State of Michigan
In the Supreme Court

The People of the State of Michigan,

Plaintiff-Appellee,

v.

Anthony Joseph Gelia,

Defendant-Appellant.

Case No. _____

Court of Appeals Case No. 344130

Jackson County Circuit Court
Case No. 16-5361 FC

Defendant-Appellant Anthony Joseph Gelia's Application for Leave to Appeal

– Oral Argument Requested –

Kathy H. Murphy (P51422)
Counsel for Anthony Joseph Gelia
P.O. Box 51164
Livonia, Michigan 48151
(734) 578-1887
kathy.h.murphy@gmail.com

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Statement of Jurisdiction

A jury acquitted Mr. Gelia of first-degree premeditated murder, but convicted him of felony murder and other related charges based on an incident that occurred when Mr. Gelia was just 62 days beyond his 19th birthday. The Jackson County Circuit Court sentenced Mr. Gelia to serve mandatory life in prison without the possibility of parole for felony murder, and to 14 to 20 years for first-degree home invasion, to be served consecutively to a two-year sentence for felony firearm.

Mr. Gelia appealed to this Court, challenging his conviction and sentence for felony murder. Specifically, Mr. Gelia argued that his sentence for felony murder was cruel or unusual in violation of the Michigan Constitution. The Court of Appeals affirmed. *People v Gelia*, unpublished per curiam opinion of the Court of Appeals, issued January 21, 2020 (Docket No. 344130). Mr. Gelia filed an application for leave to appeal in this Court.

On January 23, 2023, this Court vacated the portion of the opinion of the Court of Appeals related to Mr. Gelia's claim that his mandatory life without parole sentence was unconstitutional. This Court issued an order remanding Mr. Gelia's case to the Court of Appeals for reconsideration in light of *People v Parks*, 510 Mich 225 (2022) (Docket No. 162086). *People v Gelia*, 984 NW2d 185 (2023).

On October 5, 2023, the Court of Appeals affirmed its previous decision. *People v Gelia*, unpublished per curiam opinion of the Court of Appeals, issued October 5, 2023 (Docket No. 344130). The Court of Appeals stated that it was without authority to grant relief to Mr. Gelia:

> Given this, assuming arguendo that this panel applied the same proportionality analysis to defendant that the *Parks* majority applied to the defendant in that case, and further assuming arguendo that this panel arrived at a conclusion similar to that of the *Parks* majority, this panel would still be without authority to provide defendant any relief, given the binding precedent of *Hall* as-applied to those like defendant who committed murder when they were 19-years-old or older. Thus, any review by this panel of the proportionality of defendant's LWOP sentence would be an exercise in futility and *obiter*

> *dictum*, given our Supreme Court's explicit recognition in *Parks* of the continuing viability of *Hall* to 19-year-olds and older. *Parks*, 510 Mich at 522 n 9. "It is the duty of the Supreme Court to overrule or modify caselaw if and when it becomes obsolete, and the Court of Appeals and the lower courts are bound by the precedent established by the Supreme Court until it takes such action." *People v Metamora Water Serv, Inc*, 276 Mich App 376, 387-388; 741 NW2d 61 (2007).

People v Gelia, unpublished per curiam opinion of the Court of Appeals, issued October 5, 2023 (Docket No. 344130), slip op 2.

Statement of the Questions Presented

First Question

Does Mr. Gelia's mandatory life without parole (LWOP) sentence for felony murder violate the Michigan Constitution's prohibition on cruel or unusual punishment?

Mr. Gelia answers: Yes.

The Court of Appeals answered: No.

Second Question

Should the Court extend the ruling in Parks to 19-year-olds?

Mr. Gelia answers: Yes

The Court of Appeals did not answer.

Introduction

Anthony Joseph Gelia ("Mr. Gelia" or "Anthony") is serving mandatory life in prison without the possibility of parole. At his trial, the jury acquitted Mr. Gelia of first-degree premeditated murder, but convicted him of felony murder, home invasion in the first degree, and felony firearm. Mr. Gelia was found to have entered a residence without permission and to have shot a pistol several times while moving through the house. At least one of the bullets went through the closed door of a basement bedroom. Unbeknownst to Mr. Gelia, the decedent, Brittany Southwell, was on the other side of that door, holding her baby. A bullet struck Ms. Southwell and killed her.

In this Court and in the Supreme Court, Mr. Gelia challenged his mandatory LWOP sentence as cruel or unusual. It is. Anthony was 19 years old at the time of the offense and his brain was indistinguishable from a juvenile's brain for the purposes of punishment, deterrence, and rehabilitation.

Statement of Facts

The fatal shooting of Brittany Southwell by Anthony Gelia, who livestreamed his act on Facebook, led to numerous charges, including first-degree premeditated murder,[1] first-degree felony murder,[2] first-degree home invasion[3] and felony firearm[4].

Mr. Gelia was tried by a jury. He was acquitted of first-degree premediated murder. He was convicted of felony murder; first-degree home invasion; and felony firearm. Jackson County Circuit Judge John McBain sentenced Mr. Gelia to mandatory life in prison for the felony murder conviction; 14 to 20 years for the first-degree home invasion conviction; and two years for the felony firearm conviction, to be served consecutive to and preceding the other two sentences.

The events of the night are best recounted in Mr. Gelia's interrogation, which was played for the jury during the testimony of Jackson City Police Department Sergeant Wesley Stanton, who was assigned on the night of November 8, 2016, as lead detective on the instant case. (TIII 119-122)[5] He learned that Anthony had been taken into custody so he waited for Anthony to be brought to the station to be interviewed. (TIII 125) Anthony arrived and was taken to an interview room set up with audio and video recording equipment. (TIII 126) He read Anthony a form and Anthony agreed to speak to him. (TIII 128)

Anthony's statements had been transcribed;[6] copies were made and passed out to the jury so that jurors could read along while watching the recording of the interview in the courtroom. (TIII 128-132)

The interview was played for the jury. (TIII 134)

THE FIRST INTERVIEW

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[1] MCL 750.316(a)
[2] MCL 750.316(b).
[3] MCL 750.110(a)(2)
[4] MCL 750.227b(1).
[5] Transcripts will be abbreviated as follows: MH 3-13 = Motion Hearing of March 13, 2018; MH 3-19 = Motion Hearing of March 19, 2018; TI = Jury trial Tuesday, March 20, 2018; TII = Jury trial Wednesday, March 21, 2018; TIII = Jury trial Thursday, March 22, 2018; TIV = Jury trial Friday, March 23, 2018; TV = Jury trial Monday, March 26, 2018; S = Sentencing Wednesday May 9, 2018..
[6] The transcribed interview of November 8, 2016, is attached hereto as Exhibit A, and abbreviated as Int I; the transcribed interview of November 9, 2016 is attached hereto as Exhibit B and abbreviated as Int II.

The interview began at 10:16 p.m. and ended at 11:19 (Int I 1, 68) At some point late in the interview, Anthony took a breathalyzer test; Stanton told him "it wasn't that bad." (Int 1, 66)

Anthony had been with his current girlfriend, Amber Sager, and his brother Noah Guenther's ex-girlfriend, Ashley Boardman, the night of the incident. (Int 1 8) Anthony and Amber had been staying with Ashley Boardman and her sister (Int 1 16-18) because Anthony's mother had made him leave her house. (Int 1 12) Anthony's mother allowed Anthony's ex-girlfriend, Amber Uphold, to remain in her home. (Int 1 12) Anthony, Sager and Boardman had been drinking; Anthony was intoxicated; he had drunk a pint of OV Blue and some Smirnoff's quickly. (Int 1 12)

Ashley Boardman had told Anthony that Noah had threatened him. (Int 1 61-62) Ashley Boardman drove Anthony to the McCravey house; Anthony did not know whose house they were going to. (Int 1 15) Anthony also thought that someone named Anastasia had been threatening him and that she had three male friends who were going to shoot him. (Int 1 38, 41)

Anthony peeked in the window and saw his ex-girlfriend, Amber Uphold, in the living room. (Int 1 25) He kicked the door in; he went downstairs; he saw a man; he thought the man came at him; the man went into the bedroom and shut the door; Anthony shot at the seam of the door; he did not aim at anyone; he had not mean to hurt anyone. (Int 1 36, 37, 45, 57)

[The man was Tyler McCravey, husband of Brittany Southwell. Mr. McCravey testified that Anthony had come down the stairs, pointed a gun at him and had shot the gun at him twice; he had not been shot. (TII 90)]

Anthony was told during that interview that no one had died. (Int 1 42) He was told that someone had been shot in the shoulder (Int 1 47)

Anthony was suicidal and intoxicated during the first interview; he told Stanton to breathalyze him. (Int 1 65) Anthony expressed the desire to kill himself numerous times. (Int 1 51, 55, 66, 68)

In court, Stanton said Anthony had blown a .09 and that the legal limit for driving in Michigan was .08. (TIII 136) No written results were entered into evidence. Stanton claimed that he thought Anthony had not been too intoxicated to have a conversation with him. (TIII 138) Stanton said he had never found any evidence or any threats that were made to Anthony. (TIV 6)

Anthony, Amber and Ashley started their evening at Ridgewood Vista Apartments. (TIV 9) Next they went to Stark's Party Store. (TIV 11) Anthony told Stanton that Ashley Boardman purchased UV Blue, which is vodka, for Anthony that night. Anthony was only 19 and she was over 21. (TIV 11-12) They went from Stark's to Power's Party Store. (TIV 12) From there, they went to a tanning salon on Webb Street. (TIV 13) The next destination was the house on Jefferson Street. (TIV 14)

Tiffany Gelia, Anthony's mother, contacted Stanton on November 9, 2016, wanting to know what was going on with Anthony; Anthony's father and Noah went to the police station. (TIV 19)

Stanton interviewed Noah. (TIV 20) Ashley Boardman's probation officer contacted Stanton; she had video that Stanton later went to see. (TIV 20)

On November 9th, Stanton went to the jail to re-interview Anthony to "make sure that if there was any alcohol or anything in his system it would have dissipated or to see if he recalled the same statements." (TIV 21) The second interview had been recorded by audio only. (*Id.*) The audio was played for the jury. (*Id.*)

THE SECOND INTERVIEW

Anthony said he was drunk and on Xanax and that he had been persuaded by Boardman. (Int 2, 7-8) Stanton said he had spoken to Anthony's mother, father and Noah, and that they also thought he had been persuaded by Boardman. (*Id.*)

A few days prior, Noah had called Anthony's Facebook while Anthony was showering; Ashley answered Anthony's phone and later told Anthony that Noah had said they were all going to die soon; Anthony

also said "that Anastasia girl" was "talking shit" on Facebook. (Int 2, 9)

They arrived at the house; he saw his ex, Amber, run; he knocked on the door and kicked it. (Int 2, 12) He ran downstairs, popped shots at the door, and left. (Int 2, 13) Anthony said that Tyler was one of the guys that Anastasia had been threatening him with; he told Stanton to look at his phone. (Int 2, 14) Someone said they should go in and get Anthony's brother [presumably Boardman] and said they were going to beat Amber's ass, because she was with Noah. (Int 2, 14-15) Anthony got downstairs and shot at the door jamb; he had not been aiming at Tyler. (Int 2, 15) Anthony did not shoot until the door was closed; he had seen Amber in the basement. (Int 2, 16)

Anthony had not aimed at anyone; he had just wanted to scare them because they had been threatening him by saying they were all going to die soon. (Int 2, 17) Anthony shot at the door seam, where the hinges were, he figured; he might have missed; he was heavily intoxicated and on Xanax at the same time. (Int 2, 18)

Anthony left the house, went to his mother's house to gather belongings because he wanted to get out; the whole way to his mother's house, he had a gun to his head, he said, because he got "into these rages where I really don't like know you know I mean I wasn't in the right state of mind and then I realized like I fucked up… I was persuaded. I was drunk." (Int 2, 18-19)

"Thought you know that I was invincible or something, I mean I don't know what I was, I mean not that I was invincible but I don't know my mom kicked me out of her house. I'm not – I'm not supposed to be living on my own." (Int 2, 19) "I've always lived with my mother, but I'm not supposed to be living without my mom. I'm on Social Security – my Social Security doctors got a big long thing that says I'm not able to take care of myself." (Int 2, 19)

Anthony had put the gun in his mouth and was going to kill himself before they caught him. (Int 2, 20)

Stanton said Anthony had not been persuaded, but that the whole reason he went over there was because Noah had been threatening him

a few days before; Anthony said that was what Noah had said and that he believed it because Noah had a gun, too. (Int 2, 21)

Anthony said "I'm going to prison," to which Stanton responded "Well I don't know about that …" (Int 2, 22) Anthony was informed that the decedent was a woman who had been in the room with Tyler, and who had been holding a baby, to which Anthony replied "Man dude I just killed someone's mom." (Int 2, 24)

Stanton told Anthony what the next steps would be; Anthony asked if he would get a phone call; Stanton said he would but that he was in direct contact with Anthony's mother and could get a message to her. (Int 2, 24)

Anthony asked the name of the girl who had been shot and Stanton told him; he said "Who the fuck am I to do that to somebody dude?" (Int 2, 25)

Stanton said "Listen, listen this is what I am going to describe – I'm going to – I'm going to tell you this. Like I said last night and I don't know if you remember much of what I said, but we all make mistakes we are all human." (Int 2, 25) He said he would contact Anthony's mother and ask her to put money on his account so he could contact her or contact his lawyer. (*Id.*)

WESLEY STANTON

Detective Stiles had interviewed Ashley Boardman and Amber Sager; Stanton also interviewed Ashley Boardman, who was at the Eaton County Jail. (TIV 30-31)

Videos that had been given to Stanton by Tiffany Gelia, Anthony's mother, and by Kyra VanSluten, Boardman's probation officer, were played for the jury. (TIV 32)

On the video, Stanton identified Boardman and Anthony; Anthony may have been talking about shooting something. (TIV 34)

Stanton got a search warrant for Facebook accounts. (TIV 36) Stanton had interviewed Anastasia Nelson; he had not been "able to

confirm about the person that was threatening Mr. Gelia." (TIV 37)

Video was eventually found on Anthony's cell phone in which Anthony, Amber and Ashley are seen. (TIV 40)

Trial counsel renewed the objection he had made pretrial to a portion of the video. (TIV 41) The video was played for the jury. (The video will be submitted to the Court by mail as an Exhibit. Transcripts of the videos are contained in the transcript of the motion hearing of March 19, 2018, which is attached hereto as Exhibit C.)

A visit to the house at 403 Jefferson was made by the jury, the judge and the attorneys. (TIV 45)

Upon return to the courtroom, examination of Wesley Stanton continued. Stanton was asked about the contents of the videos. (TIV 46) There are three people, Sager, Boardman and Anthony, in a vehicle which moves; at some point, it stops and the sound of chainsaws is heard; chainsaws were found in the vehicle; at some point, Anthony shot a gun prior to going to the house, in the parking lot of the tanning salon; they arrive at the house and the kicking of the door is heard, along with fumbling noises, then gunshots. (TIV 46-49)

In his 17 years on the police force, Stanton had never experienced someone videotaping themselves while committing a crime, or broadcasting their criminal activity. (TIV 49)

On cross examination, trial counsel elicited that Anthony had been consistent in both statements that he never intended to kill anyone (TIV 59); he shot toward the door jamb to teh left of the door (TIV 59); he shot four rounds into the ground in the living room in a pattern one foot in diameter (TIV 61); he shot one in the kitchen and there was never any indication that anyone had been in the kitchen (TIV 61); that he did not know anyone who lived at the house (aside from visitors Amber and Noah) (TIV 62); that he did not know the layout of the house (TIV 62); and that when he shot into the living room floor, he would not have known that there was a bedroom in the basement. (TIV 62)

Anthony told Stanton he had been influenced by Boardman, and his

parents and his brother told Stanton the same. (TIV 63) It was Ashley who had relayed a supposed threat from Noah to Anthony (TIV 65).

Anthony told Stanton about a video that might still have been on his phone (TIV 65); Anthony told Stanton that when he felt that Noah was threatening him, he slept with a gun under his pillow but that he would shoot Noah in the legs (TIV 67); Anthony never threatened any of the police officers he dealt with after the incident (TIV 66); Anthony's mother had kicked him out of her house in favor of his girlfriend (TIV 68); Anthony was on Social Security Disability for ODD, he had mental health issues and he was supposed to stay with his mother (TIV 68).

When Anthony realized he had killed someone, he started crying. (TIV 71)

Anthony would not have been able to see anyone in the basement bedroom at the angle he had been standing. (TIV 77)

Stanton agreed that in the video leading up to the shooting, Anthony indicated several times that he wanted to shoot or kill people, i.e., police officers or anyone who was watching the livestream who came to threaten him if they did not come alone. (TIV 80, 84)

He made more threats to shoot people or saw their heads off. (TIV 84-85) But when he went into the house and saw Amber Uphold, he did not shoot her. (TIV 85) When he saw Tyler McCravey and was within two or three feet of him, he did not shoot him, he shot to the left of him. (TIV 86-87)

Instead of firing four shots into the ground, he could have shot Amber and he could have shot Tyler. (TIV 88)

After two hours of deliberation, the jury found Anthony not guilty of first-degree premeditated murder, guilty of felony murder, guilty of home invasion in the first-degree and guilty of felony firearm.

Arguments

I. Mr. Gelia's mandatory life without parole (LWOP) sentence for aiding and abetting felony murder violates the Michigan Constitution's prohibition on cruel or unusual punishment.

Standard of Review

This Court reviews constitutional questions de novo. *People v Kennedy*, 502 Mich 206, 213 (2018).

Issue Preservation

Mr. Gelia first raised this constitutional claim in his appeal of right to the Court of Appeals.

Discussion

Proportionality is central to the Michigan Constitution's prohibition against cruel or unusual punishment. *People v Bullock*, 440 Mich 15, 32-33 (1992); *People v Lorentzen*, 387 Mich 167, 176 (1972). If a sentence is disproportionate, it is unconstitutional. *Id*. See also *People v Steanhouse*, 500 Mich 453, 459 (2017), citing *People v Milbourn*, 435 Mich 630, 636 (1990). Michigan Constitution's prohibition on cruel or unusual punishments offers broader protection than the Eighth Amendment. *People v Parks*, 510 Mich 242 (2022); *Bullock*, 440 Mich at 30.

To evaluate whether a punishment is cruel or unusual, this Court considers the factors set out in *Lorentzen* and reaffirmed in *Bullock*, 440 Mich at 33-34: (1) the severity of the sentence relative to the gravity of the offense, (2) sentences imposed in the same jurisdiction for other offenses, (3) sentences imposed in other jurisdictions for the same offense, and (4) the goal of rehabilitation, which is a criterion specifically rooted in Michigan's legal traditions.

a. Mandatory LWOP is cruel or unusual punishment for 19-year-olds—late adolescents whose brains are not yet fully developed.

This Court found that mandatory LWOP for 18-year-olds was cruel punishment in violation of Const 1963, art 1, § 16. *Parks*, 510 Mich at 255. Because 19-year-olds like Mr. Gelia are neurologically equivalent to 18-year-olds, they are entitled to the same protections.[8] The fact that 19-year-olds' brains are still developing mitigates their culpability and heightens their capacity for rehabilitation. The four *Lorentzen* factors favor finding Mr. Gelia's sentence unconstitutional.

1. First *Lorentzen* Factor: Mandatory LWOP for late adolescents is too severe, even given the gravity of felony murder

The first *Lorentzen* factor compares the severity of the sentence to the gravity of the offense. *Bullock*, 440 Mich at 33. While felony murder is a serious offense, LWOP is the most severe sentence available in Michigan. See *Parks*, 510 Mich at 257. LWOP is "far more severe" than a parolable life sentence. *Graham v Florida*, 560 US 48, 70 (2010), citing *Solem v Helm*, 463 US 277, 297 (1983).

Nineteen-year-olds like Mr. Gelia are late adolescents and share the neurological qualities that make 18-year-olds less deserving of the harshest punishments:

> [S]cientific research has emerged which reinforces the reasoning of the *Miller*[9] decision and, if its implications are accepted, extends much of the science that resonated with the *Miller* court to late adolescents (ages 18–21).
>
> Maturation of brain structure, brain function, and brain connectivity continues throughout the early twenties. This ongoing brain development has profound implications for

[8] Insel, Tabashneck, et al., *White Paper on the Science of Late Adolescence*, Center for Law, Brain & Behavior (2022), p 2.

[9] *Miller v Alabama*, 567 US 460 (2012).

> decision-making, self-control and emotional processing. For example, new neuroscience research reveals that during emotionally charged situations, late adolescents (ages 18–21) respond more like younger adolescents (ages 13–17) than like young adults (ages 22–25) due to differences in brain maturation.
>
> Compared to young adults above age 21, late adolescents (ages 18–21) also take more risks and engage in more sensation-seeking behavior. Due to differences in brain development, late adolescents are more likely than young adults to respond to immediate outcomes and are less likely to delay gratification. The presence of peers can intensify these behaviors, and the brains of late adolescents are more responsive to peer involvement than those of young adults. Late adolescents are also more easily swayed by adult influence and coercion than their adult counterparts.

Insel, Tabashneck, et al., *White Paper on the Science of Late Adolescence*, Center for Law, Brain & Behavior (2022), p 2.

This Court recognized in *Parks* Court that late adolescents' brains are indistinguishable from juveniles' brains for the purposes relevant to punishment, deterrence, and rehabilitation. *Parks*, 510 Mich at 249-252. This Court explained that "late adolescents are hampered in their ability to make decisions, exercise self-control, appreciate risks or consequences, feel fear, and plan ahead." *Parks*, 510 Mich at 251. Late adolescents, as compared to adults, are "**more susceptible to negative outside influences, including peer pressure**." *Id*. (emphasis added). Mr. Gelia's case is an illustration: he was uniquely susceptible to the influence of others – he was under the influence of alcohol and drugs supplied by an older woman obsessed with finding Anthony's younger brother, who had cut her out of his life, on the night of the incident; he was obsessed with what he predicted would be the disastrous results of that night's election of Donald Trump as president of the United States; he was obsessed, as so many teenagers are, with publicizing his activities on social media; and he was unable to fully appreciate the risks and consequences of his actions.

This Court in *Parks* relied on a consensus study report published by the National Academies of Sciences, Engineering, and Medicine. *Parks*, 510 Mich at 250. That report explains, "[t]he unique period of brain development and heightened brain plasticity . . . continues into the mid-20s."[10]

Dr. BJ Casey, a leading national expert on adolescent brain development and self-control, writes, "[t]he decisions made in *Roper*[11] and *Miller* were based largely on behavioral evidence of differences between youths and adults, with little knowledge or appreciation of the functionally significant and legally relevant brain changes throughout adolescence and into young adulthood. That evidence is now available and further confirms the behavioral science. Not only do these findings apply to *Roper*, *Miller*, and *Montgomery*[12] but they also inform the extension of these decisions beyond 18 years."[13] Especially relevant to the question before this Court, Dr. Casey explains, "Distinguishing the [cognitive] capacity of a 17-year-old from an 18-, 19-, 20-, or 21-year-old would be impossible for a single individual or even group of individuals,

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[10] National Academies of Sciences, Engineering, and Medicine, *The Promise of Adolescence: Realizing opportunity for all youth—A Consensus Study Report* (Washington, DC: The National Academies Press, 2019), p 22. In the report, at page iv, the National Academies of Science, Engineering, and Medicine define the term "Consensus Study Report": "Consensus Study Reports published by the National Academies of Sciences, Engineering, and Medicine document the evidence-based consensus on the study's statement of task by an authoring committee of experts. Reports typically include findings, conclusions, and recommendations based on information gathered by the committee and the committee's deliberations. Each report has been subjected to a rigorous and independent peer-review process and it represents the position of the National Academies on the statement of task."

[11] *Roper v Simmons*, 543 US 551 (2005).

[12] *Montgomery v Louisiana*, 577 US 190 (2016).

[13] Casey et al., *Making the Sentencing Case: Psychological and neuroscientific evidence for expanding the age of youthful offenders*, 5 Ann Rev Criminal 321, 337 (2022). See also American Bar Association, *ABA Resolution 111*, at 6 ("[R]esearch has consistently shown that [brain] development actually continues beyond the age of 18" and that "the line drawn by the U.S. Supreme Court no longer fully reflects the state of the science on adolescent development.").

but this distinction in performance becomes more obvious by the mid-twenties." *Id*. at 327-328.

Because their brains are still developing, late adolescents like Mr. Gelia are uniquely amenable to rehabilitation. Criminological data show "a transient pattern in criminal behavior that peaks during adolescence and subsides by the mid-twenties." *Id*. at 332. "The transience of criminal behavior during adolescence and subsequent decline in adulthood suggests that the logic behind punitive life sentences, i.e., youth who commit violent crimes will inevitably commit violent crimes as adults, is not supported by these data." *Id*.

Punishment schemes must keep pace with society's evolving standards of decency. *Miller*, 567 US at 469-70; *Lorentzen,* 387 Mich at 178-179. "[I]t would be profoundly unfair to impute full personal responsibility and moral guilt to those who are likely to be biologically incapable of full culpability." *Parks*, 510 Mich at 259 (quotation marks and citation omitted). Given the neurological changes late adolescents undergo as their brains develop and essentially rewire themselves over time, automatically condemning 19-year-olds like Mr. Gelia to die in prison is cruel punishment. Mandatory LWOP is too severe a penalty for this age group.

2. Second *Lorentzen* Factor: Mandatory LWOP for late adolescents is disproportionate compared to penalties imposed on others in Michigan

The second *Lorentzen* factor compares the penalty in question to the sentences imposed on others in the same jurisdiction. *Bullock*, 440 Mich at 33-34. In *Parks*, the Michigan Supreme Court found that the second *Lorentzen* factor supported the conclusion that mandatory LWOP is unconstitutional for 18-year-olds because they will spend more time behind prison bars than any other adult offenders convicted of the same crime or similarly severe crimes. *Parks*, 510 Mich at 260. Therefore, mandatory LWOP for 18-year-olds is disproportionate to other offenders in Michigan. The same is true for 19-year-olds, and the science of adolescent brain development supports treating them equally to 18-year-olds.

The *Parks* Court also pointed out that late adolescents sentenced to LWOP will serve more time and spend a greater percentage of their lives behind prison walls than similarly situated older adults. See *Parks*, 510 Mich at 260-261. The Court also noted that 18-year-old offenders will spend more time in prison than most equally culpable juvenile offenders, who are eligible for term-of-years sentences with the possibility of parole at some point in their adult lives under *Miller* and MCL 769.25. "[A]rbitrary line-drawing for punishment of defendants with equal moral culpability neurologically does not pass scrutiny under the second *Lorentzen* factor." *Parks*, 510 Mich at 262.

Recognizing the science on late adolescent brains, the Michigan Legislature recently relied on scientific research to expand the Holmes Youthful Trainee Act ("HYTA") to allow even more young people—up to age 26—to avoid a criminal record. See MCL 762.11. In 2015, the Legislature increased the HYTA eligibility cutoff from 21 to 24 years old. 2015 PA 0031. In 2020, the Legislature further expanded eligibility, raising the cutoff age to 26 years old. 2020 PA 1049. During the Michigan House Judiciary Committee's hearing on the latest HYTA expansion bill, legislators cited developments in brain science in support of including 24- and 25-year-olds.[14]

There are only a handful of offenses in Michigan for which LWOP is mandatory for offenders aged 19 and older. See MCL 791.234(6) (providing that persons sentenced to mandatory life for the following offenses are not eligible for parole: first-degree murder; possession of explosives or other injurious substances with malicious intent causing death; selling adulterated drugs with the intent to kill or cause serious impairment of two or more individuals, resulting in death; several felonies that involve intent to kill or cause serious impairment and

[14] House Judiciary Committee, December 16, 2020, at 30:05-40:20, available at https://www.house.mi.gov/VideoArchivePlayer?video=JUDI-121620.mp4 (accessed March 3, 2023).

result in death; several felonies that involve possession of harmful biological or chemical substances that results in death; and recidivist first-degree criminal sexual conduct against a child).

Aside from first-degree murder, the crimes for which Michigan mandates LWOP involve repeat sexual assaults of children under 13 or conduct that endangers the lives of many people and results in death—for example, possession of explosives with intent to intimidate, injure, or kill, causing death, MCL 750.210(2)(e). Mandatory LWOP is rare and is reserved for the most blameworthy individuals. Late adolescents, due to their still-developing brains, are less blameworthy than adults and are often less deserving of the harshest punishment.

It is disproportionate for 19-year-old Mr. Gelia to automatically receive the same LWOP sentence as a middle-aged adult who detonated a bomb in an office building or repeatedly raped small children. For a late adolescent like Mr. Gelia, a sentencing court should consider mitigating evidence of youth and use that evidence to fashion a proportionate sentence. The second *Lorentzen* factor weighs in favor of finding that mandatory LWOP for late adolescents violates Const 1963, art 1, § 16.

3. Third *Lorentzen* Factor: A small minority of states impose mandatory LWOP

The third *Lorentzen* factor considers the sentences imposed for the same crime in other jurisdictions. *Bullock*, 440 Mich at 34. This Court in *Parks* observed that only 17 states impose mandatory LWOP for first-degree murder. *Parks*, 510 Mich at 263.[15] Twenty-five states and the District of Columbia do not impose mandatory LWOP for equivalent first-degree murder, regardless of the age of the offender. *Parks*, 510 Mich at 262. Six more states only mandate life without parole for equivalent first-degree murder when there are proven aggravated circumstances. *Parks*, 510 Mich at 263.

[15] As noted *infra*, p 25-26, only 15 states impose mandatory LWOP for felony murder.

Nationwide, a person convicted of first-degree murder who was under 18 at the time of the crime is most likely not serving LWOP. Following *Miller*, just 3.2% of people who were serving mandatory LWOP for crimes committed before age 18 were resentenced to LWOP.[16] By contrast, 73.6% received a term-of-years sentence, i.e., LWOP was not reimposed.[17] The median term-of-years sentence is 25 years.[18] The remaining 23.2% are still awaiting resentencing.[19] Where only 3.2% of those under 18 have been resentenced to LWOP, it is disproportionate to sentence 100% of other late adolescents to LWOP.

The Washington Supreme Court, in a case involving a 19-year-old and 20-year-old who were sentenced to mandatory LWOP, found that age group to be neurologically equivalent to juveniles and therefore entitled to the same individualized sentencing protections. *In re Monschke*, 197 Wash 2d 305 (2021).

In *State v Norris*, the Appellate Division of the Superior Court of New Jersey remanded for resentencing where the defendant, who was 21 at the time of the crime, was sentenced to 80 years in prison.[20] The court, citing *Miller*, instructed the trial court to "consider at sentencing

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[16] Campaign for the Fair Sentencing of Youth, *National Trends in Sentencing Children to Life Without Parole*, February 2021, available at https://cfsy.org/wp-content/uploads/CFSY-National-Trends-Fact-Sheet.pdf (accessed March 6, 2023).

[17] *Id.*

[18] Campaign for the Fair Sentencing of Youth, *Montgomery v Louisiana Anniversary*, January 25, 2020, p 3, available at https://cfsy.org/wp-content/uploads/Montgomery-Anniversary-1.24.pdf (accessed March 6, 2023).

[19] Campaign for the Fair Sentencing of Youth, *National Trends in Sentencing Children to Life Without Parole*, February 2021, available at https://cfsy.org/wp-content/uploads/CFSY-National-Trends-Fact-Sheet.pdf (accessed March 4, 2023).

[20] *State v Norris*, unpublished opinion of the Superior Court of New Jersey Appellate Division, issued May 15, 2017 (2017 WL 2062145).

a youthful offender's failure to appreciate risks and consequences as well as other factors often peculiar to young offenders." *Id.* at *5.

California expanded its youth offender parole hearings to include those who were under the age of 26 at the time of their offense.[21] At a youth offender hearing, the hearing panel is "required to give great weight to the diminished culpability of juveniles, the hallmark features of youth," and to the individual's "subsequent growth and increased maturity".[22] "The idea of a youth offender parole hearing is based on scientific evidence showing that parts of the brain involved in behavior control continue to mature through late adolescence and that adolescent brains are not yet fully mature until a person is in their mid-to-late 20s. Specifically, the area of the brain responsible for impulse control, understanding consequences, and other executive functions is not fully developed until that time."[23]

Other developed nations protect young people from the harshest punishments. In Sweden, young adults can be tried in juvenile court until age 25 and courts cannot impose mandatory minimum sentences on those under 21.[24] In Switzerland, young adults up to 25 can be treated as juveniles.[25] The Netherlands offers juvenile alternatives up to age

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[21] California Department of Corrections and Rehabilitation, *Youth Offender Parole Hearings*, available at https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/ (accessed March 4, 2023).

[22] *Id.*

[23] *Id.*

[24] Ishida, *Young Adults in Conflict with the Law: Opportunities for Diversion*, Juvenile Justice Initiative (2015), p 3, available at https://www.njjn.org/uploads/digital-library/IL-Young-Adults-in-Conflict-with-the-Law-Opportunities-for-Diversion_2015.pdf (accessed March 4, 2023).

[25] Transition to Adulthood Alliance, *Young Adults and Criminal Justice: International Norms and Practices* (2011), p 3, available at https://t2a.org.uk/wp-content/uploads/2016/02/T2A-International-Norms-and-Practices.pdf (accessed March 6, 2023).

23.[26] Japan treats those under age 20 as children.[27] In Germany, all people ages 18 to 21 are tried in a specialized youth court and judges have discretion to impose either a juvenile or adult sentence, depending on an individual's circumstances.[28] The vast majority of young adults convicted of homicide, rape, and other serious bodily injury crimes in Germany are sentenced as juveniles—over 90% in 2012.[29]

Michigan's mandatory LWOP sentence is more severe than the penalties in 32 states. This Court in *Parks* concluded, "The majority of jurisdictions now reflect a society and a criminal-punishment system more 'enlightened by a humane justice' than Michigan's current sentencing scheme set forth in this matter. *Parks*, 510 Mich 264, citing *Lorentzen*, 387 Mich at 178.

The third *Lorentzen* factor supports a finding that mandatory LWOP is a disproportionate punishment for late adolescents.

4. Fourth *Lorentzen* Factor: Mandatory LWOP does not advance the penological goal of rehabilitation

The fourth and final *Lorentzen* factor requires the Court to consider the relationship between mandatory LWOP and rehabilitation. *Lorentzen*, 387 Mich at 1180-181; *Bullock*, 440 Mich at 34. "Michigan has long recognized rehabilitative considerations in criminal punishment." *Lorentzen*, 387 Mich at 179.

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[26] Matthews, Schiraldi, and Chester, *Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System*, 1 Justice Evaluation J 59 (2018).

[27] Ishida, *Young Adults in Conflict with the Law*, p 4.

[28] Matthews, Schiraldi, and Chester, 1 Justice Evaluation J 59.

[29] *Id.*

Late adolescents are highly amenable to intervention and rehabilitation.[30] In *Parks,* this Court recognized that the "hallmarks of the developing brain render late adolescents less fixed in their characteristics and more susceptible to change as they age." *Parks*, 510 Mich at 251. Late adolescents take fewer risks as they age, further understand the consequences of their actions, become less susceptible to peer pressure, and tend less toward aggression. *Parks*, 510 Mich at 258. This means that, as their cognitive abilities reach full development, late adolescents are capable of significant change and a turn toward rational behavior that conforms to societal expectations. *Id.*

"Late adolescents exhibit enhanced neural sensitivity to rewards, as compared to children and adults, which enhances the vulnerabilities for risk-taking described above, but also creates a window of opportunity for prosocial learning and adaptation."[31] Importantly, "[r]elative to children and early-middle adolescents, late adolescents ages 18–21 are more likely to update and refine their decision-making strategies after receiving rewards for 'successful' decisions." *Id.* As late adolescents' brains fully develop, they have great potential for rehabilitation.

For late adolescents, aging is a major factor that facilitates rehabilitation. Adults are more stable, more resistant to impulses, and thus more law abiding. "[E]motional stability shows the biggest change after 22 years. This latter finding is reminiscent of the previously described differences between individuals under and over 22 years in

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[30] Tanner & Arnett, "The Emergence of 'Emerging Adulthood': The New Life Stage Between Adolescence and Young Adulthood," in *Handbook of Youth and Young Adulthood: New perspectives and agendas* (New York: Routledge, 2009), p 42; Dahl et al., *Importance of Investing in Adolescence from a Developmental Science Perspective*, 554 Nature 441 (2018).

[31] Insel, Tabashneck, et al., *White Paper on the Science of Late Adolescence*, p 36.

patterns of brain activity and cognitive performance under emotional arousal."[32]

A sentence must be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Steanhouse*, 500 Mich at 459, citing *Milbourn*, 435 Mich at 636. The circumstances of a late adolescent offender include a heightened capacity for change. Mandatory LWOP for late adolescents flies in the face of Michigan's emphasis on rehabilitation.

Each of the four *Lorentzen* factors counsels against the mandatory imposition of LWOP on 19-year-olds. Mandatory LWOP (1) poses too great a risk of disproportionate punishment because neither the individual's level of culpability nor the circumstances of the offense are considered; (2) is disproportionate when automatically imposed on late adolescents who the law protects from harsh penalties in other criminal contexts; (3) is imposed by a minority of states; and (4) does not advance the goals of rehabilitation.

b. Mandatory LWOP is a cruel or unusual sentence for an unintended felony murder.

In addition to his reduced culpability due to his age and still-developing brain, Mr. Gelia's lack of intent to kill renders his sentence cruel or unusual under Const 1963, art 1, § 16.

[32] Casey et al., 5 Ann Rev Criminol at 333.

1. First *Lorentzen* Factor: Mandatory LWOP for felony murder is too severe

The first *Lorentzen* factor compares the severity of the sentence to the gravity of the offense. *Bullock*, 440 Mich at 33. LWOP is the most severe sentence available in Michigan. See *Parks*, 510 Mich at 257. Unlike first-degree premeditated murder, felony murder does not require the prosecutor to establish a "willful, deliberate, and premeditated killing." MCL 750.316. To convict of felony murder, the factfinder is not required to find that the defendant possessed any intent to kill. *People v Dumas*, 454 Mich 390, 396-397 (1997) (the prosecutor must prove the defendant acted with malice—which may be the intent to kill, the intent to do great bodily harm, or a wanton and willful disregard of the likelihood that the natural tendency of the defendant's act is to cause death or great bodily harm).

Here, no one testified that they believed that Mr. Gelia intended to kill Brittany Southwell. The lack of intent to kill weighs against imposition of the most severe penalty allowed by law.

The goals of sentencing—retribution, deterrence, incapacitation, and rehabilitation—are not served by mandatory LWOP when the individual under sentence did not intend for death to result from their actions. A case like Mr. Gelia's involves moral culpability that is different from first-degree premeditated murder, thus requiring individualized sentencing that accounts for his "personal responsibility and moral guilt." *Bullock*, 440 Mich at 39.

2. Second *Lorentzen* Factor: Mandatory LWOP for an unintended felony murder is disproportionate compared to penalties imposed on others in Michigan

Mandatory LWOP for an unintended felony murder is overly severe compared to sentences for other offenses in Michigan.

There are only a handful of offenses in Michigan for which LWOP is mandatory for offenders age 19 and older. See MCL 791.234(6) (providing that persons sentenced to mandatory life for the following offenses are not eligible for parole: first-degree murder; possession of

explosives or other injurious substances with malicious intent causing death; selling adulterated drugs with the intent to kill or cause serious impairment of two or more individuals, resulting in death; several felonies that involve intent to kill or cause serious impairment and result in death; several felonies that involve possession of harmful biological or chemical substances and results in death; and recidivist first-degree criminal sexual conduct against a child). These offenses evidence an intent to harm or kill, often more than one person.

It is disproportionate for someone who did not intend to kill to be punished identically to a person who did act with that intent.

3. Third *Lorentzen* Factor: Only 15 states punish felony murder with mandatory LWOP

As discussed above, only 17 other states impose mandatory LWOP for first-degree murder. *Parks*, 510 Mich at 263-264. In Michigan, felony murder is considered first-degree murder and is subject to mandatory LWOP. MCL 750.316; MCL 791.234(6)(a).

Even fewer states impose mandatory LWOP for those convicted of felony murder. Minnesota is among the 17 states that impose mandatory LWOP for first-degree murder. *Parks*, 510 Mich at 263 n 17. But felony murder in Minnesota requires "intent to effect the death of the person or another." Minn Stat 609.185. Without a finding of intent to kill, a killing that takes place during a felony is second-degree murder and is punishable by "imprisonment for not more than 40 years"—not even discretionary LWOP. Minn Stat 609.19. Similarly, felony murder in Missouri is second-degree murder, Mo Rev Stat 565.020, punishable by at least 10 years and no more than 30 years or life in prison. Mo Rev Stat 558.011.

Therefore, only 15 states—including Michigan—punish felony murder with mandatory LWOP. This is far fewer than the 37 states in *Graham* and the 28 states in *Miller* that permitted the challenged sentence. *Graham*, 560 US at 62; *Miller*, 567 US at 482.

The third *Lorentzen* factor supports a finding that mandatory LWOP is a disproportionate punishment for late adolescents.

4. Fourth *Lorentzen* Factor: Mandatory LWOP for an unforeseen and unintended felony murder does not advance the penological goal of rehabilitation

Finally, the Court must consider the relationship between mandatory LWOP and rehabilitation. *Lorentzen*, 387 Mich at 1180-181; *Bullock*, 440 Mich at 34. Mandatory LWOP does not rehabilitate. *People v Carp*, 496 Mich 440, 520-21 (2016), judgment vacated on other grounds by *Carp v Michigan*, 577 US 1186 (2016) (recognizing that LWOP "does not serve the penological goal of rehabilitation"). On the contrary, it "'forswears altogether the rehabilitative ideal.'" *Miller*, 567 US at 473, quoting *Graham*, 560 US at 74.

This Court has noted the "important belief that only the rarest individual is wholly bereft of the capacity for redemption." *Bullock*, 440 Mich at 39-40, n 23, quoting *People v Schultz*, 435 Mich 517, 533-534 (1990). Mr. Gelia's conviction for felony murder does not make him bereft of the capacity for redemption. The evidence presented at trial did not establish that he intended to kill Brittany Southwell. LWOP far exceeds what is required to facilitate Mr. Gelia's rehabilitation.

The fourth *Lorentzen* factor weighs in favor of finding mandatory LWOP unconstitutional for those whose offense involved unintended death.

Mr. Gelia's mandatory LWOP sentence violates Const 1963, art 1, § 16 because his age mitigates his culpability and makes him highly amenable to rehabilitation, and because mandatory LWOP is a cruel or unusual punishment for an unintended felony murder. Resentencing is required.

II. The Court should extend the ruling in *Parks* to 19-year-olds.

When this Court remanded Mr. Gelia's case for reconsideration in light of *Parks*, it is clear that this Court was asking the Court of

Appeals to undertake the *Parks* analysis, and not to issue a patently erroneous two-page per curiam opinion merely saying "even if we wanted to obey the Court's order to reconsider in light of *Parks*, we are constrained from doing so by the Court's 47-year-old holding in *People v Hall*" [396 Mich 650, 242 NW2d 377 (1976)], which, it should be noted, never once mentioned the age or maturity of the defendant as being of importance.[7] Here, Mr. Gelia's age and maturity are the only issues under consideration.

The concept of cruel or unusual punishment is an evolving standard. This Court noted in *Parks* that "the United States Supreme Court has stated that to determine if a punishment is disproportionate, courts must look to the "evolving standards of decency that mark the progress of a maturing society . . . ." (*Roper v Simmons*, 543 US 551, 561; 125 S Ct 1183; 161 L Ed 2d 1 (2005)). *Parks*, 510 Mich at ___. "The definition of this standard is 'progressive and is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice.'" *Parks,* 510 Mich at ____ (quotation marks and citation omitted).

This Court in *Parks* stated that "18-year-olds are acutely sensitive to the potential of social rejection, which increases conformity with their peers. See Blakemore, *The Social Brain in Adolescence*, 9 Nature Reviews Neuroscience 267, 269 (2008)." *Parks,* 510 Mich at ____.

What *The Social Brain in Adolescence* actually stated is:

> Most researchers in the field use the onset of puberty as the starting point for adolescence. The end of adolescence is harder to define and there are significant cultural variations. However, *the end of the teenage years represents a working consensus in Western countries*. Adolescence is characterized by psychological changes that affect an individual's sense of identity, their self-consciousness and their relationships with others. Compared with children, adolescents are more sociable, form more complex and hierarchical peer relationships and are more sensitive to acceptance and rejection by their peers. (Citations omitted; emphasis added.)

[7] The Court of Appeals has decided several other cases remanded to it by this Court for reconsideration in light of *Parks*. In *People v Czarnecki*, the Court of Appeals issued a published opinion holding that it was constrained by *Hall* from extending *Parks* to a 19-year-old defendant. *People v Czarnecki*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 348732); slip op at 3.

Blakemore, *The Social Brain in Adolescence*, 9 Nature Reviews Neuroscience 267, 269 (2008).

Note that the article defines the end of adolescence as "the end of the teenage years." *Id.* The end of the teenage years is age nineteen.

In *Parks*, this Court also noted that

> "the research indicates that late adolescents are hampered in their ability to make decisions, exercise self-control, appreciate risks or consequences, feel fear, and plan ahead. See National Academies of Sciences, Engineering, and Medicine, *The Promise of Adolescence: Realizing Opportunity for All Youth* (Washington, DC: The National Academies Press, 2019), pp 37, 51-52."

Parks, 510 Mich at ____.

The very first sentence of Part 2 of *The Promise of Adolescence* is this: "**A**dolescence is a period of significant development that begins with the onset of puberty *and ends in the mid-20s*"[8] (citation omitted; emphasis added).

The scientific articles relied on by this Court to establish that the state of adolescent brain development precludes imposition of mandatory life without parole as cruel or unusual punishment for an 18-year-old do not define adolescence as ending at age eighteen. Rather, adolescence ends, according to the science relied upon by the Court, at "the end of the teenage years" or "in the mid 20s". Both of these definitions include age nineteen.

For all of the reasons set forth above, this Court must extend the ruling in *Parks* to 19-year-olds.

[8] National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Division of Behavioral and Social Sciences and Education; Board on Children, Youth, and Families; Committee on the Neurobiological and Socio-behavioral Science of Adolescent Development and Its Applications; Backes EP, Bonnie RJ, editors. The Promise of Adolescence: Realizing Opportunity for All Youth. Washington (DC): National Academies Press (US); 2019 May 16. 2, Adolescent Development.

Conclusion and Relief Requested

For the reasons set forth above, Anthony Joseph Gelia respectfully requests that this Honorable Court vacate his sentence for felony murder and remand for resentencing.

Respectfully submitted,

/s/ Kathy H. Murphy
Kathy H. Murphy (P51422)
Counsel for Anthony Joseph Gelia
P.O. Box 51164
Livonia, Michigan 48151
(734) 578-1887
kathy.h.murphy@gmail.com

Date: November 30, 2023

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Respectfully submitted,
/s/ Kathy H. Murphy
Kathy H. Murphy (P51422)
Counsel for Anthony Joseph Gelia
P.O. Box 51164
Livonia, Michigan 48151
(734) 578-1887
kathy.h.murphy@gmail.com

Date: November 30, 2023