

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

Amicus Curiae
People v Poole, 960 N.W.2d 529
2021 Mich. LEXIS 1085**
SC: 161529

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff

No. 1982-55278-FY
Honorable Marthe D. Anderson

vs.

MARTY BRYAN MILLER,


Defendant.



* * NEW EVIDENCE * *

AMICUS CURIAE WITH
BRIEF IN SUPPORT OF POOLE APPEAL

Respectfully submitted,


Marty R. Miller:
Muskegon Correctional Facility
2400 S. Sheridan Dr.
Muskegon, MI 49442
Pro Per

Dated: Sept 14, 2021.



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JURISDICTION AND RELIEF SOUGHT

Jurisdiction is evoked by this court in the decision decided June 21, 2021 in *People v Poole*, 960 N.W.2d 529; 2021 Mich. LEXIS 1085.

QUESTIONS PRESENTED

SHOULD DR. STIENBURGS FINDINGS FROM THE AMERICAN PSYCHOLOGICAL ASSOCIATION (APA) SOCIETY BE USED AS NEW EVIDENCE BE USED FOR THE PURPOSES OF FILING PROCEDURES IN POOLE, AND SHOULD THIS COURT CONSIDER RAISING THE JUVENILE AGE FROM SEVENTEEN (17) to TWENTY-ONE to TWENTY-FIVE (21-25) IN MICHIGAN,?...

PEOPLE OF THE STATE OF MICHIGAN

Answers ?

Amicus Curiae Participant
MARTY BRYAN MILLER

Answers "YES" "YES"

STATEMENT OF FACTS

Plaintiff-Appellee, v John Antonio Poole, Defendant-Appellant CGA: 392569. Wayne CC: 02-000893-FC People v Pool 2020 Mich App LEXIS 3137 (Mich. Ct. App., May 1, 2020), order of the court, amicus curiae, appoint.

Subject matter Infra.; Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.

Plaintiff/Defendant now states as follows in his brief requesting for Amicus Curiae in the above entitled cause.

CASE # 1982-5527P-FV

PEOPLE V MARTY BRYAN MILLER, 141 Mich App 637, 367 NW2d 892 (1995).

JURY TRIAL -- Marty did not take the stand.

The Defense theory was Alibi, that Defendant was in Detroit at his parents house at the time this crime was committed. That it must have been T.J. their prime suspect or someone else committed this crime (T.T. 241-43, 1378-83).

On August 13, 1982 two girls (Tina & Junita Moore) were living with Marty at his home in Detroit, they brought T.J. aka Timothy Ivan Mann/Muhn, to Martys 19th Birthday party. Marty did not know Muhn, and this was the first time he ever met him. Unannounced, to everyone at the party Muhn was an escaped inmate from the Michigan Department of Corrections, (T.T. pgs 580-81, 860-64, 950-66) while on

escape (2) weeks before this murder, before, Marty even knew Muhn existed on this planet, Muhn robbed the victim Richard VanHamm and his roommate Robert Kemming. (Unrelated robbery/conviction), (T.I. 304-322, 325-326).

On August 16, 1982 Richard VanHamm was found by his roommate Robert Kemmin at their Royal Oak home on 12 mile and Woodward. According to the police, VanHamm was stabbed, and had a cord wrapped around his wrist, and his legs were tied together. He also had strands of hair clenched in his fist when he was discovered. (T.I. Pgs. 706-08, 713). The hairs were tested and Marty was excluded as the person VanHamm ripped the hairs from while fending off the knife attack. (T.I. pgs. 985-97). numerous footprints and fingerprints found throughout the house, over 200 photographs, blood stains in a bathroom and on the stove that were not in the area where VanHamm was killed that were retrieved tested and excluded Marty as being one of the perpetrators. (T.I. pgs. 407, 410, 717-19, 722, 730-32). Fingerprints and blood, were also found in the victims car, that was found a block away from the crime scene. And again after testing it excluded Marty as one of the Perpetrators. (T.I. pgs. 491-95, 503, 508-09).

Numerous items were taken, including but not limited to some gold chains and charms. Marty's prints were alleged to have been found on the front door of the victims home, no blood was on them. Marty sold gold to numerous gold dealers in the area. Only 3 of the 10 items from one of the Gold dealers was alleged to have come from this crime. (Infra)

Approximately 1 month later on September 9, 1982 Marty was arrested for this crime. The prosecution alleged that Muhn Committed this crime and that Marty

aided him in this crime. Muhn was still on escape and not present during Marty's trial. Muhn has never been arrested in this case.

Marty was charged with First Degree Felony Murder contrary to MCL 750.316(b).

Eyewitness Susan Tamm testified, after being given a lineup, photo line-up by police, and with Marty present in the courtroom Marty was not one of the two suspects she saw fleeing from the crime scene, wearing gloves (T.T. pgs. 772-773, 777). Her sister Mary Tamm from Florida gave a written statement to Officer Johnson. This disappeared. (T.T. pgs 758-60).

Eleanor Stabile, a clerk at the gold chest store testified after being shown 7 pages of drawings of the stolen items from the crime, that she "did not" buy any of those items from Marty. That the items she bought had been melted down, destroyed. (T.T. pgs. 796-97).

Robert Swain testified that he gave Marty two of the three gold chains he sold to Mrs. Stabile and provided copies of the original purchase receipts for the chains sold. (T.T. pgs. 1271-81).

In closing arguments prosecutor John Slevin gave arguments as to Muhn committing this murder. (T.T. pgs. 1331-32, 1341-42). Because of these statements the jury was given Aiding and Abetting Instructions (T.T. pgs 1470-72) even though no corroborating evidence was given to the court, Elevating the crime to First Degree Murder. The jury questioned these instructions as to Marty not being the actual stabber/murderer, they were instructed "no it does not matter", and given a copy of CX-1 (second and first degree murder with aiding and abetting) and instructed to

continue to deliberate. This was confusing to both the jury and the defense, and letters from the jury were written to defense counsel which clearly show they did not want to find Marty guilty of murder. But the instructions given they had no choice in the matter.

Clearly Mertys inability to defend himself at such a young age is apparent. On April 12, 1983 Marty was eventually convicted of First Degree Murder and sentenced on April 27, 1983 to LIFE.

NEWLY DISCOVERED EVIDENCE

Recently new evidence that was withheld from Marty/defense has come to light, by way of a private detective, that another person was held for three days for this crime, and that after detective's trying to force a confession out of him. They released him upon Mertys arrest and stated they were going to pin this case on Marty. Juror members were contacted and stated had they heard this new evidence at the trial there is a good probability that they would have changed their verdict. and both are advocated for Mertys release. This evidence is being reviewed by counsel and is currently being rewritten for submission to circuit court by way of MCR 6.500.

The New Evidence of the American Psychological Association, (APA) Psychological Report of Brain Development as presented by Dr. Laurence Steinburge, established that 18-24 year olds have the same characteristics of persons whom are 17 years of age. (previously submitted to this court and the Miller court.

ARGUMENT

DR. STIENBURGS FINDINGS FROM THE AMERICAN PSYCHOLOGICAL ASSOCIATION (APA) SOCIETY HAS BEEN HELD BY THIS COURT TO BE NEWLY DISCOVERED EVIDENCE. SHOULD THIS NEW EVIDENCE BE USED AS NEW EVIDENCE FOR THE PURPOSES OF FILING PROCEDURES IN POOLE, AND SHOULD THIS COURT CONSIDER RAISING THE JUVENILE AGE FROM SEVENTEEN (17) TO TWENTY-ONE TO TWENTY-FIVE (21-25) IN MICHIGAN.?...

In *People v Poole*, 960 N.W. 529; 2021 Mich. LEXIS 1085. This court stated Poole, based his appeal on Retroactive Change of Law," MCR 6.502(G)(2). This court should consider that "Newly Discovered evidence "of the Psychological Report from the American Psychological Association (hereafter APA) that purports to indicate the brains of (19) year-olds are not fully developed and thus are less culpable and less deserving of societys harshest penalties. The APA went further to state that the juvenile mind is 25 years old before they are deemed mature enough or developed enough to have cognizant reasoning. California deemed the age of 23 no longer being a juvenile and Washington deemed the age of 21 as no longer being a juvenile, both based on the APA Reports before there State courts.

This being said the Michigan Appellate Courts in *People v Robin Rick Manning*, SC:160034, addressed the issue of retroactive change of law and further stated that it was raised incorrectly. However, they went further to state basically that it should have been raised as Newly Discovered Evidence. This issue of the APA Psychological Report is in fact Newly Discovered evidence. I have no idea why Michigan Attorneys keep filing under retroactive change of law.

This court stated it is Newly discovered evidence, this or any action raising the juvenile age to 21 should be filed under to address this or any court on this issue.

Michigan Appellate Courts have held that the sentencing court must take into account the differences among juveniles and their crimes when determining whether life imprisonment without the possibility of parole is the appropriate punishment. *People v Woolfolk*, 848 NW2d 169, 175, 304 Mich App 450, 459 (2014). The Woolfolk Court also noted that, under *Miller v Alabama*, 567 US 460, 132 S. Ct 2455; 183 L. Ed 2d 407 (2012), held retroactively by *Montgomery v Louisiana*, 136 S Ct 718; 193 L Ed 2d 599 (2016) a "juvenile" must be defined to include not only those individuals who are less than 17 years of age, as the term is defined in the state's Code of Criminal Procedure and the Revised Judicature Act, MCL 764.27; MCL 600.606(1), but additionally must include those individuals between "17 and 18 years of age." *People v Corp*, 290 Mich App 472, 535-37; 828 NW2d 585 (2012); 495 Mich 640; 852 NW2d 801 (2014) The Court also held that a sentencing court must evaluate and review the characteristics of youth and circumstances of the offense delineated in *Miller* and *Corp* in determining whether, following the imposition of a life sentence, a juvenile is to be deemed eligible or not eligible for parole, and that the parole board must respect the sentencing court's decision by providing a meaningful determination and review when parole eligibility arises. *Woolfolk*, supra at 175-76.

Historically Michigan Courts have been reluctant to grant new trials on the basis of newly discovered evidence. This policy is consistent with requiring

parties to "use care, diligence, and vigilance in securing and presenting evidence." The courts have identified several evaluative criteria to apply when determining whether a new trial may be granted because of newly discovered evidence, when this court stated:

****We have explained that a defendant must show that (1) The evidence itself, not merely its materiality, was newly discovered; (2) the newly discovered evidence was not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial. This test has been applied consistently for more than a century. People v Grisson, 492 Mich 296, 312-13; 821 NW2d 50, 59 (2012).****

The law as it currently stands in Miller, Carp and Woolfolk, have held that the amendment protections should afford to seventeen (17), and eighteen (18) year-old defendants who commit serious crimes against society. These cases do not afford the same protections to nineteen (19) year old defendants. However, regardless of the findings in Dr. Steinburg's findings, in Michigan a defendant is not within the class of protected defendants, and thus cannot make an eight amendment argument against his sentence. People v Boynton, 46 Mich App 74A, 750, 209 NW2d 523, 524 (1973) standard for new evidence.

However this court should consider the change of modern law, (1) that this evidence is newly discovered in this case, because in 1983 this evidence did not exist, nor did this evidence exist when Poole was sentenced. At the time of Boynton, a pack of cigarette/tobacco could be obtained at any age, which led to more deaths by cancer. Operations had no legal age restrictions. Anyone could purchase a gun under the constitutional "right to bare Arms" Act, Alcohol

was under 18 and children was out of foster care at 16-18, all of the ages have now been raised to the age of Twenty One through Twenty-four (21-24) maby it's time this Court used its athority and viewed this evidence as newly discovered as it does fit the criteria, and set a president in the following suite to mandatory juvenile, to the Twenty-One (21). The APA clearly indicates the need for the juvenile age to be 21-25. The minimum is the leest this Court should consider. As this issue is now properly raised under the guise of Newly Discovered evidence on Brain Development as presented by Dr. Laurence Steinburge, who established that based on NEM research it was found that 18-24 year olds have the same characteristics of those who were 17 years old or younger, and less culpable for criminal actions and less deserving of Societies hardest penalty of Life without the possibility of parole.

In Miller it was unnecessary for the Court to address the constitutionality of mandatory life imprisonment for those over the age of (18) because both defendants in Miller was 14 years old.

This Court cannot infer by negative implications that the Miller Court who held that mandatory life without the possibility of parole is necessarily constitutional as long as it is applied to those over the age of 18. The Miller opinion contains no statement to that effect. The Miller court did not say anything about exceptions for adolescents, young adults or anyone else unless younger than 18 years. Nothing in Miller then states or even suggests that Courts are prevented from finding that the 8th Amendment. prohibits mandatory life without parole for those over eighteen (18) but younger than twenty-five (25)

years of age. Doing so would rely on the ruling in Miller to a different set of facts not contemplated by the case in violation of Rosen v US, 422 US 916, 920; 95 SCt 2669, 45 L.Ed2d 641 (1975).

Therefore the question of whether mandatory life without the possibility of parole is constitutional for the 19 year old defendant not before the court in Miller, and it would be contrary to the U.S. Supreme Court general practice to opine on the question un-necessarily.

Miller is a New rule of constitutional law made retroactive to cases on collateral review by the U.S. Supreme Court, that was previously unavailable. The standard under MCR 6.502(G)(2) and 6.508(D) is that Defendant in this case is required to follow that establishes that his motion must CONTAIN THE New Rule and Rely On the new rule.

Therefore, Defendant asserts that neither Miller nor MCL 769.25 and 769.25a prohibit defendants from raising the question as to whether it is UN constitutional to sentence a 19 year old by three days to life without the possibility of parole without considering mitigating factors regarding the Hallmark features of adolescence first.

This court must consider New Evidence and then raise Michigan's Juvenile age to an appropriate limit 21-25 and then apply all cases retroactively under Miller and the surrounding cases.

In this case Marty was 3 days into being 19 years old when this crime happened. He could barely read or write, and it is clear he did not have the maturity to understand what was happening, during the crime or in court, even

when his trial counsel told him not to take the stand or he would die in prison. None of the eighteen (18) witnesses that were present at Marty's arrest were called to court. Clearly indicating his adolescence, and imaturity.

In Michigan, ages have been raised for the following:


1. In order for a person in Michigan to get Specific Medical Operations such as Vesectomy, Hysterectomy, Tubal Ligation or any type of potentially life altering surgery, alterations of human anatomy, other than a life threatening emergency, a person must be Twenty-one (21) or older. MCL §333.27101 - §333.27801.
2. In order for a person to get a medical marijuana permit or user permit a seller or user must be Twenty-one (21) years Old. MCL §333.27951 - §333.27967.
3. The Homes Youthful Trainee Act MCL 762.11 has raised the age for release of Juveniles from the age of Eighteen (18) to the age of Twenty-four (24).

This is not to exclude the fact that Michigan law is the age of Twenty-One (21) to buy ciggerets, alcohol, running for public office etc., This court is well aware of the standards of Michigan and the necessity of this court to implement the raising of the age of Juveniles from 17 to 21-25. Everyone is not a principle and even if they are anything under the age of 25 is considered a Juvenile under the Newly Discovered evidence by the APA.

CONCLUSION AND RELIEF SOUGHT

WHEREFORE, Marty Bryan Miller requests this honorable court grant this Amicus Curiae and grant appropriate relief to all parties.

Respectfully submitted,


Marty B. Miller
Muskegon Correctional Facility
2400 S. Sheridan Dr.
Muskegon, MI 49442
Pro Per

Dated: Sept 14, 2021.

Mr. Marty B. Miller #A-177276
Muskegon Correctional Facility
2400 S. Sheridan Dr.
Muskegon, Michigan 49442

09.13.2021

CLERK OF THE COURT
MICHIGAN SUPREME COURT
Box 30052
Lansing, Michigan 48909



RE: People v Marty Miller 1982-55279-FY in regards to
People v Poole, 2021 Mich. LEXIS 1085., SC 161529

Dear Clerk;

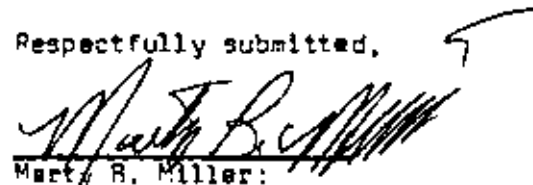
Greetings I hope this letter finds you in good health and Spirits in these troubling CV19 times.

Please find enclosed for filing in the above cause.

1. Proof of Service
2. Motion For Waiver of Fees and Costs
3. Affidavit in Support
4. Amicus Curiae with Brief In Support

To be filed at the nearest available date in the Poole case. I thank you in advance for your time and cooperation in this matter.

Respectfully submitted,


Marty B. Miller:
Muskegon Correctional Facility
2400 S. Sheridan Dr.
Muskegon, MI 49442
Pro Per

Dated: Sept 14, 2021.



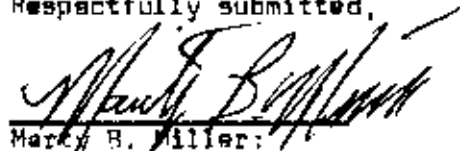
PROOF OF SERVICE

I hereby certify that on Sept 15, 2021, I served a copy of the forgoing Motion for Waiver of Fees and costs, Affidavit in Support and Amicus Curiae in connection with People v Poole, 960 N.W.2d 529, 2021 Mich. LEXIS 1085, SC: 161529, upon the clerk of the Court for the Michigan Supreme Court, by depositing same in the US Mail with First Class Postage fully prepaid by legal form here at the Muskegon Correctional Facility;

Clerk of the Court
Michigan Supreme Court
Box 30052
Lansing, Michigan 48909

I further certify that all statements are true to the best of my information knowledge and belief.

Respectfully submitted,


Mary B. Miller:
Muskegon Correctional Facility
2400 S. Sheridan Dr.
Muskegon, MI 49442
Pro Per

Dated: Sept 15 2021.



STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

Amicus Curiae
People v Poole, 960 N.W.2d 529
2021 Mich. LEXIS 1085**
SC: 161529

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff

No. 1982-5527A-FY
Honorable Martha D. Anderson

vs.

MARTY BRYAN MILLER,

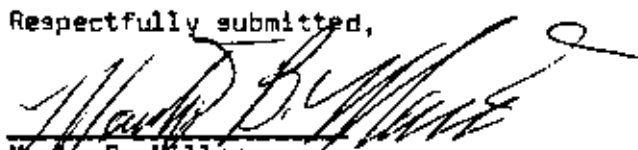
Defendant.



**MOTION FOR WAIVER OF FEES AND COSTS
FOR AMICUS CURIAE WITH
BRIEF IN SUPPORT OF POOLE APPEAL**

NOW COMES, Marty Bryan Miller #172276 and in support states as follows, that this court has hereto granted waiver of fees and cost, and herein states that he is unable to pay fees and costs as he is unemployed due to covid-19 and has been imprisoned for 38 years. And herein requests this court to grant his indigency. See Affidavit in Support of Motion and Amicus Curiae attached hereto and made a part hereof.

Respectfully submitted,

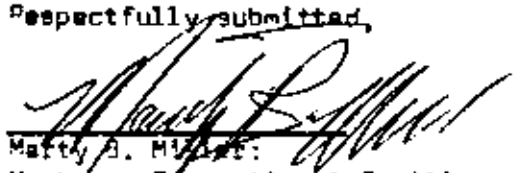

Marty B. Miller:
Muskegon Correctional Facility
2700 S. Sheridan Dr.
Muskegon, MI 49442
Pro Per

Dated:  2021.

AFFIDAVIT IN SUPPORT OF
MOTION FOR WAIVER OF FEES AND COSTS
AND
AMICUS CURIAE

I, Marty Bryon Miller, deposes and says that the information contained herein is true to the best of my Information Knowledge and belief. My signature below indicates same.

Respectfully submitted,


Marty B. Miller:
Muskegon Correctional Facility
2400 S. Sheridan Dr.
Muskegon, MI 49442
Pro Per

Dated: Sept 14, 2021.



Mr. Marty B. Miller #A-172276
Muskegon Correctional Facility
2403 S. Sheridan Dr.
Muskegon, Michigan 49442

09.27.2021

CLERK OF THE COURT
MICHIGAN SUPREME COURT
Box 30052
Lansing, Michigan 48909



RE: People v Marty Miller 1982-55278-FY in regards to
People v Poole, 2021 Mich. LEXIS 1085., SC 161529

Dear Clerk;


Greetings I hope this letter finds you in good health and Spirite in these
troubling CV19 times.

Please find enclosed for filing in the above cause.

1. Proof of Service
2. Motion For Waiver of Fees and Costs
3. Affidavit in Support
4. Motion Requesting Leave to file Amicus Curiae Brief Pursuant to MCR
7.311(H)(1). Relief Requested Proof of Service.
5. Amicus Curiae with Brief In Support previously filed on September 29,
2021. See court stamp.

To be filed at the nearest available date in the Poole case. I thank you in
advance for your time and cooperation in this matter.

Respectfully submitted,


Marty B. Miller:
Muskegon Correctional Facility
2403 S. Sheridan Dr.
Muskegon, MI 49442
Pro Per

Dated: Sept 29, 2021.