

STATE OF MICHIGAN
SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

ROBERT TAYLOR,

Defendant-Appellant.

Supreme Court
No. 154994

Court of Appeals
No. 325834

Circuit Court
No. 09-5243-FC

**PEOPLE'S ANSWER TO DEFENDANT'S SUPREME COURT
APPLICATION FOR LEAVE TO APPEAL**

PROOF OF SERVICE

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I certify that on January 4, 2017, I served, via First-Class Mail, a copy of:

Document: **People's Answer to Defendant's Pro Per Application for Leave to Appeal**

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/s/ Meghan Cassidy
Meghan Cassidy

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STATEMENT OF JURISDICTION

The People accept Defendant's Statement of Jurisdiction in his Brief on Appeal as complete and accurate.

ISSUES PRESENTED

ISSUE I

DID THE TRIAL COURT PROPERLY WEIGH THE FACTORS ENUNCIATED IN *MILLER V. ALABAMA* AND MCL § 769.25 IN DETERMINING THAT THE DEFENDANT IS THE RARE JUVENILE OFFENDER WHOSE CRIME REFLECTS IRREPARABLE CORRUPTION AND, THUS, DID NOT ERR IN SENTENCING THE DEFENDANT TO A TERM OF LIFE IMPRISONMENT WITHOUT PAROLE FOR HIS CONVICTION FOR FIRST-DEGREE FELONY MURDER?

**PLAINTIFF-APPELLEE'S ANSWER: "YES".
DEFENDANT-APPELLANT'S ANSWER: "NO".**

ISSUE II

DID THE TRIAL COURT COMMIT PLAIN ERROR IN SENTENCING THE DEFENDANT TO A TERM OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE ON HIS FIRST-DEGREE FELONY MURDER CONVICTION WITHOUT EMPANELING A JURY?

**PLAINTIFF-APPELLEE'S ANSWER: "NO".
DEFENDANT-APPELLANT'S ANSWER: "YES".**

COUNTERSTATEMENT OF FACTS

In the summer of 2009, 21-year-old Matthew Landry (“Landry”) resided with his parents in Chesterfield Township. (Tr. 12-15-10, 112). Landry worked at Dolly’s Pizza. (Tr. 12-15-10, 113). His girlfriend, Francesca Bommarito (“Bommarito”), lived in Roseville. (Tr. 12-15-10, 114, 119-120). Landry drove a 2000 green four-door Honda Accord. (Tr. 12-15-10, 116-117).

On Saturday, August 9, 2009, Matthew was delivering pizzas. (Tr. 12-15-10, 115-116). That evening, Landry called his mother, Doreen Landry (“Doreen”), and told her that he was having problems with his car alarm. (Tr. 12-15-10, 116). Landry asked his mother if he could use her vehicle to finish his deliveries. (Tr. 12-15-10, 118). With Doreen’s permission, Landry came home in the Honda and returned to work in her vehicle. (Tr. 12-15-10, 118).

Landry returned home near 12:00 midnight. (Tr. 12-15-10, 118). Doreen was up reading and Landry informed her that he was going to try and fix the car alarm. (Tr. 12-15-10, 118-119). At 3:00 a.m., Doreen, unable to sleep, heard Landry leave the house in his green Honda. (Tr. 12-15-10, 119). The car alarm was going off “all the way down the street.” (Tr. 12-15-10, 119).

Landry telephoned Doreen the following day at 1:30 p.m. from Bommarito’s house. (Tr. 12-15-10, 120). Bommarito was sick and

Landry was taking care of her. (Tr. 12-15-10, 120-121). Landry told Doreen that he would see her at a family barbeque planned for that afternoon. (Tr. 12-15-10, 120-121).

In August of 2009, Michael Sawyer ("Sawyer") was working as an assistant manager at a Quizno's at the corner of Ten Mile Road and Gratiot Avenue in Eastpointe. (Tr. 12-8-10, 57-58). Sawyer was working on Sunday, August 9, 2009, with his co-worker, Jessica McKinney ("McKinney"). (Tr. 12-8-10, 66; Tr. 12-10-10, 6-7). It was a hot summer day. (Tr. 12-8-10, 66).

That afternoon, around 2:00 p.m., a young Arab-American male individual, Ihab Maslamani ("Maslamani"), entered the store and asked Sawyer for a cup of water. (Tr. 12-8-10, 66-67, 72, 80-83; Tr. 12-10-10, 7, 10-11). McKinney helped him get a cup of water. (Tr. 12-8-10, 67, 80-83; Tr. 12-10-10, 11-12). Within seconds, Maslamani, who wore an orange baseball cap, left the store. (Tr. 12-8-10, 68, 80-83). Soon thereafter, a young African-American male individual, Robert Taylor ("Taylor"), walked into the store carrying a cup. (Tr. 12-8-10, 68-69, 72, 84-85; Tr. 12-10-10, 13). Taylor asked for some water. (Tr. 12-8-10, 68, 84-85; Tr. 12-10-10, 13-17). McKinney showed him where to fill his cup with water. (Tr. 12-8-10, 68, 84-85; Tr. 12-10-10, 16-17). Before Maslamani and Taylor entered Quizno's, Sawyer had observed them "across the street in a plaza riding their bikes." (Tr. 12-8-10, 69-71). After they had left the store, Sawyer briefly viewed Taylor drinking the

cup of water and standing outside next to a Quizno's delivery car. (Tr. 12-8-10, 75-76, 86-87). At this same time, Sawyer observed one of the bikes parked outside the store. (Tr. 12-8-10, 72-73, 76-77).

At one point, Landry entered Quizno's. (Tr. 12-8-10, 73, 85-87; Tr. 12-10-10, 17-18). McKinney took Landry's order. (Tr. 12-8-10, 73, 85-87; Tr. 12-10-10, 18-19). Landry and McKinney knew each other and chatted briefly. (Tr. 12-8-10, 73-74, 85-87; Tr. 12-10-10, 18-19). Within a few minutes, Landry left Quizno's. (Tr. 12-8-10, 73-74, 85-87; Tr. 12-10-10, 19-20). Ten minutes later, police officers from the Eastpointe Police Department ("EPD") arrived at the store. (Tr. 12-10-10, 20).

That same afternoon, Carol Santangelo ("Santangelo") was working at Uptown Clips on the corner of Ten Mile and Gratiot, directly across the street from Quizno's. (Tr. 12-8-10, 95-97). As she rang out a customer, Santangelo looked out the front window and saw "three gentlemen wrestling with each other." (Tr. 12-8-10, 98). She viewed two young males pushing a third young male into a green Honda with the trunk open. (Tr. 12-8-10, 99-100). One of these two young males was African-American. (Tr. 12-8-10, 99). Santangelo remarked to a co-worker: "[I]t looks like a fight is going to start." (Tr. 12-8-10, 100-101). Several minutes later, she looked across Gratiot and saw "plenty of people out there talking to the police." (Tr. 12-8-10, 102). She observed EPD officers seize two bikes from outside Quizno's. (Tr. 12-8-10, 103; Tr. 12-15-10, 155-156).

At this same time, Lawrence Wata ("Wata"), accompanied by his wife and his daughter, was driving his GMC Suburban eastbound on Ten Mile towards Gratiot. (Tr. 12-8-10, 123-127). As he approached Quizno's, Wata saw Taylor about 35 feet away standing around the back of the store and "kind of like tucking something" under his waist belt. (Tr. 12-8-10, 126-130). Traffic began to move and Wata drove closer to where Taylor was standing. (Tr. 12-8-10, 130). Wata told his wife: "I think that guy has a gun. Lock the doors." (Tr. 12-8-10, 130). Further, Wata viewed Maslamani and Landry near Taylor. (Tr. 12-8-10, 140-141). Wata saw Maslamani with "his hand draped over" Landry standing near Landry's green Honda. (Tr. 12-8-10, 141). The vehicle's trunk was open and "they were facing the trunk lid." (Tr. 12-8-10, 141-142). Taylor stood "ten to 15" feet away," continuing to look "up and down" the streets. (Tr. 12-8-10, 141-142).

Wata turned onto Gratiot and into the parking lot of the store directly adjacent to Quizno's. (Tr. 12-8-10, 132). He informed his wife that he was "going to warn" the Quizno's employees that Taylor was behind the store with "a gun" and "going to rob" the store. (Tr. 12-8-10, 132-133). As Wata endeavored to enter Quizno's, however, Taylor "looked around" and made eye contact with Wata. (Tr. 12-8-10, 135). Wata immediately headed back to his vehicle. (Tr. 12-8-10, 134-135). He pulled his vehicle back onto Gratiot and made his way to Ten Mile headed eastbound. (Tr. 12-8-10, 135-136). Wata parked his vehicle in a

parking lot across the street from Quizno's. (Tr. 12-8-10, 136-137). Wata called 9-1-1, indicating that "there was a fellow with a gun" who looked like he was "going to rob Quizno's." (Tr. 12-8-10, 137-140).

At this point, Maslamani had one "hand over the top of the door" and one hand on the top of the roof of the green Honda. (Tr. 12-8-10, 143). Landry sat in the vehicle "with his feet hanging out the [driver's side] door." (Tr. 12-8-10, 143-145). The trunk was now closed. (Tr. 12-8-10, 143-143-144). Maslamani walked around to the trunk and opened it. (Tr. 12-8-10, 152). As Taylor stood nearby, he grabbed Landry by his neck, put him in a headlock, and attempted to drag him into the trunk. (Tr. 12-8-10, 152-153). Maslamani was unsuccessful, however, and forced him back to the driver's side front seat. (Tr. 12-8-10, 153-154).

Maslamani punched Landry with his right hand. (Tr. 12-8-10, 145). Landry flew back into the vehicle and Wata could no longer see him. (Tr. 12-8-10, 145). Maslamani turned around and looked back at Taylor, who was several feet away seeming to watch Maslamani and Landry. (Tr. 12-8-10, 145-146). During this entire altercation, Taylor remained about 15 feet away from the vehicle and appeared to be "a look out for what [wa]s happening." (Tr. 12-8-10, 146, 174). Maslamani "caught Taylor's attention" and Taylor walked back to the green Honda. (Tr. 12-8-10, 147-148). Taylor got into the back seat and Maslamani drove the vehicle away. (Tr. 12-8-10, 147-148). Wata remained on the 9-

1-1 call this entire time, describing what he witnessed. (Tr. 12-8-10, 148).

Wata followed Maslamani onto westbound Ten Mile, still on the 9-1-1 call. (Tr. 12-8-10, 149). He travelled behind the green Honda through several turns before ultimately losing sight of the vehicle. (Tr. 12-8-10, 150-151, 155).

Later that afternoon, Essa Rahime (“Rahime”) was working at his family-owned Sunoco gas station on East Seven Mile Road near Hayes in Detroit. (Tr. 12-8-10, 180-182). The gas station has an ATM inside the convenience store, as well as security cameras both inside and outside the store. (Tr. 12-8-10, 182-183). Maslamani entered the convenience store. (Tr. 12-8-10, 184, 188-189). Rahime knew Maslamani as “Ihab Gills.” (Tr. 12-8-10, 184). Rahime saw Maslamani in the convenience store on a regular basis. (Tr. 12-8-10, 184-185). Maslamani purchased a white t-shirt from Rahime. (Tr. 12-8-10, 184-185).

Maslamani walked over to the ATM and changed his shirt. (Tr. 12-8-10, 185). Rahime watched Maslamani use the ATM. (Tr. 12-8-10, 184-185). Rahime had never seen Maslamani use the ATM or pay for anything other than with cash. (Tr. 12-8-10, 185). Rahime’s security cameras captured Maslamani’s activity inside the convenience store. (Tr. 12-8-10, 186, 188-189).

Later that afternoon, Eddie Collins (“Collins”), who resided on Coram in Detroit between Hayes and Brach, saw Landry’s green Honda

parked in front of his home. (Tr. 12-10-10, 82-87). Collins observed Maslamani, along with a black male, “standing behind the car.” (Tr. 12-10-10, 85-88). The trunk was open. (Tr. 12-10-10, 88). They stood looking into the trunk for a few moments until “[t]hey shut it down.” (Tr. 12-10-10, 88). Collins watched for “a couple minutes.” (Tr. 12-10-10, 88). When he later returned, the vehicle was gone. (Tr. 12-10-10, 88-89).

Landry did not come to the family barbeque that afternoon. (Tr. 12-15-10, 120-121). After the party had concluded, at 9:00 p.m., the Landrys received a telephone call from one of Landry’s friends, Chris Emerick (“Emerick”), asking: “Have you heard from Matt?” (Tr. 12-15-10, 121-122). The Landrys assumed “he was with [his girlfriend].” (Tr. 12-15-10, 121-122). Emerick responded that Landry was not with her. (Tr. 12-15-10, 122).

Doreen logged onto her computer to look at her son’s debit card activity. (Tr. 12-15-10, 123-124). She was a co-signer on his account at the local credit union. (Tr. 12-15-10, 123). Doreen found three withdrawals from an address on East Seven Mile in Detroit, each for \$100. (Tr. 12-15-10, 124-127). Doreen, who worked in the banking industry, noted that three \$100 withdrawals right in a row was a common pattern in credit card and debit card fraud. (Tr. 12-15-10, 124-125). The transactions were made at 15201 East Eleven Mile Road within a minute of one another just before 3:30 p.m. on Sunday, August 9, 2009. (Tr. 12-15-10, 125-127). Doreen telephoned Emerick and told

him what she had discovered. (Tr. 12-15-10, 127). Emerick told Doreen that he would go look for Landry down on East Seven Mile. (Tr. 12-15-10, 127). At some point later that evening or the next day, Doreen saw a debit card charge for Landry on the computer for a purchase at Quizno's at 2:33 p.m. (Tr. 12-15-10, 128).

In August of 2009, Frederick Singleton ("Singleton") was a crack cocaine addict who frequented the "area of Maddelein and Monarch, the Seven Mile and Gratiot area." (Tr. 12-15-10, 62-63, 71). On Sunday, August 9, 2009, Singleton earned money by bringing customers to drug dealers. (Tr. 12-15-10, 75-76). Singleton knew both Maslamani and Taylor. (Tr. 12-15-10, 76-77). Taylor was from the neighborhood. (Tr. 12-15-10, 83).

That evening, Singleton was "on the corner of Maddelein and Monarch" consuming drugs at a vacant house at 1470s Madellein. (Tr. 12-15-10, 77). At 10:00 p.m., Singleton encountered Maslamani and Taylor as Singleton emerged from the drug house. (Tr. 12-15-10, 81-82). Maslamani and Landry were in the back seat of a small "greenish or blue" vehicle. (Tr. 12-15-10, 82). Taylor was driving. (Tr. 12-15-10, 82). Singleton walked over to the vehicle. (Tr. 12-15-10, 83). Maslamani asked Singleton: "Do you have anything?" (Tr. 12-15-10, 84). Singleton, speaking through the car window, replied that he did not but that he could "get some though." (Tr. 12-15-10, 84).

At this point, the four men entered the house. (Tr. 12-15-10, 84-86). Two women were inside. (Tr. 12-15-10, 91). Maslamani gave Singleton \$100 and Singleton left the house on his bicycle to obtain the drugs from a place about a block away. (Tr. 12-15-10, 97). He returned in minutes. (Tr. 12-15-10, 87). Maslamani, Singleton, and the two females smoked the crack cocaine. (Tr. 12-15-10, 88). Landry sat on a living room couch with Taylor. (Tr. 12-15-10, 88-89). Landry's seemed "out of place" for the neighborhood. (Tr. 12-15-10, 89-90). Singleton asked Maslamani if Landry "got high." (Tr. 12-15-10, 90). Maslamani responded: "Don't worry about him. He's with me." (Tr. 12-15-10, 90).

Maslamani purchased more crack cocaine. (Tr. 12-15-10, 90-91). Maslamani, Singleton, and the two females smoked more crack cocaine. (Tr. 12-15-10, 91-92). As Singleton ultimately left the house at 11:00 p.m., he viewed two young male individuals, known as "Junior" and Chris, hand Maslamani a gas can. (Tr. 12-15-10, 93-94, 99).

Between 1:30 and 2:30 p.m., on Monday, August 10, 2009, Stephanie Stewart ("Stewart"), driving her vehicle, left her house on Beamer Street in Harrison Township to travel to the Wildflower Café, where she worked as a waitress. (Tr. 12-8-10, 108-109, 112). Stewart's house is located a few hundred feet from the Flagstar Bank, located at 16 Mile and Crocker Street near Acacia. (Tr. 12-8-10, 110-112).

Stewart drove towards Acacia from Beamer. (Tr. 12-8-10, 112-113). As she drove, she viewed "a suspicious car sitting by [her] neighbor's

house that had not been there before.” (Tr. 12-8-10, 113—114). Stewart knew that the vehicle did not belong to the occupants of the house. (Tr. 12-8-10, 114). The vehicle was an older model green Honda. (Tr. 12-8-10, 116). The vehicle was parked adjacent to a culvert for drainage and a ditch. (Tr. 12-8-10, 114-115).

Stopped near the stop sign, Stewart observed Maslamani, several feet away, running around the corner towards the vehicle. (Tr. 12-8-10, 116-117). Maslamani fell into the ditch and landed “face flat on the ground.” (Tr. 12-8-10, 116-117). He “looked like he dropped something in the ditch.” (Tr. 12-8-10, 117). Maslamani “hurried up and grabbed it back up and put it back underneath his shirt.” (Tr. 12-8-10, 118). Further, Stewart “thought [she] saw something black underneath his coat.” (Tr. 12-8-10, 117). Maslamani “got in the car and sped off.” (Tr. 12-8-10, 117-118).

At around this time, EPD detectives were investigating the Quizno’s carjacking. (Tr. 12-14-10, 174-175; Tr. 12-15-10, 148-149). The EPD “had put out a ‘be on the lookout’ for the incident” but it did not have a license plate number for the vehicle involved. (Tr. 12-14-10, 178-179). At first, the EPD had no leads regarding the Quizno’s carjacking. (Tr. 12-14-10, 177-181).

Also during the day of Monday, August 10, 2009, the Landrys contacted the Chesterfield Township Police Department (“CTPD”) and reported their son missing. (Tr. 12-15-10, 130-131). A CTPD patrol

officer met with Doreen at her house that day. (Tr. 12-8-10, 194-195; Tr. 12-15-10, 130). The Landrys described Landry's vehicle to the patrol officer and told him about the ATM withdrawals. (Tr. 12-15-10, 130-131). Doreen contacted Landry's cellular telephone service provider and was able to see all of her son's telephone calls. (Tr. 12-15-10, 131-132). 22-year-old Bommarito came over to the Landrys' house. (Tr. 12-15-10, 131). They began to make flyers to post regarding Landry's disappearance. (Tr. 12-15-10, 131-, 134-135).

On the morning of Tuesday, August 11, 2010, CTPD Detective Scott Blackwell ("Detective Blackwell") met with Landry's mother, Doreen Landry ("Doreen"), at the police station. (Tr. 12-8-10, 193-194; Tr. 12-15-10, 135-136). The patrol officer who had met with the Landrys had "pinged Matthew Landry's phone and determined that" its last known location was in the area of Seven Mile and Gratiot. (Tr. 12-8-10, 197-198). The patrol officer "flagged" Landry's green Honda as "a wanted vehicle" on the Law Enforcement Information Network ("LEIN"). (Tr. 12-8-10, 199-200).

Speaking with Doreen, Detective Blackwell learned about Landry's "debit card being used in Eastpointe and in [the] City of Detroit." (Tr. 12-8-10, 201, 203; Tr. 12-15-10, 136). Detective Blackwell began to "believe that there was some foul play involved in [Landry] being missing." (Tr. 12-8-10, 201). Bommarito was the last person to see Matthew at her Roseville home. (Tr. 12-8-10, 201-202). In light of this, Detective

Blackwell sent Doreen to the Roseville Police Department (“RPD”). (Tr. 12-8-10, 201-202; Tr. 12-15-10, 136-137).

During their conversation, however, Doreen had informed Detective Blackwell that her son’s debit card had been “used at a gas station at Seven Mile and Hayes in Detroit” at 3:30 p.m. on Sunday, August 9, 2009. (Tr. 12-8-10, 204-205, 220). Detective Blackwell drove to Rahime’s gas station and viewed the surveillance video depicting Maslamani’s activities that afternoon. (Tr. 12-8-10, 205-208). Detective Blackwell telephoned Doreen and told her that it was not her son using the debit card. (Tr. 12-8-10, 207-210; Tr. 12-15-10, 136-137). Later that week, Detective Blackwell secured a copy of the surveillance video. (Tr. 12-8-10, 208).

RPD officers arrested Maslamani during the afternoon of Tuesday, August 11, 2009, in the rear of a Walmart at 12 Mile Road and Gratiot after he attempted to carjack a patron. (Tr. 12-10-10, 94). At the scene, RPD Lieutenant Raymond Blarek (“Lieutenant Blarek”) recognized Maslamani as the suspect in a robbery of the Flagstar Bank in Harrison Township on Monday, August 10, 2009. (Tr. 12-10-10, 94-95). Lieutenant Blarek contacted the Macomb County Sheriff’s Office (“MCSO”) regarding Maslamani’s arrest. (Tr. 12-10-10, 96).

Later that day, a patrol officer from the Detroit Police Department (“DPD”) found Landry’s green Honda on Rossini in the area of Seven Mile

and Hayes. (Tr. 12-8-10, 211-212). Ultimately, the vehicle was towed to the CTPD garage. (Tr. 12-8-10, 213-214).

At 4:00 p.m., Christopher Manning (“Manning”), a friend of Landry’s father, learned of Landry’s disappearance. (Tr. 12-14-10, 114-116). Near 7:00 p.m., Manning, learning the location of the discovery of Landry’s vehicle, drove into Detroit with his brother to search for Landry. (Tr. 12-14-10, 116-119). Manning conducted his impromptu search of the neighborhood for approximately 90 minutes without any success. (Tr. 12-14-10, 122).

At some point during this search, Manning learned that some individual had used Landry’s debit card at a gas station about a mile away at Seven Mile and Hayes. (Tr. 12-14-10, 123). Between 9:00 p.m. and 9:30 p.m., Manning drove to Rahime’s gas station. (Tr. 12-14-10, 125). Rahime showed Manning the surveillance video that he had showed Detective Blackwell earlier that day. (Tr. 12-14-10, 126-127). Manning watched Maslamani throw the shirt that he had been wearing into a garbage can. (Tr. 12-14-10, 130). Manning, now accompanied by a friend, located the shirt in a garbage bag and turned it over to a RPD detective at 11:00 p.m. (Tr. 12-14-10, 130-133). Manning searched two abandoned houses right by the gas station. (Tr. 12-14-10, 128-129).

Doreen visited the RPD police station that day regarding her son’s disappearance. (Tr. 12-10-10, 97-98; Tr. 12-15-10, 137-138). That evening, Lieutenant Blarek spoke with Doreen. (Tr. 12-10-10, 98-100; Tr.

12-15-10, 140-142). Doreen told Lieutenant Blarek that Landry's vehicle had been "recovered in the City of Detroit approximately 3:00 o'clock." (Tr. 12-10-10, 101). Further, she told him that "the man who robbed the bank" and "is in your jail" is the "same man who used my son's ATM card." (Tr. 12-10-10, 140-141). Soon, Lieutenant Blarek learned about the "suspicious situation" at Quizno's in Eastpointe involving a white male and black male "trying to force a white male into a small green four door car." (Tr. 12-10-10, 101-104). Lieutenant Blarek was aware that "a small vehicle" had been used in the bank robbery in Harrison Township. (Tr. 12-10-10, 101). Lieutenant Blarek began "to think that this is somehow all interrelated and all these acts are committed by the same perpetrators." (Tr. 12-10-10, 105).

At 11:30 p.m., Lieutenant Blarek, along with another RPD detective, drove to the neighborhood in Detroit in which Landry's vehicle was found "with the hopes of finding [Landry] somewhere, or finding evidence that would send [him] in some kind of direction to find [Landry]." (Tr. 12-10-10, 105-110). They searched unsuccessfully for about four hours throughout the area. (Tr. 12-10-10, 108-111).

Upon Maslamani's carjacking arrest in Roseville, law enforcement authorities formed a multi-jurisdictional task force aimed at investigating this crime spree. (Tr. 12-8-10, 210-212; Tr. 12-10-10, 112-113). That day, Lieutenant Blarek gathered a crew of officers, drove back down to Detroit, and began to canvass the same neighborhood as he had the

previous night. (Tr. 12-10-10, 113-114). According to Lieutenant Blarek, the area was “a known drug neighborhood” and they met “a lot of resistance.” (Tr. 12-10-10, 115-116). The search continued into Thursday, August 12, 2009. (Tr. 12-10-10, 116-118).

Also on Wednesday, August 12, 2009, Doreen’s daughter received a Facebook message regarding “somebody kidnap[ing] a young man in a green four door Honda Accord at a Quizno’s at Ten Mile and Gratiot.” (Tr. 12-15-10, 143). Doreen knew that this Quizno’s in Eastpointe “was the last place [Landry] used his card.” (Tr. 12-15-10, 143). Doreen, along with family friends, drove to the EPD police station and gave them a copy of the message. (Tr. 12-15-10, 143).

During this time, Detective Blackwell travelled to a Marathon gas station on Gratiot north of Seven Mile and viewed a surveillance video from 5:00 p.m. on Sunday, August 9, 2009. (Tr. 12-8-10, 217-218, 220). Detective Blackwell observed Maslamani pull Landry’s green Honda into the parking lot, exit the vehicle, and enter the convenience store. (Tr. 12-8-10, 218, 220-222). Two black females were inside the vehicle, but not Landry. (Tr. 12-8-10, 218, 223). Inside the convenience store, Maslamani and a “black male subject” appeared to conduct “some type of transaction.” (Tr. 12-8-10, 224). To Detective Blackwell, Maslamani looked as if he had a pistol concealed in his hip. (Tr. 12-8-10, 225-227). Twenty minutes earlier, the surveillance video showed Taylor at the gas

station wearing the orange baseball hat and speaking to an unidentified individual. (Tr. 12-15-10, 170-175).

Lieutenant Blarek, along with RPD Lieutenant James Knobelsdorf, found Landry's body on Thursday, August 13, 2009, on Maddelein near Monarch just north of Seven Mile and east of Gratiot in Detroit, about two blocks away from Rahime's gas station. (Tr. 12-8-10, 217; Tr. 12-10-10, 118-125). The burnt-out house, 14711 Maddelein, was set back from the street. (Tr. 12-10-10, 120-121). Lieutenant Blarek recognized Landry from Doreen's description and viewed "a bullet hole in the back of his skull." (Tr. 12-10-10, 124-126). The body was "in a major state of decomposition." (Tr. 12-10-10, 127). Lieutenant Blarek contacted the EPD, which would serve as "the lead agency at that point." (Tr. 12-10-10, 128-129).

That morning, Kimberly Zebrowski ("Zebrowski"), a forensic scientist with the Crime Scene Team for the Michigan State Police ("MSP"), responded along with several other MSP forensic scientists to 14711 Maddelein in Detroit. (Tr. 12-14-10, 6-7, 10-11). After being briefed by EPD Detective Patrick Connor ("Detective Connor"), the forensic scientists found a fired cartridge cases near Landry's body and another fired cartridge cases on a driveway a few houses away. (Tr. 12-14-10, 15-38).

Dr. Lokman Sung ("Dr. Sung"), an assistant medical examiner in Wayne County, performed an autopsy on Landry. (Tr. 12-14-10, 139,

142-146). The body had sustained significant decomposition. (Tr. 12-14-10, 146-147). The cause of Landry's death was a gunshot wound to the back of the head. (Tr. 12-14-10, 151-157). Landry was shot in the back of the head and the bullet exited out of the front of head. (Tr. 12-14-10, 151-157). The bullet's trajectory was "slightly downward." (Tr. 12-14-10, 154). Dr. Sung characterized the manner of Landry's death as homicide. (Tr. 12-14-10, 159).

Beginning on Wednesday, August 12, 2009, EPD Detective Steven Sellers ("Detective Sellers"), as part of multi-jurisdictional task force, began to focus on identifying "the second party believed [to] have been involved in the kidnapping and abduction." (Tr. 12-14-10, 174-175, 182-183, 189). Based on eyewitness observations and the Quizno's surveillance video, Detective Sellers determined that Maslamani's accomplice was a young black male. (Tr. 12-14-10, 184-185). Through his investigation, Detective Sellers became aware of a known associate of Maslamani's known as "Fat Daddy." (Tr. 12-14-10, 201-202). Ultimately, Detective Sellers received a tip that "Fat Daddy" was 16-year-old Taylor. (Tr. 12-14-10, 203-205). Detective Sellers obtained a photograph of Taylor. (Tr. 12-14-10, 205-206). Sawyer positively identified Taylor from a photo lineup prepared by Detective Sellers. (Tr. 12-8-10, 89-91; Tr. 12-14-10, 208).

Taylor's last known address on 15887 Madellein in Detroit, "two or three blocks east" of the house in which Landry's body was found. (Tr.

12-14-10, 208-209). Detective Sellers could not find Taylor at that house or at any of the other possible addresses for Taylor. (Tr. 12-14-10, 209-211). At this point, on August 20, 2009, the EPD released Taylor's photograph to the media. (Tr. 12-14-10, 211-213). On August 24, 2009, Taylor turned himself into the DPD. (Tr. 12-14-10, 214).

That evening, EPD Detectives Sellers and Connor took Taylor into custody at the Wayne County Youth Home and transported him to the EPD police station. (Tr. 12-14-10, 216-221). During the trip, Taylor, without prompting, told the EPD detectives: "I didn't kill that man." (Tr. 12-14-10, 232; Tr. 12-15-10, 33). The EPD detectives told Taylor that they would speak at the police station. (Tr. 12-14-10, 233). At the police station, Detective Sellers read Taylor his *Miranda* rights. (Tr. 12-14-10, 224). Taylor waived these rights in writing and spoke to the EPD detectives. (Tr. 12-14-10, 226-227, 233-235). At first, Taylor denied any knowledge of Landry's murder. (Tr. 12-15-10, 6). Later, he admitted leaving Quizno's with Maslamani and Landry, but claimed that Landry voluntarily went with them. (Tr. 12-15-10, 6). Subsequently, on the ride back to the Wayne County Youth Home, Taylor told the EPD detectives that he didn't kill Landry but that he assisted Maslamani because he was fearful of him. (Tr. 12-15-10, 6). Taylor conceded that he acted as a "lookout" at Quizno's. (Tr. 12-15-10, 6, 29-30).

MCSO Deputy Ronald Murphy ("Deputy Murphy"), an evidence technician, processed Maslamani and Taylor's bicycles for evidence at

the EPD police station. (Tr. 12-10-10, 36, 45-55). Subsequently, on three separate occasions, Deputy Murphy processed Landry's green Honda at the CTPD police station. (Tr. 12-10-10, 55, 71-72, 76). He dusted the entire vehicle for fingerprints and was able to lift some latent prints. (Tr. 12-10-10, 56-59). Deputy Murphy found the interior of the vehicle to be "cluttered" and filled with cigarette butts (Tr. 12-10-10, 60). He seized "a label for an ammunition box" and an orange baseball hat on the floorboard. (Tr. 12-10-10, 61, 71-75; Tr. 12-15-10, 167-169). In the trunk, he located a gas can. (Tr. 12-10-10, 62).

Lynn Helton ("Helton"), a forensic scientist with the MSP's DNA unit, received known DNA samples from Landry, Maslamani, and Taylor, as well as evidence from the police investigation. (Tr. 12-14-10, 41-42, 54-61). Helton analyzed parts of a "Magna bike" seized by the EPD from outside Quizno's and excluded Landry and Maslamani as the donors of the DNA that she located on this item. (Tr. 12-14-10, 60, 68-69). The DNA profile found on this item matched Taylor's DNA profile. (Tr. 12-14-10, 69-71). Moreover, Helton analyzed a cigarette butt found on the passenger floor of the green Honda. (Tr. 12-14-10, 71-72). She determined that Landry's DNA profile matched the DNA profile on this cigarette butt. (Tr. 12-14-10, 72). Finally, Helton analyzed the orange baseball hat seized from the vehicle. (Tr. 12-14-10, 74). She excluded Landry as the donor of the DNA that she found on this item. (Tr. 12-14-

10, 78). Instead, the DNA profile found on the hat matched Taylor's DNA profile. (Tr. 12-14-10, 78).

Months after Landry's death, on April 15, 2010, Manning, along with some friends, drove to 14711 Madellein looking to find "the bullet or possibly [the] gun" that killed Landry. (Tr. 12-14-10, 161-162). Manning found a bullet lodged in a wall. (Tr. 12-14-10, 166-169). They contacted the EPD and Detective Connor came out to the house to retrieve the bullet. (Tr. 12-14-10, 169-171; Tr. 12-15-10, 178-182).

Lieutenant David Vroman ("Lieutenant Vroman"), a supervisor with the MSP's Firearms Tool Mark Unit, analyzed a firearm recovered from Walmart's loading dock where Maslamani was arrested, the two fired cartridge cases, and the fired bullet found by Manning. (Tr. 12-14-10, 87-88, 95, 107-108). Lieutenant Vroman determined that the cartridge cases were not fired from that firearm. (Tr. 12-14-10, 104-105). He concluded that the fired bullet did not come from the firearm. (Tr. 12-14-10, 110).

Early in 2011, Mike Sadur ("Sadur") was incarcerated in the Macomb County Jail ("MCJ"). (Tr. 12-15-10, 35-39). Sadur was a porter in the MCJ's maximum security area where Taylor was housed. (Tr. 12-15-10, 40). Sadur had some conversations with Taylor. (Tr. 12-15-10, 41-42). They came from the same Detroit neighborhood. (Tr. 12-15-10, 43). Taylor told Sadur that he and Maslamani were "hitting licks" on that Sunday in August of 2010. (Tr. 12-15-10, 44). "Hitting licks"

involves “robbing, stealing or tricking somebody out of a car.” (Tr. 12-15-10, 44-45). Taylor described to Sadur how they “put [Landry] in the car” and admitted to participating in the struggle to get him in the vehicle. (Tr. 12-15-10, 45-48). He told Sadur that, as this occurred, he saw “two older people trying to call the police.” (Tr. 12-15-10, 48).

Taylor told Sadur that, inside the vehicle as they drove away, Maslamani showed Landry the gun. (Tr. 12-15-10, 49). According to Taylor, he and Maslamani told Landry “what time it was,” meaning they intended to kill him. (Tr. 12-15-10, 49). Taylor informed Sadur that they ultimately took Landry to an abandoned house in Detroit. (Tr. 12-15-10, 50). Inside the house, Maslamani punched Landry and “shot him one time in the back of the head.” (Tr. 12-15-10, 50-51). Later, Taylor sold the gun to “a street guy.” (Tr. 12-15-10, 51).

After a trial before Macomb County Circuit Court Judge Diane M. Druzinski (“Judge Druzinski”) in December of 2010, a jury convicted Taylor of First-Degree Felony Murder (MCL § 750.316), Carjacking (MCL § 750.529a), Conspiracy to Commit Carjacking (MCL § 750.157a), Kidnapping (MCL § 750.349), Conspiracy to Commit Kidnapping, and Felony Firearm (MCL § 750.227b). (Tr. 12-16-10, 96-99).

On February 3, 2011, Judge Druzinski sentenced Taylor to a term of life imprisonment without the possibility of parole on his First-Degree Felony Murder conviction, terms of 25 years to 50 years imprisonment on the Carjacking, Conspiracy to Commit Carjacking, Kidnapping, and

Conspiracy to Commit Kidnapping convictions, and two years imprisonment on the Felony Firearm conviction. (Tr. 2-3-11, 7-9).

Taylor appealed as of right. The Michigan Court of Appeals (“Court of Appeals”) affirmed his convictions, but vacated Judge Druzinski’s sentence on Taylor’s conviction for First-Degree Felony Murder and remanded for resentencing consistent with *Miller v. Alabama*, 132 SCt 2455; 183 LEd2d 407 (2012) and *People v. Carp*, 298 Mich App 472; 828 NW2d 685 (2012) (affirmed at 496 Mich 440; 852 NW2d 801 (2014)). See Opinion (3/21/13)- COA No. 303208.

In early 2014, the Michigan Legislature passed MCL § 769.25, which took effect on March 4, 2014. In April of 2014, the prosecution filed a motion pursuant to MCL § 769.25(3) requesting imposition of a sentence of life imprisonment without the possibility of parole on the defendant’s First-Degree Felony Murder conviction. Judge Druzinski conduct a hearing in late October of 2014. On January 6, 2015, Judge Druzinski sentenced Taylor to life imprisonment without the possibility of parole. See Opinion and Order- Macomb CC No. 09-5244-FC. Taylor now appeals as of right.

Taylor appealed as of right. The Court of Appeals affirmed Judge Druzinski’s sentence in a per curiam opinion. See Opinion (9/22/16)- COA No. 325834. He now seeks leave to appeal with the Supreme Court.

ISSUE I

THE TRIAL COURT PROPERLY WEIGHED THE FACTORS ENUNCIATED IN *MILLER V. ALABAMA* AND MCL § 769.25 IN DETERMINING THAT THE DEFENDANT IS THE RARE JUVENILE OFFENDER WHOSE CRIME REFLECTS IRREPARABLE CORRUPTION AND, THUS, DID NOT ERR IN SENTENCING THE DEFENDANT TO A TERM OF LIFE IMPRISONMENT WITHOUT PAROLE FOR HIS CONVICTION FOR FIRST-DEGREE FELONY MURDER.

STANDARD OF REVIEW

An appellate court reviews findings of fact by a trial court for clear error. *People v. Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008). An appellate court reviews issues of statutory interpretation de novo. *People v. Idziak*, 484 Mich 549, 553; 773 NW2d 616 (2009). Questions of constitutional law are reviewed de novo. *People v. LeBlanc*, 465 Mich 575, 579; 640 NW2d 246, 249 (2002).

ARGUMENT

The Court of appeals remanded this case back to the trial court for resentencing in the wake of the United States Supreme Court's decision in *Miller v. Alabama*, 132 SCt 2455; 183 LEd2d 407 (2012) and the Court of Appeals' decision in *People v. Carp*, Mich App 298 Mich App 472; 828 NW2d 685 (2012) (affirmed at 496 Mich 440; 852 NW2d 801 (2014)). See Opinion (3/21/13)- COA No. 303208.

In *Miller*, supra at 2467-2475, the United States Supreme Court held that mandatory life sentences without the possibility of parole for individuals under the age of 18 were “cruel and unusual” and violated the Eighth Amendment to the United States Constitution. The *Miller* Court observed:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. 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. 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. 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. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it. *Id.* at 2468.

The Court in *Miller*, however, rejected arguments for a categorical bar to sentencing juveniles to life in prison without parole, observing that it did not “foreclose a sentencer’s ability to make that judgment in homicide cases.” *Id.* at 2469. Instead, the opinion emphasized that its holding served to “mandate[] only that a sentence follow a certain process—

considering an offender’s youth and attendant characteristics—before imposing a particular penalty.” *Id.* at 2471.

The Court of Appeals subsequently addressed *Miller* as it applied to Michigan’s sentencing scheme in *People v. Carp*, 298 Mich App 472; 828 NW2d 685 (2012). In *Carp*, *supra* at 531, the Court of Appeals held that MCL § 791.234(6)(a), which provides that a prisoner sentenced to life imprisonment for First-Degree Murder “is not eligible for parole,” was unconstitutional “as written and as applied to juvenile offenders convicted of homicide.” According to the *Carp* Court, the statute “fail[ed] to acknowledge a sentencing court’s discretion to determine that a convicted juvenile homicide offender may be eligible for parole. *Id.* Ultimately, the Court of Appeals in *Carp* directed that a trial court, in sentencing a juvenile convicted of First-Degree Murder, must “evaluate and review those characteristics of youth and the circumstances of the offense as delineated in *Miller* and this opinion in determining whether following the imposition of a life sentence the juvenile is to be deemed eligible or not eligible for parole.” *Id.* at 538.

After the decision in *Carp*, the Michigan Legislature passed MCL § 769.25, which took effect on March 4, 2014. The statute, in part, applies to criminal defendants who were less than 18 years of age at the time he or she committed an offense punishable by life imprisonment without the possibility of parole before the act’s effective date and “[o]n June 25, 2012 the case was pending in the trial court or the applicable time

periods for direct appellate review by state or federal courts have not expired.” MCL § 769.25(1)(b)(ii). Moreover, the statute provides that “[i]f the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described under subsection (1)(b), the prosecuting attorney shall file the motion within 90 days after the effective date of the amendatory act that added this section.” Further, the statute indicates that if the assistant prosecuting attorney files such a motion: “the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, the trial court shall consider the factors listed in *Miller v. Alabama*, 576 US ___; 183 L Ed 2d 407; 132 S Ct 2455 (2012), and may consider any other criteria relevant to its decision, including the individual’s record while incarcerated.” MCL § 769.25(6). Finally, the statute states that at the sentencing hearing, “the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court’s reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing.” MCL § 769.25(7).

Finally, this Court weighed in on this issue in *People v. Carp*, 496 Mich 440; 852 NW2d 801 (2014), affirming the decision in the Court of Appeals. In addition, however, this Court, echoing language in *Miller* itself, emphasized that neither the Eighth Amendment to the United States Constitution nor the Michigan Constitution categorically bars a

life-without-parole sentence for juvenile homicide offenders, even if that juvenile was convicted on an aiding and abetting theory. *Id.* at 528.

Against this backdrop, Judge Druzinski held a three-day hearing in October of 2014. In early January of 2015, Judge Druzinski ruled:

The Court has carefully considered the various factors set forth in the [the] Supreme Court's decision in *Miller*. The Court has reviewed testimony presented at the resentencing hearing, and the exhibits presented. Having done so, the Court is satisfied that defendant's case presents precisely what the Supreme Court characterized as the "rare juvenile offender whose crime reflects irreparable corruption." *Roper v. Simmons*, 543 US 551, 573; 125 SCt 1183; 161 LEd2d 1 (2004). Based on the foregoing, the Court finds that defendant is properly sentenced to life in prison without the possibility of parole. See Opinion (1/6/15), 7- Macomb CC No. 09-5243-FC.

Given the appellate record, Judge Druzinski did not err in resentencing the defendant to term of life imprisonment without the possibility of parole on his conviction for First-Degree Felony Murder.

A. Chronological Age and Hallmark Features

In its seminal decision in *Miller, supra* at 2468, the United States Supreme Court decided that state criminal sentencing schemes that mandate sentences of life imprisonment without the possibility of parole amount to unconstitutional cruel and unusual punishment, noting, in part, that such statutes "preclude[] consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate the risks and consequences." The *Miller* Court

provided a bright-line in considering the defendant's chronological age and his juvenile psychological disposition—18 years old. Although the defense presented expert testimony at the resentencing hearing suggesting that prefrontal cortex development continues for individuals into their 20s, trial courts applying the *Miller* factors are confined by the 18-year age limit. For that reason, this expert testimony is of limited utility at a *Miller* hearing, where every defendant's limbic system will be overly active and every defendant's prefrontal cortex will be developing.

Here, the defendant was 16 years and ten months when he and his co-defendant ruthlessly executed Matthew Landry in a secluded Detroit drug den several hours after abducting him after they had methodically used their victim to obtain cash and a vehicle. By contrast, as Judge Druzinski observed, *Miller* itself “dealt with juvenile defendants who were a mere 14-years old at the time of their offenses, a far cry from this case.” See Opinion (1/6/15), 7- Macomb CC No. 09-5243-FC. The defense introduced no testimony or evidence at the resentencing hearing demonstrating that the defendant was unusually immature or impetuous for a nearly-18 year old. Instead, as Judge Druzinski wrote, the developmental disconnect between [the defendant's] prefrontal cortex and his limbic system was not much more pronounced than that of an 18 year old.” See Opinion (1/66/15), 4- Macomb CC No. 09-5243-FC. Working within *Miller's* framework, Judge Druzinski did not err in concluding that “she was not convinced that this factor mitigates against

a sentence of life imprisonment of parole.” See Opinion (1/6/15), 7-Macomb CC No. 09-5243-FC.

B. Family and Home Environment

Also in *Miller, supra* at 2468, the United States Supreme Court observed that such mandatory sentencing schemes for juveniles “prevent[] taking into account the family and home environment that surrounds him—and from he cannot usually extricate himself—no matter how brutal or dysfunctional.” Here, Judge Druzinski noted that the evidence at the resentencing hearing was uncontroverted that the “defendant’s family and home environment was far from optimal.” See Opinion (1/6/15), 5- Macomb CC No. 09-5243-FC. For this reason, she determined that “this factor could arguably favor some leniency for defendant.” See Opinion (1/6/15), 5- Macomb CC No. 09-5243-FC.

C. Circumstances of the Homicide Offense

The *Miller* court, in holding that mandatorily sentencing a juvenile to life imprisonment without the possibility of parole violated the Eight Amendment, observed that such a scheme “neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and way familial and peer pressures may have affected him.” *Id.* at 2468. As set forth in more detail in the COUNTERSTATEMENT OF FACTS, the defendant, along with his co-defendant, brazenly kidnapped and carjacked Matthew Landry in broad daylight in Eastpointe and, several hours later, brutally executed him inside a burnt-out drug in

Detroit. Further, nothing in the testimony or evidence from the resentencing hearing suggested that the defendant's crime spree was the result of familial or peer pressure. See Opinion (1/6/15), 5- Macomb CC No. 09-5243-FC.

As Judge Druzinski wrote, "this factor weighs in favor of finding that defendant's sentence of life without the possibility of parole is appropriate." See Opinion (1/6/15), 5- Macomb CC No. 09-5243-FC.

Judge Druzinski stated:

. . . Defendant drove Matt Landry around town for hours and facilitated his murder in cold b[lood]. While the evidence did not establish that defendant literally pulled the trigger, his actions were still quite culpable. There is no evidence that defendant did not expect the murder to occur, or that he attempted to remove himself from the situation or dissuade his codefendant from his course of action. To the contrary, the evidence suggests that the defendant was willfully engaged in criminal activity which led to Matthew Landry's death. See Opinion (1/6/15), 6- Macomb CC No. 09-5243-FC.

Perhaps most notably, Michael Sadur, the Macomb County Jail inmate who spoke with the defendant in the Macomb County Jail as the defendant awaited trial testified that the defendant and his co-defendant told Matthew Landry "what time it was," meaning both defendant and his co-defendant intended to kill him. (Tr. 12-15-10, 49). Given these facts, Judge Druzinski did not err in finding "that there is nothing in the facts and circumstances of the crime which would warrant anything less than

life in prison without the possibility of parole.” See Opinion (1/6/15), 6-Macomb CC No. 09-5243-FC.

D. Incapacities of Youth

In *Miller, supra* at 2468, the United States Supreme Court, in striking down sentencing schemes that mandate life in prison without the possibility of parole for juvenile offenders, observed that such systems “ignore[] that [the defendant] might have been charged and convicted of a lesser offense if not for the 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.” Here, at the resentencing hearing, the defense did not even contest that the defendant may have been charged with a lesser crime if not for his age. As Judge Druzinski concluded, there is “no evidence that at the incapacities of youth caused defendant to be unable to participate in his defense . . . [n]or is there any evidence that he implicated himself due to youthful incapacities.” See Opinion (1/6/15), 6- Macomb CC No. 09-5243-FC. As a result, she did not err in determining that this *Miller* factor “favors sentencing the defendant to life without the possibility of parole.” See Opinion (1/6/15), 6- Macomb CC No. 09-5243-FC.

E. Possibility of Rehabilitation

Finally, *Miller, supra* at 2468, in ruling that a juvenile offender may not be automatically sentenced to life without the possibility of parole

without offending the Eighth Amendment, stated that “this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.” Here, the defendant had a lengthy record as a juvenile, starting with truancies and leading up to a robbery charge prior to the murder of Matthew Landry. (Tr. 10-23-14, 24). More significantly, the utter depravity of the defendant’s vicious crime spree, outlined in more detail in the COUNTERSTATEMENT OF FACTS, suggests that the defendant is wholly incapable of rehabilitation. As the assistant prosecuting attorney observed in his closing argument:

And I would dare to disagree with Mr. Simon when he says that Mr. Taylor’s involvement was merely peripheral. Mike Sedor (ph.) testified at trial, which was held in this Court. He was the person housed next to Mr. Taylor at the jail. These were his specific statements and testimony.

That Mr. Taylor told him that he and Masalmani drove to Eastpointe to look to hit a lick. And we know what that means, to commit a crime. And they came upon Landry because as they were there near Quizno’s they were intrigued by the sound system in his car. When Mr. Masalmani starts the assault on Matt, when he was not having any success getting him into the trunk because the stereo and the speakers in the trunk were too large, that’s when Taylor participated, grabbed him and helped put him in the back seat.

He then stoically told Mr. Sedor that he could see Matt was nervous and upset and to calm him down he gave him a cigarette because Matt knew what time it was. And when asked to say what that means, because Taylor told him he, Matt, knew he was going to die. And that was early on. That’s still before the ten hours.

And it was Mr. Taylor who indicated to Mr. Sedor that when they walked Matt into this abandoned house it was Mr. Taylor who punched first.

And probably one of the most telling things of this whole case is that immediately after Mr. Masalmani shot Matt he told Sedor that he asked Masalmani for that gun because he didn't get any money from the ATM, and, therefore, if he could get the gun he could sell the gun for money." (Tr. 10-24-15, 14-15).

As the assistant prosecuting attorney observed, this conduct demonstrates the extent of the defendant's amorality and irreparable corruption.

Moreover, the relevant statute, MCL § 769.25(6), provides that, at a resentencing hearing, the trial court must consider the *Miller* factors, as well as "any other criteria relevant to its decision, including the individual's record while incarcerated." In the case at bar, the appellate record reflects that the defendant, during his short time in prison, had accumulated five major misconducts. (Tr. 10-24-15, 7).

Significantly, the defense at the resentencing hearing was entirely unable to introduce any testimony or evidence tending to show that the defendant had any real prospects for rehabilitation. Dr. Daniel Keating ("Dr. Keating"), the pediatric psychologist who testified for the co-defendant at the resentencing hearing, declined to make any prediction for the defendant regarding his rehabilitation. (Tr. 10-21-14, 43-47, 55-57). Even so, as Judge Druzinski noted in her ruling, Dr. Keating "acknowledged that the rehabilitation challenges are certainly higher in

the case of a juvenile who is capable of pulling a trigger” and that “the worse the circumstances, the more likely it is for nonresilience, no rehabilitation to be the case.” See Opinion (1/6/15), 6- Macomb CC No. 09-5243-FC. Further, Kathleen Schaefer, a former probation and parole agent who testified for the defendant, conceded that “there is no test that can indicate whether a person can be rehabilitated.” See Opinion (1/6/15), 7- Macomb CC No. 09-5243-FC.

Given the foregoing, Judge Druzinski did not err in concluding that “this factor favors a sentence of life without the possibility of parole.” See Opinion (1/6/15), 7- Macomb CC No. 09-5243-FC. Judge Druzinski stated:

. . . The difficulty of defendant’s upbringing is the only factor which could be said to weigh in favor of an indeterminate sentence, but this factor also suggests that defendant’s prospects for rehabilitation are minimal. It is particularly telling that the defendant has shown any signs of rehabilitation to date. Nor is there even any evidence suggesting that defendant has accepted any responsibility for his part in the offense. That notwithstanding the fact that five years have passed since defendant committed his crime. See Opinion (1/6/15), 7- Macomb CC No. 09-5243-FC.

Under the circumstances, the appellate record fully supports Judge Druzinski’s determination that the “defendant’s prospects for rehabilitation are negligible.” See Opinion (1/6/15), 7- Macomb CC No. 09-5243-FC.

In the end, Judge Druzinski, who studiously considered the factors set forth in *Miller*, did not err in finding that the “defendant’s case presents precisely what the [United States] Supreme Court characterized as the ‘rare juvenile offender whose crime reflects irreparable corruption.’” See Opinion (1/6/15), 7- Macomb CC No. 09-5243-FC. Judge Druzinski’s sentence of life imprisonment without the possibility of parole on the defendant’s conviction for First-Degree Felony Murder should not be disturbed.

ISSUE II

THE TRIAL COURT DID NOT COMMIT PLAIN ERROR IN SENTENCING THE DEFENDANT TO A TERM OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE ON HIS FIRST-DEGREE FELONY MURDER CONVICTION WITHOUT EMPANELING A JURY.

STANDARD OF REVIEW

An appellate court reviews questions of constitutional law de novo. *People v. Vaughn*, 491 Mich 642, 650; 821 NW2d 288 (2012). Here, however, the defendant did not assert his Sixth Amendment right to a jury trial at the resentencing hearing in October of 2014. As a result, the defendant's unpreserved claim of constitutional error is reviewable for plain error affecting his substantial rights. *People v. Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

ARGUMENT

As indicated, the trial court, in October of 2014, conducted a resentencing hearing pursuant to *Miller* and MCL § 769.25, ultimately, in January of 2015, sentencing the defendant to a term of life imprisonment without the possibility of parole. During these proceedings, the defendant never asked that the trial court empanel a jury to make this determination. Regardless, however, the Court of Appeals recently held in a conflict resolution panel in *People v. Hyatt*, ___ Mich App ___; ___ NW2d ___ (2016), that *Miller's* individualized sentencing mandate, as incorporated by MCL § 769.25, did not offend the Sixth Amendment and

that a judge, not a jury, was to make the determination of whether to impose a life-without-parole sentence or a term-of-years sentence under MCL § 769.25 to a juvenile convicted of First-Degree Murder.

RELIEF REQUESTED

The Plaintiff-Appellee requests that this Honorable Court **DENY** the Defendant-Appellant's application for leave to appeal and **AFFIRM** the judgment of conviction.

Respectfully submitted,

Eric J. Smith P46186
Prosecuting Attorney
Macomb County, Michigan
By:

/s/ Joshua D. Abbott

Joshua D. Abbott P53528
Chief Appellate Attorney

DATED: January 4, 2017