SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0321-24
IND. NO. 11-03-00348

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of
v.	:	New Jersey, Law Division, Hudson County
LATONIA E. BELLAMY,	:	
	:	Hon. Mitzy Galis-Menendez, P.J.Cr.
Defendant-Appellant.	:	Hon. Paul M. DePascale, J.S.C., and
	:	a jury.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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1T - transcript of June 7, 2012 (Latonia's trial)

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11T - transcript of March 13, 2013 (Shiquan's first trial)

12T - transcript of September 10, 2013 (Shiquan's second trial)

13T - transcript of September 11, 2013 (Shiquan's second trial)

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15T - transcript of September 17, 2013 (Shiquan's second trial)

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19T - transcript of July 14, 2014 (Shiquan's plea under Indictments 10-10-1805 and 10-11-2041)

20T - transcript of September 11, 2014 (Shiquan's sentencing under Indictments 10-10-1805 and 10-11-2041)

21T - transcript of June 5, 2015 (Darmellia Lawrence's sentencing)

22T - transcript of May 30, 2019 (Latonia's argument on motion to compel DCPP records)

23T - transcript of September 10, 2019 (Latonia's argument on motion for stay)

24T - transcript of September 19, 2019 (Latonia's first resentencing)

25T - transcript of August 14, 2023 (motion to compel co-defendants PSR's)

26T – transcript of July 11, 2024 (application to extend Miller/Comer/Zuber protections to emerging adults)

27T transcript of September 16, 2024 (Latonia's second resentencing)

PRELIMINARY STATEMENT

Should Latonia Bellamy—who committed serious crimes at age 19, under duress and due to transient immaturity—be condemned to die in prison, despite an undisputed scientific record affirming her capacity for change and overwhelming evidence that she has been rehabilitated?

This appeal marks Latonia's fourth attempt to obtain a constitutional sentence. She has now been sentenced three times to the functional equivalent of life without parole. Born addicted to cocaine and abandoned at birth, she endured poverty, chronic neglect, and repeated abuse—physical, emotional, and sexual. Her childhood was defined by instability and trauma. Her mother engaged in prostitution and drug use in her presence, prompting DYFS intervention. Latonia began self-medicating with drugs and alcohol to cope with undiagnosed Complex Post-Traumatic Stress Disorder (cPTSD), which went untreated until her incarceration.

Despite never receiving a meaningful opportunity for release, Latonia has made an extraordinary transformation. She earned a college degree with honors, mentored other incarcerated women, volunteered in the prison's COVID-19 quarantine unit, and facilitated the Alternatives to Violence Project. She testified against a corrections officer who raped her cellmate, advocated for voting rights for incarcerated people, and emerged as a leader in the prison community. Her rehabilitation is exceptional, unchallenged, and well-documented.

Every expert to assess Latonia concludes that her conduct stemmed from duress, untreated trauma, and developmental immaturity—not from permanent incorrigibility. Her risk of reoffending is negligible. The stipulated record before the sentencing court, including peer-reviewed research, confirms that emerging adults like Latonia share the same developmental deficits as juveniles: impaired impulse control, heightened peer susceptibility, underdeveloped risk assessment, and a greater capacity for rehabilitation. The State did not contest this science, nor did it challenge Dr. Perrin's individualized neuropsychological evaluation applying the Miller factors directly to Latonia. This evaluation concluded that her actions arose from trauma and transient immaturity. Yet, despite the undisputed record on this science, as applied to late adolescents generally, and Latonia, specifically, the sentencing court again imposed a de facto life-without-parole term. That result is indefensible under New Jersey law and the federal and state constitutions.

First, the court failed to meaningfully consider Latonia's age and childhood in relation to the offense, violating the Bellamy II remand directive, N.J.S.A. 2C:1-2b(7), the Eighth Amendment, Article I, Paragraph 12 of the New Jersey Constitution, and fundamental fairness. Second, its Yarbough/Torres analysis was flawed. The court gave inadequate weight to Latonia's diminished culpability as an emerging adult, failed to account for the specific context of her conduct, and disregarded the real-time impact of consecutive sentences. Third, the court declined to apply two

mitigating factors strongly supported by the record. It refused to find mitigating factor thirteen, despite overwhelming, unrebutted evidence that Latonia was substantially influenced by her older, more dominant cousin—a conclusion supported by expert evaluations. The court also failed to apply mitigating factor twelve, notwithstanding Latonia's voluntary, courageous cooperation with law enforcement—conduct that placed her at great risk and which gave her no personal benefit. Fourth, the court found aggravating factors one and nine in a manner contrary to precedent and unsupported by Latonia's clear rehabilitation and low risk of recidivism.

Most troublingly, after expressly finding that the mitigating factors substantially outweigh the aggravating ones, the court still imposed harsh consecutive terms that ensures Latonia will die in prison. That outcome contradicts the sentencing court's own findings, undermines the statutory framework, and violates constitutional principles requiring individualized, proportionate sentencing for youthful defendants.

Latonia's sentence must be vacated and this matter remanded for a fourth sentencing consistent with the mandates of our State Constitution, the undisputed science, and fundamental fairness.

PROCEDURAL HISTORY

Hudson County Indictment Number 11-03-0348 charged defendant-appellant Latonia Bellamy and co-defendants Shiquan Bellamy and Darmellia Lawrence with numerous counts related to the murders of Michael Muchioki and Nia Haqq during a carjacking and robbery on April 4, 2010. (Da 1-12)[1] In 2012, Latonia[2] was tried alone before the Honorable Paul M. DePascale, J.S.C, and a jury and was convicted of first-degree felony murder of Muchioki, N.J.S.A. 2C:11-3a(3) (Count 18), first-degree murder of Haqq, N.J.S.A. 2C:11-3a(1) or -3a(2) (Count 24), and related offenses. (Da 5-8, 17, 20, 33, 36) See State v. Bellamy, 468 N.J. Super. 29 (App. Div. 2021).[3]

On February 8, 2013, Judge DePascale sentenced Latonia to life in prison subject to the No Early Release Act (NERA) for the murder of Haqq consecutive to thirty years in prison with a 30-year parole bar for the felony murder of Muchioki. The other counts were either merged or sentenced concurrently. (Da 17); (9T:17-8 to 19-4)

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[1] Given the overwhelming trial record in this case, including voluminous transcripts and appendices, the Table of Citations is set forth in the Table of Contents.

[2] To avoid confusion between Latonia Bellamy and Shiquan Bellamy, they will be referred to by their first names.

[3] State v. Bellamy, 2017 WL 5171843 (App. Div. Nov. 8, 2017) will be referred to as Bellamy I. State v. Bellamy, 468 N.J. Super. 29 (App. Div. 2021), will be referred to as Bellamy II.

Latonia appealed. In an unpublished opinion, the Appellate Division affirmed Latonia's convictions but remanded for resentencing. Bellamy I, 2017 WL 5171843 (App. Div. Nov. 8, 2017) (Da 110-117). The Appellate Division found that the trial judge erred in finding aggravating factor three, the risk that defendant will commit another offense, and in failing to consider mitigating factor eight, that the circumstances were unlikely to recur. Id. at *9. The Appellate Division "remand[ed] for resentencing consistent with this decision." Ibid.

Several legal issues occurred during the remand. The trial judge refused to provide Latonia access to her DYFS[4] records, refused to hold a full resentencing telling defense counsel that the remand was limited to the applicability of mitigating factor eight, and refused to find mitigating factor eight, repeating that "post-sentencing rehabilitation is not within the scope of this hearing." (24T:65-23 to 68-5) The judge referred to the original sentencing, incorporated the findings of mitigating factor seven and aggravating factors one and nine, and reimposed the same sentence. (Da 33-36); (24T:61-1 to 72-13)

Latonia appealed again. In a published opinion, the Appellate Division remanded for resentencing. Bellamy II, 468 N.J. Super. 29 (App. Div. 2021). The Court found that the trial judge erred by failing to hold a plenary

[4] The Division of Youth and Family Services (DYFS) is now the Division of Child Protection and Permanency (DCPP).

resentencing hearing. Id. at 39-41. Because "circumstances evolve and people change over time," a sentencing court on remand must evaluate "the whole person standing before the court at that moment." Id. at 41. Second, the judge erred by failing to release the DCPP records to the defense. Id. at 48-49, noting that "[a] defendant who commits an offense at nineteen, an age barely out of childhood, should be entitled to redacted records for her benefit to enable her to address this sentence, arguably one of the most important events in her history." Id. at 49 (Emphasis added). Third, the panel agreed with the defense that the next sentencing should be before a different judge as the trial judge seemed unable to overcome his moral outrage at the offense and consider Latonia's post-sentence rehabilitation. Id. at 49-51 Fourth, the panel stated that then-new mitigating factor fourteen, which applies to defendants under twenty-six years old at the time of the offense, must be applied at the next resentencing. Id. at 42-48. The panel noted that both the United States and New Jersey Supreme Courts have recognized that the "parts of the brain involved in behavior control continue to mature through late adolescence." Id. at 46 n.3 (internal quotation omitted). Finally, the panel clarified which counts should merge and which should receive sentences. Id. at 41-42.

On remand, Judge Patrick J. Arre ordered disclosure of the DCPP file for in-camera review. (Da 42) On July 20, 2022, Judge Mitzy Galis-Menendez

issued a protective order and released extensive redacted records to defense counsel. (Da 43)

Prior to sentencing, in extensive briefing and appendices, as well as at sentencing, defense counsel, joined by amici,[5] moved to extend constitutional protections recognized in Miller to emerging adults. In support of that application, the defense submitted robust scientific literature and expert reports on late adolescent development, offending, and desistence, demonstrating that emerging adults are developmentally indistinguishable from children and unlikely to reoffend after their brains are fully formed. (Da 206-223); (Dca 403-411); (Dca 417-452); (Dca 453-454); (26T:39 6-14); (27T8 2-12) The State did not dispute this evidence, arguing only that Latonia was not entitled to Miller protections under our current law. (26T109 2-15) The resentencing judge agreed. In a twenty-three-page written opinion, Judge Galis-Menendez accepted the undisputed science that nineteen-year-olds are developmentally indistinguishable from juveniles but found that she was not authorized by law to extend constitutional protection to Latonia as an emerging adult. (Da 309-331)

Latonia was sentenced on September 16, 2024. Judge Galis-Menendez found that the mitigating factors substantially and clearly and convincingly

[5] Amici included the Roderick and Solange MacArthur Justice Center, the Association of Criminal Defense Lawyers of New Jersey (ACDL-NJ), the Rutgers Criminal and Youth Justice Clinic, and the American Civil Liberties Union (ACLU).

outweighed the aggravating factors. (27T168 17-21) (Da 270) Latonia was sentenced to thirty years in prison with a thirty-year parole bar for the felony murder of Muchioki, consecutive to forty years in prison, subject to NERA, for the murder of Haqq, a de facto life sentence. (Da 268); (27T168 10-14); (27T168 22-25)

On October 2, 2024, Latonia filed a timely notice of appeal. (Da 272-276) On November 4, 2024, an amended notice of appeal was filed. (Da 277-281)

STATEMENT OF FACTS

A. Latonia's Childhood[6]

Latonia Bellamy was born on October 5, 1990, addicted to cocaine. (PSR I); (PSR II); (PSR III); (Dca 423) (27T26 8-10) Her mother, Tiffany, was addicted to drugs and turned to prostitution to support her addiction. Id., see also (27T31 2-4) (27T29 19-21)

Tiffany left Latonia in the hospital after birth, and Latonia had to be brought home by her maternal grandmother. (27T33 16-17) When Latonia was a toddler, Tiffany was often incarcerated. (27T26 12-21) When she was not, Latonia frequently witnessed her using drugs. (27T21 12-21); (27T26 6-8); (27T20 14-16) Latonia was shuffled between homes, spending a substantial amount of time with her grandmother and her Aunt Charlette Givens. (27T24 1-5) Givens's apartment was overcrowded but provided a relatively stable environment. (Dca 423); (27T34 10-11)

When Latonia was six, Tiffany showed up one night and took Latonia and her sister, Latura, to North Carolina where they lived in a trailer with Tiffany and her boyfriend, Tirell Ross. Tiffany continued to use marijuana and cocaine, even while pregnant with Latonia's brother, Tirell Jr. (Dca 423) Tiffany and Tirell Sr.

[6] In addition to the expert report of Dr. Charles Most (Dca 403-411) and Dr. Megan Perrin (Dca 417-452), Latonia's dysfunctional family life and troubled childhood are set forth in the redacted DYFS records and Law Guardian records. (Dca 1-230); (Dca 231-402)

frequently beat the children. Latonia was punished for trying to defend her siblings and told a DCPP worker that she "got beatings for everybody." (Dca 424)

Tirell Sr. began sexually abusing Latonia when she was six years old. Latonia did not report the abuse because she was afraid that Tiffany would assault Tirell Sr. and return to prison. (Dca 424-425) When Latonia was ten, Tiffany was reincarcerated and she and her siblings returned to New Jersey and moved in with Givens. (Dca 425) Although Givens had a stable job as a schoolteacher, she was a single woman raising seven children and battling a gambling addiction. Consequently, Latonia became responsible for managing the household and taking care of her cousins. Latonia cleaned the apartment and washed everyone's clothes, traveling to a laundromat to use the dryer. She did her cousins' hair, made them meals, and helped with their homework. (Dca 425) When Latonia was twelve, Tiffany got a two-bedroom apartment and Latonia and Latura returned to living with her. However, they were soon evicted and began living at the Spinning Wheel Motel off a highway in Jersey City. Tirell Sr. and Tirell Jr. were also living at the motel and Latonia felt unsafe there. (Dca 426) Tirell Sr. continued to be physically abusive towards Tiffany and the children, and he knocked out one of Tiffany's teeth. (Dca 302, 429) DCPP records from 2003 document that a caseworker came and that Tiffany and Tirell Sr. admitted to drug use. (Dca 302-303, 429) Tiffany and

the children were relocated to Hudson Plaza Motel in Bayonne to escape from Tirell Sr. (Dca 302, 429)

After getting away from Tirell Sr., Latonia and her siblings were often left alone in the motel room. During the days when Latonia and her sister were at school, Tiffany stayed with Tirell Jr. But in the evenings, Tiffany often left the children alone while engaging in prostitution. The children were terrified to be left alone in the motel all night. (Dca 426) At times, Tiffany brought older men back to the motel room and stole their valuables. (Dca 427) When Tiffany stayed home, she spent hours in the bathroom, getting high and picking at her skin. The children sat on their beds and watched television. (Dca 426)

The children were constantly hungry. Latonia used a skillet to cook whatever meals she could for the other children. Sometimes Latonia went across the street to a diner and used vouchers to purchase food. (Dca 426) DCPP records document that Latonia and her sister reported that they were often left alone in the motel room with nothing to eat. (Dca 304, 429)

One day, Latonia found Tiffany passed out in the bathroom, suffering from an overdose. Her sister alerted the motel security guard while Latonia stayed with two-year-old Tirell Jr. The police came and arrested Tiffany. (Dca 426) DCPP records from 2003 document that Tiffany was hospitalized in critical condition with internal bleeding. Tiffany gave consent for the children to be

placed with Givens. In 2004, the placement of Latonia and Latura with Givens continued because Tiffany was incarcerated. (Dca 104-105, 429)

During Latonia's teen years, she returned to live with Tiffany, where the abuse continued. Tiffany called her daughters "whores" and "bitches." (Dca 424) At age fourteen, Latonia began drinking and smoking marijuana. Initially, Tiffany gave her the drugs and alcohol. Then Latonia began smoking marijuana occasionally in social settings. By age eighteen, she was taking ecstasy three to four times per week. The drugs helped her cope with depression, anxiety, poor self-esteem, and feelings of inferiority. (Dca 433)

The sexual abuse that began in her childhood continued throughout Latonia's teen years. Latonia was sexually abused by a seventh-grade teacher and two cousins. A friend's stepfather attempted to abuse her by asking to perform oral sex on her. (Dca 427) When she was eighteen, Latonia was raped by a classmate named Hazmir. Latonia fought back at first but then stayed motionless. She dissociated during the assault, as is common in situations of trauma: she felt numb and felt like she could see herself being raped. Afterwards, she had a sexually transmitted disease. Latonia never told anyone. Latonia was used to bottling everything inside of her; she thought that no one would believe her; and she did not want to remember the traumatic experience. (Dca 428)

The adversity of Latonia's childhood caused her to self-harm and develop suicidal thoughts. She developed a habit during adolescence of pulling out strands of her hair. When she began to feel pressure to go to college to support her family, she contemplated walking into traffic. She wondered if her family would even notice that she was gone. (Dca 432-433)

Despite the difficulty of her childhood, Latonia attended school in main-stream classes and was never held back. (Dca 429) She graduated high school in 2009 with a B average. Latonia recalls that she could have done better, but that she lacked motivation and did not know that a high grade-point average would help her go to college. (Dca 430)

In Fall 2009, Latonia went to Felician College in Lodi on a scholarship. However, she struggled with feelings of inferiority and did not socialize with other students. She came home nearly every weekend (Dca 430, 447). Her drug use interfered with her coursework and her first semester grades were very poor. (Dca 433-434); (Da 158)

B. The Circumstances of the Offense

On April 4, 2010, Latonia was back in Jersey City at a cookout where Darmellia Lawrence and her cousin Shiquan Bellamy were present. Unbe-knownst to Latonia, Shiquan and Darmellia had already murdered three people. In February 2010, they were accomplices in an armed robbery where two people

were killed. Darmellia lured the victims to the scene and Shiquan personally killed one with a shotgun. (Da 91, 106); (8T10-2 to 11-24); (19T 8-4 to 10-11) In March 2010, Shiquan shot and killed another man with a shotgun. (Da 95); (19T 10-19 to 11-4)

Guests at the cookout were drinking and Latonia was also taking ecstasy. (Dca 421); (5T57 17 to 58-8, 79-7 to 22) Latonia commented to the others that she wanted to learn to shoot a gun. Bellamy I, 2017 WL 5171843 at *2. Shiquan then pulled a gun out and pointed it at Latonia's boyfriend. Shiquan looked like he intended to shoot. Latonia explained that Shiquan's eyes "got dark. He was like a different person when he had a gun." (Dca 421)

Latonia, Shiquan, and Darmellia went out and walked around Jersey City. Latonia believed that they were looking for an empty lot to shoot some cans. (5T27 11-15) Bellamy I, 2017 WL 5171843 at *6. Because her cPTSD made her dissociate in certain situations, Bellamy was unable to discern Shiquan's true intentions in going for a walk. (Dca 409). Latonia carried Shiquan's 9mm pistol and Shiquan carried a shotgun. (5T26 17 to 27-6) Bellamy I, 2017 WL 5171843 at *2. However, when they came upon Michael Muchioki and Nia Haqq, Shiquan unexpectedly held them up at gunpoint. He took their valuables and ordered them to lie on the ground. Shiquan then shot Muchioki in the head with the shotgun. (5T28 3 to 29-9) Bellamy I, 2017 WL 5171843 at *2. He turned to

Latonia, and said, "You want to shoot a fuckin gun, shoot the gun." When Latonia hesitated, he repeated, "Shoot the fuckin gun." (5T29 10-13) Bellamy I, 2017 WL 5171843 at *5.

But Latonia didn't want to shoot. (5T27 16-17); (5T29 20-23); (5T31 11-15); Bellamy I, 2017 WL 5171843 at *2. She was "shocked" and felt "paralyzed" and helpless. (5T29 10-15); (5T30 10-13); (5T52 8-22), (5T60 10 to 62-2) She was terrified of what Shiquan might do to her if she refused to comply. (5T30 24 to 32-10, 47-22 to 48-3, 52-8 to 22) Bellamy I, 2017 WL 5171843 at *2. In that terrifying moment, she felt "zoned out" and "stuck in space." (Dca 422) Latonia pointed the pistol towards the ground, hoping that she would miss Haqq and Muchioki. She turned her face away and fired two shots. (5T29 10 to 30-6, 42-14 to 25, 55-10 to 17) Bellamy I, 2017 WL 5171843 at *2. Shiquan then grabbed the pistol from Latonia and shot Haqq in the head. (5T 30-7 to 9) Bellamy I, 2017 WL 5171843 at *2. The three got in the victims' nearby car but could not drive away because there was a locking device on the steering wheel. They then ran away on foot. (5T30 19-23) Bellamy I, 2017 WL 5171843 at *2.

After the shooting, Latonia heard that the police were looking for her. She went to the police station of her own volition, without being arrested, and gave a statement. (5T19 7 to 21-9, 73-5 to 75-8) The incident was "haunting" her, and she "wanted the truth to be known." (5T25 7-16) She also felt like she needed

to talk to the police because the victims' families deserved to know what had happened. (Dca 435) Latonia had never been arrested and had no personal experience with the legal system. (Dca 448)

The victims' injuries were consistent with Latonia's account that she shot at the ground before Shiquan took the gun and shot Haqq in the head.[7] Muchioki's body had a near-contact shotgun wound to the head and a gunshot wound to the buttocks that was determined to be from a gun fired from further away.[8] Haqq's body had a gunshot wound to the thigh --- which appeared to be caused by a bullet that ricocheted off the pavement --- and a gunshot wound to the back of the head. Bellamy I, 2017 WL 5171843 at *2. The medical examiner opined

[7] The State endorsed Latonia's account. Indeed, the prosecutor considered calling Latonia as a witness at Shiquan's second trial. The prosecutor petitioned for a court order requiring Latonia to testify truthfully under a grant of immunity. (Da 44-50) The petition described the expected truthful testimony to be the same as Latonia's trial testimony: "Shiquan Bellamy shot Michael Muchioki in the head with the shotgun. Latonia Bellamy fired at the ground but refused to kill Nia Haqq. Shiquan Bellamy took the 9-millimeter handgun from her and shot Nia Haqq in the head." (Da 45-46)

[8] Latonia's account was supported by DNA testing that was completed in preparation for Shiquan's second trial. At Latonia's trial, the jury knew that nothing significant was observed on Latonia's clothing when police recovered it. (3T100 10-21) They knew that a bloodstain appeared to be on Shiquan's jacket when police recovered it; whose blood was undetermined at the time of Latonia's trial. (3T78 11-23, 82-20 to 83-5, 99-20 to 100-9) But by the time of Shiquan's second trial, extensive testing had been done on his jacket. Evidence was then presented of six blood stains. All six contained Haqq's blood. Two also contained Muchioki's blood. (Da 85, 86); (15T 41-2 to 45-6) This evidence further supported Latonia's account of what happened.

that Haqq suffered the thigh wound before the instantly-fatal head wound. (2T141 21 to 142-19)

C. Post-Sentence Rehabilitation

Latonia's transformation in prison has been extraordinary. While incarcerated, she has participated in as many institutional programs as possible, including sixteen religious or bible studies programs, eight business or job training programs, a substance abuse program, two family reunification or reentry programs, a program for rape survivors, and two self-help programs. (Da 160-196)

She has also become a mentor to others. She worked as a literacy volunteer tutoring prisoners. (Da 161) (Dca 449) She also took the Alternatives to Violence Project workshop, trained to facilitate the workshop, facilitated both the basic and advanced workshop, and even trained other facilitators. (Da 189, 186, 185, 179, 166). The leader of the program wrote that her involvement "shows her determination to lead a more positive life." (Da 125)

During the pandemic, Latonia worked in the quarantine wing of the prison where she cleaned and fed sick inmates. She explained her motivation: "I often think, when you die, what do you want people to say about you? That I was compassionate, helpful and generous. I want to be remembered as helping somebody. Like I did a good deed. Like despite the circumstance, I was still able to help somebody else." (Dca 449)

Latonia completed her college education with distinction through the NJ-STEP program. In 2019, Raritan Valley Community College awarded Latonia an associate's degree in liberal arts. (Da 143-144) At Raritan, Latonia was on the Dean's List. (Da 156) In May 2022, Rutgers University awarded Latonia a bachelor's degree in justice studies. Her cumulative grade point average was 3.83, and she graduated magna cum laude. (Da 139-142) She was a member of the National Society of Collegiate Scholars and a member of the Golden Key International Honor Society. (Da 150-155, 157)

Latonia's academic research has been inspired by feminist scholars. She is particularly interested in factors that lead young women of color to experience trauma and adversity and then to be involved in the justice system. She is interested in pursuing a master's and a doctorate degree. (Dca 430-431, 449) If released, she would like to provide mental health services to girls who have suffered abuse. She also hopes to publish a book of poems. (Dca 450)

Latonia's professors have written letters of support stating:

> ● Latonia "was frequently at the top of her class, not only when it comes to preparedness, but also internalizing the broader concepts of the class and demonstrating excellent critical thinking skills." She had a "joy for learning" and a "steadfast devotion to improving herself." (Da 119); (27T105 1-5)
>
> ● Latonia "earned close to perfect scores," was a "model student," and had a "willingness to take personal responsibility for [her] actions, past and present,

> as well as the ability to practice patience, endurance, and productive collaboration with others under extraordinary circumstances." (Da 120); (27T105 7-17)
>
> ● Latonia was an "exceptional collegiate learner" and had a "notable respect for the perspective of others." (Da 122); (27T105 18-23)
>
> ● "Ethical issues were central" to Latonia. Her "work exuded a deep thoughtfulness, not only on the material of the course but also on the circumstances of her life." She was "gentle and never aggressive," and "commanded the respect and affection of her fellow students." (Da 123); (27T105 25 to 106 1-8)
>
> ● Latonia "showed empathy for and was very considerate of others in the class that demonstrates her ability to relate to others well above her self-interest." She "genuinely recognized the class experience as a means to enhance her intellectual life, and ultimately, be able to contribute to society in a positive way once she is released. . . . She is a young woman who definitely possesses the emotional, and social skills that will support the positive direction she has taken. It is my hope that she will be given the opportunity to reenter society shortly as she has so much to give others." (Da 124); (27T106 9-23)

Among other accomplishments, Latonia offered written testimony to the New Jersey Assembly in support of voting rights for incarcerated people. Latonia described her childhood and her transformation in prison and asked for the vote "so [her] voice can be heard." (Da 132); (27T111 9-24); (27T112 2-25 to 113 1-4); (27T167 22-24)

Another noteworthy event during Latonia's incarceration was her testimony at the federal trial of Essex County Corrections Officer Shawn Shaw. Shaw was on duty alone one evening during a blizzard. (Da 250, 252) Latonia witnessed Shaw taunting and making sexually explicit comments to her cellmate. Later that night, Shaw raped the cellmate while Latonia was asleep. (Da 199, 201); Dca 406) Latonia, as a sexual assault survivor, cooperated in Shaw's prosecution out of a sense of moral duty; she received no promise of leniency. (Dca 406) The federal prosecutor called Latonia's cooperation "substantial" and "critical." The prosecutor commended her for testifying "even though she received no benefit for her cooperation." (Da 118) Shaw was convicted and sentenced to 25 years. (Da 118, 201)

Latonia gave birth to a baby girl in September 2022. (Da 68) The baby was the result of a consensual relationship with a transgender inmate housed at the women's prison. (Dca 438) Latonia is engrossed in ensuring that the baby has a good home and does not experience the adversity that she did. (Da 63- 69); Dca 438) Latonia pumped breast milk several times a day and the baby's guardian picked up the milk at the prison weekly. Latonia also participates in biweekly bonding sessions with the baby. The pregnancy led to the one and only

disciplinary infraction that Latonia has had in her entire time in prison: an infraction for engaging in sexual relations. (Da 59, 76, 77)[9]

D. Psychological Evaluations

In October 2022, Dr. Perrin administered the Adverse Childhood Experiences ("ACEs") questionnaire to Latonia. Latonia scored ten out of ten, indicating "severe trauma during childhood." That put her at "elevated risk for disruptive emotions, behavioral dysfunction, and maladaptive coping mechanisms in adolescence." (Dca 423-424) In fact, after a thorough analysis of all available information, Dr. Perrin concluded that, beginning in early adolescence, Latonia suffered from complex post-traumatic stress disorder ("cPTSD"). This disorder is a severe form of PTSD characterized by intrusive memories, persistent avoidance of reminders of prior trauma, hyperarousal, negative alterations in cognition and mood, and disturbances in affective and interpersonal functioning. (Dca 434)

[9] Latonia told Dr. Perrin of two other very minor incidents where she received punishment. Dr. Perrin correctly noted that the incidents were not officially listed as part of Latonia's record. (Dca 436) It appears that Latonia received "On-The-Spot-Corrections," which are a very minimal punishment imposed immediately by a corrections officer for a minor error. See N.J.A.C. 10A:31-16.5. The Department of Corrections attaches no significance to such incidents and does not list them as discipline on the face sheet and progress notes. Dr. Perrin noted that Latonia wanted to "candidly address[] her minimal disciplinary history." (Dca 436) This speaks volumes about her honesty and candor during the evaluative process.

Latonia's complex PTSD shaped her deeply during her first formative years, manifesting in a range of emotional, behavioral, and cognitive challenges. In general, childhood trauma disrupts the development of the parts of the brain responsible for self-regulation. (Dca 444-445) This disruption impeded Latonia's ability to manage emotions, created a tendency to engage in impulsive, risk-taking behaviors, and exacerbated the inability to appreciate consequences and vulnerability to peer influence that all young people experience. (Dca 434, 446, 447) Latonia's cPTSD could cause contradictory responses to further trauma: she could be hyper aroused and thoughtlessly lash out, or she could dissociate into an altered state of awareness, becoming passive and submissive. (Dca 440, 448) She could experience "both extreme emotions and emotional numbing." She could "seek out risky, emotionally evocative situations, yet avoid confrontation." (Dca 445)

Latonia's disorder made her feel "different, disconnected, and inferior to her college classmates" and more comfortable around childhood friends who had experienced similar trauma. (Dca 434, 447) She was especially fearful around men, viewing them as predators. (Dca 432, 433) To cope with the complex psychological symptoms of her trauma, Latonia turned to drugs and alcohol as a form of self-medication. (Dca 433, 447)

Dr. Perrin emphasized that Latonia "wasn't thinking" during the shooting and felt "zoned out" and "stuck in space." (Dca 422, 448). Her opinion was that the extreme stress triggered an altered state of awareness characteristic of cPTSD, leaving Latonia passive and submissive. In this state, Latonia "was reacting to a perceived life threat and acquiescing to the demands of her domineering, terrifying cousin." (Dca 448)

Dr. Charles J. Most concurred in the diagnosis of PTSD, with "dissociative symptoms of depersonalization." (Dca 406, 408) Dr. Most likewise described how Latonia's mechanisms for coping with traumatic events included passivity and dissociation. (Dca 408) Latonia tended to "avoid seeing the reality around her." (Dca 409) Dr. Most opined that on the night of the shooting, Latonia would have been characteristically unable to perceive Shiquan's nefarious intentions when they went out for a walk. Then, during the robbery and shooting, Latonia appeared to dissociate: "It was as though she wasn't present, it was as though this crime was not actually happening." (Dca 409)

To this day, Latonia suffers residual post-traumatic stress symptoms, including anxiety, insecurities, and upsetting memories, which she tries to suppress. (Dca 439-440) Dr. Perrin commends Latonia's hard work in overcoming her disorder through "sincere dedication to personal growth and betterment," through "supportive group therapies and faith-based spirituality groups," and

through a "healthy support network of mental health professionals, clergy, former professors and inmates." (Dca 437-438, 449) Dr. Perrin opined that Latonia's:

> negative perceptions of herself and others appear to have resolved with treatment and her recommitment to her faith and spirituality. She appears to have developed a stable, internal sense of identity and interpersonal relatedness. She no longer relies on others for self-affirmation and is less vulnerable to the influence of others.
>
> [Dca 440]

Moreover, while acknowledging that Latonia violated prison rules by engaging in a sexual relationship, Dr. Perrin opined that the relationship was consensual and beneficial. Indeed, peer-reviewed studies suggest that consensual sexual relationships between incarcerated individuals are associated with improved mental health outcomes. (Dca 438)

Latonia continues to carry profound guilt for her role in the offenses. This guilt has never abated. She tearfully stated to Dr. Perrin:

> I'm so sorry for what happened. I'm so sad that people died. And I can't take that back. I'll never be able to take that back. I do understand the grief and sorrow and pain. I am sorry for the grief that I caused that family. . . . For me, I keep apologizing because it's someone you can never get back. You can't put that life back that was lost. It was a sister, an aunt, an uncle or cousin, you can't restore that for that family. What was lost. For me, it is so sad. It's like unended grief or sorrow for the family. It's like will it ever get easy? A life is a life

> whether they are 5, 15 or 25. Who are you to take someone's life?"
>
> [Dca 450]

E. 2024 Resentencing

Before the most recent sentencing, the defense moved to extend Miller and Comer protections to emerging adults and presented extensive scientific reports on late adolescent development, offending, and desistence demonstrating that emerging adults are indistinguishable from juveniles and are unlikely to reoffend after their brains are fully developed. (Da 206-223); (26T) The State stipulated to this evidence, but argued that despite the science, Latonia was not entitled to Miller protection under our current law. (26T109 2-15) The sentencing judge agreed. In a twenty-three-page written opinion, (Da 245-267) Judge Galis-Menendez accepted the undisputed science that nineteen-year-olds are developmentally indistinguishable from juveniles, stating: "The developmental science is undisputed and has been stipulated to by the State. The Court acknowledges and considers the validity of the developmental science." (Da 256) In addition, the Court stated:

> In asserting these holdings [Miller, Zuber, Comer] should be extended to young adult offenders, Defendant submits, and the State does not dispute, scientific data that allegedly portrays how nineteen-year-olds share the same characteristics as juveniles. Defendant submits voluminous exhibits portraying the undisputed science that young adolescent offenders have similar

> characteristics as juveniles. The State stipulated to the exhibits[,] and no evidence was presented that contradicts the evidence Defendant provided.
>
> [Da 258] (Emphasis added)

Despite accepting the undisputed science and the voluminous stipulated record, the trial judge nonetheless found that "the factors enumerated in Miller" "simply do not apply." (Da 263) The judge concluded that she could not extend juvenile constitutional protections to emerging adults under the current law.[10] (Da 263, 266-267), stating:

> Therefore, while acknowledging and considering the credibility of the developmental science presented, the Court declines to extend the holdings of Miller, Zuber, and Comer, to young adult offenders, like Defendant, who are nineteen years old at the time of the offense. Thus, the statutory minimum sentence Defendant may receive for murder is thirty years with a thirty-year parole bar.
>
> [Da 266-267]

At resentencing, this robust evidentiary record was presented to Judge Galis-Menendez, along with a mitigation video documenting Latonia's background and transformation. (Da 1-242); (Dca 1-454); (27T7 2-21); (27T8 2-13) Four of

[10] The sentencing judge further noted that "Defendant is not eligible for a resentence under Comer because she has not yet served twenty years in prison. Defendant has served approximately fourteen (14) years. Accordingly, the Miller factors are inapplicable to Defendant who was not a juvenile at the time of the offense and has not yet been incarcerated for twenty (20) years." (Da 264)

Haqq and Muchioki's friends and family members gave victim impact statements. (27T128 20 to 141-18) Latonia also spoke. She accepted full responsibility for her actions, expressed regret to the victims' families and told them that she prays for them. (27T158 4 to 160-21)

Judge Galis-Menendez found aggravating factor one because the victims were shot after they complied with Shiquan's orders to get on the ground, as well as aggravating factor nine, which she gave great weight. (27T163 5 to 164-6) Based on the psychological evaluations and the mitigating evidence presented about Latonia's rehabilitation, Judge Galis-Menendez found mitigating factors four (moderate weight), seven (moderate weight), eight (great weight), nine (great weight), and fourteen (great weight) and found that the mitigating factors substantially and clearly and convincingly, outweighed the aggravating factors. (27T164 7 to 168-21) Although defense counsel argued mitigating factor thirteen applied, the Court failed to consider this factor whatsoever.

Judge Galis-Menendez then sentenced Latonia to the equivalent of life without the possibility of parole: thirty years in prison with thirty years of parole ineligibility for the felony murder of Muchioki consecutive to forty years in prison subject to the No Early Release Act (NERA) for the murder of Haqq. (27T168 22 to 169-14) The remaining convictions merged or received concurrent sentences. (Da 268-271)

To justify the imposition of consecutive sentences for the murder and felony murder convictions, Judge Galis-Menendez stated that "a consecutive sentence is appropriate, as the crime consisted of two victims and was the result of defendant engaging in two separate acts of violence." (27T171 4-7) The judge's statement as to the overall fairness of the length of the sentence was as follows:

> [I]n considering the overall fairness analysis, this Court finds consecutive sentences to be fair. Defendant's actions led to multiple violent acts which resulted in the death of two victims. While this Court considers that defendant was . . . a 19 year old due to the upbringing and diagnosis of CPTSD, defendant was still an adult under New Jersey law whose actions resulted in the loss of not one, but two innocent lives. When evaluating the overall fairness of the defendant's sentence, the Court considers defendant and has considered defendant as the person she stands before me today.
>
> Defendant is, as previously mentioned, 33 years old, whose achievements while incarcerated have been tremendous and cannot be overlooked. However, this Court cannot overlook the circumstances of these crimes. The victims were merely returning home from their engagement party when they were murdered. Defendant's involvement in perpetrating those murders cannot be tolerated. Accordingly, the Court finds consecutive sentences to be fair and appropriate under Yarbough.
>
> [27T171 8 to 172-5]

Latonia's aggregate sentence totals 64 years. She will not be eligible for parole until April 14, 2074—at which point she will be 83 years old, if she is still alive.

LEGAL ARGUMENT

Latonia has been sentenced three times. The decision in Bellamy II, which remanded the case for a third sentencing, required that Ms. Bellamy receive an individualized sentencing determination that reflects her unique circumstances, and complies with applicable legal principles. 468 N.J. Super. at 41 (citing State v. Randolph, 210 N.J. 330, 349 (2012)).

In its remand decision the Bellamy II court gave explicit instructions:

1. Consideration of mitigating factor fourteen must be included with the rest of the resentencing, 468 N.J. 29, 41 (App. Div. 2021);
2. "A defendant who commits an offense at nineteen, an age barely out of childhood, should be entitled to redacted [DCPP] records for her benefit to enable her to address this sentence, arguably one of the most important events in her history", id. at 49;
3. "The new judge should at least include in [its determination of whether concurrent or consecutive sentences are justified] [an] analysis [of] the real time consequence here, including the effect of mandatory parole bars." Id. at 50.

In short, this decision contemplates a fulsome consideration of Latonia's age in the context of her offense as well as how it pertains to an appropriate sentence. While the sentencing court did consider, and give great weight to, mitigating factor

14, this finding is insufficient given the remand order, the constitutional issues at issue on this record, and our state's jurisprudence on fundamental fairness. The court's failure to adequately consider Latonia's age in context requires that she be given a new sentencing hearing.

POINT I

THE SENTENCING COURT ERRED IN REFUSING TO APPLY THE MILLER FACTORS. (U.S. Const. amend. VIII, XIV; N.J. Const. art. I, ¶ 1, ¶ 12); (Raised Below) (26T109 2-15); (26T115-16 to 116-15); (26T53 12-20)

A. THE BELLAMY II REMAND ORDER CLEARLY CONTEMPLATES CONSIDERATION OF THE MILLER FACTORS THROUGH APPLICATION OF MITIGATING FACTOR 14.

The Bellamy II remand required not only that Latonia be considered as she stood before the court at the time of sentencing, 468 N.J. Super. at 39-40, it also required the court to consider how her "childhood provides context for her criminal conduct", id. at 50, if such proofs were offered. id. at 41.

While the order does not reference the Miller factors per se, the parameters of the remand are clearly consonant with the Miller factors. First, the court remanded for consideration of mitigating factor fourteen, whether she was under 26 at the time of the offense. Id. at 41-43. This corresponds to Miller factor one, age and its hallmark features. Miller v. Alabama, 567 U.S. 460, 477 (2012). Second, the court remanded for consideration of how Latonia's childhood played a role in the offense,

id. at 49-50. This corresponds to Miller factor two, family and home environment, from which it is particularly difficult for young people to extract themselves. Miller, 567 U.S. at 477. Third, the court remanded for consideration of whether concurrent or consecutive sentences were warranted, given the real-time consequences of such sentences. Bellamy II, 468 N.J. Super. at 50. This corresponds to Miller factor five, the notion that young people are particularly amenable to rehabilitation. Miller, 567 U.S. at 477-78.

Indeed, the Bellamy II court nods to the Miller factors in its discussion of mitigating factor 14, noting that, "unquestionably, the Legislature wanted to fill a void in N.J.S.A. 2C:44-1b by making a convicted person's youth a standalone factor in the court's sentencing calculus." Id. at 46. The Court recognized that mitigating factor 14 "embodied an argument defendant has made since her first hearing: that her age at the time of the killings warranted consideration at sentencing." Id. at 43. Notably, the enactment of mitigating factor 14 is not meant to limit consideration of age to the mere fact of whether a person is under the age of 26 or not; the change is meant to "broaden the court's consideration of age as a mitigating factor for determining sentences." State v. Rivera, 249 N.J. 285, 302 (2021) (citing S. Judiciary Comm. Statement to A. 4373 1 (L. 2020, c. 110)). Or, as the Bellamy II court held, "[i]f presented with the argument, a new judge must at least have the information necessary to assess whether defendant's childhood provides context for her criminal

conduct." 468 N.J. Super. at 50.

Judge Galis-Menendez properly found that mitigating factor fourteen applied to Latonia and accorded it great weight. However, the court failed to conduct the requisite fulsome analysis of all five Miller factors, depriving Latonia's youth of the full consideration the remand required, though Latonia offered substantial proof on these factors. The result is a paradox: although the court considered her age and its attendant circumstances, it imposed the same functional outcome as before—condemning Latonia to die in prison. Thus the "ameliorative" promise of mitigating factor 14, which the Bellamy II court reminded "has the potential to effect a "reduction of a criminal penalty" remains unfulfilled. Id. at 47.

B. THE SCIENTIFIC PRINCIPLES THAT REQUIRE CONSIDERATION OF THE MILLER FACTORS FOR JUVENILES APPLY WITH EQUAL FORCE TO 19-YEAR-OLD LATONIA.

The overwhelming and stipulated scientific record establishes that adolescents, like juveniles, are less culpable, more shaped by adverse home environments, more susceptible to peer influence, less capable of navigating the legal system, and more amenable to rehabilitation. (Da 206-223) This scientific record was clearly before the court.[11] One of the tenets of New Jersey's sentencing

[11] At the presentence hearing on July 11, 2024, 122 exhibits were admitted into evidence. (26T3 to 26T36) Of these exhibits, 89 consisted of scientific articles, all of which were relied upon by Dr. Tarika Daftary-Kapur in preparing her report entitled The State of the Science: Late Adolescent Development, Offending, and Desistence Scientific Report. (Da 206-223)

law is "[t]o advance the use of generally accepted scientific methods and knowledge in sentencing offenders." N.J.S.A. 2C:1-2 b(7) Since "a judge's sentencing analysis is a fact-sensitive inquiry, which must be based on consideration of all the competent and credible evidence raised by the parties at sentencing", this record cannot be ignored. State v. Jaffe, 220 N.J. 114, 116 (2014); see also State v. Torres, 246 N.J. 246 (2021) (reaffirming the need to make an individualized assessment of why a sentence, particularly a consecutive or life-equivalent sentence, is appropriate given the particular facts of the case and defendant).

The scientific record before the court clearly demonstrated that the Miller factors applied. The State did not dispute the scientific evidence submitted in support of the defense's motion to extend Miller protection to emerging adults; in fact, it expressly stipulated to its validity. (26T109 2-14); (26T 115-16 to 116-15); (Da 254, 256, 259)

Likewise, Judge Galis-Menendez "acknowledge[d] and consider[ed] the validity of the developmental science." (Da 256) The scientifically—and here legally—accepted science includes the following principles: (1) late adolescence (the period between 18 and 20 years) is its "own developmental stage, where…because brain structure and function, as well as an individual's behavior, personality, and propensity for risk-taking are all in flux." (Da 211) Specifically, adults are as immature, impetuous, and prone to risky behavior as their juvenile counterparts. (Da 210-

212) They have similar cognitive capacity in emotionally-charged situations and are susceptible to peer influences and threats. (Da 209-211); (Da 213-215) The sentencing court found that the desistance studies in the stipulated record "produced an overwhelming consensus that among developmental scientists that individuals in their late teens and early twenties disproportionately engage in risk behaviors and criminal activity, but then inevitably age out of these misbehaviors within a few years." (Da 261); (Dca 450)

The trial court accepted the undisputed science. Yet it refused to consider the Miller factors, erroneously believing that it was hamstrung from applying them based upon State v. Jones, 478 N.J. Super. 532 (App. Div. 2024).[12] This is an abdication of the court's responsibility at sentencing to consider all competent and credible evidence. The competent and credible record indisputably demonstrates that the Miller factors apply to Latonia. Failure to conduct this analysis was clearly erroneous.

C. THE CONSTITUTIONAL PRINCIPLES THAT REQUIRE CONSIDERATION OF THE MILLER FACTORS WHEN SENTENCING JUVENILES TO LENGTHY TERMS APPLY HERE, MAKING THIS ERROR ONE OF CONSTITUTIONAL MAGNITUDE.

[12] The sentencing judge erroneously relied upon Jones. In Jones, a panel of this Court declined to extend the Supreme Court's decision in Comer to youthful offenders between the ages of 18 and 20.

By acknowledging the science but failing to apply the Miller factors, the court denied Latonia the constitutional protection that Miller affords juveniles—protections that, under the undisputed scientific record, should have been extended to her as an emerging adult. See U.S. Const. amend. VIII; N.J. Const. art. I, para. 12; Miller v. Alabama, 567 U.S. 460 (2012) ("mandat[ing]… that a sentence [for a juvenile] follow a certain process – considering an offender's youth and attendant characteristics – before imposing a particular penalty."), Montgomery v. Louisiana, 577 U.S. 190, 208 (2016) (holding that "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'"). This is because "'[D]evelopments in psychology and brain science ... show fundamental differences between juvenile and adult minds", which the record here makes clear apply to Latonia. Bellamy II, 468 N.J. Super. 29, at note 3. (Internal citations omitted)

Consideration of the Miller factors' application to Latonia is constitutionally required. The test to determine whether a punishment is unconstitutionally cruel and unusual . . . poses three questions: "First, does the punishment for the crime conform with contemporary standards of decency? Second, is the punishment grossly disproportionate to the offense? Third, does the punishment go beyond what

is necessary to accomplish any legitimate penological objective?" State v. Zuber, 227 N.J. 422, 438 (2017) (Internal citations and quotations omitted)

Contemporary standards of decency do not permit sentencing a 19-year-old "barely out of childhood", Bellamy II, 468 N.J. Super. at 49, to the functional equivalent of life without parole. This is especially true in New Jersey, where the arbitrary line separating juveniles from adults at age 18 has proven to be porous and malleable—more like shifting sand than a fixed constitutional boundary. See State v. Ryan, 249 N.J. 581, 600 n.10 (2022) ("The Legislature has chosen eighteen as the threshold age for adulthood in criminal sentencing. Although this choice may seem arbitrary, 'a line must be drawn,' and '[t]he age of [eighteen] is the point where society draws the line for many purposes between childhood and adulthood." see also Bellamy II, 468 N.J. Super. 29 at note 3 (Noting, in reference to 19-year-old Latonia that "'developments in psychology and brain science ... show fundamental differences between juvenile and adult minds.'").[13] Indeed, a number of states have recognized this arbitrariness, extending certain protections available to juveniles under state constitutions to late adolescents like Latonia.[14] Where a line that our courts have labelled

[13] Confirming this, our sentencing jurisprudence actually draws the line at different places depending on the sentencing decision to be made. Compare N.J.S.A. 2C:44-3(a) (barring the imposition of extended terms on offenders under the age of 21), with N.J.S.A. 2C:44-1b(14) (mitigating factor for offenders under age 26).

[14] Some jurisdictions have decided that the science is more compelling than any

arbitrary runs contrary to the scientific record, the statutory line cannot outweigh the scientific, constitutional need. See also N.J.S.A. 2C:1-2b(7) (noting that one of the purposes of sentencing is "[t]o advance the use of generally accepted scientific methods and knowledge in sentencing offenders.").

Not only did Latonia submit hundreds of pages of scientific evidence about the developmental science of emerging adults in general, but she also submitted numerous expert reports discussing how her delayed development impacted her behavior on the night of the offense. (Dca 403-411); (Dca 417-452); (Dca 453-454); (Da 206-223) She was immature and had an underdeveloped sense of responsibility, leading to recklessness, impulsiveness, and heedless risk taking. (Dca 409) She was vulnerable to negative influences and outside pressure, including from family and peers, had limited control over her environment, and lacked the ability to extricate herself from horrific, crime-producing settings. (Dca 409) Her passivity in response

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arbitrary and preexisting lines that society has drawn. See, e.g., In re Monschke, 482 P.3d 276, 288 (Wash. 2021) (consistent with the science, eighteen to twenty-year-olds are entitled to the same protection as juveniles against life sentences.); People v. Parks, 987 N.W.2d 161, 171 (Mich. 2022) (extending Miller protections to eighteen-year-old offenders under the Michigan Constitution because "in terms of neurological development, there is no meaningful distinction between those who are 17 years old and those who are 18 years old."); People v. Taylor, 2025 Mich. WL 1085247 (April 10, 2025) (expanding these same protection to 19- and 20-year-olds in accordance with the developmental science of emerging adults); Commonwealth v. Mattis, 224 N.E.3d 410, 415, 428 (Mass. 2024) (relying heavily on the developmental science extended Massachusetts's constitutional protection through age twenty).

to Shiquan's orders to shoot was a product of both her youth and her cPTSD. (Dca 409) All experts agreed that Latonia's actions did not reflect an irreparably corrupt character, and that her post-sentencing rehabilitation clearly demonstrated her capacity for growth, maturity, and transformation. (Dca 410); (Dca 449-451) The experts also agreed that she was unlikely to reoffend. (Dca 410); (Dca 451)

Consequently, consecutive sentences are disproportionate to the offense. Latonia was sentenced to consecutive terms on a count of murder and felony murder. The United States Supreme Court has explained that "a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability." Graham, 560 U.S. at 69. This is because some of "the hallmark characteristics of young adults -- like rash behavior and an inability to appreciate risks and consequences, -- can contribute to circumstances that lead to felony murder." State v. Comer, 249 N.J. 359, 398-98 (2022).

Those same hallmark features are present here, as indicated in the reports authored by Drs. Most, Perrin, and Daftary-Kapur, the stipulated scientific record, and the opinion of Judge Galis-Menendez. (27T165 20-25) (accepting Dr. Most's opinion "that on the night of the crime, defendant would have been characteristically unable to perceive Mr. Bellamy's nefarious intentions when they went out for a walk." Further, Dr. Most opined that during the robbery and the shooting, defendant "appeared to disassociate."); (see also Dca 406-407) Latonia's conduct, like that of

many adolescents, was shaped by the immaturity and vulnerability of youth. Yet the court imposed a sentence tantamount to life without parole without meaningfully accounting for that youth, as constitutionally required.

Finally, as with juveniles, there are no penological objectives advanced by ensuring that Latonia dies in prison. Retribution is less applicable to juvenile offenders and young adults who share their diminished culpability. Comer, 249 N.J. at 398 ("The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender."). Deterrence applies with less force to young people who do not consider the consequences of their actions. Again, as Dr. Most said, "on the night of the crime, defendant would have been characteristically unable to perceive Mr. Bellamy's nefarious intentions when they went out for a walk." (27T165 20-25) Incapacitation is inapplicable given the desistance studies that were stipulated to and accepted by the court. (Da 259-260) Moreover, Latonia has been rehabilitated. (27T167 5 to 168 9) ("This Court will find mitigating factor number 9, character and attitude indicate that Ms. Bellamy is unlikely to commit another offense. Defendant's time while incarcerated has been exemplary.") (Emphasis added)

Our Supreme Court has recognized that the "parts of the brain involved in behavior control continue to mature through late adolescence." Bellamy II, 468 N.J. Super. at 46 n.3 (quoting Zuber, 227 N.J. at 441); (Da 262) The remand court

acknowledged the scientific reality of adolescent vulnerability but failed to apply the legal principles that necessarily follow. This disconnect—between accepting the science and refusing to give it legal effect—constitutes not just a misstep, but an error of constitutional dimension. Where the record establishes facts that trigger specific constitutional protections, disregarding those protections renders the sentencing fundamentally unfair and legally infirm.

D. FUNDAMENTAL FAIRNESS REQUIRES CONSIDERATION OF THE MILLER FACTORS.

"The fundamental fairness doctrine is an integral part of the due process guarantee of Article I, Paragraph 1 of the New Jersey Constitution, which protects against arbitrary and unjust governmental action." State v. Njango, 247 N.J. 533, 537 (2021); accord Jamgochian v. N.J. State Parole Bd., 196 N.J. 222, 239 (2008). "The doctrine serves as 'an augmentation of existing constitutional protections or as an independent source of protection against state action.'" State v. Melvin, 248 N.J. 321, 348 (2021) (quoting Doe v. Poritz, 142 N.J. 1, 108 (1995)). It advances "fairness and fulfillment of reasonable expectations" relating to "constitutional and common law goals." Njango, 247 N.J. at 549. "T[his] doctrine is applied 'sparingly' and only where the 'interests involved are especially compelling' ...." See State v. Saavedra, 222 N.J. 39, 67 (2015) (quoting Doe, 142 N.J. at 108).

Latonia has tried, seemingly endlessly, to get a fair sentencing. First, she was denied a fair sentencing by a judge whose "sense of moral outrage and indignation

[] overwhelm[ed] the legal process." Bellamy II, 468 N.J. Super. at 50. The case was remanded so that a "judge [could] acquire potentially significant background information, and to allow defendant to fully brief a sentencing expert." Ibid. That new judge was urged to "consider the person defendant has become as she stands before the court." Ibid. Moreover, the Bellamy II Court commanded that "[i]f presented with the argument, a new judge must at least have the information necessary to assess whether defendant's childhood provides context for her criminal conduct." Ibid.

Latonia has met her sentencing obligations in full. She provided the court, her experts, and the prosecution with critical background information detailing the profound trauma and instability that shaped her early life—context that directly informs her culpability. She did what the law and fundamental fairness require: she laid bare the roots of her conduct and invited the court to consider her as a whole person. Yet instead of engaging with that information through the constitutionally grounded lens of the Miller factors, the court offered only superficial treatment under mitigating factor 14. This fell far short of what fundamental fairness demands in a sentencing proceeding—particularly where the record contains unrebutted evidence of trauma, immaturity, rehabilitation, and transformation. A new resentencing is required to remedy this unjust and arbitrary outcome—one that gives full and meaningful consideration to the Miller factors and honors the constitutional command for individualized, developmentally informed sentencing.

POINT II

PROPER CONSIDERATION OF LATONIA'S YOUTH AT THE TIME OF HER OFFENSE CANNOT RESULT IN A SENTENCE THAT IS THE PRACTICAL EQUIVALENT OF LIFE. (U.S. Const. amend. VIII, XIV; N.J. Const. art. I, ¶ 1, ¶ 12) (Raised below) (27T75 21 to 83-5) (Da 245-267) (Da 268-271)

This matter must be remanded for a fourth sentencing because in addition to failing to consider the Miller factors prior to imposing consecutive sentences, the sentencing court imposed consecutive sentences primarily based upon the conduct of a co-defendant and failed to articulate a sufficient statement of reasons justifying the overall fairness of a life sentence for an emerging adult, in derogation of Yarbough, Zuber, and Torres.

The decision of whether to impose concurrent or consecutive sentences for multiple offenses is often the single most important decision that "drives the real-time outcome at sentencing." State v. Zuber, 227 N.J. 422, 449 (2017). Importantly, "our Code does not contain a presumption in favor of either concurrent or consecutive sentences." State v. Torres, 246 N.J. 246, 266 (2021). Instead, to determine whether sentences should run consecutively or concurrently, the sentencing court must initially apply the "general sentencing guidelines" set forth in State v. Yarbough, 100 N.J. 627, 644 (1985).

The Yarbough analysis does not end the inquiry, as sentencing courts must "make an overall evaluation of the punishment for the several sentences involved." Id. at 646; Courts must be mindful that "the imposition of a sentence, notwithstanding that multiple offenses are involved, 'concerns the disposition of a single, not a multiple, human being.'" Id. at 268 (quoting Yarbough, 100 N.J. at 646). Thus, to complete its reasoning, a sentencing court must make an "explicit statement, explaining the overall fairness of a sentence imposed on a defendant for multiple offenses." Torres, 246 N.J. at 268. Ultimately, the overall fairness of the aggregate sentence is where the court should "retain focus." Id. at 270; see also State v. Miller, 108 N.J. 112, 121 (1987) ("[I]n determining whether sentences for separate offenses should be served concurrently or consecutively, a sentencing court should focus on the fairness of the overall sentence.").

The first step requires consideration of the Yarbough factors, which are as follows:

> (1) there can be no free crimes in a system for which the punishment shall fit the crime;
>
> (2) the reasons for imposing either a consecutive or concurrent sentence should be separately stated in the sentencing decision;
>
> (3) some reasons to be considered by the sentencing court should include facts relating to the crimes, including whether or not:

> (a) the crimes and their objectives were predominantly independent of each other;
>
> (b) the crimes involved separate acts of violence or threats of violence;
>
> (c) the crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior;
>
> (d) any of the crimes involved multiple victims;
>
> (e) the convictions for which the sentences are to be imposed are numerous
>
> (4) there should be no double counting of aggravating factors;
>
> (5) successive terms for the same offense should not ordinarily be equal to the punishment for the first offense . . . .[15]
>
> [Yarbough, 100 N.J. at 643-44].

Factors two, four, and five do not relate to the facts of the offenses and "have little utility in the threshold assessment of whether to impose consecutive or concurrent sentences." Torres, 246 N.J. at 266 Likewise, factor one should

[15] By statute, the legislature repealed a sixth Yarbough factor. Torres, 246 N.J. at 265; see L. 1993, c. 223 (eff. August 5, 1993). This amendment, 2C:44-5(a)(2), removed the outer limit on consecutive sentences for multiple offenses. Despite the amendment, the Court cautioned in State v. Brown, 138 N.J. 481, 559 (1994), that "it has not superseded the requirement of principled sentencing."

not be blindly "seized upon by sentencing courts." See id. at 269. That factor was not meant to supplant the principle that "discretion runs in two directions," with no presumption in favor of either consecutive or concurrent sentences; even multiple victims create no presumption in favor of consecutive sentences. Id. at 266, 269. Factor three, on the other hand, is the "evaluative core" of Yarbough; its subfactors focus on whether the factual relationship between the offenses might make them relatively more serious. Id. at 266-67.

Notably, the Bellamy II remand order urges great caution regarding the imposition of consecutive sentences, stating that the previous, recused:

> trial judge justified consecutive sentences because of the severity of defendant's crimes and the fact there were two victims. The new judge should at least include in the analysis the real time consequence here, including the effect of mandatory parole bars. See State v. McFarlane, 224 N.J. 458, 467-68 (2016) (explaining the process of weighing the factors); State v. Louis, 117 N.J. 250, 255 (1989) (ruling that while the defendant's crimes were horrific, the multiple consecutive terms appeared to be based on double-counting and resulted in a manifestly excessive aggregate term); State v. Marinez, 370 N.J. Super. 49, 58-59 (App. Div. 2004) (stressing the importance of the real-time consequence of a sentence, particularly one subject to a lengthy parole disqualifier and consecutive terms)."
>
> [468 N.J. Super. at 50-51] (Citations cleaned up; emphasis added)

A. THE SCIENTIFIC PRINCIPLES THAT THE TRIAL COURT ACCEPTED ARE THE SAME PRINCIPLES THAT THE ZUBER COURT RELIED UPON IN CAUTIONING AGAINST THE IMPOSITION OF CONSECUTIVE SENTENCES FOR JUVENILES.

Again, because of juveniles' diminished culpability, "judges should exercise a heightened level of care before they impose multiple consecutive sentences on juveniles which would result in lengthy jail terms." Zuber, 277 N.J. at 429-30. This "heightened level of care" must also apply to emerging adults, like Latonia. While Zuber specifically addressed juvenile offenders, there is now a clear consensus that individuals aged eighteen to twenty share similar developmental characteristics with younger adolescents. (Da 206-223) Although Zuber applied to juvenile offenders, there is no principled reason, given the developmental and neuroscientific consensus, not to apply the same skepticism about consecutive sentences to Latonia since Judge Galis-Menendez noted that "nineteen-year-olds share the same characteristics as juveniles", explaining that

> In asserting these holdings [Miller, Zuber, Comer] should be extended to young adult offenders, Defendant submits, and the State does not dispute, scientific data that allegedly portrays how nineteen-year-olds share the same characteristics as juveniles. Defendant submits voluminous exhibits portraying the undisputed science that young adolescent offenders have similar characteristics as juveniles. The State stipulated to the exhibits[,] and no evidence was presented that contradicts the evidence Defendant provided.
>
> [Da 258-259]

The Zuber court explained that on scientific and constitutional grounds, the Yarbough framework must be considered through the lens of the Miller factors:

> Yarbough, however, does not cover the Miller factors. To be faithful to the concerns that Graham and Miller highlight, which our State Constitution embraces as well, a sentencing court must consider not only the factors in Yarbough but also the ones in Miller when it decides whether to impose consecutive sentences on a juvenile which may result in a lengthy period of parole ineligibility. Because of the overriding importance of that decision, we direct trial judges to exercise a heightened level of care before imposing multiple consecutive sentences on juveniles.
>
> [Zuber, 227 N.J. at 450].

While Zuber admittedly never addressed emerging adults, this Court cannot ignore the undisputed scientific record in this case, and the findings by Judge Galis-Menendez. Therefore, appellant respectfully requests a remand with specific instructions to apply the Miller factors and the "heightened level of care" required by Zuber, in deciding whether to impose concurrent or consecutive sentences. Id. at 450.

B. THE SENTENCING JUDGE ERRED IN IMPOSING CONSECUTIVE SENTENCES BASED PRIMARILY ON THE CO-DEFENDANT'S CONDUCT, IN DEROGATION OF ESTABLISHED SENTENCING PRINCIPLES.

Judge Galis-Menendez performed a cursory Yarbough analysis, stating:

> [T]he crimes . . . and their objectives were objectively independent of each other. In this case the murders of two victims were independent of each other. . .
>
> * * *
>
> The offenses were separate acts of violence. Defendant fired the gun, at a minimum, two times right after the other. The crimes were not committed at different times or places, as the offenses occurred in a single period of aberrant behavior. When considering 3d, defendant's actions involved the intentional deaths of two separate victims. The convictions for which the sentence is to be imposed are numerous and the offenses occurred in a single incident.
>
> This Court finds under Yarbough that a consecutive sentence is appropriate, as the crime consisted of two victims and was the result of defendant engaging in two separate acts of violence.
>
> [27T170 12 to 171-7]

There are three fundamental errors in this analysis. First, the judge erroneously found that the objectives of the crimes were independent of each other. That finding is contrary to the record: both victims were shot during the course of one robbery, not multiple offenses that were primarily independent of each other.

Second, the judge improperly conflated Shiquan's conduct with Latonia's. While the jury found Latonia legally accountable for murder and felony murder, that does not justify treating her and Shiquan as interchangeable for sentencing purposes. A defendant can "be vicariously liable for the crimes of an

accomplice. . . [but cannot be] liable for aggravating factors not personal to him." State v. Megargel, 143 N.J. 484, 491 (1996). Moreover, sentencing judges always have an obligation to "look at the individual offender." Yarbough, 100 N.J. at 636.

Third, Judge Galis-Menendez was obligated to assess not merely the number of victims, but Latonia's individual conduct and culpability with respect to each crime. Latonia did not plan the murders, nor did she conspire to commit them. She was caught off guard when Shiquan initiated the robbery and was stunned when he shot Muchioki. Latonia neither intended to shoot Haqq nor did she deliver any fatal shots.[16] Significantly, Judge Galis-Menendez found that mitigating factor four applied (substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense). (Da 270); see also N.J.S.A. 2C:44-1b(4). This is of special significance given the scientific evidence around the impact of peer pressure on late adolescents, generally, and Latonia specifically. (Da 211); (Da 213); (Da 215-216); (27T165 10-13) That

[16] Again, the State endorsed Latonia's version of events when it petitioned for a court order requiring Latonia to testify under a grant of immunity. (Da 44-50) The petition described Latonia's testimony to be the same as her trial testimony that "Shiquan Bellamy shot Michael Muchioki in the head with the shotgun. Latonia Bellamy fired at the ground but refused to kill Nia Haqq. Shiquan Bellamy took the 9-millimeter handgun from her and shot Nia Haqq in the head." (Da 45-46) Further, as noted, Latonia's version of events was corroborated by DNA evidence that was completed prior to Shiquan's second trial.

science is even more compelling in the context of felony murder, as our Supreme Court highlighted in State v. Comer:

> In the case of felony murder, "a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability." Graham, 560 U.S. at 69. Under the felony-murder doctrine, a "death caused in the course of a felony [is attributed] to all participants who intended to commit the felony, regardless of whether they killed or intended to kill." Miller, 567 U.S. at 491 (Breyer, J., concurring). Yet some of the hallmark characteristics of young adults -- like rash behavior and an inability to appreciate risks and consequences, id. at 477, 132 S.Ct. 2455 -- can contribute to circumstances that lead to felony murder.
>
> [249 N.J. 359, 397–98]

A boilerplate recitation of the Yarbough factors, coupled with generalized facts, detached from the robust scientific record, does not fulfill a sentencing court's duty to conduct an individualized assessment—particularly when that failure results in the same outcome for Latonia as for her more culpable co-defendant, Shiquan: both condemned to die in prison. Latonia cannot be sentenced as though she were Shiquan. Yet the court's Yarbough analysis collapsed their roles, disregarding the stark disparity in culpability and undermining the constitutional mandate for a personalized sentencing determination.

Shiquan executed both victims by shooting them in the head. Latonia, by contrast, fired two shots at the ground—quickly, fearfully, and only under

Shiquan's orders.[17] Under the court's reasoning, any offense involving multiple gunshots—regardless of whether those shots caused distinct harm—would automatically be characterized as separate acts of violence warranting consecutive sentences. This interpretation distorts the Yarbough framework and imposes upon Latonia disproportionate punishment untethered from her actual conduct and culpability.

A proper analysis of the factor-three subfactors shows that concurrent sentences are appropriate. 3a: Latonia's crimes and objectives were not independent of each other. 3b: The offenses were not separate acts of violence; instead, with a gun pointed at her, a 19-year-old suffering from cPTSD fired the gun two times in quick succession, hoping to hit the ground. 3c: The offenses occurred in seconds, during a single period of aberrant behavior, which was initiated by a older peer and family member. 3d: Although the offenses involved two victims, the significance of this subfactor is mitigated by the other subfactors, which show an exceedingly close relationship between the offenses. The existence of two victims is further mitigated by Shiquan's primary responsibility: he pressured

[17] Evidence presented at Shiquan's second trial corroborated that Latonia's fear of him was well-founded. Shiquan had written a letter from jail to his girlfriend. In that letter, Shiquan complained that the "bitches" Latonia and Darmellia had "snitch[ed]" on him; stated that he would have killed Darmellia already if his brother hadn't stopped him; and promised that "as soon as one of them fuck up, it's over." (15T 85-20 to 87-9)

Latonia into her momentary period of aberrant behavior, and he fired the two fatal shots. 3e: The offenses occurred in a single incident and were not particularly numerous. The circumstances make clear that Latonia's crimes were closely related and occurred within an extremely brief period. Accordingly, concurrent sentences are not only appropriate but required under a proper application of Yarbough.

C. A PROPER OVERALL FAIRNESS ANALYSIS REQUIRED THAT THE SENTENCING COURT JUSTIFY IMPOSING CONSECUTIVE TERMS.

The sentencing court failed to conduct the rigorous overall fairness analysis required before imposing a consecutive sentence that condemned Latonia to die in prison. This omission is particularly troubling given the robust, undisputed record of mitigating evidence including Latonia's youth, trauma history, and extraordinary rehabilitation. The court was obligated to engage in a meaningful assessment of whether such a de facto life sentence was justifiable under Yarbough, Zuber, and Torres. Application of the Miller factors to this record compels the conclusion that concurrent sentences were not only appropriate but required. The failure to impose them rendered the sentence fundamentally unfair.

As detailed above, Latonia's culpability was significantly diminished by her developmental immaturity, her profound vulnerability stemming from a history of trauma and c-PTSD, and the overwhelming pressure exerted on her by

Shiquan.[18] While incarcerated, in a rather short time, she demonstrated extraordinary growth and rehabilitation. Her transformation is not only genuine, but it is idiosyncratic and exceptional. To impose a sentence that offers no possibility of release on someone with such diminished culpability and proven reform is fundamentally unjust and contrary to the principles of individualized and proportionate sentencing.

D. THE JUDGE PROVIDED AN INSUFFICIENT STATEMENT OF REASONS JUSTIFYING THE OVERALL LENGTH OF THE SENTENCE.

Judge Galis-Menendez failed to provide an adequate explanation for the overall length of the sentence, as required by Torres. This omission frustrates meaningful appellate review and undermines the requirement that sentencing courts justify not only the decision to impose consecutive terms, but also the fairness and proportionality of the aggregate sentence. The judge stated:

> Furthermore, in considering the overall fairness analysis, this Court finds consecutive sentences to be fair. Defendant's actions led to multiple violent acts which resulted in the death of two victims. While this Court considers that defendant was . . . a 19 year old due to the upbringing and diagnosis of cPTSD, defendant was still [an] adult under New Jersey law whose actions resulted in the loss of not one, but two innocent lives. When evaluating the overall fairness of the defendant's

[18] As noted by Dr. Charles Most, when Latonia committed these crimes, she was under significant psychological duress. Shiquan wielded a gun, and Latonia was afraid that her failure to obey his orders would put her life in jeopardy. (Dca 403-411); (5T16 18-19)

> sentence, the Court considers defendant and has considered defendant as the person she stands before me today.
>
> Defendant is, as previously mentioned, 33 years old, whose achievements while incarcerated have been tremendous and cannot be overlooked. However, this Court cannot overlook the circumstances of the crimes. The victims were merely returning home from their engagement party when they were murdered. Defendant's involvement in perpetrating these murders cannot be tolerated. Accordingly, the Court finds consecutive sentences to be fair and appropriate under Yarbough.
>
> [27T171 8 to 172-5]

Although the judge cited Torres, she simply echoed the Yarbough analysis and failed to address the real-time consequences of the consecutive sentences, contrary to what Torres mandates. When imposing a lengthy consecutive sentence . . . "the explanation of the overall fairness of a sentence to be imposed serves to validate a court's decision by contextualizing the individual sentences' length, deterrent value, and incapacitation purpose and need." Torres, 246 N.J. at 271. The judge neither acknowledged nor attempted to explain why she was sentencing Latonia to die in prison, when Latonia's diminished culpability necessitates neither permanent incapacitation nor deterrence. That silence is indefensible considering the undisputed record: Latonia was found by the court to have made "tremendous" rehabilitative progress. She is unlikely to reoffend, has taken full responsibility, and is deeply committed to living a productive, law-

abiding life. To impose a sentence that forecloses any possibility of release, despite these findings, is not only disproportionate, but also profoundly unjust.

Merely restating the basic facts of the offense and emphasizing the existence of two victims does not satisfy the requirement to provide a meaningful, individualized explanation for imposing a sentence that is, in effect, life without parole. That superficial reasoning falls far short of the heightened scrutiny required when sentencing a young person facing decades in prison. This is especially true where the defendant was 19 years old, suffered from c-PTSD rooted in years of severe abuse, and acted under extreme pressure after witnessing her cousin commit unanticipated horrific acts in her presence.

Because the sentencing judge offered little more than perfunctory justifications for imposing consecutive sentences and failed to provide any compelling rationale for the overall severity of the sentence in the context of the science that she accepted, resentencing is not only appropriate but also required.

POINT III

THE SENTENCING COURT ERRED IN FINDING AGGRAVATING FACTOR ONE AND GIVING MITIGATING FACTOR NINE GREAT WEIGHT. (N.J. Const. art. I ¶ 1) (Raised Below) (27T163 19 to 164-6); (27T166 10 to 167-4); (27T120 17-20)

A. AGGRAVATING FACTOR ONE DOES NOT APPLY TO LATONIA BECAUSE HER CONDUCT WAS SUBSTANTIALLY INFLUENCED BY HER MORE MATURE COUSIN, WHO WAS HER CO-DEFENDANT.

Aggravating factor one weighs "[t]he nature and circumstances of the offense, and the role of the actor therein, including whether or not it was committed in an especially heinous, cruel, or depraved manner." N.J.S.A. 2C:44-1a(1). Central to its application is the role of the actor in the offense. That is because, as discussed above, a defendant can "be vicariously liable for the crimes of an accomplice. . . [but cannot be] liable for aggravating factors not personal to him." Megargel, 143 N.J. at 491.

As discussed above, Latonia did not plan the murders, conspire to commit them, or even know that she would become involved in a robbery and killing. She was shocked and dissociated when Shiquan shot Muchioki, and terrified when she shot the ground, in an effort to avoid hurting Haqq, who was ultimately killed by Shiquan.[19] Significantly, Judge Galis-Menendez found that mitigating

[19] Again, the State endorsed Latonia's version of events when it petitioned for a court

factor four applied (substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense). (Da 270); see also N.J.S.A. 2C:44-1b(4).

Again, the science cannot be ignored in this inquiry. (Da 206-223); (27T165 10–13) That science is even more compelling in the context of felony murder, as our court highlighted in Comer, 249 N.J. at 397–98 ("In the case of felony murder, "a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability.")). Yet the hallmark characteristics of young adults -- like rash behavior and an inability to appreciate risks and consequences, id. at 477, can contribute to circumstances that lead to felony murder.

While Latonia bears responsibility for her role in a tragic offense, she cannot be held accountable for the manner in which Shiquan escalated the violence—acts that made the crimes especially heinous, cruel, and depraved.

B. AGGRAVATING FACTOR NINE SHOULD NOT BE GIVEN GREAT WEIGHT SINCE THE ONLY JUSTIFICATION FOR ITS APPLICATION IS GENERAL DETERRENCE AND BECAUSE IT IS INCONSISTENT WITH THIS COURT'S CORRECT FINDING OF MITIGATING FACTOR EIGHT.

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order requiring Latonia to testify under a grant of asking her to testify—as she had at her own trial—that "Shiquan Bellamy shot Michael Muchioki in the head with the shotgun. Latonia Bellamy fired at the ground but refused to kill Nia Haqq. Shiquan Bellamy took the 9-millimeter handgun from her and shot Nia Haqq in the head." (Da 44-50) Further, as noted, Latonia's version of events was corroborated by DNA evidence that was completed prior to Shiquan's second trial.

At sentencing, Judge Galis-Menendez found aggravating factor nine, the need to deter the defendant and others from violating the law, explaining:

> There is a need for, of course, general deterrence for those individuals in our society who perpetrate homicides. While I hear what defense counsel has said regarding aggravating factor number 9 and mitigating factor number 8, and whether the defendant --yes, the defendant stands before me--and I will explain in a few minutes. I do believe she has engaged or is engaging in rehabilitation. This Court is far from a position to say that this defendant is rehabilitated. So on that matter, this Court also finds as to deterring this defendant specifically and this factor is given great weight.
>
> [27T163 19 to 164-6][20]

The judge then found mitigating factor eight, the defendant's conduct was the result of circumstances unlikely to recur:

> This Court does find mitigating factor number 8, defendant's conduct was a result of circumstances unlikely to reoccur. Defendant has expressed remorse and has taken responsibility for her actions. During her presentence interview, she stated in pertinent part, I am very remorseful for the act that was committed. I stand before the Court as a young adult. I have grown so much and I am dealing with my trauma and continue to grow through it.
>
> Defendant further stated, every day I am here allows me to reflect on my mistakes and the pain I caused to others, which I am truly sorry for. No words can express the damage that was done, and for the rest of my life I will be sorry for that. Defendant's approximate 14 years of incarceration has demonstrated that defendant is committed to

[20] This equivocal message regarding Latonia's rehabilitation is belied by the Court's finding of mitigating factor eight, for which there is ample support in the record.

> pursuing education, and has taken responsibility and understanding what she needs to do to better herself in order to become productive in the future. This factor will be given great weight.
>
> [27T166 10 to 167-4]

Before the imposition of sentence, defense counsel argued that under Fuentes, although aggravating factor nine and mitigating factor eight are not inherently incompatible, they "rarely apply in the same sentencing," and the sentencing court must "explain how it reconciles those two findings." (27T 120 17-20); Fuentes, 217 N.J. at 79-81. The sentencing judge ultimately failed to reconcile these contradictory findings. Her analysis lacked the clear, reasoned explanation that Fuentes mandates, leaving the sentence unsupported by coherent reasoning.

A close examination of the sentencing judge's language makes clear why aggravating factor nine cannot stand alongside mitigating factor eight in this case. The judge's findings in support of aggravating factor nine were generic and conclusory, lacking the individualized analysis necessary to justify its application in the face of compelling evidence of Latonia's character and rehabilitation. She found "a need for [] general deterrence" and stated, "this Court also finds as to deterring this defendant specifically and this factor is given great weight." (27T163 19 to 164-6) Yet the judge identified numerous, concrete reasons supporting the application of mitigating factor eight—finding that Latonia's conduct was the product of circumstances unlikely to recur. The court recognized that Latonia has consistently

taken responsibility, confronted her past trauma, demonstrated profound personal growth, and has taken every possible step toward rehabilitation." (27T166 10 to 167-4)

In Fuentes, the court noted that in "exceptional cases, even if the record demonstrates that the offense at issue arose in circumstances unlikely to recur, thus supporting a finding as to mitigating factor eight, a defendant could nonetheless pose a risk of recidivism, requiring specific deterrence." Id. at 80. This is not that exceptional case with respect to aggravating factor nine. On the contrary, an extensive and undisputed scientific record demonstrates that Latonia poses an extremely low risk of reoffending, thereby undermining any justification for specific deterrence. At Latonia's age, young adult offenders are nearly indistinguishable from the general population in their unlikelihood of committing crimes. (Da 221-222); (27T116 1-19 (referencing the Unger study). Multiple experts also opined that Latonia was very unlikely to reoffend if she was released. (Dca 410); (Dca 451); (27T17 5-14) Moreover, education in prison has been proven to substantially reduce recidivism: the greater the education, the greater the reduction. (Dca 450 to 451) Given the well-established data showing that young adult offenders "age out" of criminal behavior, and Latonia's extraordinary and sustained commitment to rehabilitation—despite having no realistic hope of release—it is illogical and legally unsound to apply aggravating factor nine alongside mitigating factor eight, let alone to give it

substantial weight. These factors are in direct conflict. Mitigating factor eight reflects that Latonia's conduct was the product of circumstances unlikely to recur, while aggravating factor nine presumes the opposite. Under these circumstances, aggravating factor nine cannot properly be considered, and Latonia must be resentenced without its application.

POINT IV

THE TRIAL COURT'S FAILURE TO FIND MITIGATING FACTORS 12 AND 13 WAS CLEARLY ERRONEOUS. (N.J. Const. art. I ¶ 1) (Raised Below) (27T89 7-10); (27T89 11-22); (27T91 13-17); (27T92 2 to 95-24); (27T173 15 to 174-1); (27T173 16-21)

A. DESPITE OVERWHELMING EVIDENCE SUPPORTING MITIGATING FACTOR 12, THE SENTENCING JUDGE FAILED TO FIND THAT FACTOR ON THE ERRONEOUS BELIEF THAT "DOING THE RIGHT THING" IS NOT SUBSTANTIAL COOPERATION

As discussed, Latonia testified at the federal trial of Essex County Corrections Officer Shawn Shaw, who raped Latonia's roommate while on duty alone during a blizzard. (Da 118); (Da 197-202) Latonia, as a sexual assault survivor, cooperated in Shaw's prosecution out of a sense of moral duty and received no promise of leniency. (Dca 406) The federal prosecutor called Latonia's cooperation "substantial" and "critical" and commended her for testifying "even though she received no benefit for her cooperation." (Da 118) Shaw was convicted and sentenced to 25 years. (Da 118, 201) Like all other evidence submitted before sentencing, Latonia's cooperation remained entirely undisputed.

Because of this undisputed substantial cooperation, defense counsel requested that the judge find mitigating factor twelve, "the willingness of the defendant to cooperate with law enforcement authorities." N.J.S.A. 2C:44-1b(12). During argument, the judge seemed genuinely perplexed regarding its

applicability, stating "Ms. Bellamy participated on her own with no promises. "Why should this Court even consider that? Because I've got to tell you, I don't even see why I should even consider that." (27T89 7-10) Counsel responded by providing three reasons why this mitigating factor was applicable: (1) the plain meaning of mitigating factor twelve; (2) there is no requirement that the cooperation be for "this specific case"; and (3) in practice many defendants cooperate in unrelated cases and receive the benefit of mitigating factor twelve. (27T89 11-22); see also (27T91 13-17); (27T92 2 to 95-24)

After imposing sentence, the judge again discussed the inapplicability of mitigating factor twelve stating:

> [t]his court did not find mitigating factor number 12, because even as defendant stated, she acted as a human being. She witnessed an offense and she stood up for someone because she would want someone to speak up [for] her. It was the right thing to do. And while I understand that it did help in a criminal case . . . I'm not going to find that factor because I think Ms. Bellamy did the right thing, and this Court can only hope she continues to make those decisions and choices in the future.
>
> [27T173 15 to 174-1]

The plain language of mitigating factor 12 does not specify what kind of cooperation is required, what state of mind is required, or what case a defendant must cooperate with. See e.g. State v. Garcia 2021 WL 2658054 at *3 (App. Div. 2021) (legislature imposed no requirement that a defendant's cooperation be

"extraordinary").[21] The only requirement is that a defendant must be willing to cooperate with law enforcement.

The sentencing judge's finding that Latonia was not entitled to mitigating factor 12 because she "acted as a human being" and "did the right thing" (27T173 16-21) improperly imposed a requirement clearly not intended by the legislature. The plain statutory text—"the willingness of the defendant to cooperate with law enforcement authorities"—encompasses any genuine cooperation. A formal deal is not a prerequisite for this factor to be applicable. Nor is there any requirement that a defendant have a specific state of mind prompting her to cooperate.

If anything, Latonia's voluntary cooperation with law enforcement—at great personal risk—strengthens the case for applying mitigating factor 12. Defendants often cooperate for self-serving reasons, typically in exchange for leniency. Latonia, by contrast, acted out of a sense of moral duty, without any promise of benefit. It is baffling—and legally unsound—that the court declined

[21] Counsel has included State v. Garcia in the appendix and is unaware of any contrary unpublished opinions. See R. 1:36-2 ("No unpublished opinion shall constitute precedent or be binding upon any court . . . No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."). (Da 282-285

to find mitigating factor 12 precisely because her motives were principled rather than opportunistic.

It is undisputed that Latonia cooperated with law enforcement and that her cooperation was instrumental in securing the conviction of a corrections officer who exploited his position of power to rape a vulnerable, incarcerated woman. Courts may not disregard mitigating factors that are clearly presented and supported by the record. State v. Case, 220 N.J. 49, 64 (2014); see also State v. Dalziel, 182 N.J. 494, 505–06 (2005) (judges must assign proper weight to mitigating factors; they may not ignore them altogether). Here, the record overwhelmingly supports the application of mitigating factor 12. The court's failure to meaningfully consider it constitutes reversible error. Latonia must be resentenced to ensure this statutory factor is not only applied but given the substantial weight it deserves.

B. THE COURT FAILED TO FIND MITIGATING FACTOR 13 EVEN THOUGH IT APPLIES AS A MATTER OF LAW AND MUST BE GIVEN GREAT WEIGHT IN LIGHT OF THE ACCEPTED SCIENTIFIC RECORD.

In addition to mitigating factor 14, "[y]outh may be considered as a mitigating factor if the defendant was "substantially influenced by another person more mature than defendant." State v. Torres, 313 N.J. Super. 129, 162 (App. Div. 1998). Where the trial court found that the defendant was an accomplice, and that an older co-defendant was primarily responsible for the crime, both the

Appellate Division and the Supreme Court upheld a finding of this factor. Megargel, 278 N.J. Super. at 562-65. This factor also applies where the older person is a family member. See State v. Brimage, 153 N.J. 1, 7 (1998) (noting that the trial court found "the negative influence of older family members on defendant" under this factor); State v. Henry, 323 N.J. 157, 166 (App. Div. 1999) (holding that trial court should have given weight to fact that defendant "was under the virtual domination of someone who was not only older than him, but was also his aunt").

Here, Shiquan was not only months older than Latonia, but he was also an influential family member, and "more mature" in the sense of having experience with guns, having committed another double homicide with the third co-defendant, Darmellia, utilizing the same weapons. As stated by counsel: "Latonia got involved with this tragic event because of her manipulative and domineering older cousin, Shiquan, who unbeknownst to her, had already committed a double homicide with Darmellia Lawrence, utilizing a 9 millimeter and a 15 [gauge] shotgun." (27T93 4 to 94-2); (27T125 10-15); (Da 91-94) Judge DePascale noted that "[Latonia] had neither the means, nor the present ability to carry out these crimes and, but for [Shiquan] providing her with both, these crimes would not have occurred." (18T17 10-18); (27T125 16-21) Indeed, he

demonstrated criminal maturity by arriving at the cookout armed with not one, but two firearms.

Once again, the science must be emphasized: late adolescents are uniquely vulnerable to peer influence—a fact firmly established in the record. (Da 206-223) (Dca 409, 434, 446, 447) These developmental realities not only support, but compel, a finding of mitigating factor 13, and demand that it be given substantial weight. The court's failure to recognize or meaningfully consider this factor reflects a disregard for both the scientific consensus and the individualized sentencing that fundamental fairness requires. This omission—particularly in light of the robust, unrebutted evidence—renders the sentencing constitutionally deficient. A fourth resentencing is necessary to correct this error and ensure that Latonia's sentence reflects the mitigating force of her developmental immaturity and substantial peer influence, as the law and justice require.

CONCLUSION

The sentencing court's ruling hinges on two irreconcilable findings: (1) that emerging adults are developmentally indistinguishable from juveniles; and (2) that the court was precluded as a matter of law from considering this science in its sentencing decision. Thus, despite presenting a robust factual and scientific record at resentencing, Latonia comes before this court sentenced, yet again, to the practical equivalent of life.

Latonia exemplifies the very category of emerging adults whose life circumstances and demonstrated rehabilitation lie at the heart of the constitutional concerns animating the Miller line of cases. At nineteen, she committed tragic crimes under the weight of severe childhood trauma, untreated cPTSD, and the transient immaturity characteristics of her developmental stage. In the years since, she has done everything the law could ask of a person seeking redemption. She has taken full responsibility for her actions, completed every rehabilitative program available to her, earned a college degree with honors, mentored her peers, and maintained a nearly spotless disciplinary record. She has shown deep remorse and an unwavering commitment to personal growth, even in the face of a sentence that offers her no realistic prospect of release.

The science, our state constitution, fundamental fairness, and the Bellamy II remand demand that youth be more than a box checked at sentencing. It must be

given fulsome consideration, and it should have an ameliorative impact on punishment, making the penalty of lifelong imprisonment exceptionally rare, available only for the uniquely incorrigible late adolescent. No case demonstrates this imperative more than Latonia's.

For these reasons, this Court should fulfill the constitutional mandate of Miller and Zuber by formally extending their protection to emerging adults—those aged 18-20—who face the possibility of life without parole. Latonia is entitled to a sentencing that meaningfully considers the Miller factors and reflects her youth, trauma, and capacity for change. Moreover, at resentencing mitigating factors 12 and 13 must be considered. Thus, her case must be remanded for a constitutionally adequate and individualized resentencing.

Respectfully submitted,

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Date: June 30, 2025

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

STATE OF NEW JERSEY,	:	**CRIMINAL ACTION**
	:	
Plaintiff-Respondent,	:	**Appeal from a Judgment of Conviction of the Superior Court of New Jersey, Law Division Hudson County.**
	:	
	:	**DOCKET NO. A-0321-24**
-v-	:	
	:	**INDICTMENT NO.: 11-03-0348-I**
	:	
LATONIA E. BELLAMY A/K/A LATONIA BELLAMY,	:	**SAT BELOW: Hon. Mitzy Galis-Menendez, P.J. Cr.**
	:	
Defendant-Appellant,	:	**Dated: September 10, 2025**

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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PROCEDURAL HISTORY

On March 1, 2011, a Hudson County grand jury returned Indictment 11-03-0348-I, charging defendant Latonia Bellamy ("defendant") with (1) first-degree murder (Michael Muchioki), N.J.S.A. 2C:11-3(a)(1) or (2) (Count Seventeen); (2) first-degree felony murder (Michael), N.J.S.A. 2C:11-3(a)(3) (Count Eighteen); (3) first-degree carjacking (Michael), N.J.S.A. 2C:15-2 (Count Nineteen); (4) first-degree felony murder (Michael), N.J.S.A. 2C:11-3(a)(3) (Count Twenty); (5) first-degree robbery (Michael), N.J.S.A. 2C:15-1 (Count Twenty-One); (6) second-degree possession of a weapon (shotgun) for an unlawful purpose, N.J.S.A. 2C:39-4(a) (Count Twenty-Two); (7) second-degree possession of a weapon (handgun) for an unlawful purpose, N.J.S.A. 2C:39-4(a) (Count Twenty-Three); (8) first-degree murder (Nia Haqq), N.J.S.A. 2C:11-3(a)(1) or (2) (Count Twenty-Four); (9) first-degree felony murder (Nia), N.J.S.A. 2C:11-3(a)(3) (Count Twenty-Five); (10) first-degree carjacking (Nia), N.J.S.A. 2C:15-2 (Count Twenty-Six); (11) first-degree felony murder (Nia), N.J.S.A. 2C:11-3(a)(3) (Count Twenty-Seven); (12) first-degree robbery (Nia), N.J.S.A. 2C:15-1 (Count Twenty-Eight); (13) second-degree possession of a weapon (shotgun) for an unlawful purpose, N.J.S.A. 2C:39-4(a) (Count Twenty-Nine); (14) second-degree possession of a weapon (handgun) for an unlawful purpose, N.J.S.A. 2C:39-4(a) (Count Thirty); (15) third-degree unlawful

possession of a weapon (sawed-off shotgun), N.J.S.A. 2C:39-3(b) (Count Thirty-One); (16) third-degree unlawful possession of a handgun without a permit, N.J.S.A. 2C:39-5(b) (Count Thirty-Two); and (17) second-degree conspiracy to commit an armed robbery, N.J.S.A. 2C:5-2/2C:15-1 (Count Forty Nine). (Da1-12).[1]

On June 7, 2012, trial began. (1T). On June 21, 2012, the jury found defendant guilty of one count of first-degree purposeful or knowing murder of Nia, N.J.S.A. 2C:11-3(a)(1) and (2); four counts of first-degree felony murder, N.J.S.A. 2C:11-3(a)(3); two counts of first-degree carjacking, N.J.S.A. 2C:15-2; two counts of first-degree robbery, N.J.S.A. 2C:15-1; two counts of second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a); and one count of second-degree conspiracy to commit robbery, N.J.S.A. 2C:15-1 and N.J.S.A. 2C:5-2. She was acquitted of the remaining counts. (7T 21:4 to 24:4).

On February 8, 2013, the court sentenced defendant to life imprisonment subject to the No Early Release Act ("NERA") for the murder of Nia and a consecutive thirty-year term with a thirty-year parole ineligibility period for the felony murder of Michael. (9T 17:8-18).

[1] The State adopts the abbreviations used in defendant's brief and additionally designates "Db" to refer to defendant's brief and "Pa" to refer to the State's brief.

Defendant appealed. On November 8, 2017, this court affirmed defendant's conviction but reversed and remanded for resentencing. State v. Bellamy (Bellamy I), A-3676-12, 2017 WL 5171843 (App. Div. Nov. 8, 2017); (Da110-17).

On September 19, 2019, the court resentenced defendant. (24T). Defendant was again sentenced to life imprisonment subject to NERA, consecutive to a thirty-year term with a thirty-year period of parole ineligibility. (24T 71:17 to 72:3).

Defendant appealed. On May 17, 2021, this court again reversed defendant's sentence and remanded for resentencing. State v. Bellamy (Bellamy II), 468 N.J. Super. 29 (App. Div. 2021). In so doing, this court ordered a different judge to resentence defendant. Id. at 49-51.

On remand, and prior to defendant's third sentencing date, defendant sought to extend constitutional protections for juveniles to young adult offenders such as her who are over the age of seventeen at the time of the offense. (Da254). On July 11, 2024, the court heard oral argument on this issue. (26T).

On September 16, 2024, the court sentenced defendant for a third time. (27T). As to the murder of Nia, the court imposed a forty-year sentence in New Jersey State Prison ("NJSP") subject to NERA, consecutive to a thirty-year sentence with a thirty-year parole ineligibility period for the felony murder of

Michael. (27T 168:22 to 169:14). The court either merged the remaining counts or ordered them to run concurrent to the other counts. (27T 168:22 to 169:14).

On the same day, the court issued an opinion and order denying defendant's request to extend constitutional protections for juveniles to young adult offenders such as her who are over the age of seventeen at the time of the offense. (Da245-67).

Defendant appeals.

COUNTER-STATEMENT OF FACTS

The State adopts the statement of facts as set forth in this court's opinion in Bellamy I:

> At trial, the jury heard testimony from Amanda Muchioki that, at approximately 2:30 a.m. on April 4, 2010, she heard a car pull up in front of her Jersey City home where she lived with her brother, Michael, and his fiancée, Nia. Amanda heard a male voice say "get out of the car" that was followed by "a loud bang." She looked out the window but could not identify the "two people standing at the car" or ascertain their gender. As Amanda ran to another room to obtain her cellphone to call 911, she heard "three more shots." She estimated these other shots—described as three "smaller explosion[s]"—occurred approximately "ten, [fifteen] seconds" after the first "big bang." After calling 911 to report the incident, Amanda remained out of sight because she feared someone would enter the home. When police arrived approximately five minutes later, Amanda went outside and saw the gunshot bodies of Michael and Nia, laying on the ground outside of Nia's black SUV.
>
> Another neighbor testified that, after she heard a "loud boom," she ran to her second-floor window to see three individuals, whom she described as consisting of one male and two female African–Americans, get into a black SUV. The witness went back

to bed but then heard three other "pops" which she knew were "gunshots," which caused her to call the police. She looked out the window again to see the three individuals get out of the vehicle and run down the street.

In the follow-up investigation, the prosecutor's office interrogated [co-defendant Darmelia] Lawrence after finding her fingerprints on Nia's vehicle. Because of her interrogation, the prosecutor's office asked defendant to come in for questioning. Defendant voluntarily reported to the prosecutor's office, and after being advised of her Miranda rights, she gave a video-recorded statement implicating herself, Lawrence, and [her cousin, co-defendant] Shiquan [Bellamy] in the murder, carjacking and robbery of Michael and Nia, which was played to the jury.

Defendant stated they left a party, and went to an apartment where Shiquan retrieved a shotgun and 9 mm handgun. When they left the apartment with no specific destination in mind, she possessed the handgun and Shiquan had the shotgun. They eventually came across the victims outside a vehicle, when Shiquan ordered them to the ground and "to give [him] everything." Despite their compliance, Shiquan shot Michael in the head with the shotgun. Defendant stated she fired two shots from the handgun towards Nia, but did not know whether the bullets hit Nia. She claimed Shiquan then told her to give him the handgun, which he used to shoot Nia in the head. They got in the vehicle, but after a locking device on the steering wheel prevented them from driving away, they got out and ran back to the apartment. While in route, Shiquan discarded the wallets containing credit cards, driver's license, and cellphone, but gave defendant twenty to forty dollars taken from the victims. The discarded items were located by police in their search of the crime scene or were later turned over to police by a neighborhood resident.

The jury also heard testimony from the county medical examiner. An autopsy of Michael's body demonstrated he died from a near contact shotgun wound to his head and a gunshot wound to his buttocks, delivered from a distance greater than eighteen inches. An autopsy of Nia's body revealed she died from gunshots from a distance greater than eighteen inches to the back of her head and her

left thigh that appeared to have hit the pavement before entering her body.

Defendant testified on her behalf. She stated she was not aware of Shiquan's plans to rob, shoot or carjack anyone, and did not willingly participate in such crimes. She admitted telling Shiquan before they left the apartment that she wanted to fire a gun but asserted she did not intend to shoot at anyone when they went outside. She claimed Shiquan directed her to shoot Nia but she only shot at the ground because she did not have the heart to shoot her. She stated her fear of what Shiquan might do to her, made her accept the victims' stolen money from him and kept her from leaving when she realized what Shiquan was doing.

The jury found defendant guilty of first-degree purposeful or knowing murder of Nia, N.J.S.A. 2C:11-3(a)(1) and (2); four counts of first-degree felony murder, N.J.S.A. 2C:11-3(a)(3); two counts of first-degree carjacking, N.J.S.A. 2C:15-2; two counts of first-degree robbery, N.J.S.A. 2C:15-1; two counts of second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a); and second-degree conspiracy to commit robbery, N.J.S.A. 2C:15-1 and N.J.S.A. 2C:5-2. She was found not guilty of Michael's murder and some weapons offenses.

[2017 WL 5171843, at *1-2; (Da110-11).]

The State additionally adds the following facts:

After this court remanded this case a second time for defendant to be re-sentenced, the sentencing court heard oral argument on whether the holdings set forth in Miller v. Alabama, 567 U.S. 460 (2012), State v. Zuber, 227 N.J. 422 (2017), and State v. Comer, 249 N.J. 359 (2022), should be extended to defendant, who was nineteen years old at the time she committed these crimes. (26T).

Defendant argued that the constitutional protections that apply to juveniles who are sentenced to life imprisonment or its practical equivalent should also be extended to her because she was only nineteen years old, and science demonstrates that her brain was still developing when she committed these crimes. (26T 48:11-19; 26T 55:1 to 56:17; 26T 77:16 to 78:8).

The State countered that the case law is clear that the Miller, Zuber, and Comer holdings apply to juveniles, not adults. (26T 110:2 to 111:14). Because defendant was an adult at the time she committed these crimes, Miller, Zuber, and Comer do not apply to her. (26T 114:16-19).

Following oral argument, the court reserved its decision.

On September 16, 2024, defendant was re-sentenced. (27T). At the re-sentencing hearing, defendant reiterated her argument that the court should apply the Miller factors when sentencing her. (27T 46:1-25). Defendant further argued mitigating factors four, seven, eight, nine, twelve, thirteen, and fourteen applied and must be given significant weight. (27T 14:21-25; 27T 44:14 to 45:25; 27T 58:4-9; 27T 59:9-14; 27T 86:2-11; 27T 88:11 to 89:22; 27T 99:21 to 100:14). Defendant contended certain non-statutory mitigating factors, including her childhood trauma and her remorse, also applied. (27T 14:21-25; 27T 38:14-16; 27T 44:7-10; 27T 121:17-19). Defendant argued aggravating factor one did not apply because she is only vicariously liable for Nia's and

Michael's deaths, (27T 63:18 to 64:16), and aggravating factor nine should be given little weight because there is no need to specifically deter her from committing another offense, (27T 119:25 to 121:16). Defendant also argued the court should impose concurrent sentences rather than consecutive sentences. (27T 76:20 to 77:4).

The State began its argument by reviewing every choice defendant made leading up to Michael's and Nia's murders. (27T 141:20 to 144:22). Defendant wanted to know what it was like to fire a gun. (27T 142:2-5). Defendant chose to take the gun. (27T 142:12-13). Defendant chose to leave the house armed with the gun. (27T 142:12-13). Defendant chose to approach Michael and Nia. (27T 142:14-18). Defendant chose to stay as Shiquan ordered Michael and Nia onto their knees. (27T 142:18 to 143:2). Defendant chose to fire the gun multiple times to the ground as Michael and Nia were lying on the ground. (27T 143:24). The State further submitted that defendant fired the third shot that ultimately killed Nia. (27T 143:21-25).

The State emphasized that after fourteen years, defendant denies taking responsibility for the death of Nia and denies taking responsibility for the part she played in Michael's death. (27T 147:1-25). The State observed that in the most recent presentence report, defendant states, "I'm very remorseful for the act that was committed." (PSR 3, at 4; 27T 147:5-9). The State noted that while

defendant appeared to be remorseful about what happened and that she was caught and prosecuted, she was not remorseful for her specific actions. (27T 148:1-8).

The State argued aggravating factor one applied because defendant fired multiple shots, killing Nia and striking Michael, and she did it while they were on the ground. (27T 150:18 to 151:4). The State argued aggravating factor nine applied because, given the brutal and senseless nature of the crime, defendant specifically needed to be deterred from committing offenses in the future. (27T 152:4-11).

The State conceded mitigating factors seven and fourteen applied but contended that neither should be given much weight. (27T 152:12 to 153:1). The State further argued mitigating factor twelve and mitigating factor thirteen did not apply because she did not cooperate in this case, and she made her own choices when she armed herself, left the house, and chose not to walk away. (27T 153:2-22).

Finally, the State argued defendant should receive a consecutive sentence as to the murder of Nia and felony murder of Michael. (27T 154:1 to 155:18). The State explained consecutive sentences were appropriate because there were two victims and two separate acts of violence, which resulted in the death of both victims. (27T 154:1 to 155:18).

Additionally, four of Nia's and Michael's family members and friends addressed the sentencing court. (27T 128:16 to 141:19). Dr. Leonard Wakefield talked about how he had been with Nia and Michael at their engagement party just before they were murdered, and he spoke about what wonderful people they were. (27T 128:16 to 132:10). He also spoke about how their deaths have impacted him, every time he hears a song that reminds him of them, every time he goes to an event that they can no longer attend, and every time he goes out with his wife, fearful that the same thing could happen to him and his wife. (27T 130:21 to 131:22).

Amanda Muchioki recounted waiting for Michael and Nia to come home. (27T 132:15 to 136:8). She remembered hearing them pull up but then hearing a loud bang followed by three other shots. (27T 133:2-9). She recalled seeing them on the ground, then having to call her father to tell him that they were dead. (27T 133:14-24). Amanda spoke about the PTSD that she continues to suffer from as a result of this crime, and she stated that Nia and Michael were loving people who did not deserve what happened to them. (27T 134:16 to 136:7).

Corey Scott expressed anger at losing Nia and Michael and noted in particular the pain and grief that Nia's mother has had to endure after losing her only child. (27T 136:11 to 137:22).

Finally, Alexis Waters spoke about the pain and suffering she has experienced after losing her Uncle Michael and Nia when she was eight years old. (27T 138:3 to 141:18). She responded to defendant's arguments for a more lenient sentence based on her youth and traumatic childhood by noting that defendant's actions caused her to have a traumatic childhood and to grow up so much quicker as a result. (27T 138:16 to 140:17). Waters concluded, "[Defense counsel] stated it was a shame that [defendant] would grow old and die in prison, but I urge them to consider it's a blessing that she gets to grow old at all, but my Uncle Mike and Nia will not." (27T 141:15-18).

After hearing oral argument, the court initially held that the constitutional protections set forth in Miller, Zuber, and Comer did not apply to defendant. (27T 162:12-20). The court reasoned that Miller, Zuber, and Comer apply to juveniles, but defendant was an adult at the time she committed these crimes, making these cases inapplicable to her. (Da256-59; Da264-65). In finding that the Miller, Zuber, and Comer holdings did not apply to defendant, the court relied on multiple cases in support, including State v. Jones, 478 N.J. Super. 532, 537 (App. Div.), certif. denied, 259 N.J. 304 (2024), where this court rejected defendant's arguments. (Da262-63).

The sentencing court then found aggravating factor one because the victims had been compliant with all requests made during the robbery and

carjacking, and yet, despite their compliance, both were shot and killed execution-style. (27T 163:5-18). As the court noted, "[t]here was simply no reason for the violence to have occurred to two victims that were compliant during a robbery and a carjacking." (27T 163:16-18).

The court also found aggravating factor nine based on the need to personally deter defendant and on the general need to deter the public. (27T 163:19 to 164:6). In making this finding, the court acknowledged that while defendant had engaged in efforts to rehabilitate herself, it did not find she had been rehabilitated. (27T 164:2-6). The court further gave great weight to this factor. (27T 164:4-6).

The court found mitigating factor four based on defendant's childhood trauma and PTSD, and it gave this factor moderate weight. (27T 164:7 to 166:2). The court also found mitigating factor seven due to defendant's lack of prior convictions and contacts with the criminal justice system and gave this factor moderate weight. (27T 166:3-9). The court further found mitigating factor eight and gave it great weight because it believed defendant had shown remorse, and she had pursued education while in prison. (27T 166:10 to 167:4). The court found mitigating factor nine based on defendant's many achievements while incarcerated. (27T 167:5 to 168:1). However, the court noted defendant had one infraction while incarcerated, which involved her becoming pregnant. (27T

168:2-8). The court gave great weight to mitigating factor nine. (27T 168:8-9). Finally, the court found and gave great weight to mitigating factor fourteen. (27T 168:10-16).

The court did not find mitigating factor twelve, reasoning that although it believed defendant did the right thing and acted as a human being by helping in a criminal case, it did not find defendant's actions fell within the purview of mitigating factor twelve. (173:15 to 174:1).

The court found the mitigating factors outweighed the aggravating factors, and, accordingly, the court sentenced defendant to thirty years in NJSP with a thirty-year parole ineligibility period for the felony murder of Michael. (27T 168:22-25). The court further sentenced defendant to forty years in NJSP subject to NERA for the murder of Nia. (27T 169:10-14).

The court then conducted a Yarbough[2] analysis to determine whether it should impose a concurrent or consecutive sentence as to the felony murder of Michael and the murder of Nia. (27T 169:15 to 172:5). The court found that the objectives for the felony murder of Michael and the murder of Nia were independent of each other. (27T 170:12-22). The court further noted that defendant was the shooter as to Nia. (27T 170:15-19). The court also noted the offenses were separate acts of violence and that defendant fired the gun at least

[2] State v. Yarbough, 100 N.J. 627 (1985).

two times one after the other. (27T 170:20-22). The court found that although the crimes were committed at the same time and location and that they occurred in a single period of aberrant behavior, the court also determined defendant's actions involved the intentional deaths of two separate victims. (27T 170:22 to 171:1). The court also observed the convictions for which the sentences are to be imposed are numerous. (27T 171:1-3).

The court held that because the crime consisted of two victims and was the result of defendant engaging in two separate acts of violence, a consecutive sentence was appropriate. (27T 171:4-7). The court further considered the overall fairness of the sentence and found it was fair. (27T 171:8 to 172:5). In so holding, the court recognized defendant's many achievements while incarcerated but nevertheless determined the circumstances of these crimes and defendant's involvement in them cannot be overlooked. (27T 171:8 to 172:5).

Thus, the court imposed consecutive sentences as to the felony murder of Michael and the murder of Nia. (27T 169:10-14). The court then either merged or ran concurrent the remaining counts. (27T 169:1-9; 27T 172:6-23).

Defendant appeals from her sentence.

STANDARD OF REVIEW

An appellate court reviews a defendant's sentence "in accordance with a deferential standard." State v. Cuff, 239 N.J. 321, 347 (2019) (quoting State v.

Fuentes, 217 N.J. 57, 70 (2014)). The reviewing court "must not substitute its judgment for that of the sentencing court." Fuentes, 217 N.J. at 70. It will affirm the sentence imposed by the trial court unless, for example, the trial court violated the sentencing guidelines, it did not base its aggravating and mitigating factor findings on competent and credible evidence in the record, or its application of the guidelines to the facts of the case "shock[s] the judicial conscience." State v. Tillery, 238 N.J. 293, 323 (2019).

A sentencing court has broad discretion to sentence within the statutory range. State v. Case, 220 N.J. 49, 53-54 (2014). To determine the appropriate length of the term, a sentencing court must carefully analyze and weigh the aggravating and mitigating factors. State v. Randolph, 210 N.J. 330, 348 (2012). The court must conduct a qualitative analysis of the relevant factors and balance them accordingly. State v. McFarlane, 224 N.J. 458, 466 (2016). It must also explain its findings and its reasons for imposing a sentence. Ibid. So long as the trial court did not abuse its discretion and provided a statement of reasons, an appellate court will affirm the sentence imposed. See State v. Vanderee, 476 N.J. Super. 214, 235-41 (App. Div.), certif. denied, 255 N.J. 506 (2023).

To the extent the trial court's determination involves a question of law, an appellate court will review that issue de novo. State v. Konecny, 250 N.J. 321, 334 (2022).

LEGAL ARGUMENT

POINT I

THE SENTENCING COURT PROPERLY FOUND THE MILLER FACTORS DO NOT APPLY TO DEFENDANT BECAUSE SHE WAS AN ADULT AT THE TIME SHE COMMITTED THESE CRIMES.

Defendant contends that the sentencing court should have applied the Miller factors when sentencing her. (Db30-41).

The five Miller factors are as follows:

> Mandatory life without parole for a juvenile
>
> [1] precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences.
>
> [2] It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional.
>
> [3] It neglects 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] Indeed, it ignores that he 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.
>
> [5] And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.
>
> [State v. Zuber, 227 N.J. 422, 445 (2017) (alterations in original) (quoting Miller v. Alabama, 567 U.S. 460, 477 (2012)).]

The purpose of the Miller factors is to require sentencing judges "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at 445-46 (quoting Miller, 567 U.S. at 480). In Zuber, the New Jersey Supreme Court extended the protections provided by Miller and held that sentencing judges must evaluate the Miller factors both when a juvenile is sentenced to life imprisonment without the possibility of parole and when a juvenile is sentenced to "the practical equivalent of life without parole." Id. at 429, 446-47.

But Zuber "did not . . . extend Miller's protections to defendants sentenced for crimes committed when those defendants were over the age of eighteen." State v. Ryan, 249 N.J. 581, 596 (2022); see also State v. Jones, 478 N.J. Super. 532, 537 (App. Div.) ("[T]he Zuber Court held judges must 'take into account how children are different,' and consider the factors enumerated in Miller before sentencing juvenile offenders to life imprisonment without the possibility of parole or its practical equivalent." (emphasis added) (internal citation omitted) (quoting Zuber, 227 N.J. at 451)), certif. denied, 259 N.J. 304 (2024).

In this case, defendant was nineteen years old when she committed the crimes for which she was convicted. A nineteen-year-old is not a juvenile. See N.J.S.A. 2A:4A-22(a) (defining a "juvenile" as "an individual who is under the

age of 18 years"); N.J.S.A. 2A:4A-22(b) (defining an "adult" as "an individual 18 years of age or older"). Rather, "[t]he Legislature has chosen eighteen as the threshold age for adulthood in criminal sentencing. Although this choice may seem arbitrary, 'a line must be drawn,' and '[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood.'" Jones, 478 N.J. Super. at 550-51 (second alteration in original) (quoting Ryan, 249 N.J. at 600 n.10); see also Roper v. Simmons, 543 U.S. 551, 574 (2005).

Because defendant was an adult at the time that she committed these crimes, the Miller factors are not applicable to her. Accordingly, the sentencing court properly rejected defendant's argument that it should examine the Miller factors when determining defendant's sentence. See State v. Marrero, 2024 WL 2799284, at *3 (App. Div. May 31, 2024) (rejecting the argument that the Miller factors applied to defendants who were eighteen or older at the time they committed an offense).[3]

Defendant also contends the failure to apply the Miller factors is fundamentally unfair, thus denying her due process. (Db40-41).

"An 'integral part' of [the] guarantee of due process is the doctrine of fundamental fairness." State v. Njango, 247 N.J. 533, 548 (2021). "The doctrine

[3] In compliance with Rule 1:36-3 and Rule 2:6-1(a), the State has included the unpublished opinion in its appendix. The State is unaware of contrary unpublished opinions.

of fundamental fairness 'serves to protect citizens generally against unjust and arbitrary governmental action, and specifically against governmental procedures that tend to operate arbitrarily.'" State v. Saavedra, 222 N.J. 39, 67 (2015) (quoting Doe v. Poritz, 142 N.J. 1, 108 (1995)).

However, the doctrine should only be applied "sparingly," and only in "those rare cases where not to do so will subject the defendant to oppression, harassment, or egregious deprivation." Doe, 142 N.J. at 108 (quoting State v. Yoskowitz, 116 N.J. 679, 712 (1989)). "The doctrine's 'primary considerations should be fairness and fulfillment of reasonable expectations in the light of the constitutional and common law goals.'" Saavedra, 222 N.J. at 67-68 (quoting Yoskowitz, 116 N.J. at 706).

For the reasons set forth above, the Miller factors do not apply to defendant. Thus, it was not fundamentally unfair for the court to sentence her without applying the Miller factors. Moreover, it is clear from the court's opinion that the court had considered defendant as she stood at sentencing, considered defendant's childhood, and considered defendant's achievements while incarcerated before imposing a sentence. (See 27T 164:7 to 168:16). Accordingly, this is not one of those rare cases that calls for the application of the fundamental fairness doctrine.

POINT II

THE SENTENCING COURT PROPERLY SENTENCED DEFENDANT TO CONSECUTIVE TERMS AFTER CONSIDERING THE YARBOUGH FACTORS AND FINDING THE OVERALL SENTENCE IMPOSED WAS FAIR.

Defendant argues the sentencing court improperly imposed consecutive sentences. (Db42-45). First, defendant contends the court erred by failing to consider the Yarbough factors through the lens of the Miller factors. (Db5252-53). Defendant further argues the holding in Zuber applies with equal force in this case. (Db46-47).

For the reasons set forth in Point I of the State's brief, the Miller factors do not apply to defendant because she was not a juvenile at the time she committed these crimes. Likewise, the holding the Court enunciated in Zuber does not apply to defendant because she was an adult at the time she committed these crimes, and the Court's holding in Zuber only applies to juveniles. See Ryan, 249 N.J. at 596 (observing the Zuber Court "did not . . . extend Miller's protections to defendants sentenced for crimes committed when those defendants were over the age of eighteen.").

Second, defendant argues the sentencing court's determination to sentence defendant to consecutive terms was improper as "the judge erroneously found that the objectives of the crimes were independent of each other"; "the judge improperly conflated Shiquan's conduct with Latonia's"; and the judge did not

properly assess defendant's "individual conduct and culpability with respect to each crime." (Db48-49). Defendant contends that "concurrent sentences are not only appropriate but required under a proper application of Yarbough." (Db52).

"Under the Code of Criminal Justice, trial judges have discretion to decide if sentences should run concurrently or consecutively." State v. Miller, 205 N.J. 109, 128 (2011); see N.J.S.A. 2C:44-5(a) ("When multiple sentences of imprisonment are imposed on a defendant for more than one offense, . . . such multiple sentences shall run concurrently or consecutively as the court determines at the time of sentence . . . ."). To determine whether to impose concurrent or consecutive sentences, a trial court will consider the following guidelines:

> (1) there can be no free crimes in a system for which the punishment shall fit the crime;
>
> (2) the reasons for imposing either a consecutive or concurrent sentence should be separately stated in the sentencing decision;
>
> (3) some reasons to be considered by the sentencing court should include facts relating to the crimes, including whether or not:
>
> > (a) the crimes and their objectives were predominantly independent of each other;
> >
> > (b) the crimes involved separate acts of violence or threats of violence;
> >
> > (c) the crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior;

> (d) any of the crimes involved multiple victims;
>
> (e) the convictions for which the sentences are to be imposed are numerous;
>
> (4) there should be no double counting of aggravating factors; [and]
>
> (5) successive terms for the same offense should not ordinarily be equal to the punishment for the first offense.
>
> [State v. Yarbough, 100 N.J. 627, 643-44 (1985).][4]

Guidelines two, four, and five "do not assist a sentencing court in making the threshold decision whether to impose concurrent or consecutive sentences; rather, they establish certain procedural requirements." State v. Carey, 168 N.J. 413, 423 (2001). Meanwhile, the first guideline "tilts in the direction of consecutive sentences because the Code focuses on the crime, not the criminal." Ibid.

Guideline three, however, "contains the evaluative core to a Yarbough analysis: it identifies five-sub-factors that 'generally concentrate on such considerations as the nature and number of offenses for which the defendant is being sentenced, whether the offenses occurred at different times or places, and whether they involve numerous or separate victims.'" State v. Torres, 246 N.J. 246, 266-67 (2021) (quoting State v. Baylass, 114 N.J. 169, 180 (1989)). "It is

[4] "A sixth factor, which imposed 'an overall outer limit on the cumulation of consecutive sentences for multiple offenses not to exceed the sum of the longest terms,' was eliminated by the Legislature in a 1993 amendment to the statute addressing concurrent and consecutive terms." State v. Liepe, 239 N.J. 359, 372 n.4 (2019) (citing L. 1993, c. 223, § 1).

by weighing those considerations that a court determines whether this factor 'renders the collective group of offenses distinctly worse than the group of offenses would be were that circumstance not present.'" Id. at 267 (quoting Carey, 168 N.J. at 428).

"Yarbough's third guideline should be applied qualitatively, not quantitatively." Carey, 168 N.J. at 427. "It follows that a sentencing court may impose consecutive sentences even though a majority of the Yarbough factors support concurrent sentences." Id. at 427-28. Indeed, "[c]rimes involving multiple deaths or victims who have sustained serious bodily injuries represent especially suitable circumstances for the imposition of consecutive sentences." Id. at 428; see also State v. Molina, 168 N.J. 436, 442 (2001); State v. Liepe, 239 N.J. 359, 374 (2019); Vanderee, 476 N.J. Super. at 241. This is because the "total impact of singular offenses against different victims will generally exceed the total impact on a single individual who is victimized multiple times." Molina, 168 N.J. at 442 (quoting Carey, 168 N.J. at 428).

"A court must 'articulate [its] reasons' for imposing consecutive sentences 'with specific reference to the Yarbough factors.'" Vanderee, 476 N.J. Super. at 239 (alteration in original) (quoting State v. Chavarria, 464 N.J. Super. 1, 19 (App. Div. 2020). To that end, "[a]n explicit statement, explaining the overall fairness of a sentence imposed on a defendant for multiple offenses in a single

proceeding or in multiple sentencing proceedings, is essential to a proper Yarbough sentencing assessment." Torres, 246 N.J. at 268.

Here, the court appropriately sentenced defendant to consecutive terms as to the murder and felony murder counts after conducting a Yarbough analysis. The court recognized that the crimes were committed at the same time and location and that they occurred in a single period of aberrant behavior. (27T 170:22-24). Nevertheless, the court found defendant's actions involved the intentional deaths of two separate victims and, furthermore, that defendant was the shooter as to Nia. (27T 170:15-19; 27T 24 to 171:1). The court also found that the objectives for the felony murder of Michael and the murder of Nia were independent of each other as they involved two separate acts of violence. (27T 170:12-22; 27T 171:4-7). Additionally, the court observed the convictions for which the sentences are to be imposed are numerous. (27T 171:1-3). Accordingly, the court held that because the crime consisted of two victims and was the result of defendant engaging in two separate acts of violence, a consecutive sentence was appropriate. (27T 171:4-7).

Contrary to defendant's claims otherwise, the court's determination is well-reasoned and supported by the competent, credible evidence in the record. Thus, its imposition of consecutive sentences should not be disturbed.

Third, defendant argues it is fundamentally unjust to impose consecutive sentences and that the court failed to provide a meaningful analysis for the overall length of the sentence. (Db52-55).

Here, the court considered the overall fairness of the sentence and found it was fair. (27T 171:8 to 172:5). In so holding, the court recognized defendant's many achievements while incarcerated but nevertheless determined the circumstances of these crimes and defendant's involvement in them cannot be overlooked. (27T 171:8 to 172:5).

Again, the court's statement of reasons is more than adequate. In considering the overall fairness of the sentence, the court did not ignore the person defendant was at sentencing. However, when considering all the facts and circumstances, the court could not overlook defendant's conduct in these crimes. The court's determination is not an abuse of discretion; therefore, it must be upheld.

POINT III

THE COURT'S FINDING AND WEIGHING OF AGGRAVATING FACTORS ONE AND NINE WERE APPROPRIATE BECAUSE THEY ARE SUPPORTED BY COMPETENT, CREDIBLE EVIDENCE IN THE RECORD.

Defendant contends the court's finding of aggravating factor one was not supported by competent, credible evidence in the record. (Db56-57). Specifically, she contends that she "did not plan the murders, conspire to commit

them, or even know that she would become involved in a robbery and killing." (Db56). She denies shooting and killing Nia and claims that she cannot be held accountable for the manner in which Shiquan escalated the violence. (Db56-57).

"Aggravating factor one requires the trial court to consider '[t]he nature and circumstances of the offense, and the role of the actor therein, including whether or not it was committed in an especially heinous, cruel, or depraved manner.'" State v. Miller, 237 N.J. 15, 29 (2019). "When applying factor one, 'the sentencing court reviews the severity of the defendant's crime, "the single most important factor in the sentencing process," assessing the degree to which defendant's conduct has threatened the safety of its direct victims and the public.'" Ibid. (quoting State v. Lawless, 214 N.J. 594, 609 (2013)). "As the Court has held, '[t]he paramount reason we focus on the severity of the crime is to assure the protection of the public and the deterrence of others. The higher the degree of the crime, the greater the public need for protection and the more need for deterrence.'" Fuentes, 217 N.J. at 74 (alteration in original) (quoting State v. Megargel, 143 N.J. 484, 500 (1996)).

When considering whether aggravating factor one applies, "a sentencing court must scrupulously avoid 'double-counting' facts that establish the elements of the relevant offense." State v. Payne, 259 N.J. 452, 469 (2025)

(quoting Fuentes, 217 N.J. at 74-75). Nevertheless, "in appropriate cases, a sentencing court may justify the application of aggravating factor one, without double-counting, by reference to the extraordinary brutality involved in an offense." Fuentes, 217 N.J. at 75. In other words, "[a] sentencing court may consider 'aggravating facts showing that [a] defendant's behavior extended to the extreme reaches of the prohibited behavior.'" Ibid. (second alteration in original) (quoting State v. Henry, 418 N.J. Super. 481, 493 (Law Div. 2010), abrogated in part on other grounds, State v. Palma, 219 N.J. 584, 595-96 (2014)).

Here, the sentencing court found aggravating factor one because the victims had been compliant with all requests made during the robbery and carjacking, and yet, despite their compliance, both were shot and killed execution-style. (27T 163:5-18). As the court noted, "[t]here was simply no reason for the violence to have occurred to two victims that were compliant during a robbery and a carjacking." (27T 163:16-18).

The court's finding is supported by competent, credible evidence in the record. Not only did the position the victims were found in and the location of the bullet wounds demonstrate they were killed execution-style, (4T 26:19-24; 2T 117:7-10; 118:4-11; 2T 124:25 to 126:4; 2T 142:6-19), but defendant herself admitted Nia and Michael were compliant and had been lying down on the ground when they were shot, (5T 28:22 to 30:9). Moreover, defendant admitted

to shooting the gun at least twice, (5T 29:13-15; Pa45), and the quick succession of the three bangs from the handgun demonstrate defendant shot and killed Nia because there was not enough time for Shiquan to take the handgun out of defendant's hands and shoot her, (2T 25:9-10; 2T 28:13, 22-24; 2T 142:20 to 143:6).

Thus, the court did not abuse its discretion by finding aggravating factor one.

Defendant further argues the court gave too much weight to aggravating factor nine. (Db57-61). She contends that in this case, a finding of aggravating factor nine and aggravating factor eight are irreconcilable. (Db57-61).

"Aggravating factor nine invokes '[t]he need for deterring the defendant and others from violating the law.'" Fuentes, 217 N.J. at 78 (quoting N.J.S.A. 2C:44-1(a)(9)). "The sentencing court's determination is a 'qualitative assessment' of the risk of recidivism, but 'also involve[s] determinations that go beyond the simple finding of a criminal history and include an evaluation and judgment about the individual in light of his or her history." Ibid. (alteration in original) (quoting State v. Thomas, 188 N.J. 137, 153 (2006)). "Deterrence has been repeatedly identified in all facets of the criminal justice system as one of the most important factors in sentencing." Megargel, 143 N.J. at 501. Indeed, "[d]eterrence is the key to the proper understanding of protecting the public."

Ibid. As such, "[d]emands for deterrence are strengthened in direct proportion to the gravity and harmfulness of the offense." Fuentes, 217 N.J. at 79 (quoting State in the Interest of C.A.H. & B.A.R., 89 N.J. 326, 337 (1982)).

"For purposes of N.J.S.A. 2C:44-1(a)(9), deterrence incorporates two 'interrelated but distinguishable concepts,' the sentence's 'general deterrent effect on the public [and] its personal deterrent effect on the defendant.'" Ibid. (alteration in original) (quoting State v. Jarbath, 114 N.J. 394, 405 (1989)). "In the absence of a finding of a need for specific deterrence, general deterrence 'has relatively insignificant penal value.'" Ibid. (quoting Jarbath, 114 N.J. at 405).

Here, the sentencing court properly found aggravating factor nine based on the need to personally deter defendant and on the general need to deter the public. (27T 163:19 to 164:6). In making this finding, the court acknowledged that while defendant had engaged in efforts to rehabilitate herself, it did not find she had been rehabilitated. (27T 164:2-6). The court further gave great weight to this factor. (27T 164:4-6).

The court's finding is supported by competent, credible evidence in the record. Defendant said she wanted to shoot a gun, (5T 27:11-15; Pa19), she agreed to take the gun her cousin gave to her, (5T 27:3-6; 5T 48:13 to 49:5;

Pa19), she admits to firing the gun at least two times,[5] (5T 29:13-15; Pa45), and, based on the quick succession of the three bullets fired, the State submits that she killed Nia, (2T 25:9-10; 2T 28:13, 22-24). Despite the many years that have passed, defendant still denies being the one to shoot Nia. Indeed, in her most recent presentence report, defendant minimizes her role in the crime by saying "I'm very remorseful for the act that was committed," while still being unable to admit what she did. (27T 122:8-11; PSR III, at 4). Additionally, defendant herself admits that she committed an infraction while in prison by having a consensual sexual relationship with a transgender inmate. (Dca438). And this infraction occurred within two-to-three years of defendant's most recent sentence, (Da68; Dca438), demonstrating that when she has the opportunity to break the rules, she will do it.

That the court also found mitigating factor eight is of no moment. In Fuentes, the Supreme Court "decline[d] to hold that aggravating factor nine and mitigating factor eight can never apply in the same sentencing." 217 N.J. at 80. Instead, our courts have consistently held that "[i]n exceptional circumstances, courts may find it necessary to apply seemingly contradictory aggravating and

[5] In her statement to police, defendant actually admits to firing three shots – one in the air and two in the ground. (Pa29; Pa45; Pa47-49). This is inconsistent with her trial testimony, where she only admits to shooting the gun into the ground twice and denies ever shooting it in the air. (5T 29:13-15; 5T 42:2). Lawrence's testimony during Shiquan's second trial also indicates defendant fired three shots, as she testified defendant "had the nine millimeter and [she] heard three shots." (14T 55:13-20).

mitigating factors." State v. Rivera, 249 N.J. 285, 300 (2021). "When doing so, the sentencing court must 'explain how it reconciles those two findings' by providing greater detail as to the weight assigned to each aggravating and mitigating factor and how those factors are balanced with respect to the defendant." Id. at 301 (quoting Fuentes, 217 N.J. at 81).

And this is one of the exceptional circumstances where a finding of aggravating factor nine and mitigating factor eight are appropriate. This case was particularly brutal and involved senseless acts of violence. Even now, defendant refuses to acknowledge her role in Nia's murder. (27T 122:8-11; PSR III, at 4). And the sentencing court recognized that, observing that defendant "was the shooter in that case," and that "the facts may be disputed, but those are all the facts that were presented to the jury for its consideration." (170:16-19).

Accordingly, the court acted well within its discretion when it found aggravating factor nine and gave the factor great weight. See State v. Rivers, 252 N.J. Super. 142, 153-54 (App. Div. 1991) (finding the trial court properly found aggravating factor nine based in part on the defendant's consistent denial of involvement in the crimes for which he was convicted).

POINT IV

THE COURT CORRECTLY DID NOT FIND MITIGATING FACTORS TWELVE AND THIRTEEN BECAUSE THEY WERE NOT SUPPORTED BY COMPETENT, CREDIBLE EVIDENCE IN THE RECORD.

Defendant contends the court should have applied mitigating factor twelve. (Db62-65).

Mitigating factor twelve is "[t]he willingness of the defendant to cooperate with law enforcement authorities." N.J.S.A. 2C:44-1(b)(12). Courts have found mitigating factor twelve applied in circumstances where the defendant cooperated with law enforcement by, for example, testifying against a co-defendant. See State v. Dalziel, 182 N.J. 494, 505-06 (2005) (finding mitigating factor twelve applied when cooperation was part of the plea agreement); State v. Henry, 323 N.J. Super. 157, 166-67 (App. Div. 1999) (finding the sentencing court should have considered the defendant's cooperation with law enforcement by testifying against one of his co-defendants at trial as a mitigating factor).

Here, the court found mitigating factor twelve did not apply because, although it believed defendant did the right thing and acted as a human being by helping in a criminal case, it did not find defendant's actions fell within the purview of mitigating factor twelve. (173:15 to 174:1). The court's finding was

proper as defendant did not cooperate with law enforcement in this case but rather another, wholly unrelated case that occurred long after the fact.

Moreover, the court had recognized defendant's steps taken to rehabilitate herself, which encompassed the many achievements she has had while incarcerated, including her decision to do the right thing with regards to this later criminal case. (27T 166:10 to 168:1).

Thus, the court did not abuse its discretion by not finding mitigating factor twelve.

Defendant also argues the sentencing court should have found mitigating factor thirteen because she was substantially influenced by her more mature cousin, Shiquan. (Db65-67).

Mitigating factor thirteen applies when "[t]he conduct of a youthful defendant was substantially influenced by another person more mature than the defendant." N.J.S.A. 2C:44-1(b)(13). Although courts have found mitigating factor thirteen where, for example, a young, impressionable defendant playing a minor role in the crime is influenced by someone older and more mature than them, including an older family member, see, e.g., Henry, 323 N.J. Super. at 159-60, 166; Megargel, 143 N.J. at 505, courts have refused to find mitigating factor thirteen in circumstances where the co-defendant was only six months older who played no dominant part in the crime, see State v. Read, 397 N.J.

Super. 598, 613 (App. Div. 2008), and where the crime was not childish or impulsive but calculated and coldblooded, see State v. Torres, 313 N.J. Super. 129, 162-63 (App. Div. 1998).

Here, mitigating factor thirteen does not apply. First, defendant's role in this crime cannot be categorized as "minor." As explained above, defendant said she wanted to shoot a gun, (5T 27:11-15; Pa19), she agreed to take the gun her cousin gave to her, (5T 27:3-6; 5T 48:13 to 49:5; Pa19), she knew the gun was loaded when she had it, (5T 38:23-25; Pa21; Pa23), she fired the gun several times, (5T 29:13-15; Pa45), and she killed Nia, (2T 25:9-10; 2T 28:13, 22-24; 2T 142:20 to 143:6). Second, defendant's cousin was merely a few months older than her—making them practically the same age. Thus, mitigating factor thirteen is inapplicable to defendant.

CONCLUSION

Based on the foregoing, the State submits that defendant's sentence should be **AFFIRMED**.

Respectfully submitted,

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LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0321-24

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
	:	
Plaintiff-Respondent,		
	:	Reply Brief on Behalf of
v.	:	Defendant-Appellant
LATONIA E. BELLAMY,	:	
Defendant-Appellant.	:	

Your Honors,

On behalf of Defendant-Appellant, Latonia E. Bellamy, kindly accept this letter brief, in lieu of formal brief, in reply to the Plaintiff-Respondent's response brief.

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Latonia E. Bellamy relies upon the Procedural History and Statement of Facts set forth in her initial brief (Db 4–29).[1] She highlights two facts that the State ignores or distorts: First, the State stipulated to the scientific record demonstrating that late adolescents, like juveniles, are less culpable, more vulnerable to adverse home environments, more susceptible to peer influence, less capable of navigating the legal system, and more amenable to rehabilitation. (Da 206–223) This scientific record was before the trial court. The court itself recognized that the developmental science is undisputed. (Da 256, 258) Yet the State's brief makes no attempt to reckon with how these pivotal findings contributed to the errors below. Second**,** the State never established that Latonia caused the death of Nia Haqq by her own hand. The State explicitly adopted the opposite position—that Latonia did not fire the fatal shot. (Db 16 n.7; Db 49 n.16) Because the State never requested a special interrogatory to the jury, this question was not definitively resolved. However, in its sworn immunity affidavit, the State subsequently adopted Latonia's trial testimony as credible: that she did not cause Ms. Haqq's death by her own hand. (Da 44–51)

[1] "Db" refers to Defendant-Appellant's initial brief; "Da" refers to Defendant-Appellant's appendix; "Dca" refers to Defendant-Appellant's confidential appendix; "Pb" refers to Plaintiff-Respondent's response brief; "Pa" refers to Plaintiff-Respondent's appendix.

These facts are not only significant but essential to evaluating the trial court's analysis, and the State's defense of that opinion cannot be sustained.[2]

LEGAL ARGUMENT[3]

POINT I

INEXPLICABLY OMITTED AND UNSUPPORTED FACTS UNDERGIRD THE STATE'S ENTIRE ANALYSIS. TO CONDUCT A PROPER REVIEW OF THE TRIAL COURT'S DECISION, THIS COURT MUST CONSIDER ALL COMPETENT AND CREDIBLE EVIDENCE IN THE RECORD.[4]

A. The State's Failure To Recognize The Stipulated Record Renders Its Legal Analysis Of The Miller Factors Meaningless.

In its brief, the State ignores the undisputed science and instead relies on case law suggesting that the trial court was prohibited from considering the Miller factors. But none of the cases addressing whether the Miller factors apply to emerging adults

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[2] Appellant emphasizes that its arguments do not hinge on the disputed identity of the shooter; they carry equal force even assuming Latonia was the one who killed Nia Haqq. By contrast, the State's defense of the trial court rests almost entirely on reframing the facts to fit its theory.

[3] With respect to Point III of respondent's brief, Latonia relies upon the arguments in her initial brief. (Db 56-61) Regarding Point IV, the record contained overwhelming, uncontroverted, competent, and credible evidence establishing mitigating factors 12 and 13, requiring a remand for resentencing. (Db 62-67)

[4] In addition to the factual errors and omissions in the State's response brief highlighted here, the State erroneously asserts that Latonia has not demonstrated remorse. (Pb 9) This is belied by the trial court's finding: "Defendant has expressed remorse and has taken responsibility for her actions." (27T166 10 to 167-4) see also, (Dca 404, 450) (Db 58, 68)

involved a stipulated scientific record, as exists here. The State's failure to grapple with that critical distinction renders its analysis in Point I of its brief meaningless. (Sb 16)

The stipulated scientific record—the first of its kind in New Jersey—consisted of 122 exhibits (26T3–26T36), including 89 scientific articles relied upon by Dr. Daftary-Kapur, all of which were undisputed by the State. (Db 32, n. 11; Da 206-223) In addition, neuropsychologist Dr. Perrin, in another stipulated report, applied the Miller factors to Ms. Bellamy, concluding that her developmental immaturity at age 19 significantly mitigated her culpability. (Dca 417-452; Db 2; Db 21-25)

The refusal to acknowledge the existence of such an expansive scientific record is indefensible, especially since the State stipulated to it, conceding that the developmental science concerning 18- to 20-year-olds was not in dispute and limiting its argument to the position that Ms. Bellamy was not entitled to Miller protection under current law. (26T109 2-15) Judge Galis-Menendez accepted the undisputed science that 19-year-olds are developmentally indistinguishable from juveniles but concluded that she lacked authority under precedent to extend the constitutional protection of Miller to Ms. Bellamy. (Da 309-331)

The State's concession and the trial court's acceptance of the neuroscience removed this issue from controversy. Yet the State now seeks to erase that record and rely on case law that has no applicability given the scientific record. This

Court must decide this case on the record actually before it, including the stipulated science on emerging adulthood, rather than on the State's *post hoc* effort to exclude facts favorable to Latonia.

New Jersey's sentencing law aims "[t]o advance the use of generally accepted scientific methods and knowledge in sentencing offenders." N.J.S.A. 2C:1-2(b)(7). Because sentencing is a fact-sensitive inquiry requiring consideration of all competent evidence, State v. Jaffe, 220 N.J. 114, 116 (2014); State v. Torres, 246 N.J. 246 (2021), the stipulated record cannot be ignored. That record established that the Miller factors applied. (26T109:2-14; 26T115:16–116:15; Da 254, 256, 259) Judge Galis-Menendez likewise "acknowledge[d] and consider[ed] the validity of the developmental science." (Da 256) The science demonstrated that late adolescence (18–20) is a distinct developmental stage characterized by ongoing brain development, impulsivity, and peer susceptibility, with desistance studies confirming most age out of criminal behavior. (Da 209–215, 261; Dca 450) Despite accepting this record, the trial court refused to apply the Miller factors, erroneously believing itself bound by State v. Jones, 478 N.J. Super. 532 (App. Div. 2024) when, in fact, Jones is not on point as it had no scientific record.

B. The State Is Estopped From Advancing An Unethical Theory That Latonia Killed Nia Haqq Where Its Immunity Affidavit Submitted Prior To Shiquan's Second Trial Directly Contradicted That Assertion.

In its brief, the State repeatedly asserts that Latonia shot and killed Nia Haqq. (Pb 8; Pb 28). That claim was advanced at Latonia's trial, where, although the jury was instructed on accomplice liability, the prosecution pressed the theory that Latonia was the shooter. (6T52 1-3; 6T62 22-25) This issue was never resolved, as the accomplice liability jury charge, omitting the mere-presence language, was submitted to the jury.[5] The assertion that Latonia was the trigger person became the linchpin of the State's argument at the third sentencing, and it remains the foundation of its position on appeal, where it continues to press for consecutive sentences on that premise. The State's argument relies on a factual assertion it has previously disavowed, an irreconcilable and ethically indefensible position.

When preparing for Shiquan's second trial, after his first trial ended in a mistrial, the State swore to an *entirely different version of events*. In its petition for immunity,[6] the State represented to the Attorney General and the court that it sought

[5] This is particularly notable because the first question the jury asked the court was to review the accomplice liability charge. Specifically, the jury asked, "can you confirm the definition of accomplice?" (7T5 22 to 25)

[6] Importantly, sentencing courts are not constrained by the trial record. At sentencing, "[t]he court evaluates a 'range of information unconstrained by evidential considerations.'" State v. Fuentes, 217 N.J. 57, 72 (2014) (quoting State v. Randolph, 210 N.J. 330, 348 (2011)).

Latonia's testimony "consistent with her prior testimony"—namely, that Shiquan shot and killed both victims.[7] (Da 44-50) (Db 16, n. 7) The affidavit stated: "Shiquan Bellamy shot Michael Muchioki in the head with the shotgun. Latonia Bellamy fired at the ground but refused to kill Nia Haqq. Shiquan Bellamy took the 9-millimeter handgun from her and shot Nia Haqq in the head." (Da 45-46) (Db 16, n. 7) The State affirmatively vouched for Latonia's trial testimony as truthful.

The contradiction could not be more stark. At Latonia's trial and sentencing, the State insisted that she killed Nia Haqq. Yet in a sworn immunity affidavit submitted before Shiquan's retrial, the State certified that he was the shooter. At resentencing—and now again on appeal—the State has reverted to its original theory solely to secure an advantage. This intentional shifting of facts forms the crux of the State's argument.

The state's conduct is legally barred and ethically indefensible. As this Court held, "like any other litigant, the State is estopped from taking inconsistent positions that are relied upon by the tribunal." State v. Reid, 456 N.J. Super. 44, 66 (App. Div. 2018). The United States Supreme Court has likewise cautioned that "[t]he staff lawyers in a prosecutor's office have the burden of letting the left hand know what the right hand is doing or has done." Santobello v. New York, 404 U.S. 257, 262–

[7] This was omitted in the State's response brief.

63 (1971). As scholars have noted, "courts have little tolerance for prosecutorial deception, whether intentional or not, that affects the trier of fact's determination of the defendant's guilt. In short, due process imposes on prosecutors an obligation to ensure that the evidence introduced at trial is, in fact, truthful. When the prosecutor fails to meet this burden, whether intentionally or not, courts have found that the defendant's right to a fair trial has been violated." Michael Q. English, A Prosecutor's Use of Inconsistent Factual Theories of a Crime in Successive Trials: Zealous Advocacy or a Due Process Violation?, 68 Fordham L. Rev. 525, 540 (1999). Where "[t]he prosecutor's use of allegedly inconsistent theories" have a direct impact on sentencing, because conclusions about a defendant's "principal role in the offense [i]s material to its sentencing determination", such due process concerns apply with equal force. Bradshaw v. Strumpf, 545 U.S. 175 187 (2005).

Not only is this pertinent to the state's ethical obligations, but it dictates how courts should respond. The doctrine of judicial estoppel "bars a party to a legal proceeding from arguing a position inconsistent with one previously asserted." State v. Jenkins, 178 N.J. 347, 358–59 (2004) (quoting State, Dep't of Law & Pub. Safety v. Gonzalez, 142 N.J. 618, 632 (1995)). See also Reid, 456 N.J. Super. at 66 (citing McCurrie ex rel. Town of Kearny v. Town of Kearny, 174 N.J. 523, 533-34 (2002) (applying judicial estoppel against a governmental entity that had asserted contrary positions at different phases of the case). Courts invoke the doctrine where a party's

"inconsistent behavior will otherwise result in a miscarriage of justice." Id. at 359 (quoting Kimball Int'l, Inc. v. Northfield Metal Prods., 334 N.J. Super. 596, 608 (App. Div. 2000)). The doctrine prevents litigants from "'playing fast and loose' with, or otherwise manipulating, the judicial process." Ibid. (quoting Gonzalez, 142 N.J. at 632). Critically, "a litigant should not be allowed to mislead courts by having one tribunal rely on his or her initial position while a subsequent body is led in a different direction." Ibid.

Judge Galis-Menendez, adopting the State's argument, concluded that Latonia was the shooter, disregarding the immunity affidavit. (Da 45-46) Defense counsel, concerned that the State was reneging on its prior position, raised this issue at length. (27T68 5 to 74-10) (27T75 16-20) (27T95 19-24) Yet the trial court made no findings on this contradiction. Pressing diametrically opposed theories, branding Latonia as a liar when convenient, while swearing to her truthfulness when expedient, is not strategy, it is gamesmanship. This gamesmanship corrodes the integrity of the justice system, undermines due process, and betrays the prosecutor's constitutional obligation to seek justice. See, Berger v. United States, 295 U.S. 78, 88 (1935) (A prosecutor's duty is to do justice – "while he may strike hard blows, he is not at liberty to strike foul ones.")[8]

[8] The State's position is further belied by DNA testing performed before Shiquan's second trial. (Db 16, n. 8) This scientific evidence further corroborated Latonia's version of events.

The consecutive sentences imposed rest on a theory the State disavowed in a sworn immunity affidavit. This is not a mere inconsistency; it is a violation of fundamental fairness and the ethical duty of candor owed to the court. Resentencing is required, free from the taint of prosecutorial inconsistencies and gamesmanship.

POINT II

THE STATE AND THE SENTENCING JUDGE ERRONEOUSLY RELIED UPON STATE V. JONES, IGNORING BELLAMY II's IMPLICIT DIRECTION THAT THE MILLER FACTORS BE CONSIDERED.

On appeal, Latonia argues that the Miller factors apply to Latonia, without a Comer lookback hearing. As explained in Latonia's initial brief, (Db 30-31; Db 41), the Bellamy II remand decision mandated that the trial court consider not only who Latonia was at the time of resentencing, 468 N.J. Super. at 39–40, but also how her childhood provided "context for her criminal conduct," if such proofs were offered. Id. at 41, 50. Extensive proof was, in fact, offered—yet it was not meaningfully considered. Although Bellamy II did not expressly reference the Miller factors by name, its parameters are plainly consonant with them. In substance, Bellamy II directed the resentencing court to evaluate the same developmental considerations that Miller identified as essential to a constitutionally sound sentencing process.

Bellamy II nodded to the Miller framework in discussing mitigating factor 14, explaining that the Legislature "unquestionably" intended to fill a void by making youth a standalone factor in sentencing. Bellamy II, 468 N.J. Super. at 46. The Court

recognized that mitigating factor 14 "embodied an argument defendant has made since her first hearing: that her age at the time of the killings warranted consideration at sentencing." Id. at 43. As our Supreme Court stated in State v. Rivera, mitigating factor 14 is not a simple age cutoff but was enacted to "broaden the court's consideration of age as a mitigating factor." 249 N.J. 285, 302 (2021) (citing S. Judiciary Comm. Statement to A. 4373 1 (L. 2020, c.110)). Importantly, the Court specifically acknowledged that mitigating factor 14 was a direct response to the Miller/Zuber line of cases. State v. Rivera, 249 N.J. at 301-302.

Procedurally, Latonia's case returns to this Court on direct appeal from resentencing pursuant to Bellamy II. This Court need look no further than its own language in Bellamy II and the Supreme Court's reasoning in Comer and Zuber to confirm that the prefrontal cortex continues to mature into late adolescence.

In Bellamy II, the Appellate Division expressly cited Zuber, which recognized that "developments in psychology and brain science show fundamental differences between juvenile and adult minds." State v. Zuber, 227 N.J. 422, 441 (2017) (quoting Graham v. Florida, 560 U.S. 48, 68 (2010)); Bellamy II, 468 N.J. Super. 36, 46, n. 3. Further, Bellamy II reiterated the Supreme Court's observation in Graham that "the parts of the brain involved in behavior control continue to mature through late adolescence." Bellamy II, 468 N.J. Super. at 46 (quoting Graham, 560 U.S. at 68). Contemporary standards of decency do not permit sentencing a 19-year-old "barely

out of childhood", Bellamy II, 468 N.J. Super. at 49, to the functional equivalent of life without parole. This is especially true in New Jersey, where the arbitrary line separating juveniles from adults at age 18 has proven to be porous and malleable, more like shifting sand than a fixed constitutional boundary. (Db 36)

The application of juvenile brain science to late adolescents is therefore neither novel nor unsettled; it is firmly established in the neuroscientific literature and increasingly recognized in our sentencing jurisprudence as required by N.J.S.A. N.J.S.A. 2C:1-2 b(7). Following Zuber, our Supreme Court in State v. Comer emphasized that "[i]n general, adolescents and individuals in their early 20s are more likely than either children or somewhat older adults to engage in risky behavior." 249 N.J. 359, 400 n.5 (2022) (quoting Laurence Steinberg, The Influence of Neuroscience on U.S. Supreme Court Decisions about Adolescents' Criminal Culpability, 14 Neuroscience 513, 516 (2013)). This line of authority reflects a consistent recognition that emerging adults share key developmental characteristics with juveniles.

Latonia's case is not about a Comer look-back hearing. Therefore, the State's reliance on Jones is misplaced (Pb 11, 17-18), and the unpublished case it cites is not pertinent to the issues before this Court. (Pb 18; Pa 81-83) This case is about a resentencing conducted under the parameters of Bellamy II, informed by a stipulated scientific record. The issue in Jones, where no robust stipulated record or

expert application of Miller existed, is not before this Court. Latonia simply argues that, given the contours of the Bellamy II remand decision, including its explicit reliance on mitigating factor 14, combined with the undisputed scientific record developed at resentencing, application of the Miller factors were constitutionally required under our State Constitution.

The resentencing judge had before her the most comprehensive record in New Jersey on emerging adulthood. To disregard that record by invoking Jones was not only error, but it also deprived Latonia of the individualized resentencing our State Constitution requires. This Court should remand for resentencing with proper application of the Miller factors.

POINT III

THE STATE, LIKE THE SENTENCING JUDGE, IGNORES THE BELLAMY II REMAND DECISION WHICH MANDATED CONSIDERATION OF THE OVERALL FAIRNESS AND REAL TIME CONSEQUENCES OF LATONIA'S SENTENCE, CAUTIONING AGAINST THE IMPOSITION OF CONSECUTIVE SENTENCES.

As noted in Latonia's initial brief, the Bellamy II remand decision urged caution regarding the imposition of consecutive sentences. (Db 45)

Judge Galis-Menendez failed to conduct any analysis regarding the real time consequences of Latonia's sentence. The real time consequence of

Latonia's sentence is that she will die in prison, just like Shiquan.[9] While the judge cited Torres, she simply echoed the Yarbough analysis and failed to address the real-time consequences of the consecutive sentences, contrary to what Torres mandates. When imposing a lengthy consecutive sentence . . . "the explanation of the overall fairness of a sentence to be imposed serves to validate a court's decision by contextualizing the individual sentences' length, deterrent value, and incapacitation purpose and need." Torres, 246 N.J. at 271.

Judge Galis-Menendez neither acknowledged nor attempted to explain why she was sentencing Latonia to die in prison.[10] She failed to articulate adequate reasons for imposing consecutive sentences and never reconciled the fundamental inconsistency of finding that the mitigating factors clearly and convincingly outweighed the aggravating factors yet nonetheless imposing consecutive terms. Indeed, where mitigating factors substantially outweigh aggravating factors and justice so demands, imposition of a sentence a degree

[9] Judge DePascale noted that "[Latonia] had neither the means, nor the present ability to carry out these crimes and, but for [Shiquan] providing her with both, these crimes would not have occurred." (18T17 10-18); (27T125 16-21)

[10] Rule 1:7-4(a) requires a trial court to "state clearly its factual findings and correlate them with the relevant legal conclusions." State v. Locurto, 157 N.J. 463, 470 (1999) (quoting Curtis v. Finneran, 83, N.J. 563, 570 (1980)). See also, Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990) ("In the absence of reasons, we are left to conjecture as to what the judge may have had in mind.").

lower is typically required. See State v. Megargel, 143 N.J. 484, 498-502 (1996). Certain incompatibilities in our sentencing law require reconciliation by the trial court. See State v. Alevras, 213 N.J. Super. 331, 342 (App. Div. 1986) (finding that "the imposition of a sentence at the bottom of the range required factfinding inconsistent with that necessary for the imposition of a period of parole ineligibility"); see also State v. Fuentes, 217 N.J. 57, 79-81(2014) (finding that because aggravating factor nine and mitigating factor eight should "rarely apply in the same sentencing", when finding both, "the sentencing court judge should explain how it reconciles those two findings.")

Likewise, the trial court's recognition that juvenile neuroscience applies to emerging adults cannot be reconciled with the imposition of consecutive sentences, particularly in the absence of a full Miller analysis. See, e.g., Zuber, 227 N.J. at 429 ("We conclude that, before a judge imposes consecutive terms that would result in a lengthy overall term of imprisonment for a juvenile, the court must consider the Miller factors along with other traditional concerns.") (internal citation omitted). Because the sentencing judge offered little more than perfunctory justifications for imposing consecutive sentences and failed to provide any compelling rationale for the overall severity of the sentence in the context of the accepted science, resentencing is required. (Db 55) The stipulated scientific record, coupled with Latonia's traumatic childhood, which contributed to the

offenses, and her extraordinary rehabilitation, which demonstrates that she will not reoffend, renders the imposition of consecutive sentences legally untenable.

CONCLUSION

For the reason set forth in Latonia's initial brief, and this reply brief, this matter must be remanded for a resentencing hearing.

Respectfully submitted,

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Date: September 24, 2025

STATE OF NEW JERSEY Plaintiff-Respondent, v. LATONIA BELLAMY Defendant-Appellant	Appellate Division Docket No. A-000321-24 CRIMINAL ACTION On Appeal from a Judgement of Conviction of the Superior Court of New Jersey, Law Division, Hudson County Indictment No. 11-03-0348-I Sat Below: Hon. Mitzy Galis-Menendez, P.J.Cr.

BRIEF OF AMICI CURIAE RUTGERS CRIMINAL AND YOUTH JUSTICE CLINIC AND AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY

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STATEMENTS OF INTEREST OF AMICI CURIAE

Amici curiae are organizations with significant experience and expertise in criminal and juvenile law, procedure, and policy. They include the following:

Rutgers Criminal and Youth Justice Clinic

The Rutgers Criminal and Youth Justice Clinic ("CYJC") is a clinical education program of Rutgers Law School. Over the last decade, the CYJC has provided legal representation to more than 700 youth involved in New Jersey's juvenile justice system, including numerous young people who have been waived to and sentenced by adult criminal courts, and system-impacted older adolescents. Through this work, clinic faculty and staff have developed extensive expertise in the policies, practices, and legal proceedings that are at issue in this matter.

The CYJC frequently appears before the New Jersey Supreme Court and the Appellate Division as or on behalf of amicus curiae. Representative matters include State v. Comer, 249 N.J. 359 (2022) (affording youth sentenced to terms of thirty years or longer the right to a resentencing hearing after serving twenty years); State in the Interest of A.A., 240 N.J. 341 (2020) (expanding protections for children in police interrogations); State in the

Interest of C.K., 233 N.J. 44 (2018) (holding that mandatory lifetime inclusion of youth on sex offender registry violates due process); State in the Interest of N.H., 226 N.J. 242 (2016) (finding that youth facing waiver to adult court have right to full discovery of prosecutor's file); State in the Interest of V.A., 212 N.J. 1 (2012) (establishing more protective standard for judicial review of prosecutorial waiver decisions); State in the Interest of P.M.P., 200 N.J. 166 (2009) (establishing time at which juvenile cannot waive Miranda rights without an attorney); State in the Interest of Y.C., 436 N.J. Super. 29 (App. Div. 2014) (holding that youth threatened with administrative transfer from juvenile to adult prison entitled to due process).

American Civil Liberties Union of New Jersey

The ACLU is a private, non-profit, non-partisan membership organization dedicated to the principle of individual liberty embodied in the Constitution. The ACLU has a long-standing interest in issues impacting young people in the criminal legal system. The ACLU served as co-counsel in State v. Comer and argued as amicus curiae in State v. Zuber, 227 N.J. 422 (2017). Beyond those cases, the ACLU-NJ has long been a strong supporter and protector of the constitutional rights of individuals in the criminal justice system, and in particular of the rights of juveniles, whose well-documented vulnerabilities have been a particular concern. Accordingly, the ACLU has

long engaged in litigation on behalf of young people. See, e.g., State in the Interest of V.A., 212 N.J. 1 (2012) (discussing standard governing review of waiver decisions); State in the Interest of A.D., 212 N.J. 200 (2012) (exploring definition of probable cause applicable in waiver hearings); State in the Interest of A.W., 212 N.J. 114 (2012) (challenging interrogation techniques used on a juvenile); State in the Interest of P.M.P., 200 N.J. 166 (2009) (establishing time at which juvenile cannot waive Miranda rights without an attorney). This follows from the tradition of the ACLU's parent organization, the national American Civil Liberties Union, which litigated, inter alia, In re Gault, 387 U.S. 1 (1967), in which the United States Supreme Court, in a landmark ruling, announced the right to counsel for children in juvenile proceedings.

PRELIMINARY STATEMENT

Developmental and brain science have established that young people do not reach full developmental maturity until at least age twenty-one and typically by age twenty-five. The resultant "distinctive attributes of youth" -- impulsivity, differential assessment of risk, and vulnerability to peer influence, among others -- undermine adolescent judgment, decision-making, and self-regulation, rendering young people both less culpable and more likely to

outgrow lawbreaking behavior than fully mature adults. The process of brain maturation can be prolonged, furthermore, by adverse childhood experiences, including child neglect and abuse, exposure to violence, and subjection to racial bias. At the same time, numerous studies have established that young people who commit serious offenses desist from offending as they reach developmental maturity.

The profound impact of developmental immaturity on the executive functioning of adolescents undergirds federal and state jurisprudence special procedural protections to youth under the age of eighteen. These same scientific truths compel the extension of similar constitutional safeguards to those who were late adolescents when they committed the crimes that led to their incarceration. Such extension would be entirely in keeping with the science, with well-established precedent, with recent amendments to the New Jersey Code of Criminal Justice, and with a large body of legal scholarship.

In this case, Latonia Bellamy, who was a nineteen-year-old late adolescent and survivor of severe trauma at the time of the offense, is entitled to be resentenced in accordance with the dictates of State v. Comer, State v. Zuber, and Miller v. Alabama. For these reasons, Amici respectfully urge this Court to grant the relief she seeks.

STATEMENT OF FACTS

Amici rely on and incorporate by reference the Statement of Facts contained in the Defendant's Brief in Support of Resentencing.

PROCEDURAL HISTORY

Amici rely on and incorporate by reference the Procedural History contained in the Defendant's Brief in Support of Resentencing. In addition, on August 10, 2022, this Court ordered briefs of Amici Curiae to be filed no later than December 14, 2022. On November 28, 2022, this Court issued an amended scheduling order directing briefs of Amici Curiae to be filed on or before March 14, 2023.

LEGAL ARGUMENT

POINT ONE

THE DEVELOPMENTAL SCIENCE UNDERGIRDING MILLER, ZUBER, AND COMER ESTABLISHES THAT OLDER ADOLESCENTS, LIKE YOUNGER YOUTH, ARE LESS CULPABLE AND MORE MUTABLE THAN FULLY MATURE ADULTS.

The legal boundaries between childhood and adulthood in the United States are fluid and inconsistent. The "near universal . . . age of majority" across the fifty states, for instance, was twenty-one until, in 1970 -- for largely political, rather than scientific, reasons -- it fell to eighteen. See Vivian E.

Hamilton, Adulthood in Law and Culture, 91 Tul. L. Rev. 55, 57 (2016).[1] Similarly, the line of demarcation between youth and adulthood in criminal law has shifted throughout history. The common law defense of infancy barred the prosecution of children under the age of seven and presumptively forbade prosecution of children between the ages of seven and fourteen. With the emergence of the modern juvenile court system in 1899, children younger than seven for the first time could be charged and prosecuted and those who were below the age of eighteen were presumptively removed from the jurisdiction of adult criminal courts, with the purported end of substituting treatment and rehabilitation for punishment of children who broke the law. See Barbara Kaban & James Orlando, Revitalizing the Infancy Defense in the Contemporary Juvenile Court, 60 Rutgers L. Rev. 33, 37 (2007) (noting that,

[1] Many state and federal statutes establish conflicting age limitations that shift over time, sometimes arbitrarily and sometimes after more careful consideration. As one example, the minimum age of eligibility for a driver's license ranges from sixteen to eighteen nationally. See Teen and Novice Drivers, Governors Highway Safety Ass'n, https://www.ghsa.org/state-laws/issues/teen%20and%20novice%20drivers (last visited Mar. 8, 2023). The federal Affordable Care Act requires insurance companies to allow late adolescents to remain on their parent's medical coverage until age twenty-six, extending the previous age limit of nineteen or twenty-three for full-time college students. See 42 U.S.C. § 18014(d)(2)(E). Further, recognizing late adolescents' developmental immaturity, some states have extended the age of eligibility for foster care services to twenty-one following the implementation of the federal Foster Care Act of 2008. Andrew Michaels, A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty, 40 N.Y.U. Rev. L. & Soc. Change 139, 154-55 (2016).

despite the articulated benevolent purposes of the juvenile court system, it "evolved into a system characterized by arbitrariness and harsh penalties"). Over the next century, however, the borderlands between juvenile and adult court eroded as state legislatures around the country, often responding to anomalous, high profile crimes committed by teenagers, amended their criminal codes to permit or compel adult prosecution of more youth and to strip away many of the traditional protections of the juvenile court. See Laura Cohen & Jane Spinak, Busting the "Juvenile Super-Predator" Myth, in Kristin Henning et al., Rights, Race, and Reform: 50 Years of Child Advocacy in the Juvenile Justice 269, 270-72 (2018).

Over the last two decades, the ground shifted once again as the United States Supreme Court has looked to developmental science to re-configure the constitutional boundaries of youth sentencing. Embracing a robust body of research establishing that developmental immaturity renders young people both less culpable and more mutable than fully mature adults, the Court outlawed the juvenile death penalty in Roper v. Simmons, 543 U.S. 551, 578 (2005). Five years later, in Graham v. Florida, 560 U.S. 48, 82 (2010), the Court held that sentences of life without parole for children convicted of non-homicides violates the Eighth Amendment's ban of cruel and unusual punishment. And, in Miller v. Alabama, 567 U.S. 460, 489 (2012), the Court

declared that mandatory sentences of life without parole violate the Eighth Amendment as applied to children younger than eighteen, regardless of the offense of conviction. The Miller Court further declared that, when sentencing youth, courts must consider five factors that are rooted in developmental, social, and psychological science. Id. at 477-78. These include the young person's innate "immaturity, impetuosity, and failure to appreciate risks and consequences"; "family and home environment"; family and peer pressures; "inability to deal with police officers or prosecutors" or their own attorney; and the "possibility of rehabilitation." Id.

The New Jersey Supreme Court extended Miller to prohibit sentences that are the practical equivalent of life without the possibility of parole for youth under the age of eighteen. State v. Zuber, 227 N.J. 422, 429 (2017). Most recently, in State v. Comer, 249 N.J. 359, 400-01 (2022), the Court operationalized Zuber by creating a procedural pathway for those sentenced to terms of thirty years or longer to seek judicial review and modification of their sentences after twenty years. At these resentencing hearings, courts must consider and apply the "Miller factors" as well as "factors that could not be fully considered decades earlier, like whether the defendant still fails to appreciate risks and consequences, and whether he has matured or been rehabilitated." Id. at 399-400.

The focus of Roper, Graham, Miller, Zuber, and Comer was adolescents younger than eighteen, the currently accepted line of demarcation between childhood and adulthood. But the developmental science that gave rise to those decisions, as well as the related question of the effects of childhood trauma on adolescent judgment and decision-making, is equally defining of young people who, like Latonia Bellamy, were sentenced to lengthy terms of incarceration for crimes committed when they were older than eighteen but had not yet reached the age developmental maturity. For these reasons, Amici join the defense in urging this Court to modify Ms. Bellamy's sentence to a term of thirty years with twenty years of parole ineligibility, consistent with the dictates of Comer.

A. Because Young People Do Not Reach Developmental Maturity Until At Least Age Twenty-One to Twenty-Five, the Judgment and Decision-Making Abilities of Younger and Older Adolescents[2] Are Similarly Impaired.

Although the criminal legal system and societal institutions fix the age of eighteen as the frontier between childhood and adulthood, advances in neuro- and behavioral science have revealed the arbitrariness of this boundary. See, e.g., Reforming Juvenile Justice: A Developmental Approach 93 (Richard

[2] Legal scholars and social scientists use the terms "older adolescents," "late adolescents," "emerging adults," and "individuals between the age of nineteen and twenty-five" interchangeably. In this brief, "older adolescent" and "late adolescent" are used interchangeably.

J. Bonnie et al. eds., 2013); Lila Kazemian, Pathways to Desistance from Crime Among Juveniles and Adults: Applications to Criminal Justice Policy and Practice 1-3 (2021). Longitudinal studies using brain imaging technology have established that the regions of the brain governing judgment and decision-making and regulating impulse control -- core characteristics of adulthood -- continue to develop through one's mid-twenties. See Mariam Arain et al., Maturation of the Adolescent Brain, 9 Neuropsychiatric Disease & Treatment 449, 453 (2013); Laurence Steinberg, Adolescent Development and Juvenile Justice, 5 Ann. Rev. Clinical Psych. 459, 482 (2009). Specifically, the prefrontal cortex, which controls integration of the cognitive and affective, or emotional, aspects of behavior and therefore is responsible for advanced thinking function, such as risk analysis, and self-regulation function, such as impulsivity, emotional, and cognitive control, is the last region of the brain to mature fully and, in general, does not do so until between ages twenty-one and twenty-five. See Elizabeth S. Scott et al., Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy, 85 Fordham L. Rev. 641, 651 (2016); Rotem Leshem, Brain Development, Impulsivity, Risky Decision Making, and Cognitive Control: Integrating Cognitive and Socioemotional Processes During Adolescence—An Introduction to the Special Issue, 41 Developmental Neuropsychology 1, 2 (2016). In contrast,

the amygdala and other subcortical regions associated with impulses, emotions, and instinctive behaviors develop earlier in adolescence. Leshem, 41 Developmental Neuropsychology at 2. This "gap between the early maturation of socioemotional networks and the relatively late maturation of cognitive networks creates an imbalanced state in which emotions are likely to override cognitive control mechanisms" making "it difficult for adolescents to impose constraints on stimulus-driven behaviors, and reduces their capacity for reasoning, judgment, and impulse control." Id.

The ongoing process of brain development and maturation makes it equally difficult for younger adolescents and late adolescents to engage in cautious decision-making. While adults older than age sixteen may have greater cognitive capacity than those sixteen and under, this is not the case with respect to psychosocial maturity. Laurence Steinberg et al., Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop", 64 Am. Psych. 583, 591 (2009). Like younger adolescents, late adolescents cannot use their cognitive abilities to supersede emotionally triggering situations and, so, have a tendency toward risk-taking and susceptibility to peer influence. Alexandra O. Cohen et al., When Does a Juvenile Become an Adult? Implications for Law and Policy, 88 Temp. L. Rev. 769, 786-87 (2016); Alexandra O. Cohen et

al., When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts, 27 Psych. Sci. 549, 559 (2016).

Again, like younger adolescents, late adolescents are more prone to impulsive and imperceptive decision-making and are more likely to engage in dangerous behavior than both pre-pubescent children and older adults. Laurence Steinberg, Adolescent Brain Science and Juvenile Justice Policymaking, 23 Psych., Pub. Pol'y, & L. 410, 413 (2017); Scott et al., 85 Fordham L. Rev. at 651. They have a harder time anticipating consequences and struggle with differentiating positive and negative rewards resulting from their behavior (and, therefore, in making rational decisions). Michaels, 40 N.Y.U. Rev. L. & Soc. Change at 161-62. They also are prone to sensation-seeking, or embracing "novel, exciting, and rewarding experiences." Steinberg, 23 Psych., Pub. Pol'y, & L. at 414. Sensation-seeking increases considerably during puberty until one's early twenties, at which point the prefrontal cortex has progressively matured and developed. Id. In short, through one's twenties, systems of reward and self-control are imbalanced, increasing young people's inclination towards impulsivity and risk taking. Laurence Steinberg & Grace Icenogle, Using Developmental Science to Distinguish Adolescents and Adults Under the Law, 1 Ann. Rev. Developmental Psych. 21, 31 (2019).

Another core characteristic of developmental immaturity is lack of resistance to peer influence. That Ms. Bellamy was only nineteen years old at the time of her offense made her susceptible to pressure from her cousin and co-defendant, Shiquan Bellamy. Peers are the "most important contextual contributor to risk-taking." Elizabeth Scott et al., Brain Development, Social Context, and Justice Policy, 57 Wash. U. J.L. & Pol'y 13, 47 (2018). Peers can particularly influence late adolescents in anti-social ways, especially in "unstructured, unsupervised settings." Id. at 47-48.

External factors also inhibit brain development. For instance, brain maturation is impacted by a late adolescent's genetics and environment, prenatal and postnatal factors, nutrition, and pharmacotherapy. Arain et al., 9 Neuropsychiatric Disease & Treatment at 450. It can be further impaired by "physical, mental, economical, and psychological stress." Id. Many of these factors were present for the nineteen-year-old Latonia Bellamy. As the record well establishes, Ms. Bellamy lived a life of severe emotional and physical trauma beginning in childhood and continuing throughout late adolescence. (Dca 423, 429) These factors, in concert with the brain's normative development immaturity, had a profound impact on her judgment and decision-making, making her both less culpable and more likely to outgrow lawbreaking behavior than a fully mature adult.

B. Adverse Childhood Experiences Prolong Developmental Maturation.

Brain and psychosocial development can be even more protracted among young people who have experienced adverse childhood experiences ("ACEs"), including, among others, trauma and racial bias, which itself is a form of trauma. See, e.g., Johanna Bick & Charles A. Nelson, Early Adverse Experiences and the Developing Brain, 41 Neuropsychopharmacology 177, 182 (2016); Rebecca Epstein et al., Girlhood Interrupted: The Erasure of Black Girls' Childhood 4 (2017). ACEs are stressful or traumatic events, like psychological, physical, and sexual abuse and exposure to violence and parental incarceration, all of which Ms. Bellamy was subjected to throughout her childhood and more. New Jersey Funders ACES Collaborative, Adverse Childhood Experiences: Opportunities to Prevent, Protect Against, and Heal from the Effects of ACEs in New Jersey 4 (2019).

1. The Effects of Trauma

Childhood trauma -- including neglect and abuse -- can adversely affect a child's development and, so, delay full maturation of the prefrontal cortex. Trauma, such as in the forms of sexual abuse, physical violence, and parental neglect, undermines young people's self-regulation and judgment and, consequently, their ability to make responsible and non-impulsive decisions.

Rachel Barkin, Hot and Cold Cognition: Understanding Emerging Adults' Cognitive Reasoning 2 (2021). These effects of early childhood trauma, furthermore, persist into late adolescence, delaying brain development. See Ashley Williams, Early Childhood Trauma Impact on Adolescent Brain Development, Decision Making Abilities, and Delinquent Behaviors: Policy Implications for Juveniles Tried in Adult Court Systems, 71 Juv. & Fam. Ct. J. 5, 8 (2020). Young people who have experienced trauma are even more disadvantaged in their decision-making and self-regulation abilities during states of "hot cognition," such as moments when they -- like Ms. Bellamy was at the time she committed the crime for which she was convicted -- are pressured by peers to engage in risky or dangerous actions. Id. at 8-11; Barkin, at 2.

2. Racial Bias, Particularly Adultification, is a Form of Trauma that Negatively Affects the Developmental Trajectory of Black Children.

In addition to other forms of trauma, persistent exposure to racism and attendant socioeconomic inequities has a profound impact on the mental health and developmental trajectory of Black children. See Nathalie M. Dumornay et al., Racial Disparities in Adversity During Childhood and the False Appearance of Race-Related Differences in Brain Structure, 180 Am. J. Psychiatry 127, 127-28, 136 (2023); Donte L. Bernard et al., Making the "C-

ACE" for a Culturally-Informed Adverse Childhood Experiences Framework to Understand the Pervasive Mental Health Impact of Racism on Black Youth, 14 J. Child & Adolescent Trauma 233, 235-36 (2021). Racial discrimination is an ACE that affects Black youth as young as six years old and can occur often throughout children's developmental stages. Donte L. Bernard et al., Racial Discrimination and Other Adverse Childhood Experiences as Risk Factors for Internalizing Mental Health Concerns Among Black Youth, 35 J. Traumatic Stress 473, 474 (2022). Racial discrimination can amplify life stressors that affect the prenatal cortex, "impacting problem-solving and impulse control" of Black adolescents. Bernard et al., 14 J. Child & Adolescent Trauma at 240; see Melissa Strompolis et al., The Intersectionality of Adverse Childhood Experiences, Race/Ethnicity, and Income: Implications for Policy, 47 J. Prevention & Intervention Cmty. 310, 319 (2019). Frequent exposure to racial discrimination causes anxiety and acts as a stressor that can impair the mental health of Black youth. Bernard et al., 35 J. Traumatic Stress at 474. This "negatively impact[s] important developmental process . . . that shape how youths view themselves and interact with others[,]" especially when there are no corrective measures taken, such as therapeutic measures. Id. at 474-75 (alteration in original).

One form of racism that uniquely affects children is adultification bias.

See New Jersey Funders ACES Collaborative, at 44. Adultification bias creates a "practice of perceiving and treating children and youth of color unfairly based on explicit or implicit negative racial beliefs." Ctr. for the Study of Social Policy et al., Shifting the Perceptions and Treatment of Black, Native, and Latinx Youth Involved in Systems of Care 6 (2022). Many adults have distorted perceptions that lead them to view Black youth as older than their actual age in comparison to white youth. Id. Black youth are perceived as more "more adult-like, less innocent, more deviant, not deserving of leniency to make mistakes, and less in need of nurturing, protection, comfort, and support." Id. (citing Kristin Henning, Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform, 98 Cornell L. Rev. 383, 426 (2013); Phillip Atiba Goff et al., The Essence of Innocence: Consequences of Dehumanizing Black Children, 106 J. Personality & Soc. Psych. 526, 536-37 (2014); Epstein et al., at 8; Brittany Davis, Criminalization of Black Girls in the Juvenile Legal System 4 (2020)). In part as a result of these skewered perceptions, Black youth are disproportionately represented at every stage of the juvenile legal system. Ctr. for the Study of Social Policy et al., at 9. See generally Racial and Ethnic Disparity in Juvenile Justice Processing, Off. of Juv. Just. & Delinq. Prevention (Mar. 2022), https://ojjdp.ojp.gov/model-programs-guide/literature-

reviews/racial-and-ethnic-disparity. Not only are Black youth four times more likely to be detained than white youth, for example, but their long-term incarceration rate is also 4.6 times higher. Ctr. for the Study of Social Policy et al., at 9. In large part, this is attributed to the fact that the errors of Black youth are seen as intentional and malicious instead of "decision-making skills that are still developing." Id. at 6.

Although most of the research focuses on Black boys, Black girls also experience adultification bias, albeit through a somewhat different lens. According to legal scholar Kristin Henning, Black girls historically were perceived and portrayed as "immoral, erotic, and seductive." Kristin Henning, The Rage of Innocence: How America Criminalizes Black Youth 100 (2021). As the authors of Girlhood Interrupted conclude, Black girls are not afforded the space to "make mistakes and to learn, grow, and benefit from correction for youthful missteps to the same degree as white children." Epstein et al., at 6. As a result, even very young Black girls are viewed as sexually mature and are subjected to unjustified and disproportionate discipline in school and harsh treatment by the police. Henning, at 101. Black girls further are viewed and treated as older than they are at all stages in their development cycle, "beginning most significantly at the age of 5, peaking during the ages of 10 to 14, and continuing during the ages of 15 to 19." Epstein et al., at 8.

One study focusing on adults' perception of Black girls found that they are perceived as being "less innocent and more like adults"; older than their actual or disclosed ages; more knowledgeable of adult topics, such as sex; and more likely to assume adult roles and responsibilities than their white counterparts. Henning, at 101. These flawed and biased perceptions lead to the imposition of harsher penalties on Black girls, who are 3.5 times more likely to be incarcerated than white girls. Id. at 100-05; see Epstein et al., at 12; Jamilia J. Blake & Rebecca Epstein, Listening to Black Women and Girls: Lived Experiences of Adultification Bias 1 (2019) (exploring the impact of adultification bias on focus group participants ages twelve through sixty).

C. Like Their Younger Counterparts, Older Adolescents Who Commit Serious Offenses Desist as They Mature.

Lying at the heart of the Miller/Zuber/Comer doctrine is judicial recognition of young people's mutability, or their capacity for change. Longitudinal studies of young people involved in the legal system have established irrefutably that, as youth reach developmental maturity, they desist from criminal activity. See, e.g., U.S. Dep't of Just., Nat'l Inst. of Just., NCJ 301497, Desistance from Crime: Implications for Research, Policy, and Practice, at xii (2021); Edward P. Mulvey et al., Theory and Research On Desistance from Antisocial Activity Among Serious Adolescent Offenders, 2

Youth Violence & Juv. Just. 213, 215-16 (2004); Laurence Steinberg et al., Psychosocial Maturity and Desistance from Crime in a Sample of Serious Juvenile Offenders 2 (2015); Michael Rocque et al., Psychosocial Maturation, Race, and Desistance from Crime, 48 J. Youth & Adolescence 1403, 1404 (2019) (alteration in original) ("[T]here is a curvilinear relationship [among all groups] between age and crime, with offending behavior peaking in late adolescence/early adulthood and declining thereafter."); Cecelia Klingele, Measuring Change: from Rates of Recidivism to Markers of Desistance, 109 J. Crim. L. & Criminology 769, 799 (2019). The leading desistance study, Pathways to Desistance, followed 1,354 youths ages fourteen to eighteen from two jurisdictions, all of whom had been adjudicated in juvenile court for serious offenses, for seven years. Edward P. Mulvey et al., Pathways to Desistance – Final Technical Report 1, 4 (2014). Although this study focus group ended with eighteen-year olds, subsequent studies extends beyond to age twenty-one. Kathryn Monahan et al., Juvenile Justice Policy and Practice: A Developmental Perspective, 44 Crime & Just. 577, 578-79 (2015) (alteration in original); see Steinberg et al., at 1; Laurence Steinberg, Cognitive and Affective Development in Adolescence, 9 Trends Cognitive Scis. 69, 71 (2005). The majority of youth progressed from persistent offending at the beginning of the study to committing less serious and less frequent crimes over

time, regardless of the severity of the initial offense. Mulvey, at 12-13. As another study concluded, "[a]dolescents demonstrate unique decision-making processes compared with adults, [where] there are continued changes and growth in brain functioning and maturation from mid adolescence to the mid-20s, and most criminal offending ceases as youths move from adolescences into adulthood." Monahan et al., 44 Crime & Just., at 578-79; see Steinberg et al., at 1; Steinberg, 9 Trends Cognitive Scis., at 71.

Social scientists have dubbed the sharp increase in offending among youth ages fifteen to nineteen and steady decline from age twenty to twenty-five and beyond the "age-crime" curve. See, e.g., David P. Farrington, Age and Crime, 7 Crime & Just. 189, 191-96 (1986). Although early researchers concluded that, given its apparent consistency across youth of different socio-economic, racial, and cultural groups, the age-crime curve was "inexplicable," more recent studies have employed a multi-variate analysis to explain the impact of developmental maturation on youth offending. Gary Sweeten et al., Age and the Explanation of Crime, Revisited, 42 J. Youth Adolescence 921, 922 (2013). As Gary Sweeten, Alex Piquiero, and Laurence Steinberg have observed:

> The process of development from adolescence to adulthood cannot be reduced to a single theory or overarching construct. Dramatic changes occur across multiple domains: less strain is encountered, impulse control and related aspects of psychosocial maturity

> improve, and perceived rewards of crime decrease, to highlight just a few examples from our analyses. More broadly, profound change occurs in biological, neural, cognitive, emotional and interpersonal functioning, and significant changes occur in every life domain: formal education is completed, new jobs obtained, living situations change often, romantic relationships form and dissolve, marriages, families and careers are launched. It would be surprising if these changes, taken together, did not account for a great deal of the co-occurring drop in crime.
>
> [Id. at 935 (citations omitted).]

In short, as people move beyond their mid-twenties, they gain "wisdom, have lower energy, more peer restraints, and, typically, desist[] from crime." Klingele, 109 J. Crim. L. & Criminology at 800. Psychosocial maturation strengthens "self-control, stronger resistance to peer influence" and the inclination to reject "immediate gratification in order to achieve future goals." Kathryn C. Monahan et al., Trajectories of Antisocial Behavior and Psychosocial Maturity from Adolescence to Young Adulthood, 45 Developmental Psych. 1654, 1654 (2009). This signifies that older adolescents, like younger adolescents, develop their cognitive abilities quicker than their executive functioning and psychosocial skills, which creates "a maturity gap." Grace Icenogle et al., Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a "Maturity Gap" in a Multinational, Cross-Sectional Sample, 43 Law & Hum. Behav. 69, 69-85 (2019). That gap means older adolescents are more likely to

lean towards risk-seeking behaviors and consider the future in their decisions. Id. at 72.

Further, and contrary to widely held assumptions that a positive correlation exists between lengthy terms of youth incarceration and recidivism, harsher punishment does not promote desistance from crime. The "Pathways to Desistance" report by the U.S. Department of Justice ("DOJ") concluded:

> Sentence severity does little to prevent reoffending. We know that custodial sentences can disrupt the desistance process, either by directly promoting criminal behavior through labeling and stigmatization or by adversely affecting ties to social institutions. The length of a prison sentence is unrelated to the risk of future offending. One study showed that individuals randomly assigned to more punitive judges (i.e., judges who resorted to incarceration more often and for longer periods of time) were not less likely to reoffend . . . . [Further,] prison impedes desistance from crime by: (1) harming ties to key social institutions, (2) neglecting the mental health needs and trauma histories of individuals who are incarcerated, (3) disproportionately focusing on rule violations and failing to track and reward progress, and (4) creating an environment that may be incompatible with the outside world. These observations bear relevance for both juvenile and adult incarceration.
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> [Kazemian, at 177, 184 (alteration in original) (citations omitted).]

Another DOJ study concluded that incarceration is "likely [to] decrease the probability of desistance — or at least significantly delay it — and increase the risk of recidivism." Christopher Wildeman, The Impact of Incarceration on the Desistance Process Among Individuals Who

Chronically Engage in Criminal Activity 10 (2021) (alteration in original). Consequently, "strong arguments" support decreasing both rates and length of incarceration in jails and prisons. Id. (concluding that lengthy incarceration is not an effective deterrent for late adolescents and a less punitive system would favor, rather than hinder, rehabilitation).

POINT TWO

RECENT SCHOLARLY, JURISPRUDENTIAL, AND LEGISLATIVE DEVELOPMENTS SUPPORT EXTENSION OF COMER RELIEF TO LATE ADOLESCENTS.

The constitutional imperative of extending Comer relief to late adolescents finds support in both federal and state case law and legal scholarship. In addition, recent legislative amendments in New Jersey and elsewhere reflect policy makers' growing understanding of developmental science and the need to integrate it into law and policy. Taken together, these developments compel modification of Ms. Bellamy's sentence.

A. Extending Comer Protections to Older Adolescents Comports with United States Supreme Court and New Jersey Supreme Court Youth Sentencing Jurisprudence.

Extending constitutional protections in accordance with developmental science and changing societal norms is wholly consistent with jurisprudential practice and legal precedent. Along the road to its eventual prohibition of the

juvenile death penalty in Roper, for example, the United States Supreme Court examined what it deemed an evolving national and international consensus regarding the age at which children reach maturity. See Thompson v. Oklahoma, 487 U.S. 815, 838 (1988) (invalidating capital punishment for children aged fifteen and younger); Stanford v. Kentucky, 492 U.S. 361, 380 (1989) (upholding execution of sixteen-year-olds), abrogated by Roper, 543 U.S. at 578; Roper, 543 U.S. at 578 (invalidating death penalty for youth younger than eighteen). In determining what constitutes cruel and unusual punishment, constitutional bright lines shift over time to accord with societal evolving standards of maturity. See, e.g., Trop v. Dulles, 356 U.S. 86, 100-01 (1958). Relying on lack of full brain maturation, the Court held that the Eighth Amendment's ban of cruel and unusual punishment is violated when children convicted of non-homicide offenses receive a sentence of life without parole. Graham, 560 U.S. at 82. Two years later, the Court went further and extended the Eighth Amendment's prohibition of cruel and unusual punishment to mandatory sentences of life without parole, regardless of the crime, for youth under the age of eighteen. Miller, 567 U.S. at 489.

In the wake of Roper, Graham, and Miller, the New Jersey Supreme Court constructed a state constitutional scaffolding that strongly supports extension of Comer relief to those who, like Ms. Bellamy, are incarcerated for

crimes committed in late adolescence. Since 2009, the Court has looked to developmental science in carving out special protections for youth across the continuum of legal system involvement. See State in the Interest P.M.P., 200 N.J. at 178 (holding that youth's statutory right to counsel attached following complaint and search warrant and that waiver of youth's constitutional right to counsel cannot occur without presence of counsel); State in the Interest of A.S., 203 N.J. 131, 136 (2010) (suppressing confession of youth with intellectual disabilities after police forced youth's mother to read youth her Miranda rights and police did not correct mother's misstatement of rights); State in the Interest of V.A., 212 N.J. at 8-9, 18 (finding an abuse of discretion standard, rather than a higher "patent and gross abuse of discretion" standard, for review of prosecutor's decision to waive youth into adult criminal court); State in the Interest of N.H., 226 N.J. at 257 (holding youth are entitled to full discovery prior to a waiver hearing); State in the Interest of C.K., 233 N.J. at 68-70, 75-76 (finding unconstitutional mandatory lifetime registration to the sex-offender registry of certain youth pursuant to specific factor-based test and relying on Miller mitigating qualities of youth); State in the Interest of A.A., 240 N.J. at 343, 349 (finding police's summoning of youth's mother where youth was detained and the conversation between youth and youth's mother was the "functional equivalent of an interrogation" thus youth was required to

have Miranda rights read to him); Zuber, 227 N.J. at 445-46; Comer, 249 N.J. at 387-91. Given the scientific consensus that late adolescents are "more neurobiologically similar to younger teenagers" than to adults in their late twenties and beyond, affording this cohort of young people relief from excessive sentences is the logical next step in this jurisprudential evolution. Steinberg & Icenogle, 1 Ann. Rev. Developmental Psych. at 32.

B. High Courts of Other States Similarly Have Embraced Developmental Science in Carving Out Sentencing Protections for Older Adolescents.

In the years since Roper, high courts of several other states have begun to acknowledge the impact of developmental immaturity on the judgment and decision-making of older adolescents and to carve out differential approaches to the prosecution and sentencing for this cohort of youth. Karen U. Lindell & Katrina L. Goodjoint, Rethinking Justice for Emerging Adults 9 (2020). These cases provide persuasive authority for resentencing Ms. Bellamy in accordance with Comer. In invalidating mandatory sentences life sentences without parole for eighteen-to-twenty-year-olds, for example, the Supreme Court of Washington observed: "There is no meaningful cognitive difference between 17-year-olds and many 18-year-olds. When it comes to Miller's prohibition on mandatory LWOP sentences, there is no constitutional difference either." In re Monschke, 482 P.3d 276, 288, 329 (Wash. 2021) (en banc).

The Michigan Supreme Court recently invalidated mandatory life

without parole sentences for eighteen-year-olds on similar grounds. People v. Parks, No. 162086, 2022 WL 3008548, at *8 (Mich. July 28, 2022). The Court based its decision on the lack of any scientific distinction between seventeen- and eighteen-year-olds. Id. at *14. It further acknowledged that youth do not attain developmental maturity until their mid-twenties but declined to consider whether Miller protections must be accorded to those over eighteen since the age of the young person before the Court was eighteen. Id. See Commonwealth v. Watt, 484 Mass. 742, 756 (2020) (remanding case of eighteen-year-old challenging life without parole sentence on Miller grounds to trial court for further development of the record. "As research in this area has progressed since [2013], it likely is time for us to revisit the boundary between defendants who are seventeen years old and thus shielded from the most severe sentence of life without the possibility of parole, and those who are eighteen years old and therefore exposed to it.")

C. Legal Scholarship

Legal scholars who have considered the synergies between developmental science and sentencing unanimously call for treating late adolescents in a manner commensurate with those younger than eighteen. Vivian Hamilton, for example, posits that the legal definition of adulthood conflicts with what neuroscience and biology teach about the brain and

recommends disregarding adulthood as a distinct legal class with an age of majority. Hamilton, 91 Tul. L. Rev. at 57. Rather, the law should and must reflect this specific developmental period of late adolescence.

Developmental science similarly is at the crux of calls to increase the maximum jurisdictional age for juvenile courts and reconsider existing sentencing laws for late adolescent offenders. See, e.g., Cohen et al., 88 Temp. L. Rev. at 788.[3] Such measures would be consistent with the current constitutional landscape and carry the additional benefit of extending age-appropriate legal intervention and supports to late adolescents. Scott et al., 85 Fordham L. Rev. at 654; see also Clare Ryan, The Law of Emerging Adults, 97 Wash. U. L. Rev. 1131, 1153-57 (2020) (arguing that the treatment of late adolescents under state parental obligations law and certain federal statutory schemes merits applying developmental science to late adolescents in the criminal justice system); Michaels, 40 N.Y.U. Rev. L. & Soc. Change at 150 (developmental science compels late adolescents' exemption from the death

[3] A number of state legislatures have taken steps to amend their juvenile court statutes or adult sentencing codes to reflect the developmental science. Vermont passed the country's first ever "raise-the-age" legislation in 2018, which expanded the scope of juvenile court jurisdiction to eighteen-year-olds with an increase to nineteen-year-olds in 2020. The bill relied on the developmental science in that the brain does not stop maturing until an individual reaches their mid-twenties. Other "raise-the-age" legislation is pending in Massachusetts, California, Nebraska, and Illinois.

penalty under Roper, 543 U.S. at 578, and Atkins v. Virginia, 536 U.S. 304 (2002)).

D. Enactment of Mitigating Factor Fourteen Reflects Legislative Recognition of the Developmental Immaturity of Late Adolescents in New Jersey.

In 2020, New Jersey amended the Code of Criminal Justice to add a new mitigating factor that courts must consider at sentencing: whether the defendant was under the age of twenty-six at the time of commission of the crime. N.J.S.A. 2C:44-1(b)(14). This provision was enacted in response to the New Jersey Criminal Sentencing and Disposition Commission's 2019 report, which highlighted Miller's acknowledgement of young people's "recklessness, impulsivity, and heedless risk-taking", their vulnerability to "'negative influences and outside pressures,' including from their family and peers", and their inability to "extricate themselves from horrific, crime-producing settings" and called for codification of these factors. Miller, 567 U.S. at 471; see New Jersey Criminal Sentencing and Disposition Commission: Annual Report 27 (2019); see also S. Judiciary Comm. Statement to S. 4373 1 (Aug. 24, 2020). The new mitigating factor reflects the Legislature's recognition that the developmental science at the heart of Miller is equally relevant to late adolescents ages eighteen to twenty-five. While a welcome step, however, the amendment does not fully embody the core mandate of Comer: that

resentencing courts consider not only who a young person was when they committed the crime that led to their incarceration, but who they become when they reach full maturity. Ms. Bellamy is entitled to this consideration. As the Supreme Court made clear in Comer, our State Constitution demands no less.

CONCLUSION

Although the behavioral and neuroscience upon which Miller, Zuber, and Comer are based support extension of Comer protections to those who were sentenced to lengthy terms of incarceration between the ages of eighteen and twenty-five, the only question before this Court is whether Latonia Bellamy, who was only nineteen and had experienced significant trauma throughout her life, is entitled to that relief. Science, controlling case law, and legal scholarship demand that this question be answered in the affirmative. For these reasons, Amici respectfully urge this Court to grant Ms. Bellamy's motion and resentence her to a term of thirty years with twenty years of parole ineligibility.

Dated: October 14, 2025

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STATE OF NEW JERSEY, Plaintiff, v. **LATONIA BELLAMY,** Defendant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-0321-24 IND. NO. 11-03-00348 CRIMINAL ACTION On Appeal from a Judgment of Conviction of the Superior Court of New Jersey, Law Division, Hudson County Hon. Mitzy Galis-Menendez, P.J. Cr. Hon. Paul M. DePascale, J.S.C., and a jury.

AMICUS CURIAE BRIEF ON BEHALF OF ASSOCIATION OF CRIMINAL DEFENSE LAWYERS – NEW JERSEY (ACDL-NJ) IN SUPPORT OF PETITIONER'S RE-SENTENCING

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PRELIMINARY STATEMENT

This appeal presents a critical opportunity for this Court to clarify the scope and application of Mitigating Factor 14, *N.J.S.A.* 2C:44-1(b)(14), in sentencing youthful offenders convicted of the most serious crimes. Defendant Latonia Bellamy ("Bellamy") was nineteen years old at the time of the offense, an age that the Legislature has expressly recognized as warranting special consideration. Yet, despite acknowledging that mitigating factors substantially outweighed aggravating ones, the sentencing court imposed a *de facto* life sentence. That result is inconsistent with both the Legislature's enactment of Mitigating Factor 14 and with established precedent recognizing the diminished culpability of youthful offenders.

The sentencing court erred by treating Mitigating Factor 14 as a perfunctory consideration tied only to chronological age, rather than affording it the robust, individualized analysis that courts have long applied to its predecessor, Mitigating Factor 5(c) under the former Capital Punishment Act. Precedents such as *State v. Bey* and *State v. Koskovich* make clear that youth is not merely a number; it encompasses maturity, judgment, life experiences, trauma, and susceptibility to negative influences. By failing to conduct such a searching inquiry, the trial court denied Bellamy the meaningful sentencing consideration that the law demands.

In the sentencing below, the court was presented with, and accepted, a stipulated scientific record regarding adolescent brain science, but declined to apply

that stipulated record in its consideration of Mitigating Factor 14. ACDL-NJ respectfully submits that in cases that do not involve stipulated scientific evidence, a hearing should be afforded to develop a robust scientific record for the sentencing court's analysis. Courts routinely conduct hearings where liberty interests of far lesser magnitude are at stake. A defendant facing the functional equivalent of life imprisonment should be afforded no less, particularly when expert testimony and other evidence can shed light on the mitigating force of youth and its developmental consequences.

This Court should reverse and remand with explicit direction that the sentencing court: i) interpret Mitigating Factor 14 in light of the established jurisprudence of Mitigating Factor 5(c); ii) apply the stipulated scientific evidence regarding how Bellamy's youth and development bear on sentencing; and (iii) hold that defendants raising the applicability of Mitigating Factor 14 should be entitled to a hearing if that Mitigating Factor is opposed by the State. Only by doing so can the sentencing process give effect to the Legislature's intent, constitutional principles governing youthful offenders, and the overarching goal of individualized sentencing.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Amicus adopts the Statement of Facts and Procedural History set forth in the brief filed by the Office of the Public Defender. We add only this addendum to the Statement of Facts.

Latonia Bellamy was nineteen years old at the time of the incident that resulted in the death of Nia Haqq ("Haqq") and Michael Muchioki ("Muchioki"). Given Bellamy's troubling upbringing, Bellamy was not an objectively "normal" nineteen year old. Indeed, Bellamy struggled since birth, when she was born to a mother addicted to drugs. While a toddler, Bellamy's mother was often incarcerated, or worse, was using drugs in front of Bellamy – thus subjecting Bellamy to experiences that were not typical for a child her age.

Throughout Bellamy's childhood, she lived at multiple different homes, was subjected to physical and sexual abuse and, given her mother's drug addiction and frequent absence, Bellamy was forced to care for herself and her younger cousins. Bellamy's teenage years were consumed with additional sexual assault, verbal abuse from her mother, experimenting with drugs and alcohol, and feelings of depression, anxiety, and suicidal ideation.

Bellamy's uniquely tragic upbringing stunted the development of Bellamy's maturity, decision making capabilities, and judgment as a young adult. Such circumstances certainly place Bellamy in a different position than a 19 year old who did not face such drastic adversity in her early years. Bellamy, while still grappling with trauma from her childhood and developing into a young adult, unfortunately participated in the incident at the direction of her highly influential cousin. Even

after resentencing on remand, Bellamy faces the equivalent of life in prison for her actions when she was just nineteen years old.

Bellamy has been sentenced three times, each time receiving a life sentence, or de facto life sentence. At her most recent resentencing, dated September 16, 2024, the judge considered mitigating factors, including Mitigating Factor 14, and found that the mitigating factors substantially outweighed the aggravating factors. Despite this finding, the judge nonetheless sentenced Bellamy to a *de facto* life sentence – thirty years in prison with a thirty-year parole bar for felony murder of Muchioki, consecutive to forty years in prison, subject to the No Early Release Act, for the murder of Haqq.

POINT I

THE SENTENCING COURT'S CONSIDERATION OF MITIGATING FACTOR FOURTEEN SHOULD HAVE BEEN GUIDED BY CASE LAW INTERPRETINGMITIGATING FACTOR 5(C) UNDER THE NOW ABOLISHED CAPITAL PUNISHMENT ACT

Before it was amended in 2007, the murder statute in New Jersey, *N.J.S.A.* 2C:11-3, permitted the jury or the court to sentence a defendant to death if it was convinced that aggravating factors outweighed the mitigating factors of the crime. *N.J.S.A.* 2C:11-3c(3)(a). The murder statute contained a list of mitigating factors, including mitigating factor 5(c) ("Mitigating Factor 5(c)"), which permitted the court or jury to **consider the age of the defendant at the time of the offense**. *N.J.S.A.* 2C:11-3c(5)(c). Case law interpreting Mitigating Factor 5(c) extends its

consideration to young adults, as opposed to just juveniles. *See State v. Ramseur*, 106 N.J. 123, 295 (1987) ("age should be recognized as a mitigating factor under Section c(5)(c) only when the defendant is relatively young").

Capital punishment was abolished in New Jersey in 2007. Thus, today, the most severe punishment for murder is life in prison without the opportunity for parole. *N.J.S.A.* 2C:11-3b. Given the discontinuance of capital punishment, the 2007 amendment to the murder statute abolished reference to subsection (c) concerning the death penalty, including the mitigating factors (*i.e.* including Mitigating Factor 5(c)). *See* N.J. Senate No. 2471. Now, the mitigating factors relevant to sentencing a defendant for murder are found in *N.J.S.A.* 2C:44-1, which includes fourteen mitigating factors. Mitigating factor fourteen ("Mitigating Factor 14") was added to the list in 2020 and reads: "the defendant was under 26 years of age at the time of the commission of the offense." *N.J.S.A.* 2C:44-1b(14); N.J. Senate No. 4373. Like Mitigating Factor 5(c), Mitigating Factor 14 requires the court to consider a young adult defendant's age as a mitigating factor at sentencing. *See id*.

As Mitigating Factor 14 is a relatively new mitigating factor with limited case law guidance, the sentencing court should have utilized case law interpreting the nearly identical Mitigating Factor 5(c) to guide its interpretation of Mitigating Factor 14 as it applies to Bellamy. Case law interpreting Mitigating Factor 5(c) permits the court to consider not only one's chronological age, but also their mental and physical

development and life experiences as such factors influence the maturity level of young adults. *See State v. Bey*, 129 N.J. 557, 611 – 612 (1992). Indeed, in *Bey*, the court found that "[i]n determining a defendant's 'relative' youth, a jury must look beyond chronological age to considerations of defendant's overall maturity." *Id*. at 612.

In support of this contention, the Supreme Court in *Bey* relied on case law weighing in on the proper consideration of youth in adult offenders, stating:

> The United States Supreme Court has stated that "the background and mental and emotional development of a youthful defendant [must] be duly considered in sentencing." *Eddings v. Oklahoma*, 455 U.S. 104, 116, 102 *S.Ct.* 869, 877, 71 *L.Ed*.2d 1, 12 (1982). As one court observed,
>
> [a]ny hard and fast rule as to age would tend to defeat the ends of justice, so the term youth must be considered as relative and this factor **weighed in the light of varying conditions and circumstances.** It is well known that **two young persons may vary greatly in mental and physical development, experience and criminal tendencies**. *Giles v. State*, 261 Ark. 413, 549 *S.W*.2d 479, 483 *cert. denied*, 434 *U.S.* 894, 98 *S.Ct.* 272, 54 *L.Ed.2d* 180 (1977).
>
> The Maryland Court of Appeals has held that "the mitigating circumstance of youthful age is not measured solely by chronological age," *Stebbing v. State*, 299 *Md.* 331, 473 A.2d 903, 921, *cert. denied*, 469 *U.S.* 900, 105 *S.Ct.* 276, 83 *L.Ed*.2d 212 (1984), but rather **encompasses such factors as prior criminal conduct, home environment, and degree of maturity**, *Johnson v. State*, 303 *Md*. 487, 495 *A*.2d 1, 19 (1985), *cert. denied*, 474 *U.S.* 1093, 106 *S.Ct*. 868, 88 *L.Ed*.2d 907 (1986).

Bey, 129 N.J. at 612 (emphasis added).

The Supreme Court in *State v. Koskovich* similarly interpreted Mitigating Factor 5(c) to require a consideration of an offender's maturity, as opposed to just their chronological age. *See* 168 N.J. 448 (2001). In *Koskovich*, the defendant, who was 18 at the time of the crime, was facing the death penalty for murder. *Id*. at 538. The Supreme Court found no error in the following jury instruction regarding his sentencing:

> age can be significant in some cases. It's up to the jury to see what it was. Here the defendant was 18 years of age. He had passed his 18[th] birthday and not yet reached his 19[th] birthday when the murder was—was committed. So he is relatively young at the time he committed the murder. And that might have something to do with respect to whether a jury would consider his age to be a mitigating factor or not. It was, perhaps, in the minds of some of us, a thought that let us say an 18 year old person might—might not be expected to—he's certainly expected not to kill people. So it's not—it's not justification**. But he—it might be understood that he would be—have less good judgment and less control than, let us say, a—a 40 year old person who's—who's matured more and has had more life experience. So this is something that you can consider**.
>
> In considering whether age is a mitigating factor here, you can also take notice of the fact that although Mr. Koskovich is of an age where he is subject to the death penalty, if other things end up that way, **in terms of his age, he barely qualifies.** In our state people below the age of 18 cannot be put to death. They can be sentenced to life imprisonment, but they cannot be put to death for—for any murder. So you might consider that in deciding what—

> what weight you might want to give, if any, to this mitigating factor.
>
> And you can also note that, although it does not excuse, and is not necessarily controlling, the fact that the other defendant in this case, Mr. Vreeland, was short of 18 years of age. He was 17. And because of that he will not be subject to the death penalty. So you may consider that in deciding what weight you will give, if any, to this mitigating factor.
>
> *Id*. (emphasis added).

Clearly, case law interpreting Mitigating Factor 5(c) as applied to cases of capital punishment required a more meaningful consideration than just the defendant's chronological age. Rather, it required a consideration of other youth-based factors, such as maturity, life experiences, judgment making capabilities, mental development, home environment, criminal tendencies, and control. *See Bey*, 129 N.J. at 611; *Koskovich*, 168 N.J. at 538. These cases confirm that such factors separate a young adult from someone who is, say, over the age of 26 that has had the time and opportunity to evolve beyond the hardships they faced in their childhood and early adulthood, so as to not allow those hardships to influence their behavior and decision-making abilities.

Accordingly, to afford Bellamy a meaningful consideration of Mitigating Factor 14, the sentencing court should have been guided by case law interpretating Mitigating Factor 5(c), which permitted the sentencing court to consider more than Bellamy's chronological age at the time of the offense. The sentencing court should

have considered factors connected to Bellamy's maturity at the time of the crime, such as Bellamy's unstable upbringing, exposure to drug use, sexual and physical abuse, and mental health challenges, that influenced her decision making as a young adult. Indeed, many of those factors were contained within the stipulated scientific record that the court accepted at the time of sentencing, but declined to apply. Accordingly, the court should reverse and remand for a new sentencing hearing, directing the sentencing court to meaningfully consider Mitigating Factor 14, and apply the information about Bellamy that was contained in the stipulated record at the time of resentencing.

POINT II

THE SENTENCING COURT SHOULD HAVE APPLIED THE STIPULATED SCIENTIFIC RECORD IN CONSIDERING MITIGATING FACTOR 14 IN RESENTENCING BELLAMY, A YOUNG ADULT BEING SENTENCED FOR A FIRST-DEGREE OFFENSE

A. The Sentencing Court Should Have Apportioned Greater Weight to Mitigating Factor 14

The sentencing court has discretion to consider aggravating and mitigating factors and apportion the appropriate weight. *See State v. Dalziel*, 182 N.J. 494, 500 (2005). The sentencing court here should have afforded great weight to Mitigating Factor 14 because of its similarity to Mitigating Factor 5(c) which, as established, permitted a consideration of a multitude of factors influencing the behavior of young adults; and because it is relevant to the sentencing of young adults who, if convicted

of murder, face spending the majority of their life confined in prison. Indeed, courts sentencing nineteen-year-old offenders, like Bellamy, who face life imprisonment, as compared to defendants just two years their junior, should meaningfully consider how their young age influenced the offense at hand.

Here, a meaningful consideration of Mitigating Factor 14 requires application of the stipulated scientific record. Such meaningful consideration is needed before justifying Bellamy's sentence. The sentencing court's denial to consider that scientific record warrants reversal.

B. The Appellate Division Should Hold that Defendants are entitled to a Hearing to Determine the Application and Weight of Mitigating Factor 14 When it is Opposed by the State

To meaningfully consider any mitigating factor, the court should provide the defense with the opportunity to vigorously argue for application of the mitigating factor(s) so as to personalize the defendant and justify the least severe sentence under the Criminal Code. *See State v. Briggs*, 249 N.J. Super. 496, 501 (App. Div. 2002). For example, courts have found that to meaningfully consider whether to release an incarcerated defendant, the defendant should be given a hearing to demonstrate their maturity and rehabilitation achieved while imprisoned. *See State v. Thomas*, 470 N.J. Super. 167, 197 (App. Div. 2022).

A similar procedure should have been followed here – to meaningfully consider Mitigating Factor 14, which has the potential to reduce Bellamy's *de facto*

life sentence, the sentencing court should have considered the stipulated scientific record as applied to Bellamy, to fully understand how her youth influenced the offense and how aging and maturity has rehabilitated her. Given the vast disparities in how courts have considered Mitigating Factor 14, this court should provide clear guidance and hold that the defendants are entitled to an evidentiary hearing when the applicability or weight to be afforded to Mitigating Factor 14 is contested. Such a meaningful consideration is critical to a fair determination of whether to take a young adult's freedom for most of his or her life.

Accordingly, ACDL-NJ respectfully urges this Court to hold that defendants should be afforded an evidentiary hearing to submit evidence in support of the application of Mitigating Factor 14.

It is well within the sentencing Court's discretion to hold such a hearing. Courts in New Jersey grant evidentiary hearings to criminal defendants for far less life-changing decisions than someone in Bellamy's position. For example, convicted sex offenders are permitted a hearing to challenge their obligation to publicly register as a sex offender under Megans law:

> For registrants who raised objections to the [sex offender registration] notification, **the Court provided a judicial hearing** at which a judge would be able to evaluate the merits of the parties' contentions. At the hearing, the State was given the burden of going forward with its prima facie case, consisting of that evidence justifying the proposed risk level and manner of notification. *Doe v. Poritz, supra*, 142 N.J. at 32, 662 A.2d 367. Once the prosecutor met the

> burden of going forward with the prima facie case, the offender bore the burden of persuading the court by a preponderance of the evidence that the proposed tier designation and notification did not conform with the laws and the Scale. *Matter of Registrant G.B.*, 147 N.J. 62, 74 (1996) (emphasis added)

In this context, the defendant/sex offender faces having their right to privacy infringed upon whereas in Bellamy's case, she faces having her *freedom* infringed upon – a much more severe infringement. If the court permits a hearing when a criminal defendant's right to privacy is at stake, the court can certainly permit a hearing on Mitigating Factor 14, where a defendant's freedom is at stake.

In the *Matter of Registrant G.B.*, Registrant G.B. was convicted of second-degree sexual assault involving his minor cousin, with incidents occurring over seven years. *Id*. at 70. Upon his release from the Adult Diagnostic and Treatment Center, the county prosecutor assessed his risk of re-offense using the Registrant Risk Assessment Scale ("Scale") and classified him as Tier Two (moderate risk), requiring targeted community notification (e.g., schools within a two-mile radius). *Id*. at 70 – 71. G.B. sought judicial review. At a judicial hearing, he challenged the predictive value of the Scale for determining the risk of re-offense and the correctness of the Scale score as applied to the circumstances of his offense. *Id*. at 72. G.B. sought to introduce evidence from three experts to support these claims. The trial court did not permit expert testimony. *Id*. at 73. G.B. appealed and the Appellate Divisions reversed, finding that:

> the registrant should be permitted to **retain an expert and to present testimony at the hearing** to show that the variable factors [in the Scale calculations] as related to him, should result in a lesser Tier classification." 286 N.J.Super. 396, 407, 669 A.2d 303 (1996). Thus, the Appellate Division held that registrant may attempt to prove that the variable factors applicable to him, demonstrate that he is so unlikely to reoffend, that he should be classified as a Tier One offender, notwithstanding his actual Scale score.
>
> *Id*. at 73 (emphasis added) (internal quotation marks omitted).

The Supreme Court affirmed the Appellate Court's finding that registrants, including G.B., are permitted to present evidence at a hearing in the form of "reliable hearsay, affidavit, or an offer of live testimony" to raise a genuine issue of material fact about the correctness of their tier classification. *Id*. at 77 – 78. For example, a registrant is able to use the hearing to establish that their Scale score does not accurately reflect the registrant's risk of re-offense. *Id*. at 82. Indeed, there are factual circumstances that the Scale does not account for and that could render a score inappropriate. For example:

> Another, more common, example of facts not currently taken into account by the Scale that may warrant a lowering of a particular registrant's tier category concerns a registrant's psychological state. In some instances, an expert evaluating a registrant may believe that the registrant's psychological profile makes him substantially less likely to reoffend than the general sex offender… Given the Scale's failure to consider positive psychiatric profiles and positive post-sentence behavior as true mitigating factors that can reduce the projected risk of

> reoffense, expert testimony may be essential for an accurate tier designation, even to the point of overriding the Scale score
>
> *Id*. at 83.

The court recognized that the statutory constructed Scale used to determine a registrant's tier status did not consider the possibility that positive psychiatric profiles was a mitigating factor of re-offense. Thus, expert testimony was needed to bridge that gap and render an accurate tier score.

That same reasoning should apply to the applicability of Mitigating Factor 14. As set forth above, permitting a full development of the factual record is critical to ensure that the Legislative intent of Mitigating Factor 14 is brough to fruition.

C. Mitigating Factor 14 Hearings Should be Held in a Bifurcated Manner

Courts should consider holding a Mitigating Factor 14 hearing in a bifurcated manner, similar to hearings for post-conviction relief. Indeed, defendants claiming ineffective assistance of counsel must first make a *prima facie* showing of ineffective assistance of counsel before the court holds an evidentiary hearing and determines the merits of the claim. *State v. Preciose*, 129 N.J. 451, 462 – 464 (1992) ("trial courts ordinarily should grant evidentiary hearings to resolve ineffective-assistance-of-counsel claims if a defendant has presented a prima facie claim in support of post-conviction relief.").

The same approach can be taken with respect to Mitigating Factor 14. ACDL-NJ submits that to the extent the court is concerned about judicial resources, defendants may be required to make a preliminary showing that good cause exists for the court to hold a hearing on Mitigating Factor 14. The court has the discretion to define the good cause standard, however, factors relevant to the good cause standard should be derived from case law interpreting Mitigating Factor 5(c), including but not limited to, considerations of the defendant's age at the time of the crime, their upbringing, life experience, maturity, trauma, mental and physical development, judgment making capabilities, and criminal tendencies. *See Bey*, 129 N.J. at 611 – 612; *Koskovich*, 168 N.J. at 538.

Factors relevant to the good cause standard should also be derived from the line of cases regarding sentencing juvenile offenders: *Miller v. Alabama*, 567 U.S. 460 (2012), *State v. Zuber*, 227 N.J. 422 (2017), and *State v. Comer*, 249 N.J. 359 (2022). Such cases recognized the unfairness in sentencing juveniles as adults because of factors such as their immaturity, dysfunctional home environment, susceptibility to peer pressure, incapacity to deal with authority, and lifelong opportunity for rehabilitation. *See Miller*, 567 U.S. at 477-78; *Zuber*, 227 N.J. at 429; *Comer*, 249 N.J. at 403. Given that such factors may very well apply to young adults – as recognized by New Jersey courts applying Mitigating Factor 5(c), courts

in other jurisdictions[1], and scholars studying the development and brain science of young adults[2] – young defendants being sentenced for murder should be able to make a preliminary showing that, regardless of their chronological age, such factors apply to them, and therefore good cause exists to hold an evidentiary hearing on the weight of Mitigating Factor 14. The evidentiary hearing should then permit young defendants to present evidence in any reliable form that bears on Mitigating Factor 14. This procedure would ensure that the court gives defendants that were 18 – 26 years old at the time of the offense a meaningful consideration of Mitigating Factor 14.

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[1] *See e.g.*, *In re Monschke*, 482 P.3d 276, 288 (Wash. 2021); *People v. Parks*, 987 N.W.2d 161, 171 (Mich. 2022).

[2] *See e.g.*, Elizabeth S. Scott, Richard J. Bonnie, and Laurence Steinberg, *Young Adulthood As A Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 *Fordham L. Rev.* 641, 642 (2016).

CONCLUSION

ACDL-NJ would urge this Court to vacate Bellamy's sentence and remand for a consideration of Mitigating Factor 14 that applies the stipulated scientific record, and to adopt a procedure entitling defendants to a bifurcated hearing regarding the application and weight of Mitigating Factor 14 when it is opposed by the state.

Respectfully submitted,
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VIA ECOURTS

Re: State v. Bellamy, Docket No. A-0321-24

Honorable Judges:

Pursuant to Rule 2:6-2(b), kindly accept this letter brief on behalf of Amicus Curiae MacArthur Justice Center.

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PRELIMINARY STATEMENT

Amicus Curiae, the Roderick & Solange MacArthur Justice Center ("MacArthur Justice Center") submits this brief to aid the Court in enforcing a requirement of proportionate punishment under the New Jersey Constitution, which the trial court erroneously disregarded: the principle that young people "'are constitutionally different'" from adults. State v. Zuber, 227 N.J. 422, 444, (2017) (quoting Miller v. Alabama, 567 U.S. 460, 471 (2012)). Recognizing brain science on adolescent development, which now shows that young people continue to develop and mature well into their twenties, both the New Jersey Supreme Court and the Legislature have made clear that youth matters in sentencing—a principle the trial court gestured to, but in no way meaningfully abided by or implemented. As Amicus sets forth more fully below, Article I, Paragraph 12 of the New Jersey Constitution and the statutory requirement to consider a person's age under 26 as a mitigating factor, N.J.S.A. 2C:44-1b(14), compel trial courts to meaningfully consider the mitigating qualities of youth. That requirement applies to late adolescents in accord with brain science and societal consensus demonstrating that young people continue to mature and develop well beyond the age of 18.

In a series of Eighth Amendment cases imposing categorical bars on capital and life without parole ("LWOP") sentences for youth, the U.S. Supreme

Court recognized that young people's immaturity diminishes their culpability, while their ongoing growth and neurological development render them remarkably capable of change. Miller v. Alabama, 567 U.S. at 477, enumerated factors rooted in adolescent brain development that describe these hallmark features of youth. The New Jersey Supreme Court later built upon Miller under the more expansive protection of the New Jersey Constitution's prohibition on cruel punishment. Specifically, State v. Zuber, 227 N.J. at 429, 445, and State v. Comer, 249 N.J. 359, 402 (2022) endorsed the "Miller factors" as requirements for proportionate sentencing of young people. These constitutional principles compel trial courts to evaluate the mitigating qualities of youth when sentencing late adolescents, even though the holdings of Zuber and Comer addressed the legality of punishments applicable to people who committed crimes before age 18.

Moreover, the juvenile sentencing jurisprudence turned on features of adolescent development which data now show apply equally to young people well into their twenties. The data underscore what the Legislature has long recognized and continues to emphasize in recent laws: that even after 18, young people are immature, vulnerable to influence, often unable to control impetuous behavior and yet remarkably capable of change.

The trial court disregarded the constitutional requirement that youth matters in sentencing, as well as the undisputed scientific record developed upon remand. It sentenced Latonia Bellamy to an aggregate sentence of 64 years, ensuring she will not be eligible for parole until she is an octogenarian. The court erred by failing to meaningfully apply the Miller factors even though the crime occurred when Ms. Bellamy was a traumatized and vulnerable 19-year-old and notwithstanding her demonstrated growth, remorse, and extraordinary rehabilitation.

The trial court was not free to disregard the importance of youth in sentencing. That is clear as a matter of statutory law recognizing youth under age 26 as a mitigating factor. N.J.S.A. 2C:44-1b(14). It is clear from this Court's 2021 remand, which instructed the trial court to meaningfully consider matters central to Ms. Bellamy's diminished culpability as a 19-year-old. And most importantly, it is clear based upon precedent enforcing the requirement of proportionate punishment under Article 1, Paragraph 12 of the New Jersey Constitution. Because the trial court's sentence cannot be squared with this law and is out of step with scientific evidence and societal consensus demonstrating that 18 in no way reflects the decisive age of maturation, this Court must reverse and remand for a constitutional sentence.

STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus MacArthur Justice Center is a public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. Amicus has offices in Chicago, at the University of Mississippi School of Law, in New Orleans, in St. Louis, and in Washington, D.C. In courts across the country, Amicus has litigated cases concerning state constitutional limits on sentencing and has challenged police misconduct, extreme sentencing—including for youth—and the mistreatment of incarcerated people. Amicus writes to demonstrate that the hallmark features of youth recognized in Miller and endorsed by the New Jersey Supreme Court in Zuber and Comer apply equally to young people well into their twenties. Drawing upon its expertise and national perspective, Amicus seeks to assist the Court in ensuring that the bedrock principles reflected in the last 15 years of youth sentencing jurisprudence are followed and respected in this case.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus relies upon the Statement of Facts and Procedural History set forth in brief of the Office of the Public Defender with the following additions. On September 20, 2022, MacArthur Justice Center moved for leave to appear as Amicus Curiae before the trial court, which granted the motion. The Appellate

Division's Clerk's office, after confirming Amicus's intent to participate on appeal, directed counsel to file a brief by October 17, 2025.

ARGUMENT

I. ARTICLE I, PARAGRAPH 12 OF THE NEW JERSEY CONSTITUTION AND N.J.S.A 2C:44-1b(14) COMPEL COURTS TO MEANINGFULLY CONSIDER THE MITIGATING QUALITIES OF YOUTH WHEN SENTENCING LATE ADOLESCENTS.

Irrespective of the categorical rules on youth sentencing imposed by the U.S. Supreme Court or the New Jersey Supreme Court with respect to offenders under 18 years old, Article 1, Paragraph 12 of the New Jersey Constitution still required the trial court to meaningfully assess the hallmark features of youth in imposing a proportionate sentence upon Ms. Bellamy. Indeed, the Federal and State Constitutions bar punishments that are disproportionate to the crime committed and the characteristics of the offender. Graham v. Florida, 560 U.S. 48, 59 (2010); Miller, 567 U.S. at 469 (citing the "basic 'precept of justice that punishment . . . should be graduated and proportioned' to both the offender and the offense") (quoting Roper v. Simmons, 543 U.S. 551, 560 (2005) (citation omitted)). The "[p]rotection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment." Montgomery v. Louisiana, 577 U.S. 190, 206 (2016), as revised (Jan. 27, 2016); Comer 249 N.J. at 383

(noting that test of cruel punishment under the State Constitution is generally the same as the Eighth Amendment).

When enforcing the proportionality requirement as applied to severe punishments for youth, the U.S. Supreme Court has repeatedly recognized that youth are "constitutionally different from adults for purposes of sentencing." Miller, 567 U.S. at 471 (citing Graham, 560 U.S. at 68, and Roper, 543 U.S. at 551 (barring the death penalty for youth under 18)). That is, youth "'are less deserving of the most severe punishments'" because of their "diminished culpability and greater prospects for reform." Id. (quoting Graham, 560 U.S. at 68).

The Court has long relied upon the science of juvenile brain development when explaining young people's diminished culpability. See Miller, 567 U.S. at 471 ("Our decisions rested not only on common sense—on what 'any parent knows'——but on science and social science as well."); Roper, 543 U.S. at 570 (citing Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003)). Miller, for example, relied on studies cited in Graham and Roper, showing "'fundamental differences between juvenile and adult[s]...in [the] 'parts of the brain involved in behavior control.'" 576 U.S. at 471-72 (quoting Graham, 560 U.S. at 68). Based upon this evidence,

the Court cited three ways that young people are less culpable, and therefore less deserving of the most severe punishments as compared to adults.

First, the Court explained that adolescents' immaturity and "underdeveloped sense of responsibility,'" leads them to engage in behavior showing "recklessness, impulsivity, and heedless risk-taking." Miller, 567 U.S. at 471 (quoting Roper, 543 U.S. at 569); Id. at 472 n.5 (citing Brief for American Psychological Association et al. as Amici Curiae 3) ("It is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance"). Prior to full maturation, young people are therefore susceptible to "transient rashness, proclivity for risk, and inability to assess consequences." Miller, 567 U.S. at 472; Graham, 560 U.S. at 68.

Second, the Court has emphasized that young people are less culpable than adults because they are "'more vulnerable ... to negative influences and outside pressures,' including from their family and peers[.]" Id. at 471 (quoting Roper, 543 U.S. at 569). Adolescents also have little power to resist these negative peer and family influences since they "have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings." Id. at 471 (quoting Roper, 543 U.S. at 569). The Court again cited brain science to support this conclusion. Id. at 472 n.5 (citing Brief for J.

Lawrence Aber et al. as Amici Curiae 26 ("Numerous studies post-Graham indicate that exposure to deviant peers leads to increased deviant behavior and is a consistent predictor of adolescent delinquency")). For this reason, "'youth is more than a chronological fact.'" Id. at 476 (quoting Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)). "It is a moment and 'condition of life when a person may be most susceptible to influence and to psychological damage.'" Id.

Third, the Court recognized that young people are less culpable even when they make grievous mistakes because their "character is not as 'well formed' as an adult's; his traits are 'less fixed'[.]" Id. at 471 (quoting Roper, 543 U.S. at 570). This fact makes adolescents' "actions less likely to be evidence of irretrievable depravity." Id. (internal citation and quotation omitted). The differences and plasticity in the developing adolescent brain, Miller noted, increase the likelihood that "as the years go by and neurological development occurs, [their] 'deficiencies will be reformed.'" Id. at 472 (quoting Graham, 560 U.S. at 68).

When interpreting the cruel and unusual punishment restrictions of Article I, Paragraph 12 of the New Jersey Constitution, the New Jersey Supreme Court has endorsed these fundamental precepts. See Zuber, 227 N.J. at 446-47; Comer, 249 N.J. at 368. But our State Supreme Court has also made clear that the New Jersey Constitution is a source of independent rights that extend beyond U.S.

Constitutional protections. Zuber, 227 N.J. at 438. Thus, in Zuber, the Court held that mandatory de facto life sentences for youth under age 18 violate the State Constitution even though the U.S. Supreme Court had not reached whether punishments other than LWOP were categorically disproportionate for children. 227 N.J. at 446-47 (finding that Miller's rationales "appl[y] with equal strength to a sentence that is the practical equivalent of life without parole") (citations omitted).

Five years later, in State v. Comer, the New Jersey Supreme Court again read the New Jersey Constitution as more protective of youth than the Federal Constitution holding that automatic, mandatory 30-year parole ineligibility for children violated the State Constitution's ban on cruel and unusual punishment. Comer, 249 N.J. at 401 (holding "that juveniles may petition the court to review their sentence after 20 years").

Although the New Jersey Supreme Court has gone further than the U.S. Supreme Court with respect to the reach of its juvenile sentencing decisions, it has adopted the factors discussed in Miller as the touchstone for implementing the constitutional requirement that courts consider the mitigating nature of youth in sentencing decisions. Zuber, 227 N.J. at 445 (citing Miller, 567 U.S. at 477-78); Comer, 249 N.J. at 370 (courts must "assess a series of factors . . . set forth

in Miller v. Alabama, which are designed to consider the 'mitigating qualities of youth'"). Those factors include:

> (1) "'chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences'";
>
> (2) "'family and home environment that surrounds [the juvenile offender]—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional'";
>
> (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) "'that he 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'"; and
>
> (5) "'the possibility of rehabilitation.'"
>
> [Zuber, 227 N.J. at 445 (quoting Miller, 567 U.S. at 477-78); see also Comer, 249 N.J. at 403 (citing Miller, 567 U.S. at 477-78).]

In the years since the U.S. Supreme Court decisions that served as the foundation for the New Jersey Supreme Court's more expansive approach in Zuber and Comer, the science on late adolescents over age 18 has shifted from developing findings to well-accepted evidence. It is now clear that neurological and psychological development do not halt on one's 18th birthday. That brain

science, which is undisputed in this case, shows that the same mitigating factors cited in Miller, Zuber, and Comer persist past age 18.

Courts in other states have cited this brain science and recognized that young people's continuing development after 18 must be accounted for in sentencing. See People v. Taylor, People v. Czarnecki Nos. 166428 and 166654, --- N.W.3d ----2025 WL 1085247,*7 (Apr. 10, 2025) ("Stated differently, as a class, 19- and 20-year-old late adolescents are more similar to juveniles in neurological terms than they are to older adults."); In re Monschke, 197 Wash. 2d 305, 325-28 (2021) (reasoning that "no meaningful neurological bright line exists between . . . age 17 on the one hand, and ages 19 and 20 on the other hand" such that the mitigating qualities of youth outlined in Miller and related watershed cases matter when sentencing youth older than 18); Commonwealth v. Mattis, Commonwealth v. Robinson, 493 Mass. 216 (2024) (holding that LWOP sentences for late adolescents violate the state constitution because people 18, 19, and 20 are not substantially different from people younger than 18 with regard to their immaturity and still developing brains).

In 2020, the New Jersey Legislature recognized that very same brain science when it added N.J.S.A. 2C:44-1b(14) as a mitigating factor that courts must consider. L. 2020, c. 110. That law requires courts to consider as a mitigating circumstance that "[t]he defendant was under 26 years of age at the

time of the commission of the offense." State v. Canfield, 470 N.J. Super. 234 (App. Div. 2022), aff'd as modified 252 N.J. 497 (2023) (quoting N.J.S.A. 2C:44-1b(14)). As this Court noted in reversing and remanding this matter to the trial Court in 2021, this law makes youth matter in sentencing for people up to age 26 in light of "'developments in psychology and brain science'" showing that "the 'parts of the brain involved in behavior control continue to mature through late adolescence.'" State v. Bellamy, 468 N.J. Super. 29, 46 n.3 (2021) ("Bellamy II") (quoting Zuber, 227 N.J. at 441 (citation omitted)).

In sum, the rationales underlying the New Jersey Supreme Court's interpretation of Article I, Paragraph 12 in cases involving youth under 18 apply equally to young people past that age who possess the same mitigating features of youth. See Zuber, 227 N.J. at 422; Comer, 249 N.J. at 383. Accordingly, the trial court was required as a constitutional matter and pursuant to N.J.S.A. 2C:44-1b(14) to apply the Miller factors when sentencing Ms. Bellamy. Although the court gave lip service to mitigating factor 14, it failed to actually assess the mitigating quality of Ms. Bellamy's youth in imposing a lengthy 64-year consecutive sentence. That is, it failed to account for her "'immaturity, impetuosity, and failure to appreciate risks and consequences'" at the age of 19; it failed to account for how her "brutal and dysfunctional" "'family and home environment'" impacted her crime and ability to extricate herself from negative

circumstances; it failed to consider the role of youth in "'the circumstances of the homicide offense, including the extent of [her] participation in the conduct and the way familial and peer pressures may have affected'" her; and finally it failed to account for the strong "'possibility of rehabilitation'" Ms. Bellamy possessed at the age of 19, which the record overwhelmingly demonstrates has now been realized. Zuber, 227 N.J. at 445 (quoting Miller, 567 U.S. at 477-78); see also Comer, 249 N.J. at 403 (citing Miller, 567 U.S. at 477-78). This Court must reverse with instructions to follow these statutory and constitutional requirements.

II. THE TRIAL COURT'S CONCLUSION THAT MS. BELLAMY "WAS STILL AN ADULT UNDER NEW JERSEY LAW" IS UNDERMINED BY THE NUMEROUS NEW JERSEY STATUTES THAT TREAT LATE ADOLESCENTS AGE 18 TO 21 THE SAME AS JUVENILES GIVEN THEIR IMMATURITY, IMPETUOUSNESS, AND LACK OF JUDGMENT.

In sentencing Ms. Bellamy to a 64-year sentence the trial court suggested that "defendant was still an adult under New Jersey law[.]" 27T171-8 to 172-5. Not only does that explanation fall far short of compliance with this Court's remand and constitutional requirement to consider the Miller factors, as outlined above, it also is undermined by the numerous laws in New Jersey regulating young people as adolescents after the age of 18 and distinguishing them from adults. From youth sentencing laws to restrictions on drugs, alcohol, gambling, handguns, and tobacco, New Jersey, along with many other jurisdictions, has

long recognized that young people remain vulnerable and immature even past the age of 18.

Of course, the enactment of mitigating factor 14 reflects the Legislature's considered judgment that young people over 18 are different from adults. State v. Rivera, 249 N.J. 285, 302 (2021) (citing S. Judiciary Comm. Statement to A. 4373 1 (L. 2020, c. 110) (noting that the change meant to "broaden the court's consideration of age as a mitigating factor for determining sentences"). Additionally, the Persistent Offender Statute recognizes that youth over age 18 lack maturity and warrant special treatment. N.J.S.A. 2C:44-3(a). That law allows a person to be sentenced to "to an extended term of imprisonment" only if they are "21 years of age or over" and have committed three first-, second-, or third-degree qualifying crimes. N.J.S.A. 2C:44-3(a); see also State v. Pierce, 188 N.J. 155, 162 (2006) (age is a "prerequisite finding" to qualify "as a 'persistent offender'"). This special solicitude for youth over the age of 18 in the area of criminal sentencing is consistent with both long-standing and emerging legislation treating youth age 18 to 21 the same as juveniles to protect them from legal activities that require maturity and judgment.

For example, the Legislature's age-restrictions on alcohol reflect a longstanding understanding that people who reach the age of 18 but who are not yet 21 are not fully developed. See, e.g., N.J.S.A. 33:1-77; N.J.S.A. 9:17B-1(b).

New Jersey follows the Federal Uniform Drinking Age Act of 1984, 3 U.S.C. § 158, which incentivized states to set their legal drinking age at 21. South Dakota v. Dole, 483 U.S. 203 (1987). That law followed the report of a Presidential Commission that emphasized the unique characteristics and susceptibilities of youth. Id. at 209 (citing Presidential Commission on Drunk Driving 8, 11 (1983)[1] (noting that young people "are at greatest risk for involvement in motor vehicle crashes" because of the impetuous and volatile nature of youth)). All fifty states uniformly adhere to 21, not 18, as the legal and safe drinking age.[2]

While in the 1970s New Jersey extended basic civil and contractual rights and obligations to people 18 and older for certain purposes, N.J.S.A. 9:17B–1 to 9:17B–3, it has always simultaneously recognized, as demonstrated by policies like the drinking age, that with respect to activities that require maturity and judgment, young people under 21 are not fully developed.[3] For example,

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[1] https://babel.hathitrust.org/cgi/pt?id=mdp.39015034427750&view=1up&seq=24

[2] J.H. Hedlund, et al., Determine Why There Are Fewer Young Alcohol-Impaired Drivers, Nat'l Highway Traffic Safety Admin. (2001), available at http://www.nhtsa.dot.gov/people/injury/research/FewerYoungDrivers/index.htm, archived at http://perma.cc/78X8-CGKB.

[3] The adoption of 18 as the age of majority even for limited purposes stemmed from states' efforts to maintain consistency when the U.S. lowered the draft age during World War II. Vivian E. Hamilton, Adulthood in Law and Culture, 91 Tul. L. Rev. 55, 64-65 (2016). But there was still no "widely held consensus that young people reached maturity or generally attained adult-like capabilities" at 18. Id.

New Jersey has long placed higher age restrictions on gambling. See N.J.S.A. 9:17B-1 (limiting casino gaming to people legally able to purchase alcohol). And after New Jersey legalized sports betting in 2018, it restricted such activities to people "at least 21 years of age." N.J.S.A. 5:12A-11(e).

Around the same time, New Jersey also raised the legal age for purchasing tobacco products and electronic smoking devices from 19 to 21. N.J.S.A. 2C:33-13.1; N.J.S.A. 2A:170-51.4. Research showed that the hallmark features of youth rendered young people particularly vulnerable to the dangers of smoking, even past age 18. Institute of Medicine of the National Academies, Ending the Tobacco Problem: A Blueprint for the Nation, 93 (2007) (young people "misperceive the magnitude of smoking harm . . . and fail to appreciate the long-term dangers" in light of their "general tendencies . . . to take a short-term perspective and to give[] substantial weight to peer influences").[4]

New Jersey likewise prohibits people under 21 from purchasing or possessing handguns in recognition of younger people's immaturity, impulsivity, and risk-taking. N.J.S.A. 2C:58-3c(4); N.J.S.A. 2C:58-6.1b. Federal restrictions in 18 U.S.C. § 922(b)(1) and (c)(1), which prohibit licensed firearms dealers from selling handguns to people under 21, reflect a similar

[4] http://www.iom.edu/Reports/2007/Ending-the-Tobacco-Problem-A-Blueprint-for-the-Nation.aspx

rationale. See Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Sen. Comm. on the Judiciary, 90th Cong. 57 (1967) (testimony of Sheldon S. Cohen) (noting that the "easy availability of weapons" impacts young people's "tendency toward wild, and sometimes irrational behavior"). Moreover, 14 states prohibit people under 21 from purchasing handguns, and 9 states make 21 the minimum age for handgun possession. Giffords Law Center to Prevent Gun Violence, Minimum Age to Purchase & Possess.[5] As experts recognize, these laws accord with research showing "that the human brain continues to develop" in late adolescents "particularly in areas that may alter a person's likelihood of involvement in violence against themselves or others." Id.

Multiple other areas of New Jersey law similarly decline to confer responsibility upon youth under 21. For instance, the New Jersey Constitution limits eligibility for service in the state Legislature to adults older than 21. N.J. Const. art. IV, § 1, ¶ 2. And to be a senator the person must be thirty. Id. The State has also carved out exceptions to the notion that 18 is the age of majority. For example, people "between 18 and 21 years of age [may] seek to avail themselves of" services provided to dependent and neglected children. N.J.S.A.

[5] https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/#:~:text=Minimum%20age%20of%2021%20is,and%20the%20District%20of%20Columbia (last visited October 17, 2025).

30:4C-1 to 30:4C-44. New Jersey law likewise includes young people under 21 within the group of "minors" protected by the New Jersey Uniform Transfers to Minors Act, N.J.S.A. 46:38A-2, which protects young people from poorly managing their assets.

Voters in New Jersey also understand that development and maturation do not end when one turns 18. In 2020, New Jerseyeans approved an amendment to the State Constitution to make it legal for people to possess small amounts of marijuana for personal use. N.J. Const. art. IV, § 7, ¶ 13 (later implemented in N.J.S.A. 24:6I-31, et seq.). Voters limited all activities related to marijuana use, growth, and sales to "persons 21 years of age or older" N.J. Const. art. IV, § 7, ¶ 13, recognizing that "young peoples' developmental immaturity leads them to take more risks, including experimentation with marijuana[.]" Committee Meeting of Senate Judiciary Committee, Feb. 15, 2021 (testimony of Prof. Laura Cohen). Significantly, all state governments that have legalized marijuana have done so only for people older than 21. Amanda Harmon Cooley, The Impact of Marijuana Legalization on Youth & the Need for State Legislation on Marijuana-Specific Instruction in K-12 Schools, 44 Pepp. L. Rev. 71, 80 (2016).

Collectively, these statutes show a long-standing and consistent societal "understanding of a juvenile's neurological and psychological development," People v. Parks, 510 Mich. 225, 252 (2022), namely, that it does not stop at 18.

Young people older than 18 differ from adults in the same ways as their younger counterparts. Characterizing or labeling them as adults, as the trial court did, is not reasoned analysis that justifies ignoring the constitutional and statutory requirement to consider the hallmark features of youth when sentencing them. See Comer, 249 N.J. at 395.

CONCLUSION

For all these reasons, the trial court's sentence is inconsistent with the New Jersey Constitution's requirement of proportionate punishment and is out of step with scientific evidence and societal consensus demonstrating that 18 is not the decisive age of maturation. Accordingly, this Court must reverse and remand with instructions to impose a sentencing in accordance with the law.

Respectfully submitted,

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Dated: October 17, 2025

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

STATE OF NEW JERSEY,	:	**CRIMINAL ACTION**
Plaintiff-Respondent,	:	**Appeal from a Judgment of Conviction of the Superior Court of New Jersey, Law Division Hudson County.**
-v-	:	**DOCKET NO. A-0321-24**
	:	**INDICTMENT NO.: 11-03-0348-I**
LATONIA E. BELLAMY A/K/A LATONIA BELLAMY,	:	**SAT BELOW: Hon. Mitzy Galis-Menendez, P.J. Cr.**
Defendant-Appellant,	:	**Dated: October 21, 2025**

SUPPLEMENTAL BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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PROCEDURAL HISTORY AND COUNSTER-STATEMENT OF FACTS

The State adopts the procedural history and counter-statement of facts as set forth in its September 10, 2025 appellate brief.

LEGAL ARGUMENT

To the extent amici raise issues the State has already addressed in its September 10, 2025 appellate brief, the State relies on and incorporates its arguments set forth in its appellate brief.

POINT I

THE SENTENCING COURT PROPERLY FOUND THE COMER HOLDING DOES NOT APPLY TO DEFENDANT BECAUSE SHE WAS AN ADULT AT THE TIME SHE COMMITTED THESE CRIMES.

In their joint amicus brief, the Rutgers Criminal and Youth Justice Clinic ("CYJC") and the American Civil Liberties Union of New Jersey ("ACLU") argue that the New Jersey Supreme Court's holding in State v. Comer, 249 N.J. 359 (2022), should be extended to defendant Latonia Bellamy ("defendant") because she was a nineteen-year-old whose brain had not reached developmental maturity when she committed these crimes.

In Comer, the Court held that "juvenile offenders—prosecuted as adults and convicted of murder—are constitutionally entitled to reconsideration of their sentences after twenty years' imprisonment." State v. Jones, 478 N.J.

Super. 532, 537 (App. Div.) (citing Comer, 249 N.J. at 369-70), certif. denied, 259 N.J. 304 (2024).

Initially, neither party raised this issue on appeal. Therefore, the CYJC and ACLU cannot raise the issue now. See State v. Dangcil, 248 N.J. 114, 132 n.3 (2021) ("[A]s a general rule, an amicus curiae must accept the case before the court as presented by the parties and cannot raise issues not raised by the parties." (alteration in original) (quoting State v. O'Driscoll, 215 N.J. 461, 479-80 (2013))).

Moreover, as this court has already recognized, the Supreme Court's holding in Comer is limited to juveniles, and this court has declined to extend Comer's holding to offenders who were between eighteen and twenty years of age when they committed their crimes. Jones, 478 N.J. Super. at 549-51. This court's reasoning in Jones, which the sentencing court relied upon when denying defendant's motion to extend the holdings set forth in Miller v. Alabama, 567 U.S. 460 (2012), State v. Zuber, 227 N.J. 422 (2017), and Comer, to defendant, is sound.

Accordingly, as in Jones, this court should find that the Comer holding is not applicable to defendant, who was an adult at the time she committed these crimes, and affirm the sentencing court's order denying defendant's motion to extend the holding set forth in Comer to defendant.

POINT II

THE SENTENCING COURT DID NOT ABUSE ITS DISCRETION WHEN IT CONSIDERED, APPLIED, AND WEIGHED MITIGATING FACTOR FOURTEEN.

In its amicus brief, the Association of Criminal Defense Lawyers—New Jersey ("ACDL-NJ") argues the sentencing court should (1) interpret mitigating factor fourteen in light of the established jurisprudence of the now-abolished mitigating factor 5(c); (2) apply the stipulated scientific evidence regarding how defendant's youth and development affect her sentence; and (3) hold that defendants raising the applicability of mitigating factor fourteen should be entitled to a hearing if that mitigating factor is opposed by the State.

Initially, neither party raised the issue of whether this court should rely on case law regarding the now-abolished mitigating factor 5(c) when deciding how to interpret mitigating factor fourteen, nor did either party argue that a hearing should be held when the State opposes the applicability of mitigating factor fourteen. As such, this court should not consider these issues now. See Dangcil, 248 N.J. at 132 n.3 ("[A]s a general rule, an amicus curiae must accept the case before the court as presented by the parties and cannot raise issues not raised by the parties." (alteration in original) (quoting O'Driscoll, 215 N.J. at 479-80)).

Moreover, since the parties stipulated to the scientific record below, the ACDL-NJ's urging of this court to create a procedure for sentencing courts to

conduct evidentiary hearings on mitigating factor fourteen is a request for this court to render an advisory opinion. But "courts should not render advisory opinions or exercise jurisdiction in the abstract." State v. Abeskaron, 326 N.J. Super. 110, 117 (App. Div. 1999); see also New Jersey Coal. of Auto. Retailers, Inc. v. Ford Motor Co., 261 N.J. 348, 358 (2025) (observing "[o]ur courts do 'not render advisory opinions or function in the abstract'"). Thus, it would be inappropriate for this court to consider the ACDL-NJ's arguments relating to conducting evidentiary hearings on mitigating factor fourteen.

To the extent the ACDL-NJ relies on the interpretation of now-abolished mitigating factor 5(c) to guide the court's interpretation of mitigating factor fourteen, that reliance is misplaced. Under the now-abolished law, a jury determining whether to sentence a defendant to death could consider "[t]he age of the defendant at the time of the murder" as a mitigating factor. N.J.S.A. 2C:11-3(c)(5)(c), repealed by L. 2007, c. 204 (effective Dec. 17, 2007). However, "[a] defendant's young age d[id] not divest a jury of its discretion to determine whether or not the age mitigating factor applies." State v. Bey, 129 N.J. 557, 613 (1992). Thus, in Bey, the Court found no error when "all the jurors found that [the] defendant's youthfulness did not mitigate the brutality of the homicide of which he had been convicted." Ibid.

By contrast, mitigating factor fourteen applies when "[t]he defendant was under [twenty-six] years of age at the time of the commission of the offense." N.J.S.A. 2C:44-1(b)(14). It is clear from the statute itself that a court must apply mitigating factor fourteen when the defendant was under the age of twenty-six at the time he or she committed the offense, although the weight given to that factor is within the judge's discretion. See State v. Morente-Dubon, 474 N.J. Super. 197, 215 (App. Div. 2022) (observing "mitigating factor fourteen shall be applied and given appropriate weight on remand" to a defendant who was twenty-one years old when he committed the offense); State v. Dalziel, 182 N.J. 494, 505-06 (2005) (holding a "trial judge is required to consider all of the aggravating and mitigating factors and to find those supported by the evidence," but recognizing the trial judge first determines "the weight to be ascribed to [any] mitigating factor").

The differences in the statutory language of the now-abolished mitigating factor 5(c) and mitigating factor fourteen demonstrate that they should not be interpreted in the same way. Unlike the now-abolished mitigating factor 5(c), which permitted a jury to consider, but ultimately reject, a defendant's age as a mitigating factor, mitigating factor fourteen explicitly applies to any defendant who was under the age of twenty-six at the time he or she committed the offense regardless of his or her maturity level. Thus, relying on case law interpreting

the now-abolished mitigating factor 5(c) to guide this court's interpretation of mitigating factor fourteen could lead to the absurd result of allowing a court to reject a finding of mitigating factor fourteen when a defendant is very mature even if that defendant was under the age of twenty-six when he or she committed the offense.

The ACDL-NJ also contends a new sentence is warranted because the court failed to meaningfully consider mitigating factor fourteen. Specifically, it argues the sentencing court should have considered factors connected to defendant's maturity at the time of the crime, including her "unstable upbringing, exposure to drug use, sexual and physical abuse, and mental health challenges." Similarly, the Roderick & Solange MacArthur Justice Center ("MacArthur Justice Center") argues the court did not properly assess mitigating factor fourteen.

The ACDL-NJ's and MacArthur Justice Center's arguments ignore the sentencing court's overall findings regarding the mitigating factors. The court clearly considered defendant's childhood trauma and PTSD, and it found and gave moderate weight to mitigating factor four as a result. (27T 164:7 to 166:2).[1] The court also found and gave great weight to mitigating factor

[1] The State adopts the abbreviations used in defendant's June 30, 2025 brief and the State's September 10, 2025 brief.

fourteen. (27T 168:10-16). The court's findings are supported by competent, credible evidence in the record, and the ACDL-NJ's mere dissatisfaction with the court's weighing of mitigating factor fourteen does not constitute an abuse of discretion. Given that the court did not abuse its discretion and otherwise followed the sentencing guidelines, this court "is bound to affirm [defendant's] sentence, even if it would have arrived at a different result." State v. O'Donnell, 117 N.J. 210, 215 (1989).

POINT III

THE SENTENCING COURT PROPERLY TREATED DEFENDANT AS AN ADULT AT SENTENCING BECAUSE SHE LEGALLY WAS AN ADULT AT THE TIME SHE COMMITTED THESE CRIMES.

The MacArthur Justice Center further argues the sentencing court's conclusion that defendant was an adult under New Jersey law "is undermined by the numerous laws in New Jersey regulating young people as adolescents after the age of [eighteen] and distinguishing them from adults." It relies on various laws restricting young adults' access to drugs, alcohol, gambling, and handguns in support.

Just as there are laws in New Jersey regulating young adults, however, there are also numerous laws in New Jersey giving certain rights and privileges to eighteen-year-old adults, as well as to certain juveniles. For example, a juvenile may obtain a probationary driver's license at the age of seventeen,

N.J.S.A. 39:3-13.4(a), and an adult may obtain a basic driver's license at the age of eighteen, N.J.S.A. 39:3-10. An eighteen-year-old may also serve as a juror, N.J.S.A. 2B:20-1(a); vote, U.S. Const. amend. XXVI; join the military, 10 U.S.C. § 505(a); and form binding contracts, N.J.S.A. 9:17B-1. Additionally, the age of consent in New Jersey is sixteen, see N.J.S.A. 2C:14-2, and older juveniles may receive some medical treatment without the consent of their parents, see N.J.S.A. 9:17A-4.

Notably, in the Code of Juvenile Justice, N.J.S.A. 2A:4A-20 to -48, which is the "operative statutory scheme for resolving juvenile delinquency matters," State ex rel. J.S., 202 N.J. 465, 474 (2010), a juvenile is "an individual who is under the age of [eighteen] years," N.J.S.A. 2A:4A-22(a). Meanwhile, an adult is "an individual [eighteen] years of age or older." N.J.S.A. 2A:4A-22(b). With certain exceptions, the Superior Court, Chancery Division, Family Part, has exclusive jurisdiction over any person who was a juvenile at the time he or she committed a crime, offense, or violation. N.J.S.A. 2A:4A-24(a); N.J.S.A. 2A:4A-25. But "[n]othing in [the Code of Juvenile Justice] shall affect the jurisdiction of other courts over offenses committed after a juvenile under the jurisdiction of the court reaches the age of [eighteen] years." N.J.S.A. 2A:4A-24(d); see State in the Interest of F.W., 130 N.J. Super. 513, 516 (Juv. & Dom. Relations Ct. 1974) (dismissing Family Part complaint because the court

determined the actor was an adult at the time he committed the offense, and the court therefore lacked jurisdiction over the matter).

In this case, defendant was clearly an adult at the time she committed these crimes pursuant to our laws because she was over the age of eighteen. Therefore, the court properly treated her as an adult when it imposed a sentence upon her. It is not a court's role to "rewrite a plainly written statute or to presume that the Legislature meant something other than what it conveyed in its clearly expressed language." State v. S.B., 230 N.J. 62, 68 (2017) (quoting Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012)). If defendant and amici are unhappy that nineteen year olds are treated as adults for the purposes of sentencing, they should not be asking this court to rewrite the laws; rather, they can lobby for the Legislature to change or enact new laws.

CONCLUSION

Based on the foregoing, the State submits that defendant's sentence should be **AFFIRMED**.

Respectfully submitted,

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