence. Thus, older adolescents (aged 16-17) often have logical reasoning skills that approximate those of adults, but nonetheless lack the adult capacities to exercise self-

⁸ Mr. Batts testified at trial that not everyone who joined a gang was expected to kill someone. Mr. Batts testified that, prior to joining the gang, “I knew that some people got killed when they were gang bangers, but I knew a lot of dudes in gangs, and *I knew a lot of dudes in gangs that never had to kill anybody.*” Batts Trial Tr. 45:5-8, July 30, 2007 (emphasis added). Therefore, it is illogical to conclude that Mr. Batts knew that he would be expected to kill someone if he joined a gang.

restraint, to weigh risk and reward appropriately, and to envision the future that are just as critical to mature judgment, especially in emotionally charged settings. Younger adolescents are thus doubly disadvantaged, because they typically lack not only those social and emotional skills but basic cognitive capabilities as well.

APA *Miller Amicus* at 14. At age 14, Mr. Batts was “doubly disadvantaged” because he lacked the social and emotional maturity and the cognitive skills necessary to appropriately weigh risks and accurately assess future consequences. Therefore, what the sentencing court declared a “purposeful choice” to leave home and join a gang is better understood as an impulsive, emotional decision typical of a young adolescent who is not carefully considering all the potentially negative long-term consequences of his actions.⁹ Mr. Batts’ age and attendant immaturity and impetuosity suggest that Mr. Batts is less culpable than an adult making a similar decision. *See Roper*, 543 U.S. at 570 (“The susceptibility of juveniles to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’” (quoting *Thompson*, 87 U.S. at 835).

⁹ Mr. Batts’ decision to leave home and join a gang is further contextualized by his traumatic childhood, lack of secure attachments with adults, and desire for a sense of family and belonging. *See* 1925(a) Statement at 52 (“Mr. Batts . . . never formed a stable bond with an adult caregiver. As a result, he has had a lifelong desire to belong to a supportive and caring family. Some of the evaluators opined that this desire left Mr. Batts particularly vulnerable to recruitment by the Bloods gang.”).

Accordingly, Mr. Batts' young age and age-related characteristics weigh strongly against imposing the harshest available sentence.

b. Mr. Batts' Family And Home Environment Demonstrate That Life Without Parole Is Not An Appropriate Sentence

Miller also requires that a sentencer must “tak[e] into account the family and home environment that surrounds [the juvenile] – and from which he cannot usually extricate himself – no matter how brutal or dysfunctional.” 132 S. Ct. at 2468.

The sentencing court acknowledged Mr. Batts' “troubled childhood,” including his “difficulties in forming attachments to trusted adults.” 1925(a) Statement at 44. As the court noted, this troubled childhood included being born to teen parents; his father's incarceration throughout his childhood; his multiple placements with relatives and in foster care; and his exposure to bullying, violence, and sexual abuse. 1925(a) Statement at 28-36. Significantly, Mr. Batts' mother was only 13 when Mr. Batts was born, and, at the age of five, Mr. Batts entered the foster care system after he was left alone outside. *Id.* at 29-30. Mr. Batts was placed in a number of foster homes. *Id.* at 30. Mr. Batts “found these events traumatic” and “hoped if he misbehaved he might be removed from foster care and sent back to live with his mother.” *Id.* Mr. Batts reported that, when he was nine, he was anally raped by his 15-year-old cousin. *Id.* at 31. When he was around 10,

Mr. Batts “was exposed to older children who forced him and other younger children to fight with each other, and the older children placed bets on who would win.” *Id.* at 33.

Incongruously, the sentencing judge held that Mr. Batts’ childhood experiences “*do not diminish your culpability.*” *Id.* at 59 (emphasis added). The finding that Mr. Batts’ troubled and traumatic childhood does not diminish Mr. Batts’ culpability directly contradicts U.S. Supreme Court jurisprudence. The Supreme Court in *Miller* noted that “juveniles *have diminished culpability* and greater prospects for reform” based on three “significant gaps between juveniles and adults.” *Miller*, 132 S. Ct. at 2464 (emphasis added). One of these three gaps that makes children less culpable than adults is that “children ‘are more vulnerable . . . to negative influences and outside pressures,’ including from their family and peers; they have limited ‘contro[I] over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings.” *Id.* (quoting *Roper*, 543 U.S. at 569). *See also id.* at 2468 (“All these circumstances go to [the juvenile’s] culpability for the offense. . . . *And so too does [the juvenile’s] family background.*”) (emphasis added); *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) (“[W]hen the defendant was 16 years old at the time of the offense *there can be no doubt that evidence of a turbulent family history, of beatings by a harsh father, and*

of severe emotional disturbance *is particularly relevant [mitigating evidence].*”) (emphasis added). U.S. Supreme Court jurisprudence therefore establishes that a trouble childhood is a mitigating factor that diminishes a juvenile’s culpability, and the sentencing court’s contrary finding is incorrect as a matter of law.

c. The Circumstances Of The Homicide Offense, Including The Impact Of Peer Pressure, Demonstrate That Life Without Parole Is Not An Appropriate Sentence

The third *Miller* factor requires that a sentencing court consider “the circumstances of the homicide offense, including the extent of [the juvenile’s] participation in the conduct and the way familial and peer pressures may have affected him.” 132 S. Ct. at 2455.

i. Life Without Parole Is Not Appropriate Because Peer Pressure Influenced Mr. Batts’ Participation In The Homicide

The sentencing court found that peer pressure was not a mitigating factor in this case. The court noted:

Mr. Batts sought out and embraced gang membership with full knowledge that the other gang members would expect him to commit acts of violence. He then agreed to commit an execution-style killing in order to move up in the ranks of the gang hierarchy. Where a defendant actively seeks out and welcomes peer pressure, the peer pressure does not diminish his culpability. The court will not treat gang membership as a mitigating factor in this case.

1925(a) Statement at 51. The sentencing court’s determination that peer pressure was not a mitigating factor on a 14-year-old offender is inconsistent with adolescent development research.¹⁰

Peer pressure to join a gang and pressure from gang members to commit crimes is precisely the sort of pressures to which juveniles are particularly susceptible. As the Court noted in *Roper*:

[J]uveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. *See* Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003) (“[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting”).

543 U.S. at 569 (citations omitted). “Research has shown that susceptibility to peer pressure to engage in antisocial behavior increases between childhood and early adolescence, peaks at around age 14,” – Mr. Batt’s age at the time of the

¹⁰ As previously discussed in Section VIII.E.3.a., *supra*, the sentencing court’s determination that Mr. Batts fully appreciated the consequences of joining a gang is disputed by adolescent development research about a juvenile’s ability to foresee and appreciate future consequences. It is therefore illogical to assume that Mr. Batts actively and accurately weighed the consequence that he might be asked to murder someone when he left his home and joined a gang.

offense – “and then declines slowly during the late adolescent years.” *APA Miller Amicus* at 16.

Peer pressure on adolescents can be both direct and indirect:

Juveniles’ lesser ability to resist peer influence affects their judgment and behavior both directly and indirectly, leading juveniles to take risks that adults might not. In some contexts, adolescents might make choices in response to direct peer pressure, as when they are coerced to take risks that they might otherwise avoid. More indirectly, adolescents’ desire for peer approval, and consequent fear of rejection, affect their choices even without direct coercion. The increased salience of peers in adolescence likely makes approval-seeking especially important in group situations.

APA Miller Amicus at 18 (internal quotation and citation omitted). Notably, “mere awareness that peers were watching encouraged risky behavior among juveniles, but not adults.” *APA Miller Amicus* at 17. Therefore, the desire for peer approval likely influenced Mr. Batts’ decision to both join the gang and commit the homicide. However, this developmentally normative desire for peer approval must not be confused with actively seeking out and welcoming peer pressure – the trial court’s characterization of Mr. Batts – which grossly misreads the science.

Additionally, the fact that Mr. Batts’ participation in the homicide, at least to some extent, may have been motivated by a desire to gain status within the gang is consistent with adolescent development. Adolescents are “more likely than adults

to engage in antisocial behavior in order to conform to peer expectations or achieve respect and status among their peers.” APA *Miller Amicus* at 18. See also Elizabeth Scott and Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 *Future of Children: Juvenile Justice Report* 15, 23 (2008) (“In some high-crime neighborhoods, peer pressure to commit crimes is so powerful that only exceptional youths escape. As [other researchers] have explained, in such settings, resisting this pressure can result in loss of status, ostracism, and even vulnerability to physical assault.”). Therefore, to the extent that Mr. Batts may have been motivated by a desire to gain peer approval of other gang members, that motivation is consistent with an adolescent’s diminished ability to analyze risk and increased susceptibility to peer pressure, and therefore should be treated as a mitigating factor. As dictated by the research, it certainly cannot be viewed as aggravating, and therefore Mr. Batts’ sentence should be vacated.

ii. Life Without Parole Is Not Appropriate Because Mr. Batts Was Under Duress When He Committed The Homicide

Mr. Batts’s testimony suggests that he acted under extreme duress or under the substantial domination of another person when he committed the homicide. Prior to the murder, Vernon Bradley, an older and senior member of the Bloods, told Mr. Batts that the teardrops on Mr. Bradley’s face indicated that Mr. Bradley

had killed people, and that he also intended to kill C.J. Edwards (the victim of the homicide). Batts Trial Tr. 55:9-15, July 30, 2007. Mr. Bradley also informed 14-year-old Mr. Batts that gang members could get killed if they did not follow orders. *Id.* at 56:13-18.

On the night of the murder, Mr. Batts was in a car with Mr. Bradley and three other gang members. 1925(a) Statement at 36. When they saw C.J. Edwards and another boy on the front porch of the house, “Bradley asked whether anyone in the car was willing to ‘put in some work,’ which Mr. Batts interpreted as a directive to kill [the boys].” *Id.* Mr. Bradley handed Mr. Batts a mask and a gun, and Mr. Batts got out of the car and shot and killed C.J. Edwards and injured the other boy. *Id.* In recalling the night of the murder, Mr. Batts testified that, as he walked up to the boys, he “did not really have a clear mind” and that he thought if he did not kill the boys, Mr. Bradley would kill him. Batts Trial Tr. 67:8-17, July 30, 2007. Mr. Batts testified that after the murder he was shaking and scared. *Id.* at 69:3-4.

Mr. Batts’ assistant vice principal’s testimony at trial supports Mr. Batts’ assertion that he feared for his own life at the time of the crime. Prior to the murder, the assistant principal, Janice Trent, asked Mr. Batts about his gang involvement. Ms. Trent testified:

[W]e were talking about the gang activity, I asked him. I said, “Do you want out?” And he said Yes. And I said, “well, what can we do as a school community to help you?” And he told me, he said there's no way out. The only way out is to die.

Batts Trial Tr. 49:19-25, July 27, 2014. Ms. Trent testified that Mr. Batts was crying during this conversation. *Id.* at 50:1-3

The sentencing court rejected Mr. Batts’ argument that he acted under duress and therefore deserved a lesser sentence. 1925(a) Statement at 48. First, the sentencing court found it persuasive that the jury rejected a duress defense at trial. *See* 1925(a) Statement at 48, 103-05. However, Pennsylvania caselaw concerning the death penalty specifically establishes that duress can be a mitigating factor even when it is not sufficient to constitute an affirmative defense. *See* 42 Pa. Cons. Stat. Ann. § 9711(e)(5) (including as a mitigating factor that “[t]he defendant acted under extreme duress, *although not such duress as to constitute a defense to prosecution under 18 Pa. Cons..Stat. Ann. § 309 (relating to duress),* or acted under the substantial domination of another person”) (emphasis added). The fact that the jury rejected Mr. Batts’ affirmative defense of duress should have no impact on whether duress was a mitigating factor.

Moreover, the same factors that make an adolescent more susceptible to peer pressure may make him more susceptible to duress. Because of teens’

impulsivity, “it may take less of a threat to provoke an aggressive response from a juvenile. And, because adolescents are less likely than adults to think through the future consequences of their actions, the same level of duress may have a more disruptive impact on juveniles’ decision making than on that of adults.” Laurence Steinberg and Elizabeth Scott, *Less Guilty by Reason of Adolescence*, 58 *American Psychologist* 1, 6 (2003). Mr. Batts, by virtue of his age and development, was less able to foresee the consequences of his actions and extricate himself from the situation once it became clear that he was expected to commit a murder.

Therefore, Mr. Batts’ actions – both in joining a gang and committing a murder at the behest of a gang leader – are consistent with his stage in adolescence in which he was particularly susceptible to peer influence and pressure. This vulnerability contextualizes Mr. Batts conduct; actions that may signify irreparable corruption and criminality if taken by a 30-year-old must be viewed and considered differently when taken by a 14-year-old. *See Roper*, 543 U.S. at 570 (“Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.”). Because the sentencing court gave no weight to Mr. Batts’ claim that he acted under duress, Mr. Batts’ sentence should be vacated.

iii. In Assessing The Circumstances Of The Homicide Offense And Mr. Batts' Level Of Culpability, The Court Must Assess His Demeanor And Remorse Within The Context Of Adolescent Development

In assessing the circumstances of the offense to determine the extent of Mr. Batts' culpability, the sentencing court gave undue weight to Mr. Batts' emotions, statements and demeanor at or near the time of offense. *See, e.g.*, 1925(a) Statement ("you committed a calculated, callous and cold-blooded murder"). In particular, the court focused on Mr. Batts' apparent lack of remorse. *Id.* at 57 ("You felt nothing. Your only concern was that you might be caught by the police."); *id.* at 37-38 ("Mr. Batts confessed that it was he who had done the shooting. He showed no emotion and no remorse. He gave no indication that he was fearful of Bradley and made no mention of having been forced to commit the crime."). A child's demeanor, statements, and apparent lack of remorse regarding a crime do not, and should not, suggest that he is irreparably corrupt. Instead, a child's demeanor and statements may be tied directly to his age and developmental status.

A juvenile's failure to exhibit remorse may reflect his adolescence in several ways. First, the importance of peer acceptance and approval may inhibit a juvenile from expressing remorse. "[Y]outh culture, which often requires youth to hide their weaknesses and project a violent image, stifles guilt and other remorseful

emotions.” See Kristin Henning, *What's Wrong with Victims' Rights in Juvenile Court?: Retributive Versus Rehabilitative Systems of Justice*, 97 Cal. L. Rev. 1107, 1150 (2009). Indeed, youth may even boast about their actions as a means to gain peer approval. See Adam Saper, *Juvenile Remorselessness: An Unconstitutional Sentencing Consideration*, 38 N.Y.U. Rev. L. & Soc. Change 99, 128-29 (2014) (“Juveniles may boast about their crimes, not because they are inherently callous and coldhearted, but because bragging seems like a reasonable manner by which to gain the peer acceptance that is vital for their developing identities.”). Therefore, it is unsurprising that Mr. Batts did not risk displaying “weakness” by expressing remorse or admitting to law enforcement that he committed the crime out of fear and under duress.

Second, youthful offenders – especially children who have experienced other pain and trauma – may avoid expressing pain or sadness as part of a coping mechanism. “Because remorse is a type of painful suffering, youth will sometimes ‘resort to defense mechanisms’ of humor, denial, or apparent indifference to avoid it.” See Henning, 97 Cal. L. Rev. at 1150. See also Saper, 38 N.Y.U. Rev. L. & Soc. Change at 133 (“Youth are particularly attuned to pain avoidance as emotional distress hurts them more than it does adults. In turn, juveniles may fail to show remorse as a byproduct of denial or a defense mechanism against the

unpleasantness of tragedy.”). Therefore, an adolescent like Mr. Batts who had experienced acute trauma by the age of 14 may have avoided expressing remorse because, throughout his childhood, he had developed coping mechanisms to avoid feeling or expressing pain. *See, e.g.*, Section VIII.E.3.b., *supra* (describing Mr. Batts’ traumatic childhood).

Finally, some youthful offenders may lack capacity to fully experience or convey remorse. *See Henning*, 97 Cal. L. Rev. at 1149 (“Not every offender will have the mental capacity to experience remorse or the intellectual capacity and language skills to convey remorse. A child who has limited life experiences or lacks the full capacity to reason may not have the same range of emotions as a more developed adult.”). Integrating and understanding emotions – and then finding words to appropriately convey those feelings – is difficult for many adults. Mr. Batts, at age 14, likely had fewer opportunities than most adults to practice identifying and giving words to his emotions. It is therefore not surprising that, at the time of resentencing at age 23, Mr. Batts was better able to express remorse and compassion. *See* 1925(a) Statement at 60 (“You have recently taken responsibility for your crimes and have recently shown some compassion for your victims.”). For these reasons, Mr. Batts’ initial failure to express remorse or emotion about the murder does not suggest that he is irreparably corrupt, callous or

cold-hearted; instead they were likely a product of his very young age at the time of the offense.

d. Mr. Batts' Incompetencies In Dealing With The Adult Criminal Justice System Suggest That Mr. Batts Should Receive A Sentence Less Than Life Without Parole

Miller holds that courts must consider a youth's incompetencies in dealing with a criminal justice system designed for adults. This includes the fact that a juvenile "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys." *Miller*, 132 S. Ct. at 2468.

Though Mr. Batts was 14 at the time of his crime and arrest, the sentencing court found that Mr. Batts "demonstrated sophisticated criminal behavior when he evaded the police, fled to another state, concealed his whereabouts by hiding with fellow gang members, falsified his identity, and lied to investigators about the circumstances of his crimes." 1925(a) Statement at 51.¹¹ Contrary to these findings,

¹¹ *Amici* dispute the characterization of this behavior as particularly "sophisticated." Mr. Batts' "falsified his identity" by telling police a fake name when they came to apprehend him. *Id.* at 37. Though Mr. Batts' technically "fled to another state," it is notable that Easton, Pennsylvania (where the murder occurred) borders New Jersey, and Mr. Batts "fled" to Phillipsburg, New Jersey,

Mr. Batts' interactions with the police did not exhibit sophisticated criminal behavior.

Children are particularly susceptible to police interrogations. *See J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011) (“‘[N]o matter how sophisticated,’ a juvenile subject of police interrogation ‘cannot be compared’ to an adult subject”) (quoting *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962)). Importantly, there is no indication that Mr. Batts invoked his right to counsel or his right to remain silent, as one would expect from a sophisticated criminal, before he ultimately confessed to the police. The willingness to talk to the police without an attorney is directly tied to age and adolescent development. *See* Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 *American Rev. Clin. Psychol.* 47, 64 (2009) (“Significant age differences were found in responses to police interrogation . . . [Y]ouths . . . were much more likely to recommend waiving constitutional rights during an interrogation than were adults, with 55% of 11- to 13-year-olds, 40% of 14- to 15-year-olds, and 30% of 16- to 17-year-olds choosing to ‘talk and admit’ involvement in an alleged offense (rather than ‘remaining silent’), but only 15% of the young adults making this choice.”). Mr. Batts’ uncounseled confession likely

which was across the river from Easton and the town where, prior to the murder, Mr. Batts had been attending high school. *Id.* at 35.

influenced the course of his criminal case, including his ability to plea bargain and his attorney's overall trial strategy. Mr. Batts' lack of criminal sophistication should therefore be treated as a mitigating factor.

e. Mr. Batts' Potential For Rehabilitation Demonstrates That Life Without Parole Is An Inappropriate Sentence

Finally, *Miller* requires that courts consider “the possibility of rehabilitation” before imposing life without parole on a juvenile. 132 S. Ct. at 2468. As to this factor, the sentencing court found that “the uncertainty of [Mr. Batts'] amenability to treatment” factored against leniency. 1925(a) Statement at 58.¹² The sentencing court found that “[a]lthough the evaluators agree that Mr. Batts has demonstrated some capacity for change in recent years, the court cannot be confident that significant change will occur without years of therapy.” 1925(a) Statement at 54. *See also id.* at 58-59 (“Although you may ultimately prove to be amenable to treatment, the experts have indicated that any rehabilitation will require years of psychotherapy. Thus, this factor weighs in favor of an extended period of incarceration.”).

¹² The sentencing court made contradictory statements about how Mr. Batts' amenability to treatment factored into his sentencing decision. While stating that amenability to treatment factored against leniency, the sentencing court also stated, “the court does believe that [Mr. Batts'] young age weighs in [his] favor in assessing [his] amenability to treatment and rehabilitation and [his] capacity for change.” 1925(a) Statement at 59.

Miller, however, does not require “confidence” that rehabilitation would occur, merely the “possibility” of rehabilitation. The evaluators’ conclusion that Mr. Batts, still only 23 years old at the time of his resentencing, had *already* demonstrated some capacity for change – even without therapy – strongly suggests his potential for rehabilitation.¹³ Even the sentencing court recognized that Mr. Batts had demonstrated remorse and insight into the issues that led him to commit his crimes. *See* 1925(a) Statement at 59. Mr. Batts should therefore receive a

¹³ The sentencing court also noted Mr. Batts’ “ongoing behavior in prison” suggested he would “pose a grave threat to public safety” if he were ever released. 1925(a) Statement at 121. The extent of Mr. Batts’ prison misconducts in the seven years between his conviction in 2007 through his re-sentencing in 2014 were: (1) refusing to obey an order; (2) refusing to attend work, school and mandatory classes; (3) fighting with another inmate during a basketball game; (4) refusing to obey an order and being in an unauthorized area; (5) possession of contraband (a pornographic magazine and money); and (6) throwing liquid at another inmate. *Id.* at 40. *Amici* contend that six generally minor and nonviolent misconducts over a seven-year period do not suggest that Mr. Batts would pose a grave threat to society. Moreover, research suggests that although inmates who are incarcerated as juveniles tend to have high levels of misconducts in prison, they are also likely to desist from these misconducts as they grow older. *See* Margaret Leigey and Jessica Hodge, *And Then They Behaved: Examining the Institutional Misconduct of Adult Inmates Who Were Incarcerated as Juveniles*, 20 *Prison Journal* 1, 15 (2013) (“[B]ecause the risk of committing disciplinary infractions decreases with age, it is expected that rule-breaking behavior declines to a level that makes [young inmates] no different than other adult inmates.”). “[T]his research suggests that over time, with regard to institutional misconduct, this group of inmates [incarcerated as juveniles] become indistinguishable from inmates who were incarcerated as adults.” *Id.* Therefore, early prison misconducts are not an accurate predictor of a juvenile offender’s potential to rehabilitate.

sentence that recognizes his potential to rehabilitate and provides a meaningful opportunity for release. *See Graham*, 560 U.S. at 79 (“Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope. Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation. A young person who knows that he or she has no chance to leave prison before life's end has little incentive to become a responsible individual.”).

Unfortunately, rather than impose a sentence that would enable Mr. Batts to reach his potential, the sentencing court imposed a sentence that will likely prevent him from getting the treatment and services that would facilitate his rehabilitation. *See Graham*, 560 U.S. at 74 (“[D]efendants serving life without parole sentences are often denied access to vocational training and other rehabilitative services that are available to other inmates. . . . For juvenile offenders, who are most in need of and receptive to rehabilitation . . . the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence all the more evident.”). Given Mr. Batts’ potential for rehabilitation, this sentence is unconstitutional pursuant to *Miller*.

IX. CONCLUSION

Though there is no question that Mr. Batts engaged in a violent act which led to tragic results, all children convicted of first degree murder by definition have engaged in violent acts with tragic results. Mr. Batts' actions cannot be assessed outside the framework of his young age and corresponding development. As *Miller* noted, "in imposing a State's harshest penalties, a sentencer misses too much if he treats every child as an adult." 132 S. Ct. at 2486. His culpability is necessarily diminished, precluding the imposition of the harshest available sentence, life without parole, without denying his responsibility and the need to hold him accountable. While Mr. Batts' age and development do not excuse his actions, they contextualize them and suggest why he is less culpable than an adult taking identical actions.

Mr. Batts is not, objectively, the most depraved offender for whom the harshest available sentence may be appropriate. Because the U.S. Supreme Court has held that juvenile life without parole sentences should be uncommon – and because all the factors outlined in *Miller* counsel against imposing life without parole in this case – this Court should vacate Mr. Batts' sentence.

Respectfully submitted,

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Pursuant to Pennsylvania Rule of Appellate Procedure 2135, I certify that the foregoing document complies with the Court's word count limits. It contains 10,712 words.

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