

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CRIMINAL DIVISION "R"

STATE OF FLORIDA,

CASE NO. 88CF4700AMB

vs.

GEORGE GARVIN WALLACE,  
Defendant.

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**BENCH MEMORANDUM OF FACTS AND LAW**

The Defendant, George Wallace, through counsel, submits this memorandum of facts and law concerning the offense at bar, juvenile sentencing jurisprudence, and section 921.1401, Florida Statutes, and states as follows:

**SUMMARY OF FACTS**

At the time of his death, victim Robert Jankowski was working as a taxi driver. *See* offense narrative at 1. During the early hours of March 11, 1988, he picked up a fare, and one of the two passengers was 17-year-old George Wallace. T327. The victim dropped them off in front of J.B.'s Market in the Cherry Hill neighborhood of Boynton Beach. T321. Cherry Hill was a violent area flooded with drugs. T339, 347, 380.

A couple of people were standing outside J.B.'s Market when Wallace got out of the cab, including Maurice Poole and his brother Neal Vincent Poole. T321-22. Neal Vincent Poole was carrying a loaded gun in his back, which he got earlier from his brother Maurice. T327-28.

Later, when Wallace confessed to the police, he stated that, after getting out of the car, he got a handgun from Neal Vincent Poole, and shot into the taxi cab after he heard someone yell, "It's a rip." *See* offense narrative at 2; interrogation cassette 1. Maurice Poole had known Wallace for 8-9 years, T349, and Neal Vincent Poole had known George Wallace for 4-5 years,

T347, and both immediately knew George Wallace was high. T387. Neal Vincent Poole took the gun from Wallace to his home. T331. Wallace left the scene on foot. T333. The police retrieved the gun from the Poole brothers' home the next day. T337.

After being shot, victim Jankowski kept driving, and came to a stop near the intersection of W. Seacrest Boulevard and Boynton Beach Boulevard. *See* offense narrative at 2. He died at the hospital a few hours later. *Id.*

Officers quickly identified an eyewitness who saw the shooting. Less than three hours after the shooting, George Wallace and his aunt showed up at police headquarters. George Wallace was interrogated and he confessed.

Wallace was found guilty as charged by a jury. The late Honorable Marvin Mounts sentenced him to the statutorily required life sentence, followed by 15 years for the remaining counts. George Wallace has been incarcerated for 30 years to date. *See* sentencing order.

#### **JUVENILE SENTENCING JURISPRUDENCE**

In *Miller v. Alabama*, 567 U.S. 460 (2012), the U.S. Supreme Court struck down mandatory life sentences for juveniles who commit homicides as a violation of the Eighth Amendment prohibition against Cruel and Unusual Punishment. The Court determined that “children are constitutionally different from adults for purposes of sentencing [] [b]ecause juveniles have diminished culpability and greater prospects for reform,” 567 U.S. at 471.

Following *Miller*, juvenile homicide offenders must have individualized sentencing hearings in which courts are “require[d] [] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 479. Juvenile homicide offenders must be afforded a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Id.*

*Miller* did not categorically ban life sentences. But, *Miller* states that the only juvenile murder offenders deserving of a life sentence are the “worst of the worst” who are “irreparably corrupt.” *Miller*, 567 U.S. at 479-80. The *Miller* Court said that the “appropriate occasions for sentencing juveniles to this harshest possible penalty [would] be uncommon” and “rare.” *Id.* at 479-80. Four years later, the U.S. Supreme Court issued *Montgomery v. Louisiana*, 136 S.Ct 718 (2016), which held that *Miller* applied retroactively. The Court said that a life sentence is “justified” for “the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible.” *Id.* at 733-34 (emphasis added).

#### **MILLER FACTORS IN SECTION 921.1401, FLORIDA STATUTES**

To comply with the mandates of the U.S. Supreme Court, the Florida Legislature enacted Chapter 2014-220, Laws of Florida, in which the *Miller* factors were codified in section 921.1401. This statute enumerates youth-related factors that must be considered by the sentencing court:

In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:

- (a) The nature and circumstances of the offense committed by the defendant.
- (b) The effect of the crime on the victim's family and on the community.
- (c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
- (d) The defendant's background, including his or her family, home, and community environment.

- (e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
- (f) The extent of the defendant's participation in the offense.
- (g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.
- (h) The nature and extent of the defendant's prior criminal history.
- (i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
- (j) The possibility of rehabilitating the defendant.

Factors (c)-(e), (g), (i) and (j) are discussed further below.

**Factor (c): The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.**

Age is not a sliding scale that weighs against the juvenile offender the closer he is to turning 18 years of age at the time of the offense. *Miller* referred to "chronological age" in identifying the need to distinguish the criminal sentencing of children from adults; it did not suggest that a seventeen-year-old child is more deserving of adult punishment than a sixteen-year-old child, or a fifteen-year-old child more deserving than a fourteen-year-old child. *See Miller*, 567 U.S. at 476. It referred to "chronological age" as a line that distinguishes children from adults for the purposes of categorization. *See id.*

Depending on the juvenile's maturity, intellectual capacity, and mental and emotional health at the time of the offense, a 17-year-old may very well be less mature than, say, a 14-year old. *Miller* quoted from *Eddings v. Oklahoma*, in which a 16-year-old shot a police officer point-blank and killed him: "[J]ust as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a

youthful defendant be duly considered” in assessing his culpability. 455 U.S. 104, 116 (1982). For instance, substance abuse in adolescents is frequently linked to mental health problems such as depression, developmental lags, apathy, withdrawal, and other psychosocial dysfunctions.<sup>1</sup>

**Factor (d): The defendant's background, including his or her family, home, and community environment.**

Children are particularly vulnerable to their surroundings. *See Roper v. Simmons*, 543 U.S. 551, 569-70 (2005). Adolescents are more susceptible than adults to the negative influences of their environment, and their actions are shaped directly by family and peers in ways that adults’ are not. *See* Amicus Brief for the American Psychological Association, American Psychiatric Association, and the National Association of Social Workers in *Miller v. Alabama* (hereinafter “APA Amicus Brief”) (internal citations omitted unless otherwise noted) at 15. For example, substance abuse and juvenile delinquency are strongly correlated. The likelihood that an adolescent will abuse drugs increases when there is drug use by a parent or household member. The latter is something outside an adolescent’s control.<sup>2</sup>

**Factor (e): The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.**

Youth is a “time of immaturity, irresponsibility, impetuosity, and recklessness.” *Miller*, 567 U.S. at 476 (quoting *Johnson v. Texas*, 590 U.S. 350, 368). Consequently, adolescents are overrepresented statistically in virtually every category of reckless behavior. *See* APA Amicus Brief at 7 (citations omitted). In fact, such behavior is a virtually normative characteristic of adolescent development. Numerous studies show that it is “statistically aberrant

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<sup>1</sup> *See* “Consequences of youth substance abuse,” DOJ Office of Juvenile justice and Delinquency Prevention, available at: <https://www.ojjdp.gov/pubs/drugid/ration-03.html>

<sup>2</sup> *Id.*

to refrain from crime during adolescence.” *Id.* Criminal behavior, including violent offenses, peak sharply in adolescence and drops off in adulthood. *Id.* at 7-8.

Juveniles brains are still developing throughout adolescence and young adulthood in precisely the areas most involved in impulse control, planning, and self-regulation, *id.* at 9-10. They are primed for spur-of-the-moment, reward- and sensation-seeking behavior without offsetting, adult sensitivities to risk and long-term consequences, *see id.* at 9-10,12, which is combined with a lack of experience navigating changes in social and environmental contexts, *see id.*

**Factor (i): The effect, if any, of the characteristics attributable to the defendant’s youth on the defendant’s judgment.**

Some childhood events can disrupt neurobiological development in the areas of the brain that control judgment and other executive functions. Actual structural changes to the developing brain can occur.<sup>3</sup> The Center for Disease Control identified the following risk factors: physical, emotional and sexual abuse, physical and emotional neglect, household mental illness, exposure to domestic violence, parental separation or divorce, incarcerated relatives, and household substance abuse.<sup>4</sup>

**Factor (j): The possibility of rehabilitating the defendant.**

Because children are uniquely capable of rehabilitation in ways that adults are not, the Supreme Courts of the United States and Florida have forecasted that occasions of sentencing juveniles to the harshest possible sentence of life in prison would be rare. *See Montgomery*, 136 S.Ct. at 733-34; *Landrum v. State*, 192 So. 3d 459, 460 (Fla. 2016). A defining aspect of

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<sup>3</sup> *See, e.g.*, Sansone, R.A. et al., “Childhood Trauma and Emotional Reactivity to Hypothetical Media Events: A Pilot Study,” *The Primary Care Companion to the Journal of Clinical Psychiatry*, 12(4) 2010.

<sup>4</sup> *See* Center for Disease Control and Prevention, Adverse Childhood Experiences (ACEs), available at: <https://www.cdc.gov/violenceprevention/acestudy/index.html>

adolescence is that character is not yet fully formed. Signature qualities of this stage in life—including their susceptibility to peer influence and weakness in self-regulation—reflect an incomplete identity or “sense of self.” APA Amicus Brief at 19. Juveniles do typically outgrow their antisocial behavior because such conduct often “results from experimentation with risky behavior and not from a deep-seated moral deficiency reflective of ‘bad’ character.” *Id.* at 21. The vast majority of juvenile offenders cease criminal conduct as they mature. *Id.* (internal quotations omitted).

The behavior of juveniles who will and will not continue with criminal conduct into adulthood is often indistinguishable during adolescence. *Id.* at 23 (internal quotations omitted). The only infallible way to determine whether a particular juvenile is capable of rehabilitation is to wait and see what becomes of him as an adult.

WHEREFORE, George Wallace respectfully submits this bench memorandum of facts and law.

Respectfully submitted,

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**Certificate of Service**

I HEREBY CERTIFY that a true and correct copy hereof has been served to Reid Scott, Assistant State Attorney, Division "R" OR the Assistant State Attorney currently assigned in STAC at the time of filing, via the STAC case management exchange on this 14th day of December, 2018.



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