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| <p><b>STATE OF NEW JERSEY,</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>LATONIA BELLAMY,</b></p> <p style="text-align: center;"><b>Defendant.</b></p> | <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> | <p><b>SUPERIOR COURT OF NEW JERSEY</b></p> <p><b>HUDSON COUNTY</b></p> <p><b>LAW DIVISION: CRIMINAL</b></p> <p><b>INDICTMENT NO.: 11-03-00348-I</b></p> <p><b>PG: 10-1092</b></p> <p><b>OPINION AND ORDER DENYING</b></p> <p><b>EXTENDING CONSTITUTIONAL</b></p> <p><b>JUVENILE PROTECTIONS</b></p> <p><b>TO YOUNG ADULT OFFENDERS</b></p> |
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DATE OF DECISION AND OPINION: September 16, 2024

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### **STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

This matter comes before the Court upon Latonia Bellamy's (hereinafter "Defendant") resentence. The Court has carefully considered the parties' submissions, oral argument, and for good cause shown, the reasons for Defendant's resentence is analyzed below.

On April 4, 2010, at approximately 3:02 a.m., members of the Jersey City Police Department (hereinafter "JCPD") responded to 243 Randolph Avenue in Jersey City on a 911 call of shots fired during a carjacking. Upon their arrival, they found the bodies of Michael Muchioki (hereinafter "Muchioki") and his fiancé, Nia Haqq (hereinafter "Haqq"), on the pavement in front of their home. The couple had just returned home from their engagement party. At the curb, was a 2010 Black Honda CRV registered to Nia Haqq, with its driver's door ajar. Members of the Hudson County Prosecutor's Office Homicide Squad were notified and took charge of the scene at about 3:40 a.m.

The 911 caller and another witness were located and interviewed. The 911 caller, Michael Muchioki's sister, Amanda Muchioki (hereinafter "Ms. Muchioki"), and resident of 243 Randolph Avenue, reported that Ms. Muchioki was awake and waiting for her brother and Nia Haqq to return from their engagement party. At approximately 2:40 a.m., Ms. Muchioki heard their car pull up. Ms. Muchioki then heard a male voice say, "Get out of the car!" Moments later, she heard a loud

bang which prompted her to run to the window where she saw a stranger standing by the open driver's side door and another stranger standing near the passenger side. Ms. Muchioki was unable to determine the gender of the strangers.

While Ms. Muchioki was trying to reach 911, she heard more shots. Ms. Muchioki later testified that only a few seconds had elapsed between the shotgun blast and the three gunshots that followed. Another witness who resided at 253 Randolph Avenue, Damaris Velasquez, testified that she heard gunshots and saw two unidentified females and an unidentified male, wearing an army camouflage jacket, running from the area of Randolph Avenue towards Union Street. At the crime scene, three spent 9-millimeter shell casings and one copper projectile were recovered in addition to personal property. The victims' car keys, cash, credit cards, purse, cell phones, camera, and wallets were missing from the scene.

On April 4 and 5 of 2010, Dr. Roger Mitchell, Regional Examiner, testified that, Assistant Regional Medical Examiner, Dr. Thomas Blumenfeld (deceased) performed the post-mortem examination of Muchioki and Haqq. Dr. Roger Mitchell testified that after reviewing the case file and photographs, he was able to determine that the cause of Muchioki's death was a shotgun wound to the head fired from a distance of less than two inches and the manner of death to be homicide. Muchioki also suffered a gunshot wound to the buttocks, a "through and through" wound, which was delivered from a distance greater than eighteen inches. Dr. Roger Mitchell further testified that the cause of Haqq's death was a gunshot wound to the back of her head fired from a distance greater than eighteen inches and the manner of death to be homicide. Haqq also suffered a gunshot wound to the front of the left thigh; this bullet appeared to have hit the pavement before entering the body.

On April 9, 2010, at approximately 2:30 a.m., Defendant arrived at the offices of the Homicide Squad after having been informed that detectives wished to speak with her. Defendant knowingly and voluntarily waived her Miranda rights and provided an electronically recorded statement implicating herself, Darmelia Lawrence (hereinafter “Lawrence”), and Shiquan Bellamy (hereinafter “Bellamy”)<sup>1</sup> in the murder, carjacking, and robbery of Muchioki and Haqq.

In Defendant’s statement to detectives, she indicated that in the early morning hours of April 4, 2010, she, Bellamy, and Lawrence were at the home of Charmain Pineiro, also known as “Cee Cee,” located at 595 Ocean Avenue in Jersey City. Defendant stated that she was in Cee Cee’s bedroom when Bellamy brought out the shotgun and the 9-millimeter handgun from another room. Bellamy handed her the 9-millimeter handgun while he held the shotgun. Defendant stated she held and played with the 9-millimeter handgun, but did not hold the shotgun because it was too big for her. Defendant further stated that she told Bellamy she wanted to shoot a gun. Defendant also explained that she did not know where she, Bellamy, and Lawrence were going, so they just walked around. Defendant further advised that “[Bellamy] was just looking.” Defendant stated that she and Lawrence were switching on and off carrying the 9-millimeter handgun and that she was aware that the gun was loaded and had placed it in her pocket at the times she was carrying it. Defendant further stated that they left Cee Cee’s and walked straight down Myrtle Avenue and then straight down Randolph Avenue. On the way there, Defendant stopped and spoke with a friend briefly who was operating a blue or green colored vehicle. Defendant stated that the vehicle was occupied by four males, and they were not a part of what transpired that evening.

After the vehicle pulled off, they walked straight down Randolph Avenue. Defendant stated, “we went down Randolph, and then we saw the couple, so we like ... robbed them and stuff”

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<sup>1</sup> To avoid confusion, the court refers to Latonia Bellamy as “Defendant” and Shiquan Bellamy as “Bellamy.”

and that the couple was already outside of their car carrying several items. Bellamy said, “get down on the fucking ground and give me everything” and the couple “just gave it up scared and petrified for their life.” The couple handed Bellamy a black bag, the keys to their vehicle, along with wallets and other “stuff.” Bellamy took these items from both victims with one hand, while still pointing the shotgun at them. Defendant indicated that Bellamy in turn handed the items to Lawrence for her to hold. Originally, Defendant denied shooting the victims but later stated she fired two shots after the couple was robbed and that she shot at the couple after they were already lying down.

At trial, Defendant testified on her own behalf which contradicted the video recorded confession that was played during the State’s case. Defendant testified that she lied during her previously recorded statement. Defendant stated that she consciously chose to leave 595 Ocean Avenue armed with a firearm that was loaded and knew that this was against the law. Defendant further testified that she knew the victims were on the ground and took part in the robbery and carjacking, albeit against her will, and admitted to firing at the ground. Defendant further stated she accepted proceeds from the robbery and stated her version of the facts is not consistent with any other testimony provided about the crime scene or her previously sworn confession.

On June 21, 2012, a jury convicted Defendant of: first-degree felony murder during a carjacking (Muchioki), N.J.S.A. 2C:11-3(a)(3) (count eighteen); first-degree carjacking (Muchioki) N.J.S.A. 2C:15-2 (count nineteen); first-degree felony murder during an armed robbery (Muchioki), N.J.S.A. 2C:11-3(a)(3) (count twenty); first-degree armed robbery (Muchioki), N.J.S.A. 2C:15-1 (count twenty-one); second-degree possession of a weapon with an unlawful purpose (to use against Muchioki), N.J.S.A. 2C:39-4(a) (count twenty-three); first-degree murder (Haqq), N.J.S.A. 2C:11-3(a)(1) and (2) (count twenty-four); first-degree felony murder during a carjacking (Haqq) (count twenty-five); first-degree carjacking (Haqq) (count twenty-six);

first-degree felony murder during an armed robbery (Haqq) (count twenty-seven); first-degree armed robbery (Haqq) (count twenty-eight); second-degree possession of a handgun for an unlawful purpose (Haqq) (count thirty); and second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b) (count thirty-two).

Before sentencing Defendant the first time, the Court merged counts eighteen and nineteen, twenty and twenty-one, twenty-five and twenty-six, and twenty-seven and twenty-eight. As the judgment of conviction (hereinafter “JOC”) indicates, “[r]emaining for sentence are [c]ounts [eighteen], [twenty], [twenty-three], [twenty-four], [twenty-five], [twenty-seven], [thirty], and [thirty-two].”

On February 8, 2013, Defendant was sentenced for the crimes against Muchioki which included two felony murders (carjacking and robbery), and possession of a weapon for unlawful purpose. With regard to the crimes against Haqq, the judge sentenced Defendant on murder, two felony murders, and possession of a weapon for unlawful purpose. Additionally, defendant was sentenced for unlawful possession of a weapon.

In imposing the sentence orally, the Court found aggravating factors one, three, and nine. The Court found aggravating factor one because the killing of two compliant robbery victims was particularly “brutal and senseless.” (9T14:17 – 9T15:15)<sup>2</sup> The Court found aggravating factor three, finding it to be “highly likely” that Defendant would reoffend. (9T15:16 – 9T16:3) Additionally, the Court seemed to discount Defendant’s “lack of prior involvement with criminal justice system and her pursuit of higher education” because the facts of the offense suggested Defendant did “not possess normal impulse control and is capable of both random and extreme violence.” (9T15:16 – 9T16:3) The Court found aggravating factor nine, the need to deter

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<sup>2</sup> “9T” refers to the transcript of Defendant’s sentencing on February 8, 2013.

Defendant and others from violating the law, because the facts show that Defendant “did not consider the consequences of her actions.” (9T16:4 – 9T16:12)

The Court found mitigating factor seven due to Defendant’s lack of a prior record but stated that the factor was given “little weight.” (9T16:13 – 9T16:2) On Count 24, the murder of Haqq, the Court imposed a life sentence with a 63.75-year parole bar under the New Early Release Act (hereinafter “NERA”). On Count 18, the felony murder of Muchioki, the Court imposed a consecutive sentence of 30 years with a 30-year parole bar. The other counts were either merged or received concurrent sentences. (9T17:8 – 9T19:4)

Defendant then appealed and the Appellate Division, in an unpublished opinion, affirmed Defendant’s convictions but remanded for resentencing. State v. Bellamy, No. A-3676-12T2, 2017 N.J. Super. Unpub. LEXIS 2800 (App. Div. Nov. 8, 2017). The Appellate Division found the trial court erred in finding aggravating factor three and failed to consider mitigating factor eight, that the circumstances were unlikely to recur. Id. at \*24. Thus, the Appellate Division “remand[ed] for resentencing consistent with this decision.” Id. at \*25.

On remand, Defendant was represented by new defense counsel. Counsel moved to compel disclosure of Defendant’s Division of Youth and Family Services (hereinafter “DYFS”)<sup>3</sup> records. On May 30, 2019, the motion was heard. Defense counsel argued that the records of Defendant’s traumatic childhood would support several mitigating factors and that counsel intended to have the records reviewed by the defense’s retained psychologist. (22T6:24-22T8:15)<sup>4</sup> In denying the motion, the Court held that defense counsel can get Defendant’s life history from Defendant herself. (22T49:6-22T50:23)

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<sup>3</sup> DYFS is now known as the Division of Child Protection and Permanency (“DCPP”).

<sup>4</sup> “22T” refers to the transcript of Defendant’s motion to compel DCPP records on May 30, 2019.

On July 15, 2019, the Court denied Defendant's motion to reconsider the denial of the DYFS records. On September 10, 2019, the Court denied Defendant's motion for a stay while leave to appeal was sought. (23T4:4-23T13:6)<sup>5</sup> On September 18, 2019, the Appellate Division denied the motion for leave to appeal. On the same day, Defendant sought emergent relief from the Supreme Court of New Jersey, but relief was denied.

On September 19, 2019, the Court resentenced Defendant as follows: life subject to NERA for murder of Haqq (count twenty-four) and two terms of thirty years of imprisonment with complete parole bars for the two felony murders of Muchioki (counts eighteen and twenty), to be served consecutive to count twenty-four but concurrent with each other. The judge imposed one ten-year term of imprisonment, of which five were parole ineligible, on one count of possession of a weapon for an unlawful purpose (count twenty-three), to be served concurrently with counts eighteen and twenty but consecutive to count twenty-four. The following were made concurrent to count twenty-four: two NERA life terms on two felony murders of Haqq (counts twenty-five and twenty-seven); one ten-year term, five of which were parole ineligible, on one count of possession of a weapon for unlawful purpose (count thirty); and ten years must serve five for unlawful possession of a handgun (count thirty-two). Thus, defendant's new aggregate sentence is a NERA life term, followed by an additional thirty-five years of parole-ineligible time. At the resentencing hearing, the judge found aggravating factors one and nine, and factor seven in mitigation. N.J.S.A. 2C:44-1(a)(1), (9); 2C:44-1(b)(7).

Moreover, on the same day, defense counsel's motion to disqualify the sentencing judge was denied. (24T3:19-24T16:25)<sup>6</sup> Defense counsel's motion for release of co-defendants' presentencing reports was also denied. (24T17:1-24T19:16) Subsequently, the Court stated that

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<sup>5</sup> "23T" refers to the transcript of Defendant's motion for stay on September 10, 2019.

<sup>6</sup> "24T" refers to the transcript of Defendant's resentencing on September 19, 2019.

sentencing was a “limited remand on the applicability of mitigating factor eight only.” (24T19:19-24T20:18) The Court noted that the record did not require “supplementation and that the proceeding today will, therefore, be limited to those facts and circumstances on the record and/or known to the parties on the date of the original sentence.” (24T19:19-24T20:18) Defense counsel disagreed and argued that other mitigating factors should be found in addition to mitigating factor eight. (24T22:11-24T58:3)

The Court did not find mitigating factor eight, repeating that “post-sentencing rehabilitation is not within the scope of the hearing.” (24T:65-23-24T:68-5) While referring to the original sentence, the Court incorporated the findings of mitigating factor seven and aggravating factors one and nine to impose the same sentence. (24T61:1-24T58:3)

Defendant appealed and the Appellate Division again remanded for another resentencing in a published opinion. State v. Bellamy, 468 N.J. Super. 29 (App. Div. 2021). The Appellate Division first noted that error occurred when the sentencing court failed to conduct a plenary resentencing. Id. at 39-41. The Court stated that “circumstances evolve, and people change over time,” and a sentencing court on remand must evaluate “the whole person standing before the Court at that moment.” Id. at 41. Error also occurred when the sentencing Court failed to release the DYFS records to the defense. Id. at 48-49. Next, the panel agreed with the defense that the next sentencing should be before a different judge because the original judge seemed unable to overcome his moral outrage at the offense and consider Defendant as she stood before the judge that day. See id. at 49-51. Furthermore, the panel pointed out that new mitigating factor fourteen, defendant was under twenty-six years old at the time of the offense, would apply at the next resentencing. Id. at 42-48.

Finally, the panel stated which counts should merge and which should receive sentences. The Appellate Division explained that a sentence should be imposed for the murder of Haqq, with the felony murder counts pertaining to Haqq merging; for the carjacking of Haqq; for the robbery of Haqq; for one felony murder of Muchioki, with the other felony murder count pertaining to Muchioki merging; for either the carjacking or robbery of Muchioki, with the count serving as the predicate for the felony murder merging; and for unlawful possession of a handgun without a permit, with the two counts of possessing a handgun for an unlawful purpose merging with the offenses that were the purpose. Id. at 41-42.

On the current remand, the Court ordered disclosure of the DYFS file for in-camera review on July 15, 2021. On July 22, 2022, the Court issued a protective order and released the redacted records to defense counsel. On December 7, 2023, the Court denied Defendant's motion to release the confidential presentence reports of co-defendants.

Defendant now seeks to extend constitutional protections for juveniles to young adult offenders such as Defendant who are over the age of seventeen at the time of the offense. Further, Defendant asks the Court to sentence Defendant to concurrent thirty-year terms with a twenty-year parole bar. On July 11, 2024, this Court heard oral argument. This Court notes and considers that all exhibits were stipulated to. These exhibits include the Expert Report of Tarika Daftary-Kapur, Ph.D. dated July 20, 2023, Expert Report of Megan Perrin, Ph.D. dated October 27, 2022, and the Supplemental Expert Report of Megan Perrin, Ph.D. dated June 19, 2024.

## **LEGAL STANDARD AND ANALYSIS**

### **I. THE 8TH AMENDMENT PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT DOES NOT APPLY TO DEFENDANT'S SENTENCE.**

Defendant's constitutional argument is that the holdings of Comer<sup>7</sup>, Zuber<sup>8</sup>, and Miller<sup>9</sup> should be extended to young adult offenders, like Defendant, who are nineteen years of age at the time of the offense and that Defendant should be eligible for a lower parole ineligibility bar. Defendant argues that instead of facing a thirty-year parole bar, she would be eligible for a twenty-year parole bar.

Counsel for amicus curiae further submits that New Jersey statutes already protect and regulate youth beyond the age of eighteen in recognition of their vulnerability and immaturity. The Legislature imposes age-restrictions that reflect the longstanding understanding that people younger than twenty-one are not fully developed. See, e.g., N.J.S.A. 33:1-77; N.J.S.A. 9:17B-1(b). For example, 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). New Jersey has also long placed higher age restrictions on gambling. See N.J.S.A. 9:17B-1. (limiting casino gambling 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. This 2017 change is consistent with research showing that the hallmark features of youth render young people particularly vulnerable to the dangers of smoking, even past age

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<sup>7</sup> State v. Comer, 249 N.J. 359 (2022).

<sup>8</sup> State v. Zuber, 227 N.J. 422 (2017).

<sup>9</sup> Miller v. Alabama, 567 U.S. 460 (2012).

eighteen. Institute of Medicine of the National Academies, Ending the Tobacco Problem: A Blueprint for the Nation, 93 (2007) (citing research showing that 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”).

However, in State v. Ryan, the New Jersey Supreme Court stated: “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.” 249 N.J. 581, 600 n.10 (2022) (alterations in original) (quoting Roper v. Simmons, 543 U.S. 551, 54 (2005)); see also Graham v. Florida, 560 U.S. 48, 74-75 (2010). At its core, it is this Court’s role to follow the law enacted by the New Jersey Legislature and oblige by the precedent of the United States Supreme Court and the Supreme Court of New Jersey.

Defendant’s argument centers around how developmental science for nineteen-year-olds, like Defendant, continue into a period of late adolescence. Defendant asserts that late adolescence offenders are less mature and more susceptible to peer influence than their fully adult counterparts. Defendant additionally submits that people’s minds do not become fully mature until their mid-twenties, and the risky, reckless behavior of adolescence generally disappears. Defendant asks this Court to consider these characteristics and the developmental science before imposing a sentence. The developmental science is undisputed and has been stipulated to by the State. The Court acknowledges and considers the validity of the developmental science.

#### **A. Juvenile Constitutional Protections Against Lengthy Sentences.**

Defendant relies on case law that simply does not apply to Defendant as she was not a juvenile at the time of the offense. In Miller v. Alabama, the United States Supreme Court

recognized “the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” 567 U.S. 460, 465, 472 (2012). The Court continued, “the characteristics of youth, and the way the weaken rationales for punishment, can render a life-without-parole sentence disproportionate.” Id. at 473. The Court held that “mandated life in prison without possibility of parole for juvenile offenders” is prohibited. Id. at 479. The Court left open the possibility that sentencing Courts could impose such a sentence in homicide cases if the mitigating effect of the defendant’s age is properly taken into account. Id. at 480.

In State v. Zuber, a case involving seventeen-year-old defendants, the New Jersey Supreme Court expanded the protections for juveniles outlined in Miller. 227 N.J. 422, 403, 433, 438 (2017). The Court held Miller’s requirement that a sentencing judge “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison applies with equal strength to a sentence that is the practical equivalent of life without parole.” Id. at 446-47 (citation omitted). Further, the Court found “that the force and logic of Miller’s concerns apply broadly: to cases in which a defendant commits multiple offenses during a single criminal episode; to cases in which a defendant commits multiple offenses on different occasions; and to homicide and non-homicide cases.” Id. at 448. Zuber extended Miller protections to those juvenile offenders who are eligible for a term of years that is the practical equivalent of life without parole. State v. Comer, 249 N.J. 359, 388-89 (2022).

In State v. Ryan, the defendant argued that his sentence of life without parole under New Jersey’s “Three Strikes Law,” N.J.S.A. 2C:43-7.1(a), was illegal. 249 N.J. 581, 596 (2022). The defendant based his argument, in part, on the sentencing judge not applying the Miller factors to his “first strike” conviction, which he committed when he was sixteen. Id. at 590. In rejecting

defendant's appeal, the Court emphasized that "[b]ecause defendant committed his third offense and received an enhanced sentence of life without parole as an adult, we hold that this appeal does not implicate Miller or Zuber." Id. at 586-87. Additionally, the Court held that it "did not ... extend Miller's protections to defendants sentenced for crimes committed when those defendants were over the age of eighteen." Id. at 596.

Furthermore, in State v. Comer, our Supreme Court held that juvenile offenders are entitled, after serving twenty years in prison, to be considered for a reduced twenty-year parole bar. 249 N.J. 359, 401, 403 (2022). In Comer, the Court reasoned that juvenile offenders waived to the adult Criminal Part and sentenced to a term exceeding twenty years may petition for review of the sentence after they have served twenty years in prison. Id. at 402-403. Significantly, the Court did not extend this right to sentence review to offenders who were eighteen years of age or older at the time of their crimes. Id. The Court ultimately concluded that all juvenile offenders are entitled to be resentenced after twenty years in prison. Id. at 403.

The Court in Comer held that a resentencing court should consider the Miller factors and decide whether the offenders have matured, rehabilitated, and whether they are fit for release. Id. at 401, 403. The Court further held that the resentencing court has the discretion to impose any base sentence within the statutory range, and to impose a parole disqualifier as low as twenty years. Id. at 403.

#### **B. Nineteen-Year-Old Offenders Do Not Receive the Same Constitutional Protections as Juveniles.**

Defendant seeks to extend constitutional protections for juveniles to nineteen-year-olds. In the three key precedent cases, the holdings dealt specifically with juveniles under the age of eighteen. In Miller, the defendants were fourteen years old. Miller, 567 U.S. at 465, 468. In Zuber,

the defendants were seventeen years old. Zuber, 227 N.J. at 430, 433. In Comer, the defendants were fourteen and seventeen. Comer, 249 N.J. at 371, 374.

In asserting these holdings 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.

Specifically, Dr. Perrin's developmental science refers to the "age-crime curve," which is the age distribution of offenders. Criminologists consistently place the age of nineteen near the peak of the curve. This overall pattern is consistent, even though the age distribution of offenses varies somewhat if offending is broken down in detail by place, by era, or by specific crime. Ben Matthews and John Minton, Rethinking One of Criminology's "Brute Facts": The Age-Crime Curve and the Crime Drop in Scotland, 15 Euro. J. of Criminology 296, 297-98, 305-11 (2017); National Institute of Justice, From Youth Justice Involvement to Young Adult Offending (2014). Darrell Steffensmeier & Cathy Streifel, Age, Gender, and Crime Across Three Historical Periods: 1935, 1960, and 1985, 69 Social Forces 869, 876-86 (1991); Darrell J. Stefensmeier et al., Age and the Distribution of Crime, 94 Am. J. of Sociology 803, 812-23 (1989); David P. Farrington, Age and Crime, 7 Crime and Justice 189, 191-201 (1986); Hirschi & Gottfredson (1983), supra, at 554-62.

Defendant further submits that desistence studies, which follow a specific sample of offenders over time, are consistent with the age-crime curve. Desistence studies show that those who offend in their late teens and early twenties tend to desist from crime as time passes. By their

late twenties and early thirties, these young adult offenders are indistinguishable from the general population in their unlikelihood of committing crimes. See R. Karl Hanson, Long-Term Recidivism Studies Show That Desistance Is the Norm, 45 *Crim. Just. & Behavior* 1340, 1341-42 (2018); Alfred Blumenstein & Kiminori Nakamura, Redemption in the Presence of Widespread Criminal Background Checks, 47 *Criminology* 327, 337-40 (2009); Keith Soothill & Brian Francis, When do Ex-Offenders Become Like Non-Offenders?, 48 *Howard J. Crim. Just.* 373, 375-77, 380-83 (2009); Megan C. Kurlychek et al., Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement, 53 *Crime & Delinquency* 64, 72-76 (2007).

The leading desistance study, Pathways to Desistance, followed 1,354 youth 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.

Defendant submits and the Court finds that these studies have produced an overwhelming consensus 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. (Dca 450)<sup>10</sup> Laurence Steinberg, Adolescent Brain Science and Juvenile Justice Policymaking, 23 Psy. Pub. Pol. And L. 410, 413 (2017); Elizabeth S. Scott, et al., Symposium: Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy, 85 Fordham L. Rev. 641, 642, 645-46 (2016); Laurence Steinberg et al., Psychosocial Maturity and Desistence from Crime in a Sample of Serious Juvenile Offenders, U.S. Dep't of Justice - Office of Juvenile Justice Delinquency Prevention Bulletin 6 (March 2015).

Defendant further submits that those in their late teens and early twenties continue to mature into a period of late adolescence. Icenogle and Cauffman (2021), supra, at 1007. The science portrays how late adolescents, like juveniles, are still highly susceptible to peer pressure. (Dca 447) Icenogle and Cauffman (2021), supra, at 1010-11; Karol Silva et al., Adolescents in Peer Groups Make More Prudent Decisions When a Slightly Older Adult Is Present, 27 Psychological Science 322, 327-29 (2016). Studies submitted to the court allegedly show that late adolescents in situations of emotional arousal lack impulse control and further show that impulse control is not developed until approximately the mid-twenties. (Dca 443 to 444) Elizabeth Scott et al., Bringing Science to Law and Policy: Brain Development Social Context, and Justice Policy, 57 Wash. U.J.L.& Pol'y 13, 26-27 (2018); Steinberg (2017), supra, at 414; Scott et al. (2016), supra, at 642, 646-47, 649; Steinberg et al. (2015), supra, at 7-8; Steinberg et al. (2009), supra, at 591, 592-93. See also Brent Roberts et al., Patterns of Mean-Level Change in Personality Traits Across the Life Course: A Meta-Analysis of Longitudinal Studies, 132 Psychological Bulletin 1,

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<sup>10</sup> "Dca" refers to Defendant's confidential appendix.

14-15 (2006) (finding that personality changes more during late adolescence than at any other period).

Overall, based on these scientific studies, Defendant submits that constitutional protections against lengthy sentences that are exemplified in Miller and Zuber should be extended at least through twenty years of age. In other words, by extending these holdings, late adolescents, like juveniles, should be eligible for a 20-year parole bar. As noted by the Appellate Division in Defendant's last appeal, the New Jersey Supreme Court has recognized that the "parts of the brain involved in behavior control continue to mature through late adolescence." Bellamy, 468 N.J. Super. at 46 n.3 (quoting Zuber, 227 N.J. at 441). Specifically, the New Jersey Supreme Court has acknowledged that the new mitigating factor for offenders under twenty-six is a response to Miller/Zuber line of cases. State v. Rivera, 249 N.J. 285, 301-02 (2021) (discussing N.J.S.A. 2C:44-1b(14)).

While other state courts have extended Miller protections, New Jersey has not. See, e.g., Commonwealth v. Mattis, 2024 WL 118188 (Mass. 2023) (extending the state constitutional prohibition against the imposition of life without parole sentences for juvenile offenders applies with equal force to adolescents ages 18-20); People v. Parks, \_\_ N.W.2d \_\_, 2022 Mich. LEXS 1483, At \* 16 (July 28, 2022); (concluding that "in terms of neurological development, there is no meaningful distinction between those who are seventeen and those who are eighteen years old"); In re Monschke, 482 P.3d 276 (Wash. 2021) (holding eighteen through twenty-year-olds are entitled to same protection as juveniles against life sentences).

Notably, Defendant's arguments have consistently been rejected by our appellate courts. See, e.g., State v. Barkley, No. A-2505-21 (App. Div. Nov. 16, 2023) (slip. op. at 2, 7-8) (refusing to extend Comer's holding to a Defendant who was "a few weeks shy of his nineteenth birthday

at the time of the incidents”); State v. Erazo, No. A-4408-18 (App. Div. Oct. 12, 2023) (slip op. at 20) (finding Comer’s holding did not apply to a Defendant who was eighteen-years-old at the time of the incident because “[h]e may have been a young adult, but he was an adult nonetheless”); State v. Wilkins, No. A0924-20 (App. Div. July 26, 2023) (slip op. at 38-39) (same), certif. denied, 255 N.J. 413 (2023); State v. Miller, No. A-3777-20 (App. Div. July 26, 2023) (slip op. at 41-42) (same), certif. denied, 255 N.J. 412 (2023); State v. Cain, No. A-0538-21 (App. Div. July 7, 2023) (slip op. at 13-14) (same), certif. denied, 255 N.J. 382 (2023); State v. Walker, No. A-2783-19 (App. Div. Mar. 31, 2023) (slip op. at 7-8) (same), certif. denied, 254 N.J. 177 (2023).

Most recently, in a published opinion, the Appellate Division declined to extend Comer to young adult offenders who were eighteen to twenty years of age at the time of the offense. State v. Jones, Nos. A-3911-21, A-1264-22, A-1358-22, 2024, 2024 N.J. Super. LEXIS 46, at \*23 (App. Div. May 31, 2024). In Jones, the court consolidated three cases where each defendant was between the age of eighteen and twenty when they committed murder in the late 1980s and early 1990s. Id. at \*2. The Appellate Division ultimately held Comer was limited to juvenile offenders tried and convicted of murder in adult court. Id. at \* 23. In this case, while the Court considers the scientific data provided, the Court must follow New Jersey precedent. The Court’s role is to interpret the laws, not enact them. This decision is best left to the Legislature who may enact such laws. Accordingly, the Court cannot extend the holdings of Comer, Zuber, and Miller to Defendant who was not a juvenile at the time of the offense as it is not permitted under New Jersey laws.

### **C. The Miller Factors are Inapplicable to Defendant.**

The holdings of Comer, as stated above, simply do not apply and thus neither do the factors enumerated in Miller. In Comer, the Court concluded that juvenile offenders could petition to be resentenced after twenty years in prison. Comer, 249 N.J. at 403. At the resentencing, the court

should consider the Miller factors and decide whether the offender has matured, rehabilitated, and is fit for release. Id. at 401, 403. The resentencing court will have the discretion to impose any base sentence within the statutory range, and to impose a parole disqualifier as low as twenty years. Id. at 403.

When a juvenile is eligible for such a penalty, the sentencing court must consider the “Miller factors”:

(1) the juvenile’s “chronological age and its hallmark features -- among them immaturity, impetuosity, and failure to appreciate risks and consequences”;

(2) “the family and home environment that surrounds [her] -- 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 [her] participation in the conduct and the way familial and peer pressures may have affected [her]”;

(4) “the effect of youth on [her] defense “-- for example, [her] inability to deal with police officers or prosecutors (including on a plea agreement) or [her] incapacity to assist [her] own attorneys”; and

(5) whether the circumstances suggest “the possibility of rehabilitation.”

Comer, 249 N.J. at 387 (quoting Miller, 567 U.S. at 477-78).

In this case, Comer and the Miller factors do not apply to Defendant. As an initial matter, Defendant was simply not a juvenile at the time of the offense. Second, even if Defendant was a juvenile at the time of the offense, 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 in prison.

While this Court commends Defendant for her numerous achievements during the past fourteen years and acknowledges the developmental science before it, the law Defendant seeks to

rely on simply does not apply to her. The Court notes that during her time in prison, Defendant worked as a literacy volunteer, in the quarantine wing during the pandemic, and progressed through the alternatives to violence program to the point of facilitating it. (Da 176, 212, 217, 230, 236, 237, 240, Dca 449)<sup>11</sup> Defendant earned her bachelor's degree from Rutgers *magna cum laude* with a grade point average of a 3.83 through the NJ-STEP program. (Da 192) Defendant is also interested in pursuing a master's and a doctorate degree with the hope of providing mental health services to girls who have suffered abuse. (Dca 430 – 431, 449, 450) Additionally, Defendant also offered written testimony to the New Jersey Assembly in support of voting rights for incarcerated people. (Da 183) Furthermore, Defendant also provided testimony in the prosecution of a corrections officer who had raped Defendant's cellmate. (Da 169, 250, 252, 406)

However, while Defendant's efforts are tremendous, Defendant did receive one infraction throughout her period of incarceration that this Court must acknowledge. As the result of a consensual relationship with a transgender inmate housed at the women's prison, Defendant gave birth in September 2022. (Dca 438) These actions resulted in Defendant receiving her first infraction for engaging in sexual relations. (Da 59, 76, 77) Defendant is engrossed in ensuring that the baby has a good home and does not experience the adversity that she did. (Da 63 to 69; Dca 438)

While the Court encourages Defendant to continue her rehabilitative efforts and acknowledges how her achievements are not an easy feat, this Court must follow precedent. At nineteen years old, while young, Defendant was an adult. Further, Defendant is not eligible for a resentencing 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

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<sup>11</sup> "Da" refers to Defendant's non-confidential appendix.

Defendant who was not a juvenile at the time of the offense and has not yet been incarcerated for twenty (20) years.

**D. The Minimum Sentence Defendant Can Receive Is Thirty Years with a Thirty-Year Parole Bar.**

Under N.J.S.A. 2C:11-3b(1), the lowest sentence for murder is thirty years with a thirty-year parole bar. As explained in Comer, the mandatory thirty-year parole bar constitutes cruel and unusual punishment when an application of the Miller factors shows that a juvenile offender's culpability is low and shows that the offender is currently reformed and fit to reenter society. Comer, 249 N.J. at 401-03. However, as stated above, Comer does not apply to late adolescent offenders, such as nineteen-year-old Defendant.

The Supreme Court in Comer contemplated that adolescent offenders would petition for resentencing "after having spent twenty years in jail." Id. at 403. The Supreme Court's main goal was to provide the best opportunity to evaluate the defendant's reform and rehabilitation, "which could not be fully considered decades earlier." Id.

In this case, Defendant asks this Court to sentence Defendant to thirty years with a twenty-year parole bar pursuant to Comer and an application of the Miller factors. However, as stated above, Comer is inapplicable to Defendant. Therefore, this Court is required to follow the provisions set forth under N.J.S.A. 2C:11-3b(1). Under N.J.S.A. 2C:11-3b(1), the lowest sentence for murder is thirty years with a thirty-year parole bar. Defendant is ineligible for a twenty-year parole bar.

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.

### **CONCLUSION**

Accordingly, for the foregoing reasons, Defendant's Motion to extend the holdings of Miller, Zuber, and Comer to young adult offenders, like Defendant, is **DENIED**.

**SO ORDERED.**

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**HON. MITZY GALIS-MENENDEZ, P.J.Cr.**

**R. 1:6-2(a):** The within matter was \_\_\_\_X\_\_\_\_ opposed \_\_\_\_\_ unopposed.

**R. 1:6-2(f):** The Court made (\_\_\_\_ oral \_\_\_\_X\_\_ written) findings of fact and conclusions of law explaining its disposition of the Motion on September 16, 2024.